

**Horizon 2020 CB/MEP**

**Role and Obligations of Different  
Parties Involved in PPP Projects  
and Contractual Framework**

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# Challenge of involving different parties in PPP projects

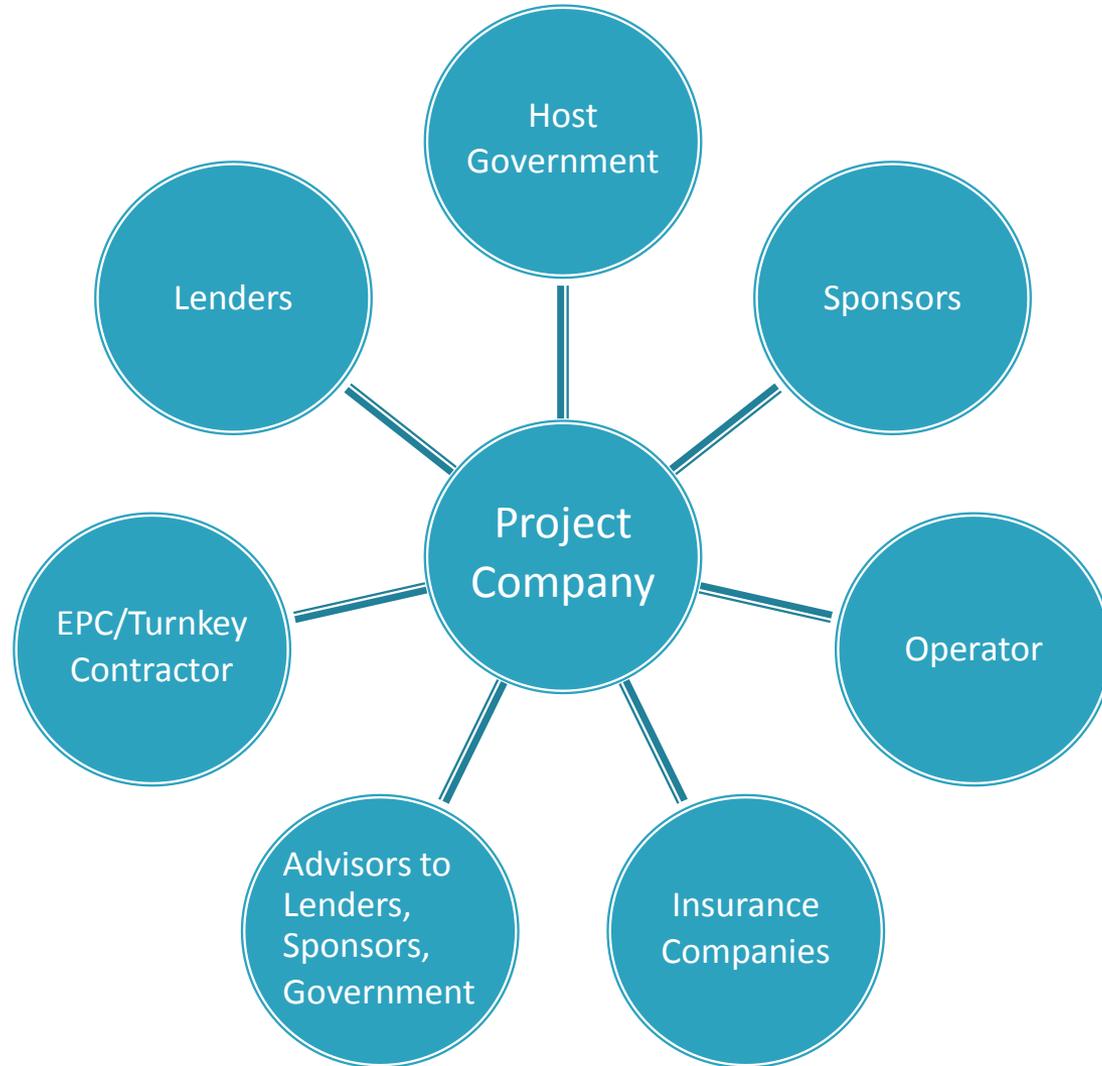
- ▶ Challenge lies in having to bring considerable number of parties with different interests together to achieve one goal:

## **A successful project**

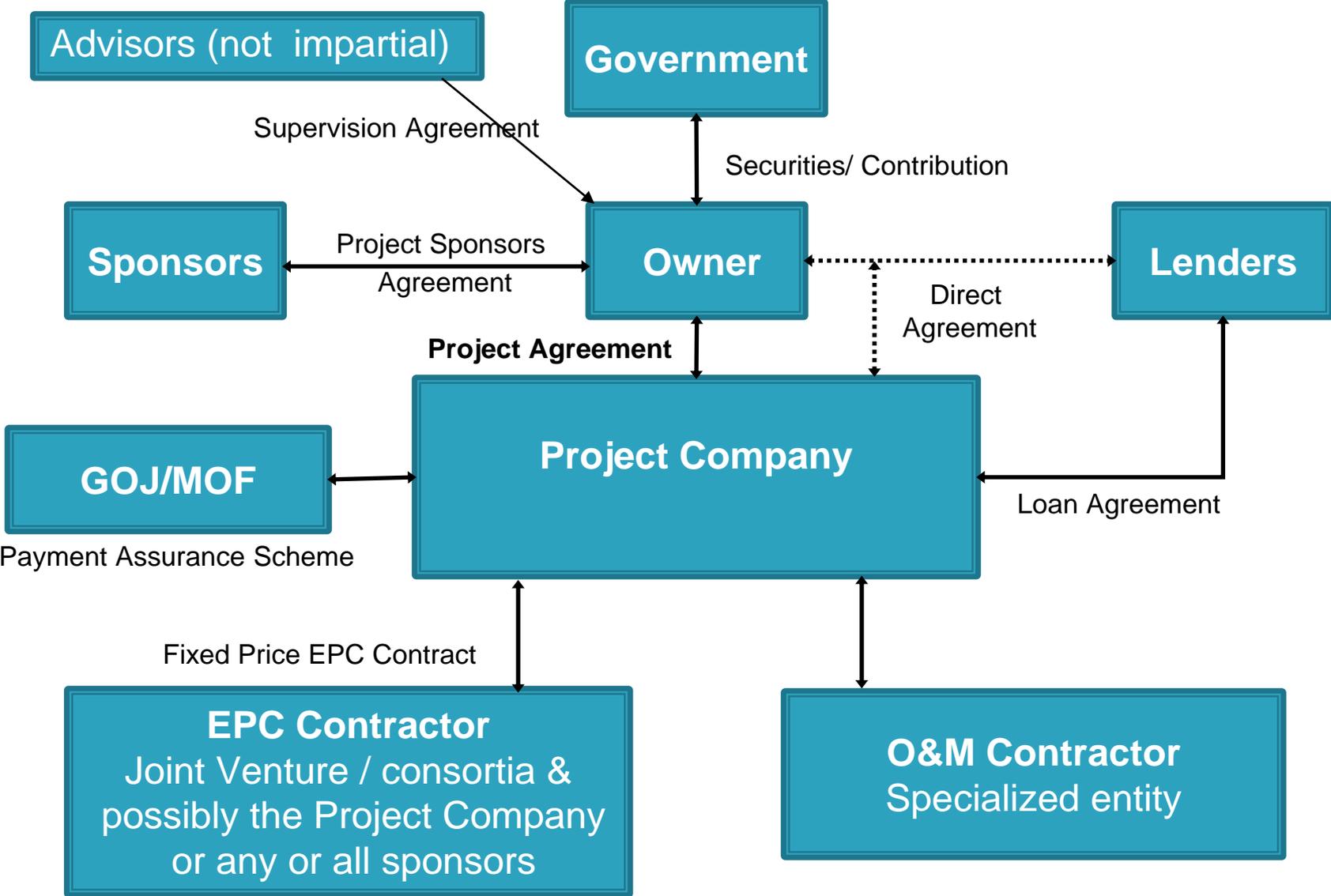
This process is complicated but interesting.

- ▶ Although the aim is one, but still interests vary and might conflict with each other.
- ▶ Parties may be located in different jurisdictions and individual laws may conflict.

# Main Parties to any PPP Project



# Simplified Contractual Framework



# Role and Obligations of the Project Company in PPP Projects 1 /

## *Project Company/Borrower*

- This might be a joint venture of limited number of companies, suppliers, operators, construction companies and, very rarely, financiers.
- The Company will be set for a special and well defined purpose (SPV/V) to limit its activities to certain works. This limits the borrowers from involvement in any non-project activities, ensuring that the lenders are not exposed to any additional risks unrelated to the project.

# Role and Obligations of the Project Company in PPP Projects 2/

- The Project Company will design, engineer, procure, construct, complete and test the Works in accordance with the Project Agreement.
- It will complete the works in accordance with the Agreement and in all respects comply with:
  - The Technical Requirements
  - Project Company's Conceptual Design
  - All applicable Statutory Requirements
  - Government Authorisations
  - Good Industry Practice, and
  - Shall be fit for the intended purposes

# Role and Obligations of the Project Company in PPP Projects /3

- Project Company shall be responsible at all times for the provision of all utilities and services (electricity, water etc), including for entering into all necessary agreements with power suppliers, utility owners and other service providers.
- It may contract with EPC Contractor to design, engineer, procure, construct, complete and test the Works, provided, however, that the appointment of the EPC Contractor by the Project Company shall not relieve the Project Company of any of its obligations or potential liability.

# Role and Obligations of Sponsors in PPP Projects

## *Sponsors/Shareholders*

are those companies, individuals, agencies promoting the project

### Roles:

- Developing the project
- Injecting different types of equities
- Obtaining permits and consents
- Providing debts or act as guarantors
- Managing the project

# Role and Obligations of Third Party Investors in PPP Projects

## *Third Party investors*

are just investors looking for return on their investments for their own shareholders such as Social Security Corporation. They will not act as sponsors, but want to be on the Board of the Project Company.

# Role and Obligations of Lenders in PPP Projects 1 /

## *Lenders/Banks*

If project is large or the level of risk is high, then syndicates of lenders is formed. In such case, the lenders assign Lead Arranger representing all lenders in front of the Company, sponsors and Owner

# Role and Obligations of Lenders in PPP Projects /2

Role of Lead Arranger on behalf of Lenders:

- arranges the loan
- represents lenders through out all project phases and protects their interest
- hires advisors to evaluate the project from technical, legal and financial view point
- administers the loan (facility agent)during the loan term
- administers the bank accounts (account bank or facility agent).
- Account bank ensures that the project insurances are completed and documented. It also maintains all project accounts

# Role and Obligations of Construction Co. in PPP Projects

## *Construction Company*

Lenders usually prefer that sponsors and project company divest itself of responsibility for project management. Thus, Contractors Role:

- design, engineer, procure, construct, commission and test the Works and assume full responsibility for the on-time completion.
- all construction liabilities and quality of works being responsibility of the Project Company are transferred back to back to the Contractor through an EPC agreement for design, engineer, procure, construct, complete and test the Works.

# Role and Obligations of the Operator in PPP Projects

## *Operator*

Lenders and Owners usually prefer that an O&M Company be hired at an early stage of the project phases if the Sponsors or the equity shareholders is not the operator.

Operator's Role:

- Operates the project and ensures that day to day operation and maintenance of the project is undertaken in accordance with pre-agreed upon guidelines.
- Ensures operations cost are within budget
- Follows renewal requirements and procedures to ensure life time and handover requirements are met.

# Role and Obligations of Owner in PPP Projects

## *Owner or Host Government*

- Ensure that laws and legal environment are clear and reliable
- Make available, and grant the right to use the Site to the Project Company;
- Provide required licences and permits for the construction and installations for the power supply, water, telephone and other similar services required for the execution and completion of the Works
- Pay the charges or fees to the Project Company as provided in the Main Agreement or Take or Pay
- Establish & maintain the Payment Assurance Scheme

# Role and Obligations of Other Parties in PPP Projects

## *Suppliers*

Such as fuel suppliers in some projects or suppliers of material during the O&M. Such suppliers will be party to the whole procurement of the project under a separate agreement similar to the O&M.

## *Purchaser or Off-taker*

Other than Government such as electricity companies or oil distribution companies. They sign a binding agreement taking the risk of sale and paying for the products the project is producing;

## *Insurance Companies*

Their role is to cover the lenders, owner and the sponsors against major catastrophe or casualties affecting the project or personnel.

# Full Contractual Framework

