



ANALYSIS of PUBLIC PRIVATE PARTNERSHIP

REPUBLIC OF MACEDONIA



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TABLE OF CONTENTS

Characteristics of PPPs in Macedonia	3
Current and potential PPP projects in Macedonia	3
Availability of data for current PPP projects	4
Good and bad PPP practices in the Macedonia	4
Started, but not completed tenders	5
Different economic sectors of PPPs	6
PPPs for financing Public infrastructure projects	6
Analysis of the relationship between PPPs and public debt	7
Legal and policy framework of PPPs	7
Pros and cons of existing legislation	7
Institutional framework established in the country	8
Stakeholders in PPPs and the relationship between stakeholders	9
Risks related to PPP	9
PPP cases on local level	10
Corruption in PPP	10
Transparency as a prevention of corruption in PPP	10
Measures for prevention of corruption in PPP	11
Benefits of PPP on local level	11
Recommendations	12
References:	14



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Characteristics of PPPs in Macedonia

Macedonia's overall performance in PPP implementation was ranked high in 2012. The country adopted a set of concession, PPP, sectorial and public procurement laws for PPPs at both the national and local levels, which are in alignment with EU directives on public procurement. The PPP Unit located in the Department for Legal affairs, receives policy development support from the Ministry of Economy and assistance for advisory and promotion tasks from the Council on PPPs. However, familiarity with technical and practical aspects of PPPs remains low in government agencies and experience in risk management is limited.

Successful PPPs have been carried out in the power and transport sectors and the country has allowed private sector participation in the form of concessions, divestitures and greenfield projects in several sectors. The two international airports "Alexander the Great" in Skopje and "St. Paul the

Apostle" in Ohrid are examples of PPP projects within the country.

There have been few PPP projects awarded in Macedonia, and there have been some remarks to the ones that were conducted. Indeed the few PPP projects have been awarded and implemented in such legal procedure at both local and state level. PPP projects in the schools sectors have been implemented by the local municipalities (the most recent one involved kindergartens).

Two large projects are to be awarded on a PPP basis concerning the design, financing, construction, operation and maintenance of new hydropower plants Cebren (indicative installed capacity of 333 MW) and Galiste (indicative installed capacity of 193,5 MW) as well as operation of the existing hydropower plant Tikves (116 MW) located on the Crna River in the Republic of Macedonia.

Generally, we can conclude that PPP is scantily implemented in Macedonia.

Current and potential PPP projects in Macedonia

Current PPP projects for which PPP contracts are awarded and are considered successful projects are the following:

Concession on the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid granted by the Government. According to the concession agreement, concessionaire was obliged to modernize and operate the airports in Skopje and in Ohrid. Thus increasing the quality of services and the interest of airline companies and decreasing the transport price.

Concession for waste disposal: City of Skopje as a grantor awarded a concession contract covering the reconstruction of the landfill "Drisla" – Skopje including construction of new installations for the disposal of waste in accordance with EU standards and within the investment dynamics given in the

bid of the selected concessionaire. In accordance with the contract, the concessionaire has invested funds for new waste management installations. Landfill "Drisla" is the only landfill in Macedonia that meets the minimum standards for waste management and environmental protection. Taking into account that the PPP project has increased the capacity of the landfill and types of the waste management services, users of this landfill, except the City of Skopje, are also the neighboring towns and settlements. The remaining legal landfills in Macedonia, a total of 56, do not meet the waste management and environmental standards. Apart of these 56 landfills in Macedonia, there are about 1000 illegal dumpsites. Apparently PPP can be a good tool to solve the problem that municipalities and regions have in the field of waste disposal.



In order to see if these projects are successful, due diligence analysis should be made. But the general perception is that they are successful.

In the period of 2015 and 2016 by the central government were awarded 35 contracts for taking a construction of hydropower plants. These PPP projects shall enable increasing the production of electricity from renewable sources of energy. Currently, two PPP projects are intended to be awarded in the Municipality of Kavadarci. The first one PPP project is related to the award of public service concession for parking, while the other one is related to the award of contract

establishing a PPP for the construction of a small hydropower plant.

Potential PPP project is the design, finance, build, operate and transfer of a SPA center and management of sports facilities in the Municipality of Kocani.

Two large PPP projects related to design, finance, build, operate and transfer of new hydropower plants "Cebren" (indicative installed capacity of 333 MW) and "Galiste" (indicative installed capacity of 193,5 MW) as well as operation and maintenance of the existing hydropower plant "Tikves"(116 MW) is intend to be awarded.

Availability of data for current PPP project

The Register of awarded PPP contracts had been put in place at March 2013 and relevant data is available on the number of PPP projects that have been awarded. This Register is carry out by the Ministry of Economy.¹ The register of started, but not completed tenders is not established although the PPP law stipulates such obligation. In accordance to the data contained in the Register of PPP awarded contracts in Macedonia have been awarded 22 contracts establishing a PPP.

There is no official register for the current PPP

projects. But some information for the already published notices for awarding of contracts establishing a PPP can be found on the electronic procurement system that is managed by the Public Procurement Bureau (PPB).²

Data on completed procedures for awarding of contracts establishing a PPP for hydropower, as well as procedures that are in current progress can be found on the Ministry of Environment and Spatial Planning's web site.

Good and bad PPP practices in the Macedonia

Examples of successful PPP projects at central level are the following:

1. Central government granted a concession on the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid. Government as a grantor awarded a contract to operate the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid. Under the contract, the airport "Alexander the Great" is planned for construction of a new terminal building, extension of the runway, construction of a suitable parking

area and access road, installation of navigation systems and other equipment in accordance with international standards. The airport "St. Paul" is planned for reconstruction of the existing parking lot, renovation of the cargo center, construction of VIP facilities, reconstruction of existing administrative building and procurement of equipment. The investment is estimated at 200 million Euros. At the expense of investment, the concessionaire shall acquire the right to operate the airports and generate revenue. The period of the contract is 20 years.

¹ Public Private Partnership, Legal Framework, Ministry of economy of Republic of Macedonia, available at: <http://economy.gov.mk/page/javno-privatno-partnerstvo>

² Electronic system for public procurement, Public Procurement Bureau, available at: <http://e-nabavki.gov.mk>



Examples of successful PPP projects at local level are the following:

1. Waste disposal: City of Skopje as a grantor awarded a concession contract covering the reconstruction of the landfill "Drisla" – Skopje including construction of new installations for the disposal of waste in accordance with EU standards and within the investment dynamics given in the bid of the selected concessionaire. The concession is implemented as an "institutional PPP", given that existing public enterprise established by the City of Skopje is transformed into a Limited Liability Company whose founders are the City of Skopje (20% equity) and the foreign private partner as majority partner (80% equity). City of Skopje is obliged to dispose a certain amount of waste each year. In the case of less amount of waste City of Skopje is obliged to compensate the unrealized income from the waste disposal to the concessionaire. The investment is estimated at about 90 million Euros. The period of the contract is 35 years
2. Parking: Municipality of Bitola as grantor has awarded a public service concession for parking system. The concessionaire is obliged to acquire the spider vehicle, management software system parking zone, PD devices for zonal system of parking, foxes, vertical and horizontal signaling, "call center" and other equipment needed for the operation of parking lots, as

well as to do winter and summer marking. In return for the investment, recovering the costs of operation and achieving reasonable profit, the concessionaire is entitled to charge end users of the parking services. Concessionaire pays to the municipality a concession fee each year. The investment is estimated at about 2 million Euros. The period of the contract is 6 years. The concession agreement has achieved the following goals: arranging and organizing a new, modern and automated way of controlling and controlling of street parking as well as the parking of closed type-zone parking and parking in indoor parkings; procurement of equipment for the provision of parking services by the private partner (concessionaire); increasing the quality of parking services; improving the traffic flow and increasing the safety of the streets; and increasing the utilization of every parking plac.

PPP project at the central and/or local level are the following:

In the period of 2015 and 2016 by the central government were awarded 35 contracts for taking a construction of hydropower plants.

There is one example of unsuccessful PPP projects. It concerns the street lighting PPP project in the Municipality of Sveti Nikole. The PPP contract is terminated by the fault of the Municipality of Sveti Nikole (municipality did not pay its obligations to the private partner).

Started, but not completed tenders

There are two significant examples of started, but not completed tenders.

Passenger transport: Public private partnership for the design, construction, financing, operation and transfer of lightweight rail system for passenger transport in the City of Skopje, which is implementing as a public works concession. City of Skopje as a grantor published a call but tender

procedure was canceled because there were no interested bidders.

Amusement park: Public private partnership for financing, design, construction, operation and maintenance of an amusement park in Skopje. City of Skopje as a grantor published a call, but tender procedure was canceled because there were no interested bidders.



Different economic sectors of PPPs

The most of the PPP projects are based locally. Considering the competencies of local authorities defined by the Law on Local Self-Government (public utilities, parking, street lightening, waste collection, water supply, culture, sports and etc.) the most of PPP projects are implemented by local authorities in the area of public utilities, parking, street lightening, administrative buildings and green market.

However, it can be concluded that there are no PPP projects in the water supply and sewerage. There is also only one PPP project implemented in the field of waste disposal, although it is necessary to build more municipal and/or regional landfills for waste disposal, either through public procurement or through PPP projects.

At the central government level the most significant PPP projects are airport, technical and industrial development zones (TIRZ) as well as hydropower plants.

It should be noted that domestic and foreign investors are not interested in participating in the procedure for awarding a contract establishing a PPP for the construction and operation of road infrastructure. There are no interested private partners for building a road infrastructure because there is no economic viability. This is because the traffic frequencies cannot expect return on investment during the period of the contract. Therefore, the construction of the road infrastructure is carried out through classical public procurement.

PPPs for financing Public infrastructure projects

Many governments turn to PPPs because they recognize that more investment in infrastructure is needed, but the government cannot 'afford' to undertake additional infrastructure projects through traditional public procurement. Although this is one of the most common motivations for using PPPs, it is also among the most debated. The extent to which PPPs genuinely enable governments to increase spending on infrastructure depends on the nature of the project in question, and of a government's particular funding and financing constraints.

Several projects were realized since adopting of the PPP models in the positive legislation, in fields such as infrastructure. Illustrative public infrastructure PPPs are the following³:

- a) Airport project: Government as a grantor awarded a contract to design, finance, build, operate and transfer the airport "Alexander the Great" in Skopje and the airport "St. Apostle Paul" in Ohrid
- b) Hydroelectric plants: The PPP contracts for the construction of hydroelectric plants had been awarded by central and local government
- c) Waste disposal: City of Skopje as a grantor awarded a concession agreement covering the reconstruction of the landfill "Drisla" – Skopje including construction of new installations for the disposal of waste in accordance with EU standards and within the investment dynamics given in the bid of the selected concessionaire.

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More details about these projects are contained in the chapter "Good and bad PPP practices in the country"



Analysis of the relationship between PPPs and public debt

The high level of public debt of the Republic of Macedonia and financial constraints for further increasing the debt puts PPP as one of the possibilities which the government could use in order to provide and improve much needed

services for the citizens. However, this private sector vehicle for financing public services should be used carefully, bearing in mind that it generates implicit debt.

Legal and policy framework of PPPs

PPP in Macedonia is governed by set of legislation such as: Law on Concessions and Public Private Partnership (PPP law), sectoral laws governing the services of public interests and Law on Public Procurement 4(PP law) which applies to the awarding of public contracts (public procurement contracts and PPP contract). In addition to these legislation 6 (six) by-laws adopted by the Government for the implementation of the PPP law. The Law clearly defines its scope of application, regulates the selection procedure (publication, pre-selection and procedure for requesting proposals, publication of concession award, possibility of review procedures) and provides for a flexible framework for the project agreement (with reference to termination/compensation, tariff setting/service standards, etc) as well as the manner and procedure for granting of the agreements regarding other types of public private partnership, contest of the agreement of public private partnership, rights and obligations of the public and private partner and legal protection in procedure for granting of the agreements for public private partnership.

The PPP law is quite well drafted and constitutes a solid basis for the development of PPP in the country provided the financing and arbitration issue can be solved in accordance with international best practice for PPP. PPP law and PP law as well generally are aligned with the EU acquis, and are duly enforced.

Pros and cons of existing legislation

The use of the lowest price as a unique criterion for awarding a public-private partnership/concession contract can violate the principle of “value for money”. Using the economically most favorable bid as the criteria for awarding the public-private partnership/concession contract is allowed but is subject to the consent of the Public Procurement Council. There is no explicit provision in the PPP law prescribing the prior consent of the Public Procurement Council for using the economically most favorable bid as the criteria for awarding the PPP contract, but in practice such consent is required. This comes from the fact that PPP law prescribes that provisions from the PP law concerning the awarding procedures shall be adequately applied to the award procedures for contracts establishing a PPP, unless otherwise provided by the PPP law. Such understanding looks like unnecessarily bureaucratic approach. In addition to this, existing legislation on public procurement and public-private partnerships and concessions should be harmonized with the newest EU directives on PP and concession.



Since 2014 the PPP law obliged the public partners to use e-auctions (positive and negative auction)⁵ in awarding procedure i.e. in evaluation bid process. According to the PPP law “electronic auction “shall mean a positive or negative auction realized after an initial full evaluation of bids, in which the bidders have a possibility, exclusively by electronic means to revise the offered prices so that the ranking is done automatically by electronic means.

The PPP law, however, applies to “possessions of common interest”, an ambiguous phrase and much

rely on specific sectorial law for implementation purpose. Also, the law does not contain clear provisions concerning government support and financial security and overall the possibility of international arbitration remains questionable except with respect to ICSID arbitration.

A general policy framework for improving the legal environment and promoting PPP has not been identified in Macedonia. Policy documents like programs and strategies related to PPP have not been adopted, yet.

Institutional framework established in the country

The quality of public institutions needed to avoid any bribery and corruption in the PPP contracts is of utmost importance. PPP needs to serve the public interests. Namely, it’s a very delicate issue for many countries, not just the very poor countries but even for more advanced emerging countries. The institutional framework in Macedonia consists of few institutions.

The Ministry of Economy (MoE) is responsible for implementing the PPP law as well as of 6 (six) by-laws adopted by the Government. The MoE is authorized to keep and maintain the Register for the awarded contracts establishing a PPP, as well. The PPP unit established within the MoE is meant to serve as a basis for support and training for all stakeholders.

The PPP Council which should consist of 15 members, to include central and local governments, utilities, business and independent experts, has been established but it is still not operational. The PPP Council has an advisory role to the Government in the PPP area, promotion of the PPP, proposes projects for PPP, and gives initiative proposals to amend the legislation in this area. However, in practice the PPP Council does not carry out the responsibilities prescribed by the PPP law.

Mutual institutions

The State Appeals Commission (SAC) is the independent review body for public procurement procedures. Since 2012 it had become responsible body for review of public private partnership procedures as well. It is composed of a president and four members appointed by the Assembly for a term of five years, with the possibility of re-appointment.

The State Audit Office (SAO) monitors the legality of procurement/awarding procedures, detects deviations from the PP law and PPP law and procurement principles, as well as violations of the principles of legality, efficiency, effectiveness and economy in public funds management.

It can be concluded that in the country there are a solid institutional framework.

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Positive auction cannot be provided by the Electronic System for Public Procurement.



Stakeholders in PPPs and the relationship between stakeholders

According to the PPP law a public partners are the following:

- ⦿ the Republic of Macedonia,
 - ⦿ the municipality, the City of Skopje and the municipalities in the City of Skopje,
 - ⦿ the public enterprises, public institutions, companies established by the Republic of Macedonia, the municipality, the City of Skopje and the municipalities in the City of Skopje and companies over which the state or the bodies of the municipality, the City of Skopje and the municipalities in the City of Skopje have a direct or indirect influence through the ownership thereof.
- ⦿ Competences between the central and local governments in awarding of contract establishing a PPP are divided. This means that the central government has no authority to interfere the local government in the implementation of the PPP project that is its competence. The private partner is not involved in deciding on PPP but can give initiative for PPP project, especially at local level. However, the interests of the end users of public services in PPP project should always be the most important. Therefore, public sector retains the right to regulate public services, but also the responsibility for the quality of service even in the case when the service is given by the private partner.

Risks related to PPP

In order to create effective and sustainable partnership, the contracting parties have to take some risks. With careful planning and consultation, the risks can be reduced to a lower level that will not affect the PPP project and can be handled within the partnership arrangement.

The various types of risk are the following: political (the level of public support for private sector; support of the independent regulation of the PPP; change of government and regulations); those relating to the implementation of the PPP project in the sense that the program for implementing well defined or whether responsibilities and activities are clearly defined; those relating to the construction (whether actual construction costs may exceed estimates); those relating to operating

income –operating risks, such as increasing or decreasing the operating costs during the PPP period, the possibility of other entities to have the right to provide the services, subject to the PPP, etc; risk of income realization such as risk of achieving sufficient revenue due to non-payment, impossibility of paying the commercial price, less customers than expected, etc; financial such as modification of the exchange rate, increase or decrease of interest rates on loans borrowed by the private partner, etc; Vis major; and protection of the environment (whether PPPs affect the environment)

However, in practice the risk should be looking in poorly structured PPP project. Well prepared Feasibility study and contract should give answer and resolve the above mentioned types of risks.



PPP cases on local level

PPP projects at local level are more numerous than those which are realized at the central level. PPP projects at the local level have been realized in several areas, such as: waste disposal, parking, street lightening, waste collection, green market, sports etc.

Examples of municipalities that have realized successful PPP projects are the following:

City of Skopje – Waste disposal; Municipality of Aerodrom – Spots hall; Municipality of Gjorce

Petrov – Waste collection; Municipality of Bitola – Parking; Municipality of Kriva Palanka – Administrative offices buildings; Municipality of Ohrid – Green market; and Municipalities of Kavadarci, Cair and Makedonski Brod – Street lightening.

At local level public enterprises established by the municipalities have awarded a PPP contracts for hydropower plants, as well.

Corruption in PPP

Legal procedures for awarding of contract establishing a PPP prescribed by the PPP law minimizes the risk of corruption. However there is still a risk of corruption regarding the tender documentation determining the economic and technical references of the bidders, which could favor a particular bidder. Lack of competitions as well as favoring criteria for evaluating of bids are risks of corruption. In addition to this, long period of PPP contracts is a risk of corruption if there is no proper monitoring of their implementation.

State Commission for Prevention of Corruption (SCPC) has stated in its annual report 2013 that there is no data for corruption in PPP contracts.⁶ Also, the State Audit Office has no information for the appearance of corruption or conflict of interest in performing a procedure for PPP by the municipality or public enterprise locally.⁷ Meanwhile has started a procedure for criminal prosecution on suspicion of corruption concerning the award of PPP contracts in two municipalities (Sveti Nikole and Struga).

In accordance to the survey of the Center for Civil Communication transparency is considered a prerequisite for good governance and that two-way communication between the public sector and citizen's increases accountability and openness and reduce corruption risks.⁸ Suspicion of corruption is the fact that some of PPP contracts announced on the electronic system for public procurement which is operated by the Bureau of Public Procurement have not been transferred to the Register of awarded PPP contracts carry out by the MoE.⁹ An interesting point is the absence of complaints of all PPP contracts according to the Register of awarded PPP contracts.

Transparency as a prevention of corruption in PPP

The procedure for awarding a contract for establishing a PPP starting with decision for initiating a procedure for awarding a contract establishment a PPP, based on Feasibility

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State Commission for Prevention of Corruption, Annual Report of the State Commission for Prevention of Corruption in 2013 <http://www.dlksk.org.mk/Images/godisen%20izvestaj%20dsk%202013.pdf> insight on 16.11.2014

7

State Audit, Information obtained through the Law on Free Access to Information from Public Character, November 2014

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Center for Civil Communications (2013), Monitoring public procurement at the local level. report No.2, available at: <http://balkantenderwatch.eu/btw-local/uploaded/MKD%20local/18m.pdf>

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Risks of corruption in PPP, prepared by Ana Stojilkovska, available at: <http://www.akademik.mk/rizitsi-od-korupsija-kaj-javno-privatno-partnerstvo-vo-makedonija-ana-stojilovska>



Study. The decision for initiating a procedure for awarding a contract establishing a PPP shall be published in the “Official Gazette of the Republic of Macedonia” or in the “Official Gazette of the Municipality”.

Adequate implementation of the provisions of the PP law which are related to the procedure for awarding public contracts for public procurement provides transparency in the award of contracts for establishing a PPP.

Apart from the obligation for publishing a contract notice for awarding a contract establishing a PPP, the public partner is obliged to prepare a tender documentation with model contract, which contains all relevant data of the PPP project. Tender documents and model contracts are part of the contract notice for awarding a contract establishing a PPP.

Contract notices for awarding contracts establishing a PPP are published on the electronic system for public procurement which is operated by the Bureau of Public Procurement. Finally, there is a Register of awarded PPP contracts carried out by the MoE.

Transparency as a prevention of corruption in PPP

In order to prevent corruption the European Commission concluded the absence of an institution designated for efficient and timely supervising over the procedure for awarding the PPP contract and implementation of the contract.

A good tool for the prevention of corruption is a publication of the contract notice on the website of public partner as well other information related to awarding procedure.

It is considered a good practice involving the experts in the process of evaluating the bids. This allows a better evaluation and effort to prevent corruption, although these external experts do not have the right to vote.

Benefits of PPP on local level

PPP is way to promote SMEs and to foster cooperation between SMEs and local government in the provision of services of public interest which represent the exclusive right of the public sector as well as to improve the overall socio-economic development.

By involving the private sector in the provision of services of public interest local government provide:

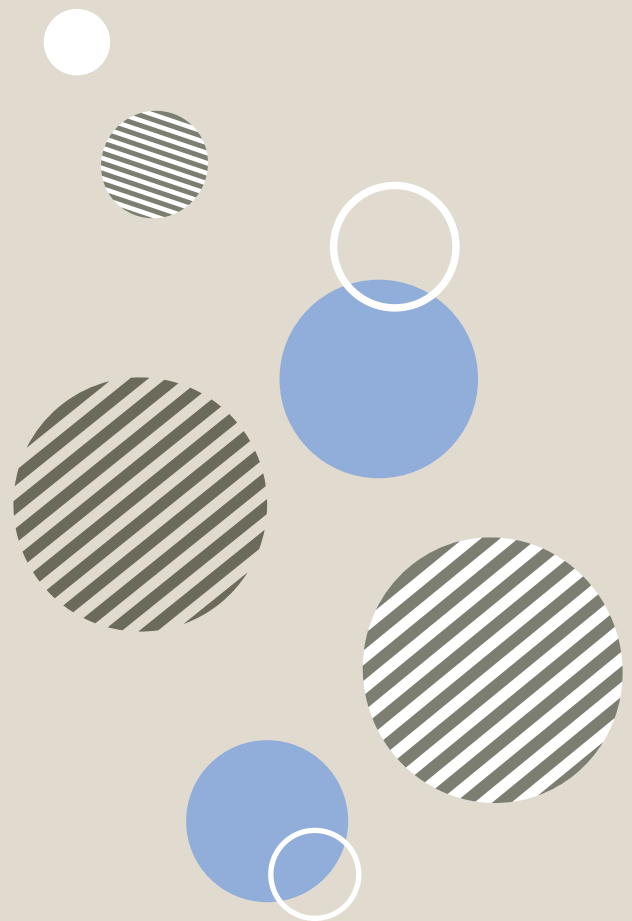
- ⦿ the accelerated construction of infrastructure;
- ⦿ better public services for money (achievement of principle –value for money);
- ⦿ faster project implementation and reduce the cost of cost of projects;
- ⦿ feasibility and faster completion of projects;
- ⦿ better management and access to specialized management; and
- ⦿ creating additional income.

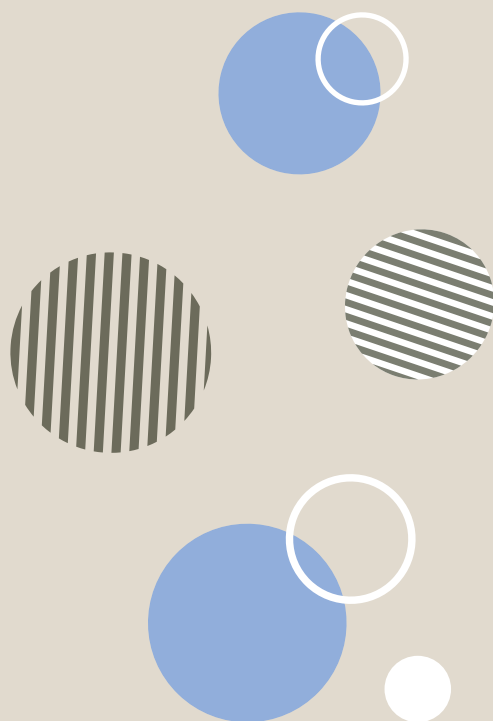
PPP can allow public authorities to get access to private capital, project implementation experience, more progressive management practices, cost minimization skills, and better service and customer focus. However, the main benefit of the PPP should be better public services to the end users.



Recommendations

- ⦿ There is risk of corruption taking into account the areas covered, the amount of the contracts as well as the long period of contract duration.
- ⦿ Transparency is a prerequisite for the prevention of corruption.
- ⦿ The process of PPP imposes unnecessary bureaucratic approach. The use of the lowest price as a unique criterion for awarding a public-private partnership/concession contract can violate the principle of “value for money”. Using the economically most favorable bid as the criteria for awarding the public-private partnership/concession contract is allowed but is subject to the consent of the Public Procurement Council.
- ⦿ PPPs should be constructed in a way to satisfy the public interest in order to avoid bribery and corruption in PPP contracts.
- ⦿ In order to use PPP more frequently it is necessary to raise the knowledge of PPP among the stakeholders.
- ⦿ Effective and efficient PPP as well as a sustainable PPP means well prepared Feasibility study, tender documentation and PPP contract as well. The two-way communication between the stakeholders in creation of PPP project can increase the use of PPPs. Most of the data (contract notices and tender documentation with contract model) should be made available to all interested private partners.





- ⦿ When we decide to use PPP as a financing tool for infrastructure projects we should consider the potential long-term gain in terms of efficiency and effectiveness, and also public interest. Nevertheless, when we consider the real effectiveness we must make a good Cost-Benefit Analysis through which we will test the PPP projects. The PPP projects that provide infrastructure solution must also be sensible and valuable in terms of socio-economic outcomes. This also can be done through Value for Money concept.
- ⦿ However, PPP is not a perfect financial tool. With all the negative experiences with public procurement, bribery, corruption, lack of transparency, PPP is an issue in many countries.
- ⦿ Recent trend is the involvement of the nonprofit-oriented organizations in the PPP process. They don't have a profit focus and can think about longer-term issues. The NGO sector is very much aware of the importance of local partners and the public interests so they can present them in the best way. The role of the local NGO is to educate people and to be the true partner between the private partner and the local population. Now the role of the nonprofit organizations in the PPP process will be to act NGO as catalyst, leader, and dominant partner.



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