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A review on the Malaysian public private partnership (PPP)

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Abstract: The paper provides a review on the Malaysian Public Private Partnership (PPP). Through a desk study, the paper begins by defining the key concept of PPP and presents the evolution of the Malaysian PPP and its implementation. Moving on, the paper provides a detailed analysis of PPP projects implementation in Malaysia and highlights key issues and problems.

Key words: Public private partnership (PPP); Construction; Economy; Evolution; Implementation

1. Introduction

Malaysia has almost always relied on the public sector in creating and maintaining public assets and facilities, and in the delivery of public services. This trend would have been maintained to the present day, if not due to the advent of Privatization that was introduced by the government in 1983. Through carefully crafted policies and strategies, the key among them being the Privatization Policy of 1983, the Private Finance Initiative (PFI) of 2006, and the Public Private Partnership (PPP) of 2010 the private sector has emerged as a reliable supplier, complimenting the public sector, in the procurement of public assets, facilities and services in Malaysia (Rashid, 2012; 2012a; 2012b).

This paper aims to provide a review on the Malaysian PPP and highlights how the system has evolved over time. The review is conducted through extensive literature reviews of relevant documents and publications.

The paper is structured into the following sections; Section 1 introduces the paper. Sections 2 present a brief overview of the Malaysian PPP and its evolution, and Section 3 discusses the implementation and structure of PPP. Thereafter, Section 4 examines the PPP projects' implementation in Malaysia. Section 5 highlights issues and problems arising from the implementation of PPP and finally Section 6 provides the paper's concluding remarks.

2. The Malaysian PPP

Basically, the Malaysian PPP has two main approaches namely Privatization and PFI (UKAS, 2010). The definitions of Privatization, PFI and PPP, provided in below, reiterate that Privatization, PFI and PPP are similar but not the same. However, in practice the terms are often used interchangeably.

2.1. Privatization

Privatization is 'the transfer of activities and functions (which has traditionally rested in the public sector) to the private sector' (EPU, 2006).

2.2. Private finance initiative (PFI)

PFI is 'the transfer to the private sector the responsibility to finance and manage a package of capital investment and services including the construction, management, maintenance, refurbishment and replacement of public sector asset … which creates a standalone business. The private sector will create the asset and deliver a service to the public sector client. In return, the private sector will receive payment … commensurate with the levels, quality and timeliness of the service provision throughout the concession period. The structure of the lease rental payment for PFI projects will guarantee a total return to the concessionaire's capital investment expenditures including financing cost repayment and profit to investment. The asset and facilities will be transferred to the public sector at the expiry of the concession period' (Government of Malaysia, 2006).

2.3. Public private partnership (PPP)

'PPP involves the transfer to the private sector the responsibility to finance and manage a package of capital investment and services including the construction, management, maintenance, refurbishment and replacement of public sector assets such as buildings, infrastructure, equipment and other facilities, which creates a standalone business. In PPP projects, there is a contract for the private party to deliver public infrastructure-based services over a long period of time. The private party will raise its own funds to finance the whole or part

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of the assets that will deliver the services based on agreed performances. The public sector, in turn, will compensate the private party for these services. In some PPP projects, part of the payments may flow from the public users directly. Though ownership of assets plays a less important role in PPPs, nevertheless many of the modalities see a transfer of the assets to the public sector (revertible) as a matter of course. There are some PPP projects where the assets are not transferred to the public sector at the end of the concession period. These usually relate to facilities or projects that have little value at the end of the period due to their technological obsolescence' (UKAS, 2009).

2.4. Evolution of Malaysian's PPP

Table 1 provides a timeline showing Malaysia's economic transformation since the 1960s; the successive Malaysia Plans (1st MP to 10th MP), and key policies and strategies related to the implementation of Privatization, PFI and PPP in Malaysia.

Given the government's stand that PPP comprises privatization and PFI (UKAS, 2010). Rashid (Rashid, 2012; 2012a; 2012b) proposed that the origin of the Malaysian PPP may be traced back to 1983 when privatization was first introduced. Privatization was introduced through two key national development policies, namely the 'Malaysia Incorporated Policy' and the 'Privatization Policy'.

The 'Malaysia Incorporated Policy' stressed the need to define, develop and put into operation a new model of economic management whereby the public sector partners the private sector with the strategic intention to improve Malaysia's competitive advantage. Under the policy the public sector acts as a facilitator, pacesetter as well as implementer of socio-economic development programmes, working in close co-operation with the private sector. Public-private consultative panels were established and efforts at de-regulation to improve public administration were introduced (Rahman, 1993). Two years later the privatization effort was improved through the publication of the 'Guidelines on Privatization.'

The 1990s saw Malaysia aggressively pursuing 'Vision 2020'. Vision 2020 is a long-term socio-economic development plan that aims to transform Malaysia from a developing country into a fully developed and industrialized country by the 2020 (Mohamad, 1991). In line with the aspiration of Vision 2020 privatization was accelerated and the privatization policies of the 1980's were given a boost through the publication of the 'Privatization Master-Plan' in 1991.

Table 1: Malaysia's economic transformation and the evolution in the Malaysian PPP
Source: Khairuddin (Rashid, 2012; 2012a; 2012b)

<table>
<tr><th colspan="2">Market-led economy</th><th colspan="3">State-led economy</th><th>Liberalization</th><th colspan="5">Towards a developed nation – Vision 2020</th></tr>
<tr><td>Independent 1957-65</td><td>1st MP 1966-70</td><td>2nd MP 1971-75</td><td>3rd MP 1976-80</td><td>4th MP 1981-85</td><td>5th MP 1986-90</td><td>6th MP 1991-95</td><td>7th MP 1996-2000</td><td>8th MP 2000-05</td><td>9th MP 2006-10</td><td>10th MP 2011-15</td></tr>
<tr><td colspan="11">Conventional procurement</td></tr>
<tr><td colspan="4" rowspan="6"></td><td colspan="7">PPP</td></tr>
<tr><td colspan="5">Privatization</td><td>PFI</td><td>PPP</td></tr>
<tr><td colspan="5"><u>Privatization</u>
Malaysia Incorporated Policy, 1983
Privatization Policy, 1983
Guidelines on Privatization, 1985
Privatization Master-plan, 1991</td><td colspan="2"><u>PFI</u>
PFI, 2006
Treasury Guidelines 2006
<u>PPP</u>
UKAS Guidelines on PPP, 2009
New Wave PPP, 2010</td></tr>
<tr><td colspan="7">Implementing Agency – Prime Minister's Department</td></tr>
<tr><td colspan="6">EPU
(1983-2009)</td><td>UKAS
(from 2009)</td></tr>
</table>

In 2006 and under the Ninth Malaysia Plan (9th MP, 2006-10) (Government of Malaysia, 2006), new strategies aimed at streamlining privatization were introduced. The strategies include effort to strengthen the approval procedures, emphasizing performance standards, streamlining the implementation process, enhancing viability through risk distribution, strengthening the institutional and regulatory framework, and increasing *Bumiputera* (indigenous) participation. In addition, the Ninth Malaysia Plan also saw Malaysia implementing PFI.

In 2010 and under the Tenth Malaysia Plan (10th MP, 2011-15) (Government of Malaysia, 2009) the PFI policy is given a 'make-over' and labelled as 'new wave PFI'. Learning from past mistakes in implementing privatization and PFI, the new wave PFI contains relatively clear, robust, detailed and transparent framework on the concept and method of procurement. In addition, the concept of PPP, encompassing privatization and PFI, was introduced.

Rashid (Rashid, 2009) contended that the Malaysian PPP is not necessarily the same as PPP implemented elsewhere. Using the Malaysian PFI as example, Rashid (Rashid, 2009) observed that;

'In contrast to the UK PFI model the respective SPV, being a government owned company, does not genuinely assume risks. Instead all risks associated with the investment, construction, maintenance and operation of the buildings and infrastructures under the PFI projects remain with the government. It seems therefore that the PFI are not PFI in the true sense. Instead they are namesakes consequently, the PFI are PFIs the Malaysian way.'

2.5. Malaysia's reasons for using PPP

According to the government, the reasons for adopting PPP in the provision of public assets and services includes to relieve their financial and administrative burden, improve efficiency and productivity, facilitate economic growth, reduce the size and presence of the public sector in the economy, and to help meet the national economic policy targets (EPU, 2006).

Upon closer examination of the literature, the following could also be said to be among the key reasons why Malaysia adopts PPP Rashid, 2012; 2012a; 2012b;

- A reactive strategy due largely to pressure by the public to reverse earlier public-sector expansion and monopolistic approach in the provision of public assets, facilities and delivery of services, budget deficits especially during the time when the country was confronted with fiscal and debt crises of the mid-1980s;
- To fashion Malaysia to be in line with the global privatization drive that was gaining momentum worldwide since privatization was made popular by the governments of the UK and US;

To prepare Malaysia towards 'Vision 2020' where the government sees there is an urgent need for more robust private sector enterprises that could act as the engine of growth for the economy. Through PPP modes of procurement private sector participation in economic development would be enhanced and the government sees itself as facilitators and enablers rather than to be in competition with the private sector enterprises.

3. Implementation of PPP

3.1. Modality of PPP concessions and funding arrangements

During the earlier part of privatization most PPP projects were implemented through the sale of equity method, followed by sale of asset method and BOT (7th MP, 1996-2000) (Government of Malaysia, 1996). Other methods of privatization include land swap, build-lease-transfer (BLT), build-operate-lease-transfer (BOLT), sale of assets/equity, listing, build-operate-transfer (BOT), management contract, management buy-out, and combination of these methods (EPU, 2006). Rashid (2010) observed that in the context of privatized road and highway projects almost all were implemented through the Build Operate Transfer or BOT method and their concession contracts range from 24 years to 60 years.

Moving on to PFI, the earliest PFI projects implemented were those under the Ministry of Home Affairs. The projects, mainly buildings for the Royal Malaysian Police was started in 2005. A government owned Special Purpose Vehicle or SPV *Pembinaan BLT Sdn Bhd* (BLT Sdn Bhd) was formed. This SPV overseas the design, build, fund, lease and at the end of the concession period transfers the assets to the government RM 2 billion worth of building projects. Funding was provided by the government owned Employees Provident Fund or EPF.

In 2006 and under the Ninth Malaysia Plan (9th MP, 2006-10) (Government of Malaysia, 2006) another government owned SPV *Syarikat Pembinaan PFI Sdn Bhd* (PFI Sdn Bhd) was formed. This SPV was given the responsibility to implement 425 projects worth RM 20 billion. Funding was provided by the government owned EPF, Pension Trust Fund (PTF) and a government linked bank, Bank Pembangunan Malaysia Berhad.

In addition, under the Tenth Malaysia Plan (10th MP, 2011-15) (Government of Malaysia, 2009) RM 63 billion was allocated for PPP projects and RM 20 billion in facilitation fund. The facilitating fund is a sum of money provided by the government to 'bridge the viability gap of projects'. The fund is aimed at facilitating private sector's new investment, large scale ventures and selected privatization and PFI projects (UKAS, 2009).

3.2. PPP specific enabling legal framework

Shortly after the launch of the Privatization Policy in 1983, the government set up a special team, Privatization Special Task Force, in the Economic Planning Unit (EPU) of the Prime Minister's Department to coordinate the implementation of the policy. With the publication of the 'Privatization Master Plan' in 1991 the special task force was renamed the Privatization Section of the EPU.

When the government introduced and implemented PFI in 2006, they saw the need for a dedicated agency to plan and implement PPP. Consequently, the Privatization Section of the EPU was transferred into a newly formed agency known as the *Unit Kerjasama Awam Swasta* or UKAS (Public Private Partnership) of the Prime Minister's Department. UKAS was formed on 22nd April 2009. Its missions are to strengthen and foster strategic PPP with transparency and integrity to stimulate the economy for the well-being of the public, enhance service delivery through speedy execution and implementation of projects, ensure projects are 'value for money' for the government, and to be recognised as the centre of excellence for PPP initiative at all levels.

The main functions of UKAS are to act as secretariat to PPP Committee in terms of processing and evaluating PPP projects and to propose potential projects to the government (Cabinet) for final decision, negotiate the terms and conditions of PPP agreements, supervise the Facilitation Fund, act as secretariat for the government's project to be implemented at the five Corridors of Development – the East Coast Economic Region (ECER), Iskandar Malaysia (IM), Sarawak Corridor for Renewable Energy (SCORE), Sabah Development Corridor (SDC) and North Corridor Economic Region (NCER), and to monitor the implementation of projects under PPP, Facilitation Fund and Corridors of Development in Malaysia.

The implementation of privatization and later on PPP requires amendments to the Federal Constitution, The Employment Act, 1995 (Revised 1981) and the Pensions Act, 1980. In addition, new legislations were enacted and regulatory bodies established to allow privatization and PPP to take place, and to provide the requisite implementation and regulatory frameworks (Rashid, 2010).

3.3. Procurement process for PPP projects

UKAS published a document *Garispanduan Kerjasama Awam Swasta* or Guidelines on Public Private Partnership in 2009 (http://www.3pu.gov.my/). Table 2 provides an overview of the guidelines.

Table 2: Summary of the Guidelines on Public Private Partnership – PPP (Source: UKAS (UKAS, 2009)).

Section	Brief description	Page
Scope and aims of the guideline	The guideline is intended to be brief and is subject to periodical reviews, as and when the need arises	3
Introduction	PFI was introduced in 2006 as part of the government's PPP scheme for public procurement Principles of PPP projects: • High socio-economic impact • Value for money • Shorter delivery period, increased in efficiency of the delivery services • High level of responsibility, efficiency and effectiveness Criteria for PPP projects: • Public-Private Partnership • Public sector dictates output specification • Private sector decides on the required input with elements of innovation and economy • Payment for services based on KPIs • Maintenance of the facility • Design-build-funding-maintain-operate • Asset to be transferred to the public sector at the end of the concession agreement • Optimum risk sharing • Whole Life cycle Costing	4-7
Development of PPP Project	Proposal to be submitted to the respective government ministry. Contents of the proposal: • Justification for the proposal • Business and financial plan • Documents in support of financial capability • Payment plan • Risk allocation	7-8
General selection criteria	• Output can be identified and measured • Project life of at least 20 years • Project with outdated technology or component would not be considered • Proposer in strong financial position with of at least 10% of the project cost • The proposer must form a project-specific SPV	8-10
Work flow process	A flow chart is provided	11
Enquiries	Address all enquiries to 3PU. Address and contact no provided	12

In addition to government's initiated projects the private sector is also encouraged to submit PPP projects' proposals to the government. Among the factors being considered in dealing with un-solicited proposals include clarity in qualifying criteria, presence of innovative ideas, competitive tension characteristic in the selection process, high level of transparency and governance, risks are well managed and contained (Majid, 2010) and the proposal has the concept of Value for Money (VfM) embedded therein (UKAS, 2009).

4. Structure of PPP contracts

There is no standard form for PPP contract (Rashid, 2012; 2012a; 2012b). In terms of management of PPP contracts and the relationships of the key players in a typical PPP project, the common arrangement is as shown in Fig. 1 and 2.

5. Analysis of PPP projects implemented in Malaysia

Malaysia has implemented PPP for almost three decades. Table 3 shows the achievement and the distribution of projects, since PPP was started in 1983.

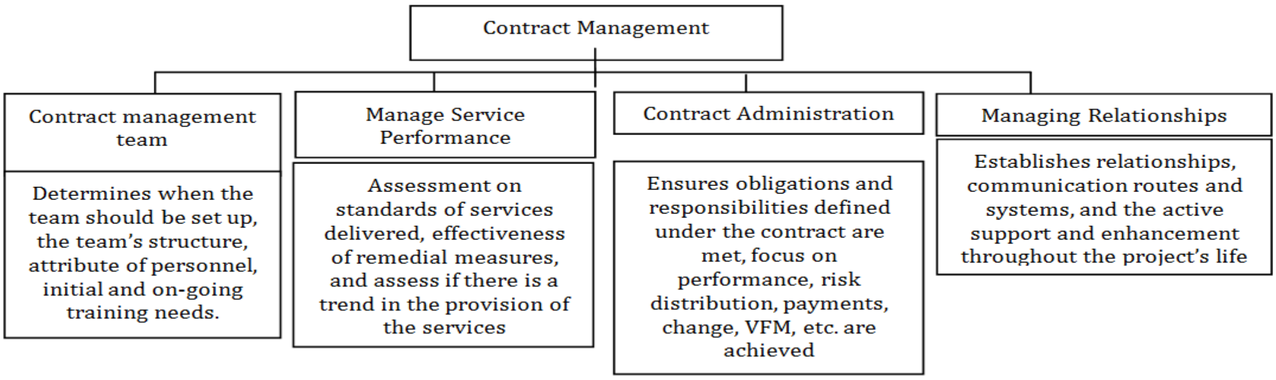

Fig. 1: Components of PPP projects' contract management (Source: Majid, 2010)

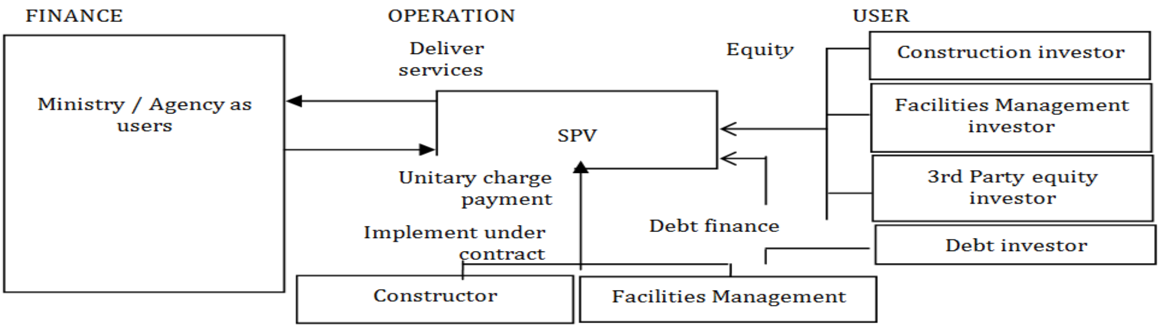

Fig. 2: Typical PPP User-Operation-Finance relationships (Source: UKAS, 2009)

Table 3: PPP: achievements and distribution of projects, according to economic sectors, 1983-2010 (Source: Malaysia Economic Report 2011/12 (Ministry of Finance Malaysia, 2011))

PPP Achievement	1983-2010
Total projects signed	513
Existing projects as at 31st December 2010	348
New projects as at 31st December 2010	165
Jobs eliminated from government payroll	113,487
Savings:	
Capital expenditure (RM bil)	163.8
Operating expenditure (RM bil)	9.0
Proceeds from sales of government equity and assets (RM bil)	6.5
Market capitalization as at 31st December 2010 (RM bil)	208.3
% of total Bursa Malaysia Capitalization (Malaysia Stock Market)	16.3
Sector	% of total
Agriculture and Forestry	6.2
Electricity, Gas and Water	8.2
Wholesale, Retail Trade, Accommodation and Restaurant	11.1
Finance, Real Estate and Business Services	10.7
Government Services	7.4
Other services	9.2
Mining and Quarrying	3.9
Manufacturing	13.6
Construction	16.6
Transport, Storage and Communications	13.1
Total	100.0

On the basis of data presented in Table 3 it could be said that the implementation of PPP in Malaysia has, to a certain extent, achieved its intended objectives whereby significant reduction in public capital expenditure: between 1983 and May 2010 the government implemented 513 PPP projects. Through these projects the government transferred to the private sector or eliminate 113,487 jobs from its payroll, saved RM 163.8 billion in capital expenditure, and earned RM 6.50 billion from the sale of government equity and assets (Ministry of Finance Malaysia, 2011).

In addition, the implementation of PPP projects has led to economic growth through greater investment that subsequently led to corporate expansion and efficiency gains as more output was produced using lesser amount of resources. PPP has resulted in the generation of multiplier effects to the economy (Government of Malaysia, 1996).

Furthermore, the savings, proceeds from the sale of equity and assets, and incomes generated from corporate tax and from lease rentals enable the government to reduce borrowing, resulting in a more balanced budget leading to stronger public sector finances and better reallocation of resources to more needy sectors of the economy (Government of Malaysia, 1996).

6. Issues and problems

On the whole, it appeared that on the one hand the implementation of PPP in Malaysia is in-line with the world's trend of market liberalization but on the other hand there is little foreign involvement in the way in which the concept was formulated, implemented and in funding. Malaysia's PPP therefore, appears to be a series of home-grown initiatives.

There are, however, issues and problems that require urgent attention and solutions if Malaysia is to excel in PPP. Topping the list of issues and problems are thought to include (Rashid, 2010; 2012; 2012a; 2012b):

- The need for a more robust scheme to evaluate PPP projects including the need for a Public Sector Comparator and mechanism to determine VfM;
- The lack of standardised forms of contract for PPP projects;
- The reluctant of private sector's banking and other financial institutions to fund PPP projects and the perception that the government prefers only government-owned pension funds or government-linked financial institutions, and

Capacity building to equip civil servants and professionals in the implementation of PPP projects; the number of experience and capable SPVs are very small causing PPP projects to be monopolized by companies who are familiar with the PPP mode of procurement.

7. Conclusion

The 2000s saw the world's economic and political landscapes changing very rapidly especially since the Enron scandal of 2001 and the global economic melt-down of 2008. Countries that were known to be aggressive in promoting and employing PPP such as the UK and the Republic of Ireland are re-evaluating their approaches.

However, available literature suggests that PPP is set to stay in Malaysia. Despite the criticisms, Malaysia enjoys many benefits arising from the implementation of PPP.

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