GOVERNMENT OF CROSS RIVER STATE

PUBLIC-PRIVATE PARTNERSHIP GUIDELINES

FISCAL COMMITMENTS

AND

CONTINGENT LIABILITIES

FRAMEWORK

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Acronyms / Abbreviations

AG	Accountant General
AO	Accounting Officer
CA	Contracting Authorities
CL	Contingent Liabilities
CRSIPB	Cross River State Investment Promotion Bureau
CRSG	Cross River State Government
DMO	Debt Management Office
DML	Debt Management Law
DPPIB	Due Process and Price Intelligence Bureau
FCCL	Fiscal Commitments and Contingent Liabilities
FDMO	Federal Debt Management Office
ExCo	Executive Council
FBC	Full Business Case
FC	Fiscal Commitments
FCCL register	Fiscal Commitments and Contingent Liabilities Register
FRC	Fiscal Responsibility Commission
FRL	Fiscal Responsibility Law (FRL) 2016
IFI	International Financial Institutions
IPSAS	International Public Sector Accounting Standards
CRS BPPP	Cross River Bureau of Public Private Partnership
CRS FC	Cross River State Ministry of Finance
DP	Due process
LTFP	Long Term Fiscal Planning
MAGA	Material Adverse Government Actions
MDA	Ministry, Department and Agencies
MTEF	Medium-Term Expenditure Framework
OBC	Outline Business Case
SPC	State Planning Commission
PDT	Project Delivery Team
PFF	Project Facilitation Fund
PFS	Pre-Feasibility Study
PFM	Public Financial Management
PFRAM	PPP Fiscal Risk Assessment Model 2.0
PFRM	Project Fiscal Risk Matrix
PFRR	Project Fiscal Risk Register
PIM	Public Investment Management
PO	Project Officer
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public Private Partnership
PPP Manual	Cross River State Public - Private Partnership Manual, 2023
VfM	Value for Money

1 Introduction

1.1 Purpose of developing an FCCL framework

The Government of Cross River State recognizes the significance of Public-Private Partnerships (PPPs) to enhance the quality, cost-effectiveness, and timely provision of public infrastructure in the State. With a growing need for infrastructure development, PPPs present an opportunity to bridge the infrastructure gap and leverage private sector expertise and investment.

The need for having robust Fiscal Commitments & Contingent Liabilities (FCCL) guidelines is rooted in the State Ministry of Finance and State Bureau of Public Private Partnership Law. The guidelines primarily focus on managing long-term fiscal cost in PPPs, including direct and contingent liabilities that extend throughout a project's lifespan. Cross River State has several PPP projects under development, such as infrastructure ventures, toll road projects, and healthcare facilities, where managing fiscal costs and contingent liabilities are crucial for sustainable implementation. Given the evolving PPP market in Nigeria, it is essential to establish FCCL guidelines that ensure the basic management of fiscal commitments without hindering the development of the PPP market. By doing so, Cross River State can optimize the advantages of private sector participation while maintaining fiscal sustainability and achieving long-term infrastructure development goals.

The objective of these guidelines is therefore to develop an operational framework for managing o ligations arising from state PPPs with the following objectives:

a. **Alignment with National Policies:** The Federal Government of Nigeria (FGN) has overarching guidelines for PPP fiscal risk management. A state-level FCCL framework helps ensure that practices of sub-national governments are consistent with national standards, enhancing overall fiscal stability.

b. **Risk Identification and Management:** The CRS BPPP currently lacks sophisticated tools and expertise required to evaluate the risks associated with PPPs. The FCCL framework will help to assess the potential financial exposure from guarantees, revenue shortfalls, demand risks, and other obligations that may arise during the project lifecycle.

c. **Enhanced Financial Discipline:** The FCCL framework mandates clear documentation and reporting of all fiscal commitments and contingent liabilities associated with PPPs. This transparency helps stakeholders, including the public, lenders and investing community, monitor government obligations and assess the state's financial health. Besides improving accountability in the management of public resources, this improves the state government ability to make informed decisions and maintain sustainable fiscal policies.

d. **Better Project Evaluation and Selection:** By incorporating a rigorous evaluation process for assessing fiscal commitments and contingent liabilities, the CRS BPPP can better prioritize projects based on their long-term fiscal impact, feasibility, and expected value-for-money. This helps ensure that only financially viable and strategically important PPP projects are developed and implemented.

e. **Sustainable Financing and Budgeting:** The FCCL framework will assist in integrating PPP commitments into the state's broader fiscal planning and budgeting process. Accordingly, the CRS BPPP is able to account for future obligations, such as payments related to guarantees or subsidies, in their fiscal projections.

f. **Mitigation of Fiscal Risks:** The FCCL framework will encourage the use of risk mitigation measures such as project structuring, insurance, and contractual safeguards to manage and reduce exposure to contingent liabilities. This reduces the likelihood and impact of contingent liabilities materializing into actual fiscal costs.

g. **Boosting Investor Confidence:** Developing and operationalizing a robust FCCL framework assures investors that the state government has a systematic approach to assessing

and managing the financial risks of PPP projects. This can lead to better financing terms and increased private sector participation in the state's infrastructure service delivery.

h. **Capacity Building for Sub-National Government:** The framework will serve as a guide for continuous capacity development of relevant officials in financial analysis, risk assessment, PPP contract management, and in the use of globally-recognized fiscal risk management tools, improving the overall quality of project implementation and monitoring.

1.2 Components of the FCCL Framework

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

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

The FCCL Framework is divided into 2 main sections:

i **FCCL Guidelines**: which provide a detailed description of fiscal liabilities arising from the execution of PPP agreements. It presents how they should be managed through the project life cycle in accordance with the legal, institutional and regulatory framework; and

ii **FCCL Technical Guidance**: which presents the methodologies for measuring and valuing direct and contingent liabilities. It describes how they are applied in the Long-Term Fiscal Planning (LTFP) Tool which has been developed to monitor these liabilities.

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

1.3 FCCL Guidelines and PPP Framework

This document presents the FCCL guidelines and technical guidance on the methodology of FCCL management adopted by Cross River State Government. Cross River State PPP framework is documented in the Cross River State Bureau of Public Private Partnership Law (CRS BPPP) Law 2010 and Manual.

Typically, a state's PPP framework includes the following key elements:

- ***Policy Guidelines*:** Policies, processes and objectives for using PPPs to achieve public infrastructure or service goals.
- ***Legislation:*** Laws and regulations that provide the legal basis for PPPs, defining the roles, responsibilities, and obligations of the public and private sectors.
- ***Institutional Setup:*** Dedicated PPP units or agencies, governance structures, and clear roles for government bodies involved in PPP projects.

- ***Standardized Documents:*** Templates for contracts, risk-sharing agreements, and other documents that help promote consistency and clarity across projects.

2 FCCL Guidelines

2.1 Overview

2.1.1 Introduction

As mentioned earlier, the objective of the FCCL Guidelines is to provide a comprehensive and standardized approach for relevant agencies of the FGN, CRSG and Contracting Authorities in identifying, assessing and managing fiscal commitments and contingent liabilities arising from PPP projects, thereby ensuring that the state government is able to balance the potential benefits of private sector involvement in public infrastructure with the need to maintain fiscal discipline and manage long-term financial risks.

The objective of the FCCL Framework is to provide a methodological approach for assessing and managing FCCL arising from PPP projects.

2.1.2 Current regulatory framework

This section summarizes the existing regulatory framework for PPPs and PFM in CRS and its impact on developing the FCCL Guidelines.

Table 1.1

Relevant Law/ MDA	Relevant provisions and impact
Constitution of the Federal Republic of Nigeria (1999, as amended)	The Nigerian Constitution provides the overarching legal framework for financial management in all states, including Cross River State. Sections relevant to PFM include the Appropriation Bill, Consolidated Revenue Fund, and Public Accounts. The sections outline the roles of the National Assembly, State Houses of Assembly, and Executive arms in budget formulation, approval, and execution. Direct and contingent liabilities associated with PPPs can be incorporated into Appropriation Bills/Laws and have impact on public accounts.
Cross River State Bureau of Public Private Partnership (BPPP)	The BPPP established under the Cross River State Bureau of Public Private Partnership Law No. 6 0f 2010 with mandate to facilitate and regulate partnership between the Public and Private Sector in the planning, design, construction, operation and maintenance of infrastructure, goods and services in the State and for matters related thereto. The law empowers the bureau to: 1. Interface with and provide technical assistance to Ministries, Departments Agencies and specific Contracting Authorities throughout PPP project the life cycle 1. Build up and enhance the capacity of Government to design, implement, Monitor and evaluate PPP projects 3. Be a center of expertise for the promotion, development, and implementation of PPPs and develop and serve as a primary and definitive source of all information on PPP legislation, regulations, guidelines and standards applicable and in force in the State; 4. Facilitate and provide full support to the private sector and serve as liaison between the private sector and government agencies and relevant authorities in regard to PPPs in the, State;

	5. Undertake the formulation, development, periodic review of the state PPP Master Plan. The FCCL framework will have to comply with the requirements of the BPPP to ensure adherence to the provisions of the BPPP Law.
Ministry of Finance (MOF)	The Ministry of Finance is responsible for granting approval to launching of tender process for the State PPPs. MOF is also responsible for management of State Government debt and contingent liabilities. It must also manage the financial risk inherent in transactions to which the State Government is a party. It is therefore the MoF's responsibility to review the financial models built for specific projects, test the assumptions in those models and design strategies/instruments to hedge against contingent liabilities becoming crystallized. At the point of considering whether or not to grant a Second Stage Approval, the MoF will be critical as the financial risk adviser to BPPP.
Debt Management Department of the Cross River State Ministry of Finance	Cross River State's debt management is a part of the state's Ministry of Finance, which is responsible for: Tax policy: Developing fair tax policies to generate revenue for public services while minimizing the burden on individuals and businesses Debt management: Responsible borrowing and prudent debt servicing to maintain fiscal sustainability and safeguard the state's creditworthiness Strategic debt management: Optimizing revenue generation, streamlining budget allocation, and strategically managing debt The Debt Management Department (DMO) deals with both domestic and external debt; and is entrusted with: • Maintaining databases of loans and loan guarantees • Verifying and servicing external debt guaranteed. This is done in conjunction with the Federal Debt Management Office (FDMO) • Verifying and servicing debt directly taken by the CRSG. This is done in conjunction with, the state Accountant General (AG) • Liaison with International Financial Institutions (IFIs) and donor agencies. The functions of the DMO particularly as they relate to guarantees, will require all PPP projects to go through a vetting process by the DMO. The FCCL will also be included in the DMO database.
Cross River State's Due Process and Price Intelligence Bureau (DPPIB)	The Cross River State Public Procurement Act of 2011 regulates the procurement process and establishes the Due Process Bureau. The act also requires that tenders are publicly opened after the bidding process is closed, and that procurement awards are published online. The DPPIB is focused on ensuring proper accountability for use of government monies but has no specific provisions at present with respect to FCCL. Its potential impact on FCCL will revolve around the government's decision to budget for/create a special fund for contingent liabilities arising from PPPs.
PPP Manual, 2024	The PPP Manual provides for checklists of the assessment and management of PPP projects throughout the project process cycle. The affordability and VfM checks are conducted under the project preparation stage as part of developing the OBC. The Government's FC to a project must be determined by the affordability to make such commitments. Therefore, the FCCL framework will be impacted by the affordability and VfM assessment processes at the project preparation stage. The Concession Agreement Checklist in the PPP Manual includes an item for "Contingent Liabilities of the MDA". This alerts the MDAs on the need to assess, quantify, document, and prepare for the contingent liabilities in a project, before signing a contract. The FCCL framework will need to align with this approach of pre-contract assessment of contingent liabilities by MDAs.

Cross River State Investment Promotion Bureau Law No 7 of 2008	The Law entrusts investment promotion and facilitation responsibilities to Cross River State Investment Promotion Bureau (CRSIPB) but it does not vest any powers on the Agency to assume fiscal risks or liabilities on behalf of the government. The law enables the Bureau to market state PPP projects within and outside the country
Cross River State Annual Appropriation Law	The Cross River State Annual Appropriation Law is passed each year by the State House of Assembly to authorize state government amongst others to spend public funds in accordance with the approved budget. Government's approved co-financing obligations must be provided in state annual appropriations.

2.1.3 Application of FCCL framework

The FCCL Framework will be mandatory for all PPP projects submitted for consideration, approval and implementation under the State's PPP framework. All PPP projects executed prior to the coming into force of the PPP Law will also be reviewed for FCCL, with the purpose of managing their FCCL impacts.

The FCCL guidelines is a dynamic document that will be refined and revised periodically as the state's PPP program evolves. Along with the technical guidance, the FCCL framework provides more detailed technical guidance for the identification and assessment of FCCL through project identification and development stages as well as their monitoring and reporting across a PPP project's lifecycle.

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

2.2 PPP Fiscal Liabilities and Risks

PPPs are collaborative arrangements where the public sector engages with private entities to finance, build, and operate infrastructure projects or deliver public services.

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

2.2.1 Fiscal liabilities in PPP

Fiscal liabilities in the context of PPPs refer to the financial commitments (FC) and obligations that the government assumes when entering into a PPP agreement. They can be classified into two categories:

- A **direct liability:** These are explicit and legally binding obligations that the government must fulfill as part of the PPP agreement**.** Examples of such direct liabilities include:
    - *Upfront "viability gap" payments* – an up-front co-financing responsibility (often paid out as the project's construction phase progresses);
    - *Availability Payments:* Periodic payments made during the operations phase by the government to the private partner based on the availability and performance of the

infrastructure or service. The payment may be adjusted with bonuses or penalties related to performance;

- *Shadow tolls or output-based payments* – a government payment or subsidy per unit or user of a service. For example, per vehicle kilometer driven on a PPP highway where the government, rather than the user, makes payment to the private sector service provider.

- A **contingent liability (CL)** is an obligation that arises from an uncertain future event (i.e. one that may or may not occur) outside the control of the government. CLs are not explicitly recognized upfront but may materialize under certain circumstances. Their occurrence (trigger event), value, and timing of a payment may all be unknown or cannot be definitively determined. Contingent liabilities under PPP contracts can include:

  - *General Guarantees* – payments on specific risk variables e.g. exchange rate, revenue, inflation, prices and traffic, force majeure, termination payments and credit guarantees, among others;

  - *Compensation clauses* – for example, a commitment to compensate the private party for damage or loss due to certain, specified, uninsurable force majeure events;

  - *Termination payment commitments* – a commitment to pay an agreed amount should the contract expire or is terminated due to default by the public or private party. The amount may depend on the circumstances of default; and

  - *Debt guarantees or other credit enhancements* – a commitment to repay part or all of the debt used to finance a project in the event that the private borrower does not repay it. The guarantee could cover a specific risk or event.

    Guarantees are used to provide security to a lender that the loan will be repaid.

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

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

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

amount of uncertainty.

Table 2-1: Fiscal liabilities in a PPP scheme

Type of FCCL	Examples	Illustrative examples
Direct - Explicit Liabilities / FCs	▪ Up-front commitments such as contribution to capital investment, land acquisition costs, etc.	▪ In many of the Nigeria Port Concession contracts, the Nigerian Ports Authority had a commitment of capital dredging to specific depths and ▪ then maintenance dredging onwards ▪ For medical warehouses in Abuja and Oshodi, Lagos, implemented on PPP, the Federal Ministry of Health, the grantor, is responsible for heavy maintenance and repairs, whereas the operator is responsible for recurring maintenance
	▪ On-going commitments such as availability payments, output based subsidies, operational subsidies, and capital subsidy obligations	▪ Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the highway authority is committed to providing quarterly availability payments to the Concessionaire. The highway authority will finance the availability payments through tolls collected by a separate toll operator. The concessionaire will expand and rehabilitate the road sections based on output specifications and adhere to defined performance standards during the O&M phase over the course of the concession term.
Contingent Liabilities (CLs) / Fiscal Risks	▪ State guarantees on project loans, minimum levels of demand / revenue guarantees, exchange rate risks, put call option agreements (PCOA), etc. ▪	▪ Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the Central Bank of Kenya is providing exchange rate support and a major multilateral development bank is extending a partial payment risk guarantee to cover two quarterly availability payments in case of default by the highway authority. ▪ The Azura power IPP in Nigeria had a put & call option agreement (PCOA)
	▪ Termination payment in case of concessionaire default, contracting authority default, or force majeure	
Indirect - Implicit Liabilities	▪ Implicit liabilities that are not explicit because they are not expressed and ▪ defined contractually but they are, nonetheless expected to be the responsibility of government. Perhaps the most obvious and often overlooked liability is the implicit guarantee from governments that ultimately underwrites all public infrastructure and services.	▪ Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the Government of Kenya is providing a letter of support to the concessionaire in case of default by the highway authority (Contracting Authority). ▪ For medical warehouses in Abuja and Oshodi, Lagos, implemented on a PPP, the Federal Ministry of Health, the grantor guaranteed a minimum occupancy of the warehouse. If

		occupancy fell below this level, the operator was allowed to increase tariffs.

2.2.2 Other fiscal risks

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

Other sources of fiscal risks are those channeled through provisions – controlled by the government– of the PPP agreement. For example, an extension of the project scope – allowed in the PPP agreement and subject to government's consent – that modifies the costs of the project to the government. Other sources of fiscal risk are outside the scope of liabilities to be paid by the government to the private partners. 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 is what will make the estimation and management of FCs more challenging.

Table 2-2: Examples of FCCL in PPP

Type of Project	Fiscal commitment	Contingent liabilities	
		Payment and Termination	Other fiscal risks
Bakassi Integrated Deep Seaport Project Restructuring	▪ Upfront capital subsidy ▪ Service payment adjusted by macroeconomic parameters and contingent events	▪ Revenue or traffic guarantee ▪ Termination payment in case of concessionaire or contracting authority default, or force majeure.	▪ Change of scope that modifies the service payment. ▪ Compensation for imposed decrease in toll rates due to social unrest
Marina Resort	▪ Availability 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
Specialist PPP Hospitals	▪ Viability Gap Funding	▪ Take or pay commitment from public utility ▪ Termination payment	▪ Change in hydrological conditions ▪ Renegotiation
Calabar Specialist PPP Hospital Restructuring	▪ Availability payments	▪ Guarantee on occupation ▪ Termination payment	▪ Change in university governance

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 Government borrows, it uses the borrowed funds and the Government is obliged to repay the debt regardless of how well the borrowed funds are used. Government liabilities to PPPs are non/limited recourse in nature, structured as performance-based payments for services delivered and/or assets/infrastructure developed/made available for use.

2.3 FCCL Management

2.3.1 Structure of FCCL Management

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

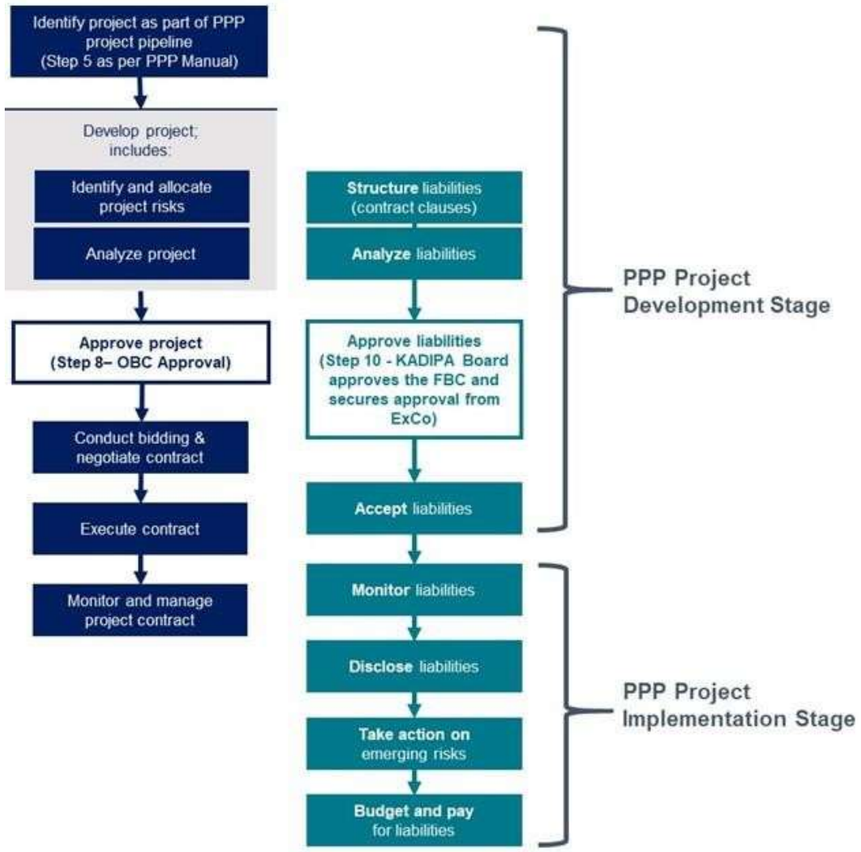
Figure 2-1: Management in Cross River State PPP Project Process Cycle

	PHASE	FCCL CONTEXT	INSTITUTIONAL RESPONSIBILITY
	Project Identification and selection (Solicited or Unsolicited Projects)	• The technical scope of a selected project is defined, including a detailed description and requirements of its operational components. • The economic sense and soundness of the project is tested. • The project is screened the project for PPP suitability, i.e. to test whether the project has the potential to be developed as a PPP	Contracting Authority/ The Cross River State Ministry of Finance (CRS MF)
	Feasibility study	• FCCL assessment required to identify likely fiscal risks, for example, demand for the services, land availability risk, comparison of likely revenue, and likely costs leading to a funding gap. • Explicit quantification of all fiscal obligations with an assessment of affordability for all projects considered suitable to be procured as PPPs. • Ensuring that direct liabilities can be accommodated within budgetary limits and that CLs	Contracting Authority

		are provided for. • Determining and confirming affordability and sustainability of FCCL. • Ensuring that the preliminary contract structure reflects acceptable risk allocation.	
	Approval	• Ensuring that the use of government resources (which take the form of liabilities) are focused on policy priorities; represent value for money; and are consistent with applicable public financial management strategies. • Confirming that FCCL are appropriately budgeted and accounted for and consistent with applicable laws and regulations such as the Appropriations Law, Fiscal Responsibility Law, etc.	CRS BPPP, CRS MF, DMO
	Procurement	• Confirming that the procurement documents reflect the outcome of feasibility study assessment with regards to fiscal obligations, and that bidders are required to explicitly assume the risks allocated to private sector parties. • Ensuring that draft PPP contract does not materially deviate from Value for Money (VfM) considerations and acceptable financial/fiscal risk allocation.	Contracting Authority, CRS BPPP, CRS MF
	Contract award	• Ensuring that all fiscal risks are manageable and generate a risk register for monitoring. • Confirming that appropriate strategy is in place for managing fiscal risks and other retained risks.	Ministry of Justice, CRS BPPP, CRS MF, DMO
	Construction/Operations Phase	• Pro-active monitoring and reporting against the fiscal risk register. • Ensuring efficient management of fiscal risks and transparency in reporting of fiscal risk management	Ministry of Justice, CRS BPPP, CRS MF, DMO, Contracting Authority

2.3.2 FCCL Process

Figure 2-2: FCCL Process



Project Development Stage

Project identification — **Project implementation**

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

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

Project Implementation Stage

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

2.3.3 Institutional framework for FCCL Management

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

Function	Objectives	Role/ Responsibility
Preparing	To develop a project design that will be bankable and ensure that the risks the government will bear are consistent with good risk allocation principles, borne at the lowest cost and with minimal fiscal impact.	**CRS MF, CRS BPPP, Ministry of Justice** Project feasibility analysis and implementation plans.
Analyzing	To inform decision making when the project is structured and approved, and provide a basis for monitoring and budgeting for liabilities.	**CRS MF, CRS BPPP, Ministry of Justice:** Fiscal risk assessments and other tools for analyzing liabilities.
Approving	To ensure the use of government resources (which take the form of liabilities) are: focused on policy priorities; represent value for money; and are consistent with good fiscal management.	**CRS MF, DMO** Centralized approval to ensure that PPPs are focused on the government's policy priorities, represents value for money, and are consistent with good fiscal management.
Accepting	To clarify the government's commitment to its liabilities (i.e.	**CRS MF, Ministry of Justice, DMO, CRS BPPP:**

Table 2-2 Example of FCCL in PPP

Function	Objectives	Role/ Responsibility
	financial obligations), and to ensure the executed contract is consistent with earlier analysis and approval	Involves the government executing formal instruments such as project agreements, issuing letters of support or performance undertakings with the purpose of guaranteeing that they will honor its obligations and commitments.
Monitoring	To provide information needed to disclose, act on emerging issues and, if necessary, budget for liabilities	**CRS MF, DMO, CRS BPPP, CRS IPB, Ministry of Justice:** To help government track its exposure to fiscal risks from year to year, and improve its ability to take action to reduce the cost and/or likelihood of an event triggering a payment.
Budgeting and paying	To ensure resources are available to make payments promptly when required, improving credibility and clarity as to how costs of liabilities will be borne, and mitigating the fiscal impact.	**CRS MF, CRS BPPP, Ministry of Justice, Budget Department:** Establish a well-defined system for budgeting and paying for liabilities will ensure the government has the resources available to meet its obligations and mitigate the fiscal or budgetary impact of contingent liabilities.
Disclosing	To improve accountability for decision makers, and increase transparency of the government's commitments to third parties (such as credit agencies and lenders).	**CRS MF, Ministry of justice, Budget Department:** Reporting on exposure to liabilities through the budget and government accounts to increase transparency and improve the accuracy and completeness of information available to external parties.
Mitigating	To help reduce the cost to government of bearing contingent liabilities by reducing the likelihood or cost of the occurrence of those liabilities.	**CRS MF, DMO, Ministry of Justice:** Continuous monitoring of exposure to contingent liabilities from PPP projects, and actively managing that exposure where possible, by identifying and taking action on emerging issues.

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

3 FCCL Technical Guidance

3.1 Overview

The purpose of the technical guidance is to

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

3.2 FCCL Management during project development stage

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

This section sets out:

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

3.2.1 Identification and evaluation of PPP fiscal risks through the PFRM

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

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

3.2.1.1 Rationale

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

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

However, the project documentation may not explicitly contain all risks and therefore their fiscal impact not fully understood. For instance, a government may take revenue risk and pay to the concessionaire an availability payment. In this case, the contract provides the terms of the

availability payment yet does not set out the effects of, for instance, real demand falling below expectations. Hence, the risk matrix complements the contract agreement in identifying FCs and fiscal risks.

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

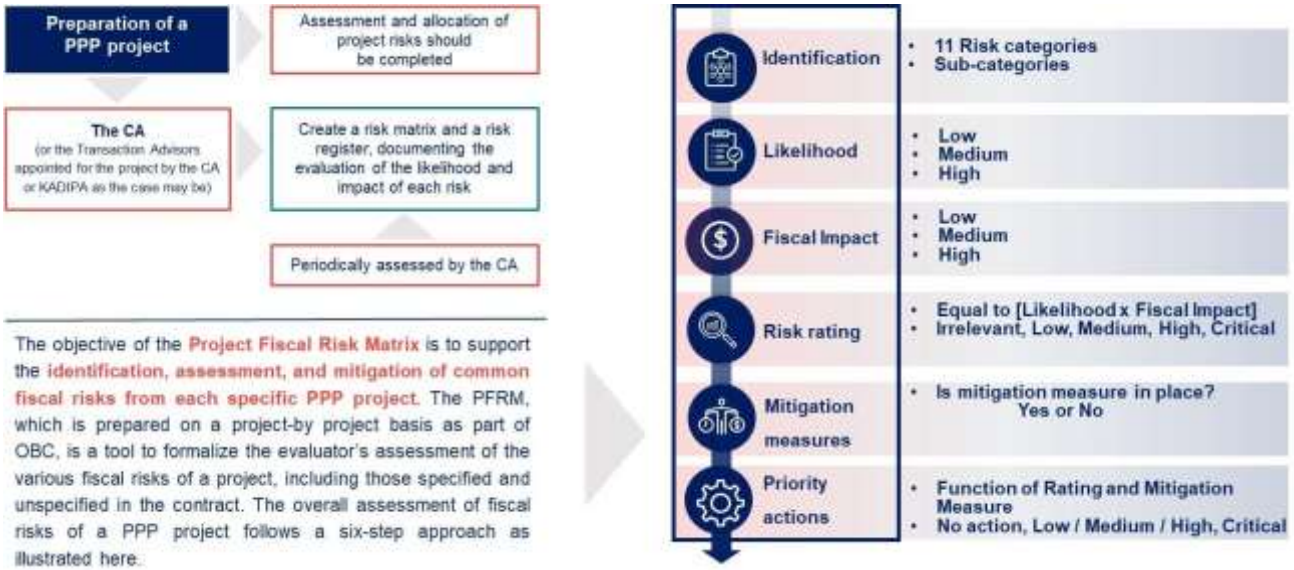
Changes to the project and the contract, especially if not triggered by the private partner, can generate a fiscal risk. When negotiating and agreeing to such changes, the private partner always has greater leverage than the CA as the project incumbent. The two most common sources for such changes are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

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

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

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

Figure 3-1: Assessment of Fiscal Risks



3.2.1.2 Approach to PFRM

a. Identification of fiscal risks (and allocation)

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

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

Based on the World Bank's PPP Fiscal Risk Assessment Model (PFRAM 2.0) instrument, 11 major categories of risks and 40 subcategories are to be captured in the PFRR. The main risk categories, as well as the subcategories included in PFRAM 2.0, are presented in Table 3-1. 3.3.3 Appendix A presents a detailed illustration of risks and sub-risks. Appendix B provides a detailed questionnaire as to how these risks should be assessed by a CA (or Transaction Advisor appointed for the project).

Table 3-1: Risk categories

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

Source: PFRAM 2.0 User Manual

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

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

Table 3-2: Project Fiscal Risk Register

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

Risk allocation

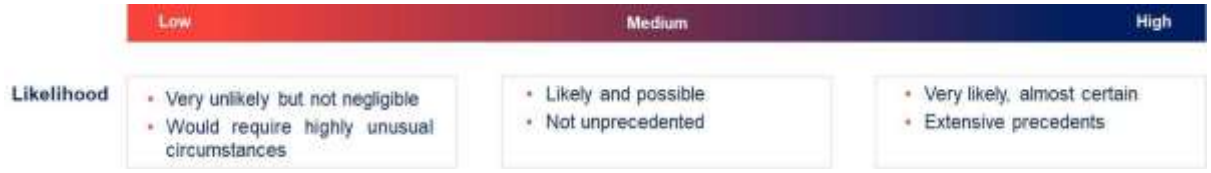
As stated above (section 3.2.1.1), risk allocation is at the heart of PPP structuring. Risks may be allocated to either the Government or the private partner or shared. The more the risk is borne by the private partner, the less its occurrence will impact the Government purse. In its project risk assessment,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

c. Assessment of Likelihood of risks

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

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

Table 3-3: Risk likelihood assessment



Source: PFRAM 2.0 User Manual

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

c. Estimation of fiscal impact of risks

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

Firstly, the Project Officer (PO) / Accounting Officer (AO)[16] should evaluate the potential fiscal impact of a particular risk in a holistic manner from a qualitative perspective, providing as much information as possible to support the assessment of low, medium, or high.

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

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

Table 3-4: Fiscal impact assessment of identified risks

Scale	Value	Fiscal Impact
Low	< 0,1% of GDP or < 5% of CAPEX	• Impact on government deficit and debt lower than X % of GDP (accumulated construction cost of the asset) • Minimal damage to government's reputation, service availability, and operation
Medium	0,1%-0,2% of GDP or 5%-25% of CAPEX	• Impact on government deficit and debt between X% and Y% of GDP (accumulated construction cost of the asset) • Limited damage to government's reputation, service availability, and operation
High	>0,2% of GDP or >25% of CAPEX	• Impact on government deficit and debt above Y % of GDP (accumulated construction cost of the asset) • Significant damage to government's reputation, service availability, and operation

Source: Based on PFRAM 2.0 User Manual

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

d. Determination of risk rating

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

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

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

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

Source: PFRAM 2.0 User Manual

e. Identification of mitigation strategy

Possible mitigation measures vary with the risks. 3.3.3 Appendix A presents a detailed illustration of risks, sub-risks and typical mitigation measures for each of the subcategories. These suggestions are not meant to be exhaustive; they represent typical mitigation measures based on international good practices.

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

f. Determination of priority actions

Based on the risk rating and the mitigation measures, an assessment of the priority of the required actions is to be undertaken as demonstrated in Table 3-6. The more severe risks - those with a high rating - should be addressed first. Risks rated as critical, paired with no mitigation measures in place, would result in the need to implement a “critical” priority action; the priority would be considered a “high priority” if mitigation measures exist. Addressing the less important risks, even if they are an easy fix, does not improve the overall risk profile of the project and does not reduce the risk for the government

Table 3-6: Prioritization of risk mitigation measures

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

Source: PFRAM 2.0 User Manual

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

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

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

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

Table 3-7: Project Fiscal Risk Matrix

Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority actions	Suggested Mitigation Strategy
Governance Risks	Low	Medium	Low	No	Medium Priority	
Construction Risks	Medium	High	High	Yes	Medium Priority	
Demand Risks	Medium	Low	Low	No	Medium Priority	
Operational and Performance risks	Low	Low	Irrelevant	Yes	No action	
Financial risks	Medium	Medium	Medium	No	High Priority	
Force Majeure	Low	Low	Irrelevant	Yes	No action	
Material adverse government actions	Medium	Medium	Medium	No	High Priority	

Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority actions	Suggested Mitigation Strategy
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.

3.2.2 FCCL Register and Affordability

3.2.2.1 FCCL register and calculation

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

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

1) Any guarantee, insurance or financial support provided by the CA or any other public entities to ensure either

    a. a minimum level of revenues to the private partner: **Revenue guarantee**, or

    b. the interest, fees or repayment due by the private partner under the terms of the financing products (debt, bonds, guarantees) arranged for the project financing: **Debt guarantee**

2) Any payment due to the private partner by the CA in case of termination of the PPP agreement before its terms: **Termination payment**. It shall be noted that Termination payment depends upon the cause of early termination, which comprise: private partner default, force majeure, contracting authority default, or termination for convenience.

3) Contingent liabilities arising from the occurrence of **other fiscal risks** as identified in the PFRR.

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

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

Table 3-8: FCCL register

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

Source: CPCS

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

Table 3-9: Methodologies for assessment of FCCL

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

Source: CPCS

3.2.2.2 Assessment of affordability

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

The three common instruments used to check affordability are:

(1) Comparing annual cost estimates against the projected budget;

(2) Assessing the impact on debt sustainability; and

(3) Introducing limits on PPP commitments.

The first instrument entails the CA and BPPP checking whether the project is aligned with budget constraints and priorities. Verifying that the FCs are affordable within the budget is the primary step. This is achieved by assessing if the commitments allow the CA to achieve their fiscal targets or surplus i.e. does the CA's annual budget allocation accommodate the cost of FCCL.

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

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

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

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

Table 3-10: Affordability indicators

FC	Cost	Indicator of fiscal affordability (Including projections over PPP contract length- beyond medium-term horizon)
Direct liabilities	- Estimated Annual payments - NPV	- Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget - Cost as percentage of sub-national public debt - Cost as percentage of GDP

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

Source: CPCS

3.3 FCCL Management during project implementation

3.3.1 Monitoring

Managing FCs entails monitoring, reporting and budgeting of PPP projects, both at individual project level and at portfolio program level. Adequate monitoring and disclosure of FCs and risks will allow the government to prevent undesirable events from occurring, mitigate their impact, and make informed decisions during the operation phase.

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

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

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

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

3.3.2. Reporting and Disclosing

Reporting

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

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

Disclosures

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

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

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

Table 3-12: Reporting Sample of FCs by project

PPP project	**Direct liabilities**	**Annual payments value for 3-year budget**			**Present value of all payments**
		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 contracting authority				

Project 2	- Termination payment In case of default of contracting authority		

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

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

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

3.3.3 Accounting

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

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

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

Appendix A PFRAM Risks and Mitigation Measures

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

1. Governance Risks

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

2. Construction

R4. Risks related to land availability

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

R5. Risks related to relocation of people and activities

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

R6. Risks related to land decontamination

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

R7. Risks related to environmental and archeological issues

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

R8. Risks related to geological issues

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

R9. Risks related to licensing

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

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

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

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

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

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

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

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

R13. Risks related to changes in input prices

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

R14. Risks related to changes in nominal exchange rate

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

3. Demand

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

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

4. Operation & Performance

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

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

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

5. Financial

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

6. Force Majeure

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

7. Material Adverse Government Actions (MAGA)

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

8. Change Law

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

9 Rebalancing of financial equilibrium

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

10. Renegotiation

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

11. Contract Termination

- **R39**. If the government enters into an early termination process without clear knowledge of the consequences and procedures, the lack of clarity regarding consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; possibly preventing the government from cancelling non-performing contracts, or generating incentives for governments to nationalize a project or assets without proper assessment of the cost of that decision. To mitigate this risk, contracts should include a clear definition of the reasons for early termination (for example, underperformance of the

private partner, public interest, or force majeure) and should present its consequences in terms of transfer of assets and responsibilities, namely, financial compensation for capital investment. Compensation should vary according to the party responsible for the early termination.

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

Appendix B Risk Assessment Questionnaire

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*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.	
1.2	**Does the MFBP have the experience and/or capacity to manage fiscal risks from complex, long-term projects during their whole life-cycle?** The **MFBP** has the experience and capacity to manage fiscal risks from large investment projects						
	No risks identified	*IF YES*					
	The **MFBP** lacks the experience and capacity to manage fiscal risks from						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	large investment projects						
	RISK 2 **The MFBP 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 Ministry of Finance/Budgetary authority	
1.3	**Does the government disclose project and/or contract information?** The government discloses project and/or contract information						
	No risks identified	*IF YES*					
	The government does not disclose project and/or contract information						
	RISK 3 **Poor disclosure of project and contract information may create public concerns regarding the governance of the project/contract**	*IF NO*	Depends on the strengths and weaknesses of the institutional framework	Efficiency loss. Lack of transparency may prevent users from acting as independent auditors of the project, and/or allow them to put pressure for changing the project.		Strong communication strategy to engage state holders and create ownership of the project. Clear and standardized disclosure procedures for project information and ultimately contract disclosure.	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2	**CONSTRUCTION RISKS**						
2.1	**Risks related to land availability**						
2.1	**Is land already available to the private partner?** Land is already available to the private partner						
	No risks identified	***IF YES***					
2.1.1	Land is not available to the private partner **Is there a credible guarantee that land will be available for the project?**	***IF NO***					
	RISK **Government's additional fiscal costs arising from possible construction delays due to untimely availability of land**	***IF YES***		Uncertain fiscal cost from compensation for construction delays		Complete assessment of land needs prior to contract closure; prepare the land acquisition process; build in buffers and flexibility clauses in the contract	
	RISK **Project cancellation due to lack of land**	***IF NO***		Costs due to compensation to private partner and project redesign		Ensure land availability at an early stage of the project cycle	
2.1.2	**Will the private partner have to pay for land acquisition?**						

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

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

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	Need for land decontamination	*IF YES*					
2.3.1	**Will the private partner have to pay for decontamination?**						
	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 archeological issues.**						
2.4	**Is there a possibility of facing environmental/archeological issues?**						
	No risks from environmental and archeological issues						
	No risks identified	*IF NO*					
	There are risks from environmental and archeological issues	*IF YES*					
2.4.1	**Will the private partner have to pay**						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	for environmental and archeological issues?						
	RISK **Government costs arising from environmental or archeological issues and from compensation for project delays**	***IF NO***		Government costs from environmental or archeological issues, and compensation to private partner due to project delays		Environmental constraints specified prior to tender (including permits and licenses); develop a plan to deal with archeological findings	
	RISK **The private partner is not able to cope with the cost of environmental or archeological issues**	***IF 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 archeological findings	
2.5	**Risks related to geological issues.**						
2.5	**Is there a possibility that the project phases geological issues?**						
	No risks from geological issues						
	No risks identified	***IF NO***					
	There are risks from geological issues	***IF YES***					

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

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
2.7	**Can the government be hold responsible for design failures, errors, or omissions?** No risks related to failures/errors/omissions in project design						
	No risks identified	***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.**						
2.8	**Can the government be held responsible for any inherent defect in assets transferred to the private partner?** No risks related to inherent defects in assets transferred to the private partner						
	No risks identified	***IF NO***					
	There are 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
	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 agencies.**						
2.9	**Can the government be responsible for compensation due to changes in design and scope required by procuring agencies?** No risks related to changes in project design or scope required by procuring agencies						
	No risks identified	*IF NO*					
	There are risks related to changes in project design or scope required by procuring agencies						
	RISK **The government pays compensation for changes in design and scope**	*IF YES*		Changes in net costs due to changes in design and/or scope of the project		Contract provisions allowing for changes in the design/scope of the project up to a limit (predetermined); improve accountability framework to	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
						monitor project cost overruns.	
2.10	**Risks related to changes in input prices**						
2.10.	**Can the government be responsible for compensation in the event of excess volatility in input prices?** There are risks for the government related to changes in input prices						
	RISK	**The government pays compensation for significant changes in input prices**	***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?**						
	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*					
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?						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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	**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**						
	If demand for services is higher than originally expected						
	RISK	**Project collapse due to demand much higher than originally expected**		Additional fiscal cost for early termination if contract collapse		E.g.: Manage demand (reduce demand, divert demand), which could have a fiscal cost	
	If demand for services is lower than						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	originally expected						
	RISK **Project is challenged due to demand much lower than originally expected**			No additional fiscal cost		E.g.: Manage demand (increase demand or divert it from other projects), which would have a fiscal cost	
3.2	**The PPP project is either totally user-funded, or funded by a combination of government payments and user fees**	***IF NO***					
3.2.1	**Are maximum user fees specified in the contract?**						
	RISK **Users may consider regulated user fees excessive relative to services received**	***IF YES***		No additional fiscal cost		Good communication	
	RISK **Users may consider non-regulated user fees excessive relative to services received**	***IF NO***		No additional fiscal cost		Good communication	
3.2.2	**Can the government influence demand?**						

	RISK 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**						
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 IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	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	*IF YES*					
4.2.1	**Does the government have the capacity/procedures in place to monitor performance?**						
	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	

RISK IDENTIFICATION	LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
				contract management procedures are feasible and efficient.	
The contract does not specify performance indicators, reference levels, and penalties and/or deductions ***IF NO***					

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK	**The government faces significant risks for not being able to punish the private partner for poor performance**		Non-monitoring of project performance reduces contract enforcement. It has administrative, efficiency, and political costs. Potential difficulties in applying project cancellation clauses and possibly in using step-in rights by financiers.		Key performance indicators should be included in PPP contracts, with reference levels, linked to penalty mechanism (preferably automatic deductions form 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).	
4.3	**Risks related to technical innovation**						
4.3	**Does the contract address the introduction of technical innovation?**						
	RISK	**Technical innovation may create explicit and implicit fiscal risks for the**	***IF YES***				

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	government						
	RISK Technical innovation may create implicit fiscal risks for the government	IF NO					
4.4	**Risks related to scarcity of specialized human resources**						
4.4	**Is there the possibility of scarcity of specialized human resources?** Specialized human resources are adequate						
	No risks identified	IF NO					
	There are risks of scarcity of specialized human resources						
	RISK **Performance issues due to scarcity of specialized human resources**	IF YES					
4.5	**Risks related to significant changes in labor costs**						
4.5	**Is there the possibility of significant changes in labor costs?** There are no credible possibilities of significant changes in labor costs						
	No risks identified	IF NO					
	There is a possibility of significant changes in labor costs						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK **Facing significant changes in labor costs--with same technology and productivity--may lead to project failure**	*IF YES*					
5	**FINANCIAL RISKS**						
5.1	**Risks related to availability of funds**						
5.1	**Is the private partner able to obtain finance for project implementation?** The private partner is able to obtain finance for project implementation						
	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	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
						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.	
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						
	No risks identified	*IF YES*					
	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.	
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						

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

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK **Government paying compensation for excessive volatility of exchange rate**	***IF YES***		If government contractually accepted some exchange rate risk, fiscal support may be needed in the form of compensation		Proper consideration of exchange rate risk may lead to better risk sharing and proper use of hedging mechanisms	
5.4.2	**Is the private partner able to cope with excess volatility of nominal exchange rate?** The private partner is able to cope with excess volatility of nominal exchange rate						
	No risks identified	***IF YES***					
	The private partner is unable to cope with excess volatility of nominal exchange rate						
	RISK **The private partner unable to cope with excess volatility in nominal exchange rate**	***IF NO***		The government may have to renegotiate under stress, or face project collapse and being required to pay compensation for capital investment, having to assume the project and then re-tender under different risk allocation scheme		Proper consideration of exchange rate risk may lead to better risk sharing and proper use of hedging mechanisms	
6	**FORCE MAJEURE**						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
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 minimize probability of occurrence and size of impact	
7	MATERIAL ADVERSE GOVERNMENT ACTIONS (MAGA)						
7.1	**Projects are always exposed to**						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	MAGA events (also known as "political force majeure")						
	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	
8	CHANGE IN LAW						
8.1	**Projects are always exposed to changes in law**						

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	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**						
9.1	**Does the legal framework or contract provide for a mechanism of re-balancing financial equilibrium?** 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 IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	RISK **The government is paying compensation and/or terminating the contract due to 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.	
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						
	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						
	No risks identified	***IF NO***					

	RISK IDENTIFICATION			LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
	The contract includes hardship clauses							
	RISK	**The government is paying compensation and/or terminating the contract due to excessive protection against some hardships**	*IF YES*		The government is paying compensation or 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?**							
	RISK	**Opening an uncontrolled renegotiation process, under information asymmetry and no competitive pressure**	*IF YES*		Opening a Pandora's Box, jeopardizing economic efficiency, by allowing the private to transfer to the government costs and risk that had originally been accepted by the private partner. The fiscal impact will depend on the government's ability to manage the renegotiation process.		Having a strategic view of PPP contract management and creating capacity to renegotiate are paramount.	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
11	CONTRACT TERMINATION						
11.1	**Does the contract clearly define the reasons for early termination and their consequences?** The contract clearly defines reasons and consequences for early termination.						
	No risks identified	*IF YES*					
	The contract does not clearly define reasons and consequences for early termination.						
RISK	**Entering in early termination process without clear knowledge of their consequences and procedures**	*IF NO*		Lack of clarity on causes vis-a-vis consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; it can also prevent the government from cancelling non-performing contracts, or generate incentives for governments to nationalize a project or assets without proper assessment of the cost of that decision		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	

	RISK IDENTIFICATION		LIKELIHOOD	FISCAL IMPACT	RISK RATING Likelihood*Impact	MITIGATION STRATEGY Is it in place?	PRIORITY ACTIONS
11	CONTRACT TERMINATION						
11.1	**Does the contract clearly define the reasons for early termination and their consequences?** The contract clearly defines reasons and consequences for early termination.						
	No risks identified	*IF YES*					
	The contract does not clearly define reasons and consequences for early termination.						
RISK	**Entering in early termination process without clear knowledge of their consequences and procedures**	*IF NO*		Lack of clarity on causes vis-a-vis consequences on early termination increases the private partner's bargaining power, leading to increases in the cost of termination; it can also prevent the government from cancelling non-performing contracts, or generate incentives for governments to nationalize a project or assets without proper assessment of the cost of that decision		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	

Appendix C Legal Framework for Disclosure and Implications for PPP Disclosure

Legal Framework for Disclosure and Implications for PPP Disclosure

Article	Text	Implication
Constitution, 1999		
Article 39(1 and 2)	Freedom of expression is inviolable.	Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference, and own, establish and operate any medium for the dissemination of information, ideas and opinions. This allows the public to openly discuss and opine on PPPs.
Article 39(3)	Exceptions to access to information.	Protects against access to information in certain circumstances when that information was received in confidence, when disclosure could undermine the authority and independence of courts, or when disclosure could impose restrictions upon persons holding office under the Government of the Federation or of a State. This may prevent disclosure of some confidential information as it pertains to PPPs, including commercially sensitive information.
Freedom of Information Act, 2011		
Article 1	Right of access to information.	Provides right of any person to access or request information in the custody or possession of any public official, agency, or institution.
Article 2(1-4) and 9	Maintenance of information.	A public institution should ensure it records, keeps, and maintains all information about its activities and operations to facilitate public access to such information. This information should be made available to the public through various means, including print, electronic and online sources, and at the offices of such public institutions.

Article 2(7)	Definition of public institutions.	Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, and all corporations and companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions. Note that this definition would apply to PPP project companies.
Article 4 and 6	Timeline for disclosure.	Requested information should be provided to the applicant, or denied (if justified), within 7 days. Extensions to the time limit can be exceptionally approved under certain circumstances.
Article 7, 10, and 20	Denial of disclosure and penalties for non-disclosure	An applicant has the right to challenge a denial of information in Court. If a case of wrongful denial of information is proven, the defaulting officer or institution is liable to a fine of N500,000. Destruction of information is liable to a minimum of 1-year imprisonment.
Articles 11 to 19	Exceptions to right to information.	Access to information may be denied if such disclosure could impact law enforcement proceedings, facilitate the commission of an offense, or reveal trade secrets and commercial or financial information. Access to certain personal information, including professional client privileges may also be denied.
Article 28	Relationship to Official Secrets Act	Classified information under the Official Secrets Act may still be disclosed, subject to the exceptions on right to information laid out in the FOI Act.
Article 29	Reporting on access to information requests.	Each public institution shall submit an annual report to the Attorney General on access to information requests. The Attorney General shall then submit an aggregated report to the National Assembly.
Official Secrets Act, 1962		
Article 9	Classified material.	"Classified matter" means any information that is not to be disclosed to the public and whose disclosure would be prejudicial to the security of Nigeria.
Fiscal Responsibility Act, 2007		

Article 2	Powers of the State Bureau of Public Private Partnership.	Bureau has the power to i) compel any person or government institution to disclose information relating to public revenues and expenditure; ii) investigate any person for violating the Law; and iii) report any violations to the Attorney General for prosecution. This may allow disclosure of information relating to government commitments to PPPs.
Article 44(5)	Role of Debt Management Office	Debt Management Office shall maintain comprehensive, reliable and current electronic database of internal and external public debts, guaranteeing public access to the information. This may allow disclosure of information relating to government commitments to PPPs.
Articles 48-50	Fiscal transparency	FGN shall ensure that its fiscal and financial affairs are conducted in a transparent manner and ensure full and timely disclosure of all information relating to public revenues and expenditures and their implications for its finances. This includes the full publication of audited accounts and budget execution. This may allow disclosure of information relating to government commitments to PPPs.

Appendix D Summary of Specific Disclosures for PPP projects

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

No.	Document	Content	Creator	Approver	Time (in calendar days where relevant)
6.	List of shortlisted bidders		CA	CRS BPPP	As soon as pre-qualification shortlisting is completed, and pre-qualified bidders have been contacted
7.	RFP		CA	CRS BPPP	Immediately after close of bids
8.	Announcement of selected bidder	Details of the preferred bidder	CA	CRS BPPP	Immediately after approval
9.	FBC		CA	CRS BPPP	Within 30 days of final approval
Disclosure of information following execution of PPP contract (commercial close)					
10.	Project Summary	Project scope and nature Parties to the PPP contract Government support Project value Tariffs and pricing Termination clauses Hand-back provisions Key performance indicators with agreed target levels	CA	CRS BPPP	Within 30 days of execution of project contract (commercial close)
11.	Financial structure of project	Debt-to-equity ratio of the project company Debt and equity providers Senior debt/ bond financing Mezzanine funding and quasi-equity Government support	CA	CRS BPPP	Within 30 days of financial close.
12.	Project documents	All non-confidential project documents including PPP contracts and agreements	CA	CRS BPPP	Within 30 days of execution of project contract (commercial close)
13.	Renegotiations	Summary information on each renegotiation All non-confidential renegotiated PPP contracts and agreements	CA	CRS BPPP	Within 30 days of signature of renegotiated contract
Performance disclosure throughout contract period					
15.	Performance Information	Performance of the project company on Key Performance Indicators (KPIs) against agreed targets (including information on construction milestones, key financial information and information on performance failures, if any) Audit reports Audited Financial Statements Private party reports Independent Engineer reports	CA	CRS BPPP	Within one year of financial close, updated annually.