

# 立法會

## *Legislative Council*

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### **Proposed Research Outline: Regulation of Public-Private Partnerships in Overseas Places**

#### **1. Background**

1.1 The Panel on Planning, Lands and Works and the Panel on Home Affairs of the Legislative Council at their joint meeting on 25 November 2003 requested the Research and Library Services Division (RLSD) to conduct a research on the experience of overseas jurisdictions in engaging private sector resources in delivering public works projects (commonly known as public-private partnerships (PPPs)). The Panels, in particular, wish to look into the role of their legislatures in monitoring the delivery of public works projects under PPPs.

#### **2. Types of public-private partnerships**

2.1 There are several major types of public-private partnerships, namely

- (a) Build-Own-Operate (BOO): A contractor constructs and operates a facility for performing public services without transferring ownership of the facility to the public sector;
- (b) Build-Operate-Transfer (BOT): A private sector entity builds a facility to the specifications as agreed with a public agency, operates the facility for a specified time period under a contract or franchise agreement with the agency, and then transfers the facility to the agency at the end of the specified period. Usually, the private sector entity provides all or part of the financing, and consequently the contract is structured to be of sufficient length to enable the private sector entity to realize a reasonable return on investment;
- (c) Buy-Build-Operate (BBO): This arrangement is a form of asset sale that includes the rehabilitation or expansion of an existing facility. The government sells the asset to the private sector entity, which makes the improvements necessary to operate the facility in a more cost-effective manner;

- (d) Design-Build-Finance-Operate (DBFO) (also known as Private Finance Initiative (PFI)): A private sector entity designs, builds and finances the project. Public sector staff may be transferred to the private sector entity to deliver the service. The public agency has to pay an annual fee to the private sector entity under a long-term operating contract for the services;
- (e) Design-Build-Operate (DBO): A single contract is awarded for the design, construction and operation of a public facility, while the title of the facility remains with the public sector; and
- (f) Build-Develop-Operate (BDO): A private sector entity leases or buys an existing facility from a public agency, invests its own capital to renovate, modernize or expand the facility and then operates it under a contract with the public sector.

### **3. Places to be Studied**

3.1 In 1997, the World Bank published *The World Development Report 1997: The State in a Changing World* in which the importance of a well-designed regulatory system in PPPs was described as "*regulation can help protect consumers, workers and the environment. It can foster competition and innovation while constraining the use of monopoly power... Making the best use of the new options emerging for private provision of infrastructure and social services will also rely, often, on a good regulatory framework.*"

3.2 In this connection, RLSD proposes to study the regulatory framework of PPPs in the United Kingdom (UK), the United States of America (US) and New Zealand. In the UK, PPPs of individual public sectors are regulated by individual regulatory agencies the responsibilities of which are, in turn, overseen by the Competition Commission, parliamentary select committees and the courts. In the US, PPPs of infrastructure are regulated by a multi-sectoral agency (public utility commissions at the state level), while PPPs of closely linked sectors, such as gas and power, are regulated by a single regulatory agency (the Federal Energy Regulatory Commission at the federal level). These regulatory agencies are accountable to individual departments, and thus are indirectly subject to Congressional scrutiny. In New Zealand, there is no special regulatory body for such purpose. Instead, a national competition agency, the Commerce Commission, is responsible for the economic regulation of infrastructure on the basis of the country's competition rules.

#### **4. Proposed Outline**

4.1 Introduction

4.2 Definition, objectives and types of PPPs

4.3 Regulatory framework in relation to PPPs

- Authorities involved in regulation
- Guidelines stipulating the tendering and award of PPP contracts
- Guidelines stipulating the financial arrangements (such as direct funding requiring the approval of the legislature or other forms of financial support, e.g. waiver of land premium, by the government) for and the administration of PPPs
- Laws and regulations in promoting transparency and enforcement of PPP contracts
- Checks and balances of regulation of PPPs

4.4 Role of the legislature in monitoring the delivery of public works projects under PPPs

4.5 Analysis

4.6 Reference for Hong Kong

#### **5. Proposed Timetable**

5.1 RLSD proposes to complete the research project by April 2004.

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