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# ***Globalization of the Engineering and Construction Industry***

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Session 8:

Risk Management Opportunities  
and Parochialism and Other  
Barriers to Overseas  
Involvement

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# Useful Definitions

- Off-take Risks
- Structural Lending
- Shadow Tolls
- Sweat Equity
- Force Majeure
- Backlog
- Exit or Take-out Strategies
- Multi-lateral Lenders
- Mixed Credits
- Parastatals
- Balance Sheet and Off Balance Sheet Financing
- Structural Lending
- Lloyd's Names
- MGIC/OPIC COFACE

*Class – Any Others?*

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# Risk Management

- Assume the Risk
- Share the Risk
  - Tax Shelters
  - Joint Ventures
  - Partnerships
- Shed the Risk
- Sell the Risk
  - Insurance
  - Hedging
  - Local Borrowing Derivatives

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# Differing Views of Risk

- Sponsor Risks
- Completion Risks
- Off-take Risks
- Country Risks
- Structural Lending Risks
- Contractor Risks

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# Risk in the International Arena

## A “Witches Brew”

- Decisions influenced by competitive motivations
- Pitfalls of sweat equity and following the leader
- Go/No Go vs. full scale risk assessment
- Off-take risks provide an excellent opportunity to review risk in general, and in the international AEC field, in particular.

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# Off-Take Risks include:

- Whether the off-take agreement terms are clear, reasonable and enforceable
- Whether the terms are subject to government monitoring and regulation
- Whether there are any escrow provisions
- Whether the off-take terms can be adequately covered by other guarantees (e.g., MGIC, OPIC, etc.)
- The integrity of the purchase contract (northwest U.S. power agreements)

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- The enforceability of user charges (Washington State, Bangkok Expressways)
  - The credit worthiness of “Off-Taker” or provider of “Shadow Tolls”
  - The pricing mechanisms including flexibility, regulatory framework and ease of adjustment
  - Whether the off-take agreement could be subject to accusations of favoritism, cronyism and corruption (ENRON, India)

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- Whether there are adequate dispute resolution procedures
  - The effectiveness of the rule of law, and legally, how secure are the off-take agreement

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Certain factors are essential to success in privatization and concession initiatives. These include:

- Proper enabling framework
- Proper selection of concessionaire (balance price/quality, qualified owner/operator, etc.)
- Reliable revenue flows
- Proper risk allocation among the partners, government, concessionaire, lender/financier, contractor and operator.

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- Firm price, fixed-term design/build or design/bid/build contracts
  - Reasonable covenants and financing terms
  - A clear, equitable and transparent franchise agreement
  - Clear understanding of underlying political realities and public needs
  - A proper regulatory framework to resolve disputes and misunderstandings, revise tariffs, etc.
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They were the world's richest and shrewdest investors, "The Electronic Herd," to use Tom Friedman's term, and they rode a wave of globalization, buying bonds and investing in attractive emerging markets and, when the emerging countries defaulted, they were livid.

"There should be lunatic asylums for nations as well as individuals," one investor wrote in the London Morning Post, denouncing a defaulting country as "a nation with whom no contracts can be made."

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# Strategic Planning

- Vision Statement – the Inspiration
- Strategic Plan
- Tactic Planning – the Perspiration