

A Checklist for Public-Private Partnership Projects¹

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¹ Prepared by the Staff of the World Bank Group for the G20 Investment and Infrastructure Working Group, August 2014

INTRODUCTION

Both the global financial crisis and national policy makers' response to it have had a significant negative impact on fiscal space, including in G20 economies. At the same time, related developments have made access to long-term finance more difficult, particularly for emerging markets and developing economies.² As a result, the task of financing the vast infrastructure needs of both advanced and developing economies has become more challenging. With the public sector constrained in its ability to respond to important infrastructure needs, policy makers are increasingly looking to partnerships with the private sector to ensure that the infrastructure needed to support strong, sustainable and balanced growth can be built and maintained. Responding to this challenge, the G20 has sought input from international organizations, including the World Bank Group, on how to foster the conditions necessary to encourage productive and efficient public-private partnerships in infrastructure.

The paper "Success Stories and Lessons Learned: Country, Sector and Project Examples of Overcoming Constraints to the Financing of Infrastructure"³ prepared by the World Bank Group for the G-20 IIMG in January 2014 identifies key requirements and includes an initial framework for successful PPPs emphasizing the importance of politics, economics and execution. This PPP checklist is an extension of the initial framework. It has been prepared from the point of view of public policy makers and decision-makers in countries at various levels of development and capacities for the purpose of a high level assessment of a PPP project. It seeks to provide public policy makers and managers with a tool that can help them ensure that the key requirements in projects and programs are fulfilled. The checklist includes project/ transaction specific questions as well as questions on the overarching environment and covers phases of a PPP project from concept to completion of contract term. Project-specific questions remain at a higher level as greater detail is outside the scope of this checklist and would need to form part of a separate exercise. This checklist can, however, be customized based on specific circumstances and needs. The checklist incorporates lessons from earlier research from IFC projects, and is organized around the initial broad categories of economics, politics and execution, but with the addition of a fourth broad category of law and institutions. The category of economics has now been expanded to include finance. More than 60 documents, including checklists, have been reviewed while preparing this checklist and the draft has undergone wide internal and external reviews and several iterations. Detail on scope and methodology and reference materials used is included in the **Annex**.

While the checklist is primarily for the public sector, it can enhance the understanding of the private sector on political, economic and institutional drivers within the public sector as well as the complexities inherent in the execution of projects. It can also be useful for other stakeholders giving them a holistic view of the PPP process and an enhanced understanding of their respective roles.

² See, for example, "Long-Term finance for Growth and Development: Umbrella Paper", Prepared by World Bank staff based on input from the staffs of the Organization for Economic Cooperation and Development, International Monetary Fund, UNCTAD, UN-DESA, World Bank Group, and the Financial Stability Board, February 2013

³ https://www.g20.org/official_resources/success_stories_and_lessons_learned_country_sector_and_project_examples

Figure 1: Approach to the PPP Checklist

POLITICS	LAW AND INSTITUTIONS	ECONOMICS AND FINANCE	EXECUTION
<ul style="list-style-type: none"> •Ownership •Potential political deal breakers 	<ul style="list-style-type: none"> •Laws and regulation •Standard documents and methodologies •Internal organization •Transparency and accountability 	<ul style="list-style-type: none"> •Business case •Fiscal issues •Financing 	<ul style="list-style-type: none"> • Internal and external capacity for implementation •Procurement •Contract management

POLITICS

It is important to ensure that the project has broad stakeholder support, there is political commitment and stability, and potential political deal-breakers have been flagged / addressed early on in the process.

Ownership

- Is there an approved national/ regional/ local infrastructure plan / PPP pipeline/ program which has clear support from the highest levels of government (Office of the President/Governor/Prime Minister, the Ministry of Finance and the line ministries; and from equivalent levels in the state and local body in the case of sub-national projects) and which clearly communicates the rationale for doing PPPs?

Project specific

- Does the proposed project derive from the approved national infrastructure plan/ program and does it have clear support from the highest levels of government?
- Are there disagreements among internal stakeholders serious enough to jeopardize the project?
- Is there sufficient support for the project among important stakeholders (political parties, unions, private sector, users, media, political commentators, think tanks, civil society organizations and any other)?
- Is there a strategic communication plan with clearly defined roles, responsibilities and timelines to engage with key internal and external stakeholders?

Potential political deal breakers

Project specific

- Can the government implement key project actions and activities including project closure within its remaining term? Or alternatively, is there cross-party consensus for the project such that there is certainty that it can be completed under a future government?
- Has there been a credible social and environmental impact assessment of the project?
- Are there specific issues raised in the social and environmental impact assessment that might have implications for the development and implementation of the project?
- Is there likely to be substantial requirement for land acquisition, resettlement or other approvals that might lead to delays in the project?
- Will other infrastructure upon which the project may depend be ready in time?
- If a “brownfield” project, will there be substantial layoffs in personnel/staff which may result in delays or stand-offs?

LAW AND INSTITUTIONS

For a successful PPP, it is important that there are sound, well-functioning and transparent legal and regulatory institutions, fiscal and financial frameworks, supportive and credible institutional processes, and the capacity and structures to implement them.

Laws and regulation

PPP frameworks

- Are there PPP legislation/ rules / regulations that provide clarity on the definition of PPP and lay out a process for approval, procurement and regulation of projects through construction and approval stages and specify which public authorities can sign the PPP agreements?
- Does the procurement law treat all bidders (including overseas bidders) equally, fairly and transparently?
- Do the legislation/ rules/ regulations include any requirement for initial or final parliamentary approval of PPP project proposals?
- What types of PPP does the framework allow (e.g. management type, leases, BOT, availability-based, concessions, asset sales, other)?
- Are there specific policies and procedures integrated within the PPP framework to select, appraise, procure (competitively or through direct negotiation) and implement projects initiated by private sector proponents through unsolicited proposals?
- Are there sector laws, regulations or policies that provide a basis for charging tariffs and establish clear methodologies for tariff setting, increases and periodic reviews, fostering financial sustainability while at the same time ensuring reasonable and affordable levels of tariff?
- Are there simple, transparent and predictable requirements for licenses, permits and planning approvals??
- Does the legal framework allow for compensation to the parties in the event of termination?

Other related frameworks

- Does land acquisition legislation provide for speed and ease of acquisition while ensuring appropriate compensation and/or rehabilitation?
- Are the labor laws sufficiently flexible to allow maximum productivity and efficiency?
- Are there land and security laws (e.g. mortgages / charges etc.) which confer enforceable rights on lenders/contractors, and permit “step in” and rescue of distressed PPPs?
- Are there tax laws that are well-established and predictable and is their application in the case of PPPs clear?
- Is there an established consistent and respected court system with a reputation for treating all litigants, including foreign litigants, on a fair and equal basis with local litigants?
- Are there alternative forms of dispute resolution which are consistent with widely accepted international good practice?
- Are international arbitration awards recognized and can they be enforced?
- Can the public authority claim sovereign immunity and is there provision for waiver?
- Does the law provide for unilateral contract termination by government?
- Is there protection against expropriation or nationalization of project assets?

Functioning of frameworks

- Does the court system provide timely redress?
- Is there a sound track record of compliance with law and contract obligations: for e.g. are there instances of government renegeing on its contractual obligations, including payments?
- Have there been instances of unilateral contract termination by government or expropriation of project assets in the past?

Standard documents and methodologies

- Are there standard methodologies and guidance for technical costs, value for money (VfM) analysis, economic cost benefit analysis, affordability analysis, discounting etc. with established benchmarks comparable to international norms?
- Are there performance standards that are comparable to international benchmarks?
- Are there standard documents and templates for different phases of the project, including standardized contracts that define the rights and obligations of the parties and allocate risks to the entity best able to manage them?

Internal organization**Structure**

- Is there a PPP Unit in the Ministry of Finance/ elsewhere with a clearly defined role and responsibilities, and adequately staffed with appropriately skilled public servants who can provide specialized expertise, guidance and oversight?
- Are there dedicated teams in line ministries/ contracting agencies for developing projects?
- Are there dedicated teams for PPP project appraisal, approval, procurement and contract management?

Processes

- Are there transparent and time limited processes for PPP project appraisal, approval and procurement including appropriate quality control procedures?
- Are there established processes for contract management which define roles and responsibilities clearly and ensure timely monitoring, evaluation, feedback and correction in performance of projects?
- Are there established processes for contract renegotiation which ensure transparent negotiations, emphasis on value for money outcomes and protection of the interests of all stakeholders?

Transparency and accountability**Disclosure framework**

- Are there methods for ensuring transparency in the PPP process, including, among others, disclosure of key pre⁴ and post-procurement information, such as information relating to the bid process, project progress, fund deployment from government, projected commitments, contingent liabilities and project performance?
- Is there clear guidance on the recommended approach to confidential information with clear reflection in the standard contract documentation?

Audit framework

- Is there a clear and established framework for financial, performance and forensic audit of PPP?
- Does the supreme audit institution have the capacity and skills to undertake PPP audit and do they publish their audits?

⁴ This includes disclosure during the procurement process.

ECONOMICS AND FINANCE

The project should make technical, economic, fiscal and financial sense with an adequate business case and an optimal allocation of risks. It should provide value for money. Financing of appropriate tenure should be available either domestically or internationally, and any foreign exchange and capital controls should be transparent, predictable and allow investors to repatriate their investments.

Business case

Project specific

Project scope

- Is there a clear articulation and substantiation of the need for the project?
- Is the project objective realistic and does it provide sufficient articulation and justification of the technical, economic, social, fiscal, programmatic and other drivers?
- Does the project deliver critical public infrastructure services?
- Has the market for the services been defined, geographically and clientele wise?
- Are there competing projects (current or future) in the defined market and has the impact of these been considered in the business case?
- Is there long term certainty on future requirements of the identified infrastructure services?
- Is the scope of the transaction and technical design as defined sufficient to achieve the project outputs and outcomes?
- Are the defined outputs in line with existing standards?
- Are the functional responsibilities of different organizations appropriately defined?
- Are the project scope and functional responsibilities as defined compatible with the current legal, regulatory and institutional framework and processes?
- Have insights from earlier similar project transactions been taken into account while developing the business case?

Costs and revenues

- Are the technical cost estimates in line with the required output specifications and based on established national/international benchmarks?
- Are all cost categories accounted for, including the costs of social and environmental impacts?
- Is there an assessment of the ability and willingness to pay (especially if this is a new project with no previous experience of user charges)?
- Are revenue estimates, whether based on user charges or government payments, backed by sound demand projections/ guaranteed demand? Are the timing and level of expected revenues based on realistic assumptions?

Site

- Is there a site suitability assessment which includes an evaluation of different options?
- Is the recommended site for the project the best among the assessed options based on extent of fulfillment of project requirements as well as cost?

Rationale for the preferred option

- Is there a rigorous process which bases the choice of PPP modality on an evaluation of the full range of project delivery options from traditional procurement to various PPP models and is the selection of modality based on a robust assessment of VFM?

Market sounding

- Has a market sounding exercise been conducted that included feedback on the availability of private sector skills, experience and interest necessary to undertake the project and deliver services to the required standard, both in terms of technical capability and project scale; constraints to risk allocation, financing and other project features?
- Did the market sounding include a variety of participants (industry players, equity providers, lenders, etc.) with experience and knowledge of similar projects?
- Has the market sounding been undertaken by a competent third-party advisor?
- Has the feedback been appropriately incorporated into the project design, business case and the bidding documents?

Timelines

- Are the recommended timelines for each stage of the process realistic taking into account the time needed for all approvals and also allowing for a realistic timetable for bidders to develop bids? Is each organization involved in the project aware of its responsibility and associated timelines?
- Are the timelines updated and tracked, to ensure accountability?

Fiscal issues

Framework

- Do the fiscal policy priorities of the government include a focus on PPP with budgetary allocations for ongoing government support to infrastructure, including for operations and maintenance?
- Is there a well-functioning budgetary system which supports multi-year fiscal commitments to infrastructure and PPPs where such support is required, and assesses whether the proposed PPPs are affordable?
- Is there a framework for government support to PPPs with clear rules on providing support to individual projects?
- Is there a clear process for accounting treatment of PPPs in terms of classification as on- or off – balance sheet assets/liabilities of government and reporting of government commitments to PPP projects?
- Is there provisioning in the budget for unexpected losses arising out of contingent liabilities?

Project specific

- Where the project requires government support, does the proposal include an assessment of the economic feasibility of the project and an assessment of the various options and instruments of support with a clear rationale for the recommended option?
- Is there an assessment of the various options to minimize the amount of support such as additional sources of revenue, tariff adjustments, reducing the scope of the project, assessing if contract term matches the useful life of assets etc.?
- Is the project affordable to government in terms of the potential fiscal commitments and contingent liabilities it generates through its entire term?
- Are budgetary allocations available for the project, including funding for development of detailed documentation and procurement?

Financing and project structuring

Framework

- Do the major sources of debt (commercial bank debt, capital markets, other), including domestic and external borrowing, provide reasonably long tenors?
- Are there restrictions on external borrowing by domestic firms?
- Is there a robust project finance market which supplements the traditional corporate finance market?
- Are credit enhancement and risk mitigation products (guarantees, etc) available to support project financing?
- Do the current regulations and rules support investments in infrastructure projects by long-term investors including pension and equity funds?

- Is there a reasonable secondary market available for refinancing debt and equity?
- Are there readily available and affordable mechanisms for interest rate and foreign currency hedging?
- Are there restrictions including caps on foreign equity investments and ownership?
- Are any controls on foreign exchange or capital movements predictable and stable?
- Are there adequate levels of foreign currency reserves?
- Are there restrictions on repatriation of profits?

Project specific

- Are all the key modeling assumptions clearly articulated?
- Are the assumptions justified and backed up by sound sources and reflective of market conditions?
- Is the methodology and rationale for identification, assessment and allocation of risks clearly explained and reflect international best practices?
- Is there an outline risk register? Are recommended risk sharing options suitable given the project delivery model and risk managing capacities of the public and private parties?
- Has a robust sensitivity analysis been conducted and what implications does it have for risk allocation as well as the VfM of the project?

EXECUTION

A disciplined approach needs to be adopted, with particular emphasis on mobilizing adequate capacity, adhering to timelines and following a sound procurement process. Post-contract performance management is of particular importance in PPPs.

Internal and external capacity for implementation

Project specific

- Have project teams been identified and their roles and responsibilities clearly defined? Do they have the skills and capacity required for carrying out their assigned roles and responsibilities?
- Are the potential bidders capable of understanding and completing the bidding documents (RFQ/RFP)?
- Have the transaction advisors/ consultants (including technical, legal and financial) been procured competitively and do they have prior experience and expertise with similar projects?
- Does the transaction team include local consultants or consultants familiar with local projects?
- Are there any conflicts of interest with the advisory team?

Procurement

- Is the bid documentation including draft contract discussed and agreed substantially before launching the procurement?
- Does the bid documentation include clear information on key project features and what is expected of the bidders and when?
- Is the contract management team involved in the development of bid documentation for the project?
- Does the qualification process ensure maximum competition amongst bidders with appropriate skills and expertise?
- Are there provisions in the terms and conditions of the bid to protect against aggressive and unsustainable bids such as requiring additional financial, technical or other information from bidders or appropriate performance bonds or parent company guarantees of bidder obligations?
- Have feedback mechanisms been incorporated into the procurement process in order to ensure feedback from bidders or other interested members of the public?

Financial bid

- Does the preferred bidder show any financing commitments as part of the bid (especially in the case of large and complex projects)?
- Is the financial bid backed by sound costs, revenues and assumptions comparable to the national/international benchmarks and does it provide value for money to the government?
- Are the negotiation parameters in place to initiate negotiations with the preferred bidder? If the law does not allow for negotiations after the preferred bidder is selected, have all matters been adequately addressed in the PPP agreement issued in invitation to submit Best and Final Offer (BAFO) to ensure deliverability of the bid by the preferred bidder?

Contract management

Managing the contract

- Are the required resources, tools and processes available to the contract management team and does the team clearly understand the provisions of the contract?
- Is there a contract management plan capable of assessing project performance, and does it include planning for potential contingency events during the contract term?
- Are all the financing agreements in place and the conditions precedent in the contract on a good course towards completion?
- Have the site (if a government site) and assets (if any) been handed over according to timelines?
- Are all stakeholders being kept informed through periodic release of information into the public domain?

- Have there been specific changes such as any refinancing that is not a part of the bidder's original financial model requiring sharing of gains, or any change in ownership that requires government approval??
- Has a post implementation review been undertaken and does it show achievement of the expected outcomes, VfM and/or the need for mid-course corrections?

Managing renegotiations

- Are there changes in the contract attributable to either the public authority or the private party that go beyond the provisions of the contract and that require renegotiation?
- Are the renegotiation parameters and necessary approvals in place for initiation of renegotiation?
- Is the project with the proposed amendments affordable and does it continue to provide VfM for government?
- In case of failure of renegotiation, is there a clear forward strategy with time lines?

Completion of term

- Has an asset inspection been carried out by an independent expert to verify that asset condition meets the hand-back standards/ requires rectification in accordance with any terms in the contract?
- Is any termination compensation required to be paid out on hand back of the assets on completion of term?
- Is there a public sector plan in place for management of the assets and continuity of services following expiry of contract including any process for re-letting of the PPP contract?

Annex I

REFERENCES AND RESOURCES

- Asian Development Bank (2008), *Public-Private Partnerships Handbook*
- Department of Treasury and Finance, Victoria (2010), *Gateway Review Process*
- Florizone, R. and Carter, L (2013), *A Winning Framework for Public-Private Partnerships: Lessons from 60-Plus IFC Projects*, Smart Lessons, IFC
- HM Treasury (2012), *A New Approach to Public Private Partnerships*
- International Finance Corporation (2014), *Deal Entry Checklists for various sectors*
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- International Finance Corporation (2014), *Summary of Lessons from All Failed PPPs 2004-2014*
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- New South Wales Government (2012), *NSW Public-Private Partnerships Guidelines*
- OECD, *Principles for the Public Governance of Public-Private Partnerships*
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- World Bank Group (2013) *Long-Term finance for Growth and Development: Umbrella Paper*, Prepared by World Bank staff based on input from the staffs of the Organization for Economic Cooperation and Development, International Monetary Fund, UNCTAD, UN-DESA, World Bank Group, and the Financial Stability Board
- World Bank Institute (PPIAF). (2014). *Public-Private Partnerships Reference Guide (Version 2.0)*

SCOPE AND METHODOLOGY

The checklist is organized around the initial categories of economics, politics and execution, but with the addition of a fourth broad category of law and institutions and expansion of the broad category of economics to include finance. While some of the key questions around law and institutions could fit into one of the three earlier categories, approaching these from a policy maker's perspective the institutional structure created by legislation, regulations, procedures, processes and frameworks has been grouped together separately. In order to maximize the use and impact of the checklist, the questions within these broad categories have been intuitively organized in groups either in the sequence⁵ in which they could be examined and/or based on common sub-themes, and/or based on whether these are overarching or project specific in nature. Given that policy makers and managers simultaneously manage several projects and programs, the checklist preserves a higher or macro-level orientation with only some key areas which have been identified as deal breakers⁶ broken down to a finer level of granularity. The checklist, however, remains flexible enough for further development of detail for more customized application in specific countries, sectors, projects or even phases of projects.

Over 60 separate documents have been reviewed while preparing this checklist, including PPP checklists of various countries, lessons from 73 failed PPP transactions between 2004-14 compiled by the IFC, the Quality at Entry document used by the IFC PPP Advisory Services, Deal Entry Checklists of Transaction Teams in ten different sectors compiled by the IFC, Learning by Doing notes in 15 projects by IFC staff, several generic and customized checklists prepared by the Public-Private Partnerships in Infrastructure Resource Center (PPPIRC) of the World Bank⁷, comprehensive country-specific PPP laws, regulations, policies, toolkits and standardized documents as well as gateway review processes, and procurement and commercial guidance from various countries. In addition, the conclusions and discussions of the World Bank's Internal Evaluation Group (IEG)⁸ have been considered in depth. A specific sub-category on transparency and accountability⁹ has been included under the broader category of law and institutions given the importance of institutionalizing transparency into PPP processes through project life.

The checklist has its limitations. The broad categorization of politics, law and institutions, economics and finance, and execution has overlaps, but these overlaps are not always clean or clear cut. To preserve simplicity the questions that straddle more than one territory have been grouped under the heading which most suits these, rather than creating additional categories.

It may often be the case that the authorities will not be able to meet some of the criteria outlined in the checklist. In such a situation, the impact of the absence of some features on a country's ability to implement PPP may need to be assessed carefully in order to create the necessary conditions through contractual clauses where needed. On the other hand, the checklist is not exhaustive and does not cover every conceivable question that can be asked. Finally, while the checklist has been intuitively designed, like any checklist it is only an aid to human ingenuity and cannot be a substitute for innovativeness, ideas and excellence. This checklist, as is the case with most checklists, will remain a work in progress, imperfect and inadequate, and must be updated in order to keep up with the dynamism and emerging new lessons in PPP. Further detailed

⁵ It must be noted, however, that the PPP process is not fully sequential and is more amenable to an iterative approach.

⁶ "Deal breakers" identified by team leaders in a *Summary of Lessons from All Failed PPPs 2004-2014*, International Finance Corporation, 2014

⁷ <http://ppp.worldbank.org/public-private-partnership/overview/practical-tools/checklists>

⁸ The World Bank, Internal Evaluation Group (2013), Evaluation of the World Bank Group's Support to Public-Private Partnerships.

⁹ World Bank Institute (2013), Disclosure of Project and Contract Information in Public-Private Partnerships.

checklists, such as checklists on each of the sub-themes or project-specific detailed process checklists can be developed to take this work further in future.