

3. The role of advisors – how can they assist?

Outline of this Module

What this Module does:

This Module describes the different types of advisors that may be used to provide technical assistance. It outlines both their general job descriptions and their roles within the PPI process and identifies the main outputs that different advisors will typically produce. In addition, the Module addresses the use of local advisors and the use of advisors by the private sector. It follows the same outline as Module 2, describing the use of advisors for each stage of the PPI process.

Who should read this Module:

Officials who are responsible for drawing up the terms of reference for advisors and who will subsequently select and manage the advisory services should read this Module.

3.1 When to appoint advisors

As a general rule, advisors should be brought on board at the beginning of the policy formulation stage, Stage 1. Decisions taken at an early stage can affect the success of a program, and can be costly if they are not based on correct advice.

However, some approaches to selecting advisors will take time. In particular, international competitive bidding may increase the time required (see 'How to select and manage PPI advisors'). Therefore, appropriate lead times should be built into the process to allow for the selection and appointment of advisors.

Recommendation 3.1: The government should bring advisors on board as early as possible in the policy formulation process. Doing so may save money later on.

Formulating the policy

When to appoint advisors

At the start of the process during stage 1, the policy formulation stage, advisors experienced in providing high-level or strategic advice will be the main source of the expertise required. Preliminary assessment of the issues that will be considered in more detail in stage 2 will also require some input from specialist advisors.

Defining the legal and regulatory framework

Stage 2, defining the legal and regulatory framework, will require significant input from advisors. If certain stages need to be accomplished by predetermined dates, the workloads may be intensive.

The inputs from advisors beyond the first stage can only be determined at the end of stage 1 and they should only be contracted up to that point. The terms of reference for advice beyond stage 1 can be drawn up once the requirements are clearer. Those hiring advisors should make it clear from the outset that appointment during stage 1 provides no guarantee of re-appointment during stage 2 and beyond.

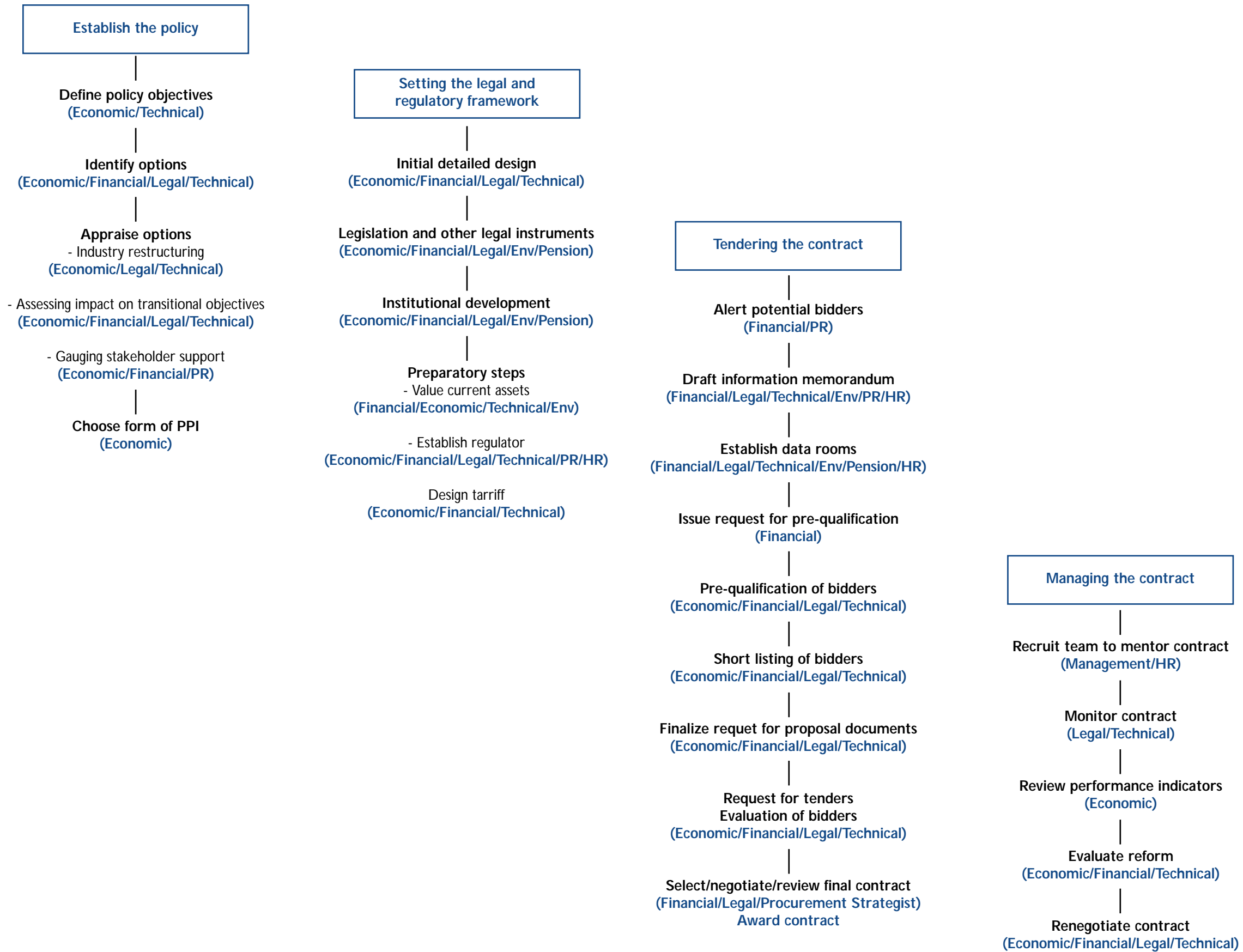
Tendering the contract

Stage 3, tendering the contract, will also require significant input from advisors. As stage three progresses, the role of economic and technical advisors will probably diminish, although lead advisors, financial advisors and lawyers may be retained to assist with the negotiation and reviewing of final contracts. Legal expertise will also be required to draft or review the final contracts.

Managing a PPI contract

The role of advisors in **stage 4** varies considerably, depending on the form of PPI. It may involve monitoring performance, reviewing the contract and providing support on price reviews

Figure 3-1:
Roles of Advisors in the PPI process

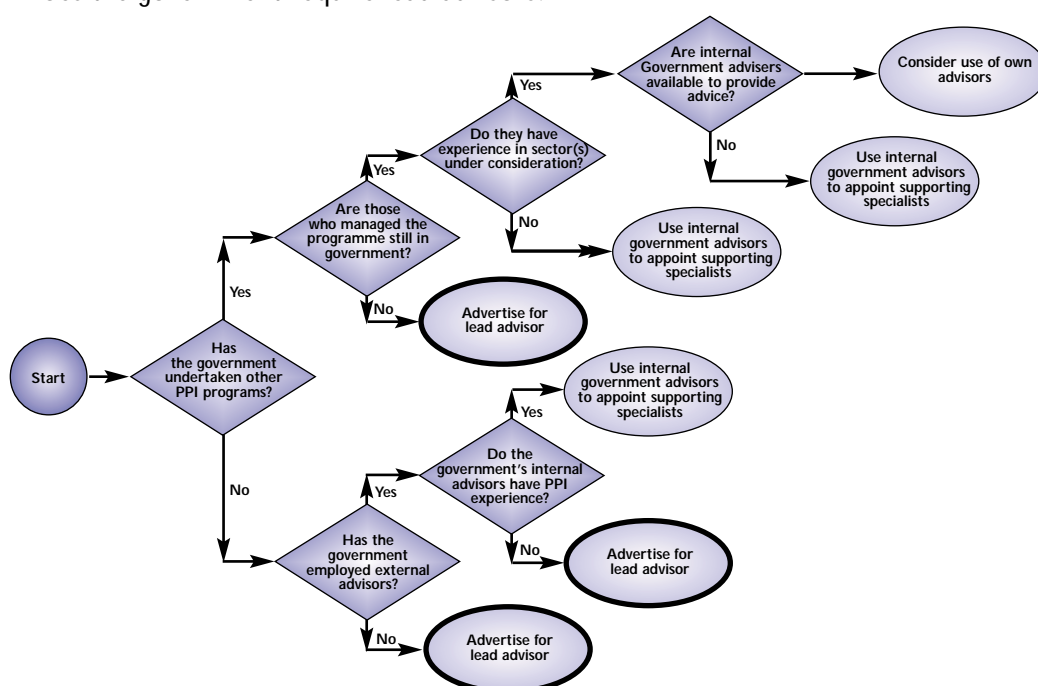


3.2 Lead advisors

Infrastructure projects are usually large and expensive. As a result, an inexperienced government beginning such a process without advisors risks incurring large, unnecessary costs. Whether lead advisors are necessary depends on the degree of government experience in PPI and in the sector under consideration. This decision is summarized in Figure 3-2. Other factors that may also come into play include:

- the size and complexity of the project;
- the available capacity within the government to handle the process;
- the extent to which the government can afford the cost of lead advisors; and
- the ability of donor and other agencies to fill the monitoring and advisory role undertaken by lead advisors.

Figure 3-2
Does the government require lead advisors?



Recommendation 3.2: Officials should decide at the beginning of stage 1 (the policy formulation stage) whether the benefits of appointing lead advisors will outweigh the costs.

Management consultancy companies and the large financial services companies may be called upon to serve as lead advisors. These companies put together multi-disciplinary teams to undertake a number of the tasks within the PPI process. In this role they oversee the process and try to ensure consistency over time between its various components. They will generally sub-contract tasks requiring specialist advice (see Section 3.3), although the government will still have to contract directly for most of the sub-components of the PPI advisory services.

Lead advisors tend to be brought into discussions at an early stage of the PPI process, usually at the policy formulation stage, where they are required to provide strategic advice on, for example, the range of realistically achievable objectives through specific forms of PPI. They also have a role in guiding officials through the PPI process once

the policy direction has been chosen. Given this role, there is substantial potential for scope creep—for the lead advisors to artificially inflate either their role in the project or the size of the project.

The main characteristic of lead advisors is that they usually have experience of all of the broad issues associated with the different stages of the PPI process and that they are fully experienced in PPI and the sector in question.

3.2.1 How can lead advisors help?

Lead advisors may provide a variety of services, depending on the nature of the PPI being considered.

- **They may advise on the form of PPI.** This involves identifying the range of constraints on governments in meeting their objectives and providing strategic advice on the most appropriate form of PPI given these constraints, all within an overall procurement strategy.
- **They may undertake preliminary feasibility studies.** This involves identifying the obstacles to a specific policy or project and making a preliminary assessment of whether these obstacles can be overcome.
- **They may help to design the implementation process and timetable.** This involves establishing the main tasks to be undertaken and assessing how long each will take, building contingencies into the timetable where appropriate.
- **They may advise on the selection of consultants for subsequent stages.** Identifying the broad range of subjects where advice might be required is usually straightforward; however, there is often a range of less obvious areas where advice may be needed, e.g. industrial relations, pension advice and insurance provision. Lead advisors will also be able to recommend an appropriate number of companies to be placed on the short list, give advice on the suitability and sustainability of different consortia, and suggest an appropriate evaluation methodology for assessing companies.
- **They may manage the implementation of the technical assistance program.** This will involve co-ordinating and briefing other consultants. Most importantly, it will ensure that the different advisors communicate with each other and present an internally consistent framework for PPI.

Table 3-1
Advantages and disadvantages of lead advisors

Advantages	Disadvantages
Lead advisors can provide the government with expertise on a wide range of issues, thus reducing the possibility of costly mistakes.	Lead advisors can be costly. If paid on a time and materials basis, lead advisors will have an incentive to provide much advice as possible to maximize their revenues.
Lead advisors can identify the range of areas where specialist input is needed. This task can often be difficult for governments that have not been involved in PPI in the past.	Lead advisors will have an incentive to limit out-sourcing of specialist tasks, even though they may not be the most suitable company to undertake the work.
Lead advisors can recommend specific firms to be included in the shortlist.	Lead advisors may be excluded from providing advice in the future in that sector because they have been so heavily involved in the provision of advice to the government at a critical stage in the industry's development.

3.2.2 Selection of lead advisors

The selection of lead advisors is made difficult by the lack of experience in government. It is under these circumstances that donors¹² may be of help. Their international experience makes it likely that they will know which advisors are appropriate to the role (*see Volume II*).

In general, lead advisors should have experience:

- in the sector under consideration, both as an organization and as individuals;
- of implementing PPI projects in the sector under consideration;
- of selecting and, possibly, managing other advisors; and
- of providing high-level advice to governments.

Module 7 in *Volume III* provides a step-by-step guide for a competitive selection process.

3.3 Differing types of expertise needed to guide officials through the PPI process

This subsection outlines the role of different types of expertise required during each stage of the PPI process. Different types of expertise can be found in different types of companies. However, of paramount importance is that requests for advisors identify the skills required of the winning company or individual, rather than merely specifying a particular type of company, individual or number of years' experience.

The key skills needed by governments involved in PPI are:

- economic (see sections 3.4.1, 3.5.1, 3.6.1 and 3.7.1);
- financial and accounting (see sections 3.4.2, 3.5.2, 3.6.2 and 3.7.2);
- legal (see sections 3.3.1, 3.5.3, 3.6.3 and 3.7.3);
- technical (see sections 3.4.4, 3.5.4, 3.6.4 and 3.7.4);
- public relations (PR) (see sections 3.3.5 and 3.6.5);
- human resources (HR) (see section 3.5.5, 3.6.6 and 3.7.5);
- environmental (see sections 3.5.6 and 3.6.7);
- pension/insurance (see sections 3.3.8 and 3.5.7) ; and
- procurement (see sections 3.3.9 and 3.6.8).

3.3.1 Economic

Relatively few companies offer purely economic advisory services, although a number of the larger accountancy companies and a few merchant banks have specialist divisions of economists. Some engineering advisors also employ economists.

Economic advisors understand the impact of different choices (e.g., over industry and market structure, and regulatory systems) on the incentives of the stakeholders (including consumers, private participants and the government). They are likely to have a substantial involvement in advising the government over most aspects of PPI because most decisions have an impact on the incentives of stakeholders.

Economic consultancy skills

Market description

Relatively few companies only offer economic consultancy services. It is more common to find economic advisors in specialist divisions within larger multi-disciplinary companies such as management consultancies. A number of the larger financial services companies that offer a wider range of services also employ economists.

Ownership structures

There is no single type of economic advisory firm. Many of the larger management and accounting companies, set up either as partnerships or public limited companies, have a division that provides economic advice. Other specialist economic consultancies tend to be privately owned.

Organizational structures

Irrespective of the ownership structure, most economic advisors will tend to work in either single disciplinary or multi-disciplinary teams comprising a partner or director, project manager and junior support staff. They may be organized according to sectoral expertise (e.g., energy, transport and health); type of client (e.g., commercial and government services); or even by geographic area of focus. However, it is common for junior and mid-level staff to be pooled and shared accordingly.

Incentive structures

Economic consultancies are usually paid on a fixed fee or time-and-materials basis. The provision of advice is expensive because of the skills and experience involved. The cost of economic advisory services is high compared to engineers or accountants, although it is generally lower than that of lawyers and investment bankers. See Module 4 (Table 4-3) for indicative comparative costs for different types of advisors.

The skills available

Economic consultants understand the impact of differing choices (e.g., over market and industry restructuring, or regulatory systems) on the incentives of the stakeholders (including consumers, private sector participants and the government). In particular, they are able to advise on industry and market structures, design of the regulatory framework and appropriate transition arrangements. Their greatest involvement is most likely to be in the contribution to the design of the reform process, including industry structure, form of PPI and regulation.

3.3.2 Financial

There are many types of companies that are likely to respond to an advertisement for a financial advisor:

- merchant or investment banks;
- accountants;
- management consultants; and
- economic consultants.

Financial advisors have the skills and experience to ensure that the final transaction (whether it is an asset sale or concession or other form of PPI) represents value for money and an affordable and deliverable deal for the government. Their input will vary considerably, depending on the form of PPI. It is likely to be minimal for a management contract but substantial for a large asset sale. Along with the government itself, they will be the primary contact for potential investors.

Generally, an individual working as a financial advisor should have two or more of the following qualifications:

- a first degree in accountancy, finance or a business-related subject;
- a Masters degree in Business Administration;
- a professional qualification in financial and/or management accountancy; and/or
- project finance/ PPI banking experience.

Financial advisors

Market structure

Increasingly, the provision of financial advice by international banks is driven by a desire to be the lead advisor of the financing. Because of the high overheads and competitive revenue risks, few banks are willing to provide project finance/PPI advice as a stand alone facility. Most merchant and investment banks tend to provide advice only on relatively large deals on which they are able to earn substantial fees. These banks may also be involved in advising the public sector as an entry strategy to the PPI market. Other companies that may offer financial advice include management consultancies and some engineering companies. In the privatization of state-owned assets, management consultants and large accountancy firms have challenged the merchant or investment banks with some success.

Ownership structures

Ownership structures vary according to whether financial advisory services are provided by international banks or management consultancies. Investment banks tend to be either publicly-listed corporations or partnerships while traditionally management consultancies

have usually been partnerships.

Organizational structures

Bank structures are usually hierarchical, leading up to director level. Each director has supporting assistant directors and managers. Analysts with a wide range of skills support these. The directors report to a managing director. Management consultants have a similar structure but are often partnerships.

Incentive structures

Financial advisors' fees are usually based on a retainer, which may be calculated on a mixture of fixed or time-and-material basis and success fees. The latter demonstrates their commitment to the project, while the former recognizes that success is not fully within their control. Advisors involved in the sale of state assets are normally recompensed by success fees, which are much higher because of the greater risk involved. An alternative to a single fixed fee is a retainer paid monthly for ongoing advice.

Financial advisors from banks or management consultancies often have a bonus arrangement in their employment package, based on individuals' or the company's results. When providing transaction advice that could lead to a success fee for the firm, individual bonuses may be tied to the success of the transaction as well.

The provision of project finance or PPI advice is expensive because of the required skills and experience. Experienced practitioners are highly paid and there is a shortage of top quality advisors, so competition is also high. Their office overheads are generally high because they are often located in major financial centers with high rents. They also require costly support.

The skills available

International, merchant or investment banks have the skills to structure finance packages, prepare financial plans, analyze risk and structures, prepare cash flow program models, and assist with the negotiation of both legal and financial documentation. They also have the expertise to value state-owned assets when these are to be privatized. When selling equity or bidding out concessions in former state-owned institutions, they must be able to attract a wide range of bidders by having a strong distribution capability – usually the preserve of merchant or investment banks.

Management consultants have similar skills but may lack experience of preparing the financial structures because they lack lending expertise. They may mitigate this by sub-contracting individuals with banking experience or by showing the options for financial structures to lending banks which may be involved in the bidding stage.

Financial advisors should have the skills to have a good understanding of the commercial logic and market feasibility of the project, to be able to carry out risk analysis and to prepare the financial structure for the type of PPI being implemented.

3.3.3 Legal

Legal advisors will need to be involved throughout the PPI process and will have an important role from the very beginning of the program. They can help to develop policy objectives by outlining the possibilities for PPI within the existing legal framework. Legal advisors will remain involved during the term of the successful bidder's appointment by assisting in contract management and advising on any variations to the contract or disputes that arise during the term of the contract.

Legal advisors

Market structure

There are several types of legal advisors: large companies with local offices in many countries, smaller companies with offices in a few countries and specialist companies with one or two offices.

Ownership structure

Law companies operate as partnerships. They vary in size from single practitioner companies to those with up to 3,000 employees.

Organizational structures

Most companies will be divided into sector-specific departments (the most common being corporate, banking, litigation, and property). In some companies (particularly larger international companies), there will be more specialist departments dealing with energy, telecommunications, and construction and other infrastructure industries.

The skills available

Law companies provide legal advisory services ranging from regulatory review to drafting and advising on contracts. The range of services they offer includes advising on policy objectives (together with other advisors). In particular, they will identify any legal or regulatory restraints to implementing the policy objectives; review and draft legal and regulatory frameworks relevant to the specific sector; advise on the establishment of regulators; draft contracts, concessions, lease agreements and licenses; and provide advice on pre-qualification processes and the evaluation of bids.

Incentive structures

Law companies usually provide their services based on time-and-material contracts with hourly rates. However, those involved in donor-sponsored work often enter into fixed-fee contracts.

When appointing legal advisors, it is vital to ensure that they have the appropriate skills. Government officials will need to check whether the company has the necessary expertise to undertake the work, although most large practices will have regional specialists with the requisite skills.

Legal advisors specializing in commercial law will be useful for some tasks, e.g., advising on the commercial structure of a new entity. Local lawyers will also be needed for some tasks (see section 3.9), e.g., interpreting and amending local laws, regulations and decrees.

3.3.4 Technical

Technical advisors¹² include those with engineering and related specializations (e.g., architects) who understand the physical aspects of the infrastructure sector under consideration. They should be knowledgeable about the particular sector and be able to advise on operational and investment needs as well as the technical aspects of regulation, legislation and evaluation. It is important that technical advisors have specific and geographically wide-ranging experience of the particular sector they are advising on. Technical advice, by its very nature, relates to the specifics of the proposed infrastructure facility, drawing on experience from previous projects and problems encountered. Whereas a lawyer or a management consultant will advise on the basis of rules and practice generally applicable to all sectors, specific sector knowledge is a prerequisite for good technical advice.

Depending on the government's role in the proposed project, the technical advisors may be required to:

- undertake preliminary analysis to establish the approximate capital costs plus the technical specifications or operating standards needed to achieve the government or public sector sponsor's objectives;
- analyze the possibility of breaking up various elements of the industry (e.g., dividing distribution networks, splitting radio spectrum);
- prepare a drawdown schedule covering the construction period, estimated annual operating and maintenance costs, and estimated project lifecycle costs; and
- review any cost estimates that currently exist as part of a feasibility study.

The estimates need to be prepared to the detail and level required to allow bidders to decide whether they are interested in the project. The bidders would then be solely responsible for undertaking their own due diligence relating to these estimates (and other matters). For further details on how the bidders will use advisors throughout the PPI process, see section 3.10 in this Module.

Technical/engineering advisors

Market structure

Technical companies normally fall into two categories: those that specialize in a limited number of disciplines and those that are multi-disciplined. The former are more common. The specialist consultants usually vary by sector (transport and traffic planning, rail, water and waste water, environmental and solid waste, power and energy, oil and gas, bridges and building structures, road design and construction, marine and ports, industrial and process engineering, mining) and by skill (civil and structural engineering, process engineering, nuclear engineering, project management). With a few exceptions, technical companies are relatively small in size measured in terms of capital or turnover.

Ownership structure

Traditionally technical companies were partnerships, but many have been corporatised as they have increased in size.

¹² In the USA, Architectural and Engineering companies also provide engineering and technical expertise. These are not discussed as a separate category of firm as they provide skills which overlap with more general engineering and technical consultancies.

Organizational structures

These companies tend to be divided by discipline (e.g., design, construction and project management,) with divisions often split geographically or between home country and overseas. There is normally a corporate management core, or center, separate from the divisions, which contains the central management to which the divisions report. Each division is responsible for its own profitability.

Incentive structures

Engineering consultants usually provide their services on a lump-sum or time-and-materials basis. It is very unusual for success fees to be utilized. There may be some form of bonus linked to time. Project management services may be priced based on the number of personnel involved.

In general, technical advisors have relatively low cost structures, especially in comparison with legal and financial advisors. Their overheads are relatively low because salary levels are lower, and their main offices are usually located in low-cost locations.

The skills available

Engineering consultants provide a range of skills and services, including general and architectural design, costing and quantity surveying, planning and traffic studies, technical feasibility studies and reviews, lifecycle costing and analysis, and project monitoring and management.

Some of the larger US and UK consultants have branched out into providing supporting financial advisory services and establishing investment companies which can, on occasion, invest in the equity of project or concession companies. Some of the larger US companies also provide architectural and engineering services separately from their consultancy services. Outside the US, such consultants are usually independent.

The four main skill sets of economic, financial, legal and technical advisors are supported by a number of more specialist advisors. These are described below.

3.3.5 Public relations

Public relations specialists play an important role throughout the process. The introduction of PPI requires change on the part of many stakeholders. This is inevitably difficult and the reasons for the changes, the costs and the benefits, must be carefully explained to government officials, employees, the public and, possibly, the international investor community. Effective public relations experts can save a lot of time, effort and money by bringing the various groups into the process and ensuring that they support, rather than try to oppose, the process.

Two types of PR activity will need to be undertaken. The first concerns the general publicity surrounding the overall reform program. This might include:

- issuing consultation papers to inform stakeholders and the public of the purpose of PPI and the direction of government policy;
- organizing ministerial interviews with the media;
- placing articles explaining PPI in the press; and
- organizing seminars with opinion makers and stakeholders.

The other type of activity PR consultants may need to consider is the promotion of specific projects. This activity will be focused towards generating potential investor interest and may include:

- organizing roadshows geared towards the investor community; and
- surveys of investor sentiment aimed at gauging the level of interest in the project.

The Brazilian experience

In the mid 1990s, when the Brazilian government embarked on the process of privatization of the electricity industry, the government's consultants brought together a panel of nearly 200 technicians from different sectors, ministries and the bank in charge of the asset sale. Working with this group, the consultants identified 34 problems requiring further consideration. These problems were subsequently discussed in working groups.

As a result, a wide range of stakeholders was informed about the process and the government was able to adjust the process incorporating stakeholders' views.

3.3.6 Human resources

Human resource advisors should be specialists in the internal processes and organization of institutions. In addition they should have expertise in designing training programs, skills transfer and the appointment and dismissal of personnel. More generally, there may be a need for detailed restructuring of the existing workforce, pension funds and in some cases, negotiations with trades unions.

There are multiple labor and human resource issues that will confront the government and investors throughout the PPI process. A detailed treatment of these challenges and possible responses is being prepared in the form of a Toolkit.

Currently under preparation, the Toolkit on Labor Issues and PPI aims to provide practical tools and information to help policy makers deal with labor issues in PPI. Drawing from experiences around the world, the Toolkit will serve to identify, promote, and disseminate best practice so as to help governments in developing countries design and implement labor programs and thus also build capacity in this challenging area.

The Toolkit will consist of the following modules:

- Overall context for dealing with labor in PPI;
- Labor approaches and options; and
- Management of the labor restructuring process.

The Toolkit will be finalized and published during 2001. Please contact PPIAF (www.ppiaf.org) for information on how to obtain the Toolkit.

3.3.7 Environmental

Many infrastructure projects have severe, permanent effects on the environment and are therefore likely to require some form of environmental assessment. While the winning bidder will undertake much of this, environmental advisors may be needed in the initial stages to establish minimum environmental standards for bidders to adhere to in their bid proposals. These standards will depend on the sector in question but may, for example, relate to the use of renewable fuels, air quality levels and waste disposal standards. Table 3-2 identifies some sector specific environmental concerns.

Table 3-2
Some environmental impacts by sector

Sector \ Impact	Power	Water and sanitation	Solid waste disposal	Tele-communications	Transport
Air quality	Sulfur dioxide emissions leading to acid rain		Emission of gases (nitrates) from landfill sites and incinerators		Carbon monoxide, carbon dioxide and particulates from road vehicles
Water quality	Contaminated water from cooling of plant	Waste disposal in seas and rivers			Toxic particles in bays and rivers from dredging
Local disamenity/noise	Power plants	Smell from sanitation plants	Road congestion around waste disposal sites	Effects of telephone masts and satellite dishes	Road congestion; rail crossings
Natural resource depletion	Use of fossil fuels	Abstraction of water and loss from leakage			Contaminated dredge spoils
Global warming	Carbon dioxide emissions				Carbon dioxide emissions

Environmental advisors are employed either by niche environmental consultancies or by generalist management, economic and engineering consultancies.

3.3.8 Pension/Insurance

Some human resource specialists will have this expertise, making hiring a separate advisor unnecessary. However, in the absence of this expertise, an individual or company specializing in these issues could save the government considerable time, effort and possible court costs as they plan for a labor retrenchment.

3.3.9 Procurement strategy

Procurement specialists may design a procurement strategy to reflect the overall goals of procurement, timescales, budgets, financing rules, local legislation and institutional capacity.

The discussion in this section provided an indication of the range of tasks governments will require specific advisors to undertake throughout the PPI process. However, there are few tasks that require a single expertise; therefore the selection of a team of advisors that has the right balance of skills is also important.




The different roles in each stage of the PPI process of all main advisors are summarized in Table 3-3 to Table 3-6¹³. The table also provides an indication of the relative importance of each of the advisors in contributing to each task. Although the relevant type of advisor will largely provide the different types of expertise, in some areas there will be some overlap between the different types of advisors and the skills that they offer.

The shading indicates the degree of involvement of the advisor in question—darker shading indicates greater involvement, with the darkest indicating the lead advisor in that area.

¹³ Note that these tables show the range of tasks for which specialist input might be required, but not their sequencing or timing.

3.4 The role of advisors in stage 1 - policy formulation

In this and the following sub-sections, areas where government officials should expect specific outputs from their advisors are denoted in the text by the following set of icons which are placed to the left of the text.

A	Analysis or advice (often provided as a presentation)
R	Report
M	Model (technical or financial)
D	Draft documentation
T	Training
	Icons with multiple borders (e.g., ) indicate outputs produced by advisors that are submitted directly to government officials ; those with single borders, (e.g., ), indicate outputs produced by advisors that form an input to the work of other advisors .

Stage 1

Figure 3-3

Advisors used in stage 1 – policy formulation

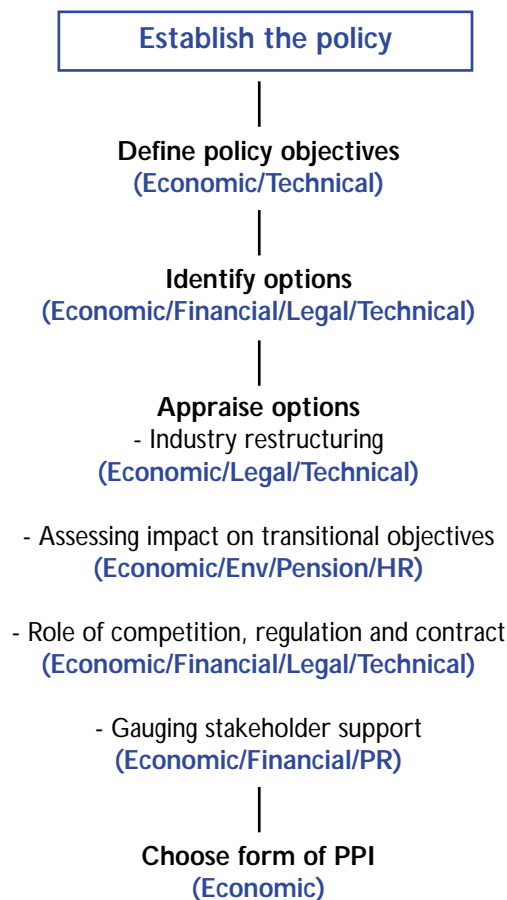


Table 3-3
Role of advisors in stage 1 – establishing the policy

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Defining policy objectives	Can provide advice on the range of objectives that might be achieved under different forms of PPI and the trade-offs between them			Can provide technical details if increasing investment is one of the objectives of the reform					
Identifying policy options	Will establish the feasible range of forms of PPI, forms of consumer protection and industry restructuring, given the set of desired objectives	Can provide advice on the financial feasibility of policy options	Can provide advice on the legal feasibility of policy options	Can provide advice on the technical feasibility of policy options					
Appraising the options - industry restructuring	Will lead on providing advice on complementary decisions of industry and market structure and the regulatory framework (see below)		Will provide advice on legal implications associated with restructuring	Will input into the decision if industry restructuring requires division of assets and other technical issues					

Key




-  Lead advisor
-  Significant involvement
-  Minor or optional involvement

Table 3-3 (continued)

Role of advisors in stage 1 – establishing the policy

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Appraising the options - Assessing the implications on transitional objectives	Cost—benefit analysis usually undertaken by economists					May be required to provide an environmental impact assessment	May be required to provide an assessment of the pension/ insurance costs of different options	Will provide advice on the employment implications of different options	
Appraising the options - Role of competition, regulation and contract	Will have responsibility for outlining where competition is effective and where regulation or contracts are necessary	Will advise on financial feasibility, impact on investor confidence and impact on sales revenue	Will assist with analysis of legal feasibility	Will assist with analysis of technical feasibility					
Appraising the options - Gauging stakeholder support	May have responsibility for presenting the analysis of the options and reasons for the selected path	May have responsibility for organizing and conducting investor roadshows			May contribute to the task of organizing and conducting investor roadshows				
Choose preferred option	Will advise on the detailed implications of various types of PPI	May model the ability of government to finance capital expenditure requirements given tariff assumptions	Will assist in advising on the form of PPI in the presence of legal constraints	May perform analysis of investment needs to see if government is able to afford capital expenditure requirements					The procurement strategist will advise on the choice of PPI given a procurement strategy

3.4.1 Role of economic advisors in policy formulation

3.4.1.1 Scoping objectives

Economic advisors can play a valuable role in providing advice on the range of objectives that might be achieved under different forms of PPI and the trade-offs among objectives.



The main output of this task is analysis of potential objectives that can be achieved under the different objectives.

3.4.1.2 Identify options

Economic advisors can establish the range of forms of PPI that can feasibly be considered, alongside options for consumer protection and industry restructuring.

3.4.1.3 Option appraisal

Economic input will be required to take forward specific elements of the appraisal of options. Economic advisors are likely to lead on the issues relating to the need for industry restructuring. They will also lead with the assessment of costs and benefits of reform, and they will have important inputs into the assessment of the existing legal and regulatory framework.

3.4.1.4 Choose preferred option

Economic consultants have the main input into the choice of PPI and related decisions. They will advise on the detailed implications of the different types of PPI outlined in Module 2. They will be able to assess the suitability of the various types of PPI, taking into account the specific circumstances of the country and sector concerned.



The main output will be a report on the appropriate form of industry restructuring and recommended form of PPI.

3.4.2 Role of financial advisors in policy formulation

3.4.2.1 Identifying options

Financial advisors, together with economic advisors, can help to establish the feasibility of specific forms of PPI, as well as different options for consumer protection and industry restructuring.

3.4.2.2 Option appraisal

The appraisal of options involves identifying a pipeline of appropriate projects for PPI. This may involve conducting preliminary investor surveys to identify whether there is sufficient interest from the private sector in specific projects. Its results may inform the design of the PPI program. Financial advisors may be best placed to conduct the survey because they are knowledgeable about potential investors¹⁴. To be useful, the survey should inform:

- the advisory team about the appropriateness of different PPI approaches and transaction strategies;

¹⁴ This should be balanced against the cost of using the financial advisors for this work. It may be that it is more cost effective to use the economic consultant or even a more specialist polling, market research or other firm to undertake the actual survey.

- the potential bidders about the approach to pre-qualification; and
- government officials of the information required by the bidders and bidders' concerns, which can be addressed either in the information memorandum or the request for proposals, or through pre-bid meetings.

Preliminary financial analysis and modeling of the financial feasibility of different PPI projects is likely to support the investor survey.

R The main output will be a report that identifies the degree of investor support for specific projects.

Stage 1 – Legal advisors

3.4.3 Role of legal advisors in policy formulation

3.4.3.1 Option appraisal

The legal advisor, together with the other advisors, should be involved in identifying and appraising the PPI policy options. The main input of the legal advisor will be in analyzing the existing legal and regulatory regime. The legal advisor will be required to:

- review the current legal and regulatory framework;
- identify any legal or regulatory constraints in the implementation of any of the policy options;
- suggest the range of changes required to the current legal and regulatory framework under different policy options; and
- indicate the extent of any legislative amendments that might be required and the likely time scales required to undertake them.

A The legal advisor will analyze the current legislative framework and identify the changes required under different options.

Stage 1 – Technical advisors

3.4.4 Role of technical advisors in policy formulation

3.4.4.1 Scoping objectives

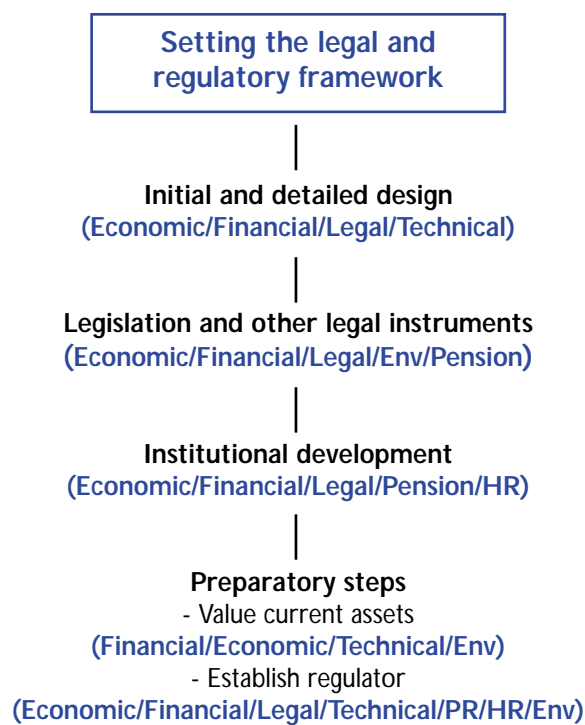
Where increasing capital expenditure is an objective of PPI, technical advisors will be required to provide information on the existing infrastructure and long-term investment needs where these have an impact on the objectives for PPI.

R The technical advisor will produce a report outlining the feasibility of different forms of PPI in delivering the government's investment-related objectives.

3.5 The role of advisors in stage 2 – establishing the legal and regulatory framework

Figure 3-4

Advisors used in stage 2 - establishing the legal and regulatory framework





A	Analysis or advice (often provided as a presentation)
R	Report
M	Model (technical or financial)
D	Draft documentation
T	Training
	Icons with multiple borders (e.g., ) indicate outputs produced by advisors that are submitted directly to government officials ; those with single borders, (e.g., A), indicate outputs produced by advisors that form an input to the work of other advisors .

Table 3-4

Role of advisors in stage 2 – establishing the legal and regulatory framework

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Initial and detailed design	Will analyze optimal risk allocation and impact on design.	Will advise on financial feasibility, impact on investor confidence. Together with legal advisors, will consider security arrangements	Will increasingly assume lead role as analysis moves from conceptual stage to preparation of legal instruments	Will have a major role in technical feasibility. Will assist with non-financial measures of assessing performance					
Legislation and other legal instruments	Will be required to provide legal advisors with outlines of legislation/regulations related to industry and market structure and regulatory framework	May advise on the impact of legislative change on sector's attractiveness to local and international investors	Will lead in drafting all documentation required to create or amend legal framework			May be required to assess the environmental impact of regulations	Will be required to advise legal team on how to draft regulations/legislation relating to the transfer of employee pension funds and other benefits		

Key




-  Lead advisor
-  Significant involvement
-  Minor or optional involvement

Table 3-4 (continued)

Role of advisors in stage 2 – establishing the legal and regulatory framework

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Institutional development	Will have lead advisory role on particular institutions for regulation or market development with respect to their location and structure	Will advise on financial structure of new institutions	Will prepare company statutes and other legal documents	Will advise on interaction with industry			Will be required to advise legal team on how to draft regulations/legislation relating to the transfer of employee pension funds and other benefits	Will play role in preparing and implementing program for institutional development	
Preparatory steps -Value assets	Will have an input on the choice of methodology May also be required to undertake valuation May be required to estimate optimal level of investment	May be required to undertake valuation. Will advise on the attractiveness of assets to private sector May be required to undertake financial modeling to support work of economists in determining optimal level of investment		Will have a key role in inspecting assets for purposes of valuation May be required to provide an estimate of need for future investment, including assessment of need to replace assets		May have a role in assessing cost of decommissioning assets May have a role in estimating environmental consequences of new investment			

Table 3-4 (continued)

Role of advisors in stage 2 – establishing the legal and regulatory framework

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Preparatory steps - Establish regulator	Will be required to undertake training of new staff in the requisite economic skills	Will be required to undertake training of new staff in the requisite financial skills	Will be responsible for ensuring any new legal and regulatory structures are properly implemented and that staff understand new laws	May be required to support regulator in initial stages, including provision of advice on types, roles and training of technical staff	May be used to ensure that wider community understands regulator's role	May be used to distinguish between regulatory responsibilities of economic regulator and environmental agency		May provide advice on staffing and structuring of regulator's office, hiring of staff, and defining internal procedures	
Preparatory steps - Design tariff	May be involved in calculating tariff and advising on tariff structures. Economists may also be required to advise on pros and cons of different tariff-setting methodologies	Input on the cost of capital may be required. May advise on impact of different approaches to setting tariffs on investors' perceptions of risk		Will be required to advise on whether tariff level will allow companies to meet obligations in terms of standards of service					

3.5.1 Role of economic advisors in establishing the legal and regulatory framework

3.5.1.1 Initial and detailed design

Economists will play a prominent role in the initial design of competitive markets, regulatory solutions, and contract structures. As the work proceeds to detailed design and preparation of legal instruments, the role of the economists will decline and the role of other advisors – in particular legal advisors – will increase. At these stages the role of economic advisors is to ensure that the laws being drafted are consistent with the current and anticipated industry, market and regulatory framework.

The balance between advisors will depend on their individual skills and experience. Generally, it is a mistake to move towards legal drafting before the outline is clear, and the input of advisory skills should reflect the need for continued support from economic advisors. Since legal companies are generally more expensive than economic consultancies, regulatory design work involving both types of skills is often led by economic consultants, who then subcontract lawyers.

3.5.1.2 Legislation and other legal instruments

Where a regulatory approach is adopted, economic advisors play an important role in advising on the appropriate regulatory framework, given the form of PPI and the government's objectives. While the legal advisors may take the overall lead in this task, economic advisors are likely to lead in advising on the system for economic industry regulation. They may also assist in drafting parts of the legislation that require an economic input.

Along with the form of PPI and associated decisions (e.g., structure of the industry, type of regulation), the draft regulations will form the core of the reformed sector. The draft regulations outline instructions from the government to the regulator or contract monitor. Economic advisors must first consider the degree of detail to be included in these regulations or the concession contract (e.g. whether the government should specify the form of tariff setting methodology or only the objectives of tariff-setting). Once this is decided, they provide advice to the legal advisors on the content of the regulations or concession contract being drafted. They should identify the implications of including specific details in the legislation, from relatively well-known issues (e.g., implications of price and revenue caps versus cost-plus tariff-setting) to more detailed issues (e.g., the formula for the recovery of stranded costs).

A **The economic advisor will provide recommendations to the legal advisor on the regulatory framework and advice on the content of the regulations or contract.**

3.5.1.3 Institutional development

The role of advisors will depend on the solution adopted. Competitive markets in infrastructure (e.g., electricity pools) are relatively recent innovations. Economists and technical specialists will play a leading role in their design and in the development of the accompanying institutions.

Where a regulatory approach is adopted, the main role for economic consultants in establishing the regulatory office will be in training new personnel in the requisite economic skills. While many regulators will have economists as members of staff, few are likely to have staff with experience of economic regulation of the infrastructure sector in question. Although the level of economic training required will depend on the backgrounds of the new personnel, usually some transfer of skills is necessary.

There is more global experience in the management of contracts. Legal advisors can play a major role in advising on the requirements for contract management, and in providing assistance with institutional development.



The economic advisor will train government officials in economic regulation.

3.5.1.4 Preparatory steps

The preparatory steps will also be dependent on the solution adopted. Where a regulatory regime is being established, work will be required on the overall approach to regulation, the preparation of guidelines explaining how regulation will work, and the initial steps (e.g., determining allowable revenues consistent with the form of regulation). Economic advisors will require support with the identification and valuation of assets, and from technical specialists and financial advisors with the preparation of financial models.

Value assets

If one of the tasks is to be valuation of the assets, the economic advisors will help determine the appropriate methodology. While most economic, financial and technical consultants are likely to be able to carry out the formal financial modeling required to derive an asset value, they first need to choose the appropriate methodology. The choice of methodology will affect not only the privatization process but also the incentives for the new private participants geared towards future investment, the requirements on the regulator and the cost of supply to final consumers.

If the government decides to assess future investment needs, economic advisors might have a role in advising on the level of investment the private sector should undertake.

Propose tariff-setting methodology

If the economic advisors have not set out the tariff-setting methodology in the legislation or concession, they will often have a role in outlining the advantages and disadvantages of various approaches to the regulatory body or government/public sector sponsor. The work of the economic advisors should extend beyond the broad overview of the various methods (e.g., price, revenue caps) to outlining, in detail, both how each methodology should be applied in the country under consideration and the implications of the various possible nuances under each broad methodology (e.g., different possible error correction mechanisms under revenue caps).



The advisors produce a report outlining alternative methodologies and a recommended approach.

Tariff design

After advising on the methodology to regulate average tariff revenues, the economic advisors may be involved in calculating the tariffs, advising on tariff structures, and participating in the first tariff review. They may also advise on the design of cross-subsidies from one type of user to another (e.g., industrial or domestic in power and water or containers and dry bulk at ports and railways), where there is a need to ensure universal service obligations. It is important to ensure that foreign advisors' skills on tariff design and setting are transferred to local staff.



The economic advisor will provide the government with recommendations on tariff design.

3.5.2 Role of financial advisors in establishing legal and regulatory frameworks

3.5.2.1 Initial and detailed design

The main role of the financial advisor will be to advise on the impact on investor confidence and on sale revenues. Depending on the solution adopted, there may also be substantial need for financial modeling. Financial advisors may also provide advice on cash flow and capital and operating expenditure projections under different legal and regulatory frameworks.

3.5.2.2 Legislation and other legal instruments

The financial advisors may have a small input into the drafting of regulations or regulatory sections of a concession contract. This input will include advice on the impact of the regulations and on the attractiveness of the sector to local and international investors. In particular, financial advisors can assess the impact of the regulatory system on investors' perceptions of risk.¹⁵

3.5.2.3 Institutional development

In all cases where institutions are to be financially self-supporting, financial advisors will need to advise on financial structure and the revenues the institutions will require. They will also need to identify and analyze the impacts of funding from different sources, e.g., annual payments made to the institutions by the private sector operators, or levies on customers.

Regulatory solutions are likely to require the development of financial modeling tools, in order to determine the viability of companies under different assumptions. Such financial modeling tools will need to incorporate the following information:

- revenue;
- expenses;
- staff numbers;
- tariffs; and
- accounts.

Figure 3-4 provides an example of such a model.



The financial advisor will build a model showing the impact of different regulatory decisions on financial indicators.

¹⁵ It should be noted that if the financial advisors claim that a certain regulation will decrease investor interest or increase their risk this does not necessarily mean that the regulation should not be implemented. In general, any regulation removing some profit from investors will decrease their interest (while benefiting consumers). This is just another factor that should be taken into account.

3.5.2.4 Preparatory steps

Value assets

The financial advisors may have two roles in the valuation of assets. The economic, financial and technical experts are all likely to possess the skills to undertake the necessary modeling once the economic advisors and the government have decided on the methodology. In addition, the financial advisors are likely to have a better understanding than either of the other two groups about the attractiveness of saleable assets. They will be able to assess the risk associated with the country and its impact on the introduction of PPI.



The financial advisor will value assets and provide analysis of asset valuations on investor confidence.

Figure 3-5
Example cash flow projections for a gas pipeline

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006..	2020
<i>Net Cash Inflows from Operations</i>											
Operating Surplus	386.91	105.63	548.86	4,717.89	8,981.92	11,398.53	10,176.29	4,153.51	4,161.67	6,532.44 ..	67,580.38
Interest and Dividends Receivable	-32.37	-46.59	-62.23	-0.48	-0.48	-0.48	-0.48	-149.55	-149.55	-224.09 ..	-298.63
Depreciation	102.51	350.67	393.70	210.18	283.51	347.94	418.82	491.96	499.93	508.70 ..	11,802.74
Taxation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 ..	0.00
Dividends Paid Out	-84.53	0.00	0.00	-2,674.69	-3,265.74	-4,824.57	-4,403.93	-1,393.07	-1,448.85	-1,517.23 ..	-26,860.38
(Profit)/Loss on Sale of Investments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 ..	0.00
(Profit)/Loss on Sale of Fixed Assets	0.00	0.00	0.00	560.47	-158.95	-124.05	-122.13	-142.62	-127.25	-125.01 ..	0.00
(Increase)/Decrease in Stores	-2.02	-16.68	-64.16	60.00	-67.66	-74.42	-76.79	-8.37	-9.21	-1,137.88 ..	-38.46
Decrease/(Increase) in Debtors	1.65	-125.93	-215.97	-1,206.53	-772.59	-540.60	40.66	-946.55	-325.68	-1,324.63 ..	-1,460.39
Increase/(Decrease) in Creditors	3.24	-42.94	110.21	838.91	269.74	192.70	224.93	2,931.58	484.12	1,421.57 ..	2,905.66
Net Cash Inflow from Operations	375.38	224.15	710.42	2,505.76	5,269.75	6,375.05	6,257.38	4,936.89	3,085.20	4,133.87 ..	53,630.93
<i>Return on Investments & Servicing of Finance</i>											
Interest and Dividends Received	1.90	46.59	62.23	0.48	0.48	0.48	0.48	149.55	149.55	224.09 ..	298.63
Interest Paid	-11.46	-182.06	-667.68	-1,339.44	-1,521.94	-1,284.29	-847.77	-796.01	-736.56	-3,012.00 ..	-7,770.66
Net Cash Outflows	-9.55	-135.47	-605.46	-1,338.96	-1,521.46	-1,283.81	-847.29	-646.45	-587.01	-2,787.91 ..	-7,472.04
<i>Investment Activities</i>											
Purchase of Fixed Assets	-20.89	-565.10	-1,833.15	-2,199.79	-1,933.08	-2,126.39	-2,194.10	-239.12	-263.03	-32,510.77 ..	-1,098.75
Purchase of Investments	-40.91	0.00	0.00	0.00	-1,475.64	-605.12	-646.25	-690.17	0.00	0.00 ..	0.00
Interest Capitalised	0.00	96.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 ..	0.00
Exchange Rate Losses Capitalised	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 ..	0.00
Receipts from:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 ..	0.00
- Sale of Fixed Assets	0.00	0.00	0.00	960.61	158.95	124.05	122.13	142.62	127.25	125.01 ..	0.00
- Realisation of Investments	0.24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00 ..	0.00
Net Cash Outflows	-61.55	-468.69	-1,833.15	-1,239.17	-3,249.77	-2,607.46	-2,718.23	-786.67	-135.78	-32,385.76 ..	-1,098.75
Net Cash Outflow Before Financing Activities	304.27	-380.01	-1,728.19	-72.37	498.52	2,483.78	2,691.86	3,503.77	2,362.41	-31,039.80 ..	45,060.14

Design tariff

Financial advisors will have minimal input into the choice of tariff-setting methodology. This may include advising on the impact of different methodologies on attracting private sector investors, and on future private sector investment.

Financial and economic advisors should consult each other about specific aspects of tariff design. Financial advisors should have experience in similar markets elsewhere to inform estimates of the cost of capital for new investors.

T The financial advisors will provide this tariff analysis to the economic advisors.

3.5.3 Role of legal advisors in establishing the legal and regulatory framework

3.5.3.1 Initial and detailed design

The legal advisors will play a major role in determining the legal changes necessary to accommodate alternative approaches, and the impact of these on program timetables. The legal advisors should therefore participate in the processes of both initial and detailed design. The outline structure should be agreed before legal drafting. However, the respective roles of advisors will depend on their individual skills and experience.

Drawing on their analysis during stage 1, the range of tasks the legal advisors undertake includes:

- more extensive review of the current legal and regulatory framework, and identification of necessary changes to it, given the choice of form of PPI;
- due diligence on corporate and debt issues, labor-related issues, health and safety, litigation and environmental issues;
- preparation of draft transaction documents; and
- identification of the changes that need to be made through primary legislation, secondary legislation, licenses and other legal instruments.

A The legal advisors will provide this legal analysis to the economic advisors.

3.5.3.2 Legislation and other legal instruments

The design work will result in preparation of legislation. Depending on the particular circumstances legal advisors may draft the legislation or may provide an outline bill to be filled in by government draughtspersons familiar with specific local requirements.

Legal advisors will also prepare other legal instruments, including codes establishing the operations of a wholesale market, trackage rights agreements, licences establishing the obligations of the companies concerned, and specific contracts.

At an early stage this work will entail close liaison with the economic advisors. The legal advisor will have the principal role of drafting all documentation necessary to create or amend the legal and regulatory framework relating to the PPI project at an early stage. They will do this in conjunction with economic advisors because it will be a key concern of potential investors. Draft laws and regulations will need to be

circulated to, and discussed with, all interested stakeholders. The legal advisor will be responsible for revising draft documentation in light of the consultation process.

Legal advisors are also likely to have the greatest skills in mechanisms to protect the interests of a contracting party, through warranties, guarantees, liquidated damages and other mechanisms, but may need to liaise with financial advisors on these issues.

D **The legal advisor will draft the necessary legislation and legal instruments for the implementation of the PPI reform.**

3.5.3.3 Institutional development

In all cases where institutions are to be autonomous, legal advisors will prepare their statutes and company structure and ensure that they meet other requirements. There is also likely to be an ongoing need for legal advice to the new institutions.

3.5.3.4 Preparatory steps

During the preparation of guidelines, legal advisors will assist in determining the extent of powers under legislation, and the interpretation of disputed issues.

The legal advisor may be responsible for ensuring the proper implementation of any new legal or regulatory structures. However, the government will retain important responsibilities in this area as the only entity able to implement the new legislation.

A **Legal advisors provide advice to the government on the requirement for implementation.**

3.5.4 Role of technical advisors in establishing the legal and regulatory framework

3.5.4.1 Initial and detailed design

The technical specialists will play a role in both initial and detailed design. Depending on the solution adopted, specialists may need to advise on the ability to split assets both vertically and horizontally.

A **The technical advisor will provide input to economists on the technical aspects of market design.**

3.5.4.2 Institutional development

Technical specialists may play a major role in institutional development. Regulatory institutions will require a close understanding of how their sector operates and how technical performance can be measured.

3.5.4.3 Preparatory steps

Regulatory solutions are likely to involve identification and valuation of assets. Technical specialists will undertake the bulk of this work. Contracts that transfer responsibility for fixed assets may require similar steps.

Value assets

The technical experts will play a key role in the valuation of existing assets. The technical advisors will physically inspect all (or a representative sample) of the assets, assess their current state and, in consultation with the economic and financial advisors, estimate their value.¹⁶ However, the valuation needs to be grounded in economic and financial reality, the absence of which can give the government unrealistic expectations about the value of the assets. This can cause the privatization to fail, especially if the government sets minimum bids based upon inflated valuations.

Following their review of the design, technical status and condition of the assets, the technical advisors may provide an assessment of the need for future investment. This may include an estimate of the cost of restoring the assets to a reasonable, appropriate or working condition. It may also include evaluation of the extent to which existing assets or networks can be extended or replaced. In addition, technical advisors may conduct an initial environmental impact study or review any existing current study with a view to assessing the need for future investment. Finally, the advisor may need to design Information Technology (IT) requirements or review any IT systems included in the design of the project.

Where a regulatory approach is adopted, the technical advisors will support the regulator in its initial stages. This role may involve simply advising the government on the qualifications and choice of any required technical staff or may be a more detailed involvement with the regulatory office, including the transfer of specific technical skills.



The technical advisor will provide input to the financial advisor on asset valuations and will train the regulatory staff on technical aspects of regulation.

Design tariff

The technical advisors' inputs to the tariff design focus mainly on setting and ensuring that the final tariff level provides sufficient revenue for companies to meet the service standards required in order to ensure the proper safety and operation of the system. They will also be responsible for providing information on monitoring capital expenditure to the economic and financial advisors designing the tariffs.



Technical advisors provide this input to economists.

Stage 2 – Human Resource advisors

3.5.5 Role of human resource advisors in establishing the legal and regulatory framework

3.5.5.1 Institutional development

One of the main roles for human resource advisors is in setting up the institutions required to operate new markets, implement regulation and manage contracts. Working with the economic and technical advisors, they will design the appropriate staffing structure, define job requirements, advertise for and hire new applicants, and

¹⁶ It is important to note that in the case of an asset sale ultimately the value of the assets will be determined by the winning bidder. However, bidders are likely to want at least an initial assessment of the assets from the technical advisors, and then they may choose to send in their own specialists for a more detailed examination.

ensure the smooth transition to the new office. Once the office has been set up, they should be able to identify the training and other needs of staff and set up appropriate training courses, which will probably be provided by the economic, financial and technical advisors.

R The HR advisors will prepare a report with their recommendations for staffing of any new institutions.

Environmental advisors – Stage 2

3.5.6 Role of environmental advisors in establishing the legal and regulatory framework

3.5.6.1 Legislation and other legal instruments

Environmental advisors will identify the specific environmental standards to be incorporated into new legislation or regulations. These standards should reflect both the benefits of a cleaner environment and the costs of remedying and/or avoiding environmental degradation, and should be in line with current and anticipated best practice and international obligations.

The environmental advisor will provide analysis of the environmental implications of proposed legislation and other legal instruments.

Pensions advisors – Stage 2

3.5.7 Role of pension/insurance specialists in establishing the legal and regulatory framework

3.5.7.1 Institutional development

The draft regulations that govern the sector once PPI has been introduced must, where appropriate, address issues such as the transfer of staff to the new entities, the transfer of pension funds and the treatment of other benefits.

A Pension/insurance specialists provide this input to the legal and economic advisors.

3.6 Role of advisors in stage 3 – tendering the contract

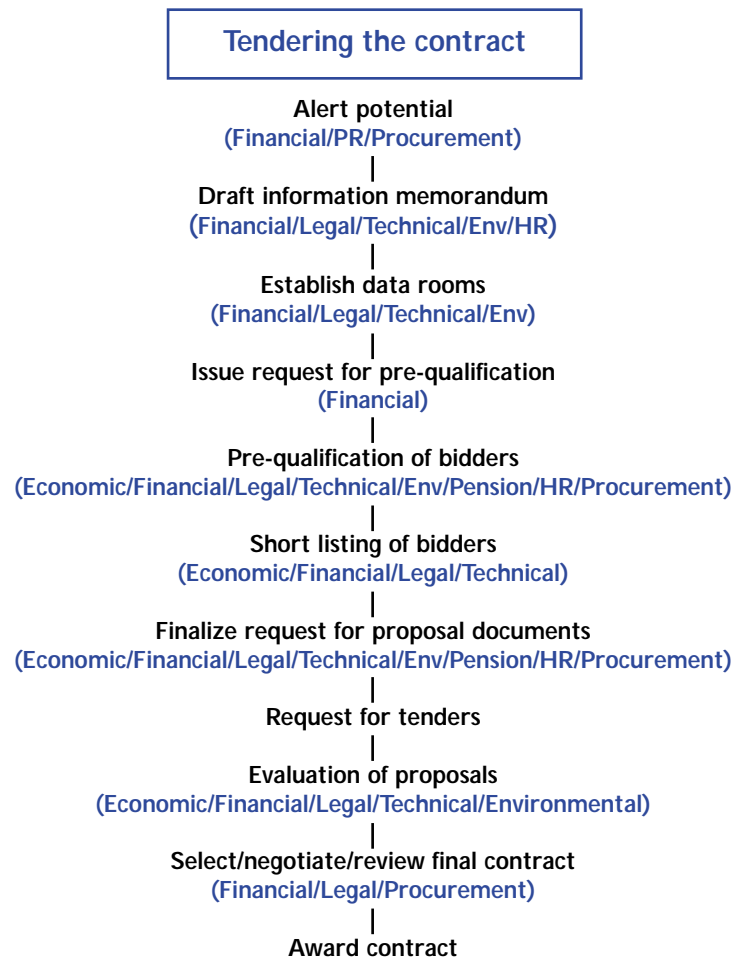


Table 3-5
Role of advisors in stage 3 – tendering the contract

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Alert potential bidders		Financial advisors will play a key role in publicizing potential investment opportunity to investors			May be required to co-ordinate and input into publicizing potential investment opportunity to investors				Advise throughout stage 3 on best approach to meeting objectives, how to present information and conduct bid
Draft information memorandum		Will draw up memorandum and will advise on its dissemination	Main input will be to draft legal and compliance sections	Will be required to provide sufficient technical detail to allow potential investors to determine whether they are interested in the project		Will provide further details on extra costs of environmental obligations that will be borne by the winning bidder	Will need to provide information on existence of pension funds and other benefits that will become responsibility of successful bidder	Will be required to provide information on the size and qualifications of existing workforce	

Key




-  Lead advisor
-  Significant involvement
-  Minor or optional involvement

Table 3-5 (continued)

Role of advisors in stage 3 – tendering the contract

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Establish data room		Financial advisor will oversee assembly of material and will coordinate with other advisors on its input	Will have responsibility for organizing limited access to data room and any required confidentiality agreements	Will advise on technical documentation placed in data room so potential investors can determine their interest in the project		May be required to specify documents to be placed in data room			
Issue request for pre-qualification		Will advise on how best to market opportunity to potential private sector investors							
Shortlisting	Will have knowledge of companies from other countries and will be able to advise on economic content of pre-qualification submissions provided for purposes of shortlisting	Will review the pre-qualification submissions. May be required to review financial standing of bidders to ascertain their ability to participate in the project	Will need to advise on information to be provided in any notice inviting enquiries	Input will be central in deciding criteria against which potential bidders are judged and in the evaluation process					

Table 3-5 (continued)


Role of advisors in stage 3 – tendering the contract

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Prepare final request for bid proposals	Will write or review the economic sections of request for bid proposals	Will brief bidders, prepare preliminary financial models and examining effect of the financial requirements on ability of project company to service debt	Will prepare outline or draft contracts sent to pre-qualified bidder	Will prepare all technical sections, schedules and drawings to be included in bid documents		Should outline further details on extra costs of environmental obligations that will be borne by winning bidder	Should provide information on existence of pension funds and other benefits that will become responsibility of successful bidder	Will provide information on staffing levels and payments	May need to check request for proposals to see that it is consistent with procurement strategy
Evaluate bids	Will review economic sections of the bids	Will be required to assess financial viability of bids	Will undertake analysis of any proposed amendments to draft agreements contained in bidding documentation	Will have substantial input into evaluation process		Will ensure that bids meet required standards set out in request for proposals			
Negotiate final contract		Will be required to assist in the negotiation and finalization of a range of issues	Will assist in negotiations to secure agreement on the PPI arrangement. Will draft PPI agreements and documents as commercial negotiations conclude						May be involved in final contract negotiation

3.6.1 Role of economic advisors in tendering the contract


3.6.1.1 Shortlisting

Given the central role played by economic advisors in the reform process, they should have an input, along with the other advisors, in the shortlisting of the companies. Typically, they have knowledge and experience of the companies from other countries or regions. If the shortlisting is based on a form of technical proposal, the economic advisors may evaluate the economic content of the proposal.

 **The economic advisors will provide input on the economic aspects of shortlisting.**

3.6.1.2 Prepare final request for proposals.


The economic advisors will typically have a relatively small role in the preparation of the final request for proposals. Their input will be either in writing the economic sections or in reviewing the request for proposals to ensure consistency with the regulatory framework or concession contract and the choice of PPI.

 **The economic advisors will draft the economic sections of the request for proposals.**




 Analysis or advice (often provided as a presentation)

 Report

 Model (technical or financial)

 Draft documentation

 Training

 Icons with multiple borders (e.g., ) indicate outputs produced by advisors that are submitted **directly to government officials**; those with single borders, (e.g., ) , indicate outputs produced by advisors that form an **input to the work of other advisors**.

3.6.1.3 Evaluate proposals

The role of economic advisors in the evaluation of proposals will possibly be limited to the economic sections. At a more detailed level, if bidders are suggesting alternative approaches to the same project (e.g., one demanding more guarantees than another), the economic advisors, along with their financial counterparts, should be able to evaluate the risks of the different proposals from the government's perspective.

- A** Throughout the third stage of the PPI process, the economic advisor will be required to provide advice on the economic content of proposed tender documents and bids.

3.6.2 Role of financial advisors in tendering the contract

3.6.2.1 Alert potential bidders

Financial advisors, possibly along with public relations specialists, will play a key role in publicizing the potential investment opportunity to investors. This will be a particularly important role in countries where capital markets are weak.

3.6.2.2 Draft information memorandum

The information memorandum will set out what the government is hoping to achieve, the scope of the proposed project, indicative financial and operational performance data, a description of the market structure, regulatory arrangements, the government's plans for implementation, and the deliverables it expects from the private sector investor. As one of the main parties supporting the government in its interaction with potential private sector partners, the financial advisors are best placed to advise on how to draw up the memorandum, and on its content and dissemination. However, they will need to ask for inputs from the other advisors for some of the content.

- D** The financial advisor will draft the information memorandum or provide advice to officials on how to do it.

3.6.2.3 Issue request for pre-qualification

The financial advisors will assist the government in defining how best to market the opportunity to potential private sector partners. This will involve conducting market soundings, drafting the advertisement to conform with relevant national and international procurement rules and, if necessary, raising awareness through relevant industry publications. The financial advisor should have extensive contacts within the investor community and should therefore be well placed to assess market demand both for the project itself and for variations of the same project (e.g., asset sale versus concession). This process may involve explaining the opportunity to potential private sector bidders.

Public relations consultants are also well placed to undertake some of these activities (see Section 3.6.5). Which advisors undertake the task will depend on their relative skills and costs, and the packaging of the Terms of Reference for advisors.

3.6.2.4 Shortlisting

The financial advisor, along with government officials, will review pre-qualification submissions. The information required and the process that determines the shortlist depends heavily on the weights attached to financial and technical criteria. However, this may involve detailed evaluation of the financial standing – perhaps using published financial reports and other available background information – of companies forming bidding groups to ascertain their financial ability to participate successfully in the project. The financial advisor may consider key financial indicators, such as turnover, profit, net worth, cash flows, gearing levels, and contingent liabilities, in deciding which bidders to select for the shortlist. In addition, advisors may evaluate other relevant background information, such as the bidder's track record of involvement in similar projects and its general technical expertise.



The financial advisor will provide advice on the pre-qualification criteria.

3.6.2.5 Establish data rooms

Data rooms contain commercially confidential information relevant to the bid that cannot be released to the public as a whole (see Module 2). Clear, informative data rooms are an important ingredient in attracting new investors. Lack of accurate data is often a difficulty in developing countries. Consequently, collecting and collating the data should begin once the form of PPI has been decided so that it is ready at this stage. The financial advisors should oversee the assembly of the material and co-ordinate with the other advisors on the content of the data room.



The financial advisor will oversee the assembly of material for the data room.

3.6.2.6 Prepare final request for bid proposals

The financial advisor will prepare the financial sections of the request for proposals. The financial advisor will ensure that the bidders, in meeting the financial requirements set out in the documentation, demonstrate the strength of the project company's ability to service the debt in the event of the occurrence of unforeseen events e.g. construction delays, cost overruns, delay in start of operations.

The financial advisor, in consultation with the government, the other advisors and any donors that are involved, will establish an evaluation procedure and develop criteria to evaluate and rank the bids.

3.6.2.7 Evaluate bids

A cross-section of government officials, financial, legal, economic and technical advisors and, occasionally, any donor agencies involved should undertake the evaluation of the proposals. All parties should have a clear understanding of the evaluation criteria and marking scheme, which will have been developed prior to issuing the request for proposals. One of these parties should be responsible for the overall coordination of the marking, usually the government or the financial advisor.

The financial advisors may assess whether bidders are internally consistent and bids are based on reasonable assumptions. They may also make checks on the quality of the service provider's proposed management team and the proposed arrangements for managing the project.

The financial advisor, in consultation with the government, the other advisors and any donors that are involved, will establish an evaluation procedure and develop criteria to evaluate and rank the bids. They may also provide assistance in briefing bidders and conducting clarification meetings.



Financial advisors will assist in the evaluation of bids.

3.6.2.8 Negotiate final contract

During this stage, the financial advisor will be involved in the detailed evaluation of the proposed contract and will advise the government during negotiations. The negotiations will often involve detailed considerations of the proposed contract; even minor changes may have a substantial impact over the length of the contract. Therefore, the financial advisors should be fully involved in advising the government as issues are raised and changes proposed. The financial advisor will also assist in the negotiation and finalization of issues such as:

- direct agreements with banks;
- insurance;
- termination compensation;
- staff transfer issues and pension rights;
- swap pricing;
- indexation factors;
- parent company guarantees;
- payment mechanisms; and
- any performance-related schemes.

They may co-ordinate with other specialist advisors, particularly legal advisors, in some of these areas.



The financial advisor will provide advice on the financial aspects of bidders' proposals to the government during negotiations.

3.6.3 Role of legal advisors in tendering the contract

3.6.3.1 Information memorandum

The legal advisor will need to be involved, in conjunction with the economic, financial and technical advisors, in the drafting of the information memorandum. The main input of the legal advisor will be the legal and compliance sections of the memorandum. The information memorandum will summarize the legal environment against which the PPI project will be undertaken. The legal advisor will prepare it.



The legal advisor will draft the legal components of the information memorandum

3.6.3.2 Shortlisting

The legal advisor will need to be involved, in conjunction with the financial and technical advisors, in agreeing to the mechanics of the pre-qualification process.

The legal advisor will need to advise on the information to be provided in any notice inviting enquiries. The legal advisor, together with the economic, financial and technical advisors, will be involved in the setting up and management of the data room. Shortlisted bidders will have a legitimate interest in specific project information, as well as in requesting clarification and discussions on the contract documentation. This will involve the compilation of a database of relevant information covering potential investors, potential contractors and background information relevant to the program. The legal advisor will assist in this process. Decisions will need to be made on the extent to which bidders can photocopy or otherwise reproduce data for their own use. Legal advisors will also be responsible for organizing limited access to the data room.

Finally, legal advisors may be responsible for drafting and monitoring the confidentiality agreements signed by companies with access to the data room.

A **The legal advisor will have responsibility for organizing access to the data room.**

3.6.3.3 Preparation of request for bid proposals

The legal advisor will need to prepare any outline or draft contracts to be sent to the pre-qualified bidders.

D **The legal advisor will prepare draft contracts.**

3.6.3.4 Evaluation of final bids

The legal advisor will have two main tasks in evaluating bids. The first is to determine that the bid is compliant in terms of the contract. This will involve a detailed comparison of the bid with the draft contract, on a clause-by-clause basis. This task will typically require a mix of skills – corporate, commercial and financial, as well as employment expertise.

The second is to review security arrangements and enforcement of the contract, and to establish whether the proposed terms and conditions protect the government against failure. Typically, legal advisors will work with financial advisors to determine the adequacy of security arrangements and the scale of risks to the government.

A **Legal advisors will ensure that all bids are compliant with the terms of submission.**

3.6.3.5 Negotiate final contract

Once a bidder has been selected, the legal advisor will play a major role in the negotiations to secure agreement on the PPI agreements and other documents. Usually it will be the government's role (or that of the relevant governmental agency, e.g., a central tender board) to contact the PPI parties. However the government may choose to delegate this role to the legal advisors (usually the consortium leader) to contact the PPI parties on its behalf. The PPI parties will usually be contacted by letter, which may be preceded by a telephone call.

The negotiations can be long and time-consuming and the legal advisor will prepare further drafts of all PPI agreements and documents as the commercial negotiations reach a conclusion. The legal advisor will have primary responsibility for ensuring that the final commercial agreement is properly reflected in the agreements and other documents.

3.6.4 Role of technical advisors in tendering the contract

3.6.4.1 Draft information memorandum

The information memorandum should contain sufficient technical detail to enable potential investors to determine whether or not they are interested in the project. The technical advisor should therefore co-ordinate closely with the financial advisor on the drafting of the memorandum. The technical component of the information memorandum will include the following:

- an asset registry;
- current operating and performance data;
- schematics/maps indicating the location of infrastructure and customers; and
- plans for capital improvement.

D **The input will be provided to the financial advisors.**

3.6.4.2 Shortlisting

In many projects, the technical qualifications of the companies will be the most important factor determining the shortlist. While the final selection may depend partly or wholly on the basis of price, shortlisting is often based on the technical qualifications of the companies. Consequently, the technical advisor should be central in deciding both the appropriate criteria and the subsequent evaluation in the formation of the final shortlist.

3.6.4.3 Establish data rooms

As with the information memorandum, it is vital that the data rooms contain enough information to inform interested investors. However, the data room should also contain all currently available information on the technical specifications of the system, including any preliminary analysis the advisors have undertaken on future investment needs.

3.6.4.4 Prepare final request for bid proposals

The technical advisor is responsible for the preparation of all the technical sections, schedules and drawings of the bid documents and also assists in the preparation of the necessary technical requirements. The technical advisor should also assist in preparing the technical evaluation criteria and the marking arrangements (see Module 6, *Volume II*).

D **The technical advisor will be responsible for preparing the technical sections of the request for bid proposals.**

3.6.4.5 Evaluate bids

The technical advisors are responsible for evaluating the technical sections of all bids received for the project, preparing a report, marking the technical sections of the bids, and ranking the bidders according to their technical responses to the bid

documents. This report will be submitted to the government or the financial advisor co-ordinating the marking.

D **The technical advisor will play an integral role in assisting with the bid evaluations.**

Stage 3 – Public Relations advisors

3.6.5 Role of PR advisors in tendering the contract

PR advisors will be involved in the PPI transaction and implementation stage, when the government is in a position to alert potential investors to a specific project. Failure to attract a sufficiently large pool of private sector investors capable of delivering the service to the appropriate standard will inevitably lead to problems later on. PR advisors will also promote the change in ownership to the public.

R **PR advisors will produce a report and presentations to attract private investors and ensure public support.**

3.6.6 Role of human resource advisors in tendering the contract

3.6.6.1 Draft information memorandum

The human resource advisors have an important input into the information memorandum. Often, one of the central issues in the introduction of PPI (particularly in the privatization of state-owned assets) is the size and qualifications of the existing workforce. The human resource advisors will outline the issues the new investor is likely to face if it assumes either ownership or management responsibilities.

3.6.6.2 Prepare final request for bid proposals

The final request for proposals should contain more detailed inputs from the human resource advisors under the same headings as those in the information memorandum. This should include an analysis of the current staffing arrangements and a preliminary assessment of future requirements.

A **This input will be provided to the financial advisors.**

Stage 3 – Environmental advisors

3.6.7 Role of environmental advisors in tendering the contract

3.6.7.1 Draft information memorandum

The environmental advisor should outline in detail in the information memorandum any specific investment related to the environment, or to mitigation of the environmental impacts of the project, that the bidder would need to undertake. In particular the information memoranda should reference specific legislation that the bidders would be expected to comply with, and should establish the minimum standards for pollution, environmental emissions and other impacts.

3.6.7.2 Prepare final request for bid proposals

Any further details on extra costs that will be borne by the winning bidder because of environmental concerns or mitigation requirements should be outlined in the final request for proposals.

3.6.7.3 Establish data room

Environmental advisors may be required to provide input on the documents to be placed in the data room.

3.6.7.4 Evaluate bids

Environmental advisors will review all bids received to ensure that they meet the minimum environmental standards contained in the request for proposals.



The environmental analysis will form part of the final government decision.

3.6.8 Role of procurement strategist in tendering the contract

A procurement strategist can assist in ensuring that the final request for proposals and the evaluation process are fair and transparent.



The advisor will advise the government on the appropriate approach to the procurement process.

3.7 Role of advisors in stage 4 – managing the PPI contract

Figure 3-7

Advisors used in stage 4 - managing the PPI contract




- A** Analysis or advice (often provided as a presentation)
- R** Report
- M** Model (technical or financial)
- D** Draft documentation
- T** Training
- Icons with multiple borders (e.g., ) indicate outputs produced by advisors that are submitted **directly to government officials**; those with single borders, (e.g., **A**), indicate outputs produced by advisors that form an **input to the work of other advisors**.

Table 3-6
Role of advisors in stage 4 – managing the PPI contract




Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Establish team								Will be required to advise on required staffing levels and structure of new team	
Monitor contract	May be required to provide ongoing support either to government or regulatory body overseeing contracts and licenses		Will advise on such issues as compliance with the PPI project agreements, record any variation or amendment to the project agreements and assist in conflict resolution	Will assess whether private sector contractors have met required standards in relation to asset maintenance and investment					
Review performance indicators	Can advise on incentive effects of performance indicators								

Table 3-6 (continued)

Role of advisors in stage 4 – managing the PPI contract

Tasks	Economic advisors	Financial advisors	Legal advisors	Technical advisors	PR advisors	Environmental advisors	Pension/ insurance specialists	HR consultants	Procurement strategists
Evaluate reform	May be involved in evaluation of reform	May provide support on evaluation		May provide support on evaluation		May provide information on environmental impacts of reform			May be involved in evaluation
Renegotiate contract (if applicable)	May provide input on pricing and tariffs	May provide financial modeling	Will draft any amendments to contract and advise on implications of these	Will be responsible for establishing new contractual requirements relating to technical standards					May assist in contract evaluation

Key

-  Lead advisor
-  Significant involvement
-  Minor or optional involvement

3.7.1 Role of economic advisors in managing the contract

3.7.1.1 Review performance indicators

The task of monitoring the contract will mainly fall to the team established within the government to take the PPI program beyond the stage of contract award. However, economists can provide advice on the incentive effects of performance monitoring and possible distortions to behavior.

3.7.1.2 Evaluate reform

The task of monitoring the extent to which the PPI reform has been a success will fall to government officials or, where these exist, to an audit office or commission. However, depending on the scale of the reform, some of this work may be contracted out to economists. The range of issues addressed within the evaluation will reflect the original objectives of the PPI program and may include the extent to which the private sector provider maintained levels of service and quality standards or the success of the program in driving down tariffs.

R The economic advisor may provide a report evaluating the reform.

3.7.1.3 Contract renegotiation

Under limited circumstances the terms and conditions contained in the contract will need to change as a result of pre-specified changes of circumstances. This may require renegotiation of some elements of the contract (e.g., tariffs) before its expiry. Economic advisors may have a role in assessing whether renegotiation should take place and in supporting the government during the renegotiation if it proceeds.

A The economic advisors will provide support should there be any changes or challenges to the regulatory regime or contract.

3.7.2 Role of financial advisors in managing the contract

3.7.2.1 Contract re-negotiation

Financial advisors may be involved in aspects of contract re-negotiation. In particular, they will advise officials on financial modeling.

3.7.3 Role of legal advisor in contract management

3.7.3.1 Monitor contracts

The legal advisors will have a limited role in contract management. They may provide the government with advice on breaches of particular contractual terms.

3.7.3.2 Contract re-negotiation

Legal advisors will play a substantial role in any contract re-negotiation. They will be involved in the drafting of any amendments to the contract and will be able to advise the government on the implications of specific terms and conditions.



The legal advisor will be required to draft any contract amendments.

Stage 4 – Technical advisors

3.7.4 Role of technical advisors in contract management

3.7.4.1 Monitor contract

Technical advisors may be involved in evaluating the extent to which private sector providers meet the required asset maintenance, operational and investment standards.

3.7.4.2 Renegotiate contract

Technical advisors will be responsible for establishing new contractual requirements relating to technical standards.

Stage 4 – Human Resource advisors



3.7.5 Role of human resource advisors in contract management

3.7.5.1 Establish team

The introduction of PPI will require some reorganization of existing staff into newly created posts or units within the existing government or public sector institutional structures, in order to assist with performance monitoring or liason with the relevant regulatory institutions. Human resource advisors, perhaps in conjunction with the key advisors need to implement substantial training programs.

Consultancy terminology

To get the best out of advisors it is useful to be aware of the terminology they use. The following glossary sets out some of the terms consultants use in their day-to-day business.

Billable time – time spent on work that can be charged to the client.

Capability statement – document describing a consultancy's expertise and experience: also known as Statement of Qualifications.

Development – work undertaken by consultants in order to develop a company's capability.

Loss leader – unprofitable work undertaken in order to gain entry into a market.

Per diem – can mean daily fee rates but usually means the money required to cover daily meals, local travel and hotel expenses.

Productive days – the number of days per year that can be charged to a client.

Proposals – the documentation consultants provide to governments or project sponsors who wish to select advisors, often split into financial and technical components.

Request for proposals – the documentation sent to potential consultants or bidders. It comprises a letter of invitation, the terms of reference, and information about the format for proposals and the timetable and form of the evaluation process.

Terms of reference – detailed description of the tasks that consultants will be required to undertake, the range of deliverables, and the timetable.

Time and materials – payment based on the amount of time taken to undertake a task and the cost of any materials or other expenses incurred.

Travel and subsistence – part of the budget set aside to pay for the travel costs and living requirements of consultants involved in work undertaken outside of the consultants' offices; also referred to as out of pocket expenses.

Utilization rates – the proportion of a year spent on billable work. This is likely to be lower for more senior staff with responsibilities for marketing and bringing in new work.

Work in progress (WIP) – occurs when either the work has been undertaken but the consultant has not yet billed the client or where the work has not been undertaken but the consultant has received an up-front payment.

3.8 Local advisors

While there are compelling reasons to select advisors with international experience, local advisors will often have an important role to play in the PPI process

There are three main reasons for selecting local advisors:

- (1) They know and understand the country in question.
- (2) They serve as a conduit for transferring knowledge and building local capacity.
- (3) They may be more qualified than international consultants.

Advisors used for the first and second reasons are likely to undertake tasks that allow them to use their local knowledge, while learning from the international advisors about wider issues.

These tasks include those demanding specific knowledge of the country, such as:

- gauging and acquiring stakeholder support;
- analyzing, translating and explaining current laws and regulations;
- advising on the current regulatory environment;
- drafting new legislation and other legal instruments;
- valuing assets;
- liaising with the existing workforce; and
- ensuring smooth public relations.

For these tasks it may be useful to create teams of local and overseas consultants. The use of secondments provides an alternative way of establishing knowledge transfer. A team of both local and international advisors should ensure that consultants lacking experience of local conditions do not devise recommendations that are inappropriate for that country. It also provides a mechanism for allowing knowledge transfer – an important consideration if countries are not to become consultant-dependent.

Market forces will ultimately determine the appropriate level of remuneration of local advisors. Only local advisors used for the third reason—that they are the most qualified to undertake the work—are likely to command international fee rates (see Module 4). However, when this is the case, those fee rates should not be refused on the basis that the advisors happen to be local. In addition, the fee rates that local advisors will be able to charge may depend upon whether they are hired directly by the government, or whether they form part of the consortium of consultants that bid for the contract to provide advisory services. In the latter case, where there are few qualified local companies available to undertake their work, the local advisors may be able to negotiate high rates if they subcontract themselves to one of the many overseas consultancies putting together a team for the work (see discussion on forming consortia in Module 4).

Rather than employing consultants working in small local companies to contribute to tasks where local knowledge is required, it is worth bearing in mind that some of the larger consultancy and accountancy companies have offices in a large number of countries. These may offer an alternative route to local expertise.

Module 7 in *Volume III* discusses in more detail how to include local consultants in the evaluation of technical proposals.

3.9 Use of advisors by potential investors

Officials should be aware of how investors or bidders make use of advisors in the bidding process so the government can avoid potential conflicts of interest.

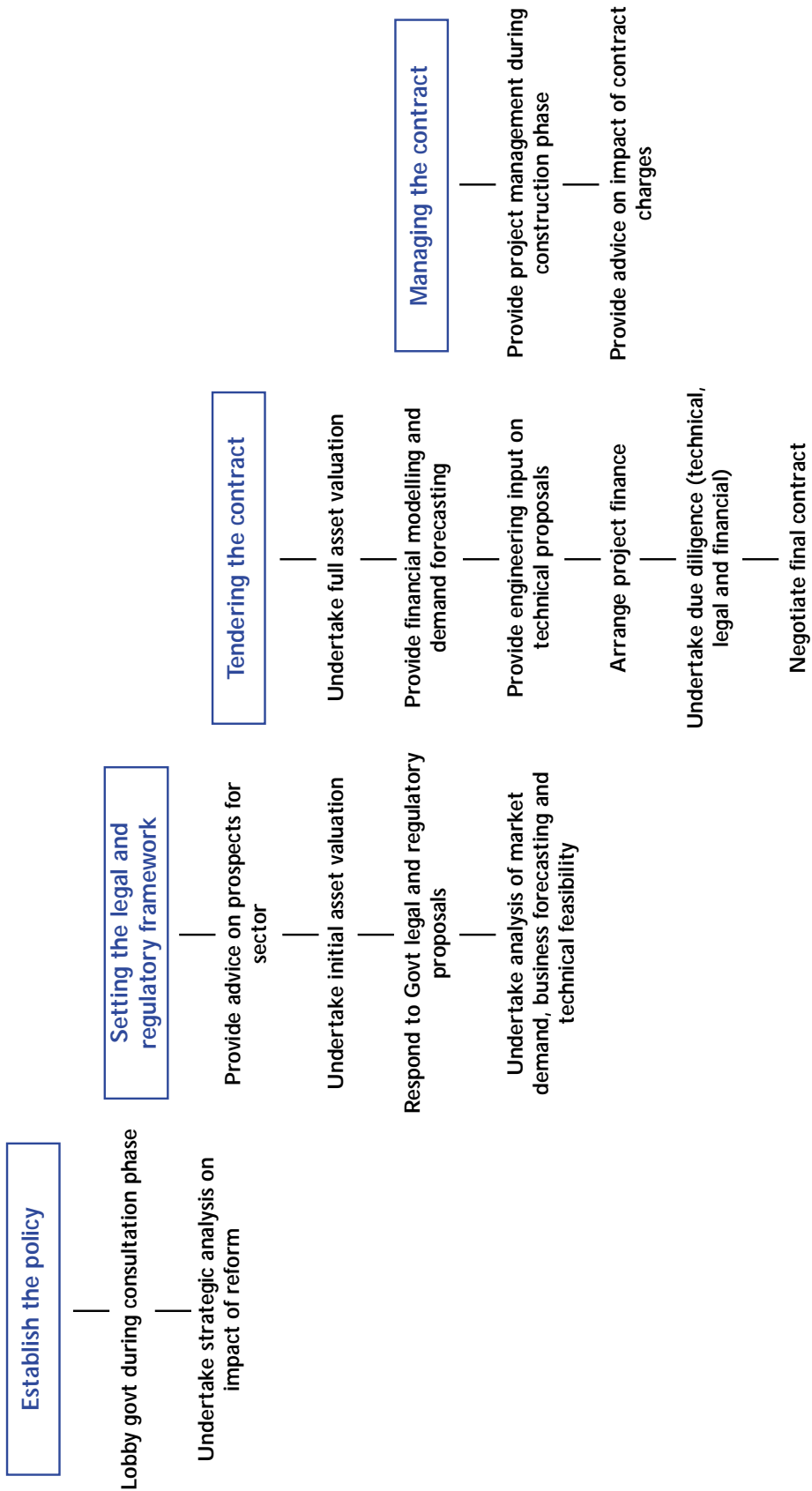
Private investors and bidders will be likely to use advisors if:

- they require lead advisors to manage a group of independent advisors;
- they do not have sufficient in-house expertise in specific areas; or
- they believe that, with the use of advisors, the overall cost for a specific project will be lower.

Investors' use of advisors largely mirrors governments' use because most of the tasks discussed have their private sector counterpart. The private sector consortia will use a similar set of advisors to the government, particularly when bidding for and implementing PPI projects. In fact, they may use the exact same advisors that the government has used in the past on similar projects or in other sectors. Given the choice, many consultants would prefer to work for investors since they generally pay higher rates. (See the discussion on conflicts of interest in Module 7 in *How to select and manage advisors, Volume III*).

The following figure illustrates the type of advice that advisors will provide to bidders at each stage of the PPI process.

Figure 3-8
Use of advisors by the private sector



3.9.1 Use of advisors during stage 1—formulating the policy

The use of advisors by the private sector during this stage is likely to be limited for the simple reason that the government will still be formulating its policy. Nevertheless the private sector may work with consultants:

- in responding to government consultation papers on the potential direction of government policy;
- when lobbying the government to encourage it to go down a particular route; and
- in devising a long-term strategy to enable them to respond quickly to any government reforms.

3.9.2 Use of advisors in stage 2—establishing the legal and regulatory framework

Again, the use of advisors will be limited because most of the tasks undertaken during stage 2 relate to information-gathering before the government issues the request for proposals. However, the private sector may use advisors once the request for proposals has been sent (and to a lesser extent once the government has received the expressions of interest) to undertake preliminary work including:

- background sector advice on the prospects for the sector;
- initial asset valuations so that potential bidders can decide whether they want to proceed; and
- response to government proposals about new regulations and legislation and tariff-setting.

3.9.3 Use of advisors in stage 3—tendering the PPI contract

It is during this stage that the use of advisors by the private sector is likely to be greatest. Most private sector consortia (excluding very large multinational companies) will use a financial advisor during the bidding and implementation stage. Similarly, unless members of the private sector consortium have experienced in-house lawyers, it will hire external legal advisors. Even if in-house expertise is available, consortia often use outside advisors to try to elicit a more impartial opinion than may be provided by in-house experts. In both cases these services will be utilized up to the point of financial close. The bidder may also require technical advisors, depending on its in-house capabilities. Private sector bidders might hire advisors for the following:

- due diligence, which involves assessing the legal and financial standing of the company, if the form of PPI is a sale of state assets or the bankability of a greenfield or concession project;
- to provide the financial structure, financial plan and financial and procurement strategy;
- to provide a cash flow program to identify tolls, tariffs or service charges for a greenfield or concession project;
- to conduct full-scale asset valuations;
- for the purposes of design (for example, IT systems and engineering input in the technical proposal);
- to carry out a technical due diligence of the project documentation and to establish capital and operating costs for a greenfield or concession project; and
- to carry out an assessment of any environmental impacts.

The project financiers, legal advisors and insurance advisors will also provide advice once the bidding consortium has been selected as the preferred bidder. The tasks advisors will undertake include:

- carrying out due diligence on all the technical and legal aspects of the project, prior to any commitment to lend to the project company. The legal advisors will continue to assist until financial close or bond issue;
- carrying out a technical due diligence of all technical aspects of the project itself and the specific bid; and
- negotiating the final contract, which will particularly involve financial and legal advisors, although economic and technical advisors will provide advice on the impact of any changes to the contract.

Once the contract has been awarded, or while the contract is being negotiated, the financial and legal advisors will assist the selected bidder in negotiating the financial documentation and all supporting contracts until financial close.

3.9.4 Use of advisors in stage 4 – managing the contract

Once the contract has been awarded, it is likely that the private sector will mostly rely on technical expertise during the construction and operation phase. In addition advisors might be brought in to:

- act as project managers during a construction and operation phase; or
- provide advice on any changes to the contract agreement – e.g., changes in price in response to pre-agreed changes in circumstances.

Finally, it is during this stage that economic advisors are used most. They will advise companies on a wide range of issues, depending on the form of PPI but including:

- price reviews and other regulatory proceedings;
- competition issues;
- pricing strategy vis-à-vis customers; and
- profit-maximizing strategies in more sophisticated markets.

Useful Reading

HM Treasury, *How to Appoint and Manage Advisors to Private Finance Initiatives*, Technical Note, 2000

Trivedi, P, *How to Implement Privatization Transactions: A Manual for Practitioners* World Bank and Harvard University Routledge, 2000