

WARM WELCOME TO OUR NEW VICE CHANCELLOR/PRESIDENT

With great pleasure the Legal Office takes note of the appointment of a distinguished educationist, YBhg Emeritus Professor Dato' Dr Hassan Said who has been appointed the new Vice Chancellor of UiTM, effective 1 February 2016. He takes over from YBhg Tan Sri Dato' Sri Prof Ir Dr Sahol Hamid Abu Bakar whose term as Vice Chancellor of UiTM ended on 31 December 2015.

Prior to his appointment, Emeritus Professor Dato' Dr Hassan Said was the Vice Chancellor and President of Taylor's University, as well as the former Director-General of the Department of Higher Education, Ministry of Higher Education (January 2005 - April 2008). He holds a Bachelor's Degree in Mathematics from the University of Manchester, UK (1979), Master of Science from Brunel University, UK (1981) and a PhD from Brunel University (1984). He specialises in Computer-Aided Geometric Design.

We, at PPUU warmly welcome our new Vice Chancellor to UiTM. We are confident that in view of his excellent leadership record and academic achievements, YBhg Emeritus Professor Dato' Dr Hassan Said will take UiTM to a higher level, both in the richness of education and the quality of its staff.



*"Allah never changes a condition which
He has conferred upon a people until they
change what is in their own selves"*

(Holy Qur'an, Surah 8:53).

AN INTRODUCTION TO PUBLIC PRIVATE PARTNERSHIP (PPP) AND PRIVATE FINANCE INITIATIVE (PFI)

By: Rasanubari Asmarah Said* and Adlin Samsudin**

Background

PFI was initially developed in Australia and United Kingdom as a mean to deliver public sector infrastructure or services by using private sector capacity and public resources. PFI expanded in the United Kingdom in 1996. The main factor for this growth was because the UK government was under pressure to reduce public debt but at the same time, there was a high demand for better services in public assets such as hospitals, schools and roads.

In Malaysia, PPP/PFI was introduced under the Ninth Malaysia Plan (2006-2010) as another mode of government project procurement and to enhance the effectiveness of the privatization program. The implementation of PPP/PFI was accelerated in the current Tenth Malaysian Plan (2011-2015) which aimed to improve the living standards of Malaysians¹. The Tenth Malaysia Plan allocated RM20 billion to a facilitation fund to assist private sector involvement in PPP projects.²

What is PPP and PFI?

Public Private Partnership (PPP) is a partnership between the public sector or government and one or more private sector with the purpose of providing a public service, infrastructure or funding a project. The private party not only provides the public service or infrastructure but also assumes substantial financial, technical and operational risk in the project. Private Finance Initiative (PFI) is also a procurement method for procuring services and infrastructure using private funding. It is a form of a PPP. The

differences between PPP and PFI are subtle and in other parts of the world, the two terms are often used interchangeably.³

The implementation of projects through PPP method include:

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| <ul style="list-style-type: none"> • Build – Lease – Transfer (BLT) • Build – Lease – Maintain – Transfer (BLMT) • Build – Lease – Maintain – Operate – Transfer (BLMOT) | } | PFI |
| <ul style="list-style-type: none"> • Build – Operate – Transfer (BOT) • Build – Operate – Own (BOO) • Land swap (the exchange of land) • Management contract • Corporation⁴ | } | Privatisation |

In a PPP project, the private sector is responsible for financing and managing a package of capital investment and services including construction, management, maintenance, refurbishment and replacement of public sector assets. The private party raises funds to finance the assets and provides public infrastructure based services. The public sector then compensates the private sector through lease rental throughout a concession period of 20 to 30 years. The lease rental payments guarantee a total return of the concessionaire's capital investment expenditures. However, payments for services such as maintenance services are based on Key Performance Indicator (KPI) for the services.⁵

In some PPP projects such as Highways and public transport such as LRT, the private party receives payment from the public users directly. In most PPP projects, the assets are transferred to the public sector at the end of the concession period.

Legal Framework and Administration

An innovation of the PPP system is the creation of permanent government units tasked with overseeing and managing the use of PPPs⁶. In Malaysia, such a unit is the Public-Private Partnership Unit (Unit Kerjasama Awam Swasta (UKAS), formerly known as 3PU) under the Prime Minister's Department. UKAS is the

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¹Nooriha Abdullah, Azlinor Sufian, Darinka Asenova and Stephen J.Bailey (2014), *PPP/PFI in Malaysian Development Plans: Purpose, Structure, Implementation, Financing and Risk Transfer*. Proceedings of 5th Asia-Pacific Business Research Conference 17-18 February 2014, Hotel, Kuala Lumpur. ISBN: 978-1-922069-44-3

²Khairuddin Abdul Rashid (2012). *Understanding Malaysia's public private partnership, Taking Stock of PPP and PFI Around the World*. Certified Accountants Educational Trust (London)

³UKAS (Public Private Partnership Unit) (2009), *Garispanduan Kerjasama Awam Swasta (Guidelines on Public Private Partnership)* (Prime Minister's Department)

⁴Ibid

⁵Nooriha Abdullah, Azlinor Sufian, Darinka Asenova and Stephen J.Bailey (2014), *PPP/PFI in Malaysian Development Plans: Purpose, Structure, Implementation, Financing and Risk Transfer*. Proceedings of 5th Asia-Pacific Business Research Conference 17-18 February 2014, Hotel, Kuala Lumpur. ISBN: 978-1-922069-44-3

⁶Seongwoo Son (2012). *Legal Analysis on Public-Private Partnerships regarding Model PPP Rules*. The United Nations Commission on International Trade Law (UNCITRAL)

central agency tasked with the planning, evaluating, coordinating, negotiating and monitoring of PPPs. The main functions of UKAS are:

- To act as secretariat to the PPP Committee responsible for evaluating PPP projects
- To negotiate terms and conditions of agreements
- To supervise the Facilitation Fund⁷
- To coordinate and monitor implementation of PPP projects and Facilitation Fund

The implementation of PPPs is governed by the Privatisation Master Plan and the PPP Guidelines 2009 which were published by UKAS. There is no specific statute formulated to govern PPP and all decisions regarding PPP/PFI are ultimately decided by the Cabinet.

Why PPP/PFI?

The main factor for procurement using PPP/PFI is the lack of public funds to meet demands in public services and infrastructure. The keystone behind the philosophy of PFI as a procurement method is that the public sector will be able to:

- Form a long-term operational and managerial relationship with the private sector in the development and delivery of public services and infrastructure;
- Harness private sector knowledge and expertise to improve and enhance public services;
- Reduce the required public sector borrowing requirement;
- Deliver value for money public service and infrastructure; and transfer risk away from the public sector to the more manageable private sector.⁸

Value for Money (VfM) is the main driver for implementing PPP projects and can be defined as 'the optimal combination of whole life cost and quality to meet the users' requirements'.⁹

Model of PFI in UiTM

For PFI projects awarded to UiTM as the user, the model used is by Build, Lease, Maintain and Transfer (BLMT). In this model of PFI, the private sector i.e. a concession company designs, finances and constructs the facilities and infrastructure on public land which has been leased to UiTM. On completion of the facilities and infrastructure, the said land is subleased to the concession company by

UiTM. Simultaneously, the company subleases the land and infrastructure back to UiTM to enable UiTM to use the facilities and infrastructure. These subleases will last for the whole concession period of 20 years.

During the concession period, UiTM/the Government pays the concession company lease rental for the use of the facilities and infrastructure. The concession company also maintains the facilities and infrastructure during the concession period. For their maintenance services, UiTM/the Government pays the concession company the maintenance services charges and life cycle cost. The maintenance services charges are paid according to the level of service provided by the concession company which must meet KPIs determined by UiTM. This ensures that an accepted level of service is always delivered by the concession company. At the end of the concession period, the facilities and infrastructure is transferred back to UiTM.

Conclusion

PPP is a useful concept in pursuing development plans when insufficient funds or debt might otherwise hinder such plans. The PPP concept has been used by both developed and developing countries with the view of providing better public infrastructure and services and improving the standard of living of its citizens.

However, the key to the success of such PPP projects is the cooperation and smart partnership of the private and public sector as well as proper implementation and management by the public sector. Even though the concept of PPP allocates an equally shared risk between the private and public sector, in reality the government's risk in losing public confidence is greater if PFI projects in Malaysia fail to achieve its intended purpose.

A good example is the situation in UK where PFI in the UK came under intense criticism by the opposition, the public, the media and financial experts. PFI in the UK were blamed for putting the UK in huge debt. It was recently revealed that PFIs have caused the UK to owe more than £222 billion to banks and businesses due to increase in the cost of servicing the PFIs.¹⁰

⁷Khairuddin Abdul Rashid (2012). *Understanding Malaysia's public private partnership, Taking Stock of PPP and PFI Around the World*. Certified Accountants Educational Trust (London)

⁸Shamsida Hj Saidin Khaderi, Sr Dr Hamimah Adnan, Anis Szira Bakri, (2008). *Risk Management Perception for Private Finance Initiative (PFI) Project In Malaysia Construction Industry*. Universiti Teknologi MARA.

⁹UKAS (Public Private Partnership Unit) (2009), *Garis Panduan Kerjasama Awam Swasta (Guidelines on Public Private Partnership)* (Prime Minister's Department)

¹⁰Jonathan Owen, *Crippling PFI deals leave Britain £222bn in Debt*, The Independent, 12 April 2015, <http://www.independent.co.uk/money/loans-credit/crippling-pfi-deals-leave-britain-222bn-in-debt-10170214.html>