

Main steps of a national PPP program

The launch of a national PPP program is a major policy initiative, whether it is for a single stand-alone project or a pipeline of potential PPP projects.

The main steps indicated in this section draw from initiatives applied in United Kingdom, the Netherlands, Ireland, Italy in Europe and Japan and the Republic of South Africa, Indonesia, India and other case studies shown in this Toolkit. These countries reflect, and have applied, a strategic and structured approach to the introduction of PPPs as a new and significant policy initiative.

What distinguishes the approach taken in these countries is their intention to adopt PPPs as a new way for delivering infrastructure and related services across a range of infrastructure sectors. Thus, a common approach is sought which can embrace for example road and rail transport projects and water supply and wastewater management. In some countries it has also embraced social infrastructure including the provision of school and hospital establishments and even prisons.

Further details on the steps to launch a national PPP program are provided in:



Draft Guidelines for Private Public Partnerships for Infrastructure Development. UN/ECE Forum on Public-Private Partnerships for Infrastructure: the Next Steps (PPPs). 2000.

Although the scale of application could be much smaller in low and middle-income countries, the same main steps still apply; the difference in approach would be in the level and scope of application of each step.

Three key steps are identified:

- **Step 1:** Establish a PPP taskforce
- **Step 2:** Develop and articulate a PPP policy framework
- **Step 3:** Identify initial projects

Step 1: Establish a PPP taskforce

PPPs represent a policy at the heart of government, requiring the need for a Taskforce. Module 3 -> PPP Policy Framework -> Institutional Framework and Reform -> PPP Units and the Role of the Highways Agency describes the role and establishment of PPP units.

For an administration to embark successfully on a program of highway PPPs, this program must be regarded as a very significant policy initiative requiring the clear support of politicians and the most senior officials at the heart of government. This implies the serious involvement of the Prime Minister’s Office, the Finance Ministry and the Ministry

responsible for Transport and/or Public Works and Local Government matters and any other Ministry which may be considering PPP projects.

To identify and co-ordinate the steps required to articulate the new policy and to put that policy into effect, it is necessary to create an expert Taskforce. Such taskforces are normally attached to the Finance Ministry, report to ministerial level and have high level access throughout the Administration.

To exercise the credibility and expertise required, the Taskforce needs to include experts across a range of disciplines (finance, law, civil engineering, planning and public policy) and for such experts to represent a mixture of Public and Private Sector experience. Critically, members of the Taskforce must be committed intellectually to the policy and have the presence and maturity to convince others. Support from an IFI can be invaluable at this stage to help guide the process and avoid mistakes made in other countries.

The work of the Taskforce will fall broadly into two activities, a division that is sometimes reflected in the organization of the Taskforce itself:

Development and articulation of PPP policy such that it is consistent with other policies within the Administration's overall policy framework. The policy will include descriptions of the legal, regulatory, risk, financial, PPP process and other component parts of an enabling environment. A PPP policy may need to be targeted at different audiences e.g. the general public, investors and as an internal government document and this should be kept in mind.

Helping to identify suitable initial (pilot) projects for subsequent project preparation, developing guidelines for partnerships including project cycle, draft model contracts and procurement methodology as well as the dissemination of PPP expertise.

Step 2: Develop and articulate a PPP policy framework

The development and articulation of a PPP policy framework should be consistent with other policies within the Administration's policy framework.

The Toolkit provides detailed guidance on legal and regulatory framework assessment (Module 4 -> Legislation -> Framework Assessment) and on establishment of a PPP policy framework (Module 3 -> PPP Policy Framework).

The policy framework will provide statements describing the government's approach and commitment under a number of headings. The policy document need not be lengthy and government may not have already worked out in detail all solutions. It must however, cover and explain clearly all the key points of their PPP program and provide/instill sufficient confidence in investors that they will continue to develop their initial interest further.

The introduction of a PPP program may invoke examination of an array of policy considerations ranging from the constitutional to the legal, economic and social. One such key question, which in ways is also a political issue, is whether constitutionally an Administration can enter a long-term agreement which can survive its term in office. It will be of paramount importance to any prospective partner that the obligations of

the Public Sector under the contract will be respected by subsequent governments and that the Courts will uphold the contractual rights reserved to Private Sector Partner throughout the life of the contract.

Other constitutional questions that are likely to be raised will focus on the powers of an Administration to delegate the responsibility to carry out certain public service functions and/or the powers to allow formal or economic ownership of infrastructure and public service to pass into private hands. The introduction of a PPP may require the clarification if not change in the constitutional and legal position.

To clear the pathway for PPPs, other specific changes in the Law may be desirable or indeed imperative. Such changes may involve the introduction of a general concession law, amendments to procurement and tax laws. In relation to the first, experience has proven that it is better for a new law to express principles and introduce a general framework. At the early stages of a PPP initiative, it is normally counterproductive to attempt to enshrine in law a model contract.

PPP's may also require certain structural reforms in government which will require legislation. This can be the case where a public service is to be conducted by a Private Sector company where previously the service has been provided by a self-regulating State Body. It will then be necessary to create or appoint a Public Sector Agency to be responsible for policing the contract and protecting the consumer, public health, and environmental interests.

Beyond the need for formal legal clarification, the new PPP policy must be articulated in such a way that it is consistent with other economic and social objectives. Such objectives may include for instance regional development, the protection of employment and conditions of employment and the encouragement of small and medium-sized enterprises. A program of PPP's is most likely to involve the following two consequences:

- the redeployment of public sector workers into the private sector and
- a significant if not leading role for foreign operating and financing companies in the delivery of public services.

The Prime Minister's office and other Ministries must be prepared to cope with the political fall-out from these changes both within the body of the public employees and the wider electorate.

Moreover, the PPP policy framework may recommend the establishment of a PPP unit (Module 3 -> PPP Policy Framework -> Institutional Framework and Reform -> PPP Units and the Role of the Highways Agency).

Specialized PPP Units are generally created in response to weaknesses in the existing government's ability to manage a PPP program effectively. Governments in different countries will suffer from different institutional failures in PPP procurement. PPP Units therefore need different designs in different countries, so they can address the specific government weaknesses concerned. In other words, the medicine must fit the disease.



Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure, EASSD, World Bank, PPIAF, 2007

A question that must be addressed under the financial framework is whether the PPP projects that are to be promoted will depend entirely on the users for the payment stream or whether the Administration or one of its dependent agencies will be partly or totally responsible for the payments. Payments to concessionaires can only come from users, from government or from a combination of these two sources. Policy will therefore normally reflect a desire by government to either have self-sustaining projects and/or minimize government contributions.

From these considerations flow two crucial issues:

- If projects are not financially sustainable or they concern services which conventionally have not been paid or fully paid for by the user, is the Administration prepared to introduce legislation to permit government support?
- If so, is there commitment to enforce the collection of such user charges and, where some categories of citizen are to be exempt from charges, is the Administration prepared to introduce for instance a voucher or viability gap scheme, with the cost of the resulting subsidies being paid for by the Administration?

If it is determined that projects will be promoted which will be partly or fully funded by the Public Sector, the implications for Public Finance budgeting and accounting must be fully weighed and a methodology developed by which annual amounts are allocated from the national budget to the relevant Ministries.

From the Finance Ministry's perspective, a decision must be taken on how to handle future PPP financial obligations and also how they should be reflected in the National Accounts, either on or off budget (Module 2 -> Public Accounting).

Step 3: Identify initial projects

As important as the Taskforce's role in establishing a PPP policy within the overall constitutional and political context is the selection and delivery of the initial projects. There are examples of PPP policy being called into question not because it was flawed as a policy but in practice because inappropriate projects were chosen for PPP procurement.

Module 5 shows a development path for the development of PPP programs including the identification, prioritization and selection of PPP projects.

However, experience has demonstrated certain rules of thumb for initially selecting a few appropriate PPP projects. These are particularly important for the initial PPP projects where public and political sensitivity may be greatest and where a failure, or at least a perceived failure, may compromise the continuation of the program. The following are some of the more significant criteria:

- The project must be one for which there is plainly a social and economic need and the delivery of which is recognized as important to most political opinions. However, it is best to avoid grandiose politically sponsored schemes as they rarely meet other criteria.

- The project(s) should have only moderate risks, be reasonably well-developed (e.g. have an economic or preliminary study) and be ready in the sense of not having too many constraints to be overcome such as obvious and severe socio-environmental issues.
- The project should be one that involves known and tested technologies and for which there is a market place of potential suppliers with whom to enter partnership (ie not too complex and risky and technologically wise).
- The project should be one that is on the main priority list (e.g. the 5 year development program) of the sponsoring Ministry or Agency (there has been a tendency for sceptical Ministries to offer up their lower priority schemes for PPP procurement).
- Financially, the best projects are those that need little or no government financial support. However if support is needed, the project payment stream must be clearly affordable by the sponsoring Ministry or Agency (and/or supported by Ministry of Finance issued guarantees);
- The project should be of a sufficient size to interest international financiers and concession companies.

Ideally, the initial pilot schemes should represent a range across the key public service sectors and be representative of likely future schemes. From the Public Sector's point of view, it is very important from the outset to be aiming to develop methods and methodologies, which will be replicable.

Once one or more pilot project(s) is/are selected, the Central Taskforce should be closely involved in the process by which a Private Sector Partner is chosen. However, the lead responsibility for the Partner selection process should always be with the project's sponsoring Ministry or Agency.

The selection/procurement process should demonstrate certain characteristics if it is to be effective. It must be fair and transparent, it must conform with best international practice in competitive public procurement and it must arrive at a result whereby the Public Sector opts for the partner offering the best long-term value by way of quality, security of provision and cost. However, as well as the process being one that leads to the selection of the best value bid, it must deliver a result which is demonstrably good value to the public sector.

Developing an effective method and methodology for procurement and applying such during the procurement projects must go hand in hand with a well focused program whereby both Public Sector officials and the national construction and service supply companies are led to understand and appreciate the detail and merits of the process. Effective means transparent and competitive procurement thus encouraging many and strong companies to prequalify and bid so that the government gets a good deal from a reliable partner.

The PPP Taskforce should provide guidance and expertise for the PPP program through the establishment of PPP policy framework and initial project preparation and tendering. In doing so, they become not a pure center of expertise but that they take a very active role in teaching and promoting the PPP message and become adept at countering the

intellectual and emotional objections that the initiative inevitably engenders. The Task Force, as mentioned above, can pave the way for a PPP unit (or units) within different government agencies e.g. Public Works/Highway Agency and Finance.

More details of project preparation may be obtained from:



Launching Public Private Partnerships for Highways in Transition Economies, Cesar Queiroz.
World Bank, 2005