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<u>Uz. Ashraf Rasheed , Senior Legal Counsel, Ministry of Finance and Planning:</u>

بسم الله الرحمن الرحيم. Thank you, Chair and the Honorable members. My name is Ashraf, and I'm representing the Ministry of Finance legal department. And thank you for this opportunity to update the work on the public private partnership law, establishment of this legal framework on the Public Private Partnership, with the assistance of the CLDP. CLDP is the commercial law division of the US commerce department. So, we have been working with CLDP for some time, and we have, last October we have drafted the initial draft of the public PPP law. Now this exercise is the, actually the validation sessions of this law. And after this meeting, we will have 2 sessions. This meeting some executive level of the government agencies and SOEs. And after that, we will have a meeting with a council of ministers. That is the schedule we are trying to attend. As we know that Public Private Partnership is very important, if we can establish that legal framework, it would not only help the development of infrastructure, but also it will be very helpful for the, it will open a door for the direct foreign investments as well. So, at this point, I would like to introduce our team. I think each one of you can introduce. And later, Mark, our consultant will give you a presentation to update and give some knowledge about the PPP laws. Thank you.

<u>Ms. Lindsey Scannell, Senior Counsel, Commercial Law Department Program:</u>

Good afternoon. On behalf of the US government, it's a pleasure to be meeting with you all. We're delighted to be here and to be in support of this important initiative. My name is Lindsey Scannell. I'm a senior counsel for the commercial law development program at the US Department of Commerce. And we've had the distinct pleasure of working with the Ministry of Finance for the last 4 years, on procurement and Public Private Partnerships in general. So, at this time, I will turn it to Aura to introduce herself.

Ms. Aura V. Abon, Senior Markets Development Advisory Officer, Asian Development Bank:
Thank you, Lindsay. Good afternoon, everybody. I'm Aura Abon, senior markets, development advisory officer from the Asian Development Bank. And we're glad to be here today seeing that this was taking, taking shape. And ADB stands ready to support the government of Maldives in furthering the PPP agenda and supporting PPP projects down the road. Thank you.

Mr. Samuel Childerson, Attorney-Advisor, Commercial Law Department Program:
Hello, everyone. Thank you for having us today. My name is Samuel Childerson. I'm an attorney adviser with the commercial law development program on Lindsey's team, and I'm looking forward to the discussion today.

Mr. Mark Warburton, Internation Program Specialist, Commercial Law Department Program:
Good afternoon. My name is Mark Warburton. I'm an International Program Specialist with the commercial law development program, and I'm very thankful for being here today. Thank you.

Uza. Aminath Sana, Associate Legal Counsel, Ministry of Finance and Planning:
My name is Aminath Sana, from Finance Ministry, Legal Department.

Uz. Ismail Siman, Legal Expert, Ministry of Finance and Planning:
Hi, my name is Ismail Siman. I'm working as a Legal Consultant at the Ministry of Finance and Planning. Thank you.

Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:

Good afternoon. My name is Mark Moseley. I am the consultant retained by the commercial law development program of the US Department of Commerce to work with the Ministry of Finance on the development of the Maldives PPP Act. And it's a real pleasure to be given this opportunity to speak with you today. So, my thanks to the chairman of the committee and my thanks to all of the members of the finance committee of the People's Majlis. This is an important step in the development of the PPP law. We wouldn't be here without the help obviously of the Ministry of Finance, without the help of the ADB, and certainly without the help of the US Department of Commerce's, commercial law development program. So, again, my thanks to all of the parliament for receiving us and giving us some time to deliver this presentation today. You've all got copies of the presentation. I apologize it's in English, and I apologize that I'm gonna be speaking exclusively in English. But I'm happy to go through the presentation, and I'm happy to take any questions which the members of the committee may have during the course of the presentation or at the end of the presentation as you wish. We could go to the next slide. There's going to be 3 main topics as you can see. The first one is a general introduction to Public Private Partnerships. I'm going to spend a few minutes talking about the concept of Public Private Partnerships or PPPs. What are they? What do they seek to achieve. Then I'm going to briefly describe the steps that have been taken to date to develop the proposed Maldives PPP Act. Mr. Rasheed touched upon that briefly in his introduction, but I'll walk you through the various steps that have been taken so far to develop the proposed new law. And than the last part of the session, I'm going to try and go through some of the key provisions in the current draft of the law, that is draft 2.0. Obviously, as Parliamentarians, you will have the opportunity once the, legislation is introduced into Parliament to study it in great detail, and do a full clause by close analysis. I'm not going to trying in to do that here. I'm simply going to try introduce the sort of high level the basic elements within the proposed legislation. So, that's the scheme of the presentation. A begin with this definition of Public Private Partnership, it's actually taken from an Asian Development Bank publication. And it sets how the key elements of what is in a PPP. A PPP is a long-term contractual arrangement. So, as it's hard, it is this legal arrangement, a legal contract between the public sector and the private sector. So, the public sector could be a national entity like a national ministry. It could be a local entity. It could be a state-owned enterprise. And then on the other side is a private sector entity. Usually, an entity that is created by a number of investors for the special purpose of undertaking the PPP Project. And the PPP Project is one where you're bringing to bare both the publics and the private scales to design and develop and informant this project in a way that shares, the risks and rewards as indicated in the definition. That's a key concept. That's what makes it a partnership. It's a sharing of risks and rewards. It's not a complete transfer from the public to the private sector. It's not like a privatization. It is a partnership. A sharing arrangement. Ultimately the government still retains responsibility for delivering this public service. But they are using the private sector to provide some or all those services. And will see how that works is we go through the presentation. The other key point is that these are not short-term arrangements. They only make sense if they are long-term arrangements. That might extend 15, 20, 25 or 30 years. These are not short-term procurements. They are long-term arrangements to provide services to the public. Specifically, infrastructure services to the public over, and extended period of time. And that feature, but long-time period plus the sharing of risks and rewards is what makes these arrangements relatively complex. And why they require not just very specialize form of contract. But also specialize legislation. That's why this framework is being developed to make these kind of agreements possible. On the next slide I illustrate what I have just been talking about. On the left-hand side you have got the public entity which is the purchaser under these PPP contracts. They set the objectives. They indicate what it is, that they want the private sector to do. What are the infrastructure services and facilities that need to be delivered. And they retain ultimate responsibility for making sure that happens. On the right-hand side is the private sector. Typically, what you've ask the private sector to do is pretty comprehensive. It's the design the project, to construct the project, to operate and maintain the project, and usually to finance the project in the sense of providing the funds necessary to do the construction in exchange for being paid out overtime. And will see how that works that payment overtime provision. And together they form what is in the middle a partnership arrangement, where it's combining the best capabilities of the public and the private sector. And there is a sharing risks as between those parties. So, if we go to this slide, this slide is been around for long, long time. As long as I've being doing this. It is a matter of fact. I actually design this slide many many years ago. It's taken from the World Bank website. And this slide shows the range of infrastructure transactions that you can have. And they start with transactions where there is a very limited amount of private sector participation or private sector investment. And that's the kind of traditional infrastructure procurement that all of you are familiar with. There is civil works contracts where the government decides, we need a new rolled or new protocol, whatever facility it is. And the government build certain or introducing to a contract with a contractor to do that building. That's a traditional public works or civil works type of contract. That is not a PPP. Not a PPP. You will hear me refer to that as traditional infrastructure procurement. So, that's the left side of the spectrum. At the right-hand extreme side of the, other side of the spectrum is fulled of a structure. That's the privatization. That's what you have taken a government owned facility and selling it off to the private sector. That's also not a PPP at the privatization. What the PPP is basically all of the different kind of the arrangements that exist in the middle. And what extinguishes those different arrangements and different types of PPPs is the degree of private sector involvement. So, you might have para low level what is called a management contract. Where, let's say you've got a state owned utility company and you want to bring in the private sector to just manage it for a short period of time, for 5 years. That's a management contract. It's a form of PPP. But it's not a high degree of private sector participation. You are not asking the private sector to make a major investment in it. Leasing arrangements or is they known in France affermage arrangements. Those are types of PPPs as well. But the classical PPPs are the ones in the next two chevrons. They are concessions or build on transferred type of arrangements where you give the private sector an opportunity to run a facility for a number of years and then transfer it back that and earn money from charging end users. That's what a concession is. That's a classical form of PPPs. And there are other forms of PPPs where again you are asking the private sector to construct, operate and maintain and the exchange they are getting periodic payments from the government, so called availability payments that are made whenever the facility becomes available for use. That's a classic form of PPPs. Most modern PPPs however also involved the concept of financing where the cost of the construction is being financed by the private sector. And we see how that works in the course of the next couple of slides. These next two slides are very very important, because they really go to heart of why the governments like PPPs. Why are they attractive. And what they do. These next two slides they compare traditional infrastructure procurement with PPPs. So, under a traditional infrastructure procurement the government contracting authority, the ministry or the local council or the SOE. It pays from the outside. And it estimates what the construction cost to going to be and it estimates what the operating costs are gonna be. That's shown in blue. And it estimates how long it's going to take to do it. But inevitable and I'm sure you are familiar with this in the Maldives and because it is the same all over the world. I am from Canada, and this is certainly the case in Canada. When the government does projects, than more often than not do not come in on budget. There are cost over runs.

More often than not they do not come in on time. There are significant delays. And then when you get up and running, there are over runs associated with the operation of the facility all shown in red there. So, you make these estimates, but under the traditional infrastructure procurement if there are cost over runs or delays it's all the responsibility of the government. And that's because under traditional infrastructure procurement all of the risks stay with the government. I want to repeat that. Under traditional infrastructure procurement all the risks stay with the government. But let's see what happens with the PPP. Classically with the PPP no money gets paid until the facility is up and running. The private sector has to build that facility before it starts to receive any money either from end users or the government under the PPP contract. What does that mean? It means that the private sector is pretty strongly incentivized to bring that thing in on time and on budget. Because they don't see money until it's actually delivered. And the private sector has bid in a competitive sense as to how much money it's gonna receive. And because of that its revenues are tapped. And as a result it wants to operate that facility as efficiently as possible in order to maximize the profit that it hope to make. It's also important to note that because you've got the same entity building the facility as its going to be operating the facility. Because of that you are getting what is called a whole life benefit that when the private sector is designing and building the facility. They are looking not just to what can we do to finish this in a few years and then go away. They have to acknowledge and understand that they are gonna be running that facility for the next 20 or 25 years. And as a result, when they design it and build it, they are building it with a view to the long term. That's the whole life benefit that you get from a PPP. How does this work contractually. You've got a fairly complex contractual structure which is all stated here. Up at the top you've got the government contracting authority. That might be the Ministry of Transport or the Ministry of Health. That's the entity that is representing the public side of the PPP. Now they may get a funding from friends at the Asian Development Bank or the World Bank or other agencies. But ultimately, they are the public side for the transaction. They enter into a PPP contract with the company that is set up specifically to do this project. The PPP company shown in blue. How does that company come into being? You have project sponsors shown in yellow. Usually, a consortium of firms gets together. Some of them might be good at construction. Some of them might be good at operation. Some of them might be just pure financial investors. But they get together, they form a consortium they enter into a shareholder's agreement. They form the project company. The project company than borrows money to finance the construction. That's the set of parts shown off to the white of the blue box. So, they might borrow money from commercial lenders, or they might borrow money from a concessional lender, such as the World Banks, I.F.C or the ADB’s privet sector operations department. They will put together a long package and they will provide funding to the project company to undertake the construction. That’s really important feature. Because what it means is that when that construction is going on, those lenders will be watching it like a hawk to make sure that the project company is doing what it is supposed to be doing. That gives the government a huge additional benefit of another party. In this case the hard knows bankers looking at how this construction is working. And making sure that it is all proceeding appropriately. They’re doing that, because they want to get their loans repaid. They’re highly interested in that. The project company will then entering to sub contract agreements with a whole bunch of sub-contractors. Sum of them will be doing construction. Some of them will be doing operations. So, on and so for those of the boxes shown in the bottom of the diagram. The next slide is a key point, and a lot of people don’t understand this point. That is correctly important. There is no free lunches, this is not magic money. This is not, you know as a government, you not getting something for nothing. Yes, you’re taking advantage of private sector expertise and private sector financing. But still, somebody is going to pay for it. There is a distinction between financing and funding. Financing is having the money upfront in order to pay for construction and the cashflow needs of the project company. That’s what financing is. But it’s a loan. It’s got to be repaid. Ultimately there has to be funding to repay the loans and to provide the profit that the project company wants to make. A funding can come from one of two sources. It can come from end-users. So, if the PPP project is a rapid bus operation. The people who are riding a bus are providing funding every time they use the bus. Or it can come from the government in the form of a periodic availability payment, as long is that bus service is available for use. Yes, a payment will be made every three months, or six months or whatever. Or it can come from a combination of those two. Availability payments and end-user payments. But that has to be funding. And don’t confuse funding and financing. Financing is just the money you need upfront in order to build the facilities and get it working. This slide illustrates the different varieties of finances where PPPs have been used around the world. They have been used frequently in the energy sector, building power plants, building new transmission lines. They have been used in the water sector to build water distribution facilities. Water treatment facilities. They suddenly been used in the transport sector, building new roads, highways, bridges, railways, ports. Those three sectors, energy, water, transport are what people called economic sectors. But they're also, PPPs are also used in social sectors. And a real-estate couple of them there. The health sector and the education sector. Now usually when you, not always, but usually when you doing a PPP in a social sector, it's in combination with the government in this way that normally you don't have the private sector doing the actual education in the classrooms. Instead what you've done is you went into an arrangement whereby the schools are build and maintained by the private sector. But the public sector is still paying the teachers to do the education in the classrooms. And similarly in the health sector, most of the time what you see is the private sector is built and maintains for hospital facilities. Buts the actual clinical facility's are been delivered by the government, through government paid doctors. Suddenly in Canada's where there is a lot of health sector PPPs, that's how the system works. So, it can be used both for economic infrastructure and social infrastructure. So, why do this? why go through all this trouble? It's because PPPs are really powerful instruments for allowing the government to do really complex. Difficult things is, do them efficiently, do them effectively, and do them faster than the governments can deliver them. And I will stated with this. What you are looking at is, a really nasty stative land in road, Turkey. This was a terrible environmental wasteland. This was a serious of open-pit co-minds that have been abandoned 80 years ago. And it was a total environmental mess. That's what it looked liked in 2015. Three years later, this is what it look like. It's the world's biggest airport. It's the new stumble airport which is a public private partnership. In three and half years, the private sector completely transformed that land, and in one of the largest construction activities ever undertaken anywhere. And there is an amazing video go online if the video of this is fantastic. How the private sector mobilized the financial resources, the human resources, technical resources to build that airport in three and a half years. It's really a remarkable story. That's the power of what PPPs can deliver, so that's why governments do it. So that's what PPPs are. Let's take a quick look. I'm just gonna do the one slide on it. On what, the process has been. So, as Ashraf indicated, it began last year where there were workshops held here in the Maldives in August 2024, organized by the commercial law development program of the, US Department of Commerce. They were multi-stake stakeholder workshops. We had lots of people from lots of different ministries. And we are banged through over the course of, quite a few days sample PPP legislation from around the world. We looked at what is appropriate in a Maldives context, what would work, what wouldn't work, and that led to the development on the 10th of September of a draft PPP law version 1.0 done by the Ministry of Finance with some help from myself and from another consultant from the USAID. But it was the Ministry of Finance's product. We circulated that to various ministries and also to donor agencies. And we got comments back from the World Bank, from the ADB, and the IMF on that draft, first draft of the legislation. We've taken all that on board and produced the January 15 draft of the PPP law, which is version 2.0. And we are now the next step in the process holding these validation sessions with the parliament and also with ministerial officials and state-owned enterprise officials, later this week. Eventually, that I'll lead to in the next few days after those sessions have concluded, the preparation of draft 3.0. We are going to put that in front of the Economic Council. And make any changes that they request and then that's the document that'll be submitted to you in the Majlis. I think they're aiming for an April delivery of the draft legislation to you. So, let's just very quickly, I'm mindful of the time talk about what's in draft 2.0. Again, you'll get a chance when the final version comes to you to study at clause by clause. But let me just give you a few highlights right now. So, it's got a total of 18 chapters. The first four of which are shown on this slide. There's an introduction which sets out the scope, the objectives, and definitions. On the scope, I should mention that it'll apply to all sectors except we've carved out tourism. So, the tourism sector to the extent that it's governed by the tourism act, that's not gonna be governed by the PPP law. In terms of definitions, there's a few key definitions in the act. One of them, I'm just gonna touch on briefly, is this concept of value for money. Value for money is critically important when you're talking about doing PPPs. The fact is that only certain types of infrastructure should be done as PPPs. PPPs are difficult to do. And they're, it's a very complex arrangement. As you will see it requires a lot of, a lot of special legal structures to make this work. And, you know most countries find that maybe out of every 10 infrastructure projects, 2 or 3 are suitable as PPPs and the others are not. How do you know which, where a project is suitable as a PPP and where it is not? You run what is called a value for money assessment. You ask the question, and there's a detailed arrangement for doing this. Am I, the government gonna get more value by doing this as a PPP, than I am going to a supposed to doing it through traditional infrastructure procurement. PPPs, in some senses, will cost more upfront, because if you're using private sector financing, that is more expensive than the government borrowing money. And so, you have to get value by bringing in the expertise of the private sector, by bringing in the specials skills of the private sector that will mean that it counteracts that higher cost of borrowing when you're using the private sector. That's only gonna happen on certain projects. And so you want to do this value for money assessment, to determine whether or not this project makes sense as a PPP. And that's critically important. Another critically important concept is found of the definitions is affordability. Frankly, there's lots of great projects out there. But can the Maldives afford them? Can it afford them, in terms of either the availability payments or in terms of the end user payments. Unfortunately, you can't afford everything you would like to do. No country can. But affordability is an important test, certainly very important to the IMF. And so that concept is embodied in the legislation. Bank ability is another concept. You only want do private sector financing, if indeed there are lenders that are willing to invest in the project. Some projects they might be good value for money, but that might be affordable. But they're not bankable. And so, you shouldn't be doing a PPP if they're not bankable. That concept is in there as well. That first chapter also identifies the rules of the SOE’s. And although there's a few bells and whistles to it, essentially, we're going to treat SOEs as public authorities. So, they would be on the public side of the transaction as opposed to being private. Some countries allow SOEs to be the private parties. Frankly, that causes problems. Because then you've got so the government on both sides of the transaction. I'll name names. That's what they do a lot of in China. And, you know sometimes it works in China and sometimes it doesn't. But the consensus of the workshop, we wanted SOEs on the public side. Chapter 2, institutional coordination, that sets out the special arrangements that have been proposed to do is, the key aspect is I've got the wrong acronym, IPPCHB, IPPCHC, inter ministerial PPP committee. So, this is going to be, committee of ministers chaired by the minister of finance, with the minister of Economic Planning on it. And, also, for each project, the line ministry, the contracting authority would also be represented on the IPPC. So, the IPPC you'd have a separate one for each project. And it is the highest, decision making body. Before you go through the various critical stages of a PPP, they have to sign off on it to make sure that governments in full control of this. It also talks about the CPPO. That's the, central PPP office that'll administer PPPs on a day to day basis in the sense of helping the contracting authorities, the line ministry, who actually owns the PPP project. There is a debate as to where the CPPO should be located. The strong recommendation from, certainly the donor community in the IMF is to put it in the Ministry of Finance. Personally, I think that's where it should be. But that's a subject that was debated at the workshop and left open for the moment. Chapter 3, contents of the PPP contract. Those are the key provisions that you find in every PPP contract dealing with describing the project and the duration, the rights and responsibilities of the parties, so on and so forth. Chapter 4, duration extension and termination of the PPP contracts. PPP contracts are meant to last this long period of time. But they are sometimes terminated prematurely either by the government or by the private sector, particularly if the other partner is not doing what they're supposed to be doing. If the private sector company is not delivering the project, you can have early termination. If the government is not making the payments, it should be making, you can have early termination. And what are the consequences of early termination? They can be significant. They can be large payouts of money. It has significant fiscal implications. So those are provisions that the Ministry of Finance and the IMF pay a lot of attention to. Next, we've got chapter 5, settlement of disputes. What are the arrangements for settling disputes under this contract? Usually, you have a mechanism that I call a staircase. The parties try and settle it, disputes between themselves. If that doesn't work, maybe they go to mediation. If that doesn't work, maybe you'd call in an expert to make a determination. If that doesn't work, you go to arbitration. Generally, you want to avoid taking these kind of disputes to an ordinary court. Because these complex, these contracts are so complex that ordinary courts struggle with them. And frankly, if you attracted foreign investors to participate and form the project company, they will want to see international arbitration, as the means for settling disputes. As supposed to applying Maldives law with a Maldives court. You will usually want to have some form of international dispute settlement. Renegotiations; renegotiations happen frequently in PPPs because of their long term nature. What happens is you get 5 or 10 years into the contract. It isn't working the way that expect. One side or the other, or maybe both want to renegotiate and do a new deal. In some countries this became a real problem and, particularly in Latin America. And the Latin Americans have come up with what I think is pretty clever solution to deal with this of having an independent, technical panel assess prospective renegotiations and determine whether or not they should be allowed. We've embodied that concept in the draft legislation. So, in that respect and in others, the Maldives draft legislation is really state of the art. It's, you know the most sophisticated arrangement you can have. Because we've borrowed from good examples all over the world. Chapter 7 sets out the stages of every PPP transaction, identification of the transaction, preparation of the project is the second stage, procurement of the process is the third stage, and implementation is the final stage. Chapter, the next chapters take you through those sections. So, chapter 8 talks about what happens during phases 1 and 2, the initiation and the preparation. Then chapter 9, it looks like a digression from this sequence, but it's not. Chapter 9 deals with the important concept of unsolicited proposals. Countries that have established PPP programs have been faced with prospective of the private sector, not waiting to hear of new projects being announced. But, instead, coming forward with their own ideas, they will come forward and say huh, we think we can build this new hospital facility, or we think we can build this new ports facility. And they trying to sell that idea to the government as a PPP. It used to be that donor agencies really discourage that. But countries continued to do it anyways. And the more recent view is, unsolicited proposals actually can be a good thing in the sense of introducing ideas that the government haven't thought of. But they really do need to be carefully controlled. And those even sophisticated advanced economies like Australia and Canada that do a lot of PPPs, they now allow unsolicited proposals. But they very carefully controlled them. And what we have embodied in chapter 9 are those controlled mechanisms recommended by the World Bank and adopted by a number of countries now. And essentially it says that you treat an unsolicited proposal as being different only during the initial stage. Only during the identification and project preparation stage. But after that, once the government has accepted the concept then it goes through the same process as a normal PPP. It goes through the normal procurement process which is a competitive procurement process. And that's discussed in chapter 10. You still get competitive procurement, even if you have got an unsolicited proposal. And then in chapter 11 and chapter 12, it describes in more detail how the competitive procurement process works. Over of the, on the last slide, the remaining chapters deal with again the sequence of events and some additional important matters. So, chapter 13 deals with situations where for particular reasons, exceptional reasons, you don't do competitive procurement. You do a direct award. Essentially chapter 13 really restricts that. The only time essentially you are allowed to do a direct award are projects involving national security. And projects where it is an extension of an existing PPP. You know that you don't have to re-tender it if you are just extending it by a few years. But otherwise, every PPP project solicited or unsolicited should be competitively procured. That's what chapter 13 says. Chapter 14 is a new chapter recommended by the ADB and its comments and we don't buy in. That basically tells you how you end the procurement phase. You take it back to that in a ministerial PPP council. They make a final decision and then you can sign the contract and proceed to implement it. Implementation is dealt with in chapter 15. Key provisions in here are the provisions whereby the contracting authority, the line ministry is told what it needs to do in terms of monitoring the performance for that contract. PPPs are not a fire-and-forget-missile. You don't just sign the contract and turn things over to the private sector. You have to, have over time an effective PPP.

You've got to monitor what the private sector is doing. That’s all said out in chapter 15. Then, that completes the cycle. The next 3 chapters deal with some incidental matters. Chapter 16, government support for PPPs. Various forms of government support are contemplated, packs holidays, guarantees, what are the permissible forms of support, how do they get approved. That’s what is in chapter 16. Chapter 17 introduces an innovative concept again. Countries that have embarked on a PPP program have often time found that they struggles to come up with the money necessary to do phase-2. To prepare the projects properly. To do feasibility studies. To draft the PPP contract. To prepare the tendering documents. That takes time. It takes money. And where does that money come from. Well yes, you can get it from donors to some extent. But some countries have had great success in establishing a project development fund where it is a revolving fund. Government puts money into the fund. Ministries use it to prepare projects. When the projects are successful, the winning bidder has to pay that money back in to the fund. And so, it recycles the money and provides funding for the government to prepare more projects. So, India has a lot of success with that. So, we have captured state of the art provisions on the project development fund concept in chapter 17. And then chapter 18, the final chapter is the one we always see at the end of every legislations. It’s the transitional and final provisions. It tells you when the act comes into force. It tells you which pre-existing legislation is overwritten by this new legislation. So on and so forth. So, in a very short form overview, that’s what is in draft 2.0 of the legislation. And in a grand overview that is what the Ministry of Finance is trying to achieve with this PPP legislation and what are the objectives of the PPP program overall. So, I hope that has given you a bit of insight into what is being done and why it is being done. Thank you, Mr. chairman.

<u>Chairman:</u>
Thank you, Mr. Mark and team.
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<u>Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:</u>
Happy to take any questions.

<u>Mr. Ahmed Azaan, MP of Central Hithadhoo Constituency:</u>

Thank you. My name is Ahmed Azaan. I have a couple of questions. So, from what I understood, from this act is, that it limits PPP for small scale projects. As you know, Maldives is a country made up of small communities spread across the oceans. And, I think sometimes it's necessary for small scale projects also to be conducted, in PPP model? What do you think about it?

Chairman:
Mr. Mark

Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:
I'm really glad that you asked this question, because this was a big issue for discussion during the workshops in August. And, if you look at the latest draft of the legislation, you'll find that the provision that deals with this issue still got blank spaces in it. So, here's the tradeoff. On the one hand, that you say, in a country like the Maldives a lot of the infrastructure projects are gonna be small. And if you wanna take advantage of all of the benefits of PPPs, well, why shouldn't we be doing small scale PPPs? The problem is this. That a PPP is a, as I keep saying, quite a complex exercise. You know, PPP contracts run to 4 or 500 pages in length. Because you've got to set out all of these issues of who does what, and you've got to have all of these provisions for what should happen under a normal sequence of events, what should happen if exceptional events occur, what are the arrangements for termination that the contract. What are the arrangements for dispute resolution. It's a very complex thing. And so, classically people have said you should only do PPP projects if they're big projects, you know, millions of US dollars, quite a few million US dollars. Now, recently a number of organizations have said, well, can we simplify the PPP process in such a way as to make it possible to do small scale projects. The answer is yes, if you do certain things. So, for example, if you bundle projects together, the, I'm from Canada, but I live in the United Kingdom now. The UK had great success with bundling together school constructions. So, if you did the construction of one school building, nobody would be interested in doing that. It would be too complex, a transaction for a single school building. But if they bundled together 10 school buildings, then, yes, people were prepared to invest in that, and the government was prepared to take the time and trouble of drafting the contracts and what not else. So, bundling helps quite a bit. The other thing that you can do is, standardization. Instead of drafting a unique PPP contract,

every time you do the project, you have a standard form that you use for projects of a certain type, such as school projects or hospital projects or road projects. Some countries have had great success with standardizing their PPP contracts. So, India's done that. South Africa's done that. The UK has done that. Some efforts have been made to try and do that on an international basis. That's proving to be more difficult. Happy to talk about that offline. But the idea of standardizing contracts does help you do smaller scale PPPs more efficiently. But there are limits using those two techniques of bundling and standardization. Some organizations, I have been belong to an organization called, the World Association of PPPs. And that organization is exploring aggressively this concept of small-scale PPPs. What else can we do to simplify it? And it's been a struggle. But, some progress is being made on that. Where you see this reflected in the legislation? Is there's a provision in the legislation that says PPPs should only be used if the total value of the project is above a certain amount. And we've put a blank in there, because we're still discussing what that amount should be. And that's something I suspect when this legislation comes before parliament. You're going to have that debate. When you have that debate, all that I can do is, encourage you to keep in mind that balance. On the one hand, yes, you wanna do these projects. You wanna use this as widely as possible. But on the other hand, you have to recognize that because of their complexity, and because of the amount of work that has to be done by both the private sector and the public sector to put one of these deals together. You can't, you can't apply it for just very, very small projects. So that's the tradeoff. I don't have a clear answer for you. That is something, as I suspect, you're gonna have to debate when this comes to parliament.

Mr. Ahmed Azaan, MP of Central Hithadhoo Constituency:

I have one more question, more of a suggestion, really. I think there should be a provision to limit excessive financing costs and profit margins. So, excessive end-user charges. I don't know if you know this. But we have had a really bad experience with the PPP agreement in the past. The main international airport of the Maldives was given to an Indian company to be managed under PPP agreement. And, it was a bad deal for us. There was an excessive financial burden on the government. And also government had no control over the end user costs as well. And it was prematurely terminated, and we ended up paying more than $200,000,000. So, I think right now, according to this act the ministries can make regulations. That's what I understood. But I think there should be a provision explicitly limiting excessive financing costs and profit margins, I think. What do you think about this?

<u>Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:</u>

I'm a big believer in competition. I think if you've designed your legislation to properly prepare the projects. And then put them out for a competitive tender. That is the best way to ensure that you're getting, here's that magic phrase again, ‘value for money’. You did not get value for money on the airport transaction that you spoke about. But that's because it was not a properly prepared project. And it was not I believe, I'm correct in saying this it was not competitively tendered, not in the way contemplated in this law. The problem if you put, if you try and put into the legislation, restrictions on profitability, you may you Know, it's impossible to figure out in advance what is acceptable, you may say okay, you know 15% return on equity is appropriate for the private sector. Well, it may be that, you know if you put that in the legislation every time anybody bids on something they're gonna come in at 15%. Whereas if you didn't have that in the legislation somebody might come in at 10%. So, you know if you try and impose in advance controls over the what levels of profit are appropriate. I think you're just going to distort the playing field. I suggest that it's better to properly prepare the project, run a competitive tender, run your value for money assessment after you got the bids in and ask the question, am I getting value for money, before you sign the contract. So, the thing about these value for money assessments is again it's not what do it once and forget. You run the value for money assessment when you're trying to identify the project. You run it again and trying to decide whether not to do this as a PPP. You run it again as you're preparing the project and you're drafting the contract and you're assigning this risk to the private sector and this risk to the public sector. And again you can run the value for money assessment and determine is this good value for me and the government? But then you run the value for money assessment another time after you've got the bids in. And at that point you ask the question, is this a good deal for the government? And if it isn't, you don't sign the contract. If it is a good deal, you do sign the contract and you let the private sector earn the profit that it had hoped to earn if it is doing the project efficiently. And frankly if it does the project even more efficiently than had been expected, and it earns a larger profit. So what? You're still getting a good deal as the government, based on the value for money assessment that you've done. So, I would urge you to focus on the process. Make sure that projects are properly prepared. Make sure that you're doing a competitive procurement. Make sure that you're doing value for money assessments. If you do those steps, you shouldn't need to put price and profit controls in and indeed it would be counterproductive to do so. That's my suggestion.

Mr. Ahmed Shamheed, MP of South Hulhumale' Constituency:
Thank you. I believe the Ministry of finance and US Department of Commerce came up with this legislation maybe. They believe they have, there are some big, I mean new opportunities to Maldives. So, have you done any research on what this new legislation bring to us in terms of project financing and other opportunities? Is there any research done on that?

Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:
I can speak generally and then maybe the ministry can add to that. The approach that was taken starting at the workshops and with the development of version 1 is that, what we wanted to do was have legislation, that was as I've said earlier state of the art. So, that, you know when a construction company in Toronto or a commercial lender in Melbourne is looking at this act. They're saying woooh, these guys paid a lot of attention to how to do PPP's. They have obviously borrowed from the very, very best arrangements around the world. It is state of the art legislation. That will make them interested in the Maldives. If you then come up with a few good projects and if you properly prepare them and present them to those investors. I think you will find considerable interest. Investors there's a whole bunch of money out there that is looking to invest, and they like investments in infrastructure and they like PPPs. Because it pays out on a predictable basis over a long period of time. Some of the biggest investors are pension funds. You know, in Canada the Ontario Teachers' Pension Fund is a huge investor in infrastructure projects around the world. In Australia similarly there is these so-called super funds which are pension funds that are big investors. They will always tell you, the problem is not money. They have got trillions of dollars that they want to invest. The problem is properly, an absence of properly prepared projects. If you'e got the right legal framework, and you've got properly prepared projects, people will be interested. But those are the two things you need. I am going to say one more, I am going to say two more words about those two things. What we doing here is, the legal and regulatory framework. Now if you do surveys of investors and the World Bank has

done this for years. If you do surveys of investors, ask them what's the most important thing. Every single time they done the survey, the answer has been, what's the legal framework? Are my legal rights protected? And this is designed to protect those rights. So, that's first thing. Second thing is, properly prepared projects. You need to not just have one or two projects. Ideally, you want to have a pipeline of projects. Why is that? It is because if I am sitting there at my construction company in Toronto or in Paris or where not else. I am going to say well, do I really want to do this project in the Maldives. I see quite properly that they've got competitive tendering, and I like that. I am a good company. I want to do competitive tendering, and I am confident in my company's abilities to win those tenders. But I know that there, you know in a properly done competitive tendering there is gonna be four or five other shortlisted bidders that I am gonna have to compete against. So, I am going to have maybe a one in four chance or one in five chances of winning that bid. I am going to spend a lot of money preparing that bid. And if I only got one in five chance I might not win it. But, if I see that there is whole series of projects being offered in the Maldives, I will feel more comfortable about getting to know the Maldives and getting to know its legal system and getting to know the local players that I will need to do business with because I might not win that first project in the pipeline. I might not even win the second one. But I might win the third one or the fourth one. And that makes it worthwhile for me to look at the Maldives as an investment opportunity. For the people sitting in those offices in Paris or Toronto or wherever, they have got the whole world in which to invest. There are any number of countries now that are offering PPPs. The ones that attract money are the ones which have got the right legal framework, and they have got a pipeline of well-prepared projects. Those are the two things you should need to do.

<u>Uz. Ismail Siman, Legal Expert, Ministry of Finance and Planning:</u>

Yeah! And just to add, I think one important point is, even with the current legal framework there is nothing preventing the government from entering into a PPP, which is kind of problematic given there is no proper process in place. And partly I think the reason why we've had some really terrible experiences previously. Not just the airport project. I think there has been some transport projects as well. So, one of the main reasons we want this law to come into place is, for even the current engagements and future engagements, so that there is an actual process in place to protect the government's interests as well. So, I just wanted to add that.

Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:

That’s why those provisions regarding unsolicited proposals are so important. Because right now what you are facing is unsolicited proposals coming forward and no legal framework that protects the government. So that would change with this.

Chairpman:

Funadhoo MP, Mamdooh.

Mr. Mohamed Mamdooh, MP of Funadhoo Constituency:

Thank you. My question is, what are the aspects we Maldives, a developing country should consider most when we try to implement such a law regarding these PPPs, which benefits the both the private and public side of these partnerships, and get the most from PPPs. As there are several arguments that PPPs are not the best fit for a country like Maldives. Actually, that’s what these laws should make sure that any negative ideology or such an experience which we had in the past never wins. What is your opinion on this?

Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:

Some extent I am going to repeat what I said earlier. That PPPs really only should be used under certain circumstances. And where countries get themselves into problems and where PPPs have earned a bad reputation is because they haven’t been selective about when to do a PPP, and they haven’t properly prepared the PPP project. That is where this key concept of value for money comes in. You need a method which allows the government to assess, does this project makes sense from the perspective of government. And if it does, what are the processes is necessary to manage that transaction in a way to maximize the value for money. You know, it’s not enough to simply do value for money assessment at the beginning and say, oh yeah! This looks attractive. And then forget about value for money. You’ve got to keep doing it. There is a difference between assessing value for money and achieving value for money. And so, what this legislation is designed to do is, yes, encourage assessments a value for money. But it’s also designed to help you achieve value for money. Help you identify the projects that are sensible candidates as PPPs. How to competitively procured them in a way that make sure you are getting the most efficient and effective offer for the infrastructure services. Make sure that you manage the implementations of those projects efficiently. So, as to maximize value for money. And overarching the whole thing making sure that the Ministry of Finance has the ability to control the direct and contingent fiscal risks associated with PPPs. I am going to talk about that for a moment because that's really important. When you entering into a PPP contract, if it's an availability type payment, you are going to be making as the government periodic payments to the project company as the project is delivered. That's a direct liability. It's easy to see what it is, it's easy to put it on a spreadsheet. And the government can easily budget for that. But PPPs also have contingent liabilities. Situations where perhaps because of you know, some force majeure event or other circumstances, there is a pre-matured termination, or because the government really is unhappy and wants to end the contract which it as the right to do under this. Or for other circumstances you have this pre-matured termination and then you can get under the contract, there is a significant payment that has to me made. Why is such payment necessary? Well, that payment is necessary because, otherwise the lenders wouldn't have lent to that project. Even if the project is not performing the way that it should be those lenders will still want to get repay at least some of their money. Because, you know all the facilities have been built, that roads have been built, maybe they are not operating the road the way you like. But the roads there, and they should be getting some compensation for the money that they lend. The equity investors in the project company, they may lose their shirts. But the bankers will want to get at least some portion back. That could be are the cases of pre-matured termination a big payment by the government. You referred to the situation with the airport, where again, there was this great big payment. That's a contingent liability. That's an uncertain liability. And those are much more difficult to manage. But there are provisions in the act that are designed to give the Ministry of Finance all of the tools they need to manage both the direct and the contingent liabilities. And this is something that the Ministry of Finance rightly was insistent upon. This is certainly something the IMF is very concerned about. We want to make sure that the fiscal risks associated with PPPs are properly management. We talked about small scale PPPs, but here we're talking about big scale PPPs. Large scale PPPs have significant risks associated with some fiscal risks. And the Ministry of Finance wants to be able to manage that. But keep this in mind, remember what I said what at the beginning. Yeah, there are risks associated with doing PPPs. But if you do traditional infrastructure procurement, all of the risks are with the government. Every single risk is with the government. At least under a PPP, you share the risks with the private sector. And that's one of the key reasons you do PPPs. You share risks in such a way that the party best able to manage the risk is responsible for it. So, things like construction risk, the private sector good at handling that, making sure there are no cost over runs and undue delays. They've got that. Things like for an exchange risks, private sector isn't so good at that and public sector you are looking at a sharing of the risks. But this business of allocating the risks between the private and the public sector. What is in one camp, and what is in the other and what is shared. That's the heart of every PPP transaction. This risk sharing is critically important. And you will see a lot of provisions and the legislation dealing with that risk sharing concept.

<u>Mr. Ahmed Shamheed, MP of South Hulhumale' Constituency:</u>
Thank you once again. With the level of corruption in our society, I'm little bit concerned about the chapter 6 actually, renegotiations. Even with the airport project, if I remember the first case is, how to define gros sales. So, definition of gross sales, Ashraf may remember it. But that's with renegotiation. Basically, they redefine the what gross sells is. So, which gave an advantage to the developer. And again, with the other projects with I had some experience, renegotiation is the main, is the stage where we actually failed most of the projects. So, as in we are every five years, we are having new government, last that's they, at least last three elections gave us new president. So, each time a new government comes, we all go through you know the agreement with the previous government has done and they are renegotiation, everybody want something from it. I don't know whatever it is. But we have to be very careful with the renegotiation that kept. And even though we say technical penal which is a good thing. But I think there should be lot of restrictions. What is your thought on that?

<u>Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:</u>
I could not agree with you more. Renegotiation has been one of the really problematic areas for PPPs around the world. I mentioned Latin America. Latin America a got absolutely awful. You know something like 70 or 80 percent of all of the contracts, particularly in the road sector, were being renegotiated. And they were being renegotiated not in year 10 or year 15 or year 20. They were being renegotiated in year 2 or in year 1. And it got so bad that they had what is politely called opportunistic bidding on behalf of the private sector. In other words, people would bid on a job, a PPP job, at an unrealistically low level and get the contract because they were confident

that 1 year later or 2 years later, they could go to the government and renegotiate it and have to, you know, rewrite it in a way that, made it work for them. And, of course, when you do a renegotiation, you're not in a competitive environment. It's just you and me renegotiating. It's not, there's no competitive of pressure on you. So, renegotiations are a problem, and that's why we've developed the material that is in chapter 6. The concept, it does involve having this, technical panel that will assess whether or not renegotiations, a particular requested renegotiation is appropriate. So, the concept here is that, you want somebody, you want a group of people who are independent of not just the private sector. But also, frankly the Ministry. Because you want, you have to be worried about what you talked about. You know, A new Minister comes in office and maybe she is a little friendly with the owners of the project company and cut a deal that is disadvantageous. You want to prevent that from happening. And so, you establish this technical panel that has to independently verify the renegotiations are, that this particular renegotiation is acceptable. Now you might say why, if there is problematic why allow renegotiation or why not just say no. You can’t do it. That’s a problem. Because you know, these are long-term contracts. And no matter how much skill you bring to there in preparing the contract, preparing the project and drafting the contract. No one can predict what is going to happen 20 years of now. And so, you need to have a mechanism which does allow the contract to be renegotiated if situation have really changed. But you need to control it. You need to manage it. And as I say, what you’ve got in chapter 6 is really state of the art in terms of the most sophisticated approach certainly that I have seen for handling renegotiations. It’s based essentially on what they have got on Chile and Peru. This is where this comes from as a primary source.

Chairpman:

Mr. Mark and team, thank you. That’s all for today.

Mr. Mark M. Moseley, Principal, Moseley Infrastructure Advisory Services, Commercial Law Department Program:

Thank you. Much appreciated. These were great questions. Thank you again for allowing us to come here. And I wish you the best of luck in your deliberations on this law. It is an important piece of legislation and given the quality of the questions I have heard today, I am confident you will do a good job with that.