

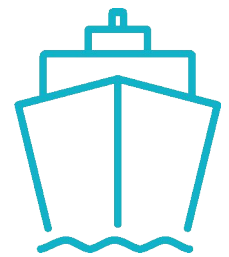


Key considerations in a PPP Transition Process

Elements and characteristics that should always be kept in mind by all involved parties, to try and ensure a successful PPP transition process.



Public-Private Partnerships (PPPs)



Many of the Public-Private Partnerships (PPPs) that were implemented in the last 2-3 decades are now coming to the end of their terms, and tender processes are being floated everywhere around the globe by governmental authorities, in order to maintain this successful model for yet more decades to come.

It is in this context that the Grantors of these concessions (usually the governmental authorities) are increasingly putting the focus on the transition phase between the Incumbent Operators that have been the contractors for the past decades, and the New Operators to which the new concessions have been granted for the years to come.

Some might think this is a mere formality, in which the Grantor and both Operators sign some paperwork, hold an event to celebrate the concession signature with the New Operators, and wish good luck in future endeavours to the Incumbent

Operators, with some press releases here and there.

But it is only when the Grantors realize that most of their current employees were not present when the contracts with the Incumbent Operators were prepared in the 80s or 90s; that these contracts had some tricky clauses that everyone overlooked back in the day (“because anyways, I will be well into my retirement in some village when this contract expires”); that the Incumbent Operators are quite unhappy about not renewing their contracts and will not make an easy exit; that maintenance of assets was not properly undertaken through all these years; that there are several crossed legal claims between Grantors and Incumbent Operators; that the New Operators are turning a deaf ear to all problems that are being uncovered by the day; and other sorts of “mundane” issues that might actually jeopardize the supply chains of the whole country, that all the alarms set off.

Basic concepts in a PPP transition phase

Main actors, dates to keep in mind and correct terminology

This paper intends to outline the key elements and characteristics that should always be kept in mind by all involved parties, to try and ensure a successful PPP transition process, while minimizing all potential risks involved.

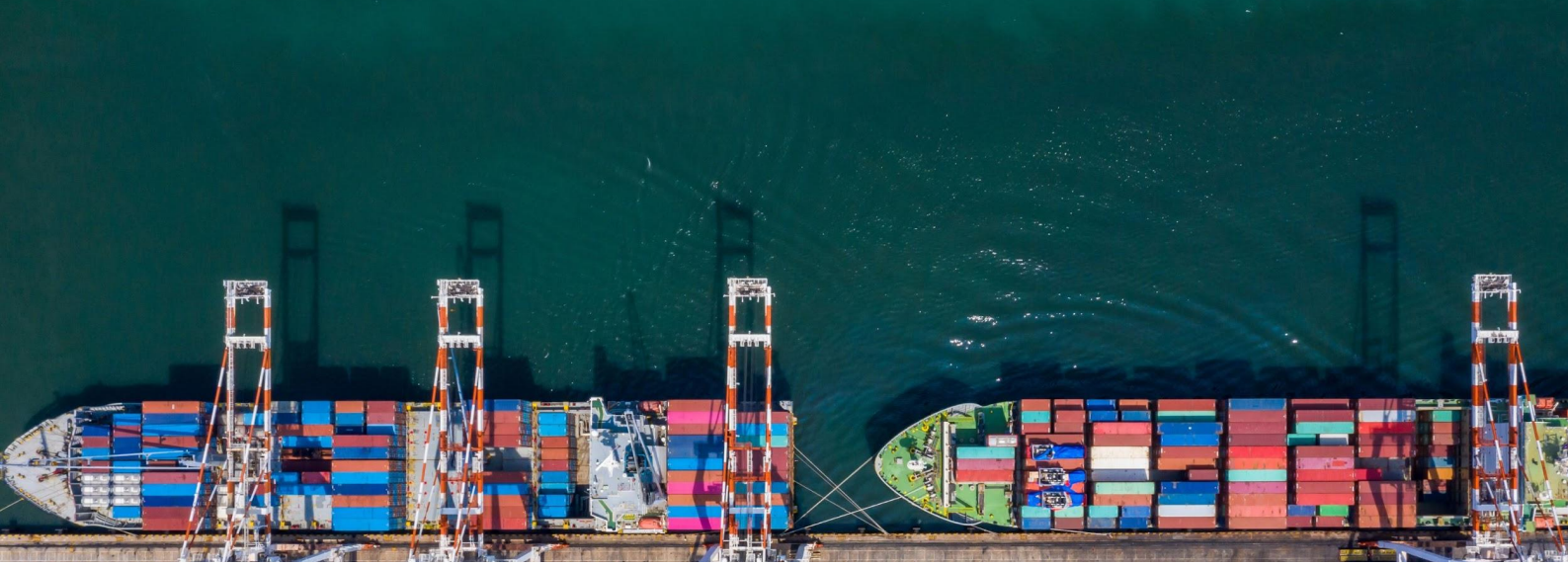
Firstly, it is important to differentiate which are the key actors of a transition, what are the correct terms to use in each context, and what do they mean, in order to ensure alignment from day one, especially considering that most probably, it is the first ever transition process for every person involved in it.

As mentioned above, the three main actors in any transition phase are:

- **Grantor:** The governmental authority that is signatory to the existing and future contracts, and that oversees their successful implementation.
- **Incumbent Operator (I.O):** The current private-party concessionaire that has been operating the contract, and whose contract is expiring.
- **New Operator (N.O):** The future private-party concessionaire, that has been awarded by the Grantor the operation of the upcoming contract, in replacement of the Incumbent Operator, starting from the moment the latter's contract expires.

There are also three key dates to keep in mind, that mark the limits of the transition phase:

- **Execution Date of new contract:** The transition phase starts in the moment N.O is officially appointed by the Grantor as the successor of I.O, after being the successful bidder of the procurement process, and signing the new contract jointly with the Grantor.
- **Expiry Date of current contract:** Date of expiry of the existing contract. It is the same date on which N.O's contract starts being effective with the Grantor, and legally marks the end of the I.O concession.
- **Effective Date of new contract:** This marks the end of the transition, and the effective start of operations of N.O. It coincides in time with the Expiry Date of I.O's contract with the Grantor (or at least should, for a seamless transition).



Additionally, and from a pure terminology perspective, it is also important that all parties are clear in what is meant by transition, handover, and takeover, and the link to the key dates that mark the occurrence of each:

Takeover: Refers to the Grantor taking over the contract from the I.O, and has two sides to it:

1- Practically: All activities that the I.O needs to undertake and in which he is involved, up to their exit.

2- Legally: The moment in which a “Takeover Certificate” is signed between the Grantor and the I.O, in the current contract Expiry Date, reflecting all activities and elements to be taken over and agreed by both parties, and marking the official end of I.O’s contract.

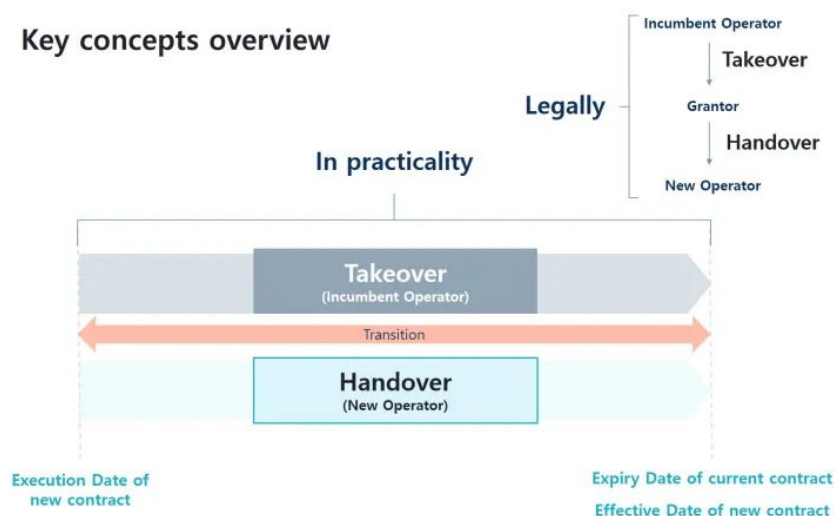
Handover: Refers to the Grantor handing over the contract to the N.O, and has two sides to it.

1- Practically: All activities that the N.O needs to undertake and in which he is involved, up to their entering.

2- Legally: The moment in which a “Handover Certificate” is signed between the Grantor and the N.O, in the new contract Effective Date, reflecting all activities and elements to be handed over and agreed by both parties, and marking the official start of N.O’s contract.

Transition phase: Refers to all practical handover and takeover activities happening between the new contract’s Execution Date, up to its Effective Date and the Expiry Date of the current contract.

Key concepts overview



Main pillars of a successful and smooth transition process

Before jumping into the specifics that come with most PPP transitions, it is paramount that the below five pillars are strongly consolidated by the Grantor (the only common party in both the Handover and Takeover processes) before starting the transition phase, in order to avoid downstream chaos and misalignments between parties, which in any process of this nature is quite the order of the day.

- **Leadership:** The Grantor needs to establish itself as the clear leader of the transition process, in charge of all the decision-making, and steering the roadmap to be followed during the handover and takeover, in order to prevent authority misalignments, avoiding of responsibility by stakeholders, and passive behaviours down the road by any of the operators, showing clarity in all steps that need to be undertaken.
- **Tasks, roles and responsibilities:** This needs to be clearly defined for all involved stakeholders, internal and external, all through the transition process, establishing an organizational



structure where each spokesman and focal point is mapped, establishing an organizational structure where each spokesman and focal point is mapped, and defining the tasks for each of the concerned parties.

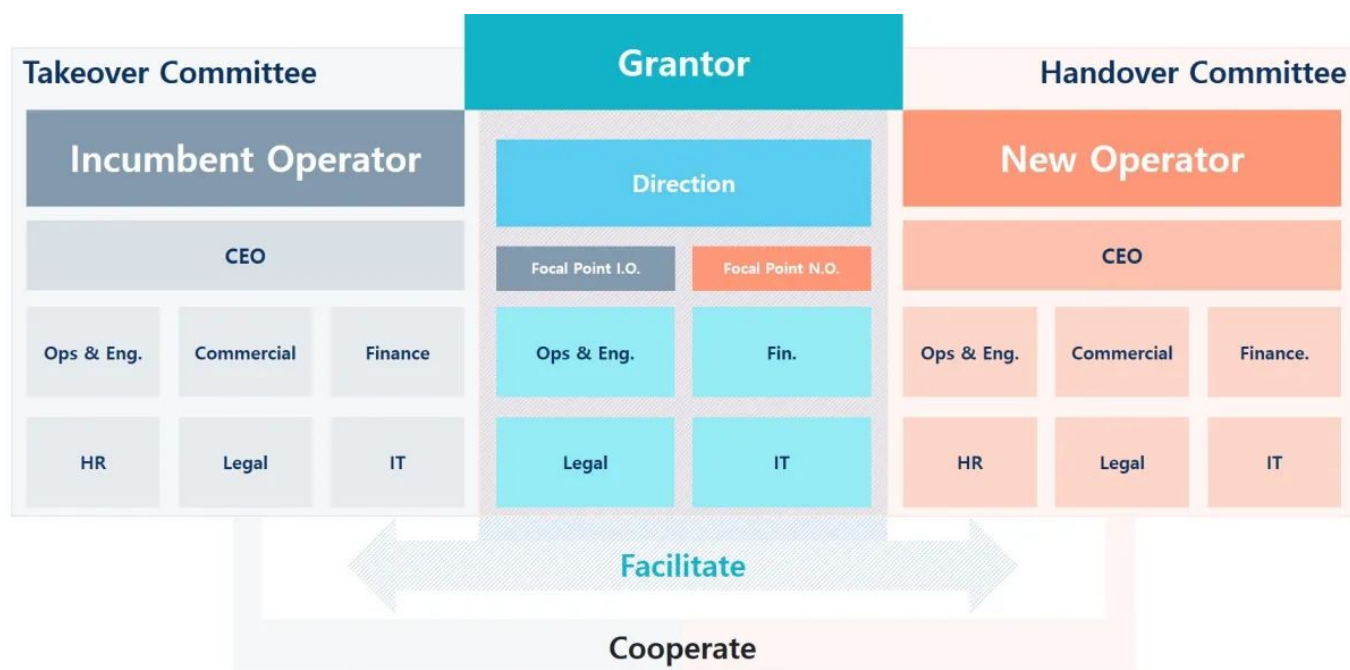
- **Access to information:** One of the points that play a major role on the smoothness and success of any transition process is the access to required information. All parties need to prepare and understand ahead of schedule the information required, the criticality of it, its actual availability, the timeline to obtain it, and having a contingency plan prepared in case of the information not being available, outdated or wrong.
- **Legal alignment:** A key pillar to the Transition Phase is having at all times full control and visibility over all legal provisions and aspects of both the current I.O contract and the N.O contract. Misalignments on this aspect could lead to disputes, delays in the processes and causing potential severe disruptions in the operations of the PPP, and damage the image of the Grantor and the country as a whole.
- **Collaborative environment:** All the above points are fostered and their risks minimized by ensuring at all moments a collaborative, agile and proactive work environment. Communication and help should flow in all directions, and all parties should be highly committed to the final objective of ensuring the takeover and handover of the PPP is completed timely and successfully.





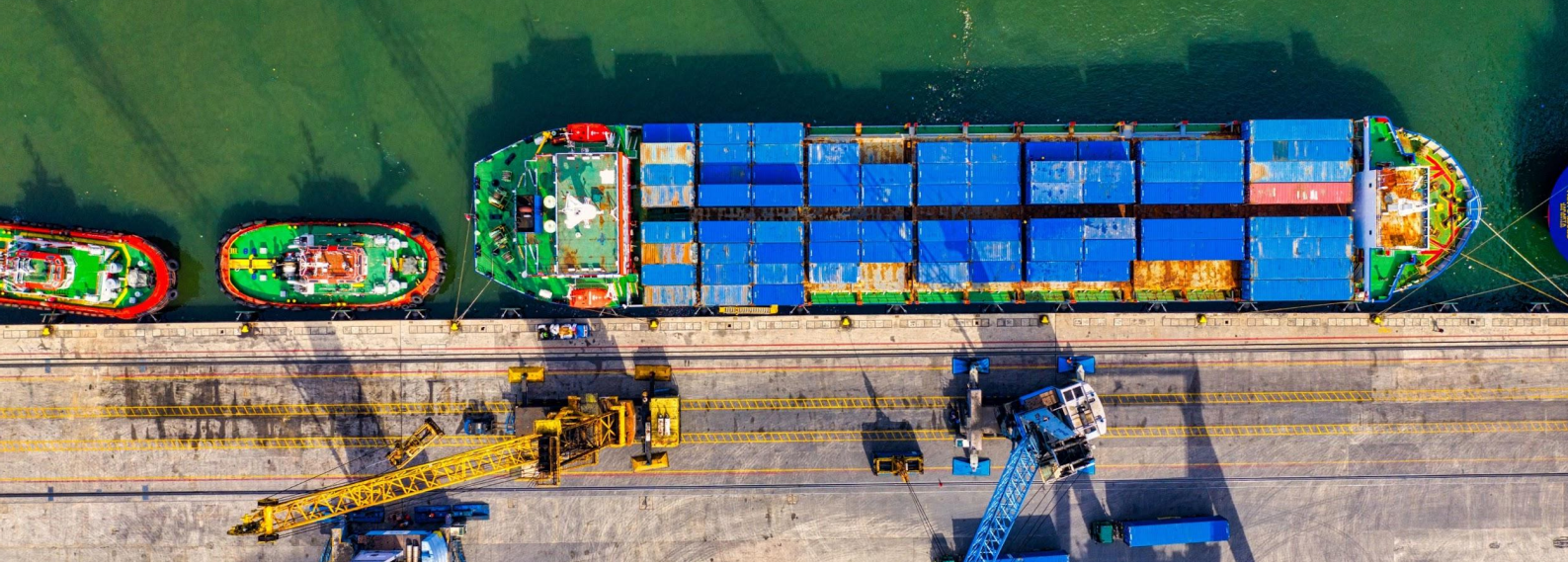
A highly effective way of ensuring the above, is establishing recurrent meeting dynamics, as frequent as possible, gathering around the same table all of the Grantor, Incumbent, and New Operators key representatives (both high management and key department heads), spokespersons and focal points, as illustrated in the image below.

These meetings should be chaired by the Grantor, whose key role is facilitating the flow of information, mediating between Incumbent and New Operators, interceding if any issues arise, ensuring there is sufficient visibility of parties of all relevant legal aspects of the process and how these might impact the other party, and maintaining this collaborative spirit all through the process, from the Execution to the Effective Date.



Activities every PPP transition process should cover





After the transition dynamics are clear, the leadership, roles and responsibilities are well established, and all teams are set and ready to work, from Grantor, Incumbent and New Operators sides, what are the activities that should not be missed from the PPP transition process itself? At the end, every Operator have their own dynamics, department procedures, and, as long as both Incumbent and New operators agree on a transition framework to be followed, and this is validated by the Grantor, a myriad of different activities could be undertaken. Nevertheless, the vast majority of these would in all likelihood fall close to one of the following six clusters:

- **Assets:** All activities related to the assets of the old and new concessions. The assets can be divided in two main categories: Moveable property (equipment, machinery, vehicles, tools, furniture...used in connection with the O&M of the PPP) and Non-moveable property (infra and superstructure). Within this cluster, two streams are identified.

1- Due diligence: Inspection, certification and repair works, when deemed necessary, of all physical elements of the contract as it is today.

.2- Development: Activities related to the deployment of the N.O's required assets to operate and comply with the contract.

- **Human Resources:** All activities related to interviewing, hiring and training of the I.O's employees into the N.O's concession, and the mobilization and training of the N.O's employees into the PPP. This is as well divided into two main subclusters of activities:

1- Pre-hiring: This covers all activities prior to N.O knowing which will be their selected list of employees, both the I.O's current employees or the N.O's own employees to be relocated.

2- Post-hiring: All necessary procedures that the selected employees will have to undergo (medical check-ups, Governmental registrations, trainings...).

- **Legal:** This covers all purely legal aspects that should be closed, solved or agreed upon before reaching to the Effective Date of the new contract, and divides into two streams, both relevant to the Grantor but dealt separately between each of the Operators:

1- Incumbent Operator: Any contractual obligation existing in the current contract needs to be duly mapped and

sought to be properly closed in the timeframe the transition allows for, as well as any existing legal claims need to be duly mapped and have under control in order to avoid "spilling" on other stakeholders, other than the Grantor and the Incumbent Operator themselves.

2- New Operator: Usually, the freshly signed contract will come with a series of conditions to agree upon and boxes to check for both the Grantor and the New Operator, without which the Effective Date could not be successfully achieved, and a proper follow up on this should be made by both parties. This usually includes documents like property rights, exclusivity, vacant enjoyment, HSSE plans, O&M manuals, etc.

- **Commercial/Contractual:** All activities related to the contractual, commercial and financial matters of the transition process, necessary to integrate I.O's legacy into the N.O company, as well as to ensure a comprehensive handover of commercial and financial information avoiding operational disruptions and misalignments with external parties. This includes any agreements with customers of the PPP, subcontractors, utilities/internet providers, open guarantees, claims, commitments, unpaid invoices, etc. Activities falling within this cluster could be split into two main subcategories:

1- Commercial (External): Customers, subcontractors, services providers, marketing...

2- Financial (Internal): Invoicing, payments, commitments, guarantees, claims, ERP...

- **IT:** A very important part of the activities of the transition phase is the IT-related, being essential to the correct and smooth operations of any business nowadays. The main subclusters in which these activities can be divided are:

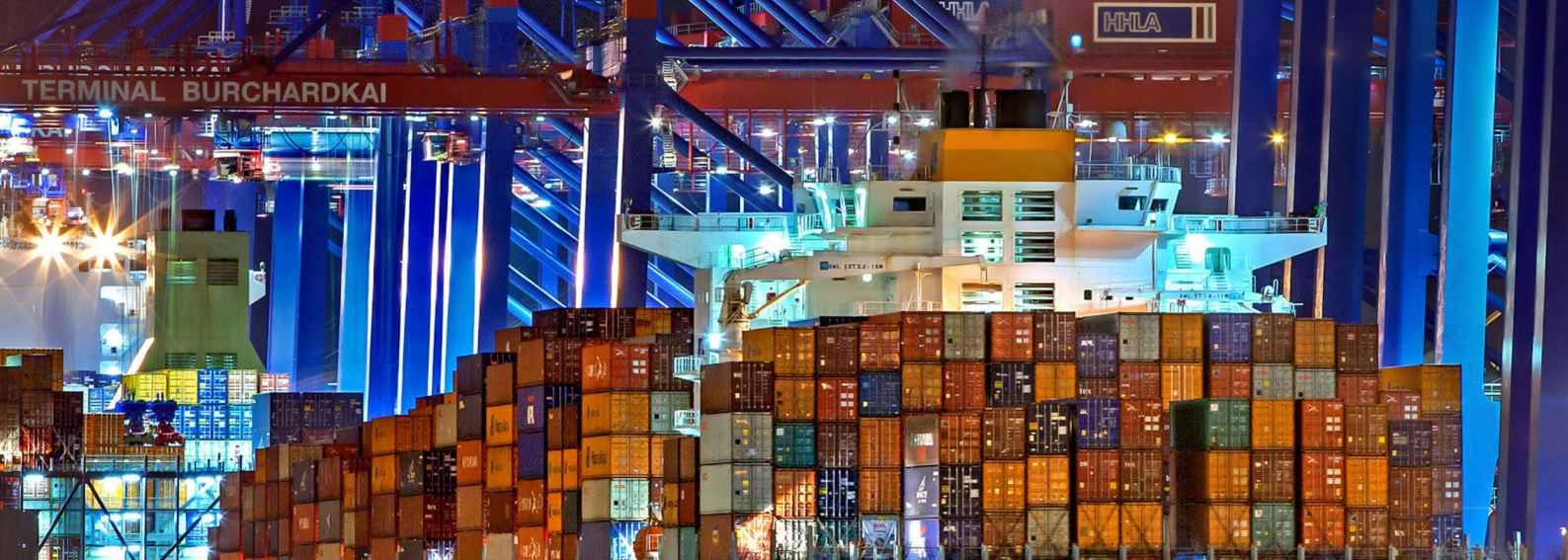
1- Due diligence: Similar to the assets case, a thorough inspection, evaluation, and necessary repairs and installations of IT systems and assets may need to be undertaken.

2- IT integration: Includes licenses and data transferring, as well as integration with any relevant Governmental entities.

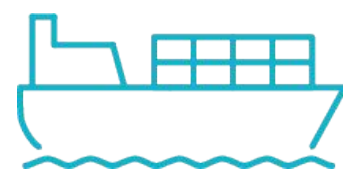
- **Existing customer inventory:** Applicable only in PPPs where this could be relevant, when the business is based on dealing with tangible products for the Operator to handle and manage (i.e., cargo). It is paramount in any transition process to have a live, clear and organized inventory of all elements not belonging to the Grantor nor to the Operator, especially in the moment when the switch is made from the old to the new contract.



If, while planning the transition phase prior to its starting, all the above six clusters of activities are kept in mind, it is almost certain that little to no surprises will appear down the road.



Most common risks in a transition process and potential mitigations



As in any large project, PPP transition phases require a proper risk assessment to be performed by all parties, mapping and identifying where the potential dangers lay through the transition road, and how they could be prevented or mitigated.

Although this is of course very critical for the private-sector, given the large financing and mobilization required to undertake any PPP project, the Grantor is arguably the party sitting in the most delicate position, given the fact that they technically are the owners of the asset being re-privatized, and any failure in the process could lead to a nation-wide impact (especially when the PPPs are of key country gateways), and a severe damage to the reputation of the governmental authority to which the Grantor belongs. Some of the main risks a transition process could encounter are:

- **Findings in assets:** Probably the most common risk, that will almost always come with an extensive array of activities that will cover the large part of the transition phase. It refers to defects found in the infrastructure, the superstructure (all owned by the Grantor) that were not properly maintained during the current concession, and to which the Incumbent Operator would usually have some obligations to fix and repair before handing over the PPP to the Grantor.
Mitigation: Several actions are usually performed in this case, that mitigate the very likely risk of finding repair works to be made to the assets:
 - Thorough due diligence: bringing an independent assessor that would inspect the assets early enough and conclude which are

the repair works to be undertaken. The grantor might then have a solid argument with which to enforce these repairs to the I.O.

- Involvement of N.O: If enough significance is given to the transition phase in the tendering and procurement of the N.O, there would probably be a provision in the new contract whereby they commit to undertake any required initial repair and maintenance works themselves.

- Collaborative environment and access to information: As mentioned above, having full visibility over all the assessors' findings, and maintaining a constant flow of communication between all parties, will keep the right amount of project management on top of the repair works to be undertaken, trying to finalize them in a timely and successful manner, and anticipating any potential problem that might cause a disruption in the PPP operations.

- **Decrease in level of service:** The Incumbent Operator will usually not be satisfied by the fact that their 20 or 30 years profitable business is approaching to an end, and it is common to find some that will try to give a hard time to both the Grantor and the New Operator, and not excel in operating the PPP in the last months, of course within legal limitations (although sometimes even beyond).

Mitigation: The Grantor should always be ready to invoke the contract, the possibility of opening legal claims, and having an emergency "Plan B" prepared if New Operator needs to take over the management of the PPP before the Effective Date.

- **Operations disruptions:** The above could be taken even one step further, and sometimes an actual disruption to operations might be a potential risk, in a situation in which the I.O directly refuses to effectively operate.

Mitigation: Similarly to the first point above, the Grantor should have an emergency plan prepared in case operations are disrupted, in order to minimize the downstream impact on the country.

- **Customer dissatisfaction:** The decrease in level of service would usually come as well with a neglective attitude to the PPP customers, which might end dissatisfied, and going elsewhere looking for a better service.

Mitigation: Early enough, both the Grantor and the New Operator should have undertaken an exercise of informing these customers about the upcoming new contract, both from a marketing and direct communication perspective, having them understanding that it is a momentarily period and potentially offering them potential incentives for the future as a "token of gratitude" for their understanding.

Anticipating the above and having multiple and comprehensive contingency plans, ideally prepared and negotiated since the tender stage when N.O was awarded the contract, is a key success factor for an effective and efficient transition.



Key considerations in a PPP Transition Process

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