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The announcement of the National Monetisation Pipeline by the Finance Minister is a very welcome step in the right direction. In trying to attract private capital into infrastructure, the UPA government made big mistakes in how risk was allocated between the private and public parties engaged in their ambitious program of PPP development.

Inverting The Old PPP Model The main thrust of UPA efforts was to mobilise private capital for new asset creation which meant that private parties were being asked to take not just the risk of operating infrastructure assets — toll roads, ports, airports, transmission lines, and the like — but also the risk of developing and constructing them. Given the challenge of acquiring land and obtaining clearances of various kinds from multiple authorities, the development and construction risks were too high for the private sector to bear. Not only did this lead to huge delays and dysfunctional behaviour by private developers trying to find creative ways of mitigating the risk they had taken on, but it also led to interminable contractual disputes that jammed up the courts, contributed to further delays and loan defaults that ended up severely damaging bank balance sheets.

That is why some of us have been arguing for years that the UPA PPP model should be 'turned on its head'. That is, the government should take the development and construction risk of creating new infrastructure. It should attract private capital by selling/leasing out operating assets i.e. by re-cycling government-owned brownfield assets.

This is precisely what the NMP aims to do, although it restricts itself — no doubt for good political reasons — to recycling only in the form of long-term concession agreements, not through outright sale to private parties. This is wise. The outright sale of brownfield assets would involve selling the associated government-owned land to a private party - a huge complication in the Indian context. The NMP builds instead on Nitin Gadkari's initiative in the road sector where several thousand kilometers of NHAI highways have been successfully given to private bidders in the form of long-term Toll-Operate-and Transfer concessions. The NMP broadens the scope of such concessions to 14 sectors with a goal of raising Rs 6 lakh crores to be deployed for the creation of new infrastructure projects identified in its National Infrastructure Pipeline over the next four years. What is laudable about the NMP is the scale of its ambition and the breadth of its scope. It sets out a clear principle and framework for how infrastructure development should be pursued and financed across the nation. Although the NMP is restricted to central government assets, there is no reason why it cannot be extended to cover state government assets as well.

Getting The Enabling System Right

This Time However, the mere announcement of the NMP does not guarantee its success. Indeed, what is not clear is whether or not this government has learned a second crucial lesson from the UPA government's experience with PPPs which is that we must also improve the design of long term concession contracts and build specialised capability to manage the inevitable legal disputes that will arise along the way. The Model Concession Agreements churned out by the UPA were much too rigid - no contract can foresee events that might occur over the 20-50 years over which concessions typically run.

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• Contracts must be designed to allow for some flexibility for addressing unforeseen developments (such as climate-related disasters, for example) and to prevent needless and longwinded litigation.

• Second, clear quality benchmarks must be set for the assets that are handed over by the government. This is key to avoiding disputes about potential additional capital expenditures that might be required to keep the asset operational over the life of the concession.

• Third, the same implies for KPIs expected of the private party for operating and maintaining the asset.

• Finally, there is a need to set up a robust mechanism for dispute resolution relating to PPP contracts. In this regard, the government would benefit from acting on the recommendations of the Kelkar Committee on PPPs.

I would also strongly urge the government to set up a centralised institution with the skills and responsibility to oversee contract design, bidding, and dispute resolution, separate from, but with appropriate assistance of, the concerned line ministries. If any government can pull this off, it is this one. Given the vital importance of NMP to the nation, an institution such as '3 PPP India' first mooted in the Arun Jaitley budget of 2014 — one that reports directly to the PMO — is needed to perform this function.

In short, the NMP is a great step forward. To ensure its success let us invest in setting up the necessary supporting institutional infrastructure as well.

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