



PUBLIC-PRIVATE PARTNERSHIPS FOR PROMOTING SUSTAINABLE DEVELOPMENT GOALS



“ PPP structure can help foster economic growth and social development in ways that promote the Sustainable Development Goals, leading to a better and more sustainable future for all. ”



1



2



3

1
ALEXEI ZVEREV
SENIOR COUNSEL, EBRD
ZverevA@ebrd.com

2
CHRIS TASSIS
ASSOCIATE, EBRD
TassisC@ebrd.com

3
ZEYNEP BOBA
ASSOCIATE, EBRD
BobaZ@ebrd.com



Achieving the UN's Sustainable Development Goals (SDGs) requires long term investment. PPPs can provide some of this investment by utilising private sector skills, know-how and finance to implement long-term public infrastructure projects. For longitudinal project partnerships to be attractive to private investors, there needs to be a stable and predictable legislative and regulatory framework in place for PPPs. To facilitate the development of effective PPP frameworks, the EBRD has produced the PPP Regulatory Guidelines Collection for policymakers and practitioners to use to create legal environments that are conducive to PPPs, in line with international best practice.



NEED TO FINANCE THE SUSTAINABLE DEVELOPMENT GOALS

The SDGs are a set of 17 goals that aim to end poverty, protect the planet and ensure prosperity for all by 2030. Achieving the common objectives enshrined in the SDGs – also known as the Global Goals – is a long-term endeavour, with sufficient and targeted financing being a catalyst.

The value of capitalising on private sector financing for the SDGs has been recognised since 2015 in the United Nations *Addis Ababa Action Agenda of the Third International Conference on Financing for Development*. It was further highlighted in the document *From Billions to Trillions: Transforming Development Finance Post-2015 Financing for Development: Multilateral Development Finance* prepared jointly by the African Development Bank, the Asian Development Bank, the EBRD, the European Investment Bank, the Inter-American Development Bank, the IMF and the World Bank.

The private sector plays a key role in implementing the SDGs, particularly SDG 17 (partnerships), with the expectation that it will contribute with capital investment in the face of dwindling public resources. In recent years, PPPs have become increasingly important as governments around the world seek to address the immense challenges associated with pandemics, population growth, climate change and economic inequality. PPPs play a vital role in efforts to identify and implement new and cost-effective solutions by bringing together the resources of the public sector and the creative thinking, efficiency, modern technology and expertise of the private sector.

PPPs have many benefits. When properly structured and implemented, PPPs can fulfil a range of valuable purposes and objectives for the benefit of society and the common good.

THE ROLE OF PPPs IN FOSTERING SUSTAINABLE DEVELOPMENT

The World Commission on Environment and Development's 1987 Brundtland Commission report *Our Common Future* defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". From this definition, the inter-temporal element of development becomes clear. PPPs as instruments and financial structures encompass a long-term nature that typically includes, importantly, a servicing element. Therefore, this unique characteristic allows effective and sustainability-aligned changes to take place in the long run.

PPPs have many benefits. When properly structured and implemented, PPPs can fulfil a range of valuable purposes and objectives for the benefit of society and the common good. They can advance the efficient and cost-effective development, provision and operation of public

infrastructure and public services, by harnessing the skills, resources, know-how and/or finance of the private sector most effectively and sustainably on a long-term basis, and structuring projects in ways that

allocate the risks and responsibilities involved most appropriately over the project's duration. This can strengthen the efficacy of project delivery (whether of design, construction, rehabilitation, operation and/or maintenance), stimulate new funding and investment opportunities, help bridge the public infrastructure and service gap, raise the quality of public services, improve the public's access to those services, and so help to achieve wider economic, environmental and social goals.

PPP structure can help foster economic growth and social development in ways that promote the SDGs, leading to a better and more sustainable future for all. By bringing together different stakeholders, PPPs can create efficiencies, increase access to capital and promote innovation. Furthermore, they can help create a long-term framework for sustainability, as public and private entities work together to ensure the success of their projects, becoming more prevalent in the sustainability realm. As governments

around the world recognise the importance of private sector involvement to achieve the SDGs, there has been an increase in the number of PPPs and the scope of their projects. In a similar vein, the EBRD has been actively working to help governments develop legal and regulatory frameworks for PPPs in a good number of countries in its regions. This has enabled governments to better leverage the resources of the private sector in developing sustainable projects that benefit local communities.

In a similar vein, adequate and well-allocated financing is a critical enabler for the development and the success of a PPP, which in turn will advance the host country's development agenda. To this end, the Bank recently commissioned a study on the sources and types of financing for PPPs in the EBRD regions. In the context of global financial and economic instability, many countries are experiencing difficulties in financing infrastructure projects, especially large-scale ones. Similar to the identification of alternative mechanisms and processes to achieve sustainable development (for instance, turn to renewable energy and responsive financial regulation), diversification of financing sources for PPPs is most welcome.



Looking beyond traditional bank lending, there is room to explore alternative ways to finance PPP projects. Global awareness of sustainable PPP projects has grown among institutional investors, especially as governments have been trying to scale up investments to meet the SDGs. Introducing innovative financing and new forms of PPP structures could offer a broader range of PPP financing mechanisms, which could better address the needs and financing/funding gaps in so many jurisdictions. Indicatively, alternative types of financing might include blended finance and receivables financing and alternative sources of financing might include pension funds, sovereign wealth funds and impact investors. In a nutshell, alternative means of PPP financing shall be explored as they are of great importance for supporting the viability of SDG-oriented projects.

PPP LEGAL FRAMEWORKS

Sound PPP legal frameworks and policies are of paramount importance for the PPP sector's development. A stable and predictable legislative and regulatory environment makes it easier to attract investment in PPP projects and further lays the ground for the successful completion of PPPs.

Until recently, almost all PPP legal frameworks primarily focused on commercial business practices, which, to an extent, would ensure the commercial viability of the project. While the actual objective of the project may have been society-oriented or environmental in nature (healthcare or education social infrastructure projects, for instance), the focus of the legal framework was geared towards the mechanics of the project per se and aimed at enhancing well-recognised legal values, such as transparency, predictability and accountability.

In line with the global shift towards proactively infusing sustainability considerations in legal and regulatory texts and policies, the EBRD's work on PPPs has been critical in helping develop and implement the Paris Agreement on Climate Change. The Bank has provided technical cooperation to its economies to help them identify and implement projects that reduce emissions and promote renewable energy sources. This has included activities such as developing legal and regulatory frameworks for PPPs, providing capacity building to local stakeholders and facilitating access to finance for green projects.

Most importantly, the EBRD has developed a collection of PPP regulatory guidelines over the past few years that represents some five years of hard work by a dedicated group of experts, most of whom took an active part in this formidable effort on a pro bono basis. The publication aims to address the needs of the many governments and authorities in the EBRD economies that shared their feedback and priorities with the EBRD regarding their desire and even the necessity to assemble examples of internationally accepted standards and best practices in the area of PPPs as far as its regulatory, institutional and enabling frameworks are concerned.

“ A stable and predictable legislative and regulatory environment makes it easier to attract investment in PPP projects and further lays the ground for the successful completion of PPPs. ”

The EBRD Legal Transition Team has carried out PPP regulatory advisory technical cooperation projects in more than 30 countries, helping to upgrade a legislative and/or enabling framework or institutional infrastructure, and to enhance the public sector's PPP capacity. By way of example, the team has provided a comprehensive programme of technical cooperation to the Serbian authorities since 2011. Serbia is one of a very few countries where the Bank exercised a well-structured approach, from helping the authorities design and draft PPP policy to drafting PPP law, creating regulatory and institutional frameworks and an enabling environment, and offering training in the country's regional centres. This contributed to the development of a good number of banking projects. The Bank used an integrated approach in Serbia and coordinated with the EBRD Banking Department on regulatory framework advisory, which helped identify gaps and room for improvement (the Bank then considered Belgrade underground parking and a number of other potential municipal and transport infrastructure investments). As a result, within three years of the new law's enactment, the pipeline of PPP projects grew significantly, from just a handful to more than 50, and Serbia's PPP programme keeps expanding.



THE EBRD'S PPP REGULATORY GUIDELINES COLLECTION

The EBRD's PPP Regulatory Guidelines Collection (hereinafter the EBRD PPP Guidelines) is a nearly comprehensive massive resource for policymakers and practitioners involved in developing and implementing PPP projects. The collection offers guidance on the key legal, regulatory and contractual aspects of PPPs, including PPP policy formulation and law drafting, key elements of the PPP regime, procurement, risk allocation, project appraisal and monitoring and dispute resolution. It is based on the EBRD's extensive experience with both regulatory advisory and supporting PPP projects across its regions of operation, and reflects internationally recognised standards and best practices. The collection is a valuable tool for governments seeking to promote private sector participation in infrastructure development and for private sector stakeholders looking to navigate through the complexities of PPPs. By providing a clear and practical enabling framework for developing PPP projects, the EBRD PPP Guidelines can help to promote transparency, accountability and good governance in infrastructure development,

and can contribute to the sustainable development of economies. The publication consists of three volumes and will be issued as an electronic version and in a limited number of hard copies.

The EBRD PPP Guidelines consist of a set of model laws, policies, explanatory materials and templates that have been produced according to best practices and can be used by governments as benchmark and reference material.

Central to Volume I of the guidelines is the EBRD/UNECE Model PPP Law for SDG-compliant PPP Projects (the Model Law). The Model Law was drawn up as part of the wide-ranging corpus of guidance documents, modules and studies on PPPs being produced on behalf of both the United Nations Economic Commission for Europe (UNECE) Working Party on PPPs and the LTP of the EBRD to help governments seeking to develop PPP systems of their own – both those doing so for the first time and those willing to upgrade their own regime.

The Model Law is followed by a supporting commentary that narrates short summaries of the Law's articles and provisions and provides brief explanations of the thinking behind them and some discussion of the core issues to which they typically give rise in practice. The commentary, written in non-legal language, offers some additional elucidation of the Law's text and where it might be helpful, but does not attempt to restate or explain every one of its provisions.

Similarly, parts of the EBRD PPP Guidelines are devoted to six modules/chapters containing notes on regulations and guidelines to support the Model Law. These guidance notes are designed to show governments, regulators, PPP units and others involved in developing or refining the subsidiary documents that often support and accompany PPP laws how to prepare and draft them. Supporting documents of this kind will typically fall into two broad categories, namely regulations and guidelines. Both are defined in the Model Law, the former being designed as legally binding secondary legislation, covering the detailed procedures and mechanisms necessary to give effect to a PPP Law, the latter as guidance texts that describe, explain and advise on their application.

The EBRD PPP Guidelines are an essential resource for policymakers, legal practitioners and investors involved in PPP projects.



The guidance notes cover six main categories that represent the areas where the supporting documents are likely to have their principal focus. These are: PPP criteria and requirements; forms of government support; tendering procedures and requirements; unsolicited proposals and direct negotiations; appraisal and approval procedures; and review and challenge procedures.

Volume I also includes the CIS Model Law on PPPs, adopted by the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS IPA) in 2014. This model law serves as a guiding framework for PPP projects in the CIS region, providing legal and regulatory guidance on all aspects of PPPs. It aims to promote the adoption of best practices and standardisation across the region. The model law includes provisions on project preparation and selection, procurement, contract management and dispute resolution, among others. It is the first comprehensive text of PPP model laws that could be used with (or even without) adjustments and national specific additions by CIS countries, given the common legal systems background and similarities in emerging economies development. The CIS IPA has adopted several enabling regulations and documents to support its implementation. These include Guidelines for the Preparation and Implementation of PPP Projects, the Model PPP Contract and Guidelines for the Development of PPP Legislation at the National Level. These documents, as well as the CIS Model PPP Law itself, were developed with the EBRD's assistance. They provide detailed guidance on the practical implementation of the CIS Model Law, including

the key steps and processes involved in preparing and implementing PPP projects. These enabling regulations and guidelines will be part of Volume II of the EBRD PPP Guidelines Collection.

The EBRD recently participated in the seventh UNECE International PPP Forum in Athens. The 3-5 May 2023 event brought together more than 700 participants from around the world, including policymakers, practitioners and experts in the field of PPPs. One of the highlights was the EBRD session specifically dedicated to the presentation of its PPP Regulatory Guidelines Collection. The forum provided an important platform for stakeholders in the field of PPPs to exchange ideas and best practices, and the EBRD's participation and presentation of the publication underscored its commitment to promoting good governance and sustainable development in infrastructure investment.

The EBRD PPP Guidelines are an essential resource for policymakers, legal practitioners and investors involved in PPP projects. The collection is available on the EBRD LTP web page (www.ebrd.com/law). The web page, which is accessible to all visitors to the EBRD website, hosts a variety of legal resources, including publications, research and reports on various legal subjects. For more than 25 years, PPP support has been a core part of the EBRD LTP designed to provide regulatory and institutional support to authorities in the EBRD regions and help them create an enabling environment in a few carefully selected areas of important commercial law. Working with colleagues in the Banking and Policy departments' advisory on regulatory aspects of PPP has always been an integral part of EBRD undertakings. The SDGs have become the central focus and will remain such in the foreseeable future.

