



Pinsent Masons



Session 7

Ensuring Political Commitment & Appropriate Regulatory Arrangements



Anthony Smith

Farne Project Consultancy

International Counsel, Pinsent Masons

Head of UN PPP Specialists 'Rapid Reaction' Team

Tel: +44(0)20 7418 8296

Mob: +44(0)7766 565957

Email: anthony.lawsmith@googlemail.com

The views expressed in this presentation are the views of the author and do not necessarily reflect the views or policies of the Asian Development Bank Institute (ADBI), the Asian Development Bank (ADB), its Board of Directors, or the governments they represent. ADBI does not guarantee the accuracy of the data included in this paper and accepts no responsibility for any consequences of their use. Terminology used may not necessarily be consistent with ADB official terms.

Political Commitment



How can private sector investment be attracted?

- Political stability and 'buy-in' by all political stakeholders
- Continuous high level political support
- Clarity of intra-governmental responsibilities and powers
- Well-defined and consistently applied 'rules of the game'
- Fair, reliable transparent procurement with open competition
- A business environment that has the potential to lead to a long term and profitable business
- Will their investment be secure for the duration of the project?
- Will they be able to repatriate any profits arising from a project?

Political Commitment



How can private sector investment be attracted?

- Enforceable contracts:
 - Will they be able to rely on terms of the contract being met by all parties?
 - Does the existing legal framework and court system offer reliable, consistent options for ensuring enforcement?
- Shared risks commensurate with return: Are the risks being transferred appropriate for the private sector to manage?
- Are they sufficiently protected from increases in cost arising from changes in law or regulation over the term of the project?
- Are they sufficiently protected from the effects of political risks?



Political Commitment



How can the private sector's needs and concerns be addressed ?

- Political commitment should be expressed in actions as well as words
 - Reflected by creation of an appropriate PPP enabling environment
 - Policy Statement. Provision of a clearly articulated statement as to why PPPs are needed, the government's objectives, where they will be used, and the government's commitment to this process.
 - Capacity building within public sector institutions responsible for delivery of PPP's
- Clear cut and well accepted division of responsibilities and powers between different government agencies





Political Commitment



- Presence of a “Champion”: A senior government official who will help to make the case for PPPs, acting as a public spokesperson, can build public and governmental support.
- PPP Unit: Creation of a central PPP Unit, most frequently in the Ministry of Finance or as an independent infrastructure agency, helps develop a centralized source of PPP expertise, and builds institutional knowledge and process consistency. A PPP Unit, appropriately empowered, with clearly delineated roles with sector ministries, demonstrates a government’s commitment to its PPP programs.
- Create transparent and predictable policies that attract investors and reduce the need for sovereign guarantees



Political Commitment



- Development of a PPP Program. Development and publication of a multi-year PPP program, i.e., a “project pipeline” of deliverable, bankable projects attracts investors and demonstrates long-term commitment to PPPs.
- Integrate with Budget. Establish a line or lines for PPP projects in the budget, thus integrating the project pipeline with the planning/budgeting process.
- Legal/Statutory Reform. The law must clearly recognize PPPs, establish eligible parties, and establish transparent, accountable processes throughout the PPP life cycle.
- PPP legislation must also be integrated with other, existing statutes to avoid inconsistencies and ambiguities in areas such as property rights, step-in rights, etc. This applies to regional and local laws as well.
- Well-defined and consistently applied ‘rules of the game’



Regulatory Arrangements



- Where regulation is required, this will typically fall outside the scope of any Concessions/PPP Law
- Regulations are usually sector specific or limited to a group of related sectors.
- Consideration should be given to the regulatory environment when drafting a concession/PPP law to ensure that they are compatible
- Particular challenges may arise where the regulatory regime in a particular sector is undeveloped or, in some case, non existent: e.g the early water concession contracts in Romania, where the concession agreement became itself the regulatory instrument, controlling prices, moderating and guaranteeing services



Regulatory Arrangements: Agencies and Institutions



- The recommended model is to have separate entities responsible for:
 - Sectoral policy (public agency)
 - Sectoral regulation including tariffs and service performance monitoring (independent regulatory body)
 - Service provider(s) (public and/or private)
- Independence and fairness of regulatory bodies, improves confidence in the regulatory process. Regulators should strive to strike a balance between the investor and consumer interests, and to objectively monitor and assess contract and service delivery performance.
- Regulatory authorities responsible for setting tolls and tariffs must balance their current social objectives with the need to improve and extend infrastructure



Regulatory Arrangements: Conclusion



- Governments should develop a roadmap to regulatory reform. A clear path to reform and policy certainty reduces investor perceptions of risk
- Focus policy on the development of a predictable and transparent regulatory framework
- Ensure that the regulatory framework aims for maximum certainty:
 - Clear delineation of authority
 - Precise identification of offences and penalties
 - Appropriate appeals procedures against regulators decisions
 - All regulations should be published
- Establish an independent, sector specific regulatory authority
- Set tariffs based on cost recovery and efficiency



Pinsent Masons



Thank You

Ensuring Political Commitment & Appropriate
Regulatory Arrangements



Anthony Smith

Farne Project Consultancy

International Counsel, Pinsent Masons

Head of UN PPP Specialists 'Rapid Reaction' Team

Tel: +44(0)20 7418 8296

Mob: +44(0)7766 565957

Email: anthony.lawsmith@googlemail.com

Website: www.pinsentmasons.com