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Scope of the PPP Legal Framework

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The PPP legal framework includes not only PPP-specific legislation and regulations, but also all legislation that affects PPP contracts, decision processes, and implementation procedures.

As described in PPP Legal Framework, in civil law countries PPP contracts are framed by **administrative law**, which governs the functions and decision-making processes of government agencies. This body of law can create legal rights and obligations for both the contracting authority and private party in addition to those specified in the contract. For example, the public contract code may establish the right of the contracting authority to modify or cancel a contract (often linked to a legal requirement for continuity of service provision). Some protections of the operator may also be implied by law—such as the right to maintain the financial equilibrium of the contract in case of certain types of unexpected change in circumstances (as described further under Designing PPP Contracts). Administrative law may also define processes and institutional roles relevant to PPPs; such as those for procurement, or resolution of contractual disputes—including the ultimate jurisdiction of administrative courts, unless otherwise specified. In both civil and common-law jurisdictions, there may also be **specific laws** that apply to aspects of the PPP process. These can include:

- **Public contract and procurement laws**—PPP contracts and transactions must typically comply with public procurement law and regulations, unless PPPs are specifically exempt.
- **Public financial management laws**—institutional responsibilities, processes, and rules established in public financial management laws and regulations can contribute to the PPP framework. For example, this could include project approval requirements, fiscal limits, budgeting processes, and reporting requirements.
- **Sector laws and regulatory frameworks**—PPPs are often implemented in sectors that are already governed by sector-level law and regulatory frameworks. These may constrain the government's ability to contract with the private sector, or provide rules for doing so.
- **Other laws affecting contracts and the operation of private firms**, which also apply to PPP companies, and should be taken into consideration when defining PPP projects and processes can include:
    - Environmental law and regulations
    - Laws and regulations governing land acquisition, ownership and expropriation
    - Licensing requirements, particularly for international firms
    - Tax rules
    - Insolvency law
    - Currency exchange controls
    - Employment law
    - Insurance

For each of the topics mentioned above, the **PPP Resource Center** (PPPRC) identifies important issues and presents guidance as well as references.

These laws taken together may comprise the legal framework for implementing PPP—that is, there may be no need for PPP-specific legislation. For an example, see PPP Legal Framework in Germany.

PPP Legal Framework in Germany

The development and implementation of PPPs in Germany is regulated primarily by the Budget law, particularly sections 7 and 55 of the *Federal Budget Code* (DE 2013), which set out requirements for project preparation and appraisal, and procurement, respectively.

The Budget law establishes **guiding principles and appraisal requirements** for all public procurements, including PPP projects. Under section 7 subsection (1) of the Federal Budget Code, the principles of efficiency and economy must be observed when preparing and executing the budget—which includes the preparation of PPP projects. Economic feasibility analysis is the main instrument for implementing the efficiency principle—it must be conducted for all initiatives having a financial impact, which includes PPPs (section 7 subsection (2) of the Federal Budget Code). This analysis— see (NRW 2007) or (DE 2014)—must be conducted during various stages of the project development process before any decision with financial impact; it includes analysis of alternative procurement approaches.

General provisions for **procurement processes** are set out in Section 55 of the *Federal Budget Code*. Federal procurement procedures vary according to certain thresholds (€5 million for construction contracts). For procedures exceeding stipulated thresholds, the rules established under EU Directives apply, as well as the *Act Against Restraints of Competition* (DE 1998, part 4) and the *Ordinance on the Award of Public Contracts* (DE 2016).

Related Content

- **INTRODUCTION**
- **PPP BASICS: WHAT AND WHY**
- **ESTABLISHING THE PPP FRAMEWORK**
- **PPP Policy**
- **PPP Legal Framework**
- **PPP Processes and Institutional Responsibilities**
- **Public Financial Management Frameworks for PPPs**

- **Broader PPP Program Governance**
- **Municipal and other subnational PPPs**
- **Key References - PPP Framework**
- **PPP CYCLE**

Additional Resources

- World Bank Group Climate Toolkits for PPPs
- Insolvency Laws
- Concession and PPP Laws

Find in pdf at PPP Reference Guide - PPP Framework or visit the PPP Online Reference Guide section to find out more.

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