



International Construction Endeavors:

The Risks Associated with Multinational Insurance

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Due to the lack of uniformity in insurance regulation worldwide, companies are increasingly at risk of global exposure. The variance in international insurance law can leave companies with multinational operations exposed to unanticipated costs and, in some countries, civil or criminal penalties.

Companies with multinational operations must obtain properly structured insurance programs that account for all risks associated with their operations in different countries. Multinational insurance programs allow companies to achieve compliance and maintain adequate coverage without the risk of barred recovery.

This survey focuses on insurance considerations affecting construction projects known as Public Private Partnerships (PPPs): (1) multinational insurance coverage, (2) prohibitions against non-admitted insurance, and (3) compulsory coverage. This survey is intended to examine several key issues in international PPP involvement that a policyholder must consider when obtaining insurance coverage. This survey is non-exhaustive and should be used only as a resource in evaluating what coverage is required, or whether existing coverage is compliant.

I. Multinational Insurance

Multinational insurance coverage generally exists in three forms: (1) a single policy providing worldwide coverage, (2) a local policy providing coverage in the country where the PPP is located (the “host country”), or (3) a Controlled Master Program (CMP). CMPs provide coverage through a single master policy that extends coverage outside the home country, combined with local policies designed to cover local risks. CMPs also include Difference in Conditions/Difference in Limits (DIC/DIL) provisions,¹ which provide for additional coverage where gaps exist between the master and local policies.

For U.S. companies with minimal operations abroad, a single worldwide policy may cover all foreign exposures. In the PPP context, however, local risks must be insured under local “admitted” policies to comply with the host country’s insurance coverage requirements. This survey focuses on CMP coverage, where the master and local policies combine to fully insure global and domestic risks.

¹ Policyholders should review local laws to ensure compliance with any DIC/DIL-specific requirements.

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II. Non-admitted Insurance

When procuring a local policy, policyholders should be aware of non-admitted insurance requirements. In many jurisdictions, local “admitted” policies are required by law, and any “non-admitted” policies can be declared invalid, leaving the policyholder at risk of uninsured exposure. It is crucial that policyholders understand whether the insurer who issued the master policy can also adequately cover any local risks associated with their PPP project under local law.

In EU countries, implementation of the EU Insurance Directives allows for free-flow of services, meaning EU insurers from one country can cover risks in another without violating the host country’s insurance laws. In some countries however, the implementation of the EU Insurance Directives combines with country-specific law, limiting this freedom of services. As a result, a number of European countries require foreign insurers to obtain specific licensure or authorization in order to provide insurance services.

Non-admitted insurance concerns do not solely exist in the PPP context. Many countries prohibit non-admitted insurance coverage for certain business risks. Thus, companies with international operations must review local laws to ensure appropriate insurance coverage for every applicable risk.

III. Compulsory Coverage

Many countries also require certain coverages by law. Policyholders should review host country laws to ensure compliance with compulsory coverage requirements.

IV. PPPs and PPP-Specific Concerns

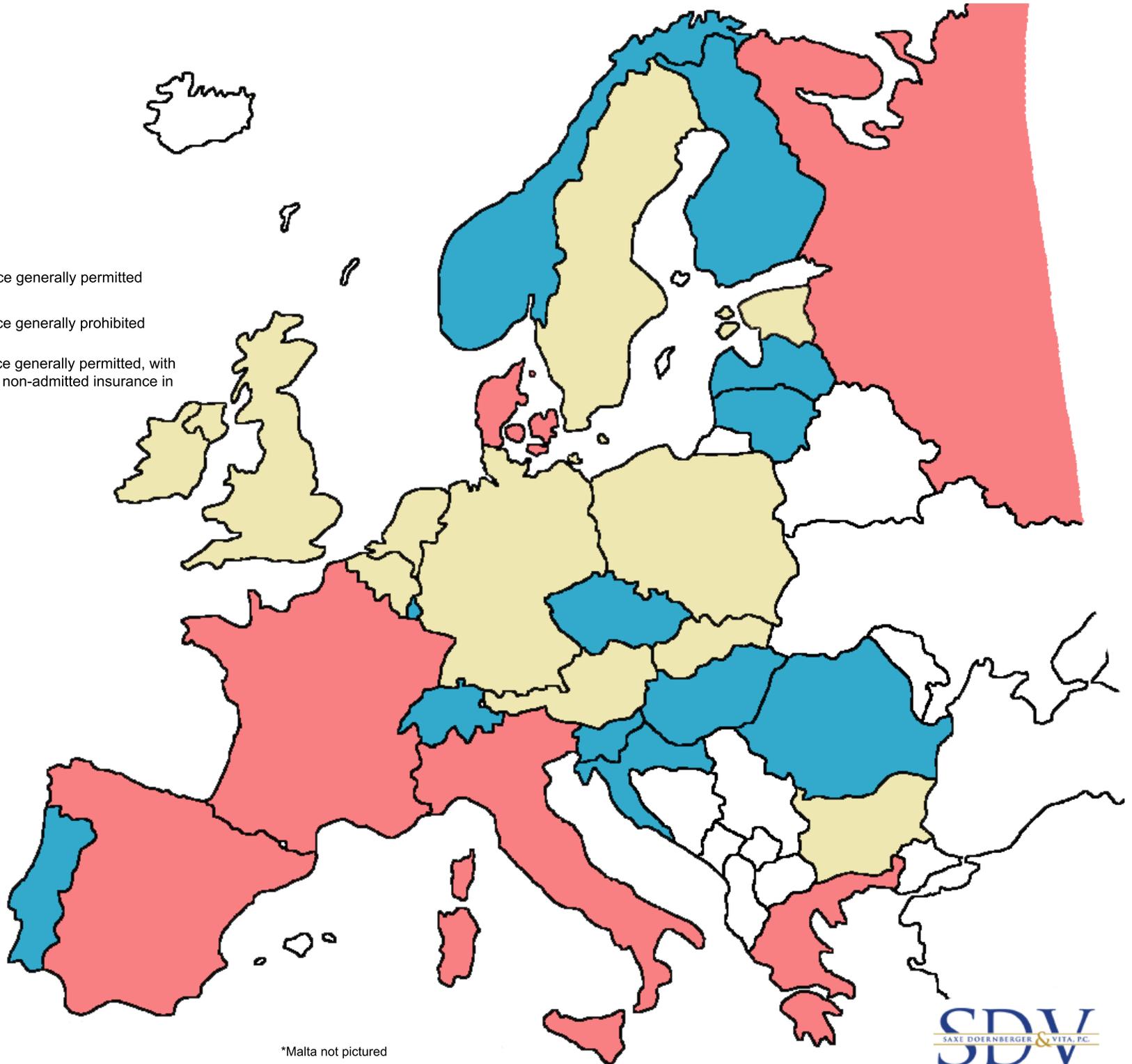
Public-private partnerships have been used worldwide in a number of public sectors, including transportation, energy, healthcare and information technology. International involvement generally takes the form of funding. For example, if Country A wants to build a new highway, but lacks the public funds to do so, it may seek funding from outside sources, which would allow a company from Country B to bid for involvement in that project. Due to the financing that company provides, Country A’s transportation sector improves, and the company from Country B can profit.

The survey includes PPP-specific laws and the relevant PPP regulatory authority in each country as a resource.

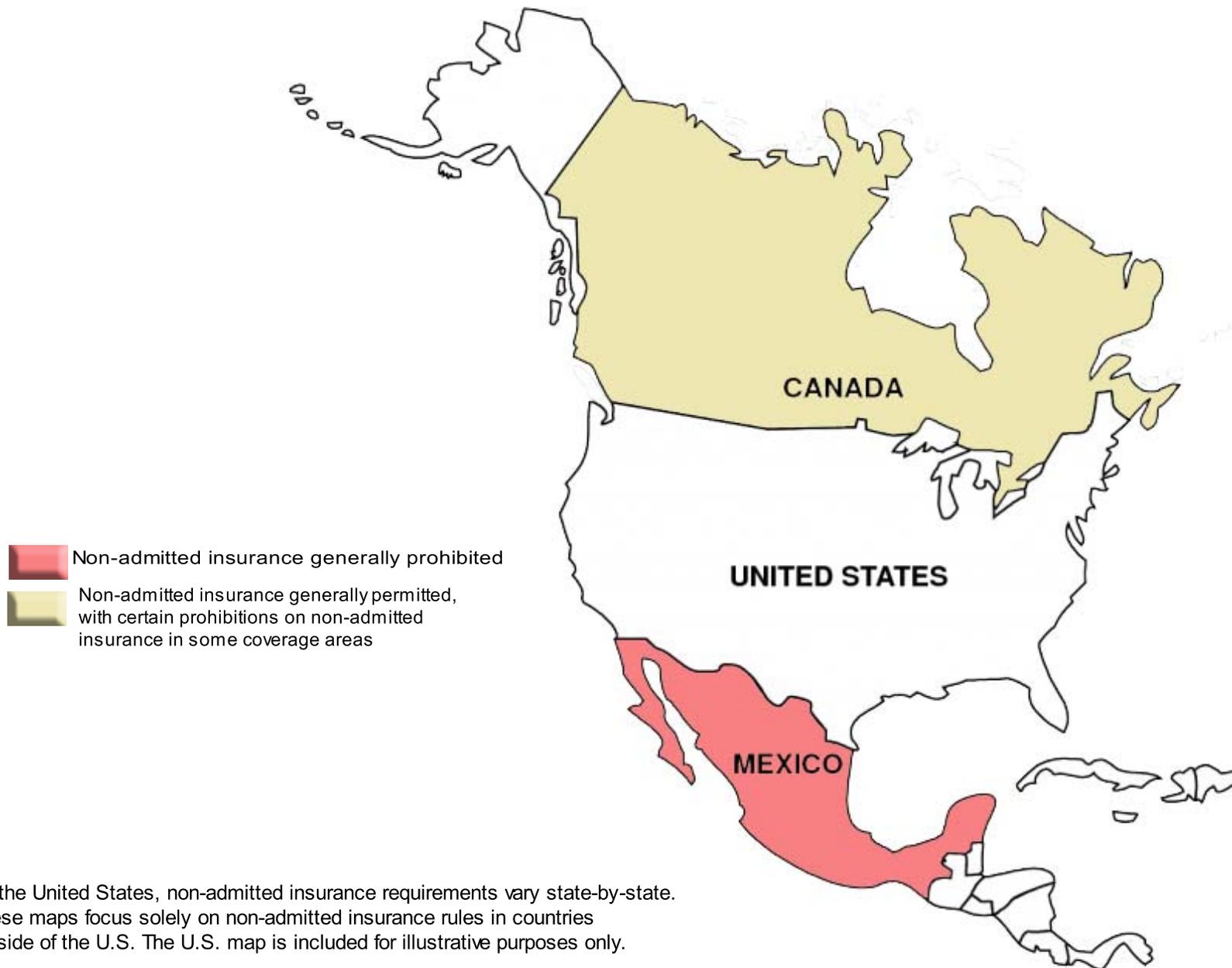
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-  Non-admitted insurance generally permitted
-  Non-admitted insurance generally prohibited
-  Non-admitted insurance generally permitted, with certain prohibitions on non-admitted insurance in some coverage areas



*Malta not pictured



*In the United States, non-admitted insurance requirements vary state-by-state. These maps focus solely on non-admitted insurance rules in countries outside of the U.S. The U.S. map is included for illustrative purposes only.

**This survey is current as of March 2017. Laws may change at any time.

**International Construction Endeavors:
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<u>Country</u>	<u>Insurance Coverage Concerns</u>				<u>PPP-Specific Information</u>		
	<u>Non-admitted Insurance</u>	<u>Compulsory Insurance</u>	<u>Insurance Regulating Agency</u>	<u>Penalties</u>	<u>PPP law</u>	<u>PPP Regulating Agency</u>	<u>Information</u>
<u>European Union</u>	EU Insurance Directives: “An insurer wishing to cover risks situated in a member state other than its home state can either set up a branch in the host state . . . [or] provide insurance services from its home state on a cross-border basis.”	(1) Motor vehicles, (2) air carriers, (3) maritime claims, and (4) insurance intermediaries.	If an insurer wishes to cover risks situated in other member states, it must notify its home state regulator, who then informs the host state regulator, who then communicates compliance requirements.	Dependent upon the law in each country.	The New Directives: Directive on Public Procurement (2014/24); Utilities Directive (2014/25); Concessions Directive (2014/23).	EU Commission; Eurostat; European Investment Bank.	Each EU country has separate requirements for how to enter into a PPP project. Carefully review the law in each country.
<u>Austria</u>	EU Insurance Directives implemented. Resistant to foreign insurers setting up local branches.	Employee insurance; motor third-party liability; professional indemnity for construction companies and insurance intermediaries; liability insurance for civil engineers and construction experts.	Financial Market Authority (<i>Österreichische Finanzmarktaufsicht</i>).	Revoke license, prohibit business, fine.	Federal Procurement Act (2006).	No specific regulatory framework. There once was a PPP entity, but it was shut down.	Concessions are preferred for public works. All other PPPs are subject to highly complex regulations under the Act.

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<u>Belgium</u>	EU non-life Insurance Directives implemented. Imposes more administrative obstacles on foreign insurers.	Accidents at work; architects; employment; public procurement; professional indemnity for insurance intermediaries.	National Bank of Belgium (<i>Nationale Bank van België</i>).	Injunction, appoint representative, suspend license.	Act of 15 June 2006.	The Flemish Public-Private Partnership Knowledge Centre.	PPPs are relatively new due to difficulties in obtaining financing.
<u>Bulgaria</u>	Placement of non-admitted insurance is not permitted, except for non-admitted insurance contracts issued by other EU/EEA insurers.	Motor third-party liability; insurance of buildings; property insurance for state and municipal property.	Financial Supervision Commission (<i>Комисия за финансов надзор</i>).	Administrative measures; fines and property sanctions.	Public-Private Partnership Act (SG, No. 45 of 2012, effective as of 01/01/2013); PPP ordinances by municipalities.	The Real Sector Finance, within the Ministry of Finance.	The Concession Law and Municipal Ownership Act give state and municipalities exclusive rights to certain property, but allow the private sector to invest.
<u>Canada</u>	Seven provinces do not restrict non-admitted business; three permit non-admitted insurance only for specific types of business.	Workers' compensation; motor third-party.	Provinces regulate exclusively, but insurers must meet both federal and provincial regulatory guidelines.	Sanctions.	Specialized federal and provincial government agencies oversee and facilitate PPP projects.	The Canadian Council of Public Private Partnerships.	World leader in PPP model usage. At least 195 PPP projects completed since the 1990s across a number of public sectors.

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<u>Croatia</u>	EU Insurance Directives implemented.	Motor third-party liability; professional indemnity for architects, engineers, and insurance intermediaries.	Croatian Financial Services Supervisory Agency (<i>Hrvatska agencija za nadzor financijskih usluga</i>).	Supervisory measures, filing of charges.	Public Private Partnership Act (2008, amended 2014); the Concessions Act (2012, amended in 2013).	The PPP Agency.	Most PPP projects are at a local/regional level.
<u>Republic of Cyprus</u>	EU Insurance Directives implemented; non-EU/EEA insurers may establish an authorized branch in Cyprus.	Motor third-party liability insurance; employers' liability; professional indemnity for insurance intermediaries.	Superintendent for Insurance Control (Εγκύκλιος Εφόρου Ασφαλίσεων).	Letters of recommendation; administrative penalties.	No regulatory framework for PPPs.	Council of Ministers; Planning Bureau; Minister of Finance.	PPP projects are slowly becoming more prevalent where the public economy cannot support major infrastructure projects.
<u>Czech Republic</u>	EU Insurance Directives implemented.	Contractors: statutory insurance for work-related injuries, motor third-party liability; professional indemnity for engineers, architects, and	The Czech National Bank (<i>Ceska Narodni Banka</i>).	Imposition of fines, sanctions, license revocation.	Public Procurement Act; Concession Act.	Ministry of Finance; PPP Centrum; Ministry of Regional Development.	Legislation does not contain special rules for PPP projects. All privatizations are governed by these acts. PPP market not well developed, but

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		insurance intermediaries.					used in transportation, healthcare, education, utilities, and defense.
<u>Denmark</u>	Non-EU/EEA insurer cannot carry out insurance business.	Motor third-party liability; workers' compensation; insurance for brokers/agents to foreign insurers; faulty building construction; professional indemnity for insurance intermediaries.	Danish Financial Supervisory Authority (<i>Finanstilsynet</i>).	Insured: fine, imprisonment; insurer: fine, sanctions.	Check municipal laws for restrictions on private lending.	Danish Competition and Consumer Authority.	Very strict construction standards; foreign investors must carefully review these in establishing PPPs.
<u>Estonia</u>	EU/EEA insurers permitted to issue insurance, but non-EU/EEA insurers must be authorized.	Motor third-party liability; aviation liability; professional liability.	The Financial Supervision Authority (<i>Finantsinspektsioon</i>).	Insurer: fines.	Public Procurement Act (2007); Administrative Co-operation Act (2003); Competition Act	Public Procurement Centre.	PPPs primarily implemented in the social housing and education sector.
<u>Finland</u>	EU Insurance Directives implemented; non-	Employers' statutory insurances (pension, health insurance	The Financial Supervisory Authority	Fines, imprisonment.	Public Procurement Act (2007).	The Ministry of Employment	Small market for PPPs.

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	EU/EEA insurers must be authorized to operate.	pension, unemployment, accident). Contractor must procure insurance for construction works, materials, and supplies.	(<i>Finanssivalvonta Finansinspektionen</i>).			and the Economy.	
<u>France</u>	Non-admitted insurance not permitted.	Structural damage insurance; ten-year warranty insurance; professional indemnity insurance.	Insurance Companies Committee; Insurance Supervisory Committee (<i>Autorité de Contrôle Prudentiel et de Résolution</i>).	Insurer and brokers/agents : sanction and fine.	Law No. 2009-179 February 2009; Ordinance of 23 July 2015.	<i>Mission d'appui aux partenariats public-privé.</i>	Two categories of PPPs: concessions and partnership contracts. Each is regulated by its own legislation.
<u>Germany</u>	EU/EEA insurers can cover risks located in Germany via correspondence. No rules prohibiting the purchase of insurance from a	Indemnity insurance for architects and engineers.	BaFin (<i>Bundesanstalt für Finanzdienstleistungsaufsicht</i>), the Federal Finance Supervisory Authority.	Fines and/or criminal liability.	PPP Acceleration Act (2005); Federal Act on Private Financing.	PPP task force (Ministry of Transport) and individual state support organizations.	PPPs are increasingly common in the infrastructure sectors and the A-models scheme.

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	non-admitted insurer.						
<u>Greece</u>	EU Insurance Directives not implemented. Non-admitted insurance generally not permitted.	Workers' compensation; motor third-party liability; liability of investment/financial companies; professional indemnity for insurance intermediaries.	The Bank of Greece (ΤΡΑΠΕΖΑ ΤΗΣ ΕΛΛΑΔΟΣ).	Penal and administrative sanctions: primary policy through non-admitted insurers is void.	Law 3316/2005; Law 3389/2005.	PPP Unit (Ministry of Economy and Finance).	Detailed legal framework regarding the selection of private investors in public-private partnerships.
<u>Hungary</u>	EU Insurance Directives implemented.	Motor third-party liability.	Central Bank of Hungary (<i>Magyar Nemzeti Bank</i>).	Fines, sanctions.	Public Procurement Act (2011, amended 2015).	PPP Committee.	Legal framework for PPPs: general PPP law and laws that are specific to general types of PPP projects.
<u>Ireland</u>	EU Insurance Directives implemented. Non-EU insurers must be authorized.	Motor third-party liability, professional indemnity for insurance intermediaries.	The Central Bank.	Insurer and broker/agent: sanctions.	PPP Arrangements Act (2002).	Central PPP Unit under Department of Finance.	In early stage of PPP development.
<u>Italy</u>	Non-admitted insurance not permitted. Insurance activities	Third-party liability insurance; decennial liability insurance;	Institute for the Supervision of Insurance	Insurer: sanction or fine.	The Code of Public Contracts.	PPP Task Force.	Italian legislation continues to develop to grow PPP market;

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	are considered “reserved” for authorized companies.	professional indemnity for architects, engineers, and insurance intermediaries.	<i>(Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo).</i>				currently, the majority of PPP market exists in urban transport and healthcare construction.
<u>Latvia</u>	EU Insurance Directives implemented.	Motor third-party liability; third-party liability for construction companies, architects, contractors; professional indemnity for insurance intermediaries.	The Financial and Capital Market Commission (<i>Finanšu un kapitāla tirgus komisija</i>).	Sanctions and fines for deficiencies upon inspection.	Law on Public-Private Partnerships (2009); Law on Public Procurement (2006).	The Ministry of Finance; the Central Finance and Contracting Agency; and the Private Partnership Advisory Council.	Limited experience at the national level using PPP models.
<u>Lithuania</u>	EU Insurance Directives implemented.	Motor third-party liability; liability of building contractors, designers and technical supervisors; professional indemnity for insurance intermediaries.	State Insurance Supervisory Authority (<i>Valstybinė draudimo priežiūros tarnyba</i>).	Sanctions and administrative penalties.	Law on Concessions (2011); Law on Investments (2014); Law on Public Procurement (1996); Resolution on Public-Private	Invest Lithuania (Ministry of Economy); Central Project Management Agency (Ministry of Finance).	PPPs are primarily at the municipal level in energy, transport, and social and urban infrastructure.

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					Partnership of the Government of Lithuania (2009).		
<u>Luxembourg</u>	EU Insurance Directives adopted. Non-EU insurers must be authorized by the Ministry of the Treasury.	Motor third-party liability; professional indemnity for insurance intermediaries.	Insurance Commission (<i>Commissariat aux Assurances</i>).		The Law on Public Procurement (2009)		Very little PPP experience.
<u>Malta</u>	EU Insurance Directives implemented. Non-admitted insurance allowed through PCC legislation.	Motor third-party liability; professional indemnity for insurance intermediaries.	Malta Financial Services Authority.	Warnings, sanctions, penalties, suspension, restriction or cancellation of license.	Public Procurement Regulations (Legal Notice 296 of 2010).	The PPP Unit within the Ministry of Finance.	Regulations do not contain any special rules on PPPs. If a PPP project is based on a public contract, the relevant public procurement regime applies.
<u>Mexico</u>	Entering into an insurance contract with an unauthorized foreign insurer while in Mexico expressly prohibited.	Third-party liability for federal concessionaires; motor third-party liability.	National Insurance and Bonding Commission (<i>The Comisión Nacional de Seguros y Fianzas</i>).	Fines and imprisonment.	The Public Private Partnerships Act (2012); PPP guidelines.	No specific overseeing body; each sector/level of government runs projects.	Since 2012, PPPs in national security and increased PPP activity across all sectors.

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<u>Netherlands</u>	Unlicensed insurers are prohibited from providing coverage for risks situated in the Netherlands, regardless of where the policy is issued.	Motor third-party liability; professional indemnity for insurance intermediaries.	Netherlands Authority for Financial Markets (<i>De Autoriteit Financiële Markten</i>) and Dutch National Bank (<i>De Nederlandsche Bank</i>).	Public warnings; custody; withdraw licenses; fines.	The Procurement Act.	Ministry of Finance.	No specific rules for PPPs. Applicable laws depend upon the sector involved.
<u>Norway</u>	EU Insurance Directives implemented. Authorized non-EEA insurers can establish a branch in Norway.	Contractor must insure materials, design documents, and work performed; must also maintain liability insurance for damage or economic loss.	Financial Supervisory Authority of Norway (<i>Finanstilsynet</i>).	Civil and/or penal sanctions.	No specific PPP legislation; PPPs are managed under public procurement law.	The Agency for Public Management and e-Government (DIFI).	PPP projects exist in the education, transportation, healthcare, police, and court sectors.
<u>Poland</u>	Non-EU foreign insurers must be authorized to sell insurance in Poland.	Motor third-party liability; professional indemnity for insurance intermediaries; professional liability for architects and engineers.	Polish Financial Supervision Authority (<i>Komisja Nadzoru Finansowego</i>).	Limit activity; revocation of licenses; fines; civil and/or criminal penalties.	Public Private Partnership Act of 19 Dec. 2008 (the "New Polish PPP Act").	Ministry of Economy; Ministry of Infrastructure.	PPP projects exist at both the national and local levels.

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<u>Portugal</u>	EU Insurance Directives implemented.	Motor third-party liability; workers' compensation; professional indemnity for architects and insurance intermediaries.	Ministry of Finance and Public Administration; Portuguese Insurance Institute (<i>Portal do Cidadão</i>).	Fine; civil and/or criminal penalties.	Decree-Law no. 111/2012.	The line ministries are responsible for PPPs in their sector.	PPPs have been implemented in a number of sectors, but has been recovering since the EU bailout in 2014.
<u>Romania</u>	EU/EEA insurers can operate with or without presence in the country; non-EU/EEA insurers must be authorized and have a local branch.	Motor third-party liability; professional indemnity insurance (architects, etc.).	Romanian Insurance Supervisory Commission (<i>Autoritatea de Supraveghere Financiară (ASF)</i>).	Limits on operations; fine; suspension.	Law no. 233/2016.	The Central Unit for the Coordination of Public-Private Partnerships (<i>Unitatii centrală pentru coordonarea parteneriatului public-privat</i>).	PPPs implemented in the energy sector.
<u>Russia</u>	Non-admitted insurance not permitted. Insurance business in Russia restricted to Russian insurers (other than property	Insurance of construction risks and liability insurance for injury caused during the work (SRO-based); motor third-party liability.	Central Bank of the Russian Federation (<i>Центральный банк Российской Федерации</i>).	Policies written by non-admitted insurers and covering risks in Russia unenforceable ; insurer	Federal Law No. 224-FZ (2016) (PPP Law); Federal Law No. 115-FZ (2005) (Concession Law); 60	No single dedicated PPP unit.	PPPs and MPPs (municipal-public partnerships) are allowed. Concessions are separately governed by the Concession law.

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	insurance for ships and reinsurance).			subject to sanctions.	regional PPP laws.		
<u>Slovakia</u>	Only duly licensed insurers may sell insurance in the Slovak Republic.	Workers' compensation; employers' liability; medical malpractice liability; liability of architects, designers, and engineers in construction; motor third-party liability.	National Bank of Slovakia (<i>Narodna banka Slovenska</i>).	Sanctions.	The Slovak Act on Public Procurement 343/2015.	Ministry of Finance and Ministry of Telecommunications and Transport have PPP units.	PPPs in the transport sector.
<u>Slovenia</u>	EU Insurance Directives implemented.	Motor third-party liability; marine third-party liability; professional indemnity for architects, insurance intermediaries, building contractors and land surveyors.	Insurance Supervision Agency of Slovenia (<i>Agencija za zavarovalni nadzor</i>); Bank of Slovenia (<i>Banka Slovenije</i>).		The PPP Act (2007); Public Utilities Act; Public Procurement Act.	The Department for Public Private Partnership under the Ministry of Finance.	Most PPP projects are at a local level.
<u>Spain</u>	Unauthorized insurers are not permitted.	Motor vehicle liability; carriage of property; professional indemnity for	Directorate General for Insurances and Pension Funds	Policies issued by unauthorized insurers are void; insurer:	Public Sector Contracts Act.	No central PPP entity.	Most PPP projects are at a regional government level.

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		insurance intermediaries.	(<i>Dirección General de Seguros y Fondos de Pensiones</i>).	financial sanctions.			
<u>Sweden</u>	EU Insurance Directives implemented. Resistant to foreign insurers setting up branches in Sweden.	Motor third-party liability; professional indemnity for insurance intermediaries.	Financial Supervisory Authority (<i>Finansinspektionen</i>).	Fines.	Public Procurement Act (SFS 2007:1091); Utilities Procurement Act (SFS 2007:1092).	The Swedish Governmental Agency for Innovation Systems (VINNOVA).	No special laws or requirements for PPP projects.
<u>Switzerland</u>	Foreign insurers must be authorized in home country, need presence and agent in Switzerland.	Fire and damages to construction work.	Swiss Financial Market Supervisory Authority.	Fines, criminal sanctions, revoked license.	No legislation specific to PPPs.	No federal PPP unit. Centre of Competence for Public Procurement provides information on PPPs. Swiss PPP Association.	No tradition of using PPP projects; PPP usage is limited.
<u>United Kingdom</u>	Non-admitted insurers are	Motor third-party liability; employers' liability; building	Financial Conduct Authority; Prudential	Financial penalties;	No PPP-specific law; PPP policy	Infrastructure UK (IUK).	One of the largest markets for PPPs worldwide.

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	allowed if properly authorized.	industry professionals' liability; and professional indemnity for insurance intermediaries.	Regulation Authority.	prohibition orders.	issued by HM Treasury.		
<u>USA</u>	Unauthorized insurance prohibited, with certain exceptions for non-admitted business (governed by Excess and Surplus Lines guidelines).	Virtually all states: workers' compensation insurance (by employers), motor liability insurance (for bodily injury and property damage).	Regulated by state law per the McCarran-Ferguson Act. Look to each state's insurance regulator for guidelines.	Civil and criminal penalties.	No federal rules governing PPPs. Several states have passed legislation authorizing and regulating these types of partnerships.	The U.S. Department of Transportation regulates most public-sector PPPs.	34 states, the District of Columbia and Puerto Rico have enacted PPP legislation.