WORLD BANK GROUP

# BENCHMARKING INFRASTRUCTURE 2023 IN KUWAIT

| SURVEY QUESTION | ANALYSIS |
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| **Regulatory and Institutional Framework for PPPs** | |
| **1. Does the regulatory framework in your country allow procuring PPPs?** | Yes |
| **If yes, please specify the relevant regulatory framework and the year of adoption:** | PPPs are governed by a specific regulatory framework in Kuwait. The regulations that fall under this framework include: 1) Law No. 116 of 2014 Regarding Public Private Partnerships [hereinafter "PPP Law"] Article 1(1) of which provides, ""Public Private Partnership Project" or "PPP Project": a project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution." ; 2) Decree No. 78 of 2015 issuing the Executive Regulations of Law No 116 of 2014 Regarding Public Private Partnerships [hereinafter "PPP Executive Regulations"]; 3) The PPP Project Guidebook 2018 [hereinafter "PPP Guidebook"], which provides detailed guidance on the PPP project process in Kuwait. The aforementioned shall be the main instruments to procure PPP projects for purposes of this analysis. |
| **and provide a link to a government–supported website where the mentioned regulatory framework is available or provide an electronic copy of it:** | PPP Law and Executive Regulation: http://www.kapp.gov.kw/en/Legislation<br>PPP Guidebook: http://www.kapp.gov.kw/en/PPP-Project-Guidebook |
| **1.1. If yes, for which of the following sectors is the above-mentioned regulatory framework applicable? Transportation** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 1(1) of the PPP Law provides the general definition of a PPP project in which it applies to and does not restrict its application explicitly. "Public Private Partnership Project" or "PPP Project" are defined as: a project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution." The regulatory framework accordingly applies to transport projects. |
| **1.1. Water Supply, Sewerage, Solid Waste Management and irrigation.** | Yes |

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| **If yes, please provide the relevant legal/regulatory provisions:** | Article 1(1) of the PPP Law provides the general definition of a PPP project in which it applies to and does not restrict its application explicitly. "Public Private Partnership Project" or "PPP Project" are defined as: a project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution." The regulatory framework accordingly applies to water supply, sewerage, solidwaste management and irrigation projects. |
| **1.1. Energy generation/transmission and distribution.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | While Article 1(1) of the PPP Law provides a general definition of a PPP project, the Independent Water and Power Purchase (IWPP) Law (Law No. 39/2010) Promulgating the Incorporation of Kuwaiti Joint Stock Companies to Undertake the Building and Execution of Electricity Power and Water Desalination Stations in Kuwait explicitly mentions it applies to power projects.<br>The IWPP Law (Law No. 39/2010) sets specific requirements with respect to building and implementing electric power stations and water desalination plants in Kuwait as part of a PPP. Any project company undertaking a project that falls within the scope of the IWPP law will be subject to its provisions. In case of any conflict with another law, including PPP law, IWPP law will take precedence.<br>The PPP Guidebook provides in p. 17that, "The IWPP Law governs those projects which fall under its mandate, including projects which are purely power projects without any water desalination component. In case of conflicts between the IWPP Law and the PPP Law, the former will prevail. However, where the IWPP Law is silent on matters that, in turn, are covered in the PPP Law, the provisions of the latter apply to such projects." |
| **1.1. ICT** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 1(1) of the PPP Law provides the general definition of a PPP project in which it applies to and does not restrict its application explicitly. "Public Private Partnership Project" or "PPP Project" are defined as: a project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution." The regulatory framework accordingly applies to ICT projects. |
| **1.1. Social Infrastructure** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 1(1) of the PPP Law provides the general definition of a PPP project in which it applies to and does not restrict its application explicitly. "Public Private Partnership Project" or "PPP Project" are defined as: a project to |

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| | implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution." The regulatory framework accordingly applies to social infrastructure projects. |
| **1.1. Other** | No |
| **If yes, specify and provide the relevant legal/regulatory provisions:** | n/a |
| **2.1. Besides national defense and other matters of national security, does the regulatory framework explicitly prohibits or restricts PPPs in any of the following sectors? Transportation** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **2.2. Water Supply, Sewerage, Solid Waste Management and irrigation** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **2.3. Energy generation, transmission and distribution** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | KAPP and the Higher Committee issued a clarification to bidders on the Al Abdaliyah ISCC PPP Project in March 2017 that the project is outside of the scope of the PPP Law and the PPP Regulations and should be procured under the IWPP Law (No. 39 of 2010 Regarding the Establishment of Kuwaiti Joint Stock Companies to Undertake the Construction and Implementation of Electrical Power Plants and Desalinating Water in Kuwait). This would also apply to two other power and water projects currently under procurement - the Az Zour North IWPP (Phase 2) and the Al Khairan IWPP (Phase 1).<br>The IWPP Law thus applies to power projects. The IWPP Law sets specific requirements with respect to building and implementing electric power stations and water desalination plants in Kuwait as part of a PPP. Any project company undertaking a project that falls within the scope of the IWPP law will be subject to its provisions. In case of any conflict with another law, including PPP law, IWPP law will take precedence.<br>The PPP Guidebook provides in p. 17 that, "The IWPP Law governs those projects which fall under its mandate, including projects which are purely power projects without any water desalination component. In case of conflicts between the IWPP Law and the PPP Law, the former will prevail. However, where the IWPP Law is silent on matters that, in turn, are covered in the PPP Law, the provisions of the latter apply to such projects." |

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| **2.4. ICT** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **2.5. Social infrastructure, including hospitals, education, prisons, housing, etc.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **2.6. Other.** | Yes |
| **If yes, specify and provide the relevant legal/regulatory provisions:** | Projects related to Natural Resources are specified in the PPP Law and require particular procedures and laws as per Article 1(1) of the PPP Law and Articles (152) and (153) of the Kuwaiti Constitution. Article 152 of the Constitution of the State of Kuwait provides, "No concession for exploitation of either a natural resource or a public service may be granted except by a law and for a limited period. In this respect, the preparatory measures facilitate the operations of prospecting and exploring and ensure publicity and competition." |
| **3. Please identify the PPP procuring authorities in Kuwait and provide their website(s) (if available):** | PPP projects procuring authorities in Kuwait shall be the relevant public entity (any government, Ministry or Department, or any public entity with a supplementary or an independent budget, Article 1(8) of the PPP Law) and KAPP http://www.kapp.gov.kw/en/Home in coordination with the public entity. For purposes of the case study assumption, the Ministry of Public Works http://www.mpw.gov.kw/sites/en/Pages/HomePage.aspx and Public Authority for Roads and Transportation http://www.part.gov.kw/ shall be the relevant procuring authorities.<br>Article 2 of the PPP Executive Regulations provides, "The proposal for the procurement and implementation of a PPP Project may be submitted by the following entities:<br>1. Public Entities: a Public Entity wishing to propose a project that falls within its competences in accordance with the PPP Law shall submit a request to the Authority along with the comprehensive feasibility studies of the project in accordance with the Law, its Executive Regulations and the Guidebook.<br>2. The Higher Committee: the Higher Committee approves the request of the relevant Public Entity for the procurement of a PPP Project in accordance with a PPP Model, and it may propose PPP Projects to Public Entities...<br>The Authority shall in coordination with the Public Entity review the feasibility studies presented by the aforementioned entities and finalize the same, as needed, in order to submit an appropriate recommendation thereon to the Higher Committee.<br>The Authority may prepare the project's comprehensive feasibility studies and procurement documents, and it may in allcases seek support from advisory firms and specialized offices whether local or foreign as it deems suitable for this purpose in accordance with the provisions of the laws and regulations." |
| **4. Is there a specialized government entity(ies) that** | Yes |

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| **facilitates the PPP program (PPP Unit)?** | |
| **If yes, please indicate its name(s), and its website(s) (if available):** | Kuwait Authority for Partnership Projects (KAPP) (formerly PTB) http://www.kapp.gov.kw/en/Home |
| **the year of establishment:** | 2008 |
| **and the relevant legal/regulatory basis:** | Article 4 of the PPP Law provides that, "A public authority called "Kuwait Authority for Partnership Projects" shall be established and shall be attached to the Minister of Finance.<br>Without prejudice to the provisions of Articles 5 and 38 of Law No. 15 of 1979, the Authority shall have a body of employees and such employees shall be appointed in accordance with the rules set by the Higher Committee in exception to the Civil Service Law and its regime, including the rules of appointment and promotion, the disciplinary sanctions, the salaries and in-kind and monetary bonuses granted to the employees of the Authority. The Minister of Finance shall issue, within six months as of the date of entry into force of this Law, the required decisions for the transfer of whom he deems appropriate fromthe Partnership Technical Bureau employees to the Authority." |
| **4. If yes, what are the main responsibilities of the agency(ies) (check all that apply): PPP regulation and policy guidance.** | Yes |
| **4. PPP capacity building for other public authorities.** | Yes |
| **4. PPP promotion among the public and/or private sectors in national and international forums.** | Yes |
| **4. Technical support in implementing PPP projects.** | Yes |
| **4. Identification and selection of PPP projects from the pipeline.** | Yes |
| **4. Revision of fiscal risks borne by the Government.** | Yes |
| **4. Consultation with affected communities on potential impact of PPP projects.** | No |
| **4. Approval of PPP projects.** | Yes |
| **4. Undertaking the procurement of PPPs.** | Yes |
| **4. Oversight of PPP implementation.** | Yes |
| **4. Post-project appraisal and audit.** | No |
| **4. Other:** | No |
| **Please specify:** | n/a |

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| **Please provide the relevant legal/regulatory provisions:** | Article 6 of the PPP Law provides, "The Authority (KAPP) shall collaborate and cooperate with the Public Entities for the implementation of PPP Projects in compliance with the provisions of this Law, and shall carry out the following:<br>1. Conduct surveys and preliminary studies to identify projects that may be procured under this Law and submit reports regarding the same to the Higher Committee.<br>2. Review and study projects and Initiatives prepared by the Public Entities or Concept proposer and submit appropriate recommendations regarding the same to the Higher Committee.<br>3. Assess the comprehensive feasibility studies of PPP Projects and proposed Concepts, prepare and complete these studies as needed, submit appropriate recommendations in relation to the same to the Higher Committee in preparation for the procurement of the project.<br>4. Prepare a guidebook for PPP Projects.<br>5. Set the mechanism for the submission of Initiatives as well as their methods of evaluation and procurement, in accordance with the provisions of this Law.<br>6. Set out approaches to follow up and evaluate the performance of approved PPP Projects.<br>7. Develop contract templates, including required terms and provisions, to be submitted to the Higher Committee for approval.<br>8. Prepare the legal drafting of PPP Agreements and the Terms of Reference thereof.<br>9. Submit recommendations to the Higher Committee for the approval of the Successful Investor after a successful negotiation.<br>10. Incorporate public joint-stock companies for the implementation of PPP Projects and determine the capital thereof in accordance with the provisions of this Law.<br>11. Develop PPP Projects programs and follow up on their completion and issue necessary decisions in relation thereto.<br>12. Compile and submit a semi-annual report on PPP Projects to the Higher Committee for its approval, prior to the Minister of Finance presenting the same to the Council of Ministers.<br>13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected.<br>14. Propose the exemption of the project from taxes and custom duties and raise such recommendation to the Higher Committee.<br>And it shall also exercise all other competences stipulated in this Law." |
| **4.1. Additionally, is there a central project development fund (support mechanism) for project preparation?** | No |
| **If yes, please indicate its name, and its website (if available):** | n/a |
| **the year of establishment:** | n/a |
| **and the relevant legal/regulatory basis:** | n/a |

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| **5. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:** | n/a |
| **Preparation of PPPs** | |
| **6. 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:** | Article 2 of the PPP Law provides, "In accordance with this Law, a Higher Committee called the "Higher Committee for Public-Private Partnership Projects" shall be established by a decree (and shall replace the Higher Committee for projects built on state-owned property established by Decree No 145 of 2008), and shall assume the powers and authorities of the Authority's board of directors provided for under this Law. The Higher Committee shall be chaired by the Minister of Finance...<br>The decisions of the Higher Committee shall only be effective upon their approval by the Minister of Finance."<br>Article 3 of the same Law provides, "The Higher Committee shall have the following competences: Approving the request of the relevant Public Entity for the procurement of PPP Projects in accordance with the PPP Model and proposing PPP Projects to the Public Entities. |
| **6.1. 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:** | Article 2 of the PPP Law provides, "In accordance with this Law, a Higher Committee called the "Higher Committee for Public-Private Partnership Projects" shall be established by a decree (and shall replace the Higher Committee for projects built on state-owned property established by Decree No 145 of 2008), and shall assume the powers and authorities of the Authority's board of directors provided for under this Law. The Higher Committee shall be chaired by the Minister of Finance...<br>The decisions of the Higher Committee shall only be effective upon their approval by the Minister of Finance."<br>Article 3 of the same Law provides, "The Higher Committee shall have the following competences: 8. Approving the Successful Investor based on the recommendation of the Authority.<br>9. Approving the PPPAgreements to be executed by the Public Entity." |
| **6.2. Does the Ministry of Finance (or government more broadly) have a specific system of: Budgeting for PPP projects (e.g., including the estimated total cost of the PPP project over the life of** | No |

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| the project in the budget cycle). | |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **6.2. Reporting liabilities (explicit and implicit, direct and contingent) arising from PPPs (e.g., disclosing information about the public sector commitments on the PPP project).** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **6.2. Accounting liabilities (explicit and implicit, direct and contingent) arising from PPPs (e.g., the public sector commitments to the PPP project are recorded in the national accounts).** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **6.3. If yes, please indicate which of the following alternatives best describes the regulation: International Public Sector Accounting Standards (IPSAS).** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **6.3. Other international standard (e.g. European System of Accounts).** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **6.3. Other** | No |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | n/a |
| **6.4. Does the Ministry of Finance (or government more broadly) disclose PPP liabilities (explicit and implicit, direct and contingent) on an online platform/database?** | No |

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| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **and specify the website:** | n/a |
| **7. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, do(es) any other authority(ies) 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:** | The Higher Committee for PPP Projects (Higher Committee). |
| **and provide the relevant legal/regulatory provisions:** | The Higher Committee for PPP Projects (Higher Committee) as per Article 3 of the PPP Law, which provides, "The Higher Committee shall have the following competences: 7. Approving the studies and Concepts of PPP Projects and approving the procurement thereof in accordance with the PPP Model." |
| **7.1. Besides the procuring authority and the Ministry of Finance or Central Budgetary Authority, does any other authority(ies) approve the PPP project before signing the PPP contract?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | The Higher Committee for PPP Projects (Higher Committee) as per Article 3 of the PPP Law, which provides, "The Higher Committee shall have the following competences: 8. Approving the Successful Investor based on the recommendation of the Authority.<br>9. Approving the PPP Agreements to be executed by the Public Entity."<br>Moreover, the State Audi Bureau shall approve PPP projects according to Article 31 of the PPP Law, providing, "PPP Agreements executed in accordance with the provisions of this Law, including consultancy agreements, shall be subject to ex ante and ex post auditing of the State Audit Bureau according to rules of supervision set forth in Law No 30 of 1964." And Article 44(1) of the PPP Executive Regulations provides, "The award of the competition is in all cases subject to the approval of the State Audit Bureau in accordance with Article (31) of the Law. The procurement documents and the offer of the Preferred Investor shall all be presented to the State Audit Bureau, as well as any the minutes of any negotiations undertaken with it and the final terms agreed upon, taking into consideration the duration of validity of the bid bond." |
| **8. Please select the option that best describes the way your government ensures that PPP projects are consistent with other government public priorities** | No |

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| **(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.** | |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | n/a |
| **8. 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.** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 3(a) of the PPP Law provides, "The Higher Committee shall have the following competences: 1. Setting the general policies for projects and initiatives of strategic importance to the national economy, identifying priorities and approving detailed documentation related thereto." Contributors further confirm that KAPP has an internal PMO and strategy analysis and management system uses to prioritize the PPP projects and ensure they are inline with the national Governmental Plan. |
| **8. The procuring authority does not evaluate PPPs against existing government priorities.** | No |
| **If yes, please elaborate and provide examples:** | n/a |
| **9. 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): 9.1. Socio-economic analysis (cost-benefit analysis of the socio-economic impact of the PPP project)** | Yes |
| **Relevant legal/regulatory provision** | Article 5 of the PPP Executive Regulations provides, "If the approval of the project in accordance with the PPP Model is recommended, the |

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| | recommendation shall include the following:<br>7. The proposed service to be provided, its economic, social and/or service importance, or whether it is a development or improvement of an existing service or reduction of the cost thereof or improvement of its efficiency."<br>Article 8 of these Regulations also provides, "The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project's investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other<br>requirements as per the best practices in this regards." |
| **Is there a specific methodology?** | No |
| **If yes, please elaborate** | n/a |
| **9.2. Fiscal Affordability assessment, including the identification of the required long-term public commitments (explicit and implicit, direct and contingent liabilities)** | Yes |
| **Relevant legal/regulatory provision** | Article 5 of the PPP Executive Regulations provides, "If the approval of the project in accordance with the PPP Model is recommended, the recommendation shall include the following:<br>7. The proposed service to be provided, its economic, social and/or service importance, or whether it is a development or improvement of an existing service or reduction of the cost thereof or improvement of its efficiency."<br>Article 8 of these Regulations also provides, "The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project's investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other<br>requirements as per the best practices in this regards." Article 9 of the Regulations further provides, "The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its<br>economic aspect, taking into consideration the following rules: 3. Assumptions with regards to the project's ability to recover the cost and the expected |

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| | internal rate of return of the project... 5. The expected Total Cost for the project including the suggested<br>capital in addition to the anticipated operational and maintenance expenses for one year of operation... 7. Determination of the anticipated economic benefits of the project... 15.Funding sources." |
| **Is there a specific methodology?** | Yes |
| **If yes, please elaborate** | Article 11 of the PPP Executive Regulations provides, "The Total Cost of a PPP Project shall be determined in accordance with the project's feasibility study, which shall include the following components:<br>1. The market value for the usufruct right of the project's land, if any.<br>2. The value of the assets provided by the Public Entities to the Investor or the fee due for the land usufruct right.<br>3. The estimated expenses for the implementation of the project including capital expenditures, comprising fees for the establishment, design, construction, financing and equipping.<br>4. The estimated expenses for the operation of the project for one year.<br>5. Any other expenses in accordance with the nature of the project."<br>Moreover, KAPP accordingly applies a standard methodology for affordability assessment that highlight the components of the Regulations are embodied in the PPP Guidebook |
| **9.3. Risk identification, allocation and assessment (risk matrix)** | Yes |
| **Relevant legal/regulatory provision** | Article 8 of the PPP Executive Regulations provides, "The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project's investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other<br>requirements as per the best practices in this regards." Article 9 of the Regulations further provides, "The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its<br>economic aspect, taking into consideration the following rules: 6. Schedule for project risk allocation." |
| **Is there a specific methodology?** | Yes |
| **If yes, please elaborate** | The PPP Guidebook provides guidance on risk assessment and allocation (see pp. 51-55 for instance) And Annex A of the PPP Guidebook further provides a "Risk Allocation in PPPs: Sample Risk Matrices". |
| **9.4. Comparative assessment to evaluate whether a PPP is the best option when** | Yes |

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| **compared to other procurement alternatives (i.e., value for money analysis, public sector comparator)** | |
| **Relevant legal/regulatory provision** | Article 7 of the PPP Executive Regulations provides, "2. It shall be established through the comparison between the implementation of the project in accordance with the PPP Model or its implementation by the Public Entity, provided that the comparison is conducted in light of any or all of the following criteria,:<br>a. Implementation cost (value for money).<br>b. Risk allocation.<br>c. Transfer of knowledge and use of technology.<br>d. The project shall have a promising rewarding financial yield to the Investor and the investment risk shall be allocated in an acceptable manner towards the private sector thus creating an opportunity for competition thereon and motivating the Lenders to finance it.<br>e. Any other standards or requirements set by the Guidebook." |
| **Is there a specific methodology?** | Yes |
| **If yes, please elaborate** | The PPP Guidebook provides detailed guidance on value for money (4.2.2.5 on pp. 55-58). |
| **9.5. Financial viability or bankability assessment** | Yes |
| **Relevant legal/regulatory provision** | Article 8 of the PPP Executive Regulations provides, "The initial feasibility study shall contain a preliminary analysis of the comprehensive feasibility study components. The Guidebook shall provide for the general framework for the preparation of the feasibility study of PPP Projects including the proposed service to be offered, its economic, social and service outcome, the benefit and the expected return of the project, as well as the means of comparison for its tendering in accordance with the PPP Model or by the Public Entity, taking into consideration the allocation of the project's investment risks whether during the construction, implementation or operation phase, as well as the hypothetical term of the project and the financial, social and economic aspects and other requirementsas per the best practices in this regards." Article 9 of the Regulations further provides, "The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its economic aspect, taking into consideration the following rules: 3. Assumptions with regards to the project's ability to recover the cost and the expected internal rate of return of the project... 5. The expected Total Cost for the project including the suggested capital in addition to the anticipated operational and maintenance expenses for one year of operation... 7. Determination of the anticipated economic benefits of the project...8. Suggestion of the proposed incentives and tax and custom exemptions as well as other exemptions essential for the success of the project... 15.Funding sources." |
| **Is there a specific methodology?** | Yes |

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| **If yes, please elaborate** | The PPP Guidebook provides in "4.2.2.4 Financial Assessment":<br>In this stage of the Comprehensive Feasibility Study process, the deliverable is a risk-adjusted financial model of the project. This model provides analysis of the financial soundness (viability and bankability) of the proposed project, including its fiscal sustainability based on the capital costs, as well as costs projected for adequate maintenance and operation. The model will present the financial costs and benefits of delivering the preferred solution/options through a PPP arrangement.<br>In developing the financial model, the following steps may be required:<br>Technical Definition of the Project: Set out a technical definition of the parameters of the project. What norms and standards will be applied? What maintenance cycles are expected?<br>Computation of Total Project Cost: In order to compute the total cost of the project, it is important to first identify all the current and future costs of the project. Some important elements of the cost of the project as laid down in the Executive Regulations are:<br>~ the market value of the project's land use—if any;<br>~ the value of assets to be provided by the Public Entity to the investor or the applicable usage fees;<br>~ the estimated costs for the implementation of the project, including capital costs, and the total establishment, design, construction, finance, and installation expenses;<br>~ the estimated costs for operating the project over the life of the project; and<br>~ any additional costs associated with the project.<br>The following paragraphs set out the different costs tobe considered for computing the total project cost:<br>Capital costs: These are costs specifically associated with the design and construction of the project. The model should account for capital costs in the year in which they occur, including, but not limited to, the design, land7 and development costs, raw materials, construction, plant, and equipment. Capital costs should also account for labor-related and management-related costs associated with the development and implementation of a project, including financial, legal, procurement, technical, and project management services, as well as all the costs incurred for incorporating the project company. Costs pertaining to asset replacements as they occur during the project's life should also be included. For the purpose of estimating total costs of intended projects, the average market value of land and the usufruct rights shall be determined by a specialized Ministry of Finance accredited firm, which is to be hired by the Transaction Advisor following a competitive bidding process with the approval of KAPP. Any costs related to risk mitigation, compliance with environment regulations, and resettlement of affected population, if any, need to be accounted for. Any expected/advised tax holidays and waiver of custom duties impacting capital costs should also be considered while computing the Capital Costs.<br>Maintenance costs: Maintenance costs will include the full lifecycle costs of maintaining the assets in the condition required to deliver the output specifications. It may include elements such as raw materials, tools and equipment costs, and labor costs associated with maintenance. The level of maintenance costs assumed must be consistent with the capital costs and the |

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| | operating cost forecasts. Any costs related to risk mitigation related to project maintenance need to be accounted for.<br>Operating costs: These are associated with the regular operation for the provision of services under the project, such as staff costs (including wages and salaries, employee benefits, accruing pension liabilities, contributions to insurance, training and development, annual leave, travel, and any expected redundancy costs); raw materials and consumables; direct management costs; and insurance. Any costs related to risk mitigation and compliance with environment regulations need to be accounted for. Finally, any rent or fee foruse of State land must be factored into the financial model (unless it is proved that it reduces project affordability and is waived—final approval of this will be provided by the Higher Committee when it approves the Comprehensive Feasibility Study).<br>Identifying Project Revenue: The total cost of the output specifications is offset by the anticipated project revenues. It should be borne in mind that forecasting potential revenues (based on demand analysis and forecast) can be a particularly difficult aspect of the model, especially where there is little or no historical data available. This element is a vital part of the Comprehensive Feasibility Study, and therefore steps such as involving specialist advisers and conducting market testing should be taken. Any assumptions on projected revenue must reflect the project's ability to invoice and collect revenue. Where relevant, analyses should also be conducted on the appropriateness of fees in relation to user affordability and long-term marginal costs, operation and maintenance costs, and the effect of pricing and cost recovery policies on the financial viability of the project, as well as the legal and financial requirements of the State. Note that revenue overestimation and cost underestimation are the most common failings of feasibility studies. Carrying out scenario and sensitivity analysis is therefore an integral part of this exercise.<br>Model Assumptions: Any assumptions made regarding inflation rates, discount rates, depreciation, VAT, taxes, custom waivers and budget availability must be explained in detail and presented in a user-friendly form, where all assumptions are identified and justified.<br>The Base Case Model: A discounted cash flow model must be created that takes into account the maintenance costs, operating costs, capital costs, and revenues anticipated for the project. Upon expiration of the PPP Contract, all state-owned assets (including land and buildings) must be handed back to the State at no cost or compensation (Article 18 of the Law) and the model should account for no residual value of these assets.<br>The Risk Allocation Matrix: Constructing a risk matrix is a fundamental part of the Comprehensive Feasibility Study process and can be usefully integrated with the construction of the financial model...<br>The Risk-Adjusted Financial Model: The base case financial model needs to be remodeled to include project risks. For this, the Transaction Advisor undertakes a detailed project risk analysis exercise, covering all of the risks noted above. This would provide a reasonably realistic overview of the project in terms of size, cost, viability, bankability, and sustainability.<br>Creating a Financial Model to Reflect the PPP Structure and the Sources of Funding: A proposed structure of the project is prepared, demonstrating the |

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| | relationships among the Public Entity, the investor's Special Purpose Vehicle (SPV)—set up specifically for the purpose of undertaking the project—and lenders, shareholders, suppliers, subcontractors, plus other stakeholders. This planned project structure must incorporate the funding structure, appropriate equity returns, and the costs and key terms of debtfunding (including, for example, debt service coverage ratios). Devising the optimal capital structure for the project is a key element in this analysis, as it directly affects the project's bankability... |
| **9.6. Procurement Strategy (i.e., quick assessment to plan and better strategize the tendering process in advance so it is fit for purpose)** | Yes |
| **Relevant legal/regulatory provision** | The PPP Executive Regulations provides in Article 9 about the Comprehensive Feasibility Study that:<br>"The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its economic aspect, taking into consideration the following rules:<br>1. Technical aspects of the project.<br>2. Operational aspects of the project.<br>3. Assumptions with regards to the project's ability to recover the cost and the expected internal rate of return of the project.<br>4. Assumptions with regards to the participation of the private sector in the project and its interest to participate in the implementation thereof.<br>5. The expected Total Cost for the project including the suggested capital in addition to the anticipated operational and maintenance expenses for one year of operation.<br>6. Schedule for project risk allocation.<br>7. Determination of the anticipated economic benefits of the project.<br>8. Suggestion of the proposed incentives and tax and custom exemptions as well as other exemptions essential for the success of the project.<br>9. Determination of the Investor's role.<br>10. Determination of the contractual framework of the project.<br>11. Setting the proceedings to ensure the selection of the Investor on a competitive basis.<br>12.Determination of the legal documents.<br>13.Setting the roles and duties of the proposed parties to participate in the project."<br>The PPP Guidebook provides in p. 61:<br>"4.2.3 Management and Procurement Plan<br>The preparation of a Project Management Plan based on the packaging of the various project components needs tobe part of the Comprehensive Feasibility Study agreed upon by all concerned parties. The plan must include a section setting out the procedure for the PPP procurement. The procurement procedure (including the possible formation of a Joint Stock Company) is dependent on the size of the project. The Comprehensive Feasibility Study will have ascertained the project size as part of the Transaction Advisor's mandate.<br>The plan will outline the procurement requirements (discussed in Chapter 5 of |

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| | this Guidebook) and must contain at least the following elements:<br>~ the project timetable, highlighting the key milestones and all approvals which will be required to take the project to implementation;<br>~ a list of any current and/or potential challenges to the project and a discussion/recommendation of how these can be reasonably addressed;<br>~ an identification of all key stakeholders and the extent of their involvement in the project;<br>~ categories of information to be made available to bidders and how such information will be developed;<br>~ a list of required approvals from all departments and agencies and a list of action items necessary for obtaining these approvals (for example, land acquisitions and environmental studies);<br>~ contingency plans for dealing with deviations from the timetable and budgets;<br>~ proposed bid evaluation parameters and the process for bid evaluation;<br>~ appropriate quality assurance process for bid documentation; and<br>~ a methodology for establishing and maintaining an appropriate audit trail for the bid process." |
| **Is there a specific methodology?** | Yes |
| **If yes, please elaborate** | The PPP Guidebook provides in p. 61:<br>"4.2.3 Management and Procurement Plan<br>The preparation of a Project Management Plan based on the packaging of the various project components needs to be part of the Comprehensive Feasibility Study agreed upon by all concerned parties. The plan must include a section setting out the procedure for the PPP procurement. The procurement procedure (including the possible formation of a Joint Stock Company) is dependent on the size of the project. The Comprehensive Feasibility Study will have ascertained the project size as part of the Transaction Advisor's mandate.<br>The plan will outline the procurement requirements (discussed in Chapter 5 of this Guidebook) and must contain at least the following elements:<br>~ the project timetable, highlighting the key milestones and all approvals which will be required to take the project to implementation;<br>~ a list of any current and/or potential challenges to the project and a discussion/recommendation of how these can be reasonably addressed;<br>~ an identification of all key stakeholders and the extent of their involvement in the project;<br>~ categories of information to be made available to bidders and how such information will be developed;<br>~ a list of required approvals from all departments and agencies and a list of action items necessary for obtaining these approvals (for example, land acquisitions and environmental studies);<br>~ contingency plans for dealing with deviations from the timetable and budgets;<br>~ proposed bid evaluation parameters and the process for bid evaluation;<br>~ appropriate quality assurance process for bid documentation; and<br>~ a methodology for establishing and maintaining an appropriate audit trail for the bid process." |

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| **9.7. Market sounding/ assessment.**<br>**9.7.1. Including the potential interest from contractors and capacity in the market for the contract** | Yes |
| **Relevant legal/regulatory provision** | Article 9 of the PPP Executive Regulations provides, "The comprehensive feasibility study shall particularly determine the technical and operational aspects of the project's Concept as well as its economic aspect, taking into consideration the following rules:<br>4. Assumptions with regards to the participation of the private sector in the project and its interest to participate in the implementation thereof."<br>The PPP Guidebook provides under the requirements to conduct "comprehensive feasibility studies" in pp. 59-60 that:<br>"4.2.2.8 Market Sounding<br>It is worthwhile at this stage to market-test the project structure and financing requirements. This 'reality check' may be done by obtaining feedback from potential investors, through workshops, presentations and 'road shows'. These should be carried out by the Transaction Advisor under the Competition Committee's supervision and involvement. The Transaction Advisor is responsible to recommend and liaise with potential investors/lenders in regard to such meetings, and their timings, and for preparing the supporting documents that should be used to promote the project and seek feedback from interested parties." |
| **Is there a specific methodology?** | Yes |
| **If yes, please elaborate** | Article 13 of the PPP Executive Regulations provides, "The Authority may announce the Request for Expression of Interest for PPP Projects, as a procedure preceding the qualification proceedings, in order to assess the interest and willingness of the private sector to participate in the implementation of the project prior to undertaking the procurement proceedings, in the Official Gazette and other local or international media that are suitable with the nature of the project, and through the publication of the same on the website of the Authority...<br>The Authority shall review and study the Requests for Expression of Interest submitted by the Investors. The Authority shall, upon that study, decide on the feasibility for undertaking the proceedings set by the law and invite interested partiesfor Prequalification to participate in the competition for the implementation of the project or to refrain from undertaking such proceeding, in preparation to present a recommendation in this respect to the Higher Committee."<br>The PPP Guidebook moreover provides under the requirements to conduct "comprehensive feasibility studies" in pp. 59-60 that:<br>"4.2.2.8 Market Sounding<br>It is worthwhile at this stage to market-test the project structure and financing requirements. This 'reality check' may be done by obtaining feedback from potential investors, through workshops, presentations and 'road shows'. These should be carried out by the Transaction Advisor under the Competition Committee's supervision and involvement. The Transaction Advisor is |

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| | responsible to recommend and liaise with potentialinvestors/lenders in regard to such meetings, and their timings, and for preparing the supporting documents that should be used to promote the project and seek feedback from interested parties." |
| **9.7.2. Specifically designed to identify the solutions and technology available as well as the opportunities for innovation** | No |
| **Relevant legal/regulatory provision** | n/a |
| **Is there a specific methodology?** | No |
| **If yes, please elaborate** | n/a |
| **9.8. Environmental impact assessment** | Yes |
| **Relevant legal/regulatory provision** | Article 7 of the PPP Executive Regulations provides, "The project to be tendered for investment in accordance with the PPP Model must meet, the following criteria, based on its feasibility study:<br>1. The project shall conform to all the technical, legal and environmental requirements and shall be economically viable, and the benefits offered by the project to the State or to the beneficiaries of the service provided shall be suitable according to the parameters set in the feasibility study and the best practice applicable in this regards." Moreover, Law No. 42 of 2014 (amended by Law No. 99 of 2015) regarding the Protection of the Environment (Environment Protection Law) defines environmental impact assessments from projects that must be conducted before there launch (Article 1) and Article16 of this Law obliges governmental entities to conduct such assessments in accordance with the Implementing Regulations (No. 2 of 2015) to the Environment Protection Law.<br>The PPP Guidebook also provides under the requirements to conduct "comprehensive feasibility studies" in pp. 59-60 that:<br>"4.2.2.7 Socio-Environmental Assessment<br>Environmental Assessment: A strategic environmental assessment is an effective instrument for integrating environmental issues into the formulation of plans to undertake the project. Environmental requirements for infrastructure projects involve far more than simply ensuring that there is compliance with environmental legislation. Authorization of projects by the environmental authorities is an important step because a project's inability to meet environmental requirements can have an adverse impact on its financing efforts. There needs to be proper and full consideration, understanding, and mitigation of the environmental risks throughout the project's lifecycle. |
| **Is there a specific methodology?** | Yes |
| **If yes, please elaborate** | The Implementing Regulations (No. 2 of 2015) to the Environment Protection Law provide details on environmental impact assessments that procuring entities must follow according to Article 16 of the Environment Protection Law. The PPP Guidebook also elaborates on this assessment |

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| **9.8.1. Consultation process with affected communities explicitly included in the environmental impact assessment** | Yes |
| **Relevant legal/regulatory provision** | The PPP Guidebook in pp. 48-49 provides:<br>"4.2.2.3 Project Due Diligence<br>At this stage of the Feasibility Study process, all legal, land, site, technical, social safeguard and environmental issues are dealt with. The list below is not comprehensive, but is indicative of the issues to be considered by the Transaction Advisor:<br>~ environmental scoping assessment report with identification of mitigation measures for the negative impacts, including an estimate as to the magnitude of the mitigation measures;<br>~ legal issues, including all legal aspects pertaining to project development and implementation such as relevant legislation, tax laws, land title, etc.;<br>~ site ownership and land availability issues, including investigations into the status of any land claims, servitudes, long leases, and constraints, as well as investigations into geotechnical conditions, existing contamination, utility service availability and capacity, and the environmental and heritage status of the land need to be made (in this regard, the Competition Committee should be proactive in obtaining all necessary filings and approvals to avoid subsequent delays);<br>~ stakeholder consultation issues, so as to ensure that all affected parties are provided with information and opportunity to express concerns regarding project impacts... |
| **Is there a specific methodology?** | No |
| **If yes, please elaborate** | n/a |
| **9.9. Social impact assessment** | Yes |
| **Relevant legal/regulatory provision** | The PPP Guidebook provides under the requirements to conduct "comprehensive feasibility studies" in pp. 59-60 that:<br>"4.2.2.7 Socio-Environmental Assessment<br>Environmental Assessment: A strategic environmental assessment is an effective instrument for integrating environmental issues into the formulation of plans to undertake the project. Environmental requirements for infrastructure projects involve far more than simply ensuring that there is compliance with environmental legislation. Authorization of projects by the environmental authorities is an important step because a project's inability to meet environmental requirements can have an adverse impact on its financing efforts. There needs to be proper and full consideration, understanding, and mitigation of the environmental risks throughout the project's lifecycle.<br>Social Assessment: This should include land acquisition and any resettlement of affected population, if any. It should also consider future potential land use on or around the land that has been allocated to the PPP asset, and not only the existing social setting but also the future planning that might happen during the PPP contract such as the development of new residential cities." |
| **Is there a specific methodology?** | No |

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| **If yes, please elaborate** | n/a |
| **9.9.1. Consultation process with affected communities explicitly included in the social impact assessment** | Yes |
| **Relevant legal/regulatory provision** | The PPP Guidebook provides:<br>"4.2.2.3 Project Due Diligence<br>At this stage of the Feasibility Study process, all legal, land, site, technical, social safeguard and environmental issues are dealt with. The list below is not comprehensive, but is indicative of the issues to be considered by the Transaction Advisor:<br>~ environmental scoping assessment report with identification of mitigation measures for the negative impacts, including an estimate as to the magnitude of the mitigation measures;<br>~ legal issues, including all legal aspects pertaining to project development and implementation such as relevant legislation, tax laws, land title, etc.;<br>~ site ownership and land availability issues, including investigations into the status of any land claims, servitudes, long leases, and constraints, as well as investigations into geotechnical conditions, existing contamination, utility service availability and capacity, and the environmental and heritage status of the land need to be made (in this regard, the Competition Committee should be proactive in obtaining all necessary filings and approvals to avoid subsequent delays);<br>~ stakeholder consultation issues, so as to ensure that all affected parties are provided with information and opportunity to express concerns regarding project impacts... |
| **Is there a specific methodology?** | No |
| **If yes, please elaborate** | n/a |
| **10. Does the procuring authority include the assessments in the request for proposals and/or tender documents?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **10. If yes, specify which of the assessments are included in the request for proposals and/or tender documents: and specify which of the assessments are included in the request for proposals and/or tender documents: Socio-economic analysis** | No |
| **10. Fiscal Affordability assessment;** | No |
| **10. Risk identification and allocation;** | No |

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| **10. Comparative assessment;** | No |
| **10. Financial viability;** | No |
| **10. Procurement strategy;** | No |
| **10. Market sounding for private sector interest;** | No |
| **10. Market sounding for technological solutions;** | No |
| **10. Environmental impact assessment;** | No |
| **10. Social impact assessment;** | No |
| **10. Any other** | No |
| **Please specify** | n/a |
| **10.1. Are the assessments published online?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **specify the website:** | n/a |
| **10.1. If yes, specify which of the assessments are published online: Socio-economic analysis** | No |
| **10.1. Fiscal Affordability assessment;** | No |
| **10.1. Risk identification and allocation;** | No |
| **10.1. Comparative assessment;** | No |
| **10.1. Financial viability;** | No |
| **10.1. Procurement strategy;** | No |
| **10.1. Market sounding for private sector interest;** | No |
| **10.1. Market sounding for technological solutions;** | No |
| **10.1. Environmental impact assessment;** | No |
| **10.1. Social impact assessment;** | No |
| **10.1. Any other** | No |
| **Please specify** | n/a |
| **11. Are tender/bidding documents made available online?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **please provide the website:** | n/a |

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| **11.1. Do the tender documents include a draft PPP contract?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 22 of the PPP Executive Regulations provides, "The project's procurement documents shall mainly include the following:<br>4. The model Agreement Documentation(s) and its language, including the draft PPP Agreement and the lease agreements of the land, if any." |
| **12. Have standardized PPP model contracts and/or transaction documents been developed?** | Yes |
| **If yes, please specify and provide a government-supported website where the mentioned standards are available or provide an electronic copy of them:** | Annex B (p. 224):<br>http://www.kapp.gov.kw/Library/Files/Uploaded%20Files/arabic/KuwaitPPPProjectGuidebook_PRINT%20english%20version.pdf |
| **and provide the relevant legal/regulatory provisions:** | Article 22 of the PPP Executive Regulations provides that:<br>The Public Entity in collaboration with the Authority shall prepare the project's procurement documents in accordance with the provisions of the Law, and shall submit the same to the Higher Committee in order to issue an appropriate decision in this regard. The Authority may seek the assistance of local or international consultancy firms to review and prepare such documents.<br>The project's procurement documents shall mainly include the following:<br>1. Instructions to bidders.<br>2. The Terms of Reference comprising the technical and financial terms and standards of the project and the formulae defined for the award of the project.<br>3. The Confidentiality Agreement.<br>4. The model Agreement Documentation(s) and its language, including the draft PPP Agreement and the lease agreements of the land, if any.<br>5. The Letter Agreement – should the project be awarded to a consortium – and the Substitution Agreement allowing the substitution of the Investor in cases of default. 6. Any other terms or documents in accordance with the nature of the project.<br>Annex B of the PPP Guidebook (p. 224) provides the Recommended PPP Contractual Provisions, with Guidance Notes. |
| **13. Does the procuring authority/responsible government entity have a role in either providing or facilitating any of the following requirements? 13.1. Obtaining the required environmental permits.** | No |
| **If yes, please specify the role of the procuring authority:** | n/a |
| **and provide the relevant legal/regulatory provisions:** | n/a |

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| **13.2. Obtaining the possession of required land.** | Yes |
| **If yes, please specify the role of the procuring authority:** | The Higher Committee shall have the competency to approve requests for the allocation of land necessary for the implementation of PPP Projects in coordination with the competent authorities. |
| **and provide the relevant legal/regulatory provisions:** | Article 3 of the PPP Law provides, "The Higher Committee shall have the following competences:<br>6. Approving the requests for the allocation of land necessary for the implementation of PPP Projects in coordination with the competent authorities." Contributors confirmed that the competent government authorities accordingly obtain the necessary land. |
| **13.3. Obtaining the required right of way.** | Yes |
| **If yes, please specify the role of the procuring authority:** | The Higher Committee shall have the competency to approve requests for the allocation of land necessary and rights of way for the implementation of PPP Projects in coordination with the competent authorities. |
| **and provide the relevant legal/regulatory provisions:** | Article 3 of the PPP Law provides, "The Higher Committee shall have the following competences:<br>6. Approving the requests for the allocation of land necessary for the implementation of PPP Projects in coordination with the competent authorities." This allocation also includes right of way pertaining to land. This is further confirmed by contributors. |
| **14. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:** | 0 |
| **Procurement/Tendering of PPPs** | |
| **15. 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 specify and provide the relevant legal/regulatory provisions:** | n/a |
| **15. The bid evaluation committee members require sufficient qualification without specific details.** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 3 of the PPP Executive Regulations provides, "The Authority shall establish, following the approval of the Higher Committee and in accordance with the requirements of the business, a committee for each PPP Project named "Competition Committee", in which the Public Entity(is) whose |

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| | competences and responsibilities correspond to the nature of the project shall be represented, by at least one member being no less than an assistant undersecretary, and provided that technical, financial and legal expertise are also represented therein.<br>The committee shall review, complete and prepare project related studies, instruments and procurement documents and shall approve the same. The committee shall also evaluate the technical and financial offers and shall supervise the public session set foropening the financial envelopes of the technically accepted offers...The committee may seek support from any expert as it deems necessary and the latter shall have no voting rights." |
| **15. The bid evaluation committee members are not required to have any specific qualifications.** | No |
| **If yes, please elaborate and provide examples:** | n/a |
| **16. Does the procuring authority issue an invitation for bids/ tender notice for the PPP project?** | Yes |
| **If yes, please specify the means of publication and provide the relevant legal/regulatory provisions:** | Article 8(2) of the PPP Law provides, "The Authority shall announce the projects approved by the Higher Committee for procurement in accordance with the PPP Model, in the Official Gazette and at least two Kuwaiti dailies, both in Arabic and English, as well as other local and international media that are convenient to the nature of the project and through announcement on the website of the Authority." Article 14 of the PPP Executive Regulations provides a similar provision. |
| **16.1. If yes, is the public procurement notice published online?** | Yes |
| **If yes, please specify the website:** | KAPP website: http://www.kapp.gov.kw/en/Home |
| **17. Are foreign companies subject to any of the following restrictions when participating in the bidding process (check all that apply)? Prohibition to bid in the public tender (including the possibility to discretionary use a procedure that precludes the participation of foreign firms).** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **17. Requirement to have an office or a branch in the country before being allowed to bid in the public tender.** | No |

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| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **17. Requirement to form a joint venture with domestic firm(s) to be allowed to bid in the public tender.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **17. Requirement to have prior experience in the country to bid in the public tender.** | No |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | n/a |
| **17. Threshold for public tenders to be open for foreign participation/to be considered international tenders.** | No |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | n/a |
| **18. 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:** | Article 23 of the PPP Executive Regulations provides, "The instructions to bidders shall in particular include the following:<br>2. Specify the deadline for submitting proposals indicating the date and hour, provided that the duration for submission of proposals is no less than (90) ninety days from the date of publication of the announcement for request of proposals in the Official Gazette." |
| **and the time in calendar days:** | 90 |
| **19. What are the procurement procedures available and/or set as default for PPP contracts?<br>19.1. Open competitive tendering/bidding: Available** | No |
| **Default** | No |
| **Relevant legal/regulatory provision** | n/a |
| **19.2. Competitive tendering/bidding with pre-qualification stage (Restricted tendering): Available** | No |
| **Default** | Yes |
| **Relevant legal/regulatory provision** | Article 14 of the PPP Executive Regulations under "Invitation for Qualification" provides, "The Authority shall, following the approval of the Higher Committee |

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| | on the PPP Project and the determination of the PPP Model and the method of procurement in accordance with the provisions of Article (8) of these Executive Regulations, in collaboration with the Public Entity appointed by the Higher Committee, announce the invitation for qualification for the project in the Official Gazette and at least two Kuwaiti dailies in both Arabic and English, and in local or international media as may be deemed necessary in accordance with the nature of the project, as well as publishing it on the website of the Authority." |
| **19.3. Multi-stage tendering/bidding (with shortlisting of final candidate(s)): Available** | Yes |
| **Default** | No |
| **Relevant legal/regulatory provision** | Article 34 of the PPP Executive Regulations provides, "The Higher Committee may, based on the recommendation of the Authority, decide to procure the project in two stages in accordance with the nature and requirements thereof, and conduct a Competitive Dialogue at the intermediary bid-submission of the process in order to obtain clarifications in relation to the elements of the technical and financial offers presented during this stage. In the second stage, final proposals shall be submitted." |
| **19.4. Competitive dialogue: Available** | Yes |
| **Default** | No |
| **Relevant legal/regulatory provision** | Article 34 of the PPP Executive Regulations provides, "The Higher Committee may, based on the recommendation of the Authority, decide to procure the project in two stages in accordance with the nature and requirements thereof, and conduct a Competitive Dialogue at the intermediary bid-submission of the process in order to obtain clarifications in relation to the elements of the technical and financial offers presented during this stage. In the second stage, final proposals shall be submitted." |
| **19.5. Best and Final Offer (BAFO): Available** | Yes |
| **Default** | No |
| **Relevant legal/regulatory provision** | Article 42 of the PPP Executive Regulations provides,<br>"The Authority shall invite the Preferred Investor to negotiate the offer it has submitted along with the details and clarifications thereon and its reservations to the project's procurement documents.<br>The Authority shall specify in the invitation the topics that shall be negotiated and term of such negotiation. The Competition Committee, under the supervision of the Authority shall handle negotiations with the Preferred Investor, and it may seek assistance of professionals, experts and consultancy firms, whether local or foreign, with which the Authority may enter into agreements to perform its works/duties.<br>In all cases, the negotiations shall not address any contractual terms deemed in the invitation for submission of proposals as being non- negotiable or as Material Deviations according to the project's procurement documents. No amendments may be undertaken with respect to the technical and financial terms and conditions upon which the proposals have been evaluated. The |

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| | negotiations may not lead to an amendment in the competition terms presented to the Preferred Investor, or relieve it from its liabilities in accordance with the provisions of the Terms of Reference under the risk allocation schedule specified in the project's procurement documents."<br>The PPP Guidebook (pp. 120-121) further reiterates the content of the PPP Executive Regulations. |
| **19.6. Direct negotiation: Available** | No |
| **Default** | No |
| **Relevant legal/regulatory provision** | n/a |
| **19.7. Other. Please, specify: Available** | No |
| **Default** | No |
| **Relevant legal/regulatory provision** | n/a |
| **19.8. If direct negotiation is either an available or default option, does the regulatory framework restrict this procedure to certain exceptional conditions and circumstances (including cases of single source providers or applicable to a certain threshold)?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **20. 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:** | Article 23 of the PPP Executive Regulations provides, "The instructions to bidders shall in particular include the following:<br>1. Means for the preparation of proposals and the number of required envelopes and their content and place for submission. The Higher Committee may approve the submittal of Proposals through electronic means of communication which support the<br>necessary confidentiality, as per the proceedings set by the Higher Committee.<br>2. Specify the deadline for submitting proposals indicating the date and hour, provided that the duration for submission of proposals is no less than (90) ninety days from the date of publication of the announcement for request of proposals in the Official Gazette." The Article provides other components as well. Articles 22 & 24 of these Regulationsprovide similar provisions about the necessary elements of a request for proposals and procurement documents, which include clarification of the procurement process. |

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| **21. Do the tender documents unambiguously specify the qualification requirements (or the prequalification requirements when applicable) making them available to all potential bidders as part of the tender notice/ invitation for bids?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 14 of the Executive Regulations provides, "The announcement of the invitation for qualification shall include the following:<br>1. Determination of the Public Entity or the Public Entities relevant to the project.<br>2. A short description of the project and its objectives.<br>3. The required expertise for qualification.<br>4. The contracting model and term.<br>5. The fee due for the collection of qualification documents. The Authority may postpone the payment thereof until the submission of qualification requests.<br>6. The duration fixed for submission of the requests for qualification, the address for its submission and the mail or electronic mail address as per the circumstances. The duration for submission of the qualification requests shall be no less than (15) fifteen days from the date of publication in the Official Gazette unless it was decided to undertake a Post-qualification in which case the duration shall be included in the duration for submission of proposals." |
| **21.1. Are there any parameters/limits to the qualification requirements to ensure that they do not unduly restrict competition of qualified bidders?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **22. Can potential bidders/tenderers submit questions to clarify the public procurement notice and/or the bidding/tender documents?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 32(2) of the PPP Executive Regulations provides, "The Investors may submit inquiries with regards to the terms of qualifications and competition in accordance with the conditions and limitations set in the qualification documents and project procurement documents." |
| **22.1. If yes, can the bidders also suggest innovations to improve the tender documents or procurement approach, including for example the provision of value engineering and/or** | No |

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| **technologically neutral options?** | |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **and elaborate on the kind of innovations that are allowed:** | n/a |
| **22.2. If yes, is there a timeframe for the procuring authority to address questions and clarifications by bidders?** | No |
| **If yes, please indicate the timeframe:** | n/a |
| **and provide the relevant legal/regulatory provisions:** | n/a |
| **22.3. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose those questions and clarifications to all potential bidders?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 32(2) of the PPP Executive Regulations provides, "The Investors may submit inquiries with regards to the terms of qualifications and competition in accordance with the conditions and limitations set in the qualification documents and project procurement documents."<br>The PPP Guidebook (pp. 107-108) provides:<br>"5.6.3.8 Questions from Bidder and Notes to Bidders<br>In addition to questions asked during the Bidders' Conferences, bidders may also submit questions, in writing, to the Competition Committee. Answers to bidders on confidential questions related to their proprietary technical solutions should be provided only to that bidder; all other answers should go to all bidders, together with the question. While any clarifications from/to bidders will be documented as part of their bids, such clarifications may or may not constitute an amendment to the bid. The bidders are to abide by the set duration for submission of questions and receive clarifications before the submission of the bid.<br>The Competition Committee may also issue Notices to Bidders, to communicate decisions or notify bidders of any changes to the RFP." |
| **22.4. If yes, does the procuring authority extend the proposal submission deadline due to the modifications introduced in the bidding/tender documents?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 33 of the PPP Executive Regulations provides:<br>The Authority may, in coordination with the Public Entity, amend the procurement documents before the deadline set for the submission of |

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| | proposals and provided the qualified Investors are granted a sufficient time for the preparation of their proposals.<br>Such amendments shall be issued through an addendum signed by the director of the Authority and approved by the Higher Committee in light of the proposal of the Competition Committee. The Authority shall invite the qualified Investors that have purchased the procurement documents to collect such addendum without any fee. Such addenda shall form an integral part of the procurement documents.<br>In all cases, all such amendments shall not prejudice the acquired rights of the qualified Investors. |
| **23. Besides questions and clarifications, can the procuring authority conduct a pre-bid conference?** | No |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | n/a |
| **23.1. If yes, notwithstanding confidential information pertaining to the bidders, does the procuring authority disclose the response to the queries raised by the bidders in the pre-bid conference to all bidders?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **24. Does the procuring authority require the bidders to prepare and submit a financial model with their proposals/ bids?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 35 of the PPP Executive Regulations provides, “The proposal must mainly include the following:<br>3. The financial offer, must include:<br>a) The expected costs for the preparation of designs and the establishment, operation and maintenance of the project.<br>b) The cost of financing the project and the sources of any such financing.<br>c) The projects estimated investment return.<br>d) The financial costs incurred by the State in light of the adopted formulae for the award of the project.” |
| **If no, please elaborate:** | n/a |
| **25. Does the procuring authority evaluate the bids/tenders strictly and solely in accordance with the evaluation criteria stated in the bidding/tender documents?** | Yes |

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| **If yes, please provide the relevant legal/regulatory provisions:** | Article 37 of the PPP Executive Regulations provides, "The Competition Committee shall undertake the evaluation of the technical proposals based on the standards and weights stated in the project's procurement documents…" |
| **25.1. Can criteria other than price (non-price attributes) be used when evaluating the tenders/bids of a PPP contract?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 35 of the PPP Executive Regulations provides:<br>Taking into consideration the nature of the PPP Project, the proposal shall be submitted in the form of separate envelopes as stated in the procurement documents. In case of post-qualification, the proposal must include the request for qualification in a separate envelope. The proposal must mainly include the following:<br>1. The appointment of a legal representative for the qualified single investor or for the qualified consortium comprising more than one investor, with the appointment of a representative for the consortium based on official proxies made by the consortium members for their representation during the qualification proceedings, along with a certified copy of the agreement entered into between the members of the qualified consortium.<br>2. The technical offer must include:<br>a) The proposed technique and technical method for the provision of the public service or the implementation of the project's structure as per the project's procurement<br>documents.<br>b) The suggested arrangements with regards to the design and implementation of structural works required to achieve the project's objectives and the provision of required supplies and equipment for that purpose.<br>c) The proposed time schedule for the implementation of the project.<br>d) The specialized technical and administrative units for the implementation and operation of the project, and the main subcontractors which are proposed to be hired for the implementation of the works.<br>e) Information, data and proposed method to comply with the standards for protection of the environment, safety and security.<br>3. The financial offer, must include:<br>a) The expected costs for the preparation of designs and the establishment, operation and maintenance of the project. b) The cost of financing the project and the sources of any such financing.<br>c) The projects estimated investment return.<br>d) The financial costs incurred by the State in light of the adopted formulae for the award of the project.<br>Article 37 of these Regulations provides on evaluating offers that, "The Competition Committee shall undertake the evaluation of the technical proposals based on the standards and weights stated in the project's procurement documents, prior to reviewing the financial offer." |
| **25.2. If criteria other than price are used, do they have** | Yes |

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| **to be justified, objective and quantifiable?** | |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 37 of the PPP Executive Regulations provides on evaluating offers that, "The Competition Committee shall undertake the evaluation of the technical proposals based on the standards and weights stated in the project's procurement documents, prior to reviewing the financial offer.<br>A proposal that does not include a bid bond as stated in the procurement documents shall be rejected. The evaluation of the technical offer must conform to the following:<br>1. Provisions for technical safety included in the offer, including the technology to be used and techniques complying with the terms specified in the project's procurement documents.<br>2. Conforming to the environmental standards specified under the procurement documents.<br>3. Evidence of the quality of the services and facilities to be implemented and provided through the project and their conformity with standards and performance indicators specified under the Terms of Reference.<br>4. The extent to which suitability between the main components of the project have taken into consideration the provisions of the technical offer and the financial offer.<br>5. Feasibility of the proposed time schedule for the implementation of the project and the effects of such schedule. The Competition Committee shall submit a report with respect to the evaluation of the technical offers along with its recommendations to the<br>Authority for approval thereof. The Authority shall notify the Investors whose technical offers were approved and those who were rejected. The latter may submit a grievance as to this before the Grievance Committee in accordancewith the terms and conditions provided for under Chapter Ten of these Executive Regulations."<br>The PPP Guidebook further provides (pp. 34-36) that:<br>3.2.5.7 Evaluating Bids<br>Evaluation of Bids by Competition Committee<br>The main purpose of bid evaluation is to determine the lowest-priced technically strongest bid i.e. the best value bid among all the bids submitted. The best value bid may or may not necessarily be the lowest priced bid. In order to determine accurately the best value bid in accordance with the terms and conditions of the bidding documents, a logical systematic evaluation procedure designed to cover all aspects of the evaluation process should be followed, in accordance with the procedure specified in the Request for Proposals.<br>~ Once the Competition Committee determines whichbidders, if any, meet the mandatory requirements, taking into account the bidders' financial capabilities and any special certificates or licensing, the qualified proposals are then distributed to the Competition Committee for review and evaluation in accordance with the established evaluation criteria in the Request for Proposal. The Competition Committee is responsible for evaluating each bidder's financial condition in accordance with the evaluation criteria. Where additional information or clarification is required to complete the technical evaluation, the Competition Committee may seek information or clarification |

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| | in writing, specifying the request and the date and time it is due.<br>~ During the technical evaluation process, the Competition Committee members shall review and evaluate the technical proposals, in accordance with the criteria and weights included in the Request for Proposals.<br>The technical review includes an evaluation of the technical/operational merit of each proposal, as well as a review of each bidder's experience, capability, capacity and resources, approach and methodology.<br>~ The technical evaluation is usually based on criteria which are assigned numerical ratings. A relative weight is also given to each criterion; this varies with the type of assignment and must be determined at the Request for Proposal stage. Common high-level criteria categories are:<br>□ technical or operational capability;<br>□ experience of the bidding entity;<br>□ methodology and approach; and<br>□ composition and quality of proposed team.<br>~ Each member of the Competition Committee independently evaluates each proposal and assigns a score to each bidder in accordance with the approved evaluation plan. Alternatively, the assigned staff may convene the members of the Competition Committee and obtain a consensus on each evaluation factor and documents the reason for each score. The Committee members' worksheets and individual scores are recorded and additional information is sought in cases of inconsistent evaluation or extreme differences in technical scores among the evaluating members." |
| **25.3. When price is used as one of the evaluation criteria, does the procuring authority provide a cost estimate?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **26. In the case where only one proposal is submitted, 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.** | Yes |
| **Please specify and provide the relevant legal/regulatory provisions:** | Article 40 of the PPP Executive Regulations provides, "In case of submission of only one proposal or if the other proposals were invalid because they were in breach or they did not conform/comply with the terms for participation in the competition, the Competition Committee must prepare a report in this respect and submit it to the General Director of the Authority in preparation for the presentation of the same before the Higher Committee along with the recommendation he deems appropriate.<br>The Higher Committee may decide to approve the sole offer or to reprocure |

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| | the project or to undertake amendments it deems appropriate in the project's procurement documents or it may cancel the investment opportunity without any liability whatsoever." |
| **26. The procuring authority considers sole proposal valid as long as it meets the conditions outlined in the tender documents.** | No |
| **Please provide the relevant legal/regulatory provisions:** | n/a |
| **26. The procuring authority does not award a PPP contract if only one proposal is submitted.** | No |
| **Please provide the relevant legal/regulatory provisions:** | n/a |
| **26. The regulatory framework does not include any provisions.** | No |
| **27. Does the procuring authority publish the contract award notice?** | No |
| **If yes, please specify the means of publication and provide the relevant legal/regulatory provisions:** | n/a |
| **27.1. If yes, is the contract award notice published online?** | No |
| **If yes, please specify the website:** | n/a |
| **28. Does the procuring authority notify all the bidders individually about the result of the PPP tendering/bidding process?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 37 of the PPP Executive Regulations provides, "The Competition Committee shall submit a report with respect to the evaluation of the technical offers along with its recommendations to the Authority for approval thereof. The Authority shall notify the Investors whose technical offers were approved and those who were rejected. The latter may submit a grievance as to this before the Grievance Committee in accordance with the terms and conditions provided for under Chapter Ten of these Executive Regulations."<br>Article 39(2&3) of these Regulations also provides, "The Authority shall specify in light of the recommendation presented by the Competition Committee the Preferred Investor as being the provider of the best proposal in accordance with the Terms of Reference based on which the project is being procured.<br>The Authority must notify the concerned Investor and the Public Entity of the Investor that was determined as being the Preferred Investor in order to proceed with the negotiations with it.<br>The Authority must also notify the other Investors who passed the financial |

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| | proposals phase of their ranking. The Authority shall keep the bid bond of the Preferred Investor and the subsequent Investor in the ranking and it may release the bid bonds of the other Investors unless it decides to keep them until the appointment of the Successful Investor or the expiry of the duration of the submitted bonds or their refusal to renew their bonds or the extension thereof as per the terms provided for under the project procurement documents." |
| **28.1. If yes, does the notification of the result of the PPP procurement process include the grounds for the selection of the winning bid/tender?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **28.2. If yes, does the procuring authority provide bidders/tenderers with the option of holding a debriefing meeting to discuss why their bid/tender was not selected?** | No |
| **If yes, please provide the relevant legal/regulatory provision:** | n/a |
| **29. Is there a standstill (or pause) period after the contract award and before the signing of the contract in order to allow aggrieved unsuccessful bidders to challenge the award decision?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **and the time in calendar days:** | n/a |
| **29.1. If yes, is the standstill period set out in the notice of intention to award?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **30. Does the regulatory framework restrict material negotiations (for example price or scope) with the winning bidder between the award and the signature of the PPP contract?** | Yes |

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| **If yes, please provide the relevant legal/regulatory provisions:** | Article 17 of the PPP Law provides, "Negotiations may be carried out with the Preferred Investor for certain clarifications and details regarding the technical and financial requirements, however, such negotiations may not include any contractual terms considered non-negotiable according to the Terms of Reference. No modification may be allowed regarding the technical and financial criteria according to which the proposals were evaluated."<br>Article 42 of the PPP Executive Regulations similarly provides, "In all cases, the negotiations shall not address any contractual terms deemed in the invitation for submission of proposals as being nonnegotiable or as Material Deviations according to the project's<br>procurement documents. No amendments may be undertaken with respect to the technical and financial terms and conditions upon which the proposals have been evaluated. The negotiations may not lead to an amendment in the competition terms presented to the Preferred Investor, or relieve it from its liabilities in accordance with the provisions of the Terms of Reference under the risk allocation schedule specified in the project's procurement documents." |
| **31. Does the regulatory framework allow for complaint review mechanisms pertaining to the PPP bidding/tendering process?** | Yes |
| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | Article 32 of the PPP Law provides that:<br>"1. A Grievance Committee shall be established by a decision of the Council of Ministers and comprised of six members for a term of four years renewable once taking into account the replacement of one third of the members who have spent four years or more in the membership of the committee at the end of each year. The committee shall also comprise specialized legal, financial and technical experts. The decision shall also determine the president of the committee from amongst its members, and the committee may use other experts depending on the nature of each project. The Council of Ministers shall determine the remuneration of the members of the committee.<br>2. The committee shall receive grievances from concerned persons in connection with any decision issued in violation of the provisions of this Law or its executive regulations. Every interested party may file a complaint or grievance before the committee in connection with any error with regards to any of the contracting procedures carried out by the Authority or any decision issued by the Higher Committee..."<br>Articles 70-76 of the PPP Executive Regulations moreover elaborate on the grievance procedures. |
| **31.1. If yes, is there a timeframe in which decisions on complaints are issued?** | Yes |
| **If yes, please elaborate the timeframe:** | 21 |
| **and provide the relevant legal/ regulatory provisions:** | Article 32 of the PPP Law provides that:<br>"3. The Grievance Committee shall issue a justified decision accepting or rejecting the grievance within fifteen (15) working days from the date of its |

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| | submission, and shall notify each of the complainant and the respondent immediately after its issuance. In case the Grievance Committee does not issue any decision, the complaint shall be considered rejected. The decision of the Grievance Committee shall then be raised to the Higher Committee whose decision thereon shall be final in this regard." |
| **31.2. If yes, are decisions subject to appeal?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | The Administrative Circuit in the Court of First Instance as per Decree-Law No. 20 of 1980 regarding the Establishment of a Circuit in the Court of First Instance to hear administrative disputes shall be competent to hear appeals of decisions of the Grievance Committee adopted by the Higher Committee as final decisions. |
| **31.3. If yes, is the original complaint and/or the appeal reviewed resolved by an independent administrative authority (other than the procuring authority or the courts)?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 32 of the PPP Law provides that:<br>"1. A Grievance Committee shall be established by a decision of the Council of Ministers and comprised of six members for a term of four years renewable once taking into account the replacement of one third of the members who have spent four years or more in the membership of the committee at the end of each year. The committee shall also comprise specialized legal, financial and technical experts. The decision shall also determine the president of the committee from amongst its members, and the committee may use other experts depending on the nature of each project. The Council of Ministers shall determine the remuneration of the members of the committee.<br>2. The committee shall receive grievances from concerned persons in connection with any decision issued in violation of the provisions of this Law or its executive regulations. Every interested party may file a complaint or grievance before the committee in connection with any error with regards to any of the contracting procedures carried out by the Authority or any decision issued by the Higher Committee..."<br>Articles 70-76 of the PPP Executive Regulations moreover elaborate on the grievance procedures. |
| **and identify the approving authority:** | Grievance Committee to be adopted by the Higher Committee |
| **32. Does the procuring authority publish the PPP contract? (notwithstanding the protection of commercially sensitive information)** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **32. If yes, which of the following elements does the** | No |

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| **publication include? 32.1. A summary of the PPP contract: Available (e.g. by request or in the official gazette)** | |
| **Available online** | No |
| **Website** | n/a |
| **Relevant legal/regulatory provision** | n/a |
| **32.2. The full PPP contract: Available (e.g. by request or in the official gazette)** | No |
| **Available online** | No |
| **Website** | n/a |
| **Relevant legal/regulatory provision** | n/a |
| **32.3. All of the contract's annexes and appendixes: Available (e.g. by request or in the official gazette)** | No |
| **Available online** | No |
| **Website** | n/a |
| **Relevant legal/regulatory provision** | n/a |
| **32.4. Any subsequent amendment made to the PPP contract: Available (e.g. by request or in the official gazette)** | No |
| **Available online** | No |
| **Website** | n/a |
| **Relevant legal/regulatory provision** | n/a |
| **33. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:** | n/a |
| **Contract Management** | |
| **34. Does the procuring authority or contract management authority establish a system to manage the PPP contract (i.e., attributing responsibilities or establishing specific management tools)?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 6 of the PPP Law provides that KAPP is competent with functions pertaining to the implementation of the PPP project which includes, "13. |

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| | Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected." |
| **34.1. 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** | n/a |
| **34.1. Participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa** | No |
| **Relevant legal/regulatory provisions** | n/a |
| **34.1. Elaboration of a PPP contract management manual or an equivalent document** | Yes |
| **Relevant legal/regulatory provisions** | Article 6 of the PPP Law provides that KAPP is competent with functions pertaining to the implementation of the PPP project which includes, "4. Prepare a guidebook for PPP Projects." This Guidebook shall address the implementation stage of the PPP project. |
| **34.1. Establishment of personnel training programs (i.e., initial training and continued training throughout the course of the project)** | No |
| **Relevant legal/regulatory provisions** | n/a |
| **34.1. Establishment of a risk mitigation mechanism which considers the evolving nature of risks throughout the project lifecycle (guidelines, specific processes, insurance regime, etc.)** | No |
| **Relevant legal/regulatory provisions** | n/a |
| **34.2. 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** | No |

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| are required to meet detailed qualifications. | |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | n/a |
| **34.2. The PPP contract management team members are required to meet sufficient qualifications without specific details.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **34.2. The PPP contract management team members are not required to meet any specific qualifications.** | No |
| **If yes, please elaborate and provide examples:** | n/a |
| **35. Does the procuring or contract management authority establish a monitoring and evaluation system of the construction of the PPP project (i.e., system for tracking progress of construction, monitoring and evaluation of performance, etc.)?** | Yes |
| **If yes, please provide the relevant legal/regulatory provisions:** | Article 27 of the PPP Executive Regulations provides, "The PPP Agreement must set the basis for the Project Company to collect payments (fees) for the services provided or works undertaken, in each or both the following forms:<br>1. From the Public Entity, in return for:<br>a) Provision of a service that is compliant with the agreed criteria.<br>b) Usage of the service or the infrastructure provided by the PPP Project.<br>c) The minimum capacity payments related to the estimated demand for the service or infrastructure to be provided by the PPP Project.<br>d) Completion of specific stages agreed upon in the implementation, operation or infrastructure, subject to agreement on the timetable adopted for the implementation of the project.<br>e) Achieving an internal return as stated under the project's procurement documents.<br>2. From the beneficiaries of the services or the infrastructure other than the Public Entities and in accordance with the mechanism set forth in the PPP Agreement for the method of calculation of such fees."<br>Article 6 of the PPP Law provides that KAPP is furthermore competent with functions that include to, "11. Develop PPP Projects programs and follow up on their completion and issue necessary decisions in relation thereto; 13. Follow up on the implementation of PPP Agreements and work on overcoming |

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| | implementation obstacles in collaboration with the entity under which the project is subjected." |
| **35.1. If yes, is the PPP contract construction performance information made available to the public (e.g. by request or published in the official gazette/bulletin board)?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **35.2. If yes, is the PPP contract construction performance information made publicly available online?** | No |
| **If yes, please specify the website:** | n/a |
| **36. 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:** | Article 6 of the PPP Law provides KAPP's competencies which include to, "6. Set out approaches to follow up and evaluate the performance of approved PPP Projects; 13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected."<br>Article 33 of this Law also provides, "The Minister of Finance shall present to the Council of Ministers an annual report on all the projects that have been executed or implemented in accordance with the provisions of this Law, and shall send a copy of such report to the National Assembly....The relevant ministers shall provide the Minister of Finance with all the data, documents, files and information he requires in connection with PPP Projects that have been executed with their ministries for the preparation of the report."<br>Article 35 of the PPP Law moreover provides, "The Partnership Agreement shall include the following in particular:<br>6. Means of quality assurance and monitoring methods, supervision and follow up on financial, administrative and technical matters in relation to the operation, exploitation and maintenance of the project." |
| **36.1. If yes, which of the following tools does it include (check all that apply)?** **Payments are linked to performance** | Yes |
| **Relevant legal/regulatory provisions** | Article 41 of the PPP Law provides, "The Project Company shall not start receiving any monetary amounts for the sale of products or the provision of |

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| | services according to the performance level provided for in the agreement until the issuance of a certificate from the party set forth in the PPP Agreement approving the quality of the works, products and services made available, unless the terms of the PPP Agreements state otherwise."<br>Article 27 of the PPP Executive Regulations provides, "The PPP Agreement must set the basis for the Project Company to collect payments (fees) for the services provided or works undertaken, in each or both the following forms:<br>1. From the Public Entity, in return for:<br>a) Provision of a service that is compliant with the agreed criteria.<br>b) Usage of the service or the infrastructure provided by the PPP Project.<br>c) The minimum capacity payments related to the estimated demand for the service or infrastructure to be provided by the PPP Project.<br>d) Completion of specific stages agreed upon in the implementation, operation or infrastructure, subject to agreement on the timetable adopted for the implementation of the project.<br>e) Achieving an internal return as stated under the project's procurement documents.<br>2. From the beneficiaries of the services or the infrastructure other than the Public Entities and in accordance with the mechanism set forth in the PPP Agreement for the method of calculation of such fees."<br>The PPP Guidebook further provides (p. 136) that:<br>8.2 Performance Monitoring:<br>The Contract Manager's focus during the construction phase willbe on monitoring quality and timescales during the development of the project. During the operational phase, the Contract Manager will focus on ensuring the availability of the asset, compliance with appropriate environmental standards, authorization of payments (if any), dispute resolution mechanisms, management of change, and the handback of the asset at the end of the project's duration. In the event of underperformance, there should be provisions for payment penalties, and ultimately for the termination of the PPP Agreement.<br>The performance measurements as stated in the PPP Agreement should be objective and measurable. The PPP Agreement should define:<br>~ detailed Key Performance Indicators (KPIs) that set the standard of performance required;<br>~ the method of monitoring and measuring performance against the defined KPIs;<br>~ what performance information will be required, how it is to be collected, and by whom;<br>~ the Public Entity's rights to carry out audits or spot checks;<br>~ when performance measurement will commence;<br>~ how the results of the performance measurement will be reported and acted upon;<br>~ the consequences of poor performance and repeated poor performance; and<br>~ any updates on the contract management process. |
| **36.1. Performance is assessed against output/ Key performance indicators (KPI)** | Yes |

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| **set in the tender documents and the PPP contract** | |
| **Relevant legal/regulatory provisions** | Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular:<br>6. Means of quality assurance and monitoring methods, supervision and follow up on financial, administrative and technical matters in relation to the operation, exploitation and maintenance of the project."<br>Article 41 of the PPP Law provides, "The Project Company shall not start receiving any monetary amounts for the sale of products or the provision of services according to the performance level provided for in the agreement until the issuance of a certificate from the party set forth in the PPP Agreement approving the quality of the works, products and services made available, unless the terms of the PPP Agreements state otherwise."<br>The PPP Guidebook further provides (p. 136) that:<br>8.2 Performance Monitoring:<br>The Contract Manager's focus during the construction phase will be on monitoring quality and timescales during the development of the project. During the operational phase, the Contract Manager will focus on ensuring the availability of the asset, compliance with appropriate environmental standards, authorization of payments (if any), dispute resolution mechanisms, management of change, and the handback of the asset at the end of the project's duration. In the event of underperformance, there should be provisions for payment penalties, and ultimately for the termination of the PPP Agreement.<br>The performance measurements as stated in the PPP Agreement should be objective and measurable. The PPP Agreement should define:<br>~ detailed Key Performance Indicators (KPIs)that set the standard of performance required;<br>~ the method of monitoring and measuring performance against the defined KPIs;<br>~ what performance information will be required, how it is to be collected, and by whom;<br>~ the Public Entity's rights to carry out audits or spot checks;<br>~ when performance measurement will commence;<br>~ how the results of the performance measurement will be reported and acted upon;<br>~ the consequences of poor performance and repeated poor performance; and<br>~ any updates on the contract management process. |
| **36.1. 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** | n/a |

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| **36.1. The private partner must provide the procuring or contract management authority with periodic operational and financial data** | No |
| **Relevant legal/regulatory provisions** | n/a |
| **36.1. The procuring or contract management authority must periodically gather information on the performance of the PPP contract** | Yes |
| **Relevant legal/regulatory provisions** | Article 33 of the PPP Law provides, "The Minister of Finance shall present to the Council of Ministers an annual report on all the projects that have been executed or implemented in accordance with the provisions of this Law, and shall send a copy of such report to the National Assembly....The relevant ministers shall provide the Minister of Finance with all the data, documents, files and information he requires in connection with PPP Projects that have been executed with their ministries for the preparation of the report." |
| **36.1. The PPP contract performance information must be available to the public (e.g. by request or in the official gazette/bulletin board)** | No |
| **Relevant legal/regulatory provisions** | n/a |
| **36.1. The PPP contract performance information must be available online.** | No |
| **If yes, please specify the website:** | n/a |
| **Relevant legal/regulatory provisions** | n/a |
| **37. Is there an economic/technical regulator to oversee the implementation of PPP contracts?** | No |
| **If yes, please provide its name and website:** | n/a |
| **and the relevant legal/regulatory provisions establishing its mandate:** | n/a |
| **37.1. If yes, does the economic regulator have (check all that apply): Political autonomy (for example, through independence of its Directors' appointments of** | No |

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| **the Line Ministry or other similar mechanisms).** | |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **37.1. Managerial autonomy (freedom to determine the use of its budget and organization of resources)** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **37.1. Tariff setting authority.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **37.1. Dispute resolution authority.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **38. Are foreign companies restricted from repatriating the income resulting from the operation of a PPP project?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **39. 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?** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 24 of the PPP Law provides, "The Project Company or the consortium company may not be dissolved, its legal form may not be changed and its capital may not be decreased except after the approval of the Higher Committee, and the Contracting Investor may not assign the project or its shares in the project, in full or in part, to third parties, nor may it change the legal form of the Project Company or the consortium company, except after the lapse of an appropriate period of time starting as of the commencement of the operations as provided for under the agreement's terms and after the approval of the Higher Committee.<br>In case of any such assignment, the assignee shall replace the Contracting Investor in the Project Company or in the consortium company in all the assignor's rights andobligations." |
| **39.1. If yes, which of the following circumstances are** | Yes |

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| **specifically regulated? (check all that apply): Any change in the private partner during an initial period (e.g. construction and first two years of commercial operation).** | |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions** | Article 24 of the PPP Law provides, "The Project Company or the consortium company may not be dissolved, its legal form may not be changed and its capital may not be decreased except after the approval of the Higher Committee, and the Contracting Investor may not assign the project or its shares in the project, in full or in part, to third parties, nor may it change the legal form of the Project Company or the consortium company, except after the lapse of an appropriate period of time starting as of the commencement of the operations as provided for under the agreement's terms and after the approval of the Higher Committee."<br>Contributors further confirm that no transfer of any ownership interest in the Successful Investor until the third anniversary of the Commercial Operation Date and KAPP includes provisions in the Shareholders Agreement embodying such meaning. |
| **39.1. Changes of ownership/contract assignment, at any time during the contract, must preserve the same technical qualifications as the original operator.** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 24 of the PPP Law provides, "In case of any such assignment, the assignee shall replace the Contracting Investor in the Project Company or in the consortium company in all the assignor's rights and obligations." Article 25 of this Law also provides that the substituted investor when certain circumstances arise, "shall meet all the requirements relating to the qualification requirements and the Terms of Reference on the basis of which the project was awarded or exceed these requirements, as shall be provided for in a written agreement between the Public Entity and the Investor or the Project Company or the consortium company or the Lenders, if any, and such agreement shall not include any additional or supplemental obligations of the Public Entity or anything that contradicts the awarding terms and conditions." |
| **39.1. In other cases, flexibility to change the ownership structure and/or assign the contract.** | No |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | n/a |
| **40. Does the regulatory framework (including standard contractual clauses) expressly regulate the** | Yes |

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| **modification or renegotiation of the PPP contract (once the contract is signed)?** | |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular:<br>7. Regulate the Public Entity's right to modify and amend the terms of construction, equipping, maintenance, operation, exploitation and other obligations of the Project Company, and the principles and mechanisms for compensation of such amendments."<br>Article 36 of this Law further provides, "The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect.<br>The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement." |
| **40.1. If yes, is an approval from a government authority, other than the procuring authority, required?** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | The Higher Committee must approve such amendments according to Article 36 of the PPP Law, which provides, "Article 36 of this Law further provides, "The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee..." |
| **40.2. If yes, which of the following circumstances are specifically regulated? (check all that apply): A change in the scope and/or object of the contract.** | No |
| **If yes, please provide the relevant** | n/a |

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| **legal/regulatory/standard contractual provisions:** | |
| **40.2.1. If yes, is there a threshold for which a new tendering process is required?** | No |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | n/a |
| **and please elaborate:** | n/a |
| **40.2.. A change in the risk allocation of the contract.** | No |
| **If yes, please provide the relevant legal/regulatory/ standard contractual provisions:** | n/a |
| **40.2. A change in the financial and/or economic balance of the contract** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 36 of this Law further provides, "The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect. |
| **40.2. A change in the duration of the contract.** | No |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | n/a |
| **40.2. A change in the agreed price or tariff or annuity payments.** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 36 of this Law further provides, "The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the |

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| | Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect. |
| **40.3. Can the procuring/contract management authority modify a PPP contract unilaterally?** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular:<br>7. Regulate the Public Entity's right to modify and amend the terms of construction, equipping, maintenance, operation, exploitation and other obligations of the Project Company, and the principles and mechanisms for compensation of such amendments."<br>Article 36(1) of this Law further provides, "The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect." |
| **41. Does the regulatory framework (including standard contractual clauses) expressly address the following circumstances that may occur during the life of the PPP contract? (check all that apply): 41.1. Force Majeure.** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular:<br>9. The basis for risk allocation associated with changes in laws or unforeseen events or force majeure and the determined compensation, as per the circumstances."<br>Article 36(2) of this Law further provides, "The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement." |
| **41.2. Material Adverse Government Action** | Yes |

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| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | The PPP Guidebook (pp. 231-235) in Annex B on the Recommended Contractual Provisions provides in B.2.2 Contractual Provision provides for material adverse government action to be addressed in the PPP agreement and provides clarifications on such concept. It is defined as: For the purposes of this PPP Contract, "Material Adverse Government Action" means any act or omission by the Contracting Authority or any relevant public authority [define if necessary] or event set out in Clause (1) below, which occurs during the term of this PPP Contract and which (i) directly causes the Private Partner to be unable to comply with all or some of its obligations under the PPP Contract and/or (ii) has a [Material] Adverse Effect] on its [costs or revenues] [insert defined terms]. |
| **41.3. Change in the Law.** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 35 of the PPP Law provides, "The Partnership Agreement shall include the following in particular:<br>9. The basis for risk allocation associated with changes in laws or unforeseen events or force majeure and the determined compensation, as per the circumstances."<br>Article 36(2) of this Law further provides, "The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement." |
| **41.4. Refinancing.** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | The PPP Guidebook (p. 130) provides:<br>6.3 Refinancing<br>The Project Company can refinance the debt in accordance with the terms of the PPP Agreement, and subject to the approval of the Higher Committee. Any approval will be based, amongst other considerations, on whether the terms and conditions of the refinancing adversely impacts the project compared with the terms and conditions of the original financing. The PPP Agreement should indicate whether there is to be a sharing of any refinancing gains between the Project Company and the Public Entity. |
| **41.5. Subcontracting and replacement of the subcontractors.** | No |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | n/a |
| **42. Does the regulatory framework (including standard contractual clauses) allow for alternative dispute resolution mechanisms in case of disputes arising from the implementation of PPP contracts?** | Yes |

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| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | Article 29 of the PPP Law provides, "PPP Projects and the agreements thereof shall be subject to the provisions of this Law and its executive regulations, as well as the provisions of applicable laws in the State of Kuwait, provided they do not contradict with the provisions of this Law. The agreement shall regulate the mechanism for dispute resolution in relation to its interpretation or its implementation. Kuwaiti courts shall be the competent authority to examine all the disputes arising from the implementation of the provisions of this Law. In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee's approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration."<br>Article 35 of the PPP Law also provides, "The Partnership Agreement shall include the following in particular:<br>14. The competence of the Kuwaiti courts with regards to disputes arising between the contracting parties.<br>15. Recourse to arbitration based on the agreement of the contracting parties." |
| **42.1. If yes, is arbitration available as an option? Domestic arbitration only** | No |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions** | n/a |
| **Domestic arbitration and international arbitration** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 29 of the PPP Law provides, "PPP Projects and the agreements thereof shall be subject to the provisions of this Law and its executive regulations, as well as the provisions of applicable laws in the State of Kuwait, provided they do not contradict with the provisions of this Law. The agreement shall regulate the mechanism for dispute resolution in relation to its interpretation or its implementation. Kuwaiti courts shall be the competent authority to examine all the disputes arising from the implementation of the provisions of this Law. In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee's approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration."<br>Article 35 of the PPP Law also provides, "The Partnership Agreement shall include the following in particular:<br>14. The competence of the Kuwaiti courts with regards to disputes arising between the contracting parties.<br>15. Recourse to arbitration based on the agreement of the contracting parties." |
| **No** | No |
| **42.2. If applicable, are arbitration awards enforceable by local courts?** | Yes |
| **If yes, please elaborate and provide the relevant legal/regulatory/standard contractual provisions:** | Article 185 of Law No. 38 of 1980 issuing the Civil and Commercial Procedures Law provides, "The judgment of the arbitrator shall be enforceable only by an order of the President of the Court, who has deposited the judgment in the management of its book at the request of one of the concerned persons, after |

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| | reviewing the judgment and the arbitration agreement and after ascertaining the absence of the impediments to its implementation, and the expiry of the date of the appeal if the judgment is enforceable. The execution order shall be placed at the root of the judgment."<br>Law No. 11 of 1995 regarding Judicial Arbitration in Civil and Commercial Matters also provides in Article 9, " Judgments issued by the arbitral tribunal shall have the force of the order and shall be enforceable in accordance with the procedures established in the Civil and Commercial Procedure Act after the executive version of the judgment has been made by the Department of the Court of Appeal." |
| **42.3. Are other Alternative Dispute Resolution (ADR) options available (including mediation or dispute resolution boards)?** | Yes |
| **If yes, please elaborate and provide the relevant legal/regulatory/standard contractual provisions:** | Article 29 of the PPP Law provides, "PPP Projects and the agreements thereof shall be subject to the provisions of this Law and its executive regulations, as well as the provisions of applicable laws in the State of Kuwait, provided they do not contradict with the provisions of this Law. The agreement shall regulate the mechanism for dispute resolution in relation to its interpretation or its implementation. Kuwaiti courts shall be the competent authority to examine all the disputes arising from the implementation of the provisions of this Law. In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee's approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration."<br>Article 35 of the PPP Law also provides, "The Partnership Agreement shall include the following in particular:<br>14. The competence of the Kuwaiti courts with regards to disputes arising between the contracting parties.<br>15. Recourse to arbitration based on the agreement of the contracting parties."<br>Article 26 of the PPP Executive Regulations further reiterate that the PPP Agreement shall embody the preferred choice of dispute settlement. This would allow any procedure including mediation to be designated.<br>The PPP Guidebook further provides (p. 39):<br>8.4 Dispute Resolution<br>The legal basis for the settlement of disputes is an important issue in PPP projects. Private parties (investors, lenders, and contractors) feel encouraged to participate in such projects when they are confident that any disputes can be resolved fairly andefficiently. A wide range of dispute settlement mechanisms should be available in order to avoid court cases that may be lengthy and costly. These may include dialogue, mediation (possibly by a third party expert), and arbitration. Consideration should also be given to establishing a Dispute Resolution Board, in the form of a panel to assist with the prevention and early resolution of disputes.<br>It is important that the settlement mechanisms are consistent with international best practices, particularly when large-scale investments from the foreign private sector are expected. Foreign investors, for example, will seek recourse to international arbitration as a final option (which is provided |

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| | for by the Law in Article 29). See Annex B.9 for suggested wording on drafting this contractual provision. |
| **43. Does the regulatory framework (including standard contractual clauses) allow for the lenders to take control of the PPP project (lender step-in rights) if either the private partner defaults or if the PPP contract is under threat of termination for failure to meet service obligations?** | Yes |
| **If yes, please provide the relevant legal/regulatory/standard contractual provisions:** | Article 49 of the PPP Executive Regulations provides, "The substitution of the Contracting Investor with another Investor who replaces it to fulfill the terms of the agreement may be undertaken subject to the approval of the Higher Committee and based on the request of the Public Entity supervising the project, the Authority or the Lenders. Substitution shall be undertaken in accordance with the terms provided in the Agreement Documentation and the Substitution Agreement..."<br>Article 50 these Executive Regulations also provides, "If the Lenders should request the substitution of the Contracting Investor with another Investor, they must submit a request regarding the same to the Higher Committee, including the identification of the candidate they deem appropriate to substitute the Contracting Investor, without affecting the liability and responsibilities of the Lenders as to the candidate they have elected as well as the Lenders' obligations provided in the PPP Agreement entered into for the implementation of the project."<br>Similar provisions exist in Article 25 of the PPP Law. |
| **43.1. 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.** | No |
| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | n/a |
| **43.1. The regulatory framework prescribes that a direct agreement should be signed with the lenders.** | Yes |
| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | Article 49 of the PPP Executive Regulations provides, "The substitution of the Contracting Investor with another Investor who replaces it to fulfill the terms of the agreement may be undertaken subject to the approval of the Higher Committee and based on the request of the Public Entity supervising the project, the Authority or the Lenders. Substitution shall be undertaken in accordance with the terms provided in the Agreement Documentation and the |

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| | Substitution Agreement..."<br>Article 50 these Executive Regulations also provides, "If the Lenders should request the substitution of the Contracting Investor with another Investor, they must submit a request regarding the same to the Higher Committee, including the identification of the candidate they deem appropriate to substitute the Contracting Investor, without affecting the liability and responsibilities of the Lenders as to the candidate they have elected as well as the Lenders' obligations provided in the PPP Agreement entered into for the implementation of the project." |
| **43.1. The regulatory framework prescribes that the lender step-in rights should be regulated in the contract.** | No |
| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | n/a |
| **43.1. Other** | No |
| **please specify:** | n/a |
| **44. Does the regulatory framework (including standard contractual clauses) expressly address the grounds for termination of a PPP contract?** | Yes |
| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | Article 19 of the PPP Law provides, "The Higher Committee may approve the termination of the agreement at the request of the Authority or the Public Entity for reasons based on public interest, provided that the Higher Committee justifies its decision and demonstrates the benefits of such termination and provides an estimate of the fair compensation to be paid to the Contracting Investor in accordance with the PPP Agreement."<br>Article 35 of the PPP Law also provides, "The Partnership Agreement shall include the following in particular:<br>11. Cases of early or partial termination, the rights of the parties associated therewith, cases where the Public Entity may solely terminate the agreement and the financial obligations arising from usage of this right."<br>Moreover, Article 26 of the PPP Executive Regulations provides that the PPP agreement shall address, "13.Events allowing the termination of the agreement without any notification or judicial order."<br>The PPP Guidebook further provides guidance on termination on pp. 140-141 (8.6 Termination). |
| **44.1. If yes, does the regulatory framework (including standard contractual clauses) also addresses the consequences for the termination of the PPP contract?** | Yes |

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| **If yes, please specify and provide the relevant legal/regulatory/standard contractual provisions:** | Article 19 of the PPP Law provides, "The Higher Committee may approve the termination of the agreement at the request of the Authority or the Public Entity for reasons based on public interest, provided that the Higher Committee justifies its decision and demonstrates the benefits of such termination and provides an estimate of the fair compensation to be paid to the Contracting Investor in accordance with the PPP Agreement."<br>Article 35 of the PPP Law also provides, "The Partnership Agreement shall include the following in particular:<br>11. Cases of early or partial termination, the rights of the parties associated therewith, cases where the Public Entity may solely terminate the agreement and the financial obligations arising from usage of this right."<br>The consequences are to be further addressed in the PPP contract.<br>The PPP Guidebook further provides guidance on termination on pp. 140-141 (8.6 Termination). |
| **45. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:** | n/a |
| **Unsolicited Proposals** | |
| **46. Are unsolicited proposals in Kuwait (PPP):**<br><br>**(choose only one) Explicitly prohibited by the legal framework?** | No |
| **46. Explicitly allowed by the legal framework?** | Yes |
| **46. Not regulated by the legal framework, but do happen in practice?** | No |
| **46. Not regulated by the legal framework, and do not happen in practice?** | No |
| **If the legal framework explicitly prohibits or allows unsolicited proposals, please provide the relevant legal/regulatory provisions** | Article 20 of the PPP Law provides, "A Concept proposer shall submit a feasibility study to the Authority for its review in order to present recommendations to the Higher Committee…" Article 52 of the PPP Executive Regulations provides, "Any person, whether a natural person or a legal entity, Kuwaiti or non- Kuwaiti, may submit a Concept before the Authority that comprises a request for the implementation of a project in accordance with a PPP Model..." |
| **47. Does the procuring authority conduct an assessment to evaluate unsolicited proposals?** | Yes |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | Article 20 of the PPP Law provides, "A Concept proposer shall submit a feasibility study to the Authority for its review in order to present recommendations to the Higher Committee, which shall take one of the following justified decisions: |

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| | - Approve the study and consider it an Initiative.<br>- Approve the study and consider it a Distinguished Project.<br>- Reject the study."<br>Article 21 of this Law provides, "The Authority shall communicate with the parties involved in the project to complete the requirements of the study within appropriate periods of time. These parties shall urgently communicate their responses to the Authority. The executive regulations shall set out and specify the appropriate periods of time in all cases.<br>The Authority shall initiate the review of the Concept as soon as itreceives the responses of the Public Entities and shall submit its recommendations to the Higher Committee, and it shall respond to the party presenting the Concept within five working days from the date of issuance of the Higher Committee's decision approving or rejecting the Concept."<br>Article 53 of the PPP Executive Regulations further provides, "The Authority shall communicate with the Public Entity(is) whose capacities and authorities are consistent with the Concept to cooperate for the completion of the requirements of the feasibility study<br>presented by the Concept Proposer.<br>The Public Entities shall provide the Authority with their responses on an urgent basis in a period not exceeding (20) twenty working days for matters requiring economic and financial analysis and (10) ten working days for matters which do not require such analysis.<br>Upon the receipt of the Public Entities' responses, the Authority shall undertake the study of the Concept and prepare a report in this regard together with its recommendation and present it to the Higher Committee." |
| **47.1. If yes, is there any vetting procedure and/or pre-feasibility analysis before fully assessing the unsolicited proposal?** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **48. Which of the following options best describes 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.** | Yes |
| **If yes, please specify and provide the relevant legal/regulatory provisions:** | Article 1(3) of the PPP Law defines "Concept" as, " a concept for a PPP Project comprising an initial feasibility study, in line with the State's strategy and its development plan, proposed by a natural or a legal person, either Kuwaiti or non-Kuwaiti." And according to Articles 20-21 of the PPP Law and 53-55 of the PPP Executive Regulations identifies the outcome of presented "concepts" as |

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| | becoming initiatives and distinguished projects. Article 1(4) of the PPP Law defines "Initiative" as, "an innovative and creative Concept of a PPP Project, unprecedented in the State of Kuwait, approved by the Higher Committee, based on a comprehensive feasibility study and submitted by the Concept proposer to the Authority, providing an economic return or social benefits in line with the State's strategy and development plan;" and "Distinguished Project" as, "a PPP Project approved by the Higher Committee, based on a comprehensive feasibility study presented by the Concept proposer and having an economic return or a social benefit that is in line with the State's strategy and development plan." (Article 1(5) of the PPP Law) |
| **48. The regulatory framework requires unsolicited proposals to be among the existing government priorities without establishing specific procedures to achieve that goal.** | No |
| **If yes, please provide the relevant legal/regulatory provisions:** | n/a |
| **48. The procuring authority does not evaluate unsolicited proposals against existing government priorities.** | No |
| **If yes, please elaborate and provide examples:** | n/a |
| **49. 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:** | Article 56 of the PPP Executive Regulations provides, "The Authority shall in collaboration with the Public Entity(is) stated in the decision of the Higher Committee prepare the project procurement documents in accordance with the provisions of the Law, ensuring the nondisclosure of confidential technical, economic and financial information of the project submitted by the Concept Proposer and specifically the technical designs of the project and any technique proposed for the implementation thereof as well as any other confidential information.<br>The principle of confidentiality shall not hinder the procurement of the project in accordance with the principles of free competition, whereby during the preparation of the project documents all the sufficient data and information to prevent the project's monopoly by the Concept Proposer are provided, ensuring the competition thereon while being procured as per the standards of transparency and fairness." |
| **50. Does the procuring authority grant a minimum period of time to additional prospective bidders (besides** | Yes |

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| **the proponent) to prepare their proposals?** | |
| **If yes, please provide the relevant legal/regulatory provisions:** | The general provisions as per Article 23(2) of the PPP Executive Regulations apply, which provides, ""The instructions to bidders shall in particular include the following:<br>2. Specify the deadline for submitting proposals indicating the date and hour, provided that the duration for submission of proposals is no less than (90) ninety days from the date of publication of the announcement for request of proposals in the Official Gazette." |
| **and the time in calendar days:** | 90 |
| **51. Does the procuring authority use any of the following incentive mechanisms to reward/compensate the submission of unsolicited proposals? (check all that apply): 51.1. Access to the best and final offer (BAFO) process and/or automatic shortlisting.** | No |
| **51.2. Developer's fee (reimbursing the original proponent for the project development cost).** | Yes |
| **51.3. Bid Bonus.** | Yes |
| **51.4. Swiss challenge (If unsuccessful, the original proponent has the option to match the winning bid and win the contract).1** | No |
| **51.5. Other** | Yes |
| **please specify:** | The allocation of a percentage determined by the Higher Committee of the shares of the Public Joint Stock Company not exceeding 10% of the shares of the company at their nominal value in addition to the issuance fee, to be deducted from the percentage allocated to the Investor under Clause (2) of Article (13) of this Law, if the project is implemented through a Public Joint Stock Company. |
| **Please provide the relevant legal/regulatory provisions:** | Article 20 of the PPP Law and 57 of the PPP Executive Regulations provide, "The approval by the Higher Committee of a feasibility study presented by a Concept Proposer and its consideration as an Initiative entails the granting of the following rights to its proposer:<br>1. The reimbursement of the costs of the feasibility study as approved by the Higher Committee's decision plus 20% of such cost or two hundred thousand Kuwaiti Dinars, whichever is less. Such amount shall be mentioned in the project procurement documents and shall be paid by the Project Company at Financial Close.<br>2. A preference of 5% granted to its proposal which meets the terms of the project's procurement documents over the value of the best proposal, unless |

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|---|---|
| | the implementation of the project is to be undertaken through aPublic Joint Stock Company.<br>3. The allocation of a percentage determined by the Higher Committee of the shares of the Public Joint Stock Company not exceeding 10% of the shares of the company at their nominal value in addition to the issuance fee, to be deducted from the percentage allocated to the Investor under Clause (2) of Article (13) of this Law, if the project is implemented through a Public Joint Stock Company."<br>Article 58 of these Executive Regulations also provides, "The Concept Proposer which Concept has been approved as a Distinguished<br>Project shall have the right to be reimbursed only for the costs of the feasibility study, as per the decision of the Higher Committee, plus 10% of its cost as approved by the Higher Committee or one hundred thousand Kuwaiti Dinars, whichever isless. Such amount shall be mentioned in the project's procurement documents and shall be paid by the Project Company at Financial Close." |
| **52. Please provide any additional information or comments on the answers to the question(s) above and indicate which one(s) you are referring to:** | n/a |