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GUIDING PRINCIPLES

FOR PUBLIC/PRIVATE PARTNERSHIPS (PPP) IN LAND ADMINISTRATION

Background

1. At its second session in November 2001, the Working Party on Land Administration held an in-depth discussion on public/private partnerships in land administration. The Working Party took note of the initiatives taken in many ECE Member States to improve services by creating effective public/private partnerships and it agreed that there was much scope for sharing experience between countries. Accordingly, it was proposed that the Working Party prepare guidelines for effective public/private partnerships (HBP/WP.7/2001/10, Annex I).

The primary objective was to prepare a set of principles designed to:

- Provide information and guidance to those national authorities which have not yet adopted PPP arrangements;
- Help senior land administration officials to fully exploit the benefits of such arrangements.

2. The following national experts were designated to the Task Force for the preparation of the study: Mr. Hayk Sahakyan (Armenia); Mr. Peter Creuzer (Germany), the Chairman of the Task Force; Mr. Paul van der Molen (The Netherlands); Ms. Božena Lipej (Slovenia); and

Mr. Ted Beardsall (United Kingdom).

Introduction

3. Recent years have witnessed a fundamental change in the way in which governments offer services to the citizen. A paradigm shift is taking place in the land administration sector, driven by changes in the wider business environment. The greatest influence has been the rapid increase in the access to and use of information technology, which created new opportunities for business and offered the citizen new possibilities for obtaining information and conducting electronic business.

4. The response by governments has been the emergence of a new political ideology. This has focused on re-examining the role of government, reducing bureaucracy and the tax burden, tapping into the expertise of the private sector and introducing competition for the delivery of services. Governments in many UNECE countries now routinely ask, in respect of a wide range of services, whether service delivery can best be supported by the private sector.

5. The establishment of Public/Private Partnerships (PPP) is one outcome. The PPP approach recognises that responsibility and accountability remain within government whilst service delivery can be enhanced through engaging private sector expertise. Those bodies/authorities entrusted by national governments with responsibility for land administration have not been immune to these changes in the business environment and government thinking. They too have sought to improve service delivery and provide increased access to information by actively engaging the private sector.

6. The driving forces for the establishment of PPP usually are: increased public expectation for public services; need to improve the value delivered by public services (in terms of both efficiency and effectiveness); need for capital investment in the assets required to deliver public services; innovation in service delivery and encouragement of competition. The success or failure of PPP will be determined by the local political and regulatory framework, public acceptance, the quality and availability of the service provider market and, in the case of this study, the attitude of land administration stakeholders.

7. This study has been prepared with the aim of providing information about the current use of PPP amongst land administration authorities in the UNECE region. Recording and drawing on the experience of Member States the study presents the benefits of forming such partnerships and suggests basic principles and recommendations for the collaboration of the public and private sectors in the field of land administration.

8. The study is based on the questionnaire prepared in 2003, which canvassed the views of public sector land administrations, comprising 43 UNECE countries and 7 Canadian provinces. A 52 percent response rate was achieved equating to 26 replies from the 50 organisations that were sent the questionnaire. Of the 26 responses, 6 countries (representing 23% of the total number of replies) indicated that they have no PPP arrangements. Of the 20 countries/provinces indicating that they have some form of PPP arrangements:

- 60% indicated that their governments have introduced policies to support PPP
- 80% indicated that their land administration authorities have entered into PPP arrangements
- 80% indicated that PPP arrangements had been made through a formal tendering process

- 95% have contracts in place governing PPP arrangements

9. The tasks for which the private sector was most frequently engaged were mapping and survey related activities, with 40 percent of respondents indicating the existence of such arrangements. In respect of the perceived benefits of PPP, the majority of respondents cited improved service delivery and reduced costs.

10. When preparing a set of guiding principles it is important to recognise that there is no common understanding of precisely what the term PPP means. The concept of PPP cannot be standardised internationally since PPP initiatives must meet the policy objectives of individual governments, complement other public procurement approaches and service delivery methods and must be implemented in light of the available resources.

However, for the purpose of this document a working definition of PPP is as follows:

'A partnership between a public organisation and a private company, which takes the form of a medium to long term relationship in which the partners have agreed to work closely together to deliver improvements to services in the interest of the public. There will be agreed arrangements for the sharing of risks, benefits and rewards and the utilisation of multi-sector skills, expertise and finance. Such partnerships are usually encouraged and supported by government policy'.

I. Current status of PPP in land administration

11. Land administration as first defined in the UNECE publication 'Land Administration Guidelines' (1996), deals with the recording, processing and dissemination of information about ownership, value and use of land and its associated resources. It includes the determination of property rights and other attributes of the land that relate to its value and use, the survey and description of these, their detailed documentation and the provision of relevant information in support of land markets.

12. The official land registers should guarantee ownership and other rights in land and support secure mechanisms for the transfer and financing of real estate. As a basis for sustainable land management they justify considerable investment of human and financial resources in appropriate land administration systems. Establishing and maintaining such systems is a major undertaking.

13. A particular problem when establishing a market economy is that land administration systems are facing a lack of appropriate organisational frameworks for staff and financing. Conversely in the more advanced countries where the issue of organisational frameworks has been addressed, budget constraints will have raised questions about how to deliver efficient services to the public with fewer staff and how to reduce and recover costs. The private sector in many countries often has to compete against well-established, large government-owned or recently privatised companies.

14. Efforts to set up spatial data infrastructures (SDI) have a strong influence on contents, underlying data models and architecture of large-scale cadastral datasets. Requirements such as interoperability or integration of data in combined datasets offer challenges for efficient public-private partnerships. This has led to a situation whereby the current status of PPP in land administration clearly varies across all ECE Member States according to each country's

individual circumstances. PPP arrangements are mainly perceived as a solution for problems in the wider field of service delivery in land administration. The question to be addressed is the extent to which the private sector should contribute to the development and further improvement of land administration systems both in former countries in transition and in the established market economies.

Ownership, value and use of land

15. Current practice shows various forms of co-operation between the public and private sectors in terms of responsibilities. Looking at facilitation of the land market, one of the main functions of land administration, we observe that land transfer documents can be drawn up by the parties themselves (e.g. Sweden), attorneys (e.g. USA), lawyers (e.g. UK), public notaries in private practice (e.g. France, the Netherlands) and notaries in the (public) registration office (e.g. Czech Republic). The registration of ownership, however, is the responsibility of civil servants everywhere, either in the courts, or in a government agency. The cadastral survey can be undertaken by publicly appointed private land surveyors (e.g. Germany, France), commercial land surveyors contracted by the government (occasionally), or by land surveyors in public service (e.g. in Norway, the Netherlands, United Kingdom). Title insurance, as practised in the United States is a special case: private insurance companies hold their own cadastral registers and maps as a business asset, in order to issue title insurance certificates. Although not common practice it is possible for some tasks, such as the dissemination of land information, that have traditionally been regarded as a function of the public sector, to be performed by a private company under concession.

16. Land and property valuation can in principle be divided into individual property valuation and mass valuation (systematic valuation of groups of similar properties by use of standardised procedures). Individual property valuation is undertaken to meet the need of participants in property transactions and mass valuation mainly serves taxation purposes. Whereas individual property valuation is normally carried out by valuation professionals (chartered or sworn valuation officers) that mostly belong to the private sector, mass valuation in the public interest is carried out either directly by government agencies or by private sector professionals operating under government contracts.

17. Land use can be determined either by land cover or by function. Recording of land cover normally is an activity of a government agency by means for example of remote sensing data; the function of land use is usually recorded by government bodies responsible for zoning (usually the municipalities).

Operational tasks

18. Operational activities could be divided into core tasks of land register and cadastre, associated tasks and supporting tasks. This subdivision normally includes an allocation of concrete tasks to the public or private sector. Whereas the contents of the land records of a country require the liability and guarantee of the state, hence a substantial involvement of the public sector in their maintenance, other tasks, such as data gathering or land management can be outsourced to the private sector, which is operating on sound business practices.

19. Associated and supporting tasks are marketing and sales of geospatial datasets

(framework data, reference data), value-adding and technical services, research and development, vocational training and capacity building. It must be emphasised that these tasks are equally important for the infrastructure of a functioning land administration system as the core tasks themselves. It is possible that the above tasks may be performed more efficiently by making use of appropriate PPP arrangements.

Core tasks of land registration and cadastre

20. The land registers should be impartial and not be subject to any conflict of interest between different parties. The core tasks of land registration mainly include:

- Registration of all real estate (land parcels, buildings, flats), property and other rights, encumbrances and mortgages, public rights in land;
- Securing ownership in land;
- Enabling secure land markets, property transactions (conveyancing of real estate, sales contracts and mortgages);
- Advisory service for public and private customers; and
- Collection, maintenance and dissemination of base information.

21. These tasks are performed by various institutions and stakeholders, it depends on the country context. They are mainly undertaken by institutions dealing with land registration such as land registry agencies and local courts. Private stakeholders who have an interest in these core tasks include notaries, lawyers, banks, real estate agents, private experts etc.

22. In the context of PPP, service delivery via electronic media (e-Government) and all relevant initiatives at state, regional or municipal level, offer many chances for improvement through PPP arrangements. In fact, most of the respondents to the PPP questionnaire see the major benefits of PPP in this area.

23. Originally designed as a register for determining land taxes, a cadastre nowadays fulfils a multipurpose function in many countries. The core cadastre tasks can be summarised as follows:

- Maintenance of real property registers and maps for further specification of the entries in the land register; securing ownership in land;
- Provision of geometric data on cadastral boundaries (parcels), other cadastral objects and their unique identifiers;
- Data exchange with other public registers;
- Provision of the official spatial reference through delivery of spatial base data;
- Creation of market transparency through recording and maintenance of all results from valuation of real estate and sales contracts;
- Advisory service for public and private customers; and
- Collection, maintenance and dissemination of relevant datasets.

24. These tasks are performed by institutions and stakeholders, mainly by cadastre authorities at national, regional or local level, licensed surveyors, state survey agencies and

official valuers of fixed assets. The replies to the questionnaire show that the tasks most frequently performed on a PPP basis are mapping and survey.

Associated tasks

25. Based on the data and documents stored and maintained by land registries or cadastre authorities, associated tasks mainly consist of:

- Performance of urban and rural development procedures including urban re-development and land consolidation;
- Data maintenance for planning purposes;
- Public acquisition of land;
- Recording government measures on environmental protection (soil etc.); and
- Securing sustainable management of natural resources, disaster management, flood plain management, spatial planning.

26. Tasks are performed by institutions and stakeholders, depending on individual country regulations. They could be performed by municipalities, licensed enterprises or persons (e.g. publicly appointed surveyors in Germany), private planning enterprises, state or local cadastre authorities.

27. Information on land and its resources is the very essence of every state. The citizens' proper understanding of the interrelations between state and society requires that such information is easily accessible and usable. Much of the information develops its use to the full only through its uniform spatial reference (geoinformation). We distinguish between geospatial *base* data (cadastre data or topographical information) and *thematic* data (e.g. spatial planning, utilities). Digital tools allow selection, analysis and synthesis of the available data using Geographical Information Systems (GIS) and creation of tailor-made datasets. Special efforts, including appropriate PPP arrangements, have to be put into making access for citizens and customers to land register and cadastre data as open as possible and as secure and restricted as necessary.

28. The establishment of high-quality geodatasets is very expensive due to staff requirements and necessary investments. The bulk of the existing geospatial base data has therefore been captured and maintained by government authorities within the scope of their statutory tasks. Concrete projects, for e.g. navigation, geo-marketing or other emerging markets, require combination with thematic data of other – private or public – institutions.

29. This value-adding process, as well as marketing and sales of geospatial data offer further opportunities for PPP based on individual business models (resellers, value-added resellers, licences, etc.). Large-scale geospatial base data serving as basis for value-adding processes have gained a market potential that goes far beyond the role of land registers and cadastres as means for securing ownership. This potential reaches into the field of governmental infrastructure services and promotion of business and technologies, and comes into effect only if the responsible land registration and cadastre administrations and private partners contribute their specific fields of expertise to a PPP. It is necessary to establish tailor-made, market oriented and harmonised business models, where public-private cooperation provides the appropriate service infrastructure and creates a real 'win-win' situation for all partners.

Supporting tasks

30. Geoinformation markets and SDI depend to a considerable extent on the legal framework that enables a controlled collaboration of all parties involved. In many countries the establishment of national SDI has begun. The current geoinformation market in the ECE Member States could be characterised by many features, where geospatial base data are to be processed or integrated and where off-the-shelf products are to be developed. In addition, web-based solutions for access to data conquer the market and both technical services and hard- and software regularly need to be adjusted to the latest demands. There is a clear opportunity for further development of this market through creation of PPP arrangements for the mutual benefit of all stakeholders, data providers and customers.

31. Looking at well functioning modern land administration systems, it becomes clear that constant research and development work needs to be done. Such work is not only carried out within the public sector (e.g. universities), but also in private institutions, organisations or companies (e.g. in the field of technical developments or standardisation). Moreover changes within the institutional or organisational framework for land administration as well as constant developments and improvements in technology require training of staff. Mutual benefits and synergies could arise out of PPP arrangements also in this field.

32. The basis for entering into PPP differs among UNECE Member States. This applies to licensing regulations for statutory tasks that need to be carried out by licensed persons or companies (e.g. notaries, licensed surveyors) as well as to procedures for contracting out services or procurement tasks that do not fall under any licensing regulation. Licensing should foster PPP and give the private sector a more active role in performing statutory tasks. PPP should result in a medium to long-term relationship. It is acknowledged, however, that in the UNECE Member States the term PPP is used to describe a range of different types of collaboration between the public and private sector that vary in terms of both scope and duration.

II. Benefits of Public/Private Partnerships

33. It is a general trend in Europe and worldwide that the private sector has increasingly been invited to take part in different activities in the field of land cadastre, land registry, land consolidation and provision of land information. The aim is to bring together the experience and skills of different partners in a way that guarantees maximum benefit with the best practical and financial outcomes.

34. Public land administration agencies should seek an appropriate distribution of responsibilities between the public and the private sector. Governments progressively turn to the private sector for additional resources and to capitalise on the private sector's efficiency, capacity and innovation. In order to speed up the procedures in land administration, the far-sighted governments are ready to give up some internal benefits (possible revenue from fees, etc). The extent of private sector involvement needs to be carefully considered against each country's individual circumstances in order to find a reasonable and harmonious balance.

35. Within the legal requirements, the land registry, cadastral and other organizations

concerned with land administration should seek partnerships with the private sector to facilitate accurate, fast, inexpensive and customer friendly access to land information and its usage. By sharing resources and knowledge, both parties profit from synergies, shared risk and technological developments, which otherwise would not take place. The sharing arrangement also allows for good practice in “equal opportunity” matters to be taken forward. The successful application of PPP in land administration requires new attitudes and skills when such partnerships are in the public interest. Land administration activities are dynamic and PPP offer greater flexibility in the management of change than a single-purpose organization or agency could provide.

36. For the public sector, the overall advantages of cooperation with the private sector are seen as:

- Better overall value for the government with the appropriate allocation of risks between the parties;
- More flexibility in target-settings and costs;
- Fewer risks of cost overruns and project delays;
- Increase in the capacity necessary to achieve the aims;
- Better value and service delivery through increased competition;
- Better awareness and understanding of its own processes and products;
- Better exploitation of government assets, data and intellectual property;
- Avoidance of staff recruitment problems;
- Injection of private sector energy and enterprise; and
- Enabling reform of public services.

37. For the private sector, the overall advantages of cooperation with the public sector are seen as:

- More opportunities of receiving a return on investment;
- Successful use of proven technological skills and equipment in other markets;
- Better cost-effectiveness;
- More incentives for technological innovation because of competition; and
- More possibilities for establishing joint ventures with foreign companies.

38. Mutual benefits for the public and private sector are seen as:

- Ability for partners to concentrate on their specific part of shared tasks and to focus on what they are best at (e.g. the public sector on managing and controlling the activities of the public administration and the private sector on performing operational activities);
- Strengthening of business processes and organizational structure on both sides;
- Enabling a long-term (strategic planning) view to be adopted;
- Better response to the demands of society for improved security, higher quality of data and faster and easier access to data, taking into account the impact of the information society on land administration;
- Easier provision of human, physical and financial resources for land administration activities;
- Changing the way in which the government does business and interacts with the private sector across the board;

- Common need for good land administration data and greater opportunities to exploit land administration data; and
- Partnerships to facilitate the modernization of organizations, including governmental agencies, making them more proactive and better able to manage higher risks.

39. There are a few practical challenges in managing PPP, such as simultaneously achieving accountability, confidentiality and fairness. For example, procedures to ensure broad accountability make the public sector relatively slow moving and rigid. In contrast, private organizations can be more flexible and efficient because their decision-making processes are not subject to the same level of scrutiny. It might be an optimal way to benefit from working together and for that purpose both sides need to adjust their expectations.

40. Normally PPP radically change the relationship between the government and the private sector for the better, promoting cooperation rather than conflict. It is recommended to start with small PPP arrangements (i.e. smaller contracts for the execution of land administration activities), then increase the number of such arrangements and in the longer term develop a more complex approach and more sophisticated relationships (i.e. bigger contracts, professional licensing, franchising etc.).

41. The overall aim of PPP is to work more efficiently, effectively and economically and in doing so offer customer-oriented services. It is therefore a prerequisite that the involved institutions should be aware of customers' needs and expectations. During the past decade land administration has become increasingly focused on services to customers. The social and economic life of the community will benefit from efficient and responsive joint public/private land administration services.

III. Obstacles for public/private partnership

42. In some parts of the UNECE region there are restrictions that prevent administrative bodies from entering into PPP. In some countries this happens because there is no current legal framework for the co-operative action of government administrations with private companies. In particular fees and charges guidelines often lack the flexibility needed to deal with appropriate business models and usually do not take PPP issues into account.

External obstacles

43. Public bodies, agencies and authorities are subject to national laws regulating the use of public funds and government subsidies for performance of public tasks. The legal requirements for delivery of services and products, including land information, apply equally to all customers and business partners both in the public and private sector and do not always provide the flexibility required for business models involving the private sector. Furthermore, the participation of public sector bodies in private sector activities on the basis of PPP arrangements is sometimes strictly limited. Regulations relating to the use of budgets may prevent the public sector entering into long-term business relationships with the private sector, especially if such relationships clearly expose the taxpayers' money to possible economic risks.

44. In some countries legislation does not clearly determine the responsibilities and rights of private and public sectors. Activities that should be allocated to the private sector and those

that should remain a statutory task are not clearly specified. The decision to enter into a PPP must therefore substantiate and define the rights and responsibilities of private and public sector partners. The mechanisms for providing sub-contractors with state orders are either not developed or are not based on an efficient selection, according to competitive principles.

45. In some countries the necessary quality control for the services provided by the private sector, the licensing legislation and rechecking mechanisms are not very efficient. Licensing procedures for the private sector are sometimes complicated and bureaucratic and the required state charges are quite high. After issuing a license the quality management procedures can be very cumbersome and might be an obstacle for the activities of the enterprise. This often prevents new enterprises from entering into this business and therefore hampers competition. In some countries, to avoid this situation, the licensing requirements for private enterprises have been abolished. This could result in a substantial decline in quality.

46. These obstacles are a major problem for transition countries where there are greater restrictions on financial resources. In some countries, where land administration systems and traditions have been established over many years, this could hinder organisational and structural improvements. Whilst it is difficult to generalise, in many countries questions are raised about public confidence or support for traditionally public sector responsibilities moving into the private sector. These issues need to be addressed at both the institutional and political levels.

Internal Obstacles

47. As a matter of principle, most trade unions will be suspicious of any initiative that might cause longstanding public sector jobs to be transferred to the private sector. Overcoming such obstacles may be difficult. The best chance of success is usually secured by respecting the legitimacy of the views whilst ensuring that the focus of the debate is maintained on end customer benefits.

48. In transition countries the newly formed private companies have serious problems connected with the introduction of new technologies, training and retraining of qualified specialists and the effective management of companies operating in a new market economy.

49. Other problems arise from the way non-governmental organisations (NGOs) are set up in some countries in transition. Some NGOs are established by their respective governments to receive grants from donors. In many cases the NGOs fail to develop the capacity for long-term sustainability and as soon as the donor's funding ends they cease to exist.

50. One significant obstacle in setting up a PPP is corruption. This could affect different countries in the UNECE region in different ways. Corruption usually occurs during the allocation of government contracts, granting of licences, supervision of the private sector, sale and lease of state and community-owned land and other procedures. Unfortunately, the state bodies responsible for land administration are often not ready for a mature relationship with the private sector and are not client oriented. Moreover, information in state bodies could be limited. This is usually due to lack of appropriate procedures and new information technologies.

51. In countries in transition the successful implementation of PPP could be affected by the

lack of highly-qualified human resources and the danger posed by the transfer of specialists to the private sector. In those countries where civil servants have served as government employees since the communist period, they have not only suffered from lack of formal qualifications, but they have also had to overcome the psychological difficulties associated with transfer to the private sector. There can also be distrust towards the implementation of state projects. This regards mainly land privatisation and restitution programmes. In some countries agricultural workers complained that the land distribution was not implemented fairly and efficiently. This could be a serious obstacle for the implementation of new projects, particularly for land consolidation, which implies cooperation between the private and State systems.

52. In some countries, the presence of state bodies with many official functions but without clearly defined areas of responsibility is considered to be an obstacle to the implementation of PPP projects. This can lead to a duplication of tasks. Therefore when private sector companies seek to enter into partnerships with government organisations there is sometimes uncertainty as to which government organisation they should interacting with.

IV. Guiding principles

53. In land administration and other government-led work there has long been a place for contracting out short-term, ephemeral or purely supporting tasks. These might include digitising cadastral maps, photogrammetric work, scanning documents or surveying tasks. It is not the purpose of this paper to examine these arrangements or to suggest that traditional contracts of this sort will not continue to have a place in public administration in the future. Where these arrangements are deemed to be most suitable the approach taken must continue to take full account of the legal requirements relating to tendering, contracts and competition.

54. PPP arrangements go beyond traditional contracts. Whatever the circumstances and the precise form of an agreement, the intention of the parties will be clear from the outset. There will be some sharing of risks, benefits and rewards, designed to create a collective and collaborative effort to drive forward real advances in public services. Some partnerships will be of a strategic nature in which the private partner's contribution may not be so apparent at the point of delivery (e.g. in ICT expertise, software or hardware). In other instances, the private partner may be given explicit authority to act on behalf of the government in the delivery of customer related tasks, e.g. licensed surveyors or other certified professionals. In these cases, the private partner may even be given the power to take definitive, legally binding steps, such as fixing cadastral boundaries (e.g. as in Austria).

55. Main guiding principles of PPP in land administration

They can be formulated as follows:

Guiding principle 1: It will usually be necessary and desirable for the private partners to be selected as a result of a properly constructed procurement or tendering exercise. This ensures that competition and other legal requirements are met and the most appropriate choice of private partner made.

Guiding principle 2: Whatever form the private partnership takes the arrangement should be one, which encourages trust and a sense of mutual ownership between the parties. The opportunity for the private partner to be included in the formal governance structure and decision-making processes should be carefully considered.

Guiding principle 3: The government and the private partner should make the achievement of the desired outcomes the main focus of their agreement. Both parties should be absolutely clear on how success will be measured.

Guiding principle 4: The government and the private partner should be satisfied that their resources and skills are complementary, and provide synergies. They should each be satisfied that there are sufficient resources and expertise available to avoid placing reliance on a small number of experts. Whether or not there is scope for any sub-contracting this should be discussed and agreed.

Guiding principle 5: The government and the strategic private partner should ensure that there is full mutual appreciation of the risks that accompany the business activities within the partnership and that the financial arrangements are sufficiently robust to carry those risks.

Guiding principle 6: The government and the private partner should make clear arrangements about respective benefits and any sharing of revenues. The arrangement must take full account of the rules and guidance provided for government budgetary systems.

Guiding principle 7: The government and the private partner should have a clear mutual understanding of the knowledge and expertise to be gained during the partnership, and how this might be applied for other specific purposes. Knowledge transfer in both directions should be encouraged.

Guiding principle 8: The government and the private partner should mutually guarantee the sustainability of the partnership in order to protect the other party against early break off. It is suggested that the co-operation take place in the framework of a long-term investment commitment of both parties.

Guiding principle 9: The government and the private partner should agree on regular reviews of the partnership agreement. This should help avoid an imbalance in the share of risks and benefits and generally ensure that outcomes are as expected.

56. Land administration activities, unheralded as they often are, nonetheless lie at the heart of good government. Nations are defined by their land coverage and land represents the source of wealth and the basis for economic prosperity. It is therefore axiomatic that land administration represents a key group of public activities. But with proper safeguards and good management, it is possible for some specific activities to be transferred to the private sector under PPP arrangements. There are many examples of this in relation to licences or concessions granted to surveyors. The following additional guiding principles relate to such arrangements.

Guiding principle 10: Governments retain final responsibility for the discharge of all public tasks. Even in licensing or concessionary arrangements the government will always be held ultimately accountable for performance and liable for (at least in terms of public perception)

the consequences of any errors or mistakes. However, private partners should be made fully responsible for their activities, which may include liability for poor performance or mistakes.

Guiding principle 11: If the government wants to assign a public task to a third party, it should specify – perhaps by regulation - the requirements that should be met in order to ensure a proper implementation of the public task.

Regulations might comprise:

- Professional standards (education, training, ethical behaviour);
- Exact competencies;
- Indicators for performance measurement; and
- Liability (and any financial penalties) for under performance or mistakes.

These requirements should be included, possibly in a more explicit form, in a licence or concession.

Guiding principle 12: The government must make appropriate arrangements for monitoring and auditing performance by the private partner. Such arrangements may be included within the licence, concession or statutory regulation. The extent to which the government retains control will need to be carefully examined in light of the specific functions to be carried out. The exercise of ‘hands on’ control by government may provide the necessary assurance, but this might be at the expense of stifling the innovation and initiative that the government is seeking from the private partner.