

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination May- 2025

Semester - X (Business Hons.)

Subject: Law of Project Finance

Time: 3 hours

Mark: 100 marks

Instructions:

- i. All the questions carry equal marks.
- ii. The students are required to attempt five questions.
- iii. The question paper comprises two pages.

Q.1). In December 2021, IndoSteel Ltd., an Indian construction company, entered into a long-term supply contract with Eastern Metals Corp., a Ukrainian manufacturer, for the monthly delivery of high-grade steel required for a government infrastructure project in India. The contract, valued at ₹250 crores, was to run for three years and contained a detailed force majeure clause that included war, civil unrest, embargoes, and acts beyond the reasonable control of the parties. The clause, however, also imposed an obligation on the parties to "use best efforts to mitigate the effects of any force majeure event." In February 2022, following the outbreak of war in Ukraine, Eastern Metals' factory was partially damaged, and martial law disrupted both production and international logistics. By April 2022, they had ceased deliveries altogether, citing impossibility of performance due to war. IndoSteel Ltd., meanwhile, faced severe project delays and penalties from the Indian government, and argued that Eastern Metals neither explored alternative sourcing nor resumed partial performance once operations resumed in mid-2023. Eastern Metals invoked the force majeure clause and also pleaded frustration of contract under Indian law when sued for damages in an Indian court. IndoSteel contended that the doctrine of frustration does not apply since the risk was foreseeable and could have been mitigated, and the contract clearly accounted for such events.

In light of the above, critically examine the legal validity of Eastern Metals' defences under Indian contract law. Discuss whether the force majeure clause and the doctrine of frustration can be successfully invoked in this scenario, with the support of relevant statutory provisions and case law.

(Marks 20)

Q.2). The State Government of X, seeking to improve urban public transport, invited innovative project proposals under the Swiss Challenge Method. RapidMove Pvt. Ltd. submitted an unsolicited proposal for a metro-lite system in the capital city, offering a detailed project report, funding model, and execution strategy. After technical evaluation, the proposal was accepted as viable. The government then invited counter-proposals, and a consortium led by UrbanTrack Ltd. submitted a more cost-effective plan with faster implementation. RapidMove was invited to match the bid but alleged that crucial financial details of the counter-bid were withheld, preventing a fair chance to compete. Meanwhile, UrbanTrack claimed the entire process favored the original proponent and challenged the selection on grounds of bias. The state opposition also raised concerns about the lack of statutory backing for using the Swiss Challenge Method and potential deviation from established public procurement norms. The matter is now pending judicial review.

Identify and analyze the following legal and policy issues:

- a) Legality and validity of using the Swiss Challenge Method in absence of a specific legislative framework.
- b) Rights of the original proponent in accessing and matching counter-bids fairly.

- c) Transparency and procedural fairness concerns in evaluating unsolicited proposals.
- d) Whether the Swiss Challenge Method complies with constitutional principles of equality and public interest in state contracts.

(Marks 5x4= 20)

Q.3). In 2024, Aranya Infrastructure LLP intends to set up an Infrastructure Investment Trust (InvIT) called GreenPath InvIT, aimed at holding and managing a portfolio of solar energy assets spread across three states in India. The sponsor, Aranya Infrastructure LLP, submits an application to SEBI seeking registration of GreenPath InvIT. However, at the time of submission:

- The net worth of the proposed investment manager is Rs. 8 crore.
- The investment manager has three employees with varied experience, only one of whom has more than five years of relevant experience in fund management.
- The Board notices that the offer size proposed in the initial offer document is Rs. 200 crore, and the value of InvIT assets is approximately Rs. 400 crore.
- GreenPath InvIT has already started engaging with investors even though it has not received its certificate of registration.
- Later, it is revealed that the sponsor has submitted information regarding asset ownership that is materially inconsistent with the actual structure of the underlying SPVs.

Addressed the following issues:

- a) Examine whether GreenPath InvIT satisfies the registration requirements under SEBI regulations for InvITs.
- b) Identify and discuss the lapses in eligibility criteria, especially with regard to the investment manager's qualification and employee requirements.
- c) Discuss the legal implications of proceeding with an initial offer without fulfilling the conditions related to asset value and offer size.
- d) In light of the sponsor submitting materially misleading information, analyze the powers of SEBI and the conditions under which registration may be denied or revoked.

(Marks 5x4= 20)

Q. 4). Green infrastructure projects have become a significant focus in recent years due to global climate commitments and the transition towards sustainable development. However, financing such projects poses unique legal, regulatory, and financial challenges. Critically examine the various sources and instruments available for financing green projects in India.

(Marks 20)

Q.5). Do you agree with the perception that a Public-Private Partnership (PPP) often results in the sovereign imposing its responsibilities on the private partner? In your response, provide a detailed explanation of the concept of PPP and describe at least five types of PPP models implemented in India.

(Marks 20)

Q6). Write brief analytical notes on the following:

- a) Sponsor agreement vs Credit agreement
- b) Due diligence vs Adequate risk allocation

(Marks 10x2=20)



25 JUL 2025

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Q.1). In 2021, EcoFuel Ltd., an Indian company specializing in biofuel production, entered into a seven-year supply agreement with AgroTrade Inc., a Malaysian exporter of palm oil, for the periodic delivery of refined palm oil at a fixed rate. The contract did not contain any force majeure clause or provision addressing unforeseen legal changes affecting trade. In 2023, due to rising environmental concerns and public protests over deforestation, the Government of India passed a new environmental regulation that imposed a blanket ban on the import of palm oil for commercial fuel production, with immediate effect. This legal development made it unlawful for EcoFuel to continue using palm oil as a raw material, and the company ceased accepting deliveries from AgroTrade. AgroTrade sued EcoFuel for breach of contract, claiming that the Indian buyer had failed to perform its obligations without lawful justification. EcoFuel argued that the contract stood frustrated due to the unexpected change in Indian law which made the core purpose of the agreement impossible to achieve. AgroTrade countered by asserting that changes in regulation are foreseeable in long-term international contracts and that, in the absence of a force majeure clause, EcoFuel bore the risk of performance.

In light of the above facts, critically analyze whether EcoFuel can successfully invoke the doctrine of frustration to avoid liability. Discuss the legal principles involved, the impact of legislative changes on contractual obligations, and whether the absence of a force majeure clause alters the parties' legal position. Refer to relevant case law to support your reasoning.

(Marks 20)

Q.2). The Municipal Corporation of City Y issued an invitation for innovative infrastructure development proposals under the Swiss Challenge Method, aiming to construct a smart multi-level parking facility in the congested commercial district. InfraBuild Pvt. Ltd. submitted an unsolicited proposal detailing a comprehensive design, financing plan, and execution timeline. The Corporation evaluated the proposal and found it technically and financially viable. As required under the Swiss Challenge Method, the proposal was made public to invite counter-bids. MegaStruct Ltd. submitted a competing proposal with slightly improved financial terms and shorter execution timelines. InfraBuild Pvt. Ltd. was then given the right to match the offer but alleged that it was denied access to key evaluation documents and claimed that the process lacked transparency and fairness. Further, local stakeholders argued that the Swiss Challenge route bypassed competitive tendering and violated principles of public accountability under existing procurement norms. The matter escalated to the State High Court, raising important questions about the legal validity of the Swiss Challenge Method in public procurement, procedural fairness, and the balancing of innovation with transparency in infrastructure projects.

In the light of the above, critically analyze the legal, ethical, and procedural issues involved in the use of the Swiss Challenge Method in public-private infrastructure development. Discuss the legitimacy and limitations of such methods with reference to judicial decisions, policy guidelines, and comparative practices.

(Marks 20)

Q.3). The Government of State X entered into a Public-Private Partnership (PPP) agreement with RapidTrans Ltd. for the construction and operation of a metro rail project under the Design-Build-Finance-Operate-Transfer (DBFOT) model for a period of 35 years. The Concession Agreement did not contain any provision relating to refinancing or mechanisms for sharing financial gains arising from refinancing activities. Eight years into the concession period, RapidTrans refinanced its original high-interest project loan with a new low-interest loan and extended its loan tenor, significantly improving its cash flows and internal rate of return. The Government later discovered this refinancing and raised concerns that RapidTrans had gained an unanticipated financial windfall and that public interest required a share of these gains. RapidTrans refused, arguing that in the absence of a refinancing clause, it had no legal or contractual duty to disclose or share refinancing benefits.

In the context of the above facts, examine the following issues:

1. What is refinancing in PPP projects? Define and distinguish between different types of refinancing such as debt refinancing, equity refinancing, and refinancing with risk transfer.
2. Whether the absence of a refinancing clause precludes the public authority from claiming any share of refinancing gains.
3. Whether the financial restructuring by RapidTrans affects the principles of equitable risk and reward sharing and value for money in PPP projects.
4. The legal and policy implications of omitting refinancing provisions in concession agreements and whether such terms can be implied or read into the contract to uphold public interest.

(Marks 5x4=20)

Q.4). Write brief analytical notes on the following, bringing out the key differences in structure, roles, and objectives:

- a) Project Finance and Corporate Finance
- b) InVIT Investment Manager and Project Manager

(Marks 10x2=20)

Q. 5). In the context of infrastructure and project finance, discuss the significance of Sponsor Agreement, Credit Agreement, Step-in Rights, Due Diligence, and Adequate Risk Allocation. How do these elements collectively contribute to the viability and bankability of a project? Illustrate your answer with relevant examples and reasoning.

(Marks 20)

Q.6). "Green finance is a critical enabler for achieving India's climate goals under the Paris Agreement and the SDGs. However, the absence of a robust legal and regulatory framework has impeded its progress." Critically examine the current regulatory ecosystem for green financing in India and suggest reforms needed to create an enabling environment for sustainable investments.

(Marks 20)

