

**POLICY STATEMENT ON PUBLIC-PRIVATE PARTNERSHIPS
OF THE REPUBLIC OF ARMENIA**

[] November 2017

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ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

Contracting authority	the public partner (grantor) in the PPP agreement, sometimes referred to in the Policy Statement as the "public contracting authority"
CSI	Centre for Strategic Initiatives
Decree	Decree of the Government No. 1241-N on the Assessment and Approval of PPP Projects dated 20 September 2012
EU	European Union
Feasibility Report	The key document helping to decide whether to pursue a project as a PPP and whether the PPP is a good use of resources. The report includes detailed project information and key results of appraisal (including value for money, economic, financial, fiscal assessment, financing plan, organisation plan, risk assessment and other critical information)
Government	the Government of Armenia
Ministry of Economic Development	Ministry of Economic Development and Investments of Armenia
Ministry of Finance	Ministry of Finance of Armenia
New Law	The new PPP Law to be developed and submitted to the National Assembly of the Republic of Armenia
Policy Statement	the present Policy Statement (sometimes referred to as the "Policy")
PPP	public private partnership
PPP agreement / PPP contract	an agreement between the public and private partners for the implementation of a PPP project (including concession agreements)
PPP Unit	any department or unit that will be given the function of a dedicated PPP authority in the future
PSC	public sector comparator, an estimate of the cost to the Government of implementing the project through traditional public procurement
private partner	the private-sector contracting party under the PPP agreement (including concessionaires under concession agreements)
PSP	private sector participation – a broader concept than PPP (see para. 1.3)
public partner	public contracting authority or implementing authority for a PPP, according to the context
value-for-money, VFM	see the definition in para. 8.4

1. Introduction

General

- 1.1 The Government is committed to developing a coherent, systematic approach to PPPs, and a robust basis for implementing them in Armenia. The Government's goal is for the strengths and resources of the private sector to be mobilised in the most favourable ways, consistent with best international practice where possible, to contribute to the economic and social development of Armenia.
- 1.2 The term "PPP", as used internationally and in the Policy Statement, is a broad concept that can be realised through different types of contract and structure, including many types of concession.
- 1.3 Private sector participation in infrastructure is even broader than PPP. The Government encourages all forms of PSP, where appropriate, including simple contracting out of services for a short term, and including other forms of public-private association or cooperation. The Policy Statement, however, deals only with the sub-set of PSP consisting of PPPs, which is defined and explained more fully below.
- 1.4 The Policy does not, a priori, favour PPPs over other approaches for developing national infrastructure. It seeks to clarify the circumstances in which the Government believes PPPs can and should be used, and to define a coherent basis for doing so in Armenia.
- 1.5 The Government wishes to use and promote PPPs where they can bring greater net benefits to the economy and society than can conventional public-sector projects. PPPs will be used where they can be reasonably shown to bring greater value-for-money than conventional public procurement, or to be the most attractive basis for implementing public-purpose infrastructure and public services in specific circumstances, according to the other criteria laid down for them by the Government.

Objectives of the Policy Statement

- 1.6 The objectives of the Policy Statement are: (i) to set out the high-level policy framework for the legislative and institutional foundations and changes that are needed to create, promote and sustain a thriving PPP programme in Armenia; and (ii) to encourage best international PPP practice in Armenia. The Government intends to follow best international practice for PPPs, consistent with Armenia's wider legal and institutional framework and adapted to the needs and constraints faced by Armenia.
- 1.7 The Government commits to develop an enabling environment to encourage private sector participation in PPP projects in Armenia, both local and foreign. The Government supports PPP projects and understands the legitimate concerns and requirements of the private sector, respecting their property and contractual rights and commercial expectations.
- 1.8 The Policy defines an institutional framework conducive to handling and advancing PPP projects and protecting the public interest, as well as ensuring rigorous governance over PPP projects in Armenia. The Government will achieve this by implementing the

institutional requirements needed to provide a clear and transparent process in preparing, implementing and managing PPPs.

- 1.9 One crucial reason for enunciating a clear and coherent Policy is the long-term nature of PPP contracts: any mistakes made or deficiencies contained in the contract can have long-term and potentially costly consequences for the public sector. The Policy minimises the scope for such mistakes and deficiencies by describing and defining a new PPP system, setting out the Government's expectations for the operation of its different aspects and components. The Policy articulates the Government's strong commitment to PPPs, invites consistent interest from the private sector in them, encourages innovations in PPP projects, and advances transparency and accountability in terms of risk and outcome.
- 1.10 The Policy sets a foundation for launching a pipeline of best-practice pilot projects to form the groundwork for a robust PPP programme for the years ahead.

Relation to legislation and legislative reform

- 1.11 In the Policy Statement, the term PPP is used in broadly the same way it will be used in the New Law. The concept of PPP shall include both concessions and other forms of PPP.
- 1.12 As the existing procurement legislation in Armenia makes PPPs subject to the public procurement regime, which is not tailored for PPP and does not allow for sufficient guarantees and incentives for sponsors (e.g. for initiators of unsolicited proposals) and financiers, the main instrument of primary legislation in Armenia dealing directly with PPPs will be the New Law. The New Law will provide a clear, comprehensive, self-standing body of rules and procedures applicable to the definition, award and implementation of PPPs in Armenia, which will help to give the new PPP system greater coherence and a clear, robust legal framework. It will govern all models of PPP, including concessions¹. The New Law shall establish uniform requirements for all types of PPP².
- 1.13 As noted above, in some minor respects the Policy may be inconsistent with certain Armenian laws in their present version. The Policy signals the longer-term intention of the Government. Any legislation that is (or comes to be perceived to be) significantly inconsistent with it, or otherwise likely to need or to benefit from consequential amendment to allow for the operation of the New Law, should simultaneously be brought into conformity. The New Law, together with other legislative acts to be adopted in furtherance of it, are expected to introduce certain amendments to various general and sector-specific laws of Armenia and repeal or amend some of their existing provisions governing or relevant to PPP.

¹ Concessions are often thought of these days and are defined accordingly under EU directives as a form of PPP in which generally a significant part of the private partner's (concessionaire's) revenue must come from payments made by users of the service and the concessionaire takes on some market and operating risk in connection with the project.

² Although it remains to be seen whether any of the practical distinctions between concession and non-concession types of PPP will need specific treatment under the New Law.

- 1.14 Statements made in the Policy Statement apply to all PPPs except where it is explicitly stated otherwise.
- 1.15 Not everything in the Policy Statement is suitable to be put in primary or secondary legislation. The Policy also aims to provide useful context and explanations that do not necessarily find their way into legislation, and to provide a broad framework for the drafting of primary and secondary legislation and for their interpretation.

2. Objectives of PPPs

- 2.1 PPPs are a means to achieve the fiscally responsible and advantageous development of infrastructure and provision of related public services. But that is not an automatic outcome. It depends on many factors that affect the successful structuring of PPPs, including the design of specific project and the contractual arrangements that will give effect to it, and the quality of the processes used to scrutinise them. The primary objectives to be served by PPPs (at least several of which should be fulfilled in any PPP, although not necessarily all of them at once), each of them connected to the overriding purpose of obtaining greater value for money in connection with public services, are the following:
- (a) Lower lifecycle costs, and improve quality of construction, operation, and maintenance of infrastructure assets.
 - (b) Ensure timely and adequate maintenance throughout the life of the assets.
 - (c) Improve access to public services and infrastructure.
 - (d) Improve the quality of public services and infrastructure.
 - (e) Benefit from the private sector's experience, resources, technologies, efficiency and capacity for innovation.
- 2.2 Secondary objectives for using PPPs include the following:
- (a) Bring greater cost transparency and budgetary certainty to certain types of payment made by national and municipal entities in connection with infrastructure and public services.
 - (b) Create a more customer-focused culture in public services.
 - (c) Encourage innovation.
 - (d) Increase transparency and accountability to the public in the procurement of public infrastructure.
 - (e) Improve the information obtained about the country's public infrastructure and public services – permitting better comparative analysis and corrective actions.
 - (f) Accelerate investment in new infrastructure, if it may otherwise not be possible, and in that way ensure the timely upgrading of existing infrastructure.

3. Definition and characteristics of PPPs

Essential attributes

- 3.1 For the purposes of the Policy and New Law, a PPP is expected to have the following minimal characteristics, and any arrangement that has the following characteristics will be a PPP. A PPP is expected to:
- (a) provide public infrastructure (including maintenance) and/or a public service – i.e. infrastructure or a service that falls within the responsibility of the state or municipalities and is traditionally provided by a public sector entity or falls within the regulated public services domain;
 - (b) be expressed in the form of a long-term legally binding contract (usually 3–50 years or longer) between a public contracting authority and a private partner;
 - (c) include responsibility on the part of the private partner at least for maintenance of the relevant assets over the life of the contract;
 - (d) transfer appropriate risks and responsibilities to the private partner.
- 3.2 In most forms of PPP, the private partner provides most of the financing for the needed investments. But private-partner financing is not an essential attribute of a PPP (see paragraph 3.8).
- 3.3 The private partner is paid for delivery of the PPP services and works. The remuneration of the private partner in a PPP may come from users of the service (directly or indirectly), from the national or municipal budget, from donor funds, or from a combination of these.
- 3.4 The following are permitted to be contracting authorities for PPPs: the state and any state administrative body acting on behalf of the state or any other body or entity authorised by the Government; and municipal executive authorities (local councils) and any local administrative bodies or entities acting on behalf of the municipal executive authority.
- 3.5 The private partner must be an Armenian company for purposes of entering into the PPP contract, although not necessarily at the time of bidding.

Duration

- 3.6 The duration of a PPP, usually within the range of 3–50 years, will be fixed by taking into consideration:
- (a) the economic life of the assets financed by the private partner;
 - (b) the time reasonably needed for the private partner to recover the costs of the investments it has made (including financing costs) and earn an appropriate return;
 - (c) a period of time sufficient for the private partner to achieve the desired benefits of the arrangement (e.g. achieve the desired efficiencies or improved services); and
 - (d) the characteristics of the sector and sub-sector.

Permitted arrangements

3.7 The following are examples of arrangements that will be considered to be PPPs provided they have the essential attributes listed in paragraphs 3.1 – 3.5. This is a non-exhaustive list, and the specific details mentioned for each example are suggestive and indicative only. Some PPPs could take elements from more than one of the examples.

(a) Contracts involving existing assets

- (i) *Operation and maintenance contract*. The private partner is contracted to operate and maintain an existing infrastructure service or asset for a specified period of time. The private partner typically receives a fee and incentive payments from the public partner (not from users) based on agreed performance indicators and outcomes.
- (ii) *Operating concession*. The private partner operates and maintains an existing infrastructure service or asset. The private partner is entitled to revenues from user charges, plus possible subsidies from the public partner, perhaps less certain payments made to the public partner for use of the public infrastructure (which in some cases is leased to the private partner).
- (iii) *Rehabilitate-Operate-Transfer (ROT)*. The private partner is contracted to rehabilitate and operate existing assets for a period of time before transferring them back to the public partner. The private partner receives tolls, fees, or other payments. At the end of the contract period, control over the asset is transferred back to the public partner.

(b) Contracts involving new assets

- (i) *Build-Transfer-Lease (BTL)*. The private partner is contracted to build, operate, and maintain a new infrastructure asset. Ownership is transferred to the public partner upon completion of the works. The private partner then leases the assets from the public partner, in exchange for lease payments. At the end of the lease period, control over the asset is transferred to the contracting authority.
- (ii) *Build-Operate-Transfer (BOT)*. The private partner is contracted to build and operate public infrastructure for a period of time before transferring it back to the public partner. The private partner receives tolls, fees, or other payments. At the end of the contract period, control over the asset is transferred to the public partner.
- (iii) *Design-Build-Finance-Operate (DBFO)* (or Design-Build-Finance-Operate-Maintain (DBFOM)). The private partner is contracted to design, finance, build, operate, and maintain a new infrastructure asset. The private partner receives tolls, fees or other payments. Control of the asset is transferred to the public partner at the end of the contract. (Typically, this structure is essentially the same as a BOT).
- (iv) *Build-Own-Operate-and-Transfer (BOOT)*. This arrangement is like the DBFO (or BOT) except that the private partner owns the assets during the term of the PPP contract; at the end of the contract ownership is transferred to the public partner.
- (v) *Build-Own-Operate (BOO)*. This arrangement is like the BOOT except that at the end of the performance term of the contract ownership is not

transferred to the public partner. The private partner retains ownership and control of the assets indefinitely.

- 3.8 The vast majority of PPPs involve private-sector finance. However, an arrangement in which most or all of the financing for the infrastructure and/or service is provided by or through the government – a "design-build-operate" (DBO) arrangement – shall also be deemed as a PPP under the New Law and Policy.
- 3.9 One form of PPP consists of an arrangement in which the private partner is remunerated on the basis of user tariffs regulated by a governmental entity (utility regulator). This type of arrangement, sometimes referred to as a "regulated utility", requires special treatment throughout the life cycle of the project. This is because the mode of regulation is no longer *regulation by contract* (as in a classic PPP) but *regulation by commission or agency*. Certain aspects of the preparation, tendering, and oversight processes need to be adjusted, and the utility regulator must be involved from the beginning of the project preparation process and in particular during the appraisal of the project as a condition to permitting the project to move forward. The Policy Statement does not address these issues; certain aspects of the Policy are not applicable to regulated utilities of the type described in this paragraph. The peculiarities of this type of concession arrangement and the required involvement of the utility regulator are likely to need to be set out elsewhere in legislation.
- 3.10 The PPP assets financed and constructed by the private partner may be owned by the public partner or by the private partner during the term of the PPP. If owned by the private partner, the PPP facility would usually be transferred to the public partner at the end of the PPP contract, although there are examples of PPPs where ownership is retained by the private sector ("BOO", standing for Build-Own-Operate).

Sectors eligible for PPPs

- 3.11 The sectors and subsectors that shall be eligible for PPPs in Armenia under the New Law include:
- (a) energy (gas, electricity and heating);
 - (b) water (water supply, treatment and distribution, wastewater collection and treatment and irrigation systems)
 - (c) highways, roads and road structures (such as bridges and tunnels), railways, metro systems, bus stations and other bus-related infrastructure and services, other public transportation services, airports, weight control systems, and other transportation infrastructure;
 - (d) solid waste collection, processing and disposal;
 - (e) municipal parking and other municipal services;
 - (f) postal infrastructure and services;
 - (g) health care;
 - (h) education;
 - (i) tourism, culture and sport;
 - (j) social housing;

- (k) social entrepreneurship;
- (l) social support network;
- (m) food bank;
- (n) alternative innovation services for elderly, children and families;
- (o) inclusion of people with disabilities; and
- (p) any other sectors and subsectors so long as they are not excluded by law, but only with the prior approval (in advance of the submission of the PPP Feasibility Report) of the responsible state or municipal authority.

Excluded arrangements

- 3.12 Certain arrangements involving private sector participation are not considered to be PPPs; they may share some, but not all, of the essential attributes of a PPP.
- 3.13 A contract in which the private partner designs, finances, and builds works and then has no further responsibilities, but payment by the public partner for design and construction is made on completion or spread out over a period (e.g. 10 – 20) years, is not a PPP.
- 3.14 Within the scope of this Policy, a contract is considered a PPP if long-term risk allocation or risk transfer to the private partner occurs.
- 3.15 A project that consists of the provision of services by the private sector that are not public services and/or are not included in the regulated public services domain and does not involve provision of public-purpose infrastructure and/or public services is not a PPP. One example would be a natural resource concession – e.g. for natural resources exploration and extraction. This is not usually treated as a PPP; the remuneration basis and in some ways the pattern of risk allocation are often different from those found in PPPs.

4. Factors that tend to favour using PPPs (value-for-money drivers)

- 4.1 In deciding whether to implement a project as a PPP or instead as a traditional public procurement, there are factors that, if present, make it more likely that a PPP would be suitable and would be more beneficial than a public-sector project. These factors are sometimes referred to as "value-for-money drivers".
- 4.2 These factors are to be borne in mind throughout the PPP preparation process. In particular, they should be used and considered in the very first stages, when promising PPP projects are identified from a longer list of possible PPP projects. They also play a role in the formal appraisal of the PPP (see para. 8.11(c)).
- 4.3 These factors do not constitute a rigid checklist. They should be regarded more in the following way: the more affirmative responses there are and the more clearly applicable they are, the more likely it is (all other things being equal) that a PPP would be preferred to a public sector project.
- 4.4 The main factors that tend to favour using PPPs over public procurement are:

- (a) There are clear economic benefits for the Government and the wider economy in structuring the project as a PPP rather than as a traditional public-sector project, or it is impossible or impracticable to structure the project as public procurement due to budgetary constraints or other fiscal concerns at the relevant time.
- (b) There are strong opportunities for economies or efficiencies to be realised by bundling together design, construction, and operation and maintenance (or some of these).
- (c) The desired outputs are known, agreed among important stakeholders and can be specified precisely and measured and monitored well.
- (d) The PPP agreement can be designed so as to be relatively complete and not leave many uncertainties.
- (e) Risks affecting the project are relatively well understood and can be allocated with sufficient clarity, and the contract can include mechanisms that deal with the consequences of these risks materialising.
- (f) Technology and other relevant aspects of the sector are fairly stable (i.e. the contract will most likely not need to be continually adapted to a changing environment).
- (g) There will presumably be no need for short- or medium-term flexibility, and so a long-term contract will work without needing to be periodically renegotiated.
- (h) The private sector has the needed approach and technical and managerial skills and expertise, together with - in most cases - the necessary available funding for the project. The private sector is likely to perform and innovate better in this kind of project than the public sector. It is likely to attract private financing.
- (i) Strong competition is expected in bidding for the PPP.

5. Approach to the design and structuring of PPPs

General principles

- 5.1 Paragraphs 5.2 – 5.7 set out some of the principles that should be borne in mind in designing and structuring PPPs.
- 5.2 PPP agreements will be made as "tight" and "complete" as possible. This means that obligations, responsibilities, risks and contingencies should be set out or addressed with sufficient precision and in sufficient detail to limit or even eliminate the probability that open-ended renegotiations will be needed in the future because it is not clear what a party should do in a certain situation. Renegotiation will be permitted only for events or circumstances so unlikely that it would not have been reasonable for the parties to take them into account when concluding the contract.
- 5.3 Performance specifications should be expressed as much as possible in terms of performance outputs – the "what" as opposed to the "how" – rather than inputs of works and equipment. The detailed inputs can largely be left to the private sector. In a PPP, the focus should be on the public partner or users purchasing services, not assets.

- 5.4 Suitable incentives should be built into the PPP agreement to yield high quality service provision and cost efficiency. Transfer of risk to the private partner is useful mainly when doing this increases the incentives on the private partner for good performance.
- 5.5 Recurrent payments to the private partner should generally start only when delivery of the specified services starts, not when construction starts. The private partner should generally take the risk of making the service available, and therefore of substantially all the design and construction works.
- 5.6 There should be a clear statement or specification in the PPP agreement of the public partner's responsibilities as well as those of the private partner.
- 5.7 Performance requirements, including service-quality and maintenance standards, should be clearly set out and appropriate negative sanctions should be included for noncompliance.

Risk assessment and allocation

- 5.8 Risks should be well articulated and then clearly allocated in a PPP contract. The full variety of risks should be considered, including the following types: design, construction, operational, maintenance, land, financial, market, macroeconomic, legal, tax, environmental, social and other risks, including "force majeure" and "exceptional events". In each group/type of risk, the team preparing the project should identify the exact risks, and should then address in detail and with precision the key ones in the PPP contract, in terms of the parties' relevant responsibilities, making it clear which party carries them and what their consequences are. The allocation should be appropriate and optimal and should be incorporated into the PPP contract in an enforceable and commercially sustainable way. Risks should be allocated to the party best able to manage them, in ways that are consistent with recognised international practice.

Payment mechanism

- 5.9 The payment mechanism defines how the private partner is remunerated.
- 5.10 The payment mechanism should reflect performance and should create incentives for better performance of the private partner (by use of adjustments to payments and/or specific bonuses/penalties).
- 5.11 The payment mechanism can take a variety of forms, including: user charges (e.g. direct toll), payments from the public partner (e.g. availability payment, shadow toll, subsidies) or combination of both. A minimum revenue guarantee may also be appropriate in some cases.

Payments for early termination

- 5.12 The public partner will be obliged to make a payment to the private partner if the public partner has defaulted on the PPP agreement. A payment from the public partner might also be required even if it is the private partner that is in default. The main reason is that senior lenders will insist on substantial repayment of their loans in any event. Thus the public partner that will own the facility and use it after the termination of the PPP agreement should pay something, roughly commensurate with the benefits that accrue

to it as a result of an early termination (less appropriate penalties resulting from the default), to prevent "unjust enrichment", even if the private partner was at fault.

- 5.13 The way that early termination payments (for different types of termination, including termination due to the public partner's fault, the private partner's fault, special and force majeure events) are to be calculated should be set out clearly and in detail in the PPP agreement or the "direct agreement" with senior lenders, often with suitable parallel provisions in the PPP contract. This will help avoid unnecessary disputes³.
- 5.14 The New Law and secondary legislation will provide broad principles that will govern the way these payments are to be calculated and paid. The PPP Unit will provide detailed guidance for contracting authorities to help them craft appropriate provisions for specific PPP contracts.

Payments made by the private partner to the public partner

- 5.15 If the PPP agreement provides payments from the private partner in favour of the public partner, then such payments should be based on the economics of the specific project, as determined *ex ante* by the financial model used in the feasibility study and appraisal of the project. This does not exclude adopting broad guidelines based on the economics of different sectors or sub-sectors. The rationale is that the economic benefit of a PPP is to be seen mainly in terms of benefits to society, rather than immediate revenue to the public partner.
- 5.16 Payments paid by the private partner to the public partner are usually of three main types, where the values are determined based on the economics of each specific project, and which can be used in combination:
- (a) fixed periodic payment (e.g. monthly or annually);
 - (b) fixed payment per unit of goods or services sold (i.e. based on throughput);
 - (c) revenue sharing or profit sharing.
- 5.17 Often the level of the payment or the sharing percentage that is proposed by the private partner in bidding is used as one of the evaluation criteria in selecting the private partner.

³ A "direct agreement" is an agreement between the public partner, the private partner and financiers. It is customary for the senior lenders to enter into a "direct agreement" with the state (or municipality in a municipal-level PPP) public partner to allow for step-in and related arrangements. A "direct agreement" normally includes cure rights, step-in rights, notice periods, and novation rights, all of which give the senior lender an option remedy for a private partner's default under its contractual obligations in the project agreement (and/or the financing documents), which effectively override the rights the public partner would otherwise have to terminate the agreement following that default, in order to ensure the continuity and ultimate success of the PPP project. It typically allows the lenders to 'step in' to a project in extreme circumstances to put right a major default, if necessary restructure the project company and keep the project alive and functioning in accordance with its requirements. If the default cannot be rectified and termination goes ahead, it will also confirm the termination payments payable by the awarding authority. In many cases, it will be impossible to obtain financing for a PPP without recognising these and other legitimate concerns and interests of the senior lenders. Legislation should be very clear about the various rights of senior lenders in this respect, and in particular their use of step-in rights.

Dispute Resolution

- 5.18 International best practice is that parties to PPPs should be allowed to make their disputes subject to international commercial arbitration. We recommend that the New Law should provide for the possibility of settling disputes in international arbitration bodies, which are entirely neutral and independent from any other organisations or public bodies and which consist of experienced arbitrators. Recourse to international arbitration will allow the parties to benefit from reliability and speed of process and international conventions on enforcement of international arbitration awards. It is also a fundamental requirement of most international lenders.

6. Institutional framework

Broad institutional framework for PPPs

- 6.1 The development of an appropriate PPP institutional framework in Armenia will be a long-term process, and in the initial years after the adoption of the New Law that framework is likely to be somewhat less complex and multi-faceted than is described below. Effective governance of a PPP system on the part of the government bodies and institutions involved is critical to the success of that system. It takes time and thought to define and develop all the relevant roles and relationships, and to carry out all the necessary capacity building. The ensuing paragraphs describe some central features of the fully-fledged institutional system which is expected to be gradually put in place in the next few years. The proposed initial institutional setup and functions of the various stakeholders during the main stages of PPP contract implementation are presented as a guide in the Appendix to this Policy. The New Law and/or secondary legislation shall establish the corresponding rights and responsibilities of the PPP system stakeholders.

PPP Unit

- 6.2 The centrepiece of the new institutional arrangements in Armenia will be the PPP Unit, which will provide support and guidance for the new system to all Government bodies involved. At present the main functions needed for the PPP Unit in Armenia are those set out in paragraph 6.3. Some of those functions are already exercised by the CSI, whilst others are spread among various ministries (the Ministry of Economic Development, line ministries, etc.). Some of those functions are not currently exercised by any authority on a permanent basis, which is why, among other reasons, the role of the PPP Unit will be crucial.
- 6.3 PPP Unit functions include:
- (a) Support of further policy development, including:
 - (i) reviewing of the Policy Statement from time to time;
 - (ii) support for initiation of changes necessary in primary and secondary legislation;
 - (iii) support for the preparation of a pipeline of pilot PPP projects / PPP programmes as necessary.
 - (b) Assisting the Government with establishing mandatory regulations concerning procedures and methodologies, including the preparation and updating of

regulations, mandatory guidelines, and methodologies – e.g. relating to feasibility studies and appraisal.

- (c) Assistance / support role in appraisal of specific PPP projects. This applies only to PPPs at the state level and to municipal-level PPPs that involve state aid of any kind.
- (d) General advice to government departments and other stakeholders about how to apply the regulations and prepare PPP projects.
- (e) Collection, analysis, provision and reporting of data about PPPs and performance results (project reports, PPP database, prioritised project master plan, etc.). Transparency and availability of data to both public and private sectors will be vital.
- (f) Non-mandatory guidance about PPPs, including:
 - (i) the preparation or dissemination of non-mandatory guidance material, best practice notes, etc.; and
 - (ii) drawing up and dissemination of sample/model (non-mandatory) PPP contract clauses and contracts.
- (g) Capacity building, including the organising of training courses of various kinds for departments, agencies, municipalities, and other stakeholders.
- (h) Development of improved ways of financing PPPs.

Responsibilities of the public contracting authority

- 6.4 Contracting authorities are the implementing authorities for PPPs within the scope of their responsibilities and remain ultimately accountable to the public and government for the provision of the services and infrastructure provided under PPPs⁴.
- 6.5 Contracting authorities should receive guidance from the PPP Unit in their initial identification of suitable PPP projects and on how to build up a prospective pipeline of project ideas.
- 6.6 Consultancy firms can play an important role in carrying out feasibility studies and in acting as transaction advisors. External advice is particularly important in the early years of a PPP programme, until the PPP Unit and contracting authorities develop sufficient internal capacity to handle some of the responsibilities of project preparation, appraisal, and tender themselves. Equally important is the capacity of contracting authorities for oversight and monitoring.

7. Stages of project preparation for PPPs

7.1 The main stages in the "life-cycle" of a PPP are as follows:

- (a) Identification (including formulating the initial PPP concept and carrying out pre-feasibility and option studies, as appropriate).

⁴ In some cases, the contracting authority might delegate day-to-day responsibility to another entity – e.g. a state or municipal enterprise – in which case it might be good to make a distinction between "contracting authority" and "implementing entity". For purposes of simplicity, this qualification is ignored below, and only contracting authorities are referred to.

- (b) Initial conception and design of the PPP project, culminating in the preparation of a PPP Feasibility Report.
- (c) Formal appraisal. Among other things, it is at this stage that a formal decision is taken as to which PPP model or form to choose.
- (d) Procurement phase (described more fully in section 9, culminating in commercial close.
- (e) Commercial close (execution of the PPP agreement and satisfaction of any conditions precedent to its effectiveness).
- (f) Financial close (execution of all the finance and security documents (including a direct agreement), and satisfaction of the relevant conditions precedent to their effectiveness, allowing the funding of the project to proceed).
- (g) Implementation of the project (design/(re)construction/operation), and its monitoring and oversight.
- (h) *Ex post* evaluation (assessing the project's successes and failures).

8. Appraisal of the PPP project

General

- 8.1 All PPPs must go through a formal appraisal process before tendering can begin. The fully-fledged appraisal system, requirements and criteria for PPPs in Armenia described below are likely to be only gradually implemented over a period of several years after the adoption of the New Law. Initially, immediately after its adoption, the appraisal procedures are likely to be rather more flexible, with some elements remaining at the discretion of the contracting authority / PPP Unit.
- 8.2 Every amendment to a PPP agreement must go through an appraisal process proportionate to the scope, complexity and impact of the amendment. For minor amendments, the review process can be very much reduced in scope, effort, and time.
- 8.3 Appraisal of the PPP project consists of a comprehensive assessment of all aspects of the PPP project, ideally (if possible) conducted by an entity (and team of staff) that was not directly involved in the preparation of the project. This is because the team that has been involved in preparing the project is likely to be biased in favour of approving the project, regardless of any deficiencies.
- 8.4 A key criterion in the appraisal of PPP will usually be "value-for-money". VFM relates to finding the optimal combination of whole-of-life costs and service quality – i.e. of maximising net benefits from the project. This concept of VfM in the PPP context (which needs to be applied with judgment and subtlety in each case) is different from another crucial criteria, which is why a public sector project should be undertaken or not: the economic case for a project. The economic cost-benefit analysis is crucial to ascertain whether a proposed project will yield net benefits to the economy and society. On the other hand, the VfM test aims at ascertaining whether a PPP modality yields higher net benefits relative to a similar, well-structured conventional public procurement project. Both exercises are crucial, but they answer different questions.

- 8.5 The depth and detail of the appraisal process for a PPP should be proportionate to the cost of the project and its importance and will inevitably vary from project to project.
- 8.6 In the case of national PPP projects, the appraisal should be carried out first by the responsible line ministry and then by the relevant authorised public body (with assistance from the PPP Unit if required). In the case of municipal PPP projects, appraisal should take place in the same way as for national-level projects, except that the only entity carrying out the appraisal is the municipal executive authority. If the PPP involves state support of any kind, then final appraisal should take place by the relevant authorised public body (with assistance from the PPP Unit if required) even in municipal-level PPPs.
- 8.7 If the appraisal is carried out by the municipal executive authority and not by the PPP Unit, the appraisal report should be sent to and reviewed by the PPP Unit as a way for the PPP Unit to keep track of the feasibility and appraisal process at the municipal level to see if it is working well and to use as input to possible changes in regulations or the applicable evaluation criteria.
- 8.8 Appraisal is conducted on the basis of the PPP Feasibility Report and supporting documentation (generally prepared by the PPP Unit or contracting entity).
- 8.9 There must be sufficient stakeholder consultation and support in advance of entering into a PPP contract. Being a centre of PPP expertise, the PPP Unit shall also maintain working relations with all stakeholders involved in PPP (including by conducting road shows, workshops, round tables etc.). Effective stakeholder management will help ensure that a PPP has the necessary support throughout its preparation and implementation.
- 8.10 The main purpose of the appraisal of the PPP project is to ensure that clearly unfeasible and fiscally and economically unsound PPP projects are not approved. The purpose is neither to redesign the details of the PPP project nor to make fine-grained adjustments to the commercial or practical decisions made by the contracting authority.
- 8.11 The main appraisal criteria are as follows:
- (a) consistency with national planning goals and sector strategy;
 - (b) economic soundness of the project and the nature and reliability of the services to be provided;
 - (c) suitability of the project to be procured as a PPP (as opposed to a public sector project) – i.e. value-for-money drivers and similar criteria (see section 4);
 - (d) qualitative and quantitative (e.g. PSC analysis) value-for-money comparison (if sufficient and reliable quantitative data are available);
 - (e) appropriateness of allocation of responsibilities and risks to the private partner, public partner and to other parties;
 - (f) appropriateness of incentives given to the private partner for cost efficiency and high quality of services;
 - (g) financial feasibility for the private partner, including from the perspective of senior lenders ("bankability"), if relevant;

- (h) sufficiency of state and municipal budgets, if relevant, taking into account any public support mechanisms;
 - (i) acceptability of the fiscal impact to the state of non-contingent and contingent liabilities resulting from the PPP project;
 - (j) acceptability of environmental and social impacts;
 - (k) appropriateness of the planned procurement process for the selection of the private partner (including evaluation criteria);
 - (l) adequacy of the contracting authority's plan for monitoring and oversight during the course of the project;
 - (m) urgency of the PPP project, compared to other potential projects, as a matter of Government priority.
- 8.12 Secondary criteria for the appraisal should be determined by the Government and/or the Ministry of Economic Development (with support from the PPP Unit) for particular sectors, subsectors, and types of projects.
- 8.13 All PPPs are to be appraised in the same manner and by the same procedures – although some criteria may not apply to all types of PPP.
- 8.14 Ultimately, decision-making process for PPPs should usually include three key steps:
- (a) cost-benefit analysis in order to assess whether a project is worthwhile from an economic and social perspective;
 - (b) VfM analysis in order to choose the type of procurement (PPP against traditional public procurement);
 - (c) "gateway" process, in which the budgetary authority plays a key role in assessing affordability, monitoring and managing the fiscal costs and risks.

Appraisal of fiscal impact

- 8.15 PPPs can involve non-contingent and contingent liabilities for the state or municipality:
- (a) An example of a non-contingent liability (sometimes called a "direct liability") is where the private partner is wholly or partially remunerated by a revenue stream paid out of the national or local government budget (contingent only on services being provided – "availability").
 - (b) In a "contingent liability", payment is made only under specified conditions which may or may not arise – for example, a minimum revenue guarantee (e.g. for a toll road) or early termination payments to private partner.
- 8.16 These liabilities can reduce "fiscal space" in the same way that taking on state debt can reduce fiscal space. Even if the debt of the private partner in a PPP is not put on the state's balance sheet, it can reduce the state's fiscal space. It is important that PPPs do not jeopardise the long-term fiscal sustainability of the state. The PPP Feasibility Report should set out, year by year if appropriate, estimated values for all the direct and indirect impacts that the PPP project will have on flows to and from the state and municipal treasuries. Depending on the particular PPP project, the flows that must be shown may include, among other things:

- (a) non-contingent obligations of the state or municipality to the private partner under the terms of the PPP agreement (or an associated agreement) based on availability or provision of the services;
 - (b) contingent payment obligations under the terms of the PPP agreement; and
 - (c) fees and tax payments made by the private partner to the state or municipality.
- 8.17 The Ministry of Finance will also be tasked with reviewing the appraisal of fiscal impact. The Ministry of Finance will also be tasked with budgeting the payments to the private partner and performing other related duties within its statutory authority.

9. Selection of the private partner

Procurement policy for PPPs in Armenia

- 9.1 The procurement procedure for PPPs in Armenia will need to conform to the New Law. The procedures established by Law of Armenia on Procurement No. HO-21-N of 16 December 2016 shall not apply (provided however that certain aspects of the existing procurement procedures may be borrowed from the existing procurement legislation subject to these procedures not interfering with the purpose of selection of private partners); rather the selection of the private partner should reflect PPP specifics and allow for more flexibility, as prescribed by international best practice.
- 9.2 Paragraphs 9.4 to 9.11 describe some of the important aspects of preferred policy for the selection of the private partner in PPPs in Armenia – a policy that should guide subsequent legislative drafting.
- 9.3 It is expected that secondary legislation and non-mandatory guidance will be issued to assist contracting authorities to use the procurement procedures in the most appropriate way. Moreover, the presence of an adequate and appropriate project-specific procurement plan (conforming to law but more detailed than the legal requirements) will be one of the criteria used in appraising a PPP project before approval).
- 9.4 **Procurement notice.** Publishing the public procurement notice marks the start of the formal procurement process. Interested persons may respond and receive documentation for the next step.
- 9.5 **Prequalification and shortlisting.** The purpose of prequalification is to include only those bidders that appear to be technically, commercially and financially capable of carrying out the PPP in an adequate manner, and are clearly serious about doing so. The invitation to prequalify (or equivalent) should include the criteria and tests that will be used to evaluate the prequalification statement and determine the short list. Other considerations include the following:
- (a) Prequalification criteria should not be defined in a way that unreasonably bars certain potential bidders from competing
 - (b) Prequalification documentation should include an adequate description of the project that attracts those companies that would be attracted if they saw the full invitation to tender and does not dissuade any companies who would want to tender if they saw the full invitation to tender.

- (c) There may be some circumstances in which an open tender can be used (i.e. no prequalification procedure, where assessment of qualifications is carried out along with evaluation of the tender) but they should be limited, as all sides tend to benefit from the efficiency, precision and fairness of a two (or more) stage process.
 - (d) There must be at least two prequalified candidates for the competition to move forward as originally envisaged. If there is only one bidder, the public partner shall conduct direct negotiations with that bidder in order to sign a PPP contract.
- 9.6 **Invitation to tender.** The documentation included with the invitation to tender ("tender documents") should contain all the information that bidders would reasonably need to bid (subject to the dialogue procedures noted in paragraphs 9.13 – 9.14). It is important to devote sufficient time and effort to develop the tender documents in enough detail to ensure comparability of the bids and to reduce the need for debate and clarification before signing the contract. A draft PPP contract should usually be included with the invitation to tender, with any aspects yet to be decided (i.e. to be based on the outcome of the dialogue or tender process) clearly indicated. It is important to highlight which clauses of the PPP contract cannot be changed during negotiations.
- 9.7 The invitation to tender should clearly set out the broad criteria that will be used to evaluate the proposals and the relative weighting (or some indicator of importance) to be given to each criterion.
- 9.8 The invitation to tender should clearly demonstrate to bidders that a transparent, rule-based decision-making process will be followed – one that limits discretion and ensures equal treatment and non-discrimination. All steps and procedures should be clearly spelled out – generally in more detail and with more precision than is found in the laws and regulations. The PPP Unit will review their adequacy during the PPP appraisal process.
- 9.9 **Tendering period.** In traditional public procurement, the main activity for the contracting authority during the bidding period is to respond to requests for clarification of the tender documents. As noted above, a more extensive and interactive dialogue is often needed in the procurement of PPPs, given their relative complexity. Considerable dialogue may take place during the bidding period. This important aspect is addressed in a separate section of this document – see paragraphs 9.12 – 9.14.
- 9.10 **Evaluation of final proposals and selection of preferred bidder.** During this period, tender committees should keep a careful and detailed record of their evaluation of the proposals, including the steps of the process followed. The record should set out clearly the decision methods followed by the evaluators and the reasoning behind all of their decisions.
- 9.11 **Final negotiations.** PPPs often require final negotiations after the designation of the preferred bidder to arrive at the final contract to be signed. In that case, the final negotiations should not modify any aspect of the draft contract (the one included in the tender documents) if the ranking of the bidders could have changed if that modification had been included in the draft contract before bidding. To make such a modification could distort the outcome of the tender. Therefore, clauses which were previously highlighted in tender documentation cannot be changed. Other clauses may be modified

in order to fit the PPP contract to a certain bidder and current market (for example money market) conditions.

Interaction with bidders during the tendering period

- 9.12 Given the complexity of PPPs, greater interaction with bidders during the tendering period (compared with ordinary public procurement) can be useful in arriving at the best solution. Contracting authorities may interact with bidders at any stage of PPP process, e.g. by conducting open hearings, consultations, dialogue and competitive dialogue procedures.
- 9.13 The dialogue procedure is subject to certain constraints, as follows:
- (a) The dialogue procedure consists of two distinct stages after prequalification and shortlisting.
 - (b) In the first stage, the contracting authority requests full or partial proposals based on specifications, requirements, and questions given to bidders. Financial proposals are not given at this stage. The information given to bidders can include different options to consider. The envisaged dialogue does not have to concern all elements of the project. For example, it might be that in the first stage, the only thing requested from bidders is to give a mark-up and comments on the draft PPP contract. Or it could be that certain broad technical alternatives are discussed during the first stage with a view to narrowing them down. This depends on the specific project.
 - (c) The process can be carried out a second time if this is considered to be useful (and if it provided for at the start in the tender documents).
 - (d) No bidders will be eliminated from consideration as a result of the dialogue stages.
 - (e) The contracting authority then issues final specifications and requirements, and bidders submit final technical and financial proposals.
- 9.14 General rules for the dialogue include the following:
- (a) All bidders must be treated equally; information given to one bidder must be given to all.
 - (b) In the dialogue following receipt of the bidders' submissions in the first stage (and in the second stage, if there is a total of three stages), separate meetings can be held with each bidder if this is considered useful. If this is done, the process needs to be handled very carefully to maintain equality of treatment.
 - (c) The tender committee should keep a clear, well-organised, and complete record of all communications issued and received and all meetings, and all decisions taken relating to the procurement. Explanations and reasoning should be set out clearly for all decisions taken.
 - (d) Particular care needs to be taken to protect each bidder's commercially sensitive material and intellectual property.
 - (e) The steps should be set out clearly in the initial tender documentation and should not be improvised as the tender process unfolds.

Single-source (direct) negotiations

- 9.15 Single-source (direct) negotiations, without competition, to select the private partner should be permitted only in certain defined circumstances, such as when there is only one potential private partner who can meet the requirements of the contracting authority or, in the case of an unsolicited proposal, if within certain period of time⁵ after its submission no other party besides the project initiator expresses interest in the project.

Unsolicited proposals

- 9.16 Unsolicited proposals are proposals made by a private partner on its own, not in response to requests made by a public partner. Unsolicited proposals can expand the range of ideas that may be included in the PPP project pipeline. This mainly refers to such programs that involve new concepts or technologies and are not included in the list of PPP priorities because of a lack of relevant experience in the public sector. Nonetheless, unsolicited proposals can also create challenges that contain risks of insufficient value-for-money, particularly if a public partner chooses to negotiate a PPP contract with the initiator directly and direct smaller financial resources to implementing non-priority projects. Therefore, maximum transparency of the corresponding procedures is required. An unsolicited PPP proposal has to be submitted by a person eligible to be qualified as private partner. As there are risks for the public side⁶, the New Law shall establish other requirements for a private investor submitting an unsolicited proposal such as technical expertise and qualifications, level of investment and resource behind the proposal, solvency, financial stability, perhaps funding confirmation requirements. The New Law shall also establish the authorised body for the receipt of unsolicited proposals and procedures and terms for its consideration, as well as regulate in detail the decision-making process involved. This ensures fair competition, as any other interested investors may apply in order to have the opportunity to bid for the project. These procedures have to be developed in order to provide incentives for private partners to present high quality PPP projects and to create an environment of competition and transparency.
- 9.17 In order to establish balanced regulation in terms of unsolicited proposals the policy in Armenia should generally be to go forward to competitive tendering for unsolicited PPP proposals (except for those to which paragraph 9.15 applies) and to provide the project initiator with certain bonuses or incentives at the tendering stage (such as the right of "best and final offer" or bonus bid points or waiver of the requirement to submit bid security). If the project initiator loses in the competition, the winning bidder shall reimburse the reasonable preparation costs incurred by the initiator in making its unsolicited proposal.

Procurement of works, goods, and services by the private partner

- 9.18 So long as the works, goods, or services to be purchased by the private partner are part of the PPP project that was subjected to competitive tendering, the private partner will

⁵ To be set out in the New Law.

⁶ For example, the private investor may not have enough expertise to duly structure the project (including inadequate value for money) from technical, legal or financial perspective. Additionally, cost effectiveness may decline and corruption risk is a real concern.

be under no obligation to follow public procurement rules in making these purchases in turn itself, unless the private partner falls under the public procurement regime due to having a stake over 50 per cent in its capital owned directly or indirectly by the state or municipality. Currently, the public procurement regime also applies to procurements of one or more of the list of certain public services (including electricity and heat generation, irrigation, electronic communication), but the New Law shall include a carve-out for such procurements if they are made within the scope of a PPP.

10. Government funding and support

10.1 The following types of state support will be permitted in appropriate circumstances. The public partner:

- (a) shall usually make the PPP project site available to the private partner, often in the form of a lease or usage right (licence) for the duration of the project agreement;
- (b) may provide design documentation, infrastructure or physical assets that are complementary to the infrastructure for which the private partner is responsible, and/or permit the development of "ancillary facilities" (commercial developments ancillary to the main infrastructure).
- (c) may provide construction grants (state co-financing on construction stage) / subsidies to the private partner;
- (d) may provide tax and customs benefits (or guarantees that the tax regime will not change for a certain period of time) so long as this is consistent with general policy regarding tax and customs benefits for the promotion of private investment and with applicable law;
- (e) may in certain circumstances provide recurrent grants or subsidies to the private partner if this is needed to keep user charges affordable. These would not be given on an ad hoc basis but would be based on pre-agreed rules or formulas. (These may be called investment payments or operational payments);
- (f) may agree to provide the project with certain forms of protection against potential competition, for at least a certain period of time such as:
 - (i) exclusive rights to carry out certain types of economic activity over a certain period;
 - (ii) guarantees that when a public partner gives similar rights to another person or constructs a similar infrastructure, which results in competition with the private partner, the public partner shall compensate the lost profits of a private partner;
 - (iii) guarantees that a public partner will purchase a certain amount of goods or services from a private partner in accordance with the law on procurement,
 - (iv) other types of protection which are not prohibited by the legislation of the Republic of Armenia or do not contravene exclusive rights.
- (g) may obligate itself in the PPP contract to make periodic payments to the private partner (such as availability payments that allow for recovery of investor's costs, as well as return of and return on invested capital) and payments to the private partner under specified conditions as a way of sharing risk – e.g. a minimum traffic or revenue guarantee in a toll road, or a foreign exchange risk guarantee;

- (h) may provide a guarantee of specific payment obligations (certain or contingent) – e.g. for early termination payments – of a state enterprise that enters into a PPP – especially for pilot PPPs which may not be fully attractive financially for the private sector;
 - (i) may provide state loans or may guarantee the senior debt (or part of it) of the private partner in specific circumstances (e.g. in the early stages of PPP development or in exceptional projects which would otherwise not be financeable).
- 10.2 Once Armenia has obtained more experience in PPP and the PPP market has become more mature, the state may gradually cut back its support for individual PPP projects, as stakeholders become more and more able to rely on existing examples of successful practice.

11. Contract monitoring, oversight, reporting and evaluation

Monitoring and oversight

- 11.1 The contracting authority remains ultimately responsible *vis-à-vis* the public and the government for the delivery of the services even after signing the PPP contract. Oversight and monitoring of PPP contracts requires adequate capacity within the contracting authority.
- 11.2 Systematic monitoring systems will be set up to assess whether the private partner is performing in accordance with the requirements set out in each PPP contract. This should not be done in a haphazard way.

Transparency

- 11.3 All signed PPP contracts should be made available to the public, subject to reasonable safeguards to protect national security and appropriate redaction to protect commercial sensitivity.

Data on PPPs

- 11.4 The PPP Unit should maintain a systematic and well-organised data base of all PPP projects. The information provided in the data base should support transparency in the procurement process and allow Government to track its fiscal obligations. Paragraph 6.3(e) of the Policy describes the type of data that PPP Units typically collect.
- 11.5 There should be standard performance reporting requirements for all PPPs – core indicators of various kinds. Performance reporting requirements should detail the outcomes to be measured, service standards to be met, systems of measurement, and repercussions for the private partner if performance goals are not met. Periodic reports in a standardised format need to be prepared and centrally recorded and analysed for every PPP in development and every on-going PPP.
- 11.6 All PPP contracts should include a requirement to comply with the contracting authority's performance reporting requirements as they may be changed from time to

time (with no additional compensation for the private partner so long as the changes are not onerous, and with compensation under change of law provisions if the changes are onerous).

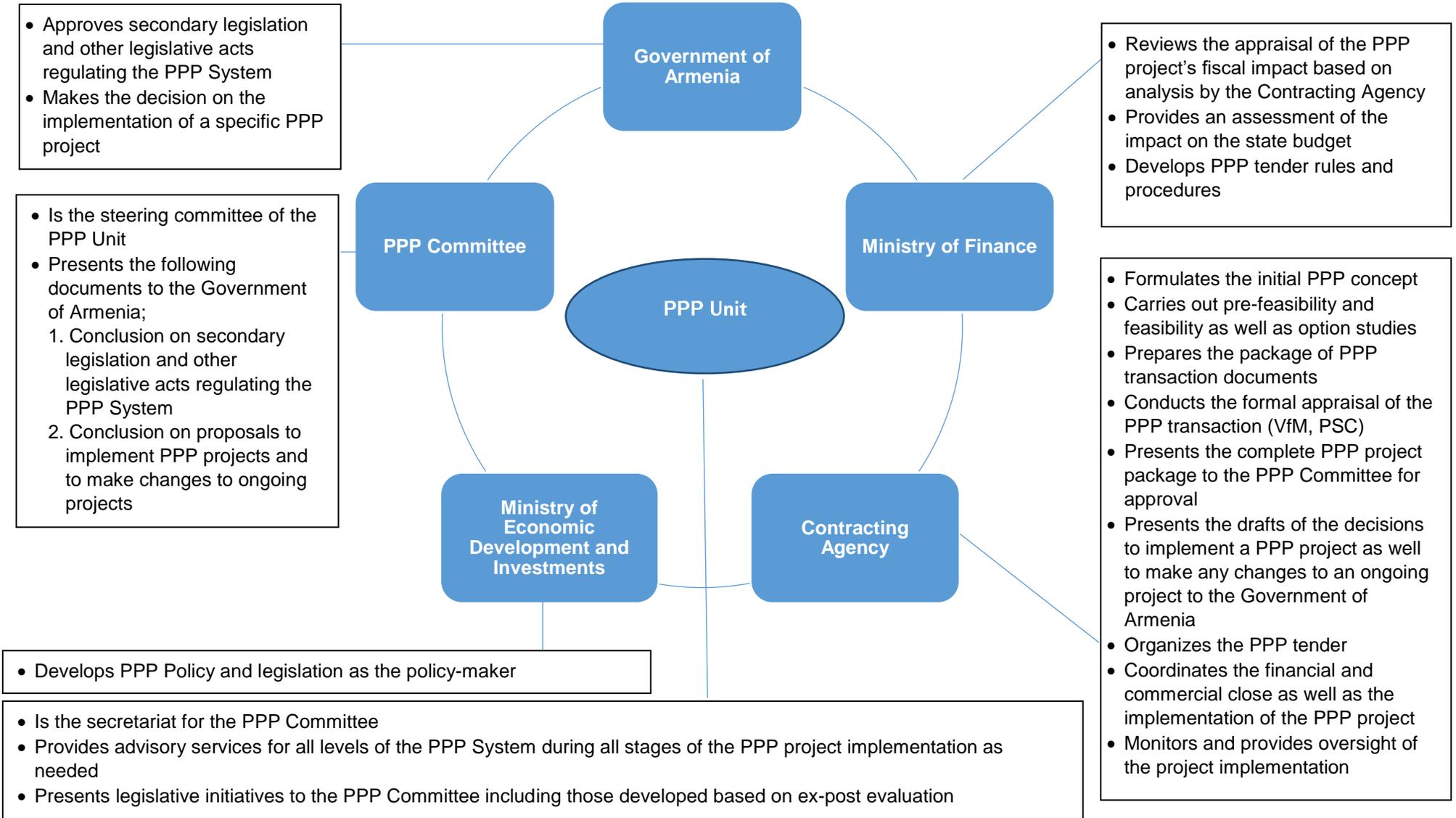
***Ex post* evaluation**

- 11.7 An *ex post* evaluation of each PPP, conducted after completion of the PPP, should be carried out by an independent team – ideally (practicalities permitting) independent from the team originally involved in appraising and approving the project. The main objective of the *ex post* evaluation is to assess a project's successes and failures, with a view to changing system requirements and procedures incrementally to help ensure better outcomes from future PPPs.
- 11.8 Information needed to conduct an *ex post* evaluation should be specified or allowed for in the PPP contract and collected over the course of the PPP. Criteria and methods for evaluating PPPs should be clearly defined in subordinate legislation / guidelines, and the independent team, in coordination with the contracting authority, should identify stakeholders that are best suited to provide any additional information to complete the evaluation.
- 11.9 An *ex post* evaluation will help improve contract design and processes for establishing realistic and achievable objectives for projects. The PPP Unit should carefully study the evaluation reports. Lessons learned from *ex post* evaluations can lead to improvements to policy, legislation, methodologies and procedures to obtain better VfM from PPPs.

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APPENDIX: PPP SYSTEM INSTITUTIONAL SETUP AND DECISION-MAKING MATRIX

PPP Institutional System Main Participants and Their Functions



Decision Making during Main Stages of PPP Project Implementation

#	Project Stage	Government of Armenia	PPP Committee authorized by the Government of Armenia	PPP Unit	Ministry of Finance	Ministry of Economic Development and Investments	Contracting Agency
1	Identification of the PPP Project <ul style="list-style-type: none"> Formulation of the initial PPP concept Carrying out of pre-feasibility and options studies 			Secondary		Secondary	Lead
2	Initial conception and design of the PPP project <ul style="list-style-type: none"> Preparation of the PPP Feasibility Report Preparation of the PPP Transaction Package 			Secondary	Secondary	Secondary	Lead
3	Formal Appraisal <ul style="list-style-type: none"> VfM, PSC 			Secondary	Secondary	Secondary	Lead
4	Decision on PPP program implementation	Lead	Secondary	Secondary			
5	PPP tender/procurement phase			Secondary	Secondary		Lead
6	Commercial close <ul style="list-style-type: none"> Execution of the PPP agreement and satisfaction of any conditions precedent to its effectiveness 			Secondary	Secondary		Lead
7	Financial Close <ul style="list-style-type: none"> Execution of all the finance and security documents (including a direct agreement) Satisfaction of the relevant conditions precedent thereunder, allowing the funding of the project to proceed) 			Secondary	Secondary		Lead
8	Implementation of the Project <ul style="list-style-type: none"> Design/(re)construction/operation 			Secondary			Lead
9	Monitoring and oversight			Secondary			Lead
10	Ex-post evaluation <ul style="list-style-type: none"> Assessment of the project's successes and failures Development of relevant legislation 			Lead	Secondary	Secondary	Secondary