Public-Private Partnership in Infrastructure Development in Cambodia

1. Introduction

- Cambodia's economic development in the 1990s began from a level of very low provision of infrastructure services. The country's recent achievements in infrastructure projects are impressive, particularly considering the relatively few years that have elapsed since Cambodia's new constitution was promulgated in 1993.

- According to population projections based on the General Population Census of Cambodia in 1998 and the Inter-censal Population Survey 2004, the Cambodia's population is 13.8 Million and growing at estimate about 1.65% per annum. Annual per capita income is approximately US$ 513 in 2006. Since 1993, Cambodia has enjoyed sustained economic growth (with the exception of 1997-1998 following the Asian financial crisis and domestic political problems). According to the Socio-Economic Development Plan II (2001-2005), Cambodia has achieved a real GDP growth at the average of 9.18% per annum combined with broad based redistributive efforts to meet its poverty reduction objectives. In addition, SEDP-II notes that infrastructure is a key area that needs to be developed as it can have a multiplier effect on pro-poor rural based growth sectors, through supply side adaptation (electricity, telecommunication, transport, etc.). In this regard, it should be noted that the structured of Cambodia's economy is around the agriculture sector (employment about 80% of the workforce and providing livelihoods access to over 70% of the poor), tourism and the production of intensive-manufacturing for export (90% of Cambodian exports consist of garments).

- Cambodia joined the ASEAN in 1999 and became member of the WTO in 2004. As such, infrastructure has become a priority as it is a key element in addressing supply side capacity gaps. It is therefore a major impediment to trade, competitiveness and sustainable development in most Least Developed Countries (LCD). In this regard, Cambodia has one of the weakest infrastructure coverage among the LDCs. At the macro level, infrastructure investment is closely connected with economic growth and integration in the global economy while, at micro level, access to infrastructure provides households with the opportunity to escape from poverty for example, by providing access to markets, reducing time spent on securing safe water supplies, and more generally by increasing productivity.

- The Cambodia's outlook in 2007-2008 is positive, with the economy expected to grow at about the same pace as in 2005-2006 (respectively 13.5 % in 2005 and 10.8 in
In 2007, growth is envisaged to pick up to 9.1% as of July 2007. In this regard, garments, tourism and construction will continue to be the most dynamic areas. Nevertheless, the country will face growing competition in external markets, particularly in garments. Although the domestic cost of labor is quite low, exporters are often at a disadvantage due to the high costs of doing business, especially due to the country's poor infrastructure. For the benefits of this growth to reach the rural poor, significant investment is necessary to restore and improve the physical infrastructure.

Despite this progress, the huge extent of the country's needs can be seen clearly in the poor coverage, quality and efficiency of much of Cambodia's infrastructure. The infrastructure services that exist are mainly concentrated in urban areas, where only 15% of Cambodian households live. Coverage and access to infrastructure services in Cambodia is poor compared with its neighbors and with countries of similar income levels. The Royal Government of Cambodia (RGC) does not have sufficient financial, technical and human resources to meet these needs by itself. Cambodia therefore both requires and welcomes private participation in infrastructure (PPI).

The nation has accumulated valuable experience in PPI in a relatively short time. Examples of Cambodia's PPI experience can be found in all infrastructure sectors and range from major national projects involving foreign investors through to local entrepreneurs active in developing small-scale projects in rural areas.

Reorganizing the importance of infrastructure in poverty reduction from the one side, the high costs facing Cambodia for providing this infrastructure from the other side, as well as the time lags in meeting the infrastructure gaps, the challenge is to find new ways of delivering these services. Among the key players in providing innovative physical infrastructure is the private sector. The different modalities of private financing of infrastructure can be mobilize nowadays, dependent on the host country ability and capacity to attract private capital flows to finance projects for electricity, transportation, telecommunication, industrial states etc. To regulate and manage PPI projects, the RGC has issued in February 1998 a basic decree, an Anukret, on BOT/Private Financing. It has facilitated financing of projects like, national highway number 4 and major roads around Phnom Penh.

Notwithstanding these early successes, the RGC still recognizes the need to continue to improve the governance of PPI transactions and the on-going management of PPI contracts, to ensure co-ordinated development, increased transparency in the award of contracts, greater control over the liabilities assumed by the public sector under PPI contracts, effective supervision of contracts and, above all, the maximum value for money from PPI is obtained for Cambodia.
This PPI Policy Paper sets out the policies of the Royal Government with respect to future PPI in Cambodia. It describes:

- The Royal Government's PPI policy and its underlying principles
- The roles and responsibilities of the various agencies of the Royal Government with respect to PPI projects
- The process for identifying and implementing PPI projects

2. The PPI Policy

2.1 The Scope of PPI

PPI offers benefits to Cambodia in the financing, construction, operations and management of infrastructure. PPI initiatives include the financing of investment, but also extend to recognize the contribution that the private sector can make to improving the efficiency of existing and new infrastructure services.

Private Participation in Infrastructure is defined, for the purposes of this Policy, as the transfer of a significant degree of investment, management and/or operating risk from the public to the private sector.

The forms that PPI may take include, but are not limited to, concessions, leases, management contracts, operating contracts, sales of existing assets and new build 'greenfield' developments, including joint ventures between public and private organizations. All PPI projects represent a partnership between the private and public sectors in the delivery of infrastructure services, although the degree and nature of public sector involvement will vary from project to project.

The infrastructure projects covered by this Policy are those that are characterized by the need for large, up-front capital investments in long-lived assets. In many cases, these projects have the characteristics of a 'natural monopoly'. It does not make sense, for example, to build two competing highways or electricity transmission lines side-by-side. In these projects, a long-term concession is needed to protect private investors and allow them to recover their investment while ensuring public services are provided at fair and reasonable prices. The typically long duration of these concessions means that the principles guiding their award and the award process itself become of great importance to the success of PPI.

Infrastructure is defined, for the purposes of this Policy, as the electricity supply, water supply and sanitation, telecommunications and transport (airports, seaports,
highways and railways) industries.

2.2 Guiding principles of PPI

The main objective of this PPI Policy is to improve the governance of PPI project transactions, and hereby to maximize the extent of PPI in Cambodia and the value for money achieved by Cambodia. The Policy does this by incorporating four guiding principles:

- **Responsibility.** The roles of each public entity will be clearly defined so that there is no uncertainty about who is responsible for each step.
- **Accountability.** Each responsible party will follow prescribed procedures with provision made for the rapid resolution of disputes.
- **Predictability.** The procedures will have clear guidelines and criteria so that the outcome of each step is not subject to arbitrary or political decisions.
- **Transparency.** The rules and procedures will be followed in an open and fair manner and the necessary information will be made available to all.

2.3 Implementation of PPI

The Policy is implemented through a simple and clear set of rules and procedures for the PPI process. The key objective of the Policy is to achieve fairness, transparency and competitiveness in PPI procurement, in order to ensure that investors can earn a reasonable return on their investments and users and the Royal Government of Cambodia maximize value for money through private provision of infrastructure services. The Policy seeks to meet this objective by defining clearly the responsibilities of various government entities involved in procuring PPI projects, so that they can be held publicly accountable, thereby building confidence that private participation in infrastructure provision is undertaken in a manner consistent with the public interest. In addition, the policy provides a framework for enhancing predictability through each stage in the process of procuring and implementing a project, thereby reducing uncertainty in the outcome of each step. This will reduce investors' perceptions of the risks they face, with the beneficial effect of lowering costs.

The policy will be implemented in accordance with the following more detailed principles:

- PPI projects provide infrastructure that meets a demonstrated demand. As far as possible, planning of projects should be demand-driven.

- PPI projects must be able to demonstrate that they offer maximum value-for-money
The promoters and sponsors of a PPI project are:

- Contracting Authority
- Responsible Line Ministry
- Council for the Development of Cambodia (CDC)

For smaller-scale projects, they may also include Provincial and Municipal Authorities or Commune/Sangkat Councils.

### 3.1.1 Contracting Authority

The key public sector role in PPI projects is that of the Contracting Authority.

The Contracting Authority is the entity defined in Cambodian Law as being responsible for the delivery of the infrastructure services in question. It is responsible for developing and awarding a PPI project, signing the contract with the selected private sector developer and monitoring compliance with the contract terms.

The Contracting Authority for a particular PPI project can be the responsible Line Ministry, a parastatal entity such as a state-owned corporation or a Provincial or Municipal Authority.

It is important that the Contracting Authority has clear and unambiguous responsibility for each PPI Project, in order to avoid uncertainty about which entity has competence, thereby avoiding the possibility of legal challenges to the authority of and arm of government to contract for a PPI project.

Each PPI project will have a single Contracting Authority. This applies even where projects cross sector boundaries, including where the delivery of some of the infrastructure services under the project is defined in Cambodian Law as being the responsibility of one government entity and the delivery of other infrastructure services under the same project is defined in Cambodian Law as being the responsibility of another government entity. In such cases, the entities will agree on which of them should act as the Contracting Authority. In the case of disputes, the decision on the Contracting Authority will be taken by the Council of Ministers.

The role of the Contracting Authority is to:

- Define specific PPI projects, thereby moving from the project concept in the relevant sector infrastructure plan to a project specification
- Promote the project and bring it to completion in a manner that is in the interests
for Cambodia

- PPI projects will be awarded through a competitive and transparent process and managed through arrangements, including the publication of contracts.

- Risks are allocated to those parties best able to manage them. Rewards to investors should be in balance with the risks assumed by them.

- Private sector initiative is encouraged while the public interest and infrastructure users are protected.

- Governance procedures must be appropriate for large projects while not overburdening developers of small rural infrastructure projects.

- Public sector obligations under PPI projects will be minimized, by increasing certainty for investors and improving the predictability of project revenues.

The following sections describe the roles and responsibilities of the Royal Government and its agencies in the PPI process and the stages in the process itself.

3. Roles and Responsibilities

- A key part of the Policy is the definition of roles and responsibilities in the PPI process so that these can be allocated to the appropriate entity, removing confusion and improving accountability. If responsibility is unclear, 'competition' can arise between agencies of government for the authority to enter into a contract for a particular PPI project. Such outcomes work against the interests of the users of infrastructure services, the public interest and the economic interests of Cambodia as a whole, by delaying the project and deterring investors who may be concerned about the legality of the award of the contract.

- The roles and responsibilities within government are best thought of in two groups:

  - Promoters and sponsors. The entities that develop and promote the PPI project and who may become the parties to the PPI.

  - Checks and balance. The entities that ensure that the balance of costs and benefits between service users, the Royal Government and the private sector is fair and reasonable, and that the procurement process has been undertaken transparently and is consistent with the relevant laws and regulations.

3.1 Promoters and sponsors
of service users and the wider public interest

- Seek approvals-in-principle to proceed from the line ministry, the Ministry of Economy and Finance, the National Assembly and others. For very large or strategically important projects, the Contracting Authority may establish a temporary project-specific inter-ministerial committee to assist in coordinating the approvals process.

- Public notice of the PPI project opportunity

- Prepare and issue the request for proposals (REP) for the PPI project

- Receive and evaluate bids and select the preferred bidder according to criteria included in the REP

- Negotiate the contract with the preferred bidder

- Obtain 'no objection' from government entities to the negotiate contract where required

- Co-ordinate with CDC to obtain the various secondary approvals required for the PPI project

- Sign the final contract with the private sector developer

- Approve the Consumer Charter prepared by the private sector developer, together with the sector regulator where applicable

- Monitor compliance with and enforce the obligations of the private sector counterpart with respect to the contract.

### 3.1.2 Line Ministries

- The Line Ministries with responsibilities for the infrastructure sectors within the scope of this PPI Policy include the :

  - Ministry of Industry, Mines and Energy (MIME)
  - Ministry of Post and Telecommunications (MPTC)
  - Ministry of Public Works and Transportation (MPWT)
State Secretariat of Civil Aviation (SSCA)

Line Ministries are responsible for preparing plans for infrastructure development and identifying PPI opportunities in their sectors, consistent with their responsibilities as set out in Cambodia Law.

The role of each Line Ministry with respect to PPI projects in its sector is to

- Prepare and publish infrastructure policies defining the overall needs of the sector, priorities and types of projects
- Identify specific infrastructure needs and PPI opportunities consistent with these policies
- Prepare a statement of PPI opportunities to be provided to the CDC for publication, including any opportunities submitted by Provincial or Municipal Authorities
- Provide support to provincial and Municipal Authorities in PPI project planning and implementation
- Review unsolicited bids for consistency with the sector infrastructure policy and identified needs. Where approved, then ensure that these are subject to the correct degree of competition in accordance with the policy for unsolicited bids.

3.1.3 Council for the Development of Cambodia (CDC)

The Council for the Development of Cambodia is responsible for promoting, facilitating and registering PPI projects, in accordance with its duties under the Law on Investment and the Law on Concession.

The role of the CDC is to act as a one-stop shop for prospective PPI project developers, by:

- Promoting PPI project opportunities in Cambodia to potential private sector investors and operators
- Maintaining and publishing a list of proposed PPI projects, either identified by Line Ministries or in unsolicited proposals received directly from potential investors, showing the current status of each project
- Coordinating between ministries and other government agencies and authorities and
donor countries and international organizations with respect to the PPI Policy and process

- Issuing and updating registration certificates for PPI projects in accordance with its responsibilities under the Law on Investment

- Coordinating with the relevant ministries, agencies and authorities to obtain the various secondary approvals (licenses, permits and authorizations) necessary for each PPI project

- Providing support and capacity-building to ministries and other government agencies and authorities involved in the PPI process

- Assisting Contracting Authorities in engaging external advisors for PPI transactions where necessary, including co-ordinating funding with the Ministry of Economy and Finance

3.1.4 Provincial and Municipal Authorities

- Provincial and Municipal Authorities assume some of the responsibilities of Line Ministries and Contracting Authorities for smaller PPI projects located within their province or municipality.

- Provincial and Municipal Authorities may, at their own discretion, propose PPI opportunities located within their province or municipality for inclusion in the statement of PPI opportunities prepared by the relevant Line Ministry. In doing so, these authorities will co-ordinate with and benefit from support from Line Ministries.

- For PPI projects located in their province or municipality, Provincial and Municipal Authorities may be the Contracting Authority where the value of this project is below the appropriate threshold as defined in the Sub-decree on Implementation of the Law on Concession. In these instances, the line Ministry responsible for the relevant infrastructure sector will need to acknowledge the authority to contract at provincial or municipal level.

3.1.5 Commune/Sangkat Councils

- Commune/Sangkat Councils assist Provincial and Municipal Authorities in identifying small-scale PPI opportunities and in monitoring contract compliance, in accordance with the wider decentralization programme of the RGC.

- Commune/Sangkat Councils assist provincial or Municipal Authorities in identifying
infrastructure requirements and PPI opportunities located within their jurisdictions and which are designed to provide service to the local community.

Where appropriate, the Provincial or Municipal Authority may include these in the statement of PPI opportunities provided to the relevant Line Ministry. Commune infrastructure that is to be developed as a PPI project will be included in the commune's development plan and the associated capital revenues and expenditures will be included in the commune budget.

3.2 Checks and Balances

The agencies providing checks and balances for PPI projects are:

- Ministry of Economy and Finance (MEF)
- National Assembly
- Councils of Ministers (CoM)
- National Audit Authority (NAA)
- Sector Regulator (where applicable)

3.2.1 Ministry of Economy and Finance (MEF)

The Ministry of Economy and Finance is responsible for assessing and approving the liabilities of the RGC under proposed PPI projects.

The role of the MEF is to:

- Review the impact on government finances of proposed PPI projects and provide approval-in-principle, return for amendment or reject the proposed PPI project if the impact on government finances is considered to be unsustainable

- Submit proposed PPI projects to the National Assembly for approval or rejection where these involve a government guarantee

- Review final contract documentation for consistency with previously granted approval-in-principle and notify 'no objections' if satisfactory

- Provide adequate budgetary funds to allow Line Ministries and other agencies and authorities to fulfill their functions under the PPI process
Ensure that Contracting Authorities have sufficient funding to hire external advisors for PPI transactions, either from the annual budget or, together with CDC, from funding from donor countries or international organizations.

3.2.2 National Assembly

The National Assembly is responsible for approving the award of government guarantees for PPI projects.

A general objective of this Policy is to reduce reliance on government guarantees for PPI projects by strengthening the legal and contractual framework within which these projects operate. However, guarantees may sometimes be required for individual PPI projects. In such cases, the National Assembly will review and then approve or reject applications for government guarantees following submission of the requirements for guarantees from the MEF.

3.2.3 Council of Ministers (CoM)

The Council of Ministers is responsible for co-ordinating the development of infrastructure policies across Line Ministries.

The role of the CoM is to:

- Review and approve infrastructure policies developed by individual Line Ministries, ensuring consistency between them and across sectors
- Resolve inter-sectoral disputes between Line Ministries including designating the Contracting Authority for multi-sector PPI projects
- Give approval for every large PPI projects exceeding the threshold defined in the Sub-decree on the Implementation of the Law on Concession, to ensure that these are consistent with the policy of the RGC

3.2.4 National Audit Authority (NAA)

The National Audit Authority is responsible for assessing and advising on whether PPI projects offer maximum value-for-money and for ensuring compliance of PPI projects with Cambodian Law.

The role of the NAA is to:

- Perform an independent audit of PPI projects, including all those awarded at the
national level and a sample of those awarded at the level of Provincial or Municipal Authorities, in order to report on whether the contracts are delivering value-for-money

- Recommend changes in the PPI process and procedures where these audits identify deficiencies or means to increase the value-for-money of PPI projects

- Recommend appropriate legal action where audits discover breaches of Cambodian Law in relation to a PPI project in accordance with the Law on the National Audit Authority

- Publish the results of all audits and any resulting recommendations or actions, in accordance with the Law on the National Audit Authority, and subject to restrictions on revealing commercially sensitive information

3.2.5 Sector Regulators

- Sector Regulators have varying responsibilities for PPI projects, depending on their powers and duties under the sector-specific-legislation establishing the regulator.

- The Electricity Authority of Cambodia (EAC) has been established as the independent regulator of the electricity sector. Independent regulators may be established in Cambodia in the future for other infrastructure sectors.

- Depending on the relevant legislation, the role of Sector Regulators is to:
  
  - Review contracts for PPI projects, including providing comments on contract documents where documents inter-relate with regulatory responsibilities and giving 'no objections' to final negotiated PPI

  - Issue rules and reference prices for benchmarking of bids where this approach is applied for small-scale PPI projects

  - Assess license applications for PPI projects and issue licenses where all requirements are met, assisting developers by publishing the technical and financial standards required of licensees and provide draft licenses to be included in REP documents

  - Approve tariffs and user charges for PPI projects, where required by law or under the contract for the PPI project. Sector Regulators should also publish tariff principles and methodologies either separately of as part of "request for proposal" documents issued by the Contracting Authority
I Approve the Consumer Charter prepared by the private sector developer, together with the Contracting Authority.

Monitor compliance with and enforce license conditions, and assist the Contracting Authority in monitoring compliance with contract terms.

4. The PPI Process

This Policy sets out the key stages and functions in the procurement implementation process for PPI projects. These fall into four major phases:

1. Planning and policy: planning the needs for the sector and identifying projects.
2. Selecting the investor: selecting the private company to carry out the project.
3. Awarding the contract: negotiating with the preferred bidder, awarding the contract and implementing the project.

A flow chart of the typical process for a PPI transaction is shown hereafter. This identifies the roles and responsibilities of the ministries, agencies and authorities involved under each phase.

<table>
<thead>
<tr>
<th>Phase</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Plan and identify projects</td>
</tr>
<tr>
<td>2</td>
<td>Select private company for the project</td>
</tr>
<tr>
<td>3</td>
<td>Award contract and implement project</td>
</tr>
<tr>
<td>4</td>
<td>Monitoring contract performance</td>
</tr>
</tbody>
</table>

CA Contracting Authority
CDC Council for the Development of Cambodia
CoM Council of Ministers
LM Line Ministry
MEF Ministry of Economy and Finance
MOC Ministry of Commerce
NA’bly National Assembly
NAA National Audit Authority
Reg’r Sector Regulator (currently the electricity supply industry only)

For PPI project selected under benchmark pricing
5. Conclusion

The recent adoption by the National Assembly, on September 10th, 2007, of the much awaited Law on Concession will provide a new and clear legal framework for PPI. Subsequently, in the coming weeks, the Royal Government of Cambodia will issue a "Sub-Decree on the implementation of the Law on Concession". The Council for the Development of Cambodia will fulfill its mandate as the focal point for PPI and in priority will address the following issues:

unsolicited bids
contract design
contract management
contract publication
decentralization and small projects
financial issues.

Moreover, to contribute to the PPI policy, a capacity building program will be developed to provide expertise in dealing with PPI to selected officials from line ministries and relevant agencies of the RGC. In the other hand, there are still needs for further assessment on which sectors are eligible for BOT/BOO so as to ensure that Cambodia will reap the benefits of these kinds of investments.