

Policy, legal and regulatory frameworks for successful PPPs

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Overview

- ▶ The Importance of Policy
- ▶ Policy framework
- ▶ The Regulatory environment
- ▶
- ▶ The Legal environment
- ▶ Areas to be reviewed
- ▶ PPP Law
- ▶ Main lessons for success



Why is the Policy, legal and regulatory framework important for PPP's?

- ▶ PPP's are complicated long term transactions that are affected by many areas of law;
- ▶ Any one area of law may cause insuperable problems for the implementation of PPP's in a country;
- ▶ Any investor will carry out a full due diligence of the existing legal framework of a country to ensure that the legal environment is sufficiently attractive for it to bid for a project;
- ▶ It is therefore important to carry out a full review of all parts of the legal framework to ensure that there is nothing that prevents, or appears likely to prevent, the successful implementation of a PPP and define the project scope;
- ▶ Successful PPPs depend on the effectiveness of the national and
- ▶ municipal legislative and regulatory structures;



Policy Framework

- ▶ **A Policy Framework is necessary to:**
 - ▶ Encourage PPP Investment
 - ▶ Inform widely within Government
 - ▶ Give Government officials the confidence to use PPP's
 - ▶ Inform widely Stakeholders including consumers/users
- ▶ **Benefits:**
 - ▶ Facilitates planning and implementation
 - ▶ Instils confidence and understanding by the private sector
 - ▶ Provides an enabling environment for PPP
 - ▶ Defines the role of the Government in the implementation of PPPs

What should the policy contain?

- ▶ Overall Policy, objectives, direction, benefits, costs, etc.
- ▶ Legal and Regulatory framework
- ▶ Risk Management Framework
- ▶ Procurement guidelines & Model PPP contracts
- ▶ Financial guidelines (inc. tolls and public sector support)
- ▶ The Project Cycle and the role of Advisors
- ▶ Technical design and service standards
- ▶ Procedure for approval of projects



Regulatory Framework

- ▶ **Regulation is important when:**
 - ▶ The service involved is a natural monopoly;
 - ▶ There is significant market power (e.g. highway with alternatives that are congested or in very poor conditions)
 - ▶ The rights and obligations in a PPP concession agreement rely on regulatory interpretation.
- ▶ **Typically, the functions of a regulator include:**
 - ▶ Establish standards for the terms and conditions for supply of services
 - ▶ Regulate rates (tariffs) and other service charges
 - ▶ Establish market rules for the sector (issue, review and cancel licenses)
 - ▶ Monitor performance of the regulated entities
 - ▶ Arbitrate and settle disputes within the sector
- ▶ **Some areas of common concern:**
 - ▶ Clarity of responsibilities: which department is responsible?
 - ▶ who should the private sector deal with?
 - ▶ Tariffs:
 - ▶ are they too low to be economically viable?
 - ▶ How are they reviewed/regulated?

The Legal Framework

▶ **The Legal System:**

- ▶ The Rule of Law!
- ▶ Reliability (or otherwise!) of the Courts and the judiciary
- ▶ Enforceability of International arbitration awards

▶ **The procurement process:**

- ▶ Is it fair, open and transparent?
- ▶ Are ministry responsibilities clear?
 - ▶ PPP Unit
 - ▶ Ministry of Finance
 - ▶ Line Ministries
- ▶ Is there sufficient government support: financial (tariffs/capital support) and political?
- ▶ Are the Guidance and documentation sufficient?
- ▶ Is there sufficient monitoring capability within government?



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预览已结束，完整报告链接和二维码如下：



need to be reviewed?

Establish a Project Company?

Clear and reliable procedures for:

Company

Structure

and their transfer

Ownership of the company and granting security

Ability

Local Law/Civil Code

Clearly clear, robust and flexible to deal with the needs of all stakeholders

Uncertainty about the efficacy or the enforceability of contracts, the project is unlikely to even get started

Local law

Uncertainty that profits of the investors can be repatriated?
