Sokoto State Government Fiscal Commitment and Contingent Liability Framework

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Acronyms / Abbreviations

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) 2021
IFI	International Financial Institutions
IPSAS	International Public Sector Accounting Standards
SSG	Sokoto State Government
SICL	Sokoto Investment Company Limited
SSIMP	Sokoto State Infrastructure Master Plan
SSPPA	Sokoto State Public Procurement Authority
SSMOF	Sokoto State Ministry of Finance
SSPPL	Sokoto State Public Procurement Law
LTFP	Long Term Fiscal Planning

MAGA	Material Adverse Government Actions
MDA	Ministry, Department and Agencies
MoF	Ministry of Finance
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	Sokoto 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	Sokoto State Public - Private Partnership Manual, 2023
UKNAIF	United Kingdom Nigeria Infrastructure Advisory Facility
VfM	Value for Money

1 Introduction

1.1 Purpose of developing an FCCL framework

A Fiscal commitment 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). Ringfencing 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 contracts 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. JSG currently has no specific framework in place for managing ongoing 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.

Section 6 Part I the Sokoto Investment Company Limited Law, 2016, provides a legal basis for the Sokoto Investment Company Limited (SICL) to issue this FCCL framework.

1.1.1 PPP project pipeline

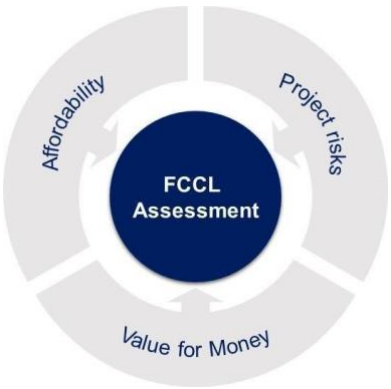
The Public-Private Partnership (PPP) landscape in Sokoto State is in its early development phase, marked by recent key frameworks like the 2024 PPP Policy and Manual, which aim to promote transparency and efficient project management.

A PPP pipeline refers to a curated list of projects identified by the state government as suitable for implementation through Public-Private Partnerships. These projects are slated for execution over a defined time frame, typically spanning at least five years. The purpose of the PPP pipeline is to prioritise and streamline the preparation, execution, and monitoring of these initiatives.

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.

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 JSG, updated based on the feedback and inputs received from the Client and JSG stakeholders.

2 FCCL Guidelines

2.1 Overview

2.1.1 Introduction

The Fiscal Commitment and Contingent Liabilities (FCCL) Framework for Sokoto State provides a methodological approach to evaluate and manage fiscal risks associated with Public-Private Partnership (PPP) projects. This framework is essential for maintaining fiscal responsibility and safeguarding the state's public finances against unforeseen risks arising from PPP agreements. By assessing direct liabilities and contingent risks early on, the Sokoto State Government can ensure that projects are implemented effectively and in a fiscally sustainable manner.

2.1.2 Current regulatory framework

Sokoto State's recent advancements in PPP regulations, including the introduction of the 2023 PPP Policy and Manual, have set the foundation for a more structured management of fiscal commitments. However, the current framework primarily focuses on direct payment obligations, with limited experience in managing contingent liabilities. This FCCL framework aims to fill this gap by establishing protocols for monitoring both direct and contingent liabilities throughout the project lifecycle.

Relevant Law	Relevant provisions and impact
Sokoto State Investment Promotion Law, 2016	The Law entrusts investment promotion and facilitation responsibilities to Invest Sokoto but it does not vest any powers on the Company to assume fiscal risks or liabilities on behalf of the government. Functions assigned to SICL under Section 13 (0), to "undertake any other task relating to investment promotion as may be directed by the Governing Council or the Governor" enables 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.
Annual Appropriation Law	The Appropriation Law captures government revenue and expenditure items. The law is expected to make provisions for Viability Gap Funds payable by the Sokoto State government each year
Sokoto State Audit (Amendment) Law, 2021	The law empowers the Auditor-General to, among other things, ensure that all monies appropriated or otherwise disbursed have been expended and applied for the "purpose for which the grants made by the Executive Council were intended". This ensures that items like Viability Gap Fund will be deployed as directed by the Appropriation Law.
PPP Policy 2024	Based on the requirements in the PPP Policy, SICL 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. The Policy further provides a framework for PPPs, including FCCL implementation.
PPP Manual 2024	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. 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.

2.1.3 Application of FCCL framework

All PPP projects in Sokoto State will be subjected to this Framework effective from December 27, 2024.

The framework may be updated and revised periodically to reflect the ongoing evolution of the PPP program.

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, the government assumes Fiscal Commitments (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 FC either a Contingent Liability (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 the 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 the Government. Such variations would fall under the purview of the Debt Management Department (DMD) in the State Ministry of Finance.

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.

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

Type of FCCL	**Examples**	**Illustrative examples**
Direct - Explicit Liabilities / FCs	● Up-front commitments such as contribution to capital investment, land acquisition costs, etc.	● 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
Type of FCCL	**Examples**	**Illustrative examples**

	● On-going commitments such as availability payments, output based subsidies, operational subsidies, and capital subsidy obligations	● 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	● State guarantees on project loans, minimum levels of demand / revenue guarantees, exchange rate risks, put call option agreements (PCOA), etc.	● 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)
	● Termination payment in case of concessionaire default, contracting authority default, or force majeure	
Indirect - Implicit liabilities	● 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.	● 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, often arising from unpredictable events or macroeconomic shocks that trigger contingent liability (CL) obligations. As such, CLs inherently represent fiscal risks. Even direct liabilities can be subject to fiscal risks if uncertain variables cause them to fluctuate.

In the context of PPP agreements, fiscal risks can extend beyond those embedded in direct or contingent liabilities, including liabilities of government-owned off takers often associated with power/energy projects such as the 1KW captive Renewable Energy Project. These additional risks may stem from provisions in the PPP agreement, such as project scope changes—allowed with government consent—that can alter the project's costs. Fiscal risks can also arise independently of the government's payment obligations to private partners, such as a decline in user-generated revenues intended to fund a project. While this reduction may not affect the government's fixed payments to the concessionaire, it can still have a broader fiscal impact.

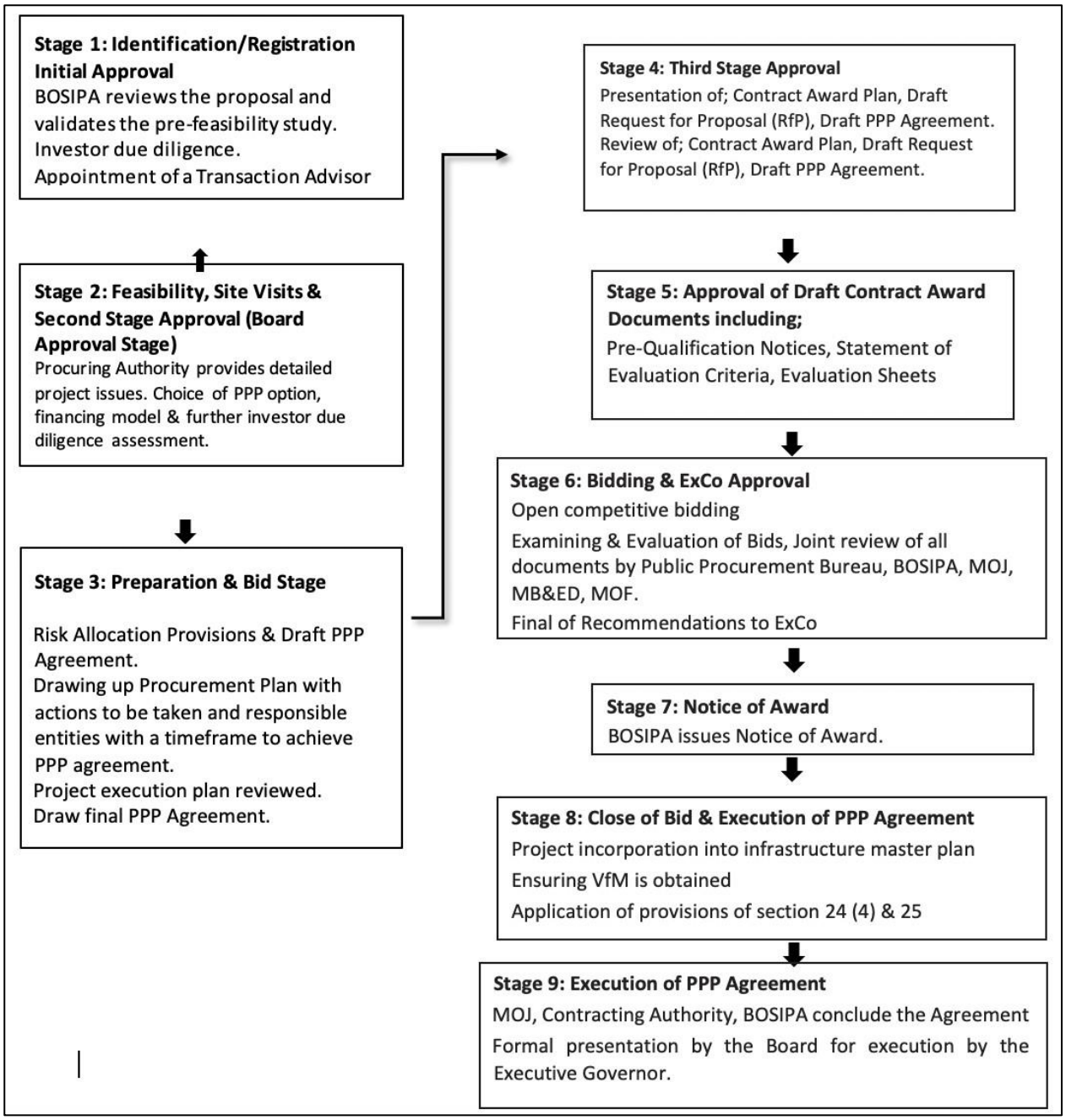
The key challenge in managing fiscal commitments (FCs) lies in the uncertainty surrounding outcomes, which complicates their estimation and oversight. Importantly, government commitments to PPPs are fundamentally different from public debt and require a distinct management approach. When a government borrows, it is obligated to repay the debt regardless of how the funds are utilised. In contrast, government liabilities in PPPs are typically structured as non-recourse or limited recourse obligations, linked to performance-based payments for services rendered or infrastructure provided.

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. 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



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

The general governance and institutional framework[1], including the specific functions that need to be undertaken to manage direct and contingent liabilities during the PPP project lifecycle, is shared as follows:

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 / SICL:** 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 / SICL / Project Delivery Team[2] (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.	**SICL Board / State Executive Council (ExCo)** Centralised approval to ensure that PPPs are focused on the government's policy priorities, represents value for money, and are consistent with good fiscal management. **MoF** is allocated the overall responsibility of approving the FCs and contingent liabilities before PPP approval by SICL board and State Exco. This precludes the launching of tender processes.
Accepting	To clarify the government's commitment to its liabilities (i.e.	**Contracting Authorities, SICL, DMD, MoF, MoJ:**

[1] This is subject to discussion with JSG stakeholders.

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

	financial obligations), and to ensure the executed contract is consistent with earlier analysis and approval	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, SICL, MoF:** To help the 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, Ministry of Budget and Economic Development, MoF:** 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).	**SICL, Ministry of Budget and Economic Development, DMD:** 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.
Mitigating	To help reduce the cost to the government of bearing contingent liabilities by reducing the likelihood or cost of the occurrence of those liabilities.	**Contracting Authorities, MoF, Ministry of Budget and Economic Development, DMD:** 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.

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.

2.4 **State Project Facilitation Fund (PFF) / Project Development Fund (PDF)**

In recognition of the critical importance of adequately funding the preparation stage of PublicPrivate Partnership (PPP) projects, the Sokoto State Government has established the State Project Facilitation Fund (PFF), also referred to as the Project Development Fund (PDF). This funding initiative is designed to bridge identified gaps in the existing legal framework and aligns with global best practices in government funding quotas for PPP projects.

The State Project Facilitation Fund (PFF) is dedicated to financing project development activities during the preparation stage of PPP projects. These activities encompass critical components such as feasibility studies, market strategies, project design, structuring, and tendering. The objective is to ensure that PPP projects are adequately prepared, meeting the up-front costs required for effective project development.

The State Project Facilitation Fund shall receive dedicated allocations distinct from the general funds of the Sokoto Investment Company Limited (**SICL**). Allocations to the Fund may be sourced from budget appropriations, grants, contributions, or any other approved funding sources.

Utilization of the Fund:

1. **Eligible Activities:**
   - ✔ The funds from the State Project Facilitation Fund are earmarked exclusively for activities related to the preparation stage of PPP projects.
   - ✔ Eligible activities include, but are not limited to, feasibility studies, market strategies, project design, structuring, and tendering.
2. **Transparent Accounting:**
   - ✔ The Company shall maintain a separate and transparent accounting system for the State Project Facilitation Fund, ensuring clear documentation of inflows and outflows.
3. **Accountability and Reporting:**

Periodic reports on the utilization of the Fund shall be submitted to the State Executive Council and made available to the public, fostering transparency and accountability.

3 FCCL Technical Guidance

3.1 Overview

The purpose of this technical guidance is to:

- Develop an analytical process to identify, assess, and monitor Fiscal Commitments and Contingent Liabilities (FCCL) throughout the lifecycle of PPP projects in Sokoto State.
- Provide a detailed methodology for implementing tools to manage FCCL, including preformatted tools for identifying and quantifying these liabilities.

3.2 FCCL Management during project development stage

The project development stage encompasses all activities involved in designing, preparing, and procuring a PPP project. The FCCL framework focuses on two key activities: (1) identifying and assessing fiscal commitments (FCs) and risks, and (2) evaluating affordability. These processes ensure that decision-makers in Sokoto State are equipped with the necessary information to make informed choices about PPP projects.

This section includes:

- The identification and evaluation of PPP fiscal risks using the Project Fiscal Risk Matrix (PFRM) and Project Fiscal Risk Register (PFRR) (Section 3.2.1).
- The calculation of FCCL using the FCCL Register and an assessment of affordability (Section 3.2.2).

3.2.1 Identification and evaluation of PPP fiscal risks through the PFRM

Risk allocation is central to structuring a PPP agreement. The guiding principle is to allocate each risk to the party best positioned to manage it. Risks can either be assigned to a specific party or shared between the government and private sector.

During the preparation of a PPP project, risk assessment and allocation must be completed. The Contracting Authority (CA), or the Transaction Advisors appointed by the Project Delivery Team (PDT) should create a risk matrix and risk register. This documentation will assess the likelihood and impact of each risk at the Outline Business Case (OBC) stage and should be periodically reviewed by the CA.

3.2.1.1 Rationale

Assessing the fiscal implications of a PPP agreement involves identifying and allocating project risks, defining the payment mechanism, and determining other financial obligations and rights of the parties involved. The necessary information is typically derived from the risk analysis and risk matrix included in feasibility studies. For active projects, the analysis will be based on a review of project agreements, letters of support, guarantee instruments, and other relevant documentation.

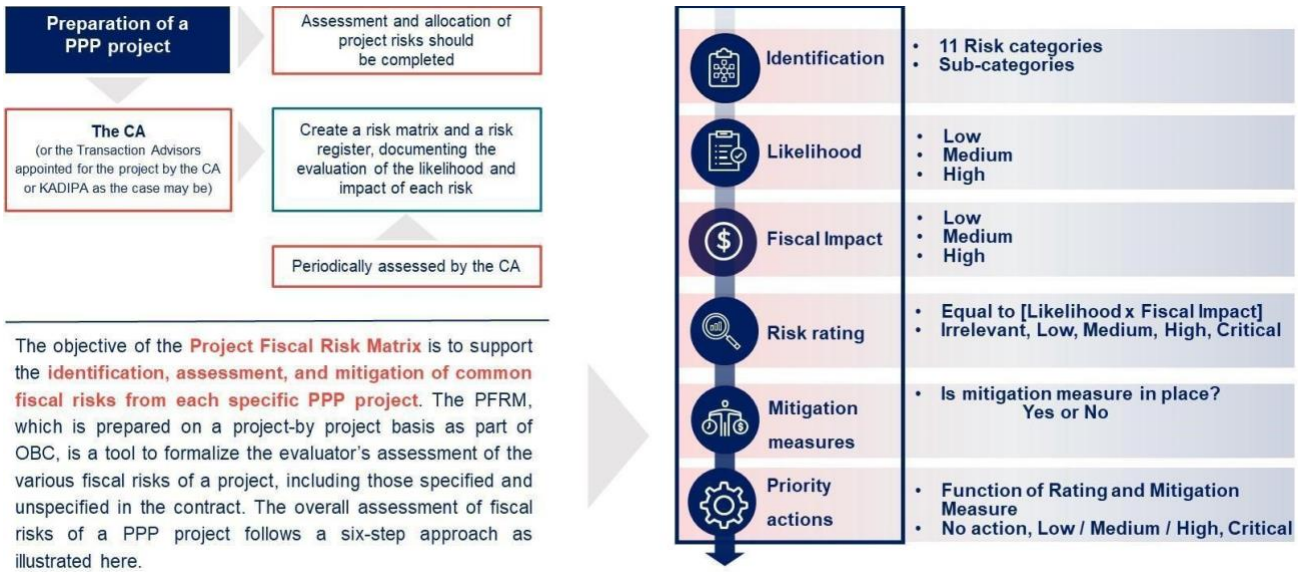
PPP project agreements, letters of support, and other forms of government backing provide the foundation for understanding FCCL arising from PPP projects. These documents outline the financial provisions, such as the payment mechanism, adjustments to availability payments, tariffs, guarantees, and conditions for termination payments. However, not all risks may be explicitly outlined, making the fiscal impact of some risks unclear. For instance, the government may assume revenue risk, paying the concessionaire an availability payment. While the contract may specify the terms of this payment, it might not detail the effects of actual demand falling short of projections. Therefore, the risk matrix complements the contract by identifying potential fiscal commitments and risks.

Additionally, fiscal risks can arise from risks not identified or clearly allocated in the contract. A common risk is that the private partner may lack the capacity to manage the project effectively, leading to financial difficulties or even project failure. Project finance arrangements with limited or no recourse to the borrower's assets require careful assessment of capital needs and private sector guarantees to ensure project execution is robust and risk is shared among multiple investors and insurers.

Changes to the project or contract—especially those initiated by the government—can also generate fiscal risks. In negotiations, the private partner often holds more leverage than the CA. The two most common sources of fiscal risks in this context are:

1. **Changes in project scope or policy**: These may result in cost overruns, which are transferred to the government when changes are made to the project design. Alternatively, renegotiation may be required if the government modifies the user-fee structure in response to lower-than-expected demand. It is crucial to understand how these changes impact FCCL and to conduct a cost-benefit analysis before making such adjustments.
2. **Exogenous changes**: These include technological advances, demographic shifts, or changes in consumer preferences. The government must proactively manage the consequences of these changes to mitigate their impact on projects and ensure they remain viable.

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 PFRR. 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

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

- 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
Category	*Event type*	*Govt/Private/ Shared*	*Probability of occurrence*	*Base Costs*	*Cost of occurrence*		*Measures and costs*
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 (PDT 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 materialising 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	• Very unlikely but not negligible • Would require highly unusual circumstances	• Likely and possible • Not unprecedented	• 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 materialise.

Firstly, the Project Officer (PO) / Accounting Officer (AO)[1] 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.

[1] As per the PPP Manual, 2023, the project planning stage initiated by SICL 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.

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 materialising 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.

Table 3-4: Fiscal impact assessment of identified risks

Scale	Value	Fiscal Impact
Low	< 0,1% of GDP or < 5% of CAPEX	• 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	• 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	• 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: Prioritisation 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 materialises.



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 predetermined 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 the 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	
Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority actions	Suggested Mitigation Strategy
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 PFRR 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 comprises 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 include:

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 analyse 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		
Availability payment adjusted permanently by macroeconomic parameters		- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Availability payment adjusted by contingent events		
Contingent liabilities		
Revenue guarantee	- Estimated annual cost over life of project - Estimated present value of payment stream for the period of agreement	- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Debt guarantee		
Guarantee over annual payment by stateowned enterprise, local or subnational government		
Termination payment	- Maximum value	
Other fiscal risks		

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 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 SICL 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.

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 JSG. 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 lengthbeyond 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
FC	**Cost**	**Indicator of fiscal affordability** (Including projections over PPP contract lengthbeyond medium-term horizon)
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 gatekeeping entities.

Each commitment or fiscal risk 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

SICL has the responsibility of publishing information on investment opportunities in the state, as well as information on the current PPP pipeline and ongoing PPP projects. SICL is also expected to develop and regularly update a web disclosure portal for PPP projects in the state.

In line with the above, the Ministry of Finance and SICL must **account for and report** on FCs of PPP agreements. The Ministry of Finance shall keep a centralised register of FCs of PPP transactions at the national or sub-national level. Proper reporting incentivizes the government to scrutinise 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 the 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 state MoF shall publish information on all FCs and contingent liabilities as a section in the "Report on Public Debt, Guarantees and other Financial Liabilities.

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
		2019	2020	2021	2022
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 3year budget**			**Present Value of Maximum exposure**
		2019	2020	2021	2022
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 the government is following accrual accounting standards. Assets and liabilities appear in the 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 controls 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 the 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 SSMOF 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 cancelled 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 re tender, 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 re tender, 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 conditions.

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 licences); 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 re tender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should (1) specify environmental constraints prior to tender (including permits and licences); 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 re tender, 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 re tender, 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 reestablish 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 form 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 specialised 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 labour 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 the 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 the government). To mitigate this risk, the government should undertake the measures listed under the **R28**.

- **R31**. If the 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 minimise 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 the 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 benefiting the government. The cost of changes in law might include compensation payments, the 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 the 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 the 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 jeopardise 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 nationalise 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) licences 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*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
1	**GOVERNANCE RISKS**						
1.1	**Does the government have a strong public investment management framework (PIM) guaranteeing that this is a priority project?**						**low**
	The government has a strong PIM						
	No risks identified	***IF YES***					
	The government has a weak PIM						
	The PIM may not have been strong enough to guarantee this is a priority project	***IF NO***	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.	
	RISK 1						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
1.2	**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						**low**
	No risks identified	***IF YES***					
	The MoF lacks the experience and capacity to manage fiscal risks from large investment projects						
	The MOF may not be able to RISK effectively manage fiscal risks 2 arising from this project	***IF NO***	Depends on the strengths and weaknesses of the institutional framework	Risk amplification: probability and impact of other fiscal risks may be higher than would be with adequate experience and capacity		Creating capacity in the fiscal risks management team in the Ministry of Finance/Budgetary authority	

1.3	**Does the government disclose project and/or contract information?**		**low**

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	The government discloses project and/or contract information					
	No risks identified	***IF YES***				
	The government does not disclose project and/or contract information					

	RISK 3	**Poor disclosure of project and contract information may create public concerns regarding the governance of the project/contract**	***IF NO***	Depends on the strengths and weaknesses of the institutional framework	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.		Strong communication strategy to engage stakeholders and create ownership of the project. Clear and standardised disclosure procedures for project information and ultimately contract disclosure.
2	**CONSTRUCTION RISKS**						

RISK IDENTIFICATION			**LIKELIHOOD**	**FISCAL IMPACT**	**RISK RATING Likelihood*Impact**	**MITIGATION STRATEGY Is it in place?**	**PRIORITY ACTIONS**
2.1	**Risks related to land availability**						
2.	**Is land already available to the private partner?**						**low**

1	Land is already available to the private partner					
	No risks identified	***IF YES***				
2.1.1	Land is not available to the private partner **Is there a credible guarantee that land will be available for the project?**	***IF NO***				
	Government's additional fiscal costs arising from possible RISK construction delays due to untimely availability of land	***IF YES***	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	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

						clauses in the contract	
	RISK	**Project cancellation due to lack of land**	***IF NO***		Costs due to compensation to private partner and project redesign	Ensure land availability at an early stage of the project cycle	
2.1.2	**Will the private partner have to pay for land acquisition?**						
	RISK	**Private partner may not be able to cope with cost of land**	***IF YES***		Cost of project cancellation and re tender, or renegotiation with higher fiscal cost	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	

	RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
					that a private partner is able to cope with the cost of land.	
	RISK **Government's additional fiscal costs arising from land acquisition and possible delays due to unavailability of land** ***IF NO***		Uncertain fiscal cost from land acquisition and compensation for possible delays		Complete assessment of land availability and cost prior to contract closure; build in buffers and flexibility clauses in procurement and contracts	
2.2	**Risks related to relocation of people and activities**					

2.2	Are there people or activities subject to relocation due to project implementation?						**low**

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	People or activities are not subjected to relocation						
	No risks identified	***IF NO***					
2.2.1	People or activities are subjected to relocation	***IF YES***					
	Will the private partner have to pay for relocation of people or activities?						**low**
	RISK	**Government paying for relocation of people and/or activities and possible project delays**	***IF NO***	Cost of relocation/compensation		Timely assessment of relocation needs; stakeholder management	

	Private partner not able to cope RISK with cost of relocation	***IF YES***	Cost of project cancellation and re tender, or renegotiation with higher fiscal cost		Ensure timely assessment of relocation needs, and provide sufficient information on relocation	

	RISK IDENTIFICATION		**LIKELIHOOD**	**FISCAL IMPACT**	**RISK RATING Likelihood*Impact**	**MITIGATION STRATEGY Is it in place?**	**PRIORITY ACTIONS**
						needs and costs.	
2.3	**Risks related to land decontamination**						
2.3	**Is there a need for land decontamination?**						**low**
	No need for land decontamination						
	No risks identified	***IF NO***					

2.3.1	Need for land decontamination **Will the private partner have to pay for decontamination?**	***IF YES***				**low**
	RISK	**The government will face costs arising from land decontamination**	***IF NO***	Fiscal costs from land decontamination	Timely assessment of need and cost of decontamination	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	**Private partner is not able to cope with the cost of land decontamination**	***IF YES***	Cost of project cancellation and re tender, or renegotiation with higher fiscal cost		Ensure timely assessment of decontamination needs, and provide sufficient information regarding land conditions.	

2.4	**Risks related to environmental and archeological issues.**						
2.4	**Is there a possibility of facing environmental/archeological issues?**						**low**
	No risks from environmental and archeological issues						
	No risks identified	***IF NO***					
	There are risks from environmental and archeological issues	***IF YES***					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.4.	**Will the private partner have to pay for environmental and archeological issues?**						**low**

1	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 licences); 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 YES***		Cost of project cancellation and re tender, or renegotiation with higher fiscal cost		Environmental constraints specified prior to tender (including permits and licences); develop a plan to deal with archeological findings

	RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.5	**Risks related to geological issues.**					

2.5	**Is there a possibility that the project phases geological issues?** No risks from geological issues						**low**
	No risks identified	***IF NO***					
	There are risks from geological issues	***IF YES***					
2.5.1	**Will the private partner have to pay for geological issues?** **RISK** **The government will pay compensation for significant *N* geological issues**	***IF NO***					**low**
	The private partner may not be *Y* RISK able to cope with cost of geological issues	***IF YES***					
2.6	**Risks related to licensing (e.g. subnational).**						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.6	**Will the project be subjected to licensing (e.g. subnational)?** No risks from lack of licensing or project delays due to licensing						**low**
	No risks identified	***IF NO***					
	There are risks from lack of licensing or project delays due to licensing						
	The government pays RISK compensation for project delays due to delayed licensing	***IF YES***		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?**						**low**

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	No risks related to failures/errors/omissions in project design						
	No risks identified	***IF NO***					
	There are risks related to failures/errors/omissions in project design						
RISK	**The government pays compensation for failures in designs presented to private partner**	***IF Y E S***		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 parner					**low**
	No risks identified	***IF N O***				

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	There are risks related to inherent defects in assets transferred to the private partner						
	Y **RISK**	***IF E S*** **The government pays compensation to the private partner for inherent defects**		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			**low**
	No risks identified	***IF NO***		

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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**	***IF YES***		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						**low**
	RISK	**The government pays compensation for significant changes in input prices**	***IF Y***				

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

		E S					
	No risks for the government related to changes in input prices	***IF N O***					
2. 10 .1	**Will the private partner have to face excess volatility of input prices?**						**low**
	No risks identified	***IF N O***					
	The private partner may not be able to cope with significant changes in input prices	***IF Y RISK E S***					
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?**						**low**
	There are risks for the government related to changes in nominal exchange rate						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	The government pays compensation for significant RISK increase in nominal exchange rate	*IF YES*					
2.11.1	Will the private partner have to face excess volatility of nominal exchange rate?						low
	No risks identified	*IF NO*					
	RISK The private partner may not be able to cope with excess volatility in nominal exchange rate	*IF YES*					
3	DEMAND RISKS						
3.1	Is the PPP project fully funded by the government?						

3.1	**The PPP is fully government-funded**	***IF YES***					

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	How are government payments to the private partner determined?						
3.1.1	**The government payments are linked to volume of services provided**						
3.1.1.1	***If demand for services is higher than originally expected***						
	:he 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	

	RISK IDENTIFICATION		**LIKELIHOOD**	**FISCAL IMPACT**	**RISK RATING Likelihood*Impact**	**MITIGATION STRATEGY Is it in place?**	**PRIORITY ACTIONS**
						the alternative is lower).	
3.	***If demand for services is lower than originally expected***						
1.1.	**Can the government influence demand?**						

2	**Facing insufficient demand for services--when the government can influence demand--may lead to project failure** **RISK**	***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 reestablish financial equilibrium. In addition, mitigation measures will have fiscal costs.

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	Facing insufficient demand for services--when demand is market determined--may lead to project failure **RISK**	***IF NO***		Additional fiscal costs of early termination or renegotiation		E.g. Renegotiate contract to reestablish financial equilibrium	

3.1.2	**Government payments are not linked to the volume of the services provided**					
	If demand for services is higher than originally expected					
	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
	If demand for services is lower than originally expected					

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

	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 userfunded, 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	

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 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 reestablish 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 reestablish financial equilibrium	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 YES***					
	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	**Does the contract clearly specify performance indicators, reference levels, and penalties/deductions?**						**low**

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	The contract clearly specifies performance indicators, reference levels, and penalties and/or deductions	*IF YES*					
4.2.1	**Does the government have the capacity/procedures in place to monitor performance?**						**low**
	No risks identified	*IF YES*					

RISK	**The government faces significant risks for not monitoring performance**	***IF NO***	Poor contract enforcement has administrative, efficiency and political costs.		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	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
				contract negotiation, to guarantee that contract management procedures are feasible and efficient.	

The contract does not specify performance indicators, reference levels, and penalties and/or deductions	***IF NO***	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

RISK	**The government faces significant risks for not being able to punish the private partner for poor performance**	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.	Key performance indicators should be included in PPP contracts, with reference levels, linked to the 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

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
						contractible (i.e., capable of being presented as evidence in a court).	
4.3	**Risks related to technical innovation**						
4.3	**Does the contract address the introduction of technical innovation?**						**low**
	RISK	**Technical innovation may create explicit and implicit fiscal risks for the government**	***IF YES***				

	RISK	Technical innovation may create implicit fiscal risks for the government	*IF* *N* *O*				

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
4.4	**Risks related to scarcity of specialised human resources**						
4.4	**Is there the possibility of scarcity of specialised human resources?** Specialised human resources are adequate						**low**
	No risks identified	*IF* *N* *O*					
	There are risks of scarcity of specialised human resources						
	RISK	**Performance issues due to scarcity of specialised human resources**	*IF* *E* *S*				
4.5	**Risks related to significant changes in labour costs**						

4.5	**Is there the possibility of significant changes in labour costs?** There are no credible possibilities of significant changes in labour costs						**low**
	No risks identified	***IF NO***					
	There is a possibility of significant changes in labour costs						

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	Facing significant changes in labour costs--with same RISK technology and productivity--may lead to project failure	***IF YES***					
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						**low**

	No risks identified	***IF YES***				
	The private partner is unable to obtain finance for project implementation					
RISK	**The private partner is unable to obtain finance for project implementation**	***IF NO***		The government may face project failure before implementation starts, being forced to take over the project, re-	Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

			tender, or redesign and retender the project.		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.	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

5.2	**Risks related to refinancing**					
5.2	**Is the private partner able to refinance short-term financing instruments?** The private partner is able to refinance short-term financing instruments					**low**
	No risks identified	***IFYES***				
	The private partner is unable to refinance short-term financing instruments					
	RISK **The private partner is unable to refinance short-term financing instruments**	***IFNO***	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	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		

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
				solution and then re-tender the project (possibly under worse cost conditions for government)		performance bonds will discourage adventures from bidding for PPPs. For very sensitive projects, governments may require bidders to obtain longterm financing.	
5.3	**Risks related to excess volatility of interest rates**						
5.3	**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						**low**
	No risks identified	***IF Y ES***					

	The private partner is unable to cope with excess volatility of interest rates					

	RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK **The private partner is unable to cope with excess volatility in *N* interest rates *IF* *O***		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					

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	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.	**Is the private partner able to cope with excess volatility of nominal exchange rate?**						**low**

2	The private partner is able to cope with excess volatility of nominal exchange rate						
	No risks identified	***IF YES***					
	The private partner is unable to cope with excess volatility of nominal exchange rate						

	RISK IDENTIFICATION		**LIKELIHOOD**	**FISCAL IMPACT**	**RISK RATING Likelihood*Impact**	**MITIGATION STRATEGY Is it in place?**	**PRIORITY ACTIONS**
RISK	**The private partner unable to cope with excess volatility in nominal exchange rate**	***IF NO***		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					

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

RISK	**The government paying compensation, adjusting or even terminating the contract due to force majeure events**	The exact list of events to be considered force majeure should be tailored for each project	Full or partial compensation by the government may even force the government to buy the assets or assume debt		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

	RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
					assets and managing services in ways that minimise probability of occurrence and size of impact	
7	**MATERIAL ADVERSE GOVERNMENT ACTIONS (MAGA)**					
7.1	**Projects are always exposed to MAGA events (also known as "political force majeure")**					

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
RISK	**The government paying compensation, adjusting or even terminating the contract due to acts and omissions by public entities**	a clear definition of events to be considered MAGA should be included in the contract	Compensation by the government may even force the government to buy the assets or assume debt.		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	

	RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
					impact on the PPP contract	
8	**CHANGE IN LAW**					
8.1	**Projects are always exposed to changes in law**					

RISK	**The government is paying compensation, adjusting or even terminating the contract due to changes in law**	The PPP contract should identify changes in law that require compensation by government, and those that	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		Proper evaluation of the efficiency of legislation and public policies.

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

			do not require compensation; changes in law that benefit the private partner should also be considered				
9	**REBALANCING OF CONTRACT FINANCIAL EQUILIBRIUM**						
9.1	**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						**low**
	No risks identified	***IF NO***					

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	There are risks from the legal framework or contract requiring reinstatement of financial equilibrium						
	RISK	**The government is paying compensation and/or terminating the contract due to the requirement to reinstate financial equilibrium.**	***IF YES***	The government is paying compensation or cancelling the project.		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.	
9.2	**Does the contract provide for any kind of rate-of-return guarantee?** No risks from contract guaranteeing a rate of return to the private partner						**low**
	No risks identified		***IF NO***				

	The contract guarantees a rate of return to the private partner						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK **The government is paying compensation and/or terminating the contract due to contract guaranteeing a rate of return for the private**	***IF YES***		The government is paying compensation or cancelling the project.		Avoiding clauses and expectations, on a guaranteed level of project rate of return, or shareholder's rate of return.	
9.3	**Does the contract include hardship clauses?** No risks from contract including hardship clauses						**low**
	No risks identified	***IF NO***					
	The contract includes hardship clauses						

	RISK	**The government is paying compensation and/or terminating the contract due to excessive protection against some hardships**	***IF YES***	The government is paying compensation or cancelling the project.		Hardship clauses, if needed, should be very precise and strict. Alternative methods to reduce

	RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
					excessive private sector risks should be considered: insurance, future markets, and other hedging mechanisms.	
10	**RENEGOTIATION**					
10	**Is the renegotiation of the contract a legal possibility?**					**low**

.1	**Opening an uncontrolled renegotiation process, under RISK information asymmetry and no competitive pressure**	***IF YES***	Opening a Pandora's Box, jeopardising 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.		Having a strategic view of PPP contract management and creating capacity to renegotiate are paramount.	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

11	**CONTRACT TERMINATION**					
11.1	**Does the contract clearly define the reasons for early termination and their consequences?** The contract clearly defines reasons and consequences for early termination.					**low**
	No risks identified	***IF YES***				
	The contract does not clearly define reasons and consequences for early termination.					
	Entering in early termination process without clear knowledge RISK of their consequences and procedures	***IF NO***	Lack of clarity on causes vis-avis consequences		Contracts should include a clear definition of	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS

			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 nationalise a project or assets without proper assessment of the cost of that decision	the reasons for early termination (e.g. underperformance 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	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
11.2	**Does the contract clearly define procedures for transfer of assets and responsibilities at the end of the contract?** The contract clearly defines procedures for transferring assets and responsibilities						**low**
	No risks identified	***IF YES***					
	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**	***IF N O***		The government may need to pay for stock of inputs or outputs. Human resources issues may imply financial compensation or increased current expenditures. Licences needed to continue operation may		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

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
		create fiscal surprises.		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 2(1-4) and 9	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 the government has a controlling interest, and private companies utilising 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 7, 10, and 20	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 the right to information.	Access to information may be denied if such disclosure could
		impact law enforcement proceedings, facilitate the commission of an offence, 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.
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.

Appendix D 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	SICL	SICL	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	SICL	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	SICL	SICL / 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	CA	SICL	Within 30 days of approval by the SICL Board.

		analysis, and management arrangement, and OBC			
Disclosure of information during procurement					
5.	EOI		CA	SICL	Following approval and publication of EOI
6.	List of shortlisted bidders		CA	SICL	As soon as prequalification shortlisting is completed, and prequalified bidders have been contacted
7.	RFP		CA	SICL	Immediately after close of bids
8.	Announcement of selected bidder	Details of the preferred bidder	CA	SICL	Immediately after approval
9.	FBC		CA	SICL	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	SICL	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 quasiequity Government support	CA	SICL	Within 30 days of financial close.
12.	Project documents	All non-confidential project documents including PPP contracts and agreements	CA	SICL	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	SICL	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	CA	SICL	Within one year of financial close, updated annually.
		Audited Financial Statements Private party reports Independent Engineer reports			