

PPP Country Paper

Namibia

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

LIMESSTRASSE 26, 61273 WEHRHEIM - 2013



Namibia

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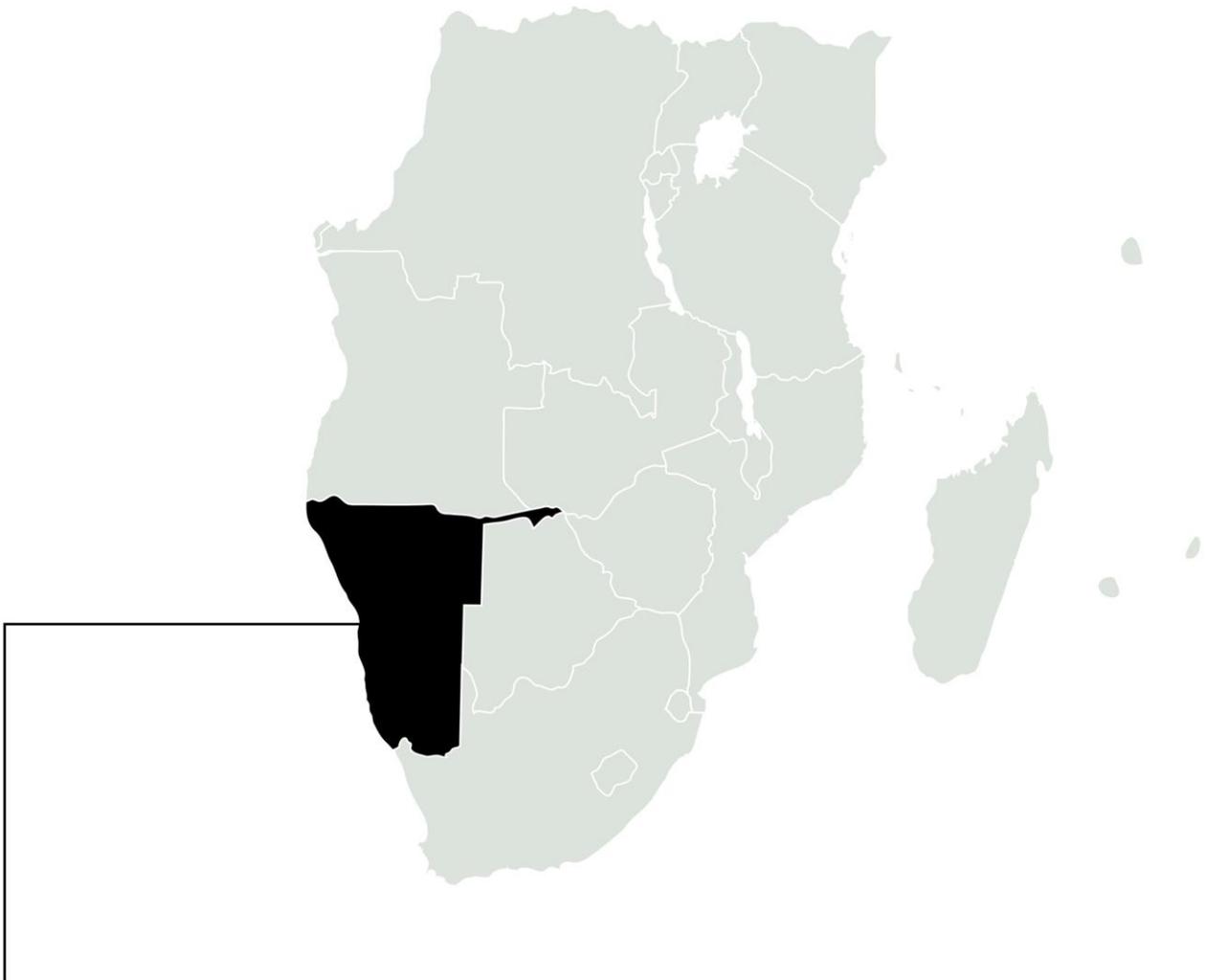
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List of Abbreviations

AfDB	African Development Bank
BLT	Build, Lease, Transfer
BOT	Build, Own and Transfer
BOOT	Build, Own, Operate and Transfer
BOO	Build, Operate, Own
CPV	Concentrator Photovoltaic
DBOFT	Design, Build, Operate, Finance, Transfer
DBO	Design, Finance, Operate
DOO	Design, Operate, Own
IDA	International Development Assistance
GDP	Gross Domestic Product
KW	Kilowatt
ML TRMP	Medium- to long-term Transport Master Plan
MoF	Ministry of Finance
Namwater	Namibian Water Corporation
Nampower	Namibian Power Corporation
PPP/s	Public Private Partnership/s
SADC	Southern African Development Community
SADC3P	Southern African Development Community- Development Finance Resource Centre PPP Network
SOE	State-Owned Enterprise
TESEF	Transformation Economic and Social Empowerment Framework
VfM	Value for Money





KEY INDICATORS - 2012

Namibia

Population (Mio.)	2.3
GDP per capita (US\$)	5.705
PPP Level of Maturity	Low

(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 Namibia'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 Namibia 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 Namibia. 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

Namibia, officially the Republic of Namibia has a population of 2.3 Million (Mio). and is largely stable and peaceful with a progressive constitution (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.290). Its neighbouring countries include Angola and Zambia to the North, Botswana to the East and South Africa to the South and East. Since March 2005, Hifikepunye Pohamba has been President of Namibia, elections are every five years. Namibia is a democratic, but one party dominant state with the South-West Africa People's Organisation in power. Opposition parties are allowed, but are widely considered to have no real chance of gaining power (Wikipedia). Namibia has enjoyed considerable success from sound economic management, good governance, basic civic freedoms and respect for human rights (World Bank, 2013, web page). The Government has been a leader in the area of natural resource conservation and has shown a strong economic performance with Gross Domestic Product (GDP) growth rate of 5.0% in 2012, up from 4.9% in the previous year (World Bank 2013, web page).

Despite Namibia's significant efforts and progress in addressing many development challenges, access to basic education, primary health care services and safe water has to be improved (African Development Bank (AfDB), 2013, web page). Thus, according to AfDB, further efforts are required for Namibia to well establish stronger policies and strategies for managing its mineral resources and mining products. Overall, AfDB estimates the medium-term perspective as favourable, and downside risks stem from global uncertainties (AfDB, 2013, web page).

Namibia's global competitiveness ranks 92 of an overall 144 countries, therefore, remaining quite moderate (on the fifth best ranking) compared to other SADC Member States (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.290). Rankings for Namibia 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 excellent (ranking 32, the best



performing country) and reflects Government's beginning of success of efforts to improve the level of service provision as far as infrastructure is concerned. Overall, the low level of competitiveness of Namibia is a reflection of Government's and policy makers' low level of 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 the country, the Global Competitiveness Report 2012-2013 provides an insight focusing on inadequately educated work force, corruption and lack of access to financing as the main limiting aspects hindering progress in Namibia (World Economic Forum, The Global Competitiveness Report 2013-2014, 2013, p.290). Also the quality of infrastructure remains a bottleneck to proper economic performance.

Dating back to 2009, AfDB highlighted in the Country Strategy Paper 2009-2013, the role of PPPs for the Namibian transport sector. In this context, the Bank's interventions were supposed to be in the scope of Namibia's medium-, to long-term Transport Master Plan (ML TRMP) aimed at promoting PPPs in the transport sector (AfDB, Namibia Country Strategy Paper 2009-2013, Regional Department South Region A, 2009, p.15). Investments within this sector should have focused on the extension of transport infrastructure to rural areas by upgrading and rehabilitating the railway system and rural roads to open up rural areas for development through linkages with urban centres. Based on this background, the Government of Namibia initiated its first attempts in 2009 to develop the fundamentals of a proper PPP Policy. Upon appointment of the International Monetary Fund (IMF), a study was conducted to develop the Framework for implementing PPPs and managing associated fiscal risks. IMF recommendations focused on strengthening the overall investment project selection and procurement, as well as the design of institutional, fiscal accounting and reporting mechanisms, and to improve the Legal Framework to render regulations more conducive towards a sound implementation of PPPs in Namibia (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p.2). In 2010, the Ministry of Trade and Industry appointed CRISIL Risk and Infrastructure Solutions Limited to undertake a comprehensive review of the Legal and Institutional Framework in the country (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p.2). The study recommendations included developing a PPP Policy, and a proper Institutional Framework for PPPs in Namibia.

In 2012, the national Government issued a comprehensive PPP Policy which was approved by the Cabinet in the same year. Currently, a consulting firm has been engaged to assist with the development of the required Institutional Framework for the establishment and operationalization of a PPP Unit. KPMG confirms in its 2013 draft country analysis that the PPP environment in Namibia has improved (KPMG, Draft KPMG, Country Analysis, 2013, p.5). There is an increased Government commitment to the agenda of achieving economic equality for its people through the Transformation Economic and Social Empowerment Framework' (TESEF) Policy Framework. Towards this end, the Government recognizes the need to increase investments in infrastructure and services aimed at creating growth and opportunities required to lift the income and quality of life for its citizens (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p.1).

Ministry of Finance reports on the experience of Namibian Government on the actual implementation of PPPs highlighting that several sub-national Governments and authorities have already developed PPP Policy Frameworks at their levels prior to 2012 and have, subsequently, some experience with implementing PPP projects. Examples are, amongst others, the City of Windhoek, NamWater, NamPower, etc. The Energy White Paper (1998) and Electricity Act (2007) both encourage private sector investments in generation. The National power utility, NamPower emphasizes in a recent presentation that it is willing to conclude PPAs with IPP investors, provided that it is in line with national Integrated Resource Plan (IRP), the price is competitive and other factors are met



(NamPower Electricity Supply Update, 2013). NamPower has, therefore, recently teamed up with Soitec, a French provider to set up a renewable electricity plant at Usib village near Rehoboth. The installation is designed for two Concentrator Photovoltaic (CPV) systems, capable of generating 25 kilowatts (KW) of electricity and connected to NamPower's national power grid (Namibia Government, webpage, 2013). Although the project is considered as a PPP, based on general information from the web page, it seems not to be a truly designed as a PPP since NamPower who is responsible for selecting the site and sizing, delegates responsibility for operation of the site only for 2 years to Soitac --who will be in charge of construction and the initial operation of the project. The idea seems to be transfer of know-how to NamPower over this limited period and then to transfer back operation and maintenance of the site in the 18 years thereafter to public sector --the agreed lifespan stretches 20 years.

In 2009, there was a research project and an analysis of PPPs in the city of Windhoek concerning the ward system which included solid waste management and street sweeping. The Namibian Government came up with a strategy to promote pro-poor service delivery partnership contracts for services such as refuse removal, street cleaning, solid waste material resource recovery/recycling, management, parks, cemeteries and recreational centres (Dr. Keyter, Effectiveness and Efficiency of a Public-Private Partnership Arrangement: A Case Study of Perceptions on the Ward Contractor System In the City of Windhoek, Namibia, 2009, p.19). Based on this approach, entrepreneurs, small-medium enterprises and civil society organisations were able to pool resources together and participate in the delivery of services for the poor. The creation of an entrepreneurial culture amongst the newly established entrepreneurs has according to Dr. Keyter created an understanding that none or under performance in service delivery will result in cancellation of contracts (Dr. Keyter, Effectiveness and Efficiency of a Public-Private Partnership Arrangement: A Case Study of Perceptions on the Ward Contractor System In the City of Windhoek, Namibia, 2009, p.18). Furthermore, the City of Windhoek in consultation with the contractor defined performance targets and built them into contracts with appropriate incentives for private operators to meet service delivery targets and enforce penalties for failure doing so.

The City of Windhoek is also currently engaged in one Township Development PPP project which involves the servicing of land with all municipal services, including the marketing and selling of serviced erven. In the water sector the City is currently engaged in a Joint Venture project for operation and management of the Water Reclamation Plant. In addition, various land development PPP proposals are currently being considered by the City Council (SADC3P, NEPAD, 2013). Another area where PPPs are supposed to be promoted is the mining sector where Government with its cabinet decision in 2011 declared officially its intention to enhance a win-win partnership in this sector. This partnership shall aim at sharing growth in the mining sector; sharing risk in exploration, mine development and mining business, making government and people of Namibian meaningful participants in the mining business rather than rent-seekers; ensuring a sense of ownership of natural endowment by the people of Namibia; creating conditions for individual Namibians to participate when at the appropriate time the State-owned company shall sell some of its shares to private investors; and ensuring that when private investors sell their shares government shall at all times be in the picture (Ministry of Mines and Energy, Towards Public-Private Partnership in the Mining Sector of Namibia, 2011, p.8).

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 Namibia to belong to those countries in SADC with a low level of PPP maturity. The next chapter will elaborate on Namibia'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 for Namibia.

3. Methodology

Our approach in this country specific paper is to provide an overview of Namibia'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 Namibia, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document distilled Namibia in 2012 to belong to the nations in SADC with little experience concerning implementation of PPPs. This paper will touch upon this evaluation and move further to analyze the current progress made in Namibia 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 Namibia 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 Namibia'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. This includes the evaluation of Namibia's 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 Namibia's 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 Namibia as far as next steps is concerned.

4. Examination of the Term PPP

The definition of PPPs is laid out in Section 4 of the PPP Policy document issued in 2012. Accordingly, PPPs are to be based on three essential elements consisting of “..a contractual arrangement, substantial risk transfer, and outcome-based financial rewards to the private sector.” Namibia has a solid definition of the term introduced which is understood as a medium to long term contractual relationship between public sector and private partners. This relationship usually involves sharing and transfer of risks and rewards concerning performance of a function in provision of infrastructure and/or services (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 4, p.21).

The Policy document clarifies more in-depth the features in section 5 to determine that PPP projects do involve provision of a service or an asset related to economic, industrial, social, municipal infrastructure. PPPs also encompass bundling of functions and are based on a well-defined payment



structure as well as output specification and a proper risk transfer. Solely, the length of the underlying contractual arrangement has been left open to include not only short-term contractual structures like service contracts, but also Build, Own Operate (BOO) options of financing that are quite long-term. The Namibian PPP Policy, however, makes clear that the agreement is usually time bound. The next chart provides an overview of the definition of the term, in Namibia as far as the major elements of the Regional Strategy Paper are concerned.

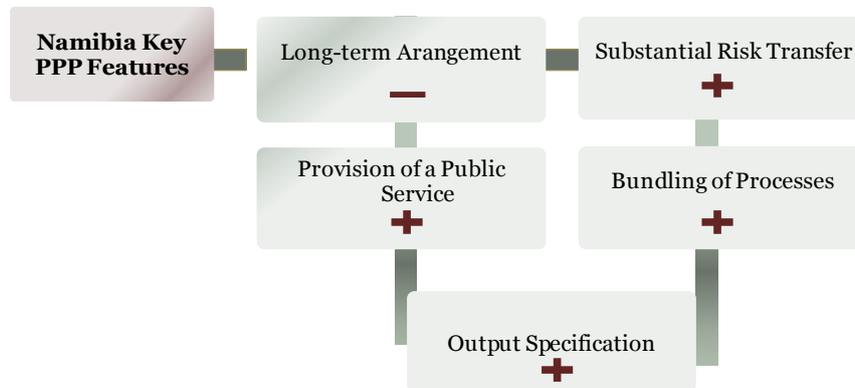


Chart 1: Overview of PPP Definition in Namibia

The principal features of a PPP are defined more in-depth in section 5 of the PPP Policy, and are as follows:

- “Provision of a service involving the creation or use of an asset involving private sector participation in a suitable combination of design, construction, financing, maintenance, and delivery of services for a specific period;
- A contribution by government through land, capital works, risk sharing, revenue diversion, purchase of the agreed services or other supporting mechanism; and
- The private sector receiving payments from government and/or through user charges or third party revenues, once operation of the infrastructure has commenced and contingent on the private sector’s performance in supplying the related services or facilities” (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 5).

Thus, according to the Namibian definition, a PPP relates to an agreement between public sector and a private partner that is time bound setting out the principles of this partnership and the rights and obligations of both parties. The provision of infrastructure service continues to be regulated by the public sector, therefore being its key responsibility. It is important to highlight that the document clarifies the core Government services quite often continue to be provided by public sector. On top, Government makes it clear that the agreement is performance-based, and governed by pre-agreed delivery standards or service targets. Therefore, returns to private sector are only rendered once capital works or services have been completed. It is interesting that the Policy document only refers to completion as measure of pre-agreed standards. There is no mention of the need to deliver the service at a satisfactory level throughout the operational period of a service.

In terms of risk transfer, PPPs in Namibia are understood to bear a substantial sharing or transfer of risks from the public to the private sector. In this context, Government makes clear that generally private sector assumes the completion and delivery risks while public sector assumes the approval and regulatory risks. Detailed risk allocation, however, shall be based on project specific matters to be dealt with in negotiations between Government and private sector (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 4, p.22).



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

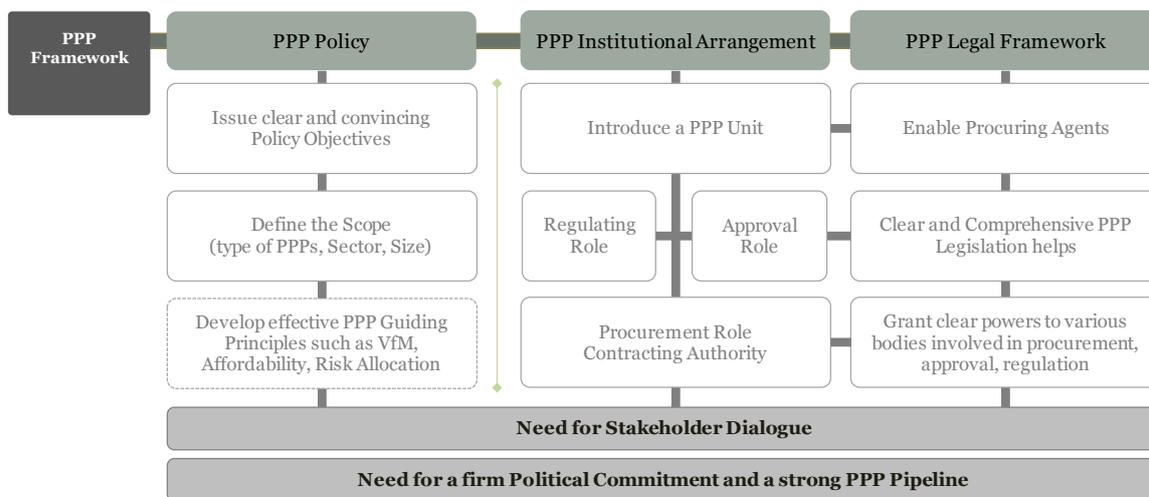


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

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 Namibia 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 Namibia

The 2012 comprehensive PPP Policy passed by Namibian Cabinet is a result of a working process



of three years. It forms the basis for improved delivery of services and better VfM by means of appropriate risk transfer, encouraging greater innovation, asset utilisation and an integrated project-life management which shall be underpinned by private financing. Formulated objectives of the Policy include encouragement of private sector investment in infrastructure and services where VfM may be demonstrated. Next, innovation shall be promoted in terms of provision of infrastructure and services, however, Namibian Government makes clear the need for rigorous oversight and governance concerning PPP projects to be selected (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 1, p.17-18). This shall be assured by ensuring competition for the award of contracts. Other objectives include achieving capacity development and focusing on skill transfer in the delivery of projects. Ultimately, the idea of PPPs is to encourage pro-poor development and focus on service delivery, poverty reduction, employment creation and inequality reduction that must be integrated into the design of PPP projects thereby forming an important consideration in their evaluation.

The latter objectives are quite important for the Government of Namibia. In this context, PPPs are explicitly referred to as an engine for “...achieving the social and economic objectives of the government of Namibia”. Employment creation, pro-poor development, inequality reduction, development of Small and Medium Enterprises and in particular TESEF shall be included in one or another way throughout “..the project conceptualization and design,..... ,and tender phases.” Government aims at making sure that fulfilment of these criteria is closely monitored during the contract management phase. It further suggests to integrate evaluation criteria for all PPP projects and ...”set a 10% preferential score for TESEF SME and other National Objectives in the Request for proposal as part of the Quality cum cost Based Selection scoring” (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p. 10). Furthermore, the Government puts an emphasis on paying attention to pro-poor based PPPs. The next chart provides an overview of various instruments and tools, pro-poor based PPPs the Government intends to use to consider PPPs as an important aspect of delivery for the Namibian people and economy.

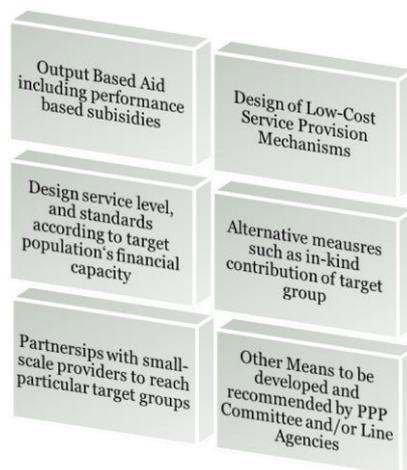


Chart 3: Planned Pro-Poor Approach in PPPs in Namibia

The associated benefits to be expected from usage of PPPs are also laid out by the Government. These arise from design and quality of services and construction of infrastructure as PPPs drawn upon the best available skills, knowledge and resources. PPPs reduce expenditure, generate efficiencies and cost-effectiveness in the delivery of infrastructure and related services through innovative and specialist expertise, and thereby deliver VfM (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, p.9). However, the Government promulgates to be aware of the contingent risks



arising out of PPPs. It considers therefore, the establishment of a formal PPP Framework and a specialist PPP Unit with appropriate skills and expertise to address and minimize problems arising. The PPP Policy also proposes to develop PPP Regulations for Namibia to govern Government's partnership with private sector (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, p.6).

In terms of scope, the Policy document makes clear that PPPs are to be conducted in the context of transfer of a ministerial function to the private party or creation of an asset that will help a ministry perform better or offer enhanced services and which will involve private investment. Departmental functions cover the following sectors, but are not limited to “..economic assets and related services such as roads, rail, ports, airports, power, communication, tourism infrastructure and amenities; social assets and related services such as health care, education, accommodation, public housing, court and correctional facilities; municipal assets and related services such as water supply, sanitation, garbage collection, sewage disposal, water treatment plants, municipal markets, rural roads, bus stations; industrial infrastructure and related services such as R&D centres, common laboratory and testing facilities for industries, and industrial parks” (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p.7).

Uniquely enough, the Government requires a more precise distinction between core, and non-core services which need to be conducted early on in the structuring phase of the project. Non-core services include the following:

- “..services that support the main departmental service function, including non-core services such as maintenance, security, cleaning, laundry, facilities up-keep, support services; and
- any core service element for which government has particular responsibilities to the people using the service and the community but which individual jurisdictions may decide to include in PPP”.

In this context, Government aims at ascertaining and retaining control over and responsibility for delivering core services --however, this is to be determined on a jurisdictional basis--; it also clarifies that PPP proposals will provide “.. fair treatment of public employees...” (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p.7).

The scope of PPPs is laid out even more detailed determining the size or volume of capital projects. Those projects with high capital investment volumes are likely to provide greater VfM and are, therefore, considered as better suited for implementation via PPP procurement. Accordingly, the Government of Namibia consider projects above the threshold level of N\$ 10 million to trigger evaluation of PPP as a potential procurement method for the relevant project. In this context, it emphasizes, however, that smaller projects with capital costs less than N\$ 10 million may also be eligible or suitable for delivery via PPP, however, they shall prove rendering sufficient VfM (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, Section 3, p. 20-21). The Policy shall apply to the Central Government as well as to the Regional and Local Authorities; however, application of the Policy to State Owned Enterprises (SOEs) will be determined by individual jurisdictions (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, Section 3, p.21).

Section 9 of the PPP Policy document determines types of PPP arrangements that are to be considered by the Line Agency or State Owned Enterprise (SOE) when deciding on a PPP project while bearing in mind that other kinds and variations of PPP options may also be possible. Thus, Namibia goes quite



far to consider not only short-term contractual options such as service contracts as a PPP, but also BOTs, and other rather long-term options such as a BOO where asset ownership remains with private sector, and the service or facility provision responsibility is also with private sector. Privatization seems not be considered as a PPP since there is no explicit reference to the term in the Policy document.

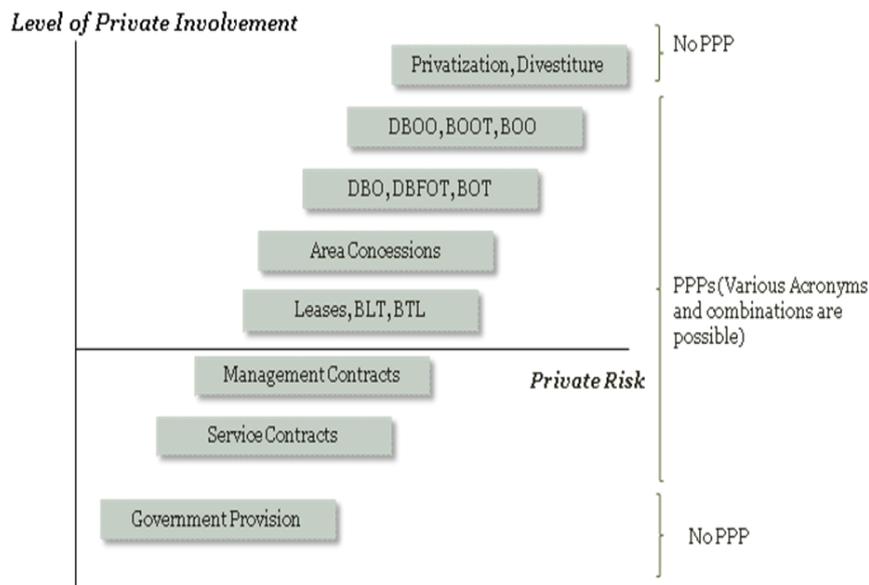


Chart 4: Definition of Types of PPPs in Namibia

The PPP Policy document refers explicitly to pertinent guiding principles such as VfM to include a combination of the service outcome to be delivered by private sector jointly considering the degree of risk transfer, and financial implications for Government. Securing public interest is an important driving factor for deciding for a PPP or against it. In this context, it is important to ensure that procuring the project as a PPP is not contrary to the Namibian public interest. Additionally, competition shall be assured by applying a tendering process and using a variety of selection criteria focused on both quality of delivery (technical) and price (financial) considerations. The Policy also addresses treatment of unsolicited proposals. Next, transparency is considered as an important driver throughout the procurement and subsequent delivery of services.

On top, Government recognizes the need to assure private sector intellectual property and commercial confidentiality. Formal approvals of projects are an integral part of the Government process. Next, disclosure policies and public consultation will protect public interests in PPP projects, and performance measures are to be clearly established to ensure transparency in the quality of services and project outcomes. Government’s interest in land and other Government assets are to be protected (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, Section 2, p. 19).

Risk allocation shall form another major principle governing PPPs in Namibia. Accordingly, an optimal risk allocation involves allocating risks to the party that is best able to manage it. Affordability is another measure that gauges the demand of the project on the budget and technical capacity of the relevant institution over the whole PPP project life and therefore determines impact on government’s resources. Finally, output specification of services to be delivered is a driving determinant of PPPs rather than how they should be delivered in order to maximize the opportunity for innovation. In this context, performance measures shall be defined to make sure that services and assets are delivered



according to pre-defined outputs. Last, accountability is needed for PPPs to work. Thus, agencies are responsible for the delivery of their outputs including where PPPs are used to deliver those outputs. Agencies cannot transfer this accountability to the private sector (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 2, p. 19). See next chart for an overview.



Chart 5: Overview of Guiding Principles in Namibia

PPPs in Namibia shall be integrated into the Vision 2030 and the National Development Plans (NDPs). Sector Plans, and policies are to develop sector specific PPP models and the concerned Ministry or Line Agency shall prepare a pipeline of potential PPP projects for every plan period. The National PPP Plan will be integrated into the Planning process and dovetailed into the medium term expenditure Frameworks of the Government with the review of the progress of PPP project implementation forming a critical part of the NDPs and the medium term expenditure Framework.

Awareness raising campaigns have taken place in Namibia to communicate and share the PPP concept with various stakeholders. The idea what a PPP is and what it is not, was promoted with key stakeholders in 13 regions of Namibia. As part of the campaign, ‘Guiding Principles and Policy Guidelines for PPP Projects’ were issued by the Ministry of Regional and Local Government and widely distributed to governmental and private actors. The guidelines were used in a variety of settings to facilitate dialogue among different stakeholders (United National Development Program , PPPs for Urban Environment, Starting a Pro-Poor Public-Private, Partnership for a Basic Urban Service, p.21).

5.2 PPP Institutional Responsibility in Namibia

The Policy Framework lays out broadly or generally the institutional responsibilities for various agencies in charge of PPPs. Foremost, the Line Agencies including Ministries, Ministerial equivalent bodies, regional authorities, local Governments or any of their subsidiary bodies thereof are considered owners and are mandated to enter into project contracts. The Line Ministry as the entity responsible for provision of advisory services to the Line Agency may also provide approval concerning the PPP.

Next, a PPP Committee needs to be established under the Ministry of Finance to consist of a Permanent Secretary, Ministry of Finance as the Chairperson; representatives of the Ministries of Trade and Industry, Works and Transport, line ministry, representative from the National Planning Commission, Attorney-General’s Office (Ministry of Trade and Industry, Namibia Public Private



Partnership Policy, 2012, Section 2, p. 10). At least two representatives from the lead industry bodies, and/or multilateral agencies, and/or eminent persons with specialist skills in the PPP area shall also be part of the Committee. In addition, the Government has approved the establishment of a central PPP Unit which following the PPP Policy Framework shall be under the PPP Committee. The Ministry of Finance shall not be only a regulating body in terms of implementation of the PPP Policy; providing overarching guidance and regulatory oversight. It also guides and regulates the functioning of the PPP Committee and the PPP Unit; and provides approvals where the Line Ministry acts as the Line Agency; and provides approvals for all PPPs that have a contract value in excess of N\$ 150 million (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 2, p. 10).

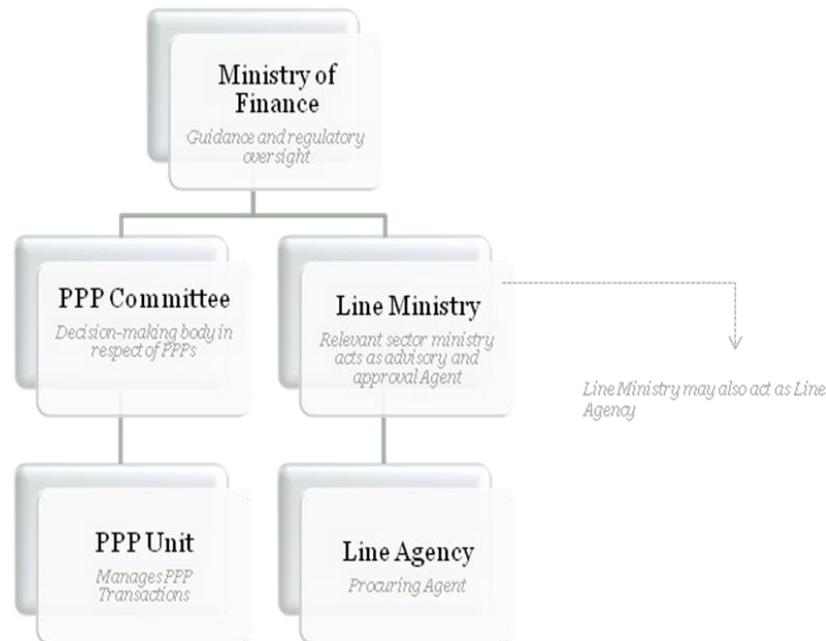


Chart 6: Overview of PPP Decision Structure as depicted from PPP Policy Paper, 2012

5.2.1 Role of PPP Unit in Namibia

In the absence of an Institutional Framework that is established, there is no administrative and organizational structure or set up for promotion, organization and operation of PPPs in Namibia yet. According to KPMG information, the Government of Namibia has approved the development of a PPP Unit and at national level, the structure of the PPP Unit has been approved by the Public Service Commission and the recruitment of staff will be initiated soon (Information from Ministry of Finance, James Seibeb, 2013).

The PPP Unit shall be endowed with an adequate capacity and resources to support Line Agencies in developing robust PPP proposals. Therefore, it shall be staffed with a highly trained team of professionals who may also engage private sector consultants as partners during the setup and operation phase. The PPP Unit shall determine whether PPP is the most appropriate procurement option; ensure consistency in the project preparation and evaluation; act as a technical secretariat to the Ministry of Finance and PPP Committee; assist the PPP Committee/Ministry of Finance in issuing regulations, circulars and guidance notes, pertaining to PPPs; and ensure other aspects of the PPP policy are adhered to in the preparation and procurement of PPP projects (Ministry of Trade and



Industry, Namibia Public Private Partnership Policy, 2012, Section 2, p. 10). The next chart provides an overview of functions of the PPP Unit as envisioned in the PPP Policy Framework in 2012. More concrete information on the actual status of works is not available.

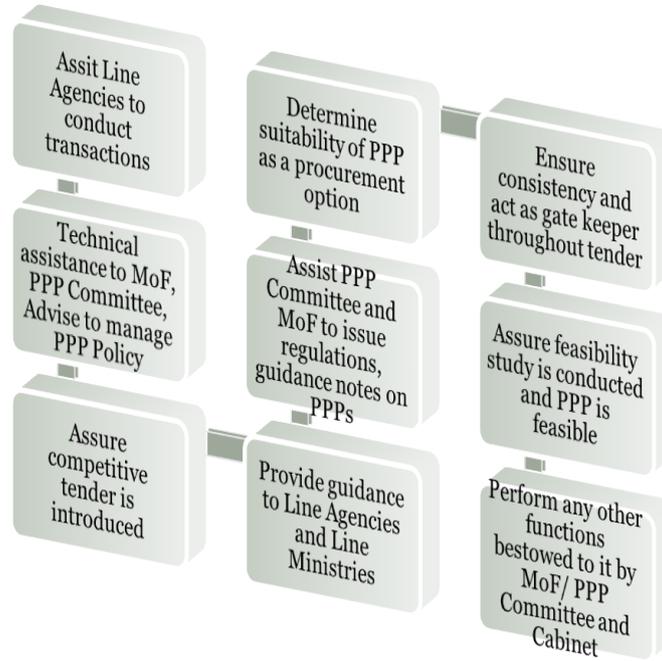


Chart 7: Overview Functions of PPP Unit

5.2.2 PPP Regulation, Approval and Implementation Roles in Namibia

The Line Agency is tdesignated as the owner of the project and will be in charge of preparing a PPP, entering into project contract, and managing the contractual relationship with the private partner for those infrastructure facilities within his/her jurisdiction (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, Section 2, p. 11). The function of the Line Agency encompasses appointment of a Transaction Advisor, invitation of tenders and selection of the PPP developer; obtaining the Transaction Approval; negotiating the PPP contract; monitoring the progress; and obtaining relevant applicable in-principle approvals. Line Agencies shall cover all National, Regional and Local Authorities, Departments and entities charged with the mandate to deliver Departmental and Government’s services that can benefit from partnership with the private sector.

Based on the above, the Namibian Government deems the Accounting Officer or Authority of the relevant Line Agency or SOE to be the implementing entity. It identifies the project; conducts an initial assessment of services needed, and evaluates the various options. It is also in charge of conducting an appraisal of the socio-economic objectives; registering the Project with the PPP Unit; and appointing the Project Officer and Project Team. On top, the Line Agency may appoint transaction advisors to undertake all the detailed financial, technical and legal work required to prepare the Agency for a PPP



project and agreement.

The Line Ministry acts as advisory body to the Line Agency and approval body. It provides guidance, receives and validates the transaction approval 1 and forwards it to the Ministry of Finance; receives and validates the Transaction Approval 3 and 4 along with results of tender evaluation and identification of selected developer to the Ministry of Finance. Where the Line Ministry is acting as the Line Agency, the Line Ministry will perform all duties of the Line Agency and the Transaction Approvals will be provided by the Ministry of Finance.

The PPP Policy paper proposes the establishment of a PPP Committee and PPP Unit under the Ministry of Finance empowered with the capacity and knowledge to determine whether PPP is the most appropriate procurement option available to government and, if this is determined to be the case, to assist the Line Agencies to transact the project. The PPP Committee and Unit will report to the Government on the performance of parties against the PPP Policy. The PPP Committee which still needs to be established acts thus as a decision-making body concerning PPPs providing all transaction approvals; developing best practice guidelines; formulating policy; monitor planning and reporting on progress of PPPs. It also oversees the functioning of the PPP Unit; and develops PPP awareness.

A number of approvals are required and need to be coordinated by the PPP Committee. Procurement gate ways are included at each stage and coordinated by the PPP Committee. These include:

- “..Investment decision and decision to go ahead with the procurement by PPP (Transaction Approval 1);
- Approval of the pre-qualification criteria and Request For Qualification (Transaction Approval 2 A);
- Approval of the Request for Proposal and draft PPP Agreement (Transaction Approval 2 B);
- Approval of the evaluation and selection (Transaction Approval 3);
- Approval after negotiation and of the Project Award (Transaction Approval 4)” (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p. 13).

MoF provides oversight and guidance to the Line Agencies/SOEs in the planning and implementation of PPP Projects; Guide and regulate the functioning of the PPP Committee and the PPP Unit; Provide approvals in all cases where the Line Ministry acts as the Line Agency; Provide approvals for PPPs that have a contract value in excess of N\$ 150 million.

The PPP Process may be a one or two stage process depending on the complexity and size of the project. A one stage PPP process will comprise of a single stage three cover RFP processes, where the Cover 1 will contain the qualification criteria, while a two stage process will comprise RFQ documents for pre-qualification followed by a two cover RFP document. In all cases, a two stage process will be undertaken for projects above the value of N\$ 200 million.

There shall be an Evaluation Committee to render the assessment concerning bids. It is to be appointed and chaired by the concerned Line Agency and shall involve the transaction advisor; selected members from the Line Agency; representative from the MOF/PPP Committee/PPP Unit; and any other member as may be considered necessary for the project. The evaluation report of the Evaluation Committee along will be submitted to the PPP Committee for review (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p. 14). To conduct negotiations, there shall be a Negotiation Committee that is to be appointed by the Line Agency and be different from the



Evaluation Committee, though one or two members may be the same.

Unsolicited proposals may be submitted, however, once the PPP Committee finds merit in such a “Suo-Moto” Proposal, the PPP Committee will then instruct the Agency to invite competing counter proposals through the standard bidding procedure as recommended in the Policy (Ministry of Trade and Industry, Namibia Public Private Partnership Policy, 2012, p. 51).

5.3 Namibia Legal Framework

Based on Ministry of Finance information, there seems to be some indication that PPP enabling legislation is being drafted in Namibia, but currently nothing has been enacted. Dr. Keyter elaborates in his analysis of the regulatory regime, the following pieces of legislation to be applicable to PPPs in Namibia including:

- The Local Authorities Act, 1992 (Act No. 23 of 1992) as amended;
- The Regional Councils Act, 1992 (Act No. 22 of 1992);
- The Decentralisation Enabling Act, 2000 (Act No. 23 of 2000);
- The Trust Fund for Regional Development and Equity provisions Act, 2000 (Act No. 22 of 2000);
- The Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975);
- The National Water Policy White Paper of August 2000;
- The National Environmental Health Policy of March 2003; and
- The National Land Policy of 2004.

He emphasizes that each of these laws as of 2009 --current or pending laws-- would bear implications for PPPs in Namibia. Generally, PPPs may be implemented in Namibia in the current environment as his analysis indicates. It is not an impending need to have an enacted legislation, although it may assist. The Regional Strategy document highlighted that the legal and regulatory framework is determined in large by a country’s cultural and historic context as well as its existing legal structure. The “PPP legal and regulatory framework” can be thought of as all the laws and regulations that control whether, or how, PPPs can be implemented. These Laws and regulations can include PPP-specific legislation, public financial management laws and regulations, and sector-specific laws and regulations. Thus, we recommend issuing some sort of Ministerial Regulations as a possible presage to a potential PPP legal Framework aimed at implementing the PPP Policy in Namibia. In order to implement the Ministerial Regulations and catalyze PPPs immediately, it will be necessary to prepare PPP Guidelines and Standard Operating Procedures, which will be followed by all stakeholders and enforced by a PPP Unit which shall be established some time soon.

In this context, we would like to emphasize the need to develop and define sufficiently the roles and powers of the awarding authorities, procuring agents, regulating bodies and approval entities. By granting procuring Authorities clear powers to enter into long term PPPs, investors will be reassured of the legality of the contract. Key requirements of lenders and investors for a Legal Framework need to be addressed to attract private capital into the delivery of services. These include next to assigning clear roles to procuring agents also clarity, enforceability and security of laws.

It is generally acknowledged that the current regulatory regime is a significant impediment to the creation of an active market for PPPs, and progress on legislation is crucial for further developing PPPs in the country. The example of a planned financing of the new port of Walvis Bay Container Terminal



Project shows the inhibiting factors of a proper Framework in Namibia. The Government would have liked to consider PPP procurement and financing as a full concession involving private sector to develop the new container terminal as a standalone business unit. However, next to expected backlashes from labour unions and other matters, the Government considered it not in the interest of the country to adopt a PPP approach due to lack of a PPP Legal Framework for port projects in Namibia (AfDB, Project Appraisal Report, OTC Department, 2013, p.5) . On top, the argument was the time to setup the Legal Framework is a lengthy process; and the project is urgently needed. The analysis shows that currently, some major projects may not be undertaken as a PPP in the absence of a solid and credible Legal Framework. KPMG supports our findings that current arrangements are temporary until an official PPP Unit is established, but foremost until the overall Framework is supported by supplemental guidelines (KPMG Draft Country Report, Namibia, 2013). Indications are that many key projects lag in development and execution due to disagreement between stakeholders, including implementing Departments and state-owned entities, supply and off-take entities.

It may be worth mentioning that in 2011, the East African Community (EAC) was finalising a Law on PPPs to be presented to the regional body's legislative assembly (EALA) later in the same year to facilitate large-scale investments in the region (The Guardian, Lusekelo Philemon, web page). In this context, the Namibian envoy recognized that the regional law on PPP once finalised would be recommended to the Common Market for Eastern and Southern Africa (Comesa) and SADC to adopt a similar Legal Framework. It may once finalised serve as an interesting notion and common Framework also for further developing the Namibian Legal Framework.

6. Recommendations

There is an overall mind set in Namibia or the notion prevailing that service delivery is the primary function of the Government and in this process the Namibian Government has a responsibility to ensure that citizens have access to their fundamental rights as enshrined in the Constitution. Nevertheless, due to limited financial resources, the Namibian Government has been more and more moving to find alternative service delivery mechanisms in order to fulfil its mandate of ensuring that services meet the expectations of people. Thus, the Namibian Government has identified PPP arrangements as an instrument in addressing service delivery problems experienced also at Local Government level. In 2012, the Government issued the PPP Policy which was approved by the Cabinet in the same year. Currently, it is working on developing the institutional arrangements needed to promote PPPs.

The Government of Namibia aims at focusing on PPPs as means of delivering improved services and better VfM through appropriate risk transfer, innovation, asset utilisation and integrated project-life management, underpinned by private financing. Moreover, the Government in the Policy document has emphasized the need for long term commitment and shared responsibilities in making PPPs successful in the country. Towards this end, we recommend to focus on stakeholders' consensus, capacity building and continued skill training as an integral part of achieving long-term sustainability in promotion of PPPs in Namibia.

AfDB and OECD lay out some critical bottlenecks facing the country. These include not only the small population of about 2 Mio., but also the legacy of infant-industry protection, and a history of racially-tinted colonialism, the economy of Namibia is characterised by low competition, high regulation, and diffuse rent-seeking. Government has embarked on a process of regulatory reform in order to promote competition, however the outcomes achieved so far have not been fruitful. Due to the heavy role of public sector, investors' perception of the investment climate has deteriorated in recent years, as



reflected in Namibia's slipping-down in a number of international competitiveness rankings. Skill shortages, restrictive labour laws, and shallow financial markets are widely mentioned factors inhibiting private sector investment in the country. Namibia has a serious deficit in different technical professions, a problem that is aggravated by restrictions on work permits and the haphazard application of existing rules. Thus, it will be crucial for the Government to tackle these issues in the context of further advancing the cause for involvement of private sector in provision of services.

Our findings show that more complex types of PPPs may only be developed in anticipation of legislative reform, but bearing some risk due to the level of PPP readiness maturity in the country. Moreover, PPPs requiring significant technical skills in operation, maintenance and management may meet difficulties in implementation. Finally, complexities relating to business start-up, property registration, taxation and cross border activities mean that rigorous due diligence activities and methodical project planning will be key to PPP project success.

We recommend working on the development of a proper regulatory regime or even a PPP Law. However, it must borne in mind that PPPs are complicated long term transactions that are affected by many areas of Law. Any one area of Law may cause insuperable problems for the implementation of PPPs in a country. Investors generally carry out a full due diligence of the existing Legal Framework of a country to ensure that the legal environment is sufficiently attractive for it to bid for a project. It is, therefore, important to carry out a full review of all parts of the Legal Framework to ensure that there is nothing that prevents, or appears likely to prevent, the successful implementation of a PPP and define the project scope. Successful PPPs depend on the effectiveness of the national and municipal legislative and regulatory structures.

Concrete SADC3P Recommendations:

- Assist in drafting supplemental guidelines on PPPs to expedite promotion of PPPs – smaller scale PPPs;
- Facilitate stakeholders' consensus in Namibia on PPPs to move away from public sector driven mind set in terms of provision of public assets and services;
- Assist in PPP capacity building and continued skill training as an integral part of achieving long-term sustainability in promotion of PPPs in Namibia;

Assist in formulating small-scale PPP concepts for Namibia since the potential for large-scale PPPs is low;

Assist in analyzing and developing a proper Legal Framework in Namibia and understanding sector led regulatory measures for PPP implementation.



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