

PUBLIC PRIVATE PARTNERSHIPS (PPPS)

Are collaborative agreements between government entities and private sector companies to deliver public services or infrastructure projects.

TYPES OF PPPS

. Build-Operate-Transfer (BOT)

- The private sector **designs, finances, builds, and operates** a project for a set period.
- After the contract period, the facility is **transferred back** to the government.
- Common in **roads, bridges, water treatment plants**.

2. Build-Own-Operate (BOO)

- The private sector **builds, owns, and operates** the project indefinitely.
- No transfer back to the government.
- Common in **power plants and telecommunication projects**.

3. Design-Build-Finance-Operate (DBFO)

- The private sector **designs, builds, finances, and operates** the project.
- The government pays for services provided instead of owning the asset.
- Used in **hospitals, schools, and transportation projects**.

4. Build-Lease-Transfer (BLT)

- The private sector **builds the infrastructure and leases it to the government** for a set period.
- After the lease term, the government **takes ownership**.
- Used in **government office buildings, hospitals, and housing projects**.

5. Build-Transfer-Operate (BTO)

- The private sector **builds and transfers ownership** to the government immediately.
- The private company **operates the project** for an agreed period.
- Common in **airport and railway projects**.

6. Concession Agreements

- The government **grants a private entity** the right to operate, maintain, and charge for public services for a certain period.
- Used in **toll roads, ports, and energy projects**.

7. Lease-Develop-Operate (LDO)

- The private sector **leases an existing public asset**, develops it, and operates it for a specified time.
- Common in **hotels, parks, and tourism facilities**.

8. Joint Ventures

- The government and private sector **form a company** to share ownership and operation responsibilities.
- Used in **infrastructure and industrial development projects**.

Advantages of Public-Private Partnerships (PPPs)

1. **Improved Efficiency**
 - The private sector brings expertise, innovation, and efficiency in project execution and service delivery.
2. **Access to Private Sector Financing**
 - Reduces the financial burden on the government by leveraging private investments.
3. **Risk Sharing**
 - Risks related to financing, construction, and operation are shared between the government and the private sector.
4. **Faster Project Completion**
 - Private sector efficiency helps ensure timely delivery of projects compared to government-led projects.
5. **Improved Quality of Services**
 - Competition in the private sector encourages high standards and better service delivery.
6. **Innovation and Technology Transfer**
 - Private companies bring new technologies and innovative approaches to public service provision.
7. **Budgetary Relief for Governments**
 - Governments can allocate public funds to other essential sectors like healthcare and education.
8. **Better Maintenance and Operation**
 - The private sector ensures high maintenance standards to protect their investment.
9. **Job Creation and Economic Growth**
 - PPP projects generate employment opportunities and boost local economies.
10. **Long-Term Value for Money**
 - Well-structured PPPs provide sustainable, cost-effective solutions for public services.

Disadvantages of Public-Private Partnerships (PPPs)

1. **High Costs**
 - PPPs can be more expensive than traditional government funding due to private sector profit margins and financing costs.
2. **Complex Contracts**
 - Negotiating and managing PPP agreements can be time-consuming and legally complex.
3. **Risk of Higher User Fees**
 - Private companies may charge higher fees for services (e.g., toll roads, utilities) to recover their investment.
4. **Long-Term Government Liability**
 - Governments may have long-term financial commitments, even if the project underperforms.
5. **Potential Quality Issues**
 - Some private companies may cut corners to maximize profits, affecting service quality.
6. **Limited Flexibility**
 - Once a PPP contract is signed, modifying or terminating it can be difficult and costly.
7. **Public Opposition**
 - Citizens may resist PPP projects, especially if they perceive them as privatization of essential services.
8. **Risk of Private Sector Failure**
 - If the private company goes bankrupt or fails to deliver, the government must take over the project, leading to financial strain.
9. **Profit-Driven Decision-Making**
 - Private companies prioritize profits, which may not always align with public interests.
10. **Corruption and Lack of Transparency**
 - Without proper oversight, PPPs can lead to corruption, favoritism, and mismanagement of public resources.

Establishment of the Public-Private Partnership (PPP) Unit in the National Treasury

The **Public-Private Partnership (PPP) Unit** within the **National Treasury** is a specialized government entity responsible for managing and overseeing PPP projects at the national level. It plays a key role in promoting, regulating, and ensuring the success of PPP initiatives.

Function of the PPP Unit

1. **Policy Formulation and Implementation**
 - Develops PPP policies, guidelines, and regulatory frameworks.
2. **Project Evaluation and Approval**

- Assesses the feasibility of proposed PPP projects before approval.
- 3. **Capacity Building**
 - Provides technical assistance and training to government agencies involved in PPPs.
- 4. **Financial Oversight**
 - Ensures value-for-money and financial sustainability of PPP projects.
- 5. **Risk Management**
 - Identifies, allocates, and mitigates risks associated with PPP projects.
- 6. **Stakeholder Coordination**
 - Acts as a link between the government, private investors, and development partners.
- 7. **Monitoring and Compliance**
 - Ensures that PPP contracts are executed as per agreed terms and conditions.

Key Guidelines and Standards for PPP Contracts and Project Agreements in Kenya

1. **Project Identification and Selection**
 - **Alignment with National Priorities:** Projects must align with Kenya's development agenda and be part of the national or county integrated development plans.
 - **Feasibility Studies:** Contracting authorities are required to conduct detailed feasibility studies to assess the technical, financial, legal, social, and environmental viability of proposed projects.
2. **Procurement Process**
 - **Competitive Bidding:** The Act emphasizes open and competitive procurement processes to ensure transparency and value for money.
 - **Direct Procurement and Privately Initiated Proposals (PIPs):** In specific circumstances, direct procurement or PIPs are permitted, provided they meet criteria set out in the Act.
3. **Project Agreements**
 - **Standardization:** The Public Private Partnerships Directorate (PPP Directorate) provides standard bidding documents and project agreement templates to maintain consistency and quality across PPP projects.
 - **Essential Clauses:** Agreements must include provisions on risk allocation, performance standards, payment mechanisms, dispute resolution, and termination procedures.
4. **Government Support Measures**
 - **Types of Support:** The government may offer support such as letters of support, guarantees, or other financial instruments to enhance project bankability.
 - **Approval Process:** Any government support must be evaluated and approved in accordance with the guidelines issued by the PPP Directorate.
5. **Contract Management and Monitoring**
 - **Oversight:** Contracting authorities, in collaboration with the PPP Directorate, are responsible for monitoring project implementation to ensure compliance with the agreed terms.

- **Independent Experts:** Where necessary, independent experts may be appointed to provide oversight and ensure project objectives are met.

6. **Transparency and Public Participation**

- **Disclosure:** The Act mandates the publication of project information, including contract awards and project progress, to promote transparency.
- **Stakeholder Engagement:** Public participation is required during the project development and implementation phases to incorporate stakeholder input and address concerns

7. **Environmental and social impact compliance**

All ppps. Projects must adhere to environmental impact assessment as per NEMA guidelines.

Composition of the PPP Petition Committee in Kenya

The **PPP Petition Committee** is established under the **Public Private Partnerships Act, 2021** to handle disputes and appeals related to PPP projects. It ensures fairness, transparency, and accountability in the implementation of PPP agreements.

Composition of the PPP Petition Committee

According to **Section 67 of the PPP Act, 2021**, the committee consists of:

1. **Chairperson** – Appointed by the Cabinet Secretary responsible for PPPs, with experience in law, finance, or public administration.
2. **Representative from the Attorney General’s Office** – Provides legal expertise.
3. **Representative from the National Treasury** – Ensures compliance with financial and economic policies.
4. **Representative from the Public Procurement Regulatory Authority (PPRA)** – Ensures adherence to procurement laws.
5. **Two Representatives from the Private Sector** – Nominated by business associations to provide industry perspectives.
6. **Secretary to the Committee** – Appointed by the PPP Directorate to facilitate the committee’s work.

Key Roles of the PPP Petition Committee

1. **Hearing and Resolving Disputes**
 - Handles complaints arising from the procurement, implementation, or management of PPP projects.
 - Acts as a dispute resolution mechanism before parties escalate matters to courts.
2. **Ensuring Compliance with PPP Laws and Regulations**
 - Verifies that all PPP projects adhere to the provisions of the **Public Private Partnerships Act, 2021**.

- Monitors compliance with national procurement and financial management guidelines.
- 3. **Reviewing Procurement and Contracting Complaints**
 - Examines disputes related to bidding processes, evaluation of tenders, and contract awards.
 - Ensures fairness and transparency in the selection of private sector partners.
- 4. **Interpreting PPP Agreements**
 - Provides legal and procedural guidance on the interpretation of PPP contracts.
 - Resolves disagreements regarding contract terms, obligations, and performance expectations.
- 5. **Recommending Corrective Actions**
 - Issues rulings and recommendations for corrective measures where irregularities are identified.
 - Can order the cancellation, modification, or re-tendering of PPP contracts in case of violations.
- 6. **Protecting Public and Private Sector Interests**
 - Ensures that PPP agreements benefit both the government and private sector without exploitation.
 - Balances risk-sharing arrangements to safeguard public resources.
- 7. **Advising the Government on Policy Improvements**
 - Identifies gaps in PPP implementation and recommends policy amendments.
 - Provides insights on improving the efficiency and effectiveness of PPP projects.

Establishment of the PPP Project Facilitation Fund in Kenya

The **PPP Project Facilitation Fund (PFF)** was established under the **Public Private Partnerships Act, 2021** to support the preparation, development, and implementation of **Public-Private Partnership (PPP)** projects in Kenya.

Key Roles of the PPP Project Facilitation Fund

1. **Financing Feasibility Studies and Project Preparation**
 - Supports technical, financial, environmental, and legal feasibility studies.
 - Ensures that only viable projects are selected for implementation.
2. **Providing Transaction Advisory Support**
 - Funds the hiring of legal, financial, and technical advisors for project structuring.
 - Ensures PPP projects are structured in a way that attracts private investment.
3. **Covering Procurement and Bidding Costs**
 - Provides financial assistance for the tendering process, including the preparation of bidding documents.
 - Ensures transparency and efficiency in the selection of private sector partners.
4. **Mitigating Financial Risks and Supporting Viability Gap Funding**
 - Offers funding to bridge financial gaps in projects that are socially beneficial but may not be commercially viable.

- Helps attract private sector investment by reducing financial risks.
- 5. **Enhancing Institutional Capacity and Training**
 - Funds training programs for public officials to enhance their understanding of PPP policies and project management.
 - Strengthens government institutions involved in PPP implementation.
- 6. **Supporting Project Monitoring and Evaluation**
 - Provides funding for the supervision and assessment of PPP projects to ensure they meet expected outcomes.
 - Helps track performance, compliance, and impact of projects.
- 7. **Facilitating Dispute Resolution**
 - Allocates resources for legal and arbitration costs in case of disputes between public and private partners.
 - Ensures smooth implementation of projects by addressing legal and financial conflicts.
- 8. **Encouraging Innovation and Private Sector Participation**
 - Provides incentives to encourage innovative solutions and private sector involvement in infrastructure and service delivery.
 - Ensures that PPP projects contribute to national economic development.