# Fostering the Development of PPP Models in the COMESA Region

## Concept Note

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COMESA RIA, in co-operation with the Investment Promotion Agency of Swaziland, organises a Regional Validation Workshop in Swaziland to present the findings and recommendations of a study undertaken to facilitate the adoption of a model set of laws and regulations for Public Private Partnerships (PPP), and also the design of appropriate institutional frameworks in COMESA.

The workshop is part of a project, supported by the ACP Business Climate Facility (BizClim), the objective of which is to help foster private investment in infrastructure construction and service provision in COMESA countries. Private investment will help bring efficiency to infrastructure projects and service provision through improved management and incentives, as well as financing. The emphasis on accessing the efficiency value-added of the private sector is critical. Overarching legal frameworks and centralized PPI units seek to establish an environment for private investment and PPIs, in particular that allows private companies to profit from the application of efficient methods, sometimes alongside capital financing, in a way that improves public goods and services, *and* provides the opportunity of a satisfactory return to private investors or operators.

Specifically, the project addresses the following key issues related to PPPs:

- What are the links between investment policies / priorities and the adoption of PPP mechanism?
- How can an efficient PPP framework contribute to foster investment?

- What are the best practice countries in the field of PPPs? What lessons can be drawn from them?
- What are the requirements in terms of laws, regulations and institutions to build-up an operational PPP framework?
- What would be the core provisions of standardised PPPs (notably for utilities, ports, transports, health and education)? The standardised procurement process? The appropriate procedure documentation?
- How can a Government assess its readiness to implement an efficient PPP mechanism and identify the gaps to close?

The objective of the workshop is, based on a regional study which is currently under preparation, to discuss the levels of PPP readiness in the 19 COMESA countries compared to benchmarks including the example of best practice African countries. It also serves to disseminate self-diagnosis tools directed at IPAs and road maps based upon observed best practices. Moreover, the workshop will present standardised PPP contracts which are to be complemented with specific provisions relating to the sectors utilities, energy, transports, ports and water supply; and a standardised procurement process. Delegates from all COMESA countries will attend the workshop in Mbabane.

## PPPs in COMESA

PPPs are undertaken to bring both efficient management of infrastructure assets, and to bring additional capital investment. In Africa management / lease and concession type projects are particularly common, but there are also some Greenfield PPPs in power generation. Mobile telephony has attracted by far the most PPP investment due to unique ability to control connections and non-payment.

A successful PPP regime for infrastructure requires strong leadership in PPP strategy, as well as a clear understanding of where it is, and is not, appropriate and feasible. Ultimately, in order to go beyond one-off deals or concentration in one or two sectors (e.g. mobile telecoms), a strong, overarching legal and institutional framework is necessary. A framework law, gathering relevant legislation from elsewhere, establishing a PPP Unit and laying down proper procedure, is valuable but not essential, and some successful countries have achieved a good enabling environment through regulations rather than laws (e.g. South Africa).

There are many advantages to pooling general expertise on PPPs in a central PPP Unit, and indeed in sharing knowledge and experience across COMESA, and the larger continent. Some line ministries (again telecommunications) may have become quite smart at designing PPPs but where deal flow is slower, transactions have to be designed and advised one at a time, with preparations being very expensive and time-consuming. The most successful PPP Units are often attached, especially in countries with weaker governance, to Ministries of Finance or a strong Planning Ministry where they hold sway, crucially, over financial due diligence in addition to other key functions. Key functions of a PPP Unit include: (i) being a centre of cross-cutting technical, project management and financial expertise; (ii) gathering and disseminating information and performance indicators; (iii) designing and rolling out training to line ministries and sub-national governments as necessary, and so on. Because of their financial due diligence role they should avoid deal generation.

Two of the larger recipients of PPP projects in infrastructure also have, not surprisingly, effective and proactive PPP Units, which happen to be inside national Ministries of Finance, namely Egypt and Mauritius. Uganda is another proactive and somewhat successful promoter of PPPs attempting a slightly different route, hoping to adapt the Privatization Body (PUSRP) to become a PPP Unit. A new legal framework is also in progress and PPIAF at the World Bank is also in the middle of a design/ feasibility exercise with Uganda. Finally, although not a member of COMESA, South Africa could be treated as a valuable model for COMESA members. Not only do many see the PPP Unit and legal environment as one of the best arrangements worldwide (although not all agree), but increasingly investors in SSA / COMESA countries come from South Africa, and investors used to the PPP system in South Africa would feel more comfortable encountering something similar in their foreign ventures.

## The underlying study and other outputs of the project

The study's focus is on the overarching legal and institutional framework for private participation in infrastructure (PPI) – the necessary PPP laws and regulations, coordination mechanisms and PPP Units – rather than sector-specific laws, particular financing mechanisms or lead generation. The study rationale is, firstly, to build upon the experience of selected COMESA countries in using PPPs to leverage private investment in infrastructure, and secondly to apply lessons from other regions and countries, in order to develop guidelines for legal arrangements and institutional design to facilitate PPPs in COMESA's infrastructure sectors.

In a first step, BKP Development, the consulting firm contracted to prepare the study, analysed the status quo of PPP activities in the COMESA region. Based on the results, relevant good practice examples of broader legal frameworks for PPI, and the establishment and operation of central PPI units were determined. The team of two international experts visited Mauritius, Uganda, Rwanda and the non-COMESA country South Africa as best practice countries since all of them have an established, somewhat diversified track record of investment; they have diverse geographical and legal backgrounds; they are relatively advanced in terms of their systematic legal and institutional approach to PPPs; and there is evidence of proactivity towards stimulating PPP for efficiency purposes.

In addition to the study, the project will produce the following outputs which will be discussed at the workshop:

- Regional PPP institutional and legal principles and sample documents that can be adapted to different countries' needs and context;
- A Self-Diagnosis Tool: This tool, ultimately a sort of check list, will be useful for COMESA country policymakers / officials but also for bilateral and multilateral project officers seeking to design projects or assess proposals. Essentially, this tool will help countries and their supporters know where they are in terms of having a suitable legal and institutional framework for PPI;
- Roadmap tool. This tool will outline a project cycle approach to foster PPPs in the COMESA region. It will rely on good practice in some COMESA and non-COMESA countries, as well as the expectations of private investors. A key point will be that investors are looking for the legal and institutional foundations for transparency, predictability and efficiency in operation.