



NALSAR UNIVERSITY OF LAW
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SESSION-III

Airport Contracts

by

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A BRIEF NOTE ON AVIATION CONTRACTS

- ☐ Airport Agreements (Concession or OMDA Agreements)
- ☐ Airlines Agreements (Slots and Space)
- ☐ Aircraft Sale or Lease Agreements
- ☐ Aviation Fuel Agreements
- ☐ Cargo
- ☐ Ground Handling
- ☐ Flight Catering
- ☐ Food & Beverages

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- ☐ Business Hotel
 - ☐ Retail / Duty Free Shops
 - ☐ Advertising
 - ☐ Transport (A/c and Non A/c Buses, Taxi, Car Rentals)
 - ☐ Lease and Financing of Aircraft
 - ☐ Insurance – Airports / Airlines
 - ☐ Passenger – Loss of Baggage / Cargo
 - ☐ Maintenance, Repair and Overhauling (MRO)

TYPES OF AGREEMENTS

❖ **Aeronautical**

- Clearances
- Agreements

❖ **Non-Aeronautical**

- Revenue Generating contracts
- Expenditure contracts

❖ **PPP Agreements:**

- Concession Agreements
- OMDA Agreements

AERONAUTICAL

❖ CLEARANCES:

- DGCA - Licence
- BCAS- Security Clearance Terminal, aerodrome,
- Airport Security- CISF,
- Local Police etc.
- Meteorological services
- Customs/ Immigrations
- Ground handling- BCAS clearance
- Cargo handling - BCAS clearance
- Quarantine facilities- Animal, Plants

❖ AGREEMENTS:

- AAI- ATM- CNS agreements
- Fueling Agreements
- Space allotment for Agencies,
- Slot Allotment for Airlines

NON-AERONAUTICAL ACTIVITIES

❖ Revenue Contracts

- Car rentals ,Hotel Booking, Cafeterias, Book shops, Duty free shops,
- Money exchange, House keeping, Advertisement
- Royalty form any other operations – Catering
- Real estate related- Airport city, Hotels, Golf courses

❖ Expenditure Contracts

- Maintenance:
- Civil.
- Electrical,
- House keeping,
- Aerobridges
- Trolleys

PPP AGREEMENTS

- ☐ What is PPP?
- ☐ Main Characteristics of PPP?
- ☐ Main Objectives of a PPP
- ☐ Principle Aims of PPP
- ☐ Principle Forms of PPP
- ☐ Kinds of PPP

What is PPP?

- ❑ *“The term PPP refers to a long-term, contractually regulated co-operation between the public and private sector for the efficient fulfillment of public tasks in combining the necessary resources (e.g. knowhow, operational funds, capital, personnel) of the partners and distributing existing project risks appropriately according to the risk management competence of the project partners”.*

Main Characteristics of PPP

- ❑ Efficiency gains through appropriate sharing of risks and responsibilities; the public sector retains mainly sovereign tasks and the private bear those for implementation;
- ❑ Long term contractual relationship; and
- ❑ Innovation, in particular through output specification, service levels and payment mechanisms, as a new way of describing the services to be supplied.

Main Objective of PPP

- To meet growing need of airport infrastructure in India
- To meet the financial requirement to support such growth
- To infuse private funds in the airport infrastructure Sector-
- To increase the standards of Indian airports- to International standards

Principle Aim of PPP

- ❑ To involve the private sector in the provision of public services, shifting the role of the public sector from the owner and provider to purchase and guardian of the interests of the public.
- ❑ It is driven by the belief that the public sector should focus on its core functions, leaving the private sector to perform those functions which it can often do more cost effectively and efficiently.
- ❑ One of the key political drivers behind the PPP is the desire to improve the nation's infrastructure and supporting public services without placing undue strain on scarce public funds and without having to increase taxation.

Principle Forms of Privatisation

- ❑ Formal Privatisation (Tender – Contract – Traditional Way)
- ❑ Material Privatisation (Property transferred)
- ❑ Functional Privatisation (Application of a particular Mechanism)

Kinds of Partnership

- ❑ The PPP relationship can either be 'Horizontal' or 'Vertical'.
- ❑ In **Horizontal** partnership both partners are directly engaged as shareholders (ie., between two owners) in a special purpose vehicle (SPV), which is related to **providing required infrastructure services**.
- ❑ In **Vertical** partnership the public sector contracts with the private partner through a concession agreement or a PPP-Contract, and the latter is **responsible for providing required services**.

Privatisation of Airports

- ❖ Greenfield Airports: New airports – By Concession agreements
- ❖ Brownfield Airports: Only Operations and Development- By OMDA

Alternative Models of PPP

- ❖ Full Privatization

- ❖ Partial privatization

- - Concessions.
- - Strategic partnership(s).
- - Management contract(s).

Salient Features of Concession Agreement

- Government Concession defined
- CNS- ATM Agreement
- Term 30 years + 30years – choice to the Operator
- Standards to be maintained – Defined
- New Concept of Concession Fee introduced
- Monopoly within 150 Kms permitted + closure of old airports
- Protected from policy changes – and to allow all type of operations
- Permission for Non- airport activities

Reserved Activities

- Customs Control;
- Immigration Services;
- Health Services;
- Plant Quarantine Services; and
- Animal Quarantine Services

Resultant Changes

- Monopoly of AAI over Airports removed
- Role of AAI has been reduced from that of regulator to CNS- ATM service provider
- Government control over planning, design, operation and management of airport reduced
- Freedom for the private companies to decide- May result in better airport services
- However, Reserved Activities continue under Government Control

Mechanisms under Public-Private Partnership

1. Operations and Maintenance (OM)
2. Operations, Maintenance & Management (OMM)
3. Design-Build (DB)
4. Design-Build-Maintain (DBM)
5. Design-Build-Operate (DBO)
6. Design-Build-Operate-Maintain (DBOM)
7. Design- Build-Finance-Operate-Maintain (DBFOM)
8. Design-Build-Finance-Operate-Transfer (DBFOT)
9. Design-Build-Finance-Operate-Maintain-Transfer (DBFOMT)
10. Build-Operate-Transfer (BOT)
11. Build-Own-Operate (BOO)
12. Buy-Build-Operate (BBO)
13. Developer Finance (DF)
14. Enhanced Use Leasing or Underutilized Asset (EUL/UA)
15. Lease-Develop-Operate or Build-Develop-Operate (LDO/BDO)
16. Lease-Purchase (LP)
17. Sale-Leaseback (SL)
18. Tax-Exempt Lease (TEL)
19. Turnkey (T)



Drafting of PPP Agreement (Mechanism: Concession Agt.)

- ☐ **Title:** Concession Agreement
 - ☐ **Parties:** (i) Ministry Concerned and (ii) Private Party
 - ☐ **Date:**
 - ☐ **Definitions and Interpretations**
 - ☐ The Concession (**Scope of the Project**)
 - ☐ **Grant of Concession** (Concession / Recognition of Rights / Concession Fee)
 - ☐ **Condition Precedent** (CP to Project/Obligations to satisfy CP / Non-fulfillment of CP / Effective Date)
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- ❑ **Obligations of Gol:** (Obligations of Gol / Exclusivity / Equivalent Treatment / Support / Existing Airport)
 - ❑ **Representations and Warranties:** (R & W / Lock-in / Approvals / Disclaimer)
 - ❑ **Construction of the Airport:** (Master Plan/Construction and Expansion/Independent Engineer/Site and Materials/Airport Opening/Licence/Commissioning)

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- ❑ **Operation and Maintenance:** (Airport Operation & Maintenance /Reserved Activities / Customs, Immigration, Quarantine / Security / Meteorological Services /Mgmt. of Airport Business / Slots / Day & Night Operations / Access for Officials)
 - ❑ **Monitoring of Operation and Maintenance:** (Performance Standards / Monitoring of Performance Standards / Records)
 - ❑ **Charges:** (Parties having right to impose charges: Airport Charges / Other Charges / Payment of Taxes)

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- ❑ **Maintenance of Insurance:** (Insurance during Concession Period / Policies / Remedies for Failure to Insure / Application for Insurance Proceeds)
 - ❑ **Accounts and Audit**
 - ❑ **Force Majeure and Termination:** (Force Majeure / Consequences of Force Majeure / Default / Consequences of Default / Transfer of Airport / Pre-Termination Obligations / Term / Other Rights of Termination / Survival / Suspension)

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- ❑ **Other Provisions:** (Assignment and Security)
 - ❑ **Liability and Indemnity:** (HAIL Liability / Gol Liability / Change in Law / Maximum Compensation Amount / Liability / Mitigation)
 - ❑ **Dispute Resolution:** (Negotiation and Conciliation / Reference to Arbitrator / Miscellaneous / Decision / Award)
 - ❑ **Redressal of Public Grievances:** (Remedies / Waiver / Consents / Entire Agreement / Further Assurances / No Partnership / Time is the Essence / Computation of Time / Notices / Deemed Delivery / Governing Language / Governing Law / Sovereign Immunity / Default)

SCHEDULES

- ☐ Clearances
- ☐ Description of the Initial Phase of the Project
- ☐ Airport Activities
- ☐ Non-Airport Activities
- ☐ Definition of Force Majeure
- ☐ Form of GOI Agreement

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- ☐ Regulated Charges
 - ☐ Settlement Amount
 - ☐ Reserved Activities
 - ☐ Specifications
 - ☐ Standards
 - ☐ Completion Certificate
 - ☐ Insurance
 - ☐ Tax Benefits

- ☐ **Attachment: Master Plan**

END SLIDE