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# Madinah Airport Expansion PPP Legal Case Study

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Best Islamic Finance Law Firm – *Euromoney 2013*

Middle East and Africa Infra Deal of the Year for the US\$1.2 billion expansion of Madinah Airport in the Kingdom of Saudi Arabia - *PFI Awards 2012*

Best Islamic Project Finance Deal - Madinah Airport Expansion PPP - *Euromoney Islamic Finance Awards 2013*

## Why is it relevant?

- Growing demand for finance in many industrial sectors
- Islamic finance as a credible alternative source of funds
- Islamic finance has traditionally required tangible assets
- Islamic economic theory fully supports financing in many industrial sectors where they add value and benefit to society
- Economic growth throughout the Muslim world
- Right deal, right place, right time...

# Increasing use of Islamic Finance in Project Finance

- Material shift in market post 2008
- No of banks have reduced significantly; no underwriting availability
- Withdrawal of European banks from the region
- Regional banks playing much more active role; greater use of local currency tranches; sets the scene for greater use of Islamic Finance
- 2006: 12.5% of PF Market in the ME; 2012: est. 30%

PF Bank Profile in ME* (2004)		PF Banks profile in ME (2011)	
European	44%	European	18%
Regional	47%	Regional	57%
Japanese	5%	Japanese/ Korean**/ Chinese	25%
Others	4%		

## Increasing trends:

- Regional banks
- Local currency funding
- Islamic finance
- Multi-sourced funding

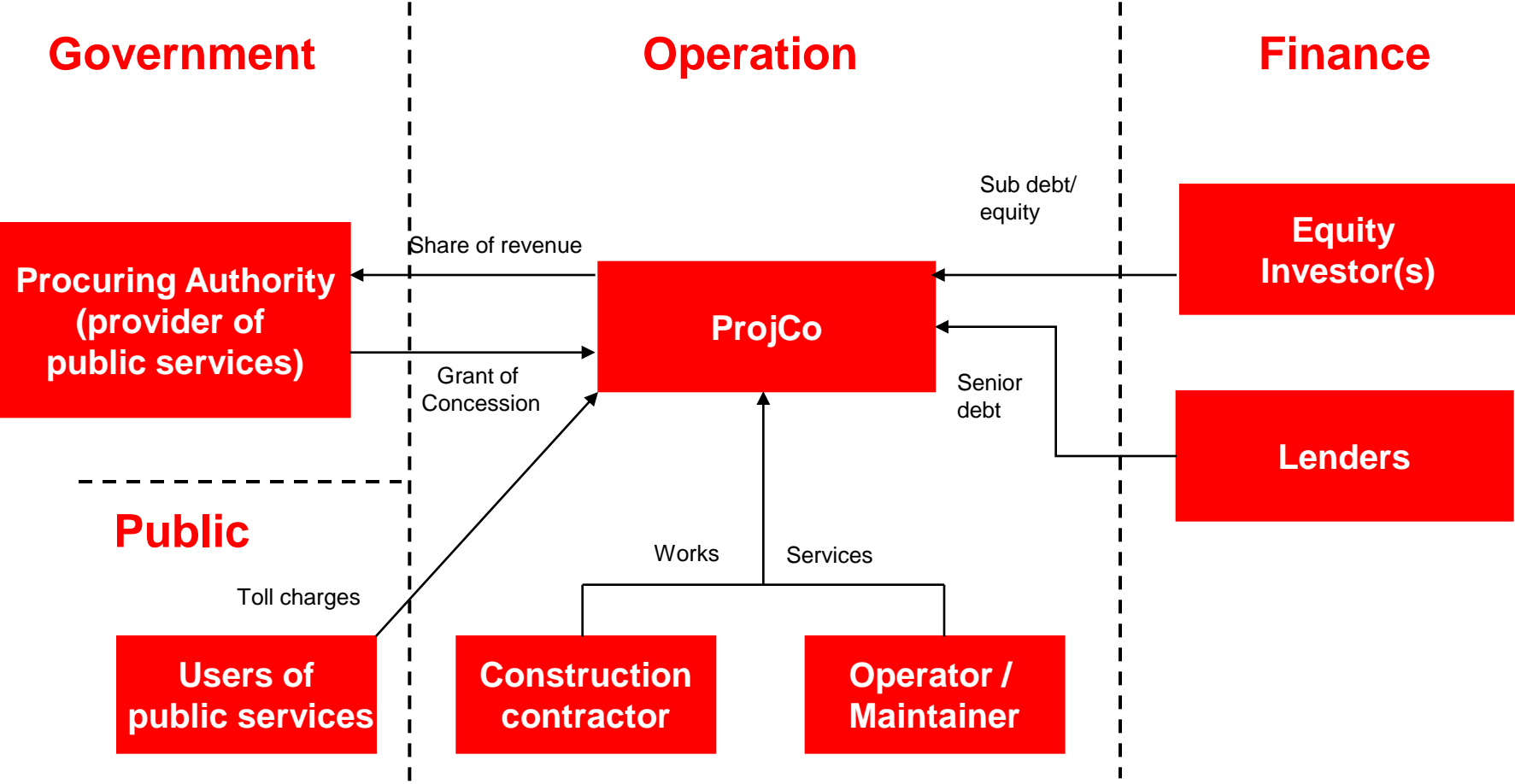
# BOOT, BOO and 'Traditional' Concession based PPP structures

Private sector finances, constructs and operates asset

- **BOOT (Build-Own-Operate-Transfer):** private sector responsible for financial and operation aspects of project during fixed term. Asset handed-back to public sector at the end of the fixed term. Higher cost to government.
- **BOO (Build-Own-Operate):** full divestiture of the asset to private sector and no provision for hand-back of the asset at the end of the fixed term. Public sector only pays for the operation of the asset, not its construction.
- **Traditional concession:** No take or pay obligations, project company collects revenues directly and bears full end user risk (demand/collection of revenues), ownership of asset and regulatory role remains public sector

# PPP project structures: toll model

## Used on Madinah Airport PPP

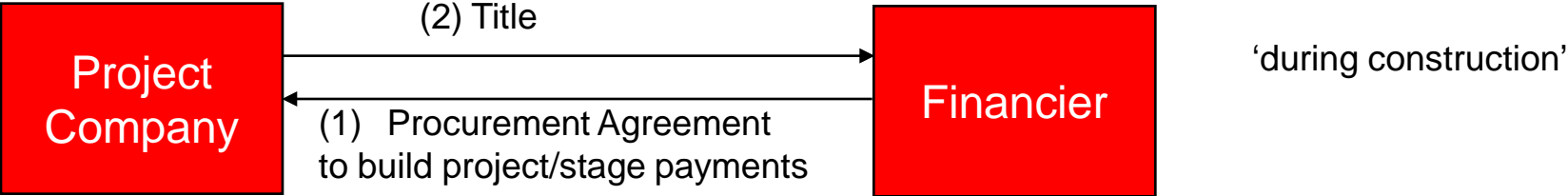


# Madinah Airport PPP – Key Facts

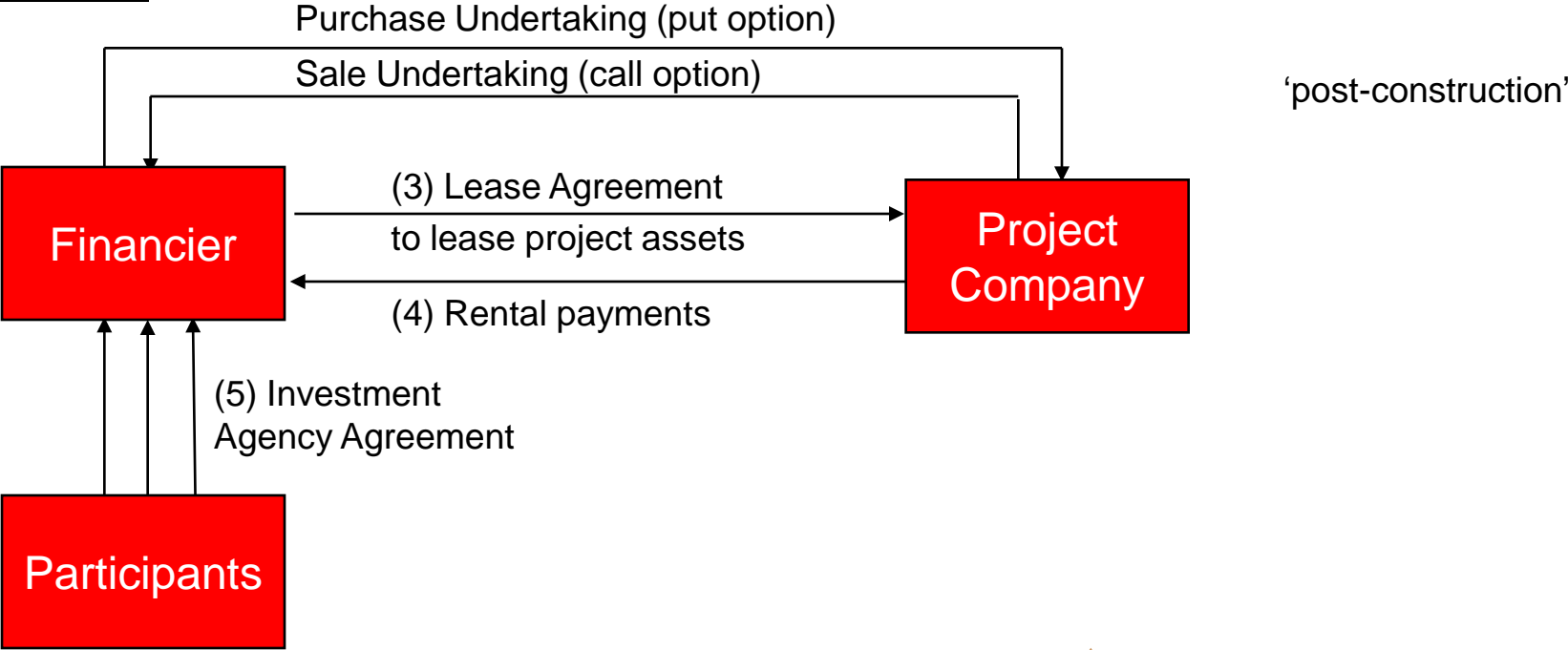
- \$1.2bn PPP to finance expansion of Madinah Airport
- TAV/Saudi Oger/Al Rajhi Consortium
- Project will increase passenger capacity from 5 million per annum up to 8 million initially, with potential for further expansion to 16 million
- Fully Islamic financed: US\$1.2 billion Islamic financing package comprising a three-year US\$436 million Commodity Murabaha Equity Bridge Facility, an 18-year US\$719 million Procurement Facility (in several tranches) and a US\$23 million Working Capital Facility
- Primarily denominated in SAR
- Financial Adviser: Sumitomo Mitsui Banking Corporation
- Bank club: National Commercial Bank; The Saudi British Bank and Arab National Bank
- Passenger demand risk assumed by the private sector
- With the expansion driven by increasing pilgrimage passengers, a very good project for Islamic finance

# The Procurement Model

## Step 1:



## Step 2:



# The Procurement Model

## What is the Procurement Model?

- *Istisna'a* with forward *ijara* (*ijara mawsufah fi al dhimmah*)

## What is an *Istisna'a*?

- Order to produce a specific asset with own materials
- Fixed price with flexibility as to payments
- Title to asset transferred to purchaser at completion



# The Procurement Model

## What is an *Ijara*?

- In simple terms, a lease of an asset
- Leased assets must be valuable, identifiable and quantifiable
- Lessor remains liable as owner of the asset
- The lease must be for a Shariah-compliant and defined purpose
- Fixed or variable rental payments against an agreed index

## When is a forward *ijara* used?

- Where the assets do not exist
- Lessor undertakes to deliver the asset to agreed specifications
- Advance rental payments made during the construction phase

# Madinah Airport PPP

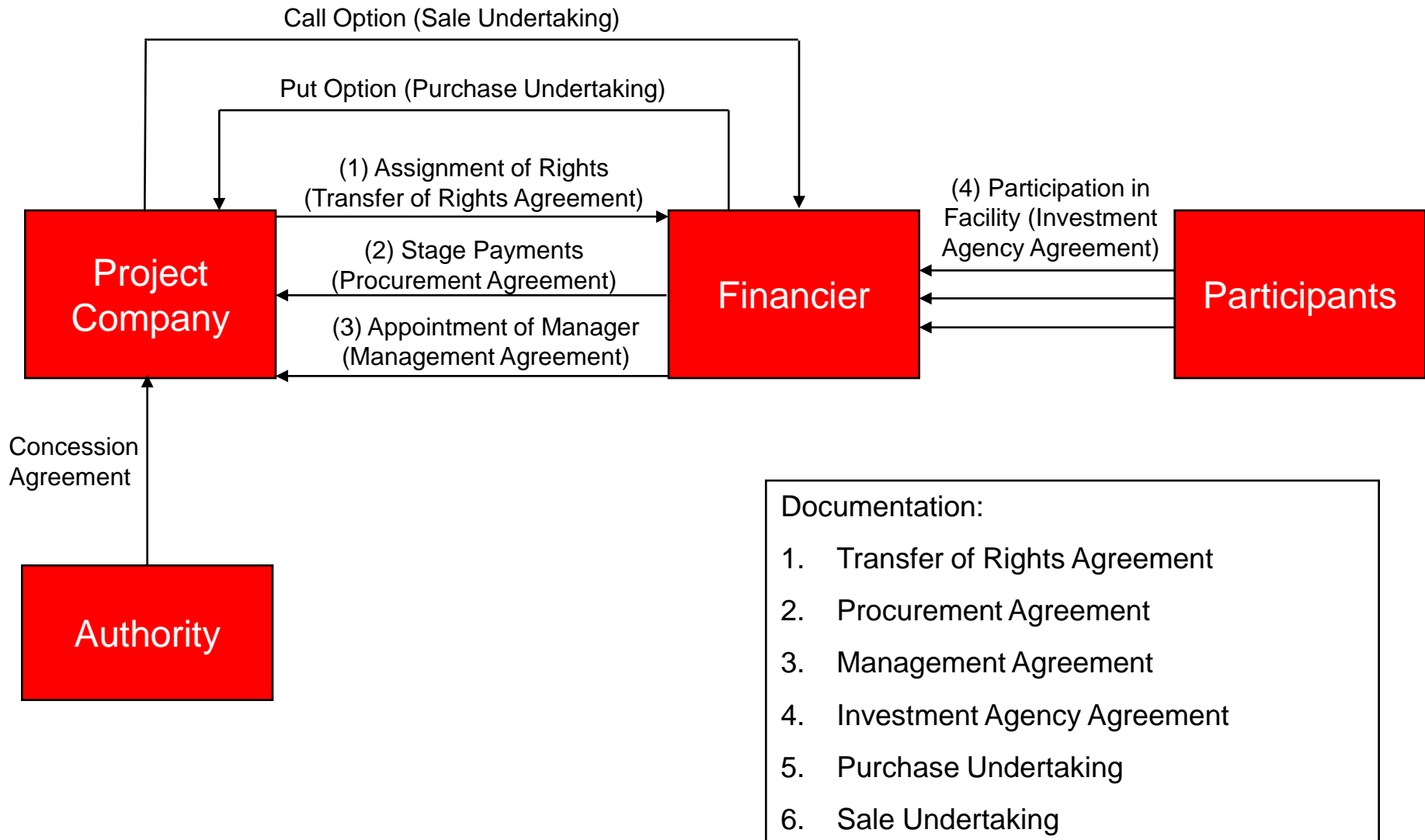
## Why the traditional Procurement Model could not be used

- Transfer of title to the physical assets is essential
- A strategic asset where title had to remain with the Authority

## Alternative approach based upon the Concession Agreement

- Substitution of physical assets for intangible rights

# Madinah Airport PPP



# Madinah Airport PPP

- Assignment of rights under the Concession Agreement
  - ❑ Assignment vs novation
  - ❑ Other considerations
  
- Appointment of Project Company as a manager
  - ❑ To perform the Services for the duration of the Facility
  - ❑ Grant of licence to Project Company (as manager)
  - ❑ Exclusive and irrevocable prior to a default
  - ❑ Sole discretion with power to appoint sub-managers
  
- In consideration for payment of a management fee
  - ❑ Nominal fee (USD 100)
  - ❑ Incentive fee equal to surplus Project Revenues

# Madinah Airport PPP

- Profit Payments made by Project Company (as manager)
  - ❑ Owner of the concession rights entitled to profit from the Project
  - ❑ Mechanics similar to rental payments under an *ijara*
- Purchase Undertaking and Sale Undertaking
  - ❑ Procurement Facility Agent remains owner of concession rights
  - ❑ Concession rights attributed value equal to the Commitments
  - ❑ The issue in relation to a Total Loss of the concession rights

The logo consists of a stylized, upward-pointing chevron shape in a gold color, positioned above the first letter of the word 'NORTON'.

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