

Public-Private Partnerships Readiness Assessment

Public Private Partnership Readiness – Self Assessment Form

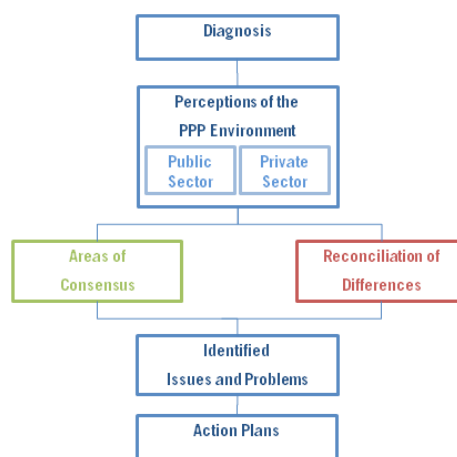
The aim of this PPP-Readiness Self-Assessment is to provide a diagnostic tool for identifying the key areas that governments need to address in order to involve the private sector more actively in the infrastructure development process.

The Assessment is to be used to diagnose the main problems in attracting private investment for infrastructure development as distinct from using it to develop benchmarks against which different sectors or countries could be compared. It would also help in preparing detailed action plans and identifying authorities to address them.

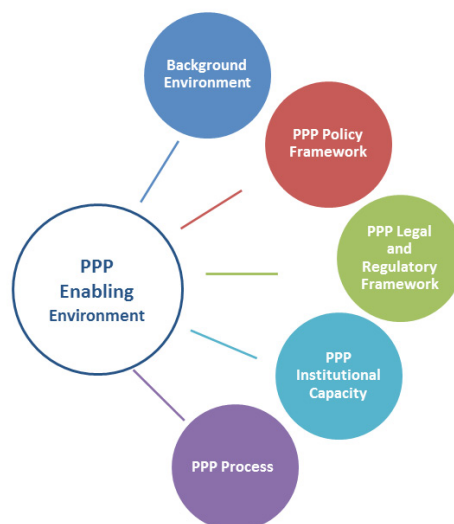
The intention of the Assessment is that it is a questionnaire in which all the questions could be answered by small informed groups that have understanding of the overall investment environment including institutional and administrative arrangements in a country in half a day. Ideally, the groups should comprise of stakeholders with common interests. For example, a public sector group with representations from each infrastructure sector (as normally the institutional arrangements are different) and a private sector group. When possible, the private sector group can also be divided separately into domestic and foreign private sector groups to consider the difference of their views and concerns.

Having filled out the questionnaire and results tabulated, the groups can discuss the commonality and difference in their perceptions of the PPP environment. If the difference in perception in an area is significant, the groups should discuss the reasons for such differences and reconcile their differences. Based on their final assessment after reconciliation of any major differences in evaluation, action plans can be prepared afterwards. The whole assessment process is summarized in the diagram below.

READINESS ASSESSMENT PROCESS



The questionnaire is separated into five main parts trying to capture the key elements which can have an impact on building an enabling PPP environment. An answer sheet as well as guidelines are provided to support respondents in marking their reply.



ESCAP supports governments in Asia-Pacific in implementing measures to efficiently involve the private sector in infrastructure development.

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Answer Sheet

Name: Function:

Group: Public Sector Domestic Private Sector International Private Sector

| General Background Environment | | Very Good | Good | Moderate | Fair | Poor |
|--------------------------------|--|-----------|------|----------|------|------|
| 1 | GDP growing at an acceptable rate | 4 | 3 | 2 | 1 | 0 |
| 2 | Business confidence high | 4 | 3 | 2 | 1 | 0 |
| 3 | Stable exchange rate | 4 | 3 | 2 | 1 | 0 |
| 4 | Ease of establishing business | 4 | 3 | 2 | 1 | 0 |
| 5 | Few restrictions on repatriation of profits | 4 | 3 | 2 | 1 | 0 |
| 6 | Convertibility of foreign exchange | 4 | 3 | 2 | 1 | 0 |
| 7 | Financial sector experienced in assessing long-term lending decisions | 4 | 3 | 2 | 1 | 0 |
| 8 | Property rights effectively enforced, and compensation for expropriation is fair | 4 | 3 | 2 | 1 | 0 |

| PPP Policy Framework and, Social and Political Environment | | Very Good | Good | Moderate | Fair | Poor |
|--|---|-----------|------|----------|------|------|
| 9 | Broad political support for PPPs | 4 | 3 | 2 | 1 | 0 |
| 10 | Clear allocation of Authority / Responsibility | 4 | 3 | 2 | 1 | 0 |
| 11 | Distinct process for unsolicited PPP proposals in policy framework | 4 | 3 | 2 | 1 | 0 |
| 12 | Viable projects generated | 4 | 3 | 2 | 1 | 0 |
| 13 | Clear criteria for government financial support | 4 | 3 | 2 | 1 | 0 |
| 14 | Positive track record or political “Champion” | 4 | 3 | 2 | 1 | 0 |
| 15 | Civil society views PPPs as viable means of providing infrastructure and basic services | 4 | 3 | 2 | 1 | 0 |
| 16 | Funds available for projects with added social welfare purpose | 4 | 3 | 2 | 1 | 0 |
| 17 | Resettlement and rehabilitation provided for communities disrupted by PPP projects | 4 | 3 | 2 | 1 | 0 |

| PPP Legal and Regulatory Framework | | Very Good | Good | Moderate | Fair | Poor |
|------------------------------------|---|-----------|------|----------|------|------|
| 18 | Legal basis for private sector participation | 4 | 3 | 2 | 1 | 0 |
| 19 | Limited restriction on foreign investors | 4 | 3 | 2 | 1 | 0 |
| 20 | Clear authority and procedure for acquiring rights of way | 4 | 3 | 2 | 1 | 0 |
| 21 | Regulatory rules and authority are clear for all PPP types expected | 4 | 3 | 2 | 1 | 0 |
| 22 | Price and quality of PPP monopolies regulated to protect consumers and others | 4 | 3 | 2 | 1 | 0 |
| 23 | Environmental laws are clear and transparent and are all available from a single source | 4 | 3 | 2 | 1 | 0 |

| PPP Institutional Capacity | | Very Good | Good | Moderate | Fair | Poor |
|----------------------------|---|-----------|------|----------|------|------|
| 24 | Staff aware of legal, financial and basic technical issues in PPP projects | 4 | 3 | 2 | 1 | 0 |
| 25 | Defined government mechanisms in place to coordinate PPP needs | 4 | 3 | 2 | 1 | 0 |
| 26 | Technical capacity sufficient to ensure construction and service standards | 4 | 3 | 2 | 1 | 0 |
| 27 | Staff can assess outside work, including feasibility studies and risk mitigation strategies | 4 | 3 | 2 | 1 | 0 |
| 28 | Provision for assisting line agencies and local government in undertaking PPP projects | 4 | 3 | 2 | 1 | 0 |
| 29 | Arrangements for risk sharing are sensible and manageable | 4 | 3 | 2 | 1 | 0 |
| 30 | PPP documentation/best practices available in the public domain | 4 | 3 | 2 | 1 | 0 |

| PPP Process: Project selection, contracting and post selection | | Very Good | Good | Moderate | Fair | Poor |
|--|--|-----------|------|----------|------|------|
| 31 | Transparent procedures specified for all stages of the PPP process | 4 | 3 | 2 | 1 | 0 |
| 32 | Bidders given proper information, including requirements for submitting proposals | 4 | 3 | 2 | 1 | 0 |
| 33 | Competitive tendering process is transparent in practice | 4 | 3 | 2 | 1 | 0 |
| 34 | Objective criteria for project sponsor selection are known and applied | 4 | 3 | 2 | 1 | 0 |
| 35 | Defined performance requirements available prior to bidding | 4 | 3 | 2 | 1 | 0 |
| 36 | Contracts for PPP are irrevocable except through due process | 4 | 3 | 2 | 1 | 0 |
| 37 | Conflict resolution process is clear, including alternative to judicial resolution | 4 | 3 | 2 | 1 | 0 |
| 38 | International arbitration recognized and effective for dispute resolution | 4 | 3 | 2 | 1 | 0 |
| 39 | Ruling by technical and economic regulators can be appealed | 4 | 3 | 2 | 1 | 0 |

I. General background environment

This part focuses on issues relating to the general investment climate in country and includes variables on macroeconomic, business climate, financial, and legal and governance environment.

() GDP GROWING AT AN ACCEPTABLE RATE

GDP is the most commonly reported summary statistic for most economies. Its rate of increase measures how fast the economy is growing, which generally is perceived as a measure of health and growth. Here it is used with the understanding that faster growth creates more demand for projects and greater chances for profits among private enterprises.

- 4 – GDP growth rate has averaged greater than 6 per cent in the last 2 years
- 3 – GDP growth rate has averaged between 4 and 6 per cent in the last 2 years
- 2 – GDP growth rate has averaged between 2 and 4 per cent in the last 2 years
- 1 – GDP growth rate has averaged between 0 and 2 per cent in the last 2 years
- 0 – GDP growth rate has averaged less than 0 per cent in the last 2 years

() BUSINESS CONFIDENCE HIGH

Business confidence reflects business' future expectations about economic conditions and the returns to investment. Although it is closely aligned with a number of other macroeconomic variables, this indicator is included as a forward-looking indicator of growth, and as a way to capture many other economic factors. If regular surveys of business confidence are not available, perceptions of current confidence are probably still valuable.

- 4 – Business confidence is high relative to historical levels
- 3 – Business confidence is moderately high relative to historical levels
- 2 – Business confidence is near average historical levels
- 1 – Business confidence is low relative to historical levels
- 0 – Business confidence is very low relative to historical levels

() STABLE EXCHANGE RATE

Stable exchange rates are important for firms who may want to repatriate profits, who may import raw materials, and who are choosing projects based on expected return. They are also an important indicator of the country's external position and stability. Devaluation is more likely to signal economic trouble than appreciation, but rapid swings in either direction are danger signs. In general the exchange rate should be measured against a basket of the major world currencies.

- 4 – Exchange rate is set using a managed float and has varied less than 5 % per year against a basket of major currencies in the past two years
- 3 – Exchange rate is fixed to a reference currency and has not been devalued in the past 2 years
- 2 – Exchange rate has fallen less than 10% per year vs. major currencies in the past 2 years
- 1 – Exchange rate has varied between 10% and 20% vs. major currencies in the past year
- 0 – Exchange rate has varied more than 20% against major currencies in the past year

() EASE OF ESTABLISHING BUSINESS

The speed and ease with which new businesses receive official permission to operate represents the extent to which government cooperates with enterprise or, alternatively, assists in rent-seeking. Important are: (a) the number of places that must be visited to register a business; (b) the actual number of steps / agencies that must be dealt with; and (c) the actual average time to establish a new enterprise. The first and second of these can be roughly captured by measuring the third.

- 4 – Average time to establish a new business is less than 1 month
- 3 – Average time to establish a new business is less than 2 months
- 2 – Average time to establish a new business is less than 4 months
- 1 – Average time to establish a new business is less than 8 months
- 0 – Average time to establish a new business is more than 8 months

() FEW RESTRICTIONS ON REPATRIATION OF PROFITS

Because of scarce local capital or technology, many PPP firms will be foreign companies. It is important to these firms to be allowed to take their profits out of the country to the home country.

- 4 – No restrictions on removing income from the country
- 3 – Most types of profit can be taken out of the country
- 2 – Firms must maintain extra accounting categories because only certain types of profit can be taken out of country
- 1 – Profits cannot be taken out of country except with special permission of the government
- 0 – Firms must keep profits inside the country

() CONVERTIBILITY OF FOREIGN EXCHANGE

Even if there are no rules against repatriation of profits, it may be difficult or time consuming for PPP firms to transfer their profits into their own domestic currency. Therefore ease and reliability or being able to convert currency are important.

- 4 – Currency is freely convertible at any time and is liquid
- 3 – Currency is freely convertible with minor paperwork requirements and justification
- 2 – Currency is convertible with appropriate documentation for government - may take some time to transfer profits
- 1 – Currency is convertible, but in seriously restricted quantities, or only for specific purposes
- 0 – Currency generally not convertible

() FINANCIAL SECTOR EXPERIENCED IN ASSESSING LONG-TERM LENDING DECISIONS

Long-term finance may be assembled by bankers if they have the capacity for assessing and coping with risk. By contrast, banking sectors which have been primarily directed by the government may not even have learned to assess the financial soundness of borrowers and the profitability of proposed investments. While international sources of finance are available, the risk to the country's system is reduced when long-term finance is available internally.

- 4 – Domestic financial sector skilled and experienced in long-term finance
- 3 – Domestic financial sector has proven competence in assessing long-term finance decisions
- 2 – Domestic financial sector has some limited experience with long-term finance
- 1 – Domestic financial sector has experience and capacity assessing loan applications, but not with long-term horizons
- 0 – Domestic financial sector has severe limitations in capacity for assessing loan applications

() PROPERTY RIGHTS EFFECTIVELY ENFORCED, AND COMPENSATION FOR EXPROPRIATION IS FAIR

A fundamental pillar of the legal system is the right to dispose of property freely. This may be infringed by government, unless its power is restricted, but also by lack of clarity in the case of disputes between private parties. Expropriation is sometimes necessary, but must be limited to cases that can be justified with reference to specific criteria, and must be fairly compensated.

- 4 – Property rights clear and fully enforced; expropriation is accountable and requires fair compensation
- 3 – Property rights enforced in most situations; expropriation accountable and gives compensation based on a reasonable standard
- 2 – Property rights generally enforced but not fully defined; expropriation requires due process of law but may be arbitrary in practice, and gives some compensation
- 1 – Property rights have some basis in law but are limited in practice; expropriation may be arbitrary
- 0 – Property rights have little basis in statute or legal practice; expropriation normally arbitrary and uncompensated

II. PPP policy framework and social and political environment

Indicators in this category refer to the adequacy of the framework of policy understanding and structure that determines the purposes and priorities to be served by PPP projects.

(9) BROAD POLITICAL SUPPORT FOR PPPs

The rationale for PPP, and the supporting requirements, should be firmly understood and accepted by policymakers. In the course of PPP projects there will inevitably be surprises, and it is important that the PPP policy be clear, strong and flexible enough to survive these.

- 4 – PPP policy clear and accepted among policymakers and officials
- 3 – PPP policy broadly understood and accepted, despite reservations
- 2 – PPP policy understood and accepted by key decision makers, but faces some resistance in important parts of government
- 1 – PPP policy inadequately understood or only tentatively supported by key officials
- 0 – PPP policy tentative and only weakly supported

(10) CLEAR ALLOCATION OF AUTHORITY / RESPONSIBILITY

Confusion and tension between different parts of government, who naturally have very different perspectives, has been a major source of difficulties for PPP projects. It is important to clearly define the respective authority and responsibility between national and local government and between central and line agencies. Full consideration must be given to adequacy of the resources required.

- 4 – PPP policy has clearly and effectively allocated authority and responsibility
- 3 – Allocation of authority and responsibility shows significant weaknesses
- 2 – Allocation of authority and responsibility shows serious weaknesses
- 1 – Unclear allocation of authority or responsibility regularly causes trouble
- 0 – Unclear or inappropriate allocation of authority or responsibility seriously limits PPP program

(11) DISTINCT PROCESS FOR UNSOLICITED PROPOSALS

Unsolicited PPP proposals (i.e. proposals submitted by private parties proposals without any request from the government) may be considered valuable, but they present different challenges for process transparency. Experience has shown that a separate process needs to be defined for approving and structuring these project proposals. Furthermore, many stages of the process, such as allocating funds if government support is called for, need to be addressed with additional care for transparency

- 4 – Challenges of unsolicited PPP proposals understood and addressed by separate selection process
- 3 – Unsolicited PPP proposals dealt with as distinct category, but not all transparency issues addressed
- 2 – Unsolicited PPP proposals mainly dealt with as if no separate issues arise
- 1 – Unsolicited PPP proposals have become a source of arbitrariness in selection
- 0 – Unsolicited PPP proposals are known to offer opportunities for manipulation

(12) VIABLE PROJECTS GENERATED

The perspective of the private sector needs to be fully recognized, and risks effectively managed, so that the PPP framework consistently generates proposals that pay for themselves (with governmental support if justified by social priorities). PPP projects needs also to be integrated with national planning process to ensure that the project will be relevant for many years to come.

- 4 – Policy has proven effective in generating commercially viable projects
- 3 – Policy adequately generates commercially viable projects but with limitations
- 2 – Serious limitations regularly require modification of proposals after initial tendering, in order to permit commercial viability
- 1 – Limitations in project selection regularly result in rejection of projects by the private sector
- 0 – Most proposals are not commercially viable, causing companies without close government contacts to be unwilling to bid

(13) CLEAR CRITERIA FOR GOVERNMENT FINANCIAL SUPPORT

Government financial support is often an invitation to abuse. There must be a solid basis in external (i.e. unpaid for) benefits of the project for surrounding areas, or in benefits to users with limited ability to pay. Careful estimates of these benefits need to be made before government support is committed, and the amount of benefit needs to be compared to alternative methods of achieving the goals.

- 4 – Criteria for project support are clear and solidly based on economic rationale
- 3 – Criteria for project support basically clear and generally used effectively
- 2 – Project support only loosely based on objective criteria
- 1 – Project support often politically motivated, with unclear criteria
- 0 – Project support decisions arbitrary, and subject to serious abuse

(14) POSITIVE TRACK RECORD OR POLITICAL “CHAMPION”

Even if public opposition is limited, the difficulties that arise in the process of bringing PPP projects to completion can cause viable projects to fail. If a project has the necessary political backing, these difficulties are more easily resolved. Thus if there is a political “champion” or a broad base of support due to past successes, the chances of unnecessary project failure are significantly reduced. Lack of such support can often cause private firms to be reluctant to bid.

- 4 – Political support is strong, durable and widely known
- 3 – Political support is significantly limited but sufficient for foreseeable situations
- 2 – Political support is seriously limited by public or internal opposition, or by well-known failures
- 1 – Political support is probably not sufficient to overcome significant trouble
- 0 – PPP faces more opposition than support

(15) CIVIL SOCIETY VIEWS PPPs AS VIABLE MEANS OF PROVIDING INFRASTRUCTURE AND BASIC SERVICES

PPP projects face a lot of political opposition and misunderstanding. If PPP firms are already accepted as a possible way to achieving government aims in infrastructure and basic services, it will greatly simplify the adoption of new PPP projects.

- 4 – PPP widely adopted and accepted
- 3 – PPP projects widely adopted, moderately accepted
- 2 – PPP projects adopted in some areas, moderate acceptance
- 1 – At least one PPP project exists, and is reasonably successful
- 0 – No PPP projects or understanding of them

(16) FUNDS AVAILABLE FOR PROJECTS WITH ADDED SOCIAL WELFARE PURPOSE

In addition to projects which can be financed from customer revenue, some may need added funds to meet other, social welfare, priorities. For example, “basic service” projects provide services to poor or disadvantaged groups. Or projects may generate “external” benefits, such as relieving congestion on nearby roads. Revenue inadequate to social benefits may be handled in a number of ways: the government may subsidize the project on a long term basis, or may provide initial funds to cover expected revenue shortfall, or may have the firm build the project and turn it over immediately to the government to run.

- 4 – Government funds available for extensive basic services or external benefit projects
- 3 – Government funds allow a regular stream of basic services or external benefits projects
- 2 – Government funds allow only the most urgent social welfare projects, though guarantees may leverage additional projects
- 1 – Government uses guarantees or other indirect methods to leverage private funds for some social welfare projects
- 0 – Government unwilling or unable to create funding for social welfare projects

(17) RESETTLEMENT AND REHABILITATION PROVIDED FOR COMMUNITIES DISRUPTED BY PPP PROJECTS

Infrastructure projects may disrupt regions and communities seriously. Failure to provide for resettlement or environmental and other rehabilitation will create popular resentment and will undermine the project and the overall PPP programme.

- 4 – Rehabilitation fully compensates for loss of land and livelihood and addresses social disruption
- 3 – Rehabilitation compensates for most money losses and is conducted helpfully
- 2 – Rehabilitation seriously limited or conducted in an alienating manner
- 1 – No assistance is provided except compensation for land
- 0 – No compensation is provided

III. PPP Legal and Regulatory Framework

Indicators in this category measure whether the laws of the nation have provided for a PPP process, and the necessary legal structures are prepared to deal with legal issues arising in the process.

(18) LEGAL BASIS FOR PRIVATE SECTOR PARTICIPATION

If there is not a superseding PPP enabling law, then individual sector legislation may have to be modified. For example, some countries do not allow private provision of telecommunications, or of water, etc. The target sectors chosen for PPP need to have explicit legal provision enabling private participation.

- 4 – Private sector participation in PPP has legal basis explicitly setting aside any conflicts with prior law
- 3 – Private sector participation in PPP has legal basis but may conflict with prior laws
- 2 – Legality of private sector participation not clear
- 1 – Private sector participation blocked by legal provisions in some target sectors
- 0 – Private sector participation in some target sectors prohibited by law

(19) LIMITED RESTRICTION ON FOREIGN INVESTORS

Even if private sector companies are enabled to provide basic services, many countries limit foreign participation in such efforts, or have serious limitations on the form in which foreign businesses may provide services. These may include limitations on land ownership or other natural resource use, greater restrictions on employment, or special requirements such as technology transfer. Openness to foreign participation usually accompanies a policy emphasis on effectiveness of private participation. Many countries have signed treaties concerning the treatment of foreign investors, providing a more predictable and secure environment for these investors.

- 4 – Foreign investors receive national treatment in ability in PPPs
- 3 – Foreign investors have treaty protection for their ability to participate in PPPs
- 2 – Foreign investors must use significant effort to work around restrictions on PPP participation
- 1 – Foreign investors heavily discouraged from participation in PPPs
- 0 – Foreign investors cannot participate in PPPs in most target sectors

(20) CLEAR AUTHORITY AND PROCEDURES FOR ACQUIRING RIGHTS OF WAY

Rights of way are critical for infrastructure. Acquisition can be excessively costly and complex if government does not have clear authority and procedures for commanding the acquisition.

- 4 – Clearly defined authority and widely accepted practice for eminent domain allows predictable process of acquiring rights of way
- 3 – Eminent domain process is defined but faces potential obstacles
- 2 – Rights of way have little advantage over other property acquisition
- 1 – Infrastructure rights of way are subject to arbitrary obstruction by property owners
- 0 – Infrastructure rights of way are targets for extraction of payment due to popular resentment and lack of clear authority

(21) REGULATORY RULES AND AUTHORITY ARE CLEAR FOR ALL PPP TYPES EXPECTED

Whether economic regulation is done by line agencies specialized by type of project, or by authorities empowered for all PPP projects, the authority needs to be clearly specified and understood by all parties. Disputes between agencies can lead to serious delays and unpredictability for private parties. Clear authority for technical regulation may also be an issue at times.

- 4 – Regulatory authority is clearly specified for all PPP types which are foreseen in the policy framework, including any necessary tests in court
- 3 – Regulatory authority is clear except for minor issues or small possibilities of legal challenge
- 2 – Regulatory authority is clear in principle but may face significant challenges in practice
- 1 – Regulatory authority is unclear for significant parts of the possible spectrum of PPP projects
- 0 – Regulatory authority for PPP projects is generally unclear

(22) PRICE AND QUALITY OF PPP MONOPOLIES REGULATED TO PROTECT CONSUMERS AND OTHERS

Some monopoly power often goes with infrastructure provision, so that consumers need to be protected by quality requirements and price limits. Other regulation may be necessary as with any industry, to protect others affected by the business.

- 4 – Price and quality regulations fully protect consumers and others affected, while permitting a fair return on investment.
- 3 – Price and quality regulations restrict abuses of monopoly power, but do not fully balance commercial interests with consumer interests.
- 2 – Regulation has the practical effect of restricting abuse, but is not based on understanding of economically appropriate decision rules.
- 1 – Regulation is limited to occasional interventions.
- 0 – PPP projects are not regulated economically.

(23) ENVIRONMENTAL LAWS ARE CLEAR AND TRANSPARENT AND ARE ALL AVAILABLE FROM A SINGLE SOURCE

Although generally PPP firms prefer to have environmental legislation as it spells out what needs to be done, environmental rules tend to be lodged in a variety of different ministries or branches of the government. If all the environmental regulations are clearly spelled out and are available from a single source - be it a book, or a government office - it greatly facilitates the firm's compliance with regulations, and helps the firm plan.

- 4 – A single source of information about environmental regulations exists and can provide complete guidance and information about environmental laws
- 3 – Environmental laws are all clear and straightforward but compliance requires visits to 2-3 agencies
- 2 – Environmental laws are mostly clear and transparent, but are enforced through many agencies
- 1 – Environmental laws are not easy to understand, or are not available in English or other international language, or are difficult to find out about.
- 0 – Environmental laws are arbitrary and unreasonable or don't exist

IV. PPP Institutional Capacity

Indicators in this section refer to aspects of the capacity of the public sector for undertaking PPP projects successfully.

(24) STAFF AWARE OF LEGAL, FINANCIAL AND BASIC TECHNICAL ISSUES IN PPP PROJECTS

Well-trained and experienced staff will have a good idea where the difficult issues arise in the process of selecting projects and choosing private partners, as well as tools for addressing these. They will also be able to anticipate which of the major potential problems are most likely to come up in the course of a particular project. This will allow special attention to the challenges, and realistic planning for contingencies.

- 4 – Personnel have a thorough understanding of the legal, financial and technical issues that need to be addressed
- 3 – Personnel understand legal, financial and technical issues at a level sufficient for effective planning and management
- 2 – Personnel are aware of legal, financial and basic technical issues, and have some awareness of strategies for dealing with them
- 1 – Staff awareness of legal, financial or basic technical issues is seriously limited, making unanticipated difficulties likely
- 0 – Staff awareness of legal, financial and basic technical issues is clearly inadequate

(25) DEFINED GOVERNMENT MECHANISMS IN PLACE TO COORDINATE PPP NEEDS

PPP projects have special problems and issues. Experience suggests that the complexities of fitting PPP priorities into government structures requires specific mechanisms, including defined and formalized procedures, and, if the number of projects is large, dedicated staff who may be consolidated in a single governmental unit.

- 4 – Dedicated PPP unit or tested formal mechanisms effectively coordinate most PPP activity.
- 3 – Defined PPP mechanisms adequate for coordination of PPP activity.
- 2 – Specialized PPP staff can be identified, but coordination problems limit effectiveness.
- 1 – Some PPP expertise dedicated to PPP needs, but lack of defined mechanisms create serious problems.
- 0 – Lack of PPP mechanism means government treatment of PPP is haphazard or inappropriate

(26) TECHNICAL CAPACITY SUFFICIENT TO ENSURE CONSTRUCTION AND SERVICE STANDARDS

Government oversight of technical matters is important for maintaining standards of safety and quality, and has added benefit such as ability to assess the desirability of adopting new methods as techniques change. Therefore, even though complete technical mastery may be unaffordable for government PPP oversight, an intermediate level is necessary for government to fulfill its role as partner.

- 4 – Technical capacity is comparable to specialists in the international private sector
- 3 – Technical capacity is sufficient to ensure proper standards in construction and service
- 2 – Technical capacity faces significant limitations
- 1 – Limitations on technical capacity risk inadequate oversight of the private sector
- 0 – Technical capacity is clearly too limited for adequate oversight of the private sector

(27) STAFF CAN ASSESS OUTSIDE WORK, INCLUDING FEASIBILITY STUDIES AND RISK MITIGATION STRATEGIES

Complex tasks delegated to outside contractors must still be supervised and evaluated. Staff should have the competence to determine whether additional work needs to be done and to evaluate work quality for purposes of determining future contracting. Ideally staff would have a high level of expertise in technical and financial matters, so that, for instance, risk/reward tradeoffs can be structured in the contract based on direct input from staff.

- 4 – Staff have no trouble evaluating outside work at all levels of complexity
- 3 – There are significant limitations on staff ability to assess outside work
- 2 – Staff cannot adequately assess outside work in particular types of projects or for unusual complexity levels
- 1 – Staff difficulties assessing outside work has caused numerous disputes or other interferences with PPP process
- 0 – PPP projects are limited to routine types by staff difficulties assessing outside work

(28) PROVISION FOR ASSISTING LINE AGENCIES AND LOCAL GOVERNMENT IN UNDERTAKING PPP PROJECTS

Expertise in PPP projects has often been concentrated in specialized agencies or central agencies, but not extended to line agencies or to local governments. As a result, the PPP approach may not be available for projects that are the responsibility of these parts of government. Less specialized users of PPP will often require assistance to manage the complexity of PPP. Specific resources may need to be developed to package management skills for the less specialized users. For example, special guidelines for small-scale projects are often developed to make the process manageable with limited resources.

- 4 – Assistance to line agencies and local governments has been effective and responsive
- 3 – Assistance to other government occurs, but with significant limitations
- 2 – Provision for assistance to other government exists, but has not been implemented effectively
- 1 – There has been little provision for assistance to other government
- 0 – Central agencies are hostile to assisting line agencies or local government

(29) ARRANGEMENTS FOR RISK SHARING ARE SENSIBLE AND MANAGEABLE

Careful definition of likely uncertainty, and proper arrangements for managing it, are critical technical requirements for reconciling the inherent tension between public and private sector goals. Insurance firms should be involved in specifying measures for dealing with physical risks. Financial risks should generally be arranged to directly impact the parties capable of limiting them, but for factors that are difficult to control, potential costs should be shared in proportion to potential benefits, or priced fairly for shifting to other parties.

- 4 – Arrangements for risk sharing are equitable and avoid unnecessary costs from enforcement or from moral hazard
- 3 – Arrangements for risk sharing have shown significant gaps, requiring improved procedures for negotiations
- 2 – Arrangements for risk sharing have serious limitations, discouraging proper effort by sponsors or discouraging firms from bidding
- 1 – Risk sharing is only minimally provided for
- 0 – Risk sharing has not been addressed in contract provisions

(30) PPP DOCUMENTATION/BEST PRACTICES AVAILABLE IN THE PUBLIC DOMAIN

A quality documentation base can save enormous amounts of time and effort by telling what problems occur and what solutions have been tried. Knowledge sharing and formal training will also benefit from thorough documentation. Ideally these are also available to the private sector.

- 4 – Documentation of best practices is open and thorough, including foreign experience.
- 3 – Documentation of best practices is extensive, open and responsive to client needs.
- 2 – Documentation of best practices is seriously limited, resulting in costs or limits on program.
- 1 – Documentation of best practices is clearly inadequate.
- 0 – There is no organized documentation of best PPP practices.

V. PPP Process: Project selection, contracting and post selection

Indicators in this category reflect more detailed aspects of the management of a PPP project through the various stages from proposals to contract to monitoring post selection

(31) TRANSPARENT PROCEDURES SPECIFIED FOR ALL STAGES OF THE PPP PROCESS

Good governance in PPP requires clear and transparent procedures for each step of the PPP process to be defined. This indicator relates to the existence of such procedures, while later indicators refer to their implementation and effectiveness. At each stage, reference to objective criteria must guide all selection, and the procedures need to include a recorded explanation of decisions with careful and verifiable reference to these criteria. Other procedures are needed to prevent manipulation of the process using inside information. For example, bids should be submitted privately but opened in public. Finally, experience shows that behavior after the selection needs to be managed by careful procedures and objective criteria, to counter the temptation to bid low in order to win the award, with the intention of later renegotiation.

- 4 – Clear and transparent procedures exist for every stage of the PPP process
- 3 – Clear procedures exist, with some limitations on transparency
- 2 – Procedures are carefully designed, but lack of clarity and transparency creates noticeable problems
- 1 – Procedures haphazard and lack transparency
- 0 – Government shows little concern for transparency in the PPP process

(32) BIDDERS GIVEN PROPER INFORMATION, INCLUDING REQUIREMENTS FOR SUBMITTING PROPOSALS

Potential bidders should be able to easily obtain complete information on the requirements of the projects sponsor, including technical and performance requirements, revenue projections and their basis, procedural requirements, criteria for sponsor selection, expected arrangements for regulation and risk sharing. Further background information, such as relevant laws and regulations, past experience and best practices, should be available for those seeking it. A “one-stop shop” or other simplified arrangement will encourage firms without PPP experience to bid.

- 4 – Complete information available conveniently and well in advance of deadlines
- 3 – Key information is available in a convenient and timely way
- 2 – Bidders given key information, but serious inconvenience or gaps in information result in some limitations to bidding
- 1 – Bidders can find key information with extensive effort, but carry the main burden of finding the appropriate source
- 0 – Key information is often not available in a timely way

(33) COMPETITIVE TENDERING PROCESS IS TRANSPARENT IN PRACTICE

Lack of transparency in tendering is one of the greatest possible challenges to the PPP process. Less established firms will be reluctant to bid, non-competitive efforts to win bids will be encouraged, and quality standards will be more difficult to uphold. Firms need to be assured that their performance, and the financial attractiveness of their bid, will be the main factor determining whether they get the contract. In addition to monitoring the transparency of the selection process, government needs to vigilantly enforce rules for bidder behavior, to exclude any coordination or manipulation of the bidding process.

- 4 – Tendering is known to be fully transparent and competitive
- 3 – Tendering process needs greater attention to implementation to be fully transparent
- 2 – Lack of effective implementation creates significant limitations to transparency
- 1 – Serious failures to implement procedure create reluctance to bid by qualified companies
- 0 – Tendering process is not competitive, or not perceived to be because of lack of transparency

(34) OBJECTIVE CRITERIA FOR PROJECT SPONSOR SELECTION ARE KNOWN AND APPLIED

A key element of transparency in sponsor selection is the careful definition of criteria for sponsor selection. These must be defined with reference to project requirements, not irrelevant factors, and must be applied consistently. Opportunity to challenge selection criteria should be offered prior to bidding, with appeal to an independent tribunal available.

- 4 – Selection criteria defined and applied objectively and appropriately, and publicized in advance
- 3 – Selection criteria generally defined properly and available in advance
- 2 – Selection criteria regularly defined or applied in ways that are not fully appropriate, leading to perception of possible bias
- 1 – Selection criteria perceived to be regularly applied in a biased way
- 0 – Definition or application of selection criteria perceived to be corrupt

(35) DEFINED PERFORMANCE REQUIREMENTS AVAILABLE PRIOR TO BIDDING

Sponsors need to know before bidding what standard of performance they will be held to. This allows them to budget realistically for costs when making bids. The basis for evaluation of the performance requirements should be spelled out and used in explaining the evaluations. Changes over the course of the contract should be limited to addressing unanticipated issues within the framework of the contract intent.

- 4 – Performance requirements carefully defined and available well in advance of bidding
- 3 – Performance requirements defined and available in advance of bidding
- 2 – Definition or availability of performance requirements significantly limited
- 1 – Definition or availability of performance requirements seriously flawed, such as by terms inappropriate to the project or by biased availability
- 0 – Performance requirements not defined

(36) CONTRACTS FOR PPP ARE IRREVOCABLE EXCEPT THROUGH DUE PROCESS

Experience shows that PPP contracts may not be fully protected by the legal system in cases of controversy or political change. Private partners will participate more readily if contracts are protected. Likewise, however, private partners seeking renegotiation should be required to make reference to specific developments justifying departure from the original terms of the bid.

- 4 – Potential reasons for contract revocation are enumerated and, in practice, must be demonstrated through due process, subject to appeal to independent authorities
- 3 – Contracts may not be revoked arbitrarily, and a form of due process is required
- 2 – Contract revocation is subject to an accountable process but not properly limited
- 1 – Contract revocation is not accountable but normally not arbitrary
- 0 – Arbitrary contract revocation by government is common

(37) CONFLICT RESOLUTION PROCESS CLEAR, INCLUDING ALTERNATIVES TO JUDICIAL RESOLUTION

Conflicts are likely to arise that have not been fully provided for in contracts. If resolution of such conflicts occurs in a predictable, timely and reasonably inexpensive way, PPP partners will participate more readily.

- 4 – Conflict resolution follows a well-defined and transparent process, including functional institutions of arbitration and mediation to avoid court
- 3 – Conflict resolution institutions impose some unnecessary burden, possibly including limited alternatives to judicial resolution
- 2 – Conflict resolution process expensive due to complexity, unpredictability, delay or likely bias against PPP operators
- 1 – Conflict resolution process highly expensive and biased against PPP operators
- 0 – Conflict resolution process not functional

(38) INTERNATIONAL ARBITRATION RECOGNIZED AND EFFECTIVE FOR DISPUTE RESOLUTION

When local provisions for arbitration are not considered completely reliable, foreign companies will be reassured by the option of specifying international arbitration. Not all countries accept, recognize and enforce international arbitration.

- 4 – International arbitration readily available and fully enforced
- 3 – International arbitration available, but recognition or implementation in question
- 2 – International arbitration available, but enforcement is doubtful
- 1 – Availability of international arbitration is limited and not legally recognized
- 0 – International arbitration is unavailable

(39) RULINGS BY TECHNICAL AND ECONOMIC REGULATORS CAN BE APPEALED

The ability to appeal regulatory decisions creates a significant check on arbitrary behavior and other lack of transparency by regulators. There must be a competent and independent authority to decide these appeals.

- 4 – Appeal of regulatory decisions is reliable and enforceable
- 3 – Appeal of regulatory decisions is possible but with significant limitations
- 2 – Appeal of regulatory decisions is so limited as to provide inadequate checks on regulators
- 1 – Appeal of regulatory decisions is ineffective except in the most egregious cases
- 0 – There is no appeal process for regulatory decisions