

SADC DEVELOPMENT FINANCE INSTITUTION NETWORK CHIEF EXECUTIVE'S FORUM

The Regulatory Environment for PPPs



PRESENTED BY:

Lindokuhle Hlatshwayo
Senior Project Advisor

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National Treasury
REPUBLIC OF SOUTH AFRICA



1. PPP Regulatory Framework

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3. Role Players in the South African Environment

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PPP Regulatory Framework



- Comprises all the laws and regulations that control whether and how PPP's can be implemented.
- Need for both Government and private party need to scrutinize the relevant laws and regulation that may apply to PPPs.
- Government embarking on PPPs must adapt a legal framework to introduce PPP Specific processes and responsibilities.
- Some countries enact PPP Laws that may establish guiding principles, processes, and institutional responsibilities for PPP program.



Detailed Legislative Framework in Place

- **Public Finance Management Act**
 - PFMA Treasury Regulation 16
 - Public-Private Partnership Manual
 - Standardised Public Private Partnership Provisions
 - Public Private Partnership Toolkit for Tourism

- **Municipal Finance Management Act**
- Local Government: Municipal Systems Act
 - Municipal PPP Regulations
 - Municipal Service Delivery and PPP Guidelines

The South African Constitution provides:

- “When an organ of state ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”

Role Players in the South African PPP Environment



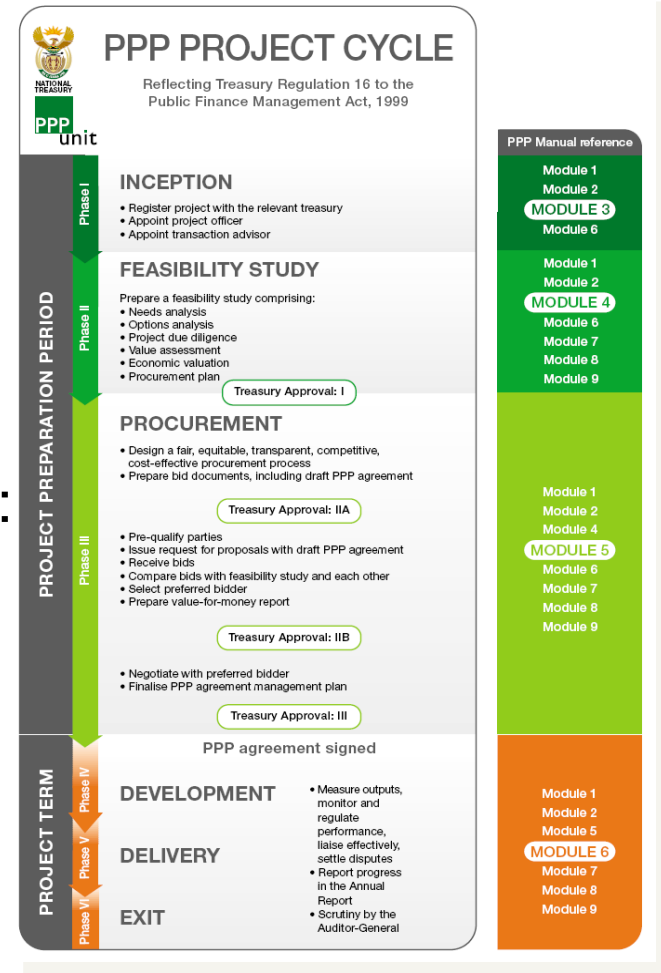
- **GTAC** created because PPP Unit had both *Technical Assistance* and *Regulatory* Roles
- Provided technical assistance on:
 - Procuring Transaction Advisors
 - Procuring Project Officers
 - Advising on project procurement and implementation
- Acted as a Regulator in terms of:
 - Approving feasibility studies to permit procurement as a PPP
 - The development and issuance of tender documents
 - The selection of the preferred bidder
 - Approving the execution of the negotiated PPP Agreement
 - Approving material variations and amendments to executed PPP Agreements
- Team in GTAC will provide only technical assistance
- Regulatory role will stay within National Treasury **Budget Office**

Fundamentals of PPPs



- Three tests for a PPP:
 - **Affordability**
 - **Value for money**
 - **Appropriate risk transfer**

- Applied in a set PPP project cycle:
 - Inception
 - Feasibility
 - Procurement
 - PPP agreement management



Fundamentals of PPPs



Worldwide experience has shown there are certain requirements before a government can successfully use PPPs to procure public services infrastructure

They are:

- *A functioning judicial/legal system*
- *Capacitated, enthusiastic government officials*
- *Demonstrated, capable private sector interest*
- *An enabling PPP framework*

Fundamentals of PPPs



- *A functioning Judicial/Legal System*
 - At the end of the day, all PPP agreements must be enforceable by both parties
 - Lenders, particularly require this certainty
 - PPP contracts may include dispute resolution and arbitration clauses, but must have a legal underpin

- *Capacitated, enthusiastic government officials*
 - Undertaking the assessment and procurement of infrastructure via PPP requires diligence and an understanding of the processes
 - Government requires a “Project Champion” with zeal and keen interest in the project
 - The failure of government in this regard is often cited as being a reason for no – or poor – PPPs

Fundamentals of PPPs



- *Demonstrated, capable private sector interest*
 - Private sector interest should include
 - Interest from contractors, facility operators
 - Interest from the financial sector
 - Banks
 - Development Finance Institutions (DFIs)
 - Other financial organisations
 - Availability of international, regional contractors, facility operators and representatives from most aspects of the financial sector



- ***An enabling PPP framework***

- Objectives:

- Clear policy framework to ensure that PPPs are a coherent option
 - Refining legislation to remove unnecessary obstacles to assess and procuring PPPs
 - Regulations to ensure sound expenditure control and prudent use of government assets
 - Enhancing capacity of government departments
 - Providing simple yet effective institutional framework to ensure that PPPs provide value for money
 - Providing clear direction and comfort to private sector participants, including financial institutions

Conclusion



- The success has been possible because of an enabling legislative and regulatory environment, together with robust support from Political Principal.
- Capacity in government and maintaining our staffing with capacitated professionals has been, and will continue to be, challenging

Contact



Lindokuhle Hlatshwayo

Senior Project Advisor

PPP Unit

GTAC, National Treasury

240 Madiba Street

Pretoria

South Africa

Tel: +27 12 315 5525

Fax: +27 12 315 5477

Lindokuhle.hlatshwayo@treasury.gov.za

www.gtac.gov.za

www.treasury.gov.za

GTAC
Government Technical Advisory Centre
Private Bag X115
Pretoria 0001

GTAC
Government Technical Advisory Centre
240 Madiba Street
Pretoria 0002

info@gtac.gov.org

www.gtac.gov.org



national treasury

Department:
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