OUR WEBINAR ON DELIVERING ICT INFRASTRUCTURE THROUGH PUBLIC-PRIVATE PARTNERSHIPS

Category: Administrative and Procurement Law,Technology Law
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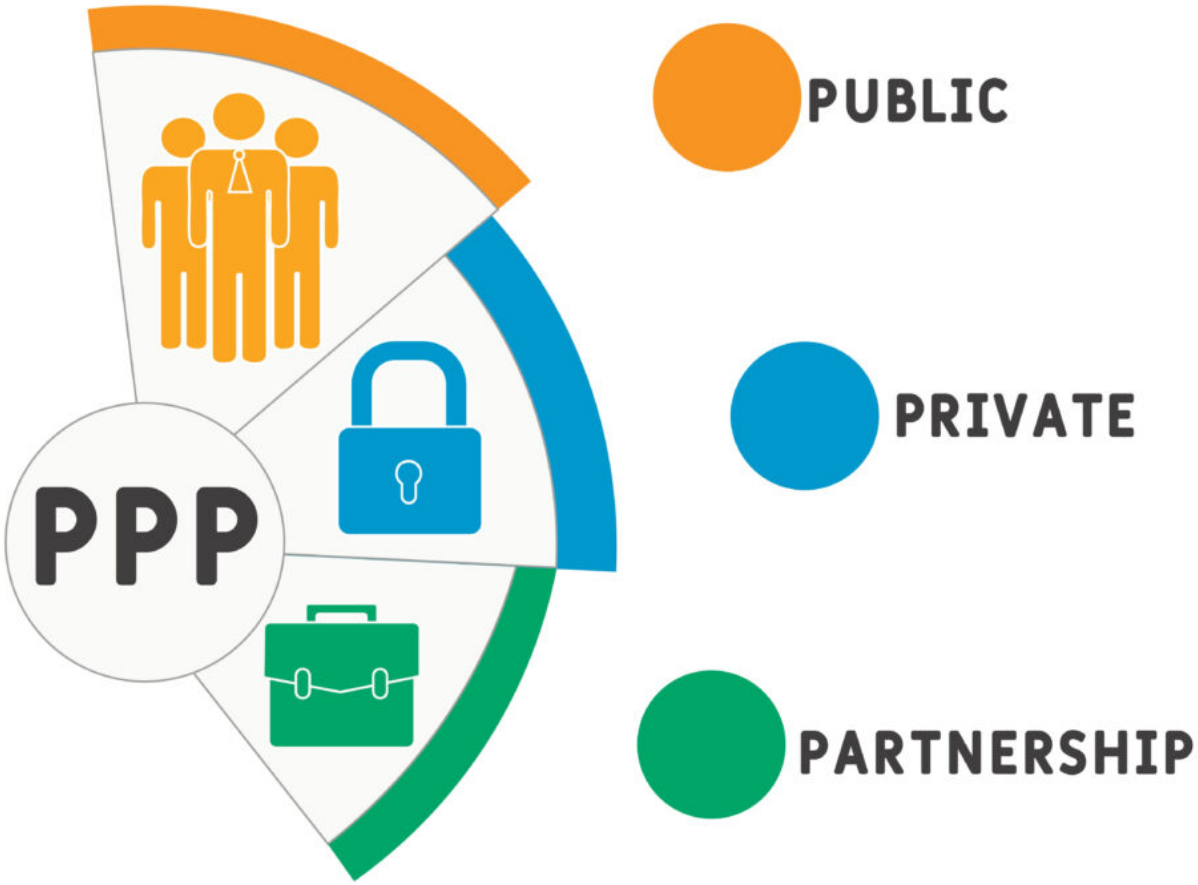

On the 23rd September 2022, we hosted a webinar in which our speakers discussed the delivery of Information Communication Technology ("**ICT**") infrastructure through Public-Private Partnerships. In this brief article, we highlight and discuss some of the key takeaways from the webinar.

IN SIMPLE TERMS, WHAT IS A PUBLIC-PRIVATE PARTNERSHIP?

A Public-Private Partnership is broadly defined as a transaction between a public institution and a private party in terms of which the private party either performs a function on behalf of the public institution for a specified or indefinite period; or acquires the use of state property for its own commercial purposes for a specified or indefinite period.

To date, 35 PPP projects valued at R91.4 billion have been completed since the introduction of public-private partnerships in South Africa. These have been in the health, transport and roads, and tourism sectors. There has been no PPP project completed in the Information Communications Technology ("**ICT**") sector.

HOW CAN PUBLIC-PRIVATE PARTNERSHIPS BE USED TO DELIVER ICT INFRASTRUCTURE AND SERVICES IN SOUTH AFRICA?

The National Infrastructure Plan 2050 ("**NIP 2050**") promotes the delivery of ICT infrastructure and services through PPPs. The NIP 2050 was published in February 2022. It recognises that communications are the lifeblood of a market economy, and that digital communication are becoming increasingly central. To that end, it recognises digital infrastructure as one of the critical network sectors and embodies the National Development Plan 2030 ("**NDP 2030**") vision of a seamless information infrastructure, that is universally available and accessible. The NIP 2050 acknowledges and encourages the thriving private investment in telecommunications and digital infrastructure, products and services. It further states that there is evidence of sufficient capacity to deliver on the objectives set out in the NIP 2050, if they are implemented through private-public cooperation.

REGULATORY CHALLENGES WITHIN THE PUBLIC-PRIVATE PARTNERSHIPS REGULATORY FRAMEWORK

Although South Africa has had success with PPP projects in various sectors, there have been significant challenges. One of the challenges has been the current PPP regulatory framework. The current framework stems from Regulation 16 of the Public Finance Management Act, 1999. This framework provides precise and detailed processes for the implementation of PPPs. In terms of the framework, a PPP project is categorised into various phases being the inception phase, the feasibility phase, the procurement phase and the PPP contract management phase. This framework has been criticised amongst others, for the lengthy, rigid and costly feasibility studies, lack of sector focus and customised approach, poor contract management and lack of preparedness at exit management stage.

To address these issues, in 2019 National Treasury commissioned a review of the PPP framework. The study found that the South African PPP framework compares well with international benchmarks. However, it proposed some changes in order to address critical gaps and challenges in order to improve the PPP operational environment. These include legislative changes to improve the selection, prioritisation, planning, financing support mechanisms, procurement , implementation, and monitoring PPPs.

In 2020, the Draft Public Procurement Bill ("**Procurement Bill**") was published. The purpose of the bill is to introduce a single regulatory framework for local, provincial and national governments and state-owned enterprises. The Procurement Bill will hopefully result in efficiency and reduce the fragmented processes currently in place, stemming from the numerous pieces of legislation that regulate procurement within the public sphere. In relation to PPPs, the Procurement Bill aims to address critical gaps and challenges in order to improve operational environment. It further sets out changes to improve the selection, prioritisation, planning, financing support mechanisms, procurement, implementation and monitoring PPPs.

In addition to the changes to the PPP framework, the past year has seen a shift towards the financing of ICT infrastructure through blended finance. This comes in the wake of the announcement of the establishment of the Infrastructure Fund ("**the Fund**") in 2018. Structured within the Development Bank of Southern Africa, the Fund represents a growing commitment by South Africa to PPPs. In the 2022 budget review, the Department of Communications and Digital Technologies announced that

Phase 2 of the SA Connect Project will be funded through the Infrastructure Fund. The aim of the SA Connect Project is to provide broadband access in communities and government facilities. It forms part of the government's commitment to bridge the digital divide and to advance the digital economy. This is an example of how PPPs can be used to deliver ICT infrastructure and services in South Africa.

We have also seen the addition of legislation being promulgated in order to provide for a more rapid roll out of electronic communications facilities, such as the Standard Draft By-Laws for the Deployment of Electronic Communications and Facilities, which were promulgated in September 2022. The Next Generation Radio Frequency Spectrum Draft Policy was also published in September 2022, to provide for the availability of spectrum which will aid in reduction of communications costs for the public These initiatives signify a concerted effort by government towards building a digital economy.

WHAT CAN WE EXPECT GOING FORWARD?

PPPs have proven to be an efficient and recommended method to deliver ICT infrastructure and services projects. The regulatory landscape is being improved to simplify the PPP process and to remove obstacles to projects before and after they are start. In addition, innovative financing models are being considered and recommended, to make more financing and funding options available.

This will hopefully lead to properly structured PPPs for the delivery of ICT infrastructure and services, which will in turn ensure that South Africa sees an increase in access to latest technologies and a reduction in cost of tech-related services for majority of the population. This will thereby create a seamless information society that can thrive in the global digital economy as envisaged by the NIP 2050.

For an in-depth discussion on the delivering of ICT Infrastructure and services in South Africa through PPPs, you can click here for the recording of our webinar.

You can follow us on our social media for regular updates on PPPs.

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Contact us for more good, clear, precise advice.