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# The Legal Aspect of PPP

## PPP的法律考量

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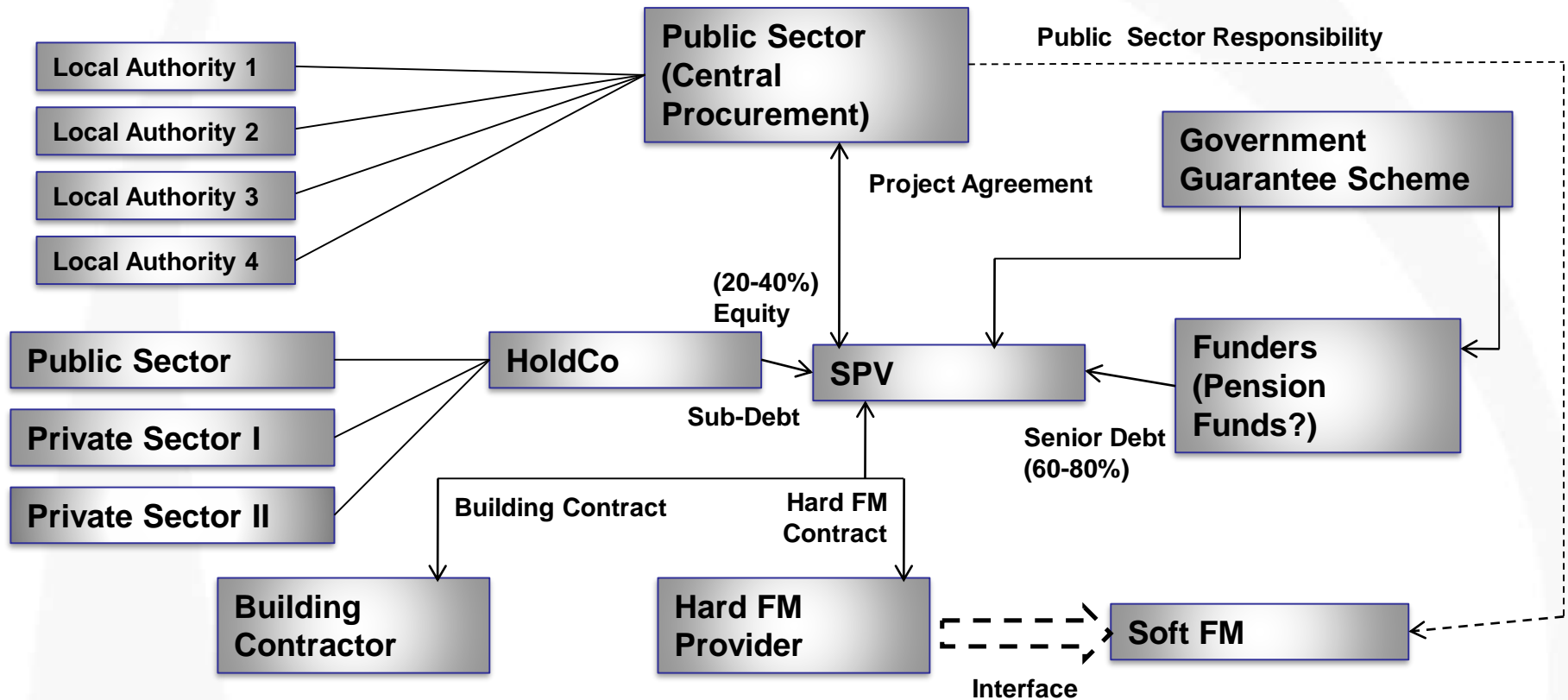
# Agenda

- The legal environment for PPP projects
  - Is a PPP law a must?
  - The nature of a PPP deal – a deal with a game rule maker
- Common key legal issues for PPP projects worldwide
  - Nature of the concession contract
  - Change in law
  - Management of political risks

# Is a PPP law a must?

- What is the supposed function of PPP law ?
  - Regulatory
  - Facilitation
- Laws governing various aspects of PPP Projects
  - Contract Law
  - Procurement Law
  - Property Law
  - .....

# A sample contractual structure of PPP



# Key Feature of a PPP Deal

- The first P (Government) wears two hats
  - Game player
  - Judge
- The key feature of PPP is a deal with the game rule maker

# The Nature of the Concession Contract

- Administrative Contract?
- Civil Contract?

# Changes in Law

- Cost of compliance with current/foreseen legislation is built into Contractor's bid price
- Uneconomical to provide for all changes in law throughout term of PFI contract
- Risk is shared between parties
- Where it is possible to pass costs on to end-users, changes in law are treated as Contractor's risk



# Changes in Law

- **“Discriminatory Change in Law”** means a Change in Law, the terms of which apply expressly to:
  - (a) the Project and not to similar projects procured under the PFI;
  - (b) the Contractor and not to other persons; and/or
  - (c) PFI Contractors and not to other persons.
- **“Specific Change in Law”** means any Change in Law which specifically refers to the provision of [services the same as or similar to the Service] or to the holding of shares in companies whose main business is providing [services the same as or similar to the Service].
- **“General Change in Law”** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law.

# Changes in Law

- Authority bears risk of **Discriminatory and Specific** Changes in Law
- Private Sector generally bears risk of **General** Changes in Law, but risk can be shared, often on a sliding scale

# Management of Political Risk

- Large PPP projects can have a very significant impact on the country in which they are situated (i.e. changing routes to market or creating physical connections between countries).  
大型PPP项目可能对项目所在国产生重大影响（如改变通往市场的路径或在城市之间建立有形的联系）
- Lessons from other jurisdictions demonstrate that the best PPPs are when there is broad public and political support.  
其他司法辖区的经验证明，最好的PPP项目有广泛的公众基础和政治支持
- Political risk should be considered in the context of the project structure with the ambition of ensuring that the project is structured for long term political consensus: 政治风险应放在项目架构中去考虑，旨在确保项目架构能获得长期的政治认同
  - A proportion of returns over an agreed %age IRR (level of profit) to be invested in community projects; or  
收入中超过某个约定IRR比例的部分用于投资公共项目；或
  - A not-for-profit model PPP?  
非营利模式PPP?



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