



Republic of Indonesia

# PUBLIC PRIVATE PARTNERSHIP (PPP)

## INVESTOR'S GUIDE



## What Private Investors Should Know

### About Investing in Indonesia's Infrastructure

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The information included in "Public-Private Partnership (PPP) Investor's Guide" is intended to provide general guidance to assist investors in developing a successful PPP for infrastructure.

The Coordinating Ministry of Economic Affairs seeks to present the best available information at the time of printing, and should not be held responsible for differences or changes to the information or data presented.

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# TABLE OF CONTENTS

<b>Foreword</b> .....	iii
<b>1 Indonesia's Infrastructure Investment Framework</b> .....	1
1.1 The Role of PPP Infrastructure in Indonesia .....	2
1.2 Purpose of This Guide .....	3
1.3 Principal Parties in the PPP Framework .....	4
1.4 The Legal Framework .....	6
1.5 Key Features of Indonesia's PPP Program .....	13
<b>2 The PPP Development &amp; Implementation Process</b> .....	15
2.1 Overview of the Process .....	16
2.2 Project Selection .....	18
2.3 Public Consultation .....	19
2.4 Feasibility Study .....	20
2.5 Risk Assessment .....	22
2.6 Form of Cooperation .....	23
2.7 Government Support .....	24
2.8 Procurement .....	25
2.9 Project Implementation .....	27
2.10 Monitoring .....	28
<b>3 Interaction Between the Government &amp; Private Parties</b> .....	29
<b>4 Application of the PPP Framework in Selected Sectors</b> .....	33
<b>5 Frequently Asked Questions</b> .....	37
<b>6 Contact Information</b> .....	41

# FOREWORD



**M. Hatta Rajasa**

*The Coordinating Ministry of Economic Affairs (CMEA) is pleased to present Public Private Partnership Investor's Guide. This guide is designed to give private investors an overview of the Government of Indonesia's Public Private Partnership framework. It is our hope that as potential investors, you will find the information presented helpful, and that this guide will serve as a useful catalyst for your investment in Indonesia.*

*Infrastructure is a top priority, and private investments are needed to build a better Indonesia. This year marks an important step toward improving the overall state of our infrastructure. The government has fully committed to accelerating projects through PPP. It will continue to take a proactive approach toward evaluating its policies in order to increase participation from the private sector. As a result, many reforms have been made and laws enacted, to assure a more level and streamlined approach for investors.*

*As the world's third largest democracy, Indonesia is emerging as a regional leader. It is a member of the Association of South East Asian Nations (ASEAN), and home to nearly 240 million people. Our goal is to further connect the archipelago to achieve balanced economic and social growth, provide adequate access to social infrastructure to enhance employability, improve the standard of living, and nurture sustainable development.*

*We truly believe Indonesia, and its sectors have much to offer potential investors. The government recognized the need to improve business conditions, and fundamental changes have been implemented at the various levels, and across sectors, to strengthen the framework, and make doing business in Indonesia, "do-able". Under these new business conditions, the PPP market in infrastructure is poised to grow quickly.*

*Investors, I invite you to use this guide to better understand the PPP operating environment. I hope the information presented will direct your investment interest to this emerging regional leader in Southeast Asia. Please take this opportunity to get to know us better, and know that you are most welcome to contact the relevant sectors for more information.*

*With kindest regards,*

*Coordinating Minister of Economic Affairs  
Republic of Indonesia*



# 1 Indonesia's Infrastructure Investment Framework



- 1.1 The Role of PPP Infrastructure in Indonesia
- 1.2 Purpose of This Guide
- 1.3 Principal Parties in the PPP Framework
- 1.4 The Legal Framework
- 1.5 Key Features of Indonesia's PPP Program





## 1.1 THE ROLE OF PPP INFRASTRUCTURE IN INDONESIA

**THE** Indonesian economy has proven remarkably resilient since the Asian financial crisis of the late 1990s. In 2009, for example, Indonesia posted GDP growth of 4.5 percent, while much of the rest of the world faced economic contraction.

Indonesia's consistent economic growth has led to increasing infrastructure needs. The Government estimates that over the five-year period from 2010 through 2014, some IDR 1,430 trillion (approximately USD 150 billion) worth of infrastructure investment is required at the national level.

The Government has recognized the vital role of the private sector in fulfilling these needs and has been laying the foundation for private sector participation in infrastructure development through private-public partnerships (PPP). Specifically, the Government is targeting IDR 980 trillion (approximately USD 94 billion) in private sector investment under this PPP framework over the 2010-2014 period. The Government's PPP program encompasses a wide range of infrastructure, including:

- Airports
- Sea and river ports
- Roads and bridges
- Railways
- Untreated water supply & irrigation systems
- Drinking water
- Waste water
- Solid waste
- Information & communications technology
- Electricity
- Oil & gas





## 1.2 PURPOSE OF THIS GUIDE

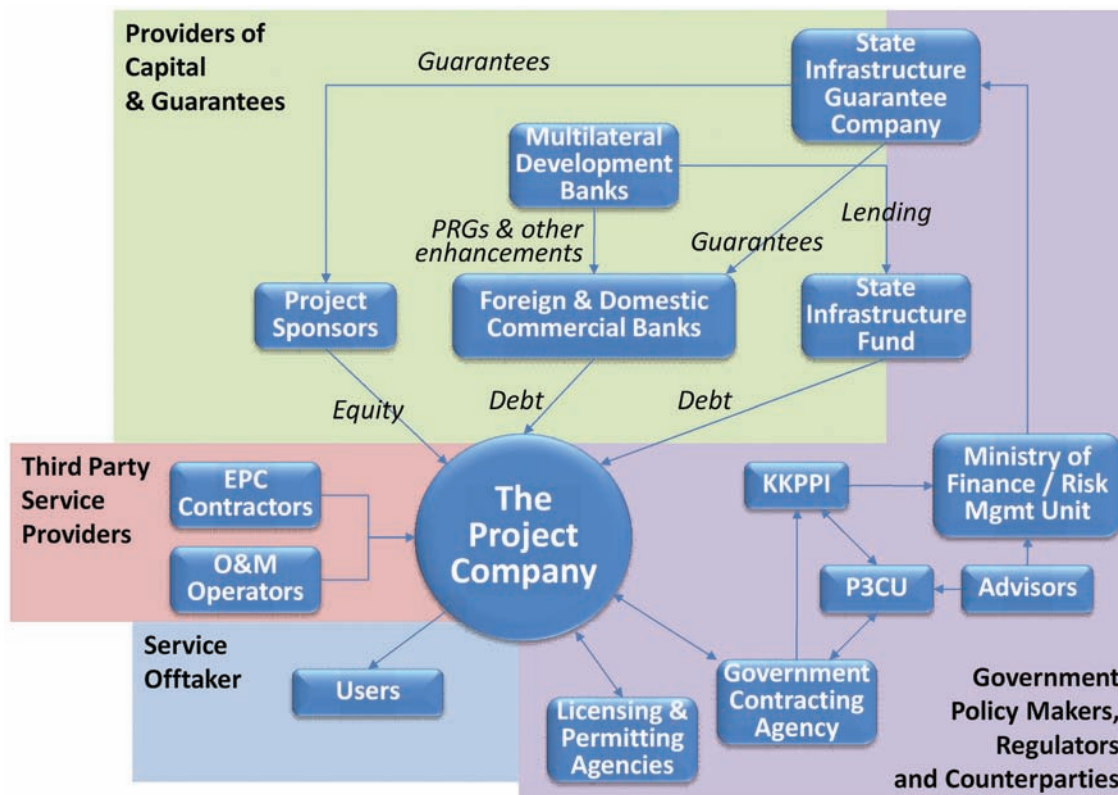
**THIS** Investor's Guide provides an overview of the Government of Indonesia's Public-Private Partnership (PPP) framework. It lays out the road map for PPP project development in Indonesia, highlighting the principles the Government has adopted and the facilities it provides to private partners under its PPP framework. By providing an overview of how Indonesia's PPP program operates, it can help direct an investor's assessment of a specific project opportunity.

This guide does not intend to identify specific PPP opportunities, nor in any way provide the due diligence that private investors must undertake when considering PPP opportunities. It does not provide a legal review of the regulations that govern PPP project development and implementation, nor does it provide detailed step-by-step procedures for PPP development or doing business in Indonesia more generally. Investors are encouraged to refer to other publications or documentation issued by the Government regarding these other aspects, as referenced throughout this Guide. These publications may be updated or re-issued over time, or supplemented by additional documentation in the future.



## 1.3 PRINCIPAL PARTIES IN THE PPP FRAMEWORK

**THERE** are a number of parties that may participate in a PPP infrastructure project in Indonesia. The exhibit below shows the key parties and the relationship between them. These parties include:



- The Project Company** is the Indonesian legal entity owned by the Project Sponsors, which enters into a Cooperation Agreement (CA) with a Government Contracting Agency, or receives a license from the Government, to provide a particular service or infrastructure on a PPP basis. It is also referred to in this Guide and in relevant government regulations as the “Business Entity”.
- Multilateral Development Banks** include the World Bank, the Asian Development Bank (ADB), and affiliates such as the Multilateral Investment Guarantee Association (MIGA). Under certain circumstances, these agencies can provide credit enhancements such as partial risk guarantees (PRGs) to project companies and lenders.
- Foreign & Domestic Commercial Banks** provide debt financing to the project. It may be possible to secure all debt financing domestically for smaller projects, but larger projects are likely to require foreign financing. Because Indonesia’s credit rating is currently below investment grade (Moody’s rating of Ba2, and Standard & Poor’s rating of BB), foreign lending will likely require credit enhancements. Note, however, that the Government aims to achieve an investment grade rating by 2011.
- Project Sponsors** are the shareholders of the Project Company. They may be domestic or foreign investors, and are typically responsible for project development in addition to equity investment. They are also referred to in the Guide as “developers”.

- **State Infrastructure Guarantee Company**, PT Penjaminan Infrastruktur Indonesia (PII), has been recently established by the Government of Indonesia to provide guarantees for government obligations under PPP contracts.
- **State Infrastructure Fund**, formally known as the Indonesia Infrastructure Fund (IIF), has been funded by the Government of Indonesia (through PT Sarana Multi Infrastruktur), multilateral development banks, the International Finance Corporation (IFC) and the Government of Germany to lend for infrastructure in Indonesia. It can provide financing for a portion of the borrower's debt needs.
- **Third Party Service Providers** are likely to be engaged by the Project Company for various aspects of project development and implementation, including engineering, procurement and construction (EPC), operations and maintenance (O&M) etc. These services will be provided under separate contracts between the Project Company and the particular service provider.
- **Users** may include a single offtaker like the State Electricity Company (PT Perusahaan Listrik Negara (Persero), PLN) or may be members of the general public in the case of toll roads or rail projects. There may a contract with an off-taker, such as a power purchase agreement in the case of electricity generation.
- **Licensing & Permitting Agencies** include Government agencies responsible for environmental management, foreign investment and company establishment (e.g. the Indonesia Investment Coordinating Board, *Badan Koordinasi Penanaman Modal*, BKPM), manpower & immigration, etc. from whom the Project Company will need to obtain various permits and approvals for setting up operations.
- **Advisors to P3CU and MOF**. The efforts of P3CU and MOF, both to develop a robust PPP framework and to help Government Contracting Agencies prepare sound projects, have been supported by legal, financial, and engineering advisors funded by various multi- and bilateral agencies.
- **Government Contracting Agency (GCA)** will be the ministry, government institution, or provincial, regency or city government, as stipulated by government regulation, that tenders the project and serves as the investor's government counterparty for the project. The GCA will contract with the Project Company for delivery of the project through a Cooperation Agreement (CA), or will issue a license to the Project Company to carry out the PPP project.
- **Policy Committee for Accelerating the Provision of Infrastructure (Komite Kebijakan Percepatan Pembangunan Infrastruktur, KKPPI)** is an inter-ministerial committee chaired by the Coordinating Minister of Economic Affairs that is responsible for policy coordination related to private provision of infrastructure. Under prevailing regulation, KKPPI must endorse requests for contingent government support (guarantees) as a basis for Ministry of Finance consideration and approval.
- **Public-Private Partnership Central Unit (P3CU)** is a unit headed by the Director for Public-Private Partnership Development within the Ministry of National Development Planning/National Development Planning Board (Bappenas). P3CU has a number of functions including: support to KKPPI for policy formulation and assessment of requests for contingent government support, preparation of the Government's PPP book listing project opportunities for private investors, support to Government Contracting Agencies for the preparation of projects, and developing capacity within government agencies for PPP implementation.
- **Ministry of Finance (MOF) / Risk Management Unit (RMU)**. The Ministry of Finance approves tax incentives that may be offered by the Government for a PPP project as well as any government guarantees. The RMU is the unit of the Ministry that is responsible for reviewing guarantee requests. Any approved guarantee would subsequently be administered by PT PII.





## 1.4 THE LEGAL FRAMEWORK

**THE** interaction between these various parties is governed by three sets of laws and regulations as described below: PPP regulations, sector-specific regulations, and other general regulations governing business activities in Indonesia.

Under the Indonesian legal system, laws stipulate general principles. Implementation of a law is typically described through a subsidiary Government Regulation, which in turn guides more detailed Ministerial Regulations. These typically describe specific steps or procedures for the implementation of laws and associated government regulations. Presidential Regulations (also referred to as *Perpres*, for *Peraturan Presiden*), on the other hand, are issued as a basis for implementation of presidential policies and programs, and must be consistent with prevailing laws. Presidential Regulations are also used sometimes to provide further guidance on the implementation of laws or Government Regulations.

Different sectors have achieved different levels of legislative and regulatory maturity. Most infrastructure sectors are governed by laws that have been enacted since 2004 with the view of modernizing the nation's infrastructure. However, not all newer sector laws have Government Regulations in place yet, or if they do, the subsidiary Ministerial Regulations may be incomplete. Investors should monitor the status of implementing regulations in sectors of interest since new regulations are frequently added and existing regulations are sometimes amended.



## PPP REGULATIONS

There are five principal regulations in this category.

Topic	Regulations	Key Points
<p>General Regulations on PPP</p>	<ul style="list-style-type: none"> <li>• Presidential Regulation No. 67 of 2005 on Cooperation Between Government and Business Entity in Provision of Infrastructure</li> <li>• Presidential Regulation No. 13 of 2010 on Amendment to Presidential Regulation No. 67 of 2005 on Cooperation Between Government and Business Entity in Provision of Infrastructure</li> </ul>	<p>These regulations govern PPP for specified infrastructure projects. These include: airports, ports, railways, roads, untreated water supply/irrigation systems, drinking water, waste water, solid waste, information &amp; communications technology, electricity, and oil &amp; gas.</p> <p>Projects may be developed on a solicited or unsolicited basis but in all cases the selection of a Business Entity shall be conducted through an open tender process. A “solicited” project is identified and prepared by the Government, whereas an “unsolicited” project is identified and proposed to the Government by a Business Entity.</p> <p>The Government Contracting Agency may be at the regional or national level. A PPP project may be based on either a government license or a Cooperation Agreement (CA). The Government may provide fiscal and/or non-fiscal support to improve the feasibility of the infrastructure project. Projects shall be structured to allocate risk to the party best able to manage the risk.</p>
<p>Procedures for Providing Contingent Government Support</p>	<ul style="list-style-type: none"> <li>• Ministry of Finance Regulation No. 38 of 2006 on Guidance for Controlling and Management of Risks in Provision of Infrastructure</li> <li>• Coordinating Ministry of Economic Affairs Regulation No. 4 of 2006 on Evaluation Methodology for PPP Infrastructure Projects that Require Government Support</li> <li>• Government Regulation No. 35 of 2009 on State Participation for Establishment of a Limited Liability Company for Infrastructure Guarantees</li> </ul>	<p>Ministry of Finance Regulation No. 38 of 2006 describes the conditions and processes for providing contingent government support, i.e. guarantees. Under this regulation the Ministry of Finance can extend guarantees related to three types of risk: Political Risk, Project Performance Risk, and Demand Risk. Project Performance Risk includes risks resulting from delays in land acquisition, escalation of land acquisition costs, post-contract changes in performance specifications, delays or lower than contracted adjustments to tariffs, or delays in approval to start operations. Demand risk refers to the risk that actual revenues fall below the minimum guaranteed revenue due to lower than contracted demand.</p> <p>Coordinating Ministry of Economic Affairs Regulation No. 4 of 2006 requires that a request for contingent support must be made at least in part on the basis of a feasibility study. This is a stricter requirement than the pre-feasibility study stipulated in Ministry of Finance Regulation No. 38 of 2006. Both regulations stipulate other documentation must also be submitted to support the request, including the form of cooperation, a financing plan, the results of public consultation, etc.</p> <p>The Government has established PT Penjaminan Infrastruktur Indonesia (PT PII) to administer these guarantees. This is expected to reduce the cost of financing of PPP infrastructure projects by improving the quality PPP projects and their creditworthiness, and to help the Government manage its fiscal risk better by ring-fencing government obligations vis-a-vis guarantees. PT PII will establish a comprehensive and consistent framework for appraising projects and making decisions regarding provision of government guarantees to PPP projects.</p>

## SECTOR SPECIFIC LAWS AND REGULATIONS

Each infrastructure sector is governed by its own law and implementing regulations. The table below lists the principal laws and government regulations by sector. In addition, there are numerous ministerial regulations not listed here that provide detailed guidance on how these principal laws and government regulations are implemented.

Sector	Laws & Government Regulations	Key Points
Port (Operation of Terminal)	<ul style="list-style-type: none"> <li>• Law No. 17 of 2008 on Water Transportation</li> <li>• Government Regulation No. 61 of 2009 on Port Affairs</li> <li>• Government Regulation No. 20 of 2010 Water Transportation</li> </ul>	The operation of a port (terminal) is open for Business Entities. PT Pelindo (the state-owned seaport operator) no longer holds the monopoly for this sector. The Government shall establish a Port Authority as the regulatory body for port activities. A Port Authority can be established for one or several ports, and shall be responsible for issuing the concession and subsequently regulating the service provided by the Business Entity.
Rail Infrastructure (Railway, Station and Train Facilities)	<ul style="list-style-type: none"> <li>• Law No. 23 of 2007 on Railway Affairs</li> <li>• Government Regulation No. 56 of 2009 on Implementation of Railway Affairs</li> <li>• Government Regulation No. 72 of 2009 on Rail Traffic and Transportation</li> </ul>	Business Entities may participate in the construction and operation of rail infrastructure (railway, station and train facilities). PT Kereta Api Indonesia no longer holds the monopoly. The concession for carrying out the construction and operation of rail infrastructure will be granted by: <ul style="list-style-type: none"> <li>• Minister: for cross-province infrastructure;</li> <li>• Governor: for cross city/regency infrastructure within a province;</li> <li>• Mayor/Regent: for infrastructure within a city/regency</li> </ul>
Airport	<ul style="list-style-type: none"> <li>• Law No. 1 of 2009 on Air Transportation</li> </ul>	PT Angkasa Pura (the state-owned airport operator) no longer holds the monopoly for this sector. The Government is in the process of preparing Government Regulations for Implementation of Airport Affairs.

Sector	Laws & Government Regulations	Key Points
Electricity (Power Plant, Transmission, Distribution)	<ul style="list-style-type: none"> <li>• Law No. 30 of 2009 on Electricity</li> <li>• Law 27 of 2003 on Geothermal</li> <li>• Government Regulation No. 59 of 2007 on Geothermal Business Activities</li> <li>• Government Regulation No. 3 of 2005 on Amendment to Government Regulation No. 10 of 1989 on the Provision and Utilization of Electricity</li> </ul>	<p>PLN, the state-owned power utility, no longer holds the monopoly for provision of electricity infrastructure (power generation, transmission and distribution). However, PLN may continue to function as the offtaker for power generation. Business Entities may participate in this sector through competitive tendering. They will compete on the basis of proposed tariffs. Power generation, transmission, distribution and geothermal concessions will be licensed activities with separate offtake or service agreements between users and the Business Entity. The licensing authority will be the:</p> <ul style="list-style-type: none"> <li>• Minister: for power projects connected to the national grid, or for geothermal concessions that cross provinces;</li> <li>• Governor: for cross city/regency infrastructure within a province; or geothermal concessions that cross city/regency boundaries</li> <li>• Mayor/Regent: for electricity infrastructure or geothermal concessions completely within a single city/regency.</li> </ul>
Piped Drinking Water (Water Treatment Plant, Transmission, Distribution)	<ul style="list-style-type: none"> <li>• Law No. 7 of 2004 on Water Resources</li> <li>• Government Regulation No. 16 of 2005 on Development of Drinking Water Supply</li> </ul>	<p>A Business Entity may obtain a concession for provision of piped drinking water in an area that is not serviced by <i>Perusahaan Daerah Air Minum</i> (regionally-owned drinking water company). The appointment of the Business Entity to carry out the service shall be conducted through a tender process. The GCA will set tariffs and regulate the Business Entity per the terms of the CA. The Government has established the Supporting Body for Water Supply System Development (BPP SPAM) to, among other things, assist regional governments with water system development on a PPP basis.</p>
Toll Road	<ul style="list-style-type: none"> <li>• Law No. 38 of 2004 on Roads</li> <li>• Government Regulation No. 15 of 2005 on Toll Roads</li> <li>• Government Regulation No. 44 of 2009 on amendment to Government Regulation No. 15 of 2005</li> <li>• Law No. 22 of 2009 on Traffic and Road Transportation</li> </ul>	<p>The toll road business is no longer monopolized by PT Jasa Marga (the state-owned toll road company). The government has established a regulatory body, the <i>Badan Pengatur Jalan Tol</i> (BPJT), to conduct toll road tenders and recommends tariffs for approval by the Minister of Transportation.</p>



## GENERAL LAWS AND OTHER REGULATIONS

There are several laws and government regulations governing aspects such as foreign investment, environmental protection, and land use and acquisition. Some of the key ones are listed below. There are also associated ministerial regulations that have not been included here. Investors may refer to [www.indonesia.go.id](http://www.indonesia.go.id) for the text of laws and government and presidential regulations, and to the website of each ministry for ministerial regulations.

Topic	Laws & Regulations	Key Points
Negative List for Investment	<ul style="list-style-type: none"> <li>• Presidential Regulation No. 77 of 2007 on List of Closed Business Areas and List of Conditionally Open Business Areas for Investment</li> <li>• Presidential Regulation No. 111 of 2007 on Amendment to Government Regulation No. 77 of 2007</li> </ul>	<p>The maximum foreign ownership in a company carrying out an infrastructure business is as follows:</p> <ul style="list-style-type: none"> <li>• Power Plant: 95% (however power plants of less than 10 MW are currently reserved for small and medium enterprises and hence closed to foreign investment)</li> <li>• Transmission of Electricity: 95%</li> <li>• Distribution of Electricity: 95%</li> <li>• Toll Road: 95%</li> <li>• Piped Water Supply: 95%</li> <li>• Port: 49%</li> </ul> <p>The Government is currently amending these regulations.</p>
Utilization of Government's Assets	Government Regulation No. 6 of 2006 on Management of Government's Asset	Government assets can be utilized by a Business Entity to carry out infrastructure projects. This could include existing state assets that a Business Entity might manage under a concession, or assets that are constructed by the Business Entity for the Government and then operated by the Business Entity, such as in a build-transfer-operate (BTO) scheme. The appointment of a Business Entity to utilize the Government's asset must be through a competitive tender process.
Cooperation with Regional Government	Government Regulation No. 50 of 2007 on Procedure for Regional Cooperation	Cooperation between a regional government and a Business Entity shall be approved by Regional House of Representatives if the cooperation involves use of the regional government's assets.
Infrastructure Fund	Presidential Regulation No. 9 of 2009 on Finance Institution	<p>The business activities of a state-owned Infrastructure Financing Institution shall include among others: providing loans, refinancing, and capital subscription.</p> <p>The Government has established PT Sarana Multi Infrastruktur (PT SMI) as a state-owned company to finance infrastructure projects using debt, equity and mezzanine financing. PT SMI has in turn established a company, PT Infrastruktur Indonesia Finance, with other shareholders including the World Bank, ADB, the International Finance Corporation (IFC), and the Government of Germany. PT SMI operations will focus on small and medium enterprises, whereas PT IIF will focus on larger infrastructure projects.</p>

Topic	Laws & Regulations	Key Points
Environmental Management	<ul style="list-style-type: none"> <li>• Law No. 32 of 2009 on Environmental Protection and Management</li> <li>• Government Regulation No. 27 of 1999 on Analysis of Environmental Impacts</li> </ul>	<p>Infrastructure projects of specified sizes require an environmental impact analysis (<i>Analisis Mengenai Dampak Lingkungan, AMDAL</i>) prior to project implementation. This analysis must be approved by the relevant government authority as stipulated in the regulations.</p>
Land Acquisition	<ul style="list-style-type: none"> <li>• Law No. 5 of 1960 on Basic Agrarian Law</li> <li>• Law No. 20 of 1961 on Land Expropriation</li> <li>• Presidential Regulation No. 36 of 2005 on Provision of Land for Public Facilities</li> <li>• Presidential Regulation No. 65 of 2006 on Amendment to Presidential Regulation No. 36 of 2005</li> <li>• Head of National Land Agency Regulation No. 3 of 2007 on Implementing Regulation of Presidential Regulation No. 36 of 2005 as amended by Presidential Regulation No. 65 of 2005</li> </ul>	<p>Based on Presidential Regulation No. 13 of 2010, government support may take the form of land acquisition for the project, in which case it shall be conducted prior to project tendering. Depending on the financial viability of the project, the Business Entity may be required to reimburse all or part of the land acquisition cost to the GCA that acquired the land. Such a requirement will be stated in the tender documents.</p> <p>Presidential Regulation No. 36 of 2005 and Presidential Regulation No. 65 of 2006 provide the procedure for Government to acquire land. In order to accelerate land acquisition, Government shall set up a committee for land acquisition, which then commissions an independent land appraisal to determine the price of land. In case the land committee and land owner cannot agree on compensation, the committee may determine the compensation and instruct the respective government institution to deposit the compensation at district court, which provides the Government with a right of way over the land. The regulation also provides that once the Government has designated an area for an infrastructure project, any party that intends to purchase land within the area must obtain prior approval from the Government.</p>
Utilization of Forest Area for Infrastructure	<ul style="list-style-type: none"> <li>• Law No. 41 of 1999 on Forestry;</li> <li>• Government Regulations No. 10 of 2010 on the Procedure for Conversion of Allocation and Function of Forest Area;</li> <li>• Regulation of Minister of Forestry No. P.43/Menhut-II/2008 on Guidance for Utilization of Forest Area;</li> </ul>	<p>A forest area can be utilized for non-forestry activities under certain conditions as determined by Minister of Forestry.</p>

Topic	Laws & Regulations	Key Points
Spatial Planning	<ul style="list-style-type: none"> <li>• Law No. 26 of 2007 on Spatial Planning</li> <li>• Government Regulation No. 26 of 2008 on National Spatial Planning</li> </ul>	The central government shall prepare a national spatial plan, provincial government shall prepare a provincial spatial plan, and a municipality or regency shall prepare a municipal or regency spatial plan. The utilization of land shall be in accordance with the governing spatial plan. The Government will control this utilization through licensing, zoning, incentives, disincentives and penalties.
Dispute Resolution	Law No. 30 of 1999 on Arbitration	<p>Parties to an agreement have the right to determine the procedure for dispute settlement and the forum to settle the dispute, such as arbitration either in Indonesia or outside Indonesia, or Indonesian court. The law does not otherwise distinguish between domestic and international arbitration, though the procedures for enforcing domestic and international arbitration awards differ. The law is not based on the UNCITRAL Model Law, but incorporates many principles of the Model Law.</p> <p>The Government has ratified the New York Convention of 1958 on Recognition and Enforcement of Foreign Arbitral Awards. Based on this convention, foreign arbitral awards can be enforced in Indonesia.</p>
Company Law and Corporate Social Responsibility	Law No. 40 of 2007 on Limited Liability Companies	This law provides the procedures for establishing a limited liability company. The law requires a limited liability company to be owned by a minimum of 2 shareholders. The Law also stipulates that a company that is in the business of utilizing natural resources or otherwise affects the environment shall carry out corporate social and environmental responsibility programs (CSR). The implementing regulations on CSR will be provided in a Government Regulation.
Creditworthiness of State-Owned Offtakers	Law No. 19 of 2003 on State Owned Enterprises	Government may assign to state-owned companies an obligation to provide a public service. In case this assignment is not commercially viable, the government shall compensate the respective state enterprise. The Government is therefore legally obligated to make state-owned enterprises whole with respect to any public service obligation imposed by the Government.
Bank Lending Limits	<ul style="list-style-type: none"> <li>• Law No. 7 of 1992 on Banking</li> <li>• Law No. 10 of 1998 on Amendment to Law No. 7 of 1992</li> </ul>	A credit facility provided by a bank to a company or a group of companies shall not exceed a maximum lending limit. The maximum lending limit will be 30% of the respective bank's capital, though the Central Bank may establish a maximum lower than 30% of the bank's capital.



## 1.5 KEY FEATURES OF INDONESIA'S PPP PROGRAM

**INDONESIA** has a long history of PPP in infrastructure development. In the 1990's for example, the Government promoted independent power producers (IPPs) and the "*Kerja Sama Operasi*" (KSO) program for telecoms expansion, and some toll roads were developed on a PPP basis. However, these were negotiated deals typically awarded in the absence of competition. These early projects met with only limited success, in some cases resulting in disputes and contract renegotiation.

There have been three fundamental policy changes in Indonesia over the past decade that have shaped the current PPP program and address the deficiencies of the earlier PPP arrangements.

### A LEVEL AND OPEN PLAYING FIELD

The sector-specific laws and regulations referenced above have eliminated the monopoly role of state-owned or state-controlled enterprises in the conduct of infrastructure activities. Although in some sectors a state-owned company will be the de facto off-taker from a PPP project, there is generally no requirement that private investors must partner with a state-owned company (though in some cases of regional projects, the GCA has requested as a condition of the tender that the Project Sponsors establish the Project Company with minority participation of a designated state-owned company, typically a regional development company). Subject to the negative investment list discussed above, foreign and domestic investors may invest in all designated infrastructure sectors, subject to sector-specific regulations and the more general PPP processes laid out in PPP regulations.

### COMPETITIVE SELECTION & TRANSPARENCY

Award of infrastructure projects based on direct appointment is no longer permitted. Competitive tendering is required for all PPP projects. PPP regulations as well as many sector-specific laws and implementing regulations stipulate the processes and factors that must be applied or considered in competitive tendering.

### THE ROLE OF REGIONAL GOVERNMENT

In 1999, the Government of Indonesia took bold steps to devolve greater authority to regional governments: cities, regencies and provinces. Regional autonomy is now reflected in virtually all sector-specific and PPP regulations. In general, the Government Contracting Agency will be the unit of government that administers the geographical area of the project. For example, for projects with a physical scope limited to a city, the Government Contracting Agency (GCA) will be the city administration as represented by the mayor; for a project limited to a regency, the GCA will be the regency as represented by the regent; for a project that crosses regencies but lies within a single province, the province will serve as the GCA as represented by the governor; and for projects that cross provincial boundaries, the central government as represented by a minister or head of institution will be the GCA. The Government, through the P3CU, is actively working to enhance the capacity of regional government to prepare and implement PPP projects.



# 2 The PPP Development & Implementation Process



- 2.1 Overview of the Process
- 2.2 Project Selection
- 2.3 Public Consultation
- 2.4 Feasibility Study
- 2.5 Risk Assessment
- 2.6 Form of Cooperation
- 2.7 Government Support
- 2.8 Procurement
- 2.9 Project Implementation
- 2.10 Monitoring





## 2.1 OVERVIEW OF THE PROCESS

*Both solicited and unsolicited projects follow the same general process for development and implementation. However, the roles of the Government and Business Entity differ depending on the approach taken.*

**THE** PPP investment process entails the nine stages shown in the exhibit below. Each is explained in the following sections of this brochure.



### SOLICITED PROJECTS

For a solicited project, the nine stages are carried out as follows:

- 1. Project Screening** is the process by which the GCA identifies and prioritizes potential PPP infrastructure projects.
- 2. Public Consultation** entails efforts by the GCA to obtain inputs from the general public as well as potential developers and lenders to help shape design of the project.
- 3. Feasibility Study** is the technical, commercial and contractual design of the project that is sufficient to facilitate tendering of the project to private partners. It will be commissioned by the GCA and completed prior to tendering the project.
- 4. Risk Assessment** is the identification of risks and potential mitigation measures throughout the project lifecycle, and the proposed allocation of those risks among the various parties to the CA. It is typically conducted as part of the Feasibility Study.
- 5. Form of Cooperation** is the assessment of how the PPP partnership may be structured to optimize value to the public while ensuring attractiveness to private partners. It is typically conducted as part of the Feasibility Study.
- 6. Government Support** is the determination of the amount and nature of government contribution to the project, in terms of mechanisms such as tax incentives, land acquisition, contingent support/guarantees, direct financial support, etc. It is typically conducted as part of the Feasibility Study. This analysis aims to ensure the bankability of the project.
- 7. Procurement** is the development of a tender package, and the entire tender process from prequalification through contract signature.
- 8. Implementation** includes establishing the Project Company by the Project Sponsors, and the financing, construction, commissioning and operation of the project.
- 9. Monitoring** is the supervision of the performance of the Project Company by the GCA as stipulated in the CA.



## UNSOLICITED PROJECTS

A Business Entity may develop a project as an unsolicited project if it:

- Is not already included in the master plan of the relevant sector;
- Can be technically integrated with the master plan of the relevant sector;
- Is reasonable economically and financially; and
- Does not need Government Support in the form of fiscal contribution, i.e. does not require direct support.

Unsolicited projects follow the same development process as solicited projects, except that stages (1) through (6) are conducted by the private partner initiating the project (the “project initiator”) rather than the GCA.

If the GCA accepts the proposed project concept and associated documentation, the GCA then procures in much the same way as for a solicited project, except that the project initiator will receive one of the forms of compensation as stipulated in Perpres 13/2010. Under that regulation, the project initiator could receive either additional points in the evaluation, a right to match the offer of the first-ranked bidder, or financial compensation for the work and intellectual property resulting from the Feasibility Study. To avail one of the first two forms of compensation listed, the project initiator must participate in the tender. The third form of compensation is available only if the project initiator does not participate in the tender.





## 2.2 PROJECT SELECTION

*There is an underlying rationale for PPP projects that the Government of Indonesia puts forward to private partners. These projects are compiled in the Government's PPP Book, which P3CU updates and publicly releases each year.*

*Developers can also propose unsolicited projects, but they must demonstrate a compelling rationale for the proposed project.*

**PROJECT** selection entails project identification and prioritization. Indonesia has massive infrastructure needs, but not all potential infrastructure projects require or are suitable for PPP. Given that resources are limited for both Government and private partners, project selection determines where these limited resources should be devoted.

The purpose of the project selection stage is to identify projects that can attract private partners while maximizing public benefits, following a process that takes into account Government policies and objectives, as well as resource constraints and project readiness. The project selection process is important for investors to be sure that a particular project has an economic and political rationale that makes it less likely to be cancelled, deferred or fundamentally changed.

Potential projects identified by a GCA will be listed in the GCA's "master plan" and will become solicited projects. In some cases projects can be identified and prioritized through planning methodologies, such as least-cost system planning for electricity generation. However, in many other cases a GCA may have a wide range of potential projects that do not result from a comprehensive planning exercise. The P3CU is promoting the use of tools such as Multi-Criteria Analysis (MCA) by GCA's to systematically screen and prioritize such PPP projects. MCA entails the following steps:

1. Definition of the candidate infrastructure projects based on the GCA's development plans, strategies and policies.

2. Definition of criteria and associated weighting to screen and prioritize the projects for PPP development. This will include factors such as priorities of the GCA, financial and economic viability, socioeconomic impact, required government support, potential risks and risk allocation, project readiness, etc.
3. Once the projects and criteria have been defined, the GCA will estimate the quantitative or qualitative impact of each project in terms of the specified criteria. This is an early stage of the project development process, so supporting analysis will be limited at best, and estimates will be approximate.
4. The GCA calculates the relative scores for each criterion for each project.
5. The scores will be weighted, aggregated and compared to prioritize projects.

The GCA will then proceed with preparation of the leading projects.

For unsolicited projects, the project initiator should conduct a similar analysis as a basis for discussion with the GCA. This will help determine the GCA's receptivity to the proposed project.

The results of the project selection process conducted by GCAs throughout Indonesia are compiled by P3CU, and published as the Government's "PPP Book".



## 2.3 PUBLIC CONSULTATION

*PPP infrastructure projects put forward by the Government of Indonesia have been designed with inputs from both the general public as well as potential private partners and lenders. This early stakeholder engagement helps ensure that projects will proceed smoothly.*

*Private partners are expected to continue public consultation and corporate social responsibility (CSR) programs throughout subsequent project development and implementation.*

**PUBLIC** Consultation is the process of the GCA seeking inputs on the need for and design of particular projects from parties outside government. This includes the general public as well as other specific stakeholder groups such as potential project sponsors and lenders. This aims to improve the efficiency, transparency and public involvement in PPP projects, as well as the likelihood that projects will be successfully tendered, financed and implemented. Many sector-specific and PPP regulations provide for, and in some cases require, public consultation.

Public consultation occurs throughout project development and implementation. The party responsible for this consultation depends on the stage of the project.



### Pre-award Period

Prior to the award of a PPP project to a particular private partner, the GCA (or its contractor) will conduct public consultations on the general acceptability of the project among the affected stakeholders, as well as market sounding to gain inputs from potential private partners on how the project can be optimally structured. This will likely be done as part of the Feasibility Study, and ideally will be carried out as early as possible in the project cycle so that the views of affected groups can be taken into account in project design and planning.

For unsolicited projects, the project initiator will be expected to conduct pre-award stakeholder consultation.

### Post-award Period

Subsequent to the award of a PPP project, the private partner will need to take a leading role in the ongoing public consultation process. This will be necessary to minimize disruption during the construction phase, to support land acquisition efforts (if land has not already been secured), and to provide stakeholder feedback during the implementation phase. This will be part of the broader stakeholder engagement, including the CSR programs that the private partner may administer.





## 2.4 FEASIBILITY STUDY

*Indonesia's PPP regulations require a feasibility or prefeasibility study for PPP infrastructure projects in advance of tendering. This ensures a sound legal, technical and commercial design for projects offered for private participation.*

**THE** responsibility for preparing a feasibility study depends on whether a project is solicited or unsolicited. For solicited projects, the GCA commissions or prepares the Feasibility Study (FS). For unsolicited projects, the project initiator will be required to prepare the FS, and may receive the right to have the cost of the study paid by the winning bidder in the event the project initiator does not participate in the tender for the project.

Some sector-specific regulations specify the contents for feasibility studies. For example, the Ministry of Public Works has issued regulations that stipulate the contents of a road feasibility study. While sector-specific regulations may apply for any particular project, there are certain common minimum requirements for a PPP project feasibility study as stipulated by prevailing cross-sectoral regulations such as Perpres 67/2005, Perpres 13/2010 and Ministry of Finance Regulation 38/2006.

These regulations distinguish between “prefeasibility” and “feasibility” studies. A prefeasibility study is commonly understood to be a less detailed study, perhaps only 25 to 100 pages total that relies to a large extent on secondary data. A feasibility study on the other hand is typically hundreds of pages, and entails the acquisition and compilation of primary data. It provides a far greater level of detail about the design of the project.

Prevailing regulations require feasibility studies for unsolicited projects and solicited projects seeking contingent government support. Prefeasibility studies are required for all other PPP projects. This Guide uses the

term “Feasibility Study” to refer to either feasibility studies or prefeasibility studies together with other required documentation.

The Feasibility Study includes basic project design and associated financial analysis, and encompasses the other documentation specified in prevailing regulations: the proposed form of cooperation and the level and nature of government support, an implementation plan, results of public consultation, etc., as mentioned elsewhere in this Guide.

The Feasibility Study therefore fulfils the requirements of prevailing regulations, provides a basis for deciding to proceed with a PPP project, and determines the amount of government support required. It does not, however, prescribe the approach that business entities must propose when bidding for the project. While bidding documents should take into account the results of the Feasibility Study, bidders will generally have the flexibility to propose innovative solutions that may result in lower cost and/or better quality. Where possible, bidding documents specify desired project outputs rather than required inputs.

The process for the preparation of a Feasibility Study for a solicited PPP projects is as follows. An unsolicited project follows a similar process, but the project initiator is responsible instead of the GCA:

- The GCA identifies a priority project, including the basic project profile. This project may entail further review and prioritization by P3CU, particularly if the GCA expects to seek government support, or technical assistance or promotional support from P3CU;

- The GCA procures a Feasibility Study Consultant (FS Consultant). This procurement may be conducted by P3CU at the GCA's request. This procurement will need to comply with Presidential Decree No. 80 of 2003. The Terms of Reference (TOR) for the FS Consultant should cover at least the scope described below;
- The FS Consultant prepares the Feasibility Study, which should encompass:
  - A review of prevailing legislation and regulations relevant to the design and subsequent implementation of the project;
  - Identification and specification of technical design options to a level of detail allowing approximate costing of the project, and consistent with the level of detail expected in a prefeasibility or feasibility study, whichever is applicable;
  - Initial public consultation and market sounding regarding stakeholder perceptions of project options that can be used to refine these options;
  - Preliminary financial evaluation of the refined options to select a candidate project. This evaluation will typically include demand analysis and determination of tariffs for each option, as well as social cost/benefit analysis to establish economic value;
  - Risk assessment, including preparation of a risk matrix for the candidate project;
  - Identification and assessment of forms of cooperation for implementation of the candidate project, taking into account the results of the risk assessment. The assessment of forms of cooperation utilizes a modified value for money analysis;
  - Identification of funding options for the candidate project under the selected form of cooperation, and financial evaluation of the proposed project to assess financeability and bankability, and determine the nature and level of government support required, if any;
  - Environmental impact studies and other social, health, safety or environmental analyses may be included within the scope of a Feasibility Study, or conducted separately;
  - Final public consultation and market sounding to confirm proposed project design;
  - Preparation of an implementation plan describing the high-level steps required to reach commercial operation, and the timing of and responsibility for each; and,
  - Compilation of the final Feasibility Study including documentation of all above activities.
- The GCA evaluates the complete Feasibility Study to confirm compliance with the terms of reference of the FS Consultant, the requirements of Perpres 67/2005, Perpres 13/2010, Ministry of Finance Regulation 38/2006 and other prevailing regulations, and to determine whether it wishes to proceed with the project. This evaluation may be conducted in conjunction with P3CU, particularly if the FS Consultant was engaged by P3CU at the GCA's request;
- If the GCA approves the Feasibility Study, it proceeds to request government support (if necessary). If government support is unnecessary, the GCA may proceed directly to procurement of a business entity for cooperation for the project;
- The Feasibility Study will typically be among the information made available to bidders.



## 2.5 RISK ASSESSMENT

*The Government of Indonesia recognizes that clear risk allocation is necessary for successful PPP projects. Indonesian PPP regulations require that risks be allocated to those parties best able to manage them, and that this allocation be integrated into the CA.*

*The Government has various instruments at its disposal to help mitigate those risks it is in the best position to manage.*

**THE** P3CU works with GCAs to ensure that project risks are clearly identified and allocated among the various parties to the project. This risk assessment is typically conducted during the Feasibility Study, and the resulting allocations captured in the draft CA to be included with the tender documents. The assessment is comprehensive in that it covers all aspects of the project at all stages.

Market soundings provide an early opportunity in the project preparation process to identify major risks. These may then be addressed more fully during the Feasibility Study and subsequent preparation of the CA.

Examples of some of the principal risks identified in Indonesian PPP projects, and typical allocation and mitigation measures include:

- **Land acquisition**

Land may not be readily available, and may take extra time and expense to acquire. The Government is currently implementing a land revolving fund and mechanisms that enable Government to purchase land in advance of the project, which the Project Company may be required to reimburse later. In addition, for toll roads, the Government can offer a guarantee to cover additional costs that may result from delays in land acquisition or escalation of land acquisition costs above a specified threshold (land capping), in the event land acquisition is the responsibility of the Business Entity.

- **Tariffs**

Political considerations can influence the future trajectory of tariffs, potentially pushing them below the level needed for full cost recovery. The CA will normally stipulate how tariffs will be established and adjusted

over time, and the Government may issue a guarantee covering this obligation.

- **Demand**

Use of the infrastructure might not materialize as initially planned, resulting in lower revenues. For instance, some toll road or railway projects may not be financially viable due to the inability to generate sufficient traffic or passenger flow, or viability may depend upon uncertain forecasts. The Government, under prevailing PPP regulations, can provide guarantees to make up for revenue shortfalls that result when actual use falls below agreed thresholds.

- **Country & political risks**

Indonesia's credit rating is currently lower than investment grade. Foreign investors may perceive this as an impediment to international financing. However, for the past 5 years, the country has shown a positive outlook and relatively a stable political environment. The Government as well as multilateral banks and their affiliates can offer various types of guarantees and insurance to address this risk.

- **Off-taker creditworthiness**

The off-taker contracted to purchase output of a project such as a power plant may face financial difficulties that inhibit its ability to pay in a timely manner. State-owned off-takers like PLN have an exemplary record of paying foreign vendors and creditors, but Project Sponsors and lenders typically seek additional means to mitigate payment risk. Law 19 of 2003 ensures that state-owned off-takers will not be adversely affected financially due to public service obligations, and the Ministry of Finance is contemplating other forms of guarantees to further mitigate this risk.



## 2.6 FORM OF COOPERATION

*PPP projects in Indonesia may utilize any form of public-private cooperation. The form used for any particular project depends upon the results of the risk assessment and a modified value for money approach.*

**PPP** may be implemented in numerous forms, including Build-Own-Operate (BOO), Build-Own-Transfer (BOT), Operate and Maintain, and Lease-Develop-Operate (LDO). There are no restrictions regarding the PPP modality that may be used for a project in Indonesia, though the modality employed should facilitate allocation of specific risks to the party that can best manage them.

In many countries, the decision to proceed with a project on a PPP basis and the selection of an appropriate PPP modality is based on a “value for money” (VfM) analysis. Traditional VfM analysis determines whether a PPP approach will deliver the service or infrastructure more effectively and at less cost than through standard public sector means, as represented by the Public Sector Comparator (PSC).

However, this traditional approach is based on assumptions that do not reflect conditions in Indonesia. For example, a traditional VfM analysis using a PSC implicitly assumes that public sector development of the infrastructure is a realistic option. Due to limited government budgets and capacity, it may not be an option in Indonesia.

Therefore, an alternative approach has been advocated for Indonesia as follows, based on work done by the Inter-American Development Bank:

1. A full range of project modalities from fully public to fully private are identified.
2. Parameters that can affect project success are identified. These include social, institutional, technical and economic factors.
3. Modalities are evaluated qualitatively relative to one another against these parameters to determine the most promising modalities.
4. Available risk mitigation mechanisms are then considered, which may re-order or expand the feasible modalities.
5. The top-ranked modalities are then evaluated quantitatively using a financial model to determine which modality yields the highest revenue-constrained project net present value. The revenue constraint is applied to reflect end-user willingness to pay or off-taker avoided cost.

While this analysis can help identify the optimal modality for project development, it does not guarantee that the project will be bankable. Bankability, i.e. the ability of the project to attract the necessary debt financing, is considered under the next stage, Government Support. Whereas financial viability is typically measured by net present value and internal rate of return, bankability is measured by metrics such as debt service cover ratio.





## 2.7 GOVERNMENT SUPPORT

*The Government of Indonesia has established a wide range of support mechanisms for PPP infrastructure projects. The support mechanisms made available for any particular project will depend upon the findings of the Feasibility Study and associated risk allocation and selected form of cooperation.*

*Any support mechanisms extended under a particular project will be noted in the tender documents.*

**THERE** are several forms of support that the Government of Indonesia can provide for PPP projects including:

### 1. Direct Support

The GCA may contribute certain physical facilities to the project, cover selected capital costs or provide operating subsidies to the project. These latter two forms of direct support are provided through the annual national or regional budget, which is approved by the national or regional parliament, respectively. This direct support may be required when an infrastructure project is economically justified but not financially feasible.

### 2. Land Acquisition

A particularly important form of support is for the GCA to acquire the land required for the project. The winning bidder may be required to reimburse the cost of the land to the GCA, and recover that cost through project revenues. Such a requirement would be noted in the tender document.

### 3. Contingent Support

Contingent Support is a guarantee by the central Government to compensate a Project Company in the event that a specified risk materializes. The Government offers these guarantees for risks that it is in the best position to manage and for which there is an economic justification.

Prevailing regulation provides for guarantees covering political risk, project performance risk, and demand risk. Project performance risk includes risks resulting from delays in land acquisition, escalation of land acquisition costs, post-contract changes in performance specifications, delays or lower than contracted adjustments to tariffs, or delays in approval to start operations. Demand risk refers to the risk that actual

revenues fall below the minimum guaranteed revenue due to lower than contracted demand.

The GCA initiates a request for contingent support based on the findings of the Feasibility Study. That request is reviewed by KKPPi with support from P3CU, evaluated by the RMU, approved by the Ministry of Finance and administered by PT PII.

### 4. Tax Incentives

For certain types of projects the Government, through the Ministry of Finance, may extend tax incentives to private partners.

### 5. Special Economic Zones

Under Law No. 39 of 2009 on Special Economic Zones, the Government may provide certain tax incentives and licenses for business activities conducted within a Special Economic Zone or *Kawasan Ekonomi Khusus* (KEK), such as:

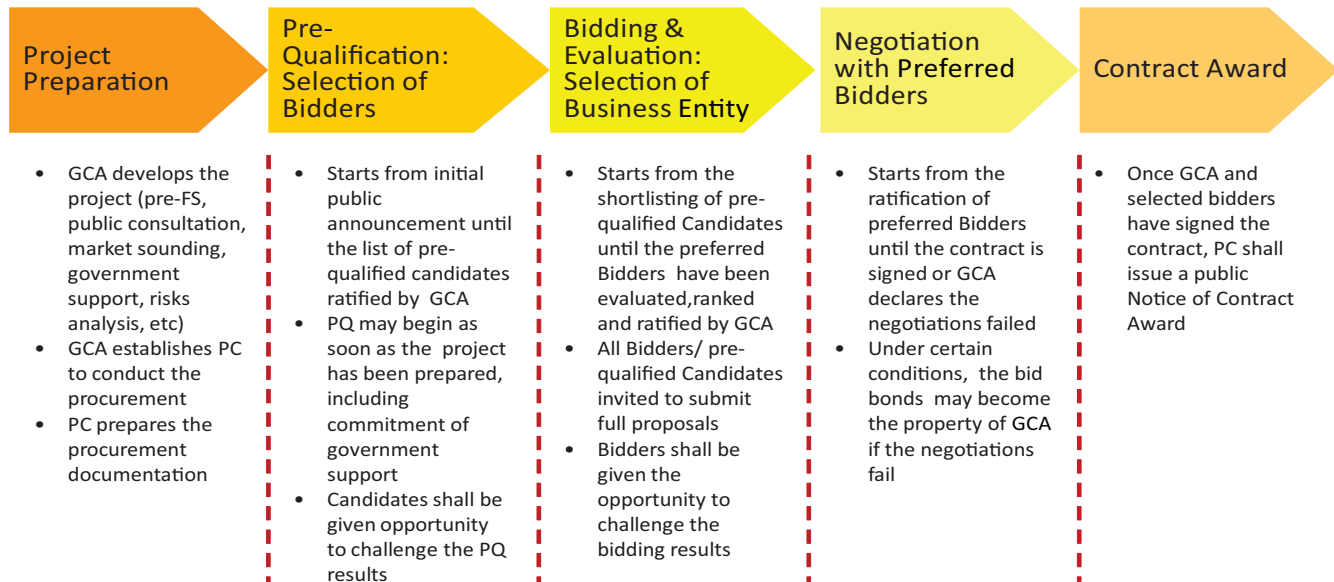
- Facility for Income Tax.
- Reduction of Land and Building Tax (*Pajak Bumi dan Bangunan*).
- Facility to import goods at reduced tax rates into the special economic zone;
- Facility to obtain business licenses.

A Business Entity may propose an area to be determined as Special Economic Zone. The Government is now preparing a Government Regulation to implement this law.

The Government will determine the nature and level of government support for any particular project based on analysis of the minimum support required for financial viability and bankability of the project under the selected form of cooperation. The support ultimately committed to a project will be noted in the tender documents.

## 2.8 PROCUREMENT

*All Indonesian PPP projects are subject to competitive procurement following a structured process that will typically include prequalification.*



**THE** GCA selects the private partner for implementation of the PPP project through competitive tendering. Both solicited and unsolicited projects are subject to this requirement. However, in a tender for an unsolicited project, the project initiator may receive either additional points in the tender evaluation, a right to match the offer of the first-ranked bidder, or compensation from the GCA or winning bidder for the work and intellectual property resulting from the Feasibility Study it prepared in the event it does not participate in the tender. The procurement process follows the following steps, as shown in the exhibit above:

### Project Preparation

Project preparation builds upon the results of the Feasibility Study. It entails preparation of the tender documents, evaluation system, and draft CA that will be included with the tender documents, as well as establishment of a Procurement Committee (PC). Any Government support must be secured prior to tendering and noted in the tender documents.

### Prequalification

The GCA publicly announces the upcoming tender and publicly solicits expressions of interest from potential private partners. The PC evaluates these expressions of

interests against criteria established in advance, and establishes a short list of bidders to be invited to submit full proposals.

### Bidding & Evaluation

The PC distributes the tender documents to the shortlisted bidders. The tender documents specify what if any government support will be provided for the project. Bidders will have on the order of 90 to 180 days to prepare and submit proposals depending on the size and complexity of the project. The PC then evaluates those proposals using previously established criteria described in the tender documents.

### Negotiation

Once the GCA has ratified the evaluation results, the PC invites the first-ranked bidder to negotiate the CA. The GCA retains the right to declare the negotiations failed if there is insufficient progress in reaching agreement. It may then cancel the tender or move to the second-ranked bidder.

### Contract Award

Once the PC and invited bidder have reach an agreement, the GCA ratifies the results and the PC publicly announces the contract award.

## NATURE OF THE COOPERATION AGREEMENT (CA)

According to Perpres 13/2010, the CA will contain the following content, terms and conditions:

1. Scope of the project;
2. Duration of the project;
3. Implementation guarantees, if any. If land acquisition is conducted by the Business Entity, the value of a corresponding performance guarantee will be the expense of land acquisition incurred by the Business Entity;
4. Initial tariff and adjustment mechanism;
5. Rights and obligations of the parties, including risk allocation;
6. Service performance standards;
7. Share transfer, if any, among Project Sponsors or other parties prior to commercial operation of the project. Such a transfer can only be made with the approval of the GCA according to criteria set by the GCA, and cannot delay the start of the project;
8. Sanctions if a party does not comply with provisions of the agreement;
9. Agreement termination or closure;
10. Financial reporting requirements for the Business Entity with respect to implementation of the CA, audited annually by an independent auditor, and its announcement in national media;
11. Disputes resolution mechanisms, escalating in steps through consensus, mediation, and arbitration/judicial;
12. Supervision of the Business Entity in conducting procurement;
13. Infrastructure asset utilization and ownership during the course of the project;
14. Return of infrastructure assets and/or infrastructure management to the GCA;
15. Force majeure conditions;
16. Statement and guarantee from each party that the Cooperation Agreement is legitimately binding and is in accordance with prevailing laws and regulations;
17. Use of the Indonesian language in the CA. If a CA is presented in more than one language, the Indonesian language version governs;
18. The governing law shall be Indonesian law.

A Business Entity must secure financing for the project within 12 months of signature of the CA, as evidenced by signed loan agreements that complete the financing of the project, and that draw-down of these funds has commenced to initiate construction. The GCA may extend this period by up to an additional 12 months based on criteria it sets, provided that the need for the extension is not the result of the Business Entity's negligence. If the Business Entity cannot secure the financing within this time, then the CA is terminated and guarantees withdrawn.



## 2.9 PROJECT IMPLEMENTATION

*In addition to a wide range of support mechanisms available for specific projects, the Government of Indonesia has enhanced the project implementation environment by establishing sector-specific regulatory authorities and tariff principles, additional sources of debt financing, and general improvements to the business environment.*

**PROJECT** implementation covers the period from the time the CA is signed until the project ends, e.g. when the assets are transferred back to the Government or the project is re-tendered. This stage includes establishment of the Project Company, financial close, construction, commissioning, operation and maintenance.

After the CA has been signed, the Project Sponsors will need to establish the Project Company, which will be established as either a domestic or foreign equity company depending on whether there is any foreign shareholding in the company. Domestic and foreign equity companies are treated essentially the same except that foreign investment in certain sectors or for certain types of projects may be restricted according to the negative investment list. BKPM offers further information on the company establishment process, including immigration, tax registration, accounting and reporting requirements. There are no restrictions on currency flows or repatriation of profits, but the foreign exchange market is relatively thin, and the availability of currency hedging instruments is limited.

Another early step in implementation is financial close. The government support provided for a particular project will be an important element in arranging finance. Guarantees will be issued through the Indonesian Infrastructure Guarantee Corporation, PT Penjaminan Infrastruktur Indonesia (PT PII). In addition, the Government has established an infrastruc-

ture finance company, PT Indonesia Infrastructure Fund (PT IIF), which can lend a portion of debt needs. Guarantees, including those offered by multilateral banks or their affiliates, may be documented during this stage.

The laws and regulations covering several infrastructure sectors stipulate how operating companies are regulated, and in particular, how end-user tariffs and subsidies are applied. Even for activities such as power generation, in which there is a single off-taker for project output, the definition of end-user tariffs and subsidies are important considerations in considering creditworthiness of the off-taker. For example, the Government is obligated to subsidize the public service obligation of any state-owned company that results from end-user tariffs being lower than the cost of supply.

Depending on the nature of the project, a Project Company may be subject to corporate social responsibility (CSR) requirements as stipulated in Law 40 of 2007.

The Government of Indonesia has made important reforms in tax and customs administration over the past several years. For example, companies are no longer obliged to pay disputed taxes or penalties until appeals have been exhausted, and a Tax Court independent of the Tax Office has been established.





## 2.10 MONITORING

*The Government of Indonesia monitors PPP project operations to ensure compliance with terms of the CA, as well as to draw lessons that can be applied to future PPP projects. The CA will spell out monitoring authorities and responsibilities between the GCA and private partner.*

The objectives of PPP project monitoring are to:

- Ensure project operations are in line with regulations
- Ensure the output or level of performance complies with the CA, particularly as required for adjustments in tariffs
- Handle any necessary variations and / or address potential problems. This is especially important because the CA for PPP projects are typically of a very long duration, measured in decades rather than years.
- Anticipate the transfer of assets back to the Government (if any)

Consequently, monitoring obligations and powers are spelled out in the CA, and are performed throughout all phases of the project:

- Pre-Construction, generally from Contract Award to Financial Closure;
- Construction;
- Operations; and
- Asset Transfer or Re-tendering.



# 3

## Interaction Between the Government & Private Parties

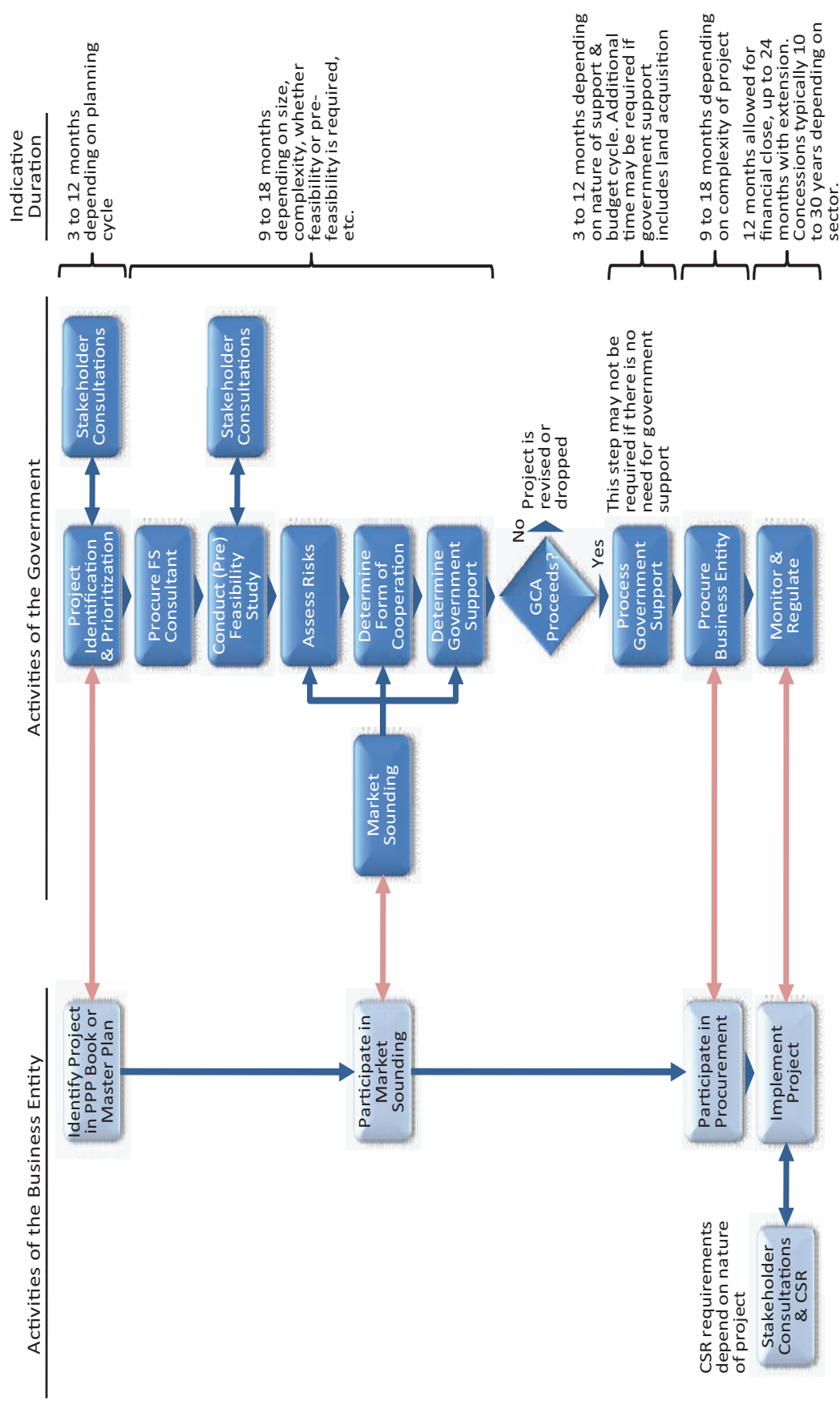


The following exhibits show indicative project development and implementation processes for solicited and unsolicited projects. The conduct of these processes within a particular sector may differ somewhat as a result of sector-specific regulations, the capacity of the GCA, etc.

These exhibits denote:

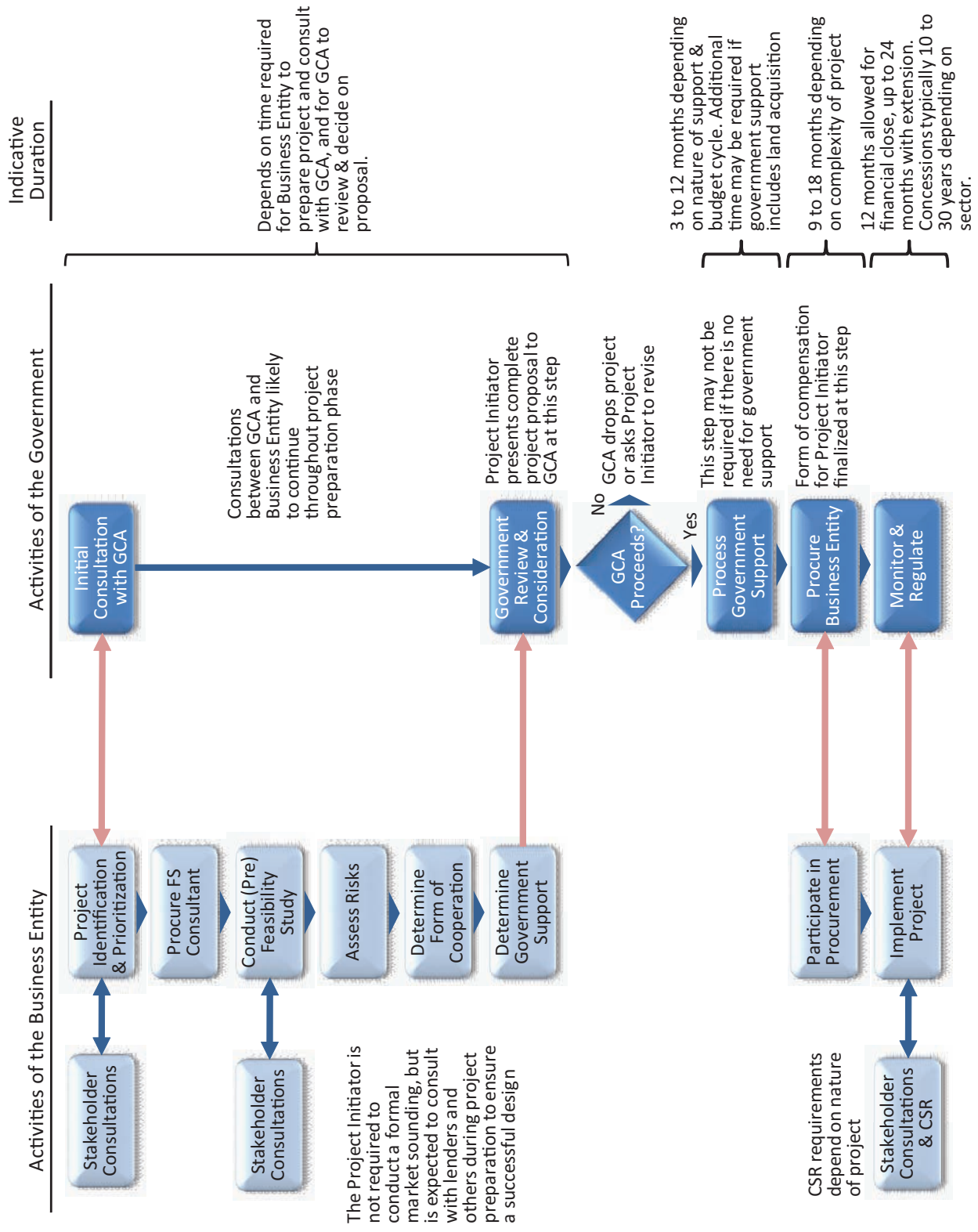
- The principal steps in the project development and implementation process, differentiating between responsibilities of the investor and the Government
- The points at which the investor and Government interact in the process.
- Indicative timing of each step or set of steps.

### Interaction & Activity Flow for a Solicited Project





# Interaction & Activity Flow for an Unsolicited Project





# 4

## Application of the PPP

## Framework in Selected Sectors



## APPLICATION OF THE PPP FRAMEWORK IN SELECTED SECTORS

Infrastructure	GCA	Basis for Concession	Basis for Project Revenue	Business Entity Selection	Regulatory Body
Rail	According to Government Regulation 56/2009, Article 307 (2), the GCA will be either the relevant ministry, province, regency or city depending on the physical scope of the project.	Agreement	According to Law 23/2007, Article 154 (2), cost for utilizing infrastructure shall be calculated based on guidance to be provided by the GCA.	According to Government Regulation 56/2009, Article 306 (2), the Business Entity shall be selected based on procedure as provided in prevailing regulations. Article 319 provides that the procedure for granting concession/business license will be regulated in Ministerial Regulations.	Not yet specified.
Port	According to Law 17/2008, Article 82 (4), a Port Authority shall serve as the GCA.	Agreement	According to Government Regulation 61/2009, Article 147 (2), the tariff shall be determined by Business Entity based on types, structures and groups of tariff that have been set by the Minister of Transportation.	According to Government Regulation 61/2009, Article 74 (2), a concession will be awarded to a Business Entity through a tender process in accordance with prevailing regulations. Article 78 provides that the procedure for granting concessions will be regulated in Ministerial Regulations.	According to Law 17/2008, Article 82 (1), the Minister of Transportation will establish Port Authorities to carry out regulation of commercial ports, among other things.
Airport	According to Law 1/2009, Article 235 (1), a concession will be granted by Minister of Transportation.	Agreement	According to Law 1/2009, Articles 244 (1) and (2), and Article 246, tariffs for airport services will be determined by the Business Entity based on procedure, structures and groups of tariff that will be determined by Minister of Transportation.	The Law does not address the procedure for selecting Business Entity. The Government is now drafting the implementing Law 1/2009.	According to Law 1/2009, Article 227 to 229, the Minister of Transportation will establish Airport Authorities to regulate airport concessions, among other things.

Electricity	Power Generation, Transmission, Distribution and Sale of Electricity to Consumers	According to Law 30/2009 Article 21, the GCA granting the electricity business license will be either the relevant ministry, province, regency or city depending on the physical scope of the project as determined by the grid to which the project is connected.	Electricity Business License [There will be an agreement with PLN in case PLN acts as the off taker]	According to Law 30/2009, Article 34 (1) and (2), tariffs for customers will be determined by central government based on approval from National House of Representatives (DPR) or determined by regional government based on approval from regional house of representatives (DPRD). According to Article 36 the Government will promulgate a government regulation on procedures for tariff determination.	Law No 30/2009 does not address the procedure for granting electricity business license. The procedure will be provided in government regulation. In principle the procedure shall be comply with Presidential Regulation No. 13/2010.	General regulation will be provided by the GCA. Tariff setting will require approval of the relevant legislative body.
Piped Drinking Water	Water treatment plants, transmission, & distribution within areas not served by regional-owned drinking water companies	According to Government Regulation 16/2005 Article 64 (5), GCA will be central government or regional government (Governor/Regent/Mayor) depending on the project scope.	Agreement	According to Government Regulation 16,2005, Article 60 (7), tariffs will be determined by the head of region (governor/regent/mayor) based on the Cooperation Agreement.	According to Government Regulation 16/2005, Article 64 (3), a concession must be awarded through a tender process in accordance with prevailing regulations. According to Article 64 (8), the tender procedure will be regulated in Ministerial Regulations.	The GCA will regulate the Business Entity according to the terms of the CA.
Toll Road	Financing, engineering, construction, operation and/or maintenance	According to Government Regulation 15/2005, Article 64, the Ministry of Public Works serves as the GCA.	Agreement	According to Government Regulation 15/2005, Article 64 (2) (c), tariffs and adjustment formulae shall be regulated in the Cooperation Agreement. According to Article 68, BPJT will adjust tariffs every 2 years following these formulae. The tariff adjustment will be approved by the Minister of Public Works based on recommendation from BPJT.	According to Government Regulation 15/2005, Article 55 (1), the selection of Business Entity shall be through tender process. The tender procedure is regulated in Government Regulation No. 15 of 2005 on Toll Road and Perpres 13/2010.	According to Government Regulation 15/2005 Article 3, the Indonesia Toll Road Authority (Badan Pengatur Jalan Tol or BPJT) will regulate toll roads.





# 5 Frequently Asked Questions



### **1. How can an investor find out about a prospective PPP infrastructure project in Indonesia?**

The Government publishes annually a list of prospective PPP projects in its PPP Book. Plans are underway to establish a website with this information. The projects listed are at various stages of preparation, and are all solicited projects that have been derived from the Master Plan (*Rencana Induk*) of each GCA. When a particular project goes to tender, the GCA will publish a notice in the mass media soliciting interested companies to submit an expression of interest for pre-qualification. At present, the Government uses the newspaper *Media Indonesia* to publish all infrastructure project tender notices. The Government may also publish the notice in other newspapers or other media such as an official website.

A Business Entity may also propose an infrastructure project that not listed in the Master Plan or PPP Book. This would be considered as an unsolicited project, and the Business Entity would become the project initiator. If based on the materials submitted by the project initiator in compliance with Perpres 13 of 2010, the Government decides to proceed with the project, the GCA will tender the project and the project initiator will be eligible for compensation as provided in Perpres 13 of 2010.

### **2. When does a foreign investor have to establish an Indonesian company to pursue a PPP infrastructure project?**

Foreign investors are not required to establish an Indonesian company to participate in the tender process. However once the foreign investor has been awarded the project, then it (with its local and foreign partners) must establish an Indonesian company as a special purpose vehicle (the Project Company) to carry out the project.

### **3. Does the foreign investor have to join with a local partner?**

Based on current negative list regulation for foreign investment, infrastructure projects are typically open for foreign investment with a maximum 95% foreign ownership of shares. For some sectors this threshold is 49%. Hence, the foreign investor will need to join with a local partner (or local partners) to hold at least 5% of the shares in the Project Company as indicated on the negative list. This local partner(s) shall participate in the tender process as a member of the foreign investor's consortium.

In some tenders a GCA may require the bidders to join with a designated state-owned development company as a partner in the Project Company. When this occurs it typically happens in tenders conducted by a regional government GCA, which designates its local development corporation as a minority partner.

### **4. How long is the tender process?**

It depends on the particular sector, size and complexity of each project. The tender documents shall clearly specify the time allowed for bidding and the period of bid validity. Indicative bidding periods may range 90 to 180 days, followed by a 6 month period of bid validity.

## 5. How does the tender committee evaluate the proposal?

The procedure and criteria for evaluating proposals will be stipulated in the tender document. In some sectors there are Ministerial Regulations that specify the factors to be considered in bid evaluation. Price will normally be a major factor. Typically the Procurement Committee will first evaluate technical proposals to ensure compliance with all required items. The Procurement Committee will then open financial proposals of those bidders who comply with the minimum technical requirements, and will then either award on price, or on an evaluated price that takes into account other factors such as quality of the financing plan and other non-price factors.

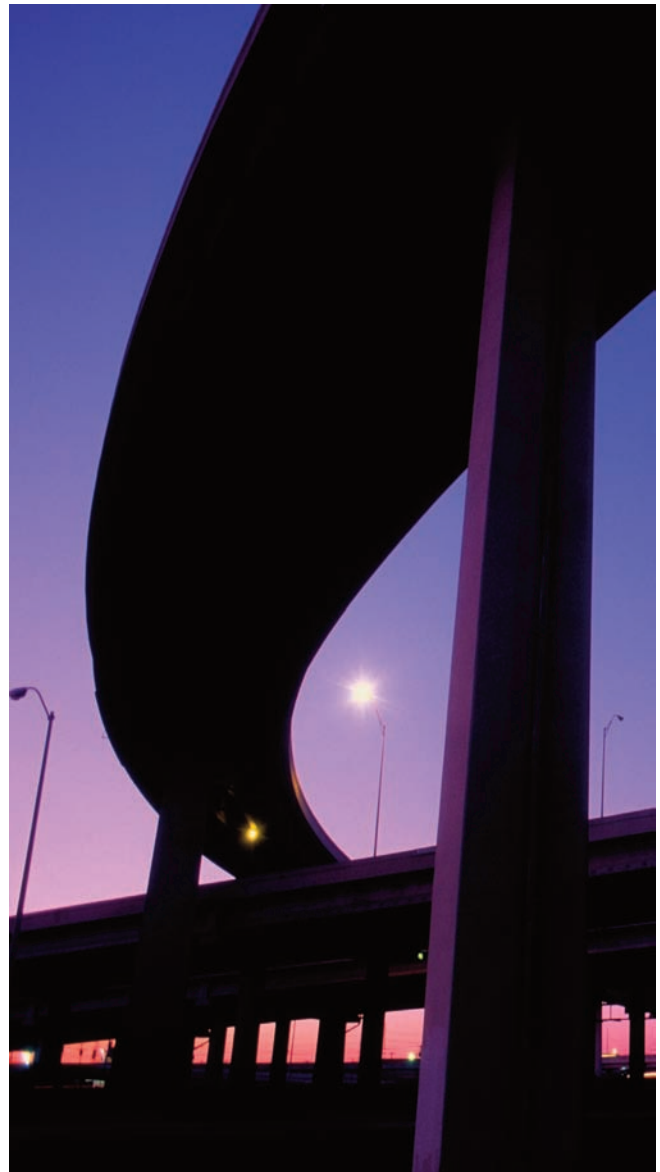
## 6. Who is the Government Contracting Agency (GCA) for a particular infrastructure project?

The GCA is typically determined according to the laws and regulations governing a particular sector. In line with regional autonomy regulations, the GCA will typically be:

- Minister: for cross-province infrastructure;
- Governor: for cross-city/regency infrastructure within a province;
- Mayor/Regent: for infrastructure within a city/regency

## 7. How will the tariff will be set initially and periodically adjusted?

The initial tariff will normally follow from the price proposed by the winning bidder, and the adjustment formula will be stipulated in the concession agreement or agreement with off taker. A draft of this agreement will be included with the tender documents. If the Government also extends a guarantee for tariff implementation, there will be additional documentation on how the guarantee is invoked in the event the tariff is not adjusted in accordance with the formula stipulated in the CA.







# 6 Contact Information



## CROSS-SECTOR PPP PROGRAMS

**Directorate of Public Private  
Partnership Development,  
State Ministry for National  
Development Planning**

Position : Director of Public Private  
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Address : Jl. Taman Suropati No. 2,  
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Phone : +62 21 3193 4175  
Website : [www.bappenas.go.id](http://www.bappenas.go.id)

**Center for Fiscal Risk Management  
(Risk Management Unit, RMU)  
Ministry of Finance**

Position : Head of RMU  
Address : Jl. Lapangan Banteng Timur No. 2-4,  
Jakarta 10710  
Phone : +62 21 384-6725 / +62 21 345 2571  
Website : [www.depkeu.go.id](http://www.depkeu.go.id)

## SECTOR-SPECIFIC PPP PROGRAMS

### ELECTRICITY SECTOR

**Planning and Partnership Office,  
Ministry of Energy and Mineral Resources**

Position : Head of Planing and Partnerhip Office  
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Website : [www.esdm.go.id](http://www.esdm.go.id)

### TOLL ROAD SECTOR

**Indonesia Toll Road Authority,  
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### TRANSPORTATION SECTOR

**Center for Studies on Partnership  
and Transportation Services,  
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Position : Head of Center Studies for Partnership  
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### WATER SUPPLY SECTOR

**Supporting Body  
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