

PUBLIC-PRIVATE PARTNERSHIP OPERATIONAL GUIDELINES



REPUBLIC OF THE GAMBIA

JANUARY 2016

Table of Contents

1	Introduction	5
	1.1 Purpose of the Guidelines.....	5
	1.2 Scope of the Guidelines.....	5
	1.3 Structure of the Guidelines.....	7
2	PPP models	8
3	PPP Critical Success Factors.....	15
4	Overview of the PPP Project Cycle.....	20
	4.1 PPP Project Cycle	20
	4.2 Public institutions in the PPP Project Cycle.....	22
5	Stage I: Inception.....	24
	5.1 Steps in Inception Stage	24
	5.2 Operational guidance for Inception Stage	24
	5.3 PPP assessment tools in Inception Stage.....	25
6	Stage II: Feasibility study.....	29
	6.1 Steps in Feasibility Study Stage.....	29
	6.2 Operational guidance for Feasibility Study Stage	30
	6.3 PPP assessment tools in Feasibility Study Stage.....	31
7	Stage III: Procurement and Contracting	38
	7.1 Steps in Procurement and Contracting Stage	38
	7.2 Operational guidance for Procurement and Contracting Stage.....	39
8	Stage IV: Implementation.....	44
	8.1 Steps in Implementation Stage	44
	8.2 Operational guidance for Implementation Stage.....	44
9	Unsolicited proposals	48
	9.1 Steps for unsolicited proposals.....	48
	9.2 Operational guidance for unsolicited proposals	49

Annex A	Public and private services	51
Annex B	Value for Money drivers of PPP	53
Annex C	Heads of Terms of PPP Agreement	67
Annex D	Indicative table of contents of PPP Agreement	70

List of Tables

Table 1:	Summary of PPP models	14
Table 2:	PPP screening tool	26
Table 3:	Structure of PPP Project Database	28
Table 4:	PPP model selection tool	32
Table 5:	Qualitative Value for Money assessment	34
Table 6:	Generic risk matrix	56
Table 7:	Indicative risk allocation in different PPP models	58
Table 8:	Financing of and paying for infrastructure: public and private options	62

List of Figures

Figure 1:	Main PPP models	8
Figure 2:	PPP Project Cycle: stages and decision points	20
Figure 3:	PPP aspects in the Project Cycle	21
Figure 4:	Three-stage tender procedure	41
Figure 5:	Overview of advantages and disadvantages of PPP	53
Figure 6:	Value for Money drivers	55

Frequently used abbreviations

BOT	Build, Operate, Transfer
CEO	Chief Executive Officer
DBFMO	Design, Build, Finance, Maintain, Operate
GIEPA	Gambia Investment and Export Promotion Agency
GPPA	Gambia Public Procurement Authority
MDA	Ministries, Departments and Agencies
MOFEA	Ministry of Finance and Economic Affairs
PPA	Public Procurement Act of 2001
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public-Private Partnership
PPR	Public Procurement Regulations of 2003
VfM	Value for Money

1 Introduction

1.1 Purpose of the Guidelines

The benefits of public-private partnerships (PPP) do not originate spontaneously. They must be actively pursued in the preparation and management of the PPP project by the implementing agency. The present *Operational Guidelines* provide implementing agencies and the PPP Directorate with a procedural framework and analytical tools enabling them to assess whether the use of PPP can deliver net benefits in a specific project, and how these benefits can be effectively achieved.

The Guidelines are consistent with the National PPP Policy of The Gambia.

1.2 Scope of the Guidelines

The *Guidelines* apply to all projects undertaken in PPP by government entities established in The Gambia.

In order to reduce the administrative burden of the PPP framework the application of the *Guidelines* may be restricted to projects with an investment cost or a contract value exceeding a threshold, to be determined by the Ministry of Finance and Economic Affairs.

To determine the scope of the *Guidelines* the term “PPP” must be defined. This task is made difficult by the fact there is no universally accepted definition of what constitutes a PPP. Many different definitions of PPP can be found in the scientific literature, as well as in guidance manuals and legislative documents issued in other countries or by international institutions. However, although different, these definitions are also all broadly similar so that they allow to derive a set of common characteristics of what is generally understood to be a PPP.

On the basis of these common characteristics the following definition of PPP has been developed for the purpose of the present *Guidelines*.

*A PPP is an arrangement for the **procurement of a public service**, typically characterized by the following features:*

- a **long-term contract** between a public contracting authority and a private sector company based on the **procurement of services, not assets**, and taking account of the whole **life cycle** implications for the project;*
- the **transfer of a substantial part of project risks to the private sector**, notably with respect to designing, building, operating and/or financing the project;*
- a focus on the specification of **project outputs** rather than project inputs;*
- the use of **private financing** to substantiate the risk transfer to the private sector; and*
- **performance-related payments** to the private sector in function of the services delivered.*

Almost every action of the government involves some interaction with the private sector. However, the mere existence of interaction does not imply that there is a PPP, as is now generally understood by that term. The following frequently occurring relationships between public and private entities each lack several characteristics listed above can therefore not be regarded as PPP:

- simple purchase of goods from private suppliers: the private party assumes no financial, technical and operational risks;
- purchase of specific and short-term services (construction including turnkey construction contracts, maintenance, consultancy...);
- privatisation of public assets.

In the first two cases the relation between the public and private sector is of a short term nature and implies no or only a limited transfer of project risk to the private party. They are examples of conventional public procurement. In the third case there is a substantial transfer of risk to the private sector, but no significant long-term relationship between public and private sector. Once the property rights of the public assets have been handed over to the private sector, the public sector is no longer directly involved in the project and its role is restricted to regulatory oversight.

1.3 Structure of the Guidelines

The *Guidelines* consist of the following parts:

- **PPP Models**

Chapter 2 describes the main types of PPP arrangements.

- **PPP Critical Success Factors**

As a backdrop for the *Guidelines*, **Chapter 3** highlights the critical factors for a successful PPP project.

- **PPP Project Cycle**

Chapter 4 presents a brief overview of the PPP Project Cycle. The main stages and decision moments are indicated.

- **Guidance for each stage of the PPP Project Cycle**

Each stage of the PPP Project Cycle is then addressed in a separate chapter (**Chapters 5 to 8**). These chapters comprise sections on (1) the *procedural steps* that must be followed, (2) *operational guidance* for the PPP aspects in these steps, (3) *PPP assessment tools* that can be used by the implementing agency, the PPP Directorate and their consultants.

- **Unsolicited proposals**

Specific recommendations on the treatment of unsolicited proposals for projects in PPP are presented in **Chapter 9**.

- **Annexes**

The annexes contain detailed information referred to in the preceding chapters. Of particular importance is Annex B, which presents an analysis of the Value for Money drivers of PPP.

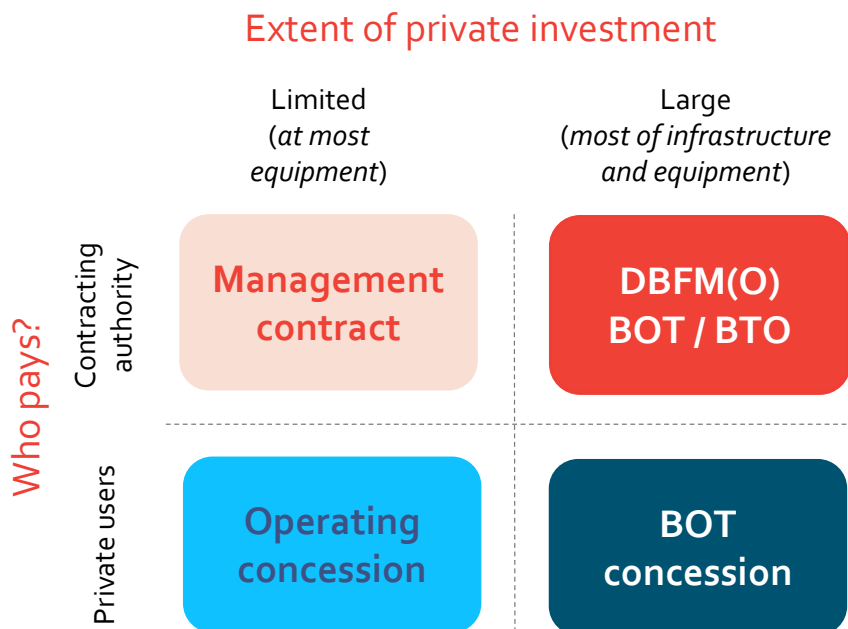
2 PPP models

There are many variants of PPP. However, on the basis of two key characteristics four basic PPP models can be distinguished (see Figure 1). The key characteristics are:

- the identity of the payer of the services: either the private user of the services or the government (i.e. contracting MDA);
- the extent of private investments, which may be large (most or all of the infrastructure and equipment) or limited (at most investments in equipment).

For completeness two non-PPP options must also be considered: conventional public procurement and privatization. These two options are situated on respectively the public and private extremes of the range of PPP options. For some projects for which PPP is initially considered, one of the two non-PPP options may nevertheless turn out to be optimal. These non-PPP options should therefore always be included in the analysis.

Figure 1: Main PPP models



In the following paragraphs the PPP models are described in more detail.

Conventional public procurement

The key characteristic of this procurement model is that the public sector assumes responsibility for all stages of the delivery of the service: financing and construction of the assets needed to perform the service, and maintenance and operation of these assets.

The fact that the public sector is responsible does not imply however that it performs all the activities in the delivery process. The design and construction of the infrastructure are always outsourced to specialised private firms (engineering firms, building contractors, equipment suppliers). Maintenance and operations are usually carried out by the public sector but may also be partially or wholly outsourced to service providers (maintenance contractors, providers of IT and communication services,...). However, even when operating activities are outsourced, the public sector retains the responsibility for transacting with the end-users of the services. The private operator does not offer the services to the user but to a government department or public agency.

The contract forms used in the public delivery model are public works and services contracts. In the concept phase several consulting firms are hired to perform technical, environmental and economic feasibility studies. Next an engineering firm is contracted to design the assets and draw up detailed terms of reference for the construction (bill of quantities). The works are then parcelled into distinct parts (construction of roads, buildings, purchase of equipment,...) and put up for separate tenders.

The design and construction phases may be integrated in a single Design and Build (DB) contract. DB contracts share a few of the features of PPP arrangements, such as output-based contracting and the transfer of the construction risk from public to private sector.¹ However, the public sector remains ultimately responsible for delivering the infrastructure to the end-user. Therefore DB contracts are generally considered as a variant of conventional public procurement rather than as a type of PPP. But some of the advantages and disadvantages of PPP that will be described later in this *Guidelines* also apply to DB.

For the same reason financial leases are generally not considered to be PPP. Although the assets are privately financed in these schemes, the private sector is not involved in the actual service delivery.

¹ These features of PPP will be explained later in the *Guidelines*.

Management contract

In this model the service delivery is outsourced to a private contractor through a management contract or an operation and maintenance contract (O&M). In contrast with the model of conventional procurement above the private contractor is appointed to manage and perform a range of activities aimed at supplying *an integrated service*. In return for the service the contracting authority pays to the contractor a performance-related service or management fee.

The contractor uses the facilities and assets of the contracting authority, but supplies his own personnel and possibly also some equipment. The financing requirements of the private sector are therefore limited.

Example of management contract



Dockland's Light Railway franchise

- The private operator is responsible for all train and passenger services across the network, including the maintenance of over 34km of infrastructure, 38 stations, as well as rolling stock.
- Transport for London (contracting authority) pays a contractually agreed service fee to the operator if strict reliability and passenger satisfaction targets are satisfied.

DBFMO and variants

Instead of outsourcing the engineering, construction and maintenance/operations of an asset with separate contracts, these services, as well as the financing of the asset are procured with a single integrated contract: a Design, Build, Finance, Maintain and Operate (DBFMO) contract.

Hence, the private contractor (usually a consortium of specialised firms covering the required areas of expertise) finances, designs, constructs, maintains and often also operates the infrastructure, all according to the specifications of the contracting authority. The contractor does not sell its services directly to the end-user, but to the contracting authority. It is paid by the contracting authority in the form of performance fees (payment in function of the service level), availability fees (payment in function of the availability of the infrastructure) or shadow tolls (fee per user, but paid by the public sector instead of the user) for the duration of the contract. The revenues from these fees are used to cover costs and earn a return on investment.

Integrated contracting with financing is widely used for the delivery of public buildings (hospitals, schools, prisons,...) and land infrastructure (roads, railroads, canals). This type of PPP comprises a wide range of contractual forms: DBFM (Design, Build, Finance, Maintain), DBFMO

(Design, Build, Finance, Maintain, Operate), BOT (Build, Operate, Transfer), BOOT (Build, Own, Operate, Transfer), BTO (Build, Transfer, Operate), BLT (Build, Lease, Transfer), ROT (Rehabilitate, Operate, Transfer),... They mainly differ with respect to the ownership of the assets during the contract period, which may have an impact on the ease of obtaining finance. For instance, in a BOOT contract the private contractor is owner of the assets during the contract period, and has therefore more collateral at his disposal (provided the assets are sufficiently liquid, so that can be easily sold in case of default).

The contract period must be sufficiently long to amortize the investments in the fixed assets. Typical contract periods are 20-30 years, but longer durations also occur (50 years and more).

Example of DBFMO contract



Delfluent

- The private contractor renovates the existing water treatment plant, designs and builds a new treatment plant, and operates the plants for 30 years.
- The Delfland Water Board (contracting authority) pays an availability payment to the private contractor.

Operating concession

In this PPP model the public sector finances and constructs the assets through a conventional public procurement procedure. Once built, the assets are leased or given in concession to a private operator for a specified period. The operator usually invests in superstructure and equipment and operates the facility on a commercial basis, selling the infrastructure services directly to the end-user. In return for the right to operate the facility on a commercial basis the operator pays a concession fee to the contracting authority, which remains owner of the facility (or at least of the land on which the facility is constructed). Depending on the contractual agreements the concession payment may take the form of a one-off lump sum, periodic fixed payments or a variable payment in function of the level of use. The public sector may also impose operational requirements on the concessionaire in the concession agreement (including, in some cases, restrictions on pricing policies). In this way the public sector can ensure that public interests are safeguarded. At the end of the concession period the assets are returned to the public owner, which will usually launch a tender procedure to select a concessionaire for the next concession period. The length of the concession period depends among other on the size of

the investment in superstructure and equipment and the bargaining power of the contract parties. Operating concessions typically vary from 10-15 years (but longer durations also occur)

The private operator sells its services directly to the end-users. Consequently, this PPP model excludes that infrastructure is made to users available free of charge. However, it is possible that the infrastructure is provided at a price below full cost. This will be the case if the concession fee paid to the contracting authority is insufficient to cover the capital costs of the contracting authority (depreciation and interest). If the contracting authority is in addition prepared to subsidize the operator (i.e. the concession fee is negative) it is even possible to offer the infrastructure services to users at a price below operational costs.

Example of operating concessions



Tanger Med Transshipment Hub

- The government of Morocco has built the breakwater, access channel, basin dredging, quay-walls and land access to the site.
- The operators have invested in terminal surface, gantry cranes and yard machinery, building and superstructures and IT systems. They operate the container terminals on a commercial basis.

BOT concession

The BOT concession resembles the DBFMO model described above, but differs from the latter in one essential respect: the private concession holder sells its services directly to the end-user of the services and assumes the commercial risk. It is not paid by the contracting authority. In contrast, it usually pays a concession fee to the contracting authority for the right to operate the facility on a commercial basis.

BOT concessions also differ from operating concessions in the fact that the latter do not involve private finance and construction of infrastructure, but only operations (including some investments in superstructure and equipment). As in the case of operating concessions, the contracting authority may impose operational requirements on the concessionaire in the concession agreement. In this way the public sector can ensure that public interests are safeguarded.

The terms BOT, BOOT,... are often used to denominate concession agreements, as well as DBFMO contracts. As mentioned above, these are very different forms of PPP. When confronted with a BOT (or similar) contract, one should therefore check whether it refers to DBFMO

contract (fees paid by contracting authority) or a BOT concession agreement (services supplied on a commercial basis to final users).

The contract period of a BOT concession must be sufficiently long to amortize the investments in the fixed assets. Typical contract periods are similar to those of integrated outsourcing with finance, i.e. 20-30 years and often even longer.

Example of BOT concession



Dakar-Diamniadio Toll Motorway

- The private developer/operator designed, built and financed the 25 km motorway, and will operate it for 30 years under a concession granted by the Senegalese State.
- The operator collects tolls from the users to cover its financing and operating costs.

Example of BOT concession



The Phu My III Power Project

- An private independent power producer (IPP) finances, constructs and operates a 700 megawatt gas-fired combined-cycle power plant.
- Electricity of Vietnam (EVN) purchases the electricity under a 20-year power purchase agreement (PPA) on a take-or-pay basis.

Privatisation

The public assets (land, infrastructure,...) are sold to a private company, which subsequently develops and operates it on a commercial basis. The sale can be made subject to commitments by the buyer to undertake specific investments in the renovation, upgrade or expansion of the infrastructure. The public sector loses, however, its influence on the further development of infrastructure and the service provision beyond the investments and other commitments specified in the sales agreement.

In the case of an investment in new infrastructure a Build, Own, Operate (BOO) contract may be used. In this contract model a private contractor builds a new facility and then owns and operates the facility at its own risk and for its own profit

Summary of PPP models

The key characteristics of the PPP models (as well as the two non-PPP options) are summarized in the table below.

Table 1: Summary of PPP models

PPP model	Coventional public procurement	Management contract	DBFMO and variants	Operating concession	BOT concession	Privatisation
Contract types	Construction and service contracts	Management and Operating contracts	DBFM, DBFMO, BOT, BOOT, BTO, BLT, ROT,...	Concession, lease, affermage	Concession, BOT, BOOT, BTO, BLT, ROT,...	Sale, BOO
Contract length	0-2 yrs	2-5 yrs	20-30 yrs (and longer)	10-15 yrs (and longer)	20-30 yrs (and longer)	In perpetuity
Ownership of asset	Public	Public	Public (or private transferred to public at end of contract)	Public	Public (or private transferred to public at end of contract)	Private
Responsibility						
Finance	Public	Public	Private	Public	Private	Private
Design/Build	Public	Public	Private	Public	Private	Private
Maintain/Operate	Public	Private	Private	Private	Private	Private
Payment by	Public sector	Public sector	Public sector	Private user	Private user	Private user

3 PPP Critical Success Factors

This chapter presents the critical success factors of a PPP project. The aim of the *Guidelines* is to help practitioners of PPP meeting these success factors by providing operational recommendations and analytical tools.

The factors for a successful PPP project can be summarized in six concise statements.

1

A useful and feasible project...

PPP is a mechanism for the delivery of projects and services. The use of a PPP arrangement can make “good” projects better by improving the speed, efficiency and quality of their implementation. However, PPP is unable to turn a “bad” project into a “good” project. The most important condition for achieving a successful PPP is therefore starting from a “good” project.

“Good” means among other that the project is well defined in scope and timing, responds to real societal needs, complies with regulatory requirements, is technically and financially feasible and fiscally affordable. The satisfaction of these conditions must be convincingly demonstrated by a comprehensive feasibility study.

A project not meeting these conditions is likely to encounter implementation difficulties, for instance lack of support from political decision makers and the general public, delays and cost increases due to unanticipated regulatory requirements, interruption or even cancellation caused by lack of funding,... These problems are common to all types of projects and not specifically related to PPP. However, because of their greater complexity and the transfer of risks to the private partner, PPP projects are much more vulnerable to them than conventional public procurement projects.

Projects not fully meeting the requirements of usefulness and feasibility have two negative impacts on the success probability of PPP. First, the procurement PPP project will attract no or too few interested bidders. In a PPP arrangement the private partner is asked to assume substantial financial and operational risks. He will only invest in a PPP project if he expects that he will be able to recover his investment outlays and earn an adequate return. In case of projects with uncertain usefulness (and therefore political backing) and feasibility, the potential private partners, anticipating implementation problems that will cause a shortfall of the expected return, will refrain from bidding resulting in little or no competition for the contract. Or they will submit a bid but demand a high price to compensate for the anticipated problems, making the project more expensive and lowering affordability for the government and/or the users.

Second, if the project goes ahead and encounters implementation difficulties as described above, the problems may be exacerbated by the fact that the project has been procured through

a PPP. The greater complexity of a PPP arrangement compared to conventional public procurement makes remedying project problems much more difficult. Often the solutions will require a renegotiation of the PPP contract. In these negotiations the contracting authority is in a relatively weak position, because once the PPP contract has been awarded there is only one counterparty (the private partner) and no competitive pressure.

The above arguments demonstrate that a thorough project selection is one of the key (if not the most important) success factors of PPPs. The *Guidelines* therefore devote considerable attention to this issue. In particular Chapters 5 and 6 cover the project selection and assessment process.

2

...and a well-founded choice of the PPP model...

As mentioned above, PPP cannot turn “bad” projects into “good” projects, but it can make “good” projects better. That constitutes the reason to procure a project by way of a PPP instead of by conventional public procurement. However, there are many types of PPP arrangements. The optimal type of arrangement depends on the characteristics of the project (size, complexity, types of investments and services to be delivered, risks,...), the objectives of the contracting authority (for instance with respect to the degree of control and flexibility during the contract period, affordability to public sector and users,...), the capacities of the contracting authority (to manage the project in the different lifecycle phases from project development to procurement and operations) and the capacities of the private sector (are there potential private partners having the financial and technical capacities required for undertaking the project and bearing the associated risks). If an unsuitable PPP model is chosen, the benefits of PPP will be lower than expected. In some cases an unsuitable PPP arrangement will actually cause project implementation problems and increase costs compared to the non-PPP alternative.

A well-founded selection and optimisation of the PPP model in function of project characteristics and the capacities of public and potential private partners is therefore essential to the success of PPP. This is achieved by a “Value for Money” assessment, and is addressed in Chapter 6 of the *Guidelines*.

3

...implemented in a well-specified PPP contract...

The fact that procurement through PPP allows increasing the value of a project (in terms of lower costs, higher quality, faster implementation,...) does not imply that the value gains are effectively obtained. The benefits of PPP are only potential. They do not emerge spontaneously. The effective realisation of the potential value gains of a PPP model depends on the existence of a well-specified contract that induces all signatories to take the appropriate actions to effectively pursue and achieve the value gains of the PPP model.

The PPP contract serves a dual purpose. First, it must give reassurance to the private partner (and his financiers) that he can earn the expected return on investment. Secondly, it must ensure

that the contracting authority effectively obtains the “Value for Money” set out in the bid on the basis of which the private partner has been selected. The PPP contract achieves this essentially by clearly stating the rights and obligations of both the public and private partners of the project, and by specifying the payments that the signatories are entitled to receive or have to pay in function of their performance and the occurrence of specific risk events.

The specification of the PPP contract is addressed in Chapter 6 of the *Guidelines*.

4

...awarded in a competitive tender procedure...

Suppose that the contracting authority has selected the best PPP model (i.e. having the greatest potential “Value for Money”) and has drafted a PPP agreement implementing this PPP model. These conditions are still not sufficient for effectively obtaining the potential benefits of PPP. To achieve the latter, the private contractor must be induced to offer the best “Value for Money” in its bid and to share the gains to the maximum extent with the contracting authority or with the community at large (the users).

The key factor for achieving this is a competitive tender procedure. Only if a sufficiently large number of bidders compete against each other, they will be induced to offer the deal with the best possible cost-quality combination (best “Value for Money”). If only one or a few bidders are in the race, they do not have an incentive to offer the best deal possible in order to get the contract. In that case, PPP may still create some value gains, but they will not be fully shared with the contracting authority or the user. For instance, efficiency gains will be converted into higher profits for the private partner rather than lower prices for users or a higher concession fee for the contracting authority.

In essence there are two requirements for a competitive procurement process: transparency and equal treatment of all bidders. However, an efficient procurement procedure must also strike a balance between maximizing competition (many bidders is better) and controlling the costs of running the procedure (few bidders is better).

The design of the PPP procurement procedure is addressed in Chapter 7 regarding general aspects and in Chapter 8 for unsolicited proposals. Obviously, many of the recommendations with respect to the design and management of the procurement process also apply to non-PPP projects. Chapter 7 emphasizes the specific PPP issues, but the inclusion of more general operational recommendations with wider application is difficult to avoid.

5

...efficiently managed by contracting authority...

International experience learns that the efficiency and quality of the project management by the contracting authority is of utmost importance to the success of a PPP project. Large, costly failures of PPP projects are often due to shortcomings in the preparation and implementation of

the project by the contracting authority. For instance: ill-defined objectives, radical change of objectives during the contract period, unrealistic expectations, insufficient or even complete lack of feasibility and “Value for Money” assessments, negation of important risks, breach of contractual agreements, insufficient or complete lack of performance monitoring,...

These problems are not restricted to PPP projects. However, in the case of PPP projects their adverse effects are much larger. As mentioned before, the greater complexity and longer duration of PPP arrangements reduce the flexibility of remedying project problems. Efficient management by the contracting authority to prevent problems or to effectively address problems as soon as they arise, is therefore even more important in PPP projects than in conventional procurement projects.

Efficient management by the contracting authority comprises both general aspects (development of management skills within contracting and relevant regulatory authorities) and project-specific aspects. The *Guidelines* focus on the latter. Project management during the PPP project cycle can be further divided into two parts: project management during the preparation phases of the project, and project management during the operational phase of the project. The first part is covered in Chapters 6 and 7^{Error! Reference source not found.} The second part is addressed in Chapter 8.

6

...supported by an adequate legal framework.

The purpose of the legal and regulatory framework is to establish a firm foundation for the satisfaction of the conditions for success described in the preceding paragraphs. This framework consists in the first place of PPP-specific laws and regulations, such as decision-making procedures regarding PPP, procurement procedures, model PPP contracts,... But also many non-PPP laws and regulations have an impact on PPP projects. For instance: civil law, administrative law, foreign investment law, environmental regulation, urban planning and zoning regulations, sector-specific regulations for sectors in which PPP projects are undertaken (transport, energy, telecommunication,...), fiscal rules,...

To some extent, aspects of the PPP arrangement that are not or not well regulated in the legal framework can be remedied in the PPP contract. Having said that, an adequate legal framework has substantial advantages:

- A legal framework offers private investors more certainty than only a PPP contract.
- If more aspects are settled by the legal framework, then PPP contracts can be shorter and simpler, resulting in a saving of procurement and transaction costs.
- Furthermore, non-PPP regulations (environmental, fiscal,...) sometimes prevent PPPs from achieving their full efficiency potential. If these obstacles are removed, then the benefits of PPP arrangements can be considerably increased.

The *Guidelines* embodied in the present document are operational in nature. They offer recommendations to the practitioners of PPP regarding the application of the legal and

regulatory framework in particular projects. However, the development of the legal and regulatory framework itself is addressed in the national PPP policy and falls outside the scope of the *Guidelines*.

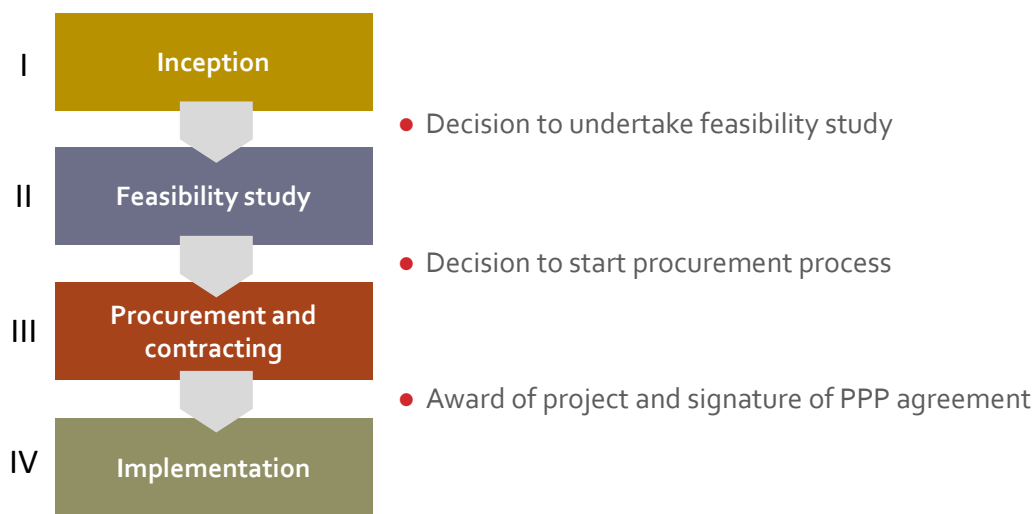
The discussion of the key success factors of PPP is concluded with an important nuance. Ultimately, the fundamental enabling condition for PPP is the **trust** of the private partners in the competence and reliability of the contracting authority, and vice versa. An excellent legal framework and a well-specified PPP contract are no substitutes for trust. This trust is founded in real project experience and can only be built up one project at a time.

4 Overview of the PPP Project Cycle

4.1 PPP Project Cycle

The figure below shows the main stages and decision points of the PPP Project Cycle.

Figure 2: PPP Project Cycle: stages and decision points



Four main project stages can be distinguished:

- inception: selection of a project for development;
- feasibility study: project design and feasibility assessment;
- procurement and contracting: selection of a private partner to realize the project;
- implementation: construction and operation of the project.

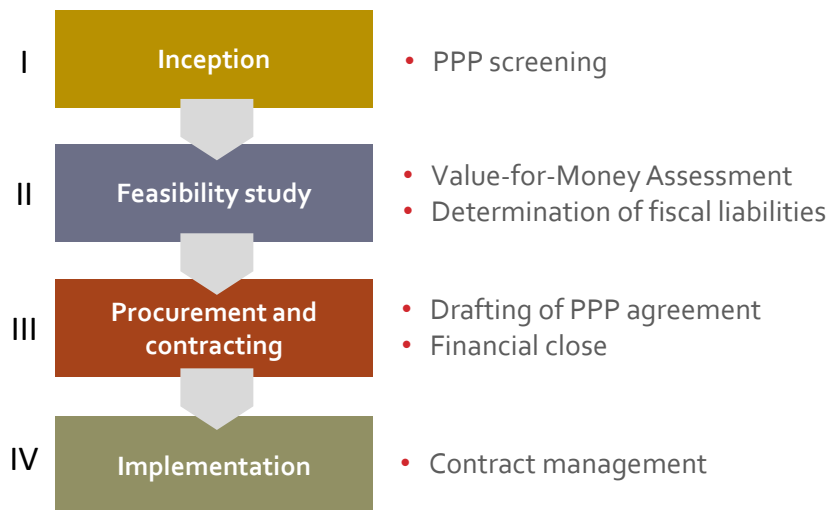
After each stage the ministry, department of agency (MDA) implementing the project must decide whether to proceed to the next stage:

- after the inception stage: decision to undertake feasibility study;
- after the feasibility study stage: decision to start the procurement process;
- after the procurement stage: awarding of the project and signature of PPP agreement with selected private partner.

The PPP Project Cycle shown in Figure 2 is not different from the project cycle of a conventionally procured project. That is not surprising given the fact, pointed out in Chapter 3, that PPP is a mechanism for the delivery of public projects. The difference between PPP and public procurement does not lie in the stages of the project cycle, but in the contents of these stages.

The figure below presents the specific additional PPP aspects that need to be addressed in the various stages of the Project Cycle.

Figure 3: PPP aspects in the Project Cycle



In the **inception** stage the MDA must also decide whether to consider a PPP arrangement for the realization of the project. For this purpose a PPP screening tool is provided later in these *Guidelines*. The tool allows to determine whether a project is in principle suitable for implementation in PPP.

If the MDA has decided to consider a PPP arrangement, then the **feasibility study** must include an investigation of the desirability of PPP and of the optimal PPP structure. This investigation has two components. In the “value-for-money” assessment the costs and benefits of PPP compared to conventional procurement are examined. This analysis results in the formulation of the optimal PPP structure. Secondly, the budget requirements and contingent liabilities over the duration of the proposed PPP contract must be estimated in order to verify the fiscal affordability of the project.

In the **procurement and contracting** stage a PPP agreement is drafted, including a definition of the output specifications and service requirements that need to be met by the private partner. Furthermore the finalization and signature of the PPP agreement involve a number of financial aspects that are not present in the case of conventional procurement. Contract close is accompanied by financial close.

A PPP agreement has a much longer duration than a conventional procurement contract. This creates the need for long term contract management by the MDA in the **implementation** stage of the project. This involves among other the monitoring of the performance of the private partner, the administration of the payment mechanism, the settlement of contingent liabilities, and finally the termination of the PPP agreement and the transfer of the assets to the public sector.

4.2 Public institutions in the PPP Project Cycle

As pointed out above a PPP project is in the first place a project. Consequently all public institutions that have a role in the development and implementation of a conventionally procured project have the same role in a PPP project. In particular the following institutions are involved:

- the MDA² implementing the project: project development and procurement;
- Gambia Public Procurement Authority (GPPA): enforcement of compliance with procurement regulations;
- sector regulatory authorities (Public Utilities Regulatory Authority (PURA), National Environment Agency (NEA), Gambia Tourism Board (GTB),...): enforcement of compliance with relevant sector regulations, issuing of licences and permits;
- Ministry of Finance and Economic Affairs (MOFEA): budgeting and debt management.

In addition PPP projects require a number of specific PPP functions to be fulfilled:

- **gatekeeper function**: ensure that only projects are carried out that are well structured and constitute a rational and justified use of public resources and funds;
- **project-specific support**: technical assistance to implementing MDAs in the preparation and structuring of PPP projects in order to maximize the 'value-for-money' of these projects;
- **cross-project support**: capacity building, development of guidelines and standards, general communication about the PPP programme,...

In The Gambia these functions have been assigned to two institutions especially established for the implementation of the PPP program:

- the PPP Committee;
- the Directorate of Public-Private Partnerships (PPP Directorate) within MOFEA.

The PPP Committee

The PPP Committee performs the gatekeeper function. The PPP committee

- approves PPP projects with a contract value between USD 1 million and 3 million;
- advises the Cabinet on the approval of PPP projects with a contract value exceeding USD 3 million.

² For convenience the term MDA will be used in the *Guidelines* to indicate the ministry, department or agency implementing the project, as well as, if relevant, any higher level government entities overseeing the MDA and responsible for approving the decisions of the MDA. State-owned enterprises are also included in the definition of MDA.

Projects with a contract value of less than USD 1 million can be approved by the MDA itself, unless only one bid is received. In that case the PPP Committee must decide whether to accept the bid.

Approval is required for all important milestones of the project (undertaking of feasibility study, launching of tender procedure, bid documents, award of contract).

In addition the PPP Committee is responsible for various cross-project issues:

- approval of PPP guidelines and standard contracts;
- recommendations for the enactment of PPP-related legislation;
- supervision of overall PPP program.

The PPP Committee is composed of:

- Minister of Finance and Economic Affairs (chair);
- Minister of Justice;
- Minister of Trade;
- CEO of Gambia Investment and Export Promotion Agency (GIEPA);
- CEO of Gambia Public Procurement Authority (GPPA);
- CEO or Minister responsible for the MDA implementing the project;
- Directorate of PPP (Secretariat).

PPP Directorate

The PPP Directorate is a department within MOFEA. It has three functions.

Firstly, it provides project-specific support to implementing MDAs with respect to PPP issues. These support activities may include advice on the preparation and structuring of PPP projects, assistance in the selection of transaction advisors and other PPP consultants, and supervision of the work of transaction advisors and other PPP consultants. A practical way to organize the project-specific PPP support activities is by including the PPP Directorate in the project preparation team that is established by the implementing MDA.

Secondly, the PPP Directorate gives practical assistance to the PPP Committee. This task involves

- the secretariat of the PPP Committee;
- preparation of project-related decisions and approvals;
- preparation of advice and recommendations of the PPP Committee with respect to cross-project issues (guidelines, policies, proposals for regulations and acts).

Finally the PPP Directorate is responsible for cross-project support to the PPP program. This involves among other maintaining a PPP database, organizing capacity building activities and communicating about the overall PPP program.

In the next chapters each stage of the PPP Project Cycle is described in more detail.

5 Stage I: Inception

5.1 Steps in Inception Stage

The steps in this stage are described in the table below. The responsible institution is shown in the first column. The PPP-specific steps are marked by a light grey background shading.

INCEPTION	Implementing MDA	<ul style="list-style-type: none">• Identifies a project that it wishes to realize in response to a societal need.• Decides to undertake a feasibility study of the project and secures funding for this study.
	PPP Directorate	<ul style="list-style-type: none">• Decides to consider a PPP for the realization of the project.• Submits a request to the PPP Directorate to register the project as a potential PPP project.• Examines the eligibility of the project for implementation under PPP, with the aid of the PPP Screening Tool.• Enters the project in the PPP Project Database with the status "Feasibility study".

5.2 Operational guidance for Inception Stage

MDA request to register the project as a PPP project

If the MDA decides to consider a PPP for the realization of the project, it submits a request to the PPP Directorate to register the project as a potential PPP project.

The MDA agency can submit this request no earlier than its decision to undertake a feasibility study of the project. To demonstrate the seriousness of the intentions of the MDA, this decision must be backed up by the allocation of adequate funds for carrying out the study (i.e. for the mobilization of internal resources and/or the hiring of a feasibility study consultant).

The MDA may, however, choose to postpone the request for considering a PPP to a later date, for instance to a time when the feasibility study has largely been completed and the MDA is fairly sure that the project will be implemented.

When an implementing agency submits a request for the registration of a potential PPP project, it provides the following information in a Project Brief:

- project name and location;
- name of implementing agency;
- short project description;

- proposed PPP model;
- motivation for PPP: reasons why PPP is considered, expected benefits from PPP;
- financial information: estimate³ of investment costs (for a project involving an investment in assets) or of the annual operating costs (for a management and operation contract);
- time planning: indicative timing of procurement process;
- documentation of the funding of the feasibility study (budget allocation, proof of support by a funding agency,...), or proof that the feasibility study is ongoing, or a copy of the feasibility study if has already been completed.

Assessment of PPP eligibility by the PPP Directorate

The PPP Directorate examines the eligibility of the project for implementation under PPP using the PPP screening tool described in paragraph 5.3.1 below.

At this stage no detailed analysis of the feasibility and desirability of PPP is conducted. The PPP Directorate only verifies, on the basis of a number of project characteristics, whether the project is in principle suitable for PPP. If the project is not eligible for PPP it is not meaningful to spend further resources on the analysis of the actual feasibility and desirability of PPP for the project. If, on the other hand, the project is in principle suitable for PPP a further analysis is justified and required.

If the project is in principle eligible for PPP it is entered in the PPP Project Database with the project status "Feasibility study". If the project is found to be not suitable for PPP, registration is refused. The PPP Directorate informs the MDA of this decision. The results of the PPP screening are joined in annex to the letter informing the MDA of the refusal to register the project in the PPP Database.

The refusal to register the project in the PPP Project Database is not necessarily final. It can be the start of a dialogue between the MDA and the PPP Directorate to refine the objectives of the PPP and resubmit a request for registration.

The structure of the PPP Project Database is described in paragraph 5.3.2 below.

5.3 PPP assessment tools in Inception Stage

5.3.1 PPP screening tool

The purpose of the PPP screening tool is to verify whether the project is in principle eligible for realisation through a PPP. The screening is based on a number of questions on the characteristics of the project. The questions are presented in the table below.

³ May be a rough indication at this stage.

Table 2: PPP screening tool

	Issue	Question / Evaluation
1	Project objective	<p>Does the project involve the supply of a public service?</p> <p>A PPP is an arrangement for the procurement of a public service. If the project does not involve the supply of a public service, it is unsuitable for PPP.</p> <p>The distinction between public and private services is not always clear-cut. In Annex A of <i>Guidelines</i> some criteria for the identification of public services are presented.</p>
2	Project type	<p>Does the project allow a substantial transfer of financial and operational risk to the private sector?</p> <p>A key characteristic of a PPP is the transfer of a substantial part of project risks to the private sector, notably with respect to designing, building, operating and/or financing the project.</p> <p>Two broad categories of projects offer opportunities for substantial risk transfer and are therefore eligible for a PPP:</p> <ul style="list-style-type: none"> – the construction or purchase of a durable asset in combination with the financing of the investments costs and the maintenance and operation of the asset for a significant fraction of its lifetime; – the integrated and autonomous (within the constraints set by service level specification) management and operation of a public service unit for a number of years (generally 3-5 years). <p>The following types of projects or transactions, on the other hand, do not allow a substantial risk transfer and are not suitable for PPP:</p> <ul style="list-style-type: none"> – purchase of goods and services; – construction works without financing and maintenance components; – service contracts without a substantial transfer of operational risks to the private partner (for instance simple maintenance contracts). <p>These types of projects must be procured with conventional procurement contracts.</p>

	Issue	Question / Evaluation
3	Size of project	<p>Is the project sufficiently large?</p> <p>The procurement and contracting of a PPP contract requires more effort and costs than a conventional procurement, both for the contracting authority and for the bidders. For the benefits of PPP to outweigh the higher procurement and contracting costs the project must be sufficiently large.</p> <p>The following thresholds are proposed:</p> <ul style="list-style-type: none"> – investment value of GMD 400 million (USD 10 million) in case of a project involving an investment in assets; – contract value of GMD 120 million (USD 3 million) in case of a management and operation contract. <p>Given the difficulty of establishing uniform thresholds for project size, these amounts should be applied flexibly. Moreover, they must be regularly updated to take account of price inflation.</p>
4	Serious project plans	<p>Has the MDA secured funding for a feasibility study?</p> <p>The purpose of this question is to assess the seriousness of the project plans. Only projects for which the implemented agency has decided to undertake a feasibility study, and has secured adequate funding for such a study, can be considered for PPP. If the feasibility study has already been completed or is ongoing, then this condition is also satisfied.</p>
5	Sound motivation for PPP	<p>Is the motivation of the MDA to consider PPP sound?</p> <p>What are the reasons for the MDA to implement the project in PPP? Do these reasons refer to the “value-for-money” drivers of PPP?</p> <p>If the MDA is unable to state reasons to engage in a PPP, or if the stated reasons are unrelated to the “value-for-money” drivers of PPP, then the objectives of the PPP are unsound or unrealistic. The PPP is then likely to fail.</p> <p>At this stage no detailed assessment of the “value-for-money” drivers is needed. But the motivation for the PPP must be logical.</p> <p>The “value-for-money” drivers of PPP are presented in Annex B.2 of these <i>Guidelines</i>.</p>
	Screening conclusion	A project can be entered in the PPP Database if all screening questions are answered affirmatively.

5.3.2 PPP Project Database

The table below shows the structure of the PPP Project Database.

Table 3: Structure of PPP Project Database

Project identification	Name and location of the project
Current status	Possibilities are: Pre-feasibility study, Feasibility study, Pre-competitive market consultation, Request for Qualifications (RFQ) issued, Prequalified bidders, Request for Proposals (RFP) issued, Indicative bids received, Shortlisted bidders, Request for Best and Final Offers (BAFO) issued, Binding bids received, Preferred bidder, Contract Close, Financial Close, On hold, Cancelled
Implementing agency	Name and contact information of implementing agency or agencies
Project description	Description of project of no more than two paragraphs (covering investments, services, indication of quantities,...)
PPP model	Type of PPP contract, payment mechanism, duration, expected benefits from PPP
Financial information	Investment costs, annual operating costs, contract value (nominal and/or present value)
Contracting authority advisors	Identity of legal, technical, financial and/or transaction advisors
Information on bidders	Identity of Prequalified bidders, Shortlisted bidders, Preferred Bidders, Contractor
Project history	Key dates and events up to the present time
Time planning	Planned timing of procurement and contracting steps until financial close (especially the planned date of the next step)

The PPP Project Database is maintained by the PPP Directorate on the basis of input information provided by the implementing agency. The PPP Project Database is a dynamic database that is updated after every completed stage in the procurement of the PPP project.

6 Stage II: Feasibility study

6.1 Steps in Feasibility Study Stage

The steps in this stage are described in the table below. The responsible institution is shown in the first column. The PPP-specific steps are marked by a light grey background shading.

FEASIBILITY STUDY	Implementing MDA	<ul style="list-style-type: none"> Selects a feasibility study consultant (possibly combined with a transaction advisory mandate). Supervises the execution of the feasibility study (possibly divided into two stages: pre-feasibility and detailed feasibility). In the case of a project for which implementation in PPP is considered, the feasibility study must include a PPP analysis (Value for Money analysis, structuring of the PPP, financial analysis,...). Decides, on the basis of the findings of the feasibility study whether to proceed to the procurement phase. Decides whether to proceed with the realisation of the project through a PPP arrangement, and, in the case of a positive decision, selects the PPP structure. Submits the PPP project for approval to the PPP Directorate.*
	PPP Directorate	<ul style="list-style-type: none"> Assists implementing MDA with: <ul style="list-style-type: none"> the drafting of the terms of references of the PPP analysis; the evaluation of the proposals with respect to the PPP analysis; the supervision of the execution of the PPP analysis; the interpretation of the findings of the PPP analysis. Evaluates the PPP analysis in the feasibility study and formulates recommendations to the PPP Committee on the approval of the project.
	PPP Committee	<ul style="list-style-type: none"> Approves project to proceed to the procurement phase (for projects with a contract value between USD 1 million and 3 million), or advises the Cabinet on the approval of the project (for projects with a contract value exceeding USD 3 million).*
	Cabinet	<ul style="list-style-type: none"> Approves project to proceed to the procurement phase.

* Projects with a contract value of less than USD 1 million can be approved by the MDA itself.

6.2 Operational guidance for Feasibility Study Stage

Feasibility study

The box below describes the contents of the feasibility study.

Contents of feasibility study

The scope and depth of the feasibility study depends on the complexity and the size of the project. For instance a large transport infrastructure project will require a more extensive feasibility study than the a straightforward building project.

In general a feasibility study consists of three steps:

- **needs analysis:** determination of the need of the project (definition of the societal problem that the project will address, definition of project objectives in relation to the societal problem and/or government policy objectives, demand study);
- **options analysis:** development and comparison of alternative project options;
- **feasibility analysis:** feasibility assessment of the preferred option.

For large projects the feasibility assessment may be carried out in two phases: an exploratory pre-feasibility study (covering the needs and options analysis) followed by a detailed feasibility study (focusing on the feasibility analysis of the preferred option).

In the options analysis and the feasibility analysis the following aspects are generally addressed:

- **technical analysis:** development of a technical design of the project in sufficient detail to demonstrate the technical feasibility and estimate the project costs;
- **environmental analysis:** air and water quality, biodiversity,...;
- **social analysis:** impact on communities, income inequality, gender issues;
- **economic analysis:** economic costs and benefits of the project;
- **financial analysis:** analysis of project cash flows to assess financial feasibility for investors and affordability for the government and for users.

The feasibility study is usually carried out by an external feasibility study consultant (or several consultants, each of which is assigned a particular aspect of the feasibility assessment: technical, environmental, economic,...). The implementing agency selects the feasibility study consultant(s) and supervises the execution of the study.

PPP analysis

In the case of a potential PPP project, the feasibility study is extended to include a PPP analysis. The PPP analysis consists of three parts:

- the determination of the **PPP structure** for the project;
- a **Value for Money** (VfM) assessment;
- a **financial analysis**.

The approach of these analyses is described in section 6.3.

The PPP analysis is carried out by the feasibility study consultant. Depending on the approach chosen by the implementing MDA, this may be a multidisciplinary feasibility study consultant who carries out the entire feasibility study including the PPP analysis, or a separate PPP consultant only responsible for the PPP analysis.

In either case the PPP Directorate can assist the implementing MDA with:

- the drafting of the terms of references of the PPP analysis;
- the evaluation of the proposals with respect to the PPP analysis;
- the supervision of the execution of the PPP analysis;
- the interpretation of the findings of the PPP analysis.

On the basis of the findings of the PPP analysis the implementing MDA decides whether to proceed with the realisation of the project through a PPP arrangement, and, in the case of a positive decision, selects the PPP structure. The MDA submits the proposed PPP structure and the reports of the PPP analysis to the PPP Directorate for evaluation.

The PPP Directorate assesses the quality and the findings of the PPP analysis. On the basis of this assessment it formulates recommendations with respect to the approval of the PPP to the PPP Committee. In the case of negative recommendations the PPP Directorate can first engage in a dialogue with the implementing MDA in order to improve the PPP analysis and optimize the proposed PPP structure before submitting the request for approval to the PPP Committee.

6.3 PPP assessment tools in Feasibility Study Stage

6.3.1 Determination of PPP structure

The PPP structure is defined by:

- a description of the project activities that will be assigned to the private partner;
- a PPP model;
- a payment mechanism;
- a risk matrix.

Selection of PPP model

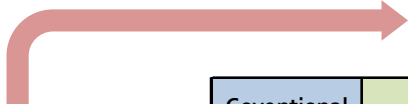
The basic PPP contract models are presented in Chapter 2.

The eligible PPP models for a specific project can be determined on the basis of three project characteristics:

- the type of project service: a public service performed on behalf of a public sector entity, or a commercial service using public assets;
- whether or not the project involves investment in a fixed asset;
- the pricing policy for the project service: full, partial or no cost recovery from private users.

Table 4 below shows the concordance between the above project characteristics and the eligible PPP models. If a cell of the table shows a “Y” (yes), then the PPP model in the column is compatible with the project characteristic in the row. A “N” (no) indicates that the PPP model is not compatible with the project characteristic. Given the characteristics for a particular project the eligible PPP model(s) can be determined.

Table 4: PPP model selection tool



Eligible PPP models

Project characteristics		Coventional public procurement	Management contract	DBFMO and variants	Operating concession	BOT concession	Privatis
Type of service	Public service on behalf of public sector entity	Y	Y	Y	N	N	N
	Commercial service using public property or assets	N	N	N	Y	Y	Y
Private investment	The project requires private investment in the construction or purchase of assets.	N	N	Y	N	Y	Y
	The project requires no significant private investments.	Y	Y	N	Y	N	N
Pricing policy	The project services are provided to users free of charge.	Y	Y	Y	N	N	N
	The project costs are fully recovered through user fees.	Y*	Y*	Y*	Y	Y	Y
	The project costs are partially recovered through user fees.	Y*	Y*	Y*	Y (with subsidy)	Y (with subsidy)	Y (with sul

** In these cases the contracting authority receives the revenues from the user fees, while it pays in turn the contractor for services rendered (possibly using part or whole of the revenues from the user fees).*

Payment mechanism

The payment mechanism describes how the private contractor will be remunerated. The payment mechanism is defined by:

- who pays:
 - the private user;
 - the public sector (contracting MDA or another public sector entity);
- the structure of the payment:
 - a periodic availability fee (monthly, quarterly or annually);
 - a fee per user or per operation;
 - milestone payments: lump-sum payments when a phase of the project has been completed;
 - combinations of the above.

Risk matrix

The risk matrix shows for each risk:

- name of risk;
- description of risk and its consequences;
- proposed risk mitigation measures;
- proposed risk allocation.

A generic risk matrix is provided in Annex B.2.2. This generic matrix can be used as an inspiration for the establishment of a risk matrix for a particular project. The risk categories of the generic matrix must be expanded and refined in function of the specific characteristics of the project, where appropriate.

Heads of terms of PPP agreement

A convenient way to describe the proposed PPP structure is by outlining the main elements of the proposed PPP agreement. A template is provided in Annex C.

6.3.2 Value for Money assessment

The objective of the VfM assessment is to determine whether the proposed PPP model offers a better price/performance than implementation of the project with conventional public procurement.⁴

⁴ Note that the VfM assessment in the PPP analysis compares the implementation of a project with and without PPP. Hence the Value for Money of the project itself (compared to the alternative of not

The VfM is conducted by considering the driving factors behind the advantages and disadvantages of PPP compared to conventional public procurement. The methodological framework is provided by the table below, which contains a structured list of questions aimed at the assessment of the various VfM drivers. At the end of the table an overall conclusion is drawn with respect to the appropriateness of the proposed PPP model (and, the case being, suggestions for the optimization of the PPP model). More detailed information on the VfM drivers is presented in Annex B.

Table 5: Qualitative Value for Money assessment

	Driver	Questions	Low	Medium	High
A	Advantages	The next six lists of questions assess the presence and strength of driving factors behind advantages of PPP. On the basis of your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.⁵			
A1	Output-based contracting	Does some degree of flexibility remain in the nature of the technical solution/service and/or the scope of the projects? Is the solution adequately free from the constraints of imposed by the procuring authority, legal requirements and/or technical standards? Is there scope for innovation in either the design of the solution or in the provision of the services?	0	0	0
A2	Optimal risk allocation	Is there scope for significant risk transfer to the private partner (in accordance with the principle of optimal risk allocation)? Can the payment mechanism and contract terms incentivise good risk management by the private contractor?	0	0	0
A3	Private outsourcing	Does the private sector have significant cost advantages in comparison with the MDA in the delivery of the project services (owing to greater efficiency, economies of scale, greater experience/expertise,...). Could the private sector achieve a better commercial utilisation of the assets underpinning the project, resulting in higher revenues.	0	0	0

implementing the project at all) is not addressed here. That is the objective of the economic assessment in the feasibility study.

⁵ This table shows a scale with three levels: low, medium and high. Alternative scales may also be used, if they are found to be more convenient or suitable.

	Driver	Questions	Low	Medium	High
A4	Life-cycle optimisation	<p>Does the project offer the potential to achieve efficiency gains from life-cycle optimisation?</p> <p>Is it possible to integrate the design, build and operation elements of the project?</p> <p>Are there significant ongoing operating costs and maintenance requirement? Are these likely to be sensitive to the type of construction?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A5	Performance based payments	<p>Can the outcomes or outputs of the investment programme be described in contractual terms, which would be objective and measurable?</p> <p>Would incentives for service delivery be enhanced through a performance payment mechanism as proposed in the PPP?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A6	Private financing	<p>Is financing by the private sector necessary to undertake the project?</p> <p>Is it the case that no or insufficient public funds are available, so that the project cannot be undertaken (or only with large delays) unless private financing steps in.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D	Dis-advantages	<p>The next six lists of questions assess the presence and strength of driving factors behind disadvantages of PPP and obstacles to PPP. On the basis of your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.</p>			
D1	Output specifications	<p>Is it possible to describe the services in clear, objective output- and result-based terms (and not in terms of activities), which can be included in a long term contract?</p> <p>Can the contractual outputs be defined so that they can be objectively measured?</p> <p>Can the quality of the service be objectively measured and assessed?</p> <p>Is a possible to establish an on objectively verifiable link between the output specifications, the monitoring of the actual performance and the payment mechanism?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D2	Operational flexibility of MDA	<p>Is it possible to reconcile the degree of operational flexibility desired by the MDA and the long-term nature of a PPP arrangement?</p> <p>Will the PPP arrangement leave the MDA with sufficient operational flexibility to respond to future needs?</p> <p>What is the likelihood of large changes in service needs during the life of the PPP contract that would require a change of the contract?</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Driver	Questions	Low	Medium	High
		<p>If the services performed under the PPP arrangement interfere with other services or other projects not covered by the PPP contract, are these interfaces manageable?</p> <p>If the PPP arrangement necessitates the transfer of public sector staff to the private partner, will it be possible to accomplish this transfer without major problems or resistance?</p>			
D3	MDA capacity	Does the contracting authority have sufficient human and financial resources to prepare and tender the PPP project?	0	0	0
D4	Policy and regulatory barriers	<p>Is it the case that there are there no legal or regulatory obstacles to delegating the provision of the services to a private party?</p> <p>Is the provision of the services under a PPP arrangement compatible with the safeguarding of public interests (for instance with respect to environmental sustainability, workers' safety, fair competition,...)?</p> <p>Is the provision of the services under a PPP arrangement compatible with other policy goals (for instance with respect to land use, income distribution, economic development,...)?</p>	0	0	0
D5	Large and uncontrollable risks	<p>Does the project involve large risks that are largely outside the control of the private partner and that may make private finance unfeasible or very expensive?</p> <p>Examples are traffic risk (especially for greenfield projects and if macroeconomic conditions are highly uncertain), large uncertainties about the costs of meeting requirements imposed by environmental regulations, the use of unproven technology, difficult terrain conditions.</p>	0	0	0
D6	Private sector capacity and interest	<p>Is there evidence that the private sector is technically and financially capable of implementing the project?</p> <p>Is there likely to be a sufficiently large number of bidders interested in the project to ensure effective competition?</p> <p>Is there evidence that financiers are willing to provide funds for investing in this type of projects?</p>	0	0	0
VfM	Overall assessment	<p>Given the answers to the questions above, are there enough indications that the proposed PPP arrangement yields Value for Money.</p> <p>Are there opportunities for the optimization of the proposed PPP arrangement (in order to strengthen drivers of advantages and reduce drivers of disadvantages).</p>			

6.3.3 Financial analysis

A detailed financial model of the project must be constructed. This model must allow projections for the intended duration of the PPP contract of:

- the investment cash flow;
- the operational cash flow (operating costs and revenues);
- the financing cash flow (investment of shareholder funds, payment of dividends, withdrawal and repayment of loans, interest payments,...);
- financial ratios (debt service coverage ratio, loan life coverage ratio, internal rate of return,...);
- financial statements (profit & loss statement, assets and liabilities).

Depending on the chosen pricing policy and the corresponding PPP model the financial model is used to determine the equilibrium level of the payments by the MDA to the private partner (for instance the level of the availability fee), or of the user charges and the concession fee paid by the private partner to the contracting authority. These results serve as input for the determination of the fiscal impact of the project and of the affordability of the project to the government and/or the users.

Apart from the base case, alternative scenarios can be analysed to test the robustness of the results and to assess the fiscal risks. These alternative scenarios may relate to a higher or lower growth rate of the service demand, the occurrence of risk events, delayed implementation of the project, etc.

7 Stage III: Procurement and Contracting

7.1 Steps in Procurement and Contracting Stage

The steps in this stage are described in the table below. The responsible institution is shown in the first column. The PPP-specific steps are marked by a light grey background shading.

PROCUREMENT AND CONTRACTING	Implementing MDA	<ul style="list-style-type: none"> Selects transaction advisor. (if not included in work of the feasibility study consultant) Designs procurement process. Prepares bid documents (including draft PPP agreement).
	PPP Directorate	<ul style="list-style-type: none"> Assists implementing MDA with: <ul style="list-style-type: none"> the drafting of the terms of references of the transaction advisor; the evaluation of the bids of candidate transaction advisors; the supervision of the work of the transaction advisor. Evaluates the bid documents and advises the PPP Committee.
	PPP Committee	<ul style="list-style-type: none"> Approves bid documents for recommendation to the Cabinet.*
	Cabinet	<ul style="list-style-type: none"> Approves issue of bid documents to potential bidders.
	Implementing MDA	<ul style="list-style-type: none"> Conducts procurement process. Selects preferred bidder.
	PPP Directorate	<ul style="list-style-type: none"> Assists implementing MDA during the procurement process and with the evaluation of the PPP aspects of the submitted bids. Assesses the evaluation of the bids and advises the PPP Committee on the selection of the preferred bidder.
	PPP Committee	<ul style="list-style-type: none"> Approves selection of preferred bidder.*
	Implementing MDA	<ul style="list-style-type: none"> Conducts final negotiations with preferred bidder Prepares final draft of PPP agreement
	PPP Directorate	<ul style="list-style-type: none"> Evaluates final draft of PPP agreement for recommendation to PPP Committee

PPP Committee	<ul style="list-style-type: none"> Approves draft PPP agreement for recommendation to the Cabinet.*
Cabinet	<ul style="list-style-type: none"> Approves PPP agreement for signature by competent minister or CEO of public enterprise.
Implementing MDA	<ul style="list-style-type: none"> Competent minister or CEO of MDA signs PPP agreement.

** Projects with a contract value between USD 1 million and 3 million, can be handled by the PPP Committee, without a need to refer them to the Cabinet. Projects of less than USD 1 million can be approved by the MDA itself, unless only one valid bid has been received. In that case the PPP Committee must review the bid and decide on its acceptance.*

7.2 Operational guidance for Procurement and Contracting Stage

7.2.1 Management of procurement and contracting process

Selection of transaction advisor

At the beginning of the procurement and contracting phase the contracting authority appoints a transaction advisor. The criteria for the selection of the transaction advisor should at least include a proven experience with the successful closing of transactions of similar projects. The transaction advisor must have the required legal, financial and technical expertise to cover all aspects of the PPP project. The technical expertise may be filled in instead by staff of the MDA that is seconded to the project procurement team.

In some projects the transaction advisory mandate is included in the scope of work of the feasibility study consultant. This approach generates some time and efficiency gains. No new procurement procedure for the selection of a transaction advisor must be conducted. The feasibility study consultant is already familiar with the project and can achieve economies of scope by performing both assignments.

These benefits must be set against the risk of a conflict of interest on the part of the feasibility study consultant/transaction advisor. In his capacity of feasibility study consultant, he has incentives to emphasize the feasibility of the project so that the project proceeds to the procurement phase and the transaction advisory mandate can be taken up. However, this conflict of interest can be mitigated by a suitable payment scheme (for instance by replacing part of the fixed remuneration of the transaction advisor by a sizeable success fee in case financial close is reached). In small projects the time and efficiency gains probably outweigh the potential effects of a conflict of interest, so that an integrated mandate is preferable in most cases.

Design of procurement process

In essence there are two requirements for a competitive tender procedure:

- transparency;
- equal treatment of all tenderers.

In order to attract tenderers, they must be informed about the project and reassured that they have a fair chance of winning the contract. This implies:

- international publication of requests for proposals (at least for large projects);
- selection of the contractor on the basis of clearly announced procedures and criteria;
- notification of the award of the contract;
- registration of the decisions during the tender procedure (so that they can be referred to in disputes);
- review procedures (enabling wrongfully treated tenderers to file a complaint).

Some of these measures might be objected to because they can lengthen procurement procedures. While this may be true, it is the price to be paid for getting the best “Value for Money” in the context of public procurement. Moreover, if implemented well, transparency can also help to reduce the length of procedures. If it is transparent to all tenderers that the contract has been awarded fairly, the incentive to challenge the award in court will be lower.

Equal treatment of all tenderers implies that:

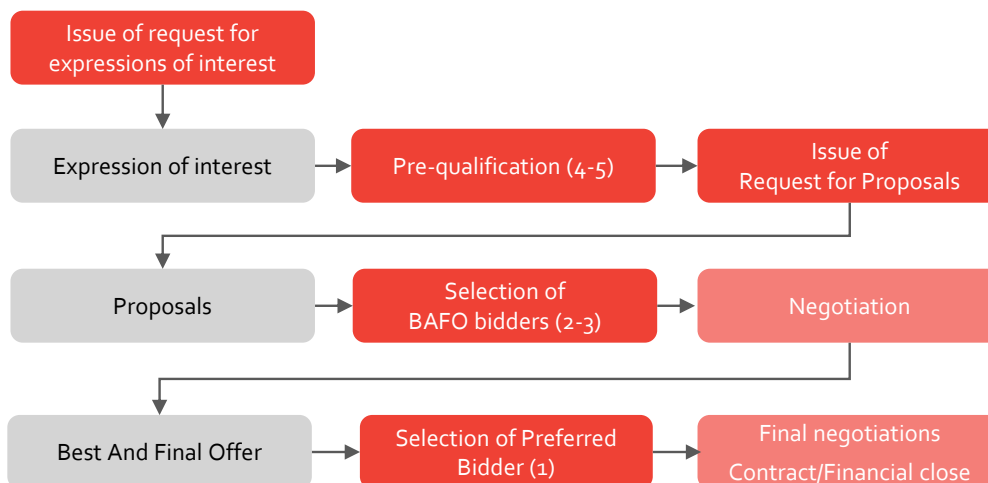
- all tenderers receive the same information on the project (for instance by means of a data room);
- all bids are evaluated according to the same criteria;
- the selection criteria do not discriminate against certain types of tenderers, unless these restrictions are necessary to get better “Value for Money”.

An efficient tender procedure strikes a balance between allowing competition (many tenderers is better) and controlling the costs of running the procedure (few tenderers is better). This balance is often obtained by a multi-stage tender procedure. The most complete procedure has three selection stages (see Figure 4).

1. All tenderers are invited to submit an expression of interest to participate in the tender procedure. Out of the submissions a smaller number of tenderers is selected on the basis of qualitative criteria with respect to technical expertise and financial strength.
2. Only the pre-selected tenderers are allowed to submit a proposal. The best few proposals (generally not more than two or three) are selected for further consideration. These proposals are fine-tuned in negotiation with the tenderers who have submitted them.
3. Finally the remaining tenderers are invited to submit a Best and Final Offer (BAFO). The tendered with the most advantageous BAFO is appointed as the Preferred Bidder. The

PPP project is in principle awarded to the Preferred Bidder subject to the successful conclusion of final negotiations to settle the remaining outstanding contractual issues.

Figure 4: Three-stage tender procedure



A three-stage procedure is only required for complex projects involving finance, construction and operation. For simpler and smaller projects (for instance the awarding of an operating concession of existing infrastructure) a two-stage procedure with a pre-qualification phase and a single bid phase is generally sufficient. In that case the Preferred Bidder is immediately selected on the basis of the initial proposals (i.e. without intermediate BAFO phase).

Tasks of procurement team and transaction advisor

The procurement team, assisted by the transaction advisor, are responsible for all tasks of the procurement and negotiation phase up to the signing of the contract and Financial Close. These tasks comprise:

- drafting of request of expressions of interest (containing the selection criteria for the potential private partner);
- evaluation of submitted expressions of interest and selection of tenderers that will be invited to submit a proposal;
- drafting of request for proposals containing:
 - a guide for tenderers (providing information on the project, the tender procedure, the evaluation criteria, the required content of the proposals,...);
 - draft PPP contract / agreement (see indicative table of contents in Annex D);
 - output specifications;
- answering pre-bid questions of tenderers with respect to the contents of the request for proposals;
- evaluation of proposals and selection of tenderers that will be invited to conduct further negotiations;
- conducting of negotiations with selected tenderers;

- drafting of request for BAFOs (essentially an updated request for proposals reflecting the outcome of the negotiations);
- evaluation of BAFOs and selection of Preferred Bidder;
- conducting of final negotiations with Preferred Bidder;
- supervision of Financial Close by Preferred Bidder (benchmark of interest rates,...);
- management of approvals process and interaction with MOFEA and relevant regulatory authorities.

Overall approach of final negotiation and contracting

Contracting is not a phase of substance. It only serves to formalize the outcome of the procurement process. During the tender procedure the tenderers have had the opportunity to ask pre-bid questions, and, in case of a multi-bid procedure, to negotiate with the contracting authority. As a result of this procedure a draft PPP agreement has been developed on the basis of which the tenderers have submitted bids. These bids are priced competitively, taking into account the output specification, payment mechanism, risk allocation,... incorporated into the draft PPP agreement.

In the final negotiation and contracting stage there is only one preferred bidder remaining, and hence little or no competitive pressure. Any major modification of the project or the contract at this stage will result in a loss of 'Value-for-Money' for the contracting authority. The final negotiations and the drafting of the final contract should therefore only consist of a contract finalization exercise, in which the remaining outstanding issues (in principle minor and few) are settled.

Financial Close

In projects involving the private financing of investments in fixed assets, it is possible that there are time lags between Contract Close (signing of PPP agreement by contracting authority and private partner), Financial Close (signing of financing agreements by private partner and his financiers) and the concluding of the interest rate swaps. The procurement team and the transaction advisor should follow the project until all of these events have occurred.

7.2.2 Safeguarding of Value for Money in the Procurement and Contracting Stage

Throughout the Procurement and Contracting Stage the Value for Money of the proposed PPP model must be safeguarded. This is the responsibility of the PPP Committee, assisted herein by the PPP Directorate for the practical analysis. At very milestone of the procurement and contracting process, the PPP Committee must verify that the VfM demonstrated in the approved feasibility study is preserved (see also the steps in Section 7.1 above). Any significant changes in the PPP structure in comparison with the approved feasibility study (including the PPP analysis) must be motivated and should not reduce the value for money of the project.

In particular, the PPP Committee must verify that:

- the payment mechanism and the risk allocation in the draft PPP agreement (joined to the Request for Proposals) and the final PPP agreement (after final negotiation with the Preferred Bidder) correspond to the PPP structure in the approved feasibility study;
- appropriate criteria have been defined for the evaluation of the financial aspects of the bids;
- the assessment of the financial criteria of the submitted bids has been correctly performed;
- the fiscal liabilities (direct and contingent) of the winning bid are in line with the assessment in the approved feasibility study.

The bids submitted by the tenderers are compared with the MDA's own estimate of the bids. The latter is determined using the financial model that has already been developed in the feasibility study phase (see paragraph 6.3.3). The results of the comparison can be used to identify negotiation points where value gains can be achieved.

8 Stage IV: Implementation

8.1 Steps in Implementation Stage

The steps in this stage are described in the table below. The responsible institution is shown in the first column.

IMPLEMENTATION	Implementing MDA and private contractor	<ul style="list-style-type: none">• Prepare a contract management plan (including a monitoring and evaluation system).
	Implementing MDA	<ul style="list-style-type: none">• Appoints a contract manager and performs contract management.• Regularly reports to PPP Directorate on the fiscal liabilities of the contract (direct liabilities and estimate of contingent liabilities in the next budget period).• Regularly reports to PPP Directorate on the progress of the project (delays, noteworthy events).
	PPP Directorate	<ul style="list-style-type: none">• Maintains a database of fiscal liabilities of PPP projects.• Prepares periodical progress reports on the PPP program for the PPP Committee.
	PPP Committee	<ul style="list-style-type: none">• Monitors the PPP program.

8.2 Operational guidance for Implementation Stage

8.2.1 Contract management

In the Implementation Stage of a PPP project the role of the MDA consists of the managing of the PPP contract. In essence this comprises:

- the monitoring of the performance of the contractor, and checking it against the contract requirements;
- the settlement of payments due under the PPP contract (including bonuses and penalties in function of performance);
- the handling of special events according to the provisions of the PPP contract (for instance risk events, force majeure, persistent non-compliance with contract requirements,...).

Contract manager

The contract manager serves as a point of contact for the private partner, and reports to the financial manager of the MDA. In case of small projects, one contract manager may be responsible for several projects. For very large projects a contract management team consisting of several staff members may be required, especially in the construction phase of the project.

Project development and contract management involve different tasks and require different skills. The contract manager will therefore be in general a different person than the leader of the procurement team, which is usually dissolved at Financial Close. However, in the construction phase of large projects it may be useful to transfer one or a few technical experts from the procurement temporarily to the contracting management team to assist in resolving technical issues.

Monitoring and evaluation system

The main instrument for contract management is the monitoring and evaluation system.

The monitoring and evaluation framework is closely integrated with the PPP agreement. The PPP agreement specifies the project outputs that the contractor must deliver and the performance standards that he must meet. It also specifies the payments that the contractor can claim in function of performance, and that are paid either by the contracting MDA or by the user of the project services. In case of sub-standard performance the contract may also impose penalties or payment reductions. The monitoring and evaluation framework must enable the contracting MDA to measure the performance of the contractor and to determine and verify the payments that are due by the different parties under the contract.

This implies that the key components of the monitoring and evaluation framework are:

- a set of performance criteria, directly linked to the output specifications and the payment mechanism in the PPP agreement;
- an audit and reporting system enabling the contract authority to assess the performance.

Generally the audit and reporting system is based on three pillars:

- self-reporting by the contractor in periodical reports;
- system for the registration of performance shortcomings reported by users and/or the contracting authority (the registration system being run by the contractor);
- random inspections by the contracting authority to check the truthfulness and the completeness of the self-reporting and the complaints register.

The monitoring and evaluation framework is codified in a project management plan. It is good practice to require the bidders to enclose a draft project management plan with their proposal. This proposal is further elaborated and refined during the final negotiations with the Preferred Bidder..

8.2.2 Management of fiscal liabilities

The main role of the central government in the Implementation Stage is the monitoring and budgeting of the fiscal liabilities resulting from the PPP project. This task is performed by MOFEA (with the preparatory analysis carried out by the PPP Directorate).

The central instrument is a database of government liabilities of PPP projects

Structure of register

For each individual project the register must contain details on the following types of government liabilities:

1. payment of grants or fees:
 - one-time (milestone payments);
 - periodic during the lifetime of the contract (availability payments, shadow tolls,...);
2. project-specific waivers or reduction of tax liabilities;
3. risks assumed by the government;
4. guarantees issued by the government in favour of the project;
5. grant or allocation of public property or user rights for public property;
6. contribution of equity or debt financing to the project.

The liabilities must be as much as possible expressed in money terms. In the case of risks and guarantees information must be provided on the maximum exposure and the expected value of claims (to the extent that this information is available).

Input for register

Project-specific government liabilities caused by PPP projects may be included in three types of documents:

- PPP agreement, in particular the sections covering:
 - payment mechanism;
 - compensation in case of risk events;
 - early termination of agreement;
- direct agreements between the contracting authority (or other public entities, such as the Finance Ministry or the ministry responsible for the contracting authority) and the financiers of the private contractor;
- unilateral project-specific government decisions to grant support or guarantees to the private partners or their financiers.

Use of register

The data in the register allows to estimate:

- the value of future direct payments and tax waivers by the government to private contractors of PPP projects (set out in time);
- value of total exposure (maximal and expected) of the government to contingent claims.

This information can be used for:

- budgeting purposes;
- the assessment of the affordability of future proposed PPP projects (given the value of the liabilities of the existing PPP projects).

Periodical projection of contingent claims

Each year the PPP Directorate makes a projection of the payment of settlements expected in the upcoming period pursuant to contingent claims. For this purpose the PPP Directorate sends a questionnaire to all MDAs with PPP projects in the exploitation phase (the register of PPP project liabilities permits to identify these authorities). On the questionnaire the MDA must fill in for each pending or expected claim:

- brief description of claim;
- expected amount of the settlement;
- expected payment of settlement: in upcoming period or later.

The data are collated by the PPP Directorate to obtain an estimate of the payments due in the upcoming period. This estimate can be used in the budgeting process.

9 Unsolicited proposals

9.1 Steps for unsolicited proposals

The steps for the treatment of unsolicited proposals are described in the table below. The responsible institution is shown in the first column.

INCEPTION	Private proponent	<ul style="list-style-type: none"> Submits proposal to implementing MDA.
	Implementing MDA	<ul style="list-style-type: none"> Reviews the proposal and decides whether to proceed with the project. Submits a request to the PPP Directorate to register the project as a potential PPP project. A Project Brief with the required information on the project must be attached to the request (see Section 5.2 for a description of the required contents of the Project Brief).
	PPP Directorate	<ul style="list-style-type: none"> Examines the eligibility of the project for implementation under PPP, with the aid of the PPP Screening Tool (see Section 5.3.1). Enters the project in the PPP Project Database with the status "Feasibility study" (see Section 5.3.2).
FEASIBILITY STUDY	Private proponent	<ul style="list-style-type: none"> Conducts feasibility study, and submits it to the MDA.
	Implementing MDA	<ul style="list-style-type: none"> Reviews feasibility study (including second opinion by external experts). If the feasibility study is found to be of insufficient quality, then the MDA appoints an independent consultant to redo part or whole of the feasibility study. Decides, on the basis of the findings of the feasibility study whether to proceed to the procurement phase. Decides whether to proceed with the realisation of the project through a PPP arrangement, and, in the case of a positive decision, selects the PPP structure. Submits the PPP project for approval to the PPP Directorate.
		The rest of the Feasibility Study Stage is the same as in the case of a solicited PPP project (see Chapter 6).

Procurement and Contracting Stage	<p>The project is competitively procured like a solicited PPP project (see Chapter 7).</p> <p>If the original proponent does not win the contract, he receives a fair financial compensation for his development and study activities.</p>
Implementation Stage	<p>The Implementation Stage is the same as in the case of a solicited PPP project (see Chapter 8)</p>

9.2 Operational guidance for unsolicited proposals

Unsolicited proposals can be accepted only if the following conditions are met:

- the project must be consistent with national development priorities (as reflected in national development plans);
- the project must demonstrate genuine and substantial innovative aspects;
- the project must be subjected to a “value for money”, technical, financial and economic assessment;
- the project must be procured competitively.

Annex A Public and private services

The goods and services produced in an economy can be divided into four categories on the basis of their position on the public-private continuum:

1. goods and services supplied by **government** departments, agencies or state-owned enterprises;
2. goods and services supplied by **private firms using public assets** under a concession or licensing agreement;
3. goods and services supplied by **private firms in a regulated sector**;
4. goods and services supplied by **private firms in an unregulated sector** (only the general legal and regulatory framework applies, such as labour laws, zoning laws, environmental regulations,...).

Only the two first categories of goods and services are eligible to be the object of a PPP arrangement. A PPP is an instrument to outsource the supply of goods and services that are presently supplied by the government, or to regulate the production of private goods and services using public assets.

The category in which specific goods and services fall varies between countries. For instance, electricity is supplied in some countries by a state-owned enterprise, and in other countries by private firms in a regulated environment. The way sectors are organized in a particular country depends on political and social preferences, as well as on historical accident.

From the perspective of economic efficiency there is nevertheless in most cases a preferred option to organize the production and supply of specific goods and services.

- Goods and services with a purely commercial purpose, and where there is sufficient competition between rival suppliers, should be produced and supplied by the private sector. The profit incentive of private firms and the competition between firms ensure that the goods and services will maximally meet user requirements, and will be produced and supplied at the lowest possible price. Government intervention should be restricted to enforcing the general legal and regulatory framework.
- In some sectors, however, the production of goods and services with a purely commercial purpose nevertheless requires government intervention.
 - One example is the case of the natural monopoly, where, because of economies of scale, the production of a good or service at the lowest cost requires the whole production volume to be carried out by a single firm (or at most a few firms). Many utilities (electricity, water, fixed line telecommunications,...) are natural monopolies, because

competition between several firms would require the construction and operation of duplicative networks. As a result, such sectors are characterized by the presence of only one or a few firms. In order to avoid the abuse of monopoly power (resulting in high prices for users) government intervention is required. This intervention may take the form of the production of the good or service by a government-owned agency or company, or of the introduction of sector legislation to regulate the behaviour of the private firms in the sector. Which of both options is chosen depends again on political and social preferences, as well as on an assessment of the relative efficiency of the options. If the first option (production by the state) is chosen, there are opportunities to outsource the production to the private sector through PPP arrangements.

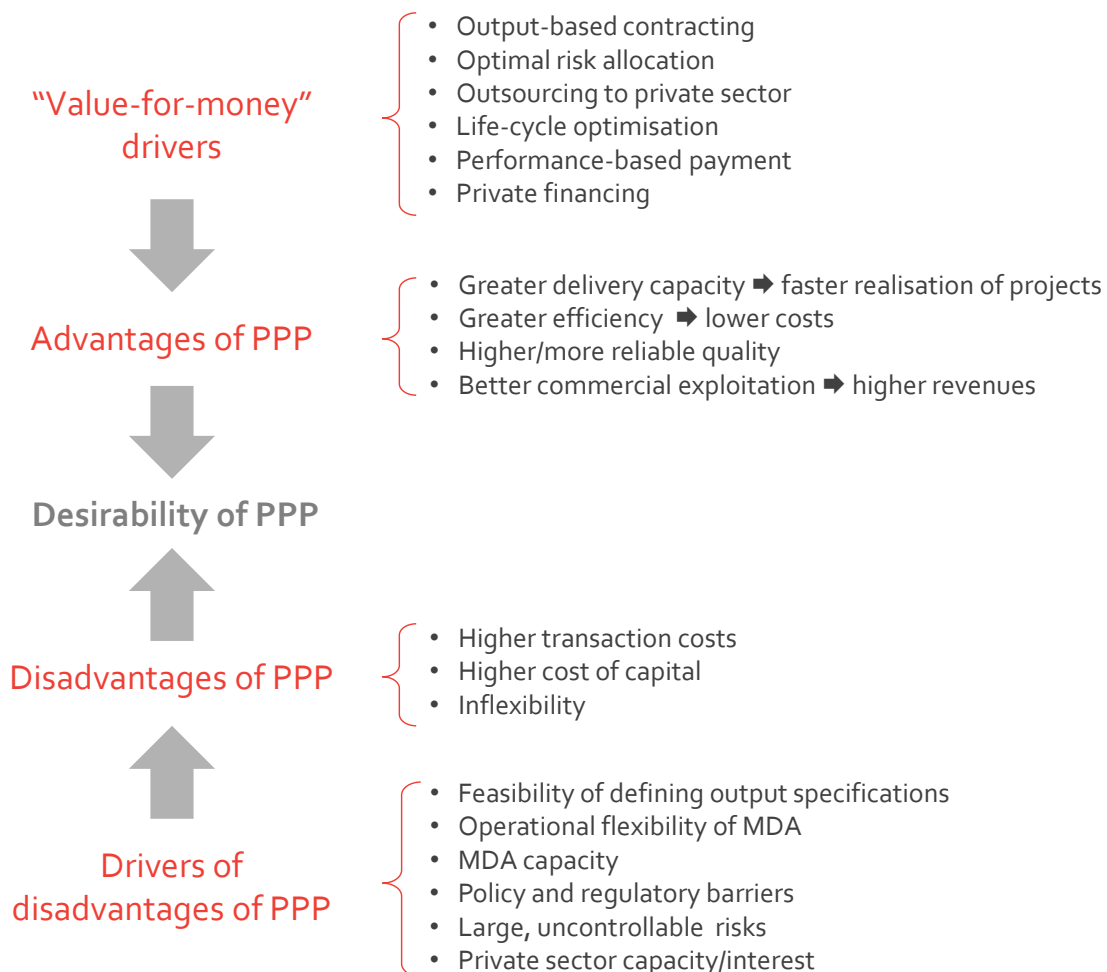
- Another case is where the production of commercial goods and services requires the exclusive use of publicly owned assets, such as land, dedicated physical infrastructure or radio frequencies. As a result some government intervention is necessary to produce the goods and services. The optimal type of intervention depends on the nature of the publicly owned assets involved. If these assets are generic (for instance land without exceptional characteristics), then it should be made available to the private sector at fair market value through a simple arm's length transaction (sale, lease or rental agreement). The goods and services are then produced by the private sector without further involvement of the government. If the assets are specific and unique (for instance a harbour) and the government wished to control the terms on which the assets are used (for instance to prevent the abuse monopoly power), then a stronger government intervention is needed. In that case PPP, in particular in the form of a concession agreement, offers a solution. PPP allows entrusting the commercial exploitation of the unique public asset to the private sector (which by nature has better skills and incentives for commercial undertakings), while the government retains a degree control through the concession agreement in order to safeguard public interests.
- Finally there are public and social goods and services that cannot be provided by the private sector on commercial terms and must therefore be supplied by the government. The following types of public and social goods can be distinguished:
 - pure public goods: the goods and services are not consumed or used by individual persons, but by society as a whole (e.g. public administration, defence, the administering of justice,...);
 - public goods due to technical constraints: the goods and services are consumed individually but it is technically infeasible or very expensive to collect a cost-recovering price from the consumers (e.g. city street network,...);
 - social goods: the goods and services are consumed individually but for reasons of social policy the services are supplied without charges or for a charge below the cost recovery level (the list of goods services in this category depends on public policy, but often includes social housing, education,...).

Annex B Value for Money drivers of PPP

B.1 Advantages and disadvantages of PPP

The figure below shows an overview of the advantages and disadvantages of PPP compared to traditional procurement, as well as the driving factors of these advantages and disadvantages.

Figure 5: Overview of advantages and disadvantages of PPP



The different categories of advantages and disadvantages of PPP and their driving factors are discussed in more detail in the following sections. The advantages of PPP are addressed first.

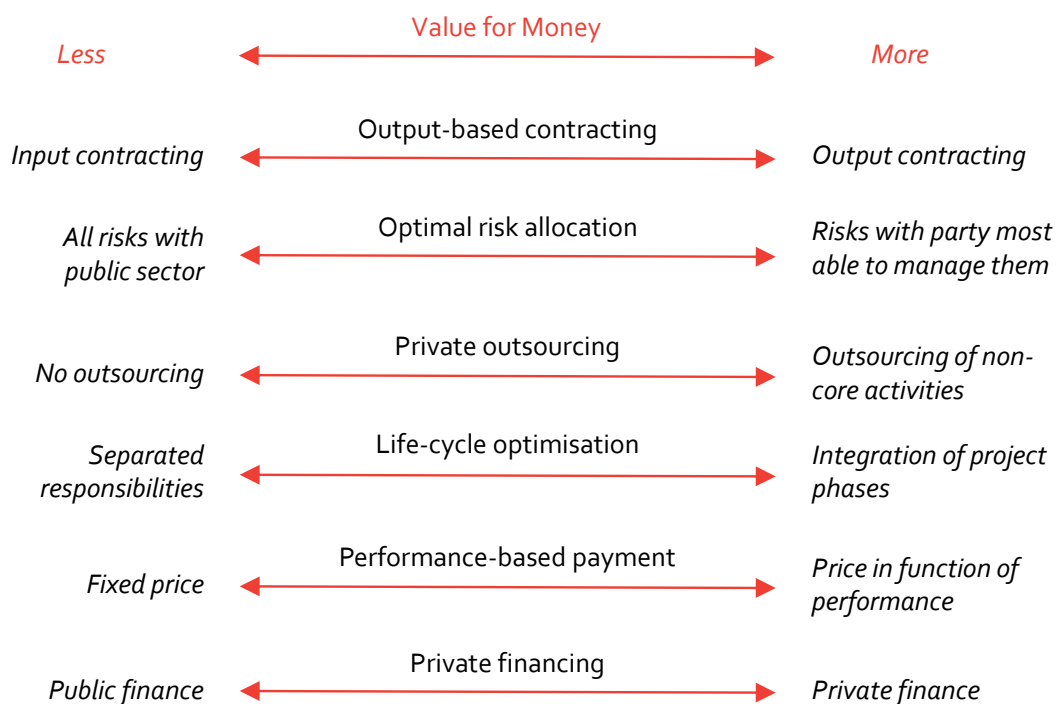
B.2 What is “Value for Money”

Experience across the world has shown that PPP can contribute to achieving service delivery with a better price to quality ratio than traditional public service delivery through the use of private sector management skills and competencies. PPPs are able to:

- **increase speed of implementation.** Some governments have found it difficult to accelerate the development of infrastructure, even if funding was available. This is mainly caused by limited implementation capacity in national and local governments. Experience has shown that introducing PPP expands the implementation capacity through the mobilization of additional human and financial resources.
- **increase efficiency.** Through better risk allocation, whole life costing and stronger incentives to perform, PPP can contribute to increasing cost efficiency of public infrastructure provision.
- **increase quality of service.** Experiences show that PPP contribute to increasing the quality of service. This may reflect the better integration of services with supporting assets, improved economies of scale and scope, introduction of innovation in service delivery, a higher responsiveness of the private sector to users’ needs. The incentive regime incorporated in a PPP contract helps achieving these goals, since it introduces another important reason for the private sector to perform well.
- **generating commercial value from public sector assets.** The private sector can assist in unlocking commercial value of public sector assets. The private sector's entrepreneurship or creativity will push it to exploit the full (commercial) potential of a project at hand; thus potentially optimizing the project's use for (or value to) the government and/or end-user. This may generate additional revenues that can be used to provide additional public services.

These advantages, which represent the Value for Money (VfM) of PPP, are result from a number of specific characteristics of PPP projects. The figure below shows an overview of the driving factors behind the creation of VfM.

Figure 6: Value for Money drivers



In the next sections each VfM driver is described in detail.

B.2.1 Output-based contracting

Output-based contracting leaves room for the private sector to decide how to deliver the envisaged services. It enables the public sector to tap into the private sector's creativity to deliver the agreed public service at lower costs, or to provide better quality at the same cost to the user.

Project characteristics conducive to efficiency gains from output-based contracting

In order to reap the efficiency gains of output-based contracting, the project must offer sufficient scope for optimisation and creativity. If the project involves the construction of standard infrastructure in a standard physical setting, or if the design of the infrastructure has been largely fixed in environmental and planning permits then the scope for optimisation and creativity is small.

PPP models conducive to efficiency gains from output-based contracting

The DBFMO model and its variants offer the largest possibilities for output-based contracting. In principle any service requirement can be included in the contract, leaving the responsibility for determining how to meet these requirements to the private sector. This explains why this type of PPP is used for the delivery of a wide range of services (transport infrastructure, utilities, school and hospital building, etc.).

Concession-based formulas (operating concession, BOT concession) also leave the choice on how to deliver the services largely to the private sector. In contrast with integrated contracting, however, the public sector has limited freedom in specifying the output. The concession holder receives its revenues from the end-user, and operates the infrastructure on a commercial basis. The public sector can impose conditions in the concession agreement (for instance an indexed maximum price), but cannot deviate from the commercial orientation of the service delivery. However, if a commercial exploitation of the service is desired then this restriction of poses no problem and concession-based formulas yield the right output.

Privatisation leaves little or no room for the public sector to determine output specifications. The infrastructure services are delivered on a purely commercial, profit-maximising basis. The influence of the government on the service delivery is limited to the conditions included in the sales agreement (but these have a limited duration) and to its regulatory powers.

B.2.2 Optimal risk allocation

The basic principle is that risks should be held by those parties best able to manage them. For instance the building contractor has the strongest influence on the management of construction activities ensuring a delivery on time and within budget. Therefore the contractor should assume the construction risk and receive a financial penalty in case delivery is late or over budget. However, the risk of delays due to planning in approval or changes in the output specifications should be allocated to the public sector. Intelligent risk allocation, based on the principle that the party best able to manage a risk should indeed bear it, reduces the costs of delivering the service. The public delivery model puts most risks in the hands of the public sector. Intelligent risk allocation requires that many risks are transferred to the private sector. PPP achieves this to some degree.

Project characteristics conducive to efficiency gains from optimal risk allocation

Optimal risk allocation yields the largest efficiency gains in projects where there are significant risks that can be transferred to the private party.

The table below shows an overview of the main risk categories of large infrastructure projects. The table describes how these risks should be divided between public and private parties from the perspective of optimal risk allocation.

Table 6: Generic risk matrix

Risk	Description	Optimal allocation
Planning approval	Risk that necessary approvals may not be obtained or may be obtained only subject to unanticipated conditions which have adverse cost consequences or	Preferably planning approval is obtained before beginning the tender process. If that is not feasible, then the public sector should assume the risk in complex or sensitive projects. If the risk is small, it can

Risk	Description	Optimal allocation
	cause prolonged delay.	be well managed by the private contractor.
Construction risk	Risk that events occur during construction which prevent the facility being delivered on time and on cost	Private contractor, unless the adverse event is caused by public intervention (public responsibility preferred) or force majeure (risk sharing if the risk is too large to be borne by the private party alone)
Maintenance and operating risk	Risk that maintenance and operating costs are higher than anticipated (for instance because design and/or construction quality is inadequate, the costs of inputs are higher than expected,...)	Private contractor
Demand/revenue risk	<p>Risk that the demand for the project services is lower than expected, resulting in a shortfall of revenues.</p> <p>Demand risk has both external causes (general economic downturn, uncertainty about traffic volume) and causes that are partially under the control of the private contractor (competitiveness of facility in comparison with facilities in rival ports).</p>	<p>The preferred allocation depends on the predominant cause of the demand risk (external or within private control).</p> <p>In case of the concession of an existing facility with a track record the external demand risk is relatively small and can be borne by the private concession holder.</p> <p>In case of new port facilities without traffic history the external demand risk may be very substantial and unacceptable for the private contractor (unless with a very high risk premium on the rate of return). The risk should be assumed by the public sector, or at least shared.</p>
Financial risk	<p>Risk that financing costs are higher than expected due to unanticipated changes of interest rates, exchange rates,...</p> <p>Risk that that when debt and/or equity is required by the private party for the project it is not available then and in the amounts and on the conditions anticipated.</p>	Private contractor, which can insure or hedge these risks to an important degree
Regulatory risk	Risk of a change in legislation/policy that could not be anticipated at contract and that has adverse cost consequences for the private party	<p>Public sector, but only for changes that are not anticipated. The risk of general changes in tax law or decisions made by regulators under existing legislation should be borne by the private party.</p> <p>Extreme political risks (breach of contract, expropriation, civil war,...) are necessarily borne by the private party, although it can not control these risks. But they can be partially insured (MIGA)</p>

PPP models conducive to efficiency gains from optimal risk allocation

The models for the delivery and procurement of infrastructure are each characterised by a different allocation of risks. The distribution of the main risk categories is shown in Table 7 below. The second column in the table shows the preferred risk allocation on the basis of the information in the preceding table. This permits a (rough) comparison of the risk allocation scheme of the various delivery models to the preferred allocation.

Table 7: Indicative risk allocation in different PPP models

Risk	Optimal allocation*	Coventional public procurement	Management contract	DBFMO and variants	Operating concession	BOT concession	Privatisation
Planning approval risk	Public/private	Public	Public	Public/private	Private	Public/private	Private
Construction risk	Private	Public	Public	Private	Public	Private	Private
Maintenance and operating risk	Private	Public	Private	Private	Public/private**	Private	Private
Demand/revenue risk	Private or public	Public	Public	Public	Private	Private	Private
Financial risk	Private	Public	Public	Private	Public/private**	Private	Private
Regulatory risk	Public/private	Public	Public	Public	Private	Public/private	Private

The reader must be warned that the allocation schemes shown in the table are only indicative. Depending on the characteristics of the specific project the preferred risk allocation may be different. Within a delivery model there are many contract variants, some of which result in a different allocation scheme from that shown in the table. In the analysis of a specific project the risks are usually mapped at a more detailed level, with several separate risks under each category listed in the table.

It is not possible to rank the delivery models according to the optimality of the risk allocation. Which model features the most efficient risk allocation depends on the preferred risk allocation, and this depends in turn on the characteristics of the project.

Nevertheless we can conclude that the DBFMO model and its variants permit the most refined risk allocation. They can be tailor-made to achieve a very detailed and almost optimal risk allocation in function of the project. The drawback is greater complexity and transaction costs.

An essential characteristic of concession agreements is that they transfer the demand risk to the private operator or investor. Whether this is efficient depends on the project characteristics. The concession framework does not permit as much flexibility with regard to risk allocation as the DBFMO model. More complex risk sharing mechanisms could be built in (for instance to share the demand risk), but in practice concession agreements are relatively standardised.

Notice that the risk allocation scheme is not only determined by the mix of public/private roles in the provision of infrastructure (finance, design, construction, operations) but also by the payment mechanism. Through the rewards and penalties in the payment mechanism risks are transferred to the private contractor (for instance penalty for late delivery). Again the integrated contract models allow the greatest flexibility in this respect.

B.2.3 Private outsourcing

The main strength of the private sector is its business process management skills, which enable it to implement projects effectively and efficiently, thus saving costs for the government and/or the end-user. PPP introduces private sector management skills and competencies in the provision of public infrastructure and services.

Project characteristics conducive to efficiency gains from private outsourcing

All public sector activities stand to benefit from better management skills, a stronger drive for cost efficiency and greater user/market-orientedness. If public sector skills are found to be inadequate in a particular stage of the infrastructure and services delivery process there is scope for the pursuit of efficiency gains through PPP.

PPP is not the only instrument to improve efficiency of public services, however. Instead of increasing the extent of private sector involvement in the delivery of the services, one can try to improve the organisation and management of the public delivery model.

PPP models conducive to efficiency gains from private outsourcing

All PPP models introduce private sector management skills and competencies in the provision of public infrastructure and services. The extent of private involvement varies between PPP models and largely depends on which project stages are included in the PPP (see summary of PPP models in Table 1 on page 14).

B.2.4 Lifecycle optimization

Integrating the design, construction and operating phases of public infrastructure allows minimizing interface problems. A contractor that is responsible for all phases of the life-cycle has an incentive to minimize life-cycle costs. In contrast if several contractors are each responsible for a single phase, they tend to minimise their own costs or maximise their own revenues even if this increases costs/lowers revenues in other stages. For instance the building contractor has no incentive to spend resources on higher quality resulting in lower maintenance costs.

Project characteristics conducive to efficiency gains from lifecycle optimisation

The potential to achieve efficiency gains from life-cycle optimisation obviously depends on the presence of interface problems and sufficiently strong linkages between the different phases of the infrastructure delivery process.

PPP models conducive to efficiency gains from lifecycle optimisation

Management contracts and operating concessions only bear on the operating phase and do not allow realising gains from lifecycle optimisation. All other PPP models integrate design, construction and operations and contribute to optimisation of the linkages between these stages.

B.2.5 Performance-based payment

Performance-based payment sustains the VfM drivers that have been described in the preceding paragraphs. It provides the financial incentives to effectively pursue the efficiency gains of output-based contracting, intelligent risk allocation, private outsourcing and lifecycle optimisation. A few examples illustrate this.

- As was already pointed out above, the payment mechanism co-determines the risk allocation between public and private partners. Through the rewards and penalties in the payment mechanism risks are transferred to the private contractor. For example, if the building contractor receives a fixed price upon completion of the infrastructure, he effectively assumes the risks of cost overruns and delays. When the costs of construction are higher than anticipated, the profits of the contractor are reduced. If the infrastructure is completed to late, the contractor will be paid later and will incur higher costs of financing his working capital. The transfer of the risk of delay to the building contractor can be further sharpened by stipulating a penalty for late delivery in the contract. A second example is the transfer of demand risk to the private partner by payment schemes that depend on revenues from end-users (as in a concession).
- The private sector can be best incentivised through both carrots and sticks. Above-par performance should improve the private sector's profits directly (through higher service payments by the public sector) or indirectly (through lower operating costs). Sub-par performance should trigger penalties, which will suppress the private sector's financial performance. Such penalties should be set to 'tickle', then 'hurt', but not 'kill' a private operator.
- If the contractor is paid for the delivery of an infrastructure service (and not for the construction of an infrastructure facility), then he will automatically have an incentive to optimise costs across all stages of the delivery process. Any efficiency gains are directly translated into profits.

Since performance-based payment supports the other VfM drivers, we refer to the preceding paragraphs for an analysis of the project characteristics and the PPP models where it may be applied.

B.2.6 Private financing.

Two basic PPP models involve private financing: the DBFMO model and its variants, and the BOT concession. Private financing has two types of benefits, respectively related to **efficiency** and **funding**.

What are the efficiency benefits of private financing?

Even if private financing is not needed for funding a project, it confers other benefits.

- First, private financing plays a similar role as performance-based pay. It sharpens the incentives by increasing the financial stakes and in this manner pushes private contractors to pursue vigorously the "Value for Money" drivers. Private financing provides especially strong incentives for timely delivery of the infrastructure. Every delay increases the financial costs of the project because the revenues to service the debt are postponed.
- Second, private finance brings forth additional project monitoring capacity. The private financiers have strong incentives and are often better placed to monitor the financial performance of the project than the public-sector entity. This will help avoid defaults by the private operator due to financial problems.

Since private financing supports the other VfM drivers, we refer to the preceding paragraphs for an analysis of the project characteristics and the PPP models where private financing may contribute to efficiency.

What are the benefits of private financing in the funding of projects?

The access to private capital for the funding – and in particular the off-balance funding – of public projects constitutes in practice the predominant motivation for the public sector to engage in a PPP.

- Many authors regard this benefit as a false motive for PPP. They argue that the financing structure has by itself no impact on the value of an infrastructure project. Unless PPP confers real efficiency gains of the kind described in the preceding paragraphs, there is no reason to abandon the public delivery model. Without VfM benefits PPP only leads to higher transaction and capital costs.
- However, other authors point out that even if PPP does not deliver efficiency gains, it might still be beneficial to engage in PPP in order access sources of private financing. Suppose that conventional public procurement is the most efficient option for a specific public investment

project, but that the public sector has no budget available to finance it. In that case a more expensive procurement through PPP will often be more beneficial to society than postponing or cancelling the project for lack of public funds. PPP allows accelerating the investment in the project, so that the economic benefits of the project (e.g. lower transport costs, water supply,...) are enjoyed sooner.

Financing and paying for infrastructure

An important distinction needs to be made between financing infrastructure on the one hand and paying for infrastructure services on the other hand. Both are separate issues that are often confused when discussing PPP.

The term “financing” refers to the furnishing of funds to cover the initial investment expenses. The term “paying” refers to the payment of a price for using the infrastructure. The revenues from the payments by users are employed to cover operating and maintenance costs, as well as to remunerate the providers of the investment funds (redemption of debt, payment of interest charges and dividends).

Both the financing of and the paying for infrastructure can be either public or private, resulting in the four combinations shown in the table below.

Table 8: Financing of and paying for infrastructure: public and private options

		Paying for infrastructure	
		Public	Private
Financing of infrastructure	Public	The state finances and operates the infrastructure and makes it available to users free of charge.	The state finances and operates the infrastructure and collects user fees from the users of the infrastructure.
	Private	A private company or consortium (banks, equity investors) finances the infrastructure and may also operate it. The state pays user fees to the private investor, allowing it to recover its costs and earn a return. The infrastructure is made available to users free of charge.	A private consortium finances and operates the infrastructure and collects user fees from the users of the infrastructure.

Starting from the fully public top left quadrant there are three options to increase the financial contribution of the private sector to the provision of infrastructure.

1. The first option is to ask payments from private users (top right quadrant). This allows the state to recover financing costs (i.e. interest charges and repayment of the debt incurred to finance the infrastructure) as well as maintenance and operational expenditures, thereby

easing the burden on the public budget. However, the state still has to finance the infrastructure. Hence this option provides no solution for short term budget and borrowing constraints.

2. The second option is to call on the private sector for the financing, and possibly also the maintaining and operating of the infrastructure (bottom left quadrant). The state remains however responsible for paying for the infrastructure. The state pays user fees to the private investor in place of the actual users. The latter can use the infrastructure free of charge. Examples of such payment mechanisms are the shadow toll (the state pays a price for every individual user like in a toll system), the availability fee (the state pays a price for every time unit – hour, day, month,... – that the infrastructure is available in good condition) or lease payments. The impact on the budget of this option is opposite to that of the first option. In the short term the budgetary burden is taken away. However, the state assumes a long-term engagement of typically 20-30 years to pay fees to the investor in the form of shadow tolls, availability fees or lease payments.
3. In the third option the private sector is asked to finance as well as pay for the infrastructure (bottom right quadrant). A private company finances the construction of the infrastructure and operates it afterwards. It collects fees from the users of the infrastructure. The revenues from the user fees are used to recover costs and earn a return on investment. In this option the infrastructure is provided at no cost to the budget neither in the short run nor in the long run. The role of the state is limited to the issuing construction and operating permits and regulatory functions.

It is obvious that only the options involving private payment for the infrastructure achieve a real reduction of the budgetary burden of the infrastructure. Private financing without private payment merely shifts the budget impact from the present to the future. This does not imply, however, that the combination of private financing and public payment (bottom left quadrant) must be ruled out as an invalid option. It provides a real solution if the government mainly faces short term budget constraints. In that case private financing allows accelerating the supply of new, urgently needed infrastructure.

B.3 Disadvantages of PPP models

B.3.1 Higher transaction costs

Setting up a PPP entails higher transaction costs than traditional procurement, both for the procurement agency and the private contractor. Due to the transfer of risks to the private sector and the long-term nature of PPP arrangements the contracts are much more complex. They must allow for a far larger set of contingencies than traditional procurement contracts. The preparation and negotiation of these contracts are very time-consuming and labour intensive. Moreover, during the execution of the contract the activities and performance of the partners must be monitored in order to verify compliance with the contract conditions. If needed corrective actions must be taken.

Project characteristics influencing transaction costs

Transaction costs have fixed component that does not depend on the size of the investment. There is a minimum amount of contract preparation and monitoring activities regardless the value of the contract. The value of the potential efficiency gains, on the other hand, is strongly related to the size of the investment. Consequently PPP should only be considered for sufficiently large investments. For investments in infrastructure a threshold value of 100 million euro is often recommended. This value should not be taken as a given, however. PPP delivery can be efficient for smaller projects. If standard contracts are available and/or if the market participants already have experience with similar PPP projects as envisaged, then transaction costs are lower. Drawback is that the use of standard contracts reduces the scope for optimization, creativity and fine-tuning of risk allocation.

Relation between PPP models and transaction costs

Private finance, extensive transfer of risks and long term commitments are factors contributing to the complexity of contracts. From this perspective one expects transaction costs to be highest for DBFM/O and BOT concession contracts.

B.3.2 Cost of capital

The use of private finance should not by itself affect the cost of financing a project. This follows from the Modigliani-Miller theorem, which says that the cost of capital (required rate of return on total assets) depends only on the risk characteristics of a project, and not on how it is financed.

One of the benefits of PPP described earlier is a more optimal risk allocation and therefore a better risk management. If this benefit is present, then project risks and the cost of capital are lower with PPP than with conventional public procurement.

Government borrowing only seems cheaper

The above conclusion that cost of capital for financing PPP projects is lower contradicts the commonly observed fact that the private sector generally faces higher borrowing costs than the government. However, this difference is not caused by differences in the project risk, but by differences in the default risk. The government's power to tax reduces the likelihood that it will default on its debt, and the private sector is therefore prepared to lend to the government at close to the risk-free interest rate even to finance risky projects. As a result PPP with private finance increases financing costs, although project risk is lower.

There are two views on how to deal with the discrepancy between project risk and borrowing costs in the comparison of PPP and conventional public procurement. One view says that the comparison must be based on the "true" cost of capital reflecting the project risk. Performing

the calculations with the low public borrowing costs would amount to an implicit subsidy by taxpayers and would give an unjust advantage to the public delivery option. The other view takes the perspective of the cost of the project to the budget. In this view the comparison is made on the basis of the actual borrowing costs. PPP is then only the preferred option if efficiency gains more than offset higher private sector borrowing costs. If taxation did not cause macroeconomic costs, then the first option would be the correct one. But taxation does cause macroeconomic costs: for instance the tax wedge between gross and net income discourages labour supply and entrepreneurship. It is therefore also important to minimize the budgetary impact of the project as advocated by the second view.

Project characteristics influencing the cost of capital

The larger the project risks, the larger the default risk and the higher the private borrowing costs.

Relation between PPP models and the cost of capital

All PPP models with private financing (*DBFMO and variants, BOT concession*) are characterised by a higher cost of capital. The risk premium will be especially high if the private investor is required to assume large risks that he cannot well manage (for instance the demand risk for a transport infrastructure facility without track record). To avoid high capital costs these risks must be partially or wholly transferred to the public sector by the choice of a PPP model without private finance, or by the inclusion of a risk transfer clause in the contract.

B.3.3 Inflexibility

A PPP contract generally has a long duration, during which the public sector only has a limited influence on the provision of the infrastructure. All requirements that the private partner must satisfy are specified in the contract. Once the contract has been signed the possibilities for altering the requirements are restricted. This limits the ability of the public sector to respond to changes in the external environment.

The origin of the costs of inflexibility resides in the fact that the public and the private sector have different interests with respect to port infrastructure. Formulated in a simplified manner: the private sector pursues business development and profit maximization, while the public sector has a broader set of socio-economic objectives. In a PPP the interests of public and private sector are reconciled through the output specifications and the payment mechanism. The public sector defines the infrastructure service requirements and leaves the responsibility for constructing the infrastructure and providing the service according to specifications as much as possible to the private sector. The problem is that the PPP contract has a long duration, during which the external environment and the desired service specifications change. It is not feasible to anticipate all possible contingencies in the PPP contract. Consequently, as time passes it becomes more difficult for the public sector to maintain a socially optimal provision of

services. One may safely assume that the private partner will respond to changes in the environment in its own interest, but not necessarily in the public interest.

Project characteristics leading to inflexibility

The potential costs of inflexibility are highest if:

- the project environment is subject to substantial changes that are difficult to forecast;
- public (social welfare) and private (profit maximisation) interests diverge so that the response of the private contractor to changes in the environment differs from what is desirable from the perspective of society;
- the public interests of the project are large.

Relation between PPP models and inflexibility

Full privatisation is characterised by the greatest inflexibility from the perspective of the public sector. In these delivery models the public sector relinquishes most or all of its influence on port development, respectively permanently or for the duration of the concession. The infrastructure is both developed and exploited according to commercial principles. The private contractor can adjust his strategy freely in response to changing market conditions, but does that solely in its own interest.

With an *operating or BOT concession* the public sector retains the responsibility for port development. The operation of terminals is entrusted to the private sector, but in this area the objectives of public and private sector largely coincide. So if the private partner responds to changes in market conditions he promotes both private and public interests.

A *DBFMO contract* is very flexible, at least in the short run. The public sector has a large freedom in setting the service requirements and devising a payment mechanism that induces the private contractor to meet these requirements as efficiently as possible. Compared to the concession-based schemes the private contractor has much less freedom to change his strategy in response to changes in the environment. He does not supply services to the end-user but to the contracting authority and is bound by the contract with that authority. This gives the public sector a greater control over the output of the private service provider. This control comes with a drawback, however. The rigidity of the contract makes it difficult to adjust the service requirements to changing circumstances. Once the contract has been signed altering the output specifications involves a costly renegotiation. To avoid this, the contract should include procedures for making adjustments in response to anticipated changes. However, it is not possible to anticipate all possible contingencies, nor is it practical to include them all in the contract.

Annex C Heads of Terms of PPP Agreement

Item	Contents
Involved parties	- ... - ...
Project Description	- ...
Obligations of the Private Contractor	<i>What is the scope of activities of..</i> ..Private Contractor vs. Contracting Authority?
Obligations of the Contracting Authority/Authorities	<ul style="list-style-type: none"> • Design • Financing • Construction • Operation • Maintenance • Permits • Assistance • Ownership • ROW acquisition • Etc.
Contract Period	Contract Period length? Start date? Potential to extend contract length? At whose initiative?
Summary Risk Matrix	First summary risk matrix highlighting risk allocation between government and private partner. Most of risks in the summary risk matrix will be elaborated in the following sections of the Heads of Terms.
Financing requirements	How is refinancing being treated?

Item	Contents
Design and Construction	<p>What is the contribution of the contracting authority in the design?</p> <ul style="list-style-type: none"> • Output Specifications • Conceptual Design • Procedural approvals and licensing <p>Design and construction milestones How to treat design changes? What are the obligations of the Private Contractor concerning construction? Are variations allowed? Procedural treatment of variations Impact on the fees</p>
Operations and Maintenance	<p>What are the operational rights granted to the Private Contractor (further development of the asset, commercial exploitation, etc.)?</p> <p>Role of the Contracting Authority during the contract period</p> <p>Requirement of operational performance security from Private Contractor</p> <p>Operations and maintenance milestones</p>
Fees, Charges, Indices, Contingencies (Payment Mechanism)	<p>Which sources of revenues will the Private Contractor have?</p> <p>In case of user charges:</p> <ul style="list-style-type: none"> • Fee structure • Min/max allowable rate • Indexation/escalation arrangements • Revenue sharing mechanisms <p>In case of payments from Government:</p> <ul style="list-style-type: none"> • Fixed periodic payments Variable depending on asset usage • Indexation/escalation arrangements • Use of milestone payments • Applicable index formula • Institution handling payment
Bonus/Penalty regime (Performance Mechanism)	<ul style="list-style-type: none"> • Structure of penalties linked to performance below norms • Bonus structures linked to performance • Monitoring and performance evaluation framework
Insurance and guarantee requirements	<p>Which risks must be insured? By Private Contractor? By Government? Requirement of construction performance security from Private Contractor?</p>

Item	Contents
Force Majeure, Default and Termination	<ul style="list-style-type: none"> • Definition of force majeure • Termination Payments Formulas • Buy-out Price Formulas • Etc.
Transfer/Turn Over	<ul style="list-style-type: none"> • Gradual build-up of transfer guarantees • Maintenance requirements preceding transfer • Asset quality requirements at transfer • Other requirements at transfer (knowledge transfer, transfer of books and accounting, etc.)

Annex D Indicative table of contents of PPP Agreement

1. Main PPP Agreement:
 - a. Definitions
 - b. Involved parties
 - c. Obligations of the Private Contractor
 - d. Obligations of the Contracting Authority/Authorities
 - e. Contract Period
 - f. Financing Requirements
 - g. Design and Construction standards, targets, milestones
 - h. Operations and Maintenance standards, targets, milestones
 - i. Fees, Charges, Indices, Contingencies (Payment Mechanism)
 - j. Bonus/Penalty regime (Performance Mechanism)
 - k. Insurance and Guarantee requirements
 - l. Force Majeure, Default and Termination
 - m. Transfer/Turn Over at Contract end
 - n. Dispute Resolution
 - o. Intellectual Property Rights

2. PPP Agreement Annex:
 - a. Detailed schedules and formulas as required
 - b. Detailed output specifications
 - c. Additional contractual documentation:
 - i. Direct (Step-In) Agreement between Government and Financier
 - ii. Models of bonds/guarantees
 - iii. Financial Close confirmation
 - iv. Etc.

MINISTRY OF FINANCE AND ECONOMIC AFFAIRS



REPUBLIC OF THE GAMBIA