

# ASEAN Principles for PPP Frameworks

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The *ASEAN Principles for PPP frameworks* have been developed by the ASEAN Secretariat and the OECD.

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# ASEAN Principles for PPP frameworks

## Preamble

There is an urgent need for enhanced infrastructure investment to bridge the infrastructure gap in the ASEAN region. The Master Plan for ASEAN Connectivity highlights the importance of an enhanced infrastructure base as a critical prerequisite to fostering economic and social development and regional connectivity. This will facilitate the successful realisation of the *ASEAN Economic Community* by 2015, and support the regional economies to avoid the middle income trap. Investment needs amount to USD 60 billion annually until 2020, according to ADB estimates. To foster infrastructure provision, ASEAN Member States and the ADB established the ASEAN Infrastructure Fund to further catalyse financing of infrastructure projects.

Public-Private Partnerships (PPPs) play an important role in meeting the infrastructure challenge and have been an established part of many countries' development paths. Private participation in infrastructure provision can enhance existing public capacity in providing economic infrastructure (e.g. transport, telecommunication, power, water and sanitation) and social infrastructure (e.g. health and education). Private investment can bring its own economic benefits through, for example, the transfer of technological expertise, managerial competence and product innovation. End-users can profit from a more competitive environment in the provision of public infrastructure and services; risks can be more efficiently allocated; and the public authorities can achieve greater value for money.

However, private sector participation in infrastructure can be challenging as PPP projects are more complex and often of longer duration than traditional capital investment methods. To ensure countries benefit from PPPs, they should be conducted under the principles of value for money, affordability, financial sustainability, and meeting user needs and as well as social objectives. International infrastructure investors are especially sensitive to perceived political and commercial risks present in unfamiliar economies; an efficient and transparent policy and institutional PPP framework needs to be in place. The capacity and structure of government and the private sector can affect the viability and affordability of a PPP versus traditional procurement.

The *ASEAN Principles for PPP frameworks* provide ASEAN governments with well-tested guidance on how to implement effective PPP frameworks. The Principles will guide governments seeking private sector involvement in infrastructure development for the benefit of society and sustainable development. The Principles present 'non-binding' recommendations to ASEAN member states to strengthen their PPP framework. The Principles shall not be construed as advocating the privatisation or private management of publicly owned infrastructure. The decision between public and private provision of infrastructure services should be guided by an objective assessment of what best serves the public interest.

The Principles are based on an assessment of existing PPP frameworks and practices in ASEAN Member states and build on the OECD's *Principles for Public Governance of PPPs* and *Principles for Private Participation in Infrastructure*. The Principles further draw on the World Bank's *Dedicated Public-Private Partnership Units*, the European Investment Bank's *Guide to Guidance*, the Asian Development Bank's 'Public-Private Partnership Operational Plan 2012–2020', and UNESCAP's *Guidebook on PPP in infrastructure*.

The Principles are relevant to a range of models of private participation in infrastructure. These models range from relatively limited services and management contracts, traditional public-private partnerships (PPP) and concession agreements, to full or partial public divestiture of existing assets. Any infrastructure project in which the public and private partners retain an interest, or partake in the risks in the case of failure, may benefit from the recommendations laid down in the Principles.

It should be noted that PPPs and private sector participation in infrastructure can be more or less complex and challenging. For instance, some projects will only require the use of established technology and contain relatively simple demand forecasts, such as road projects, whereas others might require more sophisticated technology and contain more risks. ASEAN countries should consequently match carefully the complexity of projects with the capacities of their contracting authorities.

The Principles are intended to serve as a first step in governments' consideration of private sector participation. They offer a coherent catalogue of policy directions to be assessed as part of their development strategies and should be tailored to the needs of each country. The Principles do not aim at detailed prescription nor do they provide technical advice on implementation of specific aspects of infrastructure investment, contract formulation or regulation. The Principles can be used to: conduct a country assessment at the national, provincial or local level, guide public authorities on progress reporting, assist private enterprise engagement, structure regional and other intergovernmental co-operation and public-private dialogues. International partners should facilitate the efforts of the ASEAN Member States and the ASEAN Secretariat to strengthen PPP frameworks within the region in light of the ASEAN Principles for PPP Frameworks.

## ASEAN Principles for PPP frameworks

The Principles are subdivided into four headings. First, the Principles address the requirement to establish a strong policy and organisational framework within government and a sound enabling environment for private sector participation. Second, the Principles deal with the PPP process – selection, development and implementation – followed by a third set of Principles to ensure affordability and budget transparency. The fourth and final heading addresses the issue of transnational PPPs for infrastructure connectivity.

### Policy and organisational framework for private participation

ASEAN governments attempting to mobilise private sector participation in infrastructure would benefit from policies establishing a transparent and predictable legal and regulatory investment framework, implemented by sufficiently resourced and appropriately mandated authorities, and complemented by a competitive business environment.

**1. Establish a clear and predictable legal and regulatory framework. This is particularly important for physical infrastructure investment, where the investment is long-term and it is difficult for an investor to disengage.**

It is a government's duty to regulate in the public interest. A sound enabling environment for infrastructure investment implies high standards of public and corporate governance, and the rule of law, including protection of core property and contractual rights.

Mobilising private investment in infrastructure requires that the legal and regulatory framework be transparent, predictable, and adequately enforced. Investors will be unwilling to put capital at risk unless their rights and responsibilities – vis-à-vis the public sector, other enterprises and the general public – are clearly established and enforced, preferably by entities independent of the contracting authority. Governments should look to the broad set of issues raised by the OECD in the *Policy Framework for Investment* when assessing the quality of their investment climate.

An effective regulatory framework also implies adequate evaluation of new regulations and, where necessary, reform of the stock of significant regulations to ensure that they are up to date, cost effective and deliver on the intended policy objectives. Investors are concerned with the way that investment policy is formulated and changed. They will avoid circumstances where policies are modified frequently or at short notice, where governments do not consult with industry on proposed regulatory changes, where laws, regulations and procedures are not clear, readily available and predictable, and where investors' rights are poorly protected. Changes to the legal and regulatory environment should be made through a transparent policy process and with public consultation.

The availability of effective contract enforcement and dispute resolution mechanisms that are effectively enforced is key to enhancing predictability, legal security, and assuring investors that their rights will be upheld promptly and adequately by local courts or international

arbitration courts. Member country adherence to and implementation of such mechanisms, including through international conventions, can help provide this assurance.

## **2. Develop competent and sufficiently-resourced authorities with clear lines of accountability to implement the legal and regulatory framework.**

Effective institutional arrangements, including through independent regulatory agencies, are seen as an important factor in ensuring policy predictability and stability, enhancing the overall investment climate for infrastructure investment, and successfully managing the public investment process.

A robust system of public authorities is required during the PPP process: infrastructure pipeline planning; project selection; the choice of procurement method; value for money testing; the tendering and procurement; project implementation and monitoring; and the setting and monitoring of regulatory standards. Different organisational structures could be used to achieve this, but it is important that the procuring authorities, Public-Private Partnerships Units, the Central Budget Authority, the Supreme Audit Institution and sector regulators have clear mandates, clear lines of accountability, sufficient resourcing, and avoid conflicts of interest. In general, it is important to ensure checks-and-balances between those agencies that promote and deliver PPPs, and those with final oversight and approval, to ensure objective selection of projects and best use of limited government capacity.

The procuring authority deals with the preparation, negotiation and administration of the contract and monitors and evaluates the contract performance during the construction and operation phases of the project. This is crucial to ensure government retains value for money during the entire project life-cycle.

Given the complexity and infrequency of PPPs, PPP units are often used to fill gaps in expertise or co-ordination in the government system. The structure and form of the PPP Unit(s) can vary, but they should enable procuring authorities to create, manage and evaluate a PPP efficiently and effectively. The PPP Unit should support the authorities in securing value for money both in the procurement and in the implementation phase. Where needed, the PPP Unit should make available high quality financial, legal, economic and project management capacities to the relevant public actors, without conflicts of interest. For example, the PPP Unit should be responsible for advice in managing a PPP process, but should not be responsible for investment promotion.

As the guardian of the public purse, the Central Budget Authority should provide scrutiny and monitoring to oversee the fiscal impact of PPP and other infrastructure investment projects. The Central Budget Authority is responsible for overall assessment and approval of the PPP project before it reaches the final decision-makers at the political level. In fulfilling this role, the Central Budget Authority should scrutinise the project for value for money, the choice of procurement method; long term affordability, correct use of procedural steps; and it should ensure that projects remain in line with political objectives and agreements. In some countries this role may be exercised in conjunction with the Planning Authorities, with project pipeline implementation devolved to sector ministries.

Supreme Audit Institutions (SAIs) should audit and assess PPP projects ex-post on performance, financial management, and compliance with relevant regulation and legislation. The SAI needs sufficient capacity to give a clear verdict on whether or not the project ultimately represented value for money and was affordable for the public purse and/or users. It could suggest possible improvements to the regulatory PPP framework, the procurement processes and inform the public on overall lessons regarding the use of PPPs.

**3. Public policy, regulation and procedures must be coherent and aligned to ensure that projects can move forward smoothly. Government authorities should work towards co-ordination and efficiency in regulation and its implementation, minimising red tape where possible.**

Public-Private Partnerships often involve many policy areas, several layers of legislation and regulation, and different levels of government. For example, investment laws, privatisation and concession laws, environmental protection laws, and sectoral regulations, can all affect PPPs. Procedures and approval processes can be imposed at the national, sub-national, or local level. Coherence in policy, legislation and regulation, and good co-ordination between government authorities in their implementation, will simplify project development and implementation, and support private sector participation by reducing the administrative burden.

**4. Ensure a competitive business environment so that the benefits of private sector participation in infrastructure are realised. This includes removing barriers to entry and obstacles to capital movements, and creating a level playing field.**

A competitive business environment should be promoted to increase cost-effectiveness and innovation. This requires an open and non-discriminatory investment environment where domestic and foreign-owned firms compete on an equal footing. This includes reducing restrictions to private investment in infrastructure, including by foreign investors when appropriate in view of public interests.

Countries with well-functioning and freely accessible capital markets, fully convertible exchange rates, and free repatriation of profits find it easier and cheaper to involve international private investors in their infrastructure sectors. Infrastructure investors can fund their operations at competitive international interest rates; can mitigate exchange rate and other risks and consequently do not need to shift a 'financing premium' onto domestic infrastructure users.

Where private infrastructure providers coexist with state-owned enterprises (SOEs), creating a level playing field involves ensuring clear distinctions between the operation of the SOEs and the exercise of public sector powers such as regulatory or supervisory roles. Such powers should be exercised by the state in a neutral manner. Transparency and neutrality should guide public decision-making regarding issues such as SOE service obligations, access to finance, financial assistance and guarantees covered by the public purse. Adopting strong corporate governance standards for state-owned enterprises and making them accountable to the laws and regulations applicable to private companies, including for bankruptcy and competition, help ensure they operate on an equal footing with the private sector.

To facilitate competition among infrastructure providers, where feasible, PPP projects could be unbundled into economically viable parts. ‘Vertical separation’ unbundles the supply chain, so that different operators can enter various operational segments of the chain. ‘Horizontal separation’ splits large-scale national or regional projects into different geographical parts, markets or service categories.

## Project selection, development and implementation

Project selection should be prioritized through a whole-of-government approach. The choice of procurement methodology and management of the PPP process should be based on principles of highest value for money and most efficient allocation of risks. Dispute resolution mechanisms should be in place to address disputes in a timely and impartial manner.

### **5. Develop an infrastructure project pipeline, with prioritization and senior political support. Project selection should be based on a whole-of-government approach and value-for-money assessment.**

An infrastructure programme requires active support from the senior political level if it is to succeed, as infrastructure can be politically controversial and several authorities have to collaborate to successfully implement infrastructure projects. In the face of many competing investment possibilities, the government should prioritize projects that contribute to the achievement of their development goals. Line ministries and other actors should align their investment programs with the government’s overall political priorities. Project selection should be consulted across government and should utilise value-for-money, affordability and cost-benefit assessments. A project pipeline of clearly prioritised investments is critical, to be procured and implemented at a sustainable pace taking into account the market’s absorptive capacity.

Pipeline development should also be informed by the capabilities and capacities of the government itself and the potential financing market. Achieving value for money, irrespective of procurement method, requires a frank assessment of the government’s own investment and service delivery capacities and capabilities, as well as options for external support to government through project development and implementation. It is also important that relevant government officials develop an informed view of the global market, the changing requirements for commercial project capital, and the requirements for attracting different types of investors (debt, equity, owner-operator etc.).

Project selection and the choice of procurement methodology should be based on comprehensive value for money assessments. There are two types of value for money: absolute (“should this project be done?”) and relative (“which type of procurement represents the most value for money?”). Value for money requires an assessment of the optimal combination of whole- of- life-cycle costs and the quantity, quality and features of the provided goods or services. All relevant aspects of sustainable development should also be taken into account. The absolute value for money assessment enables the government to compare its different infrastructure needs and prioritize its infrastructure pipeline.



**6. Active consultation with affected stakeholders is critical to address public concerns, enhance understanding, and garner support. Issues of social and environmental effects should be explicitly addressed.**

Given the complexity, possible controversy, and long-term scope of an infrastructure pipeline, governments should increase projects' sustainability and likelihood of success by engaging with civil society, affected communities, end-users and labour groups, on aspects such as service delivery, pricing, employment, environmental and social consequences (for more information, see principle 13). Stakeholders should be consulted at an early stage of an infrastructure project to give them a genuine chance to be heard and their views considered, and should continue following contract award.

Many sources of international financing subscribe to principles of social and environmental protection that may exceed those required within a given country. In order to facilitate access to a wide pool of potential financiers, issues of social and environmental effects should be explicitly addressed and internationally accepted standards of environmental and social impact assessment should be taken into account. This will facilitate access to finance, strengthen awareness and acceptance of investment projects, and enables companies to understand the social, economic and environmental values of the society in which they operate.

**7. Ground the selection of a procurement methodology in value for money, efficient allocation of risk, and the capacity of implementing agencies. This assessment is a key stage in the project life-cycle and should be separated from the initial selection of individual projects for investment.**

After individual projects have been identified within the pipeline, the relative value-for-money assessment helps governments to select which procurement method to use. The starting point for such a calculation is to design a comparison between various types of procurement, which may take the form of a Public Sector Comparator (PSC). The comparison between various forms of procurement for a specific project aims at comparing the risk-adjusted net present costs and revenues of a PPP project against the most efficient form of delivery according to a traditionally procured public-sector reference infrastructure project. The comparator takes into account which risks may be transferable to a private party and which risks might be retained by government.

Ensuring the robustness of a PSC can be difficult as the comparator may be open to manipulation to either strengthen or weaken the case for public-private partnerships. Much depends on the discount rate chosen or on the value attributed to a risk transferred. The comparison must be specifically tailored to the project that is being considered, and the assumptions that go into the comparison must be clearly specified and made public.

PPP projects are complex and require judgement on the part of the government, including in its value for money assessments. It is important to build up public sector expertise with PPP development and implementation at increasing levels of size and complexity, in addition to core public financial management expertise. The level of experience and expertise available to the

government should itself be a factor in determining procurement methodology and project design.

**8. The appropriate allocation of project risk is critical to guarantee value for money in PPP projects. Risk should be carried by the party best able to manage them.**

PPPs are characterised by the transfer of substantial risks from the public to the private sector, and that the payment of the contract is based on the performance of the asset. This is intended to ensure that incentives are aligned for the private party to operate efficiently and deliver value for money. Risk allocation is largely determined by the chosen model of private sector involvement: for example, full private ownership, concessions, public ownership with management or service contracts.

To guarantee an appropriate allocation of risks, risks need to be defined, identified and measured. Risks should be carried by the party best able to mitigate the risk *ex ante*, or manage the impact of the risk eventuating *ex post*. This implies that risks that can be mitigated by the private partner (for example, regarding operational efficiency) should be borne by the private sector, while risk of a public-interest nature (for example, a change in policy and/or the pursuit of non-commercial objectives) should reside with the public partner.

Some public authorities may perceive an incentive to shift as much risk as possible onto the private sector, either for the sake of transferring risk alone or to achieve a desirable accounting treatment. However, the transfer of risks is expensive. Authorities need to balance a transfer of risks against the legitimate premium the private sector will charge as a result of carrying such risks.

The public sector should be careful with issuing guarantees regarding the project. Public guarantees related to private investments can affect the risk allocation, can skew the private sector's incentives to achieve operational and administrative efficiency, and can expose the public accounts to substantial contingent liabilities.

**9. Value for money must be ensured in the procurement process and operational phase by relevant procedures and tools, and sufficiently resourced and skilled authorities.**

The tender process of PPP investments represents a large change in public procurement in many countries, and should be informed by an understanding of relevant commercial principles. Governments should guard against waste and the risk of corruption by ensuring the integrity of the procurement process and by making the necessary procurement skills and powers available to the relevant authorities. Public officials should execute their duty to act in the public interest in a manner that is competent, unbiased and diligent with due attention to regulatory and legal frameworks.

Special care is required in the case of unsolicited proposals to ensure value for money: alignment of the projects to the overall infrastructure development strategy; the use of comprehensive value-for-money and affordability assessments; and guaranteeing a competitive bidding process. There is usually little rationale to rely on unsolicited proposals, as open competition is required to deliver the best quality at the lowest price.

Beyond the procurement phase, authorities need to ensure value for money and manage risks throughout the operational phase of PPPs. Delivery of public services is a core component of the value of PPPs. The responsibility for identifying potential problems during the operational phase of the project rests primarily with the procuring line ministry or agency. However, the PPP Unit, Central Budget Authority, Supreme Audit Institution and regulatory authorities should play their part and retain the appropriate level of responsibility during the operational phase of the project. Particular attention should be paid to contractual arrangements and monitoring capacity at later stages of a project so as to ensure that incentives do not deteriorate as the cost of non-compliance falls. Special care should also be taken to ensure that value for money is maintained during renegotiation. Only if conditions change due to discretionary public policy actions should the government consider compensating the private sector.

**10. Contract renegotiation and dispute resolution mechanisms should be put in place. These allow unforeseen events and potential disputes arising through the lifetime of an infrastructure project to be handled in a timely and impartial manner.**

The long-term nature of infrastructure projects and the relatively high risks these projects bear render them potential candidates for contract renegotiations during their lifecycle. Therefore, there is a need for explicitly and clearly including contract renegotiation mechanisms in long-term contractual arrangements. Contractual provisions governing the circumstances under which renegotiations shall be considered can help ensure the flexibility needed for the success of long-term infrastructure contracts. Additionally, in the interest of maintaining the long-term contractual relationship between the public and private partners, alternative dispute resolution mechanisms, including conciliation or mediation, should be explored first, so as to avoid bringing contractual disputes before domestic courts or arbitration tribunals. Public authorities can play a leading role in promoting mechanisms for parties to come to an agreement short of litigation, including by adopting the appropriate legislation, as well as by inserting well-crafted dispute settlement and dispute avoidance clauses in infrastructure contracts.

Appropriate mechanisms for dispute settlement should also be provided in case an amicable settlement cannot be reached. As infrastructure commitments are seen as notoriously risky by private sector participants given their long lifespan and the amount of capital invested, they need to be backed by a possible recourse to impartial and independent fora for dispute resolution, stipulated in the contract and in accordance with the applicable laws. Where the rule of law is firmly entrenched and underpinned by an impartial and efficient judiciary system, private sector participants may use domestic civil or commercial courts or arbitral tribunals. The availability of recourse to investor-state dispute settlement mechanisms, as provided in international investment agreements, may also be critical to reassure international investors.

## Affordability and budget transparency

The government must ensure that investment projects and the overall investment envelope are affordable. All projects are treated transparently in the budget documentation which should disclose all costs and contingent liabilities of PPP projects.

### **11. The government should ensure that infrastructure projects are affordable and the overall investment envelope is sustainable.**

PPPs are more difficult to integrate with the annual budget process than current variable expenditures. Ordinary expenditures for capital are usually allocated in the budget in the year that construction costs happen. PPP expenditures are spread out over the life time of the asset, beyond the normal budget planning horizons. The annual expenditure that the government must pay for the PPP's operation is stipulated in the contract and can be difficult to change in the course of the ordinary budget process. This makes affordability assessments particularly important. An investment project is affordable if the expenditure and contingent liabilities it entails for the government can be accommodated within current levels of government expenditure and revenue and if it can also be assumed that such levels can be sustained. All relevant government financial obligations should be included in this assessment, and firm commitments made to honour those obligations. The affordability consideration becomes more complicated by the fact that the cost of the PPP may be fully or partly recovered by user charges. However, assessing users' ability and willingness to pay has been difficult in many countries and must be treated with caution.

A country's overall investment expenditure should be based on medium and long term fiscal projections and regularly updated. Limits on stocks and flows of PPP, while not a substitute for medium-term planning, can help contain fiscal costs and limit overall public sector long-term commitments to levels that are fiscally affordable. If the project is meant to be user funded a careful investigation of the ability and willingness of users to pay must be conducted. A PPP can make a project more affordable if it improves the value for money compared to that realised through traditional infrastructure procurement. The danger is that in light of over optimistic assumptions costs will subsequently escalate and thus undermine projects' affordability.

Since PPPs may be classified as off the government's balance sheet and budget, it may be harder to maintain discipline over affordability considerations. Political considerations may also affect decisions: due to the political cycle, the policy maker who makes the decision to enter the PPP often does not bear the long-term expenditures involved in the project. However, it befalls the Central Budget Authority as the guardian of the public purse to safeguard the country's long term fiscal position by putting in place procedures that highlight the degree to which a project is affordable and to ensure that the overall project portfolio remains within the government's medium-term budget constraint.

**12. The project should be treated transparently in the budget documentation, which should disclose all costs and contingent liabilities of PPP projects.**

Budget documentation should transparently disclose relevant information regarding the costs and contingent liabilities of the PPP. The information should include what and when the government will pay, and full details of guarantees and contingent liabilities. The payment stream from government under the PPP contract should be highlighted, particularly if it is back loaded. Preferably the information should be disclosed at the same time as the results of the long-term fiscal analysis that shows the long-term effects of the stock and new flow of PPP contracts.

In some cases, budgeting and accounting systems make it possible to avoid normal spending controls and use PPPs to circumvent spending ceilings and fiscal rules in times of fiscal constraints. The fiscal constraint argument for PPPs is driven by pressures for governments to reduce public spending to meet political, legislated and/or treaty-mandated fiscal targets. However, even when responding to fiscal constraints, project selections should still be based on value-for-money and affordability assessments. The government should ensure that the accounting treatment does not create incentives for or against taking the PPP procurement route.

A particular challenge for the prudent and transparent usage of PPPs is the application of PPPs outside of government but within the public sector, e.g. through state owned enterprises (SOEs). SOEs can engage in PPP-type of arrangements, like long-term obligations to purchase goods and services from the private sector, such as power and water. These arrangements might entail explicit or implicit guarantees and de-facto financial responsibility from the central government, in particular in case of crucial services. These contingent liabilities may not be included in the definition of public debt and/or may not be properly monitored by the central government. The Central Budget Authority consequently needs to actively monitor the use of PPP-like arrangements in the public sector at large.

Where central government has the relevant constitutional authority, it should consider allowing sub-national governments to prudently use PPPs. If there are implicit or explicit central government guarantees to sub-national government levels, PPP activity should be controlled through rules on PPP stocks and flows. The Central Budget Authority should retain an up-to-date overview of all PPP liabilities relevant for central government.

**13. Prudently assess the potential for cost recovery, regardless of the degree of private participation.**

Prices should be based on realistic assessments of the benefits, costs of service coverage and affordability. No infrastructure project – regardless of the degree of private involvement – should be embarked upon without assessing the degree to which its costs can be recovered from end-users. Governments should assess the willingness and ability of end-users to afford the services, in particular in case of critical services such as access to water or power.

When feasible, end-user prices should be allowed at cost-covering levels reflecting actual demand and providing incentives for service delivery. End-users consultations in an early stage of the project implementations enables the government to address their concerns and demands,

increase awareness of the positive impact of cost-covering prices on investment, maintenance and service quality, thereby increasing their willingness to pay for the services. End-users could also be included in the monitoring of service quality once the project is operational.

Tariffs for critical assets or in case of natural monopolies can be regulated, sometimes with restrictions to set prices for some services. Where tariffs are subject to regulation, provisions about future tariffs need to be clearly specified. This is in practice often one of the most controversial parts as it affects the perceived 'well-earned rights' of incumbent consumers. The assessment of potential revenues should include possible third party revenues. When prices at cost-covering levels are politically inadequate or the infrastructure does not allow charging end-users, governments will need to compensate private providers.

Public payments should be based on output- or performance-based specifications agreed on in the PPP contract. Defining outputs can be instrumental in achieving better alignment of service specification with user expectations, and exert pressure on service providers to meet service standards.

## Transnational infrastructure connectivity

Transnational infrastructure development is an integral part of regional integration in ASEAN, and multi-jurisdictional projects present one option for achieving this.

### **14. Mechanisms for cross-jurisdictional co-operation, including at the regional level, should be established.**

Where infrastructure projects involve separate jurisdictions, special caution is warranted to ensure that institutional arrangements are sound, project objectives are widely shared, and the process is underpinned where required by formal agreements, inter-governmental committees and dispute resolution mechanisms. This is particularly important with private sector participation given the need to manage commercial-sovereign as well as sovereign-sovereign relationships. To help manage the complexity of large-scale cross-jurisdictional projects, governments could consider horizontal separation of projects horizontally into constituent parts. Irrespective of project structure, effective management of these relationships is necessary for successful project implementation. Attracting private sector participation requires managing potential investor concerns, for example about political risk, the compatibility of legal systems, and the transportability of financial instruments.