PPP and Covid-19

April 29th 2020
1:00 PM (GMT+1)
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Webinar Agenda

- Format

- Part 1
  - Impact of the COVID-19 Pandemic on PPP projects and programs
  - How to deal with its repercussions
  - Lessons learned and opportunities that might come out of it

- Part 2
  - Impact on the training and examinations for the CP3P certification program and mitigation measures

- Questions
Welcome to our Webinar

David Baxter
Natalia Korchakova-Heeb

Michael Dallas
Naresh Bana

Marc Frilet
Thibaut Mourguès
PART I: Impact on Projects and Programs

- Impact of the COVID-19 Pandemic on PPP projects and programs
- How to deal with its repercussions
- What are the lessons learned and opportunities that might come out of it
David Baxter
International Development Consultant, PPP Navigator
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David Baxter is an independent PPP consultant who has advised public and private sector institutions all over the world on sustainable and resilient implementation of PPPs. He is a Steering Committee member of WAPPP, a senior adviser to the International Sustainable Resilience Center, and a collaborator with the UNECE PPP Center of Excellence in Geneva. David contributed to the development of the APMG core PPP curriculum as well the PPP certification tests.

David will be talking about pragmatic measures to keep PPPs operating during the Covid-19 outbreak and future "Black Swan" events, strategic approaches to recovery in the short-, medium- and long-term, and the need for future forward looking sustainability and resiliency considerations.
Surviving the Unexpected

- Governments were unprepared for Covid-19.
- By nature, they are mired in reactive decision making, procurement and contract management bureaucratic red tape that is not conducive to proactive recovery strategies.
- However, PPP projects cannot be allowed to fail – hence the need to proactive actions.
- As governments ramp up their efforts to mobilize resources to mitigate impacts of the Covid-19 pandemic on PPP projects, they will need to cumulatively leverage the resources of the private sector to augment recovery efforts – this will require innovation and voluntary collaboration.
- Stronger innovative partnerships between the public and private sectors will be needed to ensure existing PPP projects survive – as project survival is the only option.
- With decreased economic activity PPP projects are going to experience considerable revenue challenges in the coming weeks, months, and (possibly) years.
- Even PPPs contracts - where revenue is assured by public sector availability payments - might suffer as governments face contracting economic activity that will result in declining tax revenues and less treasury and budget resources to honor their commitment to availability payments.
- Additionally, the day-to-day operations and management of PPP projects will continue to be impacted if SPV (PPP project companies) employees are quarantined and become incapacitated – time is of the essence.
A Pragmatic Recovery

- The private sector must be given assurances that as soon as problems arise they can approach their public sector partners openly and honestly to share what is happening.

- Contractually punitive environments where unfair blame is placed on any party must be avoided. All recovery mitigations actions must be based on trusting collaborative partnerships that are focused on win-win solutions for all parties.

- Pragmatic recovery plans must be harmonized with national strategic priorities, with private sector needs, and need to be laser focused and technically sound – no vacillations in decisions and strategies unless absolutely necessary.

- Governments must immediately develop short-, medium-, and long-term strategy driven plans that focus on a collaborative partnerships and collective recovery goals which are inclusive of the interests of both the public and private sectors.

- Medium-term recovery planning will be effective only if effective short-term plans (strategies) are launched. Long-term recovery will most certainly depend on the actions you take now and in the medium term.

- During recovery planning, project vulnerabilities must be identified, risks (+ new ones) monitored and managed. Voluntary and mandatory recovery measures must be balanced.

- Decisions must not be made in a vacuum - all stakeholders so be engaged so that that all impacted parties understand the severity of the situation.

- Opportunities should also be sought to improve projects – especially in the area of project maintenance.
Specific Actions to Consider

Avoid Penalizing Underperformance in the Short-term - I believe that the ultimate emphasis of everyone’s recovery efforts should be to ensure that unreasonably punitive contract clauses that punish operators and concession holders - instead of supporting them in times of crises - need to be revisited. It is not the time to enforce punitive contract terms that distract from attempts to mitigate pandemic impacts on the sustainable operation and maintenance of PPP projects.

Unselfish Collaboration - Any collaborative approach must address the concerns of all project stakeholders, including investors and the holders of debt. It is also a time for selflessness where all stakeholders need to consider the “common good,” and embrace win-win strategies wherever possible. Decision that entertain failure of PPPs should not be an option, under any circumstances, as well as one sided actions that protect certain parties at the exclusion of others.

Planning/Design of Future PPPs - Governments should revisit their PPP sector priorities. This might require a total revision of program visions, plans, and strategies in terms of national development goals. Lessons learned from the current pandemic should be applied to future pandemic mitigation planning and contract terms, especially in terms of force majeure contract clauses and their potential punitive impacts on project sustainability and resilience.

People First PPPs (PfPPPs) should also be considered, so that PPPs are more resilient to societal needs when the next pandemic appears. This means that we need to future proof PPP projects by reviewing and adjusting project selection criteria in regards to potential future pandemic effects on value for money, value for people, etc.
Specific Actions to Consider

- **PPP Projects Under Construction** - SPVs should:
  - Immediately explore the impacts of labor shortages and supply chain breakdowns on contractors who are currently building projects now and in the medium term.
  - Revisit construction timelines should be revisited to determine impacts to project delivery and the subsequent servicing of debt.
  - Explore ways to mitigate impacts to their sub-contractors - in consultation with the public sector.
  - A special focus should be given to small contractors who do not have liquidity to survive the pandemic shutdown.
  - Explore the recovery steps that need to be undertaken to relaunch construction and protect project sites during the downtime caused by the pandemic (short- and medium-term).
  - Explore project health and safety concerns associated with stalled project sites and their impacts on neighboring communities (short term - immediate action).
Specific Actions to Consider

Concerning O&M PPP Projects: O&M is the area of greatest concern for existing PPPs. Loss of revenue is having a major impact on operators ability to meet their operations and project maintenance obligations – it is suggested that the following be done to ensure that projects remain sound and ready for a relaunch –

- Determine the immediate impact on limited operation scope, scale, and backlog caused by mandated cessations of activities
- Prioritize operational expenses and cut costs while keeping essential employees engaged
- Use project activity cessation as an opportunity to elevate maintenance on projects and planned infrastructure efficiency additions
- Ensure that sensitive infrastructure that is shut down is not degraded
- Prepare an O&M project reactivation plan that is launch ready in the post-Covid-19 recovery phase
- Develop strong recovery plans and strategies that are aligned with national recovery plans and strategies
Concluding Thoughts

It is impossible to develop a comprehensive list of actions that should be undertaken. However, pragmatic decisions need to take place based on common sense and the institutional knowledge of both public and private sector partners. Everything should be done to create a trust-driven recovery environment that is collaborative and partner and stakeholder friendly. It is essential that:

- Governments should proactively engage with their private sector partners to mitigate impacts to PPP projects as soon as they become apparent.
- It is also important that the private sector be given assurances that as soon as problems arise, they can approach their public sector partners openly and honestly to share what is happening with their projects – solutions should then be made jointly.
- Recovery plans are harmonized with national strategic priorities.
- Vulnerabilities are collaboratively identified, and risks monitored by the appropriate parties continually until the crisis has passed.
- Voluntary and mandatory measures for recovery should be explored with the private sector.
- Decisions making in a vacuum must be avoided. If not, this will only make the situation worse in perceptual and practical terms - make sure that your current partners will want to be your partners in the future. Investors and developers do not forget.
Marc Frilet
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For over 35 years, Marc has focused on complex construction, infrastructure, Concessions/PPP and mining projects in France and in over 20 developing nations, most of them in Africa. Marc has more than 100 publications and is a frequent speaker at conferences, seminars, and capacity building programs around the world. He is the head of the UNECE International Center of Excellence in PPP Policies Laws and Institutions. He has contributed to develop the concept of People first PPP.

Marc will speak about how to qualify the COVID-19 pandemic for existing PPP contracts, what are the lessons learned, and what are the best practices which deserve to be debated and usefully considered more broadly for resilient PPP for public services.
Three Qualification Options

**Force Majeure**
An event **unforeseeable** or **beyond the control** of the parties, **preventing** one or all **to fulfill** a material portion of the contract.

**Hardship**
Contract **more onerous but not impossible**  
→ Government taking action to contain the pandemic.

**“Fait du prince”**
**Materially Adverse Government Action**  
→ Reasonable for Government to compensate the private partner.
Force Majeure (FM)

FM is widely recognized internationally (even in absence of a specific contract clause) Two elements must be **combined**

- **Unforeseeable event**
- **Impossibility to perform the obligation**

In principle COVID-19 qualifies (e.g. UNIDROIT principles)

- Impacted by COVID-19 (objective external force)

**Consequences**

- Excuse for non-performance of the obligation(s) rendered impossible and provided that then aggrieved party has taken reasonable steps to mitigate
- Each party bears all others economic and legal consequences (the loss lies where it falls)
- The contract is not terminated unless subject matter is destroyed or after a long time period
Hardship

Recognized only by some jurisdiction, unless there is a specific contract clause

➔ Important for most PPP
➔ Two elements must be combined

Unforeseeable change of economic circumstances & Performance not impossible but excessively onerous

Consequences

• Right to reinstate up to a certain level the economic balance of the contract (several ways to do it).
• When applicable much better remedy than Force majeure.
• Contract not terminated unless specific clause.
"Fait du Prince"

Materially Adverse Government Action

Two elements must be combined (like Force Majeure)

Unforeseeable event & Impossibility to perform a particular obligation and duty to mitigate

Two situations to consider:

- General adverse Government action (e.g. general containment declared by law or executive order); same consequence as force majeure; performance excused but no indemnity
- Adverse action from the Contracting Authority; indemnity possible depending on situation of privity of contract
Impact of COVID on PPP contracts

1) Distinctive features

- PPP are very long term contracts, outcome-based.
- PPP duration is linked to an economic and financial scenario permitting the recovery of all investment and other costs including a profit element.
- PPP contributes or provides directly a public service.
- COVID-19 is only a temporary event not affecting the physical possibility to reinstate the service when health conditions permit.

2) Practical consequences

- Disruption or the service for COVID-19 should not entail termination.
- Private partner excused for not performing its obligations impacted by COVID but duty to mitigate.
- If the impact of COVID destroys the economic balance of the contract, it is equitable to reinstate the initial economic equilibrium within limits.
The practical approach: Renegotiation or possible contractual relief?

1) When the contract do not provide sufficient relief consider renegotiation with the following in mind
   • Direct monetary compensation often a problem for the contracting authority
   • Focus on the renegotiation of some key clauses such as contract duration, tax relief, change of scope of service, shifting costs to the public authority etc..

2) Future; consider how to avoid hazardous renegotiation through “contractual regulation” that the practice has developed over the years for modern Concession PPP. This “regulation” is made of an inclusive set of clauses comprising Force Majeure, Hardship and Adverse Government action referring to the agreed financial and economic scenario for the Project updated and used as the key reference for maintaining the economic viability of the venture (unless the Concessionaire company is in default). Rationale; giving effect to the “rebus sic stantibus” underlying contractual principle and facilitating the of continuity of the public service.
Natalia will present some recent PPP case studies related to how various public and private entities have teamed up to contribute to combatting the Covid-19 pandemic.

Eng. Natalia Korchakova-Heeb is an internationally recognised expert in sustainable infrastructure, public procurement, public-private partnerships and international technical assistance with experience in the public, private and non-governmental sectors. She is PPP Speaker of the German Health Alliance and the Coordinator of the Working Group on Partnerships within Global Health Hub-Germany.
COVID-19 Pandemic Is Not An Isolated Event

We have health outbreaks every year. Recent outbreaks: Avian Influenza, Ebola, Measles, MERS.

But the COVID-19 reached the size of pandemic, started off as a public health crisis but is quickly developing into a major economic and social crisis.

Early estimates of the economic damage from Covid-19 have already crossed the trillion-dollar mark.
Problem: “We Are Building An Airplane While Flying It”

Governments and policy-makers scramble to react and respond to COVID-19 and are urgently in search for immediate innovative solutions and alternatives to close the gap in delivery of healthcare services and healthcare infrastructure.

World Health Organisation (WHO) Strategy Update of 14 April 2020 says: “Governments must also re-purpose and engage all available public, community and private sector capacity to rapidly scale up the public health system.”
Solution: Public-Private Partnerships

In the case of COVID-19, where expertise is particularly thin, companies, NGOs, academia will be particularly important partners helping to anticipate potential remedies. Multi-stakeholder approaches become increasingly necessary.

PPPs in the health sector have evolved over the last decades to go beyond infrastructure, and include also service delivery, project delivery and product development.

#PPPsAgainstCorona
Australia announced a healthcare sector PPP to fight the pandemic. The Australian government will partner with the private sector to secure 30,000 hospital beds and 105,000 nurses and staff.

The government will offer agreements to 657 private and not-for-profit hospitals to ensure their viability, in return for maintenance and capacity during the COVID-19 response.

European Commission has published in April 2020 Guidance on using the public procurement framework in the emergency situation related to the COVID-19 crisis.
Examples of PPP Projects for COVID-19: India

The Ministry of Electronics and IT of India launched a mobile app called Aarogya Setu which will help people in identifying the risk of getting affected by the Corona Virus.

The app is built through public - private partnership and assesses the risk for catching the Corona virus infection. It will calculate using cutting edge Bluetooth technology, algorithms and artificial intelligence.

#PPPsAgainstCorona
Examples of Research PPP Projects for COVID-19: EU

The EU is backing a new €90 million public private partnership to develop a vaccine against the COVID-19 coronavirus, as the epidemic spreads further in Europe.

The €90 million will be channelled through the Innovative Medicines Initiative, a partnership between the EU and the pharmaceutical industry. “This includes €45 million of contribution from pharma companies,” said Janez Lenarčič, EU commissioner for crisis management and European emergency response coordinator.
Examples of Research PPP Projects for COVID-19: USA

The US government, academia and industry struck a PPP called the **COVID-19 High Performance Computing Consortium** to allow researchers tackling COVID-19 and to access to high performance computing resources. Researchers can submit proposals to gain access to the high-end computing resources. Members of the consortium include IBM, Amazon Web Services, Google Cloud, the Department of Energy’s national labs, which host some of the world’s most powerful supercomputers. The consortium represents 16 systems accounting for more than 330 petaflops, 775,000 CPU cores, 34,000 GPUs.

#PPPsAgainstCorona
In case of health emergencies, it is critical to mobilise quickly all PPP actors: public sector, private sector, donors. When PPP actors and stakeholders are organised in an ecosystem, it is easier to place calls for actions, initiate new PPPs and to receive a response in a coordinated way, through traditional procurement but also using unsolicited proposals.

https://ppphealth4all.de

#PPPsAgainstCorona
Conclusions

Covid-19 is a major event that exposes the lack of preparedness and resilience of the increasingly globalised and interconnected economy, and it certainly won’t be the last. But we can use this moment to innovate about public-private partnerships and make them serve the purpose.

#PPPsAgainstCorona
Thibaut will speak about the impact of the Covid-19 on PPP planning and how to deal with the short-term disruption and liquidity; the medium-term inflation and reduction of fiscal space; and the long-term emergence of new economic models, new international regulations and renewed priorities. PPPs shall remain on the agenda, but Governments will need to put more emphasis on sustainability and SDGs.
Impact of Covid-19 on PPP Planning

The COVID-19 crisis is a pivotal moment under many dimensions. What impact for PPP planning?

1. *Planning is all the more crucial* in a period of high uncertainty to get ready and prepared.

2. *PPP policy response* will have to be:
   - adaptative: adjust to the circumstances (market and financing conditions, contractors capacities, etc.)
   - reactive: counter the negative impact of the crisis (macroeconomic shock)
   - proactive: promote new models and address new challenges (increased resilience, new approach to SDGs)
Short-term impact of the crisis (2020)

- Supply chain disruptions (lockdown, bankruptcies, transportation issues)
- Liquidity crisis, mainly for subcontractors but also for larger companies (for instance air transport)
- Credit crunch (except coordinated monetary policy)
- Limited appetite for equity risk; higher return requirements/less tolerance to risk
Short-term recommendations to Governments

• *Existing contracts*:
  Review force majeure clauses (in a spirit of cooperation rather than confrontation); anticipate contractors and operators issues

• *Ongoing tenders*:
  Special flexibility required: extend deadlines, dialogue with bidders, facilitate online operations. Due diligence on bidders resilience

• *Scheduled tenders*:
  Market sounding; cancellation or postponement when necessary (smaller projects less at risk than megaprojects)
Medium-term impact of the crisis on the PPP ecosystem (2021)

• **Financial crisis** – Debt and fiscal crisis (both OECD and developing countries, even with debt relief programs): tax revenues down, deficit up; investors and operators more risk averse; inflation risk

• **Demand crisis** - Concession projects at risk (less traffic, less affordability)

• **Increased political instability**: developing countries at risk of poverty riots; Eurozone under pressure (Spain, Italy)
Medium-term recommendations to Governments (2021)

• **Review fiscal sustainability issues and amend projects financial structuring accordingly**: keep public exposure (guarantees) under control; more equity to make sure projects are more robust

• **Use PPPs as Keynesian stimulus when possible**: prioritize projects that can start immediately

• **Use PPPs for foundations of long-term growth**: prioritize projects that have a clear development impact (rather than prestige or narrow benefits). Preparation remains key.

• **Promote social inclusiveness**: mitigate the impact of economic crisis on the most vulnerable; make extensive use of the concept of People First PPPs
Longer term impact of the crisis on the PPP ecosystem (2022 and beyond)

- **New economic models**

  Increased interest in virtuous sustainable economic models; financial involvement of private sector in the development strategy is more important as States are overburdened with debt.

- **More emphasis on national autonomy and sovereignty**

  Europe, US: relocations from Asia; more checks and controls; shorter supply chains; less need for transport hubs

- **Uncertainty on the energy transition**: subject to relative oil prices
Longer term recommendations to Governments (2022 and beyond)

- **Review project assessment criteria**: UNECE on People First PPPs assessment framework
- **Integrate resiliency in the planning**: Crisis management, Robustness of supply chains
- **Review sector allocations**: probably less transport, more telecom and health
- **Promote more balanced global development**: limit overreliance on one country or one group of countries, increase regional cooperation
Temporary Conclusions

• Continued adjustments necessary as we learn more on the short term and long-term impacts of the crisis
• More than ever, PPPs is all about risks (risk transfer, risk management and mitigation). Resiliency will play a major role in sustainability assessment
• Developing countries are fragilized and will need even more support (either bilateral or institutional) for the benefit of global stability
• In a context of weakening of Governments, the PPP approach more required than ever but must show flexibility and be integrated into a coherent and encompassing strategy.
PART II: Impact on Training and Certification

• Measures that are being taken to facilitate the training and examinations for the CP3P certification program
Michael Dallas

CP³P Program Director, APMG International

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Michael is a founding director of APM Group Ltd (APMG), a leading Examination Institute which accredits training and consulting organisations and manages certification schemes for professionals worldwide, where he advises on strategic issues and new qualifications. In 2014 APMG were awarded the contract by the World Bank to develop and manage the PPP Certification Program globally. Michael is the Program director.

Michael will speak about the impact Covid-19 has had on the PPP Certification Program (CP³P) and the mitigation measures APMG has taken.
Impact on training and Certification

- The impact of Covid-19 has been sudden and dramatic
- Most training worldwide has been delivered in classrooms with face to face contact
- Due to social distancing these have all but ceased
- As a result the number of professionals receiving Certifications has collapsed

So what can be done about it?
Opportunity to improve skills

- Many professionals are facing lockdown and/or temporary lay-off (furlough) from their place of work
- This enforced period, with time on their hands, provides a unique opportunity to enhance their skills for when things return to normal
- Qualifications will improve their job prospects and enable them to demonstrate their ability to play a more constructive role in their jobs

But how, If training is inaccessible?
The APMG on-line Learning Platform (ALP)

What is CP³P?
- A Training and Certification Program to enhance the Preparation and Execution of PPP Programs and Projects
  - Common terms and Definitions – A common Language
  - More people who understand PPPs
  - Improved Practitioner capability
  - Better Preparation and Delivery

To get more information for CP³P, go to https://ppp-certification.com/
Guidance in PPP Certification Guide

• Covid-19 represents a Force Majeure Event in that it arises through no fault of either party to a PPP

• Chapter 7 – Section 9.3:
  • The situation is best managed by the Private Party
  • Treat as an exception
  • Focus on avoiding termination by mitigation and
  • If necessary, getting the lenders to defer payment

• Chapter 8 – Section 9.2.3:
  • Both Parties must mitigate losses to keep contract intact
  • If the Event continues longer than the time specified in the Contract (typically 6 or 12 months), either party may terminate the agreement
  • Insurance claims should be prepared with care to maximise proceeds from the claims
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A Veteran Combat Engineer, Naresh has played a pivotal role in the timely completion of Kashmir Rail Project, India. He has also managed construction and planning of a number of mega projects. His firm is engaged in PPP consulting in various countries. Naresh is Executive Vice Chairman of Indo Sri Lanka Chamber of Commerce and Industry. Inter-alia he is leading the railway project team at UNECE developing global PPP procurement standards.

Naresh will be moderating the Question and Answer session.
Ask Your Questions

David Baxter

Michael Dallas

Marc Frilet

Natalia Korchakova-Heeb

Naresh Bana

Thibaut Mourgues
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