



PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN MALAWI

| SURVEY QUESTION | ANALYSIS |
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| PPP Regulatory Framework | |
| 2. Does the regulatory framework in your country allow procuring PPPs? | Yes |
| If yes, please specify the relevant regulatory framework and the year of adoption: | In Malawi, PPPs are regulated by the public-private partnerships Bill of 2010 (“PPP Bill”). This text is detailed by the PPP policy framework approved by the cabinet on 18 May 2011 (“Policy framework”). |
| and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it: | Malawi PPP Bill: http://www.mitc.mw/attachments/article/354/Public%20Private%20Partnership%20Act.pdf Malawi PPP Policy: http://www.pppc.mw/assets/fe/PPP_POLICY.pdf |
| 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? | No |
| Please describe: | n/a |
| 2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017? | Yes |
| Please describe: | A transport sector master plan is in preparation. The Public Procurement and Disposal of Assets Bill was passed by Parliament on 28 June 2017 to repeal the Public Procurement Act. It will enter into force when the President assents to the Bill. Some aspects of the new legislation may affect PPPs. |
| 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. | No |

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| If yes, please provide the relevant legal/regulatory provisions: | n/a |
| 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 | No |
| If yes, please provide the relevant legal/regulatory provisions: | n/a |
| 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. | No |
| If yes, please provide the relevant legal/regulatory provisions: | n/a |
| 3.4 Besides national defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Telecom | No |
| If yes, please provide the relevant legal/regulatory provisions: | n/a |
| 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 | No |
| If yes, specify and provide the relevant | n/a |

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| legal/regulatory provisions: | |
| 4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)? | No |
| If yes, please specify and provide the relevant legal/regulatory provision (if any): | n/a |
| 5. Please identify the PPP procuring authorities in Malawi and provide their website(s) (if available): | Pursuant to section 2 of the PPP Bill, "Contracting Authority" means any Ministry, Government Department, Local Authority or state owned enterprise. |
| 6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)? | Yes |
| If yes, please indicate its name, and its website (if available): | PPP Commission (Part III of the PPP Bill and section 9.1.5 of the policy guidelines) http://www.pppc.mw/ |
| 6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply): PPP regulation and policy guidance. | Yes |
| 6.2 PPP capacity building for other public authorities. | Yes |
| 6.3 PPP promotion among the public and/or private sectors in national and international forums. | Yes |
| 6.4 Technical support in implementing PPP projects. | Yes |
| 6.5 Identification and selection of PPP projects from the pipeline. | Yes |
| 6.6 Revision of fiscal risks born by the Government. | No |
| 6.7 Consultation with affected communities on potential impact of PPP projects. | No |

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| 6.8 Approval of PPP projects. | No |
| 6.9 Undertaking the procurement of PPPs. | No |
| 6.10 Oversight of PPP implementation. | Yes |
| 6.11 Other | No |
| 6.11 please specify: | n/a |
| Please provide the relevant legal/regulatory provisions: | <p>Pursuant to article 8 of the PPP Bill,</p> <p>(1) The Commission shall facilitate the implementation of public-private partnership arrangements and shall be the sole authority to implement the divestiture of direct and indirect interests in state-owned enterprises.</p> <p>(2) Without derogation from the generality of subsection (1), the Commission shall -</p> <p>(a) facilitate procurement of private sector investors in public-private partnership arrangements and other form of undertaking relating to public investments projects in Malawi,</p> <p>(b) implement divestitures in direct or indirect Government ownership of, or interest in, any state-owned enterprise;</p> <p>(c) provide technical support to Contracting Authorities in the initiation of public-private partnership arrangements.</p> <p>(3) The functions of the Commission in relation to public-private partnerships shall be -</p> <p>(a) to make assessment of a project submitted to it and give its recommendations to the Minister, as to whether the project-</p> <p>(i) is affordable to the Contracting Authority;</p> <p>(ii) provides value for money; and</p> <p>(iii) presents optimum transfer of technical, operational and financial risks to the private party;</p> <p>(b) conduct feasibility studies on public private partnerships;</p> <p>(c) manage the tender process and evaluate the bids and negotiate the contract with the partner;</p> <p>(d) to prepare or examine the request for proposal to ensure conformity with the approved feasibility study;</p> <p>(e) to advise Government on administrative procedures in relation to public-private partnership projects;</p> <p>(f) to develop best practice guidelines in relation to all aspects of public-private partnerships;</p> <p>(g) to propose to the Minister policy considerations in relation to public-private partnership projects; and</p> <p>(h) to build public-private partnership awareness in the country;</p> <p>(i) Generally facilitate the implementation of PPP in Malawi</p> <p>(j) to recommend to Cabinet for approval, guidelines relating to private sector participation in state owned enterprises;</p> <p>(k) to implement the public-private partnership program in accordance with the policy guidelines approved by the Cabinet;</p> <p>(l) to advise the Minister responsible for finance of what, in the opinion of the Commission, are the optimal means of financing the cost of public investment projects in order to achieve value for money;</p> <p>(m) to recommend to the Minister for approval and issuance, public-private</p> |

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| | <p>partnership policy guidelines;</p> <p>(n) to implement public-private partnership arrangements in accordance with this Act and any regulations made hereunder;</p> <p>(o) to provide advice to any Contracting Authority on all aspects of financing, refinancing and insurance of public investment projects to be duly undertaken by means of public-private partnership arrangements; and</p> <p>(p) to monitor progress of the implementation of public-private partnership arrangements in Malawi and report the same to the Cabinet through the Minister, on a regular basis, in any case no less frequently than on a quarterly basis.</p> <p>Section 9.1.5. of the PPP policy framework provides information on the PPP Commission's mission as well.</p> |
| PPP Preparation | |
| 8. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before launching the procurement process? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to section 23 (1) of the PPP Bill, without prejudice to the functions of a Contracting Authority under any written law, the Commission or a Contracting Authority shall (c) submit the feasibility study to the Minister responsible for finance through the Commission for its approval. Ministries and Contracting Authorities will require the approval of Cabinet through the Ministry of Finance in order to embark on projects with high social content or those that have a major positive impact on poverty alleviation and requiring Government subsidies to ensure the provision of the services (Policy framework, 8.1.). |
| 8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to section 8.4 of the Policy Framework related to Management of Government's Obligations, "Government shall take steps to institute mechanisms to ensure that its financial obligations under PPPs, having been approved by the Ministry of Finance, are settled in a timely manner including obligations related to the purchase of services by the public sector as well as direct and contingent liabilities on government's finances including guarantees, arising from each PPP project." Moreover, article 29.1 of the PPP Law states: The PPP contract may be concluded solely on the basis of a decision by the Commission and the consent obtained from the Minister to the final draft contract. |
| 8.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |

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| Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to International Public Sector Accounting Standards (IPSAS). | n/a |
| Accounting and reporting according to other international standard (e.g. European System of Accounts). | n/a |
| Please specify: | n/a |
| Other. | n/a |
| Please specify: | n/a |
| 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.)? | Yes |
| If yes, please specify the relevant authority | Cabinet |
| and provide the relevant legal/regulatory provisions (if any): | <p>Pursuant to section 9.1.1. of PPP Policy Framework, Contracting Authorities will be required to submit a PPP concept and project framework paper to Cabinet for approval before implementation.</p> <p>It is also GoM's intention to support projects that fall within its national development agenda and are economically and socially (projects having major</p> |

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| | <p>impact on poverty alleviation) justified but not financially viable. Cabinet approval is required for such projects (Policy framework, section 8.3 Viability Gap Scheme (VGS)).</p> |
| <p>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?</p> | <p>Yes</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>Line minister, Commission, regulatory authorities</p> <p>Pursuant to section 29 (1) of the PPP Bill, the Public Private Partnership contract may be concluded solely on the basis of a decision by the Commission and the consent obtained from the Minister to the final draft contract.</p> <p>Section 9.1.6 of the Policy framework states that Contracting Authorities will therefore need to ensure that the Utility Regulatory Authorities approve the tariff formula or tariff discovery methodology and mechanism for changing service standards before commitments are made with the private party.</p> |
| <p>10. Does the procuring authority use transaction advisors during the PPP project cycle?</p> | <p>Yes</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>No regulatory basis</p> |
| <p>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</p> | <p>Yes</p> |

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| <p>system/medium term budgetary framework and details a specific procedure to ensure the consistency of PPPs with other public investment priorities.</p> | |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p> | <p>Pursuant to section 2.2. of the PPP Policy Framework Ministries and Contracting Authorities (MCAs) are directly responsible for identifying program areas for potential PPPs in light of government overall social and economic priorities within the Malawi Growth Development Strategies II (MGDSII).</p> <p>According to section 6.1, in order to support the objectives of the Millennium Development Goals and to enhance the opportunities for realizing both strategic and operational benefits, the Government has decided to root PPPs in its broader public expenditure reform programmed, as well as in the Public Sector Investment Program (PSIP). In so doing, the Government seeks to strengthen macro-economic stability, allocate scarce resources in line with priorities and improve the effectiveness and efficiency of public sector expenditures by linking them to strategic objectives.</p> <p>Ministry of Development Planning and Cooperation (MDPC) is charged with the responsibility of PSIP process. The line ministries submit proposals to the MDPC every year to have their projects and programs included in the PSIP. The project proposals are analyzed by MDPC to establish whether the proposed projects are efficient, effective and relevant in attaining National Development goals or not, and also to consider long-run impact of such projects on the economy. The projects that are viable are included in the PSIP, while those that are not, are rejected or referred back to respective line ministries for refinement. The MDPC monitors and evaluates the progress of PSIP projects, and use the results for development planning.</p> |
| <p>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.</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>The regulatory framework does not include any provisions but the procuring authority evaluates the consistency of PPPs with other government</p> | <p>No</p> |

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| investment priorities in practice. | |
| If yes, please elaborate: | n/a |
| The procuring authority does not evaluate PPPs against existing government priorities. | No |
| Please elaborate and provide examples: | n/a |
| 11.1. Based on your experience, is it always the case that this prioritization is done in practice in accordance with the provisions of the regulatory framework described above? | Yes |
| If yes, please specify: | PPPs are prioritized within the Malawi Growth Development Strategies II (MGDSII) and the Public Sector Investment Program (PSIP) |
| If no, please elaborate: | n/a |
| 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) | Yes |
| Relevant legal/regulatory provision (if any) | Section 7.2.3 of the Policy framework is related to Public Interest and Consumer Rights: Consideration of public interest requires ensuring that procuring the project as a PPP is not contrary to the public interest. Equally, after a decision has been taken to procure infrastructure and services through the PPP model, it is critical to ensure that the procurement process is so structured as to continue to be in the public interest. PPP projects should seek to safeguard user's interest, particularly vulnerable groups. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | In practice socio-economic impacts are assessed before procuring a PPP. |
| 12.2. Affordability assessment, including the identification of the | Yes |

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| required long term public commitments (explicit and implicit, direct and contingent liabilities) | |
| Relevant legal/regulatory provision (if any) | <p>Pursuant to Section 26 2. of the PPP Bill, the feasibility study should (c) demonstrate that the agreement shall: (i) be affordable to the contracting authority.</p> <p>Section 7.2.4 of the Policy framework also indicates that affordability will need to be the cornerstone of all PPP projects.</p> |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | In practice affordability assessment is done before procuring a PPP. |
| 12.3. Risk identification, allocation and assessment (risk matrix) | Yes |
| Relevant legal/regulatory provision (if any) | <p>According to section 26 2. of the PPP Bill, the feasibility study should (c) demonstrate that the agreement shall: (iii) transfer appropriate technical, operational or financial risk to the private party.</p> <p>Regarding Risk Allocation, the principle governing the risk transfer is one of optimal allocation. An efficient risk allocation is vital in determining whether VfM can be achieved in PPP projects. Risks will be allocated to whoever is best able to manage them, taking into account public interest consideration. The allocation of risks will therefore determine the chosen method of private sector involvement and allocation of responsibilities. (Policy framework, section 7.2.2)</p> |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No |
| Details: | In practice, risks are identified and allocated. |
| 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) | Yes |
| Relevant legal/regulatory provision (if any) | <p>Pursuant to Section 26 2. of the PPP Bill, the feasibility study should (c) demonstrate that the agreement shall: (ii) provide value for money</p> <p>Moreover, achieving Value for Money (VfM) criteria on PPP projects is paramount. As such achieving the best VfM outcome should be the key consideration at all</p> |

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| | <p>stages of the project cycle. PPPs should give greater Value for money than the best realistic public sector project designed to achieve similar service outputs. (Policy framework, section 7.2.1).</p> <p>According to section 10.2 of the policy framework, MCAs with the assistance of the PPPC shall conduct Needs and Options Analysis to determine the best solution to provide the service / build infrastructure i.e. traditional public procurement or PPP route.</p> |
| Is there a specific methodology for the assessment? | Yes |
| If yes, please elaborate | <p>According to section 7.2.1 of the Policy framework, VfM is a combination of service outcome to be delivered by the private sector, together with the degree of risk transfer and financial commitments for government. Quantitative factors may be tested by comparing the outputs and costs of the PPP proposal against a neutral benchmark called Public Sector Comparator (PSC), which is adjusted for risk (where the risk can be reliably quantified). Achieving VfM is a key requirement of the Government at all stages of a project's development and procurement. VfM is the driver for adopting the PPP approach, rather than capital scarcity or balance sheet treatment.</p> |
| Is the assessment done in practice? | No |
| Details: | Contributors could not confirm that the assessment is done in practice |
| 12.5. Financial viability or bankability assessment | Yes |
| Relevant legal/regulatory provision (if any) | <p>Section 10.2 of the Policy framework identifies as the 2nd step; an Initial Viability Analysis and Pre-feasibility, and the 3rd step is the Feasibility Study: the Government will assess whether the proposed project is robust and meets GoM criteria for risk, viability, bankability, affordability and value for money. This includes estimates of viability gap and the need for incentives. Clearance and approval shall be sought from MOF (Monitoring and Evaluation Unit) before proceeding to the next step of the process. The CA may be able to tap into the IPF to carry out the feasibility study and related studies.</p> |
| Is there a specific methodology for the assessment? | Yes |
| If yes, please elaborate | <p>Section 10.2 of the Policy framework identifies as the 2nd step an Initial Viability Analysis and Pre-feasibility Study including possible location(s), alignment(s) and estimates of broad project costs and an initial indication whether the project is likely to be viable and affordable. The PPPC will provide advisory support services to CAs, while the MoF Monitoring and Evaluation Unit will review and provide comments, but not a formal approval at this stage. The PPPC in association with the Monitoring and Evaluation shall provide the requirements for the pre-feasibility study and determine if a full feasibility study is required.</p> |
| Is the assessment done in practice? | No |
| Details: | In practice, financial viability is assessed. |
| 12.6. Market sounding and/or assessment | Yes |

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| (showing evidence of investors' interest in the market for the project) | |
| Relevant legal/regulatory provision (if any) | No regulatory basis |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | Even without any regulatory provision, the market's interest is assessed before procuring a PPP. |
| 12.7. Environmental impact assessment | Yes |
| Relevant legal/regulatory provision (if any) | Pursuant to article 9.1.5. of the policy framework, undertaking technical, economic and financial feasibility studies, legal, environment and social appraisals, assessment of project risks and identification of solutions to mitigate those risks. |
| Is there a specific methodology for the assessment? | Yes |
| If yes, please elaborate | <p>Pursuant to article 25 of the Environmental Management Act: (1) Where the Director considers that sufficient information has been stated in the project brief under section 24, the Director shall require the developer, in writing, to conduct, in accordance with such guidelines as the minister may, by notice published in the Gazette prescribe, an environmental impact assessment and to submit to the Director, in respect of such assessment, an environmental impact assessment report giving -</p> <ul style="list-style-type: none"> (a) a detailed description of the project and the activities to be undertaken to implement the project; (b) the description of the segment or segments of the environment likely to be affected by the project and the means for identifying, monitoring and assessing the environmental effects of the project; (c) the description of the technology, method or process to be used in the implementation of the project and of any available alternative technology, method or process, and the reasons for not employing the alternative technology, method or process; (d) the reasons for selecting the proposed site of the project as opposed to any other available alternative site; (e) a detailed description of the likely impact the project may have on the environment and the direct, indirect, cumulative, short-term and long-term effects on the environment of the project; (f) an identification and description of measures proposed for eliminating, reducing or mitigating any anticipated adverse effects of the project on the environment; (g) an indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be affected by the project and the measures to be taken to minimize any damage to the environment; (h) an outline of any gaps, deficiencies and the adverse environmental concerns |

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| | <p>arising from the environmental impact assessment and from the compilation of the environmental impact assessment report;</p> <p>(i) a concise description of the method used by the developer to compile the information required under this section.</p> <p>(3) The environmental impact assessment report shall be open for public inspection provided that no person shall be entitled to use any information contained therein for personal benefit except for purposes of civil proceedings brought under this Act or under any written law relating to the protection and management of the environment or the conservation or sustainable utilization of natural resources. The following articles provide more details.</p> |
| Is the assessment done in practice? | No |
| Details: | In practice environmental impact assessments are usually conducted as a matter of formality and some requirements for a thorough environmental impact assessment are bypassed. |
| 12.8. Consultation process with affected communities on potential impact of the PPP project | Yes |
| Relevant legal/regulatory provision (if any) | Section 7.2.9 of the policy framework indicates in relation to Stakeholder Consultation: Contracting Authorities shall ensure adequate stakeholder consultation, understanding and supporting in advance of entering into a PPP arrangement and shall endeavor to identify relevant stakeholders and undertake comprehensive consultation so as to ensure awareness of PPP projects under consideration. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No |
| Details: | Stakeholder Consultation is not always organized in practice. |
| 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)? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| and specify which of the assessments are included in the request for | n/a |

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| proposals and/or tender documents: | |
| 13.1. Are the assessments published online? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| specify the website | n/a |
| please specify which of the assessments are published online: | n/a |
| 14. Does the procuring authority include a draft PPP contract in the request for proposals? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| If no, please elaborate | No provision explicitly requires a draft PPP to be included in the request for proposals. |
| 14.1. Are the tender documents published online? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| and please specify the website: | n/a |
| 15. In a case comparable to the case study assumptions, have standardized PPP model contracts and/or transaction documents been developed? | No |
| If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them: | n/a |
| 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 | No |

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| authority (or other Government entity) | |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | No regulatory basis |
| 16.2. Obtaining the required environmental permits: Procuring authority (or other Government entity) | No |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | No regulatory basis |
| 16.3. Obtaining the required operational permits: Procuring authority (or other Government entity) | No |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | No regulatory basis |
| 16.4. Obtaining the required land: Procuring authority (or other Government entity) | No |
| Private Partner | No |

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| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | No regulatory basis |
| 16.5. Obtaining the required right of way: Procuring authority (or other Government entity) | No |
| Private Partner | No |
| Private partner with facilitation role assigned to the procuring authority (or other Government entity) | No |
| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | No regulatory basis |
| PPP Procurement | |
| 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. | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| The bid evaluation committee members require sufficient qualification without specific details. | No |
| If yes, please provide the relevant | n/a |

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| legal/regulatory provisions (if any): | |
| The bid evaluation committee members are not required to have any specific qualifications. | Yes |
| Please elaborate and provide examples: | The PPP Act only specifies that Bids shall be evaluated by the Commission (Section 28). |
| 19. Does the procuring authority issue a public procurement notice of the PPP project? | Yes |
| If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any): | Under section 27(2) of the Public Private Partnership Bill the invitation for bidders to submit bid shall be done through the request for proposal document which shall be prepared by the Commission and shall include a public invitation for bidders to submit bids. |
| 19.1. If yes, is the public procurement notice published online? | Yes |
| If yes, please specify the website: | www.pppc.mw |
| 20. Are foreign companies prohibited from participating in the bidding process? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 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? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| and the time in calendar days: | n/a |
| 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 | Yes |

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| Default | No |
| Relevant legal/regulatory provision (if any) | Section 7.2.8 of the policy framework: Bids will be invited only when it is clear that there is scope for a private proponent to deliver VfM. All PPP projects should be subjected to a competitive process so as to obtain market contestability and efficiency. |
| 22.2. Restricted tendering (with pre-qualification stage): Available | Yes |
| Default | No |
| Relevant legal/regulatory provision (if any) | Article 27 of the PPP Bill. - (1) The Commission shall consider carrying out a pre-qualification exercise to select potential bidders or may delegate its powers under this subsection to the Contracting Authority where the Commission considers that the Contracting Authority has the necessary expertise to undertake the pre-qualification exercise. |
| 22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.4. Competitive dialogue: Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.5. Direct negotiation with more than one candidate: Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.6. Direct negotiation with only one candidate: Available | No |
| Default | No |
| Relevant legal/regulatory provision (if any) | n/a |
| 22.7 Other. Specify: | No |
| Available | n/a |
| Default | n/a |
| Relevant legal/regulatory provision (if any) | n/a |

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| 22.8. Do the tender documents detail the procedure of the procurement process providing the same information to all the bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| If no, please elaborate: | n/a |
| 22.9. Do the tender documents specify the prequalification/shortlisting criteria (when applicable) in order to make them available to all the bidders? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Section 28 (1) of the PPPA: The request for proposals shall clearly set out the evaluation criteria which shall form the basis for selection of a preferred bidder. |
| 22.10. Based on your experience, is it always the case that the specified criteria are respected in practice? | Yes |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | Prequalification criteria provided to the bidders are in practice applied by the procuring authority. |
| If no, please elaborate: | n/a |
| 23. Can interested parties/potential bidders submit questions to clarify the public procurement notice and/or the request for proposals? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| 23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders? | Yes |

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| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| 23.2. Based on your experience, is it always the case that this disclosure of information is done in practice? | Yes |
| If yes, please specify: | Disclosure of information is made in practice. |
| If no, please elaborate: | n/a |
| 24. Besides questions and clarifications, can the procuring authority conduct pre-bidding conference? | No |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| 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? | n/a |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 24.2. Based on your experience, is it always the case that this disclosure of information is done in practice? | n/a |
| If yes, please specify: | n/a |
| If no, please elaborate: | n/a |
| 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? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |

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| If no, please elaborate: | There is no provision which requires a financial model to be presented by the bidders. |
| 26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Pursuant to section 28 (1) of the PPP Bill, the request for proposals shall clearly set out the evaluation criteria which shall form the basis for selection of a preferred bidder. |
| Evaluation criteria is not set in the tender documents | No |
| 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. | No |
| Please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents. | No |
| Please provide the relevant legal/regulatory provisions (if any): | n/a |
| The procuring authority does not award a PPP contract if only one proposal is submitted. | No |
| Please provide the relevant legal/regulatory provisions (if any): | n/a |

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| The regulatory framework does not include any provisions. | Yes |
| 28. Does the procuring authority publish the award notice? | Yes |
| If yes, please specify the means of publication and provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| 28.1. If yes, is the public procurement award notice published online? | No |
| If yes, please specify the website: | n/a |
| 29. Does the procuring authority provide all the bidders with the result of the PPP procurement process? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| If no, please elaborate: | n/a |
| 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? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | No regulatory basis |
| 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? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| and the time in calendar days: | n/a |
| 30.1. Is the standstill period set out in the notice of intention to award? | n/a |

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| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 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? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 31.1. Based on your experience, is it always the case that this restriction is respected in practice? | n/a |
| If yes, please specify: | n/a |
| If no, please elaborate: | n/a |
| 32. Does the procuring authority publish the PPP contract? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 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 | n/a |
| Publication of the full PPP contract without including all its annexes and appendixes | n/a |
| Publication of a summary of the PPP contract without publishing the full PPP contract | n/a |
| Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes | n/a |

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| Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes | n/a |
| 32.2. If yes, is it published online? | n/a |
| If yes, please specify the website: | n/a |
| 32.3. If yes, does the procuring authority also publish any subsequent amendment made to the PPP contract? | n/a |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| PPP Contract Management | |
| 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)? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Section 9.1.4 of the Policy framework indicates the missions of the Ministry of Finance (PPP Monitoring and Evaluation Unit): The Unit will carry the mandate of the PPP Monitoring and Evaluation function and for the most part this is to ensure coordination of the review and screening of PPP projects in the interest of protecting the public interest. The review function, above all, assesses the relevant financial risks exposure to government which may be associated with the project. The Monitoring and Evaluation Unit carries out a review at different stages of the project cycle of all projects submitted by MCAs and which would have been developed with the support of the PPPC. On the basis of this assessment the Ministry of Finance shall approve (or reject) specific aspects of PPP project in order to ensure fiscal sustainability, financial and economic viability and robustness of contracts over the long term. Some of the review functions are not new as these are already being carried out by MoF departments or other MCAs. The purpose of creating the PPP Monitoring and Evaluation Unit in the Ministry of Finance is to have a one-stop office that will systematize and coordinate the different inputs needed. With respect to reviews which are not currently being undertaken by any part of the Government, the PPP Monitoring and Evaluation Unit would be required to develop these skills within the MoF. The PPPC will work with MoF in ensuring that PPP functions within the ambit of the Public Finance Management Act as well as ensuring that there is coordination in developing the necessary review guidelines.</p> |

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| | <p>Contract Management is identified as the 5th step by section 10.2 of the Policy framework : CAs and Regulatory Authorities (RAs) have responsibility of ensuring contract compliance, contract enforcement and contract adjustment/re-negotiation. The CAs as the landlord and signatory to the concession contract will ensure that the performance standards laid down in the agreement are met by the private party. The RAs will ensure that the tariffs and technical quality/service delivery standards are in compliance with the PPP agreement (discretionary changes will not be permitted). The PPP agreement is a commercial contract and normally requires consent on the part of the two parties in respect of any changes. Where the RA is required to issue a separate license for the PPP agreement there will be the need to ensure that there is consistency between the two instruments. The PPPC will coordinate the recruitment of owners engineering representative where necessary to ensure that the construction contractor delivers the project according to the standards laid down in the agreement and from time to time will carry out audits of the process.</p> |
| 41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| Elaboration of a PPP implementation manual or an equivalent document | No |
| Relevant legal/regulatory provisions (if any): | n/a |
| Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project) | No |
| Relevant legal/regulatory provisions (if any): | n/a |

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| <p>Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)</p> | <p>No</p> |
| <p>Relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>41.2. Which of the following options best describes the required qualifications of the PPP contract management 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.</p> | <p>n/a</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>The PPP contract management team members are required to meet sufficient qualification without specific details.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>The PPP contract management team members are not required to meet any specific qualifications.</p> | <p>n/a</p> |
| <p>Please elaborate and provide examples:</p> | <p>n/a</p> |
| <p>42. Does the procuring or contract management authority establish a system for tracking progress and completion of construction works under a PPP contract?</p> | <p>Yes</p> |

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| If yes, please provide the relevant legal/regulatory provisions (if any): | Section 9.1.5 of the Framework Policy identifies within the PPP Commission’s attributions the Contract management/re-negotiation: assisting in on-going contract oversight, especially over the construction phase and assisting in contract re-negotiations that might occur over the life of the project, including re-financing. |
| 42.1. If yes, is the PPP contract construction performance information made available to the public? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 42.2. If yes, is the PPP contract construction performance information made publicly available online? | n/a |
| If yes, please specify the website: | n/a |
| 43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>The 6th Step identified by section 10.2 of the Policy framework is Implementation and Appraisal: The CAs supported by the PPPC will carry out an appraisal of the entire PPP project from project identification to Implementation in order to assess the efficiency and effectiveness of project implementation. The purpose of such a review and appraisal is to draw important lessons that can be applied in future projects and to assist in the policymaking effort.</p> <p>A comprehensive and regular review of the overall process shall be a core responsibility of the structures managing the development and implementation of PPPs. Reviews shall be prepared openly and transparently within an appropriate time-frame. The review shall specify implications for the procurement of infrastructure and the delivery of quality services helping to shape the future of the PPP program. The implementation of, and adherence to, the policy framework will focus, in particular, on the consistency of conduct of the PPP process with the policy and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Malawi’s PPP program.</p> |
| 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 | No |

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| Relevant legal/regulatory provisions (if any) | n/a |
| The procuring or contract management authority can abate (reduce) payments for non-performance of operating obligations under the PPP contract | No |
| Relevant legal/regulatory provisions (if any) | n/a |
| The private partner must provide the procuring or contract management authority with periodic operational and financial data | Yes |
| Relevant legal/regulatory provisions (if any) | No regulatory basis |
| The procuring or contract management authority must periodically gather information on the performance of the PPP contract | Yes |
| Relevant legal/regulatory provisions (if any) | The 6th Step identified by section 10.2 of the Policy framework is Implementation and Appraisal: The CAs supported by the PPC will carry out an appraisal of the entire PPP project from project identification to Implementation in order to assess the efficiency and effectiveness of project implementation. The purpose of such a review and appraisal is to draw important lessons that can be applied in future projects and to assist in the policymaking effort. |
| The PPP contract performance information must be available to the public | No |
| Relevant legal/regulatory provisions (if any) | n/a |
| 43.2. Is PPP contract performance information made publicly available online? | No |
| If yes, please specify the website: | n/a |
| 44. Are foreign companies prohibited from repatriating the income resulting from | No |

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| the operation of a PPP project? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 45. Does the regulatory framework (including standard contractual clauses) expressly regulate changes in the ownership structure (i.e. stakeholder composition) of the private partner and/or assignment of the PPP contract? | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 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). | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator. | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| In other cases, flexibility to change the ownership structure and/or assign the contract. | n/a |

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| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>46. Does the regulatory framework (including standard contractual clauses) expressly regulate the modification or renegotiation of the PPP contract (once the contract is signed)?</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>46.1. If yes, is an approval from a government authority, other than the procuring authority, required?</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>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.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>A change in the risk allocation of the contract.</p> | <p>n/a</p> |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>A change in the financial and/or economic balance of the contract.</p> | <p>n/a</p> |

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| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the duration of the contract. | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the agreed price or tariff. | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 46.3. Can the procuring authority unilaterally modify a PPP contract? | n/a |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 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 | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Material Adverse government action . | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Change in the Law. | No |
| If yes, please provide the relevant | n/a |

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| legal/regulatory/standard contractual provisions (if any): | |
| Refinancing. | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Section 9.1.5. of the Policy framework includes in the PPP Unit's missions : Contract management/re-negotiation: assisting in on-going contract oversight, especially over the construction phase and assisting in contract re-negotiations that might occur over the life of the project, including re-financing. |
| Subcontracting and replacement of the subcontractors. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 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? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Pursuant to Section 22 (4) of the PPP Bill, every agreement shall provide for disputes between the Partner and the Contracting Authority to be settled by arbitration, according to the rules defined in the agreement. Section 65 (1) further indicates that any dispute between - (b) an investor, a partner, a Government Authority and the Commission arising from or relating to a public-private partnership arrangement, shall be settled through negotiation, mediation, or, by arbitration in accordance with the Arbitration Act. |
| 48.1. If yes, please specify which of the following options are available (check all that apply): Local administrative review body | No |
| If yes, please specify: | n/a |
| Local courts | Yes |
| Domestic arbitration | Yes |
| International arbitration | Yes |
| Investor-State Dispute Settlement (ISDS) | Yes |
| Mediation | Yes |
| Please provide the relevant legal/ | Pursuant to Section 22 (4) of the PPP Bill, every agreement shall provide for disputes between the Partner and the Contracting Authority to be settled by |

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| regulatory/standard contractual provisions (if any) | arbitration, according to the rules defined in the agreement. Section 65 (1) further indicates that any dispute between - (b) an investor, a partner, a Government Authority and the Commission arising from or relating to a public-private partnership arrangement, shall be settled through negotiation, mediation, or, by arbitration in accordance with the Arbitration Act. |
| 48.2. If applicable, are arbitration awards enforceable by the local courts?: Domestic Arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | Section 27 of the Arbitration Act, Cap. 6:03 provides: An award on an arbitration agreement may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award. |
| International arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | Section 36 and following of the Arbitration Act regulate the enforcement of foreign arbitral awards. |
| Investor-State arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | The ICSID convention entered into force on Oct 14, 1966 in Malawi. |
| 49. Does the regulatory framework (including standard contractual clauses) allow for the restructuring of a PPP private partner (SPV) in financial difficulty prior to insolvency? | No |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 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 | No |

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| defaults or if the PPP contract is under threat of termination for failure to meet service obligations? | |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 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. | n/a |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| The regulatory framework prescribes that a direct agreement should be signed with the lenders. | n/a |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| The regulatory framework prescribes that the lender step-in rights should be regulated in the contract. | n/a |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Other. | n/a |
| Please Specify: | n/a |
| 51. Does the regulatory framework (including standard contractual clauses) expressly establish the grounds for termination of a PPP contract? | No |

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| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| 51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract? | n/a |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| Unsolicited Proposals | |
| 34. Are unsolicited proposals in Malawi: (choose only one): Explicitly prohibited by the legal framework? (If prohibited, skip to section F) | No |
| Explicitly allowed by the legal framework? | Yes |
| Not regulated by the legal framework, but do happen in practice? | No |
| Not regulated by the legal framework, and do not happen in practice? (if not done in practice, skip to section F) | No |
| If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions | <p>According to Section 31 (1) of the PPP Bill, any unsolicited bid or expression of interest for a Public Private Partnership by a prospective private partner to a Contracting Authority must be referred to the Commission and must not be responded to by the Contracting Authority.</p> <p>Section 7.3 of the Policy framework is related to Unsolicited Proposals: The many negative experiences with unsolicited proposals for private infrastructure projects have led several governments to come up with blanket refusals as the only way to safeguard against potential problems with corruption and lack of transparency. Unsolicited bids are inherently non-transparent and are therefore prone to corruption. Unsolicited bids also deny the Government the opportunity to carry out an independent and comprehensive feasibility and viability analyses in order to ascertain the Value for Money and Affordability parameters.</p> <p>In the absence of a feasibility study and a viability assessment, the private partner has a strong motivation to earn economic rent and may even push for discretionary incentives and subsidies from the Government. The Government of Malawi concurs</p> |

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| | with those that have come up with a blanket refusal to accept unsolicited bids. Ministries and Contracting Authorities are therefore not allowed to entertain unsolicited bids. It shall be an offence to accept or entertain an unsolicited bid. All unsolicited bids shall be referred to the PPP Commission who will advise the bidder to wait for a competitive tender process. |
| 35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37) | Yes |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any) | According to Section 31 (2) of the PPPA, once the Commission receives the unsolicited bid or expression of interest it shall consult with the relevant Contracting Authority for a preliminary assessment whether the Public Private Partnership of the type proposed is acceptable or not. |
| 35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Section 31 (3) of the PPP Bill: If the assessment and consultation in subsection (2) determines that the Public Private Partnership type is acceptable the Commission shall seek the approval of the Cabinet for approval to conduct a feasibility study and the unsolicited bidder shall be informed that bidders including him shall be invited to bid for the Public Private Partnership in accordance with the procedure laid down in this Act. |
| 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. | No |
| If yes, please specify and provide the relevant legal/regulatory provisions (if any): | n/a |
| The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing | No |

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| specific procedures to achieve that goal. | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| The procuring authority does not evaluate unsolicited proposals against existing government priorities. | Yes |
| Please elaborate and provide examples: | Unsolicited proposals are not prioritized within other public investment projects, like they are for public initiated projects (through the Malawi Growth Development Strategy II (MGDSII) and Public Sector Investment Program). |
| 37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Section 31 (3) of the PPP Bill If the assessment and consultation in subsection (2) determines that the Public Private Partnership type is acceptable the Commission shall seek the approval of the Cabinet for approval to conduct a feasibility study and the unsolicited bidder shall be informed that bidders including him shall be invited to bid for the Public Private Partnership in accordance with the procedure laid down in this Act. |
| 38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| and the time in calendar days: | n/a |
| 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 final offer (BAFO) process and/or automatic shortlisting. | No |
| 39.2 Developer's fee (reimbursing the original | No |

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| proponent for the project development cost). | |
| 39.3 Bid Bonus. | No |
| 39.4 Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract). | No |
| 39.5 Other. | No |
| Please specify: | n/a |
| Please provide the relevant legal/regulatory provisions (if any): | n/a |