



**European Bank**  
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# Chapter 1.

## Guide to preparing a PPP policy statement

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## Definitions

Contracting authority	The public-sector (government-related) entity that enters into a public-private partnership agreement with a private partner
Country X	The fictitious country that is supposed to have prepared the policy statement of which the executive summary is given in Part C
EES	The executive summary example given in Part C
Guide	The present document in its entirety
PPP	Public-private partnership
Private partner	The entity that enters into a PPP agreement on the private-sector side

**N.B.** The country's policy statement should include a list of acronyms and definitions. These are not provided in the Guide. They will depend to some extent on the choices the country makes about its PPP policy.

## Part A. Introduction for the user

### General

Countries – or subnational administrative units (provinces or states) – that are contemplating launching a coherent, systematic programme of public-private partnerships (PPPs) may find it helpful to begin by formulating and formally approving a policy on PPPs. This can be useful as PPPs are complex and touch on many different aspects of public policy which evoke many different points of view – and misunderstandings and misconceptions – about PPPs.

A PPP policy can serve several purposes. It can:

- give an overall, coherent policy framework for PPPs in the country
- constitute a first step in drafting (or amending) a PPP law and in drafting implementing regulations
- educate stakeholders about PPPs
- facilitate and help structure debate about PPPs, with a view to obtaining consensus on main issues
- send a message about the government's intentions to operators, lenders, equity investors and donors.

### Process

The process of working on a PPP policy is useful to bring out misconceptions and inconsistencies. Working through these issues first at policy level will make for stronger legal and institutional frameworks. The process should ensure that all major stakeholders – including the private sector and potential financiers – provide input. The process can help achieve consensus within government and among major stakeholders on at least the main points.

The policy preparation process might include steps such as:

- constituting a policy team
- reviewing existing policies, practices and perceived problems
- discussing and agreeing on key issues and questions
- instructing researchers to summarise international practice and opinions concerning key issues and questions
- consulting with a wider group of stakeholders
- undertaking study trips to other countries
- preparing and discussing drafts.

## Terminology

It will be helpful to clarify terminology. Different terms can be used: “policy”, “policy document” and “policy statement” are common and usually mean about the same thing. The present document will often use the term “policy statement”.

In some countries (notably, Commonwealth countries, but also those in the European Union), the term “white paper” is often used to mean an official paper describing the government’s policy on a particular topic. White papers may be presented for debate in parliament.

The term “policy paper” is more often used to mean a research piece focusing on a policy issue and providing clear recommendations intended for policymakers. It could be written by a government department or by external authors or a think tank. The term “policy paper” is generally not used for the final official statement of policy issued by the government.

A “policy brief” or “policy memo” (or “decision memo” or “option memo”) is likely to be a shorter document giving policy arguments relating to a narrower issue that needs to be decided. It may, for example, be submitted by staff to a government minister.

In Commonwealth countries and in the European Commission, the term “green paper” is often used for a more provisional document, intended to initiate or stimulate debate. The term “consultation document” is similar. A country may wish to begin the process of preparing a PPP policy by issuing a consultation document. The contents would be similar to those given in Part B, but more options for each policy choice might be presented and a list of questions would normally be included as a way to stimulate comments by readers.

A related term is “drafting instructions”, which is used in some countries for a document written by the staff of policymakers that describes, in non-legal language, the intended substance of a new or amended law. The purpose is to inform the legislative drafter about the objectives, the actors and their responsibilities, and so on. It is like a policy statement in some ways, but it is more tightly drafted and more focused on what the legislative drafter needs to know. It could be in the form of an outline of main substantive points (“heads of terms”).

## No standard model

There is no “one size fits all” model for a PPP policy statement. Different countries have different administrative traditions and different needs and constraints. The length of the document normally ranges from 10 to 50 pages. Longer documents are well served by including a short executive summary. Another possibility would be to issue a shorter policy statement accompanied by a longer working document.

## Style

A policy statement should be drafted in a style that differs from that of a law or regulations. It can include statements about the government’s findings, conclusions, expectations and intentions – aspects that would not normally be treated in laws or regulations (except in a distinct first part – a preamble or “recitals”). Matters of fact and opinion can be mixed in with normative statements – again, unlike legislative style.

The style of writing in a policy statement depends very much on administrative convention in the country. Some countries prefer a formal “administrative report” style. Others favour a more informal document – for instance, using the word “we” in place of “government” and using colloquial expressions. This can also depend on the subject matter; a policy document that is expected to be read only by specialists in the field is likely to be written in a drier and more bureaucratic style.

Two slightly different styles for a policy statement (white paper) are illustrated in Box 1 and Box 2.

## Box 1.

### Example tending towards a more formal, administrative style

Statements taken from the European Commission's White Paper on Sport (July 2007).

- “Sport is a growing social and economic phenomenon which makes an important contribution to the European Union's strategic objectives of solidarity and prosperity.”
- “This initiative marks the first time that the Commission is addressing sport-related issues in a comprehensive manner.”
- “In preparing this White Paper, the Commission has held numerous consultations with sport stakeholders on issues of common interest as well as an online consultation.”
- “The Commission will facilitate the exchange of information and good practice, in particular in relation to young people, with a focus on the grassroots level.”
- “The Commission believes that better use can be made of the potential of sport as an instrument for social inclusion in the policies, actions and programmes of the European Union and of Member States.”
- “When addressing sport in its development policies, the EU will make its best effort to create synergies with existing programmes of the United Nations, Member States, local authorities and private bodies.”
- “The White Paper contains a number of actions to be implemented or supported by the Commission. Together, these actions form the ‘Pierre de Coubertin’ Action Plan which will guide the Commission in its sport-related activities during the coming years.”

## Box 2.

### Example tending towards a more informal, colloquial style

Statements taken from the United Kingdom's Open Public Services White Paper (July 2011).

- “We believe that a new approach to delivering public services is urgently needed.” “We can do better – these outcomes are neither socially just nor economically efficient.”
- “Too many of our public services are still run according to the maxim ‘the man in Whitehall really does know best’.” [Whitehall is the road on which many government offices are located and so refers in general to the British civil service.]
- “Gone is the assumption that a small collection of politicians and bureaucrats have a monopoly on knowledge – and with it the idea that the state alone is equipped to run public services.”
- “We will consult on how this can best be achieved in each of the individual services.”
- “The Government would welcome views on the following: [...]”
- “To improve the commissioning of public services, it is important to get the balance right between specifying outcomes and enabling innovative approaches to service delivery.”
- “This White Paper commits the Government to a programme of modernising public services based on the key principles of increasing choice, decentralising services, opening services to a range of providers, ensuring fair access and accountability to users and taxpayers.”
- “In preparing this White Paper, the Government has undertaken consultation with voluntary, community, social enterprise and private organisations, as well as the public. We received over 400 responses to our Modernising Commissioning Green Paper in December last year, and over 50 responses to our public service reform consultation in January this year.”

## Underlying economics in the policy framework for PPPs

The Guide is based on certain assumptions about the underlying economic principles for a PPP policy. This reflects a strong, although perhaps not universal, tendency in international thinking about PPPs. PPP policy statements do not usually explicitly articulate the assumptions; instead, they remain in the background. It is more appropriate to state them here in Part A rather than in Parts B or C. They are as follows:

- PPP policy is strongly influenced by economic policy relating to public investments and other public expenditures and to the economic regulation of private-sector business activity.
- PPP policy focuses on getting the most economic/social net benefit from PPP projects, and the greatest value for money (see below for how the term “value for money” is used in the Guide.) This is strongly related to welfare economics and more specifically to cost-benefit analysis.
- Policy for PPPs typically focuses on setting conditions for the entry of firms into the market (competition for the market) for certain services serving a public purpose. This includes setting out how these firms will be permitted to price their products and, in transferring risk to the private party, there is an appropriate balance between granting incentives to increase efficiency without imposing costs on firms that lower the overall net benefit of PPPs. These topics are very much the subject matter of classic economic regulation (principal-agent theory, mechanism design and so on.). The difference is that a regime of contracts regulate PPPs. As such, a major aim of PPP regulation is not how to regulate PPPs directly (as in typical utility regulation), but how best to design long-term contracts that will serve various regulatory functions.
- Just as under best-practice policy for the economic regulation of firms, PPP policy must include as an underlying principle that a reasonably efficient and well-performing private partner in a PPP agreement will be able to recover its investments and earn a fair return on them. Otherwise, private partners will not participate.

## How to use the Guide

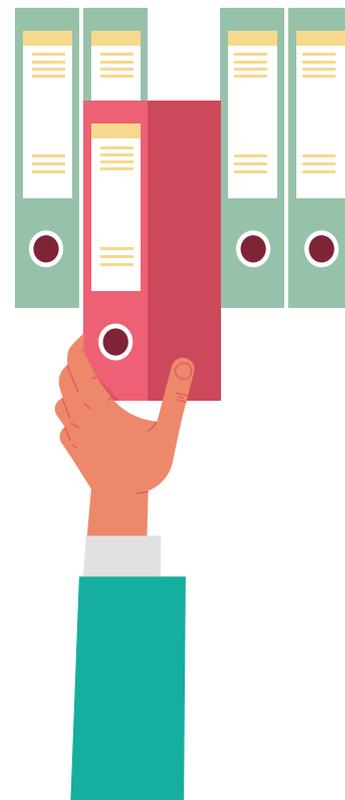
This document is not a full guide to drafting a PPP policy. A large textbook or compendium of papers would be needed to achieve that aim. The purpose of the Guide is much more limited. It consists of two sections after Part A:

- **Part B. Headings and guidance.** This section gives an example of typical headings (first and second level) for a PPP policy statement. They should not be copied unthinkingly by the user, but should be adapted to the country’s needs. They are meant to be indicative only, based loosely on PPP policy statements that other countries have adopted.

A list of questions and comments are given under each heading to provoke thought and help the user in formulating government policy for that section.

- **Part C. Executive summary example with annotations.** This section presents an example of what the executive summary of a PPP policy statement would look like – or possibly a very short full policy statement. It is not meant to be a model to be copied in its entirety. Every country has different conditions, concerns and preferences.

Annotations are given on each page in the form of extensive footnotes, often to indicate some of the other positions (or variants of positions) that a country might wish to take on certain issues.



## Part B. Headings and guidance

- The guidance points given under each of the headings below are a non-exhaustive selection of questions and issues that might be examined in writing the relevant section. They are not meant to be a point-by-point outline of the text of that section. The organisation of ideas as expressed in the sections of the policy statement may differ from the order below.
- To minimise repetition, examples of elements to include in the policy statement that are found in Part C are sometimes not included in Part B – and vice versa. For this reason, Part B should be read together with Part C.

### [Foreword]

In some countries, the policy statement will include a short foreword under the name of a high-level government official – for example, the head of the ministry that has primary responsibility for preparing the policy statement. The foreword (if there is one) will usually send a strong message of government endorsement of the country's PPP programme and of commitment to create conditions attractive to private investment through PPPs.

### Executive summary

An executive summary is always useful and recommended. An example of such an executive summary (but longer than an actual one should be) is given in Part C of the Guide. As noted in Part A, some countries may prefer to issue a short policy statement (like Part C), accompanied by a longer “working paper”, or similar.

## 1. Introduction

### 1.1 Background

- (a) How do PPPs fit within a broader range of activities involving cooperation between the public and private sectors?
- (i) Some countries refer to the entire range of cooperation between the public sector and the private sector as PSP (private-sector participation).
- (b) Should there be different and distinct legal regimes for different kinds of PPP (in the broad sense of the term) such as concessions and non-concession PPPs? Why or why not?
- (c) Should there be a bias in favour of implementing

PPPs over public-sector investment projects, or the other way around (all else being equal)? Or no bias whatsoever?

- (i) The modern tendency is to have no bias in favour of or against PPPs in deciding how to implement an investment project. Each project should be assessed in a neutral, unbiased way.
- (d) What consultations have been carried out during the work to prepare this policy statement? Was a green paper or consultation document circulated? What kind of comments were received?

### 1.2 Improving public infrastructure

- (a) The policy statement might include a short section on the state of public infrastructure, the needs for improving it and how PPPs can help. The contents would depend greatly on the particular circumstances of the country.
- (b) Giving a few key facts and figures might enrich this section.

### 1.3 Links with other government policies and programmes

- (a) The policy statement might include a section indicating how PPP policy fits with related policies and programmes. For example, depending on the country, linkages and interrelations could be highlighted between PPP policy and the government's policies on the following:
- (i) public investment management
- (ii) public procurement
- (iii) infrastructure improvement
- (iv) public service provision
- (v) decentralisation of functions to local governments
- (vi) foreign investment promotion

### 1.4 Purpose of the policy statement

- (a) What are the main purposes to be served by the policy statement?
- (b) One purpose is often to constitute a first step in the process leading to the passage of a new (or amended) PPP law.
- (c) Another purpose can be to prepare the way to launch carefully shepherded best-practice pilot projects.

## 2. Objectives of the PPP programme

### 2.1 Primary objectives

(a) What are the main public-policy objectives to be furthered by the use of PPPs, as opposed to traditional public-sector investments and service projects?

(b) These should be objectives for the PPP programme of the government in general. These are not meant to be a checklist for assessing each specific PPP. Some worthwhile projects may not help promote any of the primary objectives, but they may be valuable for other reasons.

(c) Be careful not to include means to an end in the section on objectives. For example, “allocating each risk to the party best able to manage it” is not an objective in itself; it is rather a means to obtain greater value from the PPP.

### 2.2 Secondary objectives

(a) Some countries may wish to list objectives that take second rank to the primary objectives. For example, strengthening local small and medium-sized enterprises may be one of the objectives of the PPP programme, but it is not likely to be a primary objective.

### 2.3 Dispelling myths and misconceptions

(a) This is not a common section in countries’ PPP policy statements, but it is being included here because it might be useful.

(b) Examples:

(i) One example is the idea that financing by the private sector relieves fiscal pressures on the government. It may relieve fiscal pressure in the short term, but not necessarily in the long term. Ultimately, long-term fiscal benefits through PPPs arise only through reduced costs or increased cash receipts from customers (usually linked to improving the quality of services).

(ii) Another example is the idea that the cost of debt in PPP projects is higher than the cost of government debt. If the implicit cost of bailing out government-financed projects is taken into account, much of the difference disappears.

(iii) A final example is the belief in some countries that there is (or should be) a PPP whenever the government subsidises private-sector business activities. This is not correct under most PPP frameworks.

(c) Different misconceptions (if any) arise in different countries. So if a section like this is used, the contents should be carefully tailored to the specific country.

## 3. Definition and characteristics of PPPs

### 3.1 Essential attributes

(a) What are the essential attributes of (key criteria for) a PPP – that is, those that must be present for the arrangement to qualify as a PPP under law?

(i) If the government has a PPP policy and there will be a PPP law, there needs to be a definition of PPP that makes it reasonably clear whether a described project is or is not a PPP. The definition should therefore reflect a well-thought-through decision about what kind of projects need to be treated in this special way. The boundaries of any definition like this will be somewhat arbitrary, of course.

(b) Recognise the difference between saying (i) an arrangement is not to be considered as a PPP unless it meets certain conditions and (ii) an arrangement may be a PPP, but not a PPP worthy of being pursued (not a “good” PPP) unless it meets certain conditions. There could be two sets of conditions: one to determine if the arrangement is (minimally) a PPP and the other (appraisal criteria) to determine if the PPP is worth carrying out.

(c) Necessary elements of a PPP in common usage internationally include items such as the following (where all must be present for the arrangement to be a PPP):

(i) Based on a long-term contract between a public-sector contracting authority and a private partner (a private-sector, majority-owned company).

(ii) Involves the provision of infrastructure or services, in either case serving a public purpose, and involves provision of services of some kind (at least maintenance) until the end of the contract.

(iii) Required performance specified mainly in terms of outputs, not inputs.

(iv) Includes significant/substantial risk transfer to the private partner and incentives given to the private partner for efficient performance and adequate service quality.

(d) One important distinction for countries in, or associated with (or inspired by the law of) the European Union (EU), will be the distinction between concessions and non-concession PPPs. Some countries may view this as the distinction between user-pay and government-pay PPPs. While this is

generally correct under EU law, there are also some more complex criteria focusing more on risk allocation.

(e) Should there be a minimum term (duration) of the contract for there to be a PPP?

(f) Should there be a minimum value? If so, should the policy give a rough indication of how the value of a PPP will be calculated, or should this be left to later regulations?

(i) Given that transaction costs have a fixed component, it will not make sense to carry out very small projects as PPPs (the transaction costs will likely outweigh any net benefit). But if the documentation for a type of PPP project has become more standardised, the transaction costs might fall.

(g) Should private-sector financing be an essential attribute of a PPP, in which case certain arrangements such as DBOs (design-build-operate, with public-sector funding of capital costs) would be excluded from being PPPs? Some countries list private-partner financing as an essential element of a PPP.

(h) Will a government entity be permitted to be a passive, minority shareholder in the private partner (the PPP company)? Some countries permit this.

(i) A government entity can also be a controlling shareholder. This option will not be considered in the Guide because it creates an arrangement very different from a classic PPP and so deserves more extensive and separate treatment.

(ii) The European Union uses a special term – institutional PPP – for mixed-ownership PPP companies (applicable where the government entity has a minority or majority share in the private partner). There would not seem to be any particular advantage in using this term if the only type being considered in the PPP context is one in which the government entity has a minority share and is a passive investor.

### 3.2 Permitted activities of the private partner

(a) Given that PPPs may be a new concept for the country, it may be useful in the policy statement to list some of the activities for which the private partner can be made responsible. These could include some or all of the following: design and engineering; financing; construction, renovation, rehabilitation, expansion; installation of equipment; operation; maintaining works and equipment (routine and periodic maintenance, preventive and corrective maintenance, and including periodic asset replacements); charging prices to customers (determined by the terms of the PPP agreement); and directly billing and receiving revenue from them.

### 3.3 Illustrative types of PPP

(a) There are many activities that could be included in a PPP and many ways that a PPP could be structured. Some countries find it useful to list example types of PPPs in their policy statements. This concretises the basic definition, helps explain the concepts and gives assurances that the listed types are indeed permitted (safe harbour).

(b) Common PPP arrangements include: operation and maintenance contracts; operating PPP (sometimes called operating concession); operate-maintain-manage (OMM); design-build-finance-operate (DBFO); build-own-operate-and-transfer (BOOT); rehabilitate-operate-transfer (ROT); and design-build-finance-maintain (DBFM). These types do not have consistent precise definitions in international practice. They are often meant to be merely suggestive.

### 3.4 Excluded arrangements

(a) Should a natural-resource concession (such as mining) be considered a PPP? Many national policies would exclude this arrangement because it operates under very different principles.

(b) Should an arrangement in which a national utility regulator periodically sets or adjusts user tariffs be considered a PPP, or would it be considered a regulated utility?

(c) Are there other types of arrangement involving private-sector participation that should not be considered to be PPPs (for purposes of policy and law)? Examples might include:

(i) a privatised company that now operates in the free market

(ii) a government-owned hotel under a management contract

## 4. PPP sectors

### 4.1 Priority sectors for PPPs

- (a) What are the priority sectors for PPPs?
- (b) Generally, the list given will be a non-exhaustive list of permitted sectors where the most attention will be given.
- (c) It might be helpful in the policy statement to summarise the known PPP opportunities in the various priority sectors.

### 4.2 Excluded sectors and activities

- (a) The government may wish to exclude PPPs from certain sectors or activities.
- (b) As this is policy and not law, the government may wish to state that little attention will be given to promoting PPPs in certain sectors or certain activities, even though there will not be an exclusion.

## 5. Key PPP principles

- (a) The headings that follow are one possibility. Governments may wish to formulate a somewhat different list.

### 5.2 Introduction

- (a) What are the key public policy principles that should govern PPPs? These would be overarching principles that should be considered when preparing and procuring PPPs.
- (b) The subsections below give some possibilities for key principles. These are not the only possibilities; they are merely illustrative.
- (c) The allocation of principles, attributes and criteria to the different categories – (i) aspects of basic definition of a PPP, (ii) key principles and (iii) appraisal criteria – is somewhat arbitrary. Or at least there can be an overlap.

### 5.3 PPP suitability factors

- (a) Some projects are more suitable when carried out as public-sector investment projects and some are more suitable implemented as PPPs. It is useful when initially screening projects to have a set of factors that helps decide what model to use to implement the project.
- (b) The list below is of typical PPP suitability factors. Many are based on a key characteristic of a PPP

– namely, that it should be based on a “tight” long-term contract. It is not being suggested that the user should necessarily include all of these factors in the policy statement.

(c) None of these factors is decisive taken alone and quantitative scores are not recommended, although that is one possibility. In any event, the rationale for undertaking a PPP, as opposed to a public-sector investment project, becomes weaker as more of the factors below receive a negative assessment and as that assessment becomes more strongly negative.

(d) The criteria below should not be used just to screen projects, but also to gain a better understanding of the project and the areas in which the project can be strengthened if implemented as a PPP.

(e) Example list of PPP suitability factors (it is not being suggested that the policy statement should necessarily include all of these):

(i) The outputs to be delivered can be specified objectively and precisely and measured and monitored well.

(ii) The service needs are not expected to change in unpredictable ways in the short or medium term.

(iii) The technology and other relevant aspects of the sector are expected to be fairly stable.

(iv) The risks affecting the project are well understood and the contract can include adequate mechanisms to address the consequences of these risks materialising.

(v) The arrangement is not highly complex from a contractual point of view.

(vi) There are strong opportunities for economies of scale by bundling together design and construction, and operation and maintenance (or some of these).

(vii) The private sector is expected to have greater capacities and skills than the public sector to implement the project and deliver the required services.

(viii) The project is large enough in relation to expected transaction costs to make it worthwhile to pursue as a PPP.

(ix) There is strong expressed interest from operators, investors and lenders.

(x) It is expected that there will be strong competition in bidding for the PPP project.

## 5.4 Value for money

(a) It is generally accepted that PPPs should be selected and designed to enhance value for money in some sense.

(b) “Value for money” is defined in different ways in PPP policy statements and laws. It is important to be clear about the definition used. (Unfortunately, some PPP policy statements and even laws use the term, but do not define it.) One distinction found in different definitions is between the financial perspective of the government department and the economic perspective of society as a whole.

(c) The definition used in the Guide (simply as an illustration to provoke debate and not necessarily to be copied verbatim by users) is given below.

## 5.5 Affordability

(a) There are two different ways the term “affordability” is used in this context.

(i) First, the prices charged to users must be affordable.

(ii) Second, any payments to be made from the government budget in the future must be “affordable” in the sense that they can be paid from the budget without jeopardising other planned expenditures.

## 5.6 Stakeholder consultation

(a) Efforts need to be made to hear the views of major stakeholders of all types. Good communication helps enable buy-in by these stakeholders and prevent political and social objections later.

## 5.7 Transparency

(a) Transparency of process, documentation and results is important to reduce the risk of corruption and enhance public confidence.

## 5.8 Competition

(a) Strong competition is often considered an important element to achieve high value for money.

(b) Should there be a preference for selecting private partners by full competitive bidding, with any abbreviated procedures (including single-source procurement) being the exceptions? Views on this differ.

## 6. PPP design

(a) Countries may wish to describe briefly the main issues related to the design of the PPP arrangement. Alternatively, it may be sufficient in the policy statement simply to list these items.

(b) The four subheadings below cover the most important aspects of the basic design of the arrangement. Of course, many other details are involved in designing a PPP.

### 6.2 Allocating responsibilities

(a) It is important to begin thinking early about which responsibilities will be given to the private partner and which will be retained by the contracting authority. This is a core consideration.

### 6.3 Specifying required performance

(a) What key performance indicators (KPIs) and corresponding values must the private partner achieve to comply with the PPP agreement? These should be carefully selected.

(b) There should be some type of sanction for deficiencies in performance. The required KPIs must have “teeth” of some kind.

### 6.4 Payment mechanism

(a) What principles should govern the remuneration that the private partner receives?

(b) A well-specified payment mechanism is crucial to a PPP. Several purposes must be served: to ensure that a reasonably efficient provider can recover its costs and make a fair return on its investments, to allocate certain risks and to provide appropriate incentives for efficiency and good quality of assets and services.

### 6.5 Allocating risks

(a) What principles should govern how risks are to be allocated between the parties?

(b) Note that a large part of the risk allocation will flow naturally from decisions made about the allocation of responsibilities, required KPIs and the payment mechanism. But there are residual risks that will need to be allocated.

## 7. Institutional framework

### 7.1 Public contracting authority and project preparation team

(a) The government entity that is the public-sector contracting authority almost always takes primary responsibility for preparing, procuring and overseeing the project. “Single-point responsibility” is an important principle on both sides of the deal.

(b) Some countries require that the contracting authority explicitly designate which team in the authority will be responsible for preparing the PPP project.

### 7.2 PPP unit

(a) Should there be a central PPP unit (or similar) of some kind? (Remaining questions in this section apply only if the answer to this question is “yes”.)

(b) What are the main functions of such a PPP unit?

(c) What possible functions needed for a sound PPP programme should not be performed by the PPP unit (at least not in the short and medium terms)? Who should perform these instead?

(d) Where should the PPP unit be located administratively, and how should it be organised?

(e) How should the PPP unit be funded?

(f) Should other entities be set up to deal specifically with PPPs, such as a PPP steering committee or a PPP commission? What roles will they have?

### 7.3 PPP units in other departments

(a) Should there be other PPP units (or nodes) in certain line ministries – those with a potentially large PPP deal flow? If so, when should these be set up?

### 7.4 Other institutional responsibilities

(a) Some countries may wish to list other ministries and departments that make decisions that affect PPPs and describe their main responsibilities in this regard.

### 7.5 Municipal level

(a) What should the institutional set-up be for municipal-level PPPs (if there will be one)?

(b) What roles should the central PPP unit have and what roles should be retained at the municipal level?

### 7.6 Approvals

(a) At what stages of project preparation must a specified entity (other than the contracting authority) approve the project to proceed to the next stage, if such approvals are required?

(b) Who will be the deciding body (“gatekeeper”), if there will be one, at each approval point?

(c) Should there be a fast-track procedure for PPPs of lower value or lesser importance?

### 7.7 Capacity strengthening

(a) What activities will the government undertake to strengthen the capacity of staff in the PPP unit (if there is one) and in relevant ministries to prepare projects and exercise effective oversight of PPPs?

(b) Have any international or bilateral donors been contacted about providing funds for this purpose?

## 8. Project preparation for PPPs

### 8.1 Process overview

(a) What stages must a PPP project go through during the preparation process (and afterwards)?

### 8.2 Identification, screening and project pipeline development

(a) What should be envisaged for these steps? How will the PPP unit (if there is one) help?

(b) Should there be a defined methodology (or at least a list of considerations) for the screening of pipeline projects?

### 8.3 PPP feasibility report

(a) In most countries, the major appraisal of the PPP takes place based on a comprehensive PPP feasibility report, which can go by different names depending on the country – for example, business case.

(b) What topics would normally be addressed in a PPP feasibility report? Who prepares it? Who reviews it? Is a “go/no go” decision made based on the appraisal of the feasibility report?

(c) Should a full feasibility report be prepared for every proposed PPP project?

(d) Should a pre-feasibility report or concept note be prepared for every proposed PPP project?

## 8.4 Appraisal of the PPP project – criteria for appraisal

(a) To what extent should the review and appraisal process followed for PPPs be the same as for public-sector projects?

(i) One possibility is to use the same review process until it is decided whether the project will be a public-sector investment or a PPP.

(b) Should there be a major appraisal step after a PPP feasibility report has been prepared and before detailed preparation of the draft contract and tender documents begins?

(c) What should be the methodologies, criteria and processes for the appraisal?

(d) Should an economic appraisal (looking at net benefits to economy and society) be carried out for every PPP? Should there be an abbreviated version for lower-value or simpler projects?

(e) Should the fiscal impacts of the PPP (that is, direct and contingent liabilities to the state or municipality) be estimated quantitatively in the feasibility report – and then reviewed and reported to the appropriate debt management department?

(i) How should the government account for the liabilities arising from PPPs?

(f) Should a quantitative “public sector comparator” exercise be carried out for every PPP project?

(g) If appraisal takes place at the municipal level for municipal PPPs, should the central PPP unit (if there is one) be involved in some way in reviewing the feasibility report or appraisal memorandum?

## 8.5 Funding of PPP project preparation

(a) Should a special facility be created to fund PPP project preparation activities? If so, what are the broad features of such a facility?

## 9. Selection of the private partner

### 9.1 General

(a) Should full competitive bidding be the preferred route?

### 9.2 Competitive bidding

(a) Should full competitive bidding be required for all PPPs?

(b) Under what conditions, if any, should single-source procurement of PPPs (direct negotiations) be permitted?

(c) Should PPPs use a different set of procurement rules, or should they follow the country’s procurement rules for ordinary works, goods and services – with a few modifications that are specified in law?

(d) Should different procurement rules be used depending on the type of PPP (for example, concession versus non-concession PPP)? (Countries in or associated with the European Union are likely to do this.)

(e) Should there be a specific policy for how to proceed if there is only one responsive bidder in a PPP bidding procedure?

## 9.3 Unsolicited proposals

(a) What principles should govern the treatment of unsolicited proposals (privately initiated proposals) for PPPs?

(b) Should unsolicited proposals be considered only for potential PPP projects that are innovative and unusual in some way? Or for any PPPs that are not already in the official PPP pipeline?

(c) Should the proponent of an unsolicited proposal for a PPP be compensated for its reasonable preparation costs if it does not win during the subsequent competitive bidding procedure?

(d) Should other advantages or benefits be given to the proponent of an unsolicited PPP proposal?

## 10. Legal framework

(a) This section should ideally be written based on the results of a detailed legal review.

### 10.1 PPP law

(a) What are the main laws and amendments that will need to be passed to reflect and implement the policy statement? What are the main reasons for such laws and amendments?

(i) This is meant to include only the most obvious laws that the policy statement will affect. Legal specialists will develop the full list of consequential amendments, which would not usually be included in the policy statement, which is intended for a more general audience.

## 10.2 PPP agreement

(a) The PPP agreement sets out the core elements of the PPP – starting with the precise obligations and rights of each party.

(i) Notably, the private partner promises to provide certain services over the term of the PPP and to carry out the works and activities needed to provide these services. In exchange, the contracting authority promises to pay the private partner for the services or to allow the private partner to charge end-users directly.

(b) Should the PPP law (if there is one) include a list of the main topics that must be covered in the PPP agreement? Some countries find a mandatory list of key topics useful to ensure that the agreement does not contain gaps. Other countries may include a non-mandatory list that is illustrative only.

(c) What are the public policy issues involved concerning the payments to be made by the parties in the event of early termination? This is an important issue for private partners and their lenders. Each PPP agreement will need to set out the circumstances justifying early termination with clarity and precision.

(d) Senior lenders will insist that all of the outstanding debt (or in any case, most of it) will need to be paid back upon any early termination. Given that potential lenders (especially international financial institutions) will look carefully at the policy statement, it may be useful to discuss this issue briefly in the policy statement.

## 11. Financing of PPPs

### 11.1 General

(a) As the private partner generally provides or organises the financing for the PPP, there is no need to spend many pages on this. However, certain issues are worth highlighting in the policy statement.

(b) In certain countries, it might be useful to carry out a financial market review as a prelude to writing the policy for this section. The purpose of this review would be to assess the country's financial suitability for financing PPP projects. The availability of financing will depend crucially on the country's perceived level of risk, among other factors.

### 11.2 Rights of lenders

(a) What rights should senior lenders be given in connection with their financing of a PPP?

(i) In a PPP financed by project finance, senior lenders will generally insist on having a so-called direct agreement with the public authority. The main feature of the direct agreement is to allow the senior lender to step in and replace the private partner if the private partner defaults or is about to default on the PPP contract or loan.

(ii) Lenders rarely (in fact, almost never) exercise their step-in rights. As with other seemingly draconian provisions in project-finance agreements, the main purpose is to make sure that lenders have a seat at the negotiating table if things start to go wrong and to give them sufficient bargaining power to force the private partner to take the remedial action needed.

(b) What kinds of security interests should senior lenders be able to obtain? The treatment of this issue in the policy statement, if discussed at all, would not be detailed and legally technical; it would merely sketch out a broad direction to follow.

### 11.3 Government financial support

(a) Should the government be permitted to partly finance or guarantee the financing of a PPP? Under what conditions?

(i) A common kind of government financial support in certain user-pay PPPs consists of a minimum-revenue guarantee, or similar.

(b) What types of credit enhancement from the government should be allowed, and under what conditions?

(c) Will the government consider giving certain kinds of financial support? For example, there may be a need for "viability gap funding" to make an economically sound project financially feasible for the private partner. Should there be a policy about viability gap funding?

(d) Another question related to government support is whether the central government will give guarantees for the PPP payment obligations of specific state-owned enterprises or for municipalities. This question arises frequently.

## 12. Contract monitoring, oversight reporting and evaluation

### 12.1 Principles relating to transparency, disclosure and communications

- (a) What should the policy be in these areas?
- (b) The modern trend is to make the process transparent and to permit most project-related documentation to be disclosed to the public, with suitable safeguards for legitimate commercially sensitive information.

### 12.2 Monitoring and oversight

- (a) What should the requirements be for PPP contract monitoring and oversight?
- (b) Who should be responsible for carrying this out?

### 12.3 PPP data analysis and reporting

- (a) What should the responsibilities be with respect to compiling, analysing and reporting (to government and to the public) information based on all PPPs in the country?

### 12.4 Ex post evaluation

- (a) Who should carry out ex post evaluations at the end of the life of every PPP, and possibly at periodic intervals before that?
- (b) What should these ex post evaluations consist of?



## Part C. Example executive summary with annotations

This example executive summary (EES) is not intended to be a model document or to illustrate international best practice. Although the broad lines attempt to reflect generally accepted views, it is merely an example of a possible executive summary of a PPP policy statement that might be prepared by a hypothetical country. Countries' views differ on many aspects covered in the EES.

- For simplicity, the organisation of the EES follows the first-level headings given in Part B.
- The EES is probably too long for an actual executive summary. The length serves a useful purpose here, however, as the main text of the policy statement is not provided.
- The comments given as footnotes are not intended to be part of the EES or policy statement. They are annotations for use by the preparer of the policy statement.
- “Main text” here means the main body of the policy statement, which would follow the executive summary.

### I. Introduction

Over the past decade, [Country X] has made great strides to improve the investment climate for both foreign and local private-sector companies.<sup>1</sup> As part of a continuing effort, the government intends to create a solid foundation for public-private partnerships (PPPs), which allow the private sector to become involved in the economy, expand public infrastructure and improve public services, in alignment with [Country X's] development objectives.

PPPs or similar arrangements already exist in [Country X], but a systematic framework has not existed until now.<sup>2</sup>

By harnessing the financing, know-how and management capabilities of the private sector through long-term contracts that transfer certain risks to the private sector and encourage better asset utilisation and whole-of-life costing, PPPs can deliver improved services more efficiently.<sup>3</sup>

<sup>1</sup> It may be useful to begin the policy document by showing how PPPs fit into the government's broader efforts to build infrastructure and promote private-sector investments. The EES refers to the latter, but not to the government's efforts in the area of public infrastructure – a topic that could be added.

<sup>2</sup> Countries adopting a new PPP framework often find that various arrangements already exist that are, or are similar to, PPPs. One purpose of a policy statement, in that case, may be to clarify how new PPPs are similar and how they are different from the most common existing PPP-like arrangements.

<sup>3</sup> Some countries may wish to place this in the context of international PPP practice as it has developed over the past few decades.

PPPs are not intended to replace traditional public-sector investment projects.<sup>4</sup> The aim instead is to use each method in a strategic way that results in greater value for money.

The government is committed to developing a coherent and systematic approach to PPPs, aligned with best international best practice. The process will start with this PPP policy statement.

Preparation of the policy statement began with a consultation document that was posted on the Ministry of Finance website.<sup>5</sup> Comments were received from numerous departments and stakeholders and the general public. (These comments are available on the website.) In addition, several discussion meetings were held.

The policy statement will be followed by a PPP law and the creation of a PPP commission and PPP unit. Detailed regulations and guidance documents will also follow.<sup>6</sup>

A set of carefully selected and supervised pilot PPP projects will then be prepared and implemented. Establishing a good track record from the start will boost investor confidence in the process and give assurances of the government's commitment.

The purpose of the policy statement is to describe the overall policy of the government concerning PPPs. The PPP law will include some of the ideas in the policy statement. Some will be used later in implementing regulations and guidance documents.

The policy statement should prove useful to private operators, investors and lenders in understanding the government's vision for PPPs in [Country X].<sup>7</sup>

<sup>4</sup> In the past, some countries officially prioritised PPP projects: a traditional public-sector project would be considered only if a PPP was not feasible. It is now more common to put both on a level playing field and to assess which mode of implementation is likely to yield greater value for money.

<sup>5</sup> Some countries do not yet have the practice of posting consultation documents and soliciting opinions from people outside government before issuing policy statements or regulations. There can be great merit in doing this, if carefully managed.

<sup>6</sup> In the EES, "guidance document" refers to a non-binding document that explains in a more user-friendly way the laws and regulations and how to carry out all the steps needed to prepare, procure and manage the oversight of a PPP.

<sup>7</sup> Outsiders will pay careful attention to the policy statement and it may have a considerable influence on the degree to which they want to become involved (provided that the subsequent new legislation is also sound). An important purpose of the policy will be to convince the private sector and the financial community of the genuine commitment of the government to a sound PPP framework.

<sup>8</sup> As noted in Part B, a set of less important (secondary) objectives might also be noted in the main text.

<sup>9</sup> There is some overlap between this list and the list of appraisal criteria for PPP projects. This does not mean, however, that every PPP must do something to further all of these objectives. This point should be made clear in the main text.

<sup>10</sup> Although many countries use PPPs to overcome short-term budgetary constraints, this can be dangerous because the financing must be repaid, and this can constrict fiscal space in later periods. In the long run, PPPs create additional value by reducing costs and improving services (and hence augmenting revenue). As the topic often causes confusion, these issues might be discussed in the main text.

<sup>11</sup> The main text might describe other kinds of private-sector participation common in the country as a way to make the distinction with PPPs clearer.

<sup>12</sup> Countries use different terms for the public-sector party and private-sector party.

## 2. Objectives of the PPP programme

The primary objectives<sup>8</sup> of the PPP programme in [Country X] include the following:<sup>9</sup>

- Accelerate investment in new infrastructure and further the upgrading of existing infrastructure.
- Bring additional financing for investments in infrastructure.<sup>10</sup>
- Lower the cost and improve the quality of public infrastructure and services through better construction, operation and maintenance.
- Ensure optimal maintenance throughout the life of the assets.
- Benefit from the private sector's experience, technologies, efficiency and innovation.

## 3. Definition and characteristics of PPPs

Not all valuable arrangements involving participation of the private sector for a public purpose are PPPs.<sup>11</sup> The policy statement sets out a definition of PPP and gives its general characteristics. It is important to have a clear definition of a PPP to know when the policy and PPP law do or do not apply.

A PPP involves a legally binding long-term contract between a public-sector contracting authority and a private partner, for the provision of public infrastructure or services with a public purpose.<sup>12</sup> The services in question are of a kind that would traditionally be provided by government, not by

a private-sector operator. The duration of a PPP agreement will normally be from 5 to 30 years.<sup>13</sup>

Broadly speaking, the contracting authority for a PPP can be any government-related body that is normally responsible for the relevant infrastructure or services.<sup>14</sup>

Responsibilities given to the private partner can include: design and engineering; financing;<sup>15</sup> construction, renovation, rehabilitation or expansion of assets; installation of equipment; operation; maintenance of works and equipment, and related activities. The private partner must continue to be involved operationally in some way during the entire term of the PPP.<sup>16</sup>

The required performance of the private partner will be specified principally in terms of performance outputs (services to be delivered) rather than physical inputs (detailed description of capital works or equipment).<sup>17</sup> This allows the private partner sufficient freedom to innovate and achieve efficiencies.

The PPP arrangement must involve substantial risk transfer<sup>18</sup> to the private partner and sufficient incentives being given to it to induce efficient performance and adequate service quality.

The private partner may be remunerated by payments

made by users of the service, payments from central or local government budgets, revenue from ancillary commercial activities or a combination of any of the above.<sup>19</sup>

The policy statement sets out examples of various types of PPP arrangements – among others – that will be permitted. They involve various combinations of responsibilities for design, construction, operation and maintenance, and various possibilities for ownership of assets.<sup>20</sup>

#### 4. PPP sectors

It is expected that the PPP programme in [Country X] during the first years will place an emphasis on the following sectors and subsectors:<sup>21</sup>

- solid waste processing and disposal
- healthcare
- information and communication technology and related administrative services
- road and rail transport
- airports and seaports
- electricity generation.

PPPs in other sectors will also be permitted.<sup>22</sup>

<sup>13</sup> More should be said about this in the main text; it is a very important issue.

Some countries restrict PPPs to arrangements that are at least a specified minimum number of years – for example, 3, 4 or 5. There are several reasons for doing this. First, it may be felt that the added requirements and protections for PPPs are not needed for shorter-term (and hence generally lower-value) projects. Second, if there is a PPP unit, it may be felt that the unit should not be burdened with a large number of shorter-term contracts – including simple service contracts.

Some countries also set a maximum term for PPPs. The rationale is generally that the PPP mechanism should not be used to create unnecessarily long-term monopolies and that more frequent rebidding brings greater value for money. Other countries do not set any maximum term as a policy matter, leaving this to be decided for each specific PPP agreement.

<sup>14</sup> More specificity should be given in the main text. A question that frequently arises is whether state-owned (or municipally owned) enterprises can be PPP contracting authorities.

<sup>15</sup> Some countries require significant financing of investments by the private partner to be an essential element of a PPP. Other countries do not impose this requirement, permitting long-term management or leasing (affermage) contracts, and similar, to be PPPs.

<sup>16</sup> The idea here is that an arrangement would not be a PPP, for example, if it consists essentially of construction only, with deferred payment to be made by the contracting authority over a number of years.

<sup>17</sup> This is one of the classic distinctions between traditional public-sector projects and PPPs.

<sup>18</sup> Countries differ as to the degree of risk transfer that must take place for the arrangement to be a PPP. It is generally agreed that if the private partner bears no risks at all (essentially a cost-plus contract), then the arrangement should not be considered to be a PPP.

<sup>19</sup> Country X has decided to use “PPP” in an all-embracing way to include both user-pay arrangements and government-pay arrangements. Countries that wish to follow EU law, and some countries influenced by the French administrative law tradition, distinguish between user-pay arrangements and government-pay arrangements, calling the former “concessions”. (With more complexity, they may define “concession” in relation to the kinds and degrees of risk transferred to the private partner.) This is a specialised topic that will not be addressed in any more detail in the Guide.

An example of an “ancillary commercial activity” would be the rental of space in a PPP parking garage by the private partner to shops, restaurants and so on (done in compliance with the PPP agreement).

<sup>20</sup> The main text might give as examples, and describe, some of the typical acronyms used in connection with PPPs: DBFO, ROT and so on. Some countries restrict PPPs to a set of types defined in this way, perhaps with exceptions to be granted by a higher authority. Other countries permit many combinations of activities and ownership to be PPPs, as long as the arrangement includes the essential attributes.

<sup>21</sup> This list is specific to the fictitious Country X. Countries have different priorities.

<sup>22</sup> Some countries limit the eligible sectors to those explicitly indicated in the PPP law, with higher-level approval needed for PPPs in any other sectors.

## 5. Key PPP principles

Several overarching principles will be reflected in the way the PPP programme is carried out. They are summarised below.

**PPP suitability factors.** Some projects are better suited to being implemented as public-sector projects and some are better as PPPs. The factors that favour using PPPs – for instance, where PPPs are more likely to bring significant added value compared with traditional public-sector procurement – include the following:

- The outputs to be delivered can be specified objectively and precisely, and measured and monitored well.
- There are strong opportunities for economies to be realised by bundling together design and construction, and operation and maintenance (or some of these).
- The project is large enough in relation to expected transaction costs to make it worthwhile to pursue as a PPP.
- It is expected that there will be strong competition in bidding for the PPP project.

These factors (among others)<sup>23</sup> will play a role in the screening and appraisal of potential PPP projects.

**Value for money.**<sup>24</sup> An important consideration in selecting and designing PPPs is to enhance value for money, which is defined for the purpose of the policy statement as the overall value to consumers and the broader public sector, taking into account long-term quantity and quality of services and whole-life costs.

**Affordability.** PPPs will be pursued only if the prices paid by users are affordable and the payments made by central and local governments are affordable from the budgetary point of view.

**Stakeholder consultation.**<sup>25</sup> During the project preparation process, it is important for the contracting authority to consider the views of all significant stakeholders: potential operators, investors, lenders, customers and other groups in society that may be affected by the project.

<sup>23</sup> The main text would probably discuss these factors and others in more detail.

<sup>24</sup> There are numerous definitions of value for money – many of them somewhat vague and suggestive. The definition given above is one possibility. If the policy statement specifically mentions value for money, a definition of some kind should be given to avoid confusion.

<sup>25</sup> The preparer may wish to summarise in the main text some of the methods that will be used for stakeholder consultations – for example, focus groups and opinion surveys.

<sup>26</sup> In some countries, freedom-of-information acts would impose similar disclosure requirements.

<sup>27</sup> In the main text, the preparer may wish to distinguish between total value to society (that is, including value to domestic shareholders) and value to the public sector (government, customers and so on). A PPP might bring high total value without competition. It is effective competition that can transfer excess value from private-sector shareholders to the public sector.

**Transparency.** Transparency is a key principle of a good PPP process. Experience in other countries shows that if the process of selecting the private partner and the resulting terms of the deal are opaque, the public can become suspicious and there can be a strong reaction against doing PPPs. The government is committed to greater transparency in how PPPs are identified, how the private partner is selected and how the PPP agreement works.

In addition, all signed PPP contracts will be made available to the public, subject to reasonable safeguards to protect national security and legitimate concerns about commercial sensitivity.<sup>26</sup>

**Competition.** Except in special cases, the selection of private partners to implement PPPs will be subject to full competitive bidding. This is an important aspect of enhancing value for money.<sup>27</sup>

## 6. PPP design

Designing the PPP arrangement requires care and skill. Good design involves:

- clearly allocating responsibilities to the parties
- specifying the performance required of the private partner
- specifying the “payment mechanism” – the precise way the private partner will be remunerated
- allocating risks.

Particular attention during the design process will be given to the allocation of risks. As a general rule, each risk in a PPP should be allocated to the party best able to manage that risk. This helps maximise total project value.

Most risks related to construction, operation and maintenance are generally allocated to the private partner. A principal reason why PPPs are used is that the private sector can carry out these activities more efficiently and quickly than the public sector.

Demand risk<sup>28</sup> should generally be allocated to the private partner if it has significant control over the level of demand for the services. If not, allocating demand risk to the private partner could make the project more costly and reduce overall value.<sup>29</sup>

## 7. Institutional framework

The contracting authority is, loosely speaking, the owner of the PPP project. It remains ultimately accountable to government and to the public for the provision of the services and infrastructure provided under the PPP.

The centrepiece of the new institutional framework will be the establishment of a PPP unit located under the Ministry of Finance<sup>30</sup> and an inter-ministerial PPP commission.<sup>31</sup> The PPP unit will serve as the secretariat of the PPP commission.

The PPP unit will have a number of functions related to the preparation, approval and promotion of PPPs – notably:

- Develop regulations and non-mandatory guidance documents and assist contracting authorities in understanding and following the required methodologies and procedures.

- At various stages, review, appraise and give an opinion on specific PPP projects submitted to it by contracting authorities.<sup>32</sup> Coordinate the reviews by other departments and agencies.<sup>33</sup>

- Keep a registry of all PPP projects.

- Propose improvements to the PPP programme and system.

The PPP commission will formally approve PPP projects at various stages and approve methodologies, procedures and guidelines, in both instances based on the analyses and recommendations submitted to it by the PPP agency.<sup>34</sup>

## 8. Project preparation for PPPs

The policy statement sets out the different stages that will be followed in preparing a PPP project and taking it to market.

Led by the PPP unit, a major appraisal of each PPP project will take place based on a comprehensive PPP feasibility report, submitted by the contracting authority and usually prepared with support from consultants. This is a critical step before moving to the procurement stage (that is, selection of the private partner).<sup>35</sup>

<sup>28</sup> “Demand risk” refers to how cash flow changes in response to changes in the level of demand for the services. If the private partner has substantial fixed costs (fixed per period of time), then changes in revenue in response to changes in demand can have a large effect on the return it makes.

<sup>29</sup> In the early years of PPPs in some countries, it was thought that all or most demand risk should be transferred to the private partner in all PPPs. It is better understood now that if the private partner can do little to influence demand for the services, such a risk allocation is generally not optimal.

<sup>30</sup> Countries may wish to locate the PPP unit (if there is one) under another ministry. Alternatively, it could be a special, higher-level body directly under the prime minister or president.

<sup>31</sup> There are many different institutional frameworks for PPPs. This is just one of numerous possibilities. A rigorous institutional assessment should be carried out before deciding on the best institutional framework. It is strongly advised not to simply copy the set-up seen in another country. The best way to carry out such an assessment is to start by considering the functions that need to be performed to ensure a sound PPP system. Then look at the entities (existing or new) best suited to carry out these functions. One thing missing from the EES is the designation of who will set the direction and vision for PPP policy and strategy in the future. This might be added to the commission’s responsibilities (based on recommendations of the PPP unit).

<sup>32</sup> In some countries, the PPP unit (if there is one) will not be involved in the formal appraisal of the PPP project. This will remain an activity to be carried out by the contracting authority (ideally by a different team than the one that prepared the PPP feasibility report – to lessen the risk of bias).

<sup>33</sup> Some countries use the PPP unit to organise and coordinate the reviews by all relevant departments and agencies – each reviewing within its field of competence.

<sup>34</sup> The idea behind this hierarchy is that the commission would be set up at a high enough level so that its decisions would have legitimacy and be respected. If a country decides to place a PPP unit at a very high level (for example, directly under the prime minister), then having a PPP commission in addition would probably be superfluous. Institutional set-ups are very much country-specific.

<sup>35</sup> Although preparation procedures for PPPs differ depending on the country, it is very common to see the requirement of a comprehensive PPP feasibility report (or business case) prepared and appraised before moving to the procurement stage.

The main appraisal criteria for a PPP project include:<sup>36</sup>

- technical, commercial, financial, institutional feasibility
- economic soundness<sup>37</sup>
- value for money<sup>38</sup>
- affordability to users and to central and local government budgets
- acceptable environmental and social impact
- acceptable fiscal impact,<sup>39</sup> both short term and long term.

Financial feasibility must not be overlooked: the project must be sufficiently attractive to private-sector operators, investors and lenders. Otherwise, they will not participate and the PPP will not be able to be implemented.

The policy statement describes procedures and methods for earlier stages of project identification and screening.<sup>40</sup>

## 9. Selection of the private partner

The full benefit of PPPs to the public sector can only be achieved when PPPs are procured through well-structured and transparent bidding with strong competition. Competitive bidding enhances the

value to be gained by the public sector from a PPP. Transparency strengthens the legitimacy of the government's procurement process.

The requirements of sound procurement of PPPs differ in certain ways from the requirements commonly applied to the public procurement of ordinary goods, works and services. For this reason, PPP legislation will specify a procurement regime for PPPs.<sup>41</sup> The public procurement law will not apply to the selection of the private partner in a PPP.

The main stages of the selection process for the private partner will be:

- setting up a tender commission by the contracting authority
- publishing a procurement notice
- prequalification and shortlisting of potential bidders
- requesting proposals<sup>42</sup>
- managing the process during the bidding period
- evaluating final proposals and selecting the preferred bidder
- final negotiations and signing of the PPP agreement.

Single-source procurement (direct negotiations with one company or consortium) to select the private partner, without the use of competitive tendering, will be permitted only in limited circumstances.<sup>43</sup>

<sup>36</sup> Only the principal criteria would be listed here. More might be indicated and discussed in the main text.

<sup>37</sup> This basically means positive net value to the economy and society – determined in line with the principles of cost-benefit analysis. It does not necessarily mean a full, quantitative cost-benefit analysis. Ideally, this kind of analysis should be done based on the underlying project before a decision is taken whether to use the PPP mode or the public-sector-project mode – and then should be adjusted as necessary to deal with the peculiarities of the PPP mode (if that mode is chosen for implementation). In some countries, however, this will not have been done by the time the project is being considered for implementation as a PPP.

<sup>38</sup> Based on the definition of value for money given in the EES (see above), this analysis would be similar to the one immediately above (“economic soundness”) except that in the case of value for money (as defined in the EES) the perspective is that of the public sector only. To be more specific: conventional cost-benefit analysis looks at costs and benefits to society as a whole, including domestic private-sector shareholders.

<sup>39</sup> Given the serious macroeconomic consequences that can arise when a country ignores the long-term fiscal impact of PPPs (including from contingent liabilities), this issue should be given appropriate attention in the main text. Countries that already have a high debt-to-GDP ratio may wish to say more about the issue and its importance, even in the executive summary.

<sup>40</sup> The early stages are very important. Countries can find themselves with a huge pipeline of possible PPP projects, but without the needed capacity to boil down the list to the most promising ones – ready for further study and preparation. Some countries have therefore adopted the practice of requiring a pre-feasibility report or initial concept note as a way to carry out a preliminary assessment of the project before it goes to the full feasibility report stage. These aspects would be described in the main text.

<sup>41</sup> This depends very much on the country. Procurement rules continue to evolve, and it may be that the ordinary public procurement rules in the country can be applied satisfactorily to PPPs, perhaps with just a few adjustments, which can be set out in its PPP law. (Note that EU countries are required to use the ordinary public procurement rules for non-concession PPPs.) In other countries, however, it may be considered the best solution to have a completely different procurement regime for PPPs.

<sup>42</sup> Some countries prefer the term “invitation to tender”.

<sup>43</sup> These circumstances would be described in the main text. A common and straightforward example is where only one source is capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights, and only the single source possesses them.

The preferred route to select a private partner is for the contracting authority (often supported by transaction advisers) to initiate preparation of a PPP project and develop the bidding documents and the draft PPP agreement. However, unsolicited proposals (that is, privately initiated PPP proposals) will also be permitted in certain circumstances.<sup>44</sup>

To be eligible for further consideration, an unsolicited proposal must be for a project that has not been registered with the PPP agency and that is not included in the contracting authority's pipeline of potential PPP projects. Moreover, the project must have innovative or unique features,<sup>45</sup> in the sense that it would not normally have been identified or adequately developed as a potential PPP project by the contracting authority on its own (including by consultants of the contracting authority).

An unsolicited proposal, if initially cleared, will go through a rigorous review process<sup>46</sup> and a procedure of full competitive bidding. The difference is that, if the promoter loses in the competition, it will be reimbursed the reasonable costs it incurred in making its initial proposal.<sup>47</sup>

## 10. Legal framework

The next step to be taken after the policy statement will be the preparation of a comprehensive PPP law,<sup>48</sup> to be followed by implementing regulations and guidance documents.<sup>49</sup>

The parties formalise a PPP by a long-term legally binding PPP agreement that explicitly sets out the important elements of the PPP and the practical and commercial relationship between the parties – including their rights and obligations – for the duration of the PPP.

The PPP law will include a section relating to the PPP agreement. Especially important will be to provide a list of critical topics that will need to be covered in any PPP agreement to ensure that it is comprehensive and does not leave any important gaps.<sup>50</sup>

## 11. Financing of PPPs

**Lenders' rights.** It is customary for senior lenders to enter into a "direct agreement" with the contracting authority to allow for step-in and related arrangements to ensure the continuity of the PPP.<sup>51</sup> Senior lenders in a PPP arrangement will often require secured interests over all the project assets to enable the lender to step in if the project is failing and temporarily to play the role of private partner and arrange for the appointment of a replacement private partner.

**State financial support.** One great advantage of a PPP is that the private partner is generally responsible for providing or mobilising the financing for needed capital expenditures. Nevertheless, state funding and support – grants or specific guarantees, for example – can be useful in certain circumstances. The government's policy permits this when it is beneficial, especially when projects are economically sound but

<sup>44</sup> Some countries may not wish to give preference to contracting authority-initiated PPPs, but to place both routes on an equal footing.

<sup>45</sup> The idea behind Country X's policy of requiring genuine innovative or unique features is to restrain contracting authorities from giving favoured companies an advantage for straightforward and obvious PPPs (for instance, a water treatment plant PPP) simply by refraining from initiating them to let the favoured company initiate them instead. A requirement like this in the context of unsolicited proposals is not found in all countries.

<sup>46</sup> Some countries require the contracting authority to prepare a full feasibility report even in the case of an unsolicited proposal (in which case, certain parts could be taken from or based largely on documentation submitted by the proponent).

<sup>47</sup> Other kinds of advantages can be given to the promoter of an unsolicited PPP proposal if the project results in a signed PPP agreement. Country X has chosen to include only this one – which is perhaps the most common and uncontroversial one.

<sup>48</sup> This assumes that the country does not already have a specific PPP law and wishes to enact one. It may instead be a question of amending an existing PPP law to improve it.

<sup>49</sup> The section in the main text on the legal framework might be relatively short or long, depending on the contentiousness and complexity of the legal issues and on whether lawyers have played a key role in preparing the policy statement. The composition of the intended audience of the policy statement should be borne in mind.

<sup>50</sup> Many countries include in their PPP law a mandatory list of the topics that must be addressed (one way or another) in any PPP agreement. Some countries allow complete freedom to the parties in this respect, and may give a list of topics only as non-binding examples.

<sup>51</sup> This may seem to be a technical issue not worth noting in the executive summary or even in the main text of the policy. The reason for highlighting it is that public authorities and governments are often surprised that they will need to enter into a direct agreement. So it is good to raise the issue at an early stage, as a way to educate stakeholders and preempt later objections.

not financially viable based on user charges alone, or when there are certain risks that the private sector is less capable of managing. State support, if used judiciously, can increase private-sector interest and confidence in a PPP.<sup>52</sup>

## 12. Contract monitoring, oversight, reporting and evaluation

Effective monitoring and oversight by the public partner is very important to the success of a PPP. Systematic monitoring systems will need to be set up to assess whether the private partner is performing in accordance with the requirements of the PPP agreement.

Monitoring and oversight of PPPs requires adequate capacity in the contracting authority. Sometimes, the contracting authority can carry out these activities using its existing departments and staff. But for large projects, it is often useful for the contracting authority to set up a dedicated oversight unit.

The PPP unit will establish and maintain a systematic and well-organised database of all PPP projects. A unified information portal will be developed with information about PPPs in the country for potential investors and the public.

A post evaluation of each PPP project, conducted after completion of the PPP (and sometimes more frequently), will be carried out by an independent team – independent also from the PPP unit because the PPP unit was involved in appraising the project and recommending approval. The main objective of the ex post evaluation will be to assess a project's successes and failures and to adjust policy, legislation and practice to help ensure better outcomes from future PPPs.



<sup>52</sup> An important issue in some countries is whether, and in what circumstances, the state will guarantee the payment obligations (under a PPP agreement) of a state enterprise. Some countries may wish to address this issue in their policy statement.