

PPP Country Paper

Swaziland

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

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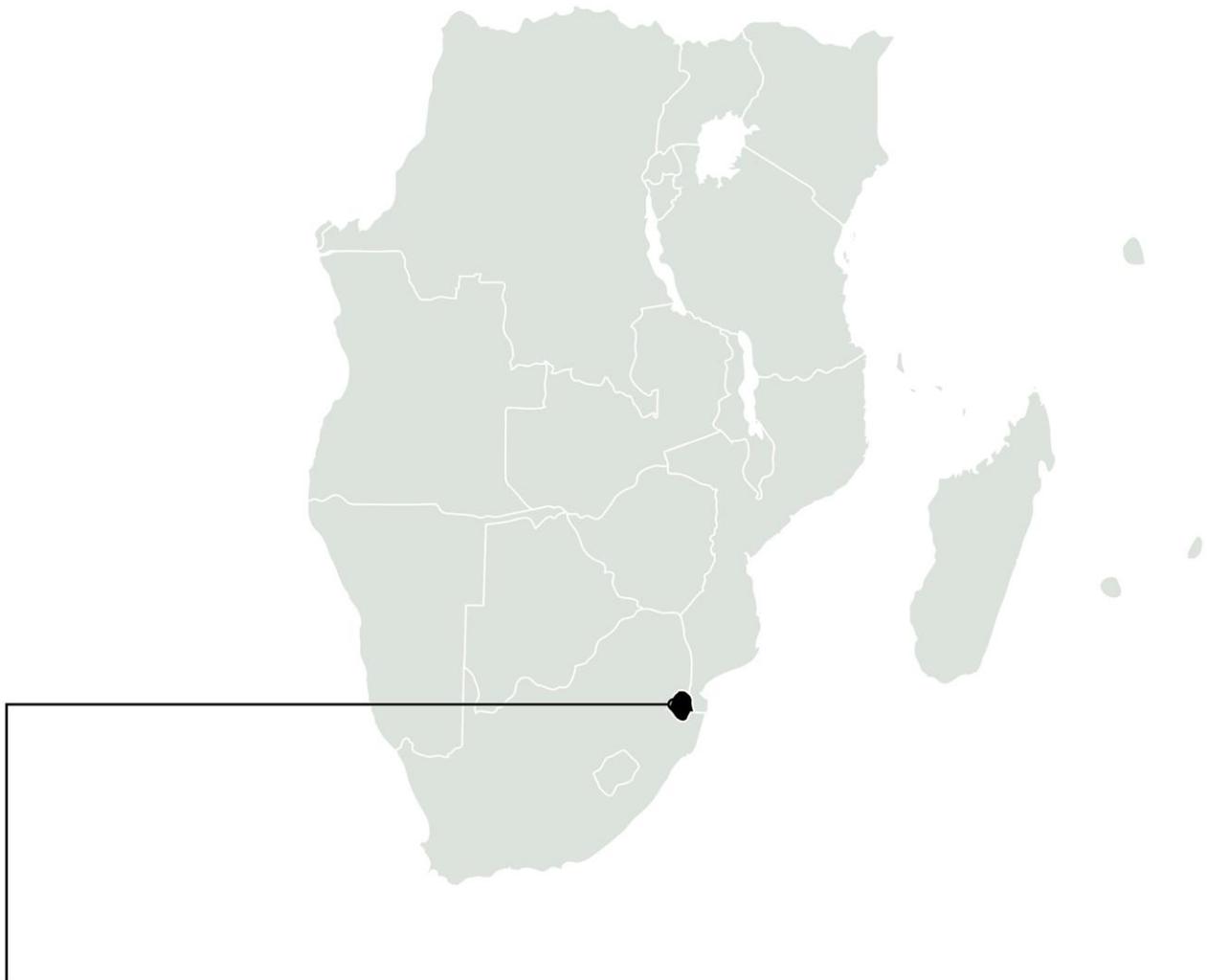
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List of Abbreviations

AfDB	African Development Bank
BOT	Build, Own and Transfer
DBOM	Design, Build, Operate, maintain
DBO	Design, Build, Operate
DBFM	Design, Build, Finance, Maintain
DBOFM	Design, Build, Operate, finance, Maintain
GDP	Gross Domestic Product
MoF	Ministry of Finance
PMO	Prime Minister's Office
PPP/s	Public Private Partnership/s
SADC	Southern African Development Community
SADC3P	Southern African Development Community- Development Finance Resource Centre PPP Network
SIPA	Swaziland Investment Promotion Authority
VfM	Value for Money





KEY INDICATORS - 2012

Swaziland

Population (Mio.)	1.1
GDP per capita (US\$)	3.457
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 Swaziland'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 Swaziland 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 Swaziland. Moreover, the country paper shall serve the SADC3P Network to identify areas of support to be offered by 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

Swaziland, officially the Kingdom of Swaziland, with its 1.1 Million (Mio.) population is a small, landlocked country, fostering close trade and financial ties with South Africa. Around 70 percent of Swaziland's small population lives in rural areas, with livelihoods predominantly dependent on subsistence agriculture (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.355). Its neighbouring countries include South Africa to the North, South and West and to the East to Mozambique. Since 1986, King Mswati III has been head of State. Swaziland is categorized as a lower middle income country (World Bank, 2013, web page). The Government aims at improving the fight against AIDS/HIV, improving its competitiveness despite an overall weak economic performance with declining foreign direct investment inflows and real GDP growth falling from an annual average of 7% between 1980 and 1992 to less than 2.5% for the period 1993 to 2008. African Development Bank (AfDB) analysis indicates a sluggish growth at an average of 1.3% between 2009 and 2011 for the economy. Economic activity has since stagnated with real GDP growing at 0.7% in 2011 --it is estimated to have contracted by 0.3% in 2012 (AfDB, Kingdom of Swaziland Country Strategy Paper 2014-2018, Southern Africa Regional Resource Centre (SARC), 2013, Executive Summary).

The close linkage of Swaziland's economy to South Africa (60% of exports / 80% of imports), the monopolised telecommunication system and heavy regulation make Swaziland's economy vulnerable. Also, the overvalued exchange rate hampers exports (Swaziland Investment Promotion Authority, Regional Investment Agency COMESA, Public-Private Partnerships (PPP) for Swaziland Conference and Training Workshop, 2012, p.8). According to the African Development Bank (AfDB), Swaziland growth perspectives depend and hinge upon increasing investments in high value added manufacturing, and services as well as skill development due to existing limited natural resources (AfDB, Kingdom of Swaziland Country Strategy Paper 2014-2018, Southern Africa Regional Resource Centre (SARC), 2013, p.3).

Swaziland's global competitiveness ranks 135 of an overall 144 countries; it remains disappointing (the



third least performing country) compared to other SADC Member States (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.355). Rankings for Swaziland as far as the infrastructure quality is concerned compared to other SADC countries --this relates to the quality of the overall infrastructure and quality of roads, railroad infrastructure, port infrastructure, air transport infrastructure, and available airline seat kilometres-- is also quite poor (ranking 71, performing at the average), therefore reflecting the Government's efforts to improve the level of service provision as far as infrastructure is concerned. Overall, the middle level of competitiveness of Swaziland may be a reflection of Government's and policy makers' 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 tax rates, inflation and access to financing as the main limiting aspects hindering progress in Swaziland (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.355).

In the past 2-3 years, Swaziland has proceeded with its attempts to design a clear and solid PPP Policy taking an important step to define a Framework to better attract private capital for service delivery. The Government approved recently a Policy on PPPs and has been working on developing a draft Legal Framework in 2013 (Information based on discussion with Deloitte, 2013). As part of this process, Swaziland Government has further enlisted assistance in the design and setup of a PPP Unit in the Ministry of Finance (MoF), through a comprehensive organisation design and recruitment plan to allow for a more rapid implementation of PPP schemes. Throughout this process, a special stakeholder dialogue inquiry was introduced aimed at communicating the need for contribution of private sector towards finalizing the PPP Policy. The 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, implementation Framework suited for PPPs to provide remedy for the infrastructure challenges ahead in the country (Swaziland Government, PPP Policy, Section 8-10).

Last year, The Government of Swaziland, through the MoF, and the Swaziland Investment Promotion Authority (SIPA) with the support of the ACP Business Climate Facility (BizClim) organised a one-week event on PPPs in the capital city of Mbanane. The experts highlighted that it is the right moment to launch PPP projects in Swaziland since the Government has limited resources to finance infrastructure, especially for pertinent projects such as Piggs Peak hotel, a tolling project, the construction of fuel reserves, Sikhuphe airport, the IT and bio technology parks, all of which needed private sector involvement. They also pointed out to some important factors inhibiting PPPs to thrive in Swaziland. These included the high HIV incidence rate of 26%, and the feminisation of the disease leading to a breakdown of social service delivery and economic productivity. Other inhibiting factors relate to the fact that only limited markets can afford to be charged user fees since 69% of the population lives below the poverty line (Swaziland Investment Promotion Authority, Regional Investment Agency COMESA, Public-Private Partnerships (PPP) for Swaziland Conference and Training Workshop, 2012, p.8). On top, economic performance and human development have stagnated since the 1990s. Although a middle class has developed, the poorest third of the population has become even poorer over the past ten years. Also, gender inequality reduces the possibilities for implementation off PPPs.

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 Swaziland to belong to those increasing number of countries in SADC that are proceeding to establish a PPP Policy aimed at the promotion of their PPP schemes. The next chapter will elaborate on Swaziland'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 Swaziland.

3. Methodology

Our approach in this country specific paper is to provide an overview of Swaziland'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 Swaziland, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document distilled Swaziland 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 Swaziland 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 Swaziland 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 Swaziland'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 Swaziland'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 Swaziland'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 Swaziland as far as next steps is concerned.

4. Examination of the Term PPP

The Government of Swaziland defines PPPs in its recently adopted PPP Policy paper as follows “the contractual agreement between Government or public enterprises or other Government entities and the private sector whereby the private sector will provide services and or facilities in sectors and services traditionally provided by the public sector.” Such contracts will be characterized by a real and substantial transfer of risk to the party best suited to manage it; (alternatively efficient risk allocation), a long term relationship; and an ownership of the assets vests in the Government...” (Swaziland Government, PPP Policy, Section 7, p.10).

Based on the above, it may be stipulated that the Government considers major elements of what the Regional Strategy paper had highlighted to be essential parts of a PPP definition. There is an explicit



reference to include public services or assets normally provided by Government, and risk allocation as a major driver of a contractual agreement under a PPP as well as recognition for a long-term relationship whereby public sector remains the sole owner of the assets. However, the definition does not explicitly address output specification or bundling of services as a prerequisite for a PPP contractual arrangement. Thus, it is to be awaited to see whether public officials will understand the actual application of PPPs or whether additional guidelines and manuals will need to be issued and published to better lay out the soul and heart of what a PPP truly encompasses. It may also be noted that the Swaziland Government defines types of PPPs in section 7 which, however, in best practice countries is laid out in the scope of PPPs.

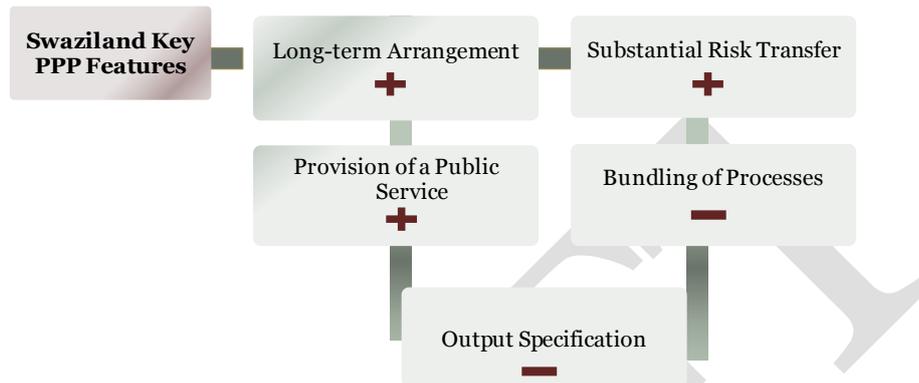


Chart 1: Swaziland Key characteristics of PPPs

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).

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 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 Swaziland 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.

SADC Framework Roadmap

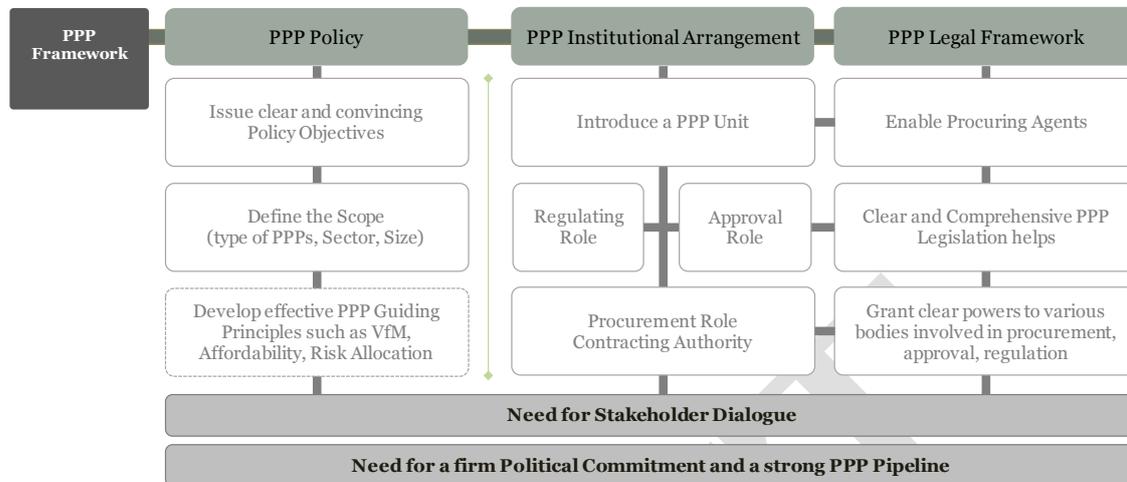


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

5.1 PPP Policy in Swaziland

Swaziland Government realizes that it is at the beginning of a learning curve as far as PPPs are concerned. In its recently published PPP Policy, the Government highlights the need to keep its Policy, and the associated procedures straightforward to include a minimum of red tape and scope for Government interference (Swaziland Government, PPP Policy, p.11). The Government recognizes further in the PPP Policy document that it is to be applied to all Ministries and Government Departments, State owned or State controlled Enterprises and Local Authorities and that PPPs "... provide a means of cooperation between public and private sector for development and/ or operation of infrastructure and provision of services, help improve quality and efficiency of public services, provide the necessary resources to cover investment needs and also provide a means to harness private sector investment, in particular private finance and the related operational efficiencies in the provision of public assets and services" (Swaziland Government, PPP Policy, p.7).

However, the Government also acknowledges that despite their advantages, PPPs shall not be considered as a miracle cure to all infrastructure and service challenges of the public sector. PPPs are considered to be complex and hence the Government justifies the need for establishment of a proper Policy to guide and regulate its implementation (Swaziland Government, PPP Policy, p.7). The next chart illustrates the reasoning provided by Government on why Swaziland opts for and considers PPPs to be better than traditional procurement.

As far as the scope of PPPs is concerned, the Government defines types of PPPs in the PPP Policy document in Section 7. Hereby, it distinguishes explicitly between various contractual arrangements in terms of their financing. Projects that are implemented by private companies with the funds of Government are referred to as BOTs, DBOM, or DBOs. In these cases, private companies receive a fee for their services. In contrast, the Government defines DBFMs, DBOFMs as projects which may be financed by private sector where the capital expenditure and operating costs are remunerated by the Government on an annual basis. These contractual arrangements may be used to provide buildings to be used by the public sector. Concession projects are considered as projects that are partly or fully financed by the private sector and fully remunerated by user charges – this is common in the roads



sector where tolls are charged to meet the costs.

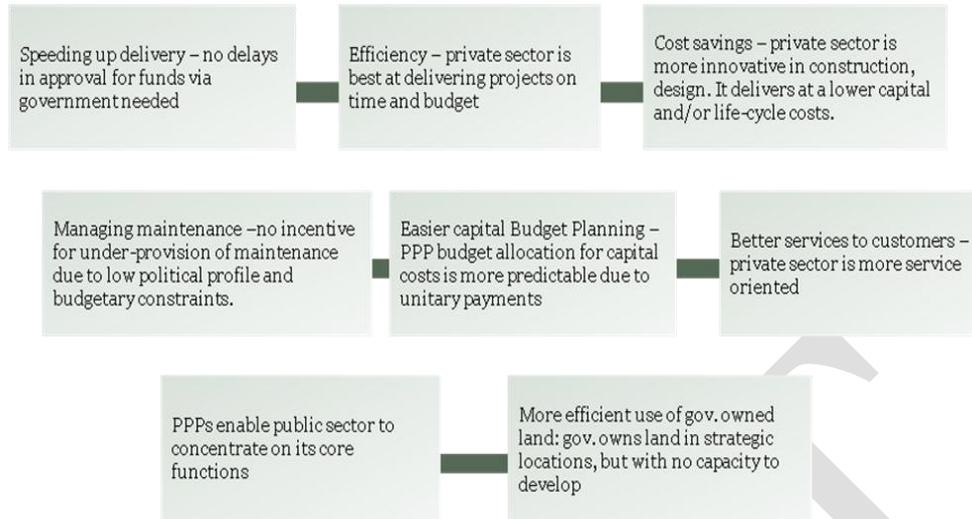


Chart 3: Swaziland PPP Drivers

Management includes responsibility for meeting the demands of new customers, maintenance of the whole network, collection of user fees etc. Concessions are considered to be defined for a period of over 20 years to allow the cost of investment and of good maintenance to be recovered. These include also franchise contracts. Simple management contracts where private sector bears the responsibility for maintenance and operation of a specific facility, such as for water or sewage treatment works includes also lease contracts for the Swaziland Government (Swaziland Government, PPP Policy, p.11). Overall, the various types of PPPs defined seem not to follow international norms and standards. The underlying financial structure is normally not the argument for and a driver of the rationale for adoption of various contractual types and PPP schemes. Drawing lines between various types of PPPs is usually based on the functions, risk allocation structure and level of private sector involvement in activities such as construction maintenance, design, etc. Thus, bundling of function is the prime determinant and the acronym used to structure a PPP.

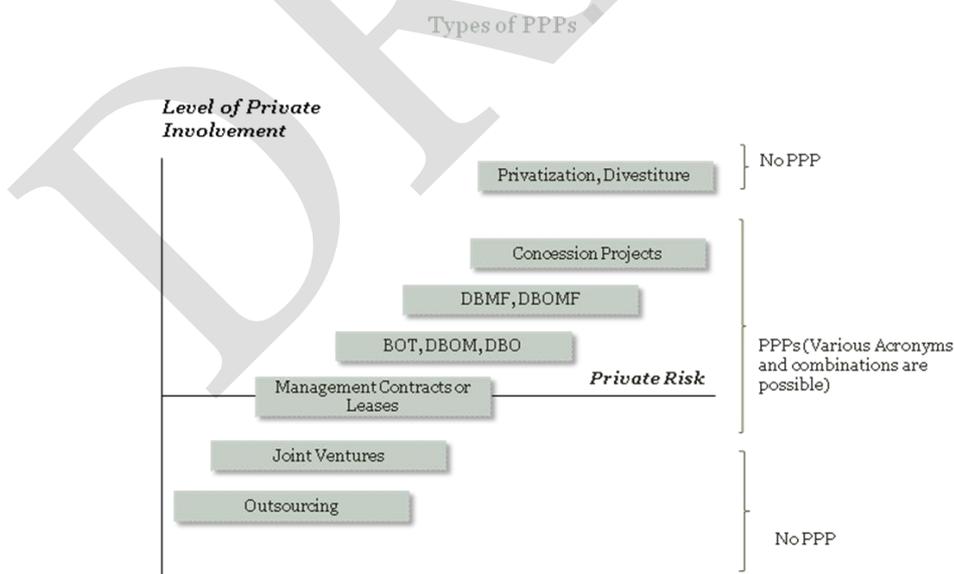


Chart 4: Various Types of PPPs based on PPP Policy Swaziland



The guiding principles governing implementation and management of PPPs in Swaziland are illustrated in the next chart. These include keeping the overall public interest such that PPPs provide better value than the current public procurement. Thus, PPP good practice according to the PPP Policy requires that the current costs of providing the service are established in advance, and are expressed in “net present value” (NPV) terms. Next to the issues laid out in the chart, there are some other principles laid out in PPP Policy, Article 8, pages 11-17. These relate to measurable performance which regulates that contracts must be structured so that payments are made on measurable performance, and performance specifications, intervention rights and censure are all considered as an important element of a PPP contract. Principle 8 stipulates the creation of an appropriate regulatory framework to include monitoring and regulation of the project after closure. Last, contracts should be drafted to permit unforeseeable changes in circumstances without jeopardising the fundamentals of the contract, or exposing either party to undue risks (Swaziland Government, PPP Policy, p.12). The PPP Framework also defines guiding principles to include mechanisms for mutual equitable adjustment of fees or the structure of user charges in such a way as to prevent profiteering at the cost of either the public entity or the private sector. There shall also be provisions to ensure participation of local citizens in both small and large contracts whether through prescribed sub-contracting, partnerships or equity holding in the special purpose vehicle (SPV). Principle 13 determines finally the need to introduce regulations- a Legislative Framework that will ensure the public sector enters into PPP contracts that will secure the interests of the public and the private sector. Overall, the guiding principles are defined in quite a detailed manner regulating not only general matters related to PPPs, but also some contractual principles that go beyond what OECD and SADC3P consider as guiding principles (Swaziland Government, PPP Policy, p.16).

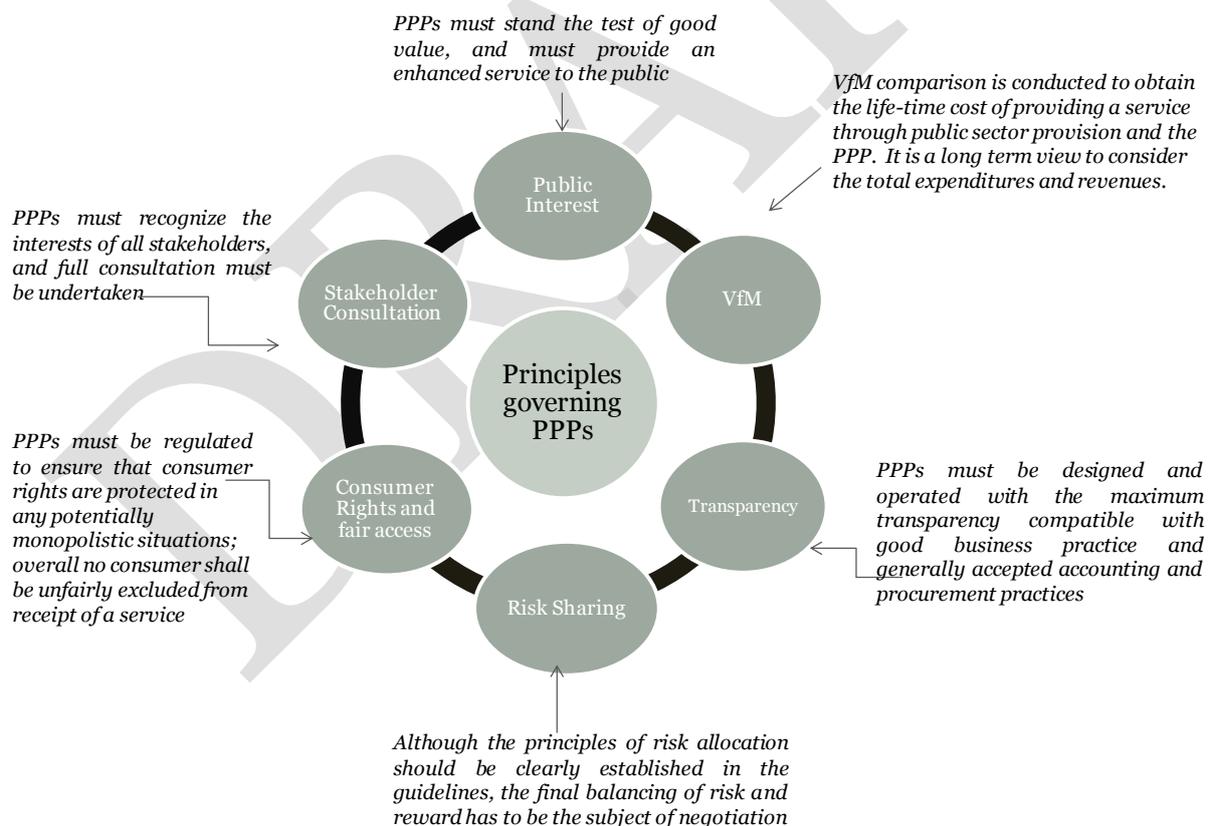


Chart 5: Overview of Guiding Principles in Swaziland based on PPP Policy



It is important to note Government’s comitment towards PPPs. It formulates the prerequisites needed for a successful implementation of the PPP Policy Framework and commits itself to ensure the following:

- Having a strong political commitment to policy implementation; and adopting an appropriate Legal Framework;
- Ensuring that private sector participants are able and willing to participate in the processes sponsored by the Government. This will include ensuring that the prospective private sector participants will be able to provide the necessary services and capital required by Government;
- Create effective regulatory authority or authorities where necessary, especially when private sector monopolies are expected to exist;
- Creating appropriate management and information systems, including the introduction of generally accepted accounting practices;
- Explanation of the potential benefits (and costs) of private involvement to the general public, including labour;
- Maintaining full transparency and accountability in all processes;
- Avoid inappropriate Government interference except in respect of any regulatory responsibility (Swaziland Government, PPP Policy, p.9-10).

5.2 PPP Institutional Responsibilities in Swaziland

The PPP Policy Framework defines explicitly the intention of the Government to create a technical assistance Unit situated in the Ministry of Finance (MoF) with a sufficient budget to provide an advisory and support role to agencies embarking on PPPs, and given the appropriate regulatory authority. On top, it defines the overall responsibility for the implementation of the PPP Policy to rest with the MoF. Line Ministries and Departments, state owned enterprises and Local Authorities have the responsibility to identify potential projects and initiate placing them in the budget cycle and to conduct the initial feasibility study (Swaziland Government, PPP Policy, p.10). Currently, the Government is being supported by consultants from Deloitte to establish the required institutional structures including a PPP Unit. The next chart provides an overview of the steps to be undertaken by Consultants within the scope of their assignment.

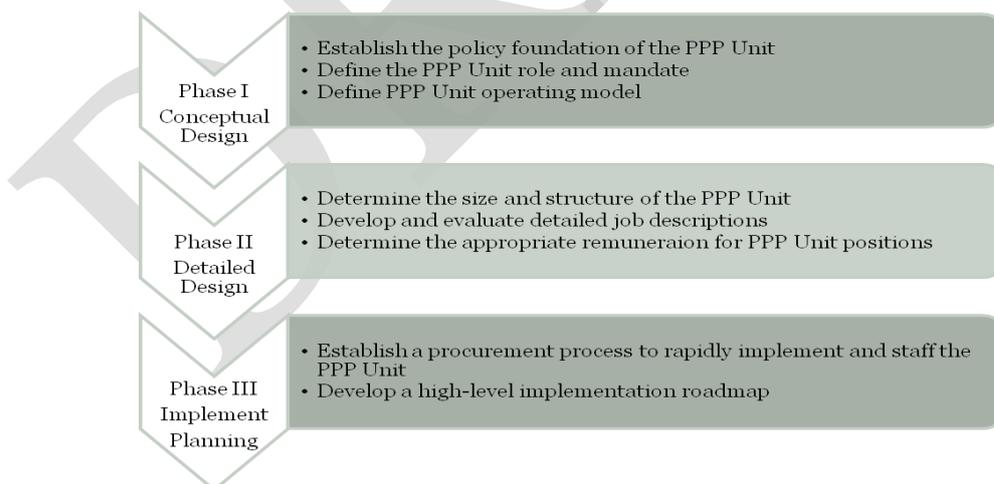


Chart 6: Illustration of Deloitte Design Approach,
Source: Deloitte, Swaziland Ministry of Finance: Public Private Partnership Unit, 2nd Draft Operating Model and Structural Design, 2013, p.5



Applying “Decide.Design.Deliver.” (or D3 for short) approach, Deloitte has been working in three different phases to establish the foundations of a PPP Unit for future, and to define the role it needs to play as a Government body. Throughout this process, they involved key stakeholders aimed at developing the subsequent design and implementation decisions. The project team conducted two stakeholder engagement sessions to this end. XS-Axis Consulting obtained the draft document to get an insight into the current works of Deloitte. Approval has been provided by SADC3P to use the information in the context of drafting the Country Paper for Swaziland. In phase II, there will a more detailed design phase to determine the size and structure of the PPP Unit, develop detailed job descriptions and determine the appropriate remuneration for PPP Unit positions. In phase three, the consultants assist the Ministry of Finance to establish a procurement process to rapidly implement and staff the PPP Unit and to develop a high level implementation road map.

SIPA provides some insight into major constraints towards promotion of PPPs in the country. These include not only human capital issues primarily pertaining to the fact that the expertise needed for PPPs is lacking at all levels of Government, but also Swazi officials seem to lack skills needed to properly select PPPs and to determine VfM and affordability of PPPs. They also emphasize that officials do not have the required competencies to monitor, evaluate procedures as well as provide adequate documentation on PPP projects. Another major problem quite often faced is public sector employee retention. Next, there is still no clear communication of the PPP Policy on how to implement PPPs. Also the general macro environment is considered as an inhibiting factor to implement PPPs due to the small economy a few true opportunities. Thus, finding some good PPP projects may remain a challenge. Finally, a general change in terms of mind set is needed as far as provision of delivery of services by private sector is concerned. Many people are not aware of the Government’s national Development Plan.

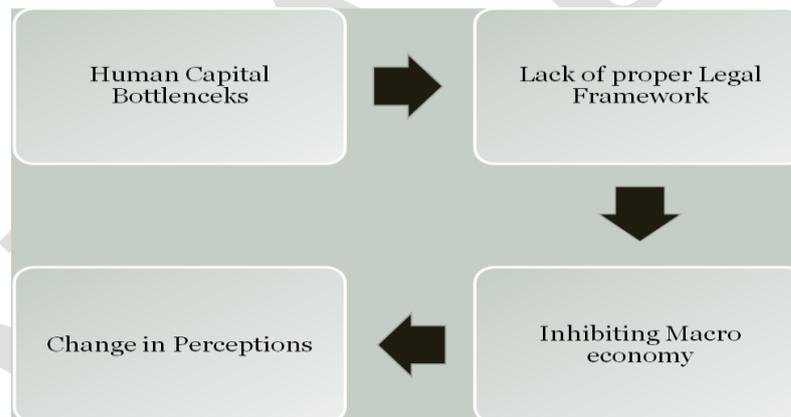


Chart 7: Overview of Bottlenecks concerning PPP Promotion

5.2.1 Role of PPP Unit in Swaziland

The PPP Unit shall have a small permanent staff complement and be created in the Ministry of Finance to fulfil the following functions (Swaziland Government, PPP Policy, p.18-19):

- “..Assist line ministries and departments to identify opportunities and conceptualise PPPs in priority sectors;
- Enhance private sector participation in the creation of state assets and provision of better services;
- Provide advice and support to line departments contemplating a PPP;
- Appoint sector specialist consultants to assist line ministries and departments;



- Administer and manage the consultants' budget outside the normal budget cycle on a multiyear basis;
- Act as a technical secretariat to the committee instituted to approve PPP projects;
- Keep a record of the long term commitments in terms of fees and other expenses incurred by the implementation of PPP projects;
- Ensure proper and regular monitoring of the projects by the line departments;
- Act as the first stop in dispute resolution to attempt to amicably resolve differences;
- Mitigate risks to government by ensuring equitable risk allocation;
- Avoid future disputes by ensuring fair reward for risk.
- Be the appropriate regulatory authority for PPPs”.

Deloitte is in the process of defining the PPP Unit's role and mandate upon a comprehensive review of the policy context and baseline. As part of their project, they broadly defined important dimensions of the PPP Unit to include:

- **Mandate:** describing where and how the PPP Unit has the accountability and authority to oversee, govern and make decisions on projects
- **Role:** describing how the PPP Unit will function in the context of the Swazi Government, whether this be a coordinating regulatory body or actively play a role in project development
- **Capabilities:** the organisational building-blocks required to deliver on the PPP Unit mandate and value proposition

Having obtained consent from SADC3P to release some of the rather general recommendations, this paper presents some of the initial results of Deloitte's advisory work. They suggest for the Swaziland PPP Unit to play more of a regulatory role instead of a simple advisory role. Thus, the recommendation for the PPP Unit is to bear an executive role as a body within the Ministry of Finance (MoF), mandated to assume accountability for regulation, oversight, support, and authentication of PPP projects. Its main functions shall be as follows:

- PPP Policy Support and Process Coordination;
- Project Analysis and Origination Support;
- Technical assistance (e.g.: transaction management, contract management, enforcement), and
- Quality Control act rather as a regulator or gate-keeper in PPP transactions.

The overall idea is that the Unit shall assume mandated decision-making authority regarding PPP projects, for instance to validate or reject proposed PPPs (Deloitte, Swaziland Ministry of Finance: Public Private Partnership Unit, 2nd Draft Operating Model and Structural Design, 2013, p.8). The Unit shall be better positioned to achieve rather sustainable results and influence as well as to better allow the delegation of authority necessary to effectively govern and grow the Swazi PPP landscape. Their recommendation is supported by the Swazi PPP Policy (section 6) stating that Government will ensure the successful implementation of PPP projects by “creating an effective regulatory authority or authorities where necessary.”

Next, Deloitte defines an operating model as an abstract representation of how an organization operates across process, organisation, and the geographical and technological dimensions aimed at achieving its value creation objectives. The next chart provides an overview of the proposed operating model (Deloitte, Swaziland Ministry of Finance: Public Private Partnership Unit, 2nd Draft Operating Model and Structural Design, 2013, p.11). The operating model establishes the



foundation for the ultimate organisational design to be rendered in phase II. Hereby, Deloitte demonstrates how the different capabilities work together to create value. The PPP Operating model also allows developing a set of design principles, which will describe important characteristics of the future organisation and provide objective criteria against which to test subsequent design decisions against.

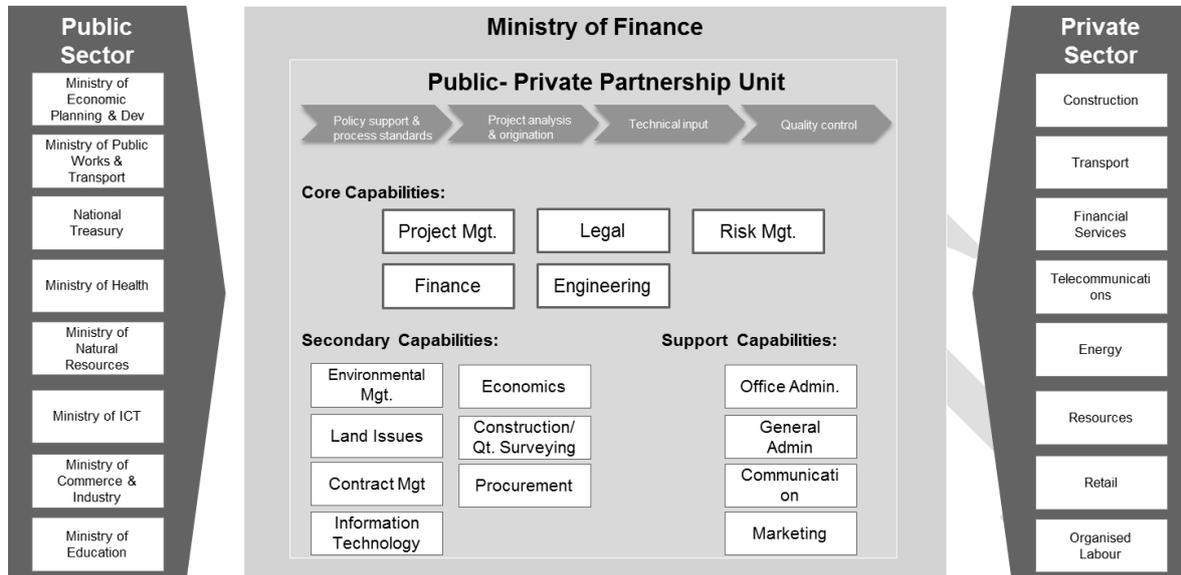


Chart 8: Proposed Operating Model,

Source: Deloitte, Swaziland Ministry of Finance: Public Private Partnership Unit, 2nd Draft Operating Model and Structural Design, 2013, p.11

In terms of the proposed structure, Deloitte has kept quite a simple and ‘lean’ organizational structure as a starting point for the Unit in order to have a basis to grow as the Unit gains more experience. Overall, the idea is to mature as they go along. It is recommended that each role encapsulates a headcount of one initially – additional roles and headcount may be added over time as the unit develops. The role of Legal Officer may be added post-initiation, depending on the degree of legal support to be received by the PPP Unit from the host ministry. Based on the above, key success factors noted by Deloitte for the Swazi PPP Unit shall include the following:

- “..High level political support and visibility: Several PPP Units globally have been deemed ineffective, due to suffering from a lack of political will. In contracts, those that have worked well have been characterised by a high level of political support, empowered by the Government and host Ministry.
- The relation of the Swazi PPP Unit to other PPP units in the SADC region for the sharing of best-practice knowledge and expertise: The SADC PPP network represents a strong resourcing and knowledge sharing partner for the Swazi PPP Unit, and should partner closely, particularly in the early stages of its inception and development.
- Inclusive implementation planning, enlisting and aligning key stakeholders, particularly those from neighbouring ministries: PPP programs are ineffective where the PPP Unit is just one of many responsible agencies. If government functions are not well coordinated and stakeholders not aligned, a PPP Unit—even one with executive powers—may not be able to stop poor quality PPPs because the unit may not receive all of the information it needs to make an informed decision, may be unable to overrule other agencies, or encounter agency/ ministry ‘territoriality’ over projects. The Swazi PPP Unit will need to circumvent this issue through comprehensive planning and stakeholder involvement.



- A strategic resourcing approach – the unit needs to be staffed with individuals with the requisite levels of skills and expertise: Ultimately the unit will only be as effective as the individuals who comprise it. The Finance Ministry would ostensibly need to take a flexible staffing approach to the Unit, and possibly consider alternative sourcing channels – in order to secure skilled individuals for key roles, but also to enable skills transfer” (Deloitte, Swaziland Ministry of Finance: Public Private Partnership Unit, 2nd Draft Operating Model and Structural Design, 2013, p.15).

The next chart provides an overview of the proposed structure of the PPP Unit. SIPA highlighted in the 2012 conference some bottlenecks existing concerning human capital in Swaziland. Thus, they find the expertise needed for PPPs is still lacking in the country (Swaziland Investment Promotion Authority, Regional Investment Agency COMESA, Public-Private Partnerships (PPP) for Swaziland Conference and Training Workshop, 2012, p.8). Swazi public officials are not able to correctly select PPP projects and to determine affordability and VfM. The monitoring and evaluation procedures as well as the professional documentation/ administration processes in public sector do not have the needed level. And even if officials get the necessary training and experience the problem of brain drain towards the private sector is not solved.

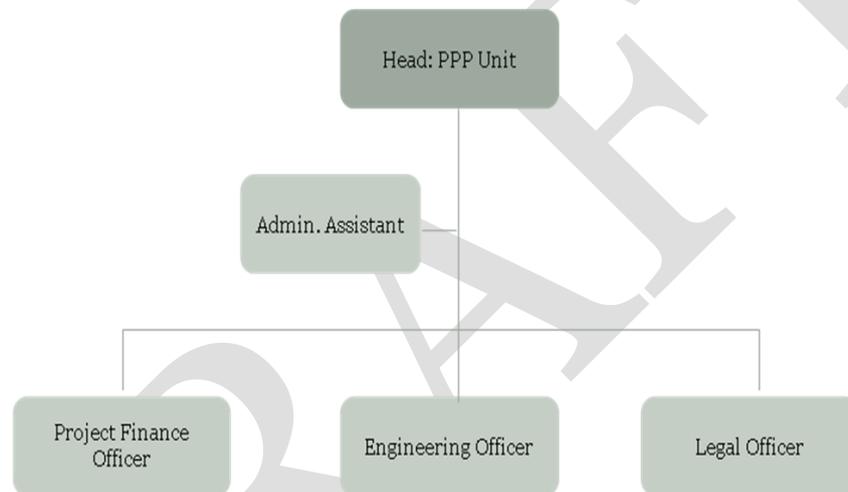


Chart 9: Illustration of the proposed Structure of Unit,
Source: Swaziland Ministry of Finance: Public Private Partnership Unit, Deloitte, 2nd Draft Operating Model and Structural Design, 2013, p.14

5.2.2 PPP Regulation, Approval and Implementation Roles in Swaziland

In terms of defining the various roles among institutions, the Government assigns in its discussions concerning PPPs, the approval role to the Cabinet who needs to provide its consent prior to proceeding with a PPP proposed. The request for Cabinet approval should address all necessary strategic and operational benefits of the proposed PPP for the Government Ministry in terms of its strategic objectives, Government policy and priorities; lay out the affordability of the PPP for the Ministry (PPPs usually have long term financial implications and therefore need to be budgeted for). Government deems it important that all PPPs are coordinated centrally so that it may closely monitor its commitments. The project proposal shall also address the proposed allocation of financial, technical, operational and any other risks between the parties; demonstrate the anticipated value for money to be achieved by the PPP; and demonstrate the



Ministry's capacity to procure, implement, manage, enforce, monitor and report on the PPP.

During implementation, the responsibility for managing the PPP rests with the project sponsor with recourse for advice to the technical assistance unit. After commissioning of the project, the management and monitoring of the project will remain the responsibility of the relevant line department, State Owned Entity or local authority. These entities shall also make all necessary budgetary provisions. The Auditor General bears responsibility on a random basis to audit PPP projects to measure and assess the value for money obtained with public money. To give effect to this all contracts shall contain an empowering clause.

5.3 Swaziland Legal Framework

The political system of Swaziland is a combination of a Westminster type constitution and traditional monarchy. The Constitution fixes the separation of powers between the King and the State but in practice, powers are not always clearly assigned. The same applies to the relations between the highly devolved tinkhundla and Central Government (Swaziland Investment Promotion Authority, Regional Investment Agency COMESA, Public-Private Partnerships (PPP) for Swaziland Conference and Training Workshop, 2012, p.8).

SIPA presentation and discussion on the PPP Framework highlights that the Crown Agents have developed improved procurement systems, including input to Procurement Bill, 2008 aimed at promoting transparency, economy, efficiency and competition and having more diverse private sector participation. The Bill proposed the establishment of technical secretariat in MoF, and defines the relationship between procuring entities, and the technical secretariat to make sure that "Contracts (for PPPs) shall be awarded in accordance with the principles and objectives of this Act and Government Policy." SIPA finds the Swazi Framework concerning implementation of PPPs to be unclear, and the business case approval seems not to work at all. Also there is weak enforcement of property rights which makes investors vulnerable. Accordingly, suggestion is to make use of the South African Guidelines as a model for procurement in Swaziland; however, as they are very comprehensive and detailed, they need to be adjusted for use in Swaziland. Another proposal is to apply their tender and bidding process that is not complicated and does not take much time if preparation is done properly.

6. Recommendations

The Government of Swaziland is at its very early stages of developing a solid PPP Framework, however, it has made considerable efforts in 2013 to advance the cause of PPPs in the country. The recently launched PPP Policy and the proposed PPP Unit pave the way for an environment that is more conducive to scaling up private investments in infrastructure and reducing the burden on Government. Dominance of public sector, however, remains a challenge in Swaziland. Apart from controlling 40% of the economy through the budget, the Government has wide commercial interests in various sectors of the economy. These include equity in banking, insurance, sugar, telecommunications and property. The concentration of ownership creates opportunities for monopolies and the associated adverse implications for welfare. In addition to crowding out private investment, the Government's role in developing appropriate regulatory and corporate governance systems is compromised.

PPPs require hard and consistent effort as well as close cooperation between Ministries. SIPA conceives tremendous opportunities for advancement of PPPs in the Kingdom. The list of potential PPP projects that may in future be procured encompasses projects in the health sector including hospitals and clinics, water and sanitation (Mondro dam, Nondvo dam, Ethemba dam). On top, project opportunities are deemed possible and may be procured in the irrigation sector such as commercial farming, agro processing, and transport including toll gates, road building



and maintenance (Swaziland Investment Promotion Authority, Regional Investment Agency COMESA, Public-Private Partnerships (PPP) for Swaziland Conference and Training Workshop, 2012, p.10). Government procurement of PPPs is considered possible for financing of Skuphe airport, and housing (UNISWA, general/social housing, teachers/police/ nurses flats; Government buildings). Next, tertiary education and municipal, solid waste management, street lighting, energy generation, prisons and Manzini shopping centre were identified by SIPA as potential PPPs for Swaziland.

Nevertheless, some major issues and problems remain in terms of implementation of PPPs. Swaziland has not adopted a specific PPP legislation and there seems to be a general lack of understanding of the term PPP. On top, coordination of such complex projects is not easy and there is not sufficient experience in the Government to conduct tender processes. Thus, Government suffers from an insufficient planning capacity as well as structuring support. Next, lack of capital and business training for outsourced employees remains a bottleneck. Finally, there remain only limited possibilities for local participation. Also lack of competition (natural monopoly) and political commitment to set cost recovery tariffs has been noted by SIPA as additional hurdles towards actual promotion of PPP schemes. To avoid these difficulties in future, regulations should be formulated and guidelines be introduced. Line Departments need to operate within proper Policy Guidelines, followed by a due process that will include the project in the public entity's budget according to normal planning and budgetary guidelines and the completion of a proper feasibility study (Swaziland Investment Promotion Authority, Regional Investment Agency COMESA, Public-Private Partnerships (PPP) for Swaziland Conference and Training Workshop, 2012).

The advancement of PPPs in Swaziland necessitates a credible creation of a PPP technical assistance Unit and a secretariat to regulate the PPP process including unambiguous approval mechanisms envisioned in the PPP Framework. Next, we recommend providing appropriate training to Ministries, Line Agencies and Government Departments including the Unit which is to be created. There must also be a proper introduction of a mandate to the Auditor General to monitor projects on a random basis to ensure the application of principles such as VfM. In addition, it is pertinent to create opportunities for the Swazi local private sector and stipulate requirements for the involvement of local firms and private firms in PPP processes and projects. It is very important that the first pilot projects are successful as they lay the basis for further projects. They should have the strong support from all stakeholders and viable income streams and must not result in job losses or the necessity for substantial changes in conditions of service.

Overall, we recommend taking account of some critical success factors in order for PPP projects to be promoted in Swaziland. Not only the existence of a solid and proper PPP Framework is crucial to the advancement of PPPs in Swaziland, but foremost there is a necessity to invest in enhancing the capacity of private and public sectors (increasing everybody's knowledge by explaining to each other), and to improve communication (finding relevant people, organising a forum, inviting the press) among various Ministries. On top, there is need to induce a change in the mind set of not only public

Concrete SADC3P Recommendations:

- Provide further advisory support to move on to the third stage of support towards implementation of recommendations rendered by Deloitte.
- Provide training to improve public sector understanding of PPPs;
- Assist in capacity building to improve skills related to procurement and management of PPPs;
- Provide assistance to establish proper Guidelines on PPPs;
- Facilitate private sector dialogue to promote local participation.



sector but also users to be able to better attract private sector investment in Swaziland -- everybody has to change their behaviour (e.g. to pay their bills on time and to arrive at meetings in good time). Also proper communication of Government's political will is an essential driver of providing comfort to investors. It is important that the Government puts in charge at least one Minister to promote the cause of and advance PPPs. It is also pertinent that the PPP strategy which already exists be followed up by a credible implementation plan which needs to be introduced in 2014. Finally, availability of investment finance needs to be improved; at present, long-term credits are hardly available. Therefore, a refinancing system should be applied for PPP projects in Swaziland, as it is easier to obtain long-term financing when a project has already been successfully initiated.

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