

Public Private Partnership:

International Standards and Georgian framework

Dr. Dimitri Japaridze

**TBILISI
2005**

Contents

CONTENTS	2
DEFINITION.....	3
BRIEF HISTORY	3
THE PPP REVIVAL IN EUROPE DURING FROM 1990.....	4
PPP IN INFRASTRUCTURE DEVELOPMENT	4
IN WHICH POSITION IS GEORGIA IN TERMS TO PPP?.....	6
Cases.....	6
1. Association of Banks of Georgia and Pension Payment Tender.....	6
2. SME'S	7
3. Education.....	7
4. Partnership to improve Legal framework.....	8
5. Environmental cooperation.	8
6. PPP in Infrastructure and Industry(Capital intensive projects)	10
Box 1: Long-term lease of the Poti Sea Port terminals	11
CONCLUSIONS	12

Definition

Public-Private Partnership (PPP) is a contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system.

The term public-private partnership defines an extensive set of relationships from relatively simple contracts to development agreements that can be very complicated and technical:

BLO-Build, Lease, Operate

BOT-Build, Operate, Transfer

BOO-Build, Operate, Own

Brot-Build, Rehabilitate, Operate, transfer

ROT-Rehabilitate, Operate, Transfer

RLT-Rehabilitate, Lease, Transfer

Brief history

In ancient times, many public works (harbours, public markets) and collective infrastructure (public baths) were conceded. Book 50 of the Digeste (public and private law book published in A.D.530) is entirely dedicated to public works. It shows clearly the existence of concession law and of a law governing public estate licensees.

This procedure disappeared during the 5th century with the fall of the Roman Empire and reappeared only during the Middle Ages for the construction of new fortified towns and the occupation of new lands in the south western region of France during the 12th and 13th centuries. Occupancy contracts for fortified towns concede whole villages to their occupants under collective contracts which compelled the occupants to improve the village.

During the 16th and 17th centuries, European sovereigns, and particularly in France, conceded public works to their “financial investors” generally called entrepreneurs. Such works included: riverbeds and canal construction, numerous public services such as road paving (actual road concessions), waste collection, mail distribution, public transportation, general stores, and even opera houses.

This system existed in European countries: e.g. the canal concessions in Britain (Oxford canal concession of 1791).

Concessions truly took off in Europe in the 19th century during which public works flourished not only for railroads, but also urban services which expanded rapidly as a consequence.

The PPP revival in Europe during from 1990

Several European states adopt PPPs to stimulate the economy. At the same time, they seek a better value for public monies, while respecting the proper rate of development for their basic infrastructure. The combined goals call for the use of alternative resources, private funds and cohesion funds. Generally, all states want to promote better budget management, greater efficiency in public management and respect for European public finance management criteria. The revival of private management methods stems from the notion that tax expansion is unacceptable and that it is necessary to find alternative ways to develop public infrastructure.

In the nineties, several countries set up taskforces to manage PPP programs, initiatives were taken to develop new contract forms.

Two traditions underlie concessions in contemporary Europe with different impacts. This very ancient system goes back a long way in France. It was developed in the nineties in Spain and Portugal. The Private Finance Initiative system launched in Great Britain in 1992 is also now developing in the Netherlands. Italy created in 2000 a PPP Taskforce. Belgium enjoys extended and renewed rights concerning concessions. North European countries and Switzerland are now renewing the process, which was once part of their usual public procedure.

Public-private partnership (PPP) mechanisms have become the clear choice for governments worldwide to improve service delivery, attract investment, reduce costs, and increase accountability. Although tremendous progress has been made in the last ten years in designing and implementing PPP programs and transactions, most countries have only just "scratched the surface" of their enormous potential as an economic and governance tool. The knowledge of the "why and how" to effectively use PPP strategies and techniques is a valuable resource, one that is slowly taking hold amongst all stakeholder groups including government, the private sector, and the public-at-large.

Public-private partnerships can generate substantial benefits for public agencies interested in encouraging innovation and saving time and money on projects. Risk aversion and lack of experience with the private sector, however, often drive public agencies to spend considerable time and resources developing systems for soliciting projects, ensuring adequate competition, and allocating the risks associated with designing, constructing, and operating a large transportation facility. These administrative procedures limit private sector flexibility and have deterred many States from fully exploring such partnerships.

PPP in infrastructure development

Public-private partnerships generally fall into one of five categories, based on the reasons for their creation. The five key public-private partnership categories are:

1. Partnerships *designed to accelerate* the implementation of high priority projects by packaging and procuring services in new ways;
2. Partnerships that turn to the private sector *to provide specialized management capacity* for large and complex programs;
3. Partnerships focused on arrangements to facilitate the *delivery of new technology* developed by private entities;
4. Partnerships drawing on private sector expertise in *accessing and organizing the widest range of financial resources*;
5. Partnerships to allow and encourage *private entrepreneurial development, ownership, and operation* of highways and/or related assets

The main areas for PPP activities are:

1. Energy
2. Telecommunications
3. Transport
4. Water and Sewerage
5. Agriculture
6. Education
7. Health
8. Tourism, etc.,

The segments covered by partnership are numerous:

- Electricity-Generation, transmission, distribution
- Natural-Gas transmission and distribution
- Telecommunications-Fixed access, mobile access, long distance
- Airports-Runway and terminal
- Seaports-Channel dredging and terminal
- Railways-fixed assets, freight, intercity passenger, urban passenger
- Toll-roads-Bridge, highway, tunnel
- Potable water-Water treatment and distribution

We may distinguish four types of infrastructure projects by nature of contracts:

Management and Lease Contracts. A private entity takes over the management of an enterprise for a fixed period while ownership and investment decisions remain with the government. There are two subclasses of management and lease contracts:

- ✓ *Management contract.* The government pays a private operator to manage the assets.. The operational risk remains with the government.
- ✓ *Lease Contract.* The government leases the assets to a private operator. The operator takes on the operational risk.

Concessions. Private entity takes over the management of a state-owned enterprise for a fixed period during which it also assumes significant investment risk. There are following categories of concessions:

- ✓ *Rehabilitate, operate, transfer.* A private sponsor rehabilitates an existing asset, operates and maintains the facility at its own risk for the contract period.
- ✓ *Rehabilitate, lease or rent and transfer.* A private sponsor rehabilitates an existing infrastructure in its own risk, leases or rent the facility from the government owner, then operates and maintains the facility at its own risk for the contract period.
- ✓ *Build, rehabilitate, operate, transfer.* A private developer builds the facility or completes a partially built facility and rehabilitate existing assets, operates and maintains the facility at its own risk for the contract period.

Greenfield Projects. A private entity or a public-private joint venture builds and operates facility for the period specified in the project contract. The facility may return to the end of concession period. The Greenfield Projects are classified by following types:

- ✓ *Build, lease, own.* A private owner builds a new facility largely at its own risk or leases the facility from the government and operates at its own risk, then receives full ownership of the facility at the end of the concession period.
- ✓ *Build, own, transfer or build, own, operate, transfer.* A private sponsor builds at its own risk, owns and operates the facility at its own risk, then transfers out the facility to the government at the end of the concession period. The government provides

revenue guarantees through long-term take-or-pay contracts for building facilities or minimum traffic revenue guarantees.

- ✓ *Build, own and operate.* A private sector builds a new facility at its own risk and operates the facility at its own risk. The government usually provides revenue guarantees through long-term take-or-pay contracts for bulk supply facilities and traffic revenue guarantees.
- ✓ *Merchant.* A private sponsor builds a new facility in a liberalized market in which government provides no revenue guarantees. The private developer assumes the operating and market risk for the project.

Divestitures. A private entity buys an equity stake in a state-owned enterprise through sale, public offering or mass privatization program. Divestitures types are:

- ✓ *Full.* The government transfers 100% of the equity in the state owned company to private entities(operator, institutional investor)
- ✓ *Partial.* The government transfers part of the equity in the state-owned company to the private entities(operator, institutional investors) The private stake may imply private management of the facility.

In which position is Georgia in terms to PPP?

It's clear that the history of collaboration of public and private sectors is not impressive. The reason is hard communism legacy. The ideological standards of the communist regime served as main impediment to PPP development. The importance of individualism was totally ignored, while the monopoly for all public aspects belonged to state. The signs of first attempts to set up public private partnership appeared in the early 90's. The aspiration of society towards the self expression and civilized standards has been significantly increased for that period. The relationship between the state and private sectors activated to mentioned date. Of course, we can not state about the voluntary retreat of the bureaucracy. They were forced to recognize the increasing function of the private sector and NGO's and commenced the equal partnership with them. The initial phase of the partnership was interesting and productive and entailed the delivery of services in the spheres of education, media, public finances and legislative cooperation.

We may indicate few spheres of positive partnership to date. Familiarization with rare success stories gives us minimum impression about ongoing developments in terms of PPP in Georgia. Simultaneously we consider the spheres with zero success in PPP as infrastructure projects or others.

Cases

1. Association of Banks of Georgia and Pension Payment Tender

Special tender to select service provider commercial bank for pension system service was organized by government. The Association of Georgian banks(ABG) was not admitted to participate in the tender commission functioning. PSI and the Coalition of NGO's launched an advocacy campaign targeting government officials and the public to ensure that ABG was included as a member of the tender commission. This helped determine the terms of the tender and helped choose the winner during the competition. This was the first time that a business association was permitted to participate at such a high level of decision-making.

The authorization to provide pension service may be considered as rare successful example of PPP in the financial sector. The case deals with full transfer of pension service to commercial banks. The government profited in multiple way by doing so:

- ✓ Cost reduction

- ✓ Increase of service efficiency, etc.,

The mentioned example enables us to conclude about significant potency of partnership between public and private sectors in the financial sphere. The successful pension service delivery conditioned further continuation of partnership and entailed new option like salary service by plastic cards issued by commercial banks.

2. *SME'S*

This is the issue of high priority to organize joint attempts of public and private sectors to provide support for small and medium size companies. The environment for mentioned segment is in the phase of crisis. The figures are clear to be persuaded about poor conditions in the SME sector:

-SME total output in the GDP is about 20%

-SME's share in the total unemployment is about 1/3.

Both figures are extremely low compared with Western European and even CIS countries. The mentioned figures show how important is the partnership in SME sphere. The strategy of PPP in SME sphere should entail:

- ✓ Definition of main aspects of support from government
- ✓ Elaboration of development policy
- ✓ Selection of instruments of financial support

Stimulation of development of education and qualification improvements, etc.,

Partnership between public and private sectors may condition synergic effect based on characteristic strength of each sector:

private sector may contribute by use of it's unique competence:

- ✓ Deep knowledge of market demand
- ✓ Managerial experience
- ✓ Awareness in competitiveness trend
- ✓ Rich experience in SME's establishment
- ✓ Flexibility and innovation
- ✓ Finance and human resources

The Strength of public sector contains:

- ✓ Monopoly to form legal framework
- ✓ Regulatory functions
- ✓ Possessing tools to modify economic environment

It is of high importance to arrange successful cooperation with international institutions in this process. Their long term experience may cause effective start up phase in the formation of favourable environment for SME's. The international institution's experts have to be included in the Coordination Council of SME's under Ministry of Economy which'll be established by autumn 2005. Council will function on all aspects of SME's development and may be considered as successful example of partnership between public and private sectors.

3. *Education*

The partnership practice in education sector also rises some concerns. In the early 90's the private sector was admitted to play significant role in the georgian education market. It has been formulated the main task for private sector: supply to georgian labour market competitive, qualified high school graduates. The private sector output in this regard may be characterized as intensive, though with low quality service delivery. As a result, government's supervisory function became stricter, aiming to limit private sector's service

involvement in high schools. Number of accredited high education institutions reduced, limiting the access to educational service delivery for less reliable institutions

Still important is the share of private sector in the so called "technical professional schools". The share of private institutions constitutes 70% of total number.

The accreditation process has limited the scale of PPP in education sector, though it's understood well by society as it aims to harmonize georgian educational system with european standards.

4. Partnership to improve Legal framework

It's worth mentioning to consider the public private partnership practice in legal framework improvement. All legal initiatives which are important for businesses are detailly considered by business interests advocate institutions before the draft is submitted to adopt by parliament session. Such practice of cooperation bears institutional frame. Actually numerous Business associations are lobbying for interests of georgian companies in diverse sectors. Amongst them two are considered as multilateral cluster lobbyists:

- Business Council under The Chair of Parliament
- Business Council under The Prime Minister

These leading institutions are serving as umbrella units to provide stable and permanent relationship between parliament, Government and private sector. They assumed as a basis the objective of improvement busines environment by close partnership and joint activities. The practice of such cooperation can be assessed as positive public private partnership, though it is too far from desirable standard.

New Tax Code elaboration procedures may be considered as clear example of fruitfull cooperation between private sector and government, though there nare alot of complaints from private sector in regards to final version of the mentioned law.

The preparation processus of the Anty-money laundering law is also assessed as best public private partnership example, which has been adopted by parliament on the basis of joint, well coordinated efforts of the governmental, private and non-governmental sectors.

5. Environmental cooperation.

The practice of relationship of Public and Private sectors in Environmental issues are positive. The main achievments are done in interaction between Public institutions, private companies and NGO's. The example of collaboration between British Petroleum and georgian public institutions and NGO's may be defined as successful.

BTC Co developed Project Environmental Investment Plans(PEIP) and Project Community Investment Plans(PCIP) to set up the public private partnership practice in pipeline project. The PEIP will help towards achieving the "no-net-loss" principle in respect of the ecological impacts of the projects, by promoting and conserving biodiversity. Specific projects to be supported under the PEIP have been identified with the involvement of a wide range of stakeholders and include:

- the need for public awareness
- the conservation of habitats
- the conservations of important species

Stakeholder's dialogue has identified key themes for the programme:

- the development of economic opportunities and income generation
- development of the agricultural sector
- strengthening the capacity of communities to self organise, manage and initiate community drive development

An associated BP corporate strategy has been established that sets out five elements for action:

- *Responsible Operations*-understands impacts on biodiversity and demonstrate continual improvement in performance
- *Public Policy*-contribute constructively to the public policy on biodiversity
- *External Relations*-understand what is important to people, forming partnerships to develop solutions to biodiversity issues
- *conservation Projects*-create collaborative partnerships, fund and contribute to conservation activities aligned with local, national and global priorities
- *Research, Education and Awareness*-make a positive contribution to biodiversity research and education.

The development of the projects also takes full account of the biodiversity initiatives that are being pursued by the georgian government:

- A Country Study Report on the status of biodiversity
- A Biodiversity Action Plan
- National Environmental Action Programme that considers biodiversity issues.

The assessment process has taken account of comments received from stakeholders and the key themes selected for georgia are as follows:

- Public awareness/community involvement
- brown bear conservation management
- Black Grouse habitat investigation, monitoring and conservation management
- Ktsia-Tabatskuri Managed Reserve management planning
- sustainable forest management pilot project
- Borjomi-Kharagauli National Park Support Zone

Consultation and working in partnership with different organisations is seen as essential to the success of the environmental investment programme. A dual approach has been adopted:

- Identification of potential project partners through Requests for Proposals made under the key priority themes
- Working with government agencies to define and implement projects within key priority themes.

The purpose of another PCIP project is to provide positive benefits through the promotion of sustainable social and economic and environmental development for the communities along the pipeline route within Georgia. The Principle Objective of the PCIP is the promotion of sustainable social, economic and environmental development with project-affected settlements along the BTC Pipeline route. Priority is given to programmes that focus on the following:

- *increased economic opportunities for income and employment* creation through the provision of a mix of instruments,,: micro-finance, rural credit in combination with vocation training, business services for micro-enterprises,extension services for rural areas
- *capacity building and institutional strengthening* to develop organised and strengthened communities so that they are better able to meet their own needs through

community mobilisation initiatives and community driven development approaches, and to ensure that communities are involved in all stages of project selection, implementation and management

- *refocused health and sanitation programmes* to produce greater impact and sustainability at the community level.
- *improved economic and social infrastructure* at the local level through community organisation and participation, with rehabilitation of existing facilities and structures given a priority

6. PPP in Infrastructure and Industry (Capital intensive projects)

The role of Georgian public institutions in regard of capital intensive infrastructure projects implementation may be assessed as passive and not satisfactory. The privatization process is exploiting some PPP instruments in infrastructure sphere. (ex: see box 1)

Box 1: Long-term lease of the Poti Sea Port terminals

Published: June 13, 2005

Georgian Ministry of Economic Development

Industry:	TRANSPORTATION AND DISTRIBUTION
Purchase Needed By:	August 30, 2005
U.S. Dollar Value:	n/a
Brief Description:	International tender for long-term lease of the Poti Sea Port Terminals
Detailed Description:	<p>Poti Sea Port LLC announces an international tender for long-term lease of the Terminals N 9-10 Long-term lease of the Terminals N 9-10 Present International tender (hereinafter "Tender") represents one of the steps of restructuring strategy in Poti Sea Port.</p> <p>Tender intends to increase cargo turnover on the terminals No 9-10 and to ensure steady growth through modernization of terminal facilities and introduction of modern management practices. The Tender commission established by the Order of the Minister of Economic Development No 1-1/657, May 11, 2005 invites bids from companies and consortiums worldwide to compete for the lease contract of the terminals N 9-10.</p> <p>Period of the lease contract is 25 years. Mandatory investments shall be made during the period of the lease contract.</p> <p>Evaluation of Bids will be performed in two stages. Bidders are required to submit qualification documents and a bid proposal consisting of technical and financial proposals, each of them placed and sealed in separate envelopes.</p> <p>Bidders shall present a bank guarantee for participation in the Tender in the amount of USD 300,000. Cost of the Tender documentation is USD 5,000.</p> <p>Terms and requirements are described in the tender documentation, which consists of three parts:</p> <ol style="list-style-type: none"> 1. Tender - instruction for bidders 2. Draft Contract 3. Tender Requirements <p>Tender Schedule:</p> <p>Survey of the port and the terminal - August 9, 2005, at 12:00 local time</p> <p>Pre-tender conference - August 9, 2005, at 14:00 PM</p> <p>Deadline for submissions of questions to the Tender Commission - August 22, 2005</p> <p>Deadline for submission of bids to the Tender Commission - Until 17:00 PM August 30, 2005</p> <p>Opening of bids - On August 31, 2005, at 12:00 local time</p> <p>Announcements of the tender results - Until September 30, 2005</p> <p>All bidders purchasing the Tender Documentation can obtain the further information concerning the tender at the administration of Poti Sea Port every day (except weekends and holidays) from 10 am to 17:00 pm.</p> <p>Poti, Georgia Tel/Fax: +995 393 70146 E-mail: administration@potiseaport.com</p>

Conclusions

This survey intended to accomplish following goals:

- to provide initial information about PPP International standards.
- to assess the existing practice of public private partnership in Georgia.
- to provide some recommendations with regard to possible areas of future developments
- to identify future targets and sector focuses for PPP in bilateral technical cooperation-with international institutions.
- to address these issues to government

Based on above presented information we can conclude that some activities has been already done in the framework of public private partnership in Georgia. Despite these activities the governmental policy in regard to the public private partnership requires some changes and improvement, which would result into the activation of private sector in solving the problems faced by the society, and consequently, into the more involvement to deliver better services for public.

Several recommendations could be given for further improvement of public private partnership conditions in Georgia:

It's clear that government have to adopt policy that promote public private partnerships as an unique option for service delivery, especially for regional areas. The concept should be embraced enthusiastically by all segments of georgian society. The following issues of PPP is to be considered by government policy:

- the types of services or projects for which it will consider public private partnership
- the forms of public private partnership it will consider
- the degree of risk it is prepared to accept as well as how it intends to manage the risk
- its criteria for determining whether public private partnerships are a viable method of service delivery
- its policy on the involvement of stakeholders throughout the process consistent with legislation, as well as on fundamental principles such as transparency, accountability and inclusiveness
- the types of partners that are eligible to become involved in public private partnerships with the local government, etc.

Which topics should be covered by georgian government in it's PPP policy?

Investment commitments for infrastructure have to be increased in agriculture and tourism. The regional administrations should focus on supports for creating new assets by means of greenfield projects in the agriculture, tourism, SME's. The private participation in mentioned sectors must be introduced by government as main consistent part of the sectoral reforms. Such reforms have to redefine the role of the state and put infrastructure operations on a more commercial footing. The private participation in touristic, agricultural, wine infrastructures are not always free of difficulties. As evidence may be considered the small output of the mentioned sectors. It's clear that private sector lacks the latest know-how and technologies. Lack of knowledge of global market trends is the traditional weakness of the georgian agricultural and wine sectors. This problem should be solved by intensifying the relations with international institutions and by their involvement in the public private partnership in Georgia.