



# Establishing the PPP Framework

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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 *Box 2.1 - Good Governance for 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.

## Box 2.1 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)

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 capaci-

ty. *Box 2.2 - The PPP Framework of Chile* and *Box 2.3 - 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.

## Box 2.2 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)

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 Infrascopes** 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 the **EIU Infrascopes index for Latin America and the Caribbean** (EIU 2014b), commis-

## Box 2.3 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)

sioned by the Inter-American Development Bank's Multilateral Investment Fund (MIF); the **EIU Infrascopes index for the Asia-Pacific region** (EIU 2014a), commissioned by the Asian Development Bank (ADB); the **EIU Infrascopes 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 Infrascopes 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 **PPP Knowledge Lab** 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 to help determine the status quo and compare it with best practices to determine gaps.
- ♦ The **World Bank Benchmarking PPP Procurement 2017** (WB 2016b)—benchmarks the regulatory frameworks govern-

ing 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.

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 *Section 2.1 - 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 *Section 2.2 - 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. *Module 3 - 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.

## 2.1 PPP Policy

The first step for government in establishing a PPP framework is to articulate its PPP policy. PPP policy is used in different ways in different countries. This *Reference Guide* uses *PPP policy* to mean the

government's statement of intent to use PPPs as a course of action to deliver public services and the guiding principles for that course of action. A PPP policy would typically include:

- ♦ **PPP rationale/program objectives**—why the government is pursuing a PPP program
- ♦ **PPP program scope**—what types of projects will be pursued under the PPP policy
- ♦ **Implementing principles and governance arrangements**—how PPP projects will be implemented, to ensure the PPP program meets its objectives

The following sections provide examples of how different countries define their PPP program objectives, scope, and implementing principles.

Many governments issue a PPP policy statement or document to communicate their intention to use PPPs to civil servants, the public, and potential investors and the rationale behind this decision. The policy statement also describes how PPPs will be implemented. The **OECD's report on fostering investment in infrastructure** (OECD 2015b, 16–17) highlights the importance of a stable government position on private participation. The following sections reference some examples of PPP policy documents. Other countries incorporate these elements of PPP policy within PPP laws and regulations, or guidance material. PPP policies benefit from being more comprehensive public investment or infrastructure policy framework, as described further in *Section 2.3 - PPP Processes and Institutional Responsibilities*.

### 2.1.1 PPP Program Objectives

Governments pursue PPP programs for different reasons. Some countries begin using PPPs to resolve a crisis or remove bottlenecks in a particular sector. For example, PPPs were first used in South Africa in the roads sector to build more highways. In the Philippines, many of the first PPPs were in the power sector, where the state-owned power company contracted with independent power producers to solve a power crisis. In both cases, the use of PPPs subsequently extended into other sectors.

Most governments define broad PPP program objectives when formulating and documenting their PPP policies. The choice and relative priority of these objectives cascade from the government's other policies and priorities. They can include:

- ◆ Enabling more investment in infrastructure, by accessing private finance
- ◆ Encouraging a whole-life-cost approach to infrastructure
- ◆ Putting a greater focus on the quality of service to the end-user
- ◆ Accessing additional management capacity through private operation of infrastructure
- ◆ Achieving value for money in the provision of infrastructure and public services
- ◆ Improving accountability in the provision of infrastructure and public services
- ◆ Harnessing private sector innovation and efficiency
- ◆ Stimulating growth and development in the country

Table 2.1 - Example PPP Program Objectives provides examples of PPP program objectives in countries' PPP policy statement or law.

## 2.1.2 PPP Program Scope

Many governments choose to limit the scope of their PPP program to particular types of projects (or contracts). The aim can be to focus on those most likely to achieve the government's objectives

and provide value for money. Governments may define the PPP program scope by one or more of the following:

- ◆ **PPP contract types**—there is no consistent, international definition of PPP. The term describes a wide range of contract types as presented in *Section 1.1 - What is a PPP: Defining Public-Private Partnership*. Some countries filter the types of contract that are included under their PPP policies. The rationale behind this approach can be to prioritize the contract types that are most consistent with the government's policy objectives. It is also important to clarify when the requirements and processes of the PPP framework apply. For example, India's draft National PPP Policy specifies the types of contracts that can be used for PPPs (Engineering-Procurement-Construction (EPC) contracts, and divestiture of assets). Brazil's *Law 11079*, Federal PPP Law, (BR 2004a) and Chile's *Ley y Reglamento de Concesiones de Obras Públicas* (CL 2010b) both define limits on the contract duration.
- ◆ **Sectors**—the PPP program may be limited to sectors most in need of investment or improvements in service performance, or those where PPPs are expected to be most successful. For example, Singapore's PPP policy limits the use of PPPs to those sectors in which other similar countries have had proven success with PPPs. Some countries exclude sectors considered too sen-

Table 2.1 Example PPP Program Objectives

Country	Reference	PPP Objectives
Australia	National PPP Policy Framework (AU 2016b, 3)	Describes the aim of PPPs as being “to deliver improved services and better value for money, primarily through appropriate risk transfer, encouraging innovation, greater asset utilization and an integrated whole-of-life management, underpinned by private financing.”
Indonesia	Regulation of Government Cooperation with Business Entity in the Supply of Infrastructure (ID 2005, Chapter II Article 3)	The purpose of cooperation of government and the private sector (through PPPs) is set out as follows: <ul style="list-style-type: none"> <li>• To fulfill sustainable funding requirements in the supply of infrastructure through mobilization of private sector funds</li> <li>• To improve the quantity, quality and efficiency of services through healthy competition</li> <li>• To improve the quality of management and maintenance in the supply of infrastructure</li> <li>• To encourage the use of the principle where users pay for services received; or in certain cases the paying ability of the users shall be taken into consideration</li> </ul>
São Paulo (Brazil)	Law 11688 (SP 2004a, Article 1)	States that the objective of the PPP program is to “promote, coordinate, regulate, and audit the activities of the private sector agents who, as collaborators, participate in the implementation of public policies aimed at the development of the state and the collective wellbeing.”
Mexico	PPP Law (MX 2012, Ley de Asociaciones Publico Privadas, Art.1)	States that the objective of the PPP program is to increase social wellbeing, and investment levels in the country.

sitive, such as water, education or health. The **EPEC report on European lessons with PPPs** (EPEC 2015) discusses the use of PPPs for specific sectors in countries such as Belgium, France, Greece, the Netherlands, and Ireland.

- ♦ **Project size**—many governments define a minimum size for PPP projects implemented under the PPP framework. Small PPP projects may not make sense because of the relatively high transaction costs—although there is evidence of a few cases in which small PPPs have been successful. In Singapore, PPPs are only pursued for projects with an estimated capital value of over \$50 million. When Brazil passed its PPP law (BR 2004a) set a minimum size of 20 million reais (\$6.9 million at that time) for individual projects launched under the PPP Law.

*Table 2.2 - Example Definitions of PPP Policy Scope* provides more detail on how various countries have defined the scope of their PPP programs.

Additionally, certain countries have special programs specifically for small projects, such as Kenya, Tanzania and India. These are described in greater detail in the **review of trends in small-scale PPPs** (Ahmad and Shukla 2014).

### 2.1.3 Implementing Principles

PPP policies often include a set of implementing principles—the guiding rules, or code of conduct under which PPP projects will be

Table 2.2 Example Definitions of PPP Policy Scope

Country	Reference	PPP Policy Scope
Australia	National PPP Guidelines-PPP Policy Framework (AU 2016b, Section 3.1.3, 6)	<b>Project size</b> —value for money considerations mean PPPs will likely only be applicable for projects over \$50 million.
Brazil	National PPP Law (BR 2004a, Law 11079, Article 2, paragraph 4)	<b>Contract Types</b> —only two types of contracts will be considered PPPs in Brazil: sponsored concession—returns for the private party come from user fees and government transfers; and administrative concessions—all returns to the private party come from government transfers. Concessions not requiring government transfers are not considered PPPs in Brazil. The law also states that the concession must be at least five years long to be considered a PPP. <b>Project Size</b> —PPP will only be used for project over 20 million reais.
Chile	Concessions Law (CL 2010b, Law 20.410)	<b>Contract types</b> —the law specifies a maximum duration for concession contracts of 50 years. <b>Sector</b> —the law does not specify the sectors.
Colombia	National PPP Law (CO 2012a, Law 1508, Articles 3 and 6)	<b>Contract types</b> —PPP contracts must always make the private investor responsible for operations and maintenance, and must be for less than 30 years (if the project is longer, it will require approval from the National Council on Economic and Social Policy). <b>Project size</b> —Total investment in the project must be above 6000 smmlv (i.e. minimum legal monthly wage) or approximately \$1,460,000.
Indonesia	Presidential Regulation No. 67 (ID 2005, Peraturan Presiden No. 67)	<b>Sectors</b> – specifies eight eligible infrastructure sectors: transportation (ports and railways); roads; water (channels for fresh water flows); potable water distribution; waste water; telecommunications; electric power; oil and natural gas.
Mexico	PPP Law (MX 2012, Ley de Asociaciones Publico Privadas)	<b>Contract types</b> —defines PPPs as long-term contractual relationships between public and private entities to provide services to the public sector or the general public, and where infrastructure is provided to increase social wellbeing and investment levels in the country. Contracts must not exceed 40 years in duration (including extensions)—contracts that are longer than 40 years must be approved by law.
Senegal	PPP Contracts Law and Order of Application (SN 2015, Loi Relative aux Contrats de Partenariat et Decret d'Application)	<b>Sectors</b> —PPP provisions apply to all sectors except those subject to special regulations, particularly mining, telecommunications, and energy.

implemented. These principles set out the standards against which those responsible for implementing PPPs should be held accountable. Regulations and processes detailing how the principles will be put into practice often support the PPP policy framework. For example, *Box 2.4 - PPP Implementing Principles in Peru* lists the implementing principles established in Peru's national PPP law.

For other examples of strong guiding principles, see:

- ♦ The **State Government of Karnataka Infrastructure Policy** (KAR 2015, 9–20) explains its *Touchstone Principles*.
- ♦ **Australia's National PPP Policy Framework** (AU 2016b, 11–12) sets out nine principles: value for money, public interest, risk allocation, output-orientation, transparency, accountability, modified funding and financing, sustainable long-term contracting, and engaging the market.
- ♦ **Brazil's Federal PPP Law** (BR 2004a, Law 11079, Article 4), identifies seven principles for the use of PPPs—efficiency, respect for the interests of users and the private actors involved, non-transferability of regulatory, jurisdictional and law enforcement responsibilities, transparency, objective risk allocation, and financial sustainability.
- ♦ The **PPP Law of the State of São Paulo**, Brazil (SP 2004a, Law 11688, Article 1) sets out eight principles to guide PPP design and implementation, including efficiency, respect for the interests of the end users, universal access to essential goods and services, transparency, fiscal, social, and environmental responsibility.
- ♦ **Indonesia's Presidential Regulation No. 67** (ID 2005, Article 6) presents PPP principles promoting transparency, fair consideration, and competition in the PPP program, as well as “win-win” structures for the public and private parties.
- ♦ **Colombia's National PPP Law** (CO 2012a, Law 1508, Articles 4 and 5) lays out the key principles of the PPP policy in the country: efficiency, necessity, and efficient risk allocation. The law also states that all payments to private investor must be conditional on the availability of the infrastructure to contractually-set levels.
- ♦ **Jamaica's PPP Policy** (JM 2012) sets out four guiding principles: optimal risk transfer; achieving value for money for the public; being fiscally responsible; and maintaining probity and transparency.

## Box 2.4 PPP Implementing Principles in Peru

Peru's PPP policy is set out in legislative Decree 1012. Article 5 defines the following guiding principles for PPP programs:

**Value for Money:** the public service provided by the private actor must offer better quality for a given cost or lower costs for a given quality outputs. This is how the policy seeks to maximize user satisfaction and optimize the use of public resources.

**Transparency:** all quantitative and qualitative information used to make decisions during the evaluation, development, implementation and monitoring stages of a PPP must be made public in accordance with Article 3 of the Transparency and Public Information Access Law.

**Competition:** competition must be sought to ensure efficiency and lower costs in the provision of public infrastructure and

services. The government must avoid any anti-competitive or collusive behavior.

**Adequate Risk Allocation:** there must be adequate risk allocation between the public and private parties. This means that the risks must be assigned to the party that has the greatest capacity to manage the risks at a lower cost, considering both the public interest and the project's characteristics.

**Budgetary Responsibility:** this is defined as government capacity to assume the firm and contingent financial commitments related to the implementation of PPP contracts without compromising the sustainability of public finances or the regular provision of the public service.

Source: (PE 2014)

## Key References: PPP Policy Examples

Reference	Description
AU. 2016b. <i>National Public Private Partnership – Policy Framework</i> . Canberra: Commonwealth of Australia.	Sets out the policy objectives, scope, assessment of projects as PPPs, and principles guiding the application of PPPs.
ID. 2005. <i>Peraturan Presiden Republik Indonesia Nomor 67 Tahun 2005</i> . Jakarta: President of the Republic of Indonesia.	Sets out the purpose, scope, and principles of the PPP program in Indonesia, as well as defines the PPP process and responsibilities.
SP. 2004a. <i>Lei No. 11.688 de 19 de maio de 2004</i> . São Paulo: Governo do Estado de São Paulo.	Sets out the objectives of the PPP Program, creates the PPP Management Council, the São Paulo Partnerships Corporation, and the PPP Unit within the Planning Secretariat. Also establishes the private partner's responsibilities, and establishes the rule for PPP contracts.
MX. 2012. <i>Ley de Asociaciones Público Privadas</i> . Mexico City: Gobierno de México, Cámara de Diputados.	Sets out the scope, principles, and processes for the PPP program in Mexico.
BR. 2004. <i>Lei No. 11.079 de 30 de dezembro de 2004</i> . Brasília: Presidência da República, Casa Civil.	Defines PPPs and the PPP process, including requirements for the tendering process and contract design. Also establishes the institutional framework for the PPP program.
CL. 2010b. <i>Ley y Reglamento de Concesiones de Obras Públicas: Decreto Supremo MOP N° 900</i> . Santiago: Gobierno de Chile, Ministerio de Obras Públicas.	This law creates the Concessions Council, defines all the preparatory activities that must be carried out by the contracting agency, establishes the procurement process, sets rights and responsibilities, and establishes processes for dealing with change.
CO. 2012a. <i>Ley 1508 de 10 de enero de 2012</i> . Bogotá: Congreso de Colombia.	Sets out the scope, principles, and processes for the PPP program in Colombia, as well as institutional responsibilities for developing projects.
SG. 2012. <i>Public Private Partnership Handbook. Version 2</i> . Singapore: Government of Singapore, Ministry of Finance.	Introduces PPPs, their structures, and the process for procuring and managing PPPs in Singapore. It also defines the scope of Singapore's PPP program.
PE. 2014. <i>Ley No. 30167: Ley que Modifica el Decreto Legislativo 1012</i> . Lima: Presidente de la Republica del Peru.	This decree is the national law and it sets out the PPP policy in the country. Defines and classifies PPPs, sets out the principles that should guide the implementation of the policy, define the institutional framework, and sets out the financial rules for PPPs in Peru.
KAR. 2015. <i>Proceedings of the Government of Karnataka: Amendments to the Karnataka Infrastructure Policy, 2007</i> . Bengaluru, India: Government of Karnataka.	Sets out the State of Karnataka's policy relating to PPPs, including procurement principles and the composition and organization of PPP cells.
SN. 2015. <i>Loi Relative aux Contrats de Partenariat (PPP) et Decret d'Application. Loi 2014-09 du 20/02/2014 et Décret 2015-386 du 20/03/2015</i> . Dakar: Gouvernement du Sénégal.	Defines Senegal's PPP policies and sets out how contracts are structured and implemented.

## 2.2 PPP Legal Framework

The **PPP legal framework** refers to all laws and regulations that govern the PPP project cycle. Governments embarking on PPPs may need to adapt the existing legal framework to ensure—at minimum—that contracts for the delivery of public services by a private entity can be entered into. In some cases, changes may be necessary to introduce PPP-specific processes and responsibilities. Some governments do so by adapting existing laws; others introduce specific legislation.

The legal framework for PPP depends on the legal tradition in the country—common law and civil law are the two main types. In **civil law systems**, the operations of government are codified through administrative law. This code, combined with other legislation, such as the civil code and the commercial and public contract codes, establishes legal rights and processes that apply to PPP contracts. **Common law systems** are less prescriptive, with fewer provisions governing contracts in general. As a result, contracts in common law countries tend to be longer than in civil law countries; the terms governing the relationship between the parties tend to be specified in greater detail to avoid ambiguities that may not be easily resolved by reference to specific jurisprudence.

This section briefly describes and provides examples of PPP legal frameworks: *Section 2.2.1 - Scope of the PPP Legal Framework* describes the broad scope of legislation that may affect PPPs and *Section 2.2.2 - PPP Laws* focuses on PPP-specific legislation. The following resources provide overview guidance on assessing and developing the legal and regulatory framework for PPPs:

- ♦ **Farquharson et al** (Farquharson et al. 2011, 16–21) sets out key questions that investors and lenders are likely to ask about the legal and regulatory framework, and some principles on developing effective frameworks.
- ♦ The **PPIAF's online PPP Toolkit for Roads and Highways** (WB 2009a, Module 4) includes a section on legislative framework that describes the types of enabling law for PPPs. It includes other laws that typically impact PPP projects in highway infrastructure.

### 2.2.1 Scope of the PPP Legal Framework

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 *Section 2.2 - 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 *Section 3.4 - 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:

- ♦ **Jeff Delmon and Victoria Delmon's Legal Guide** (Delmon and Delmon 2012) reviews key legal issues in 17 countries.
- ♦ The **World Bank's PPP Infrastructure Resource Center (PPPIRC)** presents the key features of common and civil law systems and their impacts on PPP arrangements. It has useful **online tools** for assessing the legal environment for PPPs in various countries (PPPIRC, *Legislative Frameworks*).
- ♦ Annex 2 of the **EPEC Guide to Guidance** (EPEC 2011b) has an overview of legal and regulatory requirements for PPPs in countries with different legal traditions.
- ♦ The **World Bank Benchmarking PPP Procurement 2017** (WB 2016b) presents the procurement framework in 82 economies and evaluates them against international good practices.
- ♦ **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 in Infrastructure Resource Center** (PPPIRC) 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 *Box 2.5 - PPP Legal Framework in Germany*.

## 2.2.2 PPP Laws

Some countries enact specific PPP laws. As described in OECD’s report on fostering investment in infrastructure (OECD 2015b, 16–17), these may be used to adapt the existing legal framework if it is not clear or comprehensive, or if the general framework constrains the government’s ability to structure and manage PPPs well. Instead of creating a PPP Law, the government may change existing laws to accommodate PPPs. A PPP-specific law can help raise the profile and demonstrate political commitment to the PPP program—although care is needed to avoid conflict with any other existing laws. PPP laws may establish guiding principles for a PPP program, processes and institutional responsibilities (such as for selecting PPP projects, procurement, and dealing with disputes) and policies such as public financial management rules governing PPPs. A well-designed PPP law typically sets out principles, which may be supported by more detailed regulations—with a view to avoiding rigidity and enabling the PPP programs to adapt over time.

### Box 2.5 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).

Table 2.3 Example PPP Laws

Jurisdiction	PPP-Specific Laws and Regulations
Brazil	<p>The federal-level legal framework for PPPs in Brazil is different for Concessions (self-financing projects requiring no government subsidy support), and PPPs:</p> <ul style="list-style-type: none"> <li>• <b>Law 8987 is the Federal Concessions Law (BR 1995)</b>. Establishes which government bodies can grant concessions and defines concession types. Also sets out criteria for selecting bidders during tender, the required content of concession contracts, rights and responsibilities of the contracting government agency, the concessionaire and users, the tariff policy, and acceptable reasons for step in and contract termination. <b>Law 9648</b> made some updates to this law.</li> <li>• <b>Law 11079 is the Federal PPP Law (BR 2004a)</b>. Defines PPPs in the Brazilian context, establishes the scope of the PPP program, defines the contents of PPP contracts, sets rules for providing guarantees, and defines the rights and responsibilities of the contracting authority. Each state that uses PPPs also has its own legal framework.</li> </ul>
Chile	<p><b>Law 20410 is the current Concessions Law (CL 2010b)</b>. Updated the previous legal instrument for concessions—Decree 900 (1996)—which had modified the original legal instrument for PPPs in Chile: The Ministry of Public Work's Regulation 164 (1991). The law sets out the institutional framework for PPPs, tender rules, concessionaire's rights and obligations, inspection and oversight requirements, and procedures for resolving conflicts.</p>
Colombia	<p><b>Law 1508 is the National PPP Law (CO 2012a)</b>. Sets out the scope of the PPP program in the country and the principles that should guide it; also establishes the procedures and institutional framework for PPPs. Sets out specific approaches on PPP procurement, PPP contract design, and on the budgetary approach for PPPs. The following laws also contribute to the legal framework for PPP:</p> <p><b>Law 80 (CO 1993)</b>: establishes norms and principles for government contracting. It also sets norms that regulate the legal relationship between the public and private partners.</p> <p><b>Law 1150 (CO 2007)</b>: modifies some parts of Law 80. Specifically, it incorporates certain elements that make the tendering processes more efficient and transparent.</p> <p><b>Presidential Decree 4165 (CO 2011)</b>, in article 4, establishes the National Infrastructure Agency (ANI Agencia Nacional de Infraestructura), which is in charge of identifying, assessing the viability, and proposing concessions and other forms of PPPs in transport and other related services, and of developing and implementing the resulting PPP projects.</p> <p><b>Presidential Decree 1467 (CO 2012c)</b>: defines the structures of PPPs under Law 1508.</p> <p><b>Presidential Decree 100 (CO 2013)</b>: modifies certain articles in Presidential Decree 1467, specifically the treatment of prequalified bidders and private initiatives.</p>
France	<p><b>Law 2004-559 (FR 2004) on Partnership Contracts</b> sets out the legal and institutional framework for PPPs in France. <b>Law 2008-735 (FR 2008)</b> incorporates adjustments to Law 2004-559, as well as the codes for subnational governments, urbanisms, general tax, monetary policy and finance, to improve the PPP framework in France.</p> <p>In addition, the Parliament has passed sector-specific laws to enable PPPs in the justice and penitentiary systems (<b>Law 2002-1094, and Law 2002-1138</b>), and the Public Hospital System (<b>Law 2003-850</b>).</p>
Indonesia	<p><b>Presidential Regulation No. 67 (ID 2005, Peraturan Presiden Republik Indonesia Nomor 67)</b> lays out the purposes, principles, requisites and framework for implementing PPPs in Indonesia.</p>
Mexico	<p>The <b>PPP Law (MX 2012)</b> sets out the principles, scope, institutional framework, contracting mechanisms, required studies, approval procedures, PPP registry, fiscal management, and other matters that make up the Federal PPP Policy in Mexico.</p>
Peru	<p><b>Legislative Decree No. 410-2015-EF (PE 2015)</b> establishes the principles, processes, and role of the Public Sector in the evaluation, implementation, and operation of public infrastructure and public service involving private sector participation.</p>
Philippines	<p>The <b>BOT Law (PH 2006, Republic Act 7718)</b> enables the use of PPPs to develop infrastructure in the Philippines. The law establishes rules concerning the bidding process, financing, government support, and regulatory authorities. <b>Executive Order No. 8 (PH 2010)</b> modifies the BOT law, reorganizing the BOT Office of the National Economic Development Authority (NEDA) into a PPP Center, and outlining its duties and responsibilities.</p>
South Africa	<p>The <b>Public Finance Management Act (ZA 1999b)</b> is the enabling legislation for PPPs. In accordance with this Act, the National Treasury issued <b>Treasury Regulation 16 (ZA 2003)</b> to the Act, which establishes the rules for the nation's PPP program.</p>
Tanzania	<p>The <b>PPP Act (TZ 2010)</b> sets out the responsibilities of the private and public sectors, the functions and powers of the PPP Unit, and the approval process for PPPs.</p>

PPP laws are most common in civil law countries—for example, all Latin American countries implementing PPPs do so under a specific PPP or concession law (or both). Some common-law countries also adopt PPP laws to establish a more binding commitment by government than a PPP policy.

*Table 2.3 - Example PPP Laws* provides examples of PPP laws and regulations from several countries. **Yong** summarizes the suggested content of a dedicated PPP law (Yong 2010, 33), while the **United Nations Commission on International Trade Law** has published general recommendations (UNCITRAL 2001) and model legislative provisions (UNCITRAL 2004) for enabling privately financed infrastructure projects. The **World Bank PPPIRC website** (PPPIRC, “Legislation and Laws”) provides more information, including summaries of different legislation types (such as general PPP laws, concession laws), example provisions, and PPP legislation from over 30 countries.

Resources on these and other country-specific PPP laws and regulations can be found on the **PPP Knowledge Lab** country pages.

## 2.3 PPP Processes and Institutional Responsibilities

Governments need commitment, skill, capacity, and coordination to implement PPPs successfully. Under a PPP contract, the private party will design, finance, build, and maintain the infrastructure, and provide services. However, the government remains responsible for ensuring the public service is provided to the expected quality and quantity specified in the PPP contract, in a way that achieves good value for money. The government must choose the right project, select a competent partner, and set and enforce the parameters within which that partner operates. It is always important to keep in mind that PPPs are fundamentally a procurement mechanism for the delivery of a public service.

To this end, many governments define processes and institutional responsibilities for PPPs—that is, the steps that must be followed when developing and implementing a PPP project, and the entities responsible for each step. This section provides examples and resources for practitioners on:

- ♦ Establishing the **PPP process**—there are several steps that a government must usually take to implement a PPP project successfully. Defining a standard PPP process, with approvals required at key points, helps to ensure that these steps are taken

consistently and efficiently. *Section 2.3.1 - PPP Process* describes a typical PPP process, and gives examples from various countries’ PPP programs.

- ♦ Defining **institutional responsibilities** for PPPs—that is, which entity will play which role at each step. Institutional arrangements and the allocation of functions differ from place to place—depending on the specific needs of the PPP program and the existing institutional responsibilities and capacities. *Section 2.3.2 - Institutional Responsibilities: Implementation* and *Section 2.3.3 - Institutional Responsibilities: Review and Approval* describe and provide examples of institutional responsibilities for:
  - **Implementing PPPs**—that is, doing the day-to-day work to drive forward the PPP process through the steps defined below: from identifying potential projects, appraising, structuring, drafting the contract, bidding it out, and managing the contract after it is signed.
  - **Reviewing and approving PPPs**—that is, overseeing the PPP process, typically through review and approvals at key stages, to ensure that the project represents a good investment decision for the government.
- ♦ Establishing **PPP units**. Some governments establish teams aggregating staff with specific knowledge on PPPs. The functions of these PPP Units vary widely, as do their location within government and structure—reflecting the variation in priorities and constraints facing PPP programs both between governments, and over time as the PPP program evolves. *Section 2.3.4 - Dedicated PPP Units* briefly describes the various roles played by these units, with examples from different countries.

This section focuses on the process and responsibilities within the executive branch of government for implementing PPPs. *Section 2.5 - Broader PPP Program Governance* provides further guidance on how other entities can input into the PPP process, and hold those responsible for developing PPPs accountable for their decisions and actions.

### 2.3.1 PPP Process

Many governments set out a process that must be followed to develop and implement every PPP project. Standardizing the PPP process helps ensure that all PPPs are developed in a way that is consistent with the government’s objectives. It also helps achieve coordination between the various entities involved.

*Figure 2.1 - Typical PPP Process* shows an example of a well-defined PPP process. The process is broken down into several stages, in which the PPP is iteratively developed and appraised. At each key stage, approval is required to proceed. There are two reasons to use an iterative approach to developing a PPP project. First, it enables timely involvement of oversight agencies in approving projects, as described further in *Section 2.3.3 - Institutional Responsibilities: Review and Approval*—poor projects, and poorly-defined projects, risk undermining a whole PPP program. Second, it avoids wasting resources developing weak projects. Developing a PPP project is costly—early checks that the project is promising can help ensure development budgets are well-spent.

As shown in *Figure 2.1 - Typical PPP Process*, the process of developing and implementing a PPP is typically preceded by **identifying a priority public investment project**. A PPP is one way to deliver public investment—moreover, one that “locks in” the specifications of the project over a long-term period. Potential PPP projects therefore typically emerge from a broader public investment planning and project selection process. At some point in this process some or all proposed public investment projects may be screened, to determine whether they may provide more value for money if implemented as a PPP.

**Developing and implementing the PPP** then involves several stages:

- ♦ **Structuring and appraising the PPP**—once a priority public investment project has been identified and tentatively approved for development as a PPP, the next step is to select the PPP structure, or key commercial terms—including the proposed contract type, risk allocation, and payment mechanisms. This proposed PPP structure can then be appraised. The proposed PPP structure and appraisal analysis is often pulled together in a business case to demonstrate why the PPP project is a good investment decision. Approval is typically needed at this stage, based on the analysis in the business case, before going on to prepare for and implement the PPP transaction.
- ♦ **Designing the PPP contract**—the final step to prepare the PPP for procurement is to draft the PPP contract and other agreements. This involves developing the commercial principles into contractual terms, as well as setting out the provisions for change and how the contract will be managed, such as dispute resolution mechanisms. Often the design of the draft contract is completed in the early stages of the procurement process, to allow for consultation with potential bidders. *Section 3.4 - De-*

*signing PPP Contracts* presents specific guidance on designing the PPP contract.

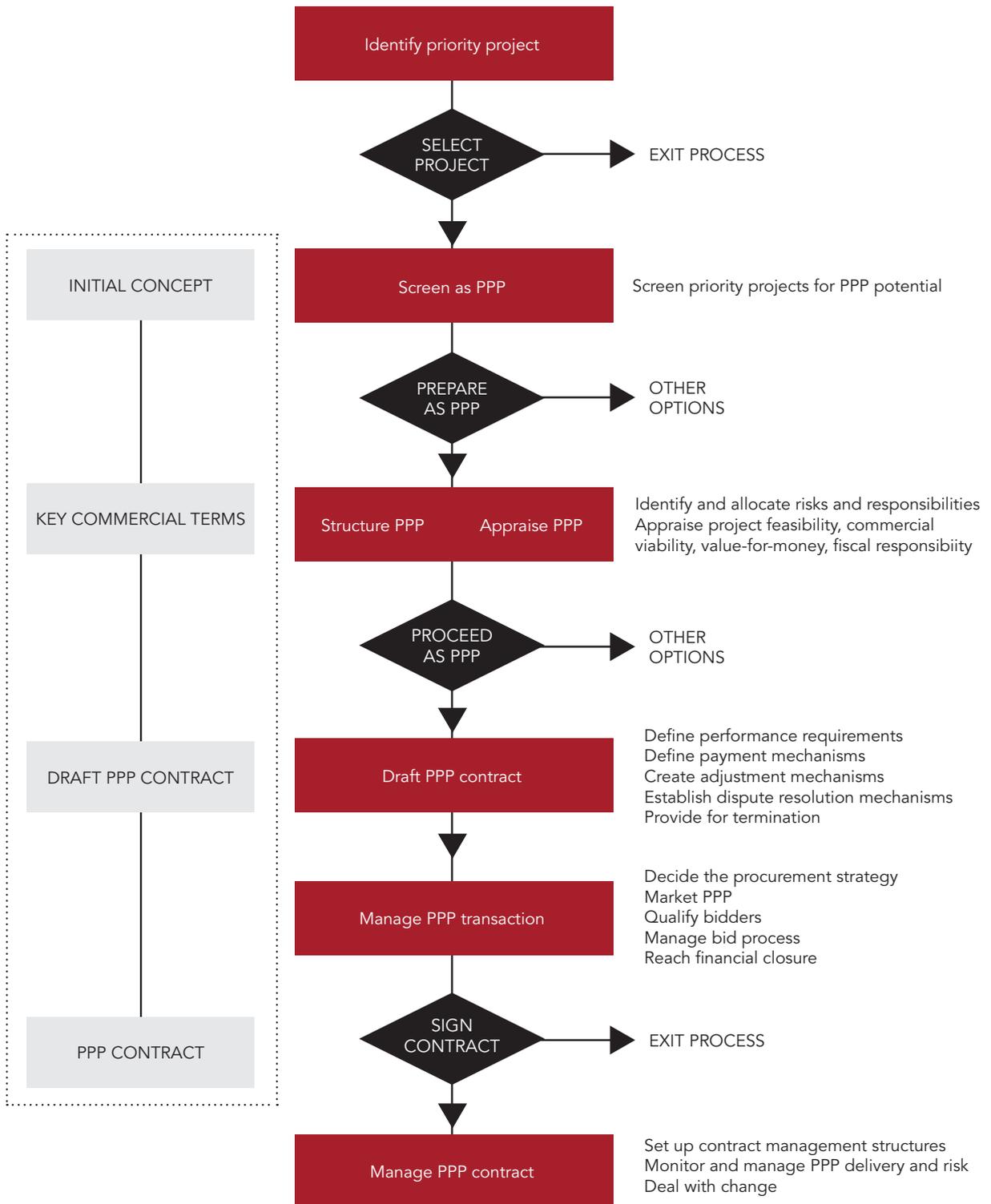
- ♦ **Implementing the PPP transaction**—in the transaction stage, the government selects the private party that will implement the PPP. This usually involves preparing for and conducting a competitive procurement process. Bidders submit information detailing their qualifications and detailed technical and financial proposals, which are evaluated according to defined criteria—often in a multi-stage process—to select a preferred bidder. Since the bidding process also results in the establishment some key parameters of the contract—in particular its cost—most processes involve a final approval before contract close. The PPP contract signed at contract close between the contracting authority and the SPV (the special-purpose firm created by the winning bidders for implementing the project) may include as attachments the main sub-contracts signed between the SPV and third-party contractors (i.e. the construction contract and the operation/maintenance contract). The transaction stage is complete when the project reaches financial close, i.e. when the financing contracts have been signed so that implementation may begin. Once the PPP has reached financial close, the government must **manage the PPP contract** over its lifetime. This involves monitoring and enforcing the PPP contract requirements, and managing the relationship between the public and private partners.

An alternative to the government carrying out all these steps is to allow private companies to identify and propose PPP projects. Some governments have introduced specific requirements and processes to ensure that these unsolicited proposals are subject to the same assessment, and developed following the same principles, as government-originated PPPs. *Section 3.7 - Dealing with Unsolicited Proposals* provides details and examples.

*Module 3 - PPP Cycle* describes the PPP process in detail, setting out options and providing information and guidance for practitioners on each stage. The following provide examples of how the PPP process is defined in a range of countries:

- ♦ In **Chile**, the Concessions law (CL 2010b, Chapters II and III, Articles 2-14) presents a thorough description of the PPP process including the preliminary proposal by the contracting agency, the tender process and implementation.
- ♦ In **Egypt**, the Ministry of Finance has published a step-by-step guide to developing PPPs (EG 2007). The guide assists the relevant Ministries through the PPP process, from identifying a

Figure 2.1 Typical PPP Process



project through developing a business case and the procurement process.

- ♦ An **ADB publication on PPP projects in Korea** (Kim et al. 2011, 61–72) includes a detailed description of the PPP implementation process for different types of PPP, including unsolicited projects.
- ♦ The **PPP Guidelines of the Government of Malaysia** (Dobbs et al. 2013, 11) provides an overview of its PPP process.
- ♦ In **Mexico**, the **PPP Law** describes all the studies that must be carried out to assess the viability of a PPP project; sets out the PPP approval process; sets out the activities and institutional responsibilities in running a PPP tender process; and describes the bid evaluation process and the selection of the winning bid (MX 2012, Articles 14, 21–25, 38–51, and 52-59).
- ♦ **Peru’s Legislative Decree No.30167** lays out the process for carrying out a PPP, establishes the criteria for selecting projects and the PPP modality, and defines the steps and responsibilities in project design and approval (PE 2014).
- ♦ The **Implementing Rules and Regulations of the Philippines BOT Law** (PH 2010, 11–51 and Annexes) set the PPP process in the Philippines.
- ♦ In **Puerto Rico**, the **PPP Act** (PR 2009, sections 7–10), presents a detailed description of the PPP process including conducting initial desirability and convenience analysis, setting up a Partnership Committee to implement the tender process and the PPP contract, and selecting proponents and awarding partnerships.
- ♦ The **South Africa PPP Manual** (ZA 2004a) has an introduction that provides a brief overview of the PPP process. The process is explained in detail in the manual, with a module dedicated to each step.
- ♦ **Spain’s Public Procurement Law** (ES 2011) has a detailed description of the PPP process, including the project appraisal requirements, disclosure requirements at each stage, the approval process, and tendering options.

### 2.3.2 Institutional Responsibilities: Implementation

Implementing a PPP project successfully requires commitment and a range of skills and expertise. Government agencies and

individuals responsible for implementing projects need a sound understanding of the needs of the particular sector, skill in economic and financial appraisal of projects and PPPs, expertise in structuring privately-financed infrastructure project contracts, expertise in procurement and contract management, and experience in dealing with the private sector. The main challenge in designing the institutional arrangements for PPPs is to ensure that all these skills are available to implement PPP projects successfully.

By default, responsibility for implementing a PPP typically falls to the ministry, department, or agency responsible for ensuring the relevant asset or service is provided. However, particularly at the early stages of a PPP program, such entities usually to have the full range of skills and experienced needed: hence, other government entities are sometimes involved, namely the central PPP unit. Both in developed (UK, Canada, Australia) and developing countries (Philippines, Colombia, South Africa) a strong central unit has been shown to be critical to a successful program. This section briefly describes the range of institutional arrangements for identifying PPP projects; developing and implementing those projects; and managing the PPP contracts.

#### Identifying PPP projects

As described in *Section 2.3.1 - PPP Process* above, PPP projects usually emerge from the public investment planning and project identification process. Responsibility for identifying potential PPPs from among priority public investment projects therefore often rests with the relevant sector agency or entity under the oversight of entities responsible for public financial management and planning. For more on PPP review and approval responsibilities see *Section 2.3.3 - Institutional Responsibilities: Review and Approval*.

Sometimes a specialized PPP team may be involved in the PPP identification process, as described in *Section 2.3.4 - Dedicated PPP Units*. For example, a PPP Unit may provide support to sector agencies in screening projects for PPP potential—particularly at the early stage of a PPP program when sector agencies may have limited understanding of how PPPs work. Sometimes PPP Units are mandated to promote the use of PPPs. This can help overcome initial anti-PPP bias at the early stage of new PPP programs. However, it can also risk distorting the public investment planning process—pushing forward projects because they appear to be doable as PPPs, rather than because they are public investment priorities. Instituting a clear PPP process with appropriate approvals, as de-

scribed in *Section 2.3.1 - PPP Process* and *Section 2.3.3 - Institutional Responsibilities: Review and Approval*, helps overcome this risk.

### Level playing field vs. perverse incentives

The need for a level playing field, when assessing PPP versus non-PPP options, is critical for success in the procurement of infrastructure and services—even more at the subnational level, where technical capacity and the ability to reach the financial markets may be limited, and free-riding on upper levels of government is often an attractive alternative. The traditional procurement practices sometimes induce governments to avoid using the PPP route, even when it provides greater value to users and taxpayers. Conversely, fiscally stressed governments may look for PPPs even for projects where the PPP option is not the most efficient solution.

Some governments have created PPP incentives in an attempt to modify the behavior of civil servants. These approaches have not always yielded positive outcomes. While public procurement practices favored the procurement modes traditionally used, PPP incentives created bias in decision-making in the other direction. “PFI credits” in the United Kingdom are now recognized as having induced significant bias. Other governments have resorted to lines of funding available only for PPP projects, or for non-PPP projects. These types of discrimination may distort decision-making in favor of non-optimal solutions—and, even when not distorting the decision process, they create reasonable suspicions of bias, affecting public perceptions.

### Developing and implementing PPP projects

Responsibility for developing and implementing the PPP project—that is, for structuring the PPP, designing the PPP contract, bidding out the transaction, and managing the contract—typically falls to the government entity responsible for the delivery of the relevant asset or service. This entity is often termed, for PPP purposes, the contracting authority or contracting agency, since it will usually be the public party to the PPP contract. The PPP law or policy may define the types of government entity that can be contracting authorities, and specify that these authorities are responsible for PPP implementation. For example:

- ◆ In the **Philippines**, the **BOT Law** (PH 2006, Implementation Rules and Regulations) delegates responsibility for developing and implementing PPPs to eligible government agencies, units, or authorities. These include Government-Owned or

Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units. These agencies are required to create a Pre-qualification, Bids and Awards Committee (PBAC) that will oversee the PPP process for each PPP project.

- ◆ Under **Tanzania’s PPP Law** (TZ 2010), the contracting authority is responsible for facilitating project development, including project identification, a feasibility study, environmental impact assessment, and design and implementation of the PPP contract.
- ◆ In **Colombia**, the **Manual for PPP procedures** (CO 2014, Chapter 4.2, 34) allows contracting authorities to be ministries or other sector-specific institutions, and local and regional institutions. The contracting authorities are in charge of conducting eligibility and value for money analyses, and submitting the results to the PPP Unit, which develops and implements PPP-related policies and steers procurement processes in coordination with contracting authorities.

However, sector agencies may lack some of the skills needed to identify and develop PPP projects successfully. Particularly at the early stages of a PPP program, sector agencies may have little or no experience with engaging with the private sector on privately-financed projects. For this reason, other government entities are often also involved, to provide additional skills or perspectives. This can be achieved in different ways, including:

- ◆ Involving dedicated PPP units, as described in *Section 2.3.4 - Dedicated PPP Units*. These units are a repository of skill and experience in developing PPPs. They often support contracting authorities in implementing PPP projects. In a few cases the PPP unit may take over primary responsibility as implementing agency. For example, the PPP Law in **Chile** authorizes the Ministry of Public Works as the implementing agency for PPPs, through its dedicated concessions unit (CL 2010b, Article 1–3, 6–9, 15–21, 25, 27–30, 35–36, 39–41). *Section 2.3.4 - Dedicated PPP Units* provides several more examples of PPP units and the extent of their roles in implementing PPPs.
- ◆ Forming interdepartmental committees to oversee each PPP transaction—often including representatives from the sector ministry as well as ministries of finance and planning, and legal representatives.

- ♦ Involving specialist entities in different implementing roles. This is the case in Peru, for example, where the procurement agency is responsible for implementing the PPP transaction, and sector regulatory agencies are responsible for monitoring the private parties' compliance with the PPP contract.

Even governments with extensive PPP experience may not have all the expertise and skills in-house needed to develop PPP projects. **PPIAF's guide for hiring and managing advisors** (PPIAF 2001) describes how they will benefit from using external advisors who will provide support in the appraisal, preparation and transaction phases of a proposed PPP. These external advisors may engage in detailed, technical tasks such as conducting feasibility studies and drafting PPP contracts. Developing countries governments are too often unaware of the significant disadvantage of not having competent external advisors by their side when negotiating with private parties. While they may be expensive, experienced advisors equip governments to take informed decisions and safeguard the public interest. Private parties seldom make the mistake of not hiring them. The best advisors in the market usually advise them. With this asymmetry in negotiating ability, PPP contracts will often be biased in favor of the private parties.

### Box 2.6 External advisors

Governments can use the advisory services provided by commercial firms or multilateral organizations. The IFC paper on independent advisors outlines several key characteristics that external advisors should possess:

- The ability to balance private and public sector interests by designing projects that guarantee long-lasting benefits for the population
- Reputation as an honest broker to demonstrate transparency and inspire investor confidence
- Multi-skilled team with extensive, direct experience in infrastructure project structuring and financing
- Direct experience in the relevant sector and market
- Ties with the global investment community

Source: (Jagun and Marques de Sá 2006)

The **EPEC report on the role and use of external advisors** (EPEC 2014d) outlines how governments may best utilize the support of external advisors. The extent and nature of external advisory support needed may change as the government and the country gains PPP experience. Initially, governments may rely heavily on advisors, and contract full-service transaction advisors providing the full range of technical skills needed as well as strategic support. Over time, responsible government teams may be better able to play an integrating role, and use advisors to provide specific technical or legal inputs. Even when working with experienced advisors, however, it is important for the contracting authority to develop the internal capacity to manage the process effectively—to oversee the work of the advisors, and retain ownership of the structuring decisions. Over-relying on external consultants to drive the procurement process can put the contracting authority in a weak position for managing the contract over its lifetime.

### Managing PPP Contracts

Monitoring the project performance and managing the contract usually falls to the contracting authority. From roads and bridges to water provision and hospital services, line ministries and agencies typically have the required technical knowledge and the policy focus for monitoring delivery. Some countries reduce conflict in contract management by outsourcing to credible external entities, such as engineering firms, or research institutions, certain specialized monitoring activities. For example, in Brazil, the state Government of Minas Gerais hires Independent Verifiers for monitoring PPP performance; in France, engineering firms are hired for monitoring PPP hospital infrastructure performance.

However, managing PPP contracts can be complex—particularly when it comes to dealing with change that inevitably occurs over the lifetime of the contract (as described in *Section 3.6.3 - Dealing with Change*). Some countries therefore involve other, specialized entities in the contract management function; for example, by:

- ♦ Creating a **centralized contract management support function**. For example, in 2006, the British Treasury invited the then-PPP Unit, Partnerships UK, to create a PFI Operational Taskforce, operating on behalf of the Treasury (UK 2006a, 3). This taskforce provided support to hundreds of contract managers and published guidance. The central PPP unit for British local governments, 4Ps (now called Local Partnerships—a company jointly owned by HM Treasury and the Local Government

Association) also has a role in supporting local governments in carrying out their contract management role. In 2007, it published a **Guide to Contract Management for PFI and PPP Projects** (4ps 2007).

- ♦ **Including responsibility for some aspects of contract management among the responsibilities of a dedicated PPP Unit.** For instance, the Concessions Unit of the Ministry of Public Works in Chile monitors performance and manages PPP contracts on behalf of several ministries. Often this involvement may be limited to non-routine events, or particularly challenging contract management tasks. In Korea, the PPP Unit PIMAC manages PPP contracts during the sensitive construction phase.
- ♦ **Allocating contract management responsibility to an independent regulator**—a solution when relevant variables, such as the mechanism determining the fees to collect over time, are not clearly prescribed in the contract. However, the functions of regulator and contract manager may collide—the contract manager is supposed to protect the public interest and the public purse, while the regulator may have a distinct and legally-mandated set of interests to preserve.

### 2.3.3 Institutional Responsibilities: Review and Approval

A PPP project is a specific type of public investment. Most governments have systems and standard procedures for reviewing and approving capital investment projects: to ensure all projects are effective at meeting strategic objectives; provide value for money; and in line with fiscal priorities. Because PPPs do not necessarily require capital investment by the government, they may not automatically be subject to these approval rules. Many governments therefore define similar review and approval requirements for PPPs. See *Table 2.4 - Example PPP Approval Requirements* for some examples.

Often, several decision points are created, allowing weak projects to be stopped before they consume too many resources, or develop a momentum of their own. This is illustrated in *Figure 2.1 - Typical PPP Process*. These iterative reviews are sometimes called *gateway processes*. **Monteiro's article in IMF's book on PPPs** (Schwartz et al. 2008) describes a typical gateway process, and how this process works in Portugal. At a minimum, formal approval is typically needed to enter into a PPP transaction. Because the final cost of a project is not known until procurement is concluded, final approv-

al may be needed before the contract is signed. *Figure 2.2 - The South African Gateway Process for PPPs* describes this gateway process in South Africa (ZA 2004a, Module 1).

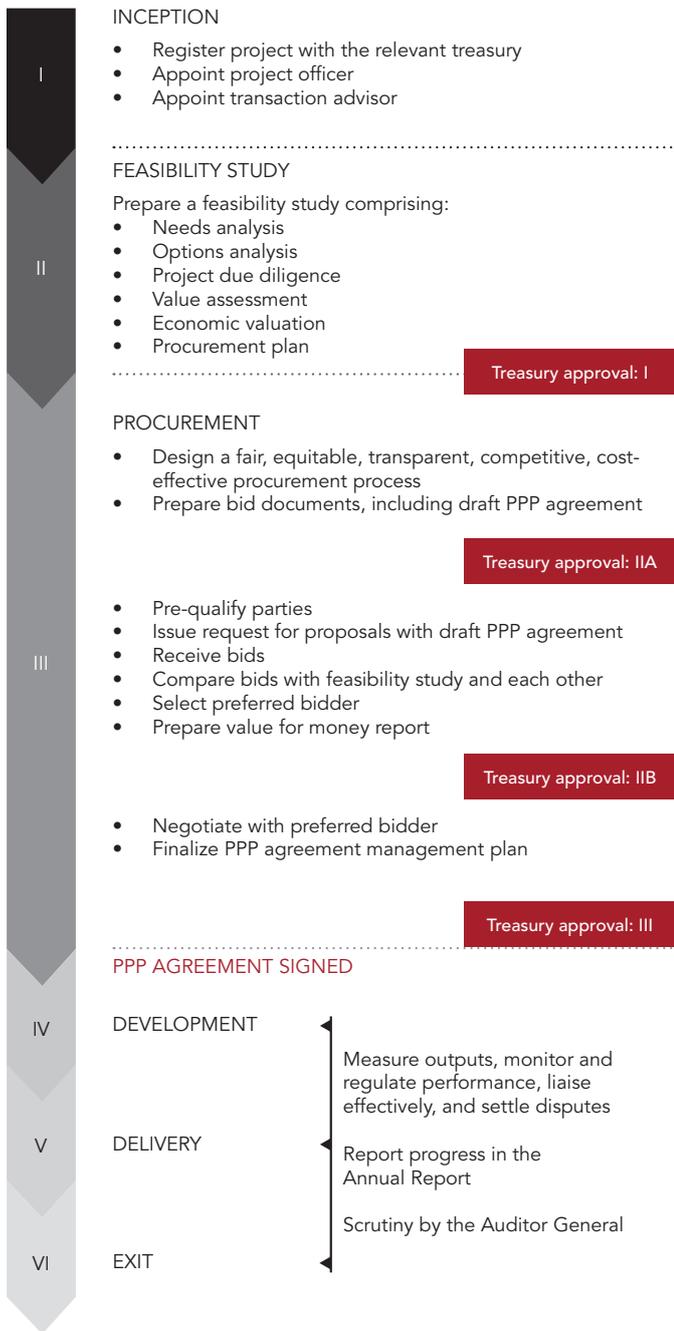
Finance ministries typically have a leading role in this process, given their responsibilities for managing government resources, and (often) economic and fiscal policy. The IMF emphasizes the importance of the role of the finance ministry in its **book on Public Investment and PPPs** (Schwartz et al. 2008, 10). In France and many Francophone countries this role is split between the Ministries of Finance, Development and Planning. In a few other countries, another entity altogether has overall responsibility for overseeing the public investment program, and hence may play the same role for PPPs—such as the National Economic Development Agency (NEDA) in the **Philippines**. Many finance ministries have established special PPP units through which to carry out their filtering and monitoring functions, as described further below.

Other oversight agencies can also have a role in reviewing and feeding into PPP project approvals, mirroring their roles in any major capital investment project. These can include:

- ♦ **Planning agencies:** Some governments separate responsibility for planning and project appraisal from fiscal oversight, with the former housed in a dedicated planning agency. For example, in **Chile**, the National Planning Authority must review and approve the economic analysis of proposed PPPs, as is the case for all public investment projects.
- ♦ **Attorney generals** may be required to approve major government contracts, including PPPs, as part of their role as the government's legal advisor. For example, The **PPP law of Tanzania** (TZ 2010, 15–16) requires that the implementing agency submit the final draft PPP contract for approval by the Attorney General before the contract is executed.
- ♦ **Supreme audit entities:** Many Latin American countries also require approvals from audit entities that are independent of the executive branch of government, as described further in *Section 2.5 - Broader PPP Program Governance*. For example, in **Brazil**, the Court of Audits (Tribunal de Contas da União, or TCU, at the federal level, and state Courts at the subnational level) is required to review each PPP project and its legal documents before it can go to market.

These additional reviews can be important checks on the quality and legality of the project appraisal and development process. However, they can also introduce delays at crucial points. Mech-

**Figure 2.2**  
The South African Gateway Process for PPPs



anisms for coordination can help. Capacity building may also be needed to ensure these institutions are able to fulfill their roles as they relate to PPPs.

Ultimately approval may be by Cabinet and/or Parliament. Jurisdictions vary as to which entity can approve a PPP. A few countries require legislative approval of large projects. More often, approval may come from Cabinet or a Cabinet-level committee, the finance ministry, or a combination. As described in **Irwin’s paper on controlling spending commitments in PPPs** (Irwin 2007, 113–114), approval power may depend on the size of the project, as is typically the case for other capital investments.

### Coordination

Decision-making for public investment projects is typically articulated around the annual budget process. However, because PPPs often do not have immediate budget implications, specific coordination mechanisms are needed to ensure the projects are integrated into the Mid-Term Expenditure Framework (MTEF) and reviews and approvals proceed smoothly and do not hold up the project development process. In some cases, PPP units are assigned with a coordinating role, as described further in *Section 2.3.4 - Dedicated PPP Units*. Some governments also form interdepartmental committees to oversee each PPP transaction, to ensure the perspectives of oversight agencies are taken into consideration throughout the project development process rather than just at review points.

### 2.3.4 Dedicated PPP Units

Government teams concentrating skills in PPPs with the public administration are often called *PPP Units*. The functions of these PPP Units vary widely, as do their location within government and team structure. This variety reflects the range of priorities and constraints facing PPP programs both between governments, and within a government over time as the PPP program evolves. Countries with established PPP programs experienced a gradual broadening of the scope of the original PPP Unit, tending to address infrastructure in general, including non-PPP solutions.

Functions allocated to such PPP Units can include:

- ♦ **Policy guidance and capacity building**—defining PPP policies and processes, and building the capacity of implementing agencies to follow those processes. This often includes preparing guidance materials and standard documentation for PPPs. *Table 2.1 - Example PPP Program Objectives* and the “Key Referenc-

Table 2.4 Example PPP Approval Requirements

Country	Reference	Approval Requirements
State of Victoria, Australia	National PPP Guidelines-Partnership Victoria Requirements (VIC 2016, 5)	All high-value or high-risk projects—including PPPs—go through a gateway approval process, established by the Department of Treasury and Finance. A panel of experts that are not directly involved in the project carries out reviews at key stages in developing and implementing the project, called <i>gates</i> . For PPPs, there are five gates: strategic assessment, business case (before issuing the requests for expressions of interest), readiness for market (before issuing project briefs and contract), readiness for service (before the contract is executed), and benefits evaluation.
Chile	Concessions Law (CL 2010b, Law 20410, Articles 7, 20, and 28)	Final approval of a PPP—through signing the decree that formalizes the concession—rests with the President and the Ministry of Finance together. Contracts cannot be bid out unless the Ministry of Finance has approved the bidding documents. The Ministry of Finance must also approve any changes to economic aspects of the bidding documents, as well as certain changes during implementation.
Colombia	PPP implementation rules (CO 2014, Section 3.2.3) Also set out in the National PPP Law (CO 2012c, Law 1508, Article 26)	<p>PPPs must be approved by:</p> <ul style="list-style-type: none"> <li>• <b>CONFIS</b>—the National Fiscal Council, which leads the national fiscal policy and coordinates the budgetary system, approves the future appropriations (<i>vigencias futuras</i>) for PPP projects. CONFIS is made up of the Ministry of Finance, the Director of the Administrative Department of the National Planning Agency, the Chief Economic Advisors of the Presidency, the Vice-minister of Finance, and the directors of the National Treasury, Public Credit, and Tax and Customs Authority. Before reaching the CONFIS the project must have the approval of the sector ministry, and the National Planning Department.</li> <li>• <b>CONPES</b>—the National Council for Economic and Social Policy, which is the highest planning authority in Colombia and advises the government in all aspects related to the economic and social development of the country, certifies the strategic importance of the project. Such certification is required for the project to be eligible to receive future appropriations. In addition, this sets the limits on how many future appropriations can be approved by CONFIS in any given year. CONPES comprises the President, Vice President, the Cabinet, the director of the administrative department of the presidency, the director of the national planning department, and the director of Colciencias.</li> </ul>
Philippines	The Philippines BOT Law (PH 2006, Rule 2, 16–19)	<p>All national projects and projects over PHP200 million (\$4.6 million) require approval from the Investment Coordination Committee (ICC) under the National Economic and Development Authority (NEDA) Board. The members of the NEDA Board are cabinet members responsible for the major infrastructure, economic and finance departments.</p> <p>PPP projects also require approval from both the NEDA Board and the President, upon recommendation by the ICC. The ICC's recommendation is in turn informed by a review by NEDA's technical staff, to check the project submission is complete, and adequately demonstrates the project complies with requirements for financial, economic, social, and environmental impacts.</p>
South Africa	Public Finance Management Act and Treasury Regulation 16 (ZA 2004a, 8–10)	PPP approvals are made by the Treasury, through its PPP Unit. 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.

es” in *Module 3 - PPP Cycle* provide examples of such guidance material.

- ♦ **PPP promotion** both within and beyond government—that is, encouraging sector agencies to consider using PPPs, or promoting the opportunities presented by the PPP program to potential suppliers and investors.
- ♦ **Technical support** in implementing PPP projects. As described in *Section 2.3.2 - Institutional Responsibilities: Implementation*

above, this may involve providing hand-holding support to responsible implementation teams in ministries or agencies; or being directly responsible for some aspects of PPP implementation. Some PPP Units act as a Project Development Facility, identifying, assessing, and structuring projects, and building a project pipeline.

- ♦ **Gatekeeping** or reviewing and overseeing the management of PPP projects for efficiency and affordability; and either approv-

## Box 2.7 PPP Training

As part of their capacity-building functions, PPP Units in countries with significant PPP programs promoted the creation of PPP training programs—e.g. the Philippines (PH 2017) and South Africa (ZA 2017). In South Korea (KDI Training), the Public and Private Infrastructure Investment Management Center (PIMAC) provides several PPP training programs every year. This training for public officials are done at two levels, basic and advanced training. The latter addresses feasibility studies, evaluation, financial modeling, and negotiation. PIMAC also provides PPP training for private companies.

Multilateral organizations have also partnered with PPP teams in organizing PPP training activities and practitioner networks. The World Bank and PPIAF promoted Tanzania's City Creditworthiness Academy (TZ 2014). The Korean Development Institute (KDIS 2017), ADB, and the World Bank have supported the annual conferences promoted by the Asian PPP Network (APN) (KDI 2017).

Several Massive Open Online Courses (MOOCs) have been developed for PPPs. The World Bank created the PPP MOOC (WB 2015d) in English followed by a French version (WB 2016g). The Inter-American Development Bank also developed several MOOCs on PPPs and infrastructure in Spanish and Portuguese (IDB 2017)—for instance, a MOOC on PPPs and another on sustainable cities. The APMG PPP Certification Program (APMG-PPP) is another useful tool in building knowledge about PPPs. Practitioners can become certified in PPP by APMG, a reputable online assessment portal—certification requires taking online examinations that demonstrate a solid understanding of the *APMG PPP Guide* (APMG 2016), a comprehensive encyclopedia developed by over 80 PPP practitioners. Students can also become accredited to train PPP practitioners to pass the certification examination.

ing PPP projects, or advising on the approval process. As described in *Section 2.3.3 - Institutional Responsibilities: Review and Approval*, such reviews can take place at several stages during project development; while the oversight role of such PPP teams can extend into PPP implementation and portfolio management.

PPP units may perform more than one of these functions, while a single PPP program may involve more than one PPP unit performing different roles.

The institutional design of PPP Units, particularly the gatekeeping ones, requires a well-pondered balance of mandatory requirements (e.g. project scrutiny, draft contract review, involvement in the tender process) and resource provision (not only money for project preparation and procurement, but mainly knowledge and experts able to supplement line ministries staff and resources)—in practice, a “sticks and carrots” approach. Adequate leverage of the PPP Unit is also required.

The structure and location within government of PPP units typically depends on their specific functions, as well as existing institutions, skills, and experience within government. PPP units may be departments within ministries or agencies, units with special status but reporting to ministries, autonomous government entities, or even government-owned or public-private corporations.

Gatekeeping units are most often located within ministries of finance, or other oversight agencies; while technical support units may be housed centrally, sometimes alongside other relevant functions such as procurement, or be established at the subnational or sector level where a sector has a significant PPP program. Units with a PPP promotion focus may be part of broader investment promotion entities.

The functions of PPP units, and hence their structure, may also change over time as the PPP program evolves. For example, in the United Kingdom, the original Treasury Task Force (its first PPP Unit) was partially converted into a joint public-private venture (Partnerships UK, or PUK, 51 percent owned by private entities), with more of a focus on PPP promotion and technical support. However, as the PPP program developed and ministries and agencies gained more experience, the focus shifted towards oversight and integration of PPP with the broader public investment function. Eventually PUK was reabsorbed into the government as *Infrastructure UK*, which later merged into the UK's Infrastructure and Projects Authority.

Many countries do establish their central PPP Unit in the Ministry of Finance, to better fulfil its role of gatekeeper—that is the case of the United Kingdom, France, Portugal, South Africa, India, and Indonesia. A number of countries that have established their central PPP Unit outside the Ministry of Finance felt the need to create

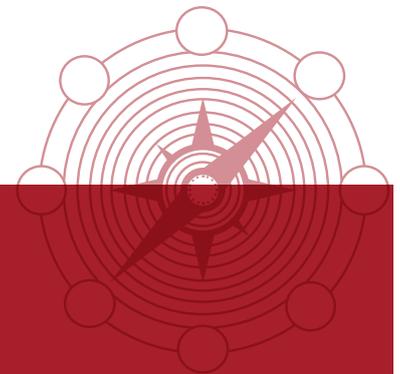
its own Ministry of Finance PPP Unit, in charge of monitoring and managing fiscal liabilities and fiscal risks arising from PPPs—that is the case, for instance, of the Division of Contingent Liabilities and Concessions of the Ministry of Finance of Chile (where the main PPP Unit is part of the Ministry of Public Works) and of the Sub-direction of PPPs of the Ministry of Finance of Colombia (where the PPP Unit is an agency under the Ministry of Transportation).

The following studies provide more information on the functions and structure of PPP Units, detailed case studies, and assessments of the effectiveness of these units in achieving their objectives:

- ◆ An **OECD study on PPP units** (OECD 2010) describes the range of PPP unit functions along the lines of the list above, and

provides detailed case studies of PPP Units in Germany, Korea, South Africa, the State of Victoria in Australia, and the United Kingdom.

- ◆ A **report by the Brookings Institution** (Irwin and Mokdad 2010) provides a similar breakdown of the functions of PPP units into three categories: review bodies or gatekeepers; full service agencies providing technical assistance to review agencies, and centers of excellence acting as repositories of best practice.
- ◆ A **set of reports published by the European PPP Expertise Centre** analyzes European PPP Units and institutional frameworks (EPEC 2014a) and discuss individual cases, such as **France** (EPEC 2012) and **Portugal** (EPEC 2014c).



## Did you know....?

### The Dakar toll road is the first successful road PPP in West Africa

The Dakar toll road was inaugurated in August 2013 by SENAC, the Senegalese concession company set up by Eiffage, a French construction company, and is considered the first greenfield toll road PPP in West Africa. Traffic congestion had been an issue for decades as the previous two-lane road could only handle a fraction of the greater capital's traffic. Built as a concession, the new 24 kilometer, six-lane road project enhanced access to the city center and improved commute times between central Dakar and outlying neighborhoods. The city center as well as the outskirts experienced stimulated economic growth as access to markets for businesses improved significantly. Some of the challenges of this project included the resettlement of more than 30,000 people, the largest resettlement program undertaken by the government and project sponsor, in concordance with IFC's Equator Principles and Performance Standards. A contract for the expansion of the road to connect central Dakar with the new international airport was signed in 2014.

*Source: Partnering for Water in Cote d'Ivoire: Lessons from 50 Years of Successful Private Operation. Gridlines; No. 50. World Bank, August 2009*

## Key References: PPP Processes and Institutional Responsibilities

Reference	Description
CL. 2010b. <i>Ley y Reglamento de Concesiones de Obras Públicas: Decreto Supremo MOP N° 900</i> . Santiago: Gobierno de Chile, Ministerio de Obras Públicas.	Sets out the processes for handling proposals, tendering, monitoring, and dispute resolution.
EG. 2007. <i>National Program for Public-Private Partnerships</i> . 2nd edition. Cairo: Government of Egypt, Public-Private Partnerships Central Unit.	Egypt's comprehensive guidelines and policies for PPPs, including regulations for the PPP procurement process. It also outlines the institutional responsibilities within the government and the approval process.
MY. 2009. <i>Garis Panduan: Kerjasama Awam-Swasta Public-Private Partnership-PPP</i> . Putrajaya, Malaysia: Prime Minister's Office, Public-Private Partnership Unit.	The Government of Malaysia's policy framework and procurement process for PPPs are outlined in this document.
MX. 2012. <i>Ley de Asociaciones Público Privadas</i> . Mexico City: Gobierno de México, Cámara de Diputados.	Sets out in detail the process and institutional responsibilities for developing and implementing PPP projects in Mexico.
PE. 2014. <i>Ley No. 30167: Ley que Modifica el Decreto Legislativo 1012</i> . Lima: Presidente de la Republica del Peru.	Sets out the entire PPP process (from appraisal to tendering and implementing the contract), and it also defines the institutional framework for PPPs in infrastructure—this includes defining the role of the Ministry of Finance and the PPP promotion Agency PROINVERSION).
PH. 2006. <i>The Philippine BOT Law R.A. 7718 and its Implementing Rules and Regulations</i> . Revised 2006. Manila: Public-Private Partnership Center.	The set of laws for PPPs in the Philippines, including implementing rules and regulations of the PPP process.
PR. 2009. <i>Act No. 29</i> . San Juan: Commonwealth of Puerto Rico.	Outlines the processes for assessing the desirability and convenience of the PPP project, tendering the project, designing the contract, and monitoring its implementation. It also establishes the PPP Authority, and assigns responsibilities to the Authority and other government agencies.
ZA. 2004a. <i>Public Private Partnership Manual</i> . Pretoria: South African Government, National Treasury.	The comprehensive PPP manual outlining the PPP procurement process for South Africa, including the approval process.
ES. 2011. "Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público." <i>Boletín Oficial del Estado</i> , 276 (1) 117729-117913. Madrid: Gobierno de España, Ministerio de la Presidencia.	Describes the different stages and studies that must be carried out when using a PPP as a procurement option. PPP that use private public-private legal framework will consider the principles of transparency, openness, and non-discrimination of public legal framework.
EPEC. 2011b. <i>The Guide to Guidance: How to Prepare, Procure, and Deliver PPP Projects</i> . Luxembourg: European Investment Bank, European PPP Expertise Centre.	A guide and sourcebook for PPP policies and project implementation. Chapter 1 presents a short guide on project identification.
PPPIRC. Accessed March 9, 2017. "Public-Private Partnerships in Infrastructure Resource Center website." Website.	The section on legislation includes information and questions for assessing legal environments for PPPs, information on types of legislation, and example PPP legislation from over 30 countries.
Farquharson, Edward, Clemencia Torres de Mästle, E. R. Yescombe, and Javier Encinas. 2011. <i>How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets</i> . Washington, DC: World Bank.	This guide for public sector practitioners describes how to develop and implement a PPP successfully, by developing a marketable project and attracting the right private partners. Chapter 4 describes guidelines for PPP project selection.
WB. 2009a. "Toolkit for Public-Private Partnerships in Roads and Highways." World Bank. Website.	An online product. Module 4 in the Laws and Contracts section of the online toolkit on Legislative Framework describes the various types of laws that comprise the framework for PPPs in roads.

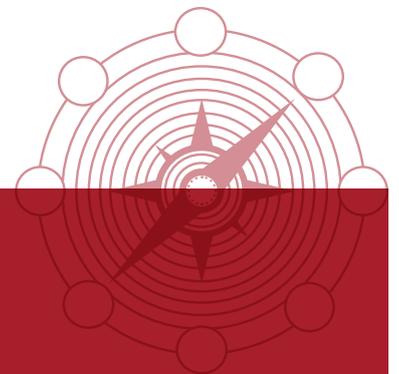
Reference	Description
EPEC. 2014d. <i>Role and Use of Advisers in Preparing and Implementing PPP Projects</i> . Luxembourg: European Investment Bank, European PPP Expertise Centre.	Highlights what practitioners should expect when working with external advisors and best practices for engagement.
UNCITRAL. 2004. <i>Model Legislative Provisions on Privately Financed Infrastructure Projects</i> . Vienna: United Nations Commission on International Trade Law.	This report by the UN offers legislative recommendations and model provisions for PPP legislation that are favorable to privately financed infrastructure projects.
Yong, H.K., ed. 2010. <i>Public-Private Partnerships Policy and Practice: A Reference Guide</i> . London: Commonwealth Secretariat.	This report provides a comprehensive review of PPP policies worldwide, including guidance to practitioners about key aspects of designing and implementing PPP policy and projects. Chapter 4.1 outlines key issues for a PPP legal framework, and principles for PPP legislation.
KR. 2011. <i>Basic Plan for Public Private Partnerships</i> . Seoul: Korea Development Institute, PIMAC.	Establishes the PPP process and institutional responsibilities of various parties involved in the PPP process.
US. 2009. <i>Public Policy Considerations in Public-Private Partnership</i> . Washington, DC: United States Government, Department of Transportation, Federal Highway Administration.	This report reviews how different states within the United States have responded to the issues most frequently raised 14 PPP issues. Both legislative and contract provisions are examined to identify how states vary in addressing the public policy concerns in PPP arrangements.
UK. 2015a. <i>Valuing Infrastructure Spend: Supplementary Guidance to The Green Book</i> . London: UK Government, HM Treasury.	Based on interviews across 10 departments in the United Kingdom, the report develops a benchmarking model which can be used to compare the management performance of PFI and PPP programs.
EPEC. 2012a. <i>France: PPP Units and related institutional framework</i> . Luxembourg: European Investment Bank, European PPP Expertise Centre.	The report surveys the developments in PPP legislations and institutions in France. It describes the role of the central PPP unit (MAPPP) in relation with other PPP units in respective line ministries.
TZ. 2010. <i>Bill Supplement No. 0: The Public-Private Partnership Act, 2010</i> . Dar es Salaam: Government of Tanzania.	Tanzania's PPP law, which creates and outlines responsibility for a new PPP unit. The law also describes the requirements for PPP projects in the country and the responsibility of each actor and stakeholder.
CO. 2014. <i>Manual de Procesos y Procedimientos para la Ejecución de Proyectos de Asociación Público-Privada</i> . Bogotá: Gobierno de Colombia, Ministerio de Hacienda y Crédito Público.	Manual that provides, in detail, the PPP procurement process in Colombia.
Akitoby, Bernardin, Richard Hemming, and Gerd Schwartz. 2007. "Public investment and public-private partnerships." <i>Economic Issues</i> 40, Washington, DC: International Monetary Fund.	A short booklet describing the implications of PPPs for public investment, including how PPP commitments should be managed and controlled.
VIC. 2016. <i>Partnership Victoria Requirements</i> . Melbourne, Australia: State of Victoria, Department of Treasury and Finance.	These guidelines outline the objective, scope, and principles of the PPP program in the State of Victoria, Australia. The guidelines also include a revised PPP procurement process to adhere to changes in the national guidelines.
NEDA. 2005b. <i>ICC Project Evaluation Procedures and Guidelines</i> . Manila: National Economic and Development Authority.	The guidelines by which projects are evaluated by the Investment Coordination Committee (ICC) in the Philippines, including reporting requirements of the implementing agency.
CO. 2012c. <i>Decreto Ley 1467 de 2012</i> . Bogotá: Congreso de Colombia.	Sets out the institutional responsibilities and processes for PPPs in Colombia. It sets out the roles of the Ministry of Finance and the National Planning Department, the Committee on Economic and Social Policy (CONPES), and the Committee on Fiscal Policy (CONFIS).

Reference	Description
NAO. 2006. <i>A Framework for Evaluating the Implementation of Private Finance Initiative Projects: Volume 1</i> . London: National Audit Office.	The report describes the evaluation framework which considers the entire lifecycle of a project from the initial strategic analysis to the mature operational phase. The matrix covers six key business management themes across six stages in the lifecycle of the project.
WB. 2013b. "Implementing a Framework for Managing Fiscal Commitments from Public Private Partnerships." Operational Note. World Bank, Washington, DC.	Presents practical guidance on how to implement that framework.

### Key References: PPP Units

Reference	Description
WB. 2007b. <i>Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure</i> . Washington, DC: World Bank.	This report provides a comprehensive assessment of the effectiveness of PPP units in developed and developing countries. The report offers lessons of the context in which PPP units have been most effective.
Dutz, Mark, Clive Harris, Inderbir Dhingra, and Chris Shugart. 2006. "Public Private Partnership Units: What Are They, and What Do They Do?." Public Policy for the Private Sector Note No. 311. Washington, DC: World Bank.	A short note reviewing several country experiences with PPP units, and provides high-level recommendations to improve governance and their effectiveness.
Kim, Jay-Hyung, Jungwook Kim, Sunghwan Shin, and Seung-yeon Lee. 2011. <i>Public-Private Partnership Infrastructure Projects: Case Studies from the Republic of Korea. Volume 1, Institutional Arrangements and Performance</i> . Manila: Asian Development Bank.	This report reviews the PPP program in Korea, including case studies of BTO and BTL PPP projects.
WB. 2006a. <i>India: Building Capacities for Public-Private Partnerships</i> . Washington, DC: World Bank.	More details on case studies, including their applicability to India.
Farrugia, Christine, Tim Reynolds, and Ryan J. Orr. 2008. "Public-Private Partnership Agencies: A global perspective." Working Paper #39. Stanford, California: Collaboratory for Research on Global Projects at Stanford University.	A review of PPP units with a focus of experience of developed countries. The report includes case studies and reviews the key aspects of eight difference agencies.
OECD. 2010. <i>Dedicated Public-Private Partnership Units: A Survey of Institutional and Governance Structures</i> . Paris: Organisation for Economic Co-operation and Development.	Provides an overview of dedicated PPP units in OECD countries, including case studies of the experience of five jurisdictions (State of Victoria, Australia, Germany, Korea, the United Kingdom, and South Africa).
Burger, Philippe. 2006. "The Dedicated PPP Unit of the South African Treasury." Paper presented at the Symposium on Agencies and Public-Private Partnerships. Madrid, July 5-7.	This paper provides a review of the PPP program in South Africa and its dedicated PPP unit.
ZA. 2004a. <i>Public Private Partnership Manual</i> . Pretoria: South African Government, National Treasury.	The comprehensive PPP manual outlining the PPP procurement process for South Africa, including the approval process.
EPEC. 2012a. <i>France: PPP Units and related institutional framework</i> . Luxembourg: European Investment Bank, European PPP Expertise Centre.	The report surveys the developments in PPP legislations and institutions in France. It describes the role of the central PPP unit (MAPPP) in relation with other PPP units in respective line ministries.
Istrate, Emilia, and Robert Puentes. 2011. "Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units." Project On State and Metropolitan Innovation. Washington, DC: Brookings-Rockefeller.	This report surveys international PPP units and U.S. domestic PPP units. It addresses whether a U.S. federal PPP unit is desirable.

Reference	Description
Farrugia, Christine, Tim Reynolds, and Ryan J. Orr. 2008. "Public-Private Partnership Agencies: A global perspective." Working Paper #39. Stanford, California: Collaboratory for Research on Global Projects at Stanford University	A review of PPP units with a focus of experience of developed countries. The report includes case studies and reviews the key aspects of eight difference agencies.
OECD. 2010. <i>Dedicated Public-Private Partnership Units: A Survey of Institutional and Governance Structures</i> . Paris: Organisation for Economic Co-operation and Development.	Provides an overview of dedicated PPP units in OECD countries, including case studies of the experience of five jurisdictions (State of Victoria, Australia, Germany, Korea, the United Kingdom, and South Africa).
Burger, Philippe. 2006. "The Dedicated PPP Unit of the South African Treasury." Paper presented at the Symposium on Agencies and Public-Private Partnerships. Madrid, July 5-7	This paper provides a review of the PPP program in South Africa and its dedicated PPP unit.
ZA. 2004a. <i>Public Private Partnership Manual</i> . Pretoria: South African Government, National Treasury.	The comprehensive PPP manual outlining the PPP procurement process for South Africa, including the approval process.
EPEC. 2012a. <i>France: PPP Units and related institutional framework</i> . Luxembourg: European Investment Bank, European PPP Expertise Centre.	The report surveys the developments in PPP legislations and institutions in France. It describes the role of the central PPP unit (MAPPP) in relation with other PPP units in respective line ministries.
Istrate, Emilia, and Robert Puentes. 2011. "Moving Forward on Public Private Partnerships: U.S. and International Experience with PPP Units." Project On State and Metropolitan Innovation. Washington, DC: Brookings-Rockefeller.	This report surveys international PPP units and U.S. domestic PPP units. It addresses whether a U.S. federal PPP unit is desirable.



## Did you know....?

### Most bridges in Paris were built as PPPs

Historically, Paris' bridges were built as PPPs by entrepreneurs under 20 to 50-year concessions. The contracts allowed them to collect tolls, for example, from pedestrians and horse riders. Sometimes the contracts included building houses on the bridge, with on average 30 to 50 houses per bridge. An example for a bridge concession is Pont Marie, the still existing bridge linking Île Saint-Louis to the Right Bank. The concession contract was established in 1614, after the entrepreneur Jean-Christophe Marie submitted an unsolicited proposal in 1610 (he was the same person reconvertng the island into a wealthy residential area). The concession authorized Marie to collect tolls for 20 years. King Louis XIII laid the inauguration stone in 1614, and the bridge opened for circulation in 1630.

Source: Xavier Bezançon, *2000 Ans d'Histoire du Partenariat Public-Privé* (Paris: Presses de l'École Nationale des Ponts et Chaussées, 2004)

## 2.4 Public Financial Management Frameworks for PPPs

Typically, PPP contracts have financial implications for governments. Payment commitments under PPP contracts are often long-term, and can be contingent on risk. *Box 2.8 - Types of Fiscal Commitments to PPPs* sets out the different categories of risk inherent to PPPs. Managing these risks can create challenges for public financial management, which is generally geared to annual appropriations for expenditure. For this reason, PPP-specific approaches to public financial management have been developed.

*Section 1.2 - Infrastructure Challenges and How PPPs Can Help* describes some of the problems that commonly arise when the fiscal implications of PPPs are not carefully thought through. Without specific rules to address and manage fiscal risk, PPPs can be used to bypass budget constraints or borrowing limits and create hidden deficits for the Government, as illustrated by **Kharas and Mishra's paper** (Kharas and Mishra 2001). Governments also often underestimate the cost of bearing risk under PPPs. This can result in significant levels of exposure to PPP-related risks that can jeopardize fiscal sustainability if not monitored and managed proactively.

This section provides guidance for practitioners on public financial management for PPPs, to help avoid these pitfalls. The following sections describe how governments can:

- ◆ Assess the fiscal implications of a proposed PPP project
- ◆ Control aggregate exposure to PPPs
- ◆ Budget for fiscal commitments to PPPs
- ◆ Reflect fiscal commitments to PPPs in government accounts and reports

### 2.4.1 Assessing Fiscal Implications of a PPP Project

Good practice consists of subjecting public investment projects to appraisal and approval processes to determine whether it is a good project. Close integration with the budget process is essential to elucidate whether and when the project is affordable. The finance ministry typically plays a central role in this endeavor. Because PPPs often involve neither capital investment nor other expenditure in the short term, they may slip through the standard control mechanisms designed for public investment financed by the public purse.

Government commitment is a key element of success of PPP programs, together with effective reforms to foster collaboration and coordination between various government institutions and overcome governance challenges.

The World Development Report 2017 (WB 2017c) describes the critical path to maximize the efficiency of policy reforms. The “policy effectiveness cycle” begins by defining the objective to be achieved; it then follows a series of six critical steps as follows: diagnosis; assessment; targeting; designing; implementation; and evaluation and adaptation. The process through which the various actors bargain about the design and implementation of policies within a specific institutional setting, must also be taken into account. The consistency and continuity of policies over time (commitment), the alignment of beliefs and preferences (coordination), and the voluntary compliance and absence of free-riding (cooperation) are key institutional functions that influence how effective policies will be.

The Ministry of Finance plays a critical role in all three functions. The assessment of fiscal implications of a PPP project/portfolio demonstrates the commitment of the government to the private sector and helps reduce uncertainty regarding project development. This in turn helps reduce the cost of private finance. It also helps attract the ablest and efficient PPP operators, instead of firms more interested in benefiting from uncertainty and contract changes by gaming government. The Ministry of Finance also coordinates and collaborates with sector ministries and other government agencies such as PPP units.

Having Ministry of Finance officials understand infrastructure risks and PPP fiscal risks is therefore critical for full government commitment. Most governments have established their central PPP units in the Ministry of Finance. Even those that have anchored it elsewhere, have felt the need to have a PPP team in the Ministry of Finance and therefore have fiscal management staff trained in PPP contracting. Those PPP teams help review PPP projects and assess PPP fiscal costs and risks, checking the fiscal sustainability of PPP programs, managing fiscal PPP risks, and reporting on PPP liabilities.

Commitment, collaboration, and coordination are also essential to formulate and implement policies on a broad set of issues including cross-sectoral issues, public finance management, and regulations concerning internal control and reporting mechanisms. Sustained efforts are also needed to develop a system to manage threats to the integrity of practitioners. Finally, because the electoral cycle is typically much shorter than the project cycle, politicians are most

## Box 2.8 Types of Fiscal Commitments to PPPs

Fiscal commitments to PPPs can be regular payments constituting all or part of the remuneration of the private party, a means to share risk, or a combination of the two. Common types of government fiscal commitments to PPPs include the following:

### Direct liabilities

Direct liabilities are payment commitments that are not dependent on the occurrence of an uncertain future event (although there may be some uncertainty regarding their value). Direct liabilities arising from PPP contracts can include:

- “Viability gap” payments—a capital subsidy, which may be phased over construction based on achievement of milestones, or against equity investments. Alternatively, subsidies can be used to lower tariffs for targeted end-users so that they become affordable to them.
- Availability payments—a regular payment or subsidy over the lifetime of the project, usually conditional on the availability of the service or asset at a contractually specified quality. The payment may be adjusted with bonuses or penalties related to performance.
- Shadow tolls, or output-based payments—a payment or subsidy per unit or user of a service—for example, per kilometer driven on a toll road.

### Contingent liabilities

Contingent liabilities are payment commitments whose occurrence, timing, and magnitude depend on some uncertain future event. Explicit contingent liabilities under PPP contracts can include:

- Guarantees on particular risk variables—an agreement to compensate the private party for loss in revenue should a particular risk variable deviate from a contractually specified level. The associated risk is thereby shared between the

government and the private party. For example, this could include guarantees on demand remaining above a specified level; or on exchange rates remaining within a certain range; or commitments to buy land needed for the project, or to pay compensation for relocation of people and activities.

- Compensation clauses—for example, a commitment to compensate the private party for damage or loss due to certain, specified, uninsurable *force majeure* events.
- Termination payment commitments—a commitment to pay an agreed amount, should the contract be terminated due to default by the public or private party—the amount may depend on the circumstances of default.
- Debt guarantees or other credit enhancements—a commitment to repay part or all of the debt used to finance a project. The guarantee could cover a specific risk or event. Guarantees are used to provide more security to a lender that their loan will be repaid.
- Litigation—potential litigation costs to government relating to PPP.

Every PPP contract also creates implicit contingent liabilities—moral obligations of governments reflecting public interest or political pressures. These include: cost of retendering or operating if operators go bankrupt; cost of expanding or redesigning service when PPP contract is overly rigid; and change in government policy.

Polackova and Schick’s edited volume on *Government Contingent Liabilities* (Polackova 1998) defines direct and contingent liabilities, and describes the fiscal risks posed by contingent liabilities in general.

likely to inaugurate projects that were planned by the previous administration, and to select and plan those that will be inaugurated by the next administration. This requires a considerable degree of commitment and collaboration, particularly since politicians usually want to leave their mark.

*Section 2.3 - PPP Processes and Institutional Responsibilities* describes how governments often create an approval process for PPPs that mirrors that used for their large investment projects. Such processes generally provide a central role for the finance ministry. This section offers guidance on how the finance ministry can decide wheth-

Table 2.5 Options for Assessing the Affordability of Fiscal Commitments to PPPs

Option	References and Examples
<p><b>Forecast budget limits</b>—that is, make conservative assumptions for how overall budget limits will evolve, and consider whether the estimated annual payments for a PPP (under a reasonable range of scenarios) could be accommodated within those limits</p>	<p>An <b>OECD survey</b> described in (OECD 2008a, 42–43) found that:</p> <ul style="list-style-type: none"> <li>• In <b>Brazil</b>, project studies must include a fiscal analysis for the next ten years.</li> <li>• In the <b>UK</b>, procuring authorities must demonstrate the affordability of a PPP project based on agreed departmental spending figures for the years available, and on cautious assumptions of departmental spending envelopes thereafter.</li> <li>• In <b>France</b>, affordability of a PPP is demonstrated by reference to a ministerial program—a multi-year indicative budgeting exercise.</li> <li>• The <b>PPP Manual of South Africa</b> section on affordability (ZA 2004a, Module 2) also describes a similar approach.</li> </ul>
<p><b>Introduce budget rules</b>—that is, the affordability of PPP commitments is considered in the annual budget process</p>	<p>For example:</p> <ul style="list-style-type: none"> <li>• In the <b>State of Victoria, Australia</b>, a department considering a PPP must first seek approval for the capital spending that would be required if the project received public funds—as required in the national PPP Guidelines (AU 2017) and described in Irwin’s review of PPP contingent liability management (Irwin and Mokdad 2010, 10-11).</li> <li>• <b>Colombia’s law on contingent liabilities</b> (CO 1998, Article 6) requires implementing agencies to make a cash transfer to a contingency fund when a PPP project is signed. The cash transfer is set equal to the expected cost of programs including any guarantees provided. The payments may be spaced out over several years. This means the decision to accept a contingent liability has an immediate budget impact that must be considered.</li> </ul>

er to approve the fiscal commitments to a proposed PPP project. In doing so, a finance ministry typically considers two questions: will the project provide value for money; and is the project affordable.

### Assessing whether a PPP will provide value for money

For most projects, assessing value for money means assessing whether the project is cost-benefit justified, and the least-cost way of achieving the benefits. When assessing a PPP, some additional analysis is needed—to check whether the PPP has been structured well, and will provide better value for money than alternative public procurement modes. *Section 3.2 - Appraising Potential PPP Projects* describes this analysis, and provides links to examples and guidance.

### Assessing whether a PPP is affordable

The second question is even harder to answer: Is the PPP project affordable? There are two main challenges in answering this question for a PPP project.

First, it is not always clear how much the PPP will cost. Direct fiscal commitments are long-term, and may depend on variables such as demand (in the case of shadow tolls) or exchange rates (where

payments are made in foreign currency). Moreover, many fiscal commitments to PPPs are contingent liabilities, whose occurrence, timing, and value all depend on some uncertain future events. *Section 3.2 - Appraising Potential PPP Projects* provides guidance and examples on how the cost of fiscal commitments to a proposed PPP can be calculated. Mostly this involves considering the modal or best estimate value, hopefully correcting for optimism bias, and scenarios for how that value might vary.

Second, because costs are long-term, and may be contingent, it is not easy to decide whether they are affordable. An **OECD publication on PPPs** (OECD 2012, 21) defines affordability to mean the “ability to be accommodated within the inter-temporal budget constraint of the government.” For most government expenditures, affordability is assessed by considering the annual budget constraint, and in some cases the medium-term (typically three-year) expenditure/fiscal framework. *Table 2.5 - Options for Assessing the Affordability of Fiscal Commitments to PPPs* describes two alternatives for PPPs. The approach may be different for different types of fiscal commitments. Limits on the total stock of fiscal commitments to PPPs may also affect decision-making for particular projects.

The complexity of financial arrangements that are often entered into in a PPP project, especially in infrastructure investments, war-

rants that the government is able to identify up-front what its liabilities are over the life of the project. These could be explicit or implicit direct or indirect. Constructing a *Fiscal Risk Matrix* (for liabilities) and a *Fiscal Hedge Matrix* (for the asset side) to catalogue the potential sources of fiscal risks to the government, and factors that influence their size, is an important analytical exercise to be undertaken prior to signing a PPP agreement. These two matrices are displayed in *Table 2.6 - Fiscal Risk Matrix: For Liabilities* and *Table 2.7 - Fiscal Hedge Matrix: Assets and Contingent Financing*. This function is typically carried out in the Ministry of Finance and must be divorced from the sector ministry or entity promoting and negotiating the project.

## 2.4.2 Controlling Aggregate Exposure to PPPs

As well as considering fiscal exposure project-by-project, some governments introduce targets or rules limiting aggregate exposure. A challenge is defining which types of fiscal commitments should be included—for example, does the rule apply to direct liabilities only, or are contingent liabilities included?

The introduction of specific limits on PPP exposure is described in **Irwin's article on controlling spending commitments in PPPs** (Irwin 2007, p.114–115). For example:

- ♦ **Peru's Legislative Decree No. 410-2015-EF** (PE 2015) states that the present value of the total fiscal commitments to PPPs, excluding governmental finance entities, shall not exceed 12 percent of GDP. However, every three years, the President may, with the endorsement of the Ministry of the Economy and Finance, issue a decree to revise this limit, depending on the infrastructure needs of the country.
- ♦ In **Hungary**, Act 38 of 1992 (Article 12) limited the total nominal value of multi-year commitments in PPPs to three percent of government revenue, as quoted in Irwin's paper (Irwin 2007).
- ♦ **Brazil's** Federal PPP Law (BR 2004a, Law 11079) initially limited total financial commitments pertaining to all PPP contracts to a maximum of one percent of annual net current revenue—in 2009 Law 12024 raised this limit to three percent, and in 2012 Law 12766 raised it again to five percent.

**Irwin** describes how creating PPP-specific limits—distinct from other limits on public expenditure—can create incentives for agencies to choose traditional public procurement over PPPs even when

PPPs would provide better value for money (or vice versa). Nonetheless, given the difficulties in deciding whether a particular PPP commitment is affordable, limits on aggregate exposure can be a helpful way to ensure the government's total exposure to PPP costs and risk remains within manageable limits (Irwin 2007).

Monitoring and managing the fiscal impacts and risks associated with PPP projects undertaken by quasi-fiscal entities at the sub-national levels is important as well. This is more so in countries where the subnational governments have undertaken, or have plans to undertake large PPP portfolios of infrastructure projects—see **Gooptu and Kahkonen lessons of international experience on subnational debt management** (Kahkonen and Gooptu 2015).

An alternative is to incorporate limits on PPP commitments within other fiscal targets. For example, some governments introduce targets or limits on public debt or government liabilities. Some types of PPP commitment may be included within measurements of government liabilities, following international norms or national rules. However, this usually only applies in limited cases and is restricted to the national level as highlighted by **Liu and Pradelli**. Their paper (Liu and Pradelli 2012) proposes a more rigorous monitoring framework of fiscal risks imposed by PPP liabilities by using a minimum set of five sub-national debt indicators which also considers the SPV's debt. **Irwin** also describes an alternative of establishing a limit on debt plus PPP commitments (Irwin 2007).

## 2.4.3 Budgeting for Government Commitments to PPPs

Budgeting for PPPs involves making sure money is appropriated and available to pay for whatever cost the government has agreed to bear under its PPP projects. Because such cost may be contingent or occur in the future, PPP budgeting can be hard to manage in traditional annual budget cycles. Nevertheless, credible and practical budgeting approaches are needed for good public financial management, and to assure private partners that they will be paid. This section describes how some countries have introduced systems specifically to enable better budgeting for PPP payments, both direct and contingent.

### Budgeting for Direct Commitments to PPPs

Direct commitments to PPP may include ongoing payments such as availability payments and shadow tolls, as well as capital subsidies during project construction.

Table 2.6 Fiscal Risk Matrix: Liabilities

	Direct	Contingent
Explicit (legal obligation, no choice)	Foreign and domestic sovereign debt Budget expenditures—both in the current fiscal year and those legally binding over the long term (civil servant salaries and pensions)	Guarantees for borrowing and obligations of sub-national governments and SOEs Guarantees for trade and exchange rate risks Guarantees for private investments (PPPs) State insurance schemes (deposit insurance, private pension funds, crop insurance, flood insurance, war-risk insurance) Unexpected compensation in legal cases related to disparate claims
Implicit (expectations – political decision)	Future public pensions if not required by law Social security schemes if not required by law Future health care financing if not required by law Future recurrent cost of public investments	Defaults of subnational governments and SOEs on nonguaranteed debt and other obligations Liability clean-up in entities being privatized Bank failures (support beyond state insurance) Failures of nonguaranteed pension funds, or other social security funds Environmental recovery, natural disaster relief

Source: (Polackova 1998)

Table 2.7 Fiscal Hedge Matrix: Assets and Contingent Financing

	Direct (based on the stock of existing assets)	Contingent (dependent on future events, such as value generated in the future)
Explicit (based on government legal powers such as ownership, right to raise taxes and other revenues)	Asset recovery (workouts, sales of non-performing loans, state equity sales, etc.) Proceeds from privatization of state-owned enterprises (SOEs) and other public resources Recovery of government loan assets (e.g. resulting from earlier direct government lending)	Government revenues from natural resource extraction and sales Government customs revenues Tax Revenues less: <ul style="list-style-type: none"> <li>• Tax Expenditures</li> <li>• Revenues from forward sales (e.g. commodity forward sales)</li> <li>• Hedging instruments and re-insurance purchased by government</li> </ul>
Implicit (based on Government indirect control)	Stabilization and contingency funds (Note: These liabilities refer to fiscal authorities, not the central bank) Positive net worth of Central Bank	Profits of state-owned enterprises Contingent credit lines and financing commitments from IFIs Current account surpluses across currencies

When governments provide capital subsidies to PPPs, the payments required are similar to those for traditionally-procured government projects. Because these payments are typically made within the first few years of a project, they can be relatively easily built into annual budgets and medium-term expenditure frameworks. Nonetheless, some governments have introduced particular funds, called Viability Gap Funds, from which such payments will be made. One example of such a fund is in India, as described in *Box 2.9 - The Viability Gap Fund Program in India*.

Budgeting for **long-term direct commitments**, such as availability payments, is more challenging. The mismatch between the annual budget appropriation cycle and the multi-year payment commitments exposes the private party to the risk that payments may not be appropriated when due. This problem is not unique to PPPs—many other types of contractual payment commitments extend beyond the budget year. In many jurisdictions, governments do not introduce any particular budgeting approach for direct, long-term PPP commitments on the assumption that a responsible legislature

## Box 2.9 The Viability Gap Fund Program in India

In July 2005, the Cabinet Committee on Economic Affairs established India's Viability Gap Fund (VGF) program through its approval of the *Scheme for Financial Support to Public Private Partnerships in Infrastructure*. During its first eleven years, 58 projects with a total project cost of approximately \$4.9 billion and VGF allocation of \$872 million received final approval thanks to the scheme.

The primary objective of India's VGF program is to attract private investment in infrastructure by making PPP projects financially viable, with three underlying objectives:

- Mobilizing additional finance to meet India's infrastructure needs more rapidly
- Prioritizing PPP projects to improve the efficiency of service delivery, control timing and cost, and attract private sector expertise
- Developing projects through an inclusive approach that does not neglect geographically or economically disadvantaged regions

Knowing that the funding is available encourages firms to bid on India's PPP projects. The resulting competition has meant that many projects that the government thought might need a subsidy have, in fact, been fully privately financed, without a VGF contribution being called on or in some cases with *negative grants*, or upfront payments by the private sector.

The scheme is funded by the Government through budgetary resources. Budget provisions are made on an annual basis based on the likely demand for disbursements during the year. In the first year, a budgetary provision of \$40 million was made. The scheme also provides for a revolving fund under the authority of the Empowered Committee to ensure liquidity of the VGF facility. The fund is replenished as needed.

In any given year, the value of projects approved is capped by a ceiling equivalent to ten times the budget provisions for VGF—to ensure continuing liquidity and prevent bunching of disbursement requests as far as possible. This cap can be modified at the discretion of the Ministry of Finance. In practice, the cap has not been binding.

Sources: (IN 2013a); (IN 2017)

will always approve appropriations to meet the government's legally binding payment commitments.

Where appropriations risk is high—typically in systems with a strict separation of powers between the legislature and executive—mechanisms to reduce this risk may be warranted. In **Brazil**, at the federal level, Law No.101 of 2000 (BR 2005) requires subsidy payments to PPPs to be treated in the same way as debt service payments—that is, they are automatically appropriated. This means that once the subsidy is approved, the appropriations needed are not subject to further legislative approval. Although no federal subsidies have been disbursed yet, this policy should help reduce the likelihood that committed funds are retracted and provides investors with more certainty.

For more on budgeting for direct commitments to PPPs, see the **World Bank report on fiscal subsidies for PPPs** (WB 2012a). The study presents the appropriations mechanisms for Brazil at the Federal and State levels (see pages 15–16), Colombia (page 31), Mexico (page 46), and India (page 59).

The long-term nature of most governments' commitments to pay, under PPP contracts, suggest the need for incorporating them in the Medium-Term Fiscal Framework (MTFF). More countries have legislation requiring periodic analysis of a MTFF, such as Brazil, China, Colombia, India, Peru, and Poland—good practice consists of including PPPs in the MTFF.

Governments with prudent fiscal governance have felt the need to establish and continuously update a centralized register for all PPP commitments in the Ministry of Finance. This is good practice. All PPP commitments should be centrally recorded and monitored. This is relevant for unitary countries, but also for federal republics that have a history of subnational fiscal discipline issues. Monitoring currency exposures may be also relevant—PPP commitments may have foreign exchange implications.

Availability payments depend on effective availability of infrastructure. Although contingent upon availability, these payments should be considered as direct liabilities as their probability of occurring is almost certain in a well-designed PPP. Governments may commit

to pay according to the volume of production or the amount and quality of services delivered, for instance healthcare services in a PPP hospital or electricity generated at a PPP power plant. Since these costs are variable, governments must budget for expected levels of delivery.

## Budgeting for PPP Contingent Liabilities

Budgeting for contingent liabilities can be particularly challenging, because payments may become due unexpectedly. If savings cannot be found within the existing appropriations, government may need to go back to the legislature to request a supplementary appropriation—often a difficult and contentious affair.

To overcome these difficulties, some governments introduce particular mechanisms for budgeting for contingent liabilities under PPP projects. As described in **Cebotari's paper on managing contingent liabilities** (Cebotari 2008, 26–28), the first option is to create additional budget flexibility. This can include creating a contingency line in the budget from which unexpected payments can be made. A contingency line could be specific to a particular liability—for example, to one considered relatively riskier—or cover a range of contingent liabilities. In **Chile**, the Ministry of Finance assesses the cost of guarantees (e.g. demand guarantees) provided to PPP operators and creates a budget line for those guarantees. Cebotari also notes that some countries allow spending in excess of the budget without need for additional approval in certain, defined circumstances.

A second option, also described in detail by **Cebotari** (Cebotari 2008, 27–29), is to create a contingent liability fund. A contingent liability fund (or guarantee fund) is an account (which may be within or external to the government's accounts) to which transfers are made in advance, and from which payments for realized contingent liabilities will be made when due.

The following are examples of contingent liability funds for PPPs:

- ♦ **Colombia**—has developed a set of procedures for managing contingent liabilities arising from guarantees offered to toll road concessionaires. This includes assessing the fiscal impact of guarantees before these are granted and setting aside funds to cover the expected payments from the guarantees (WB 2012a, 32–33). A Government Entities Contingent Liabilities Fund, established in 1998, is managed by La Previsora, a Trust Company. The fund is funded by contributions by various government entities, contributions from the national Budget, and the
- returns generated with its resources. The government entities carry out the contingent liabilities valuation which is then approved by the Public Credit Division of the Ministry of Finance. Once the PPP is approved and implemented, the division carries out ongoing assessments of the value of the associated contingent liabilities (CO 1998, Articles 3–8).
- ♦ **São Paulo, Brazil**—in the State of São Paulo, the São Paulo Partnerships Corporation (Companhia Paulista de Parcerias—CPP) was established in 2004 using resources from the sale of the government's stake in State-Owned Enterprises (SP 2004a, Articles 12–23). Section 5 of State Governor's Decree (SP 2004b, Articles 11–12) describes the duties of CPP. The CPP manages its resources as a fiduciary fund that provides guarantees to PPP projects (SP 2004b, Article 15). The CPP is governed by a directorate made up of up to three members selected by the governor of the state, a management council made up of up to five members selected by the state governor, and a fiscal council. The CPP is an independent legal entity. The government of the state can add capital to the fund using funds from the sale of shares in state-owned companies or government-owned buildings, public debt titles, other goods or rights that are directly or indirectly owned by the government. The World Bank review of Subsidy Funds for PPPs in LAC (WB 2012a, 16) provides more background about the CPP.
- ♦ **Indonesia**—the Indonesia Infrastructure Guarantee Fund, or IIGF, is a state-owned enterprise established by government regulation and a 2009 Ministry of Finance decree. As one of the fiscal tools of the government, IIGF is under direct supervision of the Ministry of Finance and has mandate to provide guarantees for infrastructure projects under of PPP schemes. IIGF is part of the government's efforts to accelerate infrastructure development in Indonesia, by providing contingency support/guarantee for the risks caused by the government's action or inaction. The Fund operates as a single window for appraising, structuring, and providing guarantees for PPP infrastructure projects. The single window ensures a consistent policy for appraising guarantees and a single process for claims. It introduces transparency and consistency in the process which is critical for market confidence. IIGF provides guarantees against specific risks based on private sector demand in a variety of sectors—including power, water, toll roads, railways, bridges, ports, and others (IIGF).
- ♦ **South Korea**—The Infrastructure Credit Guarantee Fund (ICGF) was established in 1994. It is being managed by a pub-

lic financial institution. ICGF guarantees each project up to 300 billion won, for an annual guarantee fee capped at 1.5 percent of the total guarantee amount (KR 2011). Typically, the annual guarantee fees range between 0.3 and 1.3 percent. The guarantee operates as a subrogation—that is, ICGF pays back loans taken by the project company to financial institutions if it defaults on its debt obligations. If funds become insufficient, the government can provide additional contributions (Kim et al. 2011).

As well as providing a clear budgeting mechanism and thereby improving credibility, creating a fund can also help control the government's fiscal commitments to PPPs—depending on how the fund is designed. For example, Colombia's approach encourages discipline when deciding what liabilities to accept, as described in *Section 2.4.1 - Assessing Fiscal Implications of a PPP Project*. Requiring a cash transfer from the implementing agency's budget when a contingent liability is incurred means the decision to accept a contingent liability has an immediate budget impact that must be considered. In Indonesia, the government policy requires IIGF to accept contingent liabilities based on a careful assessment of the risk by the fund's management. **The EPEC note on State Guarantees in PPPs** (EPEC 2011a, Section 2) provides further detail on the different types of guarantees that governments may offer to PPP projects.

#### 2.4.4 Fiscal Accounting and Reporting for PPPs

Governments need to account for and report on their financial commitments, including those under PPP contracts—an additional reason for the Ministry of Finance to keep a centralized register of financial commitments under PPP contracts, both direct and contingent. When reporting is done well, it encourages the government to scrutinize its own fiscal position. Making financial reports publicly available enables other interested parties—such as lenders, rating agencies, and the public—to reach an informed opinion on the government's public financial management performance.

*Box 2.10 - Types of Government Financial Reporting* briefly describes the three types of government financial accounting and reporting—government financial statistics, government financial statements, and budget documentation and reporting—and the internationally relevant—recognized standards and guidelines that apply in each case. In general, these standards set rules or guidelines for whether and how different kinds of liabilities and expenditures should be

recognized—that is, formally recorded in the financial statements and statistics, or disclosed—and reported in notes or narratives. This section briefly describes how these standards apply to PPPs, with some examples of how different countries have interpreted them in practice.

The **2016 Eurostat Guide to the Statistical Treatment of PPPs** (EPEC 2016) explains how government-pays PPP contract provisions are relevant to the **Eurostat statistical classification of PPPs** (see *Box 2.10 - Types of Government Financial Reporting*). The definition, for statistical purposes, of *general government sector* may differ from the one used for financial management of government affairs. Eurostat, a statistical office, uses the *risks and rewards* criterion for classification purposes, while the international standard for public accounts, IPSAS, uses the control criterion, as described in *Section 2.4.4 - Fiscal Accounting and Reporting for PPPs*.

#### Recognizing PPP Liabilities in Government Accounts

Governments need to decide whether and when PPP commitments should be recognized—that is, formally recorded in financial statements as creating public assets, liabilities or expenses. This is important because limits or targets are often set on the government's liabilities and expenditures. Whether or not PPP commitments are recognized as expenses or liabilities can therefore influence a government's decision to pursue PPPs, or how to structure them, in a way that is not driven by the fundamental objective of achieving value for money. *Section 1.2.1 - Insufficient Funds* describes how some governments have used PPPs to circumvent limits on liabilities. The **2016 Eurostat Guide to the Statistical Treatment of PPPs** (EPEC 2016) notes that an excessive focus on off government balance sheet recording can be at the expense of sound project preparation and value for money and may push public authorities to use PPPs where not appropriate.

The financial standards mentioned in *Box 2.10 - Types of Government Financial Reporting* vary in their treatment of PPP fiscal commitments. A few standards specifically address when and how direct liabilities and assets of PPP projects should be recognized by the contracting governments:

- ♦ **International Public Sector Accounting Standards**—introduced in 2011, IPSAS-32 defines when PPP assets and liabilities should be recognized, assuming a government is following IPSAS accrual accounting standards, that is it records revenues and expenses when they are incurred, regardless of when cash is

## Box 2.10 Types of Government Financial Reporting

Most governments capture and report financial information in three related frameworks:

- **Government finance statistics**—these are summary statistics on the state of a government’s finances, which are intended to be internationally comparable. These statistics may follow regional or international standards, such as those set by Eurostat for European Union countries, or the IMF’s **Government Finance Statistics Manual (GFSM)** (IMF 2014b) published in 2001 but with regular updates since that date.
- **Government financial statements**—most governments also publish audited financial statements. There are internationally-recognized standards on what should be in those financial statements, although in practice few governments meet

those standards. The International Public Sector Accounting Standards (IFAC) is a modified version of the International Financial Reporting Standards (IFRS). IPSAS is designed for use in the public sector, while IFRS applies to companies. Some governments adopt local accounting standards that are a simplified version of the IPSAS standards.

**Budget documentation and reporting**—most governments prepare reports on financial performance as part of budget preparation and reporting. These are not subject to any international standards, although there are international guidance materials that promote transparency—for example, the IMF’s **Update on the Fiscal Transparency Initiative** (IMF 2014a) and the OECD’s **Recommendation of the Council on Budgetary Governance** (OECD 2015a).

exchanged. Under IPSAS-32, PPP assets and liabilities appear on the government’s balance sheet, provided the government controls or regulates the services the operator must provide with the PPP asset, to whom, and at what price; and the government controls any significant residual interest in the asset at the end of the contract. Under this definition, government-pays PPPs would appear on the government’s balance sheet; the treatment of user-pays PPPs depends on the details of the contract (IFAC 2011). Additional IFAC guidance on IPSAS-32 is provided in (IFAC 2016). IPSAS-32 assumes full accrual accounting (for example, such that the government prepares a full balance sheet capturing both assets and liabilities)—PFRAM (IMF and WB 2016) adapts IPSAS-32 to cash accounting, allowing for users to see how a PPP is reflected in both accrual and cash accounting. Also relevant in the standard on contingent liabilities, IPSAS-19 (IFAC 2002).

- ♦ **The IMF’s Government Finance Statistics Manual** (IMF 2014b) sets out criteria for classifying PPP assets and liabilities for statistical reporting purposes. Under these criteria, PPP assets and liabilities are accounted for in the government’s balance sheet if the government bears most of the project’s risks and rewards—for example, taking into consideration the degree to which the government controls the design, quality, size, and maintenance of the asset, and bears construction risk; as well as

the allocation of demand risk, residual value and obsolescence risk, and availability risk.

- ♦ **Eurostat guidelines**—Eurostat requires European governments to recognize PPP liabilities in debt statistics where the government retains construction risk or demand or availability risk. **Rougemon’s article on Accounting for PPPs** (Schwartz et al. 2008, 256–268) provides more detail, and the **European Manual on Government Deficit and Debt** (Eurostat 2016) and the **European System of Accounts ESA2010** (Eurostat 2010) define the rules. Since PPPs transfer those risks to the private party, under this rule most PPPs tend to remain off the government’s balance sheet—realizing that an excessive focus on off government balance sheet recording can be at the expense of sound project preparation and value for money and may push public authorities to use PPPs where not appropriate, Eurostat prepared with EPEC the **2016 Eurostat Guide to the Statistical Treatment of PPPs** (EPEC 2016).

Most accounting and reporting standards do not require governments to recognize contingent liabilities, including those arising from accepting risk under PPP contracts. **Cebotari’s report on contingent liabilities** (Cebotari 2008, Annex I) describes one limited exception: IPSAS standards for governments implementing accrual accounting (IFAC 2002) require contingent liabilities to

be recognized, only if it is more likely than not that the underlying event will occur, and the amount of the obligation can be measured with sufficient reliability. In this case, the net present value of the expected cost of the contingent liability should be recognized as a liability when the contract is signed.

## Disclosing PPP Liabilities

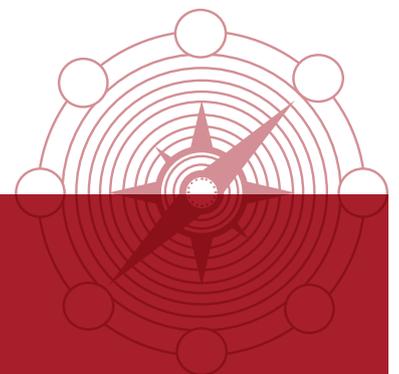
Most international reporting and statistical standards agree that even when PPP commitments are not recognized as liabilities, they should be disclosed in notes to the accounts and reports. For example, an **IMF booklet on Public Investment and PPPs** (Schwartz et al. 2008, 14–17) describes what information should be disclosed for PPPs in general, and specific disclosure requirements for guarantees. A **World Bank report on Disclosure of Project and Contract Information in PPPs** (WB 2013c) reviews practices in several jurisdictions and present best practices in the field.

Disclosing contingent liabilities can be challenging since it can be difficult to estimate their value. *Section 3.2 - Appraising Potential PPP Projects* provides guidance on how the value of contingent liabilities can be estimated. **Cebotari's paper on Government Contingent Liabilities** (Cebotari 2008, 32–41) describes inter-

national guidelines for how contingent liability exposure should be disclosed—including those under PPP programs—and provides examples from several countries.

**Cebotari's paper** also describes how some countries have interpreted these standards in practice. For example, New Zealand and Australia disclose contingent liabilities—including to PPPs—in notes to financial statements, available online. Since 2007, **Chile's Budget Directorate of the Ministry of Finance** has published an **annual contingent liabilities report** (CL 2016), which initially presented information on contingent liabilities from revenue and exchange rate guarantees to PPPs. This report has since been expanded to cover other types of government contingent liability.

**IMF's Fiscal Transparency Code** (IMF 2014c) is the international standard for disclosure of information about public finances—it comprises a set of principles built around four pillars: fiscal reporting, fiscal forecasting and budgeting, fiscal risk analysis and management, and resource revenue management. Fiscal transparency evaluations (FTE) now include PPPs as a main object. FTE reports from all continents—e.g. Peru (IMF 2015b), Kenya (IMF 2016), Portugal (IMF 2014d), and the Philippines (IMF 2015c)—demonstrate the relevance of fiscal transparency on PPPs.



## Did you know....?

### Italy implemented a modern irrigation PPP in 1870

The Villoresi irrigation canal was designed, financed, and built entirely with private capital between 1877 and 1890. The King of Italy granted a 90-year concession only 15 days after receiving the investment proposal from the original investors. Whereas the Villoresi family provided seed capital, capital for the main infrastructure was raised on the financial markets. The water was sold to farmers for irrigation. The original structure of the concession contract included the option for the water off-takers to buy out the concession. This option was called in 1918 when the farmers formed a consortium of water users and took over the concession and the infrastructure. Operated for many years by private investors, the Villoresi irrigation canal is now successfully owned and operated by a consortium of public entities.

Source: Handshake Issue #1. IFC, March 2011, page 45.

## Key References: Public Financial Management for PPPs

Reference	Description
Polackova, Hana. 1998. "Contingent Government Liabilities: A Hidden Risk for Fiscal Stability." Policy Research Working Paper 1989. Washington, DC: World Bank.	Provides the conceptual structure used by many subsequent articles to describe different types of government liabilities—distinguishing between contingent and direct liabilities, and explicit and implicit liabilities.
Schwartz, Gerd, Ana Corbacho, and Katja Funke, eds. 2008. <i>Public Investment and Public-Private Partnerships: Addressing infrastructure challenges and managing fiscal risks</i> . Washington, DC: International Monetary Fund.	A collection of papers on managing the fiscal impact of PPPs, drawing from an IMF conference held in Budapest in 2007. Part Two: "Fiscal Risks from PPPs," and Part Four: "PPP Accounting, Reporting, and Auditing" are particularly relevant to public financial management for PPPs.
OECD. 2008a. <i>Public-Private Partnerships: In Pursuit of Risk Sharing and Value for Money</i> . Paris: Organisation for Economic Co-operation and Development.	Identifies best practices for maximizing value-for-money for PPP projects, including accounting for fiscal impacts and affordability. The book also covers issues with regulatory reform, governance, and developing institutional capacity.
IMF. 2007. <i>Manual on Fiscal Transparency</i> . Washington, DC: International Monetary Fund.	Manual for public sector disclosure of fiscal reporting. The manual provides a framework for responsibilities for transparency, the transparency of the budget process, and openness and integrity of information. The 2014 Fiscal Transparency Code elaborates on this further (IMF 2014c).
Irwin, Timothy C., and Tanya Mokdad. 2010. <i>Managing Contingent Liabilities in Public-Private Partnerships: Practice in Australia, Chile, and South Africa</i> . Washington, DC: World Bank.	Describes the approach in the State of Victoria, Australia, Chile, and South Africa, to approvals analysis, and reporting of contingent liabilities (and other fiscal obligations) under PPP projects, and draws lessons for other countries.
Irwin, Timothy C. 2007. <i>Government Guarantees: Allocating and Valuing Risk in Privately Financed Infrastructure Projects</i> . Directions in Development. Washington, DC: World Bank.	Covers topics relating to fiscal impacts of PPP projects and provides frameworks to guide policymakers. Offers lessons learned in managing liabilities, direct or contingent, and case studies.
Liu, Lili, and Juan Pradelli. 2012. "Financing Infrastructure and Monitoring Fiscal Risks at the Subnational Level." Policy Research Working Paper 6069. Washington, DC: World Bank.	Proposes a more rigorous monitoring framework of fiscal risks imposed by PPP debt by using a minimum set of five subnational debt indicators which also considers the SPV's debt.
Posner, Paul L., Shin Kue Ryu, and Ann Tkachenko. 2009. "Public-Private Partnerships: The relevance of budgeting." <i>OECD Journal on Budgeting</i> 2009 (1).	Examines the budgetary treatment and issues raised by PPPs. Reviews the unique budgetary and accounting issues posed by privately financed capital services.
WB. 2012a. <i>Best Practices in Public-Private Partnerships Financing in Latin America: The Role of Subsidy Mechanisms</i> . Washington, DC: World Bank.	Provides a framework for why subsidies are sometimes needed for PPPs. The report includes case studies of PPP subsidy programs in Brazil, Colombia, Mexico, and India.
Cebotari, Aliona. 2008. "Contingent Liabilities: Issues and Practice." IMF Working Paper WP/08/245. Washington, DC: International Monetary Fund.	A seminal paper on managing contingent liabilities, including to PPP projects. Includes case studies to illustrate management challenges and practices from different countries and issues. Case studies also highlight best practices.
Kim, Jay-Hyung, Jungwook Kim, Sunghwan Shin, and Seung-yeon Lee. 2011. <i>Public-Private Partnership Infrastructure Projects: Case Studies from the Republic of Korea. Volume 1, Institutional Arrangements and Performance</i> . Manila: Asian Development Bank.	Reviews the PPP program in Korea, including case studies of BTO and BTL PPP projects.
IMF. 2014b. <i>Government Finance Statistics Manual 2014</i> . Washington, DC: International Monetary Fund.	IMF guidelines on how to report government fiscal statistics.
OECD. 2015a. <i>Recommendation of the Council for Budgetary Governance</i> . Paris: Organisation for Economic Co-operation and Development.	A tool designed to help countries increase transparency in their budget process, based on best practices.

Reference	Description
Akitoby, Bernardin, Richard Hemming, and Gerd Schwartz. 2007. "Public investment and public-private partnerships." <i>Economic Issues</i> 40, Washington, DC: International Monetary Fund.	A short booklet describing the implications of PPPs for public investment, including how PPP commitments should be managed and controlled.
ZA. 2004a. <i>Public Private Partnership Manual</i> . Pretoria: South African Government, National Treasury.	Module 4, Part 6: "Demonstrate Affordability" describes the methodology and requirements to demonstrate affordability of a PPP project.
VIC. 2016. <i>Partnership Victoria Requirements</i> . Melbourne, Australia: State of Victoria, Department of Treasury and Finance.	These PPP guidelines set out the objectives, principles, and processes for the PPP program in the State of Victoria. The guidelines highlight the need for a comprehensive test of affordability for the project before project is considered.
CO. 1998. <i>Ley 448 de 1998</i> . Bogotá: Congreso de Colombia.	Establishes the Contingent Liabilities Fund, defines where the resources will come from, states how its operative costs will be covered, and describes how it will monitor the contingent liabilities throughout the duration of the project.
PE. 2014. <i>Ley No. 30167: Ley que Modifica el Decreto Legislativo 1012</i> . Lima: Presidente de la Republica del Peru.	Sets out the entire PPP process (from appraisal to tendering and the implementing the contract), and it also defines the institutional framework for PPPs in infrastructure—this includes defining the role of the Ministry of Finance and the PPP promotion Agency Proinversion).
BR. 2004. <i>Lei No. 11.079 de 30 de dezembro de 2004</i> . Brasília: Presidência da República, Casa Civil.	Sets out the tendering process and assigns roles for the Ministry of Finance, the Ministry of Planning, and establishes the Federal PPP Management Council. The law also sets the limits of the government's financial commitments.
SP. 2004a. <i>Lei No. 11.688 de 19 de maio de 2004</i> . São Paulo: Governo do Estado de São Paulo.	Establishes how the CPP is funded, its composition, organizational structure, and its role.
SP. 2004b. <i>Decreto No. 48.867 de 10 de agosto de 2004</i> . São Paulo: Governo do Estado de São Paulo.	Defines in detail the specific duties of the CPP, including the management of the CPP fund.
KR. 2011. <i>Basic Plan for Public Private Partnerships</i> . Seoul: Korea Development Institute, PIMAC.	Sets the PPP policy, identifies the areas of PPP project development, and specifies the legal framework governing the PPP procurement process.
IFAC. 2011. "IPSAS 32 - Service Concession Arrangements: Grantor." Including amendments issued up to January 15, 2013. New York: International Federation of Accountants.	Sets out the accounting requirements for the government party to a PPP contract. Specifies when and how PPP assets and liabilities should be recognized as assets and liabilities of the government.
IFAC. Accessed March 7, 2017. "International Federation of Accountants website." Website.	Provides an overview of the IPSAS Standard 32 described above.
CL. 2016. <i>Informe de Pasivos Contingentes 2016</i> . Santiago: Gobierno de Chile, Ministerio de Hacienda, Dirección de Presupuestos.	Describes the conceptual framework for assessing contingent liabilities and the government's contingent liability exposure in the given year. This includes quantitative information (maximum value and expected cost) on government guarantees to PPPs.
EPEC. 2010. <i>Eurostat Treatment of Public-Private Partnerships: Purposes, Methodology and Recent Trends</i> . Luxembourg: European Investment Bank, European PPP Expertise Centre.	Clarifies the process for determining the impact of PPPs on government debt and deficit, for EU countries.
IMF and WB. 2016. <i>PPP Fiscal Risk Assessment Model (PFRAM)</i> . Washington, DC: International Monetary Fund and World Bank.	Evaluates the fiscal impact of PPPs and allows users to identify and assess their fiscal risks, and corresponding mitigation strategy.

## 2.5 Broader PPP Program Governance

The executive branch of government is largely responsible for implementing PPP projects. The processes and institutional responsibilities described in *Section 2.3 - PPP Processes and Institutional Responsibilities* aim to create checks and balances within the executive branch on how those decisions are made. This section describes the broader governance of the PPP program—how other entities and the general public participate in the PPP process, and hold the executive accountable for its decisions and actions.

A cornerstone of these accountability mechanisms is the timely and comprehensive **disclosure of information about PPP programs**. The entities and groups outside the executive with a role to play in ensuring good governance of the PPP program include:

- ♦ **The public**—the public can directly participate in PPP project design through consultation processes (discussed in *Section 2.5.1 - Stakeholder Communication and Engagement*), and in providing feedback on service quality. Contract disclosure and transparency of the PPP process as a whole, as discussed in *Section 2.5.2 - Disclosure of PPP Project and Program Information*, can help ensure improve project design and service performance.
- ♦ **Supreme auditing institutions**—many jurisdictions have independent audit entities, which can play a role in ensuring good governance of PPP programs. Their usefulness is more effective when they are truly independent. They may consider PPP commitments as part of their regular audit responsibilities as detailed in *Section 2.5.3 - Role of Supreme Auditing Institutions*—for example in auditing government financial statements. They may also review PPP project performance or investigate particular points of concern, or review the value for money of the program as a whole. These reviews, in turn, enable the legislature and the public to check on PPP program performance.
- ♦ **The legislature**—the legislative branch of government often defines the PPP framework, bypassing PPP legislation. In some cases, the legislature may be directly involved in the PPP process, approving PPP projects. More commonly, it exercises ex-post oversight by scrutinizing reports on the government's PPP commitments. The role of legislative bodies is outlined in *Section 2.5.4 - Role of Legislative Bodies*.
- ♦ **Independent regulators**—used in several countries to transfer regulatory responsibilities to entities protected from political

interference as described in *Section 2.5.5 - Role of Independent Regulators*.

Creating mechanisms through which the legislature, audit bodies, and the public can engage in the PPP process strengthens accountability and helps make the PPP program more participatory, transparent, and legitimate. An example of a well-established positive feedback mechanism which involves all three oversight bodies can be seen in the United Kingdom—PPP audit reports are often used in legislative hearings where all their written recordings are available to the public on the National Audit Office's website (NAO).

### 2.5.1 Stakeholder Communication and Engagement

Stakeholder engagement is an inexpensive and efficient way of creating a better operational environment for a project. The consultation process reduces risks and increases its chance of success. Most large infrastructure projects will have a wide range of stakeholders, including those that support the project, and those that oppose it. Stakeholder engagement plays two important roles throughout the project cycle:

- ♦ The information gained by consulting stakeholders confirms or reassesses whether a project will deliver value to society—consultation often improves the initial project concept.
- ♦ Governments can mitigate risk by disseminating project information, thereby learning of potential project issues, and establishing a dialogue with a range of stakeholders.

The capacity of the procurement agency to conduct stakeholder engagement is an important factor. Broad constituencies of stakeholders often need to be consulted, and agents do not always convey the opinions of beneficiaries effectively. This is a challenge in advanced economies and developing countries alike. Direct consultation is always beneficial. The timeframe during which the consultation is conducted is particularly critical.

#### Benefits of engaging stakeholders

Stakeholder engagement helps governments identify critical issues and prepare effective strategies. In particular, it can frame discussions with beneficiaries, clarify project impacts and objectives, and ultimately increase public support for a given project. In certain circumstances, creating space for dialogue and allowing

stakeholder participation in project decision-making can increase its endorsement in the national political arena and strengthen its sustainability. The process can enhance the social capital between the government and the public, generating long-term benefits for the effectiveness of policy reforms. Moreover, stakeholder engagement is one of the ten **Equator Principles** (EP 2017); a thorough consultation is a requisite to receive funds from Equator Principle Financial Institutions.

The engagement process can also give governments the opportunity to explain how a PPP differs from privatization. In modern PPPs, the government retains control over the use of the asset; it defines minimum service quality and maximum user costs. This is fundamentally different from older concessions wherein the operator acted as a local monopolist with limited accountability to the contracting agency. These factors underline the critical importance of identifying an accountable public spokesperson for any project. Before any consultations, it is good practice to appoint a project spokesperson, preferably a senior figure within government. This is critical for establishing and maintaining a regular flow of information about a project, addressing and being perceived as addressing public questions and concerns, and correcting any misinformation in the media. This spokesperson lends his or her credibility to the project throughout the project cycle.

## Identifying stakeholders

Identifying stakeholders requires thinking carefully about those who may be affected by, have a legitimate interest in, or the ability to influence the project. Identifying stakeholders too broadly may be cumbersome and open a project to risks. However, defining stakeholders too narrowly may result in potentially influential stakeholders being overlooked, and undermine local ownership and support.

The **IFC stakeholder engagement handbook** (IFC 2007, 10) defines stakeholders as “persons or groups who are directly or indirectly affected by a project, as well as those who may have interests in a project and/or the ability to influence its outcome, either positively or negatively.” This definition is broad. It demonstrates the inclusiveness needed when mapping stakeholders—but not the range of stakeholders that should be consulted in each phase of the PPP cycle. In some phases, it is crucial to include a broader set of stakeholders; in others, it should only be the core stakeholders—the users and the affected persons—that should be consulted.

The same **IFC handbook** (IFC 2007, 14-16) recommends two parallel approaches to identify stakeholders based on the project’s geospatial sphere of influence. First, identify those stakeholders that are likely to be impacted by the primary project facilities and the related facilities, such as transportation routes and areas. The analysis should focus on socio-economic and environmental consequences for those directly affected by the project, such as end-users, homeowners or specific professional categories, as well as groups that appear peripheral but perceive that they may be impacted by the project.

The second component of IFC’s parallel approach for identifying stakeholders applies to those that have interests in the project but are not affected by it geospatially. These include institutions such as political parties, trade unions, chambers of commerce, think tanks, community leaders, professional associations, or local and international civil society organizations. Analysis and mapping of motivations and influence patterns can help identify these stakeholders. Cost effective solutions, such as websites or newsletters, may provide an efficient method of establishing and maintaining communication.

It is important to note that **over the PPP life-cycle, stakeholder communication and engagement will address different categories of stakeholders**—and, as the goals will not be the same, the consultation mechanism will vary. Consider the main phases of the PPP cycle:

- ♦ **PPP program definition**—engaging citizens (as taxpayers and as potential users) during the identification phase of the government’s infrastructure program. Infrastructure programs are designed, developed, publicly presented, and tested through formal and informal feedback-collection mechanisms. The emphasis is on demonstrating the program’s ability to serve user needs—instead of simply listing projects and amounts—The process ensures that investment programs serve the public interest and reward politicians that promote them.
- ♦ **Project assessment and preparation**—engaging potential users and populations likely to be affected by the project. This engagement tests the quality of the project and provides elements for its optimization. The process is critical—the intensity of engagement with **users** and genuinely **affected persons** should be high. Extensive communication with relocated persons should be organized and publicized; and efforts to mitigate the impact on the environment should be communicated exhaustively.

- ♦ **Contract tendering**—no stakeholder consultation should take place during the tender process to avoid introducing undue pressure on the selection of the PPP operator. An **initial market consultation**, before the Call for Tender, will be highly relevant for assessing market interest and for receiving feedback that can help optimize the project, the draft contract, and the tender regulations. A competitive tender should avoid creating opportunities for collusion and force the procuring authority to deal independently with each bidder, and only with bidders.
- ♦ **Project implementation and evaluation**—requires **full proactive disclosure** of the contract, followed by periodic dissemination of information on project performance, and continuous collection of feedback from users using contractually-prescribed (or regulator-defined) communication channels.

Careful mapping to determine who is genuinely affected by the project is important to ensure the right stakeholders are consulted and to avoid legitimizing vested interests. The consultation process may attract groups of individuals to the discussion arena who are not directly or significantly affected by the project. The government's efforts to give voice to genuine stakeholders may be perceived by these individuals as an opportunity to obtain undue benefits if they are able to become actors in a process that does not concern them. In an improperly conducted engagement process, vested interests may garner too much power and derail a project.

For instance, unions representing employees of State-Owned Enterprises who see services transferred to PPP concessionaires may try to block projects that reduce their power. Engaging with them will be critical. However, it is equally important to engage directly with employees. Safeguarding the interests of workers is an essential part of project sustainability, but it should not be given priority over the public interest and the needs of users.

### Risks of disregarding stakeholders

Technocrats are often tempted to focus on technical issues and rush to finish projects. However, this approach can be dangerous—some influential stakeholders may have deeply-rooted ideological opposition to private provision of public services, and fears and suspicions of government capture and/or abuse of a local monopoly may be easily spread and difficult to diffuse.

Moreover, people may have strong apprehensions that a project will degrade their quality of life. Constituencies—including small ones—that feel threatened by a project may be powerful enough

to stop it, even when the overwhelming majority of people would benefit. Disregarding such considerations, and not building stakeholder consensus for a project, has led to many PPPs being abandoned or failing to achieve expected results.

Even if a project can be demonstrated to be economically advantageous and welfare-enhancing for society as a whole, some stakeholders may be negatively affected by it—environment and social assessments, discussed in *Section 3.2.5 - Assessing Fiscal Implications*, should identify these stakeholders and propose whether they should be compensated. Legitimate claims for compensation, for example, due to expropriation, need to be recognized and publicized in the consultation process—claims that do not lead to compensation also need to be identified and explained.

For example, a **project to develop infrastructure and local capacity and institutions at the village level in Lao PDR** (IEG 2015) did not achieve optimal results because it focused on provision of infrastructure instead of engaging stakeholders in participatory processes. Such suboptimal results could have been avoided by preparing and implementing a well thought-through strategy for stakeholder engagement.

The **World Bank working paper on strategic communications** (Calabrese 2008, 25) also provides examples of how some stakeholder opposition can arise when the project is structured as a PPP.

### Formulating a stakeholder engagement strategy

Upon completing the identification of stakeholders and the analysis of their interests, concerns, information needs, communication channels, and likely impact of the project, governments should then map key influencers to identify important entry points for their engagement and formulate context-specific strategies. These strategies need to be approached systematically; they should cover all consultation activities. The **IFC stakeholder handbook** (IFC 2007, 8) emphasizes that they require clear objectives, budget, and allocation of responsibilities.

**Calabrese's paper on strategic communications** (Calabrese 2008, 11) recommends that governments begin the formulation of their project engagement strategy by highlighting the government's national economic development and poverty reduction objectives and other relevant strategic priorities. The engagement strategy can then demonstrate how the specific objectives of the project are aligned with the overarching national policy.

Governments should customize their level of engagement with each category of stakeholders according to their relative ability to impact the project and availability of government resources to engage. Attempting to engage all identified stakeholders at the same level may lead to project delays.

The following resources provide two more in-depth methodologies for formulating stakeholder engagement strategies:

- ◆ The **European Commission guidelines on stakeholder consultation** (EC 2015, Section 6.1)
- ◆ The **IFC stakeholder engagement handbook** (IFC 2007, 34–46)

## The preliminary consultation process

In the preliminary consultation period, governments should begin by disclosing all relevant information, including identified socio-economic and environmental risks. This leads to transparency and gives an informed view of the project to stakeholders. Opinions and points of contentions can then be collected. **Calabrese's paper on strategic communications** (Calabrese 2008, 2) explains that this consultation process fleshes out the understanding of the perceptions that stakeholders hold about the project, enables governments to improve their communication efforts by directly addressing stakeholder concerns, and may provide solutions for critical project issues. It also functions as a feedback mechanism to continually improve the overall strategy. Integrating feedback into the project design has the additional benefit of demonstrating that stakeholders' input is being considered.

There is a broad consensus among policy makers and practitioners that the consultation should be as inclusive as possible. This does not necessarily mean that the level of engagement will be the same, as discussed previously, but it will ensure that all stakeholders are able to contribute their voice and thus avoid negative sentiment toward the project through feelings of exclusion.

The **European Commission guidelines on stakeholder consultation** (EC 2015) provide the following five minimum standards for conducting effective consultations:

- ◆ **Clarity**—All communication and the consultation documents should be clear, concise and include all necessary information to facilitate responses.
- ◆ **Targeting**—All relevant groups should have an opportunity to express their opinions regarding the project.

- ◆ **Publicize broadly and effectively**—Adequate awareness-raising publicity is essential; the specific consultation's communication channels should be adapted to meet the needs of all target audiences.
- ◆ **Time limits for participation in the consultation period**—Sufficient time should be provided for planning and responses to invitations and written contributions.
- ◆ **Feedback**—Receipt of contributions should be acknowledged and contributions published.

These principles provide a solid framework for conducting engagement. However, there are times when governments will need to moderate their usage. For example, in the **United Kingdom** (UK 2015b), after the authority in charge of a runway expansion at Heathrow Airport committed to responding to all comments received from the public, more than 70,000 comments were received.

An article in the **Engineers Journal** (Morrissey 2015) suggests that following the preliminary consultation, it remains important to communicate regularly around the critical milestones of the project, as well as when relevant information becomes available. This will feed the continuous feedback loop, identify concerns from stakeholders throughout the project cycle, and enhance stakeholder participation in the process. This reinforces the need for a project spokesperson to be appointed who can provide regular and timely information to stakeholders and have regular interaction with the media at key project milestones.

## Stakeholder engagement post-contract award

Once the project contract has been awarded the nature of stakeholder engagement will shift largely to managing stakeholders' expectations, maintaining relationships, and obtaining user feedback. The **IFC stakeholder engagement handbook** (IFC 2007, 135–147) presents a series of recommendations for the construction and operation phases.

For the construction phase of infrastructure projects, engagement will involve notifying those local stakeholders that will be affected by the construction. The nature of the construction, its duration, potential impacts such as noise or traffic, and information on whom they may consult regarding grievances should be provided at this stage.

Upon transitioning to the operations phase, stakeholder engagement will focus upon management of established stakeholder relationships as well as continued user feedback. This may be accomplished through retaining community liaison officers or by having an overlapping period with old and new staff, in which liaison officers with established rapport may introduce newer officers.

As operations progress, it is important to continue to review and update stakeholder information at regular intervals. Disclosure of pertinent information as well as stakeholder consultations should continue as well. This will ensure that any new issues or changes in the perception of the project may be integrated into the overall strategy. Stakeholders during this phase may shift, and, as such, the strategy may need to be adapted to include them as well.

## Role of the public

PPPs are meant to provide value to the public. Getting the right level of public involvement in the PPP process and program can enhance the legitimacy of PPP as a procurement tool, and contribute to good governance as defined in *Box 2.1 - Good Governance for PPPs*. As described above, direct public participation—by service users or other stakeholders—at various points in the PPP process can improve project design and performance. Equally important, making PPP projects and processes transparent enables PPP performance to enable informed policy debate.

User feedback mechanisms can be structured in various ways, as described further in *Section 3.6 - Managing PPP Contracts*—some projects provide a web portal for continuous user-based input, others conduct regular user surveys. A specific mechanism may also be needed for user grievances. In **Chile**, the Ministry of Public Works collects and measures user feedback statistics on their website (CL-Proyectos).

### 2.5.2 Disclosure of PPP Project and Program Information

Transparency and timely access to information are important to the principles of accountability and governance. Many governments, therefore, **proactively disclose** information about PPP projects or contractual information to the public, without receiving a specific request, making it freely accessible to anyone interested. This proactive disclosure can be achieved in various ways, for example, by:

- ♦ Sharing an online project database with key pieces of contract information
- ♦ Creating a library of PPP contracts, often with accompanying project summaries
- ♦ Publishing press releases

Proactive disclosure of project and program information is often the responsibility of a PPP unit—for instance, Chile’s PPP unit located in the Ministry of Public Works provides information on contracts, contract variations, and monthly performance reports.

In many countries, disclosure of PPP project contracts is mandatory to comply with legislation. Disclosure practices—for example, what information should be disclosed and when—are not uniform across countries. For example, Chile and Peru disclose the full contract, as does the state of Minas Gerais in Brazil. Other countries, such as the United Kingdom, redact PPP contracts before they are made available to the public, with a view to protecting commercially sensitive information—although the definition of ‘sensitive information’ is not well defined. The **Center for Global Development report on public procurement** (CGDev 2014) discusses the meaning and implications of commercial secrecy, noting how it has been used to avoid scrutiny. A British Parliament’s Public Accounts Committee report (UK 2014b) concluded that government departments should not “routinely use commercial confidentiality as a reason for withholding information about contracts with private providers.” Even in countries without mandatory proactive disclosure, responsible sector ministries or agencies may proactively disclose information about PPPs—for instance, India discloses information about road contracts.

Certain countries, such as South Africa, provide **reactive disclosure**—that is, make information available only in response to a specific request by a member of the public. Procedures for making requests are outlined in legislation. The terms of such reactive disclosure vary by country—including the cost (which may range from nominal to substantial) and the required timeframe, which may be as much as a month or more in many cases.

Disclosing PPP contracts may not be enough for the public to understand them—some additional information on the projects, and a plain-language description of the main contract provisions, is useful. For example, the **Victorian Freedom of Information Act of 1982** requires that, besides publishing all PPP contracts on Victorian Government Purchasing Board website (VIC-GPB), a project

## Box 2.11 The Delhi Water Project

In 2004, the Government of Delhi decided to reform its water sector with support from the World Bank. Delhi had access to a sufficient supply of water for its population but lacked adequate transmission and distribution systems. These deficiencies largely stemmed from political, institutional and governance issues that resulted in sub-optimal performance for the system. The project sought to increase accountability in the sector by separating the responsibilities for ownership and policy-making and provision of services while establishing a transparent mechanism between the two.

The Government of Delhi engaged stakeholders at various levels to learn their concerns and formulate an implementation mechanism. A willingness to pay survey was also conducted, which found that consumers were willing to pay more for improved service quality. This led to an increase in water tariffs for the first time in six years.

A pilot project was proposed in two of Delhi's 21 zones to be conducted under a management contract. In July 2005, before the consultation on the pilot project could be completed, a local NGO, Parivartan, made public its opposition to the project.

It made several claims about the project, including that it would lead to even higher tariffs, create inaccessibility to water for the poor, and gradually privatize the water sector. Additionally, Parivartan suggested that the World Bank was manipulating the Delhi Water Board, the entity in charge of water and sanitation services. It spread these claims widely through media and by seeking to influence important players in civil society, government, and academia.

Parivartan's claims against the project were unfounded. However, no one in either the Delhi Water Board or the Government of Delhi stepped forward to refute them. Additionally, there was already a public outcry over power privatization, adding to antipathy toward the project. Because of this unaddressed popular sentiment against the project, it was eventually suspended in November 2005 and fell into a perpetual hiatus.

Source: (Odugbemi and Jacobson 2008)

summary is published, providing information on the key project features and commercial terms of the project.

The **World Bank's 2013 report on Disclosure in PPPs** (WB 2013c) presents the above-mentioned diversity of disclosure practices. The report identifies a gradual trend towards broader disclosure, with several countries supplementing contract disclosure with project summaries presenting the main contract provisions, its origination, its procurement, and other relevant information on the project.

Additionally, a completely transparent competitive procurement process should include disclosure of the reasons behind procurement decisions. This means disclosure of which bidders presented expressions of interest, proposals for each project, which were awarded the contract and why they received it.

### 2.5.3 Role of Supreme Auditing Institutions

Supreme audit entities, such as courts of accounts and top audit offices, are an important link in the chain of accountability for

public expenditure decisions. They provide independent reviews of government finances and performance to parliaments and the public. The International Organization of Supreme Audit Institutions (INTOSAI) provides an online list of its member audit entities.

The mandate of supreme audit entities varies by jurisdiction, but often includes two types of audit:

- ♦ Regularity audits, which can include auditing the financial statements of government entities and of government as a whole, and auditing decision-making processes for compliance and probity
- ♦ Performance, or value for money audits—reviewing the government's effectiveness and efficiency

Other entities may play a similar role—for example, government procurement agencies may be responsible for checking that procurement processes have been followed, as does the Contractor General in Jamaica.

Supreme audit entities can also play a role in PPP programs. In some jurisdictions, audit entities must sign off on PPP contracts before they can be implemented. Audit entities may then need to consider PPP commitments and processes as part of regular audits

of contracting authorities and of the government as a whole. Audit entities may also conduct performance audits of PPP projects, or review the value for money of the program as a whole.

This section describes each of these elements of auditing PPP programs. Audit institutions performing these roles can help improve PPP program governance. However, to be effective in doing so—rather than simply introducing delays, or saddling PPP programs with requirements that are not appropriate for the specific needs of PPP—audit entities often need training and support. INTOSAI, supported by the World Bank and by several Courts of Audits, delivers training activities for auditors, and produced a series of manuals on PPPs, e.g. (INTOSAI 2007).

For further examples of how PPP supreme auditing works in practice, see the articles on PPP Audits in Portugal, and Hungary’s audit experience with PPPs, in the **IMF publication on Public Investment and PPPs** (Schwartz et al. 2008, Chapters 17 and 18).

## Regularity auditing for PPPs

When carrying out regularity audits of contracting authorities, audit entities may need to check that PPP commitments are appropriately reflected in accounts, and that PPP processes have been followed.

For example, the **National Treasury of South Africa’s PPP Manual** (ZA 2004a, Module 7) describes how the scope of the Auditor General’s annual regularity audits applies to PPPs. This includes:

- ♦ Checking compliance—the Auditor General is required to check that the requirements of PPP Regulations have been met, for example, that the appropriate treasury approvals were sought and granted.
- ♦ Checking financial reporting—the Auditor General must also check the financial implication of the PPP for the institution. This includes checking that information on PPPs in *notes to the financial accounts* is correct, and that commitments to PPPs have been accounted for appropriately. For more on accounting requirements for PPPs, see *Section 2.4.4 - Fiscal Accounting and Reporting for PPPs*.

According to the guidelines, the Auditor General in South Africa may also carry out forensic audits (should the regular audits raise any suspicion of fraud or corruption), or performance audits, as described further in the following section.

## Box 2.12 Audit Entity Access to PPP Company Information

While the authority of supreme audit entities vary, it typically extends only to government agencies and entities wholly or majority-owned by government. Some supreme audit entities therefore do not have the right or responsibility to audit PPP companies. Nonetheless, the private company often holds a lot of relevant information. Lack of clarity on the access of the audit entity to information held by the private party, and needed for effective auditing, has the potential to create conflict.

The Public Auditing Guidelines for PPPs issued by the Comptroller and Auditor General of India (CAG 2009) discuss this issue in Section III: *Scope and Objectives of PPP Audit*. The guidelines suggest that access rights for the CAG in carrying out PPP projects may need to be defined in the public audit statute. In the meantime, the guidelines note that the audit entity is likely only to have access to information held by the contracting authority given its contract monitoring role (CAG 2009, Section 3, 29–38). In the United Kingdom, this type of access is provided through mechanisms in the PPP contract itself.

INTOSAI has published guidelines for audit PPP projects, which note that the audit entity must be clear about its access rights to the private company associated with the PPP (INTOSAI 2007, Section 1, Guideline 1).

## Performance auditing of PPP projects

Auditing agencies may also carry out performance, or value for money audits, of particular PPP projects. **INTOSAI published guidelines for auditing PPP projects** in 2007 (INTOSAI 2007) with the aim to help audit entities carry out thorough performance audits of PPP projects, leading to recommendations for improved performance, and the spread of good practice.

**INTOSAI guidelines** recommend that the audit office review a PPP project soon after procurement and carry out further reviews over the project life cycle. The guidelines recommend that the review cover all major aspects of the deal that have a bearing on value for money. They provide guidance for reviewing how the PPP was identified, how the transaction process was managed, the tender

process adopted, how the contract was finalized, and ongoing management of the PPP contract.

Auditors and other similar bodies may review particular projects where there is concern over whether processes have been appropriately followed, or whether the project is providing value for money.

The following are examples of PPP project performance audits:

- ♦ In the State of New South Wales, Australia, the **Auditor-General audited the Cross City Tunnel through Sydney** (NSW 2006). The 2006 report included an analysis of the process in which the PPP contract was awarded, how the contracted was amended, and whether the costs of the project to citizens were justified. The project was criticized for its high tolls, lower-than-expected levels of traffic, and the lack of transparency in the amendment of the initial contract. The Auditor-General provided opinions on each of these issues based on the analysis.
- ♦ The franchises awarded for the tram and train system in the city of Melbourne ran into financial difficulties, as described in *Box 1.11 - Example of a Thinly-Capitalized PPP*. Because of the concerns this raised for the resulting value for money, the government committed to carrying out an ex-post value for money audit of the concessions and renegotiations. The report, published in 2005, focused on the effectiveness of the responsible agency, transparency of the process, proper risk allocation of the project, the development of public sector benchmarks, and adequate monitoring systems.

## Auditing the PPP program

In some countries with well-developed PPP programs, audit entities have undertaken value for money reviews of the PPP program as a whole. For example, in the UK, audit entities have compared PPPs and traditionally-procured public projects to assess whether and how PPPs provide value for money, and feed back into PPP decision-making.

In 2011, the National Audit Office published a **review of the PFI program and other large procurement projects** and provided key lessons from the UK's experience (NAO 2011). The NAO assessed various aspects of the program, including value for money, project preparation and implementation, and accountability. Based on this analysis, the NAO offered recommendations for future improvements to the PFI program. The findings were discussed in *Section 1.3.4 - Third Party Risk Mitigation and Credit Enhancement*.

## 2.5.4 Role of Legislative Bodies

The legislative branch of government—that is, the elected, law-making parliament or assembly—may engage in the PPP process in several ways. These include:

- ♦ **Defining the PPP framework**—the PPP Framework is often established in specific PPP legislation. As described in *Section 2.2 - PPP Legal Framework*, one rationale for introducing a PPP law is to enable the legislative branch of government to set rules for how PPPs will be developed and implemented, against which those responsible can be held accountable.
  - ♦ **Defining limits on PPP commitments**—as described in *Section 2.4.2 - Controlling Aggregate Exposure to PPPs*, the legislature may limit total PPP commitments, or the amount taken on in a year, or otherwise govern the risk and inter-generational equity issues that PPPs can create.
  - ♦ **Approving PPP projects**—PPP projects may require parliamentary approval, as described in *Section 2.3.3 - Institutional Responsibilities: Review and Approval*. This requirement can be limited to PPP projects above a certain size. For example, the **Hungarian PPP Act** (1992) stated the government must seek Parliament's approval before signing a contract creating multi-year payment obligations with a present value of more than \$230 million. In Guatemala, on the other hand, all PPP contracts require approval from Congress. In the United States as of 2010, nine states require some individual projects to be approved by the state legislature.
  - ♦ **Receiving and reviewing reports on the PPP program**—as described in *Section 2.4 - Public Financial Management Frameworks for PPPs*, many governments include information on the PPP program in budget documents and other financial reports. This gives Parliament the opportunity to scrutinize the government's commitments to PPPs, and hold the decision-makers responsible after the event. Parliaments may also commission and receive auditors' reports on the PPP program and processes, as described further in *Section 2.5.3 - Role of Supreme Auditing Institutions*.
- An example of a legislative review of PPP programs is described below:
- ♦ The Public Accounts and Estimate Committee in the Parliament of Victoria, Australia reviewed Partnerships Victoria, the PPP program, in the context of governance, risk allocation, ac-

countability, protecting the public interest, economic benefits and value for money, and international accounting standards for PPPs. Recommendations were then made to improve PPP policies and strengthen governance of the projects (VIC 2006).

## 2.5.5 Role of Independent Regulators

### PPPs and sector regulation

PPPs often supply essential services in monopoly (or near-monopoly) conditions, for example, in the water, electricity, gas, telecommunications, airports or highways sectors. Private providers of such public services are typically overseen by government to control tariffs and service standards—often by assigning responsibilities to an independent regulatory agency—to protect customers from possible abuse of market power. Sector regulation may also govern the terms under which providers in a sector deal with each other; entry to the sector through licensing; and control over sector investment decisions. Governments looking at options to improve performance of existing public assets and services in natural monopoly sectors may consider a PPP as an **alternative sector reform option** to privatizing and establishing a regulatory regime. While there are similarities in the processes of establishing a PPP and privatizing, and some of the guidance in this book may be applicable in both cases, the nature of the resulting relationship is distinct:

- ♦ **Regulation by contract** through a PPP. The PPP contract itself can define tariffs, tariff adjustments, and service standards to protect customers' interests as an alternative to establishing a regulatory regime. Some of the implications for PPP contract design are described further in *Section 3.3 - Structuring PPP Projects*.
- ♦ **PPP alongside sector regulation**. Some countries establish sector regulatory regimes when introducing a PPP for service provision in a sector; including, in some cases, acting as government party to the contract. In other cases, sector regulation may already be in place. In either case, the PPP agreement and sector law and regulations need to be carefully harmonized to ensure there is no conflict between the PPP contract and regulatory requirements, and to establish clear roles and responsibilities. *Section*

*2.3.2 - Institutional Responsibilities: Implementation* provides more examples of the roles of sector regulators in developing, implementing, and managing PPPs.

The Body of Knowledge on Infrastructure Regulation (PURC 2012) is an online resource that provides detailed guidance and further reading on a wide range of regulation topics. The following references also discuss regulation, including how it relates to PPPs:

- ♦ **Yong** discusses regulatory frameworks for PPPs—box 4.4 in section 4.1.3 provides an overview of the different approaches to regulation of infrastructure (Yong 2010).
- ♦ The **note on regulation of water and sanitation** (Groom et al. 2006) cover a wide range of topics in water sector regulation, including guidance on assigning regulatory functions, and the options of regulation by contract or by an independent agency.
- ♦ **Eberhard's paper on hybrid and transitional models of regulation in developing countries** (Eberhard 2007) provides an overview of different regulatory models and the advantages and potential pitfalls of each model. The paper also provides recommendations on how to improve the performance of regulatory models.

Regulation is not limited to sectors involving the provision of essential services in monopoly or near-monopoly conditions. Regulatory frameworks can also be used to overcome other market failures, such as ensuring responsible management of limited natural resources. In some cases, the processes and structures can resemble a PPP—for example, a concession for mining or petroleum exploration or exploitation, or for management of a tourism site. There can also be some muddy ground between these types of regulation, where some aspect of provision of essential services through a competitive market requires access to limited resources—such as allocation of radio spectrums for mobile telecommunications, or access to hydropower or other resources for electricity generation in the context of a competitive market.

While there are some similarities between such concessions or licensing procedures and PPPs, for the most part the contractual structures involved in such cases are distinct. The material in this *Reference Guide* is of limited relevance in such cases.

## Key References: Broader PPP Program Governance

Reference	Description
IFC. 2007. <i>Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets</i> . Washington, DC: International Finance Corporation.	Provides an eight-component description of conducting and implementing stakeholder engagement throughout the project cycle.
Morrissey, Billy. 2015. "The Importance of Stakeholder and Community Engagement in Engineering Projects." <i>Engineers Journal</i> (blog). April 21. Website.	Discusses the benefits that stakeholder engagement will bring to the planning and implementation of infrastructure projects.
Calabrese, Daniele. 2008. "Strategic Communication for Privatization, Public-Private Partnerships, and Private Participation in Infrastructure Projects." World Bank Working Paper No. 139. Washington, DC: World Bank.	Explains the design and implementation of a strategic communications program for consultation with stakeholders.
EC. 2015. <i>Better Regulation: Guidelines on Stakeholder Consultation</i> . Strasbourg: European Commission.	Provides a thorough description of how to conduct a stakeholder consultation.
WB. 2013c. <i>Disclosure of Project and Contract Information in Public-Private Partnerships</i> . Washington, DC: World Bank.	Reviews disclosure practices for PPP projects and contracts from 11 jurisdictions at the national and sub-national level, representing eight countries, and presents recommendations on proactive disclosure.
UK. 2015b. <i>Consideration of Consultation Responses</i> . Report addressing the expansion options for Heathrow and Gatwick airports. London: UK Government, Airports Commission.	Outlines the 70,000 responses received regarding the consultation for the Heathrow airport expansion.
IEG. 2015. <i>Lao People's Democratic Republic: Poverty Reduction Fund</i> . Project Performance Assessment Report. Washington, DC: World Bank Group, Independent Evaluation Group.	Describes the implementation and ultimate performance of the Poverty Reduction Fund project in Lao PDR.
Yong, H.K., ed. 2010. <i>Public-Private Partnerships Policy and Practice: A Reference Guide</i> . London: Commonwealth Secretariat.	This report provides a comprehensive review of PPP policies worldwide, including guidance to practitioners about key aspects of designing and implementing PPP policy and projects. Chapter 4.1 outlines key issues for a PPP legal framework, and principles for PPP legislation.
Groom, Eric, Jonathan Halpern, and David Ehrhardt. 2006. "Explanatory Notes on Key Topics in the Regulation of Water and Sanitation Services." Water Supply and Sanitation Sector Board Discussion Paper 6. Washington, DC: World Bank.	A series of notes covering topics related to governance of infrastructure with focus on water and sanitation. Topics include a conceptual framework for regulation, design of regulation, institutional arrangements, regulation by contract, regulating government-owned utilities, and regulation of wastewater in developing countries.
Eberhard, Anton. 2007. "Infrastructure Regulation in Developing Countries: An Exploration of Hybrid and Transitional Models." Working Paper No. 4. Washington, DC: Public-Private Infrastructure Advisory Facility.	Provides an overview of different regulatory models and the advantages and potential pitfalls of each model. The paper also provides recommendations on how to improve the performance of regulatory models.
Bakovic, Tonci, Bernard Tenenbaum, and Fiona Woolf. 2003. "Regulation by Contract: A New Way to Privatize Electricity Distribution?" World Bank Working Paper No.14. Washington, DC: World Bank.	Describes the key features of "regulation by contract"; how different countries have handled key regulatory issues through this mechanism; describes the strengths and weaknesses of different approaches, drawing on international experience.
Akitoby, Bernardin, Richard Hemming, and Gerd Schwartz. 2007. "Public investment and public-private partnerships." <i>Economic Issues</i> 40, Washington, DC: International Monetary Fund.	A collection of papers on managing the fiscal impact of PPPs, drawing from an IMF conference held in Budapest in 2007. Part Four: PPP Accounting, Reporting, and Auditing examines the role of different institutions to ensure accountability.

Reference	Description
CAG. 2009. <i>Public Private Partnerships (PPP) in Infrastructure Projects: Public Auditing Guidelines</i> . New Delhi: Comptroller and Auditor General of India.	These draft guidelines outline the regulatory framework in which the Comptroller and Auditor General of India audit PPP projects. Provides a justification for audits under the PPP law and an overview of the methodology and evaluation criteria for the audit.
INTOSAI. 2007. <i>ISSAI 5220 - Guidelines on Best Practice for the Audit of Public/Private Finance and Concessions</i> . Vienna: International Organization of Supreme Audit Institutions.	Provides guidelines on best practices for evaluating PPP projects throughout the entire life cycle.
ZA. 2004a. <i>Public Private Partnership Manual</i> . Pretoria: South African Government, National Treasury.	A comprehensive PPP manual outlining the PPP procurement process for South Africa. Provides technical guidance for value for money and affordability analysis. Module 7 provides guidelines for auditing PPP projects.
NAO. 2010b. <i>From Private Finance Units to Commercial Champions: Managing Complex Capital Investment Programmes Utilizing Private Finance - A Current Best Practice Model for Departments</i> . London: National Audit Office and HM Treasury.	A best practice model for departments engaged in PPP/PFI programs by the National Audit Office in partnership with Infrastructure UK.
NAO. 2011. <i>Lessons from PFI and other projects</i> . Report by the Comptroller and Auditor General, HC 920. London: National Audit Office.	An extensive review of the PFI program and other large infrastructure projects by the National Audit Office to evaluate value-for-money of the program and the performance of government units. The content of this report is discussed in HC 1201 (UK 2011c).
NAO. 2010a. <i>The Performance and Management of Hospital PFI Contracts</i> . Report by the Comptroller and Auditor General, HC 68. London: National Audit Office.	National Audit Office's report on the performance and management of hospital PFI contracts.
NAO. 2006. <i>A Framework for Evaluating the Implementation of Private Finance Initiative Projects: Volume 1</i> . London: National Audit Office.	This report provides a more specialized project performance matrix for PFI projects.

## 2.6 Municipal and other subnational PPPs

Subnational governments including states, provinces, and municipalities provide many essential and basic infrastructure services, especially in water and sanitation and urban transport. Some subnational governments, for instance, Australian and Brazilian states and Canadian provinces, have put solid PPP programs together—their fiscal self-sufficiency, credit ratings, and execution capabilities are not far from those of central governments. The same cannot be said about municipalities. Municipal governments are closer to the populations they serve, and therefore better able to identify projects that satisfy local needs. However, they face additional challenges and raise particular issues:

- ◆ Municipal governments often have limited project development and procurement capacity. This lack of capacity may be exacerbated by frequent changes of personnel triggered by electoral

outcomes. However, there are examples of municipalities that succeeded in building such capacity. There are other cases where central government worked with subnational governments to build capacity and provide knowledge and technical support.

- ◆ Most municipal governments do not benefit from the same credit ratings as central governments. They need to build their credit ratings gradually over time. However, in the short term, most will need central government support in the form of payment guarantees or public finance—but moral hazard concerns are leading central governments to move away from guaranteeing subnational governments fiscal decisions, as described by Canuto and Liu in the **World Bank book on subnational debt** (Canuto and Liu 2013). Moral hazard arises from subnational borrowers having an incentive not to repay their creditors, or to engage in too risky or poorly-structured projects, if they perceive that defaulting debtors could be bailed out by the central government. **Charbil and Gamper's article on coordination**

**of infrastructure investment** (Frank and Martinez-Vazquez 2015) notes that in a sample of OECD countries hardly any subnational infrastructure investment is carried out in isolation of central government—partial funding often flows from national or supra-national authorities as in many developing countries. In other developing countries, state governments can fund infrastructure on their own, but municipalities often need state government support.

- ♦ Municipal governments often do not have an efficient legal framework for procuring PPPs, reducing investors' appetite for their projects.
- ♦ Decentralization, when not accompanied by increased subnational accountability and transparency, may sometimes bolster corrupt practices, as noted by **Shah** (Frank and Martinez-Vazquez 2015). However, by bringing the decision-making process closer to the people directly affected by the project, decentralization may instead combat corruption. Often the natural geographical segmentation of construction in which local

projects are only bid upon by local contractors, as identified by the **Charbonneau Commission in Québec** (Charbonneau and Lachance 2015), creates additional challenges in setting up an effective competitive framework. It also makes it more difficult to maintain integrity in PPP procurement at the local level.

- ♦ Many cities and subnational governments have fragmented and overlapping jurisdictions. For example, some public services may be managed by the regional government whereas others are administered by the municipality. This can generate problems of coordination in policy formulation and implementation. In addition, PPPs are sometimes selected without an efficient fiscal responsibility framework in place. Clear fiscal rules allow decentralization of decision-making without jeopardizing local and national fiscal sustainability. Lack of clarity on these rules either discourages subnational governments from using PPPs or encourages free-riding with no regard to fiscal sustainability.

This section addresses these five issues one-by-one with references and examples.

### Box 2.13 Municipal Water PPPs in Benin

In 1999, Benin went through a reorganization of its public administration leading to the introduction of decentralized, financially autonomous municipalities or communes. The country's 77 municipalities own the water supply facilities and pipe networks and are responsible for the provision of water and sanitation services to their populations.

To support the Government's decentralization program and strengthen the quality of water services in small towns and rural areas, IFC, in close cooperation with the Water Sanitation Program (WSP), a multi-donor partnership administered by the World Bank, provided advisory services and technical assistance. The contribution of the WBG included advice on the structuring and implementation of a PPP pilot scheme for the delivery of improved and expanded water services to the households of three municipalities, through the participation of small domestic private operators.

The project required the private operators to design, engineer, rehabilitate, operate, and maintain systems, without increasing the price of water. This included rehabilitating equipment, extending the network, installing private water connections, and partially financing these activities. The concessions were structured with

an output/result-based subsidy payable to private operators upon verification of delivery. The subsidy ensures the profitability of the operations and creates an incentive for delivery. The output-based subsidy also permitted private operators to raise financing from local commercial banks.

From 2007 to 2014, the number of piped water systems managed by private operators in Beninese municipalities increased from one to 269, providing water services to 28 percent of the population. As of February 2015, approximately 77 private operations were functioning all over Benin. Initially, the municipalities demonstrated a dearth of technical capabilities to prepare and financially close such PPP transactions. However, their effectiveness improved gradually through a combination of institutional reforms and provision of technical assistance by the World Bank. The piped water systems performance has improved significantly, leading to approximately 32 kilometers of additional network pipes and 1,071 new household water connection pipes installed. Given the success of the pilot projects, the Government of Benin decided to scale up this approach countrywide through a World Bank lending project involving more than 180 piped water systems.

Source: (Adokpo Migan and Tremolet 2015)

Despite the challenges, PPPs are now fairly common at the state level in advanced and developing economies in countries such as Brazil, Mexico, and Australia; and at the provincial and municipal level in South Africa and Canada. Large municipalities in Brazil and China have increasingly been using PPPs. Small municipalities have also experimented with PPPs for the procurement of their infrastructure projects; in India, PPPs have been used by local executive bodies like the Gram Panchayats for the provision of urban amenities in rural areas. **The World Economic Forum report on Accelerating Infrastructure Delivery** (Maier and Jordan-Tank 2014) refers to a portfolio of €6.1 billion with more than 300 municipal projects financed by EBRD between 1994 and 2014—of this amount, 20 percent was debt or equity in privately-financed infrastructure.

### Capacity challenges at subnational level

While decentralization is theoretically a sound principle of good governance, it cannot function efficiently unless central and subnational governments develop new institutional arrangements and regulations, and build capacity. Subnational governments usually face capacity constraints of scale and governance. Traditionally, subnational governments, particularly municipalities, have been less involved in infrastructure policy and procurement than central governments. Exceptions are seen in federal countries where state/provincial governments have been responsible for infrastructure, such as **Brazil, Canada, and Australia**—examples are the Minas Gerais PPP Unit, Sao Paulo's Companhia Paulista de Parcerias, British Columbia's Partnerships BC, and Partnerships Victoria. These state/provincial units developed significant PPP knowledge and experience, even before the national PPP teams of their respective countries were established.

However, decentralization, in terms of devolution of responsibilities, seems to be spreading globally. Some countries, such as **Kenya, Turkey, and Kazakhstan** are shifting their legal regime toward decentralization; even without legislative changes, the responsibility for infrastructure procurement is increasingly transferred from central to subnational governments. Thus, a growing number of subnational governments are actively procuring PPPs. This trend increases the need for capacity building in procurement and project management.

Frank and Martinez-Vazquez, in their **book on decentralization and infrastructure** (Frank and Martinez-Vazquez 2015), insist on the need to create **intergovernmental** capacities for public in-

vestment—institutional capacities, whether in financial management, human resources or procurement, can benefit from shared approaches which go beyond individual levels of government, particularly in the design of procurement systems, monitoring arrangements, and ex-post reviews. Training provided by commercial and academic entities may be complemented by the **APMG Certification Program** sponsored by MDBs (APMG 2016). *Box 2.7 - PPP Training* describes several Massive Open Online Courses (MOOCs) developed by the World Bank and the Inter-American Development Bank, which may also be helpful.

Knowledge interchange inside a national or multi-national practitioners' network has been used, not only by national governments, but also by subnational governments. **Rede PPP** (Rede PPP 2017), a network created to promote PPP collaboration in Brazil, has fostered cooperation between states and municipalities. **EPEC, the European PPP Expertise Centre** (EPEC)—based in Luxembourg and funded by the European Investment Bank and EBRD's Infrastructure Project Preparation Facility (IPPF)—has many subnational governments among its members and beneficiaries, and several of them participated in secondment programs at EPEC, allowing staff members to spend time at EPEC, working with other European governments. In line with the National PPP Capacity Building program for civil servants organized by the Government of India, PPP cells have been created within various state governments—those PPP cells offer assistance to line departments in the development of projects through PPP arrangements.

For complex projects, capacity constraints may induce subnational governments to hire private companies to manage complex project preparation and implementation—they can provide expert advice in the elaboration of PPP contracts, joint ventures, management contracts, or operations and maintenance (O&M) contracts. However, procuring private investment will still require capacity building within the subnational government for managing external consultants and advisors during project preparation and tendering, and for contract management.

### Subnational creditworthiness and access to finance

The financial challenges of subnational governments are discussed in an **Inter-American Development Bank concept note on financing sustainable urban infrastructure** (UN-Habitat/IDB 2016). The note highlights the link between municipal PPP opportunities and cities' creditworthiness. Creditworthy local govern-

ments can generally attract private sector investment; those that are not creditworthy will require central government guarantees for their financial commitments. Sound financial management is often critical to the creditworthiness of subnational entities. Failure on the side of central governments to honor commitments towards subnational entities jeopardizes chances of attracting quality investors for subnational PPP projects.

Multilateral organizations provide technical assistance programs to strengthen the capacity of local governments to design and plan infrastructure projects, including PPPs. For example, **PPIAF's subnational technical assistance (SNTA) program** (PPIAF-Work) helps subnational entities improve their investment planning and project preparation skills, strengthen their financial management practices and processes, ensure fiscal responsibility, and ultimately improve their creditworthiness.

Creditworthiness depends on a credible, capital investment program. Investment programs provide a framework for PPPs to be identified, prioritized, and eventually approved and budgeted. A **World Bank toolkit on city creditworthiness** (WB 2017a) can be used to assess cities' preparedness for commercial-based transactions, allowing users to: (1) get a quick sense of their city's overall financial performance without burdening them with complicated studies; (2) verify their city's commitment to various financing schemes; (3) get a quick sense of its portfolio and pipeline of projects, including financing needs; (4) agree on action-plans that can help identify and prepare projects. A **World Bank book on subnational finances** (Canuto and Liu 2013) discusses fiscal incentives and insolvency risk in municipal and state governments, analyzing cases and experiences in many subnational governments.

### Legislative and regulatory framework

The absence of a clear and efficient legislative and regulatory framework, including a procurement code and fiscal management guidelines, may restrict the ability of subnational governments to implement PPPs and create uncertainty for private investors. Several countries have taken some initiatives to share information on good practices across subnational entities. Other countries have endowed each state with their own PPP legislation—such as **Brazil, India, Australia, and Mexico**. In other instances, procurement at the municipal level is governed by national legislation. And in some countries, the central government provides uniform regulations for all government institutions—hence, in **South Africa**, the government provides one PPP manual for national and provincial institu-

tions and a separate manual for municipalities. This is also true in almost all EBRD countries.

**Brazil** introduced hard-budget constraint legislation—the Fiscal Responsibility Law—in 2000. This law applies to all levels of government, and is reinforced by the PPP Law, which puts a cap on the volume of PPPs that each level (federal, state, municipal) can procure based on its expected revenue. **Frank and Martinez-Vazquez's book on decentralization and infrastructure** (Frank and Martinez-Vazquez 2015) highlights that national governments often pay insufficient attention to developing appropriate local authority procurement systems and capacity. Standard legal provisions and guidelines often reproduce the central procurement standards at the local level. For example, thresholds for project approval at the national level will apply at the local level.

### Transparency and governance

Maintaining transparency and good governance may be challenging in subnational PPPs, particularly when the stricter oversight of central governments is removed. As the responsibility of subnational governments for resource allocation and service provision increases, so does the importance of commitment, coordination, transparency, and accountability. This is highlighted by the **International Budget Partnership** (Lawson and Alvarez 2013)—its pilot studies report a wide range of fiscal transparency levels, with many subnational governments exhibiting significant weaknesses. Where subnational governments are subject to strict balanced-budget rules, borrowing constraints, or restrictions on their power to increase spending or taxes, lack of fiscal transparency rules may invite decision-makers to opt for PPPs as a way to bypass fiscal rules. A report by the **Canadian Council for PPPs** (CCPPP 2011) provides guidelines for municipalities in this regard, including a critical path and a discussion on the specific challenges that may arise when implementing PPPs, depending on whether the municipality is large or small.

### National central support to subnational governments

The **IADB report on Financing the New Urban Agenda** (UN-Habitat/IDB 2016) describes the experience of a Guatemalan municipality requiring central government support to upgrade its waste management facilities. In some countries with established PPP frameworks (e.g. South Africa and France), a major part of the activity of the central PPP Unit relates to supporting PPPs pro-

cured by subnational governments. In others (e.g. Brazil and Australia), several state governments already have more PPP experience than the central government. Often, the central PPP Unit acts as a knowledge center, leading the PPP processes at the central government level and helping subnational governments. **South Africa's National Treasury** provides guidance and training for municipalities; **Croatia** and **Tanzania** conducted municipal-level PPP training; **Colombia's Planning Department (DNP)** helps provinces

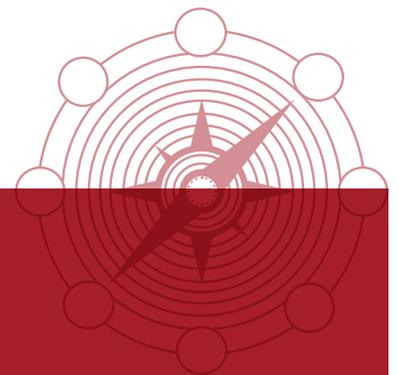
and municipalities assess PPPs; **Peru's Proinversion** is mandate to assist structure projects at the subnational level; and **Canada's** central government provides funding support to provincial and municipal PPP projects. Central public sector institutions provide other forms of support: The **Indonesia Infrastructure Guarantee Fund (IIGF)** supports subnational PPPs and **Brazil's** BNDES and **Mexico's** Fonadin help subnational government structure and finance projects.

### Key References: Municipal and other subnational PPPs

Reference	Description
FCM. 2008. <i>Innovative Mechanisms for Fiscal Transfers to Municipalities: The Canadian Experience in Municipal Financing</i> . Federation of Canadian Municipalities, Ottawa, Canada.	Highlights some of the innovative mechanisms used to transfer funds from the Canadian federal and provincial/territorial governments to Canadian municipalities.
UN-Habitat/IDB. 2016. <i>Financing the New Urban Agenda: The Challenges of Financing Sustainable Urban Infrastructure Concept Note</i> . Draft for Discussion Purposes. Washington, DC: United Nations Human Settlements Programme and Inter-American Development Bank.	Concept note was prepared with UN Habitat on the challenges of financing infrastructure projects in Latin America and the Caribbean.
PPPIRC. 2016. "India: State Sub-National PPP Policies." Public-Private Partnership in Infrastructure Resource Center. Website.	Presents subnational PPP policies for select Indian states.
PIAPPEM. Accessed March 6, 2017. "Leyes y Reglamentos." Programa para el Impulso de Asociaciones Público-Privadas en Estados Mexicanos. Website.	Highlights some of the subnational PPP policies for Mexico.
ZA. 2004a. <i>Public Private Partnership Manual</i> . Pretoria: South African Government, National Treasury.	Provides PPP policies for South Africa at the national and subnational levels.
Rede PPP. Accessed March 6, 2017. "Rede Intergovernamental PPP." Brazil: Rede Parceria Público-Privada. Website.	Provides an overview of Rede PPP, the Brazilian network of PPP practitioners.
CCPPP. 2011. <i>Public-Private Partnerships: A Guide for Municipalities</i> . Toronto: Canadian Council for Public-Private Partnerships	Presents some of the issues important or unique to municipal governments.
PPIAF-Work. Accessed March 9, 2017. "Our Work." Public-Private Infrastructure Advisory Facility. Website.	Highlights the objectives of the SNTA program, as well as the type of activities supported by PPIAF.
WB. 2017a. "City Creditworthiness Self-Assessment & Planning Toolkit." World Bank. Website.	This toolkit helps municipal-level units/ cities identify where they stand vis-à-vis investment grade, and undertake a self-assessment to help develop an action plan.
Canuto, Otaviano, and Lili Liu, eds. 2013. <i>Until debt do us part: Subnational debt, insolvency, and markets</i> . Washington, DC: World Bank.	Addresses guidance on fiscal solidarity.

## Key References: PPP Framework

Reference	Description
UNECE. 2008. <i>Guidebook on Promoting Good Governance in Public-Private Partnerships</i> . Geneva: United Nations Economic Commission for Europe.	This guide for policymakers provides detailed instructions on how to improve governance for PPP programs. The guide also gives insight into what the key challenges are and possible frameworks for solutions.
Irwin, Timothy C., and Tanya Mokdad. 2010. <i>Managing Contingent Liabilities in Public-Private Partnerships: Practice in Australia, Chile, and South Africa</i> . Washington, DC: World Bank.	Describes the approach in the State of Victoria, Australia, Chile, and South Africa, to approvals analysis, and reporting of contingent liabilities (and other fiscal obligations) under PPP projects, and draws lessons for other countries.
Farquharson, Edward, Clemencia Torres de Mästle, E. R. Yescombe, and Javier Encinas. 2011. <i>How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets</i> . Washington, DC: World Bank.	This guide for public sector practitioners describes how to develop and implement a PPP successfully by developing a marketable project and attracting the right private partners. Section 3 focuses on setting the PPP framework.
Yong, H.K., ed. 2010. <i>Public-Private Partnerships Policy and Practice: A Reference Guide</i> . London: Commonwealth Secretariat.	This report provides a comprehensive review of PPP policies worldwide, including guidance to practitioners about key aspects of designing and implementing PPP policy and projects. Chapter 4 provides guidelines for public sector appraisal of PPP projects.
EIU. 2014b. <i>Evaluating the Environment for Public-Private Partnerships in Latin America and the Caribbean: The 2014 Infrascope</i> . London: Economist Intelligence Unit.	This publication, Infrascope, sets out an index for assessing countries' readiness to carry out sustainable PPPs, and uses the index to evaluate the PPP environment in 19 countries in the region. See also the versions for Asia-Pacific, for Africa, and for Eastern Europe and CIS, based on similar methodologies.



## Did you know....?

### The first lines of the Paris Metro were PPPs

In 1898, Paris' city government appointed a Belgian entrepreneur, Édouard Empain, as concessionaire for the metropolitan railway concession. He established the Compagnie du Métropolitain Parisien (CMP), which built a power station and the rail superstructure within the tunnels (the tunnels had been built by the city), purchased electrical trains, and operated them from 1900 to 1947. In addition to defining performance requirements and level of user fees, the PPP contract provided social protection for CMP workers—including a pension plan, annual leave, paid sick days, and free medical care. In 1904, a second concession was established with Berlier, a company that constructed and operated a North-South metro line for 30 years.

Source: Xavier Bezançon, *2000 Ans d'Histoire du Partenariat Public-Privé (Paris: Presses de l'École Nationale des Ponts et Chaussées, 2004)*