



Ministry Of Finance & Economic Affairs
The Gambia

REPUBLIC OF THE GAMBIA

NATIONAL PUBLIC-PRIVATE PARTNERSHIP POLICY 2023

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LIST OF ACRONYMS

CA Contracting Authority

DDP..... Directorate of Development Planning

DPPP..... Directorate of Public-Private Partnership

GIEPA..... Gambia Investment and Export Promotion Agency

GOTG.....Government of The Gambia

GPPA..... Gambia Public Procurement Authority

MOFEA..... Ministry of Finance and Economic Affairs

PDF..... Project Development Fund

PPP..... Public Private Partnership

SPV..... Special Purpose Vehicle

VGF.....Viability Gap Funding

VGS..... viability Gap Scheme

FOREWORD



HON. SEEDY K.M. KEITA
MINISTER OF FINANCE AND ECONOMIC AFFAIRS

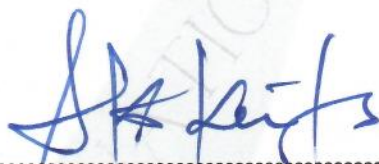
The Government of The Gambia is presently confronted with enormous challenges in infrastructure needs and services delivery which is hindering our economic growth. The development of essential public infrastructure and services is imperative for achieving sustainable economic growth of a country and the provision of these public good and services has characteristically been perceived as the duty of the Government. However, given the limited fiscal space, the country's deficit in infrastructure cannot be met by the public sector alone through budget allocations. Thus, The Gambia Government through Ministry of Finance and Economic Affairs developed a policy, to encourage the use of Public-Private Partnership (PPP) as a means of leveraging public resources with private sector resources and expertise in order to close the infrastructure gap and deliver efficient public infrastructure and services to ignite the economy and stimulate economic growth and development.

FOREWORD CONTD.

The use of PPP in addressing infrastructural gap and effective and efficient public service delivery would enable the Government to achieve better value for money and free up the fiscal space whereby, resources would be deployed to other priority areas of the economy.

In light with this objective, the Ministry of Finance and Economic Affairs has established a PPP Policy to stipulate a clear and consistent process for all aspects of PPP project development and implementation from project identification, appraisal, selection, procurement, operation & maintenance as well as performance monitoring mechanism.

Finally, the application of this policy is seen as Government's commitment to bridge the infrastructure deficit and provide efficient public service delivery. To that end, the successful implementation of this Policy will require the support of all stakeholders and we therefore, looks forward to strong collaboration between the public and public sector in operationalizing this policy.



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HON. SEEDY K.M. KEITA

MINISTER OF FINANCE AND ECONOMIC AFFAIRS

1. PREAMBLE

The high demand for infrastructure development, coupled with the pressures on National Budgets has made many governments move towards encouraging the private sector to invest in infrastructure projects. In The Gambia, a narrow tax base, growing populations and aging infrastructure are straining the Government's capacity to enhance infrastructure development in the country.

The Government of the Gambia (GoTG) recognizes these pervasive challenges and has therefore adopted the 2022 PPP Policy (the "National PPP Policy") to encourage the use of Public Private Partnerships (PPPs) as a means of leveraging public and private sector resources and expertise to close the infrastructure gap and deliver efficient public infrastructure and services. In light of these initiatives, the GoTG recognizes the use of PPPs as stated in the National Development Plan as a strategic mechanism for procuring, financing, and delivering public infrastructure and related public services.

In order to facilitate and promote PPPs in connection with the creation of new infrastructure assets as well as for the management of existing ones, the GoTG hereby lays down an explicit and comprehensive policy that articulates the broad framework for the implementation of PPPs in infrastructure and services while being sensitive to the needs of the Gambian population and national priorities. The GoTG is committed to establishing a clear financial, legal and transparent framework for eliminating obstacles to PPP arrangements. The GoTG is also committed to develop flexible and collaborative forms of PPP arrangements that can better meet the objectives of public and private sector partners and deliver the cost-effective, quality infrastructural facilities and services that the Gambian population requires.

2. THE POLICY OBJECTIVES

The main objectives of this National PPP policy are to:

- 1 Encourage and promote private sector participation in the delivery of public infrastructure and service;
- 2 Protect the interests of all stakeholders and the environment;
- 3 Leverage public resources with private sector resources to accelerate investments in infrastructure and service provision;
- 4 Promote priority projects that are affordable to the GoTG and end-users and represent value for money;
- 5 Facilitate and encourage PPP investments by creating an enabling environment;
- 6 Ensure the attainment of national and international social and environmental safeguards;
- 7 Improve the number, quality, cost-effectiveness & timely provision of public infrastructure & services;
- 8 Set up efficient and transparent institutional arrangements for the identification, structuring and competitive tendering of PPP projects; and
- 9 Provide a framework for developing efficient risk sharing mechanisms.

3. DEFINITION OF PPP

A Public Private Partnership is defined as a long-term contract between a Contracting Authority and a Private Party under which a Private Party:

- A Undertakes to perform a public service activity that would otherwise be carried out by a public entity.
- B Receives a benefit by way of:
 - i, compensation by or on behalf of the Contracting Authority;
 - ii, tariffs or fees collected by the Private Party from users or consumers of a service; or
 - iii, a combination of such compensation and such charges or fees;
- C Is generally liable for risks arising from the performance of the activity or use of the state property in accordance with the terms of the Public Private Partnership agreement.

4. BENEFITS OF PPP

When implemented well, PPP benefits include:

- ▲ Improved quality and quantity of basic infrastructure and services such as the provision of water and its treatment, energy supply, transportation etc.
- ▲ Improved project planning: construction is usually completed to plan and to budget; repairs and maintenance are planned at the outset and in consequence assets and services are maintained at a pre-determined standard over the full length of the concession;
- ▲ Assisting the public sector to develop a more coordinated, disciplined and commercial approach to infrastructure development whilst allowing them to retain strategic control of the overall project and service;
- ▲ Transferring the risk of performance to the private sector. The private sector only realizes its investment if the asset performs according to the relevant contractual obligations. As the private sector will not receive payment until the facility is available for use, the PPP structure encourages efficient completion, on budget without defects;
- ▲ Better quality in design and construction than under traditional procurement. PPP focuses on the whole life cost of the project and not simply on its initial construction cost. It identifies the long-term cost and assesses the sustainability of the project;
- ▲ The use of private finance to enable the public to have access to improved services.
- ▲ The expertise and experience of the private sector, which encourage innovation, resulting in shorter delivery times and improvements in the construction and facility management processes. Developing these processes leads to best practice and adds value;
- ▲ Helping to reduce government debt and freeing public capital to spend on other government services;
- ▲ Addressing poverty alleviation, for example by providing essential infrastructure services or indirectly by providing job opportunities;

- ▲ Realizing taxpayer benefits by avoiding paying higher taxes to finance infrastructure investment development;
- ▲ Delivering better value for money compared with that of an equivalent asset procured conventionally;
- ▲ Requiring a full analysis of project risks at the outset. The full examination of risks by both the government and lenders means that cost estimates are robust and investment decisions are based on better information; and
- ▲ Creating efficient and productive working relationships between the public and private sector.

5. KEY GUIDING PRINCIPLES

All PPP projects in the Gambia shall be guided by the following principles:

- a PPP projects shall offer “value for money”;
- b PPP projects shall serve the public interest;
- c PPP project risks are properly allocated between the public and private sectors;
- d The fiscal impact of PPP projects is well understood, their expected costs are affordable and the level of fiscal risk (including contingent liabilities) is acceptable to the GoTG;
- e The projects are procured on the basis of clearly specified output requirements;
- f The users contribute to project costs according to their ability/willingness to pay;
- g Projects are procured using a competitive process when possible;
- h Environmental and social standards are respected; and
- i Accountability and transparency (including stakeholder consultation) are built into the project development and implementation process.

6. SCOPE AND APPLICATION OF PPP PROJECTS

This National PPP Policy applies to all sectors and levels of government except:

- Oil, mines, minerals, national defense, rights of airspace; and
- Privatization or divestiture of public infrastructure or public enterprise.

Notwithstanding, subsection (6), Public Private Partnership may be used to provide infrastructure facilities ancillary to oil, mines, minerals, or rights of airspace.

The GoTG will consider PPP projects that have the following characteristics:

- a The project is defined as a priority project (i.e. it is included in the relevant Sector Plans and/or the National Development Plan);
- b It is affordable to the government and consumers;
- c It offers “value for money”; and
- d It involves an appropriate transfer of risks to the private sector.

The PPP Directorate will publish a National PPP Program annually.

Sector specific policies may be developed to accommodate the needs of specific sectors consistent with the overall government PPP policy.

7. THE PARTIES

Below are the responsibilities of the parties:

A) Public sector

- ✓ Plan and identify infrastructure and public service needs;
- ✓ Develop national and sector specific policies and guidelines;
- ✓ Supervise and enforce the PPP agenda.
- ✓ Conduct feasibility studies for projects.

B) Private Sector

- ✓ Design, construct, operate, maintain and finance PPP projects.

C) Civil society

Provide social services;

- Empower people to claim their rights;
- Shape and monitor development policies and partnerships; and
- Pursue accountability
-

The PPP Directorate will provide guidance on the applicability of this policy to a proposed project.

8. GOVERNMENT SUPPORT

A) Administrative Support:

The GoTG shall offer necessary administrative support to all infrastructure and service projects developed in the Gambia under the PPP mode:

- a If applicable, the acquisition of land necessary for the project. The land will be acquired strictly in accordance with the laws of the Gambia prevalent at the time of acquisition of land for the project.
- b Rehabilitation & resettlement of affected families/persons, in case so required as per the existing policy of the GoTG.
- c Shifting of utilities (e.g. re-routing pipes, telecommunications cable, and power lines), wherever required.
- d The process of availing benefits under the GoTG and local Government schemes (as may be applicable) to facilitate private sector participation in infrastructure and or service projects.
- e Obtaining the clearances from the PPP Technical Committee or Cabinet as may be required for the project.
- f Provision of supply of power and water at project site (if applicable).
- g In case the land owned by the GoTG is provided for the project, the same shall be on leasehold basis for the project's duration. Annual lease charges shall be as specified by the GoTG from time to time.

B) Financing PPP Projects

Considering that infrastructure projects require special considerations in view of long gestation periods and risks on return and other factors, GoTG shall provide incentives and support in terms of tax holidays, tax exemptions (if applicable) and Viability Gap Funding (VGF) measures. These may be available to selected projects / the highest priority projects of the Contracting Authorities.

The GoTG shall create the following instruments to support PPP projects:

i) Project Development Fund (PDF):

- The GoTG is to establish a PDF, which is to be operated according to standard operating procedures and guidelines.
- The PDF will be used to finance investment appraisals, value for money assessments, other feasibility and safeguard studies, Transaction Advisors for undertaking projects and transaction structuring and implementation up to the signing of contract with private investor(s).
- The PDF shall be used for training the DPPP staff and the Technical Committee members on PPP matters, project negotiation skills, project finance, and general PPP methods.

ii) Viability Gap Scheme (VGS)

- The GoTG shall establish a VGS in line with the emerging PPP program.
- The VGS will support projects that fall within the national development agenda that are economically justified but not financially viable.
- Standard procedures and guidelines will be issued for the operation of VGS.

Detailed guidelines for establishment and operation of the PDF shall be issued by the Ministry of Finance & Economic Affairs (MoFEA), setting the criteria for eligibility to receive funding and the procedures for applying, approving, disbursing and monitoring the use of funds.

9. INSTITUTIONAL FRAMEWORK

The GoTG recognizes the importance of an efficient institutional mechanism and therefore constitutes the requisite PPP center of excellence, committees and empowered groups for furthering the objectives of this Policy. These institutions shall support the following broad functions:

- a) PPP Policy development, dissemination, monitoring and evaluation;
- Project design, preparation and execution;
- Financial management of funded and contingent liabilities;
- Gate keeping and approval functions; and
- PPP project advice, support and promotion.

The following key institutions shall play a key role in these arrangements:

9.1 CABINET

The projects under PPP mode involving an investment of more than the Dalasi equivalent of USD 25 million shall be considered by Cabinet and approved on the basis of recommendations of the PPP Technical Committee.

9.2 PPP TECHNICAL COMMITTEE

The standing members of the PPP Technical Committee shall be established for the purpose of considering requests by Contracting Authorities to undertake PPPs and shall be the responsible authority for the preparation, procurement and approval of PPP projects.

The members of the PPP Technical Committee shall be comprised of:

- Permanent Secretary, Ministry of Finance and Economic Affairs (Chair);

- ▶ Secretary General and Head of Civil Service of the Office of the President;
 - ▶ Solicitor General and Legal Secretary, Ministry of Justice;
 - ▶ Director General of Gambia Investment and Export Promotion Agency (GIEPA);
 - ▶ Director of the Public Private Partnership Directorate
- Two private sector representatives from Industry Associations,
- ▶ Trade Associations or Civil Society Organizations;

Note that, other members will be co-opted based on the project-specifics.

The powers and functions of the PPP Technical Committee include:

- Approval of the PPP Program consistent with National Priorities.
- Approval of projects initiated by Contracting Authorities that are not covered in the PPP Program.
- Review of PPP projects associated documents (bid documents, draft contracts etc.) in the different phases of the procurement process;
- Review and advise on PPP sector policies and model contracts;
- Review and advise on user levies, and settlement of disputes related to user levies;
- Approval of pre-feasibility and feasibility studies;
- Approving the appointment of the successful bidder for projects that are less or equal to the Dalasi equivalent of USD 25 million in value;

- Approving the entering into the PPP Agreement for projects that are less or equal to the Dalasi equivalent of USD 25 million in value;
- Approving the entering into of unsolicited proposal;
- Approve the decision made by a Contracting Authority to proceed with direct negotiations;
- Select the appropriate Contracting Authority in the event of a conflict;
- Authorize a term greater than 30 years for PPP Agreements;
- Recommendation of legislative and regulatory changes to facilitate PPPs; and
- General oversight of the procurement, implementation and management of PPP projects in The Gambia;

9.3 MINISTRY OF FINANCE AND ECONOMIC AFFAIRS (MOFEA)

The Minister shall sign all PPP agreements to be entered into by Contracting Authorities. Directorates within the MoFEA that shall be involved in the procurement and management of PPP projects, each with distinct responsibilities.

A) Directorate of Development Planning (DDP)

- Preparation of the PPP Program in consultation with the PPP Directorate for submission to the PPP Technical Committee.

B) Directorate of Debt and Loans Management

- Ensuring debt sustainability of the PPP program and of individual PPP projects;
- Assessment of the long-term fiscal liabilities and risks of PPP agreements (direct and contingent, explicit, and implicit);
- Advise on the appropriateness of the project for government financial support in view of the potential consequences of the resulting contingent liabilities for public finances. (e.g. sovereign guarantee, or other credit enhancement); and
- Integrating PPPs in its reporting requirements for the debt sustainability analysis;

C) Directorate of Budget

Budgeting of the expenditures on PPP projects such as Project Development Fund (PDF) and Viability Gap Funding (VGF);

- Funding of claims resulting from contingent liabilities;
- Ensuring that payments by Contracting Authorities are consistent with the national budget.

D) Directorate of Public Private Partnerships

- 🔑 Centre of excellence for PPPs in The Gambia;
- 🔑 Secretariat of PPP Committees;
- 🔑 Development of guidelines for the procurement and management of PPP projects- only the directorate of PPP is mandated and given the sole responsibility to conduct procurement processes for all PPP projects in The Gambia
- 🔑 Technical assistance to contracting authorities in the identification, development and procurement of PPP projects;
- 🔑 Assessing a project's suitability for initial inclusion in the PPP Program during the project inception phase;
- 🔑 Providing quality assurance and oversight to the review of pre-feasibility and feasibility studies;
- 🔑 Maintaining of a PPP project database;
- 🔑 Communication with private sector on PPP policies, regulations, guidelines and programmes,
- 🔑 Capacity building of public and private sector entities; and
- 🔑 Any other responsibility, which may be assigned through enabling PPP legislation (eg a PPP Act/Law) and which may be regarded as relevant for the proper discharge of its functions.

E) Directorate of Revenue and Tax Policy

- 🔑 Advice on tax obligation and exemption
- 🔑 Monitoring of government share of revenue if any

A PPP focal person shall be appointed in each Contracting Authority to interact/ coordinate with the PPP Directorate and take forward the PPP initiative.

9.4 GAMBIA PUBLIC PROCUREMENT AUTHORITY (GPPA)

GPPA ensures due process in the procurement of public assets and services, including PPP projects. The PPP Directorate shall work with GPPA to develop appropriate procurement processes for PPP projects until the PPP Bill is enacted.

9.5 CONTRACTING AUTHORITIES

Contracting Authorities (CAs) are responsible for the development, signing of contracts, implementation and management of PPP projects with support from the MoFEA/ PPP Directorate.

9.6 MINISTRY OF JUSTICE

The Ministry of Justice (in collaboration with MoFEA/PPP Directorate) ensures the conformity of PPP contracts and ancillary agreements with Gambian law.

9.7 REGULATORY AUTHORITIES

The concerned regulatory authorities ensure that the PPP project and the PPP agreement is consistent with the regulatory framework (in particular where user tariffs are involved).

10. REGULATORY FRAMEWORK

10.1 RISK SHARING AND MANAGEMENT FRAMEWORK

The risks in PPP projects are allocated to the party (private or public) that is best placed to manage it. A risk management framework shall be instituted to cover generic risks and the principles of dealing with them allowing for fair risk sharing between the public and private sector parties, as appropriate. The feasibility study of each project shall clearly propose allocation of all specific risks, major project risks and generic risks. The contractual arrangement for each PPP project shall be based on the risk allocation profile. A framework for managing the fiscal risks associated with guarantees issued to infrastructure PPP projects shall be developed. Government support may be available if the risk profile so requires.

10.2 LEGAL FRAMEWORK

The MoFEA shall take the lead in the development of a legal and regulatory framework for PPP projects. Until a PPP Law is adopted, PPP projects shall be developed and implemented according to the principles set out by this National PPP Policy and in compliance with the relevant laws and regulations in the Gambia including the procurement framework (Gambia Public Procurement Authority Act and Gambia Public Procurement Regulations).

11. THE PPP PROJECT CYCLE

A) SOLICITED PPP PROJECTS

The PPP project cycle for solicited projects shall comprise of the following stages.

(For projects with an overall value of less than the Dalasi equivalent of USD 25 million, or any other number as may be prescribed in a PPP Law from time to time, a simplified and expedited project procurement process may be developed.)

(i) Project Inception:

- ✓ Once a project has been identified as a potential PPP, the Contracting Authority submits a project brief to the MoFEA/PPP Directorate. The criteria for preparing a project brief will be elaborated in the PPP Law or PPP Operational Guidelines.
- ✓ Once a project has been accepted by the MoFEA/ PPP Directorate to be explored as a potential PPP, upon receiving the PPP Technical Committee's approval, the PPP Directorate advises the Contracting Authority to constitute a project development team and launch the procurement process to hire a Transaction Advisor (if applicable).

(ii) Feasibility Studies:

- If needed, the Transaction Advisor carries out a pre-feasibility study of the proposed PPP project, focusing on the rationale of the business case and on the clear specification of the project as a PPP.
- The Contracting Authority supervises the pre-feasibility study and approves the prefeasibility study report.
- The PPP Technical Committee shall approve the decision to proceed to the full feasibility study stage.
- The Contracting Authority undertakes (or has undertaken by the Transaction Advisor) a full feasibility study and submits the report to the MoFEA/PPP Directorate for recommendations. The feasibility study must among others cover: "value for money" assessment, assessment of affordability, proposed allocation of risks between the public and private sector, estimation of the required viability gap support and demonstration of the capacity of the contracting authority to procure and manage the PPP project;

- The GoTG shall establish a tiered approval process in function of the value of the project regarding the decision to proceed to the procurement stage:
- Above the Dalasi equivalent of USD 25 million: Cabinet approval;
- Less or equal to the Dalasi equivalent of USD 25 million: PPP Technical Committee's approval.

(iii) Procurement:

When possible, a competitive bidding process shall be adopted in PPP Projects initiated by the concerned Contracting Authority. The notice for inviting participation will be adequately publicized. The bidding process will be designed to assist and ascertain, technical, financial, managerial and commercial capabilities of the private party. All proposals shall be opened and evaluated at a common platform in a free and fair manner. The Minister of Finance and Economic Affairs shall periodically inform Cabinet of the progress of all PPP Projects under process. Bidding documents (including a draft PPP Agreement) shall be reviewed by the PPP Technical Committee before they are issued to the prospective bidders. The Contracting Authority submits the report of the evaluation of the bids for review by the authorities which are responsible for the final approval.

(iv) Contracting:

A transparent process shall be followed in the award of all PPP contracts. The process of project implementation will be appropriately backed by contractual arrangements. The GoTG will develop contractual frameworks to allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerns of private investors. Risks will be allocated to the party best suited to bear the risk in question. In case a model contract for a sector has not been adopted or in case there are deviations proposed vis-à-vis the approved model contract for a sector, then, the PPP Technical Committee will review, effect changes and adopt the contract principles as the case may be.

(B) Development through Special Purpose Vehicles (SPVs):

Special Purpose Vehicles (SPVs) shall be formed, as and when required, to carry forward and realize the objectives of this Policy and get various clearances and permissions in the SPVs to speed-up the project. Where necessary, the GoTG may also participate in the equity of any SPV for the development and implementation of infrastructure projects.

The equity structure of the SPV will be decided on a case-to-case basis.

The decision to conclude a PPP Agreement with the successful bidder must receive the following approvals:

- Registration by the MoFEA/PPP Directorate;
- Review and approval by the PPP Technical Committee (if applicable); or
- Cabinet approval (if applicable).

GoTG shall establish a tiered approval process based on the project value:

- ✓ Above the Dalasi equivalent of USD 25 million: Cabinet approval;
- ✓ Less or equal to the Dalasi equivalent of USD 25 million: PPP Technical Committee's approval.

PPP Agreements are only binding if they are signed by either the authorizing Minister or CEO or Board Chairman of the Contracting Authority and if all required approvals have been obtained.

Rules, regulations and guidelines may be developed wherever required for each stage of the PPP project cycle detailed above.

(C) Unsolicited PPP Projects

Unsolicited proposals may be considered if the following conditions are satisfied:

- ✓ The project must be consistent with National Development Priorities.
- ✓ The project must demonstrate genuine and substantial innovative aspects.
- ✓ The project must entail “value for money”, technical, financial, and economic benefits.
- ✓ The project must be procured competitively.

The process for the development and procurement of unsolicited proposals is as follows:

- ◆ The project is initiated by the private sector, which submits a proposal to the relevant Contracting Authority and copied to the MOFEA PPP Directorate.
- ◆ The Contracting Authority reviews the proposal and submits it to the MoFEA PPP Directorate for review.
- ◆ The PPP Technical Committee will assess the viability of the project as a PPP.

- ◆ If the project is found to be viable for implementation as a PPP, the private proponent and the contracting authority are asked to conduct an independent full feasibility study.
- ◆ Upon approval the project is tendered through a competitive procedure.

12. PPP CONTRACT MANAGEMENT

A) Management of PPP Agreements

A Contracting Authority, party to a PPP Agreement is responsible for ensuring that the PPP Agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as agreed in the PPP Agreement.

A PPP Agreement involving the performance of a Contracting Authority's function does not divest the Contracting Authority of the responsibility for ensuring that such function is effectively and efficiently performed in the public interest or on behalf of the public service.

MOFEA/PPP Directorate shall constitute a Contract Management Committee for all PPP projects, to ensure that the contractual obligations as defined in the contract are adhered to.

B) Amendment and Variation of PPP Agreements

A prior written approval of the Ministry of Justice is required for any material amendments to the PPP Agreement, including material variation to the outputs or any waivers contemplated or provided in the PPP Agreement.

13. REVIEW

A comprehensive and regular review of the overall process shall be a core responsibility of the MoFEA/PPP Directorate. Reviews shall be prepared openly and transparently within an appropriate timeframe.

13.1 COMMENCEMENT DATE

This policy will come into force with effect from the date of issue of the relevant Government Order and will be effective until superseded by a later Government Order.

The implementation of, and adherence to, this policy will be monitored and reviewed by MoFEA/PPP Directorate in particular, to ensure consistency of conduct of the PPP process with the policy and the need for any revisions required to maintain consistency with ongoing developments and expansion of the National PPP Program.

The government recognizes that expanding and institutionalizing the scope of PPPs in provision of infrastructure and or public service may also necessitate appropriate changes in the existing legislative framework (e.g. the need for a PPP Act). The specific legislative constraints for PPPs will therefore also be reviewed and addressed during the implementation of this policy.



**DIRECTORATE OF PUBLIC
PRIVATE PARTNERSHIP
(PPP)**

**MIISTRY OF FINANCE AND
ECONOMIC AFFAIRS (MOFEA)
THE GAMBIA**