

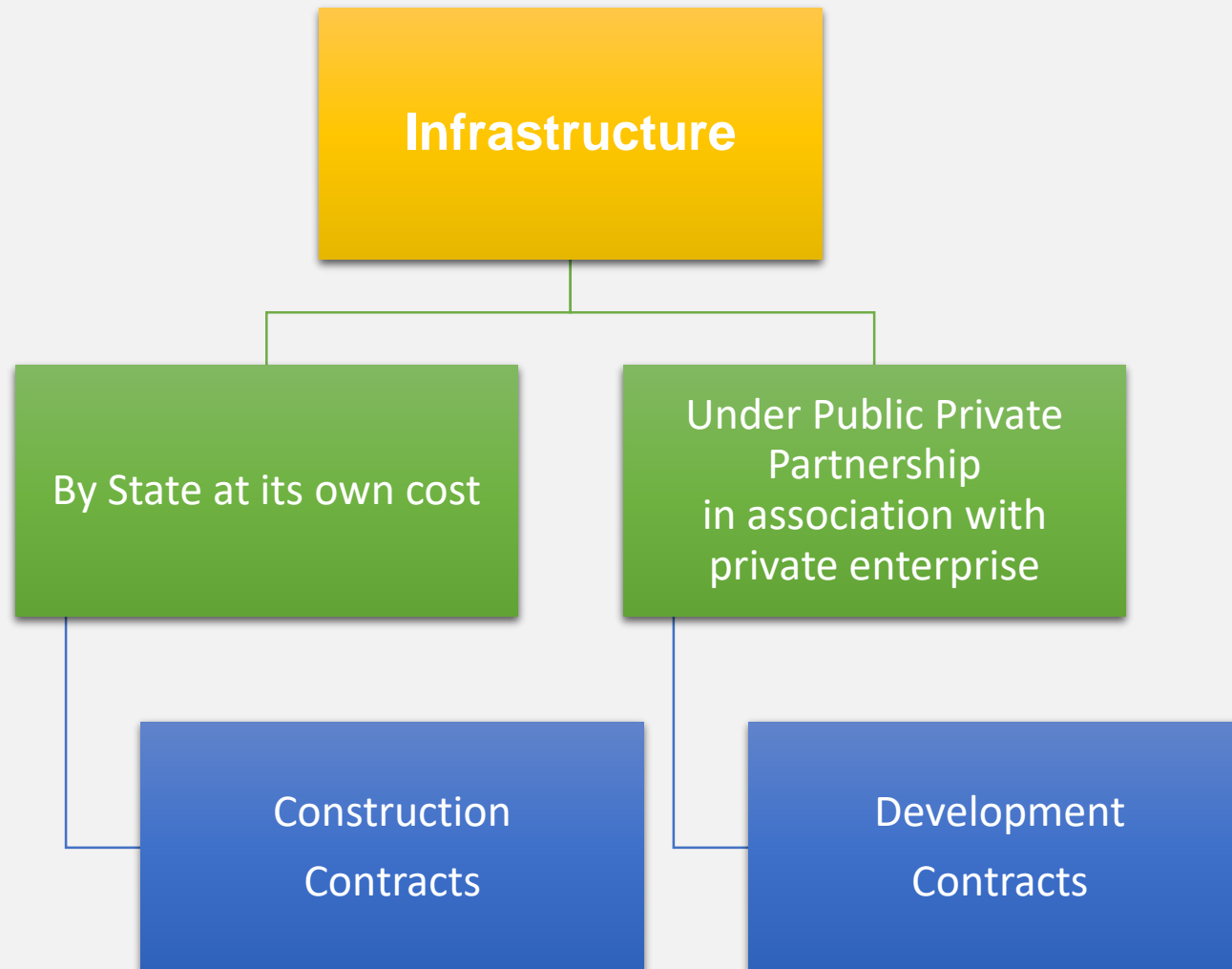


NATIONAL JUDICIAL ACADEMY

Refresher Course for Commercial Courts The Interpretation of Construction and Infrastructure Contracts

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TYPES OF INFRASTRUCTURE PROJECTS



SOURCES OF REVENUE FOR THE GOVERNMENT GRANTING THE PPP CONTRACT

Sources of revenue for the Government granting the PPP Contract

Concession Fee	Revenue Share	Negative Grant
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FINANCING OF INFRASTRUCTURE PROJECTS

Construction Contracts

Different kinds of construction contracts like lumpsum, fixed price, remeasurement contracts, etc.

Development Contracts

- 1.1. Concession Agreement or
2. Power Purchase Agreement
- 3.2. State Support Agreement
- 4.3. Shareholders' Agreement
5. (where applicable)

TYPES OF MODELS UNDER PPP IN INDIA



STEPS IN THE IMPLEMENTATION OF PPP

- Invitation to bid by the government or state authority.
- Awarding of contract for development to the successful bidder.
- Creation of a Special Purpose Vehicle (SPV) (Concessionaire) and novation of the contract in favour of the Concessionaire.
- Signing of Concession Agreement or Power Purchase Agreement, as the case may be, with the Concessionaire.
- Funding of the SPV through equity and debt.
- Financial close i.e. completion of financing arrangements with lenders.
- Construction of the project.
- Operations and collections of revenue.

FINANCING OF PPP PROJECTS

- In PPP model the lenders fund the project and not an entity. This is called project financing.
- Lenders have recourse to the project revenues through an escrow arrangement.
- Non disposal undertaking by the Shareholders of the SPV.
- Execution of loan agreements, escrow agreement, inter-creditor agreement, security trustee agreement, etc. between lenders and the borrowing SPV.

INTERPLAY BETWEEN FINANCING AGREEMENTS, CONSTRUCTION AGREEMENTS AND CONCESSION AGREEMENT

- Concessioneing authority (government) has the right to terminate the concession agreement in case of defaults by the Concessionaire.
- In such eventuality the government steps into the shoes of the Concessionaire and becomes liable for the debt of the project to the lenders.
- The Concession Agreement records the obligation of the concessioneing authority in this regard.
- In case the Concessionaire defaults under the financing agreements, the lenders have the right to substitute the Concessionaire by another entity with the consent of the concessioneing authority. Therefore, it is necessary to tie in all the implications of such default in the Concession Agreement and the financing documents through the mechanism of step down clauses.

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THANK YOU