



Pinsent Masons

Action Plan for Implementation of PPP's in Mongolia

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The Problem: Results of Feasibility Study



- Poor system for identification of PPP's
- Ineffective feasibility studies
- Lack of business plans for projects
- Poor adherence to, or failure to comply with, Procurement Law
- Lack of understanding of PPP Models and their benefits
- Lack of Capacity & human resource in Government and private sector
- Lack of, or ineffectual guidance and bidding documentation
- Poor contractual documentation and no standard documents upon which to base contract documents
- Poor, or ineffective monitoring of projects during both procurement and implementation
- Poor enforcement of contractual, legal and regulatory obligations
- Lack of stakeholder involvement

The Action Plan



- No. 1: The Establishment of a PPP Unit
- No.2: Provision of adequate training for PPP Unit and others
- No.3: Drafting of Standard Guidance, Bid and Contractual Documentation
- No.4: Establishing a system for a 'Project Pipeline'
- No.5: Establishing system for the proper review of Projects
- No.6: Ensure Adherence to agreed procurement systems and the establishment of audit trails for projects
- No.7: Deal with Regulatory and Governance Issues
- No.8: Decentralise Fiscal Control over procurements
- No.9: Ensure independence, fairness and openness of Judiciary
- No.10: Ensure Donor Agencies and Government Agency Coordination

Establishment of a PPP Unit



- Concentrates expertise in one centre
- Acts as a central repository of standard documentation, guidance, bid documents etc.;
- Able to provide detailed procedures for identifying, evaluating and procuring projects;
- Acts as a resource and advice centre for Central Government, line departments and sub national agencies;
- Able to provide continuous improvement and to feed in 'lessons learned' to next projects;
- Should initially be a small unit of experts trained in legal, technical and financial requirements of PPP's, trained and backed by international experts

Provision of Training to PPP Unit and others involved in PPP's



- Concentrate training initially on members of the PPP Unit
- Training on PPP Models, project identification, feasibility studies, building a business case, contractor due diligence, procurement, drafting and negotiating documentation, risk apportionment, financial modelling of projects and effective monitoring;
- Training to international standards by international experts;
- Develop capacity outside the PPP Unit:
 - Private sector potential bidders
 - Line Departments and Sub National Agencies
 - Private Sector consultants
 - Funders
- Provide continuous web based training and advice
- Use Pilot Projects for training and development of documentation: start small , with time and develop carefully
- Training the Trainers

Develop Standard Guidance Documentation and Contracts



- Such documents facilitate training of all sectors;
- Will produce substantial savings in time and money during procurement;
- Gives a benchmark for proper procurement and implementation of projects;
- Permits documentation of lessons learned for use in future projects
- Enables less experienced parties to better understand the process and quickens capacity building;
- Limits or removes the potential for inadequately drafted contracts which lead to uncertainty, disputes and loss of time and money;
- Allows a consistency of approach and pricing across a range of similar projects;
- Base on suitable documentation from other countries and organisations and use international advice.

Establish a 'Project Pipeline' and Pilot Projects



- A pipeline enables the private sector to understand the Governments needs for the future and to grow and plan to meet those needs
- Should only include projects that are needed as a priority, achievable, feasible, with a good business case, attractive to the market, bankable , value for money and allowed for in the Government budget;
- Should be stable and not subject to change to enable market confidence in Mongolia to be built up;
- Should be advertised widely in Mongolian and an international language: consider use of Government Procurement Website giving full details of the required projects;
- Consider initially Pilot Projects for each sector to build capacity and documentation

Monitoring and review of projects



- Is there a clearly identified need for the project?
- Is PPP the best procurement route to take to deliver the best value for money?
- Has proper due diligence been carried out on the Contractor to ensure that they can comply with their contractual obligations?
- Is the cost of the project worth the benefit likely to be received?
- Does the business case work?
 - Strategic Case
 - Economic Case
 - Financial Case
 - Commercial Case
 - Health and Environmental Impact assessment
- Carry out regular monitoring of the progress of the project: establish a line of communication for stakeholder queries and complaints

Ensure adherence to procurement procedures and proper audit trails



- Ensure procurement law enforced
- Ensure use of standard bid and contractual documentation provided by PPP Unit
- Monitoring or 'spot checks' of projects during the procurement process
- Ensure open procurement and public awareness of award criteria when appointing the winning bidder
- Ensure that a full audit trail of decisions made during procurement is kept and copies of contract documentation is available for scrutiny
- Establish a system for dealing competitively with unsolicited proposals

Regulatory and Governance Issues



- Carry out review of Regulatory bodies and ensure that there is clarity of duties and powers;
- Ensure that the apportionment of duties and powers is made public to enable bidders and others to understand who they need to deal with;
- Ensure effective enforcement of regulatory powers by regulatory bodies
- Review tariff system to encourage market participation in public sector projects

De-Centralise Fiscal Control



- Whilst procurement should, at least initially whilst capacity is being built up, remain under central control of the PPP Unit, Line Departments and sub national agencies need to be able to pay for projects in their sector or region
- Lack of finance often prevents this.

Ensure Donor Agencies and Government Agencies co ordination



- Donor Agencies need to agree their respective roles and responsibilities in assisting the Government in its progress towards a project procurement and implementation system which is open, fair and transparent, encourages the development of the private sector in Mongolia and attracts foreign investment into the country
- Action already implemented following a Donor Agency meeting on the 10th November

Ensure Fairness and Openness of Judiciary



- Current system likely to give little comfort to foreign investors
- Use of international arbitration likely but still problem of enforcement
- Consider separate enforcement for projects with training of judges

Benefits of PPP's



- Guaranteed quality of services (provided the public sector specifies properly in the beginning!)
- Utilises private sector skills and innovation for public sector benefit
- Utilises private funds for the public good
- Currently often “off balance sheet” treatment
- Encourages third party income generation
- On time and on budget projects increased dramatically
- Stimulates growth of private sector industry
- Enhances stakeholder involvement
- Significant transfer of risk to the private sector
- Improves value for money
- Responsibility for construction and maintenance passes to the private sector but the public sector remains in control of the level of services required under the project



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Thank You

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