

Vance Center Virtual Workshop

Pan-African P3 Considerations

WHAT MAKES A GOOD P3 PROJECT?



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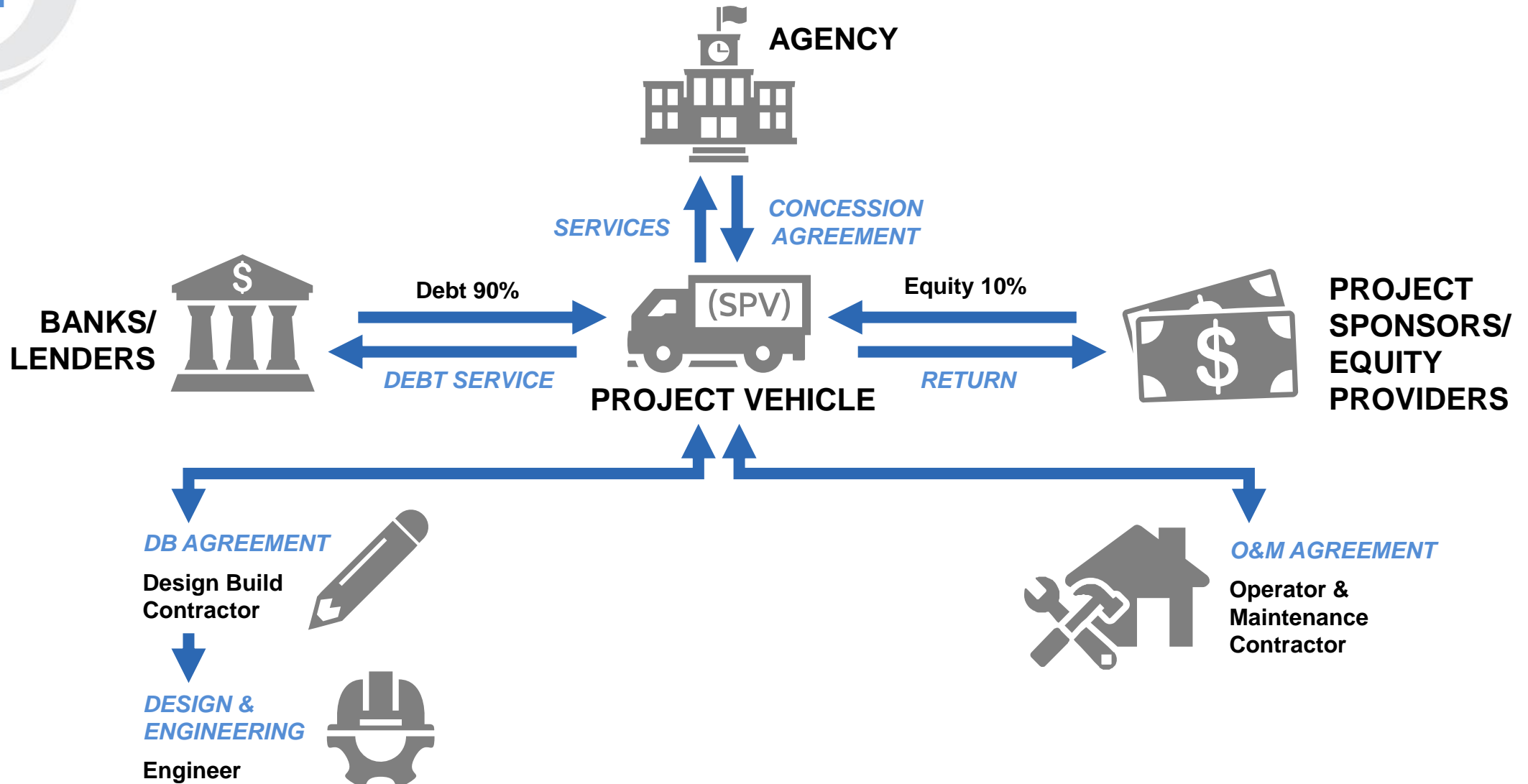


What is a P3?

A Public-Private Partnership (P3) is

- A contractual agreement between a public agency and a private entity that allows for greater private sector participation in the delivery and financing of a project.
- Non-traditional way to finance and deliver infrastructure projects
- A **Design, Build, Finance, Operate and/or Maintain** infrastructure project
- It is **NOT** privatization of public assets

Typical P3 Structure



Why Consider a P3?



P3s are an additional tool in the toolbox to deliver and maintain infrastructure efficiently

Government Perspective...

1. Accelerate project delivery
2. Efficient transfer of risks
3. Life-cycle cost savings and price certainty
4. Retain ownership of public asset
5. Engage with the local community
6. Vehicle to get needed projects delivered

Private Sector Perspective...

1. Provides an investment opportunity
2. Complete management of project risks
3. Fosters innovation with performance based requirements
4. Competitive process and transparency
5. Secondary market opportunities
6. Vehicle to get needed projects delivered

Identifying a P3

A P3 is:

- DESIGN AND CONSTRUCTION, FINANCING, OPERATIONS AND MAINTENANCE PARTNERSHIP
 - Public Sector enters into a long-term contract with private sector to deliver assets and services for the benefit of the general public
- A RISK SHARING APPROACH
 - Private sector assumes financial, technical and operational risk, public sector sets policy and retains ownership
- LIFECYCLE PROCUREMENT APPROACH THAT GUARANTEES PERFORMANCE
 - By integrating design, construction, and financing, with operations and maintenance, the asset performance is optimized for the long term
- A TRANSPARENT RELATIONSHIP
 - Public stakeholders have full control and can expect to be regularly updated and informed throughout the project

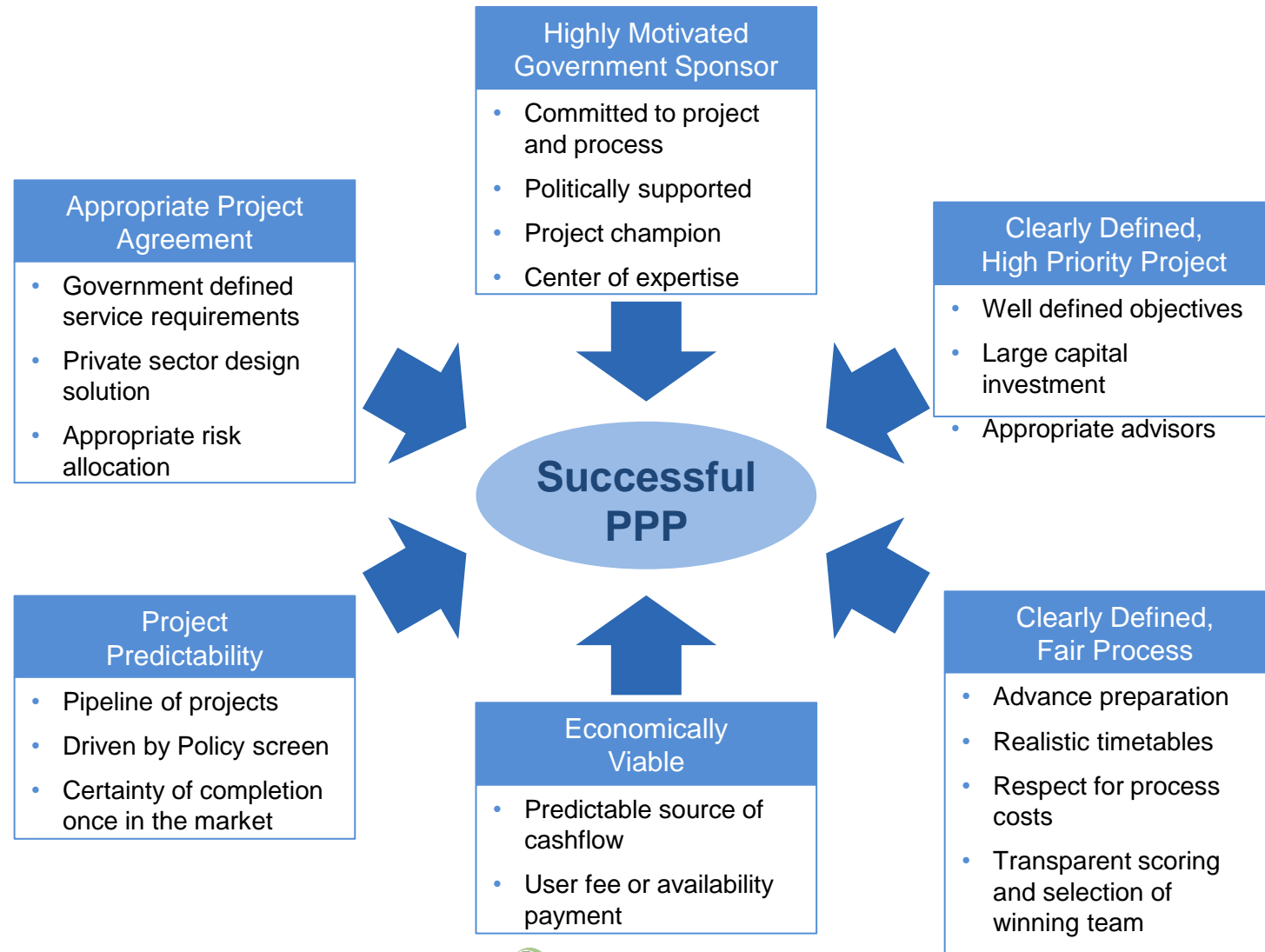
Qualifying a P3

A P3 is not:

- PRIVATIZATION
 - Public sector retains ownership and ultimate control of public asset
- A FUNDING SOLUTION
 - Government agency gains access to private debt and equity financing which may not be available in regular public procurement, but project must still be creditworthy for debt and equity investors
- A LOW-QUALITY DELIVERY MODEL
 - Private entity enters into a performance-based contract with financial penalties imposed by the public agency if availability and quality standards are not met
- THE RIGHT SOLUTION FOR EVERY PROJECT
 - A Value-for-Money analysis is performed by experienced legal, technical and financial advisors to determine if a P3 is right for your project

Lessons Learned on P3 Projects

Key Ingredients for a Successful P3 Program



Value for Money

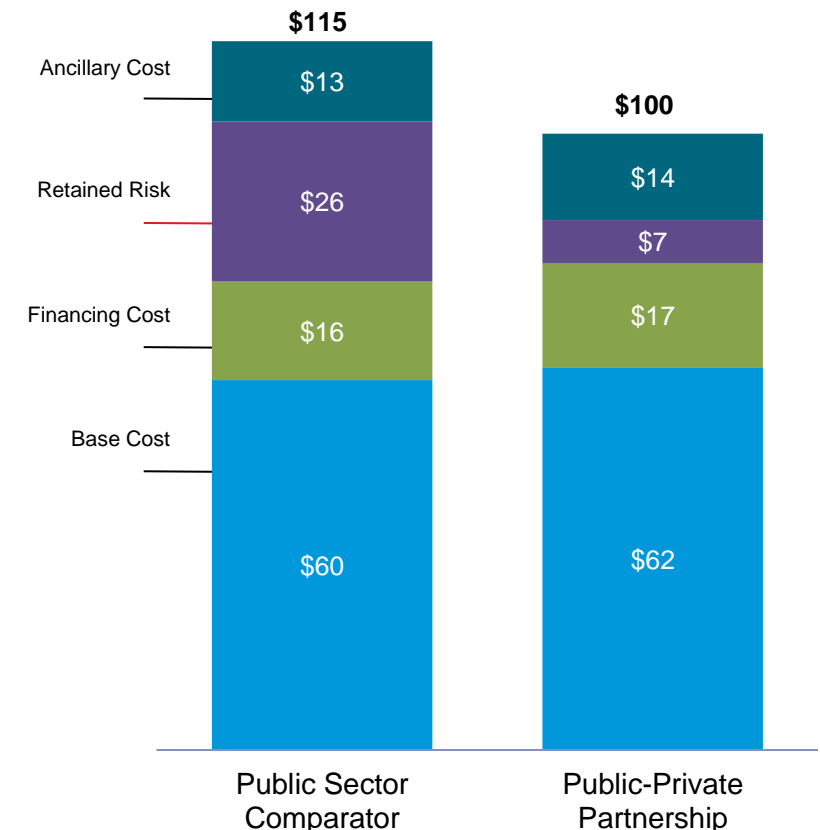
Value for Money (VfM) analysis is a process that can be used to compare the financial impacts for the public sector of a P3 project, compared against traditional public delivery alternatives.

The process to establish VfM includes:

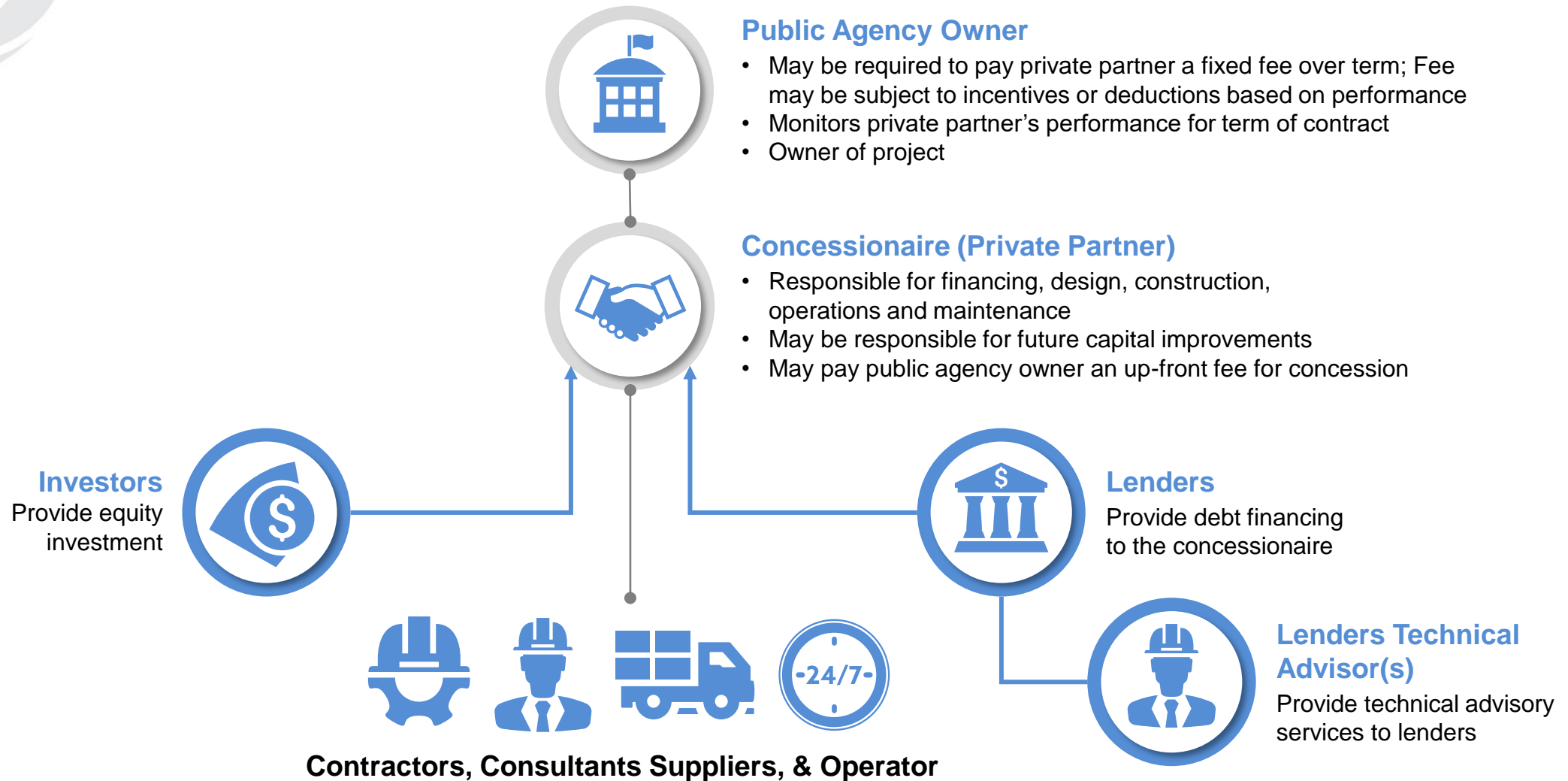
- Creating a **Public Sector Comparator (PSC)**, which estimates the whole-life cost to the public sector of the project through a traditional procurement approach including development and finance, operations and maintenance, and lifecycle management;
- Estimating the whole-life cost of the P3 alternative (either as proposed by a private bidder or a hypothetical “shadow bid” at the pre-procurement stage); and
- Comparing results.

Value for Money is an industry-accepted decision driver.

Value for Money Example

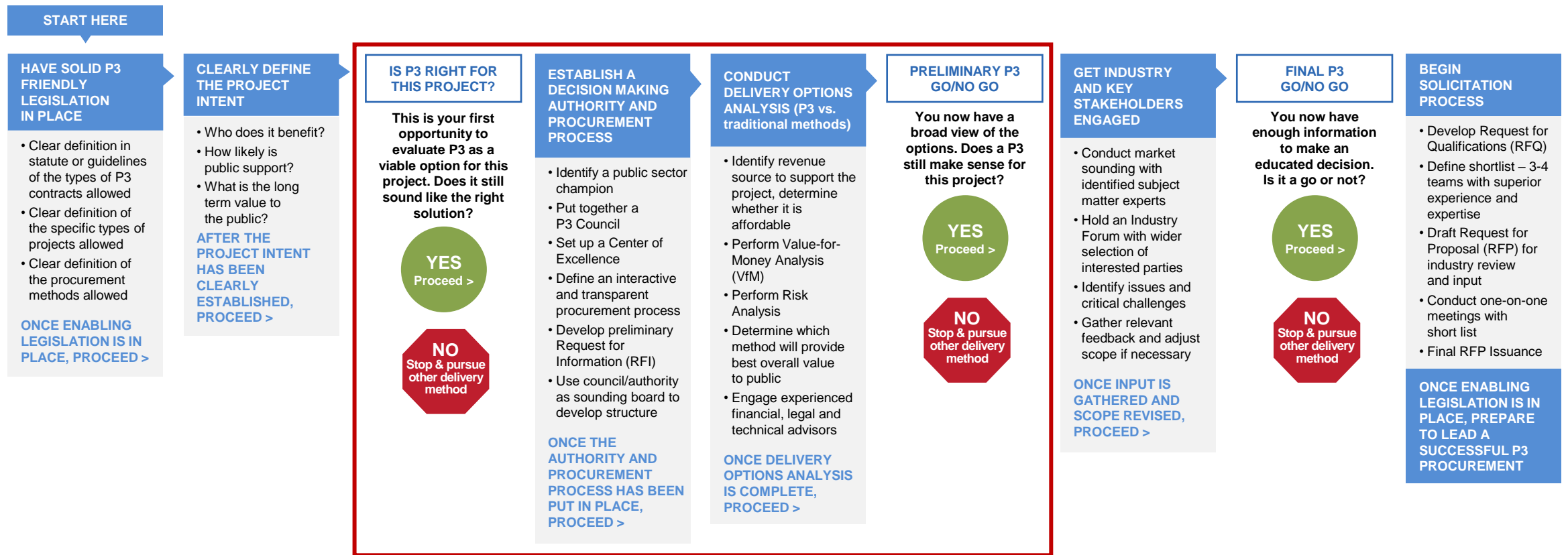


P3 Financial Structure



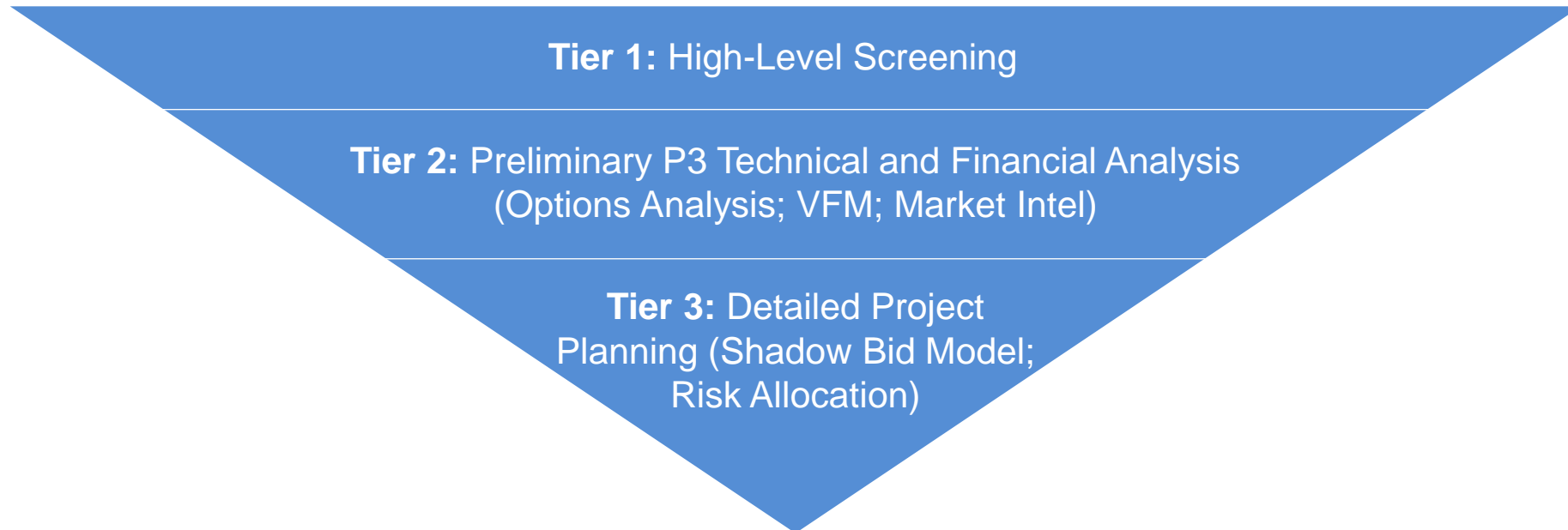
What is the process?

MAKING THE RIGHT PROJECT APPROACH DECISIONS AT THE RIGHT TIME REQUIRES THE RIGHT PROCESS



P3 Analysis and Planning

Identifying and developing a “good P3” typically involves a series of progressively more detailed and resource-intensive tiers of analysis and planning. With each tier, the definition and goal for what constitutes a “good P3” evolves, so owners should advance to subsequent tiers only if current tier goals are met.



Project Delivery

Tier 1: High-level Screening – Good P3 = P3 viable as an option

Before engaging in detailed analysis, agencies can start with these high-level questions to see if how much they want to invest in quantitative P3 analysis.

(This discussion will be more focused on design-build-finance-operate-maintain projects (even though some people define P3 more broadly), and on projects that involve major a capital construction element (rather than a pure asset monetization or privatization)).*

1. Regulatory authority?
2. Design-Build (DB) potential?
3. O&M (or at least material maintenance)?
4. Funding and financing feasibility?
5. Significant capital cost?
6. Environmental readiness?
7. Schedule permits longer procurement process?
8. Priority?
9. Organizational capacity?
10. P3 value proposition?

Tier 2: Prelim Technical/Financial Analysis – Good P3 = P3 as preferred delivery method

- After determining P3 delivery is a viable option based on high-level screening, owners typically focus on whether P3 is indeed the best or preferred option (even if they still have limited/preliminary cost or other technical information). Different tools are available to facilitate decision-making.

Question/Issue	Analytical Tool(s)	Outputs
How does my project look as a P3 in comparison to other delivery approaches (e.g., DB, DBB)?	Options analysis	Memo re: quantitative financial analysis results of each option and qualitative pros/cons and trade-offs with each option
How does P3 compare to the most viable traditional delivery approach?	Value-for-Money (VfM) analysis; Public Sector Comparator (PSC); Risk analysis	VfM – quantified results of total project cost (inclusive of risk transfer) under P3 vs Traditional; PSC – similar to VfM with less emphasis on attempting to quantify every risk;
How can I tell if the P3 market thinks my project is a good P3? Will I get a lot of bidders?	Request for Information; Informal market sounding	Qualitative feedback from experienced P3 market participants (usefulness depends on questions)
How can I tell if a P3 will achieve the appropriate risk transfer?	Initial risk assessment	Risk–list of all key project risks with quantified delay and cost impacts; owner contingency \$\$

Tier 3: Detailed Project Planning – Good P3 = P3 is financeable and delivers value

After owners select P3 as the preferred delivery method, they need to ensure that the ultimate project and related contract will:

- reflect technical, financial and legal terms that proposers and lenders in a procurement process view as reasonable and creditworthy, so they can secure equity and debt financing
- yield the benefits/value to the public that were anticipated through Tier 2 analysis

“Best practices” used to help owners meet these goals:

- Develop a “shadow bid” financial model to understand key financial drivers and their impact on project cashflow(including developer debt and equity) and owner’s funding/financing requirements
- Define a procurement approach that facilitates open, confidential dialogue with bidders to get their feedback on RFP
- Define the scope clearly and develop performance-based approach to technical requirements
- Develop an approach to mitigate those technical issues that increase project risks: real estate, environmental reviews, utilities, geotechnical, interfaces, third parties
- Coordinate with stakeholders and industry to ensure transparency in all stages of project development
- Set a realistic schedule and stick with it

What is the Process?

GET INDUSTRY AND KEY STAKEHOLDERS ENGAGED

- Conduct market sounding with identified subject matter experts
- Hold an Industry Forum with wider selection of interested parties
- Identify issues and critical challenges
- Gather relevant feedback and adjust scope if necessary

ONCE INPUT IS GATHERED AND SCOPE REVISED, PROCEED >

FINAL P3 GO/NO GO

**You now have enough information to make an educated decision.
Is it a go or not?**

YES
Proceed >

NO
Stop & pursue other delivery method

BEGIN SOLICITATION PROCESS

- Develop Request for Qualifications (RFQ)
- Define shortlist – 3-4 teams with superior experience and expertise
- Draft Request for Proposal (RFP) for industry review and input
- Conduct one-on-one meetings with short list
- Final RFP Issuance

ONCE ENABLING LEGISLATION IS IN PLACE, PREPARE TO LEAD A SUCCESSFUL P3 PROCUREMENT

Procurement Steps and Timelines

	Market Outreach / RFI	Request for Qualifications	Request for Proposals	Award / Commercial Close	Financial Close
Key Objectives	<ul style="list-style-type: none"> Feedback from industry on proper deal structure, type of P3 and key risk issues Marketing for pending procurement 	<ul style="list-style-type: none"> Establish minimum technical, financial and admin/legal qualifications Identify “shortlist” of most qualified bidders 	<ul style="list-style-type: none"> Develop project contract/tech specs Create/retain competitive tension (min. 3bidders) Conduct fair, open and transparent procurement Select developer 	<ul style="list-style-type: none"> Obtain required approvals for bidder selection and project contract Execute project contract 	<ul style="list-style-type: none"> Support developer achieve financial close under financing agreements <i>Get money moving to commence project construction!</i>
Start	Initial outreach to market or release of RFI	Release of RFQ	Release of RFP	Selection of preferred bidder	Selection of preferred bidder
End	With release of RFQ	Announcement of Shortlist	Selection of preferred bidder	Execution of project contract	Execution of financing documents and satisfaction of CPs
Time Period*	2-3 months	2-4 months	8-12 months	1-2 months	2-3 months following CC

* Reflects best DBFOM P3s based on current industry practice. Does not include the time involved for agency and advisors to undertake technical studies, planning, prepare procurement documents, etc.

Total time 15 –24 months

Key Procurement Goals

AGENCY

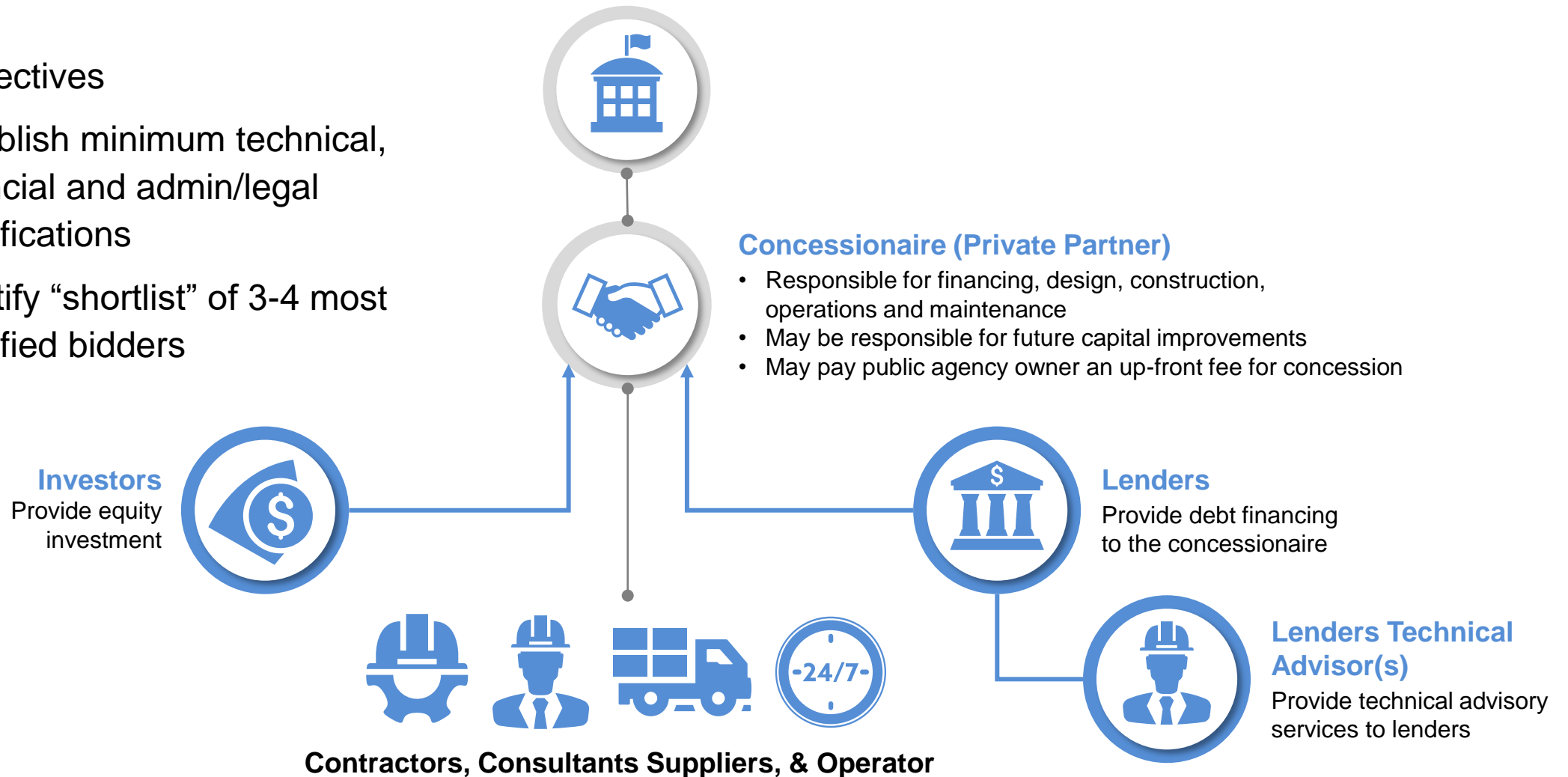
- Select bidder that proposes best value – balance technical quality, risk transfer, and price
- Achieve contract award/project completion within target deadlines
- Procurement Integrity (avoid bid protest)
- Stakeholders support

BIDDER

- Private Sector wants: payment certainty, capped risks, transparency, full public/political buy-in
- P3 procurement and negotiation:
 - Focus and performance (rather than specificity)
 - **Priceable** risks
 - **Reliable** payment stream
 - **Reduced** political risk –think statutory solutions before the start!
 - Partner attitude
 - Chance at the upside

Request for Qualifications (RFQ)

- Key Objectives
 - Establish minimum technical, financial and admin/legal qualifications
 - Identify “shortlist” of 3-4 most qualified bidders





RFQ – Shortlisting Criteria

- **Technical qualifications**

- Team organization
- Experience on projects of similar size and scope
- Key staff
- Overall approach
- Understanding of local conditions / construction market

- **Financial qualifications**

- Equity members financial capacity
- Equity members experience with P3 procurements, project financing, and management of P3 projects
- Ability to raise necessary capital for the project
- DBJV financial and bonding capacity



RFQ -Best Practices/Lessons Learned

- Articulate entire project scope (design, construction, financing structure and O&M)
- Clearly state project goals and prioritize them
- Respondents should compete on ability to deliver value on the most material elements of your specific project rather than on broad historic experience
- SOQ requirements and evaluation criteria must be clearly drafted to ensure consistency in responses
- Design SOQ evaluation to align with future proposal evaluation

Shortlisting 3-4 bidders is optimal

Request for Proposals (RFP)

- **Key Objectives**

- Conduct fair, open and transparent procurement
- Reach consensus between agency and bidders on project agreement (including technical requirements for design, construction and O & M)
- Maintain competitive tension among bidders
- Encourage innovation by maintaining confidentiality throughout the process (alternative technical concepts etc.)
- Select developer that achieves best overall value

RFP -Best Practices/Lessons Learned

Project Management

- Release a comprehensive and well-considered draft RFP
- Be realistic about procurement schedule, allow sufficient time for proposer questions and comments
- Engage legal, technical, and financial advisors with relevant P3 experience

Procurement Process

- Competitive tension among proposers drives technical innovation and better pricing
- Regular, confidential meetings (one on ones) between agency and proposer are essential and can be structured to maintain a fair procurement
- Make sufficient time for a comprehensive confidential ATC process (be open to innovation)

Scope/Risk Allocation

- P3 is performance-based contracting; don't be too prescriptive regarding design and performance
- Both agency and developer need to be clear about their “must haves” and “nice to haves”
- Perform due diligence on high-risk items *i.e.*, right of way, geotech, utilities

General

- RFP phase lasts for a long time and unexpected events occur; be flexible
- Stakeholder outreach and political support must be maintained throughout the process
- Allocate proper agency resources including staff
- Establish a realistic schedule and stick to it

Lessons Learned

KNOW WHAT YOU WANT

- Establish clear goals and success criteria
- Develop a strong program with clear output specifications
- What do you want the partner to do?
- What risk will you assume?
- Benchmark costs and establish targets
- Evaluate Financing strategies

GET THE RIGHT ADVISORS

- Real Estate and Development Advisory
- Capital formation strategies and analysis
- Legal and legislative
- Public procurement process expertise
- Expertise in complex evaluation and contract negotiations
- Design and construction oversight
- Communication and public outreach

HAVE A CLEARLY DEFINED PROCESS

- Transaction structure including financing considerations
- Attainable schedule and milestones identified
- Clear goals, expectations & evaluation criteria
- Clearly defined design process
- Clearly defined performance specifications
- Construction oversight
- Ensure transparency and accountability in process
- Communication plan for internal and external stakeholders

IDENTIFYING AND MITIGATING CORRUPTION RISKS



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Topics

- The Impact of Corruption
- Anti-Corruption Laws and Enforcement Trends
- Common Risk Areas
- Case Studies
- Best Practices



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THE IMPACT OF CORRUPTION



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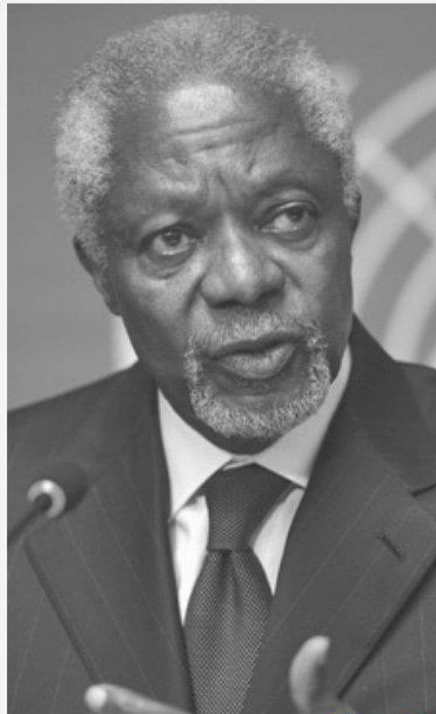


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Voices On Corruption

"
if corruption is a disease, transparency is an essential part of its treatment."

Kofi Annan



"At Microsoft, we believe corruption is an urgent global issue that can and must be solved. It will require a focused and comprehensive solution, and it will require governments, civil society, and the private sector all working together to promote transparency, create effective controls, and drive accountability."

— Dev Stahlkopf, Corporate Vice President and General Counsel, Microsoft

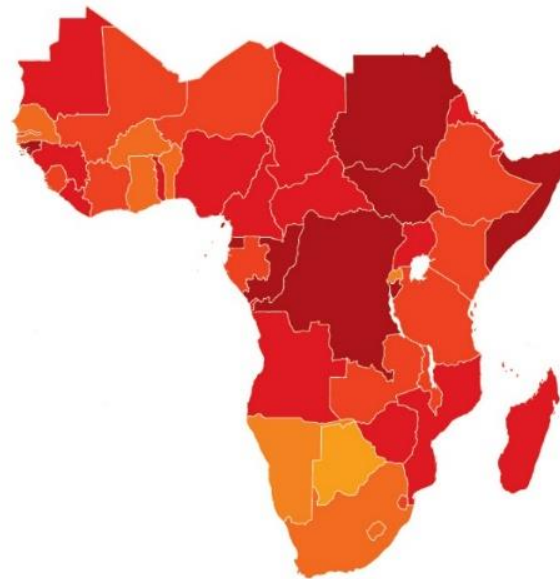
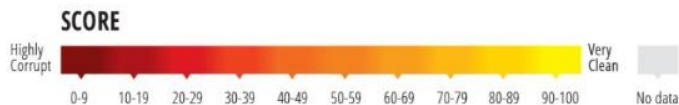
International Corruption

CORRUPTION PERCEPTIONS INDEX 2020

SUB-SAHARAN AFRICA

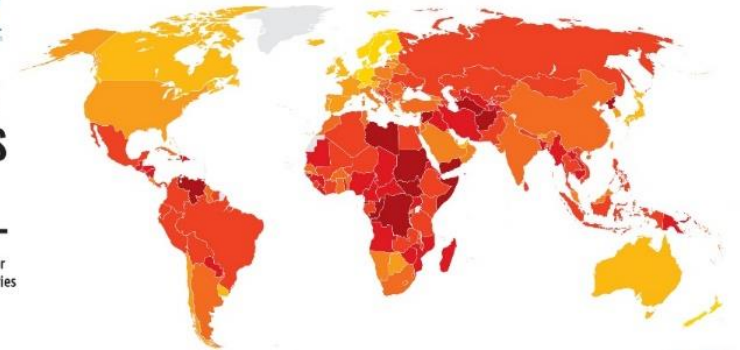
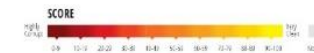
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AVERAGE SCORE



CORRUPTION PERCEPTIONS INDEX 2020

The perceived levels of public sector corruption in 180 countries/territories around the world.



#cpi2020

www.transparency.org/cpi

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SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK
66	Seychelles	27	36	Côte d'Ivoire	104	25	Cameroon	149
60	Botswana	35	33	Eswatini	117	25	Madagascar	149
58	Cabo Verde	41	33	Sierra Leone	117	25	Mozambique	149
54	Rwanda	49	33	Zambia	117	25	Nigeria	149
53	Mauritius	52	32	Niger	123	24	Zimbabwe	157
51	Namibia	57	31	Kenya	124	21	Chad	160
47	Sao Tome and Principe	63	30	Gabon	129	21	Comoros	160
45	Senegal	67	30	Malawi	129	21	Eritrea	160
44	South Africa	69	30	Mali	129	19	Burundi	165
43	Ghana	75	29	Mauritania	134	19	Congo	165
41	Benin	83	29	Togo	134	19	Guinea Bissau	165
41	Lesotho	83	28	Guinea	137	18	Democratic Republic of the Congo	170
40	Burkina Faso	86	28	Liberia	137	16	Equatorial Guinea	174
38	Ethiopia	94	27	Angola	142	16	Sudan	174
38	Tanzania	94	27	Djibouti	142	12	Somalia	179
37	Gambia	102	27	Uganda	142	12	South Sudan	179
			26	Central African Republic	146			

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Challenges to Doing Business in...

Ethiopia

Corruption	14.4
Access to financing	10.7
Foreign currency regulations	10.4
Tax rates	9.3
Inefficient government bureaucracy	7.3
Inadequate supply of infrastructure	7.1
Inflation	6.9
Tax regulations	6.4
Government instability/coups	5.6
Poor work ethic in national labor force	4.7
Insufficient capacity to innovate	4.2
Inadequately educated workforce	4.2
Crime and theft	3.6
Policy instability	2.2
Restrictive labor regulations	2.0
Poor public health	0.9

Kenya

Corruption	17.8
Tax rates	13.7
Access to financing	11.5
Inefficient government bureaucracy	9.6
Inadequate supply of infrastructure	8.1
Policy instability	7.3
Inflation	6.1
Crime and theft	5.8
Insufficient capacity to innovate	4.1
Tax regulations	3.9
Poor work ethic in national labor force	3.3
Restrictive labor regulations	2.8
Inadequately educated workforce	2.1
Poor public health	1.7
Foreign currency regulations	1.3
Government instability/coups	0.9

Nigeria

Inadequate supply of infrastructure	22.2
Corruption	15.9
Access to financing	13.9
Foreign currency regulations	12.8
Policy instability	11.0
Inefficient government bureaucracy	9.5
Inadequately educated workforce	3.6
Poor work ethic in national labor force	3.0
Tax regulations	2.0
Inflation	2.0
Tax rates	1.1
Crime and theft	1.0
Restrictive labor regulations	0.7
Government instability/coups	0.7
Insufficient capacity to innovate	0.6
Poor public health	0.0

Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

The Headlines



LAWS & ENFORCEMENT TRENDS



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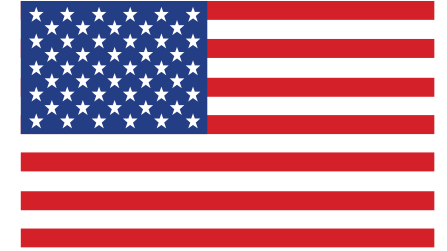
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Foreign Corrupt Practices Act: Overview

Anti-Bribery Provisions

- Prohibit paying, offering to pay, promising to pay, or authorizing the payment:
 - Of money or anything of value
 - Directly or indirectly
 - To a non-US official
 - With corrupt intent
 - In order to obtain or retain business



AND

Accounting Provisions

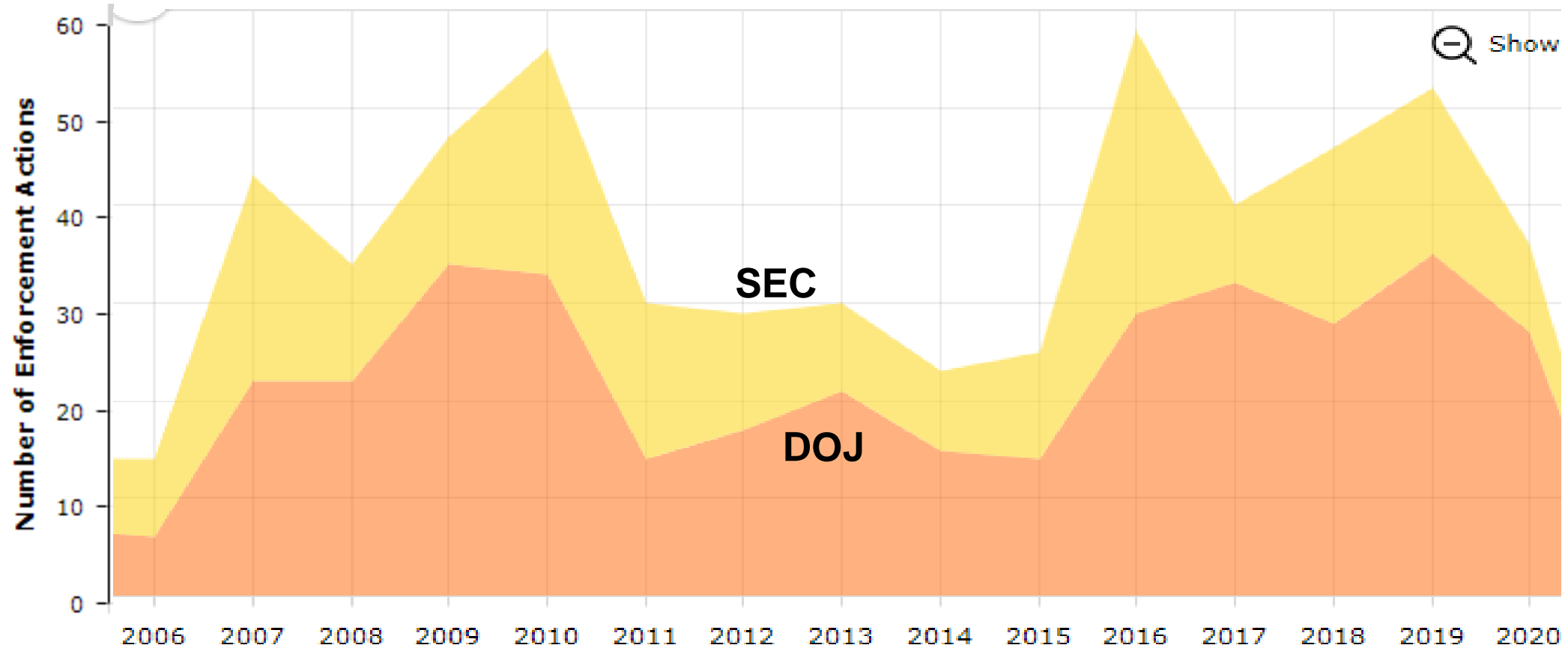
- Require companies with shares traded on U.S. exchanges (issuers) to:
 - Maintain accurate books and records
 - Implement internal controls sufficient to deter and prevent violations

FCPA Overview: Enforcement

- Creates both **criminal** and **civil liability** for individuals and businesses
 - Enforced by the US Department of Justice (DOJ) & the Securities & Exchange Commission (SEC)
- Entities can be liable for conduct of their **subsidiaries, third-party intermediaries**, and **agents**
- Potential Penalties and Sanctions
 - Millions / Billions in criminal and civil penalties for businesses
 - Fines and prison sentences for individuals
 - Collateral damage: reputational harm and/or debarment from government contracts

FCPA: Enforcement Trends

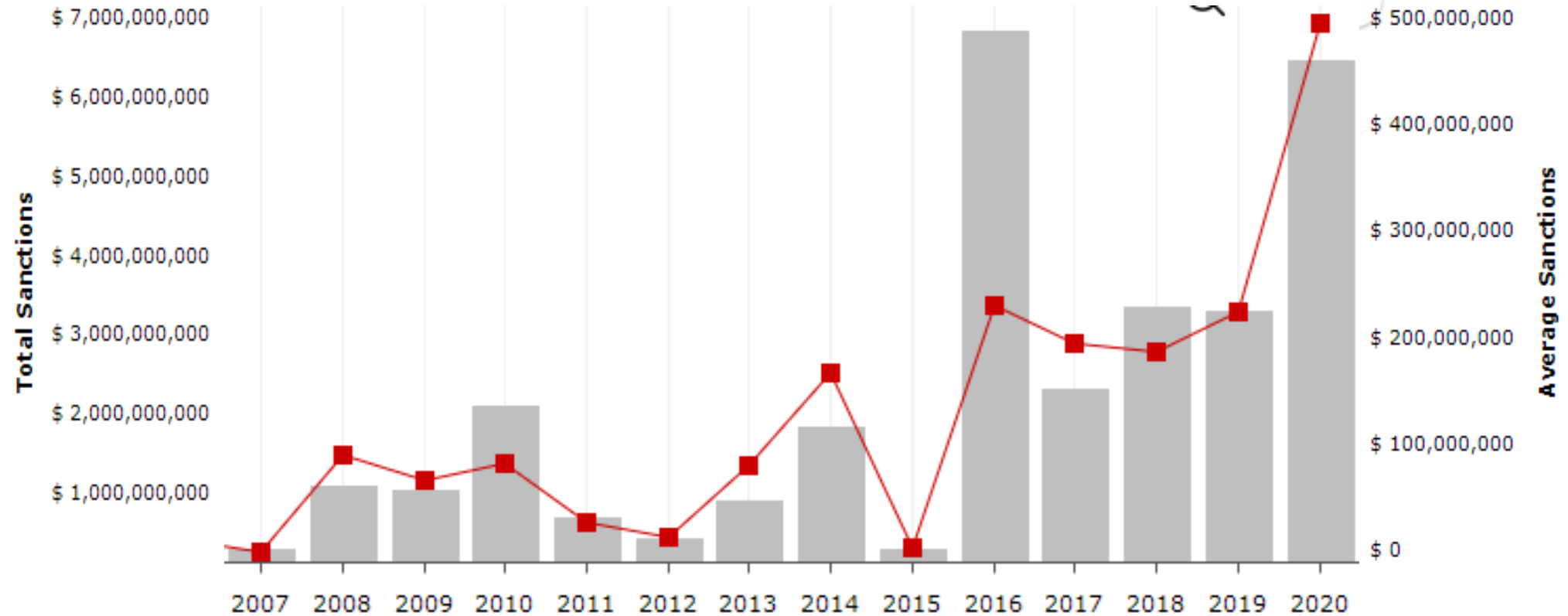
DOJ & SEC FCPA Enforcement Actions by Year



Source: Stanford Law School

FCPA: Enforcement Trends

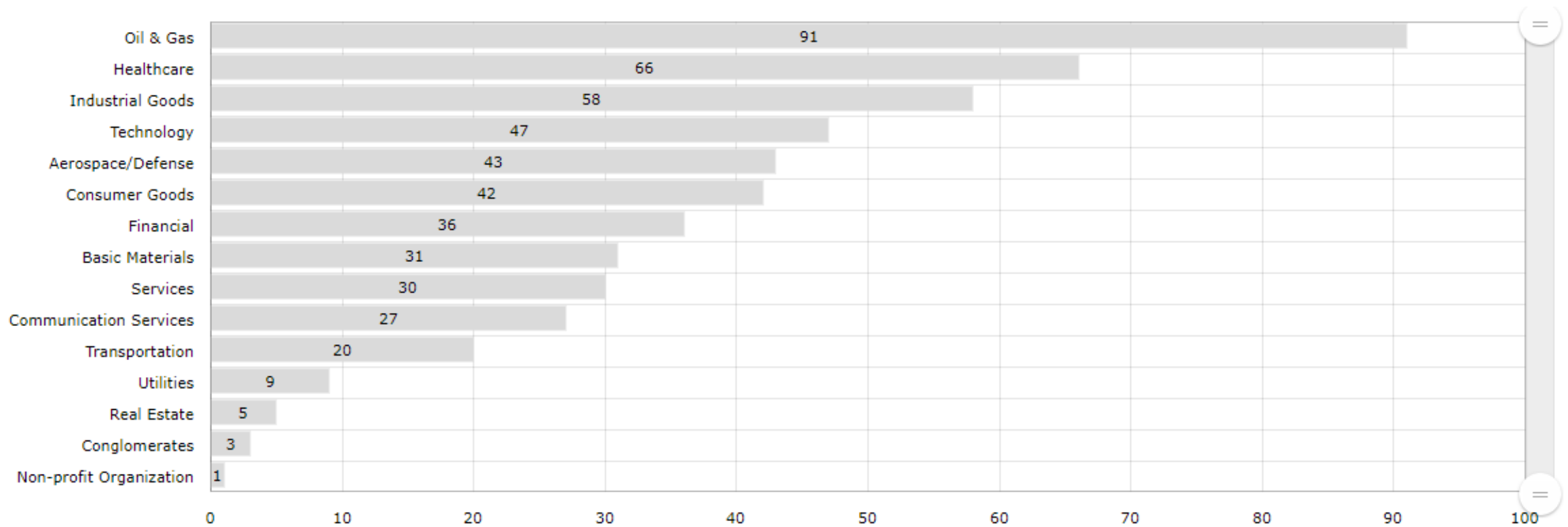
Total & Average Sanctions by Year



Source: Stanford Law School

FCPA: Enforcement Trends

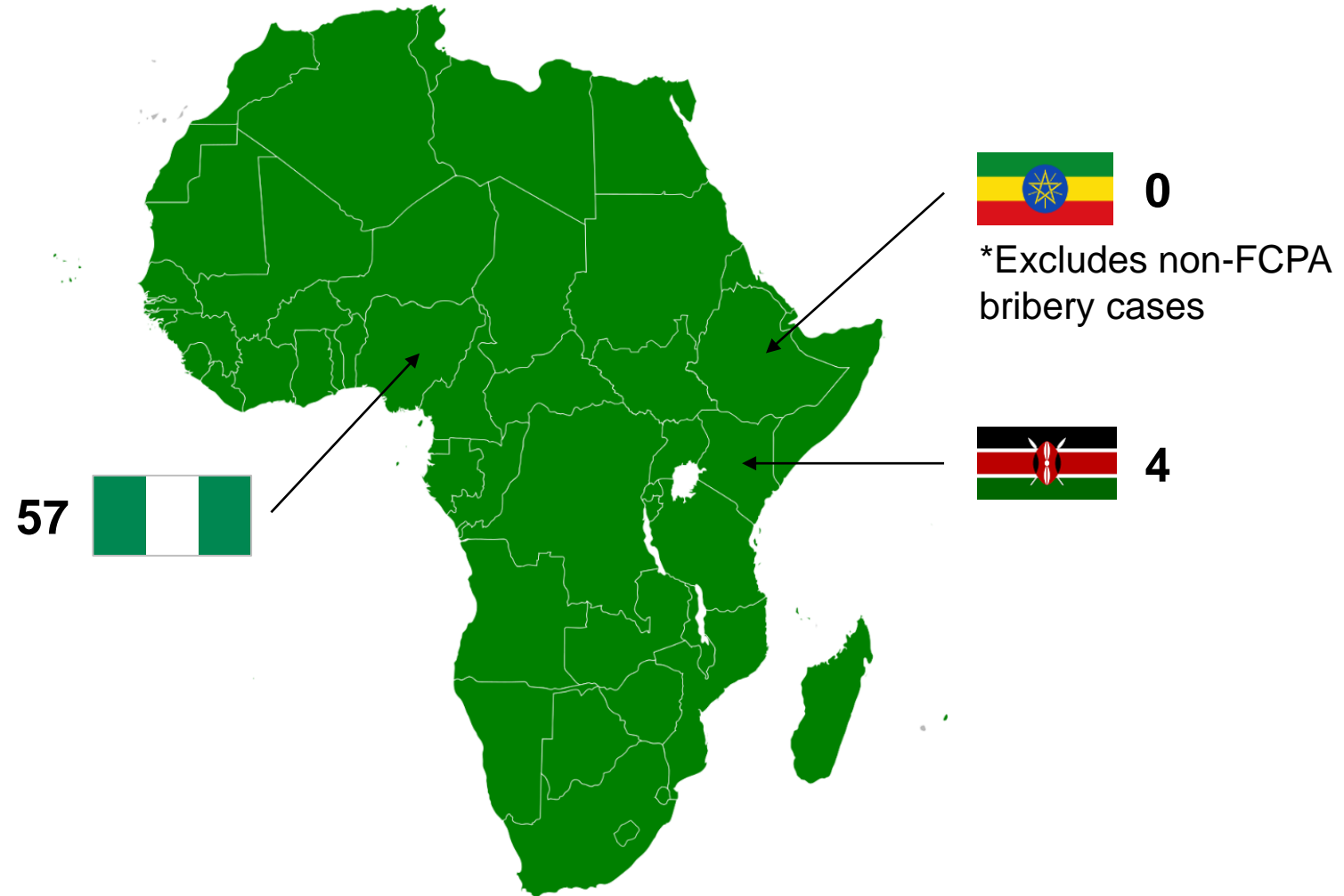
Industry Classification of FCPA Matters



Source: Stanford Law School

FCPA Actions Related to Conduct in Africa

Total Number of Enforcement Actions:
142



International Anti-Corruption Legislation

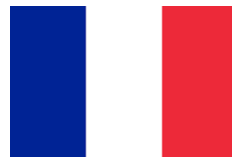
United Kingdom

- UK Bribery Act (2010)
- Prohibits bribery of both U.K. and foreign political officials
- Prohibits commercial bribery
- May be held liable for failure to prevent bribery
- No accounting provisions
- Penalties may include both fines and imprisonment



France

- Sapin II (2016): Law on Transparency, Corruption, and Modernization of the Economy
- Prohibits bribery of both French and foreign officials
- Requires companies with 500 employees and EUR 100m in revenue to implement an anti-corruption compliance program and internal accounting controls
- Penalties may include both fines and imprisonment



China

- PRC Criminal Code / Anti-Unfair Competition Law ("AUCL")
- Criminal Code prohibits bribery of both Chinese and foreign government officials or officials of international public organizations
- AUCL prohibits commercial bribery
- Penalties may include fines, imprisonment, and death



FCPA: Related New Legislation

- ***2020 National Defense Authorization Act*** – provisions that may shape enforcement include:
 - **Corporate Transparency Act:**
 - Takes aim at shell companies and requires that a registry be created to collect information about beneficial owners of corporate entities
 - Information will be made available to law enforcement
 - Implications for money laundering, corruption, and bribery enforcement
 - **Modification to Limitations Period for SEC Enforcement**



Transparency Initiatives

Open Contracting Partnership

Collaboration across governments, businesses, civil society, and technologists to bring open data and open government together to make sure public money is spent openly, fairly and effectively

Open Government Partnership (OGP)

Multilateral initiative to promote open government, empower citizens, fight corruption, and strengthen governance

Infrastructure Transparency Initiative (CoST)

Initiative across government, industry and civil society to promote the disclosure, validation and interpretation of data from infrastructure projects

Extractive Industry Transparency Initiative (EITI):

The EITI is a coalition of governments, companies, civil society, investors and international organizations that has developed a methodology for monitoring and reconciling company payments and government revenues

Resource Contracts.Org

Database of publicly available oil, gas and mining contracts from around the world

COMMON RISK AREAS



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Common Risk Areas: Third Parties

Mandatory Use of Third Parties

Procurement officials sometimes require companies hire third parties or consultants in order to participate in the procurement process

Baker Hughes 

SIEMENS

Local Content Requirements

Goal is to ensure participation of nationals in the workforce, and the promotion of local suppliers, goods, and services



Common Risk Areas: Payment Terms

Signature Bonuses

Commonly used in extractives industries

One-time payment made by company to the host country for the right to develop



Per Diems

Daily allowance an organization gives an individual, in this case typically a government employee

Payment generally based on where the employee is traveling, and what the employee's position is



CASE STUDIES



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Panalpina “Industry Sweep”

- Panalpina, a logistics company, admitted to paying **\$27 million** in bribes to foreign officials in 10 countries, including Nigeria, to expedite services for companies in oil services
- SEC and DOJ settled with all seven companies for **\$156.6 million** in criminal penalties and **\$80 million** in civil penalties.
- First time SEC charged a non-U.S. issuer with violations of the FCPA



Kenya: Goodyear Tire & Rubber Co. (2015)

- In Kenya, managers of a majority-owned subsidiary of Goodyear paid over \$1.5 million in bribes to employees of both private companies and state-owned enterprises and then falsely recorded the payments in the company's books as expenses for promotional products.
- In Angola, the general manager of a wholly-owned Goodyear subsidiary paid over \$1.6 million in bribes—again to employees of both private companies and state-owned enterprises—and concealed the scheme by falsely marking up prices of tires with additional “freight and clearing” costs.
- Goodyear settled with the SEC for more than \$16 million in disgorged profits and prejudgment interest.



Ethiopia: Metal and Engineering Corporation (Local Enforcement)

- More than 60 government officials were arrested on suspicions of corruption and economic sabotage in April 2019
- The case against the government officials was based on corruption that spanned over a decade
 - Mismanagement of the GERD project and several sugar projects
 - In an 11 billion ETB fertilizer project, the fund was depleted with only 40% of the project complete

BEST PRACTICES



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Mitigating Risks

Transparency

- Establish a transparent bidding process
 - Establish clear conflict of interest rules
 - Designated one key contact at the authority with whom bidders are permitted to communicate
 - Establish disqualification rules for bidders who fail to follow the rules
- Identify beneficial owners
- Participate in industry organizations promoting transparency (e.g., EITI)
- Dividing of power to facilitate huge public projects

Payment Provisions

- Establish official government bank accounts
- Clearly define required payments

Local Laws

- Publish procurement processes
- Follow per diem directives
- Enforce local corruption laws

