



Key issues in Asian PPPs

Ministry of Trade, Industry and Energy / KOPIA

December 2016

A&O's infrastructure / PPP practice

Legal Adviser of Global Project Finance Deals – Full Year 2015

Source Dealogic Press Release - January 2016

| Rank | Legal Adviser | Amount USDm | No of Deals | % Market share |
|------|-------------------------------|---------------|-------------|----------------|
| 1 | Allen & Overy LLP | 19,295 | 84 | 5.3 |
| 2 | White & Case | 18,476 | 42 | 5.1 |
| 3 | Chadbourn & Parke | 17,745 | 34 | 4.9 |
| 4 | Milbank Tweed Hadley & McCloy | 15,678 | 55 | 4.3 |
| 5 | Clifford Chance | 15,077 | 81 | 4.1 |

Global Infrastructure Project Finance Legal Adviser Ranking – Full Year 2015

Source Dealogic Press Release - January 2016

| Rank | Legal Adviser | Amount USDm | No of Deals | % Market share |
|------|--------------------------|--------------|-------------|----------------|
| 1 | Allen & Overy | 8,537 | 30 | 7.6 |
| 2 | Clifford Chance | 6,069 | 25 | 5.4 |
| 3 | Ashurst | 5,124 | 19 | 4.6 |
| 4 | DLA Piper | 4,897 | 11 | 4.4 |
| 5 | Allens | 4,303 | 14 | 3.8 |

Global PFI/PPP - Full Year 2014

Source Dealogic Press Release - January 2015

| Rank | Legal Adviser | Amount USDm | No of Deals | % Market share |
|------|--------------------------|--------------|-------------|----------------|
| 1 | Allen & Overy | 5,768 | 19 | 8.7 |
| 2 | Clifford Chance | 3,675 | 13 | 5.5 |
| 3 | Ashurst | 2,724 | 12 | 4.1 |
| 4 | Allens | 2,719 | 7 | 4.1 |
| 5 | Clayton Utz | 2,646 | 6 | 4.0 |

“They have good understanding of the markets, and for complex transactions you want to make sure you've got that depth of resource. They're very good.”

“With the bigger, more complex projects, I feel comfortable in their hands - if they win the deal they do whatever's involved, period.”

Chambers PFI/PPP 2015



Best Global Law Firm 2015

Infrastructure Journal Global, Global Excellence Awards

Asia Pacific Law Firm of the Year 2014

Infrastructure Journal 2015

Ranked Tier 1 – Project Finance

IFLR1000 2015 Australia

Toowoomba PPP Asia-Pacific Road Deal of the Year 2015

PFI Thomson Reuters 2016

A&O's presence in the region

LOCATIONS IN ASEAN AND APAC WHERE WE HAVE AN OFFICE

- 1 BANGKOK
- 2 BEIJING
- 3 HANOI
- 4 HO CHI MINH CITY
- 5 HONG KONG
- 6 PERTH
- 7 SEOUL
- 8 SHANGHAI
- 9 SINGAPORE
- 10 SYDNEY
- 11 TOKYO
- 12 YANGON

LOCATIONS IN ASEAN WHERE WE HAVE RELATIONSHIP FIRMS

- 1 PHILIPPINES
- 2 MALAYSIA
- 3 CAMBODIA
- 4 BRUNEI
- 5 LAOS

ASSOCIATED OFFICE

- 1 JAKARTA*



ASEAN PPP Pipeline (short list)

Vietnam

12 projects
USD16947 million

Thailand

9 projects
USD14427 million

Philippines

17 projects
USD24487 million

Myanmar

3 projects
USD2200 million

Singapore

2 projects
USD184 million

Indonesia

15 projects
USD19089 million

Laos

3 projects
USD305 million

Cambodia

3 projects
USD33 million

Malaysia

7 projects
USD2736 million

Brunei

1 project
USD600 million

*total project value does not include projects where the value has not yet been disclosed

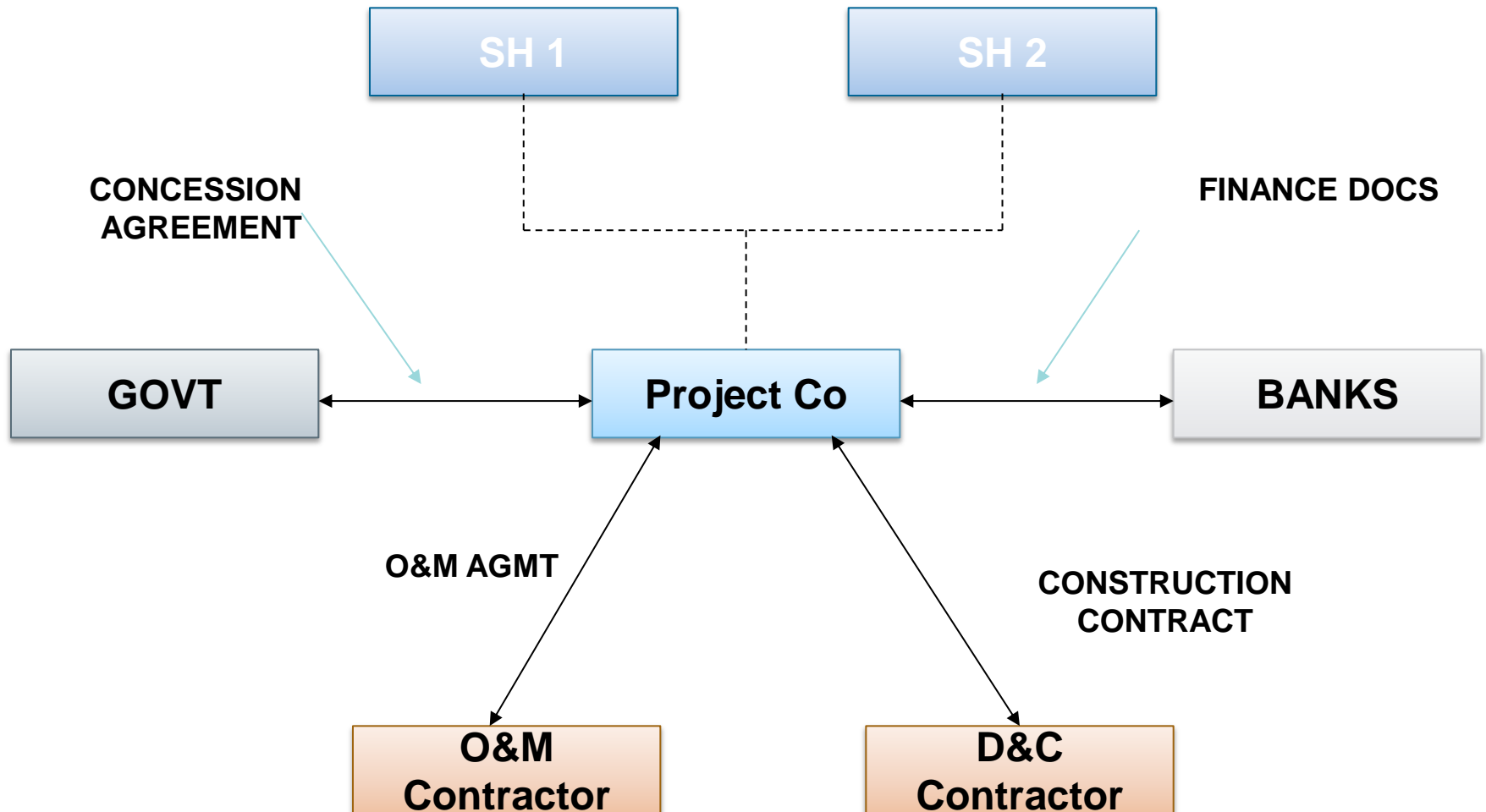
Agenda

| | |
|---|---|
| 1 | Introduction and background |
| 2 | Key issue: developing the market |
| 3 | Key issue: land acquisition |
| 4 | Key issue: mitigating demand risk; viability funding gap options |
| 5 | Key issue: addressing appropriations / sovereign payment risk |
| 6 | <p>What might be around the corner?</p> <ul style="list-style-type: none">➤ Unsolicited proposals➤ Procure and privatise➤ Project bonds |

What is a PPP?

- PPP is a procurement method
- Key features
 - Partnership between public and private sector
 - Government grants commercial party an exclusive right to deliver a service often for a “single asset”
 - Capital raised on a limited recourse basis
 - Normally involves a bid process
- Typical sectors
 - Transport: roads, ports, airports, rail
 - Energy and utilities: power and heating, water, waste
 - Social infrastructure: Government buildings, education and health

The classic PPP structure



The philosophy behind PPPs

Involving the private sector in the provision of services to or for government:

Should encourage the private sector to take a long-term view of the service-providing businesses

Should enable a significant degree of risk in both the construction and the operating phases to be passed to the private sector

Should result in better value for money

Should encourage innovative solutions

Should free up money for front-line government services

Risk allocation

- PPPs are fundamentally about the efficient allocation of risk
- The optimum allocation of risk should result in the best value-for-money from the host Government's perspective



Development of a PPP Market

Early Stage

- Evolving risk allocation and concession
- Variance in bid timetable and procedure
- Economic infrastructure only
- Centralised procurement
- No offshore financing, large role for MDBs

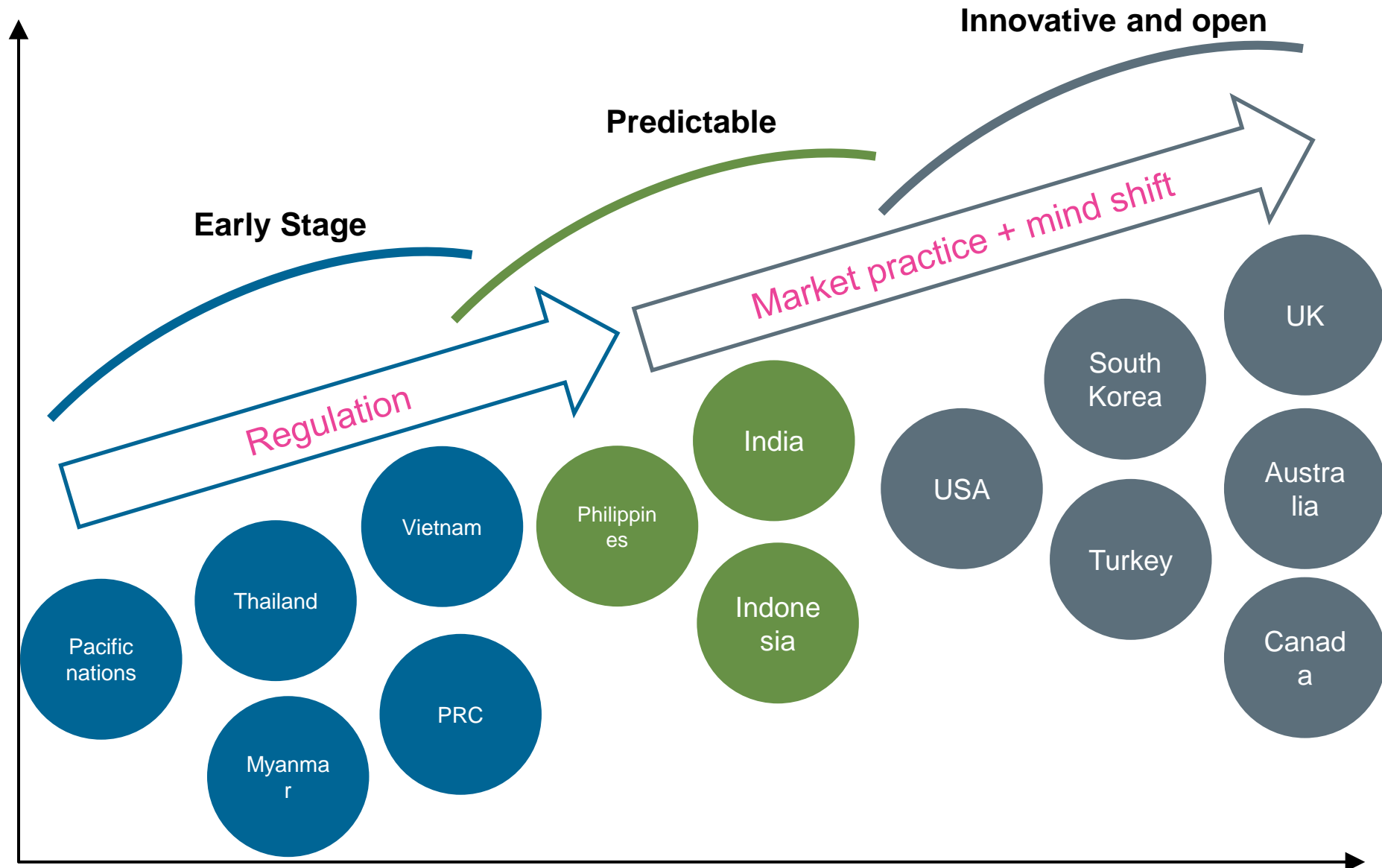
Predictable

- Predictable bid process and projects reaching financial close
- Predictable (if not efficient) risk allocation
- PPP centres play important role
- Reduced role for MDBs, limited involvement from foreign lenders

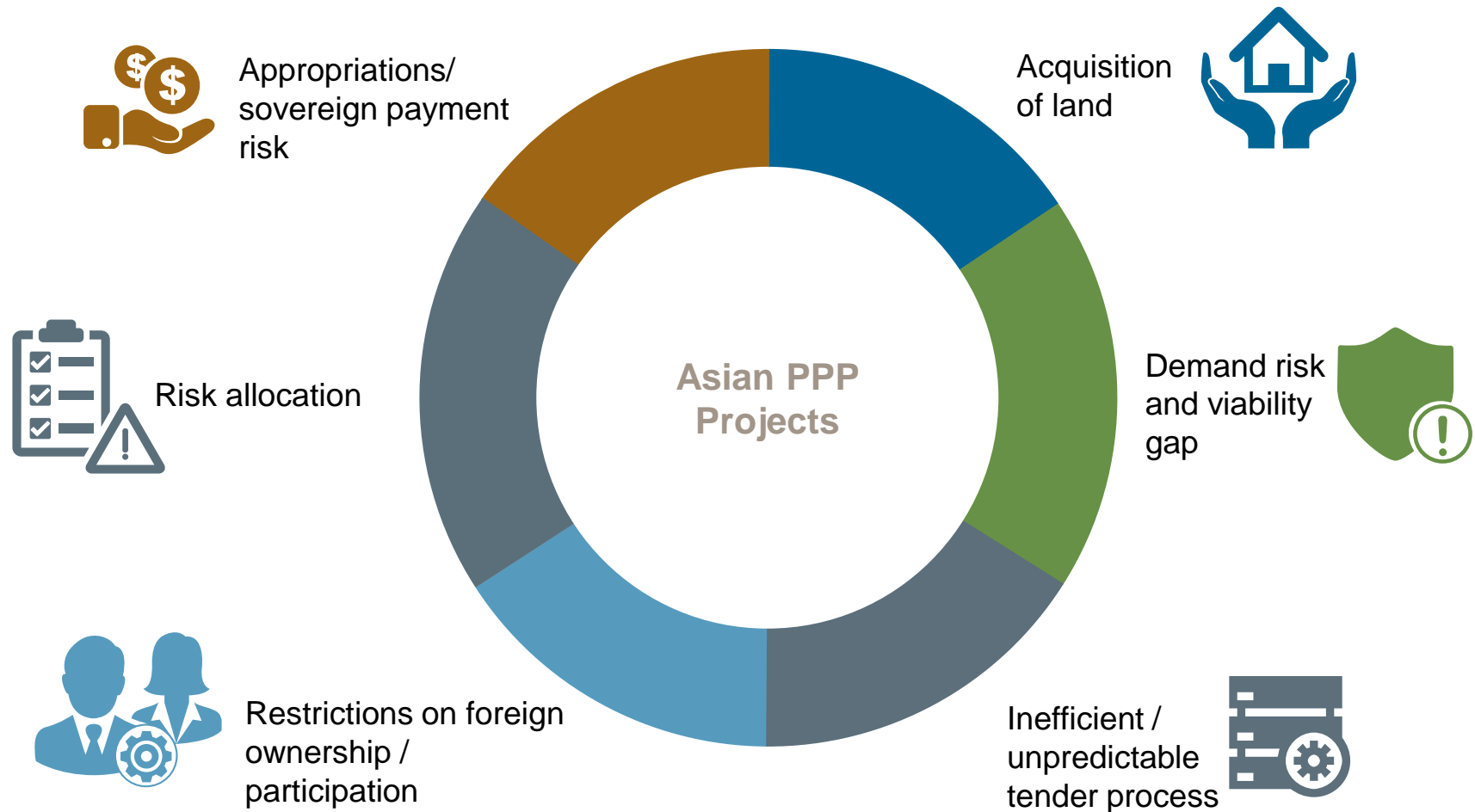
Innovative and open

- Optimal risk allocation
- De-centralised procurement process
- Economic and social infrastructure
- Innovation in design / delivery
- High levels of offshore participation in contracting, equity and debt financing
- Bond market refinancing operating PPPs

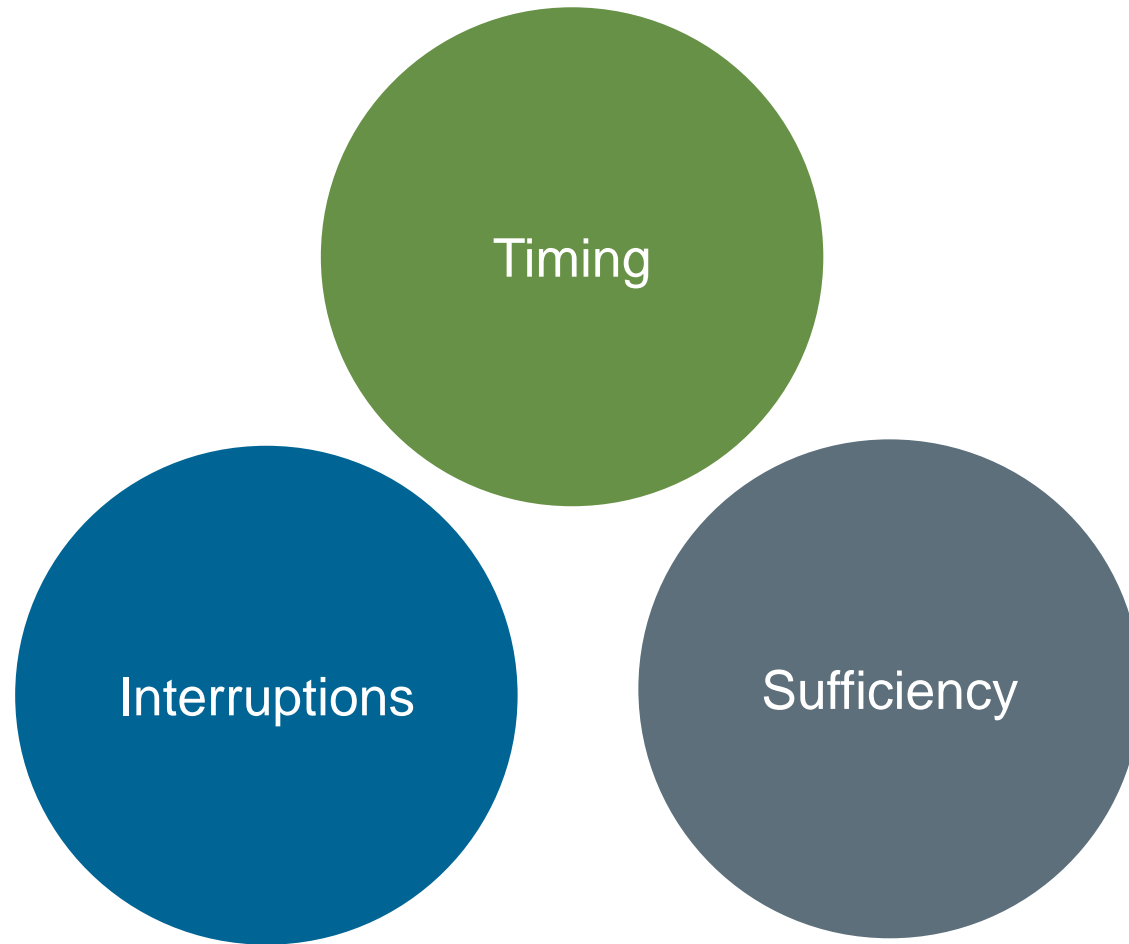
Development of a PPP Market



Key bankability issues in Asian PPP Projects



Acquisition of land



Land issues – Philippines and Indonesian case study



Timing

Procurement

- Tender projects prior to acquisition of land?
- Input from E&S advisers?

Legal powers

- Power of eminent domain, re-settlement
- Land Law (Indo), ROW Act (Phil)

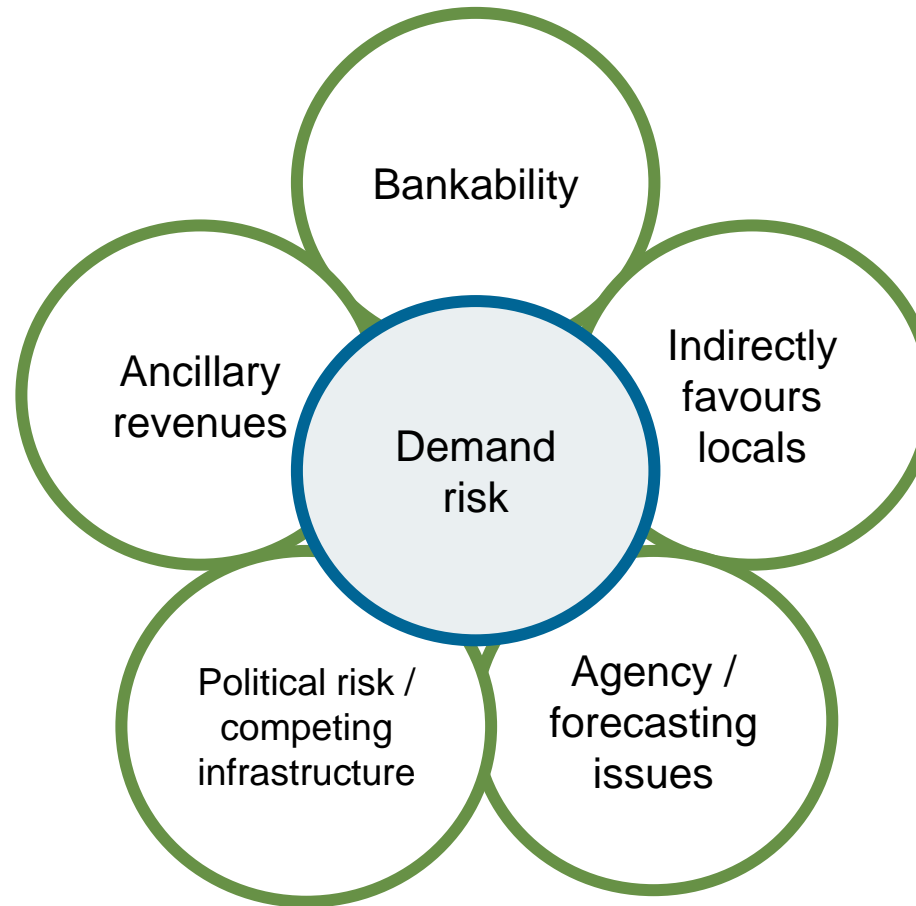
Risk allocation

- Procuring authority responsible for acquiring base land
- Relief / compensation for failure (details important!)

Execution

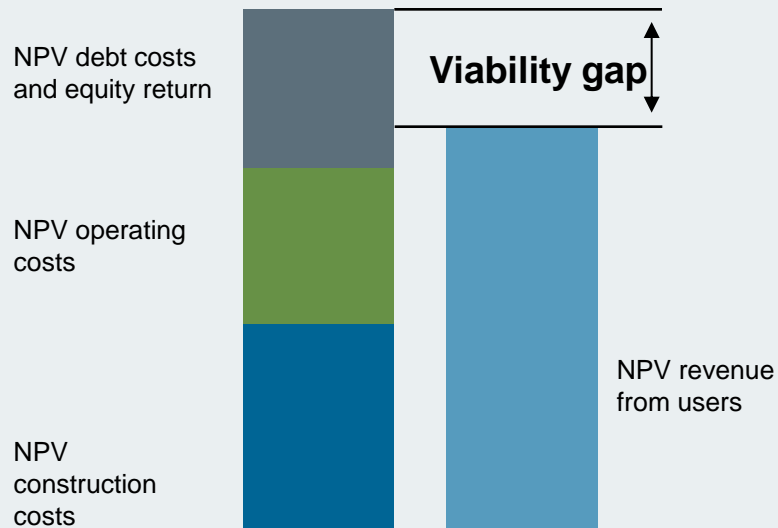
- Lack of coordination
- Lack of capacity (and incentives to out perform)

Demand risk: a compound problem

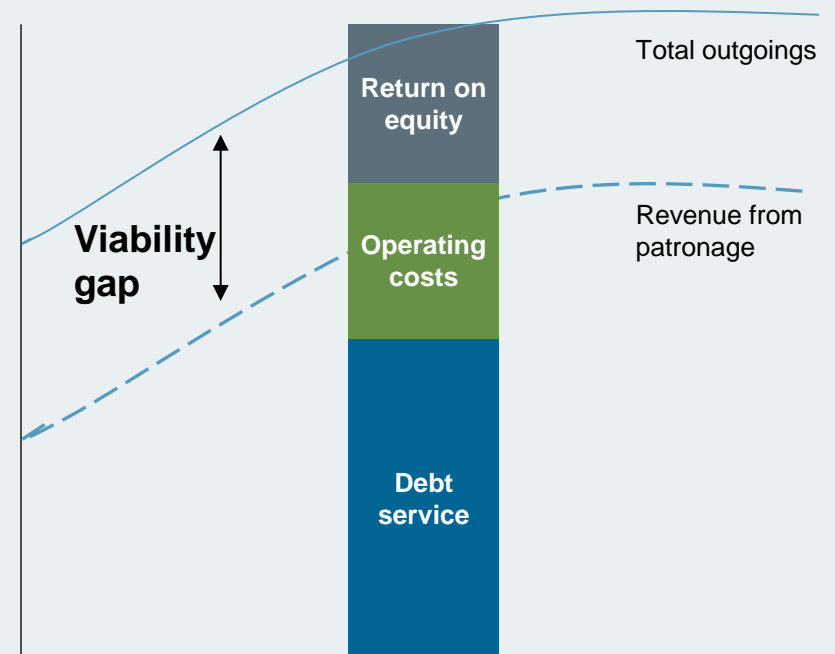


The viability gap

NPV approach



Cashflow approach

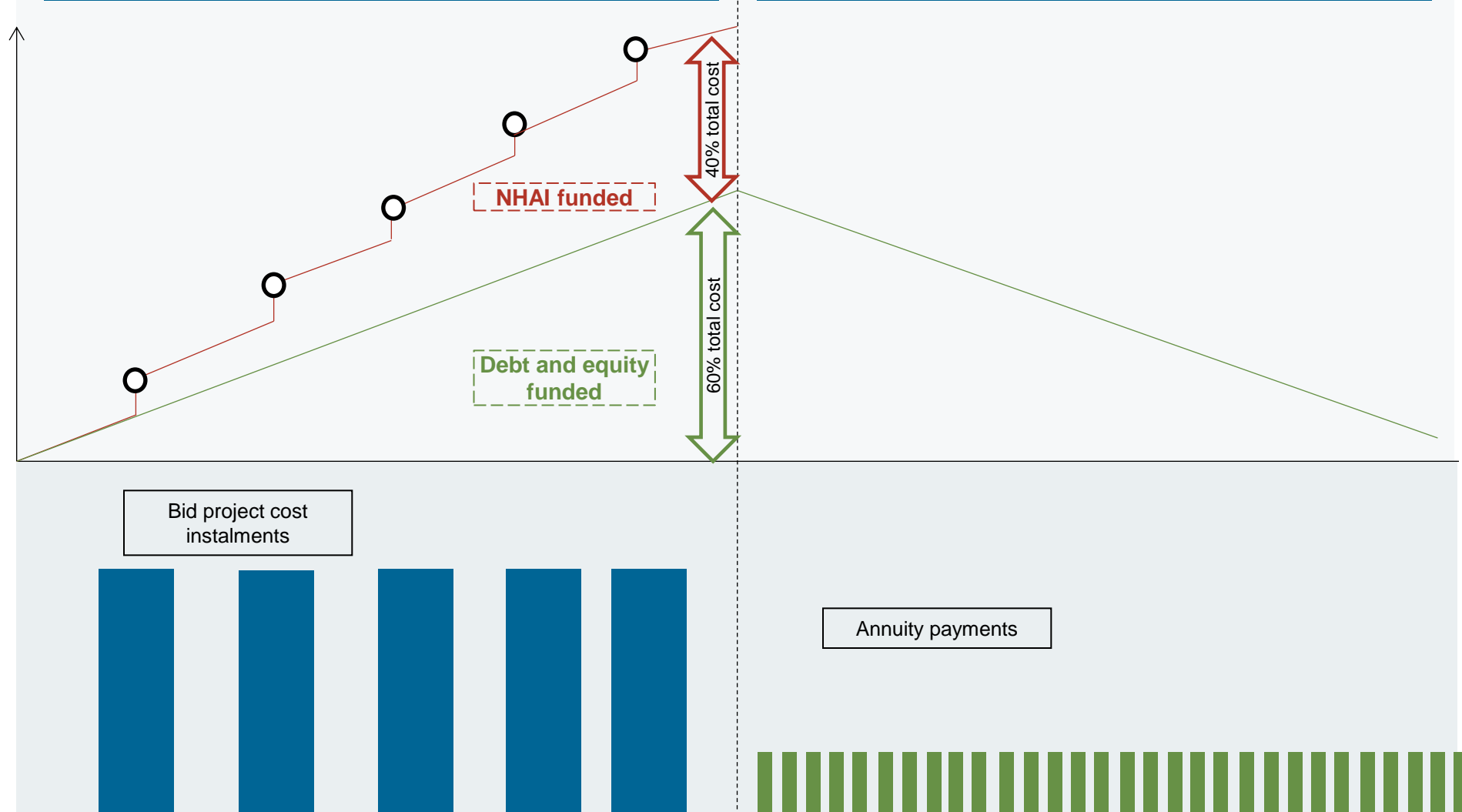




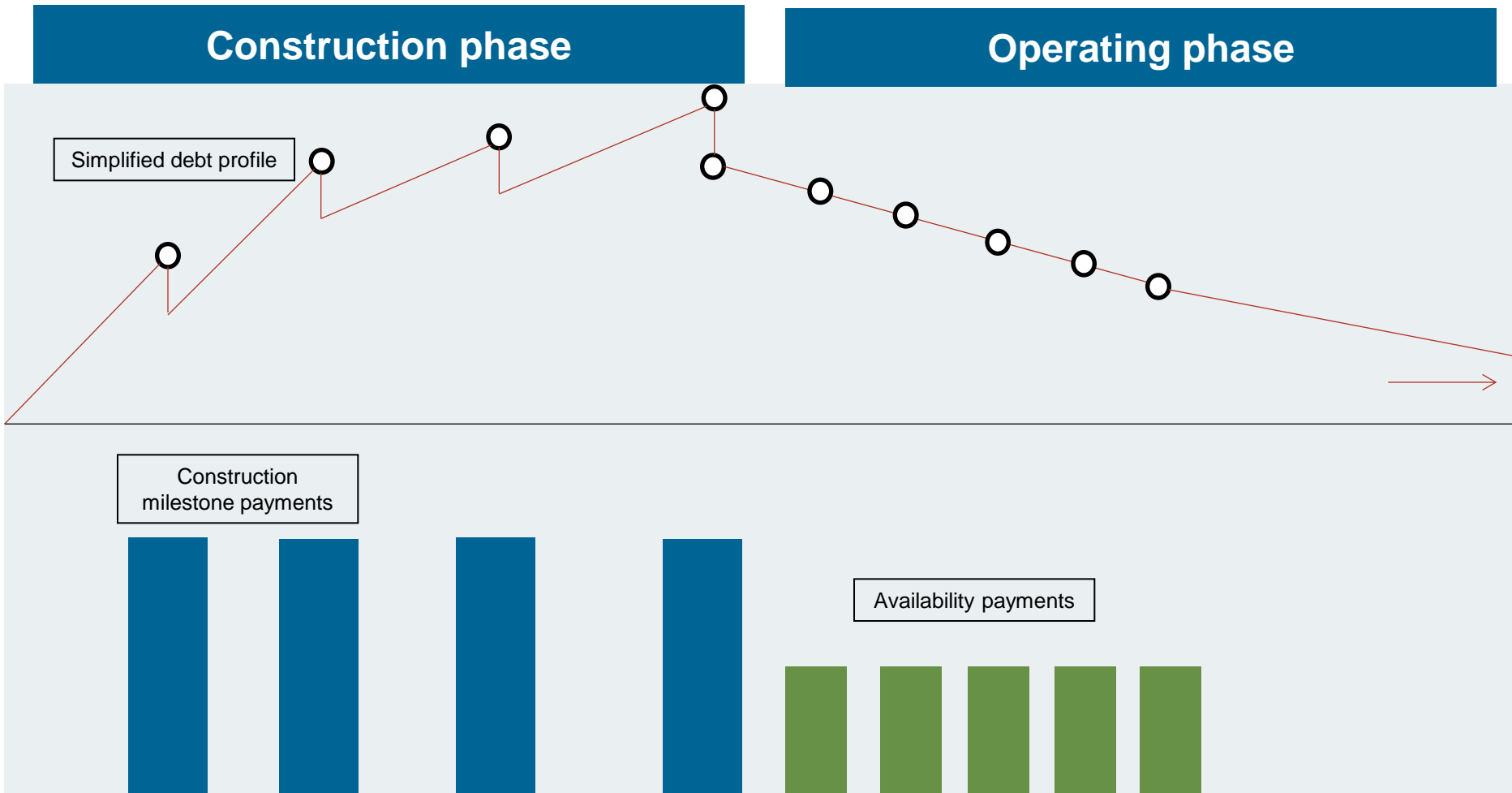
Hybrid Annuity Model (India)

Construction phase

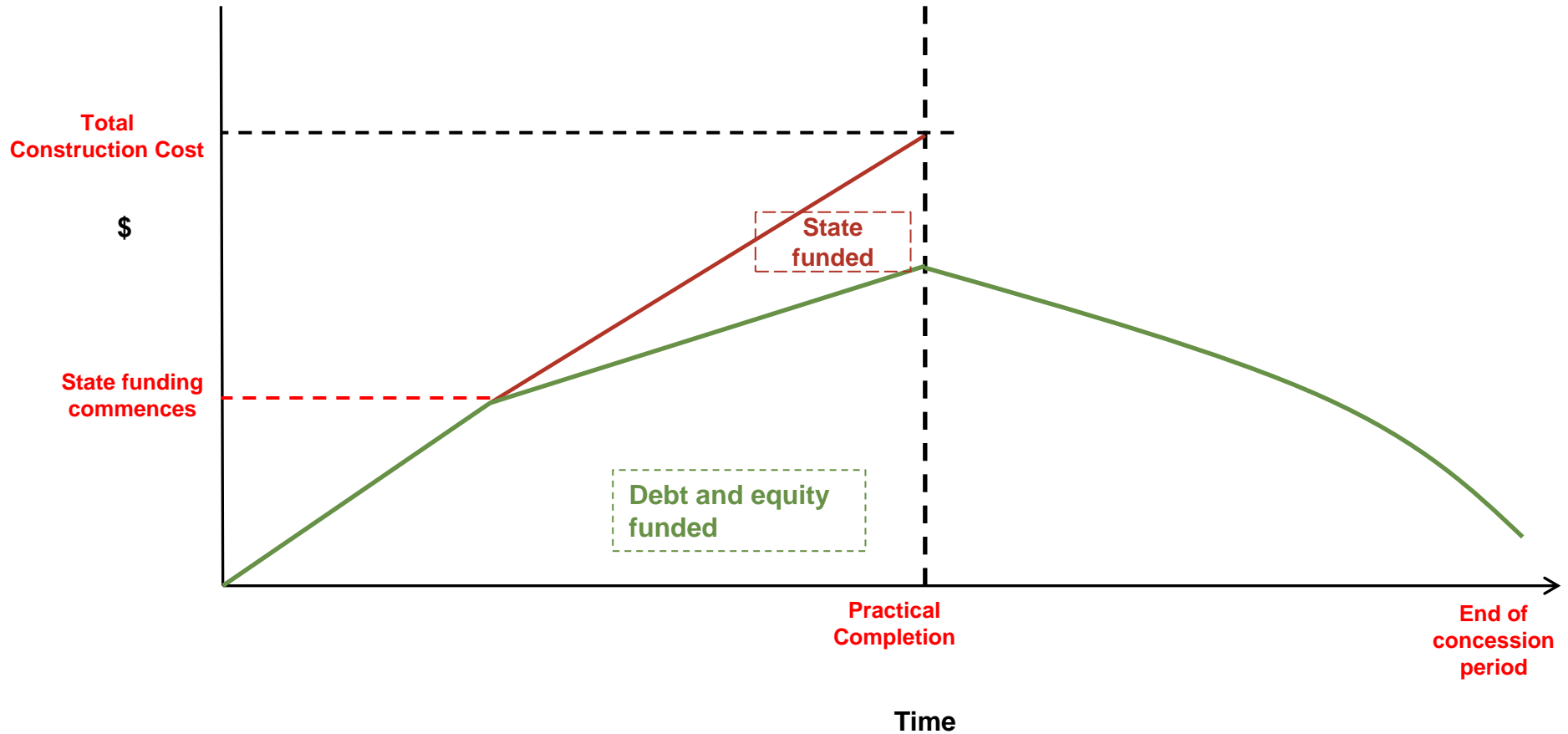
Operating phase



Philippines hybrid model



Deferred capital contribution (Australia)



Govt. support: Guarantees

Debt Guarantee

Guarantee of amounts payable to financiers

Limit of Authority's liability based on % of debt

Guarantee to financiers

No direct protection for equity

May indirectly protect financiers against other project SPV risks

Revenue Guarantee

Guarantee of minimum demand levels (and therefore revenue)

Limit of Authority's liability based on % of forecast traffic

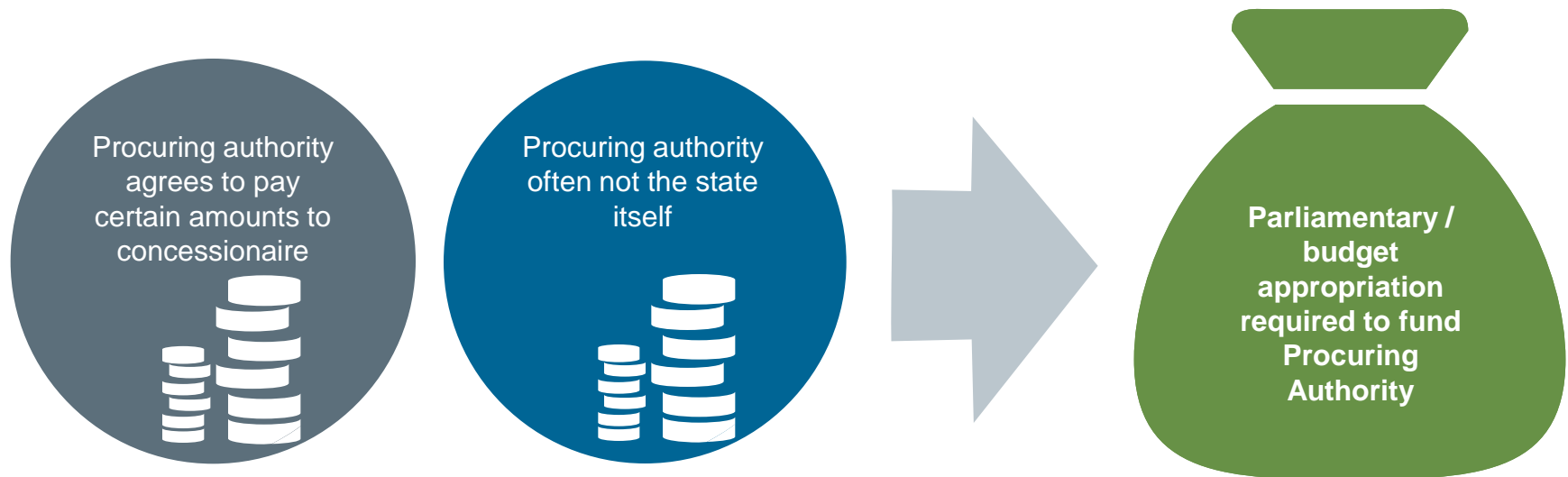
Guarantee to concessionaire

May offer some protection to equity depending on calibration

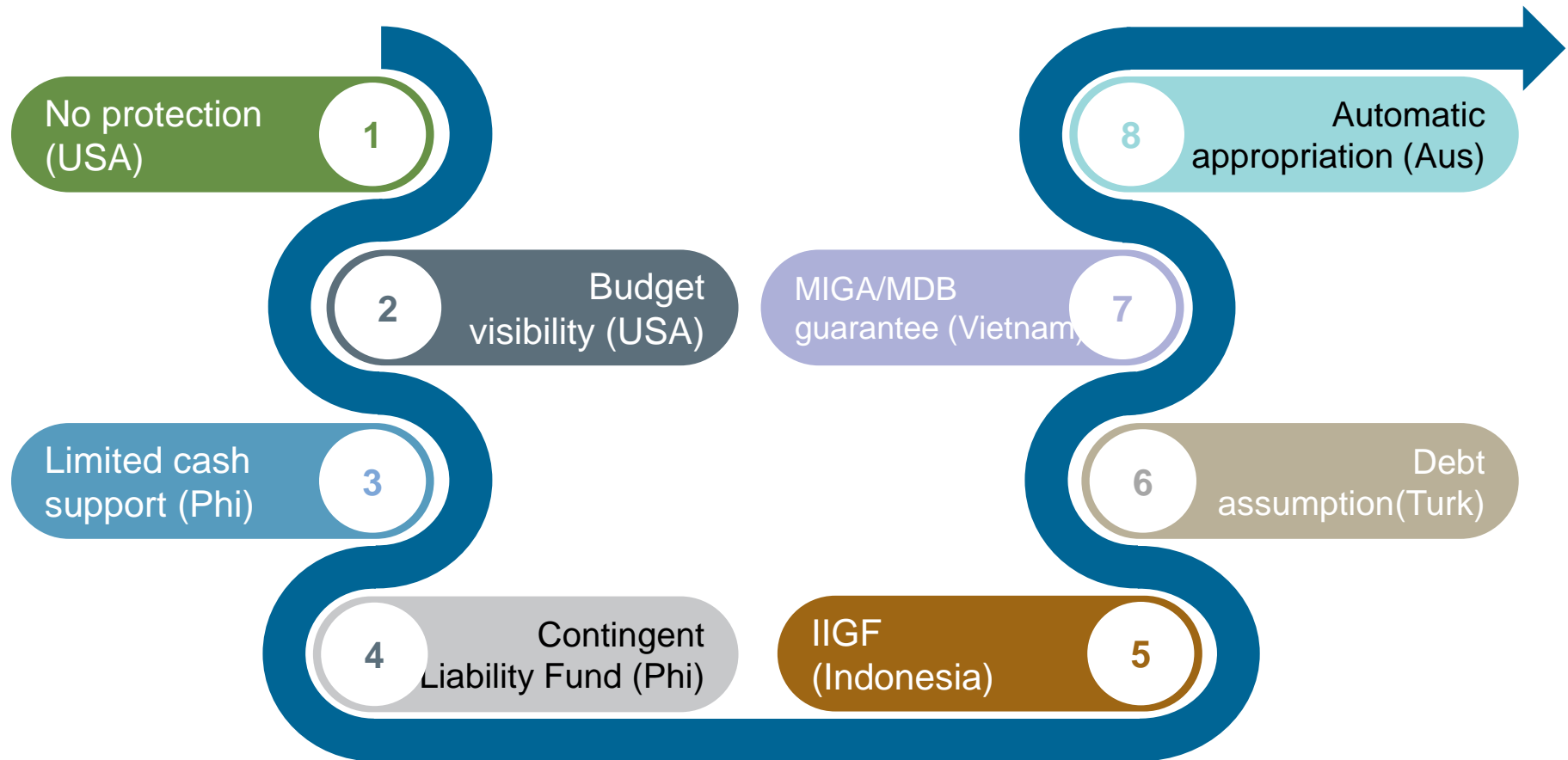
Project financiers remain exposed to other project SPV risks

Appropriations risk

Issue: How can private sector participants be comfortable that amounts payable by procuring authorities under a concession agreement will be paid when due?



Different approaches to appropriation risk

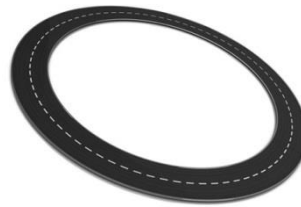


What might be around the corner?

Demand-risk
Social
Infrastructure



HOT / Express
Lanes



Project Bonds



Unsolicited
Proposals




















Procure and
Privatise



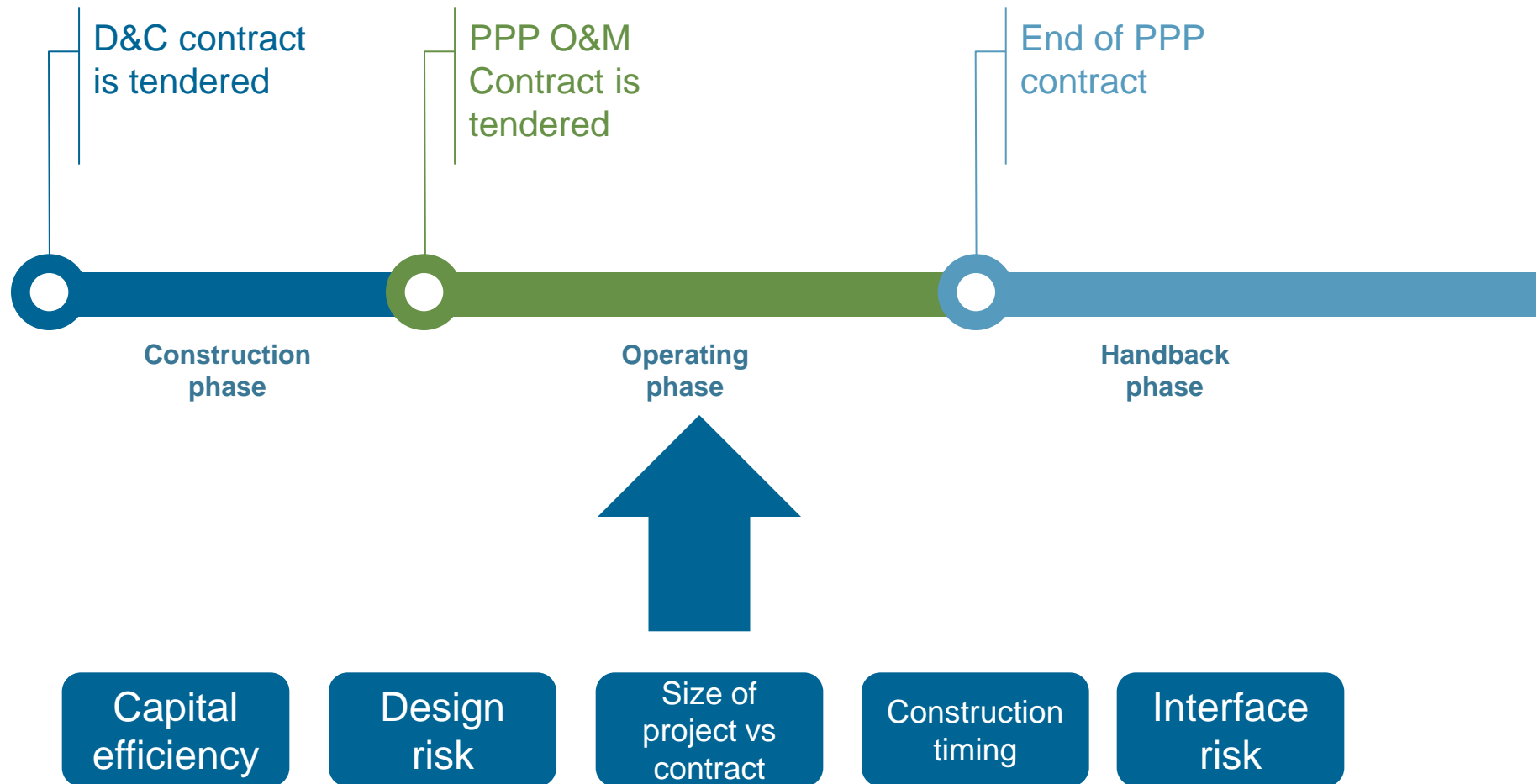
Points Based
Assessment



Unsolicited proposals

| | Indonesia | Thailand | Philippines | Vietnam | Myanmar |
|--------------------------------|--|---|--|--|---|
| Contemplated ? |  |  |  |  |  |
| Express framework |  |  |  |  |  |
| Benefits offered to Proponent | <ul style="list-style-type: none"> - Purchase of IP rights - 10% premium - Right to match |  | <ul style="list-style-type: none"> - Right to match (Swiss Challenge) | <ul style="list-style-type: none"> - 5% bonus during assessment - Costs of feasibility study |  |
| Condition to proceeding | <ul style="list-style-type: none"> - Sector plan - Financial capacity - Feasibility study | N/A | <ul style="list-style-type: none"> - New concept - Not on priority list - No government support | <ul style="list-style-type: none"> - Feasible - Consistent with policy - VND120bn - Private sector | N/A |
| Foreign ownership restrictions |  |  |  |  |  |

Procure and privatise



A word about project bonds

Government Backs Project Bonds for Philippine PPPs

"We are experiencing a lack of infrastructure right now. We have to find ways and means to develop projects that can get the interest of the private sector not only for the operation and maintenance, but also in the financing of these future infrastructure PPP projects"



| | Loans | | | Bonds | | | % Bonds vs Loans | | |
|-------------------------|----------------|----------------|----------------|---------------|---------------|---------------|------------------|--------------|--------------|
| <i>(in USD million)</i> | 2013 | 2014 | 2015 | 2013 | 2014 | 2015 | 2013 | 2014 | 2015 |
| Americas | 53,431 | 93,742 | 92,691 | 26,563 | 24,807 | 19,728 | 33.2% | 20.9% | 17.5% |
| EMEA | 88,266 | 94,539 | 109,046 | 19,706 | 20,574 | 10,748 | 18.3% | 17.9% | 9.0% |
| Asia Pacific | 63,726 | 71,004 | 75,438 | 2,986 | 4,951 | 5,284 | 4.5% | 6.5% | 6.5% |
| Total | 205,423 | 259,285 | 277,174 | 49,255 | 50,332 | 35,760 | 19.3% | 16.3% | 11.4% |

Source: PFI, Thomson Reuters

A worthy focus for regulators?



- Enormous source of potential liquidity
- Liquid bond market may assist with capital recycling
- Potential to diversify equity owners
- Long tenor debt can assist in de-risking PPP projects



Will this distract attention from the real problems?

Questions?



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