Executive Summary
The Investment Path for PUBLIC-PRIVATE PARTNERSHIPS (PPP)
Publication of the SECOMPETITIVO Program of the Swiss Secretariat for Economic Affairs - SECO.

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Prologue

There is sufficient evidence concerning the positive impact of the development of infrastructure and public services on economic growth (measured by an increase in productivity, connectivity at the local level and with external markets, as well as job creation) and social performance (measured by a reduction in poverty and equitable income distribution). Aware of the importance of infrastructure, the provision of quality services, and in order to narrow the existing gap in the country, the Peruvian government has been using in recent years a range of mechanisms that incorporate the private sector in the development of infrastructure and public services. This also includes private sector projects, specifically Public-Private Partnerships (PPP), Projects in Assets (PA) and Public Works for Taxes (OxI).

With the creation of PPP and OxI in 2008, Peru has been able to implement projects in sectors such as transport, energy, telecommunications, agriculture and irrigation, as well as water and sanitation. In addition, the project portfolio in the coming years includes social sectors such as education and health. Due to the importance of these investment mechanisms, more information on how to properly use them needs to be disseminated among the actors involved, in both the public and private sectors.

With regard to PPP and PA, to complement the Homologized Text of Legislative Decree No. 1224\(^2\), Investment Promotion Framework Law for Private Investment through PPP and Projects in Assets, which includes the modifications made in recent years, it is necessary to offer educational material that helps to build the capacities of public officials. This should be done at the national, regional and local levels on how to apply these mechanisms, with a more pragmatic approach to the procedures involved.

With the objective of strengthening capacities in the field of PPP, PA and OxI, and being on the threshold of completing a decade from the creation of PPP and OxI mechanisms in Peru in 2018, the Swiss Secretariat for Economic Affairs - SECO, through the SECOMPETITIVE Program, has offered its support to the Ministry of Economy and Finance. Together they elaborated the Methodology Guide: “The Investment Path for Public-Private Partnerships, Projects in Assets and Public Works for Taxes”. For each type of investment, a guide has been developed that includes a set of supplementary materials in the form of presentations and executive summaries, in Spanish and English, which may also serve as a reference for the private sector.

This project has been carried out with the support of officials from the General Directorate of Private Investment Promotion Policy and the National Competitiveness and Formalization Council of the Ministry of Economy and Finance of Peru.

The Swiss Secretariat for Economic Affairs - SECO and the Ministry of Economy and Finance are pleased to present this tool to all stakeholders involved in Peru and abroad, with a view to facilitating the understanding and implementation of these types of

\(^1\) Known as Obras por Impuestos (OxI) in Spanish.
investment, which promote the development of infrastructure and public services, an important part of achieving the welfare of millions of Peruvians.

Ministry of Economy and Finance
General Directorate of Private Investment
Promotion Policy
National Competitiveness and Formalization Council

Swiss Secretariat for Economic Affairs – SECO
SECOMPETITIVO Program

CONSEJO NACIONAL DE COMPETITIVIDAD Y FORMALIZACIÓN

SECOMPETITIVO
Competitividad para el Perú
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1. Abbreviations and acronyms

- **CGR**: Office of the Comptroller General of the Republic
- **CPIP**: Committee for Private Investment Promotion
- **DGAECYP**: General Directorate for International Economic Affairs, Competition and Productivity
- **DGIP**: General Directorate of Public Investment
- **DGPPIP**: General Directorate of Private Investment Promotion Policy
- **DGPP**: General Directorate of Public Budget
- **G.L.**: Local Government
- **G.R.**: Regional Government
- **IE**: State Initiative
- **IEA**: Self-financed State Initiative
- **IEC**: Co-financed State Initiative
- **IMIAPP**: PPP Multi-annual Investment Report
- **Invierte.pe**: National System for Multi-annual Programming and Investment Management
- **IP**: Private Initiative (Unsolicited Proposal)
- **IPA**: Self-financed Private Initiative
- **IPC**: Co-financed Private Initiative (Unsolicited Proposal)
- **Leg. D.**: Legislative Decree
- **MEF**: Ministry of Economy and Finance
- **OPIP**: Organism for the Promotion of Private Investment
- **OSINERGMIN**: Supervising Agency for Energy and Mining Investment
- **OSIPTEL**: Supervising Agency for Private Investment in Telecommunications
- **OSITRAN**: Supervising Agency of Investment in Public Transport Infrastructure Facilities
- **PMI**: Multi-annual Investment Programming
- **PPIP**: Private Investment Promotion Process
- **PPP**: Public-Private Partnerships (known as APP in Peru)
- **Proinversión**: Private Investment Policy Promotion Agency
- **S.D.**: Supreme Decree
- **SNPIIP**: National Private Investment Promotion System
- **SUNASS**: National Superintendence of Sanitation Services

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2. Purpose of the Executive Summary

The purpose of this document is to explain, in a summarized, clear and concise manner, the implementation of the rules related to the PPP mechanism. This executive summary may be used as a reference by the private sector to understand the development of a PPP.

3. Definition of Public-Private Partnerships – PPP

Known as APP (Asociaciones Público Privadas, in Spanish) in Peru, PPPs are private investment participations, which incorporate the experience, knowledge, equipment and/or technology of the private sector. Their purpose is to create, develop, improve, operate and/or maintain public infrastructure and/or provide public services under the established contractual mechanisms.

PPPs must take into consideration key aspects, such as planning, efficient contract design and adequate risk distribution, among other key factors. In doing so, they can provide efficient and quality public services to the country, boost the domestic economy, generate productive employment and improve the country’s competitiveness.

Figure 1: Definition of PPP

(*) Risks should preferably be assigned to the private sector, but this does not prevent some risks from being retained or assumed by the State.
4. **Guiding Principles of PPPs**

A number of principles can be applied to PPPs, which are summarized below: Art.4 TUO-Law.

<table>
<thead>
<tr>
<th>Competition</th>
<th>Transparency</th>
<th>Focus on Results</th>
<th>Planning</th>
<th>Budget Responsibility</th>
<th>Value for Money</th>
<th>Appropriate Risk Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>It promotes the search for competition and equal treatment among bidders and avoids anti-competitive practices and collusion.</td>
<td>All relevant information related to the assessment, development, implementation and accountability in a PPP must be public knowledge.</td>
<td>Public entities must adopt the necessary actions to allow for enough time for the execution of the private investment as well as identify and inform about existing obstacles.</td>
<td>The government and its entities prioritize and guide the orderly development of PPPs, in line with national, sectoral, regional and local priorities.</td>
<td>The government’s ability to pay must be considered in order to enter into financial commitments related to PPPs. Budget balance, sustainability of public finance nor service delivery should be affected.</td>
<td>Optimal combination between the costs and the quality of the service, with an appropriate risk allocation. It could be generated when prioritizing projects, selecting the best procurement alternative, identifying and allocating risks, assuring competitive conditions and establishing adequate payment mechanisms.</td>
<td>There must be an appropriate risk allocation between parties, public and private, so that they are assigned to the party that has a greater capacity for managing them, considering the risk profile of the project.</td>
</tr>
</tbody>
</table>

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*The Value for Money and Appropriate Risk Allocation principles are established in Art.11 TUO-Law.*
5. National Private Investment Promotion System - SNPIP

SNPIP is a functional system for the development of PPPs, formed by the following entities:

![Diagram: National Private Investment Promotion System - SNPIP]
6. Main stakeholders in the development of a PPP

Figure 4: Main stakeholders in the development of a PPP
7. PPP Classification

Based on their financing, the Peruvian legal system classifies PPPs as self-financed and co-financed. Art. 13 TUO-Law.

Figure 5: Classifying PPPs by financing

Self-financed PPP

Investment projects that can be repaid using the same resources they generate. That is, they do not require co-funding from the government and, if they include financial or non-financial guarantees, these should not exceed the percentages set out in the legal norm.

Co-financed PPP

These are projects that require co-funding (transfer of public resources) and/or the implementation of collaterals, in favor of the investor, to make the project sustainable.

Based on their origin, the Peruvian legal system divides PPPs as deriving from State Initiatives (IE) and from Private Initiatives (IP). Art. 11.1 TUO-Law.

Figure 6: PPPs by origin

PPP by State Initiative

The State, through its ministries, regional governments and local governments, prioritizes and guides the orderly development of PPPs, according to national, sectoral, regional and local priorities. In accordance with this, Art. 7.1.b TUO-Law states that the functions of the ministries, regional governments and local governments include identifying, prioritizing and formulating the projects to be developed under the PPP modality.

PPP by Private Initiative

The private sector is allowed to present projects for the development of a PPP through IPs, which can be considered a non-binding request to the government. IPs may be presented by: National legal persons, foreign legal persons, consortiums of legal persons (national and/or foreign) and consortiums of natural persons with legal persons (national and/or foreign). IPs may be self-financed (IPA) or co-financed (IPC).
8. **Types of contract**

The types of contract under which a PPP can be formed include those in which: (i) active participation of the private sector is encouraged; (ii) risks are transferred to the private sector; and (iii) ownership of the public infrastructure is maintained, reverted or transferred to the government.

The types of contract may be the following:

- Concession
- Operations and maintenance contract
- Others permitted by Law. Art. 11.4 Reg.

9. **Phases for the development of a PPP**

A PPP is developed through the following phases: Art. 14.1 TUO-Law.

**Figure 7: Phases for the development of a PPP**

10. **PPP process development**

This section includes the following points:

- Phases, documents and responsible parties in charge of the PPP development activities for each type of initiative.
- Graphic representation of the different activities that make up a procedure using flowcharts.
**Self-financed and Co-financed State Initiative**

a. Phases, documents and responsible parties in charge of the PPP development activities

<table>
<thead>
<tr>
<th>Phases</th>
<th>Documents</th>
<th>Who develops</th>
<th>Who approves</th>
</tr>
</thead>
</table>
| Phase 1: Planning and Programming | • IMIAPP | • Public Entity  
  ○ Planning Area  
  ○ CPIP | • Proinversión  
  • Public Entity |
| Phase 2: Formulation | • Technical Studies  
  • Evaluation Report  
  • Promotion Plan | • Public Entity  
  • OPIP | • Proinversión  
  • Public Entity  
  • MEF |
| Phase 3: Structuring | • Contract Version  
  ○ Integrated Evaluation Report  
  ○ Financial Model  
  ○ Tender Rules | • OPIP | • Public Entity  
  • Regulator*  
  • MEF |
| Phase 4: Transaction | • Final Version of Contract  
  ○ Integrated Evaluation Report  
  ○ Financial Model  
  ○ Tender Rules | • OPIP | • Public Entity  
  • Regulator*  
  • MEF  
  • CGR* |
| Phase 5: Contractual Execution | 1. Contract Registry  
  2. Contract Addendum | | • Public Entity  
  • Investor |

*Only if applicable.*
b. Flowchart

(*) For co-financed projects, the Technical Studies are elaborated within the framework of Invierte.pe.
(**) The Regulator reviews / comments, if applicable.
(*** ) The Integrated Evaluation Report is included in the Structuring and Transaction phases.
**Self-financed Private Initiative**

a. Phases, documents and responsible parties in charge of the PPP development activities

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| **Phase 1: Planning and Programming** | • IPA  
• Admission to Processing  
• Opinion on Relevance | • Proponent  
• Public Entity | • OPIP  
• Public Entity  
• MEF  
• Regulator*  
• MEP  
• OPIP |
| **Phase 2: Formulation**         | • Technical Studies  
• Evaluation Report | | |
| **Phase 3: Structuring**         | • Contract Version  
• Integrated Evaluation Report  
• Financial Model  
• Declaration of Interest | | |
| **Phase 4: Transaction**         | • Final Version of Contract  
• Integrated Evaluation Report  
• Financial Model  
• Tender Rules | | |
| **Phase 5: Contractual Execution** | • Contract Registry  
• Contract Addendum | • Public Entity  
• Investor | |

(*) Only if applicable.  
(**) The tender rules for the selection process are made in case third parties present themselves.
b. Flowchart

1. Submits the IPA (Proponent)
2. Admits IPA for processing (OPIP)
3. Request for Opinion on Relevance (OPIP)
4. Issues Opinion on Relevance (Public Entity)
5. Prepares the Evaluation Report (OPIP)
6. Reviews/Approves Evaluation Report (OPIP)
7. Incorporates project into Promotion Process (OPIP)
8. Elaborates the Contract Design (OPIP)
9. Reviews the Contract (*Public Entity/ Regulator/ MEF)
10. Approves Declaration of Interest (OPIP)
11. Carries out Call for Bids (OPIP)
12. Approves direct award (OPIP)
14. Contract Award (OPIP / Public Entity)
15. Registers contract documents (Public Entity/ MEF)
16. Presents addendum proposal (Investor/Public Entity)
17. Approves contract amendments (Public Entity/ Prokopovske/ Regulator/ MEF)

(*) The Regulator reviews / comments, if applicable.
(**) The Integrated Evaluation Report is included in the Structuring and Transaction phases.
**Cofinanced Private Initiative**

a. Phases, documents and responsible parties in charge of the PPP development activities

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• Investor | |

(*) Only if applicable.

(**) The tender rules for the selection process are made in case third parties present themselves.
b. Flowchart

(*) The Regulator reviews / comments, if applicable.
(**) The Integrated Evaluation Report is included in the Structuring and Transaction phases.
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