

Understanding Public-Private Partnerships in Nigeria

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Introduction to PPPs

Public-Private Partnership (PPPs) are long term contractual arrangements between the public sector (at both national and subnational levels) and private entities. These partnerships have become a cornerstone of infrastructure development, allowing the private sector to invest in, manage, and deliver services traditionally handled by the public sector. These services may involve the development, construction, operation, or maintenance of infrastructure.

PPPs in infrastructure projects offer a collaborative path for government and private sector institutions to work together. One of the key advantages of PPPs is the infusion of private sector expertise and technical know-how into public projects. This collaboration brings about effective and efficient project execution, ensuring that infrastructure developments are both successful and sustainable. The private sector's involvement also brings additional benefits, such as innovative solutions and the ability to navigate complex projects with greater ease.

In the context of Nigeria, PPPs have become an essential strategy for addressing challenges related to the provision of critical services and infrastructure. Given the government's budgetary limitations, PPPs enable the leveraging of private sector resources and efficiencies. This synergy not only accelerates the delivery of infrastructure projects but also promotes economic growth and enhances the quality of life for citizens through improved services. Additionally, such partnerships encourage innovation, share risks, and ensure accountability, contributing to sustainable development.

Legal Framework for PPPs in Nigeria

In Nigeria, the foundation for PPPs is set by the Infrastructure Concession Regulatory Commission (Establishment etc.) Act, 2005 ("ICRC Act" or "the Act"), amongst other sector related laws or PPP policies. The Act was enacted for "the participation of private sector in financing the construction, development, operation, or maintenance of Infrastructure or development projects of the Federal Government of Nigeria through concession of contractual arrangements, and the establishment of the Infrastructure Concession Regulatory Commission ("ICRC" or "the Commission") to regulate, monitor and supervise the contracts on Infrastructure or development projects.¹ The ICRC plays a crucial role in bridging government

¹ Explanatory Memorandum, ICRC Act, 2005.

bodies and private investors, aiming to foster collaborations that drive the nation's infrastructure forward.²

Recognizing the value of PPPs in accelerating infrastructure development and enhancing public services, several States have taken the initiative to create their own PPP frameworks. In 2011, the Lagos State Government enacted the Public Private Partnership Law 2011 ("the Lagos PPP Law"), replacing the Lagos State Roads (Private Sector Participation) Authority Law 2007 ("the PSP Law") as part of its ongoing efforts to enhance the legal framework for public-private partnerships. A key feature of the Lagos PPP Law is the establishment of the Office of Public-Private Partnerships ("the PPP Office"). This body is dedicated to facilitating infrastructure improvements and providing vital social amenities through PPPs, reflecting Lagos's proactive approach to development. Similarly, Cross River State unveiled its PPP legislation in 2010. These laws are designed to streamline and encourage private investment in public infrastructure, showcasing the States' commitment to leveraging PPPs for growth.

The recent amendments to the Constitution of the Federal Republic of Nigeria 1999 mark a significant milestone in decentralizing control over critical sectors.³ By granting States the authority to regulate aspects of the electricity and transport sectors, an innovative pathway has been opened for State governments to meet the infrastructure needs of their citizens more directly. This means state-level projects have the freedom to operate outside the ICRC's umbrella. It opens a landscape where State governments can independently craft and manage their own PPP arrangements.

As these legal amendments take effect, it is expected that PPP arrangements will proliferate across Nigeria's States, setting the stage for a wave of infrastructure development that is more responsive to local needs and aspirations.

Unlocking Opportunities: The Private and Public Gain

While the primary motivation for governments to engage in PPPs is often to address fiscal constraints and ensure the delivery of basic services, it is important to recognize the significant benefits that these partnerships also offer to private entities.

Private partners in a PPP arrangement enjoy numerous advantages, such as:

² <https://booklab24.com/product/the-effect-of-public-private-partnership-on-infrastructure-development-in-lagos-state-nigeria/>

³ Second Schedule, Part II of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

- **Revenue Opportunities:** Through user fees and government payments, private entities can secure a steady revenue stream.
- **Access to Capital:** PPPs open up avenues for private entities to access diverse financing sources, enhancing their ability to fund and execute large-scale projects.
- **Risk Mitigation:** Shared risk arrangements in PPPs allow private entities to manage and mitigate various project risks more effectively.
- **Long-term Revenue Stability:** The contractual nature of PPPs provides a framework for predictable and stable revenue over the long term.
- **Expertise and Innovation:** PPPs enable private entities to contribute their technical expertise and innovative solutions, leading to better project outcomes.
- **Asset Ownership and Management:** In some PPP models, private entities can own or manage the resulting assets, providing additional revenue and business opportunities.
- **Market Expansion and Reputation Building:** Participation in PPP projects can enhance a private entity's market presence and reputation in the infrastructure sector.⁴

For governments, PPPs unlock the ability to leverage the private sector's efficiency, innovation, and capital for public benefit. This collaboration leads to improved quality and cost-effectiveness of public services and infrastructure projects. Key benefits for public authorities include:

- **Efficient Delivery of Services:** By tapping into private sector expertise, governments can ensure more efficient and higher-quality project delivery.
- **Risk Transfer:** PPPs facilitate the transfer of project-related risks to the private sector, promoting timely and on-budget project completion.
- **Alternative Funding Sources:** Engaging with private partners allows governments to access alternative financing, reducing the reliance on public funds.
- **Enhanced Economic Growth:** By improving infrastructure and service delivery, PPPs stimulate economic activity and growth.

⁴ [Bello, Temitayo, Public Private Partnership in Nigeria: Algorithm and the Templates \(July 28, 2017\). Available at SSRN: https://ssrn.com/abstract=3010135 or http://dx.doi.org/10.2139/ssrn.3010135](https://ssrn.com/abstract=3010135)

Challenges and Pitfalls of PPPs

While PPPs offer numerous benefits, they also come with inherent challenges that must be navigated carefully. One significant challenge is the complexity of PPP contracts, which require meticulous drafting to ensure clear definitions of roles, responsibilities, and risks identification, allocation, and mitigation tools. Moreover, there is the potential for an inequitable distribution of risks, often disproportionately burdening the public sector, especially in cases of unforeseen circumstances leading to increased costs, project delays or reduced demand for the project's output. Transparency and public accountability also pose significant concerns, as PPPs can sometimes obscure the lines of public oversight, making it crucial for these agreements to include mechanisms for public scrutiny and reporting.

Despite these challenges, PPPs continue to be a valuable tool for addressing infrastructure gaps and enhancing service delivery. The key to unlocking their full potential lies in addressing these challenges head-on. This includes improving the clarity and fairness of PPP contracts, ensuring a balanced risk distribution that does not overburden the public sector, and enhancing transparency and accountability throughout the project lifecycle. By doing so, PPPs can truly leverage private sector resources and expertise for the public good, driving meaningful improvements in infrastructure development, service delivery, and ultimately, economic growth.

PPPs in Action: Success Stories from Nigeria

The Lagos-Epe Expressway project is a prime example of PPP success in Nigeria. This vital transportation project has drastically improved commute times and fostered economic activity in the surrounding areas, showcasing the tangible benefits of public-private collaboration. Another notable PPP achievement is the Azura-Edo Independent Power Plant, which has made significant contributions to Nigeria's electricity supply. This project highlights the positive impact of foreign investment and private sector technical expertise on the nation's infrastructure.

Future Directions and Emerging Trends

Looking ahead, PPPs are set to evolve with advancements in technology and changing economic landscapes. Innovative financing models, such as green bonds and social impact bonds, offer new ways to fund projects with environmental and social benefits. Technology plays a key role, with digital platforms enhancing project management and public engagement in PPP projects.

Emerging trends also point towards a greater emphasis on sustainability, with PPP projects increasingly being evaluated on their environmental impact and contribution to sustainable development goals (SDGs). As Nigeria continues to refine its PPP frameworks, the focus will likely shift towards projects that not only deliver economic growth but also promote social equity and environmental stewardship.

Charting the Path Forward: A Call to Action for Policy and Partnership

PPPs offer a symbiotic relationship where both public and private sectors can achieve their objectives—be it service delivery, infrastructure development, or financial gains—thereby contributing to overall societal and economic betterment. However, realizing their full potential requires a thoughtful reexamination and adjustment of current policies to better suit the collaborative nature of these ventures.

There is a clear need for policymakers and lawmakers to actively work on creating strong, transparent, and sustainable frameworks that encourage PPP projects. This involves cutting through bureaucratic red tape, clarifying legal aspects, and minimizing regulatory hurdles, thereby making the environment more inviting for PPP investments. At both national and subnational levels, the government must establish clear, supportive laws and regulations that outline the legal and regulatory groundwork necessary for attracting private investment in infrastructure projects.

At SimmonsCooper Partners, we recognize the role of legal and regulatory frameworks in ensuring the success of PPPs and offer services to guide businesses and government entities through the legal nuances of PPPs. For comprehensive insights into the development of PPP frameworks, please reach out to Temiloluwa Koya at temi.koya@scp-law.com or Daniel Adegbamigbe at daniel.adegbamigbe@scp-law.com or Mercy Ikeokwu at mercy.ikeokwu@scp-law.com.