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UNITED NATIONS
CENTRE FOR TRADE FACILITATION AND ELECTRONIC BUSINESS
(UN/CEFACT)

INTERNATIONAL TRADE PROCEDURES PROGRAMME DEVELOPMENT AREA
INTERNATIONAL TRADE PROCEDURES DOMAIN

PROPOSED RECOMMENDATION

PUBLIC PRIVATE PARTNERSHIP IN TRADE FACILITATION

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97 **I. RECOMMENDATION 00: PUBLIC PRIVATE PARTNERSHIP** 98 **IN TRADE FACILITATION**

99 **INTRODUCTION**

100 A large number of initiatives are today made as Public-Private Partnerships (PPP). These
101 initiatives allow the public sector to benefit from private sector funding and knowledge while
102 allowing the private sector to find a financial interest in such cooperation. Traditionally used
103 for infrastructure development, PPPs can also extend to trade facilitation measures as well. A
104 good deal of guidance has been devoted to PPPs for infrastructure development (hospitals, toll
105 roads, energy, etc.), but there has as yet been no substantive work put together on PPP in the
106 domain of Trade Facilitation. This recommendation aims to contribute to filling this gap.

107 **PURPOSE AND SCOPE**

108 PPP is one solution for financing and implementing public projects amongst many. CEFACT
109 does not necessarily recommend PPP over other financing methods but given its [ability to](#)
110 [fund otherwise unaffordable projects](#), [potential](#) efficiency, downsides and frequency, this
111 recommendation and its guidelines aim at highlighting best practice of the use, especially in
112 the context of the WTO agreement and following implementation of measures. There are
113 examples of [poor practice](#) that should be avoided and [these](#) are also addressed.

114 The aim of trade facilitation is to simplify, harmonize and standardize international trade.
115 There are a number of areas within trade facilitation where PPPs are appropriate and could be
116 beneficial in achieving these aims. These can include a Single Window, a National Trade
117 Facilitation Body, port communities, trade corridors, coordinated border management,
118 infrastructure such as ports, etc.

119 **BENEFITS**

120 On the assumption that best practice is being followed, there are potentially a number of
121 advantages that might arise by providing a service under a PPP contract in TF if this form of
122 [contracting and/or financing](#) is chosen.

123 As with any trade facilitation measure, the infrastructure and service provision can be
124 accelerated. PPPs [can](#) bring stakeholders [together to](#) coordinate, harmonize and standardize
125 processes in international trade in a context of an organized free market to compete between
126 private and public companies that could even attract foreign investments.

127 Trade facilitation can also contribute to cost reduction in international trade. This cost
128 reduction could come direct or indirectly by reducing administrative procedures, reducing the
129 clearance time, increasing transparency and reducing corruption, and accelerate economic
130 development and revenue opportunities.

131 There are also significant potential benefits that can be driven by PPP. These advantages
132 include having access to the skills and resources of the private sector, increasing the potential
133 for more streamlined and cost effective processes and service delivery mechanisms,
134 increasing access to investment which in turn enables business change to be incorporated in
135 the service delivery contract and providing more flexibility with regard to structure and
136 business change.

137 **INTERNATIONAL STANDARDS**

138 The United Nations Economic Commission for Europe (UNECE) has a division specialized in
139 Public-Private Partnerships for Foreign and Domestic Investments, under the Economic
140 Cooperation and Integration Division (ECI). This section of the UNECE has a wealth of
141 resources on best practices and actual implementations which can help any implementer in
142 their choice of PPP. These resources are usually centered on infrastructure PPPs; the current
143 recommendation aims to provide a focus on trade facilitation projects using PPPs.

144 The PPP Alliance of the UNECE was established in 2001 to improve the awareness, capacity
145 and skills of the public sector in developing successful PPPs in Europe. To this end, the
146 Alliance prepares guidelines on best practices in PPPs, as well as preparing other PPP-related
147 educational and training materials, and sponsoring PPP conferences and workshops.

148 UNCITRAL has also been working on guidance concerning PPP implementation and the
149 procurement process. The World Bank, the OECD and the UN Convention against corruption
150 also have a number of contributions to good governance in PPP implementation.

151 **RECOMMENDATION**

152 The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) at
153 its XXth Plenary session in XX in Geneva recommends to governments and those involved in
154 international trade to actively consider implementing trade facilitation through Public-Private
155 Partnership as one possibility of financing and developing trade facilitation projects. If this
156 form of financing [and/or contracting](#) is retained, the following considerations should be taken:

- 157 | 1. [Analysing the potential benefits that](#) a Public-Private Partnership can bring to
158 | [progressing](#) projects that will benefit from the application of private sector know how
159 | or investment or is otherwise unaffordable.
160 | 2. Ensuring the procurement process is undertaken in a transparent manner, that delivers
161 | affordable and value for money services, within an effective and robust governance
162 | structure.
163 | 3. Ensuring the contractual mechanisms are in place to minimize behavior that
164 | effectively lead to an increase rather than a reduction in the barriers to trade.
165 | 4. Considering common risks in PPPs that might undermine the desired outcome of trade
166 | facilitation.

167

168 **II. GUIDELINES TO RECOMMENDATION 00**

169 **PUBLIC PRIVATE PARTNERSHIP IN TRADE FACILITATION**

170 **A. INTRODUCTION**

171 Increasingly, governments are turning to the private sector for the financing, designing,
172 construction, and operation of core governmental services from infrastructure projects to
173 information and communication technology (ICT). PPP is just one among many other ways
174 that the public sector may decide to provide such a service involving the facilitation of trade,
175 especially under budgetary constraints. These guidelines aim to provide a better
176 understanding of Public- Private Partnership (PPP) in Trade Facilitation (TF).

177 Implementation of PPPs in TF successfully will increasingly involve the quality of the
178 services provided, reducing costs, increasing efficiency, reducing disputes among partners,
179 and eliminating corruption. For all these reasons, it is important to create mechanisms to
180 reduce the asymmetry of information among partners and tools to monitor PPP projects.
181 Disclosure of information has to has to be standard practice being undertaken as a matter of
182 course, in which information is accessible without specific active request.

183 These guidelines further seek to outline some of the more common risks which might
184 undermine the overall objective of trade facilitation for which a public sector body might have
185 opted for a PPP model.

186 The procurement process tender procedure will be one of the key milestones of a PPP; this
187 must be open, fair, equal, and transparent to ensure the efficiency throughout all its stages to
188 select the private partner. These stages include tender preparation, bid preparation, bid
189 submission, bid evaluation, and tender award. The national legal framework will play a large
190 role in this procedure; care should be taken since often there is no clear definition of the
191 boundaries and scope applicable to PPPs which might in turn threaten the contract validity.

192 *A.1. Definitions of Public-Private Partnerships (PPP)*

193 There is not a global consensus in terminology, scope and content about PPP. Legal
194 frameworks, if any, vary enormously from country to country. Additionally, there is a wide
195 variety of business models in PPP which make it more difficult to identify them.

196 The current guidelines bases its definition largely upon the UNECE “Guidebook on
197 Promoting Good Governance in Public-Private Partnerships” of 2008.¹ A PPP will have the
198 following characteristics:

- 199 • A public service which is financed in part or in whole through private sector
200 contribution.
- 201 • A procurement process to allow the public sector to choose the private sector partner
202 resulting in a contract between the public and private sectors and in which the risks are
203 distributed; such a procurement process needs to be in line with national law and
204 international agreements.

¹ Page 1 and following of "Guidebook on Promoting Good Governance in Public-Private Partnerships" UNECE, 2008. Available as of March 2015 at: <http://www.unece.org/fileadmin/DAM/ceci/publications/ppp.pdf>

205 • The private sector will find a return on investment if it is included in the contract either
206 during the operational phase of such a project or through fixed remuneration from the
207 public sector.

208 [This definition of PPP does not seek to encompass the now widely used alternative types of](#)
209 [PPP defined by USAID as Institutional or Developmental PPPs. This is addressed below. It is](#)
210 [important for practitioners to understand the differences in order to decide if or how to engage.](#)

211 *A.2 Definition of Trade Facilitation (TF)*²

212 Trade facilitation is defined as the simplification, standardization and harmonization of
213 procedures and associated information flows required to move goods and provide related
214 services from seller to buyer and to make payments.

215 The fundamental purpose of trade facilitation is to simplify the trading process whether
216 domestic or international. To achieve this objective trade facilitation aims at transparency on
217 all commercial and regulatory rules concerning trade procedures in order to allow the trading
218 community to prepare and comply. UN/CEFACT aims to contribute to a comprehensive set of
219 efficient and effective business processes, as well as optimizing the level of government
220 control and oversight so that these are consistent with the costs and risks involved.

221 Trade facilitation activities (especially in relation to the application of electronic business) can
222 be broadly divided into three categories; simplification, harmonization and standardization:

- 223 • Simplification is the streamlining trade procedures by removing redundant
224 requirements and activities, and reducing the cost and burdens in administering the
225 trade transaction.
- 226 • Harmonization is the means of aligning or rationalizing the information flows that
227 accompany the movement of goods or services in the domestic marketplace, or in
228 international transit especially at national borders.
- 229 • Standardization is the means for ensuring required information is described,
230 understood and applied in a consistent manner¹. Many international standards
231 development organizations, consortia and communities have developed standards
232 concerning the description, definition, use and transfer of information related to
233 international trade.

234 *A.3. Main Categories of PPP project*

235 Public-Private Partnerships [may](#) involve three [sectors](#): the public sector (government agencies,
236 for example), the private sector (commercial companies, for example) and what is often
237 referred to as the third sector. This third sector typically involves not-for-profit organizations
238 which might be in the form of non-governmental organizations (NGOs), foundations or
239 company social responsibility programs; these third sector actors do not necessarily seek a
240 return on investment.

241 Three broad categories of PPPs can be identified: institutional ([developmental](#)), contractual
242 ([commercial](#)) and blended ([triangular/hybrid](#)). These three categories of PPPs will vary not
243 only in the type of partners which are involved, but also in the various characteristics of the
244 PPP itself.

² Page 5 of "A Strategic Framework for UN/CEFACT Activities" UN/CEFACT, December 2014. Document number ECE/TRADE/C/CEFACT/2015/7.

245 Institutional PPPs will involve joint funding where both the public sector and the other
246 partner (private sector or third sector) co-fund a project. Each party inputs funds and
247 knowhow but typically employs a third party to administer/distribute funds or to deliver some
248 kind of developmental project such as training and know how. The parties agree to share risks
249 and to provide funding although there is no expectation of Party will work together sides provide
250 agree not only to share the delivered service typically the and any generated revenues but also
251 the risks involved in the entire project. This type of PPP does not necessarily have a contract
252 and as such are sometimes not considered a PPP.

253 It would be good to insert an example of a TF institutional PPP here. I need to discuss a couple
254 of PPPs to see whether they would fit TF (any examples of capacity building and anti
255 corruption training funded by donors/third sector or subsidized or free).

256 A blended PPP project can also be called a hybrid PPP or a triangular PPP. These projects
257 will differentiate from the standard Contractual PPPs because the project is seen as not being
258 commercially viable because insufficient returns will be generated. A third sector
259 organization is therefore required to provide financial or other resources. For this reason, in
260 order to provide what might be considered as a vital economic growth enabler, usually third
261 sector actors (NGOs, foundations...) will partner with the private sector. The third sector
262 provides its support in a number of different ways including acting as a loan guarantee in
263 order to underwrite a loan, providing direct budgetary support, or provide services such as
264 running part of the facility or training of staff.

265 An example of a hybrid PPP project in TF is a dry port, where the private sector may be
266 finding difficulties in achieving a commercial return. Therefore, it is necessary to find a donor
267 to support the PPP project, which objectives add feasibility to the project. In this example, the
268 donor either would not be seeking any return for their investment, or a low return at most,
269 which allows to develop a feasible PPP. Then, the donor will be taking a more strategic view
270 regarding the benefits of the dry port bring for society as a whole, rather than expecting to
271 make a direct financial return on the project.

272 Contractual PPPs are the most widely spread and the principle subject of these guidelines.
273 They can be further broken down into subcategories such as infrastructure PPPs, information
274 and technology PPPs or services PPPs. Contractual PPP in Trade Facilitation will normally be
275 on a DBTO model. Design Build Transfer and Operate (DBTO) means that the project is
276 designed and built by the private sector partner, then ownership is passed to the public sector
277 partner; the operation is then either performed by the public sector actor or contracted out to a
278 private sector actor. Other models can exist; these are detailed in the UNECE document on
279 "Guidebook on Promoting Good Governance in Public-Private Partnership" of 2008.

280 Infrastructure PPPs have a significant underlying asset that is constructed or renovated and
281 then maintained as part of a service contract. Examples would include significant border
282 control buildings, roadways and dry ports. Trade facilitation infrastructure projects using PPP
283 can include buildings, roads, ports and dry ports. They are typically longer term contracts of
284 up to 20 or 30 years and could be even longer for roadways or bridge projects. Typically, the
285 service provider will earn their return on investment through the fees related to the use of the
286 infrastructure; these are not generated during the design and build phase.

287 Information, communication and technology (ICT) PPPs differ from other PPPs in the length
288 of contracts and the technology considerations which must be taken into consideration. Given
289 the constant and rapid change in technology, private sector partners will be very reluctant to

290 | [take on the contractual risk](#) further than the life cycle of the ICT deliverable which may not
 291 exceed five or ten years. Also given the complexity of technology and the need to integrate
 292 with other systems, it will be necessary to clearly indicate in the procurement and contract
 293 such relations. Examples of ICT PPPs can include single windows, international trade
 294 websites... but also parts of some other projects such as trade corridors, coordinated border
 295 management, etc.

296 These three general types of PPPs can be summarized with the main characteristics detailed in
 297 figure 1 below.

Characteristics	Institutional	Blended/ Hybrid/ Triangular	Contractual
Contract required	No	Yes	Yes
Joint funding	Yes	Yes or other risk sharing	No
Service delivered	Typically public/private sector fund that contracts for services.	By private sector on behalf of public sector. May be some third sector delivery	By private sector on behalf of public sector.
Risks	Both parties agree responsibilities and agree risk profile.	Build, or Design and Build. May be underwritten by Third Sector	Build, or Design and Build.
Payments	Normally jointly managed funds into which they contribute, and then, make payments to implementers.	Service Delivered Could be a concession or unitary charge	Service Delivered Could be a concession or unitary charge
Contract length	Joint Venture type relationship to provide funding to third parties.	Suitable period to cover cost of investment and make a reasonable return for private sector	3-5 years 7-10 years 25-30+ years

298
 299 *Figure 1 - Main Characteristics of Institutional, Blended and Contractual PPP Projects.*

300

301 **B. GENERIC DESIGN AND BENEFITS OF CHOOSING PPP FOR TRADE**
 302 **FACILITATION PROJECT**

303 The public sector could find multiple benefits for calling upon the private sector to organize
 304 and provide partial or total financing for PPP in Trade Facilitation (TF) projects. Some of the
 305 more common types of PPP in TF projects are outlined within this section as non-exhaustive
 306 examples along with some of the core considerations that will likely need to be addressed.

307 Though various combinations of phases can exist, the generic format of a PPP in TF project
 308 will usually include the following stages in the following order: Design, Build, Transfer, and
 309 Operate (DBTO). A PPP project that performs the DBTO phases, shares the tasks as follow:

- 310 a) Design (by private sector)
 311 b) Build (by private sector)
 312 c) Transfer (assets back to public sector); and
 313 d) Operate (by private sector)

314 The design captures the innovation of private sector and allows exploration of potential
315 solutions that may not have been considered. It could be that the design is a joint exercise
316 between the public authorities and the private sector, or a separate competition. If the latter,
317 then, there are needs to be some sharing of risk between the design team and the service
318 provider (ie the party that implements the design and then goes onto deliver the service.
319 Typically the high level design will sit with the public sector whilst the detailed design risk
320 will be with the implementing and delivery partner.

321 The build and associated risk remains with the private sector. There is an assumption here that
322 the private sector can best manage the risks associated with the build phase leading to a
323 project delivered on time and to budget.

324 Conventionally PPPs have followed a Design Build Operate Transfer (DBOT) route.
325 Increasingly, however latterly it is being recognized that for particular strategic assets it is
326 important for the ownership of the asset to transfer back to the public sector on completion of
327 the build and prior to the commencement of the service. The appropriate allocation of the
328 risks is dealt with through the contract and follows the same allocation as would be the case
329 with a DBOT. Following successful completion of the construction phase the ownership of
330 the underlying assets should be transferred to a suitable public sector authority/authorities. If
331 such an authority does not exist, then the ownership of the assets should remain with the
332 service provider until such time as an authority is set up.

333 It is important to highlight that in the event that the PPP is cancelled or the service provider
334 fails to provide the service that using a DBTO approach the asset is owned by the public
335 sector the assets are already within the control of the public sector and the public sector can
336 take control of the assets in order to deliver the required service or services.

337 The operation of the service should remain with the private-sector service provider for the
338 duration of the contract (subject to performance and contract terms).

339 *B.1. PPP in Single Window*

340 Single Window (SW) is defined in Recommendation 33 (UN/CEFACT) as a facility that
341 allows parties involved in trade and transport to lodge standardized information and
342 documents with a single entry point to fulfill all import, export, and transit-related regulatory
343 requirements. If information is electronic, then individual data elements should only be
344 submitted. The private sector could be involved in a Single Window system either at the
345 service level and/or as a builder of the ICT infrastructure. A Single Window system could
346 involve multiple projects that could include issues from the conformance standards to the
347 operational control of the SW authority (licensing, insurance, etc.).

348 The implementation of a Single Window project under a PPP will involve a number of steps.
349 First, the services to be achieved in single window implementation should be defined. At this
350 step, the integration or the possibilities for sharing information with other Single Windows
351 must be analyzed. The public institutions that will be involved in the collaboration will also
352 need to be defined.

353 Then, the information should be classed according to the lead agency that will ultimately be in
354 charge of the single window facility. This could be created around a stand-alone customs
355 system, a stand-alone partner cross border regulatory agency system, a port community
356 system or a community logistics system. Such classed information should be defined,
357 analyzed and reconciled as outlined within UN/CEFACT Recommendation 34.

358 The drafting of any PPP contract on Single Window should take into consideration a number
359 of aspects. Of course, the goals and services must be defined, but also the scope of functions
360 to be covered by the private-sector partner (development, operation and/or maintenance).
361 Financial aspects will also need to be addressed in such a contract, identifying how the
362 private-sector partner will be remunerated, what will be the source of the revenue, but also
363 what will be the value added to end-users taking into consideration the expected demand and
364 contingency financing in case of low demand.

365 B.2. PPP in trade and logistics corridors

366 A corridor is the link from the producer to the final destination to facilitate the easy
367 transportation. This could integrate an entire supply chain nationally, within a region and/or
368 internationally. In terms of trade facilitation a corridor allows to harmonize and simplify the
369 procedures from origin to final destinations, which should in turn enhance trade opportunities.

370 In a corridor, the elements that facilitate trade could come from very different sources: the
371 improvement, upgrading and expansion of transport infrastructure (port, airports, railways,
372 and road networks); intermodal facilities and procedures; cargo tracking systems; customs
373 information systems; regulation of transport; procedures to export and import products;
374 regulation in trade; number of documents to trade and tariffs; development of Single
375 Windows; etc. A corridor has a geographical dimension, but additionally could be specialized
376 in a specific sector or product. The private sector could provide the knowledge to increase
377 efficiency in terms of time and cost, in terms of the traded products, and/or in terms of
378 reducing bottlenecks and technical barriers to trade. Given the private sector interest in such
379 developments, a PPP project could be a pertinent financing and developing solution.

380 If a PPP solution is chosen for a trade corridor, the private participation could be rather
381 heterogeneous. The choice of partner(s) will largely depend upon the goals and objectives of
382 the resulting corridor and how the cost of these services will be passed on to the ultimate end-
383 users. These choices will define the type of PPP which would be pertinent: institutional,
384 contractual or blended PPP. [It should be noted that both the Private and Public Sector Parties](#)
385 [need to be understand their responsibilities under a PPP contract in order for it to work](#)
386 [effectively and to reach its contractual end date.](#)

387 B.3. PPP in ports

388 Seaports and airports are key logistics sights in international trade. Any port will include both
389 services and infrastructure and eventually ICT solutions. The various services that are
390 proposed include customs clearance processes, licensing, cargo handling, tracking and tracing
391 of merchandise, etc. The various infrastructures will include the actual port terminals, the
392 warehouses and offices, the hinterland (stock sites in proximity but not geographically part of
393 the physical port), the equipment to load or unload freight, etc.

394 In developing a port environment as part of its governmental role, the public sector may wish
395 to create a PPP with private sector partners to either enhance the services or improve the
396 infrastructures within ports, or eventually both. The private sector will often have a direct
397 interest in such projects since they will want to render these key logistics sights more [effective](#)
398 and more efficient. Furthermore, the private sector often has experiences in other ports and
399 they would be able to bring best practices to the service of the public sector partner.

400 B.4. Coordinated Border Management

401 This is another area where cooperation between government departments and the private
402 sector through a PPP can produce efficiencies at the border of a country to the benefit of its

403 trading community. This can include involvement of software and IT services companies to
404 ensure that the appropriate platform is built to allow this coordination to operate smoothly.
405 Multiple agencies within government should be involved, but it is also important to ensure the
406 inclusion of the private sector in the development and implementation of border management
407 and cooperation.³

408 **C. RISKS TO BE CONSIDERED WITH PPPs IN TF**

409 There are many types of risks related to any project. One of the advantages of a Public-Private
410 Partnership is that the participating partners can share this risk. Ideally, each party should do
411 what they do best. A joint risk schedule should form part of the contract that clearly identifies
412 the ownership of risks. At the lowest level each risk should be allocated to a specific party, (ie
413 no risks should be “shared”) thereby giving clarity as to who is responsible for mitigating and
414 managing risks.

415 The Public Sector should retain the right to cancel the contract as a consequence of inadequate
416 provision or non-performance. If the Contract is a DBOT the underlying asset will be with
417 the private-sector partner and a transfer clause is required for the Government to recover the
418 asset.

419 In any type of PPP project, risks allocation and management are critical in order to provide
420 responsibility, accountability. For this, several aspects need to be taken into consideration
421 including the objectives of the project, the finding/financing structure through the length of
422 the contract, the quality of service standards agreed, the variability of the demand and the
423 value of assets at the end of the contract.

424 General considerations for risks to be considered are outlined within annex 3 and are also
425 incorporated into annex 1. However, the more general risks are detailed below.

426 C.1. PPP Units

427

428 Whilst it is not essential, the promotion, coordination and development of PPP good practice
429 is often best served by establishing centralised PPP Units. There may be a single unit within
430 central government cross cutting departments, or centrally with additional separate units in
431 those departments that are likely to undertake PPP projects. In countries with a federal
432 structure there may be a federal PPP Unit or units as well as state level. The PPP units should
433 collate and disseminate procurement and contractual best practice and lessons learnt.

434 It is therefore critical to find out if there is a PPP unit with responsibility for scrutinizing or
435 supporting PPP Projects and defining and setting the local rules, regulation and legislation
436 that must be followed. Where there is a PPP unit it would be typical for a member of staff
437 from the Unit to be assigned to one or more PPPs projects to provide expert advice.

438 Whilst it is likely that the PPP expert will be knowledgeable about infrastructure or
439 concession PPPs and familiar with health, power, transport or ICT they will probably will not
440 have much experience with regard to the area of Trade Facilitation and the goals of the World
441 Customs Organisation (being to enhance the efficiency and effectiveness with regard to
442 customs facilitation and control of its members). Secondly although the WTO instruments
443 and best practice guides are recognised as the basis for sound Trade Facilitation

³ See WCO Research Paper No.2 on Coordinated Border Management from June 2009, section 5.

444 administration throughout the world a generalist PPP specialist will not be familiar with them.
445 It will therefore up to the Trade Facilitation practitioners to ensure that any PPP does not
446 conflict with WTO best practice whilst the PPP practitioner will have responsibility to ensure
447 that due process is followed with regard to procuring, monitoring and managing PPP service
448 providers.

449 The key objectives of a PPP Unit will differ depending on the local environment and the
450 extent to which the principles for PPP are already embedded in a particular market. PPP units
451 should, as far as possible, work together across national boundaries to ensure that best
452 practice is shared internationally as well as within a country. In doing so it should provide for
453 an enabling environment for cross boundary and Supra national PPPs. The benefits of a PPP
454 unit should include

- 455 1. Promotion and coordination of PPPs within a country/area of responsibility
- 456 2. Development and dissemination of best practice
- 457 3. Prioritisation of schemes seeking funding
- 458 4. Source of reviewers to monitor quality of projects being progressed
- 459 5. Bringing together of partners (investment and delivery)

460 It is worth noting, however, that the creation of a PPP unit is neither a necessary or sufficient
461 condition for a successful PPP programme. PPP units tend to struggle when

- 462 • Senior politicians do not support the PPP program
- 463 • Procurement of infrastructure and capital works in not transparent or
464 competitive
- 465 • Coordination within Government in weak.
- 466 • There is limited or no cross boundary cooperation.

467 There has been a tendency to centralise PPP expertise into a single centralised unit. This has
468 the advantage of

- 469 • more rapidly identifying and disseminating best practice, the
- 470 • sharing of intelligence between practitioners about suppliers and their performance.
- 471 • the elimination of poor practices and therefore
- 472 • leading to the provision of improved support to the government departments and
473 ministries.

475 Nevertheless, in order to design an effective PPP it will be necessary for the Trade Facilitation
476 Unit to work closely with the PPP unit and to share WTO and other related Trade Facilitation
477 best practice data and expertise with the PPP practitioners.

479 C.2 Return on investment

480 Contractual PPP projects will be between the public sector and the private sector. The latter
481 participates within PPP projects in the expectations that they will make at least a reasonable a

482 | return on investment. Except in projects with third sector [organisations](#), the business case of
483 | PPP projects is usually based on the ability of the private sector to make a return and for the
484 | project to be affordable (to end-users) over the period. In addition to undertaking a full value
485 | for money assessment, using a risk adjusted whole life costing, there also needs to be careful
486 | consideration to the contractual commercial clauses associated with payment and reward
487 | mechanisms, step in and exit clauses and the freedoms, rights [and constraints](#) that the
488 | contractor (the private sector) has in order to operate the service and to [generate](#)- additional
489 | revenue streams.

490 | *C.3. Insufficient funds*

491 | Many PPPs fail because they are not affordable. For those PPP projects where the public
492 | sector make a regular payment for services received over the lifetime of the project, it may be
493 | that insufficient funds have been made available to pay the private sector the charges over the
494 | lifetime of the project. The level of funding [available](#) will be determined by [the](#) national (or
495 | regional or supra-national) budget. Before the project commences the public authority needs
496 | to secure the revenue funding required to support the operational phase of the project.

497 | [In PPPs where charges are levied on end-users there may be a need to subsidize the operation.](#)
498 | [The public sector will often regulate the value of charges that can be levied from end users. It](#)
499 | [is important to assess the extent to which regulation may result in a shortfall of income.](#)
500 | [Depending on the nature of the PPP the Public Sector may or may not be willing to top up a](#)
501 | [shortfall in income. The need for any top up including the value and reason will need to be](#)
502 | [identified and negotiated prior to he contract being signed.](#)

503 | For example, a government department may sign a deal with a private sector contractor,
504 | which contains a price escalator to deal with the impact of inflation over the period of the
505 | contract. The basis may be the same as that used internally within government in which case
506 | if internal funding continues on the current basis for the period of the contract and the funding
507 | is available there should not be a funding gap. However, if the funding basis changes or the
508 | government adopts a different inflation escalator over a period of time the government
509 | department may no longer have the funds to support the contract. If the department applies for
510 | additional funds and these are not forthcoming the public sector may have to renegotiate
511 | terms or default.

512 | [As a consequence of the affordability analysis if it is apparent that there](#)there are insufficient
513 | funds the appropriate actions suggested are:

- 514 | 1) To seek additional funds to support the project (from internal or external sources).
- 515 | 2) Review the project to see if the scope or specification or performance levels can be
516 | adjusted to reduce the overall cost.
- 517 | 3) Consider different and mixed charging and budget support mechanisms.
- 518 | 4) Renegotiate the terms of the initial contract.
- 519 | 5) If the budget gap cannot be bridged to make a clear decision not to go ahead with the
520 | project.

521 | *C.4. Contract length*

522 | There are three considerations when agreeing the length of a PPP contract: investment cost,
523 | affordability and life of the asset.

524 | The length of time it takes for the service provider to pay off its debts and to make a
525 | reasonable return will be affected by the need to keep the prices affordable. A large

526 infrastructure project will typically have longer contract length as it will need a longer period
527 before the initial investment is recovered before a reasonable return can be achieved. The
528 earlier the private sector service provider can repay the loan the lower the overall cost of the
529 loan potentially improving the return made by the service provider. This depends on how
530 much the end-users and government can afford or are willing to pay. If at the outset of the
531 project financial modelling indicates that a shorter contract period might be possible this can
532 be considered taking all factors into account but it is not necessarily the right thing to do.

533 C.5 Tender process

534 It is important to engage complex procurement experts that understand both developing good
535 practice and the pitfalls associated with contracting for PPPs. It is essential for the public
536 sector to prepare and issue complete and clear documentation that describes

- 537 a. the business need
- 538 b. the service required
- 539 c. the procurement process.
- 540 d. high level scoring and evaluation methodology

541 In order to ensure an effective competition it is beneficial to attract at least three bidders.
542 Having more than one or two bidders should encourage better quality submissions and
543 competitive pricing. This may require the public sector to undertake a “market making”
544 exercise such as a bidders conference where small as well as large companies, both domestic
545 and international can meet and potentially form consortia.

546 Best practice recommends that PPP contracts include an authority authored schedule that
547 states their requirement (as far as possible on an output basis) and a second service provider
548 authored schedule that describes how they are going to meet the requirement. In terms of
549 assessing performance the need to meet the requirement the The Authority Authored schedule
550 takes precedence over the Service Provider schedule.

551 The investment made by companies preparing bids can be significant so it is important to
552 ensure that they are properly scrutinized and evaluated. Bidders should be given an equal
553 opportunity to present , discuss and clarify their bid submissions. Although given equal
554 opportunity the bidders need not take advantage of the time made available to them.

555 C.6. Barriers to trade.

556 It is important that the private sector is restricted from operating in a manner that will or
557 might create barriers to trade. These barriers could be in the form of tolls, levies, or physical
558 such as invasive searches to time associated with the administration required to pass through
559 border posts.

560 It will be important to be forward thinking when creating the contract and to clearly lay down
561 all such considerations.

562 C.7. Cooperation of all relative parties

563 Some projects, such as those involving a single window, will require cooperation among
564 several government agencies, in order, to create a new border-related service. These agencies
565 will need to coordinate with each other as well as with all of the private sector partners and
566 other stakeholders. In order to correctly address this, it would be pertinent to perform a risk
567 assessment of the partners and clearly define the relationships, rights, obligations and
568 liabilities of each partner.

569 As described in UN/CEFACT Recommendation 33, it is important to ensure the full
570 participation of all relative government agencies as early on in the process as possible.

571 C.8. Public Perceptions.

572 The overt use of the private sector can lead to resentment from the end-users and if they
573 believe that the private sector is unfairly benefitting from the contractual arrangements it can
574 lead to problems, non-compliance and avoidance.

575 Public authorities usually have the risk of applying administrative and procurement law. This
576 allocation of risk might lead to a situation where private partners are overly keen on
577 suggesting different partnership ideas to the public party, not considering the legal
578 consequences and even hoping to obtain an exclusive right through the partnership. The
579 public authority runs the risk of breaching principles of transparency and non-discrimination.

580 As long as the rules on PPP are not completely clear, private partners can see PPPs as ways to
581 obtain a competitive edge in the markets without having to take part in competition for related
582 projects (by way of concluding public contracts). Public authorities could be convinced of
583 thinking that they can choose their private partners as they wish. The fact that legal risk tend
584 to go to the public partner might encourage private firms into trading with public authorities.
585 It is, however, uncertain whether the outcome of this is actually more facilitating to trade (in
586 general) than trading with public authorities through transparent procurement procedures.

587 Some solutions to this will be to consider all legal angles that will be pertinent to the proposed
588 project and also to include all interested parties (especially end-users) in the process as early
589 as possible through relevant consultation approaches (see UN/CEFACT Recommendation 40).

590 C.9. Protection of commercially or otherwise sensitive information

591 While the principle should be full disclosure between the parties to the PPP contract, there
592 need to be appropriate safeguards to avoid the disclosure of information that should remain
593 confidential. The public authority may occasionally be prohibited by law from disclosing
594 some information – e.g. public health and welfare information, depending on the nature of the
595 market concerned, or where national law requires prior judicial authorization to disclose
596 information. More commonly, commercially sensitive information that could impede fair
597 competition under the current PPP in TF or a future PPP in TF should not be disclosed.

598 An example of this might include a set of two competitors for a particular contract, in which
599 information arising in one contractual relationship that might affect competition in other
600 contractual relationships. Given the need to apply the overriding principle and to avoid
601 abusive reliance on this type of exemption, however, the standards should refer to legal
602 sources that define or describe the information that can be withheld, and categories of
603 authorized or unauthorized persons for the purpose. The possibility of legal challenges to
604 decisions in this context should be contemplated, further highlighting the need for a clear
605 regulatory framework.⁴ (This whole paragraph is a little confusing and may need to be
606 reworked a little).

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⁴ Sources: UNCITRAL Model Law on Public Procurement, article 24, accompanying Guide to Enactment, and Procurement regulations, available as of March 2015 at http://uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html

607 C.10. Risks in ICT PPPs

608 | Data (ownership, hosting, management manipulation and disclosure) of is another significant
609 issue with ICT PPPs. The data should not be in the public domain and will need to be in
610 compliance with both local privacy laws and any relevant legislation concerning the access to
611 information. The access to data by the public sector when required is critical to the normal
612 operation of government.

613 Who will own the data? Data ownership should be compatible with national laws governing
614 this issue. This will vary from one legislation to another. However, for the effective ICT
615 implementation, the private sector who is operating the solution will likely need to use the
616 data for the intended purpose. Where the data is managed, maintained and distributed may be
617 dictated by this need to use the data. However, the ultimate responsibility of the data should
618 likely be with the public sector in order to protect its security and privacy. Depending on
619 national legislation on the subject, the end-user trader who originally provided the data may
620 be considered the legal owner of the data and as such, it may be necessary to allow that party
621 to exercise a number of rights such as: a) access to their data; b) verify the accuracy, proper
622 maintenance and upgrading of those data; and c) preserve their privacy. Instruments, such as
623 National Agencies of Data Protection, can help to solve conflicts that might occur among the
624 owner, the administrator, and the responsible to warehouse the data.

625 Will the data be stored on the private sector supplier's servers? It may be the case that the
626 supplier wishes to mirror data on its own servers for back up purposes. Access to such servers
627 and the use /ownership and destruction of such data must be carefully considered by
628 government when contracting with the private sector. The importance of these issues should
629 not be underestimated. For example, the government may not wish data to be held on servers
630 in another country, in which case, this must be made clear to the service provider. Such
631 constraints could have a negative impact on price and should be considered as part of the
632 business case. Equally, if these matters are not addressed the risk of data going missing or not
633 being accessible should be included in the business case and the costs associated to the data
634 risks (for being inaccessible, inaccurate, or lost) must be included in the risks assessment.

635 | Who will be responsible for stewardship of the data. When establishing the procurement and
636 the contract, a choice will need to be made between the private sector and the public sector as
637 the final responsible of the stewardship, collection, use, maintenance and disclosure
638 accurately the data. It would be advisable to opt for the public sector partner to retain such
639 responsibility. This implies that the government retains a constant access to the servers even
640 beyond the lifecycle of the contract and regardless of any claims from the private sector
641 partner. Care should be taken as the private sector usually provides more advance knowledge
642 and skills in providing software and hardware.

643 | Who will own the licenses? In the event that the private sector partner goes bankrupt, the
644 public sector will need licenses to continue to use the systems on which the trade data is held.
645 This needs to be considered during negotiations and dealt with appropriately in the contract.

646 | Can the ownership of the licenses be transferred? It is advisable that ownership can be
647 transferred. If the licenses are held by the PPP private sector partner, arrangements should be
648 made for the public sector to inherit the licenses at the end of the contract period or ensure
649 that they can be transferred to a new private sector partner chosen by subsequent procurement.

650 Finally, when a new private sector service provider is contracted, then the existing data should
651 be freely handed over to the new supplier without the original private sector partner creating

652 commercial or technical blockages. Such considerations will need to be addressed in the
653 procurement and contract.

654 C.11. Legal consideration

655 As there are legal risks usually involved in PPPs, public authorities usually resort to private
656 partners in national markets and not economic operators situated abroad. Organizing PPPs
657 usually touches on a plethora of different laws (contract law, administrative law etc).

658 The legal framework in multiple countries can also be a potential source of risk. Where
659 countries have signed up to various trade treaties those treaties typically will identify the
660 legislative authorities, mediators and arbiters and conflict resolution routes. Even if a specific
661 contract is silent or a contradictory situation arises, it is possible to fall back onto international
662 trade agreements which the host nation is a signatory.

663 For example, some countries will oblige companies based in their territory to respect certain
664 legal obligations no matter where they conduct their business. In this way, the private sector
665 partner who responds to a procurement tender may need to not only respect the legal
666 constraints outlined in the procurement tender, but also that of the country linked to their head
667 office. This could eventually provide further guarantees to the public sector publishing the
668 tender just as this could provide multiple constraints on the private sector respondent.

669 Critically issues arise where a TF based project requires contracts to be signed with
670 Authorities in different jurisdictions. Where countries are facing different and possibly
671 difficult economic situations , or have different philosophies or legal systems these risks need
672 to be considered early on in the procurement process by potential service providers . If the
673 commitment or management approach is likely to create governance problems these need to
674 be factored into the bidders risk model.

675 The PPP in Trade Facilitation is more likely to be successful if it conforms to a set of contract
676 rules. In order for a PPP in TF to deliver benefits, it will need to consider the technical and
677 economic performance of each project. The qualitative and quantitative factors to evaluate the
678 project need to be considered within its appropriate regulatory context. All within a
679 framework of good governance with effective mechanisms of supervision, monitoring and
680 control.

681 **D. FEASIBILITY STUDY**

683 D.1. Introduction The Strategic Case

684 Private sector participation in trade facilitation measures should increase the quality of the
685 services provided. However, care must be taken and mechanisms must be created in procuring
686 the services in a transparent manner. The contractual mechanism itself should be designed to
687 reduce barriers to trade and also to encourage the service provider to innovate to reduce
688 barriers to trade.

689 In this context, an initial feasibility study needs to be developed. It important to ensure that
690 there is real transparency and this needs to start at the very beginning of the project cycle.
691 This should involve consultation which is one of the key tools employed to improve
692 transparency, efficiency and effectiveness.⁵ The consultation process should be used to

⁵ See UN/CEFACT Recommendation 40 on Consultation Approaches, 2014.

693 improve management effectiveness, regulation and governability and conversely therefore to
694 avoid pitfalls and conflicts of interest.

695 Although some of the data within the feasibility study may remain commercial in confidence
696 to the public sector, as much of the study as possible should not just be disclosed but also
697 shared and discussed with stakeholders. Transparency and accountability are the best tools to
698 ensure lack of corruption. One of the characteristics of transparency is access to the
699 information.

700 In a PPP project in TF not only the partners of the project should have access to the
701 information, information should be accessible to any stakeholders. In a fully transparent
702 environment, all the information about the project should be accessible and explained in a
703 comprehensive way. Such information should include:

- 704 a) The business Need (this needs to be clearly articulated – why do we need to undertake
705 this project (at this stage it should not be stating whether the project is a PPP or not).
706 b) The range of services included in the contract.
707 c) The revenues, benefits and performance levels agreed and achieved as well as the cost
708 of the project and payments versed.
709 d) The use of government grants, guarantees and other financial support including
710 significant risk-bearing. The creation of mechanisms to reduce corruption,
711 inefficiencies or protect against individual interests (e.g. IT solutions, supervision
712 agency, verification systems).
713

714 *D.2. Country Readiness Statement*

715

716 As part of the feasibility study it is important to be able to identify, assess and quantify risks
717 that might arise that are associated with each particular option. This need is often neglected or
718 a simple assessment is undertaken. The wider risks that are associated with conventional (ie
719 non PPP) contracting are understood but those associated with PPP are not. In particular the
720 risks that need to be considered are associated with the contracting environment which exists
721 within each country including the country's attitude towards using the private sector to deliver
722 public sector services. It is very important to undertake a PPP Country Readiness Statement
723 (Crown Agents Copyright). This comprises four pillars and focuses on the maturity of thinking
724 on PPP (private sector engagement) in public sector and ease of doing business

- 725 • Enabling environment (Appropriate Legislative framework and PPP aware public
726 servants)
727 • Established Business Environment (How easy is to set up a business operation within
728 the country ie number of days, need for local partners)
729 • Political confidence – Is there a widely held (or shared) belief amongst politicians and
730 civil servants that the private sector has a role to play in delivery of public sector
731 services
732 • Financial Marketplace What is the state of the financial market place. How familiar
733 are the local financial institution with PPP as a concept. How quickly will they assess
734 and respond to funding requests, how will they assess the risk - will interest rates be
735 reasonable or loaded making projects unaffordable.

736 and three foundation steps

- 737 • Economic Stability If there is a period of high inflation how will the private sector
738 protect its income stream. Is it the right time to invest in the local market place.
739 • Investors: Is there a wide choice of investors and who are they. Will the proposition
740 result in investment into the country but also ultimately be withdrawn from the
741 economy. To what extent do they understand the business model ?
742 • Service deliverers. To what extent are local buiders and operators availbe locally. Is
743 tere a labour force readily available. What level of training would be required to bring
744 the employees to an appropriate level of competency. Are there any funded
745 programems or grants that are available to build up local competnecies nad business
746 and would the service provider have access to these. To what extent is the supply of
747 experienced competent workers clearly engaged on other projects. Would the project
748 be more or less risky than competing PPP projsects being developed elsewhere

749 There need to be two assessments the first is based on the doemestic market and the second is
750 based on international markt. The outcome of the assessment enables stakeholders to assess
751 the risk of the project failing and this data can be fed into the feasibility study as part of the
752 risk adjusted whole life cost assessment that is undetegn as part of the economic assessment.

753

754 *D.1. Economic assessment*

755

756 To decide on the delivery mode of a specific service or project, governments and private
757 sector should conduct a value-for-money analysis that considers a variety of delivery options
758 and determines whether PPP delivers best value for moneyt would be the best option on a risk
759 adjusted whole-life-cycle cost basis. The value-for-money assessment consists of the
760 evaluation the cost and the benefits of the project. This process has to be unbiased and thus
761 should be based on high-quality data and a clearly specified and standardized evaluation
762 process. C.1. Value for money assessment
763

764 To decide on the delivery mode of a specific service or project, governments and private
765 sector should conduct a value-for-money analysis that considers a variety of delivery options
766 and determines whether PPP delivers best value for moneyt would be the best option on a risk
767 adjusted whole-life-cycle cost basis. The value-for-money assessment consists of the
768 evaluation the cost and the benefits of the project. This process has to be unbiased and thus
769 should be based on high-quality data and a clearly specified and standardized evaluation
770 process.

771 The value-for-money quantitative assessment in a PPP project should include the costs of the
772 design, build and operations, including upgrading and maintenance, and also, any financing
773 costs, and the transaction and contract governance costs. Additionally to the costs, the value-
774 for-money assessment includes the benefits of providing a PPP project, such as, the
775 improvements in the service delivery and the predictable changes in end-user requirements.

776 At the same time projects should consider options and variations and compare these to the
777 original project specification (in technical requirements, technology, methodology) in order to
778 achieve best value for money.

779 When a bidding process is used in any infrastructure or concession project to select the
780 private sector party, the efficiency is increased by selecting the best proposal based on the

781 technical solution, the budget needed, the operational feasibility, the quality and variety of
782 services provided and the compliance with environmental standards and/or the society. The
783 best solution that wins the bid, reduces the risks of the project (it is not necessarily the
784 cheapest project).

785 There are specific difficulties in calculating value for money for each type of PPP in TF
786 project. Value for money depends on risks assessment, risks allocation (public or private), the
787 length of the PPP project, the demand, the sources of revenues for the project e.g. (taxes,
788 grants, price paid by customers).

789 A number of options should be evaluated to determine the option that provides the best value
790 for money. This should include an economic impact study (not just the impact of the facility
791 itself, but also the impact on the economy itself e.g. the local area). This is undertaken using
792 discounted cash flows and by calculating an equivalent annual charge.

793 The focus of the economic assessment is to analyse a short list of options taken forward from
794 the strategic case. The intention is to identify the project that delivers best overall value for
795 money. The assessment is based on a whole life costing starting with the upfront design and
796 capital build costs to which the revenue cost over the life of the contract and any exit costs.
797 All cost and revenues are matched in the years that they arise and then discounted back to a
798 specific date using an agreed discount. This mechanism is “whole life costing” to this, the cost
799 associated with risk and risk mitigation needs to be added in order to arrive at the overall risk
800 adjusted whole life costing.

801 The financial source of investment could come from the private sector in the form of debt or
802 equity and the source of the revenue that will pay back the investment (by taxes, user charges,
803 or price of the services, etc.). However, the financial source of investment is more linked with
804 the risks of a PPP project, and the source of the revenue is more linked with the business
805 model and the value for money in a PPP project. PPP projects allow joining the best of two
806 approaches: the public sector introduce terms of efficiency (reducing cost, allocating
807 resources, and increasing profitability), client orientation and service quality; and the private
808 sector bring the defense of general interest, planning and regulation.

809

810 *D.2. Affordability*

811 As well as assessing value for money the feasibility study also needs to assess the
812 affordability of the project. We have to think here how the project is going to be funded and
813 will sufficient funds be available to the government throughout the whole life of the deal to
814 make payments to the service provider? Or where users are expected to make payments, will
815 the fees be low enough to be affordable, or at least not be so high as to be putting off the end-
816 users, resulting in insufficient demand for the services offered?

817 In some cases there may be conflict between the project that delivers best value for money
818 over time and the project that is most affordable. It may be that budget or other
819 financial/treasury constraints mean that the only affordable option for a government is to seek
820 external funding such as through a PPP.

821 The project implementation should ideally be self-financing from additional revenues
822 generated. If there is a net cost, and the project is a vital economic growth enabler then other
823 financing solutions should be considered, such as seeking third sector involvement, otherwise

824 the project should not be introduced. Another reason that there might be funding gap is as a
825 result of the project of pledging resources that may or may not materialize. An example of this
826 may be a trade corridor that involves more than one country and one country either decides
827 not to go ahead with its part of the deal or can no longer afford to make contributions to the
828 unitary charge.

829 [For completeness it is recommended that two model costings are prepared: one based on the](#)
830 [public sector delivering the service known widely as a Public Sector Comaparator \(PSC\) and](#)
831 [one for a the private sector often referred to as a reference bid.](#)

832 D.3. Good governance

833 Good governance encompasses the need for a clear, predictable, legitimate and appropriately
834 resourced institutional framework. This will involve public awareness through consultations
835 of the relative costs, benefits and risks of PPPs and public procurement. It further involves the
836 need to maintain key institutional roles and responsibilities (to ensure prudent procurement
837 process and clear lines of accountability) as well as the need for regulation to be clear,
838 transparent, enforced and not excessive. A transparent budgetary process minimizes fiscal
839 risks and ensures integrity of the procurement process in PPPs, with disclosure of all costs and
840 contingent liabilities and the need to ensure the integrity of the procurement process.⁶

841 Ensuring appropriate good governance standards is a critical pre-requisite where private
842 sector or third sector funds are sought as co-financing. In many cases, it may be desirable that
843 the PPP operate under the country's own framework. If the private sector or third sector
844 partner agrees to this use of country systems, the fiduciary assurance obligations of the private
845 sector or third sector partner will require them to be as rigorous as their own. Clearly there are
846 additional considerations if the private sector is contracting with a supra national or cross
847 border agency.

848 Contracts are more likely to fail if there is poor governance. The governance arrangements as
849 stated within the contract need to be robust as well as adherence to them. At the outset of the
850 contract, it should be agreed as part of the process that there should an agreement on the level
851 and type of information to be published throughout the life of the contract. Stakeholders
852 should be made aware of

- 853 a) [The state of evolution of the project on a regular basis.](#)
- 854 b) [Any contract or specification changes since the contract was originally signed and any](#)
855 [relevant side agreements including government guarantees.](#)

856 E. MONITORING AND EVALUATION

857
858 One of the characteristics of a PPP contract is that income streams are not guaranteed. Rather
859 the PPP Service Provider is remunerated according to the quality and level of service
860 delivered compared to that specified. The model that underpins the performance and payment
861 regime needs to set out in principle at the outset of the procurement. The actual mechanism
862 used during the life of the contract will be negotiated and finalise before contract signature.

⁶ See the work of the OECD as of March 2015: www.oecd.org/governance/oecdprinciplesforpublicgovernanceofpublic-privatepartnerships.htm as well as that of the World Bank as of March 2015: <http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/WBIPPIAFPPPReferenceGuidev11.0.pdf> and the work of the UN Convention against corruption as of March 2015: www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf

863 The contract and governance procedures should allow for changes to the mechanism
864 according to the contractually based predefined set of rules.

865
866 Actual monitoring of performance needs to be transparent and the parties should meet on a
867 regular basis for them to agree the nature and reason for performance failures. Where the level
868 of performance is such that it results in deductions being applied to payments the level of
869 deduction needs to be agreed between the parties. Any disputed “service failures” will not
870 lead directly to a deduction but, instead be referred to the appropriate governance board and
871 go through a pre-agreed procedure in order to achieve resolution.

872 The mechanism should allow the Authority and the Service Provider limited flexibility in
873 their application. For example the mechanism me be used only as a tool to assess and improve
874 performance in the initial inception phase of the project (which typically may be up to one
875 year) and not lead to financial deductions.

876
877 Repeating failures should not be encouraged and therefore the mechanism should result in an
878 increasing impact as the failure is repeated or continues over time. On the other hand the
879 mechanism should allow for rectification periods during which repairs can be made and fro
880 which deductions are not calculated.

881
882 The Mechanism should allow for “key indicators” and “other indicators”. Typically key
883 indicators lead to financial deductions whilst other indicators are simply measured to ascertain
884 overall quality of performance and to identify areas of improvement. Typically the Authority
885 is allowed to undertake limited swapping of “key” and “other” indicators on an annual basis.
886 This seeks to ensure that the focus of the monitoring and evaluation continues to be relevant
887 throughout he contract.

888
889 As part of the governance process a Partnering Board should be held at least annually between
890 Authority and delivery Partner Seniors to discuss the performance of managing staff and the
891 | partnership as a whole.

892

892

893 **ANNEX 1: PPP IN TF – KEY CHARACTERISTICS**

894 **A. INSTITUTIONAL**

Key characteristics	Development PPP are those Public Private Partnerships where Public money (such as USAID) is combined with private monies (from companies, Foundations, NGOs) in a joint fund to achieve a development objective. Typically it may be capacity building, civil society system strengthening health delivery programs. A development PPP may be used to train Customs and Revenue officials
Best practices model	
Barriers to trade	No Implication Investment in TF Development PPPs should lead to a more transparent environment as it would focus providing resources for implementing best practice and capacity building.
Charging	User charges These programs are normally free to the recipients. Contracts are let to third parties to deliver the program on behalf of the Fund Partners. The service delivery may be through training, or through technical support and advice.
Performance models	Contracts will be signed with service providers. Payments will be made to the service provider. The contract mechanism based on the quality of service as assessed by the users and/ or and will be subject to outcomes achieved as a consequence of the service provided. For example the generation of increased revenues.
Contract length	These PPP programs are relatively short from a few months to three to five years(although in the health sector they may be as much as 7 years)
Asset ownership	There are normally no significant assets associated with a development PPP.
Risk management	Development PPPs often use computers and related software. A key issue is to ensure that any such training would be undertaken on appropriate platforms.

895

896

Key characteristics	ICT (Information and Communication Technology) Infrastructure a) E.g. single-window b) E.g. E-procurement systems c) E.g. CCTV/identification cameras/charging cameras
Best practices model	Design, Build, Implementation, Transfer, Operate Design System to integrate appropriately with related wider government systems. System to reflect local conditions, i.e. reliable power supply/back up power supply/ robust kit, secure comms. (possibly by satellite) Build Supplier to recommend and supply kit to Authority. Supplier to take risk on compatibility issues regarding the recommended kit. Implementation Supplier to install all equipment and commission the system. The supplier may have a simple support contract to maintain the ICT or may have a wider brief to provide the full service or part of the service. Transfer Following build and implementation all hardware and communications equipment to be transferred to the ownership of the authority.
Barriers to trade	a) Incompatible systems – failure of systems to talk to one another – lack of a genuine single window and the time / cost associated with that. b) User Charges- entry/processing/registration charges set a level that may discriminate against SMEs and local service providers, c) Charges set by supplier (service provider) rather than controlled and capped by a public authority d) An unexpected consequence of contractual performance and payment causes the Operator behaving in a way that maximizes their revenue that slows down or impedes trade
Charging	User charges Ideally use a unitary charge payable by government and subject to a performance and availability mechanism Transaction charges to the user – these may need to be limited so as not to impede trade and should be set by government and not be linked to the cost of the contract. Otherwise there is state shadow charging The Supplier should be paid a pre-agreed fee or set of fees. Any element specifically tied to the generation of additional revenues should be capped to ensure that supplier does not generate super profits by operating the service on behalf of the public sector.
Performance models	There are two elements: 1) Performance(i.e. speed of response) and availability of the system 2) Availability of the system – and ability to handle a specific amount of traffic at anyone point.

	<p>This would normally be an acceptable risk to the contractor – although this may limit the ability to future proof the technology (for example if trade doubles beyond expected growth over the contract period)... although in that scenario you could define server response times.</p>
Contract length	<p>PPP is a poor choice for long term PPP contracts and typically ICT contracts are shorter than Infrastructure projects due to the rapidly changing pace of technology.</p> <p>ICT service providers will not typically take on the risk of technological change after the first “refresh (normally approximately 5 years and certainly no more than 10 years).</p> <p>Typical Contract lengths:</p> <ul style="list-style-type: none"> • Three to Five years (departmental or local projects) • Five to Seven years Large (departmental and expensive projects) • Eight to ten years (large national ICT project) • Ten to fifteen years (Major very expensive nationally important ICT projects) <p>The smaller the ICT component and the larger the service domain element the more the likelihood is for a five year contract with possible extension and that trade software would need to be mobile technology for smaller traders – particularly in Africa where mobile technology is more mobile based than in say the UK where there is a greater proliferation of land based internet technology.</p>
Asset ownership	<p>As far as possible assets should be transferred into public ownership as soon as possible following construction. Depending on the type of PPP (DBOT may transfer ownership a later time; but many recent PPPs are looking to have the transfer of ownership at an earlier stage)</p>
Risk management	<p>Ideally the Public Sector should contract separately for the wider service delivery and restrict the “PPP” contract to the technical delivery of the system.</p> <p>All hardware, software and communications to be “recommended”, provided and implemented, by the contractor</p> <p>The System implementation and operation should be integrated with existing government systems, based on fixed fee for implementation and operation.</p> <p>Performance and availability mechanisms should be in place with the opportunity for a supplier to earn back some of the income lost by improved performance etc.</p>

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900 **C. INFRASTRUCTURE**

Key characteristics	<p>Design Build Transfer and Operate (DBTO) or similar.</p> <p>Typically longer term contracts of up to 20, 25 or 30 years.</p> <p>These include buildings, road ways and dry ports. Service provider may require third party financing. Roadways and bridge projects could be even longer</p> <p>As with all PPP projects fees are earned by the service provider during the operation phase of the projects</p> <p>Fees earned during service phase of contract NOT during the construction phase</p>
Best practices model	Design, Build, Implementation, Transfer, Operate
Barriers to trade	<ul style="list-style-type: none"> a) Need to align cross border applicable legislation b) Need to align existing systems and processes which may be incompatible with existing systems and processes c) Any Service provider should be seeking to minimize processing time d) If possible, along a trade corridor repeat processes should be eliminated.
Charging	<p>Unitary Charge (example of topics that could be included)</p> <p>In order to minimize the barriers to trade the supplier should be paid according to a robust payment model.</p> <p>The service provider should be paid according to performance and availability of service.</p> <p>There should be no direct association between the level of charges at the border posts dry ports etc. and the receipt of income by the service provider.</p> <p>Rather the number of units charge and the accuracy of that charging should be the clear indicators used to pay the service provider against an agreed initial payment schedule.</p> <p>Any bonuses must be limited in scope and financed from the use of best practice operations rather than through perceived harassment or the slowing down of traffic creating a trade barrier.</p> <p>With direct charging the income collection by the service provider is vulnerable to alternative routes that enable their service points to be bypassed.</p> <p>National and international infrastructure and trade facilitation policies</p> <p>The unitary charge may comprise budgetary sourcing from more than one national entity. In such circumstances it may be case that direct charging is less risky for the service provider</p>
Performance models	<p>The performance mechanism associated with the unitary charge should take into account any such polices that affect the usage and payment of dues by users on the service provider.</p> <p>Some examples that could be used as a performance model)</p> <p>On the assumption that users are not directly charged and an availability of asset seems easiest solution.</p> <p>Roads can be done on number of lanes availability or average time travelled between two points</p>

	<p>Ports on number of docking spaces available, or turnaround times. More analysis is required on specific projects to understand the benefits of one approach over another. Government sets a KPI (for the operator / service provider). Service model (how should the Service Provider respond to customers) A Monitoring and evaluation mechanism needs to be established.</p>
Contract length	<p>Long enough for the asset to generate suitable income for the private sector and allow secondary investments – thus making it an attractive investment prospect. Keeping in mind that it should not become a barrier to trade. Overall compensation to the Service Provider needs to provide them with a reasonable return. Public sector aspects to be brought in here. Contract needs to be long enough to allow private sectors to want to participate in PPP; but also important for public sector to look over how contract is managed/operated so that when and if they take over the project, they will have been able to absorb the aspects that make it work in the first place. Length of contract should depend on the type of PPP project (see below).</p>
Asset ownership	
Risk management	<p>Important to consider local legislation. For example Facilities such as ports may not be able to be held as private sector assets Legally the private sector may not be able to deliver certain services – if legislative environment is not taken into consideration, it might be perceived as a barrier to bidding for the PPP). A PPP service may start and later be proven that it is actually not a service which can be provided by the private sector – health services, for example) Therefore consideration must be given to revising local legislation Risks associated with the physical assets remain with the service provider regardless of ownership</p>

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903 **ANNEX 2: VALUE FOR MONEY (VFM) FACTORS**

904 The main factors that affect the assessment of VFM in a PPP project are the following:

- 905 a) Bid criteria.
- 906 b) Delays during the project.
- 907 c) Penalties mechanisms (e.g. lack of quality, unreachable deadlines).
- 908 d) Poor specification of risks allocation and management (and the cost associated with
909 the transferable and retained risks.
- 910 e) Unrealistic affordability calculation (poor cash-flow estimation and unrealistic
911 assessment of the capability to attend payment commitments).
- 912 f) Possibility to re-competing contracts in regular intervals during the PPP project in TF.
- 913 g) Low demand of the service.
- 914 h) Inappropriate pricing or taxes recovery.
- 915 i) Investments in new capital assess during the contract duration.
- 916 j) Property rights payments associated to the service delivery of the PPP project in TF.
- 917 k) The use of economies of scale in any stage of the project.
- 918 l) Interest rates, taxes, inflation, discount rates, and exchange rates estimation.
- 919 m) Variable, semi-variable and fixed (direct and indirect) costs.

920

920

921 ANNEX 3: RISKS

922 The risks assessment should reflect the evaluation of potential of additional costs and the
923 consequences of each risks. When an accurate monetary evaluation of risks is made in a PPP
924 project it is easier to estimate the price that each party should be willing to pay to transfer the
925 risks from the public to the private sector and vice-versa.

926 To provide the value for risks, a probability factor is introduced using the following formula:

$$\text{Value of risks} = \text{Outcome} - \left(\left(\frac{\text{Consequences of risks/risks severity}}{\text{Probability of risks events}} \right) * \left(\frac{\text{Contingency /mitigation} + \text{Loss of revenues}}{\text{}} \right) \right)$$

927

928 The contract should include a comprehensive list of risks. Partners should assume the risks
929 that can handle best, and the responsibilities assumed by each partner must be agreed in the
930 contract. Any risk will be calculated in terms of costs, which is named risks assessment. We
931 calculate the value of risks as the result of normal outcomes minored by the risks assessment.
932 Thus, any risk has to be associated to a probability of occurrence and a severity of the
933 damages that any risks could cause in monetary terms. Also, the contract will consider ways
934 to avoid those risks (mitigation or contingency plan, as insurances, management of risks, etc.)
935 and calculate the value of the mitigation plan. Finally, it will be specified in the project for
936 each risks the losses of revenues produced when an uneven take place (because the tasks to be
937 performed in the PPP project are not fulfilled 100% when the risks occurs, and those
938 underperformed tasks have a cost for the PPP, that must to be assessed).

939 In order to evaluate the consequences of a risk in monetary terms, a risk identification and its
940 consequences analysis must be made. In a PPP project the types of risks that could occur
941 should be:

Types of risk	Risk description	Monetary consequences of risk
1. Macro economic risks (Xu et al. 2012)		
Political risks	Unsecured legal framework, dispute resolution, the regulatory framework, government policy, taxation, expropriation and nationalization.	Asset costs, financial costs, interest rate costs, inflation, discount costs
Foreign exchange fluctuation	Increase of overall costs of the project by unpredictable and high changes of money value	Cost of construction and/or maintenance, cost of exchange rate insurances, less revenues
Interest rate fluctuation	Increase of financial cost during the full length of the project	Financial cost Less revenues
2. Construction and operation risks (Xu et al. 2012)		
Design risks	The project design is unable to meet the performance and service requirements in the output specification.	Redesign costs, construction costs and/or delay costs.
Commissioning risks	This risk appears when a license, administrative permission, or an output specifications needed is not reached	Costs from delays and maintenances

Construction risks	Delays, exceed the budget or not follow the specification	Cost of construction and/or maintenance
Operating risks	Inefficiencies in the project development and exploitation, operation cost overrun	Less revenues, maintenance costs
Project/operation changes	The project needs to be redesign and improve its construction and/or operation.	Redesign costs, construction costs and/or delay costs.
Conflicting and imperfect contract	The contract under defines tasks and responsibilities to undertake during the project	Construction and operational costs and/or delay costs. Financial risks. Less revenue.
Price change	Unexpected price increases	Construction and operational costs, and financial risks. Less revenue.
Latent defect risks	Inherent and hidden risks in the construction of the project (infrastructure, software, equipment or other)	Permission costs, delay costs, construction and maintenance costs
Technical and technological risks	The project is unable to provide a valid solution for partners and/or consumer and clients	Less revenues, maintenance costs
Residual value risks	The loss of the value of assets budgeted at the moment to transfer the contract	Financial costs
Industrial relation risks	Risk of conflict of interest management among the partners of a project	Financial costs, construction costs and/or delay costs
Data risks	Inaccurate data, data lost, or data inaccessibility	Costs from delays and maintenances
Financial risks	Funding risks	Delay costs, financial costs
Performance risks	The project is unable to reach the results defined in the contract.	Less revenues, maintenance costs
3. Government maturity risks (Xu et al. 2012)		
Government corruption	Risks of unequal decisions, lack of information and transparency, conflict of interest	Permission costs, delay costs, construction and maintenance costs. Less revenues.
Imperfect law and supervision system	Unfair competition and non transparent market	Permission costs, unexpected taxes, delay costs, construction and maintenance costs. Less revenues.
Poor public decision-making process	Immaturity of public institutions and bureaucracy processes	Permission costs, delay costs, construction and maintenance costs. Less revenues.
4. Market environment risks (Xu et al. 2012)		
Demand risks	The demand for the service or the infrastructure was overestimated and it is not used as much as expected.	Financial cost, less revenues
Environmental and social risks	Environmental externalities	Construction and maintenance costs
5. Economic viability risks (Xu et al. 2012)		
Subjective project evaluation method	Lack of methodology to evaluate mainly assets, liabilities, demand and risks.	Construction and maintenance costs. Financial cost, less revenues
Insufficient project finance supervision	Insufficient cash-flows generated, access to higher interest rates	Financial cost, less revenues

942 **ANNEX 4: GOVERNANCE PROCESS AND PERFORMANCE**
 943 **PROCESS**

944 Figure 4. Contract Governance: Reporting and Monitoring and Management.

	Governance body	Responsibility	Sub committees reporting	Core membership
1.1	Annual partnering board		Deal with high level relationship issues and any staffing concerns High level strategic discussion	Senior representation from Govt. dept. meets senior rep from Private sector partner others by invitation only
1.2	Quarterly contract board	Board sits on a quarterly basis to consider contractual issues including contract changes Quality management risk management performance and payments resolution	Sub Committees a) Contract Changes b) Performance and Payment Dispute Resolution c) Processes and Procedures d) Quality Management e) Exit and transfer of Assets	Public and Private Reps Service Director Legal Financial Contract Manager Commercial Users
1.3	Monthly performance board	Agree Performance report and Authorise payments to supplier	Report to Quarterly Contract Sub Committee Prepare Performance Report and calculation of payments	Commercial managers Contract Managers Service Managers
1.4	Weekly meeting	Small issues that can be quickly resolved, Report to Monthly Board on Activity	Local contract manager (meeting could be by phone) But any actions taken must be reported to Monthly Board	Service Manager

945

946

ANNEX 5: SINGLE WINDOW SERVICESList of Services that [can](#) be provided by the Single Window

Trading Services	Trading partner discovery Product Discovery services Catalogue services Quotation Services Scheduling services Ordering Services Invoicing services Dispatch Services Remittance Services
Transportation Services	Booking Services Cargo pick-up Transport Billing service Cargo Tracking Partial Monopoly in ports/ airports Carry in & Carryout services Port operations Nautical services Ship Inspection Stevedore services Port Entry & Departure Transshipment operations Fumigation services Unloading and loading Tally Services Cargo Delivery workflow Billing for port handling Warehouse & port handling service Pilot and Tugging services
Regulatory Services	Conveyance reporting Advance Regulatory reporting Goods declaration for export Goods declaration for import Goods Release authorization Cargo Reporting of export Cargo Reporting of Import Regulatory product Certification Regulatory inspection – e.g. Veterinary Regulatory licensing services Security screening services
Technical Services	Electronic Messaging Services Application to application services Business computing services webhosting services Identity management services Certifying authority services Information security services

949 ANNEX 6: COORDINATED BORDER MANAGEMENT

950

951 One Stop Border Posts (OSBP)

952 In line with all new initiatives it is important to ensure that the appropriate building blocks
953 have been put in place in order to facilitate the success of the initiative. Both PPP and One
954 Stop Border Posts (OSPBs) are relatively new initiatives in trade facilitation and, at the time
955 of writing there are relatively few practitioners who are both familiar with both PPP and
956 OSBP. This guidance assumes an understanding of OSPBs but identifies the key elements that
957 need to be considered and addressed in order to facilitate a successful PPP.

958

959 Enabling environment

960 One Stop Border Post (OSBP) operation requires a firm legal framework and involves linking
961 policy, appropriate international legal instruments, revised domestic legislation, implementing
962 regulations, together with procedures and processes, to enable the extra-territorial exercise of
963 powers, discharge of duties and application of regulations, standards and compliance / control
964 regimes. Ideally, this should all be in place prior to OSBP operations.

965 The nature of the legislative framework is critical, and will be key in determining the
966 attractiveness of a PPP to a potential PPP operator. If the OSBP is to be provided through a
967 PPP then the legislation must be drafted in such a way that explicitly states

- 968 • the identity of the contracting authority or authorities
- 969 • the scope of the service that the private sector may be asked to provide
- 970 • the specific duties to be undertaken on behalf of the public sector
- 971 • the responsibility taken by each party for different aspects of the service
- 972

973 An OSBP may require a country agency to apply regulations in the territory of another, thus
974 requiring a bi-lateral agreement, regional convention, treaty, protocol or similar act

975 (e.g. the East African Community’s OSBP Act) which covers the powers of the agency
976 personnel with an ‘at the border’ remit, allowing the interruption of international supply
977 chains; the territorial extent of their writ; cross designation of responsibilities; the scope of the
978 arrangements; the modality of applying controls; and, possibly, risk profiling and
979 management. All of this needs to be considered in deciding the overall scope of the service
980 that may or may not be contracted out to the private sector and the extent to which the private
981 sector may have to operate in joint teams with the public officials.

982 It may be preferred to simply outsource to the private sector the underlying support services
983 and for the contract to be scoped as a Design Build Finance Operate Transfer for the
984 underlying accommodation service rather than providing for any of the front line customs
985 service and its associated ICT. Regardless of whether the private sector is providing front line
986 services it will need to have certainty and clarity regarding

- 987 • the contract itself,

- 988
- [the public sector partners to the contract](#)
- 989
- [each parties obligation and responsibilities](#)
- 990
- [the payment and performance regime](#)
- 991
- [how government intervention or legislative programme could impact on its ability to](#)
- 992
- [make a reasonable return](#)
- 993
- [arrangements between third party contractors that could impact on income](#)
- 994

995 [Effective OSBP operation also requires appropriate institutional arrangements be put in place.](#)

996 [These should include structures for the involvement of relevant public and private sector](#)

997 [stakeholders in the redesign of procedures and processes, and continuous improvement](#)

998 [thereafter \(e.g. a Joint Border Post Committee\) to ensure a level of sustainable buy-in and](#)

999 [ownership of the new approach.](#)

1000

- 1001
- [The relationship between such a Joint Border Post Committee and a PPP private sector](#)
- 1002 [operator needs to be clearly articulated in the governance arrangements](#)
- 1003
- [The potential for any conflict of interest between Private sector users and PPP](#)
- 1004 [operators needs to be avoided](#)
- 1005
- [The potential for the Private sector users to apply undue pressure on the PPP service](#)
- 1006 [Provider also needs to be considered.](#)
- 1007

1008 [There should also be embedded governance structures for ‘at the border’ inter-agency](#)

1009 [cooperation, both domestically and cross-border, to build institutional trust and there needs to](#)

1010 [be a shared mission between PPP Operators, OSPB Agency personnel and sponsoring](#)

1011 [governments.](#)

1012 [As with any PPP there is a need to identify](#)

- 1013
- [strong sponsorship in each of the participating territories](#)
- 1014
- [strong political and technical desire to embed the changes made](#)
- 1015
- [An inter-agency collaborative border management model to be established](#)
- 1016

1017 [This is critical for designated trade/transport/transit corridors to be effective and to enable the](#)

1018 [improvement of trade facilitation for market integration. Specifically with regard to transit](#)

1019 [corridors the private sector will only find contracts attractive if clear decisions have been](#)

1020 [made regarding](#)

- 1021
- [the financing of road building and maintenance programmes and](#)
- 1022 [who will be responsible for the collection, allocation and use of monies](#)
- 1023
- [the strength of mandate of the managing authority and its ability to fulfil that mandate.](#)
- 1024 [And those decisions are considered be reasonable and fair and that the private sector can](#)
- 1025 [potentially make a profit.](#)

1026

1027 [Procedures and Processes](#)

1028 Operationally Well-implemented OSBPs constitute a new operational environment approach
1029 to border management, with combined control and facilitation activities and potentially a
1030 shared risk management and data exchange system. OSBPs assume a single framework to
1031 cover the official procedural requirements for each country - one combined set of control and
1032 facilitation activities making best use of modern technology and techniques. Governments
1033 may also agree

- 1034 • to joint operational teams,
 - 1035 • permit joint risk analysis and profiling, and/or
 - 1036 • share exchange of transactional data
- 1037 depending on the degree of integration with which they are comfortable .

1038 Moving away from the conventional approach to border management, therefore, requires
1039 adjustments to border agency procedures and processes to ‘transition’ from the ‘as is’ position
1040 to the OSBP operational environment. Business Process Redesign (BPR) is central to
1041 effective OSBP operation.

1042 Using BPR helps to analyse and harmonise data, documentation, procedures and processes of
1043 the respective border agencies for OSBP operation, particularly for electronic data
1044 transference. This can be done at the national level, or as a joint exercise between countries,
1045 potentially increasing the efficiency gains for both sides. This is something that can be done

- 1046 • prior to the introduction of the private sector
 - 1047 • As part of the process itself
 - 1048 • Subsequent to the service being outsourced (and allowing for the PPP Partner to
1049 deliver business change).
- 1050

1051 Infrastructure and Equipment

1052 Conversion of a conventional border crossing point to OSBP operation may require a certain
1053 level of investment in the physical structures and in equipping the border post appropriately
1054 (e.g. ICT, cargo handling and inspection equipment). How a border post is physically
1055 configured and equipped can help or hinder OSBP working. In particular, from a trade
1056 facilitation point of view, it is critical that, when necessary, consignments and their
1057 conveyances can be detained in a secure area without interrupting main traffic flows.

1058 Under a PPP arrangement the private sector may be invited to design build operate and
1059 maintain such a facility, (although this may not include the user facing transactional/frontline
1060 services). It needs to be agreed between the parties the extent that the private sector operator
1061 is held responsible for the design risks. The PPP may not be considered to be attractive if the
1062 extent of the design risk causes it to be held responsible for reduced governmental income, or
1063 reduced traffic flows.

1064 Another example is the configuration of office space, which can impact positively or
1065 negatively on practical, day to day, inter-agency cross-border cooperative working. When
1066 contemplating the design of the physical layout for OSBPs it is important that it should reflect
1067 the BPR process / procedures flow, not vice-versa—that is, that the functionality be
1068 determined by procedures. This would suggest that the BPR exercise should

- 1069 • Precede any PPP procurement process

- 1070
- Be part of the procurement process (unless it over complicates the procurement itself)
 - Follow the selection of the PPP service provider (but thereby delaying the finalisation of designs and the operational date before which the PPP service provider may receive income from services delivered).

1071

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1074

1075 One way of mitigating this last impact would be to engage the successful PPP service

1076 provider and to undertake the BPR exercise as part of an inception phase for which they may

1077 specifically receive payment.

1078 Information and Communications Technology

1079 Border management is based on receiving, analysing, processing and sharing information.

1080 Selecting, implementing and operating the most appropriate ICT systems that also provide for

1081 wider governmental connectivity are essential to maximising efficiency and effectiveness,

1082 both domestically and internationally, between the various agencies operating at the border.

1083 This is particularly so in respect of the control zone where there are joint border operations.

1084 Ideally, the ICT required for OSBP operation should be carefully planned from the outset, and

1085 the adoption and implementation of systems should reflect revised border procedures and

1086 processes that have been simplified and harmonised, and designed to be compatible with

1087 OSBP / Joint Border Post (JBP) operation, following a preceding business process redesign

1088 exercise.

1089 Whilst it is clear that each government and agency involved must have access to data, an

1090 overarching (although possibly simple) ICT strategy needs to be agreed. For example should

1091 the PPP operator implement their own systems regardless of the ability to communicate with

1092 client agencies and governments.

1093 In terms of access to ICT system data by the cooperating agencies at OSBPs, options range

1094 from, for example, enabling read-only access to other agencies' systems by vetted staff, to

1095 more complex solutions, such as 'Single Window' and joint risk management modules,

1096 depending on the degree to which the agencies and governments involved are comfortable

1097 with cooperative working. As part of the strategy it needs to be agreed whether the PPP

1098 service provider

- 1099
- will take on some or all of the ICT services and implement its own compatible systems
 - will be required to take on some or all of the ICT services but implement systems as specified in the ICT strategy
 -

1100

1101

1102

1103 or whether an existing or fourth party ICT Service Provider(s) is/are required to deliver to the

1104 ICT services at the OSBP.

1105

1106 Staffing and Capacity Building

1107 Rules of engagement and Relationship Management between the different public and private

1108 sector operators need to be devised, communicated and followed. Relevant border agency

1109 personnel (e.g. Customs, Health, Police, Forestry, Veterinary, Immigration, Standards) as well

1110 as the PPP service provider and their staff must be comfortable with the new operational

1111 approach and with working to the new procedures, processes, systems and culture. Therefore,

1112 as part of an overall change management strategy, it is important to identify and plan the
1113 capacity strengthening needs of the main stakeholders that are impacted

- 1114 • by implementing an OSBP operation and
 - 1115 • contracting with the private sector to provide a range of services.
- 1116

1117 In the interests of sustaining and embedding change, a training and personnel development
1118 programme should be developed taking into the changed needs and responsibilities for
1119 ensuring operational delivery (eg from the public sector being a service provider to being a
1120 contract manager). Dependant on the services outsourced and local attitudes to PPP it may be
1121 necessary to tailor stakeholder education and training to fit the countries and operations
1122 concerned.

1123

1124 Payment models

1125 Regardless of whether the PPP service provider is engaged in frontline activities or not, the
1126 service provider should not be seeking to collect payment for their services directly from
1127 income collected from Users of the OSBP. This can create a perceived if not actual conflict of
1128 interest where Users of the OSBP believe that the operation of the facility is being managed in
1129 order to generate higher income for the PPP Service Provider rather than to operate an
1130 effective service on behalf of the customs services involved. Therefore where the PPP service
1131 provider may be providing Frontline/Operational (which is the more understandable term)
1132 services, it is more appropriate for the PPP service provider to hand over all receipts to the
1133 Contracting Authority and for a separate “net payment for services received” to be made back
1134 to the service provider (ie payment based on a suitably transparent and auditable performance
1135 model comprised of appropriate availability and performance elements).

1136

1137

ANNEX 7: SPECIAL LEGAL AND CONTRACTUAL CLAUSES

1	<u>Contracting Parties</u>	<u>This will clearly state the contracting parties which on behalf of the private sector may be in the form of a special purpose vehicle. The public sector may be an inter government agency, it is important to ensure that the legal jurisdiction that applies is articulated in the contract</u>
2	<u>Indemnities and gaurantees</u>	<u>It is normal for parent company guaranees to be sort by the Authority and indemnities to be provided</u>
3	<u>Services Required</u>	<u>The Authority Requirement (this has precedent over “Services to be Provided”</u>
4	<u>Services to be provided</u>	<u>The Service Provider’s Response</u>
5	<u>Payment and Performance</u>	<u>Contract specific negotiated Performancne Regime</u>
6	<u>Direct Agreements</u>	<u>(Agreement between the Public Sector with Funders in the event that the service provider fails and the funder has to step in to run htebusiness for a period)</u>
7	<u>Contract Change</u>	<u>Contract change mechanism that simplifies the contract change process and</u>
8	<u>Dispute resolution</u>	<u>Pre agreed process using project governance structures mediation and experts to resolve dipsutes</u>
9	<u>Condition Surveys</u>	<u>Mechanism to ensure that there is a asset status baseline at he outset ofhte contract (if the serve involves refurbishing existing assets and at the end of the ontractto establish the needd tfor any dilapidation payments to be paid, or renewal works to be undertaken by the service provider</u>
10	<u>Acceptance of any underlying Asset</u>	<u>The authority should not “accept” the underlying asset as this would suggest that the asset is of sufficient quality thereby removing the design and build rsik from the service provider. Instead a third party expert should be jointly appointed to assess that certain pre specified tests have been undetekn and that he outcome has been successful enabling the building to be occupied and the services to begin</u>
11	<u>Ownership of Assets</u>	<u>The contract should clearly state who owns the asset and on what basis</u>
12	<u>Ownership of Data</u>	<u>The conditions under which the private sector may collect, host ,share, manipulate and dispose of data must be clearly</u>

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Mis en forme: Normal, Retrait : Gauche : 0,63 cm, Sans numérotation ni puces

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	(ICT)	articulated. It is important that the data is also held in manner that is accessible and readable to the authority in the event that the service provider suddenly ceases to provide the service
13	Use of Data (ICT)	See above
14	Condition of Assets	any requirements associated with the condition of the asset when it is transferred (back) to the public sector
15	Public Sector Audit Rights	The authority needs to retain the right to inspect and audit all records associated with the projects/ The Service Provider should be charged with keeping the records in good order and make them easily accessible
16	Governance	A proper governance structure needs to be articulated in the contract and then adhered to, the structure should allow for simple service changes to be rapidly agreed at minimal cost, consider and agree the level of performance of the project and confirm the payments to be made
17	Exit Clauses	The contract should include specific arrangements with regard to what should happen in the event that the Service provider wishes to terminate the contract early or at term. As mentioned above the contractor may be held to certain clauses requiring he facilitates to be maintained to a certain standard or have an number of years life
18	Possible clauses re transfer of staff	Depending on the jurisdiction and the nature of the service, there may be a need to transfer staff from the Authority who are already engaged in delivering the service as public employees to the private sector entity or other private sector entity.
19	Risk Schedule	A risk schedule needs to be included in the contract that clearly allocates risk to the relevant party. The schedule needs to be developed to a sufficient level of detail so that it can be used as a tool for identifying the party responsible for taking responsibility in order to rectify a problem when it occurs

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Diamond, Maurice 20/3/15 09:28
Supprimé: <#>Contacting Parties .
 <#>Indemnities .
 <#>Services Required .
 <#>Services to be provided .
 <#>Payment and Performance .
 <#>Direct Agreements (Public Sector with Funders) .
 <#>Contract Change .
 <#>Dispute resolution .
 <#>Condition Surveys .
 <#>Acceptance of any underlying Asset .
 <#>Ownership of Assets .
 <#>Ownership of Data (ICT) .
 <#>Use of Data (ICT) .
 <#>Condition of Assets .
 <#>Public Sector Audit Rights .
 <#>Governance .
 <#>Exit Clauses .
 <#>Possible clauses re transfer of staff .
 <#>Risk Schedule .

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 1140
 1141
 1142

