



NATIONAL PUBLIC-PRIVATE PARTNERSHIPS GUIDELINES

**Annex J2 – Draft Terms of Reference for the review team
formed for assessing the fiscal affordability of a PPP Project**

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

The Permanent Secretary/ Secretary to the Treasury (PS/ST) has received a feasibility study report for the [_____ PPP project] for its review and consideration from the PPP Unit. The project feasibility study has been prepared the _____ [Contracting Authority] with support of its [Transaction Advisor]. The PS/ST has been requested by the PPP Unit to confirm the affordability and bankability of the PPP project in accordance with section 23 (4) of the PPP Act, 2015.

As per the said section, a PPP project requires to obtain written confirmation from the Minister of Finance that the financing required shall be available for implementation of the project. Under a PPP arrangement, the government bears some risk or provides some support that gives rise to on-going fiscal commitment – either a contingent liability or an actual direct liability. An approval by the Minister under this section will confirm the fiscal affordability of the project and the project can proceed for procuring a private sector partner.

The PS/ST hereby constitutes the review team consisting of the following members to review the feasibility report and advise him on the aspects of commercial, macroeconomic, financial, legal, taxation of the project and the implications of the project to Government. **The members of the review team are:**

1. Commissioner Macro Economic Development
2. Commissioner Debt
3. Commissioner Budget
4. Commissioner Economic Development Policy and Research
5. Commissioner Tax Policy
6. Commissioner Infrastructure Services
7. Senior State Attorney Ministry of Justice and Constitutional Affairs, Office of the Attorney General
8. Director PPP Unit
9. Any other person from relevant departments

The terms of reference for the review team are as under:

The review team has been provided with the detailed feasibility study report comprising the following sections:

- a. Needs and options analysis
- b. Demand study
- c. Technical study
- d. Environmental and social impact assessment
- e. Legal assessment
- f. Financial and economic assessment
- g. Value for Money
- h. Fiscal impact assessment
- i. Risk assessment
- j. Implementation plan
- k. Procurement documents – indicative – RFQ, RFB and term sheet
- l.

Reference documents for information of the review team:

- a. PPP Act, Regulations and Guidelines
- b. MFPED Guidelines for the Management of Contingent Liabilities
- c. PIM etc.

The review team may seek additional information from the Accounting Officer of the Contracting Authority, the PPP Unit and the Transaction Advisor to assist them in their review of the project.

Scope of the assessment:

The assessment will cover the following broad areas:

LEGAL ASPECTS

- Review the draft PPP agreements to ensure the legal, regulatory, social economic and commercial viability
- Asses the parties to the draft agreement, compliance with the Act
- Verify compliance with relevant laws and regulations
- Assess land ownership questions
- Check for any unresolved issues that may impede the progress of the project
- Use rights of the Contracting Authority:
- Review any regulatory matters that may directly or indirectly have a bearing on the project or impact the private party's ability to deliver as expected (e.g. tax legislation; labour laws; foreign exchange legislation; sector regulations...etc.);
- Examine environmental protection and heritage legislation ensure that the required authorization and approvals, and the procedures thereof have been obtained. Assess the permissible contractual arrangements for the Contracting Authority

- Any other legal assessment as deemed necessary

ECONOMIC ASPECTS

- Assessment of local and socio-economic impacts
- Market capability and appetite
- Asses the social and economic impacts of the project to the sector
- Scrutinize any factors that constrain the achievement of the project's expected outputs;
- Identify socio-economic factors that will/may need to be directly addressed via the project design
- Asses revenue growth visa viz the economic growth in the country
- Assessment of the economic figures provided especially the GDP growth, employment figures, tax revenue generation, utilization of the local construction materials and the likely multiplier effect.
- Assessment of any opportunity costs associated with implementing the project and the likely impact to the project
- Asses the economic impact of the project to the society living in the project surroundings
- The assessment of the likely impact of the project's cost to the overall macroeconomic growth of the country
- Any other economic assessment as deemed necessary

FINANCIAL, VFM AND TAX ASPECTS

- Asses the project funding and financing options
- Asses the financing structures and options
- Affordability of the funding options;
- Risk identification;
- Market analysis and financial structuring;
- VFM assessment
- Availability of financing and sources of revenue;
- Hedging/risk mitigation products;
- Assessment of tax structures, etc.
- Assessment of cash flows, project risks and risk valuation
- Analysis of the revenue projections and its assumptions
- Project structure and sources of funding
- Assessment of budgetary and debt implications of the project
- Assessment of any future contingent liability associated with the project
- Ratio analysis
- Any other financial, tax and other assessments as deemed necessary

FISCAL AFFORDABILITY ASPECTS

- Identification and assessment of fiscal commitments and fiscal risks
- Assessment of affordability

[Any other item as per the requirements of the project]

Deliverable

- Report on the findings of the review team on the economic and financial feasibility of the project (“**PPP Project Fiscal Affordability Report**”).
- Recommendation to advise the Minister in accordance with Section 23 (4) of the PPP Act and other provisions of the PPP Act related to the fiscal affordability of the project.

Time frame

The review report will be submitted within 30 days from the date of this notification.