

Overview of the framework

Need for a framework

It is well recognized that education is a pre-requisite for the growth and development of a modern and equitable socio-economic order. It is essential for empowering and enabling the economically weaker sections of the society to participate more fully in a democratic polity that identifies equality of opportunity as one of its cherished goals. Over the last 60 years, successive Governments have been committed to achieving the national goal of universal education and have steadily increased the budgetary allocation for education. At present, the expenditure on education in India is about 3.7 per cent of the GDP and this needs to be increased to at least 6 per cent of the GDP, especially for addressing unequal access to education in rural areas and among the urban poor.

Universal education is a key objective

The provision of universal school education is a complex task of gigantic proportions in a country like India. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 makes eight years of elementary education the fundamental right of all children. However, addressing the quality of education in schools is critical for the effective development of human capabilities and for achieving the objective of equality of opportunity, especially in respect of access to education for the underprivileged families.

For providing good education to students from economically weaker families, the challenge lies in supporting the recurring costs over time. The engagement with PPP schools must, therefore, rely on continuous financial support over the years in return for agreed outcomes in terms of quality education. Such an arrangement would require a clear and comprehensive framework that addresses the concerns of the government as well as the private partner. This volume responds to the need for evolving a model document that reflects best practices, particularly from the perspective of public policy, for making quality education accessible to the underprivileged.

For setting up schools on Design, Build, Finance, Operate and Transfer (DBFOT) basis, a precise policy and regulatory framework is being spelt out in this volume comprising a Model Concession Agreement (MCA). This framework addresses the issues which are typically important for inspiring confidence among potential investors, and includes diverse aspects such as mitigation and unbundling of risks; allocation of risks and rewards;

Comprehensive framework is a pre-requisite for PPP

symmetry of obligations between the principal parties; precision and predictability of costs and obligations; reduction in transaction costs; force majeure; and termination. It also addresses other important concerns such as transparent and fair procedures, dispute resolution and provision of Financial Support by the government.

Access to underprivileged students

The Concessionaire, who would be a trust, society or a not-for-profit company, is expected to build and manage the School in accordance with the CBSE Guidelines, Good Education Practice, Applicable Laws and the standards specified in this document. The School should have the capacity to teach about 1,000 children from underprivileged families, referred to in this document as Select Students. The Concessionaire will have the freedom to admit other students, not exceeding 1,500 on the condition that at least 40 per cent of the total number of students in the School shall be Select Students. The State Government shall provide Financial Support for the Select Students while the Concessionaire would be free to charge market based fees from other students, subject to Applicable Laws.

Support for underprivileged students

Obligations of the Concessionaire

The Concessionaire shall build the School and obtain affiliation from the Central Board of Secondary Education (CBSE) before claiming any Financial Support from the Authority. It shall strive to provide education of a high quality and towards this end, the MCA deals with issues such as appointment and emoluments of teachers, training of teachers, attendance of students and teacher, facilities and amenities in the School, curriculum and other activities aimed at ensuring a holistic development of the students.

Affiliation

The MCA permits the School to obtain provisional affiliation from CBSE. However, permanent affiliation must be obtained within a period of four years of provisional affiliation. The Schools are expected to follow CBSE norms for infrastructure and delivery of education including, *inter alia*, land, curriculum, medium of instruction and assessment. This would ensure uniformity of standards across PPP Schools.

Affiliation and uniformity

Output parameters

Unlike the normal practice of focussing on construction specifications, the technical parameters proposed in the MCA are mainly based on output specifications, as these have a direct bearing on the level of service.

Output parameters will focus on the level of service

The MCA lays down the parameters relating to the quality of education to be provided to the students. Such quality shall be measured in terms of learning outcomes and key performance indicators.

In sum, the framework focuses on the ‘what’ rather than the ‘how’ in relation to the delivery of services by the Concessionaire. This would provide the requisite flexibility to the Concessionaire in evolving and adopting efficient and cost-effective methods of service delivery without compromising on the quality of education. Efficiencies would occur because the shift to output-based specifications would provide the Concessionaire with a greater opportunity to innovate and optimise on service delivery.

Performance standards

The document emphasises not only the scholastic domain, but also the co-scholastic activities comprising holistic development of the students. The framework identifies benchmarks for learning outcomes and key performance indicators such as performance in curricular and co-curricular activities, score for accreditation, attendance of teachers and students, and dropout ratio. It specifies penalties for continued failure in achieving the requisite levels of performance while providing incentives for better performance.

Assessment of learning outcomes and key performance indicators

The learning outcomes specify the benchmarks for performance in examinations, including the Board examinations. The benchmarking has been done in terms of the minimum average marks for various exams conducted by CBSE for Classes IX-XII. The benchmark has generally been provided as the national average marks as declared by CBSE. Such an assessment of the performance aims to provide a feedback about the transactions in the classrooms and the quality of delivery.

The key performance indicators specify the attendance rate, the dropout ratio and the repetition rate that the School Management shall strive to achieve. For the assessment of quantitative and qualitative performance indicators of the School, accreditation under the School Quality Assessment and Accreditation Scheme of the CBSE has been prescribed along with the minimum accreditation score that the School should strive to secure. Incentives for awards and honours received by the students and teachers have also been specified. For monitoring of the above learning outcomes and key performance indicators, periodic reporting has prescribed.

Accreditation by CBSE

Financial Support

In hard infrastructure projects which are capital intensive, viability can

Tuition Support and Debt Service Support

normally be achieved by provision of a viability gap grant upfront. However, for services like education, support to the private partner needs to be provided for meeting the recurring expenditure that constitutes bulk of the cash outflows of the project, in addition to a capital grant for bridging the viability gap of individual projects. It is, therefore, proposed to provide Tuition Support for meeting the salaries of teachers plus an in-built additional amount equal to 20 per cent thereof. Annual support for Debt Service would also be provided to enable the Concessionaire to defray part of its capital investment which cannot otherwise be recovered from Select Students who will be dependent on government support for bearing the costs of their education.

Concession period

A period of 30 years has been specified as the concession period, which could be extended by a further period as may be mutually agreed upon by the Parties. This long period is considered sufficient for the School to establish itself and improve its sustainability. Government support, however, will be restricted to a period of 15 years whereafter it will be governed by the extant schemes of the Government.

Concession period to be thirty years

Selection of Concessionaire

Selection of the Concessionaire will be based on open competitive bidding. All project parameters such as the concession period, fees, government support, price indexation and technical parameters are to be clearly stated upfront and short-listed bidders will be required to specify the grant they wish to seek from the Government. The bidder who seeks the lowest grant or provides the highest premium should win the contract subject to a maximum viability gap grant of 40 per cent of the project cost.

Competitive bidding based on capacity will be the norm

Risk allocation

As an underlying principle, risks have been allocated to the parties that are best able to manage them. Project risks have, therefore, been assigned to the private sector to the extent it is capable of managing them. The transfer of such risks and responsibilities to the private sector would increase the scope of innovation leading to efficiencies in costs and services.

Risk allocation and mitigation are critical to private investment

The commercial and technical risks relating to construction, operation, maintenance and management are being allocated to the Concessionaire, as it is best able to manage them. Other risks such as the admission of students have also been allocated to the Concessionaire. On the other hand, all direct and indirect political risks are being assigned to the Government.

Construction

Procurement of land for the School is being proposed as a condition precedent to be satisfied by the Authority before the Agreement comes into effect.

The MCA defines the scope of the project with precision in order to enable the Concessionaire to determine its costs and obligations. Before commencing School operations, the Concessionaire will be required to subject the School Infrastructure to tests in accordance with Good Industry Practice for quality assurance.

Construction quality must be ensured

Management and Operation

Management and operation of the School is proposed to be governed by pre-determined standards with a view to ensuring a high level of service for the students, and any violations thereof would attract stiff penalties.

Standards to be enforced

The MCA provides for a Managing Committee to be constituted in a representative manner with a view to safeguarding the interests of the students and for pursuing excellence in the functioning of the School. The Principal is proposed as the Chief Executive Officer of the School.

Right of substitution

The project assets do not constitute adequate security for lenders. It is the recurring support from the Government that constitutes the mainstay of their security. Lenders would, therefore, require assignment and substitution rights so that the concession can be transferred to another entity in the event of failure of the Concessionaire to operate and manage the project successfully. The MCA accordingly provides for such substitution rights.

Lenders will have the right of substitution

Force majeure

The MCA contains the requisite provisions for dealing with force majeure events of different classes. In particular, it affords protection to the Concessionaire against political actions that may have a material adverse effect on the project.

Protection against political actions

Termination

In the event of Termination, the MCA provides for a compulsory buy-out by the Authority. Termination payments have been quantified precisely as compared to the complex formulations in many agreements. Political force majeure and defaults by the Authority are proposed to qualify for adequate

Pre-determined termination payments

compensatory payments to the Concessionaire and will thus guard against any discriminatory or arbitrary action by the Government. Further, the project debt will be fully protected by the Government in the event of termination, except for three situations, namely, (a) when termination occurs as a result of default by the Concessionaire, only 75 per cent of the debt will be protected, (b) in the event of non-political force majeure such as Act of God (normally covered by insurance), only 50 per cent of the debt not covered by insurance cover will be protected, and (c) when termination occurs on account of Concessionaire Default during Development Period, the initial expenditure equal to 40 per cent of the Total Project Cost will be set apart and on the expenditure in excess of such 40 per cent, an amount equal to 75 per cent of the debt expended will be protected.

Monitoring and supervision

Day-to-day interaction between the Authority and the Concessionaire has been kept to the bare minimum following a ‘hands-off’ approach, and the Authority shall be entitled to intervene only in the event of default. Checks and balances have, however, been provided for ensuring full accountability of the Concessionaire.

Monitoring and supervision of operation and management is proposed to be undertaken through an Independent Panel. A system of periodic reporting has been specified to ensure the flow of information from the Schools to the Authority. A system of bi-annual feedback from students and parents regarding satisfaction from the services provided by the School has also been incorporated. A School Management Information System is proposed to be set up which shall capture essential data such as teacher and student attendance, human resource management, essential information related to students, financial information, etc. and enable display thereof on the website of the School.

A credible and fair arrangement for monitoring is essential

The MCA provides for a transparent procedure to ensure selection of well-reputed statutory auditors, as they would play a critical role in ensuring financial discipline. As a safeguard, the MCA also provides for appointment of additional or concurrent auditors.

Independent Panel

The MCA provides for the constitution of an Independent Panel, comprising three Independent Experts, for review of the functioning of each school. The Independent Experts shall be persons who have been Principals or are similarly qualified or experienced. The Independent Panel is expected to

inspect the School at least thrice a year and submit periodic reports to the Authority.

The Independent Panel shall make an assessment of the performance of the School and monitor compliance with the Concession Agreement. In the inspections that would be carried out by the Panel, special emphasis would be placed on learning outcomes and key performance indicators. The Panel would, *inter alia*, also review the performance of teachers and students and the functioning of School Management. They will also comment on the curriculum, School Infrastructure and other critical parameters. This system of independent review is expected to provide an objective and independent assessment of the functioning and progress of every school.

Optimal utilisation of School Infrastructure

The MCA enables optimal utilisation of the School Infrastructure by permitting the Concessionaire to use it for other educational and cultural activities. Additional revenues from such use would enable the Concessionaire to meet its uncovered expenses and make further investment in the School. The use of School premises for social, religious and political gatherings and functions is prohibited.

Use of School Infrastructure for educational and cultural activities

Equality of access

The MCA provides for non-discriminatory access to the facilities and opportunities offered by the School in accordance with Good Education Practice. It also provides for support to students from vernacular medium to enable smooth transition to the medium of instruction.

Centres of excellence

The Schools developed on this framework are expected to be centres of excellence and serve as a model for other schools in the vicinity. They are expected to share best practices with other schools so that they also benefit from such practices and innovative learning techniques.

Excellence is the key

Miscellaneous

The Concessionaire shall be responsible for providing mid-day meals, school uniforms and books to its students and shall also arrange an annual health check-up.

The MCA also addresses issues relating to dispute resolution, suspension of rights, change in law, insurance, indemnity, redressal of public grievances and disclosure of project documents.

Conclusion

Together with the Schedules, the proposed Concession Agreement addresses the issues that are likely to arise in the financing, operation and management of school education on PPP basis. The proposed regulatory and policy framework contained in the MCA is critical for attracting private participation with the concomitant efficiencies and quality education, especially for underprivileged children, as part of the national commitment to inclusive growth.

Private participation should improve efficiencies and reduce costs