14th AFRICAPPP INFRASTRUCTURE INVESTMENT SUMMIT

Scaling up PPPs to Address Infrastructure Investment Gaps

Module 1

PPPs defined and setting frameworks and infrastructures

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Role of PPP Units, Government Bodies and Private sector in the PPP cycle

PPP stakeholders.

Multiple stakeholders play integral roles throughout the entire lifecycle of a PPP project, from the initiation of the project to the monitoring of the PPP agreement.

1. **Contracting authority:** procure PPPs and enter into PPP contracts.
2. **Approving authority:** approves PPP projects throughout their lifecycle.
3. **PPP unit :** support and assist contracting authorities in developing PPP projects as technical expert of PPPs.
4. **Public procurement institutions**, whose roles can be extended to cover PPPs.
5. **Budgetary authority:** evaluates the PPP projects' budgetary, financial and fiscal commitments and contingent liabilities.
6. **Sectoral regulatory authorities**: provide advices as to the compliance of the PPP project with the sectorial regulations.

PPP units.

Variety of PPP units

Various types of PPP units with various institutional positions

PPP Units either within a central Ministry (often Treasury) or as a separate entity but in practice Treasury usually keeps strong role in policy and unit control

Location between Ministries depends on focus:

- Treasury: fiscal oversight
- Economy: project development and promotion
- Dedicated Ministry: Ministry in charge of PPP
- Presidency: to overcome ministerial conflicts and bias for large projects

Attachment to the Treasury is the most common model

UK: PPP Unit United Kingdom appears mainly as a project development agency. PUK has evolved from a Treasury Task Force to a separate Unit

South Africa: PPP Unit focus on VfM, risk transfer and affordability. The PPP Unit is located within the South African Treasury

Australia: PPP unit focus is on optimal risk transfer, efficiency maximization and whole-life costs minimization; The PPP Unit is located within the Australian Treasury

Role of PPP units.

Variety of roles with the most common being

- PPP Policy Support and Coordination
- Quality Control and
- technical support until financial close.

In current practice, PPP units may have all of part of the following missions:

Missions	Beneficiaries
Strategy Formulation and Coordination	Governemental authorities etablish PPP policy
Technical Assistance	Contracting authorities in all stages of the PPP cycle from projet identification to contract monitoring
Standardization and Dissemination	Contracting authorities at the identification/ prioritization stage and feasibility study stage
Quality Control	Contracting authorities at the feasibility study and procurement stages
Promotion/ Marketing	Private sector

Financing of PPP units: Critical Issue for Discussion.

A PPP unit with broader scope tends to perform better but adequate financial means is a critical issue.

Various models

- PUK charges a fee to the public sector for its services
- The South African PPP Unit is fully funded by Treasury
- The Australian PPP Unit is financed by Government of Victoria
- Funding from public sources is necessary until reputation and successful projects are established

Critical issue (Discussion Topic)

Sustainability of the PPP Unit and effectiveness of its missions driven by financing means it may have access : secure and varied or even independent financial resources.

Secured funding of PPP unit should allow recruiting and retaining of good quality staff

Roles of PPP stakeholders in the PPP cycle.

Identification of PPP projetcs

- Contracting Authority
- PPP Unit

Development of PPP projects

- Contracting Authority
- PPP Unit
- Budgetary Authority

Public financing

- Contracting Authority
- PPP Unit
- Budgetary Authority

Procurement

- Contracting Authority
- PPP Unit
- Other procurement authorities
- Budgetary Authority

Execution

- Contracting Authority
- PPP Unit

Budgetary authority and sectorial regulator.

Budgetary Authority

Best practice requires :

- Evaluation of the budgetary, financial and tax sustainability of the project and related approval to be made by the minister in charge of budget
- Negotiation of the PPP contract not to deviate from the given approval **(Discussion Topic)**

Sectorial Regulator

Forgotten by the vast majority of PPP legislations.

Place in the PPP cycle to be determined **(Discussion Topic)**:

- During the feasibility studies phase?
- Before the public procurement phase?
- The Burkina Faso example

Expectations from the private partner.

Qualitative advantages

- Leverage private sector management capacity to deliver projects on time, on budget and at optimum value.
- Introduce private sector technology and innovation to deliver higher quality public services through greater operational efficiency.
- Develop local private sector capabilities through joint ownership with major international companies.

Financial benefits

- For projects generating user revenue (e.g. freeways), private-sector financing can be provided.
- In the case of public-payment projects, the public share of financing can be optimized by taking advantage of the savings generated by the private sector's ability to plan, build and manage infrastructure projects.

Phases of PPP cycle : PPP phases and project preparation process

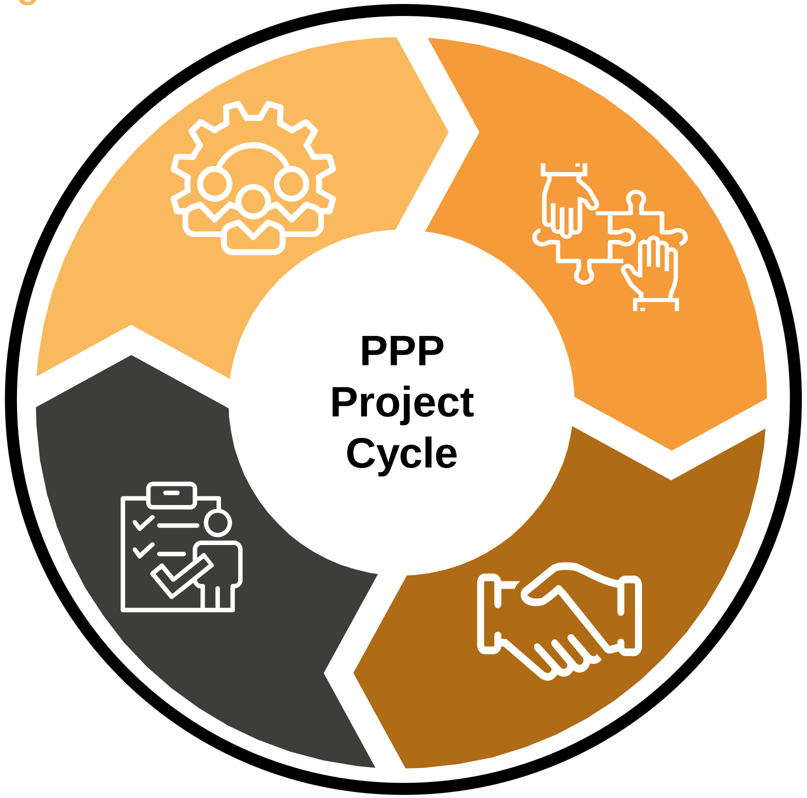
PPP Project Lifecycle.

Project Identification and Screening

- Project identification /prioritization
- Needs Analysis
- Project Concept
- Early-stage project screening for PPP suitability

Contract Management

- Monitoring mechanism for risk Handover
- Contract supervision & enforcement
- Contract breach and penalties
- Conflict resolution
- Contract negotiation
- Handback



Project Appraisal and Business Case

- Pre-feasibility and feasibility /options assessment
- Social and environmental impact assessments Financial and economic analysis of the PPP structure;
- Commercial assessment
- Market sounding
- Value for money analysis
- Affordability analysis
- Project structuring options
- Climate assessment

Procurement / Transaction

- Transaction design and preparation
- Procurement procedures (EoIs- RfP)
- Preparation of Bid Documents, including Key Performance Indicators (KPIs)
- Bid Process Management
- Negotiation and contract signature
- Facilitation of Conditions Precedent to Commercial Close

PPP Project Lifecycle.

Appraising a PPP project involves conducting **a series of feasibility studies** that inform two primary decisions:

1. **Investment decision:** Whether to implement the project?
2. **Procurement decision:** Whether to procure as a PPP versus traditional procurement?

Initial Project Scope and Needs Analysis	Technical Feasibility	Commercial Feasibility	Legal, Economic Environment and Social Assessment	Financial feasibility, VfM and Affordability Analysis	Project Structuring	Procurement Strategy and Planning

Investment decision

Procurement decision

Phase 1: Identification and prioritization of PPP Projects.

Identification

Preliminary analysis carried out to identify projects that can meet the existing needs of the public party and satisfy the return objectives expected by a private party.

Once potential projects have been identified, a qualitative analysis and pre-feasibility studies are undertaken. The aim of these analyses is to identify certain key elements, including:

- The project's conformity with government policies/ PPP policy (if exists);
- The maturity of the project;
- An idea of the project's economic impact and financial viability;
- The potential appetite of the private sector ;
- Possible structuring options and implementation methods.

Prioritization

The demand for infrastructure and the limited resources available to manage project call for prioritization of selected PPP projects based on objective criteria such as **Development Impact and Strategic Alignment**

Practice teaches that Contracting Authorities rarely have access/use prioritization tools **(Discussion topic**)

Phase 2: Development of PPP Projects.

More detailed analysis of the selected projects. The aim of these analyses is to identify:

- The market /demand for the project in question
- Technical, commercial, legal, social and environmental feasibility
- Preliminary cost estimate
- Economic impact
- Financial viability
- Project risks and allocation of those risks (risk matrix).

The aim of all these elements is to provide public authorities with the key project information (technical options, financial evaluation, contractual structuring, etc.)

Practice teaches that Contracting Authorities may face substantial constraints to finance feasibility studies which may impact the existence or quality of such studies vary (**Discussion topic**)

Phase 3: Public Financing.

The technical, economic, legal and financial analysis phase of a PPP project enable the Contracting Authority to **identify the project's financial dynamics**, and to assess the **share of project financing** from the public sector when the PPP project involves public funding, from the public and the private sector (hybrid PPP) and from the private sector.

Parallel efforts must be made by the public party to assess whether any budgetary effort required is bearable during the period when public funds must be mobilized (construction phase, operating phase, etc.), contingent labilities shall be effective and tax and custom incentive shall apply.

Public financing of PPPs, which is the rule in PPPs with public payment, but also exists in many concessional PPPs, can come from a variety of sources: the national budget, loans or grants from international donors, loans from commercial banks, export credit loans presented by the successful bidder, private equity investors, investment funds, etc.

Phase 4: Procurement of PPP Projects.

The public party's objective is to identify the best private party with whom to build a long-term partnership through a PPP contract.

To identify the private partner, it is advisable to opt for a competitive bidding process (invitation to tender), in line with the logic and rules of public procurement **(benefits of competition)** to ensure that the best possible private partner is selected (balance between the most technically advantageous and the least financially advantageous).

Once the private partner selection procedure has been completed, and in order to contract the private partner identified as the most suitable to build and/or operate the infrastructure and/or provide the service, a negotiation process begins, during which the parties discuss their respective rights and obligations under the future PPP project.

Practice teaches that direct negotiation (an exception to competition) is often well considered by Contracting Authorities given political pressure but in practice it is often **a mirage** not to say a failure in terms of benefits for **both parties** (cost, time frame), etc.).

Phase 5: Execution and Monitoring of PPP Projects.

Following signature of the PPP contract, the public entity sets up a project **monitoring unit** to monitor the PPP contract to ensure that it is being implemented effectively and in compliance with the applicable legal provisions and its contractual terms concerning inter alia :

(i) Pre-operational phase

(ii) Construction (if applicable)

(iii) Operating phase

(iv) End of contract and

(v) Asset transfer (if applicable).

Practice teaches that contact monitoring faces various difficulties such as **(Discussion topic)** :

- **Lack of financial and human means** to maintain the monitoring unit operational
- **Lack of contract management tools** (e.g. dashboard) for operational monitoring (to be provided in the contract as to be provided by the private partner)

Meeting market need - establishing the goals and motivation for engaging PPPs – SDGs, ESGs, Infrastructure Development, Climate smart PPPs

Motivation for Engaging in PPPs.

What motivates governments to enter into PPPs for infrastructure and services:

1. Attract private capital investment (often to either supplement public resources or release them for other

2. Increase efficiency and use available resources more effectively

3. Reform sectors through a reallocation of roles, incentives, and accountability

4. Meet public policy goals around SDGs and ESG

5. Implement Climate Smart Infrastructure through private innovation

Mobilization of Private Capital.

Governments face an ever-increasing need to find sufficient financing means to develop and maintain infrastructure required to support growing populations.

Governments are challenged by the demands of increasing urbanization, the rehabilitation requirements of aging infrastructure, the need to expand networks to new populations, and the goal of reaching previously unserved or underserved areas.

Infrastructure services are often provided at an operating deficit, which is covered only through subsidies, thus constituting an additional drain on public resources.

Due to **limited public financial capacity,** these pressures drive a desire to mobilize private sector capital for infrastructure investment.

Structured correctly, a PPP may be able to **mobilize previously untapped resources** from the local, regional, or international private sector which is seeking investment opportunities.

PPP as a Tool for Greater Efficiency.

The efficient use of scarce public resources is a critical challenge for governments—and one in which many governments fall far short of goals.

The public sector typically has few or no incentives for efficiency structured into its organization and processes and is thus poorly positioned to efficiently build and operate infrastructure.

Private sector operators, however, enter into an investment or contracting opportunity with the clear goal of maximizing profits, which are generated, in large part, by increased efficiency in investment and operations.

PPP allows the government to pass operational roles to efficient private sector operators while retaining and improving focus on core public sector responsibilities, such as regulation and supervision. Properly implemented, this approach should result in a lower aggregate cash outlay for the government, and better and cheaper service to the consumer.

This should hold true even if the government continues to bear part of the investment or operational cost since government's cost obligation is likely to be targeted, limited, and structured within a rational overall financing strategy.

PPP as a Catalyst for Broader Sector Reform.

PPP can serve as a catalyst to provoke the larger discussion of and commitment to **a sector reform agenda**, of which PPPs are only one component.

A key issue is always **the restructuring and clarifying of roles** within a sector – such as policy maker, regulator, and service provider - to mobilize capital and achieve efficiency.

A reform program that includes PPP provides an opportunity to **reconsider the assignment of sector roles** to remove any potential conflicts and to consider a private entity as a possible sector participant.

Implementing a specific **PPP transaction often forces concrete reform steps to support the new allocation of sector roles** such as the passage of laws and establishment of separate regulatory bodies.

In essence, **re-examination of the regulatory and policy arrangements** is critical to the success of a PPP project.

ESG and SDG.

Definitions

- **ESG** (***Environmental, Social, and Governance***) is commonly used by businesses and investors to assess and improve their sustainability performance and make informed investment decisions.
- **SDGs (*Sustainable Development Goals)*** are a set of global targets that governments and international organizations strive to achieve through policy development and implementation

While both ESG and SDGs share the objective of creating a better, more sustainable world, they are distinct in their approaches and scopes.

ESG concept

The “E” focuses on a **company’s environmental impact**

The “S” evaluates a **company’s social responsibility**

The “G” in ESG centers on **corporate governance and ethical business practices**

ESG and SDG.

SDG concept

The *2030 Agenda for Sustainable Development*, adopted by all United Nations members in 2015, created **17 world Sustainable Development Goals (SDGs).**

The 17 SDGs are:

No poverty Zero hunger, Good health and well-being, Quality education Gender equality Clean water and sanitation, Affordable and clean energy Decent work and economic growth, Industry, innovation and infrastructure Reduced inequalities Sustainable cities and communities, Responsible consumption and production, Climate action (SDG 13), Life below water, Life on land, Peace, justice, and strong institutions, and Partnerships for the goals.

The SDGs require a massive transformation of economies and societies, and a shift towards more sustainable patterns of production and consumption. PPPs appear as the appropriate tool to enable, as PPPs mobilize private sector capital and expertise to deliver public services and infrastructure that are aligned with the SDGs.

ESG and SDG.

SDG and market needs

Governments should undertake an assessment of the needs of their populations using as a starting point the SDGs.

Given the SDGs, **national needs** should be identified:

By a detailed analysis of the society, the population (culture and religion, age and family structure, socio professional categories, household incomes etc.),

A careful review of the state of the existing infrastructures, and services that are used (traffic volume on the roads for instance, volume of water distribution)

Once the needs are assessed, governments may formulate their policies, develop sector plans and identify their projects, such as PPP projects

Climate Considerations – Project Selection.

- Project Alignment with Climate Policies
- Climate Considerations in Project Selection
- Value of Investment Accounting for Climate Actions

How climate change affects the decisions regarding PPP project during the screening and selecting of PPP projects.

Considerations to observe:

- Alignment with national and international climate policies, goals and international undertakings (example: Paris Agreement international treaty -2015)
- Preliminary screening of climate risks that could affect projects and identifying mitigation and resilience measures

Climate Considerations – Project Preparation.

Interactions between Climate and PPPs

Climate considerations on Technical Feasibility

Climate Considerations on Commercial Feasibility and Bankability

How to incorporate climate actions in the assessment of a project's technical and commercial feasibility.

Considerations to observe:

- Assessing climate-related risks accounting for both internal and external risk factors;
- Promoting the use of "green" construction solutions for adaptation and mitigation benefits;
- Assessing costs and associated benefits of climate action and including them in the project without compromising its commercial feasibility and bankability.

Climate Considerations – Project Structuring.

Identify critical aspects related to climate change that should be incorporated into the procurement and contract processes.

The phase includes guidance on:

- Defining a clear risk allocation structure and management plan that specifies and nuances climate risk events.
- Exploring innovative financing instruments for climate projects beyond the traditional financial support
- Defining requirements (key performance indicators or KPIs) for inclusion in the tender documents in order to ensure compliance with climate-related performance objectives during the design, construction, and operation of the project
- Providing climate-related recommendations for inclusion in the tender documents

- Climat considerations on Risk Allocation
- Climat considerations on Financial Structure
- Integration of Climat Requirements into the Procurement Process

Climate Considerations – Climate Change.

Challenge no.1

Translating high-level commitments into project requirements

Public pressure resulting from public commitments (Paris Agreement) is constantly increasing for investments that support the climate agenda.

Challenge no.2

Managing climate uncertainty in investment decisions

Design for the worst-case scenario is not an affordable option.

Under-designing is risky and may result in increased economic losses in the long run.

Challenge no.3

Creating incentives and long-term visibility for climate investments :

Climate adaptation and mitigation measures increase CAPEX

These additional costs may critically impact the market appetite and the bankability/affordability

Creating clear and concise PPP Regulatory Framework

Standard PPP Regulatory Framework.

General remark

The analysis of the different PPP legislations around the world shows that most of these **PPP laws have common objectives and structure**. If major differences may exist regarding certain issues, most of the PPP legislations are drafted on a **relatively common model**: all these legislations set up an institutional framework dedicated to PPPs; provides for the distinction between public-pay PPP and user-pay PPP; provides for a feasibility study phase, provides for procurement rules, based a priori on competition of tenders and sets out the minimum clauses that any PPP contract must contain.

However, experience shows that **certain legal issues consistently raise serious concerns**, in particular unsolicited proposals, or are unregulated, not to mention ignored in particular (i) small-scale PPP projects, (iii) cross-border PPP projects and (iv) potential conflicts between PPP legislation and sectorial legislations

Unsolicited Proposals (USP).

General remarks

Unsolicited proposals (USP) are projects submitted by a private operator to a public entity, without any explicit request or solicitation from the public entity for such a project.

Although unsolicited bids have been successful in some countries, they are most successful in mature PPP markets, where public capacity to apprehend a proposal is high, and where clear processes for receiving and evaluating unsolicited proposals are in place.

Risks generated by USPs (Discussion topic)

For countries with little PPP expertise

For countries that cannot afford to finance feasibility studies

For countries with weak UPS eligibility criteria

International Best Practices.

Opinions differ on how USPs are handled in different countries:

Some practitioners consider them vulnerable to corrupt practices and difficult to manage - for example, they are unregulated in the UK and Canada and prohibited in India.

Others consider them useful for strengthening a country's project portfolio and encouraging private sector participation.

If a public entity decides to accept and process an USP, a number of best practices are designed to ensure that the best value is obtained from these proposals:

- Consistency with the government's priorities and objectives
- Socially and economically important infrastructure need
- The USP bidder and its management must meet high standards of integrity.

International Best Practices.

One objective: ensuring USPs are aligned with public priorities and needs

USPs are systematically compared with public strategies, investment plans, sectoral programs…

2 options

Some countries require USPs to not have been included in any public plan but be aligned with them

Some countries require USPs to have been included in a public plan, but no studies or no procurement having started

Non-Regulated or Ignored PPP Legal Issues.

<u>Small-scale PPP projects</u>: (**Topics for discussion**)

(i) criteria: how to defined a « small-scale project » ?

(ii) « simplified » feasability study: simplified to what extent?

(iii) Institutional issue: which entity(ies) should be in charge of preliminary assessment and control?

<u>Cross borders PPP projects:</u> (**Topics for discussion**)

(i) Which PPP legislations would apply?

(ii) Which public entities should have authority over PPP projects?

<u>Conflicts between PPP legislations and sectorials legislations</u> :

Which rules/principles to prevent or solve the conflict ? **(Topics for discussion)**

Thank you!

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