



# PPP Financing Overview

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# What is a Public-Private Partnership?

A PPP is a long-term (5 to 30 year) contract between a public entity and a private company, whereby the private company undertakes to provide a public service by delivering some or all of the following services:

- designing;
- financing;
- building;
- maintaining; and/or
- operating an installation/infrastructure/utility



# What is a Public-Private Partnership? Continued ...

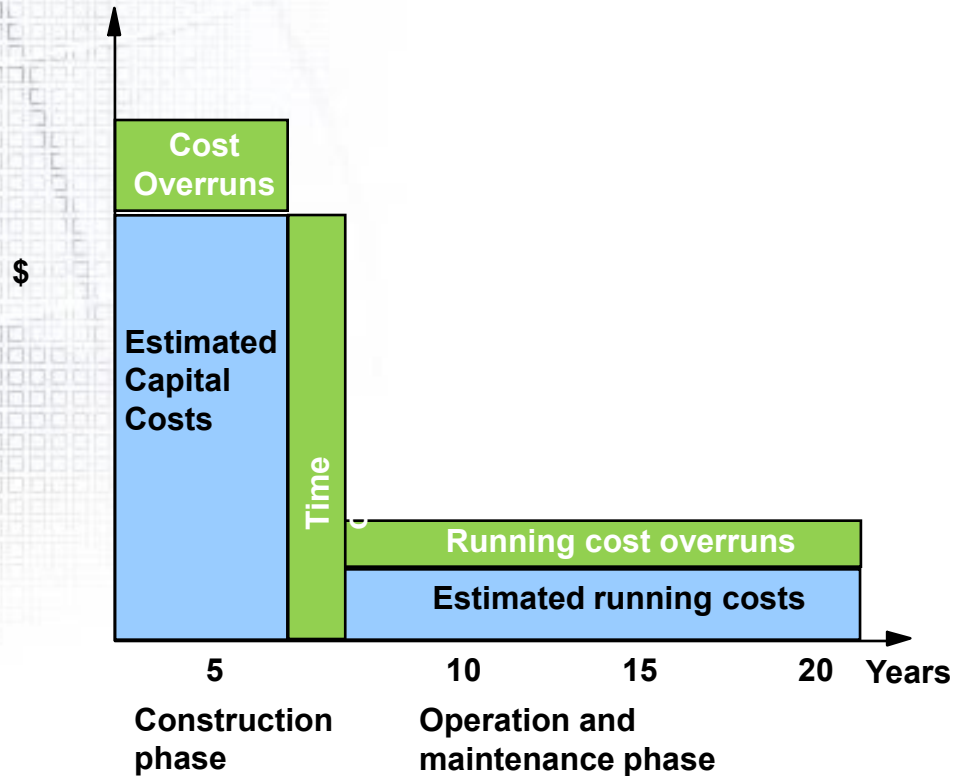


- Different PPP structures exist that vary based on the level of public ownership and risk allocation (e.g., Build-Own-Operate-Transfer (BOOT or BOT), Build-Own-Operate (BOO), Sale/Leaseback, Lease/Purchase, Design-Build-Operate (DBO), Lease/Develop/Operate (LDO))
- PPPs are not privatizations, and they are fundamentally different from traditional government public procurement programs

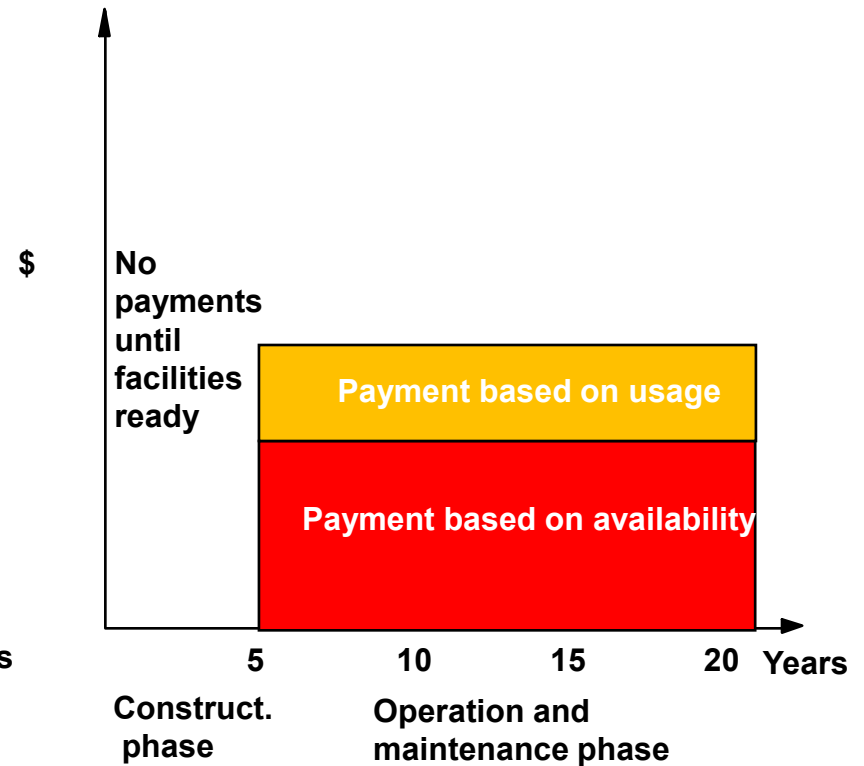


# What is a Public-Private Partnership? Continued ...

## TRADITIONAL PUBLIC PROCUREMENT



## PPPs







# Enabling Environment - Legal Framework

- PPP projects typically involve significant investment by the private sector, over a long period of time – PPP should be synonymous for “PREPARATION,” “PREPARATION,” “PREPARATION”
- In a 2003 World Bank survey, investors said that “insufficient legal protection of investors” was their primary concern





# Key Issues for a PPP Legal Framework

- Can the government entity enter into a PPP arrangement
  - which ministry or local government entity is involved – which body will be empowered to enter into and implement the project?
  - are there legal limitations on delegation to a private operator?
- Monitoring and regulating the project
  - which government entity will monitor the project?
  - is there a regulator, or is one contemplated?
  - if there is a regulator:
    - what are its powers?
    - can it override the PPP Agreement?



# Key Issues for a PPP Legal Framework

Continued ....

- Procurement of PPPs is an expensive process for government AND for bidders
- Important that bidders believe that they have a fair chance to win **bid** - is the competitive bidding process fair, transparent and objective?
- Threshold procurement questions,
  - Are there conflicting procurement laws at the national, provincial and municipal levels?
  - Are the evaluation criteria set out clearly in the law?
  - Can the PPP Agreement be extended without a new competitive tender?
  - What are the consequences of a breach of the procurement rules?



# Key Issues for a PPP Legal Framework

Continued ....

- Dispute resolution
  - Sovereign immunity
  - Does the court system satisfy the investors need for a fair, transparent and efficient dispute resolution mechanism
  - If not, is domestic or international arbitration a possibility
  - Are international arbitration awards recognized, and can they be enforced
  - Other dispute resolution mechanisms – mediation, expert determination, etc.
- Protecting the project revenues
  - Tariff setting
  - Rules for billings and collections





# Key Issues for a PPP Legal Framework

Continued ....

- Lender issues
  - Lender security
  - Insolvency arrangements
  - **The lender's rights to 'step-in', i.e. take over the project**
  - Direct agreements between lenders and government entities
- Foreign investment issues
  - Restrictions on ownership of local companies by foreign investors
  - Restrictions on currency conversions
- Land issues
  - Limitations on private ownership of land
  - Expropriation of land owned by other parties
  - Planning permissions
  - Environmental impacts



# Key Issues for a PPP Legal Framework

Continued ....

- Taxation
  - Stability of taxation system, and compensation for changes in the tax regime - danger of creep expropriation
  - Categories of taxation for which the project company is liable to (income tax, import duties, etc.)
  - specific taxes on foreign investors
- Labor Laws
  - Can public employees be transferred to a private operator?
  - Are employees subject to civil service terms and conditions?
  - Can employees be laid off to achieve operating efficiencies?



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