



CAREC PPP AWARENESS WORKSHOP

PROGRAM

I. INTRODUCTION TO PUBLIC – PRIVATE PARTNERSHIP

1. APPLICATION OF PUBLIC- PRIVATE PARTNERSHIP WORLD WIDE.

Public–private partnership (“PPP”) infrastructure arrangements are growing in use and acceptance world wide as an alternative and efficient method to mobilize additional financial resources and efficiency benefits from private sector.

PPP has also reached most developing countries, in particular within infrastructure sectors such as electricity generation, telecommunication, transportation (roads, bridges, airports, railways and ports), water and sanitation, oil and gas industry and tourism.

2. WHAT IS PPP? INTRODUCTION TO ALTERNATIVE PPP STRUCTURES.

2.1. The PPP concept.

There is no generally accepted PPP terminology. This causes sometimes confusion. Basically PPP is a contractual agreement between a public authority and a private entity, whereby the private entity performs part of the public authority’s infrastructure delivery and service functions, and assumes the associated risks for a significant period of time. In return, the private entity receives a financial remuneration according to predefined performance criteria, which may be derived entirely from service tariffs or user charges or directly from the authority’s (government’s) budget.

2.2. Alternative PPP arrangements.

A wide range of PPP arrangements exist, differing in purpose, service scope, financing, risk allocation and terms. One end of the spectrum would be a public outsourcing of some routine operations, while the other end would involve the private entity designing, building, operating, maintaining and financing of a infrastructure project, thereby taking a considerable proportion of risks for a long, predetermined period.

The following, non-exhaustive, list set forth a number of typical PPP arrangements :

- Service contracts ;
- Management contracts ;
- Lease contracts ;
- Build–Operate–Transfer, concession, DBFO and similar contracts where the private entity is building, operating and financing the project
- Joint ventures;
- Hybrid arrangements.

It should be understood that PPP arrangements are extremely dynamic and that the particulars of many PPP arrangements are tailored to the specific circumstances of each infrastructure project.

2.3. The application of PPP alternatives.

Build–Operate–Transfer, concession and DBFO arrangements are clearly the dominating PPP alternative world wide, accounting for app. 80 % of completed PPP infrastructure projects. Management contracts are a number two, accounting for app. 7 %. For Asia in particular, see ADB PPP Handbook, chap. 4.

3. WHY PPP? POTENTIAL ADVANTAGES AND DISADVANTAGES OF PPP FROM THE GOVERNMENT'S / PUBLIC POINT OF VIEW.

- 3.1. Acceleration of needed infrastructure provision by private investment.
- 3.2. Greater efficiency in the use of resources ("better value for money"). Factors determining value for money for a government.
- 3.3. PPP may generate additional industrial and social development.
- 3.4. Are PPP likely to have higher construction and operation costs than comparable public financed infrastructure projects?
- 3.5. Public and labor considerations. PPP is not privatization.
- 3.6. Exclusivity risks. Long-term freezing of contract terms dictated by current market conditions.

4. WHY PRIVATE ENTITIES PARTICIPATE IN PPP IN DEVELOPING COUNTRIES. POTENTIAL ADVANTAGES AND DISADVANTAGES FROM THE PRIVATE SECTOR'S POINT OF VIEW.

- 4.1. Higher return on equity (maximizing profits).
- 4.2. Growth opportunities, saving staffs and expertise.
- 4.3. Limited risk exposure under PPP.

5. PPP INFRASTRUCTURE SECTORS AND MARKET TRENDS.

- 5.1. PPP sectors and market trends for PPP.
(See ADB PPP Handbook chap. 2 and 4)
- 5.2. PPP examples from Asia, Africa and Europe.

(For I. Introduction to PPP, see ADB PPP Handbook, chap. i, 2, and 4).

II. STRUCTURE AND BASIC COMPONENTS OF A TYPICAL PPP.

The emergence of PPP infrastructure projects throughout the world has resulted in the development of certain accepted structures and standards for private financing of these projects.

1. CONTRACTUAL STRUCTURE OF A PPP PROJECT.

2. STANDARD COMPONENTS OF A PPP PROJECT.

Financial modeling of PPP. Equity and loans.

Project financing (limited recourse). Establishment of a private project company and lenders safeguards.

Revenue/payment structures.

- Contract based or market based revenue. DBFO arrangements (UK).
- Tariff design and tariff adjustments.
- Revenue sharing.

Accepted standards for risk allocation.

- Risk profile for a PPP project.
- The private project company to accept design risks, construction risks (including cost overrun and delayed completion) and operational risks.
- Sharing of residual risks.

Currency exchange protection, including

- free convertibility.
- protection against adverse fluctuations in exchange rates.
- free repatriation of funds.
- access to foreign bank accounts.

Transfer of technology and training of national personnel.

(ADB PPP Handbook, chap. 3 and 6)

III. PHASES OF A PPP INFRASTRUCTURE PROJECT.

1. KEY ACTIVITIES RELATED TO IDENTIFICATION, PREPARATION, PROCURING AND IMPLEMENTING OF A PPP INFRASTRUCTURE PROJECT.

Government identification of PPP projects. Guidelines for preliminary, in house, identification of PPP project candidates.

Management of unsolicited project proposals. Private sector innovations or attempts to avoid competition?

PPP project preparation. Government to take the lead!

Establishment of project data room.

Competitive bidding as the key driver of private sector efficiency.

- Specific requirements for competitive procurement of PPP.
- Final negotiations as a playground for lawyers and consultants. Negotiations to be strictly limited.
- Two-stage competitive bidding to overcome the public sector's lack of up to date technical knowledge.

PPP project implementation. Performance monitoring and reporting.

2. TRANSFER OF THE PPP PROJECT AT THE END OF THE TERM.

The importance of transfer rights. The Washington consensus.

Warranty period after the transfer of the PPP project and the dissolution of the project company. (ADB Handbook on PPP, chap. 7)

IV. GOVERNMENT SUPPORT TO PPP: LEGAL AND CONTRACTUAL FRAMEWORK.

Many countries have developed programs to foster the implementation of PPP to meet the growing industrial and public infrastructure needs of their emerging economies. These programs are structured to facilitate the development of PPP and to attract private investors on a highly competitive market.

1. LEGAL, REGULATORY AND CONTRACTUAL FRAMEWORK FOR PPP.

Providing, inter alia, for :

A regulatory regime that contemplates private participation in financing, implementation and operation of infrastructure PPP projects;

Creation of security interests, liens and mortgages in respect to project assets in favor of project lenders, and the enforcement of remedies under security documentation;

Protection against expropriation, changes in law and other political interventions that impair the viability of the PPP project;

Enforcement of rights and remedies under the PPP contracts, including resolution of disputes through internationally recognized arbitral proceedings;

Government support to PPP developers in acquisition of land use rights and logistics and in obtaining permits, licenses etc. to construct and operate the PPP project (One stop shop approach).

Implementation of basic national advantages ("better value for money" factors) in the PPP contracts and protection of the government against onerous risk allocation and exit terms in the PPP contracts (mandatory legislation).

Three approaches to an adequate regulatory framework for PPP. The negative legislative example of Laos. The adequate PPP legislation of Cambodia.

2. STREAMLINING OF PPP CONTRACTS.

Contractual engineering as an essential tool for PPP.

Final negotiation of PPP contracts to be avoided or limited.

Experience with PPP world wide clearly shows the need for streamlining (benchmarking) PPP contracts to reduce the time and transaction costs of developing PPP and the impact of the private developers contractual expertise vis a vis government officials.

An efficient approach to PPP contracts based on recognized international contract law. Examples and research on PPP contracting from Asia and Africa. (ADB PPP Handbook, chap. 3 and 7)

V. THE NEW ROLE OF PUBLIC ADMINISTRATION UNDER PPP. INSTITUTIONAL STRUCTURES.

By transferring the responsibility for designing, construction, operation and maintenance of infrastructure services to private sector the national administration will now focus upon infrastructure planning and performance monitoring instead of the day to day delivery of infrastructure services.

1. MONITORING AND REPORTING PROCEDURES FOR PPP.

2. ESTABLISHMENT OF A PPP UNIT.

Establishment of a small but competent administrative PPP unit is strongly recommended. The PPP unit must be part of or have direct access to the PM's office and/or to the Ministry of Finance.

Recent examples from UK, Germany, and Cambodia.

3. BENCHMARKING THE PUBLIC ADMINISTRATION.

By exposing existing public infrastructure management to competition from private sector infrastructure management, PPP projects enable the cost and efficiencies of public administration to be benchmarked against private sector standards to ensure that improved efficiency is being achieved by both public and private administration. (ADB PPP Handbook, chap. 6)

VI. SUMMARY OF INTERNATIONAL EXPERIENCE WITH PPP FROM A PUBLIC PERSPECTIVE.

1. RESEARCH ON PPP COMMISSIONED BY THE UK TREASURY TASKFORCE (UNIT) ON PPP.

The average percentage saving for the public sector by using PPP.

The average percentage saving in net present cost terms of using PPP (more value for money) was estimated at 17 % over the PPP contract duration.

Factors determining value for money.

Factors determining value for money will obviously vary from project to project and between infrastructure sectors. Generally the UK research identified that from a public sector perspective, there are 7 key drivers of value for money in PPP projects including :

- Competition between private sector entities.
- Faster project implementation ;
- Improved performance based infrastructure service quality;
- Rational transfer of infrastructure project risk ;
- Long term nature of PPP contracts permitting reduced life cycle costs and the full use of private sector management skills;
- The use of output based project specifications; and
- The strong performance incentives inherent in long term PPP contracts combined with efficient public performance measurement.

2. RECENT RESEARCH ON PPP TRANSPORTATION PROJECTS (NORWAY, 2009).

The average percentage saving for the public sector by using PPP for transportation projects.

The methodically advanced Norwegian study indicates a higher average saving for the public than the UK Report (app. 22 % in net present cost terms).

In particular the construction time and the costs of construction were reduced significantly under PPP compared with conventional public construction (for instance, 30 % to 40 % faster implementation). As the service quality and the maintenance standards were improved substantially by specified performance incentives in the PPP contracts.

Private sector's maximizing of profits.

The Norwegian study provides indications on how the private sector may maximize profits through asymmetric information, construction arrangements and high charges for transfer external risks.

3. SIGNIFICANT FINANCIAL IMPLICATIONS OF PPP NOT INCLUDED IN THE PPP STUDIES.

PPP brings forward additional (private) capital for infrastructure development much needed by many emerging countries. This enables infrastructure projects to proceed when the availability of public capital may be constrained. A major advantage by PPP for many emerging countries considering the importance of infrastructure for economic development.

The potential impact of PPP on the industrial and social development of emerging countries or local regions.

4. CONCLUSIONS.

While definite advantages of PPP from a public perspective do exist, and can be harnessed, PPP should not be regarded as a miracle cure nor a quick fix to development of infrastructure. Nor does PPP make bad projects to good ones. Nor does PPP provide a sleeping pillow to government officials regarding planning, implementation and monitoring of infrastructure projects.

Provided an adequate regulatory and administrative framework for PPP and active government support during project phases, PPP, however, has proved to be an efficient tool for governments to accelerate infrastructure provision, to ensure "better value for money" and (in some PPP projects) to provide additional industrial and social development. As the Frankfurt conference on PPP (2006) summed up: PPP is a complex, but very healthy way of doing infrastructure projects.