

# Lao PDR Public-Private Partnership Policy



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Governance and Capacity Development in Public Sector Management Program (Public Private Partnerships)

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## 1. Introduction

### *1.1. Background*

The Government of Lao PDR acknowledges the poor state of public infrastructure and services in the country as being one of the main impediments to the nation achieving its economic growth and development objectives. Historically the provision of public infrastructure and services has to a large extent relied on Government budget and foreign development aid.

However successive National Socio-Economic Development Plans have identified the private sector as the main engine of growth and the Government of Lao PDR is committed to fostering a transition to a private-sector-led market economy. In line with that approach, the Government of Lao PDR would now like to emphasize the role of Public-Private Partnerships (PPPs) as a useful tool to help bridge the infrastructure gap and improve the performance of public services in the country.

The present Lao PDR Public-Private Partnership Policy aims at laying out a path to gradually achieve the long-term objectives of the Government of Lao PDR with regard to PPPs and setting out the detailed policy actions required to realise its long-term vision for PPPs.

### *1.2. Aim and rationale for PPP*

The Government of Lao PDR pursues PPPs as a new way of procuring public infrastructure and services to speed up the investment program and improve the performance of public infrastructure. As such they are to be primarily considered as a tool to reach more general policy objectives such as:

- Improving transport and communication across the country;
- Upgrading energy production, transmission and distribution facilities;
- Enhancing delivery of water provision, waste collection and other urban services;
- Broadening access to basic health and education services; and
- Facilitating economic development in remote areas of the country's territory.

In comparison to the more conventional procurement approaches currently followed in Lao PDR, PPPs bring a few inherent advantages, such as private sector innovation, efficiency and creativity in the delivery of public services, which can result in increased Value-for-Money for Government and users. As such, the success of a PPP arrangement strongly depends on its ability to direct private sector advantages towards optimising public objectives.

### *1.3. Long-term vision*

The long-term vision of the Government of Lao PDR is to establish PPPs as a regular procurement mechanism to be used by all Government Agencies – e.g. line ministries, provincial governments, municipalities, specialised government agencies and other public entities – whenever the Value-for-Money of the PPP alternative appears to be higher than that of the more conventional procurement options.

Hence PPP will become the default options in delivering public infrastructure if it proves to deliver Value-for-Money.

This vision entails a strong, clear and transparent institutional framework is in place, whereby institutional roles would be dealt as follows:

- Each Government Agency is responsible for initiating, developing, approving, tendering, negotiating, signing and monitoring PPP projects falling under its mandate;
- A specialised PPP Unit within MPI acts as a public PPP Development and Knowledge Centre in support of Government Agencies for specific stages of the implementation process such as Value-for-Money assessments, Cost-Benefit Analysis, financial structuring, etc.;
- The Ministry of Finance approves PPP projects in view of affordability considerations and long-term impact on public finances and, if necessary and in line, grants adequate financial support according to clear and transparent criteria.

In order to realise that vision, the Government of Lao PDR has set the following long-term objectives in each area of PPP development:

- Setting up a conducive legal framework for PPP:
  - Have an adequate legal and institutional framework in place with a dedicated PPP legislation, clearly defined institutional roles and mandates, implementing guidelines and procedures, template contracts and documentation, etc.
- Assessing PPP:
  - Have Government Agencies play an active role in the identifying and development of PPP projects and establish a consistent pipeline of PPP opportunities feeding a regular transaction flow
- Procuring PPP:
  - Have each PPP project tendered according to best international practices of openness and transparency so as to maximise Value-for-Money
- Supporting PPP:
  - Maximise the impact of public resources by supporting strategic projects through adequate financial mechanisms, while fiscal prudence is assured
- Strengthening PPP capacity:
  - Have a dedicated team of civil servants familiar with PPP development and tender processes, including knowledge base, within each relevant Government Agency

### *1.4. Definition of PPP*

A PPP is a partnership between the public sector and the private sector for the purpose of delivering a project or a service conventionally provided by the public sector. PPP is a contractual arrangement and is commonly characterised as:

- A long-term arrangement between the public and the private sector;
- For the purpose of providing a public service;
- With risks allocated to the party best able to bear them;
- Often supported through private financing.

PPPs are applicable in the following (non-exhaustive) list of infrastructure sectors and services:

- Transport and logistics, including federal, provincial and municipal roads, rail, bridges and tunnels, airports, ports, warehousing, wholesale markets, slaughter houses and cold storage;
- Mass urban public transport, including integrated bus systems as well as intra and inter-city rail systems;

- Local government services, including water supply and sanitation; solid waste management; low cost housing, and healthcare/education and skills development facilities;
- Energy projects, including hydroelectric and captive power generation projects;
- Tourism projects, including cultural centres, entertainment and recreational facilities and other tourism related infrastructure;
- Industrial projects, including industrial parks, special economic zones and related projects;
- Irrigation projects and agribusiness, some of these combined with power generation;
- Social infrastructure, including education, culture and health infrastructure.

## 2. Starting point for PPPs in Lao PDR

### 2.1. *Current PPP market*

At present there is no real local PPP market in Lao PDR. A few projects with PPP characteristics have been implemented in the energy and transportation sectors, however most of those have been launched on a directly negotiated basis and almost exclusively with international firms.

### 2.2. *Legal setting*

At present there is no legal basis for PPP in Lao PDR. PPPs are not officially defined nor encouraged in any sector. Government Agencies therefore lack a clear mandate to explore PPP opportunities, which is constraining their staff in their attempts to identify and develop PPP projects.

The legal gap extends to procurement rules. Most PPP projects reaching financial close in Lao PDR are usually directly negotiated with bidders and are therefore not publicly tendered. Competitive procurement for PPP projects is therefore not common practice yet. Additionally current procurement rules and regulations are not adapted to PPP projects as they do not capture the concept of Value-for-Money over the whole PPP project lifecycle.

### 2.3. *Institutional setting*

At present the institutional framework for PPP in Lao PDR is virtually inexistent and there is no clear setup specifying the roles and responsibilities of the various Government entities involved in PPP initiatives. Implementing guidelines and procedures have not yet been developed.

### 2.4. *Capacity*

At present the capacity of Government Agencies' staff to assess, develop, structure, tender, negotiate and monitor PPP projects is low, which is currently preventing PPP opportunities to emerge and be initiated.

While it is not necessary for every Government Agency to permanently possess all those skills in-house, as they can alternatively be sourced from external advisors on a project basis, a higher level of understanding of PPPs and familiarity with PPP procurement processes is required for Government Agencies to initially develop PPP opportunities, drive the implementation process and make informed decisions at the tendering stage.

### *2.5. Gap analysis, challenges and bottlenecks*

At present few PPP projects are being developed and implemented by Government Agencies in Lao PDR. The occasional PPP projects which actually reach financial close typically originate from unsolicited proposals. The view of the Government of Lao PDR is that this is partly due to the lack of dedicated funding mechanisms to cover project development costs, finance pre-feasibility and feasibility studies and hire external consultants with the necessary technical, environmental, legal and financial expertise.

Additionally there is no established mechanism for the Government of Lao PDR to address so-called Viability Gap Funding issues and provide financial support to PPP projects. This situation results in projects which are not bankable on a purely project finance/non-recourse loan basis having to go through a cumbersome process to secure financial support from the highest level of Government or else being disregarded by operators and investors.

## **3. Key principles for building a mature PPP market in Lao PDR**

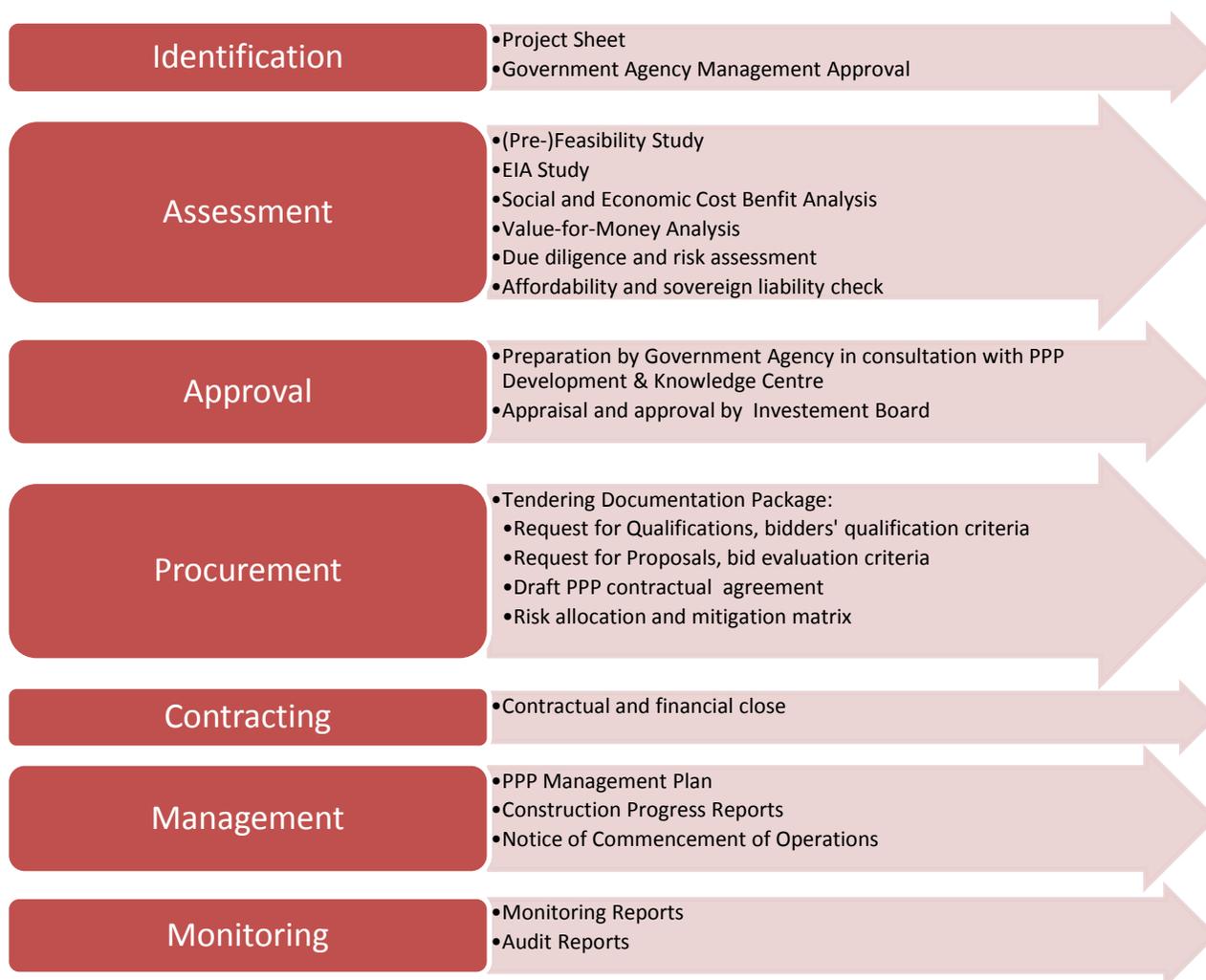
### *3.1. Principles*

The Government of Lao PDR intends to set up the emerging Laotian PPP market according to the best international standards and practices. In its endeavour to be successful, it therefore undertakes to endorse and promote the following dozen of principles when setting up the environment for PPPs in the country:

1. Ensure public awareness of the relative costs, benefits and risks of PPPs and conventional procurement;
2. Maintain key institutional roles and responsibilities and entrust Government entities involved with clear mandates;
3. Ensure that all significant regulation affecting the operation of PPPs is conducive, clear, transparent and enforced;
4. Prioritise major investment projects at senior political level;
5. Carefully investigate which investment method is likely to yield most Value-for-Money;
6. Transfer the risks to those that manage them best;
7. Sustain vigilance and effort for securing Value-for-Money at the operational phase of PPPs;
8. Maintain Value-for-Money during renegotiations;
9. Ensure there is sufficient competition in the market by a competitive tender process;
10. Ensure that the project is economically sound and affordable and the overall investment envelope is sustainable;
11. Treat PPPs transparent in the budget process and disclose all costs and contingent liabilities associated with PPPs in the budget documentation;
12. Guard against waste and corruption by ensuring the integrity of the procurement process.

### *3.2. PPP decision and implementation process*

The Government of Lao PDR promotes a clear decision and implementation process for PPP projects in conformity with best international practices. Such process would comprise the following stages, with clear milestones signifying the successful accomplishment of each stage:



## 4. Way forward, a road map

### *4.1. Three phased approach, starting with the piloting phase*

The Government of Lao PDR endorses a phased approach in a road map to developing the PPP market in the country, with three distinguished phases, (1) Piloting Phase, within coming two years, (2) Implementing Phase, within coming four years, (3) Mainstreaming Phase, within coming six years .

The Government of Lao PDR hereby expresses its willingness to support the emergence of the local PPP market and will undertake the following actions during piloting phase to reach the objectives it has set.

## Setting up a conducive legal and institutional framework for PPP

### **Objective:**

*Have an adequate legal and institutional framework in place with a dedicated PPP legislation, clearly defined institutional roles and mandates, implementing guidelines and procedures, template contracts and documentation, etc.*

### Policy actions required:

- On the basis of this national Lao PDR Public-Private Partnership Policy have all relevant Government Agencies develop their Sector-specific PPP Policies, under coordination of MPI;
- Develop a strong and transparent legal and institutional base for PPP in Lao, with a National PPP Decree to start with
- With the aim of promoting PPP, lifting bottlenecks and increase transparency and accountability issue a Prime Minister's Decree on PPP providing:
  - Clear and unambiguous definitions of key PPP concepts;
  - The scope of sectors eligible for PPPs;
  - A clear mandate for Government Agencies in those sectors to explore and develop PPP opportunities;
  - An institutional framework clarifying the roles of the various Government Agencies involved:
    - Government Agencies: in charge of identifying and developing PPP projects in their sector of competence
    - Investment Board (or other ad hoc high-level PPP Committee), chaired by MPI with representatives of MOF and other (relevant) ministries: in charge of supervising PPP initiatives and approving PPP projects at key stages of the appraisal and tendering process
    - PPP Development & Knowledge Centre: to be created within MPI; being the secretary to the Investment Board, in charge of (1) coordinating PPP efforts across sectors, coordinating PPP development, appraisal and approval processes, in conjunction with and supporting the responsible Government Agency, ensuring consistency and quality, (2) development of methodologies, tools, guides, and standard contracts (3) dissemination of information and documentation to public and private stakeholders the broader public and the international developing community
    - Ministry of Finance: in charge of conducting affordability analysis in view of budgetary considerations and granting financial support to PPP projects as and when required
  - Project appraisal and approval cycle
  - Sovereign support and incentives
  - Specific procurement and contracting rules and procedures
- Establish implementing guidelines and regulations

Once the PPP practice is firmly established in Lao PDR and PPP knowledge has been accumulated within Government Agencies, revise the institutional setup to give more autonomy and freedom for Government Agencies to initiate, develop, approve, tender, negotiate, sign and monitor PPP projects in their respective fields of competence.

### Assessing PPP

**Objective:**

*Have Government Agencies play an active role in the identifying and development of PPP projects and establish a consistent pipeline of PPP opportunities feeding a regular transaction flow*

Policy actions required:

- Set up clear processes within MPI and MOF to assess economic and social costs benefits, affordability, Value-for-Money, risks and bankability and Viability Gap Funding of PPP projects.
- Develop a project pipeline with projects that are urgent, have clear economic and social benefit and are PPP fit and implementable;
- Identify and develop some first pilot PPP projects that should serve as flagship PPP projects and ‘best practice’, alongside testing and strengthening legal viability, project assessment and approval cycle and capacities;
- Maximise use of existing budgetary lines for project development, e.g. from the National Economic Research Institute;
- Set aside additional budgetary provisions for project development costs at Ministry of Finance level;
- Secure long-term support from Multilateral Development Banks and development partners so as to streamline the PPP project preparation process
- Set up a Project Development Facility to be funded by both Government budget and development partners and managed by the PPP Development & Knowledge Centre

### Procuring PPP

**Objective:**

*Have each PPP project tendered according to best international practices of openness and transparency so as to maximise Value-for-Money*

Policy actions required:

- Make necessary amendments to the Law on Procurement to reflect specific requirements of PPP procurement
- Prepare specific procurement guidelines for PPP projects
- Create procedures dealing with unsolicited proposals, dispute resolution, etc.

### Supporting PPP

**Objective:**

*Maximise the impact of public resources by supporting strategic projects through adequate financial mechanisms, while fiscal prudence is assured*

Policy actions required:

- Appoint a well-respected person who is widely supported by both the public and (international) private sector to become the PPP Ambassador for Lao
- Create adequate support instruments for PPP projects – subsidies, guarantees, tax reliefs, etc. – and transparent rules for granting the above
- Facilitate recourse to external guarantee and insurance instruments such as export credit insurance, political risk insurance, etc.

### Strengthening PPP capacity

**Objective:**

*Have a dedicated team of civil servants familiar with PPP development and tender processes, including knowledge base, within each relevant Government Agency*

Policy actions required:

- Establish a public PPP Development & Knowledge Centre and develop capacities, knowledge base, templates and manuals, within MPI and co-chaired by MoF to initially play a central role in creating the enabling environment and promoting PPP projects across sectors
- Organise regular and thorough training sessions for PPP Unit staff to be able to serve as a centre of PPP knowledge and expertise within Government
- Gradually disseminate PPP knowledge and practice to Government Agencies
- Start setting up sector-specific PPP Knowledge Centres within Government Agencies to take direct ownership and leading role in developing, structuring and tendering PPP projects in their respective fields of competence

## 4.2. Achievements to be reached

The Government of Lao PDR will be aiming at the following achievements to be reached during the consecutive phases of the road map:

**Piloting Phase 1,**

**Short Term,**

**2 Years**

**Coherent**

**National Lao PDR Public-Private Partnership Policy**

**and**

**Sector-specific PPP Policies**

**National PPP Decree**

**Legal Framework for PPP Procurement**

**PPP Ambassador for Lao**

<b>PPP Development &amp; Knowledge Centre</b>
<b>Project Pipeline</b>
<b>Flag Ship Projects</b>
<b>Project Development Facility</b>
<b>Assessment and Validation Tools</b>
<b>PPP Procurement Guide</b>
<b>Sovereign Support Facilities</b>

<b>Implementing Phase, Medium Term 4 Years</b>
<b>Enactment of Appropriate Legislative and Regulatory Reform</b>
<b>Based on</b>
<b>Flagship Projects / Best Practices</b>
<b>Sector-specific PPP Knowledge Centres</b>
<b>Strengthened Project Appraisal and Approval Cycle</b>
<b>Viability Gap Fund</b>
<b>Expanded project pipeline / extended to new sectors</b>

<b>Mainstreaming Phase, Long Term 6 Years</b>
<b>Long-term Political Consensus</b>
<b>Reflected in</b>
<b>Established Policy Framework</b>
<b>Mature Legal and Institutional Setting</b>
<b>PPP Default Option from Certain Contract Value</b>
<b>Continuous Deal Flow</b>
<b>Comprehensive Range of Funding Sources</b>
<b>Competent Public Sector</b>
<b>Sophisticated Financial Market</b>