



Guidelines 

MANAGEMENT

FISCAL COMMITMENTS AND
CONTINGENT LIABILITIES
(FCCL)



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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Acronyms / Abbreviations

AA	Accounting Authority
ALM	Asset Liability Management
AO	Accounting Officer
CL	Contingent Liabilities
FC	Fiscal Commitments
FCCL	Fiscal Commitments and Contingent Liabilities
FLC	Fiscal Liability Committee
FSM	Financing Support Mechanism
GDP	Gross Domestic Product
GTAC	Government Technical Advisory Centre
LTFP	Long-Term Fiscal Planning
MEC	Member of the Executive Council
NT	National Treasury
NTR	National Treasury Regulation
REIPPP	Renewable Independent Power Producer Programme
PFMA	Public Financial Management Act
PFRAM	PPP Fiscal Risk Assessment Model
PFRR	Project Fiscal Risk Register
PI	Procuring Institution
PIM	Public Investment Management
PPP	Public Private Partnership
PRM	Project Risk Matrix
PSC	Public Sector Comparator
PSR	Project Status Report
PT	Provincial Treasury
TA	Treasury Approval
ToR	Terms of Reference
VfM	Value for Money

Glossary

Terms defined in the PPP Manual are noted in grey.

Term	Definition
Affordability	means that the financial commitments to be incurred by an institution in terms of the PPP agreement can be met by funds – (a) designated within the institution’s existing budget for the institutional function to which the agreement relates; and/or (b) destined for the institution in accordance with the relevant treasury’s future budgetary projections for the institution;
Fiscal Commitments and Contingent Liabilities	Financial obligations that an institution expects will materialise in the normal course of a PPP project and in the form of contractual payment commitments under a PPP agreement.
Public-Private Partnership	means a commercial transaction between an institution and a private party in terms of which the private party – (a) performs an institutional function on behalf of the institution; and/or (b) acquires the use of state property for its own commercial purposes; and (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property; and (d) receives a benefit for performing the institutional function or from utilising the state property, either by way of: (i) consideration to be paid by the institution which derives from a revenue fund or, where the institution is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or (iii) a combination of such consideration and such charges or fees
Value for Money	means that the provision of the institutional function or the use of state property by a private party in terms of the PPP agreement results in a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.
Asset and Liability Management	The process of managing financial risks associated with assets and liabilities.
Project Fiscal Risk Register	A register that documents the evaluation of fiscal risks for a PPP project.

Institution, or Procuring Institution	means a department, a constitutional institution, a public entity listed, or required to be listed in schedules 3A, 3B, 3C and 3D to the Act, or any subsidiary of any such public entity.
Accounting Officer/ Accounting Authority	The PFMA assigns significant responsibilities and accountability to accounting officers/authorities to manage the resources of institutions in the public interest and as mandated. This applies equally to any PPP project and is set out in detail in Treasury Regulation 16 to the PFMA.
Financing Support Mechanism	A mechanism that provides financial support to PPP projects.
Long-Term Fiscal Planning	The process of planning for the long-term financial sustainability of a government institution.
Project Risk Matrix	A tool used to assess the risks associated with a PPP project. The PPP Manual contains a 'Standardised PPP Risk Matrix' for the range of categories of risk typically found in PPP projects

Part A Introduction

1. BACKGROUND

Public-Private Partnerships (PPPs) have a long history in South Africa, having been introduced in the country in 1998 with the N4 toll road project. Since then, 35 PPP projects have been completed, with a total estimated value of R91.4 billion.¹ The projects span sectors across the transport (10 projects), water and sanitation (2), correctional services (2), health (8), tourism (5), information technology (1), and office accommodation (7) sectors. This included 15 projects at national sphere, 16 projects at provincial sphere, and 4 projects at municipal sphere of government.

Government continues to recognise the strategic importance of PPPs as a critical lever to accelerate infrastructure delivery, ease immediate budgetary pressures and harness private sector financing and expertise. Despite this recognition, the PPP deal flow has declined significantly over the past decade, with only three projects having reached financial close between 2015 and 2025. This slowdown is partially attributable to the evolving economic landscape which has undergone substantial changes while the PPP regulatory framework has remained largely unchanged for nearly 15 years. This regulatory inertia has contributed to a misalignment between policy intent and implementation capacity, thereby constraining the effectiveness of PPPs in meeting infrastructure delivery goals.

National Treasury (NT) commissioned a comprehensive review of the PPP legal and regulatory framework in 2019 which was completed in 2021. The findings indicated that there was no need for a complete overhaul of the PPP legal and regulatory framework as there were good aspects that compare well with international benchmarks. Nonetheless, there were critical gaps and challenges that needed to be addressed to improve the PPP operational environment. The review recommended changes to improve the PPP policy, legal and regulatory framework; strengthen institutional arrangements; and improve the reporting of fiscal risks and contingent liabilities. The changes would drive higher confidence and investment in PPPs as well as greater private-sector participation. The implementation of recommendations was initiated in 2022.

The amendments to the National Treasury Regulation 16 (NTR 16) applicable to national and provincial spheres were gazetted on 07 February 2025 and took effect on 01 June 2025.² Amendments to Municipal Regulation 309 are expected to follow in due course.

One of the key amendments relate to introducing mechanisms to report, track, and manage Fiscal Commitments and Contingent Liabilities (FCCL).

¹ National Treasury Budget Review 2022. This excludes Independent Power Producers projects.

²

<https://www.treasury.gov.za/legislation/regulations/Amendments%20to%20PFMA%20Treasury%20Regulation%2016%20Notice.pdf>

2. CURRENT FCCL MANAGEMENT PRACTICES FOR PPP

The PPP manual (module 5) outlines that the application for Treasury Approval III (TA:III) include a section on contingent liabilities, which it explains as follows: “A contingent liability is a liability that accrues to the institution through the PPP agreement but only has an actual, financial impact if a future, uncertain event occurs. An example is compensation payable upon early termination of the PPP agreement.”

As a result, the NT practice for assessing PPP contingent liabilities has thus far focused on financial consequences arising from PPPs in the event of termination or potential defaults. NT with the support of the PPP Advisory Unit estimates contingent liabilities periodically and for example, Annexure D to 2025 Budget Review³ shows potential contingent liabilities arising from PPPs because of contracts terminating due to government default amounted to R6.2 billion in 2024/25 with national PPPs accounting the most contingent liabilities, followed by provinces and public entities.

The same Annexure also states:

... Increased private-sector participation highlights the need for the National Treasury to better understand and manage fiscal risks associated with externally financed public projects. Effectively identifying, assessing, managing and reporting fiscal risks and contingent liabilities have become essential for designing new project financing methods and monitoring and reporting on existing projects.

Therefore, whilst the current estimates provide useful information on contingent liabilities in terms of termination for default and force majeure, there is need for strengthening of the FCCL assessment methodology in the context of the recently published amendments to NTR 16 presented hereafter. There is also a need to undertake a more comprehensive fiscal risk assessment for PPP projects.

3. FCCL GUIDELINES OBJECTIVES

The legislative changes (refer section 7.2) enhance the management of fiscal risks and liabilities, supported by fiscal risk assessment of PPPs by the PPP Advisory Unit and NT.

These guidelines provide comprehensive guidance and tools to enable pragmatic and effective application of the regulations’ amendments aiming to improve the identification, management and reporting of fiscal commitments and contingent liabilities. The objective is to standardise the understanding and determination of FCCL across government, ensuring rigorous analysis and consistent compliance with recent amendments.

The FCCL tracking and reporting guidance is aimed at ensuring that budget authorities and accounting officers have sufficient information to make decisions on fiscal risks and contingent liabilities throughout the PPP project stages.

³ Annexure D: Public-Sector Infrastructure and Public-Private Partnerships Update

4. FCCL FRAMEWORK COMPONENTS

An FCCL Framework is a primary tool for fiduciary assurance⁴. A clear understanding of the FCCL associated with PPP projects is crucial for policy decisions and sound Public Financial Management (PFM). Ring-fencing government risk including FCCL is critical to effectively managing and reporting:

- 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 need to be carried out to safeguard the public finances from future fiscal risks.

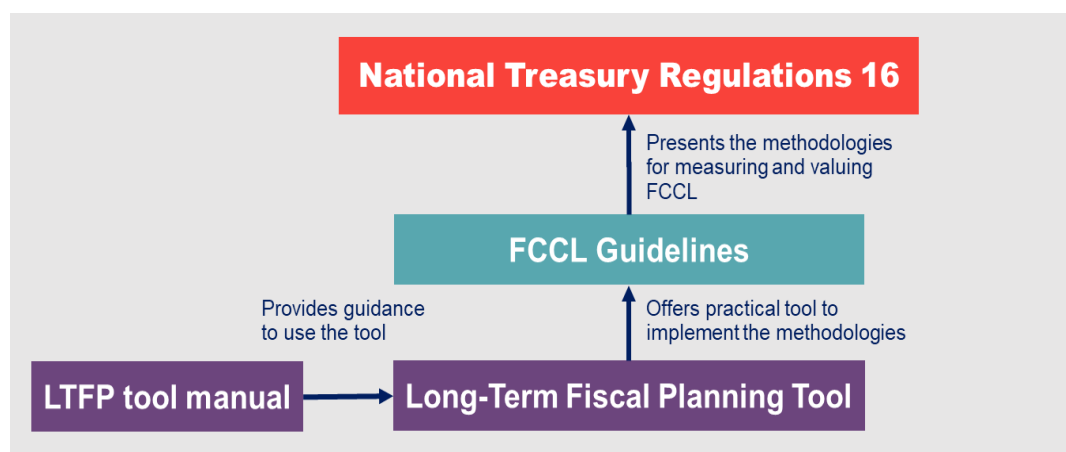
This FCCL Framework seeks to address this gap in the current PPP and PFM framework and provides a comprehensive framework to manage FCCL arising out of PPP projects.

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

- Affordability with respect to payment mechanisms and associated risks
- Project risk and the impact of FCCL on the fiscus
- Early warning on potential risks from PPP projects to enable mitigation
- Value for Money (VfM) compared to traditional procurement.

The FCCL Framework constitutes the NTR16 and accompanying documents as highlighted in Figure A-1, to set the mandatory rules applicable (presented in detail in Part C and D), user-friendly guidelines and practical tools to facilitate their implementation. The figure below presents the South African FCCL Framework.

Figure A-1 Overview of the FCCL Framework



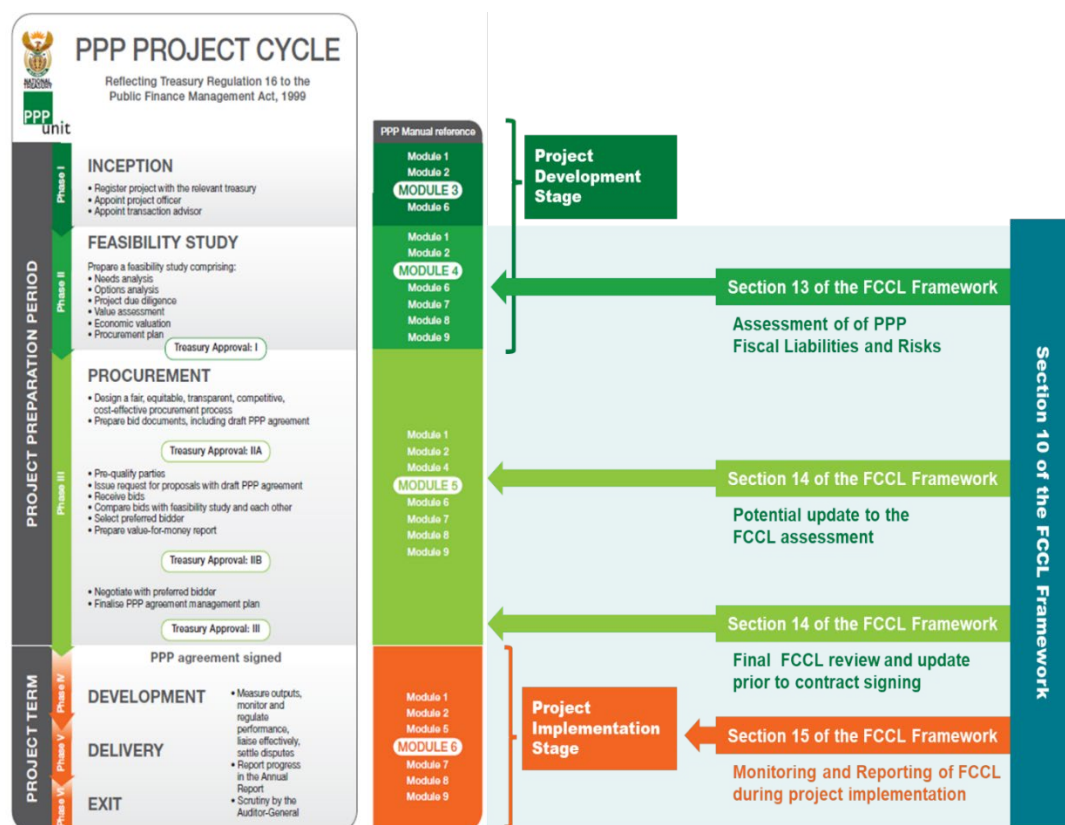
This document constitutes the FCCL Guidelines.

⁴ Fiduciary assurance refers to the processes put in place to ensure that the State manages public finances properly.

5. COORDINATION BETWEEN THE FCCL GUIDELINES AND THE PPP MANUAL

The figure below presents an overview of how the FCCL assessments, as presented in the FCCL Guidelines, are to be implemented in alignment with the PPP Manual.

Figure A-2 Coordination between PPP Manual and the PPP Guidelines



Part B Current Framework for FCCL

6. INSTITUTIONAL FRAMEWORK

Figure B-1: Current institutional Framework for PPP-PFM-FCCL



6.1. National Treasury – PPP regulator

NT serves as the primary regulator for PPPs in South Africa, as mandated under the NTR 16. It is responsible for registering PPP projects and granting approvals during the four phases described in Table B-1. The PPP regulator works closely with the PPP Advisory Unit to ensure a seamless submission process for project documents and approvals. One of NT's primary objectives as the PPP regulator is to ensure that a project represents a sound investment decision, demonstrates VfM and affordability, and provides sufficient risk mitigation for government.

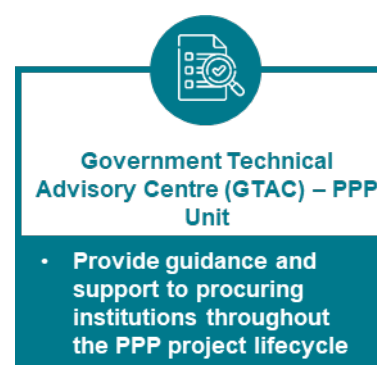


Table B-1: National Treasury Approvals Required for PPP Projects

S.NO.	APPROVAL	CONTENTS
1	TA:I (Treasury Approval: I)	Approval of the feasibility study
2	TA:II (Treasury Approval: IIA)	Approval of the procurement documentation to be obtained before issuing procurement documents
3	TA:IIB (Treasury Approval: IIB)	Approval obtained after bids have been received and evaluated for the approval of a preferred bidder
4	TA:III (Treasury Approval: III)	Final approval required before signing the PPP agreement. A contract management plan is also required to be submitted along with the application for TA:III

6.2. PPP Advisory Unit

The PPP Unit was established in 2000 as a sub-division of the Budget Office in NT. Until 2013, the regulatory and advisory functions for PPPs was performed by staff in the Budget Office. With the creation of Government Technical Advisory Centre (GTAC) in 2012, a split of functions was initiated. In 2013, the PPP Advisory Unit was moved from the Budget Office to the newly formed GTAC, an agency of NT. The role of the PPP Advisory Unit is to assist and provide guidance to Procuring Institutions (PIs) throughout the PPP project lifecycle as defined in the PPP Manual. This involves providing technical assistance on matters such as VfM, affordability, and risk sharing (technical, operational and financial) between the public and the private parties. Identifying projects and deciding whether to pursue these as PPPs is the responsibility of PIs. As such, the PPP Advisory Unit begins to engage on a PPP project once a PI registers it as a PPP potential project with NT. The PPP Advisory unit also provides recommendations memos to NT on PPP projects requiring approvals throughout the value chain.



6.3. Procuring Institutions

These are the institutions with assigned powers and functions to identify projects and decide which of these may be implemented as PPPs. PIs may be national and provincial departments or their entities⁵. PIs typically undertake an initial needs assessment internally. Then, the Accounting Officer (AO) or Accounting Authority (AA) of the PI registers the project as a PPP at NT.

With the assistance of PPP Advisory Unit, a PI then appoints a transaction advisor to support project development through the PPP cycle. This is in addition to any technical assistance provided by the PPP Advisory Unit. The PI's AO or AA is the accountable and authorised official as prescribed by NTR 16. The AA/AO is ultimately responsible for

⁵ While municipalities and their entities may be PIs, they are excluded because this Guideline is to give effect to provisions of NTR 16 applicable to provincial and national government.

ensuring that a PPP agreement is properly implemented, managed, enforced, monitored, and reported on. As soon as a project is registered with NT as a PPP, the PI is required to also appoint a Project Officer⁶. This Project Officer is responsible for assisting the PI to take the project through the PPP project cycle on time, on budget, and in compliance with NTR 16. The Project Officer reports to the Accounting Officer.

6.4. Provincial Treasury – PPP Units

PPP units in the various Provincial Treasury departments assist PIs in managing the PPP through its various development stages and providing an oversight role during the operational period of the close deal PPPs. They work with the senior project advisor⁷ allocated by the PPP Advisory unit to ensure project development adheres to the PPP Manual. This facilitates efficient approvals from NT on provincial PPPs.



Provincial Treasury – PPP Unit

- Provide assistance to PIs in managing the PPP life cycle through its various stages

6.5. Fiscal Liabilities Committee

Section 66 of the Public Finance Management Act 1999 (PFMA) states that departments and other public entities may not “borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that institution or the Revenue Fund to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction is authorised by this Act”.



Fiscal Liabilities Committee

- Assess government's contingent liabilities.
- Review credit risk reports on the guarantee portfolio and reports on compliance with guarantee conditions.

In the case of the national government, the Act authorises the Minister of Finance to enter into all such transactions and to authorise responsible Ministers to grant guarantees, indemnities, and securities if they have the written concurrence of the Minister of Finance.

A Guarantee Certification Committee was established in 1996 by NT to review all applications for guarantees and to make recommendations to the Minister of Finance on the issuance of guarantees, indemnities, securities, and letters of comfort.

In 2006, influenced in part by the potential size of the contingent liabilities associated with the Gautrain Rapid Rail Link project, NT reviewed the way it managed contingent liabilities in PPPs. One of the outcomes of the review was the reassignment of the responsibility to review Contingent liabilities of proposed PPPs from the PPP Advisory Unit to other divisions within NT.

Part of the rationale behind this change was recognition that the PPP Advisory Unit, on its own, was not best positioned to prudently assess whether the large, long-term liabilities associated with PPPs were fiscally acceptable to the government. Such

⁶ Project officer refers to a person identified by the accounting officer or accounting authority of an institution, who is capable of managing and is appropriately qualified to manage a PPP to which that institution is party from inception to the expiry or termination

⁷ Senior Project Advisor refers to a senior officer from PPP Advisory Unit appointed to provide advisory and technical support to provinces or municipalities on PPP projects.

judgment required a broader, more integrated view of state's financial position and risk exposure.

To reflect that change, the Guarantee Certification Committee was renamed the Fiscal Liability Committee (FLC or Committee) in November 2007. The Asset and Liability Management (ALM) division was assigned the responsibility to manage contingent liabilities with the support of other divisions including the Budget Office. The terms of reference (ToR) for the FLC were reviewed again in 2015 to include a comprehensive application process to be followed before requests can be reviewed by the Minister of Finance.

FLC's mandate includes:

- Considering applications for/advising the Minister on approvals policies/recommending conditions/monitoring adherence to the conditions set for guarantees, indemnities, securities, letters of comfort, borrowing limits and any other transaction that may expose the fiscus to contingent liabilities,
- Monitoring and reporting utilisation of approved transactions as well as claims and defaults that may expose the fiscus to contingent liabilities,
- Monitoring the volume and quality of and concentration risk in government contingent liability portfolio,
- Considering the quantum and monitoring government's contingent liabilities from PPP agreements and Renewable Energy Independent Power Producer Programme (REIPPP),
- Ensuring the implementation of adequate systems for recording, monitoring and management of all approved guarantees, indemnities, securities, letters of comfort, borrowing limits and any other transaction that may expose the fiscus to contingent liabilities.

Application requirements and procedures

The FLC's ToR provides for the minimum criteria to be met by departments and public entities when submitting requests for approval or concurrence with the issuance of guarantees, securities or indemnities. These include notably consistency with the government strategy, evidence of financial viability and adherence to guarantee conditions.

The FLC ToR also detail the application process describing steps for submission and consideration of requests as well as the type of information that needs to be included in the requests. Accordingly, a request must cover the following issues:

- Project description, proposal and rationale
- Financial analysis
- Impact of activity to be supported by guarantee of transaction on the application
- Industry / Sector analysis, broader government imperatives such as economic development, employment and economic growth
- Duration and legal implications if any
- Checklist demonstrating that minimum criteria have been met

If the minimum criteria have been met, the FLC technical team⁸ reviews and assesses the request in terms of:

- The mandate of the applicant applying for the guarantee and its financial position
- The capital investment programme and the funding requirement against which the guarantee will be applied
- Impact of the additional borrowings on the financial sustainability of the applicant in question, and
- The guarantee framework that gives the rules on how the applicant can use the guarantee and how to report back to the Minister.

FLC convenes quarterly and evaluates and deliberates all requests that meet the minimum criteria. Once approved the guarantee or transaction is recorded in the contingent liability register detailing the following information:

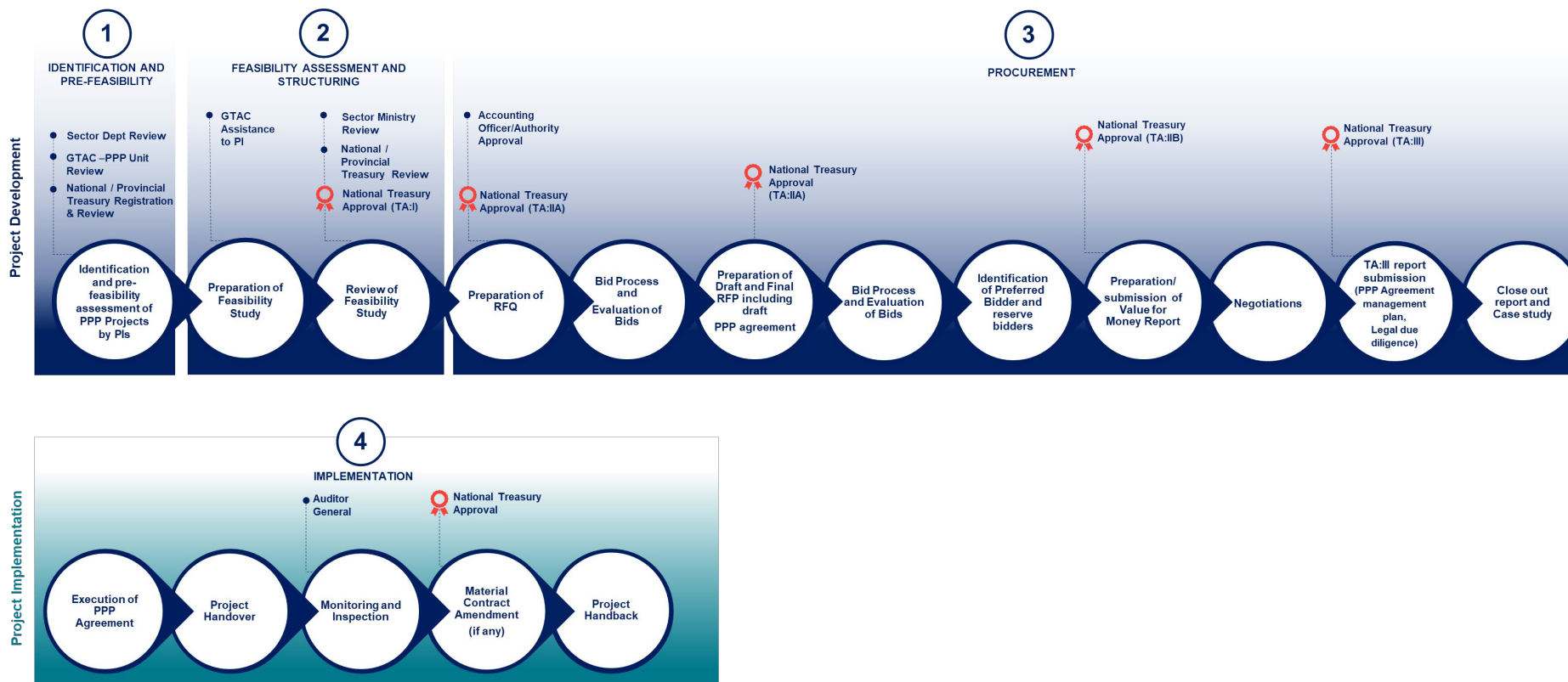
- The guarantee/transaction amount
- The issue and maturity dates
- Currency denomination
- Conditions attached to the transaction
- Relevant fees, including guarantee fees payable, and
- Administrative fees.

At present, PPP projects are subjected to FLC review and approval prior to TA:III approval.

Figure on the following page illustrates the roles, responsibilities and interplay between the procuring institutions, PPP Advisory unit, NT and other relevant institutions across a PPP project's lifecycle as per the PPP Manual.

⁸ The technical team should comprise of Chief Directorate: Sector Oversight, Chief Directorate: Governance and Financial Analysis, Chief Directorate: Strategy and Risk Management, and the responsible Chief Directorate in Public Finance Division

Figure B-2: PPP project lifecycle and approvals at national and provincial spheres of Government



7. REGULATORY FRAMEWORK

7.1. PPP governing regulations

The key governing regulations include NTR 16 for national and provincial spheres of government and the Municipal Regulations which were adopted in 2000 and 2005, respectively.

National Treasury Regulation 16 (NTR 16)

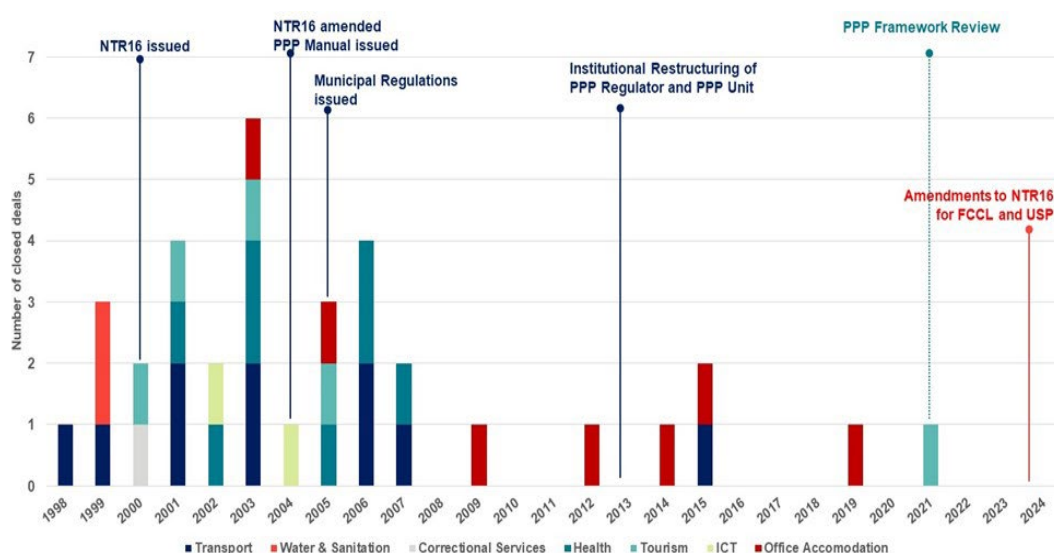
NTR 16, published under the Public Finance Management Act 1999 (PMFA) constitutes the primary regulations dealing with PPPs for national and provincial governments. It defines what constitutes a PPP, outlines the processes that must be followed from inception to procurement and defines institutional responsibilities. It sets out the approvals required at each stage of the project cycle; and the role of the AO as the focal point for a PPP project within a PI.

Municipal PPP Regulations, 2005

Municipal PPP Regulations, 2005, provides instructions to the application of the Municipal Finance Management Act 56 for PPPs. Section 4 of the regulations indicates how and on what the NT's Views and Recommendations are to be solicited.

Realising that complexity and gaps in the regulatory and institutional framework may be contributing to the decreased PPP deal flow in the last decade as illustrated in Figure B-3 (only three PPP projects have been completed since 2015).

Figure B-3: Evolution of PPP Regulatory and Institutional Framework, and completed PPP projects



The recent amendments to NTR 16 seek to provide for a clear and standardised framework for management of FCCL for PPP projects. These are detailed hereafter.

7.2. Amendments to NTR16 pertaining to PPPs

As of February 2025, the following amendments to NTR16 pertaining to FCCL have been gazetted.

Amendment of regulation 16.1

Regulation 16.1 of the Regulations is hereby amended—

(a) by the insertion after the definition of ‘affordability’ of the following definition:

“‘fiscal commitments and contingent liability’ or ‘FCCL’ mean, where—

(a) fiscal commitments, referring to financial obligations that an institution expects will materialise in the normal course of a PPP project and in the form of contractual payment commitments under a PPP agreement, and for which commitments the institution will require direct budget allocation, and which obligations do not depend on the occurrence of uncertain future events, even if the quantum of those commitments may fluctuate; and

(b) contingent liabilities, referring to—

(i) explicit conditional liabilities, assumed by an institution under a PPP agreement, arising on the occurrence of certain future known risk events and calculated in accordance with contractual mechanisms; or

(ii) implicit conditional liabilities, that would in practice fall on the institution, arising on the occurrence of other future known events but not expressly set out in a PPP agreement,

where the timing and the full impact is unknown at the time of contracting, and the institution will only have contractual obligation or residual duty as the grantor of the rights under the PPP Agreement, to make payments in respect of those liabilities if the event in question occurs.

Amendment of regulation 16.4

4. Regulation 16.4 of the Regulations is hereby amended—

(a) by the substitution for paragraph (c) of subregulation 16.4.1 of the following paragraph:

“(c) in relation to a PPP pursuant to which an institution may incur any fiscal commitments, demonstrates the affordability of the PPP for the institution, and assesses the FCCL impact of the project on the institution, through the submission of an FCCL assessment report;”;

Amendment of regulation 16.5

5. Regulation 16.5 of the Regulations is hereby amended—

(a) by the substitution for subregulation 16.5.4 of the following subregulation:

“16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury—

(a) demonstrating how the criteria of affordability, value for money and substantial technical, operational, and financial risk transfer were applied in the evaluation of the bids;

(b) demonstrating how these criteria were satisfied in the preferred bid;

(c) assessing the FCCL impact of the project on the institution, through the submission of an FCCL assessment report having regard to the FCCL assessment report submitted pursuant to regulation 16.4.1; and

(d) including any other information as required by the relevant treasury.”;

Amendment of regulation 16.6

6. Regulation 16.6 of the Regulations is hereby amended—

(a) by the substitution for paragraph (a) of subregulation 16.6.1 of the following paragraph:

“(a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational, and financial risk transfer, as approved in terms of regulation 16.4.2, or revised in terms of regulation 16.4.4, and assesses the FCCL impact of the project on the institution, through the submission of an FCCL assessment report, having regard to the FCCL assessment report submitted pursuant to regulation 16.4.1(c);” and

(b) by the addition of the following subregulation:

“16.6.3 The accounting officer or accounting authority of an institution may only conclude a PPP agreement after having complied with the section 66(2) or (3) of the Act, as may be applicable, and having obtained Treasury Approval: III.”.

Amendment of regulation 16.7

7. Regulation 16.7 of the Regulations is hereby amended by the addition of the following subregulation:

“16.7.4 During the term of any PPP Agreement, the accounting officer or accounting authority of an institution must report on the FCCL impact of the project on the institution in its annual report.”.

Amendment of regulation 16.8

8. Regulation 16.8 of the Regulations is hereby amended—

(a) by the substitution for subregulation 16.8.3 of the following subregulation:

“16.8.3 The accounting officer or accounting authority of the institution must assess whether the proposed amendment to the PPP agreement will result in substantial variations to the project parameters relating to affordability, project cost, scope, duration, risk transfer or other critical elements that may impact the overall value, risk, or performance of the PPP project, and if so, that will constitute a material amendment in respect of which the accounting authority or accounting officer must make representations to the relevant treasury substantiating the proposed amendment.”; and

(b) by the addition of the following subregulations:

“16.8.4 In order to motivate for the proposed material amendment, the accounting officer or accounting authority must make representations to the relevant treasury which must include, but is not limited to—

(a) An explanation of the proposed amendment, including its nature, purpose and potential impact on project parameters;

(b) an assessment of the anticipated variations to project parameters;

(c) a justification for the proposed material amendment, including the reasons for the change and the expected consequences to the project or the public interest;

(d) a re-valuation of the value for money report to assess the impact of the changes on the project value for money assessment, and a re-evaluation of the FCCL assessment report to assess the impact of the changes on the project FCCL; and

(e) a risk assessment outlining potential risks associated with the material amendment and proposed risk mitigation measures.

16.8.5 The relevant treasury may, with conditions, approve the material amendment, in terms of regulation 16.8.2, only upon receiving and considering the motivation of the accounting officer or accounting authority of the institution for the proposed material amendments in accordance with regulation 16.8.4.

16.8.6 If the amendments are not material and do not require approval of the relevant treasury in terms of regulation 16.8.1, the accounting officer or accounting authority of an institution must promptly inform the relevant treasury of the amendments and the impact of the amendments to the project parameters, referred to in regulation 16.8.2, and submit a report on the impact on the value for money of the project following the amendments. Upon

submission of the report, the relevant treasury may require the institution to submit a report on the FCCL impact following the amendments.”

Amendment of regulation 16.10

9. Regulation 16.10 of the Regulations is hereby amended by the addition of the following subregulations:

“16.10.2 The relevant treasury may, upon receipt of an application in terms of regulation 16.10.1, request the institution to submit such additional information to enable the relevant treasury to decide on the application.

16.10.3 If an institution obtains a general exemption in terms of regulation 16.10.1—

(a) The terms and conditions must specify that the exemption is applicable for a defined period and will be subject to periodic reporting by the accounting officer or accounting authority to the relevant treasury and the periodic assessment and review of the exemption by the relevant treasury, for the duration of the exemption; and

(b) the accounting officer or accounting authority must re-apply for the general exemption at such intervals as determined by the relevant treasury, to assess the continued need or justification of the general exemption and ensure ongoing compliance by the institution with the terms and conditions upon which the exemption was granted in terms of regulation 16.10.1.”

The effects and aim of the amendments, as outlined in the explanatory note published on the National Treasury website on February 19, 2024, are summarised below:

The insertion into **Regulation 16.4** is expected to:

- 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; resulting 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 the National Treasury when procurement timelines are not met, and reporting to the National Treasury in cases where procurement of a PPP project is abandoned.

The insertion into **Regulation 16.5.4** is expected to:

- extend FCCL assessment into the VfM assessment phase, ensuring continuous monitoring of FCCL.

The insertion into **Regulation 16.6** is expected to:

- track the assessment of project FCCL from the feasibility study phase to the PPP agreement contracting phase; and
- make it clear, under the PPP regulatory framework, that an institution should obtain approval under the terms of section 66(2) or section 66(3) of the Public Finance Management Act, 1 of 1999.

The insertion into **Regulation 16.7** is expected to:

- link annual FCCL reporting to an institution's broader contingent liability reporting obligations under Regulation 13.1.4⁹.

The insertion into **Regulation 16.8** is expected to:

- standardise the assessment and approach to determining the materiality of amendments to PPP agreements and;
- streamline the decision-making and execution of PPP projects by ensuring that only substantive amendments to PPP agreements undergo the treasury approval process.

Overall, these insertions are anticipated to **improve the efficiency and effectiveness of PPP project management, safeguarding public resources and promoting sound financial governance.**

⁹ Regulation 13.1.4 states that the accounting officer must report on all known contingent liabilities of the department in its annual report.

Part C Overview of FCCL Principles and Governance

8. INTRODUCTION

The FCCL Guidelines are a dynamic document which may be refined and revised periodically as the PPP program evolves. They:

1. provide an overview of how PPPs give rise to **fiscal commitments** (FCs) - both direct and **contingent liabilities** (CLs) – and define such liabilities by means of examples (Section 9).
2. describe the management of FCCL across the PPP project lifecycle, including milestones for assessment and approvals.

The FCCL Guidelines provide more detailed operational guidance for the identification and assessment of FCCL at **feasibility study, procurement (identification of preferred bidder) and contract award stages**, and their monitoring and reporting during **project implementation stage**.

9. OVERVIEW OF PPP FISCAL LIABILITIES AND RISKS

While PPPs offer a range of qualitative and quantitative benefits, they also have fiscal implications. **PPPs are not “cost-free” for the government**. PPPs are a means to leveraging financial resources from the private sector, but the government assumes FCs over the life of the contract as outlined in the PPP agreement.

9.1. 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 FCs - either a CL or an actual direct liability.

A **direct liability** is 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:

- Supplying the land needed for the project.
- Upfront capital contribution payments, where the government makes a contribution to the capital expenditure to ensure a project that is economically desirable but commercially unattractive can proceed.
- Unitary payments, where a regular periodic payment over the life of a project is conditional on the availability of infrastructure, a building, and associated services.

A **contingent liability** 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.

Additionally, increase of existing obligations or creation of new obligations may arise from contract adjustments and renegotiations. They may, for example, significantly modify the costs of the projects and the payments to be made by government.

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 – such as 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 may also vary significantly from baseline projections depending on the movement of variables (such as macro-economic indicators like inflation and interest rates).



➤ Specified in PPP agreements.

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

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

Table C -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 port sector projects, the grantor commits to undertaking 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 • In South Africa, Accommodation PPPs for Government Departments, Municipalities and Government Entities typically involve the Government Party contributing the land to the project, with the Private Party then financing,

TYPE OF FCCL	EXAMPLES	ILLUSTRATIVE EXAMPLES
		developing and operating the project over the concession period.
	On-going commitments such as unitary 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 unitary payments to the Concessionaire. The highway authority will finance the unitary 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. The Availability Payment was factored-in compensation for events such as higher number of heavy goods traffic than projected which would have an impact on road wear and tear and thereby on O&M expenditure. - User PPPs also may have a subsidy or revenue support component. - The Inkosi Albert Luthuli Central Hospital in South Africa was developed on the basis of a Unitary Payment.
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. - Termination payment in case of concessionaire default, contracting authority default, or force majeure	- 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 unitary payments in case of default by the highway authority. - The Azura power IPP in Nigeria had a PCOA. - Gautrain Rapid Rail Link involved Government issuing a Patronage Guarantee designed to ensure a minimum level of revenue for the operator in the event that ridership levels are lower than expected.
Indirect - Implicit Liabilities	Implicit liabilities are not explicit because they are not expressed and defined contractually but they are expected to be the responsibility of government.	- 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

TYPE OF FCCL	EXAMPLES	ILLUSTRATIVE EXAMPLES
	Perhaps the most obvious and often overlooked liability is the implicit guarantee from governments that ultimately underwrites all public infrastructure and services. Sovereign guarantees are an example.	occupancy fell below this level, the operator was allowed to increase tariffs.

The direct liabilities include **upfront payment, capital contributions, construction or operation subsidies, and unitary payments**. The universe of contingent liabilities is in essence more diverse but primarily include:

- 1) Any guarantee, insurance or financial support provided by the PI 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 PI 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 or PI default.
- 3) Contingent liabilities arising from the occurrence of **other fiscal risks** as identified in the Project Fiscal Risk Register (PFRR).

9.2. Other fiscal risks

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

Other sources of fiscal risks are those channelled through provisions of the PPP agreement and controlled by the government. For example, an extension of the project scope – allowed in the PPP agreement and subject to government's consent – that modifies the costs of the project to the government. Other sources of fiscal risks are outside the scope of liabilities to be paid by the government to the private partners. For instance, a reduction of user-based revenues used by the government to fund a project. This reduction does not affect the government's liabilities to the concessionaire (that

may be fixed and independent of user-revenues performance), but it does have a fiscal impact.

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

Table C-2: Examples of FCCL in PPP

TYPE OF PROJECT	FISCAL COMMITMENT	CONTINGENT LIABILITIES	
		PAYMENT AND TERMINATION	OTHER FISCAL RISKS
Hospitals or Office Accommodation	- Upfront capital subsidy - Service payment adjusted by macroeconomic parameters and contingent events	Termination payment in case of concessionaire or contracting authority default, or force majeure.	Change of scope that modifies the service payment.
Toll Road or Transit projects	Subsidies and Incentives, e.g. to public transport operators	- Revenue or traffic guarantee - Termination payment in case of concessionaire or contracting authority default, or force majeure.	Compensation for imposed decrease in toll rates or even abandonment of toll payments due to social unrest
Roads Annuity Program	Unitary payment adjusted by macroeconomic parameters and contingent events	Termination payment in case of concessionaire or contracting authority default, or force majeure.	- Disputes on land acquisition or resettlement - Change of scope or governance
Hydroelectric Dam Power Plant	Capital Contribution	- Take or pay commitment from public utility - Termination payment	- Change in hydrological conditions - Renegotiation
Student accommodation	Unitary payments	- Guarantee on occupation - Termination payment	Change in university governance

Overall, it is important to note that government commitments to PPPs are materially different to government's public debt and require a different management approach. When a government borrows, it uses the borrowed funds, and the government is obliged to repay the debt regardless of how well the borrowed funds are used.

Government liabilities to PPPs are non/limited recourse in nature, structured as performance-based payments, such as unitary payments, for services delivered and/or assets/infrastructure developed/made available for use.

10. SOURCE OF INFORMATION FOR THE FCCL ASSESSMENT

Since the NTR 16 amendments are effective, and as described in the FCCL Guidelines, fiscal risks are identified at the project development stage, within the studies developed by the PI. However, in some cases and in particular in projects predating the FCCL Guidelines, the fiscal risks may not have been assessed.

For active projects i.e. with signed PPP Agreements and at various stages of implementation (financing, construction or operation), this information would be determined based on a review of project agreements, letters of support, guarantee instruments, and other relevant project documentation. PPP project agreements, letters of support and other forms of explicit government support provide the baseline information on FCCL arising from PPP projects. They contain the core financial provisions, namely: the payment mechanism and allowed adjustments to unitary payments; tariff-based payments; guarantees and trigger conditions; and termination payments.

However, the project documentation may not explicitly contain all risks and therefore their fiscal impact not fully understood. For instance, a government may take revenue risks and pay the concessionaire a unitary payment. In this case, the contract provides the terms of the unitary payment yet does not set out the effects of, for instance, real demand falling below expectations. Hence, the risk matrix complements the contract agreement in identifying FCs and fiscal risks.

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

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

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

exogenous changes in a continuous and proactive manner to mitigate the impact on projects and provide solutions to challenges.

11. DESCRIPTION OF THE STEPS TO FCCL ASSESSMENT AND MONITORING

This section describes the process to undertake the FCCL evaluation during the project development stage, and to monitor FCCL during the PPP agreement implementation. It also describes the revised institutional framework and operational processes for the undertaking of these functions in South Africa given the amendments to NTR16.

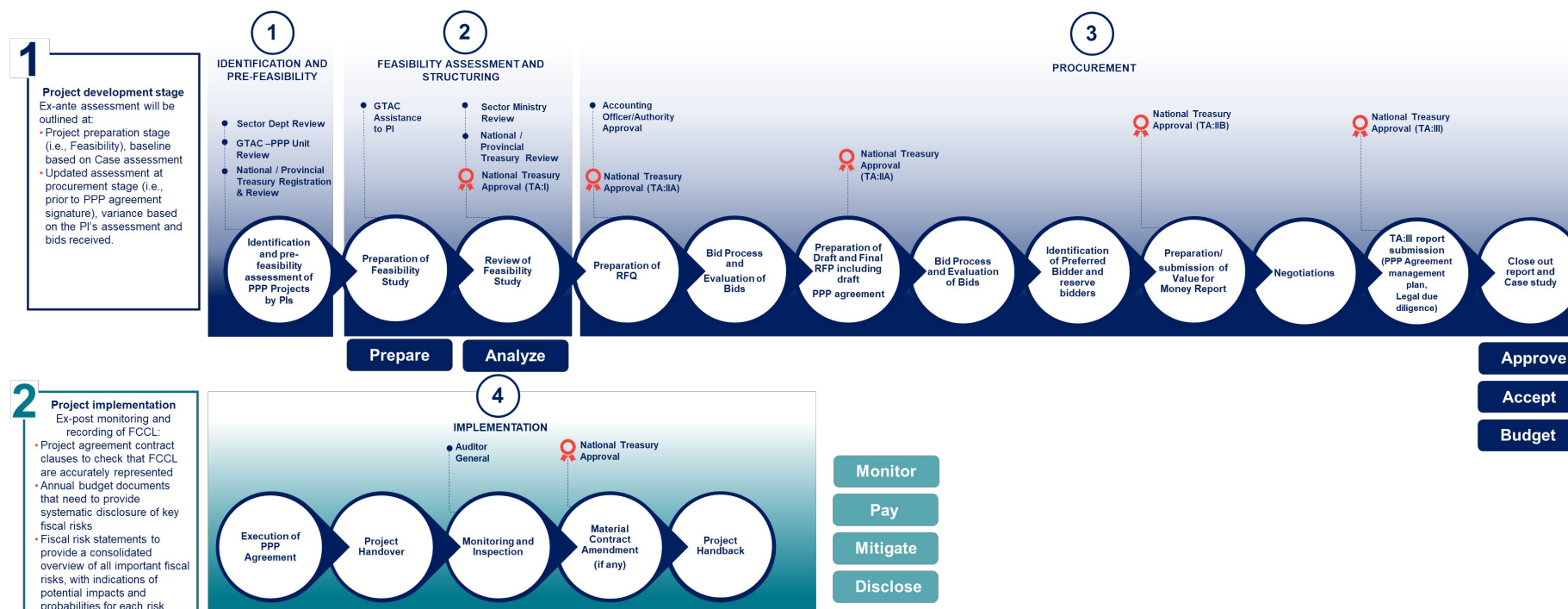
11.1. FCCL management principles

Managing and monitoring liabilities takes place across all phases of PPP development, approval, and implementation. At the project development stage, from project identification up to contract execution, the assessment and required approvals of the project FCCL are carried out through the following processes:

- **Baseline assessment** during project preparation stage, through feasibility studies including project risks analysis and finance structuring (TA:I)
- **Updated assessment** during procurement and value for money report (i.e. prior to PPP agreement signature) taking into bids received from private partners; **Approval** of assessed FCCL by the National Treasury (TA:II B); Update of FCCL assessment following negotiations with preferred bidder
- **Verification** of the FCCL's accurate representation in the final version of the project agreement; **Approval** of FCCL by respective institutions including the FLC and National Treasury (TA:III);
- **Monitoring of FCCL** during the PPP agreement's implementation.

Figure C-1 describes the typical management of FCCL during the **development and implementation stages** of a PPP project.

Figure C-1: FCCL Management across the Project Life Cycle



During the project implementation stage, monitoring and recording of FCCL should be made through annual budget documents that need to provide systematic disclosure of key fiscal risks and indications of potential impacts. This entails reporting by PIs for individual PPP project which is then consolidated by NT/PPP Advisory Unit at a portfolio level.

11.2. Institutional and operational framework

Table C-3 provides the institutional responsibilities for FCCL management for a typical PPP project taking in account the amendments to NTR16 as well as existing practice.

Table C-3: Institutional responsibility for FCCL Management

FUNCTION WITH RESPECT TO FCCL MANAGEMENT	OBJECTIVES	OPERATIONAL PRACTICES	INSTITUTIONAL RESPONSIBILITY	STAGE OF PPP PROJECT LIFECYCLE
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, resulting in the lowest cost and with minimal fiscal impact.	FCCL for PPPs estimated as part of feasibility studies	Procuring Institution	Feasibility Assessment of a Project
Analysing and Reviewing	To inform decision making when the project is structured and approved, and provide a basis for monitoring and budgeting for liabilities	PPP Advisory Unit analyses and reviews FCCL Reports NT ensures management and delivery of TA I, IIB and III	PPP Advisory Unit NT- Budget Office	Feasibility stage Procurement stage Bids evaluation stage PPP agreement signature stage

FUNCTION WITH RESPECT TO FCCL MANAGEMENT	OBJECTIVES	OPERATIONAL PRACTICES	INSTITUTIONAL RESPONSIBILITY	STAGE OF PPP PROJECT LIFECYCLE
Approving	To ensure the use of government resources in the form of liabilities is focused on policy priorities; represents value for money; and is consistent with good fiscal management.	NT ensures management and delivery of TA I, IIB and III FLC to review and approve FCCL part of TA:III supporting documentation with the assistance of NT-ALM	NT-Budget Office FLC NT-ALM PT MEC*	Feasibility stage Procurement stage Bids evaluation stage PPP agreement signature stage
Accepting	To clarify the government's commitment to its liability obligations, and to ensure the executed contract is consistent with earlier analysis and approval	Approved by NT -ALM and FLC.	NT -ALM FLC PT MEC*	Review of Evaluation Report and Supporting Documents
Monitoring	To provide information needed to disclose, act on emerging issues and, if necessary, budget for liabilities	PI monitor and report on PPP FCCL. PPP Advisory Unit is due to assist and reports to NT Budget Office and ALM on an annual basis	PI/PPP Advisory Unit NT-ALM PT MEC*	Ongoing
Budgeting and paying	To ensure resources are available to make payments promptly when required, improving credibility and	NT-ALM monitors exposure and validate payments made by PI.	PI/ NT-ALM PT MEC*	Ongoing

FUNCTION WITH RESPECT TO FCCL MANAGEMENT	OBJECTIVES	OPERATIONAL PRACTICES	INSTITUTIONAL RESPONSIBILITY	STAGE OF PPP PROJECT LIFECYCLE
	clarity as to how costs of liabilities will be borne, and mitigating the fiscal impact.			
Disclosing	To improve accountability for decision makers and increase transparency of the government's commitments to third parties (such as credit agencies and lenders).	PI, with GTAC support, to monitor and disclose FCCL variations annually at project level. Consolidation by NT-ALM and reporting in budget by NT-Budget Office. NT – Office of Accountant General provide guidance on disclosure of PPP Commitments Review and formal approval of FLC	PI/PPP Advisory Unit NT-ALM NT – Office of the Accountant General PT MEC*	Ongoing
Mitigating	To help reduce the cost to government of bearing contingent liabilities by reducing the likelihood or cost of those liabilities being realised.	Obligations to assess and report through the Feasibility and Procurement stages added by the amendments to NTR16 Performed by PI assisted by PPP Advisory Unit	PI/PPP Advisory Unit	Ongoing

* Member of the Executive Council (MEC) for Finance of Provincial Treasuries to sign on Provincial PPP FCCL

Proposed process for the FCCL Report preparation, review and approval: Table C-4 summarises the process that is proposed to be applied for the preparation, review and approval of the FCCL report (prepared in accordance with this FCCL Guidelines at different stages of a PPP project.

Table C-4: FCCL Reports and Approvals at different stages of a PPP project

STAGE OF PPP PROJECT	FCCL REPORT	PREPARATION OF FCCL REPORT	REVIEW OF FCCL REPORT	APPROVAL OF FCCL REPORT	TIMEFRAME
Feasibility Stage	Baseline FS Stage FCCL Report	PI with PPP Advisory Unit support (and inputs of Transaction Advisor if used)	NT with PPP Advisory Unit support	NT-Budget Office TA:I	In accordance with NTR16 and PPP Manual
Bids evaluation	Bids evaluation stage FCCL Report based on Bid of Preferred Bidder	PI with PPP Advisory Unit support (and inputs of Transaction Advisor if used)	NT with PPP Advisory Unit support	NT-Budget Office TA:II B	In accordance with NTR16 and PPP Manual
Signature of PPP agreement	PPP agreement signature stage FCCL Report based on negotiated PPP terms	PI with PPP Advisory Unit support (and inputs of Transaction Advisor if used)	NT with PPP Advisory Unit support FLC	FLC NT-Budget Office TA:III	In accordance with NTR16 and PPP Manual
Material Contract Amendment	FCCL Variance Report for Material Contract Amendments	PI with PPP Advisory Unit support	NT with PPP Advisory Unit support	NT-Budget Office	In accordance with NTR16 and PPP Manual

The FCCL Technical Guidance provides detailed technical guidance for assessing FCCL at development stage and monitoring fiscal exposures. 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.

The methodology for carrying out, at project development stage, FCCL identification, corresponding fiscal exposure assessment and mitigation strategy definition is developed in section 13 below. How to report and monitor FCCL during project implementation is addressed in section 15.2

Part D FCCL Technical Guidance

12. INTRODUCTION

The purpose of the Technical Guidance is to:

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

13. FCCL ASSESSMENT DURING THE PROJECT DEVELOPMENT STAGE

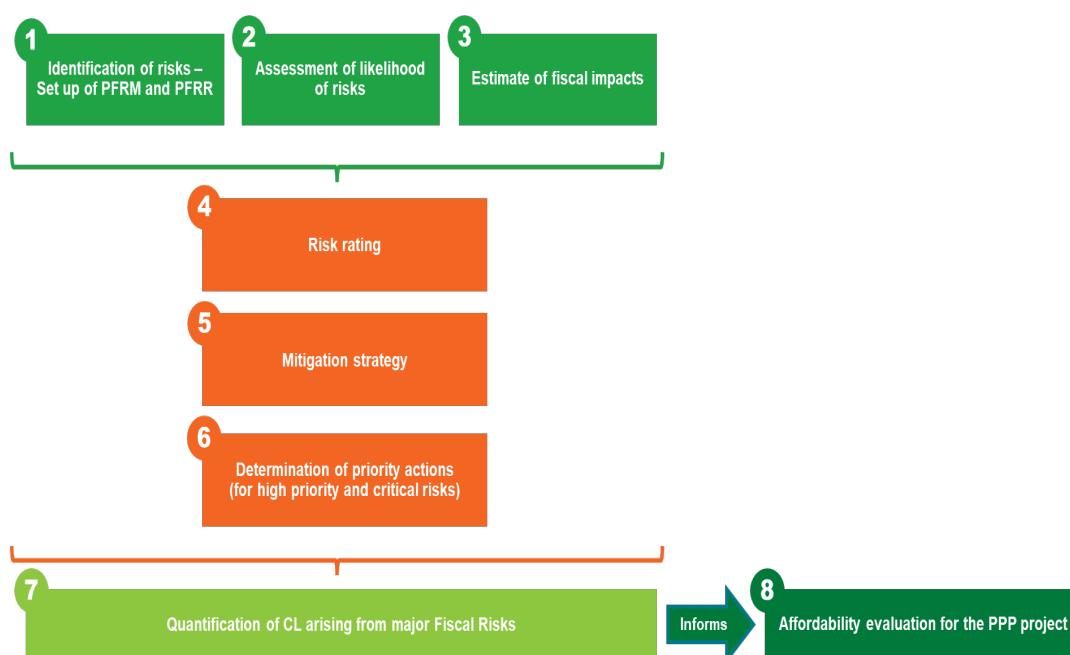
As set out in the PPP Manual, **risk allocation** is a centrepiece of structuring a well-balanced PPP agreement. The basic principle is that each risk should be allocated to the party best able to manage it. Risks may be allocated to one party or shared in a specified way. During the preparation of a PPP project, the assessment and allocation of project risks should be completed with a **fiscal risk matrix and a risk register**, documenting the assessment of the likelihood and impact of each risk at the feasibility stage.

Assessing the fiscal implications of a PPP agreement involves the identification and allocation of risks of the project, definition of payment mechanism, and determination of the other financial obligations and rights of parties. In practice, the base information needed shall be found in the risk analysis and risk matrix within the relevant feasibility studies for PPP projects at preparation stage.

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

The PFRM should be prepared as per the provisions of this Section as part of the feasibility study preparation. The figure below presents the process.

Figure D -1 Assessment of FCCL during project development



Note: All information from Steps 1 to 7 presented below are to be filled out in the LFTP Tool.

13.1. Step 1: Identification of risks and set up of the PFRM and PFRR

The identification of fiscal risks focuses on those risks that may have significant fiscal implications – including contractual risks and other risks not allocated directly by contract (for example, risks arising from the governance structure, legal framework, or government institutional capacity).

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 D-1. presents a detailed illustration of risks and sub-risks. 0 provides a detailed questionnaire as to how these risks should be assessed by a PI (or through the Transaction Advisor appointed for the project).

Table D-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

MAIN RISK CATEGORY	NUMBER OF RISKS SUBCATEGORIES
7 Material Adverse Government Actions (MAGA)	No subcategories
8 Change in Law	No Subcategories
9 Rebalancing of Financial Equilibrium	3 detailed risks
10 Renegotiation Risks	No Subcategories
11 Contract Termination Risks	2 detailed risks

Source: PFRAM 2.0 User Manual

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

- Review the major risk categories
- Identify the important fiscal risks from the project
- Starts establishing the PFRR illustrated in Table D-2.

Table D-2: Project Fiscal Risk Register

RISK IDENTIFICATION		ALLOCA-TION	LIKELIHOOD	FISCAL IMPACT		RATING	MITIGATION
Category	Event type	Govt/ Private/ Shared	Probability of occurrence	Base Costs	Cost of occurrence	Critical/ High/ Medium / Low/ Irrelevant	Measures and costs
Governance	Risk A						
	Risk B						
Construction	Risk A						
	Risk B						
	Risk C						
Demand	Risk A						
Operation	Risk A						
	Risk B						

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 (PI or Transaction Advisor) should primarily focus on those borne by the Government or shared.

The PFRR and the associated methodology to identify and assess fiscal risks is consistent with the methodology developed in the PPP Manual Module 4 (Feasibility Study) for establishing the Public Sector Comparator (PSC) and PPP Reference Models

and associated risks identification and allocation approach. It is also consistent with the risk matrix examples provided in the Annexures to this Module (Annexure 1: A PSC Model and Annexure 4 Standardised PPP Matrix).

The methodology proposed to quantify the cost of risk: probability of occurrence x cost of occurrence (as a % of Base Costs, capital expenditures or operating expenditures for instance) is also fully consistent with the Module 4 Annexure 3: How to calculate the value of risk.

Therefore, the establishment of the proposed PFRR should be usual practice for Transaction Advisors working on PPP projects feasibility studies. It should assist and enhance the PPP reference model and the valuation of retained risks.

13.2. Step 2: 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. Several factors can help determine the likelihood. For example, the logic illustrated below could be used as a reference.

Table D-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 its further assessment is a priority in accordance with the project heat map (Table D-5), the probability of occurrence may need to be determined for the purpose of contingent liabilities monitoring.

13.3. Step 3: 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 varied impact depending on how they materialise.

Firstly, the PI should evaluate the potential fiscal impact of a particular risk in a holistic manner from a qualitative perspective, providing as much information as possible to support the assessment of low, medium, or high.

For instance, this qualitative assessment could be made by comparison with the country's gross domestic product (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 D-4: provides an example of fiscal impact scale rating.

Table D-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: Base5on PFRAM 2.0 User Manual

For example, the fiscal impact of potential cost overrun for a major new PPP hospital will be assessed as “high” if the new hospital is to be built on a potentially polluted ground and assuming the ground conditions risk is retained by the PI.

Another example is a PPP financed by a foreign currency and variable rate project debt where exchange and financing rates variation risk is not transferred. In this case, the fiscal impact of financial risk is likely to be assessed “medium” or “high” depending on the size of the project.

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

13.4. Step 4: 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 D-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 D-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

13.5. Step 5: Identification of mitigation strategy

Possible mitigation measures vary with the risks. Part E 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.

13.6. Step 6: Determination of priority actions

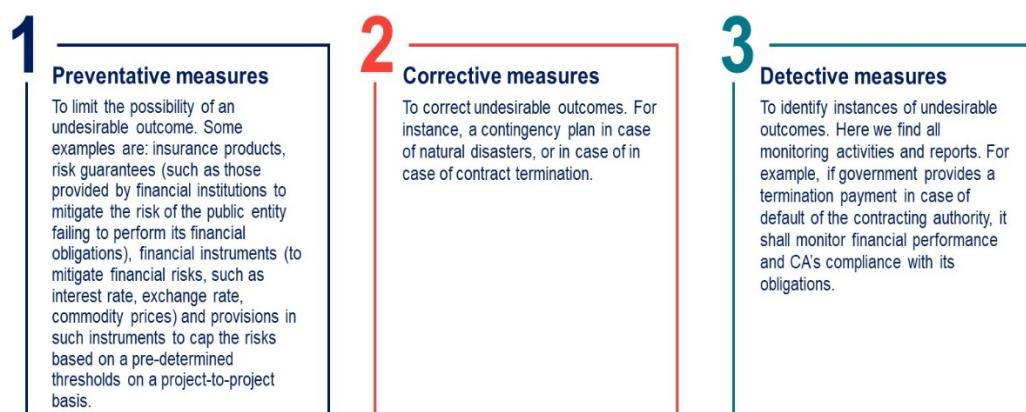
Based on the risk rating and the mitigation measures, an assessment of the priority of the required actions is to be undertaken as demonstrated in Table D-6. The more severe risks - those with a high rating - should be addressed first. Risks rated as critical, paired with no mitigation measures in place, 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 D-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 pre-determined thresholds on a project-to-project basis.
- **Corrective measures**: To correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of contract termination.
- **Detective measures**: To identify instances of undesirable outcomes. Here we find all monitoring activities and reports. For example, if the government provides a termination payment in case of default of the PI, it shall monitor financial performance and PI's compliance with its obligations.

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

Table D-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	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING LIKELIHOOD IMPACT	MITIGATION STRATEGY IS IT IN PLACE?	PRIORITY ACTIONS	SUGGESTED MITIGATION STRATEGY
Financial risks	Medium	Medium	Medium	No	High Priority	
Force Majeure	Low	Low	Irrelevant	Yes	No action	
Material adverse government actions	Medium	Medium	Medium	No	High Priority	
Change in law	Medium	High	High	No	Critical	
Rebalancing of financial equilibrium	High	Medium	High	Yes	High Priority	
Renegotiation	High	Low	Medium	Yes	Medium Priority	
Contact termination	Medium	Medium	Medium	Yes	Medium Priority	

Source: PFRAM 2.0 User Manual

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

13.7. Step 7: Quantification of FCCL arising from major Fiscal Risks retained

Based on the PFRR, the evaluator will quantify the CL arising from the occurrence of a fiscal risk identified in the PFRM and analysed 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.

Again, the quantification of the CL arising from the main retained risk is proposed to be made in accordance with the methodology for risk valuation developed in the PPP Manual Module 4.

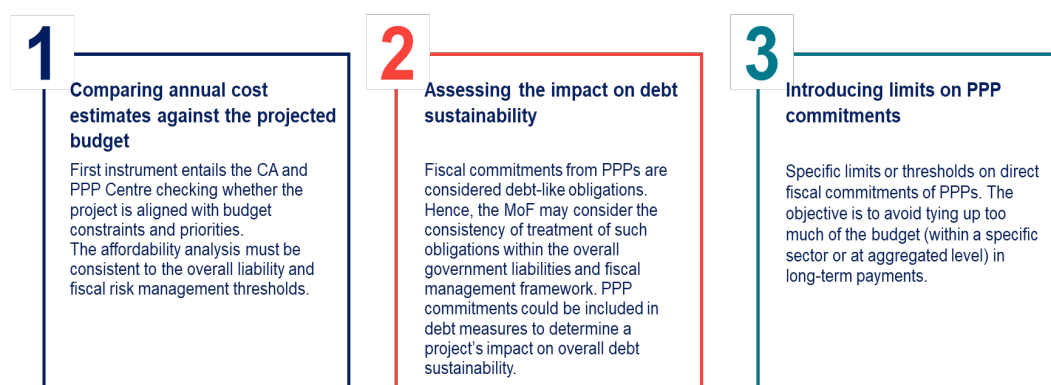
Continuing with the PPP hospital built on a potentially polluted ground, we need to assume the cost of depollution (R100 million) and a probability of occurrence (50%), then register and account for a CL of R50 million over the first year of construction.

For the quantification of FC arising from unitary payments and construction or operation subsidies, and CL arising from revenue guarantees, foreign exchange rate guarantees and termination payment, the Long Term Fiscal Planning (LTFP) Tool can be used.

13.8. Step 8: 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 feasibility study. Demonstrating affordability is part of the Value Assessment of a PPP Feasibility Study (cf. Module 4 of PPP Manual). This section provides indications to develop the risk-adjusted PPP reference model used to demonstrate affordability of a PPP, based on the results of the FCCL quantification.

The three common instruments used to check affordability are presented below.



The first instrument entails the PI, the PPP Advisory Unit and Budget Office of NT 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 PI to achieve their fiscal targets or surplus i.e. does the PI's annual budget allocation accommodate the cost of FCCL.

Also, the affordability analysis must be consistent with the overall liability and fiscal risk management of the NT. FCs from PPPs are considered debt-like obligations. Hence, the ALM division of NT 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, it is recommended that governments adopt specific limits or thresholds on direct FCs of PPPs based on best practices. The objective is to avoid tying up too much of the budget (within a specific sector or at aggregated level) in long-term payments. This could be developed later as the magnitude and potential of the program becomes clear.

Table D-8: presents the affordability indicators proposed in this framework.

Table D-8: Affordability indicators

FC	COST	INDICATOR OF FISCAL AFFORDABILITY (INCLUDING PROJECTIONS OVER PPP CONTRACT LENGTH-BEYOND MEDIUM-TERM HORIZON)
Direct liabilities	• Estimated Annual payments • Net present value	• Cost as percentage of department or sector entity, 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 • Net present value (Base/Downside cases)	• Cost as percentage of department or sector entity, 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 • Net present value	• Cost as percentage of national budget • Cost as percentage of contingency line • Cost as percentage of GDP
Other fiscal risk	• Estimated worst-case payment or expected average payment • Net present value (Base/Downside cases)	• Cost as percentage of department or sector entity, and national annual revenue / deficit-surplus budget • Cost as percentage of contingency line • Cost as percentage of GDP

14. FCCL UPDATE DURING PROCUREMENT

The FCCL valuation analysis should be updated after the bid evaluation stage based on the preferred bidder proposal and included in the Affordability and Value for Money assessment of the submission requirements for TA: IIB.

The FCCL assessment shall be reviewed and updated for final submission and agreement from the FLC for TA: III before contract signing.

Appendix C of this FCCL Guidelines provides a template of FCCL Report to be included in the submission requirements for Treasury Approvals during the procurement process.

15. FCCL MANAGEMENT DURING PROJECT IMPLEMENTATION

15.1. 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, in line with the legal framework.

Each commitment or fiscal risks must have specific information, such as financial and accounting ratios and indicators, to monitor the evolution across the full term of the contract. Table D-9 highlights what minimum information shall be collected and registered by the PIs in each PPP project:

Table D-9: 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	-	-	-	-

15.2. Reporting and Disclosing

Reporting

The ALM division needs to **account for and report** on FCCLs of PPP agreements. The Budget Office of NT shall keep a centralised register of FCs of PPP transactions at the national or sub-national level. Proper reporting requires 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 decisions on the government's PPP fiscal management and performance.

For internal and external transparency of the financial effects of PPPs on government's position, FCCLs 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 D-10 shows the suggested information to be reported on direct and contingent liabilities for each PPP project by PIs. 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 annual budget reviews and debt strategy reports.

Disclosures

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). In 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 D-10 shows a sample of reporting format to present direct and contingent liabilities by project.

Table D-10: 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 3-YEAR BUDGET			PRESENT VALUE OF MAXIMUM EXPOSURE
		2019	2020	2021	2022
Project 1	- Revenue Guarantee				
	- Termination payment In case of default of PI				
Project 2	- Termination payment In case of default of PI				

It must be noted that estimations of liabilities (Table D-9) and follow-up activities must be updated on an ongoing basis.

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

- Approval of feasibility study (TA:I)
- Approval of Preferred Bidder selection (TA:II B)
- Following negotiations with Preferred Bidder (TA:III)
- 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.

15.3. Accounting

Fiscal responsibility is usually examined in relation to thresholds over government's liabilities and expenditures. It must be considered 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 recognised is important as it defines whether such liabilities count toward debt management limits. Generally accepted accounting practices used in the public-sector in South Africa, such as Modified Cash Standard, Generally Recognised Accounting Practice and Internationally Financial Reporting Standards provide a framework for accounting and disclosure for financial commitment and contingent liabilities.

Part E Summary of FCCL management

This section summarises the recommended FCCL management processes in accordance with the new regulations (amendments to NTR16). It presents the integration of the recommended actions within the PPP project cycle as described in the PPP Manual.

Feasibility Study: FCCL valuation as part of the Value Assessment

It is recommended to integrate within the risk assessment and the construction of risk-adjusted PPP reference model of any PPP Value Assessment the development of PFRM and PFRR as described in Section 13 above.

It should be noted that this approach is consistent with the process of risk identification, allocation and valuation detailed in Module 4 of the PPP manual.

The use of the LTFP Tool in accordance with its associated manual will assist in the FCCL valuation.

The FCCL valuation will also inform the demonstration of affordability as required in a PPP Value assessment in accordance with Module 4 of the PPP manual.

It shall be part of the Value Assessment submission requirements for obtaining TA:I.

Procurement: FCCL valuation report for Treasury Approvals

The FCCL valuation analysis should be updated after the bid evaluation stage based on the preferred bidder proposal and included in the Affordability and Value for Money assessment of the submission requirements for TA: IIB.

The FCCL Report shall be reviewed and updated for final submission and agreement from the FLC for TA: III before contract signing.

Appendix C of this FCCL Guidelines provides a template of FCCL Report to be included in the submission requirements for Treasury Approvals during the procurement process.

Contract execution: FCCL monitoring and reporting

The FCCL valuation of PPP projects shall be monitored periodically during project execution in accordance with the procedures detailed in section 15 above.

Any change to a PPP Contract shall trigger the review and update of the last FCCL Report issued on this PPP for TA in accordance with the amendments to NTR 16.8.

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 be reinforced.
- **R2.** If the National Treasury cannot 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 NT/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 stakeholders and creating ownership of the project, together with clear and standardised 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 retender, or renegotiation at higher fiscal cost. To mitigate this risk, the government should ensure land availability at an early stage of the project cycle or provide sufficient information regarding the need and value of the land to ensure that the private partner is able to cope with the cost.
- If the government must pay for land acquisition, it may face additional fiscal costs arising from the acquisition and possible delays due to unavailability of land, which might lead to

compensation payments for possible delays. To mitigate this risk, the government should (1) complete the assessment of land availability and cost prior to contract closure; and (2) build in buffers and flexibility clauses in procurement and contracts.

R5. Risks related to relocation of people and activities

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

R6. Risks related to land decontamination

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

R7. Risks related to environmental and archaeological issues

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

R8. Risks related to geological issues

- If there is a possibility of geological issues and the government must 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 entities

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

R13. Risks related to changes in input prices

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

R14. Risks related to changes in nominal exchange rate

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

3. Demand

- If the PPP is fully funded by the government, and the payments are linked to the volume of service being provided:
 - **R15.** If a cap is in place, the project may be confronted with much higher demand than included in the contract, which might require a costly renegotiation of the cap or require the government to purchase services from other providers. This risk can be mitigated by managing demand and possibly diverting demand to less costly alternative services.
 - **R16.** If no cap is in place, the government may face higher than expected demand, leading to higher-than-expected costs. This risk can be mitigated by managing demand and possibly diverting demand to less costly alternative services.
 - **R17.** If the project is suffering from insufficient demand, this may lead to project failure; the government may face costs for early termination or renegotiation. This risk can be mitigated by managing the demand or by renegotiating the contract to re-establish financial equilibrium.
- If the PPP is fully funded by the government, and the payments are not linked to the volume of service being provided:
 - **R18.** If demand is much higher than expected, the project may collapse, and the government may face the cost of early termination or contract collapse. This risk can be mitigated by managing or diverting demand, which could have a fiscal cost.
 - **R19.** If demand is much lower than expected, the project might be challenged; the government would not face additional fiscal costs, but it would pay for a service that is not/not fully being taken up by the user. This risk can be mitigated by managing demand by increasing demand or diverting it from other projects.
- If the project is either totally user-funded or funded by a combination of government payments and user fees:
 - **R20.** If users consider user fees—regulated or not—excessive relative to services received, this might have a bearing on the reputation of the government. This risk can be mitigated by effective communication.
 - **R21.** If the project is suffering from insufficient demand, this might lead to project failure, presenting the government with additional fiscal costs for early termination or renegotiation. This risk can be mitigated by managing the demand or by renegotiating the contract to re-establish financial equilibrium.

4. Operation & Performance

- **R22.** If the PPP agreement does not ensure that the government has full access to information on project performance, the government may be unable to effectively manage the contract. To mitigate this risk, the information-sharing requirements should be included in the contract and addressed in the legal framework.
- **R23.** If the contract does not clearly specify performance indicators, reference levels, and penalties or deductions, the government may face significant risks for not being able to address poor performance by the private partner. Failure to monitor project performance can lead to poor contract enforcement, which has administrative, efficiency, and political costs. It may also cause difficulties in applying project cancellation clauses and possibly in using step-in rights by financiers. To mitigate this risk, (1) key performance indicators should be included in the PPP agreement, with reference levels, linked to penalty mechanism (preferably

automatic deductions from periodic payments); and (2) the core contract management team should be involved in contract negotiation to guarantee that performance indicators/levels are fair, measurable, and contractible, that is, able to be presented as evidence in court.

- **R24.** If the government does not have the capacity and procedures in place to monitor performance, it faces significant risks for not monitoring performance, which has administrative, efficiency, and political costs. To mitigate this risk, contract monitoring procedures should be in place when contracts are signed; a core contract management team should be assigned before contract closure and should be involved in contract negotiation to guarantee that contract management procedures are feasible and efficient.
- **R25.** Depending on whether and how the contract addresses the introduction of new technologies, technical innovation may create explicit and implicit fiscal risks for the government. To mitigate this risk, the duration of PPP agreements should not exceed the expected life cycle of the technology used in the sectors, enabling the government to respond to technological innovation within a reasonable timeframe. For PPP agreements for projects including high and low innovation components, it can be appropriate to separate the two components—for example, a hospital building from the medical equipment—into separate contracts that might be of different duration or nature; the high-tech component might not be under a PPP agreement but might be undertaken as traditional public procurement.
- **R26.** If there is a scarcity of 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 labor costs, this may lead to project failure. To mitigate this risk, the government should plan capacity building activities ahead of time.

5. Financial

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

- **R31.** If government contractually accepted some exchange rate risk, fiscal support may be needed in the form of compensation; it may have to pay compensation for excessive volatility of exchange rate. Also, if the private partner is unable to cope with excess volatility in the nominal exchange rate, the government may have to (1) renegotiate under stress or face project collapse and pay compensation for capital investment; or (2) assume the project and then re-tender under a different risk allocation scheme. To mitigate these risks, the government should ensure a proper consideration of exchange rate risk, which may lead to better risk sharing and proper use of hedging mechanisms.

6. Force Majeure

- **R32.** If there is no exact list of events to be considered force majeure tailored for the project, the government might have to pay compensation, adjust, or even terminate the contract due to force majeure events. Full or partial compensation by the government may even force the government to buy the assets or assume debt. To mitigate this risk, the scope of the force majeure events should be clearly stated in the contract, considering the legal requirements and specific project conditions. The contract should create incentives for the private partner to get insurance against some risks when insurance is available at a reasonable cost and to effectively manage risks by designing assets and managing services in ways that 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 government's actions and omissions can affect the project during the life of the contract. Executive government actions and policy changes should be carefully evaluated by the contract manager and the fiscal management team to assess any impact on the PPP agreement.

8. Change Law

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

9 Rebalancing of financial equilibrium

- **R35.** The legal framework may prescribe that the government is paying compensation and/or terminating the contract due to requirement to reinstate financial equilibrium. The government may have to pay compensation or cancel the project. To mitigate the risk from this, the PPP agreement should restrict its application to the cases of force majeure, MAGA, avoiding its application to a wider range of situations.

- **R36.** The government might have to pay compensation and/or terminate the contract due to contract guaranteeing a rate of return for the private partner. To mitigate this risk, clauses and expectations on a guaranteed level of project rate of return or the shareholder's rate of return should be avoided.
- **R37.** The government might have to pay compensation and/or terminate the contract due to excessive protection against some hardships. To mitigate this risk, hardship clauses, if needed, should be precise and strict. Alternative methods to reduce excessive private sector risks should be considered, including insurance, future markets, and other hedging mechanisms.

10. Renegotiation

- **R38.** If the government opens an uncontrolled renegotiation process, under information asymmetry and no competitive pressure, it might 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) licenses needed to continued operation may create fiscal surprises. To mitigate this risk, contracts should include a clear definition of the termination process; all financial consequences and identified gaps in the contract should be resolved by having both parties sign transfer protocols detailing the rules.

Appendix B Risk Assessment Questionnaire

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*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?						
	The government has a strong PIM						
No risks identified		IF YES					
	The government has a weak PIM						
RISK 1	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 IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
1.2	Does the NT have the experience and/or capacity to manage fiscal risks from complex, long-term projects during their whole lifecycle? The NT has the experience and capacity to manage fiscal risks from large investment projects						low
No risks identified			IF YES				
	The NT lacks the experience and capacity to manage fiscal risks from large investment projects						
RISK 2	The NT may not be able to effectively manage fiscal risks 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 NT/Budgetary authority	
1.3	Does the government disclose project and/or contract information? The government discloses project and/or contract information						low

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 state holders and create ownership of the project. Clear and standardised disclosure procedures for project information and ultimately contract disclosure.	
2	CONSTRUCTION RISKS					
2.1	Risks related to land availability					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	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 retender, 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 that private partner is able to cope with the cost of land.	

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	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?						
	People or activities are not subjected to relocation						
	No risks identified	IF NO					
	People or activities are subjected to relocation	IF YES					
2.2.1	Will the private partner have to pay for relocation of people or activities?						

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	Government paying for relocation of people and/or activities and possible project delays	<i>IF NO</i>	Cost of relocation/compensation		Timely assessment of relocation needs; stakeholder management	
	RISK	Private partner not able to cope with cost of relocation	<i>IF YES</i>	Cost of project cancellation and retender, or renegotiation with higher fiscal cost		Ensure timely assessment of relocation needs and provide sufficient information on relocation needs and costs.	
2.3	Risks related to land decontamination						
2.3	Is there a need for land decontamination?		low				
	No need for land decontamination						
	No risks identified	<i>IF NO</i>					
	Need for land decontamination	<i>IF YES</i>					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.3.1	Will the private partner have to pay for decontamination?						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 Private partner is not able to cope with the cost of land decontamination	IF YES		Cost of project cancellation and retender, or renegotiation with higher fiscal cost		Ensure timely assessment of decontamination needs and provide sufficient information regarding land condition.	
2.4	Risks related to environmental and archaeological issues.						
2.4	Is there a possibility of facing environmental/archaeological issues?						low
	No risks from environmental and archaeological issues						

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
No risks identified		IF NO				
2.4.1	There are risks from environmental and archaeological issues	IF YES				
	Will the private partner have to pay for environmental and archaeological issues?					low
	RISK Government costs arising from environmental or archaeological issues and from compensation for project delays	IF NO	Government costs from environmental or archaeological issues, and compensation to private partner due to project delays		Environmental constraints specified prior to tender (including permits and licenses); develop a plan to deal with archaeological findings	

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	The private partner is not able to cope with the cost of environmental or archaeological issues	IF YES	Cost of project cancellation and retender, or renegotiation with higher fiscal cost		Environmental constraints specified prior to tender (including permits and licenses); develop a plan to deal with archaeological findings	
2.5	Risks related to geological issues.						
2.5	Is there a possibility that the project phases geological issues?						low
	No risks from geological issues						
	No risks identified		IF NO				
2.5.1	There are risks from geological issues		IF YES				
	Will the private partner have to pay for geological issues?						low
	RISK	The government will pay compensation for significant geological issues	IF NO				

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	The private partner may not be able to cope with cost of geological issues	<i>IF YES</i>				
2.6	Risks related to licensing (e.g. subnational).						
2.6	Will the project be subjected to licensing (e.g. subnational)?						low
	No risks from lack of licensing or project delays due to licensing						
	No risks identified		<i>IF NO</i>				
	There are risks from lack of licensing or project delays due to licensing						
	RISK	The government pays compensation for project delays due to delayed licensing	<i>IF YES</i>	Costs of compensation for project delays		Ensure that subnational governments are fully supportive of the project, and that project deadlines are consistent with subnational regulations.	

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

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.8	Can the government be held responsible for any inherent defect in assets transferred to the private partner?						low
	No risks related to inherent defects in assets transferred to the private partner						
No risks identified			IF NO				
	There are risks related to inherent defects in assets transferred to the private partner						
	RISK	The government pays compensation to the private partner for inherent defects	IF YES	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 entities.						
2.9	Can the government be responsible for compensation due to changes in design and scope required by procuring entities?						low

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	No risks related to changes in project design or scope required by procuring entities					
	No risks identified	<i>IF NO</i>				
	There are risks related to changes in project design or scope required by procuring entities					
	RISK The government pays compensation for changes in design and scope <i>IF YES</i>		Changes in net costs due to changes in design and/or scope of the project		Contract provisions allowing for changes in the design/scope of the project up to a limit (predetermined); improve accountability framework to monitor project cost overruns.	
2.10	Risks related to changes in input prices					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.10.	Can the government be responsible for compensation in the event of excess volatility in input prices?						low
	There are risks for the government related to changes in input prices						
	RISK	The government pays compensation for significant changes in input prices	IF YES				
	No risks for the government related to changes in input prices	IF NO					
2.10.1	Will the private partner have to face excess volatility of input prices?						low
	No risks identified	IF NO					
	RISK	The private partner may not be able to cope with significant changes in input prices	IF YES				

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.11	Risks related to changes in nominal exchange rate.						
2.11	Can the government be responsible for compensation in the event of excess volatility in nominal exchange rate?						
	There are risks for the government related to changes in nominal exchange rate						
	RISK	The government pays compensation for significant increase in nominal exchange rate	IF YES				
2.11.1	Will the private partner have to face excess volatility of nominal exchange rate?						
	No risks identified		IF NO				
	RISK	The private partner may not be able to cope with excess volatility in nominal exchange rate	IF YES				

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
3	DEMAND RISKS						
3.1	Is the PPP project fully funded by the government?						
3.1	The PPP is fully government-funded	IF YES					
	How are government payments to the private partner determined?						
3.1.1	The government payments are linked to volume of services provided						
	If demand for services is higher than originally expected						
3.1.1.1	Does the PPP contract set a cap for the government payments?						
	RISK	Facing demand much higher than the cap included in the contract	IF YES	Additional fiscal cost of renegotiating the cap; government cost of services delivered by other provider		E.g.: Manage demand (reduce or divert demand)	

RISK IDENTIFICATION				LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	Facing demand higher than originally expected	IF NO	The government pays for the provision of additional services			E.g.: Manage demand (reduce or divert demand if the cost of the alternative is lower).	
	If demand for services is lower than originally expected							
3.1.1.2	Can the government influence demand?							

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	Facing insufficient demand for services--when the government can influence demand--may lead to project failure	IF YES	Additional fiscal costs of early termination or renegotiation		E.g.: Manage demand (increase demand or divert demand from other projects to this one); renegotiate contract to re-establish financial equilibrium. In addition, mitigation measures will have fiscal costs.	
	RISK	Facing insufficient demand for services--when demand is market determined--may lead to project failure	IF NO	Additional fiscal costs of early termination or renegotiation		E.g. Renegotiate contract to re-establish financial equilibrium	
3.1.2	Government payments are not linked to the volume of the services provided						

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	<i>If demand for services is higher than originally expected</i>					
	RISK	Project collapse due to demand much higher than originally expected	Additional fiscal cost for early termination if contract collapse		E.g.: Manage demand (reduce demand, divert demand), which could have a fiscal cost	
	<i>If demand for services is lower than originally expected</i>					
	RISK	Project is challenged due to demand much lower than originally expected	No additional fiscal cost		E.g.: Manage demand (increase demand or divert it from other projects), which would have a fiscal cost	
3.2	The PPP project is either totally user-funded, or funded by a combination of government payments and user fees					
	<i>IF NO</i>					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
3.2.1	Are maximum user fees specified in the contract?						
	RISK	Users may consider regulated user fees excessive relative to services received	<i>IF YES</i>	No additional fiscal cost		Good communication	
	RISK	Users may consider non-regulated user fees excessive relative to services received	<i>IF NO</i>	No additional fiscal cost		Good communication	
3.2.2	Can the government influence demand?						

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	Facing insufficient demand for services--when the government can influence demand--may lead to project failure	IF YES	Additional fiscal costs of early termination or renegotiation	E.g.: Manage demand (increase demand or divert demand from other projects to this one); renegotiate contract to re-establish financial equilibrium. In addition, mitigation measures will have fiscal costs.	
	RISK	Facing insufficient demand for services--when demand is market determined--may lead to project failure	IF NO	Additional fiscal costs of early termination or renegotiation	E.g. Renegotiate contract to re-establish financial equilibrium	
4	OPERATIONAL AND PERFORMANCE RISKS					
4.1	Risks related to information access					

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

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

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	The contract does not specify performance indicators, reference levels, and penalties and/or deductions	<i>IF</i> <i>NO</i>				

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 penalty mechanism (preferably automatic deductions from periodic payments). The core contract management team should be involved in contract negotiation to guarantee that performance indicators/levels are fair, measurable, and contractible (i.e., capable of being presented as evidence in a court).	

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 NO				
4.4	Risks related to scarcity of specialised human resources						
4.4	Is there the possibility of scarcity of specialised human resources?		low				
	Specialised human resources are adequate						
	No risks identified		IF NO				
	There are risks of scarcity of specialised human resources						

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	Performance issues due to scarcity of specialised human resources	<i>IF YES</i>				
4.5	Risks related to significant changes in labour costs						
4.5	Is there the possibility of significant changes in labor costs?						low
	There are no credible possibilities of significant changes in labor costs						
	No risks identified		<i>IF NO</i>				
	There is a possibility of significant changes in labor costs						
	RISK	Facing significant changes in labor costs--with same technology and productivity--may lead to project failure	<i>IF YES</i>				
5	FINANCIAL RISKS						
5.1	Risks related to availability of funds						

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
5.1	Is the private partner able to obtain finance for project implementation?						low
	The private partner is able to obtain finance for project implementation						
	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-tender, or redesign and re-tender the project.	Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project. Establishment of adequate qualification requirements, bid bonds and performance bonds will discourage adventures from bidding for PPPs. For very sensitive projects, governments with less developed financial markets may require some degree of commitment by financing parties during tender.
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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 <i>IF YES</i>					
	The private partner is unable to refinance short-term financing instruments					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
RISK	The private partner is unable to refinance short-term financing instruments		IF NO	The government may face project failure after implementation starts, and thus be required to pay compensation for capital investment, being forced to take over the project, or renegotiate an interim financial solution and then re-tender the project (possibly under worse cost conditions for government)		Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project. Establishment of adequate qualification requirements, bid bonds and performance bonds will discourage adventures from bidding for PPPs. For very sensitive projects, governments may require bidders to obtain long-term financing.	

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 YES				
	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 interest rates	IF NO	The government may face project failure after implementation starts, so being required to pay compensation for capital investment, being forced to assume the project, or renegotiate an interim financial solution and then re-tender the project (possibly under worst cost conditions for government).		Proper due diligence on private bidders' financial conditions and their ability (technical and managerial) to conduct the project. Establishment of adequate qualification requirements, bid bonds and performance bonds will discourage adventures from bidding for PPPs.	
5.4	Risks related to excess volatility of nominal exchange rate						
5.4.1	Has the government accepted contractual responsibility for excess volatility of nominal exchange rate?		Yes				

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

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 assets and managing services in ways that minimise probability of occurrence and size of impact		

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 impact on the PPP contract	

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 do not require compensation; changes in law that benefit the private partner should also be considered	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.	
9	REBALANCING OF CONTRACT FINANCIAL EQUILIBRIUM					

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
9.1	Does the legal framework or contract provide for a mechanism of re-balancing financial equilibrium?						low
	No risks from the legal framework or contract requiring reinstatement of financial equilibrium						
	No risks identified	IF NO					
	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 requirement to reinstate financial equilibrium.	IF YES	The government is paying compensation or cancel 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.	

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

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
RISK	The contract includes hardship clauses					
	The government is paying compensation and/or terminating the contract due to excessive protection against some hardships <i>IF YES</i> The government is paying compensation or cancel the project.					Hardship clauses, if needed, should be very precise and strict. Alternative methods to reduce excessive private sector risks should be considered: insurance, future markets, and other hedging mechanism.
10	RENEGOTIATION					
10.1	Is the renegotiation of the contract a legal possibility?					low

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS	
	RISK	Opening an uncontrolled renegotiation process, under 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.
11	CONTRACT TERMINATION							
11.1	Does the contract clearly define the reasons for early termination and their consequences?							low
	The contract clearly defines reasons and consequences for early termination.							
	No risks identified		IF YES					
	The contract does not clearly define reasons and consequences for early termination.							

low

RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
RISK	Entering in early termination process without clear knowledge of their consequences and procedures	<i>IF NO</i>		Lack of clarity on causes vis-a-vis consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; it can also prevent the government from cancelling non-performing contracts, or generate incentives for governments to nationalise a project or assets without proper assessment of the cost of that decision		Contracts should include a clear definition of the reasons for early termination (e.g. under-performance of private partner, public interest, force majeure) and present its consequences, in terms of transfer of assets and responsibilities, namely financial compensation for capital investment; compensation should vary according to the party responsible for the early termination	

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?						low
	The contract clearly defines procedures for transferring assets and responsibilities						
	No risks identified	IF YES					
	The contract does not clearly define procedures for transferring assets and responsibilities						

RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
RISK	Terminating the contract without a clear understanding of transfer processes, including financial consequences	IF NO	The government may need to pay for stock of inputs or outputs. Human resources issues may imply financial compensation or increased current expenditures. Licenses needed to continue operation may create fiscal surprises.		Contracts should include a clear definition of the termination process and all its financial consequences. Identified gaps in the contract should be solved by having both parties signing transfer protocols detailing the rules.	

Appendix C

Template: FCCL Report from Procuring Institution to the National Treasury for Treasury Approvals TA:I, TA:II B and TA:III

[To be prepared for each project by the PI. The PI is expected to undertake a fiscal assessment of the project and make suitable recommendations. This independent analysis should be consolidated into the FCCL report.]

The Fiscal Report must build a sound case demonstrating that the project is bankable with the required fiscal commitments. If in the opinion of the Units, the project is ineligible or that fiscal commitment is not necessary or that a different type or amount of fiscal commitment will be required, then the same should also be highlighted, along with detailed justification.]

Report Template:

1. Project reference:
2. Procuring Institution:
3. Line Department:
4. Project Name:
5. Has the project preparation been supported by Government funding?
Yes/ No (details on the project approval by relevant public institution)
6. Project description: A brief description of the scope of the project and location
7. Importance/ rationale of the project: Brief rationale
9. Additional details with respect to type of project, PPP variant, Project term:
What is the type of the project –
☐ User Pays, ☐ Government Pays or ☐ Hybrid (both) Select one
What is the PPP Variant?
Construction Operations Maintenance
☐ BOOT ☐ BOT ☐ BOO ☐ DFROT ☐ DFBOT ☐ Concession or Leases ☐ Others
Only Operations Maintenance

☐ Operations & Maintenance ☐ Service Contract

Project term for the PPP –

Construction period ☐ years;

O&M period ☐ years;

Total term ☐ years

Provide additional details on asset ownership, construction, finance, operations, transfer arrangements:

9. Will the PI or the Private Party assume the following risks? Or who is likely to be responsible for the actions below as per the term sheet for the project? Check which party assumes risk and check both if shared.

DESCRIPTION OF RISK	PROCURING INSTITUTION	PRIVATE PARTY	REMARKS
Land acquisition			
Design			
Construction & Commissioning			
Operations			
Maintenance			
Financing			
Commercial/ Demand/ Market			
Payment			
Foreign exchange			
Environmental			
Social			
Political			
Force Majeure			
Termination			

Additional details if any:

10 Details of Total Project Cost:

COMPONENT	AMOUNT IN MILLION (R)	PERCENTAGE
Building		%
Equipment		%
Construction cost		
Total Hard Cost		%
Preliminary & pre-op expenses		%
Interest during construction		%
Escalation and contingencies		%
Others		%
Total Soft Cost		%
Total Project Cost		100%

11 Means of Finance:

SOURCE	AMOUNT IN MILLION (R)	PERCENTAGE
Equity		%
Debt		%
Source 1		%
Source 2		%
Multilateral funding		%
Others		%
Government support		%
Capital grant		%
Others		
Total Project Cost		100%

12 Government support or investments during construction (based on Project Fiscal Register)

TYPE	YEAR 1	YEAR 2	YEAR 3	...	TOTAL
Capital Contribution/ Constructions grants					
Equity					
Debt					
Other 1					
Other 2					

13 Government support during operations (based on Project Fiscal Register)

	YEAR 1	YEAR 2	YEAR 3		YEAR N
Fixed unitary Payment					
<i>Projected Adjustments:</i>					
Inflation					
Foreign Exchange					
Others 1					
Others 2					
Total adjustments:					
Total projected payouts to Private Party					
<i>Offset/ projected income from project (if any)</i>					
User charges (toll, tariff-based charges, etc.)					
Others					
Net government support required					

14 Guarantees if any (Based on project fiscal risk matrix, fiscal register, etc.)

15 Any other incentive, concession, or grant funds provided to the project

16 Describe how the project is technically deliverable:

Summarise the recommendation and rationale from technical and operational plan

- 17 Describe how the project will be affordable to the users:
Summarise the recommendation and rationale from market study
- 18 Describe how the project will be economically viable:
Summarise from the economic analysis
- 19 Describe how the project will be financially viable to investors:
Summarise from the financial analysis
- 20 Describe how the project will be socially and environmentally sustainable:
Summarise from the environmental scoping, social and resettlement plan
- 21 Describe how the project mitigates acute climate change risks and is adaptable:
Summarise from the climate change vulnerability assessment and inclusion of scope items to mitigate risks
- 22 Describe how the performance of the Private Party will be monitored and outcomes assured?
Summarise details on the output specifications, monitoring arrangements, key performance indicators and payments/penalties linked to non-performance
- 23 Describe how the project PPP arrangement delivers value for money to the government:
Summarise the results from the qualitative and quantitative value for money assessment
- 24 Describe the likely market interest for the Project:
Views from banks, prospective lenders, private sector on their interest
- 25 Summarise the project screening results of the PPP Screening and Analytics Tool (PSAT), if used or other project screening criteria which may be applied to assess the suitability of the project for PPP, if applicable.
Provide details of the overall scores, parameter scores, comments on PPP suitability, composite indicators, areas of improvement, etc.
- 26 Summarise the Project Fiscal Risk Register and Project Fiscal Risk Matrix
Provide details on the risk rating, priority actions, mitigation measures
- 27 Summarise the details from the FCCL register as per Step 7 of these guidelines.
Provide details on the direct and contingent payment liabilities, calculation methodology,
- 28 Project implementation schedule and major milestones
- 29 Private Party selection method and brief description
- 30 Names and role of independent consultants:
Technical, Financial, Legal, Environment, Social

31 Comments and recommendations from the Procuring Institution

Prepared by:

Date:

Reviewed by:

Authorised signatory for the Procuring Institution:

Date

Enclosures:

- i Project feasibility report
- ii Bid evaluation report and outcome of negotiations prepared by the Evaluation Committee (in case of submission after renegotiations)
- iii Project draft concession agreement or Project term sheet (highlighting sections with fiscal implications)
- iv Project Fiscal Risk Register
- v Project Fiscal Risk Matrix (Summary and detailed)
- vi Project FCCL Register
- vii Guarantee drafts (if required)
- viii Excel files in soft copy – Project Financial Model, Economic Assessment, VFM assessment,
- ix Excel files with FCCL calculations
- x Supporting documentation on project commitment from the PI
- xi Any other information

Appendix D

Requirements for Feasibility Study Report with respect to FCCL analysis for PPP projects

The Feasibility Study FCCL report for all PPP projects must be prepared in accordance with these FCCL guidelines.

The fiscal risks and FCCL for the proposed project must be identified and quantified as per the provisions of Part D of these guidelines and accompanied by completed formats for the PFRM and FCCL register as detailed in the LTFP, and Appendix C of these guidelines.

Guidelines 

MANAGEMENT

FISCAL COMMITMENTS AND
CONTINGENT LIABILITIES

(FCCL)

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