

IN-DEPTH

# Public-Private Partnerships

INDIA



LEXOLOGY

# Public-Private Partnerships

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In-Depth: Public-Private Partnerships (formerly The Public-Private Partnership Law Review) is an overview of the legal and regulatory regimes governing public-private partnership (PPP) projects in key jurisdictions worldwide. Focusing on recent trends and developments, it examines the essential aspects of PPP projects for the provision of public services and infrastructure – including primary contractual requirements; bidding and award procedures; financing; disputes; and much more.

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# India

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## Introduction

Public-private partnerships (PPPs) have been utilised as a mode of development for almost 30 years. Despite many challenges, successive governments have utilised private sector participation for the development of large infrastructure projects.

Among the first sectors to open up to such private participation was the roads and highways sector, with the Delhi Noida tollway bridge being an early example of such private sector participation. Despite setbacks in the 1990s, such as the failure of the Enron-backed Dabhol power plant in the state of Maharashtra, PPPs really came to the fore in the early 2000s. In 2000, the Indian Electricity Act was passed, which overhauled the legal framework of the Indian power sector, facilitating private investment in power generating plants and moving to a scientific method for tariff determination. The early 2000s also saw the expansion and development of the Delhi and Mumbai Airports, India's two largest airports, through PPPs.

While private participation in some infrastructure sectors such as railways and inland waterways continues to be a challenge, PPP models have been applied to a wide range of sectors in India, including roads and highways, airports, ports, power, transport and healthcare. Traditionally, sectors with a strong track record of PPP projects include roads and highways, power and airports.

Recent government policy indicates that PPPs will continue to expand in other sectors such as, inter alia, medical education and electric vehicles.

## Year in review

The government has undertaken various measures to promote PPPs in India in the past few years. In May 2020, the government launched the Atmanirbhar Bharat Abhiyan (Self-Reliant India Mission) economic package to boost the country's economy amid the pandemic. As part of the package, the government announced measures to support the infrastructure sector. Adopting a forward-looking approach, the government also launched the National Infrastructure Pipeline (NIP), with projected infrastructure investment of around US\$1.5 trillion from 2020 to 2025, to provide high-quality infrastructure across the country with the aim of providing funding and support for projects in various sectors including energy, roads, railways and urban infrastructure. The NIP also includes provisions for the development of new PPP projects and the expansion of existing projects.

In December 2020, the Department of Economic Affairs introduced Guidelines for Financial Support to Public Private Partnerships in Infrastructure (the VGF Scheme) to cover gaps in financial viability in PPP projects.

In 2021, the National Monetisation Pipeline was launched by the government to boost public sector assets and infrastructure through the PPP model. Under this scheme, a list of 6,000 brownfield public sector assets and infrastructure projects across various sectors such as roads, airports, railways and ports were identified for monetisation, including through PPPs. In November 2022, the central government rolled out the India Infrastructure Project Development Fund Scheme (the Infrastructure Scheme) with the objective of

funding project-sponsoring authorities to meet the project development costs for launching PPP projects in the country.

The central and state public authorities have launched several large PPP projects in the past year. Some of the major projects are as follows.

1. The National Highways Authority of India (NHAI) has awarded the concession for the tolling, operations and maintenance of four highway bundles spanning across Rajasthan, Madhya Pradesh, Uttar Pradesh and Delhi, having a combined length of 673km, for 159.68 billion rupees.
2. JSW Infrastructure Limited has been awarded the development of a commercial port in Keni, Karnataka for an amount of 41.19 billion rupees by the government of Karnataka.
3. The National Highways Logistics Management has awarded a concession to GR Infraprojects Limited for development of a multi-modal logistics park in Indore on a design, build, finance, operate and transfer (DBFOT) basis, for an estimated amount of 7.6 billion rupees.

The VGF Scheme and the Infrastructure Scheme are expected to significantly boost the ability and willingness of project authorities to launch PPP projects.

### **Significant decisions**

One notable decision in the past year is the judgment of the Supreme Court in *Tata Motors v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others*,<sup>[1]</sup> where a three-judge bench of the Supreme Court upheld the principle that judicial authorities should exercise considerable restraint while exercising their powers of judicial review in deciding commercial and contractual matters, especially in cases of contracts requiring adjudication on technical issues. The Supreme Court held that any decisions of the court should be made with the public exchequer and public interest in mind. Acceptance of a tender should only be questioned in cases where something gross or hidden is revealed.

## **General framework**

### **Types of public-private partnership**

Traditionally, PPP projects in India were awarded on a design, build, finance, operate and transfer (DBFOT) model. However, more recently, project concessions have also been offered on operation and maintenance (O&M) models.

Road and highway concessions have traditionally seen the greatest variation in concession models, including build, operate and transfer (BOT), hybrid annuity mode (HAM), and toll, operate and transfer (TOT) models.

Another subset of PPP contracts leans towards traditional procurement models. This is most commonly seen in the power sector, where contracts are typically purely for the sale

and purchase of power. In recent years, the establishment of solar parks has also been utilised by project authorities.

In addition, there has been an increasing push for the introduction of electric vehicles in India. This has led to an increase in PPP projects for the procurement of electric buses, which are offered on a gross cost contract or a net cost contract basis.

## The authorities

There is no central principal regulatory body for PPPs in India. Many PPP projects in India are undertaken by public sector undertakings that have been set up for various sectors. For instance, the NHAI is the authority for the roads and highways sector, while the Airports Authority of India is responsible for airport projects and Solar Energy Corporation of India facilitates renewable energy projects. In other cases, concerned state ministries or departments may undertake PPP projects.

In certain sectors, regulatory authorities have been set up to exercise various functions, such as the Telecom Regulatory Authority of India for the telecommunication and broadcasting sector, the Airports Economic Regulatory Authority (AERA) for the airports sector, and the central and state electricity regulatory commissions (ERCs) for the power sector.

For central government projects above 1 billion rupees, approval of the Public Private Partnership Appraisal Committee (PPPAC) constituted by the government will need to be obtained by the project authorities prior to the launch of the PPP project. Smaller-value projects also require approval from different authorities depending on the project value.

Similarly, various state governments in India, pursuant to their respective PPP policies, have constituted committees and procedures for approving the launch of PPP projects. However, like the PPPAC, these appraisal committees are not regulatory bodies.

## General requirements for PPP contracts

### Central legislation

There is no specific central legislation governing PPPs in India. Provisions of the Constitution of India, as interpreted by the judiciary over the years, form the primary law to test government actions in PPP contracts.

In particular, Article 14 of the Constitution has been interpreted to impose certain standards on the government on issues that arise in PPPs in the procurement process, such as whether the process adopted, and decisions made by the state, are reasonable, rational, non-arbitrary and non-discriminatory. These principles have been used to test the award and performance of public contracts by the government. For example, in 2012, the Supreme Court of India cancelled the allocation of spectrum to private telecom operators on the grounds that a public auction had not been carried out while making the allocations, and that there was insufficient justification to demonstrate why a public auction should not have been carried out. Similarly, in 2016, the Allahabad High Court partly struck down the contract for the Delhi Noida tollway bridge, preventing the concessionaire from charging tolls for use of the bridge. The Court noted that the term of the concession was open-ended,

as it was to continue until the concessionaire made a certain actual return. The judges noted that 'this element of perpetuity in a public contract where the assets belonging to the state have been put in the hands of a public company (under PPP model) is bothering us'.

Guidance for central public authorities with respect to the setting of eligibility criteria comes from executive instructions from government authorities and departments, and through other executive guidance in the form of, inter alia, model agreements, manuals and guides.

The General Financial Rules 2017 (the GFR 2017) issued by the Ministry of Finance, Central Vigilance Commission (CVC) guidelines; the Department of Economic Affairs (DEA) PPP Guide; and the Manual for Procurement of Goods and the Manual for Procurement of Works (the Procurement Manuals) issued by the Department of Expenditure, Ministry of Finance outline factors that should be considered by a public authority in order to finalise eligibility criteria. These factors include, inter alia, a minimum level of experience, past performance, technical capability, manufacturing facilities and financial position. It is important to note, however, that these take the form of executive guidance, and not sources of law, and government action is exposed to scrutiny by courts on the basis of compliance with constitutional provisions and other applicable laws, whether or not such internal executive instruction and guidance or circulars issued by the CVC have been followed.

### **State legislation**

Some states in India have their own laws that regulate public procurement by the state government and its entities. For example, the states of Tamil Nadu, Karnataka, Rajasthan, Andhra Pradesh and Assam have laws on public procurement at state level. While even these can be questioned on the basis of constitutional principles, generally, these state laws codify the principles established by the courts under constitutional jurisprudence.

State legislation deals with, inter alia, the following key obligations for the procuring authority:

1. framing the eligibility criteria: typically, these provisions are aimed at prohibiting discrimination. These criteria also recognise exceptions such as:
  - promotion of domestic industry;
  - socioeconomic policy of the central government or state government; or
  - any other consideration in the public interest in furtherance of a notified policy of the central government or state government;
2. statutory restrictions on participation by entities: typically, these are:
  - entities that have not paid taxes;
  - entities that are insolvent, in receivership, bankrupt or being wound up; or
  - entities that themselves or their directors have been convicted of any criminal offence related to professional conduct;
3. conduct of the bidding process, including circumstances in which the bidding process may be cancelled;
- 4.

how the evaluation criteria should be determined: for example, the Assam procurement law provides that evaluation criteria may include the following:

- the price;
  - the time for delivery of goods or completion of works; and
  - the experience, reliability, professional and technical competence of the bidder. Further, the non-price criteria should be objective and quantifiable;
5. circumstances in which price negotiations can be undertaken; and
  6. maintenance of documents for audit or review purposes.

## Bidding and award procedure

Other than internal executive guidance and guidelines from court decisions, the CVC Guidelines and Procurement Manuals govern the bidding and award procedure that must be followed by a public authority or ministry before undertaking any PPP project. Further, several states such as Gujarat, Karnataka and Uttarakhand have come up with their own legal framework in consonance with these guidelines.

### Expressions of interest

In order to invite and assess expressions of interest (EOIs) from potential bidders and initiate the procurement process, an EOI is typically floated by a public authority or a statutory corporation, as the case may be. The EOI typically provides details of the project, a list of the goods or services required, terms and conditions of the contract, and qualification criteria for potential bidders. The EOI may also provide technical or financial requirements.

The EOI is not a binding document, and the submission of an EOI by a potential bidder does not make it compulsory for such bidder to submit a bid at a later stage.

### Requests for proposals and unsolicited proposals

#### Publication of requests for proposals

The Supreme Court of India has laid down that notifications for public auctions and tender invitations should be advertised in well-known dailies having wide circulation in the relevant locality with all relevant details such as, inter alia, the date, time and place of the auction or tender, the subject matter of the auction or tender, technical specifications, estimated cost and earnest money deposit.

Further, the CVC guidelines stipulate that in addition to publicising notifications for public auctions and tenders through newspapers and trade journals, such notifications, along with relevant auction or bid documents, should be published on the website of the concerned public authority.



The Procurement Manuals specify that the due date for opening the tender should be a minimum of 21 days after the date of advertisement of tenders on the website of the procuring entity.

Certain states have laid down detailed mechanisms for the publication of notices inviting tenders. For example, in the state of Tamil Nadu, a tender notice for a contract having an estimated value above 750 million rupees is required to be published in English in

- on the notice board of the procuring authority;
- in one regional newspaper;
- in two state-level newspapers;
- in one all-India level daily newspaper with wide circulation; and
- in any trade journal known for publication of notices inviting tenders.

Additionally, the invitation to tender shall, contain, inter alia:

1. the name and address of the procuring authority;
2. a summary of the principal required;
3. the terms and conditions of the procurement contract;
4. whether the bid procedure is to be conducted in a single stage or two stages;
5. the criteria and procedure for evaluating the qualification of bidders;
6. the price (if any) charged by the procuring entity;
7. the mode of payment;
8. the manner, place and deadline for the submission of bids; and
9. the time, date and place of the opening of bids.

### **Requests for proposals in an auction process**

In a two-stage bidding process, a request for proposal (RFP) is issued to interested applicants. Pursuant to the RFP, the applicants are invited to submit their financial bids, and the contract is awarded based on a comparison of financial bids.

In a single-stage bidding process, the public authority invites technical and financial bids together. Thereafter, the technical bids submitted in response to the RFP are evaluated, and the applicants who meet the minimum eligibility criteria on the basis of their technical qualifications are shortlisted. Subsequently, the financial bids of only such shortlisted bidders are opened and evaluated, and the contract is awarded on the basis of a comparison of such financial bids.

An RFP generally begins with an overview of the tendering authority and an introduction about the project for which it is inviting bids. This is followed by general instructions on the bidding process, such as the procedure for submission and evaluation of bids. The RFP also prescribes the eligibility and qualification requirements of the bidder that form the basis on which the contract is awarded.

### Other methods of inviting offers

The Supreme Court has held that when undertaking a public procurement, while the normal method is an auction or a call for tenders, there may be exceptional situations where adopting such a course of action may not be insisted upon. What has to be seen in such cases is only whether the action was fair, and that what has been done is the best available arrangement under the circumstances.

The GFR 2017 provide that contracts may be awarded on a nomination basis in the following circumstances:

1. it is in the knowledge of the awarding authority that only a particular firm manufactures the required goods;
2. in a case of emergency; or
3. for the standardisation of machinery or spare parts to be compatible with existing sets of equipment.

The Procurement Manuals state that direct procurements should be undertaken only for the smallest value procurements that do not exceed the threshold of 25,000 rupees, in the case of an urgent requirement of goods or works that have standard specifications, such as those required for the day-to-day needs of the procuring entities and on-field units.

The CVC guidelines provide that in exceptional events, if procurement is undertaken on a nomination basis by a public sector entity, the following should be observed by such entity:

1. all works awarded on a nomination basis should be brought to the notice of the board of directors of the relevant public sector entity for scrutiny and vetting post facto;
2. the reports relating to such awards will be submitted to the board of directors of the public sector entity every quarter; and
3. the audit committee of the board of directors of the public sector entity should check at least 10 per cent of such cases.

Certain state procurement laws provide that contracts may be awarded on a nomination basis, inter alia, under the following circumstances:

1. the subject matter of procurement is available only from a particular entity;
2. in the case of an emergency;
3. for the standardisation of goods or for compatibility with existing goods, equipment, technology or services;
4. there is an existing contract for the subject matter of procurement that can be extended for additional goods, works or services, and the procuring entity is satisfied that no advantage would be obtained by further competition. However, the existing contract is required to have a provision enabling such extension;
- 5.

if the procuring entity is of the view that any other mode of procurement is not appropriate in the interest of national security; or

6. the subject matter is of an artistic nature.

There is no formal mechanism for a private party to initiate a PPP project; however, it is not unusual for private participants to approach public authorities with proposals that the public authority may use as a basis to commence a PPP project.

## Evaluation and grant

The evaluation criteria for each project are finalised by the relevant project authority in its discretion in light of the nature, size, objective and complexity of the concerned project. With respect to states that have enacted procurement laws, the laws themselves set out the parameters that should be kept in mind while formulating the evaluation criteria.

The Supreme Court of India has held that evaluating tenders and awarding contracts is essentially a commercial function, and courts will not generally review the commercial considerations. However, evaluation criteria and tender procedures in general can be reviewed on other grounds, such as, *inter alia*:

1. whether the process adopted or decision made by the authority is *mala fide* or intended to favour someone;
2. whether the process adopted or decision made is so arbitrary and irrational as to be one that no responsible authority acting reasonably and in accordance with the relevant law could have reached; or
3. whether the public interest is affected.

Further, the Supreme Court has also held that price may not always be the sole criterion for awarding a contract; the past record of tenderers, the quality of the goods or services they offer, and assessing such quality on the basis of past performance of the tenderer, its market reputation and so on, all play an important role in deciding whom a contract should be awarded to. The Supreme Court has further held that at times, a higher price for a much better quality of work can be legitimately paid to secure the proper performance of the contract and the good quality of work, which is as much in the public interest as is a low price.

The GFR 2017, CVC circulars, the DEA PPP Guide, Procurement Manuals and other model documents provide that the evaluation criteria that a public authority will adopt to evaluate bids is required to be explicitly stated in the bid documents, and that the acceptance or rejection of any bid should be on justified grounds as per the criteria laid down.

CVC guidelines strictly prohibit the awarding authority from undertaking negotiations with the bidders after completion of the bid process. As an exception to this norm, the CVC prescribes that the awarding authority may undertake negotiations with the lowest bidder (L1) (i.e., the best bid) only under exceptional circumstances, which include procurement of proprietary items, procurement of items with limited sources of supply, procurement of items where there is suspicion of a cartel formation and urgency in procurement. Where the

procurement is done under a situation of urgency, the awarding authority should undertake negotiations with the L1 for the supply of a bare minimum quantity of such item, and the balancing quantity should be procured expeditiously through a re-tender, following the normal tender process.

Similarly, some state laws also prescribe that no price negotiations can be undertaken by the awarding authority, except under certain exceptional circumstances specified in such laws. For example, under Tamil Nadu's procurement law, if the awarding authority is of the view that the price quoted by the L1 is higher than the prevailing market rate, the awarding authority may negotiate for a reduction in price; and in cases where the quantity offered by the L1 is less than the total quantity required, the awarding authority may, after placing an order for the entire quantity proposed to be supplied by the L1, negotiate with the next lowest bidder to match the price offered by the L1 and place an order for the balance quantity required.

To maintain transparency, typically the financial bids for a procurement process are opened in the presence of such bidders whose financial bids are being evaluated. The GFR 2017 prescribe that the name of the successful bidder should be published on the Central Public Procurement Portal, the website of the public authority, and the notice board or bulletin of the public authority.

Upon acceptance of a bid, certain state procurement laws require that the procuring authority communicate such decision to all participating bidders and also publish the same on the relevant state's procurement portal.

## Contracts

### Payment

PPP contracts in different sectors provide for varied sources of revenue and forms of remuneration for private parties based on the PPP model. The contract provides the details of revenue sharing and the allocation to the state authority and the private party respectively.

There are broadly three methods of revenue collection under PPP contracts, as detailed below.

1. Collection of a regulated user fee: this is most often seen in the transport sector, for instance in the airport sector, where AERA determines the fee payable by end users (the airlines in this case), and the roads and highways sector, where the Ministry of Road Transport and Highways of India determines the fee based on the toll determination rules. In the healthcare sector, respective state health ministries may also put a cap on the amount of user fees that may be collected from certain sections of users.
2. Annuity contracts: these are typically seen in road projects, where a fixed payment is made by the authority to the concessionaire annually for operation and maintenance of the project highway. This is usually the bidding parameter for such projects.
- 3.

Direct payment for procurement of goods and services: this is typically seen in the power sector, where state or central ERCs determine (or, where the tariff has been revised as the basis for a tender process, adopt) the tariff rate at which distribution companies may purchase power.

The aforementioned sources of revenue may also be supplemented by the following.

1. State grants: in cases where the state determines that a project is unviable without funding, it may grant financial support to private parties to ensure that it is commercially feasible. This is usually done for projects in the social sector, such as health, education and water supply, and is typically a bidding parameter in such projects.
2. Supplementing revenue through commercial exploitation of land: this is most commonly seen in airport projects, whereby land is leased out to the airport operator on a long-term basis to commercially exploit and generate revenue.

While typically payments to a private party are not increased for hitting performance parameters, if key performance indicators are not met, penalties may be levied, which can be deducted from the revenue collected by the private party.

### **State guarantees**

Typically, project authorities do not provide any payment guarantees for PPP projects. In a few cases, project authorities provide letters of credit or pre-funded escrow accounts for assurances on payment. The project agreements do not provide a capped or guaranteed return for sponsors except in computation of termination payments payable for termination.

In certain PPP models, there may be other ways through which the business risk of the private party may be protected by the state to some extent. For example, in HAM projects the private party receives an annual payment from NHAI for construction and maintenance of the project highway. Another example may be an obligation taken on by the public authority to not construct any competing facilities while awarding a PPP project to a private party. For instance, NHAI under its concession agreement represents that it shall not construct any road that may affect the toll collection of the private party.

Some sectoral regulators set tariffs taking into account a reasonable rate of return for the project developers.

In some cases, the bidding parameter for a project may be a grant to be given by the public authority for construction of the project. This is done to provide financial support and to make the project commercially viable.

### **Distribution of risk**

The sharing of risks in a PPP project is usually predetermined and set out in the PPP contract itself. Typically, PPP contracts require the risk to be borne by the private party and its lenders. Some risk mitigation exists as follows:

## Force majeure

The occurrence of a force majeure event excuses the concessionaire from the performance of its obligations during the subsistence of the force majeure event. Typically, if the concessionaire is unable to collect revenues or fees due to such force majeure event, the concession period is extended by a corresponding period. In cases where the force majeure event subsists for a time period longer than the pre-specified period, either party is entitled to terminate the project agreement.

Upon termination due to force majeure, the project authority is required to pay termination payments to the concessionaire. The amounts of termination payment depend on the type of force majeure.

## Change in law

Typically, if, as a result of a change in law, the concessionaire suffers an increase in costs or benefits from a reduction in costs that is above certain thresholds, the project authority or the concessionaire may propose amendments to the project agreement so as to place the concessionaire in the same financial position as it would have enjoyed had there been no such change in law. The project agreements also specify the mechanism to be followed in the event that both parties are unable to agree to and finalise the proposed amendments.

In the case of *Energy Watchdog v. Central Electricity Regulatory Commission*,<sup>[2]</sup> certain generating companies were awarded thermal power projects on the basis of competitive bidding that set the tariff upfront. These companies were importing coal from Indonesia, where a change in law occurred that significantly increased the cost of importing coal. The companies, inter alia, requested relief under their respective power purchase agreements on the ground of a change in law. The Supreme Court of India while interpreting the provisions of the power purchase agreements held, inter alia, that 'any change in law' (under the agreements) refers only to Indian law, and consequently, generally companies are not awarded any relief.

## Termination payments

Typically, PPP contracts provide for termination payments, which are generally linked to debt due and returns on equity invested.

The risk of adverse court decisions is not provided for, and the consequences of the decisions will typically be set out in the decision itself.

In some cases, the model insulates the project developer from business risk. For instance, when power tariffs are determined by ERCs (i.e., not pursuant to a bid), the tariff takes into account a reasonable rate of return. Another example of this may be annuity contracts, where the revenue to be recovered by the private party is fixed.

## Adjustment and revision

Contracts in India are governed under the provisions of the Indian Contract Act 1872, pursuant to which the parties to a contract are free to mutually agree to amend the

contract. Having said that, the CVC guidelines discourage public authorities from granting relaxations in the contract terms and specifications after execution of the contract. As per the guidance available under the CVC guidelines and Procurement Manuals, no amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor; however, if in exceptional cases modifications or amendments are considered to be absolutely essential, they can be carried out after taking into account the financial implications of such modifications or amendments.

## Ownership of underlying assets

Ownership of the underlying asset in a PPP contract usually depends on the nature of such contract. Typically, the public authority is the owner of the project asset and leases the land out to the private party for the duration of the concession period, during which the private party is required to construct, operate or maintain the underlying asset.

For instance, road concessions are awarded on a TOT or a DBFOT model, and the concessionaire is required to construct or operate the project highway, which is owned by the state, until the end of the concession period.

In other instances, such as wind power projects, the private party may be required to construct and operate the power plant and supply power to the offtaker for the duration of the power purchase agreement. The ownership of the power plant in such a case remains with the private party.

Creation of a charge, mortgage or security interest over the underlying assets may be allowed in situations where the asset is owned by a private party. However, in cases where the public authority owns the land, such security creation is not permissible. Lenders in such a case may create security over the project documents and get a right of substitution in such contracts.

## Early termination

Generally, PPP contracts provide a list of events where an early termination clause can be invoked by both parties – for example, breach of the maintenance obligations under the contract, bankruptcy of the private party or failure of the private party to make requisite payments. The contract may also be terminated by the private party due to a material breach of the terms by the public authority. Occurrence of a force majeure event may also lead to early termination in some cases, as specified above.

In the event of early termination, the private party may be compensated by way of termination payments based on debt due and adjusted equity. Depending on the contract, the terminal value of the assets created by the private party may also be part of termination payments.

## Finance

Long-term debt financing by banks and financial institutions is the most commonly adopted model for financing infrastructure projects in India. In addition, the raising of funds through issuance of non-convertible debentures and bonds has also become prevalent in recent times.

The Indian regime provides for cross-border finance through several routes in the form of, inter alia, external commercial borrowings, issuance of bonds through portfolio investments or foreign venture capital investment. The terms and conditions of such cross-border finance is dependent on the specific route identified by the private party. This is regulated by the Reserve Bank of India via the Foreign Exchange Management Act 1999 and its allied rules and regulations.

Generally, sponsors are required to infuse equity contributions into the project company. The debt-to-equity ratio is determined by lenders and is typically in a range between 70:30 and 80:20.

The trend has generally been to permit funding from foreign lenders through rupee funding. In such a case, the exchange risk is taken by the foreign party. However, when funding is done in non-Indian currencies, the project special purpose vehicle is generally required to enter into foreign currency hedges to manage its foreign currency risk.

## Outlook and conclusions

PPPs are viewed positively by the central and many state governments, and given the ambition of the National Monetisation Pipeline, the outlook appears to remain positive for PPPs in India. As stated earlier, the Infrastructure Scheme has been rolled out for funding PPP projects. This scheme is expected to help improve the quantity and quality of PPP projects by paying for project development costs to make PPP projects more viable for project authorities.

Despite some setbacks (such as regarding railway station redevelopments), it is particularly encouraging that policymakers are considering the PPP model in many new sectors. The NITI Aayog, the apex public policy think tank of the government at the forefront of developing models for PPP projects in India, has identified the following initiatives:

1. inviting private participation in passenger train operations for a better experience for citizens by sourcing trains with modern technology;
2. development of sustainable eco-tourism projects by inviting private parties to plan for seven islands of Andaman and Nicobar and Lakshadweep;
3. operation of electronic buses in cities on an OPEX model wherein the private party shall be responsible for undertaking capital expenditure and the public authority shall be required to pay for all operational expenses;
4. development of multimodal logistics parks on a BOT model to build a network of such parks for the seamless transfer of goods in the country; and integration of private sector medical colleges with hospitals operated by the public sector to develop medical teaching hospitals and increasing the number of qualified medical professionals in the country.



## Endnotes

- 1 2023 SCC OnLine SC 671. [^ Back to section](#)
- 2 Energy Watchdog v. Central Electricity Regulatory Commission [(2017) 14 SCC 80]. [^ Back to section](#)



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