CARIBBEAN PUBLIC-PRIVATE PARTNERSHIPS (PPP) TOOLKIT

Developing Infrastructure and Improving Service Delivery

SUPPORTED BY WORLD BANK GROUP
FOMIN Multilateral Investment Fund Member of the IDB Group
CARIBBEAN DEVELOPMENT BANK
IDB Inter-American Development Bank
PPIAF Enabling Infrastructure Investment

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CARIBBEAN DEVELOPMENT BANK

PURPOSE

"The purpose of the Bank shall be to contribute to the harmonious economic growth and development of the member countries of the Caribbean (hereinafter called the Region) and to promote economic cooperation and integration among them, having special and urgent regard to the less developed members of the Region".

Article 1 - Agreement establishing the Caribbean Development Bank

MISSION STATEMENT

CDB's Mission is to be the leading catalyst in the reduction of poverty through the inclusive and sustainable development of our BMCs' by mobilising development resources in an efficient, responsive and collaborative manner with accountability, integrity and excellence.

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LIST OF ABBREVIATIONS

BAFO	Best and Final Offer
BOO	Build Own Operate
BOLT	Build Own Lease Transfer
BOT	Build Operate Transfer
CapEx	Capital Expenditures
CDB	Caribbean Development Bank
CHEC	China Harbor Engineering Company
CMEP	Conseil de Modernisation des Enterprises Publiques (Haiti)
CMT	Contract Management Team
DB	Design-Build
DBB	Design-Bid-Build
DBFM	Design Build Finance Maintain
DBFOM	Design Build Finance Operate Maintain
DBJ	Development Bank of Jamaica
DSRC	Debt Service Coverage Ratio
EBCA	Economic Benefit Cost Analysis
EBCA	Economic Benefit Cost Assessment
EIA	Environmental Impact Assessment
EoI	Expressions of Interest
ENPV	Economic Net Present Value
ERR	Economic Rate of Return
FBO	Fixed-Base Operation
GoJ	Government of Jamaica
GoSL	Government of Saint Lucia
IAIA	International Association of Impact Assessments
ICT	Information and Communication Technology
IDB	Inter-American Development Bank
IRR	Internal Rate of Return
ITB	Instructions to Bidders
IPP	Independent Power Producer
IPSAS	International Public Sector Accounting Standards
KCT	Kingston Container Terminal
KPI	Key Performance Indicator
MAGA	Material Adverse Government Action
MDAs	Ministries, Departments, and Agencies
MDB	Multilateral Development Bank
MIF	Multilateral Investment Fund
MOF	Ministry of Finance
NGO	Non-Governmental Organisation
NPV	Net Present Value
NROCC	National Roads Operating and Construction Company
OCG	Office of the Contractor General
O&M	Operation and Maintenance
OMM	Operations, Maintenance & Management
OpEx	Operational Expenditures
PBMC	Performance-Based Management Contract
PIM	Project Information Memorandum
PIMSEC	Public Investment Management Secretariat
PIOJ	Planning Institute of Jamaica
PIMS	Jamaica Public Investment Management System
PFRAM	PPP Fiscal Risk Assessment Model
PPA	Power Purchase Agreement
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public-Private Partnership
PSP	Private Sector Participation
PV	Present Value

RAS	Reimbursable Advisory Services
RE	Renewable Energy
RfP	Request for Proposal
RfQ	Request for Qualifications
RfEoI	Request for Expressions of Interest
RoE	Return on Equity
RoFR	Right of First Refusal
SIA	Sangster International Airport
SIA	Social Impact Assessment
SIDS	Small Island Developing States
SPV	Special Purpose Vehicle
SWOT	Strengths, Weaknesses, Opportunities and Threats
SPV	Special Purpose Vehicle
THA	Tobago House of Assembly
USP	Unsolicited Proposal
VfM	Value for Money
WBG	World Bank Group

FOREWORD

As populations and economies in the Caribbean Region expand, increased demands are being made for adequate, sustainable and climate-friendly infrastructure services. To address these challenges, governments need to make significant investments in high quality infrastructure assets. Estimates vary, but a broad consensus indicates that the Region needs investments of about $21 billion over the period 2014 to 2025, to close the infrastructure gap. This need requires increased participation from the private sector, to complement creative solutions from the public sector.

Public-Private Partnerships (PPPs) offer a complementary mechanism for governments to procure, finance and implement public infrastructure projects that can leverage the private sector's knowledge, financial capacity and efficiency.

The implementation of PPPs requires careful risk management and mitigation, as these long-term contracts are complex to structure, and require specific knowledge and experience. Building up technical capacity, especially of government officials who oversee PPP transactions, is therefore essential for increasing the chances of implementing projects that address a clear need and provide value for money for service users and governments, while meeting the highest standards of environmental and social sustainability.

Why a Caribbean Toolkit?

There are several features of the regional economic environment that deserve special treatment, such as small market sizes, shared legal and regulatory systems, capacity constraints within governments, high investment needs and limited fiscal space. Therefore, PPP learning materials developed in other parts of the world require adapting to these Caribbean-specific characteristics.

This Caribbean PPP Toolkit includes a set of pragmatic tools to complement existing in-country capabilities. The ultimate goal of the Toolkit is to provide PPP practitioners with the basic knowledge for the effective selection and execution of PPP projects. The Toolkit describes the Regional environment for PPPs, drawing lessons from global as well as Caribbean examples, and includes a Model Caribbean PPP Policy Template. The six Toolkit modules cover the key aspects of PPPs, including policy and enabling environment, project identification and screening, development of the business case, procurement and contract monitoring.

The Caribbean PPP Toolkit has been produced by the Caribbean Development Bank (CDB), the World Bank (WB), Public-Private Infrastructure Advisory Facility (PPIAF), Inter-American Development Bank (IDB), and the Multilateral Investment Fund (MIF). Technical inputs were received from IMG Rebel consultants.

We hope that all users of this Toolkit – governments, private sector, academia and civil society – will find it a helpful, easy-to-use tool that will increase their understanding of PPPs and the economic advancement they can bring to the Region.

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The study was conducted under the stewardship of Brian Samuel (Head of Regional Public-Private Partnerships, CDB), Rui Monteiro (Senior PPP Specialist, WB), Luciana Guimarães Drummond e Silva (Portfolio Coordinator, PPIAF), Adriana La Valley (Operations Senior Specialist, IDB), and Dennis Blumenfeld (Coordinator, PPP Facility, MIF).

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MODULE 1
TOOLKIT INTRODUCTION

An old jetty at the Port of Bridgetown. Much of the Region's marine infrastructure is dilapidated and in urgent need of rehabilitation.

1. ABOUT THIS TOOLKIT

A key component of this initiative includes the development of a tailored PPP Toolkit, specifically geared towards the Caribbean Region.

1.1 Background

Governments in the Caribbean are increasingly interested in using Public-Private Partnerships (PPPs) to develop critical infrastructure and improve service delivery. Caribbean governments are motivated by two main factors: (i) fiscal constraints; and (ii) growing appreciation of the efficiency gains to be made by engaging the private sector in delivering public services.

The Caribbean is unique; most countries in the region share similar economic, legal and regulatory systems; a consequence of their shared history and political antecedents. Caribbean countries face additional challenges of small size, geography, and the threat posed by climate change to Small Island Developing States (SIDS). These factors have a critical bearing on infrastructure in the Caribbean, and policy makers must take them into account when structuring and implementing PPP programmes and projects.

The Caribbean has had mixed results with PPPs to date. Several countries have successfully used PPP structures to deliver new or improved roads, ports, airports, water treatment facilities, and electricity generation plants. Some Caribbean PPP projects have operated successfully for years, delivering high-quality infrastructure facilities. However, many others have faced challenges. Frequently, the complexity of the PPP implementation process has resulted in delays in delivering projects, because governments do not have sufficient technical capacity to move them forward. This same lack of capacity has led to projects being implemented with questionable value for money, or unexpected costs to governments and users. In addition, projects have failed to take off, due to for the lack of regional support mechanisms.

Recognising the need to assist Caribbean governments in overcoming PPP-related challenges, the Caribbean Development Bank (CDB), the Inter-American Development Bank (IDB), the Multilateral Investment Fund (MIF), the World Bank Group (WBG), and the Public-Private Infrastructure Advisory Facility (PPIAF) created a support mechanism ("Regional Support Mechanism") which was launched in March 2015. A key component of this initiative includes the development of a tailored PPP Toolkit, specifically geared towards the Caribbean Region.

The main objectives of this 18-month Regional Support Mechanism are to:

a) Build institutional capacity and expertise in the public sector;
b) Support the development of a bankable and affordable pipeline of PPP projects;
c) Assess the need and demand for a Regional PPP Unit within CDB;
d) Develop a business plan for a longer term Regional PPP Unit within CDB; and
e) Examine the feasibility of creating a revolving project preparation fund for the Caribbean.

The activities covered by the Regional Support Mechanism include:

A. Strengthening the Regional PPP enabling environment:

- Developing a Caribbean PPP Toolkit: Modular learning tools covering key areas of PPP theory and practice: policy, project identification and screening, business case development, procurement and implementation;
- PPP Boot Camps: Regional three/four-day workshops for government staff, improving their technical knowledge and capacity to implement sound PPP projects;
- Create the PPP unit: Business Plan for the creation of a sustainable Regional PPP Unit, providing hands-on assistance to CDB's Borrowing Member Countries (BMCs); and
- Building a regional PPP Network: Enabling a sharing and knowledge resource among PPP practitioners in the Region.

PPP Boot Campers and Trainers

B. Hands-on support to national PPP programmes and projects:

- Quick-response ad-hoc support requests: Limited, one-off consulting interventions, designed to provide quick-response answers to requests from Member Governments.

- In-country support in introducing PPP policies and programmes: Consultancy interventions by technical specialists, to provide a range of services related to BMCs in problem areas.

- Screening potential PPP projects: Guidance and early-stage studies (e.g. pre-feasibility analysis) on individual projects, based on global best practices.

1.2 Purpose

This online PPP Toolkit is a regional "public good." Hence, it is freely available to PPP practitioners, the private sector and academics throughout the region, through the CDB website as well as the World Bank's PPP Knowledge Lab. This Toolkit allows Caribbean governments and other stakeholders to access guidance and practical assistance in preparing and managing PPP projects.

The Toolkit covers, amongst other things, how to protect the public interest while attracting private investment, policy and institutional structures, project identification and screening, business case development and project structuring, transaction implementation and tender processes, and post-implementation project monitoring. It draws on experiences with PPP projects in the Caribbean and globally, draws out lessons of experience and highlights accepted best practices.

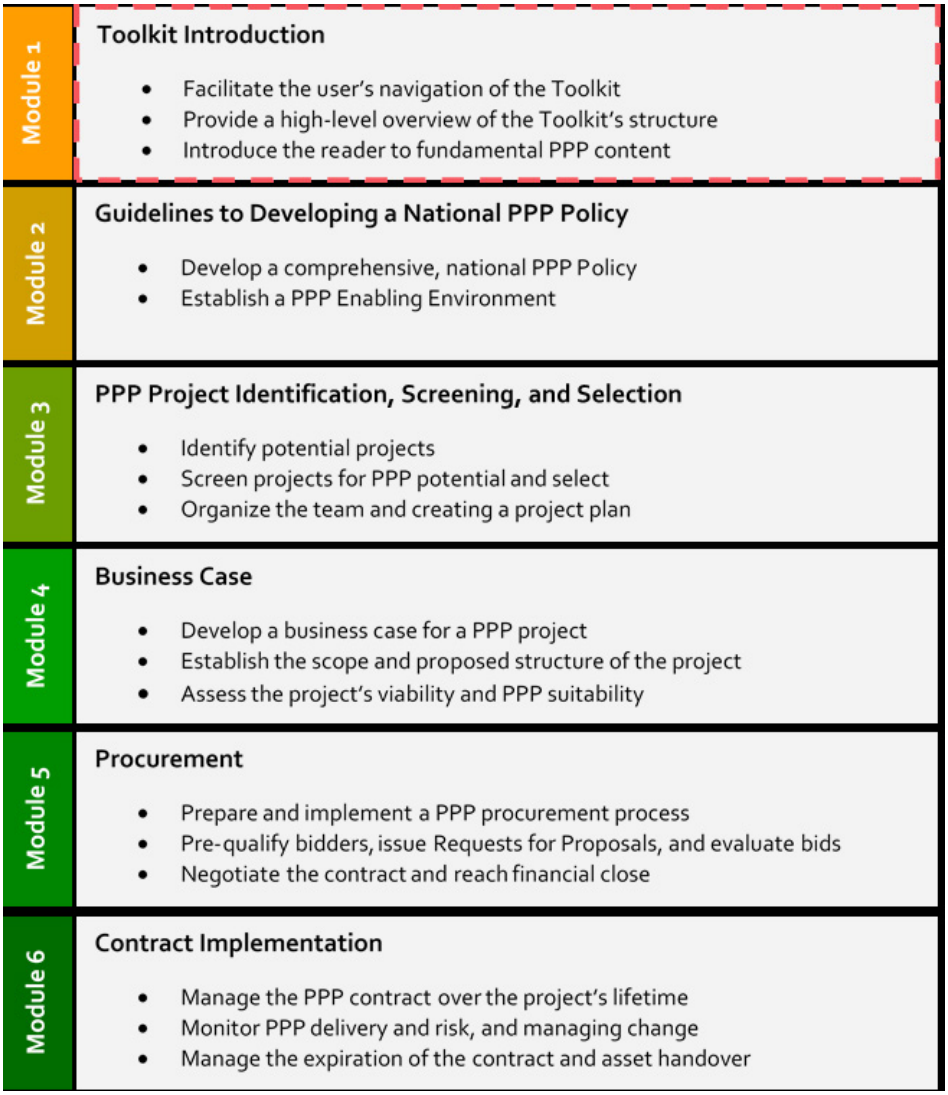
The PPP Toolkit is comprised of Caribbean-based guidance documents and supporting tools that governments can adapt to fit national priorities and legal and institutional environments. The Toolkit will act as a supplement to the technical assistance provided in several countries in the region (with the support of the IDB/MIF and the World Bank Group) and to the technical assistance provided by the Regional Support Mechanism.

1.3 Structure

The Toolkit consists of six modules structured around the PPP project cycle ("PPP Process"), with supporting annexes, templates and tools. The content in each module aims to: (i) introduce the Toolkit user to key issues, principles, and theoretical PPP concepts; (ii) provide templates and tools to guide the Toolkit user through the PPP Process; (iii) provide actual examples and case studies, from the Caribbean and globally; and (iv) provide publications, reference projects and online resources as background information. The guidance notes provided in the Toolkit are based on international best practices, modified where necessary by experiences in the Caribbean.

A detailed summary of the Toolkit's overall structure and each module is shown in Figure 1 below.

Figure 1: Toolkit Overview



1.4 Suggested Use of this Toolkit

This PPP Toolkit aims to enhance regional understanding of PPPs among governments, private investors and other stakeholders; and provide practical guidance in preparing and managing PPP projects. The Regional Support Mechanism encourages all stakeholders to use this Toolkit as a resource, when considering using PPP models to deliver infrastructure projects.

The main purpose of this Toolkit is as an introductory knowledge resource, primarily for governments. The Toolkit is not meant to be an exhaustive treatise on PPPs, nor is it to be used for legal purposes. This Toolkit is designed as an informational tool for governments and stakeholders. Governments must pay careful attention to the unique circumstances relevant to each country, and each potential PPP project. The Regional Support Mechanism encourages all Caribbean governments to seek qualified technical, legal and economic advice when structuring PPP projects, from both the donor community and qualified consulting firms.

The Regional Support Mechanism has designed the Toolkit as an effective resource to support governments in developing and implementing PPP projects, with the aim of promoting better and more efficient investment projects in the Caribbean through PPP delivery.

1.5 The Caribbean PPP Environment: Overview

Infrastructure services in electricity, transport and water and sanitation in most Caribbean countries need improvement in order to meet higher service standards, keep pace with population growth and support economic development. Recurring problems throughout the Caribbean infrastructure sectors include: high electricity costs and intermittent supply; high port and transport costs; lack of broadband networks for large parts of the population; and the need for improvements to critical infrastructure assets such as airports, ports and road networks. As of 2014, estimates indicate that to increase and improve the Caribbean region's infrastructure to acceptable international standards, total investment of about US $21.4 billion[1] is required over the next 10 years. Caribbean governments have been struggling to improve their infrastructure along with the challenges of high debt burdens, tight budgets, declining terms of trade and lagging economies. In the past, Caribbean governments have generally relied on conventional public procurement to develop and improve infrastructure assets. However, many of these public projects failed to deliver efficient solutions and sustainable quality. The objective of both the Government and the contractor under conventional procurement is to minimise the up-front capital costs of infrastructure delivery. However, this often leads to suboptimal design solutions from a long-term perspective, which in turn leads to higher on-going maintenance and operating costs. The total effect is to increase the overall cost of service over the asset's lifetime. Therefore, while saving money in the short run, poor construction is not cost-effective in the long term, because assets will deteriorate before the end of their design life and have to be re-built.

For example, many roads in the Caribbean are constructed with substandard materials and improper drainage. This is evidenced by the heavy rains in Saint Lucia on Christmas Eve 2013[2], and Hurricane Erika's impact on Dominica in August of 2015[3], which caused extensive erosion and incidences of roads and bridges washing out, requiring costly repairs, to be paid by governments. On the other hand, when on May 29th 2016 a landslide damaged part of the recently completed North-South Highway in Jamaica[4], the PPP operator China Harbour Engineering Company (CHEC) was responsible for repairs, at no cost to the Government of Jamaica.

Based on internet research, feedback from Government officials and media reports, as per mid-2016, the potential Caribbean PPP pipeline was estimated at about 48 projects, with total estimated capital costs of about US$3.8 billion. However, in a review of this pipeline, only 15 percent of these projects were actually at the bid or tender stage[5]; the majority of projects were still at the concept or feasibility study stages. This is lack of progress in project development due in part to lack of capacity among governments. This Toolkit, and other efforts of the Regional Support Mechanism, aims to overcome capacity constraints and promote the use of PPPs in the region.

[1] Source: Caribbean Development Bank: Public-Private Partnerships in the Caribbean: Building on Early Lessons, May 2014 | [2]"Island-wide flooding dampens Christmas spirit", St. Lucia News Online, December 25, 2013, http://www.stlucianewsonline.com/islandwide-floods-dampen-christmas-spirit/
[3] http://floodlist.com/america/dominica-floods-35-missing-damage-225-million | [4]http://rjrnewsonline.com/local/south-bound-leg-of-north-south-highway-closed-due-to-landslid | [5]Source: The World Bank, Caribbean Infrastructure PPP Roadmap, March

MODULE 1

2. INTRODUCTION TO PPPS

Key Points for Decision Makers

Governments should leverage multilateral resources to help address PPP financial and technical capacity constraints.

There is no need to "reinvent the wheel". Several "blueprints" of successful PPP projects in the Caribbean exist.

Establishing a clear and transparent definition of PPPs is critical to spurring an efficient, effective, and scalable PPP market.

PPP definitions should largely resemble the five key characteristics of PPPs (see

Governments must determine whether a PPP creates more value relative to conventional delivery methods before choosing the PPP route.

PPP (payment) models are not a "one size fits all". They should be adapted to the unique elements of the project.

2.1 Defining PPPs

Countries and institutions worldwide have differing perspectives on what types of public-private arrangements constitute PPPs, as distinct from other forms of infrastructure delivery models. Although there is no internationally accepted definition of a PPP, there are common features found in most PPPs. Textbox 1 presents the five key characteristics of PPPs.

It is important that countries explicitly define what they consider a PPP, typically through their respective PPP policies, in order to create a framework for evaluating how appropriate PPP delivery may be for a particular project. It is important to note that not all projects that involve collaboration between the public and private sectors constitute a PPP. Frequently, governments enlist the expertise of the private sector to perform necessary tasks and provide essential services. However, the mere interaction between the public and private sectors does not imply that there is a PPP. For example, do the cases below in Figure 2 and Figure 3 satisfy all of the key PPP characteristics listed in Textbox 1? Under the classic definition contained in Textbox 1, which of these two projects would be classified as a PPP?

Textbox 1: Typical Components of a PPP Definition

Characteristics	Description
A long-term contract between a public agency and a private sector company…	A PPP involves a long-term contract between the public agency and private party. The definition of "long-term" may depend on the jurisdiction and the type of infrastructure, but usually means not less than 10 years, and often between 20 and 30 years.
…for a public interest project that is under the responsibility of a state agency…	PPPs are intended for the delivery of a public service, as opposed to a commercial opportunity for the private party.
…which transfers substantial risk to the private party…	One of the key value drivers of a PPP is the transfer of substantial project risks to the private party.
… includes the provision of private financing…	In order to effectively transfer risk to the private party, the private party must have invested equity or "skin in the game."
…and includes a focus on the specifications of project outputs rather than project inputs, linked with a payment system based on performance.	A focus on the specifications of project outputs rather than project inputs is a key driver of value in PPP delivery models, coupled with performance-related payments to the private sector for the services delivered.

Figure 2: PPP Classification Case Study 1

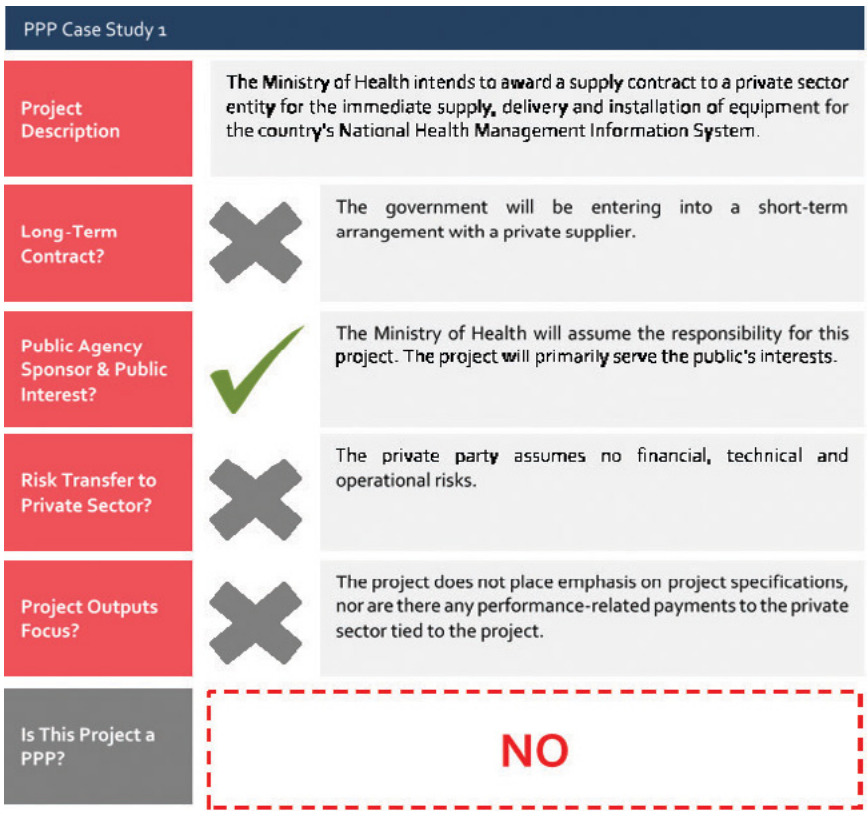


Figure 3: PPP Classification Case Study 2

These are PPPs:

- A toll road concession (e.g. Highway 2000 Jamaica)
- A long-term concession for the construction/upgrading, operation and maintenance of an airport (e.g. Sangster International Airport, Montego Bay)
- An Independent Power Producer with a Power Purchase Agreement with a national utlity (e.g. Suralco Suriname)

These are not PPPs:

- A government company sold to a private operator (e.g. Cable & Wireless)
- A private cell phone company (e.g. Digicel)
- A government hotel under a management contract (e.g. Barbados Hilton)

2.2 Creating Value with PPPs

Developing and implementing PPP projects can be complex, costly, and time consuming for the government. However, a PPP can also result in enhanced efficiency in the provision of public infrastructure services for citizens. Governments should use PPP delivery models when the additional value that PPPs can deliver is greater than the additional costs involved in developing and implementing them. Ensuring that PPPs create value for citizens is therefore central to PPP implementation.

a. PPP Value Drivers

Well-structured PPPs have the potential to deliver greater "Value for Money" (VfM) than conventional delivery models. A PPP project yields VfM when it results in a net positive economic gain to society, which is greater than the gains achieved through conventional public procurement. Global experience has shown that PPP models can contribute to achieving service delivery with a better price to quality ratio than conventional delivery through private sector management, skills and competencies (see Figure 4).

However, the benefits of PPPs do not originate spontaneously. The contracting authority must actively pursue VfM in the preparation and management of the PPP project by focusing on the value drivers of the project, and ensuring that the private provider abides by the terms of the PPP contract.

Figure 4: Potential Value Generated by PPP Delivery

Textbox 2: Value Drivers in a PPP Delivery Model

- **Integrating service provision in a single PPP contract incentivises life cycle costing, saving maintenance and operational costs.** In a PPP, one single party is responsible for the design, construction, and maintenance of the asset, procured through a single contract. A single long-term contract encourages design and construction companies to work together early on to decide how to design and deliver the asset such that it minimises future maintenance and/or operational costs (or total life-cycle costs). Opportunities to obtain economies of scale and bundle services through packaged deals may also reduce costs.

- **Performance-based (or output-based) specifications incentivise the private party to innovate, which can result in cost efficiencies.** Under a PPP model, performance-based contracts specify the deliverables in terms of outputs, rather than prescribing detailed engineering specifications. Because payment to the concessionaire is contingent upon the private party achieving these key performance indicators, he has an incentive to deliver on time, reducing the risk of cost overruns to the contracting agency. In addition, output-based specifications encourage the use of innovations, which can result in cost efficiencies.

- **Allocating each risk to the party best able to manage it results in cost efficiencies for the public agency.** Under a conventional delivery model, the contracting authority typically assumes most of the risks associated with owning and operating the infrastructure asset, which can result in undervalued costs and contingent liabilities. In a PPP, risks are allocated to the party best able to manage them, at the lowest cost. As a result, the contracting authority can typically transfer some significant risks to the concessionaire, resulting in cost efficiencies to the government.

- **Performance-based payment mechanisms incentivise the concessionaire to ensure on-time and high quality delivery.** Because payments usually do not start until the asset has been delivered, the concessionaire has an incentive to build and make the asset available in a timely manner while meeting contract requirements.

- **Competition in PPP procurement lowers the cost of capital and/or services and fosters the use of innovation.** Competition during procurement incentivises the private party to use innovative approaches to deliver the service and achieving the output-based specifications. This is particularly relevant in discussions on the challenges of procuring PPP projects via Unsolicited Proposals (see Chapters 2.4).

b. PPP versus conventional public procurement and delivery

For many decades, Caribbean governments have delivered public infrastructure assets by soliciting private sector participation through a conventional short to medium-term procurement process. Typically, the government issues a tender; companies respond with proposals; the government awards the contract to the best bidder; and the private sector constructs the infrastructure asset under the contract – and then hands the asset over to the government, to be managed, operated and maintained by the responsible public sector agency. The various types of goods or services provided by the private sector include market studies, design and construction works, materials and equipment, etc.

In conventionally procured projects, the government remains the manager of the infrastructure asset after it has been handed over by the contractor; and separately procures all phases of the project – from initial design, through construction, to operations and maintenance. The government also accepts most of the project risks; both short and long term. However, over the years, experience has shown that governments globally have encountered problems with this conventional procurement and delivery model. Projects have often suffered from inappropriate designs; the use of outdated or inadequate technology; substantial cost and time overruns during construction; insufficient maintenance over the life of the asset and ineffective operations or management.

PPPs provide the government with an alternative approach to deliver public infrastructure assets and services—one that can be efficiently used for complex projects and for projects that require proper cost and time management. Under the PPP approach, the government tenders for a capable private partner who will be able to design, construct, finance, maintain and operate the public infrastructure or service, over many years. If structured properly, the PPP approach can help overcome the challenges associated with a conventional public delivery and create better value for citizens. In a PPP structure, the private partner bears the responsibility for integrating, delivering, and managing the project over its full lifetime. The contracting authority oversees and manages this via the PPP contract that it signs with the concessionaire.

2.3 Common PPP Structures

PPP contracts can be structured in many ways, to address different circumstances and needs of individual infrastructure projects. Terms like "concessions", "joint-ventures", "management contracts" and "privatisations" are used with imprecise meanings; adding to the confusion that frequently exists as to what constitutes a Public-Private Partnership. Public and private sector parties commonly specify the structure of the PPP in the contract; the following are the principal contract types:

a. DBFOM: Design Build Finance Operate Maintain

This could be described as the "classic" PPP structure. Under the Design-Build-Finance-Operate-Maintain (DBFOM) approach, responsibility for designing, building, financing, operating and maintaining the asset are bundled together and transferred to the private operator. There are many variations in DBFOM arrangements, particularly in the degree to which the public sector transfers financial and technical responsibilities to the private sector.

All DBFOM projects, however, are either partially or wholly financed by debt; secured by the private partner. There is a great deal of overlap in PPP nomenclature, and DBFOM could be said to include variants of the Build Operate Transfer (BOT) approach, outlined in Section 2.3.3 below).

Under PPP structures, the concept of "ownership" of assets is different to the traditional concept of ownership. Under PPPs, the private partner is regarded as the "owner" of the asset only in economic terms; the private party can make economic use of the asset, under specified contractual terms. However, the asset often remains, in legal terms, owned by the government. Thus, in Jamaica's Highway 2000 PPP project, the private sector operators may be said to own the assets, but they do not "own the road".

b. DBFM: Design Build Finance Maintain

The Design Build Finance Maintain (DBFM) structure is similar to the DBFOM approach (discussed in Section 2.3.1). However, under a DBFM approach, the private party is not responsible for "operations" of the asset (except for maintenance and some technical services) in the term of the agreement. Caribbean government agencies have structured several PPP projects using the DBFM structure in recent years. For example, in 2007 the Ministry of Health of Antigua and Barbuda elected American Hospital Management Company (AHMC) as the partner to establish a PPP hospital to address the healthcare needs of the Antiguan community. Under this structure, the private operator maintains the buildings and the technical aspects of the hospital facility; leaving the government to provide the clinical services.

As shown in Textbox 3, the Government of Aruba recently awarded a 20-year DBFM contract for the Watty Vos Boulevard PPP Project. The Government was keen to introduce PPP elements, but did not want to charge tolls. "The payments to the Contractor are conditional on the delivery and proven availability of the infrastructure to the Contracting Authority. This creates a difference in the timing between income and expenditure for the Contractor and, consequently, the need for financing. The Contractor must arrange for the necessary financing within this context."[6]

Textbox 3: Watty Vas Boulevard DBFM Project in Aruba

In February 2014, the Government of Aruba announced the public tender of a DBFM, 20-year concession for the Watty Vos Boulevard PPP Project. The project involves the design and construction of a new arterial road around Oranjestad between intersection Sabana Blanco and intersection Punta Brabo. The existing lanes from intersection Punta Brabo through J.E. Irausquin Boulevard to the Westin Hotel will also be reconstructed. On July 15, 2015, the Government selected Mota-Engil as the preferred bidder.

The payments to the Concessionaire are conditional on the delivery and proven availability of the infrastructure to the Contracting Authority. This creates a difference in the timing between income and expenditure for the Concessionaire and, consequently, the need for financing. The Concessionaire must arrange for the necessary financing within this context.

Source: P3 Public-Private Partnership Aruba. Projects – PPP Aruba Watty Vos Boulevard. Accessed June 2016 at http://www.p3aruba.com/index.php?page=default

c. BOT: Build Operate Transfer

Under the Build Operate Transfer ("BOT") approach, the private party constructs the assets to the specifications agreed to by the contracting authority; operates the assets for the period specified in the contract; and then transfers the asset back to the agency at the end of the contractual period. At this time, the contracting authority could either (i) resume operating responsibility for the asset itself; (ii) re-contract the operations to the original contract holder; or (iii) re-tender the contract in a competitive transaction. Caribbean governments have employed the BOT approach to implement PPP projects across a variety of sectors and assets. BOT PPP projects have been particularly common in the transportation sector.

[6] Source:

Textbox 4: Fixed-Base Operation (FBO) Robert L. Bradshaw International Airport, St. Kitts

In December 2010, Veiling Limited of Mauritius signed a 30-year BOT agreement with the St. Christopher Air and Sea Ports Authority for a new private air terminal at Robert L. Bradshaw International Airport. The US$15 million-dollar private jet terminal is a partnership between the St. Christopher Air and Sea Ports Authority (SCASPA) and the London-based Veiling Aviation Limited. This first phase of the initiative allows St. Kitts to offer Fixed-Base Operation (FBO) services to business jet passengers; and includes the development of world-class arrival and departure lounges, a business centre, customs, immigration offices and processing facilities, as well as a landscaped courtyard and events centre.

The new facility began operations in 2014.

Source : Veiling. Press Release. Accessed June 2016 at http://www.veling.aero/press_release/downloads/pdf/FBO%20in%20St%20Kitts.pdf and http://www.thestkittsnevisobserver.com/2012/02/03/jet-terminal.html

d. BOLT: Build Own Lease Transfer

Under a Build Own Lease Transfer ("BOLT") structure, the private sector party constructs and owns the facility (design could be by either the public or private party), leases the facility to the public agency over a long-term period, then at the end of the lease period, transfers ownership of the facility to the public party. The chief advantage of the BOLT model is that it removes the burden of raising the finances for the project from the public agency, and places it on the private party. This way the BOLT developer assumes all the risk; the risk of raising the project financing and the risk during the construction period.

In the Caribbean region, BOLT arrangements have frequently been used by governments for the financing and construction of new office buildings and other facilities. One of the advantages of a BOLT contract is that it relieves the government of the burden of raising finance for the project, and transfers the risks of construction overruns and delays onto the private party. For example, the Barbados Water Authority (BWA) entered into a POLT arrangement with a private party for the financing and construction of its new headquarters building, as outlined in Textbox 5.

Textbox 5: Barbados Water Authority (BWA) Headquarters

The Barbados Water Authority (BWA) operated from a number of different locations, spread throughout Barbados. The Authority was paying a lot in commercial rent, and identified the need to house all its various commercial operations under a single unit. This would result in a savings in rental expenses overall, and all the leases/rental paid then paid to various landlords would be consolidated with one payment, made to the new landlord.

In March 2013, BWA signed an Agreement with a private party, Innotech Services Limited (ISL), for the design, financing and construction of its new headquarters premises. The Agreement also included the lease of the premises to the BWA, after which ownership of the buildings would be transferred to BWA. As originally conceived, ownership of the new building was to have remained with BWA from the inception of the project, however this structure proved unattractive to financiers, because of the difficulties of (a) borrowing on an unsecured basis; and (b) reliance on lease payments from a loss-making public authority.

The PPP project structure was subsequently altered, making the project more attractive to private financiers:

- SPV to own Land and Building to be mortgaged as security
- Fifteen (15) year lease period, with corresponding bond amortisation
- Handover to BWA at the end of the lease period
- Stringent legal, construction and other safeguards to ensure successful execution of the project
- Principal Moratorium for twelve (12) months (with interest capitalising)
- Interest only payments for eighteen (18) months

The new BWA headquarters building was completed and handed over to the client in June 2015.

e. BOO: Build Own Operate

Under a Build Own Operate ("BOO") structure, the private sector contractor constructs and operates a facility in perpetuity, without ever transferring ownership to a public agency. The legal title to the facility remains with the private sector, and there is no obligation for the public agency to purchase the facility or assume the title, at the end of the contract period. In the energy sector, Independent Power Producers (IPPs) are a common form of BOO arrangement. Government agencies in the Dominican Republic have commonly used the BOO structure for IPP projects.

In 2000 the government of the Dominican Republic entered into a BOO agreement with the private sector for the San Pedro de Macoris Power Plant project. The IDB provided a risk guarantee covering US $144 million of funding, enabling the project to receive a favourable credit rating. As illustrated in Textbox 6, Jamaica has also made extensive use of BOO structures in the energy sector.

Textbox 6: Evolution of Jamaica's Independent Power Producers (IPPs)

Commencing in the early 1990s, the Government of Jamaica (GoJ) began to reform the energy sector, leading to the Utilities Regulation Act of 1995, a key component of the liberalisation process. As part of this liberalisation, additions to electricity generating capacity would be implemented by competitive tenders to private sector operators. These early experiences with Private Sector Participation (PSP) in the energy sector resulted in an increase in the capacity of GoJ to implement renewable energy (RE) transactions, and proved Jamaica as a viable investment market for RE projects.

Subsequently, GoJ, through the Office of Utility Regulation (OUR) greatly increased Jamaica's RE generating capacity, attracting credible bids from qualified global RE operators. The following are Jamaica's current IPPs:

Jamaica Energy Partners (JEP): An Independent Power Producer (IPP) that began commercial operations in October 1995. JEP provides the national utility Jamaica Public Service Company Limited (JPSCo) with approximately 124.4 Megawatts of electricity, from its two barge-mounted power plants located in Old Harbour Bay, St Catherine:

Jamaica Private Power Company (JPPC): JPPC currently provides JPSCo with approximately 60 Megawatts of electricity; from its power plant located on Windward Road in Kingston.

Wigton Wind Farm: Wigton Wind Farm Limited is a wholly owned subsidiary of the government-owned Petroleum Corporation of Jamaica (PCJ), is located at Wigton in central Manchester. Wigton kick-started Jamaica's drive towards Renewable Energy (RE), and demonstrated the operational viability of a utility-scale wind operation under Jamaican conditions. Phase 3, for an additional 24 Megawatts at $45 million, is currently under construction.

JAMALCO: JPSCo has a co-generation arrangement with bauxite company Jamalco, which produces some of the electricity it needs for its own operations. Jamalco can provide JPS with up to 11 Megawatts of electricity for distribution on the national grid.

Blue Mountain Renewables: Under OUR's recent RE auctions, this operator committed to supply 34 megawatts of capacity from wind power at Munro in St Elizabeth. Total capital cost $77.7 million.

WRB Enterprises: US-based investor won bid to supply 20 Megawatts of capacity from solar PV facilities in Content Village. Capital cost $65 million.

Eight Rivers Energy: The preferred bidder in OUR's latest RE auction, to provide 33.1Megawatts of solar power. Capital cost $49 million.

When completed, these RE projects will be equivalent to 15% of Jamaica's total generating capacity, well on the way to meeting the Energy Policy objective of having 20% of the country's energy mix coming from renewable sources, by 2030.

Source: http://www.myjpsco.com/about-us/our-partners/;

f. OMM: Operations, Maintenance & Management

At the "light" end of the PPP spectrum; the Operations, Maintenance & Management ("OMM") contract is an arrangement (also called a Management Contract), whereby a public agency contracts with a private partner to operate, maintain, and manage a facility. Under this contract option, the public agency retains ownership of the facility, but the private partner is responsible for management and operation of the facility, under a long-term contract. The private operator may invest some of its own capital, for example in the provision of operating supplies and equipment, and will perform under the contract in order to recover the investment and earn a reasonable return. In the Caribbean, examples of this type of contract can be found in the tourism sector, where governments build hotels and gives them out to private hotel companies to market and manage, such as the Hilton Hotels in Barbados and Trinidad and Tobago, both of which have operated successfully for several decades.

To obtain greater private sector efficiencies, a variant is to structure a Performance-Based Management Contract (PBMC), where a significant portion of the operator's income is earned by improving in operating performance, as defined through Key Performance Indicators (KPIs). This could also include requiring the operator to invest, for example, in machinery and equipment, to improve efficiency. Under these PBMC structures, the operator takes on more risk than under standard management contracts. However, unless the private operator takes on a significant degree of financial risk ("skin in the game"), OMM Contracts typically would not be classed as PPPs.

Textbox 7: Non-Revenue Water (NRW) Reducation Contract for Water and Sewerage Corportation Bahamas

In 2012, the Bahamas Water and Sewerage Corporation signed a contract with Miya Corporation, for the reduction in Non-Revenue Water (NRW, i.e. water that is placed into a water distribution system but not billed to costumers) in New Providence Island (Nassau). This 10-year project focuses on providing sustainable solutions to the local water distribution utility, to substantially reduce leakage of potable water, estimated at more than 50%, at the commencement of the contract. Out of a total potential fee of US$83 million, US $24 million or twenty-nine percent, are performance-based over a ten-year contract.

As a result of this contract, the level of NRW in New Providence Island went down from 57.7% in January 2013, to 32.2% in September 2015. Subsequently, in 2015, a similar NRW reduction contract was signed for the city of Kingston Jamaica. Both projects are funded by the Inter-American Development Bank (IDB).

Sources: PR Newswire. Water and Sewerage Corporation (Bahamas) Awards Miya Contract Estimated at $83M to Maximize Efficiency of Water System. Published February 17, 2012. Accessed June 2016 at http://www.prnewswire.com/news-releases/water-and-sewerage-corporation-bahamas-awards-miya-contract-estimated-at-83m-to-maximize-efficiency-of-water-system-139528478.html; Miya Corporation

The choice of which PPP contract form is most suited to a particular project is a key element in the structuring and implementation of PPP contracts, and is explored in more depth in Modules 3 and 4.

2.4 Unsolicited Proposals (USPs)

Under global best practices, governments will solicit private sector participation in publicly initiated infrastructure projects in the form of a competitive procurement process. Private sector participation in these projects is aligned with a national infrastructure plan, and projects are procured after the government has assessed the project's purpose and societal need.

An alternative to this publicly initiated approach is a privately initiated process, referred to as an Unsolicited Proposal (USP). In the case of a USP, a private sector entity ("USP proponent") reaches out to the government with a proposal to develop an infrastructure project. The government's budget or policies may not have foreseen the project; or may not have developed it beyond the preliminary concept stage. The nature of a USP is that the private sector party initiates the concept and develops the project feasibility studies, subsequently presenting it to the government. In some instances, a USP may be only a project concept, fleshed out in a few pages. In such instances, it is possible that either the private sector develops the project studies in consultation with the government, or the government takes over the project and prepares the studies. After the government accepts a USP, it may implement the project through a competitive procedure, or through direct negotiation with the USP proponent. Clearly, most USP proponents would prefer this latter approach.

The international response to USPs has varied. Some countries, like the United Kingdom, have banned USPs outright, primarily because they present the following challenges:

- ✓ **Achieving Value for Money is difficult:** Achieving Value for Money is challenging enough in a publicly initiated approach in which the government has the capacity to identify, prioritise, prepare, and procure an infrastructure project. However, it is even more challenging to generate Value for Money from a USP project. It can be very difficult for the government to properly assess the cost and value of a USP project, particularly if there have not been any studies associated with the new project idea. Additionally, USP proponents generally do not make their best offer in their first pitch. As a result, the government needs to be skilled at negotiating and assessing the reasonableness of costs in order to generate Value for Money from a USP project.

- ✓ **It is extremely challenging to ensure competition during procurement:** Governments globally struggle to ensure a competitive and equal playing field for projects initiated as USPs.

  Typically, the USP proponent has strategic advantages over competing bidders, including an in-depth knowledge of the project and/or access to land or required technologies. As a result, most procurements for USP projects do not attract sufficient competing bidders to ensure competitive pressure, and, therefore, Value for Money.

- ✓ **Guaranteeing transparency is problematic:** USPs often face allegations of corruption and fraud levelled by stakeholders and civil society – especially after a change in political administration.[7]

In both solicited and unsolicited approaches to project development and implementation, the government's interest is to develop projects that achieve Value for Money for the users. In other words, the projects should make sense from an economic and social perspective, and the transaction should be the best deal in terms of quality, price and timeliness. In order to achieve these goals and avoid the USP pitfalls summarised above, governments are encouraged to implement competitive bidding procedures for all of their PPP projects. In the Caribbean context, USPs represent one of the major weaknesses in the regional PPP environment.

Although empirical data is unavailable, anecdotal evidence suggests that a significant percentage of PPPs in the region originate and are implemented via USPs. Due to the lack of technical capacity within Caribbean governments, USPs are often cited as an expedient way of developing public projects, by leaving project development responsibilities largely to the private sector.

In addition, officials often state that projects can be implemented more quickly through USPs. Experience shows that this "advantage" of USPs is more apparent than real; and in most cases USPs still take a long time to implement. In the long-term, the extra time spent in competitive tendering will be of far greater value than the extra few months that may be involved.

One instance in the Caribbean where USPs became a highly visible public policy issue is found in Jamaica. In 2012, Jamaica's Office of the Contractor General issued a "Public Statement"[8] voicing their concerns on a number of large infrastructure projects, which at the time were USPs. It described USPs as "corruption enabling devices"; and called for USPs to "be excised from the Government's Procurement Guidelines".

In response to these concerns, the National Roads Operating and Construction Company (NROCC) engaged the OCG and civil society in robust debate. Ultimately this led to the revision of the section on USPs in Jamaica's PPP Policy and Procedures Manual.

USPs are discussed in more detail in Module 3 of this Toolkit.

[7]An example of a USP project that faces corruption allegations is the Doraleh Container Port Terminal in Djibouti. Source: Djibouti Files Arbitration Against DP World Over Alleged Corruption in Port Deal, Wall Street Journal, 9 July 2014, accessed January 2016 at: http://www.wsj.com/articles/djibouti-files-arbitration-against-dp-world-over-alleged-corruption-in-port-deal-1404895724 | [8]Source: Jamaica's Office of the Contractor General. Open Statement by the OCG Regarding the Proposed Highway 2000 North South Link and the Container Transshipment Hub Projects. May 1, 2012. Accessed June 2016 at http://www.ocg.gov.jm/ocg/releases/open-statement-ocg-regarding-proposed-highway-2000-north-south-link-and-container

2.5 PPP Payment Models

PPP payment models vary depending on the entity that retains demand risk as illustrated in Figure 5.

For example, in a situation where demand risk is entirely transferred to the concessionaire, and private users of the service accept to be charged for its use, or the concessionaire is paid by the contracting authority given a particular target (ex. a number of patients received in a PPP hospital), then the payment mechanism may be structured principally on PPP Revenue/Target-Based 2.5 Payments (left column in Figure 5). If, however, the contracting authority in the PPP contract fully retains demand risk, the payment mechanism may be based on availability payments (right column in Figure 5).

If the contracting authority and the concessionaire share demand risk, the payment mechanism may be based on payments involving availability and service performance measures (centre column in Figure 5). Toolkit users should note that there are fiscal implications for each type of payment mechanism, which are explored in the next Modules.

Participants at CDB's third PPP Boot Camp in Jamaica on site visit to Kingston Container Terminal (KCT). In 2016 the Government of Jamaica signed a 30-year Concession with CMA-CGM, the world's largest shipping company, to expand the port in a US$425 million PPP project.

Figure 5: Typical Demand Risk Allocation

Private	Shared	Public
PPP Revenue/ Target-Based Payments	Hybrid Payment Model	Availability Payments
Concessionaire compensation from charges paid by users of the asset. Examples: • Roads – Tolls • Water –Domestic & commercial tariffs • Airports – Landing fees Concessionaire compensated by the government upon achieving a certain demand. Examples: PPP hospitals – number of patients Recycle – by volume of waste.	• A hybrid compensation model comprised of a mix of both user and government payments • Public agencies often employ multi-dimensional payment models. • Shadow toll, where the private sector receives an availability payment for collecting the fees on behalf of the government Sophisticated revenue risk sharing mechanisms such as the lowest net present value of the stream of revenues, which is used in Chile[9]	• Private sector compensation based on the availability of the asset to the public • Government payments made irrespective of the asset's usage volumes

a. Revenue-based payment PPPs

In a revenue-based payment mechanism, the demand risk is transferred to the private sector entity. The private operator expects to recuperate its development, financing, construction, and maintenance costs from the user fees charged to the public for use of the asset. By collecting revenues directly from the users, the concessionaire repays its lenders, operates and maintains the asset, and delivers a profit to its investors. An example of the user-based payment mechanism can be found in the Highway 2000 toll road project in Jamaica, in which the private operators are compensated solely or primarily on tolls paid by motorists.

b. Government-pays PPPs

In an availability payment mechanism, the government entity provides monthly or quarterly payments to a private sector party in exchange for the latter making the infrastructure asset available for use. In order to receive payment, the private sector party must ensure that the asset meets certain performance standards and is "available" for use by the public, and is fit for purpose.

[9]Least Present Value of the Revenues: The Developer prepares the construction and O&M cost estimates, secures debt financing and equity commitments, and submits a bid with its lowest possible present value of revenues. The winning bidder then receives toll revenues during the concession period, which are discounted each year by the discount rate set by the Ministerio de Obras Publicas (Ministry of Public Works). The concession ends once the bid present value of revenue amount is reached.

With an availability payment mechanism, the government entity retains the demand risk for the project. An example of an alternative to the availability payment mechanism, also linked to performance indicators, can be found in the Sustainable Barbados Recycling Centre, Inc. (SBRC) in which the private operator is paid by the Government, based on the volume of solid waste recycled. While an availability-based payment is independent of the volume of service, SBRC is paid according to the volume of production and so faces volume risk.

c. Other PPP payment models

PPP projects may also generate additional revenues, for both the public and private sector parties, from commercialising the assets or services. In some cases, the government agency formerly operating the asset would not have thought of these additional revenue-generating possibilities. Examples of such additional revenue streams include:

- ✓ A hospital PPP, structured as an availability payment for which the private sector party operates the hospital car park on a commercial basis and charges parking fees.
- ✓ A toll road, where the operator develops or promotes ancillary commercial activities, on lands adjacent to the highway; such as gas stations, hotels, etc.
- ✓ An airport structured as a user-based PPP, where the private operator earns additional revenue by renting out terminal space to retail and duty-free operators.
- ✓ A toll road structured as a user-based PPP for which the private sector party may sell advertising space at various strategic points along the road.
- ✓ Value capture: Common examples include the appreciation of land values near the PPP project site and improved work productivity resulting in a larger tax base.

PPP payment models are discussed in more detail in Module 5, on PPP Procurement.

MODULE 1

3. KEY GUIDING PPP PRINCIPLES

Governments differ in terms of the guiding principles that drive their PPP programmes. Governments must ask themselves: which rules or fundamental concepts will drive the development and implementation of a PPP project in their jurisdiction or country.? Guiding principles of a PPP Programme may include:

1. **Value for Money:** PPP projects should deliver better Value for Money than conventional delivery. Value for Money is the combination of the cost, price, quality, quantity, timeliness and risk of the PPP project as compared to public delivery. If a PPP project does not offer a better combination of these factors, then it should be delivered through a conventional approach via conventional public procurement.

2. **Affordability:** PPP projects should only be awarded if the government can meet the payments or liabilities required for the duration of the contract, and/or if users are able to pay the required tariffs or user fees. If the fiscal budget or users cannot meet the commitments, the project should not be implemented as a PPP. Affordability, however, is also a criterion for public delivery of projects. Some projects may not be affordable if publicly delivered.

3. **Commercial Viability:** PPP projects should not be implemented if they are not commercially viable or financeable for the private sector. The concessionaires in PPPs need to remain profitable if the project is to succeed and deliver value.

4. **Manageability:** A PPP project must be manageable for both the contracting authority and for the concessionaire. The contracting authority should make sure the contractual agreement and related monitoring and management procedures are clear and workable. The contracting authority must also ensure that capacity is in place to manage the contract, and for the contracting authority to meet its obligations under the contract.

5. **Acceptability:** One of the government's central responsibilities is to ensure fairness and protection of the public interest. For each project, the contracting authority needs to consider whether it will be acceptable and in the public interest to deliver the public infrastructure or service via a PPP. This may require careful communication to educate and prepare both users and the public.

Key guiding principles of a PPP project are shown in Figure 6.

Figure 6: Key PPP Guiding Principles

MODULE 1

4. THE CARIBBEAN PPP MARKET

4.1 Driving Forces for PPPs in the Caribbean

In most Caribbean countries, infrastructure services including electricity, transport, and water and sanitation require significant improvements to meet acceptable quality standards, keep pace with population growth, and support economic development. Electricity costs remain high; critical assets such as airports and ports require improvements; and road quality is low throughout most of the region. As of 2014, an estimated US $21.4 billion[10] was required over ten years, to raise the Caribbean region's infrastructure levels to acceptable international standards.

Caribbean governments have been struggling to improve their infrastructure due to high debt burdens, tight budgets, declining terms of trade and lagging economies. This has limited the ability of governments to invest resources into the proper identification and development of infrastructure projects that can meet societal needs.

In the past, Caribbean governments, like most governments globally, relied on conventional public procurements to develop and improve infrastructure. However, many of these projects have not delivered their expected value, for a variety of reasons outlined below. Specifically, Caribbean governments have faced the following challenges with infrastructure development while using a conventional public procurement approach:

✓ **Lack of lifecycle approach leads to high downstream costs:** In conventionally procured public projects, neither the contracting authority nor the construction contractor have any incentive to take a long-term approach to investment in infrastructure. All parties generally seek to minimise their up-front capital costs, during the design and construction phases. Minimising investments during construction, however, often leads to higher maintenance or operating costs in the future, increasing the total cost of service over the asset's lifetime.

Poor construction— in the form of cheap materials and improper execution of the project design—is not cost-effective in the long term, because assets will deteriorate before the end of their design life and will need to be-rebuilt. For example, many roads in the Caribbean are constructed with improper drainage.

[10]Source: Caribbean Development Bank. Public Private Partnerships in the Caribbean: Building on Early Lessons. May 2014. Accessed June 2016 at: http://www.caribank.org/uploads/2014/05/Booklet-Public-Private-Partnerships-in-the-Caribbean-Building-on-Early-Lessons.pdf

- ✓ **Construction cost overruns and delays lead to high government costs:** Many publicly funded infrastructure projects in the Caribbean suffer from budget overruns and delays in implementation, increasing the costs to government, and inconvenience to users. For example, the Government of Jamaica contracted the Montego Bay to Negril section of the North Coast Highway US$25 million in 1997 under a standard public procurement process. The project was reportedly delivered two years behind schedule and US $47 million over budget, ultimately costing the Government of Jamaica US $72.7 million.[11]

- ✓ **Inadequate maintenance leads to low service quality and costly asset deterioration:** Infrastructure assets in the Caribbean are often poorly maintained, contributing to low service quality and costly asset deterioration. Inadequate maintenance occurs for a number of reasons: a) budgetary pressures squeeze funds earmarked for maintenance to a minimum; and b) a lack of performance incentives for managers and staff leads to inadequate maintenance coverage and quality.

- ✓ **Fiscal constraints limit the delivery of new infrastructure services**: Most Caribbean governments have high debt burdens, which negatively affects their ability to borrow funds for capital projects. Governments are therefore turning to the private sector to finance the delivery of new infrastructure assets.

Although PPPs do not automatically address all of these issues, governments have increasingly looked to PPPs in order to incentivise the lifecycle planning needed to address these infrastructure challenges. A well-planned and well-executed PPP can meet cost overrun and performance related challenges, by aligning long term financial incentives properly for all parties.

4.2 Caribbean PPP track record

PPPs are still relatively new in the region; where they are increasingly being used to deliver new and improved services in roads, ports, airports, conventional and renewable energy and government facilities.

The oldest PPP in the Caribbean is Suralco in Suriname, a hydroelectric plant owned by Alcoa, which has been in operation since 1958 and delivers about 50-60 percent of the nation's electrical power.

Within the region, Jamaica has the most PPP experience, with an established PPP unit within the Development Bank of Jamaica plus a separate PPP unit within the Ministry of Finance and Economic Planning, which focuses on the fiscal impact of PPP projects.

[11]Source: Jamaica Observer. 1st leg of delay-plagued North Coast Highway opened Cost overrun at $2 billion. September 8, 2002. Accessed June 2016 at: http://www.jamaicaobserver.com/news/31594_1st-leg-of-delay-plagued-North-Coast-Highway-opened-Cost-overrun-at-2-bil

The following are the main lessons of the Caribbean's experience of PPPs:

a. The use of PPPs has been concentrated by both country and sector

The Dominican Republic and Jamaica are responsible for most of the PPP investments in the region. Most PPP projects have been in the electricity and transport sectors, primarily in electricity generation by Independent Power Producers (IPPs) and PPPs for rehabilitation, upgrade, or new investments in roads, ports, and airports. Apart from Jamaica, few other Borrowing Member Countries (BMCs) of CDB have an extensive track record of implementing PPPs.

b. Lack of technical capacity among Governments is a key constraint

Over 60% of projects in the Caribbean PPP pipeline remain stuck at the concept stage, while less than 20% make it through to implementation. The main reason for this lack of progress is due to limited capacity within governments to take projects through the rigors of the Business Case and Implementation stages. This is shown in Table 1 below.

Table 1: Caribbean PPP Pipeline by Project Stage

Phase	Number of Projects	Capex Estimate (US$ Mill)	Percent of Projects
Concept	30	$ 2,376	63%
Screening / Business Case	10	$ 795	21%
Implementation	8	$ 617	17%
TOTAL	**48**	**$ 3,788**	**100%**

Sources: Media reports, internet searches and BMC contacts

c. Governments have typically implemented smaller PPPs

The average PPP project size in the Caribbean is under $100 million; which is relatively small by global standards. This means that many Caribbean PPP projects would be below the radar screen of many global players. However, it does not mean that the Caribbean cannot attract international investors. For example, the island of Nevis, with a population of 12,106 people, has two functioning PPPs in place: one wind farm and a bulk water project. Therefore, small size is not an absolute barrier to attracting PPP investors; it just makes it more challenging, to find the right kind of investor.

d. Some Caribbean PPPs have had good results

Although defining a successful PPP is not straightforward, several PPP projects in the Caribbean have been very successful. These PPPs have operated for many years, providing quality, reliable infrastructure services at a reasonable cost. Two of these successful PPP projects are shown in Textbox 8 and Textbox 9 below..

Textbox 8: Suralco Hydro Plant in Suriname

Suralco is the Caribbean's oldest PPP—a 189MW hydro plant built at Afobaka (Brokopondo) by Alcoa Aluminium in 1958. The plant continues to supply up to 60 percent of Suriname's electricity under a 75-year Power Purchase Agreement (PPA). Around 100 Megawatts of power is supplied to Suralcoa, the country's main aluminium and bauxite producer, for their alumina processing operations. The remainder is sold under the PPA to Suriname's national power company NV Energiebedrijven Suriname (EBS) mainly to provide power to Paramaribo.

However, in 2015 Alcoa announced that due to shrinking sales worldwide, it would be shutting down its mining operations in Suriname; and discussions followed regarding the disposition of the company's assets.

Source: The World Bank. Caribbean Infrastructure PPP Roadmap. March 2014; http://jamaica-gleaner.com/article/business/20150918/alcoa-close-suralco-plant

Textbox 9: Sangster International Airport in Jamaica

In 2003, the Vancouver Airport Services Consortium took over operations of Sangster International Airport (SIA) under a 30-year concession agreement. Under the concession, the consortium took responsibility for the management, operations, financing and capital improvements of the airport, with the airport set to revert to the Government of Jamaica at the end of the 30-year concession period. The consortium has succeeded in:

Doubling the airport capacity to seven million passengers per year;
Creating 43 new spaces for retailers to serve passengers food, drink, and other goods;
Improving the financial health of the airport by using additional retail revenues to fund a portion of the airport's expansion and upgrade; and

Investing over $200 million in airport improvements and expansions, without any fiscal support from the Government.

In 2015, Abertis, the Spanish company which owned 74.5% of the Concession holder for Sangster International Airport, sold its stake to Mexican company Grupo Aeroportuario del Pacifico (GAP); as part of a larger US$190 million global asset sale. During the transaction process, it was disclosed that Sangster Airport made revenues of US$59 million in 2014, with an EBITDA of US$23.5 million and net income of US$13.2 million. This transaction signalled the international investor community's strong support for Jamaica as an investment destination.

Sangster International Airport, Montego Bay, Jamaica: A 30-year airport Concession; in April 2015 Abertis, the Spanish company which owned the major part of MBJ Airport, sold its stake to Mexican company Grupo Aeroportuario del Pacifico (GAP).

Source: Caribbean Development Bank. Public Private Partnerships in the Caribbean: Building on Early Lessons. May 2014; http://jamaica-gleaner.com/article/business/20150422/mbj-airport-sale-part-us190m-deal

e. However, not all PPPs have achieved sustained success

Problems have included unexpected fiscal costs, questionable value for the public sector, and significant implementation delays—while many potential PPP projects have simply failed to launch, mainly due to government officials' lack of technical capacity to implement PPPs. In a review of the Caribbean PPP pipeline in 2014, only 12 percent of identified projects were at the bid or tender stage.[12]

f. Inadequate risk transfer has led to Governments bearing Unplanned lifecycle costs

Many projects are implemented without any comprehensive analysis of feasibility and risk allocation, and hence result in the government bearing greater risks – and costs – than anticipated at the outset of the PPP project. For example, the project shown in Textbox 10 suffered from inadequate risk transfer to the concessionaire, resulting in an unexpected financial burden for the Government of the Dominican Republic.

Textbox 10: San Pedro Marcori-La Romana & Las Americas Highways in the Dominican Republic

The Government of the Dominican Republic (the "Government") awarded a 30-year concession in 1999 (renegotiated in 2002) to Concesionaria Dominicana de Autopistas y Carreteras (CODACSA). Most of the contract risks (including traffic risk, inflation, and exchange rate risks) were retained by the Government. The Government agreed to provide demand or revenue guarantees to compensate for any adjustments to these parameters.

However, when the Government did not fulfil its contractual commitments, the private operator launched a claim at the International Chamber of Commerce (ICC) International Court of Arbitration in London. The arbitration panel established that the Dominican Government had to compensate CODACSA with US $42 million.

Source: The World Bank. Dominican Republic PPP Roadmap: Project Screening and Prioritization. June 2013

g. Lack of technical capacity imposes significant constraints

Caribbean governments face capacity constraints at various stages of the PPP project cycle including project selection and planning, engineering, legal, financial and economic work. Additionally, high turnover of trained staff at government agencies has created capacity bottlenecks. The CDB Regional Support Mechanism (RSM) has attempted to redress this problem, by providing intensive PPP training to forty-two employees from Regional Governments, through a series of three PPP "Boot Camps", in addition to publishing this Toolkit.

[12]Source: The World Bank. Caribbean Infrastructure PPP Roadmap. March 2014. Accessed June 2016 at: http://documents.banquemondiale.org/curated/fr/2014/03/20275674/caribbean-infrastructure-ppp-roadmap

h. The pipeline of potential projects is long, but requires greater scrutiny

Very little public data exists on national PPP pipelines, and such data that does exist is often misleading. The Regional Support Mechanism (RSM) has identified forty-eight (48) projects, which are in some stage of development. A summary of the Pipeline is shown in Table 2.

Table 2: Caribbean PPP Pipeline by Sector

Sector	Number of Projects	Capex Estimate (US$ Mill)	Average Project Size (US$ Mill)
Transport	18	$ 1,739	$ 96.6
Energy	12	$ 814	$ 67.8
Water & Sanitation	7	$ 725	$ 103.6
Tourism	4	$ 260	$ 65.0
Govt Facilities	4	$ 165	$ 41.3
ICT	1	$ 50	$ 50.0
Social	2	$ 35	$ 17.5
TOTAL PIPELINE	**48**	**$ 3,788**	**$ 78.9**

Sources: Media reports, internet searches and BMC contacts

Despite this extensive list of projects, the majority of them are not "projects" in the true sense of the word; they are project concepts. Of the forty-eight (48) projects, only eight (8) are actually at the implementation stage.

i. Unsolicited proposals ("USPs") are common in the Caribbean:

Private companies frequently approach government agencies with project proposals, which governments often negotiate directly with the proposing companies. Governments that lack the capacity to develop and implement projects through a publicly solicited and competitive approach often use USPs, believing that such projects can be implemented more quickly than through an open tender. However, projects initiated by and directly negotiated with proposing companies lack transparency; face challenges in achieving VfM; and have been susceptible to criticism by civil society and political administrations.

4.3 Caribbean PPP Opportunities

Despite the limited track record of PPPs in the Caribbean, there is significant potential for the growth of PPP delivery models. Governments have a keen interest in using PPPs to deliver new public services, not only in the traditional infrastructure sectors. Governments are promoting PPPs in the following areas:

a. Energy - conventional and renewable

Private sector participation (PSP) in the Caribbean energy sector commenced with privatisation of electric utilities in the 1990s (some of which were subsequently reversed); followed by the creation of independent power producers (IPPs), for example in Haiti, Jamaica, Belize and Trinidad. Jamaica's renewable energy (RE) auctions are a replicable model, although Jamaica does enjoy the advantages of large scale. Every country is pursuing wind and solar projects – usually with limited success.

Of particular significance is geothermal energy, which exists in abundance in six OECS islands. All six are pursuing their own strategies to develop their geothermal resources – with varying degrees of success. These geothermal projects all suffer from similar challenges: lack of capacity, poor enabling environment and lack of concessional financing for test drilling. On the latter challenge CDB is playing a key role with contingently recoverable grants under its GeoSmart Facility.

b Ports and Cruise Ship Terminals

Caribbean ports are generally old, outdated, inefficient and expensive. The majority of ports are publicly owned and operated, with only a few larger ports having private sector participation. Two ports, Nassau and Paramaribo, are operated as PPPs; and coincidentally both are ranked the highest in efficiency in the Caribbean. The privatisation of the Kingston Container Terminal (KCT) via a long-term concession has just been completed with the signing of a 30-year concession with CMA-CGM, the world's largest shipping line. The small size of the OECS ports is a major constraint to PPPs – although there is urgent need for modernisation and labour rationalisation.

Cruise ships often share port facilities with cargo ships, an unsatisfactory situation from both points of view. Hence, cruise lines are increasingly investing in captive cruise terminals: in Haiti, Jamaica and Grand Turk. Antigua, Barbados, St. Kitts and Saint Lucia are all seeking to build new cruise ship terminals.

c. Water and Sanitation

The Region has not attracted much private investment in the water and sanitation sector; chiefly due to lack of public support and political will. Some countries have experimented with management contracts, but these have brought little in the way of sustained improvements. The water sub-sector has seen a lot of private sector activity is desalination: PPPs are in place in Cayman, Anguilla, Bahamas, Barbados and Trinidad; others are in planning stages.

In the Bahamas, the government signed a ten-year contract with a private operator to reduce the high levels of Non-Revenue Water (NRW). The operator is partially remunerated on its success in reducing NRW. Although not strictly speaking a PPP, there is possibility to expand the scope of NRW projects, and introduce PPP elements in long-term performance-based NRW contracts. With chronically high NRW levels in the Caribbean, reduction projects have high economic and environmental returns.

d. Roads

Most investments in the Region's roads are public. Jamaica is the only English-speaking Caribbean country with toll roads: Highway 2000; and Guyana has the tolled Berbice River Bridge. In most countries traffic levels are insufficient to support viable toll roads, plus a lack of non-tolled alternatives. However, private sector participation could take the form of long-term design-build-maintain road contracts.

e. Airports

Commencing with the privatisation of Montego Bay's Sangster International Airport in 2003, the Caribbean has seen increasing private sector participation in the airport sector; however this is limited to the larger airports. Sangster Airport has been a success, operating for thirteen years and bringing private sector investment of over US$200 million in expansion and upgrading. However, a subsequent attempt to privatise Kingston's Norman Manley International Airport (NMIA) in 2015 failed to attract bids, and is being re-tendered. The NMIA transaction is indicative of the challenges in seeking PSP in smaller airports. OECS countries are also seeking to improve their airport infrastructure, largely through public procurement (Saint Vincent, Antigua); although Saint Lucia is seeking to implement a PPP for its main gateway, Hewanorra International Airport.

f. Information and Communications Technology (ICT)

The telecommunications sector spearheaded the whole drive into private sector participation in the Caribbean; led by private sector investments in mobile telephony, followed by the Internet. However, in recent years there have not been many PPP projects in the ICT sector, largely because most countries have benefitted from liberalisation and the resulting high levels of private sector investment. PPP projects are being pursued in the development of broadband infrastructure and undersea cables.

g. Tourism

Public-private projects in the tourism sector are not PPPs in the classic sense of the term; they have different rules to traditional infrastructure projects. One common form of public-private cooperation are government-owned hotels, managed under long-term contracts by established hotel chains, such as the Port of Spain and Barbados Hiltons. On a smaller scale, all countries have unique national heritage sites; many of which are rapidly deteriorating. Nelson's Dockyard in Antigua is an excellent example of the gains to be made by cooperation

between public sector, private sector and civil society in the care and rehabilitation of national heritage sites on a commercially sustainable basis. Many countries are seeking to replicate this model, with limited success. Grenada is seeking to implement a PPP at Fort George, with partial funding from the World Bank.

h. Government Facilities

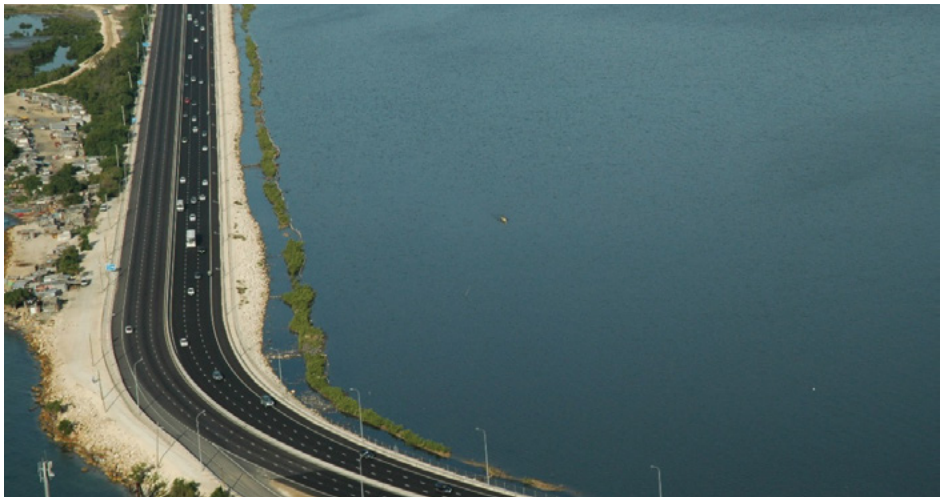
Caribbean governments are increasingly turning to the private sector to deliver new public buildings and facilities. Build-Own-Lease-Transfer (BOLT) contracts have been used to deliver privately financed government offices, prisons and other buildings (Barbados, Saint Lucia). The prime impetus is fiscal: to get new assets constructed off the government's balance sheet. In structuring and implementing these BOLT arrangements, governments need to ensure that there is adequate transfer of risk to the private sector.

i. Social Sectors

PPPs in the social sectors (health & education) are still at the early stages in the Caribbean. The Turks & Caicos Islands pioneered two full-service public hospital PPPs; with the private operator responsible for providing all clinical as well as technical services. However, opinion within Turks and Caicos is divided on the perceived value for money of these two hospital PPPs. Other countries are considering the implementation of PPP projects to deliver assets in the education sector, although to date most of these projects are BOLT-type arrangements, rather than full-service PPPs.

j. Rail

There are no rail PPPs in the Caribbean, but there are two projects currently at the concept or planning stages. Jamaica is reviewing an unsolicited proposal for the rehabilitation of parts of its rail network – including a large tourism component – while Suriname is considering a light rail transit (LRT) project. However, with small populations and limited network, the viability of rail projects will always be challenging.



The New Portmore Causeway, part of Jamaica's Highway 2000, showing the replanted mangroves alongside the new road.

MODULE 1

5. SUMMARY

Module 1 aimed to provide governments with an introduction to PPP and an introduction to this PPP Toolkit.

Wrap Up:

In Module 1, the reader was introduced to:

- ✓ An overview of the Toolkit, and its role within the broader Regional PPP Support initiative;
- ✓ The definition of a PPP;
- ✓ Forms of PPP structures and payment models;

An examination of the Caribbean PPP market; and

- ✓ Key PPP guiding principles.

Module 2 will address in detail considerations, guidelines and references pertaining to developing a national PPP policy.

MODULE 2
PPP POLICY

Many of the Region's ports are characterised by low throughputs, with the resulting high operating costs per container.

1. INTRODUCTION

Key Points for Decision Makers

Establish specific reasons for starting the PPP Programme, a clear definition and guiding principles. This will ensure the projects pursued are in line with public objectives and create value for society - essential for building support.

The value of PPPs derives from "value drivers." Explaining them in the PPP Policy encourages public officials to apply them.

Ensure that each public agency's role is simple and clear, and avoid duplication of roles. The structure of institutional responsibilities should be easy to follow.

Complement the National PPP Policy with guidelines or manuals to ensure effective implementation.

PPPs are just one delivery method and alternatives do exist.

The lack of a PPP enabling environment is a key reason for many of the challenges that Caribbean governments face in implementing PPPs.[13] Most Caribbean governments do not possess PPP-specific policy and institutional frameworks, nor clear procedures and responsibilities for managing the implementation and monitoring of PPPs. The absence of a PPP policy framework leads to ad-hoc processes for implementing PPPs, which creates unpredictability for private investors and a lack of robustness and transparency in the public decision making process.

As shown in Table 2.1, only four countries in the region have PPP policies with defined roles (Jamaica, Trinidad & Tobago, Saint Lucia and Grenada). The objective of Module 2 is to help Caribbean government officials look at issues they will need to consider when developing a PPP policy framework. It also provides guidance on developing a PPP enabling environment,[14] of which the PPP Policy is a key building block.

Finally, this Module contains a Caribbean PPP Policy Model Template, which can be adapted to the political, institutional and budgetary realities of individual countries.

Table 2.1: Caribean PPP Laws, Policies & Manuals

Country	P	P	P
Anguilla	x	x	x
Anguilla and Barbuda	x	x	x
Bahamas	x	x	x
Barbados	x	x	x
Belize	x	x	x
British Virgin Islands	x	x	x
Cayman Islands	x	x	x
Dominica	x	x	x
Grenada	x	✓	x

[13]Public-Private Infrastructure Advisory Facility (PPIAF). Caribbean Infrastructure PPP Roadmap. March 2014 | [14] For background information on a PPP "enabling environment," please refer to the website of the Public-Private Partnership in Infrastructure Resource Center (PPP IRC), accessible at: http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment

Table 2.1: Caribean PPP Laws, Policies & Manuals cont'd.

Country	P	P	P
Guyana	x	x	x
Haiti	x	x	✓
Jamaica	x	✓	✓
St. Kitts & Nevis	x	x	x
Saint Lucia	x	✓	x
St. Vincent & the Grenadines	x	x	x
Suriname	x	x	x
Trinidad & Tobago	x	x	x
Turks & Caicos	x	x	x

1.1 Structure of Module 2

Module 2 is a resource for public officials in the Caribbean who are developing their PPP policy framework. It also provides guidance on developing a PPP "enabling environment,"[15] of which the PPP Policy is a key building block.

The structure of Module 2 is as follows:

- ✓ Section 2: Processes and Governance Issues in Formulating a PPP Policy;
- ✓ Section 3: Defining the Objectives and Scope of the PPP Policy;
- ✓ Section 4: Defining PPPs and their Value Drivers in the PPP Policy;
- ✓ Section 5: Defining Institutional Responsibilities and Key Approvals;
- ✓ Section 6: Managing Unsolicited Proposals (USPs)
- ✓ Annex 1: Caribbean PPP Policy Model Template.

1.2 Why establish a PPP policy?

The process of articulating a PPP Policy in the early years of the PPP programme will help the government answer questions such as:

- ✓ Why has the government decided to undertake a PPP programme?
- ✓ How does the government expect the PPP programme to contribute to social and economic development?
- ✓ In which sectors can the government undertake PPPs?
- ✓ What will be the guiding principles of the PPP programme?
- ✓ What institutions will be responsible for designing and implementing the PPP programme?
- ✓ How will Unsolicited Proposals (USPs) be handled?

[15]For background information on a PPP "enabling environment," please refer to the website of the Public-Private Partnership in Infrastructure Resource Center (PPP IRC), accessible at: http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment and the PPP Knowledge lab at: https://pppknowledgelab.org/

Answering these questions in the PPP Policy is key to gaining political support for the PPP programme, both within the government and from the public. The PPP Policy is also a platform for communicating to potential investors about how the government plans to develop and implement PPPs.

In summary, a PPP Policy:

- ✓ Allows the government to determine how it wishes to introduce PPPs;
- ✓ Sets the scope and framework for implementing PPP projects;
- ✓ Sends a clear signal to the public and private sectors as well as civil society about the government's commitment to implementing PPPs in an open, transparent manner;
- ✓ Sets out the action plan or priorities for implementing for PPPs;
- ✓ Defines institutional responsibilities and key approvals; and
- ✓ Defines any specific support measures required to facilitate PPPs.

1.3 Typical components of a PPP policy

The PPP Policy is a high-level document that typically addresses, at a minimum, the following four components:

- ✓ The objectives of the PPP programme;
- ✓ The scope of the PPP programme;
- ✓ The key institutional responsibilities and approvals; and
- ✓ The guiding principles of the PPP programme.

Module 2 also provides an overview of developing a policy for dealing with unsolicited proposals (USPs).

1.4 PPP policy versus PPP laws

The PPP Policy is a high-level government document. It does not provide the detailed legal framework for PPPs (i.e. a PPP law or regulation), nor does it provide the detailed guidance typically contained within PPP Manuals and Guidelines. Nevertheless, the PPP Policy is an important and fundamental first step towards these more detailed policy components, and should be designed with this overarching role in mind. The main distinctions between these components of the institutional framework are illustrated in Textbox 2.

Textbox 2.1: The Policy and Legal Framework for PPPs

PPP Policy	PPP Law	PPP Law
Outlines the objectives, scope, and guiding principles of the PPP programme. Outlines the stages and procedures of the PPP Process. Defines the key approvals required throughout the PPP Process. Articulates the roles and responsibilities of the key agencies and departments.	Codifies the PPP programme and institutional framework into law. Provides a high-level definition of PPPs and guiding principles. Defines key approvals and institutional responsibilities at a high level.	Translates the PPP Law and/ or PPP Policy into practical guidance for public officials. Provides step-by-step procedures that public officials need to follow at each stage of the PPP Process. Provides guidance on how to ensure that guiding principles (such as value for money and fiscal affordability) are maintained at each stage of the PPP Process.

It is important to note that governments are not required to introduce both a PPP policy and a PPP law to establish a successful PPP programme. Introducing a PPP Law, is not a necessary precondition for a successful PPP Programme. A government can establish an effective legal framework for PPPs by changing existing laws or regulations that have an impact on PPP projects. Although many governments have introduced PPP Laws,[16] some of the most successful PPP programmes around the world, including those of the UK and Australia, have operated without a PPP Law. Jamaica, which also has a successful PPP programme, has a PPP Policy and Manual—but no PPP Law.

Features of a common law system include:

- There is not always a written constitution or codified laws;
- Judicial decisions are binding — decisions of the highest court can generally only be overturned by that same or higher court, or through legislation;
- Extensive freedom of contract — few provisions are implied into the contract by law; and
- Generally, anything is permitted, that is not expressly prohibited, by law.

There are few implied provisions in a contract under a common law system — it is therefore important to set out all the terms governing the relationship between the parties to a contract in the contract itself. This will often result in contracts being longer than in civil law jurisdictions.

[16]For more information on which governments have introduced PPP Laws, refer to the World Bank's PPP in Infrastructure Resource Center (PPPIRC), accessible at: http://ppp.worldbank.org/public-private-partnership/legislation-regulation/laws/ppp-and-concession-laws

The Caribbean is home to two legal systems — Common Law and Civil Law. Countries following a common law system are typically those that were former British colonies or protectorates. Emerging market countries following civil law systems are typically those that were former French, Dutch, German, Spanish or Portuguese colonies or protectorates. In the Caribbean the civil law jurisdictions are Suriname, Haiti, Dominican Republic, and the Dutch overseas territories. The civil law system is a codified system of law. Features of a civil law system include:

- There is generally a written constitution based on specific codes enshrining basic rights and duties;
- Only legislative enactments are considered binding for all. There is little scope for precedent or judge-made law in civil, criminal and commercial courts; and
- Less freedom of contract — many provisions are implied into a contract by law and parties cannot contract out of certain provisions.

A civil law system is generally more prescriptive than a common law system. However, a government under either system will still need to consider whether specific PPP legislation is required in order to facilitate a successful PPP programme.

There are a number of provisions implied into a contract under the civil law system — less importance is placed on setting out all the terms governing the relationship between the parties in the contract itself, as ambiguities can be remedied or resolved by operation of law. This will often result in contracts being shorter than in common law countries.

In civil law jurisdictions, certain forms of infrastructure projects may be referred to by well-defined legal concepts. For instance, concessions and affermage have a definite technical meaning and structure to them that may not be understood or applied in a common law country.[17]

Whether or not a country requires a PPP law depends on the government's political environment and legal tradition. PPP laws are more common in civil law countries than in common law countries. In Latin America, for example, all of the governments with successful PPP programmes have passed PPP and/or concession laws.

In common law countries, public officials are generally permitted to take any actions that are not expressly prohibited by law. In civil law countries, however, public officials typically rely on highly prescriptive procedures, which often must be codified into law. Textbox 2.2 provides additional considerations in determining whether to introduce a PPP law.[18]

Experience in Jamaica shows that PPPs can be delivered in the Caribbean with only a PPP Policy and PPP Manuals and Guidelines in place.

[17]For more information on how PPPs may be treated by common or civil law jurisdictions, refer to the World Bank's PPP in Infrastructure Resource Center (PPPIRC), accessible at: http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-systems/common-vs-civil-law#Common_Law_System. | [18] For additional information on the advantages and disadvantages of introducing a PPP Law, refer to: "Developing a Public-Private Partnership Framework: Policies and PPP Units," PPIAF and Castalia Advisors, May 2012, Accessible at: http://castalia-advisors.com/files/note-four-developing-a-ppp-framework.pdf

Textbox 2.2: Advantages and Disadvantages of a PPP Law

Advantages	Disadvantages
Sends a clear signal to investors on the government's political commitment to PPPs. Provides stability for both investors and the public sector by reducing the risk of future administrations opportunistically changing the PPP Policy. Enshrines procedures, responsibilities, and key principles in the law provides the highest incentives for public officials to follow them.	Drafting and approving a PPP Law takes time. This could delay the launching of a successful PPP Programme. Codifying the PPP framework and procedures results in lack of flexibility. As public officials gain experience with PPPs, they may see a need to revise the initial framework or procedures in order to meet new needs. Making changes to a PPP Law, however, will be challenging and time-consuming. Can become subject to politics, potentially causing significant delays. Danger of enacting a "bad" PPP framework

MODULE 2

2. PROCESSES FOR FORMULATING AND ADOPTING A PPP POLICY FRAMEWORK

One of the most important factors in formulating a PPP Policy is the experience and capabilities of the policy formulation/advisory team ("PPP Policy Team"). Ensuring that the government has the right people working on the exercise is an essential first step. External advisors can provide insight on best practices, but it is imperative that government officials who know the country environment take the lead. In addition to competent and committed government employees, the PPP Policy formulation process also requires a political champion: a high-level elected official who will drive the process, facilitating dialog and clearing political roadblocks.

Formulating a PPP Policy is an iterative process — in practice, it will be necessary to produce several drafts, based on consultations and feedback from stakeholders, in the policy formulation process.

A typical policy development process includes the following sequential activities:

✓ **Define objectives:** Development of Policy must start with a clear articulation from government of its objectives in implementing PPPs.

✓ **Engage consultants:** Governments will require high quality independent advice on all the technical, legal and social parameters of the various policy options. The selected consultants must possess the necessary experience in policy formulation, particularly within a regional context.

✓ **Review international experiences and practices:** In the development of their PPP policies, Governments would do well to study the experiences of other countries: those that have implemented successful PPP programmes, as well as countries that have made mistakes. It would be particularly instructive to examine the experiences in other Caribbean countries with similar legal and regulatory regimes.

✓ **Consult with stakeholders and research local environment:** All PPP policies must be country specific; there is no one size that fits all, even among countries with similar legal and regulatory regimes. Local conditions that would affect PPPs must be extensively researched, with widespread consultation among local Government agencies, private sector bodies, labor organisations, civil society and other stakeholders.

✓ **Develop draft of the policy:** The draft PPP Policy must pull together all the threads of the preceding tasks, and propose a policy that seeks to achieve the Government's objectives – while being in harmony with local conditions.

✓ **Consult widely on draft policy:** The consultation process on the draft policy involves several rounds of discussions—individually and collectively—with interested stakeholders in the PPP programme. Typically, a strong political "champion" is required, to lend weight to the discussions and promote consensus.

✓ **Submit policy to Cabinet for approval:** Possibly after several rounds of drafting, the final PPP Policy statement is submitted to the highest decision-making body in Government – typically the Cabinet. In some instances, the Policy statement may also be debated in Parliament.

Section 2 outlines a number of policy tools and processes that the PPP Policy Team can use to formulate the PPP Policy (hereafter referred to as the "PPP Policy Formulation Process"). These tools include both processes (e.g. conducting or commissioning a legal review), and analytical tools. These tools and processes include:

✓ Policy Governance Setup;
✓ International Practice Review / Study Visits;
✓ Legal Review;
✓ Financial Market Review;
✓ Policy Consultation Process Design;
✓ Strengths, Weaknesses, Opportunities and Threats ("SWOT") Analysis;
✓ PPP Process Mapping; and
✓ Policy Implementation Plan or Roadmap.

All four Caribbean countries that to date have adopted PPP policies have followed broadly similar processes. The Policy Formulation Process in Saint Lucia, undertaken in 2014 with assistance from the World Bank, took approximately nine months to implement, from commencement to final adoption by Cabinet (see Textbox 2.3).

Textbox 2.3: Policy Formulation Process in Saint Lucia

Saint Lucia has a significant need for investment in improved infrastructure—both to underpin economic growth and development, and to recover from the devastation caused by Hurricane Tomas in October 2010. To overcome these challenges, the Government of Saint Lucia (GoSL) sought to put in place a policy framework and to define and strengthen the institutions that will be responsible for leading the Government's PPP programme. The GoSL asked the World Bank for technical support. Under a Reimbursable Advisory Services (RAS) arrangement, the World Bank assembled a PPP team comprising two Bank experts and a regional PPP consultant, to assist the GoSL to:

- Review existing policies and laws;
- Discuss and agree on key PPP policy and institutional framework points;
- Work with immediate Ministry of Finance counterparts to draft a PPP policy;
- Consult with a wider group of stakeholders;
- Prepare and discuss iterative drafts of PPP Policy documents; and
- Prepare an action plan for the adoption of the PPP Policy, and subsequent actions.

On the first mission to Saint Lucia in July 2014, the World Bank PPP advisory team held a high-level workshop with key stakeholders, followed by one-on-one meetings with interested parties in the key government Ministries and departments, plus the private sector and civil society. In September 2014, the first draft Policy Statement was submitted to GoSL, followed by consultations within Government. On 1st December, comments were received from the Ministry of Finance, Ministry of Infrastructure, Invest Saint Lucia and Invest Saint Lucia. After a further mission in December 2014, and re-drafts to the Policy Statement (along with an implementation plan), the Cabinet of Saint Lucia formally adopted the PPP Policy, in April 2015.

Whereas adoption of a PPP Policy Framework is a good first step towards creating a sound enabling environment; it is still only a beginning. In May 2015, GoSL received assistance, through the Regional PPP Support Facility, for the drafting of the associated Regulations, and Procedures Manuals, these documents, plus the accompanying instructions to Government officials, were delivered in September 2015.

2.1 Policy Governance

Before formulating a PPP Policy, the government must ensure that it possesses the appropriate policy governance. This will ensure that the PPP policy reflects the main concerns of stakeholders and has broad-based support.

Before beginning the PPP policy formulation process, the PPP policy team must have a clear mandate from the highest levels of government to: (i) formulate a PPP Policy; (ii) determine which public agency will take the lead in developing the Policy; and (iii) determine the appropriate governance structure to oversee and guide the PPP Policy Formulation Process. These issues and others are examined in this Section.

a. Confirm the mandate and appoint a lead agency

The PPP policy team must have a clear mandate from the highest levels of government (typically represented by the Cabinet) to prepare a National PPP Policy. This mandate may rest within a particular ministry—for example, in the Ministry of Finance in its role of ensuring good public financial management, or in a ministry or agency responsible for economic planning or infrastructure delivery. Ideally, the Cabinet should take an official decision that instructs the preparation of the policy and identifies the ministry or public agency that will lead the PPP Policy Formulation Process.

The mandated ministry or agency should determine the required formal procedures to be followed. Most governments have procedures for how government policy is to be drafted, consulted and agreed upon; then published. The PPP Policy Formulation Process would be expected to follow similar lines.

b. Establish a governance structure

The ministry or public agency mandated to prepare the PPP policy should establish a Governance Structure to oversee and guide the PPP Policy Formulation Process. This ideally comprises a cross-governmental PPP Policy Steering Committee.

A PPP Policy Steering Committee allows for regular consultation at senior government levels to discuss key policy issues, gaps that the PPP policy team encounters during the PPP Policy Formulation Process and conflicts or interactions with other government activity. The Steering Committee is important for ensuring effective coordination as well as policy buy-in by elected officials and other stakeholders. The establishment and composition of the Steering Committee can be included in the Cabinet Decision which initially mandates the PPP Policy Formulation Process (See Section 2.1.a Mandate).

The Steering Committee could include senior representatives from the following groups or institutions:

- ✓ The main Ministries, including Ministry of Finance, Economic Planning, Infrastructure sector Ministries such as Transport, Energy, and Water & Sanitation;
- ✓ Attorney/Solicitor General's Office;
- ✓ National Planning/Development Agency;
- ✓ Provincial/Regional and/or Local Governments (as applicable in the country); and/or
- ✓ Other state agencies or bodies (as applicable in the country).

The PPP Policy Team may also involve non-government representatives—either including them in the Steering Committee or in an adjoining Consultation Forum—including representatives from:

- ✓ The private sector;
- ✓ Civil society organisations;
- ✓ Organised labor;
- ✓ Professional organisations; and/or
- ✓ Universities and colleges.

Senior officials from sector ministries, and/or locally based professionals with relevant experiences could be brought into the Steering Committee from time to time, if the Committee is working on a project in their infrastructure sector. In determining the composition of a PPP Steering Committee, the country's circumstances must be considered.

The country may already have an appropriate inter-government and/or consultative forum, which could assume the role of the PPP Steering Committee; in which case it would not be necessary to duplicate existing structures. In some countries, it may be sufficient for the Cabinet, or a Sub-Committee thereof, to perform the functions of the PPP Steering Committee; however, this would tend to exclude non-governmental representation.

It is advisable to appoint a small team of specialist consultants to undertake the technical analysis that will support the PPP Policy Formulation Process. These consultants should possess skills in areas including policy formulation, legal, financial, public administration, procurement, social safeguards and communication. The consultants should interact closely with the PPP policy team, and Steering Committee.

The PPP Steering Committee would typically meet at regular periods over the PPP Policy Formulation Process (for example, monthly). Once a draft Policy has been prepared, it will be reviewed and approved by the Cabinet including, where appropriate, Parliament.

2.2 International practice review and study visits

When formulating PPP policies, some countries conduct or commission an international practice review—a study to examine the experiences and approaches followed by other countries, in order to compare their PPP policies and policy formulation processes.

Caribbean governments may conduct study visits to countries that have successfully implemented PPP policies, programmes and projects to examine and discuss key issues and experiences with government officials and stakeholders. It is particularly relevant to look at the experiences of countries with similar legal, political and regulatory structures. Such study tours have two positive effects: (1) They allow decision-makers to discuss with their counterparts in other countries the issues they are likely to encounter in their own; and (2) they strengthen communication and shared understanding among the members of the PPP policy team. This pays off in the PPP policy team's ability to champion the proposed PPP policy to their own national stakeholders, based on actual experience.

This Toolkit presents a substantial quantity of comparable international PPP policy experience, tailored to the specific conditions of Caribbean countries, and, as such, provides a first resource for the PPP policy team in this investigation of international experience and practice. The PPP Regional Support Facility will also act as a reference for best practices, which can be used by Caribbean governments. In addition, the Facility's PPP Boot Camps created a network of trained PPP professionals from Caribbean governments, who can call upon each other for advice and feedback.

Finally, for Caribbean government employees—or private sector individuals—can take the APMG Public-Private Partnerships Certification Programme[19]. This Programme, created by, among others, the World Bank Group (WBG) and Inter-American Development Bank (IDB), ths online course offers training in all aspects of PPP policies and practices, based on international best practice.

2.3 Legal review

It is useful to conduct a Legal Review, as part of the early stage of the PPP Policy Formulation Process. The purposes of the Legal Review are to: (i) assess to what extent the legal system and existing laws already allow for and support PPPs; (ii) identify possible legal shortfalls or obstacles; and (iii) identify required legal interventions to enable PPPs. The Legal Review is usually commissioned externally—in other words, the government hires legal experts and consultants to conduct the Review. However, the involvement and support of government lawyers is imperative.

Whether undertaken internally or by external consultants, specific Terms of Reference should be prepared for the Legal Review, which can draw upon the guidance provided in Textbox 2.4 below.

[19] https://www.ppp-certification.com/

Textbox 2.4: Guidance for the Legal Review

Legal Review Issues	Output
Legal Review Coverage:	
The legal review should cover: **Foundation Legislation** • Constitution • Legislation establishing government and its operations • Provincial/regional and/or local government legislation • Public Financial Management laws • Procurement legislation and regulation • Land and property legislation • Etc. **Sectoral Legislation** • Relevant legislation and regulation determining how sectors are organised, managed and related infrastructure is implemented • Legislation and regulation concerning utilities • Etc. **Corporate and Financial Sector Legislation** • Legislation and regulation determining how companies are established and operate • Legislation and regulation concerning the operation and regulation of the financial sector • Investment laws • Etc.	• Audit of the main legislative framework relevant for PPP projects • Identification of possible legal gaps or constraints
Topics to be Analysed in the Legal Review	
The legal review should assess to what extent the existing legislative and regulatory framework can support PPP projects, including financing and project financing arrangements. Issues to consider include: • Procurement procedures • Property / land ownership • Rights regarding the ownership and use of public assets, including concessions • Securitisation of project assets • Securitisation of contract • Securitisation of project cash flows • Pledging of project SPV shares • Step-in Rights and Direct Agreements • Integrity of government contracts and payments • Currency convertibility • Repatriation of profits • Financial transfers • Taxation • Expropriation • Arbitration and dispute resolution • Bankruptcy • Possibility for government guarantees • Corporate law • (Foreign) ownership of companies	• Detailed legal analysis
Customised Legal Reform Recommendations	
• Recommendations concerning the adequacy or otherwise of the existing legal framework to support PPPs, including identified gaps, obstacles, constraints and support • Proposed amendments to legislation / regulation and/or requirement for preparation of new legislation / regulation to support PPPs • Proposed legal reform approach and programme	• Recommendations and proposed legal reform programme

Presenters at CDB's third PPP Boot Camp, in Kingston Jamaica, February 2016. From left to right: Dennis Blumenfeld (IDB), Phillipe Neves (PPIAF), Brian Samuel (CDB), Adriana La Valley (IDB), Denise Arana (DBJ), Ann-Marie Rhoden (Ministry of Finance), Rui Monteiro (World Bank), John Buttarazzi (IMG Rebel), Marcel Ham (IMG Rebel).

2.4 Financial market review

As input to the PPP Policy Formulation Process, the PPP policy team should consider commissioning a Financial Market Review. The purpose of the Financial Market Review is to develop a thorough understanding of the environment for the financing of PPP projects in the country. This analysis should include both domestic financing and access to international markets. The Financial Market Review will help identify whether there are specific obstacles, weaknesses or opportunities in the financing environment that might constrain the introduction of PPPs. It may be possible to address these issues in the PPP policy, or to ensure that they are addressed via other processes, such as financial sector regulatory reforms.

The types of issues typically covered in a Financial Market Review in the context of a PPP Policy Formulation Process are presented in Textbox 2.5. In the same way as the Legal Review, a specific Terms of Reference should be prepared for the Financial Market Review drawing on the guidance presented below.

Textbox 2.5: Guidance for Financial Market Review

Financial Market Review Issues	Output
Coverage	
The Financial Market Review should cover: • Available sources of domestic capital in the country and in the Caribbean, and the ability of domestic investors to access those sources. • Potential sources of international capital for both equity investments and project financing, and the requirements of international investors for investing in infrastructure projects in the country, with recommendations on how this capital can be mobilised more effectively. • Barriers to the wider use of domestic and international capital, including recommendations as to how these barriers may be overcome and the markets for project debt and equity finance made deeper and more liquid. • Typical financing structures: ✓ Senior debt; ✓ Subordinated debt; ✓ Credit enhancement; ✓ Equity; and Refinancing • A short description of typical financing agreements: ✓ Senior debt; ✓ Shareholders; and ✓ Parent company guarantees • Expected trends in PPP financing: ✓ The use of debt and equity in projects and how this ratio may change over time; ✓ The role of project finance and its implications; ✓ The roles of domestic and international debt providers, including multilaterals; and ✓ The financing of large and small-scale projects and the use of bond finance and funds to increase the availability of longer term finance.	• Stock taking, snapshot of current environment for financing of PPP projects in the country • Input into analysis of key bottlenecks
Topics to be analysed	
Identification of obstacles that constrain the development and implementation of PPPs through: • Interviews with different classes of investor, including equity funds, insurance companies, pension funds, banks, International Financial Institutions (IFIs) and project sponsors; • A literature review of reports relevant to the study; • Distilling lessons learned from completed projects involving private investment under the current legislation and policies to date; • Assessment of implications of the current regulatory regimes for the pensions and insurance industries and the bond markets; • Review of the role of currency fluctuations and regulations on the inward investment of international capital; • Analysis of the impact of tax law on different classes of finance and the legal basis for taking a floating charge over assets and project revenues; • Summary of perceptions of the Caribbean in general, and the country in particular, as an investment destination relative to other regions, the perceived risks of investing in infrastructure projects in different sectors, and the expected returns.	• Understanding of key bottlenecks, leading to identification of key actions/ • Recommendations

Textbox 2.5: Guidance for Financial Market Review cont'd.

Financial Market Review Issues	Ouput
Recommendations	
• Changes in legislation (PPP, financial sector, tax, etc.), that are needed to support improved access to domestic and international finance; and efficient allocation of risks though hedging, insurance, and other means; • Better understanding of the barriers to effective mobilisation of private capital for infrastructure investment, leading to a more effective legal and institutional basis for PPP in the country.	Recommendations and reform: • PPP legislation • Financial sector policy • Institutional

2.5 Policy consultation process

Preparing and formulating the PPP policy requires close consultation and coordination both within and outside the government.

✓ **Inter-Governmental:** The PPP Policy Steering Committee should establish channels of communications among all arms of government, particularly those sectors more likely to be implementing PPP projects (See Section 2.1.2 Structure).

✓ **Civil Society:** The PPP policy team can use existing consultative bodies or forums (if they exist) for consulting with civil society. If they do not exist or do not represent all relevant stakeholders, more tailored consultation mechanisms can be undertaken. Online consultations can assist engagement with affected communities, using social media, networking sites or blogs.

A combination of methods of consultation may be the best strategy to ensure effective consultation with various individuals. Attention should be paid to any specific government requirements for consultation, in terms of process and representation of specified groups. It is also important to consult wider civil society bodies, including infrastructure users, organised labor, professional organisations, environmental groups and so on.

✓ **Private Sector:** The PPP policy team should also consult with the private sector, including private sector organisations, the users of proposed projects, as well as the construction and financial sectors. Consulting with the private sector can be complex, because there is no single voice that represents the interests of all the different actors. The private sector comprises many individual companies, often in competition with each other. Chambers of Commerce or Trade Associations may exist, but these seldom include all businesses, and their opinions are not always fully representative. In Jamaica, for example, the Private Sector Organiation of Jamaica (PSOJ) is an umbrella grouping that includes representation from all the sector-focused private sector groupings.

Textbox 2.6: Guidance on Stakeholder Consultation

Stakeholders Usually Consulted During PPP Policy		
Public sector	• National Ministries and Departments • Government Agencies • Audit Offices • State Owned Enterprises • Parliamentary bodies related to budgetary and public works topics • Provincial / Regional governments • Local governments • Etc.	
Priate sector	• Business beneficiaries of the PPP Programme objectives, including exporters, importers and general business • Developers, contractors, construction companies • Operators, asset managers • Etc.	
Financial sector	• Banks • Funds and other investors • Insurance providers	• Investors banks and funds • Insurance • Rating agencies
Professional bodies and consultants	• Financial advisors • Lawyers • General management consultants• • Etc.	• Consulting engineers • Project managers
Organised Labor	• Unions	
Academic and training institutions	• Universities • Colleges • Research centres / institutes	
Media	• Journalists	
Development Partners, International Financial Institutions (IFIs)	• Caribbean Development Bank • Inter-American Development Bank • The World Bank	• International Finance Corp. • PPP Regional Support Facility • Etc.
Customers and Consumer Groups	• Users/ consumers of proposed PPP projects • Public groupings identified in line with the objectives of the PPP Programme, and groupings skeptical about PPPs	

The PPP policy team should prepare a tailored consultation plan, taking into account any formal requirements, as well as seeking the opinion of leading members of each stakeholder group. A Stakeholder Consultation Plan helps: (i) define key groups of stakeholders; (ii) explain why stakeholders are being consulted; and (iii) define how the government will undertake the consultations and how the results will feed into the wider Policy Formulation Process.

To ensure the process generates value, it is important to determine the purpose of the consultations with each stakeholder. In general, there are three main objectives of consultation, namely:

a. **Information sharing:** Providing information to stakeholders, including what the PPP programme's ambitions are and how it helps achieve the country's policy goals;
b. **Feedback:** Obtaining information from stakeholders, including feedback on specific components on the PPP Policy; and
c. **Decision-making:** Determining when stakeholders are expected to take part in joint decisions during the development or implementation of the PPP Policy.

2.6 SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis

Another policy analysis tool that can be useful in formulating a PPP policy is the SWOT analysis. The SWOT analysis is generally prepared by the PPP policy team from the perspective of the government. The analysis involves two levels:

a. **Internal (S) Strengths and (W) Weaknesses:** The strengths and weaknesses in terms of the government's internal capacity to introducing PPPs and the advantages and disadvantages to the public sector.

b. **External (O) Opportunities and (T) Threats:** The external factors that could affect the delivery of PPPs, and the positive and negative potential effects of the PPP programme on stakeholders outside the government (i.e. private sector, civil society).

Textbox 2.7: SWOT Analysis

Strengths	Weeknessess	Opportunities	Threats
Identify the government's main strengths with regard to introducting PPPs.	Identify weaknesses of the government's with regard to introducting PPPs.	Identify opportunities for the introduction of PPPs that are external to government.	Identify threats to the introduction of PPPs that are external to government.
These could include ability to pass laws to procure public projects or to regulate markets.	These could include lack of capacity, insufficient funds to prepare projects and so on.	These could include demonstrated private sector interest, external support being offered, demand for infrastructure, etc.	These could include resistance from organised labor, low interest from investors, mistaken perceptions of privatisation, low income levels of users/ taxpayers
A good pipeline of projects.	Small market and project sizes		

In this way, the SWOT analysis will allow the PPP policy team to identify how the PPP Policy might build on the internal strengths of government and the external opportunities, to support implementation of PPPs. Similarly, it is possible to identify how the PPP policy (and stakeholder consultation plan) be designed to mitigate the weaknesses of government, or external threats to the PPP Programme.

2.7 PPP process mapping

An important component of the PPP Policy will be the general outline of the eventual PPP processes and procedures, and how these will link to the roles of the existing or, where relevant, new institutions identified in the PPP Policy. While the processes and procedures will ultimately be set out in detail in the regulations and/or manuals and guidelines that may follow the PPP Policy, it is useful even at this early stage to set out the general process while developing the PPP policy.

An initial determination should be made of whether PPP processes in the country will follow existing procedures (for example existing public procurement law/regulations) and institutional responsibilities, or whether PPP-specific procedures will need to be established. These questions should, in part, be answered by the Legal Review; however, the completion of a PPP Process Map will be useful as an agreed basis for later more detailed development. This PPP Process Map should set out the general procedures to be used for the development and implementation of PPP projects. The Map should include the main PPP stages, principal institutional responsibilities, and the procedures to be followed for a PPP project from initial identification, through to implementation.

2.8 Policy implementation plan or roadmap

The PPP Policy should include, or be accompanied by, an implementation plan or roadmap. This plan will set out the specific measures that should be undertaken, who is responsible for these actions, and how and when they will be realised. This step is important to ensure that the implementation for the PPP programme has been planned properly and in a deliverable manner, to maintain momentum for implementation of the PPP Policy and to provide clarity and transparency to the market on programme rollout. It is also useful to prepare a funding and resource plan that determines the human, technical and financial resources needed to introduce the various interventions or actions. The funding and resource plan can be used when establishing budgetary resources or seeking external funding support for the implementation of the PPP programme.

2.9 How to use the Caribbean PPP policy model template

In formulating and adopting a national PPP Policy Statement, there is no "one size fits all" — each country has its own individual objectives, legal regime, level of technical capacity, regulatory framework and economic fundamentals. However, there are certain PPP principles and best practice, that would be applicable to any sound PPP policy. It is possible to define common core policy guidelines, which can be amended to suit the particulars of each individual country, particularly among countries sharing similar legal and regulatory systems.

The Caribbean PPP Policy Model Template, shown in Annex 1, can be used as a starting point to familiarise policy makers and stakeholders on the fundamentals of PPPs. The Template covers the issues that typically would be included in any PPP Policy, with simplified draft wording based on current best practice, including:

- ✓ PPP Definition, Objectives and Scope
- ✓ PPP Processes
- ✓ Institutional Responsibilities
- ✓ PPP Commercial Principles
- ✓ Fiscal Management; and
- ✓ Transparency and Accountability

MODULE 2

3. DEFINING THE OBJECTIVES AND SCOPE OF THE PPP POLICY

As a high-level public document, the PPP Policy is an opportunity to introduce stakeholders to the PPP programme; outline the motivations for embarking on the PPP programme; as well as provide guidance on which types of PPP projects public officials should prioritise and pursue.

Before drafting the PPP Policy, decision makers need to ask themselves three questions:

- ✓ What are the objectives of the PPP Programme? Why is the government embarking on a PPP Programme?
- ✓ What is the scope of the PPP Programme? In which sectors and for which types of projects may PPP delivery models be used?
- ✓ What are the guiding principles of the PPP Programme? What principles will guide the development and implementation of PPP projects?

Existing legal or policy statements (if available) will provide the basis for the PPP Policy, which should be consistent with the current overall economic framework. In the absence of a current framework, decision makers can use the PPP Policy to provide clear answers.

The guidance presented in this section will help decision makers answer these three key questions and outline them in the National PPP Policy.

3.1 Setting policy objectives

Each government has different reasons for pursuing a PPP programme, which may depend on the country's income levels, stage of development and infrastructure needs. Nevertheless, decades of experience with PPPs in countries such as Australia, the UK, the Netherlands, and Portugal, has shown that there are "right reasons" for pursuing PPPs, and "wrong reasons," as shown in Textbox 2.8.[20]

[20] Textbox 2.8 presents the "wrong" reasons for pursuing PPPs from a fiscal liabilities perspective. Note that there are also other "wrong" reasons for pursuing PPPs, including perceptions that PPPs are faster than conventional delivery models (they typically are not); can be used to bypass government regulations (they should not); and can mitigate the lack of professional capacity in governments (the reality is in fact the opposite, as PPPs require much greater public sector capacity than conventional delivery models).

Textbox 2.8: "Right" and "Wrong" Reasons for Pursuing PPPs

"Wrong" reasons for pursuing PPPs	"Right" reasons for pursuing PPPs
Pursuing PPPs in order to overcome budgetary constraints is dangerous. Of course, PPPs allow upfront capital costs to be borne by the private sector, freeing up government money in the short-term. However, the government often commits to long-term payments or liabilities through or availability payments, guarantees, or contractual clauses in which the government bears risks. Pursuing PPPs to create fiscal space presents the risk that the government will either: (1) take on more long-term liabilities (actual and contingent) than it can manage, resulting in budgetary difficulties later on; or (2) transfer the right to collect revenues in a poorly structured transaction, allowing for excessive returns for the private sector.	PPP structures are best suited to circumstances where they can create greater "value for money" than the conventional public sector alternative. PPP programmes should, therefore, be centred on generating value for money. Value for money includes elements such as: • Innovation • Higher quality of service • Greater efficiency • Timeliness • Risk transfer For more information on Value for Money, please refer to Module 1: Introduction or Module 3: Business Case of this Toolkit.

As shown in Textbox 2.9, Grenada's PPP Policy is specific about how it plans to use PPPs, namely to deliver priority public investment projects to meet basic economic and social needs, and to manage state-owned assets or land in sectors such as agriculture or tourism. Saint Lucia's objectives for its PPP programme, shown in Textbox 2.10, are broader. It aims to use PPPs to overcome fiscal constraints, generate efficiency, and promote diversification.

Textbox 2.9: Objectives of the PPP Programme in Grenada

"The PPP Programme will be an important instrument in achieving the Government of Grenada's key economic policy objectives: boosting growth and job creation, while improving fiscal and debt sustainability including by achieving greater efficiency in the public sector.

PPPs may be used to implement priority public investment projects in a range of sectors—including provision of social and economic infrastructure to meet the basic needs of the people and enable growth, as well as managing Government-owned assets or lands with potential for development in key sectors such as agriculture and tourism. In this context, the overarching objective of the PPP programme is to make the best use of the financial and technical resources of the public and private sectors to provide high quality, responsive, resilient, and sustainable public assets and services in a way that achieves value for money for the Government and service users."

Source: Government of Grenada. PPP Policy. July 2014

Textbox 2.10: Objectives of the PPP Programme in Saint Lucia

"PPPs will be used to support many of the Government's key economic Policy objectives; including:

Overcoming fiscal constraints—In order to reduce Saint Lucia's debt to Gross Domestic Product (GDP) ratio, the Government of Saint Lucia (GoSL) is seeking to attract private investment to achieve its infrastructure development goals

Improving efficiency—seeking private sector expertise to improve the operations and management of its infrastructure and other public assets

Achieving diversification—promoting new areas of growth, particularly through boosting exports, to expand employment opportunities, reduce vulnerability to shocks, and build resilience."

Source: Government of St. Lucia. PPP Policy. March 2015

Tying the objectives of the PPP programme to the country's overall economic and development goals helps bring credibility to the PPP programme. Jamaica's PPP Policy, for example, outlines in detail the linkages between its PPP programme and its overall infrastructure and growth strategy (see Textbox 2.11).

Textbox 2.11: Jamica's PPP Policy: Links with other Government Policies and Programmes

Long Term Economic Plan - Vision 2030 Jamaica:

"In 2009, the GOJ launched Jamaica's first long-term strategic plan, Vision 2030 Jamaica – National Development Plan. The plan sets out the country's national vision statements: "Jamaica, the place of choice to live, work, raise families and do business". Among the goals of Vision 2030 Jamaica is the development of internationally competitive industry structures, which will provide the framework for increased productivity throughout the Jamaican economy. The Vision 2030 Plan explicitly recognises the role of PPPs, for example in the infrastructure, construction and tourism industries, and also supports the concept of Government partnering with the private sector as a means of developing internationally competitive industry structures. The Vision 2030 Jamaica Plan articulates National Strategy 12-2 to "Develop Economic Linkages and Clusters" through strengthening partnerships between national associations, government, and other public and private sector partners."

Short and Medium Term Growth Strategy:

"The Government of Jamaica has identified PPPs as a means of stimulating economic growth in the Jamaican economy. In 2011, the Planning Institute of Jamaica (PIOJ) elaborated a Growth Inducement Strategy for the Short and Medium Term. The Growth Inducement Strategy (GIS) presents comprehensive and integrated policy and programme recommendations to induce higher rates of growth in the Jamaican economy in the short and medium term, based on a detailed analysis of the current economic situation. This strategy seeks to build the foundations for robust, broadbased, inclusive and equitable growth through a combination of initiatives aimed at progressively removing binding structural constraints, improving the business environment for private investment, and facilitating increased community self-agency training and capacity building for entrepreneurial activities. Within this general framework, the PIOJ in 2012 further elaborated the need for a prioritisation of the Government's strategic focus for the 2012/13 – 2014/15 period according to three (3) priority areas or programme themes, namely: Asset Mobilisation, Climate Change & Disaster Risk Reduction and Community Renewal.

PPPs (along with privatisation) play a particularly significant role in the GIS through its Asset Mobilisation initiatives. These are a set of supply-side initiatives aimed at mobilising "idle" or "latently productive" human, physical and financial assets in both the public and private sectors, increasing the mobility of these assets and enabling greater efficiency in the use of these assets to support production."

Source: Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica. October 2012

3.2 Determining the scope of the PPP Programme

An effective PPP Policy is clear about its scope and coverage. In other words, to which types of projects do the procedures in the PPP Policy apply? Some governments choose to keep things simple, stating that the PPP Policy applies to all projects that meet the official definition of a PPP. Other governments choose to define a narrower scope for the PPP programme, typically restricted to infrastructure sectors. Governments may define a narrower scope for the PPP programme along the components listed in Textbox 2.12.

Textbox 2.12: Defining the Scope of the PPP Programme

Project Size	Project Duration	Sectors
To reduce the administrative burden of the PPP framework and minimise transaction costs, governments may restrict PPP models to projects that exceed a threshold project size.	To avoid large transaction costs for projects of short duration, governments may restrict PPP models to projects that exceed a threshold project duration. Alternatively, they may establish a threshold duration that projects may not exceed.	The PPP Policy may define a specific sectorial scope for the PPP programme. In other words, in which infrastructure sectors may PPP models be used?

In defining the sectorial scope of the PPP Policy, governments may also consider:

✓ **Defining "priority sectors" for the PPP programme**, limiting the use of PPP models (at least in the initial years of the PPP programme) to the sectors that have the greatest need for investment; or

✓ **Exempting sensitive or incompatible sectors from the PPP programme**, including sectors in which the government sees limited use for PPP models or in which there is limited international experience.

Jamaica, for example, exempts the housing sector from the use of PPP delivery models, as shown in Textbox 2.13. Although not all governments choose to narrow the scope of the PPP programme, there are advantages associated with limiting the use of PPPs, in particular in the initial years of a PPP programme.

The Government of Saint Lucia states: "The use of PPPs will be focused on those sectors where Saint Lucia could benefit most from introducing private sector and international experience and expertise—such as sectors and services that are currently under-performing, or where there is a need for expansion, innovation, or adoption of new technology."

Textbox 2.13: Scope of Jamaica's PPP Policy

Scope of PPP Policy

"This policy is intended to be applicable to all [Government of Jamaica] GOJ PPP transactions which are the remit of the Central Government and which meets the definition of a PPP as outlined in this policy. The intended PPP transactions must be of sufficient value and scope to create a significant positive impact on the economy and society.

Exemption:

Housing PPPs, which are the responsibility of the Minister of Housing, being undertaken under the Housing Act are exempted from this policy. Therefore, the Housing PPP Policy is applicable to Public-Public Private Partnership agreements with the objective of developing housing solutions, which are be promoted by the Minister of Housing or related agencies under his authority."

Source: Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica. October 2012

a) Advantages and disadvantages of limiting the scope of the PPP Programme

Establishing "priority sectors" has its advantages. It focuses the attention of public officials and private investors on a few key sectors, where investments are most needed. It also allows both the public and private sectors to build capacity and learn from experiences in a few key areas before widening the scope of the PPP programme.

Defining a threshold project size also has its advantages. In the early years of a PPP programme, transaction costs may be high (on hiring transaction advisors, lawyers and specialist sector consultants), as the public sector builds capacity and develops templates for procurement documentation and contracts. Larger projects typically present greater opportunities for VfM that can offset (at least partially) these high transaction costs. Smaller projects, which typically have less value for money potential, may have greater difficulties absorbing high transaction costs. Countries with significant PPP experience have found that it is best to pursue smaller PPP projects at later stages in the PPP programme, after having developed standardised procedures and documentation. Streamlined procedures and standardised documents reduce transaction costs, ensuring that VfM is not undermined (even in smaller projects).

Decision makers may apply a similar logic to defining a threshold contract duration for PPP projects. The longer the PPP, the greater the cumulative VfM potential. In the early years of a PPP programme, when transaction costs are high, limiting PPPs to projects with a longer contract length may provide greater opportunities to offset transaction costs through VfM.

Despite the advantages associated with narrowing the scope of the PPP programme, too many limitations may reduce opportunities for innovation. Placing too many restrictions on the types of PPP projects considered may result in less private sector interest, or may limit opportunities for innovative approaches in terms of project size, length or type.

b) What is an appropriate threshold project size?

It is common (including in the Caribbean region) to establish a threshold project size for PPP projects. Grenada and Saint Lucia have threshold project sizes of EC$50 million (approximately US$18.5 million) and EC$30 million (approximately US$11 million), respectively. Jamaica notes that projects with a value below US $10 million are unlikely to create VfM, although they may be considered.[20] Anguilla sets a minimum threshold of EC$65 million (approximately US$24 million).[21] Given the small size of the Anguillan economy, this threshold could be seen as excessive. The Caribbean thresholds are lower than in larger PPP markets such as Australia (which has a threshold of $50 million) or Canada (which recommends a threshold of around $40 million).[22]

The lower thresholds in the Caribbean region is a natural reflection of the overall smaller size of projects in the region. As mentioned earlier, streamlining procedures and standardising documentation in order to reduce transaction costs becomes particularly important for smaller PPP projects, such that the administrative costs do not erode VfM.

Textbox 2.14: Checklist for Establishing the Scope of the PPP Programme

Determining the Scope of the PPP Programme	
Project Size and Duration	Which project sizes are eligible for PPP? Which contract lengths are eligible for PPP?
Jurisdictions	Are lower levels of government permitted to use PPP delivery models?
Sectors	Which sectors are eligible to use PPP delivery models? Which are the government's "priority sectors" for PPPs? Are any sectors restricted from using PPP delivery models?

3.3. Highlighting the guiding principles

Governments may use the National PPP policy to set out the guiding principles of the PPP programme. In other words, which rules or fundamental concepts will drive the development and implementation of the PPP programme?

[20]Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy, Government of Jamaica, October 2012, Accessible at: http://dbankjm.com/files/public-private-partnership/ppp_policy.pdf | [21]Fiscal Responsibility Act, 2013 | [22] PPP Canada. Identifying P3 Potential: A Guide for Federal Departments & Agencies. Accessible at: http://www.p3canada.ca/~/media/english/resources-library/files/p3%20a%20guide%20for%20federal%20departments%20%20agencies.pdf

As presented in Module 1 of this Toolkit, guiding principles of the PPP Programme may include:

i. **Value for Money (VfM):** PPP projects should deliver better VfM than conventional delivery. VfM is the combination of the cost, price, quality, quantity, timeliness and risk of the PPP project, compared to public delivery. If a PPP project does not offer a better combination of these factors, then it should be delivered through a conventional approach.

ii. **Affordability:** PPP projects should only be awarded if the government can meet the payments or liabilities required for the duration of the contract, and/or if users are able to pay the required tariffs or user fees. If the fiscal budget or users cannot meet the commitments, the project should not be implemented as a PPP. Affordability, however, is also a criterion for public delivery of projects. Some projects may not be affordable if publically delivered.

iii. **Commercial Viability:** PPP projects should not be implemented if they are not commercially viable or financeable for the private sector over the period of the project. Private partners in PPPs need to remain profitable if the project is to succeed and deliver value.

iv. **Manageability:** A PPP project must be manageable for both the government and for the private partner. The contracting authority should make sure the contractual agreement and related monitoring and management procedures are clear and workable. The contracting authority must also ensure that capacity is in place to manage the contract, and for the contracting authority to meet its obligations under the contract.

v. **Acceptability:** One of the government's central responsibilities is to ensure fairness and protection of the public interest. For each project, the contracting authority needs to consider whether it will be acceptable and in the public's interest to deliver the public infrastructure or service via a PPP. This may require careful communication to educate and prepare both users and the public.

Figure 2.1: Key PPP Guiding Principles

Of course, guiding principles are of little use without clarification on how public officials should apply these principles in practice. Additional guidelines and manuals can provide guidance on how public officials should apply these principles throughout the PPP process. The approvals at each stage of the PPP process may also present an opportunity to verify the project against the key guiding principles.

Although each country will have different guiding principles for its PPP Programme, the five principles listed above are common and recommended principles. Trinidad & Tobago and Saint Lucia's PPP policies, for example, are structured around these guiding principles, as shown in Textbox 2.15 and Textbox 2.16, respectively.

Textbox 2.15: Guiding Principles of Trinidad and Tobago's PPP Programme

PPPs can help the Government provide more and higher-quality infrastructure services, and achieve better VfM from those services. However, they need to be carefully managed to ensure these benefits are achieved in practice. The aim of this PPP Policy is to ensure PPP projects are implemented in a way that:

- Achieves VfM, by capitalising on the value drivers described above;
- Is fiscally responsible—that is, the fiscal impact of PPP projects is well-understood, affordable, and that the level of fiscal risk is acceptable;
- Ensures transparency and probity in how PPPs are identified, developed, procured, and managed;
- Is environmentally and socially sustainable—that is, environmental and social impacts of PPP projects are carefully assessed, and are managed appropriately.

Source: Government of the Republic of Trinidad and Tobago PPP Policy. March 2012

Textbox 2.16: Guiding Principles of Saint Lucia's PPP Programme

Value for money—PPPs are selected and structured to achieve the optimal combination of benefits (that is, quality, responsive, resilient, and sustainable infrastructure and public services) and costs to Government and service users, by capitalising on the value drivers described above

Fiscal responsibility—the fiscal impact of PPP projects is well-understood, expected costs are affordable, and the level of fiscal risk is acceptable

Transparency and probity in how PPPs are identified, developed, procured, and managed

Environmental and social sustainability—environmental and social impacts of PPP projects are carefully assessed, and are managed appropriately

Partnership and inclusiveness—PPPs meet and balance the objectives of all interested parties—the Government agency and its private sector partner, as well as end users, employees and other stakeholders—and are managed through a spirit of partnership and cooperation to achieve common goals of improved infrastructure services.

Source: Government of Saint Lucia PPP Policy. March 2015

MODULE 2

4. DEFINING PPPS AND THEIR VALUE DRIVERS

Although there are many potential arrangements between the public and private sectors, not every type of collaboration is a PPP. Understanding and clarifying the differences between PPPs and other types of public-private collaboration is key to establishing a successful PPP programme. The National PPP Policy can be an effective channel to communicate the definition of a PPP, and correct many misconceptions as to what constitutes a PPP. The National PPP Policy can be used to communicate the value of PPPs for society. Appreciating how PPPs can create value is central to deciding when PPPs are appropriate, and to guiding how they should be structured, procured and implemented. The PPP Policy can serve as an educational tool for public officials in this regard, although it should be complemented with operational guidelines and manuals.

This section provides guidance to help government officials provide a clear definition of a PPP in the PPP Policy, and outline how PPPs create value for society.

4.1 Defining PPPs

A natural starting point for defining PPPs in the National PPP Policy is the existing legal or regulatory framework. Do existing laws or regulations provide parameters for how to define PPPs? If so, public officials should use these as a starting point for drafting the definition of a PPP in the National PPP Policy. In countries that have yet to draft a definition of a PPP, governments can rely upon the common characteristics of PPPs presented in Textbox 2.17.

The specifics of a PPP definition will depend upon the country's context and priorities. As shown in Textbox 2.18 and Textbox 2.19, the PPP definitions of Saint Lucia and Jamaica include most of the common characteristics, including a long-term contract between the public and private sectors that optimally allocates risk. Jamaica's PPP definition, however, is more specific about PPPs involving a public infrastructure/asset or service.[23]

Saint Lucia's PPP definition, which closely resembles the PPP definitions of Trinidad and Tobago and Grenada, is more specific about the payment mechanism, noting that it must be "based on outputs delivered, such as the availability of the asset or the provision of services according to clearly-defined performance standards."

[23]Jamaica's PPP Policy notes that a project will not be considered a PPP unless it involves a "public infrastructure/asset or service provided for public benefit where the output has the element of facilities/services being provided by the Government as a sovereign to its people." It further elaborates on the concept of public infrastructure assets and services. Source: Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica, October 2012.

Textbox 2.17: Typical Components to Developing a National PPP Policy

Characteristics of a PPP	Description
A long-term contract between a public agency and a private sector company…	A PPP involves a long-term contract between the public agency and private party. The definition of "long-term" may depend on the jurisdiction and the type of infrastructure, but usually means not less than 10 years.
…for a public interest project that is under the responsibility of a state agency…	PPPs are intended for the delivery of a public service, as opposed to a commercial opportunity for the private party.
…which transfers substantial risk to the private party…	One of the key value drivers of a PPP is the transfer of substantial project risks to the private party, in order to create incentives for proper service delivery.
… includes the provision of private financing…	To effectively transfer risk to the private party, the private party must have money at stake, typically a combination of equity and debt.
…and includes a focus on the specifications of project outputs rather than project inputs, linked with a payment system based on performance.	A focus on the specifications of project outputs rather than project inputs is a key driver of value in PPP delivery models, coupled with performance-related payments to the private sector for the services delivered.

In the Caribbean region, many projects—usually smaller projects outside of typical infrastructure sectors—may benefit from or even require a type of public private arrangement. Examples include a hotel transaction, a special economic zone, a management contract for a government-owned asset, or commercial tourist concessions on government-owned land. These public private arrangements typically do not possess all of the common characteristics of PPPs as presented in Textbox 2.17. Although they may not constitute PPPs in the strict sense of the word, the principles and approaches presented in the Guidelines may be highly applicable in the design and procurement of these other types of public private arrangements.

Textbox 2.18: Definition of a PPP in Saint Lucia's PPP Policy

A Public-Private Partnership (PPP) is a long-term contract between a private party and a Government agency, for providing or managing a public asset and associated services, in which the private party bears significant risk and management responsibility. In this context:

- The private party to a PPP contract may be any majority privately-owned company or consortium.
- The Government agency may be a Ministry, a State Enterprise, a Statutory Body, or any other Government Agency. This agency retains overall responsibility for ensuring the service is provided by the private party to the quality required, by carefully managing the PPP contract throughout its term.

The public asset may be a new investment, or may involve upgrading or expanding existing assets. PPP may be used in wide range of sectors, and for a wide range of assets and associated services—provided the public sector has an interest in having the asset managed and service provided.

The nature of a PPP contract may vary; but generally involves the private sector bearing significant risk and management responsibility. Specifically, PPP contracts involve:

- Transfer of management responsibility for a public asset to the private party over the duration of a long-term contract—typically 15-30 years. This may involve financing, designing, building or rehabilitating, maintaining, and operating the public asset and associated services; or some subset of these functions.
- Remuneration to the private party based on outputs delivered, such as the availability of the asset or the provision of services according to clearly-defined performance standards. Payments to the private party may be made by end users, by Government, or by a combination of the two. Penalties may also be imposed for failure to meet contractually-specified standards, and bonuses may be paid for service above specified minimum standards.
- Allocation of risk to the public and private parties clearly, comprehensively, and in a way that achieves VfM, by ensuring each party bears those risks they are best suited to manage.

Source: Government of Saint Lucia. PPP Policy. March 2015

Textbox 2.19: Definition of a PPP in Jamaica's PPP Policy

The definition of a PPP:

A public-private partnership (PPP) is a long-term procurement contract between the public and private sectors, in which the proficiency of each party is focused in the designing, financing, building and operating an infrastructure project or providing a service, through the appropriate sharing of resources, risks and rewards. The definition of PPPs, as outlined in this Policy, is limited to assets of high value and areas where the Government is faced with fiscal constraints and is obligated to provide the infrastructure service. The PPP contract should define the output that is to be delivered in the agreed quality, quantity, cost, and timeframe. PPPs can take a wide variety of forms, and be used for both existing assets and services (Brownfield), and new projects (Greenfield). The Government may utilise the PPP methodology to engage the private sector to manage and or expand existing infrastructure assets or services or to develop new infrastructure assets. The private sector may receive payment for the services from the Government, from the users or a combination of both. Where an existing Government asset or service is utilised, the Government will negotiate appropriate compensation from the private sector for the use of the asset.

Essential Characteristics of a PPP:

For the purposes of this PPP Policy, projects will only be considered as PPPs if they contractually:

i. **Involve an arrangement with a private sector entity** by delegating one or more project functions to them (that is, delegating to a private party the responsibility to design, build, (or expand/develop), operate, maintain, rehabilitate, or finance an asset or service).

ii. **Require a private party to take significant risk** in performance of the functions delegated - that is, the private party's revenue is dependent on its performance (the availability of an asset, or the quantity and quality of outputs supplied). For example, if a PPP involves the private party building an asset, the private party would take all or a significant portion of construction risk - this means the private party would not receive payment until construction milestones were met and would have to pay for any construction cost overruns.

iii. **Involve public infrastructure/asset or service** provided for public benefit where the output has the element of facilities/services being provided by the Government as a sovereign to its people. Two key concepts are elaborated below:
   a. 'Public Services' are those services that the State is obligated to provide to its citizens (towards meeting the socio-economic objectives) or where the State has traditionally provided the services to its citizens.
   b. 'Public Asset' is that asset which is inextricably linked to the delivery of a Public service. For example, a public road which is linked to public transportation. Or, those assets to utilise sovereign assets to deliver the Public services.

iv. **Operations or management of the asset or service is within specified period.** The agreement with the private sector entity has the element of a time period after which the arrangement comes to a closure. Hence, the arrangement is not in perpetuity.

Source: Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica. October 2012

4.2 Defining PPP value drivers

In order to structure and implement a PPP that generates greater value for society than the conventional alternative, public officials need to have a clear understanding of where the value of a PPP comes from. The benefit of including PPP value-drivers in the PPP Policy is that it focuses the attention of public officials implementing PPPs on VfM as a guiding principle throughout the development and implementation of the PPP. Please refer to Section 2.2 of Module 1 for an overview of the main value drivers in a PPP delivery model.[24] Of course, listing the value drivers in the National PPP Policy will not be sufficient to ensure that they are adhered to in practice. Additional guidelines and manuals will be required that provide more detail on how to achieve and maintain VfM throughout the PPP process.

[24]Value for Money is discussed in greater in detail in Module 3: Business Case of this Toolkit.

MODULE 2

5. DEFINING INSTITUTIONAL RESPONSIBILITIES

One of the most important objectives of the PPP Policy is to define the roles and responsibilities of the relevant institutions. PPP policies should outline which agency is responsible for undertaking each stage and for specific activities within the stages. Saint Lucia's PPP Policy, for example, specifies that the Business Case will be prepared by a "PPP Project Team" supported by external consultants, and revised by "the PPP Core Team, Steering Committee and other relevant agencies; before being submitted to Cabinet."[25]

By contrast, the Jamaica PPP Policy assigns many of these functions to a specified agency: the Privatisation and PPP Unit of the Development Bank of Jamaica (DBJ). Figure 2.2 below shows the functions typically associated with a PPP programme, and the institutional responsibilities thereof.

Figure 2.2: Typical Institutional Functions in a PPP Programme

PPP Program Functions	Typical responsibilities
Approving PPP projects	Cabinet or Parliament (parallels with public sector investment planning)
Coordinating PPP policy	**PPP Unit**
Managing fiscal implications	Ministry of Finance (MOF)
Identifying PPP projects	Ministries, Departments, and Agencies (MDAs)—with **PPP Unit** and/or MOF support & input (parallels with public sector investment planning)
Guiding PPP development	Project 'steering committee' under MDA
Undertaking due diligence *(with advisors)*	MDA-led project team with **PPP Unit** support
Implementing transactions *(with advisors)*	MDA-led project team with **PPP Unit** support
Managing PPP contracts	Varies: **PPP Unit**/MDAs

[25]PPP Policy of St. Lucia, 2015..

Typically, the Ministry of Finance or Treasury is responsible for guaranteeing VfM and fiscal affordability. The contracting authority (usually with help from the relevant sector ministry and PPP unit if there is one) is typically responsible for identifying projects, developing the Business Case, procuring the project, and managing contract implementation. This section provides guidance on articulating the roles and responsibilities of the different institutions in the PPP Policy.

5.1 Key Agencies and Departments

The PPP Policy should introduce the relevant public actors throughout the PPP process. In most countries, the relevant actors include:

- **The PPP Unit:** The World Bank defines a PPP unit as "any organisation designed to promote or improve PPPs [...]" which "has a lasting mandate to manage multiple PPP transactions, often in multiple sectors."[26] In other words, the PPP unit is a public agency that supports the PPP programme and the implementation of PPP projects. However, it is not the procuring agency (the contracting authority) for a PPP project. If there is a PPP unit—or a PPP Focal Point in case of smaller countries—the PPP Policy should introduce the unit and outline its authority, reporting structure, and mandate. In practice however, particularly in the early days of a PPP programme, the PPP unit may often cover many of the functions that in more mature PPP markets would typically be performed by the contracting authority.

- **The Fiscal Management Team:** The fiscal management team is the body that identifies and estimates the cost of all fiscal commitments under a PPP project and assesses its affordability.

- **The Contracting Authority:** The contracting authority is the government department that develops, procures, and implements the PPP project.

- **The Cabinet:** Ultimate decision-making and key approvals for PPPs are usually made at the Cabinet level, typically because of their size and transformative nature.

5.2 Roles and Responsibilities of the Key Agencies

This section will consider the typical roles and responsibilities of: 1) the PPP unit, 2) the Fiscal Management Team, 3) the contracting authority, and 4) the Cabinet.

a. The PPP unit

Most successful PPP programmes—including those of Australia, South Africa, Jamaica, the Netherlands, and the UK—have had dedicated and centralised PPP units.

[26]"Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure," World Bank, October 2007, Accessible at: http://www.ppiaf.org/sites/ppiaf.org/files/publication/WB%20-%20PPP%20Units%202007.pdf

Establishing a PPP unit, however, is not the only possible solution. Countries may prefer to build PPP expertise directly within its sector ministries. This may be an appropriate structure if the country is prioritising investments in only a few sectors, and has extensive project pipelines—and appropriate budgetary resources. For example, if the country is predominately pursuing PPPs in the roads sector, then it may choose to house its PPP expertise within the roads ministry. If governments aim to undertake PPPs in various sectors simultaneously, however, establishing a centralised PPP unit may be the most effective strategy for advancing the PPP programme and concentrating the expertise and lessons learned.

i. What are the advantages of establishing a PPP unit?

Countries with limited PPP experience, but with significant PPP potential, should consider the establishment of a centralised PPP unit. In the early years of a PPP programme, it can be beneficial to concentrate best practices and lessons learned and institutional memory in one central location. The PPP unit may also play an important role in building support for the PPP programme, and capacity within sector ministries. It may promote the PPP programme to stakeholders within the government, among private sector investors, as well as to the public, Non-Governmental Organisations (NGOs), academia and civil society. Textbox 2.20 provides additional advantages associated with establishing a PPP unit.

Textbox 2.20: Advantages of a PPP Unit[27]

Promotion	Help build support for the PPP programme amongst the public sector and general public, and promote opportunities to the private sector.
Programme Development	Play an important role in developing the PPP programme in its early years.
Standardization	Act as focal point for developing manual, guidelines and standard practices for the PPP Programme.
Policy Formulation	Play a role in devising (and revising) the PPP Policy and Procedures Manual whenever applicable.
Quality Control	Safeguard guiding principles of the PPP programme such as fiscal affordability and value for money.
Governance	Help correct governance gaps, such as lack of capacity, coordination between agencies, information, etc.
Centralization of Public Capacity	Focus key financial, legal and technical skills in one place but be accessible to all sectors.

[27]For more information on PPP Units, refer to "Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure," World Bank, 2007, accessible at: http://www.ppiaf.org/sites/ppiaf.org/files/publication/WB%20-%20PPP%20Units%202007.pdf

Textbox 2.21: Guidance on the roles and functions of the PPP unit

The functions of PPP units globally can be divided into three groups:

- **Gatekeeper function:** ensuring that projects are only carried out if they constitute a rational and justified use of public resources (through evaluation and stamp of approval);
- **Project-specific support:** providing technical assistance to implementing agencies in the preparation and structuring of PPP projects in order to maximise the 'value for-money' of these projects; and
- **Cross-project support:** engaging in non-project specific activities to develop and strengthen the overall PPP programme, such as organising capacity building and training activities, developing guidelines and standards, identifying improvements to the PPP framework, and communicating and marketing the PPP programme to a wider audience.

Not every PPP unit performs all three groups of functions. Some units focus more on support activities while other units mainly have a regulatory gatekeeper role. In fact, there is a potential conflict of interest between the gatekeeper function (stopping projects that do not meet the criteria) and the project-specific support function (assisting contracting authorities in developing projects towards implementation).

These functions must be separated from each other. If they are integrated into the same PPP unit, then proper arrangements must be made that each function is performed by a separate team or division within the unit. In any case, all three groups of functions need to be performed in an effective PPP programme, and must therefore get a place in the institutional framework (in the PPP unit, or, if more appropriate, in other existing or new government units). Especially in the early days of a PPP programme, staffing of the PPP unit may need to be augmented by external experts, appointed to the unit on fixed-term contracts.

There is no one-size-fits-all model for a PPP unit. The optimal functional mix and organization of a PPP unit depends, among other things, on the institutional structure of the country and the capacity and experience of planning and implementing agencies. PPP units are usually established in the early phase of the development of a PPP programme, therefore the role of the PPP unit will typically evolve over time, as the programme matures. When PPPs become more widely used and implementing agencies build up their own experience, the PPP unit may be abolished, as its functions are transferred to the procurement divisions of the implementing agencies (although in practice this is unlikely).

ii) What are the functions of a PPP unit?

PPP units perform a multitude of functions, from overseeing project selection, to promoting the PPP Programme, and coordinating between different government agencies. Moreover, the functions of a PPP unit will evolve over time, as the country gains more and more experience in PPP implementation, and builds up capacity in the sector ministries.

The functions of a PPP unit can be classified into three broad categories: 1) gatekeeping (ensuring that PPP projects meet key criteria of VfM and fiscal affordability; 2) providing technical assistance to specific projects; and 3) promoting and generally strengthening the overall PPP programme. These functions—and the possible conflicts of interest between these functions—are described in detail in Textbox 2.21.

Textbox 2.22: Trinidad and Tobago's PPP Policy: Role of the PPP unit

The Ministry of Finance has established a PPP Unit to act as Secretariat to the PPP Ministerial Committee in managing the PPP Programme. The responsibilities of the PPP Unit are as follows:

Develop and disseminate PPP policy—advise on development of PPP policy and regulation; develop guidance material and templates, and build understanding in public and private sectors of the government's PPP programme

Regulate the PPP programme—ensure that all PPP projects are developed in accordance with PPP policy, principles, and processes. This includes ensuring projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are managed well

Contribute to development of PPP projects—screen potential PPP project ideas submitted by Government agencies, for consistency with the PPP criteria at the project identification stage, to inform the PPP Ministerial Decision Committee. If approved, form part of the PPP Execution Team responsible for developing the business case for each PPP project and implementing the PPP transaction

Be a repository of skills and knowledge—continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling and archive information on PPP projects in Trinidad and Tobago, and systematically analysing the success of those projects—what has worked and what has not—to inform the development of the PPP programme.

Source: Trinidad and Tobago's PPP Policy. March 2015

iii) Where should the PPP unit be located?

The location of the PPP unit is one of the most important design characteristics that will also define its functions. There are several options for housing the PPP unit.

- **Within the Ministry of Finance or Treasury:** PPP units with a gatekeeping role (protecting fiscal affordability or VfM) are typically housed within the Ministry of Finance or Treasury. This allows them to have greater access to the tools and resources required to check for fiscal affordability and VfM. Some of the most successful PPP units, such as those of Australia, South Africa, and the UK, are located within the treasury. In Trinidad and Tobago, the PPP unit is located within the Ministry of Finance.

- **Within a planning or procurement department:** PPP units primarily tasked with providing technical assistance throughout the PPP process may be best positioned within a planning or procurement department.

- **Within investment promotion agencies:** PPP units established to promote and market the PPP programme to investors may be best housed within an investment promotion agency. In Jamaica, the PPP and Privatisation Unit is located within the Development Bank of Jamaica, due to its prior experience in implementing the 2003 privatisation of Sangster International Airport, and the availability of capacity within the institution. A separate PPP unit, responsible for fiscal oversight, is housed within the Ministry of Finance (see below).

- **Autonomously created:** PPP units, not located within any particular ministry, can be established to generally strengthen the PPP programme (creating PPP policies, disseminating best practices, etc.) may be autonomously created.

In general, the most effective PPP units are those located or strongly linked with the Ministry of Finance, where they enjoy both political support at the highest levels, and access to the required resources within government to allow them to perform their gatekeeping functions. Housing the PPP unit within the Ministry of Finance helps ensure that the key guiding principles of VfM and fiscal affordability are prioritised at every level of the PPP programme. The weakest PPP units tends to be those that were independently established. Autonomous PPP units are prone to being sidelined or failing to gather sufficient political support.

Some countries may also establish two PPP units. If a country establishes two PPP units, there are typically two options: (i) a PPP unit in the Ministry of Finance combined with a PPP unit in the Investment Promotion Agency, or (ii) a PPP unit in the Ministry of Finance combined with a PPP unit in the contracting authorities. Jamaica, for example, has followed the latter option. Jamaica has two PPP institutions: the Development Bank of Jamaica Ltd (DBJ), which is responsible for the implementation of PPP projects, and the PPP unit within the Ministry of Finance (which examines fiscal issues).

In addition, a Public Investment Management Committee of Cabinet (PIMC) and Public Investment Management Secretariat (PIMSEC) were recently established in Jamaica, to further standardise the treatment of public investment across the public sector with respect to the entire project cycle. In the original process, government ministries, departments and agencies (MDAs) would send their PPP project concepts directly to the PPP unit within the Development Bank of Jamaica (DBJ) for screening; which took up a lot of staff time.

Under the new system, MDAs first submit their project ideas – PPP and otherwise – to the PIMSEC for screening. If PIMSEC decides to implement the project as a PPP, it would then be passed to DBJ for additional PPP pre-feasibility screening. This new system became operational early in 2016.

Textbox 2.23: PPP Core Team in Grenada

The Ministry of Finance will designate a PPP Core Team to act as Secretariat to the PPP Steering Committee in managing the PPP Programme. The members of this PPP Team may be drawn from across departments within the Ministry; one member and department will be designated as the main PPP focal point. The responsibilities of the PPP Core Team are as follows:

- **Develop and disseminate PPP policy**—advise on development of PPP policy and regulation; develop guidance material and templates for issuance by the PPP Steering Committee, and build understanding in public and private sectors of the Government's PPP programme
- **Regulate the PPP programme**—ensure that all PPP projects are developed in accordance with PPP policy, principles, and processes. This includes ensuring that projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are properly managed
- **Contribute to the development of PPP projects** by forming part of the PPP Execution Team responsible for developing the business case for each PPP project and implementing the subsequent PPP transactions
- **Be a repository of skills and knowledge**—continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling information on PPP projects in Grenada, and periodically reviewing and systematically analysing the success of those projects—what has worked and what has not—to inform the development of the PPP programme.

Source: Government of Grenada. PPP Policy. July 2014

Governments in the Caribbean region vary in how they have designed PPP units. The PPP unit in Trinidad and Tobago is housed within the Ministry of Finance (as described in Textbox 2.22: Trinidad and Tobago's PPP Policy: The Role of the PPP Unit), although there is a separate PPP unit for Tobago, reporting to the Tobago House of Assembly (THA). The PPP unit of Jamaica is housed within the Development Bank of Jamaica. Grenada and Saint Lucia have established "PPP Core Teams" to manage their PPP programmes, with officials drawn from different ministries (see Textbox 2.23). These PPP Core Teams largely perform the same functions as PPP units, including regulating the PPP programme and acting as a repository of skills and knowledge on PPPs. The smaller size of many of the Caribbean islands may warrant the establishment of PPP teams as opposed to dedicated units, depending on the size of the PPP programme, and the budgetary resources of the government.

Haiti's Loi de Modernisation des Enterprises Publiques (1996) provides a framework for implementing divestitures, concessions, management contracts, and other forms of private sector participation for assets and services of existing state-owned enterprises. The law also established the Conseil de Modernisation des Entreprises Publiques (CMEP). CMEP has a reasonably successful track record of privatisations—including the National Cement Plant, Flour Mill, and more recently Haiti Teleco.

In November 2012, the Minister of Finance created a PPP unit, located within the Ministry. The PPP unit has functions that could overlap with CMEP's mandate. Both agencies provide support for private sector involvement in infrastructure. Theoretically, CMEP implements PPP structures in existing state enterprises, while PPPU handles greenfield PPP projects[28].

In March 2015, the MIF, IDB, CDB, WB and PPIAF launched a Regional PPP Support Facility, hosted at CDB's headquarters in Barbados.

For any government, the decision to establish a PPP unit will have significant budgetary impacts; it should not be taken lightly. For one thing, staffing the unit can be challenging, especially as there will be a scarcity of suitably qualified national candidates, who also possess PPP experience. Often a country will seek to recruit its experienced nationals from abroad, or open key positions to international tender – either way the level of remuneration necessary to recruit such individuals would typically be much higher than prevailing public sector salary scales. For this reasons creative solutions have to be found, such as fixed-term contracts and other arrangements. In addition, allocations have to be made in the budget for: studies, consultants, study tours, training, workshops, etc.

[28]World Bank: Haiti PPP Roadmap: Project Screening and Prioritization; Results from Fact Finding Mission; 17 April 2013

To help governments develop PPP programmes and projects and improve the enabling environment for PPPs, the Multilateral Investment Fund (MIF), Inter-American Development Bank (IDB), CDB, World Bank, and PPIAF launched the Caribbean PPP Facility in March 2015.

The main objectives of this 18-month Regional PPP Support Facility are:

- Build institutional capacity and expertise in the public sector;
- Support the development of a bankable and affordable pipeline of PPP projects;
- Assess the need and demand for a Regional PPP unit within CDB; and
- Develop a Business Plan for a Regional PPP unit, to be located within CDB, providing hands-on assistance to its Borrowing Member Countries (BMCs).

Preparations are underway for the Regional PPP unit, which will have the following functions:

- Policy formulation;
- Capacity building;
- Advocacy and knowledge sharing;
- Project identification and screening;
- Business case development; and
- Transaction implementation.

This new Regional PPP unit, housed within CDB and with support from WB/PPIAF and IDB/MIF, will be operational in 2017.

b. The Fiscal Management team

If fiscal commitments are not clearly acknowledged and managed, PPPs may be pursued simply to postpone the budgetary impact of public investments, and to move the associated debt off the government balance sheet in a way that does not take into account the longer-term implications for public finances. This approach can undermine the advantages of PPPs and increase the risk of accumulating significant fiscal exposure (actual and contingent) in the future.

Establishing a fiscal management team is advisable because: 1) managing fiscal commitments under PPPs is challenging and requires very specific expertise and 2) there can be conflicts of interest within different government departments, regarding the assessment of PPPs. The sole responsibility of the fiscal management team is to independently review projects and continuously manage fiscal commitments and risks in PPPs throughout the various stages of the project cycle.

c. The Contracting Authority

The contracting authority (also known as the implementing agency) is typically in charge of developing, procuring, and implementing the PPP project. Its roles and responsibilities include:

- **Identifying potential PPPs projects** according to government needs and sectorial priorities;
- **Overseeing development of the Business Case**[29] by hiring external consultants and working together with them to develop the business case;
- **Overseeing procurement** of the project; and
- **Managing the contract,** including monitoring and reporting on the performance of the private party, and applying corresponding contractual penalties.

Typically, the contracting authority establishes operational teams (such as "project teams" and/or "contract managers") within the department, and delegates responsibility for implementing the PPP project to these teams. The "project team" not only includes officials from the contracting authority, but also from the PPP unit, other sectorial departments, and even external advisors. In Saint Lucia, a "PPP Project Team" is established for each project, which in Grenada is called the "PPP Execution Team."

d. The Cabinet

In the Caribbean, ultimate decision-making for PPPs is typically made at the Cabinet level, because of the large relative size and transformative nature of most PPP projects. The approval steps, outlined in Section Defining Key Approvals, are intended to: 1) confirm that the project is suitable to be developed as a PPP (after PPP Screening); 2) confirm that the project is feasible and suitable to be delivered via a PPP (Business Case); 3) approve the draft procurement documentation; and 4) sanction the final draft of the PPP agreement before it is signed by all the parties.

In some jurisdictions, governments may establish a PPP Steering Committee consisting of high-level decision-makers, which provide strategic guidance on the PPP Programme (see Textbox 2.24).

[29]Please refer to Module 4 Business Case of this Toolkit for detailed guidance on the Business Case.

Textbox 2.24: Saint Lucia's PPP Policy: The PPP Steering Committee

A PPP Steering Committee will be established to provide direction to the PPP programme, and oversee the development and implementation of PPP projects. Members of the Committee shall be:

- Permanent Secretary, Department of Finance, Economic Affairs and Social Security (Chairperson);
- Permanent Secretary, Planning and National Development;
- Permanent Secretary, Ministry of Infrastructure, Port Services and Transport;
- Solicitor General;
- Chief Executive Officer, Invest Saint Lucia; and
- Representative from the private sector appointed by the Minister for Finance, Economic Affairs and Social Security.

Permanent Secretaries of other Ministries and/or heads of Agencies will be invited to join the Steering Committee, when projects under their portfolios are being considered or implemented as PPPs. The composition of the Steering Committee may change from time to time, based on needs and experiences of the PPP programme going forward. At a minimum, the attendance of three members of the Steering Committee will be required as a quorum for Committee decisions; the Chair may nominate another Committee member to chair in his or her absence as necessary. PPP Steering Committee members must recuse themselves from Steering Committee discussions and/or decisions on particular PPP projects in cases where there may be an actual, or apparent, conflict of interest, for example due to business interest or other connection with one or more project stakeholders. The PPP Steering Committee will, inter alia:

- **Guide the development of PPP Policy**, including adopting as appropriate more detailed guidelines and regulations or standard forms of key documents for mandatory use by all agencies that are implementing PPPs
- **Select from among priority investment projects** those to be developed as a potential PPP, based on an initial screening by the PPP Core Team
- **Hold PPP execution teams accountable** for developing and implementing PPP projects, following an agreed project timeline
- **Guide PPP development and implementation**, including by taking project scope and structuring decisions to inform the work of PPP Project Teams as needed, which decisions will also be subject to Cabinet approval at key project stages, as described in Section 5.4 below
- **Evaluate and select preferred bidders** for PPP projects, based on evaluation reports prepared by Project Teams against pre-established clear, objective and quantifiable criteria
- **Guide Contract Managers** as needed to manage change during the lifetime of the PPP contract
- **Periodically commission independent evaluations** of PPP projects and/or the PPP programme as a whole, to assess whether PPPs have delivered the anticipated value for money.

As a form of public procurement, detailed regulations for preparing and implementing PPP transactions will be issued under the appropriate public procurement legislation. As such, the PPP Steering Committee is expected to work closely with the institutions established under this legislation.

Source: Saint Lucia's PPP Policy. March 2015

5.3 Defining key approvals

Requiring Cabinet approvals at important milestones in the PPP process is key to achieving political buy-in for a PPP project. Countries typically institute four main approval stages. The four approvals are described in detail below.

a. **Approval of PPP Screening:** The first approval supports the decision to further develop a project as a PPP. After the project has been screened for its PPP potential,[30] it is submitted to the relevant public authority for approval of the main project features. This approval is a prerequisite for moving on to the Business Case phase, since undertaking feasibility studies is resource-intensive. Projects should only be developed if they have a good chance of delivering greater VfM through a PPP model, and if the government devotes the required human and financial resources to adequately develop and implement the project.

b. **Approval of the Business Case[31]:** The second approval stage supports the project being prepared for procurement. It consists of a review of the results of the Business Case (feasibility studies, social and environmental assessments) to ensure that the project is financially, technically, and economically viable and that negative environmental and social impacts are assessed and mitigated. It also assesses the proposed PPP structuring and whether the PPP project is expected to generate VfM.

c. **Approval of Draft Procurement Documentation[32]:** The third approval stage supports the project entering the procurement phase. It consists of a review of draft procurement documentation, including Request for Qualifications (RfQ) and Request for Proposal (RfP) documentation, and the draft PPP Agreement, including specifications. This high-level approval is recommended in order to demonstrate political buy-in, and attract sufficient private bidders. It is a risk for bidders to invest millions of dollars in a procurement, if the documentation has not been approved by the appropriate public authority.

d. **Approval of the final PPP Contract:** The final approval stage supports the signing of the contract with the private operator. It consists primarily of a review of the payment mechanism; fiscal liabilities incurred by the government; and risk allocation between the public and private partners, in order to ensure that VfM will be achieved.

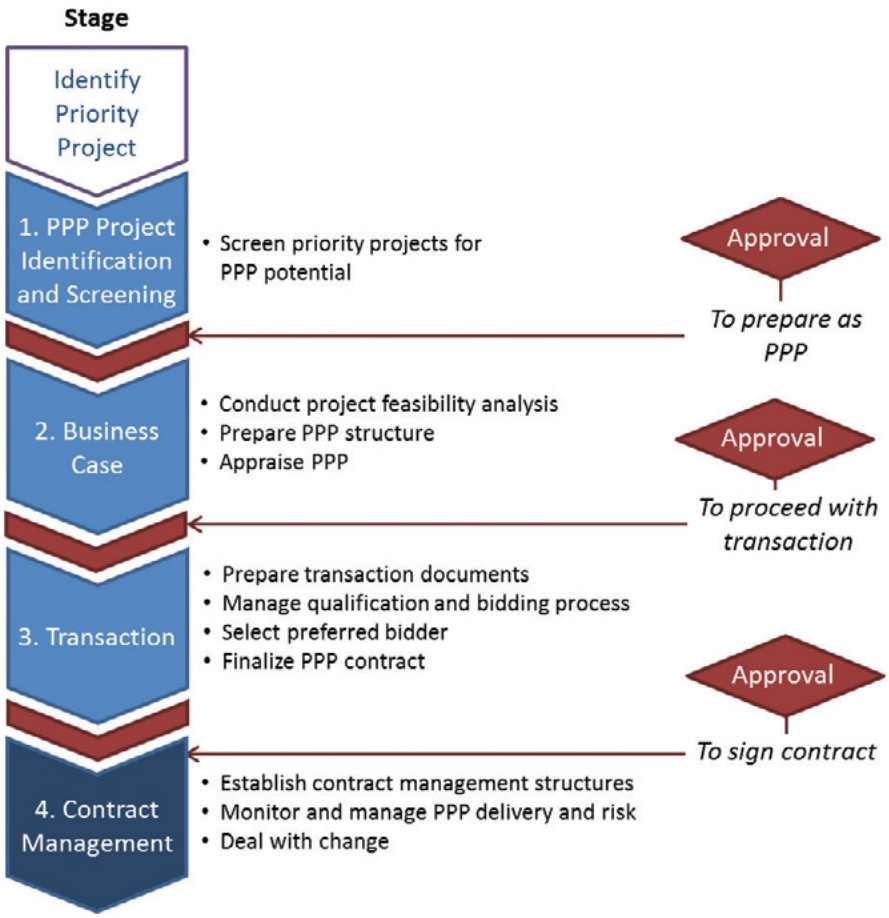
It is recommended that the Cabinet conduct at the very least the first three approvals. Many countries do not require a Cabinet approval at the fourth stage (approval of the final PPP Contract), as long as the contracting authority stays within the parameters defined during the preparation and procurement of the project when it signs the contract.

[30]See Module 3: PPP Identification and Screening of this Toolkit for detailed guidance on screening projects for PPP potential. | [31]See Module 4: Business Case of this Toolkit for detailed guidance on issues related to the Business Case. | [32]See Module 5: Procurement of this Toolkit for detailed guidance on the procurement stage

Requiring Cabinet approval at the fourth stage may present political risks for the private party, as the finalisation of the PPP Contract could depend on political factors that are outside of its control.

Although it is recommended that governments institute the four approvals described above, not all governments follow this exact approach. Saint Lucia and Grenada follow a three-stage approval process, which does not include an approval of draft procurement documentation, as shown in Figure 2.3 below. In Trinidad and Tobago, Cabinet approval is only required at two key stages: Business Case (approval to start procurement of the PPP project), and Transaction (approval to sign the PPP contract).[33]

Figure 2.3: Three stage Approvals in Grenada and Saint Lucia

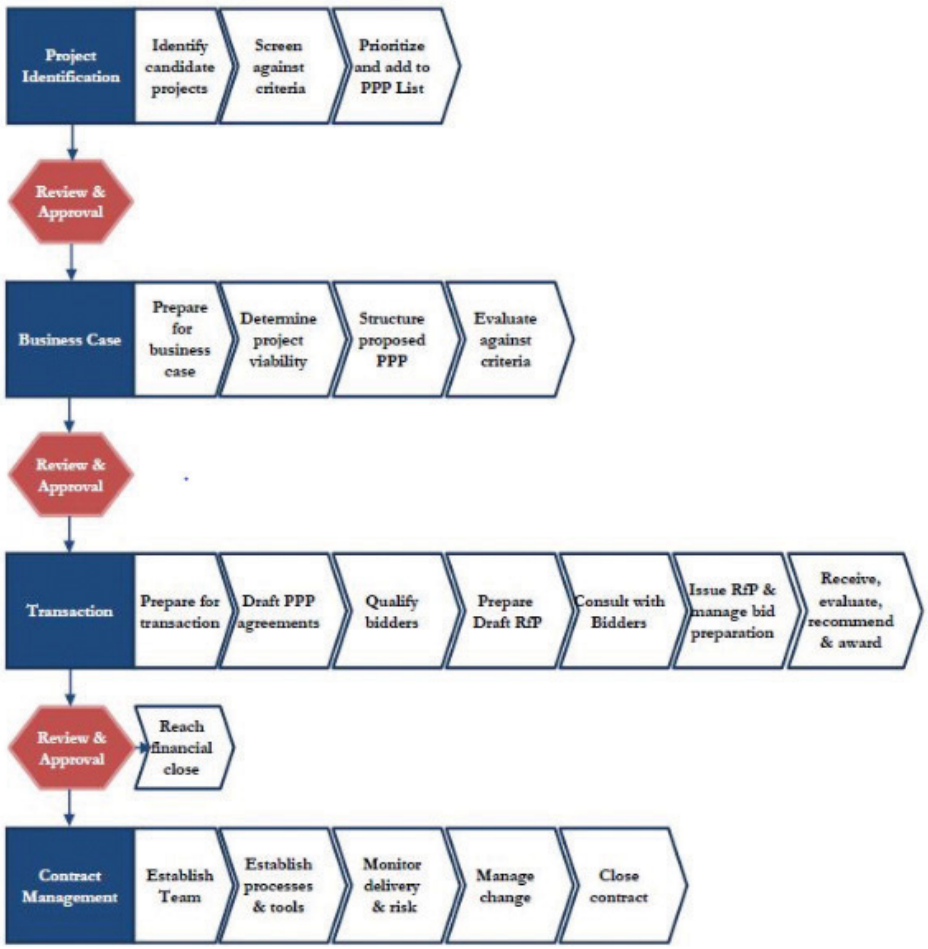


[33]National Treasury of South Africa PPP Manual, Accessible at: http://www.ppp.gov.za/Legal%20Aspects/PPP%20Manual/Main%20Intro+Contents.pdf.

In South Africa, implementing agencies must seek four approvals, three of which take place during the procurement stage. Implementing agencies must seek approval: 1) after the feasibility stage; 2) after preparing the bid documentation and draft PPP agreement; 3) after selecting the preferred bidder and completing the VfM report; and 4) after negotiating with the preferred bidder and finalising the PPP agreement.[34]

In determining the number of key approvals, public authorities must seek a balance between establishing sufficient approvals to ensure VfM, while avoiding unnecessary red tape and delays in approvals that could reduce private interest.

Figure 2.4: Key Approvals in Jamaica[35]



[34]National Treasury of South Africa PPP Manual, Accessible at: http://www.ppp.gov.za/Legal%20Aspects/PPP%20Manual/Main%20Intro+Contents.pdf.
[35]Source: http://dbankjm.com/services/ppp-and-privatisation-division/public-private-partnerships-ppp/the-process/

Throughout the approvals process, PPP projects should be subjected to strict tests against the key guiding principles of the PPP programme, in particular VfM and fiscal affordability:

- Can the institution afford the deal?
- Is it a VfM solution?

Textbox 2.25: Checklist for Outlining Institutions and Key Approvals in the PPP Policy

Does the PPP Policy outline:	
Stages	The main stages of the PPP Process?
Institutions	Which agency, team, or institution is responsible for each stage and for the activities within each stage?
Approvals	Which key approvals need to be acquired, and at which stages of the PPP Process? Which public authority will provide these approvals?
Tests	Which tests the PPP project will be subjected to at the approval stages (for example: fiscal affordability and VfM)?

Approvals at key stages of the PPP process must also take account of political cycles, and possible changes in the composition of the ruling political administration. This fact is not unique to the Caribbean; any incoming government the world over will put ongoing projects "on hold", while they appraise themselves of the facts. Given that most PPP projects span several years between conception to final implementation, it is highly likely that this time period could overlap with political timetables.

Change of political administration is not a problem in itself; and PPP practitioners should always be prepared for such an eventuality. Incoming administrations will need a complete briefing on the status of the ongoing projects, their rationale and development impact, and other factors they will need, in order to make informed decisions. One large project that straddled three political administrations was the Kingston Container Terminal (KCT) privatisation, as explained in Textbox 2.26.

Textbox 2.26: Privatisation of Kingston Container Terminals (KCT): Straddling Political Administrations

The plan to divest the port was initially announced in February 2009, by then Prime Minister Bruce Golding. In August 2011, French shipping group CMA CGM signed a Memorandum of Agreement (MoU) with the Jamaican Government, which would have seen the company investing US$100 million to improve infrastructure and equipment, under a 35-year lease to set up a major hub at KCT.

In January 2012, the political administration in Jamaica changed, from the Jamaica Labour Party (JLP), to the People's national Party (PNP), under incoming Prime Minister Portia Simpson-Miller. However the government's commitment to the privatisation of KCT did not waver, and in in 2012 an Enterprise Team was set up, to take the project through to a competitive tender process. Under this process, the French shipping line CMA/CGM was declared the Preferred Bidder, and Commercial Close was achieved in April 2015, with the signing of the 30-year Concession Contract between CMA/CGM and the Port Authority of Jamaica (PAJ).

The time for financial closing was originally set at 6 to 8 months, which would have seen the transaction finalised and the asset handed over by the end of calendar year 2015. However, as often happens there were delays in arranging all the financiers for the project's capital expenditure programme, which meant that the project was still ongoing in March 2016, when a general election returned the JLP to power, this time under Prime Minister Andrew Holness. The incoming administration requested a complete briefing on the project from the PAJ, and, satisfied that all was in order, completed the financial closing and handover of the transaction, in July 2016.

Source: http://infrapppworld.com/2016/07/megaproject-727-financial-close-reached-for-kingston-port-concession.html

MODULE 2

6. UNSOLICITED PROPOSALS

Governments usually solicit private sector participation in publicly initiated infrastructure projects in the form of a competitive procurement and contracting process. An alternative to a publicly initiated approach is a privately initiated process, often referred to as an Unsolicited Proposal (USP). In the case of a USP, a private sector entity ("USP proponent") reaches out to the government with a proposal to develop an infrastructure project.

The involvement of the USP proponent typically does not end after the submission of a proposal. Often the proponent is involved in developing the project studies in consultation with the government, which makes it difficult to organise a truly competitive procurement. USPs that are procured without a competitive process are likely to present challenges in terms of fiscal affordability, transparency, and VfM. USPs are very common in the Caribbean. Private companies are increasingly reaching out to Caribbean government officials to submit proposals to implement infrastructure projects that may not be included in the government's project pipeline.[36] The large number of USPs in the region is not surprising. Many government agencies face challenges in preparing, developing, and competitively procuring public projects, and are therefore tempted to rely on private parties. However, relying on the private sector to develop projects and, in particular, procuring projects without competition, can be dangerous for the public sector.

The international response to USPs has varied. Some countries, like the United Kingdom, have banned unsolicited proposals outright. Other governments have tried to encourage USPs in order to encourage innovative ideas from the private sector. Governments' approaches to USPs are often influenced by the public sector's capacity and PPP experience. Countries with limited public sector capacity often accept USPs hoping to accelerate infrastructure development, although anecdotal evidence indicates that USPs have in fact been slower to implement than conventionally initiated and procured projects. Countries with greater PPP capacity may still accept USPs, hoping to achieve greater innovation from the private sector.[37]

6.1 Acceptance of USPs

A government's decision of its treatment of unsolicited proposals should be based on a clear understanding of the benefits and challenges associated with USPs, as well as the extent to which they may impact the PPP programme. For example, governments will need to consider how their public sector capacity level will impact the extent to which the benefits of USPs outweigh the challenges, or vice versa.

[36]Alternatively, some USPs may be part of the government's public planning process, but may have stagnated for a number of years in the preparation and development phase, prompting a private party (USP proponent) to offer to develop and revitalise implement the project. | [37]For more information, see: Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned, Public-Private Infrastructure Advisory Facility (PPIAF), August 2014, Accessible at: http://www.ppiaf.org/sites/ppiaf.org/files/publication/UnsolicitedProposals_PPIAF.pdf

a. Benefits of USPs

The benefits of involving the private sector in project initiation are twofold:

✓ First, the private sector may be able to identify useful project concepts that the public authority has not considered. For example, a USP proponent may propose a solution based on its proprietary technology.

✓ Second, the private sector may be a source of new ideas on how to redefine or re-scope project that is in the public sector's priority list, but which may have been stalled, for a variety of reasons.

It is important to note that these two benefits are not only achievable with USPs. They could also be achieved market consultations, followed by a re-bid of the PPP project. Although many governments see USPs as a way to expedite the delivery of infrastructure assets, practice has shown that this is often not the case, and that USPs often result in a slower implementation of the project.[38]

b. Challenges of USPs

Achieving VfM is challenging enough in competitively procured projects, but is even more so in unsolicited projects. A few key challenges associated with unsolicited proposals are outlined below:

i. **USPs can drain public sector resources:** USPs can force a public authority to spend its resources investigating a multitude of unplanned projects, which may or may not turn out to be beneficial. USPs are often submitted directly to government ministers, bypassing established project initiation channels, and giving the USP an inordinately high profile in government. In addition, in most instances the initial USP is not a highly developed project, usually consisting of no more than a few pages outlining the project concept.

Poor quality USPs can overload the PPP institutions with inconsequential or half-baked business proposals. Evaluating USPs can drain the public sector of valuable financial and human resources and distract it from implementing its priority projects.

[38]Experience Review Report on Unsolicited Proposals, World Bank PPIAF, 2016 (Pending publication).

Construction work on the North-South Link of Jamaica's Highway 2000 Project, from Spanish Town to Ocho Rios. The second phase of the Project is a 50-year Concession, held by China Harbour Engineering Company (CHEC).

ii. **USPs suffer from lack of competition during procurement:** Many governments of emerging market economies allow the USP proponent to develop the project beyond its initial proposal, which gives the proponent an advantage over its competitors and discourages competing bids. Moreover, many governments provide certain incentives to the USP proponent during the tender process, or even enter direct negotiations to implement the projects, without the benefit of competition. Lack of competition during procurement limits the potential for VfM, highlighting the advantage of not offering any incentives during procurement.

iii. **USPs suffer from lack of transparency and accountability:** In many countries, USPs bypass the regular procedures for the initiation, evaluation, development, procurement and implementation of a project. As a result, USPs are prone to lack of transparency, accountability, and are often the subject of allegations of improper process or corruption. This highlights the importance of USP projects following the regular procedures and approvals for project development and procurement (and maybe even stricter procedures and approvals).

Textbox 2.27 below shows that unsolicited proposals can quickly become highly controversial, in the public domain:

Textbox 2.27: Jamaica North-South Highway: An Unsolicited Proposal Creates Waves

Projects procured through USPs can quickly become controversial. In May 2012 the Jamaican Office of the Contractor General (OCG) issued a strongly-worded statement regarding the government's procurement of the North-South Highway, through an unsolicited proposal received from China Harbor Engineering Company (CHEC). In the statement, the OCG called USPs "a corruption enabling device".

The contracting authority, National Roads Operating and Construction Company (NROCC), had awarded the North-South project to CHEC in the second phase of a larger national toll road project: Highway 2000. The private operator of the first phase, a consortium led by the French firm Bouygues Travaux Publics, held a Right of First Refusal (RoFR) to build and operate the North-South Highway as a toll road, but declined, citing profitability issues and concerns about geotechnical risk. It was around this time that CHEC made their unsolicited offer to NROCC, which, after a period of negotiation and analysis, was accepted.

In response to the concerns raised by the OCG and others, NROCC engaged the OCG and civil society in robust debate, on the merits and challenges of procurement approaches under the Highway 2000 project.

Sources: http://jamaica-gleaner.com/power/37625; http://www.ocg.gov.jm/ocg/sites/default/files/media239.pdf

USPs demonstrate an interesting paradox. Many governments believe that USPs are a good way to overcome their lack of technical capacity to develop and implement public projects by themselves. However, experience has shown that on the contrary, implementing a USP project is more challenging and requires even more capacity and expertise than developing and procuring a publicly initiated project along competitive lines. Lacking technical capacity while entertaining USPs can be dangerous, and can lead to low VfM for the government and users.

c. Establishing USP management guidelines

Because of the challenges associated with obtaining VfM from a USP project, governments should treat USPs as an exceptional way to initiate projects; only to be accepted in defined circumstances and to follow prescribed procedures. For countries with limited to no PPP experience, it may be advisable to discourage USPs entirely in the early years of the PPP programme. This recommendation acknowledges that successfully implementing a USP project is challenging and requires even more expertise and experience than for a publicly initiated PPP project.

If governments decide to allow unsolicited proposals, they should establish strict minimum requirements for the submission of proposals. Establishing minimum requirements for USPs discourages the private sector from submitting low-quality proposals that drain public sector resources during the evaluation stage. These minimum requirements may include pre-feasibility results, financial models, or business cases. In Jamaica, for example, the government requires the USP proponent to develop a full Business Case, as shown in Textbox 2.28.

Of course, establishing minimum requirements alone will not be sufficient. The government will also need to provide guidelines or manuals to ensure that public officials can evaluate the feasibility study results, financial models, and other documentation that the USP proponent submits. Indeed, in many countries, public officials have been found to exercise flexibility in judging USPs, despite clear minimum requirements, likely a result of lack of capacity.[39] Governments should also consider hiring external support for evaluating USPs, including consulting with the Regional PPP Support Facility.

Textbox 2.28: Jamaica's PPP Policy: Unsolicited Proposals

Unsolicited Proposals

An unsolicited proposal is a proposal made by a private party to undertake a PPP project, submitted at the initiative of the private firm – rather than in response to a request from the Government. Unsolicited proposals can be beneficial, but also bring unique challenges. For this reason, the PPP Policy has been developed to allow the Government to benefit from the innovation and market interest that unsolicited proposals signal, while preserving competitive pressure, transparency, and fiscal discipline.

An unsolicited proposal must contain a complete Business Case for the proposed project.

Benefits and challenges of unsolicited proposals

The PPP Programme accommodates unsolicited proposals because they indicate PPP projects that would be successful in the market, and may contain new ideas that add value for both the private sector and the public at large. Private firms are naturally on the look-out for profit-making opportunities – that is, instances where they can add value or reduce costs. So, they may spot opportunities that require government involvement – for example, because they use an asset owned by the Government – which the Government has not identified.

At the same time, unsolicited proposals also bring challenges. If the Government negotiates directly with a Proponent, it loses the benefits of competition, so it may not achieve maximum value for money. Other firms may complain that direct negotiations are unfair, since they were not given an opportunity to participate, or profit by offering a better deal. On the other hand, if all unsolicited proposals are simply put out to competitive tender, few firms will bring unsolicited proposals, since their investment in developing the proposal will not benefit them financially. The PPP Policy specifically considers how unsolicited proposals will be considered and treated. The details of the procedural requirements for the submission of unsolicited proposals are contained in the PPP Procedures Manual.

Source: Government of Jamaica PPP Policy. March 2015

[39]For more information, see: Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned, Public-Private Infrastructure Advisory Facility (PPIAF), August 2014, Accessible at: http://www.ppiaf.org/sites/ppiaf.org/files/publication/UnsolicitedProposals_PPIAF.pdf

Textbox 2.29: Minimum Requirements for USPs in South Africa

A USP in South Africa must contain the following information in terms of the proponent:

- The proponent's name, address, identification or registration number (if a corporation), VAT registration number, and the contact details of its authorised representative;
- Identification of any confidential or proprietary data not to be made public;
- The names of other South African institutions that have received a similar USP;
- The proponent's current South African Revenue Service (SARS) tax clearance certificate and, in cases where the proponent is a consortium or joint venture, a current SARS tax clearance certificate for each member thereof;
- A declaration of interest containing the particulars set out in Standard Bid Document (SBD) 4, issued by the National Treasury;
- A declaration of the proponent's past supply-chain practices, containing the particulars set out in SBD 8, issued by the National Treasury; and
- A declaration of the proponent to the effect that the offering of the USP was not the result of any non-public information obtained from officials of the relevant institution or any other institution.

The USP must set out the following information in terms of the product or service offered:

- A concise title and abstract (approximately 200 words) of the proposed product or service;
- A statement of the objectives, approach and scope of the proposed product or service;
- A statement describing how the proposal is demonstrably innovative and supported by evidence that the proponent is the sole provider of the innovation;
- A statement of the anticipated benefits or cost advantages to the institution, including the proposed price or total estimated cost for providing the product or service, in sufficient detail to allow a meaningful evaluation by the institution;
- A statement showing how the proposed project supports the institution's strategic growth and development plan and its other objectives; and
- The period of time for which the proposal is valid for consideration, which may not be less than six months.

Source: National Treasury Republic of South Africa. Unsolicited Proposals. National Treasury Practice Note No 11 of 2008/2009

6.2 Policy for USP Management

In response to the increasing reliance on USPs worldwide, governments are developing frameworks and policies to manage them in a transparent and competitive manner.[40] Most national PPP policies have sections outlining how public officials should manage USPs. This Section aims to provide public officials with key recommendations on managing USPs and addressing USPs in the PPP Policy.

In developing a policy for dealing with USPs, government officials should address at a minimum the following questions:

- What is the definition of an Unsolicited Proposal (USP)?
- What are conditions for the acceptance of USPs?
- How are USPs to be treated throughout the project cycle, from project preparation, through feasibility, procurement, and implementation?
- How should the government ensure transparency and competition when procuring projects initiated as USPs?

[40]For more information, see: Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned, Public-Private Infrastructure Advisory Facility (PPIAF), August 2014, Accessible at: http://www.ppiaf.org/sites/ppiaf.org/files/publication/UnsolicitedProposals_PPIAF.pdf

a. Definition of an unsolicited proposal

Governments define USPs as: "The private initiation of an infrastructure project (as opposed to public initiation through the regular project identification process)". Therefore, what makes USPs different from regular public projects is nothing more than the fact that the private sector introduced the project. After project initiation, the development and procurement of the project should follow as much as possible the same processes, assessment rules, and competitive procedures as a project that the public sector initiated and developed.

Some Caribbean governments have defined USPs in their PPP Policies. Saint Lucia and Grenada define a USP as "a proposal initiated by a private party to undertake a PPP project that was not specifically requested by Government."[41] Similarly, Jamaica defines a USP as "a proposal made by a private party to undertake a PPP project, submitted at the initiative of the private firm – rather than in response to a request from the Government."[42]

b. Conditions for unsolicited proposals

The projects for which private firms submit USPs may not be part of the government's existing policy objectives or priorities. As such, the government may not have identified the need for the project. This highlights the difficulty of evaluating USPs and the importance of creating clear evaluation criteria.

Governments should clearly outline the definition of a USP in the National PPP Policy. It should outline clear conditions under which USPs may, or may not be accepted. This allows the government to ensure that proposals are in line with its policy objectives. In Saint Lucia and Grenada, for example, the government may only accept USPs under three conditions:

i. The project must present an innovative solution to a public service challenge;
ii. It may not be in the government's priority list of projects; and
iii. The project must present a solution "that is unique to the private entity proposing it," in other words, the USP proponent owns the assets, land, or technology that makes it uniquely able to provide a particular service."[43]

In Grenada and Saint Lucia, the conditions for accepting USPs focus on only allowing the private sector to initiate projects that the government is not able to initiate on its own.

[41]Government of St. Lucia, PPP Policy, March 2015 and Government of Grenada, PPP Policy, July 2014. | [42]Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica, October 2012, Accessible at: http://dbankjm.com/files/public-private-partnership/ppp_policy.pdf | [43]Government of St. Lucia, PPP Policy, March 2015 and Government of Grenada, PPP Policy, July 2014.

Textbox 2.30: Saint Lucia's PPP Policy: Accepting and treating USPs

The Government of Saint Lucia will accept unsolicited proposals only if they fall into one of the following two categories:

An innovative solution to a priority infrastructure or public asset management challenge—that is, a solution that was not already under consideration or development by the Government (and hence not already included in the Public Sector Investment Programme); or

A solution to a public need that is unique to the private entity proposing it. For example, the proponent may own assets, land, or technology that makes it uniquely able to provide a particular service.

Unsolicited proposals for PPP projects in one or the other of these categories may be submitted to the PPP Core Team. Submission requirements will be set out in more detailed guidance material, but should at a minimum include all information necessary to screen the project proposal, as set out in Section 4.1 above. If accepted, unsolicited proposals will be subject to the same review and approval requirements as described above for Government-initiated projects. Responsibilities for further project preparation work will be clearly allocated between the proponent and a designated Government Project Team. In general, the proponent will be responsible for all project preparation and analysis required.

If the Business Case for an unsolicited proposal is approved, procurement will generally be through an open, competitive tender process. If the initial project proponent is ultimately not selected as the winning bidder, the winning bidder may be required to compensate the proponent for costs incurred in developing the project, to an amount agreed in advance by the Government with the proponent upon acceptance of the initial proposal. A project will be sole-sourced only where there is a clear reason that the original proposer is the only one capable of implementing it. In such cases, the Government will make every effort to ensure the proposal provides value for money.

Detailed guidance and tools will be prepared by the Core Team and adopted by the Steering Committee, to clarify requirements and processes for dealing with unsolicited PPP project proposals.

Source: St. Lucia's PPP Policy. March 2015

c. Managing unsolicited proposals

As emphasised earlier, USPs should be viewed as exceptions to the public initiation of projects. Making as few exceptions as possible to the regular PPP process is crucial to ensuring that the government obtains VfM from a USP.

Nevertheless, the extent to which governments are able to integrate USPs into the regular project cycle may depend on the level of public sector capacity. Indeed, for governments with limited public sector capacity, it may be tempting to allow the private sector to not only initiate the project, but also prepare and develop it, including conducting the required feasibility studies. However, allowing the private sector to develop the project makes it very difficult to ensure competition at procurement, because the USP proponent has a much greater knowledge of the project than its potential competitors.

The National PPP Policy should include step-by-step procedures for managing USPs. Public officials often welcome an objective USP framework that allows them to manage USPs according to a pre-determined process and without having to make exceptions. An objective framework also acts as a check against fraudulent or politically motivated proposals, and empowers officials to reject such proposals based on a rule-based process.

The step-by-step procedures for managing USPs should, at a minimum, be able to answer the following questions:

- Which department or agency is responsible for receiving and evaluating the USP?
- During which time of the year will the public agency accept USPs? In other words, will it accept USPs throughout the year, or only during specific weeks or months of the year?
- Which department or agency is responsible for checking the project against the PPP screening or "project appraisal" criteria?
- At what stage does the project enter the regular PPP process in terms of procedures and approvals?
- Are any special approvals or processes required for USPs?

Governments should also ensure that private proponents are easily able to access information on the following questions:

- To which department or agency should the private proponent submit the USP?
- Is there a specific timeframe for submitting the USP?
- What information and studies should be contained within the proposal?
- Is the USP proponent required to submit a feasibility study?
- What are the timeframes and subsequent steps in evaluating the proposal?
- Which mechanism does the government deploy in treating USPs?
- Will the public agency benefit from any reward mechanisms during the bidding process?

d. Procurement of USP projects

Ensuring a competitive procurement process is key to ensuring VfM from a USP. Governments often use some type of incentive mechanism to reward the USP proponent. The most common mechanisms include:

- **Right to match:** The government conducts an open tender process in which the USP proponent is allowed to participate. If the USP proponent does not win the tender, it has the right to match the winning bid, to win the contract. This approach is used in India and the Philippines, is and known for its anti-competitive impact. Right to match is included in the Jamaica PPP Policy and Procedures Manual (although it has not yet been carried out in practice).

- **Bonus system:** The government conducts an open tender process. In the evaluation of the bids, the USP proponent receives bonus points (generally 5 to 10 percent of the points), giving an advantage over other bidders. Chile and Indonesia use variants of this system.

- **Best and Final Offer (BAFO):** This option applies to a multi-stage tender procedure. The USP proponent does not have to pass the preliminary stages of the procedure, but is automatically invited to the last stage, in which the remaining bidders submit their best and final offers. This is the approach adopted in South Africa

- **Regular procurement with Developer's Fee:** The government conducts an open tender process, in which the USP proponent competes on equal terms with the other bidders. If the USP proponent is not the preferred bidder, the preferred bidder would reimburse the USP proponent for the costs of their project development, in an amount agreed with all bidders beforehand.

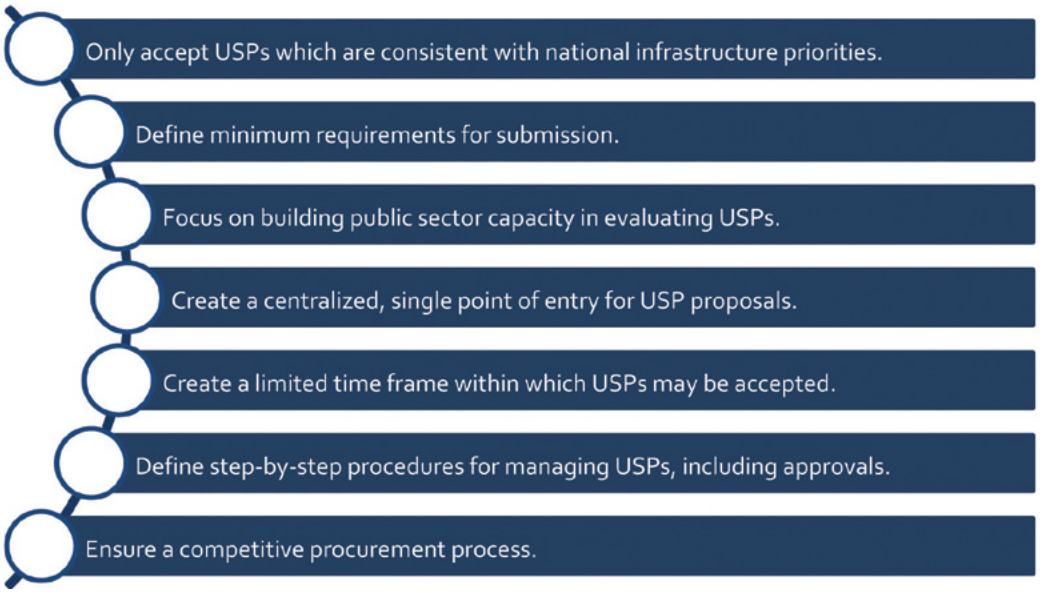
It is important to consider that the three first approaches—Right to match, Bonus system, and BAFO—distort the level playing field and reduce competition during procurement (particularly the Right to Match, which typically eliminates competition). Approaches that incentivise the USP proponent may discourage competing bidders from bidding. In addition, these systems often provide competing bidders with only a fraction of the time available to the original proponent for preparation of a proposal. As a result, there is a very slim chance that competing bidders will be able to produce high-quality proposals that can compete on an equal footing with the original proposal.

Because incentive mechanisms distort competition, some governments take the position that the procurement procedure for a USP should be entirely competitive. In this case, the government could reward the USP proponent for its efforts in developing the proposal in a different way, for example, by providing compensation for the costs of developing the proposal. Competitively procured PPP projects are, in general, the best way to ensure that a project represents VfM for the government and users.

Caribbean governments vary in their approaches to USPs. In Jamaica, how USPs are treated depends on whether the projects are listed within the government's list of PPP priority projects. If the project is listed in the government's PPP priority list, it will be subjected to standard competitive bidding. If it is not listed in the government's PPP priority list, but meets the PPP criteria, it will be subjected to the Right to Match (or "Swiss Challenge") mechanism.[44]

[44]Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy, Development Bank of Jamaica Limited, October 2012, Accessible at: http://dbankjm.com/files/tion_of_a_Public-Private_Partnership_Program.pdf

Figure 2.5: Best Practices for Managing USPs



Saint Lucia and Grenada adopt a somewhat different approach. In these two countries, approved USPs are subject to an open, competitive tender process. If the initial project proponent is not selected as the winning bidder, then the winning bidder may be required to compensate the proponent for the costs of developing the project.[45]

Unlike the approach adopted by Jamaica, the approach adopted by Saint Lucia and Grenada has the benefit of being fully competitive. The downside is that it can be challenging to create a level playing field, as the USP proponent reaps an advantage by having developed the initial proposal. In addition, if the USP proponent loses in the competitive bidding process, it can be challenging to determine a fair and adequate compensation amount for the preparation costs related to the bid development.

[45] PPP Policy, Government of St. Lucia, March 2015, and PPP Policy, Government of Grenada, July 2014.

MODULE 2

7. AMENDMENTS TO THE PPP POLICY AND MANUAL

A policy statement is not a static document; changes should be anticipated over time. With the benefit of experience and hindsight, PPP practitioners and policymakers should occasionally review lessons learned from application of the PPP Policy and Manual, and plan to make periodic modifications, as needed. Processes and institutional arrangements that seemed like a good idea at the outset of the PPP programme may prove to be unworkable, for example due to lack of capacity in some of the stakeholder institutions. The government may pass new laws, and create new institutions, which could affect the PPP Policy and, more significantly, the Procedures Manual.

In Jamaica, the country in the Caribbean with the most PPP experience, there have been no formal changes in the PPP Policy and Procedures Manual, since their adoption in 2012. This does not mean that there have not been any procedural changes over the past four years – there have. One major change in Jamaica has been the creation of the Public Investment Management Secretariat (PIMSEC), which fundamentally alters the procedures for early stage project identification and screening.

However as frequently happens, the stakeholders and practitioners have not had the time, to reflect on what has and what has not worked well; and to make the required changes. There is an established procedure for periodic reviews of Policy and Manual:

- **Review:** The PPP init within DBJ would consult with all stakeholders, review actual experience, list lessons learned and make recommendations for changes in Policy and/or manual. This task is often accomplished with assistance from external consultants.
- **High-Level Workshop:** A detailed review among Permanent Secretaries within affected Ministries, heads of government agencies and relevant non-governmental organisations (NGOs), to discuss and provide feedback on the effectiveness and efficacy of the PPP programme to date.
- **DBJ Board of Directors:** Approval of changes by DBJ Board of Directors.
- **Cabinet Approval:** Final approval.

MODULE 2

8. SUMMARY

Module 2 aimed to provide governments with considerations, guidance and tools for developing a National PPP Policy, which is one of the key building blocks of establishing an environment that enables the development and implementation of PPP projects.

Wrap Up:

In Module 2, the reader was introduced to the following elements associated with establishing a National PPP Policy:

- Establishing a governance structure to oversee the PPP Policy Formulation Process, as well as conducting a Financial Market Review, a Legal Review, a SWOT Analysis, and establishing an Implementation Plan or Roadmap for the PPP Programme;
- Defining the objectives, scope, and guiding principles of the PPP Programme;
- Defining PPPs and their value drivers in the PPP Policy;
- Determining institutional responsibilities and roles and defining the key approvals throughout the PPP Process; and
- Establishing a policy for managing unsolicited proposals (USPs).

Module 3 will introduce the first stage of the PPP Process, namely PPP Identification, Screening, and Selection.

MODULE 2

9. ADDITIONAL RESOURCES FOR PPP POLICY FORMULATION

Table 2.2 below provides a number of additional resources to assist in formulating a National PPP Policy.

Table 2.2: Resources to Assist in PPP Policy Formulation

Key References - PPP Policy Formulation		
Reference	Description	Link
National Public Private Partnership Policy Framework, Infrastructure Australia, December 2008.	The PPP Policy of Infrastructure Australia.	https://infrastructure.gov.au/infrastructure/ngpd/files/National-PPP-Policy-Framework-Oct-2015.pdf
Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy, Development Bank of Jamaica Limited, October 2012.	The PPP Policy of Jamaica.	http://dbankjm.com/files/public-private-partnership/ppp_policy.pdf
National Public Private Partnerships Policy, The Prime Minister's Office, United Republic of Tanzania, November 2009.	The PPP Policy of Tanzania.	http://www.tic.co.tz/media/PPP%20Policy.pdf
Working Together in Financing Our Future, Policy Framework for Public Private Partnership (PPP) in Northern Ireland, February 2003.	The PPP Policy of Northern Ireland.	http://catalogue.library.ulster.ac.uk/items/981415?query=author%3A(Northern+Ireland.+Department+of+Finance+and+Personnel)&resultsUri=items%3Fquery%3Dauthor%253A%2528Northern%2BIreland.%2BDepartment%2Bof%2BFinance%2Band%2BPersonnel%2529%26offset%3D60
Policy and Strategy for Public Private Partnerships, Government of Bangladesh, August 2010.	The PPP Policy of Bangladesh	http://www.pppo.gov.bd/download/ppp_office/Policy-Strategy-for-PPP-Aug2010.pdf

Table 2.2: Resources to Assist in PPP Policy Formulation cont'd.

Key References - PPP Policy Formulation		
Reference	Description	Link
Public Private Partnership Policy Statement, Ministry of Economic Development, Financial Services and Corporate Affairs, Government of Mauritius, May 2003.	The PPP Policy of Mauritius.	http://unpan1.un.org/intradoc/groups/public/documents/CPSI/UNPAN027786.pdf
Policy Statement on Public Private Partnerships, Government of Kenya, November 2011.	The PPP Policy of Kenya.	http://pppunit.go.ke/index.php/legal-regulatory-framework
National Policy on Public Private Partnerships, Government of Ghana, Ministry of Finance and Economic Planning, June 2011.	The PPP Policy of Ghana.	http://www.mofep.gov.gh/sites/default/files/docs/pid/ppp_policy.pdf
Public Private Partnerships Reference Guide, Version 2.0, International Bank for Reconstruction and Development / The World Bank, Asian Development Bank, and Inter-American Development Bank, 2014.	In Table 2.2, provides an overview of the scope of PPP policies and programmes in countries including Australia, Brazil, Chile, Colombia, Mauritius, Mexico, Puerto Rico, and Singapore. Box 1.2 provides an overview of PPP value drivers.	http://documents.banquemondiale.org/curated/fr/2014/01/20182310/public-private-partnerships-reference-guide-version-20
"How PPPs Can Help," PPP Knowledge Lab, World Bank Group.	Provides an overview of the seven main benefits of PPPs, including (1) mobilising additional funding for infrastructure, (2) improving planning, coordination, and project selection, (3) providing better VfM, (4) ensuring transparency, (5) reducing construction time and costs, (6) improving service delivery, and (7) ensuring regular maintenance.	https://www.pppknowledgelab.org/ppp-cycle/how-ppps-can-help
Key References - Unsolicited Proposals		
Public-Private Partnerships Reference Guide, Version 2.0, World Bank, Asian Development Bank, and Inter-American Development Bank, 2014	In Section 3.6, describes in detail the definition of an unsolicited proposal; the benefits and pitfalls on unsolicited proposals; and how countries have introduced policies to deal with unsolicited proposals.	http://documents.banquemondiale.org/curated/fr/2014/01/20182310/public-private-partnerships-reference-guide-version-20

Table 2.2: Resources to Assist in PPP Policy Formulation cont'd.

Key References - Unsolicited Proposals		
Reference	Description	Link
Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned, Public-Private Infrastructure Advisory Facility (PPIAF), August 2014.	Discusses a series of global trends related to USP processes; lessons learned from the management of such proposals; and some key implications for further considerations. The study recommends simple measures that countries could adopt to better manage USPs.	http://www.ppiaf.org/sites/ppiaf.org/files/publication/UnsolicitedProposals_PPIAF.pdf
Istrate, Emilia, and Robert Puentes, "Moving Forward on Public-Private Partnerships: U.S. and International Experience," Brookings-Rockefeller, December 2011.	In Chapter IV, provides international lessons learned on establishing PPP units.	
"Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure," World Bank / PPIAF, October 2007.	The objective of this report is to determine the nature of the contribution made by PPP units to "successful" PPPs, keeping in mind that such units clearly are neither always necessary nor sufficient for the success of PPP programmes.	https://www.ppiaf.org/sites/ppiaf.org/files/publication/WB%20-%20PPP%20Units%202007.pdf
Delmon, Jeffrey, "Creating a Framework for PPP Programs: A Practical Guide for Decision-makers," PPIAF, World Bank Group.	In Sections 1.0 and 2.1, provides an introduction on establishing a PPP policy, institutional, and legal framework.	http://www.ppiaf.org/sites/ppiaf.org/files/publication/PPP_guide-decision-makers.pdf

MODULE 2
PPP POLICY

APPENDIX 1:
CARIBBEAN MODEL PPP POLICY

1 Introduction

[Summarising overall Government objectives and rationale for use of PPP; for example:

- The Government of [Country] is committed to improving the quality of economic and social infrastructure across the country
- The Government also recognises that the public and private sectors both have roles to play in delivering the high-quality, responsive, resilient, and sustainable infrastructure services that [Country] needs
- To that end, the Government will engage in "Public-Private Partnerships"—relationships with private sector entities, which will introduce resources and expertise into infrastructure projects. Public-Private Partnerships (PPPs) will be used to support many of the Government's key policy objectives [describe]
- PPPs will provide much-needed resources for improving infrastructure. Crucially, PPPs will also improve the value achieved from government resources committed to these sectors. The Government's decision to implement a project as a PPP will be based on careful consideration of whether doing so will provide the best VfM.

This PPP Policy sets out the following:

- PPP definition, and the essential features of PPP contracts
- Objectives and scope of the PPP programme, in the context of [Country]'s development objectives, and the specific objectives of this PPP Policy
- Processes by which PPP projects will be identified, developed, procured, and managed—including how the Government will treat unsolicited proposals
- Institutional responsibilities for the PPP programme, and for developing, implementing, and approving PPP projects
- Key commercial principles by which PPP contracts will be structured
- Approach to managing the fiscal implications of PPP projects
- Mechanisms for ensuring transparency and accountability in the PPP programme.

This PPP Policy provides a high level framework. The policy will be supported by detailed guidance material and tools intended to clarify and help government officials meet the requirements set out in this policy.

MODULE 2

PPP DEFINITION

A Public-Private Partnership (PPP) is a long-term contract between a private party and a government agency, for providing or managing a public asset and associated service(s), in which the private party bears significant risk and management responsibility. In this context:

- The private party to a PPP contract may be any majority privately-owned company or consortium
- The government agency may be a [Ministry, a State Enterprise, a Statutory Body, or any other Government contracting authority]. This agency retains overall responsibility for ensuring the service is provided to the quality required, by carefully managing the PPP contract
- The public asset or service may be a new infrastructure or other investment, or may involve existing infrastructure or other public assets and services. PPPs may be used in wide a range of sectors, and for a wide range of assets and services—provided the public sector has an interest in having the service provided
- The nature of a PPP contract may vary; but involves the private sector bearing significant risk and management responsibility. PPP contracts:

  ✓ Transfer management responsibility for a public asset to the private party over the duration of a long-term contract. This may involve financing, designing, building or rehabilitating, maintaining, and operating the public asset and associated services; or some subset of these functions

  ✓ Remunerate the private party based on outputs delivered—such as the availability of the asset or the provision of services to clearly-defined performance standards. Payments to the private party may be made by users, by government, or by a combination of the two; penalties may also be imposed, by the government party or by regulatory agencies, for failure to meet contractually-specified standards

  ✓ Allocate risk to the public and private parties clearly, comprehensively, and in a way that achieves VfM, by ensuring each party bears those risks they are best suited to manage.

PPPs can help achieve greater value in providing infrastructure by tapping into the resources and expertise of the private sector, and creating incentives for good performance—as described further in Box 2.1 on "PPP value drivers".

However, PPP contracts are more complex to prepare, procure, and manage than traditional public procurement contracts—and hence present new challenges and risks. This PPP policy aims to provide a framework for managing PPPs in [Country] in a way that capitalises on these value drivers and manages the associated risks.

Box 2.1: PPP Value Drivers

PPPs can help increase the availability, quality, and resilience of infrastructure and other public services, while reducing the fiscal commitment and risk involved in providing them. Well-structured and managed PPPs can do so in several ways.

First, some PPPs can mobilise additional funding and financing sources for infrastructure. Charging users or customers for products and services can also bring in more revenue to fund investment in public assets, and can sometimes be done more effectively or more easily with private operation under a PPP than by the public sector. Private operators may also find new ways to raise additional revenues from alternative uses for public assets, offsetting their cost to the government or service users. Even where PPPs are ultimately paid from the public purse, the fiscal risk associated with financing and constructing new infrastructure is reduced by risk-sharing with the private party—although the government typically also retains risks, creating contingent liabilities that should be identified and taken into account.

As well as increasing resources available for infrastructure, PPPs can also achieve better value for money from those resources—whether reduced costs or improved quality— through the following mechanisms:

• **Whole of life costing—PPP** typically integrate up-front design and construction with ongoing operations and maintenance under the responsibility of one company. This creates an incentive to carry out each function in a way that minimises total project cost over the long term

• **Adequate maintenance funding** is thereby also ensured over the asset lifetime, enabling timely maintenance to avoid costly degradation of assets, and providing budget predictability

• **Innovation and efficiency**—specifying outputs in a contract, rather than over- prescribing inputs, provides opportunity for innovation in both asset design and process efficiency, and competitive procurement incentivises bidders to develop innovative solutions for meeting these specifications. Some such process or design innovations may be applicable by the Government to a broader range of public services, increasing the impact of the PPP through technology transfer

• **Focus on service delivery**—under a PPP, the responsible agency enters into a long- term contract for services delivered. Management in the PPP firm is focused on service delivery, free from competing objectives or constraints typical in the public sector

• **Accountability**—government payments, when necessary, are conditional on the private party providing specified outputs at the agreed quality, quantity, and timeframe. If performance requirements are not met, service payments to the private sector party may be abated and/or financial penalties applied

MODULE 2

OBJECTIVES AND SCOPE

The Government of [Country] will use PPPs as an instrument to implement priority investment and infrastructure projects that are aligned with the Government's development objectives, where doing so is expected to provide the best value for scarce resources. This section briefly sets out the objectives of the PPP programme, in the context of [Country]'s development objectives, and the specific objectives of this PPP Policy.

1. Objectives and scope of [Country]'s PPP programme

[Statement of development objectives and context should be developed depending on the specific objectives of the Government]

Meeting [Country]'s infrastructure need is beyond the capacity of the Government alone, and the Government of [Country] intends to engage the private sector in providing and managing public assets through PPPs. The objective of the PPP programme is to make the best use of the financial and technical resources of the public and private sectors to provide high-quality, responsive, resilient, and sustainable public assets and services in a way that achieves VfM for the Government and service users.

PPPs will be used to deliver high-priority projects that are central to achieving [Country]'s overall development objectives, where the use of PPP is expected to deliver greater VfM than other procurement and implementation alternatives. The Government will therefore consider PPP for proposed investment projects that have the following characteristics:

- Assets with significant investment value. Since the cost of preparing and managing a PPP contract is significant for both public and private parties, PPP will typically only be considered for projects with a minimum investment value of [EC$50m]. However, smaller projects could be considered on a case by case basis
- Output requirements that can be clearly specified and monitored. Specifying outputs rather than inputs and linking payment to delivery of those outputs are defining features of PPP contracts. PPPs will therefore be used only for delivering assets and services whose outputs can be clearly and comprehensively contractually specified, and monitored in practice

- Outputs address stable needs over the contract lifetime. The long-term nature of PPP contracts reduces the flexibility of the Government to adjust specifications over time. PPPs will therefore be considered for assets and services for which needs are expected to be relatively predictable—while also building in mechanisms for dealing with change
- Scope for innovation or improved infrastructure performance. The use of PPPs will be focused on those sectors and services that are currently under-performing, or where [Country] could benefit most from introducing private sector and international experience and expertise. This would include sectors where there is a need for expansion, innovation and/or the adoption of new technology
- Ability to generate revenues beyond Government payments. To maximise benefits in alleviating fiscal constraints, the use of PPPs will be focused on projects that are expected to generate revenues, whether from charging service users or ancillary sources.

[Government to define whether PPP will focus on certain sectors and/or whether certain sectors will be excluded; and clarify intersection of PPP policy and institutional framework with other sector policies—e.g. energy; general private sector investment incentives]

2. Objectives of [Country]'s National PPP Policy

This National PPP Policy (Policy) sets out clearly how the Government of [Country] will identify, develop, implement and manage PPPs. It aims to ensure the potential benefits of using PPP to deliver public assets and services bear out in practice, such that PPPs are developed effectively and efficiently, and in a way that achieves VfM for the Government and infrastructure service users. It also aims to guide the private sector on what they can expect in their partnership with the public sector.

Specifically, the objective of this Policy is to ensure PPP projects are selected, developed, and implemented per the following guiding principles:

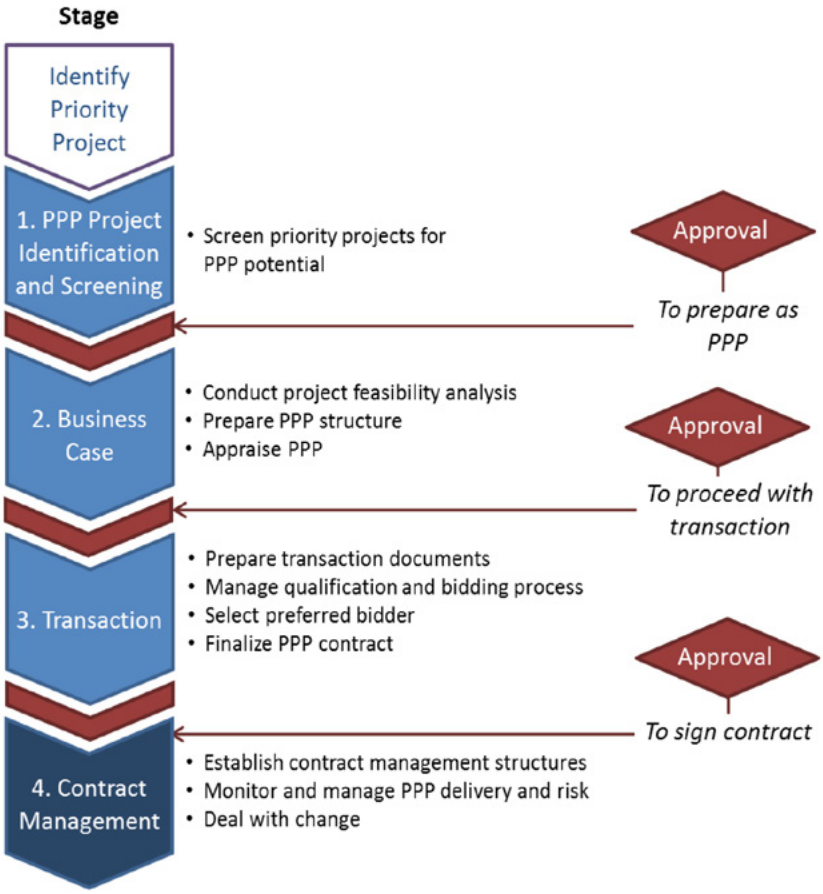
- VfM—PPPs are selected and structured to achieve the optimal combination of benefits (that is, quality, responsive, resilient, and sustainable infrastructure and public services) and costs to government and users, by capitalising on the value drivers described above
- Fiscal responsibility—the fiscal impact of PPP projects is well-understood, expected costs are affordable, and the level of fiscal risk is acceptable
- Transparency and probity in how PPPs are identified, developed, procured, and managed
- Environmental and social sustainability—environmental and social impacts of PPP projects are carefully assessed, and are managed appropriately
- Partnership and inclusiveness—PPPs meet and balance the objectives of all interested parties—the government agency and private party, as well as service users and other stakeholders—and are managed through a spirit of partnership and cooperation to achieve common goals of improved infrastructure services.

MODULE 2

PPP PROCESSES

To achieve the objectives stated above, all PPP projects in [Country] will be developed and implemented following a consistent, transparent process. The PPP process consists of four stages, as shown in Figure 2.6: (1) identifying and screening potential PPP projects; (2) developing a business case; (3) preparing for and implementing a PPP transaction; and (4) managing PPP contracts. Box 2.2 below sets out the criteria against which a proposed PPP will be assessed at each key decision point. Under certain circumstances some of this work may be undertaken by a private company based on an unsolicited proposal to the Government for a PPP project.

Figure 2.6: PPP Process



The following sections provide an overview of each stage of the PPP process. Detailed guidance and tools will be prepared and adopted to support responsible Government officials at each stage.

Box 2.2: PPP project appraisal criteria

To ensure that the objectives of the PPP programme and the potential benefits of using PPPs are achieved in practice, the Government will ensure that all PPP projects meet the following four criteria:

- **Feasibility and economic viability of the project**—the underlying project makes sense, in that it is central to policy priorities and sector and infrastructure plans; technically, legally, environmentally and socially feasible; economically cost-benefit justified and the least-cost solution to the identified service need
- **Fiscal responsibility**—the project's cost to Government is in line with fiscal priorities, and risks retained by Government would not be fiscally destabilising
- **Commercial viability**—there are qualified private parties available to do the project, and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension
- **VfM**—the proposed PPP is expected to achieve VfM compared to alternative implementation options; and compared to other PPP structures (that is, the PPP is structured well).

1. PPP Project Identification and Screening

PPPs are first and foremost public investment projects. Hence, as shown in the diagram, the process of developing and implementing a PPP is preceded by identifying a priority public investment or service need. The aim of this stage is to select from among these priority projects those that are expected to provide better VfM if implemented as PPPs.

[Adapt the following according to [Country]'s public investment planning process]. Identifying priority public investments and service needs in a given sector is primarily the responsibility of the Ministry, Department, or Agency (MDA) responsible for that sector. From among these priority projects, those with the characteristics listed in Section Objectives of [Country]'s National PPP Policy: Objectives of [Country]'s National PPP Policy may be considered for implementation as PPPs. In certain circumstances, potential PPP project ideas may also arise from unsolicited proposals from the private sector, as described in the Section below.

At this stage, identified potential PPP projects will be screened, by carrying out a quick and approximate check that a PPP for the project is likely to meet the criteria described in Box 2.2 above—that is, whether the Project is likely to be viable, and commercially attractive, fiscally responsible and provide VfM as a PPP. Depending on the complexity of the project, this could require stakeholder consultations, and pre-feasibility analysis to identify technical solutions and major risks, and estimate project costs and revenues. This analysis will be presented by the relevant MDA in a Project Concept Note, along with an estimate of the work and resources required to develop a business case and prepare for a transaction. This Concept Note will be submitted to ***[Approving Authority–see below]*** for review and approval to proceed to the Business Case stage.

2. Business Case

Once a priority public investment project has been identified and initially approved for development as a PPP, the next step is to develop a Business Case for the project. A project Business Case sets out the scope and proposed structure of the project, and a detailed assessment of its viability and suitability for implementation as a PPP.

Developing a Business Case is an iterative process, through which the scope and structure of a proposed PPP is progressively developed and assessed against the criteria set out in Box 2.2. Depending on the nature of the project, it is likely to involve:

- Further stakeholder consultations on project needs and options
- Technical feasibility analysis, including identifying costs and significant risks
- Preparation of concept design drawings
- Social and environmental impact assessments and management plans
- Financial and economic analysis of the project and of proposed PPP structures, including estimating revenues
- Developing "key commercial terms" for the proposed PPP, including the contract type, allocation of key risks, and payment mechanisms, following the key commercial principles described in Section PPP Commercial Principles, and assessing its commercial attractiveness, including through initial market sounding
- VfM analysis: assessing and articulating the rationale for implementing the project as a PPP under the proposed structure in terms of VfM for government and service users
- Fiscal analysis: identifying and assessing the level of fiscal support required for the project—both direct, and contingent through the risks to be accepted by Government under the proposed structure—and the affordability of this support given fiscal priorities and constraints (with reference to the treatment of PPP liabilities described in Section Fiscal Management and Accounting for PPPs below).

The Business Case will present the resultant project scope and structure, and summarise the results of this analysis, demonstrating the compliance of the proposed project with the criteria described in Box 2.2. The Business Case will be carefully reviewed and scrutinised by relevant agencies before being submitted to Cabinet, as described further in Section 5.4 on PPP Approvals.

3. Transaction

Once Cabinet approval is given to proceed based on the Business Case, the team will prepare and implement the PPP transaction. The objective at this stage is twofold: first, to select a competent firm or consortium to act as the private developer/operator; and second, to identify the most effective and efficient solutions to the proposed project's objectives—both from technical, and value for money perspectives. Achieving these objectives requires a well-prepared, transparent, competitive transaction process. A PPP transaction is a form of public procurement. As such, ***[PPP transaction processes will be consistent with [Country's relevant procurement law or regulations– review to check consistency].***

While the specific transaction process may vary depending on project needs, it will typically include the following steps:

- **Invite Expressions of Interest (EoIs) and qualify bidders.** To ascertain the level of market interest and determine whether private parties have the financial and technical capability to deliver the project, the Government may invite expressions of interest, and on the basis of responses received select a shortlist of potential bidders. This process may be initiated in parallel with preparation of detailed transaction documents. Requests for EOIs will be published in national, regional and globally-followed platforms relevant to the sector, and will provide an overview of the project scope, as well as clear guidelines for the submission requirements and criteria for assessing bidder qualifications

- **Prepare transaction documents.** To attract qualified investors and achieve competition in the bidding process the PPP transaction documents must be comprehensive and well-prepared. PPP transaction documents to be issued to qualified bidders will include, but not be limited to:

  - Full draft contract agreements, based on the key commercial terms defined in the Business Case, and following the commercial principles set out in Section PPP Commercial Principles. The nature of this contract documentation will vary with the nature of the PPP, particularly whether it involves existing or new assets
  - Request for Proposal (RFP) documents, which should include a detailed description of the proposal process, required proposal contents, and evaluation criteria

- **Issue Request for Proposals (RFP) and manage interactions with bidders.** The project team will ensure that bidders benefit from open and equal access to project information, for example through a data room. Protocols for bidder interactions during bid preparation will be established in the RFP documentation—these will include a structured, transparent, and fair process for bidder feedback and adjustment of the draft PPP agreement.

- **Evaluate and select preferred bidder.** Bidders will submit information detailing their qualifications and detailed technical and financial proposals, which will be evaluated according to the process and criteria set out in the transaction documents. The highest-scoring bidder will be identified as the 'preferred bidder'

- **Finalise contract.** Once the preferred bidder has been selected, the Government will finalise the PPP contractual agreements with that bidder. Some negotiation may be necessary to clarify elements of the proposal or contract, but the Government will not incorporate substantive changes to the PPP contract at this stage (that is, changes that could have resulted in a different result from the bidding process).

- **Final approval**. The final contract must be re-submitted to Cabinet for approval before signing. This submission must present any changes to the expected cost and project structure as approved at Business Case stage, and provide a clear rationale for how those changes remain consistent with the PPP criteria set out in Box 2.2.

- **Contract execution and financial close.** Once the contract is signed, several more steps, or 'conditions precedent' may be needed to achieve contract effectiveness and financial close. These may include legislative and/or regulatory changes. The project team will remain responsible for timely and comprehensive completion of these actions.

Detailed guidance on the transaction process may be prepared and adopted by Government to help implementing agencies follow the above policies, including model transaction documents.

4. Contract management

The PPP contract will be monitored and managed over its lifetime to ensure all parties' obligations are met, and services are delivered as expected. The responsible Government Agency, in consultation with the [PPP unit], will designate a [Contract Manager (or contract management team, as needed)], and develop the processes and tools for managing the contract. The Contract Manager will:

- **Monitor PPP delivery and risk**—ensuring that services are delivered continuously and to a high standard, in accordance with the contract; risk allocations are maintained in practice and risks are properly mitigated; and payments or penalties are made according to contract specifications. This may include establishing and managing contract monitoring arrangements such as use of independent engineers or mechanisms for consumer feedback. Performance of the PPP will be measured against original projections, as amended.

- **Manage change**—ensuring that external risks and opportunities are spotted and changing circumstances are acted on effectively in a way that achieves VfM over the project lifetime; and putting into practice contractually-defined mechanisms to deal with contract adjustments, dispute resolution, and contract termination

- **Manage contract expiry and asset handover**—managing the transition of assets and operations at the end of the contract term, including ensuring these meet contractually-required quality and operational standards. *[Add: Government reporting requirements for PPP projects, aligned as possible with broader public investment project monitoring and oversight]*

5. Unsolicited proposals

[Government should determine whether unsolicited proposals will be accepted. If so, the following process is recommended.] An unsolicited proposal is a proposal initiated by a private party to undertake a PPP project which was not specifically requested by Government. Unsolicited proposals may allow the Government of [Country] to benefit from private sector innovation and ideas meeting infrastructure needs. However, they also bring challenges. The Government will consider unsolicited proposals that are demonstrated to be of public interest, but only under a framework that preserves competitive pressure, transparency, and fiscal discipline.

The Government will accept unsolicited proposals only if they fall into one of the following categories:

- A solution to a publicly-identified challenge that is unique to the private entity proposing it. For example, the proponent may own assets, land or technology that make it uniquely able to provide a particular public service
- An innovative solution to a priority infrastructure or public service challenge—that is, one that was not already under consideration or development by the Government.
- A way of taking advantage of new markets, technologies or unique project ideas

Unsolicited proposals will be subject to the same review and approval requirements as described above for Government-initiated projects, with the proponent responsible for project preparation and analysis, working with a designated Government project execution team. If the project is approved, procurement will generally be through an open, competitive tender process. Tender documents will be prepared in collaboration with the proponent based on the proposal, and any confidential information contained in the proposal identified and protected. If the proponent is not selected as the winning bidder, the winning bidder may be required to compensate the proponent for costs incurred in developing the project, to an amount agreed in advance by the Government with the proponent.

A project may be considered for sole-source procurement only where there is a clear reason that the original proposer is the only one capable of implementing it. In such cases, the Government will make every effort to ensure the proposal provides VfM. Detailed guidance and tools will be prepared and adopted to clarify requirements and processes for dealing with unsolicited PPP project proposals.

Kingston Freeport Terminal Limited: In 2016 the Government of Jamaica signed a 30-year Concession with CMA-CGM, the world's largest shipping company, to expand the trans-shipment port in order to accommodate the new Panamax-sized container ships transiting through the Panama Canal.

MODULE 2

INSTITUTIONAL RESPONSIBILITIES FOR PPPS

Developing and implementing PPP projects will require close coordination between several Government entities.

The PPP programme will be overseen by a [PPP Steering Committee]. The [XX team in Ministry of Finance] has been designated as a 'PPP unit', to act as secretariat to that committee, and as a focal point for day-to-day management of the PPP programme. Each PPP initiative will be the responsibility of the relevant Ministry or Government agency, and will be implemented by [a multi-agency project team]. Proposed PPPs will be reviewed and approved by Cabinet at key stages in the development process. The roles of the [PPP Steering Committee, PPP unit, PPP Project Teams], and responsibilities for review and approval of PPP projects are described in turn below.

1. PPP Steering Committee

[The following to be edited or adapted to reflect existing Government institutional roles and capacities] A PPP Steering Committee has been established to provide direction to the PPP programme, and oversee the development and implementation of PPP projects. The responsibilities of the PPP Steering Committee are as follows:

- Guide the development of PPP policy
- Select projects to be developed as a PPP, based on an initial screening by the PPP unit
- Hold PPP execution teams accountable for developing and implementing PPP projects, following an agreed project timeline
- Guide Contract Managers as needed to manage change during the lifetime of the PPP contract.

The PPP Steering Committee consists of [May vary by government: likely Permanent Secretaries or Ministers responsible for Finance, Infrastructure]. Other [Ministers or PSs] may join the Committee when projects under their portfolios are being considered or implemented as PPPs. At a minimum, the attendance of [describe; may vary by government] will be required for committee decisions pertaining to a PPP project.

2. PPP core team

The Ministry of Finance will designate a PPP [Focal Point and/or Core Team] to act as Secretariat to the PPP Steering Committee in managing the PPP Programme. The responsibilities of the PPP Core Team are as follows:

- **Develop and disseminate PPP policy**—advise on development of PPP policy and regulation; develop guidance material and templates, and build understanding in public and private sectors of the government's PPP programme
- **Regulate the PPP programme**—ensure that all PPP projects are developed in accordance with PPP policy, principles, and processes. This includes ensuring projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are managed well
- **Contribute to development of PPP projects** - forming part of the PPP Execution Team responsible for developing the business case for each PPP project and implementing the PPP transaction
- **Be a repository of skills and knowledge**—continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling information on PPP projects in [Country], and systematically analysing the success of those projects—what has worked and what has not—to inform the development of the PPP programme.

3. PPP project teams

A PPP Execution Team will be established for each project selected for development as a PPP project, reporting to the PPP Steering Committee. The PPP Execution Team will drawn from ____; led by __; and be responsible for developing a Business Case for the project, and for implementing the PPP Transaction, with the support of experienced advisors. Each PPP Execution Team will be led by a representative of the responsible Ministry or Government agency, and will include representatives of the Ministry of Finance PPP Core Team, and other relevant Government entities.

When the PPP transaction reaches financial close, a **Contract Manager** or management team will be appointed by the responsible Ministry or Government agency, to manage the PPP contract for its duration. The Contract Manager may refer to the PPP Steering Committee to provide guidance as needed to manage change over the contract lifetime.

4. PPP reviews and approvals

All PPP projects will require review and approval at key stages in the PPP development process. The objectives of these reviews and approvals are to ensure that PPP projects are aligned with Government priorities, and are developed according to this Policy and its guiding principles.

The table below sets out PPP review and approval requirements [roles may vary by government—with a view to ensuring this is parallel with public investment projects]. At each stage, approvals will be based on the relevant submission demonstrating that the PPP is (or is expected to be) compliant with the PPP Criteria set out in Box 2.2 [The PPP Core Team will be responsible for coordinating this review and approval process—except for Concept Note stage which may be part of broader PIM process].

Table 2.3: PPP Reviews and Approvals

Stage	Review Required	Approving Authority	What is Approved
Project Identification and Screening: upon submission of Concept Note	Ministry of Finance	PPP Steering Committee	Form Project Execution Team and proceed to develop Business Case
Business Case: upon submission of Business Case	Ministry of Finance; MDA; Attorney General	Cabinet	Proceed to prepare and implement transaction
Transaction: upon submission of final contract prior to signing	Ministry of Finance; MDA; Attorney General	Cabinet	Sign PPP Contract
Contract Management: in case of renegotiation, prior to signing revised contract	Ministry of Finance; MDA; Attorney General	Cabinet	Sign revised PPP Contract

MODULE 2

PPP COMMERCIAL PRINCIPLES

PPP contracts will be designed to achieve the best VfM for the Government and service users. To that end, this section outlines commercial principles that will guide the preparation of PPP contracts in [Country]. The Government may develop and adopt detailed guidance material and standard PPP contract clauses that encapsulate these principles.

1. Risk allocation and management

Appropriate allocation of risk between the Government and private parties is critical to successful PPP projects. Project risks will be allocated following the principle that each party bears the risk they are best-placed to manage. This means risks will be allocated to the party best able to:

- Influence the risk, where possible
- Anticipate or respond to the risk factor, if it cannot be influenced directly; or
- Absorb the risk, where it cannot be influenced and its impact cannot be controlled.

Following this principle, the party to which a risk is allocated will also have control over decisions related to the risk factor. Examples of risks to be considered include land acquisition risks, design and construction risks, demand risk, macroeconomic risks such as inflation and foreign exchange rates, regulatory risks, and force majeure risks. Risk allocation will be achieved primarily through the PPP contractual agreements. Allocation mechanisms may include the performance-based payment and penalty mechanisms described in Section 6.2, and where appropriate, provision of Government guarantees or indemnities as a mechanism for accepting or sharing certain project risks. The Government will thereby accept or share only those risks it believes it is best positioned to manage, and will not offer general guarantees on overall project returns. To ensure the intended risk transfer to the private party is achieved in practice, a minimum level of equity finance may be required. Performance bonds may also be required in cases or project stages where the equity exposure of the private party is limited.

The Government may adopt detailed guidance and tools for risk allocation and management, including defining preferred risk allocations.

2. Payment mechanisms and performance specifications

The PPP contract will clearly set out the performance standards required and the mechanism(s) by which the private party will be paid. A key feature of PPP contracts is that these are performance linked, and remuneration depends on achieving contractually-defined performance standards.

Performance standards will be output-based—that is, they will define the standards of the asset or service required, rather than specifying how those standards should be achieved. They will also be SMART: Specific, Measurable, Achievable, Realistic, and Time-bound.

Payment mechanisms by which the private party will be remunerated may include user charges, Government payments or a combination of the two, as follows:

- For PPPs that involve charging users for services, the PPP contract will establish the right of the private party to collect these charges, and include as appropriate mechanisms and responsibilities for setting and/or adjusting the level of charges over time

- Government payments under PPP projects will generally be made only on delivery of the asset or service to the contractually-specified standards over time. Payments may be linked to availability of the asset, or delivery of specific outputs. Government payments may in some cases include capital contributions during construction where this is considered to result in the best VfM—any such payments will be linked with achievement of contractually-defined construction milestones. The contract will define the timing and mechanism by which Government payments will be made.

In either case, the PPP contract may also define **bonuses or penalties** for achieving or failing to achieve clearly-defined performance targets. The PPP contract may also require the private operator to post performance bond(s), to ensure compliance with contractual minimum standards.

Given the long-term nature of PPP projects, unpredictable changes over the lifetime of the contract are inevitable. PPP contracts will therefore include appropriate adjustment mechanisms by which services or payments may be adjusted in response to changing circumstances. Such adjustment mechanisms will aim to create a clear process and boundaries for change.

3. Fiscal incentives

[Set out any fiscal incentive regimes for investment projects that may apply to PPP; refer to appropriate law or regulation. PPP-specific fiscal incentives are not recommended – but in practice may be necessary]

4. Refinancing

When a PPP is being implemented, changes to the project risk profile or in capital markets may mean the private party can replace or renegotiate its original debt on more favorable terms. Each PPP contract will set out how the gains from refinancing will be determined and treated. The preferred approach will be to split such gains 50:50 between the public and private parties to the contract.

5. Dispute resolution mechanisms

Due to the long term and complex nature of PPP contracts, differences in interpretation can arise, leading to disputes. Each PPP contract will establish a resolution process to ensure disputes are resolved quickly and efficiently, without interruption of service.

6. Termination provisions

Upon termination of the PPP contract, the project assets will revert to the Government. A termination date will be clearly set in the PPP contract, along with arrangements for contract close and asset handover. The PPP contract will also set out circumstances that would allow for early termination, and any financial consequences. While the latter may vary by project, the Government will generally not make termination payments that include compensation to equity holders due to private party default.

7. Renegotiation

PPP contracts will be carefully designed to minimise the need for renegotiation during the contractual term, by comprehensively allocating risks and building in appropriate mechanisms for dealing with change. Renegotiations will be approached with caution, given the absence of competitive pressure for the private party. The Government will accept an offer for renegotiation only if it believes that renegotiation is likely to improve VfM and if the same ends cannot be achieved within the contract.

Any proposed renegotiation will be approached following the same principles, criteria, and analysis as a new PPP contract. Cabinet approval will be required for the revised contract. Where renegotiation requires adjustment to contractual payments, benchmarking or market testing will be employed where possible in lieu of a competitive process to help ensure VfM.

MODULE 2

FISCAL MANAGEMENT AND ACCOUNTING FOR PPPS

Under PPP projects, the private party is typically responsible for raising the financing needed for construction and commissioning. Nonetheless, PPPs typically create fiscal obligations for the Government, which can in some cases be similar to those arising from traditionally-procured projects financed by Government debt. PPP fiscal obligations may be direct—that is, where the payment need is known—or contingent—where the occurrence, timing, and magnitude of a payment depends on some uncertain future event. The Government of [Country] is committed to responsible management of its fiscal commitments arising from PPP projects. This includes identifying and appraising the fiscal implications of all proposed PPPs and ensuring these are in line with fiscal priorities, as described in Section 4: PPP Processes. It also includes recognising and reporting fiscal commitments to PPPs in public financial plans, reports, and accounts.

Following international practice[46], the Government will determine when and how PPP projects and their associated liabilities should be recognised as contributing to public debt:

- For 'government-pays' PPPs—where the revenue stream to the private party comprises payments from the responsible government entity— the Government will recognise and include in measures of public debt a liability equal to the value of the PPP asset

- 'User-pays' PPPs will not generally be considered as creating liabilities that should be recognised and factored into public debt measures. Nonetheless, where these projects involve fiscal risk through the provision of Government guarantees or other risk-sharing mechanisms, the associated contingent liabilities will be disclosed in notes to public financial statements, and reported alongside information on public debt in [list other important financial reports]. These contingent liabilities will be recognised as public liabilities only if payment is considered probable.

  For PPP projects involving a combination of government and user payments, the treatment in accounts and public financial reporting will be split accordingly.

[46]This approach is based on the principles set out in the International Public Sector Accounting Standard (IPSAS) 32, which defines how governments should account for PPP liabilities, and IPSAS 19, which defines the treatment of contingent liabilities.

MODULE 2

TRANSPARENCY AND ACCOUNTABILITY

The Government of [Country] is committed to a fully transparent process that ensures that information about PPP projects and the performance of the PPP programme is publicly available. This will enable independent auditing entities and the general public to hold the Government accountable for its management of the PPP programme. [Add reference to any broader transparency or freedom of information policies that would apply to PPP information]

To that end, the Government will disclose PPP project and programme information as follows:

- Information on each potential PPP project and invitation for Expressions of Interest will be published as part of the tender process;
- PPP contracts will be published as soon they become effective, along with a summary of the key project features and commercial terms. Certain contractual details may be excluded to protect commercially sensitive information;
- Contract changes will also be published as soon as they become effective;
- Performance data of each active PPP will be publically available.

[Role of the Contractor General / Auditor General / other oversight agencies in carrying out audits of PPP project processes and/or the PPP programme as a whole may vary by country] PPP projects and the PPP programme as a while may be periodically audited to assess whether the provisions of this policy have been followed, and whether the resultant projects are achieving the stated aims of the policy. External advisors may be contracted to provide appropriate expertise in assessing PPP project quality.

MODULE 3

PPP PROJECT IDENTIFICATION AND SCREENING

Several of the Region's larger ports are gearing up for increased trans-shipment traffic as a result of the recent widening of the Panama Canal.

1. PPP PROJECT IDENTIFICATION AND SCREENING

Key Issues for Decision-Makers

PPP Identification, Screening, and Selection is the first stage in the PPP Process. It provides an opportunity to evaluate a PPP model without expending substantial resources.

Not every project is suitable for delivery as a PPP.

PPP Identification, Screening, and Selection ensures that valuable human and financial resources are applied only to projects that can realistically be delivered as a PPP.

PPP Identification, Screening and Selection requires focused efforts. Completion of this stage results in projects that are good PPP candidates and that will require full feasibility analysis.

Introduction

Governments typically consider a large number of infrastructure projects every year, as part of their regular planning processes. In the Caribbean, most of these projects are implemented using conventional delivery models, as only some have the potential to be delivered as Public Private Partnerships (PPPs). PPP Project Identification and Screening allows governments to determine which projects are suitable for PPP delivery, and which ones should be delivered using a conventional public procurement approach.

PPPs have the potential to deliver large and often complex projects more rapidly and with better value for money (VfM) than conventional delivery models. However, PPP procurements, in particular a government's first few PPP projects, typically require more transaction expertise, cost and time than conventional procurements. Prioritising projects ensures that human and financial resources are used effectively and that the projects being developed are likely to succeed. As such, projects that do not deliver on the government's objectives or have limited PPP potential are eliminated at an early stage.

The PPP Project Identification, Screening and Selection stage has two potential outcomes. If the project successfully passes through the PPP Screening process, the government will decide to develop the project as a PPP. If the project does not pass through the PPP screening process, the government may decide to: (i) review the project's objectives or scope and submit it for re-screening at a later stage; or (ii) deliver the project using a conventional approach. In either case, the basic objective of PPP screening is to move the project along; either onwards towards implementation as a PPP – or not as a PPP.

1.1 The PPP process

PPP Project Identification, Screening, and Selection is the first stage of the PPP Process, shown in Figure 3.1. The four stages of the PPP Process are described on the following page.

Figure 3.1: The PPP Process

Stage1: Identification and Screening: Before considering a PPP delivery model, the public agency must identify its priority investments needs. Typically, sector ministries submit priority projects, which should align with the government's policy objectives. The objective of this stage is to "screen" the priority projects, in order to determine whether they meet basic criteria and have the potential to generate VfM if implemented as PPPs. This is the first step to define if PPP is the best delivery option for a project. Because of its budgetary implications, the decision to move a project to the next stage normally requires high-level approval. This stage is covered in this Module of this Toolkit.

Stage 2: Business Case: Once a priority public investment project has been approved for potential PPP delivery, the next step is to develop feasibility studies for the project that help all stakeholders understand the rationale and business case for the project. Studies conducted at this stage typically include technical and financial feasibility studies, VfM and fiscal impact analyses, cost-benefit or economic analyses, and social and environmental impact analyses. This stage will end with a set of recommendations on the project, including the structure and principal terms of the PPP contract. The scope and depth of the studies will depend on the complexity and the size of the project. This stage is covered in Module 4 of this Toolkit.

Stage 3: Procurement: Once the relevant contracting authority, and approving institution (usually the Cabinet), have approved the feasibility studies, the project moves on to the procurement stage. During this stage, a PPP agreement is drafted; a private partner is selected as the preferred bidder based on a competitive procurement process; the PPP agreement is finalised and signed; and contract close is followed by financial close. This stage is covered in Module 5 of this Toolkit.

Stage 4: Implementation: A PPP contract has a much longer duration than a conventional public procurement contract (which typically ends with handover of the asset to the contracting authority – or shortly thereafter). This creates the need for long-term contract management expertise by the contracting authority. Contract management includes, inter alia, monitoring the performance of the concessionaire and the contracting authority; managing the payment mechanism; implementing any changes to the contract; and handling unexpected or compensation events. This stage is covered in Module 6 of this Toolkit.

1.2 Structure of Module 3

Module 3 provides guidance on identifying, screening, and selecting projects for PPP potential. The guidance addresses the following topics:

- Identifying suitable projects;
- Adding PPP considerations in project assessments;
- Screening projects for PPP Suitability;
- Setting up a PPP Project Team and Project Plan, and preparing a PPP Concept Note; and
- Conducting a Gateway Review.

MODULE 3

2. PPP PROJECT IDENTIFICATION

The first stage in the PPP Identification and Screening process is to identify priority projects from the public investment process. Chapter 2 introduces the various approaches to identifying projects, the stakeholders involved, and measures that governments may use to encourage stakeholders to propose projects.

A distinction must be made between projects that are solicited, or initiated by government agencies, and projects that are unsolicited, or initiated by private firms. This Toolkit strongly urges governments to: (1) adopt public identification and solicitation approaches; (2) have each project (regardless of its origin) undergo the same level of technical and financial scrutiny; and (3) create a level playing field for the competitive procurement of each project.

2.1 Solicited or conventional project identification

Projects identified by Caribbean governments typically originate from a variety of sources, including:

- **Public sector planning process:** The starting point for identifying PPP projects is often a national planning process, initiated at sector or ministerial levels. These processes, which are conducted annually or periodically (e.g. every five years), result in a list of projects identified for further development. Many governments use an infrastructure gap analysis to identify service shortfalls and sector investment needs.

- **Policy-driven project identification:** If the government does not undertake a coordinated or systematic planning process, it may generate ideas on a case-by-case basis to respond to overarching policy priorities. For example, governments may adopt a policy to upgrade the national broadband or highway networks (like Highway 2000 in Jamaica).

- **Review of alternative delivery options for existing assets:** Governments may take a top-down approach to identifying potential PPP projects, considering where PPPs are likely to add the most value, and working together with sectorial ministries to choose specific projects.

This could include considering PPP delivery models for existing assets as part of an overall PPP strategy, as was done in Jamaica.

The stakeholders involved in the project identification process include:

- **Implementing Agencies:** Implementing Agencies screen all projects annually or periodically to identify those they recommend delivering via a PPP approach;

- **Line Ministries:** Line Ministries receive project suggestions from their Implementing Agencies, and may add other projects, subject to national priorities;

- **Provincial, Municipal and Local Governments:** Governments should provide all levels of government with the opportunity to submit projects, assuming these are not already included by line ministries;

- **Users, the general public, non-governmental organisations and the private sector:** Governments should always be open to ideas from the public, media and civil society, through established channels of communication;

- **The Private Sector:** Governments will often consult the private sector, to obtain their feedback on the government's project ideas, or to discuss unsolicited proposals submitted by private investors; and

- **Multilateral and Bilateral Agencies:** Governments may consult with international financial institutions or development partners, particularly for large investment projects that may require their funding and technical support.

The project identification processes result in a list of projects that the government is interested in developing further (whether through PPP or conventional delivery models). Lists of projects (or "Pipeline") can be official or unofficial and typically appear in documents such as:

- Budget documents, particularly those related to the capital budget;
- Capital Improvement Plans, for example for airport and ports;
- Real estate Master Plans;
- Prime Minister's executive priorities;
- Legislative mandates such as decrees or directives;
- Online platforms

In addition, lists of potential PPP projects can also be provided by non-governmental organisations such as:

- International Financial Institution project documents; and/or
- The private sector (for example through the adoption of new technology).

Governments may also undertake measures to encourage stakeholders to propose project ideas:

- Governments can improve the knowledge of PPPs among stakeholders, to equip them to explore PPP project potential;
- Governments can create processes or explicit requirements in the project planning and identification processes for assessing the PPP potential of all project ideas; and/or
- Governments can mandate a particular body (for example, a PPP unit) to assist in identifying PPP potential in projects across ministries and agencies.

The Government of Jamaica (GoJ) undertakes PPP project identification annually, supported by the PPP unit. Textbox 3.1 provides an example of specific measures introduced by the GoJ, to encourage early stage PPP project identification.

Textbox 3.1: Identifying PPP Projects in Jamaica

The Development Bank of Jamaica (DBJ) includes the Public Private Partnership Unit. The PPP Unit develops the PPP list and PPP projects directly, under the guidance of the Cabinet as appropriate. This work includes:

- Preparing an annual plan for the identification of candidate PPP projects;
- Screening candidate projects and recommending that they be prioritised in the PPP List sent to the Strategy Committee;
- Appointing a Technical Officer to lead each Project Team and serve as the central point of contact for the project;
- Hiring and managing external consultants; and
- Providing technical, administrative, and secretarial support to Enterprise Teams, by providing necessary information, ensuring their instructions are carried out, and preparing all necessary reports.

Source: Privatisation Agency and PPP Unit of Jamaica. Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy. pp. 17-18. 2012

2.2 Unsolicited project identification

Some governments allow private firms and other non-government entities to initiate and submit projects to the public sector for consideration. Unsolicited Proposals (USPs) should be subject to the same PPP identification, screening, and selection procedures as publicly initiated projects, to determine: (i) whether the project (as presented or with some adjustments) is in the public interest and merits further consideration, and (ii) if a PPP delivery model is the best implementation approach.[47]

Additionally, once the project has been identified as a good fit for PPP delivery, it must follow the same transparent procurement process that would ensure competition and the selection of the best offer. The onus is on the government to be the gatekeeper of project selection. Special attention must be taken during procurement, so that the USP proponent is not perceived as receiving preferential treatment from the government. The following textbox illustrates the experience with USPs in Jamaica.

Textbox 3.2: Jamaica Acknowledges Benefits and Challenges of Unsolicited Proposals

"The PPP Programme accommodates unsolicited proposals because they indicate PPP projects that would be successful in the market, and may contain new ideas that add value for both the private sector and the public at large. Private firms are naturally on the look-out for profit-making opportunities – that is, instances where they can add value or reduce costs. So, they may spot opportunities that require government involvement – for example, because they use an asset owned by the Government – which the Government has not identified.

At the same time, unsolicited proposals also bring challenges. If the Government negotiates directly with a Proponent, it loses the benefits of competition, so it may not achieve maximum value for money. Other firms may complain that direct negotiations are unfair, since they were not given an opportunity to participate, or profit by offering a better deal. On the other hand, if all unsolicited proposals are simply put out to competitive tender, few firms will bring unsolicited proposals, since their investment in developing the proposal will not benefit them financially. The PPP Policy specifically considers how unsolicited proposals will be considered and treated. The details of the procedural requirements for the submission of unsolicited proposals are contained in the PPP Procedures Manual."

Due to their controversial nature, USPs can become a highly contentious public policy issue. In May 2012, Jamaica's Office of the Contractor General (OCG) issued a "Public Statement" voicing their concerns on a number of large infrastructure projects, which at the time were the subject of USPs. The OCG described USPs as "corruption enabling devices"; and called for USPs to "be excised from the Government's Procurement Guidelines". The following day, the Jamaica Civil Society Coalition issued a similar statement, entitled: "A Review of Recent Government Infrastructure Procurement Decisions". This illustrates a commendably high level of concern among civil society, and certain arms of the Government of Jamaica, in ensuring the maximum transparency in public procurements.

Dyke Road Fishing Complex, Jamaica: Built as part of Highway 2000, to relocate fisher folk who had been illegally occupying lands adjacent to the new Highway, as part of the project's social responsibility programme.

Sources: Office of the Contractor General. Open Statement by the OCG Regarding the Proposed Highway 2000 North South Link and the Container Transshipment Hub Projects. May 1, 2012. Accessed June 2016 at: http://www.ocg.gov.jm/ocg/releases/open-statement-ocg-regarding-proposed-highway-2000-north-south-link-and-container; Government of Jamaica. Shaping new partnerships for national development. Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy. pp. 30. 2012

[47]There are strong public policy reasons for subjecting USPs to an even higher level of scrutiny, which will be discussed in the Business case and Procurement Modules of this Toolkit.

MODULE 3

3. PROJECT ASSESSMENT

After the government has identified its priority projects, the second stage is to assess these projects more thoroughly. This assessment involves confirming the societal need for the project and conducting a preliminary analysis of the economic benefits and costs to ensure that the project delivers value for society.

Module 3 highlights why government agencies should conduct project assessments in the early stages of project preparation. It then introduces a number of tools that governments can use to assess the justification for a project, including: (i) the Needs Analysis, (ii) the Economic Cost-Benefit Analysis, and (iii) the Pre-Feasibility Study. Governments should undertake these studies regardless of whether the project is intended for conventional or PPP delivery[48] This Module also introduces an Options Analysis, which helps the government identify PPP projects. Governments may choose to undertake these analyses separately, or as part of one overall assessment.

3.1 The importance of PPP project assessment

PPPs are a mechanism for the delivery of infrastructure projects and services. PPP delivery models can make "good" projects better by improving the speed, efficiency and quality of implementation. However, PPPs are unable to turn a "bad" project into a "good" project. The most important condition for achieving a successful PPP is, therefore, to begin by selecting a "good" project.

A "good" project means, among other things, that the project:

- Is well defined in scope and timing;
- Responds to real societal needs (evaluated in Needs Analysis);
- Is economically more attractive than its alternatives (evaluated in the Economic Cost-Benefit Analysis);
- Is technically and environmentally viable and sustainable; and
- Is financially feasible (evaluated in Pre-Feasibility Study).

[48]This Module presents the three studies as separate analyses. However, some governments may choose to combine the analyses into an overall assessment that includes all of the components.

A project that does not meet these conditions is likely to encounter difficulties in implementation. These difficulties include lack of public support; delays due to unanticipated regulatory requirements; cost overruns due to poor planning; lack of market appetite; and delays or cancellations caused by lack of funding. These challenges are common to all types of delivery models and are not specific to PPPs. However, because PPPs are more complex and transfer risks to the private partner, they are much more vulnerable to these challenges than conventionally delivered projects.

A private firm will only invest in a PPP project if it expects with reasonable certainty to recover its investment and earn an adequate return. Projects with uncertain financial feasibility will struggle to attract financing and bidders. Alternatively, private partners may submit a bid but demand a high price to compensate for the anticipated risks, resulting in a more expensive project and lowering affordability and VfM for the government and users.

Because PPPs are more complex and long-term than conventional delivery models, remedying implementation difficulties can be more challenging. At times, changed circumstances may require the government to renegotiate the PPP contract several years into the operational stage. In such cases, the implementing agency will find itself in a relatively weak negotiating position, because there is only one counterparty (the private partner) and no competitive pressure.

3.2 Needs analysis

A Needs Analysis assesses the societal and economic need for a project. The government should conduct a Needs Analysis regardless of whether the project will be delivered using a conventional or PPP model.

A public need for an infrastructure asset or service can present itself in the following circumstances:

a. The existing public service lacks capacity to meet society's needs (for example: intermittent electrical power, poor quality broadband);

b. The public service levels have not kept pace with increasing demand (for example: insufficient public transportation);

c. The public asset has low levels of operating efficiency (for example: inefficient and costly port operations);

d. Changing needs due to population growth or other dynamics (for example: technology trends and climate change); and

e. A government agency needs to replace public assets and services following a natural disaster or other catastrophic event (for example: damage caused by Hurricane Erika).

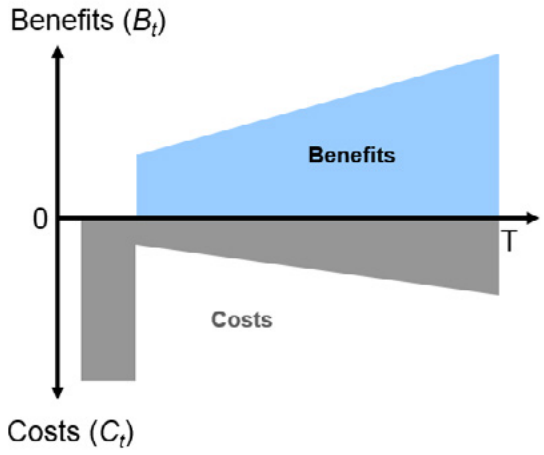
3.3 Economic cost-benefit analysis

The Economic Cost-Benefit Analysis (ECBA) assesses whether society will be better off, if the project is implemented. From a project planning perspective, the ECBA is an indispensable tool, particularly for large infrastructure projects, because it is the core rationale for implementing the project. Many countries use the ECBA as the first approval stage for infrastructure projects.

The ECBA considers and monetises the social, environmental, and economic advantages and disadvantages of the project. The results of the ECBA include: (i) an Economic Net Present Value (ENPV) of the net aggregate economic advantages (benefits) and net aggregate economic disadvantages (costs) of the project over its lifetime, and (ii) an Economic Rate of Return (ERR).

Although the ECBA is denominated in monetary terms, as either a positive or a negative ENPV, it includes implied monetary values for non-monetary costs and benefits. For example, in a highway project, the economic benefits that can be monetised may include inputted values for savings in travel time, enhancements in safety, reductions in pollution, lower accidents and decreases in vehicle maintenance costs.

Figure 3.2: Economic Cost-Benefit Analysis



The results of the ECBA have profound implications for public planning. A project with a negative ENPV has higher costs than benefits to society over its lifetime. Such projects should not be implemented, either as a public project or as a PPP, since it does not create net benefits to society. A project with a positive ENPV does create social value. A project with a positive ENPV can move on to the next stage, the Business Case, in which the government explores how such a project should be structured and delivered.

3.4 Pre-feasibility study

A Pre-Feasibility Study is an initial analysis of the technical, legal, financial, economic and environmental characteristics of a project. The Study analyses whether the project warrants the preparation of a full feasibility study. A checklist of the issues typically included in a Pre-Feasibility Study is presented in Tool 3.1. The Pre-Feasibility Study should include a Needs Analysis and/or Economic Cost-Benefit Analysis (explained in section 3.3 above).

Tool 3.1: Pre-Feasibility Study Checklist

Criterion	Key Questions
Legal Feasibility	• Does the contracting authority possess the legal authority to implement the project? • What are the required legal approvals, and from whom? • Will it be necessary to amend any laws or regulations? • Is the project expected to be legally feasible?
Technical Feasibility	• What is the geographical, functional and temporal scope of the project? • Is a preliminary or conceptual design available? • Have the major technical and operational risks been identified? • Is the project expected to be technically feasible?
Financial Feasibility	• What are the major project cost components? • Is there a preliminary market demand analysis? • Are the tariff/price assumptions reasonable? • Will the project require any increase in existing tariffs? • Is a (high level) financial model available? • Will the project require government financial support, and is such support likely? • Is the project affordable – to both government and consumers? • Have all the key financial and commercial risks – plus mitigating measures – been identified? • Is the project expected to be financially feasible? • Is the project expected to be economically feasible?
Social and Environmental Feasibility	• Is the project likely to have material social impacts? • Are material environmental impacts expected? • Can any social and environmental impacts be mitigated? • At what cost?

3.5 Options analysis

As mentioned, governments should undertake the three project analyses—the Needs Analysis, the Economic Cost-Benefit Analysis, and the Pre-Feasibility Study—for any project that they are considering, irrespective of whether it will be implemented using a conventional or PPP delivery model.

In order to facilitate the identification of PPP projects, however, the implementing agency may also conduct an Options Analysis. The Options Analysis allows the government agency to evaluate various options to deliver the project, including a conventional delivery and a PPP delivery. A template for a basic Options Analysis is provided in Tool 3.2.

The four assessments described in this Chapter 3 (Needs Analysis, Economic Cost-Benefit Analysis, Pre-Feasibility Study and Options Analysis) allow governments to begin identifying and assessing PPP options early in the project planning process. Governments can encourage their implementing agencies to consider PPP potential during their regular planning activities, or by specific efforts to identify potential PPP projects. By including an Options Analysis during the initial assessment of projects, the government can encourage agencies to consider PPP options early on.

Tool 3.2 Options Analysis Template

1	Project Name:			
2.	Project Description:			
3.	Describe how the project will meet the present and future needs of the public and users:			
4.	Describe how will the project meet the Sponsoring Agency's plans or strategy:			
5.	Describe options for delivering the service or facility: Option A: Option B: Option C:			
6.	Summary of Options Analysis:			
		Option A	Option B	Option C
	Operational features Cost Likely private sector interest			
7.	Recommended option:			
8.	List of involved government agencies:			
9.	Comments:			
10	Further required action:			

MODULE 3

4. PPP PROJECT SCREENING

After the government has confirmed the societal and economic need for an infrastructure project, and its preliminary financial, legal, and technical feasibility, the contracting authority can start considering the most appropriate delivery model. This section describes the screening processes that governments use to determine whether a project has the potential to be delivered as a PPP, or whether it is more appropriate to deliver the project using a conventional public procurement model.

4.1 The purpose of PPP Screenings

Project screening techniques are used to determine whether a project has the potential to be delivered as a PPP, or whether the project is unsuited to PPP delivery:

- Governments can introduce PPP screening into the regular project planning process:
  - Some governments require that all projects be screened for PPP suitability. This approach is appropriate for countries with an established PPP programme, and adequate capacity within contracting agencies.
  - Other governments require only that projects explicitly recommended for a PPP approach (after the Options Analysis) be screened. This approach is appropriate for countries that are in the early stages of their PPP programme.
- Governments can use PPP screening to undertake specific initiatives such as launching a PPP programme, or developing a PPP Pipeline.
- Governments can use PPP screening for an individual project in which an agency wants to assess the potential for PPP delivery.
- Oversight bodies, such as a PPP unit or Ministry of Finance, may require PPP Screening procedures.

- Governments can use PPP screening to prioritise potential PPP projects, identifying those that have the greatest potential and VfM.

This section provide tools and considerations that governments can use to conduct a PPP Screening or PPP Suitability Analysis.

4.2 PPP suitability analyses

When a government plans to deliver a project as a PPP, or add it to the PPP pipeline, it must assess whether the project is suitable for PPP delivery, based on how likely it is to generate VfM for the government and users. This step of the PPP screening process is often referred to as Suitability Analysis. The results of the suitability analysis are used to identify weaknesses in the project's characteristics or scope as well as the risks inherent to the political or legal environment under which the project is to be implemented in the long term.

Highlighting such weaknesses allows the project team to identify areas for improvement early on, and provide an early indication of an appropriate risk allocation. Furthermore, the suitability analysis guides the project team where further work may be required, or where there is missing data and information. The suitability analysis asks a series of questions that helps determine the extent to which a project is suitable for PPP delivery, based on the presence of value drivers. This is a preliminary version of the more rigorous qualitative VfM analysis that will typically be conducted at the Business Case stage.

In theory, the suitability analysis should be free from pre-conceived biases that may favor or disfavor PPPs. In practice, however, the assessment involves an inevitable degree of subjectivity; and different experts will be influenced by their personal viewpoints. It is important to be aware of the subjectivity involved in the suitability analysis, and the individual motivations that may lie behind expert judgements, in order to approach the assessment as objectively as possible. For example, engineers with primarily private sector experience may be quicker to see the potential efficiency gains under a PPP structure, than engineers who have always worked in the public sector.

Governments may also choose to include two stages in a suitability analysis:

- **PPP Project Suitability** focuses on whether the project has characteristics suitable for PPP delivery. Textbox 3.3 describes the key criteria and questions for the PPP Project Suitability Analysis.

- **PPP Context Suitability** (also referred to as the "PPP Enabling Environment" or "PPP Readiness") determines whether the government has the laws, policies and capacity in place, and whether the market has the appetite to successfully implement a PPP.

Textbox 3.3: PPP Project Suitability Analysis

Criterion	Key Questions	Clarification
Project Objective	Does the project involve the supply of a public service under the responsibility of the government? Does the project comply with relevant national/sector/ other planning?	A PPP is a long-term contract for the private delivery of a public service. If the project does not involve the supply of a public service, it may not be suitable for a PPP. "Public service" can be defined narrowly or broadly. A narrow definition would limit public service to a direct public benefit, for example, a new water treatment facility. A broad definition would include projects that provide indirect public benefits, for example, a new cruise ship terminal, which benefits only cruise line passengers directly, but indirectly generates economic benefits.
Project Type	Does the project type in combination with the proposed PPP scheme allow a substantial transfer of risks and responsibilities to the private sector?	A key characteristic of a PPP is the transfer of substantial responsibility and respective risks to the private sector, notably with regard to designing, building, operating and in particular financing the project. Not all projects allow for such a transfer of responsibilities (for example, due to specific regulations) and thus, not all projects will lead to the efficiency gain incentivised through risk transfer and risk sharing.
Project Size	Does the size of the project justify the transaction costs?	A PPP procurement requires more effort and costs than a conventional procurement, both for the implementing agency and bidders. For the benefits of PPP to outweigh the higher procurement costs, the project must be sufficiently large.
Project Plans	Are there preliminary designs or implementation plans?	While it is not necessary at this stage to develop a detailed design, it is advisable to have preliminary plans that can inform the preliminary financial analysis. An alternative is to obtain information from comparable projects.
Value for Money	Is the justification for considering a PPP sound? Does the PPP market have experience with similar projects?	If the Implementing agency is unable to state reasons to engage in a PPP, or if the stated reasons are unrelated to the Value for Money drivers of PPPs, then the objectives of the PPP are unsound or unrealistic. For example, is private management expected to reduce lifecycle costs or improve the delivery of the public service? Are these savings likely to outweigh the higher transaction and financing costs?
Market Precidents	Does the PPP market have experince with similiar projects?	It is more feasible to implement PPPs that have a precedent. A type of PPP that has not yet been attempted or a PPP in a sector that has no experience with such projects increases the risk of significant delay or failure. Although national or regional experience would be useful, it is not critical. The PPP market is international in nature, and global experience can find its way into the project.

Tool 3.3: PPP Context Suitability Analysis cont'd.

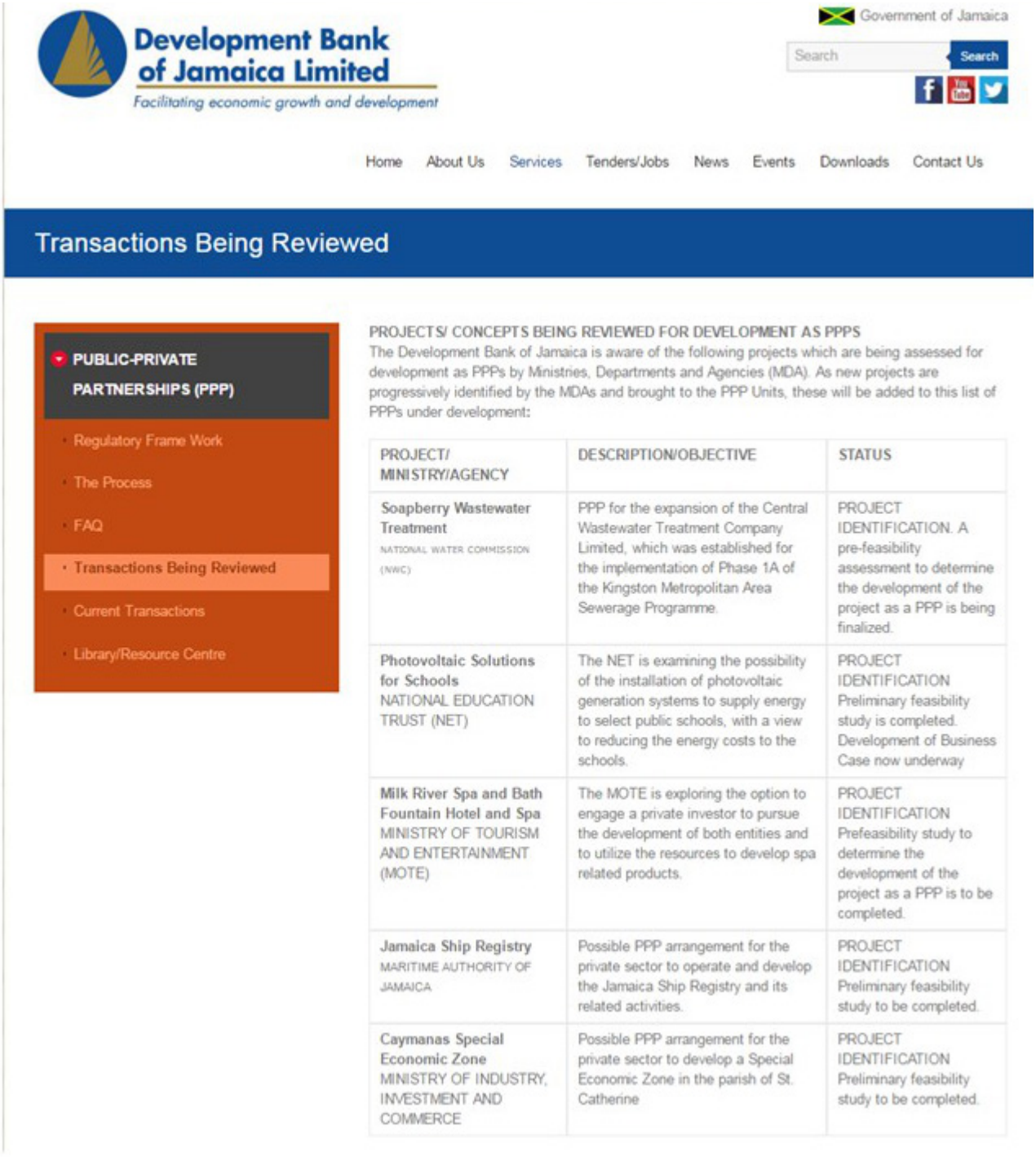
Criterion	Key Question	Clarification
Support	Is there sufficient support for PPP delivery?	The successful implementation of PPPs requires support from all of the stakeholders involved, both within the government and externally. Support from the highest levels of government is a clear success factor. Is there a "political champion"? In addition to political support, do development banks and similar partners support the project?
Legal Authority	Can PPPs be undertaken?	The existence of laws and regulations that allow PPP procurements is an important precondition for the implementation of PPPs in most countries.
Institutions	Are the institutional structures and capacity in place to implement PPPs?	It is important that the PPP regulations and/or policies describe institutional structures, including clear roles and responsibilities for the different project stages, and that these structures are in place.
Private Sector Appetite	Will there be sufficient private sector interest?	A successful PPP requires not only a willing government but also interested private firms. For a procurement to be competitive – which strengthens the negotiation position of the government at least 2-3 interested bidders are required. Government can get an idea of market interest through Expressions of Interest (EoI) or through other forms of market soundings (for example, constructive dialogue, response to information memoranda, etc.) In addition to being interested, the bidders will also need to understand PPPs and have the skills to successfully prepare and implement a PPP project.
Finance	Is a functioning project finance market in place?	A PPP requires private financing and therefore sufficient debt and equity providers. These financiers and investors can be either domestic or international, and ideally should have prior experience in financing similar projects.
Public Sector Capacity	Does the government have the required skills to implement a PPP?	While a PPP may deliver better VfM than conventional public delivery, PPPs are more complicated. Governments need specific financial, technical and legal expertise for preparation and execution. The Implementing agency and/or PPP unit – or their advisors – need to have this expertise.

4.3 Common challenges with the PPP pipeline

When launching a PPP programme, many governments develop a pipeline of eligible PPP projects. PPP pipelines are often publicised to demonstrate the government's seriousness and to gain interest from private firms. In some cases, particular projects are branded as special or "flagship," suggesting that they will receive special attention or support.

Experience with PPP pipelines is mixed. In some countries, they have served as intended, creating a predictable and transparent flow of projects that have been successfully developed and procured. In the Caribbean, the only country that has had close to a continuous flow of PPP projects is Jamaica. In other countries, producing extensive lists of PPP projects has almost become an end in itself. These project lists are widely publicised, but few projects on the list, if any, reach the procurement stage. Publicising pipelines without moving projects forward results in the government losing market credibility.

Figure 3.3: Jamaica's Project Pipeline



Common problems with extensive PPP pipelines include:

- Pipelines are filled with "flagship" or dream projects that will never be viable under any circumstance;
- Government agencies rush to include as many projects in the pipeline as possible, believing that this increases their chances of receiving political and financial support;
- Government agencies may have a tendency to add the least viable projects to the PPP pipeline, and keep the more viable projects for conventional delivery;
- Governments emphasise adding projects to the pipeline, but no attention is given to removing unviable projects from the pipeline — so the pipeline grows and continues to include out-of-date projects for political considerations; and
- Finally, governments can experience a "not on the list" problem, where a government agency may have a project with PPP potential that has not been included in the pipeline. No one then knows whether or how this project can be developed further.

If a Caribbean government decides to develop a PPP pipeline, it should ensure that it includes only appropriately identified and screened projects, to ensure credibility. Establishing a robust project screening process can help achieve this.

4.4 PPP screening in the Caribbean

Some governments in the Caribbean have instituted policies for identifying and screening PPP projects. Jamaica has an established PPP screening process,[49] and Saint Lucia screens projects for PPP potential utilising four criteria as described below.

Textbox 3.4: Saint Lucia PPP Screening

> For proposed projects that have been identified as prospective PPPs (and where relevant, have been included in the Public Sector Investment Programme (PSIP) pipeline as such) the first step will be to screen the project for its PPP potential. This requires a quick and approximate check that a PPP for the project is likely to meet the [required] criteria…—that is, whether the Project is likely to be viable, and commercially attractive, fiscally responsible and provide Value for Money as a PPP. Depending on the complexity of the project, PPP screening could require stakeholder consultations, and pre-feasibility analysis to identify technical solutions and major risks, and estimate project costs and revenues. The results of the screening will be presented in a Project Concept Note, along with an estimate of the scope of work and resources required to develop a Business Case and prepare for a Transaction.
>
> Screening analysis may be performed by the responsible Agency, with support from the PPP Core Team as needed, or may be contracted out to appropriately qualified consultants.
>
> Source: St. Lucia PPP Policy. p.11

[49]PPP Process Manual 2013

Textbox 3.5: Jamaica Public Investment Management System (PIMS)

Upon the successful concession award of Sangster International Airport (SIA) in 2003, the Government of Jamaica (GoJ) adopted a PPP Policy and standardised Procedures Manual. With the benefit of several years of actual project experience, the GoJ modified in 2015 its PPP project screening procedures.

The Jamaica Public Investment Management System (PIMS) became operational in May 2015, with the opening of the Public Investment Management Secretariat (PIMSEC). Hitherto, ministries, departments and agencies (MDAs) would send their PPP project concepts to the PPP unit within the Development Bank of Jamaica (DBJ) for screening; which took up a lot of staff time. Under the new system, MDAs will first submit their project ideas – PPP and otherwise – to the PIMSEC for screening. If PIMSEC decides to implement the project as a PPP, it would then be passed onto DBJ for "additional PPP pre-feasibility screening". This new system became operational in 2016.

MODULE 3

5. PPP PROJECT TEAM AND PLAN

Once the project has been screened and approved for its added social value and PPP potential, it moves on to the preparation stage. At this stage, the government will need to: (i) create a PPP project Team, and (ii) develop an effective project plan.

5.1 Establishing a PPP project team

Successfully implementing a PPP project requires commitment and perseverance. The project team will need to possess specialised skills spanning a number of disciplines as well as an understanding of "change management" in order to address the many organisational, procedural and motivational challenges that will accompany a new approach.

The PPP project team will need to include experts in finance, economics, law, public procurement, and engineering. PPP project teams typically augment their expertise with external advisors, particularly in the early stages of the PPP programme. The implementing agency typically appoints a team leader to lead the project team. It is often possible to form a PPP project team by drawing on the skills of staff from line ministries as well as personnel from the Ministries of Finance or Economic Development or their equivalents. Of course, if a PPP unit is in place, it too can contribute staff to the project team.

At this early stage, the PPP project team may still be relatively small. When projects move to the Business Case stage, however, and eventually to procurement, it will be critical to have a well-staffed project team in place. The qualities and abilities of the team leader are crucial. Tool 3.4 provides guidance on the competencies that should be sought in a team leader. The list should be a long list of desirable qualifications which might be difficult to find in one single person, stressing the relevance of a well-balanced project team.

The Trinidad and Tobago PPP Policy, for example, provides guidance on the establishment of a project team, as shown in Textbox 3.6.

Textbox 3.6: Trinidad and Tobago PPP Project Teams

A PPP Execution Team will be established for each project selected for development as a PPP project, reporting to the PPP Ministerial Committee. The PPP Execution Team will be responsible for developing a Business Case for the project, and for implementing the PPP Transaction, with the support of experienced advisors. Each PPP Execution Team will be led by the responsible Ministry or Government agency, and will include representatives of the Ministry of Finance PPP Unit, and other relevant Government entities.

When the PPP transaction reaches financial close, a Contract Management Team will be appointed by the responsible Ministry or Government agency, to manage the PPP contract for its duration. The Contract Management Team may refer to the PPP Ministerial Committee to provide guidance as needed to manage change over the contract lifetime.

Source: Government of the Republic of Trinidad and Tobago PPP Policy (Draft), 2012

5.2 Developing a PPP project plan

The PPP project team develops a PPP project plan at the outset of the process. The PPP project plan should describe at a minimum:

- The project timetable, showing key steps and tasks, key documents, and critical decisions and approvals required;
- Technical capacities needed going forward, both internal and external;
- Likely project development and transaction costs; and
- Key roles within the project, including decision-making authorities, and sources and funding for assistance.

The preparation of the PPP project plan will motivate the members of the project team to think critically about how the PPP process will be implemented and anticipate issues before they arise.

Tool 3.4: Checklist for PPP Project Leader Qualities

Competency Cluester	General Competencies	Specific Competencies
Individual	Applies professional expertise and experience	• PPP knowledge • Comparable project experience • Relevant knowledge in law, finance, public administration
	Develops self and others	• Professional development • Team development • Career development
	Resilient, of integrity, and motivated	• Determined • Of high integrity • Self-motivates • Rallies others
Task	Implements Strategy	• Strategy development • Strategy Implementation • Strategy communication
	Problem solver	• Innovative thinking • Listens • Supports decision-making
	Results-oriented	• Project managmeent • Handles change well • Monitors
People	Relationsihp builder	• Relationship management • Communication • PPP negotiation • Leadership • Delegation

5.3 Preparing a Project Concept Note

After screening the PPP projects, an agency may have selected one or more projects that it feels confident are worth pursuing further as PPPs. The proposed project or projects will have reached a decision point, in which the project team will need to present its findings to the decision-making authority. The decision-making authority will decide whether to advance to the Business Case stage. To assist decision-makers as well as to organise the Team's work, it is useful to draft a "Project Concept Note". The main purpose of the Project Concept Note is to provide a detailed description of the proposed project to support the decision-making process.

The Project Concept Note is typically prepared by the implementing agency, potentially supported by consultants and/or a PPP unit. Tool 3.5 provides an outline of a representative Project Concept Note. The implementing agency may add information categories, for example, detailed information on feasibility, if the project advances.

The procedures will provide guidance on how, to whom and when a Project Concept Note must be submitted, as well as the approval protocols. It will also include provisions for further clarification and eventual decision-making.

Tool 3.5: PPP Project Concept Note

Information	Description
Project Identification	Name and location of project
Project Description	Description of project, limited to no more than two paragraphs (covering investments, services, indication of quantities, etc.)
Rationale	Problems the PPP project intends to solve, such as physical deficiencies, inefficiencies, financial and regulatory issues, etc.
Implementing agency	Name and contact information of implementing agency or agencies
Current Status	Possibilities include: Pre-feasibility study, Feasibility study, Pre-competitive market consultation, Request for Expressions of Interest (RfEOI), Request for Qualifications (RfQ) issued, Prequalified bidders, Request for Proposals (RfP) issued, Indicative bids received, Shortlisted bidders, Request for Best and Final Offers (BAfO) issued, Binding bids received, Preferred bidder, Contract Close, Financial Close, On hold, Cancelled
Project History	Key dates and events up to the present time
Project Development Schedule	The proposed project development activities and their tentative timeframe, starting with the appointment of consultants and ending with the selection of the private party and financial closure. This should also indicate decision-making milestones.
Needs Analysis	Findings and conclusions
Pre-Feasibility Analysis	Findings and conclusions
PPP Sustainability Analysis	Findings and conclusions
Options Analysis	Findings and conclusions
PPP Project Plan	Findings and conclusions
PPP Model	If known, type of PPP contract, payment mechanism, duration, and expected benefits from PPP
Risk Management	Identification of key risks and challenges in the implementation of the PPP project
Key financial Information	If known, investment costs, annual operating costs, contract value (nominal and/or present value) and expected impact on public finance
Recommendations	Evaluation leading to recommendation for Cabinet
Funding Request	Total estimated budget for further project preparation and procurement and the amount requested. The budget should be broken down into project preparation, transaction execution, and capacity building. The amount requested should exclude any expenses incurred by the agency on its own staff and facilities. It can also include recommendations on cost sharing arrangements with the winning bidder, through the competitive tendering process.

MODULE 3

6. GATEWAY REVIEW

Typically, the implementing agency is responsible for PPP Project Identification, Screening and Project Planning, with support from the PPP unit, if one is in place. While the PPP project team makes daily decisions about the PPP project, policy decisions on whether to advance the project are the domain of Cabinet-level officials or their designees. A decision-making authority independent of the implementing agency may conduct a Gateway Review, with possible involvement of the PPP unit, a Steering Committee or the Regional PPP Facility.

The purpose of the Gateway Review at the end of the PPP Identification and Screening stage is to ensure that the proposed PPP project has been developed per the required procedures, and that it can advance to the Business Case stage. At a minimum, the Gateway Review checks the completeness of the Pre-Feasibility and PPP Suitability Analysis. Tool 3.6 provides sample questions that should be asked during the Gateway Review. This list of questions is indicative and governments should tailor it to the specific requirements in each country. It is advisable to include the Ministry of Finance in the Gateway Review in order to pre-assess the fiscal impact of the project.

A Gateway Review will result in one of the following decisions:

- The project should proceed as a PPP to the Business Case stage;
- The project should be revised and resubmitted for consideration (based on specified data requests);
- The project should be developed further under a conventional approach; or
- The project should be rejected altogether.

The project review process in Jamaica suggests how a PPP identification process can be finalised with a Gateway Review, as shown in Textbox 3.7.

Tool 3.6: Identifying Potential PPP Projects - A Readiness Check

Task	(Yes/No/NA)
A. Needs Analysis Has the project need been assessed? Has the project been defined to be the preferred alternative?	
B. Economic CBA Has the economic feasibility been assessed? Is the project economically feasible?	
C. Pre-Feasibility Analysis Has legal feasibility been assessed? Has technical feasibility been assessed? Has financial feasibility been assessed? Has the environmental impact been assessed? Have legal, technical, financial, social and environmental issues as well as means of mitigation been identified? Is the project legally, technically, financially feasible and social and environmental impacts are sustainable?	
D. Options analysis Have the potential delivery options been identified and assessed? Is PPP a serious and attractive delivery option?	
E. PPP Suitability Analysis Has the PPP Project Suitability Analysis been completed? Has the PPP Context Suitability Analysis been completed? Is the project likely to be successfully implemented as a PPP?	
F. PPP Project Planning Has a PPP Project Plan been developed? Have a PPP Project Team and Team Leader been appointed? Has a PPP Concept Note been developed? Have roles and responsibilities been determined? Has a work plan and timeline been defined?	

Textbox 3.7: Jamaica PPP Project Review

REVIEWS AND APPROVALS

The objective of reviews and approvals of candidate projects is to:

Ensure that the PPP Principles are effectively and consistently applied;
Ensure government resources available to develop and implement PPP projects are used efficiently, by implementing first the highest priority projects that will deliver the most value;
Ensure that these projects are properly developed and evaluated, and meet the criteria set out in the PPP Policy and Procedures Manual.

After the Project Identification Stage the Cabinet must approve the list of candidate projects (the PPP List) or a project's addition to the PPP List (reviewed by the Strategy Team).

GATEWAY REVIEW

A Gateway Review is a specially structured, in-depth review of a PPP transaction process, intended to ensure that all necessary analysis has been completed, and that all required information is presented when Cabinet is asked to make a decision.

The PPP unit, the DBJ Board, the Enterprise Team or Cabinet reserves the right to commission independent Gateway Reviews of a transaction as it deems necessary. The Gateway Review team will check to ensure that the notes to form the basis of the Cabinet submission:

- are presented in a clear format that includes the contents specified in the PPP Policy and Manual;
- fairly reflect the strengths and weaknesses of the proposed project, including compliance with all evaluation criteria;
- clearly identify risks and possible difficulties in project development, and present reasonable recommendations to deal with same; and
- include the views of all relevant stakeholders, including the Ministry of Finance & Planning.

Source: Government of Jamaica. Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy. pp. 26-27. 2012

MODULE 3

7. SUMMARY

Module 3 aimed to provide governments with considerations and tools to identify, assess, and select PPP projects for further development. A PPP Project Identification and Screening process ensures that only projects with PPP potential are further developed, and that scarce government resources are well allocated.

Wrap Up

In Module 3, the reader was introduced to the following topics:

- ✓ Identification: Governments identify potential PPP projects from existing project planning processes, which includes interacting with different stakeholders.
- ✓ Assessments: A PPP project assessment at the initial stage should be a light assessment. It typically includes a Needs Analysis, Economic Cost-Benefit Analysis, and a Pre-Feasibility Study. An Options Analysis may be included to ensure that government agencies consider PPP delivery options early on.
- ✓ Screening: PPP Screening typically takes place at the project level (Project Suitability Analysis) and at the context level (Context Suitability Analysis).
- ✓ PPP Project Team and Plan: Once a project has passed PPP Screening, the implementing agency creates a PPP Project Team and a Project Plan. A Project Concept Note supports decision-making on whether a PPP project should proceed to the Business Case stage.
- ✓ Gateway Review: An official approval of the project checks whether the project has been screened and developed using acceptable procedures and decides whether to proceed or not with a PPP approach.

Module 4 will address the next stage of the PPP project cycle, namely developing a Business Case for the PPP project.

Textbox 3.8: Managerial Cross Check of Guiding Principles

Usefulness of the project: Are the projects 'good projects' for society? Questions to ask include:

- ✓ Are the projects well defined in scope and timing?
- ✓ Are the projects responding to a real societal need?
- ✓ Are the benefits to society likely to outweigh the costs and negative effects and are the projects more attractive to society than their alternatives?
- ✓ Are they technically and environmentally viable and sustainable?
- ✓ Are the projects financially feasible?

Value-for-Money of PPP procurement: Are the selected projects likely to deliver better VfM than traditional public delivery? Questions to ask include:

- ✓ Have the selected projects been properly assessed at an initial level for potential VfM?
- ✓ Will identified PPP projects offer better value-for-money than traditional public delivery?
- ✓ Are selected projects of sufficient scale to warrant the extra cost of preparing and implementing them as PPPs?

Affordability: Can users or the government afford the PPP? Questions to ask include:

- ✓ Have selected projects been initially assessed for affordability?
- ✓ Does initial analysis suggest probable user charges (if applicable) are within willingness-to-pay or affordability of users?
- ✓ If government payments will be required, are these from initial analysis likely to be affordable?

Commercial viability: Is the project viable for a private partner? Questions to ask include:

- ✓ Are selected projects likely to be commercially viable for private partners?
- ✓ Is there any precedence of private involvement in such projects or the sector already?
- ✓ Has private interest already been shown in the project?

Manageability: Can the contracting authority and private partner manage the project? Questions to ask include:

- ✓ How complex and/or large is the project overall?
- ✓ Does the contracting authority have experience already with managing such projects either directly or on a PPP basis?
- ✓ Are private firms already running the same or similar projects?

Acceptability: Will users and the public accept private involvement? Questions to ask include:

- ✓ How acceptable will private participation in selected PPP projects be for the users and public?
- ✓ Are there already sensitive issues concerning the infrastructure or services?
- ✓ Can a reasonable case be made that a PPP will be better for users and the public?

MODULE 3

8. ADDITIONAL RESOURCES

Below are additional resources to assist governments in identifying, screening, and selecting projects for PPP potential.

Table 3.1: Additional References for PPP Project Identification and Screening

Information	Description	Links
"Identifying, Selecting and Prioritising PPP Projects for Investment Appraisal", Prepared for PPP Centre of the Philippines, Asian Development Bank, 2012.	The paper suggests a methodology within the national planning process for identification, selection and prioritisation of PPP projects.	http://ppp.gov.ph/wp-content/uploads/2015/01/Policy-Brief-Pipeline-and-Development_2012Sept20.pdf
"Identification of Potential PPP Projects", Toolkit for Public-Private Partnerships in Roads & Highways, PPIAF, 2009.	Provides an indicative route for PPP project identification within the PPP project cycle.	http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/highwaystoolkit/5/5-21.html#Anchor-Identification-49575
"Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs; An Analysis of Global Trends and Lessons Learned", PPIAF, 2014.	This study discusses a series of global trends related to USP processes; lessons learned from the management of such proposals; and some key implications for further considerations. Its overarching objective is to inform the public debate on the provision of infrastructure assets and services initiated through USPs, and more specifically, to help governments and policy makers make informed decisions about their implementation.	http://www.ppiaf.org/sites/ppiaf.org/files/publication/UnsolicitedProposals_PPIAF.pdf
"Model USP Policy Framework", PPIAF, forthcoming	This document will include a model policy framework for managing USP and specific tools and processes for the institutionalisation and operationalisation of USP policy framework, developed on the basis of an in-depth review of the international experience to date in implementation of USP policy frameworks.	

Table 3.1: Additional References for PPP Project Identification and Screening cont'd.

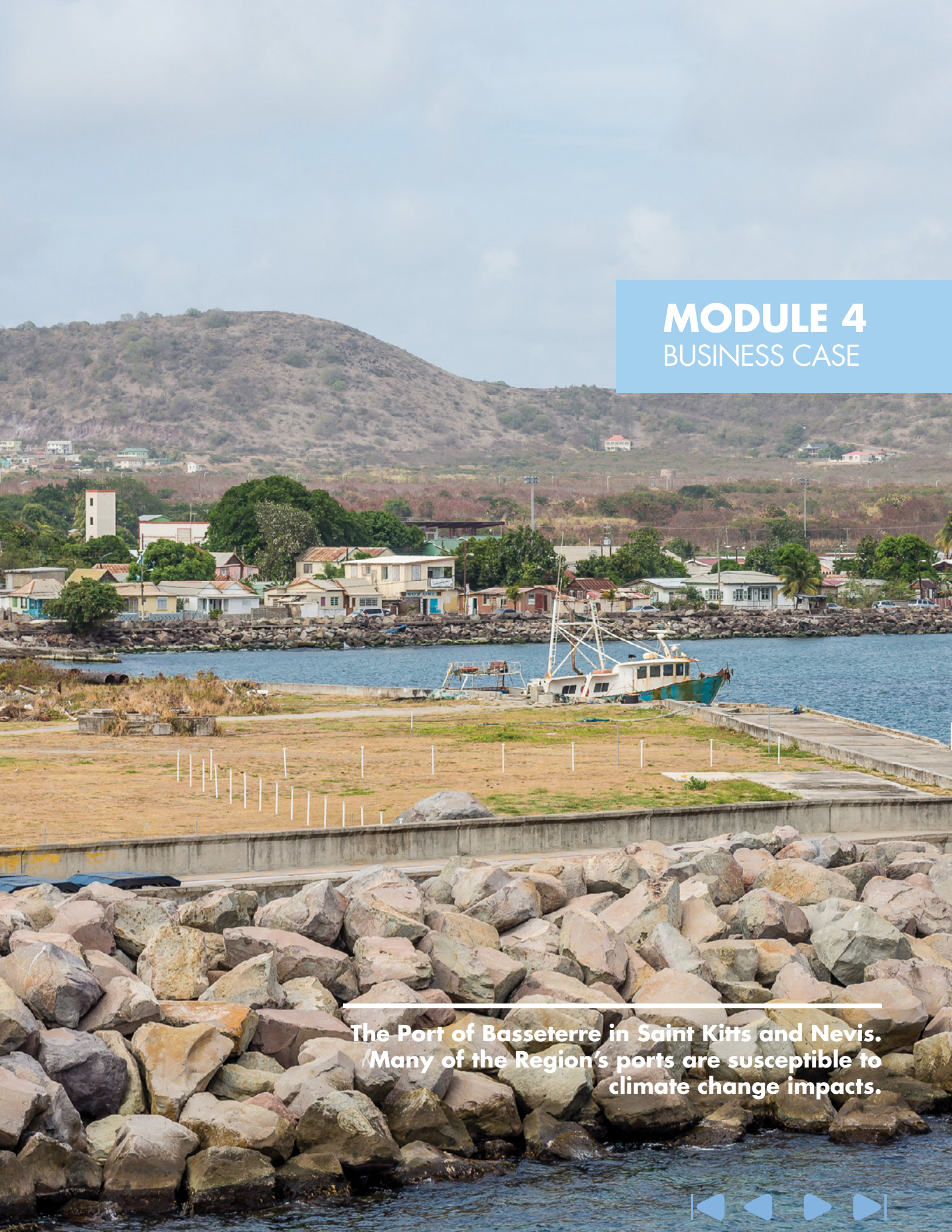
Information	Description	Links
Key References – PPP Project Screening		
"Pre-feasibility study, review of PPP options and optimum option for establishment of the Kisarawe Freight Station", World Bank, February 2011	Example of a PPP Pre-Feasibility report for a project in Tanzania.	http://www.ppiaf.org/sites/ppiaf.org/files/publication/Kisarawe_Final_Report.pdf
Public-Private Partnerships in India, Ministry of Finance, Government of India, "Phase 1 Pre-feasibility analysis"	Guidance for conducting pre-feasibility analysis.	http://toolkit.pppinindia.com/ports/module2-pfcaa-ppfa.php?links=pfcaa1b
Public-Private Partnerships in India, Ministry of Finance, Government of India, "Phase 1 PPP suitability"	Guidance for using a qualitative-based PPP suitability filter	http://toolkit.pppinindia.com/ports/module2-pfcaa-ppfc.php?links=pfcaa1a
"Qualitative Value-For-Money Guidance & Toolkit for Assessing PPP Projects in Developing Countries in Asia and the Pacific", UNESCAP, May 2016	Guidance, toolkit and support tool in MS Excel for PPP project screening and selection in Asia and the Pacific	http://www.unescap.org/sites/default/files/UNESCAP%20VfM%20-%20Screening%20Guidelines%20and%20Toolkit%20-%20Draft%20Version%20Clean.pdf
Key References – PPP Project Planning		
Public-Private Partnerships in India, Ministry of Finance, Government of India, Phase 1 Planning for PPP project management	PPP project planning guidance.	http://toolkit.pppinindia.com/ports/module2-fgost-pfppm.php?links=fgost1
"Preparation Stage – Planning & Organising", Public-Private Partnerships for the Urban Environment,: United Nations Development Programme	A step-by-step guide for implementing PPPs.	http://pppue.undp.2margraf.com/en/03.htm
Public-Private Partnerships in India, Ministry of Finance, Government of India, "Phase 1 Planning for PPP project management"	PPP project planning guidance.	http://toolkit.pppinindia.com/ports/module2-fgost-pfppm.php?links=fgost1
"Guidelines for Concept Note", Swedish International Development Cooperation	Guidelines for a PPP Project Concept Note.	http://www.swedenabroad.com/ImageVaultFiles/id_11532/cf_347/PPDP_-_Guideline_for_Concept_note.PDF

Table 3.1: Additional References for PPP Project Identification and Screening cont'd.

Information	Description	Links
Key References – PPP Gateway Review		
Public-Private Partnerships in India, Ministry of Finance, Government of India, "Phase 1 Readiness check 1"	A checklist prior to submission for Gateway review.	http://toolkit.pppinindia.com/ports/module2-rc.php?links=rc1
"Institutional Responsibilities: Review and Approval", Public-Private Partnerships Reference Guide Version 2.0, The World Bank, Asian Development Bank, Inter-American Development Bank, pp. 90-92, 2014.	Provides an overview of the review and approval process in various countries.	http://ppp.worldbank.org/public-private-partnership/library/public-private-partnerships-reference-guide-version-20

Jamaica's Highway 2000 facilitated the construction of new housing developments, outside of the Kingston Metropolitan Area (KMA), relieving pressure on the social and physical infrastructure in the capital city.

MODULE 4
BUSINESS CASE



The Port of Basseterre in Saint Kitts and Nevis. Many of the Region's ports are susceptible to climate change impacts.

1. INTRODUCTION

Key Points for Decision Makers

The Business Case stage is a significant stage for the project to enter. From now on, the contracting authority needs to make serious resources (people and money) available.

A project team and team leader should be in place. They will take responsibility for the project at this stage.

External consultants should be hired to execute the Business Case. However, the contracting authority must supervise the execution of the study.

Thorough project structuring is one of the key success factors for PPPs. The Business Case stage confirms that the contracting authority has selected a "good project" and optimises it. If the project turns out not to be feasible as a PPP, then an alternative delivery method should be pursued.

Delivering a project as a PPP can have advantages ranging from cost savings to greater VfM, and, depending on the government's approach to fiscal management, long-term certainty for public budgets. The purpose of the PPP Business Case stage is ensuring that the project and its structure are optimised, so that not only do they meet the government's objectives and guarantee an expected positive return for the private firm; but that they also maximise the value the PPP project brings to society.

The PPP Business Case typically assesses feasibility from a number of perspectives, including technical, legal, financial and economic. Furthermore, it analyses social and environmental impacts, fiscal impacts, and the extent to which a PPP approach is the appropriate delivery model for the infrastructure project.

The PPP Business Case is an important tool for governments and contracting authorities to use in the following activities:

- Proper project planning and risk assessment;
- Fiscal planning including assessing direct and contingent liabilities;
- Managing stakeholder and market sentiment; and
- Focusing on value drivers.

The results of the Business Case allow decision makers to determine whether to further develop, procure and implement the project. The Business Case also provides the main inputs for the financial structuring of the project. It is therefore essential that the contracting authority and its advisors prepare a Business Case that covers all required aspects of the project, and is in accordance with good industry practice.

The Business Case stage requires significant human and financial resources. Decision makers are advised to start this stage only with projects that have passed PPP Project Screening[50]; otherwise it could be discovered early on in the Business Case that the project is not suitable for a PPP delivery model – which would have been identified during Project Screening.

[50]The PPP Project Screeming stage is covered in detail in Module 3: PPP Identification and Screening of this Toolkit

PPP Project Screening assesses a project's pre-feasibility (both financial and economic) as well as its potential to be delivered as a PPP. The results of PPP Project Screening therefore form the basis for the Business Case, which assesses the feasibility of a PPP project in detail, and gives decision-makers all the information they will need to make an informed judgement as to whether or not to move the project forward to procurement.

The PPP Business Case stage can have one of three potential outcomes:

a. The project is deemed feasible from all of the relevant perspectives (legal, technical, economic, financial, social, and environmental), and is suitable for PPP delivery. The contracting authority is therefore given the go-ahead to procure the project as a PPP.

b. The project is feasible from all of the relevant perspectives (legal, technical, economic, financial, social, and environmental), but is not suitable for PPP delivery. In other words, the project may appear to have greater Value for Money if developed through traditional public procurement. In this case, the contracting authority may decide to procure the project using a conventional public approach.

c. The project contains major risks that cannot be mitigated; in otherwords, it is not feasible from one or more of the relevant perspectives (legal, technical, economic, financial, social, and environmental). The contracting authority may therefore be requested to restructure the project in order to improve its feasibility and mitigate key project risks, or abandon the project altogether.

1.1 The PPP process

The Business Case, with comprehensive feasibility assessments, is the second stage of the PPP Process, as shown in Figure 4.1.

Figure 4.1: The PPP Process

Stage 1: Identification and Screening: Before considering a PPP delivery model, the public agency must identify its priority investments needs. Typically, sector ministries submit priority projects, which should align with the government's policy objectives.

The objective of this stage is to "screen" the priority projects, in order to determine whether they meet basic criteria and have the potential to generate VfM if implemented as PPPs. This is the first step to define if PPP is the best delivery option for a project. Because of its budgetary implications, the decision to move a project to the next stage normally requires high-level approval. This stage is covered in Module 3 of this Toolkit.

Stage 2: Business Case: Once a priority public investment project has been approved for potential PPP delivery, the next step is to develop feasibility studies for the project that help all stakeholders understand the rationale and business case for the project. Studies conducted at this stage typically include technical and financial feasibility studies, VfM and fiscal impact analyses, cost-benefit or economic analyses, and social and environmental impact analyses. This stage will end with a set of recommendations on the project, including the structure and principal terms of the PPP contract. The scope and depth of the studies will depend on the complexity and the size of the project. This stage is covered in this Module 4 of this Toolkit.

Stage 3: Procurement: Once the relevant contracting authority, and approving institution (usually the Cabinet), have approved the feasibility studies, the project moves on to the procurement stage. During this stage, a PPP agreement is drafted; a private partner is selected as the preferred bidder based on a competitive procurement process; the PPP agreement is finalised and signed; and contract close is followed by financial close. This stage is covered in Module 5 of this Toolkit.

Stage 4: Implementation: A PPP contract has a much longer duration than a conventional public procurement contract (which typically ends with handover of the asset to the contracting authority – or shortly thereafter). This creates the need for long-term contract management expertise by the contracting authority. Contract management includes, inter alia, monitoring the performance of the concessionaire and the contracting authority; managing the payment mechanism; implementing any changes to the contract; and handling unexpected or compensation events. This stage is covered in Module 6 of this Toolkit.

1.2 Structure of Module 4

Module 4 provides guidance on assessing the feasibility of a project and determining its Business Case. The guidance addresses the following topics:

- Understanding the components and good practices in building a Business Case;
- Assessing the project's key risks;
- Analysing the project's economic feasibility using an Economic Benefit Cost Assessment (ECBA);
- Appraising the project's social and environmental impacts, and identifying possible mitigants;
- Assessing the project's financial feasibility and fiscal affordability;
- Evaluating the rationale for procuring and delivering the project as a PPP; and
- Understanding the private sector perspective and ensuring commercial viability (or "bankability").

CHAPTER 4

2. COMPONENT OF A BUSINESS CASE

The Business Case answers three important questions:

- Is the project worth undertaking?
- Is a PPP the most appropriate delivery model for the project?
- Is the project bankable?

The contracting authority will have considered these questions during the earlier PPP Project Screening stage, in order to eliminate unrealistic or unfeasible project concepts from clogging up the pipeline. The Business Case answers these questions, in detail. The detailed studies that back up the Business Case ensure that the contracting authority is confident of the project's feasibility, before it proceeds with procurement of the project.

Not only does the Business Case stage help answer the question if a project should be procured at all, it also supports the choice of the PPP delivery option. Often, feasibility assessments during the Business Case stage lead to new insights into the project, for example with regard to risks or regulations that could lead to choosing a different delivery option, or altering the project scope. It is important to understand that the Business Case is not a one-time exercise but actually an iterative process. Each iteration is based on more or better data and information and leads to new insights. These insights form the basis for a recommended PPP option.

Here are some tips for generating a comprehensive, realistic and high quality Business Case Report:

- **A good model does not** *per se* **generate high-quality results:** You also need good reasoning, analysis and good data.
- **Re-cycling studies may not be the best option:** Significant changes in project scope or options may require new studies.
- **Have in mind that optimal solutions will change over time:** Significant changes in demography, land use, or technology, may require new approaches.
- **Brainstorm solutions:** Search for alternative solutions for the identified needs; do not self-constrain the range of solutions.
- **Present conclusions in plain language, not in abstruse jargon:** Do not refrain from presenting the strong and weak points of the project.

This Module 4 focuses on a project's financial and economic feasibility, and its environmental and social impacts. Non-financial arguments, however, should not be ignored. The following section also describes the importance of technical and legal feasibility. As shown in Textbox 4.1, all these components are reflected in Jamaica's Business Case Manual.

Textbox 4.1: Project Viability Checklist in Jamaica's PPP Business Case Manual

The Policy Manual of the Jamaican PPP manual provides some specificity of the Business Case elements. The table below presents the different criteria of the business case that indicate the project's viability:

Criterion	**Business Case**
Effective in meeting government objectives	The project, as proposed for consideration as a PPP, is consistent with the sector's overall strategy, relevant development plans and integrates (as appropriate) with existing and planned assets and services
Technically feasible	A feasibility study indicates that the project (as defined for consideration as a PPP) is technically feasible
Legally feasible	A thorough legal due diligence of the project (as defined for consideration as a PPP) has assessed all legal issues having a bearing on the project, including reviewing all applicable laws and regulations, use rights, and (as appropriate) legalities of the project site, and indicates the project (as defined for consideration as a PPP) is legally feasible
Environmentally compliant	Environmental impact assessment(s) indicates that the project (as defined for consideration as a PPP) is, or is highly likely to be, in compliance with environmental laws
Socially sustainable	A social impact assessment and public consultation indicate the project (as defined for consideration as a PPP) is socially sustainable
Economically viable	An economic analysis of the project (as defined for consideration as a PPP) indicates the project is economically viable

Source: Government of Jamaica Policy and Institutional Framework for the Implementation of Public Private Partnerships, October 2012, p. 26

2.1 Non-financial feasibility

The focus of the Business Case is typically on the financial and economic feasibility of a project. Sections a and b will describe the importance of the legal and technical feasibility in determining the viability of the project.

a. Legal Analysis

Because the legal environment will differ depending on the country and the PPP project, it is crucial that the contracting authority conduct a legal assessment for every project. The pre-feasibility study[51] will already have identified any major legal "show-stoppers"—in other words, legal risks that are serious enough to prevent the project from moving forward to the Business Case stage, such as land that has yet to be acquired, or laws that have yet to be passed.

If the project has advanced to the Business Case stage, it is to be assumed that it has been found to be, in general, legally feasible, and that any legal impediments will be relatively minor and easily resolved. The Business Case stage requires a more detailed analysis of the legal environment, covering the assessment of legislation, legal obstacles and risks, permits and approvals as well as the institutional/ legal framework.

Some of the legal and regulatory aspects that need to be assessed include:

- The enabling PPP and public procurement legislation, especially looking for particular requirements imposed on projects, such as minimum capital value and maximum contractual duration;
- Legislation regulating foreign investment, property, and labour relations;
- Legislation related to land use planning and environmental laws;
- Sector specific legislation, for example, the granting of monopoly rights to incumbent infrastructure operators;
- Legislation relating to dispute resolution and intellectual property; and
- Legal treatment of hypothecation of revenue sources associated with the concession.

In determining the legal viability of a PPP project, Jamaica specifies three distinct stages, as described in Textbox 4.2.

[51]The pre-feasibility study is covered in Module 3: PPP Identification and Screening of this Toolkit.

Textbox 4.2: Legal Feasibility in Three Phases of PPP Projects in Jamaica

Definition of Legal Feasibility:
All aspects of the project are permitted by law, the parties involved in the project are legally empowered to do what they will need to do under the project, and the agreements that will be required can be made legally binding on all parties concerned

Project Phase	Extent to which feasibility must be demonstrated
Initial Screening	There is a reasonable expectation that the project is legally feasible, based on expert judgment or preliminary legal analysis.
Business Case	A thorough legal due diligence of the project (as defined for consideration as a PPP) has assessed all legal issues having a bearing on the project, including reviewing all applicable laws and regulations, use rights, and (as appropriate) legalities of the project site, and indicates the project (as defined for consideration as a PPP) is legally feasible.
Prior to Contract Signing	The project defined in the final PPP contract is materially the same as that assessed by the legal due diligence undertaken during the business case

A project may be politically, technically and financially feasible; however, the lack of an adequate legal system, and/or regulatory framework, can delay successful implementation or, even worse, prevent project completion. Jamaica's Sangster International Airport, the "poster child" of a successful Caribbean PPP, almost did not happen, because of the absence of the proper laws and regulations. Although it was possible to regulate the Sangster PPP by contract, Jamaica lacked a pre-existing regulatory framework for privatised airports. The Government decided, following the advice of its advisors, to develop such a framework during the transaction in order to give lenders and developers greater certainty. However, enacting the new law took three years, during which time the project could not achieve financial completion.[52]

To determine if a country has the necessary laws and regulations in place for PPPs, it is good practice to utilise external legal counsel, which have represented private firms in PPP transactions, in the same country. Experienced counsel will have an understanding of what legally needs to be in place for a project to be bankable, and attractive to investors. External counsel should work with the government's attorneys, who have an understanding of what legally needs to be done to preserve the public interest.

The checklist presented in Textbox 4.3 can be used as general guidance.[53]

[52]Public-Private Partnerships in the Caribbean – Building on Early Lessons, Caribbean Development Bank, May 2014, p.79. | [53]The World Bank's Public-Private Partnership in Infrastructure Resource Centre (PPP IRC) also provides guidance on assessing a country's PPP legal enabling environment. "Legal Framework/ Enabling Environment Assessment for PPPs", World Bank, May 2016, available at: http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment.

Textbox 4.3: Legal Analysis Checklist

Legislation	Examples of Legal Issues
Admnistrative law	Is the private partner in the PPP authorised to perform the required services, usage rights of assets, etc.
Corporate law	Limitations on repatriation of dividends and capital invested Provision of tax exemptions and potential specific fiscal incentives for Foreign Direct Investment (FDI)
Competition law	Monopoly rights of existing infrastructure providers
Environment law	Are specific environmental permits required for the particular site or project type, or are there exemptions that are applicable to the project? What standards to apply to the project, in the absence of national environmental legislation?
Land acquisition and resettlment regulations	Right of way or clearance for transportation projects and/or site ownership for facilities Responsibility for relocations
Employment and safety regulations	Consequences for public sector employees taken over by the private sector Pension rights Safety at work standards
Sector regulations (for example, operating licenses, tariff policies)	Adequacy of independent regulators Licensing and tariff setting regimes
Legal obstacles and risks	**Yes / No / NA**
The legal obstacles and risks have been identified (for example, amendment of laws or regulations) In case legal obstacles and/or risks are present, an action plan has been established to overcome the obstacles and to manage the risks (prevention and/or mitigation)	
Permits and approvals	**Yes / No / NA**
All required legal and regulatory permits and approvals have been identified An action plan has been identified to secure the legal and regulatory permits and approvals	
Institutional	**Yes / No / NA**
The legal authority of the contracting authority to implement the project has been established The required institutional arrangements for the implementation of the project have been determined and prepared	

b. Technical Analysis

Although the technical feasibility of the project will have already been subject to a preliminary assessment during the PPP Screening stage, the Business Case stage will further assess the technical scope and requirements of the project, in detail. Some of the issues to be addressed in the technical analysis include:

- Does the project design meet the need specified during the Project Identification and Screening Phase?
- Are the technical requirements of the project achievable? If so, are they achievable at a price comparable with similar infrastructure? Is there sufficient technical capacity to carry out the project?
- Is the proposed technology proven, and can the associated risks be properly mitigated or allocated? (This is if a specific technology is being proposed, this may not always be the best approach as it may constrain innovation.)
- Is there a complete assessment of the geo-technical risks that can affect the project? This is particularly relevant for transport infrastructure, but should be included for all projects.
- Can the service output be measured in terms of Key Performance Indicators (KPIs)?

Typically, the technical analysis is conducted by external consultants, who have experience in the field of the infrastructure project under consideration. This may involve input from more than one technical consultant, as demanded by the complexity of the project. On larger projects, governments will typically hire international technical consulting firms; who should partner with local consulting firms, who have detailed knowledge of local and regional conditions.

Due to the wide technical differences between, say, a toll road and a cargo port, it is not possible to be prescriptive about the type of technical investigations need to go into each PPP project. However, the checklist presented in Textbox 4.4 can be used as general guidance.

Textbox 4.4: Technical Analysis Checklist

Technical topic	(Yes/No/NA)
Project scope and objective	
The project objectives have been defined (such as solving a capacity bottleneck, meeting a regulatory requirement, or achieving a government policy goal, such as renewable energy)	
The geographical scope of the project has been determined	
The functional scope of the project has been determined	
The temporal scope of the project has been determined	
Technical alternatives	
Various technical alternatives for achieving the project objectives have been developed, for example:	
The project asset that will be built or purchased (for example, type, capacity, site/alignment, technology)	
The project services that will be supplied (for example, type, volume, quality)	
The time schedule on implementation and/or exploitation	
One of the alternatives is a "do nothing / minimum" option (low cost measure that at least partially achieves the project objective)	
Technical design and site assessment	
A preliminary technical design of the project has been developed to indicate technical feasibility and as a basis for cost and other estimates	
The project site/alignment has been defined and can be shown on maps	
Compliance with relevant national, provincial and district spatial plans has been assessed	
Technical feasibility	
The technical feasibility of the project has been demonstrated (for example, based on similar projects, and/or the technical design)	
Cost estimates for all technical alternatives have been prepared, as input for the financial, economic, social, environmental analysis: • Construction or procurement of the project assets • Land acquisition • Measures to prevent or mitigate social and environmental impacts • Project development and pre-opening expenses • Operation and maintenance during the lifetime of the project	
The cost estimates are well documented (with reference to source), and prepared according to good industry practice	
The cost estimates take into account specific characteristics of the project, such as location, site conditions, and local availability of inputs (human resources, raw materials, support services, etc.)	

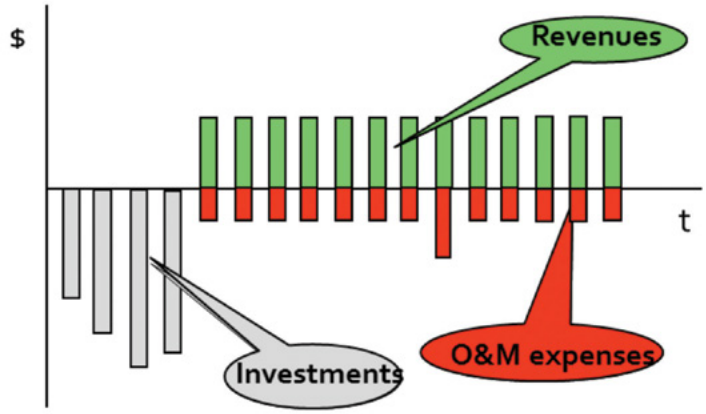
2.2 Economic and financial feasibility

The focus of Module 4—and of the Business Case stage—is to determine the financial and economic feasibility of a PPP project. Section 2.2 provides an overview of the differences between the two analyses.

The Financial Feasibility Study, illustrated in Figure 4.2, focuses on the project's affordability and answers the following questions:

- Can fees collected from users and/or taxpayers cover the costs of operating and maintaining the project, and provide a positive return to investors?
- Are financial instruments (including government support) needed to help close the gap between expenses and revenues?

Figure 4.2: Financial Feasibility Study



The Financial Feasibility Study analyses a project's capital and operational expenses, as well its revenues and risks. The point of view of the Financial Feasibility Study is "the project."

Secondly, an economic assessment or **Economic Cost-Benefit Assessment (ECBA)** is a key tool to support investment decisions, for a number of reasons:

- To assess if a project is economically viable, or in other words, if it is a good project (regardless of the delivery model);
- A positive economic assessment can also justify government contributions to projects; and
- An economic assessment can help determining in which projects to invest limited public sector funds

Outputs of the ECBA include:

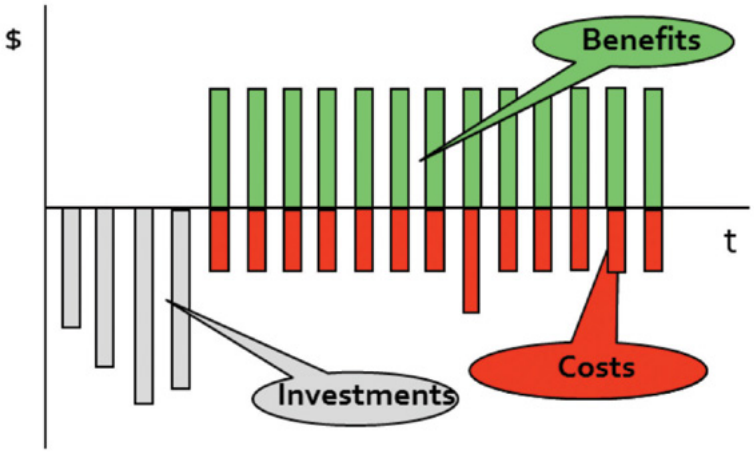
- Realistic estimations of all benefits and costs – both cash and non-cash – of a project to society;

- Within the scope of the project as defined in an overall masterplan, a detailed project structure and risk allocation; and
- An indication of the economic feasibility of a project, typically reflected in the project's Internal Rate of Return (IRR) and/or Net Present Value (NPV).

The Economic Benefit Cost Assessment (ECBA), illustrated in Figure 4.3, answers the following questions:

- Is the project useful from the point of view of society?
- Do the benefits of implementing the project outweigh the costs?

Figure 4.3: Economic Cost Benefit Analysis (ECBA)



The ECBA examines the costs to society, the benefits of the project, and the negative impacts and risks. The point of view of the ECBA is "society as a whole."

The crucial difference between the financial and the economic assessments is that the economic assessment also considers non-financial costs and benefits that do not lead to a tangible cash flow, but are nonetheless advantageous or disadvantageous to society. Examples include savings in travel time, improved health, or decreased pollution. The ECBA is therefore influenced in large part on the output or the environmental and social impact assessment. For example, transport and transport infrastructure may cause damages to environment: pollution, noise, visual intrusion, habitat destruction. These damages do not have a market price, therefore they are not included in financial analysis. However, these damages represent a cost to society, therefore they are included in the Economic Benefit Cost Assessment.

The money value of these non-monetary costs are estimated using various techniques:

- Mitigation costs (e.g., costs of air pollution are estimated on the basis of expenditures to cure health problems, and repair damages to buildings; drainage damage on highways may be estimated by the cost of constructing remedial measures, which may be located off the project site)

- Compensation costs (e.g., expenditures to create replacement habitats)
- Surveys: ask people how much they would be willing to pay to avoid negative environmental impacts. The monetary value of time may be estimated by reference to average income levels.

Figure 4.4 illustrates the relationship between the ECBA and the Financial Feasibility Study.

Figure 4.4: Relationship Between ECBA and Financial Feasibility Study

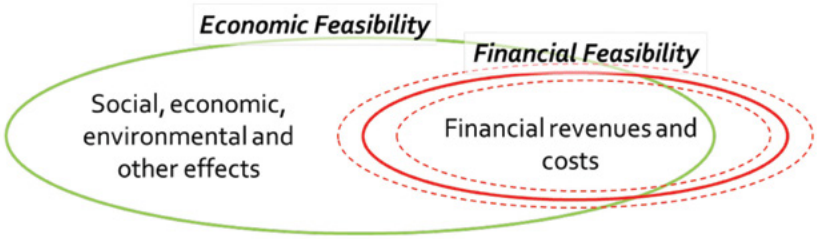


Figure 4.5: Difference between ECBA and Financial Feasibility Study

	Financial assessment	Economic assessment
Effects	Financial impact on investors of project infrastructure	All effects on all members of society affected by the project
Valuation principle	Market prices (actually paid)	Economic valuation of costs and benefits
Result	fNFV or fIRR	eNPV or eIRR

2.3 Risks and the Business Case

All projects and their economic and financial feasibility are subject to risks and uncertainty.

It is important to analyse and understand the various risks as well as their implications for project's feasibility. Firstly, understanding the different risks is crucial for identifying means to mitigate the risks, and for deciding on the allocation of the risks to the public and private parties. Secondly, it is important to understand that, in economic terms, all risks have an associated monetary value, which influences the economic and financial feasibility of a project. The valuation of risks is an essential element in the financial structuring of a project. Risks play a more prominent role in PPP projects than in conventionally delivered projects. In a PPP project, risks can be allocated between the public and the private party, resulting in improved risk management and potentially lower project costs. In a conventional delivery model, however, the government typically retains significantly more project risks than in a PPP. Figure 6 illustrates the four key steps in a risk management plan.

Figure 4.6: Risk Management

A solid risk assessment is thus not only crucial for the Business Case, but also for procurement, negotiations and contracting. Section 3 of this Module, provides more detailed guidance on identifying, mitigating and allocating project risks.

2.4 Best practices in building a Business Case

In order to structure the financial and commercial elements of the project (including possible government support and guarantees), a financial model must be able to transparently simulate relevant scenarios with respect to the value and timing of capital expenditures, operating expenditures, revenues, and risks. A robust and well-built financial model, however, does not ***per se*** generate high-quality results, but also requires high-quality inputs ("rubbish in; rubbish out").

The financial model must be built around sound estimates of project costs and revenues, derived from sufficiently accurate technical studies, costing methods and revenue forecasting models. The data should be consistent and sources continually updated. In addition, the model must include: (i) a quantification of cost and revenue risks, based on a project-specific risk analysis, and (ii) sensitivity analyses.

After incorporating the relevant project outcomes—based on adequate risk assessment and scenarios—into the financial model, the government can then determine how to structure a "bankable" project. This may include applying government support instruments, guarantees and financing instruments, as well as developing a more detailed risk allocation. Presenting both the strong and weak points of the project is crucial.

Sections 7.1, 7.2, and 7.3 of this module provide a more thorough discussion and guidance on the financial model and financial feasibility.

2.5 Stakeholder consultation

All PPP projects have political and/or societal dimensions, and some projects can become highly controversial. Consulting with stakeholders at different stages of the project and taking into account their views and ideas—leads to better projects. Stakeholder consultations not only provide valuable insights and information, but they can lead to greater social acceptance of the PPP project, avoiding delays and cost overruns caused by protests, strikes, or legal challenges to a project. Stakeholder consultation can be an element of the social impact assessment, which is discussed in more detail in section 5 and 6 of this module.

Inevitably, not all stakeholders will benefit as they had hoped, from a PPP. It is therefore important to show that the design and implementation of the project was legitimate and transparent, in order to avoid future legal, political, or social challenges. Communication between the government and the stakeholders (both ways) is a specialised field, for which the government should engage professionals to design a stakeholder communication strategy. Textbox 4.5 provides a summary of stakeholder perspectives.

Textbox 4.5: Understanding Different Stakeholder Agendas

Stakeholder group	Agenda
Consumers	Better services Lower tariffs Transparency
Politicians	Big projects (prestige) Big proceeds Delivering on promises
Investors	Certainty and transparency Independent regulation Return on investment
Financiers	Strong cash flows Enforceable security Credible investors
NGOs	Depends on their focus (for example, environmental protection, gender equality, etc.)
Unions	Better pay and conditions Creating jobs Avoiding layoffs
Alternative providers, competitors / partners	Opportunities Not to be crowded out
Media	Generating a "story"

Textbox 4.6 provides an overview of the most common modes of stakeholder engagement. In addition to this, diverse government bodies should be engaged to foster a more robust project, identifying challenges and opportunities.

Textbox 4.6: Stakeholder Engagement

Mode	Activities and objectives
Collect information	Who are the stakeholders? What are their interests and desires?
Provide information	Sharing plans and ideas
Hire social specialists	Identify the problems Propose solutions Listen to feedback Revise the approach
Giving a voice in the decision making process	One step further than stakeholder consultation Giving stakeholders a role in the design and implementation of the project
Joint action	Forming a partnership to make it happen Seeking solutions from unlikely sources
Formalise support	Letters of commitment, etc.
Compensate	Compensating stakeholders for negative effects, losses, or costs
Means	
Printed materials, such as brochures, flyers	
Opinion polls and surveys, e.g. willingness to pay surveys, consumer satisfaction surveys	
Focus groups, discussion forums	
Online platforms, e.g. town hall meetings, social media	
Media interviews	

A stakeholder consultation process is a useful tool to understand different aspects of the project and engage the different actors in the process. An example of such a consultation process is included as Textbox 4.7 below.

Textbox 4.7: Stakeholder Consultation Process Example

Stakeholder	Purpose of consultation	Method of Consultation	Timing	Intended Outcomes
Within government:				
Ministry of Finance	Allow the Ministry of to prepare VfM and fiscal impact assessments	Regular staff-level meetings; official of the Ministry of Finance	Biweekly staff-level meetings	Ensure fiscal affordability and VfM of the project early on
Environmental Protection Agency	Obtain relevant permits and ensure project is in line with environmental best practices	Formal meetings throughout the different stages of the project	At each stage of project development	Ensure that project is in line with environmental best practices and obtain relevant permitting
Provincial / Regional and/or Local Governments	Provide with information and gather insights on the particular characteristics of the region such as challenges and opportunities, as well as local regulations, if any.	Formal Meeting in the different stages of the project	Biweekly staff-level meetings	Ensure the project are in line to the regions' needs and is applicable and can oversee and monitor major implementation issues ex-ante
Outside government:				
Affected Community	Solicit feedback on the project; Ensure detailed knowledge of the project	Town Hall meetings, workshops, and site visits	During the early stages of project development	Ensure community "buy-in"
Environmental group	Solicit feedback on the project; Ensure detailed knowledge of the project	Town Hall meetings, workshops, and site visits	During the early stages of project development	Ensure "buy-in"
Users	Keep users informed, solicited feedback	Website and news letters	Throughout the project	Generate interest in the project

2.6 Required Expertise

This Toolkit alone will not be sufficient for ensuring that a project can be developed and procured as a bankable PPP project. Structuring viable PPP projects and conducting the required feasibility studies is highly technical work, which should always be done by experts that possess the relevant experience.

a. Rationale for hiring Advisors

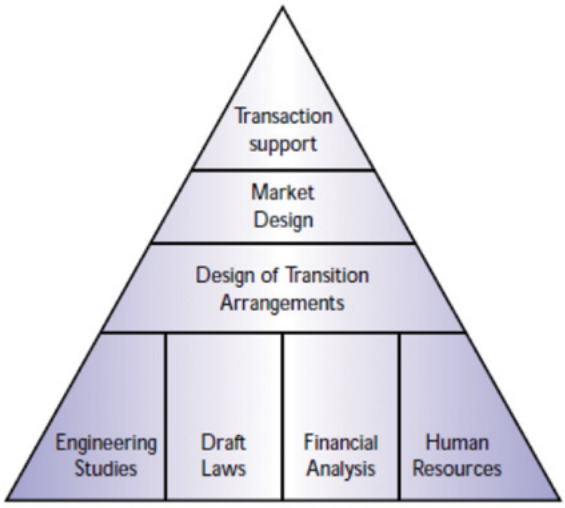
There are three main reasons why the contracting authority should strongly consider hiring external advisors at the Business Case stage:

- First, contracting authorities that have not yet been frequently exposed to PPPs are unlikely to have the required range of expertise in-house (legal, technical, financial, and economic).
- Second, external advisors with significant PPP experience supporting the project team sends a positive signal to the market, providing confidence that the project is well structured.
- Third, preparing and procuring a PPP project implies an intensive workload.

External advisors can provide additional capacity as well as greater flexibility than hiring permanent government staff. It is likely that independent advice from experienced advisors will lead to better VfM. Nevertheless, external experts should always be assisted by local understudies (either local consultants or government and/or contracting authority staff), in order to ensure maximum knowledge transfer – and knowledge of local conditions.

Figure 4.7 below shows the inter-relationships between the separate specialist consultants, which are required in order to provide comprehensive advisory services to governments in PPP projects.

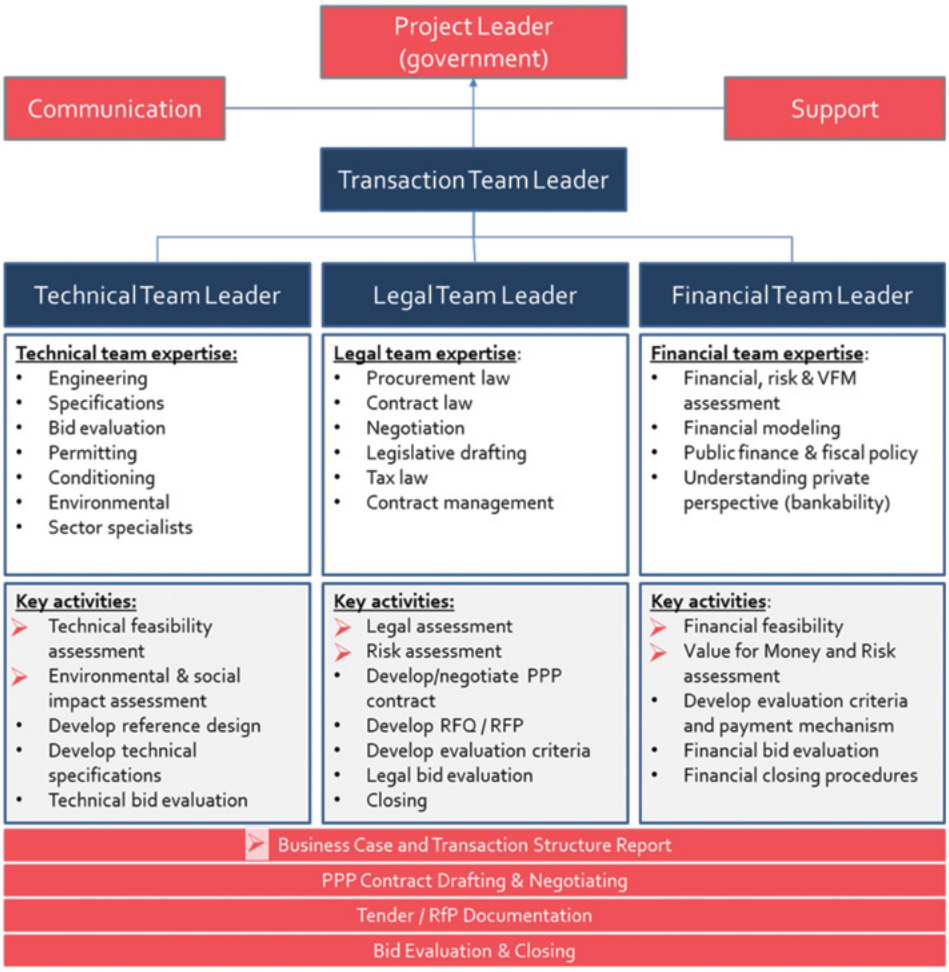
Figure 4.7: Hierarchy of Advisory Services



b. Required expertise

Government teams typically need experienced advisors on the wide range of disciplines required to successfully implement PPP projects, including legal, procurement, economic/financial, engineering, sector specialist, social/environmental, and public relations. A project team requires the following as shown in Figure 4.8 below: sub-teams (blue), expertise (white), activities (grey) and joint deliverables (red, bottom).[54]

Figure 4.8: PPP Project Team and Required Expertise



[54]Module 3: PPP Identification and Screening of this Toolkit provides additional guidance on structuring a Project Team. The World Bank Toolkit "A guide for hiring and managing advisors for private participation in infrastructure" also provides more guidance on hiring external advisors for PPP projects. Source: "Toolkit : a guide for hiring and managing advisors for private participation in infrastructure (Vol. 5) : How to select and manage PPI advisors", World Bank, July 2001, available at: http://documents.worldbank.org/curated/en/2001/07/1631768/toolkit-guide-hiring-managing-advisors-private-participation-infrastructure-vol-5-5-select-manage-ppi-advisors

The most relevant criterion when hiring advisors is their depth of PPP transaction experience, especially in the same or similar countries. It is recommended that Governments evaluate advisors based on their PPP track record, history of closed transactions, and references. Moreover, it is useful to look for experience in the Caribbean, preferably in the project country. When evaluating advisors, it is important to remember that it is not the experience of the firm that matters, but the experience of the team members. Another key evaluation criterion is to avoid conflicts of interest, when firms (perhaps through a different global office) may also be advising potentially interested bidders.

c. Hiring Advisors

It is unlikely that governments that are not frequently exposed to PPPs, will have the required range of technical expertise in-house. Governments therefore need to augment their project teams with practical deal-making experience. This sends positive signals to the marketplace, that the government is taking the PPP project seriously, and is investing in securing professional advice.

Advisory teams will also help to handle the intensive workload that arises from implementing complex PPPs; and provide coordinated independent advice. Money spent on PPP transaction advisors should be viewed as an investment, and not simply as an expense. Good quality, experienced advisors are key to assisting the government secure the best PPP deal possible. Simply put: better preparation leads to a better project, with less risks.

Fundamentally, advisors are retained to help the government obtain better VfM from their PPP projects. Given the wide range of specialist expertise needed, it may feel as if the government is being overwhelmed by an army of advisors; but in PPP implementation, this will pay off.

When hiring transaction advisors, governments must consider if they would rather a contract with one firm or consortium of advisory firms, consisting of all the necessary technical, legal, financial and PPP consultants; or separate contracts with each specialist. Advisory firms would typically be hired under a phased contract; where proceeding to the transaction implementation phase is conditional upon project passing the Business Case phase. Textbox 4.8 discusses the main considerations between the two contracting methods.

Textbox 4.8: Integrated Procurement vs. Separate Procurement of Advisors

	Integrated Advisory Contract	Separate Contract
Pros	An integrated procurement of a consortium of advisors is simpler The government needs less involvement in coordinating separately contracted advisors The government benefits from coordinated advice	The government gets the best team for each discipline based on availability
Cons	There is a risk of compromising on quality to obtain a team of advisors under one umbrella, instead of separately procuring the best in each field	More cumbersome procurement Silo mentality Potential for conflicting advice from advisors

If the government decides to hire outside expertise to build the Business Case and to assist with the subsequent PPP transaction, experience shows that it is usually most effective to bundle those two assignments into one single contract. Such contracts are usually structured with lump-sum payments linked to certain project milestones, and with a stop/go decision, to be taken at the end of the Business Case stage. At that point, the contracting authority can decide whether it wants to continue with implementation of the contract, depending on the conclusions of the Business Case.

This approach, which has been initiated with success in some of the most dynamic emerging PPP markets like the Philippines and is now being reproduced in many different countries throughout the developing world, brings the following benefits:

- Having the Business Case stage led by a single firm with actual deal closing experience, rather than a firm with only technical expertise, helps the contracting authority anticipate potential issues from the Business Case stage, which can save a lot of time and money later on in the transaction process.

- The contracting authority saves time, particularly the 12 to 18 months required to find funding for and select a Transaction Advisor after the Business Case has been approved.

- Having the same firm in performing the Business Case analysis, and implementing the subsequent transaction, provides continuity and comfort to the contracting authority; that the recommended approach is realistic and readily implementable. This avoids a common situation where the Business Case, initially prepared by a separate consultant, must be revisited and possibly amended by the new consulting team, before the PPP tender can start, leading to delays and cost overruns for the contracting authority.

- Having conducted the feasibility study, the Transaction Advisor will already be familiar with the history, details and proposed structuring of the project and does not require a "learning" period.

d. Types of Advisors

Governments can utilise expertise from different types of advisors, ranging from the advisory divisions of the "Big 4" accounting firms (PriceWaterhouse Coopers, Ernst & Young, Deloitte and KPMG) to smaller boutique advisors with sectoral and geographical areas of specialisation. There is also a growing sub-sector of locally-based advisors in emerging markets. It is highly recommended that international firms recruit local consultants into their advisory consortium, especially for legal advisors.

Caribbean countries can make use of services available under the Regional PPP Support Facility; and its successor organisation: the Regional PPP Unit, to be housed within CDB. Working with its partner agencies the World Bank Group (WBG) and the Inter-American Development Bank (IDB), the Facility/ Unit is able to assist countries gain support from donor agencies, and provide advisory services to governments throughout the project development process.

Finally, Textbox 4.9 below highlights advisory services available through the International Finance Corporation's (IFC) Advisory Services[55].

Textbox 4.9: IFC's PPP Advisory Services

The International Finance Corporation, (IFC) Advisory Services in Public-Private Partnerships provides assistance to governments in the Caribbean, to develop, promote, and execute infrastructure projects with private sector participation. IFC's PPP advisory services support regional governments to develop infrastructure in the traditional sectors such as energy, transport, water and sanitation, as well as in the social sectors including health and education.

The PPP market is still in its early stages in the Caribbean, and therefore in addition to transaction preparation and execution services, IFC also supports capacity building efforts to help create more effective government counterparts. These capacity building programs have been delivered in collaboration with the Caribbean Development Bank, the World Bank, and the Development Bank of Jamaica.

IFC's PPP advisory group operates in the Caribbean with funding support from Global Affairs Canada to prepare and execute PPPs. The cost of PPP transactions is significant and involves services of specialised experts in different fields. As such, donor support is critical in helping governments pay for the cost of legal, technical and other advisors. This funding support can also extend to advancing PPP knowledge and activity in the region, and raising regional governments' awareness of PPPs as an alternative approach for infrastructure development in the Caribbean.

Source: International Finance Corporation

[55]http://www.ifc.org/wps/wcm/connect/8b5431004983905481d4d3336b93d75f/regionalfactsheet_latinamerica.pdf?mod=ajperes

e. Compensating Transaction Advisors

A variety of compensation mechanisms are commonly used in a transaction advisory contract, ranging from:

- Fixed price for specified deliverables or the project as a whole
- Time and expenses, potentially in combination with a not-to-exceed budget
- Combination of retainer and success fee

To get the best VfM from transaction advisors, the advisory contract should incentivise quality completion of milestones according to the PPP project cycle, on time and within budget. Therefore, advisory contracts are typically structured on the basis of a retainer (fixed payment) and a success fee (one or more payments subject to reaching a specific milestone, typically financial close of the PPP transaction). Excessive reliance on success fees in the advisory contract, especially when expressed as a percentage of sales proceeds of the PPP transaction, may incentivise the advisor to seek maximisation of proceeds, at the expense of VfM. Also, making the compensation of the transaction advisor too dependent on fixed payments at milestone events like contract close or financial close can create the incentive to get the deal done no matter what, but provides no incentive to deliver the best deal for the government.

f. Working with Transaction Advisors

Transaction advisors do not lead the project; that is the responsibility of the government-appointed project leader. The project leader needs to have the trust of the political champion, and technical support from the transaction advisor. Advisors need to do everything necessary, to successfully implement the project. The project team – including the transaction advisory team – should therefore meet regularly, to provide updates, reports, make urgent decisions, resolve impasses between stakeholders and ensure continual institutional input and support.

Fundamentally, the transaction advisor is the right arm of the government, with the "simple" task to do everything necessary to get the deal done and make sure that it is the best deal – provided the project is affordable and provides VfM. In order to be able to function as the right arm of the government, advisors must have local presence. The various advisors will need to coordinate closely between each other and with the government teams.

Advisors should also be required to transfer knowledge and build capacity within the government team. Without institutional memory, the government will be constantly re-inventing the wheel on future projects.

MODULE 4

3: RISK ASSESSMENT

As discussed in Section 2.3, a risk assessment provides inputs for both the economic and financial assessment, in particular regarding the value or cost of risks. Assessing risks is also crucial for procurement and negotiation, as an appropriate risk allocation can improve the value of the project.

A PPP risk assessment has various objectives:

- It helps identify risk reduction and mitigation measures to manage the project risks;
- It helps determine the appropriate risk allocation to be used in structuring the PPP contract;
- It provides the basis for risk valuation used in financial analysis.

A risk assessment has five distinct components, as depicted in Textbox 4.10 below.

Textbox 4.10: Five Components of Risk Assessment

Component	Key Questions
Risk Identification	What are the risks in this project?
Risk Prioritisation	Which are the most important risks?
Risk Mitigation	How can we reduce the likelihood and impact of the risks?
Risk Allocation	Who should bear the risks?
Risk Valuation	What is the value/cost of the risks?

Although the above mentioned order is logical, risk assessment and management is typically a cyclical, iterative process. Textbox 4.11 below lists ten typical types of risks, that can negatively impact a PPP project.

Textbox 4.11: Classes of Project Risk

Risk	Description
Site	Risks associated with the availability and quality of the project site, such as the cost and timing of acquiring the site, needed permits or assuring rights of way for a road, the effect of geological or other site conditions, and the cost of meeting environmental standards
Design, construction and commissioning	Risk that construction takes longer or costs more than expected, or that the design or construction quality means the asset is not adequate to meet project requirements
Operation	Risks to successful operations, including the risk of interruption in service or asset availability, the risk that any network interface does not work as expected, or that the cost of operating and maintaining the asset is different than was expected
Demand, and other commercial risk	Risk that usage of the service is different than was expected, or that revenues are not collected as expected
Regulatory or political	Risk of regulatory or political decisions or changes in the sector regulatory framework that adversely affect the project. For example, this could include failure to renew approvals appropriately, unjustifiably harsh regulatory decisions, or in the extreme, breach of contract or expropriation
Change in legal framework	Risk that a change in general law or regulation adversely affects the project, such as changes in general corporate taxation, or in rules governing currency convertibility, or repatriation of profits
Default	Risk that the private party to the PPP contract turns out not to be financially or technically capable to implement the project
Force majeure	Uninsurable risk that external events beyond the control of the parties to the contract, such as natural disasters, war or civil disturbance, affect the project
Asset ownership	Risks associated with ownership of the assets, including the risk that the technology becomes obsolete or that the value of the assets at the end of the contract is different than was expected
Economic or financial	Risk that changes in interest rates, exchange rates or inflation adversely affect the project outcomes

3.1 Risk Identification

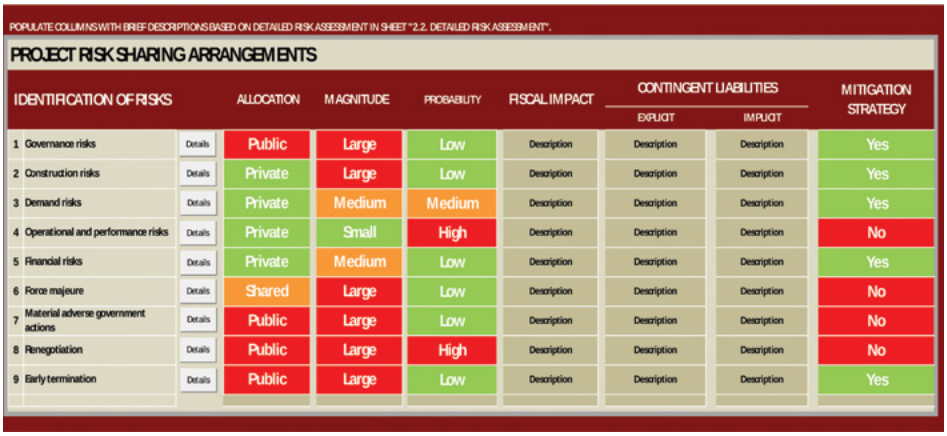
The objective of risk identification is to obtain a complete picture of all the risks that could possibly affect the project. This includes not only the most apparent risks but also those that may appear to be highly unlikely.

Looking at the risk categories outlined in Textbox 4.11, it is clear that no one individual or institution can accurately predict all the risks that could possibly affect a project. For this reason, it is common to carry out the risk identification through risk workshops.

Various stakeholders and specialists should take part in the workshop, including the project team, engineers, lawyers, sector specialists, environmental and social experts, financial analysts, etc.

The risks identified are typically included in a risk register (also known as a risk matrix). The register can be used, not only in the Business Case stage but also during procurement and implementation, as results of the different phases of the project are be added.

Figure 4.9: Risk Register



POPULATE COLUMNS WITH BRIEF DESCRIPTIONS BASED ON DETAILED RISK ASSESSMENT IN SHEET "2.2. DETAILED RISK ASSESSMENT".

PROJECT RISK SHARING ARRANGEMENTS

IDENTIFICATION OF RISKS		ALLOCATION	MAGNITUDE	PROBABILITY	FISCAL IMPACT	CONTINGENT LIABILITIES		MITIGATION STRATEGY
						EXPLICIT	IMPLICIT	
1 Governance risks	Details	Public	Large	Low	Description	Description	Description	Yes
2 Construction risks	Details	Private	Large	Low	Description	Description	Description	Yes
3 Demand risks	Details	Private	Medium	Medium	Description	Description	Description	Yes
4 Operational and performance risks	Details	Private	Small	High	Description	Description	Description	No
5 Financial risks	Details	Private	Medium	Low	Description	Description	Description	Yes
6 Force majeure	Details	Shared	Large	Low	Description	Description	Description	No
7 Material adverse government actions	Details	Public	Large	Low	Description	Description	Description	No
8 Renegotiation	Details	Public	Large	High	Description	Description	Description	No
9 Early termination	Details	Public	Large	Low	Description	Description	Description	Yes

One of the major challenges during risk identification is avoiding "blind spots." This can happen when areas are overlooked because of negligence, or paying more attention to certain top-line risks, but not to other seemingly "minor" risks. In order to come up with a complete risk register, it is convenient to identify risks with the help of three dimensions:

i. **Risks that can be classified by discipline** (technical, environmental, political, legal risks, etc.);
ii. **Risks that could occur during the different** project phases (risks during design, maintenance, termination, etc.); and
iii. **Risks related to elements of the PPP contract** (delay events, force majeure, etc.).

In order to ensure completeness, it can be beneficial to have experts from all of the three dimensions and all of the disciplines (see Textbox 4.12 below) involved in the risk workshop. It can also be efficient to use existing risk assessments of comparable projects. In addition, the project team can make use of standard categories and checklists to facilitate completeness.

Of course, care must be taken when using existing risk assessments as a basis for other projects. This should never become a simple "cut and paste" exercise, but rather the existing risk assessments can serve as guidance, in the preparation of risk registers for subsequent PPP projects.

Textbox 4.12: Risk Identification Checklist

Disciplines	Project phases	PPP contract
Financial and economic	Design	Renegotiation
Legal	Engineering	Compensation event
	Construction	Delay event
Permitting	Commissioning	Force majeure
Social	Operation	
Technical, technological	Maintenance	
Organisational	Major maintenance	
Spatial and geographical	Renegotiation	
Demographic	Termination and handback	
Environmental, ecological		
Political		
Public safety		

Figure 4.10: Sample Risk Allocation Matrix

Activity	Traditional	PPP
Design	Public	Concessionaire
Construction of infrastructure	Contractor 1	Concessionaire
Day-to-day monitoring	Public	Concessionaire
Oversight	Public	Public
Relocation of utilities	Public	Concessionaire
Hazardous materials	Public	Concessionaire
Unexpected ground conditions	Public	Public
Right-of-way acquisition	Public	Public
Timely application for permits	Public	Concessionaire
Delay or additional requirements in permitting	Public	Public
Regular maintenance	Contractor 2	Concessionaire
Major maintenance	Contractor 3	Concessionaire
Operations	Public	Concessionaire
Revenue risk	Public	Concessionaire

a. Caribbean PPP risks

There are some risks that can be described as typical or specific (but not exclusive) for Caribbean projects:

- ***Force Majeure Risks.*** The main force majeure risks are weather-related events such as:

- ✓ Hurricanes,
- ✓ Torrential rains,
- ✓ Volcanic activity,
- ✓ Earthquakes,
- ✓ Tsunamis, and
- ✓ Storm surges.

While some of these risks might be considered as Force Majeure Risks in one country, it is possible that they are not treated as such in another country, due to a higher frequency of occurrence. Excluding some events from the Force Majeure list might be beneficial as it forces the private party to account for these events in the design of the project, and incorporate appropriate risk mitigation measures. On the other hand, contracting authorities need to realise that this will also come at a price, and that project costs will increase.

- Political Risks. The following political risks are perceived in the Caribbean:

  - ✓ Lack of technical capacity
  - ✓ 'Failure to close'
  - ✓ Regulatory risk (bad decision making)
  - ✓ Nationalisation/ renationalisation
  - ✓ Crime
  - ✓ Political interference
  - ✓ Corruption
  - ✓ Civil disorder
  - ✓ Political upheaval

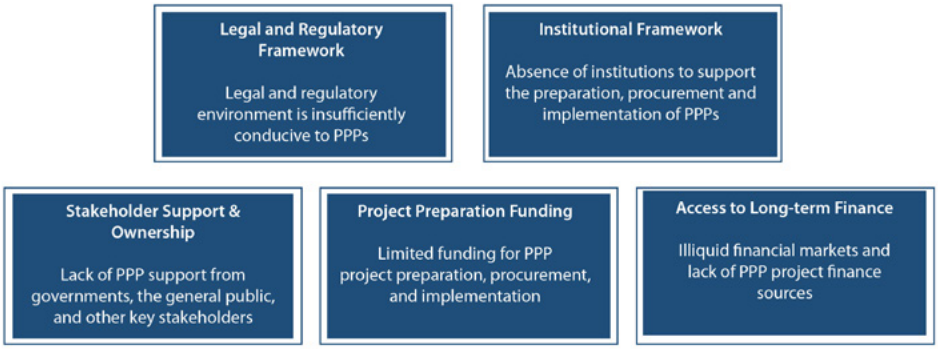
- Financial Risks. The following financial risks are perceived in the Caribbean:

  - ✓ Economic volatility
  - ✓ Demand risk
  - ✓ Budgetary constraints
  - ✓ Creditworthiness of the off-taker
  - ✓ Creditworthiness of the government
  - ✓ Exchange rate volatility
  - ✓ Foreign exchange availability
  - ✓ External economic shocks

- Risks in the PPP Enabling Environment. Key PPP enabling factors are largely absent in several Caribbean nations. This might pose substantial risks, as presented in Figure 4.11.

Despite that these risks are inherent to all projects in the Caribbean and not specifically to PPP projects, it should be noted that they may become more explicit in PPP projects through risk assessment and allocation.

Figure 4.11: Risks Inherent in the PPP Enabling Environment



The absence of a sufficient legal and regulatory environment can cause serious delays of PPP projects or even lead to a abandonment of the procurement process altogether. Assessing the legal feasibility early in the project is thus crucial. This topic is discussed in more detail the section on Legal Analysis. Having the rules and regulations in place for PPPs is essential, but not sufficient for a PPP project. Part of the risk in the enabling environment is a lack of well-functioning institutions for preparing, procuring and implementing PPPs. Measures to reduce this risk include investing in capacity building, recruitment of experienced staff, as well as using external experts.

A lack of stakeholder support and ownership is both an internal and an external risk. The external risk of a lack of support from the general public or key stakeholders can affect the project through (often costly) delays. Section 2.5: Stakeholder Consultation and section 6: Social Impact Assessment present methods to understand and engage stakeholders and thereby, seek to mitigate the associated risk.

Internally, PPPs are sometimes supported by one arm of government; but not others. This can negatively impact market appetite, if conflicting messages are given by different arms of government. Two other risk categories of the enabling environment include insufficient funding and access to long-term financing. Country specific risks, as well as natural hazards and perceived inexperience with PPP projects, make some Caribbean countries a risky investment option for financiers, which can limit available financial sources.

For example, the Multilateral Development Banks (MDBs) declined to finance Jamaica's Highway 2000 project when it was first implemented, forcing the project to rely on expensive commercial financing, for the first phase. Later, after the Project had been operation for a few years, and the enabling environment had improved, the MDBs stepped in and refinanced the project's commercial debt – see Textbox 4.13 below.

Textbox 4.13: Highway 2000 Jamaica

Commencement: Due to the size and significance of the project, National Road Operating and Constructing Company (NROCC) formed in 2002 to take over implementation from the Development Bank of Jamaica (DBJ).

Phase 1: Best and Final Offers (BAFO) received May 2001, from Bouygues S.A. of France and Dragados S.A. of Spain. After a transparent evaluation process Bouygues was selected as the preferred bidder; the 30-year concession contract signed in November 2001; and Financial Close in October 2002 (after passage of Toll Roads Act).

Refinancing: The capital cost for Phase 1 was $324 million; initially financed by 7-year bonds issued by Royal bank of Trinidad and Tobago (RBTT). In 2011 RBTT was refinanced by a $285 million package from EIB ($77m), IDB ($77m), IFC ($77m), and Proparco ($5.4m).

Phase 2: North-South Highway would be more challenging than Phase 1: higher costs, geotechnical risk and lower traffic. Bouygues had option but declined. China Harbor Engineering Company (CHEC) was looking for an anchor Caribbean project and made unsolicited proposal in 2011. NROCC kick-started Phase 2 by contracting Bouygues to build the Mt. Rosser Bypass, under a publicly funded EPC contract. CHEC construction started Sept. 2013; completed March 2016.
The Land Issue: Due to severe viability challenges on Phase 2, discussions took place on incentives around land availability for ancillary investments. Agreed to make 1,200 acres of Crown Lands adjacent to the Highway available to CHEC for commercial developments (subject to NROCC approval of development plans). CHEC is currently preparing 2,200 room hotel project on the North Coast.

Social and Environmental Issues: Multilateral Development Banks have higher environmental standards than commercial banks; remedial measures needed to comply with Equator Principles. Total 200 buildings relocated over both Phases, residents compensated at full replacement value (even where they had no land titles). Challenges in establishing fishermen's cooperative; due to lack of capacity.

Lessons: European and Chinese developers have completely different cultures. Project as originally conceived may not be bankable; therefore governments must be flexible. There are other non-financial incentives (tax, duty, lands) that can be provided to achieve bankability. "Know your developers – speak their language!"

3.2 Risk prioritisation

The objective of the second component is to prioritise the risks identified in the risk workshops. Risk prioritisation helps the project team to distinguish between significant and insignificant risks.

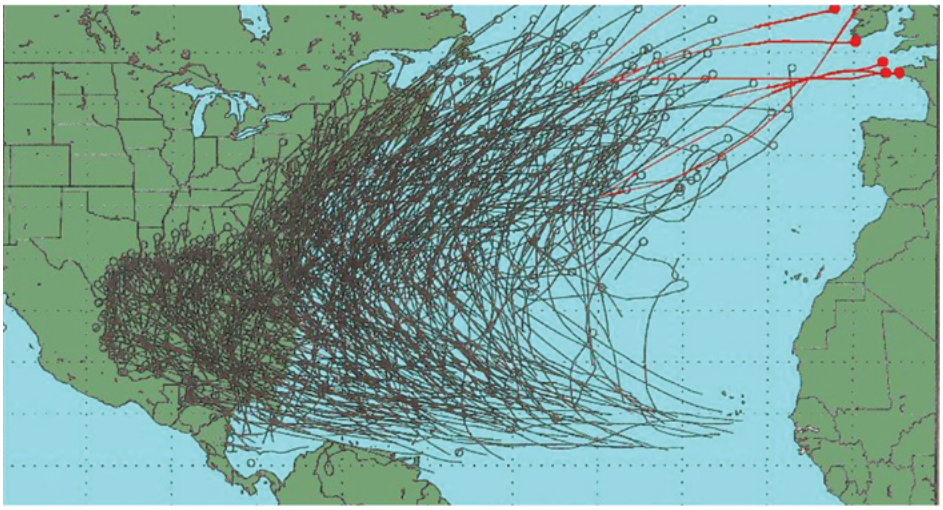
The qualitative risk assessment is a commonly used approach for prioritising risks. The qualitative risk assessment determines two factors: (i) the likelihood of a risk occurring and (ii) the consequences of a risk occurring. These factors are assigned the qualitative values of very high, high, medium, low, or very low. These judgments are then entered into a risk impact matrix to determine the risk rating (See Textbox 4.14).

Textbox 4.14: Risk Prioritisation Matrix

			Cost Consequence				
			> 25%	10%-25%	3%-10%	1%-3%	< 1%
			5	4	3	2	1
Probability scale	> 70%	5	Very High	High	High	Medium	Low
	40%-70%	4	High	High	Medium	Medium	Low
	20%-40%	3	High	Medium	Medium	Low	Low
	5%-20%	2	Medium	Medium	Low	Low	Low
	0%-5%	1	Low	Low	Low	Low	Very Low

For example, a category 5 hurricane is likely to cause extensive damages, wherever it occurs. However, the probability of occurrence is much greater in the Caribbean than, say, the United Kingdom (see Figure 4.12 below). Therefore, strong hurricane mitigation measures (insurance) would be necessary for a Caribbean PPP, but not to the same extent as would be needed for PPPs in the UK.

Figure 4.12: Caribbean Hurricane Tracks, 1886 - 1996



The result of the workshop is a shortlist of the most important (medium, high, very high) risks that will typically be included in the risk register and incorporated into the risk management plan.

3.3 Caribbean climate risk

The Caribbean region has always been affected by weather-related events more frequently and severely than other parts of the world. It is likely that extreme weather and weather related disasters are going to increase in the future due to climate change. The following list includes (but is not limited to) changes to be expected with regard to the average weather conditions in the Caribbean that cause the increased vulnerability of the region, as reported by the Caribbean Community Climate Change Centre (CCCCC)[56]:

- Higher temperatures
- Sea level rise
- Longer periods of heavy rainfall causing floods
- Longer periods of little to no rainfall / drought
- More frequent / more intense tropical storms, such as hurricanes

Climate change has a negative impact on risks in relation to PPP projects; in multiple sectors including transportation (e.g. road, airports, ports), energy (e.g. solar energy, hydropower) and water (e.g. irrigation, waste water, water supply). Several programmes are available from multilateral development banks operating in the Caribbean, to protect and mitigate against climate risk.

For example, in 2016, CDB in cooperation with Agence Française de Développement (AFD) signed an agreement to provide US$33 million towards financing sustainable infrastructure projects in the Caribbean region[57]. At least 50 percent of the funds will be used to fund climate change adaptation and mitigation projects.

In addition, CDB offers concessionary climate funds, through three programmes:

- Sustainable Energy for the Eastern Caribbean (SEEC) Programme[58]: A US$21.4 million facility, with funding from CDB, European Union-Caribbean Investment Facility (EU-CIF) and the United Kingdom Department for International Development (DFID) grant resources. The funds are a concessional blend of loan and grant resources available for public sector investment in renewable energy and energy efficiency, as well as grant resources to provide technical assistance.

[56]http://www.caribbeanclimate.bz | [57]http://www.caribbeannewsnow.com/headline-US%2433-million-to-finance-climate-change-resilient-infrastructure-in-the-Caribbean-31532.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+CaribbeanNewsNowDailyHeadlines+%28Caribbean+News+Now%21+Daily+Headlines%29 | [58]http://www.caribank.org/seec

- Sustainable Energy Facility (SEF) for the Eastern Caribbean[59]: The overall objective of this US$71.5 million programme, funded with support from the Inter-American Development Bank (IDB), utilising its own loan resources, and contingently recoverable grant resources from the Clean Technology Fund (CTF), is to contribute to the diversification of the energy matrix in the Eastern Caribbean. To reduce the cost of power generation and electricity tariffs, by promoting the implementation of energy efficiency and renewable energy technologies (with emphasis on geothermal energy development), to reduce the region's dependency on liquid fossil fuels.

- Climate Action Line of Credit (CALC)[60]: A US$64.8 million facility, that will be used to finance public or private sector climate action projects, including energy efficiency; renewable energy; transportation; low-carbon technologies, development and innovation; and adaptation.

3.4 Risk mitigation

The objective of the third component of risk assessment is to identify risk mitigation methods for the previously shortlisted risks. Risk mitigation measures can be either preventive or corrective:

- Preventive measures aim to decrease the probability of a risk's occurrence or to reduce its expected impact or damage, also referred to as risk reduction. Government can reduce risk by defining rules and regulations, and designing the project to avoid certain risks (geotechnical, commercial or meteorological).

- Corrective measures aim to minimise the impact or damage once the risk has already occurred. Examples of corrective measures include emergency response systems, designing physical facilities to be climate resistant, or investing in insurances.

A risk mitigation strategy can have both elements. If a preventive or risk reduction measure is not 100% effective, a complementary corrective or mitigating measure should be defined.

Typically, two approaches are used to identify means of risk reduction and mitigation: (i) experts can be interviewed during a workshop, and/or (ii) risk reduction and mitigation plans from previous comparable projects can be consulted. The outcome of this stage is a risk mitigation strategy, which also allocates risk management responsibilities among the project team.

In general, four types of risk control strategies can be distinguished: allocate, avoid, adapt and accept. provides a brief overview of each strategy.[61]

[59]http://www.caribank.org/news/cdb-signs-agreement-with-idb-to-secure-usd-71-5m-sustainable-energy-programme-for-eastern-caribbean | [60]http://www.caribank.org/news/cdb-and-eib-sign-letter-of-intent-to-support-action-on-climate-change

Table 4.1: Types of Risk Mitigation Strategies

Strategy	Explanation
Allocate	Allocate risk between public and private parties based on each entity's ability to manage each risk and cope with its consequences. (See next Section 3.5). The two parties may also choose to allocate risk to third parties: insurance, specific financial products (for example, interest rate swaps, currency futures, forwards)
Avoid	Optimise the scope, design and planning of the project in order to avoid critical situations, for example, choosing a realistic delivery date, avoiding non-proven technology, planning crucial construction activities outside of the hurricane season. Also relevant are measures related to the legal and institutional framework of PPPs that can impact the project, for example, building capacity for managing PPP contracts, creating the institutional entities needed for contract management, developing legal certainty regarding controversial juridical topics.
Adapt	Adapting to a risk refers to the possibility to change the project scope, in order to be better protected against specific risks (for example, re-routing a highway alignment to avoid areas of high geotechnical risk). Next, design or scope alternatives can be developed to allow for adaptation, for example, switching to a different technology.
Accept	Accepting the risk is possible when the cost of control or mitigating measures outweigh the value of the risk, in other words, when it is cheaper to accept the risk than to mitigate it (for example, it may be worthwhile to accept small amounts of pilferage on a building site, than to completely enclose it with a fence). For these risks, measures include adding a buffer in the project planning (risk of delay) or a contingency in the financial model

[61]For more information, please reference the "Guidebook for Risk Assessment in Public Private Partnerships," Federal Highways Administration of the United States, December 2013.

3.5 Risk allocaton

The objective of this fourth component is to allocate risks such that their negative impacts are minimised. The accepted principle for allocating risk is to "allocate risks on the basis of each entity's ability to manage the risk and cope with its consequences." Risks that the private party is more capable of managing are transferred (for example, geotechnical, construction delays); while risks that the contracting authority is more capable of managing are retained (for example, land acquisition, permitting). Specifically, three principles lie at the basis of risk allocation (see Table 4.2): (1) being able to control the likelihood of a risk; (2) being able to contain the impact of it; and (3) achieving risk mitigation at the lowest cost.

These risk allocation principles are especially relevant in a PPP that is financed using project finance. In project finance, financing is secured on the basis of the project's cash flows. By contrast, in corporate finance, long-term loans are secured on the parent company's larger corporate balance sheet. This has implications with regard to the ability of the project, and its sponsors, to absorb risk and the respective costs associated with risk. Projects financed with project-specific financing typically have a lower capacity to absorb risk than projects financed with corporate finance. The advantages and disadvantages of corporate finance are discussed in more detail in the section: Introduction to Project Finance.

In the early days of a PPP programme, governments sometimes make the mistake of trying to transfer too much risk to the private sector. For example, transferring too much of the demand risk of a public transportation project to the private sector might be unreasonable, if this demand cannot be influenced by the private party. Transferring too much risk to the private sector will result in higher risk premiums attached to the project, increasing project cost and lowering the project's return.

Conversely, transferring too little risk to the private sector reduces the incentives for efficient provision of assets and service by the private partner, and so limits the value that can be achieved from a PPP delivery model. This mistake occurs in both mature and emerging PPP markets.

During the risk allocation process, both expert judgement as well as experience from other projects can act as valuable guidance. Comparable international and domestic PPP contracts should be taken into consideration when allocating risks. During the workshop, several essential questions can be used as guidance (see Table 4.3). Also, market consultations will inform decision-makers of the views of the private sector, and what risks they would be willing to accept, and under what terms.

Table 4.2: Three Risk Allocation Principles

Step	Principle
Step 1: Likelihood	First, risk should be allocated to the **party best able to control the likelihood** of the risk occurring.
Step 2: Impact	Second, risk should be allocated to the party **best able to control the impact** of the risk on project outcomes.
Step 3: Lowest Cost	Third, risk should be allocated to the party **best able to absorb the risk at the lowest cost** if the likelihood and impact cannot be controlled.

Table 4.3: Essential Questions on Risk Allocation

	Question
Similar Contracts	Are there good reasons to deviate from the risk allocation matrix used in earlier transactions, and contained in the model PPP contracts? This can also be efficient with regard to transaction costs.
Marketability	Are there any reasons to assume that the private sector will not accept the risk, or price the risk at an unreasonably high value (for example, uninsurable risks)?
Incentives	Do any of the potential risk allocation mechanisms create unintended incentives for the private sector? Also, take into account risk-sharing mechanisms.
Manageability	Do any of the potential risk allocation mechanisms create "gray areas" in terms of responsibility?

The outcome of the risk allocation process is a risk allocation matrix and, eventually, a risk allocation for the PPP contract documentation. The risk allocation in a PPP contract will differ from that of a conventional delivery model (see Table 4.4).

Table 4.4: Example of a Risk Allocation Matrix: Conventional vs. PPP

Activity	Conventional Delivery	PPP Delivery
Design	Public	Concessionaire
Construction of infrastructure	Contractor 1	Concessionaire
Day-to-day monitoring	Public	Concessionaire
Oversight	Public	Public
Relocation of utilities	Public	Concessionaire
Hazardous materials	Public	Concessionaire
Unexpected ground conditions	Public	Public
Right-of-way acquisition	Public	Public
Timely application for permits	Public	Concessionaire
Delay or additional requirements in permitting	Public	Public
Regular maintenance	Contractor 2	Concessionaire
Major maintenance	Contractor 3	Concessionaire
Operations	Public	Concessionaire
Revenue risk	Public	Concessionaire

3.6 Risk valuation

The objective of the last component of risk assessment is to value the risks to obtain a complete picture of the financial and economic feasibility of the project and its fiscal impacts. This step is meaningful only when sufficient quantifiable information about the project is available, thus at a more advanced stage of the project cycle. Risk prioritisation serves as a starting point for risk valuation as it gives an indication of both the likelihood and the (financial-economic) consequence of a risk occurring. Financial experts can further monetise the risks if needed.

The values of the (most important) risks can then be included as costs in the financial assessment. In the economic assessment, it might suffice to use scenario analyses in order to determine the range of the outcome.

3.7 Risk mitigation instruments

As mentioned above, risks should be allocated to the parties that are best capable to manage them. Governments need to take the risks that it can manage better than private parties. However, not all public agencies are able to accept such risks, because they do not have proven track records or are otherwise not sufficiently creditworthy. This adversely affects the bankability of projects, which is why risk mitigation and credit enhancement instruments are necessary.

Risk mitigation instruments are financial instruments that transfer risk from lenders and investors to specialist third parties, who are better able to accept these risks. Risk mitigation instruments lower the risk profile of the Special-Purpose Vehicle (SPV), and improve the credit rating, and thereby either:

- Makes the project more financeable; or
- Improves the financing conditions by:
  - Extending the maturity; and/or
  - Lowering the interest rate

Commonly used risk mitigation instruments include:

- Swaps / Derivatives:
  - Interest rate
  - Currency
  - Inflation

- Guarantees and insurance:
  - Company / performance guarantees
  - Credit guarantees/ insurance
  - Export credit guarantees / insurance
  - Political risk guarantees / insurance

The International Finance Corporation (IFC) operates a Partial Credit Guarantees (PCG) scheme[62], designed to reduce the probability of default of the debt instrument and increase the recovery if default occurs. The PCG, and other guarantee schemes offered by MDBs, covers part of debt service in case of default, with the objective of offering the minimum amount of guarantee necessary, to facilitate a successful project financing. The government will indemnify the guarantor in the event the guarantor makes payments under the PRG.

Payment is made only if the debt default is caused by risks specified under the guarantee, typically including:

- Changes in law;
- Failure to meet contractual payment obligations;
- Obstruction of an arbitration process;
- Expropriation and nationalisation;
- Foreign currency availability and convertibility; and
- Failure to issue licenses, approvals, and consents in a timely manner

Political risk guarantees/insurance: For example, IDB offers several types of political risk guarantees[63] for debt instruments: breach of contract guarantees, currency convertibility and transferability guarantees and guarantees for other political risks. Coverage needs are tailored for each project to cover specified risk events related to non-commercial factors. Coverage extends up to 50 percent of project costs or US$150 million, whichever is less.

[62]http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/structured+finance/products/partial+credit+guarantee
[63]http://www.iadb.org/en/about-us/idb-financing/guarantees-,6040.html

Cover losses caused by specified government actions:

- Expropriation
- Currency inconvertibility
- War, civil disturbance, terrorism, and sabotage
- Breach of contract

Typically, guarantee schemes will cover lenders for full amount of the debt. Payment is made only if the debt default is caused by risks specified under the guarantee. Political risk insurance does not require a counter-guarantee from a host government. Premium rates are set on a per-project basis.

Application process:

- The application for guarantees and insurance needs to be initiated before the start of the procurement.
- Pre-approval process involves multiple internal concept/corporate review and legal documentation before approval.
- Delays in the application and approval process would affect the procurement process and financial closure of the project.
- Bidders need to consider the fees to obtain PRGs and PRIs, such as initiation fee, processing fee and guarantee fee.

The North-South Link of Highway 2000: a PPP that overcame major technical challenges in Jamaica's mountainous interior.

MODULE 4

4. ECONOMIC FEASIBILITY

The Economic Benefit-Cost Assessment (ECBA) is an assessment of whether society will be better off if a project is implemented. The ECBA is used to support (public) investment decisions by reflecting realistic estimations of all benefits and costs, both financial and non-financial. The ECBA assesses whether a project is economically viable (a "good project"), regardless of the delivery model. ECBA may use a Cost-Benefit Analysis (CBA), with full quantification (in dollars) of every cost and benefit—or less sophisticated methodologies. Because public projects are not always financially feasible and often need public funding, a positive result in ECBA can also serve as justification for providing government support to a project. Table 4.5 below gives definition of key terms.

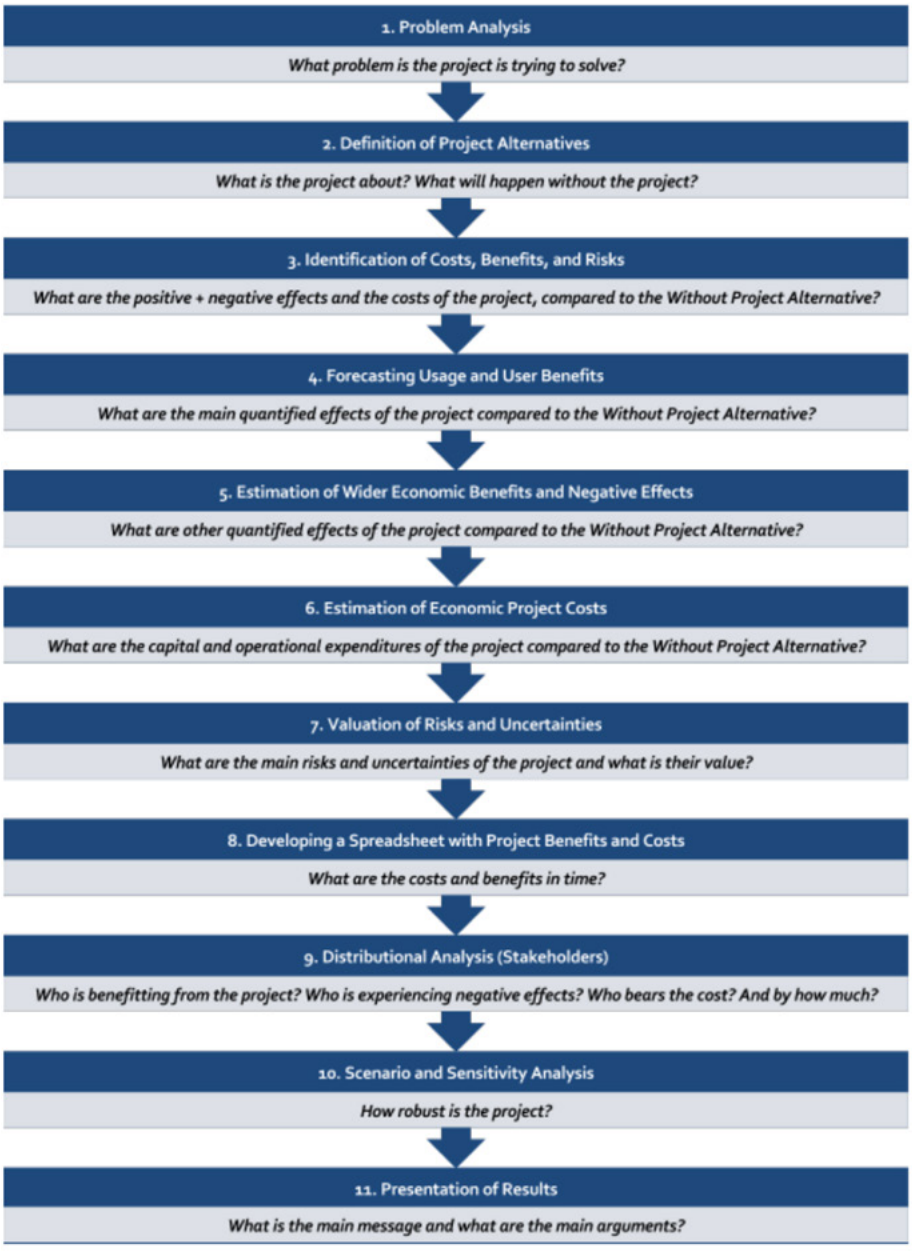
Table 4.5: Key Formulas and Terms

Formulas or Term	Definition
Economic Net Present Value (ENPV) = (Present value of all benefits – Present value of all costs)	Shows total benefits of the project If ENPV is positive, the project provides value to society and can be considered for implementation If ENPV is negative, then project implementation will result in a loss to society as a whole
Economic Cost Benefit Ratio (ECBR) = Discounted value of incremental benefits ÷ Discounted value of incremental costs	Determine if the project is cost-effective If the ECBR is greater than 1, the project can be considered for implementation because it is considered to provide value to society (benefits exceed costs) ECBR ratios less than one indicate that a project brings a loss to society (costs exceed benefits).
Discount Rate	The rate at which predicted costs and benefits are reduced in future years to reflect the time value of money. The purpose of the discount rate is to convert future values to present value.
Economic Internal Rate of Return (EIRR)	The discount rate at which the ENPV equals zero. As a basic rule, the EIRR of a project must exceed the discount rate of the project in order for the project to be economically feasible.

The result of an ECBA is an indication of the economic feasibility of a project. It is usually expressed through the Economic Net Present Value (ENPV) and sometimes an economic internal rate of return (EIRR) or a Benefit Cost ratio (B/C-ratio). The ENPV is the (dollar) sum of all economic costs and benefits of the proposed project over the expected lifetime.

In case of a negative ENPV, the costs and negative effects of a project outweigh the benefits to society: in this case, the project is not economically feasible and should (from a societal point of view) not be implemented. In contrast, a project with a positive ENPV creates added value to society, as the benefits of the project outweigh the costs and negative effects.

Table 4.6: Cost Benefit Assessment Building Blocks



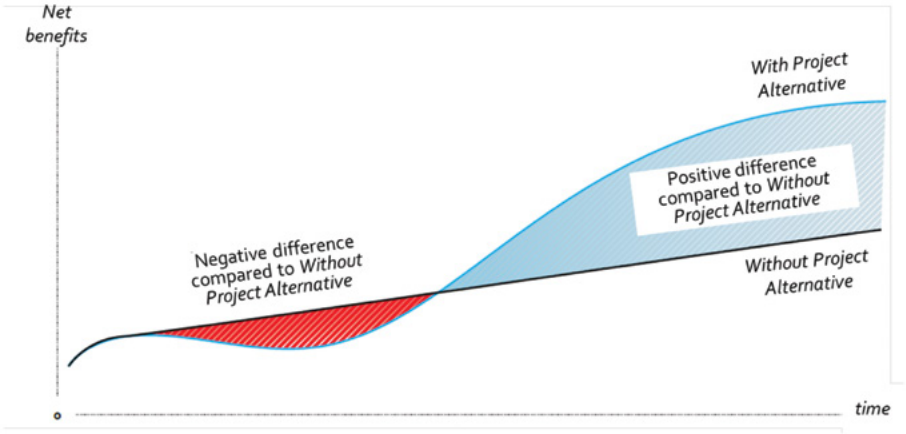
Not all of the effects of a project can or should be expressed in economic terms. Understanding the impact of the effects as well as the underlying arguments of the ECBA is more important than the actual monetised result.

Table 4.6 presents an overview of the most important steps or 'building blocks' of the ECBA. It should be noted that different approaches and methodologies exist. The steps presented below provide general guidance on the structure and process of the economic assessment.

As introduced in Section 2.2, the ECBA answers the question of whether the benefits of implementing the project outweigh its costs. This is done by comparing two situations: (i) the situation with the project, the so-called "With Project Alternative" and (ii) the situation without the project, the "Without Project Alternative." The difference between these two situations is the value of the project to society. The value of the project to society can be positive or negative. It is important to note that the Without Project Alternative does not necessarily represent the "status quo," or "do nothing" scenario. The relevant agency may still be making minimum investments in the existing project. These costs should be taken into consideration as well.

In Figure 4.13 below, the black line shows the Without Project Alternative and the red and blue lines show the development of a "With Project" Alternative. The difference between the two lines represents the economic impact of the project. Note that there will be a negative difference at the start of the project because of the capital costs involved in investing in a new project, and a positive difference in the later phase of the project because of the additional net benefits that result from the new project. Multiple net benefit curves can be shown, if the contracting authority defines more than one "With Project Alternative".

Figure 4.13: Without Project Alternative vs. With Projct Alternative



The Without Project Alternatives helps the contracting authority assess the economic impact of the project. The difference between the Without Project Alternative and the Project Alternative is determined by identifying the change in (i) costs, (ii) benefits, and (iii) risks. Table 4.7 summarises the typical costs and benefits of a project.

It is crucial to keep in mind that a With Project Alternative may have negative non-financial effects, compared to the Without Project Alternative. For example, the With Project Alternative may create additional noise or visual interferences, or other negative environmental and social impacts compared to the Without Project Alternative.

Table 4.7: Costs and Effects for the Economic Benefit-Cost Assessment

Criteria	Sub criteria	Examples of indicators
Life cycle costs	Investment costs	Total Dollars
	Operation and maintenance cost	Dollar/year, or Percentage of initial investment per year
	Re-investment after a number of years	Dollars and years
Environmental value	Ecosystem and biodiversity effects	Change of condition of habitats and species that have been identified as priorities for conservation
	Energy efficiency	Share of renewable energies
	Ambient environment / spatial quality	Green buildings; collection of rain water / rain water harvesting for urban supply
	Noise levels	Human exposure to harmful noise levels
	Greenhouse gas emissions	Share of biofuels in transport; energy consumption
	Air quality	Air pollution; green areas
Social value	Identity & Social cohesion	Score of identity and social cohesion survey
	Crime and vandalism	Crime; perception of safety; safety provision; poverty
	Casulaties and injuries	Dollar/ year, or Probability times number of persons at risk
	Health effects	Dollar/year, or Probability times number of persons at risk
	Affordable housing	Provision of affordable housing
	Recreational value for inhabitants	Green land area; tourism intensity
	Human capital / Education	Hours taught; number of people educated
Economic value	Directly effects local or regional economy	Gross Value Added (per sector of economy)
	Synergies or spin-off effects to other sectors' revenues (e.g. transportation)	Transport of goods; foods industry
	Business interruption (per business)	Probability / number of days times revenue/profit per hour/day, or Historic data/ damage reports
	Cost to business (e.g. material damage, human resources, supply)	Probability times value of assets, or Historic data / damage reports
	Economic competitiveness	Enhanced competitiveness through specialisation, agglomeration

Table 4.7: Costs and Effects for the Economic Benefit-Cost Assessment cont'd.

Criteria	Sub criteria	Examples of indicators
Economic value cont'd.	Local / regional employment	Additional employment by sector
	Local / regional employment in construction	Additional employment in construction
	Infrastructure, public property value	Probability times number of assets times value of assets, or Historic data / damage reports
	Property value	Re-use of urban and derelict areas
	Mobility / Transportation	Travel time improvement; vehicle ownership

The first step of the Economic Cost-Benefit Assessment involves identifying the costs of the With Project Alternative, compared to the Without Project Alternative, as well as the positive and negative effects. The second step is to monetise some of the costs and effects (both positive and negative). It is necessary to monetise only the most important non-monetary costs and effects. The less important effects can be described qualitatively. It is more important to understand the arguments and reasoning behind the effects, than their exact economic value.

Effects are typically monetised based on demand forecasts for the services, as well as other valuation techniques, including:

- The willingness to pay for the services delivered by the project;
- The cost savings realised by the users of the project compared to the "do nothing" alternative;
- Mitigation costs;
- Compensation costs; and/or
- Willingness to accept or avoid the negative effect (determined based on surveys).

In estimating the change in costs, a number of cost components need to be considered. These include construction and acquisition costs; maintenance and operating costs; and possible mitigation and compensation costs (if the latter were not already accounted for in the valuation of the negative effects).

The contracting authority and its consultants need to clearly document and explain the estimates of the effects as well as the costs. They need to provide a clear indication of the sources of the data, the assumptions used, and the calculations made. Aside from the costs and effects, major risks may also need to be included in the qualitative and quantitative assessments.[64]

[64]Please refer to Section 3 of this Module for detailed guidance on the Risk Assessment

Some risks are accounted for in the discount rate of the project. Other risks can be included in the cost estimates or added as a contingency.

Finally, some risks and uncertainties may be analysed using sensitivity analysis. Sensitivity analysis assesses the robustness of the financial projections, by testing the uncertainty level around the assumptions used to calculate the costs and benefits. It also assesses the impact of certain project risks that influence the economic feasibility of the project.

Typical sensitivity tests may include:

- An increase and decrease in cost estimates (usually around 20 percent);
- A low and high demand scenario, for the services to be provided by the PPP;
- Any important project risks that have been identified in the feasibility study (for example, delays in the implementation of the project due to permit problems);
- Where relevant, sensitivity tests may include economic, climate, or demographic scenarios.

The ECBA is typically concluded with a distributional analysis, which assesses the impact per stakeholder group with the help of the following guiding questions:

- Who is benefitting from the project?
- Who is experiencing negative effects?
- Who is bearing the cost?

The result gives an indication for possible interventions that may be needed to re-distribute the benefits through transfers such as taxes, tariffs, user fees, or compensation payments. The Social Impact Assessment, discussed in section 6 will address interventions needed to transfer benefits.

Octavia Forde (R), Chief Accountant in the Ministry of Finance & Economic Affairs, Barbados receives her Certificate of Attendance at the third and final PPP Boot Camp in Kingston Jamaica, from Diana Wilson Patrick (L), General Counsel at Caribbean Development Bank.

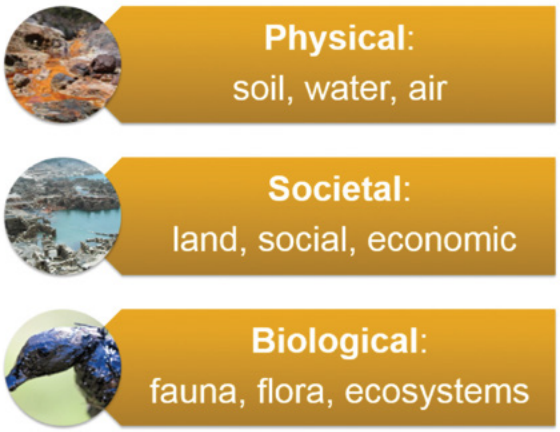
MODULE 4

5. ENVIRONMENT IMPACT ASSESSMENT

The Environmental Impact Assessment (EIA) is the analysis of physical, societal and biological effects of a project and is carried out prior to major project decision making[65]. For the Caribbean, the impact of a project on the environment is particularly crucial given that the natural beauty and fragility of the Caribbean is among its greatest natural resources.

As much of that splendor is environmentally sensitive, "sustainability" especially regarding the short and long term effects on the environment, is not simply a feel-good term. For the Caribbean, it is critical to the economy. Thus, it is critical that infrastructure PPPs are studied for their environmental impacts. Figure 4.14 below shows the three main types of negative environmental impacts:

Figure 4.14: Main Environmental Impacts



[65]http://inece.org/topics/capacity-building/environmental-impact-assessment/

The objectives of the EIA are to:

- **Ensure** that environmental considerations are addressed and incorporated into the decision making process;
- **Anticipate** and avoid, minimise, or offset the adverse biophysical, and social effects of the project;
- **Protect** the productivity and capacity of natural systems and the ecological processes; and
- **Promote** projects that are sustainable and optimise resource use and management opportunities.

The following table provides guidance on structuring the EIA along the outline of a standard EIA report.

Project-specific EIAs should normally cover:

- Existing environmental baseline conditions;
- Potential direct and indirect environmental impacts, including opportunities for environmental enhancement;
- Systematic environmental comparison of alternative investments, sites, technologies, and designs;
- Preventive, mitigatory, and compensatory measures, generally in the form of an environmental mitigation or management plan;
- Environmental management and training; and
- Environmental monitoring.

Table 4.8: Outline EIA report and Required Analysis

Chapter	Content
Executive Summary	Executive Summary, appropriate for decision making process
Policy, Legal & Administrative Framework	Classification of the project according to (environmental) laws and regulations
	Identification of contracting and other authorities
	Analysis of policies, legal and administrative requirements for obtaining permits
Project Description	Description of the project
	Description of project activities in different phases (for example, construction, maintenance, and operation)
Baseline Data	Existing environmental baseline conditions
Environmental Impacts	Potential direct and indirect environmental impacts
	Opportunities for environmental enhancement
Analysis of Alternatives	Systematic environmental comparison of alternative investments, sites, technologies, and designs
Environmental Management Plan	Preventive / mitigation / compensation measures
	Plan and time schedule for obtaining permits
	Planning, management, and monitoring of implementing suggested environmental protection measures
	Capacity building and training programme to implement the environmental protection measures

Textbox 4.15: Environmental and Social Impact Assessment of Highway 2000, Jamaica

One major Caribbean infrastructure project that was the subject of detailed environmental and social impact assessments – as well as its fair share of controversy – is the Highway 2000 Project in Jamaica. Since its inception in 1999, every stage has been preceded by extensive assessments; followed by technical reviews by the National Environmental Planning Agency (NEPA), as well as civil society. Key studies and assessments included:

- Environmental Impact Assessment, Highway 2000 - Portmore Causeway. May 14, 2003. Environmental Solutions Ltd.
- EIA Report Highway 2000: Kingston to Bushy Park, Environmental Solutions Ltd.
- Environmental Impact Assessment. Highway 2000, Phase 1B, ESL Management Solutions Ltd.
- Environmental Impact Assessment for the Proposed Highway 2000 North South Link – Caymanas to Linstead. August 2012. CL Environmental Co. Ltd.
- Environmental Impact Assessment for the Proposed Highway 2000 North South Link – Moneague to Ocho Rios. November 2012. CL Environmental Co. Ltd.
- Review of the EIA for the "Proposed Highway 2000 North South Link: Moneague to Ocho Rios" Highway Construction Project Jamaica done by CL Environmental Limited. Prepared by: Jamaica Environment Trust.
- Environmental Assessment Jamaica North South Highway – Caymanas to Linstead Realignment, December 2014. CL Environmental.
- Highway 2000 Resettlement Action Plan Phase - 1b-1: Sandy Bay to Four Paths. The Land Acquisition Unit May 4, 2009.
- Archaeological Impact Assessment, March-April 2012, Prepared by Jamaica National Heritage Trust Archaeology Division Field Unit.

The first Phase of the Project, a 35-year Concession awarded to Bouygues Travaux Publics, was successfully executed on 21 November 2001, and the first Phase was opened on 24 September, 2003. The Project was initially financed by commercial banks, and in February 2011, this was refinanced by a $285 million package from a consortium of development banks, including European Investment Bank (EIB); the Inter-American Development Bank (IDB); the International Finance Corporation (IFC); and Proparco.

The consortium of development banks had a higher social and environmental safeguards than the commercial banks, and as a result several issues on the first phase of the Project were re-examined, as part of the refinancing. This included creation of a Fisherman's Village, and attempts to organise the fishermen and vendors into a cooperative:

The second phase of Highway 2000, the North-South Link built by the China Harbor Engineering Company Ltd. (CHEC), has also had its share of social and environmental challenges. In its first twelve months of opening, there have been several landslides, and remedial work is ongoing to stabilise the steeper slopes. In addition, NEPA has issued an Enforcement Notice to the developer: "Cause or allowance of excessive sedimentation of the coastal ecosystem in the Old Fort Bay Area of St. Ann, this being the wash down of silt, solid waste and debris associated the construction and preparation activities along K61 to K67 of the Jamaica North South Highway." Remediation work is continuing.

Source: NROCC, NEPA, DBJ

MODULE 4

6. SOCIAL IMPACT ASSESSMENT

The International Principles for Social Impact Assessment provides the following definition of Social Impact Assessment (SIA):

"Social Impact Assessment (SIA) includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions … and any social change processes invoked by those interventions."[66]

The objective of the SIA is to maximise the social benefits of a project and to minimise its negative social effects. The SIA is therefore strongly linked to the other assessments in the Business Case stage of PPPs, such as the technical, economic and environmental assessments. The SIA analyses the intended and unintended social consequences of the project, both negative and positive. The International Association of Impact Assessments (IAIA) provides a (non-extensive) list of social impacts, presented in Table 4.9.

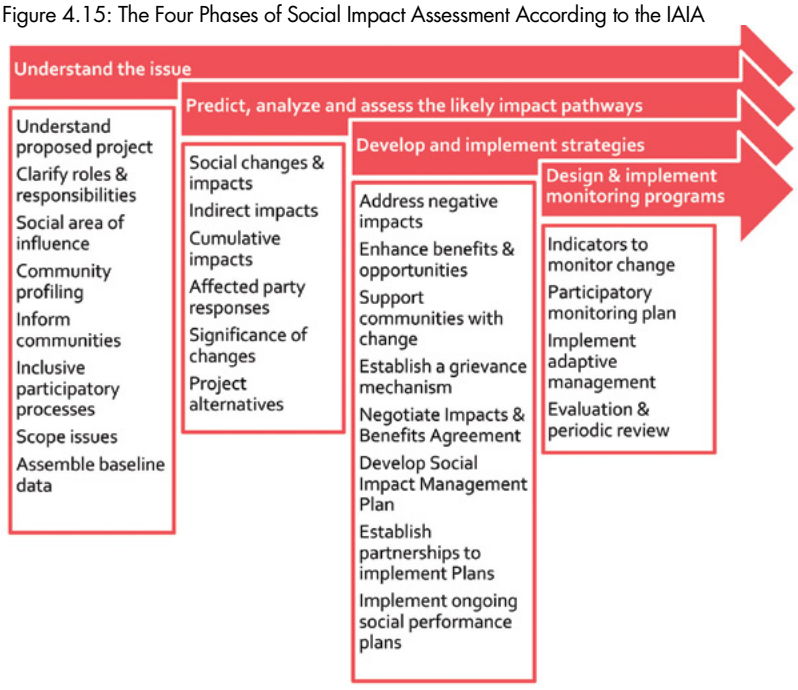
[66]International Association for Impact Assessment. Social Impact Assessment: Guidance for assessing and managing the social impacts of projects. April 2015. Available online: http://www.iaia.org/uploads/pdf/SIA_Guidance_Document_IAIA.pdf

Table 4.9: Social Impacts of a Projects According to the IAIA

Social Impacts are changes to one or more of the following[67]
• **People's way of life** – that is, how they live, work, play and interact with one another on a day-to-day basis
• **Their culture** – that is, their shared beliefs, customs, values and language or dialect
• **Their community** – its cohesion, stability, character, services and facilities
• **Their political systems** – the extent to which people are able to participate in decisions that affect their lives, the level of democratization taking place, and the resources provided for this purpose
• **Their environment** – the quality of the air and water people use; the availability and quality of the food they eat; the level of hazard or risk, dust and noise they are exposed to; the adequacy of sanitation, their physical safety, and their access to and control over resources
• **Their health and wellbeing** – health is a state of complete physical, mental, social and spiritual wellbeing and not merely the absence of disease or infirmity
• **Their personal and property rights** – particularly whether people are economically affected, or experience personal disadvantage which may include a violation of their civil liberties
• **Their fears and aspirations** – their perceptions about their safety, their fears about the future of their community, and their aspirations for their future and the future of their children

The IAIA distinguishes four phases of the social impact assessment of projects, which includes 26 different tasks, as depicted below.

Figure 4.15: The Four Phases of Social Impact Assessment According to the IAIA



[67] International Vanclay, F. (2013). International Principles for Social Impact Assessment. Impact Assessment & Project Appraisal 21 (1).5-11. Available at: http://dx.doi.org/10.3152/147154603781766491

The guidance developed by IAIA provides more detailed recommended practices and discussions on the 26 tasks shown in Figure 6. With regard to PPP projects with large physical investments, the focus will be on understanding the need for resettlements and the relocation of economic activities, as well as developing the measures and strategies to minimise the negative impact of these activities. It is especially important to ensure that the negative effects of the project to the most vulnerable stakeholder groups, such as low-income households and women, are mitigated as much as possible.

Caribbean governments are taking social impact assessments and measures seriously, especially for projects that are funded by Multilateral Development Banks (MDBs). In addition, local community groups, environmental Non-Governmental Organisations (NGOs) and other civil society groups are playing an increasingly active role in PPP projects, representing stakeholders that face possible negative social impacts. Textbox 4.16 provides an outline of a potential SIA report, indicating the structure, activities and outcome of the SIA.

Textbox 4.16: Outline Social Impact Assessment

Chapter	Content
Executive Summary	• A short summary of the key findings, appropriate for decision making process
Introduction and Project Summary	• Introducing the report • Introducing the project and activities, including options (if applicable)
Methodology and Framework	• A statement of the design of the SIA and the methods used • Definitions, discussions of key concepts • Limitations • Legal framework and applicable legislation, regulations, guidelines
Community Profile	• Key characteristics of stakeholder groups • Community profile and baseline data • If relevant, key physical environment
Prioritised List of Social Impacts	• A statement of all potential social impacts as well as a short list of the prioritised key social impacts • Discussion of how key stakeholders are affected
Resettlement and mitigation measures	• If required, a description of: ✓ how resettlement process will be undertaken, ✓ what compensation will be provided and how it will be determined ✓ measures to restore and enhance livelihoods • Mitigation and other management measures to address other social issues, including costing and timeframe for implementation
Monitoring and Contingency	• Monitoring Plan: what, how, how often, who is responsible • How to respond should an allowance threshold be exceeded
Benefit Statement	• Stating the project benefits to the local communities, including local contents and procurement strategies
Ongoing engagement strategy, grievance, and governance	• Intended ongoing community engagement processes • Description of the grievance mechanisms and managing grievances • Description of governance arrangements for all processes and mechanisms to ensure ongoing acceptability

MODULE 4

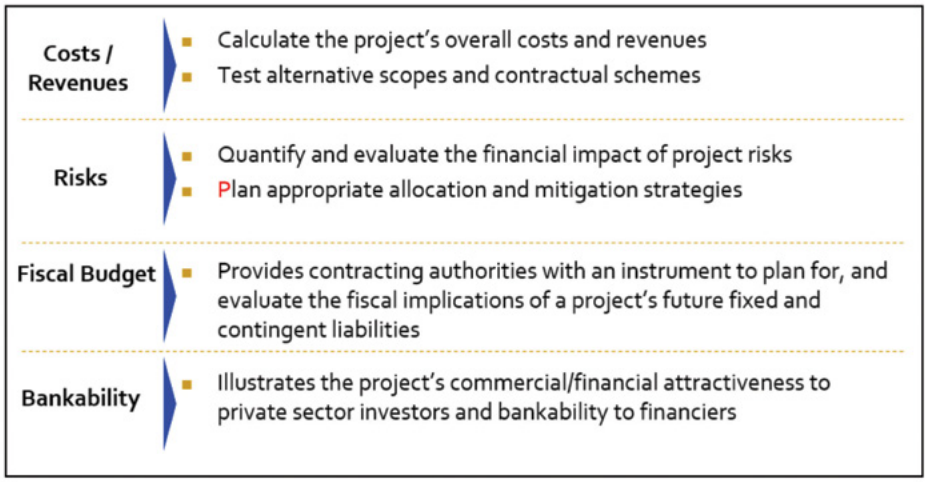
7. FINANCIAL FEASIBILITY AND FISCAL AFFORDABILITY

This Section provides guidance on conducting a Financial Feasibility Assessment and a Fiscal Affordability Assessment, as part of the Business Case stage.

7.1 Role of Financial Modeling in the business case

The financial model developed for the Business Case stage (hereafter referred to as the "Financial Model") has numerous objectives and functions, during the Business Case and procurement stages, and subsequently into monitoring. Figure 4.16 presents the main ones.

Figure 4.16: Objectives and Functions of a Financial Model



A good Financial Model:

- Includes the most realistic estimate of all future project cash flows (construction costs, operating costs and revenues);
- Indicates the impact of the most important risks and uncertainties in order to allow the government to develop allocation and mitigation strategies;
- Allows users to forecast different scenarios (such as changes in scope, timing, demand, costs, and financing terms) that may enhance or detract from the project's financial feasibility;
- Allows contracting authorities to evaluate and plan for the fiscal implications of a project, including its direct and contingent liabilities; and
- Illustrates the project's commercial or financial attractiveness to private sector investors and its "bankability,"[68] which is relevant for financiers.

The Financial Model serves a crucial role during the procurement stage. The contracting authority will use the Financial Model to evaluate bidders' proposals. The bidders will typically provide their own financial models, which will be compared to the model(s) of the contracting authority. The results of the bidders' basic data and assumptions should lead to similar results as those generated by the contracting authority's Financial Model. The winning bidder's model typically would be included in the PPP contract as the "Base Case," for future reference throughout the life of the project.

7.2 The Dos and Don'ts of Financial Modelling

A well-built Financial Model should be easy to understand for any government official, consultant or businessperson. Table 4.10 provides a summary of the most important principles ("FAST") to which financial models should adhere.

Table 4.10: Financial Model Guiding Principles

Principles of "FAST"	Explanation[69]
Flexible	Allows models to be adapted easily and quickly in case of new information
Appropriate	Model design should ensure that "form follows function" and that the model delivers the business requirement
Structured	Rigorous consistency in layout and organisation is essential to retain a model's logical integrity over time
Transparent	Simple, clear calculations that can be understood by other modelers and non-modelers alike

The Financial Model should also be consistent and follow a clear structure. All assumptions, rationales and instructions for the model should be carefully annotated, to allow future users to manipulate and update it. Table 4.11 presents essential criteria that all assumptions of a financial model should meet.

[68]"Bankability" refers to a project having sufficient future cash flow to be acceptable to the lenders of the project. In order words, a project is "bankable" if lenders are willing to finance it. For detailed guidance on bankability, refer to the PPP Guide developed by the European Investment Bank's European PPP Expertise Centre (EPEC), accessible at: http://www.eib.org/epec/g2g/i-project-identification/12/123/index.htm | [69]For more information on transparent financial modelling, see the "FAST Standard" website: http://www.fast-standard.org/

Table 4.11: Essential Criteria Financial Model Assumptions

Criteria	Guiding questions and explanations
Reasonable & Appropriate	Are all assumptions reasonable and appropriate? • Assumptions should take into account precedent projects. • Where there may be little precedent, an independent party should verify assumptions.
Clearly Assumed in the Model	Have all assumptions been clearly presented? • All assumptions should be clearly laid out in the financial model, to facilitate the process of making any changes. • Assumptions may be challenged in the procurement process.
Documented	Have all assumptions been documented? • All assumptions, as well as their supporting information and sources should be fully documented.

Financial models developed with the help of specialised consultants should be accompanied by a supplementary report, giving detailed instructions on how to use and manipulate the model, although the model should be self-explanatory. Four types of instruction sheets are distinguished, as shown in Table 4.12. Figures 4.17, 4.18 and 4.19 provide an impression of an Input sheet, Calculation sheet and Output sheet respectively. Figure 4.20 shows a screenshot of a full "cockpit" of a financial model, which is where the user can see the most important results at a glance, and can perform sensitivity analyses of the most critical inputs.

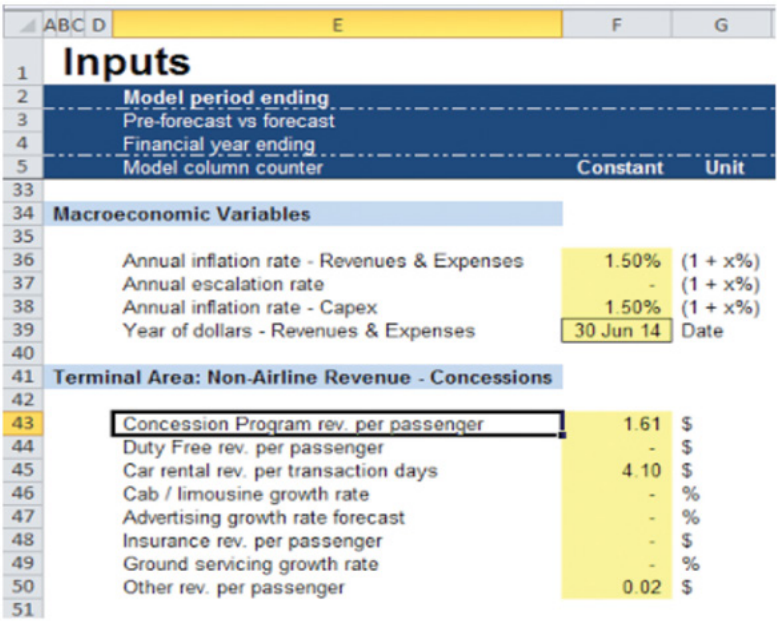
Table 4.12: Financial Model Structure per Sheet

Type of sheet	Content	Example
Cover and dashboard	• Cover: Opening sheet, including project name, date, disclaimer, client, modeler • Dashboard presents most important results and enables quick scenario analyses	Project IRR, DSCR, NPV
Input sheets	• Sheets containing assumptions that drive model projections • No calculations in these sheets • Cells with hard coded input are shaded in specific color to facilitate adjustments	Cost assumptions Inflation rate
Calculation sheets **Output sheets**	• Sheets for underlying, supporting calculations • Data form input sheets feed into calculation tabs • Calculation 'blocks' help to structure • No inputs or assumptions in these sheets	Revenue calculations Financing

Table 4.12: Financial Model Structure per Sheet cont'd.

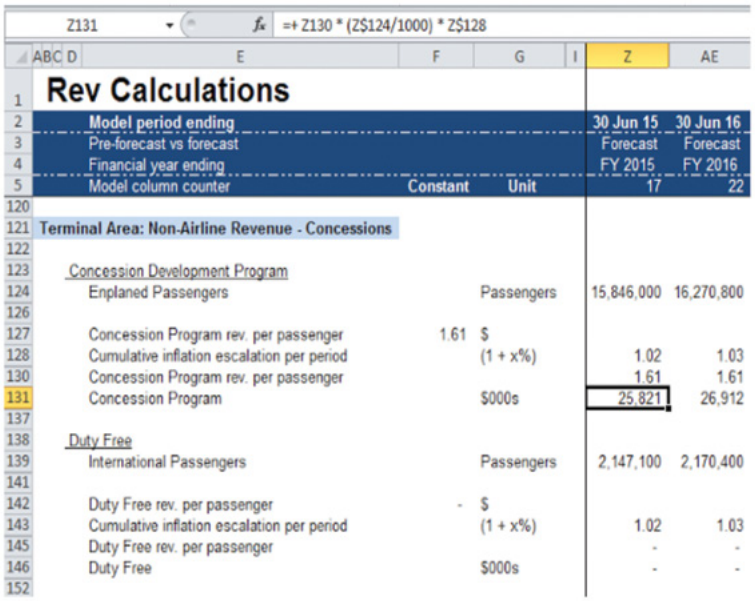
Type of sheet	Content	Example
Output sheets	• Sheets summarising key financial metrics and ratios • No calculations in these sheets	OpEx cashflow

Figure 4.17: Example of an Input Sheet



	E	F	G
1	**Inputs**		
2	**Model period ending**		
3	Pre-forecast vs forecast		
4	Financial year ending		
5	**Model column counter**	**Constant**	**Unit**
33			
34	**Macroeconomic Variables**		
35			
36	Annual inflation rate - Revenues & Expenses	1.50%	(1 + x%)
37	Annual escalation rate	-	(1 + x%)
38	Annual inflation rate - Capex	1.50%	(1 + x%)
39	Year of dollars - Revenues & Expenses	30 Jun 14	Date
40			
41	**Terminal Area: Non-Airline Revenue - Concessions**		
42			
43	Concession Program rev. per passenger	1.61	$
44	Duty Free rev. per passenger	-	$
45	Car rental rev. per transaction days	4.10	$
46	Cab / limousine growth rate	-	%
47	Advertising growth rate forecast	-	%
48	Insurance rev. per passenger	-	$
49	Ground servicing growth rate	-	%
50	Other rev. per passenger	0.02	$
51			

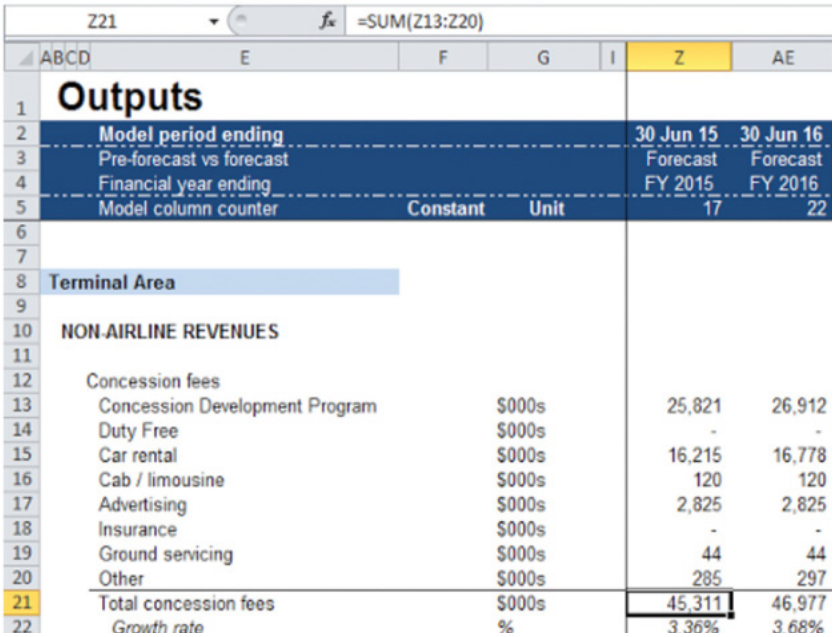
Figure 4.18: Example of a Revenue Calculation Sheet



Z131 | =+Z130 * (Z$124/1000) * Z$128

	E	F	G	Z	AE
1	**Rev Calculations**				
2	**Model period ending**			30 Jun 15	30 Jun 16
3	Pre-forecast vs forecast			Forecast	Forecast
4	Financial year ending			FY 2015	FY 2016
5	**Model column counter**	**Constant**	**Unit**	17	22
120					
121	**Terminal Area: Non-Airline Revenue - Concessions**				
122					
123	Concession Development Program				
124	Enplaned Passengers		Passengers	15,846,000	16,270,800
126					
127	Concession Program rev. per passenger	1.61	$		
128	Cumulative inflation escalation per period		(1 + x%)	1.02	1.03
130	Concession Program rev. per passenger			1.61	1.61
131	Concession Program		$000s	25,821	26,912
137					
138	Duty Free				
139	International Passengers		Passengers	2,147,100	2,170,400
141					
142	Duty Free rev. per passenger	-	$		
143	Cumulative inflation escalation per period		(1 + x%)	1.02	1.03
145	Duty Free rev. per passenger			-	-
146	Duty Free		$000s	-	-
152					

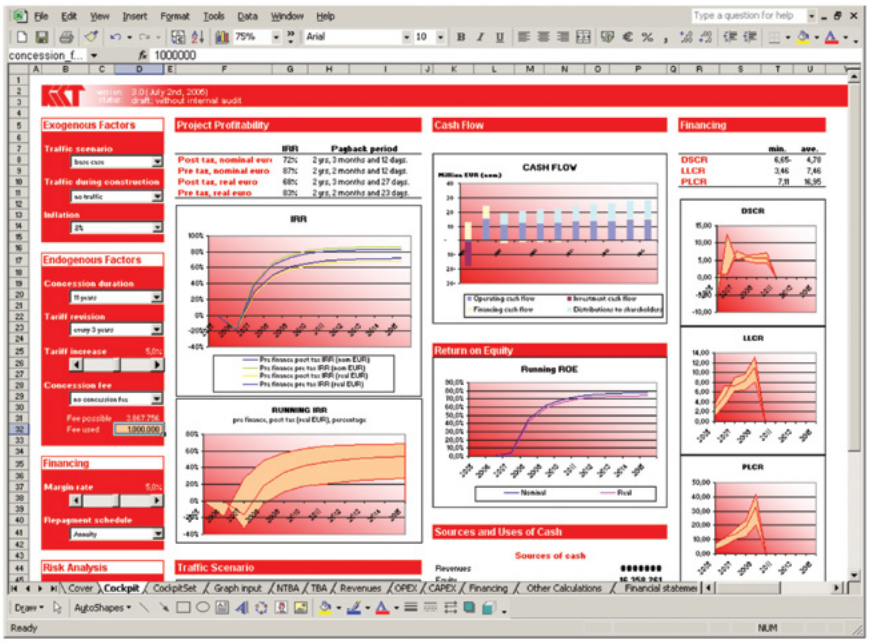
Figure 4.19: Example of an Output Sheet



Z21 =SUM(Z13:Z20)

	A B C D	E	F	G	I	Z	AE
1	**Outputs**						
2		Model period ending				30 Jun 15	30 Jun 16
3		Pre-forecast vs forecast				Forecast	Forecast
4		Financial year ending				FY 2015	FY 2016
5		Model column counter	Constant	Unit		17	22
6							
7							
8		Terminal Area					
9							
10		NON-AIRLINE REVENUES					
11							
12		Concession fees					
13		Concession Development Program		$000s		25,821	26,912
14		Duty Free		$000s		-	-
15		Car rental		$000s		16,215	16,778
16		Cab / limousine		$000s		120	120
17		Advertising		$000s		2,825	2,825
18		Insurance		$000s		-	-
19		Ground servicing		$000s		44	44
20		Other		$000s		285	297
21		Total concession fees		$000s		45,311	46,977
22		*Growth rate*		%		3.36%	3.68%

Figure 4.20: Example of a "Cockpit"



7.3 Financial Assessment building blocks

The Financial Assessment developed during the feasibility or Business Case stage includes an evaluation of the pre-financing project cash flow—in other words, the expected cash revenues generated by the project minus the expected cash expenditures.

In case of a toll road project, for example, the cash flows include:
Investment costs (a negative cash flow);

- Toll revenues (a positive cash flow);
- Toll collection costs (a negative cash flow);
- Maintenance costs (a negative cash flow); and
- Corporate taxes (a negative cash flow).

The outcome of the Financial Assessment is the Net Present Value (NPV) and the Internal Rate of Return (IRR). The NPV is the sum of all of the discounted future cash flows of the project. Discounting means that the time VfM is considered.[70] A project with a positive NPV is a financially feasible project, as its future revenues outweigh its future costs. The IRR is the rate of return that makes the NPV of all cash flows exactly equal to zero. The project is financially feasible if the IRR is greater than the project discount rate.

The discount rate used in the financial model is typically the Weighted Average Cost of Capital (WACC). The WACC represents the required return by lenders (providing debt) and investors (providing equity) in a project. Its value is based on the calculation of the costs of capital of the project, in which each category of capital is proportionately weighted.

The following formula can be used to determine the WACC:

$$WACC=g*i*(1-t)+(1-g)*ROE$$

In which:
g = Gearing (share of debt)
i = Return on debt, represented by the interest rate
t = Corporate tax rate
ROE = Required return on equity

If PPP projects are financed by private enterprises, the parameters can be determined as follows:

- g, i, t and ROE are based on the financing parameters of similar projects or obtained through a market consultation
- If the benchmark project is situated in another country, i and ROE must be adjusted for differences in country risk.
- If there are many publicly listed companies in the sector, ROE may be based on stock data[71].

[70] This is necessary as a dollar today is worth more than a dollar 10 years from now and a certain dollar (now) is worth more than an uncertain dollar (in the future). | [71] The required Return on Equity can be based on stock market data if sufficient data is available. This can be done by using the Capital Asset Pricing Model. As this is rarely the case for PPP projects, this method will not be covered in this module.

In general, the riskier the project, the higher the WACC, and thus the costlier the capital – and the project. It should be noted however that this is not restricted to absolute project risks (such as location, sector, technology, etc.), but also risk-derived parameters, such as the amount of capital available (financial market risk). PPP projects, especially infrastructure projects, are often capital intensive and require a large amount of capital upfront. Due to the long-term nature of PPP projects, the profitability of which is determined by revenues through availability or user payments, the capital can only be paid back on a longer term. Therefore, the WACC is very important to the viability of a PPP project.

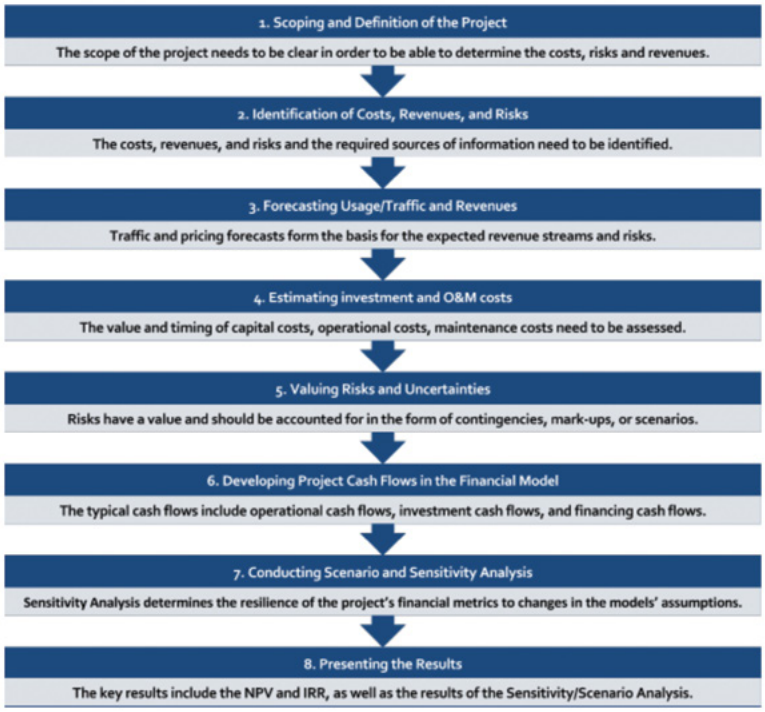
Depending on the pricing policy and the corresponding PPP delivery model, the contracting authority uses the Financial Model to determine:

(i) payments that the government must pay to the private partner (for example, availability payments);
(ii) the tariffs that users of the service must pay to the concessionaire; and/or
(iii) charges and concession fee that the private partner must pay to the government.

The results of the Financial Model allow the contracting authority as well as the Ministry of Finance to determine the fiscal impact of the project, and its affordability to the government and/or the users of the service. Finally, if done properly, a good Financial Model will inform the contracting authority of the potential range of financial bids to be expected from bidders.

Table 4.13 provides an overview of the most important steps or "building blocks" of the Financial Assessment.

Table 4.13: Building Blocks of the Financial Assessment

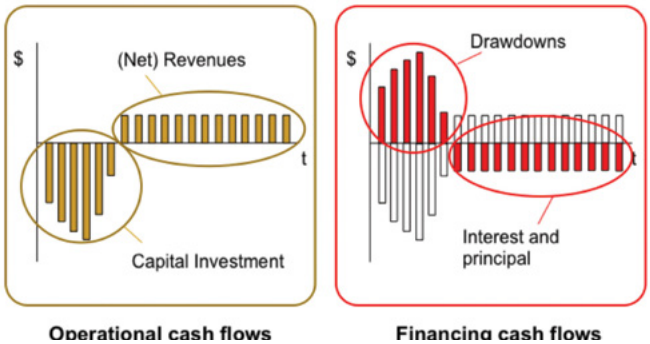


Some of the building blocks of the Financial Assessment are comparable to the building blocks presented in section 4 for the Economic Benefit Cost Assessment. However, as pointed out in section 2.2, the Financial Assessment only includes "real" cash flows while the Economic Cost-Benefit Analysis also includes (monetised) non-financial effects.

In order to estimate the cash flow, the value and timing of capital (or investment) costs, operational costs, revenues, and the main project risks need to be estimated. The revenue streams that the project expects to generate are determined using traffic and pricing forecasts. Risks are typically accounted for in one of three ways: contingencies, mark-ups, or Scenario/Sensitivity Analysis. Please see section 3 for additional guidance on valuing risks. The Financial Model allows the contracting authority to make projections over the intended duration of the PPP contract. These projections and results typically include:

- The investment cash flow;
- The operational cash flow (operating costs and revenues);
- The financing cash flow (investment of shareholder funds, payment of dividends, withdrawal and repayment of loans, interest payments, etc.);
- Financial ratios (such as: Debt Service Coverage Ratio (DSCR), Loan Life Coverage Ratio, Internal Rate of Return (IRR), etc.); and
- Financial statements (the Profit & Loss Statement, Balance Sheet, etc.).

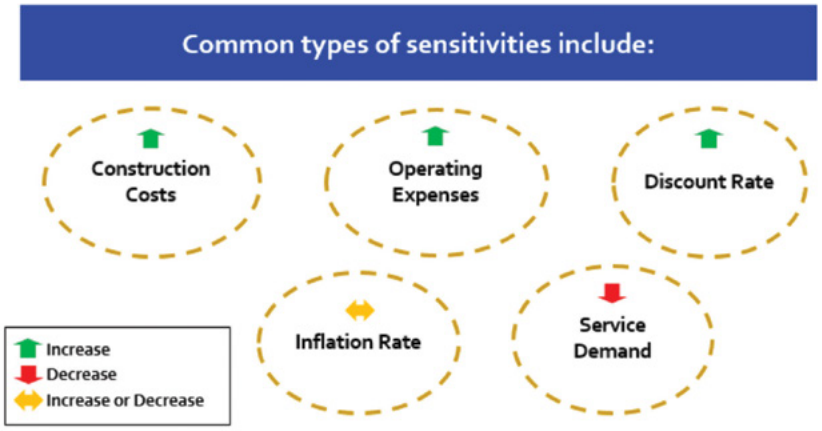
Figure 4.21: Difference between Operational Cash Flows and Financing Cash Flows



a. Sensitivity and Scenario analysis in the Financial Assessment

Aside from the Base Case, the contracting authority and its consultants can analyse alternative scenarios in order to test the robustness of the results and to assess potential fiscal risks. These alternative scenarios may include higher or lower costs, revenues and growth rate of demand; the occurrence of risk events; a delayed implementation of the project, etc. Sensitivity Analysis determines the resilience of the project's financial metrics to changes in the assumptions used in the Financial Model. The contracting authority and its consultants should run sensitivities on key variables to "stress test" the project's affordability, VfM and risk, as well as the potential fiscal impact.

Figure 4.22: Typical Variations in Sensitivity Analysis

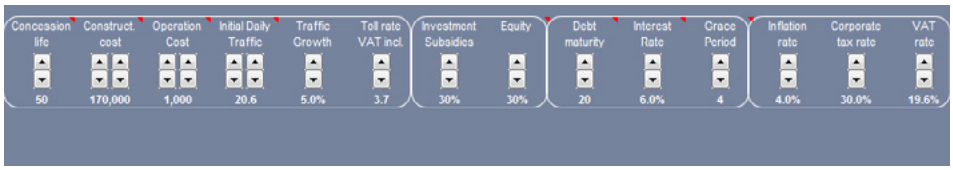


Common types of sensitivities include:

- Increases in construction costs;
- Increases in operating expenses;
- Decreases in service demand;
- Decreases in tariffs;
- Increases or decreases in the inflation rate;
- Increases or decreases in financing costs; and
- Increases or decreases in the discount rate.

In the Financial Model, project variables should be able to be easily adjusted, in one dashboard as shown below in Figure 4.23:

Figure 4.23: Dashboard for Sensitivity Analysis Adjustments



Scenario Analysis and Sensitivity Analysis, are only slight variations of the same type of analysis. Sensitivity Analysis refers to the process of changing key assumptions in the Financial Model and seeing their effects on the project cash flow. In other words, Sensitivity Analysis shows how much key inputs can be negatively changed (for example, by how much construction costs could increase) without significantly affecting the project's feasibility.

Scenario Analysis, on the other hand, involves changing a set of inputs in the Financial Model to reflect several possible courses of action. Scenarios typically focus on the area or assumption around which there is the least certainty. For example, in toll road PPP projects (particularly "greenfield" ones) there will be significant uncertainty around expected traffic levels. Therefore, the contracting authority and its consultants could create three traffic scenarios (a Base Case, an Upside Case, and a Downside Case).

Typically, it is not necessary to conduct Scenario Analysis on events with very low probability or impact on the project. Because Scenario Analysis involves changing several inputs, it is typically more complex than Sensitivity Analysis.

Sensitivity and Scenario Analysis are important because they identify potential problems with the PPP project and increases the contracting authority's preparedness to deal with these issues, if they arise. Taken together, Sensitivity and Scenario Analysis indicate the robustness of the project, and its sensitivity to changes in key input variables. Both the contracting authority and the Ministry of Finance need a quantitative basis to evaluate and create preparedness plans for dealing with future risks.

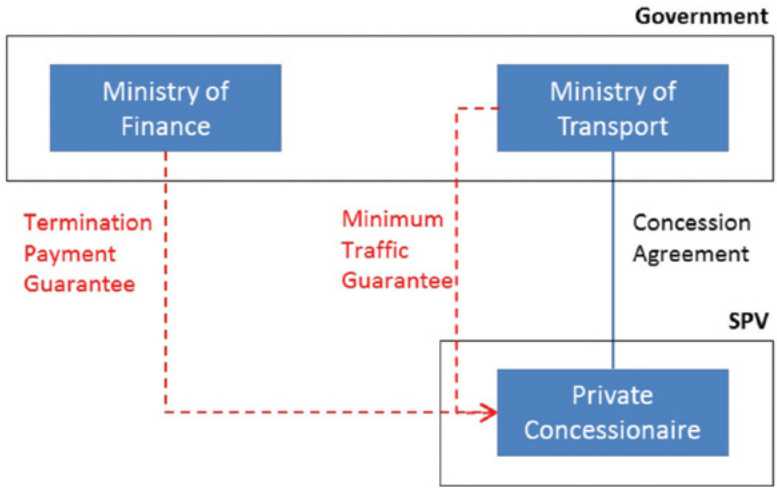
The key results of the Financial Assessment include the NPV, IRR, DSCR as well as the results of the Sensitivity/Scenario Analysis.

7.4 PPP Fiscal Liabilities

Once the project has been assessed for financial feasibility (and has been deemed "bankable" from a private sector point of view), the contracting authority must assess the consequences of the project for the public sector—in other words, the "fiscal affordability" of the project. This includes determining the financial flows that the government will be expected to receive from the private party (concession fees), and/or is required to pay to the private party (availability payments, Viability Gap Funding, subsidies, etc.).

It also includes examining "contingent liabilities" that may occur under stressed scenarios, such as higher or lower growth rate of demand, the occurrence of risk events, delayed implementation of the project, etc. Figure 4.24 below shows fiscal liabilities that could arise, from example, on a toll road concession.

Figure 4.24: Example of Fiscal Liabilities in a Concession Contract



For each PPP project, a Fiscal Liability Assessment" should be prepared by the relevant authority (typically the Ministry of Finance). This would be in two stages: (i) prior to entering procurement, and (ii) prior to signing the PPP contract. A Fiscal Liability Assessment evaluates the expected budgetary requirements of direct and contingent public sector liabilities over the duration of the proposed PPP contract.

The Fiscal Liability Assessment should go beyond the current budgeting cycle, to match the anticipated length of the PPP contract. Most governments conduct an annual budgeting process with short-term budget horizons (typically three to five years). Most PPP contracts, however, have budget impacts that exceed this duration (extending to 20 or 30 years). Some PPP projects do not involve any budget expenditures in the first three to five years after approval (during procurement and construction); however in some cases governments will agree to make capital subsidies, land acquisition or other forms of early stage support. Governments must also assess the long-term fiscal commitments entailed by PPP contracts and verify that they are affordable and sustainable.

This section provides guidance on forecasting and assessing the direct and contingent liabilities for PPP projects and developing a Fiscal Liability Register as part of the Fiscal Liability Assessment.

a. Direct and Contingent Liabilities

Table 4.14 provides an overview of explicit and implicit fiscal liabilities, while Table 4.15 provides an overview of the types of direct and contingent liabilities that arise from PPP projects. Explicit liabilities are, as the name implies, government financial commitments explicitly stated in a contractual or legal document. Implicit liabilities are not explicitly stated, but would be incurred by the government due to its general responsibility to ensure public services, and safeguard financial stability if these are threatened by a default of the PPP project.

Table 4.14: Explicit vs Implicit Liabilities

Type	Description	Example
Explicit Liabilities	• Risks retained by the government which are explicitly stated in a PPP contract, PPP law, or elsewhere	• Direct payments to the private party (availability payments, milestone payments, etc.) • Risks explicitly retained by the government in the PPP contract
Implicit Liabilities	• Risks retained by the government which are not explicitly stated, but would be incurred by the government due to its general responsibilities (including public or moral expectations) • Typically occur for projects that are too important politically, socially, or economically to "fail," implying that the government will step in and provide support in stressed scenarios	• In the case of a contract termination by the private party, the government will step in to ensure a continuation of essential service provision for users

Table 4.15: Direct vs Contingent Liabilities

Type	Description	Example
Direct Liabilities (always explicit)	• Predictable government obligations that are certain and quantifiable • Typically fixed contractual payments to be made by the government to a private party	• Availability payments • Milestone payments • Output based payments • Viability gap payments[72]
Contingent Liabilities (can be explicit or implicit)	• Unpredictable government obligations that may be incurred when an uncertain risk event occurs	• Government guarantees on risk variables including inflation risk or exchange rate risk • Government guarantees on demand • Force Majeure • Termination payments • Credit Guarantees • Compensation payments by the government if the PPP project defaults

However, fiscal support can be risky. Without effective management, fiscal support for PPPs can create unintended fiscal risks. Problems can include:

- Using PPPs to hide the true cost of a project to government. By reducing upfront capital expenditures, a PPP can make the cost of a project to government seem less than it really is.

[72]A "Viability Gap Payment" can be provided by the government when a project is economically feasible and desirable, but not commercially viable.

For example, in a project for a new hospital; if presented as a conventional project, the Ministry of Finance would scrutinise the capital costs to see if the project was fiscally responsible. The Ministry would look at the extra borrowing required, and its impact on debt levels and future debt service requirements. If however the hospital was proposed as a PPP supported by availability payments to a private operator, the project might appear cheaper than the public alternative. No upfront capital costs would be paid by government; because this would be the responsibility of the private sector.

However, the reality is that the future stream of availability payments to the private partner could, over the term of the PPP contract, be equivalent (or more) to the debt service and maintenance costs to government under the publicly financed option. This shows the importance of estimating the long run costs of fiscal support properly; to prevent PPPs from being used to understate the real cost to government of a project.

- Government bearing risks which are better managed by the private sector. If government provides guarantees that cover risks which are better managed by the private partner in the PPP, fiscal support could lead to undesired fiscal risks. For example, if government guarantees traffic levels in a toll road PPP, this could reduce the incentive for the private operator take steps to increase traffic levels.

- Distorted decision-making by understated cost of risks borne by government. In some cases, it could be appropriate for government to issue guarantees covering risks that it is best able to manage. But, if these risks are understated, this could distort the decision on whether or not to pursue a project. For example, government may agree to bear traffic risk in a toll road PPP. However, if the expected cost of this risk is understated because traffic forecasts are over-optimistic, the government might have to continually put money into a project, which it had expected to be financially self-sufficient.

A good system for managing fiscal commitments includes four elements, as shown in Figure 4.25 below.

Figure 4.25: Elements of a Sound Fiscal Commitment Plan

i. Identify and value

Fiscal commitments should be identified and valued during the PPP structuring stage. This is when decision-makers can make sure that the government is making affordable fiscal commitments.

Direct fiscal commitments, such as availability payments or capital subsidies, are relatively easy to value. For example, the value of an availability payment can be calculated as the present value of the future stream of availability payments to be made to the private operator. The annual availability payments can be estimated as the annuity of the capital costs, plus annual operating and maintenance costs.

Contingent fiscal commitments are more complex to value, because they depend on the probability of future events occurring. For example, the value of a minimum traffic guarantee for a toll road depends on the probability of traffic falling below the guaranteed level. Several methodologies can be used to value contingent fiscal commitments. These can be broadly grouped into probabilistic- or scenario-based scenario approaches:

- Probabilistic valuation: The range of possible cost outcomes from a contingent fiscal commitment is expressed in terms of an expected value—that is, the probability-weighted sum of all possible outcomes—and measures of variability such as standard deviation or percentile values.

- Scenario-based approach: Rather than attaching probability distributions to underlying risk variables, certain scenarios—that is, specific combinations of risk variables—can be defined, and the resultant cost determined under each scenario. Scenarios could be the occurrence of a risk event such as a default, which could be considered the "worst case" scenario. Alternatively, scenarios could include "base case", "upside", and "downside" values for changes in variables such as exchange rates and revenues. The values calculated using this approach do not take into account the likelihood of each scenario occurring.

ii. Budget

Clearly defining how payments will be made to meet fiscal commitments to PPP projects is imperative, so governments know what payments they have to make in the future, and can budget for appropriately. Table 4.16 describes options for budgeting and paying for fiscal commitments to PPPs.

Table 4.16: Options for Budgeting for Fiscal Commitments to PPPs

For direct fiscal commitments	
Who budgets?	Contracting authority—provides better incentives to choose and manage project risks well Government as a whole (through service-wide budget vote)—if contracting authorities are not well-equipped to estimate budget requirements
When to budget?	In advance—through transfers to an account designed to cover future payment needs over a defined timeframe—creates more certainty that funds are available In any year payment is needed—avoids opportunity cost of setting aside funds
For contingent fiscal commitments	
What to budget?	Nothing—may be appropriate for very low-probability risks (such as force majeure) Expected amount—probability-weighted estimate of cost (which is unlikely to equal actual outcome) A defined percentile value (which could include 100% provisioning)—a conservative approach, but one that risks overstating future expenditures, and hence crowding out other spending priorities.
How to deal with remaining uncertainty	In terms of budget approval—could require a supplementary appropriation, or use general contingency line. In terms of managing cash—either set up a contingent credit line in advance, or finance from available cash or borrowing as needed

The budgeting process is relatively straightforward for direct commitments such as availability payments: these can be budgeted for in the year they are made.

Budgeting for contingent liabilities is more complex, since at the start of the budget year the size of, and need for, a contingency payment will not be known at that time. This uncertainty can be reduced by allocating an amount in the budget against possible payments: the greater the amount, the higher the opportunity cost, but the lower the uncertainty.

iii. Disclose

When governments develop and finance infrastructure projects through PPPs, a question arises as to whether or not the resulting facility should be recorded as a government asset. Even more importantly, should obligations to pay for the costs of that asset in the future be recorded as a government liability?

One view is that the assets belong to the private partner, as does the obligation to repay the associated debt; and the government only has an obligation to pay for services as they are rendered.

In this viewpoint, there would be no need for government to include in its financial reporting either assets or liabilities related to a privately-financed infrastructure PPP.

Another view is that the assets are still for a public service, and are effectively controlled by government through the contract, therefore the assets should be accounted for as "belonging" to the government, Future obligations to cover the costs of those assets should be accounted as government liabilities.

A harmonised approach has been developed under the International Public Sector Accounting Standards (IPSAS). Two statutes issued by IPSAS deal with the treatment of fiscal liabilities, both explicit and contingent. IPSAS 32 treats PPPs (which it refers to as concessions) as creating assets which are essentially public, in their use. It therefore requires governments to recognise the PPP asset in its financial reporting (at fair market value). IPSAS 32 also requires the government to recognise an offsetting liability. The liability is generally assumed to be the same as the asset, unless the asset is a revenue generating asset—in which case the liability is the value of the revenue stream unearned by government.

IPSAS 19 requires that all contingent liabilities be disclosed in notes to the government accounts. In cash accounting, the liability is only recognised in the year it is paid, but under accrual accounting the liability is recognised when there is a greater than 50 percent chance that payment will need to be made. Table 4.17 summarises these various standards.

Table 4.17: Options for Recognising and Disclosing Fiscal Commitments to PPPs

	Recognition	Disclosure
Eurostat Rulings – European System of Accounts (ESA)-95	Only when contingency activates and a cash payment needs to be made (ESA 95 4 165f)	Disclose amount paid in financial statements, and explain nature in the accounts (ESA 95 4 165f)
IMF's Government Finance Statistics Manual – GFSM, (IMF 2001)	Only when contingency materialises (GSFM 3.96, page 34)	Record as memorandum items in financial accounts, and include estimates of expected payments (GSFM 3.96, page 34)
International Public Sector Accounting Standards (IPSAS)–Standard 19 (Contingent Liabilities)	For accrual accounting, only if the probability that the contingency will occur is more than 50 percent For cash accounting, only when the contingency is called and cash payments need to be made (IPSAS 19)	Disclose amount in balance sheet, and explain nature and drivers of uncertainty

iv. Monitor and manage

Once a project has been approved, and the PPP contract executed, the project will be implemented. Throughout the lifetime of a PPP contract, the government must monitor its exposure to its fiscal commitments (both explicit and contingent), and be prepared to take early action, on emerging problems.

Effective monitoring will require maintaining up-to-date information on the complete range of government's fiscal commitments under PPP contracts. This allows the government to disclose its exposures to the public, improving transparency of its commitments to its ongoing projects.

By monitoring its fiscal commitments, the government will also be able to identify emerging problems, and situations where the need for a payment is increasingly likely. The government can then consider how to intervene to manage the underlying risk factors and reduce the likelihood of needing to make interventions.

Some governments have created specialised systems and teams to monitor and manage fiscal commitments. For example, Chile has a unit within the Ministry of Finance that is responsible for monitoring and managing contingent liabilities from PPP contracts. The creation of a unit was justified in Chile because the Chilean Government has a large number of contracts. In addition Jamaica has a PPP unit within the Ministry of Finance, which is responsible for monitoring the government's fiscal commitments under its PPP projects.

b. Modelling Fiscal Liabilities

Using the information from the Fiscal Liability Register, the expected fiscal impact during the PPP contract can be modelled, to assess its affordability to the government. The outcome of this modelling exercise is a projection of the impact of the PPP project on government liabilities, non-financial assets, net lending/borrowing and the resulting cash balance to government. The project impacts can then be compared to national forecasts of the same fiscal variables to evaluate the fiscal affordability of the project. This assessment must be done not only for the PPP project under consideration, but for all existing PPP projects (or the fiscal impact of existing PPP projects must be included in the forecasts of the national fiscal variables).

Figure 4.26 shows sample outputs of a forecast of the fiscal liabilities of a hypothetical PPP project, produced by the PPP Fiscal Risk Assessment Model (PFRAM) developed by IMF and the World Bank. This fiscal spreadsheet tool is freely available for Caribbean governments to use by their PPP contract monitoring teams.

Figure 4.26: Sample Outputs of Modelling of Fiscal Liabilities[73]

The above figures show the direct fiscal impact of a hypothetical PPP project. Direct fiscal impacts mainly derive from projects in which the concessionaire is paid by the contracting authority (via availability fees, services fees, etc.). In revenue-generating PPP projects, where the private party is paid directly by users of the asset, the direct fiscal impact is small or non-existent.

The Fiscal Liability Assessment should also examine the contingent liabilities that would be triggered by the occurrence of a specified risk or a compensation event. For example, a compensation for losses and damages if the right-of-way is delivered too late, losses and damages caused by a Force Majeure event such as an earthquake or a flood, or a payment due on an early termination of the PPP contract. Contingent liabilities affect both revenue-generating projects and projects paid by the government, through availability payments.

[73] Source: IMF, PPP Fiscal Risk Assessment Model (PFRAM). Accessed June 2016

c. Developing a Fiscal Liability Register

In the next stages of the PPP process, a Fiscal Liability Register should be developed as part of the Affordability and Fiscal Impact Assessment that serves as the basis for monitoring and budgeting and contains details of all the government liabilities.

For each project, the Fiscal Liability Register must contain details on the types of government liabilities shown in Tool 4.1. The liabilities must be as much as possible expressed in monetary terms. In the case of risks and guarantees, information must be provided on the maximum exposure and the expected value of claims (to the extent that this information is available). The data in the Fiscal Liability Register allows the contracting authority and the Ministry of Finance (or equivalent) to estimate:

- The value of future direct payments and tax waivers by the government to concessionaire of PPP projects (set out in time);
- The value of total exposure (maximal and expected) of the government to contingent claims.

At a programme level (all PPP projects combined), this information will be used for:

- Budgeting purposes, and
- Assessing the affordability of future proposed PPP projects (given the liabilities of existing PPP projects).

Tool 4.1: Sample Fiscal Liability Register

Category	Examples
Payment of Grants or Fees	• One-time (milestone payments) • Periodic during the lifetime of the contract (availability payments, shadow tolls, etc.)
Project-Specific Waivers or Reduction of Tax Liabilities	• The government may decide to waive fees, costs and other payments which would otherwise have to be paid by the project company to a public sector entity (for example, it could provide tax holidays or a waiver of tax liability)[74]
Grant or Allocation of Public Property or User Rights for Public Property	• For example, the government may need to make land available for a PPP project, which could imply acquisition and resettlement costs
Contribution of Equity or Debt Financing to the Project	• Some governments provide equity provisions to the project or forms of loans (debt)

[74] For more information, see the Website of the Public Private Partnership Infrastructure Resource Centre (PPP IRC), accessible at: http://ppp.worldbank.org/public-private-partnership/financing/government-support-subsidies

Tool 4.1: Sample Fiscal Liability Register cont'd.

Category	Examples
Risks Assumed by the Government	• Risks that were explicitly retained by the government in the PPP contract
Guarantees issued by the Government	• For example, in a toll road project, the government may guarantee a certain level of traffic revenues (in other words, it will agree to compensate the private party if traffic falls below a certain level)
Implicit risks	• Risks that are implicitly retained by the government in the PPP project. For example; the take-over of project operations in case of concessionaire default.

MODULE 4

8. ASSESSING THE RATIONAL FOR PPP PROCUREMENT

Projects that reach the Business Case stage would have previously been screened and analysed for their PPP suitability, during the previous stage of the PPP Process.[75] At the Business Case stage, the project has therefore advanced in terms of scope, timing, design budget and seriousness, and the contracting authority has greater information about the project's financial and economic feasibility.

Based on the newly acquired information from the extensive analysis completed during the Business Case stage, the project team should now re-confirm the extent to which the project is suitable for PPP delivery. This includes developing a detailed rationale for delivering the project as a PPP, such that the relevant decision-making authority can take a final decision for or against delivering the project as PPP.

8.1 Re-Confirming PPP suitability

Combining the PPP Identification, Screening, and Selection with Business Case stages, the contracting authority will have obtained a much greater level of detail, both on the project and on the overall context.

The project team should therefore reconfirm general PPP suitability at a project and context level, before conducting the VfM analysis. The following two checklists, also presented during the PPP Screening stage in Module 3, can be used as guidance for re-confirming the suitability of the project for PPP delivery. The criterion "Value for Money" is the focus of the assessment of PPP rationale conducted at the Business Case stage.

[75] PPP Identification and Screening is covered in detail in Module 3 of this Toolkit.

Tool 4.2: Reconfirming PPP Suitability at a Context Level

Criterion	Key Question	(Yes/No/NA)
Support	Is there sufficient support for PPP delivery?	
Legal Authority	Can PPPs legally be undertaken?	
Institutions	Are the institutional structures and capacity in place to implement PPPs?	
Private Sector Appetite	Will there be sufficient private sector interest?	
Finance	Is a functioning project finance market in place?	
Public Sector Capacity	Does the government have the required skills and capacity to implement a PPP?	

Tool 4.3: Reconfirming PPP Suitability at a Project Level

Criterion	Key Question	(Yes/No/NA)
Project Objective	Does the project involve the supply of a public service?	
Project Type	Does the project allow a substantial transfer of risk to the private sector?	
Project Size	Does the size of the project justify the transaction costs?	
Project Plans	Are there preliminary designs or implementation plans?	
Value for Money	Is the justification for considering a PPP sound?	**To be confirmed in this section**
Market Precedents	Does the PPP market have experience with similar projects?	

8.2 Value for money (VfM)

The rationale for delivering a project as a PPP is based on the extent that delivering a project as a PPP will generate added value for the public sector and society in general. VfM in a PPP project can be achieved in two ways:

- Greater quality at the same cost as if the project was delivered conventionally; or
- The same quality (value) but at a lower cost to government and/or users of the service.

Experience across the world has shown that PPP delivery models can deliver a service with a better price to quality ratio than conventional public delivery, using private sector management, skills and competencies. PPPs have been able to:

- **Increased speed of implementation:** Traditionally, governments have struggled to meet tight delivery schedules on infrastructure projects, even when they have funding available. This is due to limited implementation capacity in national and local governments. Experience has shown that introducing PPP delivery models can expand a government's implementation capacity by mobilising additional human and financial resources. Private sector involvement brings with it an added level of accountability, which is often absent when governments implement capital projects themselves.

- **Enhanced efficiency:** Through a more effective risk allocation, life cycle costing, and stronger incentives to perform, PPPs can contribute to increasing the efficiency of public infrastructure provision.

- **Increased quality of service.** Experience shows that PPPs can increase the quality of the project. This may reflect a more effective integration of services with supporting assets; improved economies of scale and scope; the introduction of innovation in service delivery; and/or a higher responsiveness of the private sector to user needs. The incentive regime in a PPP contract helps achieve these goals, introducing incentives for the private sector to perform. When the builder of the asset will also be responsible for operating and maintaining it over its lifetime, there is great incentive to build it to a high standard of quality. Public delivery of major infrastructure projects often creates corrective or abnormally high maintenance costs during its lifetime, because of poor quality construction.

- **Generate commercial value from public sector assets.** The private sector can assist in unlocking the commercial value of public sector assets. The private sector's entrepreneurship or creativity incentivises it to exploit the full commercial potential of a project, optimising the project's value to the government and/or users. For example, airports provide opportunities for imaginative retail and commercial activities.

The objective of the VfM Assessment is to confirm whether a project will provide greater value for the government and society when delivered as a PPP, compared to a conventional delivery model. In addition, VfM Assessment also helps in selecting and refining the appropriate PPP model.

In Module 1, the most common PPP delivery models were introduced:

- BOT: Build-Operate Transfer
- BOO: Build-Own-Operate
- OMM: Operations, Maintenance, and Management
- DBFM: Design, Build, Finance, Maintain
- DBFOM: Design, Build, Finance, Operate, Maintain

As each delivery model includes different PPP features, each delivery model will also generate a different VfM outcome. The VfM assessment can be used to determine the optimal delivery model for the proposed project.

Furthermore, VfM assessment can provide valuable information for refining the PPP project further, both with regard to (i) scoping and (ii) structuring. A VfM assessment can help in deciding whether to add or delete certain services during the operational phase, or which elements to include in construction. It is thus helpful in determining the optimal scope of the project. Furthermore, VfM assessment is a valuable tool for structuring the PPP project, especially with regard to the appropriate risk allocation between the public and private party.

Again, it is important to understand that VfM assessment is not a one-time exercise, but that it should follow an iterative approach. Each iteration will lead to new conclusions that can help to further improve the PPP structure.

Textbox 4.17: Value for Money in Jamaica' s PPP Business Case Manual

The The Jamaican PPP Manual provides guidance on the components of the Business Case. The table below presents the different criteria of the Business Case that indicate the project's Value for Money:

Criterion:	Business Case
PPP Achieves Value for Money	
Project scale is sufficient	The value of the proposed project is expected to be above US$10 million, or there is clear reason to believe a PPP will be successful and offer value for money in the case of smaller projects
Project duration is sufficient	The duration of the proposed PPP project should be for the life of the project asset and service, or at least 10 years if the project life is longer than 15 years. Projects with durations below 5 years will not generally make good PPPs
Outputs are clearly specified	The project's outputs are clearly specified in measurable terms and effective contractual mechanisms for performance monitoring and enforcement have been developed
One or more PPP Value Drivers applies	One or more PPP Value Drivers have been effectively applied in structuring the PPP, and includes significant risk transfer to a private party
Functions are optimally allocated	Functions have been optimally allocated. This allocation, and the preferred solutions and consequences if should either party should fail to fulfill these functions have been clearly defined
Risks are identified and allocated optimally	All risks have been identified and optimally allocated, and mitigation strategies defined
Value for Money: PPP achieves greater net economic benefit than public provision	A comparison of economic costs and benefits (quantitative and qualitative) indicates the PPP would provide greater net economic benefit

Source Government of Jamaica Policy and Institutional Framework for the Implementation of Public Private Partnerships, October 2012, p. 26.

a. Qualitative versus Quantitative VfM

Some governments rely upon purely qualitative VfM assessments, while others also conduct quantitative VfM assessments. While a quantitative approach may appear to produce an accurate and mathematical result, governments are cautioned not to fall in the trap of "false precision."

On the other hand, a Qualitative VfM Assessment emphasises the underlying arguments and reasoning for why the project is expected to generate VfM. Many manuals on Quantitative VfM Assessment exist, which are referenced in Additional Resources. Careful attention should be paid when using Quantitative VfM Assessments, as they are prone to assessment biases and over-reliance on poor data.

Even if a government carries out a Quantitative VfM Assessment, the focus of the assessment should always lie on understanding the underlying arguments that determine the differences between the PPP and conventional delivery models. For example, how do the public sector risks differ between a PPP delivery model and a conventional delivery model? Which of the parties in a PPP contract is better positioned to control the uncertainties?

b. Advantages of PPPs ("PPP Value Drivers")

This section address the advantages (value drivers) of PPPs. These derive from a number of specific characteristics of PPP projects. This section describes each VfM Value Driver in detail.

i) Output-Based Contracting

Output-based contracting allows the private operator to decide how to deliver the envisaged services. It enables the government to tap into the private sector's creativity to deliver the agreed-upon public service at lower costs, or to provide better quality services – and/or newer services, at the same cost to the users.

Certain project characteristics and delivery models are more conducive to achieving efficiency gains from output-based contracting than others. To reap the efficiency gains of output-based contracting, the project must offer sufficient scope for optimisation, innovation, and creativity, and the project outputs must be capable of quantification, in Key Performance Indicators (KPIs). If the project involves the construction of standard infrastructure, without much scope for innovation, then the scope for creativity by the private partner is limited.

Delivery models that integrate a number of project phases in one contract (for example, the DBFM or DBFMO models) offer the greatest potential for efficiencies from output-based contracting. These projects leave the choice on how to deliver the services largely to the private party. In contrast with performance based contracting, the government has limited freedom to specify the output. The concession holder receives its revenues from end-users, and operates the infrastructure on a commercial basis.

As service delivery is commercially oriented, the contracting authority must protect the delivery of the service by imposing certain conditions in the concession agreement (for example an indexed maximum price, or quality and measurable performance requirements, which are subject to fines) to protect users.

Module 5: Procurement will elaborate on payment mechanisms. In principle, any service requirement can be included in the PPP contract, leaving the responsibility for determining how to meet these requirements to the private sector.

ii) Optimal Risk Allocation

As discussed in section 2.3, the basic principle of risk allocation states: "risks should be allocated to the party best able to manage them." The concessionaire, who is responsible for managing construction activities, is typically best able to ensure a timely delivery within budget. Therefore, the concessionaire should assume the construction risk and receive a financial penalty if delivery is late. On the other hand, the public sector typically retains the risk of delays due to the granting of planning approvals, or changes in the output specifications. Intelligent and appropriate risk allocation reduces the costs of delivering the service. A conventional delivery model typically requires the government to retain more risk than under a PPP. Intelligent risk allocation, as is typically done in PPP delivery models, requires that many project risks be transferred to the concessionaire.

An optimal risk allocation can yield the largest efficiency gains for projects where there are significant risks that can be transferred to the private party. Typically, DBFM or DBFMO models allow the contracting authority to define and tailor the most appropriate risk allocation for the project. The drawback is that this process may be complex and require significant human and financial resources to define and subsequently negotiate with the private partner.

iii) Integrated Service Provision / Lifecycle Optimisation

Integrating the design, construction, and operating phases of a project allows the contracting authority and the private party to minimize interface problems.

A contractor that is responsible for all phases of the life cycle has an incentive to minimize life-cycle costs. In contrast, if several contractors are each responsible for a single phase, they tend to minimise their own costs or maximise their own revenues even if this increases costs and/or lowers revenues during other stages of the project. For example, the private partner has no incentive to invest resources in higher quality construction materials that could result in lower maintenance costs, unless it is also responsible for the maintenance phase. In the Caribbean, this is particularly relevant for road and bridge projects; where poor standards of construction lead to poor maintenance and rapid deterioration in road conditions.

The potential to achieve efficiency gains from life-cycle optimisation depends on the potential elimination of interface problems and sufficiently strong linkages between the different phases of the infrastructure delivery process.

iv) Performance-Based Payment Mechanism[76]

Performance-based payment mechanisms tie together many of the value drivers of PPPs, and provide the financial incentives for the private party to pursue the efficiency gains of output-based contracting, intelligent risk allocation, private outsourcing, and lifecycle optimisation. The payment mechanism determines the risk allocation between public and private partners. Through the rewards and penalties in the payment mechanism, the government transfers risks to the private party. A few examples illustrate this:

- For example, if the concessionaire receives a fixed price lump-sum payment upon completion of the infrastructure, the concessionaire effectively assumes the risks of cost overruns and delays. When the costs of construction are higher than anticipated, the contractor will receive lower profits or will "cut corners", if it is not also responsible for the long-term performance of the asset. If the delivery date is delayed, the contractor will be charged a penalty and incur higher costs due to a longer construction period.

- A second example is the transfer of demand risk to the private partner, by payment schemes that depend on revenues from end-users (as in a concession). It is best to incentivise the private sector through both carrots and sticks. Above-par performance should improve the private party's profits (through greater revenues from users). Only in special cases should bonus payments be considered, as payment mechanisms that rely too heavily on bonuses present a fiscal risk to the government.

  Instead, the payment mechanism should be based on fines for under-performance. Sub-par performance triggers penalties, which will reduce the private party's financial performance. Such penalties should adhere to the "tickle-hurt-kill" principle:

  - If penalties are too low, the concessionaire may accept the penalty rather than pursue a remedy ("tickle");
  - If penalties are too high, the concessionaire can be unreasonably punished - even defaulting based on minor breaches of the contract ("kill");
  - Therefore, the key is to set penalties that matter and motivate the concessionaire to pursue a remedy ("hurt").

[76] Module 5: Procurement will elaborate on the payment mechanism that is part of the PPP contract.

- If a private party is paid by the government for the delivery of an infrastructure service (and not only for construction of the infrastructure assets that gives rise to the service), then it will automatically have an incentive to optimize costs across all phases of the project, from design and construction through to operations and maintenance. For the private party, high quality construction translates into increased profits during the operational phase.

  Key Performance Indicators (KPIs) can be developed for a wide range of infrastructure services, even those which, at first glance, may not be suitable to quantification. For example, a hospital PPP may include[77]:

- Feedback of the patients on the performance of the hospital on parameters like clinical care, housekeeping, front office, billing, pharmacy etc.;
- Number of patients treated for various diseases;
- Cleanliness of the hospital facilities; or
- Number of complaints received.

v) Private Financing

Private financing is by definition more costly and more difficult to obtain than public financing, reflecting the higher risk profile of private parties over governments. In project financing, financiers are exposed to all the project risks, whereas government financiers have the entire government balance sheet as a security, which typically leads to a much lower interest rate. However, private finance allows for a credible long-term commitment of private parties on the delivery of infrastructure and service:

- Private financing incentivises the private party to perform, by increasing the financial stakes. As such, it encourages the private party to pursue the VfM drivers of a PPP delivery model. Private financing provides strong incentives to deliver the infrastructure or service in a timely manner. Delays increase the financial costs of the project because the revenues (which are used to pay back the debt) occur later than expected.

- Private financing brings additional project monitoring capacity. The private financiers have strong incentives (and are often in a better position than the government) to monitor the financial performance of the project. This monitoring will help avoid defaults by the private party due to financial problems.

[77] https://arxiv.org/ftp/arxiv/papers/1511/1511.03204.pdf

- Private financing allows also for the private financiers to align with the public interest in cases of egregious under-performance by the private party. In those cases, private financiers are allowed to step-in and replace the concessionaire, creating conditions for service improvement, and protecting debt service. Step-in rights, by protecting financing parties, are indirectly protecting the public interest, by re-establishing project performance, without service interruption.

c. Disadvantages of PPP delivery models

Although PPP delivery models present a number of advantages and can achieve VfM for the government and society, they also have disadvantages. This section will elaborate on the disadvantages of PPP delivery models.

i) Higher Transaction Costs

Developing, structuring, and implementing a PPP project involves higher transaction costs than a conventional public delivery model, both for the contracting authority and the private party. Due to the transfer of risks to the private sector and the long-term nature of PPPs, contract arrangements tend to be much more complex under PPP structures. They must allow for a far larger set of contingencies than conventional procurement contracts. Preparing and negotiating these contracts can be time-consuming and call for higher technical capacity. Moreover, during the execution of the contract the activities and performance of the partners must be monitored in order to verify compliance with the conditions in the PPP contract.

Transaction costs have a large fixed component, which does not vary with the size of the deal. A minimum amount of contract preparation is required, regardless the value of the project. The value of the potential efficiency gains, however, is strongly related to the size of the investment. As a result, governments should only consider PPP delivery models for sufficiently large investments. PPP delivery can be efficient for smaller projects, as long as standardised documentation and contracts are available; and/or the government and private sector already have experience with similar PPP projects.

ii) Inflexibility

PPP contracts generally have a very long duration, up to 50 years in some instances. During the length of the contract, the government typically has a limited influence on the provision of the service. The PPP contract specifies the requirements with which the private partner must comply. Once the government and the private party have signed the PPP contract, they both have limited flexibility to alter the contractual arrangements. This limits the ability of the public sector to respond to changes in the external environment.

In a PPP delivery model, the private sector pursues profit maximization, while the public sector has a broader set of socio-economic objectives. .However, the interests of public and private sectors are aligned in the PPP contract, using output specifications and the payment mechanism. The public sector defines the infrastructure service requirements and leaves the responsibility for constructing the assets and providing the service to the private sector.

The PPP contract, however, has a long duration, during which the external environment and the desired service specifications will inevitably change, for example with advances in technology. It is not possible to anticipate all of the possible changes that could occur during the life of the PPP contract. Consequently, as time passes it it will be necessary to constantly monitor the PPP contract, and seek early solutions to emerging problems. The topic of PPP monitoring is discussed extensively in Module 6.

The potential costs of inflexibility are highest if:

- The project environment is subject to substantial changes that are difficult to forecast (for example changes in technology); and
- Public (social welfare) and private (profit maximisation) interests diverge such that the response of the concessionaire to changes in the environment differs from what is desirable from the perspective of society.

During the implementation stage, the public sector has freedom to establish the service requirements and devise a payment mechanism that incentivises the private party to meet these requirements in an efficient manner.

Once the contract has become operational however, the private party has limited freedom to change its strategy in response to changes in the environment, as it is bound by the terms of the PPP contract.

The rigidity of the contract, however, has drawbacks. Once the government and the private party have signed the contract, altering output specifications may require a costly renegotiation. The government would typically be in a relatively weak position, because it is negotiating with only one private party, and has less information on operating costs. To avoid this, the PPP contract should include streamlined procedures for making periodic adjustments in response to changes. However, it is not possible to anticipate all possible contingencies, nor is it practical to include them all in the PPP contract.

iii) Higher Borrowing Costs

Under a PPP, the concessionaire is responsible for attracting financing from investors and debt providers in the market. The debt and equity providers require a certain return on their capital, based on the risk profile of the project. The overall financing costs – often expressed in Weighted Average Cost of Capital (WACC) – are higher for private investors than the rate at which the public authority can borrow.

The private financing costs are included in the bid price, and therefore in the contract after financial close. They reflect not just the cost of capital, but also contain an "insurance premium" for the risks transferred to the concessionaire.

This includes risks that cannot be transferred to subcontractors of the SPV, such as long-term performance risks, exchange rate and revenue risks. Under conventional delivery, these risks would be retained by the government. Since these risks are typically not reflected in the government's borrowing costs, the "insurance premium" appears to be an extra cost related to a PPP.

In summary, PPP projects that include financing by the concessionaire face higher financing costs than under conventional delivery. In return, the PPP concessionaire assumes risks that under conventional delivery would be retained by the government.

iv) Lack of Stakeholder Support

PPP projects tend to have higher "visibility" than conventionally delivered projects, and often become highly controversial. As we saw in section 2.5, during the Social Impact Analysis, the project team will consult with a broad range of stakeholders and affected persons; not all of whom will be in support of the PPP. This extensive consultative process is an essential component of the Business Case stage, and shortcuts taken at this important stage can negatively affect the project at later stages, sometimes even derailing PPP projects before they can be implemented.

By their very nature, PPPs tend to have strong political and social undertones, and globally there are many voices raised in opposition to PPPs. In fact, there are several organisations and interest groups that actively lobby against PPPs.

Global experience shows that opposition to PPPs can come from several sources:

- Employees / trades unions: For PPPs involving existing government-owned assets and services, the current employees and management are key stakeholders, who have a vested interest in the future of the enterprise. Workers are often fearful of job losses and changed terms and conditions of employment.

- Affected persons: Large greenfield infrastructure projects often negatively affect large groups of people: relocations, loss of habitat and economic activity, lack of access, environmental impacts, etc. Such affected persons must be extensively consulted, and protected by the highest standards of social and environmental safeguards.

- Non-Governmental Organisations (NGOs): Some NGOs are fundamentally opposed to PPPs on several grounds: such as political, social and economic. In addition, issue specific NGOs (gender, environmental, social) will seek to be assured that their areas of focus are not adversely affected by the PPP project.

- Political interests: PPPs sometimes become "political footballs", and can get caught up in the larger agendas of political parties and/or interest groups.

- Infrastructure users: Particularly in first-of-a-kind PPP projects, the views of potential users of the service must be canvassed during the project preparation phase. Uncertainty about users' support for the project – and their willingness to pay – can materially impact PPP projects. For example, in the development of Jamaica's ambitious Highway 2000 project, some financiers viewed the project as being high risk, because "Jamaicans won't pay tolls". (Actual experience has proven this fear to be unfounded)

Some infrastructure sectors are more susceptible to stakeholder opposition than others. For example, the water and sanitation sector often attracts opposition to private sector participation (PSP). Textbox 4.18 below gives one Caribbean example where an attempted water PPP faced opposition from stakeholders; and was eventually cancelled.

Textbox 4.18: Attempted PPP for Water and Sewage Corporation (WASCO), Saint Lucia

In 2008, the Government of Saint Lucia announced a transaction sell a majority of shares in the Water and Sewerage Corporation (WASCO) to a strategic investor. A previous attempt at privatising WASCO in 2005 had stalled, and by 2008 the government had successfully established a framework within which a PPP would function effectively in the water sector.

The International Finance Corporation (IFC) was appointed as the lead advisor on the transaction. A special purpose vehicle (SPV) would be a mixed company with the combined private sector shareholders holding majority ownership. The strategic partner would have management control over the SPV.

The WASCO transaction followed a transparent and competitive process, in line with best practice. The Global Partnership on Output-Based Aid (GPOBA) agreed to fund a grant of US$ 1.6 Million to finance increases access to piped water services to low income households in Saint Lucia.

The transaction had many advantageous features:
Coordinated support from World Bank Group
Regulatory changes made before transaction
IFC as transaction advisor
Output-Based Aid (OBA)

However, the transaction suffered from challenges, with major concerns raised by non-governmental organisations and other citizens' groups; and ultimately the transaction was canceled. This reversal of political will may have been related to the divided opinions on the PPP among stakeholders in Saint Lucia.

Source: Public-Private Partnerships in the Caribbean: Lessons of Experience and Leveraging for Growth
http://waterblog.world-psi.org/2009/03/water-privatisation-in-st-lucia-stalled.html

d. Qualitative VfM assessment

A sound VfM analysis in the Business Case stage should include a strong qualitative analysis of the advantages and disadvantages of delivering a project using a PPP approach. Tool 4.4 provides a methodological framework for conducting a Qualitative VfM Assessment. It contains a structured list of questions aimed at assessing the presence of value drivers. At the end of the Tool, the user can draw an overall conclusion with respect to the appropriateness of the proposed PPP model (and, possibly suggestions for optimising the PPP delivery model).

Tool 4.4: Qualitative VfM Tool

Driver	Questions	Low	Medium	High
Advantages	**The questions assess the presence and strength of driving factors behind advantages of PPP. Based on your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.[77]**			
Output-based contracting	Is there some degree of flexibility in the technical solution/service and/or the scope of the projects? Is the solution adequately free from constraints imposed by the authority, legal requirements and/or technical standards? Is there scope for innovation in either the design of the assets or in the provision of the services?	○	○	○
Optimal risk allocation	Is there scope for significant risk transfer to the private partner (in accordance with the principle of optimal risk allocation)? Can the payment mechanism and contract terms incentivise good risk management by the concessionaire?	○	○	○
Private outsourcing	Does the private sector have significant cost advantages in comparison with the contracting authority in the delivery of the project services (owing to greater efficiency, economies of scale, greater experience/expertise, etc.)? Could the private sector achieve a better commercial utilisation of the assets underpinning the project, resulting in higher revenues?	○	○	○
Life-cycle optimisation	Does the project offer the potential to achieve efficiency gains from life-cycle optimisation? Is it possible to integrate the design, build and operation elements of the project? Are there significant operating costs and maintenance requirements? Are these likely to be sensitive to the type of construction?	○	○	○
Performance based payments	Can the outputs of the investment programme be described in contractual terms, which are objective and measurable? Would incentives for service delivery be enhanced through a performance payment mechanism as proposed in the PPP?	○	○	○

[77] This table shows a scale with three levels: low, medium and high. Alternative scales may also be used, if they are found to be more convenient or suitable.

Tool 4.4: Qualitative VfM Tool cont'd.

Driver	Questions	Low	Medium	High
Advantages	**The questions assess the presence and strength of driving factors behind advantages of PPP. Based on your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.[77]**			
Private financing	Is financing by the private sector necessary to undertake the project? Is it the case that no or insufficient public funds are available, so that the project cannot be undertaken (or only with large delays) unless private financing steps in?	○	○	○
Disdvantages	**The next questions assess the presence and strength of driving factors behind disadvantages of PPP and obstacles to PPP. Based on your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.**			
Output specifications	Is it possible to describe the services in clear, objective output- and result-based terms (and not in terms of activities), which can be included in a long term contract? Can the contractual outputs be defined in such a way that they can be objectively measured and assessed? Can the quality of the service be objectively measured and assessed? Is it possible to establish an objectively verifiable link between the output specifications, the monitoring of the actual performance and the payment mechanism?	○	○	○
Operational flexibility of the contracting authority	Is it possible to reconcile the degree of operational flexibility desired by the contracting authority and the long-term nature of a PPP arrangement? Will the PPP arrangement leave the contracting authority with sufficient operational flexibility to respond to future needs? What is the likelihood of large changes in service needs during the life of the PPP contract that would require a change of the contract? If the services performed under the PPP arrangement interfere with other services or other projects not covered by the PPP contract, are these interfaces manageable? If the PPP arrangement necessitates the transfer of public sector staff to the private partner, will it be possible to accomplish this transfer without major problems or resistance?	○	○	○

Tool 4.4: Qualitative VfM Tool cont'd.

Driver	Questions	Low	Medium	High
Disadvantages cont'd.	**The next questions assess the presence and strength of driving factors behind disadvantages of PPP and obstacles to PPP. Based on your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.**			
Contracting authority's capacity	Does the contracting authority have (access to) sufficient human and financial resources to prepare and tender the PPP project?	○	○	○
Policy and regulatory barriers	Is it the case that there are there no legal or regulatory obstacles to delegating the provision of the services to a private party? Is the provision of the services under a PPP arrangement compatible with the safeguarding of public interests (for instance with respect to environmental sustainability, workers' safety, fair competition, etc.)? Is the provision of the services under a PPP arrangement compatible with other policy goals (for instance with respect to land use, income distribution, economic development, etc.)?	○	○	○
Large and uncontrollable risks	Does the project involve large risks that are largely outside the control of the private partner and that may make private finance unfeasible or very expensive? Examples are traffic risk (especially for greenfield projects and if macroeconomic conditions are highly uncertain), large uncertainties about the costs of meeting requirements imposed by environmental regulations, the use of unproven technology, difficult terrain conditions.	○	○	○
Private sector capacity and interest	Is there evidence that the private sector is technically and financially capable of implementing the project? Is it likely that a sufficiently large number of bidders will be interested in the project in order to ensure effective competition? Is there evidence that financiers are willing to provide funds for investing in this type of projects?	○	○	○

Tool 4.4: Qualitative VfM Tool cont'd.

Driver	Questions	Low	Medium	High
Overall assessment	**Given the answers to the questions above, are there enough indications that the proposed PPP arrangement yields Value for Money?** **Are there opportunities to optimise the proposed PPP arrangement (in order to strengthen the drivers of advantages and reduce the drivers of disadvantages)?**			

Container Port of Port of Spain, Trinidad and Tobago. PPPs can be used to improve the capacity and efficiency of the Region's ports.

MODULE 4

9. ENSURING COMMERCAL VIABILITY

This section elaborates on the importance of structuring a PPP project such that it is commercially viable for the private sector and "bankable" for the project's financiers.

9.1 Introduction to project finance

Most PPP projects are funded on a project finance basis (where the financing is secured on the basis of the project's cash flows); as opposed to a corporate finance basis (where funding is secured on the larger corporate balance sheet):

"Project finance is the financing of long-term infrastructure, industrial projects and public services based upon a non-recourse or limited recourse financial structure, in which project debt and equity used to finance the project are paid back from the cash flow generated by the project. Project financing is a loan structure that relies primarily on the project's cash flow for repayment, with the project's assets, rights and interests held as secondary security or collateral. Project finance is especially attractive to the private sector because companies can fund major projects off balance sheet."[78]

A project finance structure means that the lenders of the project will look primarily to the cash flows of the project to repay the debt, with limited recourse to either the equity sponsors or the public sector to make up any shortfall. In other words, the company or Special Purpose Vehicle (SPV) created for the PPP project "ring fences" the project's debt liabilities, and its revenues, which cannot be used for other purposes than the securing the loan financing for the project.

To understand the implications of using a project finance structure to deliver PPP projects, it is important to understand the difference between project and corporate finance. Tool 4.5 highlights the main differences.

[78] http://www.investopedia.com/terms/p/projectfinance.asp

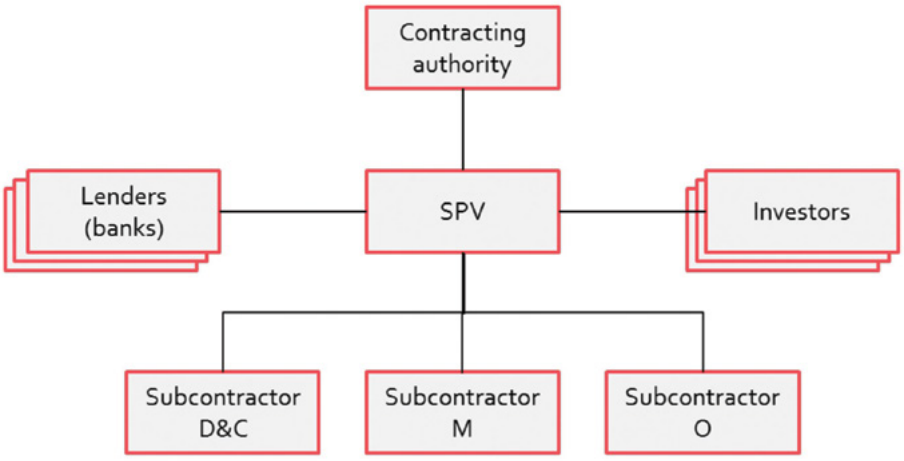
Tool 4.5: Project Finance compared to Corporate Finance

	Project Finance	Corporate Finance
Scope	One project, and one cash flow	Not necessarily tied to one project
Resource	No or limited recourse to sponsors and/or parent companies	Balance sheet financing, unlimited recourse
Risk	Focus on risk allocation, mitigation, and packaging	Secured by corporate group assets
TIme Period	Limited life span, clearly defined exit	Exit not clearly defined.

As project finance is based on the project's own cash flow, and is not secured by other assets or projects, the financing cash flows must mirror the operational cash flows. In other words, the drawdowns must mirror the required capital investments and the subsequent interest and principal must mirror the projected revenues of the project.

One aspect of project finance is that it involves establishing a Special Purpose Vehicle (SPV) for the project, as depicted in Figure 4.27.

Figure 4.27: Typical Structure of a Special Purpose Vehicle (SPV)

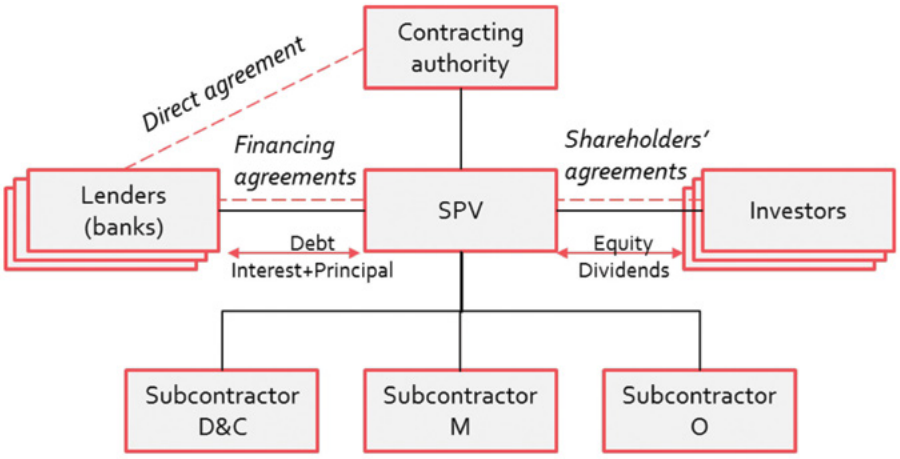


The SPV is a separate legal entity with no assets other than the project (cash flows). The SPV is financed by lenders (debt) and investors (equity). The lending is characterised by being limited or non-recourse:

"A non-recourse debt is a type of loan secured by collateral, which is usually property. If the borrower defaults, the issuer can seize the collateral but cannot seek out the borrower for any further compensation, even if the collateral does not cover the full value of the defaulted amount."[79]

The SPV is governed by the providers of equity finance, the investors. The rights and responsibilities between the partners are defined in shareholder and other project agreements (see Figure 4.28)

Figure 4.28: Agreements and Cash Flows in Project Finance



The SPV is the entity that enters into contractual arrangements with both the contracting authority on the one hand and the subcontractors, suppliers, financiers and customers on the other. Thus, all of the contracts are "pooled" within the SPV, which creates legal clarity.

From a public perspective, the advantages of project finance are that it creates incentives for the concessionaire to perform, as it has its own money at stake ("skin in the game"). Poor performance by the concessionaire leads to lower payments from the contracting authority or payments by users due to lower demand – ultimately this leads to lower profits. Thus the interests of the concessionaire and the contracting authority are aligned, as the concessionaire will do everything necessary to ensure performance.

[79] http://www.investopedia.com/terms/n/nonrecoursedebt.asp?ad=dirN&qo=investopediaSiteSearch&qsrc=0&o=40186

Furthermore, project financing also aligns the interests between the lender and the contracting authority, as lower payments potentially threaten the interest and principal repayments due by the SPV. The lender will "step in" if necessary, in order to forego financial losses. These so called 'step-in rights' are part of the Direct Agreement between the lenders and the contracting authority. These rights are discussed in more detail in Module 6: Contract Implementation. Lastly, both investors and lenders benefit from the fact that the project finance structure ring-fences project risks.

Project finance, however, has its drawbacks. Project finance is only suitable for projects that have a clearly defined scope, risks, and objectives. As it is more complex to structure, it requires detailed financial, economic and legal expertise, which may not be available. Furthermore, a project finance structure demands a sophisticated legal framework, which may result in higher transaction costs. Costs of monitoring are also higher in project finance as multiple agreements and parties are involved. The lenders play a strong role by employing technical advisors for monitoring purposes.

As mentioned earlier, an optimal risk allocation can create value if risks are allocated to the parties best able to manage them (see section 3 on Risk Allocation and section 8.2 on the value drivers in a PPP delivery model). Tool 4.6 provides an overview of the typical stakeholders and the allocation of project risks between them.

Tool 4.6: Risk Control Capacity by Stakeholder

Project Finance	Typical Risk Categoy
Investors	Credit/ default risk
Lenders/ Financial institutions	Credit/ default risk
Contractors	Construction, maintenance, and operational risk
Contracting authority	Sovereign and systematic risks

In project finance, much of the funding requirement for the project is provided by long-term debt from commercial and/or development banks. In most PPP projects, long-term debt comprises 70 to 80 percent of the total funding requirement, depending on the risks of the project. The rest of financing is provided by the sponsors of the project, in the form of equity. The ratio between debt and equity in a PPP project comprises its "financing structure," often described as "debt-equity ratios", "gearing" or "leverage".

A project's optimal financing structure depends on the project risks, and their allocation between the parties. Inappropriate risk allocation (for example, too much risk transfer to the SPV) will increase the cost of financing and reduces the ability to acquire financing for the project. However, the project's financing structure also affects the robustness of the PPP arrangement.

For example, a higher debt-to-equity ratio (more debt relative to equity) can increase the chances of default during difficult periods (because of the higher payments on debt). However, a higher amount of debt also has advantages, as it incentivises the lenders to ensure that emerging project problems are addressed early. Tool 4.7 summarises the characteristics of debt and equity and the focus of their providers.

Tool 4.7: Characteristics of Debt and Equity in Project Finance

Characteristics	Debt	Equity
Provider	Financier	Investor
Risk focus of provider	Downside risk In case of bad developments, financiers are at the top of the waterfall	Upside risk In case of bad developments, investors are at the bottom of the waterfall
RIsk-return relation	Little risk accepted Low return required	Higher risk accepted Higher return required
Leading indicator	Debt service coverage: interest and repayments	Equity return maximisation
Measures	Minimise risk of financial distress in SPV Securities in case of financial distress Guarantees from equity provider	Management of SPV Shareholder Agreement

It can be concluded that project finance is both about tailor-made financing structures and about tailor-made risk allocation and profiles. These tailor-made solutions are captured in the PPP contract and the other PPP agreements.

9.2 The Private Sector perspective

Private sector parties involved in the project finance structure of a PPP project through their role as investors include: (i) construction firms, (ii) financiers and (iii) operators. Each party has a specific return requirement and period of investment due to their role in the project. Table 4.18 below summarises the roles and returns.

Table 4.18: Roles and Interests of the Different Parties in a PPP

Sponsors	Role	Return	Investment horizon
Construction firms (part of the SPV)	Deploy equity capital Deliver the construction elements	Lower return expectations Seeks to earn returns primarily from construction	Short term (construction period)
Operators (part of the SPV)	Deploy equity capital Manage day-to-day operations	Seek to optimise CapEx and OpEx	Medium to long term (operational period)
Financiers	Deploy equity capital Monitor borrower performance	Achieve returns for institutional clients Highest return expectations	Medium to long term (up to whole project period)

On the side of the lenders, four main private players are engaged in PPP project finance: (i) commercial banks, (ii) bond traders, (iii) pension funds, and (iv) development finance institutions. The parties are involved to a different extent and require different levels of security and information. The table below summarises the main characteristics.

Table 4.19: The Four Private Financial Players in a PPP Contract

Lenders	Need for security	Interest	Role in project
Commercial banks	Conservative Deep due diligence	Senior in capital structure Protect project cash flow	Active
Bond traders	More aggressive Rely on public ratings	Performance relative to market indices	Passive
Pension Funds/ direct institutional investors	Deep due diligence	Matching assets and liabilities	Active
Development Finance Institutions	Deep due diligence	Senior position in capital structure Seek returns and development impact Social & environmental safeguards	Medium Active in drawing in other lenders

Source: IFC Presentation on Project Finance, Private Sector Perspective

9.3 Ensuring bankability

Ensuring the preliminary "bankability" of a project is an essential part of the Business Case phase. It is important to understand the difference between marketability and bankability (see below). Textbox 4.19 presents an overview of the concept of "marketability" in Jamaica's PPP Manual.

Table 4.20: Difference between Marketability and Bankability

Commercial Viability	Explanation
Marketability	Marketability defines the viability of a project with regard to the relationship between the contracting authority and/or government and the private party (mostly a Special Purpose Vehicle). A project is marketable if the products and services demanded by the contracting authority in combination with the contract and requirements meets the willingness of the private parties.
Bankability	Bankability defines the viability of a project with regard to the relationship between the contracting authority, the SPV and the banks/ financiers. A project is bankable if banks are willing to finance the proposed project with its deliverables and contractual arrangements and especially the risks, against a rate that is, in turn, accepted as reasonable by the SPV and contracting authority. The key to bankability is a fair and appropriate risk allocation to the party best able to control it (see section 3 for further details).

The European Investment Bank (EIB) has a succinct definition of bankability: "Simply put, a PPP project is considered bankable if lenders are willing to finance it."[80] This means that the project is feasible (with or without government support) and all the necessary financing conditions can be met by the project sponsors. The most important financing conditions will be:

- Expected equity return ≥ required equity return (i.e. debt providers are expecting to get what they require)
- Expected minimum DSCR ≥ required minimum DSCR (i.e. equity providers are expecting to get what they require).

[80] http://www.eib.org/epec/g2g/i-project-identification/12/123/index.htm

Textbox 4.19: Marketability in Jamaica's PPP Business Case Manual

The Policy Manual of the Jamaican PPP provides some specificity of the Business Case elements. The table below presents the different business case criteria that indicate the project's marketability:

Criterion:	Business Case
PPP is Marketable	
PPP is a viable "commercial project"	A financial analysis indicates the PPP's revenues will cover its costs and provide a rate of return sufficient for the private sector to consider the PPP a viable commercial project
Market has sufficient capacity and appetite	Market consultations indicate there is sufficient market interest from qualified private parties to generate competitive tension

Source Government of Jamaica Policy and Institutional Framework for the Implementation of Public Private Partnerships. p. 26. October 2012

A bankable project typically requires a sound enabling environment, a well-prepared project and an efficient risk allocation. But even if all of these are in place, the project may still not be bankable. In such instances, risk mitigation instruments can provide additional security. Risk mitigation instruments are financial instruments that transfer certain defined risks from project financiers (lenders and equity investors) to creditworthy third parties (guarantors and insurers) that have a better capacity to accept such risks.

The main advantages of risk mitigation instruments are:

- Emerging market countries are better able to attract private capital (debt and equity) for infrastructure projects, supplementing limited public resources.
- Private sector lenders and investors will finance commercially viable projects when risk mitigation instruments cover risks that they perceive as excessive.
- Governments can share the risk of infrastructure development using limited fiscal resources more efficiently by attracting private investors, rather than having to finance the projects themselves, assuming the entire development, construction, and operating risk.
- Governments can upgrade their credit rating as borrowers, or as the guarantor for public and private projects, by using risk mitigation instruments of more creditworthy institutions, which, in turn, can lower their financing costs for infrastructure development.

The main types of risk mitigation instruments are discussed in Table 4.21.

Table 4.21: Risk Mitigation Instruments

Instrument		Description
Partial Credit Guarantee (PCG)	Offered by:	Multilaterals and a few bilateral agencies
	Objective:	Improve both the borrower's market access and the terms of its commercial debt (that is, to extend the maturity and reduce interest rate costs) through the sharing of the borrower's credit risk between the lenders and the guarantor.
	Coverage:	Losses in the event of a debt service default regardless of the cause of default.
	Comments:	PCGs are commonly used.
Full Credit Guarantee	Offered by:	Insurers
	Objective:	Used by bond issuers to achieve a higher credit rating to meet the investment requirements of investors in the capital markets.
	Coverage:	Losses in the event of a debt service default regardless of the cause of default.
	Comments:	Monoline insurers generally require the underlying borrower or security to have a standalone investment-grade rating on an international rating scale to consider offering their guarantees.
Export Credit Guarantees	Offered by:	Export Credit Agencies
	Objective:	To cover losses for exporters or lenders financing products tied to exports of goods and services
	Coverage:	Cover (percentage of) specified political risk and commercial risk, including: ✓ bankruptcy of insolvency of the borrower ✓ failure to meet contractual payment obligations ✓ termination of the contract
	Comments:	Typically tied to the nationality of exporters or suppliers, sometimes untied
Political Risk Guarantees	Offered by:	Multilateral development banks (MDBs)and some bilateral agencies.
	Objective:	Protect commercial lenders in private projects against political risk events.
	Coverage:	PRGs cover the full amount of debt. Payment is made only if the debt default is caused by risks specified under the guarantee. Such risks are political in nature and are defined on a case-by-case basis. PRGs offered by MBDs typically cover government contractual obligations (losses arising from a government's nonpayment of its payment obligations under its contractual undertaking or guarantees provided to a specific project).

Table 4.21: Risk Mitigation Instruments cont'd.

Instruments		Description
Political Risk Insurance	Comments:	MDB PRGs require a counter-guarantee of the host government. Twenty five percent of the PRG amount will be counted against the World Bank country's assistance envelope for each country
	Offered by:	Export credit agencies, investment insurers, private political risk insurers, and multilateral insurers.
	Objective:	Protect equity investors or lenders in private projects against political risk events.
	Coverage:	PRI can cover the default by a sovereign or corporate entity but only if the reason for a loss is due to political risks. Coverage is generally limited to less than 100 percent of the investment or loan.
	Comments:	PRI includes relatively standardised risk coverage offered by the insurance industry for traditional political risks. This coverage includes: ✓ Currency inconvertibility and transfer restriction ✓ Expropriation ✓ War and civil disturbance ✓ Breach of contract ✓ Arbitration award default

The application for guarantees and insurance needs to be initiated well before the start of the procurement. This pre-approval process involves multiple review rounds and substantial legal documentation. Delays in the application and approval process would affect the procurement process and financial closure of the project. Even though bidders need to consider the fees to obtain PRGs and PRIs, such as initiation fee, processing fee and guarantee fee, risk mitigation instruments are still very attractive, since they cover those risks that are perceived as excessive and beyond the financiers' control. Guarantees are also in the direct interest of the contracting authority as they make the risk profile of projects more acceptable for financiers, and therefore make the projects financeable at improved financing conditions.

9.4 Climate risk financial instruments

The above mentioned risk mitigation instruments are mainly aimed at to addressing political risks or more generic financial risks during the development, construction and operating phases of a project. As discussed earlier, climate risk and the risks of extreme weather events are particularly relevant for the Caribbean region, and can influence PPP projects throughout all stages, with significant financial impacts. Often, project financiers (both lenders and investors) wish to use financial instruments to transfer climate risks to larger third parties that have more capacity to absorb these risks.

a. Disaster risk financing and insurance programme

The Disaster Risk Financing and Insurance (DRFI) Programme is a partnership between the World Bank and the Global Facility for Disaster Reduction and Recovery (GFDRR)[81]. It aims to improve financial resilience against natural disasters – for the public and the private sector as well as households. One focus of the Programme is the support of governments to facilitate PPPs. The DRFI Programme has four priorities:

i. Sovereign disaster risk financing and insurance: fast and cost-effective access to funding for emergency response, reconstruction, and recovery for sub-national governments.
ii. Agricultural insurance: productive asset loss protection for farmers and herders.
iii. Property catastrophe risk insurance: property damage protection for homeowners as well as small and medium enterprises
iv. Disaster-linked social protection: a social protection mechanism for immediate disaster response to vulnerable and poorest households.

b. Disaster risk financial instruments

World Bank, IADB and other multilateral and private financial institutions provide disaster risk financial products that can serve as risk mitigation instruments for climate related risks. Many of these financing instruments are not directly relevant for PPPs, as they are intended to address the immediate financing needs resulting from a natural disaster. Financial instruments that can be relevant for PPPs include:

i. Weather hedges[82]: Payments on the basis of a financial contract based on a weather index, which transfers the risk to the financial markets. In case of adverse weather events such as below or above certain levels of rainfall, seasonal temperatures, etc., payments are made to the countries affected.
ii. Catastrophe bonds[83]: Transfers natural disaster risk to private investors. In the event of a major natural disaster, the bond allows the issuer to not repay the bond principal.

The application for these financial instruments needs to be initiated before the start of the procurement. Therefore, it is recommended that the project team identifies relevant financial instruments, and analyse their applicability for the specific PPP project, early in the Business Case stage.

[81]http://siteresources.worldbank.org/EXTDISASTER/Resources/8308420-1353538006746/4Pager_GFDRR-DRFI-program_final_Nov21_2012.pdf
[82]http://openmarkets.cmegroup.com/2927/hedging-a-bet-on-mother-nature | [83]http://www.investopedia.com/terms/c/catastrophebond.asp

MODULE 4

10. BUSINESS CASE APPROVAL

The Business Case stage typically does not follow a strict chronological process, and many of the analyses and studies can be conducted in parallel. The Business Case is also an iterative process, with insights from one study feeding into the other. Moreover, the Business Case should be continually updated during the procurement stage, as new information and details become available. However, an (interim) approval of the Business Case is typically required, at the completion of the major reports.

Before initiating the procurement process, the relevant authority must approve the project including its content (is this indeed the type of project that we want?) as well as a fiscal point of view (can we afford this project?). Depending on the institutional setting, the Business Case might require different levels of approvals, in particular of the fiscal implications. In the Caribbean context, ultimate approvals at key stages of the PPP process will usually be taken by the Cabinet. PPPs tend to be large and potentially transformative projects, therefore it is appropriate that binding, long-term decisions be jointly taken by the Cabinet.

The Business Case approval will result in one of the following decisions:

i. The project is feasible from all the relevant perspectives (legal, technical, economic, financial) i. and sustainable (social, environmental), and is suitable for PPP delivery. The relevant authority decides to procure the project as a PPP.

ii. The project is feasible from all of the relevant perspectives (legal, technical, economic, financial) and sustainable (social, environmental), but is not suitable for PPP delivery. The relevant authority decides to procure the project using a conventional approach.

iii. The project contains major risks that cannot be mitigated; in other words, it is not feasible from one or more of the relevant perspectives (legal, technical, economic, financial) and/or sustainable (social, environmental). The relevant authority may decide to restructure the project in order to improve its feasibility and mitigate key project risks, or abandon the project idea altogether.

The individual approval process might differ between countries, contracting authorities and sectors. As a general guidline, the following checklist (Tool 4.8) can be used.

Tool 4.8: Business Case Approval Checklist

	Key Question	(Yes/No/NA)
A	**Stakeholders** Have the stakeholders been identified and mapped? Have risks with regard to stakeholders been identified and mitigated? Has a strategy for stakeholder engagement been designed? Have stakeholders been engaged in the assessments?	
B	**Expertise** Has a project team been appointed? Has the need for external expertise been assessed? Has the project team been completed with external expertise?	
C	**Risk** Have the project risks been identified and (preliminarily) been allocated? Have risk mitigating measures been identified? Have the main risks been monetised?	
D	**Feasibility** Has legal feasibility been assessed and confirmed? Has technical feasibility been assessed and confirmed? Has economic feasibility been assessed and confirmed? Are the economic effects for different stakeholder groups clear? Has financial feasibility been assessed and confirmed? Has a transparent, flexible spreadsheet model been constructed? Have the fiscal implications been identified? Is the project fiscally feasible? Is the project affordable? Has an environmental impact assessment been carried out? Have measures for mitigating the environmental impact been identified? Has a social impact assessment been carried out? Have measures for optimising social impact been identified?	
E	**Rationale for PPP procurement** Is the project generating Value for Money? Is the project suitable for PPP procurement?	
F	**Commercial Viability** Have the main sponsors and their needs been identified? Is the project bankable? Is there 'market appetite' for the project? Is the project marketable?	

MODULE 4

11. SUMMARY

Module 4 aims to provide governments with considerations, guidance and tools for carrying out the Business Case stage of a PPP. The Business Case ensures that the project is financially and economically feasible, that the environmental and social impacts are assessed and mitigated and that the PPP is fiscally affordable.

Wrap Up:

In Module 4, the reader was introduced to the following topics:

- Understanding the components of, and good practices in building a Business Case;
- Assessing the project's key risks using an approach that identifies, prioritises, values, mitigates, and appropriately allocates risks between the public and private parties;
- Analysing the extent to which the project will deliver societal benefits using an Economic Benefit Cost Analysis (ECBA);
- Appraising the project's social and environmental impacts;
- Assessing the project's financial feasibility and affordability using a Financial Feasibility Assessment and an Affordability and Fiscal Liability Assessment;
- Evaluating the rationale for procuring and delivering the project as a PPP using a Qualitative Value for Money Assessment; and
- Understanding the private sector perspective and ensuring commercial viability (or "bankability").

Module 5 will address the next stage of the PPP Process, namely procuring the PPP project.

Linden Pindling International Airport, Nassau, Bahamas: A 10-year management contract with YVR Airport Services Ltd. (YVRAS) to manage, operate and redevelop the airport.

MODULE 4

12. ADDITIONAL RESOURCES

This section presents a number of additional resources to assist governments in preparing the Business Case of a potential PPP project.

Key References - Hiring Advisors for the Bueinss Case Stage		
Reference	**Description**	**Link**
"Role and Use of Advisers in preparing and implementing PPP projects", European Investment Bank, March 2014.	The overall objective of this document is to help public contracting authorities, especially less experienced ones, to understand what they can reasonably expect from their advisers and how they can obtain the best advice from them.	www.eib.org/epec/resources/publications/role_and_use_of_advisers_en.pdf
"Toolkit: A guide for hiring and managing advisors for private participation in infrastructure", World Bank	This summary sets out the key issues of interest for ministers and senior policy makers who are considering whether to hire advisors.	www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/hiring_advisorys/fulltoolkit.pdf
"Sample Terms of Reference for PPPs", World Bank	Terms of Reference for hiring PPP advisors	http://ppp.worldbank.org/public-private-partnership/overview/practical-tools/terms-of-reference-ppp-advisors
Key References - Non-Financial Feasibility		
"Legal Framework/ Enabling Environment Assessment for PPPs", World Bank, May 2016	The World Bank's Public Private Partnership in Infrastructure Centre (PPP IRC) also provides guidance on assessing a country's PPP legal enabling environment.	http://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment
Key References - Risk Assessment		
Key References – Risk Assessment "Risk Assessment for Public-Private Partnerships: A Primer", US Federal Highways Administration (FHWA), January 2014	A risk assessment guide which discusses: 1) How the extent of risk transfer varies by type of project and type of P3 contract, 2) The key types of risks faced in P3 projects, 3) The analysis of project risks to assess their cost impacts, 4) how risks are optimally allocated between the public and private sectors to minimise total project life-cycle costs, and 5) How costs of risks under conventional and P3 procurements may be incorporated into VfM analyses.	https://www.fhwa.dot.gov/ipd/p3/toolkit/publications/primers/risk_assessment/

Key References - Economic Cost-Benefit Analysis (ECBA)		
Reference	**Description**	**Link**
"Benefit-Cost Analysis for Transportation Projects", Minnesota Department of Transportation	This document is intended to provide guidance to This document is intended to provide guidance to perform benefit-cost analysis for highway projects. The guidance includes: • Background information on benefit-cost analysis and how it may fit into the project development process. • Discussion of economic terms and principles. • Review of relevant stages in conducting a benefit-cost analysis for highway projects. • Advice on using benefit-cost results.	http://www.dot.state.mn.us/ planning/program/ benefitcost.html
"Road Projects Cost-Benefit Analysis: Scenario Analysis of the Effect of Varying Inputs", World Bank, 2010	The objective of the study is to obtain insights regarding the effects of varying inputs and parameters on the viability of road projects through case studies using HDM-4, thereby to facilitate the formulation and implementation of road projects that increase the welfare of the society under the environment of increased uncertainty in an economic downturn.	http://siteresources.worldbank.org/ INTTRANSPORT/ Resources/ 336291-1239112757744/5997693-1294344242332/Road_Projects_CostBenefit_Analysis.pdf
"Benefit-Cost Analysis of the Cross-Base Highway Project", Washington State Department of Transportation, April 2007.	Provides an example of ECBAECBAfor a highway project in the United States.	http://www.wsdot.wa.gov/ NR/ rdonlyres/ D036B8E5-CDC6-4D0F-BEF3-68200F45DA09/0/ SR704FinalReportApril252007_3_.pdf Resources/ 336291-1239112757744/ 5997693-1294344242332/Road_Projects_CostBenefit_Analysis.pdf
Key References - Social And Environmental Impact Assessments		
"Environmental Impact Assessment Training Resource Manual", United Nations Environment Programme, 2002.	UNEP EIA Training Manual	www.unep.ch/etb/publication/ EIAman/ IntroManual.pdf
"Social Impact Assessment: Guidance for assessing and managing the social impacts of projects", International Association for Impact Assessment, April 2015.	Provides advice on Social Impact Assessment and social impact management processes with a focus on project development.	http://www.iaia.org/uploads/ pdf/ SIA_Guidance_Document_IAIA.pdf
"International Principles for Social Impact Assessment. Impact Assessment & Project Appraisal", 21(1).5-11. Vanclay, F., 2003	A discussion document on the principles of Social Impact Assessment as the basis for developing sector and national guidelines.	http://dx.doi.org/ 10.3152/ 147154603781766491

Key References - Financial Feasibility Assessment		
Reference	**Description**	**Link**
"Financial Structuring and Assessment for Public-Private Partnerships: A Primer", US Federal Highways Administration (FHWA)	This primer addresses Financial Structuring and Assessment for public-private partnerships (P3) and has been prepared as a companion document to FHWA's primers on Value for Money Analysis and Risk Assessment for P3s.	https://www.fhwa.dot.gov/ipd/p3/toolkit/publications/
Key References - Affordability and Fiscal Liability Assessment		
Key References – Affordability and Fiscal Liability Assessment "Risk Distribution and Balance Sheet Treatment Practical Guide", European PPP Expertise Centre, European Investment Bank, November 2014.	A practical guide intended to give advice on the impact that the risk distribution between government and the private partner in a specific project has on government deficit and debt. It contains a checklist of issues designed to help procuring authorities determine the possible statistical treatment of a PPP or concession project.	http://www.eib.org/epec/resources/publications/epec_risk_distribution_and_balance_sheet_treatment_2nd_edition_en.pdf
"Eurostat Treatment of Public-Private Partnerships Purposes, Methodology and Recent Trends", European PPP Expertise Centre, European Investment Bank, November 2010.	This report provides guidance on the definition, purpose and methodology of PPP accounting and statistical treatment and explains their impact on government deficit and debt. It provides an insight into the purpose and fiscal impact of as well as new trends in accounting and statistical treatment of PPPs.	http://www.eib.org/epec/resources/epec-eurostat-statistical-treatment-of-ppps.pdf
"Budgeting and Reporting for Public-Private Partnerships", International Monetary Fund (IMF), Discussion Paper for the International Transport Forum, 2013.	Provides an overview of issues related to budgeting and reporting of PPPs.	http://www.internationaltransportforum.org/jtrc/DiscussionPapers/DP201307.pdf
"Contingent Liabilities: Issues and Practice", International Monetary Fund (IMF) Working Paper, October 2008.	The paper discusses theoretical and practical issues raised by contingent liabilities, including the rationale for taking them on, how to safeguard against the fiscal risks associated with them, how to account and budget for them, and how to disclose them. Country experiences are used to illustrate ways these issues are addressed in practice and challenges faced. The paper also points to good practices related to the mitigation, management and disclosure of risks from contingent liabilities.	https://www.imf.org/external/pubs/ft/wp/2008/wp0 8245.pdf

Key References - Affordability and Fiscal Liability Assessment		
Reference	**Description**	**Link**
"Implementing a Framework for Managing Fiscal Commitments from PPPs", Operational Note by The World Bank Group, 2014.	The note explains the kind of fiscal commitments that can arise from PPP projects and why governments may find it difficult to assess and manage them. It provides guidance on how to: consistently identify and assess fiscal commitments during project preparation and implementation; incorporate these into the project approval process. The note further highlights the key components of an institutional framework including the roles, responsibilities, and processes for managing these fiscal obligations.	http://documents.worldbank.org/curated/en/2014/01/18893343/implementing-framework-managing-fiscal-commitments-public-private-partnerships-operational-note
"Another Look at Governments' Balance Sheets: The Role of Nonfinancial Assets", IMF Working Paper, May 2013.	When discussing debt reduction strategies, little attention has been given to the role of governments' nonfinancial assets. This is in part because data are scarce. Drawing on various data sources, this paper looks at the size, composition, and management of state- owned nonfinancial assets across 32 economies, with particular focus on the advanced G-20 economies.	https://www.imf.org/external/pubs/cat/longres.aspx?sk=40503.0
Christopher M. Lewis and Ashoka Mody, "The Management of Contingent Liabilities: A Risk Management Framework for National Governments", 1997	This chapter outlines a risk management agenda for national governments. It develops a framework for improving the assessment, measurement, budgetary control, and management of risks and demonstrates how this framework can be applied to contingent infrastructure liabilities.	http://www.amody.com/pdf/lewis.pdf
Key References - Value for Money and PPP Rationale		
"Value for Money Assessment for Public-Private Partnerships: A Primer", US Federal Highways Administration (FHWA)	This primer focuses on assessing the financial impacts of P3 delivery compared to conventional delivery, from the perspective of the public agency procuring the project.	https://www.fhwa.dot.gov/ipd/p3/toolkit/publications/
"Value for Money Assessment: Review of approaches and key concepts", European PPP Expertise Centre, European Investment Bank, March 2015.	This report focuses in particular on the use of VfM assessment to guide and support decisions on whether to deliver a public infrastructure project through a Public-Private Partnership (PPP) or through other public procurement means.	http://www.eib.org/epec/resources/publications/epec_value_for_money_assessment_en.pdf
"Guidelines for Successful Public Private Partnerships", European Commission, 2003.	Refer to Section 3: "Ensuring Value for Money in a PPP."	http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf

Key References - Value for Money and PPP Rationale

Reference	Description	Link
"Value-for-Money Analysis: Practices and Challenges: How Governments Choose When to Use PPP to "Value-for-Money Analysis: Practices and Challenges: How Governments Choose When to Use PPP to Deliver Public Infrastructure and Services", World Bank Institute (WBI) and Public-Private Infrastructure Advisory Facility (PPIAF), May 2013.	This report is based on a global "roundtable" of PPP practitioners to discuss VFM and how it can be assessed. The aim of the roundtable was to draw lessons from countries that This report is based on a global "roundtable" of PPP practitioners to discuss VFM and how it can be assessed. The aim of the roundtable was to draw lessons from countries that have relatively well-developed approaches and tools for VFM analysis: with respect to how this analysis has evolved, what are the on-going and new challenges, and how the approaches might apply in countries with less well-established PPP programmes.	http://www.ppiaf.org/sites/ppiaf.org/files/publication/VFM.pdf
"The Non-Financial Benefits of PPPs: A Review of Concepts and Methodology", European PPP Expertise Centre, European Investment Bank, June 2011.	Discusses the non-financial benefits of PPPs which comprise Value for Money.	http://www.eib.org/epec/resources/epec-non-financial-benefits-of-ppps-public.pdf

MODULE 5
PPP PROCUREMENT

Out with the old, in with the new: Disused sugar loading silos next to the cruise ship pier, Bridgetown Harbour Barbados

1. PPP PROCUREMENT

Key Points for Decision Makers

Proper preparation is important and will be rewarded in better PPP contract terms and a higher quality private partner.

Actively develop the market for the project in order to create interest from private parties.

Two-stage procurement processes are preferred because they are associated with more rigorous competition between bidders.

Publish high quality bid documents, using recognisable templates and formats. High quality bid documents can assure bidders of the competence of the contracting authority, which adds to the overall attractiveness of the PPP project.

Start the formal procurement process after relevant approvals have been secured. This minimises unintended delays and provides more predictability for all parties involved.

Introduction

Following the approval of the Business Case, the project enters the procurement stage. At this stage, the contracting authority is responsible for organising a competitive procurement and appointing a private sector partner to implement the project.

The procurement stage involves a great deal of preparatory work, which must be constantly updated in the light of new information or changed circumstances. The first task is for the contracting authority to develop a procurement strategy. In developing a procurement strategy, the contracting authority relies heavily on the results of the Business Case, which will have outlined the recommended PPP structure for the project. The Business Case will include an assessment of the potential market interest in the PPP opportunity, and give ideas of the types of private firms that may be interested in bidding for the project.

The contracting authority will also need to develop the procurement documentation, including the instructions for bidders and the draft PPP contracts. It is advantageous for the contracting authority to consult the market in order to assess private sector interest in the project. As with the Business Case stage, high-level approval is needed for the draft procurement documentation, before launching the tender.

Success of the procurement stage will depend on a number of factors, including:

(i) The contracting authority's level of preparation;
(ii) The extent to which the contracting authority properly assesses and fosters market appetite for the project;
(iii) The procurement approach used; and
(iv) The quality of the procurement documentation.

1.1 The PPP process

PPP Procurement is the third stage of the PPP Process, shown in Figure 5.1. The four key stages of the PPP Process are described below.

Figure 5.1 The PPP Process

Stage 1: Identification and Screening: Before considering a PPP delivery model, the public agency must identify its priority investments needs. Typically, sector ministries submit priority projects, which should align with the government's policy objectives. The objective of this stage is to "screen" the priority projects, in order to determine whether they meet basic criteria and have the potential to generate Value for Money if implemented as PPPs. This is the first step to define if PPP is the best delivery option for a project. Because of its budgetary implications, the decision to move a project to the next stage normally requires high-level approval. This stage is covered in Module 3 of this Toolkit.

Stage 2: Business Case: Once a priority public investment project has been approved for potential PPP delivery, the next step is to develop feasibility studies for the project that help all stakeholders understand the rationale and business case for the project. Studies conducted at this stage typically include technical and financial feasibility studies, Value for Money and fiscal impact analyses, cost-benefit or economic analyses, and social and environmental impact analyses. This stage will end with a set of recommendations on the project, including the structure and principal terms of the PPP contract. The scope and depth of the studies will depend on the complexity and the size of the project. This stage is covered in Module 4 of this Toolkit.

Stage 3: Procurement: Once the relevant contracting authority, and approving institution (usually the Cabinet), have approved the feasibility studies, the project moves on to the procurement stage. During this stage, a PPP agreement is drafted; a private partner is selected as the preferred bidder based on a competitive procurement process; the PPP agreement is finalised and signed; and contract close is followed by financial close. This stage is covered in this Module 5 of the Toolkit.

Stage 4: Implementation: A PPP contract has a much longer duration than a conventional public procurement contract (which typically ends with handover of the asset to the contracting authority – or shortly thereafter). This creates the need for long term contract management expertise by the contracting authority. Contract management includes, inter alia, monitoring the performance of the concessionaire and the contracting authority; managing the payment mechanism; implementing any changes to the contract; and handling unexpected or compensation events. This stage is covered in Module 6 of this Toolkit.

1.2 Structure of Module 5

Module 5 provides Caribbean governments with guidance on organising a successful PPP procurement process. Section 2 introduces the general principles and objectives of a PPP procurement, as well as the typical stages.

As mentioned earlier, the procurement phase requires significant preparatory work. Sections 3, 4, 5, 6 and 7 in this module provide guidance on conducting the preparatory work for the procurement stage:

- Section 3 provides guidance on developing a procurement strategy;
- Section 4 provides guidance on the internal organisation of the contracting authority and other government stakeholders, including the different roles and responsibilities of the various parties involved in the procurement stage;
- Section 5 provides guidance on how to prepare the market and foster private sector interest;
- Section 6 provides guidance on drafting the bidding documentation for a competitive procurement process; and
- Section 7 provides guidance on developing the PPP contract.

Module 5 ends with arrangements for the financial closing of the PPP transaction. The management of the PPP contract after financial close is addressed in Module 6: Contract Implementation.

MODULE 5

2. PPP PROCUREMENT PROCESS

Section 2 introduces the procurement stage. It provides guidance on the general objectives and principles of a PPP procurement, as well as the typical phases of a PPP procurement process.

2.1 Objectives and principles of PPP procurement

The main objective of the PPP procurement process is to select the most appropriate and competent private firm (or consortium of firms), at the best contractual terms and conditions, in order to achieve the government's desired outcomes for the PPP project.

The primary means to reach the government's objectives is through competition. PPP procurement should aim to maximise competition between the private parties bidding for the project. This will result in better terms and conditions for the government and users, rather than the alternative method of relying on directly negotiated unsolicited proposals (USPs) from private investors. This is particularly relevant in the Caribbean, where USPs are a common feature of PPP development and implementation. To enhance and maintain competition, the procurement process should be guided by three essential principles: (i) transparency, (ii) free and open competition, and (iii) fairness. These principles are outlined in detail in Table 5.1.

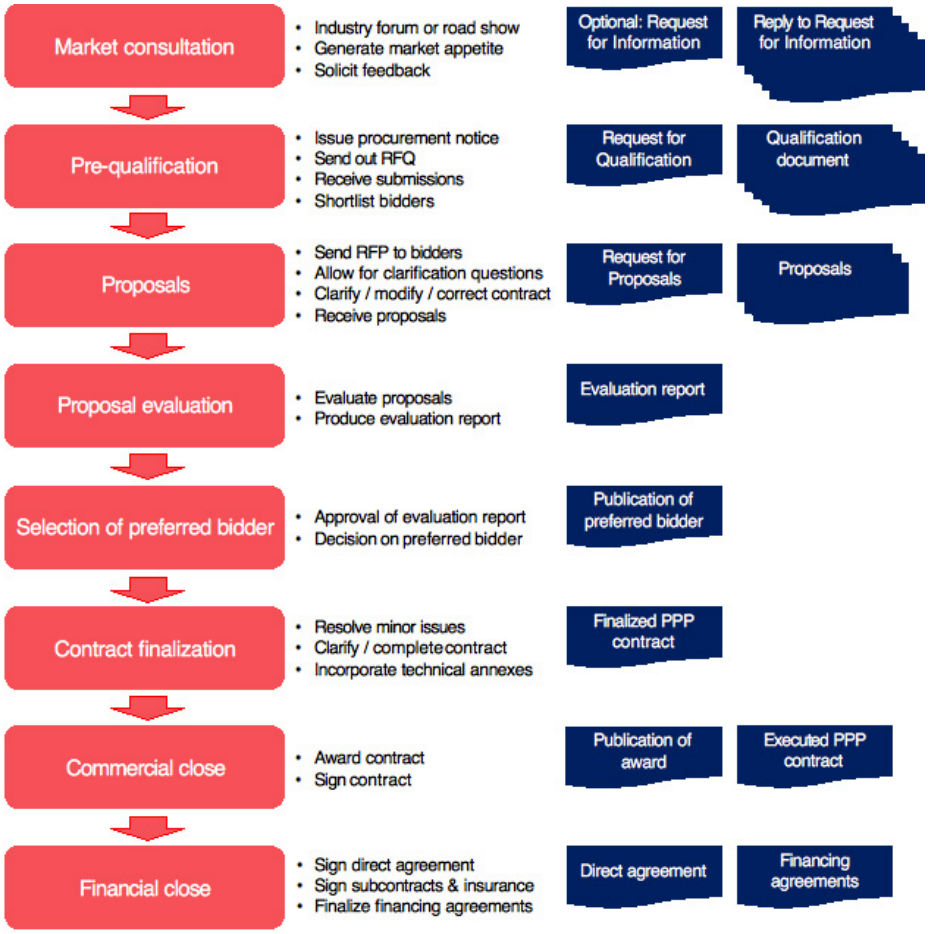
Table 5.1: Principles of PPP Procurement

Principle	Description	Application
Transparency	Clear and acceptable guidelines for bidding are distributed to all participants, and those guidelines are consistently followed	Open market consultation in which information on project and PPP is shared with the industry International publication of requests for expressions of interest / qualification / proposals Selection of the winning bidder on the basis of: • Previously announced procedures and criteria • Equal treatment of all bidders • Proper justification and notification of decisions Publication of the award of the contract and the justification Registration of the decisions during the selection procedure (so that they can be referred to in potential disputes) Review procedures (enabling bidders who feel they have been wrongfully treated file a complaint) Full disclosure of the main features of the PPP contract and performance monitoring information
Free and open competition	The first step to maximise free and open competition is through information provision, which instills confidence in the process, encourages more bidders to compete for PPP projects, and results in lower overall prices to the benefit of the public	Only if a sufficiently large number of bidders compete against each other in a fair process, will they offer the deal with the best possible cost-quality combination Most contracting authorities use a competitive selection process to procure PPP contracts, as it is the best way to achieve transparency and value for money In practice, there may be very few circumstances where direct negotiation could be an option
Fairness	All participants are treated fairly and consistently at all times, which will further encourage capable, responsible bidders to compete for PPP projects	All bidders receive the same information Bidders are provided enough time to prepare thorough proposals All bids are evaluated according to the same criteria The qualification and evaluation criteria do not discriminate against certain types of bidders, unless: • Restrictions are necessary to get better value for money • Preferential treatment of local firms may be included in the process, but needs to be documented from the beginning of the procurement process All bidders bid on the same PPP contract, individual changes are not allowed

2.2 Procurement process

The number of stages in the procurement process may vary depending on the provisions of the legal framework and the choices made by the contracting authority, as part of its PPP Procurement Strategy (see section 3). Typically, the PPP procurement process follows a standard pattern, illustrated in Figure 5.2 below.

Figure 5.2: Typical PPP Procurement Process



Each stage is described on the following page.

Table 5.2: Phases of the PPP Procurement Process

Market Consultation	• The contracting authority can use market consultation to generate market appetite and help refine the project structuring and PPP contract. • The market consultation can be conducted in the form of an industry forum / pre-tender conference (the industry gathers near the project location) or road show (the contracting authority visits the industry). • Some governments formalise the market consultation process using a Request for Information (soliciting written feedback on proposed project and PPP structure) or a Request for Expressions of Interest (soliciting written confirmation of interest).
Qualification	• The contracting authority can use a qualification process to select the firms or consortia that qualify to participate in the tender process. • The goal of qualification is to limit involvement to the most appropriate bidders, which can increase the quality of bids and the likelihood of reaching financial close. Qualification criteria will reflect the characteristics of the desired concessionaire. • The qualification phase starts with the issuance of a Request for Qualification. All potential bidders are given the opportunity to submit a response. The contracting authority conducts an evaluation of submissions and selects bidders who meet the published criteria, both financial and technical.
Proposals	• The goal of this phase is to provide clarity on the PPP contract and the expected bids, allowing and encouraging the bidders to submit their best possible proposals. • The proposal phase starts with the issuance of a Request for Proposals by the contracting authority. This document includes instructions to bidders (tender guidelines) and a draft set of PPP agreements. • The contracting authority can determine a specific timeframe to allow for requests for clarifications and changes from the qualified bidders. This clarification process is used to encourage bidders to submit proposals that closely meet the contracting authority's requirements. This phase ends with the submission of technical and financial proposals by bidders (Bid Day).
Proposal evaluation	• The goal of this phase is for the contracting authority to evaluate and rank the bids and select the most appropriate bid. • In this phase, the contracting authority reviews the proposals, based on predefined evaluation criteria. These evaluation criteria can be based on either a single financial criterion or on a combination of financial and technical criteria. • During this phase, the contracting authority may receive technical support from its advisors, and/or a centralised PPP unit or Core Team. However, all final decisions on proposal evaluation must ultimately be made by the contracting authority. • The output of this phase is an evaluation report, produced by the project team, with the support of its transaction advisors.
Selection of preferred bidder	• The goal of this phase is to formally select and announce the preferred bidder. • In this phase, the Selection Committee confirms the evaluation report and proposes the selection of the preferred bidder to the appropriate authority that can formally decide on the selection of the preferred bidder. • In the Caribbean, final approval of PPP contracts would typically be at Cabinet level.
Contract finalisation	• The goal of this phase is to make sure that the PPP contract is clear and acceptable for both parties. • Because re-negotiating a PPP contract with a preferred bidder (i.e. after submission of bids) can no longer rely on competitive tension to ensure value for money, and may give rise to legal challenges from unsuccessful bidders, the extent of post-bid discussions should be limited only to clarification and "fine-tuning" of the PPP contracts. • Post-bid changes which alter the fundamental nature of the PPP, the risk allocation or value for money will not be entertained. • The result of this phase is a PPP contract that is acceptable for both the contract authority and the preferred bidder (and the financiers). It should include technical annexes that were part of the technical proposal.

Table 5.2: Phases of the PPP Procurement Process cont'd.

Commercial and financial close	• The goal of this phase is to sign all contracts and reach financial close, thereby starting the operating activities under the contract. • In a PPP transaction, the point at which all the commercial documentation has been executed, but before conditions precedent have been satisfied or waived, is known as the commercial close. • The contracting authority will need to confirm that the requirements of all internal approvals have been met. • Financial close occurs when the all project and financing agreements have been signed, all conditions precedent on those agreements have been met, and the private party to the PPP can start drawing down the financing to start work on the project[84].. • This also requires financiers to have completed their due diligence, including a detailed review of the PPP contract. • There is a risk that the project could be delayed or canceled, if the winning bidders are unable to secure financing on the terms they had expected. In fact many projects worldwide have failed to achieve financial close, after achieving commercial close. • The ultimate result of this phase is a signed PPP contract and executed financing agreements.

As an example, the PPP procurement for the San Juan Luis Muñoz Marín International Airport in Puerto Rico largely followed the approach described in Table 5.3. After a market consultation, the Puerto Rico Public-Private Partnership Authority launched an RfQ, to which 12 bidding teams responded. After initially shortlisting 6 teams, the PPP Authority selected two final bidders as potential concessionaires. After evaluating their responses to the RfP, Aerostar Airport Holdings, LLC (AAH), a joint venture alliance of two Mexican companies (ASUR and Highstar Capital), was selected as the preferred bidder in July 2012. Six months later, in February 2013, the parties reached financial close. AAH will finance, operate, maintain, and improve the Luis Muñoz International Airport (SJU) for 40 years.

Table 5.3: San Juan Luis Muñoz Marín International Airport PPP Process

Date	Phase	Outcom
June 2010	Feasibility Completion	Determination made to proceed with PPP procurement.
June 2010 – June 2011	Market consultation	Market "teaser" document prepared and distributed. It highlights value proposition for potential concessionaires. Officials conduct a road show.
July – August 2011	Request for Qualifications	RfQ issued. Twelve teams respond in August.
September 2011	Request for Qualifications Shortlist	Six teams shortlisted.
October 2011	Request for Proposals	RfP issued.
May 2012	Subsequent Shortlist	Following due diligence, two teams selected for RfP phase.
July 2012	Preferred Bidder Named	Aerostar, a team comprised of ASUR and Highstar Capital is selected.
February 2013	Financial Close	US$615 million upfront payment. Aerostar commits to US$1.4 billion over the 40-year life of the lease in capital improvements. Government will receive an estimated aggregate amount of US$552 million in revenue sharing over the life of the lease.

This approach deviates from a more standard process in which after an initial qualifications stage, all short-listed bidders respond to an RfP. Sometimes agencies conduct further short-listing to minimise transaction costs and keep the procurement process manageable, especially when more extensive interaction with bidders is expected.

In another Caribbean example, the transaction for a 30-year concession at Jamaica's Kingston Container Terminals achieved commercial close in April 2015; and financial close in July 2016.

[84] https://pppknowledgelab.org/ppp-cycle/reaching-financial-close

MODULE 5

3. DEVELOPING A PPP PROCUREMENT STRATEGY

The first stage in preparing the PPP tender is for the contracting authority to develop its procurement strategy.

The Business Case will have provided an understanding of the preferred PPP structure for the project. It will also have consulted the market, and included initial ideas of the types of private companies that are likely to be interested in bidding for the project. The contracting authority now needs to determine the most effective and appropriate procurement strategy for this project (hereafter referred to as the "PPP Procurement Strategy"). Table 5.4 discusses two very different PPP procurement approaches, adopted in Spain and Australia.

Table 5.4: Key Features of the Australian and Spanish PPP Procurement Strategies

Australia		Spain
Extensive documentation required	Bid Requirements	Very brief bid
Extensive quantitative and qualitative VfM evaluation	Evaluation	Evaluation focuses on key financial parameters
Committed financing required at time of bid	Financing at Bid Stage	Financing sought after contract is signed
Very high – tens of millions of dollars for toll road projects	Private Sector Bid Costs	Very low – less than one million dollars for toll road projects
Land acquisition by government, mostly prior to contract signing	Land Acquisition	Land acquisition by private party or government after contract signing
Higher	Certainty at Contract Signing that Project will be completed	Lower

There is no global best practice for PPP procurement strategies. Local circumstances determine what the preferred strategy should be. For example, the Australian approach requires a high level of technical capacity on both the public and the private side, and results in higher transaction costs. Therefore, this model can be adopted if the contracting authority and the expected bidders have the required level of capacity. Moreover, this model is most relevant for large and complex projects. For small and relatively straightforward projects, the Spanish model should be appropriate. A PPP Procurement Strategy typically focuses on the following six aspects:

1. **Market consultation:** Will a consultation process be used to generate market appetite and help refine the project structure and PPP Contract?
2. **Qualification**: Will a qualification process be used to pre-select firms and consortia for the bid process? If so, qualification criteria will need to be clear and balanced.
3. **Clarification period:** Will bidders be allowed to submit questions and requests for changes to the draft contracts? Will the contracting authority provide answers / clarifications? Will modifications to the initial draft contracts be allowed? If so, when in the process?
4. **Bidding process:** Will a single stage or multiple stage process be used?
5. **Evaluation criteria:** Will the criteria for selection include both financial and technical considerations?
6. **Timing and duration:** How long will the PPP tender process take? When will the tender process start?

Section 3 discusses and provides guidance on these six components of a PPP Procurement Strategy.

3.1 Market consultation

Market consultation allows the contracting authority to test the industry's responsiveness and interest in the project and its proposed PPP structure. In some cases, the contracting authority and its advisors will have conducted a market consultation as part of the Business Case phase. If not, the contracting authority and its advisors will need to consider undertaking a market consultation before launching the tender. A market consultation will provide feedback on the attractiveness of the PPP structure, if the project has unique characteristics, or if the anticipated market interest is uncertain. Section 5.2 discusses the pros and cons of a market consultation and alternative methods to solicit feedback from the industry and market a PPP project.

Feedback from the market consultation are key inputs into the structuring decisions taken by the contracting authority. For example, the Government of Jamaica listened to investor feedback when it first went to the market with the ambitious Highway 2000 project, and restructured the project into phases.

3.2 Qualification

The use of qualification criteria helps ensure that a pool of competent firms will bid for the project, and one of them with the capacity to implement the project will be selected. The application of this qualification filter can be either:

- In a separate qualification phase (only qualified consortia are invited to submit a bid); or
- Incorporated in the evaluation of the bids (all bidders are invited to bid; but must pass qualification criteria to be considered).

In case a separate qualification stage is applied, firms can form consortia and indicate their interest by responding to the Request for Qualification (RfQ). The shortlisting process allows the contracting authority to select the candidates that are most capable of meeting the objectives during the project's lifecycle to move on to the proposal phase. In line with the principles of open competitions and fairness, qualification should never be used to discriminate against some bidders, or to favor specific bidders.

The objective of the qualification stage is to make sure that only bidders that are qualified to implement the project participate in the bidding process (filtering). Sometimes the additional objective can be to limit competition to the most appropriate bidders (ranking).

A limited number of bidders can increase interest in the PPP, because each bidder will have a higher mathematical chance of winning the tender. This can incentivise bidders to invest more in preparing high quality bids. In mature PPP markets, a pool of three to five bidders is generally sufficient to ensure a competitive process. In less mature PPP markets, more qualified bidders are necessary, because not every qualified consortium will eventually submit a proposal. In some cases, several parties qualify for a bid, but ultimately only one or even no bids are received on the appointed bid day, which could be due to contractual terms that the private sector feels are unreasonable.

Including a qualification phase has several advantages and disadvantages, listed in Table 5.5.

Table 5.5: Advantages and Drawbacks of a Qualification Phase

Advantages	Disadvantages
For potential bidders, preparing a response to the RfQ is less costly than preparing a full proposal in response to an RfP, and is a good way of initially attracting more firms into the process.	Bidders know their competitors, which can affect their behaviour and create an opportunity for collusion.
In a smaller pool of bidders, the probability of success increases for qualified firms, which encourages them to participate and to invest in preparing high-quality proposals.	If too few firms are qualified, there may be not enough competition at the bidding stage.
The number of proposals ultimately received is limited, which reduces the effort and resources required from the contracting authority to conduct the tender and evaluate the bids.	

In larger and more complex projects, resulting in longer and costlier tenders, the use of a separate qualification stage is attractive for both the contracting authority and interested bidders. There is not always a need for a separate qualification stage, especially if the PPP project is relatively small and simple. In those cases, qualification becomes part of the RfP / bidding process and therefore qualification criteria need to be included in the evaluation of proposals.

Regardless of having a Qualification Phase, or having bidders' qualification incorporated in the evaluation of the bids, the definition of qualification criteria is critical for reaching effective competition. There is a danger that the qualification criteria could be set either too high or too low; thereby attracting too few or too many bidders, respectively. A low bar will attract opportunistic bidders that will distort competition and put off competent firms. Too high of a bar will constrain the potential bidders, creating opportunities for collusion.

Solid technical reasoning and common sense are required for the proper definition of Qualification Criteria. Care should be taken not to use qualification as a process for benefiting only larger firms, or foreign firms, or local firms. Also, qualification should not be tailored to one or two firms—procuring authorities should always guarantee that the criteria are not excessively restricting the potential bidders.

More information on the RfQ document and the definition of qualification criteria can be found in section 6.4.

3.3 Clarification

In devising its PPP Procurement Strategy, the contracting authority will need to decide whether it will allow interaction with bidders. Interacting with bidders can be challenging at any stage. If interactions with bidders are not managed in a transparent, fair and well-documented manner, they may compromise the integrity of the bid process and give rise to post-bid challenges from losing bidders. However, interactions with bidders also has its advantages. Interaction can help clarify aspects of the RfP, draft PPP Contract, and bidders' initial proposals. Interacting with bidders may also result in proposals that more closely meet the contracting authority's requirements.

Countries differ in how they manage this aspect of the procurement process:

- Some contracting authorities follow a very top-down, directive approach and do not allow any "negotiation" or "clarification" of the PPP contract at any stage of the process;
- Some contracting authorities have limited communication with bidders before submission of the proposals and allow refinement of the PPP contract, after a preferred bidder has been selected;
- Other contracting authorities enter a dialogue with all bidders on all aspects of the RfP, PPP contract or proposals, before re-issuing a final version of the RfP documents and inviting final bids (EU Competitive Dialogue, see Section 3.4.2).

In general, having some interaction with bidders during the process and allowing them to provide comments or raise questions on the procurement documentation is good practice and brings a number of benefits. While the initial RfP and bidding documentation reflect the contracting authority's earliest vision of the PPP project, the final PPP Contract also needs to meet the requirements of the private partner. Allowing requests for clarifications (and sometimes requests for changes) from bidders is an effective way to obtain investor feedback, and avoid misunderstandings. The ultimate intent of a clarifications phase is to improve the quality of the proposals received. Excess rigidity on the part of the contracting authority can lead to poor quality bids being received - or no bids at all.

In conducting discussions with bidders during the clarification phase, the contracting authority should treat all bidders equally; particularly regarding sharing of information. For this reason, the normal protocol to be established is that all answers to questions submitted by individual bidders shall be shared with all bidders. This can sometimes give rise to gaming techniques among bidders, who may not wish to ask certain questions, for fear of giving their competitors clues to their bidding strategy.

Changing the PPP contract after bids have been received and a preferred bidder selected, although sometimes necessary, should be avoided as much as possible. In negotiating a PPP contract with a preferred bidder, the contracting authority can no longer rely on competitive tension to ensure VfM and, depending on the outcome of the bidding evaluation, may find itself in a weak bargaining position. Additionally, any changes to the PPP contract at this stage may give rise to legal challenges from unsuccessful bidders.

Contracting authorities with a lot of experience in PPP procurement processes tend to limit the extent of post-bid interaction to clarification and fine-tuning of the PPP contract and/or the winning proposal. Some contracting authorities do not even allow post-bid interaction at all.

3.4 Bidding process

Section 3.4 provides guidance on two of the decisions that the contracting authority will need to make when structuring the bidding process:

- Will it be a single-stage or a multi-stage bidding process?
- Will "competitive dialogue" be allowed?

a. Single-Stage vs. Multi-Stage Bidding Process

In a single-stage bidding process, bidders present both technical and financial proposals, which are evaluated to select the preferred bidder. In some mature PPP markets, however, the tender has multiple stages. In a multi-stage bidding process:

- Bidders present an initial proposal, typically including a financial bid and comments on the draft contract; then
- The contracting authority reviews the initial proposals, provides feedback to bidders, and can choose to refine the RfP and the draft contract. If the contracting authority chooses to refine the bid documents, they will request that shortlisted bidders submit revised proposals. In order to make maximum use of the competitive process, the contracting authority should make sure that all shortlisted bidders receive the same information and equal opportunity to submit an improved proposal.

Opting for a multi-stage proposal phase has a number of advantages and disadvantages which are listed in the table below.

Table 5.6: Advantages and Drawbacks of a Multi-Stage Proposal Phase

Advantages	Disadvantages
It can help ensure solutions are aligned to needs and improve final quality of proposals. In projects where technology is particularly important, it can encourage innovation and flexibility in the proposals submitted by bidders.	The process is longer, more complex to manage and more expensive for all parties involved. Ensuring confidentiality of the proposals is often a challenge. It can be difficult to avoid opportunistic bidding behaviour (especially in the case of elimination and reformulation of consortia, between the two stages).

In general, the disadvantages are considered to outweigh the advantages. A single-stage bidding phase is more straightforward and is therefore appropriate for the Caribbean, which is in line with the process adopted by most countries. Some allow for the discretionary possibility for a "Best and Final Offer" (BAFO) stage to invite final bids, in case there is no clear preferred bidder.

b. Competitive Dialogue

Competitive dialogue is a procurement procedure used in Europe (where it was established through European Commission Directive 2004/18/EC on the coordination of procedures for the award of public work contracts, public supply contracts and public services contracts). Competitive dialogue is used in EU countries for exceptionally complex projects where the contracting authority cannot define at the outset what the project output should be, how it should be structured or conducted. This means that the contracting authority cannot prepare a highly specific RfP because the project is too complex. In a competitive dialogue, the contracting authority qualifies a shortlist of firms based on specified qualification criteria. It then engages in a dialogue or discussion with each shortlisted firm concerning the project outputs, structure, technology, and so on.

Based on these discussions and the responses provided by bidders, the contracting authority then prepares the RfP, in which the project is specified to the maximum extent possible. At this stage the contracting authority can choose to re-qualify, or it can use the original shortlist of firms and issue them the RfP. One reason that the contracting authority might reopen the qualification process and invite new firms to compete is that additional or different private competencies needed for the project may have been identified, through the competitive dialogue process.

Running a tender process by competitive dialogue is complicated and costly. The contracting authority should select this route only in exceptional circumstances, for very complex projects, and with qualified advisors.

3.5 Evaluation criteria

Evaluation criteria are a tool to align public and private interests in an infrastructure tender. In any competitive process, the goal of each of the bidders is to win – and at the most favorable terms. The contracting authority will determine the preferred bidder according to the pre-announced evaluation criteria. Therefore, evaluation criteria are used to focus bidders on the objectives of the public sector. If the evaluation criteria are poorly designed, it can be used by bidders to "game" the system, by using it to their advantage in a way unintended by the contracting authority. For example, if the evaluation criteria rewards early completion of the project, bidders will try to optimise their bid so that the additional points for early completion outweigh the cost associated with expedited construction, which would be against the goals of the contracting authority.

However, if the PPP contract does not effectively enforce that earlier completion date, the bidders can simply offer earlier completion in their bids (thereby gaining additional evaluation points) but in real life plan to complete the project later, which is an unintended effect of the evaluation mechanism.

An important element to consider when setting the evaluation criteria is the appropriate weight of financial criteria versus technical criteria. A contracting authority can base its evaluation on the proposed cost only. While this can seem financially prudent, it may overlook technical aspects of the proposal, which could turn out to be more important than price. Most authorities choose to take both financial and technical aspects of the proposal into account, and apply evaluation criteria in that manner. A discussion of the two approaches for evaluating proposals is outlined in the table below.

Table 5.7: Two Approaches to Proposal Evaluation

	Ultimate selection based on financial criterion only	Ultimate selection based on a combination of technical and financial criteria
How does it work?	Either no technical proposal; or a pass-fail evaluation of technical proposals. Only bidders that pass the technical evaluation will proceed to the financial evaluation. The winning bidder is selected only on the basis their financial proposal.	Proposals are evaluated based on a weighted combination of financial and technical criteria: • Pass/fail; or • Ranking/scoring
Advantages	A short and clear list of pass/fail criteria can limit the time and cost needed to submit and evaluate proposals. A single financial number determines the end result, which may be subject to less discussion or controversy.	The combination of financial and technical scores more closely encapsulates the idea of maximising value for money. Using best value criteria allows the contracting authority to pursue a range of objectives and allows private bidders to differentiate themselves and gain an advantage in ways other than price.
Disadvantages	Evaluating bids solely on financial criteria may fail to address the inherent complexities of PPP projects. It makes it difficult to reject proposals, which may be attractive from a financial point of view but undesirable for other reasons (e.g. competition or technical issues).	Defining appropriate, quantifiable criteria and how they will be scored and weighted can be complex and requires the application of a robust and clear process. Technical criteria tend to be more subjective and therefore the risk of corruption (or perceived corruption) is higher. The end result can be more prone to legal challenges by disgruntled bidders.

In general, the "financial only" approach may be preferable on simpler PPP projects, and/or in weaker institutional environments, while the "combined criteria" approach is preferable as the contracting authorities become more experienced, and the complexity of PPP projects increases.

It is important to understand the relationship between evaluation criteria and the performance standards in the PPP contract. While the performance standards capture the technical requirements that the concessionaire needs to comply with for the duration of the contract, the evaluation criteria focuses on: (a) the technical requirements that are important enough to check during the procurement process (pass / fail); and/or (b) technical variables that the contracting authority wants bidders to compete and differentiate on.

It is preferable to keep the technical evaluation criteria simple in scope and easy to evaluate. Refer to Section 6.5.2 for more background on evaluation criteria. Performance standards in the PPP contract are ideally output based or performance based, to allow for innovative proposals that may deviate from the original ideas that the contracting authority had in mind. More discussion on performance requirements is contained in Section 7.2.1 on Performance Standards.

3.6 Timing and Duration of a PPP Tender

In order to select the best private partner for the project, a number of competent private companies will typically respond to the project opportunity. During procurement, the contracting authority selects the private investor that will be its partner for many years (typically 20 to 30 years), therefore, the contracting authority should avoid rushing through the procurement process.

Bidders need adequate time to put together high quality proposals. This includes learning about the project, exploring partnership options or forming a consortium of firms with the required expertise, sending due diligence teams, drafting the technical proposal, etc. For a consortium, putting together a proposal requires getting many certified documents together for the consortium members, negotiating and making inter-company agreements and arranging working relationships. If the consortium goes on to submit a proposal, they will need to conduct substantial technical, financial and legal due diligence. They will also need to engage with investors and debt providers to secure financing. This represents a substantial investment of time, resources and money by consortia and firms.

To encourage private parties to submit high quality proposals, contracting authorities must provide adequate time for responding to the RfP. Rushing the procurement to save time may result in less bids received, and lower quality proposals. Some bidders may decide that they cannot meet the unrealistic timetable, which could lead to the selection of an inappropriate private partner, causing downstream problems for the project.

Even if the government has a thorough and robust process with a realistic timetable, there can be delays. In practice, it could be said that delays in the transaction process are inevitable, and contracting authorities must be flexible in the event of unforeseen delays. Some causes for delay are:

- Political events: In particular, general elections – and a change in administration – inevitably have a delaying effect on PPP transactions. This is natural; it is not unreasonable for the incoming administration to put ongoing projects on hold while they become briefed on the details. For this reason, PPP transactions are often started early in the election cycle, so that there will be plenty of time to complete the transactions before the next general elections. However, these delays do not have to be for long; for example, in Jamaica when the political administration changed in February 2016, the ongoing Kingston Container Terminals (KCT) privatisation transaction was not unduly delayed, and achieved financial close in July 2016.

- Due diligence delays: Due diligence is "an investigation or audit of a potential investment to confirm all material facts in regards to a sale, such as reviewing all financial records plus anything else deemed material to the sale."[85] The length of the due diligence process depends on several factors: complexity of the transaction, amount of bidders, amount of preparatory work completed during the Business Case stage, and capacity of staff of the contracting authority. Sometimes bidders will request extra time, to complete their consortium-forming and due diligence. Sometimes there will be delays in the government satisfying the required preconditions for the transaction; for example the Sangster Airport transaction in Jamaica was delayed by two years, while the government enacted the required legislative changes to enable the transaction.

- Bidder challenges: Procedural challenges or lawsuits, typically from unsuccessful bidders, can disrupt the process, sometimes rightfully so. It is for this reason that contracting authorities must employ clear, transparent bid evaluation and award processes, communicating clearly to all bidders the basis for the award.

The textbox below discusses delays due to tender challenges in the Green Corridor project in Aruba.

Textbox 5.1: PPP Aruba Green Corridor Delays

The government of Aruba started the PPP tender for the Green Corridor Project with the publication of the tender notice on September 9, 2011. The "Green Corridor" Project encompasses the design, construction, financing and maintenance of the "Green Corridor" route. The project relates to the expansion of the of the existing main road from the Reina Beatrix Airport to Pos Chiquito from a single carriageway (1x2) to a dual carriageway (2x2) over a distance of approximately 8 kilometers (km).

The contracting authority entered the dialogue phase with the three selected bidders. Two out of three went through a series of competitive dialogue meetings with the contracting authority. In March 2013 the bidders delivered their final bids. Grupo Odinsa S.A. was announced preferred bidder April 15, 2013.

The original timetable of the tender procedure was delayed for over a year and a half, due to multiple court challenges. The procedure experienced an initial hold-up when a fourth candidate challenged the decision to disqualify it, since the contracting authority pre-defined a shortlist of just three bidders. Following re-evaluation, the contracting authority entered the dialogue phase with the three bidders selected. Other court cases were about a bidder that was excluded from the bidding by the contracting authority for submitting its bid a few minutes late in September 2012. On appeal this bidder secured the right to re-submit its bid. In line with procurement rules, the preferred bidder appointment was subject to a fifteen-day mandatory standstill period ending 2nd of May 2013. The decision regarding the final appeal was received mid-October 2013, confirming the original winner.

Source: Public Private Partnership Arbua. Register -PPP Aruba Green Corridor. Accessed June 2016 at: http://www.p3aruba.com/index.php?page=projects_gc

3.7 Finalising the PPP procurement strategy

When finalising the procurement strategy, the contracting authority should define, among other things:

- Experience, capabilities and skills which the PPP partner should have;
- Probable composition of firms or consortia that would be capable of

[85] http://www.investopedia.com/terms/d/duediligence.asp

undertaking the project and whether the participation of international firms is required (this has implications for how the project is marketed);
- Proposed procurement method;
- Main bidding and evaluation criteria for the procurement;
- Contents of the bidding documentation package; and
- Timeframes for the procurement process.

At this point it is particularly important to make sure that the contracting authority follows best practice dos and don'ts of procurement preparation, as discussed in the table below.

Table 5.8: Procurement Preparation Dos and Don'ts

Do:	Don't:
Consider all options before deciding upon the critical elements of the procurement strategy	Provide special treatment to individual bidders, and thereby eliminate the level playing field and reduce competition
Prepare thoroughly for any interface with the market	Rush into the procurement because of time or budget constraints, because this can result in significant delay or failure
Assemble a good team, money spent in preparing a transaction well pays dividends in the end result	Do everything yourself if you don't have the capacity, get support from the Regional Support Mechanism, multilaterals and experienced advisors
Listen carefully to what interested parties have to say about the transaction	Create unrealistic expectations regarding private sector contributions to the project, because that will eventually lead to disappointments and delay
Consult extensively, with all affected stakeholders	
Be flexible and prepared to change course, in response to market feedback or changed circumstances	
Learn from similar projects elsewhere and on past experience	

When finalising the procurement strategy, it is a good idea for the project team and the transaction advisor to consider various scenarios for procurement. This involves a brainstorming session in which the project team goes through each stage of the procurement, identifies how that stage will ideally proceed, and considers all scenarios. This is a good way to make sure that all considerations have been taken into account, and to anticipate possible problems or weaknesses.

Participant at CDB's third PPP Boot Camp in Jamaica on a site visit to Kingston Container Terminal (KCT), during the final stages of its privatisation. In 2016 the Government of Jamaica signed a 30-year Concession with CMA-CGM, the world's largest shipping company, to expand the trans-shipment port in a US$425 million PPP project.

MODULE 5

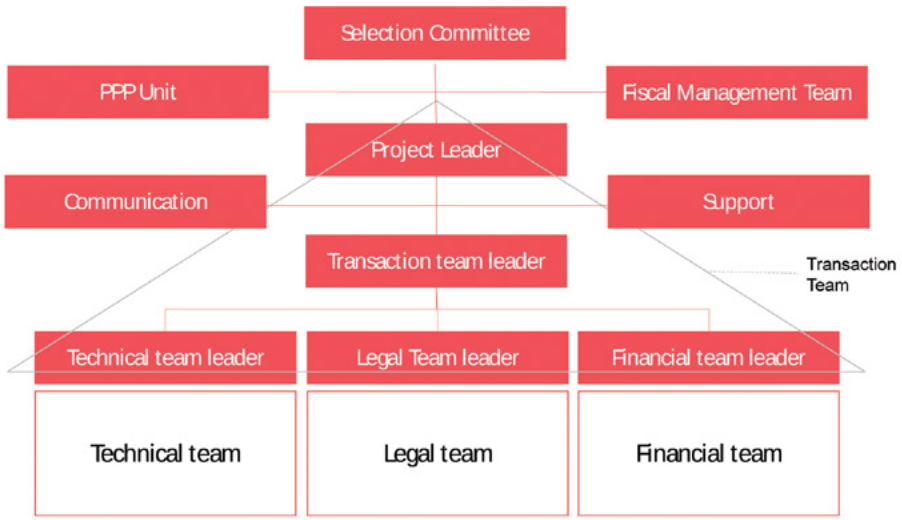
4. ORGANISATION OF A PPP TENDER

Organising a successful PPP tender requires people with very different kinds of expertise and background to work together in a coordinated fashion. It also involves the engagement of a broad range of stakeholders. In this section, internal project organisation and stakeholder engagement will be discussed.

4.1 Project organisation

In some countries, the legal and regulatory framework prescribes the nature, composition, roles and responsibilities of the different teams or entities involved in running the PPP tender process. In other countries the contracting authority is free to organise human resources to run the process as it sees fit. While there is no single organisational scheme that fits the purpose of all PPP projects and the requirements of all legal systems, the chart below represents a typical organisational chart for government teams involved in a PPP tender.

Figure 5.3: Typical Organizational Chart of Government Teams Involved in a PPP Tender



Sample roles and responsibilities of each entity are outlined in the table below.

Table 5.9: Team Roles and Responsibilities in a PPP Tender

Team	Roles and responsibilities
Selection / Steering Committee	Recommends qualification and bid evaluation results to appropriate higher authority for approval (typically the Cabinet) Primary decision authority for transaction questions • Comprised of senior officials from: • Line ministry or sector agencies • Ministry of Finance • Ministry of Economic Development • Attorney General
PPP Unit	Ensures and protects Value for Money Provides technical assistance to the Project Team in the preparation and structuring of the PPP project This role can be fulfilled by the Regional PPP Support Facility
Fiscal Management Team	Independently reviews projects and continuously manages fiscal commitments and risks in PPPs Typically located within Ministry of Finance
Project Leader	Oversees entire transaction process Manages work tasks and teams Manages timelines Resolves issues among stakeholders Interacts with senior government officials Leads interactions with bidders Approves internal and external communications Other tasks as necessary to get the project done
Transaction Advisor	May be single firm or a consortium of policy, legal, financial, and technical advisors Assists in identifying likely bidders (marketing) Assists in drafting reports and tender documents Analyses bidder comments and drafts responses to RfQ and RfP Assists in bid evaluation No decision-making authority, only advisory
Legal Team	Assesses completeness and compliance of submissions Leads development of PPP contract Leads development of RfQ / RfP documentation Leads development of internal check lists and external tender reports Leads clarification of RfQ and RfP documentation Legal bid evaluation Legal interpretations Background check needed to avoid conflicts of interest Must have local legal component

Table 5.9: Team Roles and Responsibilities in a PPP Tender cont'd.

Team	Roles and responsibilities
Technical Team	Sets technical scope and criteria for the project Proposes technical bid evaluation criteria Reviews technical submission material and prepare synopses Ranks submissions according to technical criteria Presents evaluation results to the Project Leader and the Selection Committee Raises technical issues and assists in resolving them
Financial Team	Prepares financial model for financial feasibility / affordability / value for money assessments Proposes financial bid evaluation criteria Reviews bidder comments on financial issues and drafts responses Reviews financial bid submissions and prepares synopses Ranks submissions on pre-set financing criteria Presents evaluation results to the Project Leader and the Selection Committee Raises financial issues to the Project Leader and assists in resolving them

Even though the disciplinary teams have key responsibilities based on their expertise, well-functioning procurement teams succeed in establishing a true interdisciplinary collaboration. Main deliverables like the procurement strategy, PPP contract, and RfQ and RfP documentation require inputs from all teams – and other stakeholders.

Governments that do not have frequent exposure to PPPs typically will not have the required range of expertise to successfully prepare and procure a PPP project in-house. Government teams typically need experienced advisors on the wide range of disciplines required to successfully implement a PPP project, including legal, procurement, economic/financial, engineering, sector specialists, social/environmental, and public relations. Governments typically hire advisors at the start of the Business Case phase to assist the contracting authority throughout the preparation and procurement of the PPP transaction. Section 2 of Module 4 discusses hiring and working with transaction advisors in more detail.

4.2 Stakeholder engagement

PPP projects typically have high visibility, which makes them vulnerable to controversy and negative attention. Concerns expressed by the public regarding a PPP project may be the same as for its conventionally delivered alternative, such as environmental and social impacts or the level of user tariffs. However, there may be more PPP-specific concerns such as fears of excess private sector profits, foreign domination of the local economy and confusion between PPP and privatisation. Unfortunately, there are many misconceptions about PPPs. Stakeholder engagement and outreach should facilitate open communication that minimises misconceptions among all parties.

Managing stakeholders is a resource-intensive task and constitutes one of the important risk factors in a PPP transaction. Typically, there are many stakeholders in a PPP transaction, with very different backgrounds and sometimes conflicting agendas. The table below shows examples of the various stakeholders associated with PPP transactions.

Table 5.10: Stakeholders in a PPP Transaction

Intra-Government Stakeholders	External Stakeholders
Cabinet	Users
Ministry of Finance	Voters
Sector Ministry	Taxpayers
Contracting Authorities	Labour
Elected Officials	Environmental
Employees	Journalists
Regulators	Non-governmental organisations (NGOs)
Other agencies	Potential bidders

Although PPP outreach methods should not differ substantially from those used for conventional procurements, the key themes may differ. Additional attention should be paid to addressing specific PPP contractual issues such as non-compete clauses, rate setting (in revenue based PPPs), compensation events and early termination payments.

Stakeholder outreach aims (a) to facilitate open communication and minimise misconceptions among all parties, and (b) to confirm or reassess whether the project will deliver value to society. Successful contracting authorities typically do the following throughout project preparation, procurement and implementation:

- Outreach to stakeholders in a productive manner;
- Involve the public across many channels;
- Provide credible, accurate and easy-to-understand information; and
- Establish channels for the provision of feedback, and demonstrate that the feedback is processed and used for improving the project and its procurement.

Using a proactive outreach strategy to gain and maintain public support is an important success factor for PPPs. A more detailed discussion on stakeholder engagement is included in Section 2.5 of Module 4.

MODULE 5

5. MARKETING A PPP PROJECT

Ideally, the contracting authority will have started the process of building market awareness of the project in the early stages of the project, and formalised it in the Business Case stage. During the project identification and Business Case stages, the contracting authority should have already conducted market consultations and discussed the project in various media channels. This will alert the market to the upcoming project and increase the potential level of response as investors can get an early start on preparing their involvement. As part of procurement preparations, the contracting authority should, with the transaction advisor, prepare a clear and concrete marketing plan for the project. This plan should set out to whom the project should be marketed, how, when and by whom.

The marketing plan is a key part of increasing private sector awareness and interest in the project, that will later translate into sufficient bidding by suitably qualified and capable firms. The plan sets out the promotional and awareness-raising work that will be done prior to the formal launching of the RfQ.

Several means are available to create awareness of the project on the market. The marketing actions can be more passive, in the form of publication and informal market sounding, or more active with the organisation of investor forums.

5.1 Passive communication

- **Publications in professional news sites and news feeds:** Private contractors gather information on upcoming opportunities from UN-Business[86], World Bank websites, newspapers and PPP trade journals. News services such as Infra News[87], Inspiratia[88] offer cost-efficient solutions for very large and targeted outreach to private sponsors, contractors and developers active in the infrastructure industry.

[86] https://www.ungm.org/ | [87] ttp://www.infra-news.com/ | [88] http://www.inspiratia.com/infrastructure/

- **Publications in the press:** Project notifications are usually published in the local/national press. While relevant, the outreach of such channels is limited, in particular for international parties. However, it is a good idea to give local businesses information on opportunities.

- **Networking through the Transaction Advisor:** Transaction advisors should have a good network of contacts in the industry, based on recently closed transactions or portfolios of clients. They can formally reach out to private companies in advance of upcoming publication of a project.

- **Information on the contracting authority's or another government websites:** Publishing an announcement on government websites, with a link to a downloadable short Preliminary Information Memorandum (PIM, or "teaser") and an indication of next steps and timelines.

- **Mailing lists:** Contracting authorities frequently maintain a list of contacts from previous projects. Sending a note to these contacts is an efficient way of raising awareness through direct communication.

- **Online media:** Online social media provides a free solution for reaching out to a wider community.

5.2 Active communication (market consultation)

In addition to passive forms of raising visibility, governments are recommended to create awareness of the project and generate market interest in a more active way. This can be combined with soliciting industry feedback on the project structure. The most common way to do this is to organise a market consultation. A market consultation precedes commencement of the tender procedure. In a market consultation, the contracting authority presents the project and PPP structure (and potentially the tender documentation) to the industry and asks for comments. Typically, transaction advisors will support the contracting authority in organising the market consultation.

Effective market consultation will improve marketability of the opportunity and may significantly reduce procurement time by bringing private sector perspectives to the design of the project at an early stage. Market consultation focuses on the private sector as a whole, rather than on any individual company. It includes no element of evaluation, and there is no commitment of any kind to any one bidder or all bidders.[89] As shown in Table 5.11, market consultation is useful for both the contracting authority, and for the industry. It provides the operators with an opportunity to learn about the project and prepare for qualification.

[89] "Toolkit for Public-Private Partnerships in Roads & Highways," PPIAF, p.152, March 2009.

Table 5.11: A Market Consultation Works Both Ways

Contracting authorities use a market consultation to...	The industry uses a market consultation to...
Present the project to the public and potential bidders	Learn about the project
Generate market appetite	Show interest
Generate feedback from stakeholders	Prepare for qualification / tender
Better understand private sector capabilities and requirements	Understand the capability and commitment of the contracting authority
	Provide feedback to the contracting authority, potentially influencing design of the project

A market consultation can be conducted in various forms:

- **Industry forum / pre-tender conference:** The contracting authority invites private companies to attend a workshop or conference to present the project, provide high-level information and obtain feedback. This allows for testing the proposed project structure, gauging potential level of private sector response and inviting qualified parties to suggest ideas relevant for the project.
- **Road shows:** The contracting authority carries out multiple investor forums in selected countries, typically cities at the centre of a large infrastructure market or easily reachable by a large audience (e.g. Brussels, Frankfurt or London for Europe, Singapore or Hong Kong for Asia).

In addition to plenary presentations, some contracting authorities allow potential bidders to schedule one-on-one meetings. This can generate more detailed feedback, but obviously requires strict adherence to the principles of fairness and non-discrimination. In general, contracting authorities are discouraged from holding one-on-one consultations with selected bidders, for fear of future challenges from other bidders.

Table 5.12: Market Consultation Dos and Don'ts

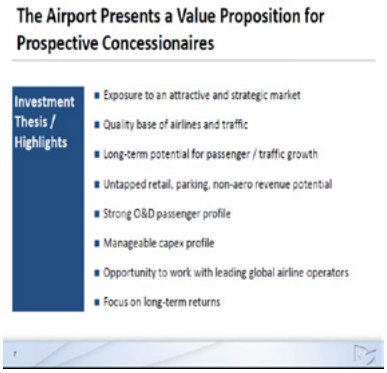
Do...	Don't...
Make sure market consultation is in line with tender rules	Waste your time receiving sales pitches. Focus on receiving information on the market perception of the proposed PPP project
Aim for a broad selection of the market, by inviting operators, construction-related firms and funders, if appropriate	Be persuaded into shaping the project to suit a particular bidder
Prepare thoroughly for any interface with the market and give the best account of the contracting authority, the project and the country to potential investors	Go to the market too early (without clear scope, political commitment, funding, firm idea about PPP solution, advisory team, timeline, etc.) as this may indicate lack of capacity in structuring a PPP
Be sensitive that private parties might not be at ease with a process that involves simultaneous discussion with two or more potential competitors	Use procurement language or otherwise give the impression that the market consultation is part of the tender process (this stage only seeks to gather information, and is not considered part for the formal tender process)

Table 5.12: Market Consultation Dos and Don'ts

Do...	Don't...
Reassure all parties that no special treatment is provided, and all are treated equally Encourage transparency by involving more than one individual on the side of the contracting authority, being consistent about what is communicated to respondents, and documenting all meetings and communications (avoid verbal communications; email everything) Make use of market information and feedback Do your homework on similar projects elsewhere and on market activity	Make promises on project structure or any other relevant information Send mixed messages to different bidders

As a practical example, when preparing for the procurement of the San Juan Luis Muñoz Marín International Airport PPP, the Puerto Rico Public-Private Partnership Authority presented the project at various conferences where government officials had the opportunity to highlight the value proposition and receive questions and comments from potential market participants. Below are images of the actual brochure distributed at the conferences.

Figure 5.4: Puerto Rico Airport PPP Brochure



More types of market consultation include:

- **Request for information:** The contracting authority invites private companies to respond to a questionnaire, typically focusing on the structure of the project. This is a relatively low-cost method to gather inputs. This method however could create the impression that the contracting authority is not capable of structuring the project properly without significant input. If the questionnaire is long and complicated, it could also lead to some level of frustration among potential bidders.

- **Request for expression of interest (RfEoI):** The contracting authority invites private companies to express their interest in the project as presented in the same request. This too is a relatively low-cost method to formalise market interest. At the same time, this stage typically adds little of real value, as all responses from private companies are non-committal. In fact, many companies routinely submit expressions of interest to project opportunities, just to gather market information. For example, in 2016 a total of 43 companies expressed interest to build and operate a desalination plant in Tobago, including local and foreign firms[90].

Governments are recommended to employ several methods of market consultation to solicit feedback and generate market interest for their projects.

5.3 Relevant marketing materials

To support any communication and promotion effort, relevant marketing material should be prepared with advice from the transaction adviser and technical consultants:

- **Official letter and advertisement:** The contracting authority prepares an official letter announcing the project and the intention of the government; preferably signed by a senior official involved in the project, for greater reliability.

- **Press release:** Prepare a concise press release (2-4 paragraphs) that can be easily provided to news websites and online publications. As these parties have to verify the authenticity of the information, the press release should always include contact details to obtain further information or confirmation.

- **Project teaser:** A 2-4 page factsheet presenting the main elements of the project and the upcoming procurement process.

- **Preliminary Information Memorandum:** The PIM is an expanded teaser, which contains more information. It is also longer, 10 or 20 pages. It elaborates on feasibility study or business case reports.

[90] http://www.guardian.co.tt/news/2016-07-20/43-firms-bid-build-tobago%E2%80%99s-desal-plant

- **Summary or edited version of feasibility studies or Business Case:** Sections or a condensed version (such as executive summaries) of Business Case reports may be distributed to potential bidders. However, as feasibility reports can contain critical or confidential information, care must be taken in deciding what to disclose to the public and potential bidders. For example, technical reports or market studies are useful for parties to form a general idea of the size or relevance of the project, but financial feasibility reports should not be distributed, as they provide too much insight on the contracting authority's position for the subsequent bid.

- **Banners and brochures:** These include brochures, leaflets or binders containing useful information on the economic environment of the country and on the project itself (similar to the teaser). Also, banners or large prints are useful for keynote presentations or road shows and are easily portable, creating an attractive visual layout for staged presentations of the project to a physical audience.

- **Slide presentations:** A standard (MS PowerPoint® or equivalent) presentation is prepared for use in forums, workshops and conferences, and can also be made available for download along with other material such as teasers or PIM. Presentations should summarise the main points of the project and be reusable by parties for project promotion.

MODULE 5

6. PREPARING A BIDDING DOCUMENTATION PACKAGE

After deciding upon the procurement strategy, the contracting authority and its advisors will prepare the Bidding Documentation Package. This involves a substantial amount of work. The documents are prepared by the transaction advisor, technical, legal and financial consultants, together with the contracting authority; and can take many months to complete.

A contracting authority may optimise time by preparing and issuing the RfQ while the documents required for the later procurement stage (RfP, draft PPP Contract, etc.) are still being prepared. Contracting authorities sometimes issue their RfQ too early, then need more time to finish the other documents and have to announce delays in the timetable. This reduces private sector confidence in the capacity of the contracting authority. Therefore, contracting authorities should seriously consider the right timing and only issue the RfQ once they know they will meet their self-imposed timelines.

The documentation must enable bidders to present the appropriate information about themselves and their proposals. It must also clearly outline the bid evaluation criteria and processes. Contracting authorities should make sure that their bidding documents are prepared in legally applicable formats and templates. Using standardised templates helps to increase market response to the project, and helps to develop the local PPP market. Over time, the private sector will become familiar with the standardised documentation, cuts transaction times.

The contracting authority should submit the proposed Bidding Documentation Package to the government decision-making entities (see Section 5.2 in Module 2: Guidelines to Developing a National PPP Policy). The contracting authority should not formally start the procurement before such entities have given their consent.

6.1 Bidding documentation package contents

Inputs for the preparation of the bidding documents comes from the Business Case and from the Procurement Strategy. The Bidding Documentation Package must comply with the local PPP legislation and should include the following:

Table 5.13: Components of a Bidding Documentation Package

Document	What is it?
Distributed to all potential bidders – up to qualification stage	
Preliminary Information Memorandum (PIM)	A document providing details of the PPP project and structure as envisaged by the contracting authority, indicating the volume and scope of the services and details of the contracting authority, intended to help potential bidders determine whether the project is of sufficient interest for them to invest time and resources in
Detailed plan for the tendering process	A clear plan setting out the procurement process, steps, and a timetable
Request for Qualification (RfQ)	A document issued by the contracting authority at the start of the first stage of a two-stage procurement procedure, inviting firms to apply to be selected for the second stage. It includes information on the project, qualification criteria, and instructions on how to apply
Distributed to qualified consortia only	
Information Memorandum (IM, or InfoMemo)	A document providing comprehensive information on the key features of the project and the context (country, contracting authority, market, purpose) and the structure and key commercial terms of the PPP
Request for Proposals (RfP) / Instructions to Bidders (ITB) / Bidding Memorandum	A detailed document issued by the contracting authority to the firms selected for the second stage of a two-stage procurement. It includes detailed instructions on the procurement steps and the content and format of the proposals to be submitted.
Draft PPP Contract	A draft of the PPP Contract(s) to be signed between the contracting authority and the selected firm at the end of the procurement.
Expected financial contributions or other forms of state support	A document summarising any financial contributions, guarantees, or other public agency support involved in the project.
Relevant technical annexes	Further technical and other detailed information on the project that will be made available to firms

6.2 Data room

The contracting authority should also establish a "Data Room" in which all information relevant to the project is kept. Only qualified consortia will be able to access the Data Room and review all related documents. The Data Room can be physical (i.e. a secure room in which documents are physically kept) and/or virtual (i.e. a secure electronic package or secured website on which data is electronically available). The Data Room must be properly established, with sound indexing and registration of all documents and secure access.

The Data Room must contain all documents, contracts, financial, technical and operational data relevant to the PPP project. In deciding what documents to include, it is preferable to err on the side of inclusiveness, so that the contracting authority does not leave itself open to charges of non-disclosure after the fact.

6.3 Tendering plan

The tendering plan includes the procedures and stages for the conduct of the transaction, with a (prospective) timetable for the explanation of key steps. This should also highlight the timing for receiving and responding to clarifications queries, in both the RfQ and the RfP phases respectively. It may also include the instructions related to a qualification conference and/or pre-bid conference, if these are to be held during the procedure.

6.4 Request for qualification (RfQ)

In case a separate qualification stage is applied, firms can form consortia and indicate their interest by responding to the RfQ. The shortlisting process allows the contracting authority to select the candidates that are most capable of meeting the objectives during the project's lifecycle to move on to the RfP phase.

a. RfQ Document

The RfQ is the formal Request for Qualification of parties, primarily a legal and procedural document that gives instructions on how, what, when and where to submit their qualifications; as well as the administrative and legal documentation needed to meet compliance standards.

Additionally, the RfQ must provide all the necessary forms, templates and annexes to be completed and returned by applicants, using the mandatory formats or wording for certain official statements or documents. It is the responsibility of the legal team and transaction advisor to ensure that the RfQ complies with the legislative framework and general best practices. The RfQ stage may involve the payment of a qualification purchasing fee.

Please see Tool 5.1 below for the typical content of an RfQ document.

Tool 5.1: Typical Request for Qualification

REQUEST FOR QUALIFICATION

Name of project
Government / Contracting authority name and logo
Date
Document version / reference number

Reference / Invitation Letter
Notices / Disclaimer
Table of Content
Definitions
Contracting authority, including key contact details
Name and location of the project

Project Description, including:
- Description of the project
- General scope of the future private partner
- Indication of the proposed tendering process

Qualification Terms and Procedures, including:
- Qualification criteria and thresholds
- Firm, consortium and/or other requirements
- Submission procedures
- Conflicts of interest and/or other limits on participation
- Qualification costs
- Clarification requests

Qualification Application Requirements, including:
- Language of documentation
- Documents making up the application
- Format of applications

Evaluation Procedures, including:
- Receipt of applications
- Clarification requests
- Opening and evaluation procedures
- Shortlisting

Procedures for Evaluation
RfQ Timeframe
Annexes, including:

- Any required formats for applications
- Any required formats for application support documents
- Project Information Memorandum (if intended for release)

Below in Figure 5.5 are the cover and table of contents from the RfQ Jamaica used to shortlist five teams for the Kingston Norman Manley International Airport PPP opportunity.

Figure 5.5: Table of Contents from Kingston Norman Manley International Airport RfQ


Norman Manley International Airport Prequalification Document – Confident

Government of Jamaica

Norman Manley International Airport

Prequalification Document

December 1, 2014

IFC International Finance Corporation WORLD BANK GROUP

Development Bank of Jamaica Limited

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LIST OF ANNEXES AND FORMS

b. Qualification Criteria

The primary goal of the RfQ phase is to eliminate candidates that are not qualified to implement the project. The qualification criteria must balance the need for high-quality potential partners, with ensuring that there is a suitably large pool of bidders and encouraging innovation and competition. Therefore, the criteria must be tailored to the financial, market and technical parameters of the project, and the minimum size, experience, capacity and other attributes required of a strong private partner. Only in a scenario where it is expected that too many qualified consortia will show interest is it advisable to cap the number of bidders.

The secondary objective of the RfQ phase is to rank candidates, allowing only the best qualified consortia to advance to the next phase. The contracting authority should ensure that the criteria is designed in such a way that they do not automatically select only the largest and most experienced firms, but allow room for newer, more efficient firms to compete.

Table 5.14: Typical Qualification Criteria

Technical Qualification Criteria	Financial Qualification Criteria
Experience of the proposer and record in delivering similar projects, including: • Minimum number of projects of more than a specified capacity developed / constructed / operated • Minimum number of projects of more than a specified project value developed/ constructed/ operated • Minimum number of O&M contracts of similar facility • Any other criteria suitable for the need of the PPP project Capacity to deliver PPP in addition to existing commitments Proposed team of experts Experience of working in local conditions (critical if the local conditions have a material impact on the technical solution or operation of the proposed facility or service)	Net worth of the proposer Average annual turnover derived from audited financial statements Average net cash accrual derived from audited financial statements Capability of the proposer to invest the capital that would be needed for the PPP project Ability of the proposer to secure adequate funds for the PPP project Ability of the proposer to support the contractual arrangements over the contract term

Most of the above criteria, are typically used either as eliminating or ranking criteria, while a few can be used for both purposes. Table 5.15 shows the qualification criteria for Kingston's Norman Manley International Airport.[91]

[91] Norman Manley International Airport Prequalification Document. p.18.

Table 5.15: Norman Manley International Airport Qualification Criteria

Criteria	Description
Technical Criterion No. 1	The Prospective Bidder, or, if the Prospective Bidder is a Consortium, the Airport Operator, shall demonstrate that it currently operates, on a stand-alone basis, or as part of a joint venture, consortium or otherwise, or that one of its Related Companies operates, on an active basis (landside and airside) at least one international airport of no less than three (3) million passengers per year for the last five (5) years continuously. The Prospective Bidder, the Airport Operator or the Related Company as the case may be, must further demonstrate that it possesses no less than twenty percent (20%) of the equity of the entity operating such international airport combined with the right to appoint at least one (1) executive officer.
Technical Criterion No. 2	The Prospective Bidder, or, if the Prospective Bidder is a Consortium, at least one Member of the Consortium, shall demonstrate experience either: a) in the development, design, engineering, procurement and construction, or b) in the management and monitoring of airport infrastructure construction projects during the past ten (10) years with an aggregate construction value of not less than US$ 150 million in at least one airport.
Financial Criterion No. 1	The Prospective Bidder (if it is not a Consortium) shall demonstrate that it had Net Worth of at least US$ 100 million or equivalent at all times during its last three (3) financial years. If the Prospective Bidder is a Consortium, the Consortium shall demonstrate that the aggregate Net Worth of the Consortium Members was at least US$ 200 million or equivalent at all times during the last three (3) financial years AND at least US$ 80 million at all times for the Financial Member or Lead Member. For the purpose of this Annex 3 (Prequalification Criteria), Net Worth shall be calculated as follows: Net Worth = (total assets) minus (total liabilities) minus (intangible assets).
Financial Criterion No. 2	The Prospective Bidder, or, if the Prospective Bidder is a Consortium, the Lead Member or the Financial Member, shall demonstrate the ability to fund/finance the Project through equity investments and/or debt financing raised for the Project, including having financed at least one previous project in excess of US$ 150 million in the past five years.

In addition, eligibility requirements can include:

- Compliance with formal and legal requirements;
- Compliance with labor and social security laws;
- Compliance with no-money laundering and anti-bribery programmes.

Typically, the RfQ phase is about the proposer and the RfP phase about the proposal, but some contracting authorities choose to request a preliminary proposal for evaluation in the qualification phase, for example, an initial project management plan. The advantage of this approach is that it gives the contracting authority more specific information to select the right bidders for the job. The disadvantages are 1) this approach creates additional transaction costs for both the interested consortia and the contracting authority and 2) preliminary proposals are by nature not very concrete and committed and therefore this approach in practice often becomes a comparison of marketing materials. Unless there are very specific reasons, it is not recommended to follow this approach.

6.5 Request for proposals (RfP)

The RfP is distributed to the qualified consortia selected in the RfQ phase. The RfP prescribes the procedures and documentation to provide, as well as the submission instructions and content of the proposal to be submitted.

See Table 5.16 for a typical content of an RfP / ITB document. It is the responsibility of the legal team and the transaction advisor to ensure compliance of these documents with the legal framework, and best practice.

Table 5.16: Contents of a Typical Request for Proposals

REQUEST FOR PROPOSALS

Name of project
Government / Contracting authority name and logo
Date
Document version / reference number

Reference / Invitation Letter
Notices / Disclaimer
Table of Content
Definitions

Contracting authority, including:
- Key contact details

Instructions to Bidders, including:
- General Bidding Rules, including:
- Eligibility and compliance requirements
- Bid security requirements and forms (if applicable)
- Corporate structure of the successful bidder
- Consortium requirements
- Role of contracting authority
- Timetables for bidding
- Bid Dates and Responsibility for Delays
- Bidders Due diligence
- Clarification process
- Additional information
- Draft PPP Contract
- Cost of bidding
- Language, format and signing
- Bid clarifications
- Bid validity
- Annulment of bidding process
- Confidentiality
- Corrupt or fraudulent practices
- Notifications

Project Information and Bidders Due Diligence
- Name and location of the project and identify the Procuring Agency
- Content and conditions of access and use of the Data Room
- Site or other inspections
- Draft PPP Contract (or in Annex)

Bid Requirements
- Compliance requirements
- Detailed guidance on the format, preparation, content and structure of the technical and financial bids

Submission of Bids
- Procedures for submission and receipt of technical and financial proposals

Proposal Opening, Evaluation and Selection of Preferred Bidder
- Procedures for the opening and evaluation of proposals
- Evaluation criteria and methodology, including inter alia weighting principle, evaluation formula, assumptions to use in the bid preparation

Table 5.16: Contents of a Typical Request for Proposals Cont'd.

REQUEST FOR PROPOSALS

Name of project
Government / Contracting authority name and logo
Date
Document version / reference number

Reference / Invitation Letter
Notices / Disclaimer
Table of Content
Definitions

Conditions Precedent to Commercial Close
- Conditions precedent
- Other

Annexes, including:
- Any required formats for submissions or support documents
- Draft PPP Contract
- Checklists
- Etc.

Among the many items mentioned above and which the RfP should cover, attention is brought to two specific topics, namely:

1. List of documents to be submitted by bidders; and
2. Evaluation criteria.

These two items are discussed below in further detail.

a. List of Documents to be Submitted by Bidders

The RfP should include a complete list of documents to be submitted by bidders. This can include:

- Technical proposal:
  - ✓ Preliminary design (not detailed engineering design)
  - ✓ Construction programme and costs
  - ✓ Operating programme and costs
  - ✓ Maintenance programme and costs
  - ✓ Environmental protection plan

- Financial proposal:
  - ✓ Cash flow projections: although usually not directly used in the evaluation, such projections can show whether the bidder has used reasonable assumptions in the preparation of its bid
  - ✓ Formal bid: proposed tariff, payment to contracting authority or requested amount of subsidy (as appropriate)

- Legal proposal:
  - ✓ Acceptance of terms of the contract.
  - ✓ Draft shareholders' agreement, consortium agreement, joint venture agreement
  - ✓ Letter of conveyance signed by the authorised representatives of the company or consortium submitting the bid

- ✓ Term sheets of other main contracts could also be requested (construction contract, operation and maintenance contract, insurance, etc.)

- Draft PPP Contract:
  - ✓ Bidders may be required to submit a signed copy of the draft PPP Contract as part of their bid documents in order to confirm their agreement to the terms of the contract and limit post-selection negotiation to a minimum.

To facilitate the understanding of the requirements by bidders and maximise the chances of all proposals received being fully compliant, it is essential that this list be clear and exhaustive, and that no additional requirements be added in other sections of the RfP document or Bidding Documentation Package.

b. Bid Evaluation Criteria

In accordance with the principle of transparency, and as a mechanism for helping bidders tailor their proposals to the procuring authority's needs and goals, the criteria for the evaluation of bids, their relative weighting and the way they will be evaluated should all be clearly indicated in the RfP. The criteria could take various forms, depending on the nature of the project and the objectives of the contracting authority. Some examples of evaluation criteria are:

- Lowest tariff or service fee, upfront grant or subsidy or availability payment
- Highest upfront payment to the contracting authority
- Fastest completion
- Best quality of service
- Shortest duration of the PPP contract

The criteria should be kept as minimal and objective as possible and the general system should remain simple and clear.

Textbox 5.2: Jamaica Qualification Criteria for Renewable Energy PPP

In July 2015, the Jamaica Office of Utilities Regulation (OUR) issued a RfP f0r interested private sector parties to bid for the right to build, own, and operate greenfield renewable energy projects.

OUR specified the following three stages of evaluation, each with different criteria:

> Stage 1 — Applicant's ability to implement project: Key criteria at this stage included the applicants' ability to raise financing, technical capability and qualifications, ability to implement the Project in a timely manner, current ownership and operations of similar installations and/or related technologies and equipment;
>
> Stage 2 — Technical evaluation: The technical aspects of each bid were evaluated, including the proposed technology, RE resource assessment, plant design, construction and operations plan, and environmental compliance; and
>
> Stage 3 — Economic evaluation: The objective is to select a Project or Projects that will best contribute to the overall power sector objective of reliability and security of supply at least cost to consumers.

Stage 1 Evaluation Criteria Weighting:

- Experience (20%)
- Ability to Finance Project (35%)
- Technical Capability and Qualifications of Key Persons (20%)
- Ability to Implement the Project in a Timely Manner (15%)
- Current Ownership of similar installations and/or related renewable technologies and equipment (10%)
- Firm Capacity Proposals must be able to guarantee the delivery of power upon request with availability of at least 90% (Yes/No)

Each Applicant will be evaluated based on the above criteria and scores and must achieve a minimum of 50% of the total score for its Proposal, with at least an achievement of 60% of ability to finance the project (category B) and positively satisfy criteria F, if applicable, to be selected for

Stage 2 Technical Evaluation Criteria Weighting:

- Proposed Renewable Plant Technology (8%)
- Renewable Energy source data and/or arrangement for provision of renewable Fuel Feed Stock (25%)
- Availability and Suitability of Proposed Site (25%)
- Design of Project Facilities (12%)
- Proposed Arrangements for Construction of Project Facilities (10%)
- Proposed Arrangements for Operation & Maintenance of Facilities (10%)
- Ability to provide Grid support in the areas of voltage and frequency control. (10%)
- Compliance with Environmental and Statutory Requirements (Yes/No)

A Proposal must obtain a minimum of 50% of the allotted maximum score for each Stage 2 evaluation criteria, and an overall score for Stage 2 in excess of 60%, for eligibility to advance to

Stage 3 Economic Evaluation Criteria:

Economic comparison is based on the expected Plant output parameters and associated costs including Grid Impact.

Please note that each of the criteria listed above include numerous sub-criteria.

Source: "Request for Proposals for Supply of up to 37 MW (Net) of Electricity Generation from Renewable Energy Resources on a Build, Own and Operate (BOO) Basis," Jamaica Office of Utilities Regulation, July 31, 2015., pp. 39-45.

Caribbean Development Bank. Public-Private Partnerships in the Caribbean – Building on Early Lessons. pp. 99-106. 2014

Each of the criteria should be allocated a weighting, reflecting its relative importance to the contracting authority. In case a "combined evaluation" approach is adopted, it is best to first decide on an overall split between technical and financial scores, and then refine the weighting allocated to each criterion.

Textbox 5.3: Practical Tips for Setting Financial Evaluation Criteria

Avoid too many financial parameters: Wherever possible, the contracting authority should avoid having multiple financial parameters as bidding criteria (for example, an upfront fee, a fixed fee and a variable fee). Multiple financial parameters provide bidders with the possibility of arbitrage between the various cash flows, and may ultimately produce unexpected results for the contracting authority. For example, having bidders submit both a completion payment and an availability payment may incentivise one bidder to propose a low completion payment and a high availability payment and another bidder the opposite, depending on how the discount rate that is used for evaluation relates to the cost of capital for individual bidders. The challenge is how to compare the two bids, considering that the risk profile for the contracting authority varies between the two bids. Therefore, it is preferable to set most of the parameters and leave only one parameter open for bidding. Having only one financial parameter will also greatly simplify the bid evaluation process. However, this may not always be feasible, given the nature of the PPP project, the characteristics of the financial flows and the objectives of the government.

Watch out for financial bids based on demand assumptions: Anyone can promise high growth and therefore high payments to a contracting authority in a financial bid. If demand risk is transferred to the private party in the PPP structure, the contracting authority should ensure that it does not have to take a view on the extent to which the demand assumptions used by bidders are realistic. The contracting authority should therefore avoid creating bid parameters that depend on demand assumptions, as this is akin to "awarding the bid on a promise". Alternative approaches are 1) let bidders guarantee all or part of their own revenue projections as a means of "keeping them honest" and 2) using a weighted average of government demand scenario and bidders demand scenarios (in which case the bidder demand scenario would still need to be wholly or partially guaranteed). For example, when the South African national Parks (SANP) bid out eco-tourism Concessions in the world famous Kruger National Park, they stipulated that "In order to discourage 'over-bidding', Concessionaires have to pay a minimum of 65% of the fee payment projected for each year in their bids.[92]"

Make the financial evaluation transparent and predictable: If there is one single financial criterion and it is not variable in time – for example an upfront payment or a fixed periodic fee – there may not be a need to evaluate based on Net Present Value (NPV). In that case, it is recommended to keep the evaluation simple. If there are multiple financial criteria, an evaluation on the basis of NPV of the various financial flows is required. In that case, the contracting authority should make explicit the discount rate to be used as a fixed parameter by all bidders, and possibly also the demand scenario, in order to ensure that the bids will be comparable. Some contracting authorities share the financial bid model with the bidders, which creates predictability and reduces the risk of confusion over submission and evaluation. This obviously puts the onus on the contracting authority to provide a clear and appropriate financial bid model, but is clearly a best practice, particularly in the case of more complicated financial evaluations.

Expect a wide disparity in bids, even negative bids: In some cases, the contracting authority may be (positively or negatively) surprised by the financial proposals received from bidders. It may be offered a payment from bidders where it had expected to make one, or vice versa (for example, a negative subsidy or negative upfront payment). It is important for the contracting authority to envisage all possible scenarios, even extreme ones, and check whether the financial evaluation system can accommodate them. Especially in the case of extremely low (or high) bids, a proper assessment of the viability of the proposal is recommended.

[92] http://www.conservationfinance.org/guide/WPC/WPC_documents/Apps_06_Fearnhead_v1.pdf

c. Bid Bond

Running a high-quality procurement process for a PPP results in high transaction costs for the contracting authority. A risk for the contracting authority is that bidders will provide insufficiently committed proposals, which can lead to difficult negotiations or delays after the selection of the preferred bidder, and even cancellation of a tender. This will result in even higher costs for the contracting authority, if there is a re-bid. To get more commitment from bidders, and prevent the winning bidder from withdrawing without good cause, contracting authorities require bidders to submit support letters from their financiers (and investors) and / or to provide a bid bond.

A bid bond is "a debt secured by a bidder for a construction job or similar type of bid-based selection process for the purpose of providing a guarantee to the project owner that the bidder will take on the job if selected. The existence of a bid bond provides the owner with assurance that the bidder has the financial means to accept the job for the price quoted in the bid.[93]"

The primary purpose of a bid bond is to assure the contracting authority that the winning bidder will enter into a contract for the price quoted in the bid, and according to the terms in the PPP contract (in other words, to "keep bidders honest"). This will also help weed out opportunistic bidders. A bid bond provides the contracting authority with a means to recover the cost of having to repeat the bidding process, if the preferred bidder is unable or unwilling to complete the transaction to financial close.

If this is a main consideration for the contracting authority, the sizing of the bid bond should reflect the expected cost of running the tender (and potentially additional cost of delay of the project). Bid bonds are usually one to three per cent of the expected contract value. The contracting authority should listen to feedback from bidders on the size of the bid bond; an unreasonably high bond will deter bidders. Also, bid bonds should be issued only by specified or qualified financial institutions, under the exact template and wording as provided by the contracting authority.

Textbox 5.4: Jamaica's Use of Bid Fees and Bonds in Renewable Energy Projects

In March 2008, the Jamaica Office of Utilities Regulation (OUR) issued a RfP for interested private sector parties to bid for the right to build, own, and operate greenfield renewable energy (RE) projects, in Jamaica's first competitive RE tender. The RfP did not require any pre-qualifications for interested bidders, but each bidder had to submit a bidding fee of USD 500 and a Proposal Security equal to one percent of the capital cost of their proposed projects.

[93] http://www.investopedia.com/terms/b/bid-bond.asp

Textbox 5.4: Jamaica's Use of Bid Fees and Bonds in Renewable Energy Projects cont'd.

Building upon its experience in the 2008 auction, OUR decided to undertake a second, more ambitious RE auction in 2012. When OUR issued the RfP for the new RE auction, in November 2012, a total of 17 bids were submitted, from reputable domestic and international project developers.

The second RfP was more detailed than in the first OUR auction: it described the qualification criteria clearly to bidders. From the bidder's perspective, this evaluation consisted of an "objective assessment of subjective criteria"— bidders remained somewhat uncertain as to exactly how winning bids would be scored and chosen.

The unease of bidders was most evident in the reluctance of many bidders to submit the required Proposal Security (which was increased to five percent of the capital costs of the proposed bids), prior to the submission of Bids. OUR responded to these concerns by waiving the Proposal Security for bidders, until they were selected as preferred bidders.

Source: Caribbean Development Bank. Public-Private Partnerships in the Caribbean – Building on Early Lessons. pp. 99-106. 2014

MODULE 5

7. DRAFT PPP CONTRACT

A PPP contract is a long-term written agreement between the contracting authority and the private party – plus other partners such as construction companies and financiers. The contract is at the heart of the partnership, defining the rights and responsibilities of all parties, allocating risks and providing for mechanisms to deal with unexpected events and change.

7.1 Preparing the PPP contract

Preparing a PPP contract requires significant time and resources, including from expert advisors and transaction lawyers. The contracting authority is generally responsible for developing the PPP contract, with the assistance of the transaction advisor and the legal team. The draft PPP contract is usually released together with the RfP to qualified consortia during the RfP stage. When bidders submit their proposals they indicate their acceptance of the PPP contract. This can be done by asking bidders to submit signed copies of the PPP contract in their bid packages; alternately, bidders could submit signed heads of terms to the PPP contract, leaving the detailed annexes until post-bid clarifications.

In some cases, the draft PPP contract issued with the RfP cannot be changed. In others, it may be changed as a result of the clarification process with bidders. Typically, contracting authorities distinguish between the mandatory sections (key provisions which cannot be changed) and the non-mandatory sections (can potentially be changed).

A well-structured PPP contract is clear, comprehensive, and creates certainty for all parties. PPPs are long-term and can be complex. PPP contracts, however complete, cannot fully specify all that is to be done, under all circumstances. Therefore, PPP contracts need to have flexibility built in, to enable all parties to handle changing circumstances within the contract, and not require re-negotiation or termination.

This is done by creating a clear process and boundaries for change. Figure 5.6 shows a typical table of contents of a PPP contract.

Figure 5.6: Sample Table of Contents PPP Contract

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Figure 5.6: Sample Table of Contents PPP Contract

Although not final, the draft PPP contract, together with its technical annexes, should provide sufficient insight into the rights and obligations of the parties. The draft PPP contract will have several "open" clauses and technical annexes, which can only be finalised at the end of the tendering procedure, following the submissions of the bidders. The logic is that all elements described in the technical and financial proposals of the preferred bidder shall enable all parties to finalise the PPP contract and its technical annexes at commercial close.

In addition to the PPP contract, there will also be a direct agreement between the financier and the contracting authority, defining the financier's step-in rights and numerous contracts between the subcontractors to the concessionaire. Table 5.17 shows the key contents of a PPP contract, annexes and related contracts.

Table 5.17: Contents of a PPP Contract

Key contents of a PPP contract	Typical PPP contract annexes	Related contracts
Definitions; Rights and responsibilities of the parties (and allocation of risks); Performance standards; Monitoring system; Payment mechanism; Supervening events; Dispute resolution mechanism; Termination clauses.	Detailed performance requirements; The winning bidder's technical proposal; The winning bidder's financial model.	A shareholders' agreement between the different members of the Corporate documentation of winning consortium which will hold an equity stake in the SPV; Numerous agreements between the PPP partner and its subcontractors; Financing and guarantee agreements between the PPP partners and its lenders; A direct agreement between the contracting authority and the lenders defining the latter's step-in rights.

7.2 Performance mechanisms

From the contracting authority's perspective, ensuring that the Concessionaire meets the contracted level of performance requires three main components: clear performance criteria, a flawless monitoring system, and appropriate financial incentives. All three should function together as a system.

a. Performance Standards

In a PPP contract, the emphasis is on developing output-based (rather than input-based) performance specifications. Output-based performance specifications focus on what a project is intended to achieve, rather than the methods and materials used to achieve those goals. They leave room for the PPP partner to decide how to deliver the proposed services.

Table 5.18: Examples of Differences Between Input-Based and Output-Based Specifications

Input-Based or Detailed Specifications	Output-Based or Performance-Based Specifications
Construct against a specified design	Ensure that the facility meets the functional and aesthetic requirements of the contracting authority
Use a particular type of asphalt and resurface the road every 7 years	Make sure the pavement always meets the following roughness index standard

While undesirable in theory, input-based specifications usually cannot be completely avoided. In practice, contracting authorities often apply a combination of input requirements and output-based service requirements, for example:

- Compliance with minimum standards of safety regulations in a tunnel PPP;
- Minimum percentage of self-generated renewable energy in an airport PPP; or
- Minimum ratio of patients to nurses in a hospital PPP.

Prescriptive construction is sometimes required because environmental processes and requests from project stakeholders often lead to specific requirements that need to be addressed by the PPP operator. Additionally, the expected life of some project components (for example civil works) often exceed the term of the PPP contract.

Textbox 5.5: Common Pitfalls in Developing Performance Requirements

Developing thousands of pages of highly prescriptive requirements, thereby limiting all creativity and making performance hard to monitor

Becoming too enthusiastic while defining performance requirements, thereby leading to "gold-plated roads" and "5-star prisons", which come at a price

Using standard performance requirements not sufficiently tailored to project-specific circumstances and not reflective of the contracting authority's and the community's objectives

b. Monitoring System

Performance control with a payment mechanism can only be effective if the monitoring system functions properly. A PPP contract is based, first, on self-monitoring. The PPP partner will be primarily responsible for monitoring its own performance and reporting periodically to the contracting authority. Most PPP contracts include provisions obligating the PPP partner to:

- Have quality assurance and quality control (QA/QC) procedures;
- Have a monitoring system and grant the contracting authority access thereto; and
- Provide the contracting authority with the results from all sources.

Textbox 5.6: Monitoring, Oversight and Administration - Experience from Sangster International Airport PPP

In 2003, the Sangster International Airport of Jamaica was privatised via a 30-year PPP concession. Key Concession terms:

- Tenure: 30 Year BOOT
- Payment Mechanism: Work Load Unit (monthly), Additional Concession Fee (Yearly), Excess Benefits Payments (Hurdle IRR)
- Financing — Equity, Debt, Airport Improvement Fee
- Approval Processes: Lenders, Airports Authority of Jamaica, GOJ
- Concessionaire reports to the asset owner through quarterly review meetings, management interaction is crucial for the partnership.

Legal Monitoring:

- Custodian of Concession Agreement and related Agreements
- Stakeholder Meetings — bi-annual Airport Forum
- Owners Meetings — Quarterly Reviews
- Insurance and risk monitoring
- Bonds maintenance
- Debt Maintenance Compliance
- Governance Changes — Changes of Shareholder/CEOs/Execs

Technical / Operational / Commercial monitoring:

- Master Plan Monitoring
- Maintenance Programme Works Monitoring
- Development Programme Works Approval and Monitoring
- Regulatory Compliance — ICAO
- Service Levels — IATA and ACI

Financial Monitoring:

- Financial Model — 30 Years
- Annual Business Plans — Rolling 5 years
- Audited Accounts — Annual
- Quarterly Reports — Financial and Operational
- Monthly Reports — AIF, Operational
- Economic Regulatory Rate Review

Lessons Learned:

- Know the Concession Agreement inside out.
- Contract Management requires continuing oversight and administration.
- Failure to effectively manage the private operator results in reduced value to the Government and a failure to meet the objectives of the project.
- Important to continually monitor the allocation of risk over the life of the PPP
- Concession Management has to be a long-term, mutually beneficial partnership, between both parties, involving constant dialog to resolve issues, before they become problems.

Source: Audley Deidrick (President and CEO, AAJ/NMIAL). Contract Management Experience Sangster International Airport PPP. A Presentation at the 3rd PPP Boot Camp for the Caribbean, February 5, 2016, Kingston, Jamaica

Typically, if the monitoring system operated by the private party is non-functioning, then a penalty is imposed, which should incentivise the concessionaire to always warrant a well-functioning monitoring system. Nonetheless, regular verification and enforcement by the contracting authority remains very important. At all times, the contracting authority should be able to verify the PPP partner's performance, by:

- Checking the PPP partner's data / monitoring system;
- Auditing the monitoring system;
- Appointing an independent auditor to carry out an independent assessment (which prevents conflicts of interest).

Textbox 5.7: Common Pitfalls in Developing a Monitoring System

Ignored until late in the game, leading to the system not being ready before implementation.

No handover, between the project implementation and the project management teams.

Incompatibility with existing asset management systems, typically due to such compatibility not having been clearly requested or specified.

Absence of a logical data structure, leaving project teams with data that is time-consuming to gather, disorganised and/or unauditable.

Excessive data collection requirements, leading to high monitoring costs for both the contracting authority and the PPP partner in the operational phase.

c. Payment Mechanism

The payment mechanism is a cornerstone of the PPP contract. While the contracting authority wants to ensure that the PPP partner performs, at minimum, its contractual duties, the private party wants to get paid for delivering its services. Both objectives can be achieved through a good payment mechanism.

A PPP payment mechanism does not simply define a fixed payment for a service, but includes penalties and deductions for underperformance, and sometimes bonuses for over-performance. Penalties, deductions and bonuses are financial incentives that are linked to Key Performance Indicators (KPIs) and output-based specifications, thus aligning the interests of the contracting authority, the PPP partner and other stakeholders. Payment mechanisms are more common for availability payment PPPs than for availability payment-based PPPs, but are relevant for both.

Contrary to the common belief that public and private interests are automatically aligned in a revenue-based PPP and therefore there is no need for additional financial incentives, many societal interests are in fact not linked to revenues, for example - safety standards, health standards and quality of service. In cases of poor performance, deductions linked to the degree of deficiency in service quality can be applied.

The contracting authority wants to ensure that the private party performs its contractual duties. An appropriate payment mechanism can provide the right financial incentive to fulfill the defined criteria by aligning the interest of the private party, the contracting authority, and other stakeholders.

Payments to the PPP partner usually need to be indexed to compensate for inflation. The indexation should be based on an agreed set of published indicators. Cost items that are beyond the control of the PPP partner can be handled on a "pass-through" basis (these items should be limited and defined in detail).

The payment mechanism is typically developed in the procurement phase as part of the PPP contract design. Determining the level of financial penalties can be a challenge: they must be large enough to incentivise the PPP partner to make decisions which are in the public interest, but not so heavy that they make the project overly expensive. The key is to set high penalties against breaches that materially affect the delivery of services, and motivate the PPP partner to pursue a remedy.

While the payment mechanism is the primary means the contracting authority has at its disposal to influence the behavior of the PPP partner, it is not the only one. PPP contracts also typically have a mechanism for non-compliance or default points that, when they reach a specified level, can result in:

- Increased oversight;
- Remedial work by the contracting authority at the concessionaire's expense;
- Suspension; or
- Early termination.

Often the "tickle-hurt-kill" principle is used when determining the appropriate level of penalties:

- Small, first-time breaches of performance trigger small penalties (tickle);
- Substantial and/or repeated small breaches of performance trigger larger penalties and increased oversight (hurt);
- Very grave and/or repeated substantial breaches trigger early termination clauses.

Textbox 5.8: Common Pitfalls in Developing a Payment Mechanism

Common Pitfalls in Developing a Payment Mechanism

- Ignoring the inflation effect, leading to disproportionately high or low payments down the line.
- Too much enthusiasm in defining strict penalties and deductions, leading to significant cost increases for the private partner.
- Lack of escalation in penalties, leading to the contracting authority hesitating to apply the penalties in the PPP contract due to concern over harming its relationship with the PPP partner.

7.3 Supervening events

During the term of the PPP contract there may be events or circumstances that will negatively affect the PPP partner's ability to perform its obligations, as originally projected. While the PPP partner may manage some of these risks, others may be beyond its control. Those risks, sometimes called "supervening events", come in three categories:

- Force Majeure;
- Material Adverse Government Action; and
- Changes in the Law.

a. Force Majeure

The definition of "force majeure" will vary from project to project and in relation to the country in which the project is to be located. It generally includes "risks beyond the reasonable control of a party, incurred not as a product or result of the negligence of the afflicted party, which have a materially adverse effect on the ability of such party to perform its obligations".[94]

It is important to limit force majeure to events that are not reasonably foreseeable / avoidable, and are unlikely to occur. For example, where supply of electricity is necessary for the operation of the facilities but is generally intermittent, then the parties should ensure that there is standby generation or some other solution; hence disruption in supply would not be a force majeure event. Under other circumstances, however, a disruption in supply could be caused by unusual or unforeseeable events, such as a hurricane, and would therefore be classified as a force majeure event.

[94] Public-Private Partnership in Infrastructure Resource Center. Force Majeure Clauses - Checklist and Sample Wording. 25.03.2015. Accessed June 2016 at: http://ppp.worldbank.org/public-private-partnership/ppp-overview/practical-tools/checklists-and-risk-matrices/force-majeure-checklist

The parties will usually agree on a list of example force majeure events, which may or may not be exhaustive. Where "political Force Majeure" is a separate category, as discussed in Section b, the definition of Force Majeure will then focus on natural events, such as earthquakes, floods, fire, plague, Acts of God (as defined in the contract or in applicable law) and other natural disasters. In countries where some natural disasters are common, they should be subject to mandatory insurance and only accepted as Force Majeure in extreme cases (well defined in the contract). For instance, Chilean jurisprudence has already recognised that earthquakes are not an "unexpected" event in Chile, and so earthquakes are no longer recognised as Force Majeure is that country, implying an increase in the expected cost of projects, but reducing fiscal risks for government. —In fact, in 2010, after the big earthquake in Chile that induced billions of dollars in damages to the public infrastructure, the insurance policies worked well, and the government was protected from fiscal costs related to damage to PPP projects. In the Caribbean, prone to tropical storms and hurricanes, Force Majeure and mandatory insurance should be carefully tailored to the local climate conditions.

Force Majeure provisions in the PPP contract govern the course of action if unforeseen events beyond the control of the contractual parties (e.g. flood, war, act of terrorism) occur and materially affect performance under the PPP contract. Force Majeure events are typically uninsurable.

A Force Majeure clause in a PPP contract will:

- Provide relief from liability to the affected party and excuse it from further performance of its obligations under the PPP contract while the event is ongoing;
- Provide for the obligations of the parties in relation to the Force Majeure event (typically, information and mitigation);
- Provides for termination rights in case of a Force Majeure event lasting more than a certain period of time; and
- Specifies the allocation of costs resulting from the Force Majeure event and determine termination payments.

Force Majeure events typically relieve any of the parties from their obligations under the PPP contract, but only to the extent that they prevent the party from performing them. PPP contracts often include the express duty to minimise the disruption caused by Force Majeure.

Typically, the risk of occurrence of a Force Majeure Event is beyond the control of the parties involved in the PPP and should not be allocated to a single party.

Accordingly, the financial consequences resulting from the occurrence of a Force Majeure event should be shared. In the allocation of Force Majeure risk, the parties will need to look at the availability and cost of insurance, the likelihood of the occurrence of Force Majeure events and any mitigation measures which can be undertaken. For example, although the government may be best placed to bear the consequences of some common natural disasters, the concessionaire should be able to obtain insurance for most of this risk. If the government is best able to manage Force Majeure risk, for example, because it is involved with disaster risk management activities, or if the government is the only party able to bear such risk, given its size and the difficulty of obtaining adequate insurance, then allocation to the government may be justified.

b Material Adverse Government Action (MAGA)

Material Adverse Government Action (or MAGA) is referred to as "political Force Majeure". The purpose of MAGA clauses is to allocate certain types of "political" risk to the contracting authority, and/or the government. The definition of MAGA should be tailored to considert the specific risks of a given PPP project, for instance, upstream pollution in a water PPP or construction of a competing port within a certain distance from the PPP port. Change in Law is sometimes included as one item of the MAGA definition, but is treated separately.

Textbox 5.9 below gives a typical definition of MAGA.

Textbox 5.9: MAGA Definition

Definition of Material Adverse Governmental Action

A "Material Adverse Governmental Action" shall occur if:

17.2.1 the State, the Implementing Authority or any other Relevant Authority either (i) takes any action of any nature whatsoever, including without limitation the introduction, application, or change of any law, decree, order, regulation, or bylaw having the force of law after the date of this Concession Contract or (ii) fails to carry out its obligations as prescribed by law, and
- (a) such action or failure directly affects:
  - (i) the Concessionaire (or any of its Contractors or O&M Contractors) in performing their function under the relevant sub-contracts; or
  - (ii) the Concessionaire (or any of the aforesaid) and any other toll road concessionaires (or any of the aforesaid).

  and only incidentally affects other Persons; or
- (b) such action or failure renders the performance by the Concessionaire or the Implementing Authority of any or all of the obligations under this Concession Contract illegal, void or unenforceable; or

17.2.2 the State or any Relevant Authority takes or omits to take any action of any nature whatsoever, which, if such action had been taken or omitted by the Implementing Authority, would have constituted a material breach of this Concession Contract, and in the case of either Clause 17.2.1 or Clause 17.2.2, such action, failure or omission, as the case may be, materially adversely affects or is likely to materially adversely affect the economic position of the Concessionaire.

Source: https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/road%20concession%203.pdf

A MAGA clause in a PPP contract will:

- Define what events or circumstances the parties agree should be determined as MAGA;
- Provide relief from obligations to the PPP partner;
- Provide for the obligations of the parties in relation to the MAGA (typically, information and mitigation);
- Provide for termination rights in case of a MAGA lasting more than a certain period of time; and
- Specify grounds for compensation of additional costs or reduced revenues as a result of the MAGA and determine termination payments.

Negotiating MAGA and Change in Law clauses during a PPP procurement is often contentious, with the government not wanting to be held liable for its own future actions, and the concessionaire insisting that these risks properly belong to the party that originated the change. In global practice, it is generally held that the concessionaire should be able to claim relief from its obligations under the PPP Contract, from MAGA events.

The procedure to be followed to establish the level of relief is similar to Force Majeure procedures. Moreover, both parties would typically have the right to terminate the PPP Contract in the event of a MAGA lasting longer than a defined period of time (generally between 6 to 12 months).

c. Changes in Law

The PPP partner is required to comply with applicable law at all times, in the country of legal jurisdiction. However, the original bid was based on the applicable law as of the date of the bid. Changes in the law are a political risk that cannot be controlled by the PPP partner. Protection is justified in this case because the PPP partner should be able to rely on a legal framework and the contracting authority will generally be in a better position to influence changes in the law. Additionally, lenders will generally require some form of protection against changes in law.

PPP contracts include provisions regulating the consequences of certain legal changes after the bid submission date and / or the date of commercial close. Key options in drafting the Change in Law clause include:

- Definition of applicable law;
- Distinction between general Change in Law, which is similar to normal business risk, and specific or discriminatory Change in Law, which should be compensated;
- Materiality threshold; and
- Exclusion of foreseeable change in Law; and
- The consequences, typically 1) compensation of the net financial impact of the change in law, 2) relief from obligations under the PPP contract and 3) extension of the scheduled service commencement date (if it happens before the service commencement date);

Some governments provide protection to the concessionaire for any previously undisclosed change in law, without distinguishing whether that change in law was discriminatory, specific, or of general application. Other governments use the following allocation:

- Discriminatory changes in law (applying to the PPP Project, and not to other projects, or to the concessionaire, and not to other PPP operators) or specific changes in law (specifically impacting projects of the same type as the PPP Project) to the contracting authority
- General changes in law requiring the concessionaire to make unexpected investments during the operations period to the Contracting Authority; and
- Any other changes in law to the concessionaire.

The second approach is more beneficial to the contracting authority, but may not be "financeable" in every jurisdiction.

The protection which the concessionaire will receive against change in law is limited to changes in law which were not "in the public domain" at the date on which the concessionaire's bid was submitted. This requires the concessionaire to conduct a thorough due diligence of the legal framework prior to submission of its proposal. This means that any change in law resulting from legislation published in draft form as of the date on which the concessionaire submitted its bid should generally be excluded.

It is important to note that change in law provisions are not intended to bind public authorities into not changing the law, but solely to allocate the risk of such changes.

7.4 Dispute resolution

Contractual disputes are common in PPPs because PPP projects tend to be complex, the PPP contract is long-term, and unexpected circumstances are bound to arise. Moreover, contractual provisions can be subject to interpretation. Therefore, mechanisms are needed to resolve disputes and conflicts.

Dispute resolution processes can help ensure that disputes are resolved quickly and efficiently. Some governments define dispute resolution mechanisms in PPP legislation applied to all PPP contracts. The contract must specify a procedure for handling disputes under the term of the contract. As going through courts may not be appropriate for all disputes that can arise under a PPP contract, alternative formal dispute resolution procedures may offer a more efficient and cost-effective method of resolving disputes. There are five typical dispute resolution mechanisms:

1. The national court system (litigation)
2. Arbitration (national or international)
3. Expert determination of some kind (normally used for specific technical/financial issues)
4. Mediation and conciliation
5. A decision by a relevant regulatory body

The tendency is to prefer informal over formal dispute resolution, because of speed and cost considerations. Dispute resolution is discussed in more detail in Module 6.

7.5 Early termination

Termination provisions consist of specific PPP contract terms (or, at times, terms derived from applicable law) that regulate proceedings if either the contracting authority or the PPP partner fails to comply with one of its major obligations or if the partnership is terminated voluntarily.

There are usually three categories of early termination events:

- Termination for extended Force Majeure;
- Termination for PPP partner default; and
- Termination for change in law, voluntary termination by the contracting authority, contracting authority default or MAGA.

Table 5.19: Termination for Extended Force Majeure Event

Question	Answer
Who may terminate	Either party
Trigger	• A Force Majeure event occurs and continues for an extended period. • A Force Majeure event occurs and the parties cannot agree on a solution within a specified period of time.
Consequences	If the PPP partner intends to terminate the PPP contract, the contracting authority will typically have the right to compensate the PPP partner in order to avoid termination.
Compensation	The guiding principle is that the negative financial consequences of the Force Majeure event should be shared, since neither party is at fault. Example of termination payments: • 100% of outstanding debt + breakage costs • 100% of outstanding equity (no return on equity) • Reasonable costs and liabilities for termination of subcontracts

Table 5.20: Termination for PPP Partner Default

Question	Answer
Who may terminate	Contracting authority Early termination should be a last resort. The contracting authority should have exhausted all other possible non-compliance remedies available, including penalties, deductions and fines and temporary step-in.
Trigger	• Failure to complete construction • Not meeting structural performance standards • Insolvency of SPV • Violation of anticorruption laws or other laws
Consequences	The PPP partner is typically granted a cure period to remedy problems before termination. Lenders are then granted step-in rights.
Compensation	The guiding principle is that the contracting authority should be in no better and no worse position than if the PPP contract had been continued. Termination payments are typically defined to ensure equity-holders bear the burden of default. Lenders may also be exposed to some possible loss, and this can affect bankability. Termination payment options include: • Specified percentage of outstanding debt; • Depreciated book value of assets (corrected for remediation costs); • NPV of future cash flows (+/- termination and remediation costs); • Proceeds of re-tendering the PPP contract on the open market.

Table 5.21: Termination for Contracting Authority Default, MAGA, Change in Law or Voluntary Termination by Contracting Authority

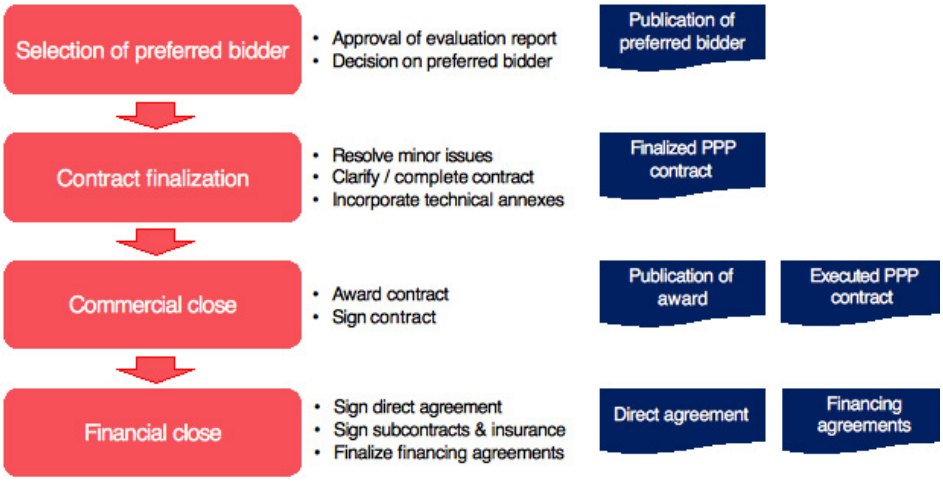
Question	Answer
Who may terminate	PPP partner Early termination should remain a last resort. An alternative remedy for failure to comply is to compensate the PPP partner.
Trigger	• Contracting authority's failure to pay • Voluntary termination by the contracting authority • Material Adverse Government Action
Consequences	The contracting authority is typically granted a cure period to remedy problems before termination.
Compensation	The guiding principle is that the PPP partner should be in no better and no worse position than if the PPP contract had been continued. Termination payments are typically defined to ensure equity-holders bear the burden of default. Lenders may also be exposed to some possible loss, and this can affect bankability. Termination payment options include: • 100% of outstanding debt + breakage costs (unwinding interest rate swaps involves breakage costs); plus • 100% of outstanding equity + return on equity (+ future return on equity); plus • Reasonable costs and liabilities for termination of subcontracts.

MODULE 5

8. COMMERCIAL AND FINANCIAL CLOSE

With the selection of the preferred bidder, the bidding process is completed and the closing process starts. The finalisation of the PPP tender ultimately leads to commercial and financial close.

Figure 5.7: Closing the PPP Transaction



8.1 Contract finalisation

In the final steps of the PPP tender, there will need to be close interaction between the contracting authority and preferred bidder. The contracting authority and the preferred bidder will need to agree on a framework for the finalisation process, and work jointly to achieve all the goals. This framework will typically include issues such as:

- Timetable;
- Defining the remaining issues;
- Satisfying the conditions precedent; and
- Recording matters already agreed or settled.

Whereas the goal should be to make sure that the PPP contract is clear and acceptable for all parties, there should be very clear limits to what clauses in the contract can be changed from the pre-bid drafts, and what cannot. Best practice is to limit the extent of post-bid interaction to "clarification and fine-tuning" of the PPP contract and/or the winning proposal. Extensive post-bid negotiations with a preferred bidder lack transparency and competitive tension, and therefore could significantly reduce value for money and cause delays. Moreover, changes to the fundamental nature of the PPP contract or the risk allocation may give rise to legal challenges from unsuccessful bidders, as they could have submitted a different offer, had they known of the eventual changes to the contract. All of this means that discussions after selection of the preferred bidder should be limited, but also that the PPP contract should have been clarified and discussed with all bidders to the maximum extent necessary, during the earlier stages.

The result of this phase is a PPP contract that is completely clear for both the contracting authority and the preferred bidder. It should also include technical annexes that were part of the technical proposal.

8.2 Commercial close

The contracting authority will need to confirm that the requirements of all internal approvals have been met prior to commercial close. These could include:

- Confirmation of the legality of the procurement;
- Approval of derogations from any standard contracting terms;
- The value for money check; and
- The affordability check.

Only after the confirmation of internal approvals and finalisation of the contract, will the contracting authority decide to award the contract (usually after Cabinet approval of the final contract wording). At this point, the contract can be formally executed by all parties. In some cases, the PPP contract is awarded and signed well before the project reaches financial close. In others signing is delayed until all parties are ready to reach financial close, in which case commercial and financial close happen on the same day. An advantage of the former approach is that a legal basis exists, which can be useful if some (limited) project activities must be started early, before financial close (such as access roads and other infrastructure works).

Typically, financial close is a condition precedent for the contract to become effective, to avoid already being bound to all the contractual obligations (and termination clauses) but never reaching financial close. An advantage of the latter approach is that technically the contracting authority can go back to the second bidder in case the preferred bidder is not able to reach financial close. There is not a globally preferred approach; selection of the approach depends on local preferences and project specific circumstances.

8.3 Financial close

Financial close occurs when all the project and financing agreements have been signed and all the required conditions contained in them have been met. Loan agreements set "conditions precedent" that must be in place before the concessionaire can access funds from the loan, typically:

- The main permitting and planning approvals have been secured;
- The key land acquisition steps have been achieved;
- The outstanding technical design issues have been clarified;
- The project and financing documents have been signed;
- All high-level approvals have been granted;
- All funding approvals are in place;
- Any necessary legislative changes have been enacted; and
- Registration of the security for the loans has been confirmed.

The concessionaire and the contracting authority often need to carry out a considerable amount of detailed work to reach financial close. The contracting authority typically seeks the support of its advisers. Meanwhile, the financiers of the project complete their due diligence, including detailed review of the PPP contract. The following table gives examples of very short and very long intervals between commercial and financial closings.

Table 5.22: Examples of Closing Periods

Project	Government	Commercil Close	Financial Close	Time (Days)
Ravenhall Prison Project	Victoria, Australia	15 September 2014	16 September 2014	1
Fourth Container Terminal at Jawaharlal Nehru	Maharashtra, India	6 May 2014	2 November 2014	180
Kingston Container Terminals (KCT)	Jamaica	7 April 2015	1 July 2016	456

Sources: APMG PPP Certification Programme; Kingston Container Terminals (KCT);

In some PPP transactions, such as the KCT project referred to above, an extended closing period is to be expected. The complexity of large modern infrastructure projects – technically, legally and financially – means that time has to be allocated for all parties to complete the detailed tasks that it could not be expected to complete prior to commercial close. However, "there's many a slip, 'twixt cup and lip". The closing process creates a risk that the project could be delayed or even fall through, if the winning bidder is unable to access finance on the expected terms; or there is a change of heart on the part of the government (say for example if there is a change in political administration, during a prolonged closing period).

This pressure to close can sometimes lead to contracting authorities agreeing to change the project's main terms, to meet lenders' requirements, since reopening the tender process at this stage would cause delays and additional transaction costs for the contracting authority. There are two ways to try to avert this situation that requires application during the RfP stage:

- Require a bid bond, which may be called if the preferred bidder fails to achieve financial close within a certain period, as discussed in Section 6.5.3.
- Require fully committed bids (underwritten' bids), which forces lenders to complete due diligence and obtain committed financing before the final bids are submitted.

The pros and cons of both approaches are described in Table 5.23.

Table 5.23: Pros and Cons of Bid Security Instruments

Project	Government	Commercial Close
Bid Bond	Financial protection for contracting authority	Higher bidding costs could potentially affect market appetite
	Effective incentive	
Fully committed bids	Can be organised as a "watertight" procedure Greater chance of achieving financial close	Higher bidding costs affects market appetite. Only applicable in "hot" PPP markets

Generally, the bid bond is seen as a relatively effective instrument to "keep bidders honest" during post-bid closing procedures. Requiring fully committed bids is an involved complex, expensive process for both the contracting authority and the bidders; and therefore can only be applied if both sides are relatively mature.

Eventually, when all the internal approval processes have been finalised, all the conditions precedent have been met, all project and financing agreements have been signed and all the required conditions contained in them have been met; the procurement stage comes to an end, and project implementation can begin.

8.4 One-Bidder bids

Particularly in thin markets or countries without a record of implementing PPP projects, it is possible that a tender may only receive one bid – or none[95]. In fact, many PPP transactions have been successfully implemented, after receiving only one qualified bid – both within the Caribbean and worldwide. It is at this point when the tender process becomes "an art not a science" – the contracting authority, and its transaction advisor, must keep their fingers on the pulse of the market for their PPP project, and try to avoid being surprised on bid day.

In some cases, the tender receives several bids, but most if not all of them are found on evaluation to be non-responsive to the RfP, hence disqualified. This may arise if some key aspects of the project – its viability and/or risk allocation – has not been favorably received by the market, who otherwise may be interested in the opportunity, but under altered terms. For example, bidders may submit a proposal that they know is non-compliant, indicating to the contracting authority that if no qualified or attractive proposals are received, they would be interesting in negotiating a mutually acceptable solution.

In case of a one-bidder bid, the contracting authority may decide to enter direct negotiations with the sole bidder. However, in such a situation the contracting authority is in a relatively weak bargaining position, as there would be no second place bidder to fall back on, in case negotiations become bogged down. For this reason, some governments specify that in case only one qualified bid is received, the tender process shall be started again.

However, in the interests of expediency and economy, contracting authorities are often tempted to opt for negotiations, over a re-bid. In negotiating with a sole bidder (whether compliant or not), governments should always make it clear that it retains the right to cancel negotiations and re-bid, should the sole bidder seek to fundamentally alter the terms of the deal, to its favor.

[95] http://www.jamaicaobserver.com/news/No-bidders-for-Norman-Manley-International-Airport

To be aware of the possibility of receiving one or no bids, contracting authorities should bear the following in mind:

- Be sensitive to requests for extra time: Bidders will frequently ask for extra time, to complete their due diligence, consortium-formation, or to obtain their required corporate approvals (for example, some boards of directors only meet quarterly). Contracting authorities should carefully discuss these requests with their transaction advisor, and be prepared to be flexible, as needed.

- Beware of deal-breakers: Bidders often complain that certain clauses in the PPP contract are "deal-breakers". Whereas the government will not want to accede to all of these requests; sometimes a pragmatic approach may be warranted. An experienced transaction advisor will be able to chart a course for the contracting authority, advising what minor adjustments may be necessary, to maintain a competitive field of bidders.

- Beware of minimum prices: Governments frequently impose minimum prices, either in the form of up-front payments or minimum annual concession fees. Whereas this has the advantage of providing comfort to contracting authorities, that their minimum financial expectations will be met by the PPP project; the practice also has risks. The contracting authority's financial advisor might get it wrong; and either under- or over-estimate the value of the PPP opportunity to the private sector. In fact, in practice it is not uncommon for governments to receive bids that are wildly divergent from the range of expected valuations. If the minimum prices are set too high, this could result in few or no bidders; alternatively if the minimum price is set too low, the contracting authority may end up "leaving money on the table", and not realising the full value for money.

- Reserve the right to cancel the tender: Direct negotiations with a sole bidder are usually relatively fractious affairs, with the sole bidder seeking to "correct" their perceived weaknesses in the project – to their satisfaction. On the other hand, the contracting authority will not wish to "give away" too much on the bargaining table. For this reason, the contracting authority should retain their right to cancel the tender – and not be afraid to exercise that right.

MODULE 5

9. SUMMARY

Module 5 aimed to provide governments with considerations, guidance and tools for running the procurement process of a PPP project. A good PPP procurement process will enhance competition and lead to the selection of the most qualified PPP partner under the best terms and conditions.

Wrap Up

In Module 5, the reader was introduced to the following topics:

- ✓ The objectives, principles and main steps of a PPP procurement process;
- ✓ Developing a PPP Procurement Strategy;
- ✓ Setting up an adequate organisation and stakeholder environment for a PPP tender;
- ✓ Marketing a PPP Project;
- ✓ Preparing a Bidding Documentation Package; and Drafting a PPP Contract

Module 6 will address the next state of a PPP Process - Implementation.

MODULE 5

10. ADDITIONAL RESOURCES

This section presents a number of additional resources to assist governments in the procurement of a PPP project.

Table 5.24: Additional Resources for Procurement

Key References – Designing a PPP Transaction		
Reference	**Description**	**Link**
"Public-Private Partnerships Reference Guide, Version 2.0", World Bank, ABD, IADB, July 2014	A step-by-step reference guide on PPPs, with information on implementing PPP procurement processes.	http://ppp.worldbank.org/public-private-partnership/library/public-private-partnerships-reference-guide-version-20
"The Guide to Guidance: How to Prepare, Procure and Deliver PPP Projects", European PPP Expertise Centre, 2015	Webtool with regularly updated PPP guidance with specific sections on launching a PPP transaction, the bidding process and how to reach contract and financial close.	http://www.eib.org/epec/g2g/index.htm
"Public-Private Partnership Infrastructure Projects: Case Studies from the Republic of Korea, Vol.1: Institutional Arrangements and Performance", Asian Development Bank, 2011	Detailed descriptions of PPP implementation process for different types of PPPs.	http://www.adb.org/sites/default/files/publication/29032/ppp-kor-v1.pdf
"P3 Peer Exchange: Denver, Colorado", U.S. Federal Highway Administration, 2014.	This report details key recommendations from a PPP peer exchange sponsored by the U.S. Federal Highway Administration. Participants included PPP experts from both public and private sectors. The procurement section of this report includes lessons learned from multiple U.S. PPP projects.	http://www.fhwa.dot.gov/ipd/p3/resources/p3_peer_exchange_2014.aspx

Key References – Preparing a Bidding Documentation Package

Reference	Description	Link
"Report on Recommended PPP Contractual Provisions", World Bank, August 2015	Summary and discussion of recommended contract language and provisions for PPP transactions.	http://ppp.worldbank.org/public-private-partnership/library/wbg-report-recommended-ppp-contractual-provisions
"Standardized Agreements, Bidding Documents and Guidance Manuals", World Bank, July 2015	Collection of standardised materials from national and international initiatives	http://ppp.worldbank.org/public-private-partnership/standardized-agreements-bidding-documents-and-guidance-manuals
"Sample PPP Clauses", World Bank, February 2012	Sample wording for key clauses of a PPP contract	http://ppp.worldbank.org/public-private-partnership/overview/practical-tools/sample-clauses
"Procurement Arrangements Applicable to Public-Private Partnership Contracts Financed Under Work Bank Projects", World Bank, September 2010	Provides guidance for preparing and implementing procurement of PPP contracts that are financed by the Bank. Includes definitions and procedures for bidder selection.	http://ppp.worldbank.org/public-private-partnership/library/procurement-arrangements-applicable-public-private-partnerships-ppp-contracts-financed-under
"Standardisation of PF2 Contracts", HM Treasury, December 2012	Standard wording and guidance to be used by UK public sector bodies when drafting PF2 contracts	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207383/infrastructure_standardisation_of_contracts_051212.PDF
"Public-Private Partnerships: A Guide for Municipalities, Chapter 3: The PPP Process", Canadian Council for Public-Private Partnerships, November 2011	Overview of PPPs, with a focus on issues important to municipal governments. Chapter 3.3 details the procurement process for PPPs.	http://www.p3canada.ca/~/media/english/resources-library/files/p3%20guide%20for%20municipalities.pdf
Federal Highway Administration Innovative Programme Delivery Website, "Procurement Documents", U.S. Department of Transportation, 2015	Selection of procurement documents, including requests for qualification, requests for proposals and other documentation used in PPP solicitations—organised by type of PPP.	http://www.fhwa.dot.gov/ipd/p3/procurement_documents/

Key References – Managing a PPP Transaction

Reference	Description	Link
"Guidelines for Post-Award Contract Management for PPP Concessions", Department of Economic Affairs, Ministry of Finance, Government of India, 2015.	Detailed discussion of post-award PPP contract management, including the need for a contract management team, and how to prepare for transitioning to post-contract award.	http://www.pppinindia.com/NPBCP_ images/PDFs/Guidelinesfor Postaward Contract Management.pdf
"P3 Project Overview Communications Model", City of Ottawa, Canada	Overview of communications model for PPP projects across the full project lifecycle. Used to promote consistent communications, particularly in the procurement phase.	http://www.pppcouncil.ca/pdf/ottawa_map.pdf
"A Framework for Disclosure in Public-Private Partnerships; Technical guidance for systematic, proactive pre- and post-procurement disclosure of information in public-private partnership programs"	Guidance on a systematic structure for proactively disclosing information through this Framework for Disclosure in Public-Private Partnership Projects.	http://pubdocs.worldbank.org/en/773541448296707678/Disclosure-in-PPPs-Framework.pdf
"Disclosure in Public-Private Partnerships: Good Practice Cases"	Case studies that highlight elements of good practice for 11 of the 13 jurisdictions studied as part of the research and analysis carried out under the Disclosure in Public-Private Partnerships project.	http://pubdocs.worldbank.org/en/610581448292161621/Disclosure-in-PPPs.pdf
"Disclosure in Public-Private Partnerships: Jurisdictional Studies"	Overview of disclosure practices in 13 jurisdictions.	http://pubdocs.worldbank.org/en/910311448299077946/Disclosure-in-PPPs-Jurisdictional-Studies.pdf

MODULE 6
IMPLEMENTATION

Many of the Caribbean's "dry" islands are turning to expensive desalination plants for their freshwater needs.

1. CONTRACT IMPLEMENTATION

Key Issues for Decision Makers

The Contract Implementation stage is the final stage of the project. Knowledge transfer from the transaction phase to the implementation phase is crucial in order to ensure long term efficiency and continuity.

A Contract Management Team should be in place. Roles & responsibilities of all parties involved must be clear.

The project must be regularly monitored and evaluated. This is not only a reporting requirement of the contract, but is also important for decision makers to have effective oversight on how well the project is proceeding.

External expertise might be necessary for dispute resolution. This can be in the form of a mediator or technical expert.

Introduction

Good preparation and effective procurement of a PPP project are important. However, the manner in which the PPP contract is monitored and managed during implementation ultimately defines how successful the project will be. It will also determine the project's ability to deliver the VfM that the contracting authority expected at the procurement stage of the service or asset it contracted.

The contract implementation stage is very different to the previous PPP process stages. It is not a one-time activity but rather a continuous process. This stage lasts considerably longer than the previous stages, spanning several phases of the project life cycle, from design through construction to operation. Finally, the contract implementation stage includes contract termination and hand-over of the project from the concessionaire back to the government.

The PPP Contract Implementation Module is an important tool for contracting authorities to use in:

- Preparing for contract implementation;
- Monitoring and enforcing the contract requirements;
- Managing the public-private relations;
- Handling changes, disputes and resolutions
- Managing contract termination.

Module 6 aims to help the contracting authority optimise contract management to ensure successful project delivery for the public authority, the private parties (the concessionaire) and the users involved.

This Module also provides guidance on required skills and expertise, as contract monitoring and management requires different expertise and resources compared to the previous stages. Decision makers are advised to prepare for this stage well in advance. The stage might even require some organisational changes and knowledge transfer from the PPP Procurement stage to the team responsible for implementation.[96]

The main outcome of this stage is the successful implementation of the project, as stated in the contract, over the contract period. Successful implementation means, among other things, that the VfM that the contracting authority expected to generate is achieved in practice. The success of this stage can be measured through effective monitoring and an evaluation process that feeds back into the project itself, and to other projects that the government is undertaking.

1.1 The PPP process

Implementation of the contract and the project is the last stage of the PPP Process, as shown in Figure 6.1. The stages of the PPP Process are described below.

Figure 6.1: The PPP Process

Stage 1: Identification and Screening: Before considering a PPP delivery model, the public agency must identify its priority investments needs. Typically, sector ministries submit priority projects, which should align with the government's policy objectives. The objective of this stage is to "screen" the priority projects, in order to determine whether they meet basic criteria and have the potential to generate Value for Money if implemented as PPPs. This is the first step to define if PPP is the best delivery option for a project. Because of its budgetary implications, the decision to move a project to the next stage normally requires high-level approval. This stage is covered in Module 3of this Toolkit.

Stage 2: Business Case: Once a priority public investment project has been approved for potential PPP delivery, the next step is to develop feasibility studies for the project that help all stakeholders understand the rationale and business case for the project. Studies conducted at this stage typically include technical and financial feasibility studies, Value for Money and fiscal impact analyses, cost-benefit or economic analyses, and social and environmental impact analyses. This stage will end with a set of recommendations on the project, including the structure and principal terms of the PPP contract. The scope and depth of the studies will depend on the complexity and the size of the project. This stage is covered in Module 4 of this Toolkit.

[96] The PPP Procurement and contract design phase is covered in detail in Module 5: PPP Procurement of this Toolkit.

Stage 3: Procurement: Once the relevant contracting authority, and approving institution (usually the Cabinet), have approved the feasibility studies, the project moves on to the procurement stage. During this stage, a PPP agreement is drafted; a private partner is selected as the preferred bidder based on a competitive procurement process; the PPP agreement is finalised and signed; and contract close is followed by financial close. This stage is covered in Module 5 of this Toolkit.

Stage 4: Implementation: A PPP contract has a much longer duration than a conventional public procurement contract (which typically ends with handover of the asset to the contracting authority – or shortly thereafter). This creates the need for long-term contract management expertise by the contracting authority. Contract management includes, inter alia, monitoring the performance of the concessionaire and the contracting authority; managing the payment mechanism; implementing any changes to the contract; and handling unexpected or compensation events. This stage is covered in this Module 6 of the Toolkit.

1.2 Structure of Module 6

Module 6 provides Caribbean governments with guidance on implementing and monitoring the PPP contract. The guidance addresses the following topics:

- Utilising existing and/or establishing new contract management institutions (teams, procedures, organisational structures);
- Monitoring and enforcing the PPP contract requirements;
- Managing the relationship between the public and private parties;
- Dealing with change and renegotiations, including fiscal impacts,
- Resolving disputes;
- Ensuring business continuity and disaster recovery; and
- Managing contract termination.

MODULE 6

2. PREPARING FOR CONTRACT MANAGEMENT

The focus of contract implementation is to deliver the project effectively and ensure that it complies with all the performance standards agreed upon in the PPP contract. The implementation stage spans the lifetime of the PPP contract, from the date of contract close to the end of the contract period. This includes three distinctive sub phases: (i) the design and construction phase; (ii) the operational phase; and (iii) the handback phase. The management of the PPP contract thus begins immediately after the end of the procurement stage.

In addition to getting a good PPP contract in place, preparing for contract management involves establishing PPP contract management structures and institutions. Such institutions comprise: (1) a team with clearly defined accountability, roles and responsibilities as well as (2) operational procedures and communication manuals.

2.1 The contract management team

After the PPP contract has been signed, responsibility for contract management will normally be transferred to a contract management team established by the contracting authority. This Contract Management Team (CMT) will carry out day-to-day contract management activities.

In order to ensure a smooth transition from procurement to contract management, the contracting authority should include the proposed CMT members in its project team, at the later stages of the procurement process. This will allow the CMT to gain a strong understanding of the project and its inherent risks from the outset, and thus develop a realistic contract management strategy.

Many PPP projects face the challenge of a complete change in team members, after financial close. This poses a risk to the success of the project, as much of the knowledge developed throughout the process is lost to the operational phase. Most of the knowledge required to effectively monitor and implement the PPP contract is developed during the procurement and transaction stages, where the contracting authority designs the payment mechanism, the output and performance specifications, and the appropriate risk allocation. If a complete team change is inevitable, it is advisable to begin knowledge sharing and early, between the Project team and the CMT, prior to handover. Involving the same staff in both procurement and implementation is, of course, the preferable option to ensure continuity and retention of institutional knowledge.

In general, a CMT requires:

- Sufficient resources (potentially involving hiring);
- Sufficient capacity and expertise; and
- Sufficient seniority.

In addition, it is crucial to ensure that the CMT has a clear mandate and the necessary resources and empowerment to deliver the Contract Management Strategy. It is also crucial to ensure that sufficient financial resources are available in the public budget for management of the PPP contract.

2.2 Roles and responsibilities

The PPP contract manager or management team must have clear responsibilities as well as authority. When establishing the responsibilities and authority of the contract manager, it is equally important to define the roles of all the government entities involved, including but not limited to:

- The contracting authority;
- The regulators;
- The sector Ministry;
- The Ministry of Finance; and
- The PPP unit (if applicable).

Defining roles and responsibilities prior to commencement of contract implementation and operation helps to prevent future conflicts and encourages transparent decision making.

2.3 Procedures and communication

In addition to defining the roles and responsibilities, the contracting authority will also need to define the process-related structures, both internally within the contracting authority as well as externally between the contracting authority and the Special Purpose Vehicle (SPV) that was established for the PPP project.

Table 6.1: Contact Management Structures

Level	Elements
Within the contracting authority	Reporting procedures Information flows Internal approval processes
Between the contracting authority and the SPV	Communication protocols Escalation procedures for decision making Escalation procedures for dispute settlement

In the Caribbean, there are few experiences with long-term contract management during the implementation stage. One successful example is the management of Sangster International Airport, as presented in Textbox 6.1.

Textbox 6.1: PPP Contract Management in Jamaica

Sangster International Airport PPP, Jamaica

In 2003, the Sangster International Airport of Jamaica was privatised via a 30-year PPP concession. Key Concession terms:

- Tenure: 30 Year BOOT
- Payment Mechanism: Work Load Unit (monthly), Additional Concession Fee (Yearly), Excess Benefits Payments (Hurdle IRR)
- Financing - Equity, Debt, Airport Improvement Fee
- Approval Processes: Lenders, Airports Authority of Jamaica, GOJ

Concessionaire reports to the asset owner through quarterly review meetings, management interaction is crucial for the partnership.

Legal Monitoring:

- Custodian of Concession Agreement and related Agreements
- Stakeholder Meetings – bi-annual Airport Forum
- Owners Meetings – Quarterly Reviews
- Insurance and risk monitoring
- Bonds maintenance
- Debt Maintenance Compliance
- Governance Changes – Changes of Shareholder/CEOs/Execs

Technical / Operational / Commercial monitoring:

- Master Plan Monitoring
- Maintenance Programme Works Monitoring
- Development Programme Works Approval and Monitoring
- Regulatory Compliance – ICAO
- Service Levels – IATA and ACI

Financial Monitoring:

- Financial Model – 30 Years
- Annual Business Plans – Rolling 5 years
- Audited Accounts – Annual
- Quarterly Reports – Financial and Operational
- Monthly Reports – AIF, Operational
- Economic Regulatory Rate Review

Lessons Learned:

- Know the Concession Agreement inside out.
- Contract Management requires continuing oversight and administration.
- Failure to effectively manage the private operator results in reduced value to the Government and a failure to meet the objectives of the project.
- Important to continually monitor the allocation of risk over the life of the PPP
- Concession Management has to be a long-term, mutually beneficial partnership, between both parties, involving constant dialog to resolve issues, before they become problems.

Source: Audley Deidrick (President and CEO, AAJ/NMIAL). Contract Management Experience Sangster International Airport PPP. A Presentation at the 3rd PPP Boot Camp for the Caribbean, February 5, 2016, Kingston, Jamaica

It is common to formalise the processes in operating manuals or plans. The process may also derive from the PPP contract. Summarising the procedures in a contract administration manual will be helpful for all parties involved.

✓ What needs to be done, by whom and when?
✓ How will the contracting authority's role be performed?
✓ What are the ramifications of any non-performance or default by the concessionaire or contracting authority, and how should these be addressed?

For example, Textbox 6.2 below describes the US Federal Contract Compliance Manual, a 537-page detailed operating procedure for all areas of monitoring private contracts.

Textbox 6.2: Contract Administration Manual U.S.A

Federal Contract Compliance Manual

An example for a contract administration manual is the Federal Contract Compliance Manual of the US Department of Labor's office of Federal Contract Compliance Programmes. The Manual answers the questions:

- What needs to be done, by whom and when?
- How will the contracting authority's role be performed?
- What are the ramifications of any non-performance or default by the concessionaire or contracting authority, and how should these be addressed?

The manual specifies how and when audits should be carried out (both desk audits as well as on-site audits). For example: required actions, data review, procedures for missing information, acceptable problems, and interview principles are included.

Furthermore, the manual distinguishes between different industries (e.g. construction industry, corporate management), describes procedures for complaint investigations and gives guidance on resolution for non-compliance.

Source: https://www.dol.gov/ofccp/regs/compliance/fccm/fccm_final_508c.pdf

Tool 6.1: Checklist Establishing Contract Management Institution

	Element of Contract Management Institution	✓
A	**Contract Manager/ Management Team** Establish a contract management team by providing the following requirements: • Sufficient resources (hiring extra staff and/or consultants as needed) • Sufficient capacity / expertise • Sufficient seniority Ensure knowledge transfer and handover between the transaction team and contract management team	
B	**Roles and Responsibilities** Define the authority of the contract manager/ management team Define the roles and responsibilities of the following entities: • Contracting Authority • Regulators • Sector Ministry • Ministry of Finance • PPP Unit (if applicable)	
C	**Procedures and Communication** Define reporting procedures and information flows Define internal approval processes Establish communications and contract management protocols between the contracting authority and the concessionaire Create a contract administration manual that summarises all procedures	

MODULE 6

3. MONITORING AND ENFORCING THE PPP CONTRACT

From the contracting authority's perspective, ensuring that the concessionaire meets the contracted level of performance requires three main components: (i) clear performance criteria, (ii) an effective monitoring system, and (iii) appropriate financial incentives. Module 5 provides more detail on each of these components and how they should function together as one system.

3.1 Performance criteria

The performance of the concessionaire is measured against a set of criteria or Key Performance Indicators (KPI), contained in the PPP contract. In PPP contracts, these criteria are known as "output-based performance specifications." Output-based specifications focus on what a project is intended to achieve (the output), rather than the methods and materials used to achieve those goals (the input). Output-based performance specifications allow the concessionaire to develop innovative solutions intended to reduce overall life-cycle costs while delivering the intended level of service; rather than depend on input specifications defined in the PPP contract, which may no longer be relevant, over time. The performance criteria are defined during contract design in the Procurement stage. The contract should be designed such that only relevant KPIs are defined and monitored, in order to avoid unnecessary burdens and inefficiencies for both the public and concessionaire during implementation and monitoring.

3.2 Monitoring system

The monitoring and reporting system is at the core of the contractual relationship between concessionaire (who will also report to financiers of the project), and the contracting authority. The concessionaire will largely monitor its own performance and report periodically to the contracting authority, with the contracting authority undertaking audits as necessary.

The contracting authority can verify the performance of the concessionaire by:

- Verifying the concessionaire's data / monitoring system
- Auditing the monitoring system
- Alternatively, an independent auditor can do an independent assessment

The contracting authority can enforce the contract by:

- Adjusting payments (penalties, deductions)
- Imposing a financial penalty if the monitoring system is non-functioning
- Calling performance bonds
- Concessionaire default

3.3 Financial incentives

The contracting authority wants to ensure that the concessionaire performs its contractual duties. An appropriate payment mechanism can provide the right financial incentive for the private operator to fulfill or surpass the defined criteria, by aligning the interests of the concessionaire, the contracting agency, financiers and other stakeholders. In case of underperformance by the Special Purpose Vehicle (SPV)[97], the "tickle, hurt, kill" principle is typically applied:

- A limited penalty should be imposed with the opportunity of the concessionaire to remedy the problem (tickle);
- If the problem or performance is not remedied adequately the penalties should be escalated (hurt); and
- If the concessionaire continues to fail to remedy and address the problem or performance failure, termination can be initiated.

At all times, this three-level enforcement structure needs to be accompanied by clear communication between all parties. Strong communication in line with established procedures is crucial to prevent small issues from escalating unnecessarily into big problems. Experience shows that escalating penalties upwards in the tickle-hurt-kill ladder can usually be avoided, through open and timely communication.

Textbox 6.3 below succinctly summarises the spirit of partnership that been at the heart of the successful Sangster International Airport PPP in Jamaica.

[97] The SPV is a separate legal entity with no assets other than the project (cash flows). The SPV is financed by lenders (debt) and investors (equity). The SPV is the entity that enters into contractual arrangements with both the contracting authority on the one hand and the subcontractors, suppliers and customers on the other. Thus, all of the contracts are "pooled" within the SPV.

Textbox 6.3: Partnership Lessons from Sangster International Airport

"The beauty of the privatisation of Sangster International Airport is that the airport operator can be proactive rather than reactive in terms of decision making, service levels and the management of partnerships that make up the entire team at Sangster International Airport. Operating as an entrepreneur, focused on business decisions allows for the flow of new ideas and quick implementation.

MBJ Airports Limited is invested and committed to a 30 year concession, with 20 years remaining. This long term commitment allows for proper planning and development of Sangster International Airport over a long period for the benefit of Jamaica and MBJ."

Elizabeth Brown Scotton
Chief Commercial Officer, MBJ Airports Limited

It is not uncommon for a close working relationship to develop between the contracting authority's CMT, and the private operator. Consequently, the contracting authority may sometimes hesitate to apply the penalties agreed upon in the PPP contract, due to concerns about harming their relationship with the concessionaire, or backlash from further disruptions in service. The contracting authority needs to strike a careful balance between following the strict interpretation of the terms of the PPP contract, and developing good and professional relationships with the concessionaire.

This phenomenon is known as "regulatory capture" and "is the process by which regulatory agencies eventually come to be dominated by the very industries they were charged with regulating. Regulatory capture happens when a regulatory agency, formed to act in the public's interest, eventually acts in ways that benefit the industry it is supposed to be regulating, rather than the public."[98]

The importance of the relationship between the two parties is covered in the next section.

[98] http://www.investopedia.com/terms/r/regulatory-capture.asp

Tool 6.2: Guiding Principles during Contract Implementation

	Guiding Questions	(Yes/ No/ NA)
A	**Value for Money** Will the promised Value for Money be realised in practice? • Is the SPV meeting its commitments under the contract? • Is the contracting authority meeting its contract obligations? • Is the project being regularly monitored and assessed? • Are there any deviations from/ changes to the main project terms?	
B	**Affordability** What are pricing and demand in practice and how does this affect overall affordability? • Is the agreed pricing being implemented properly? • Over time, how are users meeting payment obligations? • Is the contracting authority's budget appropriate and sufficiently accurate?	
C	**Commercial viability** Is the project commercially viable? • Is the concessionaire remaining commercially solid and stable? • Is any upside risk realised? (for example, windfall profits) • Is there any downside risk experienced? (for example, cost overruns)	
D	**Manageability** Are the contracting authority and SPV effectively managing the contract? • Are all contract management arrangements in place and functioning properly? • Is there an effective working relationship between the Contracting Authority and the SPV? • Is the project being regularly monitored and evaluated?	
E	**Acceptability** What is the public response to the project? • How are the users, public and market responding to implementation of the project? • Is the strategy for stakeholder engagement and public outreach implemented and functioning, including handling of negative public reaction? • Is there proper communications both inside and outside the organisation during project implementation?	

MODULE 6

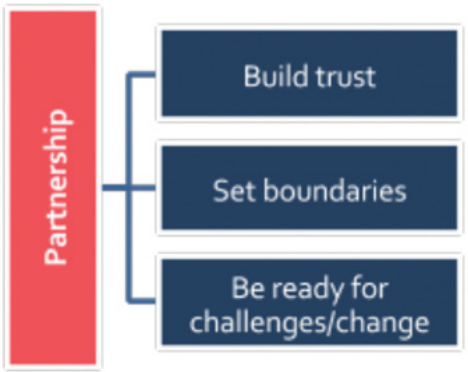
4. MANAGING THE PUBLIC-PRIVATE RELATIONSHIP

During contract management, different aspects of the partnership are important, including the roles and responsibilities of the contracting authority, the performance of the concessionaire, as well as the partnership or working relationship between both parties.

4.1 Principles of partnership

Three leading principles define the partnership, as depicted in Figure 6.2: (i) building trust, (ii) setting boundaries, and (iii) being ready for challenges/ change.

Figure 6.2: Three Principles of Public-Private Partnership



Trust and a collaborative working relationship are essential to a successful partnership. However, it is also crucial to set boundaries and accept and resolve conflicts. Boundaries apply to different fields of the partnership and should be applied in relationships that are difficult as well as those that are close. The latter includes making sure that services are not extended or reduced without an official change procedure, that gifts or invitations are not accepted over a pre-determined threshold amount (standard for public authorities) and the use of formal communication and administrative procedures when necessary.

If the above-mentioned principles of a good partnership are not in place, extreme situations can occur, for example:

- The relationship may become too close (regulatory capture): Procedures are not followed, the detailed terms of the contract are neglected and 'grey areas' assume ever greater significance. This can lead to serious integrity issues with the potential for conflicts of interest and subornation of the monitoring process.
- The relationship is not good: Parties do not trust each other. This leads to unnecessary conflicts where a better relationship could have resolved an issue without the need for escalation.

The following textbox summarises some practical ideas on how to prevent these extreme situations.

Textbox 6.4: Practical Instruments to Successfully Manage the Partnership

Instrument	Description
Partnering sessions	Joint periodic sessions on the project and the collaboration can help create both formal and informal lines of communication early in contract implementation. These can be held on different levels (for example, executive, principal, team)
Protocols	Define a clear communication protocol structure and follow this protocol for all communication.
Records	Keep records of communications between all parties, especially the contract manager and the SPV.
Committees and offices	Public-private committees and/or joint project offices (where multiple parties are co-located) can accommodate frequent and open communication; they help identify and resolve issues before they escalate into major dispute requiring a formal resolution process.

4.2 Dealing with everyday conflicts

Boundaries are also important when it comes to dealing with everyday conflicts. Different approaches to conflict management each have their own advantages and disadvantages as presented in Table 6.2. Knowing how approaches to conflict affects the relationship with the other party is helpful in avoiding actual disputes. The latter requires more serious forms of dispute resolution techniques and will be presented in section Disputes and Resolution.

Table 6.2: Advantages and Disadvantages of Different Approaches to Deal with Conflicts

Approach	Advantages	Disadvantages
Avoidance	No advantage	Usually makes a bad situation worse
Accommodation	Can maintain or improve relationships where issue is not so important	A sign that the skills or confidence are lacking
Confrontation	Can be quick and valid in urgent situations	Worsens situation over time People feel worse for lack of action
Collaboration	Fosters ownership of and commitment to solutions Strengthens relationships	Can damage relationships Can result in capitulation, which creates more conflict Takes time and patience
Compromise	Everyone gets a little of what they wanted	Everyone is a little unhappy

All approaches to conflicts (also to positive daily interaction) in the public private relationship should follow these rules:

- Play fair;
- Listen attentively and proactively;
- Respect each other;
- Find common ground;
- Make objectives clear;
- Focus on facts;
- Use reason;
- Resist use of force;
- Accept and tolerate differences;
- Learn to co-exist;
- Understand the other party;
- Forgive; and
- Be prepared to compromise

International best practices with regard to contract management are outlined in Textbox 6.5 below.

Textbox 6.5: PPP Contract Management Best Practices

1. Know the contract inside and out, but accept that the contract is not perfect. Unexpected events therefore may "fall through the cracks" and there may be ambiguities.
2. Be prepared to negotiate and work in the spirit of the PPP contract and continuously protect VfM.
3. It is a partnership, so invest in a good and professional working relationship, but understand that public interests are not static, and not always aligned with those of the concessionaire.
4. Develop trust in the private partner, but make sure to have access to all financial, technical and legal capacity and expertise needed to protect the public interest and to take responsibility when it is needed ("Trust, but verify"[99]).

[99]http://www.investopedia.com/terms/r/regulatory-capture.asp

MODULE 6

5. DEALING WITH CHANGE

There are two types of unexpected change: i) undesired changes, and ii) desired changes. These changes affect both the project and the PPP contract, and should follow the procedures agreed upon in the PPP contract.

For unexpected changes, the PPP contract should include an adjustment mechanism that describes a step-by-step procedure for considering and, where appropriate, amending the contract(s) to include the required changes. In case the parties do not agree on certain changes, or if conflicts arise with regard to performance and the payment mechanism, it is advisable to make use of established dispute resolution procedures.

The general rule in contract management is that formal renegotiations might be necessary from time to time, for example, to avoid an early termination, but that they should be avoided where possible. In case of contract amendments, the party suggesting the changes needs to indicate whether the proposed amendments will:

- Alter the affordability of the project (impact on finance);
- Change the allocation of risks between the partners (impact on risk);
- Affect service delivery to the public / the users (impact on service);
- Change the impact of the project on the environment (impact on the environment); and/or
- Alter the social impact of the project (social impact).

Textbox 6.6: Managerial Cross-Check of Guiding Principles with Regard to Changes and Contract Termination

Guiding Questions	(Yes/ No/NA)
Value for Money Will the promised Value for Money be retained after changes? • Do proposed changes affect Value for Money? • In the event of early termination, have all salvage options been explored (tickle – hurt – kill)? • If facing early or regular termination, have all options been assessed based on best Value for Money? • Can the contracting authority achieve better added value if it takes back the project?	
Affordability How do changes affect the pricing and overall affordability? • Do proposed changes involve pricing changes for users or the government? In case of increases, are they appropriate? • Can a new procurement set new prices? • If the contracting authority takes back the project, what is the effect on affordability?	
Commercial viability Do the proposed changes affect commercial viability? • For proposed changes, will the project remain commercially viable, enabling the SPV to remain commercially stable?	
Manageability Can the contracting authority and SPV manage changes and/or termination? • Will the proposed changes make the contract more (or less) manageable for the contracting authority and SPV? How can the changes be optimised with regard to manageability of the contract? • For terminations, is the contracting authority prepared to manage the consequences, such as taking back the project (capacity, etc.) or conducting a new procurement?	
Acceptability Will users and the public accept the changes? • Will amendments have user or public implications? • What impact will termination have on users and the public? • What impact will early termination have on the market and future efforts of the contracting authority to implement PPP projects?	

5.1 Fiscal Management

Module 4, Section 7.4 introduced the importance of Fiscal Affordability and Fiscal Liability Assessment. Two types of fiscal liabilities are associated with PPP projects:

a. Direct liabilities, such as pre-defined payments (for example, availability payments, milestone payments, etc.)

b. Contingent liabilities, related to risks (for example, government guarantees on e.g. inflation risk or demand, force majeure, compensation in case of default)

All direct liabilities and some contingent liabilities are explicitly stated in the PPP contract or other related agreements and regulations. However, some contingent liabilities might be implicit, particularly those that will eventually be retained by the government because the project is "too big to fail". These implicit liabilities can have significant fiscal impact for governments, and there is a strong public imperative to manage these fiscal liabilities effectively.

The textboxes below describes two Caribbean PPP projects that encountered unexpected fiscal costs that were hard to manage from a public perspective. These unexpected costs can arise for several reasons. First, lack of rigorous project due diligence and planning can lead to project issues with financial consequences that are passed on to the government. Second, governments may have accepted risks that they are unable to manage. Finally, even if the risks accepted by governments are reasonable, insufficient fiscal oversight can mean these risks (and in some cases, even direct project liabilities) are accepted without careful assessment of their potential fiscal impacts.

Textbox 6.7: Unexpected Fiscal Costs in Caribbean PPPs – Dominican Republic

In the Dominican Republic, most road projects have been managed by an office that reported directly to the president and lost political support when the presidential administration changed. Lack of project planning and experience in the government sector has also led to fiscal problems, especially in toll-road projects, where the government has paid tens of millions of dollars to concessionaires in order to honor minimum revenue guarantees. The Dominican Republic has paid approximately US$38 million annually in traffic guarantees to the concessionaire for the 107 km Autopista del Nordeste when traffic has been 30 to 40 percent lower than forecasted.

In another setback for the Dominican Republic government, an international arbitrator ordered the government to pay the investors of Concesionaria Dominicana de Autopistas y Carreteras US$41 million for illegally seizing the concession.

Sources:
PPIAF. Caribbean Infrastructure Roadmap. p. 24. March 2014
Infrascope. Evaluating the environment for public-private partnerships in Latin America and the Caribbean. The Economist Intelligence Unit p.24. 2014

Textbox 6.8: Unexpected Fiscal Costs in Caribbean PPPs – Jamaica

The National Road Operating and Constructing Company (NROCC), is the Government of Jamaica contracting authority for the Highway 2000 PPP. According to the NROCC, the Highway 2000 project has incurred approximately US$39 million in additional cost due mainly to changes to the outline drawings that were a result of requests made by NROCC. These changes were stated as follows:

- Works on feeder and take-off roads including Marcus Garvey Drive, Port Henderson, Passage Fort Drive, and Mandela;
- Realignment of the Portmore Causeway;
- Relocation of the Spanish Town Toll Plaza.

NROCC was required to pay the additional cost for the above changes. These changes and the attendant payments were carried out in accordance with the terms and conditions of the Concession Agreement.

Sources:
Office of the Contractor General. Highway 2000 Investigation. P.25. December 2007

Management of fiscal commitments during PPP project implementation includes the following tasks:

- Reporting of fiscal commitments;
- Budgeting; and
- Approval of new fiscal commitments.

The following sections will discuss these tasks.

a. Reporting of fiscal commitments

The fiscal commitments of the government resulting from PPP projects must be reported and disclosed. It is important to distinguish between recognition and reporting of fiscal commitments. Recognition means that the fiscal commitments are formally recorded as liabilities in the financial statements of the government.

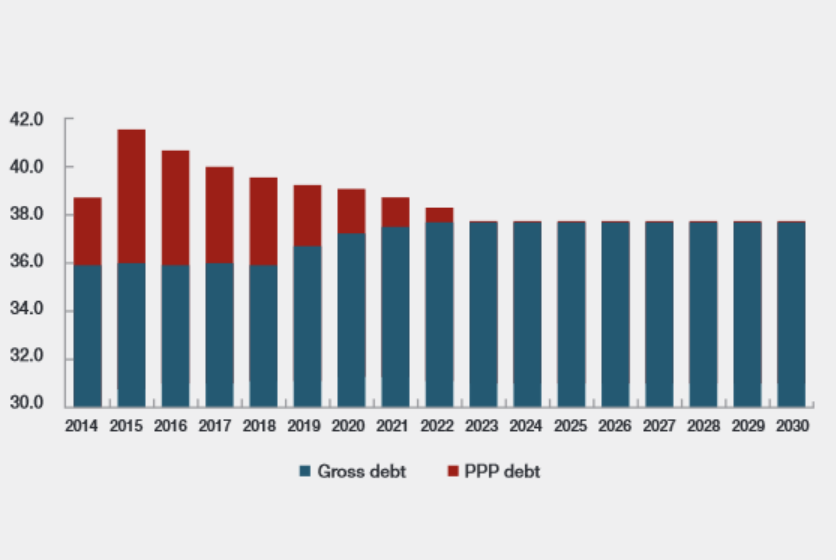
The recognition of PPP projects is governed by the public accounting standards used by government. Good practice rules are provided by the International Public Sector Accounting Standards (IPSAS). IPSAS 32 on concessions and IPSAS 19 on contingent liabilities are particularly relevant.

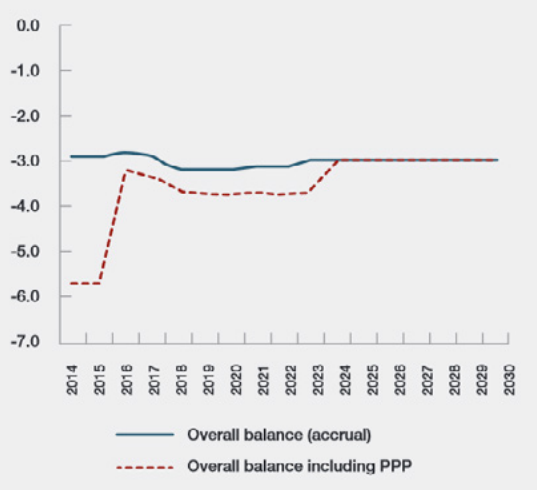
If the public accounting rules of a country do not require the recognition of the liabilities of a PPP project, they should nevertheless be reported alongside information on the official fiscal accounts. Reporting is important for the internal and external transparency of the government's liability position, as well as for the monitoring of the VfM of PPP projects.

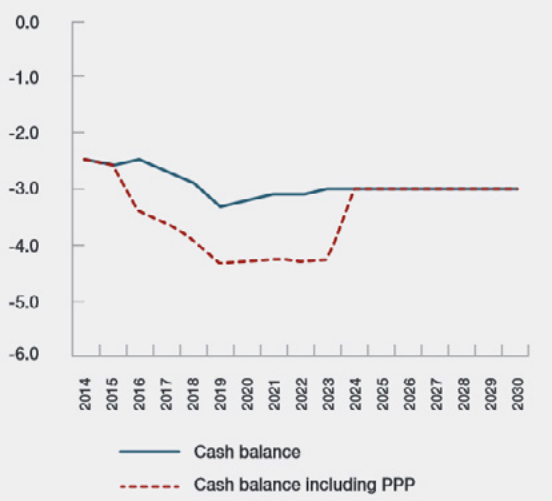
Reporting must cover both direct and contingent liabilities. The information about fiscal commitments and liabilities should include expected payments in the current fiscal year and for the next few years. The present value of the remaining expected future obligations until the expiry of the contract should also be reported. For explicit contingent liabilities (i.e. the ones directly resulting from contractual provisions defining contingent payments or responsibilities of government), the reported information should also include, if possible, an estimate of the maximum exposure of the government. The Fiscal Management Team or equivalent authority responsible for fiscal monitoring as per the PPP Policy collects the required information from the contracting authorities, who themselves may need to obtain some data from the concessionaire.

Figure 6.3 shows sample outputs of a forecast of the fiscal liabilities of a hypothetical PPP project, produced by the PPP Fiscal Risk Assessment Model (PFRAM) developed by IMF and the World Bank. This fiscal spreadsheet tool is freely available for Caribbean governments to use by their PPP contract monitoring teams.

Figure 6.3: Sample Outputs of Modelling of Fiscal Liabilities1 under PFRAM







The above figures show the direct fiscal impact of a hypothetical project. Direct fiscal impacts mainly derive from PPP projects in which the concessionaire is paid by the contracting authority (in form of availability fees, services fees, etc.). In revenue-generating PPP projects, where the private party is paid directly by users of the asset, the direct fiscal impact is small or non-existent.

The Fiscal Liability Assessment should also examine the contingent liabilities that would be triggered by the occurrence of a risk, or a compensation event. For example, a compensation for losses and damages if the right-of-way is delivered too late, losses and damages caused by a Force Majeure event such as an earthquake or a flood, or a payment due on an early termination of the PPP contract. Contingent liabilities affect both revenue-generating projects and projects paid by the government, through availability payments.

b. Budgeting

The payments due under a PPP contract must be included in the annual budget allocation of the relevant contracting authority. Most countries have a one-year budget cycle. When signing a PPP contract, the government commits itself to all future obligations in the contract from the start until the end date. However, these commitments need to be reconfirmed each fiscal year, by appropriating the required funds for the expected payments due in that year. In order to provide greater comfort to the concessionaire and its lenders, some governments issue explicit multi-year budget commitments approving not only the contracting authority's expenditure in the next fiscal year but also the commitment to appropriate the required funds in later years.

[100] Source: PPP Fiscal Risk Assessment Model (PFRAM), accessible in the PPP Knowledge Lab (https://library.pppknowledgelab.org/World%20Bank%20Group%20(WBG)/documents/2893?ref_site=kl). Accessed June 2016

However, budgeting for contingent liabilities is more difficult than budgeting for specific liabilities, because the amount and timing of payments are not known, until the risk or liability is realised. Contingent liabilities may lead to sudden large payments that cannot be accommodated within the existing budget. In that case, the government must request additional appropriations from the legislature, or even defer the settlement to the next fiscal year. Either way, payment is delayed, creating additional financial risks for the concessionaire. These problems should be avoided as much as possible by requiring contracting authorities to report the expected calls on contingent liabilities in the next fiscal period, so that it can be included in the budget. Additionally, some countries have created a dedicated fund, funded each fiscal year, from which contingent liabilities can be paid.

c. Approval of calls on contingent liabilities and of new fiscal commitments

Payments by contracting authorities pursuant to calls on contingent liabilities or the settlement of disputes must be submitted for approval to the authority responsible for the fiscal monitoring of PPP projects. The contractual justification and the amount of the claim must be verified before the payment can be approved.

Due to the long-term nature of PPP contracts, it is likely that during the contract period unforeseen circumstances will occur that necessitate a change of the contract. Consequently, PPP contracts contain provisions allowing both the contracting authority and the concessionaire to apply for a renegotiation of some conditions of the contract. In general, contract renegotiations must follow the same approval procedure as the original PPP contract. In particular, if the renegotiation creates new fiscal commitments, direct or contingent, their affordability and sustainability must be assessed.

5.2 Business continuity and disaster recovery planning

Contingency planning is essential for the operational phase of the project. Three types of events must be accounted for:

- Events that interrupt service delivery but do not involve default by the concessionaire, for example, force majeure events;
- Events that interrupt service delivery and involve a default, for example, the concessionaire fails to maintain facility as required;
- Concessionaire defaults that do not necessarily result in an immediate service interruption, for example, failure by the concessionaire to maintain professional indemnity insurance and subsequent insolvency of the concessionaire because of a negligence claim.

The potential severity of the event determines whether a business continuity plan is needed or, in case of a catastrophic event, a disaster recovery plan should be prepared. The difference between the two is that the business continuity plan aims to prevent and mitigate the impact of service delivery interruptions to the government and/or users, while the disaster recovery plan covers the steps for restoring critical service functions following a catastrophic event.

The government typically has wider national business continuity and disaster recovery plans that go far beyond the scope of any particular PPP project. Because the contracting authority is dependent on the concessionaire for delivery of services, it requires the concessionaire to establish and maintain business continuity and disaster recovery plans. The responsibilities under these plans will be split between the contracting authority and the concessionaire. Business continuity and disaster recovery plans may also be incorporated into a PPP Contract Manual. The following table lists typical contents of a business continuity and disaster recovery plan.

Tool 6.3: Typical Contents of a Business Continuity & Disaster Recovery Plan

Content	Description	✓
Events	Potential events that may trigger activation of the business continuity and / or disaster recovery plan	
Actions	Immediate actions required to respond to service interruption	
Prioritisation	Prioritisation of various components of the service	
Time periods	Time periods for stabilising or restoring critical components of the service	
Service targets	Service specifications and service level targets	
Authorisation	Identifies specific individuals and / or entities with authorisation to make decisions, and the process for establishing authority	
Resources	Resources required to implement the business continuity plan	
Information	Information requirements	
Communication	Communication requirements	
Exit	Definition of resolution of the applicable event	
Testing	Business continuity plan testing procedures, including testing schedule	

MODULE 6

6. DISPUTES AND RESOLUTION

As contractual disputes are common in PPP projects, this section provides guidance on dealing with and resolving disputes between the public and private parties. Contractual disputes in PPPs are not infrequent, because the PPP contract cannot possibly enumerate every single situation or avoid all ambiguities because:

- PPP contracts are long-term and unexpected circumstances and events will inevitably arise;
- PPP projects tend to be complex; and
- Contractual provisions in the PPP contract can be subject to different interpretations.

Especially with regard to the latter, the importance of a high quality, clearly drafted contract cannot be overestimated. The risk of disputes is lower if the contract is:

- Clear,
- Objective, and
- Comprehensive.

Three typical examples of disputes in PPPs that arise due to misinterpretations or differences in interpretations are outlined in the table below.

Table 6.3: Examples of PPP Disputes Arising from Differences in Interpretation

Issue	Concessionaire View	Contracting Authority View
Toll increase	Agreement allows for annual toll increases up to rate of inflation	Yes, but subject to approval of independent approval authority
Imposition of penalties on the concessionaire	Building is operating flawlessly, yet contracting authority is applying penalties for trivial non-compliance items	Yes, but if there are non-compliant items, then the building is not "flawless" and deductions are contractually permitted
Increased expense for higher water quality standards	We had nothing to do with the change in the law	Yes, but the concession agreement states that 'Concessionaire will maintain water to the standard required by law'

In addition to misinterpretations leading to disputes, there are several other typical causes of disputes in PPPs:

- Differences in interests
- Lack of mutual understanding
- Poor communication or no communication around issues of importance
- Personality clashes
- Leadership problems, including inconsistent, missing, heavy-handed or uninformed leadership
- Differences in opinion on performance
- Interpretation – or misinterpretation – of arrangements in PPP contract

Disputes can be resource-intensive. They may result in changes to the PPP contract, which can affect financial arrangements. Private investors will thoroughly assess the dispute resolution mechanisms in the PPP contract before committing to the project.

While contractual arrangements and mechanisms are crucial for successful dispute resolution, the relationship between the parties in the partnership must not be underestimated. A good relationship leads to smoother dispute resolution. However, a dispute may damage the relationship between the contracting authority and the concessionaire. Section 6.1 provides guidance on dispute resolution mechanisms.

6.1 Dispute resolution mechanisms

The PPP contract should stipulate the legal regime that governs the contract, and the procedures and mechanisms available to resolve disputes. Dispute resolution can take many forms, ranging from expert consultation as a standard approach, all the way to litigation in the most extreme cases. Both parties in the conflict, the contracting authority and the concessionaire, should have an incentive for using internal over external resolution mechanisms since the cost, administration and time increase considerably when an external authority is involved.

How disputes are resolved will have a significant impact on the success or failure of the PPP. The ultimate goal is to resolve any difficulties quickly, in privacy, without disruption of service to the end user and in a manner that opens channels of communication and reduces the potential for disputes further on in the life of the PPP. There are five typical dispute resolution mechanisms, the first four being non-judicial dispute resolution options, the latter being part of the judicial system:

- Expert determination of some kind (normally used for specific technical/financial issues);
- Mediation and conciliation;
- Arbitration (national or international);
- A decision by a relevant regulatory body; and
- Litigation (US, UK or Caribbean national court system).

Form of dispute resolution mechanism depends on:

- The nature of the dispute;
- The relationship between the partners;
- The sensitivity of the issues involved; and
- The likely outcome and cost of litigation.

The five dispute resolution mechanisms are discussed below.

a. Expert determination

When conflicts arise that cannot be solved on the work floor, PPP contracts often provide that the first point of dispute resolution should be negotiation between senior employees of each party. The theory is that senior officials are more likely to take into account the larger, on-going relationship, and have the proper level of authority to devise, and commit to, solutions.

In case these high-level negotiations do not lead to resolution of the conflict, independent experts can be hired to provide an unbiased opinion. A popular method of dispute resolution involving technical issues is to solicit the opinion of an independent expert or a panel of experts. The decision may or may not be binding, depending on how the contract is drafted. This has the advantage of being relatively low cost, fast and simple—in comparison with legal resolution. Issues of enforcement, and whether the courts can intervene to overrule a government decision, will need to be considered.

b. Mediation

The aim of mediation is to satisfy the needs of the two disputing partners, while at the same time preserving or strengthening their future relationship. Technically, an appointed mediator sits down with the partners and guides their discussion. The mediator must be a neutral third party, with no independent authority or ability to impose a settlement. It is his task to guide the partners to a mutually-agreed-upon solution.

c. Arbitration

Arbitration is a dispute resolution option that lies between the judicial solution of litigation and the non-judicial solution of mediation. Arbitration can be national or international (e.g., International Centre for Settlement of Investment Disputes - ICSID[101]). Arbitration has certain advantages over a judicial solution in court:

- The parties choose their tribunal;
- Arbitration can offer greater assurance of a fair and competent decision, involving arbitrators with appropriate expertise;
- Parties can appoint people with appropriate specific skills, including experts other than lawyers;
- Arbitration proceedings can be more flexible - for example it is possible to have a documents only arbitration with no oral hearing; and
- A final decision can often be reached more quickly, because the right to appeal an award may be narrower than the right to appeal a judge's decision.

Arbitration and mediation share common, positive characteristics. Table 6.4 summarises these benefits.

Table 6.4: Advantages of Mediation and Arbitration over Legal Dispute Resolution

Advantages	Description
Atmosphere	An atmosphere is created in which the parties find neutral territory where the problem can be discussed civilly.
Clarity	Perceptions are expressed and clarified which improves the understanding of each other's position.
Shared needs	There is a focus on individual but more importantly, shared needs.
Shared power	Shared power is built. The aim is to find out what needs to be done so that both partners can work together rather than working against each other.
Focus on the future	The main principle is to look at the future but also learn from the past.
Generating options	The aim is to generate options that both parties can agree to. The parties brainstorm together to solve the problem.
Problem solving	Options for resolution are developed to include methods and tasks to resolve the issue.
Best solutions	Eventually, a mutual benefits agreement is set-up to create the best solution for all parties.

[101] https://icsid.worldbank.org/apps/ICSIDWEB/Pages/default.aspx

d. Decision by relevant regulatory body

Depending on the conflict at hand, and how the PPP contract is structured, a regulatory body can be involved in dispute resolution. However, it needs to be noted that regulators often tend to depart from the PPP contract and apply the principles of their own mandate.

The regulator may exercise discretion in its judgement. If there is no confidence in the stability of the regulatory framework of the regulator's decisions, investors may consider this type of dispute resolution to be risky.

Given the aforementioned specificities of dispute resolution in PPP contracts, the next section highlights selected aspects in more detail.

e. Judicial system (Litigation)

If a conflict cannot be resolved internally or with the help of mediation or arbitration, litigation can be considered as a last resort for dispute resolution.

First, it is important to determine whether the court system of the host country is a suitable venue for resolution of disputes between the contracting parties. The court system might not be suitable, for example due to inefficiencies and suboptimal work processes. This might lead to a lack of transparency and/or undesirable project delays.

6.2 Dispute resolution and the PPP contract

PPP contracts must specify a procedure for handling disputes under the term of the contract. Given the nature of the PPP contract, it might not be appropriate or desirable to go through the courts for every dispute resolution. An alternate, formalised dispute resolution procedure may offer a more efficient, timely and cost-effective method of resolving disputes.

A common form of dispute resolutions involves a three-staged process, involving some of the above-introduced mechanisms:

1. The contracting authority and concessionaire consult each other for a fixed time period, in order to come to a solution.
2. If negotiations/consultation fail, parties may then put their case before an expert to decide. The expert appointment is regulated by the PPP contract.
3. In case either party is dissatisfied with the expert's decision it may refer to the matter either to arbitration or to the courts for final decision.

A pressing problem in case of dispute resolution in PPP contracts is the delay in activities due to disputes. This problem is usually more severe during construction than during the operational phase. During construction, milestones are pressing (both internally and externally) and delaying construction is costly (e.g. renting machinery). During operations, it might be possible to resolve a dispute without interruption of service. Therefore, the impacts of disputes during operations may be smaller with regard to both time and cost.

It is possible for the concessionaire to try to include disputes between the contracting authority and the concessionaire as a 'relief event', which implies that work cannot be continued until the dispute is resolved. It is important to specify such relief events clearly. A concessionaire should not be permitted to cease work activities during every dispute. It is only if no other course of action can be taken, that an event of relief may be appropriate.

The contract should also include how the financial implications of a dispute will be assigned. For example, the contracting authority will typically be liable for the concessionaire's costs if the dispute is resolved in the concessionaire's favor. Financial compensation can include construction related costs but also financial costs.

6.3 Step-in rights

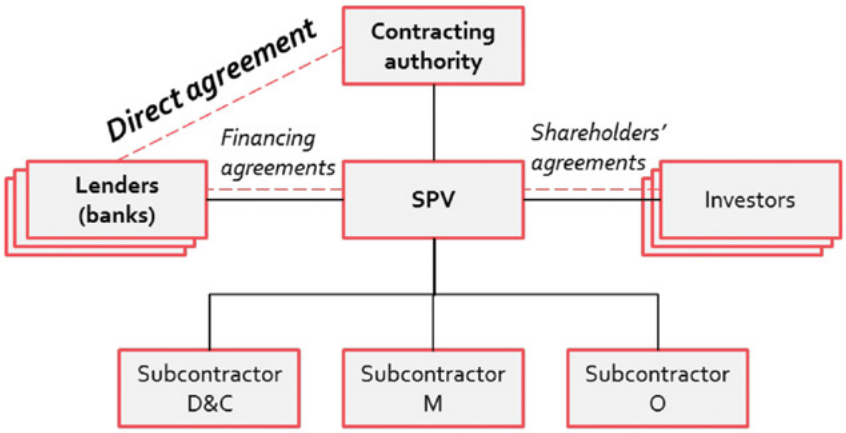
There are situations in which the PPP might be threatened by early termination, for example, bankruptcy of the concessionaire but also severe and continuous poor performance. Lenders have an important role to play in the event of a possible early termination. It is common that the lenders can contractually 'step in' when the project is threatened by early termination.

Step-in rights "are rights given to lenders in project financed arrangements to 'step in' to the project company's position in the contract to take control of the infrastructure project where the project company is not performing. There may be prohibitions in the law on lenders having step-in rights. This will be an impediment to attracting private sector finance and will need to be addressed by the government."[102]

In the event of concessionaire default, the lenders should be allowed to step in to rescue the PPP project and protect their loan. The contracting authority should permit (and rely on) the lenders to take control of the PPP project in such circumstances. The lenders' right to step in is typically provided for in a direct agreement entered into between the contracting authority, the concessionaire and the lenders.

[102] https://icsid.worldbank.org/apps/ICSIDWEB/Pages/default.aspx

Figure 6.4: The Direct Agreement in Project Finance



The contracting authority may also have the right to take control of the project, sometimes referred to as 'sequestration'. Step-in rights by the contracting authority are normally reserved for situations in which the project poses significant health and safety risks, threats to national security, or when legal requirements call for the government to take over the project. If the eventuality seems likely, the contracting authority should prepare itself to step in. This requires capacity and expertise.

The PPP contract regulates the step-in process. Typical step-in procedures include:

- Definitions of events that can trigger the contracting authority's step-in rights;
- Roles and responsibilities;
- Required internal authorisations before exercising step-in rights;
- Third-party acknowledgements or consents;
- Obligations and liabilities in exercising step-in rights;
- Resource requirements;
- Required communications to activate and implement the step-in plan; and
- "Step out" procedures.

It needs to be noted that with the right to step in comes a responsibility; the contracting authority should be prepared to step in, which requires a certain level of capacity and expertise.

MODULE 6

7. MANAGING CONTRACT TERMINATION

An important but often neglected topic of contract management is managing contract termination. A contract can be terminated regularly, that is at the end of the agreed concession period, or terminated prematurely (either by the public agency or the concessionaire) in the case of serious, pre-defined events. This possibility implies that, from inception, the contract manager needs to have a plan for termination.

7.1 Regular termination

The most important element of termination includes handing over project assets and services back to the contracting authority, at the end of the PPP contract period. Transferring assets to the public agency requires a thorough assessment of the quality of the assets at handover. Typically, the PPP contract will include quality standards that the assets and facilities are required to meet at the end of the contract period.

An audit will assess the state of the assets several years before the termination date. The audit indicates which assets need to be improved, before handover can occur. This procedure is particularly relevant because the project will represent an asset for the contracting authority, after the expiry of the PPP contract. As such, the contracting authority should have a financial incentive to ensure the asset is returned in the best condition possible. Sometimes the concessionaire is required to issue a specific bond or guarantee, to cover the last few years of the contract period. The bond should have a minimum value that ensures the concessionaire has sufficient financial incentive to continue the contract until the contracted end date and hand over the assets at the defined quality.

7.2 Early termination

Early termination procedures need to be specified in detail in the PPP contract. The PPP contract should describe in detail the specified circumstances that allow the contracting authority to terminate the contract. A breach of contract has to be fundamental in nature and should (where possible) be subject to "cure periods".

Module 5, Section 7.5 provides guidance on including early termination in the PPP contract. To summarise, early termination events include:

- Termination for extended Force Majeure;
- Termination for PPP partner default;
  - ✓ Insolvency or bankruptcy of the concessionaire; and/or
  - ✓ A serious deficiency in service provision (e.g. where health or safety is jeopardised) that is not promptly remedied.

- Termination for Change in Law, voluntary termination by the contracting authority, contracting authority default or Material Adverse Governmental Actions (MAGA).

The contract must include clear procedures and provisions for early termination of the project, including possible compensation – to both parties. The guiding principle for compensation is the "make whole" principle: the party initiating the termination should be in a no better-no worse position than if the PPP contract had been continued. This usually (but not necessarily) leads to a payment from the public authority to the concessionaire. The payment principles and mechanism to be included in the contract are discussed in more detail in Module 5, Section 7.5.

Early termination is a serious event as the contracting authority might suddenly be required to take over implementation and / or operations of the service. As early termination might also influence future PPP projects negatively, so this should be the last resort.

7.3 Summary

Module 6 aimed to provide governments with considerations, guidance and tools for carrying out the Implementation stage of a PPP. During construction and operation of the project, contracted service delivery and performance must be monitored, the payment mechanism applied, changes to the contract managed, conflicts resolved and finally, assets transferred at termination.

Wrap Up

In Module 6, the reader was introduced to the following topics:

- Establishing contract management institutions;
- Monitoring and enforcing the PPP contract requirements;
- Managing the relationship between the public and private parties;
- Dealing with change and the fiscal impact;
- Resolving disputes;
- Ensuring business continuity and disaster recover; and
- Managing contract termination.

7.4 Additional resources

This section presents a number of additional resources to assist governments in implementing, monitoring, and managing the PPP contract.

Table 6.5: Additional Resources for Contract Implementation

Key References – Contract Management		
Reference	**Description**	**Link**
"Federal Contract Compliance Manual", United States of America Department of Labor. Office of Federal Contract Compliance Program	This is an example of a Contract Administration Manual that is used in the United States of America.	http://www.dol.gov/ofccp/regs/compliance/fccm/fccm_final_508c.pdf
"Report on Recommended Contractual Provisions", PPIAF World Bank, 2015	This report presents and discusses recommendations for contractual arrangements. Given that different legal systems and a huge variety in projects ask for tailor-made provisions, this report focusses on certain contractual provisions encountered in every PPP contract and gives recommendations on the contractual language that has proven to be appropriate in PPP transactions.	http://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/150808_wbg_report_on_recommended_ppp_contractual_provisions.pdf
"Public-Private Partnerships: Principles of Policy and Finance", E.R. Yescombe, 2007	Refer to chapter 15 for an extensive discussion on the major issues in determining the approach and calculating the (compensation) payment in case of early contract termination.	http://www.untag-smd.ac.id/files/Perpustakaan_Digital_1/FINANCE%20Public%96Private%20partnerships%20Principles%20of%20Policy%20and%20finance.pdf
"National PPP Guidelines, Practitioner's Guide", Infrastructure Australia, 2015	Appendix H provides guidance on Contract Management, including risk management, the relationship between contract management and the procurement process, key elements of effective contract management.	https://infrastructure.gov.au/infrastructure/ngpd/files/Volume-2-Practitioners-Guide-Oct-2015-FA.pdf
"Guidelines for Post-Award Contract Management for PPP Concessions", PPP Cell, Infrastructure Division, Ministry of Finance of India, 2015	The guidelines provide a foundation for PPP contract management irrespective of the sector. Three additional manuals can be consulted for information on 'how' contract management needs to be undertaken (Highways, Ports, Schools).	http://www.pppinindia.com/NPBCP_images/PDFs/GuidelinesforPostawardContractManagement.pdf
"Guidelines for Successful Public-Private Partnerships", European Commission, 2003	Part 5, Chapter 6, provides guidance on Contract Management, including performance and relationship management.	http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf
"Public-Private Partnership Reference Guide: Version 2.0", World Bank, 2015	Chapter 3.7 provides guidance on managing PPP contracts, including contract management structures, monitoring, dealing with change and contract termination. Chapter 2.4 provides guidance on assessing and reporting on fiscal implications of a PPP project	http://ppp.worldbank.org/public-private-partnership/library/public-private-partnerships-reference-guide-version-20

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