

FI-H02

PRIVATE SECTOR PARTICIPATION FRAMEWORK



Project structuring process or planning of financial resources to meet the project cost

Type: Step-by-Step Guide



INTRODUCTION

PURPOSE

Developing capital intensive public transit infrastructure projects require a robust financial strategy to be in-place for gaining the confidence of private sector investment in real estate. The resulting transit and real estate projects are generally vulnerable to several risks during their life cycle. It is advised to appropriately share and mitigate the risks with the right stakeholders and partners.

It is often witnessed that the land owning agency and/or the implementing agency for transit infrastructure projects would be government bodies. Technical capacity constraints and limitations in understanding real estate markets are a common challenge with government agencies in the case of developing long-term TOD transformational projects.

While public-private partnerships (PPPs) in infrastructure projects, such as highways and public rail-based transit, have shown success in different parts of the world, successful TOD and real estate projects are found mostly in strong and emerging real estate markets. Several countries have formulated robust frameworks for developing Public-Private Partnership (PPP) projects under their legislative guidelines. The general methodology for such arrangements in project implementations is moreover common in all countries, with project to project customization based on different parameters.

Disclaimer: *The Transit-Orientated Development Implementation Resources & Tools knowledge product is designed to provide a high-level framework for the implementation of TOD and offer direction to cities in addressing barriers at all stages. As the context in low and middle-income cities varies, the application of the knowledge product must be adapted to local needs and priorities, and customized on a case-by-case basis.*

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CONTEXT

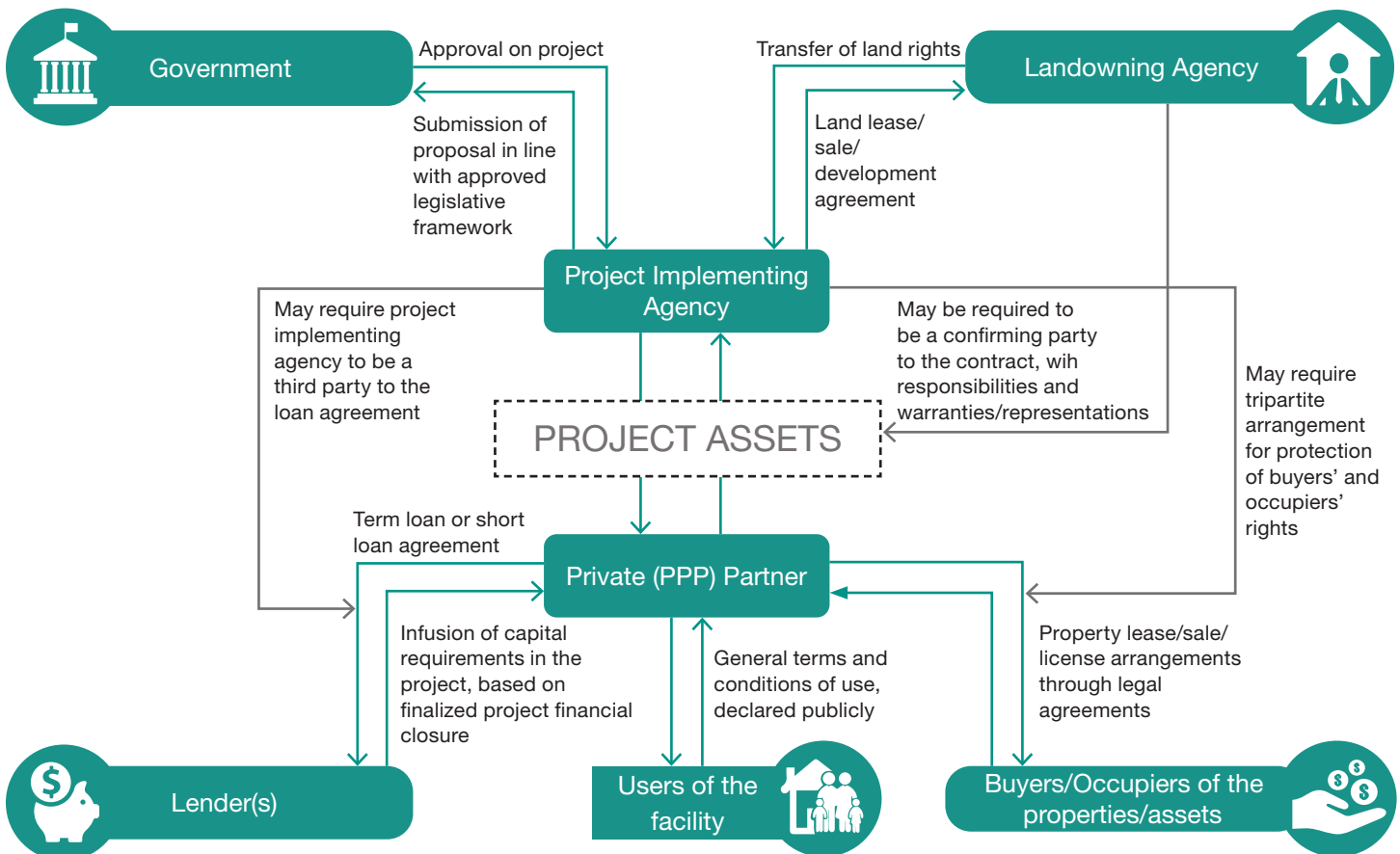
The understanding of Public-Private Partnership is important before initiating the project structuring process or the planning of financial resources to meet the project cost. This tool elaborates on the basic understanding of the PPP framework followed globally. It includes an introduction on the stakeholder arrangement, project structuring mechanisms, legislative, implementation and monitoring frameworks, post implementation management and brief case studies.

STAKEHOLDERS

In public-private partnerships, the identified stakeholders, i.e. those providing resources, those approving the implementation, who exploit resources to develop the project and who receive the services or benefits out of the envisaged plan, are contractually bound based on their responsibilities. These stakeholder can principally be identified as:

- **Government– Legislative Body/Approving Authority–** Generally responsible for ruling and monitoring the legislative framework for PPP arrangements in their jurisdiction and are also often the approving authority for the project.
- **Landowning Agency(ies)–** Generally, the land for transit infrastructure projects are owned by government agencies, different from the project implementing agencies. There may also be private land owners falling in this category.

- **Project Implementing Agency(ies)**– In most cases, there is a government agency that is entrusted with the responsibility to undertake the implementation of the project. The agency analyzes and proposes the implementation structure for the project, whether through public-private partnership or otherwise.
 - **Private partner**– These are the private partner(s) participating in the implementation and operations, either as developers, investors or the concessionaire for the project.
 - **Lenders**– The lenders are the important stakeholder in the whole business of public-private partnership projects, as they generally bring in the maximum financial resources to the project and their interests have to be protected at all times. They may be senior lenders or subordinate lenders, depending on the financial structuring of the project.
 - **Users/Occupiers/Buyers**– These are the users of the project components, whether it be transit facility or other such public components. It also includes the purchasers and buyers of properties and assets developed within or allied to the project. Generally, they are not any direct party to the project development and operations contracts, but their interests are protected in the project through warranties, representation and responsibilities of other parties.
- A schematic matrix of the relationship among these stakeholders is presented below for reference:



PROJECT STRUCTURING

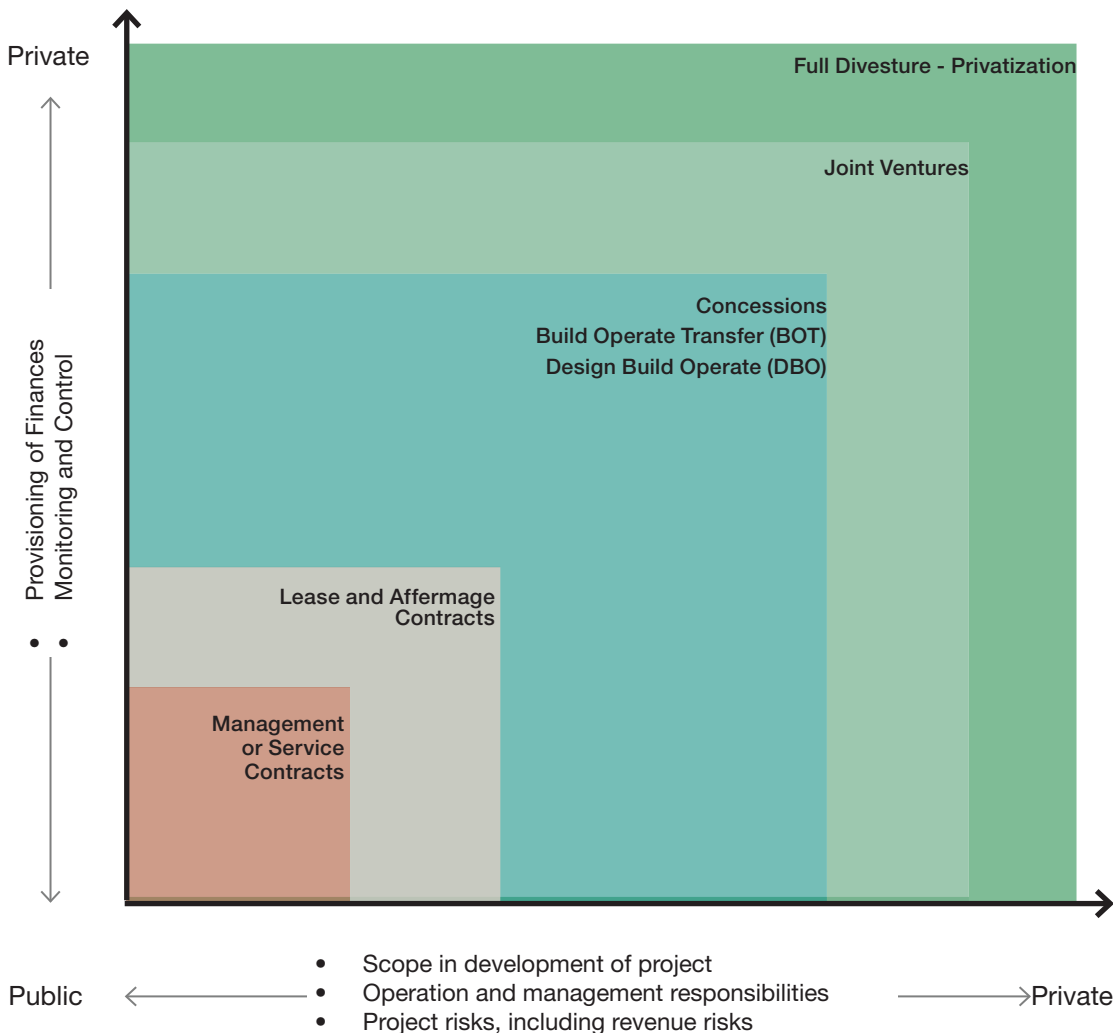
The structuring of public-private partnership projects depend on several factors and requires project level, detailed analysis before arriving at any specific model. These include the sharing of the following between the implementing agency and the private partner:

- Scope in development of project
- Provisioning of resources
- Operation and management responsibilities
- Project risks, including revenue risks
- Monitoring and control

Based on these shared responsibilities, the public-private partnership projects may be classified as following:

- Management or Service Contracts
- Lease and Affermage Contracts
- Concessions/Build-Operate-Transfer (BOT)/Design-Build-Operate (DBO)
- Joint Ventures
- Privatization

The selection of an alternative is the result of the assessment of project and stakeholder requirements. A reference framework providing benchmarks for this purpose is provided below:



LEGISLATIVE- POLICY AND REGULATORY FRAMEWORK

It is important for the project formulator(s) to have an in-depth understanding of the legislative framework governing the development and operations of the project. The project structure, including tenure of development and operations, financial and land resources, stakeholder and partner selection, rights and responsibilities, compliance requirements, revenue-based rules and guidelines, etc. shall all be required to adhere to the policies and regulations, brought in force specific to the area or generic to the jurisdiction of government.

In case of complications or requirements of clarifications, formulation of consultative committees and making reference to approving authorities at a preliminary stage is highly recommended. Some specific projects may also require reforms to the norms laid down by government for PPP projects, land development or land transfers, etc. These should be undertaken in priority, before proceeding further on the project structuring and implementation.

PROCUREMENT AND IMPLEMENTATION

Based on the decided project implementation structure, the procurement is undertaken through standard terms and conditions of bidding documents and the draft contract agreement appended to it. The draft contract agreement generally addresses all aspects of project structure parameters and aligns a risk sharing framework in the contractual terms and conditions. All federal government and in many contexts, the provincial or local government, prescribes standard bidding documents for PPP procurement as a reference. These documents may be followed with customizations to suit the requirements of project. These documents are generally termed as model concession agreements and model request for proposal documents.

It is also important that there is efficient contract management and project monitoring. For this purpose, the implementing agency may institutionalize a separate team or engage a specialized consulting organization(s) for this purpose. There is a specific role of independent engineer for all milestone certifications and minor dispute resolutions. These are independent consultants engaged by either the implementing agency or jointly, by both the parties, to check the quality of development and protect the interest of the project.

In general cases, the implementation of the project is undertaken by the private partner, independently. However, the partner takes all prior and post-implementation approvals from the implementing agency, independent engineer or any other third party, as defined in the terms of the agreement.

POST-IMPLEMENTATION MANAGEMENT

The agreements govern the entire period of the contract/concession from the date of engagement till the handover of assets back to the implementing agency, if applicable. The contract management team of the implementing agency is responsible for overseeing and monitoring the overall performance of the contract by either parties, especially the private partner. Site programming for soft components such as destination management, placemaking, safety, and overall place branding are factors that should continue through the life-cycle of the project in order to increase the value proposition for the site in the overall market.



Hong Kong SAR, China