

# SOUTH AFRICAN PPP REGULATORY FRAMEWORK

KZN PROVINCIAL TREASURY: PUBLIC-PRIVATE PARTNERSHIP (PPP) SUMMIT



National Treasury  
REPUBLIC OF SOUTH AFRICA

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# 1. DEFINITION OF A PPP

## **A PPP is defined in South African law as:**

- A contract between government institution and private party; Private party performs an institutional function and/or uses state property in terms of output specifications;
- Substantial project risk (financial, technical, operational) transferred to the private party;
- Private party benefits through unitary payments from government budget and/or user fees.

## 2. KEY ACTS, REGULATION AND GUIDELINES

### ❏ Public Finance Management Act

- Treasury Regulation 16
  - PPP Manual
  - Standardised PPP Provisions
  - PPP Toolkit for Tourism

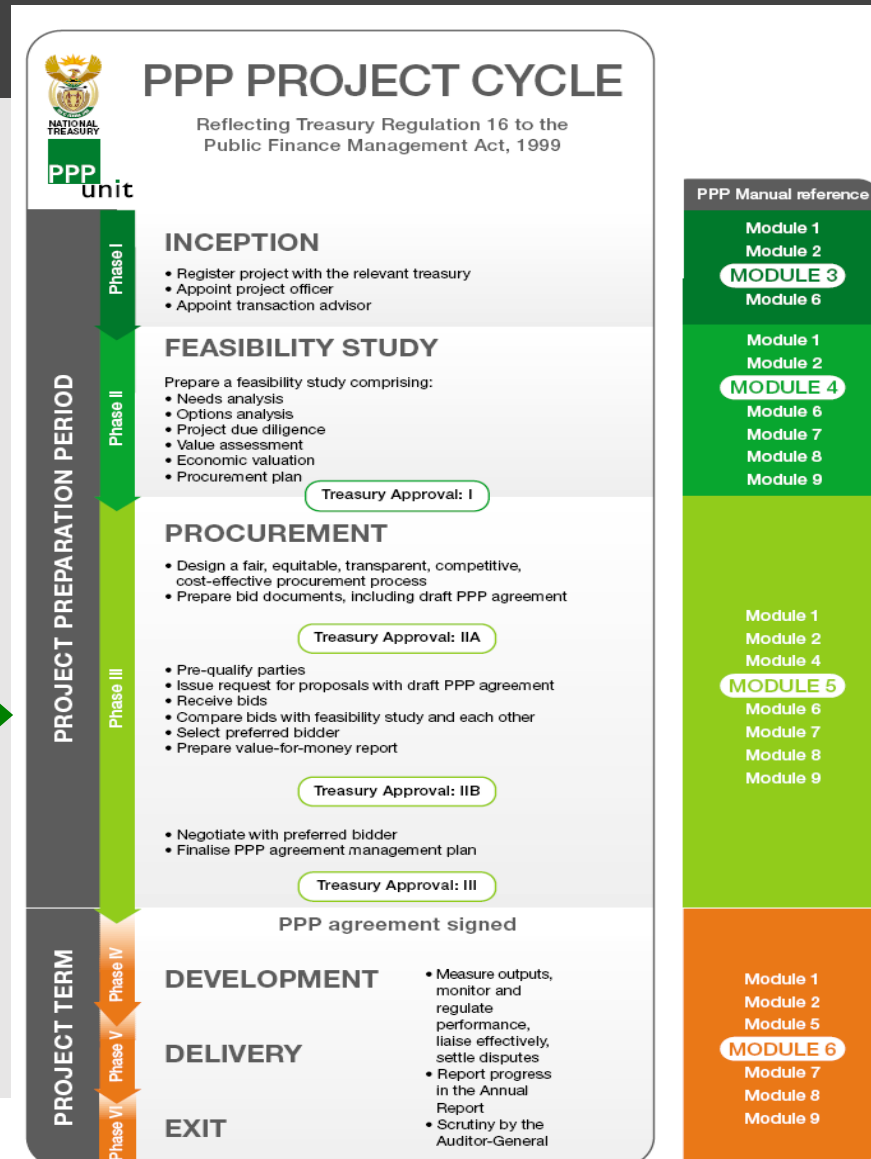
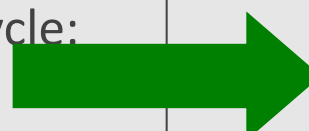
### ❏ Municipal Finance Management Act

- Municipal PPP Regulations
- Municipal Service Deliver and PPP Guidelines

# KEY REGULATORY FEATURES OF A PPP

## Key PPP Regulatory Features

- Three tests for a PPP:
  - **Affordability**
  - **Value for money**
  - **Appropriate risk transfer**
- Applied in a set PPP project cycle:
  - Inception
  - Feasibility
  - Procurement
  - PPP agreement management



### 3. HOW ARE PPPS REGULATED?

| STAGE             | REGULATORY FUNCTION (NATIONAL TREASURY BUDGET OFFICE)   | ADVISORY FUNCTION (GTAC PPP UNIT)   |
|-------------------|---|---|
| Inception         | <ul style="list-style-type: none"> <li>○ Receive applications and registers project.</li> </ul>   | <ul style="list-style-type: none"> <li>○ Advises on the process of applying for registration.</li> </ul>  |
| Feasibility Stage | <ul style="list-style-type: none"> <li>○ Review the outputs and recommendations of the feasibility study.</li> </ul>  | <ul style="list-style-type: none"> <li>○ Technical support and advice in the development of a feasibility study.</li> </ul>   |
| Procurement Stage | <ul style="list-style-type: none"> <li>○ Reviews procurement documents and the draft PPP Agreement before they are issued to prospective bidders.</li> </ul>  | <ul style="list-style-type: none"> <li>○ Technical support and advice in the development of procurement documents and the draft PPP Agreement.</li> </ul>   |
|                   | <ul style="list-style-type: none"> <li>○ Reviews the bid evaluation report and ensure that there is demonstration of affordability, value for money and substantial technical, operational and financial risk.</li> </ul> | <ul style="list-style-type: none"> <li>○ Technical support and advice in the preparation of the bid evaluation report and ensuring that the PPP Agreement continues to meet the PPP tests.</li> </ul> |
|                   | <ul style="list-style-type: none"> <li>○ Ensures that there is a proper contract management in place.</li> </ul>  | <ul style="list-style-type: none"> <li>○ Confirm that the Institution has put in place a management plan and has the capacity to manage the PPP contract over its duration.</li> </ul>                |

## 4. REVIEW RECOMMENDATIONS AND PROPOSED AMENDMENTS

### Recommendations for ppp Framework review

1. Simplifying and rationalising the PPP legal and regulatory framework.
2. Strengthening institutional arrangements and accountability.
3. Streamlining processes in the PPP framework and manual to provide clear guidance.

### Proposed amendments to ppp regulations

- Key aspects of the proposed amendments:
  - Simplification of Procurement making the procurement process less complex by setting up two pathways for PPPs – a simplified version for low value (<R2 billion) projects and one for high value projects.
  - Building procedural efficiencies and accelerating project development by reducing red-tape and bureaucracy through a clear framework for granting exemptions (TA/TVR IIA and TA/TVR IIB) for low value projects .
  - Improving discipline in project execution by the imposition of judicial limitation on Accounting Officers from abandoning projects without good cause.
  - Clarifying institutional roles and strengthening capacity (technical/advisory and regulatory mandates). This will improve compliance clarity and help stakeholders to discharge their duties.
  - Inclusion of Unsolicited proposals in the Regulations

# CONTACT DETAILS

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