Annex A

OECD principles for private sector participation in infrastructure

The OECD established principles covering five important sets of challenges for national authorities in private sector participation in infrastructure (OECD, 2007). First, the decision to involve the private sector has to be guided by an assessment of the relative long-term costs and benefits and availability of finance, taking into account the pricing of risks transferred to the private operators and prudent fiscal treatment of risks remaining in the public domain. Second, authorities need to ensure an enabling policy framework for investment. Third, the success of private involvement in infrastructure depends on public acceptance and on the capacities at all levels of government to implement agreed projects. A fourth challenge for public authorities and the private sector is to establish a working relationship toward the joint fulfilment of the general public's infrastructure needs. Fifth, insofar as they are not rooted in formal legal requirements, governments' expectations regarding responsible business conduct need to be clearly communicated by governments to their private partners.

Deciding on public or private provision of infrastructure services

1. The choice by public authorities between public and private provision should be based on cost-benefit analysis taking into account all alternative modes of delivery, the full system of infrastructure provision, and the projected financial and non-financial costs and benefits over the project lifecycle.
2. No infrastructure project – regardless of the degree of private involvement – should be embarked upon without assessing the degree to which its costs can be recovered from end-users and, in case of shortfalls, what other sources of finance can be mobilised.
3. The allocation of risk between private parties and the public sector will be largely determined by the chosen model of private sector involvement, including the allocation of responsibilities. The selection of a particular model and an associated allocation of risk should be based upon an assessment of the public interest.
4. Fiscal discipline and transparency must be safeguarded, and the potential public finance implications of sharing responsibilities for infrastructure with the private sector fully understood.

Enhancing the enabling institutional environment

5. A sound enabling environment for infrastructure investment, which implies high standards of public and corporate governance, transparency and the rule of law, including protection of property and contractual rights, is essential to attract the participation of the private sector.
6. Infrastructure projects should be free from corruption at all levels and in all project phases. Public authorities should take effective measures to ensure public and private sector integrity and accountability and establish appropriate procedures to deter, detect and sanction corruption.
7. The benefits of private sector participation in infrastructure are enhanced by efforts to create a competitive environment, including by subjecting activities to appropriate commercial pressures, dismantling unnecessary barriers to entry and implementing and enforcing adequate competition laws.
8. Access to capital markets to fund operations is essential to private sector participants. Restrictions in access to local markets and obstacles to international capital movements should, taking into account macroeconomic policy considerations, be phased out.

Goals, strategies and capacities at all levels

9. Public authorities should ensure adequate consultation with end users and other stakeholders including prior to the initiation of an infrastructure project.
10. Authorities responsible for privately operated infrastructure projects should have the capacity to manage the commercial processes involved and to partner on an equal basis with their private sector counterparts.
11. Strategies for private sector participation in infrastructure need to be understood, and objectives shared, throughout all levels of government and in all relevant parts of the public administration.
12. Mechanisms for cross-jurisdictional co-operation, including at the regional level, may have to be established.

Making the public-private co-operation work

13. To optimise the involvement of the private sector, public authorities should communicate clearly the objectives of their infrastructure policies and should put in place mechanisms for consultations between the public and private partners regarding these objectives as well as individual projects.

14. There should be full disclosure of all project-relevant information between public authorities and their private partners, including the state of pre-existing infrastructure, performance standards and penalties in the case of non-compliance. The principle of due diligence must be upheld.

15. The awarding of infrastructure contracts or concessions should be designed to guarantee procedural fairness, non-discrimination and transparency.

16. The formal agreement between authorities and private sector participants should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance-based specifications. It should contain provisions regarding responsibilities and risk allocation in the case of unforeseen events.

17. Regulation of infrastructure services needs to be entrusted to specialised public authorities that are competent, well-resourced and shielded from undue influence by the parties to infrastructure contracts.

18. Occasional renegotiations are inevitable in long-term partnerships, but they should be conducted in good faith, in a transparent and non-discriminatory manner.

19. Dispute resolution mechanisms should be in place through which disputes arising at any point in the lifetime of an infrastructure project can be handled in a timely and impartial manner.

Encouraging responsible business conduct

20. Private sector participants in infrastructure should observe commonly agreed principles and standards for responsible business conduct.
21. Private enterprises should participate in infrastructure projects in good faith and with a commitment to fulfil their commitments.
22. Private sector participants, their subcontractors and representatives should not resort to bribery and other irregular practices to obtain contracts, gain control over assets or win favours, nor should they accept to be party to such practices in the course of their infrastructure operations.
23. Private sector participants should contribute to strategies for communicating and consulting with the general public, including *vis-à-vis* consumers, affected communities and corporate stakeholders, with a view to developing mutual acceptance and understanding of the objectives of the parties involved.
24. Private sector participants in the provision of vital services to communities need to be mindful of the consequences of their actions for those communities and work, together with public authorities, to avoid and mitigate socially unacceptable outcomes.

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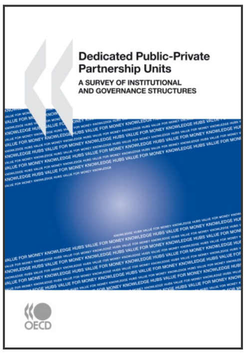

From:

Dedicated Public-Private Partnership Units

A Survey of Institutional and Governance Structures

Access the complete publication at:

https://doi.org/10.1787/9789264064843-en

Please cite this chapter as:

OECD (2010), “Annex A. OECD principles forprivate sector participation in infrastructure”, in *Dedicated Public-Private Partnership Units: A Survey of Institutional and Governance Structures*, OECD Publishing, Paris.

DOI: https://doi.org/10.1787/9789264064843-6-en