Plenary 4: Requirements for a successful PPP Programme

Monday, 15:30 to 16:30

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Session agenda

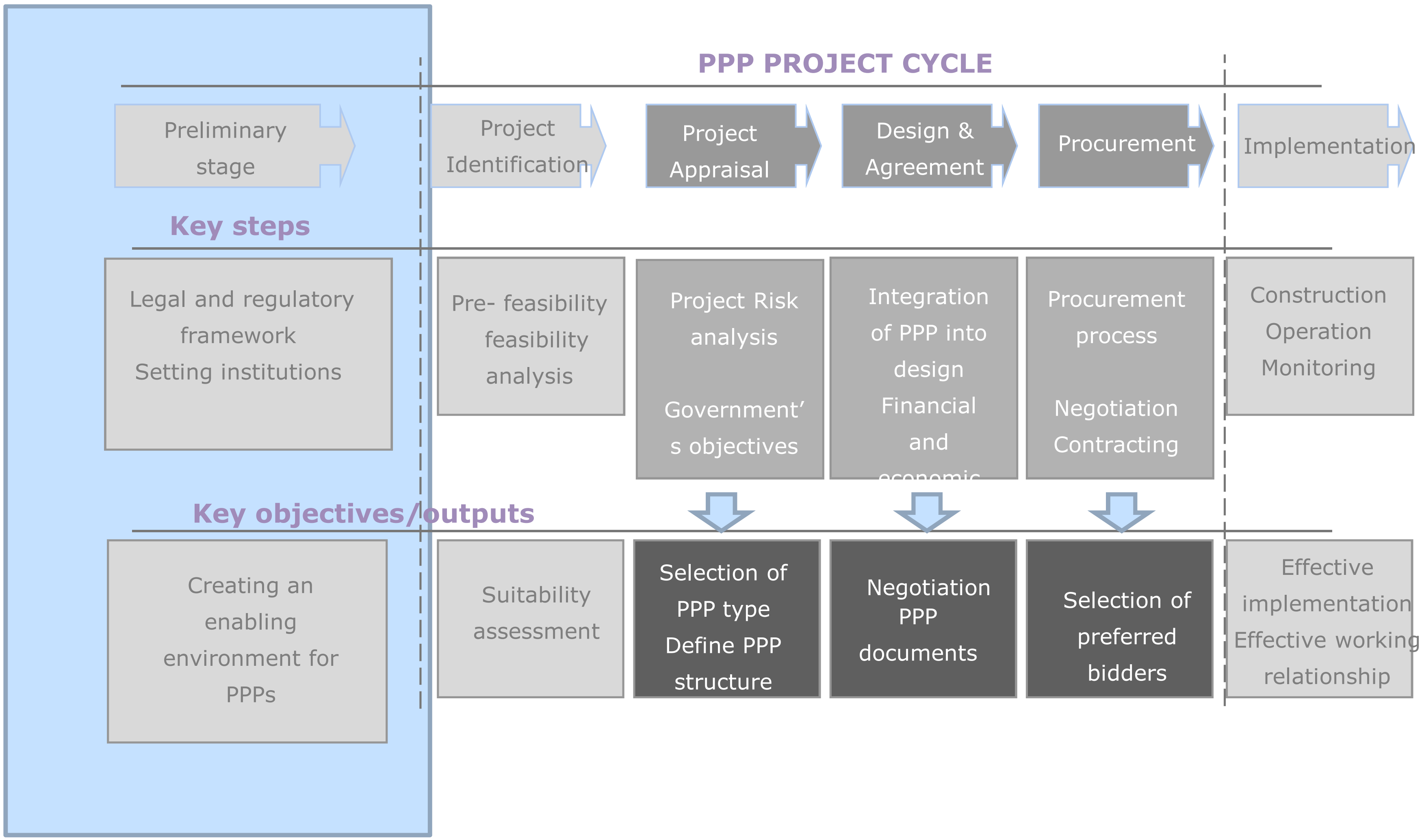
1. Preconditions to a successful PPP programme

2. Enabling environment for PPPs

3. Institutions involved in PPPs in Pakistan

4. The role of PPP Units

Preconditions for a successful PPP programme



Preconditions for a successful PPP programme

In summary :

- **A supporting and enforceable legal and regulatory framework**
- **Clear cut institutional roles and responsibilities**
- **Clearly identified project cycle activities and PPP processes**

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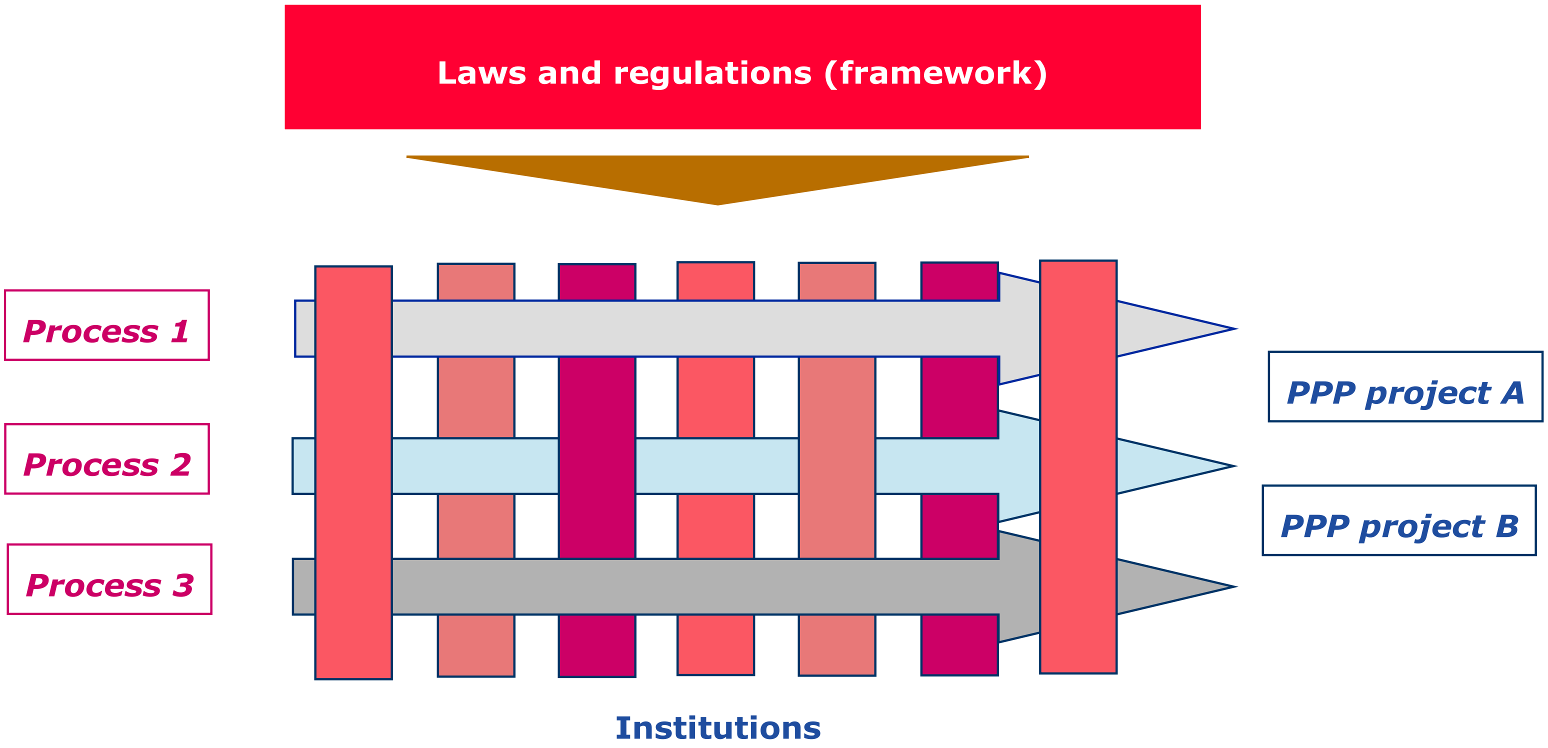
Enabling environment for PPPs - Introduction

The enabling environment refers to the context within which PPPs are to take place in terms of the level of political support, the policy framework, legislation and regulations, institutional capacities and competencies, and PPP processes.
The key elements of an enabling PPP environment can be grouped into three key broad elements:

- A **legal and regulatory framework** comprising a framework of enforceable laws and regulations which improves predictability for all parties as regards likely outcomes, thus improving confidence on all sides.
- Strong **capable public institutions** with responsibility for managing/ facilitating PPP processes and enforcing PPP agreements that minimise confusion and promote efficiency.
- Efficient, effective and coordinated **PPP processes**, built around the project cycle, that minimise transaction costs.

Enabling environment for PPPs - Introduction

At a highly simplistic level, the figure below illustrates these aspects diagrammatically.



Legal framework

- The core PPP enabling legislation can comprise a single PPP law, together with sector specific legislation, or sometimes a series of other laws and regulations which, taken together, can provide the necessary authorities to enter into PPP contracts.

- Taken together, however, the legal framework needs to specify:
  - private sector investment rights;
  - clear and transparent procurement processes (including approaches to deal with unsolicited proposals);
  - contractual arbitration processes; and
  - remedial actions for bankruptcy/ payment defaults, amongst others.

- There also needs to be a clear delineation of the capacity for different institutions to enforce contracts.

- In addition to many of the high level legal issues associated with PPPs which need addressing, there are also many secondary laws and regulations which need to be in place if transactions are to be undertaken in a timely manner.

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Regulatory framework

- The economic regulatory framework needs to be developed alongside the legal PPP framework, to reduce regulatory risks and promote private sector confidence.

- There is often a tension, however, between what investors prefer and what is often seen as being regulatory best practice. For many years and in many countries, the policy aim has been to create independent regulatory bodies – that is, *autonomy* from government and with considerable *discretionary* powers.

- In the absence of renegotiation that is less able to deal with major changes to the operating context, "regulation by contract" would seem to offer investors and lenders greater confidence than full discretionary regulation, particularly where a regulatory institution has no track record of impartial regulation.

Enabling environment for PPPs -Institutional capabilities

The key institutional capabilities required to undertake PPPs successfully might be grouped into the following three broad, but separate, groups of competencies:

1. Policy development, dissemination, monitoring and enforcement
2. Individual project sponsorship, design, preparation, execution and monitoring
3. Financial management of funded and contingent obligations.

Enabling environment for PPPs - Institutional capabilities

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Policy development, dissemination, monitoring and enforcement

- A number of institutions need to feed in to the development of a PPP policy. Whilst this may be typically led by the Ministry of Finance and/ or Ministry of Planning and Development (or equivalent); policy ownership should be broad based, with widespread acceptance.

- In practice, however, this may be difficult to achieve, not least because it involves giving up an element of control which many line ministries are typically used to having.

- Without powerful sponsorship, it is unlikely that a PPP programme will succeed.

- Related to this, but a typically overlooked starting point for PPP policy, is the type of projects which the government wishes to pursue and the types of contractual arrangements it may seek to enter into and any funding or other implications that follow this.

Enabling environment for PPPs - Institutional capabilities

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Project sponsorship, design, preparation, execution and monitoring

- One of the most common constraints to infrastructure PPPs in developing countries is the inability of the government to originate and develop bankable projects. As a result, they are highly reliant on the private sector to develop projects, which are often provided on an unsolicited basis.
- It is not necessary for a line ministry or other contracting authority to be an expert in developing and transacting projects. However, it is important that the processes involved and the implications that flow from particular decisions are well understood.
- It is usual for and advisable for ministries to hire expert advisors to help them develop and execute transactions – part of this role is to help government clients understand the PPP process better.

Enabling environment for PPPs - Institutional capabilities

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Financial management

- Whilst the Ministry of Finance (MoF)/ Treasury is responsible for managing a given country's finances, it is not that unusual where there are powerful line ministries for them to agree government commitments with investors and then to expect the MoF to sign up to sometimes highly onerous terms as a *fait accompli*. (Local authority examples in Turkey….)

- A further problem is that although funded commitments are recognised, contingent ones are often either ignored or else totally undervalued.

- It is essential that the PPP framework and processes provide for the MoF to be involved at all critical stages of the project cycle. In particular, the need for any potential public financial commitments – whether funded or contingent – need to be brought to the attention of the MoF as soon as they become likely and all commitments must be approved.

Enabling environment for PPPs -PPP processes

PPP processes

- It is important that the roles and responsibilities of different institutions are clearly defined in PPP processes and that such processes are standardised to limit confusion and improve efficiency.
- Overlapping roles or cross cutting responsibilities can unnecessarily ‘bureaucratize’ processes. The starting point for PPP processes is the PPP project cycle.
- The project cycle requires participation from many different government bodies, individual countries need to develop systems which fit their own particular institutional architectures

Enabling environment for PPPs -PPP processes

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A simple illustration of the typical main institutional roles and responsibilities involved in developing PPP processes which support the PPP project cycle.

Project cycle activity	Roles and responsibilities			
	Line Ministry	**Ministry of Finance (MoF)**	**Ministry of Planning & Development (MPD)**	**Sector regulator**
PPP policies	Inputs sector specifics into overall policy	This is often led by either the MoF or MPD, ideally with Cabinet level support		Is consulted on regulatory implications
Sector strategy development	Prepares sector PPP strategy	Provides advice on potential for PPP	Develops country national plan	Is consulted on regulatory implications
Identification/ origination/ screening	Identifies projects suitable for a PPP approach	Provides advice as required	Checks consistency with master-plan	
Feasibility testing	Undertakes detailed technical, legal and financial appraisal	Provides position on any financial support required	Assesses wider economic and social impacts	
Legal & financial structuring (i.e. project "packaging")	Develops most appropriate option to go to market with	Provides in principle financial commitments (funded and contingent)		Agrees regulatory framework/ provisions within draft contract
Procurement (through to negotiation)	Manages procurement/ transaction process	Signs off on financial aspects affecting national interest		
Contract operation	Manages contractual interface with services provider	Provides payments and/ or financing as per contract		Monitoring of contractual compliance. Economic regulation within scope of discretion allowed

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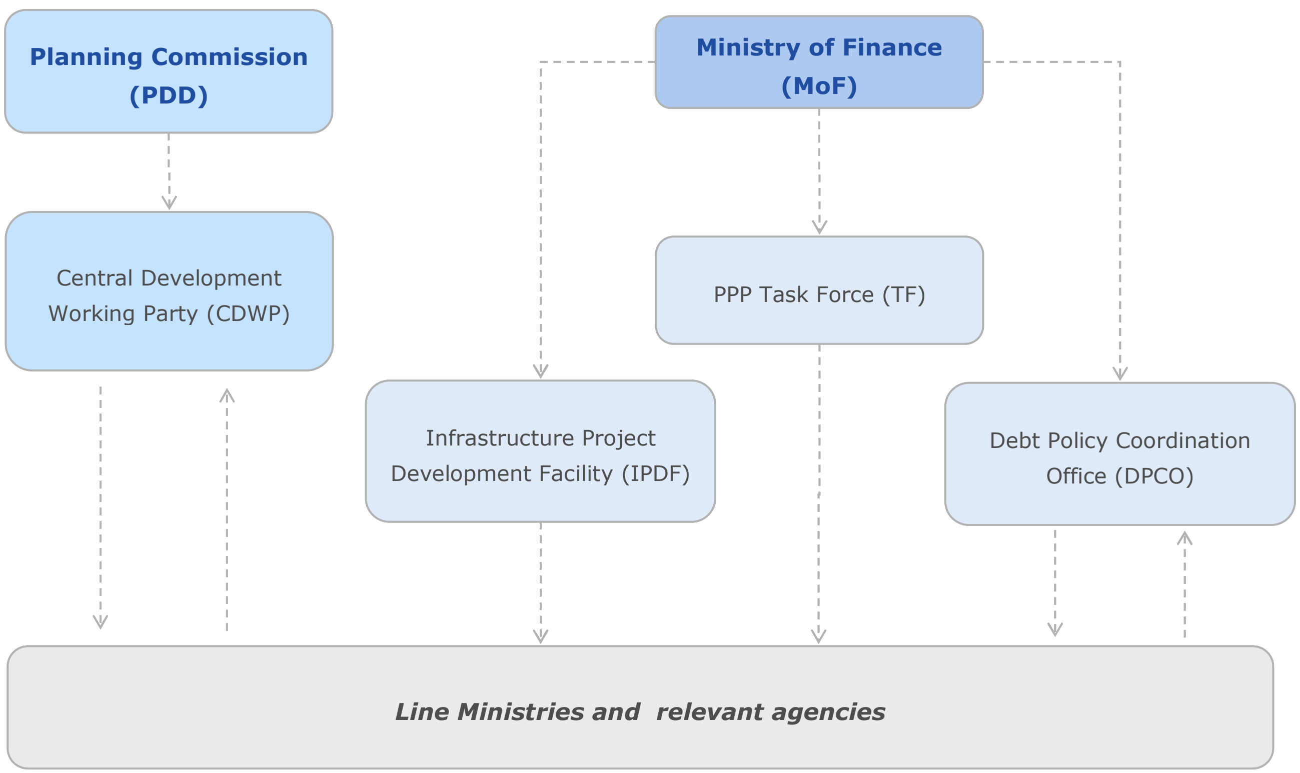
The PPP enabling environment in Pakistan

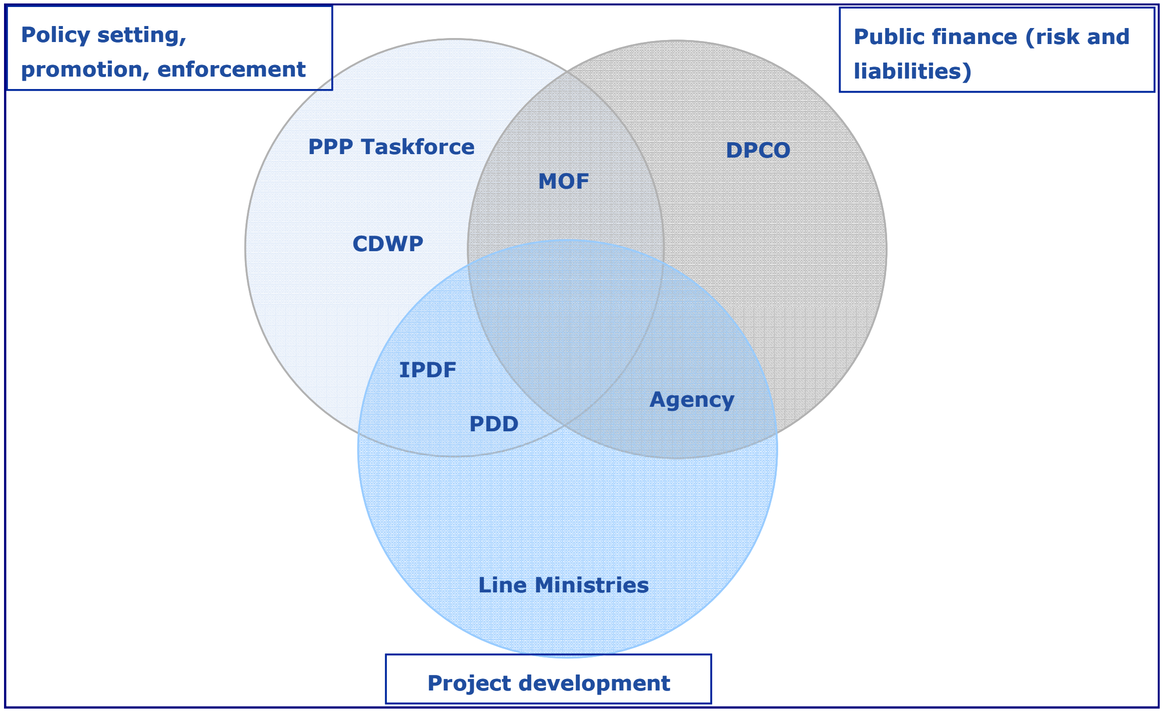
The mapping of the key institutional roles involved in the Pakistan PPP programme is set out in below.



Based on market assessment and consultations dated May 2009. Institutional framework may have changed since then.

Key institutions involved in PPP in Pakistan

- **Key institutions and their main functions**



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Private Power and Infrastructure Board (PPIB), Pakistan

- Established in 1994 to help facilitate private participation in power generation in Pakistan.
- By 1997 they had successfully attracted US$4bn foreign direct investment (FDI) and contributed to the reliability of energy generation.
- The PPIB reports that there are currently 19 private power projects with an installed capacity of above 6,600 MW in operation (>1/3 Pakistan's total power generation capacity)
- The PPIB have also been instrumental in putting together the 1994 Power Policy in Pakistan. This recieved a very positive response due to Pakistan's poor power supply history, where at peak times demand outweighed supply by up to 2,000 MW, which was considered a majorly limiting factor in economic growth.
- Regulations include a minimum equity requirement for Independant Power Producers (IPPs) of 20% of the total project cost.

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The role of PPP Units

- **Many countries have pursued the approach of establishing a PPP Unit (or PPP resource) to help support PPP processes, institutional discipline and co-ordination.**

"Pathfinders" in which the unit is empowered, through substantive high level support, to push through exemplar PPP projects.

"Gatekeeper" PPP unit approaches are typically set up to keep a check on Contracting Authorities entering into contractual arrangements with considerable financial obligations

"Corporate Developer" approaches in which the PPP unit operates as a corporate, stand-alone vehicle, charging user fees.

"Resource-centre / advisory approaches in which the PPP unit provides advisory support services to the line ministries, often across a wide range of subject matters.

The role of PPP Units

PPP Unit can play a wide variety of roles

Role	Information and guidance		Advisory support and funding				Approval
PPP Unit	Resource center	PPP guidance material	Intensive Project-specific advice	Funding for PPP preparation	Role as project developer	Role in contract monitoring	De jure or de facto approval
Andhra Pradesh, India: AP Infrastructure Authority	✓	✓	✓				✓
British Columbia, Canada: Partnership BC	✓	✓	✓		✓	✓	
Gujarat, India:Gujarat Infrastructure Development Board	✓	✓	✓	✓	✓	✓	
Ireland: National development Finance Agency			✓		✓		✓
Italy: Project Finance Unit	✓	✓	✓				
Netherland:PPP Knowledge Center	✓	✓	✓			✓	
Philippines: BOT Center	✓	✓	✓	✓		✓	✓
South Africa: PPP Unit, National Treasury	✓	✓	✓	✓			✓
United Kingdom: Partnership UK	✓	✓	✓	✓	✓	✓	✓
Victoria, Australia: Partnership Victoria	✓	✓	✓			✓	