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Public Private Partnerships for Infrastructure Development: the Next Steps

Note by the secretariat:

The following document describes the work of the UN/ECE BOT Group in promoting best practices for public-private partnership for infrastructure development in the countries of central and eastern Europe and the CIS. It also presents the new ideas, “next steps” for accelerating the development of such projects in the region. The full text of this document appeared as an article in Law in Transition, EBRD Spring 2001.

Introduction

Public-private partnerships (PPPs) continue to attract the interest of governments across Europe and around the world, as they look for a more affordable and effective means of developing infrastructure projects.¹ In response to this demand, the United Nations Economic Commission for Europe (UN/ECE) established an expert group to promote best practices in PPPs for the countries of central and eastern Europe and the Commonwealth of Independent States (CIS). After recently completing its guidelines, the BOT group is undertaking a new initiative aimed at accelerating the delivery of PPP projects by emphasizing training, regional cooperation, enhanced coordination among regional and international bodies, and the active participation of the private sector.

Over the course of the last decade many transition countries have encountered a number of challenges as they seek to develop a modern infrastructure that not only attracts investment, but supports continued economic expansion. Facing the reality of limited resources, the governments of central and eastern Europe and the CIS began to look towards forging public-private partnerships (PPPs)¹ as a means to meet the growing demands of their citizens and economy. At the request of its member governments, the UN/ECE established an advisory group of experts in 1995, which later became known as the UN/ECE BOT (Build-Operate -Transfer) Group. Recently, the

¹ Public-private partnership is not a precisely defined term. It embraces a range of structures and concepts, which involve the sharing of risks and responsibilities between the public and private sectors. The approaches and techniques range from the simple commercialization of assets that remain under public ownership right through to virtual privatization. The way in which risks, responsibilities and powers are allocated between the public and private sectors will vary enormously from structure to structure across this spectrum.

BOT Group has launched a new initiative in conjunction with the release of its Guidelines on Best Practices for PPPs.²

UN/ECE BOT advisory group

Following the decision of the member governments, the UN/ECE established the BOT Expert Group under the chairmanship of Ms Corinne Namblard-Bouverot. The UN/ECE BOT Group drew upon experts from enterprises, governments, international organizations, regional development banks, and most notably from the European Bank for Reconstruction and Development (EBRD) and UNIDO. In pursuing its goal to promote new project financing techniques, the BOT Group's work has fallen into three related areas:

1. Preparation of Guidelines on Best Practices
2. Development of a Negotiation Platform.
3. Consultative meetings and visits with governments.

Guidelines on Best Practices

The Guidelines on Best Practices in PPPs provide a comprehensive overview of PPPs including: a historical perspective, political and institutional aspects, financing and risk allocation, how to create a national PPP Unit, and the necessary social considerations. Since the guide is designed to be a continual work in progress, space is made available for updates and various case studies.³

Linked to its legal, technical and policy advice the Group further prepared principles and objectives governing the social, environmental, good governance and human rights objectives of PPPs.⁴ Although a variety of projects can be accomplished through PPPs it should be understood that some endeavors are better left completely within the hands of either the public or the private sector. Accordingly, PPPs can work only when the public and private sectors come together to espouse a set of common objectives, which should be clearly presented to the public at large.

Negotiation Platform

In addition to the Guidelines, members of the Group prepared a Negotiation Platform on PPPs.⁵ Intended to facilitate and ensure the implementation of PPPs by providing a basis for training public officials charged with infrastructure development in the negotiation of PPPs, the Platform provides a balanced approach to reconciling and harmonizing the interests of the public and private sectors. While the Platform does not focus on any individual infrastructure sector, it does highlight the major issues relevant to PPPs in general. Beginning with a discussion of

² The initiative was launched at an International Forum in Geneva entitled, "Public-Private Partnerships for Infrastructure Development: The Next Steps" on 4 and 5 December 2000.

³ The Guidelines, which are still draft form, were produced as background information for the WP.5 Forum on Public-Private Partnerships for Infrastructure Development: The Next Steps (4 and 5 December 2000) and were edited by Xavier Bezançon and Rees Griffiths.

⁴ The United Nations Global Compact was introduced by the UN Secretary-General, Kofi A. Annan, on 31 January 1999 at the World Economic Forum in Davos, Switzerland by challenging business leaders to "embrace and enact" a set of nine principles covering human rights, labour and environment. See <http://www.unglobalcompact.org>

⁵ A special thanks to Tore Wiwen Nilson of Mannerheimer Swartling Law Firm and Stanley Park of the law firm Coudert Brothers, in preparing the Negotiation Platform.

the basic structures of PPPs, the Platform goes further by: examining the principles of risk allocation; providing an analysis of the major interests of the host government, private sponsors, and lenders with respect to a PPP; covering the pre-development phase procedures and documents; discussing the issues related to project construction and completion; and providing an analysis of the most significant issues related to the operation of a PPP infrastructure project.

Consultative meetings

In developing its Guidelines the BOT Group gauged support for, and examined the experiences of, governments in the application of PPPs by holding an extensive round of consultative meetings with several governments from central and eastern Europe. These consultations were designed to evaluate the legal and regulatory framework and the feasibility of applying PPPs to certain infrastructure projects. Extending its reach beyond Europe, the BOT Group, in cooperation with UN/ESCAP, also conducted a consultation and training programme with representatives of the government of Bangladesh.

Filling the public sector skill gap

During the course of the BOT Group's work the importance of establishing a specialized agency or task force to promote and enhance the effectiveness of PPPs within governments became evident. The complexity and sophistication of PPP arrangements places a significant burden upon the government. Such projects require the development of new skills in public officials such as skills in writing output specifications, negotiating long-term contracts, and a solid understanding of the financing products used to fund PPPs. Recognizing this burden, a number of Western governments with significant PPP programmes have sought to address their own skill shortage by creating specialized units, staffed in the main by private sector experts. These experts are recruited to support the public sector in developing high-value PPP projects. Recognizing that government officials in the transition economies are no better grounded in the requisite skills than their counterparts in western economies, the Group perceives that this skill shortage could be a primary bottle-neck to implementing projects in the region. As a result the BOT Group is prepared to assist transition countries in addressing this skill shortage.⁶

Next steps

While the work of the UN/ECE BOT Group and other international organizations has assisted in the development of PPPs in the transition countries, much still needs to be done. The pace of project development is far slower than in other regions of the world. A detailed account of why this is so is beyond the scope of this article; however, the critical areas in need of improvement are: legal and regulatory structures; properly trained civil servants in dealing with PPPs; and enhancing interest among the private sector in the region, especially by the commercial banks, in PPP schemes.

Regional Flagship Initiative

In the aftermath of the recent war in Kosovo, and other conflicts in south-eastern Europe, reconstruction has become a major concern to the international community in securing peace and stability. Even though the Stability Pact has already made progress in earmarking funds for quick start projects, the amount is clearly

⁶ The BOT Group has been requested by the government of the Czech Republic to provide advice on establishing a special task force within its government to develop PPPs.

insufficient for such a massive undertaking.⁷ As a result, the active participation of the private sector will be necessary to fill the gap. In response to this shortcoming, a Regional Flagship Initiative (RFI) under the auspices of the (OECD/UK government) Investment Compact of the Stability Pact was launched on 5 December 2000.⁸ The RFI will help to: develop PPPs, create support for regional cooperation, raise awareness of new project finance techniques, enhance opportunities for the local business community, improve legal and regulatory frameworks, and generate greater coordination among multilateral and bilateral as well as international and regional financial institutions.

The RFI will address these challenges in a step-by-step process in order to bring about the greatest results possible. Stage one will involve the creation of strategic task forces for regional partnerships in project development in order to develop priority projects. In bringing these priority projects forward, members of the task forces will use their experiences with successful projects to develop similar projects in south-eastern Europe. In addition, government representatives will present projects that could be developed on a private financing basis for initial assessment. Members of task forces will also help in determining the degree of government involvement and support necessary to make proposed projects viable while looking for ways in which regional cooperation could be helpful in the development of these projects. Finally, the task forces will evaluate the enabling legal and institutional environment that is required for developing these projects.

The second phase of the RFI will focus on regional legal and regulatory harmonization to simplify the environment for investors. A regional symposium on the legal issues related to PPPs will be held in the first half of 2001 to promote the improvement of the legal and regulatory framework in the region. This symposium, organized in cooperation with UNCITRAL and to be held in Slovenia, will determine legislative and institutional gaps that need to be filled in order to attract private investment for infrastructure. The final phase of the RFI will focus on institutional capacity-building. It is important that governments at both the national and local levels learn how to protect their interests and those of their citizens when negotiating with skilled counterparts from the private sector. To address this challenge, several extensive regional training seminars will be held for negotiators, using real PPP cases. Provision-ally, the governments of Albania, Bosnia and Herzegovina and Bulgaria have expressed an interest in hosting these seminars.

In addition to the actions described above the RFI will encourage and support the creation of PPP structures within governments. Such a body, either regional or national, should also become a centre of excellence for the public sector and a “one stop shop” for the private sector. Encouraging such a culture over time ensures clarity and efficiency, particularly where BOT and concession projects are considered. This development eventually translates into lower risk profiles and finer margins on the financing. Such a coordinating body can focus on policy and lessons learned from previous projects and may be best placed within the Ministry of Finance or the Office of the Prime Minister. In order to help governments achieve this result, the UN/ECE BOT Group will advise governments on establishing a PPP Task Force Unit capable of developing projects at a pre-feasibility stage. Further, a training programme on how to develop these units, the structure and modalities of developing projects, as well as a programme on project appraisal will be held.

⁷ The Stability Pact is a political declaration of commitment and a framework agreement on international cooperation to develop a shared strategy among more than 40 countries, organizations and regional groupings for stability and growth in south-eastern Europe. See <http://www.stabilitypact.org>

⁸ 11 The Investment Compact of the Stability Pact sets out a number of commitments for policy reform which countries in south-eastern Europe need to implement in order to create a robust and sustainable market economy and to encourage local and foreign direct investment.

Public-Private Partnership Alliance

In addition to the RFI, a Public-Private Partnership Alliance was recently created. Open to governments, companies and inter-national organizations, it aims at providing a framework for cooperation between the public and private sectors and creating a network of government agencies and private-sector partners throughout Europe to provide information and advice on best practices. The PPP Alliance is designed to stimulate interest in and awareness of PPP methodologies, support the development of PPP projects that take account of social development and environmental sustainability within a market oriented framework, offer a neutral mediation service for recovering projects that encounter difficulties, provide policy-makers with details of successful PPPs and provide examples of legislation that can enhance the probability of developing a successful PPP. The scope of the Alliance expands beyond that of Europe and the CIS, to other regions of the globe looking for support and cooperation in the promotion of PPPs. Within this framework, the success and failures of projects are tracked so that new innovative processes can be developed taking into account the unique circumstances of each region and avoiding a “cookie cutter” approach to ensure the maximum impact of a PPP.

Conclusion

“The demand for infrastructure development in central and eastern Europe and the CIS is acute. For governments and private sector alike, this represents both a challenge and an opportunity. The challenge is unquestionably complex, but the potential rewards are immense: not only do PPPs provide a means of meeting an immediate need for services and facilities, but their implementation will serve to promote economic and commercial growth and development. Even if progress in this field to date has been limited, there is now widespread recognition that PPPs represent one of the keys to development in the transition economies.”⁹

Ultimately, the success of PPP projects will depend on ensuring a proper synthesis of public and private sector strengths, skills and resources that satisfies the priorities of both within each project. The PPP Alliance hopes to harness the vision and determination of both the public and private sectors to bring about PPPs capable of making a valuable and lasting impact sustainable for the economic and social revitalization of the region.¹⁰

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⁹ United Nations Publication, *Public-Private Partnerships, A New Concept for Infrastructure Development*, p. 18 (1998). A special thanks to Christopher-Clement Davies for his contribution to that publication.

¹⁰ For further information on how to join or become involved in the UN/ECE BOT Group or the PPP Alliance, please contact: Geoffrey Hamilton Travis D. Coleman United Nations Economic Commission for Europe Coordination Unit for Operational Activities Palais des Nations – Office 433 CH-1211 Geneva 10 Switzerland Tel: +41 (022) 9172838/1379 Fax: +41 (022) 9170178 Email: Geoffrey.Hamilton@unece.org UN/ECE BOT GROUP Website: <http://www.pppgroup.net>