

AN OVERVIEW OF PUBLIC PRIVATE PARTNERSHIPS (P3s)



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Introduction

Public Private Partnerships are a unique blend of public welfare and business efficiency. While the projects have a touch of commercialization, the motive of public wellness is kept intact.

The concept also has to its credit the utilization of efficient resources thereby saving time, money and also making available welfare schemes to the public at immediate and appropriate times.

Public Private Partnership (PPP) is often described as a private business investment where two parties comprising government as well as a private sector undertaking form a partnership for a public purpose/benefit. While much is talked about the performance of Public- Private Partnerships, the coverage of the term Public Purpose or Public Benefits suffers from varied interpretations.

While in some types of PPP, the cost of the service is exclusively paid by the users, in other types the private sector on the basis of a contract with government provide agreed service, the cost of which is borne by the government. With respect to infrastructure projects the government may provide capital subsidy (namely grants) or revenue subsidy (namely tax holidays) in order to make it more appealing to the private investors. The deficit in meeting the cost of a PPP project is overcome by ensuring much more private capital investment. Expert guidance is the only way out for enabling efficiency through subsequent reduction in cost.

A 'Special Purpose Vehicle' or SPV (in other words a company) is formed in order to build operate and maintain the asset for a said period referred to in the contract. The consortium or arrangement has a building contractor, a company and bank lender as

parties to it. The SPV or company signs the contract with the government and with the contractors to build and maintain the facility.

The Government of India has taken initiatives to encourage private investment in infrastructure through public-private partnerships. Infrastructure projects undertaken based on the PPP model in some sectors have shown decent progress, while the rest are in still in their nascent stages.

Public-private partnerships (PPPs) in the delivery of public services have become a phenomenon spreading across the globe and generating great interest. But how come a terminology, barely mentioned a decade ago, now attracts so much attention? An answer to it is that, PPPs avoid the often negative effects of either exclusive public ownership and delivery of services, on the one hand, or outright privatization, on the other.

PPPs combine the best of both worlds: the private sector with its resources, management skills and technology; and the public sector with its regulatory actions and protection of the public interest. This balanced approach is especially welcome in the delivery of public services which touch on every human being's basic needs.

The Uniqueness of Public Private Partnerships

According to A Guidebook on Public-Private Partnership in Infrastructure by United Nations Economic and Social Commission for Asia and the Pacific (United Nations ESCAP) the Public-Private Partnership (PPP) projects are different from conventional construction projects in terms of project development, implementation, and management. They also stand to differ in their administrative and approval processes. The viability of a PPP project depends on a healthy business model. The focus of a PPP project is not restricted to delivering a particular class/type of asset but on its ability to provide services at defined quantity and levels. The quantum of risk to be shared by the partners is the focal point of any PPP project. Arriving at clear terms of understanding with regard to

sharing risks should be arrived at given the long tenure of the construction contract. The relationship shared by the partners over the entire tenure of the contract is vital for the success of PPP project.

Broad Objectives of P3s

The broad objectives of such Public-Private Partnerships are:

- Utilizing the private sector efficiencies and effectiveness in performance in the process of asset creation, maintenance and service delivery;
- Adopting a life cycle approach to the development of a project, resulting in asset creation and maintenance over its life cycle;
- Performance involving innovation and technological improvements; and,
- Affordability and improved service to the users in a responsible and sustainable manner.

Dimensions of PPPs

The nature of PPPs are often defined based on their dimensions namely

- The degree of risk transfer;
- Outcomes;
- Purposes or objectives, such as to increase responsiveness, effectiveness, risk sharing, cost efficiency;
- By activity undertaken such as policy development, program design, program delivery;
- Mechanisms involved such as voluntary alliances, project specific agreements, contractual relationships;
- Partner interactions such as consultation, advisory,
- Operational, collaboration; and

- Financing and cost recovery methods.

Dimensions based on which the PPPs are defined help in classifying the PPPs into

- Consultative – The partner interaction is advisory in nature so as to obtain input into policy, strategies and program design and delivery. The government maintains control, ownership and risk with input from clients and stakeholders.
- Contributory – The interaction between the partners in the type of support sharing such as to leverage resources for program delivery. The government retains control, but Partner contributors agree to objectives and share in some of the ownership and risk.
- Operational – The interaction in the nature of work sharing. There is sharing of resources and work and exchange information for program delivery. Government retains control, but partners can influence decision making and share ownership and risk.
- Collaborative – The partner’s interaction is that of decision making. The agreement promotes joint decision making in policy development, strategic planning, and program design, and delivery. Control, ownership and risk are all shared between the Government and its partners

History of PPP in India

It is difficult to determine when exactly the public-private partnership, or PPP, movement started in India, considering that the term is used rather loosely.

It could be argued that the PPP story began with private sterling investments in Indian railroads in the latter half of the 1800s. By 1875, about £95 million was invested by British companies in Indian “guaranteed” railways. Or we could trace it to the early 1900s, when private producers and distributors of power emerged in Kolkata (Calcutta Electric Supply Corporation) and Mumbai, with the Tatas playing a prominent role in starting the Tata Hydroelectric Power Supply Company in 1911.

Cut to the early 1990s, and one could postulate that it was then that the new-wave PPP movement started. A policy of opening electricity generation to private participation was announced by the central government in 1991, which set up the structure of independent power producers, or IPPs. The National Highways Act, 1956, was amended in 1995 to encourage private participation. In 1994, through a competitive bidding process, licences were granted to eight cellular mobile telephone service operators in four metro cities and 14 operators in 18 state circles.

But if one were to choose a date that would capture the essence of a clear historic shift, one could zero in on January 30, 1997, when the Infrastructure Development Finance Company was incorporated in Chennai under the initiative of the then Finance Minister P Chidambaram. The firm, promoted by the government of India, was set up on the recommendations of the “Expert Group on Commercialisation of Infrastructure Projects” under the chairmanship of Rakesh Mohan. And Deepak Parekh was chosen as the first chairman. The idea was that this would signal the government’s seriousness in channelling private sector capital, expertise and management in the nation’s infra development.

The period between 1997 and 2012, thus, marks a decade and a half of PPP.

Some of the earliest PPPs in India –

- The Great Indian Peninsular Railway Company (1853)
- The Bombay Tramway Company’s tramway services in Mumbai (1854)
- PPP models in power generation and distribution in Mumbai and Kolkata

P3s in India

Since Independence, the Indian government made sustained efforts to bring about balanced development by setting up public sector enterprises (PSEs). The role of the PSEs was earlier limited to basic, heavy and core industries, which were considered of strategic importance and vital for mass consumption. Furthermore, the government had to

step in and set up these huge PSEs because the nation was in the initial stages of development and private enterprises could not afford massive investments which the core sector called for.

In recent years, PSEs have penetrated into production of essential consumer goods and have begun to spread into wide areas of the economy including non-infrastructure and other non-core areas.

The public sector banks (PSBs), which have played an important role in shaping up the Indian economy since the pre-independence period until now, continue to dominate the Indian banking industry, accounting for more than 70% share of total banking business in India.

With the introduction of economic reforms and liberalisation in 1991, the government initiated a systemic shift to a more open economy with greater reliance on market forces and a larger role of the private sector, including foreign investment. As a result, the PSEs were exposed to competition from domestic private sector companies as well as foreign MNCs. To sustain in a growing competitive scenario, PSEs have undertaken several steps to perform and operate on par with their private peers such as adopting state-of-the-art technology, focusing on improving productivity, giving performance-related pay, offering additional welfare facilities and other benefits to employees, establishing brands and increasing marketing efforts.

Structure of PSEs in India

The PSEs in India are basically categorised under four broad types based on their ownership structure.

1. Departmental undertakings:

Departmental undertakings are primarily meant to provide essential services such as railways. They function under the control of the respective ministries of Government of India (GoI). A departmental undertaking structure is considered suitable for activities the

government aims to keep in its control in view of the public interest.
E.g- Railways; Post; All India Radio; Doordarshan

2. Statutory corporations

Statutory corporations are public enterprises that came into existence by a Special Act of the Parliament. The Act defines the powers and functions, rules and regulations governing the employees and the relationship of the corporation with government departments.

E.g – Airport Authority of India; National Highways Authority of India; Food Corporation of India; Industrial Finance Corporation of India

3. Government-owned companies:

Government-owned or controlled companies refer to companies in which 51% or more of the paid up capital is held by the central or any state government (partly or wholly by both). It is registered under the Indian Companies Act and is fully governed by the provisions of this Act. E.g – Steel Authority of India Ltd. ; Coal India Ltd.; Hindustan Copper Ltd.; State Bank of India

4. Autonomous bodies:

Autonomous bodies are set up whenever it is felt that certain functions need to be discharged outside the governmental set up with some amount of independence and flexibility without day-to-day interference from the governmental machinery. These bodies are set up by the concerned ministries or their departments and are funded through grants-in-aid, either fully or partially, depending on the extent which such institutes generate internal resources of their own. These grants are regulated by the Ministry of Finance (MoF) through their instructions. They are mostly registered as societies under the ‘Societies Registration Act’ and in certain cases they have been set up as statutory

institutions under the provisions contained in various Acts. E.g – Indian Council of Agricultural Research; Council of Scientific and Industrial Research

Public assets and/or public services

(a)Public Services are those services that the State is obligated to provide to its citizens or where the State has traditionally provided the services to its citizens.

(b)Public Asset is that asset the use of which is inextricably linked to the delivery of a Public Service, or, those assets that utilize or integrate sovereign assets to deliver Public Services. Ownership by Government need not necessarily imply that it is a PPP. – Draft National PPP Policy 2011

Development and use of PPPs for delivering infrastructure services has now at least 11 years of precedence in India, with the majority of projects coming in line in the last 5 to 7 years. Policies in favor of attracting private participation as well as innovation with different structures have met with varying degrees of success. Some sectors like telecommunications, power, and ports and roads, have done very good progress compared to limited success in other sectors. Some states have undertaken far more PPPs than others, and there has been a much heavier use of PPPs in some sectors.

Road projects account for 53.4% of the total number of projects and 46% by total value because of the small average size of projects. Ports though account for 8% of the total number of projects have a larger average size of project and contribute 21% in terms of total value. It is noteworthy that if ports and central road projects are excluded from the total, there is in fact a relatively small value of deal flow, at only Rs 125,568.93 Crores in basic infrastructure PPPs to date, suggesting a significant potential upside for PPP projects across sectors where states and municipalities have primary responsibility. It is observed that the potential use of PPPs in e-governance and health and education sectors

remains largely untapped across India as a whole, though off-late there have been some activities shaping in these sectors.

Across states and central agencies, the leading users of PPPs by number of projects have been Karnataka, Andhra Pradesh, and Madhya Pradesh, with 104, 96 and 86 awarded projects respectively and the National Highways Authority of India (NHAI), with about 155 projects. In terms of main types of PPP contracts, almost all contracts have been of the BOT/BOOT type (either toll or annuity payment models) or close variants.

As far as current status of projects is concerned, as per our database, there have been 758 PPP projects in our main sectors of focus where a contract has been awarded and projects are underway – in the sense that they are either operational, have reached construction stage, or at least construction/implementation is imminent. The total project cost is estimated to be about Rs. 383,332.06 Crore.

Of the 12th plan infrastructure investment of Rs 41 lakh crores, government of India expects 50% of the investment from private sector. Most of the road projects are being funded by Viability Gap Funding scheme.

Participation of private sector in PPP based models in the railway projects are only limited to creation of infrastructure, further most of the projects have been stalled due to regulatory issues. Delay in regulatory procedures, tendering process and tariff fixing procedures are some of the key challenges facing the PPP projects in the development of Ports in India. Of all the Indian states Maharashtra accounts for more than 50% of major infrastructure projects based on the PPP model.

Roadblocks for PPP in India

The Six Roadblocks for PPPs:

1. Policy and legal gaps – inability of legal and regulatory frameworks to adopt innovative PPP models, specially the sectoral legislations.
2. Long gestation periods leading to inadequate availability of long-term financing.

3. Lack of institutional support and institutional building in managing PPP processes.
4. Bankability of the project and inadequate government support.
5. Inadequate shelf of bankable infrastructure projects that can be bid out to the private sector.
6. Often lackadaisical communication strategy to inculcate a sense of acceptance of PPPs.

Legal Regulatory Policy Framework for PPP in India

The governing framework comprises the following:

a. The Constitution of India characterised by:

- Its twin goals of ‘social and economic justice’;
- Fundamental rights of citizen which act as a check on State action, including the freedom to do lawful business, trade and commerce (subject to reasonable restrictions imposed by law on specific grounds permissible);
- Right to Property;
- Separation of Powers amongst 3 wings of State-executive, legislative and judiciary with an inbuilt system of checks and balancing;
- Directive Principles of State Policy being the objectives that must always guide State action;
- Centre-State relations regarding allocation of legislative and executive powers;
- Access to Justice.

b. Diverse legislation applicable to a particular sector/activity (enacted by a legislature of competence), viz:

- Laws governing various sector like the Electricity Act, 2003; the Telecom Regulatory Authority of India Act, 1997; the national Highways Authority of India Act, 1988; Municipal laws of various States;

- Laws governing normal commercial transactions like the Contract Act, 1872; the Sale of Goods Act, 1930; the negotiable Instruments Act, 1881; the Companies Act, 1956; the Foreign Exchange Management Act, 1999; the Competition Act, 2002;
- Laws for recognition and enforcement of rights and obligations like the Specific Relief Act, 1963, the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996.

c. A body of delegated and sub-ordinate legislation (rules, regulations, bye-laws, notifications, schemes etc.) emanating from such enacted statutes.

d. A body of Central and State level executive instruments (policy, orders, clarifications, locational incentive schemes etc.), which may have been issued in exercise of the constitutionally granted Executive Powers (which are a residue of all powers of 'State' and its Eminent Domain), or executive power recognised/vested/defined by legislation;

e. Binding rulings and instruments issued by a regulatory authority/agency created by statute to regulate specific sectors, activities and businesses within the framework of the applicable law and policy. This may include regulations, practice directions, licenses, quality of supply standards, tariff orders, performance standards, safety standards, environmental issues, and case-specific orders.

Two significant elements which have a strong bearing on private participation are:

a. Regulation of Entry and Exit for Private Enterprise. The framework defines: Sector/Industry wise clarity about the level of private participation permitted in diverse facets ranging from private ownership to varied formats of public private partnerships including where sector is reserved for small scale sector or public state ownership; The format of such private participation as also the terms and conditions applicable thereto; Rules governing procurement of goods, services, technology from private sector; Ease of exit, which often determines the zeal for entry.

b. Rules of the Game. Besides entry and exit, the framework also defines the framework within which the commercial enterprise can exist, operate and transact business, covering elements like:

Areas amenable to competitive procurement of goods and services;

Areas reserved for monopolies created and/or protected and/or recognised;

P3s in Other Countries

Public Private Partnerships commonly referred to as P3s have been implemented in at least twenty five countries in the past two decades. Most public-private partnerships began individually, as one-off deals, and much of this activity began in the early 1990s. Almost every other PPP projects in the European countries are either based on French model of “Concessions and Delegated Management” or UK model of ‘Public Finance Initiative (PFI)’. The Conservative government of John Major in the UK introduced the private finance initiative (PFI) the first ever systematic program at encouraging public-private partnerships in the UK. This 1992 program focused on reducing the Public Sector Borrowing Requirement. The federal conservative government under Stephen Harper in Canada solidified its commitment to P3s with the creation of a crown corporation, P3 Canada Inc, this in 2009. Number of Australian state governments have adopted systematic programs based on the PFI. The first, and the model for most others, is Partnerships Victoria.

Public-Private Partnerships (PPP) has been increasingly recognized as an effective and appropriate mechanism to manage the complexity of the development challenges and the attainment of the Millennium Development Goals (MDGs). United Nations Development Program (UNDP) helps the private sector leverage its financial and professional resources to move beyond philanthropy toward a more sustainable approach to reaching out to the poor and to support sustainable development at global and national levels. It is one of the key mechanisms to translate the Global Compact, a framework for businesses that are committed to aligning their operations and strategies with ten universally

accepted principles in the areas of human rights, labour, the environment and anti-corruption, into concrete actions.

The Public Private Partnership Process

The Four Elements of PPPs

There are different elements that constitute a PPP contract or project. These elements are divided into four parts namely Construction, Operation, Finance and Ownership. These four elements that constitute PPP schemes/project/contract are executed by way of outsourcing, private finance initiative, concession, lease, BOT. Other terminologies that indicate similar contracts are Design, Build, Finance and Operate (DBFO), Design and Build (DB), Facilities Management (FM), Operations & Management Contract (O&M), Lease Develop Operate (LDO), Build Own Operate Transfer (BOOT), Build Own Operate (BOO) ²

Essential Conditions of PPP

Privatization initially used to cover all forms of private involvement. PPP contracts are also otherwise widely known as Private Sector Participation (PSP). The involvement of the private sector in a Public- Private Partnership is unique with certain essential conditions that define the nature of PPP contracts.

- Arrangement with private sector entity:
- Public asset or service for public benefit:
- Investments being made by and/or management undertaken by the private sector entity:
- Operations or management for a specified period:
- Risk sharing with the private sector:

- Performance linked payments:
- Conformance to performance standards:

Good Practices or Desirable Conditions for PPP

Apart from the essential conditions that define the nature of PPP projects, certain others conditions that are generally referred to as Good Practices for PPP projects bring more clarity to the terms, thereby benefitting all the parties to the PPP Projects

- Allocation of risks in an optimal manner
- Performance linked fee payment structure from the government entity and/or through user charges from the consumers of the service
- Long term arrangement
- Incentive and penalty based structures
- Outcomes of the PPP are normally pre-defined as output parameters

P3 models Supported by the Indian Government

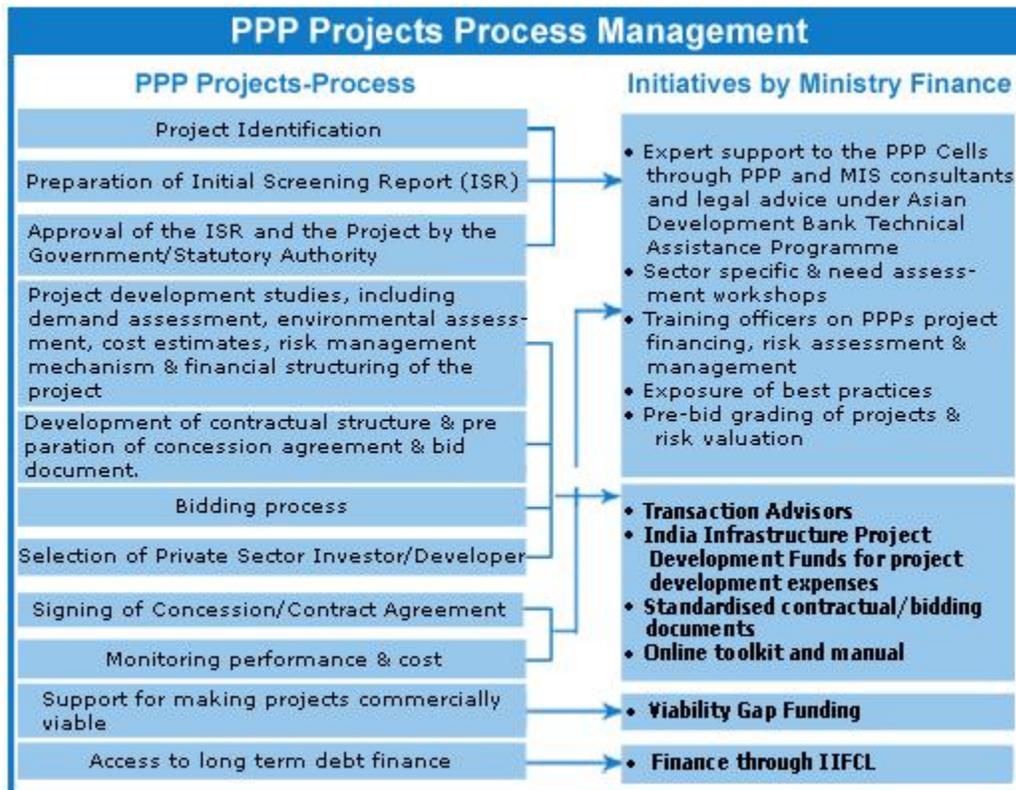
- User-Fee Based BOT models - costs are recovered mainly through user charges (Energy & transport)
- Annuity Based BOT models – (Rural Urban, health education) – annuity payments where government harnesses private performance
- Performance Based Management/ Maintenance contracts – improves efficiency (water supply sanitation, waste management, road maintenance)
- Modified Design-Build (Turnkey) Contracts- Traditionally private contractor is engaged for a fixed-fee payment on completion. The primary benefits of DB contracts include time and cost savings, efficient risk-sharing and improved quality. Government may consider a “Turnkey DB” approach with the payments linked to achievement of tangible intermediate construction milestones (instead of

lump-sum payment on completion) and short period maintenance / repair responsibilities.

The PPP Project Process

The process can be broadly divided into four phases, viz.,

- Identification stage,
- Development stage,
- Procurement stage and
- Contract management and monitoring stage.



Sectors of P3 Projects

The sectors in which PPP projects are carried out can be broadly divided into 9 sectors namely:

1. Airports
2. Education
3. Health Care
4. Energy
5. Ports
6. Roads
7. Railways
8. Tourism
9. Urban Developments

Enabling Frameworks of P3s

We have discussed in detail as to what constitutes a Public-Private Partnership deal, it is also important to understand a PPP project or deal cannot be true without the following enablers. These factors are indeed enablers of a PPP project, cause without their contribution PPP model can remain just a model.

- Financing Mechanisms -
- Land
- Capacity Building Measures
- Participation and Communication Mechanisms

Constraints of P3s

- Sufficient instruments as well as the ability to undertake long-term equity cannot be provided by the market in the present financial scenario. Also financial liability required by infrastructure projects would not be sufficed.
- Most sectors face a lot of hindrance in enabling a regulatory framework as well as a consolidated policy. So it is important to convert such policies into PPP friendly. To achieve the desired results, active participation of various state projects are essential.
- Lack of ability of private sectors to fit into the risk of investing in diversified projects also needs to be overcome. Modernization of new airports, transmission systems and building power generating plants are some of the avenues which required skilled manpower.
- Ability of public institutions to manage the PPP process should also be subdued. Maximizing the return of the stakeholders needs to be managed due to the involvement of long term deals including the life cycle of the asset infrastructure.
- Lack of credibility of bankable infrastructure projects used for financing the private sector should also be overcome. Inconsistency is still visible in the limitations of PPP projects, despite of continued initiatives by States and Central ministries.
- Inadequate support to enable greater acceptance of PPPs by the stakeholders forms another source of constraint.

Public Private Partnership Approval Committee (PPPAC)

The Cabinet Committee on Economic Affairs (CCEA) in its meeting of 27th October, 2005 approved the procedure for approval of public private partnership (PPP) projects. Pursuant to this decision, a Public Private Partnership Approval Committee (PPPAC) was set up comprising of the following:

- [a]. Secretary, Department of Economic Affairs (in the Chair)
- [b]. Secretary, Planning Commission
- [c]. Secretary, Department of Expenditure;
- [d]. Secretary, Department of Legal Affairs ; and
- [e]. Secretary of the Department sponsoring a project.

The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell for servicing such proposals. The Committee may co-opt experts as necessary. The procedure approved by the CCEA for the approval of the PPP projects is provided.

The Ministry of Finance will be the nodal Ministry responsible for examining concession agreements from the financial angle, deciding on guarantees to be extended, and generally assesses risk allocation from the investment and banking perspectives. It would also ensure that projects are scrutinized from the perspective of government expenditure.

Public Private Partnership Cell

Public Private Partnership Cell in the Department of Economic Affairs will provide a center of expertise and technical support to government ministries and other authorities developing PPPs. It will have specialists from different areas (finance, law, engineering, planning, etc.) and will have mixture of experience in both public and private sectors. The PPP Cell will be entrusted with – capacity building, developing initial pilot projects to test PPP models, providing technical advice and support, communicating lessons from project evaluations and coordinating the PPP program of the country. In due course, a company in PPP mode may be created by Ministry of Finance, with both private and

public sector shareholders, which will provide support to the PPP Cell in effective discharge of its responsibilities. The PPP Cell will also facilitate independent review of projects at each stage, which includes bid evaluation stage, and just prior financial closure to reconfirm that the final results offer Value for Money for the public authority.

Monitoring of Projects under the PPP Model

While much is being speculated in improving the performance of PPP model based projects, the National Public Private Partnership Policy, 2011 is still in the draft stage. The draft basically aims at clearing the ambiguity prevailing over the understanding over Public Purpose or Public Benefit, it also facilitates the expansion in the use of PPP approach, where appropriate, in a consistent and effective manner, through:

- i. Setting out the broad principles for pursuing a project on PPP basis;
- ii. Providing a framework for identifying, structuring, awarding and managing PPP projects;
- iii. Delineating the cross-sectoral institutional architecture and mechanisms for facilitating and implementing PPPs.
- iv. Standardising some of the vital interpretations and processes of PPP so that a clear and consistent common position is adopted in key issues.
- v. Identifying the next generation issues to mainstream, upscale, broaden and expedite PPPs.

The Policy aims to assist the Central and State government agencies and private investors seeking PPP opportunities in:

- i. undertaking PPP projects through streamlined processes and principles;
- ii. ensuring that a value-for-money rationale is adopted with optimal risk allocation in project structuring with life cycle approach;
- iii. developing governance structures to facilitate competitiveness, fairness and transparency in procurement; and

- iv. attaining appropriate public oversight and monitoring of PPP projects.

Passing of the Draft National Public Private Partnership Policy 2011 along with Draft Public Private Partnership (Preparation, Procurement and Management) Rules 2011, should help establishing the Public- Private Partnership model. The cabinet has recently approved the proposal of the planning commission to set up an Institutional Mechanism for monitoring and enforcing the provisions of the PPP projects. First tier is a PPP Monitoring Unit (PMU) at the project authority or sponsoring agency level. The second tier will comprise of the Performance Review Unit (PRU) located at the Ministry or State Government Level. A monthly status report is prepared providing details on compliance and adherence to conditions and timelines, performance assessment and remedial measures by the PMU and submitted to the PRU. Review and rectification of the report and related deficiencies respectively is done by the PRU.

Accounting for P3 projects

Currently, there is no specific accounting guidance under the Indian accounting standards for PPP arrangements

Financial reporting by the public sector of risks and liabilities in PPP transactions is very limited in India. Globally best practices require governments to reflect most PPP assets and associated liabilities on the government's balance sheet. If they are not accounted for, then they are listed in the Notes to Account.

India's proposed move towards convergence to International Financial Reporting Standards (IFRS) is expected to bring about standardisation in the manner in which PPP concession agreements are accounted for. In 2008, the Institute of Chartered Accountants of India published an Exposure Draft for accounting for Service Concession Agreements.

Auditing PPPs

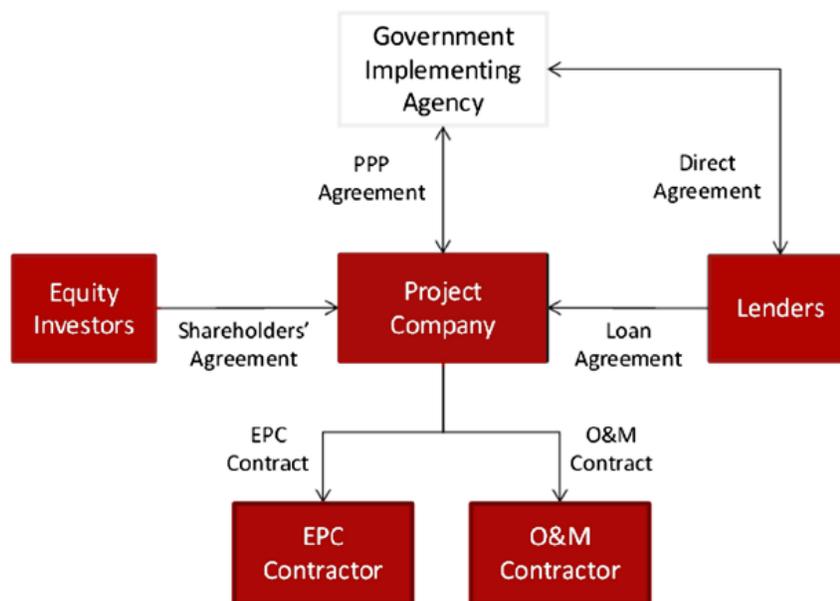
Auditing P3s

The Comptroller and Auditor General of India has published Public Auditing guidelines for PPP projects. The Guidelines have been primarily framed for use by the Indian Audit & Accounts Department.

These guidelines are intended to provide a framework in auditing PPP projects to determine whether Government and other public authorities have got the best possible value for money.

Finance Structures and Funding Analysis for Public Private Partnerships

The private party to PPP contracts is a specific project company formed for that purpose referred to as Special Purpose Vehicle (SPV). This project company raises finance through a combination of equity provided by the project company's shareholders and debt, provided by banks, or through bonds or other financial instruments. The finance structure is the combination of equity and debt, and contractual relationships between the equity holders and lenders.



A TYPICAL FINANCE AND CONTRACT STRUCTURE FOR A PPP PROJECT

(Source: Public Private Partnership Reference Guide Version 1.0 - World Bank Institute & PPIAF)

The Government's contractual relationship is with the project company. The initial equity investors, who develop the PPP proposal, are typically called project sponsors. Typical equity investors may be project developers, engineering or construction companies, infrastructure management companies, and private equity funds. Lenders to PPP projects in developing countries may include commercial banks, multilateral and bilateral development banks and finance institutions, and institutional investors such as pension funds.

The project company in turn contracts with firms to manage design and construction (usually known as an Engineering, Procurement and Construction, or EPC contract), and operations and maintenance (O&M). These contractors may be affiliated with the equity investors.

Any project losses are borne first by the equity investors, and lenders suffer only if the equity investment is lost. This means equity investors accept a higher risk than debt providers, and require a higher return on their investment. The aim of the project sponsor and its advisors in developing is typically to minimize the cost of finance for the project. Because equity is regarded as more expensive than debt, project sponsors often try to use a high proportion of debt to finance the project.

Non-Recourse Project Finance for Public Private Partnerships

Non-recourse project finance arrangement is one under which lenders can be paid only from the project company's revenues, without recourse to the equity investors. Wherein,

the project company's obligations are protected from those of the equity investors, and debt is secured on the cash flows of the project.

Project finance structures typically involve a large proportion of debt anywhere between 60 to 95 percent. From the equity investors' perspective, this helps manage risk, by limiting exposure to a project, and makes it possible to undertake much larger projects than would otherwise be the case. For lenders, it means undertaking rigorous due diligence, focusing on the project cash flow and contractual structure.

Alternative Source of Finance to Non-Recourse Project Finance

While helpful for raising finance for large, highly leveraged investments, project finance comes at a cost. Interest rates for project-finance debt are more expensive than government borrowing, and often more expensive than borrowing by established companies. The transaction cost setting up the contractual structure, and carrying out adequate due diligence can make it unattractive for smaller deals. For this reason, many PPPs adapt the non-recourse project finance structure, to achieve greater contractual flexibility, or lower the financing cost.

One option is for project sponsors to back up the project company by providing a corporate or sponsor guarantee to the lender, for repayment for all or part of the project debt.

A financial arrangement used to reduce the cost of finance for PPPs is known the forfeiting model generally used for "government-pays" PPP projects. Once construction is completed to a quality accepted by the government by issuing a "waiver of objection", the government is responsible for the debt service payments to the lender. This lowers the project's financing costs. However, it means the government retains more risk under the PPP, and as debt service payments are no longer conditional on performance, the lender has no interest in project performance during operations. The forfeiting model has been widely used in Germany, where over half of the PPPs implemented between 2002 and 2006 used this structure.

Another alternative to lower the cost of finance for a PPP is for the government to participate in the finance structure. The government or a government-owned financial institution could provide finance as a lender to the project company, or could provide a guarantee to some or all of the project debt.

Concerns for the Government in Public Private Partnerships

Involvement of private finance in a PPP project, the project sponsor typically has primary responsibility for developing the finance structure. There are several ways in which the government may need to influence the financing structure.

At the most basic level, government need to ensure that the project design is “bankable”—that is, able to raise debt. On the other hand, too much debt can undermine risk-transfer, so government may want to limit the amount of debt finance (leverage) allowed. Certain issues like, how to manage risks in going from contract award to financial close; how to deal with the possibility of refinancing project debt; and how to define step-in rights for lenders and the government have to be dealt with.

Governments may also participate in the finance structure. Governments can provide debt, equity, or guarantees—either directly, or through government-owned financial institutions such as development banks and pension funds.

Bankable Projects

The ability of a project to raise finance is called the bankability of a project. “Bankable” means that a project can attract not only equity finance from its sponsors, but the required amount of debt. For a project to be bankable, lenders need to be confident that the project company can service the debt. It means that operating cash flows need to be high enough

to cover debt service, plus an acceptable margin. It also means that the risk of variation to the cash flows must be highly likely to stay within the margin. Lenders therefore carefully assess project risks, and how these have been allocated between the parties to the contract.

Where maximum risk has been allocated to the private party, lenders will reduce the amount they are prepared to lend until the margin of cash flow over debt service is acceptable. At this, more equity will be needed. At the same time, the project company needs to be expected to generate high enough returns to compensate its equity-holders for their level of risk.

From the government's perspective, the key considerations for ensuring bankability are therefore the technical and financial viability of the project, and appropriate risk allocation.

Putting a Limit on the Debt

Projects sponsors often have an incentive to finance a PPP with a high ratio of debt to equity. Higher leverage typically enables equity investors to achieve higher returns, and makes it easier to manage the financial structure, since it can be easier to raise debt than equity. However, highly-leveraged projects can also be more vulnerable to default and bankruptcy,

To ensure a sustainable level of leverage, and large enough equity stake in the project, governments can consider introducing a minimum equity ratio for PPPs. This becomes particularly important if the government is also providing guarantees that are designed to protect lenders' investment. However, restricting an investor's ability to choose its capital structure can increase the cost of capital.

Risk from award to financial close

A PPP contract is typically awarded and signed before the project reaches financial close, even before the finance for the project is fully secured. In the interim period, lenders complete their due diligence process, including detailed review of the PPP agreements. The process creates a risk that the project could be delayed, or even fall through, if the winning bidders are unable to raise finance on the expected terms.

Governments have a few options available to mitigate this risk. Bidders can be required to provide a bond, which may be called if the preferred bidder fails to achieve financial close within a certain period. This may encourage bidders to develop more concrete financing plans before submitting bids. Another option is for governments to require bids with financing commitments already in place. In this case, lenders must complete due diligence before the tender process is complete. However, both these options increase the cost of bidding, which risks deterring bidders and undermining competition.

Another approach is to introduce stapled financing. Stapled financing is a pre-arranged financing package for the project, developed by the government and provided to bidders during the tender process. The winning bidder has the option, but not the obligation, to use the financial package for the project. Stapled financing is common in Mergers and Acquisition deals.

Project Debt Refinance

Refinancing is taking on new debt to pay off existing loans. The project company and its sponsors may have two main reasons to refinance debt that was initially used to finance the project. One is that the project may have been unable to obtain a financing package with a long enough maturity to match the project's length. This could be because long-term debt is not available at the time when the project awarded, or because lenders view the project as too risky to extend credit with a long maturity. In such cases the project may begin with a short-term loan thereby creating a refinancing risk. It is important that the PPP contract specifies who bears refinancing risk.

One option to mitigate refinancing risk is take out financing, wherein a second lender promises to take over a loan at some future point thereby encouraging the original lender to provide long term debt than might otherwise be the case. For example, the **Indian Infrastructure Finance Company Limited (IIFCL)** has established a take-out financing scheme for infrastructure projects. Refinancing can also provide an opportunity for the project company and its sponsors, if more favorable terms become available. Because

infrastructure projects have long durations, capital markets could change during the life of the project and offer better terms on the existing project debt.

Lenders also tend to offer better financing terms to projects with demonstrated track records and have already moved past initial risks, such as construction. Refinancing with more favorable terms can lower overall costs for users or government, improve returns to investors, or both.

Step-in Rights

Step-in rights refer to a power under the contract for the government or lender to take control of the project company in certain situations. Step-in rights for the government are normally reserved for situations in which the project poses significant health and safety risks, threats to national security, or when legal requirements call for the government to take over the project. The government may also terminate the PPP contract and take over the project if the project company fails to meet service obligations. Lenders generally require step-in rights that come into effect if the project company fails to meet its debt service obligations, or if the PPP contract is under threat of termination for failure to meet service obligations. In this situation, the lenders would typically appoint new senior management or another firm to take over the project company.

It is important that both the government and lenders have a clear framework and timeline for invoking their step-in rights so they are informed when problems start to occur and can take remedial actions.

The Role of Public Finance in Public Private Partnerships

Private finance is not a defining characteristic of a PPP. Governments can also finance PPP projects, either in whole or in part. Reducing the amount of capital investment needed from the private party reduces the extent of risk transfer, weakening private sector incentives to create value for money, and making it easier for the private party to walk

away if things go wrong. There are several reasons why governments may choose to provide finance for PPP projects. These include:

- **No excessive risk premiums**—the government may consider the risk premium charged by the private sector for the project to be excessive, in relation to the actual project risks. This can be a difficult call to make, since financial markets are usually better at assessing risk than governments, but can apply particularly for new projects or markets, or during financial market disruptions
- **Mitigating government risk**—where project revenues depend on regular payments from government, this **creates** a risk for the private party, which will be reflected in the project cost. Where reliability of government payments may be in doubt, this means that providing subsidies or payments upfront in the form of loan or grant finance, rather than on-going payments, could improve the bankability and lower the cost of the project
- **Improving availability or reducing cost of finance**—particularly when capital markets are under-developed, or disrupted, the availability of long-term finance may be limited, governments may choose to provide finance at terms that would otherwise be unavailable. Governments often have access to finance on concessional terms, which they may pass on to lower the cost of infrastructure projects. This may also be part of a broader policy of involving state financing institutions to provide long-term lending for developmental purposes.

There are also several different ways in which governments can contribute to the financing structure of a PPP. Governments may provide loan or grant finance directly to the project company, or provide a government guarantee on a commercial loan. Government-owned development banks or other finance institutions can also be involved either providing finance to PPPs as part of a broader portfolio, or established specifically to support the PPP program. Finally, governments may simply not transfer the financing function to the PPP

- **Loan or grant finance directly from government to project company**

Governments may provide finance directly to a PPP, in the form of loans or upfront grant subsidies. This can help mitigate government risk, as described above, or be a means to make finance available at better terms than would otherwise be possible. **India's Viability Gap Fund** uses funds appropriated from the national budget to provide upfront capital subsidies for PPP projects

The willingness of the public sector to provide funds can also act as a signal to help build confidence of private investors. For example, after the 2008 financial crisis, the United Kingdom's Treasury recognized several infrastructure projects could have difficulty raising debt and were in danger of being scrapped. The Treasury created **the Treasury Infrastructure Finance Unit (TIFU)** to lend at commercial rates to PPP projects that were unable to raise enough commercial bank finance. The unit funded one major project in April 2009: the Greater Manchester Water project.

- **Government guarantee of commercial loan to project**

Rather than providing lending directly, governments may instead guarantee repayment of debt provided by commercial sources, in case of default by the private party. Governments often provide only partial credit guarantees—that is, a guarantee on repayment of only a part of the total debt. Partial credit guarantees have been used by both developed and developing country governments to help support their PPP programs.

The use of guarantees should be carefully considered, and targeted at risks which the government is best placed to manage. Guarantees that are inappropriately used by the government can risk increase its fiscal exposure, while reducing value for money by reducing real risk transfer to the private sector, as described in Sections

- **Development bank or other state finance institution involvement in PPPs**

Many governments have established publicly-owned development banks or other finance institutions, which may provide a range of financial products to PPP projects. These financial institutions may be capitalized by the government, and can often also access concessional financing. However, they often operate more

or less as commercial finance institutions, which may be better-placed to assess the viability of a proposed PPP project than the government itself.

- **On-going government funding of capital expenditures**

Under some types of PPP particularly lease or affermage contracts for existing infrastructure networks, the government remains responsible for on-going capital investment in the network or system. This provides a way to reduce private sector risk in PPPs for the management of water or electricity distribution systems, while providing on-going subsidy to the sector.

Funding Analysis

It is important to explore viable options to address a clearly defined business needs. According to the CAMF, capital business cases should include financial information, including a year-by-year breakdown of forecast costs, revenues and funding sources for the asset's full, risk-adjusted life cycle.

The Private Sector and the sponsoring entity work together to develop a comparative quantitative analysis that forms part of the business evaluation and Finance Board Submission. This comparative analysis will inform decision makers on the potential financial impacts of the proposal. Decision makers must rely on estimated cost calculations when granting approval for a contract. It is not until a contract is awarded, after a competitive bidding process and much negotiation that the contracted project cost is available. The decision to embark on a project and issue an RFP is based on estimated amounts. The two bases of comparison that should be utilized throughout the approval and procurement process are the Shadow Bid Model and the Public Sector Comparator.

The Shadow Bid Model is an estimate of how much the bids from the private sector are expected to be. Prices are calculated based on delivery of the project by the private sector. Costs include risk, insurance, taxes, debt servicing and profit. The shadow bid analysis can be useful for negotiators and decision makers in evaluating bids that come in from the private sector.

The Public Sector Comparator (PSC) estimates the cost where the private partner constructs the asset and the public sector provides facility maintenance, rehabilitation and

financing. A PSC is an estimate of the costs and financial impacts of procuring a project, similar to the one under consideration for a P3 where the public sector retains substantially all management responsibility and exposure to risk. A PSC provides a benchmark against which a Shadow Bid, and eventually a P3 proposal, can be evaluated. A PSC should capture the costs of assets, services, staff and other elements required to deliver the project to the same standards as anticipated under a P3 arrangement.

Viability Gap Funding (VGF) Scheme

VGF is a special facility to support PPP projects. This facility is housed in the Department of Economic Affairs (DEA), Ministry of Finance.

What is VGF ?

There are many projects with high economic returns, but the financial returns may not be adequate for a profit-seeking investor. For instance, a rural road connecting several villages to the nearby town. This would yield huge economic benefits by integrating these villages with the market economy, but because of low incomes it may not be possible to charge user fee. In such a situation, the project is unlikely to get private investment. In such cases, the government can pitch in and meet a portion of the cost, making the project viable. This method is known as viability gap funding.

How does the scheme work?

VGF is typically provided in competitively bid projects. Under VGF, the central government meets up to 20% of capital cost of a project being implemented in public private partnership (PPP) mode by a central ministry, state government, statutory entity or a local body. The state government, sponsoring ministry or the project authority can pitch in with another 20% of the project cost to make the projects even more attractive for the investors. Potential investors bid for these projects on the basis of VGF needed. Those

needing the least VGF support will be awarded the project. The scheme is administered by the ministry of finance.

Which are the eligible sectors?

Projects in a number of sectors such as roads, ports, airports, railways, inland waterways, urban transport, power, water supply, other physical infrastructure in urban areas, infrastructure projects in special economic zones, tourism infrastructure projects are generally eligible for viability gap funding. The government now proposes to add social sectors such as education and health to the list.

How does the government benefit?

The government has limited resources. It can use those funds to build everything on its own, but such public funding will take years to create the infrastructure that is needed to achieve higher growth. Through viability gap funding, the same amount of funds can be used to execute many more projects through private participation. VGF is in that sense a force multiplier, enabling government to leverage its resources more effectively.

Cabinet Committee on Economic Affairs in its meeting of 25th July, 2005 approved the Scheme for support to Public Private Partnerships in Infrastructure. In pursuance of the decision of the Cabinet, it has been decided to constitute an Empowered Committee and Empowered Institution for approving financial assistance to such projects which satisfies all the eligibility criteria indicated in the Scheme.

The composition of Empowered Committee will be as follows:

- i. Secretary (Economic Affairs)

- ii. Secretary (Planning Commission)

iii. Secretary (Expenditure)

iv. Secretary of the line Ministry dealing with the subject

The Empowered Committee will:

a. Sanction Viability Gap Funding up to Rs. 200 crore (Rs. Two Hundred Crores) for each project subject to the budgetary ceilings indicated by the Finance Ministry. Amounts exceeding Rs. 200 crore may be sanctioned by the Empowered Committee with the approval of Finance Minister;

b. Determine the appropriate formula that balances needs across sectors in a manner that broad bases the sectoral coverage and avoids pre-empting of funds by a few large projects;

c. Determine the inter-se allocation between any on-going Plan Scheme providing viability gap funding and this Scheme; and,

d. Provide clarifications or instructions relating to eligibility of a project for such support as and when requested by Empowered Institution.

The Composition of the Empowered Institution is as follows:

i. Additional Secretary (Economic Affairs)

ii. Additional Secretary (Expenditure)

iii. Representative of Planning Commission not below the rank of Joint Secretary

iv. Joint Secretary in the line Ministry dealing with the subject (v) Joint Secretary (FT),
DEA -- Member Secretary

The Empowered Institution will sanction projects for Viability Gap Funding upto Rs. 100 crore (Rs. One hundred crore) for each eligible project subject to the budgetary ceiling indicated by the Finance Ministry. Empowered Institution will also consider other proposals and place them before the Empowered Committee.

Eligible Sector: The sectors eligible for Viability Gap Funding under this Scheme are:

- a. Roads and bridges, railways, seaports, airports, inland waterways;
- b. Power;
- c. Urban transport, water supply, sewerage, solid waste management and other physical infrastructure in urban areas;
- d. Infrastructure projects in Special Economic Zones and internal infrastructure in National Investment and Manufacturing Zones;
- e. International convention centers and other tourism infrastructure projects;
- f. Capital investment in the creation of modern storage capacity including cold chains and post-harvest storage;
- g. Education, health and skill development, without annuity provision;
- h. Oil/Gas/Liquefied Natural Gas (LNG) storage facility (includes city gas distribution network);
- i. Oil and Gas pipelines (includes city gas distribution network);
- j. Irrigation (dams, channels, embankments, etc);

k. Telecommunication (Fixed Network) (includes optic fibre/ wire/ cable networks which provide broadband /internet);

l. Telecommunication towers;

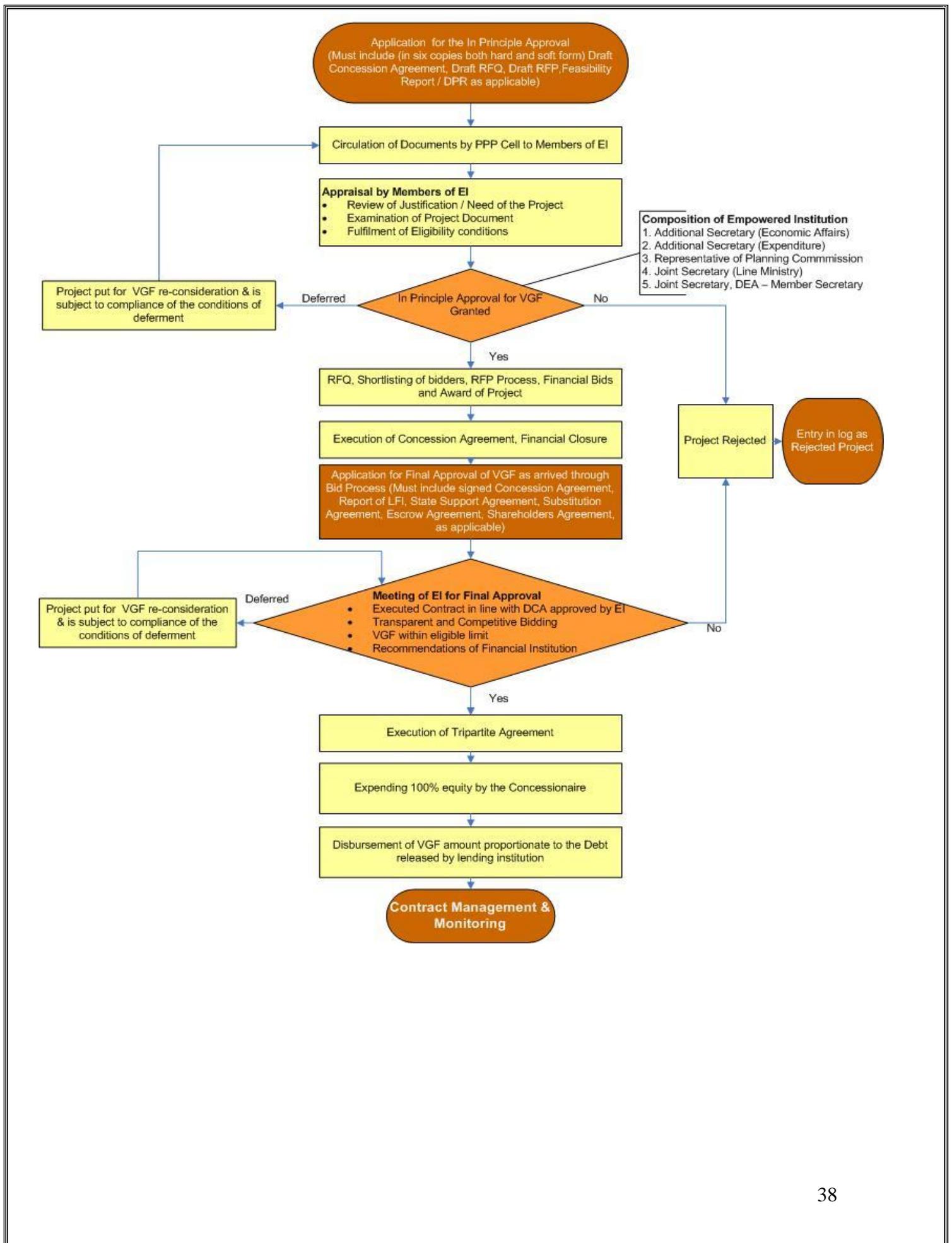
m. Terminal markets;

n. Common infrastructure in agriculture markets; and

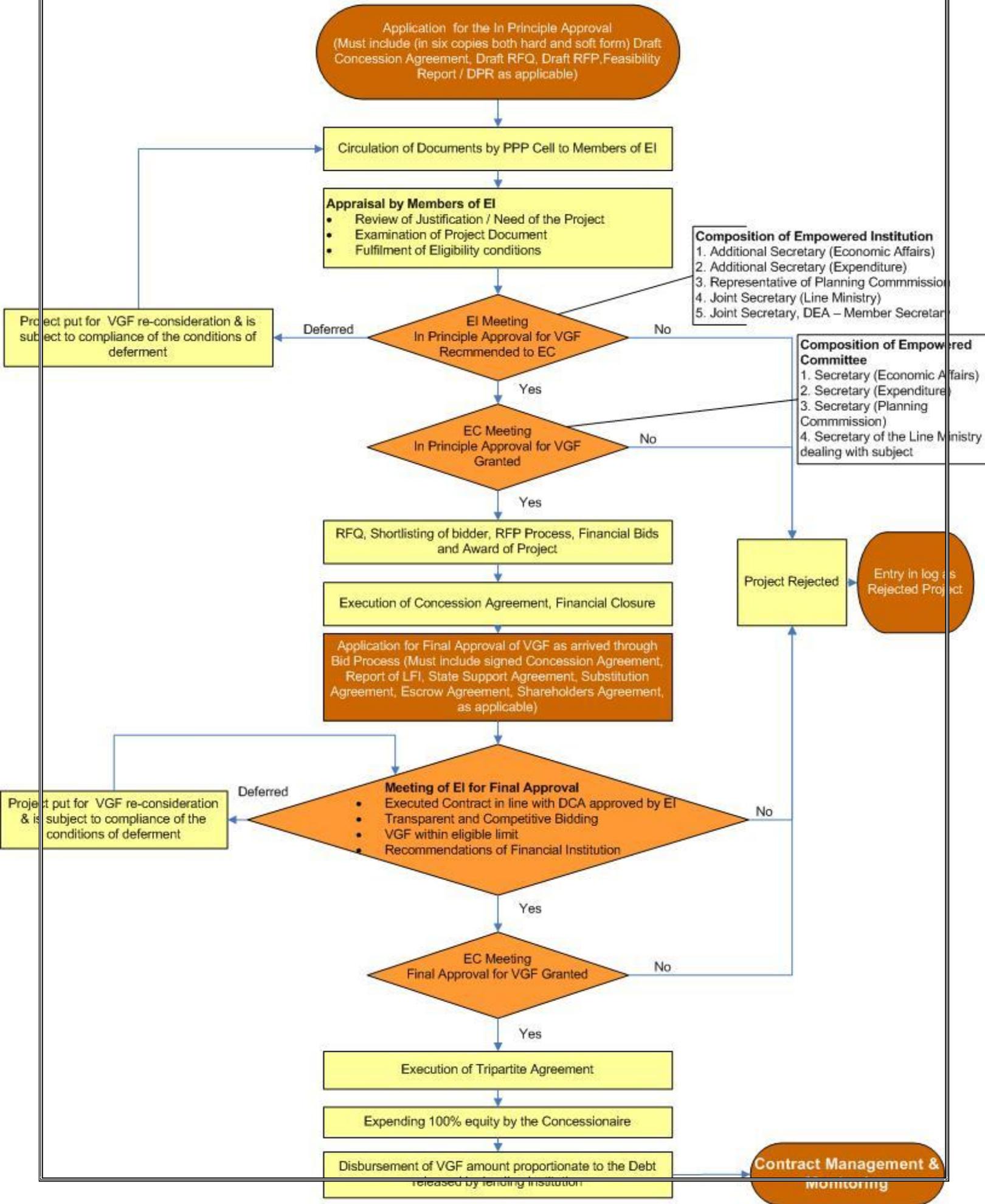
o. Soil testing laboratories.

Provided that the Empowered Committee may, with approval of the Finance Minister, add or delete sectors/sub-sectors from the aforesaid list.

VGF Process (VGF Amount <=100 crore)



VGF Process (VGF Amount > 100 crore and <= 200 crore)



VGF Process (VGF Amount > 200 crore)

Application for the In Principle Approval
(Must include (in six copies both hard and soft form) Draft Concession Agreement, Draft RFQ, Draft RFP, Feasibility Report / DPR as applicable)

Circulation of Documents by PPP Cell to Members of EI

Appraisal by Members of EI

- Review of Justification / Need of the Project
- Examination of Project Document
- Fulfilment of Eligibility conditions

Composition of Empowered Institution

1. Additional Secretary (Economic Affairs)
2. Additional Secretary (Expenditure)
3. Representative of Planning Commission
4. Joint Secretary (Line Ministry)
5. Joint Secretary, DEA – Member Secretary

EI Meeting
In Principle Approval for VGF
Recommended to EC

Project put for VGF re-consideration & is subject to compliance of the conditions of deferment

Deferred

No

Yes

EC Meeting
In Principle Approval for VGF
Recommended to FM

No

Yes

Composition of Empowered Committee

1. Secretary (Economic Affairs)
2. Secretary (Expenditure)
3. Secretary (Planning Commission)
4. Secretary of the Line Ministry dealing with subject

Approval from Finance Minister

No

Yes

RFQ, Shortlisting of bidders, RFP Process, Financial Bids and Award of Project

Execution of Concession Agreement, Financial Closure

Application for Final Approval of VGF as arrived through Bid Process (Must include signed Concession Agreement, Report of LFI, State Support Agreement, Substitution Agreement, Escrow Agreement, Shareholders Agreement, as applicable)

Project Rejected

Entry in log as Rejected Project

Deferred

Meeting of EI for Final Approval

- Executed Contract in line with DCA approved by EI
- Transparent and Competitive Bidding
- VGF within eligible limit
- Recommendation of Financial Institution

Project put for VGF re-consideration & is subject to compliance of the conditions of deferment

No

Yes

EC Meeting
Final Approval for VGF
Recommended to FM

No

Yes

Finance Ministers Approval

No

Yes

Execution of Tripartite Agreement

Expending 100% equity by the Concessionaire

Disbursement of VGF amount proportionate to the Debt released by lending institution

Contract Management & Monitoring

Public Private Partnership Contracts

Public-private partnerships include a range of agreements, which can be described in different ways. The three main aspects of a PPP contract is whether the PPP is for a new or existing asset, what functions the private party is responsible for, and how the private party is paid. The functions for which the private party is responsible depend to some extent on the type of asset and service involved. Some of the functions that may or may not be transferred to the private party, depending on the project may include

- **Design** for developing the project from initial concept and output requirements to construction-ready design specifications. When the private party is responsible for building or rehabilitating an asset, as described below, it is typically also responsible for design
- **Build**, when PPPs are used for new infrastructure assets, they typically require the private party to construct the asset and install all equipment. Where PPPs involve existing assets, the private party maybe responsible for extending the asset
- **Finance** when a PPP includes building or rehabilitating the asset, the private party is typically also required to finance all or part of the necessary capital expenditure
- **Maintain**, PPPs assign responsibility to the private party for maintaining an infrastructure asset to a specified standard over the life of the contract. This is typically considered a defining feature of PPP contracts
- **Operate**, the operating responsibilities of the private party to a PPP can vary widely, depending on the nature of the underlying asset and associated service. For example, the private party could be responsible for:
 - Technical operation of an asset, and providing a bulk service to a government off-taker—for example, a bulk water treatment plant
 - Technical operation of an asset, and providing services directly to users—for example, a PPP for a water distribution system

- Providing support services, with the government agency remaining responsible for delivering the public service to users—for example, a PPP for a school building that includes janitorial service.

The payment mechanism in a PPP agreement is an important feature. The private party can be paid by collecting fees from service users, by the government, or by a combination of the two. The options for a payment mechanism can depend on the functions of the private party.

- Under “user pays” PPPs, such as toll roads, the private party provides a service to users, and generates revenue by charging users for that service. These fees can be supplemented by subsidies paid by government, which may be performance-based or output-based
- In “government pays” PPPs, the government is the sole source of revenue for the private party. Government payments can depend on the asset or service being available at a contractually-defined quality. They can also be output-based payments for services delivered to users

The above aspects can in various ways create a wide range of PPP contracts.

Types of PPP Contracts

Different types of contracts based on the PPP model are as follows

- Design-Build-Finance-Operate (DBFO)
- Design-Build-Operate (DBO)
- Operations & Maintenance (O&M)
- Build-Operate-Transfer (BOT)
- Build-Own-Operate-Transfer (BOOT)
- Build Transfer Operate (BTO)
- Rehabilitate- Operate-Transfer (ROT)
- Concession
- Lease or Affermage

- Franchise
- Management
- Private Finance Initiative

Substance of the PPP Arrangement

A PPP project usually involves the construction of an infrastructure asset, and a long term operations or maintenance contract. Certain aspects of the agreement may relate to the capital project and others to ongoing operations of the asset, even though there may be a blended unitary performance-based payment plan.

The contract terms and conditions provide an understanding of the overall substance of the arrangement. The substance of the arrangement is more important than the legal form of the documents when determining the appropriate accounting treatment. A number of indicators, including the allocation of risks and responsibilities in the agreements, will inform us of the substance of certain core issues such as control of the organization, ownership of the constructed assets, and obligation for liabilities.

For instance, a new organization, or “special purpose entity” (SPE) may be created by the private sector partner, with the intention of being independent of government, to oversee the construction of an asset and/or delivery of services. However, certain details of government’s relationship with the SPE, such as involvement in day-to-day operations, financial guarantees of operating shortfalls, restrictions on activities, or approving budgets may indicate government effective control over the organization. If government has effective control of an organization, it must be consolidated into the government reporting entity (GRE). All P3 contracts and agreements must be analyzed on the basis of the substance of the arrangement to determine:

- Whether government controls the SPE;
- Which organization (public or private) bears the risks and rewards of ownership of the infrastructure asset under development;
- Whether the arrangement contains the lease of an asset;
- Whether any associated leases are operating or capital in nature; and

- At what point liabilities are incurred by government.

The results of these analyses are critical to the determination of the appropriate accounting treatment for the project. The substance of the arrangement prevails for budgeting, accounting and reporting purposes. Some examples of circumstances where the substance of an arrangement may differ from its form are:

1. A contract may be titled “Operating Lease”; however, the details of the agreement indicate that it is not really an “operating lease” because the lessee bears the risks and rewards of asset ownership.
2. A private sector service provider acquires or builds a specialized asset specifically to deliver services under contract to government and the asset is not readily adaptable to other uses. In this case, there may be more than just a contract for services, but may also be an underlying lease of the specialized asset that needs to be assessed.
3. Certain concession arrangements may be based on tolls or fees collected directly by a concessionaire and retained as payment for the contracted work. The substance of the arrangement is that tolls collected on the state’s asset, belong to the state and must be reported as the state’s revenue. The operations and maintenance, rehabilitation and financing costs associated with the agreement must also be recorded by the state – even though paid for through foregone revenue. It was the state’s choice to forgo the revenue in exchange for the infrastructure and service provided for in the contract. The total cost of the project would be the full amount of the foregone revenue plus any other payments the state may be required to make.

Sample Tripartite Agreement under P3

This Tripartite Agreement is made at New Delhi on this [.....] day of [.....]
...
.....], [200...] BETWEEN

1. [.....] acting through [Shri]
....., ...
....., Department of Ministry of]
Government of India, New Delhi (hereinafter referred to as “Empowered Institution”),

2. [.....], acting for itself and for the Lenders listed in Schedule as Lender, (hereinafter referred to as the “Lead Institution”) and having its registered office at [.....] and its principal administrative offices at [.....]

AND

3. [..... **LIMITED**], a company incorporated and existing under the Companies Act, 1956 and having its registered office at [.....] acting through its Director [Shri] duly authorized by the resolution passed at the meeting of its Board of Directors held on [.....] (hereinafter referred to as the “Concessionaire”).

(The expressions “Empowered Institution”, the “Lead Institution” and the Concessionaire shall include their respective successors, and are hereinafter collectively referred to as the “Parties” and individually as “Party”)

AND WITH

[....., a statutory body constituted under the provisions of the Act,/,a government company within the meaning of the Companies Act, 1956/the State of, through its]*1 (the “Owner”) as confirming Party.

WHEREAS

A. The Owner had pursuant to the Notice Inviting Prospectus No. Dated (the “Tender Notice”) laid down and prescribed the technical and commercial terms and conditions and invited bids for construction, operation and maintenance of ... [Name of the Project] (the “Project”) on BOT basis.

B. After evaluation of the bids so received the Owner had accepted the bid of the Consortium comprising of [-----], [-----] and [-----] and has consequent thereto entered into the Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annexure ‘A’; with the Concessionaire which has been promoted by the Consortium to undertake the Project .

C. The Central Government has notified a scheme called the “Scheme for Support to Public Private Partnerships in Infrastructure” (the “Scheme”) for financial support to infrastructure projects that are to be undertaken through Public Private Partnerships.

D. On an Application made by the Owner (“the Proposal”) for the Project to be considered for viability gap funding (“VGF”) under the Scheme, the Empowered Institution has agreed to provide to the Concessionaire VGF by way of grant under and in accordance with the Scheme to the extent and in the manner set forth hereinafter.

E. The Scheme requires certain representations by the Owner and entering into the tripartite agreement setting forth, inter alia, the terms and conditions of VGF grant.

NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 For the purposes of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:

1.1.1 “Agreement” means this Tripartite Agreement, and amendments if any thereto made in accordance with the provisions contained herein in this behalf.

1.1.2 “Balance Debt” shall mean the balance principal amount of the debt agreed to be provided by the Lenders to the Concessionaire under the Financing Agreements for financing the Project Cost and which remains to be disbursed by the Lenders to the Concessionaire after the Concessionaire has subscribed and expended the equity contribution required for the Project.

1.1.3 “Concession Agreement” means the Concession Agreement dated [..... ..
...] entered into between the Owner and the Concessionaire, and shall include all Annexures and appendices thereto and any amendments thereto made in accordance with the provisions contained in this behalf therein provided any amendments thereto made hereafter which materially alter any of the terms and conditions thereof shall not be binding on the Empowered Institution and the Central Government unless previously approved by the Empowered Institution.

1.1.4 “Total Project Cost” means the lower of the following total capital cost of the Project:

- (a) [Rs. (Rupees)] as estimated by the Owner;
- (b) [Rs. (Rupees)] as contained in the Financial Package approved, inter alia, by the Lead Institution; and

(c) the amount as actually expended on the Project as certified by the Statutory Auditors, but shall not include the cost of the land comprised in the Project.

1.1.5 “VGF Grant” means the grant payable by the Central Government under and in accordance with the Scheme as set forth in the Guidelines for Financial Support to Public Private Partnerships in Infrastructure notified by the Finance Ministry on 12.1.2006 vide O.M. No. 1/5/2005-PPP and as referred to in clause 2.1 of this Agreement.

1.2 The words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

1.3 In this Agreement unless the context otherwise requires –

(a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;

(b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include all genders, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);

(c) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;

(d) terms beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein;

(e) the words "include" and "including" are to be construed without limitation;

(f) any reference to a "day" shall mean reference to a calendar day;

(g) any reference to "month" shall mean reference to a calendar month;

(h) any reference to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of the Empowered Institution hereunder or pursuant hereto in any manner whatsoever;

(i) references to Recitals, clauses, sub-clauses, paragraphs, Annexures or appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, clauses, subclauses, paragraphs, Annexures and appendices of this Agreement;

(j) Any agreement, consent, approval, authorization, proposal, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and

(k) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.4 Priority of Agreements.

In the event of any conflict between this Agreement and

(i) the Concession Agreement; or

(ii) any of the Project Agreements, the provisions of this Agreement shall prevail.

2. GRANT

2.1 Relying on the representations made by the Concessionaire and the Owner as set forth hereinafter and believing them to be true, the Empowered Institution hereby grants to the Concessionaire and the Concessionaire hereby accepts from the Empowered Institution the VGF grant in a sum of [Rs. (Rupees Crore)] (the “VGF Grant”) for the Project under the Scheme subject to and on the terms and conditions set forth in this Agreement and the Scheme. The VGF Grant shall be disbursed to the Concessionaire by Lead Institution for and on behalf of the Empowered Institution in the manner as set out in Clause 2.2.

2.2 The Lead Institution shall disburse the VGF Grant in the manner set forth herein to the Concessionaire for and on behalf of the Empowered Institution in proportion to the disbursements of the Balance Debt, and shall after each such disbursement of VGF Grant to the Concessionaire, notify the Empowered Institution of the same.

2.3 The Lead Institution shall along with the disbursement of the Balance Debt disburse in proportion thereto the VGF Grant to the Concessionaire in the same manner as such Balance Debt and, upon such disbursement, shall be deemed to have been received by the Concessionaire.

2.4 Notwithstanding anything to the contrary contained in this Agreement in the event of

(i) any suspension of the Concessionaire’s rights under the Concession Agreement or termination of the Concession Agreement, or;

(ii) any suspension of the rights of the Concessionaire under this Agreement or termination of this Agreement; or

(iii) occurrence of any VGF Default, the disbursement of the balance of the undisbursed amount of VGF Grant shall be suspended or terminated, as the case may be, in the sole discretion of the Empowered Institution without the Empowered Institution or the Lead Institution being liable to the Concessionaire or the Owner in any manner whatsoever for the same. Such suspension or termination as the case may be, of the undisbursed portion of the VGF Grant shall be deemed to be with mutual agreement of the Parties.

2.5 The Concessionaire and the Lead Institution agree and acknowledge that the VGF is for and shall solely be used to fund such part of the Total Project Cost as is on account of viability gap which necessitated the VGF Grant and for no other purpose whatsoever.

2.6 The Concessionaire and the Lead Institution acknowledge and the Owner confirms that VGF Grant under this Scheme shall be disbursed only after the Concessionaire subscribes to and has expended the equity contribution required for the Project from the Concessionaire under the Financial Package.

3. REPRESENTATIONS AND WARRANTIES

3.1 The Confirming Party represents, warrants and confirms to the Empowered Institution and the Lead Institution respectively the following:

(a) The Total Project Cost does not include the cost of the land comprised in the Project incurred by the Owner;

(b) The Concessionaire has been selected through a transparent and open competitive bidding process conforming to the provisions of the Scheme;

(c) The Project shall provide service against payment of predetermined tariff/ user charge as setforth in the Concession Agreement;

(d) The pre-determined tariff/user charges payable pursuant to the Concession Agreement to the Concessionaire for provision of services pursuant thereto, cannot be increased to eliminate or reduce the viability gap, which necessitated the application for the VGF Grant for the Project under the Scheme by the Owner;

(e) The Concession Period under the Concession Agreement cannot be increased for reducing the viability gap, which necessitated the application for the VGF Grant under the Scheme;

(f) The Total Project Cost is reasonable and based on the standards and specifications normally applicable to such projects as the Project and the same cannot be restricted for reducing the viability gap, which necessitated application by the Owner for VGF Grant under the Scheme; and

(g) The grants made or which may hereafter be made by the Owner to the Concessionaire for meeting the Total Project Cost or any part thereof shall not exceed in aggregate, a further 20% of the Total Project Cost.

3.2 The Concessionaire represents and warrants to the Empowered Institution and the Lead Institution that :

(a) It is duly organized and validly existing under the laws in India and has full power and authority to execute and perform its obligations under this Agreement and to carryout the transaction hereby contemplated;

(b) It has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Agreement and to perform its obligations under this Agreement;

(c) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms;

(d) The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of the Concessionaire or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;

(e) All information furnished to the Empowered Institution, the Lead Institution and the Owner and as updated on or before the date of this Agreement is true and accurate in all material respect;

(f) There are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi judicial or other authority or body, the outcome of which may result in the breach of this Agreement;

(g) It has complied with all Applicable Laws and Applicable Permits in all material respects;

(h) It is not in breach of the Concession Agreement or of any Project Agreements or Financing Agreements; and

(i) No representation or warranty contained herein or in the Concession Agreement or any other document furnished by it to the Empowered Institution or the Owner or the Lead Financial Institution contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

3.3 In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such party shall immediately notify the other parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

4. PROJECT MONITORING

4.1 Lead Institution agrees and undertakes that subject to the provisions of this Agreement, the Lead Institution shall undertake regular monitoring and periodic evaluation of Project compliance with the agreed milestones and performance levels as set forth in the Concession Agreement and it shall, through periodic reports, advise and keep informed the Empowered Institution about the slippages or otherwise in Project compliances with the agreed milestones and performance levels as set forth in the Concession Agreement together with brief description of the causes of slippages or non-compliances, if any, therein. Without prejudice to the generality of the foregoing, the Lead Institution shall as part of its monitoring obligation hereunder undertake the following:

4.1.1 From the date of this Agreement, the Lead Institution shall through its representative inspect the Project Site on a monthly basis and shall keep a regular inspection log recording progress of the Project; and

4.1.2 The Lead Institution shall send on a quarterly basis progress reports of the Project to the Empowered Institution together with brief description of the causes of slippages or non-compliances, if any, therein.

5. ROLE OF LEAD INSTITUTION

5.1 The Concessionaire and the Lead Institution acknowledge that the Lead Institution is only acting as trustee for the Empowered Institution in respect of the VGF Grant and has no rights to the VGF Grant in any manner whatsoever.

5.2 The Empowered Institution hereby authorises the Lead Institution to exercise such rights, powers, authorities and discretion as are conferred by this Agreement on the Lead Institution together with all such rights, powers, authorities and discretion as are reasonably incidental hereto.

5.3 In performing its functions and duties under this Agreement, the Lead Institution shall act in trust for the benefit of, and as agent for the Empowered Institution or its nominees, successors or assigns, in accordance with the provisions of this Agreement.

5.4 The Lead Institution shall maintain accurate account of all VGF Grant disbursements made by it pursuant to this Agreement and shall by the 15th day of every month furnish a copy thereof as at the close of the immediately preceding month, duly certified under the hands of an officer of the Lead Institution duly authorised in this behalf, to the Empowered Institution together with statement showing the tentative disbursement schedule of the balance of the VGF Grant remaining to be disbursed.

5.5 In discharge of its duties and obligations hereunder, the Lead Institution:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by and on behalf of the Concessionaire by an officer of the Concessionaire duly authorized in this behalf by the Board of Directors of the Concessionaire;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business days of its receipt, deliver to the Empowered Institution a copy of any notice or document received by the Lead Institution in its capacity as the trustee for the Empowered Institution from the Concessionaire or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business days of its receipt, deliver to the Concessionaire a copy of any notice or document received by the Lead Institution from the Empowered Institution in connection herewith.

5.6 The Lead Institution agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to any amount of the VGF Grant pending disbursement to the Concessionaire. For the avoidance of doubt, it is hereby acknowledged and agreed by the Lead Institution that the monies, if any, received from the Empowered Institution and held by the Lead Institution on account of the VGF Grant and awaiting disbursement to the Concessionaire shall not be considered as part of the assets of the Concessionaire and being trust property held in trust for the Empowered Institution, and shall, in the case of bankruptcy or liquidation of the Lead Institution, be wholly excluded from the assets of the Lead Institution in such bankruptcy or liquidation and shall be made over to the Empowered Institution or its nominee.

6 VGF DEFAULT

6.1 Following events shall constitute an event of default by the Concessionaire ("VGF Default") under this Agreement unless such event of default has occurred as a result of Force Majeure or any act or omission of the Empowered Institution:

(a) the Concessionaire causes the Lead Institution to transfer the VGF Grant to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the designated Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

(b) the Concessionaire commits or causes any other breach of the provisions of this Agreement; or

(c) any of the representation and warranties of the Concessionaire are found at any time to be false or incorrect and fails to cure the same, within a Cure Period of 5 (five) business days; or

(d) any of the representation and warranties of the Owner are found at any time to be false or incorrect and the Owner fails to cure the same, within a Cure Period of 5 (five) business days; or (e) the Concessionaire commits Concessionaire Default under the Concession Agreement unless such default has occurred solely as a result of any breach of the Concession Agreement by the Owner or due to Force Majeure; or

(f) the Concessionaire is adjudged bankrupt or insolvent or is ordered to be wound up or passes an effective resolution for its winding up or a receiver is appointed for the Concessionaire or for the whole or a material part of its assets.

6.2 Upon occurrence of a VGF Default, the consequences thereof shall be deemed to be a material breach of the Concession Agreement by the Concessionaire and treated as a Concessionaire Default under the Concession Agreement, and shall be accordingly dealt with under and in accordance with the provisions of the Concession Agreement for such breach under the Concession Agreement.

7 TERM OF THE AGREEMENT

7.1 This Agreement shall come into force and effect upon the execution hereof and shall remain in full force and effect so long as any of the Lead Institution or the Concessionaire obligations to the Empowered Institution remain to be discharged, or a period of seven years from the date hereof, whichever is later.

8 INDEMNITY

8.1 The Concessionaire will indemnify, defend and hold harmless the Empowered Institution and Lead Institution harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of this Agreement, or the Concession Agreement or any of Project Agreement or the Financing Agreements, or on account of failure of the Concessionaire to comply with Applicable Laws or Applicable Permits, or on account of disbursement or failure to disburse the VGF Grant or any part thereof.

8.2 The Lead Institution will indemnify, defend and hold the Empowered Institution harmless at all times against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lead Institution to fulfill its obligations under this Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lead Institution, its officers, servants and agents.

8.3 The Empowered Institution will indemnify, defend and hold harmless the Lead Institution at all times against any and all proceedings, action and third party claims for any loss, damage, cost and expense arising on account of disbursement of the VGF Grant pursuant hereto for and on behalf of the Empowered Institution or on account of failure of the Empowered Institution to fulfill its obligations under this Agreement or the Lead Institution complying with any direction of the Empowered Institution given pursuant to this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful function by the Empowered Institution, its officers, servants and agents.

8.4 In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity hereunder or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15

(fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9 DISPUTE RESOLUTION

9.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably within [.....] days of communication thereof shall be decided finally by reference to arbitration to a Board of three Arbitrators comprising of one nominee of the Party which is the Claimant in such dispute, one nominee of the Empowered Institution and the third to be appointed in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”). Such arbitration shall be held in accordance with the said Rules and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

10 MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.2 Waiver of sovereign immunity

The Empowered Institution unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Empowered Institution with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

10.3 Rights of the Concessionaire

The rights and remedies of the Concessionaire in the VGF Grant, including in any balance thereof awaiting disbursement to the Concessionaire, are set forth in their entirety in this Agreement and the Lead Institution and the Concessionaire shall have no other rights or remedy against or to such VGF Grant including in any balance thereof awaiting disbursement to the Concessionaire.

10.4 Amendments

All additions, amendments, modifications and variations to this Agreement shall be valid, effectual and binding on the Parties and the Owner only if in writing and signed by their respective duly authorised representatives.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

10.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

10.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

10.9 Successors and assigns

This Agreement shall be binding on and shall work to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

10.14 Confirming Party.

The Owner has signed this Agreement as confirming party in token confirmation of the representations and warranties of the Owner setforth herein and in ratification of the terms hereof.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For and on behalf of the Lead Institution.

By:

Name:

Designation:

For and on behalf of the Concessionaire

By:

Name:

Designation:

For and on behalf of the Empowered Institution.

By:

Name:

Designation:

In the presence of:

1. _____
2. _____

In token confirmation and ratification of the Owner's representations and warranties and of the terms hereof

For and on behalf of the Owner

By:

Name:

Designation:

In the presence of:

1. _____

2. _____

14

Taxation of P3s

Under Section 80-IA of Income Tax Act, 1961, investors are offered a 100% rebate on income tax for 10 consecutive years, out of the first 20 years of a project. This will be applicable only if any enterprise is carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility which fulfils all the following conditions –

- it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;
- it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;
- it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to

another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

For the purpose of this section “infrastructure facility” means—

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterway or inland port.

Further Sec.80-IA(2) provides that deduction can be claimed only once the taxpayer develops and begins to operate the new infrastructure facility.

“Sec.80-IA - Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.]

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an

industrial park [or develops [***] a special economic zone referred to in clause (iii) of sub-section (4)] or generates power or commences transmission or distribution of power [or undertakes substantial renovation and modernisation of the existing transmission or distribution lines] :

[**Provided** that where the assessee develops or operates and maintains or develops, operates and maintains any infrastructure facility referred to in clause (a) or clause (b) or clause (c) of the *Explanation* to clause (i) of sub-section (4), the provisions of this sub-section shall have effect as if for the words “fifteen years”, the words “twenty years” had been substituted.]

[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the deduction in computing the total income of an undertaking providing telecommunication services, specified in clause (ii) of sub-section (4), shall be hundred per cent of the profits and gains of the eligible business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, thirty per cent of such profits and gains for further five assessment years.]

(3) This section applies to [an [undertaking] referred to in [clause (ii) or] clause (iv) of sub-section (4)] which fulfils all the following conditions, namely :—

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an [undertaking] which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such [undertaking] as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose:

[**Provided** that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003 (36 of 2003),

whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.]

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.—Where in the case of an [undertaking], any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.

(4) This section applies to—

- (i) any enterprise carrying on the business [of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining] any infrastructure facility which fulfils all the following conditions, namely :—
 - (a) it is owned by a company registered in India or by a consortium of such companies [or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;]
 - [(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;]

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

[*Explanation.*—For the purposes of this clause, “infrastructure facility” means—

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterway or inland port;]

[(ii) any undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services on or after the 1st day of April, 1995, but on or before the 31st day of March, [2005].]

Explanation.—For the purposes of this clause, “domestic satellite” means a satellite owned and operated by an Indian company for providing telecommunication service;

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park [or special economic zone] notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, [2006]:

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 or a special economic zone on or after the 1st day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking;]

(iv) an [undertaking] which,—

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, [2006];

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, [2006]:

Provided that the deduction under this section to an [undertaking] under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

[(c) *undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2006.*

Explanation.—*For the purposes of this sub-clause, “substantial renovation and modernisation” means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004.]*

[(v) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if—

(a) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before the 31st day of December, 2005 by the Central Government for the purposes of this clause;

(b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2007.]

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(6) Notwithstanding anything contained in sub-section (4), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(7) [The deduction] under sub-section (1) from profits and gains derived from an [undertaking] shall not be admissible unless the accounts of the [undertaking] for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the *Explanation* below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

(8) Where any goods [or services] held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods [or services] held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods [or services] as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods [or services] as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

[*Explanation.*—For the purposes of this sub-section, “market value”, in relation to any goods or services, means the price that such goods or services would ordinarily fetch in the open market.]

(9) Where any amount of profits and gains of an [undertaking] or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading “*C.—Deductions in respect of certain incomes*”, and shall in no case exceed the profits and gains of such eligible business of [undertaking] or enterprise, as the case may be.

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and

any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(11) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertaking or enterprise with effect from such date as it may specify in the notification.

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

(13) Nothing contained in this section shall apply to any Special Economic Zones notified on or after the 1st April, 2005 in accordance with the scheme referred to in sub-clause (iii) of clause (c) of sub-section (4)."

Overview of the Public Procurement Bill, 2012

Public Procurement

Public Procurement can be defined as the procurement of goods, works and services by all Government Ministries, Departments, Agencies, Statutory Corporations and Public Sector Undertakings in the Centre and the States, Municipal Corporations and other local

bodies and even by private Public Sector Undertakings providing public services on monopoly basis.

Public procurement is one of the core elements of government operation and that of its agencies. The canon of Public Procurement is to procure work, material, services of the specified quality within the specified time at the most competitive prices in a fair, just and transparent manner.

The Organization for Economic Co-operation and Development (OECD), defines public procurement as, “the purchase of goods and services by governments and state-owned enterprises. It encompasses a sequence of related activities starting with the assessment of needs through awards to contract management and final payment.” Various international organizations like the World Bank, United Nations Commission on International Trade Law (UNCITRAL), Asian Development Bank (ADB), OECD, World Trade Organization (WTO) etc. have provided guidelines governing public procurement which are followed by countries apart from their own procurement regulations.

In India, the Department of Expenditure, Ministry of Finance has issued three separate Manuals on Procurement of Goods, Services and Works as guidelines to all central government departments in the matters of procurement. Further, the Directorate General of Supplies & Disposals (DGS&D) and the Central Vigilance Commission (CVC) have also issued guidelines prescribing the procurement procedure to be followed by all Central Ministries.

There is no separate department or division in Central Government dealing with public procurement activities. At present references are made to the CVC by the procuring authorities mostly as a measure of precaution from the vigilance angle. The CVC sometimes issues clarifications and circulars even though such work should normally be done by the Government.

The Central Vigilance Commission (CVC), is an apex Indian governmental body created in 1964 to address governmental corruption. It has the status of an autonomous body, free

of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India, and advising various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.

The CVC is headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners. The Central Vigilance Commission has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a wing of Commissioners for Departmental Inquiries (CDI).

As per the Powers and Functions of the CVC as per the CVC Resolution, one of the functions of the CVC shall be to “tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise”.

Initially, CTE's organization was conducting intensive examination of construction works of civil and electrical, but with the growing expenditure on stores/ purchases including IT related purchases and outsourcing of services, CTE's Organisation started examining these contracts also. All the outsourcing activities of the government i.e. execution of works, various purchases and hiring of various services etc. clubbed together is defined as public procurement.

Regulatory Framework for Public Procurement in India

The Constitution of India does not contain any direct provision dealing with public procurement. However article No.299 stipulates that all contracts made in the exercise of executive power of the union or state shall be supposed to be made by the President or by the Governor.

There is no central law governing public procurement in India. The General Financial Rules, 2005 govern procurements made by the central government. Some ministries/departments have specific procedures/manuals to supplement these Rules. Procurements by public sector undertakings are governed by their own procedures/manuals.

The General Financial Rules (GFR), framed by the Ministry of Finance, lay down the principles for general financial management and procedures for Government procurement. The rules have the status of subordinate legislation. All government purchases must be in accordance with the principles outlined in the GFRs.

Various Public Procurement legislations in India are:

- General Financial Rules, (GFR) 2005.
- State General Financial Rules
- Delegation of Financial Powers Rules (DFPR), 1978.
- Guidelines issued by the Central Vigilance Commission (CVC).
- Guidelines issued by the Directorate General of Supplies and Disposal (DGS&D)
- Manuals on the procurement of goods, services and works issued by the Department of Expenditure, Ministry of Finance.
- Guidelines on procurement issued by individual ministries/departments, PSUs etc.
- Legislations on procurement enacted by individual states like Tamil Nadu and Karnataka.
- Defence Procurement Procedure, 2008.

The above list is indicative and there might be some rules or guidelines or legislations which are based on above mentioned legislations.

Public procurement in India has grown phenomenally over the years-in volume, scale, variety and complexity. Though procurement is a major and widespread activity in

government, it is noted that the regulatory and institutional framework for public procurement is in several respects weak and incomplete.

There is no single central body that is responsible for defining procurement policies and procedures. General Financial Rules (GFR) 2005 is a voluminous document which contains 293 rules, 16 appendices and a number of forms for different purposes. In addition, a set of guidelines is issued by Ministry of Finance (Manual on Policy and procedures on Purchase of Goods). The CVC has also issued numerous guidelines and instructions dealing with model procurement practices. This has led to a multiplicity of rules, guidelines, procedures, directives, model tender /contract documents and orders issued by various departments. However, the rules and guidelines are not backed by law and are thus not enforceable in a court of law.

Relation between Public Procurement and Public Private Partnerships

PPP means an arrangement between a government or statutory entity or government owned entity on one side and a private sector entity on the other, for the provision of public assets and/or related services for public benefit, through investments being made by and/or management undertaken by the private sector entity for a specified time period, where there is a substantial risk sharing with the private sector and the private sector receives performance linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards.

A key motivation for governments considering public private partnerships is the possibility of bringing in new sources of financing for funding public infrastructure and seeking operational efficiencies in the provision of public service needs.

One of the areas where public-private partnerships are often utilized is public procurement. The very essence of public procurement is economic and ethical relationships between the public and private sectors.

Public sector officials purchase goods, services and works necessary for society, from private suppliers and use public funds to pay for it. Public officials, or contracting authorities are obliged to make sure they purchase only those things that are really needed with regard to their function and quality, and purchase it in the most economical way possible.

A private enterprise as supplier of these goods, services or works needed in society, is interested in the public contract to improve its position in the market and also, to deliver the goods under the contract with the highest profit possible in the market.

A major role in this society-wide effort is played by public-private partnerships that are manifested through public declarations of anti-corruption agreements, enforcement of ethics codes or application of integrity pacts in major public procurement cases.

The Public Procurement Bill 2012

The Public Procurement Bill, 2012 was introduced by the Ministry of Finance in the Lok Sabha on May 14, 2012. This Bill seeks to regulate and ensure transparency in the procurement process. The Bill establishes the procedure to be followed by the government and by public sector undertakings for procurements.

The Objectives of the Bill is to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, maintaining integrity and public confidence in the public procurement process and for matters connected therewith or incidental thereto.

About the Public Procurement Bill, 2012:

The draft Public Procurement Bill, 2012 seeks to regulate government purchases using a transparent bidding process.

- Public procurement is one of the core elements of government operation and that of its agencies.
- In India, there is no overarching legislation governing public procurement by the central government and central public sector undertakings. The General Financial Rules, 2005 govern procurements made by the central government. Some ministries/departments have specific procedures/manuals to supplement these Rules. Procurements by public sector undertakings are governed by their own procedures/manuals.
- The Bill is intended to regulate public procurement by all Ministries and Departments of the Central Government, Central Public Sector Enterprises (CPSEs), autonomous and statutory bodies controlled by the Central Government and other procuring entities. The objectives of the Bill are to ensure transparency, fair and equitable treatment of bidders, promote competition and enhance efficiency and economy in the procurement process. The Bill contains broad principles and will be supplemented by rules. The Bill also provides for a grievance redressal mechanism and for penalties for offences under the Bill.
- A procuring entity could be a Ministry or Department of the central government, any Central Public Sector Undertaking, any company in which the government has a stake of more than 50%.
- This Bill shall not apply to procurements which are less than Rs 50 lakh, emergency procurements made for disaster management, and procurement for the purpose of national security.
- The basic norms that the procuring entity shall adhere to include: (a) ensuring efficiency, economy and transparency; (b) provide fair and equitable treatment to bidders; (c) promote competitiveness; (d) ensure the quality is consistent with the price of the bid; and (e) prevent corruption.

- The Bill also defines a Code of Integrity for the procuring entity or Central Purchase Organization (CPO) as well as the bidders. It prohibits acceptance of bribe, collusion, misrepresentation, coercion or threat, and obstruction in the auditing process of the procurement made.
- The procuring entity shall first determine the need for the procurement and estimate the cost of the procurement based on certain specified matters. It may publish information regarding planned procurements.
- The CPO shall not limit participation of bidders or discriminate against or amongst bidders except for the protection of public order and morality, animal or plant life, intellectual, national security. The central government may make procurement mandatory from certain bidders only on the grounds of promotion of domestic industry, socio economic policy, or other considerations in public interest.

Background of the Bill

In India, there is no overarching legislation governing public procurement by the central government and central public sector undertakings. The General Financial Rules, 2005 govern procurements made by the central government. Some ministries/departments have specific procedures/manuals to supplement these Rules. Procurements by public sector undertakings are governed by their own procedures/manuals.

In pursuance of the recommendations of the Committee on Public Procurement, the decisions of the Group of Ministers thereon as well as the announcement in the Prime Minister's Independence Day address regarding the introduction of a Public Procurement Bill, the Department of Expenditure had prepared a draft Bill called 'The Public Procurement Bill, 2011'. A Drafting Committee had also been constituted to carry out wide consultation on the draft Bill and to revise it on the basis of suggestions received.

The Draft Public Procurement Bill was placed in the public domain for inviting comments and suggestions which were to be forwarded latest by 24th December 2011. A new Revised Public Procurement Bill 2012 was then prepared by the Department of

Expenditure, Ministry of Finance, Government of India. The Public Procurement Bill, 2012 is pending as on date. The Public Procurement Bill was introduced in the Lok Sabha on May 14, 2012

Statement of Objects and Reasons as given in the Bill:

1. Procurements made by the Central Government are regulated by executive instructions in the form of General Financial Rules and manuals and procedures issued thereunder. Procurements made by the Central Public Sector Enterprises are governed by their own respective procurement procedures. Autonomous and statutory bodies make their procurements based on the General Financial Rules or their own rules, as applicable. The Central Government, Central Public Sector Enterprises as well as autonomous and statutory bodies are also subject to audit by the Comptroller and Auditor General of India and are required to follow the guidelines issued by the Central Vigilance Commission.

2. Major countries of the world have well codified legal provisions governing public procurement. In India, the States of Tamil Nadu and Karnataka have enacted laws relating to transparency in public procurement.

3. In order to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, and maintaining integrity and public confidence in the public procurement process, it has been felt necessary to enact a law in this regard, namely, the Public Procurement Bill, 2012.

The Public Procurement Bill, 2012 *inter alia*, seeks to,—

- (a) codify the basic norms governing public procurement and requires the procuring entities and their officials to comply with the norms;
- (b) lay down a code of integrity to be followed by the procurement entity and the bidders;
- (c) lay down the general principles to be followed during the procurement process and the conditions for use of, and brief procedures for, various methods of procurement;

- (d) provide adequate flexibility to take into account diversity of needs of procuring entities, description of subject matters of procurement and methods of procurement;
- (e) provide for greater transparency and accountability through a Central Public Procurement Portal to be set up by the Central Government;
- (f) provide for a grievance redressal system;
- (g) enable building of expertise in procurement matters through professional standards, suitable training and certification;
- (h) make provisions for offences and penalties relating to public procurement and for debarment of bidders.

Procuring entities to which the proposed legislation shall apply

Under Clause 3(2), For the purposes of this Bill, the following shall be the procuring entities, namely:—

- (a) any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated;
- (b) any Central Public Sector Enterprise or Undertaking owned or controlled by the Central Government;
- (c) any company in which more than fifty per cent. of the paid-up share capital is held—
 - (i) by the Central Government; or
 - (ii) by one or more companies in which the Central Government holds more than fifty percentage of the paid-up share capital; or
 - (iii) by the Central Government and one or more companies in which the Central Government holds more than fifty per cent. of the paid-up share capital;
- (d) any body established or constituted under the Constitution whose expenditure is met from the Consolidated Fund of India;
- (e) any body or board or corporation or authority or society or trust or autonomous body (by whatever name called) established or constituted under an Act of Parliament or a body owned or controlled by the Central Government;
- (f) any other entity which the Central Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial

financial assistance from the Central Government in so far as the utilization of such assistance towards procurement is concerned.

Code of Integrity

Procuring entities or bidders have to comply with the Code of Integrity which will be prescribed by the Central Government.

The code of integrity shall include provisions for—

(a) Prohibition of—

(i) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;

(ii) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided;

(iii) any collusion, bid rigging or anti-competitive behaviour that may impair the transparency, fairness and the progress of the procurement process;

(iv) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain;

(v) any financial or business transactions between the bidder and any official of the procuring entity;

(vi) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process;

(vii) obstruction of any investigation or auditing of a procurement process;

(b) disclosure of conflict of interest;

(c) disclosure by the bidder of any previous transgressions made in respect of the provisions specified above with any entity in any country during the last three years or of being debarred by any other procuring entity.

If the procuring entity comes to the conclusion that a bidder or prospective bidder, as the case may be, has violated the code of integrity, the procuring entity may take appropriate measures including—

- (a) exclusion of the bidder from the procurement process;
- (b) calling off of pre-contract negotiations and forfeiture or encashment of bid security;
- (c) forfeiture or encashment of any other security or bond relating to the procurement;
- (d) recovery of payments made by the procuring entity along with interest thereon at bank rate;
- (e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
- (f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding two years.

Principles and Methods of Procurement

The procuring entity shall first determine the need for the procurement and estimate the cost of the procurement based on certain specified matters. It may publish information regarding planned procurements activities for the forthcoming year or years on the Central Public Procurement Portal.

While assessing the need, the procuring entity shall, to the extent possible, take into account the estimated cost of the procurement and shall also decide on the following matters, namely:—

- (a) the scope or quantity of the subject matter of procurement, if determined;
- (b) limitation on participation of bidders in accordance with section 11, if any applicable, and justification thereof;
- (c) the method of procurement to be followed with justification thereof;
- (d) need for pre-qualification, if any;
- (e) offsets as may be required; and

(f) any other matter as may be prescribed.

The description of the subject matter of procurement shall be set out in the prequalification document, bidder registration document and the bidding document, as the case may be. Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognised national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. A procuring entity may, for reasons to be recorded in writing, base the technical specifications on equivalent international standards even in cases where national technical regulations or recognised national standards or building codes exist.

The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof, except when so authorised or required under the provisions of this Bill or the rules made thereunder, or under the provisions of any other law for the time being in force. However under Clause 11(4), the Central Government can restrict from imposing or enforcing measures limiting participation on account of the need

- (a) to protect public order, morality or safety;
- (b) to protect animal life or plant life or the life of human beings and their health;
- (c) to protect intellectual property;
- (d) to protect the national security and strategic interests of India.

The procuring entity may specify certain requirements for the qualification of bidders. It may also engage in a prequalification process prior to inviting bids. The prequalification shall ordinarily be for a single procurement. Provided that during the period of validity of the pre-qualification, the procuring entity may invite bids from the pre-qualified bidders for further requirements of the subject matter of procurement, if, it determines that engaging in fresh pre-qualification shall not result in enhanced competition.

With a view to identify reliable bidders for a subject matter of procurement or a class of procurement, which may be commonly required across procuring entities or is required by a procuring entity on a recurring basis, a procuring entity may maintain a panel of registered bidders. For the purpose of this panel, a procuring entity may invite offers from prospective bidders by giving wide publicity in such manner as may be prescribed, and such bidders who fulfill the qualification may be registered in the prescribed manner by following the criteria set out in the bidder registration document. The procuring entities shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once in a year. The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject matter of procurement shall be exhibited on the Central Public Procurement Portal.

The evaluation criteria of the procurement bids shall include among other factors

- (a) the price;
- (b) the cost of operating, maintaining and repairing goods or works;
- (c) the time for delivery of goods, completion of works or provision of services;
- (d) the characteristics of the subject matter of procurement, such as the functional characteristics of goods or works or the environmental characteristics of the subject matter;
- (e) the terms of payment and of guarantees in respect of the subject matter of procurement;
- (f) where relevant, quality based criteria such as the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject matter of procurement.

Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid. Provided that the requirement of such trials, sample testing or additional methods of evaluation shall be

indicated in the bidding document and a record of such trials and testing shall be maintained in such manner as may be prescribed.

The terms and conditions of the procurement contract entered into shall be in accordance with the provisions of this Act, the rules applicable to such procurement contract and the conditions indicated in the bidding document. The Central Government may prescribe terms and conditions of contract which shall be incorporated in the procurement contract entered into by procuring entities as applicable. Every procurement contract shall specify the period within which sums due and payable, in respect of any procurement, shall be paid.

A procuring entity may procure a subject matter of procurement by means of any of the following methods, namely:—

- (a) open competitive bidding; or
- (b) limited competitive bidding; or
- (c) two-stage bidding; or
- (d) single source procurement; or
- (e) electronic reverse auctions; or
- (f) request for quotations; or
- (g) spot purchase; or
- (h) any other method of procurement as may be notified by the Central Government.

Subject to the conditions and procedures specified in the Bill, a Central Purchase Organisation or the procuring entity may enter into a framework agreement or a rate contract using either open competitive bidding or limited competitive bidding.

In procuring a subject matter of procurement, every procuring entity shall follow the procedures in respect of the relevant method of procurement as may be prescribed.

Central Public Procurement Portal

The Central Government shall set up and maintain a Central Public Procurement Portal accessible to the public for posting and exhibiting matters relating to public procurement. Each procuring entity shall cause the procurement related information to be exhibited as required under this Act or the rules made there under on the Portal.

As per Clause 28 of the Bill, notwithstanding anything contained in this Bill or any other law for the time being in force, a procuring entity shall not disclose any information, if such disclosure, in its opinion, is likely to—

- (a) impede enforcement of any law;
- (b) affect the security or strategic interests of India;
- (c) affect the intellectual property rights or legitimate commercial interests of bidders or violate any pre-existing contractual obligations on confidentiality;
- (d) affect the legitimate commercial interests or the intellectual property rights or violate any pre-existing contractual obligations on confidentiality of the procuring entity.

The Central Public Procurement Portal shall provide access to the following information in relation to procurement governed by the provisions of this Act, namely:—

- (a) pre-qualification document, bidder registration document, bidding document and any modification or clarification including those pursuant to pre-bid conference, and corrigenda thereto;
- (b) list of bidders that presented bids including for pre-qualification or bidder registration, and of those bidders which were pre-qualified and registered, as the case may be;
- (c) list of bidders excluded, with reasons thereof;
- (d) decisions taken during the process of grievance redressal;
- (e) details of successful bids, their prices and bidders;
- (f) names and the particulars of bidders who have been debarred by the Central Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment;
- (g) any other information as may be prescribed.

The information exhibited shall be available on the portal for such period as may be prescribed.

Currently there exists The Central Public Procurement Portal of Government of India (<http://eprocure.gov.in/cppp/>). The Central Public Procurement Portal of Government of India facilitates all the Central Government Organizations to publish their Tender Enquiries, Corrigendum and Award of Contract details. The system also enables the users to migrate to total electronic procurement mode. The primary objective of this portal is to provide a single point access to the information on procurements made across various central government organizations.

Grievance Redressal and Procurement Redressal Committees

Any bidder or prospective bidder aggrieved by any decision, action or omission of the procuring entity which is in contravention to the provisions of this Bill or the rules made there under, may, within a period of 10 days or such other period as may be specified in the pre-qualification document, bidder registration document or bidding document, as the case may be, from the date of such decision or action, make an application for review of such decision, action or omission, as the case may be, to the procuring entity specifying the ground or grounds thereof.

A request for review and an application in that regard shall not be made in regard to any decision of the procuring entity on the following matters, namely:—

- (a) determination of need of procurement in accordance with the provisions of Clause 7 of the Bill;
- (b) provisions limiting participation of bidders in the procurement process in accordance with the provisions of Clause 11 of the Bill;
- (c) the decision to enter into negotiations in accordance with the provisions of Clause 23 of the Bill;

(d) cancellation of a procurement process in accordance with the provisions of Clause 24 of the Bill;

(e) applicability of the provisions on confidentiality specified in Clause 28 of the Bill

The Central Government shall constitute one or more independent procurement redressal committees and different procurement redressal committees may be constituted for a group of procuring entities or for different subject matters of procurement or for different geographical areas as may be considered necessary.

If the procuring entity fails to dispose of the application made within the period specified in that section, or if the bidder or prospective bidder is aggrieved by the decision of the procuring entity, the bidder or prospective bidder, may file an application for redressal to the concerned procurement redressal committee within a period of 15 days from the date of expiry of the period allowed or of the date of receipt of the decision, as the case may be. Every application for redressal shall be made in such form and in such manner and shall be accompanied by such fees as may be prescribed.

Overview of The Draft National Public Private Partnership Policy, 2011

The Union Finance Minister, in the Budget speech for the year 2011-12 had announced that, 'it is our endeavor to come up with a comprehensive policy that can be used by the Centre and the State Governments in further developing Public-Private Partnerships'. Pursuant to this announcement, Department of Economic Affairs, Ministry of Finance has prepared the draft National PPP Policy.

Department of Economic Affairs, Ministry of Finance has prepared the draft Public Private Partnership (Preparation, Procurement and Management) Rules 2011.

The National PPP Policy seeks to facilitate this expansion in the use of PPP approach, where appropriate, in a consistent and effective manner, through:

i. Setting out the broad principles for pursuing a project on PPP basis;

- ii. Providing a framework for identifying, structuring, awarding and managing PPP projects;
- iii. Delineating the cross-sectoral institutional architecture and mechanisms for facilitating and implementing PPPs.
- iv. Standardising some of the vital interpretations and processes of PPP so that a clear and consistent common position is adopted in key issues.
- v. Identifying the next generation issues to mainstream, upscale, broaden and expedite PPPs.

The Policy aims to assist the Central and State government agencies and private investors seeking PPP opportunities in:

- i. undertaking PPP projects through streamlined processes and principles;
- ii. ensuring that a value-for-money rationale is adopted with optimal risk allocation in project structuring with life cycle approach;
- iii. developing governance structures to facilitate competitiveness, fairness and transparency in procurement; and
- iv. attaining appropriate public oversight and monitoring of PPP projects.

The overarching objectives of such partnerships are:

- Harness private sector efficiencies in asset creation, maintenance and service delivery;
- Provide focus on life cycle approach for development of a project, involving asset creation and maintenance over its life cycle;
- Create opportunities to bring in innovation and technological improvements; and,
- Enable affordable and improved services to the users in a responsible and sustainable manner.

Public Private Partnership (Preparation, Procurement and Management) Rules 2011 - Draft For Consultation

Pursuant to the decision on the recommendations of the Committee on Public Procurement, a Committee has been constituted in Department of Economic Affairs to formulate the Rules for PPP projects, including rules for regulating expenditure, appropriation of revenues, contingent liabilities, etc. in PPP projects and proposed delegation of powers in this regard.

Department of Economic Affairs, Ministry of Finance had prepared the draft Public Private Partnership (Preparation, Procurement and Management) Rules 2011 and solicited views/suggestions from all stakeholders by 31st December, 2011.

Objective of the Rules

The objective of the Rules is –

- To define the norms and procedures for procuring PPP Projects, guiding officers of the Government in structuring PPP Projects and decision making;
- ensure the maximization of economy and efficiency, effectiveness of the terms of concession agreements and the promotion of competition, fairness, transparency and equity in the procurement process;
- encourage private sector investment in public infrastructure and related services;
- implement rigorous governance over the selection of PPP Projects and a uniform framework and streamlined procedures for PPP Projects;
- reduce the cost of bidding, putting in place appropriate guidelines for the evaluation of bids and ensuring the fulfillment of the Government's aim of ensuring value for money;
- ensure governance of public private partnerships that recognizes and addresses the evolving nature of public private partnerships.

These exhaustive rules on bidding process, monitoring of projects during and after implementation and on audit procedures, are proposed to be applicable on all projects undertaken by Government of India and projects of State Government or of its authorities or Corporations etc barring projects of few Ministries.

Some of the important highlights of draft PPP rules are as under:

- It involves qualitative and quantitative assessments to ascertain the Value for Money.
- The Contracting Authority has been made responsible for ensuring the interests of land owners under the extant of laws.
- In very complex PPP projects, a new stage known as Request for Technical Proposal between RFQ and RFP, and Competitive Dialogue system, have been incorporated for assessment technical qualification of developer and to establish project objectives.
- A provision of appointment of an Independent Monitor is made to ensure the transparency in bidding process. However, it may not be practically possible as in some states exiting Bid Evaluation and Consultant Evaluation Committee are being headed by fairly senior government officers of the state.
- It is proposed that bid security amount shall not be more than one percent of estimated project value.

- One applicant can submit only one application either individually or as a member of consortium.
- Negotiations with the Bidder are strictly prohibited except in case of sole bid to get better terms.
- Suitable provision for exit strategy for continued service delivery projects, are required to be made in concession agreement.
- A data bank to deal with dissemination of information following in-principle approval, signing of the Concession Agreement, after Financial Close, during Construction and Operations Phase and following Termination of the Concession Agreement shall be created.
- An Approach to audit has been formulated and provision of constitution of Contract Management Team (CMT) and Empowered Review Cell (ERC) to deal with the activities related to Post Award Project and Contract Management, has been made with clearly defining their duties.
- A code of conduct for officers or employees of Contracting Authority shall be documented and implemented.

Competent Authorities for appraisal and clearance of PPP projects

Project threshold	Authority
Project cost more than Rs. 100 crore	PPP Appraisal Committee (PPPAC)
Project cost between Rs. 25 crore and Rs. 100 crore	Expenditure Finance Committee
Project cost between Rs. 5 crore and Rs. 25 crore	Standing Finance Committee
Project cost upto Rs.5 crore	Administrative Ministry

According to the guidelines, any ministry which proposes the development of a PPP project will have to undertake the preparation of feasibility studies, project agreements and other preparatory documents and submit them in the form of an application for in-principle clearance of the SFC/ EFC/ PPPAC. The line ministry ensures that the project is of a minimum standard quality and is in line with the broader objective, through undertaking the technical and economical feasibility studies.

The application would be reviewed by the SFC/ EFC/ PPPAC for in-principle clearance. The requirement of in-principle clearance is waived off in case the project is based on an approved Model Concession Agreement (MCA). Some of the key MCAs include MCA for National Highway Projects and for Major Ports.

Once the in-principle clearance has been issued, the ministry proposing the project can go ahead and issue the Request for Qualification (RfQ) to be followed by the short-listing of pre-qualified bidders. After formulating the Request for Proposal (RFP) document inviting short-listed bidders to submit financial bids, the ministry proposing the project would apply for final clearance of SFC/EFC/ PPPAC, and submission of the draft RFP and contract document with the application. Once cleared and recommended for final clearance by SFC/EFC/PPPAC, the ministry can submit the proposal for final approval to the competent authority.

The authorities competent to grant final approval to the PPP projects are defined in the following table –

Approval Authorities for PPP Projects

Project outlay	Approval Authority
More than Rs. 150 crore	Cabinet / Cabinet Committee on Economic Affairs
Less than Rs. 150 crore but more than Rs. 75 crore	Minister in charge (of the department developing the project) and the Finance Ministry

Less than Rs. 75 crore but more than Rs. 15 crore	Minister in charge
Less than Rs. 15 crore	Secretary of the Ministry / Department

Once the final approval is granted, the line ministry can proceed with the issue of RFP document, inviting financial bids for the project.

State actions in creating a framework for PPP in India

At the State level, some key states of India like Gujarat, Punjab, Karnataka, and Andhra Pradesh have developed legal frameworks for private participation in infrastructure, specifically in areas in the jurisdiction of the State legislature and the State government. As each State has the right to promulgate legislations in the areas covered in the State List, the situation in each State is different in the context of infrastructure development.

14. PROFESSIONAL SERVICES

1. Advice on the selection of projects that will maximize the benefits of P3s
2. Performing end to end analysis of sectors where PPP model based projects can fit in.
3. A feasibility study on PPP projects
4. Restructuring of Business Organizations
5. Suggesting the ideal business structure to be followed for the success of PPPs
6. Performing the role of arbitrators to PPP arrangements
7. Drafting of P3 Agreement and other interrelated agreement
8. Tax advisory services
9. Advisory services on International P3s

15. ABBREVIATIONS

BOO	Build Own Operate
BOT	Build Operate Transfer
BTO	Build Transfer Operate
BBO	Buy Build Operate
DBO	Design Build Operate
LDO	Lease Develop Operate
BDO	Build Develop Operate
RPF	Request for Proposal
P3	Public Private Partnership
PSC	Public Sector Comparator
GRE	Government Reporting Entity
CAMF	Capital Asset Management Framework
ASD	Alternative Service Delivery
IDC	Interest During construction
IRR	Internal rate of return
REOIs	Requests for Expressions of Interest
RFPs	Requests for Proposal
RFQs	Requests for Qualifications
SPE	Special Purpose Entity
CoI	Code of Integrity
CPO	Central Purchase Organization

16. USEFUL WEBSITES

- Partnerships BC at (www.partnershipsbc.ca).
- The Public Private Partnership (P3) Office at - (www.strategis.ic.gc.ca/SSG/ce01373e.html).
- Partnerships Victoria at (www.partnerships.vic.gov.au).
- Partnerships UK at (www.partnershipsuk.org.uk).
- Canadian Council on Public Private Partnerships at (www.pppcouncil.ca).
- Public Private Partnerships Programme (4Ps) at (www.4ps.co.uk).
- Ministry of Finance, Government of India - <http://www.finmin.nic.in/>
- PPP India Database - www.pppindiadatabase.com
- Committee on Infrastructure, Planning Commission - <http://www.infrastructure.gov.in/>
- Investment Commission of India - <http://www.investmentcommission.in>
- State Level Infrastructure - http://business.gov.in/infrastructure/state_level.php
- Assam Government and Public Private Partnerships - <http://assamppp.gov.in/>
- Andhra Pradesh Government and Public Private Partnerships - <http://www.ppp.ap.gov.in>
- Andhra Pradesh Road Development Corporation - <http://www.aprdc.in>
- Infrastructure Corporation of Andhra Pradesh (INCAP) - <http://www.incap.co.in>
- Andhra Pradesh Urban Finance and Infrastructure Development Corporation Ltd - <http://www.apufidc.gov.in>
- Bihar Infrastructure Development Authority - <http://www.idabihar.com>
- Bihar Industrial Area Development Authority (BIADA) - www.biada.in
- Gujarat Infrastructure Development Board (GIDB) - <http://www.gidb.org/>
- Haryana Government and Public Private Partnerships - <http://pppinharyana.gov.in>
- Karnataka Infrastructure Development Department - <http://www.idd.kar.nic.in>
- Karnataka Urban Infrastructure Development and Finance Corporation - <http://www.kuidfc.com/>
- Infrastructure Development Corporation of Karnataka - <http://www.ideck.net>

- Madhya Pradesh - <http://www.dif.mp.gov.in/>
- Madhya Pradesh Road Development Corporation Limited - <http://mprdc.nic.in>
- Maharashtra Urban Infrastructure Development Company Ltd - <http://www.muidcl.com>
- MMRDA (Maharashtra Metropolitan Region Development Authority) - <http://www.mmrdamumbai.org>
- MSRDC (Maharashtra State Road Development Corporation) - <http://www.msrdc.com>
- Public Private Partnership in Orissa - <http://www.ppporissa.gov.in/>
- Orissa Government and Public Private Partnerships - <http://orissa.gov.in/ppp.htm>
- Punjab Infrastructure Development Board (PIDB) - <http://www.pidb.org?>
- Government of Punjab - <http://punjabgovt.nic.in>
- Punjab Urban Planning and Development Authority - <http://puda.nic.in/welcome.html>
- Rajasthan Government and Public Private Partnerships - <http://ppp.rajasthan.gov.in>
- RSRDC (Rajasthan State Road Development and Construction Corporation Ltd.) - <http://www.rsrdc.com>
- Uttarakhand Public Private Partnership Cell - <http://cell.upppc.org>
- Uttarakhand Infrastructure Development Company Limited - http://www.u-dec.com/comp_project.html
- Uttarakhand Infrastructure Project Company - <http://www.uipcinfra.com>
- Asian Development Bank - <http://www.adb.org/urbandev/links.asp>
- World Bank - <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/0,,contentMDK:22020973~pagePK:146736~piPK:146830~theSitePK:223547,00.html?mtcCampaign=7240>

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Mr. Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. A senior partner of Adukia & Associates he has authored more than 34 books on a wide range of subjects. His books on IFRS namely, “Encyclopedia on IFRS (3000 pages) and The Handbook on IFRS (1000 pages) has served number of professionals who are on the lookout for a practical guidance on IFRS. The book on “Professional Opportunities for Chartered Accountants” is a handy tool and ready referencer to all Chartered Accountants.

In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.

Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team.

Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.

Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Antidumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator

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Professional Association: *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*