

# PPP Country Paper

## *Lesotho*

Submitted to SADC-DFRC 3P  
NETWORK Public-Private-Partnership  
Working Group

LIMESSTRASSE 26, 61273 WEHRHEIM - 2013



**Axis Consulting**  
The Cross Sector Advisory

## Table of Contents

List of Figures .....	IV
List of Abbreviations .....	IV
1. Engagement Overview .....	6
2. Introduction .....	6
3. Methodology .....	7
4. Examination of the Term PPP .....	8
5. Application of SADC PPP Framework Road Map .....	9
5.1 PPP Policy in Lesotho.....	10
5.2 PPP Institutional Responsibilities in Lesotho .....	12
5.2.1 Role of PPP Unit in Lesotho .....	13
5.2.2 PPP Regulation, Approval and Implementation Roles in Lesotho .....	15
5.3 Lesotho Legal Framework.....	16
6. Recommendations .....	17



@ This publication includes information obtained or derived from a variety of publicly available and other sources. XS-Axis Consulting has not sought to establish the reliability of these sources or verified such information. XS-Axis Consulting does not give any representation or warranty of any kind (whether expressed or implied) as to the accuracy or completeness of the paper. The paper is for general guidance only and does not constitute investment or any other advice. Accordingly, it does not relieve any third party from conducting its own due diligence in order to verify its contents. The sole purpose of this Country Paper is to provide an overview of Public Private Partnership (PPP) Policy, Institutional Arrangement and Regulatory Framework as means of assisting the Client, Southern African Development Community-Development Finance Resource Center PPP Network (SADC3P), and its Member States to improve their Framework, and develop a common ground for aspiring potential harmonization of national PPP Policies.



## List of Figures

Chart 1: PPP Term in Lesotho based on Draft PPP Policy Document

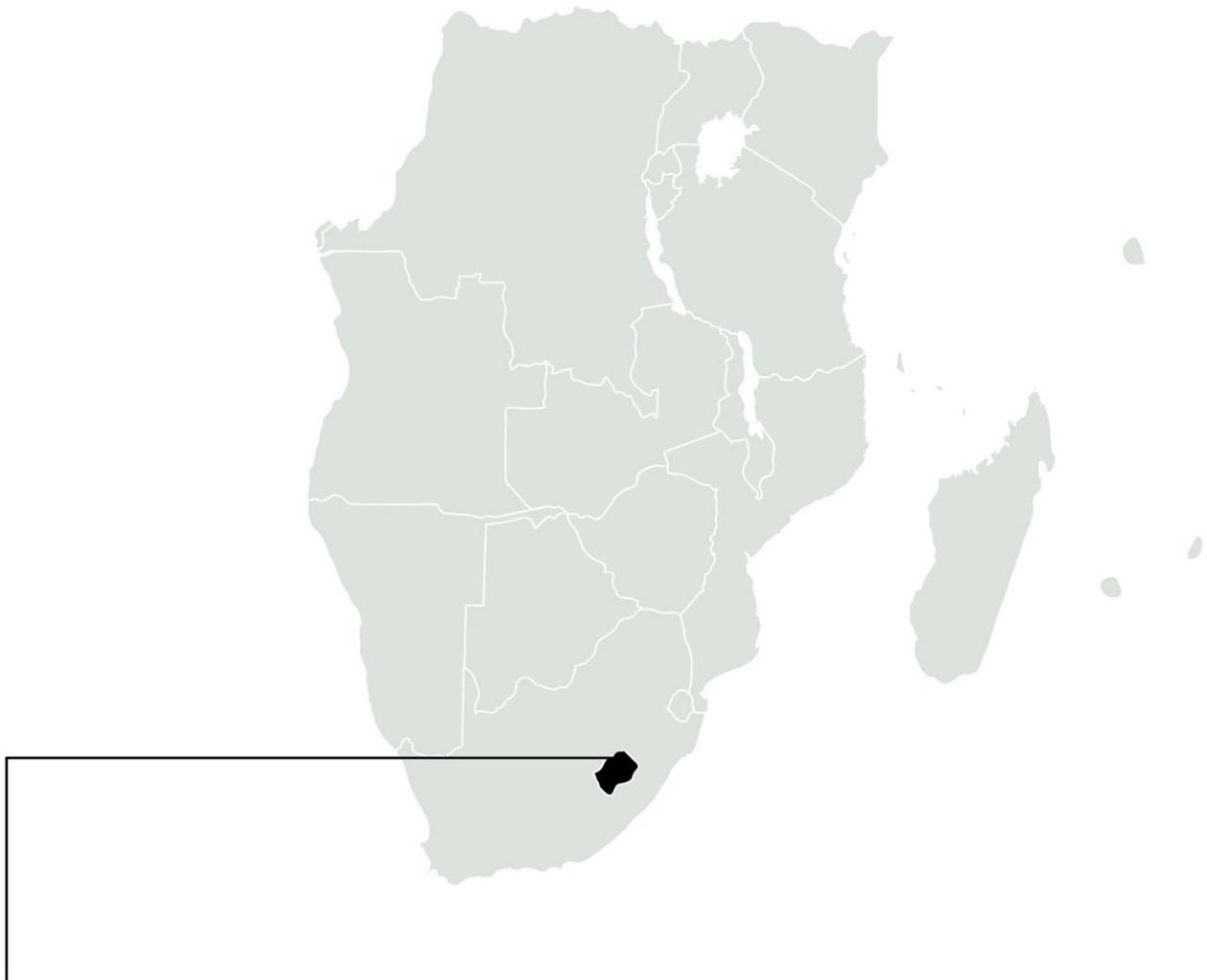
Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

Chart 3: Overview of role of PPP Unit

## List of Abbreviations

AfDB	African Development Bank
BOT	Build, Own and Transfer
BTO	Build-Transfer-Operate
GDP	Gross Domestic Product
IFC	International Finance Corporation
MoF	Ministry of Finance
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

---

## *Lesotho*

---

<b>Population (Mio.)</b>	<b>2.2</b>
<b>GDP per capita (US\$)</b>	<b>1.283</b>
<b>PPP Level of Maturity</b>	<b>Low</b>

(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 Lesotho's 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 Lesotho 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 Lesotho. 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 by the SAn Government. We render this report to the best of our knowledge and belief.

## 2. Introduction

Lesotho, officially the Kingdom of Lesotho with its population of 2.2 Million (Mio.) is a landlocked country with a unitary parliamentary constitutional Monarchy (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.250). It is surrounded by its only neighbouring country, South Africa. Since May 2012, Tom Motsoahae Thabane has been Prime Minister of Lesotho. The country has continued introducing fiscal adjustment measures to improve public sector efficiency, human development and service delivery, as well as promote economic diversification and overall competitiveness (World Bank, 2013, webpage). The performance of Lesotho's economy was modest according to the World Bank showing a Gross Domestic Product (GDP) growth rate of 3.8% in 2012 mainly driven by the expanding mining sector and the building industry (African Development Bank (AfDB), 2013, webpage). The economic outlook is positive predicated on the booming construction sector and higher competitiveness.

AfDb notes that despite its expansionary fiscal policy in 2012, which largely reflected expenses related to rehabilitation of the infrastructure affected by floods, and the recent general elections, Lesotho has a long road ahead to tackle issues related to poverty, extreme hunger and primary education (AfDB, 2013, webpage). Thus, according to the World Bank, it is quite urgent that the country invests in issues of income equality, HIV/AIDS, water resource management, transportation, disaster relief for flood victims and education.

Lesotho's global competitiveness ranks 137 of an overall 144 countries, therefore, remaining disappointing (performing next to last) compared to other SADC Member States. Rankings for Lesotho 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, port infrastructure, air transport infrastructure, available airline seat kilometres-- is also quite poor (ranking 109, the fifth weakest performing country), thus reflecting Government's lack of efforts to improve the level of service provision as far as infrastructure is concerned (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.250). Overall, the low level



of competitiveness of Lesotho's is an indication of Government's and policy makers' poor commitment, and the 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 the lack of accessibility to financing and inadequate supply of infrastructure as the main limiting aspects hindering progress in Lesotho.

Currently, Lesotho is at its early stages of developing a PPP Framework although the country has a track record of PPP projects having constructed a new public hospital and rehabilitation of three filter clinics in Maseru for 18 years based on a PPP contract in 2009. Lesotho is in the process of adopting a draft PPP Policy Framework, thus currently working on a detailed Policy jointly with SADC3P and International Finance Corporation (IFC) to support its PPP programs. In 2013, a special stakeholder dialogue inquiry was introduced aimed at communicating the need for the contribution of private sector towards finalizing the draft PPP Policy document. The draft PPP Policy document clarifies the vision and rationale behind introduction of PPPs schemes, guiding principles such as Value for Money (VfM), risk allocation, policy objectives, and strategies types, and the implementation framework suited for public and private partnerships to provide remedy for the infrastructure challenges ahead in the country.

Lesotho has passed a Public Finance and Management Act in 2011, and the procurement regulations in 2007, both of which guide implementation of PPP processes (Report of the Africa PPP Network (AP3N) Inaugural Meeting, 2012, p19). In terms of PPP achievements, Lesotho implemented the replacement of Queen Elizabeth Hospital with Queen Mwanohato Memorial Hospital via a Design, Build, and Operate as well as Transfer (DBOT) arrangement. In addition, the improvement of three filter clinics was associated with the new hospital. On top, the Government was in 2012 about to procure private partner(s) for construction of Lesotho Institute for Public Management (LIPAM) and Lesotho National Broadcasting Services (LNBS) complexes. On top, the Government has asked consultants to investigate the feasibility of PPP projects in the country's energy sector.

This paper is to be considered as a follow-up strategic document to the Framework paper which was 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 paper 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. Lesotho was distilled in 2012 not to have instituted a PPP Policy and/or a PPP Law, but it was moving towards the promotion of a proper PPP Framework and scheme. The next chapter will elaborate on Lesotho's 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, and existing PPP policies per country across all SADC.

The next chapter will elaborate on Lesotho's' specific PPP experience, its PPP Policy, Legal and Institutional frameworks as a continuation of the above mentioned cross-country Regional Framework paper aimed at providing an in-depth insight into the specific country strategies and existing PPP policy for Lesotho.

### **3. Methodology**

Our approach in this country specific paper is to provide an overview of Lesotho's 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 Lesotho, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy paper plotted Lesotho in 2012 in terms of its level of PPP development as a country being on the verge of developing its PPP Policy to attract more private sector investments. This paper will touch upon this evaluation and move further to analyze the current progress made in Lesotho aimed at depicting those developments made since 2012 as far as the PPP Framework conditions are concerned.

Methodologically, we will evaluate Lesotho’s 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. In this paper, the focus of the analysis lies on Lesotho --its PPP Policy, Institutional Responsibilities and the Legal Framework with the ultimate idea of distilling proper recommendations from our work for SADC3P and the government and public sector in Lesotho as far as next steps are concerned.

#### 4. Examination of the Term PPP

Lesotho is currently in the process of designing a national PPP Policy with the assistance of SADC3P and IFC as well as PPIAF. XS-Axis Consulting was mandated by SADC3P to conduct a review of the draft PPP Policy to provide a final Policy document to the Ministry of Finance.

The Policy document entails a definition of what a PPP is, and what it shall encompass. Accordingly, PPPs are in future to be considered as an alternative method of finance, procurement, and management of infrastructure projects as compared to traditional government procurement. A PPP in Lesotho is defined as a long-term contract between a Government entity and a private partner for providing—or contributing to the provision of—a public service. The next chart provides an overview of the assessment of the term PPP in Lesotho as currently being discussed.

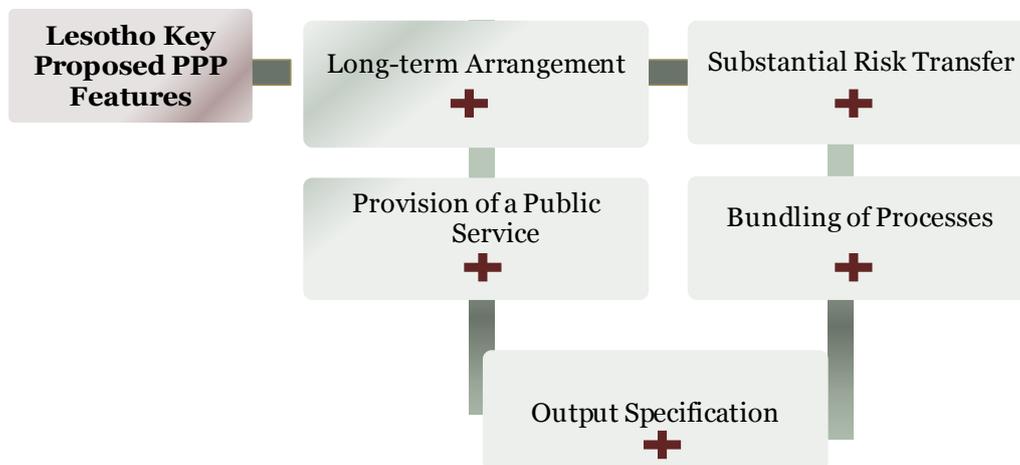


Chart 1: PPP Term in Lesotho based on Draft PPP Policy Document

Overall, the following definition will be embarked upon to clarify the term PPP in Lesotho:

“PPP involves a contractual arrangement between a a Public Partner/Procuring Unit and Private Partner for a significant period of time whereby the latter designs, finances, constructs, operates, maintains, rehabilitates a public asset or service in whole or in part in accordance with pre-defined output specifications on behalf of the Public Partner/Procuring Unit. The arrangement



involves risk sharing between both parties. The Private Partner receives benefits/financial remuneration for provision of assets or services according to pre-agreed terms either by way of tariffs, user charges or government based payments or combination thereof.” (SADC3P and XS-Axis Consulting Draft PPP Policy, January 2014, and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013). The term PPP as envisioned in the draft document entails all the elements needed to better understand the concept.

## 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**

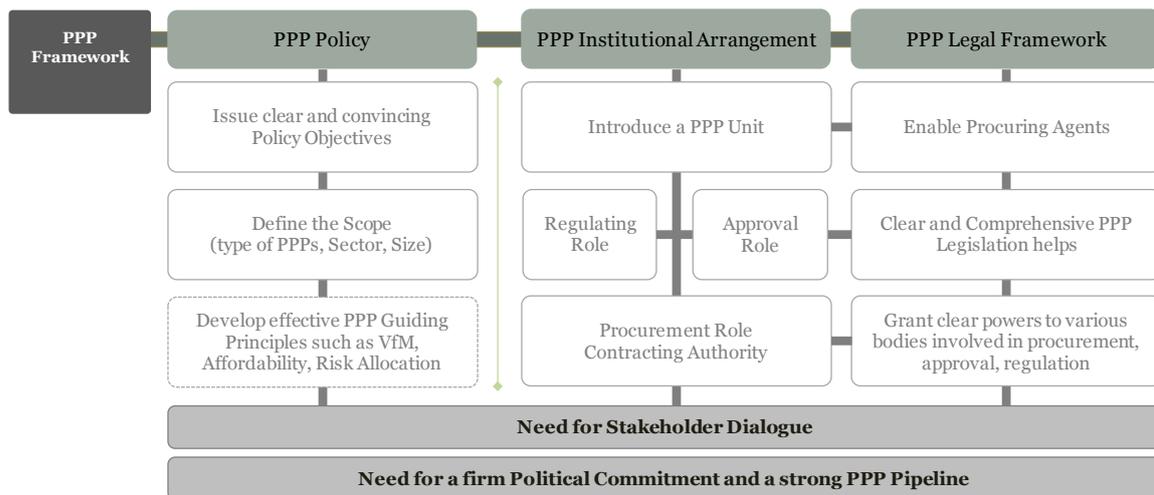


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

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 Lesotho 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 Lesotho

The revised draft PPP Policy document, dated January 2014 which is based on the September 2013 Draft version elaborates on Lesotho's vision to accelerate the provision of infrastructure assets, and services by utilizing the know-how and resources of private sector and providing for investment opportunities to private sector. The rationale for adoption of PPPs is based on the recognition that PPPs render a higher level of efficiency since private sector is more efficient in terms of delivering projects on time and on budget than public sector. PPPs are acknowledged to promote innovation and to improve services to users since private sector is better prone to rendering customer-oriented services than public sector. They also better render predictability of capital costs and funding since these projects enable Government to more easily budget for its capital costs over an extended period of time through planned unitary payments. Not only the life cycle cost approach, but also the better accountability for managing maintenance and preventing under-provision for maintenance due to low profile of maintenance operations and budgetary constraints render PPs more interesting to the Lesotho Government. On top, PPPs are considered to promote private sector since they contribute to private sector development and creation of jobs in Lesotho (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013).

The Government of Lesotho clearly recognizes that delivery of public services and assets via PPP procurement is a viable option that may next to traditional procurement be considered to contribute to economic growth, accelerate Government's NSDP, promote development of Lesotho's population, and enhance the efficiency of public spending. Thus, the Government of Lesotho assures to ensure successful implementation of this PPP Policy by:

- “Assuring its political commitment to promotion of PPP schemes;
- Adopting an enabling institutional, regulatory and legal framework to guide PPP development and process implementation;
- Developing a shared understanding of the concept and objectives of PPPs and the guiding principles to implement PPPs;
- Developing institutional capacity through developing and strengthening the knowledge base and experience;
- Introducing fair, equitable, transparent, competitive and cost-effective procurement processes for PPPs;
- Considering stakeholder dialogue throughout PPP procurement processes;
- Undertaking PPP projects through streamlined processes and principles;
- Ensuring application of guiding principles embarked upon in this PPP Policy such as Value-for-Money (VfM), proper risk allocation and affordability; and



- Attaining appropriate public oversight and monitoring of PPP projects” (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013).

In terms of types of PPPs, the Policy document provides for various contractual structures including, but not being limited to Build-Transfer-Operate (BTO), Build-Operate-Transfer (BOT), concessions, or leases. Lesotho does not confine itself to one model of PPP contract. However, PPPs shall not apply to service contracts, works contracts or consultancy contracts regulated in the Public Procurement Regulations 2007.

Sector wise, the Government aims at extending PPPs across electricity, water, sanitation, and solid waste management, transport, including roads, bridges, railroads, ports, airports, public transport system, and wireless, fixed-line and broadband telecommunication, social infrastructure including education, culture, health, tourism, sports and leisure related infrastructure; and other infrastructure including IT, prison, forestry, public housing, and public land; and any other type of infrastructure and services as the Government of Lesotho may designate (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013).

The draft PPP Policy also defines some core guiding principles to be as follows:

- ...“ Adherence to Development Objectives of Government of Lesotho—all PPP projects must be in line with the Government’s priorities regarding infrastructure development, sector growth, and pro-poor delivery of public services, set out in its Vision 2020 document, the NSDP, and other key economic policies;
- Viability of PPPs including:
  - VfM to Basotho Tax Payers — provision of an infrastructure asset or service by the Private Partner to be embodied in a PPP Agreement must result in a net benefit to the Government, and the Lesotho economy defined in terms of cost, price, quality, quantity, or risk transfer, or a combination thereof. To enhance the potential for getting VfM, the Government will foster competitive bidding; optimal risk allocation between both public and private parties and define output-based procurement. Quantitative parameters may be tested by comparing the outputs and costs of the PPP against a benchmark, entitled Public Sector Comparator (PSC). If quantification of VfM is difficult, the Public Partner/Procuring Unit may consider qualitative criteria when applying VfM test to take account of non-financial benefits such as accelerated and improved delivery with wider social impacts.
  - Affordability — financial commitments to be incurred by the Ministry of Finance or Public Partner/Procuring Unit in terms of the PPP Agreement must be met by funds designated within the existing budget. Any PPP involving fiscal support (whether through planned payments or guarantees) will be assessed to ensure that the project demonstrates fiscal affordability to the Treasury of Lesotho and the users throughout the project lifecycle.
  - Risk Allocation — an efficient risk allocation is an essential determinant of whether VfM can be achieved in PPP projects. Risks are to be allocated to whoever is best able to manage them, taking into account public interest consideration. The allocation of risks shall determine the selected method of



private sector involvement and allocation of responsibilities.

- Public Interest and Consumer Rights – consideration of public interest requires ensuring that procuring the project as a PPP is not contrary to the public interest. Equally, after a decision has been taken to procure infrastructure and services via a PPP, it is critical to ensure that the procurement process is structured such that it continues to be in the public interest. PPP projects should seek to safeguard user’s interest, particularly vulnerable groups;
- Accountability – Public Partner/Procuring Unit is ultimately responsible for delivery of service and asset outputs, including where PPPs are procured to deliver the outputs. Accountability may not be transferred to the Private Partner. At every stage of the PPP process, the procedures, laws, regulations and relevant policies must be followed;
- Empowerment of Lesotho private sector – where feasible, PPP Projects shall demonstrate Basotho enterprise empowerment through different mechanisms such as, but not limited to, equity participation, a requirement for a minimum share of Basotho contracting, and skills transfers;
- Maintaining probity and transparency – makes sure that the public is informed at all times about potential projects, and that no person is unduly advantaged or disadvantaged by the project” (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013).

## 5.2 PPP Institutional Responsibilities in Lesotho

The future institutional setting in Lesotho as far as the promotion and implementation of PPPs are concerned shall be strong and well defined to serve as a cornerstone for the development of a sustainable PPP Programme (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013). In addition to governance and due diligence functions, the institutional framework shall advance new models and innovation. It shall also contribute towards further enhancement of capacities to successfully discharge changing roles and responsibilities that PPPs require.

The main responsibilities of various government entities in Lesotho concerning development, procurement, and management of PPPs shall in future be allocated to Procuring Unit as the “owner” of a PPP. It shall hold the lead role and interest in a potential PPP Project. The Procuring Unit submits projects to the PPP Unit including all information required for proper review and clearance. The PPP Unit shall be the preliminary review and clearance body and an advisory agency for PPPs providing technical support to Procuring Units on matters related to PPP project identification, development, evaluation and implementation. There shall also be a Steering Committee as a gateway and authorization body for PPP Projects to be pursued based on a PPP Pipeline to be developed and submitted by the PPP Unit.

The Ministry of Finance will oversee the Unit. MoF bears fiscal management responsibilities, and will be charged with the coordination, evaluation, and management of the fiscal implications of PPPs ensuring that the overall fiscal impact of PPP projects is consistent with Lesotho’s fiscal constraints and those fiscal risks are identified and managed appropriately. Thus, the responsibilities of the MoF as far as fiscal management issues are concerned, are as follows:

1. “..A representative from MoF participates during all stages of the PPP process.



2. positive fiscal impact is given appropriate weight in prioritizing candidate PPP projects, and negative fiscal impacts are scrutinized.
3. The ‘expected’ and ‘worst case’ values of any fiscal commitments are identified, properly calculated, and highlighted in studies and other decision-documents on PPPs submitted to Steering Committee.
4. Economic and financial analysis is rendered properly and given appropriate prominence in decisions relating to PPPs;
5. Ensure that fiscal commitments related to PPPs are appropriately budgeted for, appropriated, and reported;
6. All fiscal commitments required by candidate PPP Projects are identified early in the process.
7. Liaise with relevant groups within MOF—such as the departments responsible for budget and debt management—providing a single point of contact between MOF and Public Sector/Procuring Unit.
8. Monitor fiscal risk across Government’s portfolio of PPP Projects including receipt and assessment of risk reports from Public Partner/Procuring Unit...” (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013).

It is worth mentioning that the Cabinet shall bear the ultimate responsibility for approval of PPPs; thus it is the most important body deciding on whether a PPP agreement is signed or not.

### **5.2.1 Role of PPP Unit in Lesotho**

There is currently no PPP Unit in Lesotho. The process is driven by the Ministry of Finance and Development Planning with close collaboration with line Ministries; however, Lesotho plans to establish a PPP Unit in 2014 with the assistance of SADC3P and International German Development Cooperation (GIZ GmbH).

The PPP Unit shall be instituted under the Ministry of Finance, and be in charge of project coordination, and management responsibilities in terms of implementation of the Policy, and monitoring as well as reporting to Cabinet on its progress. Quite concretely, responsibilities shall in future include the following:

1. “..Coordinate the implementation of the PPP Policy, monitor and report to Cabinet on its progress.
2. Regulate the PPP scheme ensuring that the PPP pipeline and the projects are developed in accordance with the principles and procedures set out in this Policy.
3. Support with identification of projects appropriate for PPPs also considering ideas from unsolicited proposals, in which a private investor or operator develops the idea for a specific PPP project, and presents it to the Unit.



4. Provide technical assistance to Public Partner/Procuring Unit in structuring and evaluating PPPs throughout the first three stages of PPP process. The Unit assumes an advisory role to Public Partner/Procuring Unit to guide and provide technical input through the entire procurement and tender process, including the appointment of suitable and skilled transaction advisors. It reviews the procedures and documentation submitted by bidders throughout the tender process including bid management, legal compliance management, and technical evaluation as well as compliance management. It acts as a first or preliminary clearance body prior to submission of documents and reports to the PPP Steering Committee.
5. Contribute substantively to development of PPP pipeline under the guidance of the PPP Steering Committee and Public Partner/Procuring Unit to make sure that the necessary approvals from PSIC and Cabinet are taken account of. It prepares an annual plan for identification and clearance of candidate PPP projects; and recommends their prioritization to the PPP Steering Committee.
6. Promote PPPs in Lesotho and internationally, and ensure public awareness among all stakeholders as well as facilitate capacity building across various Public Partners/Ministries.
7. Be a repository of knowledge and skills and continually build knowledge about identifying, developing, evaluating, implementing, and managing PPPs; including compiling and archiving information on PPP projects, and providing best practice and lessons learned.
8. Liaise with funding agencies and international development partners as well as private sector to obtain financial and technical support for PPPs.
9. Serve as the Secretariat to the PPP Steering Committee” (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013).

On top, the Unit shall be a repository of knowledge and skills aimed at compiling and archiving information on PPP projects, and providing best practice. It further manages funds for the development and implementation of PPPs, and serves as the Secretariat to the PPP Advisory Committee (SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013) See next chart for an overview).

In order to render the future PPP Unit operational, we recommend for a typical PPP Unit in a country of Lesotho’s size to pay attention to a lean and nimble structure, but also have the capacity to cover a range of functions currently envisioned in the Policy document and grow in scale as the program progresses. The PPP Unit should have core financial, technical and management staff and utilize, to the greatest extent possible, local and international experts to keep costs down and increase the skills mix available to the Government.



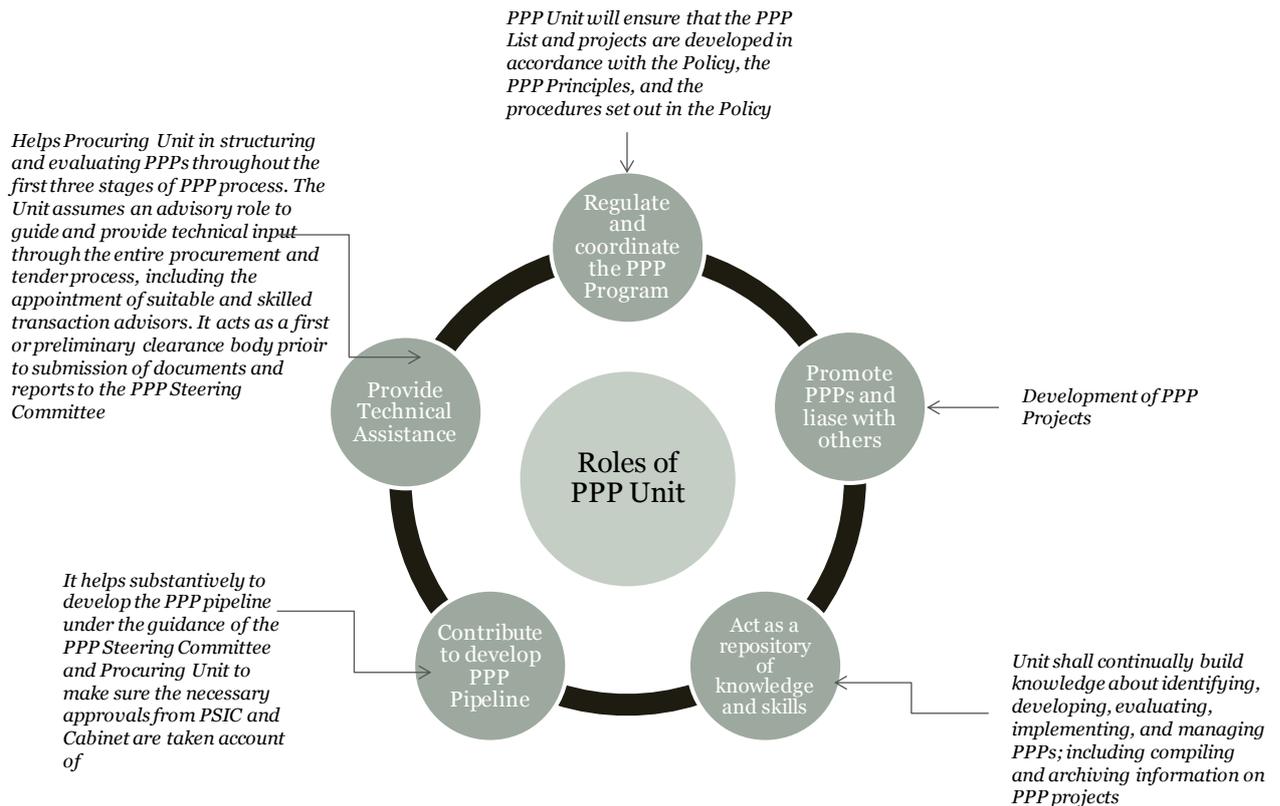


Chart 3: Overview of role of PPP Unit

Source: SADC3P, XS-Axis Consulting, PPP Policy Draft, 2014 and Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013

## 5.2.2 PPP Regulation, Approval and Implementation Roles in Lesotho

Any procuring or disposing entity of the Government of Lesotho (Ministries, Departments and Agencies), may be party to a PPP contract (Castalia Strategic Advisers, Confidential Draft Lesotho Public-Private Partnerships Policy, Report to the International Finance Corporation, September 2013). The process of development and implementation of PPPs consists of four stages:

- Project Identification to include activities such as strategic planning, project prefeasibility analysis, VfM analysis, PPP suitability checks, and internal clearances to proceed with PPP development;
- PPP Structuring stage involves preparing the PPP case including technical feasibility, financial viability analysis, and environmental and social viability, project structuring, and project approval. Also, at this stage, there will be a determination concerning project's viability as a PPP
- Procurement and Transaction stage includes drafting the PPP agreement, drafting the Request for Proposals (RfP), and consulting with bidders, issuing the RfP, evaluating bids and recommending the award. Procurement and all transaction documents shall be



- submitted to Cabinet for final approval, and
- Contract Management stage where government needs to ensure that the promises in the contract are delivered ensuring project implementation and monitoring over the life of the PPP project.

At the end of each stage, PPPs shall be reviewed and submitted to Cabinet for approval to proceed to the next stage. Cabinet is the ultimate approval body concerning the PPP Agreement. Its approval is required as follows:

1. Final approval of a PPP Agreement with preferred bidders prior to signing.
2. Major decisions on any significant implications for any stakeholder, the fiscal situation, or the country's economic development.
3. Any changes to the PPP Policy.

The PPP Process includes three review and approval stages. The first one is after the identification stage, then after the PPP Structuring stage, and last prior to signing the PPP contract after the transaction stage. Projects need Steering Committee approval at each of these Review and Approvals points to progress to the next Stage. The PPP Unit shall also be involved actively and consulted throughout the first three stages of the PPP cycle.

Overall, every PPP project will be subject to a special 'Gateway Review' through the Steering Committee aimed at controlling whether the project meets the PPP criteria in the first three stages, ensuring the evaluation against the criteria is reasonably substantiated, and checking that the project documentation fairly reflects the strengths and weaknesses of the project, notes risks and possible difficulties in project development and presents reasonable recommendations to deal with them, and includes the views of all relevant agencies (including the Ministry of Finance—MOF—as Ministry responsible for PPPs in Lesotho). The Gateway review shall be implemented by permanent members and non-permanent members of the Steering Committee.

### **5.3 Lesotho Legal Framework**

Although the current legislative environment in Lesotho does enable the implementation of PPPs, the country has experienced some negative lessons while implementing PPPs based on the current legislative and institutional structures. Thus, there is an increased recognition for the need to support implementation and promotion of PPP projects via an overall framework to provide guidance, and clarifications to public and private sectors on all key aspects of PPPs. Further, there are uncertainties around many crucial aspects of PPP project development and management which can create bottlenecks to smooth development of PPP projects and can also affect investor confidence in Lesotho's PPP efforts. This is why a proper legal framework or PPP procurement guidelines would be quite eminent for further promotion of PPPs in Lesotho.

Overall, in order to implement and promote PPPs in Lesotho, it will be necessary to introduce some PPP related procurement documents and procedures since PPP procurement are significantly different from traditional procurement. PPP requires a business orientation similar to that of private sector joint ventures, while in traditional procurement the arrangement is relatively simple: Government is the buyer and the private sector is the seller. In order to provide guidance regarding the complexities of PPP business relations, and their related risk allocation mechanisms, it is necessary to adjust the procurement regime accordingly.



## 6. Recommendations

Lesotho has a track record in the implementation of PPPs (the renovation of the Queen Mamohato Memorial Hospital being the most prominent example), however, there are a number of challenges that have ensued in the operational phase of this PPP project which serve also as learning lesson in general as far as the promotion of PPP schemes in Lesotho is concerned.

Some of the key challenges and constraints to implementing PPPs include the constraining financial sector environment and, therefore, a potential lack of appetite for local investment. Lessons learned from the Queen Mamohato hospital project included the need not only to conduct feasibility studies and baseline reviews on a realistic basis to assist in making proper project and sector assumptions. On top, the Government emphasizes the need to be aware of a proper composition of transaction advisors and Government teams to consider all the necessary technical expertise for project preparation and implementation. Moreover, it is quite important to conduct extensive consultations and active participation of all stakeholders from the inception throughout the implementation to ensure incorporation of contributions from all concerned and to ensure the buy in of key stakeholders (Lesotho Referral Hospital PPP, Project Overview, Dr. M. Letsie, and Ministry of Health).

In terms of positive lessons learned, it is interesting to note Government's special consideration of local economic empowerment which was a mandatory requirement for the operator of the hospital to create employment. The Government required the bidder to fulfil contractual requirements for local equity, local management and staff development, local subcontracting, and also local community development.

Overall, the Government of Lesotho recognizes the advantages of PPP models to provide for comprehensive solutions as far as infrastructure and service delivery are concerned. Our findings conclude that it is unnecessary to delay PPP activities and transactions until a PPP legal framework or an Act has been established. In fact, PPPs may advance using existing legal instruments in Lesotho. While the development of a legal PPP framework may be recommended in the future, especially since PPPs in Lesotho grow to meet demand, nevertheless PPPs can and should proceed using existing arrangements. Essential to this, is the adoption of a coherent PPP Policy statement which is currently in its draft stage, and the issuance of Ministerial Regulations that stipulate the policy parameters, and necessary "guidelines and procedures" to undertake PPP effectively until such time that a more comprehensive PPP legal apparatus is required and completed.

### Concrete SADC3P Recommendations:

- Contribute to strengthen the Institutional and Policy Framework for PPPs and finalize the PPP Policy Document and introduce a Unit;
  - Provide advisory services towards capacity building and to facilitate the introduction of PPP guidelines and materials to make the concept more familiar to public agents ;
- Facilitate implementation of PPP Policy via introduction of a Legal Framework or Ministerial Regulations as a possible presage to a potential PPP Legal Framework.

Key challenges remain next to finalizing the Draft PPP Policy dated January, 2014. These include the overall political will, and the support of development partners such as the World Bank and IFC and GIZ.



Other challenges include the following:

- Insufficient Institutional Framework (Low implementing capacity) thus necessary to design and institutionalize a PPP Unit;
- Insufficient Legal Framework;
- Low level of local private sector participation;
- Insufficient training in PPPs;
- Continuous education of the public in matters related to PPPs and also PPP transaction process is required.

Although PPP activity is already well underway in Lesotho, further promotion of PPPs will remain fragmented and lack necessary coordination if there is no proper Framework established soon. To enable such coordination, Government needs to adopt a clear and comprehensive National PPP Policy, a draft of which has been revised by the author. However, the draft version needs to be discussed further with relevant stakeholders and Ministries and recommendations should be best considered aimed at harmonizing PPP Policy across SADC. In order to implement the Policy, Ministerial Regulations may be recommended as a possible presage to a potential PPP legal Framework. In order to implement the Ministerial Regulations and catalyze PPP immediately, it will be necessary to prepare PPP Guidelines and Standard Operating Procedures, which will be followed by all stakeholders and enforced by the PPP Unit which shall be established next year.

