

PPP Country Paper

Zambia

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Working Group

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Zambia

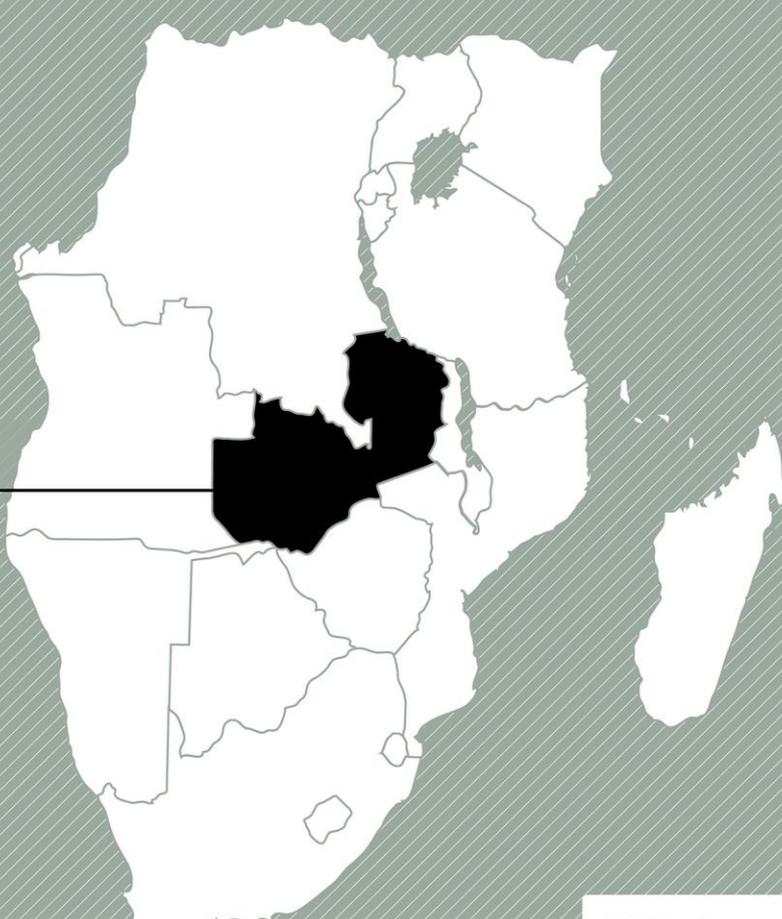
A map of the African continent is shown in white against a dark green background with diagonal hatching. The country of Zambia is highlighted in solid black. A horizontal line extends from the word 'Zambia' on the left to the black-shaded area of the map.

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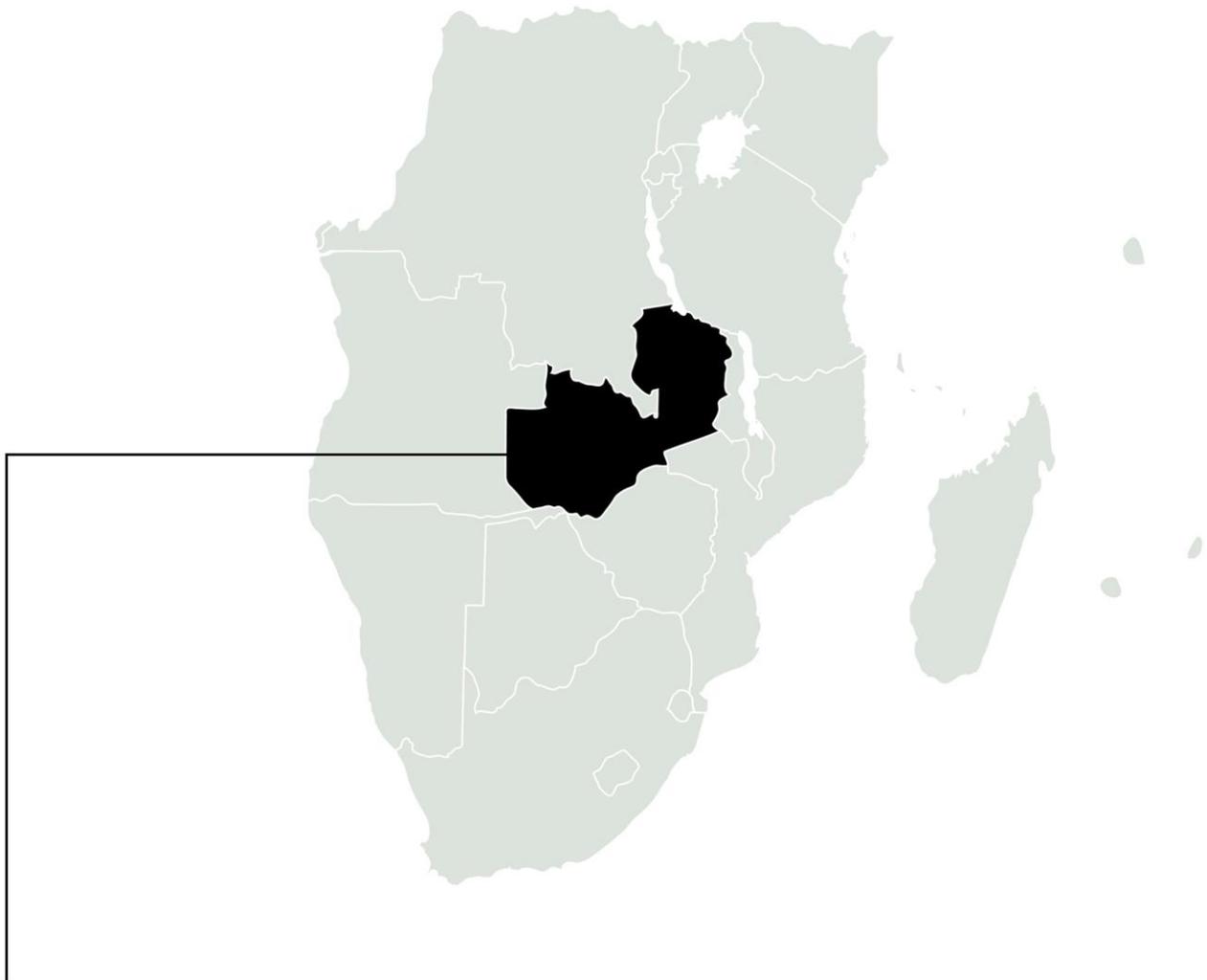
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List of Abbreviations

AfDB	African Development Bank
BT	Build, Transfer (BT)
BLT	Build, Lease, Transfer
BOT	Build, Own and Transfer
BOOT	Build, Operate, Own, Transfer
CAO	Contract Add and Operate
GDP	Gross Domestic Product
IMF	International Monetary Fund
Mio.	Million
MoF	Ministry of Finance
NEPAD	National Planning Council of Ministers
OECD	Organization for Economic Cooperation and Development
PPP/s	Public Private Partnership/s
ROT	Rehabilitate, Operate, Transfer
RDO	Rehabilitate, Develop, Operate
SADC	Southern African Development Community
SADC3P	Southern African Development Community- Development Finance Resource Centre PPP Network
VfM	Value for Money
ZDA	The Zambian Development Agency





KEY INDICATORS - 2012

Zambia

Population (Mio.)	13.5
GDP per capita (US\$)	1.474
PPP Level of Maturity	Medium

(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 Zambia'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 Zambia, 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 Zambia. 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

Zambia, officially the Republic of Zambia has a population of 13.5 Million (Mio.) and is a landlocked country governed as a representative democratic presidential republic. Its neighbouring countries include the Democratic Republic of Congo to the North, Mozambique as well as Zimbabwe, Botswana and Namibia to the South, Angola to the West and Tanzania to the North-East. Since September 2011, Michael Sata has been President of Zambia for a term of five years. According to African Development Bank (AfDB), Zambia has improved its key indicators of governance in terms of control of corruption, rule of law, regulatory quality and government effectiveness (AfDB, 2013, web page). The country belongs to the world's fastest economically reformed nations showing a strong economic performance with a Gross Domestic Product (GDP) growth rate of 7.3% in 2012 --up from 6.8% in the previous year (International Monetary Fund (IMF), 2013, web page).

Despite Zambia's expansionary macroeconomic policy, and overall balance of 3,5% of GDP from 2010-2012, the country still has a long road ahead to tackle issues related to disparity, and equality of access to opportunities for all. Thus, according to the World Bank, it is quite urgent that Zambia invests in lagging regions, particularly with a focus on infrastructure, such as drinking water, electricity and sanitation. Overall, AfDB estimates a medium-term forecast of 7% as far as the annual growth rate for 2013 and 2014 is concerned (AfDB, 2013, web page).

Zambia's global competitiveness ranks 102 of an overall 144 countries, and number 7 compared with 13 other SADC countries ranking in the middle ranges and remaining confronted with challenges as far as its competitiveness is concerned within the SADC region (World Economic Forum, The Global Competitiveness Report 2013-2014, 2013, p.392). Rankings for Zambia as far as the infrastructure quality is concerned compared to other SADC countries --this relates to the quality of the overall infrastructure and quality of roads, railroad, port, air infrastructure, and available airline seat kilometres-- is also quite poor (ranking 94) thus reflecting the Government's lack of efforts to improve the level of service provision as far as the above mentioned infrastructure categories is



concerned (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p. 392). The low level competitiveness of Zambia is an indicator of its Government's and policy makers' poor commitment towards the promotion of the country's infrastructure, 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 lack of accessibility to financing corruption as some major limiting aspects hindering progress in Zambia. Also the inadequate supply of infrastructure remains a bottleneck to proper economic performance.

Although PPPs may be considered rather as a new concept in Zambia, the country has progressed quite early on launching a PPP Policy in 2008, and enacting it in 2009. To further strengthen the Framework for infrastructure development, the Government issued also the PPP Act in 2009, thus opting to support its PPP program with a clear and unambiguous Legal Framework. A Unit was established under the Ministry of Finance and the National Planning Council of Ministers (NEPAD, OECD, Accelerating Reform in Africa: Mobilising Investment in Infrastructure and Agriculture, Highlights of the Policy Framework for Investment in Zambia, 2011, p.27). Thus, reliance upon a delegated management framework by whatever form of PPP as a means of improving the quality of public services has come to the recognition of the Zambian Government as one of the fundamental tools of economic modernisation.

Further to these actions, the Government, in cooperation with local institutions and regional Governments, formulated infrastructure investment priorities. Several PPP projects have already been implemented in various sectors ranging from agriculture, and health to energy. In total, 16 PPP projects have been implemented between public and private sectors (The Zambian Development Agency (ZDA), 2013, web page). There are more projects being proposed in agriculture, transport and communication. Designated are, for example, PPPs in transport such as railway and road network, water transportation or international airports. Efforts in the energy sector include projects in the petroleum, bio-fuels, hydro electricity power generation, transmission and distribution, renewable energy, coal and uranium.

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 Zambia to belong to those increasing number of countries in SADC that have established a PPP Policy and/or a PPP Law aimed at the promotion of their PPP schemes. The next chapter will elaborate on Zambia'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 Zambia.

3. Methodology

Our approach in this country specific paper is to provide an overview of Zambia'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 Zambia, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document



distilled Zambia in 2012 to be prone towards promoting PPPs, and establishing institutions to promote the existing PPP Framework. This paper will touch upon this evaluation and move further to analyze the current progress made in Zambia 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 Zambia 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 Zambia'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 Zambia'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 Zambia'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 Zambia'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 Zambia as far as next steps is concerned.

4. Examination of the Term PPP

In Zambia, the term PPP is defined quite clearly in the PPP Act No. 14, 2009 whereby a ...” ”public-private-partnership agreement” means a contractual arrangement between a contracting authority and a concessionaire, made in accordance with this Act, in which the concessionaire— (a) undertakes to perform or undertake any infrastructure project or infrastructure facility as specified in the First Schedule or as prescribed; (b) undertakes to provide or provides such social sector services as may be prescribed; (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function or use of State property; and (d) receives consideration for performing a public function or utilising State property, either by way of — (i) a fee from any revenue fund or a Ministry's budgetary funds; (ii) user levies collected by the concessionaire from users or customers for a service provided by it; or (iii) a combination of the consideration paid under subparagraphs (i) and (ii)“ (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, p.26).

Thus, a PPP is considered as an arrangement between public, and private sectors (consistent with broad range of possible partnership structures) consisting of a clear agreement concerning shared objectives for delivery of public infrastructure and/or public services by the private sector that would otherwise have been provided through traditional public sector procurement. In return, the private entity receives a benefit/financial remuneration according to predefined performance criteria, which may be derived entirely from service tariffs or user charges; entirely from Government budgets; or, a combination of both. Thus, the Zambian definition of the term is not only quite explicit in terms of defining the underlying contractual arrangement to involve proper risk allocation that is best to be assumed by private sector, but also determining that in return for getting the right to use the asset, private partner receives a fee from a revenue fund, user levies or a combination of both. The Zambian term considers a solid payment structure as an essential element needed to implement successfully PPPs (See next chart for an assessment of the term).



It is important to highlight that the Government of Zambia has quite a flexible definition of the length of the contractual agreement which may by nature include not only Build and Transfer (BT) projects, but also Build, Lease and Transfer (BLT) or Build, Operate and Transfer (BOT) and Contract Add and Operate (CAO) and also short term contracts such as Service Contracts and mid-term arrangements such as a Management Contract. In terms of bundling, the definition does not explicitly refer to bundling of processes and functions; however, in the First Schedule (Sections 3 and 4), the definition of infrastructure and facilities refers implicitly to bundling of financing and construction of a project in BLT arrangements. It may be added that the Zambian PPP definition does not consider any output specification to be determined by public authorities.

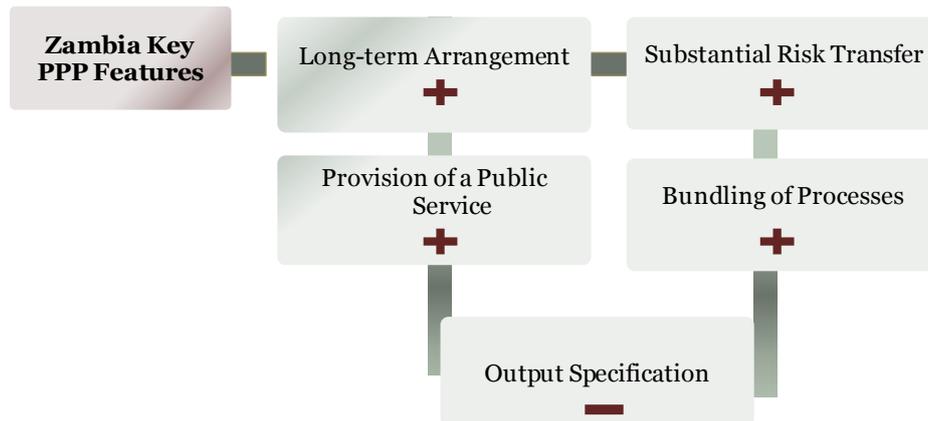


Chart 1: Evaluation of the Term PPP in Zambia

The Zambian Government intends to retain a significant role in the partnership as main purchaser of services or main enabler of the project. The PPP concept in Zambia allows the public sector to source private sector providers for the delivery of public infrastructure and related services which the private sector can provide more effectively and efficiently. The PPP Policy notes that PPPs in Zambia not only signify reliance upon the private sector for financing capital investment projects on the basis of revenue streams to be generated by the future facility, but also incorporates the use of private skills and managerial expertise in building and operating public service projects more efficiently throughout the project life cycle. In this respect, the core of PPP encompasses more the notion of service provision than simply infrastructure financing and construction.

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 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 Zambia 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

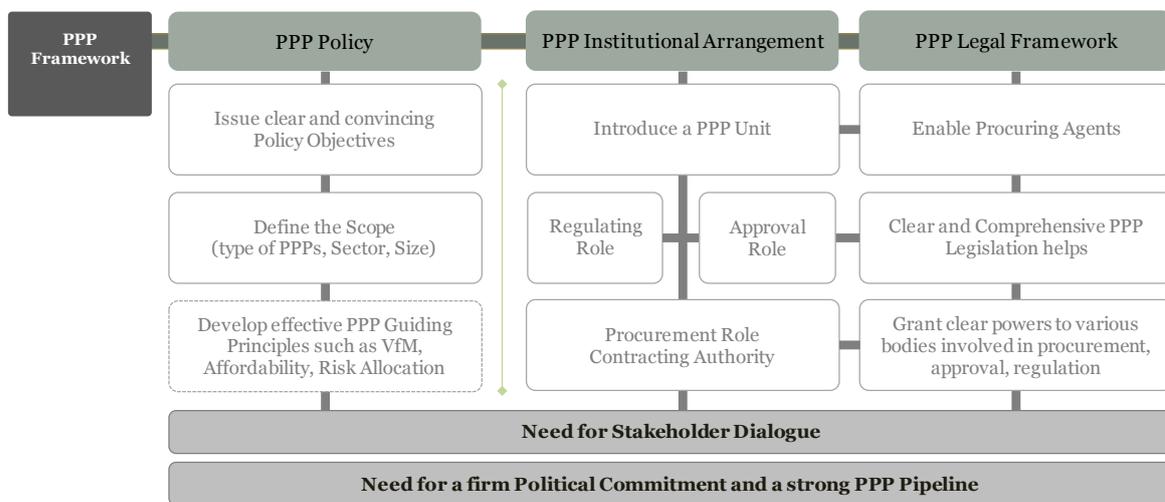


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

5.1 PPP Policy in Zambia

Proper PPP Policies address not only Government’s program objectives, but also define more clearly the intended PPP scope as well as the fundamental guiding principles underlying the rationale for adoption of PPPs for the various stakeholders to better understand and be able to implement and promote PPPs. In establishing a Framework for private sector participation in infrastructure, The Government of Zambia confirmed its intentions and commitment by initiating a policy-making process on PPPs. This was supported by a study of best practices and an assessment of the capacity of private sector to invest in infrastructure. This led to a Policy that would address and balance the objectives of both private and public sectors (Monde M. Mukela National Council for Construction, Zambia ‘The ‘Significant Other’ A Case Study of PPPs in Zambia, Lessons Learned in the Infrastructure Reform Process). An important highlight of the process of PPP Policy development in Zambia is the fact that the Government of Zambia started the PPP reform process by engaging into an active process of dialogue with private sector. The private sector was allowed to drive the process through participation in Policy and Regulatory reforms. The donor community was the catalyst supporting the private sector reform program. The stakeholders and general public provided for the consensus required to move the process forward at each stage.



The Government of Zambia formulates the rationale behind its PPP program in the 2009 PPP Policy, outlining the Framework for the implementation of PPPs in the country. Herein, the Government recognizes that “...various sectors of the economy require resources which are rather limited. Thus, PPPs would provide Government an alternative means for providing new infrastructure as well as rehabilitation and maintenance for existing infrastructure through involvement of private sector that will provide requisite finance and expertise for such investment...” (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, p.7). There is an explicit statement of operational and strategic policy objectives in the PPP Policy, which are also reaffirmed in the PPP Act of 2009. PPP Policy objectives include the efficient use of resources in infrastructure development and management, provision of infrastructure and service delivery based on international standards, promotion of sustainable socio-economic development of infrastructure, obtainment of value for money from the infrastructure investment and a number of other objectives that may be depicted from the following chart. PPPs are deemed by the Zambian Government as proper means of offering opportunities for local authorities to adequately address their infrastructure requirements. In terms of strategic objectives, the Government of Zambia aims at establishing its country as a hub of economic development in the region, and needs in this context to take steps to improve its infrastructure. The intention of the Government is to engage the private sector in these developments through PPPs. The Zambian Government will continue with its facilitating role of encouraging and enhancing private investment in the sector. Most rehabilitation and maintenance of infrastructure is being contracted out in order to further increase private sector involvement. The development of socioeconomic infrastructure through PPPs will be tailored to enhance Zambia’s strategic and geographic position in the sub region as a hub of socio-economic activity. The next chart provides an overview of Government’s goals as issued in the PPP Act and Policy.

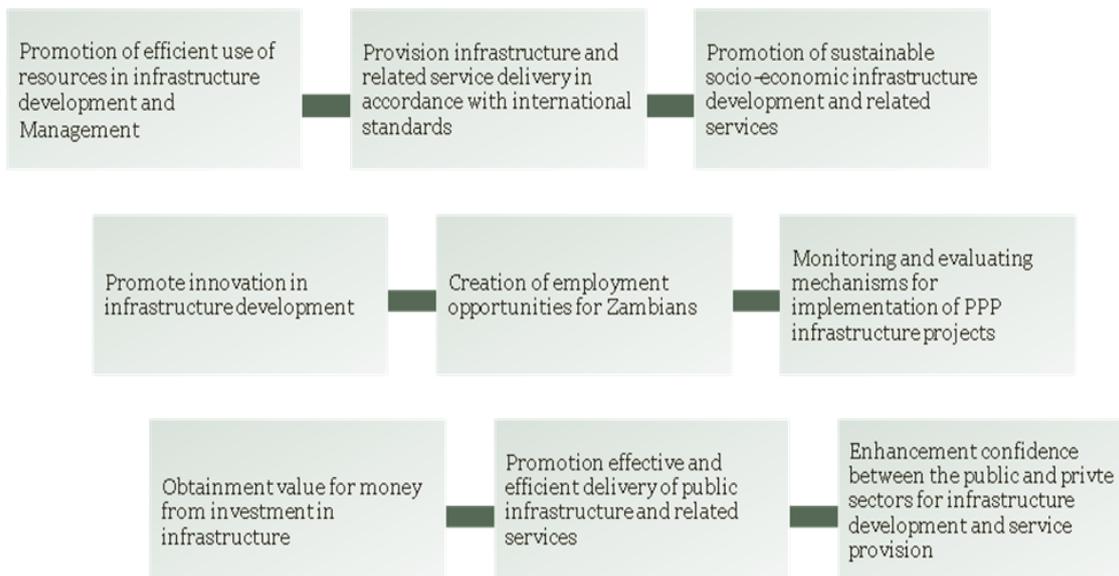


Chart 3: Overview of Zambia PPP Objectives, Source: PPP Policy and Act, 2009, Chapter 5 in PPP Policy, p.11

Based on the above, the Government has a firm commitment towards PPPs as viable means of infrastructure development to address effectively the constraints of finance and management faced by public sector and to enable the public sector to streamline the Government’s functions to being a facilitator and monitoring of services ensuring efficiency and accountability.

The Zambian Development Agency (ZDA) institution is also in charge of promoting PPPs in the country. It highlights the vision of the Government which is: “to have well developed and maintained



quality socio-economic infrastructure and related services that enhance the Zambian people’s livelihoods and effectively contributes to national development through PPP Frameworks and initiatives” (ZDA, Ernest Chirwa Senior Planning & Policy Officer-ZDA, A Presentation on Zambia’s Experiences with regard to PPP in Infrastructure, 2008). Zambia defines in chapter 5.3 of the PPP Policy, and in the First Schedule of the PPP Act (Sections 3 and 4) the scope of PPPs laying out a detailed list of PPP models which differ from type to type based on the level of involvement of private sector in “conceiving, designing, building, operating, maintaining and financing a project, thereby taking a considerable proportion of risk” (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, First Schedule). The next chart provides an overview of the various PPP models that may be implemented in Zambia.

PPP Types in Zambia

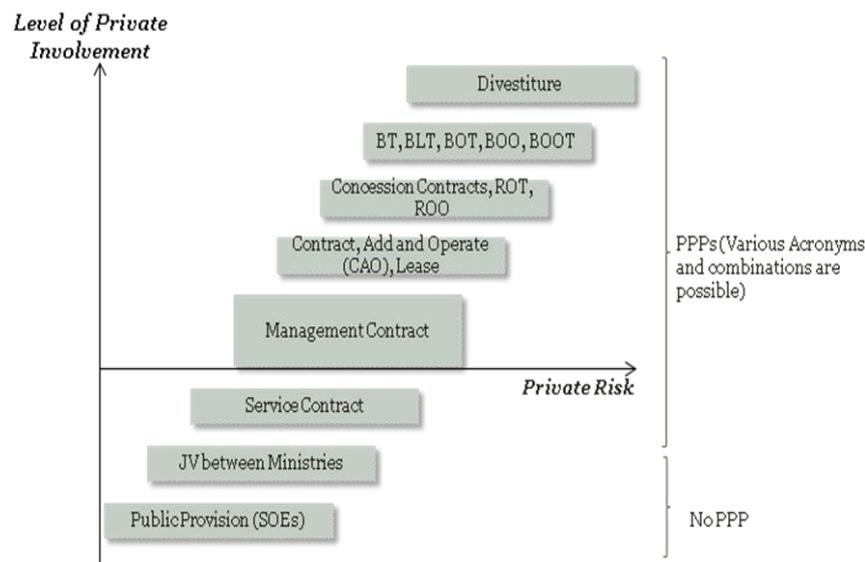


Chart 4: Overview of Types of PPPs in Zambia

The spectrum of PPP arrangements is quite wide differing in purpose, service scope, legal structure and risk sharing. One end of the spectrum may be contractual arrangements like outsourcing of some routine operation, while the other may involve the private sector conceiving, designing, building, operating, maintaining and financing a project, thereby taking a considerable proportion of risk. Chapter 5 of the PPP Policy reaffirms that the choice of a PPP arrangement for a particular project hinges upon Government’s policy in the related sector and on potential Value for Money (VfM) to be generated under such an arrangement.

In order to put PPPs into place, governments formulate important principles aimed at ensuring a mechanism whereby via supplementation and additional regulations, PPP processes shall be improved. According to the OECD, clear implementing guidelines are a positive signal to the market conveying the underpinning standards against which those responsible for putting PPPs in place may be held accountable. These include affordability, appropriate risk transfer and VfM. Zambia has laid out a number of principles in its draft Policy on PPPs to clarify those guiding principles that contribute towards a successful outcome of PPP projects. The general idea is to procure well-designed projects, thorough due diligence, competitive and transparent procurement. Overall, the PPP Policy guidelines regarding implementation include periodic review of the Policy to allow for consistency and



modification in accordance with the development process in the country (Monde M. Mukela National Council for Construction, Zambia, ‘The ‘Significant Other’ A Case Study of PPPs in Zambia, Lessons Learned in the Infrastructure Reform Process Zambia). This aspect is quite important in view of the dynamic nature of the economy and the extended durations of PPP projects.

Guiding Principles	Driving Issues
1. Feasibility	PPPs should be affordable Management of scarce resources, better risk allocation, more efficient and cost-effective
2. Bankable Projects for Financiers and Developers	Attractiveness to private sector through cost recovery pricing policy Framework should include: Contract Regulation, Contract transparency and minimise disputes or breakdowns
3. Value for Money	Economic value, service outcomes or outputs Innovation, coordination, quality, minimizing costs, effective use of capital
4. Risk Allocation	Optimal risk allocation between public and private sector
5. Economic and Social Benefits	These aims should be the underlying principles of PPPs Separation of responsibility and investment
6. Citizen's Empowerment	Implementation should have due consideration of Zambian citizens Strategy for economic growth and sustainability
7. Decentralization	Extension of responsibility of local Government and Councils
8. Social Responsibility	Effective provision of infrastructure and related services Ensuring availability to all levels of society
9. Unsolicited Bids	Initiated by the private sector under certain conditions (ministry of works and supply) Encouraging creativity and innovation

Chart 5: Overview of Guiding Principles in Zambia

AfDB examination of the status of PPPs in Zambia indicates the need to be proactive by assisting the Government in strengthening its capacity to prepare bankable projects that may be marketed to various financiers. Such capacity seems not to exist within Government, although the PPP Policy was already launched early on in 2009. OECD analysis reaffirms also that whilst the PPP concept has received wide recognition and support from private sector, the Government still faces the challenge of establishing a more transparent and consistent Framework for identifying infrastructure projects that should be brought to the market as PPPs. At present, these processes have been implemented administratively largely using executive orders rather than through public tenders (OECD, OECD Investment Policy Reviews Zambia, 2012, p.139).

5.2 PPP Institutional Responsibilities in Zambia

The 2009 PPP Act determines and establishes a number of institutions to be involved in various processes of PPPs. Next to the PPP Unit which is in charge of implementation of PPPs, a PPP Council was established to formulate Policies relating to PPPs, and as an approval body not only to approve projects; but also to approve the preliminary award of agreements, and to ensure competition, transparency, fairness and equity in the selection process. It is also a body to make recommendations to the Contracting Authority (CA) on generic risk sharing principles for any project and the grounds for entering into negotiations with a preferred bidder. On top, the Council shall be responsible to give directions to any CA, Regulatory Agency or concessionaire regarding the implementation of any project and the CA, Regulatory Agency or concessionaire shall comply with the directive, subject to any other written law, to set time limits for clearance of projects, and review the time limits periodically;



and to resolve issues relating to the project approval process; and refer any bid received by it to an appropriate CA for examination and evaluation. The Council shall approve or reject a project or award of an agreement before it within twenty one days of receiving a recommendation on it from a Technical Committee. The Council shall, in the performance of its functions take into consideration the recommendation of the Technical Committee.

The Technical Committee plays an advisory role to the Council, and the Unit on all technical matters relating to PPPs, and projects. The PPP Technical Committee reports to the PPC, chaired by the Secretary to the Treasury that is constituted by senior government officials. It includes the Attorney General, and Permanent Secretaries responsible for Works and Supply, Commerce, Trade and Industry and Local Government and Housing. Other members of the Technical Committee include representatives drawn from the Engineering Institute of Zambia, Economics Association of Zambia, national Construction Council, and the Environmental Council of Zambia. The Technical Committee provides recommendations to the Council the award of agreements, and evaluates as well as selects projects for award for recommendation to the Council. Next, it is in charge of recommending the approval of projects. The PPP Unit works directly under the supervision of the Technical Committee.

Under the Private Sector Development Reform Programme (PSDRP), the Zambia Development Act of 2006 merged various state-owned enterprises in Zambia to form the Zambia Development Agency (ZDA) (NEPAD and OECD, Accelerating Reform in Africa: Mobilising Investment in Infrastructure and Agriculture, Highlights of the Policy Framework for Investment in Zambia, 2011, p.4). The idea was to rationalize investment and trade promotion activities, and to render the concept of a one-stop-shop for investment facilitation operational. In this context, the ZDA is also responsible for promoting complementarities between Government and private sector investment through PPPs in infrastructure projects. The main role of the ZDA is to identify and package PPP Projects and to promote these to potential investors. ZDA is considered as the only agency and institution mandated to provide incentives in the country; thus being a key player in the implementation of the PPP projects (Ernest Chirwa, Senior Planning and Policy Officer-ZDA, A Presentation on Zambia's Experiences with regard to PPP in Infrastructure, 2008). ZDA shall also be involved in the process of monitoring of PPP Projects. This shall be undertaken in conjunction with the Unit that was to be created in the MFNP which should be responsible for coordinating and evaluating PPP Projects (Ernest Chirwa, Senior Planning and Policy Officer-ZDA, A Presentation on Zambia's Experiences with regard to PPP in Infrastructure, 2008).

Cuts International reaffirms that although the idea of PPPs has generally found acceptance by the Government in Zambia, and a key function has been allocated to the ZDA to promote and implement PPPs, the enabling environment, in the form of enabling Policy and Institutional Framework for PPPs, needs yet to be put in place to attract the private sector in Zambia (CUTS International, Aid for Trade and Economic Development, A Case Study of Zambia, 2012, p.26). They find that this challenge remains an inhibiting factor for trade expansion. Proper structuring of PPPs remains a challenge to the ZDA. Quite Concretely, the project, entitled Kitwe-Chingola road (50km) that is being considered as a PPP faces some problems in structuring where the Government of Zambia is yet to identify the most appropriate form of PPP arrangement (CUTS International, Aid for Trade and Economic Development, A Case Study of Zambia, 2012, p.45).

5.2.1 Role of PPP Unit in Zambia

With the enactment of the PPP Act, a PPP Unit was established to be responsible for the implementation of the provisions of the Act. The Unit is a department in the Ministry responsible for



finance and is under the control and supervision of the Minister responsible for finance. The expenses of the Unit are charged upon and issued out of the general revenues of the Republic. The functions of the Unit as laid out in the PPP Act, Part II, Article 5 is wide ranging and may be depicted from the next chart.

Next to the above, the Unit shall be responsible for ensuring the proper implementation, management, enforcement and monitoring of any agreement and the reporting by a concessionaire on an agreement. The Unit shall also exercise and perform such other powers and functions as are conferred or imposed on it by, or under, the Act or any other written law.

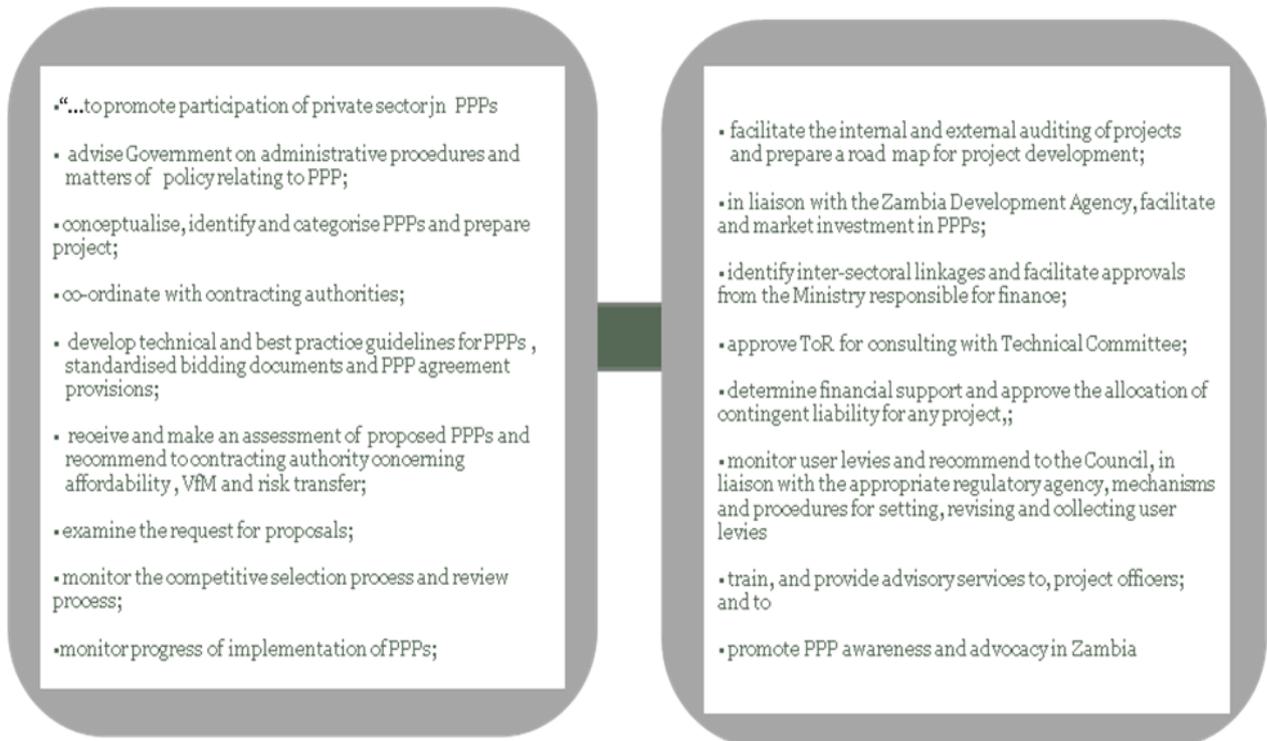


Chart 6: Overview of Functions of the PPP Unit

NEPAD, and OECD confirm that infrastructure development is highly sector specific, although the establishment of the PPP Unit in 2009 has sent the right message in terms of improving the sector coordination (NEPAD, OECD, Accelerating Reform in Africa: Mobilising Investment in Infrastructure and Agriculture, Highlights of the Policy Framework for Investment in Zambia, 2011, p.43). However, their evaluation of the investment climate in Zambia highlights weaknesses in the capacity for making informed decisions on the development of new facilities as well as the maintenance of existing infrastructure. They recommend the need to follow established standards and practices in the area of PPP implementation. This also applies to transport, and increasing private sector participation in the water and sanitation sector, an area where Zambia faces some difficulties.

The Unit is headed by a Director with a staff of roughly 19 experts with backgrounds such as economics, architecture and engineering. Recent examination of the institutional requirements concerning PPPs in Zambia indicates the need for the specialised PPP Unit to be endowed with an adequate capacity aimed at carrying out long term project planning while also ensuring that these are consistent with the national development plans and priorities (OECD, OECD Investment Policy Reviews Zambia, 2012, p. 38). The PPP Unit personnel requires some sort of predictability rather than



responding to changing short-term priorities. This is particularly important for PPPs which are rather complex and lengthy in terms of process requiring time and resources for tasks such as feasibility studies; packaging investment profiles; and soliciting interest in the private sector. Thus, OECD recommends reconsidering the current institutional set-up of the PPP Unit.

5.2.2 PPP Regulation, Approval and Implementation Roles in Zambia

The PPP Act of 2009 stipulates quite thoroughly the various functions related to implementation, regulation and approval among various bodies and entities in Zambia. Thus, the CA --after undertaking a feasibility study and in accordance with the advice of the Unit-- submits a project proposal together with the proposed agreement to the Technical Committee for evaluation. The Technical Committee then considers the project proposal and the proposed agreement submitted, and submits the feasibility study, the project proposal and the proposed agreement to the Council which approves the feasibility study for PPPs. If there are revisions needed --concerning affordability, VfM and substantial technical, operational and financial risk transfer--, the CA has to launch a revision.

Within the actual bidding process, the CA is in charge of the process, but needs approval from the PPP Unit concerning pre selected bidders. The CA must also submit a report for approval to the PPP Unit to demonstrate how the pre selection criteria specified in the PPP Act has been met.

In terms of composition of the Council, the Minister responsible for finance is the Chairperson; and four Ministers are appointed by the President, one of whom shall be designated the Vice-Chairperson; and not more than four other persons who are appointed by the President on such conditions as the President may determine. The Permanent Secretary in the Ministry responsible for finance shall be the Secretary to the Council. The Secretary shall be responsible for the day-to-day affairs of the Council under the general supervision of the Chairperson.

The Technical Committee is in charge of PPP transactions meeting once in every three months with other part-time members appointed by the Minister to include the Secretary to the Treasury, as Chairperson and a representative of the Attorney-General; the Permanent Secretary of the Ministry responsible for works and supply; the Permanent Secretary of the Ministry responsible for industry; the Permanent Secretary of the Ministry responsible for land; the Permanent Secretary of the Ministry responsible for local government; a representative of the Engineering Institution of Zambia; a representative of the National Council for Construction; a representative of the Environmental Council of Zambia; a representative of the Zambia Public Procurement Authority; a representative of the Economic Association of Zambia, nominated by that Association; and two persons appointed by the Minister.

Information from Ministry of Health criticizes the lack of interaction between the implementing CAs and the PPP Unit. There is need for the establishment of sector or sub- level PPP Units, so for instance in the health sector to further capacitate the engagement between CAs and the national Unit.

5.3 Zambian Legal Framework

The PPP Act No. 14 of 2009 regulates not only matters on the institutional structure related to PPPs, but Part III – V deal with issues governing project identification and feasibility studies as well as the competitive selection process including also the contents of a typical PPP Agreement, and settlement



of disputes. Next to introducing the general OECD principles on transparency, equity and fairness, the procurement process in Zambia shall be competitive and cost effective (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, Part IV, p.35). Interestingly enough, the competitive process must take into consideration the Citizens Economic Empowerment Act, 2006 concerning preferential treatment of certain citizens marginalised or disadvantaged as defined under the Act.

In terms of the bidding process, the CA is the owner of the PPP; it launches the request for submission of an Expression of Interest (EoI) after having obtained approval of the feasibility study (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, Part IV, p.36). The approval of the Unit is needed on behalf of the CA prior to issuing any bidding document to the market. The Act defines in a detailed manner the pre-selection criteria that need to be applied in the EoI stage, and what the EoI documents must entail prior to being sent to bidders. The approval of the PPP Unit is needed at each stage prior to moving on. In Zambia, a CA may opt for a single or a two stage competitive procedure requesting for technical proposals. The latter is similar to a competitive dialogue process where the CA may in the initial request for technical proposal stage engage into discussions with bidders and convene meetings to clarify questions concerning the initial request for technical proposals. Following such discussions, the CA may review and revise the request for proposals and thus get some idea on how to improve the documents and the technical specifications of the project. The Act regulates also the contents of the request for technical proposals (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, Part IV, p.40).

It is interesting the Government of Zambia requires a bid security which shall not be forfeited unless in some cases that have been laid out in Art. 29 of the PPP Act. The Act further sets in a detailed manner the criteria for evaluating technical proposals from the technical and financial or commercial perspective. It further lays out those circumstances authorizing the award of contracts without competitive procedure. These include cases when there is an urgent need for ensuring continuity in provision of service or when the project is of short duration and not complex, and others (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, Part IV, p.42).

As for treatment of unsolicited bids, the CA may receive such a bid; and undertake a preliminary evaluation. The bid must, however, be advertised for competitive proposals for the same project. The CA evaluates the new bids, and compares these with the original. The CA has various options available in terms of treatment. It may a) accept the original unsolicited bid; b) request the originator to match any competing bids and if so award to the originator; c) reject the unsolicited bid and accept competing bid; d) accept both the originator's and competing and negotiate terms (Republic of Zambia, Ministry of Finance and National Planning, PPP Policy and Act, 2009, Part IV, p.44).

Our analysis indicates a solid Legal Framework as far as PPP procurement and management is concerned. Zambia has not only established clear and complete processes concerning award of PPP contracts, but also established further guidelines within the PPP Act concerning the content of tender evaluation and criteria to be used. The procedures seem to provide credibility also in terms of procurement control and safeguard rights. The next chart provides an overview of the evaluation of the Legal Framework in Zambia.



Evaluation of Zambia PPP Legal Framework



Chart 7: Assessment of Zambian Legal Framework

6. Recommendations

The PPP process in Zambia has involved early on the establishment of a Policy followed by a Legal Framework in consultation with relevant stakeholders (Monde M. Mukela National Council for Construction, The ‘Significant Other’ A Case Study of PPPs in Zambia, Lessons Learned in the Infrastructure Reform Process, Zambia). The general idea of PPPs has found acceptance in Zambia, however, being a relatively new concept to be institutionalised, the PPP process has required a broad consultative process and a study of best practices in the region and beyond. It was also necessary to examine the Zambian private sector’s capacity to participate in PPP projects. By establishing a Framework for PPPs in Zambia, the Government has created a platform for business to be undertaken at a new level and with broadened options.

The PPP Policy formulation was influenced by the outcomes of the study of best practices and the assessment of local capacity to invest in infrastructure and related services. This has led to a Policy that is generic in nature, which may be adapted to a number of PPP options. The Policy further hinges on principles that would address among other things: a) poverty reduction and wealth creation through affordability and empowerment; b) development of infrastructure nationwide through implementation of PPP projects at all levels of decentralisation; c) sustainability through feasibility and VfM; d) return on investment and appropriate risk allocation. Further, Zambian PPP Policy guidelines on PPP implementation include a periodic review of the Policy to allow for consistency and modification in accordance with the development process. This is an important aspect in view of the dynamic nature of the economy and the extended durations of PPP projects. The Policy further accounts for the need to build expertise in both the public and private sectors to administer and manage PPP projects. It is important to mention that success in the Zambian PPP reform process may only be achieved through combined efforts and harnessing of the strengths and advantages of stakeholders. The reform process is subject to regular review and evaluation of its impact on the economy and society in general.



OECD reaffirms in the Investment Policy Review conducted in 2012 that the Government has done well putting in place a Legal and Institutional Framework for PPPs to address large scale infrastructure development that is beyond financing capacities of the Treasury. Through PPPs, the Government may be better in the position to address sector deficits by, for instance, facilitating private investment in new hydropower generation plants and in the rehabilitation and expansion of major road networks. These initiatives are important for stimulating increased investment in economic activities and facilitating international trade. OECD emphasizes, however, the need to promote PPPs further by strengthening and increasing transparency and disclosure of the bidding process. Furthermore, the Institutional Framework needs to be revised in order to improve management and implementation capacity of the PPP Unit (OECD, OECD Investment Policy Reviews Zambia, 2012, p. 17).

The selection of appropriate projects for development as PPPs requires an understanding of the features of, and environment required for a successful PPP project. This may be based on experience gained within a country, but also from wider experience in other countries. For Zambia, PPPs pose new demands on public agents, as skills are needed to specify outputs, to understand complex financial structures and to allocate and manage risks in the most efficient manner. In order to further attract private sector in provision of PPPs across various sectors such as health, education, and transport, Zambia must better invest in building capacity to identify and develop PPPs and engage the private sector for investment purposes. We recommend that public agents get a better understanding of the requirements posed on structuring, designing and managing a PPP procurement process to clearly identify outputs, conduct risk allocation, assess financial feasibility, etc. Indeed, the prime challenge to the advancement of PPPs in Zambia includes not only the limited local capacity to undertake PPP Projects, but also the limited local capacity to finance PPP Projects by commercial banks. We recommend providing appropriate training to Ministries, Line Agencies and Government Departments including the Unit to draft further guidelines on PPPs. Overall, there is need to reduce the heightened expectations for PPPs as a Panacea to long standing developmental problems which must be kept in mind.

At sector level, there is an urgent need to strengthen Government's capacity in PPPs and to increase the dialogue amongs various Ministries. For instance, in the Health Ministry there is need for communication among team members to get a better understanding of the concept and also between the various Ministries there is need for more dialogue.

Concrete SADC3P Recommendations:

- Provide support to PPP Unit in developing PPP Manuals and Guidelines on PPP procurement and implementation;
- Provide assistance to strengthen capacity building at the sector level;
- Support Sector Ministries such as Health Ministry in identifying projects, and structuring them including conducting proper feasibility studies;
- Follow-up on the Manager Training Program to conduct an Inter-Ministerial Stakeholder Dialogue to raise awareness on the concept of PPPs.



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