PUBLIC-PRIVATE PARTNERSHIPS AND INVESTMENT INCENTIVES

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Purpose

The purpose of a public-private partnership is to define the general rules applicable to the intervention of the State in the:

- ✓ Determination
- ✓ Design
- ✓ Preparation
- ✓ Tender
- ✓ Adjudication
- ✓ Alterations
- ✓ Inspection
- ✓ Monitoring of projects earmarked to construct or rehabilitate resources of vital interest to the development of the economy, such as basic infrastructures

Considered as Basic Infrastructure:

- ✓Ports
- ✓Airports
- ✓Highways
- ✓Bridges
- ✓Rail Roads
- ✓Dams
- ✓Telecommunications

Definition of a Public-Private Partnership and Scope of Application

- A Public-Private Partnership (PPP), is a contract or a uniting of contracts, by which means private entities, undertake an obligation, in a durable form, in relation to a public partner, to ensure the development of an activity tending to satisfy a collective need, in which the financing and the responsibility for the investment and its operation are undertaken, wholly or partly, by the private partner.

Who are the Public Partners?

- The Public Partners are:

- The State and Local Authorities
- Autonomous Funds and Services
- Public Enterprises

Legal Regulation Instruments

- The following constitute, among others, instruments that legally regulate relations of cooperation between public and private entities:

- ✓ Concession of public works contract
- ✓ Concession of public service contract
- ✓ Continuous supply contract
- ✓ Provision of services contract
- ✓ Management agreement
- ✓ Cooperation agreement, when an already existing establishment or infrastructure is involved

Objectives

The essential objectives of public-private partnerships are to:

- ✓ Improve efficiency in the allocation of public resources
- ✓ Increase the capacity of the State to execute investments
- ✓ Improve service, both qualitatively and quantitatively, through effective controls that enable it to be permanently assessed by the potential users and the public partner

Sharing Responsibilities

- Within the scope of public-private partnerships it is incumbent on the public partner to monitor and control the execution of the purpose of the partnership, so as to guarantee that the aims subjacent to public interest are fulfilled.

- Preferentially, the private partner undertakes the financing, as well as the exercise and management of the activity contracted.

Assumptions

- When constituting a public-private partnership the following should be observed:

- ✓ It is in the country's General Plan for Public-Private Partnerships (PGPPP)

- ✓ The PGPPP is a plurianual and multisectorial document, which defines strategy vis-à-vis public-private partnerships, prepared with the cooperation of all ministerial departments, which should be approved by the Executive

- ✓ Express identification of the public entity responsible for bearing the liabilities arising out payments to be made to the private partner, when it is foreseen that they will arise

Assumptions (Cont.)

- ✓ The identification of the origin of the respective funds
- ✓ Exceptionally, based on duly founded grounds, public-private partnerships not contained in the General Plan for Public-Private Partnerships (PGPPP) may be approved

Risk Sharing

- The sharing of risk between public and private entities should be clearly identified contractually, and abide by the sharing of the different risks inherent to the partnership, by the parties, in accordance with their capacity to manage those same risks at the lowest cost to projects.

Sectorial Partnership Programs

- In accordance with political and sectorial investment priorities, sectorial programs for partnerships may be developed, involving a coordinated series of projects with recourse to private management and financing, in accordance with the General State Budget Law.

- The coordination and technical support required for the preparation of the projects involved or to be involved in sectorial programs can be attributed, by the Ministry responsible for Sectorial Oversight, to specialized units or structures which will undertake, namely, to present the respective preliminary study.

Sectorial Partnership Programs (Cont.)

- The study provide for in the point above should demonstrate the capability to attract the private sector as the potentially interested party, and also existing market conditions, with it being permitted, with express authorization from the ministerial department of oversight, to be prepared by the private partner.

Bodies Supporting Public-Private Partnerships

- Before being submitted to the Titleholder of the Executive Power, public-private partnership projects, should be appraised by a Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP), empowered to:

- ✓ Appraise and deliberate on the procedure manual for selection and contracting as regards the participation of the State in investments and in the capital stock of joint ventures with private shareholders, to be approved by executive order of the Minister responsible for Oversight

- ✓ Appraise and deliberate on the proposal of the General Plan for Public-Private Partnerships (PGPPP)

Bodies Supporting Public-Private Partnerships (Cont.)

- ✓ Approve proposals for public-private partnership projects, presented by the sectors, with a prior opinion from the Ministry responsible for Oversight
- ✓ Orientate the contractual process, after consultation with the Audit Court, as to the legal conformity of the process and approval by the Titleholder of the Executive Power
- ✓ Appraise and deliberate on the reports on the execution of contracts, presented by the ministerial departments of oversight and prepared by monitoring bodies

Required Documentation

- The dossier to be submitted to the Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP) should contain:

- ✓ Program for the adjudication procedure applicable
- ✓ General Contract Specifications
- ✓ Analysis of options that determined the project's configuration
- ✓ Description of the project and its financing method
- ✓ Demonstration of its public interest

Required Documentation (Cont.)

- ✓ Justification for partnership model chosen
- ✓ Demonstration of the ability to bear costs and risks arising out of the partnership, in relation to the plurianual financial programming of the public-administrative sector
- ✓ Environmental licensing, when so required, in accordance with applicable law
- ✓ Draft contract

Launch of Public Tender

- It is incumbent on the Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP) to deliberate, definitively, as to the launch of the partnership and respective conditions, submitting its opinion to the Ministry responsible for Oversight, which will execute the partnership's selection procedures and negotiation of terms.

- The launch of the partnership is made according to the adjudication procedure applicable, already approved by the Audit Court in advance, in accordance with legislation relating to public contracts.

Launch of Public Tender (Cont.)

- Private partners may apply to have the process in course interrupted or annulled, by deliberation of the Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP), under a proposal from the sectorial Ministry responsible for oversight, with their not being entitled to receive any compensation, whenever:

- ✓ In accordance with the appraisal of the objectives to be fulfilled, the results of the analyses and assessments realized up until then and the results of the negotiations carried out in the event that candidates do not correspond, in satisfactory terms, to the objectives of public interest subjacent to the constitution of the partnership, including the respective capability to bear the estimated overall liabilities

Monitoring Partnerships

- The powers to monitor and control the execution of partnerships are exercised by the entities or services identified in the contracts

Monitoring the Execution of Partnerships

- It is incumbent on the Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP) and the sectorial Ministry responsible for Oversight to proceed with the monitoring of the partnerships, with the objective of assessing costs and risks and of improving the constitution process of new partnerships.

- The ministerial department of oversight provides technical support to the Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP) in conducting the monitoring, negotiation and execution processes of the partnerships, translated into the following:

✓ Issue of opinions, collection and availability of information relating to costs, risks and the financial impact of the partnerships

✓ Reception, on behalf of the Ministerial Commission for the Assessment of Public-Private Partnerships (CMAPPP), of the communications provided for in the respective law

Monitoring the Execution of Partnerships (Cont.)

- ✓ Monitoring of processes underway in arbitration courts, providing technical support to the partner when such is determined by Ministerial Commission for the Assessment of Public-Private Partnerships

- ✓ Filing and registration of elements related to partnerships

- The Titleholder of the Executive Power should submit, performance reports on the public-private partnership contracts to the National Assembly and the Audit Court annually, which, excepting information classified as secret, should be made available to the public, through a public data transmission network.

Financial Equilibrium and New Activities

- The financial equilibrium of the respective contract may be restored, when a significant change occurs in financial conditions in the development of the partnership, namely, in cases of a unilateral modification, imposed by the public partner, or of the contents of the private partner's contractual obligations, or of the essential conditions in the development of the partnership.

- The public partner is entitled to an equal share, together with the private partner, of the financial benefits that arise, during a set period of time, in the development of the partnership, namely in cases of an improvement in the financing conditions of the partnership by way of the renegotiation or substitution of financing agreements.

Financial Equilibrium and New Activities (Cont.)

- Documents pertaining to the adjudication procedure applicable or the contractual deed, should expressly contain presuppositions providing for the restoration of the financial equilibrium in the private partner's favor or to the share in favor of the public partner of financial benefits in the development of the partnership.

Arbitration Processes

- Any litigation arising out of relations established within the scope of public-private partnerships, may be submitted to arbitration, in accordance with the Law On Voluntary Arbitration in force.

Guarantee Fund

- The financial execution of public-private partnerships is guaranteed by a special fund, called the Public-Private Partnerships Guarantee Fund (FGPPP), to be set up by the Executive

Purpose of Guarantee Fund

- The purpose of the guarantee fund is to provide for any eventual financial obligations undertaken by the State within the scope of partnerships, that due to issues or facts of an extraordinary economic nature, cannot be provided for with the specific resources allocated to the State in the implementation of a certain public-private partnership .

Guarantee

- The major incentive to investing in PPPs is the fact that the investor does not make a "direct” risk investment.
- The risk inherent to the financing of the investment is backed by the sovereign guarantee of the State.
- The investor/financial backer, aside from reimbursement of the investment, obtains additional profits, by operating the project during an agreed period.

Tax Incentives

- The investor will be entitled to repatriate dividends with the same tax incentives afforded to "direct“ investments, as follows:

Tax Incentives				
Economic Zones	**Corporate Tax**	**Capital Gains Tax**	**Property Transfer Tax**	**Criteria for Applying Maximum Limits**
Zone A Luanda, main municipalities of Benguela, Lobito, Huila and Cabinda	1 to 5 years	Up to 3 years	For the acquisition of land and real estate connected to the project	Investments ≥ USD 50 million; Investments which generate ≥ 500 jobs;
Zone B remaining municipalities of Benguela, Cabinda, Huíla, Kwanza Norte, Kwanza Sul, Bengo, Uíge, Lunda Norte and Lunda Sul	1 to 8 years	Up to 6 years	For the acquisition of land and real estate connected to the project	Investments ≥ USD 20 million; Investments which generate ≥ 500 jobs;
Zone C Huambo, Bié, Moxico, Kuando Kubango, Cunene, Namibe, Malange and Zaire	1 to 10 years	Up to 9 years	For the acquisition of land and real estate connected to the project	

Projects Earmarked for PPPs in Angola 2013-2017

Sector	Number of Projects	USD Billion
Energy and Water	Subtotal 65	14.4 subtotal 29.1 total
Transportation and Logistics	123	24.3
Total		**53.4**

Estimated PIP (2014): 1 trillion, 380 billion AKZ equivalent to USD 14 billion
Source: National Development Plan 2013-2017

THE BOTTOM LINE

- The bottom line is knowing whether or not PPPs have been successful in the various countries in Europe where they have been implemented.

- In the cases of the UK and Portugal, experiences are known to have turned out to be not very positive

- In the case of the Netherlands, PPPs were a success, because the State does not put forward the sovereign guarantee, but just a down payment and the contract signed between the parties, paying the remainder when the execution of the work has been completed, or in special cases, the payments are made in installments.

REGIONAL AND INTER-REGIONAL PROJECTS

- Angola is once again connected to the city of Luau in the Democratic Republic of Congo and to the city of Linge on the Zambian border, by the Benguela railroad, departing from the Porto of Lobito.

- The Benguela railroad was the first PPP to be embarked upon – November 27, 1902 - between the Portuguese Government and a British citizen, Robert Williams.

- In its turn, the Republic of Zambia has plans, in its regional development program (Southern Africa), for the construction of a rail line that will link its city of Chingola to Linge on the Angolan border.

- Eastward, the Zambian project, which will be implemented with the support of South Africa, will link that country to Mozambique, thereby interconnecting countries on the eastern side of Southern Africa to Central African countries, by way of the Benguela railroad in Angola, with it arriving in the Democratic Republic of Congo, and going to the South, where it will connect up with Namibia.