

A New Dawn: Infrastructure Investment 2024



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It is 5 July 2024. No doubt many are feeling somewhat tired and perhaps a little emotional. For those who are involved in or concerned about infrastructure, however, this morning may represent a significant change in infrastructure policy in the UK opening the door for investment and new projects.

In the Spring of 2017, the Conservative Government put future PFI projects on hold. By 2020, it was clear that there would be no future PFI or PPP type projects in the pipeline. By 2023, that was proven to be correct.

In the autumn of 2023, the Labour Party announced the formation of the Infrastructure Council and more recently they have proposed the introduction of the National Infrastructure and Service Transformation Authority (NISTA) combining the National Infrastructure Commission and the Infrastructure and Projects Authority. The Labour Party has also announced that the current model of infrastructure projects will change.¹

The Labour Party, it seems, will be serious about infrastructure. But what will that look like?

It is known that the plan is to have a multi-billion plan for investment – this is per the Manifesto and press reporting.² The question is as to the format of the projects themselves and the scale and scope of any cash pipeline.

In terms of project structure, it is reasonable to expect that the Mutual Investment Model (“MIM”), which has been used in Wales, will form the basis of any discussion and is ripe for adoption and evolution.³ MIM has a different corporate structure to PFI. Unlike PFI, where the structure is: Authority – Project Company (backed by the Funders) – Building Company/Operating Company; under MIM (on the Welsh model) the State is permitted to have a minority stake in the Holding Company and it is the Holding Company that is the sole shareholder in the Project Company. Thus, equity and return flows through the Holding Company whilst the Project Company runs the project and the contracts with Building and Operator Companies which are, as per later PFI structures, autonomous.⁴

There are two different streams here – commercial and legal.

Commercially, the obstacles are as follows:

- In terms of the scope and scale of the financial investment to interest the market it will need to be significant.
- In terms of the Public Sector, the Public Sector will want assurances that any infrastructure built will deliver value for money and will be structured so as to allow dynamic change and evolution to accommodate, amongst other things, technological change.

- Funders will need increased confidence in the consistent and clear application of Government policy.
- Building Contractors will need to know that they have a substantial programme into which they will sink their resources.
- FM Contractors will need to have clarity of risk/ reward and understand the delivery model so as to evolve their business structures.

Legally, the best intentions will not solve the debates that currently exist in the industry but all stakeholders will be keen to ensure that current issues with the PFI model – construction defects, a lack of active operational contract management on some projects, reporting complexities,⁵ handback uncertainty⁶ and early termination risk are not replicated in any future model.

The good news is that if the Labour Party, now in government, is serious about infrastructure, there is the acquired experience in the market and elsewhere on which it can rely.

1 See <https://www.ft.com/content/4f8337e9-e0f4-4d5a-a320-eee1870ef2d6>

2 See <https://www.bloomberg.com/news/articles/2024-06-27/labour-expects-billions-of-private-investment-after-uk-election>

3 See <https://www.gov.wales/mutual-investment-model-infrastructure-investment>

4 In early PFI, there could be an overlap between the Funders, Project Companies and Building/Operating Companies – this obviously centralised risk.

5 See Wilken Keating Chambers Legal Update: <https://www.keatingchambers.com/wp-content/uploads/2023/03/PFI-Claims-Sean-Wilken-KC.pdf>

6 See Wilken Keating Chambers Legal Update: <https://www.keatingchambers.com/wp-content/uploads/2020/01/SDW-PFI.pdf>

7 See Wilken Keating Chambers Legal Update: <https://www.keatingchambers.com/wp-content/uploads/2024/01/Sean-Wilken-KC-PFI.pdf>