

OVERVIEW OF THE ROLE OF TRANSACTION ADVISERS IN A TYPICAL PPP PROJECT

INFRASTRUCTURE CONCESSION REGULATORY COMMISSION



Objective of the Programme



“The overall objective of this Presentation is to help public contracting authorities, especially less experienced ones, to understand what they can reasonably expect from their advisers and how they can obtain the best advice from them.”

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Presentation Outline



1. Introduction
2. Who are advisers?.
3. What are the tasks typically devoted to advisers in the PPP project cycle?
4. How to select and structure an effective team of advisers
5. How to set-up a multidisciplinary team
6. What is the optimal length of advisory?
7. Which procurement procedure to follow?
8. Key issues to consider when selecting advisers.
9. How to incentivize advisers to work effectively alongside the Authority.

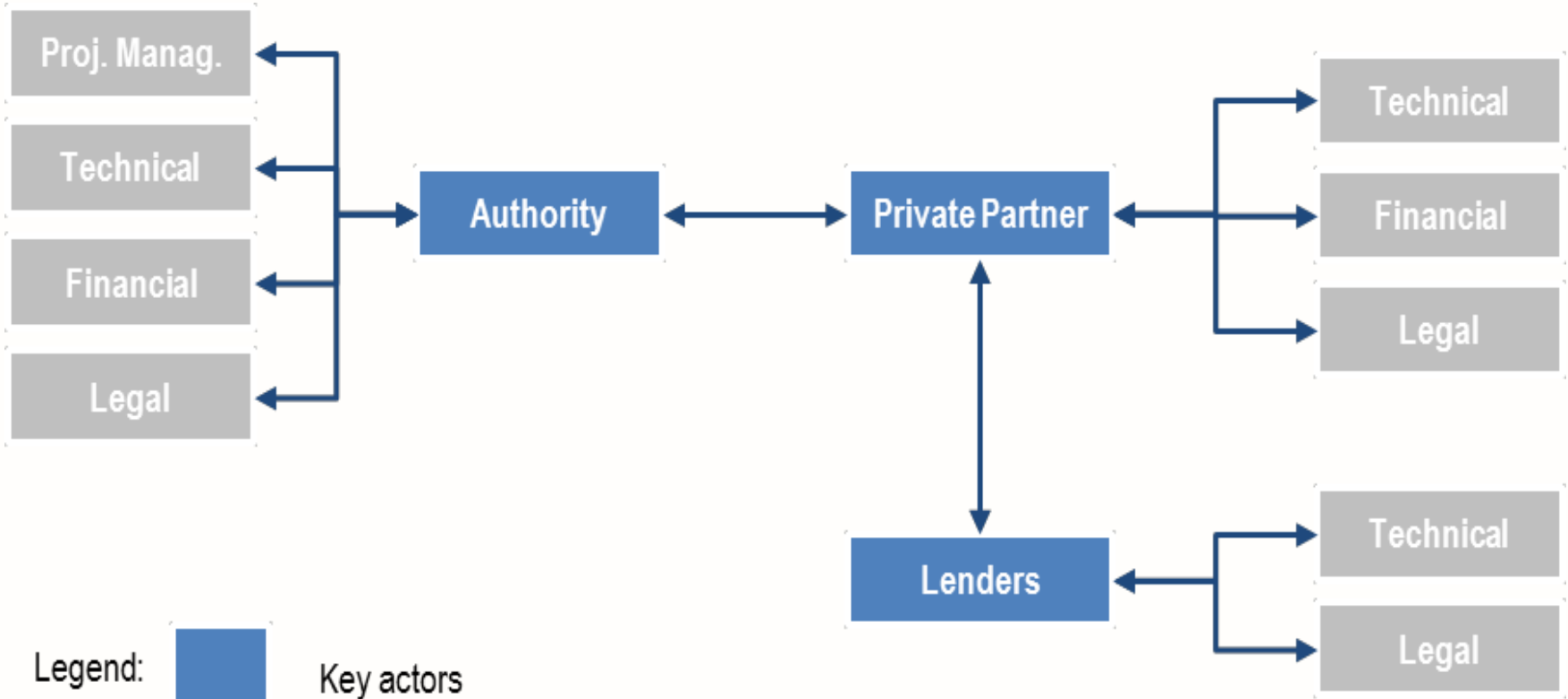
What will be the Role of Advisors?



- **Expertise**
- **Experience**
- **Network**
- **Credibility**
- **Work Load Reduction**
- **Time Management**
- **Project Management**
- **Process Management**

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The advisory “galaxy” in a PPP project



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Who are Advisers?

These are private sector companies who have acquired high level of recognition and competence as advisers in

- Preparing,
- Implementing and
- Managing PPP projects.

Most of them advise public sector clients as well as private sector clients.

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The entities providing PPP advisory services typically are



- **law firms** usually experienced in public/administrative law matters as well as business, financing and tax issues;
- **financial advisory companies** that may be (i) part of an international accounting and advisory group/network, (ii) investment banks or (iii) smaller entities specialising in PPP or public service management;
- **technical firms** that are often specialised by sector (transport, social infrastructure, etc.); and
- **public entities**, such as national or sectorial PPP units that have been tasked and staffed to advise on projects.
- Some advisers may offer a broader PPP service beyond legal/financial/technical boundaries and may therefore act as multidisciplinary advisers and experts in project management.

What is the optimal length of advisory contracts



Two main approaches can be taken:

Medium-term contracts – The MDA hires an adviser who may be involved in the project throughout the project cycle (i.e. from the early Preparation stage to, potentially, the operational phase).

The advisory contract would typically include: (i) a binding phase covering The feasibility studies and assessment of the PPP option, as well as (ii) Conditional phases that may be firmed up according to project developments. The advantages of this approach include: (i) a contract size that may foster competition at the procurement stage, (ii) a better overall service as the adviser will know the project from the outset, (iii) a long-term collaboration between the Authority's project team and the adviser, which may lead to a stronger partnership (e.g. work approach, trust).

However, long-term contracts can have disadvantages such as: (i) the risk of getting biased advice because of the adviser's desire to see the project continuing and ultimately procured as a PPP and (ii) the difficulty of changing adviser if performance is not satisfactory.

What is the optimal length of advisory contracts



- **Short-term contracts** – The MDA hires advisers for each main phase of the project cycle. For example, this may lead to separate contracts for feasibility studies, procurement support and operational management.

It may often be advisable to adopt a mixed approach that combines

- (i) an initial short-term contract for activities related to the assessment of the PPP option and subsequently
- (ii) a medium-term contract using conditional phases covering the project procurement phase and the initial period of the operational phase.

In any case, the MDA must bear in mind that a contract may not be extended indefinitely due to the legal obligation for periodic re-tendering of its advisory services.

A frequent issue for the MDA is to decide on the number of advisory contracts it will award. This selection should take account of three aspects:

1. how to set up a sound multidisciplinary team,
2. how to avoid subjective advice arising from conflicts of interest for the advisers and
3. how to contain the cost of procuring and managing a number of advisory contracts.

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How to set-up a multidisciplinary team

Two main approaches exist for contracting advisers:

- The **integrated contract** – The MDA launches a single procurement procedure to appoint a consortium of advisers.
- The main advantages are:
 - (i) a lighter process,
 - (ii) less involvement in coordinating the team of advisers during the assignment, thereby limiting, for the MDA, the interface risk between the various advisers and
 - (iii) more assurance that it will benefit from balanced advice.

The main disadvantages are:

- (i) less competitive pressure among advisers because of the difficulties of setting up consortia and
- (ii) the risk of having to compromise on quality to obtain a comprehensive team of advisers at the expense of not getting the best in each field.

How to set-up a multidisciplinary team



Separate contracts – The MDA launches a procurement procedure for appointing each adviser.

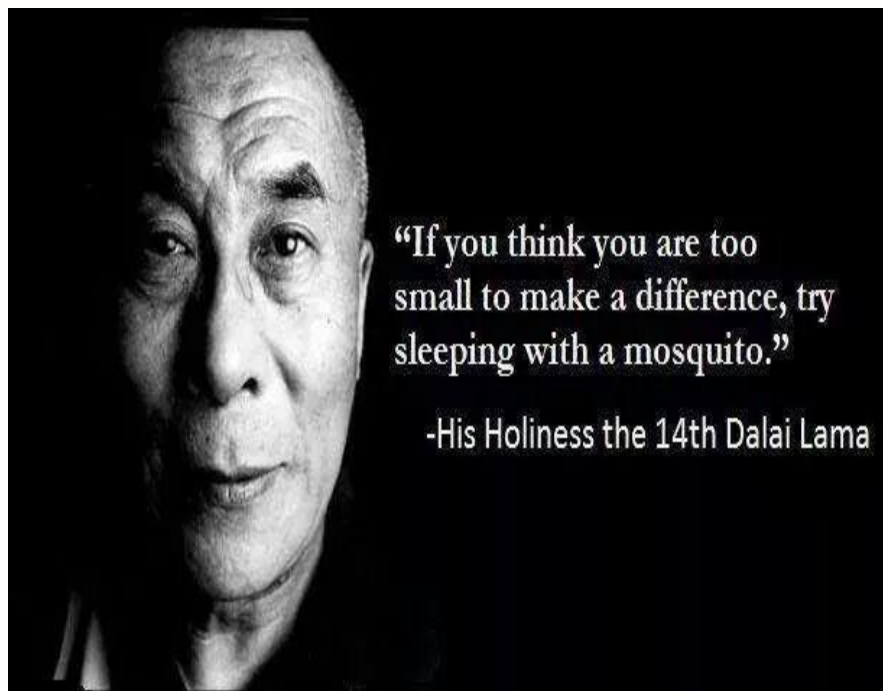
- In between these two approaches, many **mixed solutions** are possible, such as mandating the technical adviser under a separate contract and appointing the legal and financial advisers as a consortium.
- The ultimate decision must be taken case by case considering (i) the local advisory market (e.g. the number of advisers, their experience), (ii) the resources available within the Authority (both in terms of quantity and quality) and (iii) the features of the project.
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- It is however advisable that **inexperienced MDAs select more integrated approaches as these may limit interface and management risks for the MDA.**

Which procurement procedure to follow?



- To select advisers, MDAs must follow a fair and transparent process. EU legislation allows four procurement options: open procedure, restricted procedure, negotiated procedure and competitive dialogue.
- In practice, given the typical scope and size of advisory assignments for PPP projects and the conditions required to use the negotiated procedure and competitive dialogue, Authorities will normally choose between the open and restricted procedures.
- The **restricted procedure** allows for an early selection of credible bidders and may be recommended where possible. It limits the cost of analysing a potentially high number of proposals and allows the MDAs to focus on offers submitted by those firms more likely to perform the services satisfactorily.
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Wise Words



Poverty is not an accident. Like slavery and apartheid, it is man-made and can be removed by the actions of human beings.



- Nelson Mandela

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