Global projects & construction

A global force to be reckoned with

Guide to contracting in global markets

Clyde&Co

Contents

A global force to be reckoned with

Introduction

As contractors continue to look beyond their domestic, often mature, markets for growth opportunities they face an almost overwhelming choice in terms of which markets to consider, the legal requirements and implications of operating in each market and the advantages and disadvantages of each.

This guide aims to offer a high level review – by countries and regions in which Clyde & Co routinely act – of key legal issues to consider when contracting in these markets. We hope that you find this to be a useful reference tool. If you have any questions, or would like to speak with a member of our global projects & construction group, then please do contact us.

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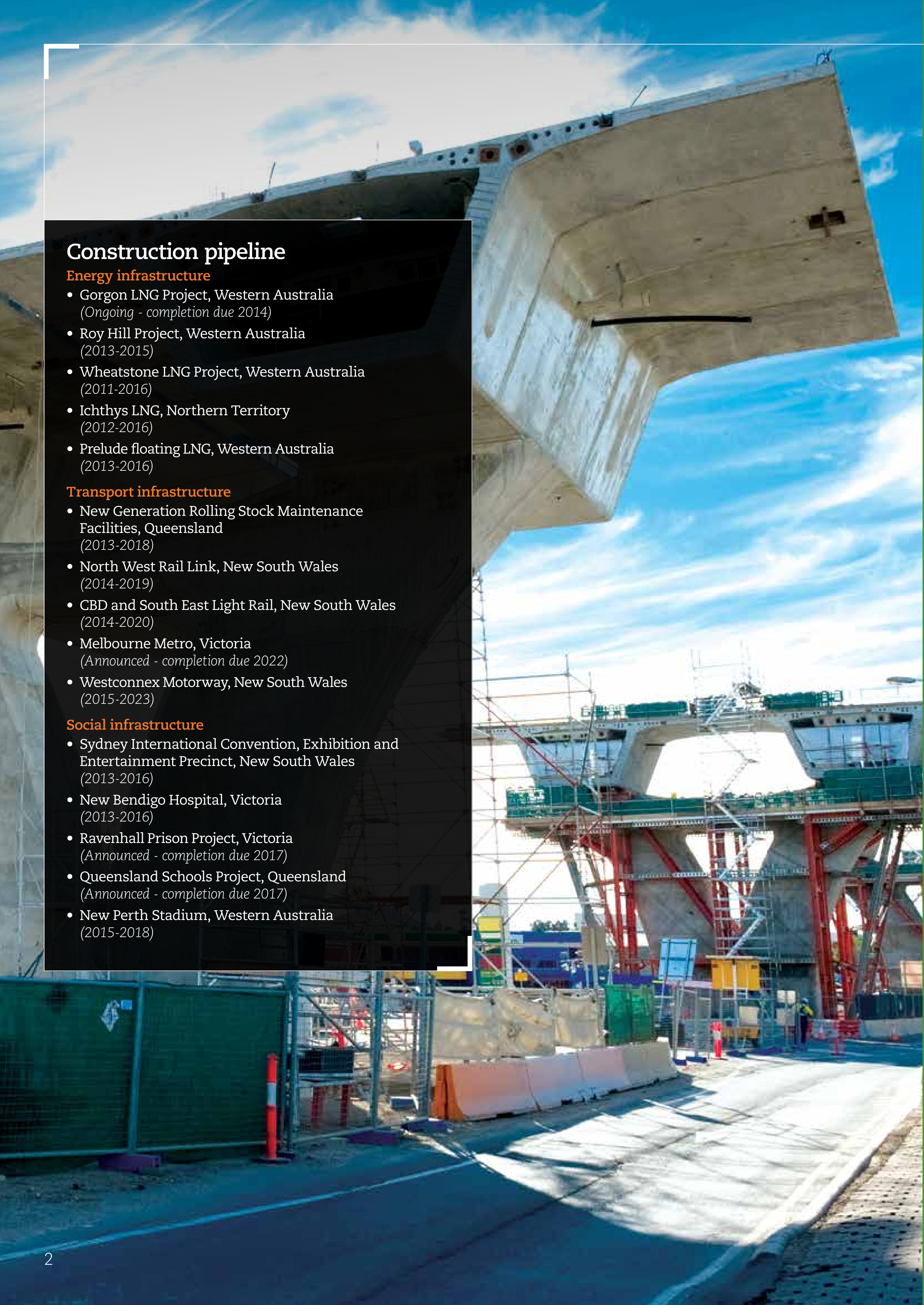


Construction pipeline

Energy infrastructure

- Gorgon LNG Project, Western Australia
  (Ongoing - completion due 2014)
- Roy Hill Project, Western Australia
  (2013-2015)
- Wheatstone LNG Project, Western Australia
  (2011-2016)
- Ichthys LNG, Northern Territory
  (2012-2016)
- Prelude floating LNG, Western Australia
  (2013-2016)

Transport infrastructure

- New Generation Rolling Stock Maintenance Facilities, Queensland
  (2013-2018)
- North West Rail Link, New South Wales
  (2014-2019)
- CBD and South East Light Rail, New South Wales
  (2014-2020)
- Melbourne Metro, Victoria
  (Announced - completion due 2022)
- Westconnex Motorway, New South Wales
  (2015-2023)

Social infrastructure

- Sydney International Convention, Exhibition and Entertainment Precinct, New South Wales
  (2013-2016)
- New Bendigo Hospital, Victoria
  (2013-2016)
- Ravenhall Prison Project, Victoria
  (Announced - completion due 2017)
- Queensland Schools Project, Queensland
  (Announced - completion due 2017)
- New Perth Stadium, Western Australia
  (2015-2018)

Australia

"The [Australian government] will ensure better infrastructure coordination and planning by tasking Infrastructure Australia with developing a 15-year pipeline of priority major infrastructure projects, to be revised every five years based on national, state and local infrastructure priorities."[1]

- The Coalition's Policy to Deliver the Infrastructure for the 21st Century

Key industry bodies

- Master Builders Australia (MBA)
- Property Council of Australia (PCA)
- Australian Constructors Association (ACA)
- The Royal Australian Institute of Architects (RAIA)
- Engineers Australia (EA)
- The Resources and Energy Law Association (AMPLA)

Market facts

- **AUD 324.9 billion** construction industry income in 2012[2]
- **AUD 86.6 billion** of capital expenditure from Australian mining in 2012[2]
- Nine ongoing construction PPP projects (as at July 2012)[3]
- **AUD 82.9-91.2 billion** of PPP projects on the government 'priority list'[4]

1 The Coalition's Policy to Deliver the Infrastructure for the 21st Century, September 2013
2 Industry Overview, Australian Bureau of Statistics, 2011-2012
3 PPP Projects in the Market, Infrastructure Australia
4 Infrastructure Priority List, Infrastructure Australia, July 2013

Construction

Contractual issues

- Common forms of contract procurement include:
  - Traditional (construct only)
  - Design and construct
  - Project management
- Each Australian State and Territory has its own statutory jurisdiction with different courts and legislation
- Standards Australia (AS) standard form contracts are widely used but often subject to amendments. They are intended to spread risk evenly between principal and contractor
- Time bars are relatively common. These clauses require the contractor to do certain things within a particular time - failing which any entitlement is lost
- 'Pay when paid' and 'pay if paid' clauses are generally void. These clauses make payment to the contractor contingent upon a related payment being made to the principal or a third party
- Generally, liability may be excluded or limited - exclusions of consequential loss and overall caps on liability are relatively common. There are some constraints on excluding liability which apply in various Australian jurisdictions (e.g. liability in respect of 'misleading and deceptive' conduct)
- Liquidated damages (LDs) are often included for contractor delays but are only enforceable if a genuine pre-estimate of loss. Principal delays are typically addressed by granting the contractor an entitlement to an extension of time (EOT) and/or additional payment for defined compensation events

Key legislation

- Security of payment legislation
  Legislation passed in each Australian State and Territory, which primarily ensures that any person who undertakes to carry out construction work (or supply related goods and services) under a construction contract is entitled to receive and is able to recover, progress payments in relation to the carrying out of that work and the supplying of those goods and services
- Business industry legislation, codes and standards
  The Australian building and construction industry is governed by a multitude of acts and regulations dealing with building services, as well as various codes and standards, such as the National Construction Code, the Building Code of Australia, or Australian Standards (Standards Australia provide an industry standard suite of construction contracts in Australia)
- Civil liability legislation
  Each Australian State and Territory has passed its own proportionate liability legislation, whereby liability for loss is to be apportioned between concurrent wrongdoers according to their respective responsibility for the loss (the risk of a wrongdoer's insolvency or disappearance falls on the plaintiff). Western Australia, New South Wales and Tasmania allow parties to contract out of the legislation, whereas contracting out is prohibited in Queensland. Victoria, South Australia and Australia's Capital Territory (ACT) are silent on whether contracting out is permitted

Insurance

- Common types of insurance required under contract include:
  - All risks insurance: damage to works and site materials
  - Professional indemnity insurance: where the contractor has design responsibility, standard AS contracts require the contractor to effect and maintain professional indemnity insurance with minimum cover
  - Public liability insurance: damage, injury and death to third parties
  - Product liability insurance: damage and injury arising from products incorporated within the contract works

PFI/PPP

Contractual issues

- PPPs generally incorporate a design and construct procurement model, usually using a bespoke form of contract negotiated between the employer and contractor
- Site risk is normally assumed by the contractor, particularly if an existing build on-site prevents thorough investigation before the contract is let. However, compensation event provisions may entitle the contractor to additional payment and/or additional time to complete works
- Legislation change risk is usually only allocated to the contractor if it adversely affects the way works are carried out
- Third party risk, such as planning or industrial action, is usually negotiated
- PPP construction contracts are generally subject to the same legislative and regulatory requirements as non-PPP construction contracts

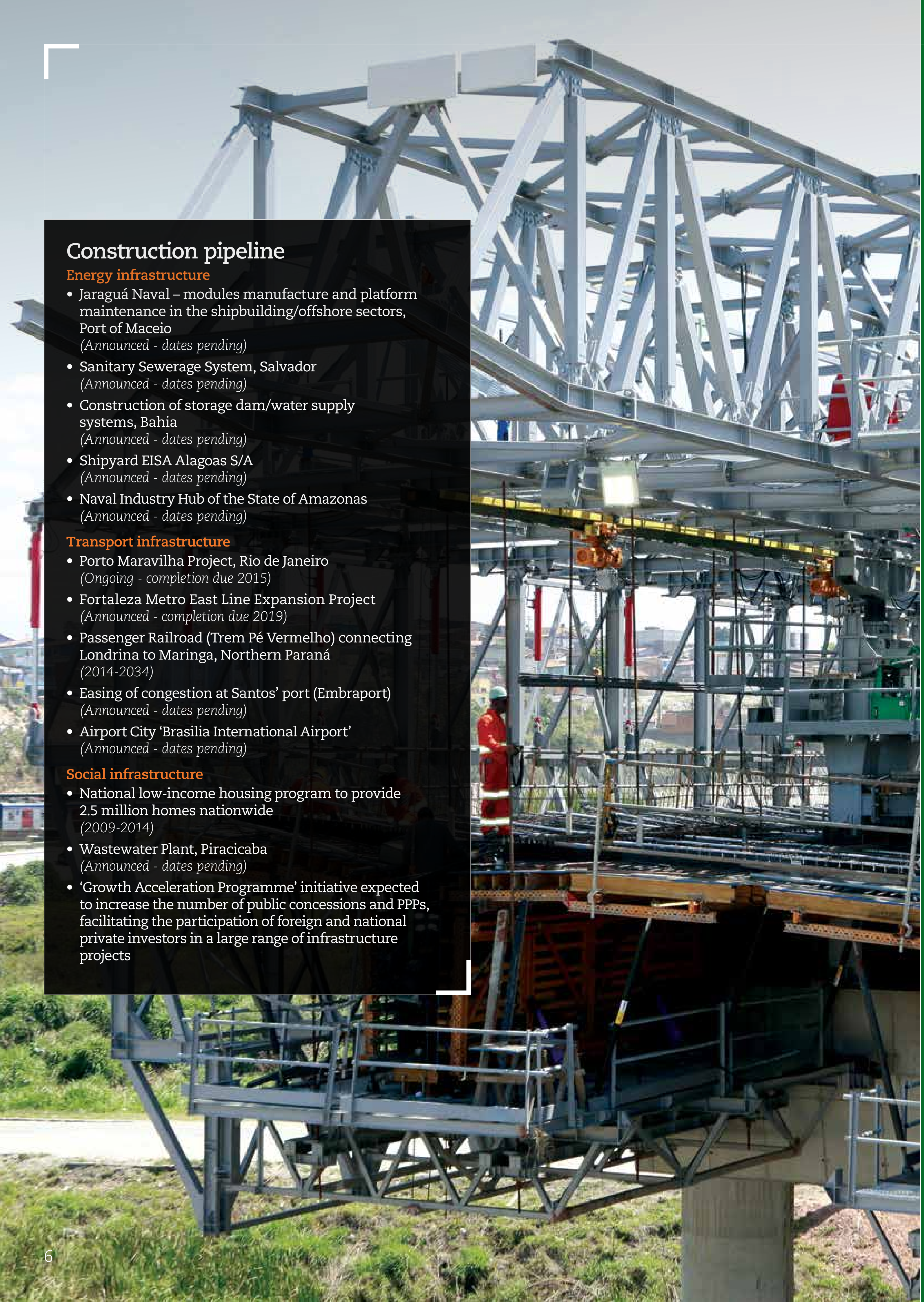
Key legislation

- National PPP Guidelines, Policy Framework, December 2008
  Australian government (and Infrastructure Australia) guidelines to promote PPPs in Australia, including minimising transaction costs, removal of disincentives to participation and a stronger pipeline of PPP projects by ensuring only best-suited projects are considered for PPP delivery[5]

Insurance

- Construction phase: contractor is expected to carry insurance in accordance with industry practice
- Operational phase: property damage, business interruption and third party public and product liability insurance is generally required

5 National Public Private Partnership Policy Framework, Infrastructure Australia, December 2008



Construction pipeline

Energy infrastructure

- Jaraguá Naval – modules manufacture and platform maintenance in the shipbuilding/offshore sectors, Port of Maceio
  (Announced - dates pending)
- Sanitary Sewerage System, Salvador
  (Announced - dates pending)
- Construction of storage dam/water supply systems, Bahia
  (Announced - dates pending)
- Shipyard EISA Alagoas S/A
  (Announced - dates pending)
- Naval Industry Hub of the State of Amazonas
  (Announced - dates pending)

Transport infrastructure

- Porto Maravilha Project, Rio de Janeiro
  (Ongoing - completion due 2015)
- Fortaleza Metro East Line Expansion Project
  (Announced - completion due 2019)
- Passenger Railroad (Trem Pé Vermelho) connecting Londrina to Maringa, Northern Paraná
  (2014-2034)
- Easing of congestion at Santos' port (Embraport)
  (Announced - dates pending)
- Airport City 'Brasilia International Airport'
  (Announced - dates pending)

Social infrastructure

- National low-income housing program to provide 2.5 million homes nationwide
  (2009-2014)
- Wastewater Plant, Piracicaba
  (Announced - dates pending)
- 'Growth Acceleration Programme' initiative expected to increase the number of public concessions and PPPs, facilitating the participation of foreign and national private investors in a large range of infrastructure projects

Brazil

"[An] important factor in the quality of spending is an increase in levels of investment in terms of overhead. Public investment is essential in leveraging private investment and as a regional development tool.

By means of the Growth Acceleration Program and the 'My House, My Life' Program, we will continue to keep investment under the strict and careful scrutiny of the Presidency of the Republic and the Ministries.

The Growth Acceleration Program will continue to be an instrument that brings together government action and voluntary coordination of structural investments made by the states and municipalities. It will also be the vector that gives an incentive to private investment, valuing all the initiatives to constitute long-term private funds.

In their turn, the investments expected for the World Cup and the Olympics will be made in such a way as to achieve permanent gains in quality of life for those in all the regions involved."[1]

- President Dilma Vana Rousseff, January 2011

Key industry bodies

- Brazilian Association Base Infrastructure and Industry (ABDIB)
- Brazilian Metal Construction Association
- Brazilian Studies and Projects Financing Company (FINEP)
- Institute of Architects of Brazil
- National Syndicate of Architecture & Engineering
- Brazilian Agency for Industrial Development (ABDI)
- National Department of Transport Infrastructure (DNIT)
- Ministry of Development, Industry and Foreign Trade (MDIC)
- Brazilian Association of Industrial Engineering (ABEMI)

Market facts

- Construction spending expected to increase at a 7% compound annual growth rate over the next five years[2]
- **USD 526 billion** estimated investment as part of second phase of 'Growth Acceleration Program' (PAC 2) between 2011-2014
- **USD 133 billion** of road and railway infrastructure investment between 2012-2017
- **USD 9.1 billion** in active PFI projects financed by the International Bank for Reconstruction and Development (IBRD) (as at September 2013)
- **USD 14.4 billion** in Rio as a result of 2016 Olympic Games - expected to have significant impact on future infrastructure and economic development

1 President Dilma Vana Rousseff Inauguration speech, Embassy of Brazil in London, January 2011
2 A Brighter Outlook - International Construction Cost Survey, Turner & Townsend, 2013

Construction

Contractual issues

- Common contractual or procurement structures include:
  - Design bid build (DBB)
  - Engineering, procurement and construction management (EPCM)
  - Engineering, procurement and construction (EPC)
  - Alliance (the use of which has recently increased- notably in the case of more complex projects with particular financing challenges)
- Commonly used corporate forms in Brazil include:
  - Limited liability company (sociedade limitada) (LLC)
  - Joint stock company (sociedade anonima)
- In both types of company, the responsibility of the project partners is limited in relation to the company and third parties
- In major civil engineering projects, the contractual structures are often simple, with the client engaging a major contractor, which then subcontracts with its supply chain
- However, major contractors may form unincorporated joint ventures to undertake larger schemes (assuming joint and several liability to their client, and allocating responsibilities between themselves through a joint venture agreement)
- If a special purpose vehicle (SPV) is used, losses at one location can be offset against gains at another, in a consolidated tax filing. Upstream ownership of private corporations can generally remain confidential, but public land records must identify the owning entities. The choice of SPV affects the type of collateral demanded (for example, parent guarantees for corporations or personal guarantees for LLCs)
- A consortium can also be used to facilitate the development of joint projects without actually incorporating a regular company. In principle, companies which take part in a consortium have no joint liability and each one is severally liable for the obligations incurred by them, unless the consortium agreement expressly states otherwise

Legislation

- Law No 4.864, of 29 November 1965
  Establishes provisions to stimulate the construction industry
- Brazilian Civil Code, 2002 (Articles 610 - 626)
  Regulates the rights and liabilities in relation to constructions contracts
- Federal Law No 5,869/1973 (Brazilian Code of Civil Procedure)
  Construction disputes are governed by this principal form of legislation governing all civil disputes
- Federal Law No 6,514/77
  Primary instrument regulating occupational health and safety standards
- Administrative Norm No 3,214/78 (known as Normas Regulamentadoras (NRs))
  Health and safety legislation issued by the Ministry of Labour establishing programmes for medical control of occupational health

Insurance

Compulsory insurance

Mandatory insurance for construction projects includes:

- Insurance for personal injury
- Insurance for buildings divided into independent units
- Insurance bond securing payment of the civil construction debtor, including the real estate obligation

Non-compulsory insurance

- Common practice for contractors to provide performance security in relation to their contractual obligations
- The contractor (and often subcontractors and suppliers, as well as, to a lesser extent, consultants) is often contractually required to take out the following insurance for a construction project:
  - Life and personal accident insurance for employees
  - A performance bond
  - Civil liability risk insurance
  - Engineering risk insurance
- In international projects, contractor performance is usually guaranteed by either a standby letter of credit or bank guarantee

PFI/PPP

Contractual issues

- In PPP agreements, the Public Administration creates guarantees to assure the payment of a government subsidy to private parties; the agreement's value needs to be at least BRL 20 million (USD 11.7 million) and the execution period must be at least five years
- PPP agreements cannot be entered into with the sole purpose of executing public works, supply of workers or installation and supply of equipment

Legislation

- Federal Law No. 11,079/2004 ('the PPP Law')
  Sets forth general rules about PPPs, which, under Article 2, were introduced as (i) sponsored concession agreements and (ii) administrative concession agreements
- Federal Law No. 8,987/1995
  Regulates sponsored concessions, which are ordinary concession of public services and public works where there are government subsidies plus tariffs charged for consumers
- (1) Article 37 of Federal Constitution and (2) Federal Law 8,666/1993
  Applicable to public procurement/bid procedures: (1) criteria of legality, impersonality, morality and publicity; and (2) criteria, inter alia, of principles of equality, compliance with the bidding prospectus, objective awarding and formal procedure
- Federal Law No. 12,462/2011
  Facilitated catalysing of public procurements necessary for recent/upcoming sporting events through Special Regime for Public Procurements (RDC), namely exclusively:
  - 2013 FIFA Confederations Cup
  - 2014 FIFA World Cup
  - 2016 Olympic and Paralympic Games
  - Construction of infrastructure and provision of services at airports located within 350 km of cities serving as host venues for the World Cup

Insurance

- Brazilian insurance market is closed to foreign players, meaning that only Brazilian companies, which must be duly licensed by the Superintendência de Seguros Privados (SUSEP), can operate in this market
- Local players, however, can be fully owned by foreign companies. Although brokers are the parties duly authorised to intermediate the contractual relationship between the (re)insurer and the (re)insured, their presence is not compulsory

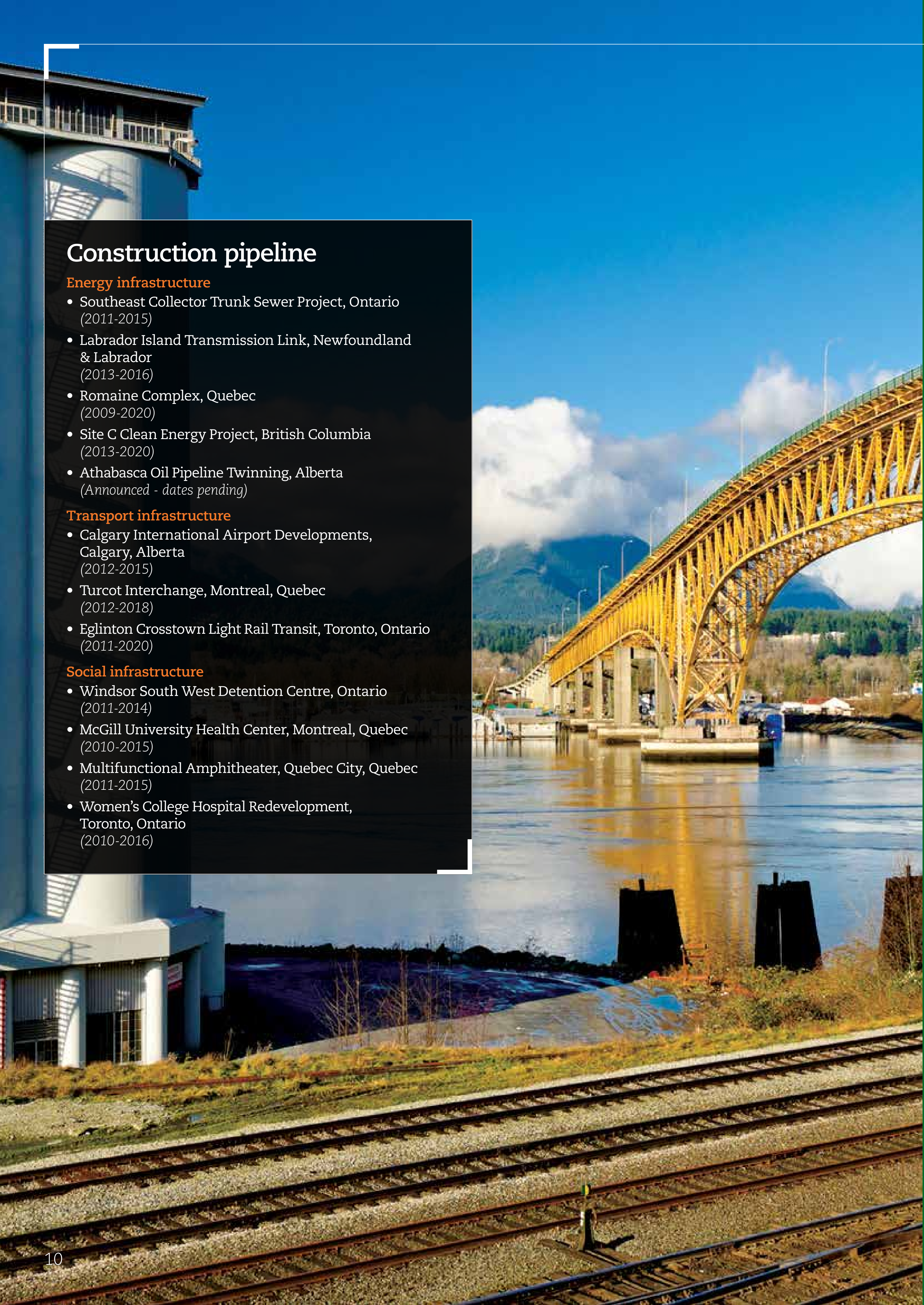
Other considerations

PPP

- Revived interest in PPPs and infrastructure in general - as Brazil prepares for the World Cup in 2014 and Olympic and Paralympic Games in 2016
- On a microeconomic level, Brazilian companies need improved infrastructure to allow them to develop, while on a macro level, it is a means to re-balancing growth and increasing the level of investment in the economy
- Brazilian growth is therefore not only driven by consumption, but investment too. A large percentage of this investment has traditionally been contributed by The Brazilian Development Bank (BNDES), which in 2011 lent more to infrastructure (40%) than it did to 'industry' (32%)
- In the short-to-medium term, international project finance lenders will struggle to compete with the terms BNDES can offer in lending long-term to national infrastructure as the difference between the long-term interest rate and policy rate stands at around 200 basis points – with BNDES charging 5.5% and the base rate at 7.5%
- The ports sector has historically suffered a great deal of under-investment which has been detrimental to Brazilian economic growth
- Embraport is an exception to the rule as it included both commercial and BNDES funding - setting an example for future port deals in the market

Construction

- Brazil is not forced to rely on international developers to realise its infrastructure ambitions, as it already boasts world-class construction companies. However, as with BNDES playing such a central role in infrastructure financing, there is a danger that such a scenario may recur in relation to its construction. Going forward, international investors are perceived as key if Brazil hopes to keep up with rising demand



Construction pipeline

Energy infrastructure

- Southeast Collector Trunk Sewer Project, Ontario
  (2011-2015)
- Labrador Island Transmission Link, Newfoundland & Labrador
  (2013-2016)
- Romaine Complex, Quebec
  (2009-2020)
- Site C Clean Energy Project, British Columbia
  (2013-2020)
- Athabasca Oil Pipeline Twinning, Alberta
  (Announced - dates pending)

Transport infrastructure

- Calgary International Airport Developments, Calgary, Alberta
  (2012-2015)
- Turcot Interchange, Montreal, Quebec
  (2012-2018)
- Eglinton Crosstown Light Rail Transit, Toronto, Ontario
  (2011-2020)

Social infrastructure

- Windsor South West Detention Centre, Ontario
  (2011-2014)
- McGill University Health Center, Montreal, Quebec
  (2010-2015)
- Multifunctional Amphitheater, Quebec City, Quebec
  (2011-2015)
- Women's College Hospital Redevelopment, Toronto, Ontario
  (2010-2016)

Canada

"The global economy is changing. Competition for the brightest minds is intensifying. The pace of technological change is creating new opportunities while making older business practices obsolete. Canada's long-term economic competitiveness in the knowledge economy demands globally competitive businesses that innovate and create high-quality jobs.

New construction and infrastructure projects are key enablers for economic growth and job creation. Investments will focus on projects that promote productivity and economic growth, such as highways and public transit, and are designed to capitalize on innovative approaches, such as public-private partnerships."[1]

- Creating a New Building Canada Plan, September 2013

Key industry bodies

- Canadian Construction Association (CCA)
- Association of Consulting Engineering Companies (ACEC)
- Canadian Construction Documents Committee (CCDC)
- Royal Architectural Institute of Canada (RAIC)
- Construction Specifications Canada (CSC)
- Engineering Institute of Canada (EIC)

Market facts

- Construction industry accounts for more than 12% of Canada's gross domestic product (GDP) and maintains and repairs **CAD 2.9 trillion** in assets[2]
- **CAD 53 billion** in federal support proposed under Economic Action Plan 2013, including over **CAD 47 billion** in new funding over 10 years (starting in 2014-15) for provincial, territorial and municipal infrastructure projects[3]
- 205 construction PPP projects (as at September 2013)[4]
- **CAD 398.2 billion** of investment in construction, machinery and equipment in 2013[5]
- **CAD 1.25 billion** to continue supporting infrastructure projects through PPPs[6]
- **CAD 32.2 billion** under a 10 year 'Community Improvement Fund' to build roads, public transit, recreational facilities and other community infrastructure[7]

1 Creating a New Building Canada Plan, September 2013
2 Build Force Canada, Government of Canada
3 Budget Plan 2013 - Chapter 3.3: The New Building Canada Plan, Government of Canada
4 Canadian PPP Project Database, The Canadian Council for Public-Private Partnerships
5 Private and Public investment in 2013, Statistics Canada, February 2013
6 Canada's Economic Action Plan 2013: The New Building Canada Plan, Government of Canada
7 Budget Plan 2013 - Chapter 3.3: The New Building Canada Plan, Government of Canada

Construction

Contractual issues

- Standard form contracts provided by the Canadian Construction Documents Committee are often adopted and modified
- Common forms of standard contracts include:
  - Design build stipulated price contract
  - Design builder/consultant contract
  - Stipulated price contract
  - Construction management contract
  - Unit price contract
  - Civil works contract
- Contracts are governed by the laws of each of the 10 provinces
- Quebec civil law regime is distinct from the rest of Canada's common law system. Quebec courts look to the Civil Code as the source of law whereas courts in the common law provinces refer to judicial precedent in the absence of a statutory regime
- Quebec Civil Code contains provisions unique to Quebec, e.g. presumption of liability of the contractor, architect and engineer for loss of immovable work in first five years after completion (art. 2118 C.C.Q.)
- Construction liens/immovable hypothecs are also a matter of provincial jurisdiction with each province determining the terms and conditions

Legislation

- The provinces and municipalities have adopted laws and regulations governing the quality of construction work and public safety – from design through to completion and beyond
  - Quebec has enacted a Construction Code and a Safety Code pursuant to the Building Act, L.R.Q., c. b-1.1, specifying requirements for engineers, architects, contractors and other parties to a construction contract
  - Ontario has enacted a Building Code pursuant to the Building Code Act, S.O. 1992, c. 23
- Legislation to protect and compensate construction workers for bodily injuries also enacted. Promotes health and safety and creates a series of no-fault regimes featuring a public insurance scheme covering work accidents funded by employers:
  - Occupational Health and Safety Act, R.S.O. 1990, c. O.1 (Ontario)
  - Workers' Compensation Act, R.S.O, 1990, c. W.11 (Ontario)
  - An Act respecting occupational health and safety, R.S.Q., c. S-2.1 (Quebec)
  - An Act respecting industrial accidents and occupational diseases, R.S.Q., c. A-3.001 (Quebec)

Insurance

Common types of insurance issued for construction projects:

- Commercial general liability insurance ("wrap-up" if issued for a single project): protects insured against liability for damage to third party property and bodily injury to third parties
- Builder's risk insurance: first party property insurance covering damage to property in the course of construction
- Pollution insurance: first party coverage for cleanup costs; third party liability insurance for pollution conditions
- Professional liability insurance: protects construction professionals against liability for third party claims

PFI/PPP

Contractual issues

- Different PPP models can be used[8]:
  - Design build
  - Finance only
  - Operation & maintenance
  - Design build finance maintain
  - Design build finance maintain operate
  - Concession
- Payment upon delivery: the private entity is paid only when construction is completed. The addition of output-based obligations and payment upon delivery creates a performance-based contract
- These are long-term contracts of two or more phases that usually cover a large part of the useful economic life of the asset
- The adoption of PPP friendly legislation by Canadian provincial and municipal governments in recent years demonstrates the increased political will to create suitable policies for the development and implementation of complex, large-scale construction projects
- The Canadian PPP market has seen an increasing range of projects over the past few years, including waste management, rapid transit and road infrastructure
- Throughout the 2008-09 financial crisis, projects were still able to attract financing as both the public and private sectors took measures to address the negative impact of the economic downturn. These included bond financing to transfer the risk of long-term lifecycle costs as well as increased government capital contributions at the substantial completion stage to help reduce long-term debt. Some measures that were adopted during the crisis are still in force today and continue to play a role in fostering the growth of the PPP market
- Over the past few years, infrastructure debt funds have been created as an alternative method to finance infrastructure and energy projects
- With an estimated CAD 400 billion investment in infrastructure upgrades over the next decade, the measures taken to stimulate the Canadian PPP market have proved to be an effective stimulus to the construction industry

Legislation

- Canada Strategic Infrastructure Fund Act, S.C. 2002, c. 9
  Establishes a program to provide contributions for the carrying out of strategic infrastructure projects

  Numerous provincial and municipal laws and regulations also contain provisions on PPP, for example:
  - An Act respecting Infrastructure Québec, S.Q. 2009, c. 53 (Quebec)
  - Ontario Infrastructure and Lands Corporation Act, S.O. 2011, c. 9, Sched. 32 (Ontario)
  - Health Sector Partnerships Agreement Act, S.B.C. 2003, c. 93 (British Columbia)

Insurance

- Construction phase: contractor is expected to procure insurance covering all parties involved in accordance with industry practice, e.g. builder's risk insurance, wrap-up liability insurance, contractors pollution insurance, single project professional liability insurance, etc
- Operational phase: parties should procure, inter alia, all risks property and business interruption insurance, commercial general liability insurance and pollution insurance as required

8 Models of Public-Private Partnerships, The Canadian Council for Public-Private Partnerships

Construction pipeline

Energy infrastructure

- Central Asia-China Gas Pipeline, Turkmenistan-Uzbekistan-Kazakhstan to China
  (2014-2015)
- Xiluodu hydropower station, Southwestern Yunnan and Sichuan
  (2005-2018)
- Zhundong Coalfield, Xinjiang
  (2013 - completion date pending)

Transport infrastructure

- Airport expansion, Guangzhou Baiyun International Airport
  (2012-2014)
- Lanxin high-speed rail line, Gansu Province-Urumqui
  (2009-2015)
- Chengdu-Chongqing railway, Neijiang
  (2012-2015)
- Third West-East Gas Pipeline Project (WEPP 3), Xinjiang
  (2012-2015)
- Airport Development, Daxing District, Beijing
  (2014-2018)

Social infrastructure

- 36 million social housing units to be built on a national scale
  (2011-2015)

China

The government is committed towards long term prosperity for the entire nation.

China's 12th five-year plan for 2011-2016 aims at higher quality growth[1]. It has plans to not only have breakthroughs in emerging industries but plans for building and energy infrastructures. The government is dedicated to pursuing a "new industrialization path with Chinese characteristics"[2]. Amongst other things, one of the focuses of the government is the strengthening of the energy and transport system.

The region's major cities will be brought closer with the expansion of airports, highways and railways and the construction of international passageways and corridors.

Key industry bodies

- Ministry of Construction (MC)
- State Planning Commission (SPC)
- State Administration for the Building Materials Industry (SABMI)
- State Reform Commission (SRC)
- Ministry of Foreign Economic Relations and Trade (MOFERT)
- China Construction Association

Market facts

- **RMB 100 trillion** total investment in construction in 2012[3]
- Total output value of construction to reach **RMB 19,456 billion** by 2015[3]
- 6.7% of GDP in 2012 attributed to the construction industry[4]
- 33 PFI projects of **USD 2,363 million** in 2012[5]

1 The 12th five-year plan: China's Scientific and Peaceful Development, speech by H.E. Ambassador Liu Xiaoming, Royal Institute of International Affairs, March 2011
2 Report on the work of the Government, Chinese Government Official Web Portal, 2011
3 The construction sector in China, The EU SME Centre, 2011
4 McKinsey, March 2012 and China Statistical Yearbook & July/August 2012 International Construction Magazine
5 Private Participation in Infrastructure Projects Database, The World Bank Group, December 2013

Construction

Contractual issues

- Standard form contracts commonly used include:
  - GF-2013-0201 jointly issued by the State Administration for Industry and Commerce and the Ministry of Housing and Urban Rural Development in 2013
  - Standard Documents for Preliminary Assessment of Qualifications for Tendering of Construction Projects and the Standard Documents for Tendering of Construction Projects, issued by the State Development and Reform Commission and eight other ministries and commissions in 2007
  - FIDIC standard forms of contract
- Use of the standard-contract forms is now mandatory under the newly adopted Regulation for the Implementation of Law on Bid Invitation and Tendering
- Liability for party sustaining injury or property damage due to quality defects continues after the normal period of time to correct defects
- Contractor has a statutory right to compensation for losses and expenditure resulting from delay attributable to the owner
- The amount of liquidated damages may be adjusted to bring the amount closer to the actual amount loss
- Liability can be excluded but Chinese law prohibits exclusion of liability for bodily or personal injury, liability for loss of assets or damage if incurred deliberately or due to gross negligence

Legislation

- Construction Law of the People's Republic of China (as amended by the Standing Committee of the National People's Congress 2011)
  Amended and published on 22 April 2011 - provides construction workers with strengthened rights in relation to insurance and safety issues
- Real right law (2007)
  Providing property owners with various rights when carrying out construction projects in China
- Work safety law (2002)
  Outlines general safety legal requirements on construction sites

Insurance

- Common types of insurance include:
  - All risks insurance: damage to the project itself
  - Construction equipment insurance: damage to construction equipment and tools arising from natural disasters and accidents
  - Installation works all risks insurance: losses and third-party liability caused by risks during the installation or adjustment of machinery and equipment
  - Third-party liability insurance: injuries to a third party
  - Construction quality guarantee insurance: losses arising from construction defects during the warranty period
  - Industrial injury insurance: injuries to workers

PFI/PPP

Contractual issues

- An off-take contract with the government is commonly signed to ensure the income flow during the operation period
- Investors and contractors need to rely on published policies/law/regulations and written contracts over oral promises
- Contract terms and conditions should be standardized where possible

Legislation

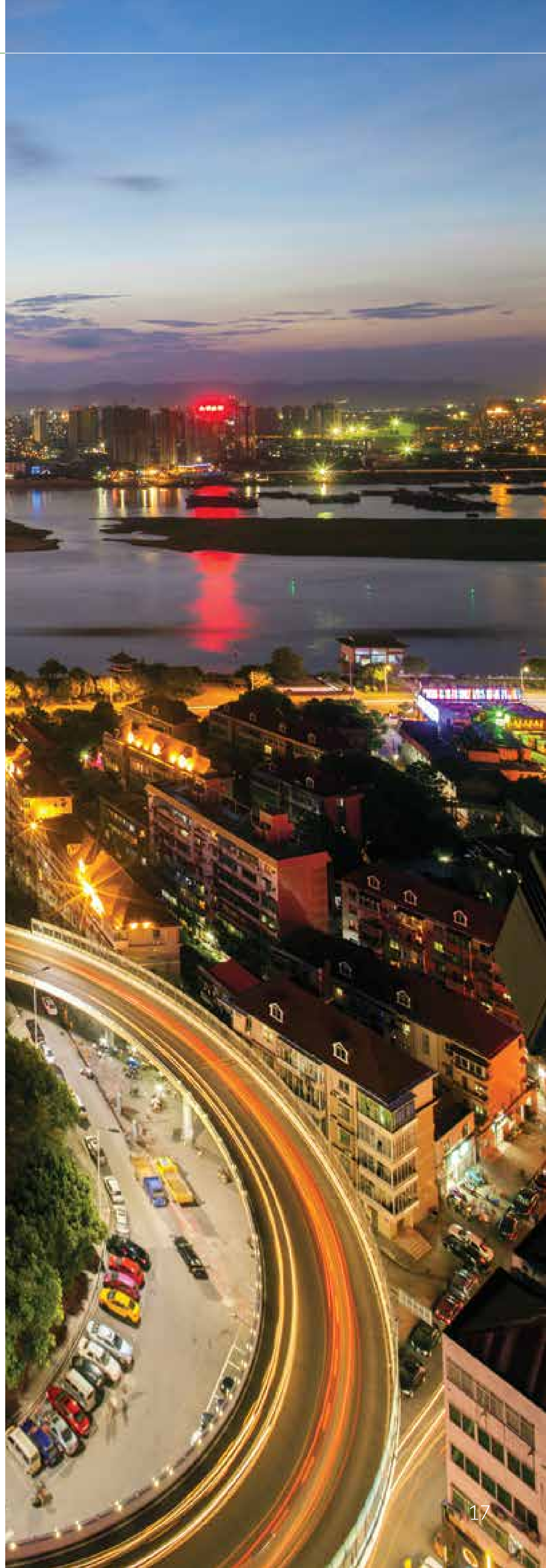
- Currently no unified legislation on concessions
- Local rules, regulations and ministerial decisions govern contracts
- In 2010, the State Council published Certain Opinions on Encouraging and Guiding the Healthy Development of Private Investment (the 'New 36 Opinions'). The New 36 Opinions are supported by detailed implementation measures issued by the State Council in June 2012, which serve as a regulatory framework for private investment

Current market position

With the increasing needs of infrastructure placing monetary pressure on the government, the need for PPP/PFI is increasing.

The use of PPP/PFI in China is expected to grow, however there are many risks associated with these projects in China and enforcement risk is high. As such, private investors cannot rely on these contracts to mitigate risks. Parties must be aware of any political, economic and force majeure risks that may affect the project.

The government has shown a positive attitude to encourage and support the use of PPP in China by publishing regulations which promote private investment. With the changes expected and the attitude moving towards international contractual practices, it is forecasted that the use of PPP/PFI will increase in the future.



Construction pipeline

Energy infrastructure

- France-Spain Interconnection Project (INELFE) - Baixas, (France) to Santa Llogaia (Spain)
  (2010-2014)
- Biomass to Liquid Project, Strasbourg
  (Ongoing - completion due 2015)

Transport infrastructure

- CDG Express, Paris
  (Ongoing - completion due 2016)
- LGV Est Européen Phase 2, Nancy/Metz-Strasbourg
  (Ongoing - completion due 2020)
- The Roissy-Picardy railway link
  (Ongoing - completion due 2020)
- Extension of RER E, Paris
  (2014-2020)
- The South Interconnection, Orly
  (2020-2025)

Social infrastructure

- Construction of 650 social housing units, Toulouse
  (2011-2015)
- Construction of 150,000 new social housing units and renovation of 12,0000 units per year
  (2013-2015)
- Lutterbach Prison, Alsace
  (2015 - completion due 2017-2018)
- Paris-La Santé, Fleury-Mérogis, Baumettes 2, Aix 2 prison renovations
  (Announced - dates pending)

France

The French Government is encouraging the acceleration of construction projects, particularly in response to the housing crisis, whilst still trying to preserve natural areas and resources[1].

Parliament is currently discussing a bill aimed at assisting contractors to overcome frequently encountered obstacles. The bill will aim to:

- Establish an integrated procedure for housing projects, which will bring together all mandatory authorization procedures required for a single project
- Promote the transformation of offices into housing
- Reduce the duration of court proceedings and address unjustified appeals against construction projects
- Increase the maximum level of loan guarantees that local governments can make to facilitate the financing of projects - facilitate cash management within construction companies
- Create a national website to improve access to planning documents

Key industry bodies

- Fédération Française du Bâtiment (**FFB**)
- Fédération Nationale des Travaux Publics (**FNTP**)
- Confédération de l'Artisanat et des Petites Entreprises du Bâtiment (**CAPEB**)
- Syndicat National du Second oeuvre (**SNSO**)

Market facts

- **EUR 130 billion** overall value in 2012[2]
- 1,167,000 employees: 337,000 construction companies
- Three major players: Vinci, Bouygues, Eiffage

1 Plan d'investissement pour le logement, Ministère de l'Égalité des Territoires et du Logement, March 2013
2 Le bâtiment en chiffres, La Fédération française du Bâtiment, June 2013

Construction

Contractual issues

- Standard forms of contract are often used for construction agreements, subcontracting and joint ventures
- Different approaches apply according to whether the project falls within the public/administrative or private domain
- The main obligations of employers/contractors are defined in two standard forms:
  - Norm AFNOR n° NF P 03-001 (December 2000) – commonly used for private construction projects
  - CCAG ('Cahier des clauses administratives générales', or General terms and conditions) – commonly used for public construction projects
- Before acceptance of works: contractual liability (Article 1147 of the Civil Code) as well as liability in tort (employer/sub-contractors)
- After acceptance of works: strict decennial liability on contractors (Articles 1792 and following), as well as contractual and tort liability, defective products

Key legislation

- Articles 1792 and following of the Civil Code – Article L.242-1 of the Insurance code
  Stipulates obligatory insurance ('dommage ouvrage') to be held by employer before the start of the performance of any works. The employer's insurer generally proceeds directly against the contractor's insurers particularly regarding matters where the contractor has strict/decennial liability
- Law of 31 December 1975 on subcontracting
  Further obligatory legislation to ensure that a sub-contractor will be paid for its work, either by the contractor or directly by the employer

  Distinct rules apply according to whether the employer is public or private
- Law of 31 December 1993 on coordination and health protection (SPS coordination)
  Onerous obligatory coordination obligations on an employer in circumstances where two or more companies are to perform works on a site, either simultaneously or successively and only if there is a risk of accidents to their employees linked to such co-activity
- Article 1799-1 of the Civil Code
  A private employer must ensure that a bank or other guarantee is in place covering payments due to its contractors for all substantial construction projects
- Article L.160-1 and following of the Environmental Code
  Obligatory regulations applying to environmental damages, especially in cases of pollution

PFI/PPP

Contractual issues

- PPP contracts or 'Partnership agreements' (contrats de partenariat) were recently introduced into French law, although other types of PPP i.e. concessions, have been used by public entities since the Napoleonic era
- The government has specified a range of matters that must be addressed in PPP documentation and in particular the role to be played by public entities
- An evaluation of the project is mandatory before implementation
- Duration of the contract is generally between 20-30 years

Legislation

- Decree of 17 June 2004
  All public entities can adopt PPPs in all sectors. An evaluation of the project is mandatory before the execution of a PPP covering complexity, urgency and financial value

Current market position

Between 2005-2012, several hundred PPPs or equivalent have been concluded[3]:

- 167 PPPs
- 300 'BEAs' (long term public construction leases)
- 35 'BEHs' (long term public hospital construction leases)
- 12 'AOT/LOAs' (temporary authorisations to occupy public land with a view of realising projects)

60% of PPPs have a value less than EUR 50 million - the average value is EUR 26 million for a local project (i.e. projects led by local state entities such as cities, departments, regions) and EUR 250 million for state level projects.

Of the 167 PPPs referred to above, 129 projects were led by local entities.

EUR 13 billion global value of such projects from 2004-2012 (up from EUR 9 billion as at the end of 2011). PPPs now represent approximately 5 % of overall annual public investment (EUR 90 billion per year).

During 2012, 11 projects were launched at national level covering the defence, railways, education and health sectors. During the same year, public local entities (cities, departments, regions) entered into 26 PPPs, with a total value of EUR 700 million, with respect to education, roads, sport, and public equipment projects.[3]

3 Ministre de l'économie et des finances, Rapport d'activité MAPPP, 2012

Construction pipeline

Energy infrastructure

- Funding for eight ‘key’ energy projects was announced by the EU Commission in October 2013, including electricity connection between Greece and Bulgaria, and between Greece, Cyprus and Israel, and a gas subsea pipeline between Greece, Cyprus and Israel
- Project Helios - aims to multiply Greek solar power production from 206 MW in 2010 to 2.2 GW in 2020 and up to 10 GW by 2050

Transport infrastructure

- In January 2014, work resumed on the motorway between Athens and Tsakona and between Maliakos Bay and Kleidi, jointly worth EUR 3.1 billion
- Tender for construction of road projects worth EUR 243 million *(Announced - dates pending)*
- Olympia Odos motorway project *(Ongoing - completion due 2015)*
- Moreas Odos motorway project *(Ongoing - completion due 2015)*
- Completion of a metro network in the northern city of Thessaloniki *(Completion currently expected between 2016-17 - over four years later than planned)*
- Expansion of regional ports of Igoumenitsa and Lavrion *(Announced - dates pending)*
- Construction of a sea cruise port in Piraeus region using PPP *(Announced - dates pending)*
- Tram network extension from Neo Faliro to Piraeus *(Announced - dates pending)*

Social infrastructure

- Patras General Hospital Upgrade Project *(Ongoing - completion due 2014)*
- Gennadiou Primary School construction Project *(Ongoing - completion due 2014)*

Greece

The Ministry of Environment, Energy and Climate Change has been established in order to confront the continuous environmental problems and to adopt a new development model – the model of green development – that will secure a better quality of life for every citizen.

The Ministry of Environment, Energy and Climate Change works to achieve the protection of the natural environment and resources, the improvement of quality of life, the mitigation and adjustment to the implications of climate change and the enhancement of mechanisms and institutions for environmental governance.

The mission of the Ministry of Infrastructure, Transport and Networks is:

– To plan and implement national policy and create the appropriate institutional framework at European and international level for the development of top quality transport, mass-transit, telecom and postal services under conditions of healthy competition

– To contribute to the country’s economic development and to the improvement of its citizens’ quality of life in the areas falling under the Ministry’s responsibility

Key industry bodies

- Technical Chamber of Greece
- Association of Greek Architects (Syllogos Architektonon Diplomatouchon Anotaton Scholon-Panellinia Enosi Architetktonon, SADAS-PEA)
- Association of Civil Engineers of Greece
- Hellenic Association of Mechanical and Electrical Engineers
- Special Secretariat for PPPs

Market facts

- Industry valued at **EUR 10.7 billion** in 2012[1]
- 8.1% decline in building activity from June 2012 - June 2013 but construction activity grew in October 2013 for first time in two years[2]
- Infrastructure construction is the largest market, accounting for 44% of industry’s total value, with residential construction the second largest at 27.5%
- **EUR 10.5 billion** in pipeline priority projects to 2015 (co-financed with EC)

1 Construction in Greece-Key Trends and Opportunities to 2017, RnR Market Research, April 2013
2 Hellenic Statistical Authority, September 2013

Construction

Contractual issues

- Lump sum traditionally procured contracts are the norm, although design and build is also popular. Remeasurement contracts and management contracts are rarely used
- Standard-form contracts are not generally used. Contracts are freely negotiated between the parties on a project-by-project basis, although these tend to be relatively unsophisticated, and large projects in the private sector are on occasion undertaken without a contract at all. Contracts need not be in writing, and are not generally subject to formalities, save for where special rules apply e.g. contracts with public bodies, transfer of property. Oral contracts are subject to Greek Civil Code provisions (Art. 681-702)
- A contract is formed when the parties reach agreement on the essential terms of a contract type as defined by law (essentialia negotii) and any point which a party expressly intended should form part of the contract (accidentalia negotii). Contract negotiations are to be conducted in good faith, and contracts are interpreted according to the requirements of good faith. Claims for breach of contract may be brought for a period of 20 years from breach
- Contracts must be in Greek, or translated into Greek, where the project relates to public construction works and/or for tax purposes

Legislation

- Greek Civil Code
  Divided into five books, general principles of contracting are set out in Book I, and construction-specific principles (including those which govern oral contracts) are set out in Book II, especially Chapter XIX, Sections 681 to 701. A number of important terms are implied into contracts by the Civil Code
- Greek Criminal Code
  Under the Greek criminal code, architects and contractors may face up to two years in prison if they violate the rules of construction
- Greek Building Regulations (Law 4014/2011)
  Implemented in July 2012, these have introduced a mandatory requirement for inspection of building works, and authorised independent inspectors are randomly assigned to every project to check the construction at different stages
- Public Works Act
  Governs infrastructure development contracts with government and the public sector, and will overrule the Greek Civil Code in cases of conflict

Insurance

- The contractor is responsible for buying insurance in all contracts, and it is a prerequisite for obtaining a construction licence. Contractor All Risk/Erection All Risk insurance is common, usually project specific. Cover for contractor's plant and equipment is given only with the contract works insurance; cover may form part of the works policy or be issued separately, depending on the size of the risk
- Professional liability cover bought by architects and engineers will generally depend on contract value, but EUR 1 million is not unusual. Cover is available either on a single project or annual basis

PFI/PPP

Contractual issues

- Unlike contracts for ordinary construction projects, the provisions of PPP contracts are largely governed by legislation pursuant to law 3389/2005 as amended (where applicable), which identifies 25 categories of mandatory PPP contract provision, including:
  - The subject matter of the PPP, specifying the project or service being provided
  - The time frame for execution and delivery, and methods of inspection and quality control
  - Allocation of risks between the parties and a definition of events of force majeure. The substantial technical and financial risks will be borne by the private sector, but the public sector is required to provide assistance and/or compensation in relation to, for example, delays caused by public authorities such as the Archaeological Service and public utilities. The private sector will assume construction and financing risk
  - Methods of inspection and quality control
  - Details of finance arrangements and allocation of profits
- The governing law and language of the project and finance documents is Greek. English is usually adopted where a second language is used
- The only accepted method of dispute resolution is arbitration, which is final and binding

Legislation

- Law No. 3389/2005 amended by L. 3843/2006, L.3375/2009, L.3746/2009, L.3840/2010, L.3982/2011 and L.4013/2011
  This is the principal statutory framework for PPP and PFI contracts in Greece, detailing specific requirements for PPP contract terms. It only applies to projects with budgets below EUR 200 million, and therefore will not apply to major infrastructure projects

Insurance

- Where L.3389/2005 as amended applies to a PPP contract, the insurance requirements must be set out in the project agreement and ancillary documents
- Insurance for the construction phase is the same as for a non-PPP project

Current market position

- The Ministry of the Economy and Finance makes the following statement concerning public private partnerships: "With the implementation of PPPs, a new boost will be given to the development of the economy, prompt and efficient delivery of necessary infrastructure will be guaranteed, while more public funds will be made available for social purposes and priorities. PPPs yield important benefits for all involved stakeholders: the public sector, the country's citizens and the private sector, which now gains access to a new expanding market. This is the reason why PPPs are considered an important reform and a fundamental pillar for the development of the country."
- Although the difficult economic situation in Greece means most PPP activity has been halted in recent years, some major projects (such as motorways), have now resumed and EU funding for some significant new energy infrastructure projects has recently been announced.

Construction pipeline

Transport infrastructure

- Guangzhou-Shenzhen-Hong Kong Express rail link (2010-2015)
- South Island Line of Mass Transit Railway Corporation (MTRC) *(2011-2015)*
- Hong Kong-Zhuhai-Macau bridge (2010-2016)
- Shatin to Central Link of MTRC *(2012 - completion due between 2018-2020)*
- Tuen Mun Western Bypass and Tuen Mun Chek Lap Kok Link (*Announced - dates pending*)
- Hong Kong International Airport (HKIA) third runway *(In March 2012, the Government granted the Airport Authority its in-principle approval to adopt, for planning purposes, the three-runway system as the future development direction for the HKIA. The Airport Authority is currently conducting the Environmental Impact Assessment and developing associated designs for the three-runway system)*[6]

Social infrastructure

- West Kowloon Cultural District first phase *(2013-2015)*
- Three phase Kai Tak Development Plan *(2009 - completion due in 2013-2016-2021)*
- New Development Areas, northern New Territories *(Ongoing - completion due 2019)*

Hong Kong

"To foster economic development and enhance the quality of life of our people, we shall continue to plan and take forward infrastructure projects. The estimated capital works expenditure for 2013-14 exceeds HKD 70 billion. By late March 2013, our total commitments for capital projects are expected to be over HKD 310 billion."[1]

"The construction industry is currently in a golden age, with major infrastructural projects reaching their peak construction period. The demand for manpower is increasing. To help the industry meet the demand, the government aims to attract and train more local construction workers."[2]

- John Tsang, Financial Secretary, February 2013[1]
- Paul Chan, Secretary for Development, May 2013[2]

Key industry bodies

- Hong Kong Construction Industry Council (CIC)
- Hong Kong Construction Association
- Hong Kong Institute of Architects (HKIA)
- Hong Kong Institution of Engineers (HKIE)
- Hong Kong Institute of Surveyors (HKIS)
- Hong Kong Institute of Construction Managers (HKICM)

Market facts

- **HKD 145.8 billion** and **HKD 163 billion** of construction expenditure in the fiscal years 2011-12 and 2012-13[3]
- Public sector construction expenditure and private sector construction expenditure to reach up to **HKD 90 billion** respectively in 2013-14[4]
- Up to **HKD 1,715 billion** total construction expenditure in the next ten fiscal years between 2013-14 to 2022-23[5]

1 Budget speech by the Financial Secretary, 2013-2014 Budget, February 2013
2 Speech by the Secretary of Development, GovHK, May 2013
3 Construction Expenditure Forecast Information, Hong Kong Construction Industry Council, September 2012
4 Mid-Term Construction Expenditure Forecast, Hong Kong Construction Industry Council, September 2012
5 Mid-Term and Long-Term Construction Expenditure Forecast, Hong Kong Construction Industry Council, September 2012
6 Three runway system, Hong Kong International Airport

Construction

Contractual issues

- Common forms of contract procurement include:
  - Traditional
  - Design and build
- Standard form contracts: the Standard Form of Building Contract Private Edition (with Quantities published by the HKIA, HKIS and HKICM) has started to be commonly used in the private sector. The General Conditions of Contract for Building Works are used in all government building contracts
- Responsibility for design is generally not held by the contractor under traditional procurement mechanisms (under design and build arrangements)
- Liability can be excluded, other than for death or personal injury, by express wording in the contract
- Liquidated and ascertained damages (LADs) are often included for contractor delays but are only enforceable if the LADs are a genuine pre-estimate of loss. Client delays are typically addressed by granting the contractor an entitlement to an extension of time (EOT) and/or additional payment for defined compensation events

Legislation

- Buildings Ordinance (Cap 123)
  The major legislation for regulating planning, design and construction of buildings and associated works, rendering safe dangerous buildings and land, and making provisions for related matters
- Electricity Ordinance (Cap 406)
  Serves mainly to provide for the registration of electrical workers, contractors and generating facilities; to provide safety requirements for electricity supply, electrical wiring and products
- Fire Services Ordinance (Cap 95)
  Serves to regulate the registration of fire service installation contractors and to provide for the control of the sale, supply, installation, repair, maintenance and inspection of fire service installations or equipment
- Waterworks Ordinance (Cap 102)
  The key legislation regulating waterworks in Hong Kong
- Lifts and Escalators (Safety) Ordinance (Cap 327)
  Serves to provide for the design and construction of lifts and escalators, for the maintenance in safe working order of lifts and escalators, and for the examination and testing of lifts and escalators
- Occupational Safety and Health Ordinance (Cap 509) and subsidiary regulations
  Regulates safety and health of all economic activities including construction sites
- Factories and Industrial Undertakings Ordinance (Cap 59) and subsidiary regulations
  Applies to construction sites and imposes general duties on proprietors and employees and prescribes detailed safety and health standards on various aspects of hazardous work activities, plant and machinery, processes and substances
- Roads (Works, Use And Compensation) Ordinance (Cap 370)
  Regulates the planning, design and construction of roads, resumption of land for construction of roads and related compensation and claims
- Arbitration Ordinance (Cap 609)
  While this Ordinance provides for a unitary regime of arbitration based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, the Ordinance allows parties to an arbitration agreement to retain some key features of the domestic arbitration regime under the previous legislation on arbitration by choosing to opt in a series of provisions set out in the Ordinance (Opt-in Provisions)

  In relation to Hong Kong construction subcontracts, the Ordinance provides that the Opt-in Provisions that are automatically applied under the arbitration agreement between the main contractor and the employer, shall be deemed to apply to subcontracting parties' arbitration agreement provided that the subcontracting parties are situated in Hong Kong. This is applicable to arbitration agreements under the subcontracts between each and every level of subcontracts

Insurance

Common types of insurance required under contract:

- All risks insurance: damage to works and site materials
- Professional indemnity insurance: professional negligence where the contractor is responsible for design
- Public liability insurance: damage, injury and death to third parties
- Product liability insurance: damage and injury arising from products incorporated within the contract works

PFI/PPP

Current market position

PFI/PPP is not prevalent in Hong Kong. There were a few very early PFI/PPP infrastructure projects under the models of Design-Build-Finance Operate (DBFO), Operation & Maintenance (O&M) or Build-Own-Operate-Transfer (BOOT). Examples of such projects in Hong Kong include the Cross Harbour Tunnel, Western Harbour Crossing, Tate's Cairn Tunnel, Tsing Ma Control Area and the River Trade Terminal of Tuen Mun.

The Asian financial crisis in 1997-98 put pressure on government finances, particularly on its capital expenditure budget and measures were taken to reduce the fiscal deficit. As a result, the Hong Kong government focused its attention on PPP schemes again in early 2000 (as part of its Private Sector Involvement (PSI) initiative) for the delivery of public services and infrastructure. While most stakeholders acknowledged the benefits of PPP and endorsed PPP in principle, there were still very few PPP projects.

In 2004, the government was set to take bids for an ice-skating centre project in Tseung Kwan O and a leisure centre project in Kwun Tong to be financed through PPP. However, these projects were criticised as being too small for the efficient adoption of this type of PPP scheme and were seen as essentially land premium deals. It has been suggested that in Hong Kong, where the significant costs involved need to be offset against project revenues, small projects are not suitable for PPP and it may be better to look to other tools such as outsourcing, service or management contracts for private sector involvement. For PPP to become increasingly common, it is essential that the government is able to bring forward projects of the right scale with the appropriate commercial potential.

Construction pipeline

Energy infrastructure

- 750 MW grid-connected solar PV power projects under Jawaharlal Nehru National Solar Mission
  (Announced - dates pending)
- Bhadravati Thermal Power Project, Maharashtra
  (Announced - dates pending)

Transport infrastructure

- Kochi Metro Rail Project, Kerala
  (Announced - dates pending)
- Visakhapatnam Port Trust New Facility, Andhra Pradesh
  (Announced - dates pending)

Social infrastructure

- Low Income Housing Finance Project
  (Announced - dates pending)
- Slum Rehabilitation Project, Mumbai
  (Announced - dates pending)

India

Infrastructure is a major sector that propels overall development of the Indian economy. The Secretariat for Infrastructure in the Planning Commission is involved in initiating policies that would ensure time-bound creation of world class infrastructure in the country. The focus is on power, bridges, dams, roads and urban infrastructure development.[1]

- Infrastructure Overview, National Portal of India

Key industry bodies

- Ministry of Power
- Ministry of Road Transport and Highways
- National Highways Authority of India FICCI
- Tariff Authority for Major Ports (TAMP)

Market facts

- **USD 403.4 billion** value of Indian construction and engineering industry[2]
- Second largest market activity after agriculture[3]
- Third largest construction market by 2025[4]
- Building and construction industry contributes to almost 15% of the country's gross domestic product (GDP)[5]
- **USD 1 trillion** government investment in infrastructure sectors for the Twelfth Plan (2012-13 to 2016-17)[6]

1 Infrastructure overview, National Portal of India
2 Indian Construction Market - Overview, International Building & Construction Show
3 Construction Sector Overview, CONSTRUTECH India 2013
4 India: world's third largest construction market by 2025, India Brand Equity Foundation, July 2013
5 Indian Construction Market - Overview, International Building & Construction Show
6 The road ahead - Highways PPP in India, PricewaterhouseCoopers India, 2012

Construction

Contractual issues
- Delays in awarding contract
- Issues in contract negotiations
- Contractual safeguards for unforeseeable circumstances
- Need for drafting of contractual terms in comprehensive manner detailing obligations of parties, asset sharing, liability and mode of sharing revenue/profits

Legislation
- Electricity Act, 2003
  Consolidates the laws relating to generation, transmission, distribution,trading and use of electricity and generally for taking measures conducive to development of electricity industry
- National Highways Authority of India Act, 1956
  Provides for the declaration of certain highways as national highways and for the regulation and governance of matters related therewith
- Indian Ports Act, 1908
  Central legislation for the regulation of ports and port-charges across the country
- Major Ports Trusts Act, 1963
  Provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith

Insurance
- All risks insurance: damage to works and site materials
- Professional indemnity insurance: professional negligence where the contractor is responsible for design
- Public liability insurance: damage, injury and death to third parties
- Advance loss of profit insurance

PFI/PPP

Contractual issues
- Lack of flexibility in contract renegotiation for long-term projects to accommodate changes in circumstances
- Lack of consensus between public and private parties regarding terms of agreement
- Need for drafting of contractual terms in comprehensive manner detailing obligations of parties, asset sharing, liability and mode of sharing revenue/profits

Legislation
- Draft National Public-Private Partnership Policy, 2013 (Pending)
  Establishes the broad principles for pursuing a project on a PPP basis and to provide a framework for identifying, structuring, awarding and managing PPP projects
- Draft PPP Rules, 2012 (Pending)
  Defines the norms and procedures for procuring, regulating and structuring PPP projects and decision making
- Public Procurement Bill, 2012 (Pending)
  Regulates public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process

Insurance
- All risks insurance: damage to works and site materials
- Professional indemnity insurance: professional negligence where the contractor is responsible for design
- Public liability insurance: damage, injury and death to third parties
- Advance loss of profit insurance

Construction pipeline

Energy infrastructure

- Upper Cisokan Hydropower Plant, West Java
  (2012 - completion date pending)
- Central Java IPP coal-fired plant
  (2013 - completion date pending)
- Sarulla Geothernal Power Project, North Sumatra
  (2013-2017)
- Karama Hydro Power Plant, West Sulawesi
  (Announced - dates pending)

Transport infrastructure

- Trans-Java Toll Road Mega Project
  (2008-2014)
- Jakarta Monorail
  (2013-2016)
- MRT Jakarta
  (phase 1: 2013-2017; phase 2: dates pending)
- Trans-Sumatra Highway Mega Project
  (2013 - completion date pending)
- Soekarno Hatta Airport rail link, Jakarta
  (2014-2018)
- Central Kalimantan Coal Railway Project
  (2014-2018)
- Bandung Monorail
  (2014-2025)
- MRT Surabaya
  (2014 - completion date pending)
- Jakarta-Bandung highspeed railway
  (Announced - dates pending)

Social infrastructure

- Mimika Sports Complex, Timika
  (2013 - completion date pending)
- Central Aceh Regional Hospital, Nanggroe Aceh Darussalam
  (2015 - completion date pending)

Indonesia

"In May 2011, the Indonesian government launched a 15-year economic development master plan, MP3EI, on the establishment of six economic corridors in Indonesia. The successful implementation of MP3EI will transform Indonesia into one of the 10 major economies in the world by 2025. Implementation requires the participation of all stakeholders and will focus on tangible and measurable priorities. The MP3EI will be implemented in three phases: 2011-2015; 2016-2020; and 2021-2025.

Infrastructure is expected to play a pivotal role in the development of the six economic corridors. The traditional approach of funding infrastructure from the state budget is not sustainable because of limited public finances. The alternative is Private Provision of Infrastructure (PPI). Hence, the reliance on PPI underpins the MP3EI. A significant number of infrastructure projects in the MP3EI are expected to be financed through an appropriate Public-Private Partnership (PPP) scheme."[1]

- Armida S. Alisjahbana, State Minister of National Development Planning

Key industry bodies

- Bappenas (National Development Planning Agency)
- PT Sarana Multi Infrastruktur (SMI)
- Indonesia Infrastructure Fund
- Indonesia Infrastructure Guarantee Fund
- BKPM (Investment Coordinating Board)
- Badan Pengatur Jalan Tol (BPJT)
- Badan Pendukung Pengembangan Sistem Penyediaan Air Minum (BPP SPAM)

Market facts

- Sixteenth largest economy in the world and the largest in Southeast Asia
- **IDR 228.3 trillion** of construction in Q2 of 2013[2]
- 10.25% growth in gross domestic product (GDP) in Q2 of 2013 for construction[2]
- In April 2013, IMF projected Indonesia's economic growth rates in the 6% range for the 2013-2017 period (ranging from 6.3% - 6.8%)
- **IDR 132.2 trillion** cumulative investment realisation from foreign direct investment (FDI) in first semester of 2013 - an increase of 30.2% compared to the same period in 2012[3]

1 PPP Infrastructure Projects Plan in Indonesia, Ministry of National Development Planning 2012
2 Economic Growth of Indonesia Quarter II-2013, Badan Pusat Statistik Republik Indonesia
3 Domestic and Foreign Direct Investment Realization, The Investment Coordinating Board of Republic of Indonesia (BKPM), July 2013

Construction

Contractual issues

Common forms of contract procurement include:

- Traditional (most common form)
- Design and build
- Management contracting

- No particular standard form of contract used for private projects. However, projects that involve international parties or require loans from international banks often use FIDIC contracts
- Indonesian construction regulations specify that construction contracts must:
  - Contain certain documents prescribed under the Indonesian construction regulations
  - Contain a provision on intellectual property rights
  - Use Indonesian law as the governing law
  - Be made in Indonesian language. Bilingual construction contracts in English and Indonesian may be made if there is any foreign party involved (in which the legally binding language must be stated)
- Liquidated damages clauses are often included in construction contracts for contractor delays. Generally, the parties will be free to determine the amount of liquidated damages as long as the amount does not violate the principles of justice stipulated under the Indonesian Civil Code

Key legislation

- Law No. 25 of 2007 on Investment and Presidential Regulation No. 36 of 2010
  Specifies rules on foreign investment in Indonesia, including restrictions on the type and amount of foreign investment that may be made in Indonesia
- Law No. 18 of 1999 on Construction Services
  Specifies requirements in relation to construction services, construction services providers' appointments, licensing requirements and construction contracts
- Government Regulation No. 28 of 2000 as lastly amended by Government Regulation No. 4 of 2010 on Business and Role of Society of Construction Services
  Specifies the type, registration and licensing of construction services business as well as an overview of the role of society of construction services in the form of (i) forum or (ii) association
- Government Regulation No. 29 of 2000 as amended by Government Regulation No. 59 of 2010 on Construction Services Implementation
  Provides further requirements on, amongst others, the appointment of construction services providers, the content of construction contracts and the implementation of construction services
- Government Regulation No. 30 of 2000 on the Implementation of Construction Services Supervision
  Specifies the roles of the central and regional government in supervising construction services activities
- Law No. 28 of 2002 on Buildings and Government Regulation No. 36 of 2005 on Implementing Regulation of Law No. 28 of 2002 on Buildings
  Specifies building requirements, rules on construction, use and conservation of buildings and rights and obligations of building owners and building users
- Regulation of Jakarta Special Capital City Region No. 7 of 2010 on Buildings
  Specifies requirements for construction of buildings within the Jakarta area

Insurance

- Common types of insurance include:
  - Contractor's All Risk (CAR) or Erection All Risk (EAR)
  - Professional indemnity insurance (for design and professional advisory elements)
  - Public liability insurance

Other considerations

- The 'Negative Investment List' under Presidential Regulation No. 36 of 2010, identifies what percentage of projects in different sectors may be owned by foreign investors. Construction services can only be carried out by foreign entities if the value of the project exceeds approx USD 10 million, and the maximum foreign equity investment for such services is capped at 67%. For technical consultants such as engineers, the maximum foreign equity stake is 55%
- Contractors and consultants in construction arrangements must be appointed by owners through public or limited tender in accordance with Indonesian construction regulations. Direct appointment is only allowed in certain limited circumstances such as (i) urgent construction projects for public health and safety, (ii) complex construction works that can only be performed by certain construction services providers or holders of certain licenses, (iii) confidential construction projects related to the security of the state, (iv) small scale construction projects, (v) advanced construction works that are inseparable from the previous works and (vi) construction works that can only be performed by copyright or license holders

PFI/PPP

Contractual issues

- Indonesia has a long history of PPP in infrastructure development. In the 1990's, the government promoted independent power producers (IPP) and operational cooperation (KSO) programs for telecommunication sector expansion. A few toll roads were also developed on a PPP basis. However, these were negotiated deals typically awarded in the absence of competition. These early projects were met with only limited success, in some cases, resulting in disputes and contract renegotiation
- The current Indonesian PPP regulations were introduced in 2005 and provide for private sector investment in various infrastructure sectors such as airports, ports, roads and bridges, water and irrigation system, waste management, technology and communication, electricity and oil and gas. The PPP regulations contemplate government concession grants to private companies that will undertake infrastructure projects under cooperation agreements or certain licenses
- Projects eligible for a PPP concession grant must first be evaluated on the basis of a pre-feasibility study, a defined cooperation scheme, a financing plan and a process plan/timeline
- Public tendering of PPP projects is mandatory. Award of infrastructure projects by the government based on direct appointment is no longer permitted. Indonesian PPP regulations, as well as many sector-specific laws and implementing regulations, stipulate the processes and factors that must be applied or considered in public tendering
- Projects are usually initiated by the public sector (solicited projects), although the private sector may also initiate projects (unsolicited projects) and receive some benefits for doing so

Key legislation

- Presidential Regulation No. 67/2005 on Public Private Partnership in Providing Infrastructure (PR 67/2005)
  Main regulation governing PPPs. Has been amended by Presidential Regulation No. 13 of 2010 and by Presidential Regulation No.56 of 2011 (PR 67/2005 as Amended). Further administrative details of the scheme are set out in Bappenas Regulation No. 3 of 2012 (Bappenas Regulation)

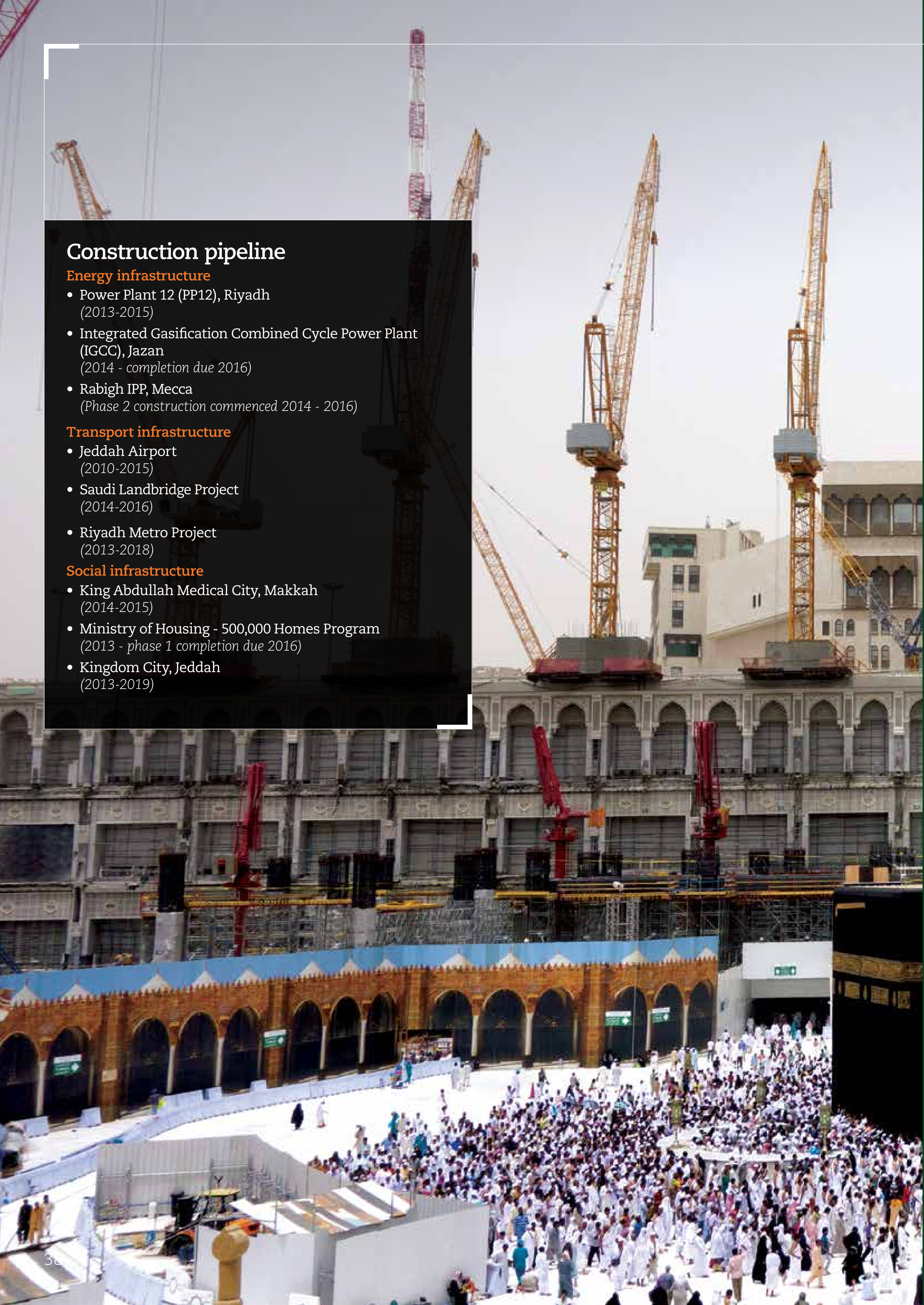
  The PPP regulations provide for the selection of projects, details of the tendering process, matters to be agreed between the private entity and the government contracting agency, as well as the government support. Under the PPP regulations, PPP projects are referred to as 'cooperation projects' and a PPP either takes the form of a 'cooperation agreement' or a license being entered into between the private entity and the relevant government entity
- Law No.2 of 2012 on Land Procurement for Development in the Public Interest and Presidential Regulation No. 7/2012
  The 2012 Land Acquisition Laws allow the national government, provincial governments and state owned enterprises (SOEs) to become the owners of the land through a 'fast track' consultative process, aimed at accelerating the land acquisition process
- Presidential Regulation No. 78 of 2010 ("PR 78/2010") and the Minister of Finance Regulation No. 260/2010
  Specifies the legal framework for infrastructure guarantees which may be provided by the Indonesia Infrastructure Guarantee Fund (IIGF) on PPP projects
- Minister of Finance Regulation No. 223 of 2012
  Specifies requirements for Viability Gap Funding (VGF) in Indonesia
- Government Regulation No. 61 of 2009 on Ports
  Specifies requirements in relation to the construction, development, management and operation of ports

Insurance

- Indonesian PPP regulations are silent on insurance requirements for PPP projects. In practice, the types of insurance used in PPP projects are similar to those under other types of construction projects in Indonesia

Other considerations

- Every year, the Indonesian government issues a PPP book listing prospective PPP projects in various preparation stages planned by relevant government contracting agencies. Under the Indonesian 2013 PPP Book, 14 projects are under the category of 'prospective projects' and 13 projects are under the category of 'potential projects'



Construction pipeline

Energy infrastructure

- Power Plant 12 (PP12), Riyadh
  (2013-2015)
- Integrated Gasification Combined Cycle Power Plant (IGCC), Jazan
  (2014 - completion due 2016)
- Rabigh IPP, Mecca
  (Phase 2 construction commenced 2014 - 2016)

Transport infrastructure

- Jeddah Airport
  (2010-2015)
- Saudi Landbridge Project
  (2014-2016)
- Riyadh Metro Project
  (2013-2018)

Social infrastructure

- King Abdullah Medical City, Makkah
  (2014-2015)
- Ministry of Housing - 500,000 Homes Program
  (2013 - phase 1 completion due 2016)
- Kingdom City, Jeddah
  (2013-2019)

Kingdom of Saudi Arabia

The Kingdom of Saudi Arabia is the largest economy in the Arabian Gulf and features the largest construction market. Between 2010-2014, USD 384 billion is expected to be spent by the government on public infrastructure projects. This is supplemented by a growing private sector market, focusing particularly on real estate, hospitality, education and healthcare projects. Investment has accelerated in recent years and is projected to continue to increase for the medium term beyond 2014. This has caused a major influx of international construction contractors and consultants to enter the Saudi market in recent years.

Key industry bodies

- The Saudi Council of Engineers (SCE)
- The Saudi Arabia General Investment Authority (SAGIA)
- The Ministry of Commerce and Industry (MOCI)
- The Ministry of Municipal and Rural Affairs (MOMRA)
- The Saudi Arabia Standards Organisation (SASO)

Market facts

- **Saudi construction market accounts for 40% of the GCC market**[1]
- **USD 90 billion** worth of construction projects expected to be awarded in 2014[1]
- **USD 17.8 billion investment set aside by government for transport and infrastructure projects - 2.5% more than 2013 budget**[2]
- Education and healthcare are key priorities, taking up to 38% of government spend in 2014[2]
- **USD 35.7 billion investment planned for power and water projects in 2014**[3]
- Volume of Saudi Arabia's construction and contractor market expected to hit **USD 300 billion** by 2015[4]

1 KSA to award SR337.5bn construction deals in 2014, Arab News, November 2013
2 Saudi government to increase budget spend, Arabian industry.com, January 2014
3 Saudi to spend $35.7bn on power and water in 2014, Construction Week Online, December 2013
4 Volume of KSA construction market to hit $300bn by 2015, Big Project Middle East, January 2014

Construction

Contractual issues

- Common procurement models include:
  - Traditional (construct only)
  - Design and build
  - Engineering, procurement and construction (EPC)
- Common standard forms include:
  - Public Works Contract (Government)
  - FIDIC (Red, Yellow, Silver & White Books)
  - Saudi Aramco EPC
- Saudi Arabia is an Islamic State governed by Shari'ah law
- Contracts on Saudi projects usually subject to Saudi law (certainly for government contracts), however, we sometimes see other jurisdictions referred to in contracts for Saudi projects (e.g. England & Wales, Switzerland)
- No broad-based Civil Code (unlike other GCC States). Commercial contracts interpreted pursuant to religious law principles. Freedom of contract recognised unless offends Shari'ah concepts (such as interest)
- Pay when paid clauses common and generally enforceable
- Liquidated damages/penalties clauses common but enforcement open to challenge under Shari'ah
- Liabilities hard to limit or exclude if inconsistent with what Shari'ah would otherwise award; however, consequential loss claims are generally not enforceable under Shari'ah anyway
- Available dispute forums include local courts, local arbitration and international arbitration. Care needs to be taken in which to choose, based on type and scale of likely disputes and enforcement issues

Legislation

- Anti-Fronting Law
  Makes it illegal for foreigners to trade in Saudi Arabia without a licence
- Foreign Investment Law
  Foreign companies are permitted to trade in Saudi Arabia provided that they have obtained a licence from the Saudi Arabia General Investment Authority (SAGIA)
- Professional Companies Law
  Regulates foreign professions trading in Saudi Arabia (such as engineers and designers)
- Government Tenders & Procurement Law
  Regulations for direct procurement by government, which remains the dominant driver of the construction industry
- Arbitration Law
  Regulation based on UNCITRAL Model Law by which local arbitration is supported as an alternative to local court proceedings
- Labour Law
  Contains strict requirements for the sponsorship and employment of expatriate labour

Insurance

- Traditional insurance is contrary to Shari'ah and is not permitted
- Foreign insurers are not permitted to offer direct insurance cover without a specific exemption
- Despite this, most forms of cover commonly used by the construction industry are available for Saudi construction projects
- Decennial liability provision only applies to government projects

PFI/PPP

Contractual issues

- PPPs in Saudi Arabia are rare. As such, there is no PPP law in Saudi Arabia or any standard set of agreements
- Projects in the oil & gas and power & water sectors sometimes have a project finance / BOT element, however, there is not yet an established track record in other sectors
- Projects in the pipeline that may involve PPP include:
  - Affordable housing
  - Healthcare
  - Transport infrastructure

Legislation

- Government Tenders and Procurement Law
  This regulation remains an obstacle to PPP as government departments must seek special permission to depart from traditional procurement models

Construction pipeline

Energy infrastructure

Libya is committed to renewable energy and plans include the construction of:

- A 650 MW solar power station to the south of Obari
- A thermal heating plant with annual production capacity of 40,000 units
- Various wind farm projects throughout the country including in Dernah, Al Maqrun, Emslatah, Tarhunah, Asaba, Gallo, Almassara, Alkofra, Tazarbo, Aljufra, Ghatt, Ashwairef, and Sebha

Transport infrastructure

- Road and bridge building will be a priority including 2,000 km of road improvements
- Authorities are planning to build new terminals in the airports of Benghazi and Misrata for over USD 47 million
- Potential resumption of the USD 4.5 billion project to link Benghazi and Sirte with a 554 km railway
- Other proposed developments, including the creation of a railway system and metro that connects to the existing international airport indicates that other parts of the wider rail network project may also be resumed or commenced

Social infrastructure

- Re-launch of the stalled Benghazi new town project - the regions' largest home-building programme worth approximately USD 100 billion over the next decade[4]
- 70,000 housing units a year are needed to keep pace with the growing population
- Dramatic growth in hotel construction is forecast as part of a USD 7 billion tourist development plan

Libya

Libya's stated goal to become the business gateway to Africa will require long-term global co-operation with the international community.

Since the revolution in 2011, the construction market has been on hold. Whilst there is a lot of activity at the SME level by local house builders and business fit-out companies, the major public procurement programme that many expected would take place, has not yet materialised. Three main reasons for this include:

– Current security situation: the fact that the Libyan police force and security services have not yet got the country fully under control has meant that many major international companies still feel that it is too early to come to Libya

– Legacy construction contracts: it is estimated that there are approximately 10,000 stalled major contracts in Libya. These contracts were let prior to the revolution and are either in a force majeure type situation, or are under investigation by the State to make sure that they are legitimate and fairly priced contracts. Until these contracts restart and contractors are paid for the work that they have done to date, most of the affected companies are reluctant to come back to Libya and resume their activities

– Lack of authority to proceed: many Ministries still do not feel properly empowered to start letting contracts because of the lack of a clear high level policy setting out the government's priorities. Additionally, many senior officials are reluctant to award any type of contract because there is currently a prevailing atmosphere of suspicion by the general public, which means that it is safer for Ministers to do nothing than risk letting contracts and then being accused of corruption or incompetence

Key industry bodies

- General Union of Professional Engineers
- Libyan Industry Trade Union
- Libyan Businessmen's Association
- Libyan Business Council

Market facts

- Ambitious plans for economic development backed by long-term budgets totaling **USD 500 billion** over the next 25 years[1]
- **USD 100 billion** government investment planned for infrastructure between 2010-2014 under the National Development Plan[2]
- Approximately **USD 55.3 billion** allocated under the National Development Plan in 2013, representing 60% of the total annual budget[2]
- One of the most hydrocarbon-dependent economies in the world generally accounting for over 70% of gross domestic product (GDP) in 2012[3]

1 Oil & Gas Libya 2014
2 Why Libya, Build Expo Libya, September 2013
3 Libya Snapshot Q2, KPMG Africa Limited, 2012
4 Libya's $100 bn Housing Opportunity, Architects Journal, June 2013

Construction

Contractual issues

- Contracting with the public sector is regulated by the Administrative Contracts Regulation No. 563 of 2007 (the Regulation)
- Under this regulation, there are generally four standard forms of contract used by the government, all of which are in Arabic
- There are fairly onerous provisions relating to the payment and taxation arrangements and it is also a requirement that all onshore contracts executed in Libya will be subject to stamp tax, payable at a rate between 0.5%-1% on the total corporate income of a company
- The Regulation also contains special rules for state contracts. These provisions are mandatory, including the choice of Libyan law to govern the contract and the requirement to include a Libyan law dispute resolution clause. The only governmental instrumentalities that have freedom to agree a foreign governing law are currently:
  - The Libyan Investment Authority
  - The Great Man-made River Authority
  - The Libyan National Oil Company
- Other governmental instrumentalities can apply to the Prime Minister's office for a special exemption in relation to certain projects, but will need to show why such an exemption is beneficial for the project and Libya as a whole with regard to prevailing public policy
- Arbitration clauses in public sector contracts are rare but can be used, provided that there is a special governmental exemption for a particular contract or project

Legislation

- Decree No. 563 for 2007 regarding the Regulation and Issuing of Administrative Contracts
  Applies to all contracts with Libyan government entities or relating to development projects which are funded by the public budget
- Decree No. 207 for 2012 regarding Foreign Participation in Companies, Branches and Representative Offices in Libya
  In non-restricted categories of business, foreign investors are only entitled to take minority shareholdings, with at least 51% of the shares required to be owned by Libyan nationals

  Foreign shareholdings may be increased to 60%, only with the approval of the Minister of Economy if special or technical considerations apply

  The restricted categories reserved for wholly owned Libyan enterprises from Decree 103 now also includes retail and various types of service companies and consultancies

  The Chairman of a Libyan joint stock company and the CEO of a limited joint venture company must be Libyan nationals

  For construction and contracting, the following requirements apply:
  - Up to a share capital of LD 30 million - only Libyan companies may participate
  - A share capital of between LD 30 million-LD 50 million - joint companies may participate
  - A share capital of above LD 50 million - 100% foreign owned branches may participate
- Law No. 23 for 2010 regarding Commercial Activities
  Stipulates the terms under which business is done generally in Libya. All local and foreign businesses are subject to this law. Article 375 states that the Ministry of Economy has authority to set the maximum percentage shareholdings of foreign investors. Prior to the introduction of Decree No. 207 of 2012, the default position was that foreign investors could take up to a 65% shareholding interest in a Libyan company
- Libyan Civil Code of 1953
  Under the Civil Code, there is mandatory decennial liability for both the architect/design consultant and the contractor for 'fixed installations'. A Libyan court will apply local law in relation to decennial liability resulting from projects in Libya, even if a foreign law has been determined as the proper law of the contract in a contract between two private sector entities. In general, it is permissible to cap or exclude certain types of damages, with the exception of gross negligence and fraud

Insurance

- Common types of insurance include:
  - Contractors All Risks/Erectors All Risks – insurance for works and equipment
  - Third Party Liabilities/Public Liability-personal injury and property damage
  - Workers' compensation
  - Professional indemnity insurance: professional negligence where the contractor is responsible for the design. Full cover for decennial liability under the Libyan Civil Code is not normally available unless a specially designed product is requested, in which case it will almost always be the case that such products are un-commercial because of extremely high policy prices

Other considerations

The state of the construction market is a source of great frustration for many, who were hoping that a large public procurement programme would help kick start the Libyan economy and develop the private sector, thereby creating jobs and other opportunities for young Libyans who currently have limited employment and other prospects.

Despite the negative short term outlook, the longer term outlook is compelling; it is conservatively estimated that the Libyan rebuild costs will be something like LD 400 billion, and this is just to restore Libya to the position it was in prior to the revolution. On top of that, there will be a whole host of new construction opportunities as Libya tries to catch up on lost time, building new schools, hospitals, roads, power stations, desalination plants, ports, airports and railways. It is certainly a market that holds enormous promise, and simply because the spotlight has switched away from Libya in the international media, it does not mean that the opportunities and prospects are in any way diminished. The backlog of projects that never materialised under the old regime and the fact that the existing infrastructure has not been upgraded for decades, means that the need is now urgent and this remains a priority for Libya. Almost all government Ministers, including the Prime Minister are 'on record' as saying that they need to start the cranes moving in Libya, but as at the date of this publication, there is not much evidence that this is happening.

PFI/PPP

To date, we are not aware of any projects having been let on a PPP/PFI basis. There was talk of this before the revolution and the initiative is now gathering considerable momentum.

A new PPP Law has now been drafted and is being considered at senior government levels. There appears to be considerable support for this initiative as it is seen as a potential mechanism to invigorate the private sector, utilize the high levels of liquidity in local banks, bring in foreign expertise and reduce corruption. There is still a long way to go before we can expect to see the first PPPs coming to market, but we believe that this will happen in the medium to long term. Our expectation is that the power sector and the housing sectors are the most likely first movers down this path.

Construction pipeline

Energy & power

- Tavan Tolgoi Power Plant, Umnugobi province
  (2010-2015)
- Sainshand Industrial Complex (including six processing and manufacturing plants), Dornogovi province
  (2010-2016)

Transport infrastructure

- New Ulaanbaatar International Airport, Khushigt Valley
  (Ongoing - completion due 2016)
- Ulaanbaatar Metro Project, Ulaanbaatar
  (Announced - completion due 2020)
- Sustainable Urban Transport Program - including the development of a bus rapid transit system (BRT), three additional bus depots and the upgrade of 11.1 km of trolleybus infrastructure
  (Announced - final phase completion due 2020)
- 'New Up Building' programme - 5,572 km of roads and 900 km of highway connecting Ulaanbaatar with aimags (provinces) to be restored under USD 3.75 billion program
  (Ongoing - completion due 2030)
- 'Northern Corridor' development - in December 2013, Mongolia, Russia and China signed a statement agreeing to accelerate the development of a Trans-Mongolian Railway. Under the trilateral statement, the sides will formulate a master plan for the development of the railway by the first quarter of 2014

Social infrastructure

- 96 Soum Center Project - hospitals, schools, kindergartens, vocational training and business centers will be built to service local areas alongside new housing supply
  (Ongoing - completion due 2016)
- 100,000 Housing Project - construction of 100,000 units of affordable family housing across the country, the majority of which being built in Ulaanbaatar
  (Ongoing - completion due 2016)

Mongolia

At its peak, the Mongolian empire stretched from the Danube to South East Asia. Today, Mongolia covers over 600,000 square miles (an area over six times as great as that of the UK) but with a population of less than three million people, it is the most sparsely populated country in the world. Economic activity in Mongolia has traditionally been based on herding and agriculture, but extensive mineral deposits of copper, coal, molybdenum, tin, tungsten and gold have emerged as a driver of industrial production and led, in recent years, to double-digit gross domestic product (GDP) growth. The challenges facing the country are various and include its harsh climate, the challenge of getting its natural resources to market efficiently and its relations with international investors. Some of these it can do little about but nevertheless, some commentators believe that Mongolia could, on a per capita basis, become the wealthiest country in the world.

The government's budget for 2014 has reaffirmed investment in the economy. Debt levels will be higher in the short term (to be financed by issuing bonds) but the expectation is that earnings will improve in the medium to longer term.

Key industry bodies

- Ministry of Construction and Urban Development
- Ministry of Road and Transportation
- Ministry of Mining
- Mineral Resource Authority
- Petroleum Authority
- Mongolian National Chamber of Commerce

Market facts

- Government pipeline of **GBP 32.4 billion** to be invested in infrastructure, construction, mining and energy by 2015[2]
- 2014 draft budget outlines **MNT 158 billion** of investment in energy, **MNT 109.9 billion** in health, **MNT 99.5 billion** in transportation and **MNT 85.1 billion** in culture, sports and tourism sectors. Mining sector to receive smallest investment of **MNT 4.01 billion**[3]
- 16.8% real GDP growth in 2013[4]
- In 2012, Mongolian Government issued **USD 1.5 billion** 'Chinggis Bond' named after Mongolian legend, Chinggis Khan
- **JPY 30 billion (USD 290 million)** 'Samurai Bond' issued on the Japanese Capital Market in 2013

1 The look of 2014 budget investment, UB Post, October 2013
2 The Report Mongolia 2013, Oxford Business Group
3 The look of 2014 budget investment, UB Post, October 2013
4 The Report Mongolia 2013, Oxford Business Group

Construction

Contractual issues

- Market has developed significantly in recent years
- Difficult to draw firm conclusions but likely that standard forms will be commonly used
- The civil code of Mongolia recognises the freedom to contract, stipulating that parties to a contract are entitled, within the applicable legal framework, to conclude contracts freely and to define the contents of their contracts[5]
- Mongolian law is based on an overarching principle (reminiscent of the English legal constitutional concept), that everything that is not prohibited is allowed[5]
- Contracting with the public sector is regulated under the Procurement Law
- 'Oyu Tolgoi' Project's Investment Agreement was signed in 2009 between the Mongolian Government, Ivanhoe Mines Ltd (Turquoise Hill) and Rio Tinto Ltd. The Investment Agreement is the first for the Government of Mongolia and the largest in the country

Legislation

- Some key legislation is already in place but other legislation is being developed
- Civil Code of Mongolia enacted in January 2002, as amended
- The Law on Status of Legal Professionals enacted early in 2013
- Mongolian New Securities Market Law enacted in 2013, as well as Mongolian Law on Investment and Investment Funding Law
- The new Investment Law provides legal guarantees to protect investment in Mongolia and sets out tax and non-tax incentives in order to promote investment in Mongolia
- Non discriminative Investment law seeks to ensure no discrimination between foreign investment and local investment
- The Mongolian President initiated the amended Minerals Law in early 2013 but it is undergoing discussion in Parliament

Insurance

- Mongolian insurance market in its early stages
- Ongoing reform may build local underwriting capacity and develop non-bank institutional investors
- Total premiums in the first half of 2012 were only GBP 45 million[6]

Other considerations

- Majority of construction growth has been driven by the mining sector and its effect is filtering through the economy
- Over last two decades, construction has moved from state-owned and controlled toward one driven by private sector
- Climatic conditions, a lack of a skilled workforce and logistical issues have acted as a brake on progress

PFI/PPP

Key legislation

- Main legislative PPP framework includes: Concession Law, Constitution of Mongolia, Civil Code, Law on Government, Law on State and Local Property[7]
- Main PPP policy framework is the State Policy on PPP as adopted by the Parliament Resolution No.64, dated 15 October 2009. It expresses strong will of the State to promote the private sector and to reduce the burden of the government to develop infrastructure and social services with limited funding and human resources

Current market position

The Ministry of Economy is in cooperation with the Asian Development Bank to implement PPP principles in a friendly environment. Accordingly, 'Guidelines for PPP' were recently produced and introduced in February 2014.

Some projects have been implemeted and others are in negotiation - one significant PPP project in development is the Ulaanbaatar Metro.

5 The Report Mongolia 2013, Oxford Business Group
6 Mongolian Insurers' Association
7 Assessment of the Quality of the PPP Legislation and of the Effectiveness of its Implementation 2011, European Bank for Reconstruction and Development (EBRD)

Construction pipeline

Energy infrastructure

- Privatisation of 10 Independent Power Plants
  (Ongoing - completion date pending)
- Unbundling and privatisation of the state-run Power Holding Company of Nigeria - this brought about the privatisation of five electricity generating companies and 10 electricity distribution companies

Transport infrastructure

- Reconstruction and upgrade of the airport terminals in Lagos, Abuja, Enugu, Port Harcourt and Kano
  (Announced - completion date pending)
- Construction of a modern state of the art international airport in Lekki, Lagos State
  (Announced - completion date pending)
- Construction of Lekki Deep Sea Port, Ibeju-Lekki, Lagos State
  (Announced - completion due 2016)
- Brass LNG (Gas Port) and Koko Port (Gas Revolution) are greenfield projects currently being considered for privatisation by the Nigerian authorities
- Snake Island Service Port, Akwa Ibom Deep Sea Port, Olukola Deep Sea Port and Badagry Deep Sea Port are all greenfield port projects under consideration by the FGN
- The Blue Line (Okokomaiko -Marina) Rail Project is phase one of seven rail projects planned for Lagos State
  (Ongoing - completion date pending)

Social infrastructure

- National Centre for Women Development, Abuja
  (Ongoing - completion date pending)

Nigeria

With the advent of democracy in 1999, the Federal Government of Nigeria (FGN) came up with an aggressive and ambitious economic blueprint tagged "Vision 20:20".

The vision is principally aimed at making the Nigerian economy one of the top 20 by the year 2020. Hence, the key goals to achieve to ensure the success of this vision are outlined as follows: i) GDP of not less than USD 900 billion; ii) GDP per capita of not less than USD 4000; iii) power generation of 40,000 MW; iv) attracting not less than USD 130 billion private capital over the next 10 years; v) guaranteeing productivity by strengthening linkages between key sectors of the economy; and, vi) fostering sustainable social and economic development by ensuring national security and enhancing infrastructure.

Unsurprisingly, adequate infrastructure was rated as the indicative parameter for vision 20:20. In this regard, Nigeria needs a total investment of USD 212 billion in infrastructure – an amount clearly beyond the FGN's capacity. The FGN has therefore started a campaign to raise these much needed funds through several initiatives, including PPP and privatisation amongst others. The targeted sources of finance are as follows: private sector 41%; federal government 31%; states and LGAs 28%[1]

- Infrastructure Concession Regulatory Commission, 2012

Key industry bodies

- Council for the Regulation of Engineering in Nigeria (COREN)
- National Association of Technological Engineering (NATE)
- Nigerian Society of Engineers (NSE)
- Nigerian Institution of Civil Engineers (NICE – a division of NSE)
- Nigerian Society of Engineering Technicians (NISET)
- Surveyors Council of Nigeria (SURCON)

Market facts

- Nigerian economy experienced an average growth of 7.4% in the last decade[2]
- Annual infrastructure investment of **USD 10 billion** needed over the next decade in order to reduce infrastructure deficit
- Approximately 7% of gross domestic product (GDP) spent on infrastructure
- Over **USD 13 billion** spent annually on fuel to power generators[3]
- Business Monitor revised upwards the growth forecast in the Nigerian Construction sector to about 9.5% in 2013[4]

1 Vision Led Concessions for Transportation Infrastructure Provision in Nigeria -The PPP Imperative, Infrastructure Concession Regulatory Commission, 2012
2 Nigeria, African Economic Outlook, 2012
3 Making PPP for Infrastructure Development Happen: The Nigerian Experience, ICRC, 2012
4 Nigerian Construction Industry Forecast, Business Monitor, September 2013

Construction

Contractual issues

- Common forms of contract procurement include:
  - Traditional
  - Design, bid and build, design and build or design, build, operate and transfer
  - Turnkey engineering/Construction contracts
  - Construction management
- Standard form contracts are commonly used with extensive amendments to reflect risks and peculiarities of projects
- Contractual approach can be adopted to mitigate or allocate virtually all risks save for instances where local legislation or mandatory laws apply

Legislation

- Nigerian Urban and Regional Planning Act Cap N138 LFN 2004
  Principal legislation governing building and construction. However, the validity of this Act and its applicability to the entirety of Nigeria is in doubt. In 2003[5] as the Supreme Court of Nigeria questioned the powers of the National Assembly to legislate on urban and regional matters for the entirety of Nigeria
- Physical Planning Urban Development and Building Control Law, 2010 (the "Lagos Building Law")
- The Land Use Act ("LUA") Cap L5 Laws of the Federation of Nigeria 2004
  Principal legislation which regulates the administration of land in Nigeria
- There are other sector specific relevant legislations including: Nigerian Communications Commission Act 2003, Nigerian Ports Authority Act N126 L.F.N. 2004, Environmental Impact Assessment Act, CAP E12, L.F.N. 2004, National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No.25 of 2007 (NESREA Act) amongst others

Insurance

Compulsory Insurance Products

- Builders liability insurance – under the Insurance Act 2003/under the Lagos State Building Control Law 2010
- Employers liability – (Group Life) – under the Pension Reform Act 2004

Common insurance products

- Construction All Risks
- Fire/Special Perils insurance
- Theft insurance
- Professional liability and Product liability insurance
- Goods-In-Transit insurance

Other considerations

- Fiscal incentives include:
  - Up to five years Income Tax Holiday under the Pioneer Status for qualified activities
  - Infrastructure tax incentive – 20% of cost is tax deductible
  - Free market – easy entry and exit procedures
- The Foreign Exchange (Monitoring & Miscellaneous Provisions) Act 17 of 1995 allows for free repatriation of profits and dividends net of taxes through any authorised dealer in freely convertible currency
- The Nigerian Investment Promotion Commission Act 16 of 1995 also provides for investment guarantees for foreign businesses/investors that 'no enterprise shall be nationalised or expropriated by any government of the federation'

PFI/PPP

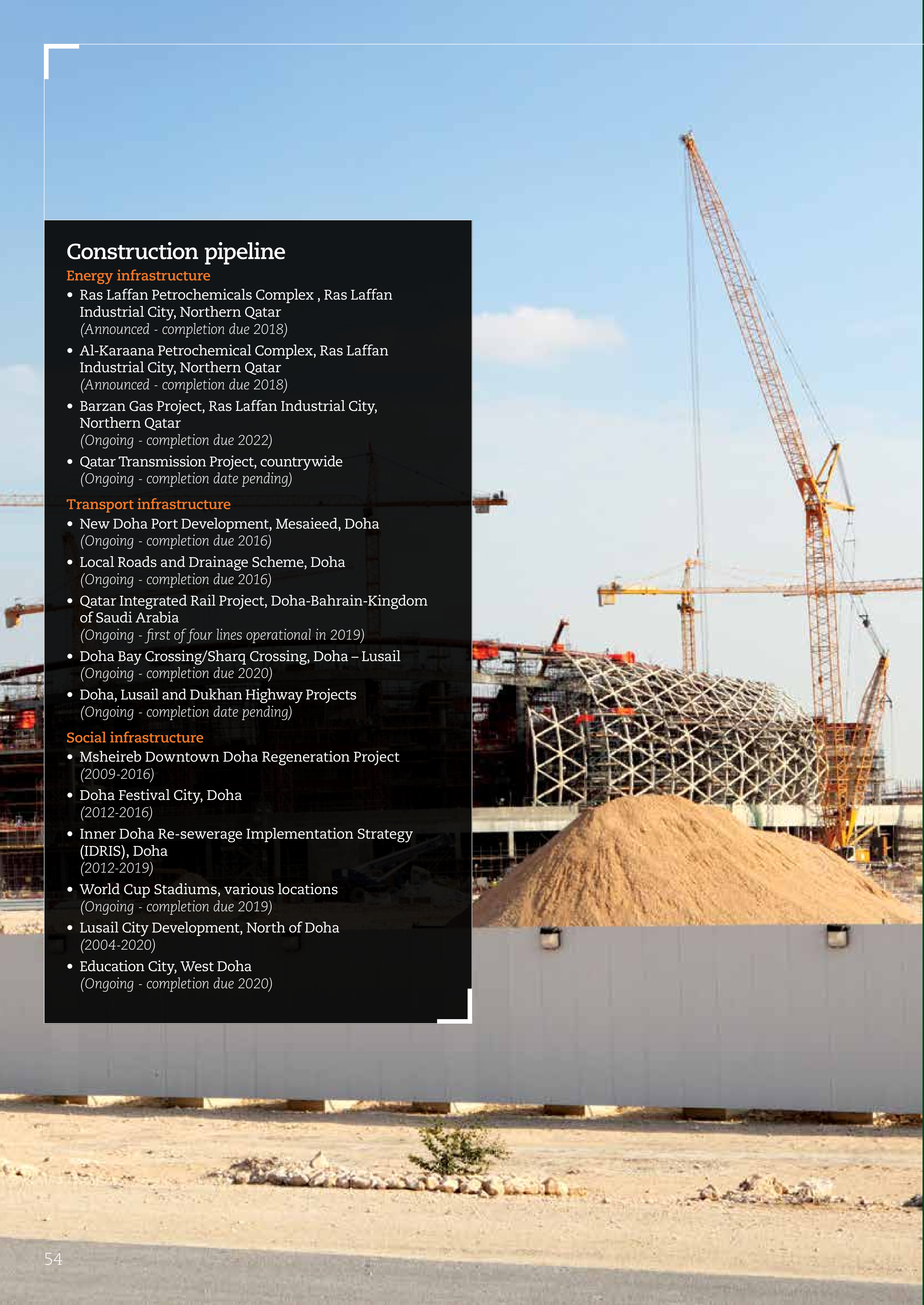
Contractual issues

- In order to bridge Nigeria's infrastructure gap, there is a compelling need to attract foreign investment through PPP to finance projects. Recently, the following contractual models had been used:
  - Concessions
  - Lease
  - Service Contracts
  - Management Contracts
  - BOT (and other variations e.g. BOOT, BTO, DBOT, DFBOT, etc)
- EPC Contract remains the typical construction contract for most of the big projects
- Design and Build is also becoming increasingly popular for sub-contracting either between the EPC Contractor and the sub-contractor or the Project Company and a sub-contractor
- No strict legislation regime for site/construction risks, hence, parties tend to negotiate these risks freely
- There is a strong drive by the Nigerian PPP regulatory agencies for disclosure of PPP contracts to enhance transparency and public awareness

Legislation

- Infrastructure Concession Regulatory Commission Act 2005
  Enacted to establish the ICRC as a central PPP unit. ICRC is the FGN's agency charged with catalysing public and private efforts/resources for the development and implementation of a PPP framework for Nigeria. It also co-ordinates and regulates all PPP initiatives of other specialist ministries, agencies and parastatals of the FGN
- Lagos State Public Private Partnership Law 2011
  Establishes the PPP Office for the Lagos State government. Which also doubles as the State's Procure Office under the Public Procurement law
- Lagos State Public Procurement Law C51 2011
  Establishes the Lagos State Public Procurement Agency which makes regulations and policies for public procurements and also enforces the procurement laws of the State

5 Attorney General of Lagos State v. Attorney General of the Federation & 35 others (2003), 12 NWLR 1



Construction pipeline

Energy infrastructure

- Ras Laffan Petrochemicals Complex , Ras Laffan Industrial City, Northern Qatar
  (Announced - completion due 2018)
- Al-Karaana Petrochemical Complex, Ras Laffan Industrial City, Northern Qatar
  (Announced - completion due 2018)
- Barzan Gas Project, Ras Laffan Industrial City, Northern Qatar
  (Ongoing - completion due 2022)
- Qatar Transmission Project, countrywide
  (Ongoing - completion date pending)

Transport infrastructure

- New Doha Port Development, Mesaieed, Doha
  (Ongoing - completion due 2016)
- Local Roads and Drainage Scheme, Doha
  (Ongoing - completion due 2016)
- Qatar Integrated Rail Project, Doha-Bahrain-Kingdom of Saudi Arabia
  (Ongoing - first of four lines operational in 2019)
- Doha Bay Crossing/Sharq Crossing, Doha – Lusail
  (Ongoing - completion due 2020)
- Doha, Lusail and Dukhan Highway Projects
  (Ongoing - completion date pending)

Social infrastructure

- Msheireb Downtown Doha Regeneration Project
  (2009-2016)
- Doha Festival City, Doha
  (2012-2016)
- Inner Doha Re-sewerage Implementation Strategy (IDRIS), Doha
  (2012-2019)
- World Cup Stadiums, various locations
  (Ongoing - completion due 2019)
- Lusail City Development, North of Doha
  (2004-2020)
- Education City, West Doha
  (Ongoing - completion due 2020)

Qatar

"The National Vision aims at transforming Qatar into an advanced country by 2030, capable of sustaining its own development and providing for a high standard of living for all of its people for generations to come. Qatar must invest too in world class infrastructure to create a dynamic and more diversified economy in which the private sector plays a prominent role.

Looking to the future, the government will work to ensure that the nation develops a world-class infrastructure backbone, with projects set out in an integrated national infrastructure master plan.

Priority infrastructure investments targeted for 2011–2016 include wastewater treatment facilities, recycling centres, primary healthcare facilities, centres for higher education and skills training, recreational spaces, and road and rail connections. Government participation through public-private partnerships and start-up investments will help jumpstart firms in new sectors of the economy."[1]

- Qatar National Development Strategy 2011-2016

Key industry bodies

- Institute of Civil Engineers (ICE)
- Society of Construction Law (SCL)
- Chartered Institute of Arbitrators (CiARB)
- Qatar British Business Forum (QBBF)

Market facts

- **USD 10.9 billion** of construction and infrastructure contracts awarded in 2012[2]
- Third most active GCC construction market in 2012[3]
- **USD 220 billion** of construction projects planned or under way[4]
- **USD 117.5 billion** pipeline of capital projects between 2012-2020[5]
- **USD 193.4 billion** value of top 20 megaprojects[6]
- **USD 22.7 billion** value of megaprojects work currently awarded[6]
- **USD 140 billion** pipeline of transport infrastructure projects over next five years[7]

1 Qatar National Development Strategy 2011-2016
2 Qatar's construction boom gathers pace, MEED, February 2013
3 Qatar to invest over USD 200 billion in construction projects by 2022, Deloitte, July 2013
4 Qatar's biggest projects: The top 20 megaprojects, MEED, February 2013
5 Qatar leads Gulf projects index, MEED, July 2013
6 Qatar's biggest projects: The top 20 megaprojects, MEED, February 2013
7 Qatar to invest over USD 200 billion in construction projects by 2022, Deloitte, July 2013

Construction

Contractual issues

- Common forms of procurement include:
  - Traditional
  - Design and build
  - Management contracting
- FIDIC is the main standard form contract used in the region - it is frequently amended
- Some governmental bodies have their own standard forms of contract, which often include broad provisions transferring risk to the contractor. Scope to negotiate the terms of these contracts may be extremely limited, as the request for proposals document will specify that the consultant or contractor must agree to its terms in an un-amended form
- Decennial liability – contractors and consultants are jointly liable for the total or partial collapse of a building/structure and/or a defect threatening the stability or safety of the building/structure for a period of 10 years following handover. No fault is necessary in order for liability to arise
- There is a risk that a court order will be required legally to terminate a contract. Legal advice should be obtained before a party purports to terminate a contract pursuant to its terms alone
- Pay when paid clauses are frequently incorporated in contracts and are generally considered as binding in Qatar
- Overall contractual liability often capped – value is dependent on the nature of the work. There may be carve-outs from the cap on liability in relation to sums payable under indemnities given in respect of personal injury, for example

Legislation

- Law No. (22) of 2004 – The Qatar Civil Code
  Principal legislation concerning the interpretation of contracts – includes provisions dealing with contractual damages and construction contracts
- Law No. (26) of 2005 (as amended) – Regulation of Tenders & Auctions
  Governs public tenders and procurement within Qatar
- Law No 25 of 2004 Concerning Controlling the Cover-up of Illegal Exercise by non Qatar nationals of Commercial, Economical and Professional Activities in Violation of the Law
  Includes a prohibition against facilitating a non-Qatari party from benefitting from economic activities in which they are not permitted to engage under other Qatari laws
- Law No. (13) of 2000 – Regulation of Foreign Capital Investment in Economic Activity
  Requires non-Qatari companies to form partnerships with Qatari partners if they wish to operate within the region (unless otherwise exempt)
- Law No. (19) of 2005 – The Organisation of the Practice of Engineering Professions and its executive regulations
  Governs the practice of engineering and architecture

Insurance

- Common types of insurance required under contract:
  - Professional indemnity where the contract involves elements of design
  - Employer's liability
  - Third party liability/public liability
  - Contractor's all risks
- An engineer which sets up an office in Qatar is required to hold certain insurances, in particular professional indemnity insurance
- Cover for decennial liability is traditionally unavailable in Qatar

PFI/PPP

Contractual issues

- Given the strength of the Qatari economy, the government has to date had no need to procure any public funded projects on a PFI/PPP basis. As such, there is no relevant legislation and there are no standard form documents

Construction pipeline

Energy infrastructure

- Offshore Platforms Filanovsky Field, Caspian Sea
  (2013-2015)
- Far Eastern Petrochemical Company petrochemical complex, Primorsk Region
  (2013-2017)
- LNG plant, Vladivostok
  (2013-2018)
- Russian Far East LNG Project
  (2013-2019)
- Subsidy program to boost renewable energy output
  (2013-2020)

Transport infrastructure

- Moscow-Kazan HSL Project
  (2015-2018)
- Trans-Korean Main Line Project
  (Ongoing - completion date pending)
- Sakhalin Bridge connecting Sakhalin Island to Russian mainland
  (Announced - dates pending)
- Modernisation of Baikal-Amur Mainline
  (Announced - dates pending)
- Reconstruction of Trans-Siberian Railway
  (Announced - dates pending)

Social infrastructure

- Construction of three Dreamworks theme parks - Moscow, St Petersburg and Yekaterinburg
  (2015 - completion date pending)
- FIFA World Cup 2018 - construction/renovation of football stadiums in 13 Russian cities
- All-Russian Exhibition Centre renovation, Moscow
  (Announced - dates pending)

Russia

"We made one more important decision – to invest 450 billion roubles into infrastructure projects, on a repayable basis. In total, up to half of the National Welfare Fund will be invested into projects on the territory of our country. … Key conditions will be an assessment by private business that the projects are viable and effective, and co-financed from their side."[1]

- Vladimir Putin, 21 June 2013

Key industry bodies

- Federal Agency for Environmental Technical and Nuclear Supervision
- Ministry of Regional Development & Federal Agency for Construction & Housing
- Self Regulation Organisations (SRO) for Construction/Design/Survey

Market facts

- Commercial construction market valued at **USD 41.8 billion** in 2012[2]
- **USD 94 billion** foreign direct investment (FDI) into Russia over the past year (as at January 2014) - 83% higher than in 2012[3]
- Russian Direct Investment Fund (a **USD 10 billion** fund) has attracted approximately **USD 9 billion** of foreign capital into joint investment projects (as at January 2014)[4]
- Ranked third globally in terms of FDI volumes behind only the U.S. and China[5]
- 40% of the National Welfare Fund's assets allocated to investment projects, including the modernisation of the Trans-Siberian and Baikal-Amur railways and construction of the Central Ring Road outside Moscow (January 2014)[6]
- 2018 FIFA World Cup (11 host cities, 12 stadiums, nine new constructions) will support growth in all construction markets

1 Putin pledges USD 14 billion from wealth fund for Infrastructure, RIA Novosti, June 2013
2 Construction in Russia – Key Trends and Opportunities to 2017, June 2013
3 UNCTAD – Global Investment Trends Monitor No. 15, 28 January 2014
4 Russian Finance Ministry to use Welfare Fund to support Rosatom projects, ITAR-TASS News Agency, January 2014
5 UNCTAD – Global Investment Trends Monitor No. 15, 28 January 2014
6 Russian Finance Ministry to use Welfare Fund to support Rosatom projects, ITAR-TASS News Agency, January 2014

Construction

Contractual issues

No standard form contracts. Generally hybrid contract used in major projects combining FIDIC terms and mandatory provisions under Russian law.

- Responsibility and risk lies with contractor for accidental loss/damage to facility before acceptance, even in cases where loss/damage due to force majeure event. Phased acceptance of the facility (and thereby earlier transfer of risk of accidental loss/damage) should be considered
- Contractor must warn employer and must suspend work on discovery of unsuitable/improper quality of material/equipment/technical documentation provided by employer, of possible unfavourable consequences to employer or other circumstances which threaten suitability/soundness of the results of the work performed/make it impossible to complete it on time (Article 716 of Civil Code)
- Contractor can limit liability to compensation for actual damage, exclude loss of profits and interest, and for specific types of actual damage
- Caps on liability are enforceable
- Contractual penalties are enforceable
- Code specifies key characteristics of force majeure/circumstances which will not constitute a force majeure event
- Contracts generally include provision for penalties/damages and right to terminate for material delays. Employer entitled to terminate if contractor delays in start of work/impossibility of meeting deadline due to slow performance of work
- Additional work is recorded by addendum/additional agreements to the contract
- Work inspected either by regional or federal construction supervisory authority

Legislation

- Construction/Design/Survey
  - Civil Code – Chapter 37, Part 3 (Construction), Part 4 (Design & Survey) with general and mandatory provisions for construction/design/survey contracts
  - The Town Planning Code No. 73-FZ (07 May 1998) – planning/construction/improvement of urban/rural settlements/engineering/transport/social infrastructures and environmental protection
  - Technical Regulation on the Safety of Buildings and Structures No. 384-FZ (30 December 2009) – overarching technical regulation of construction industry
  - National Standards (GOST) and Construction Norms and Rules (SNiP) – technical regulations with specific requirements for each stage of construction project, including planning/survey/design and construction
- Environment
  - On Environmental Protection No. 7-FZ dated 10 January 2002
  - The Land Code No. 136-FZ dated 25 October 2001
  - The Forest Code No.200-FZ dated 04 December 2006
  - On Natural Areas of Preferential Protection No. 33-FZ dated 14 March 1995
  - On the Sanitary and Epidemiological Welfare of the Public No. 52-FZ dated 30 March 1999
  - On Farm Land Turnover No. 101-FZ dated 24 July 2002
- Air
  - On Protection of Atmospheric Air No. 96-FZ dated 04 May 1999
- Water
  - The Water Code No. 74-FZ dated 03 June 2008
- Waste
  - On Production and Consumption Waste No. 89-FZ dated 24 June 1998
  - On Radioactive Waste Handling No. 190-FZ dated 11 July 2011

Interplay between laws for specific issues and main piece of legislation, i.e. Civil Code, Town Planning Code, Environmental Protection.

Insurance

- Membership of a SRO entails compulsory third party liability insurance
- Construction All Risk
- Erection All Risk
- Professional indemnity – where contractor responsible for design
- Product liability – where product incorporated into contract works

Other considerations

- Regulatory licenses, permits and consents relevant to contractors include:
  - Membership of relevant SRO
  - Governmental expert review of design documentation /engineering surveys
  - Technical conditions for connecting to the public utilities
  - Construction permit from the Federal, Regional or local government
  - Inspections within framework of state control over construction (GSN) and Opinion on Compliance (ZOS), certifying compliance of project with applicable technical regulations/laws and approved design documentation
  - Commissioning certificate from the federal, regional or local government
- Procurement Laws where government entity customers involved
- Usually, major government-backed construction projects are organised by state-owned corporations (e.g. Olympstroy, the Customer for Sochi Olympics construction projects). Procurement rules are less strict and focused more on disclosure and transparency than on restricting freedom of contract

PFI/PPP

Market overview

The stated mission of the PPP Centre at Vnesheconombank (State Corporate Bank for Development) is "to ensure support and accelerate development of federal, regional or municipal infrastructure projects and enhance quality of public services through the application of a range of PPP instruments."[7]

This is a developing sector in Russia. There have been a number of major PPP projects concerning waste processing, road construction, city toll road, upgrading of airports, high speed rail link, port terminals and utilities. Generally the projects are structured as concession agreements.

The form of PPP under the Federal Law On Concession Agreements is similar to BTO. In the absence of Federal Law catering for other PPP models (BOOT, BOT, BOO), there is a risk that Russian courts may construe agreements between public customer and a private contractor as a concession agreement and therefore invalidate transfers of ownership to a private contractor. There are mandatory model concession agreements for different sectors (rail, transport, utilities, health care, etc).

In April 2013, a draft of the Federal Law On the Basis of Public Private Partnership (PPP) passed the first reading in the State Duma. Currently, the draft does not restrict the freedom of parties to choose a form of PPP and does not prescribe bidding rules for PPP tenders.

In 2010, the PPP Expert Council of the State Duma developed a model law on PPP which encouraged regions to adopt their own regional PPP legislation. So far 69 regions have adopted local PPP laws or regulations. Regional legislation permits the use of forms, other than concession type PPP, including PFI. However again there is a risk that in the event of dispute, if there is inconsistency between the Federal Law and Regional Law, the Federal Law will prevail.

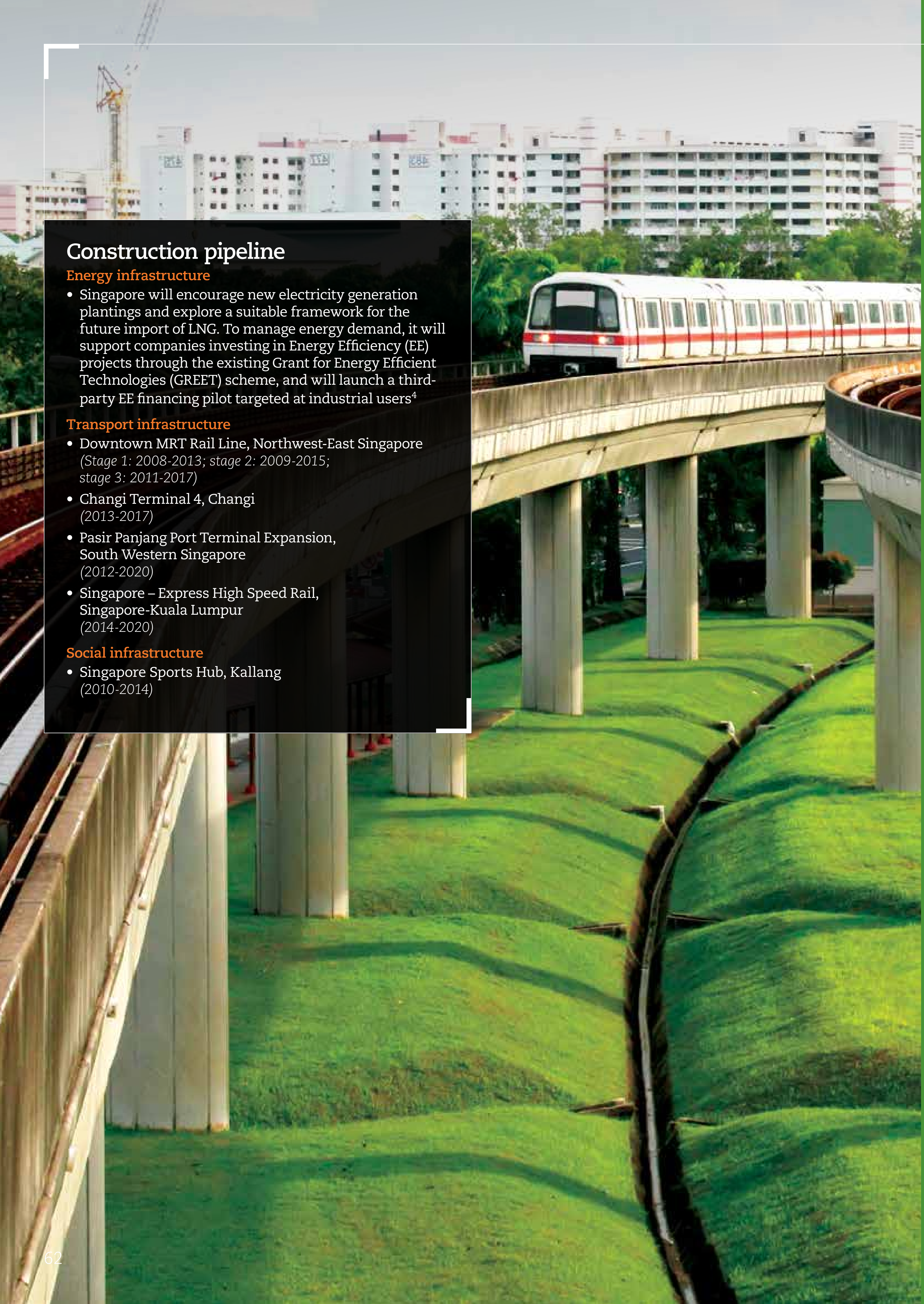
7 PPP Centre overview, Public-Private Partnership Centre of Vnesheconombank, 2012

The law On Concession Agreements permits foreign governing law but not international arbitration; regional PPP laws are more flexible in this regard.

Oil and gas infrastructure may not be the subject of concession or regional PPP laws.

Legislation

- Civil Code – Chapter 37, Part 5
- On Concession Agreements No. 115-FZ dated 21 July 2005
- On Placing Orders for Goods, Works and Services for State and Municipal Needs No. 94-FZ dated 21 July 2005 (to be replaced from 01 January 2014 with On the Contract System for Procuring Goods, Works and Services for State and Municipal Needs No. 44-FZ dated 5 April 2013)
- On Procurement of Goods, Works, Services by Certain Types of Legal Entities No. 223-FZ dated 18 July 2011
- On Production Sharing Agreements No. 225-FZ dated 30 December 1995
- On Capital Investments in the Russian Federation No. 39-FZ dated 25 January 1999
- Regional PPP Legislation – e.g. On the Participation of St Petersburg in Public-Private Partnerships No. 627 dated 20 December 2006, and on investments and public-private partnership in Penza Oblast No. 1755-PRL dated 30 June 2009



Construction pipeline

Energy infrastructure

- Singapore will encourage new electricity generation plantings and explore a suitable framework for the future import of LNG. To manage energy demand, it will support companies investing in Energy Efficiency (EE) projects through the existing Grant for Energy Efficient Technologies (GREET) scheme, and will launch a third-party EE financing pilot targeted at industrial users[4]

Transport infrastructure

- Downtown MRT Rail Line, Northwest-East Singapore *(Stage 1: 2008-2013; stage 2: 2009-2015; stage 3: 2011-2017)*
- Changi Terminal 4, Changi *(2013-2017)*
- Pasir Panjang Port Terminal Expansion, South Western Singapore *(2012-2020)*
- Singapore – Express High Speed Rail, Singapore-Kuala Lumpur *(2014-2020)*

Social infrastructure

- Singapore Sports Hub, Kallang *(2010-2014)*

Singapore

"We want Singapore to continue to be one of the best places to live in the world – a city for all age groups, and a country we are proud to call home.

We will invest in our infrastructure and create high quality urban spaces, offering convenient access to amenities, transport nodes and services. Our rail network will expand by about 100 km to a total length of 280 km by 2021. We will build more public housing, hospitals and care facilities.

By planning our infrastructure developments well in advance, and implementing them in a timely and effective way, we can overcome our current strains and congestion, and accommodate a larger population."[1]

- A Sustainable Population for a Dynamic Singapore, January 2013

Key industry bodies

- Building and Construction Authority
- Centre for Public Project Management (CP2M)
- Institute of Engineers, Singapore (IES)
- Association of Consulting Engineers Singapore (ACES)
- Singapore Institute of Architects (SIA)
- Singapore Institute of Surveyors and Valuers (SISV)

Market facts

- **SGD 3,654.2 million** of construction in Q2 of 2013[2]
- 6.1% increase in construction gross domestic product (GDP) in Q2 of 2013[2]
- Ranked by the World Bank as the easiest country in which to do business seven years running[3]
- 17% increase in U.S. foreign direct investment (FDI) in 2012[3]

1 Population White Paper: A Sustainable Population for a Dynamic Singapore, The National Population and Talent Division, January 2013
2 Statistical Tables from Economic Survey of Singapore, Singapore Department of Statistics
3 Singapore-U.S. Trade High to Persist on Record FDI Level, Bloomberg, August 2013
4 Expenditure Overview, Singapore Budget 2013, Government of Singapore

Construction

Contractual issues

- Common forms of procurement include:
  - Traditional
  - Design and build
  - Management contracting
- In addition to contract law, the law of tort and applicable legislation will shape the parties' rights and obligations
- Standard form contracts are used for public and private sector projects, including:
  - Singapore Institute of Architects (SIA) Conditions of Appointment
  - Association of Consulting Engineers, Singapore
  - Public Sector Standard Conditions of Contract for Construction Works (PSSCOC)
  - Public Sector Standard Conditions of Contract for Design and Build
  - REDAS Design and Build Conditions of Contract
- Performance bonds of between 5-10% of the contract price are often required to cover the contractor's performance whilst on site and during the defects liability period

Legislation

- Building Control Act, Cap 29 and Building Control Regulations 2003
  Specifies standards of safety and good building practice as well as a system of inspection and approval of Building Works
- Building and Construction Industry Security of Payment Act 2004 and Building and Construction Industry Security of Payment Regulations 2004
  Seeks to facilitate and promote sound payment practices by requiring progress payments and enabling the parties to take payment disputes to adjudication
- Professional Engineers Act, Cap 253 and Architects Act, Cap 12
  Regulates the conduct of engineers and architects

Insurance

Common types of insurance include:

- Public liability insurance: cover for third party liability for bodily injury or property damage (could alternatively be covered under an All Risk policy)
- Contractor's All Risk: cover for the contract works during the construction period against loss or damage and for third party liability for bodily injury or property damage
- Professional indemnity insurance: cover for the Contractor's negligence in relation to design work

Other considerations

- Singapore is very open to FDI, and has many policies in place to support it, including a comparatively low corporate tax scheme and investment incentives such as double taxation agreements and investment guarantee agreements
- For public projects over SGD 70,000, a tendering process is conducted either on an 'open', selective or limited basis, depending on the nature of the project

PFI/PPP

Contractual issues

- Unlike other jurisdictions, there is no specific piece of legislation that governs the PPP process – the Ministry of Finance is responsible for setting out PPP policies and guidelines
- The PPP initiative is based on a hybrid of both the UK's PFI scheme and Australia's PPP framework
- PPP models that may be used include:
  - Design Build Operate (DBO)
  - Design Build Finance Operate (DBFO) (most common)
  - Models proposed by the private sector
- Project agreements tend to be between 15 – 30 years

Legislation

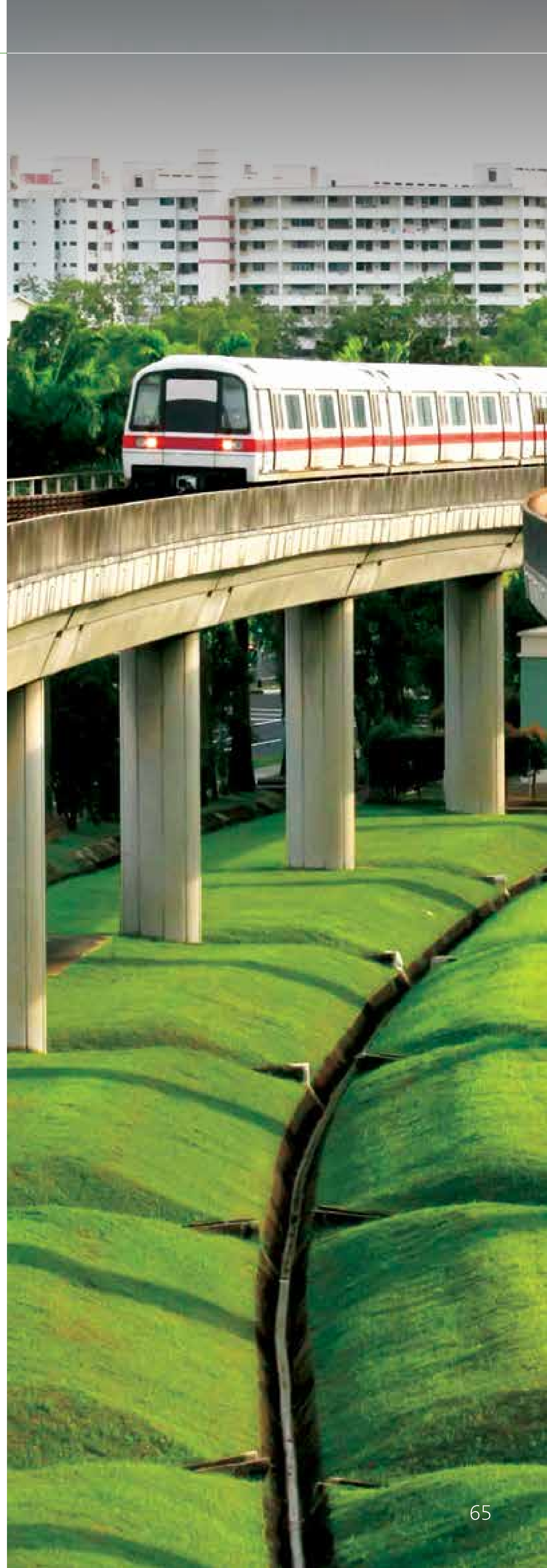
- Public Private Partnership Manual Version 2, 2012
  Government Procurement Entities are required to comply with the procurement procedures set out in this guide when tendering for PPP work

Insurance

- Insurance requirements for PPP projects are similar to those under other types of construction projects
- Parties will also need to consider requirements for property and asset insurance during the project's operational phase

Other considerations

- PPP Handbook released in 2004 which actively encouraged the use of PPP models for which prominent projects, including the Singapore Sports Hub and Tuas Desalination Plant have since been procured. A new version was published in March 2012, however, no new projects have been procured on a PPP basis since 2010



Construction pipeline

Energy infrastructure

- Improvement, management and operation of three major water treatment and desalination plants, Catalonia
  (Announced - dates pending)

Transport infrastructure

- **Benavente-Zamora A66 road** (Autovia de la Plata) connecting Gijon and Sevilla
  (Announced - dates pending)
- **Autovia del Olivar; Autovia del Almanzora; Valencia-Castellón line; A362 motorway; Cuenca Minera highway**

Social infrastructure

- **Cordoba Courthouse Project, Andalucia**
  (Ongoing - completion date pending)

Spain

[Spain] called on the European Union, in the coming months, and together with reforms at a national level, to take as many measures as are necessary to foster growth and competition, thereby acting as a catalyst to ensure the positive impact of reforms and adjustments being made by Member States:

– Affirmed the importance of creating conditions to ensure investment in the economy, particularly to support small- and medium-sized enterprises, as well as micro-enterprises, through the European Investment Bank, among other institutions, and by means of as many instruments as exist to that end

– Highlighted the importance of the Cohesion Policy as the backbone of social and economic development in the EU, and as a catalyst for growth in Europe, considering it is necessary to guarantee that the Cohesion Policy complements other EU policies to ensure the maximum impact of EU investments within the framework of strict budgetary discipline that exists in Europe

– Affirmed the necessity of the future of the economies of the two countries and of the EU as a whole being based on a model of strong, diversified and sustainable growth that serves to generate employment, human capital, investment and innovation

– To those ends, suggested that the EU drive a policy of competitiveness, fostering a pro-competition regulatory framework and adopting structural reforms to remove their main macro-economic imbalances[1]

- President of the Government of Spain Joint Statement

Key industry bodies

- Colegio de Ingenieros de Caminos, Canales y Puertos (CICCP)
- Spanish Council for Architectural Technology
- Superior Council of Colleges of Architects of Spain

Market facts

- Economy contracted by 1.4% in 2012 and is expected to shrink by a further 1.5% by the end of 2013 - though trend is expected to reverse for 2014 (0.9%)
- Inflation was 2.4% in 2012 and is expected to fall to 1.5% by the end of 2013 and to 0.8% the next year
- Transport sector received 26% and urban infrastructure 3% of 2012 budget
- **EUR 9.6 billion** budgeted for transport infrastructure in 2013

1 President of the government of Spain joint statement, 26th Spain-Portugal Summit, May 2013

Construction

Contractual issues

– Turnkey contracts are often used. The contractor holds all the risks and liability until handover with the only exception of act of God events. Contracts typically establish the penalties for lack of compliance with the established milestones

– A guarantee term (typically ranging between 18-24 months) is granted. Sub-contracts are normally allowed but this does not limit the main contractors liability to the employer/developer

– Disputes are normally submitted to civil courts. Arbitration is less frequent, but increasingly used

Legislation

European

The 2006 Technical Code for Building (Código Técnico de la Edificación) is the rule governing the construction of buildings (project, construction, maintenance, conservation).

– Eurocodes (European technical standards) are the Europe-wide means for the structural design of buildings and other civil and engineering works, covering:
  – Basis of structural design (EN 1990)
  – Actions on structures (EN 1991)
  – Concrete structures (EN 1992), steel (EN 1993), Composite steel and concrete (EN 1994), timber (EN 1995), masonry (EN 1996) and aluminium structures (EN 1999), together with geotechnical design (EN 1997)
  – The design, assessment and retrofitting of structures for earthquake resistance (EN 1998)

– According to the Public Procurement Directives (2004/17/EC and 2004/18/EC), contracting authorities in the EU must allow the use of the Eurocodes in structural design aspects of tenders falling within the scope of these Directives

– In addition, to implement the Internal Market for services (engineering and contracting) and structural construction products, the Commission Recommendation 2003/887/EC of 11 December 2003 strongly encourages the EU Member States to take on board the Eurocodes as their national design codes

Insurance

– Professional indemnity Insurance is required for Architects, Technical Architects and Engineers

– Property damage all risks insurance (with or without liability section)

– Public liability insurance

– In case of residential buildings decennial liability insurance must be taken out by contractors to cover costs associated with the potential collapse of the building after completion. The names derives from the fact that it covers the ten year period after handover and completion of the project

PFI/PPP

Contractual issues

There is no standard form for PFI and PPP contracts. As a general rule, the contractor (the concessionaire) shall bear site risk, legislation changes risk, construction risk and demand risk; however, it is often agreed that the concessionaire is entitled to compensation by the Public Authorities or additional payment measures in case that the balance of the contract has been broken because of circumstances beyond the contractual forecasts.

Contracts with the Spanish Public Authorities cannot be submitted to arbitration The contracts are subject to Spanish law and competence falls with the administrative courts.

Legislation

The main rule is the Act of Public Sector Contracts which was approved by means of Royal Decree 11/2003. It intends to harmonise the diversity of rules formerly governing this matter (namely Act 30/2007 and Act 13/2003). The general principle is the freedom of the parties to agreed the terms of the contract (section 25) which in any event has to meet a minimum content (section 26).

This recent act contains a specific section concerning public works concession contracts (the concession model has been and currently is the main vehicle for the development of PPP in Spain) and includes procurement provisions.

However, any public contracts awarded under the Previous Act as well as those initiated before the entry into force of the Public Sector Contracts Act will continue to be regulated by the earlier legislation.

Insurance

– Insurance cover will typically be the responsibility of the contractor. The public tender conditions do normally detail the coverage to be obtained: typically, property damage all risk and liability for the construction and the O&M phases

Construction pipeline

Energy infrastructure

- Mtwara-Dar Gas pipeline construction, Mtwara-Kilwa District-Dar es Salaam *(2012-2014)*
- SONGAS gas-electricity PPP *(2003 - completion date pending)*
- Kinyerezi Power Project, Dar es Salaam *(Announced - dates pending)*

Transport infrastructure

- Tanga-Arusha-Musoma-Kampala Railway Line *(2011 - completion date pending)*
- Bagamoyo, Tanga and Musoma port developments *(2014 - completion date pending)*

Social infrastructure

- 14 countrywide water development projects funded by the Water Sector Development Programme - USD 286 million allocated by the government during 2013-2014[4]
- Abbott Fund PPP to strengthen country's healthcare system; fund invested more than USD 95 million to date *(Ongoing - completion date pending)*

Tanzania

"The Government of Tanzania is committed to the pursuit of sound, consistent and predictable macro-economic policies with low inflation. The policy stance is one of building on the foundations and successes, and scaling-up implementation and policy with new vigour, new zeal, and new speed. The promotion of good governance, adherence to the rule of law, promotion of private sector development and opening-up new areas with high economic potential are key issues.

The government strongly encourages private sector participation in development financing. To that end, the government has laid out clear policy, legal and regulatory frameworks. Specifically, PPP arrangement will be used to finance priority development projects including infrastructure projects."[1]

- Guidelines for the Preparation of Annual Plan and Budget 2012/2013

Key industry bodies

- Architects and Quantity Surveyors Registration Board (AQRB)
- Contractors Registration Board (CRB)
- Engineers Registration Board (ERB)
- Public Procurement Regulatory Authority (PPRA)

Market facts

- 8% increase in construction sector activities over the past five years
- Increased government spending on infrastructure from **USD 1.2 billion** in the 2012-13 fiscal year to **USD 1.34 billion** in the 2013-14 fiscal year
- **USD 1 million** allocated towards raising generation, transmission and distribution of electricity in the 2013-14 fiscal year[2]
- **USD 1.7 billion** allocated for roads in the 2013-14 budget[3]

1 Guidelines for the Preparation of Annual Plan and Budget for 2012/2013 in the Implementation of the Five Year Development Plan 201/12-2015/16, The United Republic of Tanzania, February 2012
2 National Bureau of Statistics Tanzania
3 Performance Audit 2009-2010, National Audit Office of Tanzania
4 National Bureau of Statistics Tanzania

Construction

Contractual issues

- Standard form contracts are commonly based on National Construction Council's template agreement and schedule of conditions
- Contractors expected to maintain liquid assets equivalent to at least three times the monthly cash flow of the project
- Contracts typically include anti-corruption clauses

Legislation

- The Local Government Urban Authorities Act
  Principal statute affecting construction projects
- The Town and Country Planning Act 2002
  Framework for building design, building consent and land use
- Environmental Management Act, 2004
  Framework for environmental requirements in construction projects
- The Land Act 1999
  Provides over all guidelines for the management of land, leases and land dispute settlement

Insurance

Projects must hold:

- Contractors all risks insurance: damage to works and site materials
- Public liability insurance: damage, injury and death to third parties

Most projects will have:

- Insurance against poor performance by the contractor

Other considerations

- Permission from environmental and local governmental authorities are required prior to construction
- Companies engaged in construction related activities are required to register with their professional registration boards before offering services to the public
- All persons or companies that hold themselves out as contractors or that undertake contractors' work need to be registered with the Contractors Registration Board

PFI/PPP

Contractual issues

- Contracting authority is the body that procures and signs the project agreement and performs contract management for the duration of the contract
- For unsolicited bids, the contracting authority will amend any project agreement in line with the legal opinion of the Attorney General

Legislation

- The Public Private Partnership Act No. 18 of 2010 (the Act) as enforced by The Public Private Partnership Regulations 2011
  Establishes a legal and institutional framework to guide investment in PPP projects
- Public Procurement Act
  Dictates that all PPP projects shall be procured through an open and competitive bidding process

Insurance

Projects must hold:

- Contractors all risks insurance: damage to works and site materials
- Public liability insurance: damage, injury and death to third parties

Other considerations

- If bids are unsolicited bids they do not have to put up for public tender however, all solicited bids will have to be
- A feasibility study must be carried out before the project is submitted to ministerial/governmental level

Construction pipeline

Energy infrastructure

- Evrencik WEPP wind farm, Marmara
  (final phase: 2014 - completion date pending)
- Second nuclear power plant, Sinop
  (Announced - completion due 2023)
- 3,500MW thermal power plant, Afyon
  (Announced - dates pending)

Transport infrastructure

- Yavuz Sultan Selim Bridge (initially named Third Bosphorus bridge), Istanbul
  (2013-2015)
- Istanbul-Izmir Highway
  (2013-2016)
- Eurasia Tunnel Project, Kazlicesme-Goztepe, Istanbul
  (Ongoing - completion due 2017)
- Third Istanbul Airport, Istanbul
  (2017-2019)
- Galataport Project, Istanbul
  (Announced - dates pending)
- Kanal Istanbul, Aegean Sea-Mediterranean Sea
  (2013-2023)

Social infrastructure

- Tarlabası Renewal Project, Istanbul
  (2007-2015)
- Ankara Etlik/Ankara Bilkent Integrated Health Campuses, Ankara
  (2013-2017)
- Fener-Balat-Ayvansaray Renovation Project
  (Ongoing - completion date pending)

Turkey

"The government's ambitious vision for 2023, the centennial foundation of the Republic, envisages grandiose targets for infrastructure. The overall target is to make Turkey one of the top 10 economies in the world.

The national and local authorities in Turkey have been implementing numerous infrastructure projects through Public and Private Partnership (PPP) and they are also keen to realize further infrastructure projects in education, energy, defense, health, transportation and other public services."[1]

- Infrastructure Overview, Invest in Turkey

Key industry bodies

- The Turkish Contractors Association
- Ministry of Environment and Urban Development
- Association of Turkish Consulting Engineers and Architects
- Turkish Contracting and Engineering Services
- Republic of Turkey of Prime Ministry Housing Development Administration of Turkey

Market facts

- **USD 26.1 billion** value of overseas projects secured by Turkish construction industry in 2012[2]
- **USD 400 billion** pipeline investment for urban renewal projects over next 10 years[3]
- 441 construction projects undertaken in 2012[4]
- **USD 35 billion** value of 134 PPP projects in 2011[5]
- 31 Turkish contractors ranked among 'The World's Top 225 International Contractors' in 2011[6]

1 Infrastructure Overview, Invest in Turkey
2 Turkey's overseas construction projects worth 26.1 bln USD in 2012, Xinhua, January 2013
3 Infrastructure Investment in Turkey, Investment Support and Promotion Agency of Turkey, February 2013
4 Turkish Contracting and Engineering Services, Republic of Turkey Ministry of Economy, 2012
5 Infrastructure Investment in Turkey, Investment Support and Promotion Agency of Turkey, February 2013
6 Construction industry in Turkey: facts and figures, Novron, December 2012

Construction

Contractual issues

- For overseas contracting, regional or international format contracts such as FIDIC contracts are used
- Standard form contracts are widely used
- Arbitration is often used when there is international financing/international partner involvement
- Swiss law is sometimes put forward as a neutral option for choice of law (Turkish law is based on the Swiss Civil Code

Legislation

- The Turkish Code of Obligations
- Law Regarding the Protection of the Worn Historical and Cultural Immovable Properties through Renovation and the Use of the Same by Conservation
- The Public Tender Act
- Turkish law is a civil law system and so it requires a positive permission or right to carry out any particular activity and there are many matters regulated directly by law which cannot be amended by contract

Insurance

Common types of insurance required under contract:

- Contractor's All Risk 'CAR' (All risks for construction)
- Erection All Risks 'EAR' (All risks for assembly)
- Accredited Plant and Equipment Insurance 'CPA' (Equipment Insurance)

PFI/PPP

As previously mentioned, true PPP projects are still to be developed and we are not aware of any projects which have come to full completion or have passed the construction phase and moved to the phase of service provision Nevertheless, there is much talk of this model and provided the Turkish economy and banking system continues to improve, the model may be more fully adopted

Legislation

- Law No. 6428 (also known as the new Healthcare PPP Law)
  Replaces Additional Article 7 of Law No. 3359, the Law on Healthcare Services (which introduced the build-lease-transfer PPP model into Turkey's healthcare sector in 2005.) In addition to introducing changes to the healthcare PPP regulatory framework, the Healthcare PPP Law specifically addresses certain legal challenges encountered by healthcare PPP projects under previous legislation

  Turkish Code of Obligations, Law Regarding the Protection of the Worn Historical and Cultural Immovable Properties through Renovation and the Use of the Same by Conservation, Public Tender Act. There is a draft PPP law but it has not been progressing very fast since there appear to be other priorities at present

Insurance

- Construction phase:
  Construction insurance commonly covers risks and damage occurring at the construction site. Insurance fee is determined according to the value of the equipment and work of the construction (including tax, customs, labour and transport expenses) as well as the machines and tools used for the construction and current market value of the outbuildings

  Commonly, coverage starts as of the transfer of equipment to the construction site and terminates with the delivery at completion of the construction to the owner. Upon request, it is also possible to provide cover, for wreck removal, third party indemnity insurance and the risks of earthquake, strike and lock-out
- Operational phase:
  Standard insurance is provided in order to cover usual risks of loss and damage during operations, including public liability, plant and common risk property insurance

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Construction pipeline

Energy infrastructure

- Umm Lulu Development Project, Abu Dhabi
  (Ongoing - completion due 2018)
- Dubai Electricity and Water Authority 1200 MW Clean Coal Power Plant, Dubai
  (Announced - first phase completion due 2020)
- Upper Zakum Field development extension, Arabian Gulf, Abu Dhabi
  (Ongoing - completion date pending)
- EmiratesLNG import gas terminal, Port of Fujairah
  (Announced - dates pending)

Transport infrastructure

- Al Sufouh Tram
  (Ongoing - first phase completion due 2014)
- Dubai Metro expansion projects
  (Ongoing - three new metro lines and Jumeirah tram route due for completion in 2030

Social infrastructure

- IMG Worlds of Adventure theme park, Dubai
  (Ongoing - completion due 2014)
- Madinat Jumeirah expansion
  (Announced - completion due 2015)
- Dubai Creek Extension Project, Business Bay
  (Announced - completion due 2016)
- Mohammed bin Rashid (MBR) City, Dubai
  (Announced - completion due 2018-19)
- Al Amal Hospital, Al Ruwaayah, Dubai
  (Announced - dates pending)
- Creek Panorama pedestrian bridge, Bur Dubai - Shindagha
  (Announced - dates pending)

United Arab Emirates

"The United Arab Emirates (UAE) is a federation of seven Emirates (states), the largest of which are Abu Dhabi (the capital city) and Dubai. Both of the Abu Dhabi and Dubai municipalities have individually established ambitious plans (the Abu Dhabi Economic Vision 2030 and Dubai Strategic Plan 2015 respectively) to ensure the continued growth and development of their respective Emirates.

Abu Dhabi:
By 2030, Abu Dhabi intends to build a sustainable and diversified, high value-added economy that is well integrated into the global economy and that provides more accessible and higher-value opportunities for all its citizens and residents.[1]

Dubai:
The government of Dubai will focus on delivering its mission of achieving comprehensive development and building human resources, promoting economic development and government modernisation, sustaining growth and prosperity, protecting Nationals' interests, public interest and wellbeing and providing an environment conductive for growth and prosperity in all sectors."[2]

- Abu Dhabi Economic Vision 2030/Dubai Strategic Plan 2015

Key industry bodies

- Build Safe UAE
- UAE Contractors Association
- UAE Society of Engineers
- Emirates Green Building Council

Market facts

- Dubai has been awarded the honour of hosting the World Expo 2020 - making it the first Expo to take place in the Middle East, North Africa and South Asia region
- **USD 43 billion** of infrastructure investment required in Dubai to host Expo 2020
- **USD 549 billion** estimated total value of projects planned or underway in the UAE
- **USD 30 billion** worth of construction and infrastructure projects awarded in 2013
- **USD 82 billion** worth of projects currently underway in Abu Dhabi alone, including **USD 37 billion** projects in the oil & gas sector and **USD 26.7 billion** worth of real estate and construction projects
- **USD 25 billion** to be spent on railway infrastructure over the next decade
- **USD 200 billion** plus worth of planned and unplanned projects

1 The Abu Dhabi Economic Vision 2030, Abu Dhabi Council For Economic Development, 2009
2 Dubai Strategic Plan 2015, Government of Dubai, February 2007

Construction

Contractual issues

- Common forms of construction procurement include:
  - Traditional
  - Design and build
  - Construction management
- FIDIC is the most commonly used standard form contract but is almost always amended. FIDIC Red Book 4th edition 1987 is still in use, although 1st edition 1999 is becoming more common
- An Abu Dhabi standard form construction contract is prescribed by law and used by Abu Dhabi government departments. It is based on FIDIC
- Decennial liability – contractors and consultants are jointly liable for the total or partial collapse of a building/structure and/or a defect threatening the stability or safety of the building/structure for a period of 10 years following completion. No fault is necessary in order for liability to arise
- Caps on liability and liquidated damages – contracting parties are free to prescribe compensation, but in certain circumstances the clauses may be opened up and reviewed by the local Courts
- Pay when paid clauses – generally recognised under UAE law and will be considered binding
- Termination – there is a risk that a court order will be necessary to legally terminate a contract, so legal advice should be obtained before a party purports to terminate a contract pursuant to its terms alone
- Boycott of Israel legislation – although rarely enforced within the UAE, American companies contracting in the UAE should be aware that entering into contracts that oblige it to comply with local law may potentially breach anti-boycott laws in America

Key legislation

- Federal Law No. 5 of 1987 (UAE Civil Code)
  The principle legislation in the UAE that contains a section comprising twenty-four clauses on Muqawala – contracts for works and services. These articles cover an extensive range of construction related matters, including the obligations of contractors, employers, subcontracting and termination
- Federal Law No. 11 of 1992 (UAE Civil Procedure Code)
  Although not aimed exclusively at construction contracts, the UAE Civil Procedure Code does contain provisions that apply incidentally to construction contracts, such as arbitration and the recoverability of interest
- Abu Dhabi Law No. 21 of 2006
  Prescribes a standard form construction contract to be used by Abu Dhabi government departments
- Abu Dhabi Law No. 6 of 2008 (Abu Dhabi Procurement Law)
  Governs the public tendering processes of Abu Dhabi government departments and includes a code of best practice 'guidebook'
- Dubai Law No. 6 on Contracts of Government Departments
  Governs the public tendering processes of, and contract negotiations with, Dubai government departments

Insurance

- Common types of insurance include:
  - Contractors All Risks/Erectors All Risks – insurance for works and equipment
  - Third Party Liabilities/Public Liability – Personal injury and property damage
  - Workers' compensation
  - Professional indemnity insurance: professional negligence where the contractor is responsible for design
- Full cover for decennial liability is not yet effectively available in the UAE, however, amendments to CAR policies are occasionally seen in an attempt to extend cover (albeit uncommon)

PFI/PPP

Contractual issues

- From time to time, the UAE engages in PPPs
- Examples of PPPs that the UAE has implemented (or seeks to implement) include such projects and services as:
  - Water and sewerage provision
  - Desalination plants
  - Telecommunications
  - Airport and seaport services
  - Railroads
  - Building and operating public markets, slaughterhouses and parks; and
  - Building and maintaining education buildings
- There are no standard forms of PPP agreements or contracts. For PPPs undertaken to date in the UAE, bespoke construction contracts have been used so that developers can match off risk with head concession agreements
- There is no specific procurement/tender process for a PPP transaction. The PPP tender process operates under the procurement laws in the same way that typical procurements do
- Since risks arising in the course of construction may bring down the entire project, those risks are normally passed on by the concessionaire to the independent contractor (an EPC contractor)

Key legislation

- Dubai is currently in the process of formulating a draft PPP law at Emirate level, but no timescale has been indicated for its coming in to force
- There has been some reports in the local press that a PPP law has recently been drafted in Dubai by the Roads and Transportation Authority

Insurance

- The concessionaire's liability is tied up with the head concession agreement
- Normally, the concessionaires carry insurance against liabilities arising under the head concession agreement, such as liability for claims, damages, losses and expenses. This applies despite the fact that the concessionaires usually pass on all the risks to the contractor. It is also in the concessionaire's own interest to insure against financial risks
- The grantor and lenders must also scrutinize the insurance arrangements, since they have to be safe when it comes to guarantees of stable cash-flow generation and due provision of the relevant services
- The grantor (i.e. the government entity) guarantees the fixed payment under an off-take agreement (or any other payments under similar arrangement) to enhance the financial viability of the PPP project

Construction pipeline

Energy infrastructure

- Derbyshire Waste Management, Midlands, England *(2014-2017)*
- Peterhead Carbon Capture and Storage Project, Scotland *(2015-2017)*
- Immingham Renewable Fuels Terminal, North East England *(2013-2028)*
- High Heavens Waste Transfer Station, South East England *(2015 - completion date pending)*

Transport infrastructure

- Crossrail, London and the South East *(2009-2017)*
- Mersey Gateway Bridge Project, North West England *(2014-2017)*
- High Speed 2 Rail, London to the North *(2017-2026)*
- M4 Road, Wales *(Announced - dates pending)*

Social infrastructure

- Windsor Park Stadium, Northern Ireland *(2014-2016)*
- Stoke on Trent 'extra care' homes, Midlands, England *(2014-2017)*
- Dumfries & Galloway Hospital, Scotland *(2015-2018)*
- Yorkshire School Development, Northern England *(Announced - dates pending)*

United Kingdom

"The Government is determined to succeed in the global race by creating growth and delivering lasting prosperity. To build a strong economy, necessary for a fairer society, the UK needs infrastructure that competes with the best in the world. Long-term investment in infrastructure helps in rebalancing the economy, enhances productivity and creates jobs. It also means the UK is ready to face new challenges such as population growth and climate change and take full advantage of new technologies. The UK needs transport and communications networks that connect people and businesses; resilient, cost effective and sustainable energy supplies; and the science infrastructure which can give UK industry the edge over our competitors. 21st century infrastructure is needed for a 21st century Britain."[1]

- Investing in Britain's Future 2013

Key industry bodies

- Association of Consulting Engineers (ACE)
- Construction Industry Council (CIC)
- Institution of Chemical Engineers (IChemE)
- Royal Institute of British Architects (RIBA)
- Royal Institution of Chartered Surveyors (RICS)
- Technology & Construction Bar Association (TECBAR)

Market facts

- **GBP 23.7 billion** of construction in Q1 of 2013[2]; the industry returned to growth and reached its highest level of activity for three years during 2013[3]
- **GBP 375 billion** pipeline of government projects to 2020 and beyond[4]
- **GBP 54.2 billion** of PFI projects in 2013[5]
- 725 PFI projects in 2013[6]
- **GBP 3.5 billion** of investment for purchase of new build homes under the government's Help to Buy Scheme[7]

1 Investing in Britain's Future, HM Treasury and Infrastructure UK, June 2013
2 UK construction sector reviving, ONS figures show, BBC, July 2013
3 Markit / CIPS Construction Purchasing Managers' Index
4 National Infrastructure Plan 2013, HM Treasury and Infrastructure UK
5 GBP 109 billion of future construction opportunities up for grabs, Cabinet Office and Efficiency and Reform Group, August 2013
6 UK PFI Projects: Summary data as at March 2013, UK Government
7 Help for home buyers, Department for Communities and Local Government, October 2013

Construction

Contractual issues

- Common forms of contract procurement include:
  - Traditional
  - Design and build
  - Management and contracting
- Standard form contracts – e.g. Joint Contracts Tribunal (JCT) – are widely used, but rarely without amendments
- Responsibility for design is generally not held by the contractor under traditional procurement mechanisms
- Unforeseen ground conditions do not require a standard contractual approach, but a client can instruct a ground survey at the contractor's risk
- Liability can be excluded, other than for death or personal injury, by express wording in the contract. However it is more common for a cap on liability to be agreed, usually by reference to the obligatory professional indemnity insurance held by the contractor
- Liquidated and ascertained damages (LADs) are often included for contractor delays but are only enforceable if a genuine pre-estimate of loss. Client delays are typically addressed by granting the contractor an entitlement to an extension of time (EOT) and/or additional payment for defined compensation events

Legislation

- Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009)
  The principal statue affecting commercial construction and engineering projects prescribes regular payments and gives either party to a construction contract the right to adjudicate at any time
- Health and Safety at Work Act 1974 and the Construction (Design and Management) Regulations 2007 (CDM Regulations)
  Relevant legislation imposing duties on clients to ensure the health and safety of workers, and to put certain procedures in place to that end. A revision of the CDM regulations was anticipated in 2014 but has been delayed

Insurance

- Common types of insurance required under contract:
  - All risks insurance: damage to works and site materials
  - Professional indemnity insurance: professional negligence where the contractor is responsible for design
  - Public liability insurance: damage, injury and death to third parties [damage to third party property]
  - Product liability insurance: damage and injury arising from products incorporated within the contract works

PFI/PPP

Contractual issues

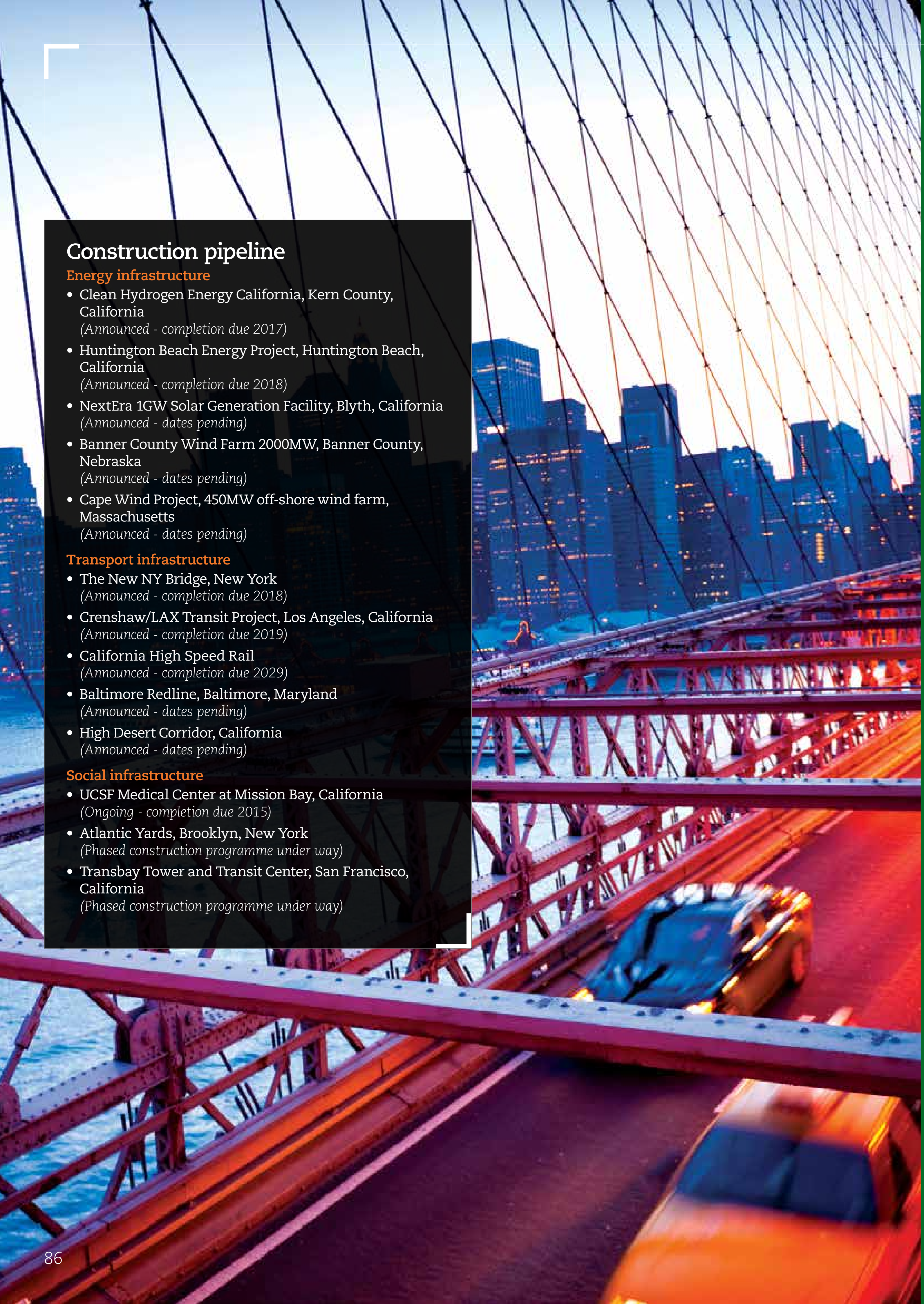
- The Private Finance Initiative (PFI) was first implemented in the UK in 1992 and was widely used until 2010. As of March 2013 there were 725 PFI projects in the UK with a combined capital cost of GBP 54.2 billion. PFI has predominantly been used for social infrastructure and accommodation projects across a variety of sectors including health, defence, justice, education, social care, waste and transport
- PFI contracts are typically for 25-30 years (although can be for less or greater duration) and the public sector usually pays for the asset on completion of construction on an availability and performance based payment mechanism
- The terms of the Project Agreement for PFI contracts was standardised in 2001 and subsequently only project specific amendments to the standard form were permitted
- Following the credit crisis in 2008, the Government undertook a review of PFI which led, in December 2012, to the Government's introduction to a new approach in England & Wales for involving private finance in public infrastructure and services delivery called PF2
- PF2 has introduced a number of reforms to the previous PFI model which are designed to eliminate waste, improve efficiency and transparency and to align public and private incentives. In addition, alternative funding structures and solutions are being considered. PF2 will be utilised for accommodation and social infrastructure projects and is currently being used for the Priority Schools Building Programme (PSBP) led by the Education Funding Agency

Legislation

- The Public Contracts Regulations 2006 and EU Procurement Rules
  Sets out the competitive dialogue procedure for PF2 projects
- Housing Grants, Construction and Regeneration Act 1996 and Construction Contracts (England) Exclusion Order 2011
  Permits pay-when-certified clauses in PFI Construction sub-contracts
- Health and Safety at Work Act 1974 and other construction and employment related legislation
- HM Treasury guidance (including the Standardisation of PFI Contracts (SOPC) and the Standardisation of PF2 Contracts)
- Sector specific legislation applicable to the relevant PFI/PF2 project

Insurance

- The Project Company organises the project insurances where the public sector and the private sector participants are joint named insured including contractor's all risks, ALOP and public/third party liability insurances during the construction phase and material damage, business interruption and public/third party liability insurances during the operational phase
- The principal subcontractors are required to take out PI cover and any insurances required by law



Construction pipeline

Energy infrastructure

- Clean Hydrogen Energy California, Kern County, California
  (Announced - completion due 2017)
- Huntington Beach Energy Project, Huntington Beach, California
  (Announced - completion due 2018)
- NextEra 1GW Solar Generation Facility, Blyth, California
  (Announced - dates pending)
- Banner County Wind Farm 2000MW, Banner County, Nebraska
  (Announced - dates pending)
- Cape Wind Project, 450MW off-shore wind farm, Massachusetts
  (Announced - dates pending)

Transport infrastructure

- The New NY Bridge, New York
  (Announced - completion due 2018)
- Crenshaw/LAX Transit Project, Los Angeles, California
  (Announced - completion due 2019)
- California High Speed Rail
  (Announced - completion due 2029)
- Baltimore Redline, Baltimore, Maryland
  (Announced - dates pending)
- High Desert Corridor, California
  (Announced - dates pending)

Social infrastructure

- UCSF Medical Center at Mission Bay, California
  (Ongoing - completion due 2015)
- Atlantic Yards, Brooklyn, New York
  (Phased construction programme under way)
- Transbay Tower and Transit Center, San Francisco, California
  (Phased construction programme under way)

United States of America

"Investing in a "Fix-It-First" policy: *The national transportation system faces an immense backlog of state-of-good-repair projects, a reality underscored by the fact that there are nearly 70,000 "structurally deficient" bridges in the country today. The President's plan will put people to work as soon as possible on our most urgent repairs. The President's plan for USD 50 billion in frontloaded transportation infrastructure investment would direct USD 40 billion towards reducing the backlog of deferred maintenance on highways, bridges, transit systems, and airports nationwide. For example, the President's proposed investments could bring almost 80 percent of structurally deficient bridges up to date, getting Americans home faster and making the flow of commerce speedier.*

Attracting private investment through a "Rebuild America Partnership"*: Creating a partnership with the private sector will create jobs upgrading what our businesses need most – modern ports to move our goods; modern pipelines to withstand a storm; modern schools worthy of our children. The President's plan will bring together an array of new and existing policies all aimed at enhancing the role of private capital in U.S. infrastructure investment as a vital additive to the traditional roles of federal, state, and local governments – making American workers and businesses more competitive and putting more Americans back on the job."*[1]

- The White House Blog, March 2013

Key industry bodies

- American Institute of Architects (AIA)
- Engineers Joint Contract Documents Committee (EJCDC)
- American Society of Civil Engineers (ASCE)
- American Council of Engineering Companies (ACEC)
- Association of General Contractors (AGC)
- Design Build Institute of America (DBIA)

Market facts

- **USD 900 billion** in annual expenditures
- 5.5% of the U.S. gross domestic product (GDP)
- **USD 300 billion** residential expenditures
- **USD 270 billion** public sector expenditures
- 5.7 million individuals employed
- Expected market growth between 2%-7% for fiscal year 2014

1 What You Need to Know About President Obama's Plan to Improve American Infrastructure, The White House Blog, March 2013

Construction

Contractual issues

- Each of the 50 states comprising the United States (U.S.) maintains its own system of laws, administrative bodies, and courts. The federal government of the United States also maintains a system of laws, regulations, administrative bodies, and courts. Contracts for construction are typically subject to the laws and regulations of the jurisdiction of the project location. However, with respect to the commercial obligations between the parties, this general rule is often amended by agreement
- All of the states within the United States and the U.S. Federal Government are common law jurisdictions with the exception of Louisiana, which has its roots in the Napoleonic Civil Code
- The majority of projects utilize contracts based upon standardized form agreements. The form agreements used are largely dependent upon the project type, location, industry served and the sophistication of the parties. When form contracts are used between private entities, they are often modified and negotiated. The terms of contracts for public construction projects are typically not negotiated. Some of the more common industry forms are published by:
  - The American Institute of Architects (AIA)
  - The Engineers Joint Contract Documents Committee (EJCDC)
  - The Design Build Institute of America (DBIA)
  - The ConsensusDocs Collation Council (ConsensusDocs)
- Various methods of procurement are utilized within the United States, including:
  - Design bid build (the traditional approach)
  - Design build
  - Construction manager at risk
  - Multi-prime
  - Integrated Project Delivery (IPD)
  - Public Private Partnership (PPP)
- Most jurisdictions allow for the placement of mechanics liens upon the property of the project in order to secure payment. However, most jurisdictions also prohibit the placement of mechanics liens on property owned by the government
- The majority of projects employ some level of surety bonding. The typical arrangement requires the prime contractor to post both performance and payment bonds in amounts equal to the total value of the contract. These bonds require a third party to assure the obligations of the prime contractor. Performance bonds assure that the contractor will complete the project for the agreed upon price. Payment bonds assure that the contractor will pay the amounts due to its subcontractors

Legislation

- Construction projects are governed by the laws and regulations of the jurisdiction of the project location and by the applicable laws and regulations of the United States federal government
- The United States is separated into fifty states, with each state separated into counties and further still into local municipalities. Each of the states has independent legislation regulating most aspects of the construction industry including: construction standards; worksite safety; labor compensation; environmental controls; corruption; permitting; and, licensure. Many of the local municipalities have similar regulations and all fall under the umbrella of federal mandates
- Some of the more prevalent legislative and regulatory schemes include:
  - The Davis Bacon Act (40 U.S.C. 3141 et seq)
  - Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq)
  - McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 351 et seq)
  - Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq)
  - Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq)
  - Copeland Anti-Kickback Act (40 U.S.C 3145)
  - False Claims Act (31 U.S.C. 3729 *et seq*)
  - The Miller Act (40 U.S.C. §§ 3131–3134)
  - The Federal Acquisition Regulations (Title 48 of the United States Code of Federal Regulations)

Insurance

Common types of insurance issued collateral to construction projects include:

- Builder's Risk: also referred to as "All Risk Insurance" is a first party property policy insuring damage to the works during the course of construction
- Commercial General Liability: protects the insured against liability arising out of damage to the property of third parties and against liability arising from personal injury to third parties
- Professional Liability: often called 'Errors & Omissions' or 'E&O' coverage protects design professionals and those providing design services to the project from liability arising from errors and omissions in the designs furnished
- Pollution: coverage for the discharge of pollutants is typically excluded from the CGL policy
- Workers' Compensation: purchased by contractors working on the project and provides all those employed on the project with compensation in the event they are injured

There are also a number of specialty insurance products utilized in the construction industry, including:

- Owner Controlled Insurance Programs: known as an 'OCIP'. Typically purchased by the owner, it provides project specific coverage for all parties involved in the construction project
- Contractor Controlled Insurance Programs: known as a 'CCIP'. Very similar to an OCIP except that it is typically purchased and administered by the prime contractor as opposed to the project owner
- Subcontractor Default: typically maintained by the prime contractor and protects the prime contractor from cost overruns arising from the default of its subcontractors. Typically used in lieu of obtaining performance bonds for subcontractors
- Cost Cap: typically issued on fixed priced remediation projects and protects the contractor against cost overruns on fixed-priced fixed-quantity projects

U.S. Construction projects also typically require the prime contractor to provide surety bonding. Many public entities are required by statute to require its contractors to post bonds. Additionally, the U.S. Federal Government mandates the use of bonds on federal construction projects under the Miller Act.

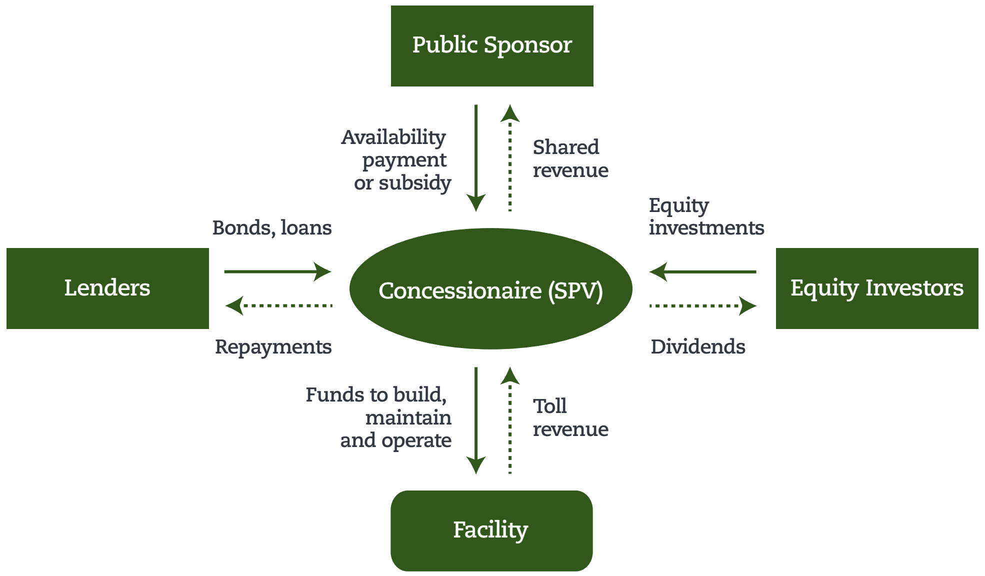
- Performance bonds: assure the project owner that the prime contractor will complete the project for the agreed upon price
- Payment bonds: assure that the subcontractors and suppliers on the project will be paid for their labor and materials

PFI/PPP

Contractual issues

In the U.S., various contractual structures are available for PPP projects. There are two primary levels of contracting. The first level occurs between the public entity and the lead private entity. The second level occurs between the lead private entity and the design and construct team.

The typical finance structure for PPP projects in the U.S. is depicted below.[2]



The following arrangements are often employed between the public entity and the concessionaire:

- Finance only
- Finance, design and build
- Finance, design, build, and maintain
- Finance, design, build, maintain and operate
- Finance, operate, and maintain
- Concession

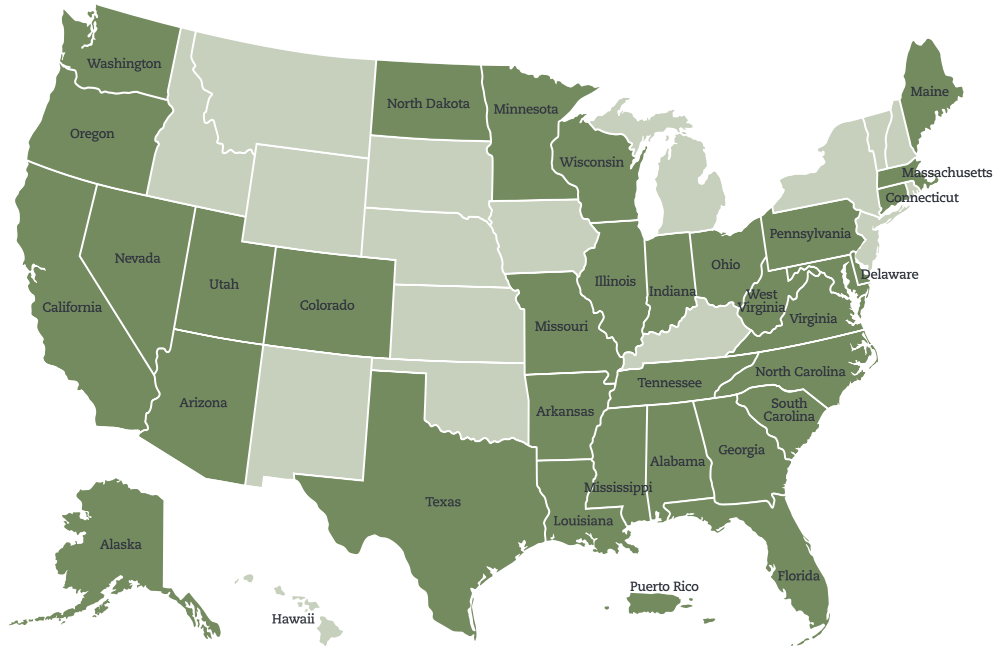
Generally, the lead private entity assumes the traditional responsibilities of the project owner and procures design and construction. In procuring the design and construction on the project, the lead private entity typically uses the following methods:

- Design bid build
- Design build
- Multi-prime or
- Integrated Project Delivery (IPD)

The contractual issues associated with each of these methods are the same as discussed above.

Legislation

Similar to the discussion above, the enabling of PPP projects is governed by the statutes of the individual states. 33 states and one U.S. territory have enacted legislation enabling the use of PPP as a procurement method. These states are depicted below.[3]



Insurance

- Construction Phase: Insurance is typically provided consistent with construction industry standards (see above)
- Operational Phase: All risk coverage, commercial general liability coverage, completed operations coverage, workers' compensation coverage and pollution coverage are typically required

2 Establishing A Public-Private Partnership: A Primer, U.S. Department of Transportation Federal Highway Administration, November 2012
3 State P3 Legislation, U.S. Department of Transportation Federal Highway Administration, September 2013

Key contacts

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Our global projects & construction group

Our global projects & construction group advises across the whole industry, with expertise in all infrastructure sectors and particular skill in applying the developments in mature markets to assist both the private and public sectors in emerging territories.

With significant capabilities in both the litigious and non-contentious aspects of construction work, we offer clients a rounded perspective - whether at the front end of developments or on the occasions when disputes occur. Where appointed as project counsel, our involvement enables issues to be resolved before they develop into formal disputes or ensures that clients are well positioned should disputes arise.

"Due to its considerable expertise in this sphere the team is often sought out for particularly complex matters, both domestically and on the international stage."
Chambers UK, 2012

Infrastructure sector specialists

Construction development
- Commercial property
- Hospitality
- Industrial
- Retail

Energy
- Power & utilities
- Oil & gas
- Natural resources
- Renewables

Social
- Education
- Healthcare
- Housing
- Regeneration

Transport
- Airports
- Ports
- Rail
- Road

Core skills
- Project finance
- Projects/ concessions
- PPP/PFI
- Procurement
- Risk avoidance
- Contract drafting
- Construction delivery
- Construction disputes
- International arbitration

Our clients
- Governments
- Sponsors
- Main contractors
- Consultants
- Sub-contractors/ suppliers
- Corporate occupiers
- Developers
- Banks/funders
- Insurers

Leaders across all infrastructure classes globally

With over 150 infrastructure lawyers across six continents, we have an established footprint across all infrastructure classes.

Commercial industrial projects

Spanning mature and emerging markets, our lawyers ensure that complex and high value projects, across all infrastructure asset classes, are a success throughout all phases of planning, delivery and operation. Whatever the size or complexity of the project at hand, we mobilise the critical mass and specialist knowledge from across our network to deliver within the timescale, budget and quality required.

We advise on mid to large scale transactional and contentious project requirements and offer a comprehensive service with the ability to advise both at the front end of developments or on the occasions when disputes occur. Where appointed as project counsel, our involvement enables risk to be mitigated and issues to be resolved before they develop into formal disputes, or ensures that clients are well positioned should proceedings commence.

Energy infrastructure

Demographic shifts and unprecedented demand for energy and natural resources brings both familiar and unprecedented challenges to infrastructure participants. Our team supports clients across the full life cycle of these power & utilities, renewable energy, natural resources and oil and gas projects - supporting across planning, funding (including PPP/ PFI), constructing, developing and operating to refinancing and sale, amongst others.

We apply a truly global perspective and partner with energy investors, sponsors, developers, contractors, operators, suppliers and insurers. Having developed a wholesale understanding of the market, we successfully leverage this knowledge for the benefit of our clients.

Social infrastructure

Governments tasked with the provision of social infrastructure face distinct challenges inherent to their socio-economic status and we frequently advise both public and private sector entities on projects, from inception to completion and beyond. On transactional project elements, we advise across PPP/ PFI transactions, project finance, bespoke construction agreements and planning (amongst other disciplines) and on the contentious side, we resolve disputes using all forms of dispute resolution including early settlement of claims, adjudication and litigation.

We successfully deploy knowledge gained in developed markets to deliver projects in emerging economies and recognise that whilst the range of physical facilities serving communities are relatively consistent globally, the obstacles to deliver and maintain them are heavily influenced by domestic factors. In recognition of this, our integrated team combines international standards and regional knowledge and works closely with clients to deliver health, housing, education, recreation and other community services across the globe.

Transport infrastructure

Applying first hand industry knowledge and experience, our global transport infrastructure group has a proven track record across airports, ports, rail and road and understand the nuances across both developed and emerging markets. We deploy specialist lawyers for large scale transport projects to provide dedicated and bespoke client teams adept at addressing challenges and pursuing opportunities – from high-speed rail networks in developed countries to deepwater ports in emerging markets.

We advise a broad range of market participants on all stages of transport infrastructure, including procurement and financing (including PPP/ PFI), construction, development, operations and maintenance and have a footprint that mirrors our international client base. Moreover, our blend of transactional and contentious strengths ensures that clients receive the best possible advice in one client-focused team.

Clyde & Co LLP

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