PPP Contract Types and Terminology

Full Description

Most PPP projects present a contractual term between 20 and 30 years; others have shorter terms; and a few last longer than 30 years. The term should always be long enough for the private party to have an incentive to integrate service delivery costs considerations into the design phase of the project. This includes maintenance considerations as well, in order for the trade-offs between initial investment cost and future maintenance and operation costs to be optimized. The “whole-life” approach, considering whole-life costs and whole-life benefits, maximizes the efficiency of service delivery. It is at the core of the rationale for using PPPs for the delivery of public services. The precise length of the contract depends on the type of project and policy considerations. Policy makers need to satisfy themselves that the demand for the services delivered by the project will be sustained over the whole life of the contract; the private party should be able to accept responsibility for service delivery over its term; and the procuring authority should be able to commit to the project for its term. The availability of finance, and its conditions, may also influence the term of the PPP contract.

PPP Contract Types

Throughout the *Reference Guide*, PPPs are described in terms of three broad parameters: first, the type of asset involved; second, what functions the private party is responsible for; and third, how the private party is paid.

Many PPPs involve new **assets**—often called *greenfield* projects. For example, the United Kingdom's PPP program—the Private Finance Initiative (PFI)—involved private companies in financing, building, and managing new public assets, from schools and hospitals to defense facilities. PPPs can also be used to transfer responsibility for upgrading and managing existing assets to a private company—or *brownfield* projects. In either case, a key feature of a PPP is that the assets or services provided are specified in terms of outputs rather than inputs—that is, defining what is required, rather than how it is to be done.

A central characteristic of a PPP contract is that it bundles together multiple project phases or functions. Nonetheless, the **functions** for which the private party is responsible vary and depend on the type of asset and service involved. Typical functions include:

- **Design** (also called *engineering work*)—involves developing the project from initial concept and output requirements to construction-ready design specifications.
- **Build, or Rehabilitate**—when PPPs are used for new infrastructure assets, they typically require the private party to construct the asset and install all equipment. Where PPPs involve existing assets, the private party may be responsible for rehabilitating or extending the asset.
- **Finance**—when a PPP includes building or rehabilitating the asset, the private party is typically also required to finance all or part of the necessary capital expenditure, as described further in How PPPs Are Financed.
- **Maintain**—PPPs assign responsibility to the private party for maintaining an infrastructure asset to a specified standard over the life of the contract. This is a fundamental feature of PPP contracts.
- **Operate**—the operating responsibilities of the private party to a PPP can vary widely, depending on the nature of the underlying asset and associated service. For example, the private party could be responsible for:
    - Technical operation of an asset, and providing a bulk service to a government off-taker—for example, a bulk water treatment plant

    - Technical operation of an asset, and providing services directly to users—for example, a PPP for a water distribution system
    - Providing support services, with the government agency remaining responsible for delivering the public service to users—for example, a PPP for a school building that includes janitorial service

For the provision of these services, the private party typically creates a PPP company, a **Special Purpose Vehicle (SPV)**. A dedicated SPV allows for the segregation of all assets and liabilities linked to the private provision of services.

The PPP **payment mechanism** is a third defining feature. The private party can be paid by collecting fees from service users, by the government, or by a combination of the two—with the common, defining characteristic that payment is contingent on performance. The options for a payment mechanism can depend on the functions of the private party:

- Under *user-pays* PPPs, such as toll roads, the private party provides a service to users, and generates revenue by charging users for that service. These fees (or tariffs, or tolls) can be supplemented by government payments—for instance, complementary payments for services provided to low-income users when the tariff is capped; or subsidies to investment at the completion of construction or specific construction milestones. The payments may be conditional on the availability of the service at a defined quality level. The social returns generated by user-pays PPPs may benefit the broader population, not only those who directly use the asset. For example, the value of real estate near the PPP project may rise as economic activity increases in the area. Non-users are then free-riding unless property taxes are adjusted.
- In *government-pays* PPPs, the government is the sole source of revenue for the private party. Government payments can depend on the asset or service being available at a contractually-defined quality (availability payments)—for example, a free highway on which the government makes periodic availability payments. They can also be volume-based payments for services delivered to users—for example, payment from hospital care effectively delivered.

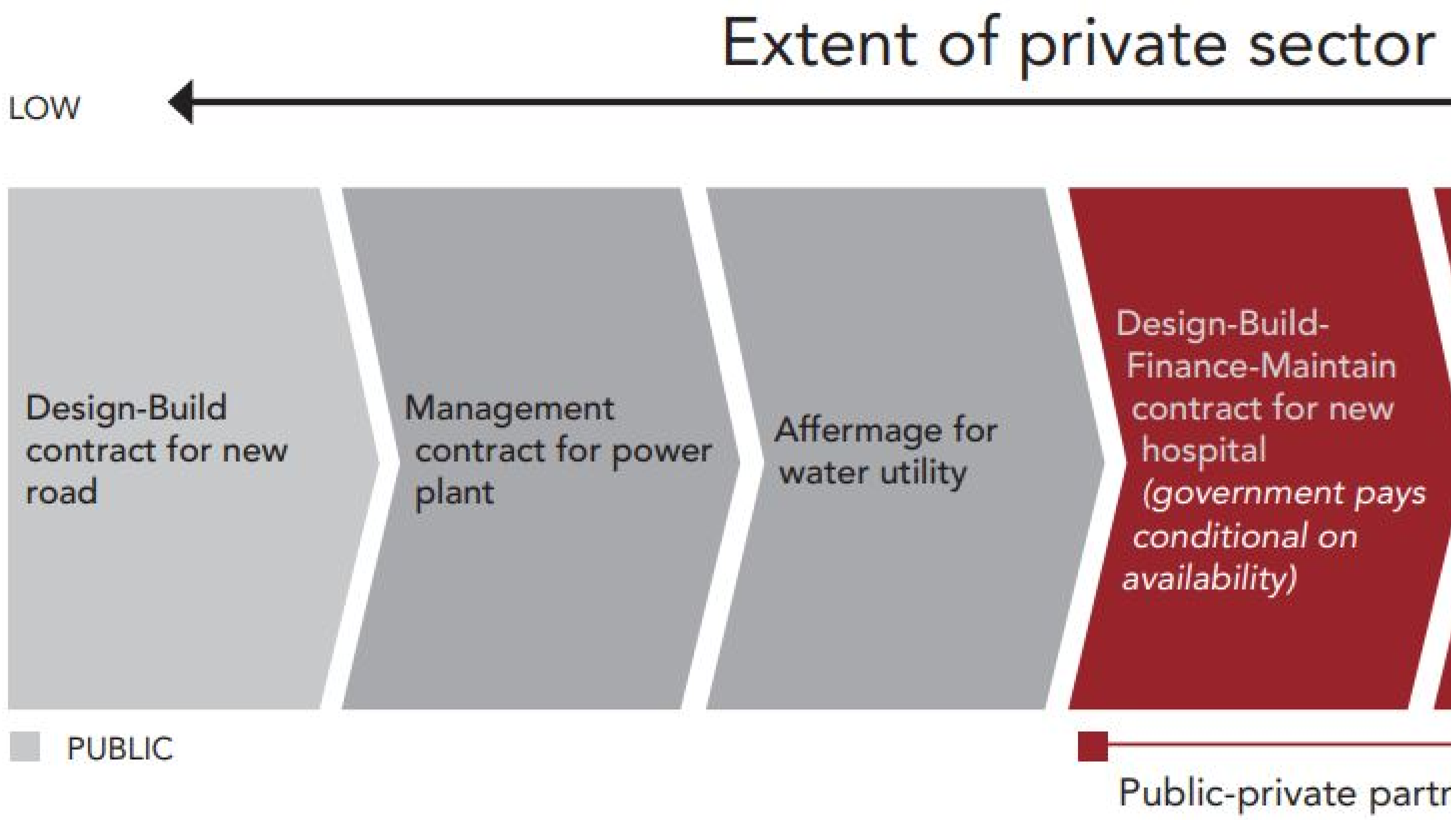
These characteristics can be combined in various ways to create a wide range of PPP contracts. These contracts can be thought of as a continuum between public and private provision of infrastructure—transferring increasing responsibilities and risk to the private sector.

The payment mechanism should be structured in such a way that the **net remuneration of the private party is linked to performance**. For the private party to have the right incentives to deliver services at the performance levels intended by the procuring authority, its remuneration, net of costs, should increase when approaching these levels. Additionally, sustained significant deviations from the intended performance levels should lead to contract cancellation, with termination payments designed so that quitting the project is never an easy solution for the private party.

PPPs are not the only way the private sector can be involved in infrastructure. These adjacent arrangements are described further in What PPP is Not: Other Types of Private Involvement.

Examples of PPP Contract Types

Figure 1.1 Examples of PPP Contract Types



PPP Terminology

This *Reference Guide* uses the term *PPP* to describe the wide range of contract types, regardless of the terminology in any specific country or jurisdiction. While PPP contracts can be categorized using the parameters above, there is no consistent, international standard for naming and describing these different types of contract. This varying terminology can create confusion when comparing international experience.

Some governments define PPP in their PPP policies or laws to mean a specific range of contract types, as described in PPP Policy. Other terms are sometimes used as synonyms for PPP, or refer to particular types of PPP—either in law or in common usage. For example:

- Brazilian law distinguishes between user-pays and government-pays projects—the Concessions Law governs PPP projects fully paid for by users; other PPP projects are governed by the PPP Law. Accordingly, only the latter are commonly referred to as PPPs. In France, the term *PPP* is restricted to government-pays contracts implemented under the PPP Law; user-pays contracts are referred to as *concessions*.
- In the United Kingdom, government-pays PPPs for new assets are known as *Private Finance Initiative* or *PFI projects*, while PPPs for existing assets (such as hospitals or railways) are sometimes known as *franchises*.
- In some jurisdictions, the term *concession* is used to refer to specific types of PPPs. For example, in Brazil, a concession is a fully user-pays PPP. In Chile, all PPPs are called *concessions* and implemented under the country's Concessions Law.
- The process of entering into a PPP is sometimes referred to as *privatization*, or for the resulting assets to be termed *private*—although this *Reference Guide* makes a distinction between PPP and

privatization, as described further in the following section.

In some cases, PPPs are described by the functions transferred to the private party. For example, a Design-Build-Finance-Operate-Maintain, or DBFOM contract would allocate all those functions to the private party. Other nomenclatures such as Build-Operate-Transfer (BOT) focus instead on the legal ownership and control of the assets.

The asset may be property of the public or private partner—usually decided by the legal constraints in place in any given country. The relevant factor for PPPs is not who the legal owner of an asset is, but who holds the economic rights to exploit that asset. The SPV may use an asset as collateral or simply use the flow of funds generated by the operation of the asset. Therefore, a BOT may not be significantly different from a BTO, in which transfer occurs immediately after construction. For example:

- In France, the roles governing the *domanialité* (defining the public domain) stipulate that the public domain can never be sold, seized by a tribunal, or subject to statutes of limitation. Consequently, the assets built on public land belong to the public authority, although the private partner in a PPP can be granted specific economic rights to those assets.
- In other countries, public land can be leased to private operators who built and own the asset on that land until its ownership is transferred to government at the end of the contract. The ownership is not significant for accounting and statistical purposes—IPSAS, the International Public Sector Accounting Standards, focuses on who controls the use of the infrastructure instead of who owns it to determine whether the asset should be consolidated on the government's balance sheet.
- The **2016 Eurostat Guide to the Statistical Treatment of PPPs** (EPEC 2016) states that asset ownership does not influence statistical classification—but ownership of the asset following the expiration of the PPP contract may.

Infrastructure Contract Nomenclature explains common PPP terminology, and how each relates to the description by asset type, functions, and payment mechanisms described above.

The following resources provide more information on PPP contract types and nomenclature:

- **Delmon's paper on understanding options for PPPs in infrastructure** (Delmon 2010) provides the most detailed discussion. Delmon classifies PPPs by five factors similar to the characteristics described above: (1) whether the PPP is a new or existing business or asset; (2) the responsibility of the private party for construction; (3) the level of private finance involved; (4) the nature of the project company's service delivery obligations (bulk supply or retail level); and (5) the source of revenue stream.
- **Yescombe chapter "What are Public-Private Partnerships"** (Yescombe 2007) also describes the range of PPP structures and how these are classified.
- **Farquharson et al chapter "Defining Public-Private Partnerships"** (Farquharson et al. 2011, 9–14) focuses on how PPPs differ from privatization and management contracts; and describes user-fee and availability-based PPPs.
- **The World Bank explanatory notes on key topics in water sector regulation** (Groom et al. 2006, Note 4) describe common contract types for managing existing assets in the water sector: concession, lease or affermage, and management contracts.
- **The World Bank's PPP in Legal Resource Center website** (PPPLRC) describes a spectrum of PPP types based on the extent of private sector's participation.

Structuring PPP Projects provides guidance and hyperlinks on PPP contract structures, and how governments can decide which to use for a particular project.

Infrastructure Contract Nomenclature

Contract Nomenclature	Overview Description and Reference	Type of Asset	Functions Transferred	Payment Source
Design-Build-Finance-Operate-Maintain (**DBFOM**); Design-Build-Finance-Operate (**DBFO**); Design-Construct-Manage-Finance (**DCMF**)	Under this nomenclature, the range of PPP contract types is described by the functions transferred to the private sector. The *maintain* function may be left out of the description (so instead of DBFOM, a contract transferring all those functions may simply be described as DBFO, with responsibility for maintenance implied as part of operations). An alternative description along similar lines is Design-Construct-Manage-Finance (DCMF), which is equivalent to a DBFOM contract.	New infrastructure	As captured by contract name	Can be either government or user pays
Build-Operate-Transfer (**BOT**), Build-Own-Operate-Transfer (**BOOT**), Build-Transfer-Operate (**BTO**)	This approach to describing PPPs for new assets captures legal ownership and control of the project assets. Under a BOT project, the private company owns the project assets until they are transferred at the end of the contract. BOOT is often used interchangeably with BOT, as **Yescombe** (Yescombe 2007) describes. In contrast, a Build-Transfer-Operate (BTO) contract, asset ownership is transferred once construction is complete. As **Delmon** (Delmon 2015, 20–21) describes, ownership rights mainly affect how handover of assets is managed at the end of the contract.	New infrastructure	Typically, design, build, finance, maintain, and some or all operations Under some definitions, BOT or BTO may not include private finance, whereas BOOT always includes private finance	Can be either government or user pays
Rehabilitate-Operate-Transfer **(ROT)**	In either of the naming conventions described above, *Rehabilitate* may take the place of *Build* where the private party is responsible for rehabilitating, upgrading, or extending existing assets.	Existing infrastructure	As above, but *rehabilitate* instead of *build*	As above

Concession	*Concession* is used for a range of types of contract, as described in **Delmon** (Delmon 2010, Box 1 on page 9**)**. In some jurisdictions, concession may imply a specific type of contract; while in others it is used more widely. In the PPP context, a concession is mostly used to describe a user-pays PPP. For example, in Brazil, the Concession Law applies only to user-pays contracts; a distinct PPP Law regulates contracts that require some payment from government. On the other hand, *concession* is sometimes used as a catch-all term to describe a wide range of PPP types—for example, all recent PPPs in Chile have been implemented under the Concession Law, including fully government-pays contracts.	New or existing infrastructure	Design, rehabilitate, extend or build, finance, maintain, and operate—typically providing services to users	Usually user pays—in some countries, depending on the financial viability of the concession, the private party might pay a fee to government or might receive a subsidy
Private Finance Initiative (**PFI**)	The United Kingdom was one of the first countries to introduce the PPP concept under the term *Private Finance Initiative*, or *PFI*. It is typically used to describe a PPP as a way to finance, build and manage new infrastructure.	New infrastructure	Design, build, finance, maintain—may include some operations, but often not providing services directly to users	Government pays
Operations and Maintenance (**O&M**)	O&M contracts for existing assets may come under the definition of PPP where these are performance-based, long-term, and involve significant private investment (sometimes also called performance-based maintenance contracts).	Existing infrastructure	Operations and maintenance	Government pays

Affermage	An *affermage* contract is similar to a concession, but with the government typically remaining responsible for capital expenditures. *Affermage* in particular may have a specific meaning in some jurisdictions. The **World Bank's explanatory notes on water regulation** (Groom et al. 2006, 36–42) describe lease contracts, as well as concessions. Such contracts may or may not come under the definition of PPP, depending on the duration of the contract.	Existing	Maintain and operate, providing services to users	User pays—private party typically remits part of user fees to government to cover capital expenditures
Management Contract	The state retains asset ownership, and capital expenditure is the responsibility of the public sector, whereas operation and maintenance is the handled by the private sector. These types of contracts are 3-5 years in duration.	Existing	Operations and maintenance	Management fees extended to the contractor
Franchise	*Franchise* is sometimes used to describe an arrangement similar to either a concession or a lease or affermage contract, as described in **Yescombe** (Yescombe 2007).	Existing or new	May include design, build, and finance, or may be limited to maintaining and operating an asset	User or government pay

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