

Constraints in the Law on Scope of PPP Projects

Full Description

A Government wishing to implement a PPP program or arrangement will need to consider early on in the project development whether there are any aspects of the **existing** legal environment of the host country that would **limit the scope of the project**.

All relevant elements of the legal environment need to be considered, including the different sources of law that make up the legal system of the host country, judicial decisions and international standards that may have been adopted.

The following illustrate some of these limitations (covered in more detail in other sections of [Issues arising from Host Country's legal environment relevant to PPP Projects/Programs](#)):

- **limitations on the power to delegate public services** - a government authority may be prevented by law from delegating certain powers and duties, such as the power to collect bills from end users or even to delegate provision of an essential public service to the private sector. Where services have been decentralized to a local authority, the document delegating authority, may contain limitations on sub-delegation and even on the powers vested in that local authority to deliver services (for more, go to [Government Organization](#)).
- **limitations on tariff increases** – does the law restrict increases in tariffs above a certain level or prevent a regulator or other tariff setting body from committing itself in a contract or otherwise to impose certain tariff increases (on the basis that the regulator’s discretion cannot be fettered). A government may wish to introduce such safeguards into the law if they do not exist. A private operator will be concerned to understand how its projected revenues can be achieved in the event that tariffs are limited and whether there is a mechanism in law or in the contract to redress the balance of the contract to enable the operator to make an appropriate profit, service debt, etc.
- **restrictions on disconnection of consumers who fail to pay their bills** - while there may be very sensible reasons for such a law, such as the principle that citizens should not be deprived access to essential services, this may stop the operator from having an effective weapon against bad debtors and thought will need to be given as to which stakeholder should bear the burden of bad debts - whether it is other customers, general tax payers or the operator.
- **vesting rights in public land/assets** - the law may prevent a public entity from transferring title in public assets and over public land. If a private operator is investing in assets, it is likely to want assurances as to title in the underlying land. For more on this and other land issues, click on [Land Issues](#).
- **limitations on granting security over assets** - where a private operator is going to be required to finance the development of new assets, it will want to ensure that it (and/or its lenders) can take security over such assets. Countries often have limitations on the ability to grant security and other limitations that can limit the protections of lenders. For more on this, click on [Issues Where Financing is Being Provided by Private Sector](#).

- there may be **constraints in the law on what can be included in the contract** and the extent to which parties are free to agree their own arrangements, **as well as duties and obligations imposed by law on the service provider** as the provider of a public service by law that cannot be amended/ removed by contract. For example, the level of investment in new assets required may be set by law as a proportion of annual turnover of the service provider or the awarding authority may have a right under law to terminate the contract unilaterally, even if this is not included in the contract. Such issues arise particularly in jurisdictions based on civil law (for more, go to [Legal Systems](#)).

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