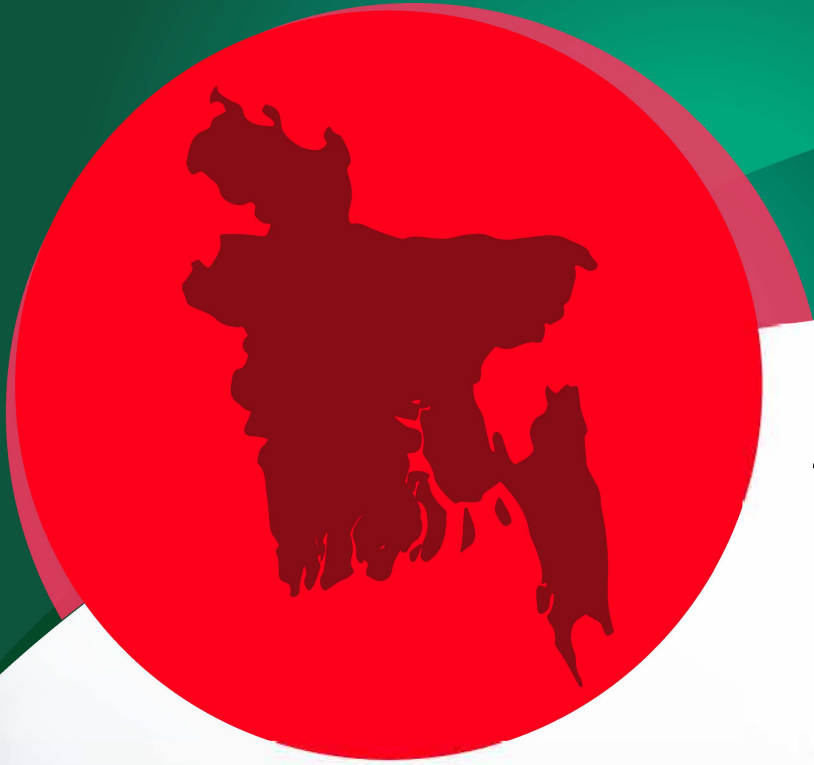


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# The Performance and Challenges of Public-Private Partnership (PPP) Projects in Bangladesh

Md. Abu Rashed\* Md. Mahmudul Alam<sup>†</sup> Fahim Faisal<sup>‡</sup>

\*PPP Expert, Investment Promotion and Financing Facility, Dhaka, Bangladesh

<sup>†</sup>PhD Student, Institute for Environment and Development, National University of Malaysia

<sup>‡</sup>PhD Student, School of Economics and Finance, Queensland University of Technology, Australia

## Abstract

Like many other countries, Public-Private Partnership (PPP) has been appreciated as an important way out for infrastructure development in Bangladesh. Though there have been recent successes in institutional and regulatory framework, other critical issues like transaction expertise and PPP financing facilities are yet to be boosted in the country. There also needs to be a strong incentive for the executing agencies that will bring more bankable PPP projects for the private sector. So far, around 40 private sector infrastructure projects have been completed in Bangladesh with a total investment value of US\$ 2.93 billion, and around 40 additional projects are in the national pipeline. Many PPP projects that were awarded earlier are not performing well due to weaknesses in transaction processes. Under the circumstances, it is essential to evaluate the effectiveness of the existing PPP project framework in Bangladesh. This paper analyzes selected PPP projects in Bangladesh to draw lessons in view of the institutional, regulatory, project financing, and other policy relevant issues. The paper specially focuses on upfront project development constraints and corresponding solutions for creating a greater PPP-enabled environment in the country.

## 1 Introduction

Infrastructure is the key for sustained economic growth. The high transaction costs arising from inadequate infrastructure can limit the growth potential of an economy regardless of its progress in other areas. However with significant initial investment requirements, infrastructural development is a challenging task for the government. For emerging economies constrained with low tax GDP ratio, it is even more difficult to ensure long term project financing and implement capital intensive infrastructure projects. As governments may not be able to invest a large amount at a time only for the infrastructure sector, countries are increasingly turning towards the private sector for infrastructure development (Alam and Rashed 2011a). Therefore private participation in infrastructure is increasingly receiving importance for the provision of infrastructure and utility services around the world (Alexander 2002). However, governments still need to play a key role in terms of PPP project development and transaction, so it cannot be left completely to the private sector (Alam and Rashed 2011b).

Worldwide, Public Private Partnership (PPP) projects are becoming popular as an innovative approach for the development of infrastructure with the involvement of private sector (Rashed, Alam and Mohd. Ekhwan 2011).

PPPs have gained utmost attention from the public sector and donor groups particularly in terms of service quality, procurement efficiency, risk minimization and the ability to combine adequate managerial and technical capabilities. The concept of PPP though not relatively new, has not been yet fully developed and defined (World Bank 2007, p. 1). According to Asian Development Bank, PPP is a range of possible relationships among public and private entities in the context of infrastructure and other services that present a framework for engaging private sector and also structure the role of governments in ensuring that social obligations are met (ADB 2008, p. 55).

Generally, a public infrastructure project is financed, owned and operated by government authorities or utilities. However, in a private infrastructure project or a PPP project, development, financing, procurement, construction and operation are carried out through a private investor through schemes such as build-operate-transfer (BOT), build-own-operate (BOO), etc. In reality, a PPP project is not only a project, but a business for a long period of time to be carried out by a private investor through partnerships between government and a private firm to provide services formerly supplied by the government alone (UNESCAP 2005, p. 30). Similar types of experiences are also observed by researchers. Engel, Fischer and Galetovic (2007) describe the circumstances un-

der which PPPs may provide better value than traditional public procurement programs. The study also describes institutional requirements for a successful PPP program. Fischer (2011) uses the experience of Chile and other developing countries to examine the benefits and pitfalls of PPPs, and also offers recommendations to address common problems.

Developing countries have received more than US \$680 billion of investment in private infrastructure projects between 1990 and 2000 (Brook and Smith 2001, p. 6), when 130 developing countries had infrastructure projects with private participation, and their governments transferred the operating or construction risk, or both, to the private sector for more than 2,300 infrastructure projects and attracted investment commitments of almost US \$690 billion (World Bank 2002). Gassner, Popov and Pushak (2008) carried out a comprehensive econometric analysis of more than 1,200 utilities in 71 developing and transition countries. The study found that private sector participation improved efficiency and service levels. Marin (2009) also carried out a similar study by reviewing the experience of 65 PPPs in the water sector in developing countries, finding consistent improvements in efficiency and service quality.

At the same time, researchers also identified several issues crucial for success of PPP projects. Rashed et al. (2011) noted that in a PPP project, though the investment comes from the private sector, government has the prime role of upfront project development particularly project identification and feasibility study in order to determine the financial and economic viability of a business venture with broad functional specification on technical matters and commercial aspects. The feasibility study identifies the risks and the regulatory and monitoring framework. It is the most important tool to identify any possible problems that might occur during project implementation in order to make the project transparent to the potential private investors in terms of risk involvement, goods/service demand and future growth of the business.

Guasch (2004) describes in detail how poor PPP design and weak implementation can lead to renegotiations and increased costs. Farquharson and Yescombe (2011) describes how to develop and implement a PPP successfully, by developing a marketable project and attracting the right private partners. (UNECE 2008) provides a detailed direction on how to improve governance for PPP programs. The study also provides insight into the key challenges and possible frameworks for implementation. Along with policy support successful implementation of PPP projects requires institutional development and financial market development. Regan (2012) provides a comprehensive assessment of the effectiveness of PPP units in developed and developing countries and offers lessons on

the context in which PPP units have been most effective. Farrugia, Reynolds and Orr (2008) highlight the example of PPP units with a focus on experiences of developed countries.

Following many developing countries, Bangladesh also successfully implemented projects under PPP models to solve its infrastructure problem. So far, a total of 41 PPP projects have been completed in Bangladesh with a total investment value of US \$2.93 billion; currently another 40 projects are in the national PPP pipeline. In Bangladesh, PPPs have been most successful in the power generation sector in terms of legal and regulatory framework, transparent procurement process, efficient off-take guarantee and creation of specific units like the PPP Office, the Power Cell, etc. However, PPP success in the power sector also needs to be replicated in other sectors like road and social infrastructure sector. It is a paradox that PPP project development and especially successful implementation in these sectors has not been able to keep pace with the growing demand. Under the circumstances, it is essential to evaluate the effectiveness and problems of PPP in the country. At the same time, addressing the challenges is also essential for policy makers to deal with the issue in the best possible way. This paper identifies the existing gaps in roles and procedures of various parties involved in PPP project development and aims to propose long, short and medium term strategies.

## 2 Overview of PPP Projects in Bangladesh

PPP development in Bangladesh can be divided into three phases. First generation PPP projects started with independent power producers (IPPs) after the government approved the 1996 private sector power generation policy. The second generation PPPs were carried out in multiple sectors after the government approved (BPSIG 2004). The third generation PPPs have been enriched further as the government approved the PPP budget in 2009. The third generation PPP policy framework and guidelines have been approved by the government in June 2010.

The Government of Bangladesh (GoB) has shown its strong commitment to PPP by allocating a PPP budget that is separated from the traditional development and revenue budget. In the 2009–2010 fiscal year, US \$360 million has been allocated under this PPP budget. The budget has been segregated under three heads — \$300m for loan or equity, \$45m for viability gap funding (VGF) and \$15m as a centralized technical assistance fund. In addition, the government has issued a position paper titled, “*Invigorating Investment Initiative through Public-Private Partnerships*,” in June 2010.

**Table 1:** Sector Wise PPP Projects Implemented in Bangladesh.

Sector	Project <sup>a</sup> Name	Capacity	Investment (USD\$ million)
Power Sector			
	CDC Meghnaghat Ltd.	450 MW	300
	CDC Haripur Ltd.	360 MW	183
	Khulna Power Company Limited	110 MW	110
	Haripur EI Paso Barge Mounted Power Plant	115 MW	115
	Westmont Baghabari Power Barge	130 MW	16.2
	BEPZA Power Plant at CEPZ	40 MW	28
	BEPZA Power Plant at DEPZ	35 MW	23
	Power Plant at Savar	44 MW	30
	Power Plant at Narsingdi	35 MW	23
	Power Plant at Comilla	25 MW	17
	Small Power Plants (10 to 33 MW) — 12 stations	230 MW	115
	Captive Power Generation (many plants)	1200 MW	500
Telecom Sector			
	Banglalink	34	123
	GrameenPhone	448	500
	Pacific Bangladesh Telecom Limited	65	118
	TM International (Bangladesh) Ltd.	25	366
	Warid Telecom	—	—
	Bangladesh Rural Telephone Network	123	150.4
	Public Switched Telephone Network (PSTN) (Fixed Line Providers)	Many	172.5
	PGCB's Optic Fiber Cable (Phase-I) (Dhk-Ctg)	STM 64	1.2
	PGCB's Optic Fiber Cable (Phase-II) (Ctg-Cox'bZR)	—	11
	License for International Gateway Services	—	—
	License for Interconnection Exchange (ICX) Services	—	—
	License for International Internet Gateway Services	—	—
Port Sector			
	Land Port at Sonamasjid	—	2.2
	Land Port at Banglabandha	—	1.0
	Land Port at Hili	—	2.2
	Land Port at Birol	—	0.71
	Land Port at Bibirbazar	—	0.71
	Land Port at Teknaf	—	4.0
Roads Sector			
	Gulistan-Jatrabari Flyover (Toll Road from Gulistan to Jatrabari)	7 km	108
	Dhaka Elevated Expressway	—	—
	Jamuna Bridge toll management contract	5	—
	Shah Amanat International Airport	1	—

<sup>a</sup>This list covers mostly projects under the previous PPP institutional and regulatory structure as adopted in 2004.

In the power sector, after the approval of the 1996 Private Sector Power Generation Policy, a large number of IPP projects have been taken up and completed in Bangladesh. Notable amongst them are the 360MW Haripur and 450MW Meghnaghat combined cycle power plants. At the moment, about 25 IPPs have been either completed or are in varying stages of completion, representing an investment of almost \$1 billion. IPPs currently supply about one-third of the electricity used in Bangladesh.

In the telecom sector, private investments approach the \$1.5 billion mark, with world-class mobile companies such as Grameenphone, Banglalink, Aktel, Citycell, and Warid. Fixed line phones have also been opened up and many operators such as RanksTel, Dhaka Phone, OneTel etc are giving commercial service. The Power Grid Co. has leased out its Dhaka-Cox's Bazaar optic fiber cable constructed on its high-voltage transmission lines. The Bangladesh Railway has done the same for the optic fiber along its railway lines, leasing it with a PPP.

In the ports sector, six land ports have been constructed through PPP, located in Sonamasjid, Banglabandha, Hili, Birol, Bibirbazar and Teknaf. These are the first BOT land ports in the world. The tendering process for private operators is currently underway for the New Mooring Container Terminal at the Port of Chittagong.

### 3 PPP Project Development Phases and Regulatory Framework in Bangladesh

In 1996, Government of Bangladesh issued the private sector power generation policy to facilitate public private partnerships (PPP). Later, Bangladesh Private Sector Infrastructure Guidelines (BPSIG) 2004 and Private Sector Power Generation Policy (PSPGP) 1996 (revised 2004) have been the major guiding instruments especially to facilitate private investors for PPP projects. The Public Procurement Act (PPA) was enacted by the national parliament in 2006. This act incorporated concessions agreement related provisions and extended the government's legal jurisdiction to formulate independent PPP guidelines. Policy and strategy for public-private partnership (PPP policy) was adopted in 2010.

Along with regulatory certainty, PPP projects need several consents and approvals including environmental clearance. Department of Environment (DOE) under Ministry of Environment and Forest is the approving authority for environmental clearance in Bangladesh. The Environmental Conservation Act 1995 (and amendment 2000) and the Environmental Conservation Rules 1997 are the guiding instruments for projects to get environ-

mental approval from DOE. The World Bank guidelines are generally followed for environment impact assessment (EIA), social impact assessment (SIA), rehabilitation action plan (RAP), social action plan (SAP), environment management plan (EMP) etc. for maintaining "Equator Principles" which facilitate PPP projects in getting finance from banks. Other relevant policies and laws in conducting PPP business in Bangladesh include:

- The Foreign Exchange Regulation Act, 1947
- Foreign Private Investment (promotion and protection) Act 1980
- The Income Tax Ordinance, 1984
- Acquisition and Requisition of Immovable Property Ordinance, 1982
- Investment Board Act, 1989
- The Companies Act, 1994
- Industrial Policy 1999
- Arbitration Act, 2001

The life cycle of PPP projects in general may be segregated into seven phases in terms of role played by the agencies involved in these projects. In different phases the sector agencies have different roles. The PPP project phases are given in Table 2.

## 4 Selected Case Studies of PPP Projects in Bangladesh

This section depicts selected case studies of PPP projects in Bangladesh which were implemented before adoption of existing institutional and regulatory structure.

### 4.1 Case Study on AES Meghnaghat 450MW Power Plant

The AES Meghnaghat 450MW Power Plant project was handled directly by Bangladesh Power Development Board (BPDB). Six parties were pre-qualified to compete and five of them submitted tenders. The quoted levelised tariff of different bidders ranged from 2.79 to 3.98 US cents/kWh. A project agreement was signed in mid-1999 with AES (Applied Energy Services) Meghnaghat, the bidder quoting the lowest tariff. The concession was a wholesale concession with BPDB being the only customer. GoB has given a payment guarantee on behalf of BPDB and a performance guarantee on gas supply through Titas. Financial closure was reached in April 2001. The commercial operation date was planned as 30 months after the financial closure date. During bidding AES also committed to supply BPDB about 1.4 billion kWh of free electricity worth US \$34.75 million, equivalent to five months of full-load production.

The relevant project implementation problem areas are as follows:

**Table 2:** Major Steps of PPP Project Development in Bangladesh.

Stage	Action
Stage I: Pre-Development	<ul style="list-style-type: none"> <li>• Project idea and conceptualization</li> <li>• Identification and assessment meetings and discussions within the agencies</li> </ul>
Stage II: Feasibility	<ul style="list-style-type: none"> <li>• Agency engages consultants</li> <li>• Elicit project ideas</li> <li>• Define the need</li> <li>• Identify and agree on major technical and transaction parameters</li> <li>• Complete feasibility study</li> </ul>
Stage III: Commercial Framework and Procurement	<ul style="list-style-type: none"> <li>• Develop action plan</li> <li>• Prepare commercial framework</li> <li>• Obtain Ministry agreement for Pre-qualification</li> <li>• Obtain Expressions of Interest and shortlist</li> <li>• Prepare draft agreements</li> <li>• Prepare bid documents</li> </ul>
Stage IV: Evaluation	<ul style="list-style-type: none"> <li>• Hold bidders conference</li> <li>• Shortlisted bidders prepare bids</li> <li>• Agency receives bids and prepares evaluation report</li> <li>• Approval of successful bidder</li> <li>• Issue LOI to successful bidder</li> </ul>
Stage V: Negotiation & Agreement	<ul style="list-style-type: none"> <li>• Prepare for negotiations</li> <li>• Carry out negotiations with sponsor</li> <li>• Signing of agreement</li> </ul>
Stage VI: Financing	<ul style="list-style-type: none"> <li>• Sponsor makes Loan Applications to commercial lenders</li> <li>• Commercial lenders perform due diligence</li> <li>• Renegotiations for Lenders Requirements</li> <li>• Loan documents prepared</li> <li>• Financial closure</li> </ul>
Stage VII: Construction	<ul style="list-style-type: none"> <li>• Carry out Contract Administration functions</li> <li>• Oversee construction by lenders' engineer</li> <li>• Conduct satisfactory completion tests</li> <li>• Commercial Operations Date</li> </ul>

- Only one-third of the total land was handed over to AES and the site hand-over was delayed by eight months.
- In mid 2000 (during the construction phase), EPC contractor Hyundai faced significant liquidity problems. Lenders became doubtful if Hyundai could do the project as stipulated. The lenders compounded Hyundai's problems by insisting on a performance guarantee from Hyundai six months before the due date.
- Due to inappropriate design of foundations, the cooling water intake structure settled in January 2002. There were serious vibration problems. Remedial actions must await settlement to finish. An issue like this affects the sponsor (because of delay in generation of power and consequent delay in revenues) and the overall power supply.

The project was successfully established and is currently running very well and is being considered as one of the most successful IPPs in Bangladesh.

#### 4.2 Case Study on Construction of Dhaka Chittagong National Highway

The Dhaka Chittagong Highway (DCH) is the country's main transport corridor; it connects Chittagong, the port city southeast of Dhaka, and further up to the Jamuna Bridge linking the eastern and western parts of the country. The DCH was built with two lanes for most of its stretches and currently is unable to handle the high level of traffic. The government decided to expand the DCH to a dual two-lane carriageway to accommodate the current level and expected high growth of traffic on the DCH. The upgrading work constitutes the building of an additional two lanes alongside the existing 300 km long highway.

The relevant project implementation problem is that the project has been stalled due to the unavailability of the required Technical Assistance funds for the upfront project development activities. The Asian Development Bank has recently taken up this project and is planning to take it forward.

#### 4.3 Case Study on Development of Sonamasjid Land Port

The GoB decided to operate the existing Benapole land port directly in the public sector and the remaining twelve land ports would be developed and operated through private sector on a build-operate-transfer (BOT) basis for a period of 25 years from the commercial operations date. For the first time, government termed thirteen land customs (LC) stations as "*Land Ports.*" Twelve land ports

were declared by gazette notification on 12 January 2002 and Bibirbazar was notified on 18 November 2002.

The relevant project implementation problem is that the investor quoted a very high amount of royalty in the bid, which was 49% of the gross revenue earned from the port. The difference between the quoted royalties with the other contenders was significantly high and unrealistic. IDCOL as the lead financier did not properly model the cash flows with a 49% offer. It also disbursed a significant portion of the loan in the project without proper monitoring of the construction progress. In spite of having received a large amount of money from IDCOL and other banks, the expected project work was not completed up to the required level and the whole project turned out less than satisfactory.

#### 4.4 Case Study on Khanpur Inland Container Terminal Project

The concept of inland container terminal project was very new among other PPP infrastructure projects. Considering the containerized traffic volume inside the country, this project was unique. Transportation by barge is cheaper than road and rail and accordingly an inland container terminal at Khanpur on the river Sitalakhya in Narayanganj, about 34 km downstream from Dhaka, was proposed as a suitable location for setting up an inland container terminal. The project would provide a water alternative for the transportation of containers. Such a terminal might also be useful in connecting with Mongla and other major river ports. The proposed project was supposed to be developed in BOT basis with a 30-year concession period.

The relevant project implementation problems are as follows:

- The public sector officials did not have a clear understanding about the procurement process of such private sector infrastructure projects.
- Delay in decision-making by the Procuring Agency led to investors losing interest in the project.

### 5 Problems of PPP Project Implementation in Bangladesh

By its very nature, a PPP project is very different from a conventional public sector project as it can only be realized through a complex contract. It is essentially a business for a lengthy period of time and not a short-term construction project. This contract is extremely vital for the business relationship between the public sector and the private sector. Clauses in the contract might entice private investors or potentially drive them away.



The PPP projects require consultancy skills from local and foreign consultants. However, often consultants fail to understand the local context while developing PPP projects. Lack of consultants' skills can be related to consultants' inexperience with public sector projects and for overseas consultants, their inability to design projects that are appropriate for the resource-poor developing countries (the overdesign risk). To achieve sustainable growth via infrastructure development, these kinds of major obstacles have to be eradicated by introducing hassle-free mechanism with proper consulting guidance from experienced consultants in related fields

Infrastructure projects, from the funding viewpoint, have two components — Technical Assistance (TA) fund and investment fund. TA fund is basically used for compensating technical advisors or the consultants and investment fund is used for implementing the project on the ground. For a public infrastructure project, the TA fund and investment fund are found compositely while for a private infrastructure project (PPP), these two funds are separated —public sector deals with TA fund for technical advisors, linked projects, VGF and annuity payments etc. and private sector brings up the investment fund for financing the project. Problems that can be found in the real scenario is that as these two components are separated for PPP projects, the amount of fund becomes very small and fund dissemination process falls sometimes in an inert situation and it slows down the pace of implementation. In conducting feasibility study of the project, fund for consultancy services is needed. Moreover, investment promotion, draft agreements preparation, conducting the tendering process, evaluation of bids, and negotiation with the winning bidder along with finalization of the agreements need technical, commercial and legal advisory/consultancy services. Recently the government has adopted PPP budgets provisioning fund for TA and VGF which significantly resolves the fund constraints in project development, which earlier was one of the most critical problems for PPP implementation in Bangladesh.

Previously there was no prescribed manual to follow to conduct feasibility study and project transaction. Different projects were implemented using different factors and parameters. The agreements of all PPP projects need to be consistent in order to meet some common objectives. However, recently the PPP Office has taken significant steps to develop a uniform process for PPP project development and transaction. The PPP office has already published model concession agreements and prepared manuals for port, mass rapid transit, industrial park, etc. Along with addressing the issue of feasibility studies, it is also important to ensure proper budgetary allocation for carrying out feasibility studies and other associated activities. The government obligations in PPP projects are often limited to the feasibility study, transaction support and im-

plementing linked government or public sector projects which subsequently provide the basis for the fund to be mobilized by the government for these services as upfront development.

In addition, while implementing the PPP project, timely completion of associated/linked projects as specified in the contract is primarily the public sector's obligations. These are very crucial to make the PPP project successful. Under PPP Policy and Strategy 2010, Section 9, there is a provision for initiating linked components and arranging finance for such components. Depending on the nature of the PPP project, the line ministry/implementing agency may consider financing and implementing linked services, construction of approach roads, etc. The linked projects through Development Project Pro-forma (DPP) are to be included in the Annual Development Plan (ADP) using the existing procedures for initiating and formulating development projects. However, it should be noted that delays in getting DPP approval should not hamper/ delay the main PPP initiative. Infrastructure projects in Bangladesh often suffer from delays and cost overruns. Delays and cost overruns have significant implications from economic as well as political point of view. Due to delays in project implementation, the people and the economy have to wait for the provisions of public goods and services longer than necessary. Thus, delays limit the growth potential of the economy. Similarly, cost overruns reduce competitiveness of the economy. To address these issues, PPP project implementation process can be coordinated by a central authority like the PPP Office. Recognizing this issue, Government of Bangladesh has established the PPP Office under the Prime Minister's office to coordinate overall PPP project development and transaction process.

One of the key constraints is the domestic capacity for financing infrastructure PPP projects by the local commercial banks. Currently Bangladesh Bank imposes Single Borrower Exposure Limits capping exposure to the companies seeking finance, making a theoretical maximum syndication, if all the private commercial banks participated, of US \$600 million to a single sponsor. However, in reality, the total amount available to a single sponsor is likely to be much smaller. Bangladesh's local banks have limited capacity to finance large infrastructure projects. Local commercial banks are largely limited to making loans with a maximum term of 5–7 years and generally require equity of 25%–35%.

In public sector projects (which are developed, financed and implemented by the government itself), the government seeks support from the development partners (especially in the developing countries) for both technical assistance (for project development including feasibility studies, environmental and social due diligence, etc.) and

actual investment in terms of lending (sovereign loan). Such support from the development partners in public sector projects are arranged upfront at the early stage of project development. In public sector projects the borrowing government agency strictly follows the project development compliances of the development partners and receives their concurrences for each major development stage or milestones. Each of the development partners has established a set of project development compliance requirements in terms of environment, social, procurement (like International Competitive Bidding *aka* ICB of the World Bank) etc.

In PPP projects, as the investment comes from the private sector, the TA required for developing the PPP project becomes important and is generally arranged by the concerned executing agency solely and in most cases without any support from the development agencies. Considering the fact that development partners are invisible in the PPP project development phase, many government agencies follow their own national PPP guidelines which in many cases do not correspond to the required development compliance criteria (especially that of the development partners). The situation is even more complicated where the government does not have a central guideline and agencies develop their PPP project on ad-hoc arrangements.

As such, the development phase of PPP projects becomes very uncertain. Moreover, for PPP projects, even the development partners in many cases do not have a standard framework for project development compliances (where the World Bank has only 3.13 (a,b) in WB's PG for PPP procurement, many other development partners do not have any). There is also much confusion among government agencies on applicability of the ICB of WB in PPP project development where ICB is traditionally used for public sector projects. All these create substantial uncertainty in terms of standard compliances for PPP project development including the procurement, environmental and social due diligence. For example, the government's compensation policy for re-settlement in a developing country like Bangladesh is found quite different from that of ICB of WB or that of ADB.

In PPP projects, as the financing comes at a later stage after the project is developed and awarded to a private sector, due to the huge initial capital requirement, the winning bidder often approaches the development partners for project financing. Moreover, with an emerging banking sector, when the sponsors apply to commercial banks for PPP financing, as per the "*Equator Principles*", the commercial banks also need to follow the compliances of the development partners. Finally, for political risk guarantee or partial credit guarantee, the PPP projects need to ensure compliances of the development partners. As such,

although not being involved in the project development stage, the development partners emerge as the key PPP financing stakeholder especially for large PPPs. For PPP financing decision, development partners then "*look back*" to the development phase of the particular PPP projects to assess their compliances. The depth and coverage of the feasibility study, the level of due diligence in environmental and social studies, and the transparency in procurement is critically examined by development partners. After examining the compliance requirements by the development partner, many PPP projects are found to be non-eligible for development partners' support (e.g. IPFF's rejection of Summit power project or ADB's constraints to support the Elevated Expressway in Bangladesh).

## 6 Policy Recommendations and Conclusions

Generally public sector projects are significantly different from private sector projects. Interests of these two sectors and the concerned stakeholders vary due to the very inherent nature of objectives that these two sectors try to achieve. Therefore, when a public sector project is selected to be done by a private investor, there has to be some sort of incentive based on which these two sectors can come to the same page. For this reason, government has to consider the concerns of the private sector.

Since PPPs have to be awarded through tenders to ensure transparency of the front end-development of PPPs, the activities prior to the award of a PPP may take a long time to occur. Recently with the establishment of the PPP Office, the Government of Bangladesh has addressed some of the major obstacles associated with PPP projects including project identification process, lack of commercial focus and lack of experience in project development. In future, establishment of the PPP office will certainly assist in PPP project development, transaction and monitoring in Bangladesh.

In addition, public infrastructure projects are identified in the ADP and national five year plans which is not the case for PPP projects. From a national perspective, since private sector infrastructure is encouraged, there needs to be a commercially viable pipeline of PPP projects. In addition, a formal mechanism is needed to segregate between projects which will be carried out under the public sector and those which will be carried out under the private sector. Without this segregation, only a few infrastructure projects will be implemented through the private sector.

For political convenience, governments may often change the rules of operation in the industry after investments are made. As most infrastructure assets cannot be easily transferred to alternative activities (in other words,

has a high degree of specificity), investors are compelled to adjust to such changed situation, which may affect their business case and result in lower returns on their investment. The establishment of an independent regulator can help ensure continuity of rules and credibility of the government. By delegating powers to independent regulators, the government can assure private investors that it would not be able to arbitrarily change any rules or intervene in the market after investments are made.

The Government of Bangladesh has already established a PPP office under Prime Minister's office to supervise the overall PPP project management process. Investors, however, may become wary of high levels of discretionary power granted to independent regulatory agencies. When regulatory risks are considered high, private investors are discouraged from investing in new infrastructure facilities. Investment decisions are made with high risk premiums in a situation of high risks. This in turn can result in high prices of the services for a developing country like Bangladesh.

Except the Power Cell in the power sector, Bangladesh is currently lacking sector specific PPP units. The sector focused PPP unit is particularly needed to perform a wide range of services, including development of PPP policies and legislation, development of guidance material including standard contracts, manuals and processes for identifying and developing PPPs, clearance and approval functions during the PPP, a source of expertise in one or more aspects of PPP procurement and management, development of training programs, dissemination of information on PPPs, and assessment of fiscal costs (direct and contingent) of PPPs. The constitutional nature of a PPP unit varies. One option is to set it up within a ministry and supplement the capacities of the ministry. It can be set up as an autonomous entity, attached to but not fully a part of government bureaucracy. The Philippines BOT Center and Partnerships British Columbia of Canada are formed in this manner.

PPPs in Bangladesh may end up spending substantial time in protracted and extensive negotiations on risk sharing and project specifications with short-listed bidders. In order to avoid this, a move towards a system of competitive dialogue (through pre-bid conference) with short-listed bidders prior to bid submission may be considered. This would facilitate competitive behavior by allowing discussion between potential bidders and the procuring agencies and submission of competitive bids based on a common understanding. There is a need to poll the investor community at the earlier stages of the bid, and factor in their concerns in the concession agreement, around the project viability, with an objective of ensuring greater participation in the bidding process. Increased participation by bidders allows for greater competitive play in

the bidding process and would result in greater value for money for the public sector.

Both development partners and government agencies have common long-term objectives for ensuring country benefits through proper infrastructure facility. Strategic fit for existing gaps in terms of roles and procedures for the development partners in the development phase of PPP projects needs to be ensured with a standard framework for PPP project development. This will also ensure standard project development compliance requirements and subsequent concurrences from the corresponding development partner, saving their effort for "*look back and fix*," while a PPP project travels through its development stages.

At present, Bangladesh does not have any PPP law. The PPP Office has prepared a draft PPP law which is expected to be finalized within 2013. A PPP law advocating the use of PPPs, as well as the rationale for their use, provides country commitment and support for the PPP projects. This is vital particularly in the early years of a PPP program. Using the experience of PSIG, a PPP law is essential for the procuring agencies to enter into PPP arrangements and to protect investor interests that would provide a legally sound framework. From international review, various countries have gone about addressing the issue of PPP law in three different ways, such as no explicit legislation, umbrella PPP legislation and sector specific legislation.

A common PPP legislation for multiple sectors has been used more extensively in countries that operate under the civil code. Philippines adopted BOT law, which covers multiple sectors. India adopted both sectoral and cross-sectoral legislations. Where cross-sectoral legislation is used, it often covers aspects such as specifying which sectors PPPs can operate in, how tariffs for PPPs are set and adjusted, the role of different institutions in a PPP program, procurement of PPPs, and dispute resolution procedures. Legislation can also create new institutions, which will play a key role in the PPP process. Finally, a new law can help clarify the overall legal framework for PPPs by consolidating the provisions needed in connection with PPP.

Executing agencies and private investors are to be aware of the PPP business (especially on commercial and legal aspects of different types of PPPs). Despite the efforts in the past to disseminate knowledge on PPP through training and workshops, a few misconceptions about PPP still persist. Correct information about the range of PPP dealings like BOT Annuity, service delivery PPPs, or performance based management contracting should be disseminated to the concerned stakeholders.

## Disclaimer

The views expressed in the research paper are authors' own, and do not reflect the organization in which they work.

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