



COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

PUBLIC PRIVATE PARTNERSHIP GUIDELINES

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LUSAKA

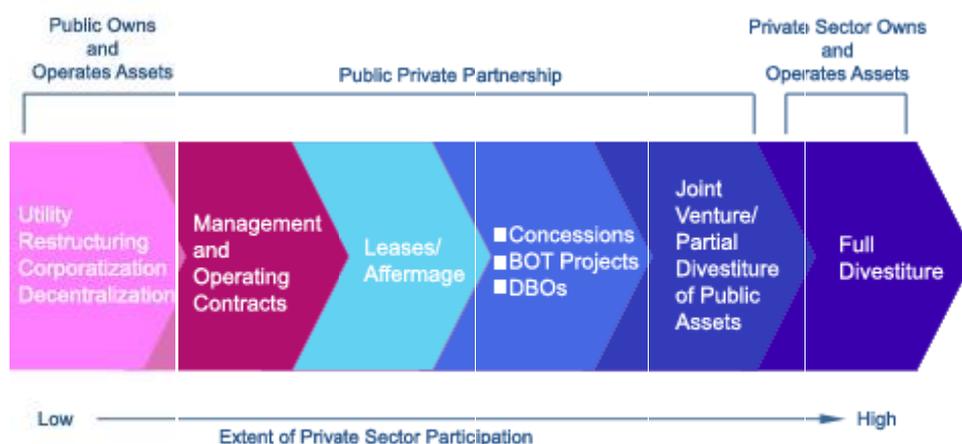
PUBLIC PRIVATE PARTNERSHIPS GUIDELINES

1 Objectives of the PPP Guidelines

The main objective of the COMESA Private Public Partnerships Framework is to provide the COMESA member States with harmonized guidelines that would facilitate PPP harmonization in the COMESA region in efforts to ensure that private sector investor are more-or-less faced with similar PPP structures in the COMESA region.

The specific objective of the PPP framework is to provide outline contents expected in a PPP framework , which countries can then adopt and/or customize, therefore, harmonizing the PPP approach in the spirit of regional integration.

Public-private partnerships can take a wide range of forms varying in the degree of involvement of the private entity in traditionally public infrastructure. A public-private partnership is generally memorialized in a contract or agreement to outline the responsibilities of each party and clearly allocate risk. The graph below depicts the spectrum of PPP agreements.



2 Justification of PPPs in COMESA Energy Projects

The COMESA installed capacity is projected to grow annually by 7% to 188 569 MW in 2030, consequently, the power sector in COMESA needs to install an estimated 7 500 MW of new generation capacity each year. Adequately financing the development of the energy sector in the COMESA region is expected to require the mobilization of funds in the order of US\$ 40 billion per year.

The public sector has two key challenges in meeting the required investment to achieve the 7 % annual growth in electricity demand: i) insufficient capital because there are other public services competing for limited State finances, and ii) shortage of skills to manage large capital programmes. PPPs are increasingly seen as a solution to these challenges in COMESA. PPS refer to governments collaborating with private companies (domestic or foreign) in various ways to build and/or operate infrastructure facilities. PPPs for energy projects have four key characteristics.

- i. they involve an efficacious sharing of risk between public and private sector;
- ii. they provides a public service;
- iii. they offer value for money; and,

- iv. it is a long-term partnership over many years.

PPPs are valued for their ability to attract capital investment in infrastructure projects. Egypt has attracted the highest private investment through PPPs in COMESA. Kenya, Uganda and Mauritius have also attracted significant capital through PPPs. PPP investments in COMESA Member States has been largely contractual rather than based on a fully-fledged legislative framework.

3 Institutional Framework

COMESA Member States have different legal and institutional frameworks for PPP. The Member States differ in the size of countries, their respective legal and institutional settings relating to the provision of public service, the operation and management of public facilities, and their sophistication with regard to PPPs. In this section, we discuss the key elements of a PPP institutional framework.

3.1 Policy

A national policy is the starting point when developing a PPP framework. The national PPP policy should generally cover the following.

The Objectives of the Policy – these could be:

- i. encourage private sector investment in public infrastructure and related services where value for money for government can be clearly demonstrated;
- ii. encourage innovation in the provision of infrastructure and related service delivery;
- iii. ensure rigorous governance over the selection of projects for PPPs and the competition for and awarding of contracts;
- iv. provide a framework and streamlined procedures for applying PPPs; and,
- v. Articulate the accountability of outcomes.

The Scope of the PPP Program – this should address the following:

- i. The sector that the PPP program covers – e.g., energy, water, roads, telecommunications, etc.
- ii. The types of PPPs that are permitted.

The PPP program implementation principles – this include:

- i. *Value for money* – which is a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for government;
- ii. *Public Interest* - ensuring that procuring the project as a PPP is not contrary to the public interest;
- iii. *Transparency* - There should be an emphasis on transparency and disclosure of the processes and outcomes, acknowledging the need to protect commercial confidentiality where appropriate;
- iv. *Competition* – PPPs must be competitive on quality, service and pricing;
- v. *Risk Allocation* - risk transfer is one of optimal risk allocation, risk will be allocated to whoever is best able to manage it, taking into account public interest considerations;
- vi. *Output Oriented* - Projects should focus on the specification of what services are to be delivered rather than how they should be delivered in order to maximise the opportunity for innovation;

- vii. *Accountability* – the agencies that are responsible for the delivery of outputs including where PPPs are used to deliver those outputs should not transfer this accountability to the private sector;
- viii. *Engaging the market* - bids should be invited only when it is clear that there is scope for a private proponent to deliver value for money.

3.2 Legal and Regulatory Framework

The main features of a suitable legal framework aimed at designing, implementing and monitoring PPP projects are¹:

- i. The legal framework should be based upon a clearly defined policy setting out the underlying principles and the criteria according to which PPP schemes should be adopted;
- ii. The different types of contractual arrangements should be defined;
- iii. The legal framework should establish an institutional setting that permits sound administrative coordination;
- iv. In particular, PPP authorities and their respective roles and responsibilities should be identified, and the following should be expressly set forth:
 - may enter into PPP arrangements;
 - advise and assist in setting up the PPP projects;
 - select qualified private sector operators;
 - main terms and conditions of PPP agreements; and,
 - monitor and audit the proper performance of the PPP contracts by the private sector.
- v. The establishment of specific PPP units, which may assist in the promotion of PPP transactions,
- vi. and provide information and guidelines on project contractual structure, procurement and project management;
- vii. The law should clearly state the provisions for providing the modalities of financial or economic support to PPP transactions and the relevant authorities which are responsible for doing so;
- viii. A sound transparent and competitive procurement procedure addressing the specificities of PPP contractual arrangements and other forms of delegation of public service;
- ix. Concise terms and conditions governing the different types of PPP transactions and the corresponding modes of remuneration of the private operator;
- x. Definition of clear rules for tariff setting and revision as well as regulated technical, environmental and safety standards and the establishment of an independent regulatory authority for the sector concerned with resources adapted to arbitrate between the different stakeholders;
- xi. Well-defined standard PPP agreements and other guidance materials should be available;
- xii. The establishment of a clear process for dispute resolution, including the ability to enforce the contract terms and conditions and lenders' remedy in case of bankruptcy or insolvency.

3.3 Responsibilities

¹ Blizchem - Fostering the Development of PPP Models in the COMESA Region.

The agencies involved in PPPs vary because each Member State has a different government structure. However, typically, the following agencies are involved:

Ministry of Finance – responsibility for the PPP Policy in most jurisdictions resides with the Treasury or Finance portfolios.

Sector Ministries – these are Ministries responsible for infrastructure, that is the Energy, Housing and Transport; services Ministries such as the Ministry of Health may also be included. Each PPP project in most jurisdictions is the responsibility of the relevant Sector Ministry, unless otherwise decided by government. The Sector Ministry is assisted by the PPP Unit on best practices for implementing the project from concept to implementation.

Cross Sector Ministries – the Ministries responsible for Commerce, Justice and Environment. These ministries are responsible for regulatory approval as well as drafting the laws and regulations.

Regulatory Agencies – In the energy sector, COMESA Member States either have an independent regulator or such regulation is done within the Ministry. The trend is to approve the project and regulate technical and pricing aspects for the project life cycle.

PPP Unit - Developing a core PPP Unit as central agency with specialized PPP skills is increasingly common. The Ministry of Finance plays a key role in financing issues and this role must be preserved; consequently, the PPP Unit is normally placed in the Finance Ministry. However, some Member States have established Privatization Agencies and such cases the PPP Unit could be located under these Agencies / line Ministry. The PPP Unit must be at the Center of the PPP approval process and have the necessary expertise to facilitate the PPP process.

3.4 Program Oversight and Governance

Strong internal processes and governance provide some checks but need to be reinforced by external oversight:

Legislature - roles can include defining framework and limits, reviewing progress, approval.

Audit bodies - these include regularity / compliance and policy audits.

Other stakeholders - transparency important for external stakeholders to be able play an oversight role. Good practises on disclosure include:

- Placing the contract with minimal redactions in the public domain - perceptions of commercial confidentiality have changed and now many relate to specific dollar values, specific thresholds in relation to risk sharing, intellectual property in terms of risk management or intellectual property in structuring of the bid as a whole;
- Placing project and/or contract summaries in the project domain;
- Putting studies rationalizing project as a PPP in public domain – project description, how the project was selected, why was PPP adopted & how was the project awarded; and,
- Periodically reporting on performance – includes range of services, KPI and targets, performance assessments and performance audits.

4 Lessons learned from PPPs

4.1 Critical Success Factors

The critical success factors are presented in the table below.

FACTOR	EXPLANATION
Permanent government involvement	The public sector should continue to set standards and monitor product safety, efficacy and quality and establish systems whereby citizens have adequate access to the products and services they need.
A sound regulatory framework	Regulation provides assurance to the private partner that the regulatory system includes protection from expropriation,

	arbitration of commercial disputes, respect for contract agreements, and legitimate recovery of costs and profit proportional to the risks undertaken.
Fulfilment of key formation requirements	These requirements include resource dependency, commitment, symmetry, common goal symmetry, intensive communication, alignment of cooperation learning capability, and converging working cultures. individual excellence, importance, interdependence, investment, information, integration, Institutionalization, and integrity as the key ingredients of effective Collaboration”
Four C’s in partner selection	Four C’s of compatibility, capability, commitment and control as critical for successful pre-selection of alliance partners. Of Particular important is the notion of compatibility, which entails identifying complementary strengths and weaknesses and commitment as reflected in the formalized commitment of necessary time energy and resources.
A common vision and trusty relationship between partners	Some of the traditional constraints in the way of a successful realization of a PPP are the hold-up problem caused by a change in the position of partners; the reductionist measures instilling competitive norms instead of cooperative ones; and cultural differences between private and public partners.
Ensure that the multiple interests of key participants are skillfully negotiated and packaged	Partnerships appear to be most justified where: traditional ways of working independently have a limited impact on a problem; the specific desired goals can be agreed on by potential collaborators; there is relevant complementary expertise in both sectors; the long-term interests of each sector are fulfilled; and the contributions of expertise of the different sectors are reasonably balanced

Source: Jamali, D. (2004) Success and failure mechanisms of public private partnerships in developing countries:

4.2 Lessons Learned

PPPs are complex, and they will continue to be fraught with problems. Governments should learn from the failures of privatization, tendering systems, and past relations between business and government. Some of the lessons learned are highlighted below.

Politics Matters

Most of the successful PPP projects [in Africa] are the result of very strong political commitment. In countries where the regulatory and legal frameworks to governing these projects are not fully developed, political support is key for the success of PPP projects. Examples of PPPs in Africa that have benefited from having a political champion include the N4 toll road, which was promoted by the then Mpumalanga premier, Mathews Phosa; water and electricity provision in Gabon; the concession for Maputo port and the container terminals at Dar es Salaam port.

The experience of Northern Electricity in Namibia is a classical example that politics matters. Contracted by the Namibian Ministry of Regional and Local Government and Housing in 1996 to operate a set of state-owned assets, Northern Electricity provided a reliable and profitable service in a rural area where the local authorities had been losing approximately US\$1 million annually. The newly created Electricity Control Board, however, did not renew Northern Electricity’s contract despite their success.

Pricing Policy

Many governments turn to PPPs or privatization when they cannot afford to continue to provide free or inexpensive services, or the capital expenditure required to extend services. Allowing companies to raise prices rapidly on formerly cheap public services can spark a political storm. But ignoring market forces and suppressing price hikes entirely can force businesses to back out of PPP deals.

In South Africa, the introduction of e-tolls of the newly expanded Johannesburg road network resulted in a public backlash that stalled the introducing of tolling for 3 years, and to date, the system is not fully operational. The pricing has since been capped at under R500, which may not meet the revenue projection of the PPP that contracted the roads.

Most utilities in Africa are seized with the problem of under recovery of revenue due to either low tariffs or poor culture of payment or both. In Uganda, Zambia and Zimbabwe, the governments raised tariffs in water and electricity before the actual privatization in order to reduce the companies financing gap and to attract strategic buyers. Gabon's 10 year restructuring of its water and electricity sectors prior to privatization meant that the French company Vivendi was actually able to lower prices when it started providing water and electricity. In Peru and Guatemala, governments have provided subsidies that are dependent on the private sector expanding services to thinly-populated rural areas.

Pricing policy may also be constrained by the fact that the regulator often does not have accurate information on the costs of suppliers, and translating fixed costs into per unit charges requires complex assumptions and accounting analysis. South Africa's PPP Unit learned the importance of pricing and affordability through the APOPS prison deals. Part of the problem was that the department had not calculated what it could afford in terms of its Medium-Term Budget Framework and the high specifications also affected the costs.

Corruption

Corruption has been an enormous problem affecting public procurement in Africa. PPPs due to their complexity offer far greater latitude for manipulations by foreign or local firms or government officials that are hard for the public and anti-corruption systems to spot. Privatization does present the possibility of having lucrative companies taken over by cronies or relatives of those in government. It also opens up the possibility of bribes related to the award of concessions or leases. For example, the 12 multinational companies that were found to have bribed the former head of the Lesotho Highlands Water Project, according to the Lesotho prosecuting authorities, were the prime movers in initiating the bribes.

Risk Transfer/Risk Management

Government would prefer a PPP where business would bear all the costs and risks associated with less than anticipated demand, regulation and currency fluctuation, for a negligible price and profit. On the other hand, for business the ideal PPP would involve very fat profits, no risk, government subsidies and monopoly control. In reality, crafting a PPP means bridging these extremes fairly to mitigate the risks that each side fears. Risk allocation is discussed below.

Providing a Range of Service Options

Developing tend to set the standards too high and simulate engineering approaches used in developed countries. In order to ensure that services are accessible to the whole population, a range of services must be provided such that it is tailored to suit the target population. Rural communities have different requirements – based on affordability – from urban communities. Also, within the urban areas, there are very low cost shelters to

expensive conventional housing. When providing water and electricity, the level of service must be geared to suit affordability.

In the electricity sector, small independent service providers in unserved areas can boost electricity coverage. In Cambodia for example, around 600 entrepreneurs run small systems powered by diesel generators and supply 5% of national electricity consumption. In Swaziland, the national utility receives a sizable annual grant to subsidise the cost of erecting their network in rural areas. This has led to phenomenal growth in the electricity connections in rural areas.

Regulating the Private Sector, Enforcing Contracts

Developing countries have tended to lack regulatory agencies or vest the regulatory function with the ministry or parastatal concerned with the project (such as in Gabon with water and electricity, Mozambique for the port concession or Tanzania for the container terminals). However, independent regulators (if properly set up and adequately funded) are preferable. Problems with regulatory fairness have arisen, for example, when governments licence private firms to compete against state owned utility firms but do not create a truly impartial regulatory body.

Local Economic Empowerment

PPPs offer opportunities for the transfer of economic power to the local population through greater participation in and ownership of businesses. The development of national private sectors and the participation of local investors, often referred to as the 'indigenisation process', is still under-developed in COMESA. In South Africa, the PPP framework makes provision for Black Economic Empowerment. The drawbacks of involving explicit empowerment criteria in PPPs include the extra time needed to make bids compliant and the extra costs involved managing the compliance of bidders by the government.

5 Finance

Infrastructure investment is generally characterized by large up-front capital intensity during the construction phase, with relatively smaller operational costs. Roads or hydroelectric dams, for example, are expensive to design and build, but once their construction is complete they have significantly lower operating and maintenance costs. Another characteristic of infrastructure investment is that the assets provide limited flexibility compared to other commercial activity. Infrastructure must physically fit into, and interconnect with, the existing array of utilities and networks (electrical lines, drainage pipes, water networks, etc.).

While high initial capital investments into single-purpose assets can be considered risky, the nature of such public infrastructure projects is that demand for their use will often, but not always, be stable after construction. Some infrastructure investments are natural monopolies, such as providing electricity distribution networks, water networks, airports and hospitals, to name a few. This degree of certainty in stable, long-term demand is a great source of comfort and confidence for investors and lenders.

In a PPP, the private firm or consortium of private firms undertaking the project typically establishes a specific project company, called a special purpose vehicle. The SPV independently signs the PPP contract with a public entity in order to build, own and operate a specific infrastructure project.

5.1 Financing and Leverage of Funds

The private sector can raise financing by taking out commercial loans (debt finance) or by drawing on equity from bond markets (equity finance). Thus, to be internally financially sustainable in the most rudimentary sense, infrastructure projects must be able to repay interest and principal to commercial lenders, and produce acceptable dividends to owners.

Project Finance

Over the years PPPs have developed a distinctive form of debt financing termed project finance that is ideally suited to providing the kind of funding needed for new, large, long-term, single-purpose assets described. The first notable element of project finance is that lenders' assessments of risk rely entirely on the future cash flow that a project is expected to generate throughout its entire operational lifetime. This cash flow is what enables the SPV to service its debt obligations and generate a return for investors. By contrast, corporate lenders to other types of commercial projects would look to projected profits over cash flow, and within a much shorter (1–3 year) time frame. Particularly important to lenders is the free cash flow that remains once operating costs have been covered—the debt service coverage ratio—indicating how much cash is available to repay each \$1 of debt service payments that are owed to lenders. As a general rule, the project may be considered viable for lenders when the debt service coverage ratio is greater than 1.2, and 1.5 is desirable². Estimates on future cash flow can and should be independently verified.

Credit Risk

Risk is a key element of PPP contracts, and indeed structures the financing of the PPP. A basic tenet of modern finance theory tells us that there is a positive correlation between risk and the cost of finance (expressed as return), such that the more risk a lender is expected to take, the higher the required rate of return on the investment. Funds that are lent to governments tend to have the lowest risk and therefore the lowest interest rates. At the other end of the spectrum, private sector equity is high risk and thus demands the highest rate of returns.

Lenders to PPP projects such as infrastructure development refer to credit risk, or the overall risk that the lenders will not be re-paid. In this regard, any delay in project completion, or reduced demand, currency depreciation or other changes could delay repayment and thus be considered a credit risk. Generally speaking, risks are divided into “commercial” (e.g., operating costs) and “political” (e.g., legislative change) risks, which are best handled by the private and public sectors respectively.

Gearing Ratio

In funding PPPs, the private sector uses a mix of funding sources in proportions that are not very common to business outside this realm of activity. Usually PPP funding from the private sector exhibits a high level of gearing—meaning a high proportion of debt (75–80 per cent) to relatively small equity finance (20–25 per cent)³. As debt is lower risk and requires lower returns on investment, this suits the nature of infrastructure projects, as discussed above, that require long-term investments in projects that are generally stable and low risk. Thus, in order to be financially sustainable, PPP projects generally seek to use as much low-cost debt as possible in their financial structure. This can also be known as highly leveraged, as a small amount of equity is used to leverage a high amount of debt.

² Asian Development Bank, 2008

³ Financing Sustainable Public-Private Partnerships. *International Institute for Sustainable Development*. February 2013.

Collateral

Since projects undertaken as PPPs are often single purpose and generally have no alternative use other than the one they are designed to provide, these projects provide limited collateral for investors. In contrast with other commercial lending agreements that pledge property or assets in case of default, project lenders will instead seek to secure “step-in” rights to use the assets in order to continue to operate the utility until its debt obligations have been repaid. This sort of potential constraint on management is not present, or is limited, in other forms of corporate lending.

5.2 Financial Sustainability of PPPs

There are many project finance options available to those interested in pursuing the PPP route, some aspects of which have been outlined above. Once a request for tender has been issued by a public authority, the market and its array of private firms can and will respond with project finance solutions to meet nearly any project demand. In large part, the onus is on governments to attain broad financial sustainability of infrastructure projects through clearly identifying and developing good projects that they can afford in the long run. It is this initial assessment that is crucial—the financing will come. Furthermore, the regulatory environment, policy frameworks and investment protections that create confidence in the stability of the schemes will ultimately come from the public sector.

Though the responsibility for arranging the financing of an infrastructure PPP rests largely with the private sector (the SPV), it is important for the public sector client and its advisers to understand the financing arrangements and their consequences. The public authority must be able to rigorously assess whether the proposed PPP contract is bankable in light of the market conditions and practices prevalent at the time, particularly if they are to play a direct role in some part of the financing package. Early analyses, such as feasibility studies and financial modelling, must be conducted thoroughly, and the long-term finance implications of a PPP adequately addressed. Otherwise, PPPs risk becoming default procurement option merely due to attractive budgetary optics; just because capital investment is sourced off the public balance sheet does not mean government will not eventually pay for it.

To be financially sustainable in the wider economy, a PPP needs to offer value-for-money to the public purse. In this respect, it is not only vital to ensure competitive processes and due diligence are observed, but also that the necessary capacity is available to manage complicated financial structures and monitoring requirements. It is imperative to have access to the appropriate commercial and professional skills in order to realize the benefits of PPP contracts. This may necessitate hiring and training staff, retaining external advisers and/or availing of the expertise available from dedicated PPP units at the national level. Dedicated PPP units can provide a point of coordination, quality control, accountability and information related to PPPs either within a single sector or across a range of sectors. For public stakeholders and the public at large, the units are able to disseminate information and provide specialized management of a specialized process. The independence of these units is key in establishing their credibility and added value.

6 Sharing Risk / Risk Allocation

Most PPPs, due to the size of the deal, carry a host of things that can go wrong, or risks. Both the public and private sector have in the ideal world, opposing/different interests in risk allocation as indicated in 5.32 above. For the PPP deal to succeed, risk allocation must be carefully done to bridge these extremes fairly to mitigate the risks that each side fears. Risk mitigation strategies are effectively financial strategies. The main risks are identified below, with suggestions how these risks could be allocated.

RISK	EXPLANATION	ALLOCATION
Completion risk	The possibility that a project's construction or installation will be delayed, with additional cost or other implications.	Mainly by the construction contractor - it will be liable for liquidated damages for late completion.
Cost overrun risk	The possibility that during the design and construction phase, the actual project costs will exceed projected costs.	Shared by Project owners and the Project company. The Project Company must lock certain costs such as major plant equipment and commodity costs as early as possible.
Design risk (Greenfield Projects)	The possibility that the private party's design may not achieve the required specifications.	Project company & main plant / equipment supplies. Performance tests must be before full hand over.
Construction risk (Greenfield Projects)	Probability of loss associated with the physical (construction) phase of a project.	The EPCM or EPC company.
Exchange rate/forex risk	The possibility that exchange rate fluctuations will impact on the costs of imported inputs or the project's debt or equity. Including: <ul style="list-style-type: none"> - Forex availability. - Currency interchangeability. 	The lenders will want to see appropriately robust hedging arrangements or some other mechanism to manage currency exchange risk such as price increase that is link to foreign exchange variations.
Force majeure and change in law.	The occurrence of certain unexpected events that are beyond the control of the parties, whether natural or man-made, that affects the project <ul style="list-style-type: none"> - 	The lenders will want to review the force majeure and change in law provisions in the project documents and ensure that they are back to back (as far as possible) with the concession agreement.
Interest rate	Fluctuations in the rate at which the project borrows money.	Project finance debt tends to be fixed rate. This helps provide a foreseeable, or at least somewhat stable, repayment profile over time to reduce fluctuations in the cost of infrastructure services. If lenders are unable to provide fixed rate debt and no project participant is willing to bear the risk, hedging or some other arrangements may need to be implemented to manage the risk that interest rates increase to a point that debt service becomes unaffordable to the project.
Market/demand risk	The demand for the services generated may be less than projected.	This market risk is usually assigned to the off taker in PPAs. The rationale of the off taker taking this risk is that the off taker is a government utility and it is the government that is charged with the responsibility of ensuring it meets its projected development levels and a failure on the government's

RISK	EXPLANATION	ALLOCATION
		<p>side implies paying for the predetermined volumes even with non-existent demand for it. The tool in the PPA that is used to allocate this risk is the take or pay clause. Take or pay clauses simply contract to guarantee a market for the product through pricing arrangements which cover operating expenses, debt service and retirement.</p>
Price Risk	<p>The risk to the generator is that the purchase price of electricity would go too low, such that the generators cash flows are not enough to meet the operational and management as well as equity and debt payments.</p>	<p>In regulated economies, price management is done through price regulation by government which is a way of making the consumers bear the economic costs of price risk management. In deregulation economies, the free market forces of demand and supply come into play causing volatility hence the need to manage price volatility through hedging in options and future contracts. With the exception of Uganda, COMESA markets are regulated and the price and escalation factor is stipulated in the contract and the risk is borne by the off-taker, which passes on to the consumer.</p>
Volume risk	<p>It is the risk that the generator is not able to produce the contracted volumes or that the off taker is not able to take up all the contracted volumes for one reason or another.</p>	<p>The operational aspect of volume risk is on the plant operator and is usually allocated thus because the operator has to ensure that the plant is always available so as to generate a continuous stream of revenue. In the PPA, It is reflected in capacity recovery charge and a fixed operation and maintenance charge, which are all indexed to the inflation and exchange rates.</p>
Operating risk	<p>Factors other than Force Majeure such as projected operating expenditure, skills requirements, labour disputes, employee fraud.</p>	<p>Operating costs can be locked in, to some extent, through hedging and futures contract and through input agreements but there are likely to be some costs that are not hedged and the lenders will want to be sure that these are limited.</p>
Political risk	<p>Unforeseeable conduct by a government institution that materially and adversely affects the expected return on equity, debt service or costs of the project. This includes</p>	<p>Political risk should be managed in the project agreements with the government taking some of the risk in terms of compensation to be paid in the case of unilateral termination or expropriation.</p>

RISK	EXPLANATION	ALLOCATION
	expropriation and nationalization.	
Regulatory risk	Consents required from government authorities or an independent regulatory agency are not obtained or result in additional costs	Government – particular in the case where prices are not adjusted as per agreement.
Resource risk (including climate change)	The resource (water, steam, gas, etc.) for the project are not available.	Resource risk must be shared or borne by the host utility or government, depending on the Agreement. It could also be borne by the project developers / owners

Source: South African National Treasury's PPP Manual, pp. 63-66 – Risk & Explanation Only.

7 Public Private Partnership Models

A wide spectrum of PPP models has emerged. These models vary mainly by:

- i. Ownership of capital assets;
- ii. Responsibility for investment;
- iii. Assumption of risks; and,
- iv. Duration of contract.

The PPP models can be classified into five broad categories in order of generally (but not always) increased involvement and assumption of risks by the private sector. The five broad categories are:

- i. Supply and management contracts
- ii. Turnkey contracts
- iii. Affermage / Lease
- iv. Concessions
- v. Private Finance Initiative and Private ownership.

Each of these five categories has many variants. A categorization of the PPP/PSP models together with their main characteristics is shown below. While the spectrum of models shown in the table are possible as individual options, combinations are also possible such as, a lease or (partial) privatization contract for existing facilities which incorporates provisions for expansion through Build-Operate-Transfer. In fact, many PPP projects of recent times are of combination type.

Broad category	Main variants	Ownership of capital assets	Responsibility of investment	Assumption of risk	Duration of contract (yrs)
Supply and management contract	Outsourcing	Public	Public	Public	1 - 3
	Maintenance management	Public	Public / Private	Public / Private	3 – 5
	Operational management	Public	Public	Public	3 - 5
Turnkey		Public	Public	Public/Private	1 – 3

Broad category	Main variants	Ownership of capital assets	Responsibility of investment	Assumption of risk	Duration of contract (yrs)
Affermage/ Lease Concessions Private ownership of assets and PFI type	Affermage	Public	Public	Public/Private	5 – 20
	Lease ⁴	Public/Private	Public/Private	Public/Private	5 – 20
	Franchise	Public/Private	Public/Private	Public/Private	3 – 10
	BOT ⁵	Public/Private	Public/Private	Public/Private	15 - 20
	BOO/DBFO	Private	Private	Private	Indefinite
	PFI ⁶	Private/Public	Private	Private/Public	10 - 20
	Divestiture	Private	Private	Private	Indefinite

7.1 Supply and management contracts

A management contract is a contractual arrangement for the management of a part or whole of a public enterprise by the private sector. Management contracts allow private sector skills to be brought into service design and delivery, operational control, labour management and equipment procurement. However, the public sector retains the ownership of facility and equipment. The private sector is assigned specified responsibilities concerning a service and is generally not asked to assume commercial risk. The private contractor is paid a fee to manage and operate services. Normally, the payment of such fees is performance-based. Usually, the contract period is short, typically three to five years. But the period may be longer for large and complex operational facilities such as a port or an airport.

ADVANTAGES	DISADVANTAGES
Can be implemented in a short time	Efficiency gains may be limited and little incentive for the private sector to invest.
Least complex of all PPP models	Almost all risks are borne by the public sector
politically and socially more acceptable for certain projects	Applicable mainly to existing infrastructure assets

7.2 Turnkey

Turnkey is a traditional public sector procurement model for infrastructure facilities. Generally, a private contractor is selected through a bidding process. The private contractor designs and builds a facility for a fixed fee, rate or total cost, which is one of the key criteria in selecting the winning bid. The contractor assumes risks involved in the design and construction phases. The scale of investment by the private sector is generally low and for a short-term. Typically, in this type of arrangement, there is no strong incentive for early completion of the project. This type of private sector participation is also known as Design-Build.

ADVANTAGES	DISADVANTAGES
Well understood traditional model	The private sector has no strong incentive for early completion
Contract agreement is not complex	All risks except those in the construction and

⁴ Build-Lease-Transfer (BLT) is a variant.

⁵ Build-Operate-Transfer (BOT) has many other variants such as Build-Transfer-Operate (BTO), Build-Own-Operate-Transfer (BOOT) and Build-Rehabilitate-Operate-Transfer (BROT).

⁶ Private Finance Initiative.

ADVANTAGES	DISADVANTAGES
	installation phases are borne by the public sector
Generally, contract enforcement is not a major issue	Low private investment for a limited period

7.3 Affermage/Lease

In this category of arrangement, the operator (the leaseholder) is responsible for operating and maintaining the infrastructure facility (that already exists) and services, but generally the operator is not required to make any large investment. However, often this model is applied in combination with other models such as build-rehabilitate-operate-transfer. In such a case, the contract period is generally much longer and the private sector is required to make significant investment.

The arrangements in an affermage and a lease are very similar. The difference between them is technical. Under a lease, the operator retains revenue collected from customers/users of the facility and makes a specified lease fee payment to the contracting authority. Under an affermage, the operator and the contracting authority share revenue from customers/users.

ADVANTAGES	DISADVANTAGES
Can be implemented in a short time	Has little incentive for the private sector to invest, particularly if the lease period is short
Significant private investment possible under longer term agreements	Almost all risks are borne by the public sector
legally and politically more acceptable for strategic projects like ports and airports	Generally used for existing infrastructure assets
	Considerable regulatory oversight may be required

7.4 Concessions

In this form of PPP, the government defines and grants specific rights to an entity (usually a private company) to build and operate a facility for a fixed period of time. The government may retain the ultimate ownership of the facility and/or right to supply the services. In concessions, payments can take place both ways: concessionaire pays to government for the concession rights and the government may pay the concessionaire, which it provides under the agreement to meet certain specific conditions. Usually, such payments by the government may be necessary to make projects commercially viable and/or reduce the level of commercial risk taken by the private sector, particularly in a developing or untested PPP market. Typical concession periods range between 5 to 50 years.

In a Build-Operate-Transfer or BOT type of concession (and its other variants namely, Build-Transfer-Operate (BTO), Build-Rehabilitate-Operate-Transfer (BROT), Build-Lease-Transfer (BLT) type of arrangement), the concessionaire makes investments and operates the facility for a fixed period of time after which the ownership reverts back to the public sector. In a BOT modal, operational and investment risks can be substantially transferred to the concessionaire.

In a BOT model, the government has, however, explicit and implicit contingent liabilities that may arise due to loan guarantees and sub-ordinate loans provided, and default of a sub-sovereign government and public or private entity on non-guaranteed loans.

By retaining ultimate ownership, the government controls the policy and can allocate risks to parties that are best suited to assume or remove them. BOT projects may also require direct government support to make them commercially viable.

The concessionaire's revenue in a BOT project comes from managing and marketing of the user facilities and renting of commercial space where possible. Concessions for BOT projects can be structured on either maximum revenue share for a fixed concession period or minimum concession period for a fixed revenue share, a combination of both, or only minimum concession period.

ADVANTAGES	DISADVANTAGES
Private sector bears a significant share of the risks	Highly complex to implement and administer
High level of private investment	Negotiation between parties and finally making a project deal may require long time
Potential for efficiency gains in all phases of project development and implementation and technological innovation is high	May require close regulatory oversight
	Contingent liabilities on government in the medium and long term

7.5 Private Finance Initiative

In the private finance initiative model, the private sector remains responsible for the design, construction and operation of an infrastructure facility. In some cases, the public sector may relinquish the right of ownership of assets to the private sector.

In a PFI project, as the same entity builds and operates the services, and is paid for the successful supply of services at a pre-defined standard, the SPV / private company has no incentive to reduce the quality or quantity of services. This form of contractual agreement reduces the risks of cost overruns during the design and construction phases or of choosing an inefficient technology, since the operator's future earnings depend on controlling the costs. The public sector's main advantages lie in the relief from bearing the costs of design and construction, the transfer of certain risks to the private sector and the promise of better project design, construction and operation.

ADVANTAGES	DISADVANTAGES
Private sector may bear a significant share of the risks	Complex to implement and manage the contractual regimes
High level of private investment	Government has direct financial liability
Potential for efficiency gains and innovation is high	Negotiation between parties may require long time
Attractive to private investors in an untested or developing PPP market	Regulatory efficiency is very important
Most suitable for social sector infrastructure projects (schools, dormitories, hospitals, etc.)	Contingent liabilities on the government in the medium and long term

7.6 Hybrid Arrangements

Contract arrangements that incorporate different characteristics of a range of contract types can also be developed. Called “hybrid arrangements”, these bring together the attributes most suitable to a particular project’s requirements and the operating conditions. Hybrid arrangements provide a tailored solution in terms of scope, risk sharing, and/or scope that is most directly suitable to the project at hand.

8 PPP Project Development

The key tasks at the initial project development stage would involve:

- Project identification and preliminary internal stakeholder consultation;
- Scoping the project;
- Identifying the major issues in project planning;
- Assessing institutional due diligence;
- Establishment of a project management structure;
- Appointing a transaction advisor; and,
- Establishing a mechanism for public participation and information disclosure.

The key tasks in the feasibility study and due diligence phase include:

- Project planning and feasibility
- Risk analysis and management
- Financing
- Value for money
- Pricing policy
- Government support
- Responsibilities of, and liabilities on government
- Regulatory arrangements
- Service and output specifications
- Setting the main terms of contract
- Getting the necessary government approvals

8.1 Project Planning and Feasibility

All projects require a detailed planning and feasibility study based on the most recent data and information usually collected from a variety of primary and secondary sources and previous studies. The physical components of the project and their capacities are determined on the basis of the outcomes of the feasibility study. These elements, in turn, determine the service requirements that the project has to deliver.

Any PPP project should be subject to social cost-benefit analysis based on a proper feasibility study to examine its public as well as private benefits. Results of the analysis provide an essential input for the political decision making process.

A financial analysis with due consideration of all costs will also have to be undertaken to assess the commercial viability of a project. The economic and financial analyses¹² are undertaken to establish the need and size of the project, and also to provide the basis for any government support (including participation in financing), if necessary.

8.2 Risk Analysis and Management

Risks are inherent in all PPP projects as in any other infrastructure projects. They arise due to uncertain future outcomes which may have direct effect on the provision of services by the project, and/or the commercial viability of the project. The risk allocation to parties in contract and the management of risks are, therefore, at the heart of a PPP design. This is also an important element in establishing the business case for a PPP project.

The risk analysis, allocation and management involve the following activities:

- Identification of all possible risks and assessing their likelihood;
- examining the likely effects of the risks in quantitative and qualitative terms;
- consideration of suitable mitigation measures that may be available; and
- allocation of risks to parties.

8.3 Financing

Infrastructure PPP's typically require financing; that is, external funds are required for the initial investment costs that are recovered over time from future revenue streams. The funds may be sourced from the public sector or the private sector. Regardless of the source of finance, such funds have a cost and, therefore, impact the project's economics and required tariffs (and thus affordability). Fundamental to the question of project financing is the correlation between perceived credit risk (resulting from various technical, commercial, and other risks associated with the project) and the cost of finance. A government's cost of funding is typically lower than that of a private operator even of the same originating country. Providing private financing may therefore increase the financial costs of PPP. However, the efficiency gains from PPP are expected to outweigh this additional cost and result in net savings and efficiency gains, with an ultimate benefit to consumers. In addition, public sector financing is usually scarce, creating one of the initial drivers for PPP.

The operator will typically establish a project company for implementing the contract, often called special purpose vehicle. The company owners may be a consortium of companies or a single large company. The company owners will not usually finance all project requirements; instead, they will provide a proportion as equity and borrow the remainder of the required financing from financial institutions or place debt securities in the capital market. The creditworthiness ("bankability") of a project depends on a number of factors, some of which are within the control of the government when designing PPP. They include commercially attractive project design and tariffs (shorter payback and, hence, financing periods) as well as strong off-take arrangements to reduce market/revenue risk (predictability of cash flows), together with the level of certainty and transparency of regulatory settings, which affect future cash flows.

Infrastructure project financing in general, whether from banks or bond markets, faces a number of challenges including:

- long-term debt maturities to match project cash flows,
- limits to the availability of local currency debt financing to match local currency revenue streams,
- limited available equity and resulting high degree of leverage, and
- no security/guarantee except for project assets available ("nonrecourse financing").

As a result, project finance is a specialized activity and, depending on prevailing market conditions, may or may not be available at any time. To make financing possible or to secure better borrowing rates, the operator may seek credit enhancement through insurance or

guarantees. These might include (partial) credit guarantees (e.g., from the government itself or from a development finance institution) or political risk guarantees (from insurers or development finance institution) against the government or regulator not adhering to agreements (e.g., take-or-pay off-take agreement, concession agreement, etc.).

To determine the amount of debt finance the project can sustain, lenders perform their own calculations related to project performance and cash flow. These include debt service cover ratios, loan life coverage ratios, and project life coverage ratios. Project financing requires a very thorough appraisal process because of the sole reliance on project cash flows. Lenders will undertake due diligence exercises to get comfort that the project assumptions and risks are reasonable.

It is critical to understand that the bidders may not fully know the prospective financing arrangements until the last stage of the contracting process. The bidders will have potential financiers lined up, but the final arrangements and risk allocations will only be put in place.

8.3.1 Sources of project finance

The project finance may come from a variety of sources. The main sources include equity, debt and government grants. Financing from these alternative sources have important implications for the project's overall cost, cash flow, ultimate liability on concerned parties, and claims to project incomes and assets.

Equity refers to the capital invested by the sponsor(s) of the project and others. The main providers of equity are project sponsors, government, third party private investors, and internally generated cash. Some governments have established formal mechanisms for the award of grants to PPP projects.

Bond financing can play a major role in bridging the financing gap for infrastructure investments. In a nutshell, project bonds are debt instruments issued by PPP project companies / government and typically bought by institutional investors (e.g. pension funds, insurance companies) and ordinary citizens. They are sometimes tradable on secondary markets. While bond financing plays a significant role in some PPP markets outside of COMESA (e.g. Canada), "true" project bonds are still in their infancy in COMESA and raise a number of issues, in particular for procuring authorities during the project procurement phase. The public sector has a key role to play in facilitating the use of project bonds in PPPs.

8.3.2 Financial structure

Careful analysis of alternative financial structures is required to establish the right financing structure for a project. As the expected return on equity is higher than return on debt, the relative shares of debt and equity in the total financing package have important implications for cash flow of the project. Their relative share is also important for taxation purpose (generally, the higher the debt the lower is the tax on return).

Higher proportion of debt, however, requires larger cash flow for debt servicing. This could be problematic, particularly in the early years of project operation when the revenue earnings are generally low. This is a typical situation faced by transport and water sector projects. In such a possibility, the risk of default would be considered high.

8.3.3 Cost of capital

The cost of capital for a project is a weighted sum of the cost of debt and the cost of equity. Risk is an important element which is factored in to determine the cost of debt and equity. Lenders determine risk premiums to take into account the assessed levels of risks from various sources. These are added to risk-free rate of borrowing to determine the required return on debt finance. The risk-free rate of borrowing is practically the rate at which government can borrow money from the market.

Similarly, the cost of equity is defined as the risk-weighted projected return required by the investors. However, unlike debt, equity does not pay a set return to its investors. The cost of equity is therefore established by comparing the investment to other investments with similar risk profiles. Once these rates of return on debt and equity are established, the weighed cost of capital can be determined as follows:

$$WACC = k_d x (1 - t) x g + k_e (1 - g)$$

Where:

- WACC = weighted average cost of capital;
- k_d = cost of debt;
- k_e = cost of equity;
- g = gearing, which is debt over total capital ;
- t = tax rate.

8.3.4 Cash flow analysis

It is important to analyse a project's cash flow as available cash is used to service any debt obligations. The analysis is done through the development of a cash flow model. Once the financial model for a project is developed, the implications of alternative financial structures and effects of changes in other parameter values on cash flow can be analysed. The following are the critical components of a cash flow model:

- i. Capital expenditure
- ii. Financial structure and cost for finance from each source
- iii. Terminal cash flow
- iv. Discount rate
- v. Assumptions on parameter values

8.3.5 Financial indicators

A number of financial indicators are used to assess the financial viability of a project as well as alternative financial structure for its implementation. Some of the commonly used indicators are:

- i. Return on Equity (ROE)
- ii. Annual Debt Service Coverage Ratio (ADSCR)
- iii. Project Life Coverage Ratio (PLCR)
- iv. Payback period
- v. Net Present Value (NPV)
- vi. Financial Internal Rate of Return (FIRR)

8.3.6 Tariff Design

Tariffs need to balance a number of objectives:

- i. stipulated service standard and associated costs,
- ii. customers' willingness and ability to pay,

- iii. resulting cost recovery,
- iv. required economics (return on investment) for private operator, and
- v. need for/availability of subsidies.

The right combination of factors must be determined through an iterative optimization process. This process is made more complex if differentiated/complex tariff structures (e.g., unit price as a function of consumption to help low-income users) or tariff adjustment mechanisms (e.g., for input cost changes, exchange rate changes) are used. It is critical to employ qualified and experienced specialists for this modelling and optimization task.

The following objectives provide an appropriate starting point for designing tariffs:

- cost recovery/return on investment,
- incentives for efficiency,
- fairness and equity, and
- simplicity and comprehensibility.

8.4 Value for Money

Theoretically, a PPP project is favoured only when its generated benefits/revenues exceed the total costs including the additional costs compared with a public sector project. To ensure this, government regulations guiding PPP schemes may establish some value for money or public sector comparator criterion. A project is implemented through the PPP modality only when it promises to give a superior value for money as a PPP project compared with its value as a public sector project.

8.5 Pricing Policy and Compensation to The Project Company

A major responsibility of the Government or the Regulator is not to allow any excessive profit to the private sector in a PPP deal. Ideally, the price should be set at a level that allows a fair return on the investment to recover the cost of financing and to meet the contractual obligations.

An appropriate level of base tariff can be established by considering the cost of capital. Ideally, the Internal Rate of Return (IRR) of a project should be equal to its cost of capital. If IRR is greater than the cost of capital, the concessionaire/investor makes excess profit, and if IRR is less than the cost of capital, the concessionaire/investor loses money.

The established base tariff rates can be adjusted periodically (yearly, or every two years, etc) according to an agreed formula based on a weighted adjustment index that may take into consideration items such as:

- i. the total amount of outstanding debt to finance the project;
- ii. the rates of inflation in the host country and the overseas countries that provided equity and debt;
- iii. the increase in cost of operation due to cost escalation by major components; and,
- iv. the local/(agreed) major international currencies exchange rate.

The issue of subsidy may also be taken into consideration when the pricing structure of infrastructure services is established. A PPP does not mean that there would not be any element of subsidy in pricing. Even when government subsidy is not available, pricing may be based on cross-subsidization between two groups of users of a facility or between two components of the same project, if possible.

There are five main ways to compensate a private investor of a PPP project:

- i. Direct charging of users;
- ii. Indirect charging of (third party) beneficiaries;
- iii. Cross-subsidization between project components;
- iv. Payment by the government (periodic fixed amount or according to use of the facility or service); and,
- v. Grants and subsidies.

8.6 Government Support

Infrastructure projects have long gestation periods, and often are not financially viable on their own. A feasibility study may reveal that a project is not commercially viable or attractive to private investors but is economically and socially desirable from long-term considerations. In such a situation, various options can be considered for improving the project's commercial viability and attractiveness. These options may include government intervention of various types and provision of incentives or subsidies. Government support is also well justified when a project can generate substantial external benefits, which cannot be captured or priced by the project operator. Social welfare is improved by undertaking such projects with government support.

Without government support, implementation of commercially unviable projects is not possible. Government support may also be crucial in the early years of PPP development in a country or in an untested PPP market. Without sufficient government support, the private sector may not take much interest in such situations. Subject to provisions in the government's PPP policy framework or in legal and regulatory framework, the commonly available government support includes:

- Land acquisition
- Capital grant and other forms of financial support
- Revenue guarantee
- Foreign exchange risk
- Tax incentives
- Protection against reduction of tariffs or shortening of concession period
- Loan guarantee
- Relief in certain Force Majeure events
- Equity participation
- Performance guarantee

8.7 Responsibilities of and Liabilities on Government

Besides usual responsibilities in regulatory and legal affairs and in policy and administrative matters, the government may be involved in a PPP project in many other ways. The involvement may be through assets ownership, equity participation, subordinate debt financing, risk sharing and provision of various incentives including loan guarantees for sub-sovereign and non-sovereign borrowings. These types of involvement require the government to bear direct and contingent liabilities, which can be both explicit and implicit.

8.8 Regulatory Arrangements

There is a need to regulate a service provider to ensure that services provided reflect the adequate level and meet the desired standard or quality. Several risks are involved in the absence of a regulatory system. The main risks are:

- i. Excessive tariff
- ii. Inadequate service level and quality

- iii. Non-compliance of contractual obligations to users, government or other parties
- iv. Low efficiency in production and in the provision of goods and services
- v. Inadequate level of investment in the sector, and
- vi. Frequent discontent between the parties involved.

In order to eliminate or minimise these risks, an appropriate regulatory system needs to be in place and should be considered at the planning stage of a project. The powers to regulate are provided in the relevant legal instruments, statutory rules, concession/contract agreements, and other applicable documents.

8.9 Service and Output Specifications

The focus of a PPP project is usually on delivering specified amount of services at defined levels and not on delivering a particular class/type of assets. For many projects, however, the assets created will have to be transferred back to the government and the assets may have very long life. As such, they should be usable in delivering the required amount of service much beyond the contract tenure of the project. The new assets may also require compatibility with the existing ones. In such cases, the class/type of assets may also be specified. In all cases, the preparation of details of the service/performance requirements of a project is very important.

There may be four types of output specifications:

- a) the main outputs required to deliver the specified service;
- b) ancillary outputs that are not directly related to the main service (for example, a park-and-ride facility with an urban rail project or a community building facility with a power project);
- c) input specifications; and
- d) conditions of assets at the time of handover of the project to the government (if applicable).

8.10 Terms of Contract

Several parties are involved in the implementation of a PPP project. They include government agencies, project sponsor(s), banks and other financial institutions, experts, suppliers, off-taker(s) and third parties. A special project company called SPV may also be established for the purpose of project implementation and its operation. The details of implementation and payment arrangements are negotiated between the parties involved and are documented in a number of written agreements signed by them.

A concession/contract agreement is the only agreement that is unique to PPP projects. The agreement:

- Underpins the whole structure of a PPP transaction;
- Defines the relationship between the public sector and the private sector;
- Identifies and allocates vital risks in a project; and
- Represents an important part of the security documents for the lenders.

Other agreements are analogous in form and content to agreements found in other corporate or commercial transactions.

8.11 Government Approval

A government approval would normally be required at the end of the project development phase. Activities related to procurement in the next phase can follow this approval. For government approval, an interim business case for the project may be prepared by the

project team/transaction advisor based on the outcome of the feasibility study. In some countries, there are specific information requirements for government approval at this stage. The interim business case proposal for approval could be expected to contain information on, among others, justifications for pursuing the project and selection of the PPP model, key details about the project, expected costs, financial and economic viability, financing plan, proposed risk allocation, responsibilities of, and liabilities (fiscal or otherwise) on government, justifications for government support (if proposed), and implementation plan and arrangements.

8.12 Dealing with Unsolicited PPP Project Proposals

Unsolicited PPP projects have been implemented in many countries, but some countries do not entertain such proposals because of the problems associated with them, especially the risks they involve for competition and transparency. In fact, the legal provisions of many countries do not allow consideration of such project proposals.

There are some merits in keeping provision for considering unsolicited project proposals. Often, such proposals are based on innovative project ideas. The difficulty with unsolicited proposals however, lies in getting the right balance between encouraging private companies to submit innovative project ideas without losing the transparency and efficiency gains of a competitive tender process.

There are three main approaches that have been developed to deal with unsolicited proposals. These are:

- i. In a formal bidding process, a predetermined bonus point is awarded to the original proponent of the project.
- ii. The Swiss challenge system in which other parties are invited to make better offers than the original proponent within a specified time period. If a better offer is received, the original proponent has the right to counter-match any such better offer.
- iii. The government can purchase the project concept and then award it through a competitive bidding process.

9 The Pre-Procurement Process

9.1 Establishing the procurement process, evaluation committee and setting the evaluation criteria

The procurement of a PPP contract is generally much more complex than the procurement of conventional public sector projects and, depending on the complexity of the project, it may require much longer time. There are tasks that need to be completed before initiating the formal procurement process. These tasks may include the following:

- Deciding the whole procurement process including identification of stages at which government approval is required (if not already defined);
- Establishment of evaluation criteria and committees;
- Setting a timeframe and deliverables; and
- Establishing a contract negotiation team.

Once these tasks are completed and cleared by the government, the implementing agency can consider initiating the contract procurement process.

9.2 Setting the terms of contract and preparing a draft contract/agreement

The main items that are generally covered in a PPP contract may include the following:

- i. Definitions and interpretations,

- ii. Tenure of contract, end of term arrangements and access rights to the project site,
- iii. Obligations of the parties to the agreement (the private party, the contract awarding agency and the government),
- iv. Project, project site, and ownership of land and other assets,
- v. Design, construction, commissioning, operation and maintenance of the facility,
- vi. Engagement of subcontractors,
- vii. Handover of project facility,
- viii. Performance requirements,
- ix. Payment and other financial matters (including tariff, fees and their collection and appropriation; price review and adjustments; and penalties for failure to meet performance requirements),
- x. Tariff, fees, levy and their collection and appropriation,
- xi. Insurance,
- xii. Waste treatment and disposal,
- xiii. Independent engineer,
- xiv. Independent auditor,
- xv. Applicable law and dispute resolution,
- xvi. Change in law,
- xvii. Liability and indemnity,
- xviii. Arbitration,
- xix. Force Majeure,
- xx. Termination of contract,
- xxi. Events of default and termination,
- xxii. Contract compliance and management (including monitoring and review, data collection, compilation and reporting),
- xxiii. Redressal of public grievances,
- xxiv. Representations and warranties, disclaimer, and
- xxv. Substitution Agreement.

The body of the contract agreement is generally divided in several sections or chapters, each on a specific issue. There may be one or more annexes or schedules attached to the main body of the agreement. These annexes or schedules provide more details on some specific matters, for example, the technical and performance specifications for the project.

10 The procurement process

There are certain common steps involved in the procurement process in countries that have a matured PPP programme. Although the details of each of these common steps may vary and differ in approaches, their purpose is very much similar. Generally, the following steps are taken:

- a) Assessing interest of the private sector;
- b) Prequalification of bidders;
- c) Request for proposal from prequalified bidders;
- d) Information exchange and feedback from the bidders;
- e) Finalization and issuance of final tender;
- f) Evaluation and selection of preferred bidder; and,
- g) Contract negotiation, award and financial close.

10.1 Interest of the private sector

The interest of the private sector can be assessed by organizing a procurement briefing/conference open to the interested private parties. The main purpose is to get some feedback from the market on the feasibility of the proposed PPP project. On this occasion,

relevant basic information on the project is provided to the interested parties. Both the government and the interested investors are benefited through this pre-procurement engagement and consultation.

The implementing agency can structure, refine, and subsequently tender documents and terms in such documents in a better way with the feedback received at this stage. The engagement with the interested private parties is considered a technical consultation and is not intended for any other purpose related to procurement. Also, at this stage no commitment is expected from any side.

An additional advantage of this process is that it helps the government to establish prequalification criteria and develop a general schedule of requirements.

10.2 Prequalification of bidders

The prequalification of bidders is a typical step taken in most countries. This may also be considered as the beginning of the formal procurement process to select a private investor/service provider. It begins with an invitation for expression of interest. The main objective is to pre-qualify potential bidders for the project. The purpose of prequalification is to assess the technical and managerial competency and financial soundness of the interested bidders. Prequalification of bidders is not intended to cover any aspect of the proposal for the project or factors related to the indicative contract. These elements are considered at the later stages of the procurement process.

Sufficient time is given to the prospective bidders to submit their EOI. Considering the complexity of the project some countries allow 4-12 weeks for the submission of EOI. The EOI notice may include the following information for the prospective bidders to consider:

- a) Sufficient explanation of the project and basic information;
- b) Project objectives and its service requirements;
- c) Services to be delivered by the private sector and the implementing agency's role in service delivery;
- d) Main terms of the indicative contract including proposed risk allocation. These terms are similar to those presented at the procurement briefs/conference but modified to accommodate the response of the private sector as necessary;
- e) Any available technical reports and known project constraints (legal, financial, budgetary, planning etc.);
- f) The information that tenderers must submit;
- g) Evaluation criteria and their relative weights. Such criteria may include technical capability, management capacity, financial condition, past performance, etc. The prequalification criteria are chosen to assess the capacity of the intending bidders to deliver the contract; and,
- h) The procedure for selection.

All bidders who satisfy the prequalification criteria are generally selected as prequalified bidders. There may not be any pre-determined number to artificially limit the number of prospective bidders who can participate in the following tendering stage. If there are too many prequalified bidders, some countries allow formation of consortiums of prequalified bidders for submission of their final bids.

10.3 Tendering

Often, a two-step tendering process is employed. This serves two main purposes. First, it helps both the implementing agency and the bidders to understand each other's requirements and the implementing agency gets sufficient time to make appropriate revisions before the issuance of the final tender. Second, it avoids costly detail design efforts

of the bidders before they are awarded the contract which is widely viewed as unfair and, can also diminish participation in the bidding process.

10.4 Request for proposal from selected bidders: First stage of tendering

At this stage, the prequalified bidders are requested to submit their proposals. This is a very crucial stage for complex PPP projects and may require substantial time. Before issuing this request notice, it is important to refine the project appraisal, if needed, and also to reconsider the assumptions made.

In the first step, bidders are invited to submit tender proposals for the PPP project. At this stage, the interested bidders are asked to supply the conceptual design, a rough estimate of cost, a business plan with performance forecast, the financing plan and the desired share of risks, rewards, costs, etc. The tendering agency may also require other information concerning the bidder's partnership proposal, past performance data, information on technical and managerial capacity and financial status.

At this stage, the implementing agency may consider to provide more detailed information about the project and the contract to the bidders. This may include: the level and amount of service to be provided, output-/input-based performance specifications, draft contract to be signed, timetable and the process for all clarifications that the intending bidders may ask for and other relevant documents.

In order to undertake due diligence the bidders require sufficient information about the project and terms of the contracts. To make this viable, the implementing agency may provide the following information to the bidders:

- Technical conditions of the project site;
- The projected usage/demand for services;
- Relevant legal, technical, financial information;
- Level and amount of service to be delivered;
- Output standards/specifications;
- Auxiliary tasks that may also be needed to be undertaken;
- Safety/security standards;
- Terms of the indicative contract including service specifications, standard specifications, payment mechanism and penalty regime, and legal/regulatory requirements;
- Bid formalities, bid evaluation criteria and their relative weights;
- Whether any first round evaluation would be done;
- Contents of the tender proposal with specified requirements to be met; and,
- Other relevant requirements.

The draft contract document should include all critical elements and clearly specify all such items which, among others, include the following:

- Risk allocations and responsibilities of each party;
- Financial terms (including revenue sharing, if any);
- Performance standards, target dates, deliverables;
- Options for terminating the contract;
- Contract management procedures and mechanisms; and,
- Dispute resolution approach and mechanisms.

Information exchange and feedback from the bidders

A feedback period can be considered after the first stage of tendering. In this stage, many countries allow further exchange of information between the bidders and the implementing

agency within a specified time period mentioned in the RFP. The bidders may request any clarification in this period. The main purpose of this stage is to ensure that all intending bidders have the same understanding about the project. The information exchange serves three important purposes.

- i. It helps the prequalified bidders better understand the terms and conditions of the contract and undertake due diligence, and thus better decide whether to participate in the final stage.
- ii. It allows the government to amend the terms and conditions of the intended contract in order to make it more robust and viable considering the feedback from the contesting bidders.
- iii. It allows the government to clarify any issues raised by the bidders.

The bidders with highest evaluations are asked to submit comprehensive proposals in the second stage. In some countries, for some projects (such as a large housing project or a community/cultural facility) at the end of the first round the bidders are required to submit a draft proposal with conceptual designs for scrutiny by the stakeholders. For this purpose, a public participation process is designed as an in-built mechanism of the procurement process. The preliminarily selected bidders are then asked to submit their final bids with greater details of their conceptual design and the basic proposal. This process helps to avoid costly design exercise by the bidders at the outset which may in fact limit competition.

10.5 Finalization and Issuance of final tender: Second stage of tendering

Considering the feedback received from the first round of selected bidders, the implementing agency may like to amend the tender document at the end of the information exchange and market feedback period. If any such amendment is carried out, the same is made known to all the bidders well in advance of the closing date. The whole process may take several months depending on the complexity of the project.

10.6 Evaluation and selection of preferred bidder

A tender evaluation committee conducts a fair objective evaluation of the tenders received from the bidders following the criteria which were made known to the bidders in the first stage of tendering (RFP) and at the EOI stage. In the process of evaluation, the committee may require and ask for clarifications from the bidders. Generally, the tenders that do not meet the specified requirements (termed as “non-responsive”) are excluded from the evaluation process.

The evaluation committee selects the preferred bidder and makes its recommendations to the concerned approving authority. For the sake of transparency in the process, the members of the evaluation committee can be asked to declare that they do not have any conflict between their personal or family interests and those of the project.

10.7 Contract negotiation, award and financial close

The successful bidder is notified of the award after the approval of the government. The implementing agency negotiates the final contract document (not the basic terms but details of implementation arrangements such as establishing dates, identifying the relevant authorities / officials on both sides and other relevant matters of contract management) with the successful bidder.

After the end of the contract negotiation and after agreeing on the contract document, both parties (the selected bidder and the implementing agency) sign the contract. Signing of the contract is the last task of the procurement process.

Thereafter, the selected bidder is allowed sufficient time to finalise and complete all agreements with other parties. The bidder enters into agreements with the lender(s), sub-contractors and other parties within a given time period and brings the deal to financial closure.³³ Depending on the complexity and size of the project, several months may be required for a project to come to financial close after the contract award is made.

Financial close marks the end of the project development phase. The bidder notifies the implementing agency of the financial close and submits copies of the agreements with the lenders and other parties as required in the contract agreement.

5.11 Framework for Measuring, Monitoring, and Reporting on Results

A successful PPP depends in large part on the capacity of the government to keep the contract on track. This entails setting clear requirements of the partnership, monitoring the performance of all parties to the contract, reporting on results, and enforcing contract provisions that are not met. Different entities are available to support, or to take on full responsibility, for monitoring progress against the targets specified in a contract. These entities include:

Contract monitoring unit - in some cases, a separate regulator does not exist or is not required. In this case, a unit can be developed within government to receive and verify reports on progress against the contract terms. This unit may be located within the sectoral Ministry, a more independent ministry such as finance, or may be the PPP unit. To accomplish contract monitoring, the contract has to contain explicit details on the targets, acceptable procedures of measuring performance results, and the reporting regime. The unit, in addition, has to develop a procedures manual for verifying performance against the contract and for responding to any contract deviations. Where incentive payments are to be rendered, the unit should also have a method for ascertaining the basis for such payments, making payment, and reporting on and accounting for payments made.

Regulator - where a regulator is present, there is approximately the same process as above, but the monitoring is against the provisions of sector regulations. This means overarching principles and methodologies are set out in regulations and the implementation detail is contained in the contract and a license (if applicable). The regulator has the mandate to monitor compliance against the regulations and the license, publishes reports on performance, and enforces any penalties for non-performance. Like a contract monitoring unit, the regulator must have procedure manuals to dictate the application of its responsibilities.

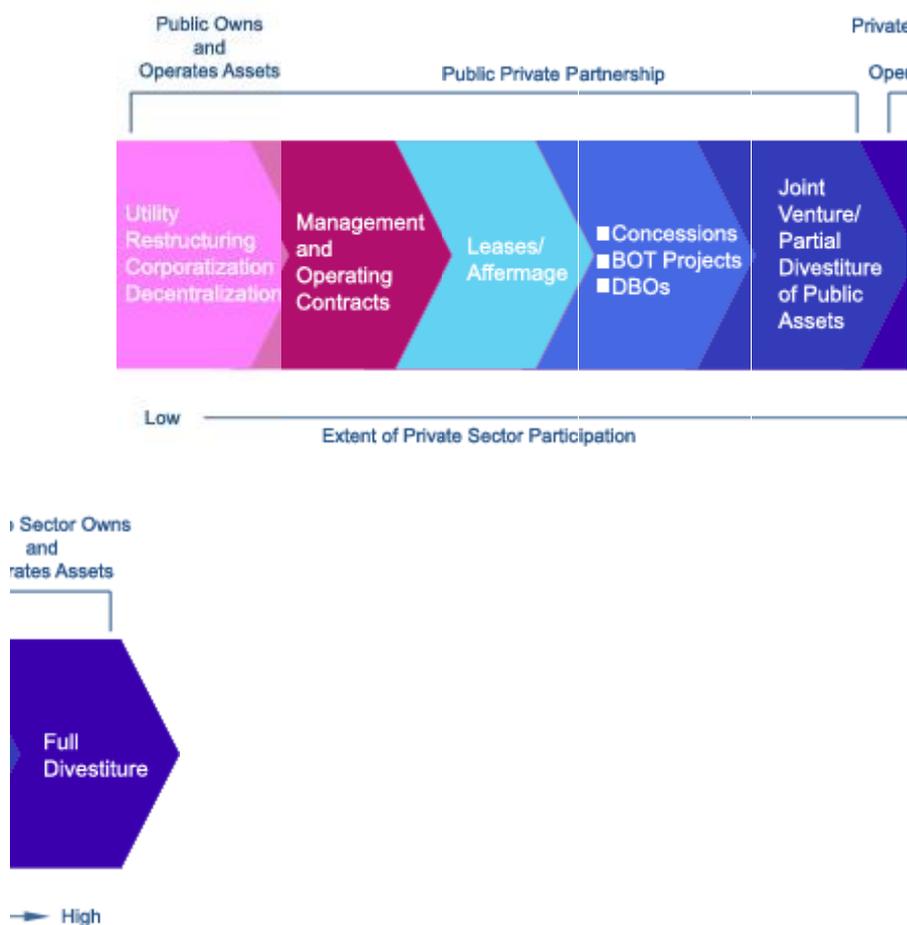
Independent auditors - some countries find it advantageous to procure the services of independent technical and/or financial auditors. This may be in addition to or instead of the role of the contract monitoring unit or regulator. In some cases, the auditor provides an independent assessment of the performance, which provides credibility and support to the overall monitoring. In other cases, this contracted expertise replaces the need to retain an on-going regulatory function.

An important role of any of these entities is to report on performance. This is accomplished through websites, published reports, reports to parliament, and information made available to customers. While these entities initially employ international experts to strengthen capacity, the goal in the long run is to transition to fully local staff. This can be accomplished through training and effective twinning with regional and international peers to provide ad hoc advice, often from a regional perspective.

APPENDIX A – Public Private Partnership Models

Public Private Partnership Model

Public-private partnerships can take a wide range of forms varying in the degree of involvement of the private entity in traditionally public infrastructure. A public-private partnership [PPP] is generally memorialized in a contract or agreement to outline the responsibilities of each party and clearly allocate risk. The graph below depicts the spectrum of PPP agreements.



1. Utility Restructuring and Corporatization

Involving the private sector is one way of improving a utility's performance as well as accessing private capital instead of relying entirely on State supported funding. The various forms of PPP are discussed in sections 3.2.2 to 3.2.6 below. For most government owned utilities, the involvement of the private sector may not be possible, practical or desirable on the onset. In such cases, the government needs to consider if it can improve performance through sector reform or restructuring. This may be the first step towards involving the private sector, once the asset is ring-fenced and performance standards established, or it may be a solution in itself.

Utility Reform

The objective of utility reform is to allow accountability to stakeholder and to create transparency in the features of a well-run utility, which are:

- *Operational autonomy* - being independent to operate professionally in the interest of all stakeholders, without arbitrary interference by others.
- *Financial autonomy and clear reliable funding sources* - tariff policy that reflects the economic cost of service provided, as well as clear and reliable subsidy mechanisms.
- *Accountability* - being answerable to another party for policy decisions, for the use of resources and for performance.
- *Customer orientation* - reporting and listening to clients.
- *Market orientation* - making greater use of markets and introduction of market-style incentives.
- *Transparency* - preparing accounts for independent audit to reflect true costs of operations.

Utility Restructuring into Business Units

Most utilities in COMESA have undergone the restructuring phase. Restructuring is the first step towards greater autonomy or the introduction of the private sector. The World Bank [and other development agencies] has been providing assistance to African governments to restructure their energy utilities for over 20 years. Restructuring involves:

- creating a performance plan with measurable deliverables or creating a performance contract between the utility and the municipality or relevant agency;
- creating a structure for monitoring performance, separate from the municipality;
- creating incentives for management to meet and out-perform performance plan, such as bonuses;
- institutional capacity building—training management to meet performance standards, out-perform, recruiting new or additional management with relevant expertise; and,
- enhanced customer involvement and attention to customer concerns.

Corporatization

A more enduring model of reform, known as ‘Corporatization’, is to transfer assets and liabilities, staff and the on-going business of the utility into a corporation. The entity would have a separate shareholding, board of directors and accounting and reporting lines. It may also be helpful as a first step towards private sector involvement. This process has been adopted by some COMESA member States as a precursor to privatization; however, in almost all cases, the government currently remains the sole shareholder.

2 Management and Operating Agreements

The term ‘management contract’ has been applied to cover a range of contracts from technical assistance contracts through to full-blown operation and maintenance agreements and so it is difficult to generalize about them. Management contracts tend to be task specific and input rather than output focused. Operation and maintenance agreements may have more outputs or performance requirements. The simplest management contracts involve the private operator being paid a fixed fee by the awarding authority for performing specific tasks - the remuneration does not depend on collection of tariffs and the private operator does not typically take on the risk of asset condition. Where the management contracts become more performance-based, they may involve the operator taking on more risk, even risk of asset condition and replacement of more minor components and equipment. The key features of management / O&M agreements are:

- contractor to manage a range of activities;
- traditionally been favoured as transitional arrangements for introducing the private sector into managing infrastructure;

- generally short term, usually for two to five years;
- longer term operation and maintenance agreements are becoming more common in the energy sector where more extensive participation by the private sector through a lease, affermage or concession arrangement in these "essential services" is deemed to be too politically sensitive or impractical;
- limited potential for improvements in efficiency and performance although more sophisticated management contracts [which are often called operation and maintenance contracts] may introduce some incentives for efficiency or improved bill collection, by defining performance targets and basing a portion of the remuneration on their fulfilment;
- operator is usually paid a fixed fee to cover its staff and expenses. There may also be a performance based fee and liquidated damages for failure to achieve performance parameters;
- operator may be required to collect bills on behalf of the utility and may accept some collection risk in terms of performance standards but is unlikely to collect bills on its own behalf;
- can be useful where condition of assets is uncertain where the private sector would be unwilling to accept more extensive risk;
- some may also include obligations on the private operator to operate and maintain the assets, sometimes extending to bearing the cost of routine replacement of small, low value parts of equipment. Such features require more monitoring to ensure that the outputs are being achieved and usually involve higher establishment costs;
- operating agreements are also usual in relation to BOT / concession arrangements, with the concessionaire sub-contracting the operations phase of the concession to an operator; and,
- usually no transfer of employees to the contractor - the contractor will merely add a layer of management over the existing utility structure. This often causes problems if the staff of the utility still looks to the awarding authority, their employer, for instructions. Enforcement of discipline by the private operator may also be difficult.

3 Leases / Affermage

Leases and affermage contracts are generally public-private sector arrangements under which the private operator is responsible for operating and maintaining the utility but not for financing the investment. When to choose Leases / Affermage Contracts:

- i. when private equity and commercial debt is not available for the renewable energy project;
- ii. the awarding authority wants to combine public financing with attracting private efficiency; and,
- iii. greater commercial risk is to be passed to the private operator than with a management contract, with incentives to perform.

Leases and Affermages differ from management contracts principally in that:

- i. the operator does not receive a fixed fee for his services from the awarding authority but charges an operator fee to consumers, with:-
 - in the case of a *lease* a portion of the receipts going to the awarding authority as owner of the assets as a lease fee and the remainder being retained by the operator,
 - in the case of an *affermage*, the operator retaining the operator fee out of the receipts and paying an additional surcharge that is charged to customers to the awarding authority to go towards investments that the awarding authority makes or has made in the infrastructure;
- ii. the operator tends to bear greater operating risk; and,
- iii. the operator tends to employ the staff directly.

In the case of a *lease* the rental payment to the authority tends to be fixed irrespective of the level of tariff collection that is achieved and so the operator takes a risk on bill collection and on receipts covering its operating costs. In the case of *affermage* the operator is assured of its fee and it is the authority that takes the risk on the rest of the receipts collected from customers covering its investment commitments. The key Features of leases and affermage contracts:

- medium length - typically between 8 and 15 years;
- collection risk passed to operator in lease;
- lease operator will require assurances as to tariff levels and increases over term of lease, and compensation/ review mechanism if tariff levels do not meet projections;
- cost of maintenance and some replacement passed to operator (operator takes some degree of asset risk in terms of the performance of the assets);
- operator may be put in charge of overseeing capital investment program/ specific capital works;
- employer is paid a fixed lease fee [*lease*] / receives net receipts from customers (less affermage fee) [*affermage*];
- review process every 4 or 5 years to review performance, costs, tariff levels, etc.;
- employees seconded or transferred to the operator;
- operator to maintain asset register and operation and maintenance manuals/ records, etc.; and,
- typical to include minimum maintenance or replacement provisions towards the end of the contract, so that facilities are handed back in an operational state.

4 Concessions, BOTs, BOOT, BOO, BO and DBOs

A concession gives an operator the long term right to use all utility assets conferred on the operator, including responsibility for all operation and investment. Asset ownership remains with the authority. Assets revert to the authority at the end of the concession period, including assets purchased by the operator. In a *concession* the operator typically obtains its revenues directly from the consumer and so it has a direct relationship with the consumer. A concession covers an entire infrastructure system [so may include the operator taking over existing assets as well as building and operating new assets].

A *BOT Project* (build operate transfer project) is typically used to develop a discrete asset rather than a whole network and is generally entirely new or greenfield in nature (although refurbishment may be involved). In a BOT, the project company or operator generally obtains its revenues through a fee charged to the utility or government rather than tariffs charged to consumers.

Build-Own-Operate-Transfer is a public-private partnership project model in which a private organization conducts a large development project under contract to a public-sector partner, such as a government agency. The public-sector partner contracts with a private developer - typically a large corporation or consortium of businesses with specific expertise - to design and implement a large project. The public-sector partner may provide limited funding or some other benefit (such as tax exempt status) but the private-sector partner assumes the risks associated with planning, constructing, operating and maintaining the project for a specified time period. During that time, the developer charges customers who use the infrastructure that's been built to realize a profit. At the end of the specified period, the private-sector partner transfers ownership to the funding organization, either freely or for an amount stipulated in the original contract. Such contracts are typically long-term and may extend to 40 or more years.

With a **Build-Own-Operate** contract, a private company is granted the right to develop, finance, design, build, own, operate, and maintain a project. The private sector partner owns the project outright and retains the operating revenue risk and all of the surplus operating revenue in perpetuity. This approach is quite common in the power generation sector.

In a **Design-Build-Operate** project the public sector owns and finances the construction of new assets. The private sector designs, builds and operates the assets to meet certain agreed outputs. The documentation for a DBO is typically simpler than a BOT or Concession as there are no financing documents and will typically consist of a civil works contract plus an operating contract, or a section added to the contract covering operations. The Operator is taking no financing risk and will typically be paid a sum for the design-build of the plant and then an operating fee for the operating period.

The key features of concessions are:

- A concession gives a private operator responsibility not only for operation and maintenance of the assets but also for financing and managing all required investment.
- The operator takes risk for the condition of the assets and for investment.
- A concession may be granted in relation to existing assets, an existing utility, or for extensive rehabilitation and extension of an existing asset (although often new build projects are called concessions).
- A concession is typically for a period of 25 to 30 years (i.e., long enough at least to fully amortize major initial investments).
- Asset ownership typically rests with the awarding authority and all rights in respect to those assets revert to the awarding authority at the end of the concession.
- General public is usually the customer and source of revenue for the operator.
- Often the operator will be operating the existing assets from the outset of the concession - and so there will be immediate cash-flow available to pay operator, set aside for investment, service debt, etc.
- Unlike most management contracts, concessions are focused on outputs - i.e., the delivery of a service in accordance with performance standards. There is less focus on inputs - i.e., the service provider is left to determine how to achieve agreed performance standards. .

The key features of BOT Projects are:

- In a BOT project, the public sector grantor grants to a private company the right to develop and operate a facility or system for a certain period (the "Concession Period"), in what would traditionally be a public sector project.
- Usually a discrete, greenfield new build project.
- Operator finances, owns and constructs the facility or system and operates it commercially for the concession period, after which the facility is transferred to the authority.
- BOT is the classic tool for project finance. As it relates to new build, there is no revenue stream from the outset. Lenders are therefore anxious to ensure that project assets are ring-fenced within the operating project company and that all risks associated with the project are assumed and passed on to the appropriate actor.
- The revenues are often obtained from a single "offtake purchaser" such as a utility or government, who purchases project output from the project. This will take the form of a Power Purchase Agreement.
- Project company obtains financing for the project, and procures the design and construction of the works and operates the facility during the concession period .

- Project company is a special purpose vehicle, its shareholders often include companies with construction and/or operation experience, companies with input supply and offtake purchase capabilities and sometimes companies with experience in the management of the appropriate type of project.
- The project company will co-ordinates the construction and operation of the project in accordance with the requirements of the concession agreement. The off-taker will want to know the identity of the construction sub-contractor and the operator.
- The revenues generated from the operation phase are intended to cover operating costs, maintenance, repayment of debt principal (which represents a significant portion of development and construction costs), financing costs (including interest and fees), and a return for the shareholders of the special purpose company.
- Lenders provide non-recourse or limited recourse financing and will, therefore, bear any residual risk along with the project company and its shareholders.
- The project company is assuming a lot of risk. It is anxious to ensure that those risks that stay with the grantor are protected. It is common for a project company to require some form of guarantee from the government and/ or, particularly in the case of power projects, commitments from the government which are incorporated into an Implementation Agreements.
- In order to minimize such residual risk (as the lenders will only want, as far as possible, to bear a limited portion of the commercial risk of the project) the lenders will insist on passing the project company risk to the other project participants through contracts, such as a construction contract, an operation and maintenance contract.

5 JV & Partial Divestiture of Public Asset

A model for public-private infrastructure projects favoured by many countries is the Joint Venture. Public-Private Joint Ventures have the following key features:

- i. In the case of an existing utility, shares in the utility are divested to the private sector. In the case of a new build project, the project company will be established with a joint share ownership structure.
- ii. The level of share ownership will differ depending on whether the government is seeking to get the project off balance sheet and whether the government wishes to retain management control of the utility. However, there are ways of giving the government control, or even negative veto power over certain management issues, even though it transfers a majority of the shares in the entity to the private sector.
- iii. For strategic reasons, the public sector will often keep control of the entity [at least initially], particularly if the joint venture company owns the assets. However, the private sector will want to be sure that it is granted the management of the entity and so will require powers of veto or weighted voting rights on certain issues.
- iv. Typically, the operation and maintenance functions are delegated to the private operator through a management contract.
- v. Rights attaching to shares and the rights between the shareholders are typically set out in the constitutional documents of the company and the shareholders' agreement.
- vi. It is also possible to have a joint venture in the form either of:
 - a partnership (arrangement with profit sharing between partners) created for specific purpose – no separate legal entity created and each of the partners with full legal responsibility for the project; or
 - a contractual consortium arrangement in which the parties contract to work together on a specific project. There is here, however, no concept of a sharing of a pool of profits as there is with a partnership. Each party is remunerated for specific services provided to the consortium and no separate legal entity is created.

6 Full Divestiture

Full divestiture, also known as, privatization, occurs when all or substantially all the interests of a government in a utility asset are transferred to the private sector. A divested or privatized utility is distinguishable from a private commercial enterprise in that the government generally retains some indirect form of control or mechanism for regulation over the privatized utility, in the form of a license granted to the entity to deliver the service to the public. Full privatization is distinguishable from partial privatization and joint venture arrangements between public and private where the public sector maintains a significant interest.

A government intending to divest of utility assets will sell shares in the utility or transfer assets into a special purpose company and sell shares in that company, although divestiture can be via a sale of assets. Whether the divestiture is via an asset or share sale will depend on the circumstances of the utility and local issues such as tax treatment of such sales. The share sale is often favoured as it allows the government to retain an indirect or veto interest in the privatized utility through a "golden share".

However, a private purchaser may be unwilling to accept all of the existing liabilities of the utility and only be willing to accept a portion of the assets and liabilities. In such case the assets will be transferred to a special purpose company. The prospective purchaser will be interested, however, in knowing that the company has a track record and so the government may be required to run the new company for a few years prior to privatization to establish such track record.

7 PPPs status in COMESA Member States

COUNTRY	TYPE OF PPP ARRANGEMENTS / OWNERSHIP		
	STRUCTURE	OWNERSHIP	PPP ARRANGEMENTS
BURUNDI	Vertically Integrated (generation, transmission & distribution) REGIDESO – generation & distribution in urban areas. SINELAC – develops PPP mainly in hydro.	Government	Generates, imports & encouraging IPPs. Is part of a PPP development company, SINELEC which was established with Rwanda & DRC to develop international electricity projects.
COMOROS	Vertically Integrated (generation, transmission & distribution) [Electricite et Eaux des Comores (EEDC)]	Government	Encouraging IPPs, but Comoros has no Energy policy at the moment. The African Development bank has provided funding for policy development. Electricity demand low at about 20 MW.
DEMOCRATIC REPUBLIC of CONGO	Vertically Integrated (generation, transmission & distribution) [State-owned Société Nationale d'Electricité (SNEL)]	Government	Other organisations generating electricity include SINELAC which was established by Burundi, Rwanda and DRC to develop international electricity projects. Eskom to manage Kinshasha distribution & strengthening Inga-Kolwezi and Inga-South Africa interconnections & to construct a second one to supply the Capital. IPPs encouraged. DRC has potential to generate 60% of Africa power.
DJIBOUTI	Vertically Integrated (generation, transmission & distribution) Electricité du Djibouti (EDD) – main utility TKE-Djibouti Power Light (DJPL) - generate, transmit, and sell RE electricity directly or through EDD.	Government	Public Private Partnership Agreement has been signed with TKE-DJPL, which authorizes TKE-DJPL to generate, transmit, and sell electricity. An environment has been created for IPP to realize a good return over 25 years. Imports from Ethiopia.
EGYPT	Unbundled, but owned by a Egypt Electric Holding Company (EEHC) in a vertically integrated structure, EEHC owns: - 6 generation companies (Cairo Electricity Production Company, East Delta Electricity Production Company, Middle Delta Electricity	Government	The Government of Egypt has embarked on a major program to expand and improve its public infrastructure through Public Private Partnerships. The government and EEHC wishes to increase electricity supply in the country through private sector participation under an Independent Power

COUNTRY	TYPE OF PPP ARRANGEMENTS / OWNERSHIP		
	Production Company, Hydro-Power Plants Electricity Production Company, Upper Egypt Electricity Production Company, West Delta Electricity Production Company. - <i>Egyptian Electricity Transmission Company (EETC)</i> - <i>9 Distribution companies</i> (North Cairo Electricity Distribution Company, South Cairo Electricity Distribution Company, Alexandria Electricity Distribution Company, El-Behera Electricity Distribution Company, North Delta Electricity Distribution Company, South Delta Electricity Distribution Company, Canal Electricity Distribution Company, Middle Egypt Electricity Distribution Company, Upper Egypt Electricity Distribution Company).		Producer program. Egypt has several privately-owned power plants currently under construction which were financed under Build, Own, Operate, and Transfer financing schemes.
ETHIOPIA	Vertically Integrated (generation, transmission & distribution) [Ethiopian Electric Power Corporation (EPPCO)]	Government	Ethiopia has large expansion plans for its electricity generation, which includes IPP projects as well as inter-government joint ventures. So far,
ERITREA	Vertically Integrated (generation, transmission & distribution) [Eritrean Electric Authority (EEA)] Electricity is only available in Eritrea's larger cities and towns, leaving about 80% of the Eritrean population without access to electricity.	Government	In 1997, South Korean firms Daewoo and Hanjung signed an agreement to build a heavy oil-fired plant in at Hirgigo, just outside of Massawa. The plant, nearly completed, was damaged in a bombing raid in 2000. This was the only PPP project & though attempts to repair the 88 MW project, it never came on line primarily because of concerns that it will overload the outdated grid system.
KENYA	Unbundled KenGen – responsible power generation KPLC - responsible for the transmission, distribution and retail of electricity	Government (both KenGen & KPLC)	KPLC buying power from IPPs under REFIT regime. Generation growth envisages PPP and IPP projects, the bidding process in on-going for some of them. Also, the FIT regime is operational and targets IPPs for RE projects.

COUNTRY	TYPE OF PPP ARRANGEMENTS / OWNERSHIP		
LIBYA	Vertically Integrated (generation, transmission & distribution) General Electricity Company (GECOL)	Government	There are no PPPs in Libya at the moment and the framework for PPPs has not been developed. Libyan government can finance its electrical infrastructure growth.
MADAGASCAR	Vertically Integrated (generation, transmission & distribution) [JIRAMA utility] Owns 6 hydro plants with a capacity of 105 MW (Andekaleka, Mandraka, Antelomita, Volobe, Namorona, Manandona & Manandray).	Government	There are 3 hydro power IPPs with a total capacity of 23 MW (Sahanivotry, Tsiazompaniry & Maroantsetra). In the rural areas there are 7 small hydroelectric power station IPPs with a total capacity of 440 kW.
MALAWI	Vertically Integrated (generation, transmission & distribution) Electricity Supply Corporation of Malawi Limited (ESCOM) – a private company under the Malawi Companies Act.	Government–99% MDC Ltd–1% MDC-Govn Owned	The Power Sector Reform Strategy (PSRS) approved in 2003 allows private sector participation and competition as a driver of the overall National Energy Policy and it highlights the strategies for energy Supply Industries. Generation under PPPs is the main goal and has been achieved in Bagasse Energy Generation, Biomass Electricity Generation, medium, small and mini hydro power plant and other technologies and . Malawi still experiences load shedding due to poor responsible in new generation capacity by IPP.
MAURITIUS	Vertically Integrated (generation, transmission & distribution) [Central Electricity Board (CEB)]	Government	The CEB produces around 40% of the country's total power requirements from its 4 thermal power stations and 8 hydroelectric plants; the remaining 60% being purchased from Independent Power Producers. 1 BOT (2x55 MW) & 1 Joint Venture (2x55 MW) projects are currently in progress.
SEYCHELLES	Vertically Integrated (generation, transmission & distribution) The Public Utilities Corporation (PUC) responsible for providing the islands of Seychelles with electricity, water and sewerage services.	Government	PUC produces 90% - 95% of all electricity consumed in Seychelles [installed capacity of 85.3 MW]. In the outer islands all power is produced in privately owned installations (IDC/Hotels) [installed capacity of 15 MW].

COUNTRY	TYPE OF PPP ARRANGEMENTS / OWNERSHIP		
RWANDA	Vertically Integrated (generation, transmission & distribution) [Energy, Water and Sanitation Authority (EWSA)] Rwanda thermal power plants are currently JABANA I power plant (7.8 MW), JABANA II power plant (using heavy fuel to produce 20 MW) and Methane gas extracted from Lake Kivu (4 MW).	Government	The Government of Rwanda has embarked on an electricity market reform process to allow the private sector to play a much bigger role in the electricity industry. SINELAC which was established by Burundi, Rwanda and DRC to develop international electricity projects. RUSIZI I, II & III are SINELAC projects supplying power to Rwanda.
SUDAN	Vertically Integrated (generation, transmission & distribution) National Electricity Corporation of Sudan (NEC)	Government	Regions not covered by the utility's grid rely on privately owned small diesel-fired generators.
SWAZILAND	Vertically Integrated (generation, transmission & distribution) (Swaziland Electricity Company)	Government	Corporation, purchases power from Illovo IPP plus imports just under 80% from Eskom, EdM & SAPP day market.
UGANDA	Unbundled into generation, transmission and distribution. -Uganda Electricity Generation Company Limited (UEGCL) is a public limited liability company. -Uganda Electricity Transmission Company Limited (UETCL) is a public limited liability company. -Uganda Electricity Distribution Company Limited (UEDCL) is a public limited liability company.	Privatized	UEDCL was privatized by the government through a 20 year concession bringing on board Umeme Ltd, a private sector investor in electricity distribution.
ZAMBIA	Vertically Integrated (generation, transmission & distribution) Zambian Electricity Supply Company Limited (ZESCO) is a parastatal company under the Companies Act.	Government	Central African Power Corporation (CAPC) operates a transmission system from Kariba connecting into both the Zambian and the Zimbabwe networks. The system consists of 330 kV overhead lines linking Kariba and is paid for by the two national utilities. ZESCO is developing projects under PPP & also purchases power from IPPs.
ZIMBABWE	Vertically Integrated (generation, transmission & distribution)	Government	Central African Power Company (CAPC) operates the Kariba Complex, consisting of the Kariba Dam

COUNTRY	TYPE OF PPP ARRANGEMENTS / OWNERSHIP		
	Zimbabwe Electricity Supply Authority (ZESA)		and four power stations, one of which supplies electricity to Zimbabwe. ZESA is pursuing projects with private sector involvement.