MOSELEY INFRASTRUCTURE ADVISORY SERVICES

MMM INFRA

Best Practices in PPP Legislation for Emerging Economies

9th Istanbul PPP Week

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Outline of the Presentation

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Four main topics

I. What Are the Reasons for Having a PPP Law

II. Are the UN Model PPP Laws Helpful

III. The Key Components of a PPP Law

IV. Concluding Observations

I. What Are the Reasons for Having a PPP Law

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For an emerging market country, a PPP Law helps manage PPPs, and it sends a positive message to investors

- many countries with successful PPP programs do not have a PPP act (for example, Australia and Canada) – but they are advanced economies with well-established legal frameworks

- for emerging markets (both Common Law and Civil Law), there are real benefits in enacting a law for PPPs

- such a law can help the PPP program by:
  - setting out the institutional arrangements for PPPs in the country
  - defining the key features of the PPP program
  - sending a message to prospective investors – both foreign and domestic – that the country is serious about PPPs

I. What Are the Reasons for Having a PPP Law (cont.)

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There is no 'perfect' PPP Law – each country needs to design its own legislation

- **a PPP Law must be tailored to fits the needs of the country – it is NOT 'one size fits all'**

- **the conditions in the country need to be considered when drafting a PPP Law**
    - is the country a small unitary state, or a large federation
    - is the economy primarily reliant on agriculture and tourism, or is the economy highly industrialised
    - what are the government's objectives for the PPP program: economic infrastructure, social infrastructure, or a mix?

II. Are the UN Model PPP Laws Helpful


UNCITRAL

UNCITRAL
Model Legislative
Provisions on Public-Private
Partnerships

United Nations
ECE
Economic and Social Council

Economic Commission for Europe
Committee on Innovation, Competitiveness and Public-Private Partnerships
Working Party on Public-Private Partnerships

Standard on Public-Private Partnerships/Concession Model law

Revised note by the Bureau

Background

- two separate UN agencies have produced guidance materials on how to draft a PPP Law:
  - in 2019, the United Nations Commission on International Trade Law (UNCITRAL) released an updated version of its *Model Legislative Provisions and the Legislative Guide on Public-Private Partnerships* *
  - in 2022, the UN Economic Commission for Europe (UNECE) published its *Standard on Public-Private Partnerships/Concession Model law* **

* available at https://uncitral.un.org/en/

** available (in various languages) at https://unece.org/eci/documents/2022/10/working-documents/standard-public-private-partnershipsconcession-model-law

II. Are the UN Model PPP Laws Helpful (cont.)

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Both of the UN Model Laws are helpful – but they must be used carefully

- **the two UN Model Laws are relatively complex, and they contain many details that some countries may prefer to put in secondary legislation (regulations or rules), which can be more easily amended**

- **both UN models seem to be primarily designed for Civil Law countries**

- **the UN Model Laws do, however, provide helpful guidance as to the 'chapter topics' which should be in a PPP Law, and the key issues to be dealt with in each chapter**

III. The Key Components of a PPP Law

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The initial chapters in the PPP Law should set out its objectives, and define the institutional arrangements

- the **Introduction** chapter should
  - set out the **scope of the Act**, and the government's key objectives
  - **identify the sectors** to which the law will and will not apply
  - **introduce key concepts**, such as Risk Allocation, Value for Money, Sustainability and Affordability

- the **Institutional Arrangements** chapter should
  - establish the necessary new entities, such as a **Central PPP Unit** and the **PPP Inter-Ministerial Committee**
  - describe the relationship between those new entities and
    - the line ministry (or agency) which will act as the PPP public partner (the **Government Contracting Authority**) and
    - the private entity that will act as the **PPP Project Company**

III. The Key Components of a PPP Law (cont.)

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There should be a series of chapters describing what happens during the various phases of the PPP Project Cycle

- the chapter on PPP **Project Identification** should indicate how line ministries can **initiate PPP projects** and describe the rules for **Unsolicited Proposals**
- the chapter on PPP **Project Preparation** should deal with **feasibility studies** and as the **PPP Contract**; it should also discuss market soundings and bankability
- the chapter on PPP **Procurement** should set out the procedures for **competitive bidding**
- the chapter on **Project Implementation** should discuss **contract monitoring** and reporting, along with **dispute resolution and renegotiations**, plus **handback** issues

III. The Key Components of a PPP Law (cont.)

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Additional chapters – some of which are optional

- it is helpful to have a separate chapter on **Government Support for PPPs**, setting out
  - support mechanisms available to a PPP Project Company such as tax breaks or **Viability Gap Funding**
  - support for lenders, including **Direct Agreements** and **'step-in rights'**
- if a country wishes to establish a **Project Development Fund**, that should be included in the PPP Act
- the PPP Act should have a chapter dealing with **Transitional and Final Provisions**, identifying the laws that will no longer be in effect; the disposition of projects currently being implemented; and the ability of the government to **issue regulations** under the PPP Act

IV. Concluding Observations

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Key 'takeaway' points

- although it is possible to have a PPP program without PPP-specific legislation, having a PPP Act can yield real benefits, especially for an emerging market country

- careful consideration should be given to determining which aspects of the PPP program need to be in primary legislation, as opposed to regulations and rules

- there is no 'perfect' PPP Law – each country must design its PPP legislation to meet the particular needs of the country

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