



भारत सरकार
GOVERNMENT OF INDIA

**Panel of Transaction Advisers
for PPP projects:
A guide for use of the Panel**

**Department of Economic Affairs
Ministry of Finance
Government of India**

2007

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1 Introduction

1.1 The Government of India has announced its intention to create an enabling environment for private investment in infrastructure. The Government of India has established the Committee on Infrastructure under the chairmanship of the Prime Minister of India to support this policy. The Government has also established a scheme for financial support to Public Private Partnerships (PPPs) where there is a gap between revenues which can be raised from user charges and the funds required.

1.2 Implementation of this policy will require that the agencies concerned at central, state and municipal government level have access to appropriate advisory support for the implementation of PPP transactions.

1.3 There has been a demand from some of the State Governments and its agencies raised in different fora for assistance in short-listing transaction advisers/consultants to eliminate delays in creation of shelf of projects and to prevent hiring of transaction advisers/consultants on nomination basis.

1.4 In response to this demand, the Government of India has established a panel of pre-qualified Transaction Advisers, hereinafter referred to as Panel. The Panel has the following characteristics:

- The Government has pre-qualified those firms who it has assessed are the most suitable for providing this advice, rather than pre-qualifying all firms who pass a minimum threshold.
- This Panel is available to all central, state and municipal governments who are undertaking or intending to undertake PPP transactions. However, it is advisable to procure financial, legal and technical expertise separately in the case of large projects such as port development or airport development projects where the project cost is very high.
- Panel members have skills and experience to provide both commercial/financial and legal services in support of PPP transactions. The possible scope of such services is described in section 3. Where specialist technical advice related to the sector concerned is required, this should be separately procured.
- Panel applicants have already been assessed as capable of providing transaction management services. Subsequent appointment by the central, state and municipal government agencies should be on the basis of a financial proposal, against a defined scope of work.
- Firms/ Consortia on the Panel will contract directly with the Sponsoring Authorities concerned for provision of transaction management services.

DEA should however be kept informed on the use being made of the Panel, and the performance of Panel members.

- The transactions may arise in urban waste management, water, public transport, highways, education and health. However, use of the Panel is not restricted to these sectors

1.5 This Users' guide describes the processes and the tasks involved in appointing a transaction adviser for a PPP transaction using the Panel. Projects may be implemented Government Departments, project units, or agencies. These are collectively referred to as Sponsoring Authorities in this document.

2 Role of the Panel

2.1 The Panel is intended to:

- streamline the tendering process for the engagement of transaction advisers for PPPs;
- enable fast access to firms that have been pre-qualified against relevant criteria; and
- ensure transparency and accountability through clear definition of the processes and the role and responsibilities of the agencies and the private sector.

2.2 All Central, State and municipal government agencies may access the Panel for the purpose of procuring transaction advisers for PPP projects.

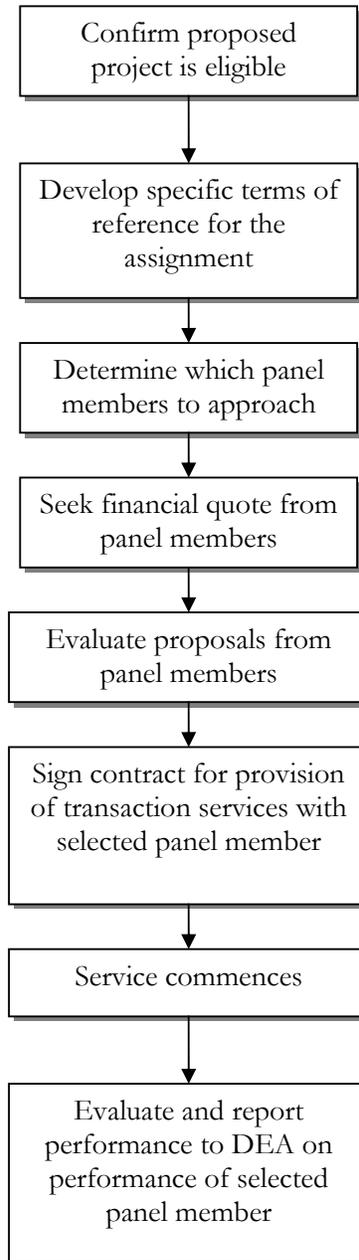
2.3 Where Sponsoring Authorities are seeking a quote from a Panel member, the Sponsoring Authority concerned should directly approach those members. A full listing of Panel members and their contact details is provided in section 4.

2.4 The Panel is valid for a period of two years. During this period Department of Economic Affairs (DEA) may remove firms from the panel if it concludes that they have not demonstrated adequate capability of providing the required services in a professional manner or add new firms, after due diligence. Any information on change to panel membership will be made available through DEA's website- www.pppinindia.com.

3 Step-by-step guide

3.1 Figure 1 provides a summary of the steps that Sponsoring Authorities need to take in determining whether the panel is applicable to their requirements, and (if it is applicable) in appointing panel members to act as transaction adviser.

Figure 1: Summary of steps in using panel consultants:



3.2 These steps are detailed below.

Step 1

3.3 Ensure the project meets the eligibility criteria

3.3.1 The Panel has been developed to provide pre-qualified transaction advisers for small to medium size PPP projects. The first step is to confirm that the project under consideration is a small to medium size PPP project.

3.3.2 The panel should not generally be used for projects with a capital cost exceeding around Rs. 250 crore (Rs. 2.5 billion). If the projected capital costs exceed that level, the panel is unlikely to be appropriate. The panel has sought integrated offers to provide both commercial/financial and legal advice. Larger projects will often use separate commercial/financial and legal advisers.

3.3.3 The Panel should be used for PPP projects. Broadly defined, a Project is based on a contract or concession agreement between a Government or statutory entity and a private sector company for delivering a service on payment of user charges.

3.3.4 Prior to using the Panel, the agency should confirm that the project under consideration meets the following conditions:

- A substantial capital investment (but not exceeding around Rs. 250 crore) in infrastructure will be required, to provide the services required under the project;
- Government facilitation is required, whether in purchasing the output, other direct financial support to the project's viability, or supporting inputs (such as land acquisition); and
- The concessionaire will be required to finance the project, and recover the capital costs over time, through user charges/annuities. Typical concession period is likely to be 15 to 30 years, and in some cases longer. A contract where the contractor receives payment for the capital cost at an earlier stage (such as on successful commissioning) and not based on life-cycle costs that include maintenance for the period, is not eligible.

The reason for limiting the Panel to projects of this kind is that they raise distinctive problems in their execution. The Panel of advisers has been selected on the basis of their capability to advise on projects of this kind, and their experience in doing so.

Step 2

3.4 Develop specific terms of reference for the assignment

3.4.1 The panel is intended as a source of advisers to assist with implementation of a transaction. The panel is not intended for use for preliminary analysis, for instance to determine whether the project is viable, and to determine whether it should be procured through a PPP contract or some other means.

3.4.2 The terms of reference for the assignment should relate to the successful execution of a PPP transaction.

3.4.3 There are many different stages at which the transaction adviser could become involved, and many different ways of allocating the tasks between the Sponsoring Authority and the transaction adviser. The transaction adviser needs to understand clearly what tasks they will undertake and what resources they will require, in order to provide a financial offer for undertaking the transaction. The terms of reference should therefore set out both what needs to be done, and the supporting inputs that will be provided by the Sponsoring Authority (or other advisers) and the role that the transaction adviser needs to play.

3.4.4 An **indicative list of tasks** that could be considered in developing the terms of reference includes:

- Interaction with the market, or conduct of formal market soundings, to confirm decisions on scope, timing and packaging of the transaction;
- Preparation of bid documents including but not limited to the Request for Proposals and the Contract for Services (Concession Agreement);
- Preparation of supporting information to assist bidders in preparation of their bid, and where relevant creation of a data base and management of access to the data base;
- Support to communication with the market and interaction with the market, including managing and responding to requests for clarification;
- Preparation of an evaluation plan, assistance with evaluation and preparation of evaluation reports;
- Assistance in negotiation with one or more parties prior to contract award;

- Monitoring and advice on bidder performance against any conditions precedent to financial close; and
- Management of other advisory inputs, and overall management of the transaction team, to ensure a successful conclusion.

3.4.5 Panel members have been selected on the basis of their capability and experience in discharging a lead role in transactions and providing commercial, financial and legal advice. They are unlikely to have detailed technical or engineering expertise. Where further technical advice is required, the technical advisers should be procured separately. The terms of reference should not include any tasks (such as detailed design of the technical specifications) which need to be undertaken by technical specialists. Generally this task is left to the contracted private party.

Step 3

3.5 Determine which panel member to approach

3.5.1 The firms/consortia on the Panel have been selected on the basis of their ability to provide transaction services. This is a skill which is applicable across all sectors. Where specialist technical expertise is required, this should be separately procured.

3.5.2 There may however be advantageous to use transaction advisers who have previously worked in the sector concerned. These advisers may bring a close familiarity with typical contract arrangements, the potential bidders and other knowledge which assists with undertaking the transaction.

3.5.3 The Panel has therefore sought an indication from panel members of the sectors in which they have previous experience in undertaking transactions. Each panel member has indicated whether they have experience in, - i.e., Urban waste management, Water, Public transport, Ports, Airports, Highways, Education and Health.

3.5.4 These sectors have been selected as ones in which PPP projects are likely to proceed. However, it is also intended that the panel can be used for other sectors as PPP projects develop in those sectors.

3.5.5 Before approaching Panel members, the Sponsoring Authority should carefully consider whether it wishes to seek advisers with previous expertise in the sector applicable to the project. This will reduce the number of eligible panel members, and therefore, reduce the number of competitors.

Step 4

3.6 Seek a proposal and financial quote from the selected panel members

3.6.1 Having identified the project for PPP structuring, the Sponsoring Authority should request a proposal (RFP) from all or at least five members of the Panel. The RFP should clearly define the tasks to be undertaken by the transaction adviser, the key deliverables, the timelines and the evaluation criteria. The RFP should also provide background on the project, how it is currently being managed, and (where relevant) the role of other advisers.

3.6.2 It is possible to structure the fee in two parts. The first part would be the lumpsum fee to be quoted by the Transaction Adviser as the financial bid (the bidding parameter), and would be released against pre-determined milestones. The second part, as an incentive, could be a predetermined success fee, payable on the project reaching technical close, i.e. on signing of the Concession Agreement by the prospective concessionaire for the PPP project. The quantum of the success fee, to be recovered from the Concessionaire, could be 50-100 percent higher than the cost of transaction actually incurred by the Transaction Adviser, excluding outsourced work, expenses incurred by the Sponsoring Authority and similar such costs. The percentage of return on the actual cost of transaction (say 50-100 per cent) should be specified in the RFP to enable the Transaction Adviser to determine his most competitive financial bid.

3.6.3 The proposal from the selected panel member should provide a detailed description of the resources that will be applied to the assignment, especially adequately experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under the contract. The panel member must agree to assign specific individuals to the key positions and that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the Authority. If key personnel are not available for work under this contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the panel member shall immediately notify the Sponsoring Authority, and shall, subject to the concurrence of the Sponsoring Authority, replace such personnel with personnel of substantially equal ability and qualifications.

3.6.4 The panel member should confirm that there is no conflict of interest in taking up this Transaction Advisory assignment. Sponsoring Authority

should take an undertaking from the tendering Panel member or consortia, that they/ their affiliates will not bid for/ rate the same projects.

3.6.5 In case the Panel member is a Consortium, change in composition of the Consortium shall not be permitted by the Sponsoring Authority.

3.6.6 In short the RFP should contain the following:

- (i) A letter of invitation
- (ii) Information to Consultants regarding the procedure for submission of proposal
- (iii) Terms of Reference (TOR)
- (iv) List of key position whose CV and experience would be evaluated
- (v) Standard formats for financial proposal.
- (vi) Proposed contract terms
- (vii) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

Step 5

3.7 Evaluate proposals from panel members

3.7.1 The panel members have already been pre-qualified as capable of providing transaction services. A further technical offer and evaluation is not required. It is expected that appointment will be on the basis of a financial evaluation. However, the Sponsoring Authority, while evaluating should ensure that :

3.7.2 The panel member has confirmed its acceptance of the deliverables, has confirmed its capability and resources to meet the deliverables within the timeline set out in the RFP;

3.7.3 The panel member has confirmed that they face no conflict of interest in undertaking the assignment. A conflict of interest will arise if the panel member, or its parent company, is advising potential bidders for the PPP project, or if the panel member or its parent company is considering a debt or equity involvement in the project or is required to rate the proposed PPP project. It is, therefore, recommended that the Sponsoring Authority appointing the transaction advisers should ensure that such a conflict of interest does not exist or arise.

Step 6

3.8 Sign a contract with the successful panel member

3.8.1 Sponsoring Authorities using the Panel should note that they will be the party contracting with the Panel member. DEA has established the Panel, but will not be involved in any contracts between Sponsoring Authorities and Panel members.

3.8.2 After the completion of evaluation process and the selection of the preferred - panel member the Sponsoring Authorities must send a letter of appointment together with a contract of engagement.

3.8.3 The Sponsoring Authority will rely on the transaction adviser for managing the transaction up to the award of the PPP contract. It is of great importance that the contract clearly sets out:

- The role and functions of the transaction adviser and of other parties, key deliverables, timelines, and accountabilities;
- The basis on which the transaction adviser will be paid.;
- The reporting requirements to ensure the Sponsoring Authority is well informed on progress on the PPP transaction, and on any issues arising; and
- Probity requirements, including the need to actively monitor any possible conflicts of interest, and the need to maintain project confidentiality, supported by a Deed of Confidentiality.

3.8.4 DEA is separately providing advice on standard terms and conditions in a contract with a transaction adviser.

Step 7

3.9 Commencement of service

3.9.1 After signature of the contract, the transaction adviser can start work.

3.9.2 The Sponsoring Authority should ensure that a full and comprehensive briefing is provided to the transaction adviser, to assist an early and effective start on the assignment.

3.9.3 The Sponsoring Authority should also ensure that all relevant parties, including project staff within the Sponsoring Authority itself, other institutions involved in the project, and other advisers working on the project are informed of the appointment of the transaction adviser.

Step 8

3.10 Report performance to the DEA contract manager

3.10.1 The Panel has been established by DEA to assist agencies in identifying and retaining transaction advisers. It is of importance that DEA receives feedback on the performance of Panel members to ensure the ongoing quality, and the effectiveness of the Panel arrangement.

3.10.2 Agencies should inform DEA when a Panel member is appointed to provide transaction services and provide a report on performance after completion of the transaction adviser's assignment.

4 List of Panel of Transaction Advisers (Panel members)

S. No.	Name of the Transaction Adviser	Address	Contact No.s/ e-mail	Contact person
1.	Abacus Legal Group, India Consortium partner: Clayton Utz., Australia	B-226, 1 st Floor, Greater Kailash-1, New Delhi-110 048	(011) 2923 4030/ 2923 4092/ 2923 6522 abacus@del2.vsnl.net.in	Shri Akshoy Rekhi 98110 43477
2.	CRISIL Infrastructure Advisory, India; Consortium partners: Verulam Consultants Private Limited, India; Amarchand & Mangaldas and Suresh A. Shroff & Co., India and Devesh K Shah & Co., India	CRISIL Limited, 121-122, CRISIL House, Andheri-Kurla Road, Andheri (East), Mumbai-400093	(011) 52405194	Mr. Sameer Gupta, Head- CRISIL Infrastructure Advisory 91 9350491051
3.	Deloitte Touche Tohmatsu India Private Limited, India; Consortium partners: Deloitte & Touche LLP, UK and Hemant Sahai Associates, India	Hansalya, Barakhamba Road, New Delhi-110 001	011 2331 5256 2331 3543 2331 5437 kamleshmittal@deloitte.com	Mr. Kamlesh Mittal 09811156820

S. No.	Name of the Transaction Adviser	Address	Contact No.s/ e-mail	Contact person
4.	Ernst & Young Private Limited, India Consortium partners: Amarchand & Mangaldas and Suresh A. Shroff & Co	U&I, Plot No.47, Sector 32 Institutional Area, Gurgaon 122001 Regd. Office: 22, Camac Street, Block C, 3 rd Floor, Kolkatta-700016	0124 4644175 0124 4644050 Kuljit.Singh@in.ey.com	Mr. Kuljit Singh, Partner, Lead Advisory Services, Ernst & Young Private Limited, 98104 01207
5.	Feedback Ventures Private Limited, India; Consortium partners: Delhi Metro Rail Corporation (DMRC), India and Bankworld Inc., USA and Hemant Sahai Associates, India	Feedback House, 7, Local Shopping Centre, Panchsheel Park, New Delhi-110 017	(011) 42007508 akhileshwar@feedbackventures.com	Mr. Akhileshwar Sahay, President, Government & Multilateral Advisory Services (GMAS)
6.	Grant Thornton UK LLP, London, Consortium partners: U.K. Grant Thornton India Private Limited, India and Amarchand Mangaldas & Suresh A Shroff & Co., India.	Grant Thornton House, Melton Street, Euston Square, London, NW1 2EP, United Kingdom	0044(0)870 324 2282 (Telefax) Glenn.stone@gtuk.com	Mr. Glenn Stone 0870 324 2282 Mr. Amit Jain, Senior Vice President, Government and Infrastructure Advisory, Grant Thornton, India 98717 44 226

S. No.	Name of the Transaction Adviser	Address	Contact No.s/ e-mail	Contact person
7.	Infrastructure Development Finance Company (IDFC) Limited, India; Consortium partners: Infrastructure Development Corporation (Karnataka) Limited (iDeCK), India and Singhania & Partners, India	ITC Centre, 3 rd Floor, 760, Anna Salai, Chennai-600 002	044 2855 9440 044 2854 7597(F) info@idfc.com cherian@idfc.com	Mr. Cherian Thomas, Senior Director – Advisory Services (011) 46006111
8.	Infrastructure Leasing and Financial Services (IL&FS), India; Consortium partners: IL&FS Infrastructure Development Corporation, India; IL&FS Education and Technology Services, India; Amarchand and Mangaldas & Suresh A. Shroff & Co. and Junnarkar & Associates, India	Infrastructure Leasing and Financial Services Limited, Regd Office: IL&FS Financial Centre, C-22, G Block, Bandra Kurla Complex, Bandra East, Mumbai-400051	011 4130 6726/27 prasanna.srinivasan@ilfsindia.com	Mr. Prasanna Srinivasan, Sr. Vice President, 98110 66728
9.	International Finance Corporation	50M, Niti Marg (Gate No.3) Chankyapuri, New Delhi-110021	(011) 4111 1018/ 1000 011) 4111 1001/ 02 (Fax) vbhagat@ifc.org	Mr. Vipul Bhagat, Manager, Infrastructure Advisory, South Asia

S. No.	Name of the Transaction Adviser	Address	Contact No.s/ e-mail	Contact person
10.	Pricewaterhouse Coopers Private Limited, India; Consortium partners: A.Y.Chitale & Associates, India and Singhania & Partners, India	Pricewaterhouse Coopers Private Limited, Building 8, 7 th & 8 th Floor, Tower B, DLF Cybercity, Gurgaon-122 002. Regd office: Plot No.Y-14, Block EP, Sector V, Salt Lake Electronics Complex, Bidhannagar, Kolkata-700 091	0124 4620557 01244620000 (Board) 0124 4620620 (fax) vishwas.udgirkar@in.pwc.com	Mr. Vishwas Udgirkar, Associate Director
11.	RITES Limited, India Consortium partner: Suri & Company Law Firm, India	Regd Office: New Delhi House, 27, Barakhama Road, New Delhi Corporate Office: Plot No.1, Sector 29, Gurgaon 122001	0124 2571666/ 0124 2818170 0124 2571630 / 0124 2571660 (F) skseth@rites.co.in info@rites.co.in	Mr. S.K. Seth, Group General Manager (Privatisation and Concession)

NOTE:

1. There may be potential conflict of interest in case of panel members such as IL&FS and IDFC Limited are selected as the Transaction Adviser for a project for which they could be potential bidders. It is, therefore, recommended that the state governments/ local governments appointing the transaction advisers should take an undertaking from the selected consortia that they/ their affiliates will not bid for the same projects.
2. There may be potential conflict of interest in case the agencies with CRISIL consortia are selected as the Transaction Adviser for a project, where CRISIL is also required to rate the proposed PPP project.

5 Contact information

Further information on this Panel of Transaction Advisers can be obtained from:

Ms Aparna Bhatia
Joint Director
PPP Cell
Department of Economic Affairs
Room 61, North Block
New Delhi
Telephone: +91 11 2309 4443
Fax: +91 11 2309 2477
Email: aparna.bhatia@nic.in

Alternatively information can be obtained from [www.pppinindia.com]