Public Private Partnerships Review of Kazakhstan

by

Ana Maria Ruiz Rivadeneira and Juan Garin

Kazakhstan has put in place a well-structured legal and institutional framework for preparing Public Private Partnerships (PPPs) at both the national and regional levels. The government has prioritised PPPs as a delivery mode for both economic and social infrastructure. The central emphasis on PPPs had a strong impact at the regional level with a large number of relatively small projects signed in the past years. At the national level the impact has been modest mostly due to financing challenges. In terms of priority areas for reform, the report outlines capacity building (particularly during the project preparation phase), the need to promote quality over quantity of PPPs, strengthening the methods used to guide the choice of delivery mode, and transparency and accounting of contingent liabilities.

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Keywords: Kazakhstan, Public Private Partnerships, Kazakhstan PPP Centre, PPP policy and legislation

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Executive summary

Kazakhstan has put in place a well-structured legal and institutional framework for preparing Public Private Partnerships (PPPs) at both the national and regional levels. The legal framework is composed of a Concessions Law adopted in 2006 and a PPP Law adopted in 2015. The PPP Law provides a very expansive definition of PPPs encompassing a wide range of contractual arrangements, including service contracts, trust management, IT outsourcing contracts to name a few.

Institutions have been created for supporting PPP project preparation and review at both the national and regional levels. The Kazakhstan Project Preparation Fund provides support to line ministries and regions for commissioning studies (design, feasibility) and preparing project documentation (tender documents, and contracts). The Kazakhstan PPP Centre, reporting to the Ministry of National Economy (MNE), performs as a centre of expertise on PPPs supporting the development of PPP policy and legislation, developing guidelines and methodologies, and assessing the economic efficiency and budget affordability of PPP projects proposed by line ministries. Further, a number of line ministries have created their own PPP units for developing PPP projects. This structure has been mirrored at the regional level with most regional governments having established separate units responsible for preparing and assessing PPPs.

In addition to these operational units, a number of high-level political entities, such as the Republican Budget Commission and the Commission on PPPs, act as decision-making bodies during the PPP planning, preparation and implementation process. The Kazakh government is prioritising PPPs as a delivery mode for both economic and social infrastructure. The government has set targets for the use of PPPs at both the line ministry and regional government levels. The central emphasis on PPPs has had a strong impact at the regional level with 266 PPP contracts signed since the adoption of the PPP law in December 2015 until March 2018. Most of these projects are relatively small and have developed in social sectors such as health care; education and sports; and recreation facilities. The proliferation of PPPs in such a short period of time raises questions over the quality of contracts and their future sustainability. Indeed, a number of officials raised doubts over the capacity and preparedness of regional authorities for structuring, procuring and monitoring PPP contracts.

At the national level, on the other hand, this pressure has not translated into many meaningful transactions. Since the introduction of the first legal framework in 1991, there have only been 6 contracts signed at the national level. Some of these contracts suffered from structural issues and were not able to reach financial closure. The slow progress at the national level can be partly explained by challenges in obtaining financing for large projects. The domestic banking system has neither the appetite nor the capacity to finance large projects. On the other hand, international investors have been unwilling to accept exposure to the domestic currency, which suffered a major devaluation in 2015. The participation of international commercial banks in financing projects will therefore depend on the adequate implementation of the new tools available to face currency risk issues.

In response to the slow progress in developing PPPs at the national level, the government is introducing changes to the PPP law aimed at streamlining the PPP review process by reducing the number of review steps from two to one. However, it is not clear that loosening the project review process will address the core of the problem, which has to do with the way risks are allocated between the state and the private sector.
Kazakhstan has a medium-term budget framework. Currently, long-term PPP liabilities are not reflected in the budget. However, the Ministry of Finance is leading an effort to register all PPP contracts and associated liabilities incurred at both the national and regional levels with a view to eventually presenting a consolidated position of PPP liabilities within the budget documentation. The budget law limits direct liabilities from PPPs to 20% of state revenues. A similar limit applies to regional authorities though the Ministry of National Economy is envisaging increasing the limit to 50% of revenues for cities of national importance and the capital.

Key issues and remaining challenges:

The overlap between the Concessions Law and the PPP Law combined with a very broad definition of PPPs could result in confusion among contracting authorities, especially at the regional level, and lead to PPPs being implemented for sectors and projects where it may not be the most appropriate instrument. The Ministry of National Economy and the Kazakhstan PPP Centre are currently working to have a unified legal framework.

There is limited and uneven capacity, and inadequate resources to prepare projects, particularly at the regional level. Regional authorities do not appear to rely on expert advisory services for project preparation (primarily because of the high cost of these services), and have limited access to central government expertise.

The incentive system in the form of key performance indicators (KPIs) that apply to both line ministries and regional governments may promote the quantity of PPPs over quality. The proliferation of relatively low-value PPPs at the regional level appears to be a result of this top-down pressure. Since the economic efficiency benefits of PPPs tend to materialise in larger projects, the current system, which promotes small projects may lead, in the medium-term, to increasing costs of public services.

Initial decisions on the choice of delivery mode are made by line ministries at a very early stage in the planning process, typically before feasibility studies are undertaken. While the Kazakhstan PPP Centre performs value for money analysis at a later stage, major modifications to the choice of delivery mode become more difficult and costly the further the project proceeds down the project preparation pathway. It is in the early phases of project planning when major modifications can be made easily and at minimal cost. It is therefore critical to ensure that sufficient analytical effort is exerted to evaluate various options, both in terms technical solutions and delivery models, at an early stage in the project development process.

Private initiatives followed by direct negotiations with the project initiator appear to be relatively common, especially at the regional level. An absence of competition in the development of PPPs could lock-in excessively high costs for the provision of public services.

The decision to use PPPs as a delivery model appears to be based primarily on the budgetary considerations of line ministries and regional authorities. Considering the current budgetary pressures facing all levels of government, this approach may result in an inappropriate use of the PPP delivery model on some occasions, and the accumulation of PPP-related liabilities.

The financing of PPPs represents a major challenge in Kazakhstan. The participation of international investors will depend on achieving a suitable allocation of risks, particularly with regard to currency risk.
Insufficient transparency with regard to future PPP liabilities (both direct and contingent). The proliferation of PPPs at the sub-national level will result in the accumulation of long-term liabilities among regional governments. Further, the state is likely to accept significant currency and demand risk on large projects (e.g. BAKAD project). It will be important that these risks are accounted for and reflected in the budget documentation.
1. The state of play of PPPs in Kazakhstan

1.1. Introduction

This introductory section aims to provide a general overview of the definition, evolution and state of play of Public-Private Partnerships (PPPs) in Kazakhstan. In particular, it highlights the broad definition of PPPs in Kazakhstan and how it compares with other national and international definitions. It also provides an overview of the evolution of the PPP framework, from the adoption of the Concession Law in 2006 to the adoption and reform of the PPP Law in 2015. Institutional and legal reforms have led to a rapid increase of the number of PPP contract signed at the regional level. However, the trend has been different at the national level, with no significant increase in the number of projects signed since the introduction of the PPP law.

1.2. Defining PPPs in Kazakhstan

There is no standard definition of what constitutes a PPP. Each country usually sets the key elements of such type of agreements, taking into account the national context as well as international definitions (Box 1). The OECD defines public-private partnerships as “long-term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks”. Within this relationship, the government specifies the quality and quantity of the service it requires from the private partner (OECD, 2012).

In a PPP agreement the service delivery objectives of the government are intended to be aligned with the profit objectives of the private partner. The effectiveness of the alignment depends on a sufficient and appropriate transfer of risk to the private partners. The private partner may be tasked with the design, construction, financing, operation and management of a capital asset required for service delivery as well as the delivery of a service to the government, or to the public, using that asset. A key element is the bundling of the construction and operation and maintenance of the underlying asset over the life of the contract. The private partner will receive either a stream of payments from the government for services provided or at least made available, user charges levied directly on the end users, or a combination of both.

Even though there is no widely recognised definition of PPPs, most definitions include the following features:

- Form of procurement of a public asset
- Public private co-operation and risk sharing/transfer
- Private sector involved in financing, asset delivery and provision of services
- Bundling of design, construction, financing, operation and maintenance
- Long lifetime
- Focused on outcomes (as opposed to inputs)

Kazakhstan has a particularly broad definition of PPPs, encompassing a wide range of contractual arrangements, including service contracts, trust management, contracts for the development of technologies and preproduction prototypes, after-sales service contracts and leasing agreements. According to the PPP Law, this type of agreement can be implemented in all sectors of the economy. Declared priorities are education, health care, transport, power industry, and housing and public utilities (ADB, 2017).
According to the PPP Law, PPPs are a “form of co-operation between the public partner and a private partner that corresponds to the features defined by the law.” Such features include: 1) building of relations between the state partner and a private partner through entering into a PPP contract; 2) medium-term or long-term PPP project implementation (from 3 to 30 years depending on the particular features of the PPP project); 3) joint participation of the state partner and a private partner in PPP project implementation; and 4) combining resources of the state partner and a private partner for PPP project implementation. The definition of PPPs in Kazakhstan is therefore broader than the one used by most OECD countries. In Kazakhstan, PPPs are not always used to procure a public asset. Any asset, service or activity can be considered as the object of the PPP agreement. This expansive definition of PPP is essential to understand the particular challenges and strengths of the PPP governance framework of Kazakhstan. Special attention should be taken when comparing trends with OECD countries, since the type of contractual agreements and the size of the projects can be considerably different.

Box 1. Definitions of PPPs

Korea defines a public-private partnership project as a project to build and operate infrastructure such as roads, ports, railways, schools and environmental facilities – which have traditionally been constructed and run by government funding – with private capital, thus tapping the creativity and efficiency of private sector.

South Africa defines a public-private partnership as a commercial transaction between a government institution and a private partner in which the private party either performs an institutional function on behalf of the institution for a specified or indefinite period, or acquires the use of state property for its own commercial purposes for a specified or indefinite period. The private party receives a benefit for performing the function or by utilising state property, either by way of compensation from a revenue fund, charges or fees collected by the private party from users or customers of a service provided to them, or a combination of such compensation and such charges or fees.

The United Kingdom defines a public-private partnership as “…arrangements typified by joint working between the public and private sectors. In their broadest sense, they can cover all types of collaboration across the private-public sector interface involving collaborative working together and risk sharing to deliver policies, services and infrastructure.” (HMT, Infrastructure Procurement: Delivering Long-Term Value, March 2008). The most common type of PPP in the United Kingdom is the Private Finance Initiative. A Private Finance Initiative is an arrangement whereby the public sector contracts to purchase services, usually derived from an investment in assets, from the private sector on a long-term basis, often between 15 to 30 years.

The State of Victoria (Australia) defines a public-private partnership as relating to the provision of infrastructure and any related ancillary service which involve private investment or financing, with a present value of payments for a service to be made by the government (and/or by consumers) of more than AUD 10 million during the period of a partnership that do not relate to the general procurement of services.

According to the International Monetary Fund (IMF, 2006 and 2004), public-private partnerships (PPPs) refer to arrangements where the private sector supplies infrastructure assets and services that traditionally have been provided by the government. In addition...
to private execution and financing of public investment, PPPs have two other important characteristics: there is an emphasis on service provision, as well as investment, by the private sector; and significant risk is transferred from the government to the private sector. PPPs are involved in a wide range of social and economic infrastructure projects, but they are mainly used to build and operate hospitals, schools, prisons, roads, bridges and tunnels, light rail networks, air traffic control systems, and water and sanitation plants.

For the European Commission (EC, 2004), the term “public-private partnership” is not defined at Community level. In general, the term refers to forms of co-operation between public authorities and the world of business, which aim to ensure the funding, construction, renovation, management and maintenance of an infrastructure of the provision of a service.

Standard and Poor’s definition of a PPP is any medium- to long-term relationship between the public and private sectors, involving the sharing of risks and rewards of multisector skills, expertise and finance to deliver desired policy outcomes (Standard and Poor’s, 2005).

Source: OECD (2012) and OECD (2008)

1.3. The evolution of PPPs in Kazakhstan

Very early in the transition process from a Soviet Republic to an independent market-based economy, Kazakhstan began considering mechanisms to attract private investors in infrastructure provision. Despite multiple attempts to introduce a robust legal and institutional framework, very few concession or PPP-type projects were operational in Kazakhstan prior to 2016.

The first attempt to regulate PPPs in Kazakhstan was a Concession Law adopted in 1991. This law was focused only on foreign investors and was declared invalid by April 1993. Only a couple of projects were implemented under this first Law, some of them supported by the Development Bank of Kazakhstan. Despite the absence of a specific legal framework, some concession projects were implemented between 1993 and 2006 under the Civil Code, namely the concession for the construction and operation of the inter-regional power line North Kazakhstan – Aktobe Region (2005), and the concession for the construction and operation of the railway Shar-Ust-Kamenogorsk Station (2005).

A new Concession Law was introduced in 2006 to attract private investment in large-scale projects such as airports, motorways and railways. This law has been subject to multiple amendments since its introduction. Nevertheless, in the 10 years following the law’s ratification, the only project to reach financial closure was the Aktau airport.

Most of the concession projects carried out in this initial phase did not have the expected results, due to deficiencies in the structuring process and unbalanced risk allocations between private investors and the state. For example, in the case of the Shar-Ust-Kamenogorsk Station demand was not well estimated and several of the enterprises expected to use the power line were either out of action or operating below full capacity. Excessive regulation and long bureaucratic procedures were also a major problem, reducing the popularity of concessions (Chikanayev, 2015).
In order to address these issues, the government decided to introduce a PPP law in 2015. The new Law did not intend to replace the Concession Law, but aimed to provide a more flexible and robust framework for PPPs. The main objective of the law was to develop and strengthen the long-term co-operation between the state and the private sector by pooling resources to increase availability and quality of public services. Additional objectives included reducing the burden on the budget, and involving the private sector in the management of state assets (Kazakhstan Strategy 2050). Implementing regulations and guidelines were also adopted to complete the PPP legal framework.

These normative changes were reinforced with a clear mandate to implement PPPs in all sectors and regions of Kazakhstan. The government has established targets for the number of PPPs that line ministries and regional authorities must sign on an annual basis. The new strategy combined with the regionalisation reforms supported the decentralisation of PPP preparation, approval and implementation activities resulting in the rapid implementation of a significant number of PPP projects at the regional level (see following section for more detailed information). The proliferation of PPPs in such a short period of time raises questions over the quality of contracts and their future sustainability (see Section 4).

In 2018, the government introduced a new concept to develop Regional Public Private Partnerships and local infrastructure in Kazakhstan under a 4P approach (Public-Private-Partnership-People). The main objective of this new approach is to link PPPs activities with public needs and involve local investors in providing public services and cultural activities (Box 2). The 4P concept is still at a very early stage of development and involves structural reforms beyond the governance of PPPs, such as citizen engagement and budgetary governance. Special attention should be given to ensure that PPP projects undertaken under this new approach represent value-for-money, are affordable and the overall investment envelope of local governments is sustainable in the medium and long term (see Sections 4 and 5).

**Box 2. The 4P Concept**

Developed by the PPP Centre of Kazakhstan, the 4P Concept is a new approach to Public-Private Partnerships development, with a new vector P (People) added to the equation. Under this approach, PPPs should link activities with people’s needs, helping to overcome the challenges that PPPs encounter in post-soviet countries. The 4P Concept is based on the application of a pull-strategy which should replace the current push-mechanisms in place. Under a pull strategy, local governments aim to increase citizens and local investors participation to define key challenges and needs, and propose adequate solutions.

The Government has identified a vicious circle that prevents investors from entering small cities in Kazakhstan: local governments have small budgets compared to the infrastructure needs; single-industry towns have a large dependence on the city-forming enterprise; there is a lack of or weak development of infrastructure; and people migrate away from small cities, including those qualified specialists that are needed to develop the towns.

The PPP Centre of Kazakhstan has proposed some corporate management methods in the public sector aiming to break this circle and attract local investors. It developed an initiative named «Archimedeans lever» which aims to reboot and update the partnership of the state, business and residents for the successful development of cities and business.
This initiative includes the following four elements: sociocultural hubs, smart management (Smart City), clusters, and financial tools based on 4P concept.

To generate and sustain a favourable atmosphere for the creation and development of 4P projects, the PPP Centre of Kazakhstan defined four key steps:

1) Establish a socio-cultural space – Sociocultural hub;
2) Ensure the involvement of the local population under the principle of Do-it-Together;
3) Create an operational budget that meets the actual needs of the population;
4) Initiate the selection and implementation of the PPP projects.

The PPP Centre of Kazakhstan is currently holding seminars and lectures on the 4P concept, and is negotiating with local authorities around key steps for implementation. A few pilot 4P projects are planned to be launched by the end of 2018. By 2020, the authorities are aiming to deliver 20% of total public investment using PPPs.

Source: Kazakhstan PPP Centre (2018)

1.4. Stock and flow of PPPs in Kazakhstan

1.4.1. There are currently very few PPP projects implemented at the national level in Kazakhstan

Despite recent efforts to strengthen the legal and institutional framework in Kazakhstan, there are still few PPP projects implemented at the national level. Since the introduction of the first legal framework in 1991, there have been only 6 contracts signed at the republican level (Table 1). Two contracts have been signed under the framework of the new PPP law: a contract to build a checkpoint and a transport and logistics centre in the international transit corridor "Western Europe - Western China", and a contract to design an automated information system "Kandelik". A third contract was signed in 2018 to build and operate the Highway of the Great Almaty Ring Road (BAKAD). However, this contract was signed under the 2006 Concession Law after several years of delays in the preparation and tender process.
Table 1. National PPP projects

Contracts signed before February 2018

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Region</th>
<th>Contract type</th>
<th>Signing date</th>
<th>Duration</th>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Checkpoint and a transport and logistics centre in the international</td>
<td>Mangystau region</td>
<td>PPP</td>
<td>2017</td>
<td>8 years (2017-2025)</td>
<td>LLC &quot;Eurotransit terminal&quot;</td>
</tr>
<tr>
<td>transit corridor &quot;Western Europe - Western China&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Automated information system &quot;Kandelik&quot;</td>
<td>All the Republic</td>
<td>PPP</td>
<td>2018</td>
<td>12 years (2017-2029)</td>
<td>LLC &quot;Күнделік&quot;</td>
</tr>
</tbody>
</table>

Source: Kazakhstan PPP Centre (2018)

The slow progress at the national level can be partly explained by challenges in obtaining financing for large projects. The domestic banking system has neither the appetite nor the capacity to finance large projects. On the other hand, international investors have been unwilling to accept exposure to the domestic currency, which suffered a major devaluation in 2015. The participation of international commercial banks in financing projects will therefore depend on finding a resolution to the currency risk issue (see Section 3). The Government is also working to resolve the issue of recognizing PPP contracts that have guaranteed payments from the budget, as collateral, to protect the rights of investors. In particular, Order No. 14 of the MNE (5 September 2018) determines how a private partner can pledge its rights to attract debt financing for the implementation of a PPP project.

In line with the Kazakhstan 2050 Strategy, the Government is planning to increase the number of PPP contracts at the national level in the following years. As of March 2018, there were 12 projects at the document preparation stage or at the tender process stage (Figure 1).
1.4.2. There has been a rapid adoption of PPPs at the regional level, however the average project size is very small

As mentioned in the previous section, since the launch of the Concessions Law in 2006 and until the adoption of the PPP Law in late 2015 only 9 contracts were signed in Kazakhstan (3 at the national level and 6 at the regional level). The PPP Law led to a burst of PPP activity at the regional level, with 16 contracts signed in 2016 and 250 contracts signed between January 2017 and March 2018 (Figure 2). This trend is expected to continue with 355 projects already planned for implementation (Figure 1). Of the 272 contracts signed at the regional level, 128 projects are already fully operational, 60 are under construction, and 84 contracts were recently signed (Figure 3). Aktobe and East Kazakhstan are the regions with the highest numbers of PPPs signed - more than half of the projects have been implemented in these two regions. In contrast, other regions such as West Kazakhstan, Jambyl, Atyrau, North Kazakhstan and Astana have less than 5 projects implemented (Table 2).
Figure 2. Number of PPPs signed by year

Note: Signed contracts include contracts that have been signed and registered or in the process to be registered.
Source: Kazakhstan PPP Centre, 2018

Figure 3. PPP projects by stage of implementation

Source: Kazakhstan PPP Centre, 2018
Table 2. Number of projects by region

<table>
<thead>
<tr>
<th>Region</th>
<th>No of Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akmola Region</td>
<td>8</td>
</tr>
<tr>
<td>Astana</td>
<td>4</td>
</tr>
<tr>
<td>Aktobe Region</td>
<td>74</td>
</tr>
<tr>
<td>Almaty Region</td>
<td>5</td>
</tr>
<tr>
<td>Atyrau Region</td>
<td>2</td>
</tr>
<tr>
<td>East Kazakhstan Region</td>
<td>71</td>
</tr>
<tr>
<td>Jambyl Region</td>
<td>1</td>
</tr>
<tr>
<td>Karaganda Region</td>
<td>21</td>
</tr>
<tr>
<td>Kostanay Region</td>
<td>20</td>
</tr>
<tr>
<td>Kyzylorda Region</td>
<td>10</td>
</tr>
<tr>
<td>Mangystau Region</td>
<td>7</td>
</tr>
<tr>
<td>North Kazakhstan Region</td>
<td>4</td>
</tr>
<tr>
<td>Pavlodar Region</td>
<td>11</td>
</tr>
<tr>
<td>South Kazakhstan</td>
<td>22</td>
</tr>
<tr>
<td>West Kazakhstan Region</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Authors based on Kazakhstan PPP Centre, 2018

Total investment in PPPs at the regional level in Kazakhstan is around KZT 114 billion (equivalent to EUR 289 million). Regional PPP projects tend to be small compared to OECD countries. Half of the projects signed have a maximum investment not exceeding KZT 100 million (equivalent to less than EUR 250 thousand). Furthermore, 80% of the projects have a total value below KZT 500 million (equivalent to EUR 1.2 million). Only one IT project to create and operate a video surveillance hardware-software system in Astana City has a total investment between KZT 5 billion (equivalent to EUR 12.3 million euros) and KZT 10 billion (equivalent to EUR 24.6 million). All regional PPP projects are below the threshold of KZT 9.6 billion required to implement a simplified procedure during the preparation and tendering phase (Figure 4). In contrast, the average contract value for local government in France was EUR 28 million as of 2011. Likewise, the average capital value of projects procured by local authorities in the United Kingdom was GBP 56.4 million in 2014 (OECD, forthcoming).

Regional PPP projects have been focused on social infrastructure such as kindergartens, primary schools, primary health care centres, and sports and recreation facilities (e.g. halls for martial arts) (Figure 5). Many of the projects developed under PPP legislation at the local level take the form of service contracts with limited capital investment such as street cleaning or waste processing.
Figure 4. Total number of projects by price range (Million KZT)

Source: Kazakhstan PPP Centre, 2018

Figure 5. Share of PPP projects by sector

Source: Kazakhstan PPP Centre, 2018
2. The institutional framework for PPPs in Kazakhstan

2.1. Introduction

Kazakhstan has made important progress in developing a robust institutional and legal framework for PPPs. The government created support units to strengthen capacity and improve project preparation, and parliament passed a PPP law in 2015. However, this institutional framework has been subject to regular reforms aimed at simplifying procedures and facilitating the implementation of PPP projects. While these reforms could have a good impact on reducing red tape, care must be taken so as not to weaken the project preparation phase, which could lead to the implementation of bad projects, or poorly structured projects.

This section examines the institutional setup for PPPs in Kazakhstan and whether it aligns with the first header of the 2012 Recommendation of the OECD Council on the Principles for Public Governance of Public-Private Partnerships (the PPP Principles), namely, if a clear, predictable, and legitimate institutional framework supported by competent and well-resourced authorities exists for PPP projects in Kazakhstan. It starts with an overview of the measures implemented to increase public awareness of PPPs in Kazakhstan. Then, it presents the key actors responsible for designing and implementing PPP policy. This section concludes with an assessment of the adequacy of the legal and regulatory framework for PPP contracts in Kazakhstan.

2.2. Consultation and public awareness

2.2.1. Principle 1 of the PPP Recommendation

Ensure public awareness of the relative costs, benefits and risks of PPPs and TIP as part of an integrated public-sector infrastructure investment and procurement framework. Popular understanding of Public-Private Partnerships requires active consultation and engagement with stakeholders as well as involving end-users in defining the project and subsequently in monitoring service quality.

2.2.2. Kazakhstan has made progress in improving awareness on PPPs

The first OECD PPP Principle states that political leadership should ensure public awareness of the relative costs, benefits and risks of Public-Private Partnerships and conventional procurement. Only if the political level is aware of and accepts the costs and benefits of using PPPs can the issues around PPPs be tackled and balanced appropriately with stability and predictability.

Popular understanding of PPPs requires active consultation and engagement with stakeholders. In Kazakhstan, there is a consensus amongst the key stakeholders in the government that PPPs can be helpful to overcome Kazakhstan’s urgent need for increased public social and economic infrastructure across a large number of sectors. The Kazakhstan PPP centre has played a major role in providing training and promoting the use of PPPs in the country. One of its main functions is to organize training sessions and discussion forums with public officials at different levels of government.
2.2.3. There is a general perception that PPPs are costly and difficult to implement

Despite increased awareness and a clear mandates to implement PPPs in Kazakhstan, there is a general perception that PPPs are costly, slow and difficult to implement. PPPs are also tainted by the legacy from the failure of past concession projects and the financial consequences they entailed for local investors.

Traditional procurement is used for priority projects, since this type of procurement is perceived to be faster and easier, while PPPs require major efforts to attract private investors. Despite the training provided, there is still space to improve public servants awareness of the nature, definition as well as the main benefits and challenges of PPPs.

While the project preparation process ensures the participation of representatives from the private sector (National Chamber of Entrepreneurs, and key state entities), the process could nevertheless benefit from a broader consultation and greater coordination among interested and affected stakeholders during the concept stage. For example, large projects at the national level are likely to impinge on multiple local jurisdictions. Consultation with local governments would avoid potential pitfalls and conflicts that could result in delays to the project. It is particularly important to ensure effective coordination between infrastructure projects and urban and land use planning. The most important stakeholders for infrastructure projects are ultimately the end-users. Consultations with future users is therefore key to ensuring projects will meet their needs and provide services that are affordable.

Citizen engagement also requires that the government provides clear and complete information on PPP contracting and implementation. Independent public oversight of PPP implementation can also promote public sector innovation and better outcomes for society as a whole through greater accountability and social control. OECD countries have developed interesting initiatives to provide useful and complete information to inform citizens about PPP projects. In particular, the UK has increased efforts to keep the public informed about the relative costs and benefits of PFI projects through annual and monthly reports (Box 3).

In the particular case of Kazakhstan there are some transparency concerns that limit citizens’ engagement and participation, including 1) limited public consultation and debate regarding PPPs, which may lead to sub-optimal outcomes for users and citizens, as well as 2) lack of public information regarding PPP procurement, evaluation and delivery. To address these concerns, Kazakhstan has already taken a number of steps to explain the nature of PPPs to the wider population and to include some information in the webpage of the Kazakhstan PPP Centre and the Kazakhstan Project Preparation Fund. In particular, the MNE launched the PPP Single Information Database, aiming to attract a wider range of investors by providing access to consolidated information on all national and international PPP projects (http://kzppp.kz/project_base). In addition, the National Chamber of Entrepreneurs of the Republic of Kazakhstan “Atameken” recently created a council to monitor PPPs. Despite recent improvements, information is often incomplete or contradictory, and difficult to access for end users.
Box 3. Type the title here

The yearly Whole of Government Accounts by HM Treasury and the Fiscal Sustainability report by the Office of Budget Responsibility (OBR) are both prime examples of the UK Government’s commitment to providing clear and understandable data on its Private Finance Initiative (PFI)/Private Finance 2 (PF2)-related liabilities, even when those are not explicitly reflected in the Public Sector Net Debt (PSND). Far-reaching efforts have been made in the UK to keep the public informed about the relative costs and benefits of PFI projects through annual and monthly reports.

As part of its Parliamentary mandate, the National Audit Office (NAO)’s reports on various PFI projects and tools used have been instrumental in informing public and institutional debate around PFI projects. Two of the NAO’s flagship reports on PFI/PF2, the 2011 Lessons from PFI and the 2013 report on Savings from operation PFI contracts, show important results that have been achieved under the past PFI framework, and provide a forward look on how to continue improving public spending efficiency and effectiveness. Furthermore, the last NAO report published in January 2018 present a comprehensive analysis on the rationale, costs and benefits of the Private Finance Initiative (PFI); the use and impact of PFI, and ability to make savings from operational contracts; and the introduction of PF2 in the UK.

Source: OECD, 2015a

2.3. Institutional framework

2.3.1. Principle 2 of the PPP Recommendation

Key institutional roles and responsibilities should be maintained. This requires that procuring authorities, Public-Private Partnerships Units, the Central Budget Authority, the Supreme Audit Institution and sector regulators are entrusted with clear mandates and sufficient resources to ensure a prudent procurement process and clear lines of accountability.

A number of institutional roles should be competently pursued to secure and maintain value for money including managing a sound procurement process; implementing the specific PPP; ensuring fiscal sustainability and transparent budgeting; auditing of the PPP; and monitoring and enforcement of contracts. These roles can be maintained in a number of institutional set-ups, but it is important that they are kept separate so as not to confuse the key tasks of each actor and to secure lines of accountability. This section discusses the relevant units and institutions involved in the PPP process in Kazakhstan. It sets out their purpose, operations, and the specific roles and inter-relations in the PPP framework.

2.3.2. Responsibilities for infrastructure development

Responsibilities for infrastructure development in Kazakhstan are shared between the central government and regional governments (Akimats). In the transport sector, the main motorways are the property of the Republic whereas regional and local roads are communal property. Railway lines are the exclusive province of the national government though they may be state-owned or privately-owned. Large airports, of which there are 15 in Kazakhstan, also fall under the jurisdiction of the national government. On the other hand,
utilities such as water and gas infrastructure are regional property. In the education sector, regional governments are responsible for kindergartens and school, while universities are national government property. In the health sector, 90% of hospitals are under the responsibility of regional governments.

2.3.3. Kazakhstan has a well-developed institutional framework for PPPs at the national level

With respect to the roles, responsibilities and capacities in the public sector for attaining value for money from PPPs, Kazakhstan appears to follow the same path as many OECD countries – introduction, gaining experience, and then refinement of framework and capacities.

High-level policy objectives and targets with regard the use of PPPs are set by the executive. A speech in 2015 by the President dubbed 100 Steps provides high-level goals for government, including with regard to the use of PPPs in developing infrastructure. The government has set KPIs for line ministries and regional authorities which include targets for the number of PPPs to be signed on annual basis. As part of a crisis recovery plan following the devaluation of the KZT in 2015, every central government department is required to implement one PPP each year, and local authorities are required to implement five.

In order to achieve these national objectives the Ministry of National Economy (MNE) has a specific mandate to further develop and implement PPP policy in Kazakhstan. The MNE is the central authorised body for state planning. It exercises leadership and inter-sectoral coordination in the fields of strategic and economic planning, budgetary policy, and development and implementation of state policies relating to regional development. The MNE sets PPP policy guidelines, drafts PPP legislation and has an overarching monitoring role with regards to PPPs.

According to the PPP Principles, the Central Budget Authority should scrutinise PPPs in order to secure affordability and project quality. The Central Budget Authority should check and monitor the PPP through each key phase: planning; feasibility, design and tender preparation; bidding and contract signing; and construction and operation. The Central Budget Authority should also scrutinise the project for value for money, affordability, procedural steps, and ensure that projects remain in line with political agreements. The Central Budget Authority need not possess deep and specific knowledge of the PPP project’s technical design. However, it needs sufficient capacity to evaluate the documentation presented to it.

Aligned with these international best practices, in Kazakhstan the MNE is responsible for evaluating and approving all PPP projects proposed by line ministries, this includes approving the project concept, tender documentation, and the draft PPP agreements and amendments. The Ministry of Finance also performs an important gatekeeping role in PPPs (see below). It is responsible for reviewing tender documentation ahead of the tendering process with a view to assessing the need for and terms of any state guarantee for the debt used to finance the project. Approval by the Ministry of Finance is required in order to proceed with the tendering process.

Most of these functions are carried out in collaboration with Kazakhstan PPP Centre (KPPPC). The KPPPC receives its budget from the MNE and its director is appointed by the Minister. Its main role is to assess project preparation documents and provide recommendations to the MNE on the advisability of using the PPP delivery mode for
specific projects. It also provides input to the MNE on PPP policy, develops methodologies, and provides capacity building support to the PPP units within line ministries and regional governments. The KPPPC is also responsible for performing ex post evaluations of PPP projects. In performing its evaluations the KPPPC focuses on the affordability (budget efficiency) of projects and their compliance with PPP legislation.

Originally, the KPPPC also performed evaluations of regional PPPs but this role was transferred to local authorities. While the KPPPC does not perform an oversight role for PPPs implemented at the local level, it can support the development of local projects upon the request of local authorities. For example, staff from KPPPC can work closely with the regional PPP units.

Another important actor for PPP development is the Kazakhstan Project Preparation Fund (KPPF). This Fund was created in 2014 as a result of the reorganization of the Centre for Support of Public-Private Partnership Projects (LPP). KPPF is a joint-stock company jointly owned by the state-holding company Baiterek (75%) and the Kazakhstan PPP Centre (25%). KPPF’s main objective is to promote infrastructure development in the Republic of Kazakhstan through the provision of services related to the structuring and maintenance of infrastructure projects, including those implemented by PPP. In particular, KPPF provides support to line ministries for project preparation and structuring, including the preparation of design and feasibility studies, financial modelling and the development of tender documents and contracts. Support from the KPPF is conditional on approval from the MNE. Upon request of regional governments (Akimats), KPPF can also support project preparation and structuring at the regional level.

The authority that is procuring the PPP is the institution ultimately responsible for the project, subject to approval, monitoring and advice from the other actors at various stages. The contracting authority is responsible for preparation, negotiation and administration of the contract, and for monitoring and evaluating contract performance during the construction and operation phases of the project. This is crucial to ensure that the project delivers value for money during the whole life of the contract. This authority is, therefore, ultimately responsible for the PPP contract and its operation.

In Kazakhstan, line ministries perform the role of contracting authority for projects in their sector. They are also responsible for planning and developing investments programmes in their sector. In addition to selecting investment projects, the line ministries decide on the delivery mode for these projects. Line ministries also develop documentation on PPPs, and a number of line ministries have established PPP units.

Ministry of Investment and Development

The Ministry of Investment and Development (MID) is a super-ministry responsible for infrastructure development in the transport and water sectors, as well as for industrial development and attracting foreign investors. The transport sector is organised into three committees: the Roads Committee, the Rail Committee, and the Civil Aviation Committee. Each of these committees is responsible for policy development and investment in their respective sector. The Road Committee has established an internal PPP unit.

Ministry of Internal Affairs

The Ministry of Internal Affairs (MIA) is responsible, among other things, for the development and management of Kazakhstan’s penitentiary system. Presidential guidance set out in the speech entitled 100 Steps specifically calls for the construction of new prisons.
using PPPs. While the Ministry has worked on a number of different options for developing new prison capacity through a PPP structure (including the construction of a new facility in southern Kazakhstan and the rehabilitation of a female prison in Almaty) no project has yet reached the tender phase. The principal reasons cited for the lack of progress include the elevated cost of a PPP, the lack of physical collateral against which bank loans can be secured, and the challenge of allocating currency risk (in the case of foreign investment).

Ministry of Health

The Ministry of Health (MH) sets policy at the national level and coordinates health care delivery across regions. The MH, with the support of the World Bank, is currently in the process of developing a strategic masterplan that will determine future needs for the health sector. The masterplan will form the basis for developing an investment plan.

Health care delivery has been decentralised to the regional level. As a consequence, the MH has limited influence on the delivery of health care infrastructure, which has been devolved to the regions. Therefore, with the exception of large multi-profile hospitals which are planned centrally, regional authorities determine how to deliver and finance most health care infrastructure. A total of 42 PPPs have been signed in the health care sector, 31 of which were signed in 2017.

A PPP unit (Centre for Public Health Development) has been established within the Ministry of Health. Its main role involves collecting and disseminating data on the use of PPPs across the regions. Accordingly, it does not perform an advisory or screening role for projects at the regional level.

Other actors involved in PPPs:

The Ministry of Finance (MOF) is the central authorised body for state planning, budget execution, accounting, budget reporting and, within its competence, local budgets, and the National Fund of the Republic Kazakhstan on the basis of the report of the National Bank of the Republic of Kazakhstan. The MOF is led by a minister, a responsible secretary and four vice-ministers, as well as a board of 13 people.

According to Article 71 of the Budget Code, the Ministry of Finance prepares the Republican Budget and submits it to the Republican Budget Commission. The MOF sets the budget limits for line ministries, including for total PPP liabilities. The MOF determines the methodology for calculating these limits. The limits proposed by the MOF need to be approved by the Republican Budget Commission.

The MOF’s also performs a gatekeeping role with regard to PPPs since its approval is required before projects proceed to tender.

The Treasury Committee within the MOF is responsible for registering and tracking PPP liabilities at both the national and sub-national level, and ensuring that total limits on PPP liabilities aren’t breached.

The Republican Budget Commission (RBC) is established to ensure the timely development of the budget project and make proposals for the refinement and implementation of the budget. It is chaired by the President. The President also appoints its members. According to the Decree No. 10 of the Government of the Republic of Kazakhstan dated January 15, 2018 "On the composition of the Republican Budget Commission", the members of the Republican Budget Commission are:
• The Chair of the Committee on Finance and Budget of the Senate of the Parliament of the Republic of Kazakhstan;
• The Chair of the Committee on Economic Development and Entrepreneurship of the Senate of the Parliament of the Republic of Kazakhstan;
• The Chair of the Committee on Finance and Budget of the Mazhalis of the Parliament of the Republic of Kazakhstan; and
• The Chair of the Committee on Economic Reform and Regional Development of the Mazhalis of the Parliament of the Republic of Kazakhstan.

Members consider budget applications, draft strategic plans, budget programs of budget program administrators, and the draft Republican Budget, before it is tabled to the Parliament of the Republic of Kazakhstan. The RBC approves the ceilings of total PPP liabilities. It also reviews and approves requests for disbursements from the MNE to line ministries to purchase project preparation support services from the KPPF.

The Commission on Concessions/PPPs reviews and approves applications from line ministries for inclusion in the list of Projects of Special Importance. These projects qualify for compensation for currency risk. The Commission is also the ultimate decision-making body with regard to the selection of the winning bid in PPPs and concessions. Currently there are three projects in the list of Projects of Special Importance: the BAKAD project and two multidisciplinary hospitals in Almaty and Karaganda.

The Commission on Natural Monopolies is responsible for regulating activities that have natural monopoly features. It therefore has a key role in setting tariffs for rail line concessions. The tariff-setting process involves annual reviews of tariff levels.

The Accounts Committee is the supreme audit institution of Kazakhstan and reports to the Presidency. In addition to performing its main function of auditing the execution of the state budget, the Audit Committee can perform audits of state programmes that involve the use of central government funds. It can also audit programmes implemented by state governments if these benefit from central government funding. The Committee is independent from government and can determine the programmes and institutions which will be subject to an audit. The Committee presents its recommendations to the relevant authority responsible for administering the programme. Audits seek to determine whether central government funds were used in accordance with the stated objectives of the programme and whether they achieved these objectives. Currently, the accounts committee does not perform any specific role regarding PPPs.

2.3.4 The institutional framework is less robust at the regional level, where low capacity can lead to implementation problems

Regional governments are responsible for developing regional and local infrastructure such as roads, primary health care centres, schools and kindergartens, and sports facilities. Regional governments have been strongly encouraged to use PPPs to deliver infrastructure and public services. To this end, regional governments have established their own PPP units mirroring the structure at the level of the central government. Under the PPP Law, regional governments (Akimats) can create legal entities to support local PPP projects and to carry out the appraisal of such projects.

For example, the Astana Akimat has established a unit called Astana Invest that is responsible for PPP project development and reports to the department for Investment and Development. Its activities include developing PPP documentation in line with legislation,
identifying potential investors, and procuring consulting services. A separate Centre for Project Expertise performs the economic appraisal of projects.

Regional governments tend to have weak capacities to implement PPPs and often face a shortage of resources to prepare projects. As a consequence, local authorities may rely excessively on private initiatives, and contracts may be awarded without having gone through a competitive tendering process.

However, this lack of capacity at the regional level does not act as an obstacle to project development as evidenced by the large number of PPP projects that have been signed over the past year. In fact, the speed at which PPPs are being developed in the regions may be a result of local contracting authorities responding to the strong mandate combined with fiscal incentives to undertake PPP projects, rather than seeking value for money and affordability (Box 4). The large number of PPP projects approved and signed in a short period of time may be a sign of inadequate project preparation, insufficient due diligence, and the bypassing of competitive tendering practices, which could lead to future problems including disputes and litigation. The authorities should carefully monitor the first series of PPPs emerging from local governments in order to detect, early on, issues that could point to wider problems in PPP implementation at the regional and local levels.

**Box 4. Challenges to PPPs in a decentralised context: choosing PPP for the right reasons**

Decentralisation arrangements can lead to costly sub-national responsibilities for which own resources are not enough. Sub-national government often tap (and in some cases rely on) intergovernmental transfers to meet spending obligations. But resources may still be insufficient to accommodate needs for infrastructure development, operation, and maintenance without borrowing. In many cases, sub-national governments often face important borrowing constraints (e.g. borrowing limits, weaker credit). Public-private partnerships can appeal to governments looking to work around these fiscal constraints.

Opting for PPPs in order to overcome tight budgets and circumvent fiscal rules - rather than seeking value for money and affordability - is not the right justification for a PPP, but it can be appealing. In the short-term, the private partner is usually responsible for the capital expenditure, enabling a government to develop capital assets without paying for them immediately. The cost of infrastructure shifts to the future, potentially to a next generation of taxpayers, and beyond the electoral cycle of politicians (Musson, 2009). Fiscal constraints can thus create an incentive to use PPPs and in some cases to move investment “off the books”. However, risks to this approach are high.

PPPs create long-term ordinary liabilities for sub-national governments that must be addressed and, depending on their design, contingent liabilities that must be accounted for lest they create fiscal risks. For example, in the UK until recently PPPs often took the form of “Private Finance Initiative” (PFI) contracts procured by local authorities, NHS Trusts, or central government departments (HM Treasury, 2012). As of March 2014, there were 728 current projects with a capital value of GBP 56.6 billion (HM Treasury, 2014b). Total PFI unitary charge payments for 2015-16 were expected to amount to GBP 10.5 billion (HM Treasury, 2014b). In some cases, poor financial management and procurement of PFIs have left English NHS trusts in a precarious financial state (Mathieson, 2014).
Given a political willingness to consider private sector engagement, the decision to enter into a PPP involves substantial ex-ante analysis regarding the costs and benefits of PPPs, as compared to traditional procurement, over the life cycle of the asset. The technical capacity required for this analysis can be substantial, placing demands on a sub-national government’s administrative capacities. Weak sub-national administrative capacity can be problematic in the case of PPPs and will need to be reinforced in order to ensure that the decision to enter into a PPP is based not on a short-term desire to bypass fiscal constraints, but rather on accurate assessment of the lifecycle specificities of a given project.

*Source: OECD (forthcoming)*

### 2.3.5. PPP preparation capacity is concentrated at the central level though most of the activity takes place at the regional level.

Much of the capacity and expertise for preparing, structuring and evaluating PPP projects in Kazakhstan resides at the national level, and in institutions such as KPPPC and the KPPF. Paradoxically, the decentralisation of the Kazakh state means that, for a majority of PPP projects, project delivery responsibilities lie at the regional and local levels, where there is much less capacity and expertise. Both the KPPPC and KPPF can, if requested by a regional authority, provide support for project preparation for regionally-procured projects. However, this support is optional and depends on the regional authority reaching out to these entities, and, in the case of the KPPF, providing funding for their advisory services.

This approach limits efficiency gains by requiring all regional and local authorities to develop their own independent capacity for preparing, structuring and appraising PPP projects. More simplified procedures for small projects and the standardisation of documentation and contracts will go some way to easing the burden of project preparation for a subset of projects. While standardised documentation has been developed for a number of sectors, such as kindergartens, limitations in terms of resources and expertise will pose significant constraints for more complex or one-off projects.

Given the limited availability and high cost of experts and consultants for preparing and structuring PPPs, projects developed at the regional level may not always be benefiting from the best available expertise. This creates the risk of generating a large pipeline of projects, that, as a result of built-in weaknesses in project design and structuring, may run into contractual problems and disputes down the line, thus causing future problems for the delivery of key services in areas such as health care and education. For most projects, a precedent exists somewhere in the world, and drawing on lessons-learned in different jurisdictions can greatly enhance the likelihood of success.

It would be unrealistic and inefficient for all but the largest regional governments to duplicate the expertise that exists at the national level. Enhancing the role of central institutions such as the KPPPC and the KPPF in project preparation and appraisal at the regional and local levels would contribute to strengthening the quality of PPP projects procured by subnational governments. For example, in the United Kingdom, an organisation called Local Partnerships provides support to local authorities through preparing business cases, providing procurement advice and assisting in contract management (Box 5). While the KPPPC is already contributing to strengthening and streamlining project preparation at the regional level through the provision of training and
the development of standardised contracts, more direct support in the form of staff secondments, sharing of national and international best-practices, and review of project documentation may be beneficial.

**Box 5. Local Partnerships: supporting local authorities in the United Kingdom to procure infrastructure through PPPs**

The United Kingdom has spearheaded the use of PPPs to deliver social infrastructure since the early 1990s. A significant proportion of PPPs in the UK have been implemented by local authorities (Figure below).

**Evolution of total capital value of current PFI projects by level of government, as of March 2014, millions pounds**

However, local authorities did not always have the necessary in-house technical skills and administrative capacity to prepare and procure PPPs. In response, the UK government established a unit in 2009 called Local Partnerships (LP) as a joint venture between the UK Treasury and the Local Government Association with the aim of supporting the delivery of investment in local infrastructure and local services. It can provide transaction advisory services during the procurement stage, all the way from the strategic business case stage to the full business case through opinions and recommendations. It is particularly experienced in wastewater, schools and housing, but also works in other areas of infrastructure. It collaborates closely with Treasury on efficiency, or how to drive the best value from existing PPP/PFI contracts. The role of LP is akin to public authorities “outsourcing” their internal procurement and contract management functions. LP has approximately 40 full-time employees, about 70 associates, and includes the vast majority of local governments as members.

2.4. Legal framework

2.4.1. Principle 3 of the PPP Recommendation

Ensure that all significant regulation affecting the operation of Public-Private Partnerships is clear, transparent and enforced. Red tape should be minimised and new and existing regulations should be carefully evaluated.

2.4.2. Kazakhstan has a well-developed legal framework for PPPs

As many other former Soviet countries, Kazakhstan has a civil law system. Under the current legal framework, PPP projects can be implemented under the PPP Law, which encompasses a range of contractual arrangements, or under the Concession Law, which provides for a single contractual arrangement, namely concessions. Both laws have a well-developed set of rules regarding the object of the contracts, the private and the public partners, bidding and award procedures, payments, state guarantees, termination amendment, etc. In addition to these two legal instruments, there are other codes and laws that complement the PPP legal framework (e.g. Civil Commercial, Budget and Tax Codes, Law on State Property, and Law on Securities Market) (Chikanayev, 2015). Certain specific aspects of the PPP process and financial aspects of PPP contracts are further specified in secondary legislation (Box 6).
Box 6. PPP secondary legislation in Kazakhstan

After the PPP Law was enacted, the Republic of Kazakhstan and in particular the Ministry of National Economy enacted a comprehensive set of by-laws, regulations and guidelines with regards to PPPs. Some of the most relevant are the following:

- Order 713 of the Acting President Minister of National Economy (25 November 2015) on approval of the Rules on acceptance of PPP objects in state ownership;
- Order 724 of the Minister of National Economy (25 November 2015), on approval of the templates for the tender documentation and the PPP agreement for PPP projects in different sectors of economy;
- Order 725 of the Acting President Minister of National Economy (25 November 2015) on some questions of planning and implementation of PPP projects;
- Order 731 of the Minister of National Economy (26 November 2015) on approval of the methodology to define state obligations limits for PPP projects, including state concession obligations, obligations of the government of Kazakhstan and local executive bodies;
- Order 743 of the Minister of National Economy (30 November 2015) regarding rules for the formation and ratification of the tariffs (prices) for regulated services of the subjects of natural monopoly that carry on their activities on the basis of a PPP agreement, in particular concession agreement;
- Decree 1056 of the Government of Kazakhstan (25 December 2015) on some questions of the Kazakhstan PPP Centre;
- Decree 1057 of the Government of Kazakhstan (25 December 2015), on determination of the legal entity to be responsible for the support of PPP projects of the Republican (national) level;
- Edict 172 of the President of Kazakhstan (14 January 2016) on the list of objects that cannot be transferred for implementation on the basis of PPP;
- Resolution 710 of the Government of the Republic of Kazakhstan (6 November, 2017) On approval of the list of objects not subject to transfer for the implementation of public-private partnership, including concessions.
- Order 59-r of the Prime Minister of the Republic of Kazakhstan (11 May, 2018) on the establishment of the Commission on Concession Projects of Special Importance.

Source: MNE, 2018 and Chikanayev, 2015

2.4.3. Coherence between the PPP Law and other legal instruments could be improved

The PPP Law provides a broad and flexible legal framework for procuring infrastructure and services. The PPP Law, unlike the more narrow Concession Law, encompasses a wide range of PPP arrangements (see chapter 1). Similarly, the asset that forms the basis of the agreement is also defined more loosely. Practically any property can be considered as the PPP object. The PPP Law also has a broader definition of the parties to the agreement, allowing regions (Akimats) and SOEs to engage into contractual relationships with a service provider. Finally, the PPP law introduces new methods for the selection of a private partner (e.g. closed tender, direct negotiations and simplified procedure) (Dentons, 2015).
As explained in the previous chapter, the PPP law does not replace the concession Law, but creates a parallel legal framework. In accordance with the PPP Law, concession agreements are governed by the general provisions of the Law on Concessions. Despite this hierarchy between the two laws, there are concerns about the scope of application of the laws and the way they will interact (Dentons 2015, Chikanayev, 2015).

The overlap between the Concessions Law and the PPP Law combined with a very broad definition of PPPs could result in confusion among contracting authorities, especially at the regional level, and lead to PPPs being implemented for sectors and projects where it may not be the most appropriate instrument. Furthermore, public officials have identified certain regulations that are not compatible with the PPP life-cycle approach and would require some amendments.

2.4.4. The PPP Law has been subject to multiple revisions since it was first enacted in December 2015

Kazakhstan PPP legal framework has been subject to constant reforms aiming to simplify procedures and facilitate the implementation of PPP projects. Since its introduction in 2015, the Law has been reformed 4 times. Some of the most relevant reforms include simplifying the procedure for reviewing and assessing projects, and letting the government define special requirements and tender procedures when the PPP is defined within a particular government program. Under the new amendments, the Project Concept stage is eliminated and there is only a single review ahead of the tendering process. Likewise, line ministers are now allowed to develop and approve the procedure for selecting the private partner within the framework of a particular government program. While these reforms could have a good impact on reducing red tape, they can also weaken the preparation phase, leading to the implementation of bad projects. As it will further developed in chapter 4, the two-stage gateway process provides a robust foundation for assessing and screening projects and is consider as a good practices in project preparation and appraisal in OECD countries. Likewise, the rules for selecting the private partner should be clearly stated, ensuring appropriate levels of competition among private bidders.

2.5. Recommendations

2.5.1. Strengthen central government support for PPP preparation and monitoring at the regional level

It is paradoxical that in Kazakhstan the bulk of PPP expertise resides centrally within organisations such as the KPPPC and KPPF while virtually all PPP transactions have taken place at the regional level, where expertise, capacity and resources are much more limited (with the exception perhaps of the Astana and Almaty Akimats). In view of this reality, it would be advisable to direct expertise, capacity and resources for PPP project preparation to the local level so as to ensure that projects are being developed in line with international best practice. In particular, the following supportive mechanisms have been found useful to bolster government capacity to structure and implement PPPs at the subnational level in OECD countries: professionalizing public procurement, using performance indicator systems, implementing peer-to-peer knowledge exchange platforms for sub-national governments, mechanisms for inter-municipal and regional co-ordination and assistance targeted to sub-national PPP capacity (Box 7).
Box 7. Supportive mechanisms to improve government capacity to structure and implement PPPs at the subnational level

- **Professionalizing public procurement** can strengthen capacity to undertake procurement generally, and potentially reinforce proper treatment of PPPs. As of 2010, 19 of 31 OECD countries recognized procurement officials as a specific profession (OECD, 2013). Eleven countries have a formal job description for procurement officials, eight have implemented specific certification or licensing programmes, and five have integrity guidelines (e.g. codes of conduct) for procurement officials (OECD, 2013). The degree to which these mechanisms extend to and affect hiring at sub-national levels of government is not clear.

- **Performance indicator systems** can strengthen PPP design and implementation by revealing information throughout the investment cycle. Performance indicators for PPPs can be adopted at both the national and sub-national levels, thereby narrowing information gaps among levels of government (OECD, 2009) and between public and private partners. Made publicly available, they strengthen transparency and accountability.

- **Peer-to-peer knowledge exchange platforms for sub-national governments** can be used to share good practices and to benchmark local experience in a range of areas, including PPPs. In its review of PPPs, the special Panel on Public-Private Partnerships of the Transportation Committee in the U.S. House of Representatives “encourage[s] states interested in enacting P3 authorizing legislation and pursuing P3 procurements to coordinate with other states to share lessons learned by early adopters and consider establishing stand-alone state P3 offices that look beyond only transportation and develop regional partnerships to achieve common infrastructure objectives” (US HR, 2014: 13).

- **Mechanisms for inter-municipal and regional co-ordination** can be used to examine potential synergies arising from co-ordination of public investment and PPPs specifically. Specific provisions can be made for bundling across sectors (UNECE, 2008; Plummer, 2002) or jurisdictions to encourage economies of scale or attract operators, as well as horizontal unbundling to encourage competition and benchmarking (e.g. dividing a large area, such a city, into zones and arranging contracts for each area, Plummer, 2002).

- **Assistance targeted to sub-national PPP capacity** can help boost the design and results of these partnerships. The UK, for example, saw the creation of the “Public Private Partnership Programme” (4ps) in the mid-1990s to support PPP development at the local level in England and Wales (see the UK case study). It subsequently evolved into Local Partnerships, a joint venture between the Local Government Association and HM Treasury, which continues to support local authorities. In addition to within-country support, some sub-national governments may be eligible for assistance from supra-national organizations (e.g. the Public-Private Infrastructure Advisory Facility’s Sub-national Technical Assistance program).

Source: OECD, forthcoming
2.5.2. Ensure coherence between the PPP Law and other relevant legislation

Kazakhstan has made important progress in developing a robust legal framework for PPPs. However, despite the efforts of the Ministry of National Economy and the Kazakhstan PPP Center to provide advice and explain the new amendments, there is still uncertainty on how the new legal framework interacts with the pre-existing Concession Law. This could be further clarified, to ensure all different stakeholders have a clear understanding of the applicable legal framework.

Kazakhstan could also consider revising particular prerogatives allowed in the concession law to be applicable under the PPP framework, such as tax deductions on fixed assets.

2.5.3. Adopt sector standards for PPPs

Kazakhstan has made progress in developing guidelines and standards for PPPs at the national level. However, there are sectoral needs that have not yet been addressed. Kazakhstan could benefit from developing such standards to address particular aspects of PPPs in each sector (e.g., health, energy, education), and providing an overall sector strategy to implement PPPs. These standards could also help in strengthening PPP implementation at the regional level, by providing contracting authorities with contract documentation that has been developed by experts and thereby lower the barriers they face to procuring projects.

Some OECD countries, have implemented this approach to strengthen PPP preparation and implementation in particular sectors. For example, Germany carried out a study on PPP for Schools, with Procedural Guides and Model Contracts (2008) as a guideline designed to facilitate the implementation of public-private partnership projects within the education sector. The study was commissioned by the PPP Task Force of the Federal Ministry of Transport, Building and Urban Development (OECD, 2015c).

Furthermore, more specific guidance should be developed regarding which sectors should be targeted for PPP delivery. The broad definition of PPPs has led regional authorities to consider developing PPPs in sectors that are not traditionally developed through this delivery mechanism (e.g., agriculture, recreation facilities).

3. Financing for Public-Private Partnerships in Kazakhstan

3.1. Introduction

Most infrastructure development in Kazakhstan has taken place in the context of vast multi-year cross-sectoral state programmes. These state programmes have been funded through a combination of contributions from the state budget, the National Fund, and state-owned enterprises’ (SOEs) own resources.

Historically, SOEs have played a dominant role in the Kazakh economy and have therefore been important players in infrastructure development. These companies have often acted as a channel through which budgetary funds are funnelled into infrastructure. According to the Department of the State Assets Management Policy of the Ministry of Energy of the Republic of Kazakhstan the total number of SOEs in Kazakhstan is 6,948, and they are still responsible for between 30 to 40% of economic activity in the country. They are present throughout practically all sectors of the economy and include the largest corporations in the oil and gas, electricity, mining, telecoms, and railway sectors (OECD 2017a). The largest SOEs are held within Samruk-Kazyna, the Kazakh sovereign wealth fund.
The decline in oil revenues has placed this statist development model under pressure. As a consequence, Kazakhstan is embarking on a major privatisation programme of its state holdings and is seeking greater private participation in infrastructure development. However, historically, private financing has played a limited role in infrastructure development in Kazakhstan. Only a handful of infrastructure projects have been financed privately at the national level. These include an airport terminal (Aktau Terminal) and a rail line (Shar-Ust-Kamenogorsk Railway Concession). Private investments have played a more prominent role in the electricity sector, financing the development of an interregional transmission line (North Kazakhstan region), as well as a number of power plants, including, in recent years, projects in the field of renewable energy sources. However, it should be noted that most of these projects were implemented outside of the legal framework for concessions and PPPs.

The establishment of the Kazakhstan PPP framework consisting of a PPP law and a variety of institutions (refer to Section 3) provides for a robust regulatory structure that should facilitate the flow of private finance into sectors such as transport, education and health. The success of PPPs will depend to a considerable extent on being able to access a diverse range of financing sources that are adapted to the specific risk profiles of each project and their evolution over their lifetimes.

3.2. Sources of financing

The capital structure of PPP projects requires a combination of debt and equity financing that can deliver a number of features: sufficient patience to sustain long payback periods, lenders with enough risk appetite to ride through the risky construction phase, and sufficient equity buffers to absorb project delays and other events that could impact profitability.

Equity that can absorb risks, particularly elevated during the construction phase, is typically provided by the sponsor company that is developing the project. Equity investors may also include investment funds, private equity investors, institutional investors such as pension funds, as well as non-financial corporations.

The construction period during which most of the capital is disbursed and before any revenues are generated is particularly challenging for lenders. Loans during this phase are usually provided by banks who have the capacity and experience to conduct due diligence and closely monitor project development. In some cases, the debt takes the form of short-to medium-term loans designed to cover the construction period. These loans are usually relatively expensive given the higher level of risk present during construction.

Once the project becomes operational and begins generating revenues, the risk diminishes significantly, and less expensive financing becomes feasible. Long-term debt financing during the operational phase can be provided by banks loans - often syndicated among a group of banks - or through the issuance of infrastructure bonds. The buyers of these bonds are normally institutional investors such as pension funds or investments funds. Investors in these long-term instruments will be risk averse and thus reluctant to accept risks arising from currency fluctuation or political risks.

A successful financial structure for a PPP thus requires a complex mix of financial instruments and knowledgeable investors that are matched to the specific risk profile of the project as it evolves throughout its lifecycle.
3.2.1. Domestic financing sources

Most developing countries with a successful history of PPPs have built their programmes on a solid financial foundation with the domestic financial system at its core. Latin American and Asian countries with strong track-records of PPPs such as Chile, Colombia, Brazil, and the Philippines have financed their PPPs primarily using domestic sources of finance. Domestic investors are typically more willing to participate in local PPP projects because of their familiarity with local regulations, and their knowledge of local business practices. Moreover, they are not as exposed to currency risk, which is a major concern for foreign investors. However, Kazakhstan’s domestic financial sector currently lacks the capacity and depth to provide the necessary financing for all but the smallest PPP projects.

3.2.2. Domestic banking system

Bank lending represents a leading source of finance for infrastructure projects worldwide. With their ability to exercise due diligence and oversight of projects, banks are well-positioned to respond flexibly to unforeseen events during construction. Due to the large size of many infrastructure projects, debt is often syndicated among a group of banks. Syndicated loans play a particularly important role in financing infrastructure projects in Europe and Asia.

However, the domestic banking system has played a limited role in financing infrastructure development in Kazakhstan. The sector is constrained by weak balance sheets and a high level of deposit dollarization (IMF, 2017). The Kazakh banking system was heavily impacted by the 2008-09 financial crisis with a number of the country’s largest lenders defaulting on their debts and requiring state bailouts to prevent collapse. Domestic banks were weakened further by the devaluation of the tenge in 2015. The banking sector therefore continues to receive state support, and is now heavily concentrated, with a single entity controlling almost 40% of bank assets.

As a consequence, the banking system is not performing as an effective channel of financial intermediation to the private sector. Domestic credit to the private sector stood at an average of 35% of GDP between 2014 and 2016, significantly lower than in other middle-income countries. Some progress in strengthening the banking sector is being made nonetheless. The authorities have established a Problem Loans Fund (PLF) operated by the central bank, to acquire the bad loans of lenders. According to official data, non-performing loans (NPLs) have declined from 31.2% in January 2014 to 7.32% in February 2017. However, according to the IMF, the true level of underperforming loans has been underreported and stands closer to 40% (IMF 2017).

As a result of its weakness, the domestic banking system has limited capacity and appetite for infrastructure lending. Moreover, with interest rates in the range of 15-20%, domestic loans are a very expensive way of financing infrastructure. Further, with loan tenors typically not exceeding 6 to 7 years, they are unsuitable for infrastructure projects that require longer-term financing. When domestic banks have participated in infrastructure projects they have typically been for local projects where the total amounts are relatively small and the loan tenors are shorter. If the domestic banking sector is to contribute to infrastructure investment and economic development more generally, further progress will be required in terms of resolving the sector’s structural weaknesses.
3.2.3. Institutional investors

Institutional investors with long-term inflation indexed liabilities such as pension funds and insurers have, in principle, the suitable profile to invest in long-lived infrastructure assets with predictable and stable cash flows. Indeed, in certain OECD countries such as Canada and Australia, infrastructure has become an important component of pension funds’ portfolios, with total allocation to this asset class ranging between 5 and 15% (Table 3).

Table 3. Allocation to unlisted infrastructure of selected pension funds, 2014 (% of total assets)

<table>
<thead>
<tr>
<th>Country</th>
<th>Fund name</th>
<th>Type</th>
<th>Target allocation</th>
<th>Actual allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>AustralianSuper</td>
<td>LPF</td>
<td>13.0</td>
<td>9.1</td>
</tr>
<tr>
<td></td>
<td>Health Employees Superannuation Trust Australia</td>
<td>LPF</td>
<td>12.5</td>
<td>9.2</td>
</tr>
<tr>
<td></td>
<td>Sunsuper</td>
<td>LPF</td>
<td>7.0</td>
<td>6.0</td>
</tr>
<tr>
<td></td>
<td>Future Fund</td>
<td>LPRF</td>
<td></td>
<td>7.4</td>
</tr>
<tr>
<td>Canada</td>
<td>OMERS</td>
<td>LPF</td>
<td>21.5</td>
<td>14.7</td>
</tr>
<tr>
<td></td>
<td>OTPP</td>
<td>LPF</td>
<td>8.4</td>
<td>8.3</td>
</tr>
<tr>
<td></td>
<td>Canada Pension Plan Investment Board</td>
<td>LPRF</td>
<td></td>
<td>5.5</td>
</tr>
<tr>
<td></td>
<td>Quebec Pension Plan</td>
<td>LPRF</td>
<td>7.5</td>
<td>4.6</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>USS</td>
<td>LPF</td>
<td>6.0</td>
<td>5.3</td>
</tr>
</tbody>
</table>

Source: OECD (2016a)

In spite of the large amount of assets held in the portfolios of pension funds, insurers and investment funds, and the clear synergies between the economic characteristics of infrastructure investments and the needs of institutional investors, institutional investment has only played a marginal role in financing infrastructure. In low and middle-income countries, institutional investment only amounted to 0.67% of total private infrastructure financing between 2011 and 2017, and much of it was concentrated in the energy sector (World Bank, 2018).

The largest institutional investor in Kazakhstan is the state-run unified accumulative pension fund (UAPF), which was created in 2013 to address mismanagement and corruption in the private pension fund management sector. At the time of its creation, UAPF was placed under the management of the National Bank of Kazakhstan. The UAPF’s holdings amounted to USD 23.4 billion as of 1 January 1 2018, equivalent to approximately 17% of GDP. Its assets are concentrated in government securities (46.1%), the debt of Kazakhstan-based banks (16.0%), and the bonds of quasi-government entities (10.1%). Bonds issued by commercial Kazakh companies represented a meagre 1% of its portfolio.

The UAPF has important limitations as a potential institutional investor for infrastructure. It is managing the fall-out from a USD 250 million investment in bonds issued by the International Bank of Azerbaijan (IBA), which have defaulted and are being restructured. Further, public pension funds should be managed with the purpose of protecting the retirement incomes of ageing generations. The current governance structure of the UAPF, which places it under the control of the NBK creates the potential for conflicts of interest, and the risk that pension funds could be used towards other goals such as supporting the banking sector. Nevertheless, the government is seeking to transfer the operational management of the fund to professional fund managers.
The UAPF could potentially contribute to financing infrastructure investment if, following in the steps of pensions funds in OECD countries, it were to allocate a certain proportion of its assets to infrastructure. For example, an allocation of 5% of AUM would make nearly USD 1 billion available for infrastructure investment. Such a development would need to be enabled by favourable pension fund regulations that allow it to diversify across asset classes and instruments, while guarding against excessive exposure to any single sector. It would also require suitable investment vehicles with experienced investment managers, and a sufficient supply of liquid instruments such as infrastructure bonds (see section on Capital markets below).

Beyond the UAPF there are few other domestic savings vehicles. The asset management industry is underdeveloped while the insurance sector, though growing, is small with assets under management a meagre 2% of GDP (OECD 2017). As a consequence of these limited investment options, wealth that could contribute to economic development is often transferred offshore. The development of the savings and investment industry may eventually be stimulated by the establishment of the Astana International Financial Centre (AIFC). However, for the short- to medium-term, it will not play a meaningful role in channelling funds to infrastructure investment.

3.2.4. Domestic capital markets

The participation of institutional investors in infrastructure financing requires as a prerequisite liquid capital markets that can support an active market for corporate bonds. However, capital markets in Kazakhstan represent a negligible source of investment in the country. Trading on the Kazakhstan stock exchange is dominated by foreign currency and repo transactions, with government and corporate securities representing only 1% of trading volume in 2017. By the end of February 2017, corporate bond market capitalisation was a relatively meagre USD 24.7 billion.

Capital markets are dominated by the national pension fund. The consolidation of pension fund assets into a single entity has reduced the number of institutional investors operating in the financial markets. This level of concentration of financial assets in a single institution is detrimental for market liquidity and is a factor contributing to high spreads.

3.2.5. Infrastructure bonds

In spite of the relative underdevelopment of capital markets, there is a precedent for using bonds to finance infrastructure investments in Kazakhstan. Two concession projects: the North Kazakhstan–Aktobe region power line and Shar–Ust–Kamenogorsk railway, were financed through the placement of infrastructure bonds with local pension funds. In the case of the Shar–Ust–Kamenogorsk railway, the concessionaire defaulted on its debt resulting in the bondholders nursing significant losses. While the bonds benefited from a state surety, the enforcement of this surety by the bondholders turned out to be a complicated and lengthy process (Chikanayev, 2016). As it turns out, the state surety on the bonds only applied to the construction period, which left the bond holders exposed to the default of the concessionaire during the operational phase (ADB 2017). As a consequence, infrastructure bonds are negatively perceived by investors in Kazakhstan which could prove to be an obstacle for future fund-raising attempts.

3.2.6. External financing sources

In view of the limitations and constraints with regard to the capacity of the domestic banking system and local capital markets to mobilise sufficient financing for PPPs,
policymakers in Kazakhstan need to consider external financing options that could support infrastructure development.

3.2.7. International banks

International commercial lenders are major players when it comes to financing infrastructure projects in OECD and Asian countries, however they are largely absent from financing concessions and PPPs in Kazakhstan. They have the capacity to mobilise large amounts of debt financing for projects over long timeframes, particularly when they operate as syndicates. However, their participation is dependent on having in place appropriate financing and risk mitigation structures that provide an acceptable risk-adjusted return. The reputation and financial solidity of the project company are key factors, as are considerations relating to country risk. In most low and middle-income countries, international banks will typically require a host government guarantee to underpin project revenues. They will also privilege projects where a major multilateral development bank (MDB) or a developed country export credit agency (ECA) is participating in the financial structure. A major obstacle to obtaining foreign financing of PPP projects in Kazakhstan is currency risk since international banks are, for the most part, unwilling to be exposed to fluctuations in the KZT.

3.2.8. MDBs/ECAs

Multilateral development banks (MDBs) and export credit agencies (ECAs) are indispensable actors in financing major infrastructure projects in low and middle-income countries. Because of their capacity to mitigate risks and their policy role, they are often willing to invest in countries where commercial lenders may be recalcitrant. ECAs perform similar roles to MDBs in terms of providing financing and dissipating risks, though their support is often contingent on the participation of home-country project sponsors or exporters.

Not only do MDBs such as the World Bank/IFC, EBRD, and IDB have significant lending capacity, expertise and experience in infrastructure development, they can also often catalyse investment from other sources such as international commercial banks or institutional investors through credit enhancement and the provision of guarantees. By using their strong balance sheet and triple-A ratings to provide subordinated or mezzanine debt that can absorb losses, MDBs enhance the quality of senior debt issued by emerging market borrowers, thereby making it palatable to a broader range of investors. Thus, through making a limited yet targeted use of their funds, MDBs mobilise much larger amounts of private finance at a lower cost. The European Bank for Reconstruction and Development (EBRD), for example, has piloted a new project financing facility in Turkey that, through combining EBRD guarantees, MIGA insurance, and IFC funding, enables the issuance of investment-grade project bonds to finance greenfield projects (Box 8).
Box 8. EBRD-MIGA risk mitigation solution for infrastructure bonds

The European Bank for Reconstruction and Development (EBRD) and the Multi-lateral Investment Guarantee Agency (MIGA) have developed a joint risk mitigation solution that is designed to boost the credit rating of infrastructure bonds issued for PPP projects. The facility addresses two key gaps in insurance coverage for infrastructure projects: (1) the lack of protection against construction risk, and (2) the long delays between a political risk event such as breach of contract and the eventual pay-out under a political risk insurance policy.

The mechanism combines two unfunded liquidity facilities (CSF and RSF) provided by the EBRD with political risk insurance (PRI) provided by MIGA:

**Construction Support Facility (“CSF”):** An unfunded credit facility designed to provide significant timely liquidity during the construction period. The facility provides liquidity in the event of contractor default from failure to pay liquidated damages or the replacement costs of the contractor in the event the EPC contract is terminated.

**Revenue Support Facility (“RSF”):** Subordinated unfunded credit facility designed to credit enhance grantor risk during the operations period of the project. The facility is designed to provide timely debt service in the event of a default by the grantor bridging the period until the arbitration process is completed (usually 2 to 3 years) after which MIGA honours its payment obligation.

**MIGA’s PRI Guarantee:** based on standard three-point coverage (Breach of Contract, Expropriations and Transfer Restriction). Under the “Breach of Contract” coverage, lump-sum insurance proceeds would be paid out following an arbitral award. Under the “Expropriations” coverage, PRI payment is not subject to arbitration award.

The facility was piloted in Turkey in a PPP transaction to build, design, finance and maintain a large integrated health campus located in Elazig, Eastern Turkey for a concession period of 28 years. The project forms part of the Government of Turkey’s Health Transformation Programme put in place in 2003 to tackle inequality in access to health care services. Under the PPP agreement the Turkish Ministry of Health as the grantor is required to compensate the project company for the availability of the facility. The project was financed through the issuance of a EUR 288 million euro-denominated bond, structured into two tranches. As a result of the EBRD-MIGA risk mitigation solution...
facility, Moody’s assigned the bonds a Baa2 rating, two notches above Turkey’s sovereign rating ceiling, thereby making the bonds eligible for the portfolios of institutional investors.

Source: EBRD and Moody’s

MDBs have also developed innovative co-financing facilities to mobilise institutional money for projects in developing countries. These facilities essentially create investment grade assets that are appealing to institutional investors by isolating and allocating certain risks to public partners, and providing diversification. For example, the IFC has developed a new mechanism called the Managed Co-Lending Portfolio Programme (MCPP) for Infrastructure that aims to mobilise institutional money for investing in infrastructure projects in developing countries (Box 9).

**Box 9. MCPP IFC Co-financing Facility**

The Managed Co-Lending Portfolio Programme (MCPP) for Infrastructure involves a three-way partnership between the IFC, a bilateral lender (Sida - Swedish International Development Agency), and a number of institutional investors. Institutional investors provide funding to a debt fund that will invest in a portfolio of projects that are originated and approved by the IFC. The IFC provides credit enhancement through a first-loss tranche. Sida provides a guarantee on a portion of IFC’s first loss position in exchange for a guarantee premium. The fund thus provides institutional investors with an investment grade asset with good returns and excellent diversification benefits. The programme aims to mobilise up to USD 5 billion over the next three to five years. The MCPP is representative of a new partnership approach, whereby the public sector leverages its limited resources in a targeted manner to mobilise much larger amounts of private financing.

There is certainly scope to expand the role of MDBs and ECAs in infrastructure financing in Kazakhstan.

While there are a number of MDBs active in Kazakhstan (such as the EBRD, the World Bank/IFC, the Islamic Development Bank (IDB) and the Asian Development Bank (ADB)), few have participated in the financing of concessions or PPPs. Over the past few years, the EBRD has financed a number of power plants including the Burnoye solar power plant, and is participating in the negotiations related to the BAKAD project (Box 10). Closer cooperation with MDBs will be critical for unlocking greater private participation in infrastructure financing in Kazakhstan.
Box 10. Almaty Ring Road Project (BAKAD Project)

The project of the Great Almaty Ring Road, also known as the BAKAD project, is a 66-kilometer toll road around the city of Almaty. The project is emblematic of some of the challenges in securing financing for large projects in Kazakhstan.

The project was first included in the project pipeline in 2006, and a number of tendering processes were initiated but never completed. Because of the size of the project, the contracting authority is the Roads Committee within the Ministry of Investment and Development (MID), and not the Almaty Akimat.

The project is structured as a 20-year build-transfer-operate (BTO) concession under the Concessions Law. The state is assuming traffic risk by collecting the tolls and making availability payments to the concessionaire that cover both capital expenditure and operating expenditure.

The latest tendering process was launched in 2015 and involved a two-stage competitive procurement. Five bidders were shortlisted and the contract was eventually awarded to a Turkish-South Korean consortium. However, the devaluation of the tenge in 2015 undermined the economics of the project, and delayed the conclusion of an agreement. Negotiations between the state, the winning bidder, and the main financiers which include the EBRD and the IFC have primarily focused on the allocation of currency risk. An agreement was reached in February 2018 with the state agreeing to compensate for any devaluation of the KZT-USD exchange rate.

3.2.9. Islamic finance

Islamic finance represents an additional source of financing for infrastructure that could potentially enable Kazakhstan to tap investors in the Middle East and Malaysia. Islamic finance and in particular sharia-compliant instruments which are asset-backed is well-adapted to financing infrastructure projects. Malaysia has pioneered the use of Islamic finance for infrastructure by issuing sukuk bonds (financial certificates that comply with Islamic religious) to finance the Mass Rapid Transit project in Kuala Lumpur. The Queen Alia Airport in Jordan was developed as a PPP using a combination of conventional and Islamic finance. While Islamic finance in Kazakhstan is in its early stages of development, the country has strong ambitions in this area and has published a “Roadmap on the development of Islamic finance until 2020”. There are currently two banks specialising in Islamic finance and the President recently announced that the Development Bank of Kazakhstan would be issuing USD 300 million worth of sukuk in 2018. A successful fund raising could pave the way for future issuance of sukuk to finance infrastructure projects. The Islamic Development Bank (IDB) has been supporting countries in developing Islamic finance instruments, and would be an important partner in developing this asset class in Kazakhstan.

3.2.10. Public financial institutions

Development Bank of Kazakhstan

The Development Bank of Kazakhstan (DBK) is the lead financial institution with responsibility for supporting the modernisation and development of non-resource
manufacturing, processing and infrastructure sectors. Its current activities are focused on manufacturing and processing industries including metallurgy, pharmaceuticals, chemicals, food and beverages and automotive sectors. The DBK lends to investment projects and provides export credit. It provides funding through a range of instruments including leasing transactions, co-financing, syndication and project financing.

As a state-owned bank within the Baiterek Holding Company it operates under a strict mandate channelling government funds to priority sectors in the context of state programmes. The State Programme of Accelerated Industrial and Innovative Development (SPAIID) has been the principal mechanism for promoting industrial development and diversification in Kazakhstan (Box 15). The DBK contributes to the implementation of this programme by providing subsidised credit to investment projects.

While it can provide financing for infrastructure projects, the DBK does not receive state funds for infrastructure investment, and, to do so, it must raise funds on the capital markets at an average cost of 11%. Once administrative costs and a margin have been added, the DBK lends at a rate of 13-14% for terms between 5 and 20 years (which is considerably lower than the lending rates of commercial banks, which stand at around 17%).

Infrastructure projects in which the DBK has participated include the construction of breakers for the Port of Aktau. While the Bank was involved in earlier discussions relating to the BAKAD project, it has since pulled out of the project.\footnote{1}

The Bank is interested in participating in PPP projects and is in the process of drafting the necessary internal policies and guidelines. A key obstacle to participating in the financing of PPP projects are the strict limits the DBK must adhere to on collateral requirements (i.e. it can only accept tangible security).\footnote{2}

The DBK has raised funds through issuing bonds domestically, most of which have been bought by the national pension fund (see below). It is in the process of diversifying its funding sources by, for example, seeking to raise KZT 100 billion through a eurobond issuance. It is also in the process of reducing its exposure to foreign currency funding which had reached 70% before the devaluation of the tenge in 2015.

Kazyna Capital Management

Kazyna Capital Management (KCM) is a state-owned investment company that is also part of the Baiterek Holding Company. Its mandate is to support sustainable economic growth and promote investment in Kazakhstan through making equity investments via private equity funds, and attracting international investors. KCM is a fund of funds with investments spread across 13 private equity funds, a number of which focus on infrastructure. Most of the funds it invests in consist of joint ventures with international investors including sovereign wealth funds (e.g. Abu Dhabi’s Mudabala), multilateral development banks (e.g. EBRD and IFC) and international investment companies (e.g. Macquarie Group).

3.3. Project finance framework in Kazakhstan

3.3.1. Kazakhstan has adopted a legal framework for project finance

Private investment in infrastructure, when not performed by a corporate entity, typically takes the form of project finance structure whereby the repayment of debt is linked to the performance of a project. A robust project finance framework is therefore, a key precondition for mobilising significant levels of debt for financing infrastructure projects
including for PPPs. In 2006, Kazakhstan introduced the so-called Law on Project Finance and Securitization, which created the legal framework for structuring financing in accordance with the principles of project financing (Law of the Republic of Kazakhstan of February 20 2006 No. 126 “On project financing and securitization”).

A key feature of project finance is the ability to pledge receivables as security for loans. According to the project finance framework in Kazakhstan, project companies can pledge cash and monetary claims under a contract (such as an off-take agreement). Other forms of security are also accepted under Kazakh law including (i) mortgage over real property of the project company; (ii) security agreements over plant, equipment and physical assets; (iii) assignment of rights under insurances, project contracts and project bonds; (iv) pledges of bank accounts and cash; (v) pledge of shares in the project company; and (vi) limited guarantees by the sponsors. However, with the exception of assigned cash or receivables, all other forms of security must be sold at a public auction before the proceeds can be distributed to the creditors (Chikanayev and Abdukhalykova, 2015). Creditors participating in PPP projects are also protected by step-in rights, though these must be subject to a direct agreement between the lender and the contracting authority (PPP Law, Article 47).

3.3.2. Prudential standards limit the effectiveness of the project finance framework

While the Kazakh legal framework enables transactions to be structured according to project finance principles, prudential standards are regularly cited as an obstacle to the implementation of the project finance mechanism, and, in particular, to the participation of domestic commercial banks in PPP transactions. According to the rules set by the National Bank of Kazakhstan, receivables under a PPP contract cannot be accepted as “solid pledges” by commercial banks, which therefore increases the capital required to offset against loans to PPP projects. While any proposed lowering of prudential standards in the context of a relatively weak banking sector must be assessed very carefully, it might be appropriate for authorities to study the implications of reducing the credit risk ratings for loans that benefit from a state guarantee on overall credit quality and the balance sheet of banks.

3.4. Innovative mechanisms for mobilising private finance

In the traditional model of publicly-funded infrastructure development, resources from the state budget are used to directly fund investments. However, public funds can also be used to catalyse much greater amounts of private financing. A number of innovative approaches have been developed that involve co-financing of projects and/or credit enhancement mechanisms where a limited amount of public money is used in a targeted way to mobilise much larger amounts of private capital. By adopting such techniques Kazakhstan can make its public resources go much further than through a purely budget-based infrastructure development model and attract larger amounts of private investment at lower cost than through an entirely privately financed model.

3.4.1. Co-financing can enhance the appeal of infrastructure for institutional investors

Co-financing, often referred to as blended finance, can take multiple forms but, at its most basic, it involves blending public and private money to invest in infrastructure or other public goods. Institutional investors and sovereign wealth funds, particularly if they are
foreign, are often reluctant to invest in illiquid assets outside of their home country due to concerns relating to a lack of local knowledge and heightened risk perceptions, particularly political risk. For many such investors, the cost of pursuing opportunities alone in Kazakhstan would be prohibitive, and most won’t have the necessary in-country expertise to be able to source projects and perform the due diligence.

A co-financing vehicle can resolve these obstacles by bridging the local knowledge gap and using public sector money to provide a portion of the capital and share in the risk. The recently established National Investment and Infrastructure Fund (NIIF) of India, for example, is a fund that mixes public and private capital to invest in infrastructure projects either directly or through sub-funds (Box 11). The Governing Council and the fund’s management include infrastructure experts and financial professionals with local knowledge of the Indian infrastructure market. Institutional investors that participate in the fund can benefit from that expertise without having to develop their own local capacity.

A similar vehicle could be considered in Kazakhstan with its capital base financed, in part, by resources from the National Fund or from the proceeds of the planned privatisations (see below). The participation of MDBs, institutional investors, or sovereign wealth funds (SWFs) in its share capital would enhance its standing among potential investors.

3.4.2. Credit enhancement improves the risk profile for lenders

Credit enhancement, discussed above, is another approach where public funds applied in a limited and targeted manner can mobilise much larger amounts of private investment. Credit enhancement works through improving the risk-return profile of investments in order to match the risk appetite of different classes of investors. This can be done by providing subordinated or mezzanine debt that absorbs risks, thus enhancing the credit quality of more senior debt. The public sector can also improve debt ratios for lenders through providing additional equity or grants.

### Box 11. National Investment and Infrastructure Fund of India

The National Investment and Infrastructure Fund (NIIF) is a fund created by the Government of India to mobilise financing for infrastructure investment. The fund was established in late 2015 as a Trust, under the Indian Trust Act. It is structured as a fund of funds meaning that it can comprise a variety of sub-funds.

The initial authorised capital of the fund is equivalent to USD 6 billion of which 49% will be provided by the Government of India. The other 51% will be raised from other anchor investors including long-term institutional investors such as sovereign wealth funds (SWFs), insurance and pension funds, as well as multilateral or bilateral institutions. The fund can augment its financial resources by borrowing.

The NIIF is led by a Governing Council, chaired by the Minister of Finance, and composed of government representatives, along with economists, financial experts and infrastructure professionals.

The goal of the fund is to support economic development through investing in commercially viable infrastructure projects, both greenfield and brownfield, in the roads, rail, ports, airports, and energy sectors.
The fund is highly flexible with the ability to invest in other funds or to make direct investments in projects. It can invest in both equity and debt instruments including:

- Units of funds engaged mainly in infrastructure sectors and provide equity/quasi-equity or debt funding to listed/unlisted companies;
- Equity/quasi-equity in non-bank financial corporations (NBFCs) and financial institutions that are engaged mainly in infrastructure financing; and
- Equity/quasi-equity or debt to commercially viable projects, both greenfield and brownfield.

The fund’s structure enables it to multiply the government’s initial contribution through the participation of anchor investors and through issuing debt. Moreover, by making equity investments or providing subordinated debt that can absorb project risks, it has the potential to further augment its impact by crowding-in private sector investment and/or reducing the cost of finance.

Recent developments:

- In October 2017, the NIIF signed a USD 1 billion investment agreement with the Abu Dhabi Investment Authority (ADIA). As part of the agreement, ADIA will become a shareholder in the NIIF.
- In January 2018, the NIIF and Dubai-based DP World agreed to establish joint a USD 3 billion platform to ports, terminals, transportation and logistics businesses in India.

Source: OECD, 2018a

3.5. Risk mitigation for PPP projects

A key challenge to structuring concession and PPP projects in Kazakhstan and elsewhere is achieving an efficient allocation of risks between the public sector and private investors. Disputes over the allocation of risks have been at the heart of some of the problems in getting PPPs off the ground in Kazakhstan. Given the limited track record of privately financed infrastructure in Kazakhstan this may require that the state, at least initially, retains more risk than is the case for infrastructure projects in countries with a longer history of PPP implementation. Some risks, such as construction risk involving delays or cost overruns are common to most projects regardless of the jurisdiction (Figure 7). Particular emphasis should be placed on mitigating those risks that are more specific to Kazakhstan, and which contribute to reducing the appetite of investors and/or raising the cost of finance relative to other middle-income countries.
3.5.1. Principal risks requiring public intervention

Among the risks most likely requiring some form of public intervention are:

Demand/revenue risk

Project sponsors and lenders are confronted with the risk that demand for infrastructure fails to reach projected levels, thus putting in jeopardy the financial viability of the project company. Uncertainty relating to future demand for an infrastructure service is of particular concern in the case of greenfield projects that will depend on some form of user charges. The allocation of demand and revenue risk will therefore be a central issue in the structuring of the financing. Commercial lenders will often require some form of guarantee with regard to a minimum level of revenues from the project. Most recent PPP road projects in Central and Eastern Europe have benefit from government support whether in the form of availability payments, viability gap funding, or revenue guarantees (Table 4). In the case of PPPs, where project companies are remunerated by payments from a government entity, a state guarantee underpinning those payments is often required.

A majority of infrastructure projects in the transport and social sectors in Kazakhstan will require support either in the form of direct government payments (availability or capacity payments), and/or some form of revenue guarantee (e.g. minimum revenue guarantee) that transfers demand/revenue risk to the state. Because of long distances and low population densities across most of the country, most transport projects are unlikely to support cost-recovery on the basis of user fees alone, and will thus require direct government support. Further, even in the case of projects that can be funded through user fees (such as toll roads), early investors are unlikely to accept demand risk.
Table 4. Selected PPP road projects in Eastern Europe and Central Asia

<table>
<thead>
<tr>
<th>Country</th>
<th>Project name</th>
<th>Financial closure year</th>
<th>Principal funding source</th>
<th>Type of government support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>Milot - Morine Highway</td>
<td>2017</td>
<td>User fees &amp; availability payments</td>
<td>Revenue subsidy</td>
</tr>
<tr>
<td>Russia</td>
<td>Kutuzovsky Northern bypass toll road</td>
<td>2015</td>
<td>User fees</td>
<td>Revenue subsidy</td>
</tr>
<tr>
<td>Russia</td>
<td>M11 Moscow-St Petersburg (543-684km)</td>
<td>2015</td>
<td>User fees</td>
<td>Not specified</td>
</tr>
<tr>
<td>Russia</td>
<td>Russian Toll Collection System PPP</td>
<td>2015</td>
<td>User fees</td>
<td>Not specified</td>
</tr>
<tr>
<td>Russia</td>
<td>Syktyvkar - Naryan-Mar Motorway</td>
<td>2016</td>
<td>Availability payments</td>
<td>Capital subsidy, state guarantee</td>
</tr>
<tr>
<td>Russia</td>
<td>Moscow Central Ring Road Section 3</td>
<td>2017</td>
<td>Availability payments</td>
<td>Capital subsidy</td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td></td>
<td>Availability payments</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>Third Bosphorus Bridge and Northern Marmara Highway Project</td>
<td>2014</td>
<td>Availability payments</td>
<td>Payment guarantee</td>
</tr>
<tr>
<td>Turkey</td>
<td>Third Bosphorus suspension bridge additional financing</td>
<td>2016</td>
<td>User fees</td>
<td>Revenue subsidy; revenue guarantee</td>
</tr>
<tr>
<td>Turkey</td>
<td>North Marmara Motorway Remaining Sections</td>
<td>2017</td>
<td>Availability payments</td>
<td>Not specified</td>
</tr>
</tbody>
</table>

Source: World Bank PPI database (consulted April 5, 2018), and authors

In the absence of an extensive track record, it is unsurprising that the public partner will need to absorb a large part of the revenue and demand risk in order to attract private financing. However, in the long-term, it is undesirable for the state to absorb demand risk for all projects. Mechanisms that enable sharing of demand risk between the public and private partner should be explored. These include the use of minimum revenue guarantees coupled with a profit-sharing equation if revenues exceed a certain level so that the state can benefit in the upside. Chile has developed an innovative mechanism for awarding concession contracts called the least-present-value-of-revenue (LPVR) method that helps to reduce demand risk for the concessionaire (Box 12).

Box 12. Chile’s least-present-value-of-revenue (LPVR) mechanism for awarding concession contracts

Highway concessions financed by tolls paid by users face significant demand risk. This is due, in part, to the uncertainty around the price-elasticity of demand for roads, as well as the inherent difficulty of predicting future traffic over a long time period. Such schemes are inevitably subject to the vagaries of economic cycles and other unpredictable changes in the economic circumstances affecting demand for the asset.

Traditional auctions typically involve fixed-term contracts based on the lowest toll, which leaves the concessionaire facing elevated demand risk. In order to reduce the high level of demand risk which serves to increase the risk premium required by investors and to raise the likelihood of renegotiations, the Chilean government introduced, in 1994, a new mechanism for adjudicating concession contracts called Least-present-value-of-revenue (LPVR) auctions.

Under this system for awarding concession contracts, the contract duration is variable, only ending once the present value of revenues has been reached. In the case of lower than expected toll revenues, the contract duration gets extended so that the concessionaire obtains the agreed present value of revenues. It also allows for the
possibility of adjusting toll levels, for example, if demand is lower than expected, without affecting the underlying economic value of the contract. Such a system thus goes a long way towards eliminating demand risk. It also provides a transparent basis for compensating the concessionaire if the government decides to terminate the contract early (Engel 2001).

Since its adoption, numerous highway concession in Chile have been procured using the LPVR method. Moreover, in spite of the potential variability in the value of payments, banks and other lenders have accepted this mechanism because it reduces the likelihood of failure of the project company.

Source: OECD (2017c), Engel (2001)

Currency risk

Currency risk arises when there is a mismatch between the currency of the project revenues and the currency of the debt repayments. Wherever possible project developers should seek to limit foreign currency financing to projects where all or some of the revenues can be collected in hard currency. However, this is unlikely to be feasible except for in a few exceptional cases (e.g. international freight corridors).

The devaluation of the KZT in 2015 highlighted the potential for exchange rate fluctuations to wreak havoc on the financial viability of projects. The shift to a floating exchange rate will undoubtedly reduce the likelihood of such dramatic shifts in the value of the KZT in the future. In the near term, however, few foreign investors or lenders will be willing to accept exposure to fluctuations in the value of the KZT.

Since the options for hedging this risk, particularly on a long-term basis, are, at best, highly limited, expensive, or non-existent for the less liquid currencies, exchange rate fluctuations will need to be absorbed by the project company (which is unlikely), the users or the state. Transferring exchange rate risk to users is likely to be unpopular and politically sensitive (since they don’t have the ability to influence the rate). The government is the only entity with a measure of control, albeit limited, over the exchange rate, and, as such, is arguably the most appropriate party for bearing this risk.

The rules regarding the allocation of currency risk in Kazakhstan have been in flux. Under previous rules, private investors were required to accept currency fluctuations within a corridor of 15%, with the state willingly compensating the foreign investor for movements beyond 15%. However, recent adjustments to the rule will allow the state to fully compensate investors for currency risk on projects designated of “special importance”. In all likelihood, in order to get PPPs off the ground at the national level, the government will have to bite the bullet and fully retain currency risk, at least for the first series of PPP projects.

Political risks

Classic political risks such as expropriation, political violence, and currency inconvertibility are of particular concern for foreign investors. Since these risks lie outside their control, investors typically seek to allocate them to a third-party that is both willing and capable of managing them. Instruments for transferring political risk, such as political risk insurance and guarantees can be purchased by investors from providers of insurance.
cover (either private or public). Lenders and insurers are also likely to require a sovereign guarantee as a backstop.

**Breach of contract**

In cases when the project output is purchased entirely by a government entity through an off-take agreement, or when the project company is remunerated by availability or capacity payments, revenue risk takes the form of the government purchaser reneging on the contract. Private operators can obtain insurance to protect against this risk. However, under standard ‘contract frustration’ policies, private insurers often do not cover the breach of contract event itself – they cover failure to pay arbitration awards in the event that attempts to pursue arbitration are frustrated by the government. Investors and lenders typically require government guarantees to cover the risk of non-payment by a government entity.

**Credit risk**

Credit risk is the result of the project company being unable to service its debt irrespective of the cause. The risk of default by the project company is borne by the creditors which could be either lenders or bondholders. Public entities can offer full or partial credit guarantees that protect creditors in the event of a default. Guarantees can improve the credit quality of a project’s debt, thus reducing its cost and making it eligible for institutional investors that face regulatory restrictions. In some cases, they can be applied selectively to certain tranches of debt. Credit guarantees can be offered by MDBs, ECAs, and national and subnational governments (OECD, 2015b).

3.5.2. The role of guarantees in mitigating risks

Investors in Kazakhstan PPPs that involve large capital expenditures and long payback periods are unlikely, in the majority of cases, to be willing to accept demand risk and exchange risk. Moreover, it is accepted practice for risks such as political risk and breach of contract risk to be retained by the state.

Various types of public guarantees whether in the form of minimum revenue guarantees, exchange rate guarantees or credit guarantees are thus likely to be required in order to close financing for major PPP and concessions projects, particularly when they involve foreign investors. The Kazakh PPP law allows for the provision of state guarantees. However, guarantees represent contingent liabilities for the state, and should therefore be awarded selectively, based on strict and transparent criteria so as not to undermine fiscal sustainability. They should be targeted to support projects that yield a strong positive net economic benefit, and that would otherwise fail to obtain financing.

3.6. Recommendations

Improving the availability and lowering the cost of private financing for infrastructure in Kazakhstan requires action on a number of fronts. In the long-term a healthy and vibrant domestic financial system is indispensable for ensuring a sustainable source of financing for infrastructure. Ultimately, domestic sources of finance provide the best match for infrastructure that is funded from domestic resources, whether through tariffs or taxation. Actions should therefore be pursued that support the strengthening of the domestic banking system as well as the emergence of more diversity and competition in the capital markets. However, such reforms take time, and need to be complemented in the short- to medium-term by steps that promote new financing options and support greater participation of
international capital. Key to fostering greater interest from international investors will be to demonstrate long-term commitment to private participation, establish a track-record of successful project implementation, and reduce the risk profile of investments through the selective use of guarantees and credit enhancement.

3.6.1. Reform the domestic financial system so that it becomes a more effective partner for infrastructure development

Strengthen the banking system and introduce greater competition in capital markets

As mentioned above, most countries with a vibrant PPP programme have built it primarily on the back of a strong and well-diversified domestic financial system, with a healthy banking system at its core. Kazakhstan needs to continue pursuing reforms to its banking system that will enable its domestic banks to become more effective partners for infrastructure development. This involves encouraging banks to clean up their balance sheets through reducing their levels of non-performing loans, lowering the dollarization of deposits, and shifting bad loans into a “bad bank”. Authorities should also take measures that improve the effectiveness of capital markets to intermediate between pools of savings and infrastructure development needs. Capital market liquidity and competition could be enhanced and spreads reduced through reforming the pension system to reduce the dominance of the unified accumulative pension fund (UAPF) which currently invests in little else than government securities and the debt of Kazakh banks.

Perform a review prudential and regulatory standards

 Authorities should also perform a review of prudential standards and regulations in the banking, pension and insurance sectors to identify specific barriers that inhibit infrastructure financing. Prudential banking standards should not unreasonably discriminate against infrastructure debt, particularly if these benefit from a state guarantee. Further, insurance and pension fund regulations should not prohibit investments in infrastructure as long as appropriate concentration limits and solvency standards are in place.

3.6.2. Demonstrate long-term commitment to private financing

Long-term commitment by the government to private financing will be critical for encouraging investor interest and participation in financing PPP and concession projects, particularly at the national level. International lenders need to dedicate capacity when entering a new market, and their decisions are informed by the medium- to long-term potential of that market. A one-off project is unlikely to justify the investment required in getting to know a jurisdiction which requires basing capacity there. Lenders will therefore look for tangible evidence of the ability of the government to implement projects and the potential of the market as indicated, for example, by a robust pipeline of future projects. The successful implementation of a number of PPP projects will have a strong demonstration effect by creating confidence in the PPP regime and the government’s ability to deliver. The finalisation of the agreement for the BAKAD project is an important step in this direction.
Establish a credible pipeline of PPP projects

The government can also demonstrate long-term commitment by establishing a credible pipeline of priority projects that have been approved for delivery as PPPs or concessions. The KPPPC hosts an online database (currently containing over 450 projects), which includes information both on concluded contracts and on planned PPP projects at the national and local levels. While the KPPPC database serves an important domestic purpose, it is simply too large and includes such a wide diversity of projects, the vast majority of which are small local projects, that it is of limited utility for foreign investors.

A single pipeline, which is derived from comprehensive infrastructure plans based on assessments of long-term needs would contribute significantly to improving the ability of investors and lenders to identify and assess the potential of infrastructure opportunities in Kazakhstan. The pipeline could focus exclusively on the subset of priority PPP projects considered to be of “special significance”. The pipeline should be made easily accessible to external stakeholders via online publication in Kazakh, Russian and English. Projects in the pipeline should be tested for their bankability and economic efficiency. Documentation developed as part of the project preparation process should be made available online.

For example, Infrastructure Australia, the independent federal body responsible for developing national infrastructure plans and prioritising projects in Australia, maintains a prioritised list of nationally significant investments. Projects on the list are grouped along two simple dimensions: their level of development (projects vs initiative) and their priority (high priority vs priority). Business case appraisals prepared by Infrastructure Australia are easily accessible on their website. Investors and stakeholders can thus easily obtain information on a project’s position in the investment pipeline, as well as the aims of a project, and a description of its main technical, economic, social and environmental features.

3.6.3. Ensure project documentation matches international standards

The credibility of projects from the perspective of foreign investors also depends on the quality of project documentation, and the extent to which it reflects international standards and practices. The reputation and experience of the legal and financial advisors can be instrumental in achieving financial closure on projects. Their understanding of market conditions and the expectations of investors can help in structuring deals that appeal to investors and lenders. However, the recruitment of leading transaction advisors is an expensive proposition that would strain the budgets of many contracting authorities.

The Philippines has developed a successful solution to this challenge by creating a mechanism called the Project Development and Monitoring Facility (PDMF) that supports contracting authorities by financing project development costs and assisting in the recruitment of transaction advisors (Box 13). Currently, eligible national projects in Kazakhstan benefit from the advisory services of the Kazakhstan Project Preparation Fund (KPPF) (see Chapter 2). The KPPF could follow the example of the Philippines PDMF and supplement its advisory services with assistance to contracting authorities in recruiting transaction advisors for those projects that would benefit from the participation of international investors. This assistance could take a number of forms including maintaining a pool of pre-qualified consulting firms that can then be called on to bid on specific engagements, and supporting the procurement of legal and financial advisors for individual projects. Financing for the recruitment of advisors could be provided through the establishment of a revolving fund.
In addition to working with internationally recognised advisors, contracting authorities in Kazakhstan can also draw on publicly available project preparation resources such as SOURCE3 that provide guidance and standardised documentation that is based on international best-practice.

**Box 13. Philippines Project Development and Monitoring Facility**

The PDMF is a revolving fund with initial funding from the Government of the Philippines and the Government of Australia through the Asian Development Bank (ADB). The general objective of the PDMF is to provide a facility to fund and facilitate pre-investment activities of potential PPP projects and develop a robust pipeline of viable PPP projects. More specifically, the PDMF may be used for: (a) preparation of project pre-feasibility and feasibility studies; (b) project structuring; (c) preparation of bid documents & draft contracts; (d) transaction advisory and (e) assistance in the tendering process, including bid evaluation and award of the PPP contract.

Only projects included in the government's list of priority infrastructure programmes are eligible for PDMF assistance. In order to use the PDMF, implementing authorities (IA) contact the PPP Center to request PDMF support. The PPP Center evaluates the request on the basis of the ability of the IA and the nature of the project. The PPP Center then submits the request for approval to the PDMF Board. Upon PDMF Board approval, the IA and the PPP Center enter into a Technical Assistance Agreement (TAA) that sets out the terms of the collaboration between the IA and the PPP Center. This is the basis for the hiring of transaction advisors that will work with the IA and PPP Center on the project. The PPP Center manages the contracts and financing of the technical advisors.

Advisors are recruited and retained for three years in a non-committal basis through an Indefinite Delivery Contract (IDC) to provide transaction advisory services for the development and bidding of bankable PPP projects. Currently 22 consulting consortia are part of a panel that may receive a request for proposals from the PPP Center. The consultant is paid on the basis of a lump-sum rather than on the basis of the actual number of person/hours spent on the assignment. As a consequence, the consultant has to estimate how many person/days he/she will have to allocate to the task. The output of the work of the transaction advisors serves two distinct purposes: (a) it contributes an analytical basis to the “internal” process that leads to the consideration of the project by The Philippine National and Economic Development Authority or NEDA-Board/Investment Coordination Committee (ICC); and (b) prepares and documents the deal structure that will be put to tender. The competencies of the transaction advisors bring credibility to the projects in terms of good project preparation.

Since the inception of the PDMF, it has supported 68% of the PPP projects in the pipeline. The remaining 32% were funded from other sources, such as the World Bank, International Finance Corporation, Japan International Cooperation Agency, etc. Also, not all applications submitted for PDMF support were approved and only about 60% were granted. As of 21 April 2015, a total of USD 57 million have been committed by the PDMF for project preparation and/or tender.

Ultimately, the project development cost will be recovered by the PDMF from the successful bidder upon successful completion of the bidding process, plus an administrative fee of 10%. The reimbursement of the project development costs will be a condition for contract award to the private sector concessionaire. The 10%
administrative fee will be used to ensure the sustainability of the revolving fund. Not all projects supported by PDMF were reimbursed by a winning bidder. In some cases project costs were refunded by the IAs due to the decision not to pursue a PPP tender or due to a failed bidding process.
Source: OECD, 2016b

3.6.4. Leverage public resources to mobilise private financing

In order to meet Kazakhstan’s vast infrastructure needs, limited public resources will need to be applied more efficiently and made to work smarter. Public financial institutions can use their balance sheets to crowd-in larger amounts of private financing rather than doing all the heavy lifting themselves.

Use the Development Bank of Kazakhstan as a catalyst for commercial lending

As the Development Bank of Kazakhstan develops its policy and guidelines with regard to PPPs it should consider a role where it performs as a catalyst that enables greater participation by commercial banks in infrastructure lending. It could use its infrastructure expertise to act as a lead arranger for a syndicate of Kazakh banks. It could focus its lending on subordinated debt, thus improving the risk profile and credit quality of senior tranches that would be marketed towards commercial lenders.

Create a co-financing vehicle to channel international capital

Public financial institutions can also facilitate participation by international institutional investors and sovereign wealth funds in infrastructure investments through the creation of co-financing vehicles. Kazyna Capital Management (see above) currently performs such a role by investing alongside international investors in a series of private equity funds. However, the impact of such an institution could be magnified if its toolkit were expanded enabling it to invest in a wider range of assets (e.g. infrastructure bonds), to use a wider range of instruments (e.g. making direct investments into PPP projects, offering guarantees), and to issue its own debt. Canada, for example, has recently established an Infrastructure Bank that will have access to a wide range of instruments (debt, equity, loan guarantees) with the goal of attracting private sector and institutional investment into revenue-generating projects that are in the public interest. Infused with expertise and local knowledge such an entity it could serve as an effective partner for international investors seeking to participate in Kazakhstan’s long-term growth potential. Participation of multilateral developments banks in the entity’s share capital could provide additional credibility and reinforce its balance sheet.

3.6.5. Strengthen partnerships with MDBs

Because of their mandates, their expertise, their triple-A rated balance sheets, and their large toolkit of financial instruments, MDBs are indispensable partners in the development of large-scale infrastructure in low and middle-income countries. MDBs have also been at the forefront in developing innovative solutions for crowding-in private finance. Kazakh authorities should therefore work closely with MDBs when initiating projects and seek to capitalise on their expertise and various project preparation and financing facilities.
3.6.6. Develop a clear policy and limits on guarantees for PPPs

Investors and lenders participating in PPP projects in Kazakhstan, particularly in the early phases of the programme before a track-record of operational projects develops, are likely to be reluctant to accepting a number of risks such as demand risk and currency risk. Under these conditions, state guarantees can help to unlock financing that otherwise would not be forthcoming or would be very expensive. However, in providing guarantees, the state takes on the risks, which represent long-term liabilities for taxpayers.

The Budget Code of Kazakhstan sets out the general rules, conditions and requirements for the provision of state guarantees. Under the current definition, state guarantees can be provided to protect lenders from the risk of non-payment of obligations by a Kazakh legal entity. An annual limit for the provision of state guarantees is established in each Republican budget.

In the case of PPPs, guarantees may be required to cover a broader range of project-related risks such as revenue risk, demand risk, or exchange rate risk. For example, a significant area of negotiation between the state and investors in the BAKAD project revolved around the amount of exchange-rate variation that would be absorbed by the project company. Kazakhstan should consider developing a more focused policy with regard to guarantees for PPPs, which regulates the types of risks that state guarantees can cover, eligibility criteria, limits, and conditions. As highlighted in the Budget Review of Kazakhstan (Beazley, 2019), transparency could be further improved through disclosure of state guarantees and contingent liabilities in the annual financial statements of the government.

Kazakhstan could also consider establishing a guarantee fund that caps the total amount of liability, thus limiting the potential impact on the government balance sheet and providing greater longer-term predictability regarding the state’s capacity to support private financing of infrastructure. A number of countries including the United Kingdom and Brazil have established such guarantee funds (Box 14).

Box 14. Brazilian Infrastructure Guarantee Fund

In 2014, the Brazilian government established the Infrastructure Guarantee Fund (FGIE) to guarantee, directly or indirectly, any risks, including non-manageable risks, related to concessions. More specifically, the fund will guarantee large infrastructure projects in the Growth Acceleration Programme (PAC) or strategic plans defined by the executive. PPPs implemented by the federal government or state governments are also eligible. The fund will only directly guarantee risks for which there is no available insurance or reinsurance cover. The government will contribute a maximum of BRL 11 billion to the fund. The fund will be managed by the Brazilian Guarantees and Fund Managements Agency (ABGF), Brazil’s national export credit agency.

Source: OECD, 2018b

3.6.7. Use proceeds from privatisation productively to support infrastructure development

The state is planning to divest itself from a significant portion of its holdings, with the aim if reducing the SOE share of economic activity down from 30-40% to 15% by 2020. The Comprehensive Privatisation Plan 2016-20 envisages the sale of stakes in 65 large SOEs.
The resources raised through the privatisations should be reinvested in productivity-enhancing investment that will contribute to long-term economic growth. A portion of the funds raised could be directed towards mobilising private capital through co-financing vehicles and credit enhancement mechanisms by, for example, capitalising an infrastructure fund (see above), funding a guarantee fund, and providing grants to PPP projects. In this way, capital invested in existing operational assets could be recycled in order to support the development of new productive infrastructure.

4. Ensuring that PPP projects deliver value for money

4.1. Introduction

Investment projects can only be justified if they provide value for money over the life cycle of a project. The OECD defines value for money as “what government judges to be an optimal combination of quantity, quality, features and price (i.e. cost), expected (sometimes, but not always, calculated) over the whole of the project’s lifetime” (OECD 2012).

The concept of value for money is often applied to comparing the relative efficiency of different procurement models. Under this interpretation, value for money is achieved if a particular procurement mode represents the most efficient means of delivering a particular service. PPPs can generate value for money compared to traditional procurement if they bring about improvements in quality or costs savings - for example through the adoption of innovative construction techniques or the bundling of construction, operation and maintenance.

However, value for money can also be construed in absolute terms whereby a particular intervention delivers a net benefit to society (typically measured using cost-benefit analysis). Achieving value for money under this interpretation begins with selecting the right projects; that is, projects that are aligned with a country’s development goals that address present and future needs, and are prioritised according to their net economic benefits. However, value for money must be guarded at each stage of the project lifecycle, from planning through operation. Competitive tendering procedures are critical for driving down costs. However, the benefits achieved through a well-structured competitively procured project can be squandered if future contract renegotiations reduce the net economic benefits of a project. Once projects have been procured, the contracting authority and owners need to ensure that contractual performance is respected, that the assets are adequately maintained, that contract modifications are avoided, and renegotiations conducted fairly.

This chapter will discuss the extent to which the Kazakh PPP framework and the investment planning system more generally protect value for money throughout the project lifecycle beginning with project planning and prioritisation, followed by the choice of delivery mode, competitive procurement, transfer of risks, project monitoring and evaluation, and finally contract renegotiations. The assessment will use as a reference the five OECD PPP principles that relate to the concept of value for money. It should be mentioned that since Kazakhstan’s PPP framework was only introduced in 2015 there is therefore a very limited track record and even less data on which to develop a more results-based analysis. As a consequence, the review will focus primarily Kazakhstan’s institutional and regulatory framework for PPPs in terms of how it compares with OECD best practice as enshrined in the Recommendation.
4.2. Project planning and prioritisation

4.2.1. Principle 4 of the PPP Recommendation

All investment projects should be prioritised at senior political level. As there are many competing investment priorities, it is the responsibility of government to define and pursue strategic goals. The decision to invest should be based on a whole of government perspective and be separate from how to procure and finance the project. There should be no institutional, procedural or accounting bias either in favour of or against Public-Private Partnerships.

Ensuring that infrastructure investments represent a net benefit to society depends, first and foremost, on selecting the right projects. Infrastructure decision-making should therefore be aligned with a country’s long-term strategic development goals, defined by the political executive. Furthermore, while investment decisions are ultimately political choices, they should be framed by robust analysis that privileges economic criteria. Given the need to allocate scarce resources between competing projects, project prioritisation should ensure that public funds, whether in the form of grants, availability payments or guarantees are directed to those projects that generate the greatest value for money.

4.2.2. In Kazakhstan long-term goals and priorities are defined by the Presidency

Achieving value for money requires that infrastructure investments be aligned with long-term development objectives and policy priorities. In the case of Kazakhstan, the long-term vision for the development of the country and the key policy priorities for government are set out in a series of Presidential addresses. A key statement in this regard is the “Strategy Kazakhstan – 2050”, an address by the President made in 2012 that outlines a long-term vision for the country built around seven priority themes. This address was then complemented by the “100 Concrete Steps”; a statement made by the President in 2015, that, as the title implies, sets out 100 actions required to implement five institutional reforms. These statements and others provide guidance to the policymaking process for line ministries and regional governments, and are therefore key inputs for defining infrastructure needs and priorities, and developing investment programmes.

4.2.3. Sectoral investment programmes are developed by line ministries and approved by the Ministry of National Economy

Infrastructure investments in Kazakhstan are often delivered through large multi-year cross-sectoral investment programmes such as SAIIPD and Nurly Zhol (Box 15). The impetus for these programmes is provided by statements from the Presidency. Financing for these programmes comes from a combination of funding from the national budget, transfers from the National Fund⁶, and the resources of state-owned enterprises. The plans are often split into separate programmes, which are then administered by line ministries and implemented by state-owned companies.

Investment proposals made by administrators of budget programmes are introduced in the form of public investment projects. The State Investment Project is a set of measures aimed at achieving the strategic goals of the state through the implementation of budgetary investments and/or PPP projects, including concession projects.
Box 15. Kazakhstan state investment programmes

State Program for Accelerated Industrial Innovative Development (SPAIID)

SPAIID was a major national economic development programme implemented between 2010 and 2014. The impetus for the programme came from a state of the nation address by the President in 2010. The aim of the programme was to promote industrial and infrastructure development while also boosting economic diversification through supporting small- to medium-sized businesses. The SPAIID consisted of 25 separate programmes, of which 14 were sectoral programmes specifying investments and support measures for individual sectors. The programme mobilised a total of KZT 4.2 trillion over the period 2010-15 of which 30% went into transport infrastructure, while 10% was invested in the electric power sector and 3% in ICT. The bulk of the funding (KZT 2.39 trillion) for the programme was provided from the national budget, with the balance coming from the National Fund and the resources of public enterprises.

State programme of the infrastructure development 2015-2019 ("Nurly Zhol")

The Nurly Zhol programme was launched by the President of Kazakhstan in 2014. It involves a vast programme of infrastructure development covering transport, energy, industrial infrastructure, public utilities such as water and heat, housing and social infrastructure. A key aim of Nurly Zhol is to support the diversification of the economy away from its dependence on oil and gas. Many of the transport projects are thus focused on enhancing trade links with China and Western Europe and positioning Kazakhstan as a logistics hub. Funding for the programme amounts to a total of approximately USD 9 billion, the bulk of which is provided from the state budget and the National Fund. The Ministry of National Economy is responsible for the development of the programme, in co-operation with central and local government entities.

Sources: OECD 2017a; Baiterek www.baiterek.gov.kz/en/programs/nurly-zhol/

At the national level, line ministries develop their sector plans and investment programmes that contain a list of investment proposals. For example, the Ministry of Health together with local executive bodies is developing a single long-term plan for the development of the health infrastructure based on the regions and levels of medical care, which takes into account the specificities of the regions and their populations’ needs for specific types of medical care. The plan will serve to guide investment planning, with a particular focus on stimulating and attracting private investment.

The investment programmes prepared by line ministries are submitted to the MNE for review and approval. Investment proposals include a description of the project as well as a preliminary cost estimate and a recommended approach for delivering and financing the project. However, the basis on which projects are included (or not) in investment programmes in Kazakhstan is unclear.

The procedure and requirements for selecting state investment proposals are regulated by the Rules for the development or adjustment of state investment projects approved by Decree No. 129 of the Ministry of National Economy, December 5, 2014. According to these rules, investment proposals must receive a positive economic conclusion in order to qualify for funding for a feasibility study. While these rules specify the necessary documentation and analyses to be submitted for the evaluation of investment proposals they
do not provide clear criteria for screening projects, nor a firm basis for comparing and prioritising projects.

4.2.4. Project preparation in Kazakhstan involves a two-stage gateway process

Project preparation in Kazakhstan is performed by the contracting authority consisting of line ministries or SOEs at the national level, and the regional executives at the regional level. The MNE performs a role in vetting PPP projects and maintains a list of PPP projects proposed for implementation. Projects considered for PPP delivery are subject to a two-stage gateway process involving a Project Concept stage and a Tender Documentation stage (Box 16). The Project Concept stage comprises a variety of analyses including estimates of costs and revenues, an analysis of the need for budget support, an assessment of the project’s socioeconomic efficiency, and an analysis of the principal risks. Projects that pass the concept stage proceed to the tender stage which involves the preparation and review of the bid documentation and draft agreement.

The two-stage gateway process provides a robust foundation for assessing and screening projects. It involves reviews by a number of stakeholder organisations (National Chamber of Commerce, Commission on Natural Monopolies), and requires approvals by key state bodies such as the Ministry of Finance and the Republican Budget Commission thus ensuring that PPP projects are subject to proper scrutiny at different stages. In this sense, it is not dissimilar from best practices in project preparation and appraisal in OECD countries. Norway, for example, also has a two-stage quality assurance process involving external reviewers and comprising a concept stage (QA1) focusing on the choice of concept and socioeconomic analysis, and a second phase (QA2) focusing on the management strategy and the budget (OECD 2018). Similarly, the UK applies a three-stage gateway process comprising five separate business cases, each focusing on a different dimension (strategic, economic, commercial, financial and management). Each step in the process requires approval by the UK Treasury (equivalent to the Ministry of Finance) in order to proceed to the next stage (OECD, 2015a).

4.2.5. Thorough analysis at the early stage of project development is critical for long-term success of projects

There has been criticism in Kazakhstan over the length of the project preparation process, and the low approval rate for projects. In fact, in a survey conducted by the OECD of various contracting authorities at the central and regional level, authorities in Kazakhstan frequently cited project preparation requirements as a burden.

It should be recognised that large PPP projects, anywhere in the world, take time to prepare properly and to procure under competitive circumstances. Major project failures are often the result of decisions made in the early planning stages, when the project concept is first developed (Samset and Volden 2016). Effort and resources invested upfront are money and time well spent if they reduce the likelihood of future overruns, delays, contract modifications or project failures. Attempts to compress project preparation time and reduce the requirements may result in minor savings in the context of large and complex projects with a 20 to 30-year lifespan, but risk lowering the quality of the project or compromising its long-term success.

The Project Concept stage is particularly important because it provides the greatest scope for fundamentally influencing the direction of a project, and for making changes at minimal cost. If the project design is frozen at a too early stage the scope for analysis, independent review and debate is restricted, and adjustments to the project become more difficult and
costly. Once a project enters the procurement phase it becomes much more difficult and expensive to make adjustments. Different project design and delivery options should thus be rigorously tested ahead of entering into the tendering process. Before seeking to cut-back on project preparation and appraisal activities the Kazakh authorities should perform an analysis of the reasons for projects proceeding slowly and/or being rejected, and benchmarking their process against that of OECD countries.

4.2.6. **However, not all projects require the same level of preparation**

While project preparation and appraisal for large PPP projects that carry a major potential economic and fiscal impact should be subject to extensive in-depth analysis and scrutiny, the process and requirements could be adapted, and potentially simplified for smaller projects. For example, in Norway, the formal quality assurance process described above applies to projects costing over NOK 750 million (equivalent to USD 95 million on 9 February 2018). Projects below that level must still undergo an impact evaluation but the analytical requirements are less onerous (for example, not all projects will require a CBA).

In the case of Kazakhstan, the project preparation procedures and documentation apply to all PPP projects irrespective of type of PPP (e.g. Build–operate–transfer BOT, lease agreement, service contract, etc…), their size or complexity. Thus, a small local project will be subject to similar analytical requirements as a large nationally significant project. The indiscriminate application of a single procedure for project preparation will impose a particularly large burden on smaller projects and the contracting authorities responsible for developing them – mostly regional authorities.

The authorities in Kazakhstan have gone some ways to addressing this issue by developing standardised contracts and other documentation for certain types of projects. Standardisation, however, has its limits since it will not be applicable to all projects as there will always be circumstances requiring a more tailored approach. Thus, rather than simplifying project preparation and appraisal requirements for all projects, it would be advisable to develop a simplified procedure that applies exclusively to smaller projects that have a limited impact on public finances and where the state carries less risk.

The Kazakh authorities have stated that they are planning to introduce a new PPP planning approach for state/government programmes. If certain basic parameters (conditions and criteria for selecting projects taking into account industry specifics) and state support measures for standardised projects are satisfied, then additional examinations will not be required. The aim is to simplify the process to make it easier, on the one hand, for businesses to implement typical PPP projects at the regional level, and on the other hand, for local government agencies to develop documentation for standardised projects.

4.2.7. **Projects procured through different mechanisms should be subject to the same gateway process**

In Kazakhstan, budget-based investments and PPPs follow a different project approval pathway as early as the investment proposal stage. The analysis conducted during the Project Concept stage is relevant for all investment projects, including those delivered through traditional procurement. For projects financed through the budget it is not clear that they are required to undergo a similar evaluation, and if so, how the results of the assessment inform project screening and prioritisation. The Project Concept stage of the project preparation process should therefore apply to all investment projects. A common process and methodology at the concept stage would ensure that all projects are evaluated on an equivalent basis. The analysis at the concept stage would therefore serve as a screen
for all infrastructure projects. It would also serve to evaluate different delivery options, and make a recommendation to the MNE.

**Box 16. Kazakhstan’s two-stage project preparation and appraisal process**

Currently, projects selected to be delivered as PPPs undergo a two-stage appraisal and screening process prior to proceeding to implementation. The process is described in detail below for national-level projects. A similar process applies for regional projects, with the difference that responsibilities are devolved to local executive authorities of regional governments. Under current regulations, the same procedures apply to all PPP projects, irrespective of nature, size, or complexity.

At the start of the project preparation process, the contracting authority appoints an Interdepartmental Project Team (IPT) composed of specialists that may be drawn from within subordinate agencies, concerned state authorities, the National Chamber of Commerce, engineering and design companies, and consulting organisations. The role of the IPT is to determine the PPP implementation approach, decide on the procurement mechanism, review the studies and calculations that form the concept phase, and generally oversee the project preparation process.

**Stage 1: Project Concept**

The Project Concept stage involves an analysis of different options for achieving project outcomes. The contracting authority is responsible for preparing the project concept. The key elements prepared and reviewed at the concept stage include estimates of costs and revenues, financial models, socioeconomic analysis, a description of the technical features and parameters of the project, and an analysis of the principal risks (MNE Order 725).

The concept documentation is reviewed by a number of entities including the National Chamber of Entrepreneurs who evaluates the attractiveness of the project for investors and the protection of their rights; the Commission on Natural Monopolies, in the case of projects that lie within sectors designated as natural monopolies; and the relevant industry group.

The project concept documentation is then submitted for an independent appraisal by the KPPPC. The KPPPC assessment considers a wide range of factors including but not limited to the need for state support, the socioeconomic efficiency of the project, expected demand for the project’s output, and the proposed procurement approach. A positive evaluation of the project concept by the KPPPC means that it can proceed to the next stage involving the preparation of the tender documentation. In the event of a negative evaluation the contracting authority can revise and re-submit the project concept.

**Stage 2: Tender Documentation**

The Tender Documentation stage involves preparation and review of the tender documentation including the bid documents and the draft contract. The contracting authority is responsible for preparing the tender documentation. For projects in sectors designated at natural monopolies the tender organiser must obtain the agreement of the Commission on Natural Monopolies on matters relating to tariff formulation.
A key step in the process is the review of the tender documentation by the Ministry of Finance with a specific view to assessing the need for and terms of any state guarantee for the debt used to finance the project. Approval by the Ministry of Finance is required in order to proceed with the tendering process.

The tender documentation is then submitted to the Ministry of National Economy who ensures that, as in the case of the project concept, it undergoes an independent appraisal by the KPPPC. The KPPPC verifies that the tender documentation is consistent with the project concept, assesses the results of the feasibility study, and evaluates the needs for state support, among other things. Following a positive assessment by the KPPPC the tender documentation is presented to the Republican Budget Commission for approval before the initiation of the procurement process.

Source: MNE Order 725

4.2.8. Project documentation is comprehensive but lacks guidance for how it should inform decision-making

The project documentation required for PPPs in Kazakhstan is comprehensive. At the Concept Stage, the documentation comprises a variety of analyses including revenue and cost estimates, socioeconomic assessments, financial modelling, and budget affordability tests. At the national level, the documentation is evaluated by the KPPPC, and subsequently approved by the MNE. In performing its evaluations, the KPPPC claims to focus on the affordability (budget efficiency) of projects and their compliance with PPP legislation. As a consequence, projects that are greenlighted by the MNE tend to be those that require the least amount of budget support.

While projects are subject to a wide range of analyses, and concept documentation is comprehensive, there are no clear and transparent criteria for screening and prioritising projects, nor is there any official guidance on how the results of the economic assessment should influence project prioritisation decisions. The bundling of multiple different analyses and the absence of a clear hierarchy and criteria for arbitrating between them (e.g. strategic priority, socioeconomic efficiency, budget efficiency, etc…) reduce the salience of each individual analytical component thus leaving excessive discretion to decision-makers responsible for greenlighting projects.

4.2.9. Projects should be screened and prioritised on the basis of explicit and transparent criteria.

The project screening and prioritisation process in Kazakhstan would benefit from more explicit and transparent criteria, particularly with regard to the results of the socioeconomic assessments. Project screening and prioritisation criteria could be quantitative or qualitative. In Chile, for example, projects are required to satisfy a minimum socioeconomic return of 6% (Box 17). Other countries, such as the UK, use qualitative criteria to identify priority projects. Irrespective of the methodology, explicit criteria would provide greater clarity to all actors involved in developing projects. A more transparent basis for selecting projects would reduce the scope for discretion, and ensure that economic factors are at the forefront of decision-making. It would also facilitate the work of the line ministries by providing them with clear goals and targets that can guide their planning activities, and assist them in developing projects that have the greatest positive impact.
Chile has successfully deployed the concessions model to build its extensive highway network. Since the launch of the concessions programme in 1992, Chile has built or rehabilitated over 2,500 kilometres of highways using this mechanism. A key factor in the programme’s success has been Chile’s disciplined approach to screening projects based on their economic merits. Social cost-benefit analysis (CBA) plays a fundamental role in Chile’s national investment system. Line ministries that develop infrastructure projects, including concessions, such as the Ministry of Public Works, are required to prepare social cost-benefit evaluations for their proposed projects. These analyses are then submitted to the Ministry of Social Development (MDS) for an independent review. Projects must meet a minimum social rate of return of 6% to proceed. The MDS issues an opinion as to whether the project meets the requirements. This system which combines rigorous processes, independent review, and a high degree of transparency has undoubtedly contributed to the relatively high quality and efficiency of Chile’s infrastructure investments over the past 20 years.

Source: OECD 2017c

4.2.10. Kazakhstan has put in place robust processes for scrutinising and assessing projects

It has been well documented that infrastructure planning is significantly prone to errors in the estimation of key variables such as revenues, cost and timeframe. Some of these errors may be the result of strategic gaming behaviour on the part of the project developer, but, in many cases, it is the consequence of ‘optimism bias’, whereby planners are susceptible to making over-optimistic predictions about project outcomes (Flyvbjerg 2014). One mechanism for reducing the potential for strategic behaviour or optimism bias in project preparation is to ensure that project estimates and analyses are subject to a review by an independent competent authority that is institutionally separate from the project developer.

In Kazakhstan, PPP project documentation at both project concept and tender stages, is subject to an independent expert review prior to a project entering the procurement phase. The procedures and scope of the expert review are set out in MNE Order no. 725 dated 25 November 2015. At the national level, reviews are performed by the KPPPC. The KPPPC provides its assessment to the MNE in 20 days for large projects and in 10 days for simple projects. In the case of regional governments, a separate appraisal unit ensures projects undergo an independent assessment. The actual experts performing the review can be either from the private sector or the public sector. According to the PPP law, the National Chamber of Entrepreneurs also undertakes reviews of Project Concept documentation (PPP Law, Article 28). However, given the potential for conflicts of interest, some clarification of the specific scope and remit of the review performed by the National Chamber of Entrepreneurs would be beneficial.

As a result of the expert review, the MNE or the relevant regional authority can require modifications to a project before proceeding. A number of projects have been abandoned following a negative assessment by the KPPPC. In some cases, PPP projects were blocked because they were proposed in sectors where the state is not responsible. A key challenge in Kazakhstan is that the majority of privately-financed projects, including those involving
user fees, will still require significant levels of budget support. Even projects such as motorways may suffer from weak bankability because of the long distances, low traffic levels and the weak capacity to pay of road users. As a consequence, investors are typically unwilling to accept demand risk, and the state is required to compensate investors with availability payments.

In addition to the independent evaluation by the KPPPC, a number of other state bodies scrutinise and approve (or not) the project documentation. The Ministry of Finance assesses tender documentation in light of their need for state guarantees. The Commission on Natural Monopolies reviews tariffs procedures and levels in relation to the existing tariff regime in sectors considered natural monopolies. These various checks and balances are important for ensuring that projects do not impose too high a cost on users or represent an unacceptable risk for financial stability.

4.2.11. Projects of special significance are subject to high-level political control but could benefit from more detailed guidance

Large infrastructure projects impose major long-term commitments on taxpayers in the form of future budgetary disbursements or contingent liabilities. Further, infrastructure decisions in the context of budgetary constraints often involve hard choices between different legitimate objectives. As a consequence, decisions regarding what to build should ultimately be subject to political control. The role of evidence-based analysis in this context is to provide political decision-makers with the best possible options and the necessary evidence so that they can make informed decisions.

In Kazakhstan, strong political control is exerted over project decision-making at the national level. The Ministry of National Economy maintains a list of *Projects of Special Significance*. These projects are eligible for additional levels of state support in the form of exoneration from currency risk for foreign investors (in these cases, the state may accept the currency risk). The criteria used to determine whether a project should be designated of special significance include: (1) the degree of technical complexity, (2) alignment of the project with public interests, (3) projects involving the use of state property and/or for which the beneficiaries include two or more regions, cities of national importance, and the capital; and (4) cost that exceeds 4 million monthly units equivalent to about USD 23 million based on the monthly calculated index in 2016 (MNE Order 725). Currently, only the BAKAD ring road project is designated as being of special significance.

The Concession/PPP Commission of special importance, chaired by the Deputy Prime Minister, reviews and approves applications from line ministries for inclusion in the list of projects of special significance. Given the significant risks and potential liabilities entailed by these projects, such high-level political involvement in decision-making is a positive feature of Kazakhstan’s institutional framework for PPPs. On the other hand, the very broad and vague criteria provide considerable discretion to policymakers with regard to which projects get on the list. While a certain degree of discretion is appropriate, decisions should nevertheless be sufficiently circumscribed to avoid projects being promoted for purely political reasons. The criteria, in this sense, would benefit from more detailed guidance particularly with regard to how projects should contribute to strategic goals and promote economic efficiency.
4.3. Choice of delivery mode

4.3.1. Principle 5 of PPP Recommendation

Carefully investigate which investment method is likely to yield most value for money. Key risk factors and characteristics of specific projects should be evaluated by conducting a procurement option pre-test. A procurement option pre-test should enable the government to decide on whether it is prudent to investigate a Public-Private Partnerships option further.

4.3.2. There is strong top-down pressure to implement PPPs

The government is strongly promoting PPPs as a preferred delivery model for infrastructure in Kazakhstan. In his 31 January 2017 address to the nation, the President called for PPPs to “become a primary mechanism for infrastructure development, including the social one”. This policy preference has been translated into explicit targets for both line ministries and regional governments. Line ministries are required to implement two PPP projects per year while Akimats must implement five. The mandate to use PPPs to develop new capacity is even more explicit in certain sectors. For example, the Densaulyk State Health Development Programme of the Republic of Kazakhstan for 2016-19 calls for the development of infrastructure on the basis of PPPs. Similarly, in the prisons sector, the “100 Concrete Steps” statement mandates that the modernisation of the prison system be implemented through PPPs.

This top-down pressure has resulted in numerous projects being initiated (at the regional level) and/or being proposed as PPPs across multiple sectors including transport (motorways, rail network infrastructure, airports), health (hospitals), education (schools and kindergartens), justice (prisons), and recreation (sports facilities) (see Section 4.2). Furthermore, in Kazakhstan, PPPs are being proposed in sectors that are challenging - such as prisons - or where there is little international precedent of PPP implementation - such as rail network infrastructure. Such an approach is at odds with the experience of OECD countries where PPPs have tended to be concentrated in certain sectors, thus providing benefits of experience and scale. For example, the UK has focused its PFI programme on social sectors of health care and education. Chile, on the other hand, has extensively deployed the PPP model in the roads sector, building over 2 500 km of motorways in a little over 20 years, but has been hesitant about using PPPs in other sectors.

4.3.3. Line ministries select PPPs based primarily on budgetary considerations

In Kazakhstan, the choice of delivery mode is made by the sectoral line ministries at an early stage in the planning process. In developing their investment proposals, line ministries consider from among several options and instruments for delivering infrastructure including: (1) budget investments; (2) equity investments by SOEs; (3) PPPs; and (4) state guarantees (e.g. loan to SOE guaranteed by the government). In practice, line ministries first determine which investments can be made within the budget envelope provided by the Ministry of Finance. Projects that exceed the budget envelope are then proposed to be delivered as PPPs. According to discussions with government officials, line ministries determine which projects to deliver as PPPs on the basis of “budget efficiency” and urgency. Thus, by the time a project enters into the project preparation process, the delivery mode has been largely pre-determined.

In the absence of more specific guidance and decision-making criteria, choices made by line ministries are likely to be shaped principally by budget considerations rather than an
analysis of the economic characteristics of the project and their match with a particular delivery model. Such an approach can result in the misallocation of risks, raise the costs of infrastructure development, increase the likelihood of project failure, and generate excessive contingent liabilities.

4.3.4. Kazakhstan would benefit from a decision-making framework for guiding the choice of delivery option

Some countries apply a “public sector comparator” (PSC) to evaluate the suitability of the PPP delivery model compared to traditional public procurement. A public sector comparator compares the net present cost of bids for the PPP project against the most efficient form of delivery according to a traditionally procured public-sector reference project (OECD 2012). There is no consensus on the merits of value for money tests using a PSC, and they are not universally applied by OECD countries (Table 5). They can be subject to manipulation with the purpose of strengthening or weakening the case for PPPs. Further, they are conducted at a late stage in the procurement process (because they are based on actual bids received), which raises the cost of pursuing an alternative delivery route in the event of a negative result.

Table 5. Approaches used to ascertain value for money in OECD countries.

<table>
<thead>
<tr>
<th>PPPs</th>
<th>TIP</th>
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<tbody>
<tr>
<td>Public sector comparator</td>
<td>Cost-benefit analysis</td>
</tr>
<tr>
<td>Public interest test</td>
<td>17(^a)</td>
</tr>
<tr>
<td>Cash-flow estimates over the</td>
<td>12(^b)</td>
</tr>
<tr>
<td>project cycle</td>
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<tr>
<td>Central guidelines</td>
<td>Central guidelines</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
</tbody>
</table>

Notes: \(^a\) Australia, Austria, Canada, Chile, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Korea, Mexico, Netherlands, Slovak Republic, South Africa, Spain; \(^b\) Australia, Austria, Canada, Denmark, Germany, Hungary, Ireland, Korea, Mexico, Netherlands, Norway, United Kingdom

Source: Burger and Hawkesworth (2011)

PPP regulations in Kazakhstan do not require that projects undergo a value for money test using a public sector comparator (PSC). However, according to the KPPPC, value for money tests are regularly performed for PPP projects as a matter of course. A procurement option pre-test would provide an alternate basis for determining whether a PPP might be an appropriate delivery mode for a given project (see Box 18 for an example of some of the questions to be considered when deciding on a delivery mode). Such a pre-test would be applied at an early stage in the project preparation process and would examine the extent to which a project’s technical and economic characteristics, and distribution of risks would lend itself to a PPP versus more traditional procurement method. It would enable line ministries to make a preliminary yet analytically-grounded determination regarding the preferred delivery mode. More in-depth analysis could then be conducted during the Project Concept stage. While such an approach might result, initially, in fewer projects being proposed for PPPs, it will increase their likelihood of success, resulting in more PPPs being implemented in the medium-term. It will also improve the understanding among the line ministries of the rationale for PPPs.
Box 18. Checklist for investigating relevant delivery mode

Project size and profile

- Is there a large initial capital outlay and long payback period?
- Does project size justify the legal, technical, and financial costs of the delivery mode?
- Can quality enhancements in the design and construction phase generate savings during the operating phase of the project?
- Do these savings justify the additional transaction costs involved in bundling construction, operation, and maintenance in a single contract?

Revenue and usage

- Can user fees be charged? Are they affordable for the majority of users, and are they politically acceptable?
- Are user fees sufficient to cover the majority of capital and operating costs?
- Can usage be monitored?

Quality

- Can the quantity and quality of project outputs or outcomes be specified and measured efficiently?
- Will design innovation be required to achieve improvements in efficiency and value for money?

Uncertainty and risk

- What is the level of uncertainty related to future technological conditions?
- What risks is each sector (public vs private) most capable of influencing and managing?
- Is demand relatively predictable over the lifetime of the project?
- Who is best placed to influence demand for the infrastructure-based service?
- Is the private sector willing to and capable of bearing some or all of the demand risk?
- Are there particular integrity risks in terms of corruption and undue influence that merit attention?

Competition

- Will there be a sufficient number of qualified bidders in the case of a PPP/concession project to ensure a competitive bidding process?

Note: This box should not be interpreted as either for or against increased public provision or private sector participation in infrastructure delivery. It is offered as a guide for reflection and attempts to compress the experience of countries and practitioners into a checklist of key issues. There will therefore be cases, countries, and sectors where experiences are not sufficiently reflected in the above.
4.4. Transfer of risks

Transfer the risks to those that manage them best. Risk should be defined, identified and measured and carried by the party for whom it costs the least to prevent the risk from realising or for whom realised risk costs the least.

Kazakhstan’s PPP framework recognises the importance of efficient risk allocation for the success of PPP projects. Kazakhstan’s PPP Law explicitly calls for risks to be imposed on the party best able to manage them and at minimal cost. Further, it requires that the allocation of risks between public and private partners as well as measures used to mitigate them be specified in the PPP agreement. Finally, the law allocates the responsibility of identifying PPP risks to the MNE.

Achieving an efficient allocation of risks in practice, however, can be challenging, particularly in a context where investors are likely to be risk averse. Investor risk perceptions (and therefore the cost of finance) in Kazakhstan are likely to be negatively impacted by the lack of a significant track record of large infrastructure projects that demonstrate the state’s capacity to deliver bankable and sustainable infrastructure projects. Moreover, foreign investors in particular will be unwilling to accept certain risks such as demand risks, currency risks or political risks (e.g. contract repudiation or non-payment risk). As a consequence, the state will in all likelihood be required to accept these risks as a condition for obtaining foreign financing (refer to Section 3.5 on financing for a more in-depth discussion of different risks and mitigation options).

4.5. Competitive procurement

4.5.1. Principle 6 of PPP Recommendation

Government should ensure there is sufficient competition in the market by a competitive tender process and by possibly structuring the Public-Private Partnerships program so that there is an ongoing functional market. Where market operators are few, governments should ensure a level playing field in the tendering process so that non-incumbent operators can enter the market.

Competition is the main driver of efficiency, and thus key to ensuring that PPPs deliver value for money. Because PPPs are typically implemented in sectors with natural monopoly features (e.g. motorways) or to deliver what are considered public services, competition must be introduced during the procurement phase. However, the benefits of competition can be diluted by practices such as the excessive resort to unsolicited proposals or contract modifications. The regulatory framework and oversight bodies should therefore guard against potential abuses that could undermine value for money during the procurement process.

4.5.2. The legal framework governing PPPs and concessions in Kazakhstan privileges competitive tendering of projects.

Procurement procedures for PPPs and concessions are governed, respectively, by the PPP and concessions laws, and not by the law on public procurement. The Concessions Law contains a single unified procedure for procuring projects. The PPP law, on the other hand, offers contracting authorities a greater choice of procurement approaches (open/closed, two-stage/simplified). It also offers the possibility of a competitive dialogue procedure whereby the contracting authority enters into a structured discussion with pre-qualified bidders before finalising the tender documentation.
The PPP law allows for a simplified procurement procedure for local projects of a value less than the equivalent of USD 23 million (in 2016). The simplified procedure involves the use of standard tender documentation and standard agreements, and exempts projects from the independent assessment process undertaken by the KPPPC at the national level or the local equivalent. The simplified procedure has been applied extensively by local governments and is no doubt a key reason for the large number of PPPs that have been signed at the local level within the past two years.

A key challenge for contracting authorities is how to handle situations where only a single bidder responds to a request for tenders. In Kazakhstan, PPP regulations allow the contracting authority to proceed with the procurement procedure based on the sole bid (World Bank, 2017). In such cases, contracting authorities don’t have the benefit of being able to compare different offers and evaluate trade-offs in terms of quality and cost. Under such circumstances, contracting authorities and oversight bodies such as the MNE and MOF should be particularly vigilant, and be willing to abandon the procurement process if there are concerns over the quality and price of the offer.

4.5.3 Resort to unsolicited proposals should be subject to strict conditions and oversight

Contracting authorities often have an incentive to pursue unsolicited proposals (USPs) because it enables them to short-circuit the expensive and time-consuming project preparation and procurement processes. Private companies, in return, are interested in submitting USPs because they typically gain an advantage during the procurement process or are able to avoid competitive procurement altogether. However, resort to USPs can, through reducing competition, remove a key driver of efficiency and thus undermine the principal rationale for private sector participation in infrastructure development.

The Kazakhstan PPP law allows for the use of USPs through which private investors can submit proposals for PPP projects that are aligned with a particular government programme. However, when the project initiator owns or has a long-term lease on an asset that forms the basis of an unsolicited proposal, contracts can be awarded through direct negotiations without resort to competitive procurement (Chikanayev, 2016). When line ministries receive such proposals they are required to place announcements in national media soliciting expressions of interest (EOI) from other interested parties. For large projects, potential bidders have up to 60 days to submit an EOI, while the deadline for smaller projects is set at 30 days. If no EOIs are received within the specified timeframe, the line ministry can enter into direct negotiations with the project initiator.

Unsolicited proposals are subject to the same independent assessment procedures as for government-initiated projects. However, there is no requirement to ensure that unsolicited proposals are aligned with government priorities (World Bank, 2017). Given the risks of abuse of the direct negotiations approach, officials should carefully monitor the use of this approach to ensure that it does not serve as a means of avoiding competition.

4.6. Monitoring and evaluation

4.6.1. Principle 7 of the PPP Recommendation

The procuring authorities should be prepared for the operational phase of the Public-Private Partnerships. Securing value for money requires vigilance and effort of the same intensity as that necessary during the pre-operational phase.
Particular care should be taken when switching to the operational phase of the Public-Private Partnerships, as the actors on the public side are liable to change. Recent experience in countries with extensive PPPs such as the United Kingdom has clearly demonstrated that capacity to monitor contractual performance as well as the financial situation of the private partner is essential for ensuring that projects deliver value for money over their lifecycle and that the public sector does not end-up bearing excessive risks. While few PPPs have reached the operational phase in Kazakhstan in view of the relatively recent adoption of the PPP law, the authorities should prepare actively for the operational phase of projects. This is particularly relevant for regional authorities given that the vast majority of PPP contracts are being implemented at the regional level.

4.6.2. PPP regulations assign responsibilities for monitoring and evaluating PPP contracts

The regulatory framework for PPPs in Kazakhstan outlines key responsibilities for monitoring and evaluating the implementation of PPP projects. PPP agreements must specify the criteria and procedure for monitoring the performance of obligations under the agreement (PPP Law, Article 46, 19 & 23). Contracting authorities are responsible for monitoring the implementation of national PPP projects and reporting the results to the MNE (PPP Law, Article 23.5). For PPP projects procured at the regional level, responsibility for monitoring PPP projects falls to the local executive authority (PPP Law, Article 25, 6).

According to the PPP law, the contracting authority is entitled to conduct inspections of the financial and economic activities of the private partner if it deems them to be necessary (PPP Law, Article 17). Furthermore, the contracting authority has the right to access documentation relating to the implementation of the project by the private partner. MNE Order no. 725 specifies the type of documentation that should be submitted by the private partner to the contracting authority. In addition, the National Chamber of Entrepreneurs also participates in monitoring the implementation of PPP contracts though its specific role in the monitoring process is not specified (PPP Law, Article 28). Greater clarity with regard to the role of the National Chamber of Entrepreneurs in monitoring contract implementation would enhance transparency.

Responsibility for evaluating PPP contracts at the national level is assigned to the KPPPC. The KPPPC performs an annual evaluation of the implementation of PPP projects on the basis of information submitted over the previous four quarters (MNE Order 725). The goal of the evaluation by the KPPPC is to determine, on the basis of the data collected during the monitoring process, whether the performance indicators specified in the PPP contract, and the financial and economic model have been met.

4.6.3. Further guidance and support for contracting authorities on monitoring is necessary

While the roles and responsibilities for monitoring and evaluation are clearly defined, it is less evident that contracting authorities have the resources and capabilities for performing the monitoring activities, particularly at the regional level where numerous contracts have been signed within a short period of time. Though responsibilities for monitoring regional projects lie with local executive authorities, these may lack the capacity and knowledge to effectively monitor a wide number of PPP contracts.
Given the high level of decentralisation in the implementation of PPPs, firmer guidance regarding the organisational structure and processes for monitoring activities would be beneficial. Further, the KPPPC should support regional authorities through the provision of capacity building to ensure that they are adequately prepared and resourced for the transition to the operational phase of projects.

4.6.4. Ensure financial and operational performance data is collected for PPP projects

Access to comprehensive data on the financial and operational performance of projects is a prerequisite for effectively monitoring and evaluating them. Since a large part of the data must be provided by the operators, data requirements should be determined at an early stage in the project preparation process and integrated into contractual agreements. The data collected by the contracting authorities should be stored centrally by the KPPPC to enable analyses across multiple projects. The initiative of the Treasury within the Ministry of Finance to collect PPP contract information and information on payments is a step in the right direction. However, this effort should be extended to include other types of financial and operational data.

4.6.5. An independent entity should be assigned with the responsibility and the concomitant resources to perform ex post evaluations of PPP projects

Ex post evaluation is an essential step in ensuring that investment programmes and projects achieve their policy objectives, and represent good value for money. It also provides a mechanism for capturing lessons from ongoing projects and providing feedback for improving the development of new projects. Ex post evaluations should be conducted during the operational phase of projects by an independent entity that has not participated in the project preparation or approval process, and can therefore evaluate a project from an objective and disinterested perspective.

At the national level, the absence of projects that have reached the operational stage means that any discussion of ex post evaluation is somewhat academic. However, at the regional level, the proliferation of PPP projects in a very short time frame would justify scrutiny to ensure that these projects are being structured and managed appropriately, and do not hide risks for the finances of regional authorities or the national government. Consideration should therefore be given to what would be an appropriate entity for undertaking independent ex post evaluations. In a number of OECD countries (e.g. UK, France, Chile) it is the supreme audit institution (e.g. National Audit Office, Cour des Comptes) that typically performs this role. The equivalent body in the case of Kazakhstan is the Accounts Committee, which reports to the Presidency, and is responsible for auditing the state budget and state programmes. Whichever organisation ultimately takes on this responsibility would need to be adequately resourced and trained.

4.7. Contract modifications and renegotiation

4.7.1. Principle 8 of PPP Recommendation

Value for money should be maintained when renegotiating. Only if conditions change due to discretionary public policy actions should the government consider compensating the private sector. Any re-negotiation should be made transparently and subject to the ordinary procedures of Public-Private Partnership approval. Clear, predictable and transparent rules for dispute resolution should be in place.
Maintaining value for money following contract modifications and renegotiations is challenging since these tend to occur under non-competitive conditions. Contract modifications and renegotiations can therefore easily undermine the net economic benefits of a project. Data on renegotiations of road concessions in Chile, Peru and Colombia highlight their elevated fiscal cost (Table 6). In Colombia, the fiscal costs of renegotiations between 1993 and 2010 represented an astounding 283% of the initial value of the project.

While certain renegotiations might be the consequence of unforeseeable events, others can be the result of opportunistic behaviour on the part of the operator or the contracting authority. Unfortunately, many contract modifications are initiated by the public side who exploit existing contracts to “get things done quickly” without being subjected to the scrutiny and oversight of the public investment process. For these reasons, oversight authorities should place strict limits on the recourse to such practices.

Table 6. Statistics on renegotiations of road concessions in selected Latin American countries, 1993 - 2010

<table>
<thead>
<tr>
<th></th>
<th>Chile</th>
<th>Colombia</th>
<th>Peru</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total road concessions</td>
<td>21</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Renegotiated concessions</td>
<td>18</td>
<td>21</td>
<td>11</td>
</tr>
<tr>
<td>Total number of renegotiations</td>
<td>60</td>
<td>430</td>
<td>53</td>
</tr>
<tr>
<td>Mean number of renegotiations per concession</td>
<td>3.3</td>
<td>20.5</td>
<td>4.8</td>
</tr>
<tr>
<td>Mean fiscal cost of renegotiations (constant USD Dec 2009, millions)</td>
<td>47.2</td>
<td>266.8</td>
<td>28.9</td>
</tr>
<tr>
<td>Mean fiscal costs (% of initial value)</td>
<td>17.4</td>
<td>282.8</td>
<td>13.4</td>
</tr>
</tbody>
</table>

Source: OECD, 2013

The PPP Law stipulates the conditions governing the introduction of modifications to PPP contracts. The PPP agreement can be amended by mutual agreement between the public and private parties to the contract. Furthermore, the private partner is entitled to propose amendments to the contract. Lastly, the PPP Law stipulates that PPP contracts should specify the conditions under which PPP contracts may be modified. However, the current law and regulations do not assign clear responsibility for the approval of contract modifications in the case of signed contracts. According to the Kazakh authorities, changes to PPP or concessions contracts are examined by the KPPPC, and the authorised state planning agency in the field of PPPs. However, because contract modifications are likely to have implications for both value for money and budget affordability, modifications should require approval from the central budget authority.

The law allows for contract extensions in the event of circumstances “beyond the control of the state-party agreement on the private partnership”, or delays caused by the public partner or other state authorities. Surprisingly, the contract period may also be extended if there is an increase in expenses related to the implementation of the PPP. This last condition carries the risk that private partners may transfer what are normally operational risks to the state. It also creates an incentive for private partners to underestimate costs in order to win a bid, knowing full well that there will be opportunities in the future to extend the contract terms. However, given that no PPPs have been signed at the national level to date, these clauses have yet to be tested.

The Concession Law affords the state with greater leeway to unilaterally modify the terms of or terminate the contract in the event of circumstances that are specified in the concession agreement relating to, in particular, securing of national and ecological safety, health care
and good morals (Chikanayev 2016). The concessionaire is entitled to claim compensation
for additional expenses or losses resulting from such unilateral actions by the state.

Disputes relating to the execution and termination of PPP agreements are governed by the
laws of Kazakhstan and by the PPP contract. The PPP Law also stipulates that PPP
agreements must specify the dispute settlement procedure. In cases where the private
partner is a non-resident, the applicable law of the PPP agreement shall be determined by
the parties to the agreement (PPP Law, Article 46.3). For projects designated of ‘special
importance’ the PPP Law offers the possibility to resort to international arbitration to settle
disputes if the private partner is a non-resident. The Concessions Law offers slightly more
flexibility in this regard by permitting the parties to include an international arbitration
clause in the concession agreement for projects of special importance where one of the
shareholders is foreign, even if the private partner is a domestic company. This particular
discrepancy between the PPP and concessions law might create a preference for the
concessions model for those projects with some foreign participation.

4.8. Recommendations

4.8.1. Strengthen central government support for PPP preparation and
monitoring at the regional level

Greater project preparation support should be made available for regional projects. While
projects at the national level have access to financing and expert resources for developing
projects, local authorities have limited resources for preparing projects and developing
documentation. As a consequence, they may not benefit from the best legal and financial
advice, resulting in suboptimal solutions. Thus, while regional authorities can solicit the
KPPF for project development support, central government project preparation funding is
currently not available for regional projects, thus limiting the extent to which this support
is accessible for regional authorities. Only two local projects receive the support of KPPF.11
A regional project preparation fund could alleviate the financial barrier faced by regional
authorities in accessing expert advisory services, whether from the KPPF or the private
sector.

Second, there should be greater central oversight over PPPs implemented at the regional
level. Projects above a certain value should be subject to review and approval by the
KPPPC, even if they fall under the responsibility of the regional government. Further,
support from a regional project preparation fund could be contingent on projects being
subject to oversight by the KPPPC.

Finally, given the larger number of PPP projects that have been launched at the regional
level and which will shortly become operational, there is an urgent need to develop firmer
guidance regarding the processes, organisational set-up and data needs required for
monitoring the implementation of PPP projects.

4.8.2. Maintain the rigour of the current gateway process while simplifying the
analytical requirements for smaller projects

Project preparation and appraisal activities need to strike a balance between guarding
against potentially bad choices, while serving as an efficient mechanism for shepherding
good projects towards implementation.

Before seeking to cut back on project preparation and appraisal activities the Kazakh
authorities should perform an analysis of the reasons for projects proceeding slowly and/or
being rejected, and benchmarking their process against that of OECD countries. If PPP projects are being sent back to the drawing board because they do not represent value for money or are not sufficiently bankable, then the system is performing as intended.

One thing that can be said for certain is that there is a wide diversity of projects in Kazakhstan in terms of both size and complexity, and the analytical requirements are not identical for all projects. Smaller and simpler projects that represent less risk for the state do not require the same level of detail in the analyses as large and complex projects. Thus, rather than simplifying project preparation and appraisal requirements for all projects, it would be advisable to develop simplified requirements that apply exclusively to smaller projects with limited impact on public finances and where the state carries less risk.

4.8.3. Develop clear guidance and transparent criteria for prioritising all infrastructure projects, including PPPs and concessions

Infrastructure projects should be selected and prioritised according to their alignment with a country’s development priorities and their socioeconomic efficiency as determined by cost-benefit analysis. Project prioritisation should also be independent from the proposed delivery mode.

The Kazakh authorities should develop firm guidance and criteria that could assist decision-makers in prioritising investment projects. These criteria should apply across all investments projects, including those procured through traditional means as well as PPPs. There exists a range of different methodologies for selecting and prioritising projects including both quantitative and qualitative approaches. Irrespective of the specific methodology that is adopted, the results of the socioeconomic analysis should play a prominent role in project selection and prioritisation. While PPP projects in Kazakhstan are subject to cost-benefit analysis as part of the assessment conducted during the Project Concept stage, there is no specific guidance as to the role that socioeconomic criteria should play in prioritisation. Projects, for example, might be evaluated against a minimum hurdle as in the case of Chile, or ranked according to the results of the CBA.

Finally, the criteria used to determine whether a project merits the designation of “special significance” would benefit from greater specificity to reduce the scope for discretion. The current guidance doesn’t make any reference to a project’s socioeconomic efficiency. Given that projects that benefit from this designation are eligible for state protection from currency risk, they should demonstrate clear economic benefits.

4.8.4. Ensure that the choice of delivery mode is grounded in value for money analysis rather than budget expediency

The structure and incentives within the current investment planning system in Kazakhstan drive line ministries to make choices regarding project delivery modalities at a very early stage in the planning process primarily on the basis of budgetary capacity rather than value for money criteria. As a consequence, projects might be selected for PPP delivery before the necessary analysis has been performed, resulting in inappropriate projects being squeezed through the PPP channel when they are better suited for another procurement mode.

Such an outcome can be averted by ensuring that decisions regarding delivery modality are based on clear, objective and transparent value for money criteria. One way of implementing this is to develop a procurement option pre-test that can be applied by contracting authorities at a relatively early stage in the project preparation process, possibly
at the Investment Proposal stage. Such a procurement option pre-test would be a relatively simple and inexpensive way of making an initial choice regarding the most appropriate delivery mode based on value-for-money criteria. If desired, a more in-depth (and more resource intensive) value-for-money test using a public-sector comparator can be applied at a later stage in the process (e.g. the Project Concept stage or the Tender Documentation stage) to confirm the choice of delivery mode.

### 4.8.5. Expand data collection on PPPs

Effective monitoring and evaluation of projects depends on having access to data as well as the capacity to process and analyse it. The current initiative being led by the Treasury within the Ministry of Finance to collect PPP contract information and information on payments is an important improvement that should contribute to the management of PPP-related liabilities. This effort should be extended to other types of data such as the procurement procedures and process (one-stage/two-stage/competitive/direct, number of bidders), financial data (financial structure and sources, debt repayments), contractor performance (delays, service levels), renegotiations, etc. This data should be collected for projects at both the national and regional/local levels.

### 4.8.6. Assign responsibilities and allocate resources for conducting independent ex post evaluations

As the PPP programme develops and expands, it will be important for policymakers to get a clear picture on whether PPPs are successful as a delivery mode in terms of meeting infrastructure development objectives, and providing affordable and quality services for users and taxpayers. While the KPPPC is responsible for evaluating PPP projects on an annual basis, it will also be important to perform independent *ex post* evaluations that look beyond individual projects. 

*Ex post* evaluations of the effectiveness of the PPP programme across different sectors and levels of government should therefore be conducted once enough projects have reached an operational steady-state. This is particularly important at the regional/local level where the vast majority of PPPs are currently being implemented. *Ex post* evaluations should also look into practices that could potentially undermine value for money such as the use of unsolicited proposals and renegotiations.

Responsibility for performing *ex post* evaluations should be assigned to an entity that has sufficient expertise, capacity, and independence. Any institution tasked with performing *ex post* evaluations should be empowered to ask difficult questions and be independent from either the contracting authority or the entity performing project appraisals. The Accounts Committee, as the supreme audit institution, with both financial and political independence from line ministries and regional governments, might be a candidate to perform this role, on the condition that it has sufficient capacity, expertise and resources. Whichever institution is ultimately selected for this role should benefit from technical assistance provided by international organisations and peers in other countries.

### 5. The budgetary framework for PPPs in Kazakhstan

The annual budget is the primary mechanism with which OECD governments reconcile competing policy interests, allocate resources and set the medium-term direction for public spending. The central budget authority, in the particular case of Kazakhstan the Central Authorised Body for Budget Planning, is the custodian of this budget process. Given the
complex and long-term nature of PPP projects, they require particular scrutiny to ensure close linkages with the budget process.

This section aims to give an overview of how the PPP framework interacts with the budget process in Kazakhstan. In particular, it considers whether it is used transparently to minimise fiscal risks and ensure the integrity of the procurement process, in line with the third heading of the PPP Principles. It starts by exploring recent tools implemented to ensure affordability and sustainability of PPP spending, as well as aspects that could be improved. The section then examines measures taken to ensure that PPP commitments and contingent liabilities are monitored, as well as mechanisms to strengthen transparency and reporting. The section ends with a review of the key aspects that could be improved in terms of the transparency of the procurement process for PPPs.

5.1. Affordability and Sustainability

5.1.1. Principle 10 of PPP Recommendation

In line with the government’s fiscal policy, the Central Budget Authority should ensure that the project is affordable and the overall investment envelope is sustainable.

PPPs, as well as conventional long-term government borrowing for investment, are more difficult to integrate with the annual budget process than more ordinary variable expenditures that can be modified from year to year. This makes affordability assessments particularly important when the project is being prepared. An investment project is affordable if the expenditure and contingent liabilities it entails for the government can be accommodated within current levels of government expenditure and revenue, and if it can also be assumed that such levels will be and can be sustained into the future. A public-private partnership can make a project more affordable if it improves the value for money compared to that realised through traditional public procurement, and it fits within the government budget constraint.

PPPs limit flexibility as they are long-term contractual and financial commitments. The contractual rigidity of PPPs has made it more difficult for some government agencies to respond to budget cuts by reducing their expenditures on capital and maintenance. This future rigidity in the fiscal space needs to be considered by procuring authorities when contemplating the PPP route.

Kazakhstan could improve its multi-year public budget affordability analysis

Kazakhstan has developed a framework to assess PPP affordability at the project level. In particular, the two-stage gateway process provides a robust foundation for assessing and screening projects (see Chapter 4). However, this assessment is not integrated with the overall medium term expenditure framework, which can create threats to public finances in the medium and long term. PPPs can cause considerable fiscal risks if affordability is not accounted for properly before the procurement of a project or a portfolio of projects. The type of fiscal strain that PPPs can cause on the public purse is well exemplified by the case of Portugal (Box 19).
Box 19. Impact of PPPs in Portugal fiscal consolidation efforts

Portugal used PPPs extensively to finance its infrastructure in the wake of global financial crisis, particularly in the motorways sector. Public payments that the government had to make to the private sector for road concessions reached a peak of more than EUR 1 billion in 2015.

Government’s payments to private concessionaires (2012-40)

In the context of an economic recession, the long-term obligations associated with the PPP availability payments that Portugal was required to make to its concessionaires constituted a substantial drag on its fiscal consolidation efforts. A multi-year and multi-pronged public budget affordability analysis, both from the government standpoint and that of the users, could have helped to better guide some past choices.


Kazakhstan has established ceilings for PPP liabilities aimed at limiting overall public sector long-term commitments

Like many OECD countries (Box 20), Kazakhstan has established limits on stocks and flows of PPPs. While this is not a substitute for medium-term planning, it can contain fiscal costs and can help limit overall public sector long-term commitments to levels that are fiscally affordable.

The Budget Code of Kazakhstan defines two types of liabilities for PPPs, those under the Republic of Kazakhstan and those under local executive governments. It also clearly states that the Republican Government and the local executive bodies are not liable for each other’s PPP liabilities. Limits to total Republic PPP liabilities are set in the Budget Law. In 2017, the limit for cumulative direct liabilities from PPPs was set at 20% of the state budget revenue, roughly equivalent to the entire state development budget (KZT 1.5 trillion or USD 4.3 billion).

The limits for PPP liabilities of sub-national governments are defined by the MNE on a rolling basis for a three-year period. Currently, these cumulative direct limits are also fixed at 20% of a local authority’s own revenues. However, the MNE is envisaging increasing this limit to 50%. In addition, expenses for repayment and servicing local executive bodies PPP liabilities should not exceed 10% of the local budget revenues for the corresponding fiscal year. Sub-national governments are free to act within these limits.
Box 20. PFI/PF2 limits in the UK

With the PF2 scheme, Treasury introduced a control total that limits PFI/PF2 commitments. In the Autumn Statement 2012 the Government announced that it would introduce a control total for the commitments arising from off-balance sheet Private Finance Two (PF2) contracts to GBP 70 billion and that will be set for five years starting from 2015-16. It is HM Treasury’s task to ensure compliance and performance against the control total, annually, at Budget (HMT, 2013). The OBR has a complementary role in assessing whether the government is within its targets by reporting progress of PFI commitments against the control total in its report on fiscal sustainability. The introduction of this limit under PF2 guidance provides an improved whole-of-life assessment of the cost of PFI/PF2 projects and their affordability.

Source: OECD, 2015a

5.2. Budget transparency and accounting

5.2.1. Principle 11 of the PPP Recommendation

Principle 11. The project should be treated transparently in the budget process. The budget documentation should disclose all costs and contingent liabilities. Special care should be taken to ensure that budget transparency of Public-Private Partnerships covers the whole public sector.

The system of government budgeting and accounting should provide a clear, transparent and true record of all PPP activities in a manner that will ensure that the accounting treatment itself does not create an incentive to take the PPP route. It should also clearly disclose not only costs, but also any PPP guarantees or contingent liabilities at different government levels. Ensuring that all PPP projects are properly and consistently accounted for at every stage of the fiscal cycle reduces the incentive to pursue PPPs for the wrong reasons (Box 21).

Box 21. Key issues regarding PPP budgeting and reporting

The way PPP transactions are reflected in the overall fiscal cycle depends on several factors. Some of the key issues regarding PPP budgeting and reporting are summarised below:

1) User-funded PPPs tend to be excluded from the budget.
2) Since budgets are normally on a cash basis, they may not show PPP operations at early stages of the PPP cycle, even for projects committing government resources.
3) Even countries with accounting systems on an accrual basis may not show PPP operations if the related asset is regarded as being owned by the private partner or if it is owned by a public entity outside the coverage of national headline fiscal indicators.
4) Countries with no integrated financial accounting system may report PPP operations inconsistently among different fiscal reports.
5.2.2. Treatment of PPPs in the budget process in Kazakhstan

Formally, the Republican budget of Kazakhstan consists of the revenues and budgetary allocations for a three-year period including the budget year. However, only the first year is legally binding and must be executed; the figures for the second and third years are indicative and are routinely adjusted and updated by the time the following budget cycle comes around. The budget is divided into three components consisting of 1) current expenditures, 2) so-called development expenditures covering equipment (e.g. vehicles and computers), and 3) investment comprising construction and reconstruction of physical assets.

Budget envelopes are provided by the MOF at the line ministry level. Line ministries have discretion in terms of how this overall budget is allocated within the different segments within the ministry. Usually, annual PPP liabilities are incorporated in the annual budget of the implementing agencies as investment expenditure. Since the budget is mainly done on a cash basis, it does not show PPP operations at early stages of the PPP cycle, even for projects committing government resources. PPP liabilities at both national and sub-national levels are not included in public debt figures. As explained below, Kazakhstan has developed some tools to improve monitoring of PPP explicit liabilities.

Since 2015, Kazakhstan implements International Accounting Standards 37 “Provisions, Contingent Liabilities and Contingent Assets”. However, PPP contingent liabilities are not disclosed. Considering that projects that are designated of “special importance” may qualify for full state compensation of currency risk, it is essential that PPP guaranties and contingent liabilities are closely identified, monitored and disclosed.

5.2.3. New tools to monitor PPP explicit liabilities

Kazakhstan has made some improvements in monitoring PPP liabilities at both the national and subnational levels. A government resolution was passed on 10 January 2017 that requires all PPP projects to register with the Treasury Committee of the MOF. As of March 2018, a total of 192 local projects had been registered with the Treasury Committee. The Treasury Committee verifies that the liabilities resulting from future payments from projects don’t breach the established limits for PPP liabilities (see following section).

The Treasury Committee is developing a database to record information on PPP contracts and associated future payments at both the national and regional levels for the purpose of tracking PPP liabilities. This system will enable the MOF to monitor PPP liabilities. It is also expected that the registration system will provide reassurance to investors through an explicit recognition of PPP liabilities, including those at the regional level, by the MOF. Consolidated data on PPP liabilities will be published in the budget.

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5) Headline fiscal indicators and fiscal targets can be based on any of such reports, and they could even incorporate further modification - such in the case of the European Union. This hampers the decision making process.

*Source: Funke, Irwin, and Rial, I 2013*
5.3. **Integrity and corruption**

5.3.1. *Principle 12 of the PPP Recommendation*

*Principle 12. Government should guard against waste and corruption by ensuring the integrity of the procurement process. The necessary procurement skills and powers should be made available to the relevant authorities.*

The necessary procurement skills and powers should be made available to the relevant authorities. Tasks and responsibilities should be clearly and distinctly assigned to different authorities, and value for money should be the golden thread that runs through all the stages of public procurement. Enhancing integrity necessitates recognising the risks inherent throughout the procurement cycle and developing appropriate management responses to these risks, and monitoring the impact of mitigating actions.

The general issue of uneven public sector integrity and corruption remains a burden on business in Kazakhstan. In particular, public procurement is one of the areas that are perceived to be most corrupt, as evidenced by surveys studies (OECD, 2017). However, PPPs are perceived as one of the procurement options that are less prone to corruption, due to interaction of a number of stakeholders (including investors and lenders) and the existence of a well-structured procedure for project planning and procurement. Even though, in relative terms, PPPs are perceived as more transparent, Kazakhstan could consider increasing the transparency of PPP tender documents.

5.4. **Recommendations**

*Kazakhstan could improve the use of the multi-year and comprehensive fiscal framework to provide guidance on fiscal affordability of projects for annual budget planning*  

A project portfolio can be considered affordable if government expenditure can be accommodated within the intertemporal budget constraint of the government. In that way, affordability means more than just fitting into the upcoming year’s budget, as the project should at least fit into the medium-term budget envelope of the government department (Jacobs, 2009). Therefore, it is advisable that both construction and operational cost estimates of the feasibility studies serve as inputs into the budget and medium-term expenditure frameworks (not just in the year in which the project is approved, but for as long as the project is operational). This requires a thorough integration of the project into a government department’s programme and budget (and thus, also in the overall national/federal budget).

Kazakhstan could better use its multi-year and comprehensive fiscal framework to provide guidance on fiscal affordability of projects for annual budget planning. Overall limits for PPP liabilities should be discussed under this framework. This will imply strengthening the multi-year fiscal framework (see Beazley, 2019). A good example on this practice could be found in the UK (Box 22).
In the UK, a three-year Comprehensive Spending Review is used to determine total annual expenditure limits for the government, expressed as Annual Managed Expenditure (AME) amounts, for a three-year period. AME is allocated to government departments through Departmental Expenditure Limits (DEL), of which a certain proportion will consist of capital spending. Thus, the overall capital budget for the UK will consist of the aggregate of the capital portion of the various DELs. More specifically, the total investment budget is a residual derived from a number of capital related decisions taken in procedures that are separate from the annual budget process. Mega projects (such as High Speed Rail, Trident, the London Olympics) will have gone through particular scrutiny and have been decided on separately. For a number of years these types of projects were part of the base line. Other projects were decided in the previous year’s budget process and were part of the infrastructure/PPP portfolio. The remaining part was a result of new interactions between the line Department, HM Treasury, and priorities of the government. Overall fiscal sustainability is secured via the Spending Review totals, but the capital part of this varies according to the priorities of the government, and takes place through a combination of top down and bottom up approaches.

With regard to specific projects, affordability is addressed as part of the business case presented by line Departments and procuring authorities for each project. Direct project costs are part of both the economic and financial dimension of the business case prepared for significant spending decisions. The economic case incorporates direct costs in the value for money assessment, whereas the financial case incorporates direct costs in the analysis of annual affordability. Any contingent liabilities are collated and reported in the OBR’s fiscal sustainability report. The independent Gateway Review process, led by the Efficiency and Reform group, also examines the financial viability of the project and the proposed approach to its implementation (OGC, 2007). It looks at the whole-of-life affordability of the project and how it fits with the budget.

*Source: OECD, 2015a*

**5.4.1. Kazakhstan could improve transparency of PPP procurement process**

In contrast with regular practices in OECD countries, Kazakhstan provides limited information to the public on PPP projects. Even though new monitoring tools are being adopted to track PPP liabilities none of this information is made publicly available. Furthermore, procurement documents are not made available to the public before, during or after the procurement of a PPP project. This reduces transparency and limits the scope for any public debate about the costs and benefits of the project.

KPPPC has made some effort to disseminate project-related information to the public via an online database of PPP projects. However, the information made available through this database is very limited and does not serve the needs of stakeholders such as investors, citizens, or civil society. Kazakhstan could strengthen engagement and scrutiny by publishing some of the documentation developed as part of the project preparation process online, as well as producing aggregate analyses aimed at informing the public on the current state of play of PPPs in Kazakhstan. The World Bank has developed a compressive
framework on Disclosure of Project and Contract Information in PPPs that can be used as a guideline. Some examples on how countries approach PPP contract and project disclosure are presented in Table 7.

Table 7. Summary of approaches to PPP contract and project disclosure

<table>
<thead>
<tr>
<th>Country</th>
<th>Contract Disclosure</th>
<th>Summary</th>
<th>Guarantees</th>
<th>Performance reports</th>
</tr>
</thead>
</table>
| Australia: New South Wales | proactive disclosure?with redactions | detailed summary | statement of actual liabilities, statement of indemnities /guarantees including loans are proactively disclosed | • operator reports not proactively disclosed, only reactively  
• post implementation reviews proactively disclosed  
• audit reports proactively disclosed |
| Australia: Victoria | proactive disclosure with redactions | detailed summary | proactively disclosed as part of project summary, but not described in detail | • performance reports not proactively disclosed, only reactively  
• some third-party assessments proactively disclosed  
• audit reports proactively disclosed |
| Brazil: Federal | full proactive disclosure is the standard | no summary | all guarantees are stated in disclosed contracts | • performance reports not proactively disclosed  
• audit reports not disclosed |
| Brazil: Bahia | full proactive disclosure is the standard | No summary | all guarantees are stated in disclosed contracts | • performance reports not proactively disclosed  
• audit reports not disclosed |
| Brazil: Minas Gerais | full proactive disclosure is the standard | no summary | all guarantees are stated in disclosed contracts | • operator reports not disclosed?  
• annual reports disclosed for selected projects; monthly performance proactively disclosed  
• results from user surveys proactively disclosed  
• audit reports not disclosed |
| Canada: British Columbia | proactive disclosure with redactions | brief summary | proactively disclosed | • performance reports not proactively disclosed  
• audit reports proactively disclosed |
| Chile | full proactive disclosure is the standard | no summary | all guarantees are stated in disclosed contracts | • operator reports not disclosed?  
• contract management reports proactively disclosed  
• audit reports not disclosed |
| India | proactive disclosure in some sectors | no summary | all guarantees are stated in disclosed contracts | • performance reports not proactively disclosed, only reactively  
• audit reports proactively disclosed |
| Perú | full proactive disclosure | no summary | all guarantees are stated in disclosed contracts | • performance reports for transport projects proactively disclosed  
• audit reports not disclosed |
| South Africa | no proactive disclosure, only reactive disclosure | no summary | all guarantees are stated in the contracts, and only reactively disclosed | • all reports, third party assessments and user surveys reactively disclosed |
5.4.2. Kazakhstan could develop additional tools to improve the way PPPs are treated in the budget process

The database currently being developed by the Treasury Committee is a good practice for improving the monitoring of PPP liabilities. Even though it’s at an early stage of development it could be further complemented with periodic reporting on PPP liabilities in the budget documentation and/or in a separate report. Furthermore, this report should provide an assessment of the cumulative impact of PPP explicit and contingent liabilities on medium to long-term fiscal sustainability. In addition, it should inform the annual and multiannual budget process and the Government expenditures accounts. Given that most PPP contracts are being implemented at the subnational level, the Central Budget Authority should consider developing guidelines for local governments on how to report PPP liabilities.

Likewise, as highlighted in the OECD Budget Review, Kazakhstan would benefit from maintaining a central register and disclose contingent liabilities in the annual financial statements of the government, following IPSAS 19 and the IMF Code on Fiscal Transparency. This register should pay special attention on contingent liabilities derived from PPPs. Chile offers a good example on how to value, monitor and report contingent liabilities. In particular, Chile is distinguished for measuring and valuing contingent liabilities associated with revenue guarantees for toll road and airport concessions, and for publishing the results of the measurement and valuation each year (Box 23).
Box 23. Measuring and valuing contingent liabilities in Chile

The Fiscal Responsibility Law mandates the Chilean government to provide information on contingent liabilities. The Budget Directorate in the Ministry of Finance DIPRES must inform annually on the total amount and characteristics of state guarantees. Given the size of contingent liabilities, these are taken into account when calculating the structural balance target.

Since 2007, DIPRES publishes a report on contingent liabilities yearly. This report carries out sensitivity analysis on minimum income guarantee on concessions, state guarantee on debt of state owned enterprises, guarantee of higher education loans, state deposit guarantee, Chilean Economic Development Agency (CORFO) hedge fund risk and small business guarantee fund, and guarantees of the pension system.

In the particular case of PPP, it should be noted that Chile started estimating the fiscal effect of revenue guarantees and revenue sharing for PPP in the late 1990s. This work led to the development of a spreadsheet model that could estimate the expected cost of revenue and exchange rate guarantees (and the expected revenue from revenue- and gain-sharing arrangements) for each year of each concession. The model also generated an estimate of the probability distribution of future spending and revenue each year, which allowed estimates of cash flow at risk and similar measures. The Ministry of Finance took over the model and developed it further, extending its scope to include airports as well as roads. The ministry now uses the model to estimate the cost of possible guarantees, to set guarantee fees, and to report information on the costs and risks of guarantees.


Notes

1. According to officials, the Bank’s lending rates were too high for the project.

2. As of 1 January 2018, the Bank will begin applying International Accounting Standard (IAS) no. 9, which may impact its collateral requirements.

3. Step-in rights enable the creditor to seek the replacement of the private partner in case of a material breach by the private partner of the PPP/concession agreement.

4. The devaluation undermined the proposed financial structure for the BAKAD project, requiring the actors to return to the negotiating table.

5. SOURCE is an online project preparation toolkit jointly developed and funded by the MDBs with a view to assisting national and subnational governments and public agencies in developing bankable projects: https://public.sif-source.org/
The National Fund of the Republic of Kazakhstan (NFRK) was created in 2000 as a stabilisation and savings fund with revenues from the oil sector.

At the time of research and writing a number of amendments were being introduced into the PPP regulatory framework which could affect the project preparation process. The analysis herein does not consider the adjustments to the regulatory framework.

The United Kingdom operates a franchise model for rail lines, whereby private companies operate lines for a number of years. However, the network infrastructure is managed by a state-owned company.

Based on my notes, but they were not very clear on this point

The term “budget efficiency” was mentioned on a number of occasions during the meetings but was not defined. Some officials mentioned that urgent projects tended to be delivered through the budget because of the long lead times required to develop PPPs.

There are two regional projects in the portfolio of KPPF: the construction of a new airport terminal in Kyzylorda and the construction of a college for 600 places in the city of Kyzylorda. There are no other regional projects for KPPF.

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