Nepalese Experience:
Public Private Partnership Policy (draft)

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1. Background

- PPP Policy of the Government of Nepal provides a framework to enable the private sector participation in the development and improvement of public infrastructure and services at national and local level.

- It is essential to create a conducive policy environment for the participation of private sector in development, implementation, and operation of public infrastructure and services.
2. Past Attempts on PPP

• Public Infrastructure Build, Operation and Transfer Policy - 2000, is in operation.

• Private Financing in Build and Operation of Infrastructure Act 2006 has been enacted.

• Some projects have been implemented at local level based on the concept of PPP.

• Despite of attempts of reforms, significant progress is yet to be achieved at National Level.
1992  Hydropower Act and Electricity Act
1999  BOT Policy on Road Sector
1999  Local Self Governance Act
2000-01 Public Infrastructure Build Operate and Transfer Policy
2003-04 Private Investment in Infrastructure Build and Operate Ordinance
2004  Local Body PPP Policy
2006  Private Financing in Build and Operation of Infrastructures Act
2010  Investment Board Act
2011  White Paper on PPP
3. Present Situation

• Thirteenth Plan (2015-17) has envisioned Nepal to graduate from a least developed nation to a developing nation by 2022.

  – *For this purpose indicators, have already been identified*
    
    • *Per-capita Income – US$ 1190*
    • *Human Assets Index – 66*
    • *Economic Vulnerability Index - <32*

• Current policy and statutory provisions have not fully covered the international concept and values of PPP
4. Problems and Challenges

• Problems
  – Limited resources
  – Lack of professional efficiency, Innovation & technology

• Challenges
  – Capacity enhancement for PPPs
  – Adopt appropriate policy regarding allocation of risks and benefits
  – land acquisition
  – Establishment and operationalize VGF
  – Independent appraisal of projects
5. Necessity of a New Policy

- To create enabling environment for the attraction of private resources, skills, entrepreneurship and innovative approaches

- To supplement investment in infrastructure development to attain an annual growth rate as expected.
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| **8. Objectives** | • Create an Enabling Environment to Attract Private Sector Investment in the development of public infrastructure and services.  
• Maximize Utility of Private Sector and their Capabilities - professionalism, efficiency, entrepreneurship, and technical know how for the quality infrastructure and services |
9. PPP Policy

9.1 Promotion of Principles and Values of PPP

9.2 Maximize the use of Private Sector expertise

9.3 Creation of Conducive Environment for Investment of private sector
9. PPP Policy

9.1 Promotion of Principles and Values of PPP

9.1.1 Embrace values and concepts of PPP in all organs and entities of state.

9.1.2 Identify and prepare infrastructure services in priority sectors.

9.1.3 Execute implementable projects through all organs and entities of state.

9/22/15

spa/policy dialogue on PPP/UNESCAP
9.2 Maximize the use of Private Sector expertise

9.2.1 Encourage private sector participation in identification, feasibility study and designing of projects.

9.2.2 Utilize professional efficiency, entrepreneurship and effectiveness of private sector to build and manage of projects.

9.2.3 Ensure private sector’s responsibility in sustainable operation and maintenance (O&M) of projects.
9.3 Creation of Conducive Environment

9.3.1 Simplify and make transparent the procurement and award process

9.3.2 Allocate rationally the risks and benefits between public and private sector

9.3.3 Ensure government investment, support / cooperation, and commitment to keep high morale of private sector

9/22/15 spa/policy dialogue on PPP/UNESCAP
11. Working Policy

11.1 Definition

What PPP is:
- a partnership contract between the Government or a statutory entity on one side and a private party on the other side,
- Wherein the private party assumes substantial financial, technical and/or operational risk in some or all aspects of the design, financing, building and operation and maintenance of a project.

What PPP is not:
- A Simple outsourcing of functions where sufficient financial, technical and/or operational risk retained by PIA
- Privatization/Divestiture of public assets/liabilities
- Commercialization of public function
- Donation by private entity for a public goods
11. Working Policy

11.2 Attributes of Projects Under PPP

• Defined Concession Period
• Capital investment by the Private entities (in const/rehab/modern/of infrastructure assets)
• O&M of assets and provision of services by the private entity
• Performance – linked Payments to the private entity
• Revenue risks borne by the Private
• Concession Agreement signed by the public and private parties
• Policies and user fees are fixed and clear
• Clear role and responsibilities between private and public are defined
• Allocation of risks to the party - based able to managed it,
• Payment, incentives and penalties are clear for the services in the agreement
• Clear provision on ownership of assets
• Monitoring mechanism in the project cycle
11. Working Policy

11.3 Identification of Priority Infrastructure

• PIA to prioritize the PPP Projects time to time
• Access to service and quality enhancement related projects.
• Output oriented projects related to improvement to current service delivery, insure economic benefit, maximal mobilization of government fund, use of innovative and latest technology.
• Prioritization based on report of pre feasibility and appraisal
• Project are prioritized in the following areas (National level)
  – Physical infrastructure and transport (road, bridge, airport, railways, cable car, and ports)
  – Electricity (Generation, transmission and distribution) and other energy related sector
  – Information and communication sector
  – Rural and urban environment: solid waste, water supply and sewerage
  – Education, Health and tourism infrastructure excepts hotel and residents
  – Service related urban infrastructure
11. Working Policy

11.4 Implementation of Partnership Concept

- Consultative meeting with private sectors in the priority projects for their selection, design and suitability study
- PIA itself or It can be call to the Interested private sector for designing the project
- NPC to identify the project for its PPP Model in advance, and PIA to call for its preparation
- < NRs 50 Million Estimated Outlay Project are subject to implement, operation, handover directly by the Chief of the public entities themselves.
11. Working Policy

11.5 Utilization of Private Sector in Project Design and Preparation

- Public entity can engage private sector for project development in the priority sector,
- PIA to provide project related information to private sector,
- Special priority to be given to the private sector for innovative and/or newly introduced project,
- Private sector to clarify and get approval related to the EIA and other related tests.
11. Working Policy

11.6 Project Appraisal and Approval

• Procurement process can commence only after project selection, RFP and model project agreement are appraised, approved, and granted.

• All types of PPP project needs feasibility study and bid document to be prepare from the PIA,

• > NRs 100 Million projects (VGF or Gov. support needed) needs to submitted to the PPP center for its appraisal,

• < NRs 100 Million projects can be appraised from the PIA,

• Local bodies can appraised the PPP project value <NRs 50 Million,

• PSC approves the project based on the appraisal report and permits for the procurement,

• PIA (National level entities) can approve the project valued < NRs 500 Million (incase of no need of VGF)
11. Working Policy

11.7 PPP Project Procurement Process – *steps to follow*

- Request for Expression of Interest, REOI – *optional stage*
- Request for Qualification, RFQ – *first stage of a two stage bidding*
- Shortlisting of pre-qualified bidders -
- Request for Proposal, RFP – *second stage of a two stage bidding*
- Appraisal of the proposal and selection of Suitable proposal – *bid to be assessed on the specific compliance and selection criteria.*
- Use of Model Document – *PPP center to issue model doc*
- Approval of the Proposal - *PIA to Issue a letter of Award*
- Project Agreement – *Concession Agreement provided at RFP stage to be finalized & signed with the successful bidder; and no modification at these stage.*
11. Working Policy

11.8 Unsolicited Projects

• Project implementing agencies may consider proposals from interested private entities, which have not been solicited by the PIA,

• It should be considered under following circumstances:
  – Projects where competitive bid process has been tried earlier and such process failed to identify a successful bidder, or
  – Projects that involve proprietary technology or franchise, especially if it is exclusively available with the entity proposing the project, or
  – Project that may be considered strategically important by the cabinet of the Government of Nepal
11. Working Policy

11.9 Land Acquisition

• In general, GON provides the land to the PPP project (for both central, local)
• Existing land acquisition law, Policy -2014, and directives from the GON prevails in acquiring the land
• GON acquires Private land on the basis of involuntary settlement, and contracting party reimburse or pay the royalty to PIA as per the agreement
• No PPP project agreement shall be made until 80 percent of the land are acquired
11. Working Policy

11.10 Risks Sharing

- Risk sharing framework shall be based on the risk profile created during the options analysis and feasibility study.
- Project related foreseeable risks, specific risks (force majeure, termination payments, change in law, etc.) shall be compiled together and be addressed in the concession / PPP agreement.

**Risk to be assigned to Private**
- Design, construction, project management, compliance, environmental regulations, quality, technical standards and efficiency,
- Demand of services, cost of project and cost of finances

**Risks to be assigned to Public**
- Market risks (relating to demand build up)
- Relating to general permits and approvals, land acquisition, political force majeure, inter governmental co-ordinations and government funding contributions.
11. Working Policy

11.11 Policy Implementation Plan

• PPP related Guidelines and directives shall be formulated based on these policy
• GON to formulate guidelines on Project preparatory fund, and Viability Gap funding within one year
• PPP Center to prepare a Model Document within One year, and to develop an action plan
11. Working Policy

11.12 Equity Participation

• There can be equity stake of PIA in the PPP project (*on case to case basis based on clear and documented justification*).

• Other financial support with due approval of competent authority of the GON may consider for PPP project such as taxation rebate and provision of subordinate debt agreement.
11. Working Policy

11.13 Dispute Resolution

- Project agreement shall be made based on the Nepalese law
- Dispute related to interpretation and implementation of agreement shall be mitigate based on mutual consensus through dialogue
- Provision for dispute resolution mechanism in the model agreement or draft concession of PPP agreement shall be based on Arbitration act of Nepal, 1999.
- For foreign investors – ICC rules or UNCITRAL procedure can be followed by provisioning in the agreement.
- However, it may be modified as per the specific requirement of the project with approval of the cabinet.
12. Institutional Framework

12.1 PPP Steering Committee (SC)

- Comprise of Secretaries from various Ministries and NPC; and Chair by the Finance Secretary.
- Be Single window for approval of Projects, overall Policy Coordination, Guidance, and sectoral Identification of the projects and work as a oversight agency.

12.2 PPP Regulatory Committee (PPPRC)

- Comprise of Joint Secretaries from various key Ministries and Chair by the NPC Secretary.
- Work and facilitate PPP Center, coordinate among the PIA.
12. Institutional Framework

12.3 PPP Center - to be Established under NPC

- Comprises of Executive Director (Equi. to JS) with various group of experts from Public and Private Sector
- Appraise PPP projects, Assist and facilitate PIA, and build capacity
- Study the best Practices, institutionalize and promote them in the national context
- Develop model documents and guidelines, manuals
- Bring together various stakeholders and provide forum for discussion to the developer, investors and bankers

12.4 Project Implementation Unit

- To be establish under every potential Public entities
- Preparation of PPP project, manage the Study and Procurement related tasks, and Support, Coordinate and Agreement related activities with private sector.
13. Financial Arrangement

13.1 Budget from Central and Local Bodies
• for capacity building, Consultation, experts hiring, and fund establishment; and budget for the PPP Center.

13.2 Project Preparation Facilitation Fund
• For project feasibility study, financial support to the PIA for the successful completion of Options analysis and feasibility study, consulting services, hiring of Advisors for PPP projects, and opportunity analysis

13.3 Land Acquisition Revolving fund
• To be revolved from the project cost

13.4 Viability Gap Funding (VGF)
• This fund shall be utilized as a capital grant to make project financially viable.
13. Financial Arrangement

13.5 Project Preparatory Provision and Financing

• Project selection, detailed feasibility study, project supervision, and private sector selection related expenses to be financed by GON
• Land acquisition cost to be financed from GON to be reimbursed from private sector or royalty;
• Project implementation cost to be borne by the private sector

13.6 Account Management & Auditing

• based on the provision of national law, private developer should submit the annual report to the government.
14. Legal Framework

Necessary statutory provisions to be made inline with these policy, For this purpose, within one year of its approval:

- A suitable PPP Act to be enacted, to replace existing BOOT Act,
- MOF to setup and develop guidelines for project Preparation, facilitation Fund, Viability Gap Fund, and land acquisition revolving fund
- PPP Center to develop guideline for PPP procurement / Bid document, appraisal and approval,
15. Monitoring & Evaluation

M &E process and regulatory provisions shall be simple, clear and effective.

- **Process** - PPP center submits the annual report to GON through PPPSC, sole responsibility remains on PIA to monitor PPP project

- **Regulatory Provision** - Separate sectorial regulatory unit to be formed by GON on the basis of neutral, independent, transparent and accountable manner.
16. Risks in Policy Execution

Public sector may face the following potential risks during the implementation of this Policy:

- If insufficiently prepared the project – *that may lead to failure of project and conflict creation,*
- If Complexity arose in involuntary re-settlement of land - *that may lead to time overrun, and additional compensation to private sector.*
- If insufficient provision of project and Contract management are made - *that may lead towards non completion of project, and problem in hand over process.*
- If Political instability remained - *it may lead towards the time and cost overrun*
17. Project Handover

• After completion of the tenure of the agreement private sector shall handover the project in running condition to the implementing agencies as per agreement.
Thank You