



DISCUSSIONS ON POSSIBLE IMPACTS AND IMPLICATIONS ON PPPS POST-COVID-19

Abstract

This paper presents the current state of public discourse on the post-COVID-19 impact on PPPs. The primary aim is to preview the possible challenges to public sector PPP programs and highlight potential recovery efforts to mitigate or overcome the associated consequences.

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September 2020

The response to COVID-19 has impacted every type of economic and social activity worldwide. The pandemic and its consequences have been challenging to the whole economy and significantly disrupted many sectors including the public-private partnerships (PPPs) industry. PPPs are not exempted from the possible impacts on how the public and private sectors deal with the newly emerging issues and conduct business over the long term. Currently, there is a growing discussion on possible impacts beyond the current wave of COVID-19 that urges immediate revision of Government PPP strategies, particularly the strategic objectives and operational elements. This paper presents the current state of public discourse on the post-COVID-19 impact on PPPs. The primary aim is to preview the possible challenges to public sector PPP programs and highlight potential recovery efforts to mitigate or overcome the associated consequences.

Today, revisiting strategy and questioning every element is the starting point to develop responses to different anticipated challenges related to the nature of the PPP business within the ecosystem. This should lead to new operating models, new priorities, and new activities and measures, to be able to survive and grow within the emerging landscape. PPP practitioners have reported a number of potential factors that may have major impacts on existing PPP management and operations. These factors can be classified into two main themes: strategic and operational implications.

Potential Strategic Implications

PPP Practitioners and analysts have anticipated that the impact of COVID-19 may touch certain aspects of the PPP pipeline and its contract management in the short term. Besides, this impact may extend to affect both medium and long terms of PPP life cycle. It is often the impacts associated with the short and medium term that are related to the operational aspects of the PPPs life cycle. These can be managed and mitigated by considering the overall objectives of the public sector PPP programs and their relevance and significance to national policy. The fallout from COVID-19 highlights certain gaps in certain sectors that need to be given a high priority in the longer term to mitigate against similar future events. Central to these priorities is the alignment of the Public sector PPP programs with the national strategy. This requires proactive and collaborative efforts among government entities in reassessing sectoral needs and associated

risks. It has been recommended that *“governments should revisit their PPP sector priorities once the scale of impacts on existing PPPs is ascertained. This might require a total revision of program visions, plans, and strategies in terms of national development goals (medium- and long-term action and goal)”* (Baxter, 2020). Such a re-evaluation of longer term goals will need to consider how to make PPP projects are sustainable in nature, resilient to unknown events while still bringing efficiency gains and returns (Haegel, 2019, Carrasco et al., 2020).

Declining global economic activity, and the support measures taken by many governments, will lead to severe budget deficits. This increases the pressure to engage the private sector to fund feasible and bankable PPP projects to support national policy objectives. Existing funding mechanisms for infrastructure will need to be reassessed and the costs and benefits compared to the alternatives.

As part of this discussion, some PPP practitioners are in favor of making greater use of the “land value capture” concept, allowing PPP operators to generate additional revenue from the public by providing additional services, thereby reducing the cost burden on the government. The aim is to reduce the fiscal burden of government-funded PPP projects. Even before COVID-19, this was seen as potentially attractive, and was used widely in the UK and USA, among other countries (Connolly and Wall, 2016). Mobilization of such non-traditional revenue sources may make the difference between doing the project as a PPP and not doing it at all (Grover et al., 2020).

Potential Operational Implications

For ongoing PPPs, COVID-19 raises different issues. It could exacerbate and increase the risk of disputes between the private partner and the Government contract management team, particularly in the short term. PPP practitioners have highlighted various potential issues, including supply side impact, delay in construction, demand issues, supply chain issues, risk allocation and force majeure issues (World Bank, 2020). If emerged, these issues need to be addressed urgently by both parties in order to avoid potential conflicts and discrepancies.

PPP specialists have suggested various mitigation and recovery strategies to maintain the sustainability and resilience of PPP projects. For example, the World Bank (2020) recommends initiating renegotiation of PPP contracts on various parameters of key projects that are particularly

vulnerable to low performance, construction delays and other aspects. The primary goal should be to ensure the quality and continuity of PPP services to the target community during the crisis and beyond. This should be done in a co-operative and win-win manner to achieve the best outcomes. Extreme actions such as penalties or even termination of PPPs contracts are more likely to be disruptive and risky and may bring wider negative effects on the sector.

Review of risk allocation is another aspect highlighted by PPP practitioners. Commonly, construction, maintenance and operations risks are allocated to the private sector while political risks are allocated to the public sector. Accordingly, force majeure events, including pandemics, are usually a shared risk. Part of the problem is that, by definition, force majeure is rare. On average only 7% of PPPs are likely to experience a force majeure event (Global Infrastructure Hub, 2018). Contract provisions considered to be “standard” may not be questioned as much as they might be during drafting and negotiation. However, there may be ambiguities surrounding “standard” contractual terms and force majeure clauses. According to Baxter (2020) most PPP contracts have only vague descriptions of what constitutes a force majeure event. This means that when a force majeure event like COVID-19 happens, there is a high risk of disagreement and dispute that may negatively affect the PPP project. Key questions to be asked include “*what does force majeure include? What is the compensation to be paid if it is invoked? What are the lacunae in contracts that need correction so that stakeholders interest is balanced?*” (Sural, 2020), and does the contract adequately cover such pandemic events (Baxter 2020)?

These questions are valid in the current situation and need to be clarified with concrete answers embedded within the PPP contracts. In the short run if these issues are emerged, it is recommended to seek mutual solutions that prevent project failures through agreed and satisfactory terms for both parties. It is worth doing this as a preventative measure even if there is currently no claim or dispute. In the long term, it is suggested to revisit the past practical guidelines and redefine the details of the potential risks and the responsibilities of each party that may occur in similar events or other anticipated events (Baxter 2020, Sural 2020).

Concluding remarks

The COVID-19 crisis highlights some emerging issues related to the PPPs industry and how it has been impacted. Today, exploring different scenarios and risk analyses provide opportunities for reassessing the anticipated implications in the short-to-medium and long terms. Based on current discussion and discourse in the PPP literature, below are some recommended mitigation and recovery strategies for consideration:

- Reassessment of the PPP pipeline in cooperation with the relevant sectors and stakeholders, to ensure that it remains relevant and affordable.
- For current PPP projects that have been affected, it is advisable to seek immediate solutions through a renegotiation strategy.
- Avoiding extreme actions (such as penalties or contract termination) to maintain the continuity of service.
- Review of risk sharing mechanisms incorporated in PPP contracts, including specifically those relating to force majeure.
- Adopt comprehensive guidelines on force majeure risks that spell out the responsibilities of the public and private sectors under different events.

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