UNITÀ TECNICA FINANZA DI PROGETTO

CIPE - PRESIDENZA DEL CONSIGLIO DEI MINISTRI

UTFP: 100 Questions and Answers

PRESIDENZA DEL CONSIGLIO DEI MINISTRI

FOREWORD

Over recent years Project Financing and, more generally, Public-Private Partnership (PPP) have been the focus of growing attention at both European and national level. Difficulties related to public finance as well as budget constraints imposed by Monetary Union membership have certainly encouraged the search for more efficient financing patterns alternatively to merely resorting to State resources.

Although PPP schemes are nowadays very widely employed for public works implementation, not always are such instruments applied adequately or upon full knowledge of their related operational mechanisms. In such perspective, the Project Finance Technical Unit (UTFP) at the Presidency of the Council of Ministers (Department for Economic Policy Programming and Coordination) can contribute to re-defining interaction between public sector and private sector and enhancing favourable context conditions through assistance, training and promotion activities aimed at spreading PPP culture. We thus deemed it advisable to produce a synthetic ***vademecum*** ensuring clarity of terminology and concepts, and aiming at dissemination of a common and uniform language, notably for public operators approaching PPP for the first time.

We wish the present volume will prove a helpful working tool for Public Administrations as well as all sector operators.

Eventually, I personally wish to thank all those who have passionately contributed their knowledge and devoted their expertise to this initiative.

Prof. Fabio Gobbo

Under-Secretary of State

Presidency of the Council of Ministers

INTRODUCTION

The Project Finance Technical Unit (UTFP) undertook to produce a synthetic and user-friendly publication addressed to all those who, within Italy's Public Administration and not solely, deal with Public-Private Partnership and Project Financing. The UTFP components who contributed to enlarging the present text thus wished to reply to most frequently posed questions as clearly as possibly, and invite to further survey Public-Private Partnership undoubtedly a key issue for Public Administrations nowadays. Adoption and correct implementation of PPP schemes can certainly optimise public spending and ensure more efficient and better quality services to citizens namely, PPP main beneficiaries.

Hence the guiding and supporting role underlying the whole of UTFP activity.

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UTFP: 100 Questions and Answers

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PROJECT FINANCE TECHNICAL UNIT (UTFP)

1. What is UTFP?

The UTFP (Project Finance Technical Unit) is a technical body established by Art. 7 of Law n.144/1999 within Italy's Inter-Ministerial Committee for Economic Planning (CIPE).

Pursuant to CIPE and related bodies' transfer to the Presidency of the Council of Ministers (PCM) (Law-Decree n. 181/2006 subsequently converted into Law n. 223/2006), the UTFP is currently encompassed in the PCM Department for Economic Policy Programming and Coordination.

2. What are UTFP institutional tasks?

Pursuant to the above institutive Law, the UTFP is in charge of:

Promoting use of infrastructure financing techniques through private capitals within Public Administrations, at both central and local level;

Assisting applicant administrations in all phases of Public-Private Partnership (PPP) implementation process;

Supporting commissions constituted within CIPE relatively to Italy's

infrastructural interventions financing.

Legislative Decree n. 190/2002 (enforcing Law n. 443/2001 — so-called ***Legge Obiettivo***, namely Framework Law for Infrastructures), extended UTFP tasks and enabled the Ministry of Infrastructure and Transport to avail itself of UTFP so as to perform preliminary analysis activities within strategic infrastructure projects.

Recent Legislative Decree n. 113/2007, amending the Code for Public Contracts as by Legislative Decree n.163/2006, ascribed further functions to UTFP within measures aimed at creating strategic infrastructures upon obligation, for contracting administrations, to acquire UTFP feasibility study findings related to such infrastructures. The obligation is aimed at verifying conditions for resorting to private capitals relatively to infrastructures whose management offers potential economic return.

3. WHAT ARE UTFP ACTIVITIES?

In order to fulfil its institutional tasks, the UTFP performs the following activities:

- Organisation and provision of technical, legal and financial assistance for applicant public administrations and, within them, promotion and dissemination of financing techniques via private capitals;

- Identification of activity sectors eligible for financing through private resources, as well as detailing and itemising technical, juridical and financial specificities

within each sector;

Collecting information, documentation and all and any helpful elements related to project-design, technical-economic evaluation, calls for tenders and their contracting phases, in order to simplify PPP use by administrations, also through uniform operational schemes applicable to various typologies of public works and public utilities services;

Providing support to evaluation of infrastructural interventions financed through private capitals and subject to CIPE evaluation by virtue of their scope and economic impact;

Monitoring PPP primary and secondary legislation;

Activating cooperation with institutions, bodies and associations operating in sectors relevant for UTFP activity;

Developing cooperation with NARS — consultative nucleus for implementation of guidelines for regulation of public utilities services — operating within CIPE.

4. WHAT ASSISTANCE ACTIVITIES ARE PROVIDED BY UTFP TO PUBLIC ADMINISTRATIONS?

Pursuant to its institutive Law, the UTFP "provides support to contracting administrations in identifying needs eligible to be fulfilled through works financed via private capitals as eligible for economic management".

Such support is referred to all PPP schemes and over all procedural phases, and notably as to:

Initiative design for identification of: i) infrastructural needs eligible for financing via private capital; and ii) most suitable procedures;

Evaluation of proposals submitted by promoters;

Over the tender, preparation of related call and documentation required to compare, evaluate and select submitted tenders;

Over contract execution, assistance aimed at analysis of possibly arisen problems.

5. What assistance is delivered to administrations for identification of initiatives compliantly with PPP actual logic?

UTFP assists administrations over implementation of PPP interventions by specifically identifying most suitable partnership patterns consistently with PPP underlying principles and assessing the economic sustainability and juridical feasibility of the given intervention.

6. What is technical, juridical and economic-financial assistance?

UTFP assists administrations free of charge and upon request throughout public

infrastructure implementation by providing clarifications, elaborating advice and drawing reports on related technical, juridical and economic-financial issues. Indications and opinions issued by the UTFP are not binding for the applicant administration, which is thus free to assume decisions deemed as advisable within its own discretionality powers.

7. How is the UTFP assistance procedure activated?

UTFP assistance procedure is activated upon specific formal request transmitted by the applicant administration via letter on headed notepaper bearing reference number and specifying the issue of the required assistance.

Following to the application, the UTFP will contact the concerned administration so as to either arrange a preliminary meeting or request the necessary documentation.

8. What documentation shall be transmitted to UTFP?

It depends on the type of assistance required and procedural phase for which assistance is requested. The documentation to be transmitted to UTFP shall in any case include all the elements necessary to enable UTFP to perform its consulting and support activities.

For instance:

In case of requests for legal advice, it may be sufficient to provide a detailed

description of the procedure adopted and main characteristics of the pursued intervention;

In case of requests for assistance over evaluation of proposals submitted by promoters (Art. 153 of Legislative Decree n. 163/2006), UTFP shall be provided with the documentation prescribed by the above legislation.

9. SHALL THE ADMINISTRATION COMMUNICATE TO UTFP DECISIONS TAKEN AS TO ASSISTANCE REQUESTED AND/OR INTERVENTION OUTCOME?

The Administration is not compelled to provide communications on the outcome of interventions for which UTFP assistance has been requested. Such communication would, in any case, produce the following advantages:

Inform on decisions taken by Administrations following to UTFP activity;

Enable UTFP monitoring on the status and outcome of assisted interventions;

Acknowledge and analyse successful cases, so as to identify best practices;

Acknowledge and analyse unsuccessful cases so as to identify related underlying causes and adopt initiatives aimed at preventing, limiting and/or removing them.

10. How does UTFP inform on its own activity?

In compliance with the aforementioned institutive Law, the UTFP will make known both activities performed and results attained on an annual basis through elaboration and delivery of an "Annual Report" and its subsequent transmission to CIPE by 31 July every year. CIPE will then transmit the Annual Report to the two Parliamentary Chambers. The Annual Report is also available on the UTFP institutional Website (http://www.utfp.it).

11. Where are UTFP documents made available?

The UTFP institutional Website (http://www.utfp.it) publishes technical documents, studies and reports drawn up throughout implementation of UTFP institutional tasks.

PPP FOR CIVIL WORKS IMPLEMENTATION

12. WHAT IS PPP?

PPP, namely Public-Private Partnership, is not specifically defined at national or EU level. As a matter of fact "Public-Private Partnership" refers to numerous different forms of cooperation between public sector and private sector.

Resort to PPP through various implementation methodologies can be envisaged whereby a Public Administration intends to entrust a private operator with a project for construction of a public infrastructure and management of related services.

All or most of the following elements coexist within a PPP intervention:

- Project-design;
- Financing;
- Construction or Renovation;
- Management;
- Maintenance.

13. How are PPP-eligible public works classified?

Projects eligible for PPP implementation can be classified in three main categories:

Projects intrinsically capable of generating revenue through use – Initiatives whose projected commercial revenue allows the private sector to recover investment costs. Public sector involvement is limited to identification of project implementation assumptions;

Projects requiring public contribution – Infrastructure initiatives whose commercial use is by itself insufficient to generate adequate economic return, but whose implementation will produce relevant positive externalities in terms of induced social benefits;

Projects whose private partner directly provides services to Public Administration – All public works (i.e. prisons, hospitals, schools) for which the private implementing and managing partner gains proceeds exclusively (or primarily) through payments issued by the Public Administration.

14. What are PPP interventions' main characteristics?

Public-Private Partnership main characteristics are:

Relatively long cooperation between public partner and private partner on various aspects of the project to be carried out;

Project funding pattern by the private sector. Public funds, often rather substantial, may integrate private funds;

Major role played by economic operators participating in various project stages. The public partner mainly focuses on definition of aimed objectives in terms of public interest, quality of provided services and pricing policy, and is also responsible for monitoring compliance with set objectives;

Distribution of risks between public partner and private partner, determined on a case-by-case basis, consistently with concerned parties' respective ability of assessing, controlling and coping with implied risks.

15. WHAT FORMS OF PPP ARE IDENTIFIED AT EUROPEAN LEVEL?

The "Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions" presented by the European Commission on 30 April 2004 differentiates between two major models of partnership:

Contractual Partnership — based upon contractual between public and private partners, whereby one or more tasks are assigned to the private partner. In such context, concession is certainly one of the most widespread models, characterised by direct links between private partner and final user i.e. the private partner provides a public service on behalf, yet under control, of the public partner;

Institutionalised Partnership — implying an entity jointly held by public and

private partners, and aimed at ensuring delivery of works or services for public benefit. In EU Member States, public authorities notably resort to such structures for management of public services at local level (i.e. water supply or waste collection services). Direct cooperation between public partner and private partner within a body with own legal personality enables the public partner, through its participation in the board of shareholders and decision-making bodies of the joint entity, to maintain relatively high control over project progress, which can however be adjusted over time depending on circumstances. It also allows the public partner to develop its own experience as to provision of concerned services, while resorting to private partner support. Institutionalised PPP can either result from establishment of a company jointly held by public sector and private sector, or by the private sector taking control of an existing public undertaking.

16. WHAT FORMS OF PPP ARE CARRIED OUT IN ITALY?

Italy's legislation provides both for contractual and institutionalised PPP.

The main forms of contractual PPP are:

Works Concession

Service Concession

Sponsoring

Financial Lease.

Furthermore other institutes can envisage contractual PPP forms aimed at implementation of specific interventions, namely:

Promoters of urban planning works

Promoters of tourist settlements

Concession of public assets to enhance their economic value.

Institutionalised PPP forms are:

Joint stock companies with predominantly public capital;

Joint stock companies with predominantly private capital;

Mixed joint stock companies established pursuant to Civil Code provisions;

Urban transformation companies.

17. WHEN ARE PPP SCHEMES ADVISABLE?

PPP schemes are to be utilised when recourse to private capitals and resources can produce benefits both for Public Administration and provided services' final users. Such benefits can be economic and result in reduced costs for infrastructure implementation and management, and/or enhanced efficiency and effectiveness, as well as improved quality of provided services.

18. WHAT ARE PPP ADVANTAGES?

Besides collective benefits in terms of management efficiency, quality of interventions and effectiveness of provided services, resorting to PPP can also enable overcoming public spending and budget constraints induced by European Monetary Union membership (extended at local level by the Stability and Growth Pact).

Furthermore, private partners' intervention in financing and management of public projects enables pursuing further aims, and namely: i) upgrading and fine-tuning of project evaluation methodologies via whole life costing techniques (i.e. infrastructure whole lifecycle) which enable optimising capital account expenses; ii) rigorous estimate of benefits that public operators can attain via partnership solutions alternative to traditional public financing (i.e. Value for Money); and iii) possibility to transfer part of project risks to private sectors compliantly with transparent, proportionate and *ad-hoc* patterns.

19. WHAT ARE PPP DISADVANTAGES?

Main criticalities identified in PPP interventions so far set up in Italy can be itemised as follows:

Excessive trust in PPP solving capacity, as the alternative to public resources poor availability;

Absence of preliminary verifications on PPP actual convenience in terms of optimisation of Public Administration costs;

Public Administrations' inadequate capacity to report and interact with private partner, both in identifying respective contractual obligations and monitoring contract execution;

Time extension for set-up of initiatives' operational phase, due to procedural complexity.

20. WHAT IS PROJECT FINANCING?

Project Financing (PF) stands for the financing of a project capable of generating, over its management phase, cash flows sufficient to repay the debt contracted for its implementation and related risk capital. The project is an autonomous entity to its promoters and is primarily evaluated by funders on the basis of its capacity to generate cash flows.

Project Financing was born as a financing pattern for financially independent public or private projects, characterised by high financial needs and possible risk distribution among the various participants.

In compliance with Italy's legislation, works concession represents a possible instrument to finance public works via Project Financing.

21. WHAT ARE THE DIFFERENCES BETWEEN PPP AND PF?

Public-Private Partnership (PPP) stands for all forms of public-private cooperation aimed at project-design, construction, financing, management and maintenance of public works or utilities services.

Project Financing (PF) indicates a specific financial technique adopted within PPP interventions to finance infrastructure projects.

22. WHEN ARE PF SCHEMES ADVISABLE?

PF schemes are to be preferred to traditional financing whereby:

Income flows are sufficient to cover management risks and repayment of capital

invested by partners and banks;

Management plays a major role;

Private partner takes on the financing, envisaging repayment limited to financed activity (i.e. without public guarantee);

Private partner assumes a considerable part of risks related to project implementation and management.

23. WHAT ARE PF ADVANTAGES?

PF main advantages can be differentiated, relatively to involved partners, as follows:

Advantages for Public Administration:

Implement remarkably interesting initiatives for general public, limiting their impact on public budget and without assuming their related financial and market risks, to be, instead, allocated to private partner;

Generally guarantee higher quality project-design, reduced implementation timing, and more efficient management.

Advantages for Private Partner:

Limit the impact of possible project failure on its own budget, as the project

stands for an autonomous entity;

Access to further “off-budget” financing, thus avoiding increasing its own debt ratios;

Activate high financial leverage (possible debt percentages on own resources up to 70-90%);

Share with other (public/private) enterprises both competences and resources on innovative, thus riskier, projects.

24. WHAT ARE PF DISADVANTAGES?

PF main disadvantages are:

Higher costs, due to the more complex contractual structure required to properly pattern interventions (i.e. legal, technical and financial costs for implementation, insurance costs, commissions, etc.).

Rigid contractual structure, upon conclusion of negotiations among all actors involved.

JURIDICAL INSTRUMENTS AND PROCEDURES

25. WHAT IS PPP REFERENCE LEGISLATION IN ITALY?

Legislation disciplining PPP institutions is mostly laid down in Legislative Decree n. 163 of 12 April 2006 and subsequent amendments ***(Codice dei Contratti pubblici di Lavori, Servizi e Forniture*** - Code of Public Contracts for Works, Services and Provisions — hereinafter the Code) with regard to PPP contractual subjects. Legislative Decree n. 267 of 18 August 2000 (Local Authorities Single Text), instead, provides for general discipline on enterprises with public-private mixed capital (so-called Institutionalised PPP).

Along with Civil Code rules, single sector laws also apply (i.e. water resources, waste, energy, transports, gas, etc.).

26. WHAT ARE WORKS CONCESSIONS?

Pursuant to Art. 3 Para 11 of the Code, works concessions are defined as "remunerative written contracts" aiming at final and executive project-design and execution of public works and structurally or directly connected works, as well as related functional and economic management, and featuring the same characteristics as public works contracts, except in that the compensation for works to be carried out consists either solely in the right to exploit the concerned works or in such right together with payment.

As a matter of fact, works concessions are characterised by management responsibilities (i.e. economic risk) being transferred to the concessionaire. Such risk, strictly depending on concessionaires' management proceeds, represents a key element to distinguish concessions from public contracts.

27. HOW ARE WORKS CONCESSIONS AWARDED?

Current legislation distinguishes between two main schemes for awarding works concessions: 1) a public initiative procedure (i.e. traditional procedure) regulated by Art. 142 and subsequent articles, and 2) a private initiative procedure, activated by the so-called Promoter and disciplined by Art. 152 and subsequent articles of the above Code.

28. WHAT PRELIMINARY FULFILMENTS ARE REQUIRED BY CURRENT LEGISLATION TO SET UP A PPP INTERVENTION FOR CONSTRUCTION AND MANAGEMENT OF PUBLIC INFRASTRUCTURES?

Administrations identify their own needs upon analysis of the demand for public works, thus devising preliminary projects and feasibility studies to support the tri-annual programme of public works and respective updating. Programming represents the decisional phase in which Public Administrations set their own objectives and implementation patterns, so as to comply with criteria of maximum efficiency and economy. Programming documents also encompass public works to be implemented

through private capitals.

29. How are interventions inserted into public works programming instruments?

Art. 128 of the Code represents programming main regulatory reference and establishes that implementation of > €100,000 public works (single amount) shall be performed in accordance with a tri-annual programme and related annual updates, made public through notice displayed at the premises of the contracting administration for at least 60 consecutive days and, whereby necessary, through publication on buyer's profile.

The tri-annual programme shall lay down a priority sequence of civil works among which top priority will be ascribed to maintenance, recovery of existing patrimony, completion of already set up works, approved executive projects, as well as interventions that may be mostly financed via private capital.

Inclusion of a given work in the annual list is subordinated to feasibility study pre-authorisation for < €1,000,000 interventions, and to preliminary project-design pre-approval for €1,000,000 or > €1,000,000 interventions.

The annual list issued by contracting administrations shall be approved jointly with related budgets and contain indications of both forecast and/or allocated financial resources.

30. WHAT IS A FEASIBILITY STUDY?

A feasibility study is a document identifying interventions aimed at fulfilling a given Public Administration need, indicating functional, technical, operational and economic-financial requirements of the interventions so as to ensure proper fulfilment. Feasibility studies also provide analysis of the state-of-the-art of each intervention in its possible historical-artistic and architectonic characteristics, in terms of landscape and environmental sustainability, as well as its socio-economic, administrative and technical components.

31. HOW DOES ART. 144 (CODE) APPLY?

The procedure establishes that the awarding administration may entrust works concessions through either open or restricted procedure in compliance with the most economic and convenient offer criteria. On the basis of an either preliminary, final or executive project, the Administration issues and publishes a call for tender containing all the information indicated in Annex IX B to the Code. Furthermore, the Administration forwards invitation letters to selected competitors, then receives, evaluates and selects their tenders, and subsequently awards and entrusts a concession contract.

32. HOW DOES ART. 153 (CODE) APPLY?

The procedure establishes that private subjects (so-called Promoters) may present proposals for implementation of an initiative encompassed in the tri-annual

programming of public works of the granting administration. Each promoter is required to elaborate a proposal encompassing a preliminary project, a draft contract, a business plan, and the necessary documents on feasibility and environmental background of the initiative.

Once the proposal has been acknowledged by the administration as having public interest, it represents the basis for a public selection aimed at identifying the suitable concessionaire.

33. When may proposals be submitted as by Art. 153 (Code)?

Interested subjects shall present their proposals within 180 days from publication of the indicative notice through which the contracting administration informs of the presence, amongst programming instruments, of interventions to be implemented via private capitals as eligible for economic management. The notice shall lay down the basic criteria followed by the awarding administration to evaluate the proposals submitted.

34. What subjects may submit proposals as by Art. 153 (Code)?

Pursuant to Art. 153 of the Code, proposals may be submitted by subjects proving the technical and financial requisites established by Art. 99 of Presidential Decree (D.P.R.) 554/1999, as well as by single enterprises, commercial companies, cooperatives, consortiums, production and labour/work cooperatives, consortiums of handicraft enterprises, permanent consortiums and temporary groupings of abovementioned

subjects, and engineering companies as by Art. 90 Para. 2 b) of the Code, also whereby associated or grouped into consortiums with financing organisations and service operators.

35. WHAT DOCUMENTS MUST BE INCLUDED IN THE PROPOSAL SUBMITTED BY THE PROMOTER?

Art. 153 of the Code prescribes that proposals shall contain and itemise:

Assessment of territorial and environmental background;

Feasibility study;

Preliminary project;

Draft contract;

Business plan and related asseveration

Detail of service and management characteristics;

Indications as by Art. 83 Para 1 - Code (i.e. elements upon which the economically most convenient offer is evaluated) and guarantees offered by the Promoter to the contracting administration;

Expenses borne to issue the concerned proposals (i.e. max. 2.5% of the

investment value, upon Business Plan).

36. WHAT IS A DRAFT CONTRACT?

A draft contract is aimed at disciplining interaction between the granting administration and the concessionaire throughout the concession period and represents the core of all project contractual relationships. On the basis of the draft contract, all the other contracts composing the interventions are laid down (i.e. financing contract, insurance contract, provision contract, etc.). The elements composing the proposal must therefore be fully compliant with the contract itself. In particular, the latter should lay down, in terms of legal obligations amongst parties, all the economic, project-design, technical-executive, operational and administrative components of the envisaged intervention.

A draft contract is a document included in the proposal submitted by the Promoter, which allows drafting, yet upon proposal submission itself, contents and procedures of mutual and respective obligations (financial, too) of the parties involved in the concession relationship.

Upon evaluation of the contract submitted by the Promoter, the contracting administration is entitled to amend it. Art. 86 of Presidential Decree (D.P.R.) n. 554/1999 lays down mandatory minimum elements to be provided by draft contracts.

37. WHAT IS A BUSINESS PLAN?

The Business Plan (hereinafter BP) is the document itemising assumptions and basic conditions for the economic and financial balance of both investments and management throughout the concession period. Therefore, BP represents the instrument to estimate project profitability and thus justify proposed tariffs or fees (in the case of works for direct use by Public Administration), as well as hypothetical need for public grants upon investment execution.

BP is moreover recalled in Art.153 of the Code as a key element in proposal evaluation. As a matter of fact Art.153 provides that the "economic-financial value" profile of a submitted plan shall be taken into account in evaluating proposals.

38. WHAT IS "ASSEVERATION"?

Asseveration consists in a document drawn up by a credit institution/other entrusted subject (as by Art. 153 - Code) so as to certify BP consistency and balance, as well as project capacity of generating adequate cash flows to ensure debt service and settlement, and risk capital remuneration — hence possible implementation of the given public work via private capital.

Therefore asseveration represents the only verification of interventions' financial structure consistency. It nevertheless does not include BP data verification.

39. What fulfilments follow the proposal submission phase?

Within 15 days upon receipt of tenders, contracting administrations entrust procedure responsibility to a public officer, thereof inform the concerned promoters, and then verify that submitted documents are complete and, if necessary, request for their integration.

Within 4 months upon receipt of the concerned offer, the contracting administration sees to evaluating and identifying public interest proposals. Whereby necessary, the public officer in charge of the procedure can agree with the Promoter for a longer examination and evaluation period.

40. How is proposal evaluation performed?

The proposal evaluation procedure encompasses the following phases:

Feasibility evaluation of the proposal under the profiles listed in Art. 154 of the Code (i.e. construction, urban-planning and environment, project quality, functionality, public accessibility, return, management and maintenance costs, concession duration, deadlines for completion of concession works, tariffs to be applied and related updating methodologies, business plan value, and draft contract contents);

Verification of absence of obstacles to proposal implementation;

Hypothetical comparative analysis whereby various proposals are submitted

relatively to the same public work(s);

Hypothetical debate between promoters and contracting administration;

Identification of public interest proposals.

41. WHAT ARE THE IMPLICATIONS OF ACKNOWLEDGING A PROPOSAL AS BEING OF PUBLIC INTEREST?

Acknowledging a proposal as being of public interest is necessary to proceed, over the three following months, to the contracting phase (as by Art. 155 - Code) upon application, whereby necessary, of the discipline regulating expropriation for public interest. Public interest acknowledgement renders the proposal binding for the Promoter whereby no other tenders are submitted. The proposal is complemented with a guarantee equal to 2% of investment costs indicated in the notice and an additional guarantee equal to the expenses borne for the submitted proposal (2.5% limit of investment value) to be provided, upon request by the contracting administration, ahead of the tender launch.

42. HOW IS A TENDER CARRIED OUT AS BY ART. 155 (CODE)?

The procedure for concessionaire identification encompasses two phases: i) the first aimed at selecting the two best tenders upon preliminary project presented by the Promoter — if necessary amended by the administration and setting requirements to

identify the most economically advantageous tender — consistently with measures envisaged by the BP presented by the promoter; ii) the second, whereby possible and consisting in a negotiated procedure between promoter and subjects selected in the previous phase so as to improve the tendered project and award it.

43. WHAT IS A SPECIAL PURPOSE VEHICLE?

A Special Purpose Vehicle (SPV) is a joint stock company (*SpA - Società per Azioni*) or limited company that the concession awarding subject has the right/duty to establish, whereby provided in the tender notice. The SPV takes over the concession relation without involving contract cession or requiring authorisations or approvals.

The take-over results in the Special Purpose Vehicle becoming the official concessionaire and replacing the contractor in all relations with granting administrations. The so-called Special Purpose Vehicle (SPV) allows guaranteeing the project juridical and economic separation from other activities by subjects involved in the project itself.

44. WHAT CAUSES THE EXTINCTION OF CONSTRUCTION AND MANANGEMENT CONCESSIONS ?

Concessions may be extinguished due to either non-fulfilment by the granting authority, reasons ascribable to concessionaire, or concession revocation by the granting subject for public interest reasons.

45. WHAT ARE THE CONCESSIONAIRE RIGHTS FOLLOWING THE RESOLUTION OF A CONSTRUCTION AND MANAGEMENT CONCESSION?

In case of concession resolution due to non-fulfilment by the granting administration, or whereby the latter revokes the concession for public interest reasons, the concessionaire is reimbursed of:

- Implemented works' value plus accessory charges net of amortisation or, whereby works have not successfully passed the test phase, the costs actually borne;
- Penalties and other costs borne or to be borne as a result of the concession resolution;
- Indemnity for compensation of missed earnings (i.e. 10% of the value of works still to be implemented or part of the service yet to be managed) assessed upon BP.

All the abovementioned amounts are primarily aimed at refunding concessionaire's funders and are only made available to concessionaire once all such credits have been fulfilled.

46. WHAT IN CASE OF CONCESSION RESOLUTION DUE TO CONCESSIONAIRE?

In case of concession resolution for reasons ascribable to the concessionaire, project

funders can prevent resolution by designating a company for concession take-over within 90 days of receipt, by the granting subject, of the notified intention to resolve the relation.

Acceptance by the granting administration is subject to the following conditions:

The designated company has technical and financial characteristics substantially equivalent to the concessionaire characteristics at the time the related concession was granted;

Concessionaire non-fulfilment — reportedly cause of resolution — ceases within a given period of time defined and agreed upon by both granting administration and funders.

47. WHAT ARE SERVICE CONCESSIONS?

Art. 3 Para. 12 - Code defines service concession as a contract with the same characteristics as a public contract for services, except in that the consideration for services provision either solely consists in the right to exploit the service, or in such right coupled with payment.

48. HOW ARE SERVICE CONCESSIONS AWARDED?

Art. 30 (Code) lays down general discipline on service concessions, not subject to Code

provisions for the rest. In particular, Art. 30 Para 3 establishes that concessionaire shall be selected in compliance with the Treaty general principles (notably as to transparency, adequate publicity, non-discrimination, equal treatment, mutual recognition, and proportionality) upon informal selection involving at least five invited participants — upon availability of sufficient number of qualified participants relatively to the concession object — and consistently with pre-determined selection criteria.

Furthermore, the above Art. 30 establishes that, at bidding stage, payment may be granted to concessionaire whereby the latter is obliged to apply, to users, prices lower than the sum of the service cost plus ordinary profits, or whereby the concessionaire shall be granted with successful business plan of investments and related management as to the quality of the service to be provided.

49. WHAT IS SPONSORING?

Sponsoring is the contract through which the administration (*Sponsee*) offers to a third party (*Sponsor*) the possibility to publicise its name, logo, trademark and products in ad-hoc spaces, upon payment in assets, services, or other utilities.

As to Art. 26 specific discipline (Code), sponsoring contracts are aimed at implementation of public works, services, and provisions.

50. How are sponsoring contracts awarded?

Art. 26 (Code) establishes that the same provisions on subjective requisites of contract project-designers and implementers shall discipline sponsoring contracts for implementation of public works, and/or interventions for restoration and maintenance of movable assets and decorated surfaces of architectonic assets subject to preservation measures as by Legislative Decree n. 42 of 22 January 2004 (Code on cultural and natural heritage), as well as services or provisions.

Furthermore, the contracting administration is required to formulate and issue adequate prescriptions on contract project-designing, management and implementation.

51. What is Financial lease for public works ?

Financial Lease represents the contract allowing users to have access to given fixed or movable assets, made available by a granting administration upon payment of periodical fees, and envisaging possible redemption of given assets upon contract conclusion.

Art. 160-*bis* (Code), in particular, provides that contracting administrations can recourse to financial lease for realisation, acquisition and completion of public infrastructures.

52. How is a leasing contract for public works awarded?

The Code establishes that the call for lease award shall indicate: subjective, financial,

economic, technical-operational and organisational requirements for participation; technical and aesthetic characteristics of the concerned intervention; related costs, timing and guarantees; economic-technical evaluation parameters of the economically most advantageous tender, along with other Code provisions.

The bidder may be a so-called "general contractor" or a temporary association jointly established by a funder and the implementer, responsible for specific obligations respectively assumed. In case of either failure, non-fulfilment or unexpected hinder to obligation fulfilment by either subject establishing the temporary association, the other can replace it, upon approval by the awarding administration, with another subject proving the same requisites and characteristics.

53. WHAT ARE URBANISATION WORK PROMOTERS?

With regard to public works to be implemented by private operators entrusted with construction permit and first-hand implementing urbanisation works upon total/partial deduction of the grant envisaged for permit issuance, Art. 32 Para 1 g) - Code enables the administration issuing construction permits to provide that, relatively to urbanisation works, the construction permit holder will act as Promoter, thus submitting work preliminary project-design to the concerned administration within 90 days from such permit.

Upon outcome of the tender called and carried out by the administration issuing the construction permit and project-design presented by the Promoter, the latter may exert, as long as expressly provided by the tender notice, pre-emptive right versus the highest bidder within 15 days from the award, providing the latter with 3% of the value

of the awarded tender within 15 days from the award date itself.

54. WHAT ARE TOURIST SETTLEMENT PROMOTERS?

Art. 1 Para 583 and subsequent of Law n. 266 of 23 December 2005 (Italy's Budget Law for 2006) provides that proposals may be submitted for creation of quality tourist settlements also through concession of public maritime assets and through upgrading of both new and pre-existing settlements. Proposals shall be submitted to the concerned Region, which will see to calling for tenders to be selected upon the most economically advantageous tender criteria, in compliance with Art. 155 (Code), and only whereby various proposals are put forward for the same concession of public assets. No limit is set for concession duration. Grantor fees shall however be specified.

The above provisions may be applied upon issuance of an ad-hoc regulation by Italy's Minister of Productive Activities, in concertation with the Minister of the Economy and Finance and the Minister of Environment and Territory.

55. WHAT ARE PUBLIC ASSETS CONCESSION FOR VALORISATION AND CAPITALISATION?

Art. 1 Para 259 of Law n. 296 of 27 December 2006 (Italy's Budget Law for 2007) provides that, upon payment and for a period not longer than fifty years, State-owned assets may be granted or leased to private operators for their upgrading and re-conversion through recovery, renovation and restructuring interventions also via new applications aimed at either economic activities or services provision to citizens,

consistently with Code provisions regulating cultural and natural heritage.

Concessions and leases are assigned through public procedures for the period required to pursue the set intervention business plan, and however not longer than fifty years. Awarding criteria as well as concession and leasing conditions are laid down in tender notices by the *Agenzia del Demanio* (Italy's Public Property Agency), which shall also envisage, in case of concession revocation or lease withdrawal, an indemnity to be granted to the leasee and assessed on the basis of the Business Plan (BP). As to assets valorisation and capitalisation regulated by the above Article, such assets may be entrusted to third parties pursuant to Art. 143 (Code), as compatible.

56. WHAT IS A "MIXED COMPANY"?

It is a company with public-private mixed capital, established for creation and/or management of public works or services and notably:

Joint Stock Companies *(SpAs)* with mixed public-private capital for provision of economically relevant local public services. As to conditions and procedures for entrustment and management of local public services, Art. 113 of Legislative Decree 267/2000 integrates the sector discipline;

Joint Stock Companies *(SpAs)* with local authorities' minority participation (Art. 116 of Legislative Decree n. 267/2006) for exercise of local public services without economic relevance and realisation of works for correct service implementation, as well as for realisation of infrastructures and other public

interest interventions;

Mixed *SpAs* established pursuant to Italy's Civil Code i.e. so-called Special Purpose Vehicles (SPV), for creation of public infrastructures and management of related services, established pursuant to Civil Code provisions on corporations.

57. How are private partners selected in "mixed companies"?

Art. 1 Para 2 - Code establishes that private partners shall be selected through public procedure tendering.

58. What are Urban Transformation Companies?

Urban Transformation Companies, regulated by Art. 120 of Legislative Decree n. 267/2000, are mixed joint stock companies, instituted by metropolitan cities and municipalities and also participated by their respective Province and Region to project-design and implement urban transformation interventions, via application of current urban planning instruments and upon acquisition, transformation and commercialisation of concerned areas.

Area identification stands for acknowledgment of their public utility, also whereby not related to public interventions. Areas belonging to local entities may be attributed to an urban transformation company via concession. Private shareholders are selected through public procedure, and relations between local entities and urban transformation joint

stock companies are regulated by a covenant laying down rights and duties of parties involved.

ECONOMIC-FINANCIAL ASPECTS

59. WHAT ARE THE AIMS OF A FEASIBILITY STUDY?

The Feasibility Study (FS) pertaining to an investment project is aimed at transforming a project idea into concrete investment proposals upon evaluation of instruments,

techniques, and resources required to attain a given specific purpose.

FS is therefore aimed at analysing information needs related to development of a new project drafted over the planning phase and thus attaining:

- Identification of one or more alternatives aimed at identifying different patterns to implement the original idea;
- Provide the decision-making body with adequate evaluation to take decisions relatively to project operational implementation;
- Proposing a technical organisational and financial solution through evaluation of: i) solutions' costs; ii) benefits attainable over time; iii) implementation-related risks; and iv) consequences of project objectives' failed achievement.

60. WHAT IS COST-BENEFIT ANALYSIS?

The Cost-Benefit Analysis (CBA) is a technique aimed at evaluating whether it is convenient to carry out an investment on the territory consistently with aimed objectives.

CBA therefore consists of a set of operational rules aimed at guiding Public Administration in choosing among various intervention options. Starting from financial analysis results, CBA aims to financially evaluate all the cons (costs) and pros (benefits) that the investment generates for a specific reference group.

The CBA objective is to attain a comparative analysis of benefits and costs related to project implementation, so as to assess whether the project will actually produce an increase (or decrease) in the wellbeing standard of the concerned community so as to suggest or discourage its implementation.

61. WHAT IS FINANCIAL ANALYSIS?

Financial Analysis (FA) is a method aimed at analysing future monetary flows generated by an investment. FA allows evaluating feasibility and financial return of an investment project through aggregation of corporate budget items within an integrated accounting plan (Business Plan).

Financial Analysis is therefore aimed at assessing whether the project will manage to generate sufficient cash flows to cover expenses — whereby deemed as necessary — or whether, instead, insolvency risks occur.

The *Discounted Cash Flow Method* is the most widespread method to aggregate FA values, based on recording of all expenses actually borne or monetary proceeds generated by the project throughout its lifecycle, discounting future values by an appropriate discount factor.

62. WHAT IS THE PPP TEST?

The Public-Private Partnership Test (PPP Test) is aimed at verifying whether necessary

conditions for use of PPP schemes actually exist, and notably:

Compatible legislative and regulatory framework;

Risks transferable to private subjects;

Actual organisational skills and know-how by the granting Administration adequate to undertake PPP interventions;

Payment mechanisms related to precise quantitative and qualitative performance levels of the given service;

Possible application of tariffs on services to be issued, and verification of collective consensus to pay such services. In the case of projects whose private partner is to provide services to the Public Administration, verify whether the concerned PA can actually bear payment of related fees.

63. WHAT ARE THE AIMS OF A BUSINESS PLAN?

A Business Plan (BP) can be defined as a strategic planning and income evaluation instrument utilised for investment decisions and capable of pre-emptively evaluating risks and opportunities set by a new project. A Business Plan is also aimed at identifying:

Revenue capacity of the activity to be managed through project implementation (i.e. issuance of services and production of assets);

Financial needs related to implementation of single interventions and overall investment.

64. How is a Business Plan structured?

The Business Plan (BP) is developed through a system of inter-dependent accounts which allow determining the economic convenience of a new investment project and its capacity in terms of debt service and risk capital remuneration.

The first step consists in identifying a detailed and plausible set of hypotheses to be employed as an information base for subsequent creation of Profit and Loss Account and Balance Sheet provisional schemes, as well as for calculation of investment-generated cash flows.

65. What are Business Plan main inputs?

Business Plan correct elaboration requires performing a detailed analysis of the following input data:

Timing hypotheses (i.e. year of construction start, construction conclusion and concession ending, etc.);

Technical hypotheses (i.e. investment costs);

Operational management hypotheses (i.e. operational proceeds and costs, tariffs, etc.);

Financial management hypotheses (i.e. interest rates, credit lines, interest rate margins, banking commissions, discount factors, financial structure, grants, etc.);

Fiscal hypotheses (i.e. fiscal imposition, amortisation methods and rate);

Reserve hypotheses (i.e. legal reserve, cash reserve, cash reserve for debt);

Circulating capital hypotheses (i.e. payment and proceeds average timing).

66. WHAT IS A PREVISIONAL PROFIT AND LOSS ACCOUNT?

Previsional Profit and Loss Account (PL) synthesises the profitability of a new entrepreneurial initiative in its envisaged scope and through management over a reference period.

The Profit and Loss Account therefore represents the synthesis of a company's economic cycle without taking into account its related financial cycle, considered in developing previsional cash flows.

67. What is a previsional Balance Sheet?

A previsional Balance Sheet (BS) represents the enterprise patrimony in a given timeframe.

BS enables identifying capital sources and investments performed over a new investment project.

A previsional Balance Sheet (BS) encompasses two sections:

Activities (uses/applications);

Liabilities (funding sources).

The total of activities is always equal to total liabilities, namely total uses shall always be equal to total funding sources.

68. What are previsional Cash Flows?

Previsional Cash Flow (CF) plan records and itemises all foreseen monetary revenues and expenses resulting from management of a new investment project.

The CF reveals the capacity of a given initiative to bear, through available resources, foreseen expenses and thus, presence/absence of a monetary balance for construction

and management phases. Cash Flow plans can be drawn upon projection of monetary revenues and expenses for each reference timeframe.

CF plans thus allow identifying cash availability/needs at the end of each reference timeframe, so as to set necessary actions to manage lower liquidity periods.

69. WHAT IS INVESTMENT ECONOMIC-FINANCIAL BALANCE?

The term Economic-Financial Investment Balance stands for simultaneous compliance with economic convenience conditions and investment financial sustainability.

70. WHAT IS INVESTMENT ECONOMIC CONVENIENCE?

Investment economic convenience refers to its capacity to create value over construction and management concessions and generate profitability for the invested capital adequately to private investors' expectations.

The analysis of investment economic convenience can be patterned on the basis of various evaluation methodologies, and most frequently on specific indicators apt to provide synthetic evaluation of the investment capacity to create value and generate adequate profitability.

To such end, reference shall be made to the following indices:

NPV (Net Present Value);

IRR (Internal Rate of Return).

71. WHAT DOES NPV STAND FOR?

NPV stands for *Net Present Value* namely, the present value of investment's future net cash flows minus initial investment. Only whereby NPV is positive should the investment be made (unless an even better investment exists).

Positive NPV substantially indicates project capacity to free monetary cash flows to repay initial spending, remunerate capitals employed and possibly keep resources available for further applications. Therefore any investment producing a NPV >= 0 creates value.

NPV calculation for specific initiatives usually envisages a two-phase procedure:

Phase 1: evaluation is carried out considering the investment project exclusively in the hypothesis of financing through own capital (i.e. all equity). In such case, the selected discount rate will only reveal risk capital, equal to the yield required by shareholders in absence of debt (unlevered NPV).

Phase 2: possible resort to external coverage sources in addition to own resources made available by shareholders (levered NPV).

72. What does IRR stand for?

IRR stands for Internal Rate of Return, namely a capital budgeting metric used by firms to decide whether they should make investments. IRR is an investment efficiency indicator, opposed to Net Present Value (NPV), which indicates value or magnitude.

In another sense, IRR can be interpreted as gross profitability measure revealing investment yield net of employed resources (unlevered IRR). As for NPV, also IRR can be calculated taking into account coverage sources other than own resources (levered IRR).

The analysed evaluation criteria are based on comparison between the calculated project IRR and a threshold rate that, consistently with aforementioned NPV features, will correspond to the invested capital estimated cost.

Whenever an investment reveals a measured IRR higher than the cost of required funding sources, it should certainly be assessed as economically convenient and thus be carried out.

73. How is the SPV shareholders' profitability measured?

Investment operation economic convenience is to be evaluated also analysing the SPV shareholders' point of view, so as to appreciate the pursued profitability level. In such a case, IRR and NPV shall be calculated upon cash flows due to shareholders, and the

selected discount rate will solely indicate the risk capital opportunity cost.

74. WHAT IS "FINANCIAL SUSTAINABILITY"?

The term financial sustainability refers to project capacity to generate monetary flows sufficient to guarantee loan reimbursement and adequate shareholders' profitability.

Project financial sustainability expressed in terms of cover ratio refers to particular indicators capable of evaluating the related security margin for funding subjects as to guaranteed punctual debt service payment.

Main coverage factors considered are: i) *Debt Service Cover Ratio* (DSCR); ii) *Loan Life Cover Ratio* (LLCR).

75. WHAT IS DEBT SERVICE COVERAGE RATIO?

The Debt Service Coverage Ratio (DSCR) measures the ability of a business to fulfil its regular debt obligations. DSCR expresses the ratio between the annual business cash flow available for debt repayment and its total debt service. DSCR indicates a safety margin available should the business profits, and its cash flows, temporarily decline. Sophisticated investors and small business lenders insist on DSCRs greater than 1.

A standard level against which debt coverage ratios can be compared is not actually available. Therefore the admissible limit will be negotiated on a case-by-case basis,

relatively to project riskiness, provided guarantees, and parties' contractual strength.

76. What is Loan Life Cover Ratio?

Loan Life Coverage Ratio (LLCR) is a ratio commonly used in Project Finance. The ratio is defined as: Net Present Value of Cash Flow Available for Debt Service ("CFADS") / Outstanding Debt in the period NPV (CFADS) measured only up to debt tranche maturity. The ratio provides an estimate of the project credit quality from a lender perspective.

Such indicator has a less immediate interpretation than DSCR. We can nevertheless affirm that if numerator is higher than denominator, a coefficient higher than 1 results, thus guaranteeing funders.

Nevertheless the same considerations made for DSCR apply to LLCR quotient: funders generally require a security margin value higher than 1 (variable depending on project riskiness, provided guarantees, and parties' contractual strength).

77. What are PPP interventions' funding sources?

The funding sources of Public-Private Partnership initiatives are:

- Own Capital/Risk Capital (i.e. own means, equity)

Intermediate Capital

Debt Capital

Grant

The first three items above represent private funding sources.

78. WHAT FORMS OF OWN CAPITAL ARE ENVISAGED?

Own capital can be differentiated in three categories:

Ordinary Shares: namely the real capital of a joint stock company (SpA). Each share stands for the capital contribution by a given subject and is related to a host of rights (i.e. vote, new issue option, etc.);

Special Shares: privileged(with limited vote) and savings;

Partners' Loans: whereby a firm has temporary financial needs, it can resort to partners' loans rather than capital increase upon payment.

Within PPP interventions, the first and third categories are most recurrent. Equity remuneration results from dividend distribution.

79. WHAT IS AN INTERMEDIATE CAPITAL?

Intermediate capital sources are hybrid forms of own capital and debt capital in terms of risks and costs.

Own capital can be differentiated in the following categories:

Mezzanine Debt

Convertible Bonds

Privileged Shares and savings

High-yield bonds.

80. WHAT IS DEBT AND WHAT ARE ITS FORMS?

Debt is an available source to finance investments and implement infrastructures. Debt can be differentiated as follows:

Mortgage: monetary loan with long-term deadline through which the beneficiary engages itself to periodically repay quotas of borrowed capital plus interests;

Bonds: collection of capitals from either savers and/or institutional funders.

81. What are financial costs?

Within PF interventions, financial costs are represented by the sum of structuration costs (commissions) and pre-amortisation interests.

82. What are banking fees?

Banking fees are the main form of bank remuneration over debt structuration and issuance phases, necessary to implement Project Financing interventions.

Main banking fees are:

Management Fee: paid by debtor to bank(s) for expenses borne for organising the given intervention (variable equal to 0.35% - 2% of loan value);

Commitment Fee: owed by borrower to bank(s) relatively to credit quota granted but not utilised;

Agency Fee: owed to bank(s) for loan administration, and usually paid as a fixed annual quota.

83. What are pre-amortisation interests?

Pre-amortisation interests are paid upon capital quota used by the subject receiving

funds (i.e. borrower) over utilisation phase (construction period plus a grace period) without engagements in terms of capital quota return.

84. How is maximum sustainable debt determined?

The maximum sustainable debt within a PF operation varies depending on project riskiness and capacity to generate cash flows adequate to guarantee debt reimbursement and profitability for shareholders. PF operations are generally characterised by a 75/25 debt-equity ratio financial structure.

To this end, it is necessary to create cash flows capable of revealing cash availability or needs upon conclusion of each reference timeframe.

85. How is the bank loan interest rate determined?

Bank loan interest rates vary according to project riskiness and capacity to generate cash flows, and are usually determined through a rating process encompassing a base rate to which a *spread* is to be added.

86. What is a bank loan base rate?

So as to carry out a Financial Analysis, it is necessary to identify the interest rate

structure suitable to define the base cost (base rate) of loans to which a spread (margin) required by funders is added consistently with project riskiness.

For base rate identification, reference can be made to:

EURIBOR Rates (short-term rate 1 year max. duration) if a variable rate is applied to the granted credit;

Interest Rate Swap (for deadlines equal to or longer than 1 year) if a fixed rate is applied.

Both rates express an average of rates recorded by the financial market depending on negotiations occurred over the given single day. In such case, the reference information base can be retrieved from the "*Il Sole24ore*" newspaper (reporting both rates) as well as from the site *www.euroribor.org*, which reports *Euribor* values relatively to concerned deadlines and BP elaboration period.

The main difference between fixed and variable rates lies in the uncertainty of debt flow to be reimbursed.

A fixed rate is usually applied to PF structured interventions.

87. WHAT IS THE LOAN BASE RATE SPREAD?

Spread is the margin to be added to base rate, indicating project riskiness and affecting

the interest quota to be reimbursed.

88. When are grants issued?

The granting administration can provide the concessionaire with a contribution (payment), whereby the concessionaire itself is obliged to apply "to users, prices lower than remuneration of investments and the sum of the service cost and ordinary profits, or whereby it is necessary to ensure to the concessionaire attainment of economic-financial balance of investments and related management as to the quality of the service to be provided".

In determining the price, the administration shall take into account "possible provision of assets and services by the concessionaire to the very awarding administration, relatively to concession works and in compliance with tender notice provisions". (Art. 143 - Code).

89. What forms of grants are issued?

The price (or grant) can be issued over either construction or management phase of concession works. In the first case, contributions have to be paid to the administration by the concessionaire upon Interim Payment Certificate (IPC) or once the test has been performed.

The contribution provided by the administration may also consist in granting the

ownership or right of use of fixed assets available or ad-hoc expropriated, whose usage may be instrumental or related to the concession works, as well as fixed assets that no longer fulfil public interest functions, already indicated in the programme as by Art. 128 – Code. (See Art. 143 Para. 5 - Code).

90. HOW CAN OPTIMUM GRANT BE QUANTIFIED?

From a strictly financial point of view, it is possible to estimate consistency of grants through techniques aimed at forecasting capital budgeting needs.

Grants are aimed at ensuring economic financial balance of investments and their related management. Through application of such techniques, grants shall guarantee debt service coverage, as well as project and shareholders' profitability. All this results in i) compliance with debt coverage indices, and ii) project and shareholders' IRR consistency with the performance level granted by the market for the concerned project typology.

91. WHAT IS THE GENERALLY MOST CONVENIENT ISSUANCE PATTERN FOR PUBLIC ADMINISTRATIONS?

There is no single most convenient pattern, as each project presents peculiar features and different initial conditions that can orientate Public Administration choices.

Over the construction phase, the grant reduces the need for private capital funding.

Issuing a grant over the management phase increases annual cash flows, raising both debt and cash flow capacity available to shareholders, thus allowing for higher coverage of overall project financial need in terms of debt and risk capital.

92. WHAT ARE PPP INTERVENTIONS' MAIN RISKS?

Risk can be defined as uncertainty of future results analysed over a given timeframe.

With reference to a project for implementation and management of public works, risks can be associated to various phases of project lifecycle, and notably:

- Project risks related to project implementation period (i.e. pre-completion risks), in their turn differentiated in sub-categories;
  - General project risks (i.e. risk factors persisting throughout implementation, such as bureaucratic risks, political risks, etc.);
  - Project risks related to work economic management (i.e. post-completion risks).

93. WHAT DOES RISK TRANSFER MEAN?

RIsk probability is, within a certain measure, linked to the ability of the subject to which a given risk has been allocated to set prevention and mitigation measures aimed at

minimising it. In this sense, the Administration should transfer risks to the private subject that, in light of its specific technical competences or previously acquired knowledge and experience, can minimise risk probability or related negative economic impact.

Correct PPP implementation shall be aimed at optimum risk transfer, rather than at its maximisation. In such a perspective, the Administration shall evaluate the involved subjects' actual capacity to properly take responsibility of their own allocated risks as well as the impact such allocation will exert on intervention actual costs, debt cover ratio and fruibility.

94. HOW ARE RISKS ALLOCATED AMONGST INVOLVED PARTIES?

Project risk allocation is one of the risk management process phases. Project risk management is carried out throughout the project lifecycle and encompasses a four-step sequence:

Step 1: Risk Identification – Identify relevant events that could pose a risk over project implementation.

Step 2: Risk Assessment – Assess the probability that identified risks will actually occur, their possible impact on the project, and identify during which phase such risks could arise (i.e. project-design, construction and management).

Step 3: Risk Management — Responsibilities are allocated in terms of risk management amongst subjects intervening by virtue of contracts, agreements or

mechanisms for distribution of risk typologies and instruments aimed at reducing risk probability. In particular, it will be necessary to verify actual risk transfer within the covenant that disciplines construction and management concessions.

Step 4: Risk Management Monitoring and Revision — Through adequate reporting instruments and revision of identified risks. Furthermore, new possible risks are also identified, namely new risks generated by the project and submitted to the same management process. The process ends upon intervention implementation conclusion and expiry of contracts amongst involved parties.

Once project risks have been identified and assessed, it will then be necessary to respectively evaluate which ones shall be advisably transferred, or retained and/or distributed among parties, as well as their related distribution percentages.

It is worth recalling a typical concession feature, namely entrusting private partners with estimate of management economic-financial risks (Art. 143 Para. 9 - Code).

95. WHAT IS A RISK MATRIX?

Risk matrix is an instrument aimed at enhancing risk analysis and identification, and aimed at:

Listing and describing all project-related risks;

Identifying the subject to which the given risk is ascribed (i.e. public partner,

private partner, mixed partner).

96. HOW ARE RISKS ALLOCATED IN A CONCESSION CONTRACT?

A concession contract is a juridical instrument defining the allocation of project risks between the granting administration and the concessionaire.

The contract clauses shall punctually define partners' mutual obligations.

With regard to the construction phase, risk allocation entrusted to the concessionaire is performed through Code application. In particular:

Grant issuance upon either works completion or IPC;

Envisaging additional costs for variants only within the measure established in Art. 132.

With regard to forecast risk allocation over management phase, the contract and its annexes shall specify:

Listing of services that concessionaire is due to provide with indication of their quantitative and qualitative levels;

Application patterns and scope of penalties to be applied in case of failed

fulfilment of set standards;

Vigilance exercice patterns on Public Administration management;

Hypothetical mechanisms for adjusting obligations consistently with consolidated and pre-established rules.

97. WHAT DOES VALUE FOR MONEY STAND FOR?

The term ***Value for Money*** (VfM) stands for optimum combination of overall project costs and quality of issued services consistently with users' needs — i.e. achieving set objectives through optimum use of available resources.

PPP ***VfM*** stands for the Administration financial benefit resulting from such operation.

VfM verification by Public Administration should be the assumption for start-up of PPP operations. In such a context, before soliciting private investors' market, Public Administration should verify:

Whether PPP usage is more convenient than traditional procedures;

Whether possible PPP proposals would actually optimise costs borne by public sectors and, in the presence of various proposals, identify and select the most advantageous one.

98. WHAT IS THE PUBLIC SECTOR COMPARATOR?

The Public Sector Comparator (PSC) a methodology available to Public Administrations to evaluate Public-Private Partnership convenience (*VfM* quantification) through monetary comparison between hypothesis of project first-hand implementation and management and resort to PPP initiatives.

PSC encompasses three main elements:

- Infrastructure base cost throughout project lifecycle (*whole-of-life cost*) or base PSC;
- Monetary quantification of non-transferable risks;
- Monetary quantification of transferable risks.

It is of major importance for Public Administrations to primarily perform exhaustive analysis of all risks related to infrastructure construction and management. Only correct assessment, which can also substantially modify the base cost initially hypothesised, allows estimating the PSC precisely.

PSC is expressed in terms of NPV i.e. via discounted cash flow analysis methodology and taking into account all costs and risks encountered over a public contract award procedure.

99. WHAT ARE PSC MODEL IMPLEMENTATION MAIN LIMITS AND DIFFICULTIES?

As to evaluating whether recourse to PPP proves advisable, PSC main limit stems from such methodology being based on often subjective forecasts and estimates that, whereby not adequately supported by data and historical information, may be not fully reliable.

Furthermore, however attentive and rigorous, risk quantification and transfer to private partners will necessarily be arbitrary and subjective, notably in the long run.

Operators' expertise and competence as well as use of statistical techniques may certainly result in refining such technique and curbing its imprecision, although this will hardly enable cleansing the PSC instrument of its inner arbitrary component.

100. WHAT TYPES OF PPP INTERVENTIONS CAN BE DECONSOLIDATED FROM PUBLIC BUDGET?

PPP operations can provide an opportunity to deconsolidate part of infrastructural investment costs from public budget. So as to identify and evaluate suitable costs, it is necessary to make reference to project classification consistently with their self-financing capacity via cash flows. In particular:

> PPP projects in which revenue from use of implemented interventions enables the private partner to integrally recover investment costs (i.e. projects without grant). Being such projects carried out through totally private capitals,

investment costs are obviously not consolidated in public budget;

PPP projects envisaging grant. Case-by-case evaluation, depending on the specific grant and risk transfer level, is then required.

Eurostat Decision "Treatment of Public-Private Partnerships" of 11 February 2004 took into consideration a particular PPP typology and punctually defined its treatment in national public accounts. The decision concerns long-term contracts stipulated between Public Administration and a private partner whereby the public subject is the main purchaser of assets and services provided, whether the demand results both from public partner and third parties.

This is the case, for instance, of public services (i.e. healthcare and education) whose provision to citizens is paid by the Public Administration by virtue of a substitution mechanism, as well as other infrastructure typologies (i.e. road-related infrastructures) whose tolls are paid by the public partner through the so-called ***shadow tolls***. Pursuant to the above Eurostat Decision, it is possible to consider the implementation cost of such infrastructure typologies as out-public budget, whereby a consistent part of project risks is transferred to private partner, and notably:

Construction risk

Either availability risk and/or demand risk.