

PPP Country Paper

Mauritius

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NETWORK Public-Private-Partnership
Working Group

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Axis Consulting
The Cross Sector Advisory

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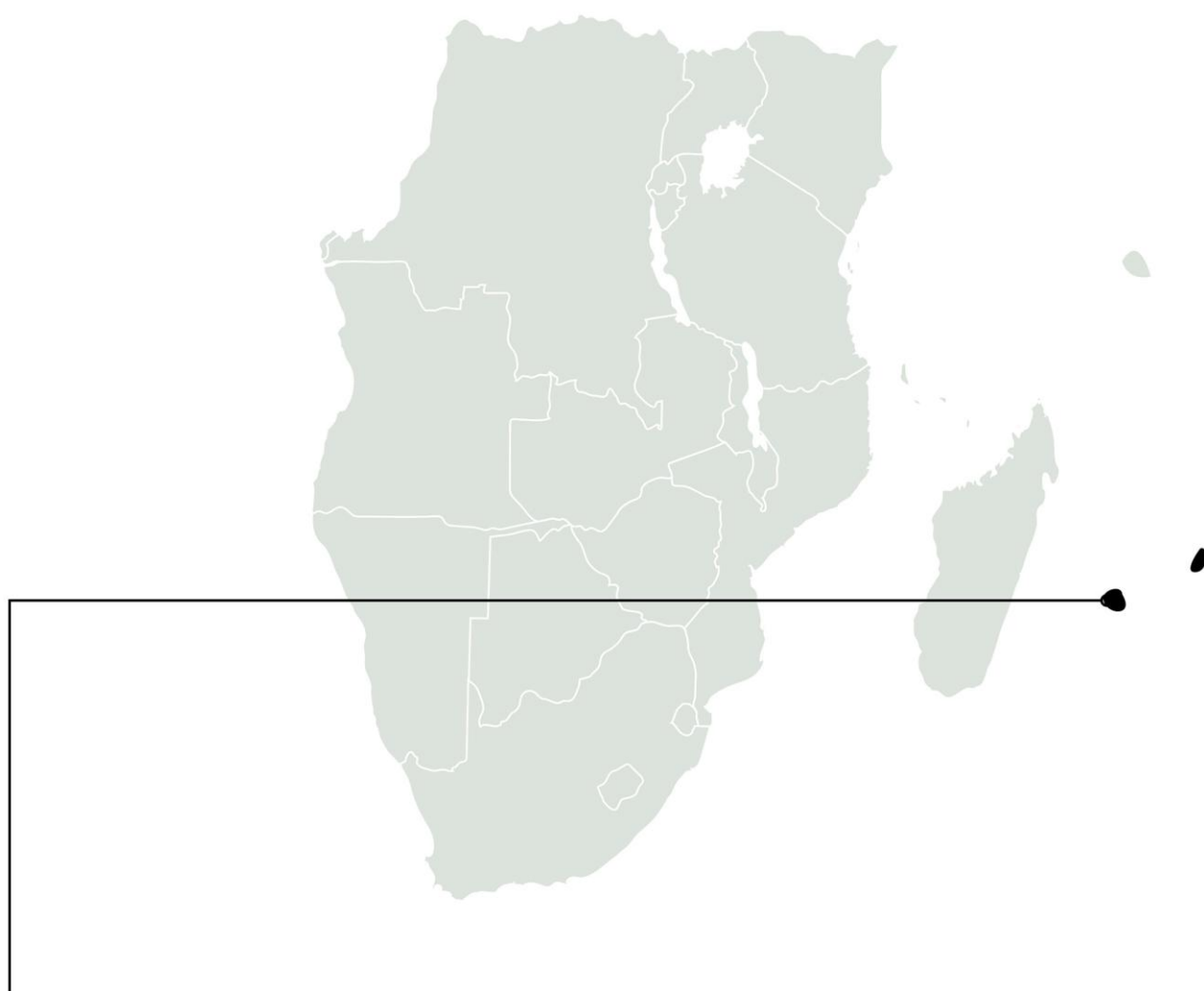
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List of Abbreviations

| | |
|---------|---|
| AfDB | African Development Bank |
| BOT | Build, Own and Transfer |
| BOOT | Build, Own, Operate and Transfer |
| BOO | Build, Operate, Own |
| CPS | Country Partnership Strategy |
| CTB | Central Tender Board |
| DBOF | Design, Build, Operate, Finance |
| DBO | Design, Finance, Operate |
| IDA | International Development Assistance |
| IPP | Independent Power Project |
| GDP | Gross Domestic Product |
| GOM | Government of Mauritius |
| MLRT | Mauritius Light Rapid Transit |
| MOFEE | Ministry of Finance and Economic Empowerment |
| MEDFSCA | Ministry of Economic Development, Financial Services and Corporate Affairs |
| MoF | Ministry of Finance |
| OECD | Organization for Economic Cooperation and Development |
| PPIAF | Public-Private Infrastructure Advisory Facility |
| PPP/s | Public Private Partnership/s |
| SADC | Southern African Development Community |
| SADC3P | Southern African Development Community- Development Finance Resource Centre PPP Network |
| VfM | Value for Money |





KEY INDICATORS - 2012

Mauritius

| | |
|------------------------------|--------------|
| Population (Mio.) | 1.3 |
| GDP per capita (US\$) | 8.850 |
| PPP Level of Maturity | High |

(Regional Strategy Paper, 2012)

1. Engagement Overview

XS-Axis Consulting, Wehrheim (The Cross Sector Advisory) has been engaged by the Client, Southern African Development Community-Development Finance Resource Center PPP Network (SADC3P) to prepare 14 country papers taking a look at current practice of PPPs with a specific focus on PPP Policy, Institutional Arrangements, and Legal Frameworks as a follow-up of the Draft Regional Strategy paper submitted to SADC3P in November, 2012. This paper focuses on Mauritius' PPP Policy, Institutional Arrangements and Legal Frameworks as a Member State in SADC providing specific recommendations for the implementation or enhancement of private sector participation in the development of public infrastructure in the country. The main objective is to serve as a strategic paper for the Government of Mauritius and its Ministries in order to refine, develop and ultimately develop further its PPP Policy, Legal Framework, and Institutional Arrangements aimed at closing the 'infrastructure gap', and its negative impact on economic growth, job creation and social cohesion in Mauritius. Moreover, the country paper shall serve the SADC3P Network to identify areas of support to be offered by the SADC3P Network towards identified Member States.

We render this report to the best of our knowledge and belief. Our results are based on the most recent verifiable information available at time of the report. Public sources were used where appropriate and fact based observations were made.

2. Introduction

Mauritius, officially the Republic of Mauritius is an island nation in the Indian Ocean about 2,000 kilometres off the South-East coast of the African Continent and has a population of 1.3 Million (Mio.). Since July 2012, Kailash Purryag has been President of Mauritius for a term of five years which according to African Development Bank (AfDB) has as a country held up well against the persistent global economic turbulence (African Development Bank (AfDB), 2013, web page). It is ranked as a middle-income high performer country by the World Bank indicating a good economic performance with Gross Domestic Product (GDP) growth rate of 3.5% in 2012, down from 3.8% in the previous year (World Bank, 2013, web page). AfDB and World Bank support to Mauritius both focus on two pillars including enhancing competitiveness and trade integration aimed at ensuring sustained long-term growth, and improving public sector efficiency as well as basic services delivery focusing on sustaining and consolidating reform achievements. Other reform activities shall include fiscal consolidation, and improving investment climate as well as democratizing the economy through participation, inclusion and sustainability. The AfDB estimates a recovery in medium-term forecast of between 3.8% and 4.2% as far as the annual growth rate for 2013 and 2014 is concerned (AfDB, 2013, web page).

Mauritius' global competitiveness is quite high with a ranking of 54 of an overall 144 countries, thus performing quite well compared to other SADC Member States (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.274). Rankings for Mauritius as far as the infrastructure quality is concerned compared to other SADC countries --this relates to the quality of the overall infrastructure and quality of roads, railroad infrastructure, port infrastructure, air transport infrastructure, and available airline seat kilometres-- is also quite good (ranking 52) reflecting the Government's success of efforts to improve the level of service provision as far as infrastructure is concerned. Overall, the medium level of competitiveness of Mauritius is an indication of its Government's and policy makers' commitment, and its political will as an essential driver to achieving sustainable growth in the country and prosperity for its people. In terms of the most problematic factors affecting doing business in the country, the Global Competitiveness Report 2012-2013 provides



an insight focusing on government bureaucracy and insufficient innovation as well as corruption as three main limiting factors hindering progress in Mauritius. Also the quality of infrastructure remains a bottleneck to proper economic performance (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.274).

Mauritius has developed a Public Private Partnership (PPP) Framework composed of a number of different Statements, Acts, and Guidelines to have emerged in the past 10 years. The PPP Policy was formulated in 2003 aimed at encouraging private sector to play a larger role in procuring and financing infrastructure projects and services via well-designed PPPs. The PPP Unit Act was enacted in 2004, and the PPP Guidance Manual was developed in June 2006 to provide further assistance and directions on how to process PPPs and manage them. The Unit was established in July 2008 under the aegis of the Ministry of Finance and Economic Empowerment (MOFEE). In 2010, IP3 conducted a review of the Legal and Institutional Framework of PPPs in Mauritius based on a grant obtained from the Public-Private Infrastructure Advisory Facility (PPIAF). The idea was to support the Government of Mauritius (the “Government”) in improving its Framework for PPPs and strengthening the PPP project pipeline.

At the same time, in the past fifteen years, Mauritius has been attempting to implement PPP-type projects as it has been proceeding with the establishment of a Policy, Legal, and Institutional Framework. Pilot PPP projects have been promoted in a number of sectors including Independent Power Projects (IPPs), a private flour mill at Port Louis, a PPP in the water and wastewater sectors, and others. As of 2010, Mauritius was preparing a portfolio of six PPP projects including Highland’s modern town project of the State Land Dev. Co, the Rose Hill Integrated Mixed-Use Facility, the Port Louis Ring Road & Harbour Bridge Tolling System, the Bigara Curepipe 25-40 MW Windpark Project, the Mahebourg Waterfront Development Project (Phase 2), and the Curepipe Integrated Mixed-Use Facility Project (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.32).

In spite of considerable efforts, the level and pace of PPP project construction and operation has been less than expected and below what is required to fulfil the need in Mauritius for improved, expanded, and more competitive infrastructure. Especially, from the perspective of private sector, investing in PPPs in the country has resulted in some frustrating experience –a recent example is procurement of a PPP aimed at achieving road de-congestion to be designed as a milestone project for Mauritius; the project was cancelled short before reaching financial close without providing proper information to the market on reasons for cancellation and thus leaving the investors with lack of trust and credibility in procurement in Mauritius.

Other PPPs include a wind farm project at Bigara Curepipe South with estimated costs of US\$ 33 million which was planned in 2009 as a PPP; feasibility studies were completed. Currently, the Government of Mauritius (“GoM”) through the Ministry of Public Infrastructure, National Development Unit, Land Transport and Shipping intends to procure the Design, Construction, Finance, Operations and Maintenance of the Mauritius Light Rapid Transit (MLRT) system (the “Project”) through a PPP model. The MLRT project is a significant public transport infrastructure project and is aimed at alleviating traffic congestion by providing an affordable and sustainable public transport alternative within the Curepipe to Port Louis corridor (<http://amarbheenick.Blog-spot.de>).

This paper is to be considered as a follow-up strategic document to the Regional Strategy paper submitted to SADC3P in November, 2012 recognizing that PPP Frameworks do not develop in isolation, but evolve over time along a PPP maturity curve that often responds to various challenges



faced while actually implementing PPPs in specific cultural, legal and procedural and institutional settings. The Regional Strategy document examined the current status of PPP Frameworks across all Member States to classify SADC countries into four categories as far as their level of maturity of PPP frameworks is concerned. It distilled Mauritius to belong to those few developed countries in SADC that have early on established a PPP Framework aimed at promotion of their PPP schemes. The next chapter will elaborate on Mauritius' specific PPP experience, its PPP Policy, Legal and Institutional Framework as a continuation of the above mentioned cross-country Regional Strategy aimed at providing an in-depth insight into the specific country strategy for Mauritius.

3. Methodology

Our approach in this country specific paper is to provide an overview of Mauritius' PPP Policy, Institutional Arrangements, and Legal Framework by taking into account the country-specific strategies, and drivers for resorting to PPPs considering the individual level of PPP development in the country. The ultimate idea is to draw lessons for Mauritius, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document distilled Mauritius in 2012 to belong to those few advanced nations in SADC to have implemented a Framework on PPPs, and established institutions to promote the existing Policy and Legal Framework. This paper will touch upon this evaluation and move further to analyze the current progress made in Mauritius aimed at depicting those developments made since 2012 as far as the PPP Framework conditions are concerned.

Methodologically, we will first take a look at the definition of the term PPP in Mauritius since experience across countries shows that lack of a proper term and definition of what a PPP typically encompasses does indeed result in poor implementation of PPP schemes. Next, we will evaluate Mauritius' approach towards developing a PPP Framework based on the recommendations provided to the Minister's of Finance and the road map developed for SADC countries aimed at establishing a typical good practice PPP Framework. This includes the evaluation of Mauritius' PPP Framework in terms of its PPP Policy –examining whether its Policy contains Government's formulation of its objective to use PPPs, the scope of the PPP program and the implementing principles. Then, we will consider whether Mauritius' operational Framework related to the implementation of PPP processes and the institutional responsibilities underpins its national PPP scheme. In addition, we will take a look at the legislature and entities participating in the PPP program as an integral part of any good Framework approach. Ultimately, we will evaluate as to whether the country's PPP programs are backed up by prudent laws and regulations enabling public sector to enforce and implement PPPs and set the boundaries within the contractual context. The overall idea is to distil proper recommendations from our work for SADC3P, and the Government of Mauritius as far as next steps is concerned.

4. Examination of the Term PPP

The Mauritius definition of what the term PPP encompasses may not only be depicted from Government's PPP Policy Statement issued in 2003, but also the PPP Act dated 2004. They differ partially and render some confusion in terms of which definition has priority and whether these definitions complement each other or serve as substitutes. According to Section 3 of the Policy Statement, the Government understands PPPs as “..... a contractual agreement between a public entity and a private entity, whereby the private entity performs part of a government organisation's service delivery functions, and assumes the associated risks for a significant period of time. In return, the private entity receives a benefit / financial remuneration according to predefined performance criteria, which may be derived:

- entirely from service tariffs or user charges,



- entirely from Government budgets,
- or a combination of the above.

The public sector retains a significant role in the partnership project, either as the main purchaser of the services provided or as the main enabler of the project. It purchases services and specifies the service outputs/outcomes required as well as the performance criteria for payments. The private party commonly provides the design, construction, operation and possibly financing for the partnership project, and is paid according to performance. Risks are identified and placed with the party best able to bear and manage them at lowest cost” (Ministry of Economic Development, Financial Services and Corporate Affairs May, PPP Policy Statement, 2003, Section 3, p.3).

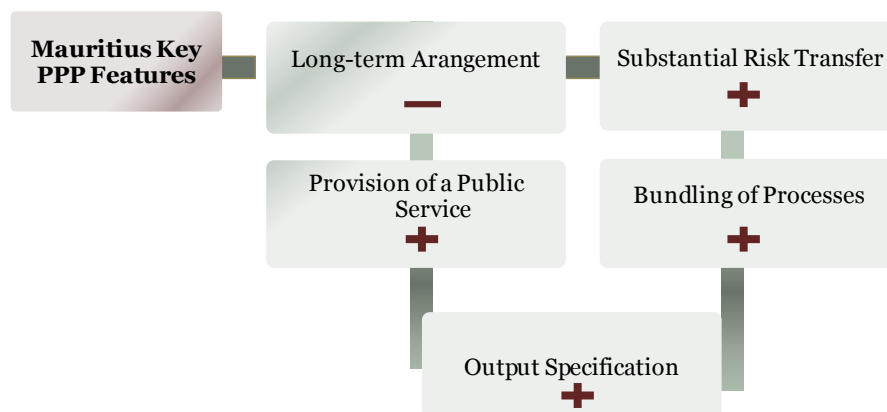


Chart 1: PPP Term as defined in the Policy Statement 2003

Based on the above, the 2003 definition of PPPs in Mauritius does take account of the most relevant drivers of PPPs (See next chart). However, in 2004 the Government introduced a revised definition in the PPP Act as follows: “.... an agreement between a contracting authority and a private party, in terms of which (a) the private party undertakes to perform a contracting authority’s function on behalf of the contracting authority for a specified period; (b) the private party receives a benefit for performing the function by way of (i) compensation from a revenue fund; (ii) charges or fees collected by the private party from users or customers of a service provided by it; or (iii) a combination of compensation and charges or fees; (c) the private party is liable for the risks arising from the performance of its function; (d) state facilities, equipment or other state resources may be transferred or made available to the private party...” (PPP Act, 2004, Article 2).

The Policy Statement was more explicit about bundling options for design, construction and operation of services. The PPP Act eliminates expressly the reference to provision of a facility or service by private sector through a PPP arrangement. A facility or service would need to be a function of a contracting authority to fall within the meaning of a PPP and for the PPP Act to apply. However, it remains unclear which functions are usually referred to and whether bundling may be applied when entering into a PPP arrangement. Performance of functions of a contracting authority usually relate to design and construction of an asset, jointly with operation of associated services, and provision of finance, if required. Furthermore, the provision in (c) of the definition of PPP agreement that a private party is liable for the risks arising from the performance of its function is unclear since first of all the definition in the Act refers to the private party undertaking to perform the function of a contracting authority, and not its own function, and second of all risks in performing a function are usually allocated between both parties and private partner is rarely liable for all risks arising from the arrangement. On top,



Section 6 says that the agreement provides for sharing of risks. Furthermore, IP3 notes that the term a “revenue fund” is not defined in the Act (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.190). Overall, a better and more precise definition of the term PPP is required.

Nevertheless, the PPP Guidance Manual issued in 2006 clarifies further the term to note that the essential aspects of a PPP arrangement, as distinct from direct delivery of a public service by a Ministry include a focus on “the services to be provided, not the assets to be employed; and a shift of the risks and responsibilities to a private provider for the activities associated with the provision of services. The key difference between traditional procurement and PPP is that a PPP requires the use of an output specification by Government to describe the outputs the private sector must provide as part of the complete service” (Ministry of Finance and Economic Development, PPP Unit, PPP Guidance Manual, 2006, p.5). Thus, output specification has been an underpinning element of the term in Mauritius.

5. Application of SADC PPP Framework Road Map

The experience to date across comparators and SADC countries indicates that there is no unique formula for developing a sound PPP Framework. More specifically, the development of a common framework for SADC needs to take into account the economic and political context of countries, their historically grown institutional and legal structures as well as the actual experiences with PPPs so far, with some countries having made considerable strides and others having made very little progress, and some none at all. Nevertheless, if PPPs are to work and render the expected results, we suggested in the Regional Strategy document a number of requirements for a proper PPP Framework with key features related to Policy, Institutional Structures and Legal setting (see next chart).

SADC Framework Roadmap

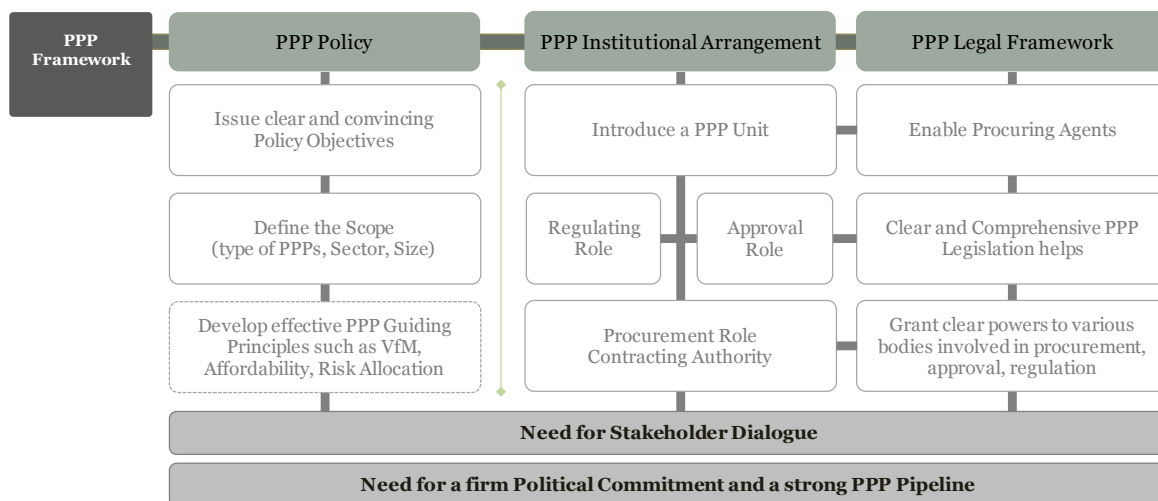


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

Thus, successful PPP schemes are characterized by clear policy statements, competent and enabled institutions that can appropriately identify, procure and manage PPPs, and efficient oversight procedures as well as proper Legal Frameworks. Nevertheless, it must be borne in mind that firm political commitment, stakeholder dialogue and a number of other factors such as a sound and strong PPP pipeline are important contributing factors for the promotion of PPPs in a larger context. It is also important to be aware of the contribution of sector reforms and their role



in developing and supporting PPP schemes. In a number of countries, sector institutions, for instance, power sector regulators have had an important role as far as the promotion of IPPs and investment in the power sector are concerned. It is in this context that Member States with a low level of PPP maturity should acknowledge the relevance of sector institutions in terms of their contribution towards developing PPPs over time and across various sectors --which are however best supported by setting up efficient and proper frameworks at the national level. In this section, we examine these various elements of a PPP Framework to see how far Mauritius has proceeded in terms of its PPP Policy implementation and practice as well as looking into its Institutional structures and Legal Framework more in-depth as well as the political commitment of the Government and its approach towards stakeholder integration into the PPP process.

5.1 PPP Policy in Mauritius

The PPP Guidance Manual issued in 2006 provides relevant insight into the evolution of PPPs in the country. Accordingly, in 2002 first attempts were made to formalize the concept of PPPs in Mauritius with the idea of defining the Government's Policy as "an alternative means of financing public infrastructure and other major capital projects" (Ministry of Finance and Economic Development, PPP Unit, PPP Guidance Manual, 2006, p.2). In that year, initial steps were taken towards the enactment of a new enabling legislation; and a Joint Task Force on PPP was established -- supported by a PPP Unit at the Ministry of Finance and Economic Development-- to develop the Legal and Organisational Framework of the PPP.

The PPP Policy Statement published in May 2003 was to set out the Framework for using PPPs in Mauritius. It must be highlighted that the Government of Mauritius does not usually issue Policy Statements prior to introducing new Legislation. Thus, the Policy Statement issued by the Ministry of Economic Development, Financial Services and Corporate Affairs was an exception being introduced prior to the legislation that became the PPP Act in 2004. The 2003 Policy Statement has since been overhauled by events, including changes in the composition of Government, the Act and further regulations being passed (Ministry of Finance and Economic Development, PPP Unit, PPP Guidance Manual, 2006, p.2).

As far as the objectives of introducing PPPs is concerned, Section 5 of the PPP Policy Statement notes that it is Government's intention to encourage innovation in as many areas as possible. Section 4 of the PPP Policy Statement provides further insight highlighting that PPPs offer "...both strategic and operational choices to Government. Strategically, the use of PPP fosters economic growth by developing new commercial opportunities and increasing competition in the provision of public services, thus encouraging crowding-in of private and/or foreign investment. At the same time, it allows Government to set policy and strategy, and where appropriate, to regulate economic activities, while leaving service delivery to the private sector. Operationally, PPP provides opportunities for efficiency gains (better quality and more cost-effective delivery of services), better asset utilisation, clearer customer focus (since payments are typically linked to performance rather than service inputs), and accelerated delivery of projects" (Ministry of Economic Development, Financial Services and Corporate Affairs, PPP Policy Statement, 2003, Section 4).

IP3 draws attention to be aware of the reality and perception of PPPs in the country. Some officials in Mauritius convey a different view by expressing that PPPs would be primarily adopted because of the opportunity to transfer risk to private sector and not because of any financial need on the part of Government (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, 169).

The PPP Policy Statement Section 5 determines the scope of PPPs in Mauritius to encompass sectors such as transport, public utilities (energy and water), solid and liquid waste management,



health, education and vocational training and ICT. A later schedule to the PPP Act 2004 provides a more in-depth definition of scope of PPPs. Accordingly, “infrastructure” means any asset, facility or service provided for the benefit of members of the public, or any section of the public and includes, without limitation those assets, facilities and services listed in a Schedule to the PPP Act (for example); “infrastructure” means facilities and systems together with any buildings, structures, parking areas, ancillary facilities and other property needed to operate a facility including the following that are laid out in the next chart. The Government has expanded the sectors where PPPs may be applied to over time.

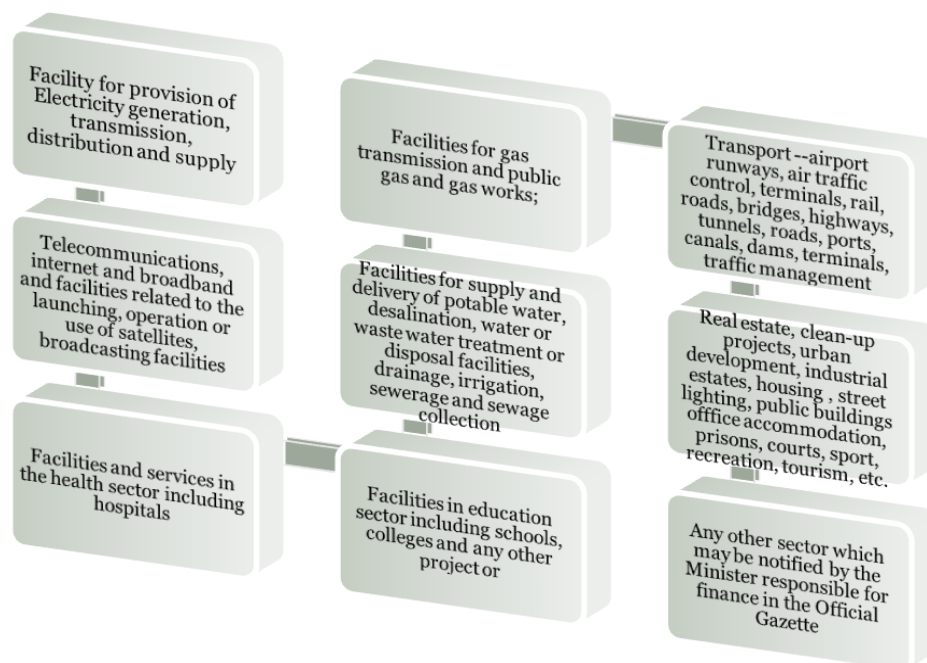


Chart 3: Overview of scope of PPPs according to Schedule to PPP Act, 2004,

Source: The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.171

Section 6 of the PPP Policy Statement further lays out four key guiding principles and pre-conditions which need to be present in the Policy Framework for PPPs since they are considered as critical in delivering successful outcomes. These include affordability, the legislative environment, institutional arrangements and capacity building. Affordability needs to be the cornerstone of all PPP projects. PPP options must be affordable both to Government and the public, given other priorities and commitments.

The PPP Guidance Manual 2006 is the only document that elaborates on types of PPPs to encompass not only short-term contractual arrangements such as service contracts, and management contracts, but also longer-term models such as BOOs, BOTs, and DBFOs. The PPP Guidance manual also provides a listing of relevant criteria to be applied in the selection of relevant PPPs. These include:

- “The project must have clear boundaries and measurable performance in output terms;
- The project must be of a scale and value to be of interest to private sector contractors;



- The project must have a significant element of service or operating content;
- There must be scope for cost effective allocation of risk to the private sector;
- There must be scope for innovation;
- There must be scope for the generation of additional third party revenue” (Ministry of Finance and Economic Development, PPP Unit, PPP Guidance Manual, 2006, p.5).

IP3 analysis emphasizes the need to address some of confusion that has arisen within Government, and also the local private sector about goals, roles, and the overall process for PPPs (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.35). Lack of understanding seems to inhibit the actual implementation of PPP projects in Mauritius. Furthermore, the PPP Policy Statement 2003 seems to have generally been rendered irrelevant since a number of subsequent amendments have been issued --also to the PPP Act of 2004. IP3 recommends in this context a thorough revision of the 2003 PPP Policy to improve the understanding of the term PPP, the rationale, goals, and strategic roles as well as the important foundation for the legal and institutional procedures needed to facilitate PPP project implementation in Mauritius. They suggest allocating the responsibility for drafting a revised PPP Policy to the PPP Unit which may first be discussed, and then adopted by Cabinet to be followed- up by a broad training and capacity-building measures by the PPP Unit. Results cannot be realized simply through ministerial decree or inclusion in a budget speech (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.35).

Types of PPPs

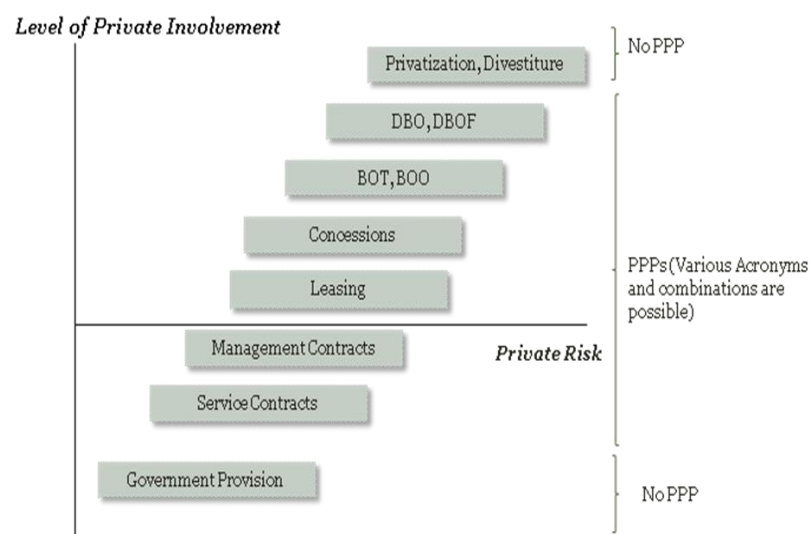


Chart 4: Overview of Types of PPPs in Mauritius, PPP Guidance Manual, 2006, p. 6

The PPP Policy Statement elaborates also on the roles of the Contracting Ministries, Ministry of Finance, the PPP Unit and Ministry of Economic Development, Financial Services and Corporate Affairs (Ministry of Economic Development, Financial Services and Corporate Affairs May, PPP Policy Statement, 2003, p.7). However, the contents of the 2003 Policy Statement are deemed not to be accurate and inconsistent with the current Legal and Institutional Framework (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.39). On top, they are not complete in the range of issues



addressed. Finally, IP3 notes that the Policy is no longer compatible with a streamlined PPP project cycle process in which institutional roles are distinguished, relationships are specified unambiguously and the extent and limits of authority are clearly delineated to provide essential checks and balances for transparency and accountability.

Overall, there seems to be an urgent need for clarification of Government's strategic and sector objectives associated with promotion of PPPs, especially private sector needs more visibility concerning which projects will be implemented on behalf of the Government. Thus, developing a credible pipeline and communicating Government's commitment are essential to further advancement of the PPP landscape in Mauritius. Furthermore, there is need for an updated and strengthened PPP Policy Statement to help getting a common understanding --both Government and private sector in Mauritius-- on the purpose of PPPs, the principles for their preparation and implementation. Currently private sector leaders in Mauritius' financial institutions, property development, industrial, and sugar industries have reported lack confidence in Government's Framework for PPPs and are unwilling to propose new PPPs, and are doubtful that current PPPs such as the Port Louis Road Decongestion Project will work. A more clear statement would provide the foundation for addressing this important long-term constraint to PPPs in Mauritius. Finally, there is need for adoption of a more policy oriented leadership on PPPs and to convey to private sector and financial institutions on the pipeline and the continuous political commitment for PPPs to achieve policy goals.

5.2 PPP Institutional Responsibilities in Mauritius

International experience suggests that identifying and establishing clear and unambiguous institutional functions in relation to PPPs early on in the onset of a country's PPP programme can greatly assist in successful PPP implementation. At the same time, it is useful to have a degree of institutional flexibility in the early years of a country's PPP programme, to encourage experimentation and innovation, and importantly, to ensure that public bodies that have capacity are not delayed while institutional capacity elsewhere is being developed. While institutional roles and responsibilities may change over time as Government's experience with PPP grows, a number of public institutions in Mauritius play important roles in the promotion of PPP schemes. The next chart illustrates the institutional changes in Mauritius since 2005.

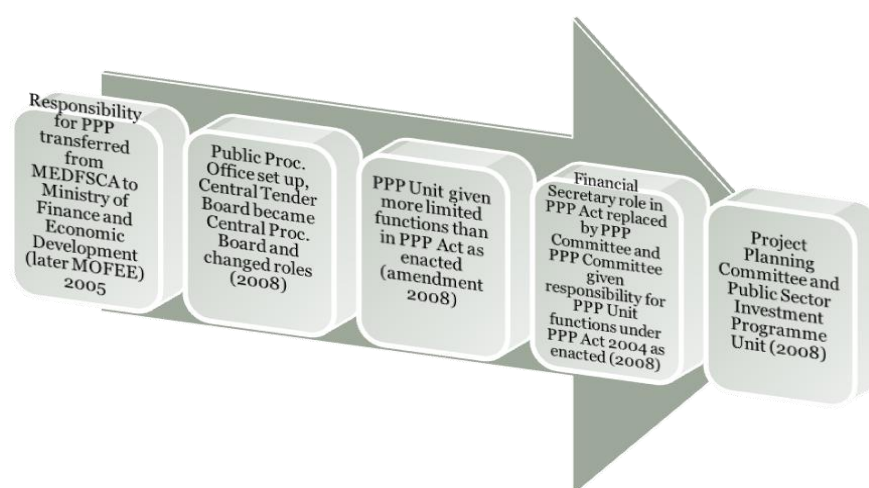


Chart 5: Overview of Institutional Changes in Mauritius since 2005.

Source: The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.167



Contracting Authorities (CAs), and other public bodies are owners of PPPs and play a lead role in the identification, selection and monitoring of PPP projects in their sectors. Sectors with capacity are encouraged to move forward with their projects, subject to them being affordable and generating Value for Money (VfM). Sectors with less capacity shall receive assistance from the PPP Unit and external transaction advisers. Ministry of Finance plays a key role in assessing the budgetary implications of PPP projects. The PPP Unit works closely with the Ministry of Finance in the assessment of PPP project affordability, VfM, feasibility, and contingent liabilities associated with PPP projects.

Ministry of Economic Development, Financial Services and Corporate Affairs (MEDFSCA) through its recently established PPP Unit shall be the driver of PPP Policy and responsible for its development and refinement over time. As the process develops and moves into the implementation stage, the PPP Unit shall ensure effective stakeholder engagement, market interest and momentum of the process (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.82). The PPP Unit shall also support ministries and other public bodies to ensure that their PPP projects are carefully appraised, scoped and planned prior to initiating a procurement process. Transaction advisers are recruited as and when required to assist in this process. As Mauritius gains experience with PPPs, the PPP Unit shall develop guidelines on best practices to assist sector Ministries in the roll-out of their PPP projects.

5.2.1 Role of PPP Unit/s in Mauritius

The PPP Unit was established in 2002, and its role was set out in the PPP Policy Statement 2003 and in the PPP Act 2004 (prior to amendments). The PPP Unit initially reported on PPP matters through MOFEE's Finance Secretary. However, amendments to the PPP Act in 2008 have required the PPP Unit to report to a PPP Committee, consisting of representatives from the Public Procurement Office, and the MOFEE.

The role of the PPP Unit is to assess projects on the basis of affordability, VfM and appropriate risk transfer, which constitute three basic principles of PPP project appraisal (see next chart on the role of the Unit). It also examines the request for proposals to ensure conformity with the approved feasibility study, and advises Government on administrative procedures in relation to PPP projects. Furthermore, it develops best practice guidelines in relation to all aspects of PPP; formulates policies in relation to PPP projects; and promotes PPP awareness in the country (SADC Banking Association, Newsletter 3).

It is important to note that the role of the PPP Unit has changed from the PPP Policy Statement to the PPP Act as it was enacted. The Policy Statement saw the PPP Unit as a vehicle through which MEDFSCA was to drive PPP Policy, supporting ministries and other public bodies to ensure that PPP projects were carefully appraised, scoped and planned prior to initiating a procurement process and assisting sectors with less capacity to move forward with projects and working closely with Ministry of Finance in the key role of the Ministry in assessing PPP budgetary implications (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p. 173). Instead, the PPP Act (as enacted) has seen the PPP Unit as an entity within the Ministry of Finance that has little or nothing to do with contracting authorities or projects but with a policy development role, carrying out fiscal risk assessment rather than working closely with the MoF on this subject, an oversight role developing guidelines and procedures, ensuring conformity between RFPs and feasibility studies and public awareness.

Another weakness is based on the legal status of the Unit itself. The PPP Act as enacted defined a "Unit" as meaning "the Public-Private Partnership Unit established under section 3". Section 3(1)



provides that “there shall, for the purposes of this Act, be a unit within the Ministry to be known as the Public-Private Partnership Unit which shall deal with all matters relating to a public-private partnership project....” Hence the Unit was established as an unincorporated statutory body and not as an administrative Unit of the Ministry created by administrative means. In practice, the PPP Unit has been treated as an administrative Unit, but in legislation, it is a statutory unincorporated body (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.175).

AfDB reports in its country strategy draft report, dated 2009 that staff strength, and the capacity of the Unit is weak and inadequate to carry out effectively its mandate (AfDB, Mauritius 2009-2013, Country Strategy Paper-Draft, Country and Regional Department – South B (ORSB), 2009, p.15). There were plans underway to strengthen capacity of the Unit through a grant of US\$ 0.2 Mio., and a credit of US\$ 0.5 million from the World Bank. The Unit has commenced training aimed at sensitizing both public and private officers in PPP (Ministry of Finance and Economic Empowerment). On top, based on information from Mauritius, there are primarily junior specialists at the PPP Unit providing support to Ministries; however, there is no interaction with private sector on within the Unit. Overall, the promotion of PPPs hinges on getting momentum and introducing more visibility and continuity for the notion of PPPs in Mauritius. The former financial Secretary was more familiar with the concept; however, Government lacks continuity and political stability to deal with such large and complex projects like PPPs.

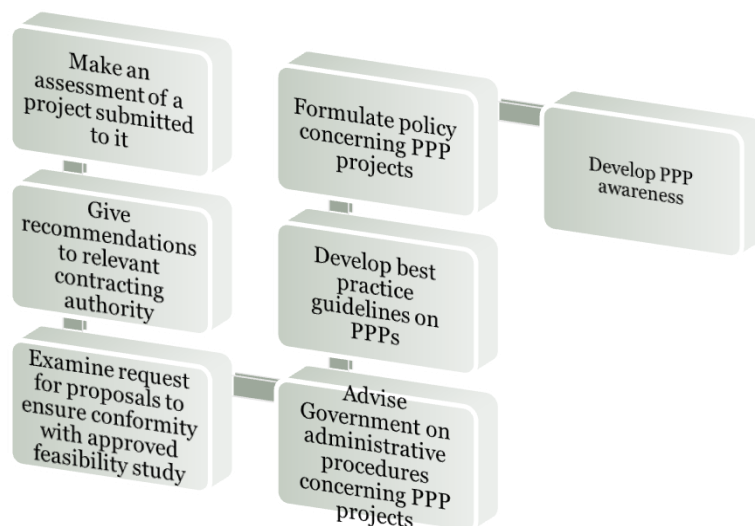


Chart 6: Role of PPP Unit, PPP Act, 2006, Article 3, Paragraph 2

5.2.2 PPP Regulation, Approval and Implementation Roles in Mauritius

The CA plays the lead role in identifying, appraising, developing and monitoring the implementation of its PPP project as well as arranging for a feasibility study to be carried out where it is believed that an opportunity might exist. While the role of the Ministry of Finance and Economic Development remains essentially a regulatory one, the Central Tender Board (CTB) is to ensure the legitimacy and transparency of the procurement process.

The PPP Act as initially enacted stipulated the CA, the Financial Secretary (who referred projects which were to be subject to PPP arrangements to the Central Tender Board) and the Central



Tender Board to be major players in PPP projects (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.175). IP3 emphasizes that the PPP Act has since its proclamation in 2005 been amended a number of times. Thus, the role of the Financial Secretary has been replaced by the PPP Committee which in turn took over the functions that had been given to the PPP Unit in the PPP Act as initially enacted. A 2008 amendment provides that there is set up a unit within the Ministry to be known as the PPP Unit which shall deal with matters relating to a PPP project referred to it by the PPP Committee (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p. 175).

Thus, according to the Act, the CA is the owner of the PPP in charge of identifying, appraising, developing and monitoring a PPP to be implemented. It also needs to make sure a feasibility study is conducted which needs to be submitted to the PPP Unit for its approval, prepare a request for proposal on the approval of the feasibility study and, where the terms of the proposed agreement impact on public finance, seek the approval of the Financial Secretary. The PPP Act provides that a project for which there is no financial or contingent liability for Government shall be exempt from the approval of the Financial Secretary – although in practice it is difficult to think of a PPP project where there would be no financial or contingent liability for Government. Where the Financial Secretary approves the terms of the agreement, the CA shall submit a request for proposal to the CTB (now the Central Procurement Board) to obtain its written authorization to advertise, invite, solicit or call for bids. The CA shall consult the CTB to obtain its written authorisation to conduct what is described as a “pre-selection” exercise after public invitation.

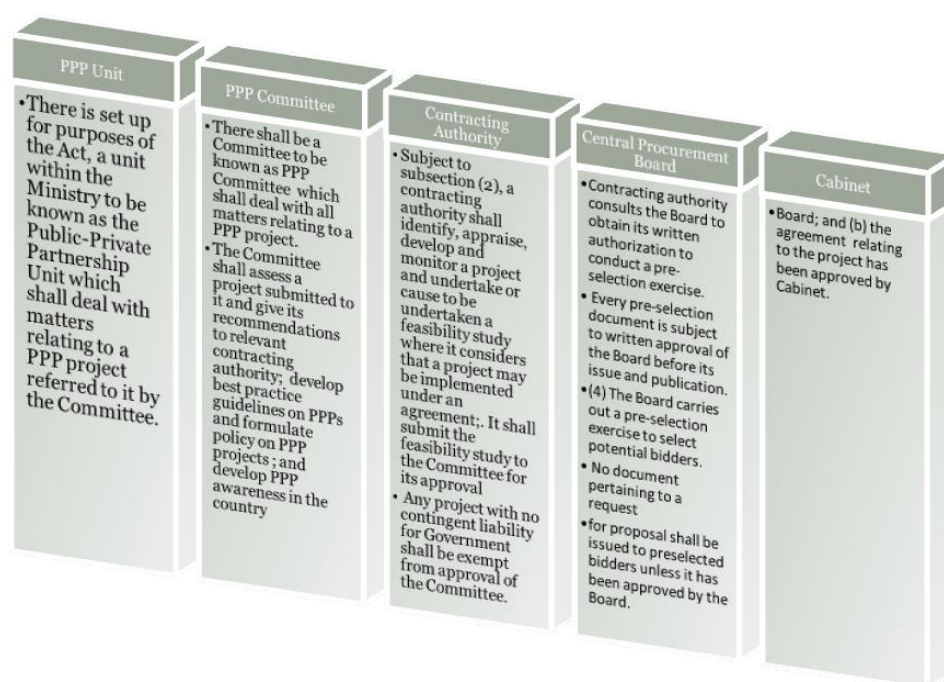


Chart 7: Overview of Roles of various entities in Mauritius,

Source: The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.179

The CTB is responsible for ensuring transparency and equity in the bidding procedures. It examines and evaluates the bids received, makes recommendations to the CA for entering into negotiations with the preferred bidder, and may approve the award of the project. The functions of the Central Procurement Board, which is the successor body to the CTB, have been amended in



the Public Procurement Act 2006 and a Procurement Policy Office has been established. The PPP Act provides that a Contracting Authority shall not award a project or sign an agreement unless the award of the project has been approved by the CTB; and the agreement relating to the project has been approved by Cabinet (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p. 54). The 2008 Amendments to the PPP Act 2004 promulgated in 2005 changed the roles of the PPP Unit with that of the Committee. Thus, it provided for the establishment and functions of the PPP Unit, was deleted and replaced by provisions for the establishment and functions of the PPP Unit and a PPP Committee as well as the process for handling unsolicited proposals. The next chart illustrates the roles of various entities as of 2012.

5.3 Mauritius Legal Framework

Mauritius made back in the 90s early on some efforts to establish a PPP Legal Framework for promotion of PPP schemes in the country. The Government enacted the Concession Projects Act (CPA) already in 1997 which was then repealed in 2001 and replaced by the PPP Act in 2004. In addition, the Procedures Manual for Concession Projects produced by the Concession Project Division of the then Ministry of Finance, 1998-1999 provided some guidance on how to implement PPPs. A series of consultations were made with the PPP Task Force, advisors, the World Bank, the Central Procurement Board, the State Law Office prior to approving the PPP Act. The PPP Act was approved unanimously in the Assembly in November 2004. It was proclaimed in March 2005, and amended in June 2008 to set up a PPP Committee and provide for unsolicited bids. The Legal Framework for implementation of PPPs in Mauritius consists of a number of different regulations, next to the PPP Act of 2004 (as amended) (See next chart for an overview of legal provisions).

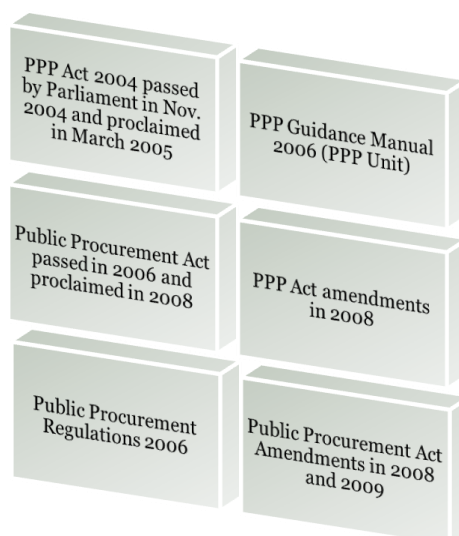


Chart 8: Overview of Changes in Legal Framework in Mauritius since 2003,
Source: The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p. 166

Thus, the Public Procurement Act 2006 (as amended), and the Public Procurement Regulations dated 2008 all apply to procurement of PPPs. Nevertheless, the PPP Act which was proclaimed in March, 2005 provides the legal and administrative Framework for the actual implementation of PPP agreements in Mauritius. The PPP Legal Framework was designed to ensure transparency and equity by entrusting this responsibility to the Central Tender Board (CTB), which is the body responsible for ensuring the legitimacy of the procurement process and approving the selection



of bids in Mauritius (SADC Banking Association, Newsletter 3). The PPP process makes it obligatory to undertake a thorough feasibility study for every envisaged PPP project, such that only financially sound and affordable PPP ventures that generate value for money are implemented.

The PPP Act does not allow unsolicited proposals as these may seriously undermine the competitive process. Since unsolicited proposals have given mixed results in countries where they have been entertained, the Government prefers to proceed cautiously in the initial years of PPP development by restricting itself to competitive tendering. At a later stage however, when more experience has been gathered, such proposals may be considered on a case-by-case basis and as an exception rather than the rule. The PPP Act lays out the responsibilities of major stakeholders throughout the PPP process. These include the PPP Unit established within the Ministry of Finance and Economic Development; the CA which may be any Ministry or Government Department, local authority or statutory corporation; the CTB; and the private partner.

The PPP Legal Framework in Mauritius is broader than the PPP Act. It includes the interface with legislation on public financial management, public procurement, the regulations and procedures for operating the PPP project cycle including PPP procurement, the relationships between different Government authorities relevant to PPP, the PPP legal agreements, contract monitoring and auditing. IP3 finds that a comprehensive PPP law should set out a general Legal Framework on which regulations, procedures, guidelines and instructions and a PPP Manual can be built to enable best practice PPP procurement (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.5). The primary legislation should avoid unnecessary prescription or problematic omissions, but much of the detail can be left to regulations, guidelines and procedures or to the agreement for the PPP arrangement.

The PPP Act 2004, the absence of PPP Regulations made under the PPP Act, the later enactment of the Public Procurement Act 2006 and Public Procurement Regulations 2008, amendments in 2008 to the PPP Act and Public Procurement Act and amendments to the PPP Regulations in 2009 have resulted in the Mauritian Legal Framework for PPPs to be disjointed, incomplete, repetitive in parts and yet not comprehensive. A complete list of these gaps, weaknesses, and constraints in all of the components of the PPP Act is provided in the IP3 report dated 2010.

Based on the above, OECD and IP3 both recommend a revision of the PPP Act and its Implementing Regulations. They propose specific actions to take place. Accordingly, based on the established process for initiating the preparation of draft legislation in Mauritius, the PPP Unit should be endowed with the required authority to prepare revisions to the PPP Act and its Implementing Regulations in consultation with stakeholders and specialist legal advice within different parts of Government (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.6). Thus, they propose that the Unit's new PPP Framework & Capacity Building Manager engages the support of a specialized PPP legal adviser to ensure consistency, coherence and synergy of the PPP policy with the Act. Revisions to the PPP Act and Regulations are prepared and submitted for consideration by the PPP Committee, the Finance Secretary before being revised and circulated for observations within Government. The PPP Act is revised, either through amendment in the Finance (Miscellaneous Provisions) Act, or through submission as a New Bill before the National Assembly. Annual evaluation review of the PPP Law is conducted by the PPP Unit, supported by



specialists as necessary, to determine if it should be further modified and improved

6. Recommendations

Starting with the Budget speech, and a presentation of 2002/2003 budget by the Minister of Finance, the Government of Mauritius announced already early in 2002 its objective to establish a Framework for PPP schemes to be used as a new form of financing infrastructure projects. As its first measure, the Government set up a PPP Secretariat at the Ministry of Economic Development, Financial Services & Corporate Affairs to design a Policy Framework including appropriate legislation. The PPP Policy Statement from the Ministry of Economic Development, Financial Services and Corporate Affairs was published in May 2003. A Unit was established to promote and market PPP projects. It drafted the PPP legislation and produced the PPP Guidance.

Our analysis indicates that the current PPP Policy Framework in Mauritius has not produced significant and meaningful results in terms of PPP activity in the years since the Concessions Project Act 1997 or the ten years since the PPP Policy Statement was published in 2003 (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.39). The PPP Policy Statement has not succeeded in providing a common, clear understanding of institutional roles, responsibilities and relationships for different parts of Government and the private sector throughout the entire PPP project cycle. It has not managed to address many other issues that are essential to a streamlined PPP process, promotion of competition among potential partners and implementation of successful transactions.

Based on information from Mauritius, commitment to PPPs suffers from changes in political leadership, for instance, changes within the MoF have to some extent harmed the development of the PPP environment for PPPs in Mauritius and also the upcoming elections seem to be an inhibiting factor to the promotion of PPPs in 2014. On top, there is lack of clarity on behalf of private sector concerning Government's sector policies in general and PPPs more specifically. This applies to both Ministry of Infrastructure as well as the strategic direction of Ministry of Energy and Public Utilities. On top, despite the fragmented PPP legislation, the most pressing issue relates to the institutional set up of the Unit which seems to lack visibility in the MoF. More senior staff is needed to provide visibility to PPPs in the country.

Furthermore, both IP3, and OECD embark on recommendations to reduce the confusion and uncertainty concerning the PPP Policy Statement to be found in different parts of Government, and among representatives of the private sector and the general public. This relates to basic matters such as what a PPP is, what its aims are, by what means PPP projects may be brought about, what are the roles, responsibilities and relationships of different parts of Government throughout the PPP project cycle and how complex transaction and project issues will be addressed in the interests of the public sector, private sector investors, operators and lenders and the general public (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.41, and OECD Investment Policy Reviews: Mauritius, OECD, 2013, p.39).

Restating Mauritius' PPP Policy would help to accelerate the implementation of a coherent set of actions aimed at improving provision of infrastructure facilities and services through successful PPP projects. A restatement would also bring about a common understanding of PPP goals and



help promote public sector and private sector capacity to identify and realise potential PPP projects. Restating the PPP Policy would finally provide a sound basis for addressing specific problems in Mauritius' PPP Legal Framework as set out in this report. In addition, a strengthened PPP Policy Statement would help to eliminate the current level of confusion and misunderstandings that existing between Government bodies (including the PPP Unit, the PPO, the PPP Committee, MOFEE, PPC, Line Ministries, and Contracting Authorities) about the definition of PPP, which is currently blocking progress on PPP projects such as the Bigara Wind farm project. A strengthened PPP Policy Statement will provide a clear basis for development of a clearer PPP Law (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.45).

As for the PPP Act, OECD finds that it has failed to assist in implementing PPP projects, and is considered as an inadequate Legal Framework for further promoting PPP schemes in the country (OECD Investment Policy Reviews: Mauritius, OECD, 2013, p.39). The PPP Act 2004, as enacted, is substantially different from the contents of the PPP Policy Statement, making the policy-making and policy consultation processes largely redundant. The PPP Act 2004 has been amended substantially since proclamation in 2005 indicating that the policy formation process or the law making process was inadequate. The Legal Framework may best be considered "patchy" in Mauritius and has been subjected to frequent piecemeal changes. The authors recommend improvements to the PPP Act (The Institute for Public Private Partnerships (IP3), Analysis and Recommendations for PPP Legal and Institutional Framework, 2010, p.42). The process of drafting PPP legislation is critical to determining its effectiveness and to promoting the much-needed acceptance and understanding of it in Mauritius. PPP legislation must be seen as practicable by officials, and public sector bodies affected by it and with responsibility for implementation. A full understanding of both the spirit and intent of what the Government seeks to achieve through PPP legislation is essential not only for legislators, but also for key public sector bodies (including the PPP Unit, the MOFEE, the Procurement Policy Office, line ministries, CAs).

Concrete SADC3P Recommendations:

- Strengthen the PPP Unit's visibility and provide support to come up with a sector specific PPP pipeline;
 - Provide assistance to formulate a new document reinstating the PPP Strategy of Government either by issuing a revised PPP Policy or other means;
 - Cooperate with AfDB who is currently assisting Government on promoting PPPs transaction wise;
- Assist in identifying a concrete PPP project and provide support to establish and implement the project.
- Provide assistance to evaluate the current Legal Framework in terms of attractiveness to promote investments.

Based on the above, we recommend likewise IP3 and OECD to revise the coherence of the Legal Framework for PPPs, notably by: clarifying responsibilities among relevant bodies (including the PPP Unit and PPP Committee); strengthening the pipeline of PPP projects in strategic sectors; and updating the 2006 PPP Manual (OECD Investment Policy Reviews: Mauritius, OECD, 2013, p.9). Other reform steps proposed include the establishment of an authority responsible for capacity-building, clarifying responsibilities among relevant bodies (including the PPP Unit and PPP Committee), strengthening the pipeline of PPP projects in strategic sectors, and updating the 2006 Manual for PPP Guidance (OECD Investment Policy Reviews: Mauritius, OECD, 2013, p.39).



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