

G:GENESIS

# Key Institutional Decisions - Exante

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Introduction

Enabling Laws

Enabling Institutions

Regulation of Planning

Good Fiscal Accounting & Reporting

Summary

Successful PPP program needs sound legislative foundation that provides ...

- ... easy access to a clear, fair, predictable, and stable legal environment for projects with private sector participation

- ... reassurance to the private sector that contracts will be honored

PPPs are less likely to get renegotiated when the regulatory framework is embedded in the law (17% of all renegotiations) than when it is embedded in the PPP contract itself (40% of all renegotiations) or in government decrees (28%)

Laws and regulations should be based on clear policy for PPPs

To ensure clarity of rules, the law should provide ...

- ... clear definition of scope of application of legal framework

- ... good definition of PPPs

The law should ...

- ... ensure that PPPs are integrated with budget cycle

- ... clearly allocate role and responsibility for PPP issues within government, with strong mandate for Ministry of Finance

	South Korea	Ireland	Chile	South Africa
Legislative Framework	<ul style="list-style-type: none"> <li>▪ Project appraisal introduced in the 1990s</li> <li>▪ National Finance Act, 2006</li> </ul>	<ul style="list-style-type: none"> <li>▪ Finance Act</li> </ul>	<ul style="list-style-type: none"> <li>▪ 11 sets of legislation</li> <li>▪ Budget office guidelines</li> <li>▪ Cabinet decision</li> </ul>	<ul style="list-style-type: none"> <li>▪ Public Finance Management Act</li> </ul>
Appraisal Framework	<ul style="list-style-type: none"> <li>▪ General Guidelines for PFS &amp; FS</li> <li>▪ All conventional projects above \$50 million need a PFS</li> </ul>	<ul style="list-style-type: none"> <li>▪ Appraisal Guidelines</li> <li>▪ Delegated authority with specific approval from MoF</li> </ul>	<ul style="list-style-type: none"> <li>▪ System of National Investment (NIS) procedure manuals</li> <li>▪ Sector specific guidelines</li> </ul>	<ul style="list-style-type: none"> <li>▪ Capital budgeting guidelines as addendum to MTEC guidelines</li> </ul>
Reporting Framework	<ul style="list-style-type: none"> <li>▪ Candidate projects submitted to Ministry of Strategy &amp; Finance for decision to undertake a PFS</li> <li>▪ Only after PFS can MOSF decide whether to proceed to FS</li> </ul>	<ul style="list-style-type: none"> <li>▪ Post project review</li> <li>▪ Focus on project outcomes and, appraisal and management procedures</li> </ul>	<ul style="list-style-type: none"> <li>▪ Integrated project bank</li> <li>▪ Post project evaluation by Auditor General</li> </ul>	–

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- Legal framework required to underpin decisions around planning and budgeting of projects.
    - Important to ensure that the system cannot be by-passed
  
  - System need to be implemented pragmatically
    - Emphasis on good project formulation and innovation than merely to stop projects
  
  - Critical success factors
    - High level of political support
    - Cadre of professionals required – engineers, project managers, appraisal specialists, etc

Strong institutional setup is essential to ...

- ... manage and assess risks from PPPs
- ... help government build a reputation as good partner
- ... lower political and regulatory risk for private partner
- ... increase value for money

Strong institutional setup requires ...

- ... clear allocation and implementation of responsibilities
- ... skilled and dedicated staff

Good institutions include appropriate MoF-driven “gateway” safeguards

## Establish central PPP unit that provides

- ... forum to acquire, develop, and share knowledge and expertise with other government agencies
- ... centralized oversight for PPPs and implementing role of gatekeeper
- ... a single contact point for various operators involved in PPPs, contributing to cost savings over time

## Location of the PPP Unit is usually a matter of debate

- ....Ministry of Finance is the most common location
- ....Other Central ministries may also house the Unit



A specialist Unit in or close to the Ministry of Finance with the mission to:

- Promote PPP initiative across public and private sector
- Identify formal legal and institutional obstacles
- Develop best practice
- Validate and develop project proposals
- Shepherd pilot procurement
- Build capacity in the public sector to promote PPP transactions
- Alert and stimulate contractors and bankers to enter the market
- Monitor total PPP liabilities

- PPP requires civil servants to handle public procurement in a totally different way
- Essential that each ministry and public sector body involved in PPP has sufficient fully trained staff to handle its responsibilities
- Set up a regular PPP training programme
- Utilise all the in-house skills available to the Government eg. Procurement
- Set up nodal points in each Ministry, Department, and Agency (MDA)

Establish appropriate “gateway” safeguards that empower Ministry of Finance to stop/suspend PPP if ...

- ... It does not provide value for money

- ... is not fiscally affordable

- ... may threaten macroeconomic framework

Gateways need to be installed at specific stages of project (e.g., project preparation, negotiation, and renegotiation)

No objection of Ministry of Finance required before contract signature

Gateway process ensures that key steps and decisions are systematically communicated to Ministry of Finance

Regulations regarding size of PPPs might be helpful:

Ceiling on size (PPP project/program) to guide affordability assessment

Floor on size to avoid overburdening the PPP process

Government needs to develop technical expertise in ...

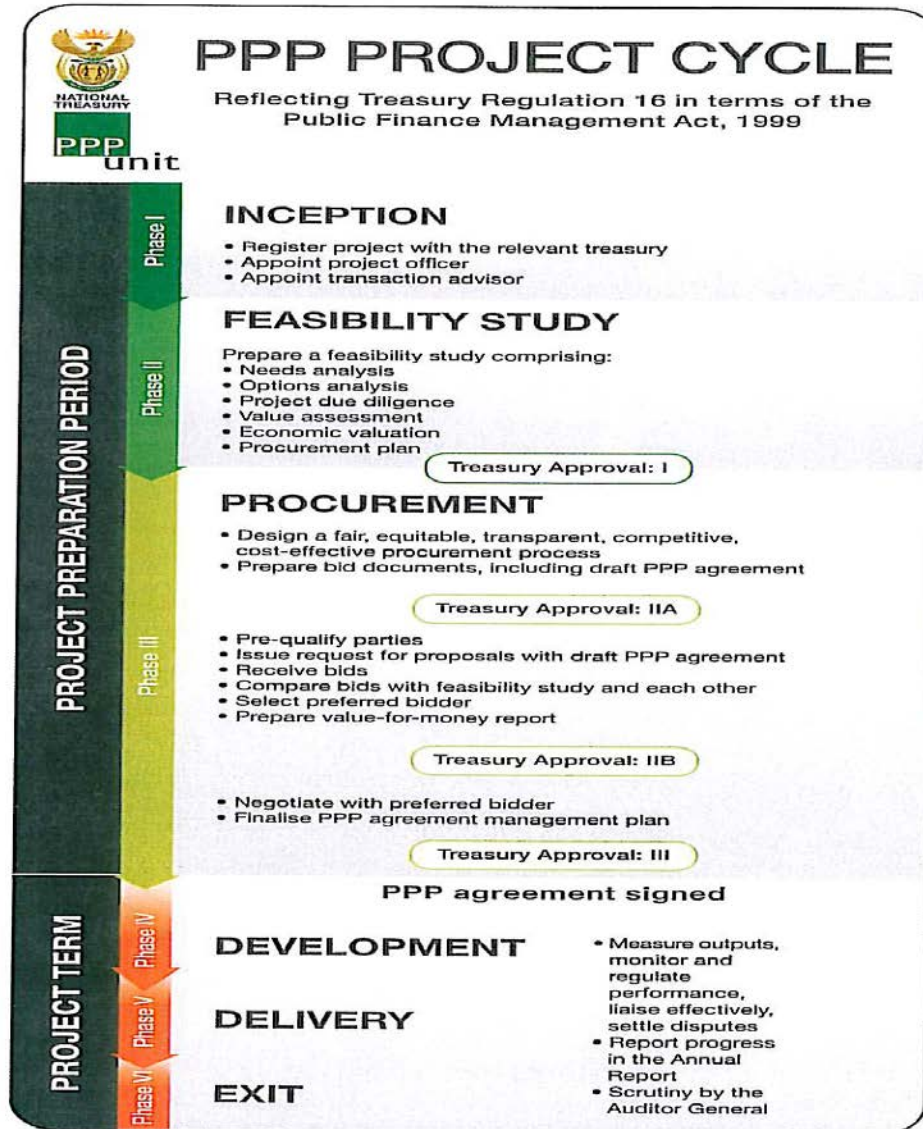
... conducting project appraisal

... prioritizing and managing projects

... ensuring that PPPs are consistent with broader fiscal and economic policy objectives

... assessing and pricing risks (external help often needed)

... negotiating and dealing effectively with private sector (external help often needed)



## Southern Africa Example

Project Phase	Actors
Project identification	Line Ministry (LM)
Project appraisal and proposal for procurement method	Prepared by LM with support from Ministry of Works and Transport (MoWT) for pre-feasibility study reviewed by National Planning Commission (NPC)
Budget allocation for sector	NPC
Project prioritization within sector	LM
Preparation of PPP feasibility study	PPP Unit in coordination with LM
<b>MoF approval of PPP feasibility study</b>	
Tender document design	PPP Unit together with LM
<b>MoF approval of tender documents</b>	
Tendering	Tender Board issues tender and receives bids LM reviews bids and selects preferred bidder
VfM assessment and affordability check for preferred bid	PPP Unit in coordination with Fiscal Risk Unit
<b>MoF approval of preferred bidder</b>	
Contract negotiation with preferred bidder VfM and affordability check for contract	LM with participation and concurrence of PPP Unit PPP Unit
<b>MoF approval of PPP contract</b>	
Implementation and Monitoring	LM with NPC

- Need for a continuous and longer planning horizon
  - No planning for immediate funding
  - Ample opportunity to redesign investment initiatives
- Decouple the pre-investment phase from the investment stage
  - Appraisal process distinct from budgeting process
  - Only appraised projects allowed into the budget process
- Uniform decision framework across government
- Interaction more critical early in the project cycle
  - Difficult to stop a bad project once in implementation
  - Even more difficult if lots of money has already been spend on the project

PPPs are chosen to move public investment off budget and debt off government balance sheet

Government still bears considerable risk, and faces potentially large fiscal costs

Proper accounting and reporting of fiscal implications of PPPs is essential to prevent their misuse, and to make increased efficiency their main motivation

General accounting and reporting standards for PPPs are still to be developed

Each Ministry or Public Body involved in PPP when preparing its annual budget must account for all PPP liabilities , in addition to normal operational and capital requirements.





Key actors:-

- MDAs
- Ministry of Finance
- M of Justice

Cabinet-level Cttee

Central PPP Unit

Ministry PPP Units

- Legislation necessary ?
- Amend Public Procurement Act
- Review of Land legislation

- Integration with MTEF and national budget
- Consideration of payment mechanisms
- Contingent liability mgmnt, guarantees

Situated in /managed by MoF?

Resource centre:-

- Advisory body
- developing standard documentation
- Guiding projects from inception to completion

public /private sector advisers with expertise in:-

- Legal
- Finance
- Procurement

Develop PPP process

Develop PPP Guidance Manual

Start with Pilot projects

- Policy Statement on PPP
  - commitment, policies (financial, procurement)
  - roles and responsibilities (PPP Unit)
  
- Review Legislation
  
- planning
  - Infrastructure Masterplan
  - project pipeline (early success)
  
- strengthen institutional capacity
  - public and private skills
  - good project management

- A clear PPP policy supported from the highest levels of Government
- Consult with key stakeholders to ensure broad-based support
- A sound legislative foundation, supported by PPP regulations
- A clear unambiguous management process
- A mandatory process
- A central government PPP Unit

# Questions

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