



FIFTH CONSTITUTIONAL GOVERNMENT

DECREE-LAW NO. 08/2014

DATED 19 MARCH

Regulating the Legal Regime on Public-Private Partnerships

With the approval of the Legal Regime for Public-Private Partnerships by means of Decree-Law no. 42/2012 of 7 September, it becomes necessary to regulate it by approving the necessary structures for the implementation of public-private partnerships, as well as to set a legal basis for approving the procurement procedure according to the public-private partnership project cycle.

As such, this diploma sets the powers and tasks of the Public-Private Partnership Unit and identifies the procedures associated with the public-private partnership project cycle, namely the Initial and Feasibility Stage, the Procurement and Negotiation Stage and the Implementation and Operation Stage.

Thereby, under sections 115.1 (e) and 116 of the Constitution of the Republic, the Government decrees the following, to prevail as law:

Article 1

Subject

This decree-law establishes the structures and processes concerning public-private partnerships.

Article 2

Public-Private Partnership Unit

The Public-Private Partnership Unit, known as PPPU, operates under the scope of direct administration, in conformity with the Organic Law of the Ministry of Finance.

Article 3

Tasks

Subject to the provisions contained in the diploma regulating the Organic Structure of the Ministry of Finance, the PPPU performs the following tasks:

- (a) Managing and implementing the public-private partnership project cycle, in coordination with the public sector bodies and with CAFI;
- (b) Mobilizing consultants and advisors to assist with the implementation of the public-private partnership project cycle;
- (c) In collaboration with the relevant entities, drafting arrangements and other standard documents to be used in public-private partnership arrangements;
- (d) Drafting guidelines on Public-Private Partnerships and keeping them up to date, including all the laws, regulations, instructions, directives and guidances, namely templates, standardized documents and document samples on Public-Private Partnership arrangements, along with an easy-to-use guide on their application and implementation;
- (e) Requesting a public sector body or a private partner to supply information, details, documents and data related with a public-private partnership arrangement, so as to monitor the project's cost-efficiency;
- (f) Providing training to public sector entities on public-private partnership arrangements and sharing good practices and knowledge with public sector entities and with the private sector.
- (g) Any others given to it by law.

Article 4

CAFI support structures in terms of Public-Private Partnerships

1. The Major Project Secretariat provides technical secretariat support to CAFI in what concerns public-private partnerships.
2. The Public-Private Partnership Unit is responsible for the implementation of the PPP project cycle and provides technical support to CAFI, through the Major Project Secretariat, in terms of:
 - (a) Reviewing Public-Private Partnership policy and programmes;
 - (b) Reviewing and assessing bids in relation to projects and providing opinions to CAFI in order to determine whether a public-private partnership is the best way for implementing a project;
 - (c) Issues concerning the policy, prices and regulations that are likely to have impact on Public-Private Partnership arrangements, after consulting with the proper entities;
 - (d) Options and reforms, including regulatory reforms, so as to simplify procedures and increase the efficiency of Public-Private Partnership arrangements;
 - (e) Mechanisms for funding investments in Public-Private Partnership arrangements;
 - (f) Better means for funding and structuring public investment projects;
 - (g) Any others given to it by law.

Article 5

Team, Task Force, Committees and Project Assessment Team

1. CAFI may occasionally set up teams, task forces or committees for monitoring or supervising public-private partnership projects, approving their terms of reference.
2. The PPP Project Assessment Team members may vary depending of the project stage, with each of the following entities appointing one member:
 - (a) Initial Stage and Feasibility Stage:
 - i. Public-Private Partnership Unit;

- ii. The public sector body responsible for the project area;
- iii. External consultants specialized in PPPs, if necessary; and
- iv. Other relevant entities.

(b) Procurement and Negotiation Stage, divided into 3 stages:

Stage 1 – Drafting the Tender Documentation

- i. Public-Private Partnership Unit;
- ii. The public sector body responsible for the project area;
- iii. External consultants specialized in PPPs, if necessary; and
- iv. Other relevant entities.

Stage 2 – Tender Procedure and Bid Evaluation

- i. National Procurement Commission;
- ii. External consultants specialized in PPPs, if necessary;
- iii. The Public-Private Partnership Unit, the public sector body responsible for the project area and other relevant entities will act in this stage only as observers, seeking to ensure that the procedure is transparent.

Stage 3 – Negotiation Stage

- i. National Procurement Commission;
- ii. Public-Private Partnership Unit;
- iii. The public sector body responsible for the project area;
- iv. External consultants specialized in PPPs, if necessary; and
- v. Other relevant entities.

(c) Implementation and Operation Stage:

- i. The public sector body responsible for the project area;
- ii. Other relevant entities.

Article 6

PPP Project Cycle

1. The PPP Project Cycle describes the stages and procedures of a project up to a PPP arrangement and is regulated by the Government member responsible for Finance.
2. The PPP Project Cycle consists of the initial stage, the feasibility stage, the procurement and negotiation stage and the implementation and operation stage, as described in Annex I to this diploma.

Article 7

Reviewing Public-Private Partnerships Arrangements

1. Subject to Law no. 13/2009 of 21 October, on Budget and Financial Management, the Ministry of Finance shall prepare periodic independent reports with the following contents:
 - (a) The contents of the public-private partnership arrangement;
 - (b) The process through which a public-private partnership arrangement is procured;
 - (c) Assessing whether a project can be procured under a public-private partnership arrangement in such a way as to meet the goals and the criteria that led to the decision to sign the public-private partnership arrangement;
 - (d) Making recommendations in order to improve the outcomes of Public-Private Partnership arrangements.
2. The Ministry of Finance shall publish the reports reviewing public-private partnership arrangements within a month after concluding them.

Article 8

Entry into force

This Decree-Law enters into force on the day after its publication.

Approved by the Council of Ministers on 21 November 2013.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Finance,

Emília Pires

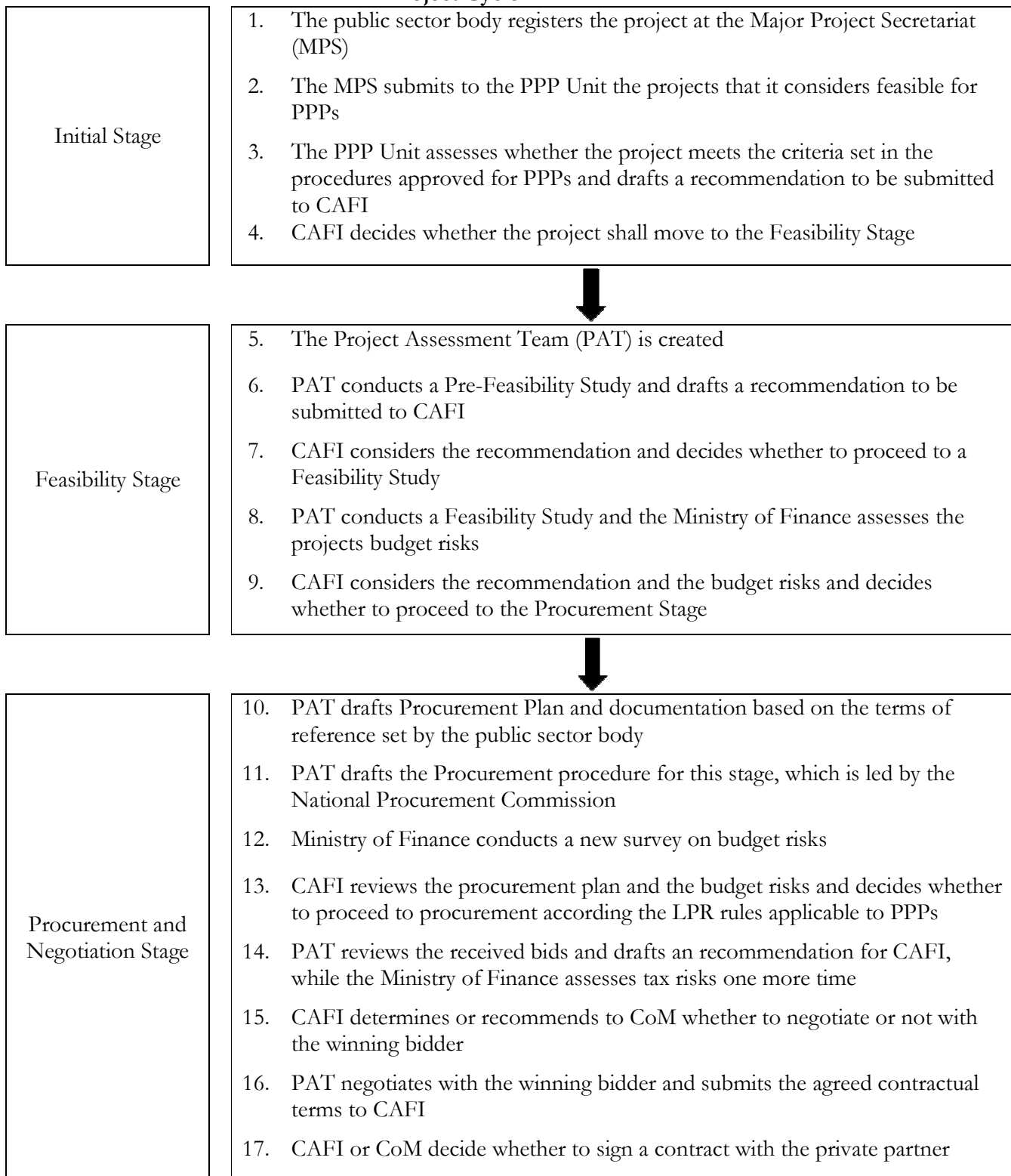
Promulgated on 17.03.2014

To be published.

The President of the Republic,

Taur Matan Ruak

Annex I
PPP Project Cycle





Implementation
and Operation
Stage

18. Minister of the relevant public sector body signs the contract
19. Project is built and/or the infrastructure becomes operational
20. Monitoring, performance evaluation and contract management done by the relevant public sector body
21. PPP Unit monitors contractual management in order to assess the project's cost-efficiency
22. Should it be necessary to renegotiate the contract, the Ministry of Finance shall take part in that renegotiation together with the relevant public sector body