# ASCERTAINING THE CONTRACTUAL FEATURES, LEGAL CLASSIFICATIONS AND MODELS IN THE EXISTING LEGAL FRAMEWORK OF PUBLIC PRIVATE PARTNERSHIP (PPP) IN NIGERIA

*Written by **Faruk Sani***

*Research Scholar, Usmanu Danfodio University Sokoto, Nigeria*

## ABSTRACT

The paper explores the various features, classifications and models of PPP with a view to measuring whether the existing dominant legal framework in Nigeria, the Infrastructure Concession Regulatory Commission (ICRC) Act 2005, could accommodate the various PPP tendencies and manifestations. When the ICRC Act was promulgated in 2005 and its Board inaugurated in 2009, there was so much optimism that the PPP policy in Nigeria would deliver public infrastructure and services successfully. In less than a decade and latching on the optimism, many agencies of the Federal Government came up with various innovative PPP programmes and schemes whose regulation by the ICRC was ambivalent. The amortization arrangement of the NPA, the land swap programme of the FCT, the road tax credit scheme of the Federal Ministry of Finance, the production sharing contracts of the NNPC, and the InfraCorp and other PPP intervention projects of the CBN are programmes and schemes which the ICRC neglected or refused to effectively regulate. Since the aspirations of the Federal Government in closing the public infrastructure stock deficit are expressly stipulated in its various National plans, there is a need to explore if existing legal framework could accommodate the various features and classifications of PPP as to make such aspirations achievable. The paper therefore looked at the general features and classification of PPP to conclude that the provision of the ICRC Act did not capture expressly and adequately the general classifications and models of PPP as to give both the public and private sectors the confidence to explore and innovate different PPP arrangements. Consequently, the paper recommended for the amendment of ICRC Act and the institution of value threshold to enable public authorities pursue specific category of PPP projects with less regulatory bureaucracy.

***Keywords**:* PPP, Contractual features, Classifications, Legal framework, PPP models, Project Financing.

## INTRODUCTION

The importance of PPPs to the infrastructure development and progress of developing countries like Nigeria cannot be overemphasized. It has been shown that for every ten percent increase in infrastructure investment, there is a corresponding six percent increase in a nation's economic development and prosperity.[i] But PPP's infrastructure investment can only achieve such desired economic development and prosperity if PPP features and legal classifications are properly understood, accommodated and internalized within the context of a National legal framework on PPP, whose dominant enabling legislation in Nigeria is the Infrastructure Concession Regulatory Commission Act (ICRC) 2005.[ii]

Being essentially a contractual arrangement, the features or characteristics of a PPP transaction focus on those basic contract elements that are critical to the preparation, execution and enforcement of PPP transactions. These elements are the capacity, equality and freedom of parties to enter into a PPP contract as well as the respective obligations of parties including events upon termination. The application of the features to PPP transactions would be easier if PPPs are straitjacket contracts. But they are not.

Looking at the historical evolution of PPP and the central role of the private sector in risk allocations, it is unarguable that dynamism and innovation have been the hallmark of its conceptualization and implementation. Thus, features of PPP are better understood within the context of their various classifications. Such classifications enable the public sector to accommodate the different expectations of the private sector in the delivery of public infrastructure and services. In the same vein, such classification within the context of National legal framework enable the private sector to be more enthusiastic in exploring systems and strategies that could make a transaction more viable and the recovery of investment more realistic.

It is in this respect that the main thrust of the paper is to consider whether the Nigeria's existing legal framework on PPP is robust enough to accommodate the various tendencies and manifestations of a PPP arrangement in the delivery of public infrastructure and services. Consequently, the paper is divided into six parts. The first part is the introduction; the second part discusses the applicable legal framework in Nigeria; the third part discusses the characteristics of PPP; and the fourth part discusses the legal classification of PPP. The fifth part explores the provision of the ICRC Act in respect of PPP characteristics and classifications, while the sixth part is the conclusion.

## THE APPLICABLE LEGAL FRAMEWORK IN NIGERIA

PPP is a long-term contract for private sector participation in public infrastructure and services on the basis of shared risks, shared resources and shared rewards. Its legal regime in Nigeria cuts across substantive, regulatory and financial legal frameworks, and strategic plans of both the Federal Government and some of its constituent parts. The dominant enabling legal framework, which allows Ministries, departments and agencies of the Federal Government to explore PPP transactions is, however, the Infrastructure Concession Regulatory Commission Act[iii] supplemented by the National Policy on PPP.[iv] These were promulgated in 2005 and 2009 respectively.

Other legislation and National plans as part of the PPP legal framework and underpinning its policy and practice in Nigeria included such enabling legislation as the Constitution of the Federal Republic of Nigeria;[v] the Public Enterprises (Privatization and Commercialization) Act;[vi] the Electric Power Sector Reform Act;[vii] the Deep Offshore and Inland Basin Production Sharing Contract Act;[viii] the Road Infrastructure Development and Refurbishment Investment Tax Credit Order;[ix] the Infrastructure for Land (Land Swap) Policy;[x] and the Lagos State Public Private Partnership Law.[xi] These enabling legislations have provided for different PPP tendencies and obligations.

While the above instruments enable the practice of PPP in Nigeria, there is another category of legislations that stipulate compliance in any PPP arrangement in Nigeria. These include the Public Procurement Act;[xii] the Fiscal Responsibility Act;[xiii] the Finance (Control and Management) Act;[xiv] the Loans Act[xv] and the Loans (State Development) Act;[xvi] the Debt Management Office Act;[xvii] Environmental Impact Assessment Act;[xviii] and the Nigerian Urban and Regional Planning Act.[xix] There are also other legislations that impact to PPP systems and processes. These are the Companies and Allied Matters Act;[xx] Companies Income Tax Act;[xxi] the Land Use Act;[xxii] Utilities Charges Commission Act;[xxiii] and the Nigerian Investment Promotion Commission Act.[xxiv] It is auspicious to mention some sector specific legislations that played major role in consummated PPP projects in Nigeria. These included the Nigerian Ports Authority Act;[xxv] the Federal Airports Authority of Nigeria Act;[xxvi] and Federal Highways Act.[xxvii]

The National plan, being the roadmap for the stable and sustainable development of a country in the short, medium and long-term, has played a key role in Nigeria's PPP strides. All Nigeria's National plans since the Structural Adjustment Programme (SAP) of 1986 up to the Vision 2020 of 2010 and the extant National development plan, the Economic Recovery and Growth Plan (EPRG) of 2017,[xxviii] have prioritized PPP as a major component in the development and funding of Nigeria's public infrastructure projects. Its predecessors are the Nigeria's Integrated Infrastructure Master Plan[xxix] developed in 2014, the Nigeria's National Strategic Industrial Development Master Plan 2010 (NSIDMP),[xxx] and Nigeria's Vision 20:2020 (NV20: 2020)[xxxi] in December 2010. These National and strategic plans are critical in understanding PPP features and classifications in Nigeria.

## CHARACTERISTICS OF PPP

At the outset, it is necessary to mention that there are different styles that described the characteristics or features of PPP. Such nomenclatures included 'fundamentals',[xxxii] which sought to explain parties and structures of PPP; or 'basic principles',[xxxiii] which listed affordability, value for money and risk transfer as essential features; or 'stages' which look at the PPP life cycle of project conceptualization, procurement, implementation and maturity as the identifying elements of PPP. There is also another style that considers PPP from the scope of contractual obligations and input specifications in the transaction.[xxxiv] The paper adopts a style that is most germane to the law discipline, which discusses PPP characteristics from the perspective of such contract elements as the equality of parties; risk sharing; return on investment for the private entity; and return of asset to the public authority.

***Equality of Parties***

The PPP transaction involves public authority and private entity as well as many marginal players that include lenders, operators, financiers, transaction advisers, consultants, construction companies, operation & maintenance (O&M) contractors, etc.[xxxv] The principal parties in the main agreement are however the public authority and the private entity. The public authority could be federal, central, national, state, regional, municipal or a local authority. It could also be an agency, corporation or entity established by statute and technically independent of their principals, i.e. national, state or local authority.[xxxvi] These statutory agencies are entities that are supervised, monitored or funded, wholly or partially, by their principals. In Nigeria however, the public authority under the ICRC Act are the Departments and Agencies (MDAs) of the Federal Government Ministries.

The other principal partner in a PPP transaction is the private entity, which is normally incorporated as a limited liability company under relevant company laws. The private entity could be an existing company, a Joint Venture Company (JVC), a consortium of companies or an aggregation of companies known as a Special Purpose Company (SPC) or Special Purpose Vehicle (SPV). Though the nature, capacity, capability and size of the company determines its ability to handle projects, in PPPs however, SPCs or SPVs are always used as preferred vehicles to deliver projects.[xxxvii]

It is axiomatic to note that the public authority owns the asset, enables the transaction and regulates the entire sector. It is in reality, the bigger and dominant party. On the other hand, the private entity, as a citizen, must tailor its activities to regulations, policies and standard set by government to be able to operate in that sector. It is therefore necessary for this marginal player to stand up to its rights and entitlements at all stages of the transaction in order, and if it is, to achieve a fair bargain.

Since the owner of the asset, who doubles as the regulator, is a party to a transaction of which its officers determine and enforce standards, it is logical to assume that the government and the private sector are not at par in a transaction that involves a transfer of public function or service. Could there be freedom of contract or equality of bargaining strengths under these circumstances? The question becomes more pertinent in view of jurisdictions that have legislations limiting freedom of contract. The World Bank, for instance, listed three types of laws that often limit freedom of contract as termination rights, compensation payment in the event of termination, and extension of contract duration.[xxxviii]

Freedom as well as equality of parties to enter into contracts represent the Anson's classical model of contract law,[xxxix] which was developed during the early to middle of 19th Century, and which was taken to a new level by Lord Denning MR when he propounded his doctrine of inequality of bargaining power and its classification into five categories.[xl] The public authority must strive to neither use its position nor put pressure on the private entity to obtain an unfair advantage or unfair bargain during the negotiation or implementation of the PPP contract.

Equality of parties and their bargaining strengths is one of the hallmarks of a PPP relationship. Parties, from the beginning of the PPP transaction to the end of its life cycle, should not only be equal in the long term relationship, but must have rights to negotiate freely and to agree on the terms and conditions governing their relationships.[xli] This would create the enabling environment to foster serious commitment and willingness to work together to resolve challenges and conflicts for their mutual benefits. The public authority must be a good partner while the private entity must be diligent in the performance of their obligations. The comparison of PPP to a marriage relationship by Delmon [xlii] signifies the equality of parties as *sine qua non* to the success of any long-term relationship. The PPP process in many jurisdictions including Nigeria internalized these notions in the Request for Proposal (RFP); Pre-transaction negotiations; and the composition of Project Delivery Teams (PDTs), which comprises the representatives of both parties.

***Risk Sharing***

The principal feature that makes PPP different from other contracts is the significant risk transfer to the private sector. In normal contracts, the public authority always funds and procures a public asset as well as operates and maintains it. This is notwithstanding the capacity or otherwise of the public authority to perform such tasks. In PPP however, such tasks are subject to critical analysis and assessment as a result of which all components of the delivery, operation and maintenance of a public asset are optimally shared between the public and the private entities. Under this arrangement, the private entity always assumes greater risks based on a system of risk analysis and management that involves risk quadrants of risk identification, assessment, allocation and mitigation.

Project risks are unforeseen factors that adversely affect the successful completion of a project, which could be in terms of cost, time or quality.[xliii] These risks, which represent potential costs, are very specific and vary from sector to sector and project to project. The system of risk analysis and allocation is central to PPPs and is made on the basis that the party best able to assume a particular risk should bear it. In this regard, the private entity leverages on its funds, expertise and resources to deliver a public asset, while the public authority provides conducive and enabling environment for the private entity to deliver the asset and recover its investment within agreed timeframe.

There are different ways of classifying project risks. This largely depends on one's field or discipline. For the purposes of contractual design however, risks are classified into two, namely global and elemental risks.[xliv] Global risks are those allocated through the contractual agreement and include political risks, legal and regulatory risks, commercial risks, demand risks, foreign exchange risks and environmental risks. On the other hand, elemental risks are risks associated with the design, construction, operation, finance and revenue generation of an asset. This classification would not only facilitate a comprehensive appreciation and management of the risks, but could certainly assist lawyers in the effective drafting of agreements between the parties.

Since risk analysis, assessment and allocation are made with a view to mitigating or totally eliminating possibilities of project failure, there are risks mitigating techniques that assist the private entity to deliver on its obligation. These techniques have been shown to transcend insurance policies on assets but to include public loans, loan guarantees, equity participation, subsidies, sovereign guarantees, tax incentives, viability gap funding, and protection from competition, payment mechanisms and annual operating subsidies.[xlv] Risks are important as they provide the benchmark against which the performance of PPP projects are assessed and determined.

***Return on Investment***

At the root of PPP risk analysis and management described above is the primary objective of the private entity to recover its investment. PPPs require large upfront capital investment cost that is immediately followed by operation and maintenance costs. During the critical period, not a single cash flow from the asset exists until after capital investment has been completed and the new asset becomes functional. The challenge here is that there must be sufficient comfort for the private entity to make and recover its total investments.[xlvi]

The sources of funds for capital investment could vary depending on the viability, size and nature of the project. It transcends equity contributions of project owners and off-plan sale proceeds of potential off-takers to different classes of debts that may include senior, mezzanine and subordinate debts.[xlvii] These multiple sources are necessary considering that such investments could involve payments of commitment fees, interest payments, facilitation fees, consultancy fees, project preparation fees, etc. These are all investments that are to be recovered if the internal rate of return (IRR) on investment is to be positive, thereby making the project viable.[xlviii] The transaction therefore has to be structured in such a way that its project finance has sufficient waterfall of cash flows to guarantee repayments of these capital investments and more.

PPP ensures that the governing contract has sufficient structures and strategies for the private sector to recover its investments. These structures and strategies may include risk-mitigating techniques described above, feasibility studies or outline business case for the project, clauses on liquidated damages and specific legislation on sharing formula. In fact, even where the government declines to give demand or sovereign guarantees, which are the best comfort for recovery of investments, it has to, nonetheless, give sufficient comfort for the private entity to make necessary investment, for instance issuance of a certificate of occupancy in a housing delivery PPP.[xlix]

***Return of Infrastructure***

PPP transactions ensure return of assets to the public authority at project maturity, i.e. at the end of the project term. The return of assets, though a cardinal feature of PPPs, is largely dependent on the structure of the relevant PPP transaction. Concession, lease and Affermage will always require the return of assets, as the reversionary interest to the public authority is inherent in their contractual structures. The other delivery models however depend on whether there is a specific stipulation in the contract agreement for transfer of the asset. For example, BOT would require return of asset at the end of the term while Built-Own-Operate (BOO) would not require any return of asset as there is no reversionary interest in the transferred asset.[l]

A clear stipulation of what asset is to be transferred at the project maturity is important, as the asset could be a product of a Greenfield or Brownfield or Yellowfield transaction. The Brownfield asset would not pose any problem, as the asset is widely known as being owned, belonging to and in fact, previously operated by the public authority.[li] The Greenfield and Yellowfield assets, which are assets constructed for the first time at a specific site, would however pose a more difficult notion. Without adequate stipulation in the contract agreement, the private entity could assume ownership or strip the asset of its functionality at the project maturity date.[lii]

## LEGAL CLASSIFICATION OF PPPS

There are different types or classifications of PPPs, which many literature have tended to look from the perspective of either the nature of the transaction or the project delivery model or the nature of its funding. There could also be another classification that looks at the sources of revenue, ownership of the company, scope of parties' responsibilities or the extent of the private sector's role in the financing. Another perspective is to look at PPPs from the previous use of the relevant project sites, i.e. Greenfield, Brownfield or Yellowfield PPPs.[liii] Among these perspectives, the most common classification however is the one that focuses mainly on the delivery model, which is the traditional approach. These categorizations, focusing on singular perspectives, are restrictive for lack of their robustness to capture novel transactions and structures that could enable private sector participation in the funding or delivery of public infrastructure and services.[liv]

PPP is a product of dynamism and, since no two PPP projects are the same in their respective processes, structuring and expectations, efforts should be made to capture wider forms and derivatives of PPPs.[lv] It is on this basis that Delmon[lvi] identifies five factors that should be considered in any successful classification of PPPs. These are:

(1) whether the PPP is a new or existing business or asset;
(2) the responsibility of the private sector for construction;
(3) the level of private finance involved;
(4) the nature of the project company's service delivery obligations; and
(5) the source of revenue streams.

Consequently, this paper would prefer to consider PPP classification from their intrinsic nature of management, delivery and funding. This classification, however, is not mutually exclusive as a single PPP project might not only cut across the three classifications but might be given different names in different sectors or countries.[lvii] For instance, a lease in one country may be referred to as a concession in another country that could involve funding and management or funding, delivery and management. Since it provides more comprehensiveness in capturing as many PPP models as possible, the paper examines PPP legal classifications from three broad perspectives, namely infrastructure management; infrastructure delivery; and infrastructure funding.

***Infrastructure Management PPP***

These are PPPs that involve an existing public asset in which the basic objective is to manage the asset, catalyze it for increased capacity or utilize the proceeds for reinvestment. In such service delivery, multiple strategies are adopted. Such strategies could include leases, concessions, Affermage, joint venture contract,[lviii] project alliancing, project partnering[lix] and production sharing contract.[lx]

*a.* Leases - Leases in PPPs, whether short or long term, are the most common models for the temporary transfer of ownership rights over public assets to a private entity to enable it operate a specific business within government jurisdiction.[lxi] It is classified into two categories, namely, Concessions and Affermage, depending on the scope of responsibility of the private entity under the PPP contract.[lxii] In both cases however, lease fee, sometimes called fixed fee, is always paid by the private entity to the public authority.[lxiii] Leases are often applied in combination with other models such as BOT (Build-Operate-and-Transfer), BROT (Build-Rehabilitate-Operate-and-Transfer), ROT (Rehabilitate-Operate-and-Transfer), etc.[lxiv]

*i.* Concessions – A Concession is an arrangement whereby a public authority grants rights, land or property to a private entity to operate a specific government business for an agreed term.[lxv] The arrangement could be for short or long term and could be exclusive or otherwise. In concessions, lease of public assets to private entities include the obligations for further investments, and operation and maintenance of the leased assets. As a consideration for the grants, private entities pay fixed fees in respect of the assets and variable fees, also called royalties, in respect of the services.[lxvi]

*ii.* Affermage – It is almost the same thing as Concession except that public authorities bear wholly the investments risks. As in concession, the private entity is responsible for the operational risks, including operation and maintenance of the leased facility, but is not required to make any large investment on or for the asset. Their contractual structures are very similar, their difference being only technical. Under a concession, the operator retains revenue collected from users of the facility and makes a specified fee payment to the contracting authority. In an Affermage however, the operator and the contracting authority share the accruable revenue based on agreed formula. Unlike Concession, there is significant supervision by the public authority.[lxvii]

*b.* Project Alliancing – This is a commercial arrangement between a public authority and a private entity to manage a project on the basis of collective sharing of risks and responsibilities rather than their allocations to individual participants.[lxviii] The participants have a peer relationship where each has an equal say in the project such that all participants win or all participants lose depending on the outcomes actually achieved. All participants are bound together and treated as a single entity within a particular ambience of collaboration to achieve agreed outcomes.[lxix] Thus, there is collective sharing of project risks, faults and blame, and there is no dispute among alliance participants. Notably, the project team is selected among participants on the basis of the best person for each position. Project alliance operates as a virtual organization performing all of the functions required to deliver a project and all participants are considered as owners of the project.

*c.* Project Partnering – It is a collaborative management approach whereby a project owner integrates contractors and other major contributors into the implementation of a project based on mutual objectives, trusts, openness and joint problem-resolution methods. It is commonly used on large, long-term or high-risk contracts. A core issue that differentiates it with project alliancing is that partners may reap rewards at the expense of other partners, while each alliance member places its profit margin and reward structure at risk.[lxx] In contrast, the alliance entity either benefits together or not at all.

*d.* Production Sharing Contract (PSC) – This is an arrangement used in the hydrocarbon industry whereby the private entity bears all exploration risks and production costs in return for agreed share of production. It is based on the principle of profit sharing whereby a public authority leases out a land to the private sector for extraction of mineral resources on the basic term that if it discovers oil or gas, it is expected to share with the public authority the profit from the venture. This is a common management arrangement between NNPC and International Oil Companies since 1973 and was reinvigorated in 1999 when the Deep Offshore and Inland Basin Production Sharing Contracts Act was promulgated and backdated to 1993.[lxxi] Under the scheme, taxes, royalties and profits are paid from actual oil productions.

*e.* Joint Venture Contract (JVC) – Though a common arrangement by state owned enterprises (SOEs) to undertake business ventures, the Joint Venture Contracts (JVCs) is also another arrangement between the public authority and one or more private entity for the creation of a new organizational entity to prospect, explore and market business ideas. Though parties actively participate in the venture, their corporate independence is however religiously maintained as any merger, economic or political, is avoided.

***Infrastructure Delivery PPPs***

These are arrangements in which the major obligation on the private entity is to create, construct or deliver a new public asset based on agreed terms and specifications. Although there are instances where such assets are retained by the private entity e.g. in a Build-Own-Operate (BOO) model, the dominant view however is that such newly created assets are returned to the public authority at the agreed maturity date and that the said ownership is merely economic ownership rather than legal ownership.[lxxii] The public authority always has a reversionary interest not only to its land but also to the asset so created. Under this category of PPPs, three types of infrastructure delivery PPPs are discernible, namely, BOT and its many variants that do not depart from their acronyms; innovative structures that require explanations based on their acronyms; and the Land for infrastructure swap scheme in housing developments. These are not exhaustive as new structures are created to underscore the innovation and dynamism inherent in PPPs. The PPPs highlighted above are explained further.

*a.* Build-Operate-Transfer (BOT) and its Variants – these are arrangements whereby the private sector builds an infrastructure asset, operates it and thereafter transfers it to the public authority at the expiry of the agreed period, by which it is expected that it would have recovered its capital investment, maintenance expenses and reasonable return on investment.[lxxiii] In the recovery of its investment, the private sector is allowed to charge users appropriate fees, rentals, tolls or such other charges agreed by the parties. The public authority may also decide to pay for the usage.[lxxiv] While the former is referred to as 'user-pays', the latter is called 'government-pays'.

As could be seen above, the scope of a BOT arrangement is limited by its acronym. This is also true of other innovative arrangements, which have been developed to capture the dynamism of PPP. Other models under this category include Build-Own-Operate-and-Transfer (BOOT), Build-and-Transfer (BT), Design-Build-Finance-Operate-and-Transfer (DBFOT), Construct-Maintain-and-Finance-Transfer (CMFT), Build-Lease-and-Transfer (BLT) as well as Operate-Maintain-and-Transfer (OMT).[lxxv]

b. There are arrangements that are not strictly defined by their acronyms. These include:

i. Build-Transfer-and-Operate (BTO*)* – this is an arrangement whereby the public authority contracts out the building of a public asset to the private sector on a turnkey basis. On completion, the private sector operates the asset under an Operation and Management (O&M) Agreement on behalf of the company. While the private sector does not assume any risk at the construction stage, it assumes significant risk during the operation and maintenance of the asset.[lxxvi]

ii. Contract-Add-Operate-and-Transfer (CAOT) - the private party adds to an existing public asset based on agreed specifications. On completion, it operates the now bigger asset for an agreed period of time to recover its investment. It is similar to a BOT arrangement except that in CAOT, there is a concession or leasing of a part.[lxxvii]

iii. Develop-Operate-and-Transfer (DOT) – under this arrangement, the private party is given an opportunity to develop an adjoining property so as to ensure the viability of his concession.[lxxviii] The difference with the CAOT is that opportunity is given to the private sector to develop an adjoining property, while CAOT entails increasing the capacity or adding to the concession.

c. There are also arrangements, though defined by their acronyms, but which in reality are classifications based on their nature and belong in the same class with concessions and leases. These are Rehabilitate-Operate-and-Transfer (ROT), Rehabilitate-Own-Operate-and-Transfer (ROOT), Modernize-Operate-and-Transfer and Build-Own-Operate-and-Remove (BOOR).

Whatever acronym is used, it needs to be appreciated that such additions indicate the additional obligations of the private sector.[lxxix]

d. Land-for-Infrastructure-Swap – this is an arrangement whereby a public authority, using its statutory land powers, grants a parcel of land in a district to a private developer for real property development.[lxxx] In exchange for the grant, the private developer will provide public infrastructure in the entire district based on agreed specifications and timelines. The private entity is expected to recover its capital investment including cost of financing and reasonable return on investment from the sale to the general public of serviced lands or of the houses, if it decides to develop the lands allocated to it.[lxxxi] This arrangement also manifests in private sector-led accelerated and mass housing development programmes, which MDAs, like the FCT Administration, explore.

***Infrastructure Funding PPPs***

These are financial arrangements that ensure the availability of private funds or opportunities to create or upgrade public infrastructure. These arrangements enable public authorities to access significant funding for infrastructure investment without a corresponding reflection on their balance sheets. A public authority is able to provide infrastructure by delaying payments,[lxxxii] monetizing its rights, capitalizing the benefit or impact of its infrastructure investment, or trading off a part of its asset.[lxxxiii] These financial arrangements are many and, some of which are discussed hereunder.

*a.* Private Finance Initiative (PFI) – This is an arrangement whereby the private sector provides upfront capital for the delivery of a public infrastructure while the public entity pays back the investment through the payment of a unitary charge.[lxxxiv] The unitary charge is payment that encompasses the costs of building the asset, financing it and operating it for the entire length of contract duration. It is usually paid periodically, e.g. monthly, and from the waterfall of the cash flows of the infrastructure asset. In other words, payments can only be made when the asset is successfully constructed, delivered and being operated. It needs to be clarified that under the PFI model, the public authority does not own the asset during the contract period. It pays for the use of the asset and, depending on the terms of the PFI contract, only gets ownership of the asset at the expiration of the contract.[lxxxv] This initiative gained popularity in the United Kingdom such that by the year 2003, there were about 571 PFI projects in the UK with an estimated value of almost £36 billion and cutting across all development sectors including education and health.[lxxxvi]

*b.* Brownfield Monetization Project – Referred also as asset recycling initiative, it is a scheme whereby a public authority monetizes a non-strategic or underperforming asset through a sale or a lease to the private sector, and uses the proceeds to reinvest in new or existing infrastructure that could deliver improved or additional benefits to the citizenry.[lxxxvii] Such a scheme unlocks idle capital for immediate reinvestment.[lxxxviii]

*c.* Amortization – Amortization is an accounting term used to periodically lower the book value of a loan or intangible asset over a period of time. It is the repayment of loan over time, which ensured that the cost of an asset is incrementally charged to expense or due payment and that there is a shift of the asset from the balance sheet to the income statement.[lxxxix] Each payment is recorded as an expense.

*d.* Annuity Model – It is an arrangement whereby private investment for the design, financing, construction and operation of a public infrastructure is recovered with annuities paid by the public authority over the concession period.[xc] The public authority usually makes payment in a fixed amount for a considerable period and then in a variable amount in the remaining period.

*e.* Tax Credit Scheme – It is an arrangement whereby a public authority agrees that a specific percentage of taxable income of a company could be utilized for the delivery of an approved public infrastructure, and this expenditure would be deducted from the tax due or payable by the private entity.[xci]

*f.* Betterment Levy – This is one of the mechanisms used by public authorities to capitalize benefit or capture the value of public infrastructure investment.[xcii] A betterment levy is a tax that the state collects on a plot of land that its actions have in some way made 'better'.[xciii] For instance, if building roads, metros or airports with public money leads to an appreciation in land prices in the vicinity of these projects, then landowners enjoy a windfall. Betterment Levy is called special assessment in the US and *contribucion de valorizacion* in Colombia and is similarly used in Bogota.[xciv] In Colombia where it has been collected since 1921, for instance, it is a compulsory charge imposed by a government on the owners of a selected group of properties to defray, in whole or in part, the cost of specific improvements or services that is presumed to be of general benefit to the public and of specific benefit to the owners of such properties.[xcv]

*g.* Impact Fees – This is also another strategy of public authorities to capitalize benefit or capture the value of their investments on existing public infrastructure. It is a one-time charge for creation of new infrastructure and is assessed by a public authority to a property owner or developer to offset the impact and burdens of a new development.[xcvi] Such developments could include roads, public safety facilities, schools, parks and wastewater facilities. In Georgia, for example, local councils could only charge impact fees for only seven types of facilities or services, namely, libraries, recreation facilities, water supply, road and bridge infrastructure, public safety, wastewater management, and storm water management.[xcvii] Another example is Chile where the impact fee of $1,600 was imposed per housing unit in 2010 to partly finance a 21-km radial highway with several interchanges in Santiago because the project was expected to add 40,000 new households for the benefit of the developers.[xcviii]

*h.* Land Re-adjustment Schemes – The public authority pools various privately owned parcels of land in a given area and prepares a land use plan for the overall area including designating spaces for public infrastructure and services such as roads and open spaces.[xcix] It then implements the plan and provides the necessary trunk infrastructure. At the end of the process the government returns to each landowner a land parcel proportional to their original parcel but of smaller size (for instance 50-60 percent of the original land parcel). The new land parcel is, however, of a higher value because it is now a serviced urban land. The government retains selected strategic land parcels, which it auctions or sells at market rates to recover the infrastructure costs.[c] It should however be noted that such commercial sale of lands by the government is only possible if the law allows it. This concept of land readjustment scheme is very popular in East Asian countries such as Japan and Republic of Korea. It is also being used in Germany.[ci] It is doubtful if it can be done within the framework of the Land Use Act.

*i.* Developer Land Sales – These are arrangements whereby the public authority obtains revenue for infrastructure investment through alienation of public-owned lands. This is achieved through any of the three alienations, namely, asset sale or auction, asset lease and asset grant.[cii] There are many recorded success rates, as in many instances the proceeds of sales will sufficiently provide enormous resources beyond the budget of the public authority for infrastructure investment.[ciii] It is equally doubtful if commercial sales and leases of land can be done under the Land Use Act. However, such sale of public assess is possible under the privatization and commercialization statutory mandates of the Bureau of Public Enterprises.

## FEATURES AND CLASSIFICATIONS OF PPP UNDER THE ICRC

We have considered in greater details the features of PPP from a legal perspective and its general classifications, which covered its different manifestations and dimensions. The fundamental question at this stage therefore is to assess whether the Act is robust enough to accommodate these contractual features and general classifications. The ICRC Act defines PPP in terms of concessions, which is a contractual arrangement whereby a private proponent undertakes the construction, financing, operation, and maintenance of infrastructure[civ] as well as its repairs during the contract period.[cv]

Since the Act recognizes that PPP is a contractual arrangement, it can be rightly assumed that equality of parties, as a fundamental feature of any contractual relationship, is guaranteed and that the executed agreement regulates the conduct of parties. However, the caveat in section 11 of the Act that no agreement shall be arbitrarily suspended, stopped, cancelled or changed except in accordance with the Act is a red flag. It is trite law that what regulates parties' conducts, and hence could precipitate suspension or cancellation of contractual obligations, is the contract agreement duly entered by the parties. In respect of other PPP features as described above, except for the recovery of investment which section 7(1) stipulated as 'may' be done, risk sharing and return of infrastructure could only be assumed as no express mention was made of either of them.

The ICRC Act did not specifically provide for any classification or model of utilizable PPPs but only provided for entering into any contract or granting of concession.[cvi] In other words, it did not expressly provide for any specie of PPP except to say that MDAs may grant concession for the financing, construction, operation or maintenance of any public infrastructure that is financially viable. Although, the definition of the term under section 36 of the Act[cvii] appears to accommodate many of the PPP types or models discussed in the preceding section, it ought, as a legislation of the National Assembly and premier PPP legal framework, to be more robust. Notwithstanding the attempt to expand the repayment option by way of amortization under section 7(3), the Act is very restrictive considering the obligation of maintenance and repairs under section 7(2)(b).

The failure of the Act to expressly identify and recognize other specific PPP models had made the governmental system to see all PPP projects as concessions and to create doubts on the PPP status of other models.[cviii] If the Act had expressly provided for the classifications, it would have given PPP desk officers the advantage to widen their horizon in streamlining their projects to more dynamic models. This philosophy has impacted positively in countries that are specific on PPP models in their legal instruments and guidelines like Brazil, Philippines and the UK. While many Federal Government agencies have successfully explored many new and innovative models of PPP, the ICRC seemed to be ambivalent in recognizing that they are valid transactions within the ambit of its enabling legislation. Amortization, product sharing contract, land swap, land re-adjustment and auctions, accelerated and mass housing development, tax credit swap, CBN's InfraCorp initiative, NIRSAL, Highway tolling, etc., are examples of schemes which the ICRC was unsure of its authority over them. Indeed, the Act was very economical on the various classifications of PPP.

## CONCLUSION

The characteristics and legal classification of PPP discussed in the foregoing paragraphs could significantly facilitate the identification of PPP models as well as give a better understanding of the diversity of PPP arrangements. It is also obvious that a good National PPP legal framework ought to create a mechanism, which gives stakeholders the confidence to explore different relationship arrangements, project funding models and recovery of investment options. In view of the robust opportunity for both the public and private sectors to explore different models of funding, development and management of public infrastructure, it is recommended:

a. that the Infrastructure Concession Regulatory Commission Act, particularly sections 1, 7(2)(b), 11 and 36, should be amended to expressly provide for the legal features and to formally recognize the different models and legal classifications of PPP that are utilizable by Ministries, departments and agencies of the Federal Government; and

b. that the Infrastructure Concession Regulatory Commission shall institute value threshold on PPP projects to enable MDAs pursue certain category of PPP projects with no recourse to ICRC regulatory bureaucracy.

## BIBLIOGRAPHY

Adeosun A., *Amortization as a Tool for Financing Port Infrastructure: The Nigerian Ports Authority Experience*, 8 (Power Point Presentation) <https://www.scribd.com/presentation/59437214/ Amortization-as-a-Tool-for-Financing-Port-Infrastructure> Accessed 25 March 2020;

Akintoye, A. and MacLeod, M., 'Risk Analysis and Management', *International Journal of Project Management* (1987)(15)(1) 38-39;

Bailey J. A. Jr., *Impact Fees: What are those* [2019] <https://www.mondaq.com/ unitedstates/Real-Estate-and-Construction/797620/Impact-Fees-What-Are-Those>. Accessed 18 March 2020.

Allen G., *The Private Finance Initiative (PFI)*, (2003, House of Commons Library), Research Paper 03/79, 9 <https://www.researchgate.net/publication/28952 5295_The_Private_Finance_Initiative_PFI> accessed 25 March 2020;

Dasgupta A., 'Financing infrastructure: The Hybrid Annuity Model', (*India Business Law Journal*) https://www.vantageasia.com/financing-infrastructure-the-hybrid-annuity-model/> Accessed 25 March 2020;

Delmon J., *Making PPPs Work: Going to the Chapel*, 3 <http://blogs.worldbank.org/ppps/making-ppps-work-going-chapel> Accessed 07 February 2020.

Delmon J., *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*;

Delmon J., *Understanding Options for Public-Private Partnerships in Infrastructure: Sorting out the Forest from the Trees: BOT, DBFO, DCMF, Concession, Lease...* [2010, The World Bank], <https://openknowledge. worldbank.org/handle/10986/19947> Accessed 10 March 2020;

El-Nagdy M., 'Threats and Root Causes of Using Publicly-owned Lands as Assets for Urban Infrastructure Financing' [December, 2018] (57)(4), *Alexandria Engineering Journal*, 3907-3919; <https://www.sciencedirect.com/science/ article/pii/s1110016818301856> accessed 03 December 2019;

Engel, E. and Fischer, R. D. and Galetovic, A., *The Economics of Public-Private Partnerships: A Basic Guide* (Cambridge University Press 2014).

Federal Ministry of Trade and Investment, *Nigeria's National Strategic Industrial Development Master Plan* [Abuja, 2010].

Infrastructure Concession Regulatory Commission, *The National Policy on Public Private Partnership* [July 2009]; <https://estateintel.com/app/uploads/2016/05/ National-Policy-on-Public-Private-Partnership.pdf> Accessed 09 April 2020;

Jacobsson, M. and Walker, D. H. T., *Alliancing within a Public-Private Partnership* (August, 2013), 4 <https://www.researchgate.net/publication/273831989_ Alliancing_within_a_Public_Private_Partnership> accessed 18 August 2020;

Manalastas J. M. and Corpus-Martinez E. W., *Private Sector Prticipation in Infrastructure and Projects in the Philippines*, <https://www.mondaq.com/ investment-strategy/9061/private-sector-participation-in-infrastructure-and-development-projects-in-the-philippines> Accessed 20 March 2020;

National Planning Commission, *Economic Recovery and Growth Plan 2017 – 2020* (EPRG 2017) (Abuja, February 2017).

National Planning Commission, *Nigeria Vision 20: 2020: Economic Transformation Blueprint* [2010].

National Planning Commission, *The Nigeria's National Integrated Infrastructure Master Plan: Final Report*, [Abuja, October 2014].

Nwangwu G., *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016).

Ogunleye, T. A., 'A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry' *Journal of Energy Technologies and Policy* [2015] (5)(8);

Peterson G. E., *Unlocking Land Value to Finance Urban Infrastructure*, 59

Public Private Infrastructure Advisory Facility (PPIAF), *PPP Guide: Introduction and Overview: Types And Variations of PPPs – Other Names Used for the PPP Concept*, <htpps://ppp-certification.com/ppp-certification-guide/32-nomenclatu re-%E2%80%93-other-names-used-ppp-concept> Accessed 16 August 2020.

Public Private Infrastructure Advisory Facility (PPIAF), *Toolkit for Public Private Partnerships in Roads & Highways: Key Players and Roles*, https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/highways toolkit/6/pdf-version/1-3.pdf> Accessed 09 September 2020.

Son, S, *Legal Analysis on Public-Private Partnerships Regarding Model PPP Rules* [2012], r. 14 <https://www.uncitral.org/pdf/english/colloquia/public0private0partnerships2013/20120704Report_on_PPP_legal_IssuesSon_Seungwoover.11.pdf> Accessed 10 March 2020.

Tijani A. M., *Legal And Regulatory Framework For Public-Private Partnerships In Infrastructure Development: A Case Study Of Three African Models And Core International Frameworks* (Being a PhD thesis, University Of Kuala Lumpur 2014) <**Error! Hyperlink reference not valid.**> Accessed 03 December 2019.

UNCTAD, 'Bridging Gaps or Widening Divides: Infrastructure Development and Structural Transformation', 104 in *Trade and Development Report 2018*, <https://unctad.org/en/PublicationChapters/tdr2018ch4_en.pdf> accessed 17 October 2019.

United Nations Economic Commission for Europe, *Guide on Promoting Good Governance in Public Private Partnership* [Jan, 2008] 8 <https://www.unece.org/cicppp/cecipublications/ceci/2008/guidebook-on-promoting-good-governance-in-public-private-partnerships/.html> Accessed 12 February 2020.

Walker, D H T and Hampson, K. and Peters, R., *Project Alliancing vs Project Partnering: A Case Study of the Australian National Museum Project* [May 2002] <https://www.emerald.com/insight/content/doi/10.1108/1359854021042 5830/full/ html> accessed 16 February 2021;

World Economic Forum, *Recycling our Infrastructure for Future Generations* (2017), 18, <http://www3.weforum.org/docs/WEF_Recycling_our_ Infrastructure_for_Future_Generations_2017.pdf> accessed 25 March 2020;

World Bank Group, PPPLRC, *Contract Law: Limitations on Freedom of Contract* [2016], https://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-environment/contract-law> Accessed 10 February 2020.

World Bank, *Land Readjustment,* 2 <https://urban-regeneration.worldbank.org/ node/31> accessed 03 April 2020;

Yescombe, E. R., *Public Private Partnerships In Sub-Saharan Africa – Case Studies For Policy Makers*, (Mkuki na Nyota publishers for Uongozi Institute, 2017), 8.

## ENDNOTES

LL M (Southampton, UK); LL M (Unilag); BL; LL B; MILT (UK); FIPM.

[i] UNCTAD, 'Bridging Gaps or Widening Divides: Infrastructure Development and Structural Transformation', 104 in *Trade and Development Report 2018*, < https://unctad.org/en/ PublicationChapters/tdr2018ch4_en.pdf> accessed 17 October 2019.

[ii] Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act (ICRCA 2005) Cap. 125A, LFN 2004.

[iii] Ibid.

[iv] Infrastructure Concession Regulatory Commission, *The National Policy on Public Private Partnership* [July 2009], 11; <https://estateintel.com/app/uploads/2016/05/National-Policy-on-Public-Private-Partnership.pdf> Accessed 09 April 2020.

[v] Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) Cap. C23, LFN 2004.

[vi] Cap P38, LFN 2004. The Act establishes the National Council on Privatization and the Bureau of Public Enterprises.

[vii] Electric Power Sector Reform Act (EPSRA 2005), Cap. E7, LFN 2004.
[viii] Deep Offshore and Inland Basin Production Sharing Contract Act (DOA 1999), Cap D3, LFN 2004
[ix] Road Infrastructure Development and Refurbishment Investment Tax Credit Order, No. 007 of 2019 (Executive Order 007).
[x] Federal Government Gazette No. 91 of 11th April 2014.
[xi] Lagos State Public Private Partnership Law 2011 (LPPPE 2011); <https://laws.lawnigeria.com/2019/05/07/lagos-state-public-private-partnerships-law/. Accessed 04 January 2021.
[xii] Public Procurement Act 2007 (as amended) (PPA 2007), Cap. P44, LFN 2004.
[xiii] Fiscal Responsibility Act 2007 (FRA 2007), Cap. F40, LFN 2004.
[xiv] Finance (Control and Management) Act 2004 (FCMA), Cap. F26, LFN 2004.
[xv] Loans Act Cap. L15, LFN 2004.
[xvi] Loans (State Development) Act Cap. L16, LFN 2004.
[xvii] Debt Management Office Establishment, Etc.) Act 2003 (DMOA 2003), Cap. D12, LFN 2004.
[xviii] Environmental Impact Assessment Act No. 86 of 1992 (EIIA 1992), Cap. E12, LFN 2004.
[xix] Nigerian Urban and Regional Planning Act (NURPA), Cap. N138, LFN 2004.
[xx] Companies and Allied Matters Act 1990 (CAMA 1990), Cap. C20, LFN 2004.
[xxi] Companies Income Tax Act 1961 (as amended) (CITA). Cap. C21, LFN 2004
[xxii] Land Use Act 1978 (LUA 1978), Cap. L5, LFN 2004.
[xxiii] Utilities Charges Commission Act 1992 (UCCA), Cap. U17, LFN 2004.
[xxiv] Nigerian Investment Promotion Commission Act (NIPCA 1995), Cap. N117, LFN 2004.
[xxv] Nigerian Ports Authority Act 1964 (as amended) (NPAA 1964), Cap. N126, LFN 2004.
[xxvi] Federal Airports Authority of Nigeria Act 1996 (FAANA 1996), Cap. N5, LFN 2004.
[xxvii] Federal Highways Act 1956 (FHA 1956), Cap. F13, LFN 2004
[xxviii] Economic Recovery and Growth Plan 2017 – 2020 (EPRG 2017) (February 2017).
[xxix] National Planning Commission, *The Nigeria's National Integrated Infrastructure Master Plan: Final Report*, [October, 2014].
[xxx] Nigeria's National Strategic Industrial Development Revolution Plan [2014].
[xxxi] National Planning Commission, *Nigeria Vision 20: 2020: Economic Transformation Blueprint* [2010].
[xxxii] Adekilekun Mubarak Tijani, *Legal And Regulatory Framework For Public-Private Partnerships In Infrastructure Development: A Case Study Of Three African Models And Core International Frameworks* (Being a PhD thesis, University Of Kuala Lumpur 2014), 39 <http://studentsrepo.um. edu.my/4615/1/Adekilekun%2C_M.T_Thesis.pdf> Accessed 03 December 2019.
[xxxiii] Ibid, 43.
[xxxiv] Infrastructure Concession Regulatory Commission, *The National Policy on Public Private Partnership* [July 2009], 11; <https://estateintel.com/app/uploads/2016/05/National-Policy-on-Public-Private-Partnership.pdf> Accessed 09 April 2020.
[xxxv] Jeffrey Delmon, *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*, 22; PPIAF, Toolkit for Public Private Partnerships in Roads & Highways: Key Players and Roles, https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/highwaystoolkit/6/pdf-version/1-3.pdf> Accessed 09 September 2020.
[xxxvi] Ibid, Jeffrey Delmon, 22;
[xxxvii] Ibid, 22;

[xxxviii] World Bank Group, PPPLRC, *Contract Law: Limitations on Freedom of Contract* [2016], https://ppp.worldbank.org/public-private-partnership/legislation-regulation/framework-assessment/legal-environment/contract-law> Accessed 10 February 2020.
[xxxix] Under the doctrine, there is a presumption that each party has same bargaining strengths when entering into a contract and that parties are free to contract as they wish and deem fit.
[xl] *Llyod's Bank Ltd v Bundy* (1975) QB 326; (1974) 3 All ER 757 cited in Sagay, *Nigerian Law of Contract* (2nd Edition, 1985, Spectrum Books Ltd), 345 - 346.
[xli] *Unilife Development Company Limited v Adeshigbin* (2001) 2 SC 43 (SC); *African Petroleum Ltd v Owodunmi* (1991) 8 NWLR (Pt. 210) 351 (SC).
[xlii] Jeffrey Delmon, *Making PPPs Work: Going to the Chapel*, 3 <http://blogs.worldbank.org/ppps/making-ppps-work-going-chapel> Accessed 07 February 2020. He observed thus, "PPPs are actually not so different from marriage …. PPPs are about working together, learning how to get along and how to bring the best in your partner. There needs to be commitment and a willingness to work through challenges and conflict. Only then will the partnership bloom."
[xliii] Akintola Akintoye and Malcolm MacLeod, 'Risk Analysis and Management', International Journal of Project Management, (1987) 15-1, 38-39 referred in Nwangwu G., *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 305.
[xliv] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 126.
[xlv] United Nations Economic Commission for Europe, *Guide on Promoting Good Governance in Public Private Partnership* [Jan, 2008] 8 <https://www.unece.org/cicppp/cecipublications/ceci/2008/guidebook-on-promoting-good-governance-in-public-private-partnerships/.html> Accessed 12 February 2020.
[xlvi] E Engel and R D Fischer and A Galetovic, *The Economics of Public-Private Partnerships: A Basic Guide* (Cambridge University Press 2014), 76.
[xlvii] Jeffrey Delmon, *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*, 92-93.
[xlviii] E Engel and R D Fischer and A Galetovic, *The Economics of Public-Private Partnerships: A Basic Guide* (Cambridge University Press 2014), 77.
[xlix] George E. Peterson, *Unlocking Land Value to Finance Urban Infrastructure*, 59 where the author showed how Egypt's New Urban Communities Authority (NUCA) issued land title certificate to a private entity as consideration for installation of infrastructure, 59.
[l] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 23.
[li] Jeffrey Delmon, *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*, 142.
[lii] Ibid, 143.
[liii] The Public Private Infrastructure Advisory Facility (PPIAF), *PPP Guide: Introduction and Overview: Types And Variations of PPPs – Other Names Used for the PPP Concept*, 3 <htpps://ppp-certification.com/ppp-certification-guide/32-nomenclature-%E2%80%93-other-names-used-ppp-concept> Accessed 16 August 2020.
[liv] Jeffrey Delmon, *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy* Makers, 10.
[lv] Seungwoo Son, 'Legal Analysis on Public-Private Partnerships Regarding Model PPP Rules' [2012], r. 14 <https://www.uncitral.org/pdf/english/colloquia/public0private0partnerships2013/20120704Report_on _PPP_legal_IssuesSon _Seungwoover.11.pdf> Accessed 10 March 2020.
[lvi] Jeffrey Delmon, 'Understanding Options for Public-Private Partnerships in Infrastructure: Sorting out the Forest from the Trees: BOT, DBFO, DCMF, Concession, Lease...' [2010, The World Bank], <https://openknowledge.worldbank.org/handle/10986/19947> Accessed 10 March 2020.
[lvii] PPIAF, *PPP Guide: Introduction and Overview: Nomenclature – Other Names Used for the PPP Concept* <htpps://ppp-certification.com/ppp-certification-guide/32-nomenclature-%E2%80%93-other-names-used-ppp-concept> Accessed 16 August 2020.
[lviii] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 25.
[lix] Walker D H T and Hampson K. and Peters R., 'Project Alliancing vs Project Partnering: A Case Study of the Australian National Museum Project' [May 2002] <https://www. emerald.com/insight/content/doi/10.1108/13598540210425830/full/ html>;
[lx] Ogunleye T. A., 'A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry' [2015] (5)(8) *Journal of Energy Technologies and Policy*;

[lxi] PPIAF, *PPP Guide: Introduction and Overview: Nomenclature – Other Names Used for the PPP Concept* <htpps://ppp-certification.com/ppp-certification-guide/32-nomenclature-%E2%80%93-other-names-used-ppp-concept> Accessed 16 August 2020.
[lxii] Jeffrey Delmon, *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*, 9.
[lxiii] Ibid, 143.
[lxiv] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 23.
[lxv] Ibid, 26.
[lxvi] Yescombe E. R., *Public Private Partnerships In Sub-Saharan Africa – Case Studies For Policy Makers*, (Mkuki na Nyota publishers for Uongozi Institute, 2017), 8.
[lxvii] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 25.
[lxviii] Mattias Jacobsson and Derek HT Walker, 'Alliancing within a Public-Private Partnership' (August, 2013), 4 <https://www.researchgate.net/publication/273831989_Alliancing_within_a_Public_Private_ Partnership> Accessed 18 August 2020.
[lxix] Ibid, 4.
[lxx] Derek HT Walker and Keith Hampson and Renaye Peters, 'Project Alliancing vs Project Partnering: A Case Study of the Australian National Museum Project' [May 2002] <https://www. emerald.com/insight/content/doi/10.1108/13598540210425830/full/html> Accessed 12 February 2020.
[lxxi] Taiwo Adebola Ogunleye, 'A Legal Analysis of Production Sharing Contract Arrangements in the Nigerian Petroleum Industry' [2015] (5)( 8) *Journal of Energy Technologies and Policy*, 6.
[lxxii] Ibid, PPIAF, *PPP Introduction and Overview: Nomenclature – Other Names Used for the PPP Concept*, 1 <htpps://ppp-certification.com/ppp-certification-guide/32-nomenclature-%E2%80%93-other-names-used-ppp-concept> Accessed 16 08 2020.
[lxxiii] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 23.
[lxxiv] E Engel and R D Fischer and A Galetovic, *The Economics of Public-Private Partnerships: A Basic Guide* (Cambridge University Press 2014), 115.
[lxxv] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 23.
[lxxvi] Ibid, 23.
[lxxvii] Jesus M. Manalastas and Emelyn W Corpus-Martinez, *Private Sector Prticipation in Infrastructure and Projects in the Philippines*, 2 < https://www.mondaq.com/investment-strategy/9061/private-sector-participation-in-infrastructure-and-development-projects-in-the-philippines> Accessed 20 March 2020.
[lxxviii] Ibid, 2.
[lxxix] Jeffrey Delmon, *Public Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*, 10.
[lxxx] George E. Peterson, *Unlocking Land Value to Finance Urban Infrastructure*, 59 where the author showed how Egypt's New Urban Communities Authority (NUCA) issued land title certificate to a private entity as consideration for installation of infrastructure, 56. See also Arts. 1-3 of the Framework of FCT Land for Infrastructure Swap Executive Order, No. 91 of 2014.
[lxxxi] Ibid, George E. Peterson, 56.
[lxxxii] George Nwangwu, *Public Private Partnerships in Nigeria: Managing Risks and Identifying Opportunities* (Palgrave Macmillan 2016), 18.
[lxxxiii] George E. Peterson, *Unlocking Land Value to Finance Urban Infrastructure*, 59 where the author showed how Egypt's New Urban Communities Authority (NUCA) issued land title certificate to a private entity as consideration for installation of infrastructure, 55.

[lxxxiv] Grahame Allen, *The Private Finance Initiative (PFI)*, (2003, House of Commons Library), Research Paper 03/79, 9 <https://www.researchgate.net/publication/289525295_The_Private_Finance_Initiative_ PFI> Accessed 25 March 2020.
[lxxxv] Ibid, 9.
[lxxxvi] Ibid, 9-10.
[lxxxvii] World Economic Forum, 'Recycling our Infrastructure for Future Generations' (2017), 18, <http:// www3.weforum.org/docs/WEF_Recycling_our_Infrastructure_for_Future_Generations_2017.pdf> Accessed 25 March 2020.
[lxxxviii] Ibid.
[lxxxix] Adeyinka Adeosun, *Amortization as a Tool for Financing Port Infrastructure: The Nigerian Ports Authority Experience*, 8 (Power Point Presentation) <https://www.scribd.com/presentation/59437214/ Amortization-as-a-Tool-for-Financing-Port-Infrastructure> Accessed 25 March 2020.
[xc] Anjan Dasgupta, 'Financing infrastructure: The Hybrid Annuity Model', (India Business Law Journal), https://www.vantageasia.com/financing-infrastructure-the-hybrid-annuity-model/> Accessed 25 March 2020.
[xci] The Road infrastructure Development and Refurbishment Investment Tax Credit Scheme Order, No. 007 of 2019; <htps://pwcnigeria.typepad.com/files/executive-order-no-007-of-2019.pdf> accessed on 23 September 2019. The executive order was signed by President Muhammadu Buhari on 25th January 2019.
[xcii] George E. Peterson, *Unlocking Land Value to Finance Urban Infrastructure*, 59 where the author showed how Egypt's New Urban Communities Authority (NUCA) issued land title certificate to a private entity as consideration for installation of infrastructure, 61.
[xciii] Ibid, 61.
[xciv] Ibid, 61.
[xcv] Ibid, 61.
[xcvi] Jenry A Bailey Jr., *Impact Fees: What are those* [2019] <https://www.mondaq.com/unitedstates/Real-Estate-and-Construction/797620/Impact-Fees-What-Are-Those>. Accessed 18 March 2020.
[xcvii] Ibid.
[xcviii] Seungwoo Son, 'Legal Analysis on Public-Private Partnerships Regarding Model PPP Rules' [2012], 77 <https://www.uncitral.org/pdf/english/colloquia/public0private0partnerships2013/20120704Report_ on_PPP_legal_IssuesSon _Seungwoover.11.pdf> Accessed 10 March 2020.
[xcix] ibid, 59.
[c] Ibid, 48.
[ci] The World Bank, *Land Readjustment*, 2 <https://urban-regeneration.worldbank.org/node/31> Accessed 03 April 2020.
[cii] Mostafa El-Nagdy, 'Threats and Root Causes of Using Publicly-owned Lands as Assets for Urban Infrastructure Financing' [December, 2018] (57)(4), *Alexandria Engineering Journal*, 3907-3919; <https://www.sciencedirect.com/science/article/pii/s1110016818301856>. Accessed 03 December 2019.
[ciii] Seungwoo Son, 'Legal Analysis on Public-Private Partnerships Regarding Model PPP Rules' [2012], 48 <https://www.uncitral.org/pdf/english/colloquia/public0private0partnerships2013/20120704Report_ on_PPP_legal_IssuesSon _Seungwoover.11.pdf> Accessed 10 March 2020.
[civ] ICRC Act 2005, s. 36.
[cv] Ibid, s. 7(2)(b).
[cvi] ICRC Act, s. 1(1).
[cvii] Cap. 125A, LFN 2004, s. 36.
[cviii] The ICRC neither has Mass Housing and Land swap schemes nor amortization in its project pipelines.