LESSONS LEARNED AND BEST PRACTICES IN PUBLIC-PRIVATE PARTNERSHIP PROJECTS

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Multilateral Investment Fund
Member of the IDB Group
ABOUT THE MULTILATERAL INVESTMENT FUND

With funding from 39 donor countries, the MIF, a member of the Inter-American Development Bank (IDB) Group, supports development led by the private sector to empower dynamic entrepreneurs and poor and vulnerable populations. Its aim is to give businesses, farms, and households the tools to boost their incomes: access to markets and the skills to compete in those markets, access to finance, and access to basic services and green technology.

A core MIF mission is to act as a development laboratory—experimenting, pioneering, and taking risks in order to build and support business models for successful micro, small, and medium enterprises. To use its resources effectively, the MIF is committed to results-based project measurement, impact evaluation, and active knowledge sharing so that the most promising solutions are widely known and can be scaled up.

The MIF uses technical assistance grants, equity investments, and loans, as well as combinations of these tools when both capacity building and risk-sharing finance are needed. It is the largest provider of technical assistance to the private sector in Latin America and the Caribbean, and always works with partners to help fund and carry out pilot projects. In the region, the MIF works with local, mostly private partners that contribute both a significant portion of the project costs and on-the-ground resources to implement operations. The MIF also works with global partners that share its goals, such as corporations, foundations, and other multilateral organizations. They pool their financial and other resources with the MIF’s to jointly solve development challenges.

ACKNOWLEDGMENTS

Ramón Espelt, commissioned by the MIF, wrote this report, which is an independent assessment of lessons learned from the MIF’s work throughout Latin America and the Caribbean to foster public-private partnerships. Staff of the MIF who contributed to this report include Ana Castillo and David Bloomgarden, who coordinated the project; Katherine Hutt Scott, who edited the report; and Claudia M. Sáenz, who coordinated the design and typesetting.
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INTRODUCTION

Both the Multilateral Investment Fund (MIF) and the Inter-American Development Bank (IDB) receive requests from countries and local governments that are seeking support for launching public-private partnership (PPP) programs. Some requests are from smaller and less-developed governments that lack the capacity to select, execute, and administer PPPs.

The collective experience of partners that have worked with this type of contract could be of great value to those that would like to start developing PPP frameworks. Therefore, the MIF has gathered lessons learned and best practices as useful tools to identify and resolve problems and to improve decision making during the cycle of implementing a PPP.

To analyze the lessons learned, the MIF selected projects in which it supported almost all phases of development, in robust PPP environments in Brazil, Colombia, Mexico, and Uruguay.

The MIF conducted interviews in 2013 with people who have played a significant role in developing projects, from the MIF as well as from government agencies that benefited, to gather useful advice. Also, the MIF assessed the products generated, in the form of new laws and regulations, manuals, guidelines, and procedures for identifying best practices.

The observations and conclusions resulting from the interviews were the main sources of information used to prepare these lessons learned. They can help inform governments about how to create and put into practice the organizations, regulations, and know-how needed to successfully carry out PPP projects for the development of public infrastructure.

In addition, the MIF launched an $8 million, five-year technical assistance program for PPPs in July 2012, targeting small countries and local governments that need help in launching PPP projects in the market. The program—implemented in coordination with the IDB’s Infrastructure and Environment Sector—was designed to be a pioneer in developing municipal-level PPPs. One component is training for both the public and private sectors, in the hopes this will encourage the private sector to participate in financing and providing infrastructure. The goal is to bring innovative projects with complete financing to the market in the areas of health and education.

The program is expected to generate new knowledge on how to structure PPPs in small countries and more decentralized governments, or in those countries that have less per-capita income than traditionally supported by the MIF. This knowledge will be disseminated through various channels, including the MIF’s PPPAmericas Conference, a biannual event that focuses on the interchange of technical knowledge about PPPs in Latin America and the Caribbean.
PUBLIC-PRIVATE PARTNERSHIPS IN LATIN AMERICA AND THE CARIBBEAN

**PPPs are a financial/management alternative for providing infrastructure and public services**, using a broad understanding of the concept of "management" that includes the construction, operation, and maintenance of infrastructure. A concession is the most common form of contract for PPPs in many countries.

We consider PPP to be the term applicable to all public-private associations for the development of public infrastructure and/or the performance of a public service, which meets the following criteria:

- private participation (in financing and management)
- transfer of risk
- long-term contractual relationship

Construction is not necessarily the key aim of a PPP; the objective may be administration of a public service, such as health care. PPPs have become an essential tool for providing new infrastructure, enabling the private sector to manage the project’s life cycle, assume a large part of the risks, and provide financing for developing the project. For this reason, the benefits of PPPs as a formula for developing and funding infrastructure are basically two:

(I) additional resources to accelerate the development of new infrastructure, or improve existing infrastructure, in an environment of budgetary restrictions; and

(II) greater efficiency, based on the hypothesis (in some countries, based on empirical evidence) that private-sector management is more efficient, as demonstrated by greater capacity for the following tasks:

- maximizing income from the project (for projects in which users pay);
- applying cost-control and risk-management techniques;
- using technological innovation; and
- building the infrastructure, on time and on budget.

The success or failure of PPPs depends to a large extent on the development of suitable government organizations and laws and on sufficient know-how to enable appropriate pre-investment work and structuring of projects. PPPs also depend on adequate monitoring of the contract. In addition, there are two more commonly overlooked factors: the private sector's capacity to handle this type of complex, long-term relationship, and the existence of a financial market (not only banking entities, but also institutional investors, bondholders, etc.) able to provide the resources needed for this type of project.
In 2011, Latin America and the Caribbean invested 2 percent of its total GDP in infrastructure; this percentage should rise to 5 percent and stay there to reduce the existing infrastructure deficit in a reasonable period of time.

—The United Nations
There is clearly a need to increase investments in infrastructure in Latin America and the Caribbean, to improve the region’s competitiveness and the quality of life for its inhabitants.

PPPs can play a decisive role in this scenario, because they mobilize private resources, thereby accelerating the process of obtaining the financing required.

This role has been crucial in Chile, where PPPs have enjoyed robust development since the early 1990s and which has become an example for other countries in the region. Governments in Mexico, Colombia, and Brazil have already implemented numerous PPP projects, although in some cases, still under a concessional plan. In these countries (and on a smaller scale in Uruguay), major infrastructure projects are planned in which the PPP model will be the principal structure. These projects are slated for implementation over the next few years, mainly in productive infrastructure such as roads and ports, but also in social infrastructure such as hospitals, schools, and prisons.

2.1. THE ROLE OF THE INTER-AMERICAN DEVELOPMENT BANK GROUP AND THE MULTILATERAL INVESTMENT FUND

The MIF is providing significant support to governments in Latin America and the Caribbean to improve their capacity to plan, design, and manage PPP projects in basic productive and social infrastructure and related services.

Since 2004, the MIF has leveraged $20 million in 18 technical cooperation projects, serving as a catalyst for another $671 million in private investment and more than $4 billion in anticipated private investment through PPPs.

To date, the MIF’s program to support PPP capacity in national and local governments has been active to a greater or lesser extent in 12 counties, at both the national and local levels.

MULTILATERAL INVESTMENT FUND SUPPORT FOR PUBLIC-PRIVATE PARTNERSHIP CAPACITY

12 COUNTRIES

18 TECHNICAL COOPERATION PROJECTS IN 7 COUNTRIES

15 TECHNICAL ASSESSMENTS FOR 8 GOVERNMENTS

$20 MILLION in total grants

Through these projects, the MIF has helped improve the laws and regulations in these countries and their capacity to manage PPP contracts. As a result, the countries have become attractive markets for private investment in infrastructure.
MULTILATERAL INVESTMENT FUND IN LATIN AMERICA AND THE CARIBBEAN

22 PPP units established

+2,200 specialists trained

28 laws and regulations created
In addition to the investment figures already mentioned, 28 laws and regulations have been passed and more than 2,200 public-sector specialists have received training. Also, 22 PPP units—specific government units that are responsible for leading the development and implementation of a PPP—have been established at national and local levels.

The MIF has promoted the interchange of technical knowledge in Latin America and the Caribbean by holding PPPAmericas, a conference that—since the first in 2008—has become the seminal event on innovative trends in PPPs in the region.

In alliance with the Economist Intelligence Unit, the MIF has created Infrascope, an interactive learning tool that analyzes national environments for PPPs.

As a result of this process, Latin America and the Caribbean has advanced significantly in recent years in adopting PPP models. According to Infrascope, more countries have updated their laws and regulations and begun to develop specific government units with expertise in PPPs. But PPPs are still far from reaching their full potential. The majority of contracts are still concentrated in only a few countries (Brazil, Mexico, Chile, and Peru). The IDB Group remains committed to supporting countries that are interested in developing frameworks that encourage the development of PPPs.

The main stages in the cycle of implementing PPP projects that the MIF has supported are:

Other members of the IDB Group also have worked with the private and public sectors to create favorable environments for PPP development and to ensure financing for this type of project, providing both innovative financial structures and mitigation of political risk.

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1 See www.pppamericas.org for more information on PPPAmericas.
2 Infrascope is an interactive tool to evaluate a country’s capacity to develop and implement PPPs. It was developed by the Economist Intelligence Unit, with support from the MIF and the government of Spain. It is available at http://www.fomin.org/Knowledge/EconomicData/Infrascope/tabid/434/language/en-US/Default.aspx
LESSONS LEARNED

3.1. Creating Laws and Structuring Government Involvement

One of the immediate concerns of the countries and local governments analyzed is how to formulate laws that encourage PPPs and how to structure government involvement in these projects—both where to place the PPP unit in the government and how this unit interacts with the rest of the government. The countries and local governments also must set policies regarding the size of the PPPs they will develop and the sectors these projects will cover, and establish procedures for assessing and approving the projects. In the majority of cases in the countries and local governments analyzed, suitable laws already existed, enabling the private sector to participate in financing, providing, and profiting from infrastructure and public services. However, these were limited to concessional models, in which a project’s financial viability depended on income from consumers, and generally entailed only limited government subsidies to complement revenue from users.

Specific PPP law. The drafting of a specific PPP law (which can encompass all methods of private participation, or be limited to regulating only those projects requiring public support) clarifies the legal environment and sends a message to the private sector that there is a stable support system for this type of contract. A law also helps differentiate PPPs from fully privatized projects, which have been criticized because of projects during the 1990s that were not always ideal or transparent.

Government involvement in PPPs. To properly structure the involvement, it is essential to consider the skills and assign the roles of the different government organizations involved in providing infrastructure, from planning, economic, and financial leaders, to institutions responsible for investing in specific PPP projects.

PPP units. As part of this institutional redesign, it is recommended that the government set up a PPP unit. The unit’s main objectives are to ensure that the PPP is designed following solid criteria, allows for adequate transfer of risks between the public and private sectors, and generates value for money when compared with more traditional forms of project promotion.

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3 For global experience on the legal and institutional components of a PPP framework, see Yong, H. K., ed. 2010. Public-Private Partnerships Policy and Practice: A Reference Guide. London: Commonwealth. This publication provides a comprehensive review of PPP policies worldwide, including guidance on the design of PPP policies. Also the Organization of Economic Cooperation and Development. 2010. Dedicated Public-Private Partnership Units: A Survey of Institutional and Governance Structures provides an overview of dedicated PPP units in OECD countries.

4 "Value for money" is defined as the difference in cost for the state between the options of promoting a project as a public works contract or as a PPP project.
The traditional functions of a PPP unit can encompass a wide range of responsibilities, such as implementing and developing PPP policies, conducting specialized training, identifying a project portfolio, structuring projects, issuing calls for bids, and monitoring contracts.

—David Bloomgarden, acting chief, Access to Basic Services and Green Growth Unit, Multilateral Investment Fund
All these activities could be handled by different government entities or private consultants without having to create a specific PPP unit. However, it is highly recommended that such a unit be established, to ensure general consistency and efficiency as well as the quality of individual transactions.

The presence of a mandated PPP unit that can structure transactions in different sectors appears to be more efficient than a model of numerous independent teams, specialized in PPPs, working separately in different government entities to structure “their projects.”

**ROLES AND FUNCTIONS OF PUBLIC-PRIVATE PARTNERSHIP UNITS AND RELATED GOVERNMENT MINISTRIES**

There are no fixed rules about the choice of institution in which the PPP unit should be located, although the ministries of the treasury or the economy are recommended. This was the arrangement in the majority of cases analyzed, because these ministries are in charge of policies on spending and fiscal control. The PPP unit also could be located in the planning ministry, if there is one, or directly in the ministry of the presidency.

Below, we present a series of lessons on formulating laws that encourage PPPs and structuring government involvement in these projects, derived from the interviews conducted:

1. **The presence of PPP laws does not ensure the success of PPP projects.** Some governments—for example, some Mexican states—have had PPP laws in effect for more than a decade, but have not yet developed PPP projects. On the other hand, a number of PPP projects were implemented at the national level in Mexico under old PPP laws, and only after this experience revealed gaps was a new PPP law drafted. If existing laws support development of these projects, the creation of a new PPP law could benefit from lessons learned through experience.

2. **There should be ample debate on draft PPP legislation.** It is always recommended that representatives of the executive branch of government and the private finance sector thoroughly debate any draft laws, thereby allowing for a broad consensus. Such debate took place in Colombia and Uruguay, resulting in laws that were widely accepted.

> “Prior to the drafting of the law, CONPES report #3615 was published, a public policy document that recommends designing a tool to prepare and evaluate PPP projects and review the laws in effect. Thanks to the document, the government’s intention to support PPPs was evident, sending a clear signal to the market and initiating a public debate in search of consensus.”

— *Luis Eduardo Niño and María Patricia Sandoval, then with National Planning Department, Colombia*
Securing parliamentary approval for a PPP law can be viewed as a challenge because of lawmakers’ preconceived ideas. Their ideas often are based on negative precedents, such as associating PPPs with privatizations that took place in Latin America and the Caribbean during the 1990s and were perceived as leading to job losses. PPPs are not privatization. In a PPP, the government retains ownership of the infrastructure, unlike in privatization in which the government sells the asset to the private sector. Also, some lawmakers may not have an appreciation of the value of PPPs as a means to improve the quality of public infrastructure and services. In Colombia and Uruguay, approval of PPP laws faced obstacles because parliamentary procedures started before lawmakers had been presented with the information necessary to understand this value, or even with basic information about the projects.

“It would have been good if other stakeholders in the process, such as parliamentarians and ministers, would have had access to international best practices in the field before the process began.”
—Luis Porto, then with National Development Corporation, Uruguay

There should be broad support for approval of a PPP law. Broad parliamentary support is important to convey policy stability in a country. In many countries studied, there was an individual with considerable political heft who catalyzed and spearheaded broad-based support for the actions needed to implement the legal changes and to structure the government involvement in PPPs.

The process of designing a PPP unit and assigning roles for the rest of the government entities involved can be difficult and result in confrontations. There is no uniform rule, and in each case, the existing government structure must be taken into account so that the design of the PPP unit is efficient and acceptable. Uruguay’s experience served as a lesson that a PPP unit must have not only technical capabilities, but also considerable weight within a country’s government: in Uruguay, it is not mandatory for government entities to work with the National Development Corporation—which serves as the national PPP unit—when structuring PPPs. Meanwhile, Colombia’s experience shows how unclear delegation of roles can hinder the development of PPP projects:

In Colombia, there is no specific PPP unit, but rather the functions are divided among the Ministry of Treasury and Public Credit, the National Planning Department, and other agencies. Ángela Martín Cáceres of the Ministry of Treasury said in an interview, “We were in favor of creating a PPP unit, because as it is, everything is dispersed. For the transport sector, the National Infrastructure Agency is the PPP unit, but the problem is with the rest of the sectors and at the local level.” And María Patricia Sandoval, then with the National Planning Department, explained, “One of the most important lessons learned is that after we quickly developed the regulations, we should have continued at the same pace with structuring the government involvement, especially in sectors other than transport.”

All PPP-related functions need not fall under the responsibility of the PPP unit. In Colombia, roles are divided between the National Planning Department and the Ministry of Treasury and Public Credit. In Uruguay, although the National Development Corporation assumes the main role, the Office of Budget and Planning carries out other functions. In such cases—according to those interviewed in Colombia—it is recommended that the roles be clearly defined and that there be high-level coordination between the organizations involved. This way, it is clear that decision making should be handled by the lead organization and that the others should share the remaining responsibilities.
Officials in government entities involved in PPPs and other government officials often have reservations about the functions and responsibilities of PPP units. These officials at times perceive that public works contracts or traditional concessions result in a loss of control and decision-making power. This initial doubt is more widespread among government departments responsible for road projects, because in many cases, they are using staff who have previous experience structuring toll road concessions and may view a PPP unit as competition for scarce government resources, rather than as a source of technical support. It is therefore advisable to grant a PPP unit sufficient executive authority to enable it to lead the process and to create work teams jointly with government departments in the respective sectors involved. (Mexico—especially at a local level—is a good example of how work teams collaborate to resolve these tensions.)

Specialized teams ease communications between government entities involved in PPPs and a PPP unit. Specialized teams should be created in the lead entities and other government entities that interact with a PPP unit, given the complexity of PPP projects in general and the major differences between projects in different economic sectors. In Mexico, according to interviews with directors of state-run PPP units, dialogue between PPP teams and lead government entities was a key factor in the success of PPPs. In Brazil, it is common practice to form a working group with members from the PPP unit and the lead entity—a practice that has yielded very positive results.

Avoid conflicts of interest when PPP units are located in the treasury department. It is important to avoid a conflict that could arise from the ministry’s possible dual roles of fiscal oversight, and supervising or advising about the PPP contract and its assessment for tax purposes.

Disseminate experiences on a local level by creating regional PPP units that—apart from guiding PPPs on a local level—can act as negotiators with national organizations. One possibility is PPP units that support several states (or provinces or departments, depending on the country). This should take place in countries without a critical mass of PPP projects or the prospect of any in the foreseeable future, which would justify the creation of independent PPP units in each state. Such was the case in southern Mexico.

Limited development of PPPs at a local level seems to correlate with a lack of a local PPP unit. In cases where there is a PPP unit in each regional government (in Mexico, with some exceptions, and Brazil), more PPP projects are developed.

3.2. Training in the Public and Private Sectors

Training in the public and private sectors is essential to ensure successful application of PPP projects. The phases, scope, and depth of the training program should be targeted to its recipients. The MIF has focused a large part of its support for PPPs on facilitating training courses with experts and specialized educational institutions, first for officials of emerging PPP units, then more generally for government agencies and ministries. In some cases, such as in Uruguay, members of the private sector also have taken these courses.6

Some advice on optimizing the training was extracted from the interviews conducted:

Use ongoing training to ensure that trained public workers stay in their jobs. Training in public institutions should be continuous and conducted at multiple levels, to minimize turnover among public officials or workers dedicated to PPPs when higher-paying private-sector jobs open up. Constant turnover prevents public organizations from having professionals with structured and meaningful training in the subject matter. It is also highly recommended that the employees chosen for training should be those whose job tasks include project follow-up and monitoring.

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6 See Farquharson, Edward, Clemencia Torres de Mastle, E. R. Yescombe, and Javier Encinas. 2011. *How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets*. Washington, D.C.: World Bank. The chapter on contract management highlights the need for the implementing agency to budget for training, contract management skills, and knowledge. These skills are important for the ability of the government to manage the partnership and ensure that the project achieves its long-term social and economic objectives. The book can be downloaded from [http://pppnetwork.ning.com/](http://pppnetwork.ning.com/)
The "public entrepreneurs" policy promoted by Brazilian administrations to attract professionals who have technical knowledge about PPPs to the public sector appears to have had excellent results. These professionals collaborate in the training of other team members (although it should be noted that this initiative is complemented by more attractive salaries than those earned by public employees, which is clearly a decisive factor).

"Not only is it important to provide training to public officials, but it is also important to capture the private sector's expertise, which was achieved through the public entrepreneurs program."
—Marcos Siqueira, then director of PPP unit in state of Minas Gerais, Brazil

Complement general training with specific training. After the general training, more specific training courses should be offered in both the public and the private sectors. The training should focus on different economic sectors, highlighting the particular features of each (transportation, health, urban facilities, etc.). PPP units have generated more specific training programs, in Uruguay (for National Development Corporation personnel) and Brazil (for employees of the state government of Minas Gerais).

Provide legislators with training on PPPs. It is highly advisable that legislators called upon to discuss a new draft PPP law receive a basic training course on PPP principles, as this will greatly inform their debate. This need was underscored in interviews with directors of PPPs units in the public sector in Mexico, Columbia, and Uruguay.

3.3. PPP Implementation Process

3.3.1. Development of Guidelines and Methodologies

In the process of implementing PPPs, guidelines and methodologies are needed to identify, select, evaluate, and structure projects.7

Developing government how-to manuals on planning, designing, and implementing PPPs, before generating experience, can be counterproductive. In Brazil, the prevailing idea is that it is unwise to develop manuals before generating a body of practical experience. However, it can be valuable to produce brief technical notes on specific matters; that is, summarized versions of the different procedures to follow (for example, cost analysis without detailed itemization) and a simple map of actions. Excessive bureaucratization of the processes before gaining practical experience can be an obstacle to project lift-off.

7 A good source for information on PPP methodologies, policies, and manuals on topics ranging from design to implementation is the European PPP Expertise Centre. 2011. The Guide to Guidance: How to Prepare, Procure, and Deliver PPP Projects. Luxembourg. The website for this publication can be found at: www.eib.org/epec/resources/guide-to-guidance-en.pdf
“When we first started implementing the PPP projects, we though it unadvisable to create extensive rules and manuals that could slow down and hinder project development; better to limit ourselves to providing general guidelines on preparation of the studies needed ... a moment comes when it makes sense to standardize documents, but only after concrete experience has been gained from several completed projects.”

—Marcos Siqueira, then with PPP unit in state of Minas Gerais, Brazil

Adaptation of manuals and training of teams are critical. Although manuals and methodologies are generally similar in different countries, and for the most part could be standardized, the main task of the advisors—apart from adapting the manual to each different country—consists of training the corresponding PPP units in how to use the manual.

“The coaching that came afterward was important ... if you hired a consultant to prepare a manual, it would surely be expensive, but if it came with training, then it would end up being cheap. No matter what the manual might cost, there is more value in the training and adaptation to the local reality.”

—Marcelo Pérez, then with PPP unit in National Development Corporation, Uruguay

Using the official methodologies should be mandatory. This should apply no matter which government entity structures the project. In Uruguay and Brazil, only PPP units are obligated to follow the official methodologies, and other institutions are exempt from this requirement. The result is that PPPs aren’t designed and implemented following consistent procedures.

The theoretical complexity of the methodologies calls for simplified instructions. Given the complexity of some of the established methodologies, recommendations have been made in some countries, such as Colombia, to develop simpler versions of the manuals. These simplified instructions will facilitate the use of the methodologies, especially by local entities.

“It is true that the manuals are too theoretical, especially for nonspecialists. On the issue of the public-private comparator [a methodology for comparing the same investment as a public or a private investment], when you speak to people in the planning departments of local entities, they seem unable to manage the concepts.”

—Luis Eduardo Niño, formerly with National Planning Department, Colombia

“It is difficult to get all those involved to read and assimilate a complicated technical document and another 50 pages of extended information ... ”

—Rodrigo Velasco, National Development Corporation, Uruguay
3.3.2. The Initial Projects

The first projects in a PPP program can set the tone for the future success of the overall program. Political support is necessary, but should not determine the ultimate selection of a project. Selection should be based on objective standards and value for money. A sound communication strategy is important for all stakeholders to understand the benefits of the project.8

- **The selection of projects, especially pilot projects, is crucial.** This is aptly noted in the 2012 edition of *Infrascope*, which evaluates the readiness and capacity of countries in Latin America and the Caribbean to implement PPP projects: “In countries with little prior experience in PPPs, flagship projects are highly visible, and the future of the PPP model depends on their success.”

- **Initial pilot projects should be selected based on objective criteria.** Extensive experience reveals that initial projects were selected based mainly on political criteria resulting from budgetary restrictions, without a detailed assessment of feasibility.

- **PPP projects shouldn’t be publicized too soon.** It is crucial that during the structuring of a PPP project, there be communication with and feedback from the private sector and financial entities, to ensure that the project is later accepted in the market. However, when the structuring process takes a long time—especially in the case of a pilot project—delays in opening the bidding process can lead to private-sector doubts, rightly or wrongly, about public-sector commitment to the project. Such was the case in Uruguay, where PPP bidding processes were announced long before the first project became a reality.

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BEST PRACTICES

PPP projects that are largely in compliance with international standards and best practices are underway in all the countries studied for the purposes of this report. Our analysis has revealed that the following practices are highly recommended.9

1. **Diagnosis of Existing Laws and Government Structures**

   As a first step, it is always advisable to conduct a thorough diagnosis of the existing laws governing PPPs and the structure of government involvement in these projects, to help detect strengths and weaknesses and to evaluate the changes needed to successfully develop PPP projects. For example, such an analysis was conducted in Uruguay to better evaluate which actions to take and the alternatives available for connecting the state with the tools necessary to implement these projects.

2. **Design of New Laws**

   The laws and regulations developed to govern PPPs are quite similar across different countries and address the principal aspects of these projects:

   1. The definition of PPP should be broad enough to encompass the possible different alternatives, and restrictive formulas should be avoided.

   2. Transfer of risk from the public to the private sector is an essential element in PPP projects and has been a general feature of all laws and policies approved.

   3. The PPP law (or general budgetary laws) should contain an explicit clause that establishes multi-annual budget payments—preferably using an availability-based payment plan—under which the public sector pays the private provider based on the availability of an infrastructure service at or above a pre-agreed level of quality. This will make viable certain projects that otherwise have insufficient income or do not charge user fees to generate project revenue. This multi-annual budget clause must be explicit, to reduce the perceived risk of possible non-payment under future governments.10

   4. Legislation should include clear criteria for renegotiating a PPP contract, and address how potential modifications to the contract are agreed upon by the government and the private contractor. For example, if economic conditions change and the contractor loses money through no fault of their own, the contract can be modified to give an adequate return to the contractor. It was considered especially important to address this issue during the drafting of Colombia’s recent PPP law.

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9 An important source of advice for PPP practitioners is the **PPP Reference Guide**, jointly developed by the World Bank, the Asian Development Bank (ADB), and the Inter-American Development Bank (IDB). The guide sets out the main topics, looks at the key issues that must be addressed, and provides important references that PPP practitioners can turn to for answers and to enhance their own knowledge and understanding. See [www.fomin.org/en-us/HOME/Projects/Access-to-Basic-Services/Public-Private-Partnerships](http://www.fomin.org/en-us/HOME/Projects/Access-to-Basic-Services/Public-Private-Partnerships).

10 Abrantes de Sousa, Mariana. 2011. Managing PPPs for Budget Sustainability: The Case of PPPs in Portugal, from Problems to Solutions. [http://ppplusfonia.blogspot.com/](http://ppplusfonia.blogspot.com/). This paper describes how inadequate control of the PPP process resulted in the government of Portugal taking on significant fiscal exposure to its PPP contracts, thereby contributing to its 2011 fiscal crisis. The paper highlights the risks involved when governments turn to PPPs because they face tight budgets.
5. Clear rules and regulations should spell out compensation to the promoter and financiers of a PPP project in cases when a government decides to unilaterally terminate the contract, or when force majeure prevents the contractor from fulfilling their obligations through no fault of their own.

### PUBLIC-PRIVATE PARTNERSHIPS MULTIPLY IN MEXICAN STATES AFTER MULTILATERAL INVESTMENT FUND HELPS ESTABLISH LAWS

The MIF set out to address issues in implementing PPPs at the state level in Mexico. The project set up PPP units to plan and design a PPP, trained government officials to work in those units, and helped the states draft supportive laws and regulations. The box below shows the resulting laws, and also PPP projects that the states bid out or are preparing after the MIF’s assistance:

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<thead>
<tr>
<th>STATE</th>
<th>LAWS</th>
<th>PROJECTS ($ MILLIONS)</th>
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<tbody>
<tr>
<td>GUANAJUATO</td>
<td>Law of Public-Private Projects</td>
<td>Celaya highway ($73)</td>
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<td></td>
<td>Operating regulations for the Law of Public-Private Projects (for the state and its municipalities)</td>
<td>Salamanca-León highway ($343)</td>
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<td>Road maintenance program ($44)</td>
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<td>Guanajuato-San Miguel de Allende expressway ($146)</td>
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<td>YUCATÁN</td>
<td>Law of Public-Private Projects</td>
<td>Museum of Mayan Culture ($58)</td>
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<td>Maternity hospital, city of Mérida ($40)</td>
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<td>VERACRUZ</td>
<td>Strengthening the Law of Public-Private Projects</td>
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<tr>
<td>QUINTANA ROO</td>
<td>Law of Public-Private Projects (for the state and its municipalities)</td>
<td>Drinking water system, city of Tulum ($53)</td>
</tr>
<tr>
<td>CAMPECHE</td>
<td>Contract Law for Public-Private Collaboration</td>
<td>Maternity hospital ($26)</td>
</tr>
<tr>
<td>CHIAPAS</td>
<td>Strengthening the Law of Public-Private Projects</td>
<td>Wind power generation park ($71)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>University town for Universidad Autónoma de Chiapas ($51)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Highway maintenance program ($111)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gutiérrez-Villaflor expressway, city of Tuxtla ($73)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Water sanitation program ($16)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ISSTEC hospital ($22)</td>
</tr>
</tbody>
</table>

6. When structuring a project, it’s essential to have a road map, including the studies necessary for each phase of the process. In addition to technical and economic feasibility reports, these studies should include a comparison of the same investment as a public investment versus a PPP investment, to determine which provides better value for money to the government. This type of analysis is commonly referred to as a public-sector comparator.
### PPP Project Design, Structuring, and Market Launch

<table>
<thead>
<tr>
<th>Project Preparation Cycle</th>
<th>Actions</th>
<th>Responsible Body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-selection (Eligibility)</td>
<td>Selection of eligible projects based on technical criteria</td>
<td>PPP unit, Treasury, Sector ministry</td>
</tr>
<tr>
<td>Pre-Validation and Cost-Benefit Analysis</td>
<td>Pre-feasibility study and cost-benefit analysis</td>
<td>PPP unit, Treasury, Planning ministry, Sector ministry</td>
</tr>
<tr>
<td>Studies</td>
<td>Feasibility studies and technical, economic, legal, and financial studies</td>
<td>PPP unit, Sector ministry</td>
</tr>
<tr>
<td>Structuring</td>
<td>Technical, legal, and financial structuring (emphasis on value for money and risks)</td>
<td>PPP unit, Sector ministry</td>
</tr>
<tr>
<td>Budget Supervision and Control</td>
<td>Verification that available budget can pay for the project over its lifetime and of government capacity to manage unanticipated liabilities and legal issues during the lifetime of the contract</td>
<td>Treasury (with collaboration of PPP unit and PPP teams in government entity involved)</td>
</tr>
<tr>
<td>Launching, Awarding, and Formalization</td>
<td>Announcement of call for bids and awarding of contracts</td>
<td>PPP unit, Sector ministry</td>
</tr>
<tr>
<td>Contract Management</td>
<td>Follow-up and management and monitoring of projects</td>
<td>Government entity involved (with collaboration of PPP unit for certain aspects: negotiations, and modification of tariffs and payments to reflect changing economic conditions, such as inflation that affects the cost of the service provided)</td>
</tr>
</tbody>
</table>

7. The bidding procedures and awarding of contracts must be carefully regulated.

8. There should be regulations that govern how to receive and review private-sector initiatives that are not solicited by government tenders. The regulations should define the process to ensure transparency and competition, as well as to protect the interests of the private-sector proponent.

9. There should be limits imposed on the annual budget commitments stipulated in PPP contracts. In the majority of countries analyzed, when there is satisfactory transfer of risks to the private sector, these projects can steer clear of becoming public debt for the purposes of national accounting—although they do generate payment commitments and it is necessary to ensure the sustainability of the program over time.
Case Study

Colombia’s Legal Framework for Private Initiatives

PPPs originating in the private sector, referred to as unsolicited proposals, cannot and should not replace the government planning that is necessary in that economic sector. However, such PPPs contribute to economic development and help identify potentially value-generating projects. Since PPPs also require government funding when government policy limits or prohibits user-based revenue, it is reasonable to limit the maximum amount of public funding that can be used to make one of these projects financially viable.

To this end, Colombia’s PPP law (Law 1508 of 2012), and the regulations therein (11467 of 2012 and 100 of 2013), include the option of unsolicited private-sector proposals, as well as the conditions and procedures applicable in such cases.

Other best practices exist in designing laws that—except in the case of Colombia—have not been implemented in these countries to support PPPs, but that are recommended to encourage PPPs. This is the case for a specific regulation on competitive dialogue, which gives a government some flexibility to talk with the top bidders on a project about how their bids might be improved before the government makes a final decision. Although all those interviewed agreed that this procedure—which ensures transparency but also is sufficiently flexible—can be useful for highly complex projects, there is reticence to use it because of the possibility that losing bidders could protest perceived subjectivity in the process of selecting the winning bidder. Other countries, such as Uruguay and Brazil, are evaluating its possible implementation.
Creating an appropriate structure for PPP units is highly recommended. This has been done in the MIF’s PPP cases analyzed for this report, therefore producing a body of centralized practices and knowledge.

1. It is recommended that a PPP unit be granted the authority that it needs, and that the law establish and define its location in the government and its roles and responsibilities.

2. A PPP unit should have sufficient clout within the government to overcome traditional bureaucratic inertia and reticence. “The person in the top position should be high level ... with access ... this is a key point, and such a person should be able to speak with the highest levels of authority, have sufficient time to implement the policy, and be sufficiently well remunerated,” said Luis Eduardo Niño, formerly with Colombia’s National Planning Department.

3. A PPP unit’s role can include a wide range of executive or advisory responsibilities and tasks, including the following:
   - Assessing specific legislative matters;
   - Developing guidelines and methodologies;
   - Analyzing the portfolio of projects suitable to be promoted as PPPs;
   - Selecting, evaluating, and defining projects;
   - Structuring, promoting, and bidding of projects, or providing support and assessment during structuring to lead government entities;
   - Standardizing contracts;
   - Analyzing and evaluating initiatives proposed by the private sector; and
   - Handling knowledge management, including maintaining databases and statistics and disseminating knowledge on the subject.

4. Selection of a Project Head

A project head should be chosen from within the PPP unit who will lead the project team—composed of the PPP unit and relevant government ministries—coordinate the different governmental entities involved, and interact with external advisors.

"... Designation of a project head has given us very good results."
—Rodrigo Velasco and Victoria Rodríguez, National Development Corporation, Uruguay

"[Project] teams should be established as mandatory, not as optional, as a possible way to solve problems in inter-administrative relations."
—Juan Hinojosa and Rocío Moreno, government of state of Guanajuato, Mexico
5. **Creation of a Contingency Fund for State-Retained Risks**

A contingency fund that can be used to meet the PPP’s financial obligations is an important feature. A contingency fund that was implemented in Colombia years ago is endowed with resources that are calculated based on an exhaustive study of the occurrence and impact of risks retained and transferred in the case of a PPP.

### Case Study

**A Contingency Fund for Colombia’s Public Entities**

A contingency fund’s main objective is to ensure the availability of resources in the government to address the obligations arising from the occurrence of risks retained by the state in PPP contracts.

This best practice provides projects with greater solvency and mandates an in-depth qualitative and quantitative risk analysis before a decision is made to proceed with the project.

The Colombian government has made enormous progress in learning from and adapting international best practices regarding contingency funds.

The history of Colombia’s fund and its contingent liabilities can be followed at:

[www.minhacienda.gov.co/HomeMinhacienda/creditoydeudapublicos/Riesgo/PasivosContingentes1](http://www.minhacienda.gov.co/HomeMinhacienda/creditoydeudapublicos/Riesgo/PasivosContingentes1)

Colombia is leading Latin America and the Caribbean in the area of risk-management procedures. Although the procedures’ highly theoretical nature may cause difficulties, the uniformity and confidence that they provide are highly valuable in ensuring the success of PPPs.

6. **Eligibility Assessment before Bidding PPP Projects**

It’s highly recommended that a government assess a project’s eligibility to be a PPP before deciding whether to proceed with the project as a PPP. This process—allready underway in Uruguay—makes optimal use of resources by focusing the efforts of the structuring government entity, and thereby helps to maximize the success rate of projects finally opened for bidding. The selection of projects to be bid should be based on a multi-criteria analysis; political criteria or budgetary restrictions should not appear to be the sole motivation.
### Case Study

#### Project Eligibility in Uruguay

One highly recommended practice is to clearly spell out the criteria and processes to select a project for possible structuring as a PPP. This makes optimal use of the resources of the PPP unit and the other government entities involved, and helps give confidence to lead government entities.

The Uruguayan selection process is notable. On the Ministry of the Economy’s website, there is a section dedicated to PPPs ([http://ppp.mef.gub.uy/](http://ppp.mef.gub.uy/)), with links to guidelines and manuals, in particular the National Development Corporation’s “Index of eligibility for selecting PPP projects in infrastructure and services.”

The guidelines and manuals can be downloaded at: [https://www.mef.gub.uy/14820/2/areas/guia-para-estudios-previos-ppp.html](https://www.mef.gub.uy/14820/2/areas/guia-para-estudios-previos-ppp.html)

#### Preparation of Guidelines and Manuals

The PPP cases analyzed for this report yielded these best practices in the preparation of guidelines and manuals for structuring, development, and monitoring of PPP projects:

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<tr>
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<tbody>
<tr>
<td>Specifies procedures and criteria for feasibility studies (technical, economic, financial, and legal)</td>
<td>Establishes procedures and criteria for feasibility studies (technical, economic, financial)</td>
<td>Establishes guidelines for and a description of the project-structuring process</td>
<td>Establishes guidelines for creating a record of statistics on the main variables (for example, changes in costs and time periods)</td>
</tr>
<tr>
<td>Contains general guidelines for preliminary analysis of possible options</td>
<td>Contains guidelines for cost-benefit analysis</td>
<td>Contains guidelines for risk analysis and determination of liabilities, contingencies, and weaknesses of a project</td>
<td>Establishes criteria for control by the administration of satisfactory compliance with the contract</td>
</tr>
<tr>
<td>Establishes criteria to form a working team for a project that combines the technical capacities needed</td>
<td>Contains guidelines for the preparation of public-private comparison (value-for-money assessment and multi-criteria assessment)</td>
<td>Contains the main features required for a self-monitoring system for private partners</td>
<td></td>
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<tr>
<td>Contains guidelines for preliminary verification of the existence of budgetary resources for a project</td>
<td>Contains guidelines for the preparation of spreadsheets and management of adjudication procedures (specific components of competitive dialogue)</td>
<td></td>
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<tr>
<td>Contains guidelines for assessing unsolicited private proposals</td>
<td>Contains guidelines for standardization of contracts (includes types of clauses)</td>
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</table>

### Index APP

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Score</th>
</tr>
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<tbody>
<tr>
<td>Institutionalized</td>
<td>3.16</td>
</tr>
<tr>
<td>Strategy</td>
<td>3.25</td>
</tr>
<tr>
<td>Cohesion</td>
<td>3.68</td>
</tr>
<tr>
<td>Results</td>
<td>3.44</td>
</tr>
<tr>
<td>Competence</td>
<td>4.27</td>
</tr>
</tbody>
</table>
A good training plan should evolve along with the needs of each phase of a project, and be specific to each department or service.

It is highly recommended that training be offered by educational institutions offering courses on the subject at hand at the undergraduate level or higher, because this provides continuity, encourages follow-up, and gives the private sector access to the training. Mexico has had successful experiences with online courses offered by the Monterrey Technology Institute and with onsite courses at the Polytechnic University of Madrid.

Including the private sector in PPP training is another best practice that has not been verified in the majority of cases, but interviewees were practically unanimous in saying it was necessary. Training will be an incentive for the local private sector to participate in PPP projects.

**Case Study**

**Structured Training**

The importance of providing solid training in PPP subjects is evident, and all countries that have participated in MIF projects have appreciated it.

To ensure that this training is ongoing, consistent, and accessible to both the public and private sectors, another best practice is degree programs—whether through online courses (such as the Monterrey Technology Institute degree) or onsite classes offered through the collaboration of chambers of commerce or educational institutions (for example, courses offered by the National Development Corporation in Uruguay, in collaboration with the Polytechnic University of Madrid).

Related links:

- [www.csg-master.com](http://www.csg-master.com)

**9. Creation of a Guarantee Fund**

In environments where there is a significant risk that budgetary disbursements for PPP projects won’t be forthcoming (for example, at the level of local governments, or in the case of a national government with a negative track record for paying bills on time), the creation of a guarantee fund may be recommended. The fund would not be designed to cover contingencies, but to make payments for the administration’s commitments.
A favorable climate for PPPs is not worth much if funding is not available. Mexico, Brazil, and more recently, Colombia have public tools that facilitate project financing. In both Mexico and Colombia, different financing structures have been under consideration, and the countries have a relatively developed financial market in place.

Therefore, another best practice is to set up public financial instruments (funds, lines of credit from official finance entities, etc.) that can finance or co-finance PPP projects.

In Mexico, this task is largely carried out by FONADIN (www.fonadin.gob.mx), and in Brazil, by BNDES (http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/). In Colombia, the National Agency for Infrastructure is financing the ambitious fourth generation of a road concession program.

It is important to provide incentives for private banks and institutional investors to participate in the financing of PPP projects, thereby encouraging the issuing of bonds, and not to entrust the entire financing to public entities. That said, the public role is crucial in the first steps of PPP policy development, and to ensure financing at moments when credit markets become constricted.
The author wishes to express his gratitude to the people interviewed for the preparation of this work:

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