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

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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 that 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 exists.
- 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 tehnical quality indicators)
- Tariffs, compensation ans sactions 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 quantifyable 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 overuns common, average cost overrun 27.6%
- Optimistoc demans 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 maintenece costs
- Now moving towards the amount so that the Debt Service Coverage Ratio (DSCR) equals 1.05x for each years
- 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 appelable (within 30 days)