

P-102 Structuring Legal Agreements and Concession Contracts



Course Description

Contracts and legal agreements are at the foundation of any public-private partnership transaction. Once sound agreements are put in place, PPPs and concessions can achieve the objectives set forth by all parties in the transaction. Under poorly structured agreements, these partnerships have a higher likelihood of failing. With hundreds of millions of dollars at stake, it is imperative that time and money are well spent in designing good legal agreements and contracts.

In this course, participants will learn best practices in creating, negotiating, and implementing sound PPP and concession contracts. Using presentations, case contract reviews and simulation exercises, participants will deepen their understanding of the key elements of successful PPP and concession contracts, effective risk allocation, and the development of negotiation skills. The course will also describe the key financing agreements typically required by lenders in project finance transactions, and include discussions on risk and mitigation techniques, and how to handle contract disputes.

Who Will Benefit

- Legal staff from national line ministries, state infrastructure agencies, or municipal governments
- Legal staff from PPP units, privatization units or investment agencies responsible for infrastructure development
- PPP transaction advisors, legal counsel or project developers involved with PPP project development
- Legal staff from regulatory bodies
- Legal staff of bilateral and multilateral international development organizations

IP3 is an accredited provider of Continuing Education Units (CEUs) as sponsored by the International Association for Continuing Education and Training (IACET).



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Learning Objectives

Through successful completion of this course, participants will be able to:

- Understand public-private partnerships and the overview of the project cycle
- Compare the structure and design of legal agreements for PPP infrastructure projects between public agencies and private investors
- Examine effective legal contracts within a regulatory framework
- Identify all relevant project risks: engineering, financial, economic, design/build, political, social
- Develop strategies for resolving disputes and learn conflict resolution techniques for settlements
- Analyze and review legal documents including concession, offtake and other types of PPP contracts and key financing agreements
- Identify how to take advantage of international best practices to improve personal or organizational negotiating positions, vis-à-vis international investors and partners
- Develop effective negotiation strategies to reduce costs and delays in procurement and project development
- Design a strategic legal agreement action plan

Become a Certified PPP Specialist

IP3's PPP Specialist Certification program provides a core body of knowledge in public-private partnerships, creating a world-class standard in PPP skills development.

Certification requirements include 24 CEUs and successful completion of a PPP Specialist exam.

Course Offering

Dates May 11-22, 2020

Location Washington, DC Metro Area

Reg. Code 5305-WA

CEUs 6.0 | **Tuition** \$5,500

Rationale for PPPs

- What are PPPs?
- Advantages and challenges of PPPs
- Objectives of PPPs
- Where PPPs are used
- Why use PPPs over traditional procurement?
- PPP options and best practices

Overview of the Project Cycle

- PPP financial feasibility analysis
- PPP tendering and procurement
- PPP monitoring and evaluation

Concession, Offtake, and other PPP Projects: Intro to Project Finances

- Introduction to project finance
- PPP agreements

Structuring the SPV

- Understanding the project company
- Types of SPV project companies and ownership arrangements
- Key terms of the agreement
- Government as an owner

Financial Agreements for PPPs

- Funding sources
- Project costs and CapEx
- Key project financing terms

Lender Risks and Inter-Creditor Management

- PPP risk matrix
- Contractual relationships among project lenders
- Basics of corporate/sovereign finance
- Fundamentals of project finance
- Project finance vs. corporate finance
- Types of private finance lenders
- Inter-creditor agreements in project finance
- Political risk and project finance
- Commercial lender loan/credit agreements
- IFI loan agreements

Managing Construction Risks in PPPs and Project Finance

- Contract structures for the EPC in PPP projects
- Select clauses and issues
- Back-to-back contractual flow-through
- Lender protections under EPC and lender direct agreement
- O&M agreement and interface agreement

Dispute Resolutions in PPPs

- Introduction: What is a dispute?
- Potential areas of dispute
- Why is dispute resolution important?
- What is the impact of developing the right dispute resolution?
- Overview of arbitration and mediation

PPP Dispute Settlements, Workouts & Restructuring

- Operational problems
- Political challenges
- Economic challenges

PPP Agreement and Implementation

- Structure of a concession agreement
- Allocations of risks in the concession
- The economic financial equilibrium
- Liquidated damages and penalties
- Change of law
- Change of scope
- Termination provisions and lender interests

PPP Negotiations

- Four PPP phases
- Preparing for negotiation (internal and external)
- Types of negotiation: positional v. win-win, cooperative v. aggressive
- Influences on negotiation
- Drafting the agreement

