



Risk of Legal Challenges to PPP Projects

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It is important for both government and potential investors to consider early on in the project development the range of mechanisms for challenging the PPP arrangement and determining the risk of such a challenge. Protections are often built into the law to protect private citizens from government action that has a detrimental impact and so due process should be followed. From a practical perspective, such challenges can give rise to delays in the project.

Possibility of Challenges to the PPP Arrangements on Public Interest Grounds

Some jurisdictions have a procedure allowing interested citizens to bring litigation on public interest grounds (Public Interest Litigation). These procedures are designed to protect the ordinary citizen from government intervention which might adversely affect them. While this right plays an important role in protecting citizens' rights and also in ensuring that the government follows appropriate procurement procedures, it is important for all parties to understand the scope of such litigation and the power of the courts as they can be a source of potential disruption to a PPP program. The following should be considered:

- whether such litigation can be brought;
- who can bring such litigation (i.e. does the party have to have a clear link to the project or can an interested member of the public bring such an action);
- whether the courts have power to stop the project from proceeding as well as to award damages;
- whether the courts can throw out actions that are brought on spurious grounds;
- whether in the case of a vexatious litigant the court can order the litigant to pay the costs of all parties.

Challenges Regarding the Procurement of PPP Projects

Where established procurement procedures have not been followed there may be an opportunity for interested parties such as other disappointed bidders to challenge the award of the project in the courts of the country. Some countries also have freedom of information laws that require details of the winning bid be available and so an awarding authority may be required to disclose any post bid amendments to the contract that have been made. The following should be considered: -

- whether such litigation can be brought;
- who can bring such litigation (other bidders, general public);
- whether the courts have power to stop the project from proceeding/ require the awarding authority to re-commence the procurement process.

For more on procurement laws, click on [Procurement Restrictions](#).

Challenges Regarding Planning and Environmental Issues

Where planning laws have not been followed there may be a right of the planning authority or other party to challenge the project award in court and have the project stopped/ de-constructed. Where third party land needs to be acquired to allow the project to proceed, the law may stipulate how this can be achieved and what compensation is to be paid - failure to follow the law may give rise to a right to challenge the project and stop or delay the project. Where an environmental impact assessment is required and this has not been carried out or there are question marks as to its objectivity, there may be rights under law to challenge the project and delay or stop it from proceeding. For more on planning and environmental issues, go to [Land and Environmental Issues](#).

Related Content

- [Laws and Regulations](#)
- [PPP Legal Foundations - Further Reading](#)
- [Legislation and Laws - General and Sector Specific](#)
- [Regulatory Systems and Sector Overview](#)
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Additional Resources

- [PPP Reference Guide](#)

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