

**SEFI**



## PPP FOR PUBLIC INFRASTRUCTURE SERVICES

### EXECUTIVE SUMMARY

of the PPP Handbook in progress  
and of its related evaluation Index

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# I. INTRODUCTION TO THE PPP HANDBOOK

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## 1. Why this handbook?

- Because without massive investments in the public infrastructure service sector many countries around the world will continue to lose several percentage point of GDP.
- Because nowhere in the world the public budgets permit to finance such massive investments.

*Example in Africa: The gap which cannot be filled by the international community and donors is of US\$ 40 billion per year. If the gap is not bridged the millennium goals will not be reached.*

- Because with the exception of a few countries the industry and PPP champions are losing appetite for private investment and operation of public infrastructure service projects.
- Because the financial crisis further limit the capacity of the industry to consider PPP.
- **Because** the lessons learned internationally in the industry over the years and confirmed by experienced legal practitioners show that:

**PPP Projects in the Public Infrastructure service sector has a promising future virtually in any country in the world.**

- Because this conclusion is shared by the most authoritative analysis around the world:
  - PPIAF/ICA/World Bank: “Attracting investors to African Public-Private Partnerships - A project preparation guide”, 2009
  - World Bank: “Concept note transformation through infrastructure”, 2011
  - High level panel (HLP) on infrastructure recommendations to G20 2011.

## Why most countries in the world fail to propose to the private sector well designed pipeline of PPP Projects?

- Because unlike traditional public procurement where infrastructure is fully paid for to a contractor upon completion:
  - Very few countries have a complete set of tested regulation and/or adequate guidance and practice for PPP,
  - In spite of many useful conceptual analysis the international community has been unable so far to develop simple and operational guidelines and standards documents for the design award, contract conditions as it has done for procurement of public infrastructures projects,
- Because there is often a bias in the mind of recent players made of several principles which are misleading. Examples:

*“Each PPP is unique and regional or sectorial factor are the main drivers”*

*“The so called “PPP models” applicable in some regions or legal systems are not useful precedents, especially between developed and developing countries”*

*“PPP are driven by financial considerations”*

As a result in many of the new comer countries to PPP are difficult to design, to negotiate and to finalize in an acceptable manner for the potential projects participants.

## How to reverse the trend in the interest of the well being of the citizens and economic development throughout the world?

Representatives of contractors from most of the regions of the world (CICA) and a team of international practitioners gathered by the IFEJI and supported by the French Public cooperation agency (ADETEF and the French Institute for Development: AFB) have created two working groups which have been working for several years for analyzing existing projects applicable regulations and related practice on the ground with a view of outlining basic and common conditions of success of PPP internationally.

Those groups have been in frequent contact with multilaterals and various governments for exchanging their conclusions on lessons learned and the way forward. Several international workshops and conferences have been organized over the years.

- Those analyses have demonstrated that **the conditions of success of PPP able to attract reliable and competitive private sector investors are based on a number of underlying conditions of economic, institutional legal and contractual nature which are more or less similar for most PPP projects around the world.**

- Based on tested experience, it appears that once those conditions which form a platform of core principles and procedure have been sufficiently identified and understood, it is easy to “acclimate” them to local conditions, particular sectors and local practices (with appropriate capacity building programs).
- When this exercise is carried out with an appropriate methodology with deliverables based on good and proved standards, the private sector is often ready to consider seriously PPP and to enter into PPP contracts even in fragile states and low income countries.
- Those conclusions are in line with the most recent conclusions of the international community deriving from:
  - The World Bank (inter alia various infrastructure action plan).
  - The PPIAF/ICA “Project Preparation Guide for Africa”  
*It emphasizes the priority for setting the framework for institutional and regulatory regime and criticizes piecemeal approach to PPP.*
  - The European International Contractors White Book  
*It recommend to the government to adopt a realistic and consistent strategy for BOT/PPP projects and pursue projects with high public priority and socio-economic viability.*
  - The HLP recommendations to G20 2011 based on an active dialogue with a range of stakeholders :
    - *Priority must be given to building an enabling environment since the private sector will not invest “in the dark”,*
    - *Success of PPP is dependant of well design project i.e. effective project preparation,*
    - *“Gold standards” PPP policies procedures and documentation based on proven experience for use in developing countries and LIS is in particular should be developed as basic material in order to realize efficiency gains.*
  - The WB Concept Note on transformation through infrastructure  
*The institutional setup required to support PPP goes beyond establishing a PPP unit to monitor the PPP programs.*
  - The United Nation documentation and programs:
    - UNCITRAL guidelines and model legislative provisions on privately financed infrastructure projects 2001 and 2003
    - The UNECE guidebook on promoting good governance on PPP 2008, including the “How to do” Manual for Capacity-building in PPP (in progress)

**CONCLUSION (our perception of the shared views between the industry, legal practitioners, countries expectation, MDBs and bilateral development agencies):**

- Most of the countries are at the first stage of PPP development i.e. definition of a policy framework and identification of project pipeline.
- Efficient policy framework may only be developed by consensus between all stakeholders public and private.
- **Without the efficient development of this framework, it is not realistic to expect a sufficient pipeline of PPP projects attracting private sectors, investors, and operators.**

**The only ambition of this handbook is to contribute to the acceleration of this process.**

## 2. PPP: What are we talking about?

### **Need of a clear definition**

The lack of consensus on PPP definition virtually in any country and at an international level is creating a lot of misunderstanding.

If there is no doubt that PPP may cover different nature of contractual relationships between a public and a private party it remains nevertheless essential to clarify which relationship is considered when a particular project is discussed. This need to be clarified at the outset, since statistics on PPP are often misleading.

It is widely recognized by PPP experts that the need of a definition is not a theoretical exercise. It has indeed lots of practical consequences on the procedural and legal regime applicable to a particular PPP transaction and therefore for deciding or not a private sector company to enter into PPP scheme.

In addition, since PPP generally entails risks and rewards matrix substantially different depending of each nature of PPP, the related institutional, legal and contractual framework necessary for a particular type of PPP is sometimes very different from another.

Some existing regulations and scholars propose a laundry list of acronyms. Some others include in the PPP scope mining concessions, privatisation of public service, public leases for a private building project, or for tourist resort, etc.

*For instance, the PPP database proposed by the World Bank is based on the existence of subcategories (Management and lease contract, Concession, Greenfield project, Divestiture) which not reconcile easily with definitions deriving from the PPIAF/ICA/World Bank publication "Attracting investors in African public private partnership: a project preparation guide" of 2009 which identifies two main families of PPP: Concession PPP and Availability Based PPP. This is also different from the UNCITRAL "Legislative guide on privately financed infrastructure project" of 2001 and related legislative model provisions of 2003 which deal essentially with Concession. This broad definition of Concession is itself substantially different from the nature of Concession currently in operation in civil law countries having developed a public contract law deriving from the French tradition. In other countries such as Guinea-Conakry there is comprehensive BOT law which includes Concession as well as various other project delivery forms, etc.*

### 3. PPP: What have we learnt?

#### Lessons learnt historically

PPP have been a key driver for the development of the Western world in the 19<sup>th</sup> century. Virtually, all those countries, including continental Europe, UK, USA etc., have benefited from PPP projects in the core public infrastructure service sectors (railways, ports, waterways, water, sewages, bridges, gas and power etc.). Most of those PPP took the form of concessions.

After the First World War, only few countries have continued to develop PPP on a large scale (mostly France, Southern Europe, and countries under French/civil legal tradition almost 50 countries across the World).

#### Lessons:

*“Traditional PPP” can be developed and implemented for the satisfaction of all parties but subject to an array of economic, institutional, contractual and legal conditions: an authoritative set of case law has helped to carve those conditions.*

#### Lessons learnt in the eighties:

When in the 1980's, PPP models have been once again considered as essential for the development of public infrastructure, all forms of PPP including privatization, have been tested. Many projects have been developed essentially in the UK.

#### Lessons:

- *Outright privatization is not a solution in the core sectors.*
- *Public-Private Partnership is not just another contractual venture. It involves two worlds with their own conditions, standards and traditional practices.*
- *Those two worlds should not forget that they have a common duty: to deliver a service participating to the satisfaction of common interest of the citizens often for decades. This is substantially different from the obligation to perform any construction contract.*

#### Lessons learnt in the late nineties

During the 1990's, new PPP models have been tested around the world, additional lessons have been learnt.

#### Lessons:

- *Many of the public infrastructure projects developed under the new wave of PPP have been too rigid, too highly leveraged and not able to adapt easily to changing conditions.*
- *Project finance techniques are useful and often essential for the closing of the project. However in core public infrastructure service, they should not be the decisive factor for entering in a long PPP venture. In many situation, they should come in sequence after the socio-economic and long term issues for resilient PPP such as:*

- *Affordability for payment of the service either by the public budgets, and/or by the end users over the years.*
- *Adaptation of the scope service and of its price to future expectations in changing societies and foreseeable and unforeseeable changes in the economic conditions which are one due to the very long term nature of PPP, more particularly for countries with strong potentials of economic growth.*

## **Lessons learnt in the previous decade**

### In developing countries:

The alternative to outright privatization which is usually referred to as Public Private Partnership (PPP) has been difficult to organize and to implement in developing countries.

#### **Lessons:**

- *Transaction costs generally too high.*
- *Many landmark projects much advertised have difficulty to reach closure (Ex: NEPAD in Africa).*
- *Some projects are real success even in the core areas of water and transport: Those projects have often been planned, designed and operated taking into account underlying principles, practices and contract conditions tested in a range of successful projects in the same sector in developed countries.*

### In the rest of the world:

The track record in transition economy countries is not very different from developing countries.

In developed economy, and more particularly in UK and civil law Europe, numerous PPP have been implemented and, after having experienced various problems, are generally considered as successful.

#### **Lessons:**

*The feasibility of successful PPP and the cross fertilization between all stakeholders with the help of pools of experienced legal practitioners for identifying the main conditions of success and related institutional, and contractual frameworks, should be one of the main focus of the day.*

### **Handbook intended role:**

**The ambition of this Handbook and related Index is to contribute to this objective in close cooperation with all interested parties sharing the same goal, and inter alia, to contribute to the “How to” Manual for Capacity-building in Public-Private Partnerships under development by the United Nations Economic Commission for Europe.**

## 4. The scope of the handbook

### Limited to PPP project in core public infrastructure service sectors

- **Examples of projects:**

Port, Waterways, Canal, Airport, Highway, Bridge, Power and water production transport and distribution, Waste water plant,, Railway, Tramway, Prison, Metro, Stadium, and other sport facilities, Urban services normally rendered by local authorities for a price etc.

- **A proposed definition:**

Based on numerous precedents throughout the world, this Handbook will only deal with PPP projects under the following definition:

**- “A physical infrastructure which is the basis of a service of general interest nature is designed, financed, built or rehabilitated and always operated by a private sector company in accordance with the terms of a contract concluded with the public authority in charge of delivering the service under agreed conditions including performance parameters and providing for the compensation of the private company upon the delivery of the service either by the public authority or by the end users (including sometimes subsidies and guarantees) for a time period calculated in such a way that the private company is able to fully recover its costs including financial cost, and make a reasonable profit. At the expiry of period, the infrastructure is transferred to the Public Authority in good operating conditions, generally without consideration or with a consideration agreed at outset”.**

- **A contractual relationship:**

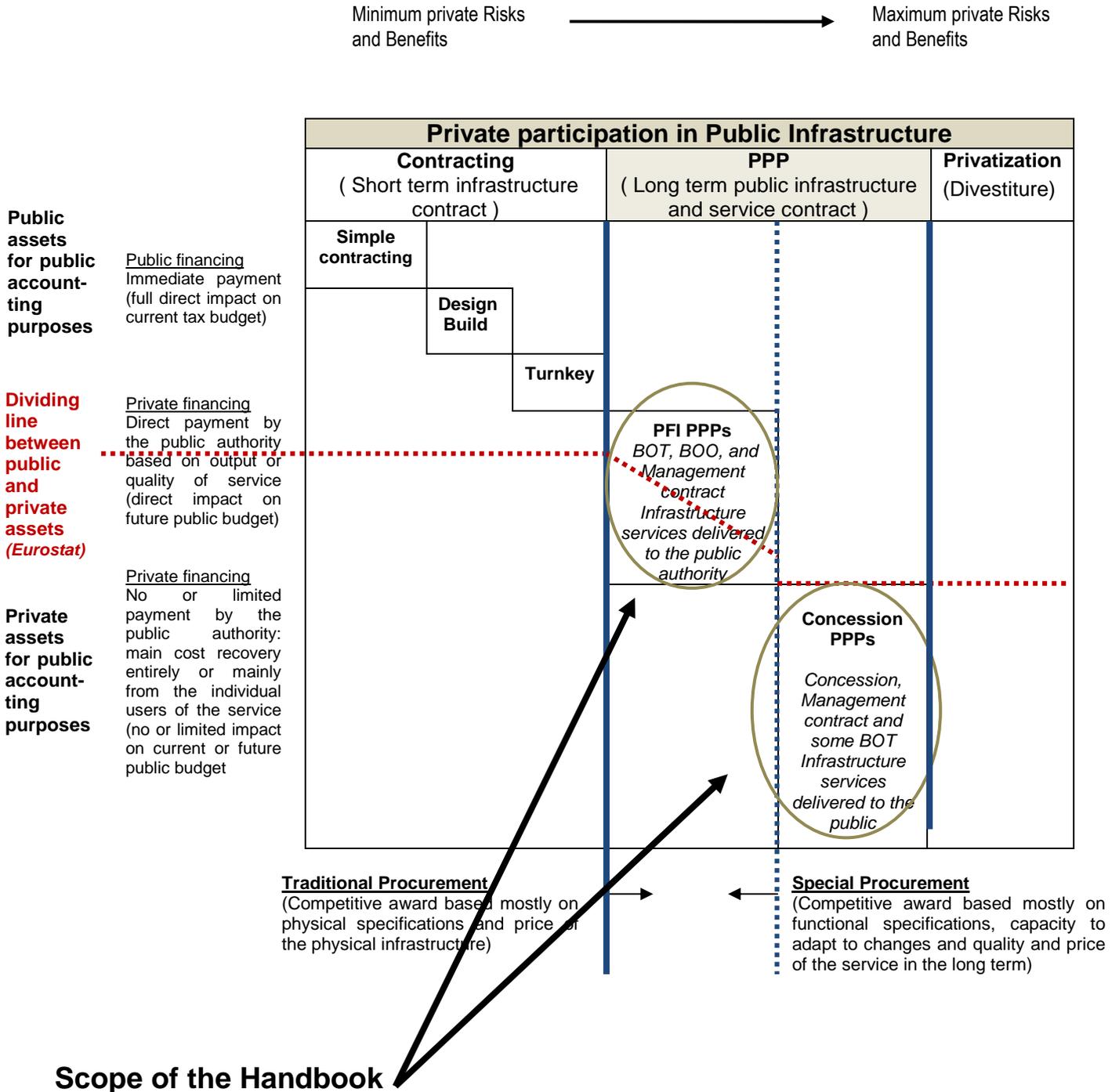
The Handbook only relates to an institutional relationship which take the form of a contract between a public entity at national, regional or local and a private company to which is transferred the authority to create or rehabilitate the infrastructure and deliver the related service in consideration of a range of particular obligations and close monitoring taking into account the general interest nature of the service to be delivered.

### The scope of the handbook does not include

- Traditional procurement where an infrastructures is built by the private sector with a price paid upon completion,
- Divestiture,
- Private participation in a State owned enterprise.

### Illustrative chart of the scope of the handbook

The scope can be illustrated by a summary chart outlining on the various forms of private participation in public infrastructure:



## 5. Two families of PPP: an essential distinction for designing and concluding a PPP contract

### Background

As already outlined, PPP started with the “Concession PPP family” which has played an important role for the economic development of the western world. Nowadays, this family remains very popular in France, Southern Europe and in various countries of French legal tradition. This family is expanding around the world.

The “PFI PPP family” developed progressively in the UK from the Thatcher era’s has developed quickly in this country and later in common law countries. This family is also expanding around the world.

### The distinctive features between the two families of PPP

- **The PFI PPP’s: Mother country UK**

The particular definition deriving from the general definition of this handbook may be summarized as follows:

**“A physical infrastructure based on public functional requirements is designed, financed, built and operated by a private sector company in accordance with the terms of a contract concluded with the public authority in charge of delivering the service under agreed conditions including performance parameters and providing for the compensation of the private company by the public authority upon the delivery of the service for a time period calculated in such a way that the private company is able to fully recover all its costs including financial costs and make a reasonable profit. At the expiry of period, the infrastructure is transferred to the Public Authority in good operating conditions, generally without consideration or with a consideration agreed at the outset”**

Nearly two decades of experience and lessons learned mostly in the common law world.

- Very useful principles in project preparation, value for money, public sector comparator, performance criteria, benefit from private sector skills and organization in the delivery of public infrastructure project etc.
- Useful principles in the development of project finance and limited recourse techniques.

### When to consider firstly PFI-PPP?

Where the infrastructure service is provided for the own use of the public authority able to pay for it for several years (even if rather complex institutional arrangement due to the particular nature of structured financing)

### Caution:

This model is difficult to adapt to long term demand risks and for recovery from user fees.

- **The Concession PPP's: Mother country France**

The particular definition deriving from the general definition in this handbook may be summarized as follows:

**“A physical infrastructure which is the basis of a service of general interest nature is designed, financed, built or rehabilitated or maintained and always operated by a private sector company in accordance with the terms of a contract concluded with the public authority in charge of delivering the service under agreed conditions including performance parameters and sometimes subsidies or guarantees and providing for the compensation of the private company by then end users upon the delivery of the service for a time period calculated in such a way that the private company is able to fully recover all its costs including financial costs and make a reasonable profit. At the expiry of period, the infrastructure is transferred to the Public Authority in good operating conditions, without consideration or with a consideration agreed at outset”.**

150 years of experience and lessons learned mostly in the civil law world.

- Very useful principles in legal and contractual framework: the constraints of the public sector result in an array of rights and contractual obligations which in important matters depart from traditional contract law. One important condition of the success is the use of underlying public contract principles based on economic viability and equity deriving from the paramount interest of the end users of the service (example: continuity, affordability, adaptability) together with the right for the private operator to be compensated if the financial equilibrium is affected by outside causes.

### **When to consider firstly Concession-PPP?**

When the private company is requested to deliver the entire service on behalf of the public authority directly to the end users and recovers entirely or mainly from user fees.

When budgetary constraint and contingent liability have stretched over some limits, PPP may only be considered under this model.

### **Caution:**

Model difficult to design and implement without including equitable public contract law principles (but with a reasonably acceptable and bankable risk profile when such principles apply).

## 6. Contribution to international statistics on PPP project (statistics limited to the PPP considered in this handbook)

As indicated in introduction, there is so far no reliable statistic internationally recognized identifying all the PPP projects having been developed either under the Concession PPP model or under the PFI PPP model in the public infrastructure service sector.

The working groups having contributed to this handbook have requested those statistics from various institutions without tangible result so far. However, after cross checking information from various sources, the following statistics (unfortunately limited so far to Europe) can be proposed.

### Statistics on PPP: number and investment value

- **Statistics on Concession-PPP:**

**In France**, Concession-PPP, including Management contract with recovery from user fees (known as affermage), are not published. Concessions currently in operation represent around 20 000 contracts (8500 in the water sector) out of which 1000 are concluded each year for a total investment value in the region of € 100 billion per year<sup>1</sup>.

**In Spain**, the investment for Concession-PPP between 2003 and 2007 has been amounted to € 30 billion, mostly in roads (51%) and also ports, airports, rail, urban transports and water sanitation<sup>2</sup>.

- **Statistics on PFI-PPP:**

**In UK**<sup>3</sup>, from 1992 to 2007, 667 PFIs were launched<sup>4</sup>. At the end of 2011, 712 projects were in operation or in construction for a capital value of £ 54,2 billion, representing 10 to 15 % of public investment.

**In France**<sup>5</sup>, in the last seven years, the investment in PFI-PPP (referred to as partnership contract) amounted to € 7 billion.

**In Europe**<sup>6</sup>, aggregated value of PPP/PFI transactions that reached financial closure on the European market between 2003 and 2011<sup>7</sup>: € 195 billion.

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<sup>1</sup> Source: IGD – The French Institute for PPP

<sup>2</sup> Source : José Manuel Vasallo, Escuela de Ingeniería de Antioquia in May, 2009.

<sup>3</sup> Source: UK – Treasury - November 2011

<sup>4</sup> Source: OECD report, 2008.

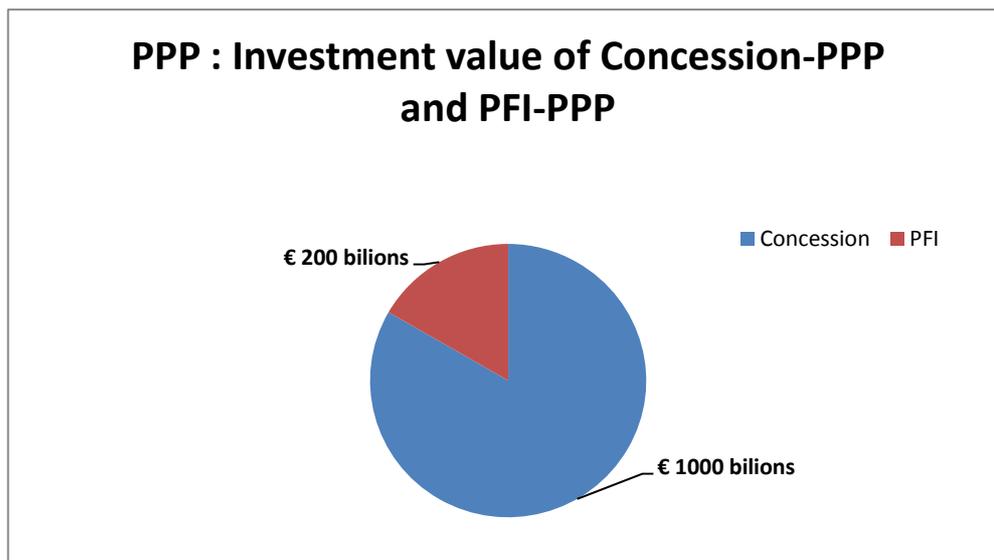
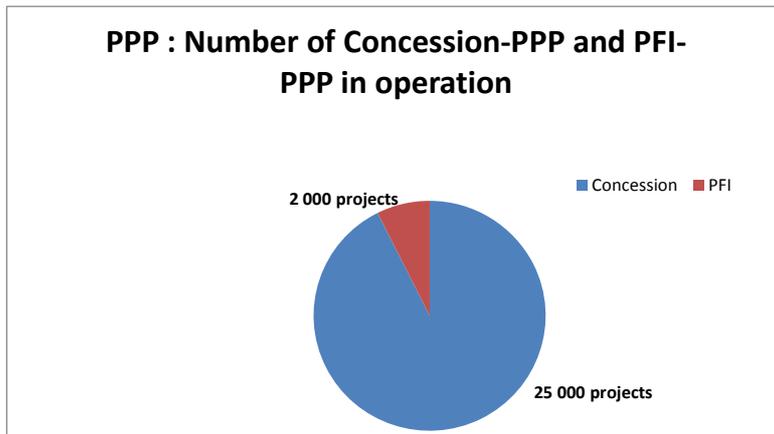
<sup>5</sup> Source: IGD – The French Institute for PPP

<sup>6</sup> Source: The European PPP Expertise Center (EPEC) of the European Investment Bank

<sup>7</sup> Source: Market Update, Epec, First semester 2011

### Blueprint chart of the respective numbers and investment value of Concession-PPP and PFI-PPP around the world (work in progress)

This chart remains to be designed on the basis of uniform definitions and methodology for a better appraisal of the world experience on PPP in the core public infrastructure service. The following is only a blueprint based on our experience and knowledge for information, criticism and discussion purposes.



## II. ORGANIZATION AND CONTENT OF THE PPP HANDBOOK

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### 1. Objective and organization of the PPP handbook

The objective of the Handbook is to be an easy reference document for virtually any person interested in PPP in public infrastructure services irrespective of its localization and industry sector.

The ambition is to cover the whole life of the PPP from cradle to grave.

The editorial team as determined (as other specialists of the matter) that the fundamental conditions of the success lie in the planning of project to be delivered under PPP and then to their preparation procurement and award.

The researchers and authors of the Handbook have progressively identified thirty (30) conditions which all together for an organized chain for the success of PPP. The identification process of those conditions has been carried out by the Team including industry representatives at different level consultants, team of legal practitioners having carried out due diligence in various regions and countries at different stages of development and having participated to several PPP projects.

Like in any chain, the chain cannot be stronger than its weakest link.

The debate is of course open on the nature and the scope of those conditions and the opportunity to delete some and include other in the chain. At this stage, we hope that the main headings of the conditions matched with the situation of a particular project in a particular country should facilitate the process of designing both the institutional and legal framework for implementing PPP projects and the development of a particular project already in the pipeline.

Those thirty (30) conditions have been themselves aggregated in order to facilitate the use of the handbook at different stages of a particular project or at different stages in the process of developing institutional, legal, regulatory and contractual framework conducive to a well designed pipeline of PPP projects in a particular country or region.

The handbook will develop the rationale for each link in term of issues, backgrounds, experiences, and synthesis of lessons learnt and related principles and guidance for the future. The handbook will propose to the extent necessary term sheets and templates.

The illustrative presentation of those conditions is summarized in the following charts:

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### 1. PPP preparation



### 2. PPP procurement

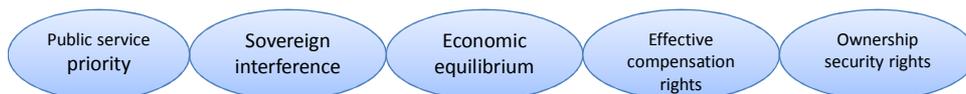


### 3. PPP contract template clauses



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### 1. PPP underlying principles



### 2. Central level institutions



### 3. Project level institutions



## 2. Outline presentation and content of the two first links:

### Link 1.



### 1. Issues

When PPP projects are proposed to the private sector, they are sometimes poorly designed and the private sector has no appetite. There are too many risks and issues that are not sufficiently analyzed to permit a professional bid.

Even well designed project runs the risk to become a project in distress if they have not coming from a program or well organized pipeline of projects. Example: IPP projects intending to serve a particular region and for which an interconnector is planned with the capacity to divide the cost of energy by two in the area.

Tram or urban railway projects not integrated with the other transport facility and future planning and long term planning of urban transport.

Two main issues to address:

1. Poorly designed individual project
2. Well designed individual project not integrated in global planning and related externality potential

### 2. Lessons learnt

For PPP which are within the scope of the handbook national or regional planning as the case may be is essential.

It is possible to draw from a lot of experience on thousand of projects in order to propose guidance principles.

Depending of the PPP family considered, the planning details and scope of studies may be substantially different.

### 3. Guiding principles: the benefit of a PPP list and the listing process

By reference to the experience developed in the planning of a substantial number of projects at the national or local level, an advisable process is to publicize an official list of PPP projects in the pipeline. Depending of the type of project this can be done at the national or the local level.

The conceptual evaluation should preferably be carried out under the authority (national or local) in charge of a particular public infrastructure service project that it intends to develop under a PPP scheme (the “Contracting Authority”).

The Contracting Authority should take into account the general guidelines on the PPP preparation deriving from international best practices and/or from the national or sectorial body in charge to promoting PPP (globally or in its sector).

On the basis of those guidelines, the Contracting Authority should make an **initial conceptual evaluation** of the need to develop new services which may usefully be considered to be developed through a PPP delivery method.

If it appears *prima facie* that those needs and related service could be delivered by a private sector company in a reasonable economic framework then several steps should be accomplished at the conceptual evaluation.

**1. Review of economic externalities**

- a. Positive: e.g. the impact of the project in the economic development and the well being of the region and the population
- b. Negative: e.g. analysis review of negative impacts such as environmental, social, economic, resettlement, etc...

2. **Affordability of the price to be paid for the service:** depending on the nature of the project and initial analysis should be made on the capacity and the interest of the service for the citizen and their capacity and willingness to pay for it (affordability test) if the intention is that the payment come from the Contracting Authority, the analysis of affordability should take into account future budgetary capacity of this Authority. The affordability test should be made at different horizon during the life of the project taking into account foreseeable changes for the end users.

3. **Cost of the project:** initial evaluation of the CAPEX and OPEX for the project.

4. **Conceptual economic scenario:** a conceptual economic scenario for the intended lifetime of the project should be designed in order to have an initial evaluation of economic feasibility.

5. The initial conceptual economic scenario should be tested with various tools such as **best value for money** and **public sector comparator**.

6. A **conceptual review of the applicable regulations** and possible hurdles for the involvement of the private sector should be carried out including an initial analysis of the permitting process.

7. An **initial proposal on the designed PPP form** (PFI-PPP or Concession-PPP, the rationale for it and a related proposal for procurement).

For carrying out these tasks in accordance with the guidelines published by the Authority in charge of developing PPP in a particular region of State, the Contracting Authority should set up a **project preparation team or “unit”** in charge of developing or monitoring all the steps on the basis of terms of reference including timing and budget prepared with the help of the central PPP body and in accordance with published guidelines.

After due evaluation of the in-house capacity of the Contracting Authority, the team may be granted authority to hire specialized consultants but only in compliance with consultancy procurement rules complying with standards published by the central PPP body.

## 4. Expected deliverables

A detailed “**needs and options**” memorandum made of several chapters addressing in appropriate order at least all the issues outlined above and as well as all the issues considered as important in a making decision by the Contracting Authority.

The Public Authority should only transmit the memorandum if the conclusions are reasonably positive for developing further the feasibility of the project with the view of including it eventually on a local or national list of PPP projects.

### **Important note:**

In this approach, the cost of the conceptual evaluation of the project and the related decision to continue toward project development in view of inclusion of the project or not in the list remains limited and generally affordable. The Contracting Authority should then be put in a position to appreciate and monitor with his own forces the project that it proposes or not for consideration for inclusion in the list.

## Link 2.

### Preliminary business case

## 1. Issues

When a PPP contract is concluded, it is a result of a negotiation itself based on economic conditions which must permit to the private sector company complying with its contractual and other obligations to develop the project in a sustainable manner on a basis of an economic equilibrium including a reasonable rate of profits.

It is important to note that PPP projects must be self standing economically. An important reason for this lies in the “**reversibility principle**”. This means that if at any point of time and in accordance with contract conditions and underlying legal framework, an early termination takes place, the Contracting Authority which in the most cases has the duty to continue the service directly or indirectly does not want (and in most cases is unable) to be obliged to invest additional funds for this purpose.

This can only be achieved if at the outset the principle of economic equilibrium of the venture at any time during the lifetime of the project for a complying private sector company has been agreed.

## 2. Lessons learnt

The whole purpose of the preliminary business case is to assess whether the conceptual parameters taken into account at the conceptual evaluation stage are confirmed after a more detailed evaluation.

The objective at this stage should be to establish a business case where all the figures and evaluation would be more or less at the same level (this level here is generally referred to as “**order of magnitude**” e.g. with the margin of error between fifteen to twenty five percent).

In order to reach such a result, a **preliminary business case design program** should be prepared by the central PPP body in charge of evaluating the opportunity of including the project in the PPP list. This program should be developed in close preparation with the team initially set up by the Contracting Authority.

## 3. Guiding principles:

Depending on the nature of the project, and more particularly for the projects belonging to the Concession family, emphasis should be given to the **socio-economic studies and to the scope and perimeter of the service** having the best chances to meet the needs taking into account the existing and likely future needs based on economic developments, possible competing future services and likely costs, migration etc.

When the project requires to have land to be put at the disposal of the private sector company and which do not belong to the Contracting Authority and/or is not free from encumbrances or settlements, an additional set of studies should analyze with a sufficient level of detail all issues at stake. The objective is to provide a reasonable comfort that the Contracting Authority and/or the State, as the case may be, will be able to have the land cleared from all encumbrances and occupation for being put at the disposal of the private sector company on time for building the infrastructure in accordance with its contractual obligations. Part of the issues addressed and conditions of **environmental and social management plan including a resettlement action plan** are required by international and national standards.

Other aspects of the preliminary business case are more traditional. They relate to **engineering studies including various options to develop the project**. Those studies should in addition include analysis **on the cost of operation maintenance** also based on an array of possible scenario.

It is important to remember in this respect that PPP projects are substantially different from standard contracting. The **PPP engineering studies does not need to be detailed** since the private sector company is not bidding for a construction of an infrastructure or a facility for which a price is paid but for a provision of services in the long term through the construction of an infrastructure **that it should be free to design and to adapt in order to be able to render the service** since it is only paid when the services are rendered. This further encourages innovation and fair competition attracting the best private sector companies.

## 4. Expected deliverables

Upon completion of the studies, a **preliminary business case memorandum** should be drawn under the authority of the central PPP body. The conclusions should be exchanged with the Contractual Authority and if the decision is to continue toward a development of the project, the Contracting Authority should endorse the report.

In order to prepare this report if the central PPP body does not have sufficient capacity in house, it should refer to outside experts and consultants after having prepared terms of reference adapted to the needs and permitting to select experts and consultants on a competitive basis. One condition of success of PPP is the capacity of the public authority to behave as a strong and real partner.

### **Important note:**

If the **preliminary business case memorandum** is prepared in accordance with the above principles, the “value for money” for evaluating the project for a possible inclusion in a list is generally optimized. The budget for reliable and useful studies will remain limited and at the same time a good level of certainty will be reached through appropriate sensitivity analysis on each of the key factors. This could permit to prepare an **initial risks matrix** permitting inter alia useful comparison with other projects in the pipeline for consideration by the central body.

## III. PPP EVALUATION INDEX: ORGANIZATION AND USE

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### 1. The benefit and outline of a PPP evaluation Index

The PPP Evaluation Index (PPPEI) has been designed in continuity of the PPP handbook.

The benefit of the Index is not only to raise awareness of the stakeholders on the main issues identified by a multidisciplinary international team as conditions of success or failure of PPP in the core public infrastructure service sector, but also to be progressively used by any interested party for a self evaluation of the chances of success of a PPP project at any time of its development.

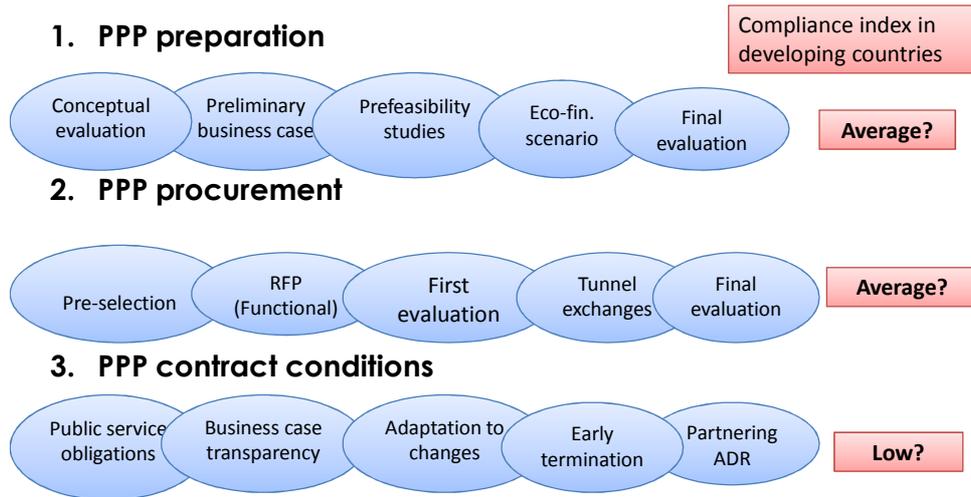
The whole exercise is of course ambitious and the Index is by no means yet complete. Critics and proposals are welcome.

However, the editorial team is convinced that proposing simple and universal tool is an important driver permitting not only to develop both an institutional and contractual framework in a particular country and project, but also to facilitate the development of pipelines of well designed PPP projects.

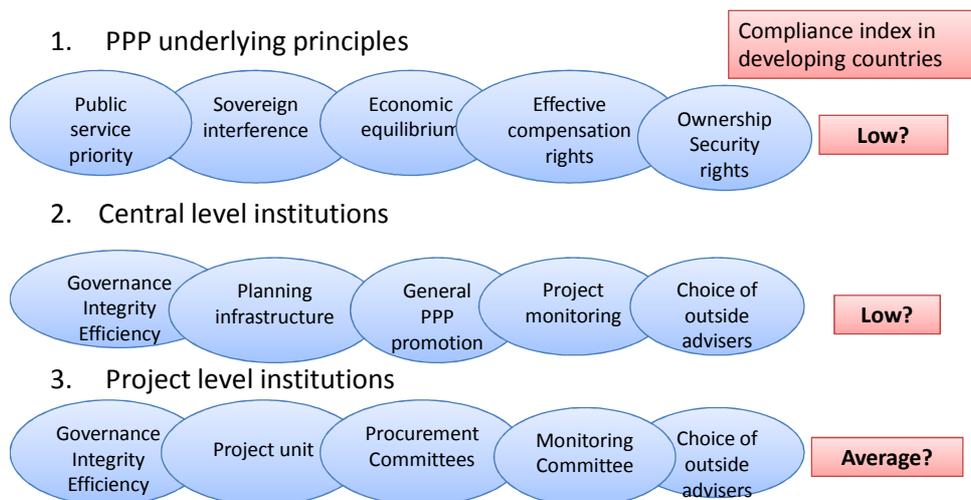
**In our view, a project may only be considered well designed when several reliable private sector companies have a sufficient appetite to bid.**

## 2. Proposal for the content of the Index

### PPP Evaluation Index



### PPP Evaluation Index



## Example of a link of the PPPEI



## Example of a link of the PPPEI

