ESTABLISHING THE PPP FRAMEWORK

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Describes the elements of a sound legal and institutional PPP framework—that is, the policy, processes, institutions, and rules that together define how PPPs will be identified and implemented, and that promote good governance of PPP programs. Explore the section below or visit PPP Online Reference Guide for a full overview.

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PPPs can be implemented on a one-off basis without any specific supporting legal and institutional framework. However, most countries with successful PPP programs rely on a sound PPP framework. Countries pioneering PPPs have built their PPP programs and frameworks together, learning by doing, and adjusting their frameworks to their needs. Governments now beginning or expanding their PPP programs can benefit from this global experience. By addressing efficiency and good-governance requirements, they can design and implement PPP frameworks that promote sound project selection, fair and competitive procurement, effective delivery of public services, and the ultimate success and sustainability of PPP programs.

The "PPP framework" consists of the policies, procedures, institutions, and rules that together define how PPPs will be identified, assessed, selected, prioritized, budgeted for, procured, monitored, and accounted for; and who will be responsible for these tasks. Establishing a PPP framework communicates government's commitment to PPPs and it fosters efficiency in the governance of the PPP program—that is, it promotes accountability, transparency, and integrity. It ensures that selected projects are aligned with the government's development strategy, generate the greatest economic returns for society as a whole, and do not expose the government to excessive fiscal risks. It also guarantees that consultation with stakeholders will be systematically undertaken and fair compensation awarded to those that are entitled to receive it. This generates greater private sector interest and public acceptance of PPP programs. These core principles are described in Good Governance for PPPs.

Good Governance for PPPs

The United Nations Economic Commission for Europe (UNECE) **Guidebook on Promoting Good Governance in PPPs** defines governance as *the processes in government actions and how things are done, not just what is done*. All elements of the PPP Framework described in Module 2 of the *Reference Guide* contribute to the governance of the PPP program. UNECE describes good governance as encompassing the following six core principles:

- **Efficiency**—use of resources without waste, delay, corruption, or undue burden on future generations
- **Accountability**—the extent to which political actors are responsible to society for their actions
- **Transparency**—clarity and openness in decision-making
- **Decency**—development and implementation of rules without harming people
- **Fairness**—equal application of rules to all members of society

- **Participation**—involvement of all stakeholders

One of the aims of establishing a sound PPP framework is to ensure these principles of good governance are followed in the implementation of PPP projects.

Source: (UNECE 2008, Section 2.1: Principles of Good Governance in PPPs)

Defining the PPP framework

There is no single, model PPP framework. A government's PPP framework typically evolves over time, often in response to specific challenges facing its PPP program. In the early stages of a program the emphasis may be on enabling PPPs, and creating and promoting PPP opportunities. Once several PPPs have been implemented on an *ad hoc* basis, concern about the level of fiscal risk in the PPP program may be the impetus for strengthening the PPP framework. In this case, the focus may be on strengthening control over how PPPs are developed, or improving public financial management for PPPs, as for example in **South Africa** (Burger 2006).

Often the initial phase of this iterative process involves introducing PPP-specific institutions, rules, and procedures to ensure PPP projects are subject to similar discipline as public investment projects. Gradually, as experience with PPP grows, these PPP frameworks may re-integrate with normal public investment and infrastructure planning, procurement, and fiscal management processes, with PPPs as one option facing the same standards as others for implementing public investment projects. Maintaining the same standards will prevent PPPs from being used to circumvent standard project checks and balances or fiscal constraints.

The best solutions to any given challenge will likely vary between countries—depending on the country's existing legal framework, investment environment, government institutions, and capacity. The PPP Framework of Chile and The PPP Framework of South Africa provide brief overviews of the PPP frameworks in South Africa and Chile—both countries recognized as having best-practice PPP frameworks.

The components of a comprehensive PPP framework typically include the following:

- **Policy**—articulation of the rationale behind the government's intent to use PPPs to deliver public services, and the objectives, scope, and implementing principles of the PPP program.
- **Legal framework**—the laws and regulations that underpin the PPP program—enabling the government to enter into PPPs, and setting the rules and boundaries for how PPPs are implemented. This can include PPP-specific legislation, other public financial management laws and regulations, or sector-specific laws and regulations.
- **Processes and institutional responsibilities**—the steps by which PPP projects are identified, developed, appraised, implemented, and managed, ideally within the Public Investment Management system; and the roles of different entities in that process. A sound PPP process is efficient, transparent, and is followed consistently to effectively control the quality of PPP projects.
- **Public financial management approach**—how fiscal commitments under PPPs are controlled, reported, and budgeted for, to ensure PPPs provide value for money, without placing undue burden on future generations, and to manage the associated fiscal risk.
- **Other arrangements**—how other entities such as auditing entities, the legislature, and the public participate in the PPP program, and hold those responsible for implementing PPPs accountable for their decisions and actions. The sections of this module describe each of these elements of a PPP framework, providing examples and guidance for practitioners.

In practice, these elements are closely interrelated. For example, a well-controlled process for developing PPPs requires assessing their fiscal consequences, which implies some Finance Ministry control at different stages of the project cycle. This is essential for sound public financial management of the PPP program.

Comprehensive public reporting of fiscal commitments to PPPs in turn enables effective oversight of the PPP program. These linkages are highlighted throughout this module.

For more on the typical components of a PPP framework, see **Farquharson et al** (Farquharson et al. 2011, 15–16), and **Yong** (Yong 2010, 30), which both provide brief overviews. **The OECD's recommendation on public governance of PPPs** (OECD 2012) also sets out guiding principles for governments on managing PPPs. The recommendations cover three areas: (1) establishing a clear, predictable, and legitimate institutional framework supported by competent and well-resourced authorities; (2) grounding the selection of PPPs in value for money; and (3) using the budget process transparently to minimize fiscal risks and ensure the integrity of the procurement process. These built on earlier **OECD principles for private sector participation in infrastructure** (OECD 2007b).

Detailed assessments of PPP frameworks in a range of countries are available in the following:

- The **Economist Intelligence Unit (EIU)'s *Infrascope* index** publications assess the PPP environment in a set of countries to determine whether they are ready to undertake sustainable PPPs. The variables used to assess the countries include many of the PPP framework elements described above, as well as the country's operational experience with PPPs, the availability of finance and financing support mechanisms, and the overall investment climate. The series includes **EIU *Infrascope* index for Latin America and the Caribbean** (EIU 2014b), commissioned by Inter-American Development Bank's Multilateral Investment Fund (MIF); **EIU *Infrascope* index for the Asia-Pacific region** (EIU 2014a), commissioned by the Asian Development Bank (ADB); **EIU *Infrascope* index for Eastern Europe and the Commonwealth of Independent States** (EIU 2012), commissioned by the European Bank for Reconstruction and Development (EBRD); and the **EIU *Infrascope* report evaluating the environment for PPPs in Africa** (EIU 2015), commissioned by the World Bank.
- **Irwin and Mokdad's paper on managing contingent liabilities in PPPs** (Irwin and Mokdad 2010) describes the PPP approval, analysis and management approach in Australia, Chile, and South Africa, with a focus on fiscal management.
- The **PPPLRC** contains links to a set of tools designed by multilateral organizations to assess and improve PPP frameworks.
- The **OECD Principles for Public Governance of Public-Private Partnerships** (OECD 2012)—provides recommendations on how to ensure value for money through institutional design, regulation, competition, budgetary transparency, fiscal policy, and integrity at all levels of government.
- The **Country Readiness Diagnostic for Public-Private Partnerships** (WB 2016a)—is a World Bank tool that helps determine the status quo and compares it with best practices to determine gaps.
- The **World Bank Benchmarking PPP Procurement 2017** (WB 2016b)—benchmarks the regulatory frameworks governing the PPP procurement processes in 82 economies, and evaluates these data against internationally recognized good practices.
- The **Framework for Disclosure in PPP Projects** (WB 2015a)—is a World Bank review of PPP disclosure frameworks and practices together with a set of recommendations for a systematic structure for proactively disclosing project information.

The PPP Framework of Chile

Chile is a country with substantial PPP experience and a well-defined PPP framework. As of 2015, Chile had 59 active projects in roads, airports, jails, reservoirs, urban transport, hospitals, and other sectors, with a total investment value of $10.8 billion.

The use of PPPs in Chile was enabled in 1991 by Decree 164, which set out much of the framework still in use today. This framework was updated in 2010 by the Concessions Law.

The Concessions Law sets out the institutional responsibilities and processes for developing and implementing PPPs. The Concessions Unit of the Ministry of Public Works (MOP) acts as implementing agency for all PPPs in Chile. The MOP may receive proposals from government agencies or private investors. It follows a clearly-defined process to appraise a project. If the project is deemed to be a good PPP candidate, the MOP Concessions Unit prepares the tender documents, manages the tender process, and selects and announces the winning bidder by decree. The Unit then manages the PPP contract over the project lifetime, receiving regular reports from the concessionaire—with the ability to request additional audits to check the information received—and managing any changes needed to the contract.

The National Planning Authority reviews and approves the technical and economic analysis of the project. The Concessions Council—led by the Minister of Public Works, with an advisor selected by the MOP, and four other advisers representing the Civil Engineering, Economics and Management, Law, and Architecture departments of the University of Chile—approves the initial decision to carry out the project as a PPP.

The Ministry of Finance approves PPP tender documents, as well as any changes made during the tender process, and any significant changes made through the lifetime of the contract. The Minister of Finance also signs the decree awarding the PPP contract to the winning bidder. To manage these responsibilities, the Ministry has established a Contingent Liabilities Unit, which reviews all projects prior to approval, and calculates the value of the government's liabilities initially and throughout the contract on an annual basis. Chile publicly discloses its commitments to PPP projects in a detailed annual contingent liabilities report. Information on the PPP program is also included in budget documentation.

The Chilean Treasury makes the payments set out in the PPP contract in accordance with appropriation procedures and the milestones stipulated in the contract. These payments were previously approved by the Ministry of Finance during the project approval phase. Disbursements are structured where possible to minimize their impact on fiscal risk—for example, demand guarantee payments are typically due the year after a demand shortfall, once the amount is known.

Either party can bring a dispute that emerges during the implementation of a project to a Technical Panel. If the solution proposed by the technical panel does not resolve the problem, the parties may bring the matter before the Arbitration Commission or the Appeals Court of Santiago.

Sources: (CL 2010a); (CL 2010b); (CL 2016)

The PPP Framework of South Africa

South Africa is another country with substantial PPP experience. From 2000 to April 2014, South Africa implemented 24 national and provincial level PPP projects totaling over $8.35 billion of investment.

The legislation governing national and provincial PPPs is the **Treasury Regulation 16**, issued under the Public Finance Management Act of 1999. Regulation 16 sets out the PPP process, requirements and approvals, and institutional responsibilities. Municipal PPPs are governed by the Municipal Finance Management Act and the Municipal Systems Act. There are also municipal PPP regulations that roughly mirror the requirements of Treasury Regulation 16.

PPP processes and institutional responsibilities are established in a detailed ***PPP Manual***. This manual describes how the Treasury regulations should be interpreted, and provides detailed guidance at every

step in the PPP process, each in a separate module. Each module of the manual is issued as a practice note of the National Treasury, and can be updated separately. A similar manual, the ***Municipal Service Delivery and PPP Guidelines***, provides instructions for municipal PPPs.

Responsibility for implementing PPP projects rests with the contracting authority. Contracting authorities must identify and appraise PPP projects, and manage the tender process to select the winning bidder, following the detailed guidance and requirements (including checklists for each stage and standard forms) set out in the manuals. The contracting authority is responsible for managing PPPs through the contract lifetime, which includes ensuring the project meets performance standards, resolving disputes, and reporting on the PPP in the institution's/municipality's annual reports.

PPP approvals are made by the Treasury at the national and provincial levels. Municipal PPPs will be subject to Treasury's views and recommendations. Projects are submitted for approval at four points, after: (1) the feasibility study has been completed; (2) the bid documents have been prepared; (3) bids have been received and evaluated; and (4) negotiations have concluded and the PPP contract is in its final form. The Treasury established a PPP Unit in 2004 to review all PPP submissions and recommend the PPP for approval. The Treasury's evaluation focuses particularly on the value for money and affordability of the PPP project.

Payments for PPP commitments are made through the annual appropriations process. The Accounting Standards Board of South Africa has published **guidelines for public sector accounting for PPPs**. The PPP Manual also sets out the auditing requirements for PPP. The Auditor General's annual audits of contracting authorities should check that the requirements of the PPP regulations have been met, and the financial implications are reflected in the institution or municipality's accounts. The Auditor General may also conduct forensic audits if any irregularity is suspected.

Sources: (ZA 2004a); (Burger 2006); (Irwin and Mokdad 2010)

A PPP framework can be instituted in different ways. The options available typically depend on the legal system of the country, and on the norm for establishing government policies, procedures, institutions, and rules. They can include:

- **Policy statement**—in developed countries with a common-law tradition, PPP policy statements typically set out the rationale for, objectives, scope, and implementing principles of the PPP program, as described further in PPP Policy. Policy statements may also outline procedures, institutions, and rules by which the objectives and principles will be put into practice.
- **Laws and regulations**—as described further in *PPP Legal Framework*, civil law countries typically require legislation to enable PPPs to be pursued, and set out the rules for how PPPs will be implemented; many common law countries also introduce PPP legislation as a more binding form of commitment to a PPP framework. This can be a dedicated PPP law, a component of broader public financial management law, subordinate legislation such as executive orders, presidential decrees, regulations, or a combination.
- **Guidance materials**, such as manuals, handbooks, and other tools. These may be used to establish PPP procedures upfront, or developed over time to supplement policy statements or legislation, as a codification of good practice. PPP Cycle provides examples and draws from many examples of good quality guidance material from national PPP programs.

In addition to cross-sector PPP frameworks, policies or laws at the sector level can enable the use of PPPs and create a framework for PPPs within the sector. Many PPP programs use a combination of these approaches.

Sections

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Yellow crane

PPP Policy

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Red crane

PPP Legal Framework

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Construction cranes

PPP Processes and Institutional Responsibilities

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Scaffolding

Public Financial Management Frameworks for PPPs

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Construction site with cranes

Broader PPP Program Governance

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Scaffolding

Municipal and other subnational PPPs

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Cranes

Key References - PPP Framework

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PPP Reference Guide 3.0 (Full version), Infrastructure, bridge

PPP Reference Guide 3.0 (Full version)

Research and Publications in PPPRC

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