UNITED NATIONS
ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

Report of High-level Expert Group Meeting on Infrastructure Public-Private Partnerships for Sustainable Development

Tehran, 11 to 13 November 2012

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I. INTRODUCTION

A. Background

1. The High-level Expert Group Meeting (EGM) on Infrastructure Public-Private Partnerships for Sustainable Development was organized as an integral part of the Third Ministerial Conference on Public-Private Partnerships for Infrastructure Development in Asia and the Pacific, hosted by the Government of the Islamic Republic of Iran. The Meeting was designed to provide an opportunity for representatives of public sector agencies involved in the development of PPPs for infrastructure development to share knowledge and stimulate new ideas to address the development challenges and opportunities for the region. The Meeting reviewed the implementation of the Jakarta Declaration on Public-Private Partnerships for Infrastructure Development in Asia and the Pacific which was adopted at the Ministerial Conference on Public-Private Partnerships for Infrastructure Development in Asia and the Pacific, organized and hosted by the Government of Indonesia in Jakarta in April 2010. The Meeting also had before it a draft Tehran Declaration on Public-Private Partnerships for Infrastructure Development in Asia and the Pacific (Annex III), which was to be submitted to the Ministerial Conference for further consideration and adoption.

B. Organization of the Meeting

2. The EGM was hosted by the Government of the Islamic Republic of Iran through the Institute for Management and Planning Studies affiliated to the Vice Presidency for Strategic Planning and Control of the Islamic Republic of Iran. It was organized and conducted by the ESCAP secretariat in Tehran from 11 to 13 November 2012. It was chaired by Mr. Dong-Woo Ha, Director Transport Division of ESCAP and co-chaired by Dr. Davood Manzoor, Deputy Vice-President for Planning, Vice-Presidency for Strategic Planning and Control. The programme of the Meeting is contained in Annex II to the report.

C. Attendance

3. The Meeting was attended by representatives from the following member and associate member countries: Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, Democratic People’s Republic of Korea, Fiji, Indonesia, Islamic Republic of Iran, Japan,

Kyrgyzstan, Lao People's Democratic Republic, Mongolia, Nepal, Pakistan, Philippines, Republic of Korea, Russian Federation, Samoa, Sri Lanka, Tajikistan, Thailand, Turkmenistan, Tuvalu, Uzbekistan and Vanuatu.

4. Representatives from the following intergovernmental organizations and non-governmental organizations were present: Asian Institute for Transport Development and Islamic Development Bank.

5. The list of participants is attached as Annex I to the report.

D. Opening of the Meeting

6. Two opening statements were made by Dr. Mohammad Nahavandian, Head of the Islamic Republic of Iran Chamber Of Commerce, Industries and Mines, and Dr. Noeleen Heyzer, Under-Secretary General of the United Nations and Executive Secretary of ESCAP. Both speakers highlighted the contribution that PPP could bring to sustainable economic development. They further stressed the importance of good governance in the establishment and implementation of PPPs and the need for PPPs to reconcile economic growth with poverty alleviation and responsible management of natural resources.

II. PROCEEDINGS

A. Public-Private Partnerships modality for Infrastructure Development

(Item 2 of the agenda)

7. Under this agenda item presentations were made by the following experts: Messrs. Peter O'Neill, John R. Moon, Mr. Hyoung-Kwon Ko, Cherian Thomas and Ali Saedi.

8. A presentation by the ESCAP secretariat outlined the PPP modality for the development of economic and social infrastructure and considered the ways in which it differed from more traditional financing and development modalities. Issues considered included the purposes, common misconceptions, characteristics and complexities of the PPP mode for infrastructure development.

9. As an introduction to the proceedings, the Meeting was informed of the various modalities for private sector engagement including some earlier variants of partnerships between the public and private sectors. Insights were offered into defining the components

and advantages of PPPs, that utilised the skills and assets of each sector, required asset transfer and/or transfer of operating rights whilst sharing balanced risks and rewards. PPPs enabled access to private sector finance to supplement national funds availability. PPPs utilised a payment system that is based on results not the process of infrastructure provision and so increased ownership benefits whilst employing whole life-cycle costs.

10. The possible benefits of PPPs were set out including the opportunities for more sustainable development that required structured processes, transparency, clear roles and responsibility as well as stated objectives and expectations that took into account evaluation of risks and external variables such as tax regimes and interest rates. It was emphasised that a partnership is based on understanding each sectors role and developing cooperation and trust. Consequently, business plans, guaranteed revenue streams with incentives for efficiency improvements were needed. The capacity of public and private sectors to undertake a successful PPP needed to be enhanced. Statutory, institutional and political support also needed to be set in place.

11. In a second presentation, the secretariat provided an overview of the level of investment in public-private partnerships by region and sector over the period 1990-2011. In this respect it was noted that the total PPP investment in the ESCAP region had been around US$ 823 billion. The region attracting the largest investment was South Asia followed by Southeast Asia, Central Asia, Northeast Asia, Southwest Asia and the Pacific. The largest sector was energy followed by telecommunications, transport and, water and sewerage.

12. The Meeting acknowledged that the implementation of PPPs faced a number of barriers and constraints. According to an ESCAP survey, prominent amongst those were a lack of ownership of, and support for PPP programmes; poor understanding about PPPs by decision makers in governments; a lack of capacity in both the public and private sectors concerning project identification, development, procurement and implementation; the absence of, or inadequate, coverage of PPP legal regimes and/or institutional frameworks, the absence of a clear definition of the PPP process, and the non-availability of model concession agreements.

13. While the above barriers and the lack of capacity to remove them had led to an underutilization of PPP modalities or the failures of some projects implemented under PPP,

the Meeting heard that tools existed to help them gauge their readiness to embark on PPP implementation. In particular, the Meeting was informed of the PPP-readiness self-assessment model developed by ESCAP to assist governments in identifying key areas that they needed to address in order to involve the private sector more actively in the development process (the Meeting was informed that the tool can be downloaded from the ESCAP website).

14. An important follow-up action is the establishment by governments of an institutional environment conducive to PPP. This often means adapting areas of public sector frameworks, in particular taking regulatory, legislative and governance measures as well as understanding roles and risk transfer that needed to be set in place.

15. The Meeting participants were briefed about the experience of the Republic of Korea in introducing a successful PPP programme in the country. A presentation from the Ministry of Strategy and Finance provided the details of the PPP framework, some key performance highlights and PPP policy direction in the Republic of Korea.. The framework provided a new option for public service delivery under fiscal constraints, utilized the private sector's efficiency and innovation and also provided an institutional arrangement for stable and long-term investment opportunities for the private sector. The PPP Act provided opportunities for 48 types of infrastructure facilities in 15 sectors. Two types of PPP models namely Build Transfer Operate for economic infrastructure and Build Transfer Lease for social infrastructure were followed. The selection process of projects ensured their relevance, value for money and fiscal discipline in government. The Government also provided a range of incentives which included construction subsidy, tax incentives, termination payment and minimum revenue guarantee to promote PPPs as well as to make projects commercially viable. The Government also established an infrastructure credit guarantee fund to support PPPs. Meeting participants were briefed about the experience in the Republic of Korea where as of December 2011, a total of 600 PPP projects had been signed for an aggregate value of about US$80 billion. Success factors in the Korean experience were listed as (i) a solid legal framework of international standards, (ii) strong government commitment in support of PPPs and (iii) the central role of the Ministry of Strategy and Finance of the Republic of Korea.

16. The Meeting was informed that officials from the Republic of Korea stood ready to share their experience and assist other member countries in refining their approach to PPP through ad hoc meetings or Memorandum of Understanding.

17. The Meeting was informed that proper risk evaluation and sharing were critical to the successful completion of a project under PPP in terms of time, costs, quality of assets and services and returns to investors. In this respect, the Meeting was made aware that risks went well beyond the project planning stage to encompass the entire project life cycle, including construction and operation.

18. Major risks were, at the planning stage, inadequate feasibility studies and poor bidding procedures; at the completion stage, land acquisition modalities and environmental clearances; and at the operating stage, below-standards services. Furthermore, other non-technical risks not directly relating to the project were also to be taken into account and suitably addressed. Such risks were, for example, environmental and social risks, force-majeure risks, and/or governmental actions. The Meeting was informed that high-quality contractual arrangements were key to risk management.

19. The Meeting noted that the financial instruments complying with Islamic Law were being used in some countries for financing of infrastructure projects. In that respect, a special presentation considered the needs of Islamic finance for PPP projects, the principles of such financing arrangements and the Shariah (Islamic Law and principles) compliant financial instruments for project finance. The Islamic financial instrument "Istisna" was suitable for project finance. Two types of Istisna namely Ijarah Istisna (a fixed-income instrument) and Musharakah Mudarabah (an income-based instrument) may be available in an Islamic capital market. In an Istisna type of financing arrangement, a concessionaire can ask a contractor to supply an asset meeting certain specifications within a specified period of time. Considering the legal relationship between the project originator (i.e. the government agency), the Special Purpose Vehicle(SPV) (or the project company) and the contractor, two types of arrangements were available. In the first type, known as parallel Istisna, the Government agency permits the project company or SPV to execute the project through an Istisna contract. The SPV procures the asset from a contractor. The SPV sells Istisna sukuk to the public through the capital market and settles its payment with the contractor. The second type of Istisna through hire-purchase, is similar to the first one in terms of raising debt from the capital market. However, in this particular arrangement, the

Government agency purchases the asset from the SPV on a hire-purchase basis. The Meeting learned that a significant number of projects was being financed through Islamic Finance instruments.

B. Implementation of the Jakarta Declaration on Public-Private Partnerships for Infrastructure Development in Asia and the Pacific

(Item 3 of the agenda)

20. The Meeting recalled that the Jakarta Declaration was adopted by the Ministerial Conference on Public-Private Partnerships for Infrastructure Development in Asia and the Pacific, organized and hosted by the Government of Indonesia in Jakarta in April 2010. Subsequently, the Commission at its 66th session held in May 2010, adopted resolution 66/5 on "Implementation of the Jakarta Declaration on Public-Private Partnerships in Infrastructure Development in Asia and the Pacific". The resolution underlined the strength of the public and private sector working together to combine their resources to supply and maintain infrastructure facilities and services, and invited members to, inter alia, review and assess their Public-Private Partnerships, sectoral and other relevant policy frameworks and action plans for infrastructure development.

21. The Meeting was apprised of a range of activities undertaken by Governments to implement resolution 66/5. In particular, the following delegations provided an overview of PPP activities in their countries.

22. **Bangladesh**. Bangladesh has prior experience in developing and delivering PPP projects. A policy framework was formulated in late 1990 and other institutional arrangements were created to facilitate PPP project implementation. It also managed to implement a number of PPP projects in the power, telecommunication and other sectors.