NATIONAL PUBLIC-PRIVATE PARTNERSHIPS GUIDELINES

Annex I – Generic Project risk matrix

PPP Unit of the Ministry of Finance, Planning and Economic Development

1. Introduction

1.1 Background

1.1.1. In 2010, the Government of Uganda adopted a PPP policy. The policy creates a framework for the involvement of the private sector in provision of public infrastructure and services.

1.1.2. The *Public Private Partnerships Act* came into force on 1 October 2015. The *PPP Act* establishes the legal and institutional framework for the concrete implementation of PPP projects. The *PPP Act* provides for the establishment of the Public Private Partnerships Committee, the Public Private Partnerships Unit and the Project Development Facilitation Fund. The *PPP Act* also sets out the procedure for the implementation of PPP projects across all steps of the project cycle from inception to the end date of the PPP agreement. Furthermore, the *PPP Act* defines the contents of the PPP agreement.

1.1.3. Pursuant to the *PPP Act*, the Minister responsible for finance issued the *Public Private Partnerships Regulations, 2019* and the *Public Private Partnerships (Meetings of the Committee) Regulations, 2019 (*together, *the PPP Regulations 2019) .* The *PPP Regulations* prescribe the bidding methods and procedures for the selection of a Private Party.

1.1.4. The *Guidelines* presented in this document are firmly grounded in the policy and legal framework that has been put in place by the Government for the implementation of PPP projects.

1.2 This document

1.2.1. The National Public-Private Partnership Guidelines consist of a Main Document and a set of Annexes.

1.2.2. This document is Annex I, which contains a generic project risk matrix for PPP projects.

2. Generic project risk matrix

Risk is generally defined as the probability of incurring a loss / gain due to the occurrence of an event. As such, a party bearing the risk will be exposed to the probability of incurring a loss / gain. Risks generally vary from project to project and is therefore required to be assessed on a project per project basis.

In PPP projects, the principle of efficient risk allocation is generally utilised. This principle states that the party better able to manage the risk should bear the risk. Efficient risk allocation is utilised to better mitigate project risks to maximize the financial and economic gains from the project.

The table on the next page shows an overview of the main risk categories of public infrastructure projects. The table indicates how these risks should be divided between public and private parties from the perspective of optimal risk allocation and indicates possible mitigation measures.

This risk matrix must be developed and amended by the Transaction Advisor as part of the project Feasibility Study to determine how risks will be allocated on each PPP project. The table is not exhaustive and risks vary from project to project.

Risk	Description	Consequence	Possible mitigation measures	Preferred allocation
Site risks				
Land acquisition	The land access and use rights of the designated project site are not obtained in time and on the expected conditions.	Additional construction time and cost	Agreement with relevant stakeholders on a land acquisition plan before the launching of the tender procedure.	Government (unless the project is to be realized on a site chosen and acquired by the private party)
Ground conditions	Unanticipated adverse ground conditions are discovered	Additional construction time and cost	Testing of ground conditions in feasibility study and during bid preparation. Inclusion of experienced construction company in private consortium.	Private Party (possibly only up to a specified amount, with the government assuming the costs above that amount)
Approvals	Necessary approvals are not obtained in time or only subject to unanticipated conditions	Additional construction time and cost	Impact assessments in the feasibility study (environmental, social, archaeological, …) to identify liabilities and regulatory land use restrictions. Introduction of appropriate land use plans before the launching of the tender procedure	Government (unless the project is to be realized on a site chosen and acquired by the private party, or if the delays in obtaining the approvals are due to negligence or errors by the private party)
Environmental risks				
Contamination risk	Risk that contaminants are present in the project site that will deem the site unsuitable for intended use	Unsuitability of the project site	Soil testing	Government
Ecological risk	Risk that the project may cause adverse ecological effects	Adverse impact of the project to the ecology in the site	Preparation of an environmental impact assessment	Private Party
Social risks				
Resettlement risk	The use rights of the designated project site are not obtained in time and on the expected conditions.	Additional construction time and cost	Agreement with relevant stakeholders on a resettlement plan before the launching of the tender procedure.	Government (unless the project is to be realized on a site chosen and acquired by the Private Party)

Risk	Description	Consequence	Possible mitigation measures	Preferred allocation
Legal risks				
General change in law	A change in law/policy which could not be anticipated at contract signing, which is general (i.e. not project specific) in its application, and which significant adverse cost or revenue consequences for the private party.	Additional capital and/or operating costs, or reduced revenues	Regulation allowing pass-through to end-users (in user-pays projects)	Private Party (unless the Private Party, due to the PPP agreement, cannot respond to the change in law in the same way as the average company in the rest of the economy, so that is affected significantly more than the average company in the rest of the economy)
Discriminatory and specific change of law (incl. tax)	A change in law/policy which could not be anticipated at contract signing, which is directed specifically at the project or the services, and which has significant adverse cost or revenue consequences for the private party.	Additional capital and/or operating costs, or reduced revenues	Regulation allowing pass-through to end-users (in user-pays projects) Legal protection of private party against discriminatory measures taken by decentralized government units.	Government (unless the costs can be passed on to end-users)
Political risks				
Contracting authority's default	The contracting authority fails to meet its payment obligations	Revenue loss	Financial supervision of contracting authorities by central government	Government
Regulatory consent	The regulator revokes the operating permit. The regulator imposes conditions on pricing or on other aspects of the project or the services, which were not expected in the business plan of the private party.	Additional costs or revenue loss	Assessment of regulatory system before bidding. Making representations to regulatory authority.	Private Party (unless there has been a change in the regulations that could not be anticipated at contract signing)

Risk	Description	Consequence	Possible mitigation measures	Preferred allocation
Design and Construction				
Design risks	The design of the infrastructure is incapable of delivering the services at anticipated cost and quality Changes to risks Approval of design	Additional operating costs and/or inadequacy of service quality resulting in revenues losses	Appropriate contractual agreements with designer and construction company	Private Party
Construction risks	Events occur during construction which prevent the facility being delivered on time and on cost	Additional construction time and cost	Risk management plan Appropriate contractual agreements with construction company.	Private Party
Operational risks				
Input quantity, quality and price	Required inputs cost more than anticipated, are of inadequate quality or are unavailable in required quantities	Additional operating costs and/or inadequacy of service quality resulting in revenues losses	Long term supply contracts	Private Party
Output quantity and quality Performance and price risk	The outputs cannot be produced in required quantities and with adequate quality./The delivery of contracted services does not meet he performance specification metrics or the price of doing so	Revenue loss	Quality management system	Private Party
Maintenance risk	Maintaining assets to the contractual agreed standard and specifications cannot be produced to required standard or at an increased cost	Additional maintenance costs and/or inadequacy of maintenance service quality resulting in revenues losses	Appropriate contractual agreements with O&M contractor	Private Party
Interface risk	The delivery of contracted services adversely affects the delivery of core services in a manner not anticipated in the contract, or vice versa	Increased costs of contracted services and/or core services	Interface management	Private Party (unless the government has made unanticipated changes)

Risk	Description	Consequence	Possible mitigation measures	Preferred allocation
Revenue risks				
Tariff adjustment breach	The regulatory authority fails to approve tariff adjustments anticipated in the in the business plan of the private party (in user-pays projects)	Revenue loss	Assessment of regulatory system before bidding. Making representations to regulatory authority.	Private Party
Demand risk	Demand for the service is lower than expected in the business plan of the private party (in user-pays projects)	Revenue loss	Thorough demand study. Robust financing structure	Private Party (if the demand risk is very large, the government may reduce or eliminate the revenue risk through government-pays payment scheme)
Network connectivity risk: complementary route	A complementary government network, on which the project relies, is not provided as planned.	Demand loss, resulting in revenue loss (in projects relying on payments in function of usage)	Network management	Government
Network connectivity risk: competing route	A competing network created, extended or re-priced so as to increase competition for the facility	Demand loss, resulting in revenue loss (in projects relying on payments in function of usage)	Thorough demand and competition study. Robust financing structure	Private Party (unless the changes to the competing network are the result of unanticipated, discriminatory acts of the government)
Sponsor and financial				
Financial risks	Debt and/or equity required by the private party for the project is not available when and in the amounts and on the conditions anticipated	Delays and increased costs	Financing agreements and hedging arrangements	Private Party
Sponsor risks	The private party does not have the financial, managerial or technical capacity to provide the required services	Cessation of service to government and possible loss of investment for equity and debt providers	Appropriate screening of bidders. Step-in rights in PPP agreement	Government (cessation of services) and private party (investment loss)
Exchange rate and interest rate risk	Currency and interest rate fluctuations over the life of a project	Increased costs	Financing agreements and hedging arrangements	Private Party
Inflation	The risk that the costs of the project increase more than expected.	Increased costs	To confirm/Payment mechanism to factor in inflation	[To confirm depending on project]

Risk	Description	Consequence	Possible mitigation measures	Preferred allocation
Force majeure				
Force majeure risk	A force majeure event damages the infrastructure and/or causes a temporary or permanent inability for the private party to provide the contracted services.	Loss or damage to the asset, service discontinuity for government and loss of revenue for private party	Insurance, reserve accounts	Private Party (asset loss, revenue losses) and government (service interruption)