

PPP Units and the role of the Highway Agency

The overall objective is to develop and implement policy and regulatory reforms, and to build the institutional and social foundations, needed to enable, promote and facilitate efficient and sustainable large-scale private investment in infrastructure.

The expansion of Public Private Partnerships (PPP) is viewed as essential to develop sufficient infrastructure to maintain and expand economic growth. Expanded growth means more employment, more inward investment in other areas of the economy (other than infrastructure) and the continued promotion of exports which the macro economy urgently needs. Better and safer infrastructure under PPP also serves an important socio-economic function by helping to expand services to the whole population.

Reform programs overall address the legal and regulatory constraints to this expansion at both cross-sectoral and sector levels.

PPP Units-Centralized and Sector related

Institutions form an equally important element in developing an effective PPP framework. Regulatory reforms need institutions for their implementation, hence the relevance of a PPP central unit and the need for related sector PPP Cells in the line ministries. The inter-connection of these units is important.

The basic premises underlying recent developments are described below.

The central unit is usually an integral part of a planning ministry, although it might be located in a ministry of finance. PPP implementation is normally decentralized to respective sector agencies with the consequent need for PPP Cells in either line ministries/specialist agencies or both.

The tasks of a Central PPP Unit include:

- Coordinate with ministries of finance, planning ministries, line ministries and PPP cells on PPP matters
- Assist in the evaluation and coordination of PPP projects
- Coordination with the PPP Cells in line ministries and local government and/or government institutions responsible for the preparation, implementation and monitoring of PPP Transactions
- Evaluate project preparedness to assure project feasibility/ bankability and risk management
- Identify cross sectoral problems and solutions
- Prioritize priority of infrastructure projects under PPP
- Review the output of PPP Cells to verify consistency with prevailing strategies and procedures

- Prepare briefing notes on the feasibility of Government support.
- PPP Policy and Development
- Institutional Capacity Building for PPP, including to PPP Cells, local government and other government institutions responsible for PPP
- Prepare Database and information on PPP projects
- Collect, process and disseminate information relevant to PPP

The PPP Central Unit usually has the authority to:

- Access data and information, as necessary, from parties related to a proposed PPP, and
- Propose the priority of PPP projects
- Prioritize and Recommend projects for government support

Regulations should reflect all or most of these activities.

The PPP units can also develop Policy and Institutional capacity relating to their sectors and specific PPP projects

PPP Cells or Units

PPP Cells are part of a national PPP network under consideration, and may well be planned as part of wide ranging or specific technical assistance.

PPP Cells should be considered for establishment in the sector ministries/agencies overseeing the implementation of PPP projects. Regional PPP units, to assist PPP implementation at the local government level, should also be considered.

The network is expected, at least, to maintain and update information on PPP policies, regulations and procedures, disseminate such information and promote the private provision of infrastructure, including current and potential PPP opportunities.

The mechanisms for coordination necessary to enhance the network's effectiveness also need to be defined. This must be borne in mind when considering PPP units.

The PPP Cell will then serve as a repository of expertise and skills within the ministry and will continue to facilitate PPP projects after any TA is completed. However, other consultants may be recruited to facilitate the implementation work of the PPP Cell.

Building an institutional capacity is always considered to be of paramount importance.

PPP Cells are planned within the proposed national institutional PPP framework. Therefore, linkages, functions, responsibilities and authority of each part of the PPP system should be clarified at the outset.

The Regulatory Function, the Regulator and the PPP Cell

Institutional reform and improvement of the regulatory framework are key components of any PPP programs. It is useful therefore to provide the context for the PPP Cell and the institutional reforms.

The most significant difference between the PPP Cell and the Regulator is that the PPP Cell's most important functions are pre transaction and the regulator's are post transaction. However, the PPP Cell will also be involved in the entire PPP cycle including contract management.

The PPP Cell, while having to be aware of what would generate private sector interest in PPP projects, is largely a facilitator, a monitor and an internal ministry adviser. The regulator by contrast is an external body which has several functions including;

- Advising on the tariffs/tariff adjustments for PPP projects
- Creating a competitive environment in monopoly/semi monopoly situations
- Advising on regulatory reforms to improve PPP

In terms of the PPP Cell and the Regulator, the PPP Cell is part of government and relates especially to the line ministry and the Contracting agencies. The ideal regulatory body is independent but is likely to have some ad hoc interaction with the PPP Cell. The PPP Cell may also have some interaction with the operators of PPP projects. (See section on Regulation)

PPP Cells within National Highway Authorities

Due to the need for specialist inputs at an early stage in project development, PPP Cells should be considered for highway agencies.

The fundamental objective of a PPP Cell is to facilitate the development of infrastructure through the mechanism of Public Private Partnerships, thereby increasing both the quantity and quality of public services.

Purpose

The fundamental purpose of having a PPP Cell is to provide a repository of information and skills which will facilitate Public Private Partnerships by:

having an in-house capability within the authority and/or ministry to help plan, mobilize, structure and implement PPP projects according to national laws and regulations. In particular the PPP Cell would be involved in assisting the contracting agency in project identification and preparation, including due diligence related to the required Pre or Full feasibility studies and in structuring and preparation of bid packages including draft contract documents;

- to provide a "one-stop-shopping" entity that potential private sector investors and operators can deal with in pursuing PPP opportunities.
- To coordinate with the PPP Centre and thus to cross-sectoral policies, regulations, risk management and fiscal support (if any) under a Risk Management Unit in a MOF.

Tasks and Functions

The tasks and functions of a PPP Cell include the following;

- An organization with appropriate mix of skills with a culture to reflect the change in the line ministry's role as provider of infrastructure to enabler of PPP projects
- Sector policies, regulations and procedures to enable and facilitate PPP in infrastructure
- Reliable and up to date information on PPP practices, policies, regulations and project opportunities.

Scope of the PPP Cell

Internationally, PPP Cells vary in scope, and range from those which function as centers of PPP knowledge and skills to those that provide a full range of project, transaction, analysis, monitoring and implementation support.

The extent to which a PPP Cell can provide services in support of increased PSP and PPP for improved service delivery depends both on the structured requirements of PPP within the line ministry but ultimately its budget and resources.

A PPP Cell budget normally includes funds or access to funds for international and national expert advisors who will transfer skills to local counterparts through on-the-job training. There is usually also a budget for formal training, and site visits or study tours, for local counterparts. Substantial capacity building is usually required.

As the number of PPP projects and transactions increase, the PPP Cell can develop into a fully functioning, semi independent, unit. It is then common practice to develop the PPP Cell into a PPP Unit that has a budget for contracting analytical work to outside consultants and may even have its own revenue generating sources. Indeed it could be envisaged that some sub sectors with expanding PPP programs might start with an external liaison function.

Development of PPP cells has to be undertaken within the overall principles, frameworks and procedures for PPP within a country. In some countries, the major responsibility for PPP project selection, evaluation and implementation will be with the 'contracting agencies' (CAs). However, strong support and guidance will be needed with all the connections which will form part of the PPP 'network'.

The scope of work of the Cell will, in particular, be to provide or undertake the following functions;

- Guidance and Support for PPP Development
 - Act as the focal point for all matters (including legislative, policy, regulation, structural, implementation and coordination) relating to undertaking PPPs
 - Information and Assistance within its ministry on transport specific projects
 - Help analyze sector needs and the contribution of PPP to those needs
 - Any other supporting role for PPP development
 - Public Consultation
- Oversight:

- Related to procedures and regulations for PPP implementation including due diligence and including risk management
- Compliance monitoring
- Scheduling and coordinating procurement of private sector partner(s)
- Assistance with contract management (monitoring)
- Coordination:
 - Coordination with Contracting Agencies (CAs) and other agencies related to project planning and development processes through to financial closure
 - Coordination of the provision of information to public and private parties
 - Project Monitoring System to keep track of projects being undertaken in the sector/sub-sector
 - Disseminate (via website, periodicals, seminars, workshops etc.) relevant issues (such as plans, progress, project pipeline etc.) to stakeholder

In particular the PPP Cell can be designed to;

- Supervise and monitor the implementation of PPP consistent with policies, regulations and laws
- Coordinate with the PPP central units for cross and inter-sectoral issues including but not limited to;
 - Accessing to technical assistance available
 - Accessing best practice available
 - Accessing funding for hiring Transaction Advisory Teams via the proposed Project Development Facility
 - Ensuring quality control and consistency during project development
 - Accessing Ministry of Finance for subsidy and guarantee (if required)
 - Assisting in developing Guideline and Standardization documents
 - Monitoring and developing status reports
 - Linking up to any proposed 'PPP Intranet'
 - Assist in the preparation and implementation of bankable proposals
- Prepare Operating Procedures and Guidelines for PPP Cell operations and when agreed implement same.
- Assist in the evaluation of PPP projects and especially assist the contracting agencies in preparing Information Memos and pre- and/or full Feasibility Studies
- Provide assistance in negotiations
- Respond To Requests For Assistance In Developing Project Portfolios
- Support Requests for Assistance in Screening and ranking viable Projects
- Advise on Prequalification, Tender Documents, RFPs and on the Evaluation of Bids to ensure compliance with law and international best practice
- Review Draft Negotiated Contracts
- Assess the existing Legal and Regulatory Framework and Propose New or Modify existing Laws and Decrees to Enhance PPP Implementation
- Help strengthen the legal capacity of various levels of the line ministry to enter into PPP arrangements with the private sector.
- Assist with drafting future legislation for PPPs
- Develop Minimum Standards and Regulations Governing Contracts

- Collect and disseminate information on PPP through website, seminars, socialization, etc.
- Provide training

Setting up PPP Cells

While it may seem that there may be a number of options for the institutional framework for PPP Cells, realistic options may be few. In consideration of its potential importance to the national economy, a permanent PPP Cell is obviously essential. Consultation and discussion within government is clearly needed on the institutional framework for setting up new bodies.

Staffing

Staffing of the Cell must relate to its foreseen functions based on a timeline of proposed activities. Staffing should be limited to a small number of well qualified personnel with sub-sector specialists;

- Head of Unit: Experienced financial specialist or PSP economist with experience of infrastructure development
- Procurement specialist/legal
- Regulatory Expert
- Economist
- Financial analyst
- Sub sector Specialists-Technical
- Trainer
- Consultation/public relations specialist

Recent International Experience of PPP Units Incl. Decentralized Units

PPIAF undertook this study to assess if PPP units have contributed to the development of PPPs and if so under what conditions. The study concluded that;

- Units with executive powers tend to be more effective than those that are purely advisory
- Ineffective governments tend to have ineffective PPP units
- Without high level political support, PPP units will fail
- The appropriate location of the unit, according to its purpose and function, within the government system is critical to its success.
- In parliamentary systems, effective PPP units tend to be attached to Ministries of Finance as among others it coordinates government policies and expenditure. In a non parliamentary system a PPP unit may do better attached to a powerful coordinating agency

- Where there are failures that the Unit tries to address (a common role) a clear focus on the role of the unit is needed if it is to succeed.

The discussion on whether establishing PPP units is merely a trend or whether benefits can be achieved through their institutional development. PPP advisors are now suggesting that the development of a PPP unit may not offer a universal solution.

As with other comments in this Toolkit, there is not one single ‘best practice’. There are instead lessons from other countries to be avoided, combined with experience as with PPP units, as to what has worked well in some countries.

Establishing PPP units takes time and many countries go through studies on whether and how to establish PPP units. The studies once decided upon may be relatively short and may be included within longer term technical assistance.

However, planning and obtaining technical assistance may take several years and then implementation requires a further period. This is not to indicate that PPP units are not worthwhile. If any country is going to develop a serious PPP program it may need a number of PPP cells at sector and cross sector level. But their development should not hold back ongoing PPP projects and indeed experience with ad hoc projects can be extremely helpful, not least in that ongoing projects build capacity through ‘doing’.

A further practical issue is that although advisors may help start up PPP units, they will need to work alongside and train government staff, who may or may know very little about PPPs and indeed may not even be very convinced that PPPs are beneficial.

Initial staffing should therefore be, if possible, senior, qualified, committed to the concept and aware of both advantages and drawbacks of PPPs. It is possible that some line ministry PPP units could employ generalists or specialists such as from ministries of finance or other relevant ministries.



Public Private Partnership Units: lessons for their Design and Use in Infrastructure. PPIAF. 2007



Designing and using public-private partnership units in infrastructure; Lessons from case studies around the world; PPIAF Gridlines, 2007

Some International Experience in Institutional Development and PPP cells

It was noted recently (See also the India Case Study) that the progress that India has made in the field of PPPs, and the institutional steps that the government had taken to encourage this at the Federal level. State governments are working on establishing robust PPP units, and to develop clear procedures for dealing with potentially contentious issues such as unsolicited proposals.

The Government of India has taken recently to develop the framework for PPPs and build up capacities. These steps included:

- The creation of PPP Cells in all central ministries and state governments;
- The creation of the Public Private Partnership Appraisal Committee (PPPAC) at the national level;

These institutional measures are supported by;

- Establishing PPP as the preferred mode in sectors such as highways;
- Strengthening the regulatory and policy framework, including the expansion of user fees;
- Providing fiscal incentives in terms of “tax holiday” to infrastructure projects and tax incentives to investors providing long-term finance or investing in equity capital;
- Permitting FDI up to 100% on the automatic route in several infrastructure sectors;
- Preparation of standard documents such as Model Concession Agreements,
- Pre-bid qualification methodology and procurement processes.

It was noted that a key part of the growth of PPPs in India represents a paradigm shift, with line agencies initially reluctant to embrace the concept.

Successful pilot projects and a major emphasis on PPPs, from the Prime Minister’s Committee on Infrastructure with Empowered Sub-Committees, have provided both overall leadership as well as strategic direction. PPPs have now become integrated in the planning process, and in some cases PPPs are now the default option, for example national highways.

The Government is undertaking an active program of capacity building, including support to PPP nodal cells at the state government level and in central government line agencies; the development of an on-line toolkit for PPPs, a database on PPPs and working on the fiscal costs of PPPs and training programs, all supported by the World Bank; and capacity building visits of PPP-related officials to countries with successful PPP programs under an Asian Development Bank Technical Assistance facility.

The following are some of the lessons learned:

- The benefits of specialized and efficient dispute resolution and arbitration mechanisms, as seen in Chile, are substantial;
- The need to adapt and develop institutions over time, of which the UK is a good example;
- How to build on the achievements in one sector and broaden the program, as has been seen in South Korea and the UK.
- PPPs can encounter difficulties during implementation and operation which, if not resolved efficiently and transparently, can impact not just the project but the credibility of the broader program. As far as public works contracts are concerned,
- Chile has both Conciliation Commissions and Arbitration Commissions, which deal with disputes
- In both the UK and Korea, developments in the PPP program over time required the strengthening and adaptation of the institutions involved. Both countries have opted for a key role for a central PPP agency.

- In Korea, a new agency Public and Private Infrastructure Investment Management Center (PIMAC) was created to replace an earlier central PPP unit, as part of a broader set of reforms to the government’s PPP program that were legislated in 2005. PIMAC has a number of different functions. To reflect the need to evaluate and manage effectively the current portfolio of PPPs, increasingly emphasis is being placed upon the implementation of methodologies for decision-making, on whether to pursue PPPs through the Public Sector Comparator, as well as the evaluation of outcomes. The latter has also been an important feature of the UK program, with the National Audit Office publishing reports on individual PPPs as well as the program overall, which has helped considerably in refining the approaches adopted.

It was noted that the UK and Korea showed that specialized PPP institutions can help by:

- Imparting greater visibility and commitment to the PPP program;
- Facilitating quicker assimilation and dissemination of best practices to various levels of government; and
- Preserving institutional memory and facilitating cross-sectoral pollination of good ideas.

This has been particularly useful as the PPP program in these countries has expanded across different sectors, including roads and the social sectors.

As far as international experiences were concerned, the main lessons for countries in transition from procuring and bidding out a large portfolio of PPPs, to managing and overseeing this portfolio and spreading the program to other sectors, are:

- Capacities for PPPs have to be institutionalized within the system, within specialized units, for the expertise to be retained over time;
- More resources and attention will have to be devoted to contract management and oversight skills;
- Efficient and transparent dispute resolution systems will be important in ensuring that PPPs continue to perform effectively over time; and
- PPP programs need a robust evaluation mechanism, to ensure that they are delivering value for money, and to provide for corrections related to course and approach over time.
- International Conference on Meeting India’s Infrastructure Needs with Public Private Partnerships The International Experience and Perspective February 2007



Road Funds and Road Maintenance, An Asian Perspective, July 2003, ADB.

SUMMARY OF SUCCESS OR FAILURE OF PPP UNITS				
Jurisdiction and unit	How much success did PPP program achieve?	What were PPP unit's objectives?	Did PPP unit meet its objectives?	How many functions necessary for solving government failure? Did PPP unit perform effectively?
Bangladesh IIFC (1999)	Little success	<ul style="list-style-type: none"> Advise line ministries and government agencies in identifying, evaluating, awarding, negotiating, and implementing projects Promote private participation in infrastructure and serve as clearinghouse of expertise on PPPs 	No apparent effect on private participation in infrastructure	None to few <ul style="list-style-type: none"> Technical assistance Policy formulation, but no implementation authority
Jamaica NIBJ (1988)	Little success	<ul style="list-style-type: none"> Secure greater efficiency Reduce fiscal drain Optimize government's management resources Secure enhanced access to foreign markets, technology, and capital Broaden ownership 	No, especially not the reduction in fiscal drain	None to few <ul style="list-style-type: none"> Managed some transactions, but real power never effectively delegated
Portugal Parública (mid-1990s)	Much success	<ul style="list-style-type: none"> Help structure higher-quality PPPs 	Yes	Some <ul style="list-style-type: none"> Policy formulation Technical assistance Quality control
South Africa Treasury PPP unit (2000)	Much success, despite low deal flow	<ul style="list-style-type: none"> Filter out fiscally irresponsible PPPs while creating a structure for PPPs that would reassure private investors despite its being a fine filter 	Yes, but scant impact on infrastructure deals	Some <ul style="list-style-type: none"> Technical assistance Quality control Policy formulation
Republic of Korea PIMAC (2005)	Much success	<ul style="list-style-type: none"> Provide technical assistance to government agencies and private sector Promote infrastructure projects and educate private sector about PPPs Review unsolicited proposals, feasibility studies, and bidding documents Conduct value-for-money tests, evaluations, and negotiations; formulate PPP policy 	Yes	Most to all <ul style="list-style-type: none"> Technical assistance Quality control Policy formulation Promotion and marketing

Philippines BOT Center (1993)	Some success, though IPPs of the 1990s left significant contingent liabilities	<ul style="list-style-type: none"> • Provide technical assistance • Promote and market PPPs • Monitor PPPs 	Yes, but not for all PPPs	None to few <ul style="list-style-type: none"> • Assigned many functions but effective only in technical assistance
United Kingdom Partnerships UK (1996) and Treasury task force	Much success	<ul style="list-style-type: none"> • Improve quality of PPPs • Shift focus away from financing infrastructure to value for money and risk allocation 	Yes	Most to all <ul style="list-style-type: none"> • Technical assistance • Quality control • Policy formulation • Promotion and marketing
Victoria, Australia Partnerships Victoria (1999)	Much success	<ul style="list-style-type: none"> • Improve quality of PPPs in infrastructure • Ensure that PPPs provide for optimal risk transfer, maximize efficiency, and minimize lifetime costs 	Yes	Most to all <ul style="list-style-type: none"> • Technical assistance • Quality control • Policy formulation • Promotion and marketing

Source: PPIAF and World Bank forthcoming. www.PPIAF.org. The year in parentheses is the year the unit was established.