Background of PPP Negotiation

- Many Governments look to improve existing infrastructure and invest in new public infrastructure projects
- Purpose:
  - Share risks with private sector, but retain control
- Advantages:
  - Government revenue from PPP or concession payments or lease payments of state-owned assets
  - Better provision of services by paying private sector for improved infrastructure

Key Issues in Negotiation

- Starting point for PPP agreement structure is risk transfer from the procuring public institution to the private party
- This derives from the general assumption that a PPP agreement must demonstrate "value for money" (**VFM**) for the procuring public institution, i.e.

  "a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof"

- VFM effectively entails more accessible and efficient performance of services at cost-effective remuneration levels and with low risk exposure for the public sector

Negotiation Dynamics

Government : whether the premium it will pay for transferring risk provides VFM

Private Party:
if risk carries greater probability of diminished return, then risk allocation should carry appropriate equity premium

Lenders :
private party should not assume risk to the extent this threatens debt service and minimum operating costs

Key Items in Negotiation

Risks usually assigned to Private Party and….

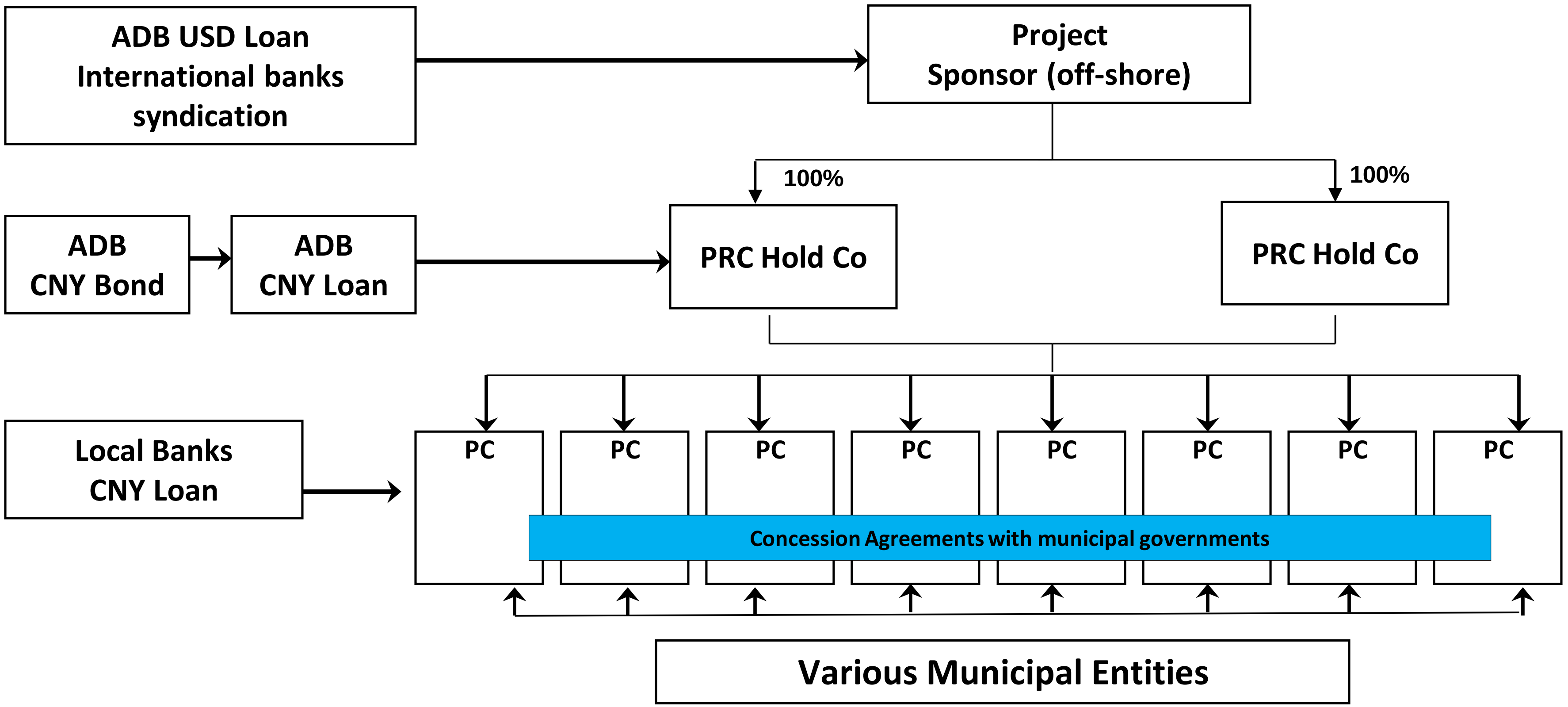
▪*Site conditions*	▪Latent defects
▪*Environmental & Heritage*	▪Subcontractor
▪Design	▪Insurance
▪Construction	▪Inflation
▪Technology	▪*Material adverse governmental action*
▪Operating	▪*Force Majeure*
▪Utilities & other third party supplies	▪Currency
▪Permit / governmental approval	▪Interest Rate

What Private Parties Care About

- Caps on penalties deductions from unitary charges for poor performance to levels that maintain debt service
- Caps on liabilities under private party indemnities to levels of available insurance
- Government retaining or sharing in:
  - Certain site condition risks
  - Risks of change in law
  - Force majeure risks classified as “relief events”

by allowing pass through of associated costs and not termination or reduction of operating period to allow full recovery of projected revenues and equity return

Structure to Finance Multiple PPPs



PC: Project Company

Structural Considerations

- Selection of Borrower – offshore vs. onshore – holding company
- Uniform concession agreement regime
- Application of ADB loan proceeds – equity investment and shareholder loan
- Which project may utilize ADB loan proceeds – eligibility criteria
  - Financial tests
  - Technical eligibility
  - Environmental / social compliance
- Cashflow analysis – cashflow shortfall risk spreads across a portfolio of project companies

Structural Considerations (continued)

- Collateral – traditional project finance type collateral may not be available – other types of collateral include downstream guarantee, debt service reserve and project company share pledge
- Future potential – PBOC "*Circular on Simplifying the Cross-Border RMB Business Procedures and Improving Relevant Policies*" (Issued July 5, 2013), Article 5 which provides that "a domestic non-financial institution may grant a guarantee or security denominated in RMB in favor of a foreign entity provided that it complies with the Property Law, the Security Law and all applicable PRC laws."
- Ring-fence cashflow from project companies up to the holding companies and prevent any cash leakage or cash trap