

United Nations Economic Commission for Europe

Governance in Public Private Partnerships for Infrastructure Development

Draft



UNITED NATIONS

Geneva, 2004

Table of contents:

Preface	2
Introduction	2
1. Public-private partnerships and governance.....	3
2. Key issues.....	6
3. Benefits.....	11
4. Key lessons.....	12
5. Actions required	15
6. Benchmarking success	16
ANNEX – Case Studies	21

Preface

The *Public Private Partnership (PPP) Alliance* of the *United Nations Economic Commission for Europe (UNECE)* was established to improve the awareness, capacity and skills of the public sector in developing successful PPPs in Europe. To this end, amongst other things, the Alliance prepares guidelines on best practices in PPPs. At its last Meeting, the PPP Alliance agreed, in light of the lack of information available on the topic, to prepare guidelines on the subject of good governance in PPPs.

The following document has been prepared by the secretariat in collaboration with a task force established after a Forum on the topic of “Good Governance in Public-Private Partnerships for Infrastructure Development (November 17, 2003), Palais des Nations Geneva. At the Forum, the PPP Alliance agreed that the document would be discussed at its next meeting to be held in Barcelona under the auspices of UN Habitat’s Second World Urban Forum.

The secretariat wishes to thank the task force for its help. It suggests that this document be further elaborated, and invites the task force to continue its work and to hold a meeting as soon as possible to finalise the document.

Membership is open to the PPP Alliance from both the public and private sectors and from NGOs. The Alliance carries out its work in cooperation with the EU, EBRD, EIB and the OECD. The PPP Alliance is a subgroup of the Working Party on International Legal and Commercial Practice (WP.5).

Introduction

Many governments, as well as regional and international organisations and NGOs have begun to recognize the importance of good governance in economic development.¹ This increase in interest in governance issues is due to some concerns about the ethical behaviour of both public and private actors operating in an increasingly global economy.

To date, however the practitioners of Public-Private Partnerships (PPPs) in infrastructure have not given their specific attention to the question of governance. This gap needs to be addressed not just for countries with established institutions and procedures, but also for the vast majority of countries where such arrangements are lacking. Weak governance, a lack of transparency and corruption not only have negative repercussions on the project concerned - they also lead to a feeling of

¹ The bodies include: International Monetary Fund (IMF), World Bank Institute (WBI), Organisation for Economic Co-operation and Development (OECD), the International Centre for Not-for-Profit Law (ICNL).

frustration and resentment amongst the population towards PPPs, and this hostility can delay the full implementation of a successful PPP programme.

The following document is aimed at policy makers and representatives of the private sector and NGOs. It is designed to be of especial use to these three constituencies in countries, which are at a pre- PPP stage in their creation of an appropriate enabling environment for PPPs.

1. Public-private partnerships and governance

Public-private partnerships

There is no precise universally agreed definition of a Public-Private Partnership (PPP) in infrastructure. However, PPPs have a number of common characteristics. They involve concessions or other contractual arrangements with public bodies (federal, state or local) whereby the private sector makes a service available to the general public. The projects also must share risks between the partners. The best formula for sharing risks is that risks are allocated to the party which is best able to manage, and therefore minimise, the cost of risks. The need to utilise private sector management and expertise, not only the capability of raising finance, is also common.

PPPs are not advisable in all cases and should not be seen as a panacea. However, they do offer a number of benefits, namely, additional resources, new technology, speedier delivery and customer satisfaction. They cover all types of infrastructure, energy, transport telecommunications and more recently education, health, security and defence. They offer solutions and alternative options to both local and national authorities. PPPs are especially interesting for local and city authorities. Local infrastructure can be extremely expensive to develop or rehabilitate. Local authorities often seek to mobilize private capital, where the size of the capital investment required compared with a local authority's ability to incur debt renders projects unfeasible.

Governments must however overcome a number of challenges in implementing PPPs. These include developing and establishing:

- Strong legal and regulatory frameworks that can clarify the legal authority to grant concessions, the procurement process, the contribution from the public authority of assets that can make the project viable and the rebalancing of tariffs which will make the project viable from a financial point of view.
- Political commitment to give confidence to the partners to make investments.
- Effective public administrations: this typically means the establishment of a dedicated central PPP unit located within governments that can oversee the whole PPP process and has cross cutting authority over all Ministries.

Governance

Governance can be broadly defined as the exercise of political, economic and administrative authority to manage a nation's affairs. Governance is thus about the importance of institutions, the interactions between different levels of government within a country, the interaction between the public, including nongovernmental organizations and business, and government. On an international plane it entails the interaction between different governments. International organizations also play an important part.

For the purposes of measuring and evaluating the governance of a country, the World Bank has further unbundled the definition into six more detailed governance concepts

They are:

- Voice and accountability (which includes political rights, civil liberties and independence of the media)
- Political stability (such as probability that the government will be overthrown)
- Government effectiveness (e.g., quality of public service provision and the competence of civil servants)
- Regulatory quality (e.g., incidence of market unfriendly or excessive regulation and inadequate banking supervision)
- Rule of law (e.g., crime, effectiveness of the judiciary and the enforceability of contracts)
- Control of corruption (e.g., the exercise of public power for private gain).

Good governance is a key condition for sustainable economic stability and security. Evidence also suggests that good governance is an essential component of sustained economic performance, particularly in transition economies.² In contrast, poor governance and slow economic development appear to be mutually reinforcing.³ International institutions have increasingly observed the links between good governance and security.⁴

Good governance in PPPs refers to a number of inter-linked ingredients. Governance in PPPs combines at least the following five key ingredients

Transparency

Transparency refers to:

- The way in which the design and initiation of projects, procurement and selection process, ought to be organised.
- the taking into account the interests of all ‘stakeholders’, for example, local citizens, NGOs, employees/trade unions, civil society, media, investors, lenders, government.⁵
- the limitation on use of bribes and other forms of corruption to win favours and approval for projects from governments

² The United Nations Economic Commission for Europe in its annual Economic Survey of Europe has consistently paid considerable attention to institutional reform and good governance in transition economies. See for example *The Economic Survey of Europe*, 2003, vol. 1, Chapter 5.

³ The typical symptoms of poor governance are the failure to make a clear separation between what is public and what is private; arbitrariness in the application of rules and laws; excessive rules and regulations which impede the functioning of markets and encourage rent-seeking; and narrowly-based or non-transparent decision-making.

⁴ There are many definitions of governance and many commentators on the subject. The Oxford English Dictionary defines governance as “the action, manner or fact of governing”. Daniel Kauffmann of the World Bank Institute describes governance as “the exercise of authority through formal and informal traditions and institutions for the common good”.

⁵ See Guidelines on PPPs, prepared by the UNECE Build-Operate –Transfer (BOT) Group, Geneva, 2001

Public accountability

The public needs to know that its interests will be protected in a number of specific areas:

- That the PPP will obtain ‘value for money’
- That the project has clearly defined goals which can be measured, and should be met
- That procedures for the award of the contract will be fair and according to the criteria as laid down in the project specification
- That if the financing of the projects involves a subsidy from the state, the size of the subsidy will be known to the citizen (financing of PPPs is a complicated exercise and creates political and regulatory risks for all the parties involved. PPP transactions create obligations of payment by a public sector body over the 20-30 or more years of their life, which exceeds considerably the duration of any political cycle. It involves the distribution and transfer of funds from the public to the private sector and vice versa. PPPs involve future financial obligations on the taxpayers.

Public management

PPPs involve a redefinition of the role of Government in the context of infrastructure projects, focusing on supervision and regulation and moving away from direct ownership and management. PPPs allow Governments to attract private sector funding and involvement, without incurring the adverse political repercussions sometimes associated with full-scale privatization. Government retains a significant role and can guard against private sector excesses. It can also retain ownership of the assets in question, and avoid perceptions of “selling out” to foreign buyers. The PPP approach, in other words, avoids undermining the essentially “public” character of many infrastructure projects.

PPPs do not happen all on their own. It is up to the governments to decide what use they wish to make of PPPs, to identify appropriate PPP projects and to ensure that they have the capabilities to procure them in an efficient and effective way. Government must establish an appropriate legal and regulatory environment for the PPPs, define clearly and publicly formulated objectives for the project; and monitor performance after project completion. Public civil servants have a new role in PPPs A sound public management is required if such a policy is to become a reality.

Sustainable development

Sustainable development refers to a process where integrated consideration of economic, environmental and social processes ensure the long-term viability of a project. PPPs are ideal vehicles to achieve such integrated objectives, because of their multi-parity, multi-sector structure. Policy makers must ensure that PPPs increase the delivery of services to those who need them most and should not exclude those in most need by raising tariffs beyond the purchasing power of those who are economically and socially disadvantaged.

Dispute resolution

The multiplicity of parties in privately financed projects makes conflict predictable. Yet despite its perceived negative impact, conflict within PPPs can lead to creative and constructive outcomes when it is managed by encouraging open discussion that allows full exploration of the participants’

needs, concerns, values, meanings, and interests – the essential ingredients of authentic communication. This process can contribute significantly to the accountability and transparency that PPPs strive for, and serves itself as a mechanism for channelling constructive conflict towards positive outcomes.

However, agreed upon conflict resolution mechanisms should be put in place prior to misunderstandings or conflict. Given the essential and critical nature of services being delivered by PPPs to the national economic life, it is important to ensure that services continue to be provided in the face of disagreement between the various parties in the project. Because of the complexity and the numerous parties involved, PPPs are prone to dispute. There must therefore be in place within the contracts a means to resolve the disputes. There must be also independent judiciary, neutral and efficient court systems that can resolve disputes that arise without undue cost.

Safety and security

Safety and security are paramount requirement in the delivery of infrastructure services. All projects should be properly screened to examine whether they are feasible from this respect and thus there should be experts able to give advice on how projects can achieve the highest standards in these criteria.

2. Key issues

The above-mentioned ingredients are key to governance in PPPs. How are they best respected and implemented in PPP projects?

Transparency

Procurement

The best ways of designing suitable procurement regimes is to ensure that the process attracts bids from the most capable companies and ensures that the possibility of winning is open to all, i.e., there is true competition. The achievement of these goals should not be at the expense of creating over complicated procedures or accuring excessively high bidding costs to bidders. Many PPP projects are advertised to give maximum opportunity to those wishing to make a bid.

Generally, within the EU, despite changes in rules on procedures for awarding contracts, there is still uncertainty for public sector officials who are responsible for the procurement of PPP style contracts. This being said, some countries have made considerable progress in establishing open and transparent procurement procedures in PPPs. For example, in the UK a competitive tender for PPP health projects was issued. The successful three winners came from countries registered outside the U.K. These projects have been successful, demonstrating the value of open competitive tendering in PPPs.

Involvement of stakeholders

Taking account of the interests of all ‘stakeholders’ in projects can be done by a number of methods. An interesting example of consultation with the public occurred when the Zurich city authority decided to build a soccer stadium. The Green Party had been opposed to the construction of the stadium on environmental grounds and local residents reacted against the project as well, because of concerns over increased traffic congestions that would result from the project. A

referendum⁶ was held to solve the dispute. It was called to approve both the planning permission and the city decision to provide land and funding worth a total of CHF 37.5m, 10% of the total project's cost. The referendum results were: 63, 26% of the inhabitants agreed to the private plan and 59, 19% agreed with the financial participation.

Public scrutiny by a referendum, before the final approval of a project, generates a better understanding by the community. It encourages an open debate. In this case, this debate focused on potentially controversial aspects, such as traffic increase. Such a debate can prevent challenges to the project being raised subsequently, which can thus avoid costly delays to the project. While referenda are typically used in Switzerland due to its unique history and culture, there are many other methods, which can be used to achieve such desirable outcomes. (Examples)

This method of consulting with citizens beforehand is particularly salient in transport projects. In some countries, however, there is no formal procedure for consulting citizens who will be affected by projects. In the Russian federation, for example, a proposed airport in Moscow is being carried out and there are no planned consultations of the local inhabitants. There are no rules for the authorities to organise a public consultation.

Corruption

PPPs are no more prone to corruption than other construction projects. However, one of the main causes of corruption in PPPs is the lack of a tendering process. There needs to be in place a number of procedures that can address such a problem. These include requirements for preparing in advance feasibility studies, open procedures and known criteria for the award of contracts, and mechanisms which deter and punish offenders. In the case of Bulgaria the authorities launched an investigation into allegations of corruption in a PPP water project. These allegations were investigated through a due judicial process. This is the best means of deterring those in the future who will try to circumvent existing procedures for personal gain.

Public accountability

Public accountability requires (i) institutions to oversee the process of PPP design and implementation; (ii) performance reviews; (iii) and a free flow of information to the public especially on financing issues.

(i) An independent audit office is useful and can work to ensure that the public receive "value for money" from the PPP project.

Democratic institutions in parliamentary systems can also play a role in ensuring that value for money is obtained and sound procedures are applied. In the UK, the government's tax authority (the Inland Revenue and Custom Excise (IRCE)) in order to raise capital for the Exchequer proposed a PPPs through a transference of the ownership and management of buildings belonging to the IRCE in a lease back for 20 years. For £220m 600 buildings went to a consortium "Mapeley" who was chosen as the preferred bidder. The Inland Revenue said at the time of the operation that it was dealing with a UK registered company. However, 18 months later, it stated that in the

⁶ The referendum is a sort of halfway house between a pure form of direct democracy in which the citizens assemble and discuss the issues before taking a direct vote on them, and representative democracy in which the citizen's direct participation is limited to going to the polls and casting a ballot for one's preferred candidates. In some countries, referendum has been included in their Constitutions, as a way of introducing more direct forms of democracy. The two main justifications for direct democracy are 1) that it leads to better outcomes, and 2) that it leads to better citizens (Pennock, 1979, pp 438-45). See Mueller, Dennis, *Constitutional Democracy*, Oxford University Press, 1996

company was based offshore in Bermuda. This raised therefore, the possibility that valuable assets were to be shifted beyond the reach of the UK tax authorities to a company registered in a tax haven.

A stakeholder company registered in a tax haven was able to participate in a public tendering offer in spite of the fact that through the contract the Government Exchequer would receive less tax income. Neither the law nor the contract provided for any disqualification for such a company. Information disclosed to the UK Parliament and to the public provided by the Government was not accurate. The exact contract structure was revealed fairly late in the procurement process and the press release incorrectly stated that the contract was signed with a UK based company. A financial crisis affected Mapeley UK, soon after the signing of the contract demonstrating a poor due diligence and accountability process that should be improved. The case shows the importance of such watchdog bodies to ensuring that good governance is achieved. In this case, not only was the Select committee informed but all the files are available as public record on the Internet.

- (ii) With regard to determining if projects meet their targets, many countries have established a number of checking mechanisms. For example, governments publish reports on the success of PPPs in meeting targets such as achieving completion dates and meeting cost/performance goals. Others do consumer studies to determine if the public has found the services to be an improvement on those that had been previously delivered by the state.
- (iii) On financing PPPs and avoiding excessive debts, information on the size of financial transfers made into the project by the state should be open and accounted for. The public must know what the obligations of the future generations to pay back the debt will be.⁷ In this context, Euro stat, the Statistical Office of the European Communities, has taken a decision on the accounting treatment in national accounts of contracts undertaken by government units in the framework of partnerships with non-government units⁸. Euro stat recommends that the assets involved in a PPP should be classified as non-government assets, and thus recorded off balance sheet for government, only if both of the following conditions are met: 1. The private partner bears the construction risk; 2. The private partner bears at least one of either availability or demand risk. In this sense, the analysis of risks borne by the parties is the key element of the assessment of the project, as regards classification of assets, to ensure the correct accounting of the impact of the government deficit of PPPs⁹.

Sustainable Development

Social protection

The challenge is to achieve successful PPPs that deliver on social objectives such as poverty alleviation, and protection of the weak and vulnerable groups.¹⁰

A good example of a PPP providing social protection is the Tajikistan Pamir Private Power Project operating in one of the poorest countries in the region. In this project, the International Finance

⁷ PPP: Public –Private Partnerships: “Son-of-Enron”? T.Martin Blaiklock, Adviser, Unpublished paper submitted to the NAO, 27 January 2003.

⁸ See Eurostat Press Release, 18/2004, 11 February 2004

⁹ For more information, see www.europa.eu.int/comm/eurostat/

¹⁰ According to the World Commission on Environment and Development in 1987 and also more recently, the Agenda 21 of the Environment Summit report formulated in 1992, “sustainable development” has been accentuated as the new development paradigm. This paradigm serves as a guideline to development policies, strategies and projects. The World Summit on Sustainable Development in Johannesburg provided another platform wherein proper execution and planning for projects on sustainable development was underscored. In particular, the concept of partnerships between governments, business and civil society was given a large boost by the Summit and the Plan of Implementation See www.johannesburgsummit.org

Corporation (IFC) and the Aga Khan Fund for Economic Development (AKFED) together with the Tajikistan government are developing a new electricity generation and distribution project in Gorno-Badakhshan region for 250,000 residents, at a cost of \$26m. In addition, the Swiss Government provided \$5m to maintain the tariff increase required in the early years in line with the national tariff and to support a minimum consumption amount.¹¹ The project established a special social protection tariff scheme. The tariff will increase gradually over 10 years with additional flexibility but the key objective is that the tariff and the especially-mobilized funds will ensure that those who cannot afford the current prices will nevertheless receive electricity.

Another example of social protection is found in education PPPs in Scotland. Under a scheme in Glasgow the project is ensuring that schools are serving deprived areas and giving children for the first time Internet access. The project provides furthermore for a quality-working environment and access to world-class information technology, enabling pupils and teachers to work together, productively and efficiently, to raise standards and maximise the individual potential of every participant. Moreover, the PPP is designed to increase educational standards, to improve pupil attendance, to prepare them for the Information Age, and to raise the morale, commitment and dedication of teachers. As a result, the project is generating value for money as educational standards improve. School projects are implementing progress in several aspects of education in order to make attendance of pupil more attractive and to improve school results. The essential way this is achieved is through contracts. These align the private sector to the achievement of improved social standards e.g. the private contractors may incur penalties if they do not achieve the improvements in education standards agreed in the contract.

Environmental improvement

Environment improvement also is very prominent in many of today's PPPs. One example of a PPP scheme helping to preserve the environment is found in the US. The Chesapeake Bay is one of the United States richest bio habitats supporting over 3,600 species of plants and animals, and providing fishing, recreation, tourism, and other employment opportunities for the region. Growing population pressure, however, and loss of undeveloped land, have reduced the environmental quality of the Bay. Faced with declining water quality and severe reductions of fish and shellfish populations, governments in the area have made restoration of the Chesapeake Bay an environmental priority.

In 1999, a lumber company offered for sale a tract of 58,172 acres in the Chesapeake Bay watershed, including shoreline property. This land included large segments of unbroken forest and more than 4,000 acres of wetlands, as well as established populations of several threatened and endangered species. Much of this land bordered on existing State-owned parkland and forest, creating a unique opportunity to buffer a large area from deforestation and development. However, the State faced several obstacles to this environmentally desirable goal:

- The State lacked funding to acquire the land
- The State lacked resources to manage the land after purchase (the State estimated that four full-time foresters and associated support services would be required)

¹¹ The company will control and operate all existing electricity generation, transmission and distribution facilities in Gorno-Badakhshan under a 25-year concession, complete with a partly constructed hydroelectric plant increasing its capacity from 14MW to 28MW. It also will operate another 8KW plant in the city of Khorog and construct a river regulating structure at the upstream Yashikul Lake to ensure adequate flow in winter and rehabilitate other assets including substation, transmission and distribution lines. The concession granted a legal, regulatory, environmental (including deforestation and pollution), financial and technical framework with a parliamentary approval that reduced political risk of future changes.

- Cessation of timber harvesting would cause unacceptable disruption of the local economy in this largely rural part of the State

To overcome these obstacles the government opted for a Public-Private Partnership solution and working with a non-profit environmental group designed a partnership with the following objectives:

- Providing a steady flow of economic activity and employment to support local businesses and communities
- Preventing the conversion of forested lands to non-forest uses
- Contributing to improvements in water quality, as part of the larger Chesapeake Bay restoration effort
- Protecting and enhancing habitat for threatened and endangered species
- Maintaining soil and forest productivity and health; and,
- Protecting visual quality and sites of special ecological, cultural, or historical interest.

To achieve these objectives, the State awarded a multiyear contract with a lumber company. This innovative agreement allows the company to harvest up to 1,000 acres of timber annually, an environmentally sustainable level. In return, the lumber firm is required to manage the Chesapeake Forest to the State's silvicultural standards. Harvesting of timber is allowed only where consonant with the environmental objectives of water quality and wildlife habitat. The partners, a State and timber company, share the profits generated from the sale of timber, with a 15 percent share of sales revenues also directed to the local county governments. To minimize risk to its private partner, the State agreed to compensate the lumber company for any losses in the first two years. However, this guarantee was never triggered, since the partnership has generated a profit every year since its inception. The lumber company is required to keep a fully accessible and transparent accounting system, open to the State's review, and audited by an independent accounting firm.

This PPP has been a remarkable success. The State is achieving its environmental objectives, without negative impact to the local economy. In the process, it is not only avoiding expenditure of State funds (after the initial land acquisition), but is generating positive revenue flow. This approach may serve as a model for preservation of other environmentally sensitive areas utilizing a PPP-based approach.

Dispute resolution

Specific mechanisms for dispute resolution in PPPs include *conflict preventive mechanisms* (substantive and procedural arrangements that anticipate and offset the potential for conflicts to develop), *conflict escalation mechanisms* that identify emergent conflicts so they can be addressed early, third party facilitation, mediation, negotiation, or adjudication, and *conflict resolving mechanisms* that provide assistance to parties in moving their dispute towards a positive outcome (mediation, facilitation, training, advisory mediation, expert decision-making).

Mediation is an interesting new form of dispute resolution and can be used where normal procedures have failed. In a large energy project after many years of failing to achieve resolution the various sides called on a mediator. The mediator in this case helped to significantly improve

understanding, and assisted the parties to change the valuation, particularly regarding the risk of the zero-sum option from an arbitration alternative. Each party presented its own assessment of what needed to be discussed. By gathering these positions and concerns of both companies a much more realistic view of the situation was taken. Each party met in a neutral location for three-day mediation with their negotiation team. After six months from the starting day of the mediation, the parties involved ratified an agreement.

Security and Safety

Provision by the private sector of transport, health and other services raises concerns about security and safety. However these issues are being dealt with in contracts and current practices in most PPPs. One critical element is environmental safety in large-scale energy projects, which involve shipping huge quantities of oil. In Georgia, the increasing traffic flows from Europe through the Black Sea ports of Odessa, Varna and Constantza to the Caucasus has placed strains on old infrastructure that badly needs new investment. The Port of Poti is strategically located and is a gate to the Caucasus and Central Asian states economies. As part of the enlargement project and in response of an urgent need for investment Channel Energy (Poti) Ltd. was set up as a joint venture between Channel Energy Ltd. (EIRE) and Poti Sea Port (Georgia) under the sponsorship of the Tower Holding group. One of the key concerns was to avoid serious oil spill. An Environmental Impact Assessment (EIA) by the Environment Ministry identified needs for:

- A detailed oil spill response plan to be developed and coordinated prior to commissioning of the terminal
- A self-monitoring programme to be developed and agreed
- The neighbouring countries to be informed about the project and its potentially adverse trans-boundary impacts if unforeseen disaster struck.

Such a project demonstrates the importance PPPs give to environmental security.

Another example is found in the Baltic Sea Port of Ventspils, Latvia. With funding from the European Bank for Reconstruction and Development (EBRD) the project will upgrade the rail network at Latvia's main port. This will increase the efficiency of Latvia's railway transport service and reduce environmental and safety threats at the port by routing some chemicals and oil products away from the populated area. The project was structured as a Public-Private Partnership between SIA Noord Natie Ventspils Terminal (NNVT) a joint venture company incorporated in Latvia and the Ventspils Port Authorities to built and operate a new multi-purpose terminal in the Ventspils Port that provides connection of different modes of transport. This is common type of transport PPP that puts a premium on environmental security.

3. Benefits

By giving these aspects of good governance in PPPs due attention policy makers can benefit their countries in a number of ways.

Increasing the chance of project success

An appropriate legal/regulatory framework with clear and enforceable laws related to property rights, contracts, and liability, speeds up PPPs and lowers the risk to all stakeholders. It thereby increases the chances of the project coming to closure. Projects which are well planned and have

been based on the full agreement of all the parties engaged following a proper and ongoing consultation process have less chance of unravelling or encountering delays, thereby avoiding costly litigation.

Building trust and confidence

A public administration that conducts its procurement in an open manner contributes to the increases confidence of suppliers in the reliability of the administration as a business partner.

Lowering costs

An effective procurement regime will mean that government institutions, regional and local authorities are able to buy goods and services of higher quality at lower prices.

Increasing foreign direct investment

The perception of good governance encourages risk investment by foreign and national investors. Political and regulatory risks are the ones which most deter foreign investment. There is a clear correlation between good governance and increased flows of foreign direct investment, including investments made into infrastructure through PPPs.

Heightening social acceptability

Mechanisms that secure well-governed projects will heighten the support of society for PPPs and give policy makers the confidence to provide the necessary political support for the PPP process.

Aid funds

Governments often will rely on aid funds in getting started. These funds are used to pay for such things as feasibility studies and the hiring of advisers, support staff and training. Donors will be more inclined to provide funding where governments establish clear and transparent procedures for governance in PPP projects.

4. Key lessons

The above analysis demonstrates the need for governments, policy makers and representatives of the private sector to give good governance more attention when developing public private partnerships. Projects encounter problems as a result of insufficient attention being given to the procedures and processes involved. Conversely, application of the principles of good governance throughout a project's life cycle can greatly increase the probability that it will be a technical, social, and economic success. Without doubt PPPs cannot be the sole responsibility of technical, legal and financial specialists, but should involve broader sectors of society as well.

Good governance means rules, processes and behaviour that affect the way in which powers are exercised, particularly as regards to openness, participation, accountability, effectiveness and coherence. What have been the lessons learned so far?

Transparency

PPPs should be governed by transparency:

- Competitive tenders: ensure that there is a fair competition in the tender process and the government obtains the best value for money. Such a principle comprises many specific obligations. While these are listed in procurement and competitive tendering guidelines that have been prepared by the multilateral development banks, (World Bank, EBRD) various branches of the business sector, the OECD, the ICC and by the United Nations, there needs to be more efforts at implementation.
- Corruption: local authorities have roles in PPPs and they must also respect new responsibilities: new external actors such as the media and civil society have a role to play in uncovering corruption and they must be protected in undertaking this role. Governments need to give a strong support to the freedom of the press and to allow them as much freedom to operate and investigate corruption.
- Bottom up approaches: Consumer groups too have a role to play in uncovering corruption. Citizens are victims and potential informants on corruption.
- Involvement of all stakeholders: The Zurich soccer stadium case showed that an open debate could encourage participation and a better understanding of the project amongst local populations. The argument that a PPP is too ‘technical’ for ordinary citizens to understand and to make a judgement is not valid.

Public accountability

Many projects take place successfully. There are, however, a few that undermine public confidence, so it is important that effective mechanisms of public accountability are established: The lessons from the experience to date are:

- Clear rules on tenders: The general legislation governing the decision process about projects should introduce as much as possible clear rules of responsibility of specific bodies and persons in the public sector. Accountability means amongst other things providing basic information on the pricing of projects. Proper cost and benefit analyses should be undertaken before projects begin, and the facts and figures should be made publicly available. The Mapeley Case showed a weakness in the information about the financing of projects and a lack of information about the company, which was awarded the contract.
- Disqualification if these rules are breached: Governments might consider disqualifying applications from companies, which undermine government’s objectives for tax transparency and openness. Transparency should be the criterion for the selection of a bidder and the award of a contract. In addition the extent to which the bidders own market is protected, if it is a foreign company, may also be another criterion in which a bidder may be disqualified from competing.
- Setting up of ‘public watchdogs’: The Mapeley case demonstrated the value of an open Parliamentary Enquiry in the UK system. The National Audit Bodies can play important roles of investigation to complement these bodies. These powers should include the power to decide to take on the investigation of a specific case. It should also have powers to obtain more information specifically regarding the financing of the projects.

- Open access to information on financing: Much of the financing of PPPs is of a technical nature and the argument is that ordinary citizens are not interested in having such information. In addition, governments and private sector are sometimes reluctant to disclose how much each has financially supported the other in a PPP project. This is related to the sensitive nature of negotiations between the public and private sector, prior to a deal being closed. But it is important for both sides to make a strong commitment to disclosure. Without such disclosure there is room for the manipulation of accounts, cross subsidies etc in abuse of the receipt of public funds. Accordingly, the private sector should make available their financial statements for each concession entered into.

Sustainable development

Critical to the sustainability of PPPs is their ability to deliver both social advantages and commercial viability. This is not easy since the private sector has to make a profit and poor and disadvantaged regions are often not attractive to private sector investors. However the lessons from experience show that sustainable development is achieved through PPPs and in fact their nature enhances the possibility of achieving social goals, much more than by traditional means:

- Social protection and improvements: In the case of Tajikistan – one of the poorest countries in Europe, it was possible to attract the private sector with a scheme that improved the social welfare of the local community. The schools projects in Glasgow extended and improved services in disadvantaged parts of the city. In local mass transit schemes in many European cities, poor areas are reached by such schemes and charges are affordable. All these projects have desirable social effects such as creation of employment in poor regions as well as use of local expertise and small businesses.
- Meeting social standards through the contract: While not-for-profit organisations are becoming another useful variant in PPP, the profit motive remains the best way to ensure that the project achieves social improvements. As demonstrated in the case of Scottish Schools, companies were not eligible for financial incentives if they did not achieve improvements in educational standards and in class attendance.
- Creative solutions and good projects: environmental preservation goals can be achieved by well-structured PPPs, as seen in the Chesapeake Forest Case. The government had clear environmental objectives as well as profit maximization for the private sector. The positive role of the private sector in achieving sustainable development is defined and maintained through a well-designed project.

Dispute resolution

PPP projects like any other project can go wrong and there must be put in place adequate systems for resolving disputes. The key lessons are:

- Litigation is not recommended: Because PPPs involve long-term relationships between multiple parties whose cooperation and collaboration are keys to the effective delivery of projects, litigation as a form of dispute resolution is not recommended. Aside from high financial costs, litigation exacts opportunity costs including interruption of the business development, impairment of important commercial relations and deterioration of the governments' and companies' public image.

- Efficient dispute resolution: Contracts between the public and private sectors should comprehend an efficient dispute resolution process. Contractual parties should consider using arbitration especially in cases of large projects involving important infrastructure services, such as is being used in the London Underground PPP.
- Consult the private sector: in projects where an incoming government seeks to change the project after it has started it is important that the government consults with the private sector before making amendments to the agreement. Unilateral actions not only are unfair to the private company, they can undermine the confidence of the business community in the government itself.
- Mediation: all dispute-solving needs some form of mediation and such practices offer useful opportunities that can save time and money for all parties. There are a variety of conflict managing mechanisms that can be embedded in PPPs. Processes that aim to prevent conflicts from developing use substantive arrangements (partner buyout provisions, agreements about execution of contracts) and procedural arrangements (opening effective channels of communication or decision making). Mechanisms that aim to interrupt conflict escalation work by monitoring and resolving conflicts as they arise. Methods for moving a conflict towards a positive outcome can involve procedural assistance (mediation, facilitation, and training) or substantive (fact finding, data gathering, professional consultation).

Security and safety

The key lessons are:

- Procedures must be put in place to ensure that safety and security concerns are met in PPP projects. But it is not sufficient to issue new procedures. There must also be a commitment to their implementation. The private sector has an economic imperative to improve its standards. Partnerships with insurers show that the economic imperative and the threat of litigation are good motivators for improving and ensuring compliance with standards.
- Governments need to establish bodies, which can scrutinise the safety aspects of PPPs. They need to be independent and include experts. The companies as well must demonstrate their awareness of the increased importance of safety in PPPs and must show that they are implementing new standards in their current commercial practices.
- Environmental audits need to be organised before projects are begun.

5. Actions required

Given the actual and potential impact, which the procedures and processes above can have on the development of PPPs in Europe, serious consideration needs to be given to identify suitable actions for achieving progress and change.

The most important recommendation is to develop the necessary institutional capacity within governments on PPPs. This is the goal of the UNECE PPP Alliance. Further efforts are required, including the elaboration of a strategic plan for achieving real progress. PPP Units in the heart of government are an important step forward and governments should be assisted in establishing these.

Our further recommendations in support of good governance in PPPs are as follows:

- Clear statements need to be made on improving transparency and fighting corruption
- Recommendations for improving governance need to be back up through benchmarking these set out clear guides on procedures for implementing good governance and can be used by government to measure their performance in meeting targets. (See below) In fighting corruption, an often-neglected weapon is simply to reduce the economic opportunities for it. Benchmarking can eliminate precisely those procedures which are unnecessary in PPP development but which can provide opportunities for corruption.
- Improvements in PPPs need to be linked with improvements in the performance of governments. In the transition context, the fight against corruption must be linked to the reform of the state. In some countries, transparent leadership by example and basic economic reforms, including privatisation, would sharply curtail economic opportunities for dishonesty. In these cases, economic distortions and administrative controls, which should be given priority, include those that involve high discretion such as issuance of licences, permits, quotas, customs, border crossing documentation and tax exemptions. At the same time, it is counter-productive to allow regulations to proliferate, even those that are specifically aimed at fighting corruption.
- Develop and provide easy access to case studies of PPPs on the internet: Nothing breeds success as success and providing case studies of PPP which have been successful can inspire policy makers in the ECE region and beyond.
- On dispute resolution: there is little information on how to establish or use appropriate conflict resolving mechanisms to solve disputes especially in countries, which are probably in the most need of establishing alternative dispute resolutions systems for improving their judicial processes. Therefore, it might be useful as a follow up to prepare guidelines with other organisations such as UNCITRAL and to show how these mechanisms can fulfil a need in emerging market economies.

6. Benchmarking success

Benchmarking as stated above is a good way for policy makers to improve their compliance with good governance standards. Policy makers can use the following indicators to measure progress in achieving good governance. The model presents benchmarks based on the ingredients of good governance previously identified.

1. Transparency and openness

- a. Public procurement (*subsector*)
 - i. Selective procedure (*desired condition*)
 1. General applicable law for all tender processes (*indicators*)
 2. Specific laws according to the sector
 3. Harmonized rules under regional unification initiatives
 4. Corporate governance requirements
 5. Award procedure
 6. Tender appeal procedure
 - ii. Open participation and non-discrimination (*desired condition*)

1. Companies whose headquarters are not based in the country are successful in tender processes
2. Early publication of tender offers in local and international newspapers
3. Open competition rules
4. Level playing field
- iii. Good negotiation platform (*desired condition*)
 1. Expertise and dedication of negotiators
 2. Independence of judgment
 3. Defined goals and objectives in the negotiation process
- iv. Coordination (*desired condition*)
 1. Special governmental agency in charge of coordinating the project proposals and commencement of tender process
 2. Web site information and on-line pre-registration
- v. Organized data gathering (*desired condition*)
 1. Centralized database with possible and actual contractors
 2. Due diligence on the bidders' financial and technical performances
- vi. Contractors' registry (*desired condition*)
 1. Qualification of contractors according to specific standards
 2. Contractors' updated profile
 3. Regular advertisement of status of contractors
- vii. Due authorization to grant permits, concessions or licences (*desired condition*)
 1. Legal delegation of authority to officials to sign on behalf of the government
 2. Regulation about permits and/or licenses at a national level
 3. Divulgation of information about granted permits, licenses and/or concessions
- b. Strong anti-corruption measures (*subsector*)
 - i. International level
 1. Anti-bribery Convention (*desired condition*)
 - a. Ratification of the OECD Convention (*indicators*)
 - b. Implementation of its requirements
 - c. Proposals in international for anti-corruption measures
 - d. Participation in specialized inter-governmental organisms for combating corruption
 - ii. National level
 1. Enforcement measures (*desired condition*)
 - a. Criminal law reforms
 2. Anti-corruption independent Agency (*desired condition*)
 - a. Independency from all three powers (public, private and facilitators)
 - b. Publication of reports on corruption issues
 - c. Divulgation of information and reports
 - d. Educational programs
 3. Criminal prosecution (*desired condition*)
 - a. Rate of prosecuted cases
 - b. Rate of sentences imposing imprisonment and economic penalties on defendants
 - c. PPP unit (*subsector*)
 - i. Creation of legislation (*desired condition*)

1. Amount of projects presented to Legislative body (*indicator*)
 2. Amount of proposed bills passed by Legislative Body
- ii. Existence of specialists taskforce (*desired condition*)
 1. Diversity of specialists backgrounds
 2. Independency
- iii. Identification of projects (*desired condition*)
 1. Updated database of possible projects (*indicators*)
 2. Frequent contacts with private sector and civil society
 3. Project “hunting”
 4. Private initiatives and/or unsolicited offers
- iv. Education and dissemination of information (*desired condition*)
 1. Special programs at different levels to disseminate information on PPPs
 2. Access to media
 3. Publications
 4. Organization of conferences, seminars and/or workshops on related topics
- v. Issuance of guidelines and advisory notes (*desired conditions*)
 1. Publication
 2. Advertisement
- vi. Measure of performance (*desired condition*)
 1. Ad campaign
 2. Elaborate webpage
 3. Amount of consults registered in the website
 4. Amount of people who know of the existence and assigned tasks of the Unit

2. Public accountability

- a. Public servants’ responsibility (*subsector*)
 - i. Awareness for the consequences of their decisions (*desired condition*)
 1. Appointment based on merits and open election
 2. Presentation of personal financial statements
 3. Definition of civil torts regarding public officials’ performance
 4. Criminal and civil prosecution for irregularities on PPPs projects
 5. Level of citizens’ scrutiny and participation in the appointment process
 - b. Participation of citizens (*subsector*)
 - i. Consumers’ organizations (*desired condition*)
 1. involvement in projects
 2. Media exposure
 3. Proposal of projects by civil society and/or NGOs
 - ii. Use of constitutional tools for decision-making process (*desired condition*)
 1. inclusion of referendum in the Constitution
 2. regularity of its use
 3. level of citizens’ awareness of its existence and purpose
 - c. Accounting and auditing (*subsector*)
 - i. Clear accounting treatment of assets involved in PPPs (*desired condition*)
 1. Off-balance sheet allocation
 2. Definition of ownership of assets
 3. Risk assessment
 4. Risk assumption by the private sector
 - ii. Independent auditing (*desired condition*)

1. Participation of independent auditing firms selected by transparent, open procurement.
2. Independent permanent auditor assigned to the project and/or SPV
3. Reports directly to PPP unit
- d. Performance of private company (*subsector*)
 - i. Performance and output milestones definition (*desired condition*)
 1. Stepped or banded thresholds
 2. Involvement of experts in stepped or banded thresholds analysis
 3. Trigger of payments based on performance assessments
 - e. Tax (*subsector*)
 - i. Tax advantages (*desired condition*)
 1. Tax reduction according to investment (*indicator*)
 2. Progressive elimination of tax burdens
 3. Elimination of double-taxation irregularities

3. Sustainable development

- a. Long-term infrastructure goals (*subsector*)
 - i. Inclusion of PPP policy in national program (*desired condition*)
 1. Creation of PPP Unit
 2. Legislation
 3. Assignment of PPP projects in national and/or state budget
 4. Outline of comprehensive national infrastructure projects
 5. Clear definition of sectorial goals
 6. Special treatment to problematic and/or urgent national infrastructure needs
 - ii. Annual plans and programmes (*desired condition*)
 1. Publication of plans
 2. Access to media
 3. Education programs at all levels (primary, secondary and university)
- b. Feasibility studies (*subsector*)
 - i. Technical (*desired condition*)
 - ii. Financial (*desired condition*)
 - iii. Profitability study (*desired condition*)
- c. Commercial development (*subsector*)
 - i. Sustainability (*desired condition*)
 1. Compromise of private sector for long-term projects
 2. Financial performance of private sector in social infrastructure
 3. Public control
 - ii. Value for money (*desired condition*)
- d. Contracts (*subsector*)
 - i. Good design of agreements (*desired condition*)
 1. Broad choice of contracts that better suit the needs of the project
 2. Creative definition of covenants
 3. Flexibility during the life of the contract
- e. Publicity and Education (*subsector*)
 - i. Expansion of knowledge on PPPs (*desired condition*)
 1. Diversification
 2. Level of understanding of citizens about the key elements of a PPP project
 3. Access to media

4. Polls among users and consumers on performance of the private company
5. Polls to measure public's satisfaction with the service

4. Achieving effective resolution of disputes

- a. Tender (*subsector*)
 - i. right to challenge (*desired condition*)
 1. number of times used
 2. results
- b. Contractual level (*subsector*)
 - i. Easy dispute mechanism on interpretation and application of clauses (*desired condition*)
 1. Frequency
 2. Clear arbitration clause
 3. Choice of law clauses
 4. Existence of a choice of forum clause
- c. Post-contractual period (*subsector*)
 - i. conflict prevention (*desired condition*)
 1. Flexibility
 2. Consultation with independent experts
 3. Use of mediation
 4. Permanent team of experts assigned to solve conflicts
 - ii. Participation of consumers (*desired condition*)
 1. Extended use of class action
 2. Instauration of consultation procedures
 3. Performance of Ombudsman

5. Security and safety

- a. Government level (*subsector*)
 - i. Specialized agency (*desired condition*)
 1. Performance
 2. Instauration of preventive measures
 3. Level of spread of information related to security measures
 4. Periodic exams in the project
 - ii. Strong insurance policy (*desired condition*)
 1. Regulation of insurance market
 2. Existence of covenants in agreements

The indicators are scaled from 1 to 5, being 1 very poor, 2 poor, 3 moderate, 4 good and 5 very good. Once the indicators are graded, they should be added within each sub-sector and then divided by the maximum possible result and then by 100 to achieve a percentage.

Each section is divided in thematic subsection, which contains desired conditions measured by specific indicators

ANNEX – Case Studies

1. Transparency

a. Danish Sports Facility

A local authority in Denmark of around 20,000 inhabitants, seeking increased funds for local projects, implemented a new PPP financing system. The financing mechanism consisted of selling public assets, such as school buildings, kindergartens and cleaning services, to private enterprises and then renting them back with a provision that the municipality may buy them back after a number of years. The scheme also included a project for the construction of a sports arena and a soccer stadium as well as a nautical centre under a contract of 20 years. The scheme was based on provisions of the Danish tax system: this allowed the leasing company tax advantages, which the municipality was not able to enjoy. In 2000, a sale and leaseback agreement was signed with a financial institution. The sale and leaseback contract was not formally offered as part of a tender process.

At first sight the impact of the projects was positive. No Danish community had been able, up until that time, to offer such high standards of service through public funds. School children were provided with free personal computers, pensioners were offered free trips and the new sports facilities were of an international standard. Following a newspaper investigation, however, it was alleged that companies had given money to the soccer club in return for obtaining contracts from the local authority. The mayor was a shareholder of the company and chairman of the soccer club, which was to play in the new soccer stadium.

Issues

- Failure to follow the EU's procurement rules for tender and contracting;
- Lack of proper public accountability, the local council was not effective in accounting for payments;
- No formal tender offer process was declared, apparently due to the sale and leaseback contract to a private financing company, which gave the possibility of avoiding EU procurement regulations;
- The local community was not aware of the procedures and contract formalities of the project;
- There are ongoing investigations to determine whether corrupt payments were made by the private companies in the form of sponsorships of local sports clubs as pre-requisites for the awarding of public works contracts by the council.

2. Public accountability and scrutiny

b. The Mapeley PFI project: sale of land and building by the Inland Revenue UK

Case Facts

In March, 2001 the UK government's tax authority (the Inland Revenue and Custom Excise) in order to raise capital for the Exchequer proposed a PFI through a transference of the ownership and management of buildings belonging to the IRCE in a lease back for 20 years. For £220m 600 buildings went to a consortium "Mapeley" who was chosen as the preferred bidder. The Inland Revenue said at the time of the operation that it was dealing with a UK registered company. However, 18 months later, it stated that in fact it concerned a company based offshore in Bermuda.

This raised therefore, the possibility that valuable assets were to be shifted beyond the reach of the UK tax authorities to a company registered in a tax haven.

Ministers and officials of the Board of the Inland Revenue were not informed about key aspects of the deal, including its tax implications. Mapeley UK reported a loss of £12m in 2001 after it transferred £81m to a Bermuda based Mapeley Company for the master lease. How much Mapeley charges the Revenue in rent and service cost is not known, because commercial agreements between the government and the private sector are confidential. In addition, further details of the contract cannot be disclosed from Mapeley Bermuda accounts because neither does the company file financial reports, nor does it pay tax in the UK. Some experts believe the sale will eventually cost the Government millions of pounds in lost revenues from capital gains tax.

Issues

- Important government officials were not fully informed about key circumstances related to the contract.
- A stakeholder company registered in a tax haven was able to participate in a public tendering offer in spite of the fact that through the contract the Government Exchequer would receive less tax income. Neither the law nor the contract provided for any disqualification for such a company.
- Information disclosed to the UK Parliament and to the public provided by the Government was not accurate. The exact contract structure was revealed fairly late in the procurement process and the press release incorrectly stated that the contract was signed with a UK based company.
- A financial crisis affected Mapeley UK, soon after the signing of the contract demonstrating a poor due diligence and accountability process that should be improved.
- The Inland Revenue (IR) issued two letters of comfort without approval of the IR board, overlooking Government accounting requirements.
- Mapeley as a bidder was able to charge the Inland Revenue a lower rent than UK-based companies that were competing in the tender offer and therefore was awarded the contract.

c. The Zurich Soccer Stadium project

Case Facts

A project to build a new football stadium in Zurich was proposed which included a shopping centre alongside the stadium. The Green Party was however opposed to the construction of the stadium on environmental grounds. The local residents reacted against the project as well, because of concerns over increased traffic congestions that result from the project. To solve the dispute a referendum¹² was called to approve both the planning permission and the city decision to provide land and funding worth a total of CHF 37.5m, which is 10% of the total project's cost. In September of the year 2003, the referendum results were: 63, 26% of the inhabitants agreed to the private plan and 59, 19% agreed with the financial participation.

Credit Suisse will finance the project with a loan of CHF 370m among a consortium of other private investors. The project involves improvements in the public transportation network with a new tram and bus line to meet the rise of traffic.

¹² The referendum is a sort of halfway house between a pure form of direct democracy in which the citizens assemble and discuss the issues before taking a direct vote on them, and representative democracy in which the citizen's direct participation is limited to going to the polls and casting a ballot for one's preferred candidates. In some countries, referendum has been included in their Constitutions, as a way of introducing more direct forms of democracy. The two main justifications for direct democracy are 1) that it leads to better outcomes, and 2) that it leads to better citizens (Pennock, 1979, pp 438-45). See Mueller, Dennis, *Constitutional Democracy*, Oxford University Press, 1996.

Issues

- Public scrutiny by a referendum before the final approval of a project provides benefits. Participation is positive as it generates a better understanding by the community through an open debate.
- Consideration on related aspects, such as traffic increase before a project being approved, is highly recommended.

d. D47 Motorway Project (Czech Republic)

Case Facts

In order to improve the infrastructure to meet EU standards and the expected greater use of motorways, a project to improve the D47 motorway was proposed. It was intended to be the first motorway project in the Czech Republic to be built using a payment structure based on shadow tolls. In March 2001, a consortium company (Halliburton, Housing & Construction Holding, Bauholding Strabag and Shiran) was awarded the construction for an 80 km Motorway in the Czech Republic (north-east Moravia). The company, it was announced, would manage the Motorway for 30 years and the Government would pay an annual toll based on the number of vehicles that used the motorway. The contract stipulated several conditions regarding the final price, including risks involved in the buy-out of property and receipt of land-use permits (the risk covered by the Government).

In April 2003, the Czech government decided to cancel the contract due to strong criticism on the price and contract's omissions and the fact that an important amount of money could be saved even though a possible penalty for early termination might have to be forfeited. Environmental groups in addition, claimed that the construction would severely damage the environment and urged that an alternative route be considered. A parliamentary commission was appointed to investigate circumstances of the conclusion and subsequent termination of the contract. A compensation for the constructing consortium was agreed in July 2003.

Now, the Czech Government has decided that the D47 motorway project should be reinitiated but this time using traditional methods, i.e. constructing companies are chosen by tender the financing comes partially from the State Transport Infrastructure Fund, partially through issuing bonds and partially from loans from the EIB.

Issues

- Why the original contract was granted without a tender process.
- Environmental groups claim their views were not taken into consideration
- Early termination of a contract by government may send a wrong message to the private sector although an early exit may on the other hand appear to be the best option in the long run.
- An efficient as well as an impartial dispute resolution system should be considered in advance.

3. Sustainable Development

e. Tajikistan Pamir Private Power Project

In Tajikistan, one of the poorest countries in the region, the International Finance Corporation (IFC) and the Aga Khan Fund for Economic Development (AKFED) together with the Tajikistan

government are working for the development of a new electricity generation and distribution project in Gorno-Badakhshan region for 250,000 residents. A new company was established (Pair Energy), 70% owned by AKFED (a group of private, non-denominational development agencies) and 30% by IFC. The project will cost \$26m. In addition, the Swiss Government provided \$5m to maintain the tariff increase required in the early years in line with the national tariff and to support a minimum consumption amount. The company will control and operate all existing electricity generation, transmission and distribution facilities in Gorno-Badakhshan under a 25-year concession, complete with a partly constructed hydroelectric plant increasing its capacity from 14MW to 28MW. It also will operate another 8KW plant in the city of Khorog and construct a river regulating structure at the upstream Yashikul Lake to ensure adequate flow in winter and rehabilitate other assets including substation, transmission and distribution lines.

Issues

- The concession granted a legal, regulatory, environmental (including deforestation and pollution), financial and technical framework with a parliamentary approval that reduced political risk of future changes.
- A social protection scheme tariff that should increase gradually in 10 years was agreed with some flexibility in order to accomplish affordable tariff to mitigate political and social risk. Due to limited fiscal resources and weakness in public sector financial management, precise funds were mobilized to ensure a social protection cost at a lifeline tariff.

f. Scottish Schools

In Scotland, more than half of all expenditures on PPPs have been directed towards schools. In 2001, schools PPPs accounted for 10% of all capital expenditure committed by the Scottish Executive. In March 2003 it was announced that almost £750m would be invested in rebuilding or refurbishing more school buildings under the second stage of a programme that already includes £1.2bn since June 2002. The project will provide the quality working environments and access to world class IT enabling pupils and teachers to work together, productively and efficiently, to raise standards and maximise the individual potential of every participant. As of May 2002 there were 89 school PPP projects, representing £2.6bn capital value, some of them with excellent teaching and learning facilities, such as swimming pool, a gymnasium, fitness suite and a floodlit artificial grass pitch, including an email address for each pupil. The main goals on the Schools PPP Project are to increase educational standards, to improve pupil attendance, to prepare them for the Information Age, and to raise the morale, commitment and dedication of teachers.

Issues

- Value for money as educational standards is being improved.
- Schools are set up in many of Glasgow's so-called "deprived" areas.
- School projects are implementing progress in several aspects of education in order to make attendance of pupil more attractive and to improve school results.
- PPPs in education have not taken a single, standardised form; the range of PPPs completed or in procurement has expanded in response to the diverse needs and circumstances of different local educational authorities.
- Contracts align the private sector to the achievement of improved social standards e.g. the private contractors may incur penalties if they do not achieve the improvements in education standards agreed in the contract.

g. Sofyiska voda, Bulgaria

Bulgaria has a well-developed water supply system servicing 99% of the population but the system itself is in a very poor condition. Around 3% of the population connected to drinking water supply systems uses water with dangerously high levels of nitrates, oil and serious microbiological contamination. Infrastructure systems for water supply and wastewater treatment and disposal are currently undergoing far-reaching transformation in Bulgaria. The country's water strategy is focused on improving the quality and to comply with EU environmental standards.¹³

Sofijska Voda¹⁴ has taken over operating responsibility for the water and wastewater system for Sofia under a 25-year concession agreement. The Municipality of Sofia holds 25% of the shares. The EBRD's finance of EUR31 million will support Sofijska Voda's capital expenditure programme for the first five years of the concession, including start-up costs. The sponsor group will provide combined subordinated debt and equity, which together with funds generated internally by the company bring the total amount of the five-year project to EUR94 million. Initial investments will concentrate on the rehabilitation of the water and sewerage networks to reduce leakage and infiltration, ensure reliable supply as well as streamline billing and financial management. In 2002, the company completed 71 rehabilitation projects on the water supply network and 15 projects on the sewerage networks in the city, resulting in improved quality of service for about 25,000 habitants.

The social and financial impact:

The private involvement though the concession agreement resulted in a commercial success with a strong social impact.

- The Company provides services to a population of about 1.3 million people and operates and maintains a water supply network of an overall length of 3,500 km, and 1,700 km of sewerage network, the two water treatment plants in Bistritsa and Pancharevo, and one wastewater treatment plant.
- The capital investment programme of EUR 78m over the first five years and minimum US 150m over the next 15 years is required by the concession agreement for extension and rehabilitation of the water distribution network and improvement of the quality of drinking water and also implementation of measures for reduction of the water losses along the water supply network. The use of the resources and the collection and treatment of sewage is now more efficient.
- The revenue collection improved by implementation of a new billing system. The tariff reform was initiated in order to reach alleviation of the cross-subsidies. However the tariff for water and wastewater treatment services increased but they are still competitive and affordable and at the same time consumers enjoy better quality of service.¹⁵
- The project promotes environmental benefits.

¹³ Similar to many of the countries in the region, Bulgaria's water and wastewater infrastructure suffers from decades of severe underinvestment and needs around EUR 3.6 billion to adapt with European Union standards. About EUR 1.77 million is needed for rehabilitation of the water supply network and reduction of water losses.

¹⁴ Joint Stock Company is majority owned by International Water UU - Sofia, whose parent companies include Bechtel Enterprises Holdings Inc., Edison SpA and United Utilities plc.

¹⁵ Valentin Georgiev, April 5, 2001, in PARI Daily, "Water tariffs rise disputed in court".

"The Bulgarian Federation of Consumers on 30th March 2001 took court action requesting that Sofia city council's decision to increase water tariffs to consumers by 25.5% to be revoked. The committee and the federation of consumers demand that the classified addendum to the concession agreement (filed to the Sofia City Court) to be disclosed. International Water argued that the increase was justified by the inflation rate and the introduction of a state fee"

Project objectives:

- Sofiyska Voda is combining sustainable resource development with demand management, which includes leakage control, accurate metering and the promotion of water efficiency to the customers. This process aims to slow down the increase in overall demand for water and that should transform the condition and performance of the city's water and wastewater networks by combining social and economic progress.
- The residents of Sofia will benefit from the country's first privately managed water and wastewater company. The funds will help the company improve maintenance of the city's pipe system, enhance customer service, promote a more efficient and easy-to-use billing system and to improve the environmental conditions.

h. The Chesapeake Forest

The Chesapeake Bay is the largest estuary in the United States. The surface area of the Bay and its tidal tributaries is approximately 7,000 square miles, and its watershed comprises 64,000 square miles in six states and the District of Columbia. Historically, the Bay was one of the richest bio habitats in North America; today, it still supports over 3,600 species of plants and animals, and provides fishing, recreation, tourism, and other employment opportunities for the region.

Growing population pressure and loss of undeveloped land have reduced the environmental quality of the Bay. Faced with declining water quality and severe reductions of fish and shellfish populations, governments in the area have made restoration of the Chesapeake Bay an environmental priority.

In 1999, a lumber company offered for sale a tract of 58,172 acres in the Chesapeake Bay watershed, including shoreline property. This land, all in the State of Maryland, included large segments of unbroken forest and more than 4,000 acres of wetlands, as well as established populations of several threatened and endangered species. Much of this land bordered on existing State-owned parkland and forest, creating a unique opportunity to buffer a large area from deforestation and development. However, the State faced several obstacles to this environmentally desirable goal:

- The State lacked funding to acquire the land
- The State lacked resources to manage the land after purchase (the State estimated that four full-time foresters and associated support services would be required)
- Cessation of timber harvesting would cause unacceptable disruption of the local economy in this largely rural part of the State

A Public-Private Partnership Solution

The acquisition of the land was achieved through fairly traditional means. The State purchased one-half of the acreage using State funds, while the remaining 29,000 acres were purchased by an environmental non-profit which transferred ownership to the State. By December 2000, the State owned all of the Chesapeake Forest lands.

The State, working with the non-profit environmental group, then sought to craft a Public-Private Partnership (PPP) with the following explicit objectives:

- Providing a steady flow of economic activity and employment to support local businesses and communities;
- Preventing the conversion of forested lands to non-forest uses;
- Contributing to improvements in water quality, as part of the larger Chesapeake Bay restoration effort;

- Protecting and enhancing habitat for threatened and endangered species;
- Maintaining soil and forest productivity and health; and,
- Protecting visual quality and sites of special ecological, cultural, or historical interest.

To achieve these objectives, the State advertised, negotiated, and awarded a multiyear contract with a lumber company. This innovative agreement allows the company to harvest up to 1,000 acres of timber annually, an environmentally sustainable level. In return, the lumber firm is required to manage the Chesapeake Forest to the State's silvicultural standards. Harvesting of timber is allowed only where consonant with the environmental objectives of water quality and wildlife habitat.

The partners, State and timber company, share the profits generated from the sale of timber, with a 15 percent share of sales revenues also directed to the local county governments. To minimize risk to its private partner, the State agreed to compensate the lumber company for any losses in the first two years. However, this guarantee was never triggered, since the partnership has generated a profit every year since its inception. The lumber company is required to keep a fully accessible and transparent accounting system, open to the State's review, and audited by an independent accounting firm.

This PPP has been a remarkable success. The State is achieving its environmental objectives, without negative impact to the local economy. In the process, it is not only avoiding expenditure of State funds (after the initial land acquisition), but is generating positive revenue flow. This approach may serve as a model for preservation of other environmentally-sensitive areas utilizing a PPP-based approach.

Issues

- The government determined the preservation of the environment as the main objective
- Performance objectives were set up, in reference to the aspects of quality of the environment for the population.
- The project assured revenues for the private sector, maintaining its interest and long-term involvement, and thus achieving sustainability
- The project outlined the role of the private sector in the community; the private company contributes to preserve the environment and commits to several standards in the exploitation of the timber

4. Dispute resolution

The multiplicity of parties in privately financed projects makes conflict predictable. Yet despite its perceived negative impact, conflict within PPPs can lead to creative and constructive outcomes when it is managed by encouraging open discussion that allows full exploration of the participants' needs, concerns, values, meanings, and interests – the essential ingredients of authentic communication. This process can contribute significantly to the accountability and transparency that PPPs strive for, and serves itself as a mechanism for channelling constructive conflict towards positive outcomes.

However, agreed upon conflict mechanisms should be put in place prior to misunderstandings or conflict. Given the essential and critical nature of services being delivered by PPPs to the national economic life, it is important to ensure that services continue to be provided in the face of disagreement between the various parties in the project.

Specific mechanisms include *conflict preventive mechanisms* (substantive and procedural arrangements that anticipate and offset the potential for conflicts to develop), *conflict escalation mechanisms* that identify emergent conflicts so they can be addressed early, third party facilitation, mediation, negotiation, or adjudication, and *conflict resolving mechanisms* that provide assistance to parties in moving their dispute towards a positive outcome (mediation, facilitation, training, advisory mediation, expert decision-making).

Governments are not always cooperative in accepting dispute resolution mechanisms as a vehicle to resolve controversies arising from the contract with the private party.

Mediation and arbitration are highly recommended in Public- Private Partnership's projects as they traditionally involve long-term relationships. These techniques are internationally recognized and provide a viable means to resolve disputes expeditiously and transparently. Aside from high financial costs and the time consuming procedure, the use of the indigenous law and court system exacts opportunity costs including interruption of the project development, impairment of important commercial relations, deterioration of the governments' and companies' public image. Local courts are in general incapable to deal with the complexity of the interrelationship between the main agreement and the rest of the project and financing documents. However there is a fundamental distinction between mediation and arbitration. Mediation is a form of alternative dispute resolution where the parties or the appointing body have to appoint an independent third party to act as mediator. The mediator convenes a joint meeting and if a settlement agreement is not reached by the fixt length of time then the mediation is deemed to have failed, and the parties continue as if mediation had never taken place. The mediator facilitates settlement but has no authority to make any binding decisions. Arbitration is typically used both for settlement of disputes that arise during the construction or operation of the infrastructure facility and for the settlement of disputes related to the expiry or termination of the project agreement. Arbitration reduces a parties' control over the dispute and the arbiter makes a binding and enforceable decision. These different types of dispute resolution are regularly used in combination with each other by including a "dispute escalation clause". Mediation could be followed by arbitration or litigation if the dispute cannot be settled within a set period of time and can delay proceedings against the better interests of some of the parties.

Mediation and arbitration can provide neutrality and expertise where the parties come from different countries or countries with dissimilar legal systems. The parties usually have freedom to agree, they enjoy a tailor-made procedure for the settlement of the disputes and an arbiter/mediator has particular expertise in the subject matter. There is usually no need the parties to be represented at the hearing by locally qualified lawyers and all arbitration hearings generally should be held in private. Confidentiality, privacy and finality are those factors which should one bear in mind when deciding whether to opt for litigation or arbitration, but there is a risk if the party is unable to challenge an award. If enforcement is likely to be required in a country other than the host to the mediation/arbitration a treaty between the two countries for the mutual recognition and enforcement of awards is required in order to easier the enforceability. (The Brussels regulations and the Lugano Convention are applicable throughout the EU and the European Free Trade Association countries.)

There are different methods used for preventing disputes. "Early warning provisions" typically require the claiming party to submit a quantified claim, along with the necessary proof to events that might affect the quality of public services, increase their cost or cause delay. "Partnering" or cooperation among key partners has been found useful to avoid disputes and to achieve the goals of the project. Independent experts or permanent boards composed of experts ("dispute review boards") have often been used for the settlement of disputes under construction contracts. Although this occurs very rarely the board's decision could be final and binding. Variety of conflict

managing mechanisms that can be embedded in PPPs. Processes that aim to prevent conflicts from developing use substantive arrangements (partner buyout provisions, agreements about execution of contracts) and procedural arrangements (opening effective channels of communication or decision making). Mechanisms that aim to interrupt conflict escalation work by monitoring and resolving conflicts as they arise. Methods for moving a conflict towards a positive outcome can involve procedural assistance (mediation, facilitation, training) or substantive (fact finding, data gathering, professional consultation). “Mini-trial” can be involved in order to inform senior executives about the dispute matter and to serve as a reality check of what the outcome of a real trial might be. There is a similar procedure so called “non binding arbitration”, which is conduct as a same manner as binding arbitration. It can be followed by litigation later on.

International arbitration, in a neutral location, under one of the more familiar international systems often becomes the compromise solution for dispute settlement. Three different forms of dispute resolution mechanism will usually be needed, relating to:

- (a) Disputes about the interpretation and application of the agreement’s provisions, where a breach of contract is alleged. Should proceedings be litigated or arbitrated?
- (b) Questions about minor adjustments to the agreement (such as replacement of the component of an index) where expert determination can be used;
- (c) Disputes about modifications to the agreement, in connection with the operation of a “change of circumstance” provision (e.g. modifying deadlines or adjusting tariffs).¹⁶

Additionally the main disputes may be divided into one more categories. The privately financed infrastructure projects typically require the establishment of a network of interrelated contracts and other legal relationships involving various parties. Legislative provisions dealing with the settlement of disputes arising in the context of these projects must take account of the diversity of relations, which may call for different dispute settlement methods depending on the type of dispute and the parties involve.¹⁷

At the same time there is little information on how to establish or use appropriate conflict resolving mechanisms to solve disputes especially in countries, which are probably in the most need of establishing alternative dispute resolutions systems for improving their judicial processes. Therefore, it might be useful as a follow up to prepare guidelines with other organisations such as UNCITRAL¹⁸ by adopting action plans and to show how these mechanisms can fulfil a need in emerging market economies.

i. Sofyiska voda, Bulgaria

Bulgaria has a well-developed water supply system servicing 99% of the population but the system itself is in a very poor condition. Infrastructure systems for water supply and wastewater treatment and disposal are currently undergoing far-reaching transformation in Bulgaria.

UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects prepared by the United Nations Commission on International Trade Law, 2001.

¹⁶ Christopher Clement-Davies “Public/Private Partnerships in Emerging Markets: Structuring the Concession Agreement.” Published “Business Law International”

¹⁷ UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects prepared by the United Nations Commission on International Trade Law, 2001.

¹⁸ UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, United Nations publications, sales No. E.01.V.4.

Sofijska Voda¹⁹ has taken over operating responsibility for the water and wastewater system for Sofia under a 25-year concession agreement. The Company provides services to a population of about 1.3 million people and operates and maintains a water supply network of an overall length of 3,500 km. The EBRD's finance of EUR31 million will support Sofijska Voda's capital expenditure programme for the first five years of the concession, including start-up costs. The capital investment programme of EUR 78m over the first five years and minimum US 150m over the next 15 years is required by the concession agreement for extension and rehabilitation of the water distribution network and improvement of the quality of drinking water and also implementation of measures for reduction of the water losses along the water supply network. The project was successfully structured to attract substantial limited recourse finance whilst still delivering water and wastewater services at an affordable price.

The structuring of the dispute resolution clause in the concession agreement between the concessionaire and Sofia Municipality was subject to some initial discussions. The concessionaire was insisting any disputes to be settled through the dispute settlement mechanism in a way to ensure high competence and impartial judgement. On the other hand Municipality of Sofia was reluctant to pay high cost for foreign lawyers and pointed as an argument the lack of perceived legitimacy of the Arbitrage in the minds of the citizens.

The parties agreed on twofold settlement system: independent ad hoc third-party intervener and Arbitral Tribunal. Concession Dispute Resolution Board (CDRB) will comprise three members: chairman a qualified lawyer and two technical and financial members. There is an appointing authority in case the parties cannot agree on the selection of the members. CDRB's decision becomes binding if either of the party disagrees within 30 days. Otherwise they can take the case to the Arbitral Tribunal where the decision can be admitted as evidence. The Arbitration will be conducted under UNICITRAL Rules at Vienna Arbitral Centre.

Objectives

- Development of a model dispute resolution procedure where the Arbitration is a final step in the dispute resolution process.
- Any disputes between the contracting authority and the concessionaire shall be settled through the dispute settlement mechanisms stipulated by the parties in the main contract.

j. The British Embassy in Berlin

Subsequent the reunification of Germany, the German Government moved from Bonn to Berlin and later was followed by the major embassies. The British Government also decided to return its embassy and choose its pre-war site close to the Brandenburg Gate. The old building had been demolished in 1945 but the place remained in British Government ownership.

There was the inevitable debate as to whether conventional or PFI procurement should be the right route for the construction of this prestigious premise. The project was procured through Private Finance Initiative and after EU tender bid, the Foreign and Commonwealth Office (FCO) signed a contract with the German consortium Arteos, who financed, constructed and will manage the building for 30 years. The six-storey building provides 9,000m² in total and house around 125 UK-based and locally engaged staff. Final adherence to the design was not a requirement of the procurement process but the right were assigned and novated in favour of the preferred bidder.

¹⁹ Joint Stock Company is majority owned by International Water UU - Sofia, whose parent companies include Bechtel Enterprises Holdings Inc., Edison SpA and United Utilities plc.

The FCO faced difficulties, because they had to undertake a novel form of procurement abroad. The exclusive feature of the project documentation is that it would be for the development of a facility outside the UK and consequently inquiries of governing law and conflict of laws arise. It was decided at an early stage that the project agreement would be an English law contract.

In parallel with this the underlying property interest was the grant by the FCO of a German law-building lease. While the jurisdiction of the German Courts in relation to the building lease cannot be entirely excluded, both the project agreement and building lease have been structured so as to place virtually exclusive reliance on dispute resolution procedures, should problems arise in the future.²⁰

The project was successfully completed and this shows that despite of specificness and potential complexities, an effective structure was found by implementing common law structure of design, build, financing and operation of the facility overseas.

Issues:

Project agreement governed by English law but adapted to major German law related financial and tax issues.

Introduction of Dispute resolution Clause which aims to exclude jurisdiction of the local courts.

k. The London Underground

The London Underground has initiated a major new form of arbitration that has implications for other projects around the world and could become a ‘test case’. The special role of PPP Arbiter was created by the Greater London Authority Act 1999, which establishes its functions and duties. The ‘Arbiter’ determines disputes on the key commercial aspects of the PPP agreements, in particular at the seven year Periodic Reviews, and gives guidance on any aspect of the Agreement when requested by one or both of the parties. He is able to require parties to provide information and to carry out inspections, consult appropriate parties and do what he considers appropriate to prepare for giving directions or guidance. The Arbiter has an office comprising a Director, supported by technical, commercial and legal advisers and administrative staff. The essential new aspect is that the Arbiter is ‘on call’ continuously in order to deal with disputes and to solve them as quickly as possible.

Issues

- Contracts should be clear in considering an efficient dispute resolution mechanism. Although arbitration is widely accepted in contracts, it may be useful in cases to consider other alternatives such as mediation.
- An expensive and exhausting litigation process may interrupt the business development and damage important commercial relations.
- The companies’ public image may be seriously damaged through a litigation process.

I. Resolving a dispute in an energy project

Case Facts – Energy - Mediation

²⁰ “Public-Private Partnerships, UK Expertise for International Markets.” International Financial Services London – CASE STUDIES.

Two large energy companies built a joint facility based on a long-term power purchase agreement. However, the economic, regulatory and political circumstances changed unexpectedly in the country concerned. The dispute began over a joint infrastructure facility project. The value of the dispute – if fully litigated – is estimated to come close to €1 bn²¹. For one party the joint facility's exclusive contractual use appeared onerous; whilst the other insisted on the fulfilment of the project in order to recover its investment. Three years of negotiations failed to reach an agreement. Arbitration appeared likely to be both expensive and time-consuming (up to three years plus five years by the enforcement agency involved), both parties therefore agreed to use a mediator elected through a public tender.

The mediator in this case helped to significantly improve understanding, and assisted the parties to change the valuation, particularly regarding the risk of the zero-sum option from an arbitration alternative. Each party presented its own assessment of what needed to be discussed. By gathering these positions and concerns of both companies a much more realistic view of the situation was taken. Each party met in a neutral location for three-day mediation with their negotiation team. After six months from the starting day of the mediation, the parties involved ratified an agreement.

5. Security and Safety

Provision by the private sector of transport, health and other services raises concerns about security and safety. The key concern is that the private sector while improving efficiency by cutting costs, may in addition seek to cut costs available for maintenance, control etc of important services. For the stakeholders and citizens, out of all the things which PPPs must do, e.g. increase efficiency, delivers better services, etc the most important is the improvement of the security and safety of the service.

m. Channel Energy Poti Port project, Georgia

The increasing traffic flows from Europe through the Black Sea ports of Odessa, Varna and Constantza to the Caucasus and beyond are overloading facilities at the Port of Poti. Poti one of the major and oldest sea outlets of Georgia was established in 1858. The Port of Poti is strategically located and allows it to be a gate to the Caucasus and Central Asian states economies. It is the shortest route connecting Europe with Central Asia and further expansion of the Euro - Asian Transport Corridor known as TRACECA (the new “Silk Road”), will increase cargo transportation by sea via the Port of Poti.

As part of the enlargement project and in the response of an urgent need for high investment Channel Energy (Poti) Ltd. was set up as a joint venture between Channel Energy Ltd. (EIRE) and Poti Sea Port (Georgia) under the sponsorship of the Tower Holding group. The project is funded through European Bank for Reconstruction and Development (EBRD) and Black Sea Tread and Development Bank (BSTDB) parallel loans where the total project cost is USD 30.0 million.

The project aims least-cost export route for oil products from the Caspian to the Black Sea, incensement of the rail traffic and fostering the development of projects planned for the refineries in the Caspian region. High quality and better reliability of the services provided would have an impact towards the establishment of a commercially competitive framework including Russian Ports and Batumi.

The Georgian Ministry of Environment (MoE) and several public consultation meetings initiated by the Georgians Greens rose concern about the potential trans-boundary impact of the unmitigated

²¹ For a discussion of the concept and practice of transnational mediation see: T. Waelde, in: Special Issue of Oil, Gas and Energy Intelligence No. 2 –2003 – at www.gasandoil.com/ogel

oil product spill outside the port and the future of the Kolkheti nature reserve. An Environmental Impact Assessment (EIA) was done and the MoE has reviewed it demanding the following requirements:

- Additional technical parameters about the effluent treatment plant need to be presented for approval
- Detailed oil spills response plan be developed and coordinated prior to commissioning of the terminal
- A self-monitoring programme be developed and agreed, and
- The neighbouring countries to be informed about the project and its potentially adverse trans-boundary impacts under adverse scenarios.

Georgia had also developed its National Oil Spill Contingency plan which aims of achieving safe and environmentally responsible passage through the Strait.

Project objectives:

- Enhancing the service standards in the region through commercially operated facilities under private management
- Greater competition in the private sector
- Development of an Environmental Safe Strategy.

n. New multi-purpose terminal in the Baltic Sea Port of Ventspils, Latvia

Loans provided by the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) will help Latvia Railways bring the country's railway infrastructure into line with the needs of a modern high-volume transit route. They will be used to modernise rail track in Latvia's principal rail corridor and to upgrade the rail network at Latvia's main port. This will increase the efficiency of Latvia's railway transport service and reduce environmental and safety threats at the port by routing some chemicals and oil products away from the populated area.

EU-Phare is also providing significant grant funding for rail infrastructure development and technical cooperation funds to help Latvia Railways with its on-going restructuring programme.

Ventspils is the fifteenth largest port in Europe and the largest port specialising in liquid cargo on the Baltic Sea. The project was structured as a Public-Private Partnership between SIA Noord Nolie Ventspils Terminal (NNVT) a joint venture company incorporated in Latvia and the Ventspils Port Authorities to built and operate a new multi-purpose terminal in the Ventspils Port that provides connection of different modes of transport.

The total cost of the investment is about EUR 69.0 million where the public financing exceeds EUR 29.5 million. NNVT received a EUR 19.5 million loan from the European Bank for Reconstruction and Development (EBRD) to be used as a private contribution to the PPP and in particular to finance the purchase and installation of cargo handling equipment and other superstructure for the multi-purpose- inter-modal terminal.

Environmental Action Plan (EAP) was developed and agreed with the Port Authorities and the City Council. The project implementation comply with national and EU/World Bank environmental and health and safety standards.

Project objectives:

- Improving environmental safety
- The new terminal will introduce efficiency, innovation and a better service for customers through modern management techniques.
- To increased efficiency with the development of more balanced traffic flows
- It will benefit Latvian railways through higher network utilisation, diversification of business and enhance their modernisation and restructuring.