

## BOOK REVIEW

### "BOO/BOT PROJECTS: A COMMERCIAL AND CONTRACTUAL GUIDE", 2000

Jeffrey Delmon, Sweet & Maxwell, London 2000 ISBN 0-421-705 604

This book is an heroic attempt to explain the contractual arrangements which underlie BOO/BOT projects and how risk may be allocated amongst project participants. Although it exhaustively discusses the issues associated with getting BOO/BOT projects off the ground, the book provides a compelling case for avoiding these excessively elaborate contractual structures in all but the most straightforward of cases.

Thousands of proposals for BOO/BOT projects are languishing around the world. These projects have been particularly useful in the financing of monopoly-type facilities such as toll roads, tunnels and bridges but they have become a blight on the electricity supply industry. The reason is simple enough: most BOO/BOT power projects are elaborate financing schemes for cash-strapped governments which are unable or unwilling to establish a free market in which private sector operators are able to carry them out at their own risk.

A World Energy Council task force on which I served in 1997 concluded that the world is awash with capital for independent power projects (IPPs). The challenge is, however, to create investment conditions which enable this capital to be mobilised so that it is available for the projects that need it. In most countries, this challenge is best addressed by market reforms, not by elaborately crafted BOO/BOT financing schemes. As the author of this book concedes, each BOO/BOT project must be considered as a "one-off with a unique risk allocation regime" which must then be accommodated in project-specific contractual documentation.

The introduction of IPPs raises a serious policy problem for governments because such projects effectively constrain the introduction of competitive industry reforms. As well, the international landscape is littered with unsuccessful IPPs which struck trouble after they initially became airborne. Some discussion and analysis of these cases would have enlivened the text, apart from the odd footnote about Enron's difficulties with the Dabhol power project in India. The fate of many IPPs in Indonesia, for example, will have put off many would-be investors forever.

In my experience, the main danger in BOO/BOT projects is not a failure to properly allocate risk but, rather, the conflict of interest problems which typically affect project participants. This often results in distorted contractual structures which give participants a false sense of security. Bankers, project sponsors and governments tend to jostle amongst themselves as to what constitutes "proper" risk allocation. What is "proper" is very much in the eye of the beholder. Bankers tend to be as blatantly self-interested and unrealistic as anyone.

For students, this book provides a comprehensive explanatory course but the experienced practitioner will get little help from it because of the essentially *sui generis* nature of each BOO/BOT project. The text is characterised by excessive generalisation and insufficient intellectual rigour.

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