

The Canadian Council for
Public-Private Partnerships



Le Conseil Canadien pour
les Partenariats Public-Privé

The Impact of Global Credit Retraction and the Canadian PPP Market

Deliberations by the Industry Members of
The Canadian Council for Public-Private Partnerships

Spring / Summer 2009

Foreword

The past twelve months have presented challenges for economies throughout the world. As this report goes to print in August 2009, we have the benefit of the July 23, 2009 Monetary Policy Report from the Bank of Canada's Governor Mark Carney which states that "Global economic activity appears to be nearing its trough and there are increasing signs that activity has begun to expand in many countries in response to monetary and fiscal policy stimulus and measures to stabilize the global financial systems."

With economic conditions showing signs of recovery domestically and globally, there is optimism that the Canadian PPP market will see improvements in conditions related to credit availability in PPP projects. However, none would suggest that the PPP market is likely to return to the ideal conditions in previous years and as such, the following discussion and recommendations contained in this report will have relevance as we continue to develop PPP projects with governments in Canada into the future.

Let us start by reflecting on conditions not long behind us. In the latter part of 2008 and early 2009, uncertainties in the global markets persisted. Although proponents of PPP were quick to point out that the conditions that prevailed in the market were not specific to PPP, it was unquestionable that an impact was being felt in PPP both domestically and globally. Throughout, PPP projects continued to move through their stages of procurement and in many cases, government actions were being taken outside of Canada¹ and within Canada² to mitigate the impact of the disrupted markets, all with a view to being temporary and in some cases specific to individual projects. Some of these measures were successful in getting projects closed while others were not.

With members working both in the government and businesses associated with PPP projects, The Canadian Council for Public-Private Partnerships ("CCPPP" or the "Council") was acutely aware that the uncertain market created a very unsettled condition for PPP. In February and March 2009, the Council conducted a number of interviews with members who were active as lenders, project sponsors and arrangers to get an appreciation of the extent to which the global credit crisis was affecting the Canadian PPP market.

Two things became clear. First, that there was a wide range of opinion among the private sector members – some believing that there was still ample well priced credit available to finance projects in procurement at the time; and others expressing concern about both the quantum and the pricing of the available capital. Second, that the market is made up of a large number of companies, all with very diverse characteristics and capacities. As we are inclined to remind the private sector that there is no single voice that represents the "public sector", so too are we reminded that the private sector does not lend itself to a single voice or position on something as complex as a global market upset because it affects different companies in different ways.

¹ Refer to Section 3.5 for a comparative overview of government actions outside of Canada in the United Kingdom, France, the European Union and the United States.

² Refer to Appendix 2 for a comparative overview of government actions within Canada, specifically, provincial measures in British Columbia, Alberta, Ontario and Québec.

Although CCPPP clearly recognized that for the most part, matters related to conditions in the global or domestic markets were being addressed by governments at the highest level, there was a belief that those active in the Canadian market would have some insights that could be captured as recommendations to government to navigate through this period of reduced credit capacity, so that government programs could continue with the least disruption.

“The Impact of Global Credit Retraction and the Canadian PPP Market Deliberations by the Industry Members of CCPPP” is the result of an effort which involved a 4-month consultation process with project sponsors, lenders and advisors. This included two intensive workshop sessions in April and June 2009 – one set in Toronto and one in Vancouver. At the first event on April 21, 2009 in Toronto, CCPPP conducted a set of separate workshops on matters arising in the current PPP market and asked the participating project sponsors and lenders to offer their comment and recommendations. The Toronto Workshops grouped topics into four areas, namely:

- Market efficiency and effectiveness of the PPP procurement process,
- The potential role of governments in filling the financing gaps,
- Alternative methods to secure private sector finance, and
- The optimization of participation of sponsors and lenders in the Canadian market.

The outcomes from those discussions were then combined into a first draft of this report.

In order to ensure that the report reflected the majority views of industry representatives and to take into account developments in the rapidly evolving markets, CCPPP hosted a second workshop on June 24 in Vancouver. Changing the format to a single-group workshop, the task for the participating lenders and project sponsors was to test the continued relevance of the issues and recommendations contained in the draft report and to take account of any new developments in the PPP market since the April workshops. It was clear that within the two intervening months between the first and second workshop the market was showing steady signs of improvement, but that continued diligence would be required into the foreseeable future.

In all, over 30 companies participated in the Workshops representing a full spectrum of those working on PPP projects across the country and in all sectors. In addition, CCPPP had the benefit of relying on the following firms to act as knowledgeable facilitators for the workshops at the events in April and June:

- Ernst & Young Orenda Corporate Finance Inc.,
- PricewaterhouseCoopers LLP,
- Deloitte & Touche LLP,
- Investec North America Ltd., and
- Davies Ward Phillips & Vineberg LLP (April event only)

The recommendations embodied in this report are a reflection of the majority opinion emerging out of discussions with the PPP industry and do not necessarily reflect positions held by those who participated as facilitators. The responsibility of the facilitators was to capture the themes, thoughts and if possible, recommendations rather than to extract reaction to pre-determined recommendations. CCPPP would like to extend its appreciation to those who acted as facilitators at both sets of workshops recognizing the time and effort that was involved not only in conducting the actual workshops but documenting the discussion and results for use in the report.

CCPPP would specifically like to extend its sincere appreciation to Ernst & Young Orenda Corporate Finance Inc. who took on the primary task of amalgamating the outcomes from each of the initial workshops into a single report and then further, finalizing the report with the refinements added at the final workshop in Vancouver.

Readers will note that the report includes discussion on topical matters that in some cases resulted in firm recommendations, and in others did not. In all, it captures the thinking of the market as it evolved during the spring / summer period 2009. As the markets are shifting continuously, it has become clear that all need to continuously monitor developments and update any identified issues and proposed solutions. As such, this report is not intended to present a final private sector perspective; it rather aims to mark the beginning of a process of continuous dialogue between the public and private sector market participants.

It is the sincere hope that government representatives reading this report will appreciate that it is a collective effort of many who share a like-minded desire to see the continuation of the Canadian PPP market, one that the market firmly believes is among the best and most sophisticated in the world.

Notes to the reader:

In the report, the following key terms are used:

- **Public sector authority.** Public sector procuring authority responsible for PPP procurement.
- **Government.** Federal, provincial, municipal, or regional governments.
- **Private sector sponsor.** Private sector firms who lead consortia to bid and carry out the primary responsibilities for public asset.
- **Preferred proponent.** The private sector sponsor selected by the public sector authority from a competitive Request for Proposal (“RFP”) process as the preferred proponent with whom the public sector authority will negotiate a project agreement for the public asset.

All figures are expressed in Canadian dollars unless otherwise stated. Conversions from foreign currencies to Canadian dollars are as of May 2009.

Executive Summary

Context: Global Financial Crisis

The global financial crisis (“GFC”), unprecedented in both scale and reach, has triggered one of the most radical shifts of the global financial and banking sectors. While financial conditions have improved recently, the GFC has resulted in a retraction in the amounts of credit available globally. Governments have taken extraordinary measures to buttress the financial system and keep the system functioning. Government support has taken both direct forms such as capital injections and nationalization of institutions, and less direct forms such as liquidity support in capital markets. The GFC, amongst other macro-economic forces, led to the current, deep and synchronized global recession, which has spared few developed economies.

Despite government and private sector initiatives, the GFC continues to provide significant challenges to the financing of transactions across all asset classes and sectors, including infrastructure projects being delivered as public-private partnerships (“PPP”). These challenges are not a failure of the PPP model, but rather highlight the need for PPP delivery models in Canada to adapt to new and uncharted regulatory, economic, and financial market realities. As a result, material changes in the way PPP are financed are anticipated in the short term, with possible longer-term structural changes.

Challenges Emerging in the Canadian Market

In this environment, Canada’s public sector faces challenges when procuring public assets and services under a PPP. Setting expectations with the public and managing public perception becomes a challenge due to the increased possibility of re-scoping projects to achieve affordability thresholds and increasing government contributions to support PPP. Uncertainties surrounding key parameters in financial bid submissions like committed financing and fixed interest rates, along with the risks of not attracting sufficient lenders and sponsors threaten healthy competition and the best value solution. Furthermore, refinancing risk becomes more severe with shortened lending tenors.

The private sector’s key challenges within this environment include a reduced supply of lenders leading to greater competition to find lenders, tighter requirements for committed financing at the Request for Proposal (“RFP”) submission stage, answering the question of how to structure and price greater refinancing risk, an increased cost of debt and security packages and a potential change in project capital structure (debt/equity ratio) which may drive up project costs.

Recommendations on Keeping the Canadian Market Strong

The Canadian Council for Public-Private Partnerships (“CCPPP”) has identified a number of procurement process and funding mechanism enhancements that will ensure long term strength and competitiveness of the Canadian PPP market in the global context. These recommendations are highlighted below, including the appropriate page reference in the report¹:

- A national pipeline of projects in Canada should ideally be organized such that the timing of the projects better meets the supply of resources required to complete them. This will

¹ The reader should refer to the full report for additional context.

increase lender participation and ease the burden on private sector sponsors, contractors and operators thereby stimulating more competition and potentially a better price. (page 15)

- Continue to use a two-staged evaluation procurement process (i.e., technical evaluation, followed by financial evaluation to shorten the irrevocability period of financial submissions). (page 16)
- Emphasis on stable scope and disciplined adherence to procurement schedule. (page 3)
- Commitment to an outside date to reach financial close. This would allow all parties to rely on timelines specified and plan accordingly. Remedies to all parties should be considered if timelines are not abided by. (page 16)
- Increased due diligence on private sector sponsors would ensure that the closed transaction is representative of the competitive process. Where appropriate, a mechanism to trigger additional diligence such as additional financial analysis, model audits and commitment letters should be considered. (page 17)
- Increased honoraria should be considered if public sector authorities require the private sector sponsors to undertake additional costs and/or risks associated with bidding committed financing and supporting letters of credit. (page 18)
- A fair and objective manner to evaluate requested committed financing or letters of credit should be communicated and scored appropriately within the evaluation process. (page 18)
- Establish clear and consistent definitions for refinancing risk and be clear on the amount of refinancing risk it intends to transfer to private sector sponsors. (page 19)
- Lenders and arrangers would welcome government co-lending on select PPP transactions, however, co-lending of senior debt would need to be passive and subordinate to private lenders' debt and should not be too large as to impact equity returns and dissuade sponsors from pursuing projects. (page 19)
- Government grants have their place in Canadian PPP projects, particularly in the current capital markets climate, but should not be too large as to impact risk transfer, impact equity returns and dissuade private sector sponsors. (page 21)
- It may be possible for Export Development Canada ("EDC") to have a beneficial role to extend term loans, construction loans, standby credits, bridge loans, bonding, guarantees and other forms of project insurance due to EDC's ability to participate on current commercial terms while not being perceived as a "subsidizer" or lender of last resort. (page 23)
- Within the value for money ("VFM") analysis, input costs should be refreshed during one or more stages in the procurement process to ensure affordability targets move in line with the market. The public sector comparator ("PSC") must be more transparent to promote a clearer understanding of how the PSC is derived while balancing this with the downsides of increased public scrutiny and a more competitive bidding by private sector sponsors. (page 25)

- In order to maintain the attractiveness of the Canadian PPP market, governments should not be tempted to participate as equity investors, should not reduce the number of bidders short listed, nor introduce funding competitions post-preferred proponent selection while continuing to require committed financing at the RFP bid stage. (page 30)

In general there exists an underlying belief and confidence both globally and domestically that PPP will continue to prove itself as a valuable alternative to conventional procurement of public infrastructure, and that infrastructure investment in Canada will emerge as a very desirable asset class, quite possibly stronger than before.

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1.0 Global Financial Crisis

1.1 Nature of the Global Financial Crisis

The global financial crisis (“GFC”), unprecedented in both scale and reach, has triggered one of the most radical shifts of the global financial and banking sectors. While financial conditions have shown signs of improvement recently, the GFC has resulted in a retraction in the amounts of credit available globally. Governments have taken extraordinary measures to buttress the financial system and to keep the system functioning. Government support has taken both direct forms such as capital injections and nationalization of institutions, and less direct forms such as liquidity support in capital markets. The GFC, amongst other macro-economic forces, led to the current, deep and synchronized global recession, which has spared few developed economies.

The shift in global financial and banking sectors continues as one of the dominant forces now in the global economy. The GFC has reversed over a decade of growth in consumer and household debt, leverage in the financial sector, and expansive global credit. Now major financial institutions around the world are focused on decreasing leverage down to more sustainable and prudent levels by shrinking assets and raising more capital, in an effort to stabilize the system.

Despite government and private sector initiatives, the GFC continues to provide significant challenges to the financing of transactions across all asset classes and sectors, including infrastructure projects being delivered as public-private-partnerships (“PPP”). These challenges are not a failure of the PPP model, but rather highlight the need for PPP delivery models in Canada to adapt to new and uncharted regulatory, economic, and financial market realities. As a result, material changes in the way PPP are financed are anticipated in the short term, with possible longer-term structural changes.

Notwithstanding, there exists an underlying belief and confidence both globally and domestically that PPP will continue to prove itself as a valuable alternative to conventional procurement of public infrastructure and that infrastructure investment will emerge as a very desirable asset class, quite possibly stronger than before.

1.2 Impact on Canadian PPP Market

The Canadian PPP market has been immune to neither the GFC nor the current, deep and synchronized global recession. The effects of the GFC on the Canadian PPP market began to show in the autumn of 2008. From mid-September 2008 to mid-August 2009, twelve projects have reached financial close¹. Some of these were relatively small while others only required short-term financing (e.g., Build-Finance projects), so the market is not entirely tested in this new environment. However, the next six to eight months will be a big test. We anticipate a ramping up of demand for debt capital across Canada as a whole, with nine projects expected to reach financial close by March 2010, including some large projects such as the McGill University Health Centre and Montreal University Hospital Research Centre in Quebec, the Toronto South Detention Centre in Ontario, the Stoney Trail Southeast in Alberta, as well as the RCMP E Division Headquarters and the South Fraser Perimeter Road in British Columbia.

¹ A list of projects is provided in Appendix 1.

The GFC and the reduced availability of credit manifest itself in a number of ways directly affecting the financing of PPP in Canada, including:

- Reduced pool of bank lending, driven by:
 - International banks refocusing their attention on their home market and pulling back from international business, resulting in fewer banks lending in the Canadian market.
 - The need to restructure balance sheets and reduce risk exposures.
 - Increased internal competition from other lending alternatives under more stringent capital, liquidity and profitability constraints.
- Reduction in hold levels, thus requiring an increase in the number of lenders, which is becoming increasingly challenging, particularly for transactions requiring \$500 million and higher.
- Elimination of the “underwrite and syndicate” lending approach, having been replaced with a lending “club” approach, which involves reduced hold levels with a prearranged group or club of lenders.
- Increased pricing reflecting liquidity premiums.
- Increased difficulty in providing committed financing at RFP submission stage and in holding credit spreads to financial close.
- Tighter debt terms surrounding a range of parameters including leverage, cover ratios, security, reserve accounts and performance bonding.
- Increased conditionality including market flex provisions, market disruption and material adverse effects clauses and validity refresh requirements.
- Reduced tenors to as short as five to seven years. Some long-term financing is available, but not typically as the majority of the senior debt funding.
- Increases in equity pricing.

1.3 Highly Desirable Attributes of the Existing Canadian Market

Canada remains a desirable destination for infrastructure capital. Features of the Canadian PPP market that should be reinforced and continued include:

- Canadian provinces are developing an internationally recognized reputation and track record of getting transactions through the procurement process to financial close.
- A firm pipeline of projects exists thus providing a level of certainty and predictability to the market in terms of future opportunities and the value of making commitments and investments in Canada in developing PPP expertise, establishing relationships with local contractors and sub-contractors, funders, and other suppliers.

- Generally acceptable risk allocation in projects.
- The use of honoraria for bid costs demonstrates commitment on the part of the procuring authority.
- Generally, a politically supportive environment.
- Best in class, credit worthy companies domestically with which to partner.
- An independent judicial system in the event of conflict on a contract.
- Emphasis on stable scope and disciplined adherence to procurement schedule.

2.0 Challenges Emerging in the Canadian PPP Market

Current market conditions have created challenges both for the public sector agencies procuring PPP projects and the private sector bidders and participants. Both now face the possible reality that the conditions of the recent past are unlikely to return and a new norm may need to emerge for PPP in Canada.

2.1 Public Sector Perspective

Canadian governments and public sector authorities are faced with a number of challenges when procuring public assets and services under a PPP model in this environment, all of which impact VFM for the public. Key challenges from the public sector perspective include:

- Uncertainty in attracting sufficient lenders and sponsors to maintain competitive tension and achieve the best value solution.
- Uncertainty of key parameters in the financial bid submissions (e.g., obtaining committed financing and fixed credit spreads) and the impact on determining VFM and advancing projects to financial close.
- Allocation of refinancing risk resulting from shortened lending tenors.
- Uncertainty in the ability to keep projects intact as originally planned and communicated to the public (e.g., the need to re-scope projects mid procurement to achieve affordability thresholds if no additional government support is available).
- Greater need for awareness and coordination of the pipeline of projects across the country in other provincial procurement agencies, departments, and other levels of government in order to relieve capacity stress on the market.
- Managing public perception of public risk related to decisions by governments to support PPP through increased contributions or financial support.

2.2 Private Sector Perspective

Challenges emerging in the Canadian PPP market have impacted private sector sponsors and lenders, including:

- Reduced pool of lenders in the Canadian market and reduced hold levels has led to a significant increase in the time, cost, and complexity of arranging financing for projects.
- Requirements for committed financing at time of RFP submission in light of prevailing credit market challenges.
- Impact of shorter-tenor (“mini-perm”) bank financing and how to structure and price refinancing risk.
- Increased cost of debt and greater stringency in lending terms and conditions.

- Possible changes to equity/debt gearing ratio which has the potential to drive up project costs.
- Increased security packages for construction and operating performance.

3.0 International Initiatives Enacted to Respond to Credit Issues in Domestic PPP Markets

As noted earlier, the world is experiencing a global financial crisis, not a PPP crisis. But PPP projects throughout the world have been impacted by the global financial crisis and governments are taking actions to stabilize their PPP markets to ensure the model thrives and the market remains intact, with the full expectation that a robust and healthy market will return.

This chapter will highlight remedial steps that have been taken in other markets to support PPP in the context of the GFC. New initiatives have been enacted in the United Kingdom (“UK”) and France. Enhanced levels of support are being provided for European projects through the European Investment Bank (“EIB”). In the United States (“US”), the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) program is providing support for state transportation projects, a number of which are PPP.

In the latter part of the chapter, a chart summarizes the issues arising in the various markets and the remedies being implemented to respond.

3.1 United Kingdom

3.1.1 Background and Issue

As of March 2009, the UK had a pipeline of 110 Project Finance Initiative (“PFI”) projects with a total capital value of approximately \$23.2 billion (£13 billion). The pipeline spans various sectors, in particular waste treatment, transport and education.

As a result of the disruptions in the credit markets, the UK government was concerned that the availability and pricing of long-term debt would be inadequate to support the current pipeline of PFI projects.

3.1.2 PFI Lending Initiative

On March 3, 2009, the UK Treasury announced a government lending initiative to help safeguard the PFI project pipeline. Under the initiative, the UK government will lend alongside the private sector (and the EIB, if applicable) to projects that would otherwise fail to reach financial close. The program will be executed by the newly established Treasury Infrastructure Finance Unit (“TIFU”).

Treasury lending will be on commercial terms and is intended to supplement and not replace private sector lending. If necessary, TIFU will be able to provide up to 100% of senior debt to a project, but the expectation is that TIFU lending will be less than 50% of the requirement in most cases.

The initiative is also intended to streamline and consolidate public sector lending by providing a dedicated centralised unit with the required expertise and resources. Consequently, the Treasury will generally not approve direct lending to PFI projects by departments or other procuring authorities.

3.1.3 Impact

The main focus of the lending initiative is to ensure that PFI projects in the existing pipeline proceed according to schedule despite the disruption in the financial markets.

With many projects at an advanced stage, one of the reasons to continue with the PFI procurement model is to avoid the delays and costs related to switching to a traditional procurement method. By aiming to keep the schedule of current PFI projects intact, the UK government also hopes to create or safeguard jobs during this phase of the economic downturn. The implementation of major infrastructure projects is also perceived to serve as a foundation for an eventual economic recovery. An additional factor is the threat of European Union fines that the UK authorities would incur in the case of a delay of major PFI waste projects, which are necessary to meet tougher European waste regulatory standards.

Incidentally, the first project to receive TIFU funding was the \$6.8 billion (£3.8 billion) Greater Manchester Waste PFI, which received a \$214 million (£120 million) loan from the new unit.

3.1.4 Implementation

Following the original announcement on March 3, 2009, TIFU was quickly set up and completed its first loan facility (for the Greater Manchester Waste PFI project) on April 8, 2009. The unit operates at arm's length from government and is funded from departmental budget surpluses and unallocated resources. The initiative is expected to lend up to \$3.5 billion (£2 billion) in 2009 and 2010.

Projects that are currently in procurement are generally eligible. Future projects intending to go to market will also be eligible, provided they meet the usual value for money and affordability criteria. TIFU will however not engage with project sponsors before the preferred bidder stage. TIFU lending will only be granted as a last resort, if funds from the private sector or the EIB are insufficient to bring the project to financial close on a timely basis. In order to be considered, the procurement agencies and project sponsors must demonstrate that they have exhausted alternative options to reach financial close, such as running a post-preferred bidder funding competition, restructuring the project, changing the scope or adding equity / subordinated debt.

In addition to cases where there is a shortfall of private debt, TIFU can also be approached when the proposed funding is on terms and conditions that are not consistent with prevailing market conditions. In this context, it should be noted that a core principle for TIFU is lending on commercial terms. Consequently, TIFU assistance is not intended for cases where project affordability might be endangered by the private sector lending terms, as long as these terms are consistent with the prevailing market. The burden of proof to show that the lending terms offered are out of step with the prevailing market is borne by the relevant procurement agency.

Since TIFU lending will be on commercial terms, it will also include voting rights. The loans will rank *pari passu* to commercial loans and will have the same unencumbered syndication and sale rights. Any refinancing of the TIFU loan will be treated like any refinancing of a commercial loan in the project, including the application of refinancing provisions relating to possible gains, as set out in the project agreement.

3.1.5 Time Frame and Exit Strategy

The TIFU program is a temporary measure to support the PFI pipeline in the context of extraordinary market disruption. Once market conditions improve to the extent that the demand for private finance can be met again, TIFU lending will cease and outstanding loans will eventually be sold to the private sector.

3.2 France

On December 4, 2008, the French government announced a \$41 billion (€26 billion) stimulus plan (“plan de relance”). The plan focuses on infrastructure as a means to stimulate the entire French economy and contains several initiatives which are aimed at supporting PPP in the context of diminished liquidity in the financial markets.

3.2.1 Government Guarantee

A key component of the French stimulus program with regards to PPP is the Government Guarantee program. The French state will provide up to \$15.8 billion (€10 billion) in partial guarantees for PPP projects.

The state guarantee is limited to a maximum of 80% of the total financing requirement for any given project. The guarantee is contingent on certain conditions, such as the requirement that the project company be financially healthy and solvent, the project deliverables be located in France and the project company be headquartered in Europe. The allocation of guarantees is at the discretion of an evaluation committee which will identify priority projects on a case-by-case basis.

The guarantee scheme is a temporary measure and will only be available to projects that reach financial close by December 31, 2010. The guarantee will not only be applicable to new projects, but potentially to refinancings of existing projects.

3.2.2 Caisse des Dépôts et Consignations Loans

The French government has also revised the mandate of the state backed Caisse des Dépôts et Consignations (“CDC”) to allow it to provide up to \$12.7 billion (€8 billion) in the form of loans on savings funds to infrastructure projects.

CDC is a public institution that provides financial services to central, regional, and local governments in France. It manages French savings deposits and retirement savings funds. Its total assets amount to \$351 billion (€221 billion) according to 2007 figures. The CDC is a major long-term institutional investor and its mandate has previously already included the use of its funds for public-interest and development missions.

The new infrastructure loans will be allocated either directly to projects alongside commercial lenders or to local authorities procuring such projects. The CDC loans can cover a maximum of 25% of total project cost. In line with CDC’s established role as a long-term investor, there is no time limit or required exit strategy attached to the CDC loan initiative. There is, however, no indication the loan initiative will extend beyond the funds now allocated to it.

3.2.3 Changes to the PPP Regulatory Framework

In addition to the guarantee and lending elements of the stimulus package, the French government has also applied the following changes to the regulatory framework to facilitate more PPP projects.

Under the original French PPP framework, the private sector partner had the responsibility to source 100% of the financing for a project. In order to reduce the cost of financing PPP projects, this restriction has now been lifted, allowing the public sector to partially finance projects. The private sector is required to provide at least 50% of the financing, unless the project is larger than a certain threshold that has yet to be defined. This regulatory change is permanent.

Another measure removes the requirement for bidders to submit firm financial commitments with the final bid. The aim of this measure is to improve liquidity in the market by ensuring that scarce capital is not tied up in competing bids. Accordingly, the financial terms of a PPP agreement only have to be finalised at the preferred proponent stage by the winning bidder. Should the preferred proponent fail to reach financial close within a specific time period, the second-placed bidder may be approached to finalise the financing.

The French Constitutional Council has reviewed this arrangement and attached the following conditions: a) the principle to choose the economically most advantageous bid must be upheld; b) the final agreement must not change the economics of the original bid; and c) the price adjustments are only acceptable as long as they affect only the financial component of the overall project cost and are a direct result of variations in the financing itself, rather than any other factors.

This measure is of temporary nature and applies only to tenders launched in 2009 and 2010.

3.3 European Union

The European Investment Bank ("EIB") is the European Union's long-term lending institution and was established under the treaty of Rome in 1957. Its owners are the Member States of the European Union, who subscribe to the bank's capital.

Benefiting from its historically consistent AAA rating, the EIB raises substantial funds in the capital markets, which it can then lend on favourable terms to projects furthering EU policy objectives. The bank supports projects both inside the EU, as defined in the Corporate Operational Plan and outside the EU in selected regions, as defined in EU external cooperation and development policies. In 2007, the European Investment Bank lent a total of \$75.6 billion (€47.8 billion) to projects. Finance for the EU Member States represented 87% of its activities and amounted to \$65.4 billion (€41.4 billion).

While the EIB has been an active participant in the PPP market since 1990, it has recently ramped up its activities in the context of the GFC.

3.3.1 Increased EIB Co-lending

EIB's first loan to a PPP project was for the Great Belt Link between Denmark and Sweden in 1990. As of April 2009, the EIB has provided a total of approximately \$47.5 billion (€30 billion) for PPP financing.

EIB participation in PPP is intended to leverage private sector contribution and as such, the EIB generally provides loans up to a maximum of 50% of a project's total cost. The EIB lends on a pari passu basis alongside commercial banks.

In the context of the current economic downturn, the EIB undertook the following steps to help ease the effects of the credit crunch in Europe. In December 2008, the EIB Board of Directors approved an increase of its lending targets by \$23.7 billion (€15 billion) per year for both 2009 and 2010. The Board also initiated a capital increase in order to fund the increased lending target while respecting its statutory duty to keep loans and guarantees within 250% of its subscribed capital.

As of April 1, 2009, the EIB's subscribed capital has increased by \$106 billion (€67 billion) to a total of \$368.4 billion (€232 billion), which means that its statutory lending limit has increased to approximately \$921 billion (€581 billion). This capital increase will support the bank's increased lending activities.

While the EIB is a long-term lender offering long tenors, the capital increase itself is a temporary measure for 2009 and 2010 and aimed to be quickly implemented and to provide targeted relief for projects in challenging market conditions.

In order to increase lending activities to PPPs, EIB is currently seeking a larger envelope for its Structured Finance Facility ("SFF"), which is expected to happen in due course. The SFF is important for EIB's PPP lending as it allows the Bank to take risk that is below its normal thresholds.

3.3.2 Loan Guarantee

In addition to its lending activities, the EIB also supports PPP through loan guarantees. In January 2008, the EIB and the European Commission established the Loan Guarantee Instrument for Trans-European Transport Network projects ("LGTT").

This new instrument is aimed at facilitating greater participation of the private sector in the financing of transport infrastructure, especially for investments in transport projects where there is a high level of revenue risk in the early operational period of a project. The LGTT partially covers this risk and thereby improves the financial viability of transport investments. Under the LGTT the EIB accepts exposure to higher financial risks than under its normal lending activities. By taking this risk through the LGTT guarantee, EIB helps projects cope with the early revenue risk while relying on the long-term perspective of the project to be financially viable.

LGTT is financed with a joint capital contribution of \$1.585 billion (€1 billion), which is equally shared between the Commission and the EIB and is intended to support up to \$31 billion (€20 billion) of senior loans.

The first projects that have closed using this instrument are the IP4/Marão Tunnel project in Portugal (May 2008), and the A5 Motorway project in Germany (March 2009).

3.3.3 European PPP Expertise Centre

In addition to financing, the EIB is also involved in providing PPP know-how to public sector authorities. In a joint initiative with the European Commission, EIB launched the European PPP Expertise Centre (“EPEC”) in September 2008.

EPEC is intended to facilitate the sharing of experience and establishment of best practices in PPP on the public sector side. Membership is consequently restricted to public sector bodies. Since the level of public sector experience with PPP varies markedly across the various national bodies across the EU, the initiative is expected to bring more consistency to the European PPP market.

EPEC is a temporary initiative and will run in its current form until the end of 2010. At that point, a review of its effectiveness will determine a potential future role for EPEC.

3.4 United States

The Transportation Infrastructure Finance and Innovation Act (“TIFIA”) was established in 1998 and provides credit assistance to major US transportation investments, such as: highway, transit, passenger rail, freight facility, and port projects with regional and national benefits.

The TIFIA credit program is designed to fill market gaps and leverage substantial private co-investment by providing supplemental and subordinate capital.

The TIFIA program is required by law to establish a capital reserve, or “subsidy amount” to cover expected credit losses before it can provide TIFIA credit assistance. Congress places limits on the annual subsidy amount available.

Congress authorized \$142 million (US\$122 million) for each Federal fiscal year from 2005 through 2009. Based on experience, this funding amount can support more than \$2.328 billion (US\$2 billion) of average annual credit assistance. Under the provisions of the recent American Recovery and Reinvestment Act, the TIFIA program is expected to be able to offer an additional \$2.328 billion (US\$2 billion) in credit assistance (see section 3.4.1 TIGER TIFIA payments)

3.4.1 Secured Direct Loans

Secured loans are the main form of credit assistance made available by TIFIA to eligible transportation projects.

Eligible projects must be large surface transportation projects – in excess of \$58 million (US\$50 million), such as public or private highways, transit, rail and port projects. Proposals, including financial plans, need to be submitted to the US Department of Transportation for consideration. Senior debt must be rated investment grade for a proposal to be considered.

The maximum TIFIA contribution to a project is limited to 33%. However, TIFIA recently introduced changes to the way it calculates the contribution limit: the recent Florida I-595 project introduced an innovation whereby procedural costs (such as costs from preliminary design process and procuring advisors) are included in project cost and therefore deemed eligible for TIFIA funding.

TIFIA loans have long tenors with interest rates based on US Treasury rates. The rate is fixed at financial close, effectively providing an interest rate hedge at no extra cost. As of August 14, 2009 for example, the TIFIA interest rate for a 35-year loan was 4.53%.

3.4.2 Other Forms of Credit Assistance

In addition to direct loans, TIFIA also offers assistance through loan guarantees and standby lines of credit.

The guarantee is a pledge by the US Department of Transportation (“DOT”) to pay a third-party lender all or part of the debt service on a borrower’s debt obligation. The DOT will seek to recover from the borrower all funds paid to the guaranteed lender, pursuant to a reimbursement agreement executed simultaneously with the loan guarantee.

The line of credit provides a contingent loan that may be drawn upon after substantial completion of the project to supplement project revenues during the first ten years of the project’s operations. The DOT will disburse funds under the conditions specified in the credit agreement.

3.4.3 TIGER TIFIA Payments

Signed into law on February 17, 2009, the American Recovery and Reinvestment Act includes a supplemental discretionary grant program that provides up to \$1.5 billion for surface transportation infrastructure. On May 18, 2009, the DOT accordingly announced the availability of Transportation Investment Generating Economic Recovery (“TIGER”) Discretionary Grants. Projects eligible for funding include, but are not limited to, highway or bridge projects, public transportation projects, passenger and freight rail transportation projects, and port infrastructure investments.

Up to \$232 million (US\$200 million) of the \$1.75 billion (US\$1.5 billion) in TIGER funds can be used to pay TIFIA subsidy and administrative costs, referred to as TIGER TIFIA Payments. The Department estimates these payments could support up to approximately \$2.33 billion (US\$2 billion) in TIFIA credit assistance, providing a significant opportunity for potential borrowers and the TIFIA program, which recently has lacked available funds for new loan applications.

Applicants seeking a TIGER TIFIA Payment must submit applications to, and meet the requirements of, both programs.

3.5 Comparative Analysis of International Government Actions

The chart below provides a brief comparative overview of the various measures put in place and the issues they are aiming to address.

		UK	France	European Union	United States
Issues	Measures	Government initiative	Government stimulus plan	European Investment Bank	TIFIA
Capacity related issues					
Lack of availability of commercial financing	Co- lending from a Government or Government Agency	Yes (through new Treasury Infrastructure Finance Unit, commercial terms)	Yes (up to CAD 16.8 bn through Caisse des dépôts et consignations)	Yes (increased co-lending, commercial terms)	Yes (existing TIFIA loan and line of credit program)
	Funding competition	Yes (at preferred bidder stage, prerequisite to qualify for TIFU loans)			
	Guarantee facility from Government or Government Agency		Yes (allocated through the Minister of the Economy, details TBC)	Yes (LGTT for transportation projects)	Yes (existing TIFIA Loan Guarantee)
Lack of market capacity to support multiple bids at RFP stage	Remove requirement for committed financing		Yes (tenders launched in 2009 and 2010)		
Lack of market capacity to support multiple projects under bid across the country	National-level coordination and prioritization of project pipeline	Yes (through TIFU)	Yes (Minister of the Economy allocating state guarantee to priority projects)		

		UK	France	European Union	United States
Issues	Measures	Government initiative	Government stimulus plan	European Investment Bank	TIFIA
Pricing related issues					
Terms of private sector lending not inline with prevailing market conditions	Co- lending from a Government or Government Agency	Yes (TIFU considers lending support, when commercial terms offered to a project are not in line with the prevailing market)			
Tenor related issues					
Refinancing risk resulting from the introduction of mini-perms in the capital structure	Guarantee facility from Government or Government Agency for refinancing		Yes (Loan guarantee scheme will be applicable to refinancings as well, details TBC)		

4.0 Deliberations on keeping the Canadian PPP Market Strong

4.1 Reinforcing the Positive Features of the Canadian Market

PPP procurements and programs across Canada are generally being run efficiently and Canada continues to be an attractive place to invest. From a political risk perspective, Canada is perceived as stable, with relatively good economic prospects (compared to G7 and G20 nations), a sound financial system, and a solid fiscal and monetary policy framework.

While PPP are generally delivered at the provincial level, there is a high degree of uniformity across each province, making Canada an attractive destination for international lenders/project sponsors compared to the US where state programs tend to differ from one another. Canada also compares favourably to other foreign jurisdictions in terms of a reliable and predictable pipeline of projects that close in a timely manner, a key factor in influencing the private sector to allocate resources and capital to pursue PPP opportunities when choosing between different markets.

To reinforce the positive features of the Canadian market, governments and public sector authorities should consider the following:

- The GFC has significantly increased the need for governments and procuring authorities to more closely coordinate the timing of all PPP projects into the market so as to strategically sequence their private financing requirements, especially on large transactions. Development of a national pipeline of projects by sector and by size to ensure there is not excessive overlap would assist in ensuring that such projects do not exceed the supply of financing available at specific points in time.
- Project staging would also aid in meeting resource constraints faced by sponsors, contractors, and operators as it can often be challenging to respond with quality proposals on multiple projects with overlapping timelines.
- There have been some concerns surrounding the cancellation or major delays of projects since the beginning of the GFC in British Columbia, Ontario, New Brunswick, and Quebec for example. This has called to question the need to increase the size of the break fees and honoraria, along with increased transparency into any affordability targets set by governments.
- Because most commercial lenders are unable to hold credit spreads for more than 30 days, the period between preferred proponent selection and financial close also needs to be held to that same maximum 30 day period, or allow for credit spread resets.
- Increasing honoraria to cover additional legal and bidding costs to advance development of financial documentation during the bidding process.
- To preserve the integrity of the procurement process, it is important to private sector sponsors that all project procurement elements or features (e.g. staple financing, level of government contributions, possibility of funding competition post preferred proponent announcement, sharing of the refinancing risk, etc.) are established at the outset of the process with minimal alteration after preferred proponent selection.

Overall, there is widespread acknowledgement that governments and public sector authorities are making strong efforts to respond to the current market challenges facing PPP projects.

4.2 Modifications to Procurement Processes

The following sets out where modifications in the procurement processes could lead to greater market acceptance and ultimately enhanced benefit to the public sector.

4.2.1 Duration of Evaluation Process

Issue

The evaluation process for PPP projects continues to evolve with the maturity of the Canadian market. Significant improvements have been made to improve the process since the procurement of early PPP projects, though there continue to be areas where modifications could be made.

Generally, there is a view that the RFP submission evaluation process has been, and continues to be, too lengthy – particularly in light of the constantly changing nature of the construction industry and the current volatility in the credit markets. This has made it challenging for private sector sponsors to hold costs from proposal submission through to the end of the preferred proponent stage.

Remedy

Continue to use as a best practice, a two-staged procurement process (i.e., technical submission followed by financial submission) to shorten the irrevocability period of financial submissions. Adopting this practice, however, should not be at the expense of design and development time.

Advantages and Drawbacks

Doing so allows private sector sponsors to reduce / remove contingencies which would otherwise need to be added to proposals to mitigate against possible increased costs, leading to better VFM to the public sector. From a practical perspective, this also allows private sector sponsors to focus efforts on a single submission (technical or financial) during the time immediately before submission.

One drawback of a two-staged procurement process is that it leads to a reduced financial submission evaluation period for the public sector authority, although this can likely be appropriately mitigated as evidenced in several jurisdictions.

Ease of Implementation and Timeframe

This remedy can be implemented in a short to moderate amount of time, but would be limited to projects early (or not yet) in the procurement in-market phase. Once implemented, this remedy should be viewed as a permanent change, but could be subject to change depending on the unique characteristics of each new transaction to enter procurement.

4.2.2 Time to Reach Financial Close

Issue

Currently, there is a view that large variability exists in the time required to move from preferred proponent selection to financial close across Canadian jurisdictions. This leads to uncertainty in private sector sponsor planning, and the need to adopt a unique approach to each jurisdiction.

Remedy

It was viewed that a simple solution to this issue would be for the government to commit to outside dates to reach financial close upon selection of the preferred proponent, allowing all parties to rely on the timelines specified. Remedies could then be made available to all parties should the financial close deadline not be delivered. In addition, public sector authorities should keep demands on the preferred proponent to a minimum.

Advantages and Drawbacks

The potential remedies imposed will motivate all parties to achieve the milestone dates, allowing both the public and private sectors to plan and budget for resources more definitively. Failing to meet the milestones, however, could lead to additional and unplanned costs for either party, thereby impacting the private sector sponsors' profitability or the public sector's VFM.

Ease of Implementation and Timeframe

This remedy can be implemented quickly with appropriate milestone dates established by reference to past successful projects. Once implemented, this remedy should be viewed as a permanent change, but could be subject to change depending on the unique characteristics of each new transaction to enter procurement.

4.2.3 Due Diligence on Bidders**Issue**

Generally, limited due diligence conducted on Proponents during the RFP submission evaluation process has potentially led to impact on the ability of some transactions to reach financial close following preferred proponent selection.

Remedy

Transactions could benefit from an increased level of due diligence on Proponents and their proposals submitted at the RFP stage to ensure that the closed transaction is representative of the competitive process. Where appropriate, implement a mechanism to trigger additional diligence, such as additional financial analysis, model audits, required commitment letters, subject matter expert reviews, and reference checks. However, a best practice is to require a significant bid date letter of credit to support bid submission.

Advantages and Drawbacks

The key advantages to the proposed remedy are overall greater certainty by all parties that the preferred proponent will be able to reach financial close and reduced due diligence required following selection of the preferred proponent. This does, however, require additional work required by the public sector authority during the RFP submission evaluation stage.

Ease of Implementation and Timeframe

This remedy can be implemented in a short to moderate amount of time, though the public sector authority will need to work actively to develop a framework for the appropriate level of due diligence. Such a framework will need to be communicated to private sector sponsors and would be limited to projects early (or not yet) in the RFP phase. Once implemented, this remedy should be viewed as a permanent change, but could be subject to change depending on the unique characteristics of each new transaction to enter procurement.

4.2.4 Proponent Bid Costs

Issue

When financial close is accelerated, bidders incur increased costs.

Remedy

Increased honoraria for unsuccessful private sector sponsors could be awarded to help compensate private sector sponsors for undertaking the additional costs / risks associated with ensuring an accelerated financial close such as committed financing and supporting letters of credit.

Advantages and Drawbacks

The key advantage to the proposed remedy is that private sector sponsors will be more aligned to achieve financial close as quickly as possible, thereby providing comfort of the same to public sector authorities. The increased honoraria, however, also mean additional costs to the taxpayer.

Ease of Implementation and Timeframe

This remedy can be implemented quickly with changes to RFP documentation. If implemented, it should be viewed to be permanent, as it will be difficult for private sector sponsors to accept lower honoraria in the future.

4.2.5 Committed Financing

Issues

Generally, policies relating to the requirement of committed financing as part of the RFP financial submission package are undefined and/or inconsistent across Canadian jurisdictions. Furthermore, the additional cost and diligence undertaken by private sector sponsors that obtain committed financing is not rewarded in the scoring of financial submissions, even though the ultimate benefit is realized by the public sector.

Remedy

Public sector authorities should continue to request committed financing or accept a sufficiently large letter of credit at the bid date. Governments should also use a fair and objective manner to evaluate committed financing and scores should be allocated in the RFP submission evaluation to private sector sponsors who have achieved this requirement.

Advantages and Drawbacks

Submitting a sufficiently large letter of credit demonstrates ability and incentive to reach financial close.

Ease of Implementation and Timeframe

The requirement for committed financing can be implemented quickly, with straightforward changes to RFP documentation and development of associated evaluation criteria.

This remedy could be viewed as a temporary solution to meet the needs of the current credit markets, but be reassessed once markets have stabilized.

4.2.6 Refinancing

Issue

There continues to be uncertainty surrounding the treatment of refinancing in light of the current credit markets.

Remedy

There is a need to establish clear and consistent definitions for various forms of refinancing (e.g., exempt refinancing, qualifying refinancing, forced refinancing, etc.) and the government's intended risk allocation. In addition, there is a need for application of symmetry in refinancing risk, that is, a sharing of gains and losses. Short-term, mini-perm financing should not be unreasonably penalized if the solution meets the government's risk allocation. If the public sector authority is willing to accept an alternative to the intended transfer of refinancing risk, private sector sponsors should be scored in part based on their proposed approach to this risk transfer, combined with transparency by the public sector authority on what evaluation criteria will be used to direct such scoring.

Advantages and Drawbacks

Clarity and transparency around refinancing risk will allow private sector sponsors to clearly understand the public sector authority's position and allow them to structure proposals that will allow for the highest evaluation score possible. Should the public sector authority choose to absorb refinancing risk, the need for private sector sponsors to include refinancing contingencies in their proposals will be eliminated.

It is appreciated that governments and public sector authorities will require time to reach a position on refinancing risk although this could potentially stall the timely procurement of some transactions. To the extent that governments and public sector authorities are unwilling to accept all or part of refinancing risk, contingencies will be added by private sector sponsors to their proposals and VFM will be reduced. Should governments and public sector authorities choose to accept refinancing risk, the result may actually be taking on a risk which the private sector is better equipped to manage. Furthermore, governments and public sector authorities undertaking refinancing risk may be recorded on provincial balance sheets thereby affecting credit ratings.

Ease of Implementation and Timeframe

Some time will be required for governments and public sector authorities to reach a position on refinancing risk. Once determined, changes may be made to RFP documents fairly quickly. The remedy can be easily unwound during the procurement in-market phase via addendum, but will be much more difficult and costly to unwind following bid submission or during the concession period.

4.3 Government Co-Lending into Projects

4.3.1 Issue

In light of the significant ongoing capacity constraints in the financial markets, there might be a need for public entities co-lending alongside financial institutions to PPP projects on a pari passu basis.

4.3.2 Private Sector Views

Views on this issue are diverse and varied, depending on the role held by the participant in the PPP market.

- Current credit market conditions have led to greater risks taken by private sector sponsors. Private sector sponsors generally would welcome any form of government assistance (financial or non-financial) that could assist in the raising of financing in the current markets.
- Governments have limited funds, especially in the current environment. Consideration should be given to whether government funds could be better deployed elsewhere rather than invested into PPP transactions.
- By participating in projects as a co-lender, governments would be equalizing terms between bidders by decreasing the amount of external private financing required to deliver a project. There is a limited number of investment grade contractors in Canada and banks have single name limit requirements for lending which impacts their ability to participate in multiple PPP transactions being procured by the same private sector sponsor or constructor. Note, however, EDC's enhanced powers will allow it to provide additional support to sponsors, contractors and facilities management companies involved in PPP under the Stimulus Program.
- Any government co-lending in PPP transactions should be viewed as temporary. Voting rights are critical if there is to be a secondary market for PPP debt.
- Any government or agency conducting the lending should be distant from the government entity sponsoring the deal in order to avoid conflicts when enforcing lender rights. The federal government is advised to consider whether there could be a role for the Export Development Canada ("EDC") in domestic PPP transactions, similar to the role played by the EIB in Europe.
- Instead of co-lending, governments could contemplate establishing a program similar to TIFIA in the United States that uses subordinated debt ("sub-debt") as the government's investment vehicle. Sub-debt would be more acceptable to private investors as it would be subordinate to traditional private sector-sourced senior debt so that inter-creditor concerns would be reduced.
- Government co-lending must be structured to ensure potential bidders are not discouraged from projects with such co-lending. Further, a minimum amount of private sector financing must be established to ensure bidders make all necessary efforts to bring competitive financing terms and do not rely on the government to back stop failed efforts to raise the required financing.
- In light of current market and economic conditions, there is the risk that governments will try to do too much and that government involvement in a PPP transaction as a co-lender will complicate the bidding process by potentially altering the lending parameters during the procurement process.

- In a default situation, governments may be conflicted by political concerns and by their role as project sponsor.

4.3.3 Remedy

Any government co-lending of senior debt would need to be passive and subordinate to the senior debt provided by private lenders. True subordinate-debt would be the preferred structure for any form of government co-lending into PPP transactions.

4.3.4 Advantages and Drawbacks

Government co-lending that is passive and subordinate would limit a government's ability to protect its investment should a project encounter financial difficulties.

Furthermore, ongoing government co-lending would likely lead to the development of an active secondary market for Canadian PPP debt for governments which are not interested in holding their project investments for the full concession period. A secondary market for PPP debt would be beneficial to maximizing the funding appetite for Canadian PPP transactions by providing risk-averse investors with an opportunity to engage in projects once the higher risk phases (e.g. construction and commissioning) have been successfully completed.

4.3.5 Ease of Implementation and Exit

To make government co-lending more predictable and therefore more palatable to private investors, there will need to be uniformity and consistency in structure across transactions.

Despite possible market interest, government co-lending may be difficult to implement. The structure of the government's investment will be critical for private investors, with voting rights being the single most important issue.

The structure of the government co-lending will influence the ease of exit. Any form of subordination or limits on voting rights, while attractive to the initial private investors, may be less appealing characteristics in the secondary market and limit the government's ability to exit from its investments (i.e. few private investors are willing to buy long-term debt with reduced participation or voting rights).

4.3.6 Timeframe

Current financial constraints are more project specific than endemic to the Canadian PPP market and the current financing gap is temporary. Further, any direct government investment in Canadian PPP transactions would be undertaken on a temporary basis.

4.4 Government Grants

4.4.1 Issue

Some provinces have implemented (or are considering the implementation of) payments made by the government to the private sector sponsors during the construction period, at substantial completion and/or at a specified time after the commencement of operations. Contributions made during the construction period address the gap in short term financing whereas at substantial

completion and beyond, they deal with the gap in long term financing. It is important to determine for a typical project risk profile, the tipping point for the risk transfer not to be altered in order to size the appropriate level of government contributions.

4.4.2 Private Sector Views

Private sector views relating to government grants include:

- A project begins to resemble a Design Build transaction rather than a Design Build Finance transaction as the level of government grants rise and the amount of sponsor equity declines.
- Government grants may have a material impact on termination payments (i.e., the value of work completed less rectification costs and grants paid).
- Material grants increase the level of a sponsor's potential loss given default due to the impact of grants on project gearing.
- Large upfront grants disrupt risk transfer and have the potential to impact the validity of the PPP structure.
- Large upfront grants impact equity returns and may result in transactions that lack enough potential equity returns to attract a wide pool of bidders.
- While the new government grant solutions will bring liquidity, they may have rating impact which is neutral, positive or negative depending on their nature, structure, size and other project characteristics.
- Finding the correct balance of liquidity / acceptable risk sharing / VFM / affordability will not be easy.

4.4.3 Remedy

Government grants have their place in Canadian PPP projects, particularly in the current capital markets climate, but should not be too large as to impact risk transfer, impact equity returns and dissuade private sector sponsors.

4.4.4 Advantages and Drawbacks

If structured properly, government grants can assist in the financeability of Canadian PPP projects while still allowing for sufficient risk transfer to the private sector.

A concern with large government grants, however, is that the contractor support package may become smaller than optimal given the true size of the transaction. Furthermore, grants may complicate the procurement process (different components with different holders) and lead to inter-creditor issues (e.g., step-in, voting, enforcement, acceleration). Government grants may also result in a higher risk of private sector sponsor default.

4.4.5 Ease of Implementation and Exit

Government grants are not difficult to implement. They should be identified at the outset of a procurement process (at the RFP stage) and the terms should not change through the procurement and negotiations.

4.4.6 Timeframe

The current move towards significant government grants during the construction phase or early in the operations phase is a direct response to the current credit markets and is likely transitory.

4.5 Government Credit Guarantees

4.5.1 Issue

One of the solutions proposed to meet the liquidity challenges in the credit market is for governments to provide credit default guarantees to private sector lenders in support of the project.

4.5.2 Private Sector Views

Generally government credit guarantees are not supported by lenders due to the complexity and lack of cost-benefit evidence.

4.6 Export Development Canada

4.6.1 Issue

Export Development Canada (“EDC”) may have a beneficial role in providing project finance capacity on domestic PPP projects. EDC is in a unique position because it has the ability to participate on current commercial terms, will neither be perceived as subsidizing a transaction nor as a lender of last resort, and will not support alone the back-end of any financing.

4.6.2 Remedy

The actual form of EDC’s participation should be permitted to extend to term loans (alongside banks, insurance companies, pension funds and other institutions), construction loans, standby credits, bridge loans, bonding, guarantees, and other forms of project insurance. Flexibility in filling market capacity gaps based on the nature of each individual PPP project will also be important.

EDC would need to see market validation of the potential financing terms and conditions to warrant their participation on a pari passu basis with other lenders.

4.6.3 Ease of Implementation and Exit

The potential remedy involving EDC is conceptual and requires further discussion and consideration. CCPPP welcomes the opportunity to enter into an urgent dialogue with the management of the EDC so as to assist EDC in quickly implementing the most critical financing needs that have arisen due to capacity failures in the project finance credit markets.

4.7 Funding Competitions: Post Preferred Proponent Selection

4.7.1 Issue

Current market capacity constraints may prevent private sector sponsors from being able to secure financing at the RFP stage.

4.7.2 Remedy

A potential response to financing capacity constraints is the implementation of a debt funding competition at the preferred proponent stage. The procurement process would be structured to enable the selection of the preferred proponent on the basis of submissions received at the RFP stage, with the preferred proponent subsequently leading a debt funding competition alongside the public sector authority on an “open books” basis to secure the most competitive financing available in the market to reach financial close.

4.7.3 Advantages and Drawbacks

From a process point of view, enabling the procurement authority to retain an option to trigger a funding competition post-preferred proponent while continuing to require committed financing at the RFP stage would pose significant challenges to private sector sponsors given the cost and effort required to pursue financing commitments. Alternatively, removing the requirement for committed financing at the RFP stage and subsequently proceeding to a funding competition post-preferred proponent was also not considered favourable due to several issues noted below.

While precedents for this approach exist in the UK, the prevailing context was significantly different relative to the Canadian market today. The presence of an active monoline market to guarantee the debt effectively resulted in funding competitions in the UK becoming a competition on bank/dealer fees. In the current context, moving to a funding competition would essentially remove “responsibility” for arranging financing away from the sponsors, thus likely incentivizing private sector sponsors to bid minimum construction prices, security packages etc. in order to be selected as preferred proponent, with financing risk having been transferred to the public sector. The public sector authority would face significant challenges in devising an evaluation process to appropriately assess submissions without the benefit of financial due diligence being reflected in the bids. Thus a potential risk may exist that the preferred proponent selected at the RFP close stage may not be viewed as the “optimal” consortium in terms of lenders’ assessment of the preferred proponent’s ability to achieve financial close thus adding a dimension of execution risk to the transaction process.

This approach is met with a high level of reluctance in the private sector due to the impact that a move to a funding competition would have on existing lender relationships, as well the possible negation of the competitive advantage some sponsors perceive they enjoy in the procurement of financing. Further, the implementation of funding competitions post-preferred proponent would likely result in longer project closing timelines and possible challenges arising from late-stage partnering of preferred proponent and selected lenders. Thus while some views exist that a funding competition may be a potentially viable approach for large projects facing severe market capacity constraints, introducing this approach is not viewed as a required nor desired adjustment to procurement practices, especially in the context of recent improvements in the market.

4.8 Staple Financing

4.8.1 Issue

Current debt market capacity constraints may prevent private sector sponsors from being able to secure financing at the RFP stage.

4.8.2 Remedy

A potential response to financing capacity constraints is the integration of staple financing in the procurement process. Under this approach, the public sector authority would pre-arrange financing terms with prospective lenders during the early stages of the procurement and offer this financing package to private sector sponsors alongside other project documentation (e.g., RFP, Project Agreement, etc.) during the procurement process. This approach would be expected to provide private sector sponsors with more certainty in the availability of debt financing and associated terms and conditions during the RFP submission stage.

4.8.3 Advantages and Drawbacks

There is a general reluctance to support staple finance-type solutions for PPP projects. This approach has been more readily applied in merger and acquisition-type transactions in circumstances where all buyers would be bidding to acquire the “same” company. This stands in contrast to the PPP context where private sector sponsors are not typically viewed by lenders as having identical risk profiles.

There is also a general consensus that a staple financing solution would be extremely challenging to implement as lenders would likely be unable to commit a reference financing package to an “unknown” preferred proponent without biasing the bid to a particular type of sponsor. Beyond the question mark surrounding the general feasibility of a staple financing approach, it was also noted that such a remedy, if implemented, would raise similar issues as funding competitions where there could be adverse impact to private sector sponsors’ lender relationships and competitive advantage in financing procurement. While some views exist noting the possibility of such an approach being viable under specific circumstances (for example, if the financing were sourced from a different market thus representing a unique source of capital that would not otherwise be available to private sector sponsors), in general however, there was a not a high degree of support for this concept and staple financing was not viewed as a desired adjustment to current procurement practices.

4.9 Value for Money Analysis

VFM analysis considerations include estimated input costs and affordability targets, and public sector transparency.

4.9.1 Affordability versus Value for Money

There is merit in clearly distinguishing between project “affordability” and “VFM”, as the two terms are often used interchangeably but are fundamentally different. Generally, affordability refers the public sector’s ability to afford or pay for a project. A project’s affordability envelope is often driven by treasury budgets or a public sector comparator / shadow bid model which the government sponsor believes to be sufficiently robust and reflective of the market. Such an

envelope or estimate is frequently published at the RFP stage as a maximum price against which bidders are expected to submit proposals. Once published, the affordability envelope is rarely changed and under extreme circumstances may cancel a procurement process if all proposals received exceed this amount.

VFM typically refers to the “value creation” generated as a result of undertaking a PPP delivery, as compared to traditional procurement – this is in effect the “savings” accrued by the public by choosing the PPP delivery model. So long as the risk-adjusted PPP estimated costs are lower than the risk-adjusted traditional estimated costs, there is a financial case for procuring under a PPP. VFM is often updated throughout various stages of the procurement process, as the PSC is benchmarked against a shadow bid prior to selection of a preferred proponent, and later compared to the financial model of the selected proposal following financial close.

The key relationship between affordability and VFM is that the outcome of the PSC or shadow bid in the VFM analysis may often be used by private sector sponsors to inform the affordability envelope; however, the two may not necessarily co-exist.

4.9.2 Estimated Input Costs and Affordability Targets

4.9.2.1 Issue

Affordability targets quickly become outdated during the procurement process as construction, operating, and financing costs change. Outdated figures may lead to outdated affordability targets against which private sector sponsors are expected to bid. Once established, it is unclear how affordability targets are used by governments and public sector authorities.

4.9.2.2 Remedy

Estimated input costs should be refreshed during one or more stages in the procurement process (e.g. business case, pre-RFP issue, and pre-bid submission) to ensure that resulting affordability targets move in line with the market. Additional detail should be provided in RFP documentation on how affordability thresholds will be used by the public sector authority to evaluate proposals (if at all), and affordability should be assessed globally and not necessarily on one particular input.

4.9.2.3 Advantages and Drawbacks

The proposed remedy should result in affordability targets being more aligned with market costs and therefore a more accurate benchmark against which to evaluate bid submission prices, providing for a more accurate determination of whether value for money has been achieved. Private sector sponsors will also be able to make more informed decisions in their bid strategy when they clearly understand how the affordability target will be used in the evaluation process. The drawbacks of this proposed remedy include possible disruption to governments’ budgeting processes, as well as less aggressive cost bidding by private sector sponsors in the event that the affordability target is overstated.

4.9.2.4 Ease of Implementation and Time Frame

This remedy would be straightforward to put in place as it would simply require an update of the financial model(s) used to establish the initial affordability target, and additional drafting in RFP documents to clarify use of affordability targets.

Once implemented, this remedy should be viewed as a permanent change, but could be subject to change depending on the unique characteristics of each new transaction to enter procurement.

4.9.3 Public Sector Comparator Transparency

4.9.3.1 Issue

Currently there is insufficient transparency in the development and use of the PSC models in PPP projects across Canadian jurisdictions. The PSC remains a “black box” to some industry participants, and it is unclear whether the PSC is an accurate reflection of costs incurred under the traditional procurement approach.

4.9.3.2 Remedy

All or selected PSC costs in the VFM report be clearly disclosed. As an alternative to full disclosure, the public sector authorities might also consider releasing categories of costs as a percentage of total costs.

4.9.3.3 Advantages and Drawbacks

This proposed remedy provides private sector sponsors with a clearer understanding of how the PSC is derived, but opens public sector authorities to increased scrutiny with limited value (e.g. more competitive bidding by private sector sponsors) in return.

4.9.3.4 Ease of Implementation and Timeframe

This remedy could be easily implemented because the information already exists for each transaction.

Once implemented, this remedy should be viewed as a permanent change, but could be subject to change depending on the unique characteristics of each new transaction to enter procurement.

4.10 Improve Lending Capacity

The Canadian market had successfully attracted an increasing number of lenders prior to the GFC. The question is how can that interest be retained, increased or even attract additional lenders? What are the new measures being implemented in other countries in order to respond to the new credit and liquidity environment and should Canada follow suit to keep its programs competitive?

Foreign lenders have become comfortable with the Canadian PPP programs over the last 10 years and have been recurring participants. The credit and liquidity crisis has set a new scene for international lenders where PPP projects are competing against other lending alternatives under more stringent capital, liquidity and profitability constraints. Several foreign banks have already confirmed their continuing interest in the Canadian market, albeit for shorter tenors and with increased pricing. However, they feel under increasing pressure to support deals in their home markets for several reasons:

- They do not bear any currency risk (lend in their own currency US\$, €, £) or basis risk (C\$LIBOR/CDOR);
- They can meet lower return thresholds;
- They can provide support to existing strong client relationships; and
- Their loan is more liquid should they wish to decrease their position.

4.10.1. Government Payments to Mitigate Currency or Basis Risk

When comparing PPP lending opportunities in Canada and in their home markets, the foreign banks assert that they are at a disadvantage due to higher costs of funding in Canadian dollars. There are a very limited number of non-Canadian banks with the ability to fund in CDOR. Funding in CADLIBOR increases the number of banks, but it is still extremely limited compared to US\$LIBOR or EURIBOR. The cost of swapping CADLIBOR to CDOR¹ has widened from their historic 5-8 basis points to a high water mark of 80 basis points (October 14, 2008) since the beginning of the crisis over the last year. Although the spread has since reduced closer to historical levels and seems to have stabilized, lenders remain wary that the spread could rise again very quickly.

This new and increased volatility in the cost of the basis swaps has to be priced in the bid for the entire 30-year concession term unless, under competitive tension, the bidding consortia are more willing to take some risk on the cost of securing the Canadian dollar funding over the concession.

Alternatively, to mitigate the LIBOR/CDOR basis risk, foreign banks have proposed that the public sector authorities / governments either facilitate foreign currency lending by providing for availability and other payments to be made in the loan currency, or assume part or all of the basis risk. With respect to funding in EURO or other foreign currency, while this may potentially attract a larger number of lenders to the Canadian market, the approach is somewhat counterintuitive to the PPP model and is likely to meet a lot of political resistance. Governments would have to pay for key public infrastructure in a foreign currency over the 30-year contract period whereas their tax revenue generating base is in Canadian dollars. Furthermore, a provincial government's foreign exchange exposure is the domain of the Ministry of Finance and managed centrally, not on a project by project basis.

Concerning the possibility of a province assuming part or the entire basis risk, it revolves around providing some certainty around the funding costs of the Canadian dollar to the foreign lenders.

As it stands, the public sector is already taking the risk of fluctuations in the benchmark or reference rate (typically a portfolio of Government of Canada benchmark bonds or Bankers' Acceptances rates) over the period when bids come in up to financial close. One proposal could be to expand the definition of reference rate to include the basis swap spread so that any fluctuations are included in the all-in rate paid by the province for the senior debt over the Concession term. This also assists in determining value for money as proponents would not have differing provisions for possible fluctuations in the swap spreads over the bid period. This approach was put forward for the Port Mann project and was found to assist in mitigating the basis risk.

¹ It is usually done via a series of swaps, for example, Euro into US\$LIBOR then swapped again into CDOR.

The next step in getting the public sector to take some additional basis risk would be at the first renewal date of the basis swaps, 7 to 10 years into the Concession. As a swap market exists for that initial period, one could argue that the bidding consortium is best placed to assume and/or mitigate the LIBOR/CDOR risk for the initial period.

If the public sector were willing to absorb all the basis risk, they would have to be willing to act as a back stop at the time of any of the basis swap roll-over dates and take the counterparty and market risk associated with those. This presents several challenges for public sector authorities including the additional administrative burden of managing the basis swaps on a project by project basis and providing for a fair and equitable evaluation framework of the proposals from a risk/cost perspective depending on how much of the basis risk was proposed to be taken back.

At this time, requiring the public sector to absorb all the basis risk is not recommended.

4.10.2. Indexed Capital Payments

The second measure being proposed to increase the number of lenders in the Canadian PPP market is for public sector authorities to provide for indexed capital payments throughout the contract term. Under current PPP models, indexation of the monthly and annual payments made to the private sector sponsors is allowed up to a certain annual maximum percentage, agreed upon at the outset. The set percentage usually covers indexation of part of the labour and annual maintenance costs and not capital repayments.

Pension funds, which have long-term liabilities, seek investments in long term matching inflation proof assets. The indexation of the capital payments stream throughout the contract period would facilitate the structuring/issue of real return revenue bonds to finance PPP projects and could entice a larger participation from pension funds.

The challenge for public sector authorities is that it brings more uncertainty around the annual payments to private sector sponsors and tends to push out the bulk of the repayment risk to the latter years of the contract period. In addition, while inflation is usually correlated to the state of the economy and level of tax revenues collected by the provinces, albeit usually with a lag, they provide for a natural hedge against inflation enjoyed by the public sector. On the other hand, the only way that the private sector sponsor can mitigate the inflation risk in PPP projects is to provide for it in the nominal long-term interest they charge for lending to PPP projects.

The debate is whether it is essentially more efficient for the government or the private sector to assume the long-term inflation risk in connection with the long term financing of infrastructure projects. One consideration might be whether it is a plausible request to the federal and the provincial governments to 'create' a real return bond market around PPP projects when they have been quite reluctant to accept more exposure to that product for their general financing needs.

5.0 Actions to be Avoided

In order to keep the Canadian market attractive for project sponsors and lenders, governments, public sector authorities, and policy makers should avoid a number of actions or changes to current procurement models. Particularly, governments / public sector authorities should:

- Not be tempted to participate as equity investors in PPP projects. This approach has several policy implications and potential conflicts and does not address the underlying challenges in the market today, nor the types of projects currently being procured. Moreover, equity participation in PPP projects would distort risk allocation in projects.
- Not reduce the number of short-listed bidders at the RFP stage. Healthy and competitive tension is only truly tested with three bidders.
- Not introduce funding competitions at the post-preferred proponent stage while continuing to require committed financing at the bid stage.

6.0 Summary Conclusions and Recommendations

The onset of the GFC has created significant challenges in the financing of transactions across all asset classes and sectors; infrastructure projects being delivered as PPP are no exception.

In general, Canada has faced a reduction in the availability of credit through a reduced pool of bank lending as international banks refocus on their home market, balance sheets are restructured and competition from other lending alternatives increase. A greater number of lenders are now required, resulting in an increased number of challenges as transaction size increases. Beyond these issues are increased pricing reflecting liquidity premiums, increased difficulty providing committed financing, tighter debt terms, reduced tenors and increased conditionality to reflect market flex provisions, market provision and validity refresh requirements.

Canada's public sector faces challenges when procuring public assets and services under a PPP model in this environment. Setting expectations with the public and managing public perception becomes a challenge due to the increased possibility of re-scoping projects to achieve affordability thresholds and increasing government contributions to support PPP. Uncertainties surrounding key parameters in financial bid submissions like committed financing and fixed interest rates along with the risks of not attracting sufficient lenders and sponsors threaten healthy competition and the best value solution. Furthermore, refinancing risk becomes more severe with shortened lending tenors.

The private sectors key challenges within this environment include a reduced supply of lenders leading to greater competition to find lenders, tighter requirements for committed financing at the RFP submission, answering the question of how to structure and price greater refinancing risk, an increased cost of debt and security packages and a potential gearing ratio change which may drive up project costs.

The following represent key structural considerations to address both the public and private sector challenges with the ultimate goal of mitigating risks and increasing the strength of the Canadian PPP market:

- A national pipeline of projects in Canada should ideally be organized such that the timing of the projects better meets the supply of resources required to complete them. This will increase lender participation and ease the burden on private sector sponsors, contractors and operators thereby stimulating more competition and potentially a better price.
- Continue to use a two-staged evaluation procurement process (i.e., technical evaluation, followed by financial evaluation to shorten the irrevocability period of financial submissions).
- Emphasis on stable scope and disciplined adherence to procurement schedule.
- Commitment to an outside date to reach financial close. This would allow all parties to rely on timelines specified and plan accordingly. Remedies to all parties should be considered if timelines are not abided by.
- Increased due diligence on private sector sponsors would ensure that the closed transaction is representative of the competitive process. Where appropriate, a mechanism to trigger

additional diligence such as additional financial analysis, model audits and commitment letters should be considered.

- Increased honoraria should be considered if public sector authorities require the private sector sponsors to undertake additional costs and/or risks associated with bidding committed financing and supporting letters of credit.
- A fair and objective manner to evaluate requested committed financing or letters of credit should be communicated and scored appropriately within the evaluation process.
- Establish clear and consistent definitions for refinancing risk and be clear on the amount of refinancing risk it intends to transfer to private sector sponsors.
- Lenders and arrangers would welcome government co-lending on select PPP transactions, however, co-lending of senior debt would need to be passive and subordinate to private lenders' debt and should not be too large as to impact equity returns and dissuade sponsors from pursuing projects.
- Government grants have their place in Canadian PPP projects, particularly in the current capital markets climate, but should not be too large as to impact risk transfer, impact equity returns and dissuade private sector sponsors.
- It may be possible for Export Development Canada ("EDC") to have a beneficial role to extend term loans, construction loans, standby credits, bridge loans, bonding, guarantees and other forms of project insurance due to EDC's ability to participate on current commercial terms while not being perceived as a "subsidizer" or lender of last resort.
- Within the value for money ("VFM") analysis, input costs should be refreshed during one or more stages in the procurement process to ensure affordability targets move in line with the market. The public sector comparator ("PSC") must be more transparent to promote a clearer understanding of how the PSC is derived while balancing this with the downsides of increased public scrutiny and a more competitive bidding by private sector sponsors.
- In order to maintain the attractiveness of the Canadian PPP market, governments should not be tempted to participate as equity investors, should not reduce the number of bidders short listed, nor introduce funding competitions post-preferred proponent selection while continuing to require committed financing at the RFP bid stage.

In general, there exists an underlying belief and confidence both globally and domestically that PPP will continue to prove itself as a valuable alternative to conventional procurement of public infrastructure and that infrastructure investment in Canada will emerge as a very desirable asset class, quite possibly stronger than before.

Appendix 1: Projects reaching Financial Close (September 25, 2008 to August 12, 2009)

Project Name	Model	Financial Close
Autoroute A30 (Châteauguay and Vaudreuil-Dorion)	DBFMO for 35 years	September 25, 2008
Woodstock General Hospital	BFM for 30 years	October 27, 2008
Quebec Service Areas	DBFMO for 30 years	November 3, 2008
Moncton Law Courts	DBFMO	January 20, 2009
Lakeridge Health Oshawa	Build-Finance	February 11, 2009
Royal Victoria Hospital (Barrie)	Build-Finance	February 20, 2009
Niagara Health System (St. Catharines Hospital)	DBFM for 30 years	March 27, 2009
Champlain Long-Term Care Facility	DBFMO for 25 years	April 9, 2009
Montreal Concert Hall	DBFMO for 30 years	May 28, 2009
Windsor Regional Hospital (Western Site)	Build-Finance	June 5, 2009
Fort St. John Hospital	DBFM for 30 years	July 17, 2009
Bridgepoint Health (Toronto)	DBFM for 30 years	August 12, 2009

Appendix 2: Provincial Government Measures

The following table provides an overview of provincial government measures in relation to the issues stemming from the GFC:

		BC	Alberta	Ontario	Quebec
Issues	Measures				
Capacity related issues					
Lack of availability in financing and/or inability to meet affordability ceiling	Upfront partial grant	Grants from Federal Government on qualifying transportation/transit projects.	Alberta has historically funded approximately 50% of project costs with milestone grants to improve value for money. There is no concept of an affordability ceiling.	Introduction of larger substantial completion payment and Year 2 payment (following substantial completion).	Grants from Federal Government on transportation/transit projects.
	Re-size project	Scope ladder.	Reduced size of bundle for current Schools project.		
Lack of availability of construction financing	Additional progress or milestone payments during construction	Milestone payments from regional hospital district authority up to 40% continue to be part of capital plan.	See above.		
Lack of availability of long term financing	Larger substantial completion payment	Preference for payments to match progress in construction.	Provincial contribution featured in all P3s, with milestone payments matching construction progress. Current Schools P3 includes a 20% holdback payable at substantial completion.	Introduction of larger substantial completion payment and Year 2 (following substantial completion) payments.	Considering substantial completion payment.

		BC	Alberta	Ontario	Quebec
Issues	Measures				
	Government substantially increasing grant funding to eliminate need for private bank debt	Referred to as the "wide equity" model, since it involves higher-than-normal sponsor equity contributions but larger acceptance payments that eliminate the need for commercial bank debt. The first project to use wide equity is the Fort St John hospital project.	Not being considered.	Not being considered.	Not being considered.
Lack of availability of commercial financing (either long term or short term)	Government Equity stake	Not being considered.	Not being considered.	Not being considered.	Not being considered.
	Co- lending from a Government or Government Agency	Co-financing on commercial terms by the Province on pari passu basis. (Considered for Port Mann).	Not being considered.	Not being considered.	Not being considered.
	Funding competition	Funding competition allowed within a set period after preferred proponent is declared mainly to enable PP to complete its financing and/or fall within affordability.	Not being considered.	Allow proponents to lock in their financing up until 30 days prior to CC/FC. Reserve right to run funding competition if financing is not competitive or within affordability level.	Funding competition by Public sector sponsor not considered thus far.

		BC	Alberta	Ontario	Quebec
Issues	Measures				
	Guarantee facility from Government or Government Agency	Not being considered. Co-lending seems to be preferred approach.	Not being considered.	Not being considered.	Not being considered.
Lack of market capacity to support multiple bids at RFP stage	Remove requirement for committed financing	Committed financing continues to be required subject to documentation and substantial adverse change. Shorter tenor allowed.	Committed financing not a requirement. However, proponents must hold their bid price for up to 90 days (Province will help to facilitate a 30-day close).	Committed financing not a requirement. Proponents also not permitted to enter into exclusivity arrangement with any lenders. Benchmarking of financing to monitor subsequent changes up until FC.	Committed financing continues to be required if financing is available.
	Staple financing	Not contemplated.	Not contemplated.	Not contemplated.	
Lack of market capacity to support multiple projects under bid across the jurisdictions	National-level coordination and prioritization of project pipeline	Pipeline consists of a couple of projects a year.	Pipeline consists of 1 - 2 projects per year (2 projects currently in procurement)	Large pipeline of projects which overlap within Ontario (though generally staged to minimize direct conflict) and potentially with other jurisdictions.	Large projects that have to be dealt with on a case by case basis.
Lack of foreign lenders related to basis risk (swapping CAD funded at LIBOR and lending CAD long term in CDOR)	LIBOR/CDOR risk mitigation	LIBOR/CDOR risk borne by the province as part of the protection of the benchmark rate.	No protection of LIBOR/CDOR risk; no indexing of the capital payments.	No protection of LIBOR/CDOR risk; no indexing of the capital payments.	No protection of LIBOR/CDOR risk; no indexing of the capital payments.

		BC	Alberta	Ontario	Quebec
Issues	Measures				
Tenor related issues					
Lack of long term financing	Remove requirement for long term financing covering the entire Concession period	Shorter tenor allowed.	Shorter tenor allowed.	Shorter tenor allowed.	Soft mini-perm allowed; foreign currency tranche allowed.
Refinancing risk resulting from the introduction of mini-perms in the capital structure	Adjust refinancing gain share/pain share between private and public sector	Considering different gain share/pain share on qualified refinancings on a case by case basis.	Province not considering any refinancing gain sharing/pain sharing provisions; refinancing risks to be borne entirely by the private sector.	Gain share/pain share being revisited to reflect new market conditions but skewed towards public sector. Not inclined to share the refinancing risks with private sector.	No hard mini-perm allowed. Otherwise no change in gain share / pain share.

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