



ONDO STATE GOVERNMENT

Public-Private Partnership Fiscal Commitments and Contingent Liabilities (FCCL) Framework

Table of Contents

Acronyms / Abbreviations	iv	
1	1	
1.1	Purpose of developing an FCCL framework	1
1.1.1	PPP project pipeline	1
1.2	Components of the FCCL Framework	3
1.3	This document	3
2	4	
2.1	Overview	4
2.1.1	Introduction	4
2.1.2	Current regulatory framework	4
2.1.3	Application of FCCL framework	5
2.2	PPP Fiscal Liabilities and Risks	6
2.2.1	Public liabilities under PPP	6
2.2.2	Other fiscal risks	8
2.3	FCCL management	9
2.3.1	Structure of FCCL management	9
2.3.2	Institutional framework for FCCL management	12
3	15	
3.1	Overview	14
3.2	FCCL Management during project development stage	14
3.2.1	Identification and evaluation of PPP fiscal risks through the PFRM	14
3.2.1.1	Rationale	14
3.2.1.2	Approach to PFRM	16
3.2.2	FCCL Register and Affordability	21
3.2.2.1	FCCL register and calculation	21
3.2.2.2	Assessment of affordability	22
3.3	FCCL Management during project implementation	24
3.3.1	Monitoring	24
3.3.2	Reporting and Disclosing	25
3.3.3	Accounting	27
Appendix A	28	
Appendix B	35	
Appendix C	1	
Appendix D	6	

Tables

Table 1-1: ODSG current PPP project pipeline	2
Table 2-1: Illustrative public liabilities in a PPP scheme	7
Table 2-2: Examples of FCCL in PPP	8
Table 3-1: Risk categories	16
Table 3-2: Project Fiscal Risk Register	17
Table 3-3: Risk likelihood assessment	17
Table 3-4: Fiscal impact assessment of identified risks	18
Table 3-5: Example of Heat Map based on Risk Rating	19
Table 3-6: Proritization of risk mitigation measures	19
Table 3-7: Project Fiscal Risk Matrix	20
Table 3-8: FCCL register	22
Table 3-9: Methodologies for assessment of FCCL	22
Table 3-10: Affordability indicators	23
Table 3-11: Monitoring Information: FCs and Fiscal Risks	25
Table 3-12: Reporting Sample of FCs by project	26

Figures

Figure 2-1: PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle	10
Figure 2-2: FCCL management across project lifecycle	11
Figure 3-1: Assessment of Fiscal Risks	16

Acronyms / Abbreviation

AG	Accountant General
AO	Accounting Officer
CA	Contracting Authorities
CL	Contingent Liabilities
DMD	Debt Management Department
DML	Debt Management Law
FCCL	Fiscal Commitments and Contingent Liabilities
FDMO	Federal Debt Management Office
ExCo	Executive Council
FBC	Full Business Case
FC	Fiscal Commitments
FCCL register	Fiscal Commitments and Contingent Liabilities Register
FRC	Fiscal Responsibility Commission
FRL	Fiscal Responsibility Law (FRL) 2016
IFI	International Financial Institutions
IPSAS	International Public Sector Accounting Standards
ODSG	Ondo State Government
ONDIPA	Ondo State Investment Promotion Agency
ODMoF	Ondo State Ministry of Finance
ODPPL	Ondo State Public Procurement Law
LTFP	Long Term Fiscal Planning
MAGA	Material Adverse Government Actions
MDA	Ministry, Department and Agencies
MTEF	Medium-Term Expenditure Framework
OBC	Outline Business Case
P&BC	Planning and Budget Commission
PDT	Project Delivery Team
PFF	Project Facilitation Fund

PFS	Pre-Feasibility Study
PFM	Public Financial Management
PFML	Ondo State Public Finances (Control and Management) Law
PFRAM	PPP Fiscal Risk Assessment Model 2.0
PFRM	Project Fiscal Risk Matrix
PFRR	Project Fiscal Risk Register
PIM	Public Investment Management
PO	Project Officer
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public Private Partnership
PPP Manual	Ondo State Public - Private Partnership Manual, 2024
UKNAIF	United Kingdom Nigeria Infrastructure Advisory Facility
VfM	Value for Money

1 Introduction

1.1 Purpose of developing an FCCL framework

A Fiscal Commitments and Contingent Liabilities (FCCL) Framework is a primary tool for fiduciary assurance. A clear understanding of the FCCL associated with Public Private Partnership (PPP) projects is crucial for policy decisions and sound Public Financial Management (PFM). Ring-fencing government risk and FCCL is critical to effectively managing: future debt and interest payment liabilities; financial compensation under termination provisions; and recurrent contractual obligations found in PPP contracts¹ such as operational subsidies.

FCCL assessment and monitoring needs to be carried out in order to safeguard the public finances against unanticipated future fiscal risks. Ondo State Government currently has no specific framework in place for managing on-going fiscal commitments (FC) triggered by PPP agreements. This lack of an FCCL Framework and methodology is a key gap in the current PFM framework which these Guidelines seek to address.

1.1.1 PPP project pipeline

The PPP landscape in Ondo State is still at a nascent state with the recent formalization of critical PPP framework instruments such as the PPP Policy (2024) and the PPP Manual (2024). However, Ondo State Government's strategy for PPPs as a central mechanism to achieve its investment targets are well articulated in the SDP and Ondo State Infrastructure Master Plan ().

A report on PPP Project Prioritization and Institutional Strengthening prepared in 2023² identified projects with potential to be developed as PPPs. Based on a multi-criteria analysis, some of the identified projects were selected as priority projects with some of those projects identified as high priority³. These projects are spread across key infrastructure sectors of Ondo State, including:

- Energy;
- Transport;
- Water[and
- Agriculture

While not all of the projects have progressed further, concept notes have been prepared for some projects, part of the funding came from the United Kingdom Nigeria Infrastructure Advisory Facility (UKNIAF). A pre-feasibility study (PFS) is also underway for another identified project for the Operations and Management of the 3 Grains Aggregation Centres.

Table 1-1 presents a snapshot of the current PPP project pipeline comprising four projects (including – two in agriculture / agro-processing sector⁴, and one each in renewable energy⁵ and

¹ The ODSG PPP Manual, 2024, identifies the major types of PPPs to include Service Contracts, Management Contracts, Lease Contracts and Concessions drawing distinction in their characteristics such as asset ownership, responsibility of O&M, capital investment and commercial risk allocation between the public and private sector. It also identifies the varying degrees service responsibilities and payment mechanisms as a key feature across the types of PPPs.

² PPP Project Prioritization and Institutional Strengthening for Ondo State, Public-Private Infrastructure Advisory Facility (PPIAF), World Bank, March 2018

³ Updates about the current status of PPP project pipeline has been sought from ONDIPA via CPCS email. Updates provided by ODSG are reflected in this document.

⁴ These projects are part of the projects that were identified in the initial long list of projects in 2018.

⁵ This is a cluster of projects including multiple solar projects for schools, health facilities and water plants that were identified in the initial long-list of projects in 2018.

transport⁶ sectors). The projects are at the early stages of preparation (PFS or Concept) and initial estimated capital investment is over USD 1.2 billion.

Table 1-1: ODSG current PPP project pipeline

S.No.	Name of project	Sector	Name of Contracting Authority	Stage of Project	Estimated Capital Investment
1	Ondo State 5 Million Hectares Food Security Project	Food Security	Ministry of Agriculture Ondo State	Beginning	\$5bn
2					
3					
4					

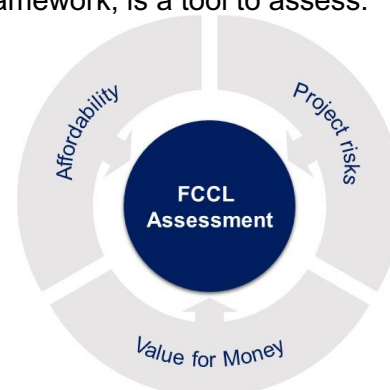
Source: ODSG Data on PPP Project Pipeline⁷

Data provided by ODSG on the projects in the PPP project pipeline does not include clear requirements for VGF and FCCL. The projects are currently at early stages of preparation and it is possible that these requirements may become clear by the Outline Business Case (OBC) stage.

1.2 Components of the FCCL Framework

The FCCL assessment for PPPs, which underpins the FCCL Framework, is a tool to assess:

- Affordability from the perspective of the Government
- Project risk and the impact of FCCL on the fiscus
- Value for Money (VfM) compared to traditional procurement



The FCCL Framework is divided into 2 main sections:

- i **FCCL Guidelines:** which provide a detailed description of fiscal liabilities arising from the execution of PPP agreements. It presents how they should be managed through the project life cycle in accordance with the legal, institutional and regulatory framework; and
- ii **FCCL Technical Guidance:** which presents the methodologies for measuring and valuing direct and contingent liabilities. It describes how they are applied in the Long-Term Fiscal Planning (LTFP) Tool which has been developed to monitor these liabilities.

⁶ This is a new project which is not part of initial long-list of projects identified in 2018.

⁷ Based on data received from ODSG on October 10, 2024. As per further clarification received from ODSG, the PPP project pipeline comprises projects that have been identified and prepared as per the provisions of PPP Manual 2024 and PPP Policy, 2024, and approved by the ONDIPA Board. This excludes projects such as lease contracts and/or Joint Ventures that may have been entered into by CAs prior to the promulgation of the current PPP framework, even though these may involve some form of private sector participation.

In addition to the framework, an excel-based tool (the Long-Term Fiscal Planning Tool or LTFP Tool) and its user manual (the LTFP Tool Manual) have been developed to assist in the identification, assessment and monitoring of FCCL arising from the PPP projects. It is to be used in conjunction with the FCCL Framework.

1.3 This document

This document presents the FCCL guidelines and technical guidance on the methodology of FCCL management proposed for ODSG, updated based on the feedback and inputs received from the Client and ODSG stakeholders.

2 FCCL Guideline

2.1 Overview

2.1.1 Introduction

The objective of the FCCL Framework is to provide a methodological approach for public officials of the Ondo State Public Private Partnership Agency (ONDIPA), Ondo State Ministry of Finance (MoF), Fiscal Responsibility Commission (FRC), Debt Management Department (DMD) and the Contracting Authorities (CA), to assess and manage FCCL arising from PPP projects.

2.1.2 Current regulatory framework

This section summarizes the existing regulatory framework for PPPs and PFM in Ondo State and its impact on developing the FCCL Guidelines. As per consultation with ODSG stakeholders⁸ the current practices with respect to FCCL are limited to recording payment obligations and do not cover contingent liabilities (CL). The stakeholders do not have significant experience addressing and accounting for FCCL for PPP projects.

⁸ Consultations conducted on October 10, 2024

Relevant Law	Relevant provisions and impact
Ondo State Fiscal Responsibility Law (FRL) 2010	<p>The FRC, established under the ambit of the FRL, is an agency mandated to provide standards for the efficient allocation and management of public expenditure, revenue collection, debt control, and transparency in fiscal matters. The FRL defines the procedure for the preparation and approval of the Medium-Term Expenditure Framework (MTEF) for Ondo State, a framework that outlines the expenditure plan for the State government over three financial years. The MTEF contains the Macro Economic Framework, the Fiscal Strategy Paper, and the Expenditure and Revenue framework.</p> <p>As stipulated in the FRL, the MTEF must also contain:</p> <ul style="list-style-type: none"> ● A Debt Statement which describes the fiscal debt liability of ODSG ● A Statement describing the nature and fiscal significance of contingent liabilities and measures to minimize/ mitigate such liabilities. <p>The FCCL framework will have to comply with the requirements of the MTEF to ensure adherence to the provisions of the FRL.</p>
Debt Management Law (DML), 2017	<p>The DML deals with both domestic and external debt; section 4 of the DML provides for the establishment of the Debt Management Department (DMD), as a body corporate which is entrusted with:</p> <ul style="list-style-type: none"> ● Maintaining databases of loans and loan guarantees ● Verifying and servicing external debt guaranteed. This is done in conjunction with the Federal Debt Management Office (FDMO) ● Verifying and servicing debt directly taken by the ODSG. This is done in conjunction with, the state Accountant General (AG) ● Liaison with International Financial Institutions (IFIs) and donor agencies. <p>The functions of the DMD particularly as they relate to guarantees, will require all PPP projects to go through a vetting process by the DMD. The FCCL will also be included in the DMD database.</p>
Ondo State Finance Management Law, 2017	<p>The PFML is focused on ensuring proper accountability for use of government monies but has no specific provisions at present with respect to FCCL. Its potential impact on FCCL will revolve around the government's decision to budget for/create a special fund for contingent liabilities arising from PPPs.</p>
Ondo State Public Procurement Law 2020	<p>While there are no specific provisions with respect to FCCL, the functions of the Bureau of Public Procurement (BPP), as expressed in Sections 13(f) and (k) include the issuance of a certificate of no objection for contract award in respect of all public procurements (the law does not specify whether PPPs are exempt from its purview), as well as to prepare and update standard tender and contract documents. Though the relevant CA would execute the contract and act as contractual counter-party, the PPP Manual prescribes that representatives of BPP are included in the tender committees for procurement of PPP projects.</p>
PPP Policy, 2024	<p>Based on the requirements in the PPP Policy, ONDIPA and the relevant Ministry, Department and Agencies (MDAs) are expected to review different aspects of a PPP project during preparation and procurement stages, including the review of contingent liabilities.</p>

PPP Manual, 2024	<p>The PPP Manual provides for checklists of the assessment and management of PPP projects throughout the project process cycle. The affordability and VfM checks are conducted under the project preparation stage as part of developing the OBC. The Government’s FC to a project must be determined by the affordability to make such commitments. Therefore, the FCCL framework will be impacted by the affordability and VfM assessment processes at the project preparation stage.</p> <p>The Concession Agreement Checklist in the PPP Manual includes an item for “Contingent Liabilities of the MDA”. This alerts the MDAs on the need to assess, quantify, document, and prepare for the contingent liabilities in a project, before signing a contract. The FCCL framework will need to align with this approach of pre-contract assessment of contingent liabilities by MDAs.</p>
ONDIPA Law, 2017	<p>The Law entrusts PPP facilitation responsibilities to ONDIPA but it does not vest any powers on the Agency to assume fiscal risks or liabilities on behalf of the government. Functions assigned to ONDIPA under Section 4 (23), to “perform such other functions as the Governor may from time to time direct”, could, however, enable it to do such things as subscribing to equity in a PPP project company and thereby assuming certain risks that may impact the FCCL framework.</p> <p>The ONDIPA Law is currently under review. The draft review report⁹ recommends that the role of project preparation, VfM analysis and assessment of risks for a PPP project be segregated from the approval/ authorization of fiscal risks and liabilities. The review report suggests that the KSMOF’s risk unit should undertake the role of confirming risk transfers in VfM analyses, including analysis of contingent liabilities.</p>

2.1.3 Application of FCCL framework

The FCCL Framework will be mandatory for all PPP projects submitted for consideration and approval by the ONDIPA Board¹⁰ from [December, 2024]¹¹. All PPP projects executed¹² before this date will also be reviewed for FCCL by ODSG for the purpose of collecting and consolidating FCCL information as required.

The FCCL Framework is a dynamic document that will be refined and revised periodically as the PPP program evolves. The Framework provides an overview of how PPPs give rise to FCs - both direct and contingent liabilities - and defines such liabilities by means of examples. It then describes the management of FCCL across the PPP project lifecycle, including milestones for assessment and approvals.

The Framework provides more detailed technical guidance for the identification and assessment of FCCL at project development stage and their monitoring and reporting during project operation.

⁹ Draft Report, June 2024

¹⁰ As per the PPP Manual, 2024, a project initiated by a CA is considered being part of the ODSG PPP project pipeline once approved by the ONDIPA Board.

¹¹ The FCCL Guidelines will specify a date after which all projects approved by ONDIPA as being part of the PPP project pipeline will need to comply with the FCCL framework. The projects will need to identify, report and monitor FCCL as per the provisions of the FCCL Guidelines and the Technical Guidance Manual. The ODSG should issue a public notification to this effect on or before such date.

¹² Executed projects imply those PPP projects for which the project agreement was signed prior to the date on which FCCL framework becomes effective.

2.2 PPP Fiscal Liabilities and Risks

While PPPs can offer a range of benefits both qualitative and quantitative, they have fiscal implications. PPPs are not “cost free” to a government. Although PPPs are viewed as means of leveraging financial resources from the private sector, government assumes FC over the life of the contract as set out under the PPP agreement.

2.2.1 Public liabilities under PPP

Under a PPP arrangement, the government almost always bears some risk which can take the form of support that gives rise to an on-going **fiscal commitment (FC)** - either a CL or an actual direct liability.

- A **direct liability** takes the form of a defined and quantified undertaking to pay or carry a funding obligation for a feature, phase or item in a PPP project essential to its development, operation and/or completion. Its salient characteristic is that the occurrence of the payment obligation is known, although uncertainty may remain as to the size. Examples of such direct liabilities include: (i) supplying the land needed for the project; (ii) upfront “viability funding gap” payments, in which the government makes a capital contribution to ensure a project that is economically desirable but commercially unattractive can proceed; and (iii) annuity or availability payments in which a regular unitary payment over the life of a project is conditional on the availability of the service, etc.
- A **contingent liability (CL)** is an obligation that arises from a particular discrete but uncertain future event (i.e. one that may or may not occur) that is outside the control of the government. For CL, the occurrence (trigger event), value, and timing of a payment may all be unknown or cannot be definitively determined. Such liabilities include guarantees on specific risk variables e.g. exchange rate, inflation, prices and traffic, force majeure, termination payments and credit guarantees, among others.

Most FCs are explicitly specified in PPP agreements. However, FCs can also come from **implicit sources**. For example, a letter of support for a specific project may be considered a type of guarantee for some stakeholders. Also, political or socially sensitive projects may be expected to be rescued by government in the event of financial distress.

Additionally, increase of existing obligations or creation of new obligations may arise from contract adjustments and renegotiations. They may, for example, significantly modify the costs of the projects and the payments to be made by Government. Such variations would fall under the purview of the DMD as contemplated by the DML 2015.

Even though direct liabilities are often considered more predictable than contingent liabilities, there can also be some uncertainty with respect to certain components. For example, the project agreement of a toll road project may include a service payment defined as an annual payment to be made by the government to the concessionaire based on the availability indicators set out in the agreement. This service payment can change due to a change in several factors - inflation, exchange rate, local interest rate, change of scope, increase of road size, and other components – which may lead to change in the amount and/or timing of payments. Hence, direct liabilities can also carry a significant amount of uncertainty.



> Specified in PPP agreements.

> Can also come from **implicit sources**.

- For example, a letter of support for a specific project may be considered a type of guarantee for some stakeholders.
- Also, political or socially sensitive projects may be expected to be rescued by government in the event of financial distress.

Table 2-1: Illustrative public liabilities in a PPP scheme

Type of FCCL	Examples	Illustrative examples
Direct - Explicit Liabilities / FCs	<ul style="list-style-type: none"> Up-front commitments such as contribution to capital investment, land acquisition costs, etc. 	<ul style="list-style-type: none"> In many of the Nigeria Port Concession contracts, the Nigerian Ports Authority had a commitment of capital dredging to specific depths and then maintenance dredging onwards For medical warehouses in Abuja and Oshodi, Lagos, implemented on PPP, the Federal Ministry of Health, the grantor, is responsible for heavy maintenance and repairs, whereas the operator is responsible for recurring maintenance
	<ul style="list-style-type: none"> On-going commitments such as availability payments, output based subsidies, operational subsidies, and capital subsidy obligations 	<ul style="list-style-type: none"> Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the highway authority is committed to providing quarterly availability payments to the Concessionaire. The highway authority will finance the availability payments through tolls collected by a separate toll operator. The concessionaire will expand and rehabilitate the road sections based on output specifications and adhere to defined performance standards during the O&M phase over the course of the concession term.
Contingent Liabilities (CLs) / Fiscal Risks	<ul style="list-style-type: none"> State guarantees on project loans, minimum levels of demand / revenue guarantees, exchange rate risks, put call option agreements (PCOA), etc. Termination payment in case of concessionaire default, contracting authority default, or force majeure 	<ul style="list-style-type: none"> Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the Central Bank of Kenya is providing exchange rate support and a major multilateral development bank is extending a partial payment risk guarantee to cover two quarterly availability payments in case of default by the highway authority. The Azura power IPP in Nigeria had a put & call option agreement (PCOA)
Indirect - Implicit Liabilities	<ul style="list-style-type: none"> Implicit liabilities that are not explicit because they are not expressed and defined contractually but they are, nonetheless expected to be the responsibility of government. Perhaps the most obvious and often overlooked liability is the implicit guarantee from governments that ultimately underwrites all public infrastructure and services. 	<ul style="list-style-type: none"> Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the Government of Kenya is providing a letter of support to the concessionaire in case of default by the highway authority (Contracting Authority). For medical warehouses in Abuja and Oshodi, Lagos, implemented on a PPP, the Federal Ministry of Health, the grantor guaranteed a minimum occupancy of the warehouse. If occupancy fell below this level, the operator was allowed to increase tariffs.

2.2.2 Other fiscal risks

Fiscal risks are factors that cause fiscal outcomes to deviate from expectations or forecasts. They arise from the occurrence of an uncertain event and from the realization of macroeconomic shocks, or other unpredictable variables that trigger CL obligations. Hence, CLs are by definition fiscal risks. Direct liabilities may be subject to fiscal risks when they may change because of uncertain parameters. Within the context of PPP agreements, other sources of fiscal risks than those embedded in direct or contingent liabilities merit attention.

Other sources of fiscal risks are those channelled through provisions – controlled by the government– of the PPP agreement. For example, an extension of the project scope – allowed in the PPP agreement and subject to government’s consent – that modifies the costs of the project to the government. Other sources of fiscal risk are outside the scope of liabilities to be paid by the government to the private partners. Example is a reduction of user-based revenues used by the government to fund a project. This reduction does not affect the government’s liabilities to the concessionaire (that may be fixed and independent of user-revenues performance) but it does have a fiscal impact.

Uncertainty or more precisely, unpredictable outcomes is what will make the estimation and management of FCs more challenging.

Table 2-2: Examples of FCCL in PPP

Type of Project	Fiscal commitment	Contingent liabilities	
		Payment and Termination	Other fiscal risks
Toll road	<ul style="list-style-type: none"> • Upfront capital subsidy • Service payment adjusted by macroeconomic parameters and contingent events 	<ul style="list-style-type: none"> • Revenue or traffic guarantee • Termination payment in case of concessionaire or contracting authority default, or force majeure. 	<ul style="list-style-type: none"> • Change of scope that modifies the service payment. • Compensation for imposed decrease in toll rates due to social unrest
Roads Annuity Program	<ul style="list-style-type: none"> • Availability payment adjusted by macro-economic parameters and contingent events 	<ul style="list-style-type: none"> • Termination payment in case of concessionaire or contracting authority default, or force majeure. 	<ul style="list-style-type: none"> • Disputes on land acquisition or resettlement • Change of scope or governance
Hydroelectric Dam Power Plant	<ul style="list-style-type: none"> • Viability Gap Funding 	<ul style="list-style-type: none"> • Take or pay commitment from public utility • Termination payment 	<ul style="list-style-type: none"> • Change in hydrological conditions • Renegotiation
Students accommodation	<ul style="list-style-type: none"> • Availability payments 	<ul style="list-style-type: none"> • Guarantee on occupation • Termination payment 	<ul style="list-style-type: none"> • Change in university governance

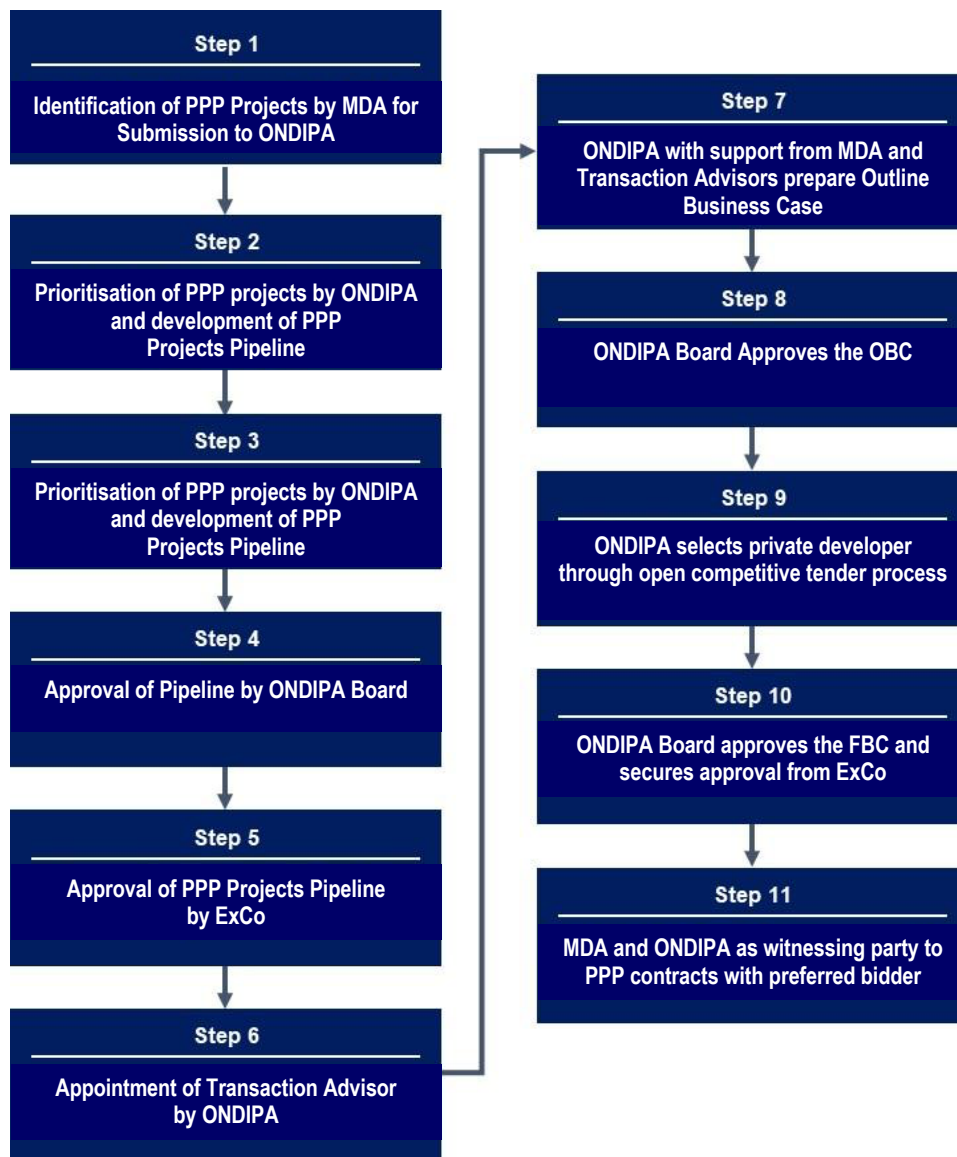
Overall, it is important to note that Government commitments to PPPs are materially different to Government’s public debt and require a different management approach. When a Government borrows, it uses the borrowed funds and the Government is obliged to repay the debt regardless of how well the borrowed funds are used. Government liabilities to PPPs are non/limited recourse in nature, structured as performance-based payments for services delivered and/or assets/infrastructure developed/made available for use.

2.3 FCCL management

2.3.1 Structure of FCCL management

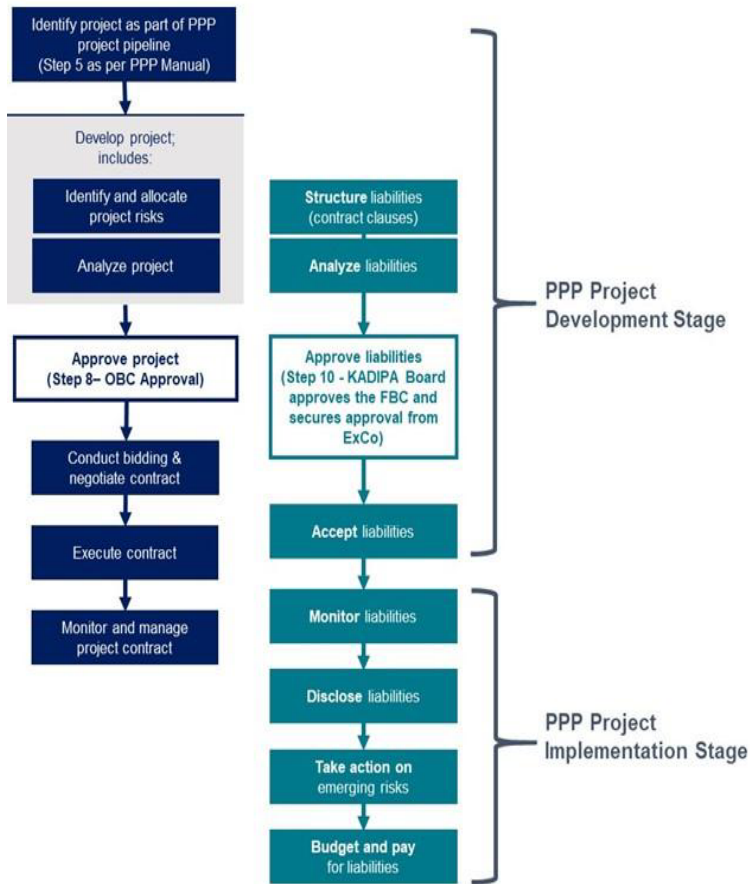
Managing and controlling liabilities takes place in all phases of PPP development, approval, and implementation processes. Figure 2-1 describes the PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle as per PPP Manual, and Figure 2-2 describes the management of FCCL at development and implementation stages of a PPP project. The functions to be undertaken are shown in the context of the broader PPP project development and implementation process.

Figure 2-1: PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle



Source: ODSG PPP Manual, 2024

Figure 2-2: FCCL management across project lifecycle



Project Development Stage

Project identification

The assessment and required approvals of the project FCCL are carried out by:

- Initial assessment during project preparation stage, through feasibility studies including project risks analysis and finance structuring
- Approval of initially assessed FCCL by the required institutions
- Updated assessment during procurement (i.e. prior to PPP agreement signature) taking in account variance based on the contracting authorities' assessment and bids received
- Checking accurate representation of FCCL in the final version of the project agreement

Project Implementation Stage

Monitoring and recording of FCCL are made through annual budget documents that need to provide systematic disclosure of key fiscal risks and indications of potential impacts.

At the project development stage, from project identification up to contract execution, the assessment and required approvals of the project FCCL are carried out by:

- Initial assessment during project preparation stage, through feasibility studies including project risks analysis and finance structuring
- Approval of initially assessed FCCL by the required institutions as described in the following chapter
- Updated assessment during procurement (i.e. prior to PPP agreement signature) taking in account variance based on the CA's assessment and bids received private partner
- Checking accurate representation of FCCL in the final version of the project agreement
Section 3.2 provides technical guidance on FCCL management during project development stage.

During the project implementation stage, monitoring and recording of FCCL are made through annual budget documents that need to provide systematic disclosure of key fiscal risks and indications of potential impacts. Section 3.3 provides technical guidance on FCCL monitoring and reporting.

2.3.2 Institutional framework for FCCL management

While the primary FCCL oversight is role assigned to the FRC, the general governance and institutional framework¹³, including the specific functions that need to be undertaken to manage direct and contingent liabilities during the PPP project lifecycle, is shared as follows:

¹³ This is subject to discussion with ODSG stakeholders.

Function	Objectives	Role/ Responsibility
Preparing	To develop a project design that will be bankable and ensure that the risks the government will bear are consistent with good risk allocation principles, borne at the lowest cost and with minimal fiscal impact.	Contracting Authorities / ONDIPA: Project feasibility analysis and implementation plans.
Analyzing	To inform decision making when the project is structured and approved, and provide a basis for monitoring and budgeting for liabilities.	Contracting Authorities /ONDIPA / Project Delivery Team¹⁴ (PDT) Fiscal risk assessments and other tools for analyzing liabilities.
Approving	To ensure the use of government resources (which take the form of liabilities) are: focused on policy priorities; represent value for money; and are consistent with good fiscal management.	ONDIPA Board / ExCo Centralized approval to ensure that PPPs are focused on the government's policy priorities, represents value for money, and are consistent with good fiscal management. Planning and Budget Commission (P&BC), DMD, MoF Allocated the overall responsibility of approving the FCs and contingent liabilities before submission to the PPP Committee for approval.
Accepting	To clarify the government's commitment to its liabilities (i.e. financial obligations), and to ensure the executed contract is consistent with earlier analysis and approval	Contracting Authorities, ONDIPA, DMD, MoF, MoJ: Involves the government executing formal instruments such as project agreements, issuing letters of support or performance undertakings with the purpose of guaranteeing that they will honour its obligations and commitments.
Monitoring	To provide information needed to disclose, act on emerging issues and, if necessary, budget for liabilities	Contracting Authorities, DMD, P&BC, ONDIPA: To help government track its exposure to fiscal risks from year to year, and improve its ability to take action to reduce the cost and/or likelihood of an event triggering a payment.
Budgeting and paying	To ensure resources are available to make payments promptly when required, improving credibility and clarity as to how costs of liabilities will be borne, and mitigating the fiscal impact.	Contracting Authorities, P&BC, MoF, DMD: Establish a well-defined system for budgeting and paying for liabilities will ensure the government has the resources available to meet its obligations and mitigate the fiscal or budgetary impact of contingent liabilities.
Disclosing	To improve accountability for decision makers, and increase transparency of the government's commitments to third parties (such as credit agencies and lenders).	FRC, DMD, ONDIPA, P&BC: Reporting on exposure to liabilities through the budget and government accounts to increase transparency and improve the accuracy and completeness of information available to external parties.

¹⁴ As defined in the PPP Manual comprises the MDA's PO and AO, Legal Adviser and other key members.

<p>Mitigating</p>	<p>To help reduce the cost to government of bearing contingent liabilities by reducing the likelihood or cost of the occurrence of those liabilities.</p>	<p>Contracting Authorities, MoF, DMD, ONDIPA, P&BC, FRC: Continuous monitoring of exposure to contingent liabilities from PPP projects, and actively managing that exposure where possible, by identifying and taking action on emerging issues.</p>
--------------------------	---	---

An adequate identification and assessment of FCs and risks during the project development stage will allow the government to be well informed when it makes decisions regarding the financial structure, risk allocation, and approval of the project.

3 FCCL Technical Guidance

3.1 Overview

The purpose of the technical guidance is to

- Develop an analytical process to identify, assess and monitor FCCL during the project life cycle of PPP projects
- Detail a methodology for implementing the tools involved in the management of FCCL including pre-formatted tools for the identification and quantification of FCCL.

3.2 FCCL Management during project development stage

The project development stage covers all the steps taken to design, prepare and procure a PPP project. The FCCL framework includes: (1) the identification and assessment of FCs and risks, and (2) the assessment of affordability. Both activities will help authorities to take well-informed decisions over the project.

This section sets out:

- The identification and evaluation of PPP fiscal risks through the PFRM and Project Fiscal Risk Register (PFRR) (section 3.2.1);
- The calculation of FCCL through the FCCL Register and Affordability (section 3.2.2);

3.2.1 Identification and evaluation of PPP fiscal risks through the PFRM

Risk allocation is a centerpiece of structuring a PPP agreement. The basic principle is that each risk should be allocated to the party best able to manage it. Risks may be allocated to one party or shared in a specified way.

During the preparation of a PPP project, the assessment and allocation of project risks should be completed. The CA (or the Transaction Advisors appointed for the project by the CA or ONDIPA as the case may be) should create a risk matrix and a risk register, documenting the evaluation of the likelihood and impact of each risk at the OBC stage. These should be periodically assessed by the CA.

3.2.1.1 Rationale

Assessing the fiscal implications of a PPP agreement involves the identification and allocation of risks of the project, definition of payment mechanism, and determination of the other financial obligations and rights of parties. In practice, the base information needed shall be found in the risk analysis and risk matrix within the relevant feasibility studies. For active projects, these would be determined based on a review of project agreements, letters of support, guarantee instruments, and other relevant project documentation.

PPP project agreements, letters of support and other forms of explicit government support provide the baseline information on FCCL arising from PPP projects. They contain the core financial provisions, namely: the payment mechanism and allowed adjustments to availability payments; tariff-based payments; guarantees and trigger conditions; and termination payments.

However, the project documentation may not explicitly contain all risks and therefore their fiscal impact not fully understood. For instance, a government may take revenue risk and pay to the concessionaire an availability payment. In this case, the contract provides the terms of the availability payment yet does not set out the effects of, for instance, real demand falling below

expectations. Hence, the risk matrix complements the contract agreement in identifying FCs and fiscal risks.

In addition, fiscal risks may also result from risks not identified or not clearly allocated in the contract. The most obvious is the risk that the private partner does not have the managerial capacity to implement the project or face the stipulated risks, culminating in its bankruptcy and potentially the failure of the project. Project finance solutions, with limited or no recourse to the assets of the borrower, require a careful assessment of the capital and private-sector guarantees needed for sound project execution to spread the risk among multiple investors, insurers, and diverse financial entities.

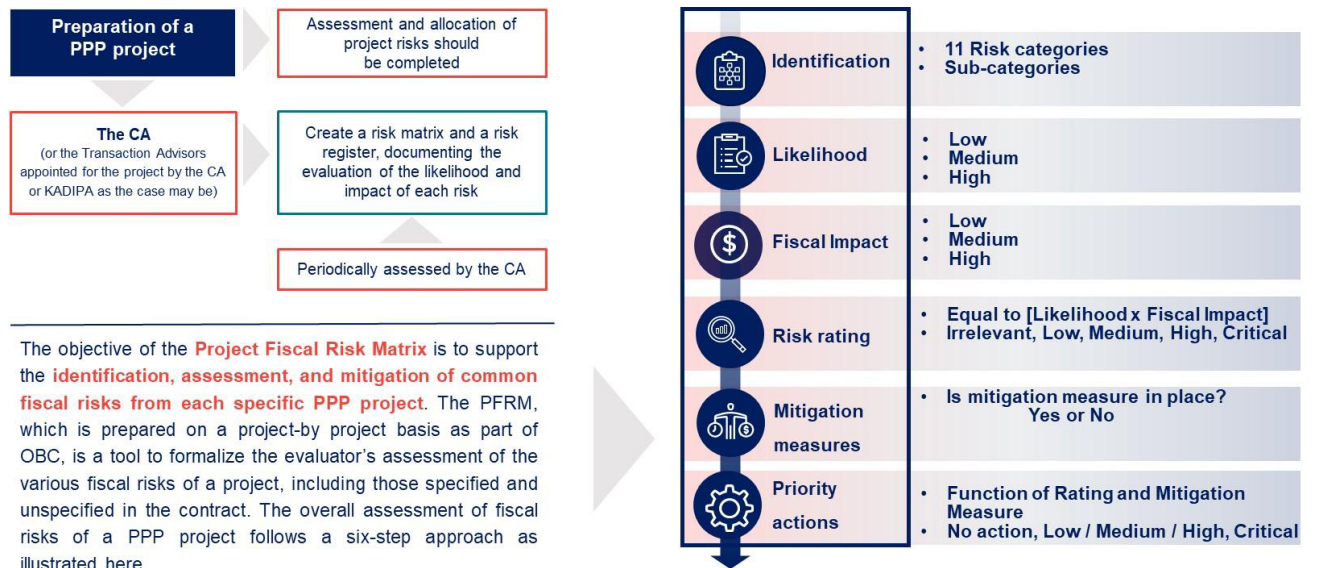
Changes to the project and the contract, especially if not triggered by the private partner, can generate a fiscal risk. When negotiating and agreeing to such changes, the private partner always has greater leverage than the CA as the project incumbent. The two most common sources for such changes are as follows:

- Fiscal costs related to changes in scope or policy changes introduced by government during the term of the contract. Typical examples for this are: (1) transferring some cost overruns to the government when the government asks for changes in project design, or (2) renegotiating the contract when the government decides to change the user-fee structure in response to lower-than-expected demand. It is key to understand the FCCL impact of such government-initiated changes on PPPs and conduct the cost-benefit analysis of initiating such changes in this context.
- Fiscal costs triggered by exogenous changes resulting, for example, from technological improvements, demographic movements, or changes in consumers' preferences. It is crucial for the government to manage the consequences of exogenous changes in a continuous and proactive manner to mitigate the impact on projects and provide solutions to challenges.

The objective of the **Project Fiscal Risk Matrix** is to support the **identification, assessment, and mitigation of common fiscal risks from each specific PPP project**. The PFRM, which is prepared on a project-by project basis, is a tool to formalize the evaluator's assessment of the various fiscal risks of a project, including those specified and unspecified in the contract. The overall assessment of fiscal risks of a PPP project follows a six-step approach as illustrated in Figure 3-1.

The PFRM should be prepared as per the provisions of this Section 3.2.1 as part of the OBC preparation under Step 7 as illustrated in the Figure 2-1: PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle as per PPP Manual.

Figure 3-1: Assessment of Fiscal Risks



3.2.1.2 Approach to PFRM

a. Identification of fiscal risks (and allocation)

The identification of fiscal risks focuses on those risks that may have significant fiscal implications.

In doing so, it looks into both contractual risks and other risks not allocated directly by contract (for example, risks arising from the governance structure, legal framework, or government institutional capacity). It does not assess all of the potential risks that can arise during the project cycle

Based on the World Bank's PPP Fiscal Risk Assessment Model (PFRAM 2.0) instrument, 11 major categories of risks and 40 subcategories are to be captured in the PFRM. The main risk categories, as well as the subcategories included in PFRAM 2.0, are presented in Table 3-1. Appendix A presents a detailed illustration of risks and sub-risks. Appendix B provides a detailed questionnaire as to how these risks should be assessed by a CA (or Transaction Advisor appointed for the project).

Table 3-1: Risk categories

Main Risk Category	Number of Risks Subcategories
1 Governance Risks	3 detailed risks
2 Construction Risks	11 detailed risks
3 Demand Risks	7 detailed risks
4 Operation & Performance Risks	6 detailed risks
5 Financial Risks	4 detailed risks
6 Force Majeure Risks	No Subcategories
7 Material Adverse Government Actions (MAGA)	No subcategories
8 Change in Law	No Subcategories
9 Rebalancing of Financial Equilibrium	3 detailed risks
10 Renegotiation Risks	No Subcategories
11 Contract Termination Risks	2 detailed risks

Source: PFRAM 2.0 User Manual

At the early stages of the project design and when preparing the draft contract, it is recommended that CAs:

- Review the major risk categories
- Identify the important fiscal risks from the project that should be covered in the PPP agreement or the legal framework
- Starts establishing the PFRR illustrated in Table 3-2.

Table 3-2: Project Fiscal Risk Register

Risk Identification		Allocation	Likelihood	Fiscal Impact		Rating	Mitigation
<i>Category</i>	<i>Event type</i>	<i>Govt/Private/ Shared</i>	<i>Probability of occurrence</i>	<i>Base Costs</i>	<i>Cost of occurrence</i>		<i>Measures and costs</i>
Governance	Risk A						
	Risk B						
Construction	Risk A						
	Risk B						
	Risk C						
Demand	Risk A						
Operation	Risk A						
	Risk B						

Risk allocation

As stated above (section 3.2.1.1), risk allocation is at the heart of PPP structuring. Risks may be allocated to either the Government or the private partner or shared. The more the risk is borne by the private partner, the less its occurrence will impact the Government purse. In its project risk assessment, the evaluator (CA or Transaction Advisor) should primarily focus on those borne by the Government or shared.

c. Assessment of Likelihood of risks

After identifying the relevant risks for a PPP project, the evaluator shall assess the likelihood of such risks materializing in the future.

Initially, it is sufficient to identify whether the likelihood is low, medium, or high. A number of factors can help determine the likelihood. For example, the logic illustrated in Table 3-3 could be used as a reference.

Table 3-3: Risk likelihood assessment

	Low	Medium	High
Likelihood	<ul style="list-style-type: none"> • Very unlikely but not negligible • Would require highly unusual circumstances 	<ul style="list-style-type: none"> • Likely and possible • Not unprecedented 	<ul style="list-style-type: none"> • Very likely, almost certain • Extensive precedents

Source: PFRAM 2.0 User Manual

In case the risk rating is high, and it’s further assessment is a priority in accordance with the project heat map (Table 3-5), the probability of occurrence may need to be determined for the purpose of contingent liabilities monitoring (section 3.2.2.1).

c. Estimation of fiscal impact of risks

Evidently, the most critical output when looking at FCCL is the cost of risk occurrence. It is also the most difficult to predict as most fiscal risks could have varying impact depending on how they materialize.

Firstly, the Project Officer (PO) / Accounting Officer (AO)¹⁵ should evaluate the potential fiscal impact of a particular risk in a holistic manner from a qualitative perspective, providing as much information as possible to support the assessment of low, medium, or high.

For instance, this qualitative assessment could be made by comparison with the state GDP or with the project costs. The fiscal implications of governance risk materializing would be reflected also in terms of the government’s loss of reputation, efficiency, availability, and transparency.

Table 3-4 provides an example of fiscal impact scale rating.

¹⁵ As per the PPP Manual, 2024, the project planning stage initiated by ONDIPA begins with the appointment of a Project Delivery Team (PDT) comprising of experienced public officials to ensure effective management of the PPP process and contracts. The PO manages the PPP project preparation process. The AO is the officer in the CA responsible for financial oversight of the process, report on the financial viability of the PPP project and manage any capital flows to/from government.

Table 3-4: Fiscal impact assessment of identified risks

Scale	Value	Fiscal Impact
Low	< 0,1% of GDP or < 5% of CAPEX	<ul style="list-style-type: none"> Impact on government deficit and debt lower than X % of GDP (accumulated construction cost of the asset) Minimal damage to government's reputation, service availability, and operation
Medium	0,1%-0,2% of GDP or 5%-25% of CAPEX	<ul style="list-style-type: none"> Impact on government deficit and debt between X% and Y% of GDP (accumulated construction cost of the asset) Limited damage to government's reputation, service availability, and operation
High	>0,2% of GDP or >25% of CAPEX	<ul style="list-style-type: none"> Impact on government deficit and debt above Y % of GDP (accumulated construction cost of the asset) Significant damage to government's reputation, service availability, and operation

Source: Based on PFRAM 2.0 User Manual

As per the likelihood, in case the severity of the risk is rated as high or critical in the project heat map (Table 3-5), the fiscal impact would need to be further determined for the purpose of contingent liabilities monitoring (section 3.2.2.1).

d. Determination of risk rating

The qualitative likelihood and fiscal impact are put together to estimate the overall risk rating (typically called the *severity of the risk*). This is done by combining the likelihood and fiscal impact, as show in Table 3-5. Risks assessed as having a high likelihood and a high fiscal impact, would be regarded as “critical”. A “high” risk rating would be the result of a high likelihood and a medium fiscal impact, as well as a medium likelihood and a high fiscal impact.

Table 3-5: Example of Heat Map based on Risk Rating

Risk Rating = Likelihood x Fiscal Impact				
Fiscal Impact	High	Medium	High	Critical
	Medium	Low	Medium	High
	Low	Irrelevant	Low	Medium
		LOW	MEDIUM	HIGH
		Likelihood		

Source: PFRAM 2.0 User Manual

e. Identification of mitigation strategy

Possible mitigation measures vary with the risks. Appendix A presents a detailed illustration of risks, sub-risks and typical mitigation measures for each of the subcategories. These suggestions are not meant to be exhaustive; they represent typical mitigation measures based on international good practices.

For risks, the severity of which are rated high or critical, mitigation measures should be considered, and associated costs assessed.

f. Determination of priority actions

Based on the risk rating and the mitigation measures, an assessment of the priority of the required actions is to be undertaken as demonstrated in Table 3-6. The more severe risks - those with a high rating - should be addressed first. Risks rated as critical, paired with no

mitigation measures in place, would result in the need to implement a “critical” priority action; the priority would be considered a “high priority” if mitigation measures exist. Addressing the less important risks, even if they are an easy fix, does not improve the overall risk profile of the project and does not reduce the risk for the government

Table 3-6: Prioritization of risk mitigation measures

Priority action = Risk rating x Mitigation measure						
Mitigation measure	NO	No action	Medium priority	High priority	High Priority	Critical
	YES	No action	Low Priority	Medium priority	Medium priority	High priority
		Irrelevant	Low	Medium	High	Critical
		Risk Rating				

Source: PFRAM 2.0 User Manual

Depending on the stage of the project cycle, risks identified as areas for priority actions can be addressed as follows: (1) by changing the design of the project to avoid the risk—this is only relevant before the PPP is contracted; (2) by introducing additional mitigation measures; or (3) by creating fiscal space to absorb the potential fiscal cost if the risk materializes.

1 Preventative measures

To limit the possibility of an undesirable outcome. Some examples are: insurance products, risk guarantees (such as those provided by financial institutions to mitigate the risk of the public entity failing to perform its financial obligations), financial instruments (to mitigate financial risks, such as interest rate, exchange rate, commodity prices) and provisions in such instruments to cap the risks based on a pre-determined thresholds on a project-to-project basis.

2 Corrective measures

To correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of in case of contract termination.

3 Detective measures

To identify instances of undesirable outcomes. Here we find all monitoring activities and reports. For example, if government provides a termination payment in case of default of the contracting authority, it shall monitor financial performance and CA's compliance with its obligations.

With respect to mitigation, the following are some suggested types of mitigation measures by the Government:

- *Preventive measures*: To limit the possibility of an undesirable outcome. Some examples are: insurance products, risk guarantees (such as those provided by financial institutions to mitigate the risk of the public entity failing to perform its financial obligations), financial instruments (to mitigate financial risks, such as interest rate, exchange rate, commodity prices) and provisions in such instruments to cap the risks based on a pre-determined thresholds on a project-to-project basis.
- *Corrective measures*: To correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of contract termination.
- *Detective measures*: To identify instances of undesirable outcomes. Here we find all monitoring activities and reports. For example, if government provides a termination payment

in case of default of the contracting authority, it shall monitor financial performance and CA's compliance with its obligations.

For each project, the compilation of the qualitative assessment of the identified fiscal risks constitute the PFRM which will provide for a heat map for the monitoring of fiscal risks during the project life cycle.

Table 3-7: Project Fiscal Risk Matrix

Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority actions	Suggested Mitigation Strategy
Governance Risks	Low	Medium	Low	No	Medium Priority	
Construction Risks	Medium	High	High	Yes	Medium Priority	
Demand Risks	Medium	Low	Low	No	Medium Priority	
Operational and Performance risks	Low	Low	Irrelevant	Yes	No action	
Financial risks	Medium	Medium	Medium	No	High Priority	
Force Majeure	Low	Low	Irrelevant	Yes	No action	
Material adverse government actions	Medium	Medium	Medium	No	High Priority	
Change in law	Medium	High	High	No	Critical	
Rebalancing of financial equilibrium	High	Medium	High	Yes	High Priority	
Renegotiation	High	Low	Medium	Yes	Medium Priority	
Contact termination	Medium	Medium	Medium	Yes	Medium Priority	

Source: PFRAM 2.0 User Manual

The PFRM should be reviewed annually and each time an event changes the project risk profile, and the PFRM be filled in accordingly for all medium, critical and high priority risks.

3.2.2 FCCL Register and Affordability

3.2.2.1 FCCL register and calculation

As discussed in section 2.2, FCCL comprise direct and contingent financial liabilities. The direct liabilities include **upfront payment, VGF, construction or operation subsidies, and availability payments.**

The universe of contingent liabilities is in essence more diverse but primarily includes:

- 1) Any guarantee, insurance or financial support provided by the CA or any other public entities to ensure either
 - a. a minimum level of revenues to the private partner: **Revenue guarantee**, or
 - b. the interest, fees or repayment due by the private partner under the terms of the financing products (debt, bonds, guarantees) arranged for the project financing: **Debt guarantee**
- 2) Any payment due to the private partner by the CA in case of termination of the PPP agreement before its terms: **Termination payment**. It shall be noted that Termination payment depends upon the cause of early termination, which comprise: private partner default, force majeure, contracting authority default, or termination for convenience.
- 3) Contingent liabilities arising from the occurrence of **other fiscal risks** as identified in the PFRR.

Based on the PFRR, the evaluator will quantify the contingent liabilities arising from the occurrence of a fiscal risk identified in the PFRM and analyzed the PFRR. This quantitative assessment shall be done in accordance with the priority actions determined on the project heat map and address the risks which have been qualified as critical or requiring high priority monitoring.

All direct and indirect liabilities shall be consolidated in the following FCCL Register (refer Table 3-8). The FCCL Register contains the type of liability, description of adjustment factors and trigger events, and the location (which will depend on the stage of the project).

Table 3-8: FCCL register

Fiscal Commitment	Type of fiscal commitment/Definition	Adjustment factors/Trigger events	Location
Project X			
Payment 1	Direct Explain payment concept, periodicity, and form of calculation	Detail adjustment factors and trigger events if apply	Specific location where this information was taken (Feasibility Study, PPP Contract, Letter of Support, etc.)
Payment 2	Contingent Explain payment concept, periodicity, and form of calculation		
Payment 3	-	-	-

Source: CPCS

Table 3-9 provides guidelines on what measures and methodologies to use for the assessment of typical FCCL.

Table 3-9: Methodologies for assessment of FCCL

FCCL	Estimate	Function of available information
Direct Liabilities		
Upfront payment	- Annual cost over life of project - Present value of payment stream for the period of agreement	- Base Case
Availability payment		- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Availability payment adjusted permanently by macroeconomic parameters		
Availability payment adjusted by contingent events		
Contingent liabilities		
Revenue guarantee	- Estimated annual cost over life of project	- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Debt guarantee	- Estimated present value of payment stream for the period of agreement	
Guarantee over annual payment by state-owned enterprise, local or subnational government		
Termination payment		
Other fiscal risks	- Maximum value	

Source: CPCS

3.2.2.2 Assessment of affordability

With the estimations of fiscal costs, the government must now check if the project is affordable. This should be undertaken as part of the OBC preparation under Step 7 as illustrated in the Figure 2-1: PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle as per PPP Manual.



The three common instruments used to check affordability are:

- (1) Comparing annual cost estimates against the projected budget;
- (2) Assessing the impact on debt sustainability; and
- (3) Introducing limits on PPP commitments.

The first instrument entails the CA and ONDIPA checking whether the project is aligned with budget constraints and priorities. Verifying that the FCs are affordable within the budget is the primary step. This is achieved by assessing if the commitments allow the CA to achieve their

fiscal targets or surplus i.e. does the CA’s annual budget allocation accommodate the cost of FCCL.

It must be noted that this step needs to be done in line with the overall PPP framework, i.e. verification that the FC estimations allow for positive social benefits (pass the cost-benefit analysis). Also, the affordability analysis must be consistent to the overall liability and fiscal risk management of the P&BC.

FCs from PPPs are considered debt-like obligations. Hence, the DMD may consider the consistency of treatment of such obligations within the overall government liabilities and fiscal management framework. PPP commitments could be included in debt measures to determine a project’s impact on overall debt sustainability.

Finally, some governments adopt specific limits or thresholds on direct FCs of PPPs. The objective is to avoid tying up too much of the budget (within a specific sector or at aggregated level) in long-term payments. At this point, however, such limits are usually not needed in the early stages of PPP programs, such as the case of ODSG. This could be developed later as the magnitude and potential of the program becomes clear.

Table 3-10 presents the affordability indicators proposed in this framework.

Table 3-10: Affordability indicators

FC	Cost	Indicator of fiscal affordability (Including projections over PPP contract length-beyond medium-term horizon)
Direct liabilities	- Estimated Annual payments - NPV	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of sub-national public debt - Cost as percentage of GDP
Guarantees	- Estimated annual payment, or expected average payment - NPV (Base/Downside cases)	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of contingency line - Cost as percentage of public debt - Cost as percentage of GDP
Termination payment	- Estimated worst-case payment or expected average payment - NPV	- Cost as percentage of national budget - Cost as percentage of contingency line - Cost as percentage of GDP
Other fiscal risk	- Estimated worst-case payment or expected average payment - NPV (Base/Downside cases)	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of contingency line - Cost as percentage of GDP

Source: CPCS

3.3 FCCL Management during project implementation

3.3.1 Monitoring

Managing FCs entails monitoring, reporting and budgeting of PPP projects, both at individual project level and at portfolio program level. Adequate monitoring and disclosure of FCs and risks

will allow the government to prevent undesirable events from occurring, mitigate their impact, and make informed decisions during the operation phase.

This stage will require gathering project financial parameters, risks and performance, and country macroeconomic information, and any other input that may affect fiscal commitments and fiscal risks. The objective will be to ensure that updated information is reported at the right time to the relevant gate-keeping entities, in line with the provisions of the FRL, 2016 and DML, 2015.

Each commitment or fiscal risks must have specific information, such as financial and accounting ratios and indicators, to monitor the evolution across the full term of the contract. Table 3-11 highlights what minimum information shall be collected and registered by the CAs in each PPP project:

Table 3-11: Monitoring Information: FCs and Fiscal Risks

FC	Required information / Periodicity	Entity who must send information	Obligation to submit information set at: (PPP Agreement, Letter of Support, etc.)	Follow-up of mitigation activities of Risk Register
Project X				
Direct Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Contingent Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Other fiscal risks				
Risk A	-	-	-	-

Source: CPCS

3.3.2 Reporting and Disclosing

Reporting

A recent report Improving Transparency and Accountability in Public-Private Partnerships: Disclosure Diagnostic Report¹⁶, Ondo State, Nigeria, examines the political, legal, and institutional environment for the disclosure of information on PPPs in Ondo State. It concludes that “the Freedom of Information (FOI) Act, 2011 and the Ondo Public Procurement Law, 2020 provide rights and guidance on access to information and an approach to commercially sensitive information, particularly as it pertains to the procurement phase. However, the PPP legal framework does not provide any guidance on PPP project information to be publicly disclosed. There is no disclosure/information policy that would guide this disclosure.”

With respect to information dissemination, it purports that “Procurement information can be found via ODBPP’s e-Procurement portal. ONDIPA’s website contains general information on private sector investment opportunities, although there is no specific information about the current PPP pipeline and ongoing PPP projects. No PPP annual (or otherwise periodic) reports have been published. For PPP procurement information, there is no separate PPP procurement section on ODBPP’s e-Procurement portal or on the Open Contracting Portal, and users cannot specifically search for or filter PPP procurement opportunities as a separate procurement type. More specific PPP information on ONDIPA website would be useful to improve dissemination of PPP-related information.”

¹⁶ Draft report dated June 2021 was reviewed for the purpose of this section.

Appendix C provides information on the current legal framework for disclosure and implications for PPP disclosure as summarised in the above study. Appendix D provides a summary of the recommended disclosures for PPP projects.

In line with the above, ODSG needs to **account for and report** on their FCs of PPP agreements. The FRC / Ministry of Finance shall keep a centralized register of FCs of PPP transactions at the national or sub-national level. Proper reporting incentivizes the government to scrutinize its own financial position. Also, making reports available to other parties, such as lenders, rating agencies, PPP stakeholders, and the public, enables them to make informed opinions on the government's PPP fiscal management and performance.

For internal and external transparency of the financial effects of PPPs on government's position, FCs shall be reported. Also, it is recommended that, given the FCs may have debt-like effects on public finances, they are subject to similar checks and limits to debt obligations.

Table 3-12 shows the suggested information to be reported on direct and contingent liabilities for each PPP project by CAs. Description shall include: description of the liability, estimate of the value of the liability, annual cost and present value (for direct liabilities), and maximum exposure (for contingent liabilities). This reporting shall be included in medium-term budget reports and debt strategy reports.

Disclosures

Specifically, the FRC shall publish information on all FCs and contingent liabilities as a section in the "Report on Public Debt, Guarantees and other Financial Liabilities", as may be required under the FRL, 2016 (and the MTEF).

For public disclosure purposes, it is recommended to disclose the stream of annual payments and net present value of all payments of direct liabilities per project. It is also recommended to publish maximum exposure for those contingent liabilities which probability or occurrence is considered low (such as for instance termination payments). For the case of guarantees, it is recommended either: (1) to disclose the stream of annual payments and net present value of all payments per project if the information used for its estimation is reliable, or (2) maximum exposure of aggregated payments.

Table 3-12 shows a sample of reporting format to present direct and contingent liabilities by project.

Table 3-12: Reporting Sample of FCs by project

PPP project	Direct liabilities	Annual payments value for 3-year budget			Present value of all payments
		2021	2022	2023	2024
Project 1	- Annuity payment. Indexed quarterly by inflation.				
Project 2	- Annuity payment. Indexed quarterly by inflation.				
PPP project	Contingent liabilities	Estimated annual payments value for 3-year budget			Present Value of Maximum exposure
		2021	2022	2023	2024
Project 1	- Revenue Guarantee				
	- Termination payment In case of default of contracting authority				
Project 2	- Termination payment In case of default of contracting authority				

Source: CPCS

It must be noted that estimations of liabilities (Table 3-11) and follow-up activities must be updated in an ongoing basis.

Estimates should be updated at least during the following project milestones:

- Approval of PPP project in the PPP project pipeline by the Executive Council (ExCo)
- Approval of OBC
- Approval of Full Business Case (FBC) by ExCo
- After financial closure for PPP project
- During construction years (they are the riskiest years) on an annual basis
- During operation (checking on financial performance of firm) on an annual basis

3.3.3 Accounting

Fiscal responsibility is usually examined in relation to thresholds over government’s liabilities and expenditures. It must be taken into account that adequate accounting and reporting tackle the perception bias that PPPs attract immediate private financing without increasing government spending and debt. Determining how PPP commitments are to be recognized is important as it defines whether such liabilities count toward debt management limits. International public-sector accounting standards, such as International Public Sector Accounting Standards (IPSAS) 32, and international government financial reporting and statistics guidelines, such as IMF’s GFSM (2014), and IMF’s Guide on Public Sector Debt Statistics (2013) provide a framework for accounting and statistics of PPP transactions.

IPSAS 32 defines when PPP assets and liabilities should be recognized, assuming government is following accrual accounting standards. Assets and liabilities appear in government's balance sheet, if: (1) the government controls or regulates the services the operators must provide through a PPP agreement, and (2) the government control any residual interest in the asset at the end of the contract. Under this framework, the assets provided by the concessionaire are recognized, as well as its correspondent liabilities, either if the assets are funded by users-tariffs or by government. Regarding contingent liabilities, IPSAS 19 states that the expected cost of a contingent obligation should be recognized only if: (1) it is more likely than not (50%) that the event will occur; and (2) the amount of the obligation can be measured with sufficient reliability.

Based on the understanding that NSMOF is already accustomed to IPSAS, it is recommended that this framework be used for accounting for FCCL.

Appendix A PFRAM Risks and Mitigation Measures

PFRAM 2.0 User Manual proposes the following list of risks and associated potential mitigation measures to be considered when establishing the Project Risk Matrix:

1. Governance Risks

- **R1.** If the Public Investment Management (PIM) framework is not strong enough to guarantee that only priority projects are selected, a non-priority project might be implemented and absorb public resources, crowding out priority projects and leading to efficiency losses. To mitigate this risk, the public investment management framework should to be reinforced.
- **R2.** If the Ministry of Finance (MOF) is not able to effectively manage fiscal risks arising from this project, the risks might be amplified, and the probability and impact of other fiscal risks may be higher than they would be with adequate experience and capacity. To mitigate this risk, capacity in the fiscal risk management team in the MOF/Budgetary authority should be strengthened.
- **R3.** If project and contract information is not disclosed adequately, public concerns regarding the governance of the project/contract may arise, preventing users from acting as independent auditors of the project and/or exerting pressure to change the project. To mitigate this risk, the government should put in place a strong communication strategy engaging stake holders and creating ownership of the project, together with clear and standardized disclosure procedures for project information and, ultimately, contract disclosure.

2. Construction

R4. Risks related to land availability

- If the land is not already available, the government might face additional fiscal costs arising from possible compensation for construction delays. To mitigate this risk, (1) a complete assessment of land needs should be undertaken prior to contract closure; (2) the land acquisition process should be prepared; and (3) buffers and flexibility clauses should be included in the contract.
- If the project might be canceled due to lack of land, the government might face costs due to compensation to the private partner and the project redesign. To mitigate this risk, the government should ensure land availability at an early stage of the project cycle.
- If the private partner has to pay for the land acquisition, the private partner might not be able to cope with the cost; the government would be confronted with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should ensure land availability at an early stage of the project cycle or provide sufficient information regarding the need and value of the land to ensure that the private partner is able to cope with the cost.
- If the government has to pay for land acquisition, it may face additional fiscal costs arising from the acquisition and possible delays due to unavailability of land, which might lead to compensation payments for possible delays. To mitigate this risk, the government should (1) complete the assessment of land availability and cost prior to contract closure; and (2) build in buffers and flexibility clauses in procurement and contracts.

R5. Risks related to relocation of people and activities

- If people and/or activities are subject to relocation due to project implementation:
- If the government is paying for the relocation of people and/or activities and possible project delays, it will face the cost of relocation and compensation. To mitigate this risk, the government should undertake a timely assessment of relocation needs and engage in effective stakeholder management.
- If the private partner is paying for the relocation of people and/or activities and is unable to cope with cost, the government will be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should ensure timely assessment of relocation needs and provide sufficient information on relocation needs and costs.

R6. Risks related to land decontamination

- If the government has to pay for land decontamination and the need for decontamination arises, this will result in fiscal costs. To mitigate this risk, the government should undertake a timely assessment of the need and cost of decontamination.
- If the private partner has to pay for land decontamination and is not able to cope with the cost, the government may face the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should (1) ensure a timely assessment of decontamination needs; and (2) should provide sufficient information on land condition.

R7. Risks related to environmental and archeological issues

- If there is a possibility of facing environmental/archeological issues and the government has to pay for them, the government may face costs (1) for environmental and archeological issues; and (2) for compensation payments it might have to make to the private partner due to project delays. To mitigate this risk, the government should (1) specify environmental constraints prior to tender (including permits and licenses); and (2) develop a plan to deal with archeological findings.
- If there is a possibility of environmental/archeological issues and the private partner has to pay for them, the private partner might not be able to cope with the associated costs; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should (1) specify environmental constraints prior to tender (including permits and licenses); and (2) develop a plan to deal with archeological findings.

R8. Risks related to geological issues

- If there is a possibility of geological issues and the government has to pay for them, it may face compensation payments. To mitigate this risk, the government should (1) ensure a timely assessment of the geological conditions and their implications for the project; and (2) develop a plan to deal with these issues.
- If there is a possibility of geological issues and the private partner must pay for them, the private partner might not be able to cope with the costs related to these issues; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should (1) ensure a timely assessment of the geological conditions and their implications for the project; and (2) provide sufficient information regarding geological conditions.

R9. Risks related to licensing

- If the project is subject to licensing and the government pays compensation for project delays due to delayed licensing, the government may face the costs of compensation for project delays. To mitigate this risk, the government should ensure that subnational governments

are fully supportive of the project and that project deadlines are consistent with subnational regulations.

R10. Risks related to failures/errors/omissions in project design

- If the government can be held responsible for design failures, errors, or omissions, it may have to pay compensation for failures in designs presented to the private partner if the cost of design risks is not fully transferred to the private partner. To mitigate this risk, the tender process and the contract should ensure that the private partner takes full responsibility for the design.

R11. Risks related to inherent defects in assets transferred to the private partner

- If the government can be held responsible for any inherent defect in assets transferred to the private partner, it may have to pay compensation to the private partner for inherent defects and the costs of defect remediation. To mitigate this risk, the government should ensure a prior assessment of the quality of the assets to be transferred to the private partner, allowing for full pricing of identifiable defects.

R12. Risks related to changes in project design and scope required by procuring agencies

- If the government is responsible for compensation due to changes in design and scope required by procuring agencies, it may have to compensate the private partner for net costs due to changes in the design and/or scope. To mitigate this risk, the contract should include provisions allowing for changes in the design/scope of the project, up to a predetermined limit. In addition, the accountability framework to monitor project cost overruns should be reviewed and improved, as necessary.

R13. Risks related to changes in input prices

- If the government is responsible for compensation in the event of excess volatility in input prices, it may have to pay compensation for significant changes in input prices. To mitigate this risk, the volume and prices of the relevant inputs should be monitored, and sufficient funds should be allocated for expected compensation payments.
- If the private partner faces any excess volatility of input prices, the private partner may not be able to cope with significant changes; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. This risk can be mitigated by renegotiating the contract to reestablish financial equilibrium.

R14. Risks related to changes in nominal exchange rate

- If the government is responsible for compensation in the event of excess volatility in nominal exchange rate, it may have to pay compensation for significant increases. To mitigate this risk, the volume of foreign currency required and the exchange rate should be monitored, and sufficient funds should be allocated for expected compensation payments.
- If the private partner faces any excess volatility in the nominal exchange rate, the private partner may not be able to cope with significant changes; the government may be faced with the cost of project cancellation and retender, or renegotiation at higher fiscal cost. This risk can be mitigated by renegotiating the contract to reestablish financial equilibrium.

3. Demand

- If the PPP is **fully funded by the government**, and the **payments are linked to the volume** of service being provided:
- **R15.** If a cap is in place, the project may be confronted with much higher demand than included in the contract, which might require a costly renegotiation of the cap or require the government to purchase services from other providers. This risk can be mitigated by managing demand and possibly diverting demand to less costly alternative services.

- **R16.** If no cap is in place, the government may face higher than expected demand, leading to higher than expected costs. This risk can be mitigated by managing demand and possibly diverting demand to less costly alternative services.
- **R17.** If the project is suffering from insufficient demand, this may lead to project failure; the government may face costs for early termination or renegotiation. This risk can be mitigated by managing the demand or by renegotiating the contract to re-establish financial equilibrium.
- If the PPP is **fully funded by the government**, and the **payments are not linked to the volume** of service being provided:
 - **R18.** If demand is much higher than expected, the project may collapse, and the government may face the cost of early termination or contract collapse. This risk can be mitigated by managing or diverting demand, which could have a fiscal cost.
 - **R19.** If demand is much lower than expected, the project might be challenged; the government would not face additional fiscal costs, but it would pay for a service that is not/not fully being taken up by the user. This risk can be mitigated by managing demand by increasing demand or diverting it from other projects.
- If the project is either **totally user-funded or funded by a combination of government payments and user fees**:
 - **R20.** If users consider user fees—regulated or not—excessive relative to services received, this might have a bearing on the reputation of the government. This risk can be mitigated by effective communication.
 - **R21.** If the project is suffering from insufficient demand, this might lead to project failure, presenting the government with additional fiscal costs for early termination or renegotiation. This risk can be mitigated by managing the demand or by renegotiating the contract to re-establish financial equilibrium.

4. Operation & Performance

- **R22.** If the PPP agreement does not ensure that the government has full access to information on project performance, the government may be unable to effectively manage the contract. To mitigate this risk, the information-sharing requirements should be included in the contract and addressed in the legal framework.
- **R23.** If the contract does not clearly specify performance indicators, reference levels, and penalties or deductions, the government may face significant risks for not being able to address poor performance by the private partner. Failure to monitor project performance can lead to poor contract enforcement, which has administrative, efficiency, and political costs. It may also cause difficulties in applying project cancellation clauses and possibly in using step-in rights by financiers. To mitigate this risk, (1) key performance indicators should be included in the PPP agreement, with reference levels, linked to penalty mechanism (preferably automatic deductions from periodic payments); and (2) the core contract management team should be involved in contract negotiation to guarantee that performance indicators/levels are fair, measurable, and contractible, that is, able to be presented as evidence in court.
- **R24.** If the government does not have the capacity and procedures in place to monitor performance, it faces significant risks for not monitoring performance, which has administrative, efficiency, and political costs. To mitigate this risk, contract monitoring procedures should be in place when contracts are signed; a core contract management team should be assigned before contract closure and should be involved in contract negotiation to guarantee that contract management procedures are feasible and efficient.
- **R25.** Depending on whether and how the contract addresses the introduction of new technologies, technical innovation may create explicit and implicit fiscal risks for the government. To mitigate this risk, the duration of PPP agreements should not exceed the

expected life cycle of the technology used in the sectors, enabling the government to respond to technological innovation within a reasonable timeframe. For PPP agreements for projects including high and low innovation components, it can be appropriate to separate the two components—for example, a hospital building from the medical equipment—into separate contracts that might be of different duration or nature; the high-tech component might not be under a PPP agreement but might be undertaken as traditional public procurement.

- **R26.** If there is a scarcity of specialized human resources, this could lead to performance issues. To mitigate this risk, the government should reallocate human resources from other activities or plan capacity-building activities in advance.
- **R27.** If there is a risk of significant increases in labor costs, this may lead to project failure. To mitigate this risk, the government should plan capacity building activities ahead of time.

5. Financial

- **R28.** If the private partner is unable to obtain finance for project implementation, the government may face project failure **before implementation starts**, being forced to take over the project, re-tender, or redesign and re-tender the project. To mitigate this risk, the government should (1) undertake a proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project; (2) establish adequate qualification requirements; (3) consider bid bonds and performance bonds to discourage not suitable candidates from bidding for PPPs; and (4) require some degree of commitment by financing parties during tender for very sensitive projects in less developed financial markets
- **R29.** If the private partner is unable to refinance short-term financing instruments, the government may face project failure **after implementation starts**. In such cases, the government could (1) be required to pay compensation for capital investment, (2) take over the project, or (3) renegotiate an interim financial solution and then re-tender the project (possibly under worse cost conditions for government). To mitigate this risk, in addition to undertaking the measures listed under **R28**, the government may require bidders to obtain long-term financing for very sensitive projects.
- **R30.** If the private partner is unable to cope with excess volatility in interest rates, the government may face project failure **after implementation starts**. The government could (1) be required to pay compensation for capital investment, (2) assume the project, or (3) renegotiate an interim financial solution and then re-tender the project (possibly under worst cost conditions for government). To mitigate this risk, the government should undertake the measures listed under the **R28**.
- **R31.** If government contractually accepted some exchange rate risk, fiscal support may be needed in the form of compensation; it may have to pay compensation for excessive volatility of exchange rate. Also, if the private partner is unable to cope with excess volatility in the nominal exchange rate, the government may have to (1) renegotiate under stress or face project collapse and pay compensation for capital investment; or (2) assume the project and then re-tender under a different risk allocation scheme. To mitigate these risks, the government should ensure a proper consideration of exchange rate risk, which may lead to better risk sharing and proper use of hedging mechanisms.

6. Force Majeure

- **R32.** If there is no exact list of events to be considered force majeure tailored for the project, the government might have to pay compensation, adjust, or even terminate the contract due to force majeure events. Full or partial compensation by the government may even force the government to buy the assets or assume debt. To mitigate this risk, the scope of the force majeure events should be clearly stated in the contract, considering the legal requirements and specific project conditions. The contract should create incentives for the private partner to get insurance against some risks when insurance is available at a reasonable cost and to

effectively manage risks by designing assets and managing services in ways that minimize the probability of occurrence and size of impact.

7. Material Adverse Government Actions (MAGA)

- **R33.** If no clear definition of events to be considered MAGA are included in the contract, the government might have to pay compensation, adjust, or even terminate the contract due to acts and omissions by public entities, potentially forcing the government to buy the assets or assume debt. To mitigate this risk, contract managers should monitor the channels through which government's actions and omissions can affect the project during the life of the contract. Executive government actions and policy changes should be carefully evaluated by the contract manager and the fiscal management team to assess any impact on the PPP agreement.

8. Change Law

- **R34.** If the PPP agreement does not identify changes in law that do and do not require compensation by the government, the government might have to pay unforeseen compensation when adjusting or even terminating the contract due to changes in law. Changes in law might also benefit the private partner and, if not considered in the contract, increase the private partner's profit margin without benefitting the government. The cost of changes in law might include compensation payments, need to buy the asset or to assume debt, or loss of potential compensation paid by the private partner to the government. To mitigate this risk, the PPP agreement should clearly identify changes in law that trigger a compensation or the right to terminate and should define the consequences. In addition, legislation and public policies should be in place to efficiently deal with this risk.

9 Rebalancing of financial equilibrium

- **R35.** The legal framework may prescribe that the government is paying compensation and/or terminating the contract due to requirement to reinstate financial equilibrium. The government may have to pay compensation or cancel the project. To mitigate the risk from this, the PPP agreement should restrict its application to the cases of force majeure, MAGA, avoiding its application to a wider range of situations.
- **R36.** The government might have to pay compensation and/or terminate the contract due to contract guaranteeing a rate of return for the private partner. To mitigate this risk, clauses and expectations on a guaranteed level of project rate of return or the shareholder's rate of return should be avoided.
- **R37.** The government might have to pay compensation and/or terminate the contract due to excessive protection against some hardships. To mitigate this risk, hardship clauses, if needed, should be precise and strict. Alternative methods to reduce excessive private sector risks should be considered, including insurance, future markets, and other hedging mechanisms.

10. Renegotiation

- **R38.** If the government opens an uncontrolled renegotiation process, under information asymmetry and no competitive pressure, it might jeopardize economic efficiency by allowing the private partner to transfer to the government costs and risk that had originally been accepted by the private partner, with the fiscal impact depending on the government's ability to manage the renegotiation process. To mitigate this risk, the government should have a strategic view of PPP agreement management and create the capacity to renegotiate.

11. Contract Termination

- **R39.** If the government enters into an early termination process without clear knowledge of the consequences and procedures, the lack of clarity regarding consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; possibly preventing the government from cancelling non-performing

contracts, or generating incentives for governments to nationalize a project or assets without proper assessment of the cost of that decision. To mitigate this risk, contracts should include a clear definition of the reasons for early termination (for example, underperformance of the private partner, public interest, or force majeure) and should present its consequences in terms of transfer of assets and responsibilities, namely, financial compensation for capital investment. Compensation should vary according to the party responsible for the early termination.

- **R40.** If the government terminates the contract without a clear understanding of transfer processes, including financial consequences, then (1) it may need to pay for stock of inputs or outputs; (2) human resources issues may imply financial compensation or increased current expenditures; and (3) licenses needed to continued operation may create fiscal surprises. To mitigate this risk, contracts should include a clear definition of the termination process; all financial consequences and identified gaps in the contract should be resolved by having both parties sign transfer protocols detailing the rules.

Appendix B Risk Assessment Questionnaire

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Im pact	MITIGATION STRATEGY Is it in place?	PRIORI TY ACTIO NS
1	GOVERNANCE RISKS					
1.1	<p>Does the government have a strong public investment management framework (PIM) guaranteeing that this is a priority project? The government has a strong PIM</p>					
	No risks identified	<i>IF YES</i>				
	The government has a weak PIM					
RISK 1	<p>The PIM may not have been strong enough to guarantee this is a priority project</p>	<i>IF NO</i>	Depends on the strengths and weaknesses of the institutional framework	Efficiency loss. Implementing a non-priority project and/or not pursuing a priority project.	Reinforcing the public investment management framework.	
1.2	<p>Does the MoF have the experience and/or capacity to manage fiscal risks from complex, long-term projects during their whole life-cycle? The MoF has the experience and capacity to manage fiscal risks from large investment projects</p>					
	No risks identified	<i>IF YES</i>				
	The MoF lacks the experience and capacity to manage fiscal risks from large investment projects					

	<p>RISK 2 The MOF may not be able to effectively *manage fiscal risks arising from this project</p>	<p>IF NO</p>	<p>Depends on the strengths and weaknesses of the institutional framework</p>	<p>Risk amplification: probability and impact of other fiscal risks may be higher than would be with adequate experience and capacity</p>	<p>Creating capacity in the fiscal risks management team in the Ministry of Finance/Budgetary authority</p>
1.3	<p>Does the government disclose project and/or contract information? The government discloses project and/or contract information</p>				
	<p>No risks identified</p>	<p>IF YES</p>			
	<p>The government does not disclose project and/or contract information</p>				
	<p>RISK 3 Poor disclosure of project and contract information may create public concerns regarding the governance of the project/contract</p>	<p>IF NO</p>	<p>Depends on the strengths and weaknesses of the institutional framework</p>	<p>Efficiency loss. Lack of transparency may prevent users from acting as independent auditors of the project, and/or allow them to put pressure for changing the project.</p>	<p>Strong communication strategy to engage state holders and create ownership of the project. Clear and standardized disclosure procedures for project information and ultimately contract disclosure.</p>

2		CONSTRUCTION RISKS					
2.1	Risks related to land availability						
2.1	Is land already available to the private partner?						
	Land is already available to the private partner						
	No risks identified		<i>IF</i>				
			<i>YE</i>				
			<i>S</i>				
	Land is not available to the private partner		<i>IF</i>				
2.1.1	Is there a credible guarantee that land will be available for the project?		<i>NO</i>				
	RISK	Government's additional fiscal costs arising from possible construction delays due to untimely availability of land	<i>IF</i>		Uncertain fiscal cost from compensation for construction delays		Complete assessment of land needs prior to contract closure; prepare the land acquisition process; build in buffers and flexibility clauses in the contract
			<i>YE</i>				
			<i>S</i>				
	RISK	Project cancellation due to lack of land	<i>IF</i>		Costs due to compensation to private partner and project redesign		Ensure land availability at an early stage of the project cycle
			<i>NO</i>				

2.1.2	<p>Will the private partner have to pay for land acquisition?</p>				
	<p>RISK Private partner may not be able to cope with cost of land</p>	<p><i>IF YES</i></p>	<p>Cost of project cancellation and retender, or renegotiation with higher fiscal cost</p>		<p>Ensure land availability at an early stage of the project cycle, or provide sufficient information regarding the need and value of the land to ensure that private partner is able to cope with the cost of land.</p>
	<p>RISK Government's additional fiscal costs arising from land acquisition and possible delays due to unavailability of land</p>	<p><i>IF NO</i></p>	<p>Uncertain fiscal cost from land acquisition and compensation for possible delays</p>		<p>Complete assessment of land availability and cost prior to contract closure; build in buffers and flexibility clauses in procurement and contracts</p>
2.2	<p>Risks related to relocation of people and activities</p>				
2.2	<p>Are there people or activities subject to relocation due to project implementation? People or activities are not subjected to relocation</p>				

No risks identified		<i>IF NO</i>			
2.2.1	People or activities are subjected to relocation	<i>IF YES</i>			
	Will the private partner have to pay for relocation of people or activities?				
	RISK Government paying for relocation of people and/or activities and possible project delays	<i>IF NO</i>	Cost of relocation/compensation	Timely assessment of relocation needs; stakeholder management	
	RISK Private partner not able to cope with cost of relocation	<i>IF YES</i>	Cost of project cancellation and retender, or renegotiation with higher fiscal cost	Ensure timely assessment of relocation needs, and provide sufficient information on relocation needs and costs.	
2.3	Risks related to land decontamination				
2.3	Is there a need for land decontamination?				
	No need for land decontamination				
No risks identified		<i>IF NO</i>			
2.3.1	Need for land decontamination	<i>IF YES</i>			
	Will the private partner have to pay for decontamination?				
	RISK The government will face costs arising from land decontamination	<i>IF NO</i>	Fiscal costs from land decontamination	Timely assessment of need and cost of decontamination	

	RISK	Private partner is not able to cope with the cost of land decontamination	IF YE S	Cost of project cancellation and retender, or renegotiation with higher fiscal cost	Ensure timely assessment of decontamination needs, and provide sufficient information regarding land condition.
2.4	Risks related to environmental and archeological issues.				
2.4	Is there a possibility of facing environmental/archeological issues?				
	No risks from environmental and archeological issues				
	No risks identified		IF NO		
	There are risks from environmental and archeological issues		IF YE S		
2.4.1	Will the private partner have to pay for environmental and archeological issues?				
	RISK	Government costs arising from environmental or archeological issues and from compensation for project delays	IF NO	Government costs from environmental or archeological issues, and compensation to private partner due to project delays	Environmental constraints specified prior to tender (including permits and licenses); develop a plan to deal with archeological findings

	RISK	The private partner is not able to cope with the cost of environmental or archeological issues	IF YE S						Environmental constraints specified prior to tender (including permits and licenses); develop a plan to deal with archeological findings
2.5	Risks related to geological issues.								
2.5	Is there a possibility that the project phases geological issues?								
	No risks from geological issues								
	No risks identified		IF NO						
	There are risks from geological issues		IF YE S						
2.5.1	Will the private partner have to pay for geological issues?								
	RISK	The government will pay compensation for significant geological issues	IF NO						
	RISK	The private partner may not be able to cope with cost of geological issues	IF YE S						

2.6	Risks related to licensing (e.g. subnational).					
2.6	Will the project be subjected to licensing (e.g. subnational)? No risks from lack of licensing or project delays due to licensing					
	No risks identified	<i>IF NO</i>				
	There are risks from lack of licensing or project delays due to licensing					
	RISK The government pays compensation for project delays due to delayed licensing	<i>IF YES S</i>	Costs of compensation for project delays		Ensure that subnational governments are fully supportive of the project, and that project deadlines are consistent with subnational regulations.	
2.7	Risks related to failures/errors/omissions in project design.					
2.7	Can the government be hold responsible for design failures, errors, or omissions? No risks related to failures/errors/omissions in project design					
	No risks identified	<i>IF NO</i>				
	There are risks related to failures/errors/omissions in project design					
	RISK The government pays compensation for failures in designs presented to private partner	<i>IF YES S</i>	Costs of design risks not fully transferred to the private partner		The tender process and the contract should ensure that the private partner takes full responsibility for the design	

2.8	Risks related to inherent defects in assets transferred to the private partner.					
2.8	Can the government be held responsible for any inherent defect in assets transferred to the private partner? No risks related to inherent defects in assets transferred to the private partner					
No risks identified		<i>IF NO</i>				
There are risks related to inherent defects in assets transferred to the private partner						
RISK	The government pays compensation to the private partner for inherent defects	<i>IF YES</i>		Costs of defects remediation		Prior assessment of the quality of the assets to be transferred to the private partner, allowing for full pricing of identifiable defects.
2.9	Risks related to changes in project design and scope required by procuring agencies.					
2.9	Can the government be responsible for compensation due to changes in design and scope required by procuring agencies? No risks related to changes in project design or scope required by procuring agencies					
No risks identified		<i>IF NO</i>				
There are risks related to changes in project design or scope required by procuring agencies						

	RISK	The government pays compensation for changes in design and scope	<i>IF YE S</i>	Changes in net costs due to changes in design and/or scope of the project	Contract provisions allowing for changes in the design/scope of the project up to a limit (predetermined); improve accountability framework to monitor project cost overruns.
2.10 Risks related to changes in input prices					
2.10.		Can the government be responsible for compensation in the event of excess volatility in input prices? There are risks for the government related to changes in input prices			
	RISK	The government pays compensation for significant changes in input prices	<i>IF YE S</i>		
		No risks for the government related to changes in input prices	<i>IF NO</i>		
2.10.1		Will the private partner have to face excess volatility of input prices?			
		No risks identified	<i>IF NO</i>		
	RISK	The private partner may not be able to cope with significant changes in input prices	<i>IF YE S</i>		

2.11	Risks related to changes in nominal exchange rate.					
2.11	Can the government be responsible for compensation in the event of excess volatility in nominal exchange rate? There are risks for the government related to changes in nominal exchange rate					
	RISK The government pays compensation for significant increase in nominal exchange rate		IF YE S			
2.11.1	Will the private partner have to face excess volatility of nominal exchange rate?					
	No risks identified		IF NO			
	RISK The private partner may not be able to cope with excess volatility in nominal exchange rate		IF YE S			
3	DEMAND RISKS					
3.1	Is the PPP project fully funded by the government?					
3.1	The PPP is fully government-funded		IF YE S			
	<i>How are government payments to the private partner determined?</i>					
3.1.1	The government payments are linked to volume of services provided <i>If demand for services is higher than originally expected</i>					
3.1.1.1	Does the PPP contract set a cap for the government payments?					

	RISK	Facing demand much higher than the cap included in the contract	IF YES	Additional fiscal cost of renegotiating the cap; government cost of services delivered by other provider	E.g.: Manage demand (reduce or divert demand)
	RISK	Facing demand higher than originally expected	IF NO	The government pays for the provision of additional services	E.g.: Manage demand (reduce or divert demand if the cost of the alternative is lower).
	<i>If demand for services is lower than originally expected</i>				
3.1.1.2	Can the government influence demand?				
	RISK	Facing insufficient demand for services--when the government can influence demand--may lead to project failure	IF YES	Additional fiscal costs of early termination or renegotiation	E.g.: Manage demand (increase demand or divert demand from other projects to this one); renegotiate contract to re-establish financial equilibrium. In addition, mitigation measures will have fiscal costs.
	RISK	Facing insufficient demand for services--when demand is market determined--may lead to project failure	IF NO	Additional fiscal costs of early termination or renegotiation	E.g. Renegotiate contract to re-establish financial equilibrium

3.1.2	Government payments are not linked to the volume of the services provided			
	<i>If demand for services is higher than originally expected</i>			
	RISK	Project collapse due to demand much higher than originally expected		Additional fiscal cost for early termination if contract collapse
				E.g.: Manage demand (reduce demand, divert demand), which could have a fiscal cost
	<i>If demand for services is lower than originally expected</i>			
RISK	Project is challenged due to demand much lower than originally expected		No additional fiscal cost	E.g.: Manage demand (increase demand or divert it from other projects), which would have a fiscal cost
3.2	The PPP project is either totally user-funded, or funded by a combination of government payments and user fees	IF NO		
3.2.1	Are maximum user fees specified in the contract?			
RISK	Users may consider regulated user fees excessive relative to services received	IF YES	No additional fiscal cost	Good communication
RISK	Users may consider non-regulated user fees excessive relative to services received	IF NO	No additional fiscal cost	Good communication
3.2.2	Can the government influence demand?			

	RISK	Facing insufficient demand for services--when the government can influence demand--may lead to project failure	IF YE S	Additional fiscal costs of early termination or renegotiation	E.g.: Manage demand (increase demand or divert demand from other projects to this one); renegotiate contract to re-establish financial equilibrium. In addition, mitigation measures will have fiscal costs.
	RISK	Facing insufficient demand for services--when demand is market determined--may lead to project failure	IF NO	Additional fiscal costs of early termination or renegotiation	E.g. Renegotiate contract to re-establish financial equilibrium
4	OPERATIONAL AND PERFORMANCE RISKS				
4.1	Risks related to information access				
4.1	Does the contract give the government full access to information on project performance?				
	The contract gives to the government full access to project performance information				
	No risks identified		IF YE S		
	The contract does not give to the government full access to project performance information				
	RISK	The government faces significant risks for not having access to information on performance	IF NO		
4.2	Risks related to disclosure of information				

4.2	<p>Does the contract clearly specify performance indicators, reference levels, and penalties/deductions?</p> <p>The contract clearly specifies performance indicators, reference levels, and penalties and/or deductions</p>	<input type="checkbox"/>	<p><i>IF YE S</i></p>	4.2.1	<p>Does the government have the capacity/procedures in place to monitor performance?</p>	<input type="checkbox"/>	<p><i>IF YE S</i></p>	<p>No risks identified</p>	<p>RISK The government faces significant risks for not monitoring performance</p> <p><i>IF NO</i></p> <p>Poor contract enforcement has administrative, efficiency and political costs.</p> <p>Contract monitor procedures should be in place when contracts are signed. The core contract management team should be hired before contract closure and be involved in contract negotiation, to guarantee that contract management procedures are feasible and efficient.</p>
<p>The contract does not specify performance indicators, reference levels, and penalties and/or deductions</p>		<p><i>IF NO</i></p>							

	<p>RISK The government faces significant risks for not being able to punish the private partner for poor performance</p>		<p>Non-monitoring of project performance reduces contract enforcement. It has administrative, efficiency, and political costs. Potential difficulties in applying project cancellation clauses and possibly in using step-in rights by financiers.</p>	<p>Key performance indicators should be included in PPP contracts, with reference levels, linked to penalty mechanism (preferably automatic deductions from periodic payments). The core contract management team should be involved in contract negotiation to guarantee that performance indicators/levels are fair, measurable, and contractible (i.e., capable of being presented as evidence in a court).</p>
4.3	Risks related to technical innovation			
4.3	Does the contract address the introduction of technical innovation?			
	RISK Technical innovation may create explicit and implicit fiscal risks for the government	<i>IF YES</i>		
	RISK Technical innovation may create implicit fiscal risks for the government	<i>IF NO</i>		

4.4	Risks related to scarcity of specialized human resources					
4.4	Is there the possibility of scarcity of specialized human resources? Specialized human resources are adequate					
	No risks identified	<i>IF</i> <i>NO</i>				
	There are risks of scarcity of specialized human resources					
	RISK Performance issues due to scarcity of specialized human resources	<i>IF</i> <i>YE</i> <i>S</i>				
4.5	Risks related to significant changes in labor costs					
4.5	Is there the possibility of significant changes in labor costs? There are no credible possibilities of significant changes in labor costs					
	No risks identified	<i>IF</i> <i>NO</i>				
	There is a possibility of significant changes in labor costs					
	RISK Facing significant changes in labor costs-- with same technology and productivity-- may lead to project failure	<i>IF</i> <i>YE</i> <i>S</i>				
5	FINANCIAL RISKS					
5.1	Risks related to availability of funds					
5.1	Is the private partner able to obtain finance for project implementation? The private partner is able to obtain finance for project implementation					
	No risks identified	<i>IF</i> <i>YE</i> <i>S</i>				
	The private partner is unable to obtain finance for project implementation					

<p>RISK The private partner is unable to obtain finance for project implementation</p>	<p><i>IF NO</i></p>	<p>The government may face project failure before implementation starts, being forced to take over the project, re-tender, or redesign and re-tender the project.</p>	<p>Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project. Establishment of adequate qualification requirements, bid bonds and performance bonds will discourage adventures from bidding for PPPs. For very sensitive projects, governments with less developed financial markets may require some degree of commitment by financing parties during tender.</p>	
<p>5.2 Risks related to refinancing</p>				
<p>5.2</p>	<p>Is the private partner able to refinance short-term financing instruments? The private partner is able to refinance short-term financing instruments</p>	<p><i>IF YE S</i></p>		
<p>No risks identified</p>		<p><i>IF YE S</i></p>		

<p>The private partner is unable to refinance short-term financing instruments</p>	<p>RISK The private partner is unable to refinance short-term financing instruments</p>	<p><i>IF NO</i></p>	<p>The government may face project failure after implementation starts, and thus be required to pay compensation for capital investment, being forced to take over the project, or renegotiate an interim financial solution and then re-tender the project (possibly under worse cost conditions for government)</p>	<p>Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project. Establishment of adequate qualification requirements, bid bonds and performance bonds will discourage adventures from bidding for PPPs. For very sensitive projects, governments may require bidders to obtain long-term financing.</p>
<p>5.3 Risks related to excess volatility of interest rates</p>				
<p>5.3</p>	<p>Is the private partner able to cope with excess volatility of interest rates? The private partner is able to cope with excess volatility of interest rates</p>	<p><i>IF YES</i></p>		
<p>No risks identified</p>				
<p>The private partner is unable to cope with excess volatility of interest rates</p>				

	RISK	The private partner is unable to cope with excess volatility in interest rates	IF NO	The government may face project failure after implementation starts, so being required to pay compensation for capital investment, being forced to assume the project, or renegotiate an interim financial solution and then re-tender the project (possibly under worst cost conditions for government).	Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project. Establishment of adequate qualification requirements, bid bonds and performance bonds will discourage adventures from bidding for PPPs.
5.4	Risks related to excess volatility of nominal exchange rate				
5.4.1	Has the government accepted contractual responsibility for excess volatility of nominal exchange rate?		Yes		
	No risks identified		IF NO		
	RISK	Government paying compensation for excessive volatility of exchange rate	IF YES	If government contractually accepted some exchange rate risk, fiscal support may be needed in the form of compensation	Proper consideration of exchange rate risk may lead to better risk sharing and proper use of hedging mechanisms
5.4.2	Is the private partner able to cope with excess volatility of nominal exchange rate?				

	The private partner is able to cope with excess volatility of nominal exchange rate					
	No risks identified	<i>IF YE S</i>				
	The private partner is unable to cope with excess volatility of nominal exchange rate					
	RISK The private partner unable to cope with excess volatility in nominal exchange rate	<i>IF NO</i>		The government may have to renegotiate under stress, or face project collapse and being required to pay compensation for capital investment, having to assume the project and then re-tender under different risk allocation scheme		Proper consideration of exchange rate risk may lead to better risk sharing and proper use of hedging mechanisms
6	FORCE MAJEURE					
6.1	Projects are always exposed to force majeure risks					

<p>RISK</p>	<p>The government paying compensation, adjusting or even terminating the contract due to force majeure events</p>	<p>The exact list of events to be considered force majeure should be tailored for each project</p>	<p>Full or partial compensation by the government may even force the government to buy the assets or assume debt</p>	<p>The scope of the force majeure events should be clearly stated in the contract, considering the legal requirements and specific project conditions; the contract should create incentives for the private partner to get insurance against some risks (when insurance is available at a reasonable cost), and to effectively manage risks by designing assets and managing services in ways that minimize probability of occurrence and size of impact</p>
<p>7</p>	<p>MATERIAL ADVERSE GOVERNMENT ACTIONS (MAGA)</p>			
<p>7.1</p>	<p>Projects are always exposed to MAGA events (also known as "political force majeure")</p>			

RISK	<p>The government paying compensation, adjusting or even terminating the contract due to acts and omissions by public entities</p>	<p>a clear definition of events to be considered MAGA should be included in the contract</p>	<p>Compensation by the government may even force the government to buy the assets or assume debt.</p>	<p>Contract managers should monitor the several channels through which government' actions and omissions can affect the project; during the life of the contract, executive government actions and policy changes should be carefully evaluated (by the contract manager and the fiscal management team) for assessing impact on the PPP contract</p>
8	CHANGE IN LAW			
8.1	Projects are always exposed to changes in law			

	<p>RISK</p> <p>The government is paying compensation, adjusting or even terminating the contract due to changes in law</p>	<p>The PPP contract should identify changes in law that require compensation by government, and those that do not require compensation; changes in law that benefit the private partner should also be considered</p>	<p>Compensation by the government, or even the need to buy the assets or assume debt; change in law may also require the private partner to compensate government</p>	<p>Proper evaluation of the efficiency of legislation and public policies.</p>
9	REBALANCING OF CONTRACT FINANCIAL EQUILIBRIUM			
9.1	<p>Does the legal framework or contract provided for a mechanism of re-balancing financial equilibrium? No risks from the legal framework or contract requiring reinstatement of financial equilibrium</p>			
	No risks identified	<i>IF NO</i>		
	There are risks from the legal framework or contract requiring reinstatement of financial equilibrium			

	<p>RISK</p> <p>The government is paying compensation and/or terminating the contract due to requirement to reinstate financial equilibrium.</p>	<p><i>IF YES</i></p>	<p>The government is paying compensation or cancel the project.</p>	<p>If prescribed in the legal framework, the PPP contract should restrict its application to the cases of force majeure, MAGA, avoiding its application to a wider range of situations.</p>
9.2	<p>Does the contract provide for any kind of rate-of-return guarantee?</p> <p>No risks from contract guaranteeing a rate of return to the private partner</p>	<p><i>IF YES</i></p>		
	<p>No risks identified</p>	<p><i>IF NO</i></p>		
	<p>The contract guarantees a rate of return to the private partner</p>			
	<p>RISK</p> <p>The government is paying compensation and/or terminating the contract due to contract guaranteeing a rate of return for the private</p>	<p><i>IF YES</i></p>	<p>The government is paying compensation or cancel the project.</p>	<p>Avoiding clauses and expectations, on a guaranteed level of project rate of return, or shareholder's rate of return.</p>
9.3	<p>Does the contract include hardship clauses?</p> <p>No risks from contract including hardship clauses</p>	<p><i>IF YES</i></p>		
	<p>No risks identified</p>	<p><i>IF NO</i></p>		
	<p>The contract includes hardship clauses</p>			

		<p>RISK</p> <p>The government is paying compensation and/or terminating the contract due to excessive protection against some hardships</p>	<p><i>IF YE S</i></p>	<p>The government is paying compensation or cancel the project.</p>	<p>Hardship clauses, if needed, should be very precise and strict. Alternative methods to reduce excessive private sector risks should be considered: insurance, future markets, and other hedging mechanism.</p>
10	RENEGOTIATION				
10.1	Is the renegotiation of the contract a legal possibility?				
		<p>RISK</p> <p>Opening an uncontrolled renegotiation process, under information asymmetry and no competitive pressure</p>	<p><i>IF YE S</i></p>	<p>Opening a Pandora's Box, jeopardizing economic efficiency, by allowing the private to transfer to the government costs and risk that had originally been accepted by the private partner. The fiscal impact will depend on the government's ability to manage the renegotiation process.</p>	<p>Having a strategic view of PPP contract management and creating capacity to renegotiate are paramount.</p>
11	CONTRACT TERMINATION				
11.1	<p>Does the contract clearly define the reasons for early termination and their consequences?</p> <p>The contract clearly defines reasons and consequences for early termination.</p>				

No risks identified		IF YE S
RISK	Entering in early termination process without clear knowledge of their consequences and procedures	IF NO
The contract does not clearly define reasons and consequences for early termination.		<p>Lack of clarity on causes vis-a-vis consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; it can also prevent the government from cancelling non-performing contracts, or generate incentives for governments to nationalize a project or assets without proper assessment of the cost of that decision</p> <p>Contracts should include a clear definition of the reasons for early termination (e.g. under-performance of private partner, public interest, force majeure) and present its consequences, in terms of transfer of assets and responsibilities, namely financial compensation for capital investment; compensation should vary according to the party responsible for the early termination</p>
11.2	<p>Does the contract clearly define procedures for transfer of assets and responsibilities at the end of the contract?</p> <p>The contract clearly defines procedures for transferring assets and responsibilities</p>	IF YE S
No risks identified		IF YE S

The contract does not clearly define procedures for transferring assets and responsibilities					
RISK	Terminating the contract without a clear understanding of transfer processes, including financial consequences	<i>IF NO</i>	The government may need to pay for stock of inputs or outputs. Human resources issues may imply financial compensation or increased current expenditures. Licenses needed to continue operation may create fiscal surprises.	Contracts should include a clear definition of the termination process and all its financial consequences. Identified gaps in the contract should be solved by having both parties signing transfer protocols detailing the rules.	

Appendix C Legal Framework for Disclosure and Implications for PPP Disclosure

Legal Framework for Disclosure and Implications for PPP Disclosure

Article	Text	Implication
Constitution, 1999		
Article 39(1 and 2)	Freedom of expression is inviolable.	Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference, and own, establish and operate any medium for the dissemination of information, ideas and opinions. This allows the public to openly discuss and opine on PPPs.
Article 39(3)	Exceptions to access to information.	Protects against access to information in certain circumstances when that information was received in confidence, when disclosure could undermine the authority and independence of courts, or when disclosure could impose restrictions upon persons holding office under the Government of the Federation or of a State. This may prevent disclosure of some confidential information as it pertains to PPPs, including commercially sensitive information.
Freedom of Information Act, 2011		
Article 1	Right of access to information.	Provides right of any person to access or request information in the custody or possession of any public official, agency, or institution.

Article and 9	2(1-4) Maintenance of information.	A public institution should ensure it records, keeps, and maintains all information about its activities and operations to facilitate public access to such information. This information should be made available to the public through various means, including print, electronic and online sources, and at the offices of such public institutions.
Article 2(7)	Definition of public institutions.	Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, and all corporations and companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions. Note that this definition would apply to PPP project companies.
Article 4 and 6	Timeline for disclosure.	Requested information should be provided to the applicant, or denied (if justified), within 7 days. Extensions to the time limit can be exceptionally approved under certain circumstances.
Article and 20	7, 10, Denial of disclosure and penalties for non-disclosure	An applicant has the right to challenge a denial of information in Court. If a case of wrongful denial of information is proven, the defaulting officer or institution is liable to a fine of N500,000. Destruction of information is liable to a minimum of 1-year imprisonment.

Articles 11 to 19	Exceptions to right to information.	Access to information may be denied if such disclosure could impact law enforcement proceedings, facilitate the commission of an offense, or reveal trade secrets and commercial or financial information. Access to certain personal information, including professional client privileges may also be denied.
Article 28	Relationship to Official Secrets Act	Classified information under the Official Secrets Act may still be disclosed, subject to the exceptions on right to information laid out in the FOI Act.
Article 29	Reporting on access to information requests.	Each public institution shall submit an annual report to the Attorney General on access to information requests. The Attorney General shall then submit an aggregated report to the National Assembly.
Official Secrets Act, 1962		
Article 9	Classified material.	“Classified matter” means any information that is not to be disclosed to the public and whose disclosure would be prejudicial to the security of Nigeria.
Fiscal Responsibility Act, 2007		
Article 2	Powers of the Fiscal Responsibility Commission.	Commission has the power to i) compel any person or government institution to disclose information relating to public revenues and expenditure; ii) investigate any person for violating the Act; and iii) report any violations to the Attorney General for prosecution. This may allow disclosure of information relating to government commitments to PPPs.

Article 44(5)	Role of Debt Management Office	Debt Management Office shall maintain comprehensive, reliable and current electronic database of internal and external public debts, guaranteeing public access to the information. This may allow disclosure of information relating to government commitments to PPPs.
Articles 48-50	Fiscal transparency	FGN shall ensure that its fiscal and financial affairs are conducted in a transparent manner and ensure full and timely disclosure of all information relating to public revenues and expenditures and their implications for its finances. This includes the full publication of audited accounts and budget execution. This may allow disclosure of information relating to government commitments to PPPs.
ONDIPA Law, 2011		
Article 9(10)	Project pipeline and procurement information.	Requires ONDIPA to publish and periodically revise data on the investment status of the State. This provides the general principle of transparency and disclosure of project information.
Article 24(3)	Bidders and citizens shall have access to the tender process and commercially insensitive information.	Bid process must be made public in a fair, transparent, and timely manner, and all non-commercial information should be made available.
Article 53	The contracting entity shall provide information to stakeholders at all phases of a PPP project.	The contracting authority has an on-demand disclosure obligation.

Ondo PPP Policy, 2024		
Article 6	Procurement transparency.	Transparency is a core principle of Ondo State’s PPP program (along with competition and fairness), with a particular emphasis on the procurement process, to achieve value for money. ODSG will make procurement information publicly available, including the basis on which the successful bidder will be selected.
Ondo PPP Manual, 2024		
Section 2.6	Transparent, competitive procurement process.	PPP projects should always undergo a competitive bidding process to ensure competition and best value for money.
Annex 12	Treatment of confidential information during the procurement process.	The code of conduct for the Bid Evaluation committee recognizes the public's right to access to information in the interests of administrative justice. However, it does also define “privileged or confidential information” that should not be disclosed.
Ondo Public Procurement Law, 2020		
Article 43(2)	Equal information to bidders.	Under open competitive bidding the procuring entity offers equal simultaneous information and opportunity to all bidders.
Article 56 (1 and 2)	Confidentiality of bids.	Procuring entities shall not disclose information forwarded to them by bidders labelled as confidential. Confidential information contained in any bid concerning commercial, financial or technical information shall not be disclosed to any person not officially concerned with the procurement process.

Source: Improving Transparency and Accountability in Public-Private Partnerships: Disclosure Diagnostic Report, Ondo State, Nigeria, June 2021

Summary of Specific Disclosures for PPP projects

No.	Document	Content	Creator	Approver	Time (in calendar days where relevant)
Disclosure of information at project identification					
1.	PPP projects pipeline	List of projects approved for development including brief project description, contracting authority, sector, and estimated project cost	ONDIPA	ONDIPA	Within 30 days of approval for inclusion in the PPP project pipeline
2.	Basic project information	Project name Location Sector Contracting Authority Project value Project rationale Description of asset Services to be provided Estimated demand to be served annually Rationale for selecting the PPP mode Indicative investment size Pre-feasibility study report	CA	ONDIPA	Within 30 days of approval of the OBC
3.	Project progress tracking	A section on the web-based platform that will reflect actual dates of achievement of key milestones: Date of inclusion in the published projects pipeline Date of appointment of transaction advisors Date of OBC approval Date of procurement milestones, such as EOI, prequalification of bidders, RFP, selection of preferred and reserved bidder, date of issuance of FBC, date of FBC approval, and so forth Date of contract signing Date of financial close Beginning of construction End of construction Commencement of operation and maintenance Expiry of contract expiry	ONDIPA	NSPONDIP A / CA	Immediately after the information becomes available
Disclosure of information during project preparation					
4.	Project preparation documents	Strategic needs assessment, technical analysis, risk matrix, financial model, economic analysis, and management arrangement, and OBC	CA	ONDIPA	Within 30 days of approval by the NSPPPP Board.
Disclosure of information during procurement					
5.	EOI		CA	ONDIPA	Following approval and publication of EOI
6.	List of shortlisted bidders		CA	ONDIPA	As soon as pre-qualification shortlisting is completed, and pre-qualified bidders have been contacted
7.	RFP		CA	ONDIPA	Immediately after close of bids

8.	Announcement of selected bidder	Details of the preferred bidder	CA	ONDIPA	Immediately after approval
9.	FBC		CA	ONDIPA	Within 30 days of final approval
Disclosure of information following execution of PPP contract (commercial close)					
10.	Project Summary	Project scope and nature Parties to the PPP contract Government support Project value Tariffs and pricing Termination clauses Hand-back provisions Key performance indicators with agreed target levels	CA	ONDIPA	Within 30 days of execution of project contract (commercial close)
11.	Financial structure of project	Debt-to-equity ratio of the project company Debt and equity providers Senior debt/ bond financing Mezzanine funding and quasi-equity Government support	CA	ONDIPA	Within 30 days of financial close.
12.	Project documents	All non-confidential project documents including PPP contracts and agreements	CA	ONDIPA	Within 30 days of execution of project contract (commercial close)
13.	Renegotiations	Summary information on each renegotiation All non-confidential renegotiated PPP contracts and agreements	CA	ONDIPA	Within 30 days of signature of renegotiated contract
Performance disclosure throughout contract period					
15.	Performance Information	Performance of the project company on Key Performance Indicators (KPIs) against agreed targets (including information on construction milestones, key financial information and information on performance failures, if any) Audit reports Audited Financial Statements Private party reports Independent Engineer reports	CA	ONDIPA	Within one year of financial close, updated annually.