KINGDOM OF CAMBODIA

Nation Religion King

Royal Government of Cambodia

STANDARD OPERATING PROCEDURES FOR PUBLIC-PRIVATE PARTNERSHIPS PROJECTS

VOLUME II

GUIDELINES

August 2022

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

រាជរដ្ឋាភិបាលកម្ពុជា

លេខ : ១៧៤ អនក្រ.បក

អនុក្រឹត្យ
ស្តីពី
ការដាក់ឱ្យប្រើនីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួម សម្រាប់គម្រោងភាពជាដៃគូរវាងរដ្ឋ និងឯកជន

រាជរដ្ឋាភិបាល

- បានឃើញរដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៩១៨/៩២៥ ចុះថ្ងៃទី០៦ ខែកញ្ញា ឆ្នាំ២០១៨ ស្តីពីការតែងតាំងរាជរដ្ឋាភិបាល នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៣២០/៤២១ ចុះថ្ងៃទី៣០ ខែមីនា ឆ្នាំ២០២០ ស្តីពីការតែងតាំង និងកែសម្រួលសមាសភាពរាជរដ្ឋាភិបាល
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៦១៨/០១២ ចុះថ្ងៃទី២៨ ខែមិថុនា ឆ្នាំ២០១៨ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃគណៈរដ្ឋមន្ត្រី
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១៩៦/១៨ ចុះថ្ងៃទី២៤ ខែមករា ឆ្នាំ១៩៩៦ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបង្កើតក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៥០៨/០១៦ ចុះថ្ងៃទី១៣ ខែឧសភា ឆ្នាំ២០០៨ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីប្រព័ន្ធហិរញ្ញវត្ថុសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១១២/០០៤ ចុះថ្ងៃទី១៤ ខែមករា ឆ្នាំ២០១២ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីលទ្ធកម្មសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/១១២១/០១៨ ចុះថ្ងៃទី១៨ ខែវិច្ឆិកា ឆ្នាំ២០២១ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីភាពជាដៃគូរវាងរដ្ឋនិងឯកជន
- បានឃើញអនុក្រឹត្យលេខ ៤៣ អនក្រ.បក ចុះថ្ងៃទី២៨ ខែកុម្ភៈ ឆ្នាំ២០២២ ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ
- បានឃើញអនុក្រឹត្យលេខ ៤១ អនក្រ.បក ចុះថ្ងៃទី២៥ ខែមីនា ឆ្នាំ២០២០ ស្តីពីការគ្រប់គ្រងការវិនិយោគសាធារណៈ
- យោងតាមសំណើរបស់រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ

សម្រេច

មាត្រា១ .–

ដាក់ឱ្យប្រើនីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួមសម្រាប់គម្រោងភាពជាដៃគូរវាងរដ្ឋ និងឯកជន (ភ.រ.ឯ.) ដូចមានខ្លឹមសារភ្ជាប់មកជាមួយអនុក្រឹត្យនេះ។

មាត្រា២ .—

នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួមសម្រាប់គម្រោង ភ.រ.ជ. ដែលត្រូវបានដាក់ឱ្យប្រើ ក្រោមអនុក្រឹត្យនេះ រួមមាន:

១- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ១ ស្ដីពីគោលនយោបាយ និងនីតិវិធី

២- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ២ ស្ដីពីគោលការណ៍ណែនាំ រួមមាន:

- គោលការណ៍ណែនាំស្ដីពីការធ្វើអត្តសញ្ញាណកម្ម និងការជ្រើសរើសគម្រោង ភ.រ.ជ.
- គោលការណ៍ណែនាំស្ដីពីមូលនិធិអភិវឌ្ឍន៍គម្រោង ភ.រ.ជ.
- គោលការណ៍ណែនាំស្ដីពីការគាំទ្រពីរដ្ឋសម្រាប់គម្រោង ភ.រ.ជ.
- គោលការណ៍ណែនាំស្ដីពីការគ្រប់គ្រងកិច្ចសន្យា ភ.រ.ជ.

៣-នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ៣ ស្ដីពីនីតិវិធីគ្រប់គ្រងលទ្ធកម្មគម្រោង។

មាត្រា៣ .—

នីតិវិធី និងគោលការណ៍ណែនាំផ្សេងទៀតពាក់ព័ន្ធនឹងគម្រោង ភ.រ.ជ. ត្រូវកំណត់ដោយប្រកាសរដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ។

មាត្រា៤ .—

រដ្ឋមន្ត្រីទទួលបន្ទុកទីស្ដីការគណៈរដ្ឋមន្ត្រី រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ រដ្ឋមន្ត្រីនៃគ្រប់ក្រសួង និងប្រធានគ្រប់ស្ថាប័នដែលពាក់ព័ន្ធ ត្រូវទទួលបន្ទុកអនុវត្តអនុក្រឹត្យនេះឱ្យមានប្រសិទ្ធភាពខ្ពស់ ចាប់ពីថ្ងៃចុះហត្ថលេខានេះតទៅ។

ថ្ងៃ ពុធ ៥កើត ខែភទ្របទ ឆ្នាំខាល ចត្វាស័ក ព.ស. ២៥៦៦

ធ្វើនៅរាជធានីភ្នំពេញ ថ្ងៃទី ៣១ ខែសីហា ឆ្នាំ២០២២

នាយករដ្ឋមន្ត្រី

សម្ដេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន

បានយកសេចក្ដីគោរពជម្រាបជូន

សម្ដេចអគ្គមហាសេនាបតីតេជោនាយករដ្ឋមន្ត្រី សូមហត្ថលេខា

ឧបនាយករដ្ឋមន្ត្រី

រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ

អគ្គបណ្ឌិតសភាចារ្យ អូន ព័ន្ធមុនីរ័ត្ន

កន្លែងទទួល:

-ក្រសួងព្រះបរមរាជវាំង
-អគ្គលេខាធិការដ្ឋានក្រុមប្រឹក្សាធម្មនុញ្ញ
-អគ្គលេខាធិការដ្ឋានព្រឹទ្ធសភា
-អគ្គលេខាធិការដ្ឋានរដ្ឋសភា
-ខុទ្ទកាល័យសម្ដេចអគ្គមហាសេនាបតីតេជោ នាយករដ្ឋមន្ត្រី
-ខុទ្ទកាល័យ សម្ដេច ឯកឧត្តម លោកជំទាវឧបនាយករដ្ឋមន្ត្រី
-ដូចមាត្រា៤
-រាជកិច្ច
-ឯកសារ-កាលប្បវត្តិ

[Unofficial Translation]

KINGDOM OF CAMBODIA
NATION RELIGION KING

Government of the Kingdom of Cambodia
No: 174 ANK.BK

Sub-Decree
On
Promulgating the Standard Operating Procedures for the Public-Private Partnerships Projects

The Government of the Kingdom of Cambodia

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0918/925, dated September 6, 2018, on the Formation of the Government of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0320/421, dated March 30, 2020, on the Formation and the Amendment of the Members of the Government of the Kingdom of Cambodia;
- Having seen the Royal Kram No. NS/RKM/0618/012, dated June 28, 2018, on Promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. NS/RKM/0196/18, dated January 24, 1996, on Promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Having seen the Royal Kram No. NS/RKM/0508/016, dated May 13, 2008, on Promulgating the Law on the Public Finance System;
- Having seen the Royal Kram No. NS/RKM/0112/004, dated January 14, 2012, on Promulgating the Law on the Public Procurement;
- Having seen the Royal Kram No. NS/RKM/1121/018, dated November 18, 2021, on Promulgating the Law on the Public-Private Partnerships;
- Having seen the Sub-Decree No. 43/ANK/BK, dated February 28, 2022, on the Organization and Functioning of the Ministry of Economy and Finance;
- Having seen the Sub-Decree No. 41/ANK/BK, dated March 25, 2020, on the Management of Public Investments;
- Pursuant to the Request of the Minister of Economy and Finance;

Hereby Decides

Article 1 .-

Promulgate the Standard Operating Procedures for the Public-Private Partnerships (PPP) Projects as attached to this Sub-Decree.

Article 2 .-

The Standard Operating Procedures for PPP Projects promulgated under this Sub-Decree consists of:

1- Standard Operating Procedures for PPP Projects, Volume I: Policies and Procedures;

2- Standard Operating Procedures for PPP Projects, Volume II: Guidelines including:

- Guidelines on Project Identification and Selection of PPP Projects;
- Guidelines on Project Development Facility for PPPs;
- Guidelines on Government Support Measures;
- Guidelines on Contract Management; and

3- Standard Operating Procedures for PPP Projects, Volume III: Procurement Manual.

Article 3 .-

Other PPP-related procedures and guidelines shall be determined by Prakas of the Minister of Economy and Finance.

Article 4 .-

Minister in charge of the Council of Ministers, Minister of Economy and Finance, Ministers of all Ministries and Heads of relevant Institutions shall effectively implement this Sub-Decree from the date of signature.

Phnom Penh, 31 August 2022

Prime Minister

Signature and Seal

SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN

Have submitted to SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN for signature

Deputy Prime Minister

Minister of Economy and Finance

Signature

AKKA PUNDIT SAPHEACHA **AUN PORNMONIROTH**

Receiving Places:

- Ministry of the Royal Palace
- General Secretariat of the Constitutional Council of Cambodia
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Cabinet of Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister
- Cabinet of Deputy Prime Ministers
- As Article 4
- Royal Gazette
- Archives-Chronicle

ABBREVIATIONS

AP	Availability Payment
CEC	Consultant Evaluation Committee
CMP	Contract Management Plan
DED	Detailed Engineering Design
DP	Development Partner
FA	Framework Agreement
FMM	Financial Management Manual
FS	Feasibility Study
GDB	General Department of Budget
GDICDM	General Department of International Cooperation and Debt Management
GDPPP	General Department of Public-Private Partnerships
GDR	General Department of Resettlement
GDT	General Department of Taxation
GKC	The Government of the Kingdom of Cambodia
GSM	Government Support Measure
IA	Implementing Agency
IC	Independent Consultant
IDC	Indefinite Delivery Contract
MEF	Ministry of Economy and Finance
MIS	Management Information System
MPSS	Minimum Performance Standards and Specifications
OE	Owner's Engineer
PDF	Project Development Facility
PFRAM	Public-Private Partnerships Fiscal Risk Assessment Model
PIC	Public Investment Committee
PIP	Public Investment Program
PMU	Project Management Unit
PPP	Public-Private Partnerships
PRC	Procurement Review Committee
QIP	Qualified Investment Projects
RFP	Requests for Proposals

SOP	Standard Operating Procedures
SPC	Special Purpose Company
TA	Transaction Adviser
TAS	Transaction Advisory Services
USP	Unsolicited Proposal

TABLE OF CONTENTS

GUIDELINES
ON
PROJECT IDENTIFICATION
AND SELECTION OF PPP PROJECTS

1. INTRODUCTION

1.1. The **Guidelines on Project Identification and Selection of PPP Projects** introduce a methodology for the *identification* and *selection* of PPP projects, using a multi-criteria analysis. The Guidelines will help the Implementing Agencies (IA) in following a structured and consistent process for identifying and selecting potential projects that could be procured as PPP projects.

1.2. The Guidelines also provide the methodology for the *prioritization* of the selected PPP Potential Projects to determine the final list of the PPP Projects which can then proceed to the Project Preparation Stage of the Project Cycle.

1.3. A Multi-Criteria Analysis (MCA) is used as the tool for the identification and selection of potential PPP projects as well as their prioritization. The MCA is undertaken at the early stage of the project cycle when limited information is available and the preliminary Pre-Feasibility Study and project concept paper have been carried out by the IA.

2. OBJECTIVE

2.1. The objective of these Guidelines is to provide a standard and consistent methodology for **(i)** the identification and selection of public infrastructure projects and public service projects as potential PPP Projects by the IA and **(ii)** the prioritization of the potential PPP Projects to determine the final list of Priority PPP Projects by the General Department of Public-Private Partnerships (GDPPP).

2.2. The MCA is the key tool for carrying out the identification, selection, and prioritization of potential PPP projects. It is used to assess and evaluate the project against a set of criteria to determine if the project has the potential for PPP procurement and inclusion in the final list of PPP Projects.

3. COVERAGE

3.1. The Guidelines cover both solicited and unsolicited proposals and apply to *eligible projects* as defined under the Law on PPPs and in Section 2 of Chapter III: Project Identification and Selection of the **SOP for PPP Projects, Volume I: Policies and Procedures**.

4. MULTI-CRITERIA ANALYSIS

4.1. The MCA consists of two stages and uses a mix of subjective and objective assessment criteria. Under Stage 1, each project is assessed against a set of subjective criteria to identify it as a potential PPP project. Under Stage 2, the identified PPP project is assessed against a set of objective criteria under which a score is given for each criterion and the scores are totaled. If the total score obtained exceeds the *prescribed threshold/minimum score*, it is selected as a Potential PPP Project. The MCA will be carried out the assessment and evaluation by a team from the IA comprising at least three members of the PPP Unit/Cell/Project Management Unit (PMU) or a similar arrangement and chaired by its Head in accordance with the procedures prescribed in the **SOP for PPP Projects, Volume I: Policies and Procedures**. The assessment and scoring must be agreed by all three members. The details on the assessment under Stage 1 and evaluation under Stage 2 are provided in Paragraphs 4.3 to 4.13.

4.2. The Potential PPP Projects that have passed Stage 2 of the MCA are subjected to further evaluation for the prioritization and determination of the final list of Priority PPP Projects by the GDPPP. The detailed methodology for this evaluation is provided in Section 5 on Project Prioritization below.

Stage 1:

4.3. Stage 1 involves the identification of potential PPP projects through a *Pass/Fail* criteria analysis. The criteria assess the basic requirements necessary for a project to determine if it may be suitable for PPP procurement and should be subjected to further assessment under Stage 2.

4.4. The IA's assigned team will be responsible for undertaking Stage 1 and Stage 2 assessment for each project that is being proposed for consideration and approval by the Ministry of Economy and Finance (MEF) for inclusion in the Potential PPP Project List.

4.5. Only projects that meet *all threshold criteria* in Stage 1 shall 'Pass' and can proceed to Stage 2 assessment. A project that does not meet *any one* of the threshold criteria in Stage 1 shall 'Fail' and cannot proceed to Stage 2.

4.6. The following threshold criteria shall be assessed for Stage 1 assessment of potential PPP projects.

	Threshold Criteria	Yes/No
1	**The Project is aligned with the Government's strategic priorities on infrastructure and other Eligible Sectors.** – It is consistent with the Government's National Strategic Development Plan and national and sectorial priorities. – It is consistent with the Eligible Sectors list stipulated in the **SOP for PPP Projects, Volume I: Policies and Procedures**. – It has been reviewed and approved by the IA i.e., included in the Public Investment Program (PIP) of the Government or approved Sector Master Plan. – In the case of an unsolicited proposal, it is not an extension of or a part of an existing project that is under consideration by the Government**.** *(This criterion shall determine whether the Project is consistent with the national priorities of the Government.)*	
2	**The Project is of a minimum capital/project cost and/or is not considered too complex for procurement.** – The total capital/project cost is generally ***<u>at least</u>*** USD 10 million except where the Project is for procurement as an O&M contract. The Project shall have an operational period of at least five (05) years. – The Project is not considered too complex and does not have multiple and changing risk profiles, that could pose challenges in determining, quantifying, mitigating and sharing project risks between the government and private sector. *(This criterion shall ensure that the capital/project cost of the Project is not too small or the Project is not too complicated from a risk profile point of view, either of which could make a PPP procurement unfeasible. Note that this does not refer to new technology or innovation which is desirable. In exceptional cases, projects with capital costs lower than 10 million may be considered with prior approval of the Minister of the MEF.)*	

	Threshold Criteria	Yes/No
3	**The Project has relevant stakeholders' support based on preliminary public consultation**[1]. – The Project is capable of attracting and receiving private sector funding, attracting users to use the project assets, and capable of demonstrating innovation in its delivery. *(This criterion shall provide an indication of the preliminary consultation undertaken with relevant stakeholders to determine their level of support and possible innovations.)*	
4	**Support/commitment/willingness of the IA to undertake the Project has been confirmed to the MEF.** – The IA is willing to provide support[2] for project preparation through a written confirmation. – The IA has the institutional capacity to undertake the project as a PPP and has a dedicated team in place for its management. *(This criterion shall determine the commitment of the IA for assessing the level of seriousness of the institution in carrying out the project preparation activities.)*	
5	**The Project does not have any significant land acquisition, resettlement, environmental or social safeguard concerns that could prevent its implementation.** – The Project is unlikely to have any significant land acquisition, resettlement, environmental or social safeguard concerns, or if any, they are remediable and manageable and do not, prima facie, pose a threat in the implementation of the Project. *(This criterion assesses the degree of complexity of the land acquisition issues and/or the issues related to resettlement, or the degree of complexity of the environmental or social issues to determine whether the project is suitable for PPP procurement. If any impact is irreversible or mitigation costs are very large that makes the project financially unviable, it cannot be considered.)*	
6	**The Project has defined delivery objectives, output specifications and payment mechanism.** – The Project is capable of providing facilities and services on a steady and continuous basis (expressed in the form of outputs, e.g., megawatts of power, kilometers of road or cubic meters of water, etc.) that satisfies the quality standards, meets user requirements, and lends themselves to PPP procurement. – The payment mechanism can be clearly determined based on the output.	

[1] Public consultation refers to either formal or informal interactions with stakeholders, including prospective equity investors, potential users of the asset, government departments likely to get impacted/influenced by project-related decisions, debt financiers/banks and others, as relevant.

[2] Support refers to any form of operational support, including the provision of past studies and works undertaken on the project and the commitment of the line ministry to establish and staff the PPP Cell/Unit/PMU.

	Threshold Criteria	Yes/No
	(This criterion shall enable articulation of outputs - that can be specified with clarity, whose quality can be monitored and measured and whose payment mechanism (Revenue-based/Availability-based or Hybrid Payment model) for recouping the investment can be fully determined.)	
7	**The Project has PPP potential, as similar projects have been procured in the past using private sector financing and expertise, either nationally or internationally, through solicited or unsolicited routes.** – The Project is comparable to similar projects, which have been procured in the past using private sector financing and expertise, either nationally or internationally. *(This criterion shall determine if the Project, which is currently being screened, is comparable to the projects that have been successfully implemented using the private finance model.)*	
8	**An unsolicited PPP project does not require any form of financial support from the Government in the form of guarantee, subsidy, grant money, or any other types of financial assistance.** – The Project is expected to be financially viable on its own without the need for any form of financial support from the Government. *(This criterion is for unsolicited projects only and shall determine if the project can be delivered by the proponent with the use of private finance and with no financial support from the Government.)*	
Stage 1 Outcome - Multi-Criteria Analysis for Project evaluated*		**Pass / Fail**

* The form has been prepared to support the above analysis and is provided in Appendix 1.

Stage 2:

4.7. A project that passes Stage 1 is identified as a potential PPP project and will be evaluated in Stage 2 to determine its selection as a PPP Potential project for inclusion in the **Potential PPP Projects List**. The six (6) criteria outlined below involve a more detailed assessment of the initial findings from Stage 1 and incorporate other key aspects of PPP requirements. The criteria shown in the table below shall be used in Stage 2.

	Evaluation Criteria	Score
1	**Market acceptability** (i) Market demand & growth potential - the Project is expected to have a user base that is likely to use the services of the project asset to be constructed. (ii) Private interest for equity and/or debt - the Project is likely to generate market appetite from private partners as well as the debt funding market locally and/or from international funders.	

	Evaluation Criteria	Score
2	**Predictable/stable revenue collection/payment mechanisms and financial attractiveness** (i) The Project is likely to have a predictable revenue stream/payment mechanism that enables its structuring as a 'Revenue-based Payment' (user-pays), an 'Availability-based Payment' (government-pays) or a 'Hybrid Payment' (a combination between Revenue-based Payment and Availability-based Payment) PPP model. In the case of an unsolicited PPP project, it shall be structured as a Revenue-based Payment (user-pays) PPP model. (ii) Project is expected to generate a steady stream of revenue and can be financially viable. (iii) User fees are expected to be affordable and achievable and they are likely to provide expected Return on Equity to investors. (iv) Project size (CAPEX – Capital expenditure/Project cost) is expected to be large enough to provide economies of scale and attract debt funds.	
3	**Economic and social desirability** (i) Qualitative assessment: significant levels of economic benefits are expected from the Project.	
4	**Appropriate risk sharing** (i) The project can be appropriately structured and likely to allow optimal risk transfer/sharing between the government and the private party [optimal means that the risk is allocated to the party that can best bear the risk].	
5	**Manageable life cycle costs** (i) No serious bottlenecks for acquisition of land or acquisition is substantially complete for the project, and the proposed site is functionally convenient to meet the project's objectives. (ii) Site offers manageable challenges for the engineering and construction contractor during construction. (iii) Project proposes proven technology that is tried and tested. (iv) Environment, health, and safety issues are manageable and are not likely to impact adversely on project costs during construction or operations phases. (v) Operations & Maintenance costs are manageable and likely to be responsive to improved technology and management or such costs are likely to be stable and predictable.	

	Evaluation Criteria	Score
6	**Comply with the legal and regulatory framework** (i) The Project complies with the legal framework of the Kingdom of Cambodia under which the project will be implemented. (ii) Regulatory and institutional frameworks are in place for the Project to be successfully implemented, or the Project can be regulated by contract.	
Total score*		

* The form has been prepared to support the above analysis and is provided in Appendix 2.

4.8. Stage 2 involves scoring of each of the six (6) criteria shown in **bold**. Each of the 6 criteria has other sub-criteria which are taken into consideration to determine the overall score of the main criterion. Score is not given for each sub-criterion but only for the main criterion. The maximum score that can be given for each of the 6 criteria is 10.

4.9. The scoring will be based on the determination of the degree of achievement of the requirements for each criterion outlined above by the team assigned by the IA. The team from the IA will carry out the evaluation. Full marks should only be given if the criteria fully meet the requirements, with no risks and weaknesses. The score is reduced in proportion to the extent of non-conformities, risks and omissions. In other words, each of the sub-criteria is assessed and all of them are taken into consideration to determine the overall score of the main criterion.

4.10. The scoring of each criterion shall be based on the following rating system:

Score	Guidelines
9 - 10	**Very Good.** Full achievement of the requirements specified in the criteria. Demonstrated strengths, no risk, no weakness, or omissions.
7 - 8	**Good.** Substantial achievement of the requirements specified in the criteria. Low risks, weaknesses, or omissions, which can be corrected/overcome with minimum effort.
5 - 6	**Fair.** Some achievement of the requirements specified in the criteria. Some medium risks, weaknesses, or omissions, which are possible to correct/overcome and make the Project acceptable.
3 - 4	**Low.** Minimal achievement of the requirements specified in the criteria. Existence of substantial risks, weaknesses, or omissions, which are difficult to correct/overcome to make the Project acceptable. Totally deficient and non-compliant.
1 - 2	**Unacceptable.** No achievement of the requirements specified in the documentation, for that criterion or criteria category. Existence of high risk, numerous errors, weaknesses, or omissions, which are difficult to correct/overcome and make acceptable. Totally deficient and non-compliant.

4.11. Projects that meet a minimum of ***70% of the marks i.e., 42 out of 60*** marks are selected as Potential PPP Projects, subjected to confirmation by the MEF. The MCA assessments under Stage 1 and 2, undertaken by IA, will be submitted to the MEF for confirmation of the assessment. The GDPPP will review the assessments and confirm the results before recommending the project for inclusion in the Potential PPP Projects List for approval by the Minister of the MEF.

4.12. In the case of an unsolicited PPP project, if it passes Stage 2 of the MCA, MEF will inform the IA of the result after verification of the assessment by the GDPPP. If the unsolicited proposal passes the Stage 2 evaluation, the Minister of the MEF and the Head of the IA will jointly submit a memorandum as a request to the Head of the Government for an in-principle approval and proceed with the preparation of a Framework Agreement (FA).

4.13. During the scoring process, any criterion which is given an 'Unacceptable' score by the IA team shall be highlighted for the attention and consideration of the MEF. The MEF may, after due consideration, either proceed with the selection of the Potential Project as it has achieved the qualifying marks or may treat the 'Unacceptable' score for the criterion as a deal breaker and send it back to the IA for further consideration. If the IA can find a remedy that can correct the unacceptable score, it can resubmit the proposal for the consideration of the MEF.

5. PROJECT PRIORITIZATION

5.1. All proposals that have passed Stage 2 and have been approved for inclusion in the Potential PPP Projects List are further subjected to a prioritization exercise by the MEF. The GDPPP will undertake this exercise. The prioritization is carried out under a procedure in which different *weights* are assigned to each of the six (6) criteria used in Stage 2 of the MCA depending on the degree of their criticality and level of importance which largely depends on the nature of the Potential Project.

5.2. Each of the six (6) criteria analyzed in Stage 2 is allocated a total weight and this total is distributed among the sub-criterion under that criterion. The weights are based on the importance of the criterion, the more important or critical the criterion, the greater is the weight assigned to it. The Table below provides the *standard* distribution of the weights that must be used for the scoring system. The MEF may vary the established weightage if there is sufficient justification, in which case it will inform the IA.

5.3. The six (6) criteria outlined in Stage 2 will be allocated weightage out of 100. The weight allocation is given below:

Indicative Weight for the Criteria	Sub-Criteria	Relative Weight of the Sub-Criteria
1. Market Acceptability (25)	• Market demand & growth potential - the Project is expected to have a user base that is likely to use the services of the project asset.	50%
	• Private interest for equity and debt - the Project is likely to generate market appetite from private partners as well as the debt funding market locally and/or from international funders.	50%
2. Predictable/ stable revenue collection/payment mechanisms and financial attractiveness (25)	• The Project is likely to have a predictable revenue stream/payment mechanism that enables its structuring as an 'Availability-based Payment' (government-pays) or 'Revenue based payment' (user-pays) or a 'Hybrid payment' (a combination of Availability-based Payment and Revenue-based Payment) PPP model. In the case of an unsolicited PPP	30%

Indicative Weight for the Criteria	Sub-Criteria	Relative Weight of the Sub-Criteria
	project, it shall be structured as a Revenue-based Payment (user-pays) PPP model).	40%
	• Project is expected to be financially viable, either on its own or with minimum financial support from the Government.	20%
	• User fees are expected to be affordable and achievable, and they are likely to provide expected Return on Equity for investors.	10%
	• Project size (CAPEX – Capital expenditure/Project cost) is expected to be large enough to provide economies of scale and attract debt funds.	
3. Economic and Social Desirability (15)	• **Qualitative Criterion**: Significant level of economic benefits is expected from the Project (Whether it is likely to meet the normal threshold for EIRR for public investment based on similar projects)	100%
4. Appropriate Risk Sharing (15)	• The project can be appropriately structured and likely to allow for optimal risk transfer/sharing between the line ministry/agency of the Government and the private party.	100%
5. Manageable Life Cycle Costs (10)	• No serious bottlenecks for acquisition of land or acquisition is substantially complete for the project, and the proposed site is functionally convenient to meet the project's objectives	20%
	• Site offers manageable challenges for the Engineering, Procurement and Construction contractor during construction.	10%
	• Project proposes proven technology that is tried and tested.	20%
	• Environment, health, and safety issues are manageable and are not likely to impact adversely on project costs during construction or operations phases.	20%
	• Operations & Maintenance (O&M) costs are manageable and responsive to improved technology and management or O&M costs for this type of project are likely to be stable and predictable throughout the project life cycle.	30%

Indicative Weight for the Criteria	Sub-Criteria	Relative Weight of the Sub-Criteria
6. Comply with the Legal and Regulatory Framework (10)	• The Project complies with the legal framework of the Kingdom of Cambodia under which the project will be implemented.	50%
	• Regulatory and institutional frameworks are in place for the Project to be successfully implemented, or the Project can be regulated by contract.	50%

5.4. The output from the above table will provide the weighted scores based on which the prioritization of the Projects will be carried out. The allocated weighted scores (specified as %) shown in the table may be varied by the MEF based on the specific nature of the project or the payment mechanism. The higher the weighted scores, the higher the probability of a Project being selected for priority funding of project preparation and/or Transaction Advisory Services (TAS) under the Project Development Facility (PDF) for PPP Projects. The GDPPP will prepare the final list of the Priority PPP Projects with the order of the priority ranking as determined by this prioritization exercise.

5.5. The weighted scores resulting from the above assessment may be subjected to a further assessment to take into account the *sector importance/priorities* of the Government. The MEF will determine the weights for sector importance based on the criticality of specific sector development as determined by the Government from time to time. In such cases, the MEF may overlay a "sector importance" weight on the score resulting from the prioritization exercise under Paragraph 5.3 above.

5.6. The priority sectors are allocated a sector importance weightage which should normally not exceed 20%. For example, if road projects are of a higher priority for the Government, a sector importance weight of 20% is allocated to the road project in the list of the Priority PPP Projects. Its score will increase by 20% which will increase its overall score and change its rating to a higher priority in the list of Priority PPP Projects. The irrigation sector may be declared a priority but less than the road sector and may be allocated a 10% weightage increase. This methodology will enable sector prioritization and will be used only when the Government decides on such prioritization. The specific allocation of weightage for sector importance will be determined by the MEF.

5.7. The GDPPP will prepare a report on the results of the prioritization exercise and submit the list of the Priority PPP Projects with the ranking to the Public Investment Committee (PIC) to determine which projects will be included in the PPP pipeline for implementation in the short and medium term. The IA(s) may have a different priority than as decided by the MEF in which case the IA may make additional representations to the MEF for consideration. The final list of PPP projects with the priority for short-term and medium-term implementation as determined by the PIC will be submitted to the Minister of the MEF for approval. The GDPPP will inform the respective IA(s) of the approval of the Priority PPP Projects for initiating Phase II: Project Preparation and Appraisal.

APPENDIX 1

Stage 1 of the MCA Sheet for Potential PPP Project

1. General information:

Project Name:	
Sector:	
Implementing Agency:	
Prepared by: (insert all names of team members)	
Date of Preparation:	

2. Stage 1: Pass/Fail (Yes/No) Criteria Test on Project Eligibility:

For each of the following criteria, mark Yes or No; then provide the justification in the Justification box.

Criteria 1: The Project is aligned with the Government's strategic priorities on infrastructure and other Eligible Sectors.	☐ **Yes** ☐ **No**
Justification:	
Criteria 2: The Project is of a minimum capital/project cost and/or is not considered too complex for procurement.	☐ **Yes** ☐ **No**
Justification:	
Criteria 3: The Project has relevant stakeholders' support based on preliminary public consultation.	☐ **Yes** ☐ **No**
Justification:	
Criteria 4: Support/commitment/willingness of the IA to undertake the Project has been confirmed to the MEF.	☐ **Yes** ☐ **No**
Justification:	

<u>Criteria 5</u>: The Project does not have any significant land acquisition, resettlement, environmental or social safeguard concerns that could prevent its implementation.	☐ **Yes** ☐ **No**
Justification:	
<u>Criteria 6</u>: The Project has clearly defined delivery objectives, output specifications and payment mechanisms.	☐ **Yes** ☐ **No**
Justification:	
<u>Criteria 7</u>: The Project has PPP potential, as similar projects have been procured in the past using private sector financing and expertise, either nationally or internationally, through solicited or unsolicited routes.	☐ **Yes** ☐ **No**
Justification:	
<u>Criteria 8:</u> In the case of an unsolicited PPP project, the Project does not require any form of financial support from the Government in the form of guarantee, subsidy, grant money or any other types of financial assistance.	☐ **Yes** ☐ **No**
Justification:	

APPENDIX 2

Stage 2 of the MCA Sheet for Potential PPP Project

1. General Information:

Project Name:	
Sector:	
Implementing Agency:	
Prepared by: (insert all names of team members)	
Date of Preparation:	

2. Stage 2:

Involves scoring each of the six (6) criteria shown in **bold** below. A score is not given for each sub-criterion but only for the main criterion.

	Evaluation Criteria	Score (1-10)	Justification
1	**Market acceptability** (i) Market demand & growth potential - the Project is expected to have a user base that is likely to use the services of the project asset to be constructed. (ii) Private interest for equity and/or debt - the Project is likely to generate market appetite from private partners as well as the debt funding market locally and/or from international funders.		
2	**Predictable/stable revenue collection/payment mechanisms and financial attractiveness** (i) The Project is likely to have a predictable revenue stream/payment mechanism that enables its structuring as a 'Revenue-based Payment' (user-pays), an 'Availability- based payment' (government-pays) or a 'Hybrid Payment' (a combination between Revenue-based Payment and Availability-based Payment) PPP model. In the case of an unsolicited PPP project, it shall be structured as a Revenue-based payment (user-pays) PPP model. (ii) Project is expected to generate a steady stream of revenue and can be financially viable. (iii) User fees are expected to be affordable and achievable and they are likely to provide expected Return on Equity to investors. (iv) Project size (CAPEX – Capital expenditure/Project cost) is expected to be large enough to provide economies of scale and attract debt funds.		

	Evaluation Criteria	Score (1-10)	Justification
3	**Economic and social desirability**		
	(i) Qualitative assessment: significant levels of economic benefits are expected from the Project.		
4	**Appropriate risk sharing**		
	(i) The project can be appropriately structured and likely to allow for optimal risk transfer/sharing between the government and the private party [optimal means that the risk is allocated to the party that can best bear the risk].		
5	**Manageable life cycle costs**		
	(i) No serious bottleneck for acquisition of land or acquisition is substantially complete for the project, and the proposed site is functionally convenient to meet the project's objectives.		
	(ii) Site offers manageable challengzes for the engineering and construction contractor during construction.		
	(iii) Project proposes proven technology that is tried and tested.		
	(iv) Environment, health, and safety issues are manageable and are not likely to impact adversely on project costs during construction or operations phases.		
	(v) Operations & Maintenance costs are manageable and likely to be responsive to improved technology and management or such costs are likely to be stable and predictable.		
6	**Comply with the legal and regulatory framework**		
	(i) The Project complies with the legal framework of the Kingdom of Cambodia under which the project will be implemented.		
	(ii) Regulatory and institutional frameworks are in place for the Project to be successfully implemented, or the Project can be regulated by contract.		
	Total score*		

Projects that meet a minimum of **70% of the marks i.e., 42 out of 60 marks are selected as Potential PPP Projects, subjected to confirmation by the MEF.*

Name of Head (PPP Unit/Cell/PMU):
Signature:
Date:

GUIDELINES
ON
PROJECT DEVELOPMENT FACILITY
FOR PPP PROJECTS

1. INTRODUCTION

1.1. The Government of the Kingdom of Cambodia (GKC - hereafter referred as the Government) has established a central Project Development Facility (PDF) under its Public Investment Management System Reform Strategy 2019-2025 (PIMSRS 2019-2025) to finance the development and preparation of public investment projects. The objective of the PDF is to act as a dedicated fund that finances project development, preparation and procurement of public investments financed through official development assistance, national budget, and the Public-Private Partnerships (PPP) mechanism. The central PDF mainly consists of three windows for financing namely: the Externally Financed Projects Window, the National Budget Financed Projects Window, and the PPP Projects Window.

1.2. The establishment of the PPP Projects Window (hereafter referred as the PDF for PPPs, or PDF for PPP Projects) as mandated by Article 12 of the Law on Public-Private Partnerships. The PDF for PPPs will finance transaction service activities by providing financial support to the Implementing Agencies (IA) for undertaking quality preparation and procurement of PPP projects and the associated transaction services. The Guidelines on PDF for PPPs are consistent with the principles defined in the guidelines on the central PDF issued under the Action Plan for the PIMSRS 2019-2025.

1.3. The project preparation and transaction services are normally referred to as Transaction Advisory Services (TAS) and are provided by a firm or a consortium of firms which, collectively, is termed as the Transaction Advisor (TA). The PDF for PPPs will help improve the enabling environment that catalyzes PPPs in infrastructure investments through structural strengthening of the preparation, transaction, and negotiation process for implementing PPP Projects in Cambodia.

2. SCOPE OF SERVICES FOR FINANCING UNDER THE PDF FOR PPPs

2.1. The PDF for PPPs can be used for financing the full range of TAS for solicited PPP proposals. The scope of the services includes, but not limited to, the following:

(i) Preparation of Feasibility Study (FS). Pre-feasibility study may be considered where this is packaged together with the FS and is not a standalone study;

(ii) Due Diligence of FS;

(iii) Demand studies, including willingness to 'pay' and 'use' surveys;

(iv) Environment and Social assessment studies;

(v) Project and Financial Structuring;

(vi) Financial modeling, legal, regulatory and tax assessments;

(vii) Procurement for the Selection of the Private Partner;

(viii) PPP Contract negotiations and award;

(ix) Preparation of PPP Contract management plan/manual; and

(x) Incidental transaction support until contract/financial close.

2.2. The financing from the PDF for PPPs is available only for the projects in the list of the Priority PPP Projects, as determined and approved by the MEF after undertaking the selection and prioritization of PPP Projects in accordance with the **Guidelines on Identification and Selection of PPP Projects of the SOP for PPP Projects, Volume II: Guidelines**.

2.3. The PDF for PPPs is used for undertaking TAS for PPP Projects procured through the solicited route. In case of unsolicited proposals (USP), the development and preparation of the PPP Project is financed by the Proponent/Private Sponsor and hence no financing is required from the PDF for PPPs.

2.4. The Framework Agreement (FA) entered between the IA and the Proponent/Private Sponsor for an USP will clearly specify the requirement for the Proponent/Private Sponsor to bear all the costs for the development and preparation of the USP. It will also allocate a budget for the IA for the recruitment of TA or consultants/advisors to undertake the due diligence of the FS by the Government and for the assistance in the negotiations of the draft PPP Contract. The due diligence of the FS is carried out by the IA and the Ministry of Economy and Finance (MEF) on behalf of the Government.

2.5. However, in exceptional cases, where provisions and budget for the Government for undertaking the due diligence or assistance in contract negotiations have not been specifically included in the FA, the PDF for PPPs can be used for financing these services subject to (i) a written agreement from the Proponent/Private Sponsor that it will reimburse the expenditures incurred by the Government prior to the approval of the FS by the IA in case of expenditures for the due diligence of the FS, or prior to the signing of the PPP Contract in the case of assistance for contract negotiations, and (ii) prior to approval of the Public Investment Committee (PIC) of the MEF.

3. OPERATING PRINCIPLES OF THE PDF FOR PPPs

3.1. The PIC of the MEF will select the PPP Projects for which funding and allocation of budget will be made available from the PDF for PPPs. Once the prioritization of the Potential PPP Projects has been completed by the General Department of Public-Private Partnerships (GDPPP) in accordance with the **Guidelines on Identification and Selection of PPP Projects of the SOP for PPP Projects, Volume II: Guidelines**, the final list of the Priority PPP Projects will be submitted to the respective IA by the GDPPP with the advice that the PPP Projects in the list will be eligible for the consideration for the financing of TAS from the PDF for PPPs by the PIC of the MEF.

3.2. The list of the Priority PPP Projects with their order of ranking will be submitted to the PIC by the GDPPP for the review and in-principle selection of the Priority PPP Projects for which funding for TAS will be made available from the PDF for PPPs. This will be carried out on an annual basis. In case of any representation from the IAs on its priority for the PPP Projects which is different from the order of ranking in the list of the Priority PPP Projects, this will be conveyed to the PIC at the time of the submission of the list of the Priority PPP Projects by the GDPPP.

3.3. The number of PPP Projects selected will depend on the budget available in the PDF for PPPs. The MEF will determine and approve the budget for the PDF for PPPs on an annual basis.

3.4. Once the decision on the in-principle selection of the PPP Projects has been made by the PIC, the GDPPP will inform the respective IA of the results and request for submission of the application for the allocation of budget from the PDF for PPPs. The respective IA will submit details on project information, scope of TAS required and the estimated cost for each selected PPP Project in the format provided in **Appendix 1** with its application. The application can be for a single or multiple number of PPP Projects depending on the number in-principle selected by the PIC.

3.5. For due diligence of FS and other transactions services like assistance in the drafting and negotiating of the PPP Contract in case of USP, the budget set aside for these purposes in the FA will be deposited by the Proponent/Private Sponsor into the central PDF account as determined by the Government and automatically allocated to the PDF for PPP Projects account of the GDPPP. No specific approval of the PIC will be needed for the use of these funds.

3.6. In case of the due diligence of the financial/commercial proposal under USP, the GDPPP will undertake such proposals and use the funds allocated in the PDF for PPP Projects account to finance the due diligence consultants/advisors. In the case of due diligence of the technical proposal, where required, this will be undertaken by the IA. The IA will request the GDPPP for the budget from the funds deposited by the Proponent/Private Sponsor. The GDPPP will review the Terms of Reference (TOR) of the due diligence consultants/advisors and the cost estimates and provide the necessary approval of the budget. In case legal advisor is required for the drafting or finalizing the PPP Contract, the GDPPP will allocate the necessary budget for recruitment of the legal advisors.

3.7. In the case where a Development Partner (DP) is financing the TAS and/or acting as the TA, no funding is provided from the PDF for PPPs. In such cases, the arrangements for the engagement with the DP is formalized through a written and binding agreement between the DP and the MEF. However, the PPP Project for which the DP will provide financing and/or act as the TA must either be from the final list of the Priority PPP Projects or an approved Sector Master Plan.

3.8. In the case PPP Project is not from the list of the Priority PPP Projects, it will need to be subjected to the selection and prioritization of PPP Projects in accordance with the **Guidelines on Identification and Selection of PPP Projects, SOP for PPP Projects, Volume II: Guidelines** and approved by the PIC. In exceptional cases, the PIC can recommend the PPP Project without the need for the selection and prioritization process to the Minister of the MEF for approval.

4. INSTITUTIONAL ARRANGEMENTS FOR THE PDF

4.1. The MEF is responsible for setting the policy and guidelines on the use of the central PDF and other windows of financing; their management and oversight, and for approving applications/request for funding. It will ensure sufficient funds are allocated to the central PDF to meet the demands for undertaking TAS and due diligence services for the PPP Projects pipeline and its sustainability. The MEF is also responsible for any revision and upgrade of these **Guidelines on PDF for PPP Projects** as and when necessary.

4.2. The PIC of the MEF is responsible for selecting the PPP Projects for which funding can be provided and the budget allocation from any window for undertaking the TAS and due diligence services, where required. The PIC will oversee the central PDF and the main three windows of funding.

4.3. The PIC is responsible for the overall management of the central PDF and its three Widows of financing, and the operations and the financial management of the central PDF. It will undertake the evaluation and assessment of all funding requests and make the necessary recommendation to the PIC for a decision.

4.4. The operations and financial management of the three windows of funding will be the responsibility of the General Department of International Cooperation and Debt Management (GDICDM), the General Department of Budget (GDB), and the GDPPP.

4.5. The GDPPP is responsible for the operations and financial management of the PDF for PPPs. It will serve as the focal point in the MEF for PPPs and undertake the assessment and evaluation for selection of PPP Projects for funding and the applications/requests for budget allocation from the PDF for PPPs. It will also undertake the due diligence of FS, particularly the financial, commercial, and legal aspects of PPP Projects and may seek funding from the PDF for PPPs for such services, where required.

4.6. The key responsibilities of the GDPPP in respect of operation and financial management of the PDF for PPPs are as follows:

(i) Ensuring the establishment of the account for the PDF for PPPs at the National Bank of Cambodia;

(ii) Preparing the annual budget estimates for PDF for PPPs for submission to PIC for the preparation of the budget for the central PDF;

(iii) Providing assistance to the IA in the preparation of request for funding, as necessary;

(iv) Assessing and evaluating the IA requests for funding for TAS and making recommendation for consideration and approval of the PIC;

(v) Seeking funds from the PDF for PPPs for its due diligence services, where required;

(vi) Verifying and processing claims for payments made by TA/Consultants/Advisors;

(vii) Ensuring that the reimbursement for the expenditures incurred for carrying out the TAS and success fee, where applicable, are made by the successful private partner in the correct amount and timeframe and deposited to the account number as prescribed in the PPP Contract;

(viii) Ensuring that the advances or reimbursements for government due diligence are made by the Proponent/Private Sponsor in case of USP in the correct amount and timeframe and deposited in the account number as prescribed in the Framework Agreement or any other written agreement;

(ix) Managing the funds in the PDF for PPPs Account;

(x) Preparing of the quarterly progress reports and the annual financial statements for PDF for PPPs Account; and

(xi) Performing other related functions as required by the MEF.

5. ASSESSMENT OF APPLICATIONS

5.1. The MEF is responsible for carrying out the processing and assessment of the applications for funding under the PDF for PPPs submitted by the IA which is assigned to the GDPPP. The assessment is carried out in a two- stage procedure. In the first stage, the assessment of the project information provided by the IA in the Project Information Sheet section of the Form shown in **Appendix 1** is carried out to verify and validate the following:

(i) The environment and social impacts are manageable, and the mitigation costs are reasonable;

(ii) There are no serious bottlenecks for land acquisition and costs are reasonable;

(iii) There is sufficient level of private sector interest from a market perspective;

(iv) Financial viability can be expected without or with minimum government support;

(v) The level of risk exposure, particularly contingent liabilities, on the Government are manageable;

(vi) There is capacity of IA to implement the Project (the MEF to verify if the PMU or a similar institutional arrangement is established, if not there shall be a firm commitment of the IA on timeline for its establishment, or if the IA is overloaded with the preparation of multiple projects); and

(vii) Other specific criteria (For example, high priority of the Government, introduces digital or innovative technology, integrated with other priority project/sector plan like the logistics centers).

5.2. The PPP Projects proposed by the IA have undergone a vigorous identification, selection, and prioritization exercise and therefore the PPP Projects in the list of the Priority PPP Projects are all prima facie suitable for proceeding to the next stage of seeking funds for TAS from the PDF for PPPs. Hence, the purpose of the first stage assessment is to review the updated project information to determine if there are any bottlenecks/issues which the Government finds unacceptable, or which represent a deal breaker.

5.3. No application shall be rejected on account of incomplete information. The GDPPP may request the IA to provide the missing or necessary additional information and data so that it can carry out an informed assessment. The IA will be provided within ten (10) working days from the date of receipt of the request for additional data or clarifications sent by the GDPPP which can be requested by email or letter.

5.4. If a deal breaker is identified by the GDPPP in the first stage, the IA will be informed and requested to reconsider the situation. In case the IA agrees with the assessment of the GDPPP, the application will be considered as withdrawn. However, if the IA is of a different opinion, the IA can respond in writing through the GDPPP providing its justification for proceeding with the application for a final decision on the matter by the PIC.

5.5. In the second stage, the GDPPP will carry out the review of the TOR for the TAS/Scope of Services to determine completeness, the proposed staffing of the TA and time inputs, and the estimated costs provided in the section on TAS and Due Diligence Services Requirements in the Form shown in **Appendix 1**. The main purpose of this assessment is to determine the appropriate budget allocation for the TAS. Sample TOR for TAS will be provided in the **SOP for PPP Projects, Volume III: Procurement Manual** which will guide the IA in the preparation of the TOR.

5.6. The GDPPP will review the draft TOR and compare it with the sample TOR to ensure completeness. It will review the proposed team composition and positions, and the time inputs to ensure all the required expertise are included and the time inputs are reasonable to accomplish the tasks specified for each position in the TA team.

5.7. The GDPPP will maintain a database on renumeration rates for different positions and other rates for reimbursable items based on the prevailing market rates which shall be mostly derived from recent consulting contracts under multilateral development bank financed projects, particularly the Asian Development Bank and the World Bank. The cost estimates for the proposed scope of services for TAS will be compared with the rates in the database and revised where necessary.

5.8. If the review of the TOR, the proposed staffing of the TA and the time inputs, and the cost estimate finds that revisions will be required, the GDPPP will advise the IA to consider the revisions and re-submit the application for budget allocation for the TAS.

5.9. The GDPPP will prepare a report on the findings of the first and second stage assessments, any additional representation from the IA and its recommendations. The report will be submitted to the PIC for its review and decision. The PIC will review the report from the GDPPP and make the necessary recommendations for the decision of the PIC for approval and budget allocation.

5.10. Once the decision on the application is made by the PIC, it will be informed to the IA by the GDPPP. If the decision is in the affirmative, the GDPPP will inform the IA of the approved budget amount and request the IA to initiate the process for the recruitment of the TA in accordance with the section on the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual**.

5.11. In case of USP, no approval of the PIC is necessary when the funds have been deposited by the Proponent/Private Sponsor in advance. For due diligence of the technical proposal, the IA will submit only Section B of the Form in **Appendix 1** with details of the TOR; the proposed staffing and the time inputs; and the cost estimate for the due diligence consultants/advisors. The GDPPP will review the details and once these are agreed with the IA, it will allocate the budget. In the case of due diligence of the financial/commercial proposal, the budget will be approved by the GDPPP. In case of a legal advisor, the IA and the GDPPP will jointly agree on the need and the GDPPP will allocate the budget following the finalization of the TOR.

5.12. However, in the exceptional case where the Proponent/Private Sponsor has not advanced the funds for the GKC's due diligence requirements and the IA or the GDPPP needs to use the funds from the PDF for PPPs, the approval of the PIC will be required. The request will be submitted to the PIC by the IA or the GDPPP, as relevant, together with the detailed TOR, staff inputs and cost estimate for the due diligence consultants/advisors; and the written agreement from the Proponent/Private Sponsor that it will reimburse the expenditures incurred as prescribed in Paragraph 2.5.

6. RECRUITMENT OF TA

6.1. The recruitment of the TA will follow the procedures prescribed in the section on the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual**. The GDPPP will establish a panel of consulting firms under an Indefinite Delivery Contract (IDC) arrangement through the pre-qualification selection process and procedures prescribed in the PPP procurement manual. This is called the IDC Panel which will comprise preferably ten (10) firms and the contractual arrangement with the selected firms in the Panel will be valid for three (3) years from the date of the signing of the IDC. The IDC Panel will be updated every three (3) years.

6.2. The IA is responsible for the recruitment of the TA. Once the PIC has approved the funding and budget from the PDF for PPPs, the IA will recruit the TA from the IDC Panel following the procedures prescribed in the section on the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual**.

6.3. The IA will be responsible for preparing the Request for Proposals (RFP) incorporating the approved TOR and issuing the RFP to the selected firms from the IDC Panel. The Proposals submitted by the firms will be evaluated by the Consultant Evaluation

Committee (CEC) which will submit its evaluation report and recommendation to the Procurement Review Committee (PRC) for approval of the selection of the consulting firm. The detailed step by step procedures and the composition of the CEC and PRC are prescribed in the section on the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual**.

6.4. In the case where a DP is financing the TAS, the recruitment of the TA will be undertaken in accordance with the procurement guidelines and regulations of the DP. Normally, the DP agrees to the use of the PPP procurement manual as long as the provisions are consistent with their procurement guidelines and regulations. The applicable procurement arrangement will be spelled out in the legal agreement signed between the DP and the GKC which must be followed by the IA.

6.5. The selected TA shall conduct the FS, prepare the bidding documents including the draft PPP Contract, and provide the transaction services for the selection of private partner in strict conformity with the agreed TOR.

6.6. The TA will provide the services in two stages as follows:

I. In the first stage, the TA will carry out the detailed FS which will be submitted to the IA and the MEF for their due diligence and determination if the FS and the PPP Project can be approved in accordance with the procedures prescribed in Chapter V: Project Approval of the **SOP for PPP Projects, Volume I: Policies and Procedures**. If the FS and the PPP Project are not approved, the TA will not be required to undertake any further services and its contract will be terminated. The consulting contract signed with the TA will specify these conditions.

II. If the FS and the PPP Project are approved by the MEF, the TA will proceed to the second stage of services which will undertake transaction services for the selection of the winning Private Partner and until the contract/financial close in accordance with the procedures prescribed in Chapter VI: Project Procurement and Contracting of **the SOP for PPP Projects, Volume I: Policies and Procedures**.

6.7. In case of USP, the recruitment of consultants/advisors for due diligence of the financial/commercial proposals and legal advisors for the drafting or finalization of the PPP Contract will be undertaken by the GDPPP in accordance with procedures prescribed in the section on the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual**. It is not mandatory to use the firms from the IDC Panel for this purpose. These due diligence consultants/advisors are normally recruited through a Framework Contract arrangement under which the GDPPP signs a contract with a firm for a duration of three (3) years to provide services as and when needed. When the services are required a request with the TOR is submitted to the firm to provide a cost estimate for the services. The cost estimate is reviewed by the GDPPP and the budget agreed with the firm before the commencement of the services.

6.8. The recruitment of consultants/advisors for due diligence of the technical proposal, where required, will be undertaken by the IA in accordance with procedures prescribed in the section on the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual**. It is not mandatory to use the firms from the IDC Panel for this purpose. The TOR for the services and the cost estimates will be reviewed and agreed with the GDPPP. The consultants/advisors can be recruited using the methods of selection of consultants prescribed in the section on the **Selection of Consultants of the SOP for**

PPP Projects: Procurement Manual with the prior approval of the MEF.

6.9. The recruitment on the legal consultants/advisors may be on an individual or firm basis depending on the scope of the services required. Where the Proponent/Private Sponsor uses a reputable and experienced legal firm/advisor to draw up the PPP Contract, an individual is recruited by the GDPPP to carry out the due diligence by the GKC. Where the draft PPP Contract lacks quality or where the Proponent/Private Sponsor relies on the GKC side for drafting or finalizing the PPP Contract, it is advisable to recruit a firm.

7. FINANCING AND REVOLVING NATURE OF THE PDF

7.1. The MEF is responsible for ensuring there is sufficient funding of the central PDF to meet the demand for undertaking TAS for the pipeline of PPP Projects. The funds may be sourced from grants or concessional loans from DP or the national budget or a combination of the two.

7.2. The PDF for PPPs is established as a sustainable revolving facility. The expenditures incurred for carrying out the TAS funded by the PDF for PPPs will be reimbursed by the winning Private Partner. The PPP Contract will clearly specify this requirement, the amount of the reimbursement to be made, the central PDF account details and the time and method of payment. In some cases, the PPP Contract may also specify a success fee that the successful Private Partner will need to pay. In the case of an USP, the Proponent/Private Sponsor will advance the budget for the due diligence and other transaction services required by the GKC which will be stipulated in the Framework Agreement (FA).

7.3. The payments of all the specified amounts in the PPP Contract and the FA in case of USP will be deposited directly into the central PDF account by the winning Private Partner or by the Proponent/Private Sponsor, as relevant, within the timeframe stipulated in the PPP Contract and in the FA. The PIC will reallocate all the reimbursed funds in the case of solicited proposals and advances in the case of USP from the central PDF account into the PDF for PPPs Account.

7.4. The winning Private Partner or the Proponent/Private Sponsor will need to submit the relevant bank remittance documents to the MEF to substantiate that the required payments have been made. The GDPPP will verify and confirm the receipt of the funds and inform the IA if the conditions specified in the PPP Contract or in the FA have been satisfied. Without this confirmation by the MEF, the PPP Contract cannot be made effective or the review of the FS under USP cannot proceed.

7.5. In the exceptional case the procurement for the selection of the private partner is not successful, the cost incurred for undertaking TAS is not refunded and the central PDF will need to bear the costs.

7.6. Since the PDF for the PPPs is a revolving fund in nature, it will be sustainable on its own over the longer term as the PPP program matures. In the short to medium term, the GDPPP will need to seek annual budgetary allocations to ensure that the PDF for PPPs is sufficiently resourced to meet the demand for pre-financing of the TAS.

7.7. The MEF will prepare the budget estimate for the central PDF on an annual basis and will be responsible for seeking the necessary allocation from the national budget and DP assistance, where required.

7.8. The GDPPP will prepare the annual estimates for the PDF for PPPs, the GDB for the PDF for National Budget Financed Projects and the GDICDM for the PDF for Externally Financed Projects. These will be submitted to the PIC for review and approval. The PIC will seek budget approval from the MEF in accordance with the GKC annual budget process.

7.9. All funds provided by the DP under grants or concessional loans for financing of TAS will be deposited in the central PDF account and allocated to the PDF windows depending on the scope of the use of these funds as specified in the grant or loan agreements.

7.10. The PIC will ensure that the funds from the central PDF is allocated to the three PDF windows according to the budget approval for each of them. Similarly, any funds provided by the DP will be allocated to the PPP window(s) according to the purpose for which the funding is provided.

8. FINANCIAL MANAGEMENT AND DISBURSEMENT FROM THE PDF

8.1. The MEF will establish an account for the central PDF at the National Bank of Cambodia. All funds will be channeled through this central account which will be operated and maintained by the PIC. In addition to this, three separate sub-accounts will be established by the MEF for the three main windows of the central PDF.

8.2. The GDPPP will be responsible for the operations of the PDF for PPPs Account; the GDICDM for the operations of the PDF for Externally Financed Projects Account; and the GDB for the operations of the PDF for National Budget Financed Projects Account. They will also be responsible for maintaining proper accounting records, reporting, preparation of annual financial statements and arranging for their audits.

8.3. The financial management policies and procedures of the GKC will be applicable for the use of the funds under the PDF for PPPs Account.

8.4. The payments for the TAS from the PDF for PPPs Account may be made under one of the following methods:

(i) The GDPPP may transfer funds directly to the designated bank account of the TA, as specified in the consulting contract for the TAS. The charges and fees for the transfer of the payments will be on account of the TA.

(ii) The GDPPP may make payments by check in the name of the TA.

(iii) In case of payments are made from the proceeds of loan/grant provided by a DP, the payments may be made directly to the designated account of the TA under the direct payment procedures of the financing DP.

8.5. The processing of the payments to the TA will follow the following procedures:

(i) Step 1. The TA shall submit invoices or claims with the required supporting documents as per requirement in the contract, to the IA.

(ii) Step 2: The IA will review the claim, scrutinize the supporting documents, and certify that the TAS have been performed and the specified outputs delivered.

(iii) Step 3: The IA will submit a request to the MEF for processing of the payment to the TA. The request must be accompanied by the claim, supporting documents and the certification of the payment. The GDPPP will review the documents and assert if the payment is in accordance with the terms and conditions of the consulting contract. The GDPPP will process the payments if all is found to be in order. In case of any discrepancies the GDPPP will seek the clarification from the IA.

(iv) Step 4: The GDPPP will make the payments to the TA using one of the three methods of disbursements described above.

9. ACCOUNTING AND AUDIT OF THE PDF FOR PPP PROJECTS ACCOUNT

9.1. The GDPPP will maintain accounting records of all transaction from the PDF for PPPs Account for each PPP Project.

9.2. The GDPPP will prepare quarterly reports on the cash flow as per the template shown in **Appendix 2** and submit to the PIC.

9.3. The GDPPP will prepare the annual financial statements and submit to the PIC for consolidation into the central PDF Account annual financial statements. The PIC will be responsible for arranging for the audit of the consolidated annual financial statements in accordance with the auditing requirements and standards prescribed for the GKC accounts. No separate audit for the PDF for PPPs Account will be required except in the case of the use of grant or loan proceeds provided by a DP.

9.4. In case of funds from grants or loans provided by a DP and where the DP's financial management guidelines required, the GDPPP will maintain separate accounting records on the use of these funds and arrange for the audit of the annual financial statements by an independent auditor acceptable to the DP.

APPENDIX 1

Project Information Sheet and Service Requirements

Project information to be provided by Implementing Agencies (IA) to the MEF for seeking funding from the PDF for PPPs

A.	Project Information Sheet
1	**Implementing Agency**:
2	**Project Name and Description:** A brief description of the scope of the project
3	**Rationale of Project:** Brief Rationale
4	**Project Location**: Province, District [location and area map]
5	**Land Availability and Ownership**: Government or Private owned, existing land use, area of land for acquisition
6	**If land needs to be acquired, land acquisition plan, if available and key acquisition issues, if any:**
7	**Estimated Project Cost:** in USD Million [as available or estimated based on prior experience] – Construction Cost – Land Cost – Other Costs – Total Project Cost
8	**Likely Revenue Sources for the Project:** From user charges, other sources [please specify]
9	**Financial Viability:** Sufficient users and revenue sources have been identified and whether the project is likely to be financially viable. Any government support mechanism required?
10	**Project Risk:** identify key risks for the Private Partner and the IA. Any of these a deal breaker?
11	**Key Social and Environmental Risks and Costs:** Summarize if there are any environment or social risks that can have serious implications on the cost or implementation of the Project. For example, if there is large displacement of affected communities/villages/communes) or the Project requires land in protected areas or forests or watersheds?
12	**Private Sector Interest:** If any market sounding has been carried out, what is the interest level of the private sector/likely interest based on experience with similar projects.
13	**Establishment of PPP Unit/Cell/PMU**: Status of establishment of PPP Unit/Cell/PMU. If not established, enclose a letter from the Head of the IA providing a commitment and the timeline for its establishment.
14	**PPP Workload:** State the number of PPP Projects under preparation or number for which funding from PDF for PPPs has been/is being requested.
Name of the Head of PPP Unit/Cell/PMU: **Signature:** **Date:**	

B. Transaction Advisory Services and Due Diligence Services Requirements	
1. **Solicited PPP Project:** Indicative scope of Project Preparation and/or Transaction Service (Tick as applicable)	
Transaction Advisory Services (TAS)	☐
Due Diligence of Feasibility Study (FS)	☐
Legal Advisor	☐
Others (specify)	☐
2. Estimated costs for consultancy services (amount in USD):	
3. Terms of Reference: Attached the Terms of Reference 3.1. Schedule of Experts/Expertise Required and Time Inputs: Attached list of international and national experts, their designation and time inputs 3.2. Costs Estimates: Breakdown of Cost Estimates	
4. Date of RFP: month and year	
5. Proposed Date of Completion of Recruitment: month and year	
6. Proposed Date of Completion of FS: month and year	
7. Proposed Date for Pre-qualification Applications (if required): month and year	
8. Proposed Date for List of Pre-qualified Bidders (where relevant): month and year	
9. Proposed Date for Issuance of Invitation to Bid: month and year	
10. Proposed Date of Selection of Private Partner: month and year	

APPENDIX 2

Statement of Cash Flows of the PDF for PPP Projects Account

PARTICULARS	Actual	Projections	
	Current Year	Year 1	Year 2
OPENING BALANCE			
CASH INFLOWS			
a. Receipt from Development Partner			
b. Receipt from Government Budget			
c. Receipt from reimbursements/advances			
(i) From successful private partner (list name and date of payment below) i. ii.			
(ii) From Proponent/Private Sponsor (list name and date of payment below) i. ii.			
d. Other sources (specify)			
TOTAL CASH INFLOWS			
CASH OUTFLOWS			
Disbursements:			
(i) [Name of Implementing Agency], [Project], [Date of Disbursement] i. ii. iii.			
(ii) [Name of Implementing Agency], [Project], [Date of Disbursement] i. ii. iii.			
(iii) [Name of Implementing Agency], [Project], [Date of Disbursement] i. ii. iii.			
TOTAL CASH OUTFLOWS			
CASH BALANCE / (DEFECIENCY)			

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Prepared By Certified By

GUIDELINES
ON
GOVERNMENT SUPPORT MEASURES

1. INTRODUCTION

1.1. When the financial analysis for a *Priority PPP Project* (after the potential project has been prioritized under the Project Identification and Selection Phase) carried out during the Feasibility Study (FS) shows that it is financially unviable, there will be a need for *fiscal* and *other government support* (non-financial) to make it financially viable and bankable. The FS will review and prescribe the extent and nature of such government support measures that may be required.

1.2. It is not that all financially unviable PPP Projects will be provided with Government Support Measures (GSM). The decision to drop a project or provide such measures will be made by the Minister of Economy and Finance after the FS has been thoroughly reviewed by the Implementing Agency (IA) and the Ministry of Economy and Finance (MEF). The granting of any form of government *fiscal support* will require the endorsement of the Minister of the MEF and, if necessary, the approval of the Head of the Government.

1.3. The purpose of these Guidelines is to provide general guidance to stakeholders involved in PPP Projects and do not necessarily commit or bind the Government in any way to offer the GSM. When there is a conflict between the provisions under these Guidelines and the laws, regulations, and rules of Cambodia, the latter will prevail over these Guidelines. Where the Government decides to grant any form of GSM, this must comply with the laws, regulations and rules prescribed for the same in Cambodia when there is a conflict with the provision under these Guidelines.

2. PURPOSE OF GOVERNMENT SUPPORT MEASURES (GSM)

2.1. The purpose of providing GSM is to enable an economically feasible but financially unviable project to be implemented on a PPP modality. This support may be needed in a number of situations, including:

(i) Where there are insufficient revenues from users for the PPP Project to be commercially viable, or where the cost to users without support would be beyond the capacity of users to pay;

(ii) Where there is too much perceived risk, or unacceptable types of risks, allocated to the Private Partner to invest in the PPP Project;

(iii) When such support can improve the additional value that the PPP project can offer the public, including by reducing private financing or cost of risks absorbed by the Private Partner;

(iv) As a payment mechanism for the Private Partner in the PPP Project;

(v) For initial PPP projects in a new sector; or

(vi) In earlier stages of the PPP market development when the private sector and lenders are still cautious about the potential of PPP in Cambodia.

3. ELIGIBILITY OF GSM

3.1. GSM needs to be prioritized for PPP projects that offers higher beneficial impact for the community and the Government. To be eligible for GSM, a PPP Project must first meet all the eligibility requirements set out in the Law on PPPs in Cambodia. GSM required for the Project are identified during the preparation of the FS for the PPP Project. This is evaluated through three sequential considerations as given below along with a checklist of assessment criteria to determine the need for GSM.

(i) **No GSM as a starting position** – the initial analysis of GSM needs for the PPP Project should start on the assumption that no GSM is to be provided. This approach ensures that GSM is identified and motivated only on a need's basis.

(ii) **GSM to achieve a viable business case** – the FS of the PPP Project should assess whether any GSM is required for the Project to be commercially viable. This might lead to identifying the need for subsidization for the Project to be commercially viable, or it may lead to identifying specific payment mechanisms (e.g., an Availability Payment where user payment is not possible).

(iii) **GSM to support bankability and enhance value** – the PPP Project should be assessed to identify GSM required for the Project to be bankable. This relates to risks that the Private Partner could encounter in the Project that may not be acceptable (e.g., the Private Partner may not accept the risk of payments by the IA without an explicit payment guarantee). Alternatively, it could relate to risks that if assumed by the Private Partner would result in a higher price in its financial bid (e.g., a Private Partner could set a high tariff/toll if it is expected to take the full demand risk of a new project in an untested PPP market). Identifying such GSM is often done during and through the market consultation process with potential bidders and financiers.

Table 1: Checklist of GSM Assessment Criteria

Criteria	Yes	No
Is the project identified and selected as a Priority PPP Project by the MEF?	Proceed with FS preparation	Do not continue with the preparation of the project
Does the project achieve preliminary financial viability in the FS?	Proceed with the completion of the FS and next steps	Investigate alternatives to GSM, including: • Increasing the length of the PPP Contract • Reducing the scope of the PPP Contract • Utilizing opportunities for indirect revenues (e.g., commercial utilization of a part of the project land) • Increasing the user charges
Does the project achieve viability with alternatives to GSM?	Proceed with FS preparation including alternatives	Investigate GSM, including: • Tax incentives • Removing part of the investment spending from the scope of the PPP Contract (and transferring it to the Government) • Payment of Availability Payment or service fee to the Private Partner • Viability Gap Financing (VGF)

		• Guarantees
Does the project achieve viability with GSM?	Proceed with preparation of proposed GSM package	Review basic project structuring, consider public delivery

4. TYPES OF STATE SUPPORT AS GSM

4.1. State Support may include incentives, Government's direct fiscal commitments (e.g. capital subsidies), contingent liabilities (e.g. guarantees), contributions of State's asset(s) and other forms of assistances, as discussed below.

(i) Incentives

(ii) Direct fiscal commitments

(iii) Guarantees

4.2. The Government's preferred positions on these are summarized in the table below.

Table 2: Government's Preferred Positions with Respect to GSM for PPP

GSM	Instrument	Application
I. INCENTIVES		
1	**Investment Incentives**	Existing tax incentives are applicable for qualifying PPP projects.
2	**Currency Convertibility and Repatriation**	To facilitate transactions for the effective implementation of a PPP and with respect to foreign investors in PPP.
II. DIRECT FISCAL COMMITMENTS		
3	**Asset (including Land) Contributions**	May be considered on a project specific basis, subject to applicable sector laws and availability of land of the Government of the Kingdom of Cambodia (GKC).
4	**Availability Payments**	Available where service fees cannot be collected from users, or are insufficient.
5	**Viability Gap Financing**	VGF in the form of subsidization of a PPP project.
III. GUARANTEES		
6	**Payment or Performance Guarantee**	Payment or performance guarantees are allowed as per applicable law and approval procedures for the issuance of government guarantees.
7	**Sovereign or Political Risk Guarantee**	Sovereign or political risk guarantees are allowed as per the approvals and procedures for the issuance of government guarantees.

4.3. Incentives

4.3.1. The Government may provide tax incentives for infrastructure PPPs. The rationale for it may be to increase public investment in infrastructure to increase economic activity and thereby boost the Gross Domestic Product (GDP) of a region or the country resulting in increased overall tax revenues.

4.3.2. The PPP Project or the Private Partner may be eligible for the investment incentives, and/or the currency convertibility and repatriation incentives, provided that the PPP Project and/or the Private Partner meet the required eligibility requirements stated for those incentives. The PPP Project and/or the Private Partner must follow the relevant procedures as required by the Government to receive those incentives, with support of the MEF where applicable, to formalize such incentives. The following existing tax incentives are available to Qualified Investment Projects (QIP) in Cambodia under the Law on Investment of the Kingdom of Cambodia.

Table 3: Tax Structure for QIP in Cambodia

Incentives	Tax structure in Cambodia
Income Tax Exemption	Option 1: Income Tax exemption for 3 to 9 years, depending on the sector and investment activities, from the time of earning its first income. After the income tax exemption period has expired, the QIP is entitled to paying progressive income tax at: – 25% for the first 2 years – 50% for the next 2 years – 75% for the last 2 years. Option 2: – Accelerated Depreciation Allowance: special depreciation of 40% for QIP, if not availing tax exemption. – Deduction of capital expenditure through special depreciation and deduction of up to 200% of specific expenses incurred for up to 9 years.
Tax Incentives – Export QIP	Customs duty, special tax, and value-added tax exemption for the import of Construction Materials, Construction Equipment, Production Equipment and Production Inputs.
Tax Incentives – Domestically Oriented QIP	Customs duty, special tax and value-added tax exemption for the import of Construction Materials, Construction Equipment and Production Equipment. Production Inputs incentives shall be determined in the annual financial law and/or the Sub-Decree.
Tax Incentives – Locally made production inputs	VAT Exemption for the purchase of locally made production inputs.
Losses Carried Forward	5 years of Operations.
Lower Tax on Interest	Domestic loans: Not Applicable Foreign loans: 14% Withholding Tax (WHT)
Lower Tax on Dividends	Domestic Investors: 20% Advanced Tax on Dividend[3] Foreign Investors: 20% Advanced Tax on Dividend+ 14% WHT

[3] Advanced Tax on Dividend applies for years where full rate of Income Tax is not applied, such as in QIP tax exemption phase.

4.3.3. Tax and investment incentives are made available to all infrastructure PPPs, subject to compliance with the requirements of the Law on Investment of the Kingdom of Cambodia.

4.3.4. Following the provisions of the Law on PPPs and other applicable laws and regulations in Cambodia, a Private Partner shall have the rights to buy foreign currencies through the banking system and to remit abroad these currencies for commercial transactions, capital transactions and other transactions relating to investments in the PPP Projects. This includes:

- Payment for import of goods and services from abroad;
- Repayment of principal and interest on international loans;
- Payment of license fees and management fees to overseas entities;
- Payment for lease of equipment and machinery from abroad;
- Remittance of capital, profit, revenues from investment liquidation, and of other lawful income (applicable only for foreign Investors) abroad.

4.4. Direct Fiscal Commitments

4.4.1. To reduce the capital cost to be incurred by the Private Partner and/or provide additional income sources for the PPP Project, the Government may provide the rights to use of existing state land or acquire land for use by the Private Partner at zero cost. An alternative approach is to bundle existing operational assets along with the proposed infrastructure facility under the same PPP Contract and thereby provide the Private Partner with early revenues from operating assets. Some examples are provided in the table below.

Table 4: Examples of Land and Other Asset Support

Incentive	Description
Land Support	These are cases where the government provides state land or acquires land and provide the rights to the use of the land free of cost thus reducing the private investment requirement for the project. In selected cases, the use of state land for a PPP project can be provided at no cost especially in cases where the PPP Project will be transferred to the IA at the end of the PPP Contract. In high priority cases, the IA could incur land acquisition costs and then provide the land on a nominal lease basis to the PPP Project for the normal duration of the PPP Project. For example, various transport infrastructure projects such as roads or railroads require acquisition of large tracts of land. The acquisition of land is undertaken by the government and land is provided for use by the Private Partner free of cost. In addition, to generate additional sources of revenue, the IA may provide land parcels along the transport corridor for monetization through real estate development.
Other Asset Support	These are cases where the government provides existing or operational facilities to be managed by the Private Partner in addition to the core infrastructure facility to be created under the PPP Contract. In this way, the Private Partner is able to benefit from early revenues

	generated by the operating facility and enhance the overall financial viability of the PPP Project. Subject to applicable sector laws and regulation, the IA should explore options for bundling existing or operating assets with new facilities to be constructed to enhance the overall financial viability of the proposed PPP Project, e.g., an operational asset can be bundled with new infrastructure project to enhance the viability of new project.

4.4.2. The Government may provide *rights to use the land and other asset support* to a PPP project under limited conditions. This should be considered for PPP projects where reducing project costs can improve affordability and cost recovery, or where project land or assets are returned to Government at the termination of the PPP Contract. The Private Partner will have the rights to use such land and assets and not the ownership for the duration of the PPP Contract.

4.4.3. The applicability of support via rights to the use of land and other assets to a Private Partner depends on the availability of land and the applicable laws and regulations in the relevant sectors and/or relevant local area regulations under which the PPP Project falls. Therefore, the IA and MEF should consult with sector and local regulatory agencies to determine the practicality of provision of land and other asset support to a PPP Project, conducted during the FS stage of the project.

4.4.4. Direct fiscal commitments also include the following:

(i) Availability Payment

- In a PPP Project where it is not possible or not desirable to collect revenues or service charges from users, the Availability Payment (AP) model is used. APs are long term budgetary commitments for the duration of PPP Contract and the IA must ensure the sufficient budget are approved to meet these commitments following the Government's budgetary processes.
- The IA provides a fixed ongoing payment over the lifetime of the PPP Contract, starting after completion of the construction phase and on commencement of the operations. This payment is generally conditional on the availability of the service or asset at a contractually specified quality. The Private Partner receives the majority of its revenues through the AP that is paid by the IA. A payment guarantee may be provided by the Government to back up an AP payable by the IA, subject to the MEF approval and following the applicable regulations and procedures.

(ii) Viability Gap Financing

- Viability Gap Financing (VGF) is to financially support a PPP Project by reducing the required capital expenditure to make the PPP Project's infrastructure facilities and services commercially viable and bankable for investors and affordable to users. VGF may be available in the form of milestone-based capital subsidies provided by the Government against performance milestones. The MEF shall request to the Government to establish a *Facility for VGF (VGF Facility) under a Sub-decree to provide VGF support and manage its operations through a Prakas of the Minister of the MEF.*
- VGF is provided on a *very exceptional basis* and mostly in cases of the high capital expenditure requirements of a PPP Project result in an unbankable or

unaffordable business case and where capital expenditure can be partially reduced without diminishing private performance incentives, and where milestones for VGF payments can be clearly defined. VGF must be endorsed by the Minister of the MEF and approved by the Head of the Government.

4.4.5. Direct Fiscal Commitments during the construction and/or operations phase of the PPP Project are provided subject to the following conditions:

(i) The PPP Project shall be transferred back to the Government or the IA at the end of the PPP Contract Period, on terms and conditions that shall be specified in the PPP Contract.

(ii) The Private Partner in the PPP Project shall contribute at least 51% of equity capital of the Special Purpose Company (SPC), where this is established.

(iii) The ceiling amount of Direct Fiscal Commitment for a PPP Project shall be specified in the PPP Contract as approved by the Head of the Government and shall not be changed, unless the PPP Contract provides for a formula-based revision mechanism or where the Minister of the MEF endorses and the Government decides to increase the amount due to reasons of public policy or national interest and under exceptional circumstances relating to actions of the Government that have a material impact on the viability of the PPP Project, such as a change in law, change in taxation or reduction in the predetermined user charges.

(iv) Any payments for Direct Fiscal Commitments shall commence only after firm and legally binding agreements have been signed by the Private Partner or the SPC with all the investor(s) and lenders to the PPP Project, who have been committed to contributing equity capital, debt or other forms of funds for the total construction cost of the PPP Project, subject to applicable performance standards as may be specified in the PPP Contract.

(v) The Direct Fiscal Commitments shall only be disbursed after substantial equity has been invested into the SPC, which should at least be 50 (fifty) per cent of the total equity required for the PPP Project; and the first installment of debt by senior lenders has been contributed into the PPP Project. Further installments of direct commitment should be disbursed in installments at such time periods as agreed in the PPP Contract.

(vi) While fiscal support during the construction phase may be made in the form of grants, subsidies or VGF, payments shall commence only after the commencement of the construction and on successful commissioning, and subject to applicable performance standards as specified in the PPP Contract.

4.5. Guarantees

4.5.1. **Payment or Performance Guarantee** may be provided by the Government to back-stop payment commitments or other performance undertakings of an IA. These may include off-take purchase agreements (e.g. power purchase agreements, or bulk water off-take agreements, etc.) or Availability Payments (where such PPP projects are implemented). By providing a Payment or Performance Guarantee, the Government assures the Private Partner or the SPC and its lenders and investors that the Government, specifically the MEF, will fulfill the obligation on any payment or commitment shortfalls of an IA. The Payment Guarantee may cover periodic payment commitments or compensation related to termination as specified in the PPP Contract. The potential need for a Payment or Performance Guarantee should be identified as early as possible, ideally during the FS stage of the PPP Project. Payment or Performance Guarantees for a PPP Project shall be provided only in *very exceptional circumstances* and is subject to the endorsement of the Minister of the MEF and the approval of the Head of the Government.

4.5.2. **Sovereign or Political Risk Guarantees** ensure due compensation to the Private Partner or the SPC in the case of governmental or political events negatively impacting the PPP Project or related investments. A Sovereign or Political Risk Guarantee is similar to Payment Guarantee covering Government's compensation payments in the event of PPP Contract termination. Issues of Sovereign or Political Risk Guarantee follow the same approval procedures as Payment or Performance Guarantee. However, this is not provided for PPP Projects and until such time as the Government makes a policy decision, ***this GSM is not available***.

4.5.3. Payment and Performance Guarantees for a PPP Project shall be subject to the following:

(i) For a PPP Project structured on APs or on off-take revenue commitments that are resourced from the budget of the IA or the Government, the use of payment guarantees should only be considered if they make the PPP Project bankable or result in substantial reduction in interest cost or a substantial increase in the loan tenure, thereby reducing the quantum of direct commitment for annual payments from the IA or the Government.

(ii) Payment guarantee shall be used by the IA or the Government as an instrument to manage cash availability or liquidity with the IA for meeting its payment obligations to the PPP Project, and not as a means for providing yearly operating subsidies to the IA. This requires that for the payment amounts guaranteed, the future cash flow of the IA is expected to cover the future payment liability.

(iii) The annual guaranteed amount does not exceed the aggregate payments to be made by the IA in the corresponding year.

(iv) The established legal and administrative procedures for the approval of the guarantees must be followed.

5. APPROVAL PROCESS AND INSTITUTIONAL ARRANGEMENTS FOR GSM

5.1. The MEF through General Department of Public-Private Partnerships (GDPPP) will review the FS Report and will validate the findings and recommendations related to GSM contained therein. The GDPPP will pay particular attention to the Value for Money (VfM) assessment and the results of the Public Private Partnership Fiscal Risk Assessment Model (PFRAM) assessment of the PPP Project relating to the proposed GSM and other risks to Government, including the PFRAM fiscal risk matrix. The GDPPP will also assess the general risk allocation of the PPP Project, as well as the fiscal and budgetary risk and affordability. Where necessary, the GDPPP will consult other agencies involved in the provision of GSM. The GDPPP will be guided by the ***Guidelines on Fiscal Management of the SOP for PPP Projects*** in undertaking these assessments.

5.2. Based on the assessment and due diligence, the MEF may conclude that:

(i) the FS Report is inadequate and refer it back to the Head of the IA.

(ii) the PPP Project meets requirements and does not require GSM, in which case the Minister of the MEF shall approve the PPP Project to proceed to procurement.

(iii) the PPP Project meets requirements but requires GSM, in which case the Minister of the MEF shall decide on whether the required GSM is acceptable, and where, found acceptable, the Minister will seek approval for the GSM from the Head of

Government, prior to approving the PPP Project to proceed to procurement. Where the Minister of the MEF finds the recommended GSM is not acceptable, the Minister will inform the Head of the IA that the PPP Project cannot be approved.

5.3. The MEF shall require the IA to summarize the request for GSM support for a PPP Project. A sample template is provided in Appendix 1 for this. Once the necessary approval of the Head of the Government has been granted, the Minister of the MEF will issue an in-principle approval for the package of GSM through a memorandum. The IA shall ensure that the approved GSM package is correctly reflected in the bidding documents/draft PPP Contract prior to the issuance to the bidders.

5.4. The GDPPP will ensure that the GSM package specified in the bidding documents is consistent with the approved package stipulated in the memorandum issued by the Minister of the MEF. This is done prior to the approval of the bidding documents by the Procurement Review Committee (PRC). If there are any discrepancies, these will be brought to the attention of the IA and the IA requested to correct the bidding documents.

5.5. During the negotiation process, the Negotiating Team will seek the approval of the Minister of the MEF for any deviations from the in-principle approved GSM package. The GDPPP will review the request and conduct a detailed review of the provisions in the draft negotiated PPP Contract related to GSM. The GDPPP will prepare a memorandum outlining the impacts from the proposed change with its recommendation for the consideration of the Minister of the MEF. The endorsement of the Minister and the approval of the Head of the Government shall be obtained before any change can be accepted and the negotiated PPP Contract approved.

5.6. The review of the draft negotiated PPP Contract by the GDPPP will also include identification of the formality and approval procedure/processes that will need to be accomplished for the Government to meet with the requirements of the GSM package in the negotiated PPP Contract or where the assistance of the Government may be necessary. These may include, among others, the following:

- The qualification of the PPP Project as a Qualified Investment Project (QIP) and approval required for any related investment incentives following the Law on Investment of the Kingdom of Cambodia.
- Approval and issuance of Government Guarantees, where required, following the relevant laws, regulations and procedures in Cambodia.
- Approval of the rights to use land or asset following relevant laws, regulations and procedures in Cambodia.
- Approval of issuance of additional development rights following relevant laws, regulations and procedures in Cambodia.
- Approval of budgetary commitments by the MEF following budgetary procedures.

5.7. After the signing of the PPP Contract, the MEF through the GDPPP will monitor the implementation of the conditions precedent to commercial or financial close. The GDPPP shall prepare a detailed plan of all the pre-requisite requirements related to the conditions that are required to be met by the Government and inform the agencies that are responsible for fulfilling the conditions. The plan will also include the requirements for accomplishing all the GSM stipulated in the PPP Contract. The GDPPP shall monitor the compliance with the requirements on a monthly basis and report to the Minister of the MEF. Where, there is inaction or delay in the accomplishment of the conditions and requirements, the Minister of the MEF will issue a notification to the relevant agencies seeking remedial actions.

APPENDIX 1
Template for GSM Required for a PPP Project

1. **Project Name:**

2. **Implementing Agency:** **Line Ministry:**

3. **Project File Number:**

4. **Summary of Government Support Measures proposed for the PPP Project:**

- **Incentives**
  - **Investment incentives**
  - **Currency convertibility and repatriation**
- **Direct Fiscal Commitments**
  - **Asset contributions**
  - **Availability payment/s**
  - **Viability Gap Financing**
- **Guarantees**
  - **Payment or Performance Guarantees**
  - **Sovereign or Political Risk Guarantees**

5. **Term Sheet: Incentives**

Type of incentives

Direct cost to GKC of incentives

Amount: Total Year 1 Year 2 Year 3 … Year *n*

6. **Term Sheet: Direct Fiscal Commitments**

Asset contributions

Nature of asset / value of asset / duration / terms of contribution / terms of return of asset / other cost to GKC

Availability Payments

Types / GKC payment from / payment basis / payment frequency / fixed or variable / indexation / range of variation

Amount: Total Year 1 Year 2 Year 3 … Year *n*

Viability Gap Financing

Types / VGF payment from / duration / terms of VGF

Amount: Total Year 1 Year 2 Year 3 … Year *n*

7. **Term Sheet Guarantees**

8. **Any other commitments / covenants not mentioned in previous categories**

Description

9. **Summary of GSM Commitments**

	Obligations of the MEF **Obligations of the IA and Other Agencies** **Obligations/entitlements of the SPC/Private Partner** **Obligations/entitlements of Financing Parties**
10.	**Comments and Recommendations of the GDPPP:**
11.	**Name of Authorized Signatory:** **Position:** **Date:** **Signature:**

GUIDELINES
ON
CONTRACT MANAGEMENT

1. INTRODUCTION

1.1. The **Guidelines on Contract Management** provide guidance on the management, monitoring, and reporting on the performance of the PPP Contract in accordance with the terms and conditions under the PPP Contract. Both the Implementing Agency (IA) and the selected Private Partner [or the Special Purpose Company (SPC) established by it] must exercise the rights, undertake the responsibilities, and comply with the obligations assigned to them under the PPP Contract. The Guidelines relate to Step 12: Management of the PPP Contract and Step 13: Handover as prescribed in the **SOP for PPP Projects, Volume I: Policies and Procedures.**

1.2. The contract management functions commence after the PPP Contract is signed between the IA and the Ministry of Economy and Finance (MEF) on behalf of the Government of the Kingdom of Cambodia (GKC – hereafter referred as the Government) with the selected Private Partner. The contract management tasks generally include the monitoring of (i) the Conditions Precedent which are required to be completed before the Effectiveness of the PPP Contract (Effective Date) can be declared; (ii) the pre-construction activities like the completion of detailed engineering designs and other technical requirements; (iii) the construction of the assets/facilities under the Project; (iv) the commencement of the commercial operations; (v) the operations and maintenance of the facilities for the duration of the contract period; and (vi) the handover of the Project to the IA after the expiry of the contract period.

1.3. The Conditions Precedent for Effectiveness are referred to as actions required for Commercial Close or Financial Close. In most PPP Contracts, the Commercial and Financial Close occur concurrently within the same timeframe defined in the PPP Contract. Since the Conditions are quite complex and substantive, the period for compliance with them can be between 12 to 18 months. There may be some cases where the Commercial Close is required prior to signing of the PPP Contract and Financial Close for the Effective Date. In both the cases, the IA and the MEF, through the General Department of Public-Private Partnerships (GDPPP), will ensure that Conditions assigned to the IA must be fulfilled within the stipulated time and at the same time, monitor the progress of the Private Partner in complying with the Conditions assigned to it. More details on conditions for Commercial Close and Financial Close are provided in Paragraph 4.2 of these Guidelines.

1.4. Once the Effective Date has been accomplished, the main responsibility of the IA is to ensure that the Project facilities are constructed to agreed specifications, quality and timeframe, and the services during the operations of the facilities under the Project are delivered by the SPC to the intended users, as per terms agreed in the PPP Contract. Contract management by the IA is the process of managing the delivery of the PPP Project using the rights given under the PPP Contract and the legal framework and meeting the commitments/responsibilities defined in the PPP Contract for delivery of the public service.

1.5. The terms and conditions of the PPP Contract vary depending upon the type or PPP Contract Model. For example, Design-Build-Finance-Operate-Maintain PPP Contracts may have a larger set of terms and conditions when compared to an Operations and Maintenance Agreement where there may be no creation of new assets and hence no requirements for detailed engineering design. These Guidelines is therefore required to be custom-fit to the type of PPP Contract.

1.6. The custom-fit is done through the specific Contract Management Plan (CMP) which is prepared for each PPP Contrac t by the Transaction Advisors (TA) and approved by the IA and MEF after the contract negotiation but before contract signing. The IA and the MEF, through the GDPPP, must undertake the management, monitoring and reporting on the performance of the PPP Contract strictly in compliance with the CMP.

1.7. The PPP Contract with the Private Partner is signed by the IA and the MEF on behalf of the GKC. It is therefore important to understand that it is the GKC that is ultimately responsible for the contractual obligations specified in the PPP Contract. While the IA will play a major and focal role in contract management, there will also be involvement for multi-sectoral agencies of the Government. For example, the General Department of Resettlement (GDR) will be the responsible for implementing the obligations related to land acquisition and resettlement. Similarly, the MEF through GDPPP will be responsible for the obligations related to fiscal matters. Contract management of PPP Contracts will therefore involve multiple stakeholders from the Government side.

2. PURPOSE OF CONTRACT MANAGEMENT

2.1. The core aim of managing the PPP Contract is to monitor and ensure that the services are delivered as per the output specifications agreed in the PPP Contract and Value for Money (VfM) is achieved through efficient risk transfer. This requires the IA and MEF to anticipate future needs and avoid delays and default events, and promptly respond to situations that would arise during the implementation of the PPP Project. To enable this, a good working relationship needs to be built and maintained between the IA, MEF and the SPC throughout the life of the PPP Contract. The main objectives of contract management are as follows:

(i) ensure that implementation and operations of the PPP Project are as envisaged and in accordance with the agreed terms and conditions under the PPP Contract;

(ii) monitor, supervise and take corrective action wherever necessary to ensure proper performance of the PPP Contract by the SPC;

(iii) ensure that the Government fulfils its commitments and responsibilities under the Contract;

(iv) ensure that the fiscal risks and impacts of the Government are monitored and managed by the MEF;

(v) manage conflicts arising from the PPP Contract and its implementation;

(vi) manage/monitor relationships of the SPC with external stakeholders who are relevant for the execution of the PPP Project, including but not limited to:

(a) Lenders

(b) Relevant Government agencies and sector regulators

(c) Public/user groups;

(vii) manage amendments to the Contract, including risk and unforeseen events; and

(viii) undertake performance monitoring and reporting, as well as protecting the rights of users and the general public.

3. KEY REQUIREMENTS FOR CONTRACT MANAGEMENT

3.1. Preparation of Contract Management Plan (CMP)

3.1.1. The CMP is the primary tool used by the IA and the MEF for effective contract management of the PPP Contract. It has the following key characteristics:

(a) Serves as a strategic management tool to guide the IA on what PPP Contract management activities to conduct, how, and during which stage of the PPP Project implementation (i.e. contract effectiveness, pre-construction, construction, operations and maintenance, handover/transfer) should such activities be undertaken;

(b) Clarifies the roles and responsibilities of the IA, MEF and other Government stakeholders during each stage and identifies the resources that it will require to undertake these responsibilities.

(c) Provides guidance on how to effectively utilize the management framework embedded within the PPP Contract (i.e. monitoring, supervision, and dispute resolution mechanisms which are available at various stages of project implementation); and

(d) Provides additional tools to the IA on how to manage issues and risks that cannot be adequately addressed by any of the built-in management mechanisms within the PPP Contract.

3.1.2. The key activities under the different stages of the PPP Contract implementation namely: Effectiveness of PPP Contract; Pre-Construction; Construction; Operations and Maintenance; and Handover are provided in detail in Step 12: Management of the PPP Contract and Step 13: Handover in the **SOP for PPP Projects, Volume I: Policies and Procedures**. The requirements for Performance Monitoring and Reporting, Management of Defaults, Monitoring of Fiscal Commitments and Revenues and Contract Amendments are also provided under Step 12. The IA and MEF must ensure that the TA addresses all these topics, where applicable, in the CMP and shall cross-check if these have been included during the review of the draft CMP. An illustrative template of contents for the CMP is given in **Appendix 1**.

3.1.3. The CMP must also reflect the role of Owner's Engineer (OE) and Independent Consultant/Engineer (IC), where applicable, in relation to ***<u>contract management matters only</u>*** and not all aspects of their Terms of Reference (TOR). The IA and MEF must clearly understand their role in contract management and must not confuse these with other services that they are required to provide under their respective TOR. The overall contract management of their services will be undertaken separately from the CMP.

3.1.4. The CMP must be in place after the draft PPP Contract is negotiated and prior to the Signing of the PPP Contract by the IA and the MEF on behalf of the GKC and the Private Partner. The CMP is prepared by the TA and reviewed and approved by the IA and MEF. The TA will normally commence the preparation of the basic draft of the CMP after the draft PPP Contract has been approved by the Procurement Review Committee (PRC) in parallel with the period to the bidding process and finalize the final draft after the negotiations have been completed.

3.1.5. The IA and MEF will ensure that the CMP: (1) is consistent with the provisions of the PPP Contract, and (2) contains the minimum required content as illustrated in **Appendix 1**. The IA and MEF must also ensure that the TA provides the necessary training to their staff to equip them with the knowledge and skills to use the CMP. The training on the management of the functions related to ***<u>Effectiveness of the Contract and Pre-Construction Stage</u>*** must be delivered prior to the signing of the PPP Contract.

3.1.6. PPP Contract management requires the IA and MEF to build a constructive partnership and relationship with the SPC and requires a different approach to that is taken in case of traditional public procurement. The management and monitoring of the implementation of the PPP Contract extends over a long period, normally over 30 years, and this requires a good and respectful long-term working relationship.

3.1.7. The IA and MEF will need to budget for the activities identified in the CMP. Some of the activities may require specialized skills that require consultants. For example, undertaking the verification of the toll revenue which will require user vehicle counts or a revision of the financial model and such similar activities. The IA and MEF will ensure that funds are budgeted for such services and ensure adequate financial resources are available to undertake all the activities on an annual basis.

3.2. Institutional Arrangements for Contract Management

3.2.1. The IA has the overall responsibility of ensuring that the management, monitoring and reporting of the PPP Contract are carried out and is guided by the CMP. The MEF also plays a critical role in the monitoring and reporting of financial aspects, including fiscal commitments and risks, and other key contractual terms and conditions. In addition, there are other multiple Government agencies that are responsible for undertaking contractual obligations related to their area of mandate. Hence, there will be a need for efficient and effective coordination mechanism. The CMP will point out the specific roles and the related coordination mechanism.

3.2.2. **The SOP for PPP Projects, Volume I: Policies and Procedures** requires the establishment of a higher-level Contract Management Committee (CMC) comprising of representatives of the IA and the MEF to oversee the performance of the PPP Project and serve as the decision-making body on all contractual matters. Where decisions require approval of the Head of the IA or the Minister of the MEF or the Head of the Government, the CMC will seek the necessary approval. Sample key responsibilities of the CMC are provided in the **Appendix 2**.

3.2.3. Where an IA is implementing more than one PPP Project, the CMC arrangement can be a more permanent institutional arrangement established by the Head of the IA to oversee the portfolio of ongoing PPP Projects. However, the MEF must also be represented in this arrangement.

3.2.4. The composition of the CMC shall be agreed between the Head of the IA and the Minister of the MEF and shall comprise of ***<u>at least</u>*** the following members:

- IA Representative at Secretary of State Level as the Co-Chair;
- MEF Representative at Secretary of State Level in charge of PPP as the Co-Chair;
- IA Representative at Under Secretary of State Level or above with the Knowledge of PPP as a Member;
- IA representative at Director General Level Responsible for the Project as a Member;
- Director General of GDPPP as a Member; and
- Director General of General Department of State Properties and Non-Tax Revenue as a Member.

3.2.5. The composition may be expanded depending on the nature of the PPP Project, and the applicable institutional arrangement. When preparing the CMP, the TA will carefully identify and recommend if any special expertise is needed in the CMC to ensure efficient decision-making process. This will be reviewed by the IA and MEF and a joint recommendation with the justification submitted to the Head of the IA and the Minister of the MEF for their consideration. The establishment of the CMC shall be formalized through a joint *Prakas* of the IA.

3.2.6. The CMC shall normally meet once every quarter to consider the progress and performance of the Project. In case of any serious contractual dispute, it shall convene within 5 working days after the matter is reported by the Head of the Project Management Unit (PMU). The Head of the PMU or Department responsible for day-to-day management of the Project shall serve as the Secretariate/Permanent Member of the CMC.

3.2.7. The Head of the IA or the Minister of the MEF may co-opt temporary members for any specific contractual matter. For example, when a dispute involves tax issues, a senior level representative of the General Department of Taxation (GDT) may be co-opted or there is a serious legal issue, a senior level representative from the Legal Council of the MEF may be co-opted.

3.2.8. The Co-Chairs may also invite experts to assist them in when a matter under discussion or consideration required specialized knowledge or establish ad hoc Sub-Committees to examine and provide recommendation for resolution on specific matters. The composition of the ad hoc Sub-Committees shall be jointly determined by the Co-Chairs.

3.2.9. The terms and conditions under a PPP Contract are highly complex and legal which require specialized skills to understand and interpret. Those, particularly related to claims and disputes, resolution of claims and disputes, breaches, force majeure events, compensation events, and termination, will require specialists as in house expertise are unlikely to be available. The CMC will therefore need to recruit such experience as and when required to advise it in the decision-making process. Where the IA has recruited an OE for service up to the completion of the construction stage and commencement of operations, the IA may extend the contract of the OE to provide intermittent inputs as and when required. Such services will be supervised by the PMU.

3.2.10. The IA shall establish a PMU for the PPP Project or a similar dedicated arrangement for carrying out the day-to-day monitoring of the PPP Contract. The PMU will be headed by a senior level office of the IA as the Head and shall comprise of functional and technical experts matching the specific areas of contract management and monitoring. These may include relevant sectoral experts, engineer, monitoring expert, contract specialist, safeguard monitoring expert, a financial expert, Management Information System (MIS) expert, etc.

3.2.11. The range of expertise required for the efficient and effective management and monitoring of the PPP Contract will be determined at the time of the preparation of the CMP. The TA will recommend the composition and structure of the PMU with the necessary justification. The IA and GDPPP will review the justifications and make the appropriate recommendations to the Head of the IA and the Minister of the MEF respectively for their consideration. Where the expertise is not available in the IA, provisions for national or international consultants shall be made to supplement the PMU.

3.2.12. Where the IAs have an established institutional arrangement like a General Department/Department/Unit or a similar arrangement, and has the capacity to manage the PPP Contract, no separate PMU will be necessary. An assessment of the capacity will be carried out by the TA during the preparation of the CMP and the strengths and weakness identified. The TA shall propose recommendations for filing in any gaps in the capacity for the review of the IA and MEF. The approval of the Head of the IA and the Minister of the MEF shall be sought before finalizing the implementation arrangements in such cases.

3.2.13. The PMU or the established institutional arrangement will include expertise which are required in a full-time basis. For the expertise which are not required on a full-time basis, for example legal advice, these may be sought as and when required from within the IA or MEF or the relevant Government agencies or external consultants.

3.2.14. Personnel changes in the PMU may be required since the management, monitoring and reporting of the PPP Contract and the Project are spread over a very long period of time.

3.2.15. The PMU has will have a wide range of responsibilities of which the key are as follows:

(a) Ensure that the PPP Project continues to be affordable, provides quality service, Value for Money (VfM), and appropriate risk transfer;

(b) Ensure that both the IA and the SPC meet their obligations under the PPP Contract;

(c) Ensure compliance with the CMP in the management, monitoring and reporting on the implementation of the PPP Contract and the performance of the Project;

(d) Ensure that Minimum Performance Standards and Specifications (MPSS) requirements are achieved;

(e) Monitor the performance of the SPC and take corrective actions where necessary;

(f) Respond to any contractual issues raised by the IC. In case of serious disputes with financial implications or risks, submit to the CMC for resolution after consulting with GDPPP;

(g) Prepare agenda and report for regular CMC meetings. In case of serious disputes or issues, prepare and submit an issues paper and seek for a meeting of the CMC;

(h) Coordinate with and provide regular updates to the MEF on matters relating to the disbursement of funds relating to Government Support Measures (GSM).

(i) Coordinate with the MEF to provide regular updates and seek guidance on contract management concerns, especially in cases of contractual breach prior to submission to the CMC;

(j) Coordinate with other concerned Government agencies to resolve project issues, where required;

(k) Prepare and submit quarterly progress reports to the CMC and the MEF to enable them to monitor the performance of the PPP Project;

(l) Prepare a summary of contractual claims/disputes and the status of resolution on a quarterly basis and submit to the CMC;

(m) Establish and maintain a MIS and all records on the implementation, operations, maintenance and handover of the Project; and

(n) Conduct annual review of the CMP and introduce updates and revisions where necessary with the approval of the MEF.

3.2.16. The GDPPP of MEF has a critical role in the management, monitoring, and reporting of financial aspects, including fiscal commitments and risks, and other key contractual terms and conditions. In PPP Contracts where the SPC is required to pay fees and/or share revenues, the GDPPP will monitor and verify the payments. It serves as the focal point for communication and coordination between the IA and MEF. It is also responsible for the review and making recommendations on all matters which require the approval of the Minister of the MEF. The GDPPP therefore plays an equal and collaborative role in the management, monitoring and reporting on the PPP Contract and the performance of the Project.

3.2.17. The GDPPP will therefore establish a similar institutional arrangement to undertake its roles and responsibilities under which a dedicated team will be assigned within its functional departments. The GDPPP team will work and collaborate very closely with the PMU and will be invited to attend regular meetings held by the PMU.

3.2.18. Where the contractual matters related to very complex financial aspects, for example calculation of compensation payments due to breach of contract or termination or updating of the financial model, the GDPPP may recruit external consultants/experts to advise it on such matters.

4. CONTRACT MANAGEMENT OVER THE PPP LIFECYCLE

4.1. The IA and the GDPPP will ensure that Contract management is undertaken for all the following stages of the PPP Project lifecycle as follows:

(i) Effectiveness of the PPP Contract

(ii) Pre-construction Stage

(iii) Construction Stage

(iv) Operations and Maintenance Stage

(v) Handover Stage

4.2. Effectiveness of PPP Contract

4.2.1. This stage covers the implementation of the Commercial Close and Financial Close after the signing of the PPP Contract and before it comes into effect. Normally, the set of commercial conditions and financial conditions required to be accomplished by both the Parties to the PPP Contract are prescribed for the achievement of Effectiveness. However, in exceptional cases, some of these conditions may be specified after the award as condition for the signing of the PPP Contract and hence are monitored prior to the signing stage. These conditions are related to the execution and delivery of the PPP Contract such as corporate authorization, legal opinion, evidence of secured financing arrangements and such similar conditions.

4.2.2. The commercial conditions typically include apart from what are mentioned in Paragraph 4.2.1, but not limited to, the delivery of performance security, where required; evidence of insurance; tolling agreement; initial land requirement, confirmation of availability of tax incentives, licenses, completion of detailed engineering design (DED) and its approval, formation of SPC, shareholding agreement, etc.

4.2.3. The Financial Close is achieved when the SPC has entered into and executed loan/financing agreements with the lenders. It may also include a requirement for an independent auditor to provide an audit and opinion regarding the suitability of the base case Financial Model or an updated Financial Model which incorporates agreed amendments.

4.2.4. The PPP Contract will clearly set out all the commercial and financial conditions related that the SPC and the IA will be required to fulfil before the PPP Contract can be declared Effective. The timeframe required for the fulfillment of these conditions is generally between 12 to 18 months as the conditions for Financial Close will take longer time as these cannot be achieved until all the other conditions have been accomplished.

4.2.5. The CMP will provide a time bound plan with the assignment of the responsibility for each condition for achieving the conditions assigned to the IA. This will be the main focus of the PMU and the GDPPP of MEF to ensure there are no defaults on the part of the IA. It will be very important for the IA to coordinate with Government agencies under which the mandate for the condition falls. For example, on the confirmation of tax incentives, the responsibility for processing of this is with the GDT and approval by the Minister of the MEF. The GDPPP will be actively involved in monitoring and ensuring that the conditions related to fiscal matters and incentives and other areas like land acquisition falling under the mandate of MEF are accomplished within the contractual time frame.

4.2.6. The PMU and GDPPP will conduct monthly meeting to take stock of the status of progress in the conditions assigned to the IA and prepare quarterly reports for the CMC in the initial 6 months after the signing of the PPP Contract and monthly thereafter. Where there is lack of progress or bottlenecks, this will be reported to the CMC to seek its intervention in taking corrective actions.

4.3. Pre-Construction Stage

4.3.1. This stage covers the management of the PPP Contract from Contract Award to the commencement of construction of the Project. A number of actions will be required to be undertaken by the IA and the SPC before the construction of the Project can commence. For example, the SPC will need to complete the DED, obtain the environmental approvals, enter in construction contract with the Key Contractor, and other such conditions. Similarly, the IA will need to approve the DED within a given timeframe, provide the agreed land for commencement of construction and such other conditions.

4.3.2. The CMP will point each one of these which will guide the PMU, GDPPP and other relevant Government agencies in accomplishing the conditions within the stipulated timeframe. The tables below capture some of the typical key responsibilities and risks which will need to be managed by the PMU and GDPPP during the Pre-Construction Stage. This is not an exhaustive list and is provided for guidance only. The CMP will capture the actual and more comprehensive set of conditions and guidance on the monitoring of them.

Table 5: Responsibilities at the Pre-Construction Stage

Monitoring Aspects	Responsibilities[4]
Ensuring compliance of IA's responsibilities	- Handover of the project site and access to the project site within the committed schedule - Providing approvals that are explicitly the responsibility of the IA under the PPP Contract - Appointment of the Independent Consultant/Engineer (if applicable) - Recruitment of Owner's Engineer if necessary - Issue of authorization and permits under IA's control - Review and approval of technical and engineering designs - Arrangements for inter-linkages with any connecting/ feeder infrastructure facilities
Monitoring compliance by the Contractor	- Preparation and submission of the technical and engineering designs - All approvals and permits (other than those which are explicitly the responsibility of the IA) - Arrangement of the financial resources needed for the Project and finalization of the financing contracts (financial close) - Insurance of Project - Arrangement of utilities (electricity connection, construction of water supply) - Submission of the performance/ security bonds and guarantees as required under the PPP Contract - Payment of Fees, if applicable - Opening of the project bank accounts and escrow arrangements, where required

Table 6: Monitoring and Management of Risks at the Pre-Construction Stage

Risk	Description
Land risk	- Risk that the entire land required for the PPP Project may not be available, or - IA will need to spend additional cost to acquire the land required for the project, or - The land acquisition is likely to get delayed due to delay in the handover of land to the SPC (making the IA liable for damages) resulting in subsequent delay in project construction.
Approval risk	- Risk that all the approvals and permits required for the PPP Project may not be available, or - Risk that the approvals and permits will necessitate increase in the cost of the PPP Project - Risk that the approvals and permits will take more time than envisaged, leading to delay in commencement of construction (and cost escalation)
Financial risk	- Risk that the required debt, equity and other financial resources for the PPP Project may not be available, or - Risk that the financial resources are available but the cost of financing the PPP Project is higher than envisaged
Input risk	- Risk that the necessary input facilities may not be available for the PPP Project, or - Risk that facilities that feed into the Project may be available later than envisaged
Design risk	- Risk that the design developed by the SPC does not meet the requirements of the IA, leading to redesign of the Project (and consequent delays in the commencement of construction) - Risk that the IA approves the designs submitted by the SPC and the approved designs turn out to be inadequate/ improper for the requirements of the IA

[4] The responsibilities mentioned here relate to typical PPP projects- they may or may not be true for all PPP Projects. The CMP will point out the responsibilities for each project based on the specific PPP Contract.

4.4. **Construction Stage**

4.4.1. Management of the PPP Contract during the construction stage commences from the start of the construction until the commissioning of the Project. The key objective of the PMU should be to ensure that the construction is on schedule and as per the approved design and standards and all the technical obligations by the SPC are met.

4.4.2. The IC will be the independent engineer that will certify that the construction meets with all the specified requirements and recommend the issuance of a completion certificate. Any non-compliance or complaints by the PMU or the SPC will be brought to the attention of the IC who will handle them and make the final decision. The OE, where available, will provide technical support to the PMU in undertaking supervision and bringing any non-compliance by the SPC to the attention of the IC. The OE's role is that of a Technical Advisor.

4.4.3. The role of the MEF during this phase is normally to manage the use of viability gap financing provided by the Government and monitoring the construction progress to identify any delays. In case of any complaints and disputes communicated by the IC, the PMU will involve GDPPP of the MEF in the matter. Where, the complaint is related to land acquisition and resettlement issues, these will be handled by the GDR and coordinated by the GDPPP on behalf of MEF.

4.4.4. The typical key responsibilities and risks to be managed by the PMU with the assistance of the OE, where available, during the construction stage are given in the following tables.

Table 7: Responsibilities at the Construction Stage

Monitoring Aspects	Responsibilities[5]
Ensuring compliance of IA's responsibilities	- Payment of capital grants based on the contractual milestones, where viability gap financing is provided - Ensure construction meets with the agreed designs and standards - Identify gaps that may hinder the proper delivery of safe and reliable services, for example, the technical designs missed the need for an underpass or overpass for safe movement of the local public. - Ensure land is made available free of any obstructions in accordance with the agreed schedule
Monitoring compliance by the Contractor/SPC	- Review of the construction progress - Review of the Independent Consultant/Engineer's Reports - Review of trial run results - Review of fulfilment of safety requirements - Review of adherence to the budget - Review of adherence to the approved designs - Review of disruptions to existing users, as relevant - Review of instances of regulatory non-compliance

[5] The responsibilities mentioned here relate to typical PPP projects- they may or may not be true for all PPP Projects. The CMP will point out the responsibilities for each project based on the specific PPP Contract.

Table 8: Monitoring and Management of Risks at the Construction Stage

Risk	Description
Design Risk	- Risk that the approved design of the Project is incorrect, during its construction
Cost Escalation Risk	- Risk that the actual cost of construction would be higher than envisaged during project development (for delay in meeting IA commitments)
Interest rate risk	- Risk that the interest rate applicable during construction is higher than expected (to be borne by the SPC)
Completion risk	- Risk that the completion would be delayed beyond the targeted schedule
Social/ Environmental risk	- Risk that the social or environmental impacts of the project construction are more than expected resulting in higher cost of managing the impact - Risk that there is widespread public opposition to the construction of the Project

4.5. Operations and Maintenance Stage

4.5.1. This stage relates to Contract Management from the commencement of commercial operations of the Project facilities to the End Date of the PPP Contract or its termination if this occurs prior to the End Date. This is the phase when the SPC delivers the services to the users using the constructed Project facilities. The focus of the PMU and the GDPPP of MEF during this stage would be to ensure that quality of the services and the performance of the SPC meets the expected standards (MPSS), and the users' rights and interests are protected.

4.5.2. One of the key roles of the GDPPP of MEF is to ensure that all fees and revenues, where revenue sharing is applicable, are correct and deposited to the account designated by the Minister of the MEF. This will require the verification by the GDPPP that all the revenues are correctly captured, and the right percent is paid in accordance with the payment terms specified in the PPP Contract.

4.5.3. The typical key responsibilities and risks to be managed by the PMU and the GDPPP during the Operations and Maintenance stage are given in the following tables.

Table 9: Responsibilities at the Operations and Maintenance Stage

Monitoring Aspects	Responsibilities[6]
Ensuring compliance of IA's responsibilities	- Payment of grants during the operations period where applicable - Monitor compliance with non-monetary commitments of the IA, e.g., - No competing facility during the tenure agreed in the PPP Contract - Coordination with other government departments for connecting infrastructure facilities and services - Ensuring continuity of services - Review of the maintenance activities - Monitoring planned maintenance and replacement activities - Others
Monitoring compliance by the SPC/Operator	- Review of SPC performance against defined outputs standards/ service levels (MPSS) - Review of Project performance – use of the Project facility, revenue, etc. - Monitoring quality of services – availability of the facilities, number of service disruptions, etc. - Monitoring of the user experience/ grievances - Preparation and submission of the maintenance activities - Preparation and submission of planned maintenance and replacement activities - Verification of the usage data and revenues reported by the SPC - Ensuring the SPC fulfills all its financial commitments like paying proceeds from revenue sharing to the MEF, where applicable and other fee payments in accordance with the PPP Contract

Table 10: Monitoring and Management of Risks at the Operations and Maintenance Stage

Risk	Description
Demand risk	- The risk that the actual demand of the Project facilities/ services are higher or lower than expected
Revenue risk	- The risk that the actual revenues of the Project are lower/ higher than expected - The risk that the revenue leakage is higher than expected
Operating risk	- The risk that the operating cost of the Project is higher or lower than expected
Performance risk	- The risk that the Project may not be able to deliver the expected performance - The risk that the operating cost to deliver the expected performance would be higher than expected
Interest rate risk	- The risk that the interest rate applicable during the operations period is higher than expected
Financial risk	- The risk that the financials of the Project will not be able service the project debt - The risk that the financial returns of the Project are lower than expected

[6] The responsibilities mentioned here relate to typical PPP projects- they may or may not be true for all PPP Projects. The CMP will point out the responsibilities for each project based on the specific PPP Contract.

4.6. **Handover Stage**

4.6.1. PPP Project facilities are handed back to the IA through CMC at on the End Date of the PPP Contract or on termination of the PPP Contract. This is the handover stage where Project facilities and service responsibilities are handed back by the SPC to the IA. The key focus of the PMU at this stage is to ensure that the Project facilities are handed over in good working condition as per pre-agreed conditions specified in the PPP Contract. This will include operation as well as engineering standards and specifications. The PMU and GDPPP must also ensure that all outstanding liabilities and financial obligations of the SPC have been cleared as part of the handover.

4.6.2. The IC will play the key role in assessing and certifying that the Project assets and facilities are in good working conditions and meets with all the standards and specifications stipulated in the PPP Contract.

4.6.3. The typical key responsibilities and risks to be managed by the PMU and GDPPP during the Handover Stage are given in the following tables.

Table 11: Responsibilities at the Handover Stage

Monitoring Aspects	Responsibilities[7]
Ensuring compliance of IA's responsibilities	- Taking over the possession of the PPP Project Facilities in good working condition - Ensuring that there is no disruption in service provision and the user's rights are protected while the handover is under process - In case where a new operator is required, initiate bid process to appoint a new Private Partner for the next tenure - In case of handover as a result of termination, payment of termination payments, as specified under the PPP Contract - Release of all guarantees provided by the SPC - Provide decisions on completion and handover
Monitoring compliance by the SPC	- Review of the condition of the Project facilities before the IA takes possession - Where the condition of the Project facilities do not conform to the specified standards, then ensuring that the SPC brings the facilities back to the required standards - Ensuring that the SPC has meet the liabilities and obligations related to the operations period prior to the handing over of the possession and control to the IA - Ensuring that the SPC does not disrupt the service to users while the handover is in progress - Ensuring the SPC clears all of its liabilities and financial obligations

[7] The responsibilities mentioned here relate to typical PPP projects- they may or may not be true for all PPP Projects. The CMP will point out the responsibilities for each project based on the specific PPP Contract.

Table 12: Monitoring and Management of Risks at the Handover Stage

Risk	Description
Project condition	- The risk that the Project facilities at the end of the contract period do not meet the prescribed operational and engineering standards and specifications - The risk that the IA will need to spend a higher-than-expected amount to bring the PPP Project facilities back to the required operating standards
Service disruption risk	- The risk that the service to the users is disrupted while the handover is in progress
Re-tendering risk	- The risk that the cost of retendering the project facilities is higher than expected resulting in the value for money becoming much lower than expected by the IA

5. MONITORING OF FISCAL COMMITMENTS

5.1. The **Guidelines on Fiscal Management of the SOP for PPP Projects** provide guidance on managing government's fiscal risks arising out of PPP projects, the procedures to follow and the institutional arrangement for the same.

5.2. The PPP Contract will specify the specific fiscal commitments, both direct and indirect, that will be provided by the Government as GSM. The MEF through the GDPPP is responsible for the managing, monitoring, and reporting on all matters related to fiscal commitments and risks that may give rise to contingent liabilities under the PPP Contract. All the contingent liabilities risks will be reported in the Disclosure of Major Contingency Liabilities under PPPs and Reporting Exceptions and High Severity Risks. While the GDPPP will be required to prepare these reports, the PMU will be responsible for collecting and compiling all the information on the risks and providing them to the GDPPP. The CMP will provide the templates and the details on what information and data required for the GDPPP to report on the contingent liabilities.

5.3. At the commencement of the implementation of the PPP Contract, the GDPPP and the PMU will need to revalidate the fiscal commitments based on the negotiated financial arrangements with the SPC. The revalidated fiscal commitments would include the following types of direct and contingent liabilities, as applicable:

- projected payments of upfront viability payments.
- projected payments of the availability payments.
- projected payment of output-based grants or unit payments.
- projected cash flow related to public financing of the PPP Project.
- major contingent liabilities and high severity risks.

5.4. **Budgeting of the expected fiscal expenditures:** the PMU will prepare the projections of the payments arising out of fiscal commitments an annual basis and submit to the MEF for validation as part of the IA's preparation of the annual budget. The budget for the payment of any fiscal commitments will be submitted to the MEF for approval following the Governments national budgetary process.

5.5. **Administration of the payments related to fiscal commitments:** the IA will set up an administrative and operational mechanism to ensure proper accounting, reporting and disclosure of payments on account of fiscal commitments. All payments will need to be validated by the GDPPP before the payments are made. The accounting and reporting would be in line with the relevant legal and regulatory framework in force in Cambodia. All the payments made for meeting liabilities arising out of fiscal commitments must be recorded based on their type of payments (e.g. availability payment), one time (e.g. termination payment) or multiple times based on a trigger (e.g. counterparty default guarantee). The IA will submit the financial reports on a quarterly basis to the GDPPP which will review and validate the accounting records before consolidating and submitting to the Minister of the MEF.

6. MANAGEMENT OF DISPUTES, DEFAULTS AND CONTINGENCY EVENTS

6.1. PPP Contracts often face disputes, defaults between the parties and exposed to external contingencies. These events if not managed carefully and in line with the prescribed approach defined in the PPP Contract may lead to service disruptions and substantial liabilities or additional costs for the IA. The PMU and GDPPP would need to manage the defined events of default and in complex contractual matters, they will be assisted by external consultants/experts. The CMP will provide details on the pathway to managing disputes, defaults and contingency events and the PMU, GDPPP and the CMC must be guided by them.

6.2. The key aspects needing consideration for managing defaults include:

(i) **Management of disputes:** PPP Contracts define the process to be followed in case of disputes between the IA and the SPC. The PMU should focus on minimizing disputes between the two parties. Disputes cannot be eliminated, as PPP contracts are substantially long-term commercial arrangements.

(a) **Periodic review meetings:** The PMU will conduct periodic meetings, monthly or at least quarterly, with the management staff of the SPC. The objective of these meetings would be to identify and discuss the operations of the Project and the plans in the short and medium term. A part of the agenda would be to discuss any potential conflicts and potential disagreements/differences that have arisen or likely to arise in the future. The GDPPP shall be invited to these meetings. There will be a need for an open culture to establish cordial and good working relationship and ensure that potential disputes can be managed proactively.

(b) **Exception reporting:** As part of the regular monitoring process, the PMU should report exceptions and deviations from the PPP Contract, projected service levels and volumes, projected financial flows, expected social/environment impacts, changes in the workforce, changes in the user composition etc. The reporting arrangements should record and report any event that is a deviation from the defined/ expected event and may lead to either (a) potential conflict in the future or (b) financial implication for either of the parties. The CMP will provide a template for this.

(c) **Predefined dispute management process:** The PPP Contract will define the sequential steps to be undertaken by the IA and the SPC, in case a dispute arises. The IA and the MEF must ensure that the predefined steps are followed and where, any timeframe is specified, the IA must comply with this. However, the IA and MEF will avoid taking disputes to Arbitration or the Judicial Courts for resolution as these are costly and time consuming. All efforts should be made by the IA and MEF in resolving the dispute amicably. The process should be as follows:

- **Interparty discussion:** The discussions between the PMU and GDPPP, on one side and the SPC is the first step in dispute resolution, where each party presents its perspective, and both parties try to reach an agreement.

If required, the IA may invite external experts to share their opinion especially if the dispute relates to the value of the PPP Project facilities, contract variations and technical aspects. Where the issues are purely technical in nature and does not pose any financial implications for the Government, the participation of the GDPPP is not required. All efforts will be made to resolve this dispute at this stage. Where the discussion at the PMU and GDPPP levels do not lead to a resolution, a further discussion between the IA and MEF, and the SPC at the management level is held to resolve the dispute.

- **Conciliation:** Mediation or conciliations are essentially discussions between the IA and the SPC facilitated by a neutral individual or panel of individuals. Both parties agree on the individual or the panel.
- **Arbitration:** Arbitration processes are governed by the Law on Commercial Arbitration (LCA) and depending on the arbitration mechanism agreed and defined in the PPP Contract, there are specific rules and regulations that will need to be followed. The IA and SPC must follow the process and the rules and regulations. When a dispute is submitted for Arbitration, the IA and MEF may need the services of legal and specialist experts. The GDPPP will seek the advice of the MEF's Legal Council.
- **Judicial Proceedings:** Judicial proceedings would be governed by the defined process for commercial disputes and relevant court jurisdictions. Typical judicial proceedings are the last dispute resolution mechanism, invoked when the other dispute resolution mechanisms have been tried and the two parties have failed to reach an agreement over the dispute. If the IA and MEF or the SPC do not agree with the results of the arbitration proceedings, the matter can be referred to the courts that have jurisdiction under the law governing the PPP Contract as defined in the PPP Contract. In such cases, the decision of the Head of the Government shall be sought before any action is taken by the IA and MEF.

(ii) **Management of Contract Variations:** During the implementation of the PPP Contract, there will be instances where a change in circumstances will occur which was not anticipated or properly quantified when the PPP Contract was signed. This may require a variation or amendment of the PPP Contract. Step 12: Management of PPP Contract in the **SOP for PPP Projects, Volume I: Policies and Procedures** also provides the procedures for the processing and approval of such variations or amendments.

(iii) The PMU, with guidance from the GDPPP, should consider if the amendment to the PPP Contract will continue to provide:

- Value for Money (VfM);
- Affordability; and
- appropriate risk sharing between the parties.

(iv) Contract variations may be categorized as follows and the procedures outlined will guide the IA in processing of with these variations:

(a) *Variations involving no additional costs* – The PMU and the SPC will discuss the most optimal way of implementing such variations. If the variation will result in a reduction in costs, both parties need to reach an agreement on how to distribute the savings. If the variation is proposed by the PMU, savings should accrue either to Government and/or the end users; while savings derived from a variation proposed by the SPC should be divided between the IA, the SPC, and the end users. The GDPPP will need to participate in the discussions. Such variations can be agreed with the endorsement of the PMU and the GDPPP as there are no adverse financial implications on the Government. However, such variations will be reported in the regular reports to the CMC.

(b) *IA-initiated variations* – These variations should only be limited to changes in the service requirements, specified constraints on inputs, and the limits or scope of project warranties. The IA must first submit a variation proposal to the SPC. The proposal must describe the nature of the variation and require the SPC to provide an assessment of the technical, financial, contractual and timetable implications of the proposed variation within a specified time period. After discussing with the SPC, the IA will decide, with guidance from the GDPPP which contracting party should put the funding in place to implement the variation. Depending on who provides the funding, payment for the variation should be made by necessary adjustments to availability payments, government support payments, or other payments contemplated in the PPP Contract. Such variations will need to be endorsed by the CMC and approved by the Minister of the MEF.

(c) *SPC-initiated variations* – The SPC must submit a variation proposal to the PMU, setting out the details of the variation and its likely impact to the PPP Contract. The PMU will assess the proposal and discuss with SPC and provides an opportunity for the SPC to modify its variation proposal if necessary. The PMU must decide, with guidance from the GDPPP, whether to accept the proposal or not. If the PMU and the GDPPP agree on the merits of the proposal, the PMU will seek the endorsement of the CMC before submitting to the Minister of the MEF for approval.

(d) Where, the variation is purely technical in nature and has no financial implications for the Government and substantial in nature, the PMU will submit such variations for the approval of the CMC after it has been verified by the GDPPP. On other technical issues not substantial in nature, no variation order is necessary, and the Head of the PMU can provide approval.

(v) **Management of Contingency Events:** PPP Contracts can have the following types of contingency events that may need to be managed during the PPP Contract implementation period:

(a) Change in law

- This may relate to a material change in the legal or regulatory framework that governs the construction, operations and services of the PPP Project and has a material impact on the financials of any of the parties to the contract. The management of change in law involves asking the following questions:
    - Does the event meet the defined criteria of change in law?
    - What is the impact of the change in law event?

- What is the provision in the PPP Contract regarding compensation to the SPC for the change in law event?

– The PMU with the assistance of the GDPPP will review the matter and prepare a report indicating the impact of the change on the terms of the PPP Contract and whether this triggers any compensation payments to the SPC. The report will be submitted to the CMC for its review and endorsement before it is submitted to the Minister of the MEF for approval. Where the matter is submitted by the SPC to the IC, the same process of review will be undertaken by the PMU and GDPPP and a response submitted to the IC. The IC will make the final decision which will be referred to the CMC for a decision to accept or lodge a dispute for resolution under 6.1 above.

(b) Force Majeure Events

– Force Majeure Events are unforeseen circumstances that materially impact the ability of the contracting parties to perform their contractual responsibilities, and in consequence may have financial impact on the PPP Project or the contracting parties. The PPP Contract will define a Force Majeure Event and the process to be followed by the IA and the SPC when invoking this. The management of consequences of Force Majeure Events will involve the following activities:

- **Notice of Force Majeure Event** - In case the IA becomes aware of a Force Majeure Event, it will need to prepare a written notice describing the event and the likely impact on the PPP Project and issue it formally to the SPC. The IA must however first assess and be certain that a Force Majeure Event has occurred. Where, there is any uncertainty, the IA through the PMU will need to seek expert advice for either its OE (if it has been contracted to provide services during the operations and maintenance stage) or any other expert. The notice would be prepared by the PMU in consultation with the GDPPP and it would be issued under the authority of the authorized signatory of the IA defined in the PPP Contract. The PMU will then ensure the SPC and it will undertake all the necessary actions required after the declaration of the Force Majeure Event.

- When the SPC issues a notice of a Force Majeure Event, the PMU with the assistance of GDPPP will review the notice to ensure that the event in question meets the criteria of a Force Majeure Event. The PMU may seek the advice of its experts where there is uncertainty about the validity of the Event. The notice will be assessed by the PMU and GDPPP and presented to the CMC for its approval. The PMU will then ensure that the SPC and it will undertake all the necessary actions required after the declaration of the Force Majeure Event.

- A Force Majeure Event can have substantial financial implications for the Government. In such cases the matter will be submitted by the CMC to the Minister of the MEF for consideration. The report should describe the Force Majeure Event, potential impact of the event and the likelihood that the event would trigger termination of the PPP Contract. The Minister will make the decision and in the case the

Force Majeure Event leads to termination, the approval of the Head of the Government shall be obtained.

- **End of Force Majeure Event** - When the party affected by the Force Majeure Event becomes aware that the event has concluded, it will send a notice of that effect to the other party. The notice should necessarily describe the impact of the event, and the financial implications of the impact. The PMU, in consultations with the GDPPP, may engage the services of external experts/ valuation professionals to estimate the financial value of the impact of the Force Majeure Event in accordance with relevant compensation payment provisions in the PPP Contract. The PMU and the GDPPP will jointly prepare a report on the financial implications of the Force Majeure Event and submit to the CMC for its endorsement. The CMC will submit the report with its recommendation to the Minister of the MEF for consideration and approval.

(c) Termination of Contract

- Termination of contract refers to the severance of contractual relationship between the IA and the SPC prior to the End Date of the PPP Contract. There are several situations where termination can be initiated by the IA or the SPC which will be clearly defined in the PPP Contract.
- The Termination of the PPP Contract is a very serious matter and will have far reaching consequences on termination payments. Before any issuance of a termination notice, expert and legal advice will be sought from external consultants to confirm if the breach of the contract by the SPC merits a termination of the PPP Contract. The matter will be handled jointly by the PMU and the GDPPP. A detailed report will be prepared providing the assessment of the expert advice and the justifications for the termination shall be prepared and submitted to the CMC. The CMC will call a meeting of its members to consider the matter and where, it endorses the report and submit its recommendation to the Minister of the MEF. The Minister of the MEF shall seek the approval of the Head of Government for instituting the termination of the PPP Contract.
- The activities to be performed by the IA and MEF for termination of the PPP Contract are given below:

  (a) Where the termination is initiated by the IA, the PMU and MEF must prepare a written note explaining the reasons for initiating termination, including supporting evidence following the process described in the previous paragraph. A termination notice is issued under the signature of the authorized person representing the IA as defined in the PPP Contract to the SPC after approval of the Head of the Government has been obtained.

  (b) If the termination is initiated by the SPC, the PMU and GDPPP must review and assess the following:

    (i) If the reasons for termination are valid and eligible under the terms of the PPP Contract?

(ii) If there are any alternatives to termination?

(iii) If the termination notice is in conformance with the terms of the PPP Contract?

(c) The PMU and GDPPP will seek expert including legal advice from experts/consultants on the validity and merits of the termination notice and where validated, seek any alternative solution. The experts will also estimate the amount of termination payments that will be due to the SPC. A detailed report shall be prepared for the consideration by the CMC. The CMC will meet with the management of the SPC and seek any alternative solution or compromise, where possible. The CMC will provide its recommendation to the Minister of the MEF for consideration. Where the Minister endorses the recommendation for termination, the approval of the Head of Government shall be obtained.

(d) The transition and handover of facilities, and/or the post termination would be governed by the terms of the PPP Contract, as discussed under the section 4.6: Handover Stage.

APPENDIX 1
Illustrative Contents of Contract Management Plan

Section	Indicative content
Introduction	Purpose of the CMP Overall approach Summary of objectives, output specifications and key deliverables of the PPP Project
Partnership Management Framework in the PPP Contract	Platforms for discussion of updates and issues on the project between IA and Private Partner (IA officials / Private Partner senior representatives) Monitoring, supervision and evaluation procedures of the IA; reportorial requirements to be fulfilled by the Private Partner Contract amendment/variation procedures Dispute-resolution procedures Partnership termination/pre-termination procedures
Contract Management Team	Key persons and positions within the IA to fulfil critical roles during project implementation Assessment on current and anticipated manpower requirements to ensure that IA is capable of satisfactorily performing its obligations and responsibilities under the PPP Contract
Pre-construction Stage	Establish partnership management structure Establish performance management system Appoint Independent Consultant/Engineer Recruit Owner's Engineer if necessary Monitor the Conditions Precedent to Effectiveness of PPP Contract Provide access to Project Site Review and approve the Detailed Engineering Design (and other plans) Issue the Notice to Proceed Others
Construction Stage	Conduct of the scheduled inspections and tests (with Independent Consultant/Engineer) Trial runs Certification of construction completion Fulfilling financial commitments during the construction stage (construction grant for instance)
Operations and Maintenance Stage	Conduct quality assurance reviews Review performance reports Conduct regular review meetings with Private Partner Monitoring of user's grievances Monitor project financials Monitor service levels Monitor risks and exceptions Fulfil financial commitments during the operation stage Review of the maintenance activities Monitoring planned maintenance and replacement activities Others
Handover Stage	Prepare the handover plan and responsibilities Ensure the compliance with the terms and conditions of the handover as per pre-agreed and specified in the PPP Contract Manage service disruption and protection of user's rights during the handover process Clear outstanding liabilities and financial obligations of the SPC Monitor and manage risks in the handover stage Others

APPENDIX 2
Sample Key Responsibilities of the CMC

The main responsibilities of the CMC include the following:

- serve as the steering committee for the oversight of the overall performance of the PPP Project to ensure compliance and obligations of both parties under the PPP Contract are met;
- serves as the decision-making body on all contractual matters except matters related to financial matters which falls under the purview and require approval of the Minister of the MEF. The CMC shall seek the approval from the Head of the GKC and Minister of the MEF where applicable;
- coordinate and facilitate with other relevant government agencies for any specific matter falling under their mandate;
- may invite experts to assist in when a matter under discussion or consideration required specialized knowledge;
- establish ad hoc Sub-Committees if necessary to examine and provide recommendation for resolution on specific matters;
- manage changes in the contract, risk allocation, claims/disputes, resolutions, and other events including termination. Where those changes have financial implications and fiscal impact, CMC shall refer the matter to the Minister of the MEF for review and resolution;
- ensure effective working relationship with the SPC and communication among key stakeholders, including the users of the facilities;
- review and endorse semi-annual progress and other relevant reports; and
- perform other duties as directed jointly by the Head of IA and the Minister of the MEF.

Note: This proposed CMC is for guidance to the IA. When preparing the CMP, the TA will carefully identify and recommend if any special expertise is needed in the CMC to ensure efficient decision-making process. This will be reviewed by the IA and MEF and a joint recommendation with the justification submitted to the Head of the IA and the Minister of the MEF for their consideration.

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