



Public Private Partnerships in Water - Contract Management and Regulation

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Issues this session seeks to cover

- Resources
- What is contract management?
- What is regulation?
- Design issues

Resources

World Bank Toolkit for Approaches to Private Participation
in Water -

<http://siteresources.worldbank.org/INTINFNETWORK/Resources/ApproachesstoPrivateParticipationWaterServices.pdf>

PPP in Infrastructure Resource Center for Contracts, Laws
and Regulations – www.worldbank.org/ppp

What is Contract Management?

■ *Functions*

- *Oversight of private operator performance*
- *Manage public sector obligations*
- *Anticipating and managing disputes*
- *Customer relations*

■ *Typical Actors:*

- *Public party to contract*
- *Regulator*
- *Environmental monitoring body*
- *Ministry of Health*

■ *Capacity is key*

What is Regulation?

- *system of rules/ checks and balances*
- *Introduced by Government to monitor performance of operators in a sector and entry and exit of operators in a sector*
- *Regulate public and private bodies*
- *Administered by a regulator or agency (possibly number of agencies)(may be 3rd Party), often with powers delegated from government*



Why Regulate PPPs?

Protect consumers against monopoly

- Service provider may have a monopoly – water and electricity distribution, toll roads
- Data gathering
- Monitor and seek to improve service
- Protect against inequitable tariff increases

Protect and give certainty to investors

- Set performance standards
- Certainty of tariff levels
- How long and whether have license to operate
- Ensure Government commitments are honored – independent from political influence

Help Government - Monitor + reduce asymmetry of information

- Monitor and enforce performance
- Information gathering, publication, review, analysis
- Capacity centralized

Protect other stakeholder interests

- Environment
- Competition and Liberalization
- Procurement



What are functions of a PPP/ Utility Regulator?

Economic regulation of activity or project

Monitor cost base of activity or project Data gathering	Monitor performance of activity or project and apply performance and penalty regime	[Set tariffs/ recommend tariff levels - Determine which stakeholders should pay for cost increases]	Set entry and exit requirements – level playing field	[Provide arbitration service]
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- *But economic regulation should not be considered in isolation from other regulatory functions: health, environment, planning, water resource management*
- *Government might choose to retain functions such as tariff setting*



1. Regulatory Design issues - General

- *Regulation is a means to an end – what matters is regulatory outcomes and NOT rules*
 - *Keep regulation simple and easy to implement*
 - *Make sure that regulation is tailored to the country/sophistication of entity being regulated*
- *Benefits of regulation should not exceed cost of regulation*
 - *Costs of set up*
 - *Costs of implementation – monitoring and data collection*
- *It takes time to establish an effective regulator*



Regulatory Design Issues

2. *What entities should be regulated?*
 - *Is it appropriate to regulate all potential service providers in a sector or just the private service providers?*
 - *Is it appropriate to regulate only monopoly service providers?*
 - *If a sector is to be liberalized with the monopoly being reduced, will all entrants to the sector be required to meet similar service standards?*
3. *What activities should be regulated (coverage)?
Should all activities of the regulated entity be regulated?*



4. What model of regulatory framework is appropriate for PPPs/ for country?

- *Independent regulator*

- Transparent appointment of staff*
 - Fully funded by regulated sector*
 - Decisions not subject to veto by Government*
 - Power to impose fines and penalties*

- *Regulatory function within a line ministry*

- *Multi-sector regulator*

- *Regional Regulator*

- *Regulation by contract*

- *Regulation contracted out to consultant*



5. What is scope of Regulator's powers

- The Regulator will need to be empowered to do the following:
 - gather information and data*
 - establish rules and change rules*
 - monitor implementation of rules*
 - enforce the rules – should the regulator have power to impose fines and sanctions for breach of rules, or does it need to apply to a different agency to have its decisions enforced?*
- The regulatory designers may seek to put limits on these powers or impose general obligations of fairness and proportionality on Regulator
- Investors/ operators will want to ensure that there are limits on the extent to which the Regulator can change rules
- Consumers will want input into regulatory decisions



6. What is the source of these powers?

- 2 main approaches to **the source of the Regulator's powers:**
 - UK and US - a separate regulatory body established under legislation – **license** between regulator and operator.
 - In France, **regulation by contract**, with the local government contracting party overseeing the activities of the operator through the contract.
- These are not the only two possible models. There is a growing trend in developing countries to combine these models, by providing in the PPP contract that:
“a third party board is established by contract to monitor performance under the contract, and make recommendations for tariff setting and in time the powers of the board will be transferred to a regulatory body, established by statute”.



7. How much discretion should Regulator have?

- If Government is seeking to encourage investor confidence in a sector then will need to keep discretion of Regulator to a minimum (investors like certainty)
- Where the private sector is accepting end user risk, investors will be looking for commitments regarding tariff levels (particularly if tariff levels represent less than the economic cost of service delivery) with little room for discretion
- Where there is to be a tariff review after an initial period investors will want a clear objective formula for calculating tariff increases
- Where Government reserves tariff making powers then the investors will want clear provisions regarding shortfalls in projected income if Government fails to increase tariffs and how these are shared between the parties



8. What recourse is there against Regulatory Decisions?

- *Is the regulator accountable to Government? Can Government overturn its decisions? This may be a concern for investors*
- *Stakeholders such as investors and customers will want to know that they have recourse against Regulator or its decisions.*
 - *In particular, will recourse be through the courts, if so, under administrative law rules and courts or through the general court system/ through arbitration?*
 - *Will consumers have access to these courts?*
 - *What remedies are available?*

