

The views expressed in this paper/presentation are the views of the author and do not necessarily reflect the views or policies of the Asian Development Bank (ADB), or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequence of their use. Terminology used may not necessarily be consistent with ADB official terms.

Knowledge Sharing on Infrastructure Public-Private Partnerships in Asia: CHILE

Jose Luis Guasch

World Bank

Seoul, Korea, May 2009

I. Policy and Institutional Approaches for PPPs in Infrastructure

- PPP is **defined** as a special execution mechanism of public works. The public entity awards a concession for the construction, execution or exploitation of a determined public infrastructure under specific terms established in a public contract signed after a public tender process
- **Broad use:** Transport, Utilities, Irrigation, Jails, Public Buildings, Hospitals, Schools, Stadiums, Sporting Arenas, Multicultural Centers and Parks

Origin of Project/PPP

- No specific formal criteria shapes the origin
- Each sector defines the pipeline of projects in light of sector planning and strategy
- Matching stated public sector and policy priorities

Institutionality

- Ministry of Public Works (MOP) has the jurisdiction for contracting public works projects and PPPs
- Relevant Ministers identify projects and sign mandate agreement with MOP (if approved by National Investment System)
- The projects has to be evaluated (first filter) by the National Investment System M of Planning and Finance)-estimates social and financila rate of return
- Ministry of Finance has to sign in in most projects PPP, (acts as a last filter) particulalrly when there are government financial contributions-such as guarantees, subsidies etc.
- PPP Unit promotes, develops, implements and oversees/regulates projects and PPP.
- It does allows for the submission of unsolicited proposals by the private sector

PPP Unit

- Part of the Ministry of Public Works
- Functions:
 - Design the contract
 - Promotes projects
 - Draw the tender
 - Oversee and regulate the project/contract
 - Propose contract modifications
- Its subcontracts as needed technical tasks (250 employees)

Decisions on Projects

- Criteria: Social rate of return at least x (6%)
- Cost benefit analysis the norm, IRR computed (DSRC must be better than $1.05x$, but if the project has a guarantee the DSCR must be higher than $1.5x$)
- Value for Money and Public Sector Comparator not mandatory and not used. Some cases as referential
- Recently Ministry of Finance has requested to apply PSC to new government initiatives (ministry of Justice, Health..)
- No discount rate policy for the PSC but MH accepts the risk-free (local currency) bond by Central Bank

- Standard modality of PPP: Build, Operate and Transfer (BOT)
- No explicit measure of success (implicit, numbers of bidders and low conflict levels)
- Over 60 PPP in 16 years, near US\$9billion and current pipeline 48 projects for about US\$8.9 billion

II. PPP Legal and Regulatory Framework

- Embedded in a Multisector Concession Law (now being revised)
- Complemented for some sectors with sectoral laws
- Specifics are contained in the respective PPP contracts
- The mode and oversight of regulation varies across sectors

Regulator: By Sector

- Water and Sanitation: Regulated by a Superintendency
- Energy Sector: Regulated by three bodies
 - National Energy Commission, policy, recommends tariffs
 - Superintendency of Electricity and Fuels: quality, complaints, costs
 - Minister of Economy: approves tariffs
- Railways: The State owned company operates and regulated the sector

Ports

- Ports: Each Port Authority regulates its corresponding port and the PPP when they exist.
- Regulation stated in Sectoral Law and on the contracts for PPP

Other PPPs: Public Works: Roads etc

- Regulation embedded in Public Works Concession Law and in the corresponding PPP contract
- The regulation and oversight is by the Concession Unit, which is part of the Ministry of Public Works, which is also responsible for the design of the PPP and contract.
- Regulatory policy and enforcement by PPP unit

- Regulation of service levels through performance-based contracts
- Sets contracts and regulation by **levels of service** (might be complemented by some technical quality indicators)
- Tariffs, compensation and sanctions based on attaining the contractual indicators of level of service

III. PPP Procurement Cycle- Key Actions and Outcomes

Stages

- Terms of Reference
- Pre-qualification process (technical evaluation)
- Final auction (economic evaluation)
- Awarding contract-decree
- Sign-up concession contract

- The norm is public, open and transparent auctions
- Prequalification phase
- Two sequential criteria: technical and economic (a bidder has to submit both components)
- The economic criteria is a single quantifiable variable
- No structured dialogue with bidders

- Contract award to the best economic offer, provided the technical offer is above the requested threshold

Complementary Contracts and Renegotiation

- Not very transparent under current Law
- Near 100 percent renegotiation in transport PPP
- Over 50percent of additional investment renegotiated

- Draft Law addresses:
 - Tendering additional works if over 15% of investment
 - Guidelines for compensation along no change on net return
 - Elimination of financial equilibrium and unforeseen clauses

- Subcontracting evaluations
- Conflict of interest issues
- No explicit guidelines for community and stakeholder participation in projects PPP (environment somehow)
- Time and costs overruns common, average cost overrun 27.6%
- Optimistic demands estimates
- High contracting costs

IV. Approaches for PPP Risk Sharing and Risk Management

Standard Government Support

- Minimum Revenue Guarantees are standard
- Foreign exchange risk guarantees offered
- Now a Variable-term Insurance is used-
Revenue Distribution Mechanisms
- Variable and fixed subsidies build in social sector PPP
- Tariffs indexed for inflation

- Design and construction risks transferred to private sector
- Operational and maintenance risk transferred to private sector
- Financial risks completely transferred to the private sector, including reaching financial closure (crisis)

Minimum Revenue Guarantee

- Targeted to cover 70% of investment plus operation and maintenance costs
- Now moving towards the amount so that the Debt Service Coverage Ratio (DSCR) equals 1.05x for each year
- Also to facilitate foreign financing an FX guarantee has been defined, that is triggered when it goes beyond a band of 10% change

Compulsory risk evaluation

- Every project must have a risk report which is approved by the Ministry of Finance

Contingent Liabilities

- Registered under the Finance Minister
- Specific management system and accounting of contingent liabilities
- There is a methodology which imputes each year budget implications of current contingent liabilities and the corresponding allocation is made in the yearly budget
- Preparation and guidelines for the valuation of contingent liabilities done every year by the Ministry of Finance

Status of Contingent liabilities

- Total stock of Guarantees is 3.72% of GDP
- The present value of expected payments is 0.14% of GDP
- Probability that present value of expected payments exceed 0.5% of GDP is less than 1%

- No requirements or controls on refinancing
- No explicit considerations on sharing the “upside” or on supranormal returns (beyond tariff reviews, when applicable)
- Performance bonds levels
- Minimum equity requirements
- Termination clauses and transfer of ownership
- All information in the web, including contracts

Conflict Resolution

- Two stages:
 - First, Alternate Dispute Resolution (within 30 days) seeking a settlement, if not
 - Second, Arbitration Committee (or Court of Appeals): 3 person (1,1,1), rules by “good judgment and equity” not contract and is not appealable (within 30 days)