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## Concessions Checklist

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The Questionnaire and Checklist highlight key issues in concession contracts between the public and private sectors. Download pdf versions of the [Concession Contracts Questionnaire and Checklist Between Public and Private Sector](#).

### If Civil Law:

- Does law provide for adjustment of terms in the event of change in circumstances?
- Does the purpose behind the project constitute public service obligations/public interest and what is effect of this in relation to:
  - change in cost structure;
  - use of assets;
  - compensation on termination
- Can the private sector acquire land/assets/land use consents in its own right? And if so, how onerous is this?
- Does State have continuing liability for services carried out (e.g. public service obligation or public interest)?
- Is contract or are assets used for project alienable?

### **Is there a Concession Law or similar?**

- If so does it restrict:
  - ownership of project company;
  - control of project company;
  - assignment by lenders to the project company;
  - change in assets (renewal or replacement);
  - payment for services (does it restrict profit element in payment);
  - use of assets owned by State.

### **Is there procurement legislation?**

- If so does it permit:
  - change in ownership of project company;
  - assignment of project agreement;
  - negotiated procedure or similar for letting contract;
  - prequalification of bidders and restricted number of bidders;
  - sufficient time to run a complex tender – if not what are the restrictions;
- What approvals during the tender process are required and from whom?
- If there is a concession law what is the relationship between the two laws?

### **Is there any legislation which impacts upon the proposed project and which:**

- requires the public sector to exercise certain functions;
- restricts delegation down to private sector of certain functions.

### **How long does the use of land consents procedure take and what are the stages?**

### **How long does the compulsory acquisition of land procedures take and what are the stages?**

### **What is the position of lenders to the project or project company:**

- are step-in rights by lenders recognised;
- can the lenders obtain protection from claims by third party creditors so as to protect the use of assets for and income stream from the project;
- can administrators of an insolvent project company prevent the project assets from being used by:
  - the public sector; and/ or
  - the lenders or their nominee;
- are there restrictions in using a charge or pledge over assets so as to enable those assets to be used for revenue earning in relation to the project – e.g., must the holder of the pledge auction those assets subject to a pledge?

### **Are different classes of shares recognised under corporate law?**

### **Can a holding company of the project company be based off-shore?**

### **Can security packages be created off-shore and be subject to English or New York law?**

### **What is the tenor of debt in the debt market?**

### **What is the availability of hedging:**

- interest;
- foreign currency, if applicable.

**How are changes in cost of living reported and what are the indices used?**

**Are there restrictions on the remittance of currency to outside the host country?**

**What is the incidence of tax (including VAT and Stamp Duty) on transfer of project assets between the public and private sector?**

**If the projected assets are vested in the State:**

- can the project company obtain writing down allowances against tax on the capital value of the project assets;
- is a leasehold interest sufficient to obtain writing down allowances?

**In real property law is there the concept of stratified title – namely buildings and structures can be in separate ownership to the land on which they are erected?**

**Are utilities state owned?**

**Do the administrators (civil servants) change with the Government?**

**Is the concept of an indemnity understood and permitted in law?**

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