

UNECE  
Team of Specialists  
for PPPs

# The PPP Good Governance Challenge

Presented by:  
Art Smith  
Chairman, UNECE TOS-PPP  
[asmith@mainet.com](mailto:asmith@mainet.com)

May 16, 2013



# Governance and PPPs

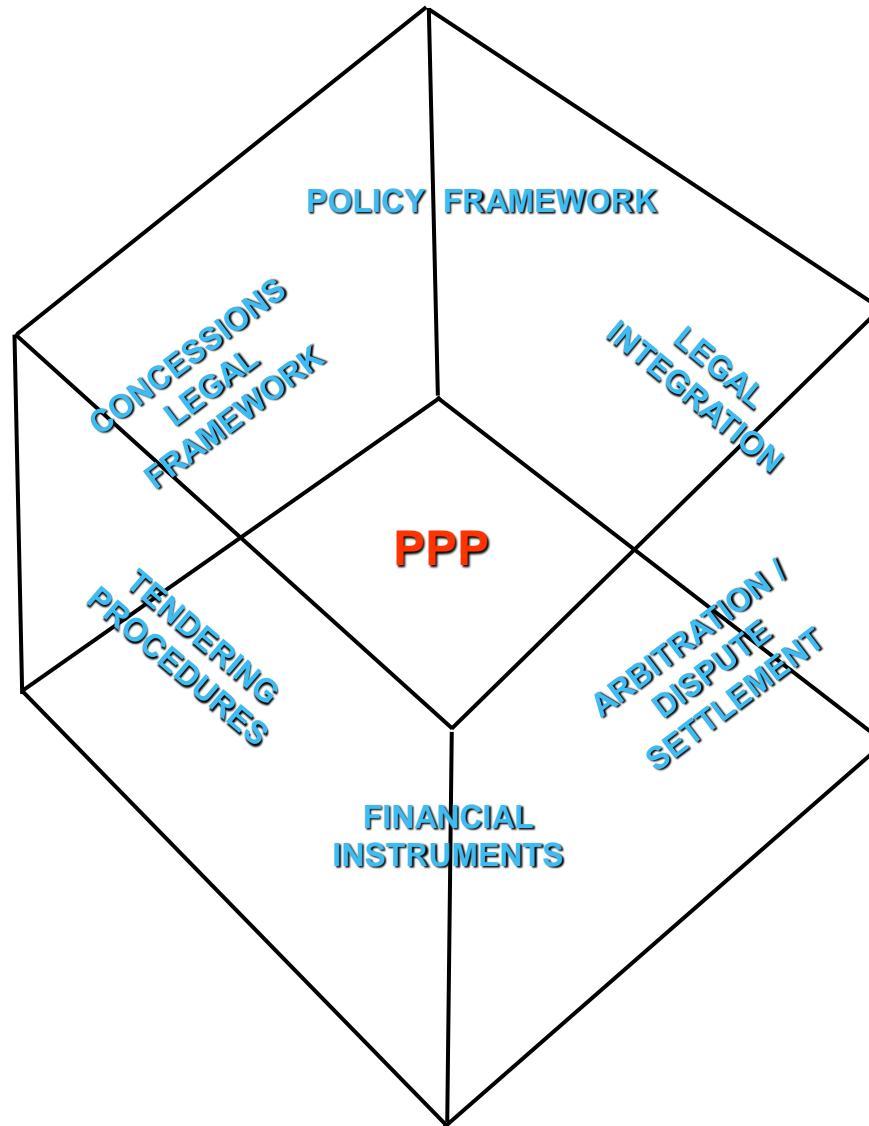
Governance: the manner in which public sector power is exercised in the management of a country's economic and social resources for development.

- The growing body of experience with PPPs demonstrates the contribution of good governance to successful PPP outcomes. At the individual project level, good governance can enhance project identification and selection, increase competition, encourage innovation and efficiency, and improve project sustainability.
- The Economist Intelligence Unit recognized the pivotal role of PPP governance in its 2011 PPP Readiness Index for the Asia-Pacific region.

# Attracting the Private Sector

- The private sector chooses which projects to participate in from amongst many investment alternatives. Investors seek investment opportunities where they may reasonably anticipate a fair return on their investments.
- A clearly-defined revenue stream, with quantifiable and limited risks, is essential.
- Transparent and predictable policies attract investors and reduce the need for sovereign guarantees.

# The PPP Enabling Environment



# Policy Framework

- High-level Government Support
- Clear Policy Statement
- Central PPP Unit

# PPP Legal Framework

- Create sound legislative basis for PPPs
- Provide clear definitions and applicability
- Provide stable legal framework
- Provide fairness and transparency

# Legal Integration

- Establishment of a strong PPP framework law does not provide the full legal structure necessary for successful PPPs.
- A holistic approach is required, in which statutes related to property rights, procurement, domestic and foreign investment, etc. are integrated with the concessions law.
- Consistent and objective judicial enforcement is required.

# Tendering Procedures

- Public advertisement of PPP opportunities, in a recognized (standard) source or sources, with provision of international exposure
- Clear, detailed Requests for Tender, with full disclosure of all known risks
- Opportunity for bidder comment on Request for Tender
- Clear, detailed tender evaluation procedures, known to all parties, and providing a level playing field
- Clearly stated project goals and objectives



# Tendering Procedures *(cont'd)*

- Clearly stated performance standards for assessing project performance
- Open participation in tender process, to include foreign-owned firms
- Qualified tender evaluation board, with subject matter expertise and no conflicts of interest
- Objective, documented evaluation and negotiations process, consonant with the published evaluation factors
- Public notice of award, with debriefing opportunity for unsuccessful bidders

# Arbitration / Dispute Settlement

- Inclusion of dispute resolution procedures, to include third-party arbitration and/or choice of forum (access to international arbiters or bodies)

# Financial Instruments

- Creation of financial structures which will facilitate generation of project capital
- Availability to security instruments on the assets and cash flow of concessions, to include “step in” rights

# For More Information

See the UNECE's  
“Guidebook on Promoting Good Governance”  
at  
<http://www.unece.org/>