GOVERNMENT OF MALAWI

PUBLIC PRIVATE PARTNERSHIP POLICY FRAMEWORK

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Acronyms and Abbreviations

CAs	Contracting Authorities
GoM	Government of Malawi
MCAs	Ministries and Contracting Authorities
MoF	Ministry of Finance
MDPC	Ministry of Development Planning and Cooperation
MGDs	Millennium Development Goals
OPC	Office of the President and Cabinet
PPP	Public Private Partnership
PPPC	Public Private Partnership Commission
PC	Privatization Commission
IPF	PPP Infrastructure Project Financing Fund
IDP	International Development Partners
IFIs	International Finance Institutions
RAs	Regulatory Authorities
SOEs	State Owned Enterprises
SPV	Special Purpose Vehicle
VGS	Viability Gap Scheme

1 INTRODUCTION

1.1 The Government of Malawi (GoM) is committed to promoting infrastructure investment in Malawi, as one tenet of spurring economic growth, thereby improving the quality of life through reduction of poverty. In this vein the Public Private Partnership (PPP) framework will be used as a new form of procuring and financing infrastructure projects and services in the public sector. This PPP Policy documents was approved by Cabinet on 18th May, 2011, and therefore sets out the policy framework for initiating, designing and implementation of PPPs in Malawi.

2.0 THE WIDER POLICY CONTEXT FOR PPP

2.1 The Government has come up with the Malawi Growth and Development Strategy 2 (MGDs 11), which articulates Government's strategy and policy orientations for the medium term. The main objectives of the MGDS are to enhance economic growth through the exploitation of the employment-generation potential of the economy and thereby raising the quality of life of all sections of the population. For this purpose the Government has identified the following key priority areas within the MGDs11, often referred to as Priorities within Priorities:

1. Agriculture and Food Security
2. Energy, Industrial Development, Mining and Tourism
3. Transport Infrastructure and Inland Ports
4. Education, Science and Technology
5. Public Health, Sanitation, Malaria and HIV and AIDS Management
6. Integrated Rural Development
7. Greenbelt Irrigation and water Development
8. Child Development, Youth Development and Empowerment
9. Climate Change, Natural Resources and Environmental Management

The economic strategy being pursued by the Government seeks to reduce poverty through economic growth and to transform Malawi into more of an export based economy, fully integrated in the new global economic environment. The overall competitiveness of the Malawi economy will be bolstered by means of investments, especially those directed towards improving and expanding infrastructure.

2.2 In order to strengthen the investment climate in Malawi, Government is committed to maintaining sound economic policies and continuous improvement of the business environment. In this vein, the Government has reduced and stabilised the interest rate regime and sustained single digit inflation rates since 2004 through pursuing strong economic and fiscal policies. The business environment is being strengthened by, among others, the establishment of the commercial court to speed up resolution of commercial disputes, promoting investor access to land, institutionalizing the public private dialogue and speedy registration of new businesses. . The quality of public finances and expenditure is being strengthened through a variety of efforts. A major programme to improve the quality and effectiveness of public expenditure and to enhance the buoyancy and efficiency of the tax system is already under way. Government also now wants to create the appropriate policy, legal and institutional framework for encouraging the private sector to play a larger role in procuring, financing, operating and maintaining infrastructure projects and services in the public sector through well-designed PPPs. The framework provides the broad environment, whereby ministries and public contracting agencies (MCAs) directly responsible for the programme areas identify and develop potential PPPs in light of government overall social and economic priorities.

3.0 THE PPP CONCEPT

3.1 A Public-Private Partnership (PPP) is a legally enforceable contract in which a Contracting Authority partners with a private sector Partner to build, expand, improve, or develop infrastructure or service in which the Contracting Authority and private sector Partner contribute one or more of know-how, financial support, facilities, logistical support, operational management, investment or other input required for the successful deployment of a product or service, and for which the Contracting Authority and the private sector partner is compensated in accordance with a pre-agreed plan, typically in relation to the risk assumed and the value of the result to be achieved. Usually the private entity performs infrastructure service delivery functions that would otherwise have been provided through traditional public sector procurement and assumes the associated risks through a long term contract (typically ranging from 10 to 50 years). In return, the private entity receives a benefit/financial remuneration according to predefined performance criteria, which may be derived:

- entirely from service tariffs or user charges,
- entirely from GoM's budgets, and or
- a combination of the above.

4 0 THE SCOPE OF PPPs

4.1 PPPs allow each party to concentrate on activities that best suit their set of skills and strategic objective. For the public sector, this not only means planning and identifying infrastructure and public service needs and focusing on developing national, local and sector specific policies but also overseeing enforcement of the PPP agenda. The public sector retains a significant role in the PPP project, either as the main purchaser of the services provided or as the main enabler of the project. It purchases services and specifies the service outputs/outcomes required, as well as the performance criteria which triggers payments to the private sector.

4.2 For the private party the key is to deliver effectively the infrastructure and facilities required by the public sector and consumers at the project level, usually in a PPP arrangement where the private party provides the design, construction, operation maintenance and financing for the project, and is paid according to performance. Risks are identified and placed with the party best able to bear and manage them at lowest cost.

A particular arrangement or project may constitutive a PPP where the following key characteristics are present:

- Shared responsibility for the provision of infrastructure or services with a significant level of risk being taken on by the private party, for example in infrastructure project, linking design and construction with one or all of the finance, operation and maintenance element;

- Long term commitment by the public sector to the provision of quality public services to consumers through a contractual arrangement between the public sector and private operator; and
- Better value for money (VfM) and optimal allocation of risk, for example, by exploiting private sector competitiveness (managerial, financial and innovation) over the period of the project's life cycle and by promoting the cross-transfer of skills between private party and public parties.

4.3 There is a clear distinction between a PPP arrangement under which the private party supplies public infrastructure and public services on behalf of the state for a contract period and the sale of specific state assets (i.e.divestiture) to the market. A PPP project typically requires the establishment of a special purpose vehicle (SPV) by the private Party. The SPV will be a locally incorporated company, hence a legal entity with no other activity other than those in the agreement and connected with the borrowing.

4.4 There are several well defined models of PPPs, including public finance initiative (PFI) differing in purpose, scope, legal structure and risk sharing, and increasingly offering different permutations and combinations of them. Specific forms of PPPs are often referred to by special names. However a single PPP can have the characteristics of several different forms and new types may emerge from time to time. One end of the spectrum would be an outsourcing of some routine operation, while the other could involve the private sector conceiving, designing, building, operating, maintaining and financing a project, thereby assuming a considerable proportion of risk. The choice of the PPP arrangement for a particular project will depend on Government's policy in the related sector and on potential Value for Money to be generated under such an arrangement. Emphasis however will be on developing new infrastructure facilities, or major rehabilitation of an existing facility so that additional and, or higher quality services are provided for the citizens of Malawi. Hence outsourcing without a significant transfer of risk to the private sector over a period is not strictly speaking a PPP. It is important to note that a PPP is a contract for service and outputs, rather than merely a physical asset. This policy framework does not cover government assets listed for divestiture/privatisation and the outsourcing of public services where no significant private investment and risk transfer is involved.

5.0 ELIGIBLE AREARS

5.1 It is Government's intention to encourage innovation in as many areas as possible. However the focus will be on the traditional physical and social infrastructure sectors identified as key priority areas in the national development and economic strategy - such as energy (electricity, oil and natural gas) telecommunications and information technology, transport (air transport, airports, inland waterways, inland ports, railways roads, urban public transport, inter-modal) tourism, public utility (water, irrigation and municipal and liquid waste management and sanitation sectors), health and education sectors.

6.0GOALS AND BENEFITS

6.1 In order to support the objectives of the MGDS and to enhance the opportunities for realising both strategic and operational benefits, the Government has decided to root PPPs in its broader public expenditure reform programme, as well as in the Public Sector Investment Programme (PSIP). In so doing, the Government seeks to strengthen macro-economic stability, allocate scarce resources in line with priorities and improve the effectiveness and efficiency of public sector expenditures by linking them to strategic objectives. Well-structured PPP projects integrate recurrent and capital budgets and provide meaningful benchmarks for measuring performance, thus making PPP an important tool for better management of public expenditure. In addition, PPP is an instrument which Government can use to reform and re-structure certain strategic sectors of the economy to introduce competition, with the objective of securing increased investments and efficiency, reduced prices and expand the range of services available to a wider cross-section of the society.

6.2. Strategically; the use of PPP fosters economic growth by developing new commercial opportunities and increasing competition in the provision of public services, thus encouraging private sector and/or foreign investment to play a more dynamic role in the economic development process, as well as ensuring rigorous governance over the selection of projects for PPPs.

6.3 Identification of the goals of PPPs and the prospective benefits from individual projects provide more certainty, in particular, for those (e.g. local communities) that PPP projects are expected to serve. More specifically the benefits are as follows:

- Speedy, efficient and cost-effective delivery of projects;
- VfM for money for taxpayers, inter alia, through optimal risk transfer and risk management;
- Efficiencies from integrating design and construction of public infrastructure with financing, operation and maintenance/upgrading;
- Creation of added value through synergies between public authorities and private sector companies, in particular through integration and cross transfer of private and public sector skills, knowledge and expertise;
- Alleviation of capacity constraints and bottleneck in the economy, through higher productivity of labour and capital resources in the delivery of projects;
- Competition and greater construction capacity (including participation with overseas firms);
- Accountability for the provision and delivery of quality services through incentive/ performance based management/ regulatory regime;
- Innovation and diversity in the provision of public services; and
- Effective utilization of state assets where applicable to the benefit of all users of public services.

7.0 KEY PRINCIPLES IN THE APPLICATION OF PPPs

7.1 While the benefits and advantages of PPP can be significant, they are not automatic. Rather, the positive outcomes have to be earned through careful attention to project identification and conceptualization and preparation of well-designed and structured projects, as well as through thorough due diligence and competitive and transparent procurement. There are thus certain key principles which are necessary and these are included in this policy framework, as they are critical in delivering successful outcomes. These have been identified as VfM, risk allocation, public interest and consumer rights, accountability, affordability, transparency, competition, local content & technology transfer**,** stakeholder consultation and public PPP procurement.

7.2 All PPP arrangements in Malawi shall be guided by the process outlined below.

7.2.1 VfM: Achieving Value for Money (VfM) criteria on PPP projects is paramount. As such achieving the best VfM outcome should be the key consideration at all stages of the project cycle. PPPs should give greater Value for money than the best realistic public sector project designed to achieve similar service outputs. VfM is a combination of service outcome to be delivered by the private sector, together with the degree of risk transfer and financial commitments for government. Quantitative factors may be tested by comparing the outputs and costs of the PPP proposal against a neutral benchmark called Public Sector Comparator (PSC), which is adjusted for risk (where the risk can be reliably quantified). Achieving VfM is a key requirement of Government at all stages of a project's development and procurement. VfM is the driver for adopting the PPP approach, rather than capital scarcity or balance sheet treatment.

7.2.2 Risk Allocation: The principle governing the risk transfer is one of optimal allocation. An efficient risk allocation is vital in determining whether VfM can be achieved in PPP projects. Risks will be allocated to whoever is best able to manage them, taking into account public interest consideration. The allocation of risks will therefore determine the chosen method of private sector involvement and allocation of responsibilities.

7.2.3 Public Interest and Consumer Rights: Consideration of public interest requires ensuring that procuring the project as a PPP is not contrary to the public interest. Equally, after a decision has been taken to procure infrastructure and services through the PPP model, it is critical to ensure that the procurement process is so structured as to continue to be in the public interest. PPP projects should seek to safeguard user's interest, particularly vulnerable groups;

7.2.4 Affordability – Affordability will need to be the cornerstone of all PPP projects. PPP options must be affordable, both to Government and the consumer, given that there are other priorities and commitments competing for scarce resources. The rationale for PPPs is improved management of scarce resources, better risk allocation and more efficient and cost-effective delivery of services. It will always need to be borne in mind, however, that while the private sector may be willing to finance and deliver infrastructure and services through PPPs, only users or taxpayers can pay for them. Affordability thus acts as a real constraint, and public bodies will need to give serious consideration to the selection of potential PPP projects, ensuring always that their choices are in line with Government's policy, priorities and objectives. PPP provides real and exciting prospects for new forms of procurement, financing and operation in ways that are likely to result in improved management of scarce resources. Government's PPP programme should not, however, be seen simply as an opportunity for public bodies to undertake projects that would ordinarily not get approval through normal budgetary approval processes.

7.2.5 Accountability: Contracting Authorities (CAs) are responsible for the delivery of their project outputs, including where the PPPs are used to deliver those outputs. This accountability cannot be transferred to the private sector. At every stage of the PPP process the procedures, laws, regulation and relevant policies must be followed.

7.2.6 Transparency: Transparency and openness are important requirements of all government procurement and is no less so for PPPs. The procurement process laid down for Malawi must be followed. Instructions to bidders must be clear and unambiguous to prevent manipulation or abuse of the process. The bid conditions and evaluation criteria must lead to the attainment of VfM, economy, and efficiency and must be made available to all interested private sector parties. Equal opportunity and access to information must be given to all interested bidders. The process shall be accessible to the public to the extent allowed by law, except where national security would be prejudiced and the need to protect commercial confidentiality. The conduct of the public sector must be such that confidence in the probity of the PPP model is maintained. No unsolicited bids to supply infrastructure or delivery of services shall be entertained by Government, Ministries, Contracting Authorities and any other public institutions. Unsolicited bids are inherently risky as they are known to promote corrupt practices and to result in inefficient and suboptimal delivery of infrastructure and services

7.2.7 Local Participation, Content & Technology Transfer: PPP projects shall be structured to encourage the maximum use of local content and technology transfer. As much as possible, the PPP arrangement should facilitate the promotion and linkages with local industries and the private sector in Malawi. PPP projects shall seek to promote Malawian participation in private sector consortia. The Government through the PPP Commission shall come up with strategies policies, schemes and mechanisms for encouraging local Malawian participation.

7.2.8 Competition: Bids will be invited only when it is clear that there is scope for a private proponent to deliver VfM. All PPP projects should be subjected to a competitive process so as to obtain market contestability and efficiency.

7.2.9 Stakeholder Consultation: Contracting Authorities shall ensure adequate stakeholder consultation, understanding and support in advance of entering into a PPP arrangement and shall endeavour to identify relevant stakeholders and undertake comprehensive consultation so as to ensure awareness of PPP projects under consideration.

7.2.10 Public Procurement and PPP Procurement: PPP procurement activities that are within the scope of public procurement shall be undertaken under the Public Procurement Act. Guidelines shall be issued on procurements of PPPs that do not fall within the scope of public procurement.

7.3 Unsolicited Proposals: The many negative experiences with unsolicited proposals for private infrastructure projects have led several governments to come up with blanket refusals as the only way to safeguard against potential problems with corruption and lack of transparency. Unsolicited bids are inherently non-transparent and are therefore prone to corruption. Unsolicited bids also deny the Government the opportunity to carry out an independent and comprehensive feasibility and viability analyses in order to ascertain the Value for Money and Affordability parameters.

In the absence of a feasibility study and a viability assessment, the private partner has a strong motivation to earn economic rent and may even push for discretional incentives and subsidies from the Government. The Government of Malawi concurs with those that have come up with a blanket refusal to accept unsolicited bids. Ministries and Contracting Authorities are therefore not allowed to entertain unsolicited bids. It shall be an offence to accept or entertain an unsolicited bid. All unsolicited bids shall be referred to the PPP Commission who will advise the bidder to wait for a competitive tender process.

8.0 GOVERNMENT SUPPORT FOR PPP PROJECTS

8.1 Government Subsidies

Government shall deploy a range of instruments to support project preparation and financial viability assessment of projects. Consent from the Ministry of Finance will be required in order to use public assets to secure debt-collateral, provision of government guarantee (including contingent liabilities) where necessary. Ministries and Contracting Authorities will require the approval of Cabinet through the Ministry of Finance in order to embark on projects with high social content or those that have a major positive impact on poverty alleviation and requiring Government subsidies to ensure the provision of the services.

8.2 PPP Infrastructure Project Financing Fund (IPF)

The GoM shall establish a PPP Infrastructure Project Financing Fund (PIPF) in line with the emerging PPP programmes. The IPF shall operate according to stated operating procedures and guidelines issued for IPF. The IPF shall support the financing of project preparation activities (engineering, economic, financial, public awareness, social and environmental and related studies and the financing of transaction advisors for undertaking project transaction, structuring, procurement and implementation up to the signing of the PPP contract with the private investor(s). It is GoM's intention to seek the assistance of international development partners (IDP) in the initial financing of this fund.

8.3 Viability Gap Scheme (VGS)

It is also GoM's intention to support projects that fall within its national development agenda and are economically and socially (projects having major impact on poverty alleviation) justified but not financially viable. Cabinet approval is required for such projects. The GoM intends to explore the establishment of a VGS, which shall operate according to stated operating procedures and guidelines issued for VGS. The VGS aims at providing rule-based incentives for PPP projects that are economically justified but financially not feasible without reasonable support of their investments or operation.

8.4 Management of Government's Obligations: Government shall take steps to institute mechanisms to ensure that its financial obligations under PPPs, having been approved by the Ministry of Finance, are settled in a timely manner including obligations related to the purchase of services by the public sector as well as direct and contingent liabilities on government's finances including guarantees, arising from each PPP project.

9.0 THE LEGISLATIVE, INSTITUTIONAL AND REGULATORY ENVIRONMENT

The country already has many of the ingredients required for a successful PPP programme: a stable government, a reliable and independent judiciary and reasonably well-performing public institutions. However, without a PPP legislation, political and regulatory risks remain potential barriers to effective PPP implementation in any country. With this in mind, GoM intends to enact a new legislation, which will encompass both PPPs and divestiture so as to provide further concrete evidence of Government's commitment to the PPP policy framework. The new Act will codify the general principles set out in this policy framework including rules for PPP procurement. All CAs and related public bodies will be required to comply with the Act and regulations following from the Act, thereby ensuring consistency in approach across the sectors. This will also enhance the confidence of investors in Malawi's PPP Programme.

9.1 Institutional Arrangements – International experience suggests that identifying and establishing clear and unambiguous institutional functions in relation to PPP early on in the onset of a country's PPP programme can greatly assist in successful PPP implementation. While institutional roles and responsibilities may change over time as Government's experience with PPP develops, a number of public institutions will play key roles in the programme and these are as follows:

9.1.1 The **Office of the President and Cabinet (OPC): OPC** will provide broad policy leadership and overall direction of the PPP framework and the Public Private Partnership Commission (PPPC). The OPC will ensure timely enactment of legislative instruments as well as ensuring that project concepts and sectoral reform proposals are brought before Cabinet before implementation. Contracting Authorities will be required to submit a PPP concept and project framework paper to Cabinet for approval before implementation.

9.1.2 The Ministry Responsible for Economic Planning and Development (MEPD); MDEC will ensure that PPP projects fall in line with the national planning process and or the national infrastructure plan, as well as being consistent with the goals of the MGDS.

9.1.3 The Ministries and Contracting Authorities; *This* “ownership” role is to be carried out by a particular Ministry or one of its CAs. A Contracting Authority is essentially an asset holding company that legally owns public assets but opts to cede out its right of use of the assets to the private sector through a PPP arrangement. The PPP Act sets out the MCAs as owner of the PPP projects. At all times there should be an identified MCA (sponsoring authority) taking on the ownership role, from inception through to construction and operation. MCAs will play a lead role in the identification, selection and monitoring of PPP projects in their sectors. This does not mean that MCAs will actually undertake all of the work related to the PPP project cycle, but the MCA is to be involved in every phase, retaining the lead interest in the project. The objective of the MCAs is to ensure that a list of bankable infrastructure projects are presented for that sector and that the projects are capable of attracting private sector investments and in so doing reduce the cost of developing and implementing infrastructure projects.

9.1.4 The Ministry of Finance (PPP Monitoring and Evaluation Unit): The Unit will carry the mandate of the PPP Monitoring and Evaluation function and for the most part this is to ensure coordination of the review and screening of PPP projects in the interest of protecting the public interest. The review function, above all, assesses the relevant financial risks exposure to government which may be associated with the project. The Monitoring and Evaluation Unit carries out a review at different stages of the project cycle of all projects submitted by MCAs and which would have been developed with the support of the PPPC. On the basis of this assessment the Ministry of Finance shall approve (or reject) specific aspects of PPP project in order to ensure fiscal sustainability, financial and economic viability and robustness of contracts over the long term. Some of the review functions are not new as these are already being carried out by MoF departments or other MCAs. The purpose of creating the PPP Monitoring and Evaluation Unit in the Ministry of Finance is to have a one-stop office that will systematise and coordinate the different inputs needed. With respect to reviews which are not currently being undertaken by any part of the Government, the PPP Monitoring and Evaluation Unit would be required to develop these skills within the MoF. The PPPC will work with MoF in ensuring that PPP functions within the ambit of the Public Finance Management Act as well as ensuring that there is coordination in developing the necessary review guidelines. MOF will ensure fiscal sustainability for PPP projects, considering both direct and contingent liabilities on government's finances including guarantees, arising from each PPP project. Specifically, MOF will be responsible for the following:

- Fiscal impact: assessing the long-term fiscal impact of the PPP project (direct or contingent, explicit or implicit) and determining whether it is acceptable, given other national priorities;

- Government support: confirming the appropriateness of the project for sovereign guarantees (debt or specific-event) or other kinds of government support.

- Will establish processes to incorporate PPP project development into the annual budgeting exercise, and fund direct as well as contingent (unanticipated) calls on the budget. MoF shall therefore ensure that any payments to be made by MCAs under the PPP contract are consistent with the national budget.

9.1.5 The Public Private Partnership Commission: The Privatization Commission will be the implementation Agency for PPPs and will be renamed as the PPP Commission after the PPP law is passed. The rationale for choosing the Commission is based on its extensive experience accumulated over the years in managing privatisation transactions. The expertise required for privatization transactions and PPPs is the same. The PPPC will be mandated to provide advice and support to the MCAs on project development and to coordinate the PPP procurement support and related services function. The PPPC will be the driver of PPP policy framework assisting MCAs to ensure that their PPP projects are carefully planned, prepared and appraised, prior to initiating a procurement process. The PPPC will manage the process for recruiting advisors to carry out feasibility studies, as well as the process to recruit transaction advisers. The PPPC will also be responsible for developing guidelines on best practices to assist sector Ministries in the roll-out of their PPP projects. The PPPC will work closely with the Ministry of Finance in the review and assessment of PPP project affordability, value-for-money, feasibility, and contingent liabilities associated with PPP projects. More specifically, the PPPC will provide advice and support in the following areas:

- Development of infrastructure sector policies and strategies where necessary to accommodate private sector financing and operation of public services;
- *Project Identification:* Support with identification of infrastructure projects appropriate for PPPs, Project concept development and exploration of different PPP options and undertaking pre-feasibility analysis;
- *Feasibility studies:* Undertaking technical, economic and financial feasibility studies, legal, environment and social appraisals, assessment of project risks and identification of solutions to mitigate those risks. This would include support in the development of financial and economic models;
- *Procurement process*: Supervising a competitive bidding process to select the best private sector offer;
- *Negotiation*: providing support to the MCA during negotiations with the private sector provider;
- *Contract management/re-negotiation*: assisting in on-going contract oversight, especially over the construction phase and assisting in contract re-negotiations that might occur over the life of the project, including re-financing;

- *Liaison with PPP Monitoring and Evaluation Unit at MOF*: *A*ssisting the MCAs in understanding the approval requirements (the Review function), helping them develop necessary documents for review and generally guiding the MCAs through the approval process.
- *Promotion and Capacity Building*: promote PPPs in Malawi and internationally, ensures public awareness amongst all stakeholders, facilitate capacity building across the various institutions and provide guidance on PPP procedures and processes.
- *Liaising to obtain financial support*: Liaise with funding agencies and international development partners with respect to obtaining financial and technical support for PPP projects.

9.1.6.The Utility Regulatory Authorities (RAs): The regulatory authorities in telecommunications, energy, transport and water usually require, under their Acts, that licenses be issued to private operators wishing to enter their respective industries. The licenses permit such operators to provide specific services in the industry. RAs will need to liaise with the CAs and the PPPC to ensure that the terms and conditions as they relate to service standards and tariff (or any other regulatory matter) are consistent with the terms of the contract between the CA and the private party. Private investors/operators will see the agreement as a binding contract and will not expect the regulator to embark on discretionary changes to the tariff and service standards outside of the terms conditions set out in the concession contract. CAs will therefore need to ensure that the RAs approve the tariff formula or tariff discovery methodology and mechanism for changing service standards before commitments are made with the private party.

10.0 The PPP Process

PPPs involve a number of players from different sectors, representing a variety of interests, and thus the relationships need to be formalized and the processes need to be followed in a systematic and transparent way. Detailed guidelines will be issue to cover all phases of the PPP project cycle. It is important to note that PPPs can take a long time to procure if these processes are not carefully followed. To improve credibility and transparency at all phases of project development, the input of both Government and the private Party shall be assessed in terms of their compliance with the legislation, regulations and the PPP process and its components, including the bidding process, local content, and the formation of a SPV.

10.1 The PPP Life Cycle Process for Government Originated Project: The PPP project cycle covers five distinct phases; project identification, initial viability assessment, project preparation and development, project procurement and the post contract phase.

10.2 MCAs (assisted by PPPC and/or qualified and experienced transaction advisors as appropriate) shall go through the following steps to ensure that PPPs are carried out rigorously:

1st step: Project Identification, Needs and Options Analysis: MCAs with the assistance of the PPPC shall conduct Needs and Options Analysis to determine the best solution to provide the service / build infrastructure i.e. traditional public procurement or PPP route.

2nd step: Initial Viability Analysis and Pre-feasibility: Preparation of a Pre-Feasibility Study including possible location(s), alignment(s) and estimates of broad project costs and an initial indication whether the project is likely to be viable and affordable. The PPPC will provide advisory support services to CAs, while the MoF Monitoring and Evaluation Unit will review and provide comments, but not a formal approval at this stage. The PPPC in association with the Monitoring and Evaluation shall provide the requirements for the pre-feasibility study and determine if a full feasibility study is required.

3rd step: **Feasibility Studies:** The Government will assess whether the proposed project is robust and meets GoM criteria for risk, viability, bankability, affordability and value for money. This includes estimates of viability gap and the need for incentives. Clearance and approval shall be sought from MOF (Monitoring and Evaluation Unit) before proceeding to the next step of the process. The CA may be able to tap into the IPF to carry out the feasibility study and related studies.

4th step: Procurement Process: Management of the procurement process will largely be the responsibility of the PPPC working in close collaboration with the MCA.

5th step: Contract Management: CAs and Regulatory Authorities (RAs) have responsibility of ensuring contract compliance, contract enforcement and contract adjustment/re-negotiation. The CAs as the landlord and signatory to the concession contract will ensure that the performance standards laid down in the agreement are met by the private party. The RAs will ensure that the tariffs and technical quality/service delivery standards are in compliance with the PPP agreement (discretionary changes will not be permitted). The PPP agreement is a commercial contract and normally requires consent on the part of the two parties in respect of any changes. Where the RA is required to issue a separate licence for the PPP agreement there will be the need to ensure that there is consistency between the two instruments. The PPPC will coordinate the recruitment of owners engineering representative where necessary to ensure that the construction contractor delivers the project according to the standards laid down in the agreement and from time to time will carry out audits of the process.

6th Step: Implementation and Appraisal: The CAs supported by the PPPC will carry out an appraisal of the entire PPP project from project identification to Implementation in order to assess the efficiency and effectiveness of project implementation. The purpose of such a review and appraisal is to draw important lessons that can be applied in future projects and to assist in the policymaking effort.

A comprehensive and regular review of the overall process shall be a core responsibility of the structures managing the development and implementation of PPPs. Reviews shall be prepared openly and transparently within an appropriate time-frame. The review shall specify implications for the procurement of infrastructure and the delivery of quality services helping to shape the future of the PPP programme. The implementation of, and adherence to, the policy framework will focus, in particular, on the consistency of conduct of the PPP process with the policy and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Malawi's PPP programme.

11.0 CONCLUSION

11.1 Government is committed to increasing private sector participation in infrastructure provision and public sector delivery, and to reducing any budget deficit. But cost savings are not the only consideration in justifying PPP but rather the Government would also like to see improved service delivery from its PPP programme. Over the next few years, appropriate incentives associated with broader reform initiatives will be set in place to encourage sector ministries to consider PPP for their capital projects. Procurement practices for PPP will be structured in line with international best practices, Sector studies will be carried out to review policy and strategy and to identify potential areas for private participation. GoM hopes to develop list of projects to form the initial a pipeline of PPP projects for the approval of Cabinet. Capacity building will continue to be strengthened and more targeted towards implementing Ministries. Public awareness in relation to the PPPs and consensus building with all stakeholders will form essential components of the PPP programme.

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