



EXPLANATORY NOTE TO PUBLISHED ON THE NATIONAL TREASURY WEBSITE

The National Treasury has drafted amendments to the National Treasury Regulation 16 and the Municipal Regulation 309, which govern PPPs. These amendments have now been published in the government gazette for public comment. A Comments Template Guideline on Amendments is provided for both the National Treasury Regulation 16 and the Municipal PPP Regulations for use when providing comments.

Government recognizes that public-private partnerships (PPPs) can be an important lever to deliver much-needed infrastructure, and ease pressure on stretched government finances given past successes in the implementation of PPPs in key sectors such as transportation. While the economic landscape has significantly changed over the years, the PPP regulatory framework has remained unchanged for close to 15 years. Despite the early success of the PPP model in South Africa, the number of new project transactions has declined over the past ten years, decreasing from an estimated R10.7 billion in 2011/12 to R7.1 billion in 2022/23.

The National Treasury commissioned a review of the current PPP regulatory framework, manuals, and guidelines to identify any existing bottlenecks in the process of preparing PPP projects and taking them to the market, and to formulate recommendations for necessary changes in the PPP value chain. The objective of the review was to undertake a critical analysis of the existing PPP Framework and the Manuals applicable to the national and provincial spheres of government falling under the PFMA, and of the PPP Framework and Guidelines applicable to the municipal sphere falling under the MFMA.

The PPP Framework Review was completed in 2021. Overall, the review findings indicate that there is no need for a complete overhaul of the PPP regulatory framework as there are good aspects that compare well with international benchmarks. However, the review presents recommendations on how to address identified gaps and shortcomings in the regulatory framework. The implementation process of the targeted recommendations with regards to changes in the regulatory and legislative framework has been initiated.

The amendments to the National Treasury Regulation 16 and the Municipal Regulation 309 are expected to reduce procedural complexity in PPP implementation by fixing regulatory gaps, streamlining institutional relationships across the PPP project cycle, making it easier for the private sector to engage with investment opportunities, strengthening fiscal risk governance and re-energising the development of a bankable pipeline of transactions to mobilise private capital.

The table below provides a summary of the draft legislative amendments, explains the purpose of the proposed amendment and the expected effect of the amendment.



SA PPP LEGISLATIVE REVIEW: TABLE SUMMARY OF DRAFT LEGISLATIVE AMENDMENTS

REGULATION / SECTION	PURPOSE OF PROPOSED AMENDMENT	EFFECT OF AMENDMENT
<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none"> The purpose of inserting a new definition of 'FCCL' (financial commitments and contingent liabilities) into NTR 16 is to provide a clear and standardised understanding of the term and its components within the context of PPPs. This amendment aims to augment the visibility of the requirement and importance of assessing the impact of FCCL in the design and procurement of PPP projects, and continually assessing and reporting thereon during the implementation of PPP projects. 	<p>As a result of the insertion of the new definition of 'FCCL' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> establish a common and well-defined reference point for stakeholders using the term, and promoting a shared understanding; and reduce ambiguity and potential misinterpretation in the language of the regulation, thereby enhancing compliance and adherence to established standards.
<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none"> The purpose of inserting a new definition of 'Innovation' into NTR 16 is to provide a clear descriptor in the context of the submission of an Unsolicited Proposals ("USPs"). 	<p>As a result of the insertion of the new definition for 'innovation' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> establish a common and well-defined reference point for stakeholders using the term, and promoting a shared understanding; and reduce ambiguity and potential misinterpretation in the language of the regulation, thereby enhancing compliance and adherence to established standards



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<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none">• The purpose of inserting a new definition of 'PPP Advisory Unit' into NTR 16 is to provide a clear descriptor of the functionary within National Treasury whose functions and powers are primarily to advise and support institutions in the procurement, implementation and management of PPPs.• This amendment aims to codify and enhance clarity of the role of the PPP Unit within the Government Technical Advisory Centre ("GTAC") in the procurement, implementation and management of PPPs.	<p>As a result of the insertion of the new definition for 'PPP Advisory Unit' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none">• establish well-defined roles and responsibilities of the PPP Advisory Unit, within the regulatory framework of PPPs; and• reduce ambiguity and potential misunderstanding between the PPP regulatory functionaries and PPP advisory functionary within National Treasury, thereby enhancing compliance with and adherence to established protocols in the procurement, implementation and management of PPPs.
<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none">• The purpose of inserting a new definition of 'proponent' into NTR 16 is to provide a clear descriptor of who should submit an Unsolicited Proposals ("USPs").	<p>As a result of the insertion of the new definition for 'proponent' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none">• establish a common and well-defined reference point for stakeholders using the term, and promoting a shared understanding; and• reduce ambiguity and potential misinterpretation in the language of the regulation, thereby enhancing compliance and adherence to established standards



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<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none"> The purpose of inserting a new definition of 'strategic sectors' into NTR 16 is to provide a clear descriptor of the sector which are considered in the context of the submission of an Unsolicited Proposals ("USPs"). 	<p>As a result of the insertion of the new definition for 'strategic sectors' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> establish a common and well-defined reference point for stakeholders using the term, and promoting a shared understanding of the se; and reduce ambiguity and potential misinterpretation in the language of the regulation, thereby enhancing compliance and adherence to established standards
<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none"> The purpose of inserting a new definition of 'total project cost' into NTR 16 is to provide a clear and standardised understanding of the term within the context of PPPs. This amendment aims to enhance clarity and consistency, in the interpretation of 'total project cost' in the context of determining the threshold for low value projects. 	<p>As a result of the insertion of the new definition for 'total project cost' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> establish a common and well-defined reference point for stakeholders using the term, and promoting a shared understanding; and reduce ambiguity and potential misinterpretation in the language of the regulation, thereby enhancing compliance and adherence to established standards.
<p>NTR 16 Regulation 16.1: Definitions</p>	<ul style="list-style-type: none"> The purpose of inserting a new definition of 'unsolicited proposal' or 'USP' 'into NTR 16 is to 	<p>As a result of the insertion of the new definition for 'unsolicited proposal' or 'USP' in NTR 16, the insertion is expected to, <i>inter alia</i>, have the following effects:</p>



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	provide a clear descriptor of what is meant by Unsolicited Proposals (“USPs”)	<ul style="list-style-type: none"> • establish a common and well-defined reference point for stakeholders using the term, and promoting a shared understanding; and • reduce ambiguity and potential misinterpretation in the language of the regulation, thereby enhancing compliance and adherence to established standards.
NTR 16 Insertion of Regulation 16.2bis: The Role of the PPP Advisory Unit	<ul style="list-style-type: none"> • The purpose of Regulation 16.2bis, 'Role of the PPP Advisory Unit' is to define and clarify the roles and responsibilities of the PPP Advisory Unit within the PPP project cycle. • This regulation aims to provide a clear outline of the roles and responsibilities of the PPP Advisory Unit in the context of PPPs. 	<ul style="list-style-type: none"> • As a result of the insertion Regulation 16.2bis, stakeholders will have a better understanding of the roles and responsibilities of the PPP Advisory Unit, within the object, functions and powers of the Government Technical Advisory Centre (GTAC) in relation to PPPs, helping in fostering greater accountability and adherence to established procedures in the procurement, implementation and management of PPP projects; and • This regulation will contribute to improved management, oversight, and efficiency within National Treasury in the execution of PPPs.
NTR 16 Regulation 16.4: Feasibility Study – Treasury Approval: I	<ul style="list-style-type: none"> • The purpose of the insertions to Regulation 16.4, 'Feasibility Study – Treasury Approval: I,' is to (i) make provision for a requirement for an FCCL assessment, and (ii) add to Regulation 16.4, a framework that drives accounting authorities and accounting officers to continue 	As a result of the insertion of the new regulations to Regulation 16.4, the insertion is expected to: <ul style="list-style-type: none"> • commence the assessment of FCCL at the feasibility study phase, as the first step to tracking the impact of FCCL on the project through to financial close and post financial close;



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	<p>with PPP procurement once commenced, and to dissuade abandonment of a procurement process when the relevant indicators for the project remain in place.</p> <ul style="list-style-type: none"> This regulation aims to provide clear guidelines (i) for the consideration of FCCL at feasibility study phase, and (ii) for the initiation and continuation of PPP projects based on specific indicators, ensuring responsible management of public funds and resources and commitment to closing out procurement process relating to PPPs. Introduce a level of (i) accountability by accounting authorities and accounting officers who are considering to abandon or suspend a PPP procurement process and (ii) engagement with National Treasury when PPP process is being abandoned or suspended. 	<ul style="list-style-type: none"> result in a more rigorous and accountable approach to procurement of PPP projects after obtaining TA I; and lead to (i) enhanced transparency and responsible decision-making by requiring PPP projects to continue once specific indicators are met, (ii) an increased level of scrutiny and approval-seeking when indicators change, and (iii) a system of accountability to National Treasury when procurement timelines are not met, and accounting to National Treasury in cases where procurement of a PPP project is to be abandoned. <p>Overall, the insertions to the regulation are anticipated to improve the efficiency and effectiveness of PPP project management, safeguarding public resources and promoting sound financial governance.</p>
NTR 16	<ul style="list-style-type: none"> The purpose of the insertion to Regulation 16.5.4, is to make provision for a requirement, 	<p>As a result of the insertion to Regulation 16.5.4, the insertion is expected to provide a continuation of the assessment of FCCL at the value for money</p>



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Regulation 16.5 Procurement: Treasury Approvals: IIA and IIB	<p>as part of the value for money report, to review and report on the project FCCL assessment at TA: IIB.</p> <ul style="list-style-type: none"> This regulation aims to provide clear guideline for the continued consideration of FCCL assessment at value for money report phase. 	<p>report phase, as the next step to tracking the impact of FCCL on the project through to financial close and post financial close.</p>
NTR 16 Regulation 16.5 Procurement: Treasury Approvals: IIA and IIB	<ul style="list-style-type: none"> The purpose of inserting a new regulation is to establish a mechanism for exempting projects falling below a certain money quantum threshold from the requirement to obtain Treasury Approval IIA and IIB. This regulatory addition aims to simplify and expedite the approval process for smaller projects by dispensing with the process of seeking Treasury Approval IIA and IIB. 	<p>As a result of the insertion of the new regulation, which exempts projects below a specified monetary threshold from Treasury Approval IIA and IIB the insertion is expected to, inter alia, have the following effects:</p> <ul style="list-style-type: none"> reduce the administrative burden on smaller PPP projects by eliminating the need for Treasury Approvals IIA and IIB; and expedite the approval process and accelerate the commencement of smaller PPP projects.
NTR 16	<ul style="list-style-type: none"> The purpose of the insertions to Regulation 16.6, 'Contracting PPP Agreements – Treasury Approval: III,' is (i) to make provision for a requirement for an FCCL assessment at TA: III 	<p>As a result of the insertion of the new regulations to Regulation 16.6, the insertion is expected to:</p>



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<p>Regulation 16.6 Contracting PPP agreements – Treasury Approval: III</p>	<p>phase, and continuing annual FCCL reporting during the term of the PPP agreement, and (ii) to make reference to the requirement for the institution to comply with section 66(2) or section 66(3) of the Public Finance Management Act, 1 of 1999.</p> <ul style="list-style-type: none"> This regulation aims to provide clear guidelines (i) for the consideration of FCCL at PPP agreement contracting phase, and annual reporting thereon for the project term, and (ii) when the institution is to seek the requisite approval in terms of section 66(2) or section 66(3) of the Public Finance Management Act, 1 of 1999, within the PPP regulatory framework, bearing in mind that this section 66(2) or (3) PFMA approval will only be granted after FSC/FCCL Committee has considered the PPP project. 	<ul style="list-style-type: none"> track the assessment of project FCCL on the institution from the feasibility study phase to the PPP agreement contracting phase; and make it plain, when in the PPP regulatory framework, that an institution is to seek the requisite approval in terms of section 66(2) or section 66(3) of the Public Finance Management Act, 1 of 1999. <p>Overall, the insertions to the regulation are anticipated to improve the efficiency and effectiveness of PPP project management, safeguarding public resources and promoting sound financial governance.</p>
<p>NTR 16</p>	<ul style="list-style-type: none"> The purpose of the insertions to Regulation 16.7, ‘Management of PPP Agreements’ is to 	<p>As a result of the insertion of the new regulations to Regulation 16.6, the insertion is expected to:</p>



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Regulation 16.7: Management of PPP agreements	make provision for a requirement for the continuing annual FCCL reporting during the term of the PPP agreement.	<ul style="list-style-type: none"> link annual reporting of project FCCL to the obligation of the institution, in terms of regulation 13.1.4, to report on all known contingent liabilities of the institution.
NTR 16 Regulation 16.8: Amendment and variation of PPP agreements	<ul style="list-style-type: none"> The purpose of amending Regulation 16.8 by inserting new sub-regulations is to impose an obligation on the accounting authority or accounting officer of an institution to assess and demonstrate the materiality of proposed amendments to PPP agreements. This regulatory amendment aims to ensure that only significant amendments necessitate approval from the relevant treasury. 	<p>As a result of the amendment of regulation 16.8 by introducing new sub-regulations to address the assessment of proposed PPP agreement amendments for materiality and treasury approval, the amendment is expected to <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> standardise the assessment and approach to determining the materiality of amendments to PPP agreements; streamline the decision-making and execution of PPP projects by ensuring that only substantive amendments to PPP agreements undergo the treasury approval process.
NTR 16 Regulation 16.10: Exemptions	<p>The purpose of amending regulation 16.10 by introducing new sub-regulations is to establish a process that:</p> <ul style="list-style-type: none"> manages the institution's application for exemptions from NTR 16; provides for the reporting obligations to the relevant treasury by the accounting authority or 	<p>As a result of the amendment of regulation 16.10 with the addition of new sub-regulations for exemption applications, periodic reporting, and re-application, the amendment is expected to <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> provide clarity with regard to application for exemptions from NTR 16, increasing the adaptability of regulatory compliance to NTR16;



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	<p>accounting officer of the institution that has been granted exemption; and</p> <ul style="list-style-type: none"> requires for the reapplication for exemptions at reasonable intervals. This regulatory amendment aims to enhance the flexibility and oversight of compliance with NTR 16 while promoting transparency and accountability. 	<ul style="list-style-type: none"> strengthen oversight and transparency through the obligation of the accounting authority or accounting officer to make periodic reports to the relevant treasury, promoting accountability of the institution with respect to its exemption; and; <p>establish a framework for institutions to reapply for exemptions at reasonable intervals, ensuring ongoing relevance and effectiveness of the exemption process.</p>
<p>NTR 16 Regulation 16.11: PPP Unsolicited Proposals (“USPs”)</p>	<ul style="list-style-type: none"> The purpose of the USP Regulations are to establish a discreet set of rules and guidelines governing unsolicited proposals in relation to PPP projects, separately from the existing National Treasury Practice Note regulating unsolicited proposals. The USP regulations serve the purpose of creating a specialised and separate regulatory framework that is tailored to process unsolicited PPP proposals. 	<p>The amendment of Treasury Regulation 16, to include regulations on USPs, is expected to, <i>inter alia</i>, have the following effects:</p> <ul style="list-style-type: none"> ensuring the regulation of the entire value chain in relation to unsolicited proposals for PPP projects, dictating the process from inception to completion; and overseeing and managing (i) the receipt of USPs, (ii) the activities following receipt of a USP, being assessment and acceptance, or assessment and rejection of a USP, (iii) the activities on acceptance of a USP relating to the development of a feasibility study meeting the NTR 16.4 requirements, and (iv) the post TA: I phase activities and the



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	<ul style="list-style-type: none"> The USP Regulations aim to provide a clear, and standardised regulatory framework for processing unsolicited proposals in relation to PPP Projects by, inter alia, (i) setting out who may submit a USP, (ii) to whom a USP is submitted and (iii) how USPs are processed, evaluated and determined, thus ensuring fairness, transparency, and efficiency in processing unsolicited proposals that originate from private sector parties for potential public PPP projects. 	<p>reintegration of a USP into the ordinary operation of Treasury Regulation 16 for an institution project.</p>
<p>Municipal PPP Regulations Regulation 1: Definitions "Preferred bidder"</p>	<ul style="list-style-type: none"> The purpose of inserting a new definition of 'preferred bidder' into the Regulation is to provide a clear descriptor in the context of the procurement process. 	<p>As a result of the insertion of the new definition for 'preferred bidder' in the Municipal PPP Regulations, the insertion expected to, inter alia, have the following effects:</p> <ul style="list-style-type: none"> establish a common and well-defined reference point for stakeholders using the term, promoting a shared understanding; and reduce ambiguity and potential misinterpretation in the regulation's language, thereby enhancing compliance and adherence to established standards.



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<p>Municipal PPP Regulations Regulation 1: Definitions "PPP Advisory Unit"</p>	<ul style="list-style-type: none"> • The purpose of inserting a new definition of 'PPP Advisory Unit' into the Regulations is to provide a clear descriptor of the functionary within National Treasury whose functions and powers are primarily to advise and support institutions in the procurement, implementation and management of PPPs. • This amendment aims to codify and enhance clarity of the role of the PPP Unit within the Government Technical Advisory Centre ("GTAC") in the procurement, implementation and management of municipal PPPs. 	<p>As a result of the insertion of the new definition for 'PPP Advisory Unit' in the Municipal PPP Regulations, the insertion is expected to, inter alia, have the following effects:</p> <ul style="list-style-type: none"> • establish well-defined roles and responsibilities of the PPP Advisory Unit, within the regulatory framework of municipal PPPs; and • reduce ambiguity and potential misunderstanding between the PPP regulatory functionaries and PPP advisory functionary within National Treasury, thereby enhancing compliance with and adherence to established protocols in the procurement, implementation and management of municipal PPPs.
<p>Municipal PPP Regulations Regulation 1: Definitions "total project cost"</p>	<ul style="list-style-type: none"> • The purpose of inserting a new definition of 'total project cost' into the Municipal PPP regulations is to provide a clear and standardized understanding of the term within the context of PPPs. • This amendment aims to enhance clarity and consistency, in the interpretation of 'total 	<p>As a result of the insertion of the new definition for 'total project cost' in the Municipal PPP Regulations, the insertion expected to, inter alia, have the following effects:</p> <ul style="list-style-type: none"> • establish a common and well-defined reference point for stakeholders using the term, promoting a shared understanding; and



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	project cost' in the context of determining the threshold for low value projects.	<ul style="list-style-type: none"> reduce ambiguity and potential misinterpretation in the regulation's language, thereby enhancing compliance and adherence to established standards.
Municipal PPP Regulations Regulation 3(1) Additional matters to be regulated in feasibility study	<ul style="list-style-type: none"> The purpose of inserting a new paragraph into Regulation 3(1) is to provide for additional assessments that are currently contained in Section 78(3) of the MSA. This amendment aims to enhance the required assessments pertaining to PPPs as a mechanism to provide a municipal service. 	The inclusion of this new paragraph in regulation 3(1) is expected to have <i>inter alia</i> , the following effect: <ul style="list-style-type: none"> pull from section 78(3) assessment(s) which are not immediately apparent from the Regulation.
Municipal PPP Regulations Regulation 4: Insertion of sub-paragraphs (5), (6) and (7) Procurement of public private partnership agreements	<ul style="list-style-type: none"> The purpose of the insertions to Regulation 4, 'Procurement of public private partnership agreements', is to add to Regulation 4, a framework that drives municipalities to continue with PPP procurement once commenced, and to dissuade abandonment of a procurement process when the relevant indicators for the project remain in place. 	As a result of the insertion of the new regulations to Regulation 4, the insertion is expected to: <ul style="list-style-type: none"> result in a more rigorous and accountable approach to procurement of PPP projects after obtaining TVR I; and lead to (i) enhanced transparency and responsible decision-making by requiring municipal PPP projects to continue once specific indicators are met, (ii) an increased level of scrutiny and approval-seeking when indicators change, and (iii) a system of accountability to National Treasury when procurement timelines are not met, and accounting to



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	<ul style="list-style-type: none"> This regulation aims to provide clear guidelines for the initiation and continuation of municipal PPP projects based on specific indicators, ensuring responsible management of public funds and resources and commitment to closing out procurement process relating to PPPs. Introduce a level of accountability by municipalities who are considering to abandon a PPP procurement process. 	<p>National Treasury in cases where procurement of a municipal PPP project is to be abandoned.</p> <p>Overall, the insertions to the regulation are anticipated to improve the efficiency and effectiveness of municipal PPP project management, safeguarding public resources and promoting sound financial governance.</p>
<p>Municipal PPP Regulations</p> <p>Regulation 4: Insertion of sub - paragraph (8)</p> <p>Procurement of public private partnership agreements</p>	<ul style="list-style-type: none"> The purpose of inserting a new regulation is to establish a mechanism for exempting projects falling below a certain money quantum threshold from the requirement to comply with sub regulation (1). This regulatory addition aims to simplify and expedite the approval process for smaller projects by dispensing with the process of complying with sub regulation (1). 	<p>As a result of the insertion of the new regulation, which exempts projects below a specified monetary threshold from complying with sub regulation (1) the insertion is expected to, inter alia, have the following effects:</p> <ul style="list-style-type: none"> reduce the administrative burden on smaller PPP by eliminating the need for complying with sub regulation (1).; and expedite the procurement process and accelerate the commencement of smaller municipal PPP projects.