



Republic of the Union of Myanmar
Office of the President

Notification No. 2 / 2018
Project Bank Notification

30th November 2018

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8th Waning of Tazaungmone 1380 ME

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Project Bank Notification

This Notification is issued to include the Projects that Implementing Government Agencies plan to develop with multiple financing mechanisms such as government's budget or development assistance or Public Private Partnership (PPP) or any other mechanisms in the Project Bank in a transparent manner to implement the strategies and action plans set out in the Myanmar Sustainable Development Plan and to apply concrete procedures in the development and implementation of the Projects in the Project Bank.

Section I

Definitions

- 1 (a) **“Business Case”** means an assessment of a Project to determine viability on the basis of its economic and financial internal rate of return, the social and environmental issues to address and the estimated cost of the Project and its revenue.
- (b) **“Corporatization”** means separating a Government business from a Government or department and establishing it as a State Economic Enterprise (SEE) incorporated under the Myanmar Companies Law or Special Companies Act.
- (c) **“Development Assistance”** means financial and technical assistance provided by governments and international agencies to support the economic, environmental, social, and political development of Myanmar, with a primary focus on poverty alleviation and long-term sustainable development.
- (d) **“Equitization”** means a process where the ownership of a State Economic Enterprise is transferred in part or whole to a private entity with the consent of the Government.
- (e) **“Government”** means the Government of the Republic of the Union of Myanmar and State or Region Government.
- (f) **“Greenfield”** means any investment in a structure or an area where no previous facilities exist and without constraints imposed by prior works.
- (g) **“Implementing Government Agency (IGA)”** means any Government agency or department under the Union Government or a State or Region Government which plans to develop and implement a Project.

- (h) **“Ministry of Planning and Finance (MoPF)”** means the Union Ministry of Planning and Finance of Myanmar.
- (i) **“Myanmar Sustainable Development Plan (MSDP)”** means the national development plan of the Government.
- (j) **“National Economic Coordination Committee (NECC)”** means the body established by President’s Office Notification No. 31/2016.
- (k) **“Pre-Feasibility Study”** means a comprehensive study of a range of options for the viable delivery of a Project, including an assessment of the technical, financial, legal, environmental and social viability of the Project.
- (l) **“Project”** means a clearly defined initiative that has the implementation of the MSDP as its main objective and where the total value of the undertaking exceeds two billion Myanmar Kyat.
- (m) **“Project Bank”** means an interactive, web-based, publicly accessible database or project information bank that includes Projects that IGAs plan to develop to implement the MSDP and its Strategic Action Plans.
- (n) **“Public-Private Partnership (PPP)”** means an investment mechanism based on a contractual agreement between an IGA and a private party for providing a public asset or infrastructure or service that includes but is not limited to financing, designing, implementing, managing, and/or operating infrastructure facilities and services traditionally provided by the public sector in an effort to reduce the Government’s capital and operating expenditures while improving the quality of assets and services. Types of PPP include but shall not be limited to the following:
 - (1) **“Availability Payment”** means a payment mechanism to the private sector for a type of PPP Project whereby the public sector pays the private partner a pre-established, maximum period payment to design, build, finance, operate and/or manage Project facilities; the scope of services for the private sector would not include numbers of customers/users and demand risks, fare collection; the private partner is compensated for both capital and operating costs; the private partner is evaluated each period on the availability of facilities and services and performance; each periodic payment is adjusted to reflect deductions for non-compliance with pre-established service levels and credits for enhanced performance.
 - (2) **“Build-Own-Operate (BOO)”** means a Build-Own-Operate contract to build, operate, and maintain a facility; after the completion of the facility, the investor shall own and have the right to commercially operate such facility in perpetuity unless by mutual agreement the Government decides to purchase the asset at the end of a specified period of time.

- (3) **“Build-Operate-Transfer (BOT)”** means a Build-Operate-Transfer contract to build a facility; after the completion of the constructed facility, the investor shall have the right to commercially operate such facility for a fixed term; at the end of such term, the investor(s) shall transfer the facility to the Government.
- (4) **“Build-Transfer-Lease (BTL)”** means a Build-Transfer-Lease contract to build a facility, transfer its ownership to the Government after the facility’s construction, and after the private investor having executed its right to operate the facility for a specified period of time, leases the facility to the Implementing Government Agency from whom lease payments are made to the investor for a period of time specified in the BTL contract.
- (5) **“Build-Transfer-Operate (BTO)”** means a Build-Transfer-Operate contract to build a facility; after the completion of the constructed facility, the investor shall transfer such facility to the Implementing Government Agency and shall have the right to commercially operate such facility for a fixed term.
- (6) **“Operation and Management (O&M)”** means an Operate-Manage contract to commercially operate part of a facility or the entire facility for a fixed term, where the private sector operator would not have any investment responsibility.
- (7) **“Other Forms of PPP”** means forms of PPPs other than the above and may also include but not be limited to Design-Build-Operate and Design-Build-Finance-Operate-Transfer contracts.
- (o) **“Public-Private Partnership Center (PPP Center)”** means a specialized unit formed within the MoPF.
- (p) **“PPP Unit”** means a specialized unit formed within an IGA.
- (q) **“Screening Tool”** means a tool developed and maintained by the MoPF that shall be used to determine whether a Project meets criteria required for inclusion in the Project Bank.
- (r) **“Solicited Proposal”** means a solicited bid received from private parties via a competitive tender process for PPP Projects under the purview of an Implementing Government Agency.
- (s) **“State-Owned Economic Enterprise (SEE)”** means any entity established in accordance with the State-Owned Economic Enterprises Law.
- (t) **“Strategic Action Plans”** means action plans underpinning the implementation of strategies, goals and pillars contained within the Myanmar Strategic Development Plan.
- (u) **“Swiss Challenge”** means a public procurement process designed to encourage private sector initiatives to engage in PPP Projects. Under the Swiss Challenge tender process, if a relevant government agency wishes to proceed with a Project that was received as an

Unsolicited Proposal, the agency is required to publish a bid and invite third parties to exceed it.

- (v) **“Unsolicited Proposal”** means a proposal made by a private party to undertake a PPP Project, submitted at the initiative of the private party, rather than in response to a request from the relevant government agency.
- (w) **“Development Assistance Coordination Unit”** means the body established by Cabinet Notification No.66/2016.

Section II Purpose

The purposes of issuing this Notification areas follows:

- ensuring that Government plans for Project development and implementation are predictable and transparent, and are employed as effectively as possible to achieve national development objectives;
- ensuring that there is coordination and facilitation for Project development and management among Government agencies;
- pro-actively attracting appropriate private partners for PPP and Equitization that can effectively augment government resources to achieve national development objectives; and
- ensuring that competition and efficiency are encouraged in the implementation of PPP Projects through competitive or Swiss Challenge tender processes.

Section III Project Bank Development

1. The MoPF shall establish the Project Bank that shall include Projects submitted by IGAs.
2. The purpose of the Project Bank is to strengthen the development of Projects that will enable the Government to effectively implement the MSDP, including:
 - a. by publishing government plans for the priority projects needed to achieve national development objectives in a predictable and transparent way; and
 - b. by developing procedures to ensure that Projects are well coordinated and facilitated among the MOPF and IGAs

3. The responsibilities of the MoPF for the Project Bank shall include but not be limited to:
 - a. establishing the Project Bank;
 - b. determining Projects to be included in the Project Bank;
 - c. making the Project Bank accessible via an interactive, web-based, publicly accessible database;
 - d. updating the Project Bank on a quarterly basis; and
 - e. ensuring consistency with regard to the application of and adherence to this Notification by all stakeholders and presenting to the NECC in this regard from time to time.

4. The Project Bank shall include Projects that IGAs plan to develop to implement relevant Strategic Action Plans either:
 - a. with the Government's budget;
 - b. with Development Assistance;
 - c. in partnership with the private sector through PPP mechanisms, including through Unsolicited Proposals where applicable, and
 - d. through plans to transfer SEEs, in part or in whole, to the private sector through Equitization, PPP mechanisms,
 - e. through a blended mechanism of above modalities.

5. IGAs seeking to have a Project included in the Project Bank shall submit to the MoPF a memorandum comprising the following information or shall submit in a template prepared by the MOPF:
 - a. Project name;
 - b. the necessity or strategic desirability of the Project;
 - c. links to specific Strategic Action Plans;
 - d. objective, scale, location, land and other resources required for implementation of the Project;
 - e. intended type of the Project contract;
 - f. proposed source of finance for the Project and an assessment of advantages and disadvantages of implementing the Project under the proposed financing scheme;
 - g. summary of the technical requirements, standards, quality of the Project facilities, products or services to be provided;

- h. estimation of the total investment capital and the Government's investment capital required to implement the Project;
 - i. anticipated schedule and terms for Project implementation, including the timeline for the formulation of the Pre-Feasibility Study report, investor selection, the duration of the construction, completion and exploitation of the Project facility, terms for construction, and plans for organizing the management, commercial operation or provision of services;
 - j. plans for compensation, land clearance and resettlement;
 - k. project risks and other risks sharing analysis and mitigation strategies/tactics;
 - l. preliminary estimation of the socio-economic effectiveness of the Project, including potential social and environmental impacts;
 - m. requirements for governance and organizational and technological sustainability; and
 - n. contact address of the IGA that plans to implement the Project.
6. The MoPF shall develop and maintain screening tools to determine whether a Project meets criteria required for inclusion in the Project Bank and the most appropriate and viable source of Project financing. The MoPF will coordinate and monitor the use of these tools by IGAs. As appropriate, the MoPF may request information in addition to that specified in Article 5.
7. For Projects included in the Project Bank, an IGA shall provide quarterly updates to the MoPF that shall include but not be limited to any changes to items stated in Article 5. Based on these updates, the MoPF will update the Project Bank on a quarterly basis.
8. The MoPF shall publicize Projects contained in the Project Bank via various means that include but shall not be limited to an interactive, web-based, publicly accessible database.
9. Project details published in accordance with Article 8 may contain the following:
- a. Project name;
 - b. the necessity or strategic desirability of the Project;
 - c. links to specific Strategic Action Plans;
 - d. objective, scale, location, land and other resources required for implementation of the Project;
 - e. general summary of the Project facilities, products or services to be provided;
 - f. estimation of the total investment capital and the Government's investment capital required to implement the Project;

- g. anticipated schedule and terms for Project implementation, including the timeline for the formulation of the studies, reports, investor selection, the duration of the construction, completion and exploitation of the Project facility;
- h. updates on the Project implementation schedule; and
- i. contact address of the IGA that plans to develop the Project.

Section IV

Establishment of the PPP Center and PPP Units with Standards and Processes to Conduct PPPs

10. The purpose of the PPP Center is to strengthen the capabilities of IGAs to effectively identify, develop, procure, implement, monitor and audit PPPs.
11. The PPP Center shall be established within the MoPF and shall be responsible for identifying Projects that are capable of being delivered by PPP from those Projects submitted for inclusion in the Project Bank. Additional responsibilities shall include but not be limited to:
- a. facilitating the identification and development of PPP Projects;
 - b. managing aspects of the Project Bank relevant to PPP Projects;
 - c. developing requirements, guidelines, templates and procedures to be used in the identification, preparation, bidding and management of PPP Projects;
 - d. monitoring and reporting on the implementation of PPP Projects; and
 - e. investigating and recommending PPP policy reforms.
12. The PPP Center may itself or through transaction advisers provide advice and support to IGAs with respect to:
- a. providing PPP capacity building support;
 - b. initial strategic assessments;
 - c. pre-feasibility studies;
 - d. development of Business Cases, cost-benefit analysis and cost-effectiveness analysis;
 - e. procurement processes;
 - f. assessments of Unsolicited Proposals;
 - g. risk allocation matrices;
 - h. advising on types and structures of PPPs and contractual approaches to the main terms;

- i. financial ratios and contribution; and
 - j. coordination and facilitation of required permits.
13. IGAs may establish a dedicated PPP Unit within its agency that shall be responsible for facilitating PPP transactions.
14. IGAs, with the advice and support of the PPP Center, shall have the responsibilities for:
 - a. the preparation of PPP Projects;
 - b. the management of tenders for PPP and Swiss Challenge Projects, which includes the selection of winning bidders;
 - c. preparing and signing PPP contracts; and
 - d. managing PPP contracts with the relevant Department within the Agency.
15. When proposing a Project that is capable of being delivered by a PPP for inclusion in the Project Bank, IGAs shall conduct a Pre-Feasibility Study for that Project that shall demonstrate whether the proposed PPP Project adheres to applicable requirements and guidelines established by the PPP Center. The IGA may request that the Pre-Feasibility Study be conducted either jointly with the PPP Center or by the PPP Center alone. In cases involving Unsolicited Proposals, the Pre-Feasibility Study shall be conducted by the private party proposing the Project.
16. The PPP Center, in cooperation with the Treasury Department and Budget Department of the MoPF, shall develop concrete criteria upon which appropriate types of Government support may be provided for each PPP Project. Appropriate types of Government support shall include but not be limited to government guarantees or viability gap funds.
17. If a submitted Project is found to be capable of being delivered by a PPP, an IGA shall, with the support of the PPP Center upon request, prepare a Business Case which should demonstrate whether the proposed Project fits the requirement for a PPP Project as well as to determine the Project size and characteristics.
18. IGAs shall, with the support of the PPP Center upon request, prepare tender documents, produce request for proposal, develop criteria for bidder selection and select the winning bidder either via a competitive tender process or Swiss Challenge tender process.

19. IGAs may hire or work with appropriate domestic or international transaction advisors to conduct the competitive tender and Swiss Challenge tender processes. The PPP Center will provide advice and support to IGAs with regard to engaging international transaction advisers.
20. IGAs shall give enough time to all bidders to examine all relevant Project documentation and to conduct due diligence on the Project and to prepare a proposal in reply to the request for proposals.
21. PPP Projects exceeding US\$ 100 million in value shall require Union Cabinet approval.
22. An IGA, with support to be provided by the PPP Center upon request, shall prepare and sign the PPP contract with the tender award winner.

Section V

Unsolicited PPP Proposals

23. If the size of a Project submitted by a private party to a relevant government agency via an Unsolicited Proposal exceeds two billion Myanmar Kyat, the relevant government agency shall seek advice of the PPP Center whether to include it in the Project Bank.
24. Where an Unsolicited Proposal submitted to a relevant government agency requires coordination with other agencies, the Project may be referred to the PPP Center. The PPP Center shall then proceed in accordance with established guidelines and procedures.
25. Provisions in this section shall not be applicable to Unsolicited Proposals for the development of Greenfield Projects in the energy and mining sectors.
26. All Unsolicited Proposals shall contain the following information or the information contained in the template prepared by the PPP Center;
 - a. A Project proposal that includes but shall not be limited to the following:
 - (1) anticipation of the Project objectives, scale, implementation, location, demand for the use of land and natural resources;
 - (2) preliminary analysis of the technical requirements, standards, quality of the Project facilities, products or services to be provided;

- (3) anticipated schedule and terms for Project implementation; terms for construction, exploitation of Project facilities; plans for organizing the management, commercial operation or provision of services;
 - (4) anticipated overall plans for compensation, land clearance and resettlement;
 - (5) preliminary analysis of the financial plan of the Project, including the following contents;
 - (5.1) the total investment capital of the Project,
 - (5.2) the structure of the capital sources and the [capital] mobilization plan;
 - (5.3) Government's investment capital for the participation in the Project implementation (if any);
 - (5.4) estimated expenditures; revenue sources, prices, fees of products and services; and
 - (5.5) the term for recovering capital and gaining profits;
 - (6) preliminary anticipation of the risks in Project implementation process and risk sharing between the relevant government agency and the investor;
 - (7) proposal on forms of investment incentives and guarantees (if any);
 - (8) preliminary estimation on the socio-economic effectiveness of the Project; impacts of the Project on environment and society;
- b. documents setting out legal status, capacity, experience of the investor, and, as appropriate, a specification of intellectual property, trade secrets or other proprietary information may need to be protected, including from publication;
 - c. evidence of experience implementing similar Projects and environmental and social responsibility; and
 - d. other documents as required by the relevant government agency or PPP Center to explain the Project proposal.
27. For each Unsolicited Proposal for which a relevant government agency decides to pursue, the relevant government agency, with support to be provided by the PPP Center upon request, shall prepare a Swiss Challenge tender process that shall include but not be limited to the following steps:
- a. the relevant government agency shall draft the Request for Proposal and invite comparative proposals for competitive bidding;
 - b. prior to drafting the Request for Proposal, the relevant government agency shall review the Unsolicited Proposal and determine what, if any, information is considered proprietary in consultation with the Project proponent;

- c. if a successful counter-proposal is superior to the original Unsolicited Proposal, the relevant government agency shall notify the original proponent of the Unsolicited Proposal that they have at least 45 working days to match or improve on the selected competing proposal;
 - d. assessment of the proposals shall include public need, Project merits, complementary nature, uniqueness and novelty of the concept and technology;
 - e. the notification shall include all relevant details of the competing proposal determined to be non-proprietary; and
 - f. if the original proponent matches the counter-proposal, the relevant government agency shall continue negotiating with the original proponent. If the original proponent does not match the selected competing proposal, the relevant government agency shall negotiate with the selected competing proponent with the objective of entering into an agreement based on the proposal submission, as may be amended through the negotiation process.
 - g. consider and implement fair mechanisms and arrangements between the original proponent and the tender award winning competing proponent.
28. Unsolicited Projects may be awarded directly to a private party if both PPP Center and the relevant government agency determine that more favorable commercial and technical terms could not be secured following a tender process based on concrete criteria that include but are not limited to reputation and international experience of the proponent in the same or similar business field.

Section VI

Sources of Funds for PPP Projects

29. PPP Projects may use either Government's budget in order to ensure their sustainability (viability gap funding) or development assistance in accordance with the bid terms of the tender documentation with the consent of the Union Government.
30. The PPP Center shall be responsible for analyzing all potential Government contributions and shall advise IGAs accordingly.
31. The Government's contribution to Project implementation shall include but not be limited to capital from the Government's budget, Government bonds, Development Assistance, in-kind contributions, or other forms.

32. Only PPP Projects selected via a competitive tender process or Swiss Challenge tender process shall seek Government support in terms of guarantee, viability gap funding, or other forms of support.
33. The PPP Center shall establish concrete criteria upon which potential Government contributions shall be based that may include but not be limited to the following:
- a. unless specifically recommended otherwise, the equity ratio shall not be lower than 30 percent for the capital portion of up to US\$ 50 million;
 - b. for the capital portion of more than US\$ 50 million, the debt-to-equity ratio shall not be lower than 20 percent of this portion;
 - c. the Government's investment capital in terms of the Government's support, if any, for participation in Project implementation shall not be counted as part of the total investment capital when identifying the debt-to-equity ratio;
 - d. the investor shall demonstrate successful experience with comparable projects and demonstrate environmental and social responsibility;
 - e. the Project company shall be liable to pay the guarantee fee set out in the bidding documentation; and
 - f. the investor shall comply with other criteria set out in the bidding documentation.
34. The MoPF shall use the annual medium-term debt management plan as defined in the Public Debt Management Law to determine an absolute annual limit per year on the total amount of guaranteed obligations, which shall be approved annually in the Union's Budget Law.
35. Both existing and planned, new government guarantees shall be presented for information in the annual Union's Budget Law as contingent liabilities of the Union Government. Existing government guarantees shall be also reported on in the notes to the annual financial statements of the Union Government.
36. Shareholder loans or offshore financing may be acquired by a private party under the PPP arrangement in accordance with the Foreign Exchange Management Law.

Section VII
Environmental and Social Aspects for PPPs

37. Environmental and social impact studies and aspects for proposed Projects including PPP Projects shall comply with regulations set out by the Ministry of Natural Resources and Environmental Conservation.
38. The Government may be responsible for resettling and paying compensation to Project-affected persons within the timeframe provided for by the applicable regulations and standards.
39. Project documents may provide that the private partner would be liable for paying a prompt, fair and adequate compensation, in line with international best practice, to Project-affected persons, but direct payment be made through the relevant government agency.

Section VIII
Contractual Requirements for PPPs

40. PPP contracts may be based upon Availability Payments, BOO, BOT, BTL, BTO and O&M or Other Forms of PPP considered by the IGA, with support to be provided by the PPP Center upon request, to achieve the most appropriate risk sharing structure. The PPP Center will issue guidelines and contract document principles and structures for the IGA to follow in the preparation of PPP contracts.
41. A PPP contract may include but not be limited to the following:
- a. amount of investment;
 - b. conditions precedent;
 - c. responsibilities and liabilities;
 - a. rights and obligations of the Union or State or Region Governments;
 - b. rights and obligations of the private partner;
 - d. risk allocation;
 - e. incentives;
 - f. dispute resolution;
 - g. effectiveness and key performance indicators;

- h. financing;
 - i. insurance;
 - j. term;
 - k. minimal performance standards;
 - l. performance monitoring;
 - m. termination;
 - n. early termination and extension;
 - o. amendments;
 - p. force majeure;
 - q. tax and duties;
 - r. auditing;
 - s. change in law;
 - t. effective date;
 - u. contract term;
 - v. guarantee and representation; and
 - w. renegotiation.
42. For Projects exceeding US\$ 100 million in value, the relevant government agency may engage an independent monitor to conduct periodic assessments to ensure that all parties are abiding by contract terms.
43. A PPP contract may provide for international arbitration in accordance with the 2016 Arbitration Law and the terms of the PPP contract.
44. A PPP contract should as a principle be governed by Myanmar Law.
45. A PPP contract may state that the relevant government agency shall be considered to have a waiver of immunity from jurisdiction and execution by statute when executing a PPP contract.

Section IX

Monitoring and Supervision for PPPs

46. IGAs shall monitor and supervise PPP Projects to ensure compliance with terms and conditions stated within respective PPP contracts and shall send a copy of monitoring reports to the PPP Center on a 6-month basis.

47. The Development Assistance Coordination Unit (DACU) shall monitor and evaluate the Development Assistance financed Projects in accordance with the Myanmar Development Assistance Policy (DAP).
48. The Government may also engage with external consultants and independent experts to assist in the monitoring and evaluation of Projects.

Section X
Transferring SEEs in Part or in Whole to the Private Sector through Equitization or PPP Mechanisms

49. A relevant government agency may submit to the MoPF to include in the Project Bank a SEE for the transfer, in part or in whole, to the private sector.
50. Where relevant government agencies propose to undertake Equitization or apply a PPP mechanism for a SEE, plans may include the following and be reviewed by the PPP Center:
 - a. provide cash flows for at least the past five years;
 - b. provide comprehensive information on the SEE's employment and labor;
 - c. provide information on products and services produced or provided;
 - d. prepare Projected or forecasted free cash flows for at least five years;
 - e. prepare up-to-date business records and books of account according to standards listed in the Companies Law;
 - f. prepare a rolling two-year investment and financing plan and a manpower development plan;
 - g. prepare annual financial statements and cause them to be audited not later than four months after each financial year;
51. For any SEE submitted for Equitization or Corporatization, and submitted to the Project Bank, the relevant government agency shall ensure:
 - a. that a fixed asset register is maintained that shall be reconciled with the financial statements;
 - b. not to perform any action or actions that would result in the assets of the enterprise being dissipated;
 - c. not to undertake any new capital investment program;

- d. not to incur any liabilities other than in the ordinary course of business; and
- e. not to give any person information other than in the ordinary course of business that might confer any advantage on that person or any potential investor.

52. The PPP Center shall assist the submitting relevant government agency to go through a proper Corporatization and Equitization or PPP mechanism. This includes advising on pre-Equitization restructures, such as:

- a. separating regulatory and commercial functions and restructuring so that Government retains the regulatory functions; and
- b. reviewing legislation to enable Corporatized or Equitized entities to compete on a level playing field and to maintain competition in relevant markets.

53. The PPP Center and the relevant government agency may employ various modes of Equitization or PPP that include but are not limited to the following:

- a. public offering of shares;
- b. auction;
- c. sale of shares through competitive bids and Swiss Challenge tender process arrangements;
- d. sale of the assets and business of a SEE;
- e. management or employee buyouts by management or employees of a SEE;
- f. lease, management or concession contracts;
- g. BOT, BTO, BT, BOO, BTL, BLT, O&M or Other Forms of PPP; or
- h. others.

54. When a SEE is Equitized, its shares shall be allotted to the State represented by the MoPF.

55. The valuation of a SEE shall be performed by an independent valuation company or qualified individual consultants who shall issue a certificate of valuation to the relevant government agency. The valuation mechanism shall be based on the following:

- a. the current value of the SEE or its assets as a going concern;
- b. where the enterprise or the assets are not a going concern, the valuation shall be based on net asset value; or
- c. any other prudent valuation method approved by the PPP Center.