



**PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN  
MADAGASCAR**

SURVEY QUESTION	ANALYSIS
<b>PPP Regulatory Framework</b>	
<b>2. Does the regulatory framework in your country allow procuring PPPs?</b>	Yes
<b>If yes, please specify the relevant regulatory framework and the year of adoption:</b>	<p>Madagascar has passed a PPP Law 2015-039 on February 3, 2016. Two decrees based on the PPP Law were adopted and published on May 23, 2017: First, Decree 2017-149 from 2 March 2017, elaborating on the application of the PPP Law with regard to procurement modalities of PPP contracts. Second, Decree 2017-150 from April 2, 2017, elaborating on the application of the PPP Law with regard to the institutional framework of PPPs. The former Public Procurement rules remain partly applicable to PPPs, granted that the Law n° 2016-055 replaced the public procurement code of Law n°2004-009 of July 26, 2004.</p> <p>Article 2 of the PPP Law defines a PPP as: a contract, whatever its shape or its name, by which a Public person entrusts a party, for a determined period, according to the amortization period of the investments or the financing terms retained, a mission having for object: (i) All or part of the financing, the infrastructures, the works, the equipment or intangible assets, necessary for the public service, as well as, (ii) All or part of their construction, rehabilitation, transformation, maintenance, exploitation, operation, or management, with or without delegation of public services.</p>
<b>and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it:</b>	<p><a href="http://www.mefb.gov.mg/index.php?option=com_content&amp;view=article&amp;id=938&amp;Itemid=878">http://www.mefb.gov.mg/index.php?option=com_content&amp;view=article&amp;id=938&amp;Itemid=878</a></p>
<b>2.1. Are you aware of any reforms (in the regulatory frameworks – laws, regulations, policies, etc.- or in generally followed practices) related to PPPs that: Took place in 2016, are ongoing and/or are planned to be adopted BEFORE June 1, 2017?</b>	Yes
<b>Please describe:</b>	<p>Implementing decrees for the PPP Law were adopted, and published on 23 May 2017: Decree 2017-149 from 2 March 2017, elaborating on the application of the PPP Law with regard to procurement modalities of PPP contracts and Decree 2017-</p>

	150 from 2 April 2017, elaborating on the application of the PPP Law with regard to the institutional framework of PPPs.
<b>2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017?</b>	Yes
<b>Please describe:</b>	National PPP Strategy, procedure manuals, standard templates, and revision of regulations in the electricity sector are being discussed.
<b>3.1 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Transportation.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.2 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Water and Irrigation</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.3 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Energy generation and distribution.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of</b>	No

<b>the following sectors?: Telecom</b>	
<b>If yes, please provide the relevant legal/regulatory provisions:</b>	n/a
<b>3.5 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</b>	Yes
<b>If yes, specify and provide the relevant legal/regulatory provisions:</b>	Pursuant to Art. 3.1 of the PPP Law, mines and hydrocarbons are excluded from the application of that Law.
<b>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provision (if any):</b>	n/a
<b>5. Please identify the PPP procuring authorities in Madagascar and provide their website(s) (if available):</b>	The State, local entities and public institutions can procure a PPP (Art. 2 of the PPP Law).
<b>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</b>	Yes
<b>If yes, please indicate its name, and its website (if available):</b>	Articles 4 to 6 of the PPP Law and the Decree 2017-150 are related to the institutional framework for PPPs, which is made of the National Committee for PPP, a PPP Unit and PPP correspondents within each administration, local entity and public institution, and PPP Cells created within each procuring authority. The National Committee is under the President of the Republic's authority and is an advisor to the Government for the PPP regulatory framework and strategy (article 4 of the Decree 2017-150). The PPP Unit is under the Ministry in charge of national plans of infrastructure development's responsibility. It assists the National Committee and the public authorities in all steps of procuring a PPP (articles 10 to 14 of the same Decree).

<b>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance.</b>	Yes
<b>6.2 PPP capacity building for other public authorities.</b>	Yes
<b>6.3 PPP promotion among the public and/or private sectors in national and international forums.</b>	Yes
<b>6.4 Technical support in implementing PPP projects.</b>	Yes
<b>6.5 Identification and selection of PPP projects from the pipeline.</b>	Yes
<b>6.6 Revision of fiscal risks born by the Government.</b>	No
<b>6.7 Consultation with affected communities on potential impact of PPP projects.</b>	No
<b>6.8 Approval of PPP projects.</b>	Yes
<b>6.9 Undertaking the procurement of PPPs.</b>	No
<b>6.10 Oversight of PPP implementation.</b>	Yes
<b>6.11 Other</b>	No
<b>6.11 please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions:</b>	The attributions of the National Committee are listed in article 4 of the Decree 2017-150, while articles 10 to 14 detail the PPP Unit's attributions.
<b>PPP Preparation</b>	
<b>8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 7.6 of Decree 2017-149, the feasibility study and the affordability assessment have to be validated by the Ministry of Finance. Additionally, the public person invites the Ministry of finance to give observations and recommendations on the prefeasibility study when the project has an impact

	on the public finances. This aims to ensure that the project will be validated later on (article 6.2.1).
<b>8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 9 of the PPP Law and Article 8.6 of the Decree 2017-149, the Ministry of Finance must approve any contract involving public finances before its signing.
<b>8.2. Does the Ministry of Finance (or government more broadly) have a specific system of Budgeting for PPP projects.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to Art. 43.4-7 of the PPP Law, The Public person has to publish every year a list of the PPPs which it plans to pass during the budgetary year, whatever is the form of envisaged procedure, including a description that specifies commitments which it plans globally to set in conformance with every project, in date of payment, of loan, subsidy or guarantee.</p> <p>The same list will also have to mention in a detailed way all the guarantee and financial commitments of all kinds taken for PPPs by the current exercise and by the previous exercises having effects in payment or risk of guarantee on the budgetary year to come. [...]</p> <p>The maximum threshold of the commitments of the State for PPPs or as guarantee of the execution of the PPP, for considered year, must be explicitly mentioned and registered in the finance law.</p>
<b>Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Art. 43.4-7 of the PPP Law, The Public person has to publish every year a list of the PPP which it plans to pass during the budgetary year, whatever is the form of envisaged procedure, including a description that specifies commitments which it plans globally to set in conformance with every project, in date of payment, of loan, subsidy or guarantee. The same list will also have to mention in a detailed way all the guarantee and financial commitments of all kinds taken for PPPs by the current exercise and by the previous exercises having effects in payment or risk of guarantee on the budgetary year to come.
<b>8.3. If yes to question 8.2, which of the</b>	No

<b>following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS).</b>	
<b>Accounting and reporting according to other international standard (e.g. European System of Accounts).</b>	No
<b>Please specify:</b>	n/a
<b>Other.</b>	Yes
<b>Please specify:</b>	Madagascar has an Accounting Plan for Public Operations for the accounting and liabilities from 2006 which is based on IPSAS and foreign accounting laws, in particular the French law.
<b>9. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before launching the procurement process (e.g. Cabinet, Cabinet Committee, Parliament, Supreme Audit Office, etc.)?</b>	Yes
<b>If yes, please specify the relevant authority</b>	PPP Unit, sectoral authorities for regulated sectors, Organ in charge of controlling public procurement contracts (for competitive dialogue)
<b>and provide the relevant legal/regulatory provisions (if any):</b>	Art. 9 of the PPP Law and Art. 7.6 of Decree 2017-149 require the procuring authority to prepare a prefeasibility study and to transfer it to the PPP Unit for approval. Article 7.5 of Decree 2017-149 requires the feasibility study to be sent to the sectoral regulatory authority for approval. The tender documents for competitive dialogue are approved by the Organ in charge of controlling public procurement contracts before launching the procedure (article 8.3)
<b>9.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(s) approve the PPP project before signing the PPP contract?</b>	No

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>10. Does the procuring authority use transaction advisors during the PPP project cycle?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 8.1 of Decree 2017-149, according to its internal skills, the Public person can recruit, by call for tenders and any other legal or statutory way, advisers to assist in the writing of the call for tenders and/or the writing and negotiation of the Contract. The Public person can require the technical support of the PPP Unit and, if it has no financial means, it can request with the PPP Unit that all or part of its costs of advice are financed by the Fund of development, guarantee and viability. The PPP Unit assists then the Public person in the elaboration of a request.
<b>11. In a case comparable to the case study assumptions, please select the option that best describes the way your government integrates the prioritization of PPP projects with other public investment project prioritization? (e.g. in the context of a national public investment system, multi-year perspective plans, medium-term budgetary framework): The regulatory framework provides for the inclusion of PPPs in the national public investment system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	The public person prepares every year a program of public investment identifying and evaluating its needs in infrastructure, following the rules to elaborate public procurement plan. Within this investment plan, the public person identifies projects which could be implemented as PPPs, (i) taking into account the nature and importance of the public interest to be satisfied, (ii) measuring the capacity of existing infrastructure if any to serve the public interest in quality and quantity, (iii) considering the infrastructure needs of final users, (iv) taking into account the

	<p>orientations of the national policy of PPPs' development, (v) considering the budgetary impact of each project, (vi) ensuring the maximum financial thresholds are respected (article 5.1 of Decree 2017-149).</p> <p>Afterwards, for each identified project, the public person establishes a project sheet containing a number of information, setting a priority order within the projects taking into account several criteria - including at least the budgetary sustainability and cost/advantage balance. Those sheets are sent to the Ministers of decentralization and finance and the sectoral ministries for approval by the local entities. The public institutions pass it on to the line ministries for approval. If the procuring authority is a Ministry, it sends it directly to the PPP Unit (article 5.2.1.).</p> <p>Pursuant to Article 5.2.2., the PPP Unit includes in a Program of National projects or program of local projects the PPP projects which it considers compliant with the Law. The Program of National Projects is transmitted to the National Committee to be finalized and transferred to the Government for approval. The Program of local projects is transmitted to the national Committee for approval. No project can be implemented as a PPP if it is not included in the program.</p>
<p><b>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities without establishing a specific procedure to achieve that goal.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government investment priorities in practice.</b></p>	<p>No</p>
<p><b>If yes, please elaborate:</b></p>	<p>n/a</p>
<p><b>The procuring authority does not evaluate PPPs against existing government priorities.</b></p>	<p>No</p>
<p><b>Please elaborate and provide examples:</b></p>	<p>n/a</p>
<p><b>11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of</b></p>	<p>No Data</p>



<b>the regulatory framework described above?</b>	
<b>If yes, please specify:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess practice
<b>If no, please elaborate:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess practice
<b>12.1 Which of the following assessments are conducted when identifying and preparing a PPP in order to inform the decision to proceed with it? (check all that apply): Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 8 of the PPP Law, before launching a PPP project, the procuring entity must realize a pre-feasibility study of technical, economic, financial, environmental, social, legal and administrative data to assess the potential value of a project. Terms and conditions of this study and the model of report are determined by decree. Article 7.2 of Decree 2017-149 requires the feasibility study to determine the social impact of the project, regarding job creation among others.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess practice
<b>12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 9 of the PPP Law, for any PPP project, a feasibility study from the procuring entity is mandatory. Based on this feasibility study, the procuring entity prepares a study of financial and fiscal sustainability and forwards both to the PPP Unit. The PPP Unit transfers this document for assessment and approval of the Ministry of Finance Art. 7 of Decree 2017-149 furthermore indicates : The Study of financial and budgetary sustainability allows to make sure, in case of a project with an Impact on

	<p>the Public finances that the Public person is and will be capable of dealing with her financial commitments and their budgetary implications during the duration the aforementioned commitments during the development and during the operation of the Project.</p> <p>Pursuant to article 7.3 of Decree 2017-149, this study aims at estimating the financial and budgetary capacity of the Public person to face, for the duration of the Project, the flows of payments bound to the commitments led by the Contract.</p> <p>To this end, the Public person realizes an analysis of the budgetary implications of the Project to make sure that the contributions expected from the Public person are bearable on the budgetary plan on all the duration of the Project. The study takes into account all the costs of the Project (direct and recurring, indirect and exceptional which result from the coverage of certain risks by the Public person). The study defines the conditions of a good control of these costs. The study takes into account variable data during the duration of the Project such as the indexation of some commitments, in case of PPP with public payment, and the mutability of the public service, in case of concessive PPP.</p> <p>The Study of financial and budgetary sustainability gives rise to a report on the feasibility of the referred to in the article Project 9 of the law n°2015-039 of February 3rd, 2016 identifying clearly if the implementation of the Project has or not an Impact on the Public finances and if yes which and in which proportion. This analysis is without prejudice to the analysis of the Impact on the Public finances of clauses and appendices of the Contract of PPP after negotiations, such as the clauses of guarantee and compensation.</p>
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess practice
<b>12.3. Risk identification, allocation and assessment (risk matrix)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 6.1.2 of Decree 2017-149 requires a risk matrix to be prepared within the prefeasibility study and indicates: the Matrix of the risks identifies the risks of the Project and distributes them between the private partner and the Public person, estimates their impacts (delays, additional costs) in the various stages of the Project (conception, construction, financing, operation), distributes their coverage between the Public person and one or several private partner(s) that must participate in the development and/or in the operation of the Project and proposes measures of mitigation and/or bypassing and risk coverage.</p> <p>This risk matrix is to be updated when preparing the feasibility study (article 7.4).</p>
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Article 6.1.2 of Decree 2017-149 requires a risk matrix to be prepared within the prefeasibility study and indicates: the Matrix of the risks identifies the risks of the Project and distributes them between the private partner and the Public person,

	<p>estimates their impacts (delays, additional costs) in the various stages of the Project (conception, construction, financing, operation), distributes their coverage between the Public person and one or several private partner(s) that must participate in the development and/or in the operation of the Project and proposes measures of mitigation and/or bypassing and risk coverage.</p> <p>This risk matrix is to be updated when preparing the feasibility study (article 7.4).</p>
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess practice
<b>12.4. Comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (i.e. value for money analysis, public sector comparator)</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 7.2 of Decree 2017-149 requires the feasibility study to ensure the relevance of the approach PPP for the Project through a comparative analysis: it is a question of appreciating the most efficient approach to realize the Project, that is the one who allows to optimize the use of the public finances and to maximize the direct and indirect profits of the Project (which type of concessive PPP or which type of PPP with public payment). The Public person has to able to compare the costs and the profits of the Project according to various plans of implementation.</p> <p>Within the framework of the comparative analysis, the Public person compares the various available forms of the state commission for the reached of the goals of the Project and demonstrates that the Contract of PPP is the most appropriate choice, in particular in terms of global cost on the duration of the Project, of performance, quality of service and division of the risks, and in compliance with the objective of optimization of the public spending.</p> <p>It is essentially a question of arbitrating between the realization of the Project by the Public person and the appeal to a solution of PPP (comparative analysis). The only one differed payment, forbidden for public procurements, cannot be the only criterion for choosing the realization of the Project as a PPP.</p>
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating the PPP Law are very recent (published in May 2017), there is a lack of experience to assess.
<b>12.5. Financial viability or bankability assessment</b>	Yes

<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 9 of the PPP Law, for any PPP project, a feasibility study from the procuring entity is mandatory. Article 7.2 of Decree 2017-149 requires the feasibility study to determine the economic rentability and commercial viability of the project: It is a question of determining if the Project may generate attractive and long-lasting financial income, to assure the financial balance of the Project, in particular in case of a mission of public service, and in these conditions to arouse the interest of the operators and the private investors.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess
<b>12.6. Market sounding and/or assessment (showing evidence of investors' interest in the market for the project)</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>Is there a specific methodology for the assessment?</b>	n/a
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	n/a
<b>Details:</b>	n/a
<b>12.7. Environmental impact assessment</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Article 7.2 of Decree 2017-149 requires the feasibility study to determine the environmental impact: The study estimates what is the impact of the Project on the environment and which measures can be implemented to limit this impact and correct the negative effects. The study estimates the cost of these measures and their financing. Furthermore, pursuant to article 13 of the environment Charter, all investment projects, whether public or private, are submitted to an environmental impact study.
<b>Is there a specific methodology for the assessment?</b>	Yes
<b>If yes, please elaborate</b>	Pursuant to article 13 of the environment Charter, all investment projects, whether public or private, are submitted to an environmental impact study. Decree no 99-954 related to the compatibility of the investments with the environment provide details, in particular its articles 11 and 12. Those indicate the content of the study, which is at least: <ol style="list-style-type: none"> <li>1. A document certifying the legal situation of the place of setting-up of the project;</li> <li>2. A description of the project of investment;</li> </ol>

	<p>3. An analysis of the affected environmental system or likely to be affected by the project; this analysis has to end in a schematic model highlighting the main aspects (static or dynamic, local or regional) of the environmental system, in particular those susceptible to be questioned by the planned investment;</p> <p>4. A forward-looking analysis of the possible effects on the system previously described;</p> <p>5. An Environmental Management plan of the Project;</p> <p>6. A non technical summary drafted there Malagasy and in French, to facilitate the apprehension by the public of the information contained in the study; this summary.</p>
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating the PPP Law are very recent (published in May 2017), there is a lack of experience to assess.
<b>12.8. Consultation process with affected communities on potential impact of the PPP project</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Pursuant to Article 13 Decree 2017-150, no project can be submitted to public consultation until the feasibility study has not received a favorable option from the PPP Unit and the study of financial and budgetary sustainability from the Minister of finance when a project has an impact on public finances.
<b>Is there a specific methodology for the assessment?</b>	No
<b>If yes, please elaborate</b>	n/a
<b>Is the assessment done in practice?</b>	No Data
<b>Details:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess
<b>13. Does the procuring authority include the assessments (indicated in Question 12 above) in the request for proposals and/or tender documents (for example, as part of an Information Memorandum to the bidders)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 8.3 of the decree 2017-149 indicates: the Public person establishes the call for tenders which contains in particular the specifications or the functional Program as well as the draft contract of PPP by taking into account the Feasibility study, the Study of financial and budgetary sustainability and the Matrix of the risks and the mentioned compulsory clauses of article 30 of the present decree. This implies the feasibility study according to its definition included in section 7.2.
<b>and specify which of the assessments are</b>	All feasibility studies realized as specified in Q12 are included in the tender documents.

<b>included in the request for proposals and/or tender documents:</b>	
<b>13.1. Are the assessments published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>specify the website</b>	n/a
<b>please specify which of the assessments are published online:</b>	n/a
<b>14. Does the procuring authority include a draft PPP contract in the request for proposals?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 8.3 of Decree 2017-149, the tender documents include in particular the draft PPP contract.
<b>If no, please elaborate</b>	n/a
<b>14.1. Are the tender documents published online?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and please specify the website:</b>	n/a
<b>15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed?</b>	No
<b>If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:</b>	n/a
<b>16.1 In a case comparable to the case study assumptions, who is the responsible party for each of the following requirements? Obtaining the required urban permits: Procuring</b>	No

<b>authority (or other Government entity)</b>	
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Art. 29.5 of Decree 2017-149 requires the contract to include clauses related to the conditions of entry into force, including the permits, authorizations and other necessary conditions to the start of a project.
<b>16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Art. 29.5 of Decree 2017-149 requires the contract to include clauses related to the conditions of entry into force, including the permits, authorizations and other necessary conditions to the start of a project.
<b>16.3. Obtaining the required operational permits: Procuring authority (or other Government entity)</b>	No
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	Yes
<b>Relevant legal/regulatory provision (if any)</b>	Art. 29.5 of Decree 2017-149 requires the contract to include clauses related to the conditions of entry into force, including the permits, authorizations and other necessary conditions to the start of a project.
<b>16.4. Obtaining the required land: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No

<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Pursuant to Article 37 of the PPP Law, when the PPP contract includes occupation of public property, it implies an occupation's authorization for its duration. The State shall not grant any rights regarding those lands without prior written consent for the duration of the PPP contract.</p> <p>Any land allotment in violation of this prohibition is void.</p> <p>In case of work to be done on land under private ownership and if the owner refuses to grant a right on this Land, State organizes an expropriation procedure and declaration of public interest within one (1) calendar month.</p>
<b>16.5. Obtaining the required right of way: Procuring authority (or other Government entity)</b>	Yes
<b>Private Partner</b>	No
<b>Private partner with facilitation role assigned to the procuring authority (or other Government entity)</b>	No
<b>To be established in the contract</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Pursuant to Article 37 of the PPP Law, when the PPP contract includes occupation of public property, it implies an occupation's authorization for its duration. The State shall not grant any rights regarding those lands without prior written consent for the duration of the PPP contract.</p> <p>Any land allotment in violation of this prohibition is void.</p> <p>In case of work to be done on land under private ownership and if the owner refuses to grant a right on this Land, State organizes an expropriation procedure and declaration of public interest within one (1) calendar month.</p>
<b>PPP Procurement</b>	
<b>18. Which of the following options best describes the required qualifications of the bid evaluation committee members? (Please select only one): The membership of the bid evaluation committee is specified and/or its members are required to meet detailed qualifications.</b>	Yes



<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Pursuant to article 28 of Decree 2017-150, the bid committee for PPPs is made of a president and 5 members appointed by the public person. It can also include experts with a consultative voice. Members are chosen on a list of at least 15 candidates prepared by its services, granted that:</p> <ol style="list-style-type: none"> <li>1. each candidate shall have at least 2 years of uninterrupted experience with public procurement, be trained for PPPs and have a sufficient experience in one of the following fields: Law, Works, services, financial operation, project finance.</li> <li>2. each candidate shall commit in writing to abide by the ethics Code.</li> <li>3. each member shall commit in writing to make itself available for the committee's meetings.</li> </ol> <p>Article 16 of Decree 2017-149 related to the opening of bids furthermore indicates that, in case of competitive dialogue, a PPP Unit representative should be member of the committee and, for any project having an impact on the public finances, the bid committee includes a representative of the ministry of finance. The public person can add the competence of persons, internal or external to the public person, specialized in bid evaluation. The organization and functioning of bid committees follow the rule of bid committees for public procurement.</p>
<p><b>The bid evaluation committee members require sufficient qualification without specific details.</b></p>	<p>No</p>
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>n/a</p>
<p><b>The bid evaluation committee members are not required to have any specific qualifications.</b></p>	<p>No</p>
<p><b>Please elaborate and provide examples:</b></p>	<p>n/a</p>
<p><b>19. Does the procuring authority issue a public procurement notice of the PPP project?</b></p>	<p>Yes</p>
<p><b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Pursuant to Article 17 of the PPP Law, every competitive dialogue is preceded by a notice established according to a standard model. Notice is published in press that is entitled to receive legal advertisements and on the PPP Unit's website.</p> <p>Article 11.1 of Decree 2017-149 furthermore indicates: The notice of public call for competition is published in the Gazette and in at least one (01) daily newspaper of national distribution authorized to receive legal notices as well as on the web site of the PPP Unit.</p> <p>For the Projects requiring an international call for tenders, the notice of public call for competition is also published in a newspaper, non-specialized or specialized, of international distribution.</p>
<p><b>19.1. If yes, is the public procurement notice published online?</b></p>	<p>Yes</p>

<b>If yes, please specify the website:</b>	PPP Unit's website (to be created)
<b>20. Are foreign companies prohibited from participating in the bidding process?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>21. In a case comparable to the case study assumptions, does the procuring authority grant the potential bidders a minimum period of time to submit their bids?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 22 of decree 2017-149: The deadline between the date of publication of the call for tenders and the deadline of reception of applications is of at least forty days. It is mentioned in the notice of call for tenders. The deadlines of presentation of applications and offers must be adapted to the complexity of the Projects.
<b>and the time in calendar days:</b>	40
<b>22.1. In a case comparable to the case study assumptions, which are the procurement procedures available and/or set as default for PPP projects? Open tendering: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 16 of the PPP Law indicates 3 procedures to procure PPPs: call for tenders, open or restricted; direct agreement; competitive dialogue. Open tendering is the rule for PPPs and other modes are only usable within the defined conditions. Tender is open when all candidates can present an offer. It can include a prequalification or not. Tender is restricted when can only present an offer the candidates directly invited by the procuring authority. Tender can be organized with one or several stages.
<b>22.2. Restricted tendering (with pre-qualification stage): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	Article 16 of the PPP Law indicates 3 procedures to procure PPPs: call for tenders, open or restricted; direct agreement; competitive dialogue. Open tendering is the rule for PPPs and other modes are only usable within the defined conditions. Tender is open when all candidates can present an offer. It can include a prequalification or not. Tender is restricted when can only present an offer the

	<p>candidates directly invited by the procuring authority. Tender can be organized with one or several stages.</p> <p>Articles 17 and 18 provide details on the tender process with prequalification.</p>
<b>22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 16 of the PPP Law indicates 3 procedures to procure PPPs: call for tenders, open or restricted; direct agreement; competitive dialogue. Open tendering is the rule for PPPs and other modes are only usable within the defined conditions.</p> <p>Tender is open when all candidates can present an offer. It can include a prequalification or not. Tender is restricted when can only present an offer the candidates directly invited by the procuring authority. Tender can be organized with one or several stages.</p> <p>Details on two stages tendering are provided by Article 24 of Decree 2017-149.</p>
<b>22.4. Competitive dialogue: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 16 of the PPP Law indicates 3 procedures to procure PPPs: call for tenders, open or restricted; direct agreement; competitive dialogue. Open tendering is the rule for PPPs and other modes are only usable within the defined conditions.</p> <p>Tender is open when all candidates can present an offer. It can include a prequalification or not. Tender is restricted when candidates can only present an offer when they have been directly invited by the procuring authority. Tender can be organized with one or several stages.</p> <p>Article 25 of the Law provides details on competitive dialogue and indicates it can be used for particularly complex PPPs when the public person is not able to define the means to satisfy its needs or evaluate the solutions offered on the market on the technical, financial or juridical fields.</p>
<b>22.5. Direct negotiation with more than one candidate: Available</b>	No
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.6. Direct negotiation with only one candidate: Available</b>	Yes
<b>Default</b>	No
<b>Relevant legal/regulatory provision (if any)</b>	<p>Article 16 of the PPP Law indicates 3 procedures to procure PPPs: call for tenders, open or restricted; direct agreement; competitive dialogue. Open tendering is the rule for PPPs and other modes are only usable within the defined conditions.</p> <p>Tender is open when all candidates can present an offer. It can include a prequalification or not. Tender is restricted when candidates can only present an offer when they have been directly invited by the procuring authority. Tender can be organized with one or several stages.</p> <p>Article 24 of the Law provides details on the direct agreement. It can be used in the</p>

	following cases: (i) public security or national defense, (ii) 2 consecutive unsuccessful calls for tender, (iii), urgency, (iv) right of exclusivity, (v) public interest after authorization by a decree of the Council of Ministries, (vi) tasks complementary to the ones made during a previous PPP with the same contractor.
<b>22.7 Other. Specify:</b>	No
<b>Available</b>	n/a
<b>Default</b>	n/a
<b>Relevant legal/regulatory provision (if any)</b>	n/a
<b>22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 20 of Decree 2017-149, the tender documents shall include the tender rules, the modalities and the organization, the evaluation procedure...
<b>If no, please elaborate:</b>	n/a
<b>22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 17 of the PPP Law, the tender notice indicates prequalification criteria. Article 17 of Decree 2017-149 confirms that the tender documents for prequalification include the prequalification criteria.
<b>22.10. Based on your experience, is it always the case that the specified criteria are respected in practice?</b>	No Data
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess
<b>If no, please elaborate:</b>	n/a
<b>23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals?</b>	Yes

<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 15 of Decree 2017-149 related to open tendering, complementary information can be obtained from the public entity until 6 days before the deadline of reception. All candidates which obtained the tender documents are to receive the answers.
<b>23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 15 of Decree 2017-149 related to open tendering, complementary information can be obtained from the public entity until 6 days before the deadline of reception. All candidates which obtained the tender documents are to receive the answers.
<b>23.2. Based on your experience, is it always the case that this disclosure of information is done in practice?</b>	No Data
<b>If yes, please specify:</b>	As the two decrees elaborating on the PPP Law are very recent (published in May 2017), there is a lack of experience to assess
<b>If no, please elaborate:</b>	n/a
<b>24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference?</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>24.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the content and the results of the pre-bid conference to all bidders?</b>	n/a
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>24.2. Based on your experience, is it always the case that this</b>	n/a

<b>disclosure of information is done in practice?</b>	
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	n/a
<b>25. In a case comparable to the case study assumptions, does the procuring authority require the bidders to prepare and present a financial model with their proposals?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>If no, please elaborate:</b>	A financial model must be prepared by the procuring authority and included in the tender documents. However, it is not mandatory to the bidders to present such a model with their offer, even though procuring authorities can require one.
<b>26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to Article 22 of the PPP Law, the opening and evaluation of proposals and the choice of the best offer are made within the conditions described in the tender documents.
<b>Evaluation criteria is not set in the tender documents</b>	No
<b>27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the procuring authority deals with them? (Please select only one): The procuring authority follows a specific procedure before awarding a PPP contract where only one proposal is submitted.</b>	No
<b>Please specify and provide the relevant legal/regulatory provisions (if any):</b>	n/a

<b>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</b>	No
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority does not award a PPP contract if only one proposal is submitted.</b>	Yes
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>The regulatory framework does not include any provisions.</b>	No
<b>28. Does the procuring authority publish the award notice?</b>	Yes
<b>If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any):</b>	Article 7 of the PPP Law states that obligation of transparency in the procurement process implies that procuring entities (...) publish the results. Article 26 of Decree 2017-149 requires that publication be in a daily newspaper and on the PPP Unit's website.
<b>28.1. If yes, is the public procurement award notice published online?</b>	Yes
<b>If yes, please specify the website:</b>	PPP Unit's website (to be created)
<b>29. Does the procuring authority provide all the bidders with the result of the PPP procurement process?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 26 of Decree 2017-149 requires the procuring authority to notify the other candidates that their offers have been rejected and the name of the winning bidder at least 20 days before signing the contract.
<b>If no, please elaborate:</b>	n/a
<b>29.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a

<b>30. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow unsuccessful bidders to challenge the award decision?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Article 26 of Decree 2017-149 requires the procuring authority to notify the other candidates that their offers have been rejected and the name of the winning bidder at least 20 days before signing the contract.</p>
<b>and the time in calendar days:</b>	<p>20</p>
<b>30.1. Is the standstill period set out in the notice of intention to award?</b>	<p>No</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>n/a</p>
<b>31. Does the regulatory framework restrict negotiations with the selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>The Contract is negotiated, after the awarding, in the limits fixed by the documents of the call for tenders taking into account i) the principles retained in the Feasibility study and in the Study of financial and budgetary sustainability, ii) the notices and observations of the PPP Unit, the Ministry of finances and sectoral Regulator(s), iii) the Matrix of the risks.</p> <p>In case of variation in the allocation of the risks between the parties during the negotiation, the risks Matrix is modified so that it always reflects the risks allocation between the parties and allows to appreciate if:</p> <ol style="list-style-type: none"> <li>1. It is compatible with the type of PPP chosen, and if</li> <li>2. Each of the parties is capable of anticipating, of reducing and of managing the risks put at its expense and of accepting the consequences</li> </ol> <p>Any negotiation having the effect of modifying substantially the structure of the Contract of planned PPP, the respective obligations of the parts, the allowance of the risks between the parts, the financing or the financial commitments of the Public person requires the latter to inform the PPP Unit and Minister of Finance for preliminary favorable opinion. (Article 8.5 of Decree 2017-149)</p> <p>Article 25 indicates the public person can adjust the contract, those modifications cannot question the substantial characteristics, in particular financial, of the offer, nor the mandatory clauses of article 29. Those modifications are included and</p>



	justified in a report cosigned by both parties. This report is passed on to the PPP Unit with the contract itself for control purposes.
<b>31.1. Based on your experience, is it always the case that this restriction is respected in practice?</b>	No Data
<b>If yes, please specify:</b>	n/a
<b>If no, please elaborate:</b>	The implementing decrees are too recent to assess the practice.
<b>32. Does the procuring authority publish the PPP contract?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Pursuant to article 26 of decree 2017-149, the PPP contract is entirely published online, except for its confidential clauses and annexes.
<b>32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP contract including all its annexes and appendixes</b>	No
<b>Publication of the full PPP contract without including all its annexes and appendixes</b>	Yes
<b>Publication of a summary of the PPP contract without publishing the full PPP contract</b>	No
<b>Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes</b>	No
<b>Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes</b>	No
<b>32.2. If yes, is it published online?</b>	Yes
<b>If yes, please specify the website:</b>	PPP Unit's website (to be created)
<b>32.3. If yes, does the procuring authority also publish any subsequent</b>	Yes

<b>amendment made to the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	No regulatory basis
<b>PPP Contract Management</b>	
<b>41. Has the procuring or contract management authority established a system to manage the implementation of the PPP contract (e.g. attributing responsibilities or establishing specific management tools)?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to Art. 30 of Decree 2017-149, Without prejudice to powers of the supervisory bodies of the State and the local entities, in particular the Parliament, the Court of Accounts and the financial courts, the Public person exercises any power of control to verify the conformity of the execution of the Contract with the public interest or the underlying public service with regard to which it was concluded. This control is applied in a permanent way but without disrupting the operation of the Holder or interfering in its management of the Contract. The Contract is the object of a periodic audit realized at least every three (03) years by the Public person who can require the assistance of the PPP Unit. The results of any audit are communicated with the PPP Unit and with the Minister of Finance.</p> <p>Article 9.1.1 of Decree 2017-149 requires the public entity to set up in house a team of piloting of the Contract which is trained and has tools adapted to the monitoring of the Contract. This team can consist of members of the PPP Cell. It is recommended that all the members of the team of piloting are chosen among the members of the PPP Cell.</p> <p>Article 29 (19) furthermore requires the contract to include clauses related to the creation and functioning of a monitoring joint committee.</p>
<b>41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	<p>Article 9.1.1 of Decree 2017-149 requires the public entity to set up in house a team of piloting of the Contract which is trained and has tools adapted to the monitoring of the Contract. This team can consist of members of the PPP Cell. It is recommended that all the members of the team of piloting are chosen among the members of the PPP Cell.</p> <p>The team develops, in dialogue with the Holder, a plan of piloting of the Contract of PPP in terms of organization and means. The team receives the operational and financial data passed on by the Holder in the conditions planned in the Contract and</p>

	<p>analyzes them regarding, in particular, agreed Objectives of performance.</p> <p>Article 29 (19) requires the contract to include clauses related to the creation and functioning of a monitoring joint committee.</p> <p>Article 21 (9) of Decree 2017-150 indicates monitoring and evaluating the PPP contract and projects' realization is within the PPP Cell's missions.</p>
<b>Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	According to Art. 21 Decree of 2017-150, PPP cells are responsible for identifying the projects that could be implemented as PPPs, prepare the projects and the preliminary studies in particular, choosing and launching the procurement process, help the negotiation and monitoring and evaluation the implementation.
<b>Elaboration of a PPP implementation manual or an equivalent document</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	Article 9.1.1 of Decree 2017-149 : The team develops, in dialogue with the Holder, a plan of piloting of the Contract in terms of organization and means. The team receives the operational and financial data passed on by the Holder in the conditions planned in the Contract and analyzes it regarding, in particular, agreed Objectives of performance.
<b>Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project)</b>	No
<b>Relevant legal/regulatory provisions (if any):</b>	n/a
<b>Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</b>	Yes
<b>Relevant legal/regulatory provisions (if any):</b>	Article 29 of decree 2017-149 requires the PPP contract to include clauses related to: 6. the conditions in which is established the sharing of the risks between the Public person and the Holder, in particular in case of force majeure or change of law affecting specifically the balance in the economy of the Contract, and the action items in case of emergence of the risks so defined.
<b>41.2. Which of the following options best describes the required qualifications of the PPP contract management</b>	No

<p><b>team members? (Please select only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.</b></p>	
<p><b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b></p>	n/a
<p><b>The PPP contract management team members are required to meet sufficient qualification without specific details.</b></p>	Yes
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>Article 9.1.1 of Decree 2017-149 requires the public entity to set up in house a team of piloting of the Contract which is trained and has tools adapted to the monitoring of the Contract. This team can consist of members of the PPP Cell. It is recommended that all the members of the team of piloting are chosen among the members of the PPP Cell.</p>
<p><b>The PPP contract management team members are not required to meet any specific qualifications.</b></p>	No
<p><b>Please elaborate and provide examples:</b></p>	n/a
<p><b>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</b></p>	Yes
<p><b>If yes, please provide the relevant legal/regulatory provisions (if any):</b></p>	<p>According to the article 32 of the Decree 2017-149, the public person sends every year a report to the PPP Unit and to the Minister of finance relative to the execution of the contract, the achievement of the objectives of performance, the cost of realization of the project. Then, the contracts are the object of a periodic evaluation by the PPP Unit which reports it to the National Committee PPP (article 33).</p> <p>The PPP Unit can provide a technical assistance to the public person on, among others, monitoring the developments on a technical, financial, accountable, juridical point of view: studies, construction, control and reception of the works, maintenance of the works,... (article 9.1.2.).</p>
<p><b>42.1. If yes, is the PPP contract construction performance</b></p>	No

<b>information made available to the public?</b>	
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>42.2. If yes, is the PPP contract construction performance information made publicly available online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	Article 31 of Decree 2017-149 is related to the yearly and periodical reports prepared by the private partner. According to article 32, the public person sends every year a report to the PPP Unit and to the Minister of finance relative to the execution of the contract, the achievement of the objectives of performance, the cost of realization of the project. Then, the contracts are the object of a periodic evaluation by the PPP Unit which reports it to the National Committee PPP (article 33).
<b>43.1. If yes, which of the following tools does it include (check all that apply)?: Performance is assessed against evaluation criteria set in the tender documents and the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	Article 31 of Decree 2017-149 is related to the yearly and periodical reports prepared by the private partner and requires those to include indicators of the performance objectives set in the contract.
<b>The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>The private partner must provide the procuring or</b>	Yes

<b>contract management authority with periodic operational and financial data</b>	
<b>Relevant legal/regulatory provisions (if any)</b>	Article 31 of Decree 2017-149 is related to the yearly and periodical reports prepared by the private partner. It details the procedure of preparation and transmission and the content of those reports.
<b>The procuring or contract management authority must periodically gather information on the performance of the PPP contract</b>	Yes
<b>Relevant legal/regulatory provisions (if any)</b>	Pursuant to Article 34 of the PPP Law, the procuring entity must perform an assessment of performance according to frequency and method determined in the PPP contract. This data is forwarded to the PPP Unit. According to the article 32 of decree 2017-149, the public person sends every year a report to the PPP Unit and to the Minister of finance relative to the execution of the contract, the achievement of the objectives of performance, the cost of realization of the project.
<b>The PPP contract performance information must be available to the public</b>	No
<b>Relevant legal/regulatory provisions (if any)</b>	n/a
<b>43.2. Is PPP contract performance information made publicly available online?</b>	n/a
<b>If yes, please specify the website:</b>	n/a
<b>44. Are foreign companies prohibited from repatriating the income resulting from the operation of a PPP project?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the</b>	Yes

<b>private partner and/or assignment of the PPP contract?</b>	
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Articles 29 (3) and (28) of Decree 2017-149 require the contract to include clauses related to: the stability of the share capital of the Holder during a determined period and in the control by the Public person over any change of control of the Holder, and to the control exercised by the Public person and the lenders on the partial or total transfer of the Contract or the titles of the share capital of the Holder which should not deprive the Public person nor the lenders, of the experience of the Holder through his shareholders or partners, of reference during the construction phase and during the time required after the starting up of the exploitation phase.</p>
<b>45.1. If yes, which of the following circumstances are specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first five years of operation).</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Articles 29 (3) and (28) of Decree 2017-149 require the contract to include clauses related to: the stability of the share capital of the Holder during a determined period and in the control by the Public person over any change of control of the Holder, and to the control exercised by the Public person and the lenders on the partial or total transfer of the Contract or the titles of the share capital of the Holder which should not deprive the Public person nor the lenders, of the experience of the Holder through his shareholders or partners, of reference during the construction phase and during the time required after the starting up of the exploitation phase.</p>
<b>Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Articles 29 (3) and (28) of Decree 2017-149 require the contract to include clauses related to: the stability of the share capital of the Holder during a determined period and in the control by the Public person over any change of control of the Holder, and to the control exercised by the Public person and the lenders on the partial or total transfer of the Contract or the titles of the share capital of the Holder which should not deprive the Public person nor the lenders, of the experience of the Holder through his shareholders or partners, of reference during the construction phase and during the time required after the starting up of the exploitation phase.</p>
<b>In other cases, flexibility to change the ownership</b>	<p>Yes</p>

<b>structure and/or assign the contract.</b>	
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Articles 29 (3) and (28) of Decree 2017-149 require the contract to include clauses related to: the stability of the share capital of the Holder during a determined period and in the control by the Public person over any change of control of the Holder, and to the control exercised by the Public person and the lenders on the partial or total transfer of the Contract or the titles of the share capital of the Holder which should not deprive the Public person nor the lenders, of the experience of the Holder through his shareholders or partners, of reference during the construction phase and during the time required after the starting up of the exploitation phase.</p>
<b>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Article 34 of Decree 2017-149 is related to the modification of a PPP contract. Moreover, the contract shall include clauses related to the modification of the contract (article 29 (14)).</p>
<b>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Pursuant to Article 9 of the PPP Law and article 34 of Decree 2017-149, modification is disclosed to the PPP Unit and the Minister of finance before its realization and requires an approval from the Minister in case of an impact on public finance. Moreover, Article 37 of Decree 2017-150 indicates the Institution in charge of controlling public procurement contracts is competent to make decisions on projects of modification or of additional contract to a PPP contract.</p>
<b>46.2. If yes to question 46, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Pursuant to Article 34 of Decree 2017-149, a modification cannot affect the essential characteristics of a project or the general balance of the contract.</p>



<b>A change in the risk allocation of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 29 of decree 2017-149 requires the PPP contract to include clauses related to: 6. the conditions in which is established the sharing of the risks between the Public person and the Holder, in particular in case of force majeure or the change of law affecting specifically the balance in the economy of the Contract, and the action items in case of emergence of the risks so defined.
<b>A change in the financial and/or economic balance of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to Article 34 of Decree 2017-149, a modification cannot modify the essential characteristics of a project or the general balance of the contract. The contract shall furthermore include clauses related to balance restoration in case of an action or inaction of the public person or an exterior event affecting the economical balance of the contract (article 29).
<b>A change in the duration of the contract.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 29 of decree 2017-149 requires the PPP contract to include clauses related to: the duration of the contract and the exceptional circumstances of extensions précised in the tender documents within the duration necessary to write off and/or restore the economical balance when affected by the public person.
<b>A change in the agreed price or tariff.</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>46.3. Can the procuring authority unilaterally modify a PPP contract?</b>	No
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>47. Does the regulatory framework (including standard contractual clauses) expressly regulate the following circumstances that may occur during the life of the PPP contract? (check all that apply): Force Majeure</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard</b>	Article 47 of the PPP Law indicates force majeure as a cause for termination. Pursuant to Article 29 (6) of Decree 2017-149, the contract shall include clauses

<b>d contractual provisions (if any):</b>	related to the conditions within which the risk sharing is established, in particular for force majeure or change in the law affecting the contract's economic balance.
<b>Material Adverse government action .</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to Article 29 of Decree 2017-149, the contract shall include clauses related to economic balance restoration in case of an action or inaction of the public person or an exterior event affecting the economical balance of the contract.
<b>Change in the Law.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to Article 29 (6) of Decree 2017-149, the contract shall include clauses related to the conditions within which the risk sharing is established, in particular for force majeure or change in the law affecting the contract's economic balance.
<b>Refinancing.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Decree 2017-149 requires the contract to include clauses related to termination to take into account [...] a modification in the financing conditions (article 29 (14)).
<b>Subcontracting and replacement of the subcontractors.</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Pursuant to Article 29 (6) of Decree 2017-149, the contract shall include clauses related to the control of the public person over the conditions within which the private partner recourses to other companies to implement the PPP contract.
<b>48. Does the regulatory framework (including standard contractual clauses) allow for administrative and/or contractual complaint review mechanisms to address disputes arising from the implementation of PPP contracts?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	Article 49 of the PPP Law states that any dispute arising directly or in connection with the award of a PPP is subject to competent administrative court. Any dispute arising directly or in connection with the execution, termination , cancellation or interpretation of a PPP contract, is subject to dispute settlement mechanisms as agreed by the parties in the contract. To this end, the use of national or international arbitration is authorized under this Act. Otherwise, the dispute is submitted to the administrative court competent.
<b>48.1. If yes, please specify which of the following options are available (check all that</b>	No

<b>apply): Local administrative review body</b>	
<b>If yes, please specify:</b>	n/a
<b>Local courts</b>	Yes
<b>Domestic arbitration</b>	Yes
<b>International arbitration</b>	Yes
<b>Investor-State Dispute Settlement (ISDS)</b>	Yes
<b>Mediation</b>	No
<b>Please provide the relevant legal/regulatory/standard contractual provisions (if any)</b>	<p>Article 49 of the PPP Law states that any dispute arising directly or in connection with the award of a PPP is subject to competent administrative court.</p> <p>Any dispute arising directly or in connection with the execution, termination, cancellation or interpretation of a PPP contract, is subject to dispute settlement mechanisms as agreed by the parties in the contract.</p> <p>To this end, the use of national or international arbitration is authorized under this Act. Otherwise, the dispute is submitted to the administrative court competent.</p>
<b>48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	Pursuant to articles 451 and 451-1 of the Law no 98-019 of December 2nd, 1998 related to arbitration, exequatur is granted by the tribunal of first instance and can only be refused if the decision is obviously inexistent or if its content is contrary to public order.
<b>International arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	<p>Article 463 of the Law no 98-019 of December 2nd, 1998 related to arbitration, is related to the recognition of arbitration decisions for international arbitrations and, if reciprocity applies, of foreign arbitration decisions.</p> <p>Madagascar accessed the New-York convention on 16 Jul 1962.</p>
<b>Investor-State arbitration</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</b>	The ICSID convention entered into force in Madagascar on Oct 14, 1966.
<b>49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in</b>	No

<b>financial difficulty prior to insolvency?</b>	
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>50. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>According to Article 46 of the PPP Law, the PPP contract and the Direct Agreement may provide the terms and conditions in which lenders involved in financing and / or refinancing of Investments can replace or substitute a qualified entity of their choice in case of failure of the holder or default under the PPP contract or financing or guarantee agreements are related.</p> <p>Rights and obligations, including rights to occupy and necessary facilities and infrastructure are transferred.</p> <p>The beneficiary lender, must present technical, legal and financial guarantees and be able to ensure continuity of service and offer equality of users.</p>
<b>50.1. If yes, which of the following options best describes the lender step-in right? (Please select only one): The regulatory framework expressly regulates the lender step-in rights.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>According to Article 46 of the PPP Law, the PPP contract and the Direct Agreement may provide the terms and conditions in which lenders involved in financing and / or refinancing of Investments can replace or substitute a qualified entity of their choice in case of failure of the holder or default under the PPP contract or financing</p>

	<p>or guarantee agreements are related.</p> <p>Rights and obligations, including rights to occupy and necessary facilities and infrastructure are transferred.</p> <p>The beneficiary lender, must present technical, legal and financial guarantees and be able to ensure continuity of service and offer equality of users.</p>
<b>The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.</b>	No
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	n/a
<b>Other.</b>	No
<b>Please Specify:</b>	n/a
<b>51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract?</b>	Yes
<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Grounds are, pursuant to article 47 of the PPP Law: Misconduct, force majeure, financial balance, public interest</p> <p>Article 47: The PPP contract may be terminated early by mutual agreement or at the initiative of one of the parties in the event of serious misconduct by the other party, force majeure, or disruption of financial balance under the conditions defined in the contract.</p> <p>The PPP contract may be terminated unilaterally by the procuring entity for a public purpose. The implementation of this termination of power implies that the public person to firstly prove the existence of a pattern of general interest justifying the legitimacy of the termination and also compensate the Holder's loss and shortfall. The PPP contract sets the terms of compensation due to each party in each cases of termination.</p> <p>Decree 2017-149 requires the contract to include clauses related to termination to take into account an evolution of needs of the public person, technological innovation or modification in the financing conditions, and the conditions within which early termination can be pronounced (articles 29 (14) and (23).</p>
<b>51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract?</b>	Yes

<b>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</b>	<p>Pursuant to Art. 47 of the PPP Law, in case of termination for public interest, the procuring entity must pay the operator's loss and its shortfall.</p> <p>Article 29 (27) of Decree 2017-149 requires the contract to include clauses related to consequences of termination of the contract, early or not, in particular regarding property of the buildings, equipment or immaterial goods and the insemination of the non written off investments in case of early termination.</p>
<b>Unsolicited Proposals</b>	
<b>34. Are unsolicited proposals in Madagascar : (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F)</b>	<p>No</p>
<b>Explicitly allowed by the legal framework?</b>	<p>Yes</p>
<b>Not regulated by the legal framework, but do happen in practice?</b>	<p>No</p>
<b>Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F)</b>	<p>No</p>
<b>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</b>	<p>Article 12 of the PPP Law 2015-039 and Article 28 of Decree 2017-149 regulate unsolicited proposals.</p>
<b>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</b>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</b>	<p>Article 12 of the PPP Law requires the procuring entity to realize a pre-study independent from the proposal's author.</p> <p>Pursuant to article 28.1 of Decree 2017-149, when within the framework of article 12 of the law n°2015-039 of February 3rd, 2016, a private person sends a private initiated Project to a public person, the Project can be acceptable for deeper examination only if:</p> <ol style="list-style-type: none"> <li>1. The commitments of the Public person for the Project, accumulated with the commitments relative to the Projects already registered on the Program of Projects of the Public person respect the conditions of maximum threshold of commitment of the article 36 of the present decree;</li> <li>2. The proposed Project is not similar to or the continuation of a Project registered in a Program of Projects or a Project previously presented by a Public person outside of a Program of Projects;</li> <li>3. The Project contains at least the following information: [...]</li> </ol>

	<p>Furthermore, article 28.2 indicates: the project can only be considered by the public person if it presents a special interest which can consist in any or several of the following alternative criteria:</p> <ol style="list-style-type: none"> <li>1. The Project has a innovative nature - i.e. it aims at the realization of an operation presenting new features, new services or technical innovations at the level of a market or of a given sector;</li> <li>2. The promoter of the Project makes a commitment to make so that at least twenty percent (20 %) of the Project is reserved for National, so that this reserve concerns i) the share capital of the company of project, ii) the part of the investments of the private sector, iii) or the amount of the works to be realized or services to be supplied within the framework of a subcontracting;</li> <li>3. The Project has a significant impact, calculated and demonstrated regarding creation of direct or indirect long-lasting jobs for the Nationals;</li> <li>4. The Project allows the opening up of one or several territorial community (is) or a mutual satisfaction of needs for several remote territorial community (ies) with calculated substantial economies of scale.</li> </ol>
<b>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</b>	<p>Yes</p>
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to article 28.3 of Decree 2017-149, if the public person decides to continue with the unsolicited proposal, all rules from the PPP Law and the present decree apply regarding prefeasibility study, feasibility study and study of financial and budgetary sustainability.</p>
<b>36. Which of the following options best describe how the procuring authority ensures that unsolicited proposals are consistent with existing government priorities? (Please select only one): The procuring authority follows a specific procedure to ensure the consistency of PPPs with other government investment priorities.</b>	<p>Yes</p>
<b>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to article 28.1 of Decree 2017-149, When within the framework of article 12 of the law n°2015-039 of February 3rd, 2016, a private person sends a private initiated Project to a public person, the Project can be acceptable for deeper examination only if:</p> <ol style="list-style-type: none"> <li>2. The proposed Project is not similar to or the continuation of a Project registered in a Program of Projects or a Project previously presented by a Public person outside of a Program of Projects.</li> </ol> <p>Article 28.3 indicates that, if the public person decides to continue with the</p>

	unsolicited proposal, it starts the procedure in order to include the project in a Program of projects.
<b>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</b>	No
<b>Please elaborate and provide examples:</b>	n/a
<b>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</b>	Yes
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	According to article 12 of the PPP Law, if the procuring entity decides to accept an unsolicited proposal, PPP bidding process is used.
<b>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</b>	No
<b>If yes, please provide the relevant legal/regulatory provisions (if any):</b>	n/a
<b>and the time in calendar days:</b>	n/a
<b>39.1 Does the procuring authority use any of the following incentive mechanisms to reward/compensate the presentation of unsolicited proposals? (check all that apply): Access to the best and</b>	No



<b>final offer (BAFO) process and/or automatic shortlisting.</b>	
<b>39.2 Developer's fee (reimbursing the original proponent for the project development cost).</b>	Yes
<b>39.3 Bid Bonus.</b>	No
<b>39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).</b>	No
<b>39.5 Other.</b>	No
<b>Please specify:</b>	n/a
<b>Please provide the relevant legal/regulatory provisions (if any):</b>	<p>Pursuant to Article 12 of the PPP Law, the procuring authority must provide for reimbursement to private initiators of the selected projects of all or part of the justified development costs they have incurred for a project that is not assigned to them. This repayment is made according to conditions and limits fixed by decree after approval of the PPP Unit.</p> <p>Pursuant to article 28.3 of Decree 2017-149, The private person at the origin of the Project to which the Contract of PPP would not be awarded, following the procedure of procurement for which it participated, is entitled, chargeable to the Holder, to the payment of a premium of fixed nature calculated by the Public person by considering the specificity of the Project concerned in particular its innovative character. This premium covers at least the reasonable expenses committed by the developer of the Project to supply the information mentioned in the article 28.1 of the present decree.</p>