

## TERMS OF REFERENCE

### Project: Lending to PPPs

<b>Project Owner:</b>	<b>MEF State Secretary coordinating the issue (TBA)</b>
<b>Project Manager:</b>	<b>A MEF manager from the PPPs Unit (TBA)</b>
<b>Deputy Project Managers:</b>	<b>A bank manager from the corporate lending or product development areas (TBA) A PPP EBRD/IFC expert</b>

**Technical Anchor (TAN): TBD**

**Project Working Group:** **Representatives of banks, Association/Federation of the Local Public Authorities, business associations, Ministry of Transport, Ministry of Development, Public Works and Housing etc**

### **I - Background**

Public-private partnerships" (PPP) refer to contractual agreements formed between a public agency and private sector entity that allow for greater private sector participation in the delivery of big assets or infrastructure projects.

Traditionally, private sector participation has been limited to separate planning, design or construction contracts on a fee for service basis – based on the public agency’s specifications.

Expanding the private sector role allows the public agencies to tap private sector technical, management and financial resources in new ways to achieve certain public agency objectives such as greater cost and schedule certainty, supplementing in-house staff, innovative technology applications, specialized expertise or access to private capital. The private partner can expand its business opportunities in return for assuming the new or expanded responsibilities and risks.

Some of the primary reasons for public agencies to enter into public-private partnerships include:

- Accelerating the implementation of high priority projects by packaging and procuring services in new ways;



- Turning to the private sector to provide specialized management capacity for large and complex programs;
- Enabling the delivery of new technology developed by private entities;
- Drawing on private sector expertise in accessing and organizing the widest range of private sector financial resources;
- Encouraging private entrepreneurial development, ownership, and operation of infrastructure.

The PPPs provide benefits by allocating the responsibilities to the party – either public or private – that is best positioned to control the activity that will produce the desired result. With PPPs, this is accomplished by specifying the roles, risks and rewards contractually, so as to provide incentives for maximum performance and the flexibility necessary to achieve the desired results.

The primary benefits of using PPPs include:

- Expedited completion compared to conventional project delivery methods;
- Project cost savings;
- Improved quality and system performance from the use of innovative materials and management techniques;
- Substitution of private resources and personnel for constrained public resources;
- Access to new sources of private capital.

**The Romanian legislation has been recently amended in order to be better aligned with EU Directives and the institutional framework has been completed by establishing a special unit in MEF. Banks appreciate that additional measures have to be taken in order to reach a better level of risk sharing among the public and private partners and to clarify legal aspects.**

If banks feel more comfortable with the PPP regulatory framework and have a better understanding of the risk sharing and of the ways to mitigate them, they would be more willing to finance PPPs. This would boost large value infrastructure projects and the absorption of EU structural funds which are often used by PPPs, and, at the same time, would have positive effects on the banks' business

## **II - Project Objective**

To prepare a document underlining the main provisions of the regulations on PPPs, providing clarifying details on the interpretation of the legal provisions and the identified solutions for a better legal and institutional framework in order to facilitate lending under PPPs

## **III – Intended Strategy**

The project management group (Project Owner, Project Manager, Deputy Project Managers, supported by the SPI Secretariat) acts based on the mandate received from the SPI Committee to prepare a document underlining the main provisions of the regulations on PPPs, providing clarifying details on the interpretation of the legal provisions and the



identified solutions for a better legal and institutional framework in order to facilitate lending under PPPs

The project management group (PMG) should gain a satisfactory understanding on the drawbacks and/or unclear issues perceived by various stakeholders in the application of the current regulatory framework. Based on the information and documentation provided by PMG, SPI Secretariat will prepare a compilation of the existing legislation on the matter, evidencing the main regulatory provisions, to be used in the further dialogue with stakeholders.

PMG, with SPI Secretariat support, should list all the stakeholders and enter into dialogue with them in order to get their views on the difficulties in implementing the current legal provisions on PPPs and on the possible solutions, and to assess the level of the stakeholders' involvement in the project (representation in the PWG or punctual interventions at significant stages of the project).

PMG, with SPI Secretariat and RBA- Technical Commission on Lending support, should conduct an industry survey in order to gather all the issues to be clarified/modified with/by authorities and other stakeholders. The banking survey should be also used to gather banks' representatives for the PWG.

Based on the information gathered as described above, the SPI Secretariat will prepare an issues paper for PWG discussions. PWG should provide inputs on their understanding of the legal provisions pointed out as unclear and formulate explanatory notes on their correct interpretation. PWG should also identify possible solutions to the issues raised by the bank survey.

After consultations with relevant stakeholders, the solutions addressing all stakeholders' concerns should be presented for SPI Committee endorsement.

The approved proposals should be forwarded to the responsible party for implementation and the project output should be disseminated to all stakeholders.

PMG and SPI Secretariat should follow the implementation of the proposals and inform accordingly SPI Committee, PWG members and stakeholders.

#### **IV- Methodology: from kick off to the accomplishment of the project**

##### ***Preparation of PWG 1<sup>st</sup> meeting (PM/DPM and SPI Secretariat)***

The Project Owner will appoint PM and RBA and EBRD/IFC will appoint DPMs following PO's invitation; SPI Secretariat will prepare the draft invitation letter.



The project management group (PMG) will build a common understanding on the drawbacks and/or unclear issues perceived by various stakeholders in the application of the current regulatory framework.

SPI Secretariat will prepare a compilation of the existing legislation on the matter, evidencing the main regulatory provisions, to be used in the further dialogue with stakeholders.

PMG, with SPI Secretariat support, will establish the list of all stakeholders and will contact the relevant institutions. The discussions held by PMG/SPI Secretariat with the stakeholders aim at inventorying all the difficulties in implementing the PPPs regulations, in lending to PPPs and ideas for the possible solutions. At the same time, these discussions will serve at assessing the stakeholders' future involvement in the project (representation in the PWG or punctual interventions at significant stages of the project).

In order to prepare the bank survey, PMG/SPI Secretariat will have consultations with RBA Lending and with Legal technical Commission . SPI Secretariat will send the questionnaire approved by PMG to banks through RBA; the questionnaire will include also the invitation to participate in the PWG and questions on the expected impact on the banks' balance sheets and profit & loss accounts.

Based on the information gathered from discussions held and from the centralized results of the bank survey, SPI Secretariat will prepare an issues paper.

After PMG clearance and before the 1<sup>st</sup> meeting, SPI Secretariat will send to PWG members the following documents:

1. An issues paper prepared by the SPI Secretariat;
2. Draft TORs prepared by SPI Secretariat and endorsed by PO and PM/DPM.

### **PWG 1st meeting**

1. PWG members agree on TORs prepared by SPI Secretariat and endorsed by PO and PM/DPM;
2. PWG members discuss the issues paper prepared by the SPI Secretariat;
3. PWG members take stock of the drawbacks/unclear issues perceived by various stakeholders in the application of the current regulatory framework;
4. PWG members provide input on the issues identified as unclear and start to formulate details for a correct interpretation;
5. PWG members outline possible solutions to overcome the difficulties in implementing structural programs;
6. PWG decides if international/domestic technical assistance is needed and the expertise profile.
7. PM/DPM establishes **homework**:
  - SPI Secretariat: prepare the minutes of the meeting and a table with unclear issues and clarifying details and a table with issues to be changed



and the identified solutions, their advantages and disadvantages and implementation way (type of regulation to be modified and responsible party);

- PWG members: provide input on the documents prepared and sent by SPI Secretariat.

SPI Secretariat will centralize individual contributions and will send the document to PWG before the second meeting.

SPI Secretariat will perform RIA calculations based on the data provided by banks.

SPI Secretariat will take the necessary steps for contracting the technical anchor, if needed.

### **PWG 2nd meeting**

1. PWG members discuss and agree on the correct formulas for the laws interpretation and application, on the possible solutions and implementation ways and steps;
2. PWG members validate RIA findings;
3. PWG members formulate the regulatory amendment proposals;
4. PWG members establish the stakeholders to be asked to provide input on the proposals.
5. PM/DPM establishes **homework**:
  - SPI Secretariat: prepare the minutes of the meeting and a draft document to be sent to stakeholders and technical anchor for feedback;
  - PWG members: provide input on the documents prepared and sent by SPI Secretariat.

SPI Secretariat will send the documents to relevant stakeholders and technical anchor and will centralize their inputs. SPI Secretariat will send the draft document including these opinions and RIA results to PWG members before the third meeting.

### **PWG 3rd meeting**

1. PWG members discuss and approve the final position paper;
2. PWG discuss and agree on the stakeholders' responsibilities for implementing the proposals in a short timeframe;
3. **Homework:** SPI Secretariat: integrate all the views expressed into the final document to be presented for SPI Committee endorsement.

## **V- Output**

### **PWG 1<sup>st</sup> meeting**

- PWG members agree on the list of unclear issues and of the roadblocks perceived;
- PWG members provide details for the clarification of the issues;



- PWG members agree on possible solutions for removing the roadblocks;
- PWG members send individual contributions;
- SPI Secretariat prepares tables with the correct interpretations of the regulatory provisions and with the identified possible solutions, pros and cons, and implementation ways.

#### *PWG 2<sup>nd</sup> meeting*

- PWG members agree on the details to be provided to various stakeholders, on the solutions and implementation ways and steps;
- PWG members validate RIA findings;
- PWG members formulate the regulatory amendment proposals;
- PWG members agree on the stakeholders to be asked for feedback;
- SPI Secretariat drafts position paper.

#### *PWG 3<sup>rd</sup> meeting*

- PWG members approve position paper;
- PWG agree on stakeholders' responsibilities in the implementation process;
- SPI Secretariat finalizes and sends the document to SPI Committee for endorsement.

### **VI - Project Team**

The team is composed of:

- Ministry of Economy and Finance, PPPs Unit;
- Ministry of Development, Public Works and Housing
- Ministry of Transportation;
  
- Federation/Association of Local Public Authorities
- Business Associations
- Banks
- EBRD/IFC

The team will be chaired by the Project Manager (a manager from the ministry of Economy and Finance) and co-chaired by the Deputy Project Managers (a manager from a bank and an EBRD/IFC PPP expert).

SPI Secretariat will report periodically to PO on the project progress.