

PROCURING INFRASTRUCTURE PUBLIC-PRIVATE PARTNERSHIPS 2018 IN MOZAMBIQUE

| 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: | Public Private Partnership Contracts in Mozambique are regulated by (1) Law no. 15/2011 (related to large scale projects and PPP, hereinafter referred as “PPP Law”), (2) Decree no. 16/2012 (hereinafter referred as “PPP Regulations”) , (3) Decree n.º 69/2013 which came into force on the year of publication, and (4) Decree no 5/2016, March 08 governs the PPP procurement procedures, on a subsidiary basis and revoke the Decree. no. 15/2010, May 24 (5) Decree no. 31/1996, of 16 June, for concession on tall roads, (6) Decree no. 45/2009, of 21 August, related to Investment Regulation. |
| and provide a link to a government-supported website where the mentioned regulatory framework is available or provide an electronic copy of it: | https://docs.google.com/viewer?a=v&pid=sites&srcid=bWFyY2hlcY1wdWJsaWNzLWFmcmlxdWUuY29tfG1hcmNoZXMtchVibGljcy1hZnJpY2FpbmN8Z3g6NzEyYjc1ZTgzZmNINDk2ZQ |
| 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 | Yes |

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| and/or are planned to be adopted BEFORE June 1, 2017? | |
| Please describe: | Decree no. 5/2016, of 8 March (governs the PPP Procurement Procedures), which came into force on June, 2016, and revoked the Decree no. 15/2010 |
| 2.2 Are ongoing and/or are planned to be adopted AFTER June 1, 2017? | No |
| Please describe: | n/a |
| 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 |
| 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?: | No |

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| Water and Irrigation | |
| 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 | Yes |

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| <p>defense and other matters of national security, does the regulatory framework explicitly prohibit or restrict PPPs in any of the following sectors?: Other</p> | |
| <p>If yes, specify and provide the relevant legal/regulatory provisions:</p> | <p>(1) According to article 3 (2) of the PPP Law, the supply of goods and provision of services to the State, including public works and consultancy in public works are excluded from the PPP Law. Moreover, non profit activities are excluded as well. (2) According to article 2 (2) (a), the PPP Law does not apply to Natural Resources ventures including Oil and Gas Sector and the Mining sector.</p> |
| <p>4. Does the regulatory framework provide for a specific tax regime for PPP transactions (i.e. tax incentives, special tax depreciation treatment, etc.)?</p> | <p>Yes</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory provision (if any):</p> | <p>According to Article 10 of the PPP Law, (Guarantees and investment incentives)</p> <ol style="list-style-type: none"> 1. Each PPP, ... is eligible in accordance with the specific legislation on the matter, for the guarantees and incentives applicable to investments made 2. Tax or other financial benefits are granted, in accordance with the applicable legislation, by the entity responsible for financial and reporting protection in the General Account of the State of the respective economic year. <p>Additionally, according to Article 20 of the Code of Fiscal Benefits (exemption of the stamp tax): The acts for the incorporation of companies including the alteration of the share capital and the articles of association are exempt from stamp duty during the first five (5) years counting from the commencement of the investment or from the commencement of operations, provided that same relates to undertakings whose investments are covered by article 1 of this Code.</p> <p>Also, Article 21 provides for Reduction in the rate of the Real Property Transfer Tax in investment projects.</p> <p>Furthermore, Article 33(2) of the PPP Law provides: 2. In addition to the benefits provided for in paragraph 1 of this article, the entire PPP or EC enterprise involving the for the exploitation of national resources, should also be provided the following benefits:</p> |

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| | <p>a) payment of award fee or bonus of signature, whether or not under any provided for in the respective invitation to tender to be made signature of the contract and of a value of not less than 0,5% or more than 5% of the fair value of the assets assigned contractually by the State or another public for the enterprise;</p> <p>b) payment of the rate of concession or assignment of exploitation, monthly, quarterly, half-yearly or annual basis, as agreed between contracting parties, broken down into components of:</p> <p>(i) a fixed concession fee of not less than 2% nor more than 5% of the fair value of the assets transferred contractually for the enterprise;</p> <p>(ii) the variable rate of concession, levied on the net gross revenue from indirect taxes relating to monthly, quarterly, biannually or annually of the operation of the activity object of the project and whose value must be corresponding to:</p> <p>ii. a) 2% to 5% of said revenue, in the case of structuring PPP enterprise that is producer and supplier of inputs other ventures in the country, during the repayment period of loans contracted for the financing of the phase of their Implementation;</p> <p>(ii) (b) 5% to 10% of such revenue, in all other undertakings, as well as those referred to in previous paragraph as soon as the amortization borrowing for financing of the implementation phase.</p> |
| <p>5. Please identify the PPP procuring authorities in Mozambique and provide their website(s) (if available):</p> | <p>According to Articles 5 and 6 of the PPP Law: In terms of institutional framework, the PPP projects are made by the Government entities or Ministries or municipalities, responsible for the sector of the project. In terms of financial framework, the financial supervision is exercised by the Ministry of Economy and Finance. In fact, Article 5 provides that the ventures are subject to the relevant sectoral Minister. All ministries can be accessed on the following government website: www.portaldogoverno.gov.mz</p> |
| <p>6. In addition to the PPP procuring authorities listed above, is there a specialized government entity that facilitates the PPP program (PPP Unit)?</p> | <p>No</p> |
| <p>If yes, please indicate its name, and its website (if available):</p> | <p>n/a</p> |
| <p>6.1 If yes, what are the main responsibilities of the PPP Unit (check all that apply):</p> | <p>No</p> |

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| PPP regulation and policy guidance. | |
| 6.2 PPP capacity building for other public authorities. | No |
| 6.3 PPP promotion among the public and/or private sectors in national and international forums. | No |
| 6.4 Technical support in implementing PPP projects. | No |
| 6.5 Identification and selection of PPP projects from the pipeline. | No |
| 6.6 Revision of fiscal risks born by the Government. | No |
| 6.7 Consultation with affected communities on potential impact of PPP projects. | No |
| 6.8 Approval of PPP projects. | No |
| 6.9 Undertaking the procurement of PPPs. | No |
| 6.10 Oversight of PPP implementation. | No |
| 6.11 Other | No |

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| 6.11 please specify: | n/a |
| Please provide the relevant legal/regulatory provisions: | n/a |
| 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): | Article 6 of PPP Regulations states that the Ministry of Finance must provide the budgetary framework for the venture, as well as oversee the draft of the feasibility studies and risk/benefit sharing assessment. It also controls the granting of State guarantees (should there be any). In fact, Pursuant to article 6 of Decree n.º16/2012, 1-a) the entity responsible for the financial safeguarding or custody shall guarantee that each venture is duly framed within the economic policy and within the strategies and global plans for the development and growth of the national economy, and insure the registration of the resources, in the State Budget, when essential to the economic and financial viability of any venture/project, (pursuant to Article 20 of Law n.º15/2011). Furthermore, 1-c) It shall also ensure the assessment and decision regarding the economic and financial options relating to each ventures. Additionally, article 24 of Law 15/2012, provides that the PPPs, PGD and CE shall have an appropriate budgetary framework, due to its repercussion translated into long term multiannual commitments, with the financial exposure of the public purse. |
| 8.1. Does the Ministry of Finance or Central Budgetary Authority approve the PPP project before signing the PPP contract? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | 0 |
| 8.2. Does the Ministry of | No |

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| Finance (or government more broadly) have a specific system of: Budgeting for PPP projects. | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 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. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 24 of the PPP Law:</p> <ol style="list-style-type: none"> 1. PPPs, PGDs and ECs should have an appropriate budgetary framework, given its repercussions on the long-term, with financial exposure of the public. 2. The General State Account shall report the execution and performance of Public-Private Partnerships at the end of each financial year. |
| 8.3. If yes to question 8.2, which of the following alternatives best describes the regulation?: Accounting and reporting according to | No |

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| International Public Sector Accounting Standards (IPSAS). | |
| Accounting and reporting according to other international standard (e.g. European System of Accounts). | No |
| Please specify: | n/a |
| Other. | No |
| 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.)? | No |
| If yes, please specify the relevant authority | n/a |
| and provide the relevant legal/regulatory provisions (if any): | n/a |

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| 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>No</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| 10. Does the procuring authority use transaction advisors during the PPP project cycle? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 21 (3) of PPP Regulation, the public and private partners can, by mutual agreement, use an expert or independent advisor to carry out the due diligence for verification and evaluation purposes.</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 | <p>Yes</p> |

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| <p>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.</p> | |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p> | <p>Articles 20(2) and 24 provide for the inclusion of PPPs in the State Budget. In fact, pursuant to Article 24 of the PPP Law: The Government shall include, in each annual proposal for the State Budget, the budget regarding its own investment in PPP ventures where the direct intervention of the State is seen as indispensable, relevant or convenient. It shall also foresee and budget the liabilities assumed for compensation or subsidies by the State or for the granting of access to guarantees or other financial facilities for clearly identified PPP projects, taking such amounts into consideration when analyzing the sustainability of public debt. Furthermore, the PPPs shall have an adequate budget framing, given their repercussion as long term commitments.</p> |
| <p>The regulatory framework prescribes the need for PPPs to be consistent with all other investment priorities</p> | <p>No</p> |

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| <p>without establishing a specific procedure to achieve that goal.</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 investment priorities in practice.</p> | <p>No</p> |
| <p>If yes, please elaborate:</p> | <p>n/a</p> |
| <p>The procuring authority does not evaluate PPPs against existing government priorities.</p> | <p>No</p> |
| <p>Please elaborate and provide examples:</p> | <p>n/a</p> |
| <p>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</p> | <p>No</p> |

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| framework described above? | |
| If yes, please specify: | n/a |
| If no, please elaborate: | According to our contributors, the Government in Mozambique does not always integrate the prioritization of PPP projects with other investment project prioritization in practice. Our contributors explained this phenomenon by the fact that most approved PPP are motivated by politically pressure or economic interest of political groups and due to the unsolicited proposals. Some contributors added that considering the fast development of the Mozambican economy sector, some provisions of the regulatory framework are “amended” and/or waived in practice to accommodate the needs and demands of each project, which is why the prioritization provided for in the regulatory framework is not always followed. |
| 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) | Article 4 of the PPP Law provides that the contracting of PPP, LSP or BC undertakings is subject to conformity with the following guiding principles for each undertaking, concretely: a) its proper fit in the policy, strategy and development plans of its respective economic or social sector; b) its contribution to the development of the effective capacity for efficient and rational use and economic appreciation of national resources and goods; g) its contribution to the development of the national capital markets and the promotion of greater economic inclusion of Mozambicans in each undertaking...Furthermore, Articles 9, 10 and 11 of the PPP Regulations provide for conducting socio-economic analysis when identifying and preparing a PPP |
| Is there a specific methodology for the assessment? | Yes |
| If yes, please elaborate | According to Article 4 of the PPP Law, The contracting of PPP, LSP or BC undertakings is subject to conformity with the following guiding principles for each undertaking, concretely: a) |

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| | its proper fit in the policy, strategy and development plans of its respective economic or social sector; b) its contribution to the development of the effective capacity for efficient and rational use and economic appreciation of national resources and goods; c) equity in the sharing of benefits arising from each undertaking, among the contracting parties, actors and concerned or affected parties; [...] f) creation and maintenance of jobs and professionalization and transfer of know-how to Mozambican employees and managers; g) its contribution to the development of the national capital markets and the promotion of greater economic inclusion of Mozambicans in each undertaking [...] |
| Is the assessment done in practice? | Yes |
| Details: | The socio-economic analysis is done in practice when identifying and preparing a PPP in Mozambique |
| 12.2. Affordability assessment, including the identification of the required long term public commitments (explicit and implicit, direct and contingent liabilities) | No |
| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | n/a |
| Details: | n/a |
| 12.3. Risk identification, allocation and assessment (risk matrix) | Yes |
| Relevant legal/regulatory | Under PPP Regulations: Article 5(1)(d) provides: The identification and design of each project and preparation of the technical feasibility study, environmental , economic and financial , |

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| ry provision (if any) | including the analysis and monitoring of the benefits, assumption of risks; 5(3)a The analysis and monitoring during the contract life, sharing of benefits and risk-taking , and the prevention of risks ...Additionally, Article 6(1)(b)(c)(d) provides: (b) The verification of compliance in the analysis process, the assessment of economic and financial benefits and risks in each project , (following the guiding principles provided in Article 4 of Law no. 15/2011; (c) The assessment and decision making on economic and financial information (in particular those that have or can produce effects on benefit sharing and prevention and risk-taking) ; (d) analysis , certification and monitoring of sharing benefits and prevent and risk-taking, or in a business model or the instruments legal hiring of each project ; |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | A risk identification, allocation and assessment is done in practice when identifying and preparing a PPP project in Mozambique |
| 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) | No |
| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment | n/a |

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| done in practice? | |
| Details: | n/a |
| 12.5. Financial viability or bankability assessment | Yes |
| Relevant legal/regulatory provision (if any) | <p>Article 20 of the PPP Law provides for financial guarantees grantable to undertakings, and Article 24 provides for budgeting framework Furthermore, under PPP Regulations, article 11 establishes that a study regarding the financial-economic feasibility of the PPP shall be prepared prior to launching of the PPP. In fact, this Article provides that: The viability-study preparation is based on the economic financial reference model, it is approved by the entity responsible for financial supervision, and by the entity responsible for sectoral protection. It should include, among other elements: a) the basic assumptions made in preparing the study, such as the level of investments (tangible and intangible), equity and loans prices purchase and sale, interest rates, volume of production, depreciation rates of fixed assets and foreseeable risks; b) The amounts of expected revenues and their total (sorted by type); c) The amounts by type of investment, insurance, financial and loan amortization of assets and its total; d) The value of any tax incentives in accordance with applicable law; e) A statement of cash flow and indicators treasury management; f) A statement of expected operating results (before and after loan repayments); g) The indicators for management and solvency of the enterprise; h) Indicators or profitability ratios of capital and other assets invested resources in enterprise, the critical point of sales , the rate of internal return , the effective tax rate, as well as the recovery period of investments ; i) The total net present value and the allocation for investors, partners and shareholders; j) The demonstration of the equitable sharing of financial benefits between the contracting parties ...; Also, Article 5(d) provides that the identification and design of each project and preparation of the technical feasibility study, environmental, economic and financial studies, including analysis and monitoring of benefits and risk assumption and prevention; and finally, Article 6(e) provides for guidance making arrangements for the feasibility economic and financial developments of socio- economic nature, relevant to national strategy (which justifies such intervention by the state)</p> |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | Yes |
| Details: | A financial viability or bankability assessment is done in practice when identifying and preparing a PPP in Mozambique |
| 12.6. Market sounding and/or assessment (showing evidence of | Yes |

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| investors' interest in the market for the project) | |
| Relevant legal/regulatory provision (if any) | When preparing a PPP, a study is conducted to assess the economic and financial feasibility of the project. As per Article 11(2) paragraph a), this study shall namely include "the underlying assumptions of the study, such as the estimate level of tangible and intangible investment, the capacity to install and its levels of use, equity and loans, buying and selling prices, interest rates, inflation, production volume, amortization rates and expected risks". Market assessment is not an item which is expressly included per se in the text of the law, but the law is interpreted to implicitly include market assessment. |
| Is there a specific methodology for the assessment? | No |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | No |
| Details: | n/a |
| 12.7. Environmental impact assessment | No |
| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | n/a |
| Details: | n/a |
| 12.8. Consultation process with affected communities on potential impact of the PPP project | No |

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| Relevant legal/regulatory provision (if any) | n/a |
| Is there a specific methodology for the assessment? | n/a |
| If yes, please elaborate | n/a |
| Is the assessment done in practice? | n/a |
| Details: | n/a |
| 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)? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 12 of the PPP Regulations, 2. The launching of the public tender, for bidding and selection of investors interested in the realization, management and of the enterprise. is based on the proposal information and documentation phases of integration and preparation of the technical feasibility study, environmental and economic dynamics of the enterprise. |
| and specify which of the assessments are included in the request for proposals and/or tender documents: | feasibility study, environmental and economic assessment should be conducted according to the Law. Our contributors also provided that risk, market and financial assessment are also conducted in practice |
| 13.1. Are the assessments published online? | No |

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| 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? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | According to Article 47 of Decree no. 5/2016: 2. The Bidding Documents must include: ... p) Model Contract |
| If no, please elaborate | n/a |
| 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 | Yes |

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| documents been developed? | |
| If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them: | <p>Standardized PPP models are only available for specific sectors, and drafts are not made publicly made available (they are only provided directly by the overseeing cabinet of the Ministry for discussion). Additionally, we note that according to Article 21(1) of the PPP Law, the execution of a PPP Project may be made via (i) concession agreement, (ii) assignment of operation agreement or (iii) management agreements. Paragraph 2 of the same article establishes the various sub-types of concessions, which include for example the DBOT - Design, Build, Operate and Transfer - model (subparagraph b)).</p> <p>Although there is no standard model to be used for PPPs, the PPP Regulation establishes a long list of mandatory clauses, in paragraph 1 of article 37, which shall be expressly mentioned in the contract. By means of example, the Contract shall specifically refer to:</p> <ul style="list-style-type: none"> - Description of the object and purposes of the project (subparagraph b)); - Envisaged results, indicators, level and standards regarding services / goods (subparagraph c)); - Definition of the obligations, rights and liabilities of the parties (subparagraph d)); - Scheduling of inspections or audits to the undertaken investments and to the public goods assigned to the Project (subparagraph l)); - Indication of applicable sanctions and respective enforceability, in case of non compliance with the contract (subparagraph q)); - Dispute resolution mechanisms (subparagraph w)); |
| 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 authority (or other Government entity) | <p>No</p> |
| Private Partner | <p>No</p> |
| Private partner with facilitation role assigned to the procuring authority (or other | <p>No</p> |

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| Government entity) | |
| To be established in the contract | Yes |
| Relevant legal/regulatory provision (if any) | According to Article 37(1)(f) of the PPP Regulation, Without prejudice to the applicable legal provisions, ... the Regulatory Authority shall ensure that the contract explicitly contains, among other clauses, those relating to: ... f) Right of use of land, permits, and relevant authorizations, when applicable |
| 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) | According to Article 37(1)(f) of the PPP Regulation, Without prejudice to the applicable legal provisions, ... the Regulatory Authority shall ensure that the contract explicitly contains, among other clauses, those relating to: ... f) Right of use of land, permits, and relevant authorizations, when applicable |
| 16.3. Obtaining the required operational permits: 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) | According to Article 37(1)(f) of the PPP Regulation, Without prejudice to the applicable legal provisions, ... the Regulatory Authority shall ensure that the contract explicitly contains, among other clauses, those relating to: ... f) Right of use of land, permits, and relevant authorizations, when applicable |
| 16.4. Obtaining the required land: 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) | According to Article 37(1)(f) of the PPP Regulation, Without prejudice to the applicable legal provisions, ... the Regulatory Authority shall ensure that the contract explicitly contains, among other clauses, those relating to: ... f) Right of use of land, permits, and relevant authorizations, when applicable |
| 16.5. Obtaining the required right of way: Procuring authority (or other | No |

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| 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) | According to Article 37(1)(f) of the PPP Regulation, Without prejudice to the applicable legal provisions, ... the Regulatory Authority shall ensure that the contract explicitly contains, among other clauses, those relating to: ... f) Right of use of land, permits, and relevant authorizations, when applicable |
| 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. | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | The bid evaluation committee in Mozambique must integrate the following members: representatives from the Ministry of Economy and Finance, Ministry of Land, Environment and Rural Development, Ministry of Labor, Employment and Social Security and from the Central Bank of Mozambique. |
| The bid evaluation | No |

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| committee members require sufficient qualification without specific details. | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| The bid evaluation committee members are not required to have any specific qualifications. | No |
| Please elaborate and provide examples: | n/a |
| 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): | Article 32 of Decree No. 15/2010 provides that the procuring authority issues a public procurement notice to the press, at least twice and posts the notice in its head office, and publication is made through the newspaper with largest circulation in the country, through Official Gazette and internet (in cases of international call for tenders) |
| 19.1. If yes, is the public procurement notice published online? | Yes |
| If yes, please specify the website: | http://www.concursos.co.mz |

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| 20. Are foreign companies prohibited from participating in the bidding process? | <p>No</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| 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? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 69(1) of the Decree No. 15-2010, bidders shall be granted with a reasonable deadline for presenting their bids, which shall be of at least twenty one days. Note also that paragraph 3 of article 12 of the PPP Regulation establishes that tender documents shall establish the deadline for presentation of proposals and that the deadline shall be counted from the date of publication of the tender notice or from the date when the respective documents are made available to the interested parties. In case these deadlines are different, the last date prevails.</p> |
| and the time in calendar days: | <p>21</p> |
| 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 | <p>No</p> |

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| Default | Yes |
| Relevant legal/regulatory provision (if any) | According to Article 13(1) of the PPP Law: The general legal regime for the contracting of PPP is the public tender. |
| 22.2. Restricted tendering (with pre-qualification stage): Available | Yes |
| Default | No |
| Relevant legal/regulatory provision (if any) | According to Article 13(2) of the PPP Law and Article 13(2) of the PPP Regulation, In the public interest and meeting the legal requirements, the contracting procedure may be carried out by means of a public invitation to tender, with prior qualification or competition in two stages. |
| 22.3 Multi-stage tendering (with shortlisting of final candidate(s)): Available | Yes |
| Default | No |
| Relevant legal/regulatory provision (if any) | According to Article 16 of the PPP Regulations, a two steps procedure is used for projects with technical complexity ... The competition in pairs comprises a preliminary phase where interested parties submit initial technical proposals in order to be eligible for the second phase of the technical proposal and the financial proposal after being selected in the first step. |
| 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 |

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| ry provision (if any) | |
| 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 |
| 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): | <p>Article 44 of Decree No. 5/2016 establishes that the tender documents shall include information regarding the stages of the procurement process. A public tender process shall observe the following stages: (i) preparation and launching, (ii) presentation and opening proposals and qualification documents, and so on. Furthermore, Article 14 of PPP Regulations provides that the development of the public tender comprises the following steps: a) The preparation of tender documentation which should be based on the feasibility study information of the enterprise (or in two stages in the case of a contract); b) The launch and publication of the contract; c) the submission of tenders; d) The opening, analysis and evaluation of proposals and selection of proposals eligible for the analysis and assessment in accordance the contest rules; e) The classification of the technical proposals, resulting in the selection of winning tenderers (1st, 2nd and 3rd place), observing the rules of competition; f) The award of the contract to the winning bidder in 1st place and the exercise by interested bidders, the right of complaint about possible irregularities committed in the evaluation process, classification and clearance of the successful bidder, in accordance with contest rules; g) The negotiation of the contract for the project, (draft contract agreed upon); h) the conclusion of the contract, and registration with the private notary responsible for the protection after evaluation and approval of the project venture investment under hereinafter</p> |

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| | referred to in Articles 31 and 32 of this Regulation. 2. Submission of unsolicited proposals that are not included in public investment plans should follow the public tender procedure, in accordance with paragraph 5 of Article 13 of Law no. 15/2011 of 10 August. 3. The public tender referred to in the preceding paragraph is intended to assess and adjust the terms of the technical proposal, its quality, price and other conditions proposals for hiring, enjoying the proponent of enterprise initiative of the margin of preference of 15% the evaluation of tenders for the award contracting as a result of this bidding.m 4. On completion of the tender are complementarily, The provisions contained in the legislation on hiring of public works contract, supply of goods and provision services to the State. |
| 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): | No regulatory basis |
| 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): | When prequalification or shortlisting is used, the criteria are generally respected in practice |
| If no, please elaborate: | n/a |
| 23. Can interested parties/potential bidders submit | Yes |

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| questions to clarify the public procurement notice and/or the request for proposals? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Article 49 of Decree no. 5/2016, (applicable by way of Article 14 of the PPP Regulations), states that bidders shall be allowed to request clarification which they deem necessary to fully comprehend the tender documents. These clarifications shall be requested within the deadline for submission of proposals.</p> |
| 23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Article 49 of Decree no. 5/2016 provides: 1. Competitors can request the clarifications necessary for understanding and interpreting the Tender Documents in the first third of the deadline set for the submission of proposals ... the Procuring authority should send a copy of the responses to all competitors.</p> |
| 23.2. Based on your experience, is it always the case that this disclosure of information is done in practice? | <p>Yes</p> |
| If yes, please specify: | <p>Disclosure of the questions and clarifications about the public procurement notice to all potential bidders is always done in practice in Mozambique</p> |
| If no, please elaborate: | <p>n/a</p> |
| 24. Besides questions and clarifications, can the procuring | <p>No</p> |

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| authority conduct pre-bidding conference? | |
| 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 | Yes |

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| authority require the bidders to prepare and present a financial model with their proposals? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Article 14(1), paragraph b), of PPP Regulations (Decree 16/2012) imposes the presentation of a financial model by the bidders, and Article 19 presents the criteria for the assessment and establishes that the financial models of the proposals presented by the bidders/applicants are subject to an evaluation.</p> |
| If no, please elaborate: | <p>n/a</p> |
| 26. Does the procuring authority evaluate the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 56 (1) of Decree No. 5/2016: The proposals of the competitors are evaluated according to the criteria set out in the Tender Documents</p> |
| Evaluation criteria is not set in the tender documents | <p>No</p> |
| 27. In the case where only one proposal is submitted (sole proposals), which of the following options best describes the way the | <p>No</p> |

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| <p>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.</p> | |
| <p>Please specify and provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The procuring authority considers sole proposals valid as long as they meet the conditions outlined in the tender documents.</p> | No |
| <p>Please provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The procuring authority does not award a PPP contract if only one proposal is submitted.</p> | No |
| <p>Please provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The regulatory framework</p> | Yes |

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| does not include any provisions. | |
| 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): | Article 64 paragraph 2 of Decree No. 5/2016 foresees that awards shall be published in the press. |
| 28.1. If yes, is the public procurement award notice published online? | Yes |
| If yes, please specify the website: | As most PPPs are determined via direct award, at the end of the negotiation process a summary of the main terms agreed for the PPP is published in the official gazette, which may also be found on online legislation databases with paid subscriptions, such as: http://www.atneia.com http://www.lexlink.eu http://www.legis-palop.org/bd/ |
| 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): | Article 20 of the PPP Regulations (Decree 16/2012) clearly states that “award” refers to the indication and communication of the winner bid to all the bidders. In fact, Article 20 provides that the procuring entity notifies all bidders of the winning bid, allowing for a period of 30 days for the non-selected bidders to protest, if they deem it reasonable. |
| If no, please elaborate: | n/a |
| 29.1. If yes, does the notification of the result of the PPP procurement process include the | No |

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| grounds for the selection of the winning bid? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 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? | No |
| If yes, please provide the relevant legal/regulatory provisions (if any): | n/a |
| 31. Does the regulatory framework restrict negotiations with the | No |

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| selected bidder between the award and the signature of the PPP contract in order to prevent an unfair disadvantage to the other bidders? | |
| 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? | Yes |
| If yes, please provide the relevant legal/regulatory provisions (if any): | Paragraph 1 of article 24 of the PPP Regulations (Decree 16/2012) and Article 23 of the PPP Law (No. 15/2011) establish that the main terms of the contract shall be published in the Mozambican Official Gazette (“Boletim da República de Moçambique”). |
| 32.1. If yes, which of the following options best describes this publication (choose only one)?: Publication of the full PPP | No |

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| contract including all its annexes and appendixes | |
| Publication of the full PPP contract without including all its annexes and appendixes | No |
| Publication of a summary of the PPP contract without publishing the full PPP contract | Yes |
| Publication of a summary of the PPP contract along with the full PPP contract including all its annexes and appendixes | No |
| Publication of a summary of the PPP contract along with the full PPP contract without including all its annexes and appendixes | No |
| 32.2. If yes, is it published online? | Yes |
| If yes, please specify the website: | www.portaldogoverno.gov.mz.However, in practice, the publication of legislation at www.portaldogoverno.gov.mz is incomplete. The official gazette and main terms of PPP contracts can be found on legislation databases with paid subscriptions such as: http://www.atneia.com http://www.lexlink.eu http://www.legis-palop.org/bd/ |
| 32.3. If yes, does the procuring | Yes |

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| authority also publish any subsequent amendment made to the PPP contract? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 39 of PPP regulations, rules applied to the contract (including publication) also apply to its modifications.</p> |
| 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)? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>According to Article 5(3) of the PPP Law, the procuring authority (for the sector at stake) is the entity entrusted with the sectoral control of the contract and is responsible for the monitoring of the contract throughout its life cycle. Furthermore, Article 27 of the PPP Regulations provides that monitoring and evaluation of the project including process of verification , control and performance measurement must be done according to the clauses and relevant indicators provided for in the contract and must be compliant with Articles 33 and 34 of Law No. 15/2011 of 10 August. 2. The Regulatory Authority must ensure compliance with the provisions of the preceding paragraph, issue reports on the performance of enterprises semiannually and submit such reports to the authorities responsible for guardianships of the relevant sector. Additionally, Article 7 of the PPP Regulations provides that the regulatory authority performs: a) The supervision, monitoring and control to ensure fulfillment of contractual obligations as well as legal compliance, contractual and technical implementation of operations, management, exploration, production, maintenance and return of each project in an area under its jurisdiction; b) The monitoring of the pursuit and achievement of objectives, results, indicators and performance levels and standards and specifications contractually agreed upon, along with compliance with the law. Finally, Article 9(1)(m) of the PPP Regulations establishes the phases of a PPP project and states that one of the phases of the project is the monitoring and assessment phase, and Article 27, titled “monitoring and assessment”, establishes the guidelines to be considered.</p> |

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| 41.1. If yes, which of the following tools does it include (check all that apply)?: Establishment of a PPP contract management team | <p>No</p> |
| Relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa | <p>No</p> |
| Relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| Elaboration of a PPP implementation manual or an equivalent document | <p>No</p> |
| Relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| Establishment of personnel training programs (i.e. initial training and continued training throughout the course of the project) | <p>No</p> |

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| Relevant legal/regulatory provisions (if any): | n/a |
| Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.) | Yes |
| Relevant legal/regulatory provisions (if any): | <p>According to Article 15 of the PPP Law, (General Principles on Risk Prevention and Mitigation):</p> <ol style="list-style-type: none"> 1. The prevention and mitigation of risks by the contracting parties are their permanent obligation throughout the process of the PPP project, through the observance of following principles: <ol style="list-style-type: none"> (a) the professional, technical, technological, or commercial risks which, if they do occur, have a negative impact on the pursuit of the objectives, activities, goals or contractually agreed benefits. These risks are attributable to the private partner and the contractor, who are responsible for their prevention and mitigation as well as their consequences, damages and losses that may result from the occurrence of such risks; b) political and legislative risks and conflicts of interest of institutional nature and the granting of public planning that, in the event of their occurrence, actual losses to the enterprise are attributable to the State. Consequently, the procuring authority is responsible for their prevention and mitigation as well as that of the consequences, damages and occurrence of such risks. 2. At any stage of the approval process, implementation and management of the PPP contract shall be protected from the occurrence of any kind of risks referred to in Articles 16 and 17 below, the Contracting Parties. The Government and other competent entities, in their respective areas of action are responsible to prevent the occurrence of such risks |
| 41.2. Which of the following options best describes the required qualifications of the PPP contract management team members? (Please select | n/a |

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| <p>only one): The membership of the PPP contract management team is specified and/or its members are required to meet detailed qualifications.</p> | |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The PPP contract management team members are required to meet sufficient qualification without specific details.</p> | n/a |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | n/a |
| <p>The PPP contract management team members are not required to meet any specific qualifications.</p> | n/a |
| <p>Please elaborate and provide examples:</p> | n/a |
| <p>42. Does the procuring or</p> | Yes |

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| contract management authority establish a system for tracking progress and completion of construction works under a PPP contract? | |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Article 27 of the PPP Regulations mandates the Procuring Authority to track compliance of indicators established in the contract during the completion of construction work under a PPP contract. Hence, as long as construction milestones are established in the contract, they shall be monitored by the mentioned authority.</p> <p>The above Article provides: 1. The monitoring and evaluation of the work is done through verification, control and measurement of the operational, economic and financial performance, in accordance with the clauses foreseen in the contract. Such evaluation is also done regarding the degree of the expected results, as well as the financial benefits and expected socio-economic factors, provided for in Articles 33 and 34 of Law no. 15/2011.</p> <p>2. The Regulatory Authority shall be responsible of the observance of the provisions of the preceding paragraph. It should also issue the performance of the projects in a semiannual reports that would be submitted to the sectoral and financial responsible bodies</p> |
| 42.1. If yes, is the PPP contract construction performance information made available to the public? | <p>No</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>n/a</p> |
| 42.2. If yes, is the PPP contract construction performance information made publicly available online? | <p>n/a</p> |
| If yes, please specify the website: | <p>n/a</p> |

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| 43. Does the procuring or contract management authority establish a monitoring and evaluation system of the PPP contract implementation after construction? | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory provisions (if any): | <p>Article 27(2) of the PPP Regulations provides: It is in particular the responsibility of the Regulatory Authority to ensure compliance with the provisions of the preceding paragraph , issue reports performance of enterprises in a semiannual fashion, and submit such reports to the authorities responsible for guardianships. Furthermore, Article 5(3) provides that: The entity responsible for sectoral protection, based on information collected from the PPP projects, PGD and EC, via the Regulatory Authority must also ensure: a) The analysis and monitoring during the life of the project, sharing of benefits and risk-taking, and the prevention of risks particularly for the national economy of the State, and to Mozambican society; b) Monitoring and timely evaluation of the results expected of each project; c) The enjoyment of guarantees or incentives under which they have been granted in the light of Law no. 15/2011 of 10 August, and other applicable laws; d) Facilitating the collection and regular analysis of economic and financial information for each project; e) The periodic preparation of aggregate reports about the performance of projects in the areas under his tutelage.</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 | <p>Yes</p> |
| Relevant legal/regulatory provisions (if any) | <p>According to Article 7 of the PPP Regulations, The regulatory authority is responsible for... (b) monitoring the pursuit and achievement of the objectives, results, indicators and levels of performance and contractually agreed standards and specifications as well as the observance of the law</p> <p>Article 27 of the PPP Regulations provides that 1. The monitoring and evaluation of the work is done through verification, control and measurement of the operational, economic and financial performance, in accordance with the clauses foreseen in the contract. Such evaluation is also done regarding the degree of the expected results, as well as the financial</p> |

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| | benefits and expected socio-economic factors, provided for in Articles 33 and 34 of Law no. 15/2011. |
| 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) | According to Article 9 of the PPP Law, 2. For the purposes of paragraph b) of the preceding paragraph and without prejudice to the confidentiality of the strategic information and competitive commercial activity of the private entity in a PPP contract, the contractor should organize and provide the information required by competent authorities about the performance of their duties and the monitoring of these ventures, in accordance with this Law. |
| The procuring or contract management authority must periodically gather information on the performance of the PPP contract | Yes |
| Relevant legal/regulatory provisions (if any) | Article 27 (2) of the PPP Regulations (Decree No. 16/2012) provide that It is in particular the responsibility of the Regulatory Authority to ensure compliance with the provisions of the preceding paragraph , issue reports performance of enterprises in a semiannual fashion, and submit such reports to the authorities responsible for guardianships. Therefore, we conclude |

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| | that in Mozambique, the procuring authority is required to periodically gather information on the performance of the PPP contract and report to the guardianship authorities |
| 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 the operation of a PPP project? | No |
| 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 | Yes |

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| composition) of the private partner and/or assignment of the PPP contract? | |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>Article 21(6) of the PPP Law provides that any transfer of the contractual and statutory position of the private partner to a third party requires express consent, under the terms provided in the respective contract. Furthermore, Article 42 of the PPP Regulations provides for the rules applicable in case of transfer of contractual position; it specifically states that, subject to the limitations provided by law, the private partner can transmit to others its contract, partially or totally, provided that the procuring authority expressly agrees on the transmission and the terms. Consent on the transmission requires submission of documents proving that the transferee will comply with all the contractual terms of the concession in force. Finally, the assumption and fulfillment of the terms of the contract can not occur under less favorable to the State, to the national economy and the Mozambican society, than those which applied at the time the initial contract was transferred, which should be adequately covered by financial guarantee given by the transferee. (As a final note, the transmission of contract should remain extraordinary and prove to be beneficial).</p> |
| 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). | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</p> |
| Changes of ownership/contract assignment, at any time during the | <p>Yes</p> |

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| contract, must preserve the same technical qualifications as the original operator. | |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>Article 21(6) of PPP Law and Article 42 of PPP Regulations determine that the assignee must guarantee to fully comply with the terms of the procurement contract already in place, therefore implicitly meeting the same minimum qualifications as the original operator.</p> |
| In other cases, flexibility to change the ownership structure and/or assign the contract. | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</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>Yes</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual | <p>Article 21 (4) of the PPP Law provides that the amendment or revision of the main contract follows the process observed for the approval and conclusion of the initial contract. Additionally, Article 39 of the PPP Regulations provides that the parties of the PPP contract may review it, either to amend it or to correct inefficiencies. Furthermore, changes of the terms of the contract should be made through an Addendum. Article 39 specifically states that the revision or modification of the contract only takes place through addenda and by mutual</p> |

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| provisions (if any): | <p>agreement between the contracting parties or for correction or adjustment purposes in situations arising from events or factors beyond the control or management capacity of any Contracting Party, and for the purpose of mitigating the effects of force majeure events or for contracted conditions such as: a) agreed deadlines for implementation; b) Levels and types of investments agreed upon; c) Levels of production and meeting the needs; d) benefit levels expected (financial and socio-economic); e) Certain indicators or ratios contractually agreed upon; f) Other aspects considered relevant for this purpose by the parties. Finally, the contracting parties must comply with the same procedure observed for the approval and conclusion of the original contract referred to in the addendum, namely: a) analysis and evaluation of the need for foundation revision or change in view; b) analyzing, evaluating and negotiating the terms of the addendum; c) an indication of the forms of mitigation and compensation in the event of unforeseen circumstances; d) sharing of benefits and the assumption and risk prevention, in light of the initial contract and accordance with Articles 15 to 18 of Law no. 15/2011 of 10 of August; e) Approval of the addendum of the contract amendment...</p> |
| 46.1. If yes, is an approval from a government authority, other than the procuring authority, required? | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</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>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual | <p>n/a</p> |

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| provisions (if any): | |
| A change in the risk allocation of the contract. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the financial and/or economic balance of the contract. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |
| A change in the duration of the contract. | Yes |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 39 (1) (a) of the PPP Regulations provides that the revision or modification of the contract only takes place through addenda and by mutual agreement between the contracting parties or for correction or adjustment purposes in situations arising from events or factors beyond the control or management capacity of any Contracting Party, and for the purpose of mitigating the effects of force majeure events or for contracted conditions such as: a) agreed deadlines for implementation |
| A change in the agreed price or tariff. | No |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | n/a |

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| 46.3. Can the procuring authority unilaterally modify a PPP contract? | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</p> |
| 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 | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>Article 18 of PPP Law establishes that risks arising from force majeure must be assessed in a way which is fair to all parties involved, taking into account each party's responsibilities and obligations. Additionally, Article 63 of PPP Regulations expressly regulates the Force Majeure circumstance that might occur during the life of the PPP contract. In fact, Article 63 titled Mitigating the effects of force majeure provides that: 1. The Parties undertake to report any occurrence defined as force majeure event whose effect is extended or is expected to last for more than fifteen consecutive days. The parties must also indicate the performance of which obligations would be compromised by the occurrence of such an event and indicate the measures that need to be taken to mitigate their impact. The occurrence of force majeure event exonerates the parties of responsibility for compliance with the obligations under contract , and the deadline for delivery of the contract can be extended if it was affected by the occurrence of this event .</p> |
| Material Adverse government action . | <p>Yes</p> |
| If yes, please provide the relevant | <p>Article 15 of PPP Law provides for the mitigation of the risks that should be borne by the Public entity, including any political and legislative risks that have a negative impact on the venture. Furthermore, Article 16 provides that The Government and the contracting party</p> |

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| legal/regulatory/standard contractual provisions (if any): | <p>shall ensure the prevention and the mitigation of occurrence of the following risks: a) political and legislative risks, arising from the unilateral adoption, by the Government or public institutions, of measures or the practice of acts with negative and adverse effects on the normal implementation, operation and management of the PPP undertaking or its competitiveness and economic and financial feasibility; b) conflict of interests of an institutional nature arising from the full or partial concentration or accumulation, in the same public entity, of the functions of regulatory authority and granting authority, as well as of quota holder or shareholder of the contracted party; c) related to the granting of land and public planning. 2. The Government shall further assume, as applicable, the implications arising from the granting or facilitation of access by the PPP undertakings to financial guarantees or facilities allowed under the terms of articles 10, 11 and 20 of this Law. Additionally, Article 60 of the PPP Regulations regulates material adverse government action that may occur during the life of the PPP contract. In fact, Article 60 provides that the Contracting Authority, the Regulatory Authority and the entities responsible for sectoral guardianships should prevent the possibility of any other type of risk not expressly dealt with in this Regulation, such as the risks arising from: a) non suitable treatment not expressly provided for in the contract, the occurrence of force majeure events and of the mechanisms and forms of mitigating their perverse effects ; b) assignment of undue assumption, by the State or another public entity, of financial burden or economic burden of the enterprise; c) Other events with negative impact attributable to the Contracting Party or the public entity or the State (without corresponding economic consideration).</p> |
| Change in the Law. | <p>Yes</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>Article 50 of the PPP Regulations provide that in order to prevent or mitigate the effects of unilateral measures or practice acts with negative adverse effects on the smooth implementation, operation and project management PPP or its competitiveness and economic-feasibility, the government or other public institution responsible for this material effect must: Submit the proposal of measures or the practice of acts in view of the jury, the Commission and the Regulatory Authority for analysis, and evaluation to assess their viability and feasibility, their impact and consequently, order technical, economic, social and any other forms of compensation to the contractor (where necessary); Give priority to consultation and negotiation with the entity contracted, the matters covered by such measures or practice acts. Finally, the mitigation of the effects of unilateral measures taken or the practice of acts accomplished by the Government must observe the principles set out in paragraph 1 of article 15 of Law no. 15/2011, of 10 August, and on the basis of respect for fairness and justice.</p> |
| Refinancing. | <p>No</p> |
| If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any): | <p>n/a</p> |
| Subcontracting and replacement of the | <p>No</p> |

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| subcontractors. | |
| 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): | Articles 36 and 39 of the PPP Law (n.º 15/2011), and Article 72 of PPP Regulations, (Decree n.º 16/2012) establish how the parties shall proceed when conflict arises. In fact, the regulatory framework prescribes that a dispute resolution mechanism should be regulated in the contract and that the contract may set preferences for mediation and arbitration. |
| 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 |

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| Local courts | Yes |
| Domestic arbitration | Yes |
| International arbitration | Yes |
| Investor-State Dispute Settlement (ISDS) | Yes |
| Mediation | Yes |
| Please provide the relevant legal/regulatory/standard contractual provisions (if any) | Article 39 of the PPP Law states that 2. To allow for speedier dispute resolution and safeguarding the dynamics of business economic life, especially for the satisfaction of collective needs, PPP contracts may privilege the resolution of emerging conflicts through mediation and arbitration |
| 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): | According to the article 43 of the Law n. 11/99, 8 of July (Law of the Arbitration, Conciliation and Mediation) the arbitration award have the same effects as a local court sentence and constitute an enforceable title. That means that the arbitration awards are enforceable by the local courts |
| International arbitration | Yes |
| If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any): | <p>According to the article 43 of the Law n. 11/99, 8 of July (Law of the Arbitration, Conciliation and Mediation) the arbitration award have the same effects as a local court sentence and constitute an enforceable title. That means that the arbitration awards are enforceable by the local courts.</p> <p>Additionally, Mozambique adopted the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which entered into force in the country on 9 September 1998.</p> <p>Under article I(3) of the New York Convention, Mozambique declared that it would enforce an award rendered in another contracting state's territory on the basis of reciprocity. No other reservation was made by Mozambique to the New York Convention.</p> |
| Investor-State arbitration | Yes |

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| <p>If yes, please provide the relevant legal/regulatory provisions/standard contractual provisions (if any):</p> | <p>Mozambique is part of the ICSID Convention</p> |
| <p>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?</p> | <p>No</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>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</p> | <p>No</p> |

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| <p>under threat of termination for failure to meet service obligations?</p> | |
| <p>If yes, please provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>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.</p> | <p>n/a</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any):</p> | <p>n/a</p> |
| <p>The regulatory framework prescribes that a direct agreement should be signed with the lenders.</p> | <p>n/a</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory/standard contractual</p> | <p>n/a</p> |

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| provisions (if any): | |
| 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? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | (1) PPP Law in Mozambique provides that: The contracting parties shall fix, in the contract, the reasons for its withdrawal or termination and the respective mechanisms of its claim, when applicable. Constitutes causes for termination of the contract: (i) serious breach of the contract, which affects the objectives and purposes of the project; (ii) Abandonment of the contract execution or implementation of its scope (iii) Transmission of the contractual position to a third party by the contracted party or conclusion and exploration, temporary or permanent, of another business with the same objective of the contract in force, without authorization or written consent by the contractor and the entities responsible for the sectoral and financial custody; (iv) Failure in complying with the payment of the due rates or other counterparts in terms of the contract; (v) default in service provision or public good, in terms contractually agreed. (2) Additionally, PPP Regulations in Mozambique provide that if non-compliance is imputable to the defaulting party, the latter shall be notified in writing, within 120 days, fixed by the contractor party, to comply with its liabilities and repair the damages eventually deriving from non-compliance with the terms of the contract. In the event of default, unless otherwise provided in the contract, or in the applicable sectorial legislation, the other party may immediately terminate the contract, after notifying the defaulting party |


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| | about its decision to terminate the agreement. (1) Article 26 of PPP Law: n.º 15/2011, and(2) Article 44 of PPP Regulations: Decree n.º 16/2012 |
| 51.1. If yes, does the regulatory framework (including standard contractual clauses) establish the consequences for the termination of the PPP contract? | Yes |
| If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions (if any): | Article 44 of the PPP Regulations establishes that if a PPP is terminated, the private party loses any guarantee provided to ensure a sound execution of the contract and may also be obliged to indemnify the public party for damages and losses arising from the termination. In case the termination is due to reasons attributable to the public party, the private party shall be indemnified pursuant to the law, and additionally, the guarantee / guarantees it has provided should be returned. |
| Unsolicited Proposals | |
| 34. Are unsolicited proposals in Mozambique: (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 | No |

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| <p>practice? (if not done in practice, skip to section F)</p> | |
| <p>If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions</p> | <p>Article 13 (5) of PPP Law provides that Proposals of PPP undertakings at private initiative are subject to public tender intended to determine or ensure the technical and quality terms, the price and further conditions offered by the proponent, which shall benefit from the right and preference margin of 15% in the assessment of the technical and financial proposals resulting from such tender and without any right to compensation for costs incurred in the preparation of the proposal. Additionally, Article 14 (2) and (3) of PPP Regulations allow for the submission of unsolicited proposals in Mozambique</p> |
| <p>35. Does the procuring authority conduct an assessment to evaluate unsolicited proposals? (if not, skip to question 37)</p> | <p>Yes</p> |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any)</p> | <p>Article 13 (5) of PPP Law, and Articles 3 (2) and 17 of PPP Regulations establish that the same phases that need to be followed pursuant to a public tender apply when dealing with a proposal that didn't follow a public tender (such as unsolicited proposals). Therefore, the procuring authority needs to subject unsolicited proposals to a public auction, in order to assess its price, quality and technical conditions</p> |
| <p>35.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>36. Which of the following options best</p> | <p>No</p> |

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| <p>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.</p> | |
| <p>If yes, please specify and provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |
| <p>The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures 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> |

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| <p>The procuring authority does not evaluate unsolicited proposals against existing government priorities.</p> | <p>Yes</p> |
| <p>Please elaborate and provide examples:</p> | <p>The procuring authority does not evaluate unsolicited proposals against existing government priorities in Mozambique</p> |
| <p>37. Does the procuring authority initiate a competitive PPP procurement procedure when proceeding with the unsolicited proposal?</p> | <p>Yes</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>Paragraph 5 of article 13 of the PPP Law and paragraphs 2 and 3 of article 14 of the PPP Regulation provide for a competitive PPP procurement procedure when proceeding with the unsolicited proposals</p> |
| <p>38. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides the proponent) to prepare their proposals?</p> | <p>No</p> |
| <p>If yes, please provide the relevant legal/regulatory provisions (if any):</p> | <p>n/a</p> |

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| 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 proponent for the project development cost). | No |
| 39.3 Bid Bonus. | Yes |
| 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 | Paragraph 5 of article 13 of the PPP Law and paragraph 3 of article 14 of the PPP Regulation establish that the initial bid is subject to public bidding for other interested bidders, but that the initial bidder enjoys a preference margin of 15% (fifteen percent) in the assessment of |



**ry provisions
(if any):**

technical and financial criteria. These provisions also very clearly state that the initial bidder is not granted with a right for compensation of the costs incurred in the preparation of the proposal. In fact, according to one of our best contributors, The Mozambican PPP legal framework opts for the Bonus system, one of the three most common models existing to deal with unsolicited proposals. In this type of model, a bonus is granted to the original bidder, which may be either the attribution of a certain number of points relevant to add final value to the proposal or the attribution of a percentage within which the original proposal shall be preferred over the others.