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Public- Private Partnership (Ppp) As Catalyst for Sustainable Infrastructural Development (Effort of Rivers, Cross Rivers, Oyo and Lagos State Government).

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ABSTRACT: *This research presents a microeconomic outlook on the benefits of a strong infrastructure base to the Nigerian economy as evident in some states in Nigeria. The overall objective is to highlights the importance of infrastructure development to economic growth and the need for government to take more strategic approach to tackling its dearth in Nigeria. It provides an informed perceptive on economic impact on infrastructure development has on nation building. Special focus is given to the strategic position the Construction industry takes in bridging the gap between - a state of underdevelopment (economic-anorexia) and economic prosperity. A look at strategic procurement options through the use of Public Private Partnerships (PPP) as a viable alternative to Traditional procurement is also discussed.*

KEY WORDS: *Public –private partnership, infrastructure, sustainable infrastructural development, Private sector, Public sector.*

I. INTRODUCTION

The nomenclature of PPP started in form of Build Operate and transfer in 1858 for the construction of Suez Canal. £ 19 million spent on the revenue producing water ways was financed with a mixture of European and Egyptian financial support and was based on a concession to design, construct and operate. The company managed it for 99 years after which the ownership passed over to the Egyptian government. Many Roads and Railways in Europe and the United States were developed using private concession. PPP was introduced into the United Kingdom in 1979 in a move to improve the record of public sector procurement; the aim was to give incentives to the private sector to deliver new public projects on time and to budget and in some cases allow the private sector to run and maintain public assets on long term contracts. Public–private partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as PPP or P3 Canning and Friday (1993).Many developed nations in the world jumpstarted their economies by accelerating their infrastructure and building on it; India and the United States of America is one of such nations. The late President J.F. Kennedy of USA once stated that, “America has good roads, not because America is rich, but America is rich because it has good roads”.

The crux of this matter is that a country cannot be rich without good infrastructure. All the great civilizations attained greatness only through the entrenchment of adequate and sustainable infrastructure. The World Bank estimates that every 1% of government funds spent on infrastructure leads to an equivalent 1% increase in Gross Domestic Product (GDP), which invariably means that there is a correlation between any meaningful inputs in infrastructure development which reflects on economic growth indices, hence the value of infrastructure cannot be underplayed. Infrastructure development has in recent times assumed a central importance in Nigeria’s fight to attain social and economic stability. The federal government and all state governments are using infrastructure as the focal point of their administrations and policy enactments. Infrastructure generally has to do with the fixed provision of tangible assets on which other intangibles can be built on. Not limited in scope, it revolves the provision of Housing, Power (electricity), Transport, Education, Communication, and Technology (www.fpppn.com).

In the history of Nigeria, it has been a mix of daunting challenges and boundless opportunities. However, since the transition to democracy in 1999, the country has laid a solid foundation for economic growth and development. Nigeria's rich human and material resource endowment gives it the potential to become Africa's largest economy and a major player in the global economy. The present government of Nigeria has proposed to be among the top 20 economies in the world by the year 2020. That notwithstanding, our huge infrastructure deficit has greatly constrained economic growth and development, thus inhibiting our ability to improve the quality of life as envisaged in the Agenda of the Federal Government (KPMG 2007).

There is therefore the need for the development of an infrastructure base comparable to those of other nations in the world. These Infrastructure and related Investments are critical in achieving and sustaining a high double-digit annual growth rate necessary for Nigeria to achieve its Vision 2020. Given the huge amounts needed and the drive necessary for development, the Nigerian government does not have the requisite capability to achieve this on its own and has thus among other options embarked upon the use of Public Private Partnerships (PPPs), for infrastructural development and thus addressing the challenges constraining the growth of the Nigerian economy. The Federal Government of Nigerian has further established the Infrastructure concession regulatory commission through the Infrastructure Concession Regulatory Commission (Establishment, Etc) Act of 2005 (The ICRC Act).The ICRC Act therefore seeks to provide for the participation of the private sector in financing, construction, development, operation, and maintenance of Federal Government infrastructure or development projects through concession or contractual arrangements. The Infrastructure Concession Regulatory Commission (ICRC) and its Governing Board were then established to regulate, monitor, and supervise the concession and development projects. The Infrastructure Concession Regulatory Commission (ICRC) is responsible for setting forth guidelines to promote, facilitate and ensure implementation of Public Private Partnership (PPP) Projects in Nigeria with the objective of achieving better value for money (VFM)for infrastructure services and enhanced economic growth (Uff, J 2005).

Nigeria's policy on PPP is to the effect that it will develop regulatory and monitoring institutions so that the private sector can play a greater role in the provision of infrastructure, whilst ministries and other public authorities will focus on planning and structuring projects. The private sector will be contracted to manage some public services, to design, build, finance and operate some infrastructure. It is the Government's expectation that private participation in infrastructural development through PPPs will enhance efficiency, broaden access, and improve the quality of public services. This policy statement sets out the steps that the Government will take to ensure that private investment is used, where appropriate, to address the infrastructure deficit and improve public services in a sustainable way; and it will ensure that the transfer of responsibility to the private sector follows best international practice and is achieved through open competition.

This piece which is the first in many series intends to offer an overview of PPPs, its different models, including their potential benefits for both the public and private sectors in Nigeria and the necessary conditions in negotiating and executing concession or contractual agreements in this regard. As a legally-binding contract between government and private businesses, a PPP arrangement provides assets and delivers services by allocating responsibilities and business risks among the various partners. In this arrangement, government remains actively involved throughout the project's life cycle. The private sector is responsible for the more commercial functions such as project design, construction, finance and operations. This distinction of responsibilities is secured by agreements. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government. Government contributions to a PPP may also be in kind (notably the transfer of existing assets). In projects that are aimed at creating public goods like in the infrastructure sector, the government may provide a capital subsidy in the form of a one-time grant, so as to make it more attractive to the private investors. In some other cases, the government may support the project by providing revenue subsidies, including tax breaks or by providing guaranteed annual revenues for a fixed period.The aim of this research is for private sector Engineers to offer his view on the problem of sustainable infrastructural development and economic growth, and proffer solutions to same. PPP are to increase the availability of infrastructure services, and to do so with lower cost for the level of services provided than could be achieved using the traditional public sector approach.

What is Public-Private Partnerships (PPPs) :

The backbone for the development of any nation is its physical infrastructure, such as roads and bridges, power generation plants, power transmission and distribution networks, water and sanitation networks, seaports, airports, and railways. These infrastructure projects are highly capital-intensive in nature and exert a strain on

public finances, and developing nations in particular have limited resources at their disposal to finance infrastructure. As a result, public sector authorities in developing countries are constantly on the lookout for alternative sources of funds, and one such source is investment by the private sector through PPPs

Definition of a PPP : A PPP is defined as a contract whereby the private sector is engaged by the public sector to manage public services and/or to design, build, finance and operate infrastructure to enhance efficiency, broaden access, and improve the quality of public services. The role of the public sector (i.e. ministries, departments, agencies, municipalities, or state-owned enterprises) is to plan and structure projects, while the private sector (i.e. local or international business) directly implements the projects. These PPP arrangements have been used successfully for decades in countries such as Australia, Canada, South Africa, and the United Kingdom and are increasingly being adopted by governments in other countries as a way of increasing access to infrastructure services for their citizens and economies. There are two globally accepted definitions of PPP's

The American Definition of PPPs
The Canadian (with other country other than American definition)

THE AMERICANS DEFINITION : In American, the PPP are contractual relationship between the public and the private sectors that brings together the strength of both parties to provide services or infrastructure in a cost effective manner. The private sector brings in the innovations, technology and its resources while the public sector provides sufficient control and monitoring of these contracts. Therefore there is a thin line between PPPs and privatization in America. As a matter of facts, it is used interchangeably. In other words PPPs provide sufficient control by the public while harnessing the management skills, technologies and financial resources of the private sector.

The ideas of PPPs within the American concept and definition are:

[1]. The profit motive in private sector does not necessarily force a reduction in the quality of public service because of level of government control.
[2]. The private sector can be more accountable to the public because of the same Government control. Jobs are not necessarily lost in a partnership.
[3]. Private sector can often bring useful management skills, technology and resources to a partnership. This is informed because of the less involvement of government within the public sector delivery services in America.

THE CANADIAN (WITH OTHER COUNTRIES OTHER THAN AMERICA DEFINITIONS)

In Canada and other countries other than America PPPs are defined as a cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined public needs through the appropriate allocation of resources, risk and rewards. Therefore the concept of Government involvement in public utilities and delivery of social services are high and can be seen within this perspective:

[1]. It relates to the provision of public service or public infrastructure
[2]. It necessitates the transfer of Risks between partners
[3]. The term privatization is placed to the furthest point in the PPP spectrum where most or all assets are held by the private sector.

Objectives of a PPP

The objectives of a PPP are to increase the availability of infrastructure services, and to do so with greater efficiency (lower cost for the level of services provided) than could be achieved using the traditional public sector approach. These objectives can be achieved as:

- PPPs allow access to the substantial financial resources of the private sector.
- PPPs enable the public sector to benefit from private sector technical expertise, experience and efficiency.
- PPPs enable the public sector to transfer project-related risks to the private sector

Roles of Public and Private Sector

A PPP is therefore structured in a manner that allows both the public and private sectors to take on certain roles and enjoy certain advantages relative to each other while performing their specific tasks. The government's contribution to a PPP may take the form of capital for investment, a transfer of assets, or other commitments or in-kind contributions that support the partnership. The government also provides social responsibility, environmental awareness, regulation, and the ability to mobilize political support. During the operational life of

the project, the public sector's role is to monitor the performance of the private partner and enforce the terms of the contract. The private sector's role in the partnership is to make use of its expertise in commerce, management, operations, and innovation to run the project efficiently. The private sector is responsible for carrying out or operating the project and takes on a significant portion of the associated project risks. Often, though not always, the private sector will contribute the majority of the project's capital costs (King, D.T 2003).

Characteristics of a PPP Project
Major Operational Characteristics
Long-Term Contracts : PPP projects requiring investment are generally long-term in nature, typically ranging from 10 to 30 years or more (note: PPP projects not requiring investment, such as management contracts, could be for shorter terms). The tenure of the contract is such that it typically covers the entire economic life of the asset to ensure that the private sector partner takes a whole life-cycle view for the development of the asset. The asset is then designed, constructed, operated, and maintained such that the whole life-cycle cost of the project is minimized and the private sector operator ensures that the asset is well-maintained throughout its entire economic life.

Independent PPP Company : Given the capital-intensive nature of PPP infrastructure projects and the risks associated with them, private sponsors of the project often form a separate independent PPP Company, often under a Special Purpose Vehicle (SPV) structure. The rationale for SPVs is that the risks associated with a project are unique to that project and therefore should be limited to that project. In addition, when a government tender goes to market interested private sector parties often will pool skills and finances in a consortium that will form the basis of the SPV, so the implementing partners often are also unique to that project. The SPV also allows the private sector consortium to rise limited recourse funding restricted to the SPV thus protecting the parent companies from the risks of project failure.

Allocation of Risks : One key factor to achieving successful implementation of a PPP project is the optimal sharing of risks and responsibilities between the public and private sector. The guiding principle adopted in identifying and allocating responsibilities is that the party best able to manage a particular activity should be responsible for the risks associated with that activity and receive the associated rewards or losses. For example, PPP risks typically assigned to the private sector include the proper designing and construction of the assets and that financial returns are adequate to repay loans. The public sector, on the other hand, often assumes risks related to macro-economic stability (e.g. inflation) and land acquisition from public and private land owners.

Output Standards and Specifications : Output specifications form a vital part in encouraging innovation in PPP projects. Producing effective output specifications involves defining the ends without being prescriptive about the means for meeting these outputs. The public agency concerned clearly states the public service requirements for the facilities and services, while leaving room for the private sector to produce innovative, cost-effective solutions. The output specifications detail what needs to be achieved and not how it is to be achieved. In these types of PPP contractual arrangements, the public agency concerned makes payments to the private sector based on whether the outcome/output specifications have been met (e.g. a certain number of new electricity connections are made).

Performance-based Payment Mechanisms :
A PPP can be structured in such a manner that the contract includes a performance-based payment mechanism, whereby the public sector only pays when services are delivered by the private sector. Moreover, the recurrent payment may depend on whether the services provided meet the specified performance standards as well. For example, it is not just expected that a new water distribution PPP project will provide customers with adequate quantity of water, but also that the potable water is above specified quality standards. When these payments are made by the public sector they are often referred to as Availability Payments, which are reduced if the full service to the required standard is not provided. In addition, the performance system may include penalty points that are awarded for each minor breach of the performance standards and which may accumulate over time so that if there are persistent minor breaches the public sector can escalate its response to warning letters, payment deductions, or even termination.

Major Financial Characteristics

Private Financing : In a PPP structure, the responsibility of financing the project assets often rests with the private sector partner, depending on the service delivery model adopted. In the models which involve funding the project assets by the private sector, the private sector partner raises project finance through equity and/or debt finance. The project is usually owned (or leased) by one or more equity investors during the project term. Some of these shareholders may also be contractors to the project, who carry out construction, design or management of the assets. Others may be pure financial investors. Debt finance, in the form of bank loans or bonds, also can be raised to at least partially finance the construction and operation of the project.

Fee for Service : Unlike some forms of public infrastructure, PPP projects will often recover many of their costs from users. In these cases the PPP Company will need to recover their investment from the project revenues, i.e. mainly user fees rather than from government directly. For example, many public, most government-funded highways do not charge vehicle tolls, whereas most PPP road projects are structured as toll roads which collect revenue directly from cars and trucks.

Viability Gap Funding (VGF) : The PPP route will not be viable if the business case does not demonstrate that the private sector can achieve an acceptable rate of return for the risks it takes in financing the project's assets. Under such circumstances, and to cover any shortfall in income to cover total project costs, the public sector may provide a payment to part-finance the project costs which in turn will raise the return to the private sector making the project more financially attractive. This payment or VGF is provided on the basis that the assets involved in the project are available 24 hours of every day for the whole year, except for periods of pre-arranged maintenance. This VGF therefore continues to pass operational risks to the private sector, which is one of the main benefits and objectives of a PPP structure. A PPP is only structured to include VGF when total income does not cover total project costs to make the project financially viable and bankable and to attract private investors.

Value-for-money (VFM)

Best Value for Money in public service delivery, or in public procurement, involves a comparison of which option, or bid, provides the highest ratio of net benefits to overall cost. It allows a comparison of different means of delivering the project objectives and their expected economic and social impacts, alongside their expected costs. This is important in PPP because different options or bids may result in higher or lower risks, or better quality outcomes. Traditional procurement usually selects bids on the basis of lowest cost and assumes that the outcomes are the same for all bids. The decision of whether to procure services by means of PPP or traditional procurement should also be based on an assessment of which option is likely to result in the best Value for Money. Since this may result in a better quality outcome, albeit at a higher overall cost, it is important to ensure that the best value for money solution, or bid, is also affordable at key stages in the project appraisal and procurement process.

Service Performance Standards

To ensure that the private sector concessionaire or service operator fully understands the minimum service levels that the public sector requires for the PPP project in question, it is necessary for the public sector project sponsor to describe in general details in the Request for Proposal (RFP) a full set of minimum performance standards for the requested services, covering the availability of the assets provided by the private sector concessionaire and the required minimum service levels. Detailed service performance standards are then negotiated with the selected preferred bidder, as part of the PPP concession contract. These performance standards are backed by an incentive or penalty system for rewarding or punishing the private sector operator for service levels delivered above or below the agreed performance standards. In extreme cases of continuous poor performance below the agreed performance standards, the PPP contract can be terminated. The benefit to the public sector sponsor is that any penalties that are levied due to poor service performance go straight to reduce the equity return thereby encouraging the private sector operator to take immediate corrective action.

Overview of PPP Delivery Models

There are several types of PPPs models depending on the stakeholders involved, their ownership arrangements, and allocations of risk between the private and public partners. The choice of a PPP model depends on the objectives of the government (e.g. improving service efficiency, transferring investment risk, maintaining service control).

Table 1: Different Types of PPP Delivery Models

Contract Type (Duration)	Characteristics				Service & Payment to Private Sector Contractor
	Asset Ownership	O&M	Capital Investment	Commercial Risk	
Service Contract (1-3 years)	Public	Public & Private	Public	Public	A definitive, often technical service fee paid by government to private sector for specific services
Management Contract (3-8 years)	Public	Private	Public	Public	Private sector manages the operation of a government service and receives fees paid directly by government
Lease Contract (5-10 years)	Public	Private	Public	Private	Private sector manages, operates, repairs and/or maintains a public service to specified standards and outputs. Fees are charged to consumers/users and the service provider pays the government rent for the use of the facility.
Concession, BOT, BOO, etc. (10-30 years)	Private & Public	Private	Private	Private	Private sector manages, operates, repairs, maintains and/or invests in infrastructure to specified standards and outputs. Fees are charged to consumers/users. The service provider may also pay a Concession Fee to the government.

Service Contracts

Under a service contract, the government (public authority) hires a private company or entity to carry out one or more specified tasks or services for a period, typically one to three years. The public authority remains the primary provider of the infrastructure service and contracts out only portions of its operation to the private partner. The private partner must perform the service at the agreed cost and must typically meet performance standards set by the public sector.

Under a service contract, the government pays the private partner a predetermined fee for the service. Often there may be some financial incentives in the contract to reduce operating costs and/or improve operating performance. The government is responsible for funding any capital investments required to expand or improve the system. One financing option involves a cost-plus-fee formula, where costs such as labour are fixed and the service contractor receives a premium over the fixed costs for its efforts.

Advantages include:

- Relatively low-risk option for expanding the role of the private sector.
- Quick and substantial impact on system operation and efficiency.
- Means for technology transfer and development of managerial capacity.

Disadvantages include:

- Require strong enforcement of contracts and laws by public sector.
- Does not attract capital investment from the private sector.
- Private partner’s incentives are limited and therefore may not encompass overall objectives.

Management Contracts :

A management contract is a comprehensive service contract that covers all of the management and operational components of the public utility or service provider. Although the ultimate obligation for service provision remains with the public sector, daily management control and authority are assigned to the private partner. The private contractor is paid a predetermined rate for labour and other anticipated operating costs and, often, to provide an incentive for performance improvement, the contractor is paid an additional amount for achieving pre-specified targets. In most cases, the private partner provides some working capital, but the public sector

retains the obligation for major capital investments, particularly those required to expand or substantially improve the system.

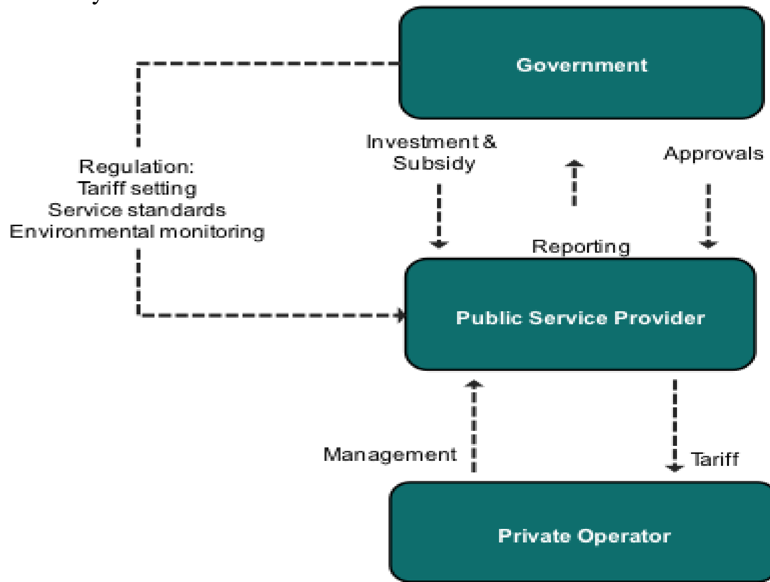

Figure 1: Structure for Management Contracts

Advantages include:

- Operational gains from private sector management can be realized without transferring the assets to the private sector partner.
- Less difficult to develop and less controversial than some of the other PPP models.
- Relatively low-cost contracts requiring no major capital from private operator.

Disadvantages include:

- Private contractor does not have authority over the labour force and, as a result, deep and lasting changes are hard to achieve.
- Private contractor often has limited authority to disconnect services, raise tariffs, etc.

Lease Contracts

Under a lease contract, the private partner is responsible for the service in its entirety and undertakes obligations relating to quality and service standards. Except for major capital investments, which remain the responsibility of the public authority, the operator provides the service at his expense and risk. In particular, the operator is responsible for losses and for unpaid consumers' debts. Given the increased risk burden on the private sector, the duration of a leasing contract is typically longer than a service or management contract. Leases do not involve any sale of assets to the private sector, however.

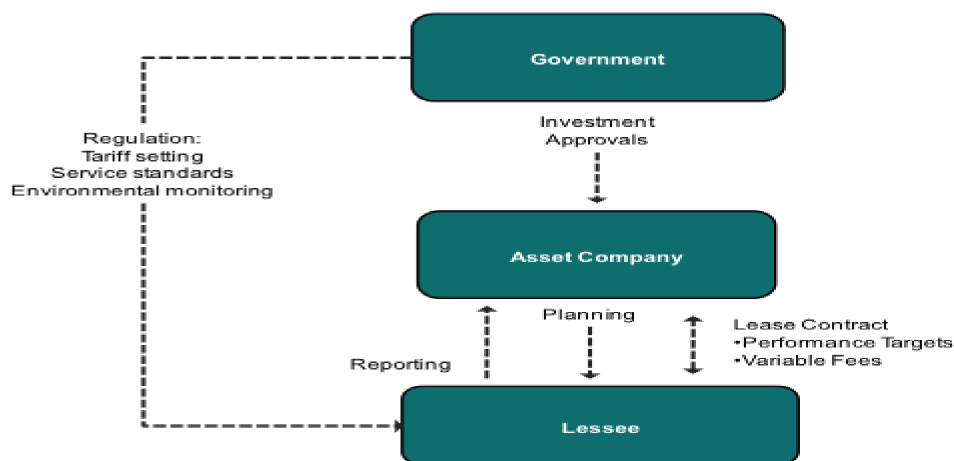

Figure 2: Structure of Lease Contracts

Advantages include:
- Separate the use of the facilities from the ownership of the facilities.
- Allows private sector to make the tough management decisions (e.g. labour reductions).
- Public authority receives stable stream of cash flows without having to manage operations and maintenance of the facilities.

Disadvantages include:
- Responsibility for capital investment remains with the government and no private investment capital is mobilized.
- Private sector cannot improve physical infrastructure on its own so technical losses many not be improved much.

Benefits of PPPs for the private sector

1. PPPs give the private sector access to secure, long-term investment opportunities. Private partners can generate business with the relative certainty and security of a government contract. Payment is provided through a contracted fee for service or through the collection of user fees – and the revenue stream may be secure for as long as 50 years or more.

2. Private sector partners can profit from PPPs by achieving efficiencies, based on their managerial, technical and financial and innovation capabilities. They can also expand their PPPs capacity and expertise – or their expertise in a particular sector – which can then be leveraged to create additional business opportunities. For example, the company can market its experience in other jurisdictions, once it has established a track record of working successfully with the public sector in Nigeria.

PPPs in other jurisdictions : In other jurisdictions, PPPs have been used to develop large transportation infrastructure projects, including roads, railways, transit systems, seaports and airports. They have also been used in the transportation, power, water, wastewater and gas sectors, as well as for asset-based projects in health care, education, corrections and defence. Examples of these include the United Kingdom, Australia, Ireland, the province of British Colombia, Canadian, and India, to mention a few Moszoro et al 2008.

Models of Public-Private Partnerships

The following terms are developed from commonly used terms to describe PPP agreements globally as in Nigeria.

- **Design-Build (DB) or “Turnkey” contract:** The private sector designs and builds infrastructure to meet public sector performance specifications, often for a fixed price, so the risk of cost overruns is transferred to the private sector. (Many do not consider DB's to be within the spectrum of PPP's).
- **Service Provision (e.g., Specific customer services or operation & maintenance) contract:** A private operator, under contract, operates a publicly-owned asset for a specified term. Ownership of the asset remains with the public entity.
- **Management contract:** A private entity contracts to manage a Government owned entity and manages the marketing and provision of a service.
- **Lease and operate contract:** A private operator contracts to lease and assume all management and operation of a government owned facility and associated services, and may invest further in developing the service and provide the service for a fixed term.
- **Design-Build-Finance-Operate (DBFO):** The private sector designs, finances and constructs a new facility under a long-term lease, and operates the facility during the term of the lease. The private partner transfers the new facility to the public sector at the end of the lease term.
- **Build-Operate-Transfer (BOT):** A private entity receives a franchise to finance, design, build and operate a facility (and to charge user fees) for a specified period, after which ownership is transferred back to the public sector. This has been used in telecommunications service contracts.
- **Buy-Build-Operate (BBO):** Transfer of a public asset to a private or quasi-public entity usually under contract that the assets are to be upgraded and operated for a specified period of time. Public control is exercised through the contract at the time of transfer.
- **Build-Own-Operate (BOO):** The private sector finances, builds, owns and operates a facility or service in perpetuity. The public constraints are stated in the original agreement and through on-going regulatory obligations.
- **Build-Own-Operate & Transfer (BOOT):** The Private Sector builds, owns, operates a facility for a specified period as agreed in the contract and then transfers to the Public.

- **Operating License:** A private operator receives a license or rights to build and operate a public service, usually for a specified term. Similar to BBO arrangement. This is often used in telecommunications and ICT projects.
- **Finance Only:** A private entity, usually a financial services company, funds a project directly or uses various mechanisms such as a long-term lease or bond issue.

Legal Regulatory Framework for Developing PPPs

The legislation on PPP procurement is provided under the Infrastructure Concession Regulatory Commission Establishment Act 2005 and the Public Procurement Act 2007. These Acts set out the requirements for competition in all public procurement and for the prior approval by FEC of all PPP contracts. The Public Procurement Act also sets out the grounds for direct contracting for goods or services in exceptional circumstances. The transitional arrangements set out in this guidance apply to projects which started a procurement process before June 2007 (the date of enactment of the Public Procurement Act) but where FEC approval is required under the ICRC Act. It applies to projects based on unsolicited proposals by a private sector party as well as projects which are financially free-standing (i.e. which do not require funding from the Federal budget), but which involve the transfer of rights to use public assets and/or to charge users of an unregulated public service through a concession (Dominic, E.O 2012).

Contract Agreement, Contract Management and Dispute Resolution

Several parties are involved in the implementation of a PPP project. They include government, project sponsor(s), banks and other financial institutions, experts, suppliers, off-taker(s) and third parties. As already stated, a special project company called SPV may also be established for the purposes of project implementation and its operation. The details of implementation and payment arrangements are negotiated between the parties involved and are documented in a number of written agreements signed by them. If an SPV is established, it is at the centre of most of such agreements. In other words, the SPV negotiates the contract agreements with most of the parties involved in the process. If establishment of an SPV is not required, the concessionaire (or the private project company which sponsors the project) is at the centre of such agreements and negotiates the contract agreements with the other parties including the government involved in the process. Among the agreements executed between an SPV (or the concessionaire/private project company) and other parties, the two most important are the contract agreement with the government and the agreement with the financiers. In fact, the contract agreement with the government forms the basis for subsequent agreements with other parties, for example, an off-take agreement in case of a toll road. This piece, considering the scope will be limited to the contract agreement between the SPV or the concessionaire and the government.

Contract Agreements

Contract agreements of a project between the contracting authority in government and the concessionaire may be contained in a single document or may consists of more than one separate document. It is difficult to generalize all possible contents of such agreements as they vary due to difference in legal and regulatory provisions from one country to another, type of PPP model and the nature of involvement of the public sector, implementation arrangements (including financial matters), operational and various sector specific resource High-level Expert Group Meeting on Public-Private Partnerships, utilisation, technological and other matters. There are, however, certain global key elements that are expected to be covered in all PPP contract agreements. The preparation of contract documents can be a major administrative task in PPP development and may also require a considerable amount of time. The availability of standardized contract documents or model contract agreements with the provisions of model clauses can be of great help in this respect. It helps considerably in streamlining the administrative process by reducing the time in preparing such documents and getting them cleared from the concerned government agencies. Model concession/contract agreements or MCAs also help in this regard.

The agreements in a typical PPP arrangement may include the following: SPV (Project company) Output Input supply agreement, Labour agreement, Other supply/procurement agreement, Third party agreement, Insurance Agreement, Escrow agent Agreement, Operation and maintenance agreement, Engineering procurement construction (EPC) Concession agreement, Project development Agreement, License and Permit Obligations, Shareholders agreement, and so on. Further, generally acceptable terms of a PPP agreement must include a preamble, the interpretation and Definition clauses for purposes of identification of the parties, their responsibilities and clarity of the transaction.

Contract management

The contract management is an important activity in PPP programme/project administration. A management process needs to be in place from the outset to ensure timely completion and operation of a project. The contract management process not only helps to fix responsibilities, but also allows timely response to any deviation in project implementation or operation from the provisions in the contract agreements and thus helps to avoid disputes between the parties at later stages.

The contract management is required by the implementing agency, regulator and the government. The main tasks include:

[1]. Formalisation of management responsibilities by organization and at different levels
[2]. Monitoring of project delivery (construction phase) (by implementing agency)
[3]. Management of variations during project implementation (time schedule, change of design and specification etc.) (by implementing agency)
[4]. Monitoring of operational aspects and service outputs after project implementation (implementing agency and regulator)
[5]. Maintaining the integrity of the contract (implementing agency)
[6]. Fiscal obligations of the government (concerned ministry of the government)
[7]. Financial matters related to debt servicing (concerned bank of the government)

Separate monitoring frameworks need to be developed for the construction and operational phases. A mechanism also needs to be in place to gather, collate and analyze the required information for these frameworks on a regular basis, and to feed that information to the relevant authorities according to their requirements. The information requirement for different agencies is different. As such, the implementing agency, regulator and the government may also establish separate monitoring frameworks to serve their own specific needs. However, the monitoring frameworks need to be based on performance indicators mentioned in the contract/concession agreement and other requirements of the administrative procedures related to PPPs.

Dispute resolution

The legal basis for the settlement of disputes is an important consideration in implementation of PPP projects. Private parties (concessionaire, financiers and contractors) feel encouraged to participate in PPP projects when they have the confidence that any disputes between the contracting authority and other governmental agencies and the concessionaire, or between the concessionaire and other parties (for example, the users or customers of the facility), or between the private parties themselves can be resolved fairly and efficiently. Disputes may arise in all phases of a PPP project namely, construction, operation, and final handover to the government. The agreed methods of dispute resolution between the parties are generally mentioned in the contract agreement as allowed under the legal framework of dispute resolution in the country.

The legal framework for dispute resolution may be embodied in a number of legal instruments and relevant rules and procedures of the country. The legal instruments may include the private contract law, company law, tax law, competition law, consumer protection law, insolvency law, infrastructure sector laws, property law, foreign investment law, intellectual property law, environmental law, public procurement law or rules, acquisition or appropriation law, and various other laws.

The commonly used methods for dispute resolution include:
Conciliation and mediation
Non-binding expert appraisal
Review of technical disputes by independent experts
Arbitration
Legal/Court proceedings

It is important that the settlement mechanisms are in line with the international practices, particularly when large-scale investments from a foreign private sector, is expected. Generally, the contract agreement(s) specifies what methods of dispute resolution would be followed to settle any disputes arising between the parties and the rules and procedures to be followed for that. The United Nations Commission on International Trade Law (UNCITRAL) has prepared a Legislative Guide on Privately Financed Infrastructure Projects. The Guide provides guidance on clauses related to dispute resolution that may be considered for inclusion in the contract document.

Infrastructure and Economic Development : Infrastructure is defined as the basic physical and organisational structures (building, roads, power supplies, etc.) needed for the operation of a society or enterprise. It is the vital services and facilities that power the national economy and the technical structures that support a society. Infrastructure contributes to economic development by increasing productivity and providing amenities which enhance the quality of life. The services generated as a result of an adequate infrastructure base will translate to an increase in aggregate output. Two categories of derived benefits to direct investment are:

1. Investment in infrastructure services, such as transportation (roads), electricity and water are intermediate Inputs to production.
2. Infrastructure services tend to raise productivity of other factors. Infrastructure is often termed the "unpaid factor of production". Investment in infrastructure in a given location often attracts additional flow of resources. Both effects contribute to economic growth by stimulating aggregate supply as well as demand.

However, these contributions on aggregate output, take time for the benefits to be realized. It was concluded that developing countries showed a high rate of return on transport infrastructure comparable to those of developed countries (Foster, V et al 2010). Infrastructural Development is the creation of public goods which carries the distinction of producing external economies (technological and pecuniary) and social benefits different from private benefits. I.e. the consumption by one individual of services provided by these public goods does not prevent consumption by another individual. The establishment, upgrading and maintenance of infrastructural facilities are essential for every economic activity on which sustainability of growth lies. Virtually every sector of the economy requires infrastructural development:
a. Agriculture and Rural Development
b. Health
c. power sector
d. manufacturing
e. Information, Communication and Technology
f. Education
g. Services (Tourism)
h. Public works / Housing etc

Environment : Implies neighbourhood or geographical landscape within context of discussion. For instance, Nigeria is our own environment and it is our focus of discussion. Infrastructure and infrastructural development is environment based. When we develop, it is the physical environment that we are developing, since it is the very focus of the developmental process. In pursuance of the divine mandate to develop the environment, contemporary human societies and nations have sought to use the power of technology and science to develop institutional framework, to make the environment a better place of convenience, comfort and luxury to live in. Since the outbreak of industrial revolution in the 18th century, the world has not remained the same as industrialization has since then become a major means of achieving economic growth and development.

Population : It is important to note that discussion on infrastructural facilities could not be conclusive without considering such relation to population. Population is significant to the extent that adequacy of infrastructural provision depends on what number of people resides or live within the contextual land space. It is suffice to say that changes in population imply changes in whatever level of infrastructure are required. Therefore, it is important for environment planners to providers of public facilities to consider population with projection into the future, while planning for sustainable infrastructural development. The reason why electricity, pipe bone water, railway and some other infrastructures remains inadequate in Nigeria today is simply consequential of the fact that; the same amenities provided in the 1960s, 70s and 80s when population ranges between 39.2 million and 65.7 million is still being relied upon with little or no expansion in the current twentieth century, when the population is above 158 million and even growing. This is why facilities provided in the 70s have become grossly inadequate to carter for the current population. Developed countries of the world do plan their project on infrastructures with consideration of significance of population and its probable growth within the projected life span. It should interest us that whatever facility we are putting in place is not just adequate for the present situation, but would continue to be able to carter for the growing population within its projected life span. For the purpose of this discussion, I therefore intend to consider sustainable infrastructural development with great cognizance to the impact of population growth.

Sustainable infrastructural development : To sustain means to maintain; keep in existence; prolong sustainable infrastructure refers to anything built or used in a way that contributes to the overall sustainability of natural resources. In most cases, this is related to energy consumption and water use, two of the most high profile conservation areas. Though there is no firm definition on what constitutes sustainable infrastructure, efficiency over previous generation of technology and construction is a must. Sustainable infrastructure refers to the designing, building, and operating of infrastructure in a way that do not diminish the social, economic, and ecological process required in maintaining human equity, diversity, and the functionality of natural system. A sustainable infrastructure ensures the smallest possible strain on resources and the environment, and contributes to a sustainable society as a whole. A well modern society, and the value and consequences of the same can be measured in several ways. Global developments now focus attention on sustainability as an explicit goal. But the concept has to be translated into the practical dimensions of the real world to make it operational. We must be able recognise the presence or absence of sustainability, or threats to sustainability in the system under our stewardship.

II. 0INDICATORS OF SUSTAINABLE INFRASTRUCTURAL DEVELOPMENT.

For any infrastructure development to be sustain there must be

- Adequate financial provision for maintenance
- Quality delivery of project
- The project must be durable
- For mechanical and electrical installations, Drawings must be kept to be available for maintenance referencing.
- The project must be planned in such a way and manner that incorporates provision for growth. i.e the project must guarantee continued sufficiency (adequacy) within its projected life span even when population increases.

Sustainable infrastructure is critical to sustainable community development, our future well- being and the day to day lives of individual Nigerians. The sustainable infrastructures built today will shape tomorrows communities. Achieving sustainable infrastructure requires an integrated strategy which strengthens government finance; strengthen the private sectors and which in turns strengthen the foundation for growth. It is therefore necessary to analyse the available methods of public procurement to be able to establish the optimum advantage of PPP over others.

III. PUBLIC PROCUREMENT APPROCHES

Traditional Procurement (Government Direct Procurement)

This is a method in which Government issues out contracts and finances projects directly. Can government actually provide all that is required in terms of sustainable infrastructure? Paucity of funds had constituted a constraint to the amount of that government can undertake at a time. The pace of corruption in this country today has also eroded public confidence in government sole capability to provide all the needed amenities. It is therefore important to examine the various financing options available to government to finance her projects to be able to determine her competence to solely put in place sustainable infrastructural development.

GOVERNMENTS FINANCIAL TECHNIQUE : The resources mobilization options available to government for the financing of infrastructural provision include the following:

[1]. **General Tax Revenue:**This involves Government reliance on raising fund from the public through taxlevied on corporate organisation and private individual. Even though this is a viable means of revenue mobilisation, the government need to thread with care to avoid the counter productive as over taxation could lead to brain drain with many corporation fleeing the economy for a more friendly economy where taxes are low and even have incentives. This is therefore not reliable means which government could depend on for financing the infrastructural needs of the society.

[2]. **GOVERNMENT BORROWING:** This is another technique through which government could finance his projects. Government could raise bonds or procure long term loan to finance her projects. If a sustainability infrastructural provision is to be considered, government cannot continue to borrow in perpetuity borrow to build today: borrow to maintain tomorrow: or may have to borrow for another provision. The implication of this will be a insolvency of the state, if not bankruptcy.

[3]. **EMARKED TAXES:** This refers to special taxes levied on private organisation to raise fund for specific projects or scheme. For instance Education Tax Fund, petroleum trust fund, housing fund, textile Tax, etc. Such taxes had in the past contributed a pool of resource utilized by government in the provision of some public facilities. Meanwhile, it also has consequences relating to over taxation of the organisation involved when other taxes paid are considered in summation to this. The government would want to avoid creating a situation capable of causing layoff and unemployment as a result of possible resultant relocation of companies involved to other places. This is another unsustainable technique which would not be able to guarantee sustainable infrastructural development for the government.

[4]. **ADMINISTRATIVE FEES:** This represents the charges levied on the public and private entities for the processing or registration of their documents as well as other services rendered privately to them by the government. This is one of the sources of revenue through which government earned funds. This usually represents a little proportion of government earning and could be inadequate for capital intensive projects, which reflects the inability to carter for sustainable infrastructural development projects.

[5]. **USER PRICE:** This is the amount charged on members of the public for benefiting from some public facilities. This could include social amenities like Hospital, Schools, Toll gate, etc. Many politicians in this present democracy want to act more on social responsibility for the fear of criticism by their opponents and most user price are not collected. Even when collected, every little amount is charged. This obviously have limitations on what kind of project could be financed by revenue generated.

[6]. **ALLOCATION:**As far back as early 1970s, the bulk of federally allocated revenue derived from revenue accruing to the federal government is shared with the three tiers of government under a revenue allocation system using different formulas at different times. Despite these efforts, the 36 state governments have been at daggers- drawn over the formula that would be acceptable to all stakeholders. One major impact of this seemly never ending controversy is the fact that it has not been able to contribute optimally to social and economic development as expected.

PRIVATIZATION : Is the procurement approach in which Private investors are allowed to take full charge of financing the provision as well as the management of a particular facility. This could involve undue exploitation for the public through exorbitant user's charges.

Why PPP as a tool to facilitate sustainable infrastructural development – the nexus

PECULIARITY OF OUR SITUATION: In view of the current economic realities of global financial meltdown coupled with dwindling oil prices; there are budget constraints at all levels of Government. It is obvious there should be an informed acceptance of this method of meeting the needs of the public. Happily, Nigerian Government particularly at the Federal and State level has embarked on PPP and has passed the infrastructural concession and Regulatory commission (ICRC) with its board already reconstituted. The bureau of Public Enterprises (BPE) through the act establishing them have been involved in concession, commercializing and outright privatization all in effort to bring in the private sector to deliver efficient service for public goods.

HOW PPP OPERATE : PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the services is borne wholly or in parts by the Government. Government contributions to a PPP may also be in kind (notably the transfer of existing assets). In projects that are aimed at creating public goods like in the infrastructural sector, the Government may provide a capital subsidy in the form of a one- time grant, so as to make it more attractive to the private investors (Babalakin, B 2008). In some other cases, the Government may support the project by providing revenue subsidies, including tax breaks or by providing guaranteed annual revenue for a fixed period. PPP could be conducted for the implementation of new infrastructures as well as in the form of maintenance of existing ones. Moribund facilities could therefore be resuscitated through PPP, where private investor rehabilitates, manages and maintain the facility for an agreed tenure and terms. It is important to emphasize here, that every project under PPP must be handed over to Government in a very good condition on the expiration of the concession.

Conditions for Sustainable Ppp: These are some of the conditions that investors and Government must meet for there to be sustainability.

INVESTORS MUST

- Ensure conformance with Government aims
- Ensure that projects are in public interest
- Ensure that project reflects environmental and economic sustainability
- Ensure that project is viable
- Not seek to place onerous condition upon Government. I.e. the project must be carried out in good faith.

GOVERNMENT MUST

- Ensure proper social security and economic prosperity i.e. growth in GDP
- Must guarantee adequate legal protection for private investors
- Should engage orientation campaign to ensure users acceptance
- Should ensure proper and relevant legislation in place to guarantee some basic pioneer status and protect private investors.
- There must be political will power to engage
- in the scheme

THE IMPORTANCE OF PUBLIC PRIVATE PARTNERSHIPS.

PPP have been successful on a multitude of projects throughout the world including the U.S.A, on transportation, water/ waste management, urban development, university/colleges and utility projects. Benefits of PPP include:

[1]. The public benefits from the use of new cutting edge technology that normally a government entity would deem too risky for public procurement.
[2]. Large infrastructural projects can be undertaken without risking public funds.
[3]. Sustainable maintenance and rehabilitation
[4]. It reduces Government burden for infrastructural development.
[5]. Brings in private sector creativity and responsiveness to reduce cost.
[6]. It enables more benefits to the public beyond what Government could provide at any given time.
[7]. It enables timely completion of projects.
[8]. It allows for effective utilization of resources by Government.
[9]. It facilitates greater economic activities
[10]. Tailored maintenance, attention to whole life costs, sensitization and smoother operations.

IV. PROJECTS EXECUTED THROUGH PPP IN NIGERIA BY FEDERAL GOVERNMENT

Actually, public- private partnership have been in existence since long in other developed countries of the world, but in Nigeria, PPPs are seen and heard of in more recent time. In today's world, creative government leaders develop partnership with private contractors to provide essential services to meet environmental compliance requirements and improve operations, without having to increase taxes upon their constituencies. Also, government realise that the combined capital and intellectual resources of the public and private sector s can result in a better and more efficient services. According to Engr. Saidu and founder of FPPP Nigeria, there are no known statistics or survey carried out on the real position of PPP in Nigeria. The Federal Government, by action is committed to PPP. Even though there exists knowingly and unknowingly, PPP in the oil and gas industry through the joint venture operation of NNPC and major oil companies such as SPDC, TOTAL E&P, Chevron, Agip, Addax Petroleum which is being administered by NAPIMS; the first known Federal Government Projects that is executed and celebrated under the PPP is the Bi- Courtney MM2 Air port project in Lagos. The National Council on Privatization has also concessioned some sea ports in Lagos, Warri, and Port Harcourt under the PPP arrangement. Recently, the Federal Ministry of Works has advertised for concesioning many Federal Roads to include Lagos – Benin Road, Lagos – Ibadan Road, Abuja- Kano Road, etc. The Federal Ministry of Agriculture under the National Food Reserve Agency (NRFA) is rigorously undertaking PPP in it silo and reservation facilities.The National Food Reserve Agency (NFRA) of the Federal Ministry of Agriculture and Water Resources also invited interested and eligible private investors / Cooperative groups for the expression of interest to participate in the establishment of 200 Cassava Processing mills in 22 states and FCT under Public – Private Partnership (PPP) arrangement.

The federal Government under Ministry of Power concessioned, Privatised some Power Plants and Dams in the country in its bids to solve power and energy problem in the country.

Ppp At The State Level : States with known involvement in PPP is Lagos State under Governor Babatunde Raji Fashola (SAN) where a special office to co-ordinate activities of PPP under the state ministry of finance is now functional. The Lekki Concessioning Company (LCC) is undertaking the construction of major Roads (Lekki –Epe Expressway) under BOT for a term of 30 years.Lagos state hosted an international workshop on PPP on 5th November 2007 where the state signed MOU with some firm on Housing, Road constructions and Tourism.

In Rivers State, deliberate efforts have been directed by His Excellency Gov. Rotimi Amaechi in addressing the public Health, Housing and Agricultural programmes through the PPP. The following projects have being completed under PPP:

- ClinoRiv Hospital
- Transportation (sky bank)
- Golf Estate
- Entertainment (Silverbird)
- Risonpalm
- Songuy farm (malasian firm)
- Rivers Adama Project

Ongoing Project

- Monorail
- Greater Port Harcourt

Cross Rivers State Government has signed a ₦100 billion naira project with American firm jack Rouse of Cincinnati for design and master planning of their theme park project to attract tourism and have completed the following projects under PPP

- Tinapa Free Zone
- Urban Water Reform – World Bank
- Specialist Hospitals – Netherland Ministry of Foreign Affairs

Oyo State, Apart from participating in the Lagos – Ibadan Road concessioning, other PPP project done by the state are:-

- Oyo State Pace Setter Asphalt Quarry
- A modern Abattoir for Akinyele Cattle dealers.
- Oyo Water Scheme and Sanitation – African Development Bank

Ongoing Projects

- 10,000 Housing Projects by PMI
- 108 Kilometre Circular Road by DSC Limited

CONSTRAINTS OF PPP IN NIGERIA

- Political instability / acrimony
- Financial constraints
- Legislative barriers
- Public perception – protest against Lekki tolls.
- Civil unrest – militants and Boko Haram
- Lack of adequate protection for investors Equity

KEYS TO SUCCESSFUL Ppps

1. Political Leadership

Political leaders must play critical role in minimising misconception about the value to the public of an effectively developed partnership. There should be statutory fund for the implementation for each partnership.

2. Public Sector Involvement

Once a partnership has been developed or established, the public sector must remain actively involved in the project or programme. Monitoring and evaluations are very important.

3. A well thought- out plan
A carefully developed plan often done with the assistance of an expert in the field will substantially increase the probability of success in a partnership. Plans should be extensive, detailed contract, clear description of responsibilities and should attempt to foresee areas respective responsibilities and a defined method of dispute resolution because all contingencies can be foreseen.

4. A dedicated income stream
While the private partner may provide initial funding for capital improvements, there must be a means of repayment of this investment over the long term of partnership. The income stream can be generated by variety and combination of sources (tolls, tax increment financing or wide range of additional options), but must be assured for a length of the partnership.

5. Communication with Stake holders
More people will be affected in a partnership than just the public officials and the private sector partner. Affected employees, a portion of the public receiving the services, the press, appropriate labour union and relevant interest groups will all have opinions and frequently significant misconceptions about a partnership and its value to the public. It is therefore important to communicate openly and candidly to these stakeholders to minimise potential resistance to establishing a partnership.

6. Selecting the right partner
It is a known fact that the lowest bid is not always the best choice for selecting a partner. The best value in a partner is critical in a long term relationship that is central to a successful partnership. A candidate's experience in the specific area of partnership being considered is an important factor in identifying the right partner.

7. Enabling Environments
Low confidence due to social security situation will increase the risk of project development, resulting in higher cost of money and decreased viability of project. There is therefore the need for enabling environment.

LIMITATION OF PPP : PPP is population driven – investors are attracted to provide facilities in areas where they observe good patronage potentials. Furthermore, investors are not just concerned about population but the purchasing power of particular population. By implication, most PPP projects are sited in the urban or elitist environment. It is therefore necessary for Government to be strategic by concentrating efforts in the rural areas and allow private investors participation in the urban areas.

V. CONCULSION

With the current state of dilapidated infrastructure in our economy, and a view to enhancing better economic development post 50 years of our National existence, it is hoped that the public and private sectors of our economy would seize the opportunities provided by evolving global partnerships to create enduring infrastructures in Nigeria.The bane of our national development has been a dearth in infrastructures. This must change and as the parties take practical steps in this regard by harnessing the PPPs strategy, while tailoring them to the needs of the different sectors of the economy, they must look critically at the legal implications of such arrangements to further mutually beneficial partnerships. What emerges from the observation of currently adopted schemes is that each PPP arrangement should be designed and adapted to the specific characteristics of the asset at stake, as well as to the peculiar abilities of all partners involved in the project. In order to guarantee value for money (VFM), the relative strengths and weaknesses of each PPP scheme should be considered. Depending on the sector of application, some models are better suited than others in delivering targeted outputs and in ensuring accurate risk management. Choosing the wrong model or inaccurately evaluating the risk management capacities of each party may have extremely costly consequences and a negative impact on public accounts.

Finally, if we work hard Ibadan, Ibarapa, Ogbomoso, Saki, Oke ogun, Isiokpo, Omuagwa, Igwruta, Oron, Ogoja, Greater Port Harcourt environs in Rivers, Cross Rivers, Oyo and Lagos State in the Federation can become Mega Cities in the rank of New York cities, London, Tokyo, Paris, Atlanta, etc, with multiple lines-road network, superbly working sewage and refuse control mechanism, speed train system, monorail, high tech schools and hospitals and other computerised public utility system in the nearest future.

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