

Public Private Partnerships A New Zealand Overview

PECC Workshop on PPPs
13 December 2004

Presented by
Michael Weatherall
Partner



Public Private Partnerships

- Terminology
- Recent PPP projects
- Legislative changes – are PPPs being promoted or precluded?
- Where to now?



What is a PPP?

Public = public sector authority

Private = private organisations (incl non profit)

Partnership = **risk sharing** relationship (not merely regulatory or short term contract)

“ A PPP is a risk-sharing relationship between the public and private sectors to deliver a desired public policy outcome and/or public service”



Types of PPPs

- Publicly Financed:
 - Alliances
 - DBO (no private finance)
 - Long term maintenance
- Privately Financed
 - BOOTs/ DBFOs
 - Development Agreements (BOOs)
 - Franchise



What is a BOOT/DBFO?

DBO, BOT, BOOT, DBFO, DBFOOT

D = Design

B = Build

F = Finance

O = Operate

O = Own

T = Transfer

Key Distinction from D&B or DBO = Contractor Finance

Does NOT necessarily include Toll



Concession Agreement

- Contractor's obligations: D, B, F, O, O, T
- Authority's concession (in return for performance of obligations) allowing Contractor to:
 - **generate revenue** from Project (eg toll or off-take); and
 - do things normally precluded by law (eg toll) or reserved to Public Authority (eg control roads, operate prison)
- **Concession Agreement** = Single agreement covering all (cf conventional separate agreements)



Public Authority

Consultancy
Agreement

D

Engineer/
Architect



Public Authority

Consultancy
Agreement

D

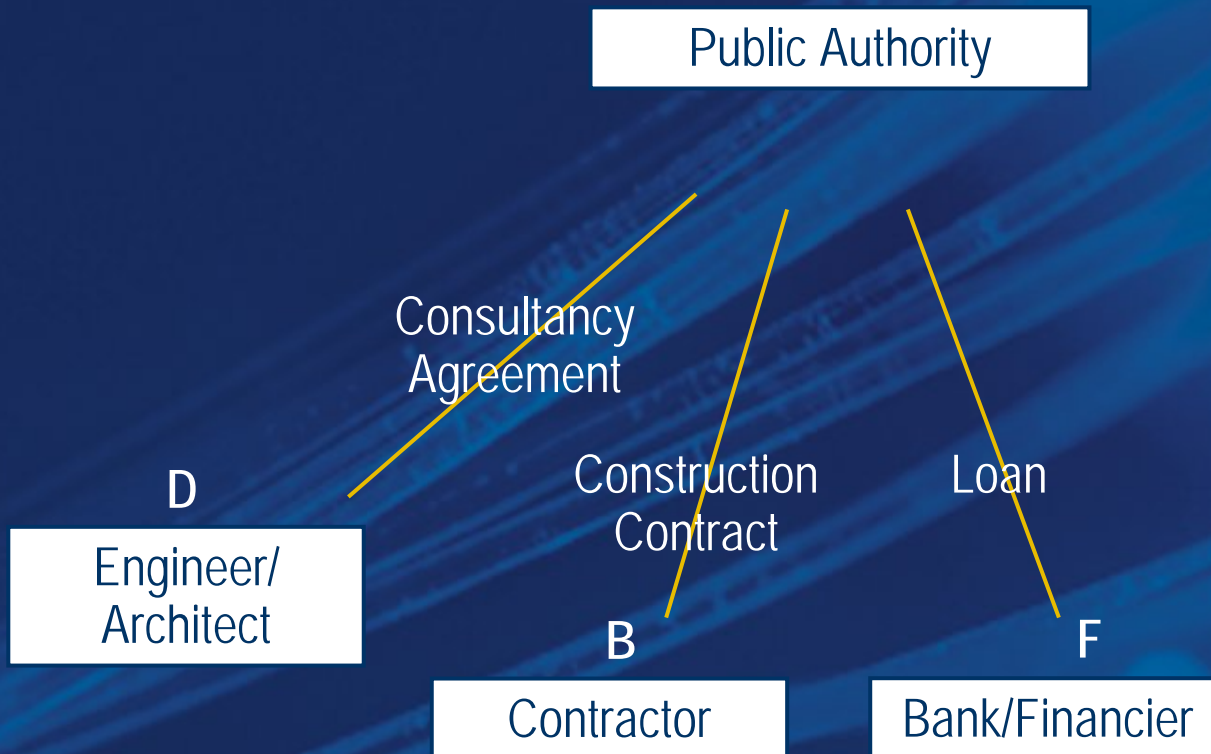
Engineer/
Architect

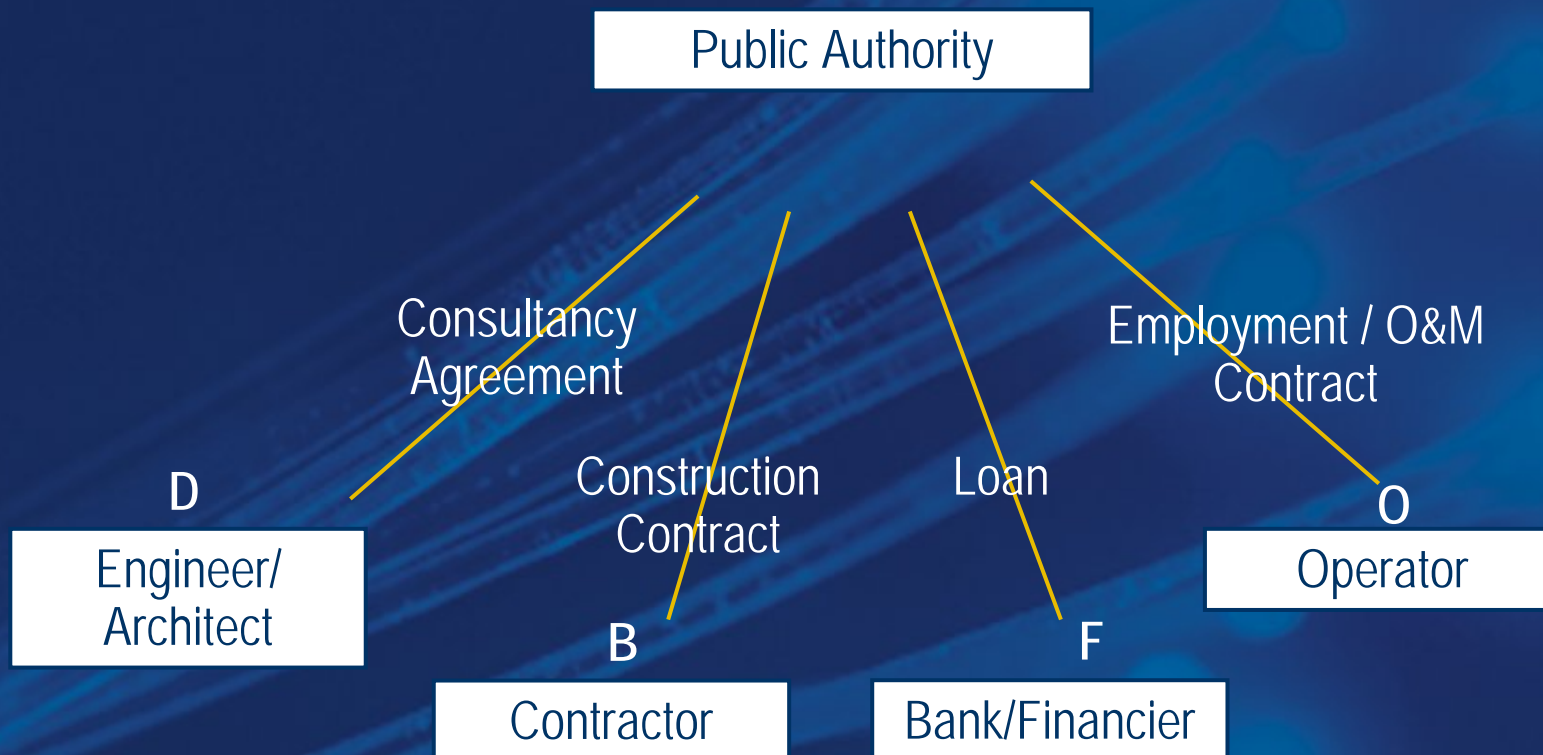
Construction
Contract

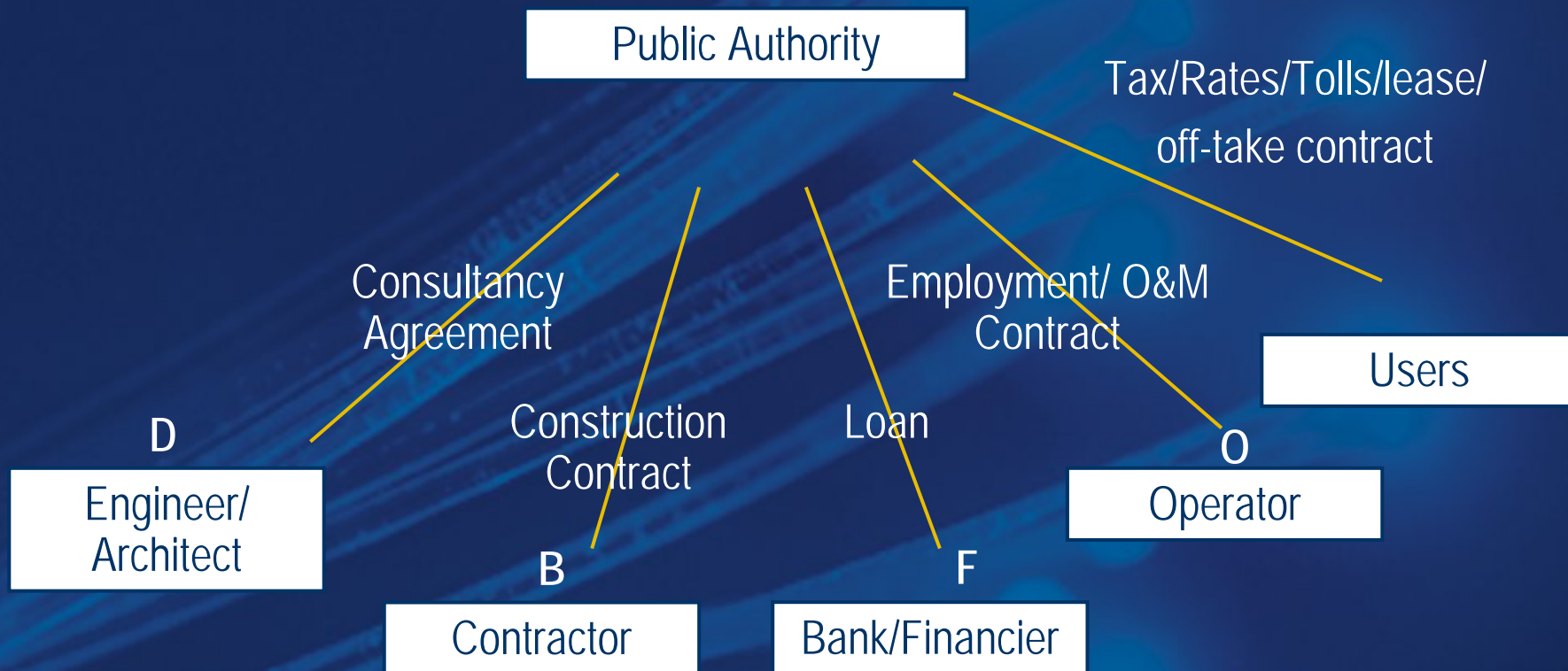
B

Contractor

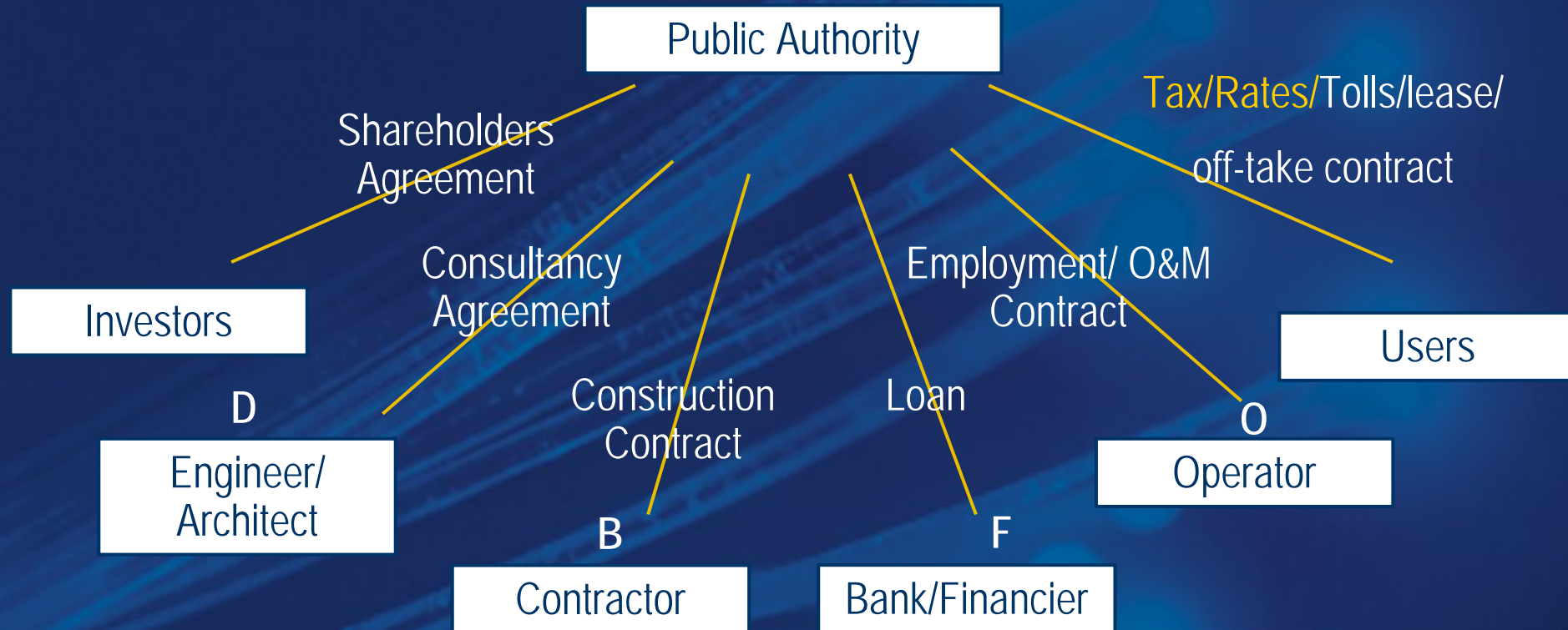




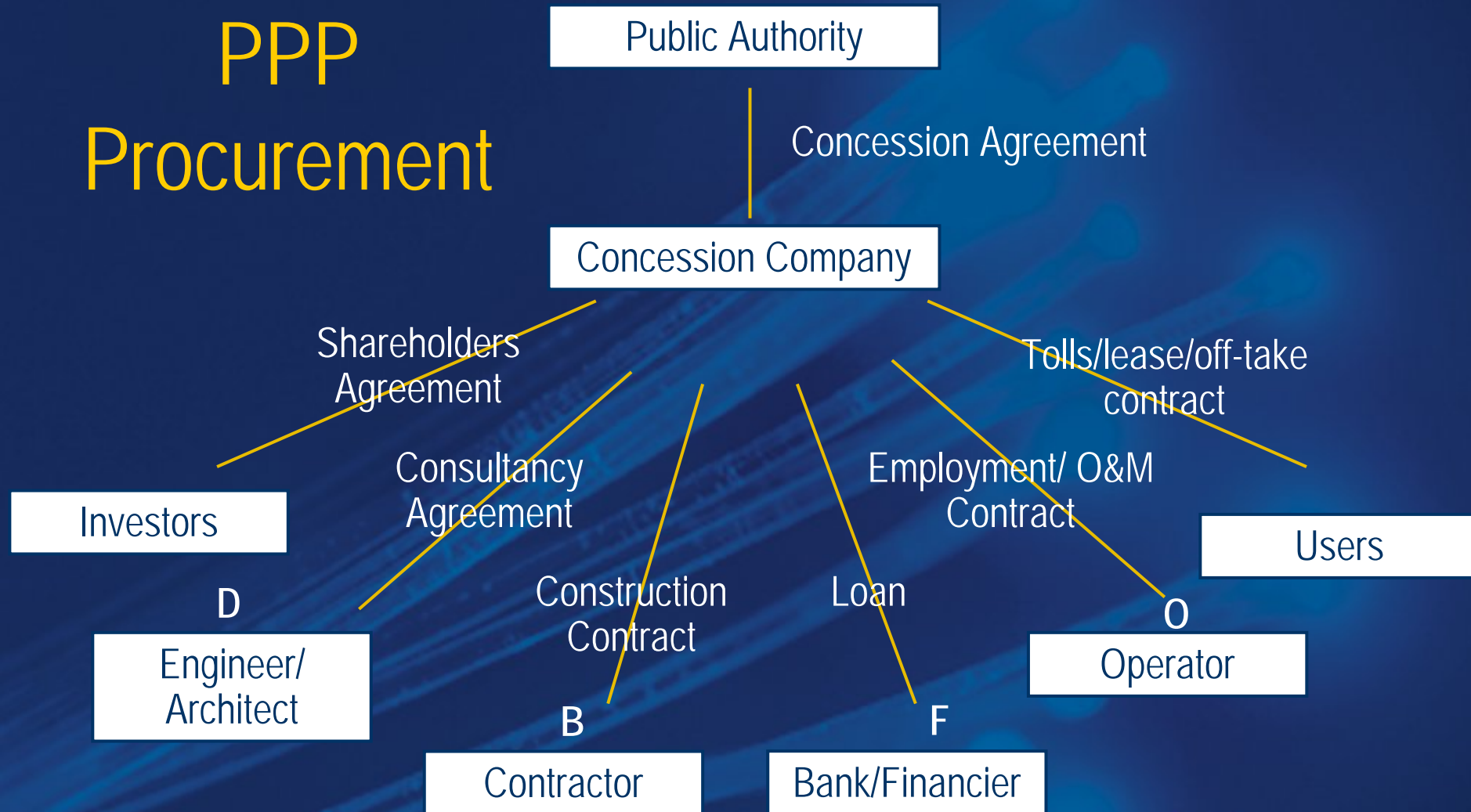




Public Procurement



PPP Procurement





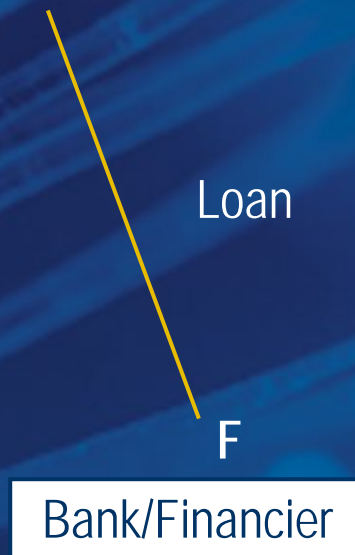
Public/Private difference:

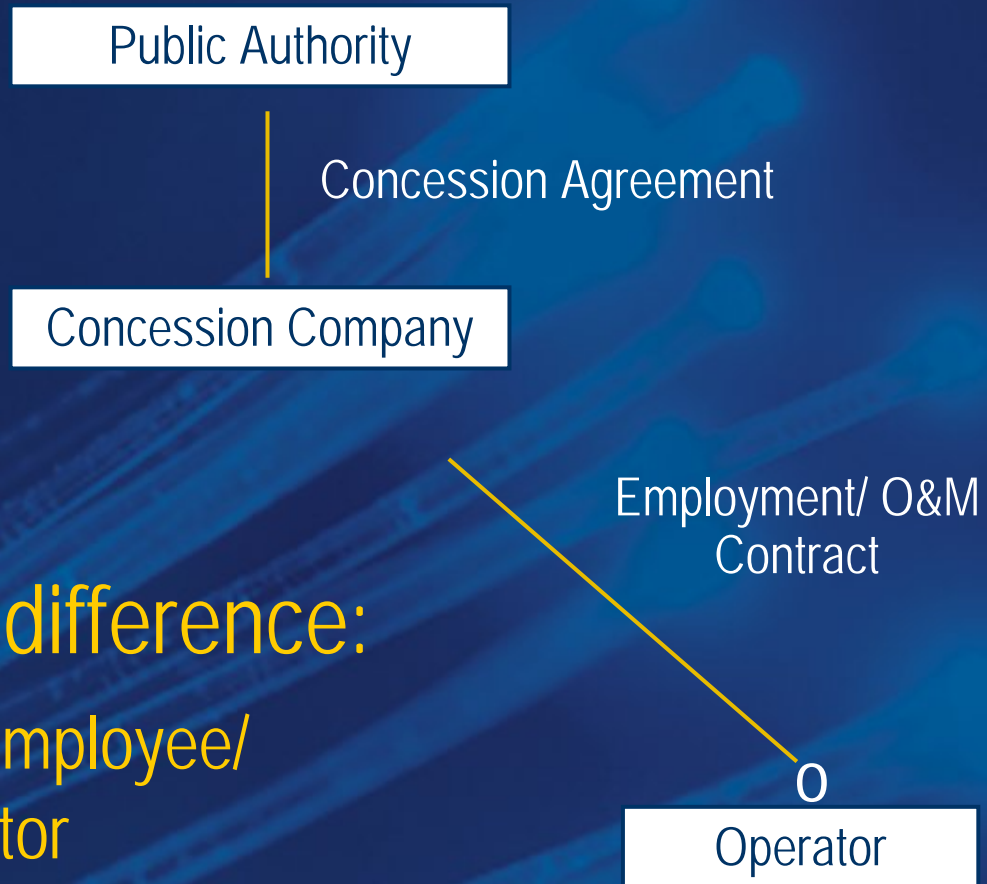
Public loan = Cheaper

Lender's Security = Public ability to levy rates or taxes

Private loan = Project Finance

Lender's Security = Project revenues (more risky)



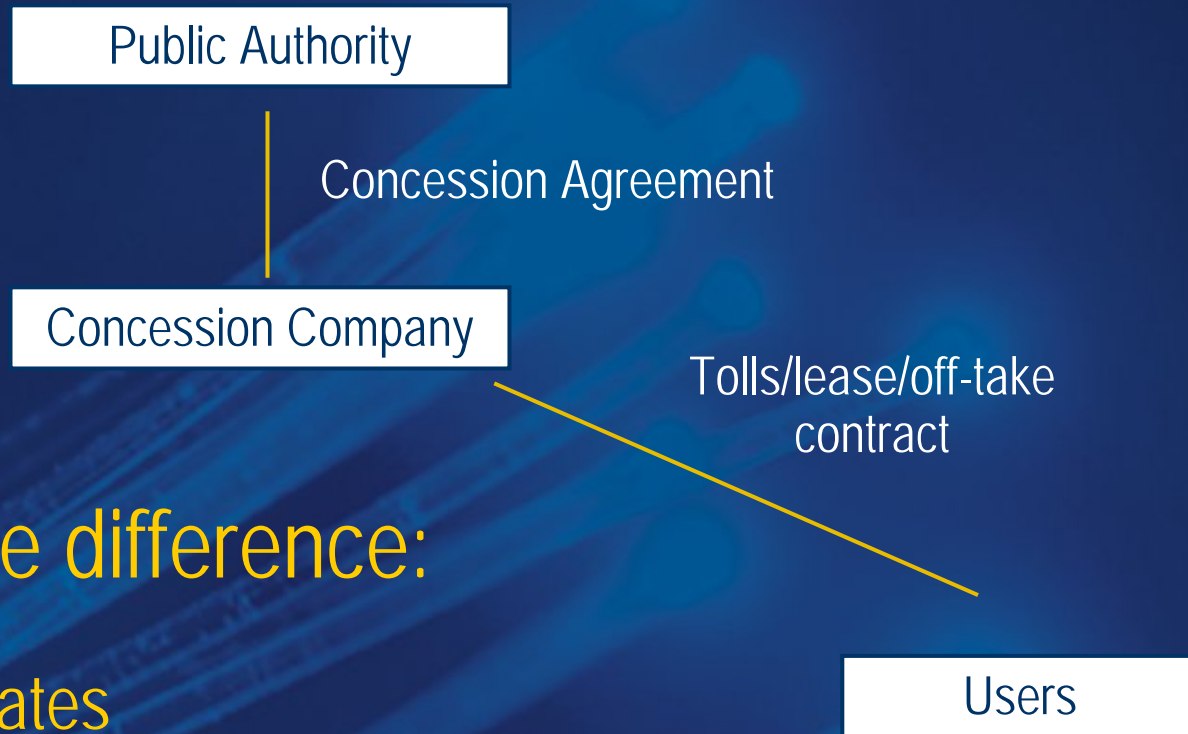


Public/Private difference:

Public = Direct Employee/
Contractor

Private = Indirect control





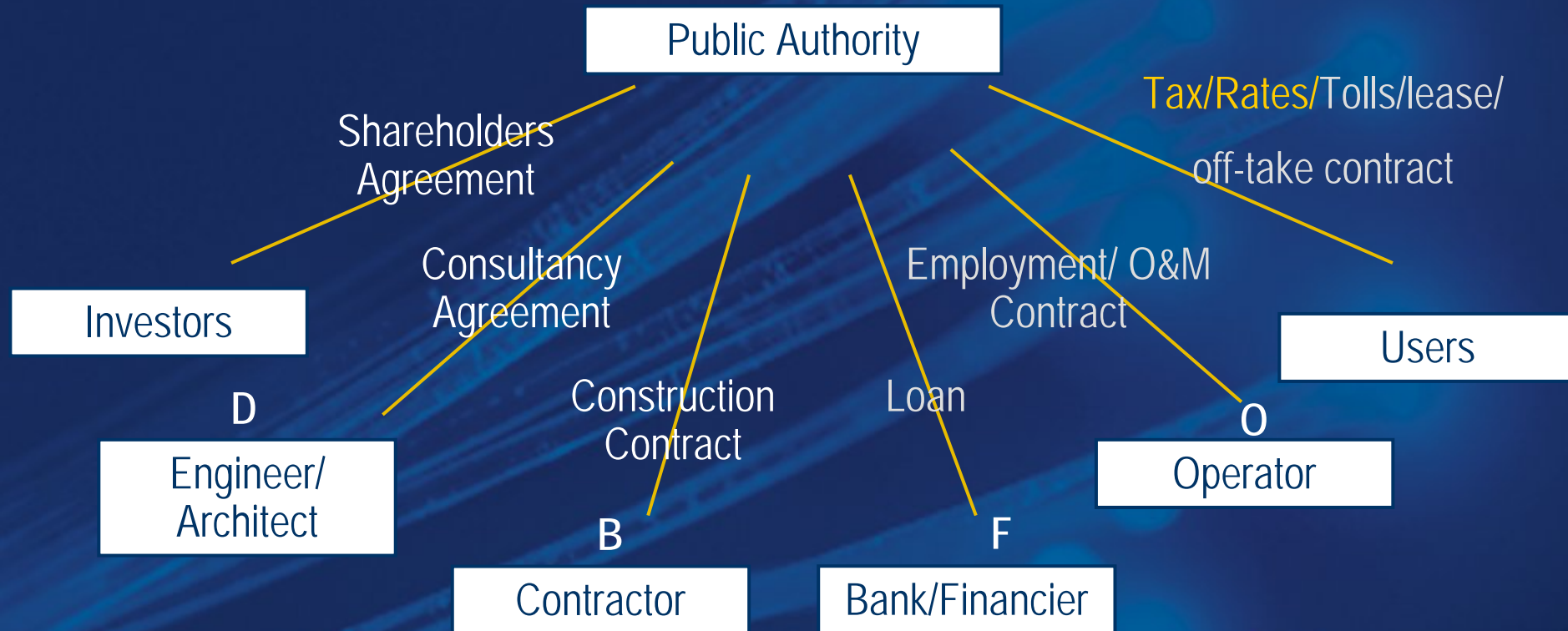
Public/Private difference:

Public = Tax/ Rates

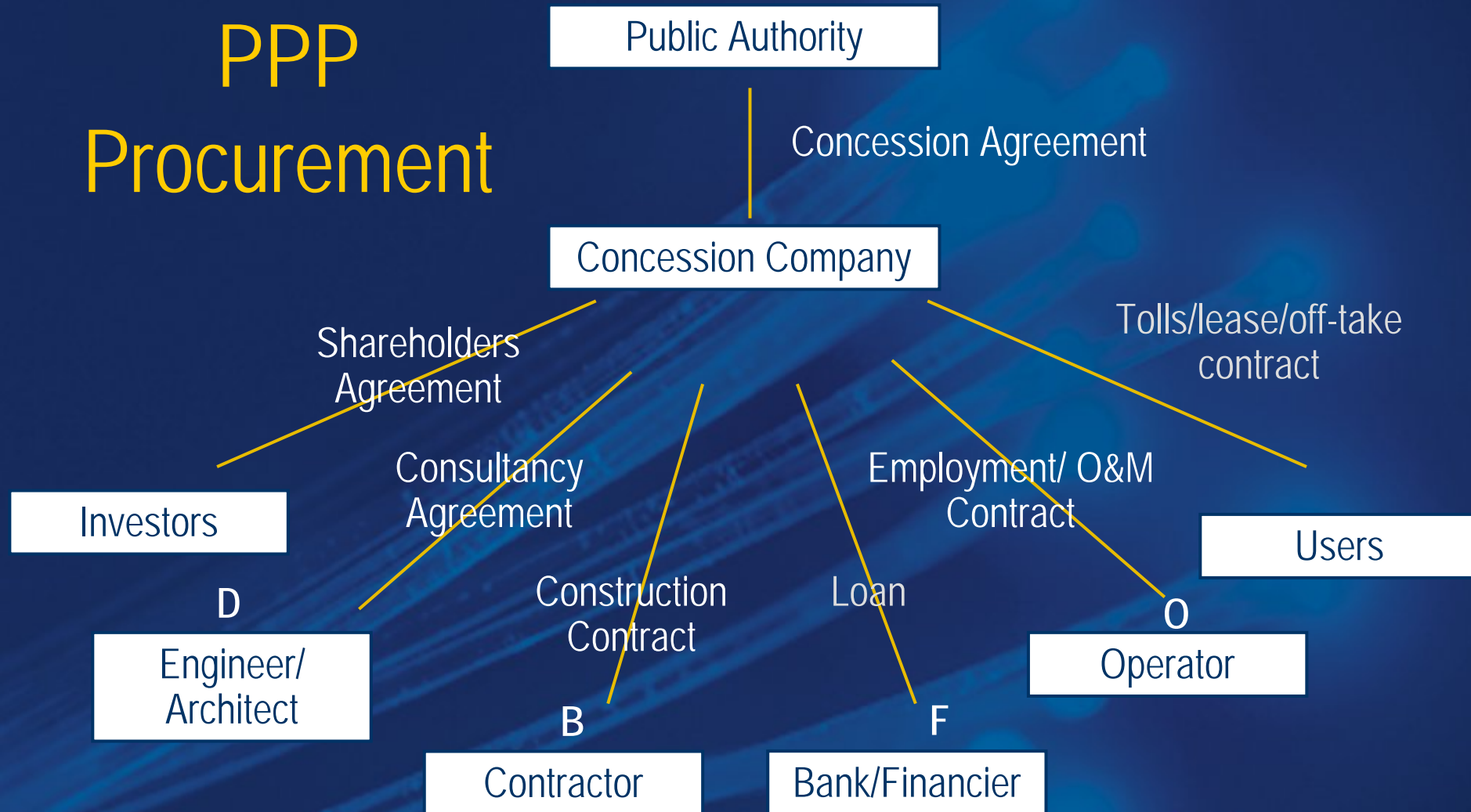
Private = Tolls/ lease/ off take
contract (user pays or contract back
to the Public Authority)



Public Procurement



PPP Procurement



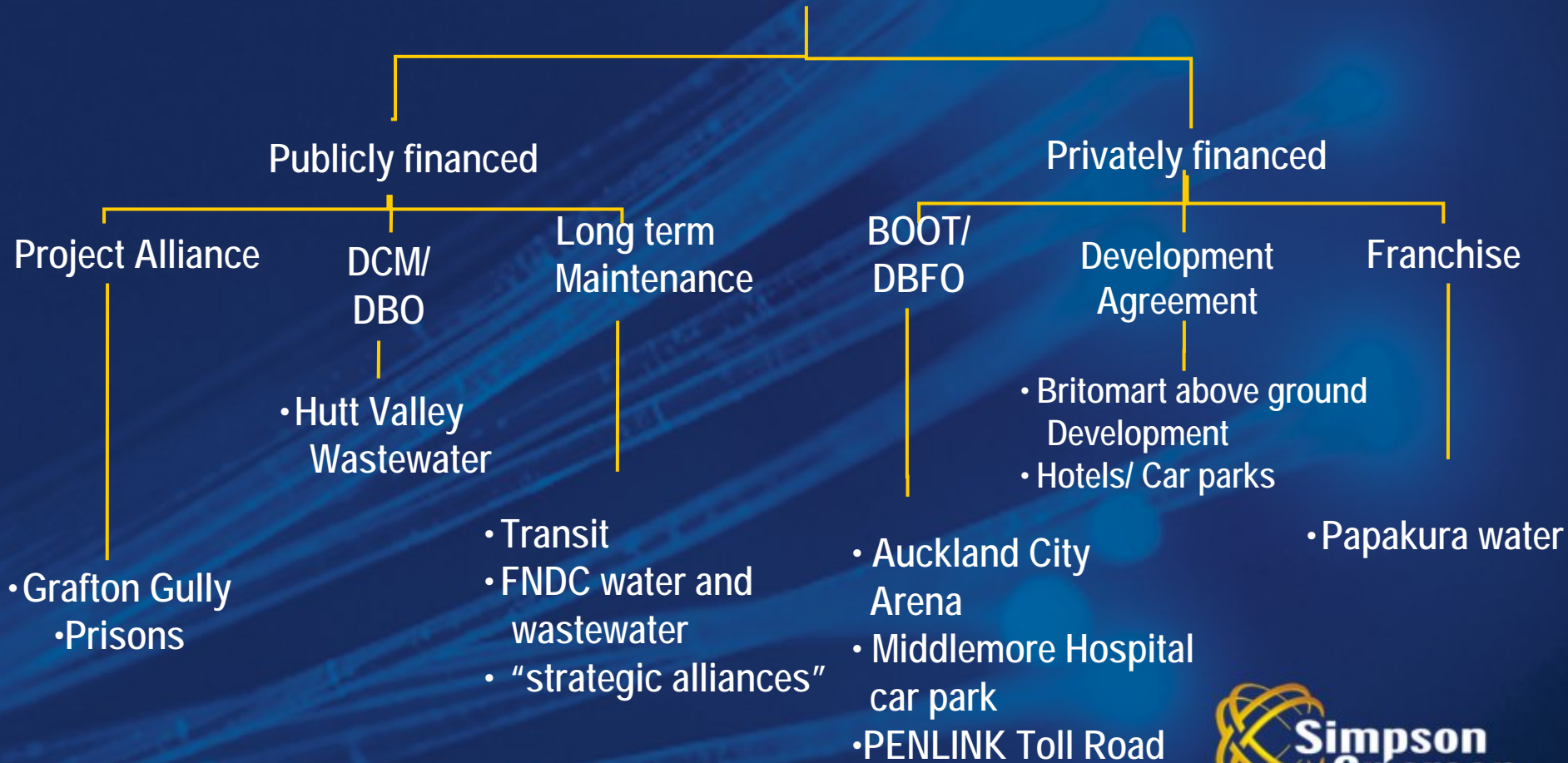
Why use Private Finance?

- Alternative/ Only funding:
 - Eg "Toll road or no road"
- Best Value:
 - Better (cheaper and higher quality) delivery of services
 - Best Value – Quality, Cost and Risk
- Verify by Public Sector Comparator
- If Not – Don't do it!



NZ PPP Family

NZ PPP Family



Overseas Trends

PPPs (including Private Finance) used for:

- **Economic** infrastructure: Energy, Transport, Roads, Water and Wastewater
- **Social** Infrastructure: Hospitals, Schools, Prisons, Courts
- Many Governments have **strongly supported** PPPs *as an option* (subject to best value etc)



What is happening in NZ?

- *Are PPPs being promoted or precluded?*
- Eg: Roads, Water & Wastewater, Prisons



Roads – LTMA 2003

- Pre Land Transport Management Act 2003:
 - To Toll: needed legislative authority
 - For PPP/ DBFO/ BOOT/ Concession Agreement: nothing special required (except to Toll)
 - To grant Road Controlling Authority entitlements to private sector: already a process (LTA 1998)



Land Transport Management Act

- Part 2 Sub-part 2: Tolling Schemes and Concession Agreements
- Two separate processes:
 - For Tolling: Order In Council
 - For Concession: Ministerial Approval
- Long and arduous processes with no certainty of outcome – and ultimately at Minister's discretion
- Since enactment, only Public Toll Roads have been considered



Water & Wastewater

- Pre LGA 2002 – no restriction on PPPs
- Local Government Act 2002:

136. Contracts relating to provision of water services—

(1) Despite section 130(2), a local government organisation may enter into contracts for any aspect of the operation of all or part of a water service for a term not longer than 15 years.



Water & Wastewater cont..

- (2) *If a local government organisation enters into a contract under subsection (1), it must **retain control** over all matters relating to—*
- (a) *the **pricing** of water services; and*
 - (b) *the **management** of water services; and*
 - (c) *the development of policy related to the delivery of water services.*



Water & Wastewater cont..

- (3) *This section does not limit contracts in relation to water services that are entered into solely between local government organisations.*



Prisons

- Penal Institutions Amendment Act 1954 (amended in 1995):

4A Management of Penal Institutions under contract-

*(1) Subject to this Act, the Secretary **may** from time to time, in the name and on behalf of the Crown, **enter into any contract with any other person** for the management by that person, of any penal institution.*



Prisons cont..

- (2) The Secretary shall not-*
 - (a) Enter into any management contract; or*
 - (b) Agree to any extension of the term for which a contractor is to manage a penal institution under any management contract without the **prior written consent of the Minister** in each case*



Corrections Act 2004/2005 cont..

198 *No new management contracts may be entered into*

No person may, on behalf of the Crown, enter into any contract with any person for the management, by that person instead of the Crown, of any Prison.



Corrections Act 2004/2005 cont..

199 *Who may manage prison*

No prison may be managed by any person except-

(a) the Crown; or

(b) a person who, under a management contract entered into under section 4A of the Penal Institutions Act 1954 before the commencement of this section, is required to manage a prison



Corrections Act 2004/2005 cont..

- s209 of the Act **prevents the extension** of the term of any management contract



Are PPPs being promoted or precluded?

- **Precluded** (despite the rhetoric)
- Why?
- **Best Value should be driver** for infrastructure development - especially "Economic Infrastructure"



Where to from Here?

Design *then* Build *then* Operate



Design & Build



Design Build Operate (DBO)



Design Build Finance Operate (DBFO/ BOOT)

- The Driver = Best Value



Summary

- PPPs are **up and running** in New Zealand
- Legislative “road blocks” have been introduced
- **Best value** should (and ultimately will) be the driver for infrastructure procurement



END

Presented by
Michael Weatherall
Partner
Simpson Grierson

