Update of the Policy Framework for Investment

Draft chapter: Investment in infrastructure

Context

Since the PFI was developed in 2006, new forces have reshaped the global investment landscape, including the global economic and financial crisis, which started in 2008 and from which many economies have still not recovered, and the emergence of new major outward investors within the G20, the spread of global value chains. Numerous lessons have also been learnt through the use of the PFI, particularly in developing and emerging economies. To reflect new global economic fundamentals, an update of the PFI was launched in 2013 and is due for completion in 2015.

Invitation to contribute

Experts, business and civil society representatives, international organisations, and the general public are invited to contribute comments on this draft chapter. Comments should be sent to **investment@oecd.org** by 31 December 2014.

A compilation of comments received will be published online at the end of the consultation period.

Contact

If you have any questions regarding the consultation, please email **investment@oecd.org**.

Find out more about the update of the PFI: **www.oecd.org/investment/pfi-update.htm**.

INVESTMENT IN INFRASTRUCTURE[1]

1. A crucial input to growth and connectivity. Infrastructure is a fundamental cornerstone of the investment climate. Poor quality or inadequate infrastructure raises costs for all firms and restricts the flow of goods, services, people and market information both within the economy and abroad, with implications for countries integration into global value chains and broader economic development. By segregating markets, infrastructure weaknesses limit competition, thus dulling incentives to innovate and to improve productivity. All firms, from rural micro-entrepreneurs to multinational enterprises, are affected, although infrastructure problems usually hit smaller firms hardest.

2. An essential element of policies to promote inclusive growth. Reliable and sustainable infrastructure enhances economic activity and contributes to poverty reduction by raising labour productivity and lowering production and transaction costs. In order to maximise the contribution of infrastructure to development goals, countries need to build comprehensive infrastructure strategies, support the involvement of low income population and other user groups throughout the planning and implementation phases, emphasise the crucial role of maintenance and sustainability in delivering results, and support the diverse mix of financial instruments facilitating a broader involvement of all providers.

3. Why involve the private sector in infrastructure provision? Current infrastructure gaps, economic development and growing urbanisation in developing countries, and ageing infrastructures in developed ones, will rapidly strain existing infrastructure, particularly in large cities, and will require not only raising investments but particularly investment in more efficient and sustainable infrastructure modes. Greater private sector participation in infrastructure can help enhance value for money in the use of public finances for infrastructure development. By expanding the choices of infrastructure delivery, it facilitates the bundling of different stages of infrastructure projects, which can lead to cost and efficiency gains. Governments may also benefit from more efficient risk allocation, increased competition and private sector managerial and technological skills. In a number of countries, when adequately regulated and managed, private participation in infrastructure has helped boost both the coverage and efficiency of services.

4. Difficulties in attracting private investors. Although infrastructure investment opportunities are plentiful across countries, investors are not yet fully seizing them. Infrastructure projects are particularly complex and involve a number of specific risks to private investors, including risks of corruption in certain circumstances. The number of failed public-private partnerships in infrastructure sectors attests to the difficult challenges facing policy makers. Attracting international investors to infrastructure projects is especially difficult, as these investors are particularly sensitive to the domestic regulatory environment, and more exposed to public opinion and political scrutiny. Since private participation in infrastructure delivery is a relatively recent form of procurement in many countries, governments do not necessarily have the experience and capacity needed to effectively develop these projects and manage the associated risks.

5. Deciding between modes of delivery. The decision itself of involving the private sector in infrastructure projects, and to what extent, has to be guided by an objective assessment of the costs and benefits accruing over the entire project lifetime and the availability of finance to ensure value for money. Careful sensitivity and risk analysis is necessary to help strike an adequate balance of risks allocation

[1] Draws from the OECD Principles for Private Sector Participation in Infrastructure; the OECD Principles for Public Governance of Public-Private Partnerships; the G20/OECD High-Level Principles of Long-Term Investment Financing by Institutional Investors; and the OECD DAC Guiding Principles on Using Infrastructure to Reduce Poverty.

between public and private partners. All short and long-term fiscal risks shouldered by the government, including contingent liabilities (which are particularly high in some contractual structures, such as availability payment PPPs), need also to be identified and managed transparently in the budget process. Private participation should not be used as a vehicle for escaping budgetary discipline. All relevant aspects of sustainable development should also be taken into account. The procurement regime should include appropriate gate-way mechanisms to ensure that the chosen form of procurement and the retained modality of private participation (be it contracting out, PPP, concession etc.) indeed secure the best value for money.

6. Signalling government commitment for private participation in infrastructure. Securing necessary resources and making infrastructure networks more attractive for private involvement requires a range of complementary policies and there is no "one size fits all" approach in this matter. Particularly in contexts where private participation in infrastructure faces resistance or where conflicting policies have deterred investments in the past, private investors need to be assured of governments' political commitment to infrastructure projects. Ensuring policy co-ordination across all levels of government, including at the regional level, and communicating clearly policy priorities and the roles expected from the private sector in national infrastructure plans can help assure investors that their investments will be promoted, and that institutional and regulatory obstacles will be mitigated by government. Extensive stakeholder consultations with all concerned parties, including governments, donors, private sector participants, civil society and affected communities, on policy objectives and on individual projects is also key to align objectives and ensure that infrastructure projects benefit all parts of society.

7. Predictable economic regulation. Establishing a credible institutional and regulatory environment to reduce policy uncertainty is also critical. Infrastructure projects are long-term and are natural candidates for contract renegotiations due to the variability of underlying economic conditions over the project life-time. Hence, private sector participation is made easier where governments implement appropriate institutional arrangements for improving regulatory predictability, including by entrusting regulation and price-setting to specialised authorities that are competent, well-resourced and shielded from undue influence by the parties to infrastructure contracts.

8. A clear legal regime to safe-guard investor rights. The legal and institutional framework should facilitate contract enforcement and the functioning of infrastructure partnerships. Regular consultation with the private partner and stakeholders may help prevent potential conflicts from escalating. Predictable frameworks, including at the contract level, governing the circumstances under which renegotiations shall be considered, can help ensure the flexibility needed for the success of long-term infrastructure contracts and enhance investors' confidence in the regulatory environment. At the same time, the regime for infrastructure procurement and PPPs needs to guard against deliberate understating of project costs – followed by ex-post cost escalation – by private sector bidders. The investment regime needs also to protect core investor rights, including by guaranteeing access to timely and fair compensation in cases of expropriation, and allowing access to dispute settlement mechanisms (see chapter on Investment Policy).

9. Competition in infrastructure procurement. Savings from more competitive procurement practices can represent a large share of total project development costs. A well-designed procurement regime guarantees procedural fairness to all bidding investors and minimises the risk of corruption, bidder collusion and bid-rigging. Close collaboration among the competition authority, law enforcement authorities responsible for enforcing corruption offences, and public procurement agencies can help to avoid anticompetitive behaviour in the design of bid specifications and in the award of public infrastructure contracts. Specifying contracts in terms of output-based services to be provided to the public and publicising decisions in terms of careful and verifiable references to those criteria adds transparency and helps prevent corruption, besides encouraging companies to propose more innovative and efficient solutions. Alongside, simplified procurement procedures may help ease the process, increase competition,

and facilitate participation by small-scale bidders – but any simplification should not come at the cost of due diligence and careful contract selection.

10. A competitive market structure. Competition authorities also have an important role to play during the operation of infrastructure projects, by subjecting activities to appropriate commercial pressures, dismantling unnecessary barriers to entry and implementing and enforcing adequate competition laws. While many countries have made progress in dismantling barriers to entry in infrastructure sectors, including to foreign investors, progress has not been uniform. FDI restrictions continue to constrain foreign investment in infrastructure sectors in a number of jurisdictions. An open and non-discriminatory regime can widen the number of potential participants and exert pressure on infrastructure providers to perform efficiently. Close co-ordination between regulatory and competition agencies is then necessary, particular in assessing the costs and benefits of unbundling network industries (see chapter on Competition).

11. Governance of state-owned infrastructure operators. Where privately owned infrastructure providers coexist with state-owned incumbents, particular measures to maintain a level playing field may also be needed to safeguard a healthy competitive environment and reduce concerns over regulatory discretion and risks, including corruption. Adopting strong corporate governance standards for state-owned enterprises and ensuring that all relevant laws and regulations applicable to private companies also apply to them, including for bankruptcy and competition, and laws prohibiting corrupt acts, help ensure they operate on an equal footing with the private sector (see chapter on Corporate Governance).

12. Balancing affordability and cost-recovery in price-setting. Countries are also reforming their regulatory regimes in order to strike a balance between cost-recovery needs of public and private investors on the one hand, and end-user affordability on the other. Where cost-recovery prices have been possible and politically acceptable, investment has often substantially increased. When affordability is low, public subsidisation may remain necessary. The effectiveness of such subsidies, as well as their weight on the public purse, should be regularly assessed. Using smart consumption subsidies in place of production subsidies can help enhance affordability without deteriorating operators' incentives to perform, but their impact should nonetheless be assessed on a regular basis. Dedicated funds have also been used to finance universal service requirements imposed on private operators.

13. Inclusiveness of infrastructure projects. Responsible business conduct also helps to ensure infrastructure projects benefit all parts of the society. These projects are often exposed to a number of potential social, economic and environmental risks that need to be addressed, including health, safety and environmental risks associated with large engineering works, but also potential socioeconomic risks related to community resettlement and human rights abuse. The myriad of contractual supply relationships these projects involve only amplifies these risks. Host and home governments can play a role in encouraging infrastructure providers to observe commonly agreed principles and standards of responsible business conduct. More broadly, end-users, affected communities and private investors should be involved from the earliest stages of infrastructure projects to ensure that needs and risks are correctly assessed and addressed, and adequately reflected in the contractual structures (see chapter on Responsible Business Conduct).

14. Stimulating investment in green infrastructure. Infrastructure policies, including pricing policies, should also allow for a level playing field between competing technologies (e.g. between resource-intensive and green technologies) and enable the development of green infrastructure systems, such as sustainable transport infrastructure, renewables-based electricity and energy efficient infrastructure. In managing the transition towards more sustainable modes of infrastructure, governments may benefit, inter alia, from policies re-orienting incentives to green infrastructure delivery, including by removing inefficient fossil-fuel subsidies, and putting a price on carbon emissions through market-based instruments. In addition, policies providing long-term financial support and other policies accounting for externalities can help steer investment towards green infrastructure. These policies are key to address market and

regulatory rigidities that may favour incumbent fossil-fuel sources in the electricity sector, for instance; or to help limit private vehicle-based urban sprawl and encourage more sustainable public urban transportation systems in metropolitan areas (see chapter on Investment Framework for Green Growth).

15. Public sector capacity. The success of private involvement in infrastructure also depends on the capacities at all levels of government to deliver on equal footing with private sector upon agreed projects. In several countries the lack of private sector experience and technical expertise in procurement entities has resulted in poorly negotiated contracts, inadequate risk management, and costly contract renegotiations. Well-equipped dedicated PPP units with clear mandates and lines of accountability have been created in several countries to facilitate project preparation, oversight of procurement processes and the implementation and monitoring performance of infrastructure projects. Attracting and retaining skilled staff may require offering salaries outside of the public sector pay-scale. Capacity-building efforts, as well as effective stakeholder engagement, can also improve the likely of success of infrastructure projects.

16. Regional infrastructure projects. Where infrastructure projects involve separate jurisdictions, including at the regional level, special caution is warranted to ensure that project objectives are widely shared and underpinned by formal agreements and dispute resolution mechanisms. Regional infrastructure projects require, inter alia, shared standards for oversight and transparency of infrastructure procurement processes, including common criteria for bid selection, close co-operation across procuring entities, and agreement on pricing structures and revenue sharing. Having clear and transparent mechanisms for distributing risks and rewards, as well as funding commitments across levels of government is essential for the success of regional projects.

17. Financing for infrastructure. Lastly, access to capital markets to fund operations is essential for private sector participants. Taking into account macroeconomic policy considerations, restrictions in access to local markets and obstacles to international capital movements may be possibly phased out to broaden availability of finance. Governments may also benefit from policies to mobilise long-term savings and unlock their use for the financing of infrastructure investments by long-term institutional investors, particularly since the tightening of banking regulations in the aftermath of the 2008 financial crisis reduced the availability of financing for long-term infrastructure projects. Development agencies can also play an important role in helping countries mobilise investment in infrastructure, particularly by using ODA to enhance the quality of projects, mitigate and clarify risks and raise profitability of PPPs.

Key questions and principles

[Horizontal questions related to transparency, predictability, periodic review and public consultation are consolidated in an earlier chapter]

Ensuring coherence and support for infrastructure development

1. How does the government's strategy for infrastructure development take into account overall development and competitiveness goals, as well as green policy goals and long-term targets?

2. Is the infrastructure dimension of national development plans understood, and its objectives and co-ordination shared, throughout all levels of government and in all relevant parts of the public administration, to ensure a coherent implementation of the national infrastructure policy programme?

3. Is the role and desired extent of private participation clearly detailed, including at sub-sector level, within these plans?

4. Does the national government work in co-operation with local and regional governments to establish infrastructure investment priorities, and what sort of mechanisms exist for cross-jurisdictional co-operation on infrastructure, including at the regional level?

The enabling environment for competitive private investment in infrastructure

5. What steps have been taken to create a sound enabling environment for infrastructure investment, including to ensure commitment to high standards of public and corporate governance, balanced and transparent procurement procedures, and protection of property and contractual rights?

6 . What efforts have been taken to create a competitive environment in infrastructure sectors, including by subjecting activities to appropriate commercial pressures, dismantling unnecessary barriers to entry and implementing and enforcing adequate competition laws? 7

7. How do public authorities ensure that infrastructure projects are free from corruption at all levels and in all project phases, including during the bidding stage?

Mitigating project risk and ensuring value-for-money

8. How does the government assess the suitability of its infrastructure projects for private investment, inter-alia through mitigating project risk and ensuring value-for-money?

9. How does it ensure that risks of infrastructure projects are adequately identified, measured and allocated to the contractual party that is best able to assess and control it?

10. How does the government ensure that fiscal discipline and transparency are safeguarded when the government shares responsibilities with the private sector in infrastructure projects?

11. Do the authorities responsible for privately-operated infrastructure projects (both national and local) have the "ability to deliver", including inter alia the capacity to adequately prepare, select and implement infrastructure projects and to partner on an equal basis with their private sector counterparts?

12. To what extent are contractual obligations between public authorities and private sector participants specified in terms of verifiable infrastructure services to be provided to the public (for instance on the basis of output or performance-based specifications)?

Regulation and pricing of infrastructure markets

13. Are the regulatory agencies that oversee infrastructure markets well-equipped in terms of mandates, resources and staff and shielded from undue political interference?

14. Does tariff-setting strike the balance between the imperative of end-user affordability and the need for cost-recovery by the infrastructure operator?

15. What steps have been taken to ensure that the fiscal costs of any public subsidisation are proportional with the secured results (in terms of infrastructure delivery or consumer access)?

A balanced market structure for infrastructure provision

16. To what extent have different infrastructure markets gone through structural separation, making more space for private actors? Which authorities are responsible for assessing and making decisions as regards structural separation?

17. Where private providers can coexist with state-owned incumbents, what steps have been taken to ensure that infrastructure providers compete on a level playing field?

18. What steps have been taken to strengthen the corporate governance standards of state-owned enterprises in view of increasing operational efficiency and ensuring transparency and accountability?

Financing infrastructure projects

19. Are infrastructure projects assessed against the degree to which its costs can be recovered from end-users and, in case of shortfalls, what other sources of finance can be mobilised to ensure that authorities' targets for service coverage and affordability are met?

20 .Has the government enacted policies and regulations to promote long-term savings and to unlock these sources for infrastructure financing? Is official development assistance being used to mitigate risks and leverage private investment flows?

21. Do private sector participants have adequate access to capital markets to fund operations, and are restrictions in access to local markets and obstacles to international capital movements being progressively phased out, taking into account prudential macroeconomic considerations?

Encouraging inclusive growth and responsible business conduct

22. What steps have been taken ensure that infrastructure projects serve the public interest, and to maintain public support for private involvement in infrastructure?

23. How do authorities maximise the contribution of infrastructure investment to development, including by broad-based stakeholder consultations, ex ante poverty impact assessments of competing proposals, environmental and social impact assessments etc.?

24. How does the government ensure that small-scale infrastructure service providers are not excluded from infrastructure markets?

25. What role does the government play in ensuring that private sector participants involved in the provision of vital services to communities remain mindful of the consequences of their actions?

26. Do authorities consult with end-users and other relevant stakeholders prior to the initiation and during operation of infrastructure projects, in view of assuring that the envisaged undertakings are in the public interest and are acceptable to consumers and other stakeholders?

SUPPLEMENTAL QUESTIONS

Ensuring policy coherence and government commitment for private participation in infrastructure development	• How does the government ensure that infrastructure projects are aligned with the government's overall political and economic priorities? • Does the national government work in co-operation with local and regional governments to establish infrastructure investment priorities? • What processes does the government use to evaluate its infrastructure investment needs, and to what extent are end-users involved? What are the investment needs in each infrastructure sector, including for new investment and operations and maintenance? • Do public authorities communicate clearly the objectives of their infrastructure policies and have in place mechanisms for consultations and full disclosure between the public and private partners regarding specified objectives and individual projects? • Has the government established a comprehensive and integrated infrastructure plan, delineating the government's medium-to-long-term vision and goals, establishing a prioritized and credible pipeline of projects based on adequate initial due diligence, and clearly stating the expected role for public and private participation? • To what extent does infrastructure investment needs integrate green policy objectives? What is the estimated investment needed in green infrastructure? • How does the government's strategy to promote private investment in infrastructure take into account the overall green infrastructure goals, notably to develop climate-resilient and energy efficient infrastructure systems? ***Sector-specific considerations*** • What processes are followed to inform decisions on the development of new transport facilities, as well as the maintenance of existing transport infrastructure? • Are the requirements for all modes of transport regularly reviewed, taking into account investor needs and the links between different modes of transport infrastructure? • Is there policy support to shift investment away from carbon-intensive road transport and toward more sustainable transport modes, to avoid locking-in carbon-intensive and climate-vulnerable development pathways? • Are there policies to reduce the need to travel by improving transport system efficiency through integrated land-use planning and transport demand management (e.g. through compact, mixed-use urban development, traffic restrictions, or reduction of urban sprawl)? • How does the government support the shift to sustainable transport modes and to improve trip efficiency in urban transportation systems (e.g. through dedicated bus lanes; light-rail transport systems; rapid-transit systems)? • Are clean energy policies part of a broader national infrastructure framework? Is procurement for new clean energy generation part of a long-term grid infrastructure development strategy? • Has the government evaluated the investment needs in water required to support its development goals? To what extent is the private sector involved in water management, supply and infrastructure financing?

Enabling environment for competitive private investment in infrastructure	• What is the overall policy and institutional framework for private investment in infrastructure and how has it been informed by international good practices? • Does the government have a strategy for public-private partnerships, and if so to what extent are its provisions and institutions consistent with the broader regime for infrastructure procurement? Does the legal basis for PPPs avoids conflicts with other legislation, either through a PPP act or through sectoral legislation explicitly admitting PPP delivery modes? • Is an open and non-discriminatory investment environment in place for infrastructure providers, including between foreign and domestic and new providers and incumbents? What are the restrictions to foreign investment in infrastructure sectors, if any? • What modalities for private investment in infrastructure does the government promote? What are the most common concession/PPP modalities across sectors? Is the combined procurement of design, construction and long-term operation Are concession contracts allowed to include no-compete (or exclusivity) clauses? Please describe the characteristics of licences and concessions. • How do regulatory agencies and the competition authority co-ordinate in assessing the costs and benefits of unbundling network industries? • To what extent do regulatory and competition authorities dispose of adequate political support and independence to denounce anti-competitive behaviour by infrastructure providers (including by SOEs), particularly when they must challenge vested interests? • Are there clear and transparent guidelines that the government uses to ensure predictability and consistency in the selection, preparation, and procurement of infrastructure projects (PPP or other)? Are the institutional roles and responsibilities of agencies responsible for these different phases clearly identified in the legal framework? • Are there regulations to guarantee full disclosure of all project-relevant information between public authorities and their private partners, including in the state of pre-existing infrastructure? • What forms of infrastructure procurement exist (open or restricted bidding, two-stage bidding, preferential margins etc.) and subject to what conditions? When unsolicited proposals are permitted, are there distinct, clear and transparent selection procedures for such proposals? To what extent they adequately address the specific transparency issues such proposals entail? • Are there any preference margins for domestic versus foreign bidders, or for SMEs versus larger bidders, in infrastructure procurement procedures? If so, what is the extent of these margins and do they vary according to the sector and size of the project? • What role does the government play in ensuring that corruption is not involved in the procurement process? • What steps have been taken to minimise the risk of bid-rigging in infrastructure contracts? Are competition authorities involved in the procurement process, and how? How are the responsibilities co-ordinated between procurement agencies and the competition authority? • What measures have been taken to counter bidders' temptation to bid low in order to win the award, with the intention of later renegotiation? Do the selection procedure ensures appropriate due diligence of bidders to assess the realism of the bids, their financial soundness, risk profile and prior experience? Do procedures allow for adequately addressing any potential conflict of interest? • Are authorities legally required to set and publicise the criteria according to which infrastructure providers will be chosen when an invitation to tender is made? Are the performance standards required from winning bidders carefully defined and publicised in advance of tenders? • Are authorities required to publicize explanation of awarding decisions in terms of careful and verifiable references to those criteria? Can bidders challenge the decision by the awarding authority in an independent tribunal?

	• What dispute resolution mechanisms exist to ensure that disputes arising at any point in the lifetime of an infrastructure project are handled in a timely and impartial manner? • Do contracts provide for the need to accommodate circumstantial changes over the project lifecycle by incorporating explicitly the conditions under which they may be reconsidered or renegotiated? When contracts specify under which circumstances revisions to the original agreement shall be considered, what type of mechanisms are mostly used for such occasional renegotiations to be conducted in good faith, in a transparent and non-discriminatory manner (e.g. permanent and active review panels, dispute committees and arbitrational instances, among other)? • What other measures are used to limit the possibility of contract renegotiation (e.g., profit-sharing mechanisms; equity participation; compensation rules for early termination; among other)?
Mitigating project risk and ensuring value-for-money	• To what extent are decisions to invest in infrastructure projects based on cost-benefit analysis taking into account all alternative modes of delivery, the full system of infrastructure provision, and realistic projections of financial and non-financial costs and benefits over the project lifecycle? • To what extent, when assessing overall costs and benefits, are social and environmental impact assessments taken into account? • What steps have been taken to ensure that risks of infrastructure projects delivered in partnership with private parties are adequately identified, measured and allocated to the contractual party that is best able to assess and control it? Has the government established a clear policy to guide risk allocation? • How does the government identify, price and manage any risks and contingent liability remaining in hands of the public sector in infrastructure projects undertaken in partnership with the private sector? Are long-term fiscal implications of PPPs accounted for as contingent liabilities in government accounts? • Does your government have (or is it planning to set up) a dedicated PPP expertise unit? What is the line of authority attached to the unit (e.g. independent agency; treasury; Prime Minister/President's cabinet; line ministries)? • Are the institutional roles and responsibilities of agencies responsible for design, negotiation and roll-out of infrastructure procurement (whether using the traditional procurement, the PPP, or the privatisation route) well defined and delineated in legislation? Are there clear lines of authority for who approves what and when throughout the process of project selection, preparation and procurement? • What available channels of communication exist among the PPP Units and different bodies tasked with infrastructure procurement? To what extent co-ordination issues limit the effectiveness of PPP development and implementation? • What steps have been taken to ensure relevant government agencies are adequately staffed, including for the oversight of technical matters and outside contractors, and have the needed financial resources to effectively manage PPP development and implementation? Are there dedicated sources of finance to enhance project preparation (e.g. project development funds for advisory services)? • What measures have been taken to facilitate the execution of infrastructure projects involving the private sector (e.g. standardised contracts; simplified procedures; use of commonly used legal terms)? • Do authorities usually obtain environmental licensing and planning permission (e.g. land use change when necessary) before calls for tender are made? • Are regular and timely consultations with contractual partners and stakeholders the norm, or are ad-hoc meetings organised when one of the contractual partners or stakeholders perceive a problem? Are affected third parties systematically invited to participate in such consultations?

Regulation and pricing of infrastructure markets	• How is regulation of infrastructure services co-ordinated? Which sectors have a dedicated regulatory agency, and which are overseen by a line ministry? • Which authorities have powers to verify regulatory implementation, supervise infrastructure providers, apply fines and sanctions, or set tariffs? Which authorities have the right to issue, enforce and revoke licences in infrastructure sectors? • Do regulatory agencies make use of performance indicators to systematically monitor infrastructure operators following clear criteria and scheduling defined in contract? Are these publicized? If yes, please indicate in which sectors. • Is there a system of penalties/ rewards attached with the non-compliance/ good performance of the private partner? • Is there an independent agency or consultancy firm that evaluates PPP performance ex-post (i.e., evaluates the consistency of the PPP outcome with the economic policy objectives set ex-ante, including financial objectives)? • Do regulatory agencies have clear responsibilities and powers, and are they well-resourced and shielded from undue political influence (and from the influence of parties to the infrastructure contracts concerned)? • To what extent are regulatory agencies funded from independent sources beyond government influence (e.g., annual fee from regulated companies)? Do the regulatory agencies receive instructions from the executive? Can their decisions be overturned by the executive? • Are regulatory agencies adequately staffed in number and skills to allow the agency to work at the level required by the industry; and are there any arrangements for technical co-operation with competition authorities? How are responsibilities shared between these agencies? • Are decision-making rules clear and transparent to ensure predictability and to avoid undue personal influence? Are regulators required to publicise decisions and the explanatory reasons behind them? Can infrastructure operators appeal regulatory decisions to the courts? • What steps have been taken to ensure regulators are accountable for their decisions in view of avoiding opportunism, corruption and inefficiencies? To whom are regulatory authorities accountable: Parliament, the Executive or a Ministry? Is regulators' performance formally reviewed by independent auditors or legislative committees? • To what extent, and how, have regulatory agencies or competition authorities addressed anti-competitive practices by incumbent enterprises, including state-owned enterprises (SOEs), that inhibit investment in green infrastructure? • How are infrastructure projects generally financed at the operational stage (user fees, government revenues, or mixed), and how does this vary by sector? • On what basis are prices in infrastructure markets calculated and how often are they revised? Are there regulated prices, entirely or partially? How are regulated prices determined (e.g. pre-determined rate-of-return, cost-based regulation, price-cap or other form of regulation)? If price-caps are used, how are these set? • When public subsidisation is socially necessary, what steps have been taken to ensure it is set at an optimal level, taking into account the need to meet socially desired objectives (e.g. access expansion or affordability concerns) while continuing to encourage the efficient delivery of infrastructure providers? • To what extent are prices allowed to vary according to space, time or customer, and revised on a regular basis? • How important is public subsidisation: what is the gap between the average tariff and average cost of services unit in each infrastructure sectors? What is the share of infrastructure subsidies as a percentage of GDP or budget, and is this regularly made public?

	Sector-specific considerations • In the telecommunications sector, how are interconnection and access prices determined? To what extent are they cost-oriented? • In the transport sector, has the government implemented adequate pricing mechanisms taking into account the full costs of fossil-fuel based road transport and shift incentives away from carbon-intensive road transport (e.g. carbon pricing; fuel and vehicle taxes; reform of fossil-fuel subsidies; congestion charges and other road user charges; parking levies, etc.)? • What are the major forms of electrification (e.g. grid, off-grid and mini-grid)? Are private sector captive users allowed to sell power back to the grid? Does the sector regulatory agency have authority over all or only some forms of electrification? • In energy generation, to what extent primary input prices determined by the market or are negotiated? Are any automatic pricing mechanisms used? • For both energy and water sectors, how are tariffs determined? What is the structure of tariffs (e.g. flat or time-differentiated tariffs)? Does the dominant infrastructure operator have a say in revising the tariff, or does the regulator have an independent methodology for cost assessment and tariff revision? • How are the costs for different services allocated between consumers in view of affordability (geographic or industry-specific tariffs, increasing block tariffs, stepped tariffs, etc.)? Are any non-tariff mechanisms used (e.g. coupons or targeted income support)? • For both energy and water sectors, is the effect of production and consumption subsidies, as well as the fiscal cost, regularly assessed and reported on? • For both energy and water sectors, what steps have been taken to bring prices closer to cost-recovery levels? What portion of the overall cost of providing the service is covered through tariffs? • Has the government taken measures to remove inefficient fossil-fuel subsidies? Are the level and efficiency of these subsidies monitored on a regular basis? • As water is linked, *inter alia*, to agriculture, food security and health, how the government and donor partners work together to develop and use integrated water resource management frameworks and strengthen co-ordination between central and decentralised levels of government?
Financing infrastructure investment	• What sort of long-term investment vehicles are available to mobilise funds for infrastructure? • Is there a robust project finance market which supplements the traditional corporate finance market? • What steps have been taken to ensure the domestic capital markets is conducive to long-term investment? Has specific policies been enacted to support the development of project bonds? • Do current regulations and rules support investments in infrastructure projects by long-term investors, including pension and equity funds? Are there efforts to ease regulatory barriers preventing greater resource allocation to infrastructure projects by institutional investors? Is the bundling of small infrastructure projects possible in order to minimize transaction costs and thus facilitate attracting investors? • Has the government established special purpose funds for infrastructure maintenance and for addressing social objectives such as universal service provision? How are these financed? • Is the government working with donors to provide more predictable and long term support for infrastructure? How does it benefit from official development assistance (ODA)? To what extent, has ODA been used to improve financial viability of infrastructure projects while taking into account poor people's ability to pay?

	• What sort of financial instruments and mechanisms are in place to stimulate private investment in green infrastructure, including to attract long-term institutional investment (e.g. green bonds, carbon finance mechanisms, etc.)? • What types of incentives (e.g. subsidies, tax exemptions and feed-in tariffs) are in place to stimulate private investment in support of green infrastructure goals? Are incentives time-limited and appropriately targeted? (*see chapter on Tax Policy for guidance on tax incentives*) ***Sector-specific considerations*** • Is there any incentive for investment in clean energy infrastructure? Who bears the costs of such incentives (e.g. taxpayers, customers, providers of CO_2 credits)? • Have carbon emissions been priced? Is the price set in a transparent and predictable manner? How is the price level determined? Is there a market mechanism (tax or cap-and-trade systems) to price carbon?
Balanced market structure for private participation in infrastructure	• Which parts of network industries have been open to market competition or competitive tendering? Which markets remain dominated by SOEs? • Are concession contracts allowed to include no-compete (or exclusivity) clauses? Please describe the characteristics of licences and concessions across sectors. • Is there a national code of corporate governance, and if so, does it have a chapter/ section (or a separate code) dedicated to corporate governance of SOEs? • Does it establish a clear separation between the public sector's ownership function and other factors that may influence companies' position, service obligations, access to finance and weight on the public purse? • Are SOEs, regardless of their legal status and even if not listed, regularly audited by independent auditors? Are they required to disclose financial and non-financial information according to high quality international accounting and financial reporting standards? • Are the obligations and responsibilities of SOEs clearly mandated by laws or regulations? Are the related fiscal costs, as well as the SOE's economic performance, disclosed to the general public in a transparent manner – and by what agency? ***Sector-specific considerations*** • In the telecommunications sector, do authorities assess market access potential and the extent of competition among operators? • What are the main characteristics of telecom licences: multi-service licensing allowed; technology-and-service neutral rules; universal access obligations; etc.? Are there clear rules for network sharing? Is number portability allowed? • In the electricity sector, what is the degree of integration from power generation to power supply (e.g. unbundling, independent power provision under the 'single-buyer model' etc.)? • What efforts have been taken to the development of diversified off-grid energy infrastructure, as well as feed-in infrastructure? If feed-in tariffs are allowed, how are these determined? When and on what basis is the price of the tariff susceptible to change? If tenders for clean energy are used, how are bidders selected and prices determined in the tender? • To what extent does the clean energy sector face higher barriers to foreign investment? Do foreign investors face limiting constraints such as local content requirements? If so, what are the objectives behind these measures and is the government considering alternative ways of achieving these objectives?

Enhancing regional connectivity and supply chains	• In what ways is the government involved in promoting cross-border infrastructure investment to enhance regional connectivity and the integration in regional supply chains? Please indicate any cross-border infrastructure projects in which your country is involved, including regional power pools, shared river basins and hydropower projects etc. • In the case of cross-border infrastructure projects, do the involved governments commit ex-ante to a sufficient allocation of budgetary resources, and agree on shared development priorities to be upheld throughout the project? • Should a dispute or need for contract re-negotiation arise in a cross-border project, what is the competent jurisdiction and how will the dispute be resolved? • To what extent are pricing structures aligned among countries engaged in a cross-border project (for instance, alignment of national pricing structures to facilitate cross-border power purchase agreements; or agreement on levels of road tolling on either side of the border)?
Encouraging inclusive growth and responsible business conduct	• What strategies are in place for communicating and consulting with the general public, including vis-à-vis consumers, affected communities and corporate stakeholders, with a view to developing mutual acceptance and understanding of the objectives of the parties involved in infrastructure projects? • What role does the government play in ensuring that private sector participants involved in the provision of vital services to communities remain mindful of the social consequences of their actions? • Do public authorities work together with private actors, and affected communities, to avoid and mitigate socially unacceptable outcomes? • How does the procuring agency, the regulatory agency or the competition authority ensure that the private partner acts according to the norms of responsible business conduct as mentioned in the OECD Guidelines for Multinational Enterprises (see chapter on Responsible Business Conduct)? • Are comprehensive infrastructure strategies linked to other economic and sector plans? How the government aligns providers (domestic and foreign, private and public) to meet priorities and maximise benefits to socio-economic development? • How does the government encourage local private sector provision of services and the development of local industries for construction and maintenance of infrastructure assets? • Does the government facilitates SME participation in infrastructure contracts (for instance by simplifying bidding procedures for SMEs, setting quotas for a minimum number of SMEs to participate in the bidding process, sub-dividing infrastructure contracts etc.)? • What specific approaches are in place to deal with the particularities of fragile and post conflict zones, including the importance of core infrastructure and of building governance and administrative capacity? ***Sector-specific considerations*** • How does the government seek to link ICT infrastructure programmes with activities in other sectors important for the livelihoods of poor people? • How does the government support grid extensions in areas less attractive to operators but necessary from a social perspective? How does it balance costs, revenues and the need for smart subsidies?

ADDITIONAL RESOURCES

Web pages

www.oecd.org/daf/inv/investment-policy/water.htm

www.oecd.org/daf/inv/investment-policy/clean-energy-infrastructure.htm

www.oecd.org/pensions/private-pensions/institutionalinvestorsandlong-terminvestment.htm

www.oecd.org/gov/budgeting/ppp.htm

www.ppiaf.org/

References, Tools, Guidance, Manuals

OECD (2001), Recommendation of the Council Concerning Structural Separation in Regulated Industries, OECD Publishing: Paris.

OECD (2002), OECD Best practises for Budget Transparency, OECD Publishing: Paris.

OECD (2005), OECD Guidelines on Corporate Governance of State-Owned Enterprises, OECD Publishing: Paris.

OECD (2005), OECD Guiding Principles for Regulatory Quality and Performance, OECD Publishing: Paris.

OECD (2006), DAC Guiding Principles on Using Infrastructure to Reduce Poverty, in Promoting Pro-Poor Growth: Infrastructure, OECD Publishing: Paris.

OECD (2009), OECD Principles for Integrity in Public Procurement, OECD Publishing: Paris.

OECD (2009), Guidelines for Fighting Bid Rigging in Public Procurement, OECD Publishing: Paris.

OECD (2009), OECD Principles for Private Sector Participation in Infrastructure, OECD Publishing: Paris.

OECD (2009), Private Sector Participation in Water Infrastructure: OECD Checklist for Public Action, OECD Publishing: Paris.

OECD (2011), Meeting the Challenge of Financing Water and Sanitation: Tools and Approaches, OECD Studies on Water, OECD Publishing: Paris.

OECD (2012), OECD Principles for Public Governance of Public-Private Partnerships, OECD Publishing: Paris.

OECD (2012), OECD Recommendation on Regulatory Policy and Governance, OECD Publishing: Paris

OECD (2013), G20/OECD High-Level Principles of Long-Term Investment Financing by Institutional Investors, OECD Publishing: Paris.

OECD (2013), Mobilising private investment in sustainable transport infrastructure: the case of land-based passenger transport infrastructure, OECD Environment Working Paper No 48, OECD Publishing: Paris.

OECD (2014), Fostering investment in infrastructure: lessons learned from OECD Investment Policy Reviews, OECD Publishing: Paris, forthcoming.

OECD (2014), G20/OECD Checklist on Long-Term Investment Financing Strategies and Institutional Investors, OECD Publishing: Paris.

OECD (2014), OECD Policy Guidance for Investment in Clean Energy Infrastructure: expanding access to clean energy for green growth and development, OECD Publishing: Paris.

OECD Competition Assessment Toolkit (http://www.oecd.org/daf/competition/assessment-toolkit.htm)

United Nations (2004), UNCITRAL – Model Legislative Provisions on Privately Financed Infrastructure Projects, United Nations: New York.

Indicators

World Bank Private Participation in Infrastructure Database (http://ppi.worldbank.org/)

OECD Indicators of Product Market Regulation (www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm#indicators)

OECD FDI Regulatory Restrictiveness Index (www.oecd.org/investment/fdiindex.htm)