

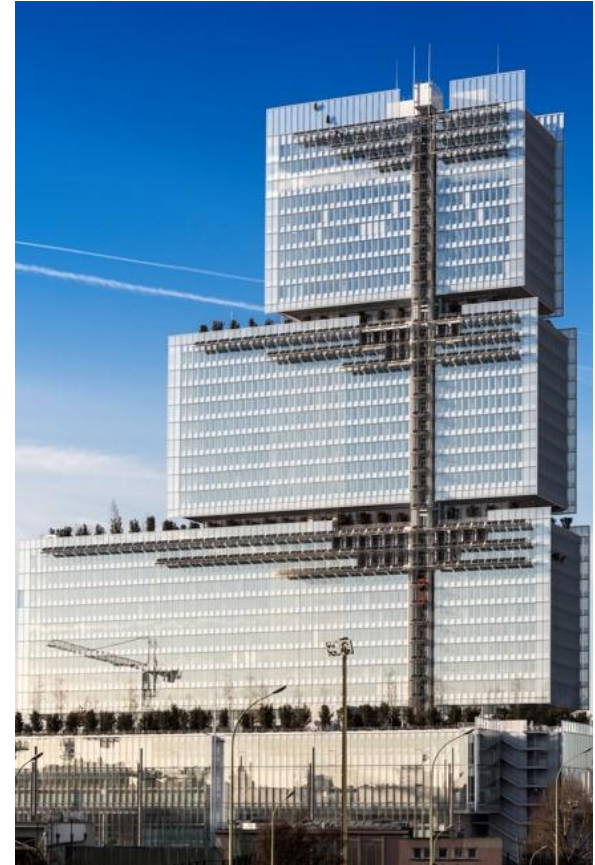


MINISTÈRE
DE L'ÉCONOMIE
DES FINANCES
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PPP & Concessions: the French experience

March 2022

Fin Infra

A team dedicated to public investment

- **Fin Infra - the National Unit for Infrastructure Financing, under the French Treasury**
 - A broad mandate : both government's and local public authorities' projects
 - Covering all infrastructure financing issues, with a dedicated assessment function on government-pay PPPs
 - A pool of infrastructure-focused financial and legal experts

- **Mission statement**
 - Facilitate the financing of public infrastructure projects
 - Maximize the value for money of projects
 - Identify and mitigate the risks of projects

- **What we do**
 - Not a procuring authority
 - Advise government and public sector entities on the structuring of projects, negotiation of concession and PPP contracts, infrastructure finance more broadly
 - Mandatory early assessment for engaging in a government-pay PPP for both State and local authorities projects

Summary

1. **PPP why and what for ?**
 2. **France investment toolbox**
 3. **PPP project and stakeholders issues through lifecycle**
 4. **French PPP experience**
 5. **Some successful examples**
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1. PPP why and what for ?

Conceptual Issues About PPPs

PPPs are a specific model for **allocating responsibilities in the design and delivery of a project** :

- Public authorities define their needs, objectives but let the private partner define the solution, how to implement it ... and bear the risks including traffic risk in concessions contracts;
- Refocusing the infrastructure debate on asset performance.

PPPs should be able to implement a better **contractual allocation of risks** to optimize the value of the project :

- A clear allocation of risk to the party best positioned to mitigate them to minimize the uncertainty premium;
- A financing mechanism designed to support the efficiency of risk allocation and the performance delivery;

PPP should led to an **improvement of the quality of the project though the whole of life**:

- Association of construction and maintenance operators must led to an optimization in construction processes;
- Long term commitment should prevent lack of maintenance and minimize the global cost of the project.

Conceptual Issues About PPPs

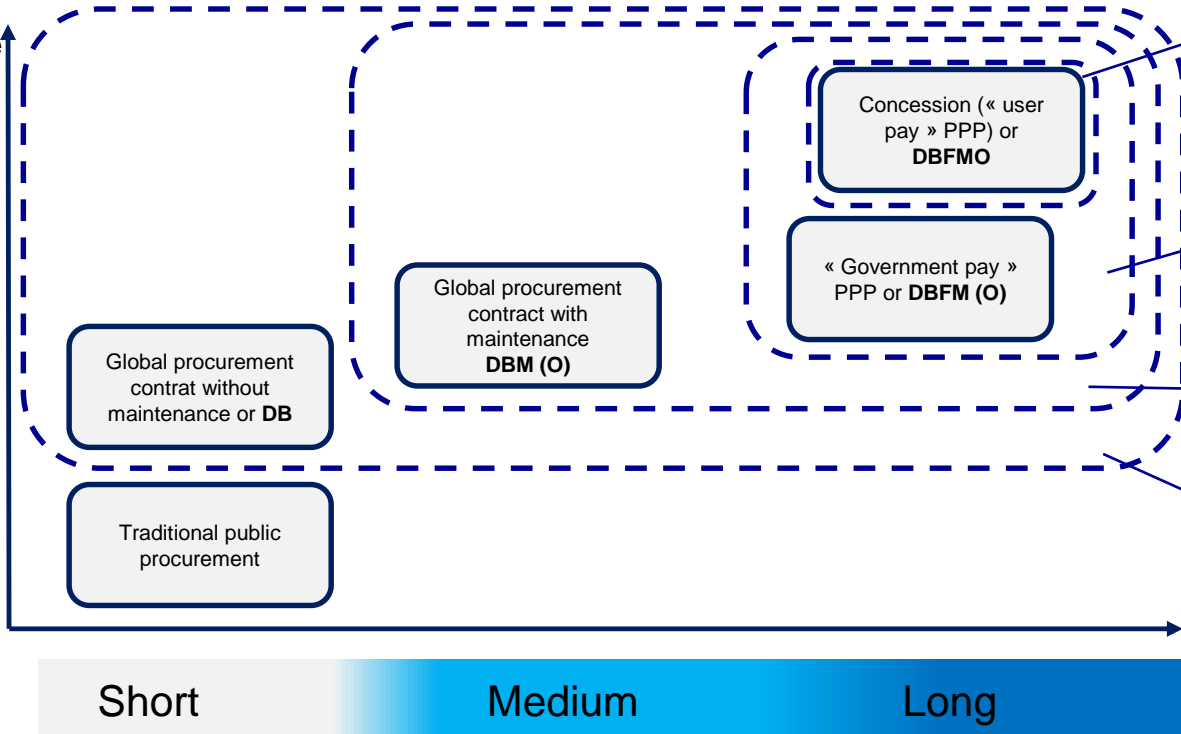
Requirement for fiscal transparency of PPPs: **off-balance sheet debt resulting from PPP contracts should be fully reported:**

- PPPs should not be seen as a financial mechanism.
- Fiscal transparency mechanism should be implemented to avoid building a hidden sovereign debt (e.g. 'ESB' in France; IMF/World Bank PFRAM tool).
- Need for data on off-balance sheet sovereign debt for : (i) Financial model to manage the global sovereign debt, including off-balance sheet debt; (ii) optimizing the preparation and selection of infrastructure projects pipelines.

2. France investment « toolbox »

Infrastructure Contracts Toolbox: Global Picture

Risk transfer to private partner



Transfer of both construction, maintenance, financing **and** operation risks

Transfer of both construction, maintenance **and** financing risks

Transfer of both construction **and** maintenance risks
 Opportunity to also transfer operation without transferring risks associated

Transfer of **construction risks**

Short

Medium

Long

Duration of the contract

Infrastructure Contracts Toolbox: public procurement

Public procurement: For which projects?

Especially suitable to :

- Infrastructure with **an architectural gesture**:
 - Ex: “**signal**” buildings
- **Very complicated infrastructure** projects with a substantial technological hazard:
 - Ex: very complex underground metro “grand paris”
- Very simple projects usually dealt with by public entities:
 - Ex: streets, public spaces arrangement



Infrastructure Contracts Toolbox: 'Government-Pay PPPs'

'Government-Pay PPP': For which projects?

Especially suitable to :

- **Non-income generating** infrastructure:
 - Ex: **social infrastructure**
- Infrastructure projects whose **profitability is uncertain (significant traffic risk that could lead the private sector to charge an uncertainty premium)**:
 - Ex: risky new high speed **train lines**
- Projects led by public entities that **rarely built and borrow themselves** and can benefit from the private experience:
 - Ex: medium cities with a low number of projects in need for a "turnkey" solution



Infrastructure Contracts Toolbox: Concessions ('User-Pay')

Concession: for which projects?

Especially suitable to :

- **Transfer a substantial part of the demand risk to the concessionaire when demand risk is low:**
 - Ex: **water sector, district heating, school catering** or the operation of existing infrastructure
- Transfer a part of a high demand risk:
 - Ex: some **new high speed roads or train lines**
- Or, transfer the **entire demand risk** when: i) traffic forecast studies are favorable and ii) the private sector is in capacity to take the risk or is able to pool it within a larger portfolio of assets
 - Ex: existing high speed roads or airports

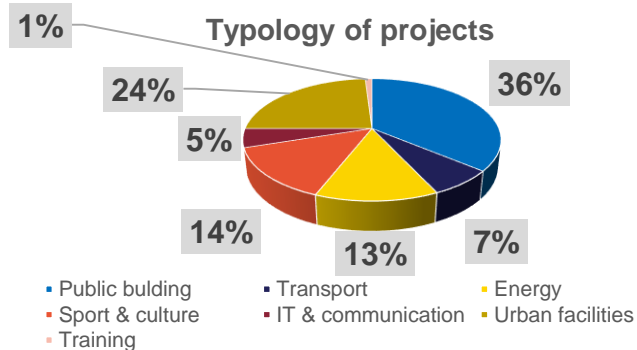


Infrastructure Contracts Toolbox: some figures

French market

Government pay PPP

- **Around 250 contracts signed since 2004**, 75% of these contracts concern local authorities
- Contracts for public buildings and urban equipment represent nearly 60% of contracts signed
- The number of signed PPPs has dropped considerably since 2015 (less than 10 contracts signed per year):

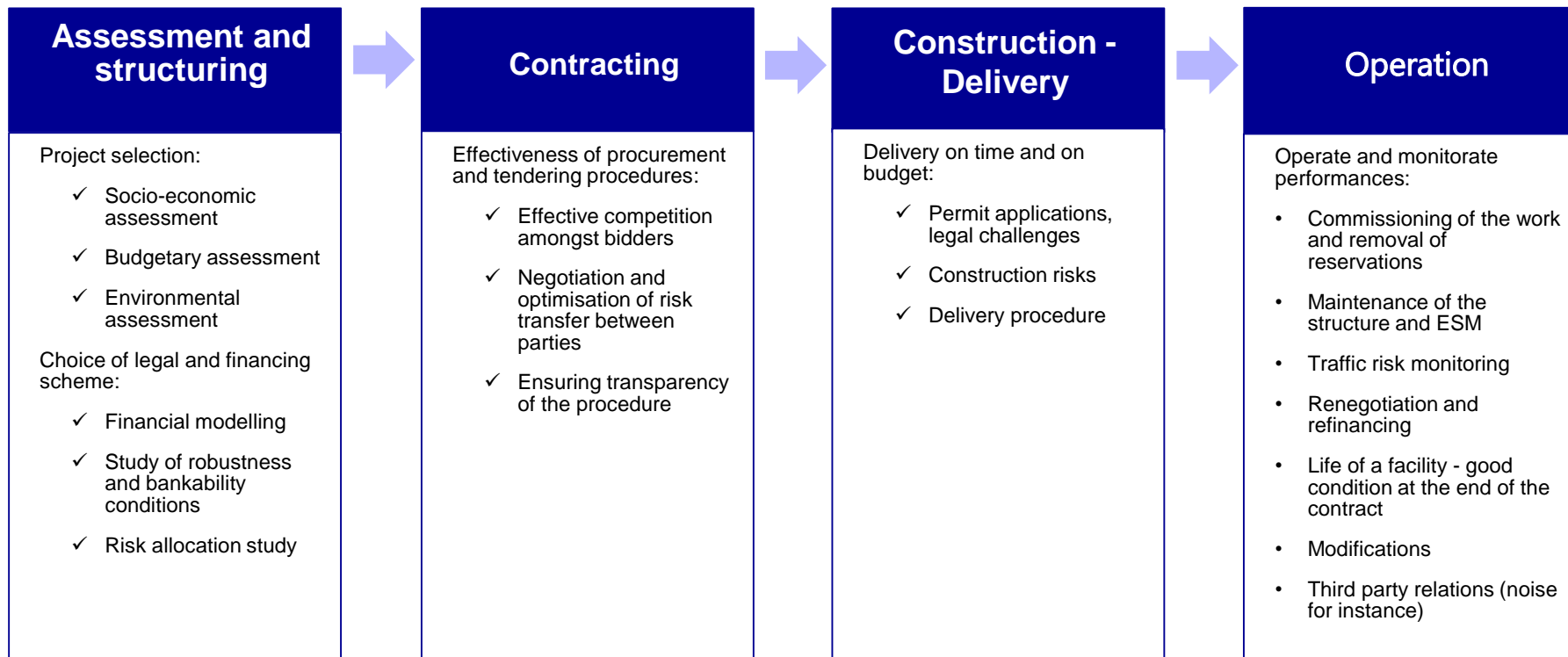


Concessions

- More than 30,000 concession contracts in operation, 95% are contracts concluded with local public authorities :
 - Water distribution & sewage: 20 000 contracts, 2/3 of French population supplied by concession contracts
 - Urban energy and heating systems: 93% of market
 - Highways: 75% of the 10 000 km highways
 - Urban transport networks (metro, bus...): 90% of cities above 100 000 inhabitants
 - Airports
- High social acceptance of the concession model by the citizens

3. PPP project and stakeholders issues through lifecycle

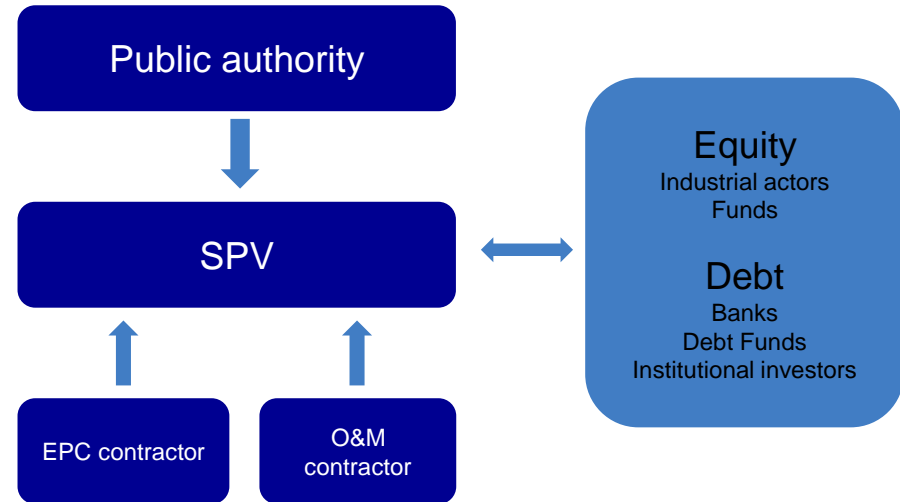
Stages of implementation of an infrastructure project



Stakeholders roles and responsibilities

Usual mechanism to finance infrastructure projects has the following characteristics:

- A dedicated financing scheme without recourses against owners
- A full transfer of projects technical risks to subcontractors (*back-to-back and if and when*)
- A low exposure of debt providers to project risks



4. French PPP experience

General aspects of the PPP legal framework in France

PPP contracts are always administrative contracts under French law:

- Public authorities have specific powers under such contracts like the right to unilaterally change or terminate the contract. The financial consequences of the use of such powers are to be fully compensated by the public authority;
- Disputes are to be resolved before administrative courts. No use of arbitration in France in PPP contracts.

PPP contractors in France are generally “**service providers**”:

- Strict competition during procurement phase has always been seen as a way to improve VfM of the project. Discussions between bidders and public authority are often limited to some specific modes of negotiation.
- Some recent legal evolution have created the **possibility of an increased cooperation between parties** (SEMOP) yet, mutual mistrust keeps being rather strong.

Unsolicited proposals:

- Before 2015/2016, there was a specific legal framework for unsolicited proposals in the French PPP law, but these provisions have been repealed.
- **Very few unsolicited proposals** have been presented but none of them succeeded, mostly for political reasons.

General aspects of the PPP governance in France

Each procurement authority is responsible for its own projects from the choice of to contract to the end of it.

Multi-steps validation process are set in place :

- For state projects investment projets : SGPI is responsible to ensure consistency of investment policy in France. Since 2012, socio-economic analysis of all projects above 100M€ of State public funding must be counterevaluated by them
- For government pay PPP : 'ESB' and 'EPMR' :
 - Public authority must prepare a financial sustainability report and a report demonstrating that the government pay PPP scheme has the best value-for-money compared to other forms of public procurement. These reports have to be submitted to two departments of the Ministry of the economy for opinion.
 - For central government entities, the launch of a PPP project requires an authorization issued by the Minister of the Economy and of the Minister of the Budget.

High qualified team must be set in place to ensure the **long term management of the contract**.

- Legal and financial experts are required to deal with legal amendments, refinancing processes, regulation of financial return
- Also technical experts must be required to challenge the private partner

Key incentives to attract local and foreign investors

Investors are **at risk only up to their shares** in the project (non recourse financing):

- Equity represents between 10-30% of the initial investment depending on the risks beared by the private sector

The **main risks associated with the project are well managed** and secured for investors :

- Unilateral change or termination by the public authority are associated with full compensation of the contractor (including profit loss)
- In case of legal challenge against the contract by a third party, the contractor can be compensated for the incurred costs.
- In government pay PPP, remaining risks beared by investors are very low (only some residual risks on taxes)
- In all PPP contracts, construction / maintenance risks are usually transferred to the sub-contractors (back-to-back and if-and-when)

The **sale by investors of their stakes** in SPVs dedicated to PPP projects are reasonably controlled:

- Foreign investment control on such sales is not too restrictive.
- In practice, PPP contracts include a non-transferability period of up to 2 years after completion date, and the possibility of freely transferring one's shareholding afterwards (except for the EPC and O&M contractors who may have to keep a minimum shareholding for the entire duration of the contract).

Key incentives to attract local and foreign banks

Most PPP projects in France benefit from **guarantees of the public authority**:

- The “Cession Dailly” scheme allows the contractor to assign its receivables on the public authority (capped at 80% for government pay PPP) to the banks with an “approval” of such assignment by the public authority.
- The effect of this acceptance is to make the payment of the fees by the public entity irrevocable, as from the delivery of the works, whatever the problems of contractual execution which may arise.

Banks are usually secured by a significant transfer of risks to the EPC & O&M contractors: *if-and-when* and *back-to-back* clauses, warranties

Contracts do **take into account their usual demands** to secure their investment:

- Step-in clauses, debt service reserve account or debt service reserve fund, strict cash waterfall, collaterals, etc.
- Yet, property of the infrastructure is, since delivery date, transferred to the public authority and mortgage securities are not needed and probably wouldn't be effective in practice.
 - It is commonly assumed that a mortgage on a property that is intended for public use or dedicated to public service is not useful since such properties do not really have a market value.

Public perception of PPP projects

Perception of concessions or “user-pay” PPPs **is mixed:**

- Concession or “user-pay” PPPs have historically been well accepted in France with an image of a good quality of service ;
- More recently, concessions have been associated with very high profitability for contractors and therefore met with more skepticism.

“Government-pay” PPPs have a very bad image in the general public:

- Such PPPs are seen as very costly;
- Since they are usually concluded in the area of social infrastructure with no user-pay, they are seen as a way to privatize the associated services.

In this context, the **Government reaction** has been as follows:

- **Renegotiating the concession contracts** where the profitability for the contractor was too high (introducing profit caps in toll road concessions for example).
- **Creating a more restrictive administrative procedure** for launching a “Government-pay” PPP;
- **Limiting use of PPP schemes in sectors where there were bad experiences** (hospitals for example).

Current challenges to PPP projects in France

The **administrative procedure for launching a “Government-pay” PPP project currently deters public authorities** from using such schemes:

- The financial sustainability report and the report demonstrating that the government pay PPP scheme has the best value-for-money compared to other forms of public procurement must only be realized when choosing government pay PPP
- Also, for central government entities, authorization issued by the Minister of the Economy and of the Minister of the Budget.

The **management of the maintenance and financing aspects of a PPP in the long run can be difficult** :

- The **costs of maintenance services are often very high in the long run compared to market prices**. Also, it is difficult to define the condition in which the works should be returned at the end of the contract ;
- In a PPP scheme, the **cost of private financing can become politically unbearable** in the long run, when at the same time borrowing costs are sharply decreasing.

Public authorities often **have trouble maintaining a highly qualified team** in charge of monitoring the PPP project in time.

Recent evolutions of PPP schemes in France

Given the problems of the costs of maintenance in the long run, **PPP schemes without a maintenance phase or with a very short maintenance phase** have been concluded.

- What kind of **impact on the state of the works** in the long run?
- **Do we still benefit from the global analysis** of the private partner in charge of construction?

In order to **limit the higher costs of private financing**, new financing arrangements have been tried:

- **Providing subsidies in the construction phase** so as to reduce the amount to be borrowed or fully refinancing the project by the public entity upon delivery.
- **Combining the PPP project with real estate development/revenue generation**, so that the revenues of such real estate operation can contribute to the financing of the PPP project.

Since the **administrative procedure to launch a “Government-pay” PPP is seen as very heavy**, public authorities are launching concessions instead:

- These concessions are heavily subsidized often up to 100% of the investment cost. The users only pay for the operating costs.
- In order to avoid this strategy to circumvent the procedure to launch a “Government-pay” PPP, the French government is thinking about **extending the procedure to concessions**.

5. Some successful examples

High speed rail « Bretagne Pays de la Loire »

Government based PPP – with public subsidies

Type of infrastructure : Transport infrastructure

Main service : DBFM of the infrastructure during 25 years

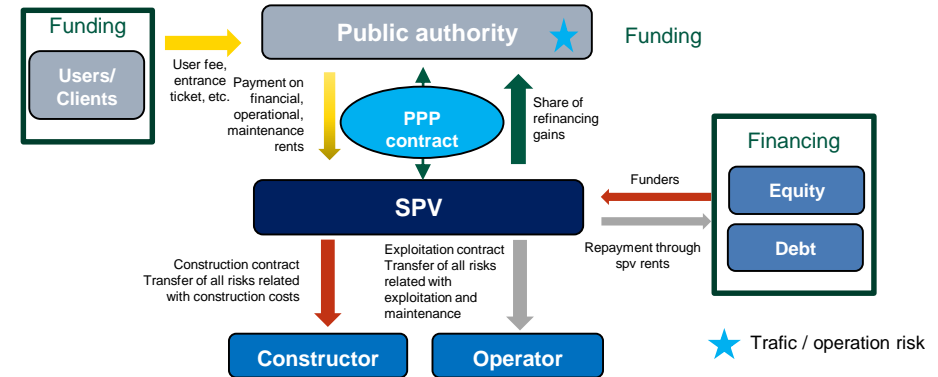
Contract characteristics :

- Conception, construction operation and maintenance of a high speed train infrastructure (182 km)
- Contract signed in July 2011 by SNCF Réseau with Eiffage Rail Express
- Date of entry into service: July 2017
- Investment costs: € 3.4bn
- Funded by user but also by public subsidies and availability payment
- **Deliver on time and on budget**

Risk transfer :

- All conception, construction and maintenance risks
- Due to uncertain revenues **the granter decided to keep the commercial risk** : incomes received from users are collected directly by SNCF Réseau

Contractual scheme :



High speed rail « Sud Europe Atlantique »

Concession – with public subsidies

Type of infrastructure : transport infrastructure

Main service : DBFOM during 50 years.

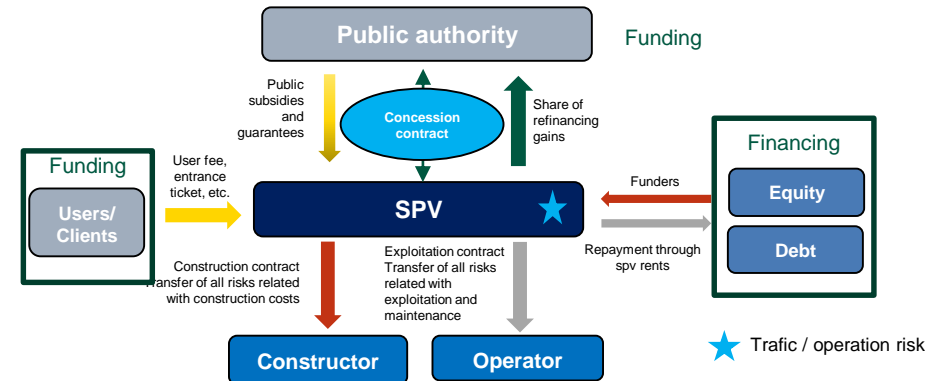
Contract characteristics :

- Conception, construction operation and maintenance of a high speed train infrastructure between Tours and Bordeaux (302 km)
- Contract signed in 2011 by SNCF Réseau with LISEA (SPV), owned by VINCI Concession, Caisse des Dépôt, Meridiam and Ardian
- Date of entry into service: July 2017 (with a month in advance)
- Investment costs: € 7.8bn
- Funded by user (~50%) but also by public subsidies and guarantees from French State

Risk transfer :

- All conception, construction and maintenance risks, but also, transfer of **all commercial risks** to the private partner : **in this project the economic performance was better and therefore required less public funding**

Contractual scheme :



« Plan Campus » University Program

Government based PPP – with public subsidies

Type of infrastructure : Social infrastructure

Main service : DBFM for 12 university campus (“Plan Campus” program) during 25 years

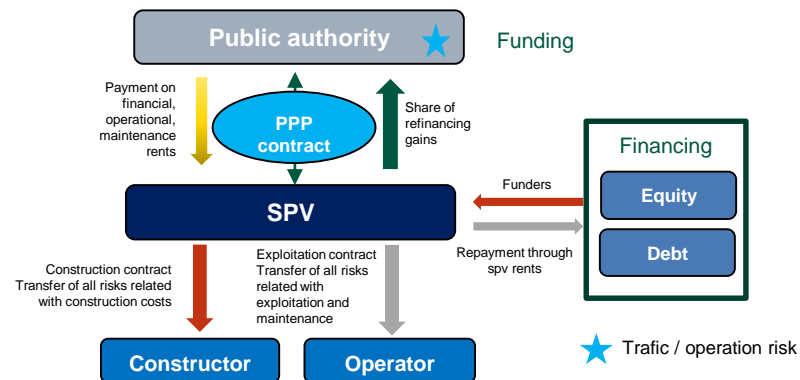
Contract characteristics :

- Universities are the contracting authorities
- Payment by the State to different contracting authorities of a non-consumable capital (total amount of 5 billion €) => guaranteed investment of this capital
- Payment on the SPV (financial, operational and maintenance rents) via the interests of the invested capital and public subsidies
- Date of entry into service: 2014 - 2022
- Total Investment costs: € 1,5 bn
- **Deliver on time and on budget**

Risk transfer :

- All conception, construction, financing and maintenance risks

Contractual scheme :



Bordeaux City Stadium

Between government based PPP & concession : guaranteed additional revenues

Type of infrastructure : sports infrastructure

Main service : DBFM with partial operation

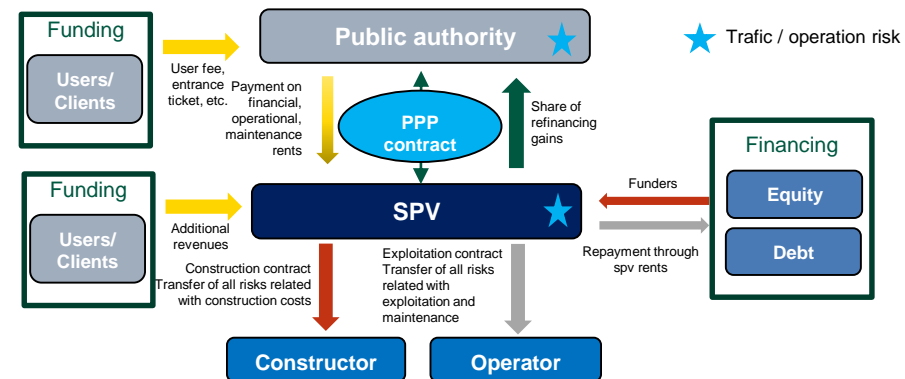
Contract characteristics :

- Contract signed with SBA, à private company owned by VINCI Concessions,
- 3-years construction period : 2012-2015
- 33-yers contract : end of contract 2045
- 200M€ investment
- Funded by a quarterly public payment (~50%) and “additional revenues” guaranteed by the private partner (~50%)

Risk transfer :

- All conception, construction and maintenance risks
- Also, transfer of **all part of commercial risks** to the private partner in the form of additional revenues guaranteed

Contractual scheme :



Le Mans City Stadium

Concession contract

Type of infrastructure : sports infrastructure

Main service : DBFMO

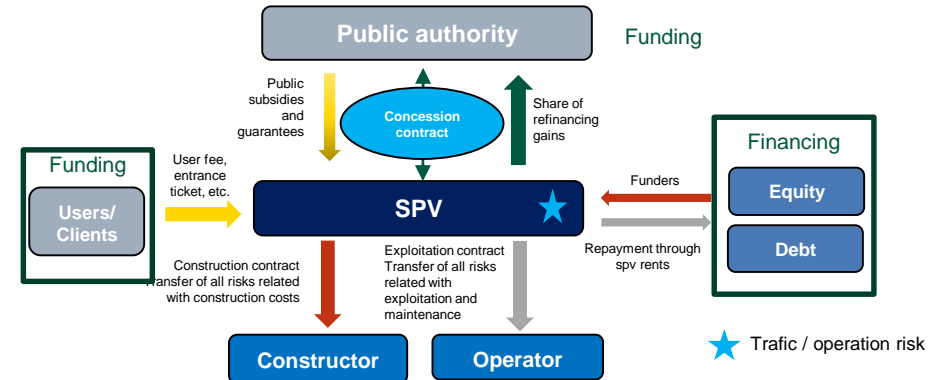
Contract characteristics :

- Owned by VINCI Concessions
- Signing in June 2008
- 26 month construction period
- 35-years contract, until 2043
- Capex: 102 M€
- Funded by a public subsidy (~50%), €11m core capital and €39m debt
- Also €3m naming

Risk transfer :

- All conception, construction and maintenance risks, but also, transfer of **all commercial risks** to the private partner

Contractual scheme :



High Speed Highways

Concession contracts

Type of infrastructure : high speed roads infrastructures

Main service : DBFMO

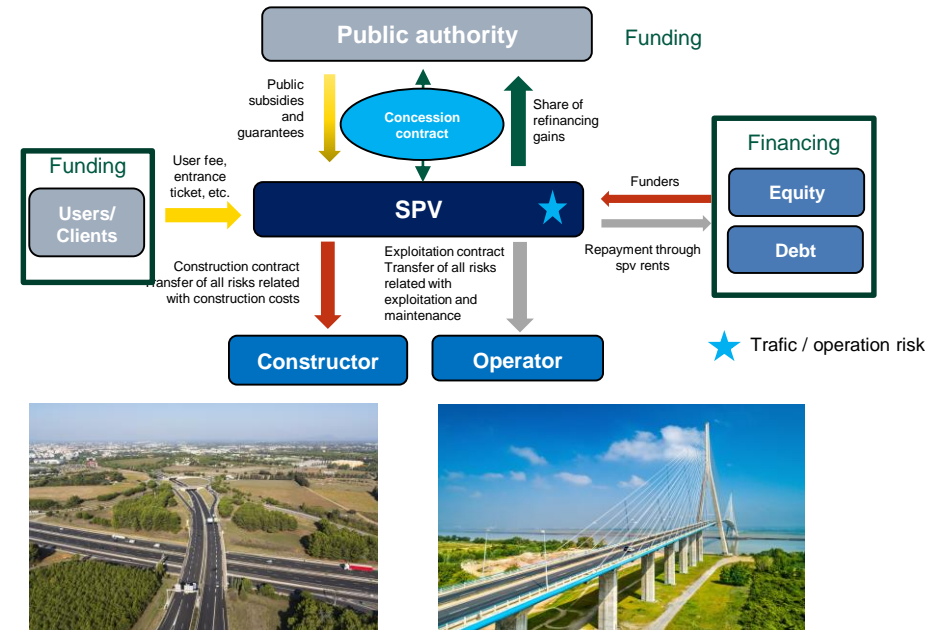
Contract characteristics :

- Seven historic concessions (privatization in 2006) : ASF, Escota, APRR, AREA, SAPN, SANEF and Cofiroute. End of contracts between 2031-2036
- Ten recent concessions. Beginning of concessions between 2001-2019, for circa 75 years
- Two tunnel concessions (ATMB and SFTRF)

Risk transfer :

- All conception, construction and maintenance risks, but also, transfer of **all commercial risks** to the private partner

Contractual scheme :



Airports

Concession contracts

Type of infrastructure : airport infrastructure

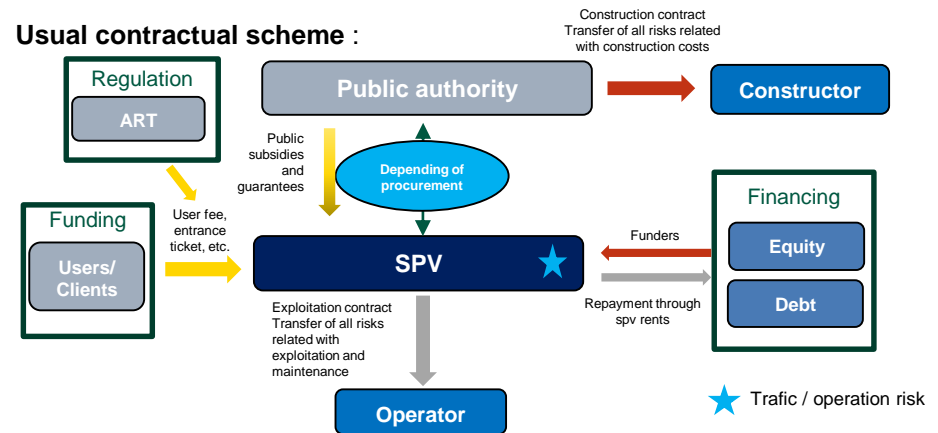
Main service : DBFMO

Contract characteristics :

- Different types of procurement :
 - Traditional or classic procurement (ADP for example)
 - Concession models : either through public controlled companies, privatisations (Lyon / Nice) or whose capital has been opened to private sector shareholders (Toulouse)
 - Government paid PPP could also be used but has not been yet
- Regulated tariffs set by an independent authority (ART) in order to cover costs and a “fair” return on capital (mesured as WACC)

Risk transfer :

- All maintenance risks, but also, transfer of part of **commercial risks** to the private partner
- Risk sharing mechanism is set in place through the regulation process





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