

GENERAL INFORMATION

Capital: Bissau

Population: 2.061 Million (2021)

GDP (USD): 1.639 Billion (2021)

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts

- Law No. 2/2021, of 26 March – Public Private Partnership Law (“PPP Law”).

Other applicable sectoral laws

- Law Decree No. 2/2012, of 20 August – Public Contracts Code (“PC Code”).
- Law No. 13/2011, of 6 July – Investment Code.

PPP Unit

(Articles 9, 10, and 11 of the PPP Law)

- The Public Private Partnership Unit (“PPP Unit”) is named the Project Monitoring Unit (*Unidade de Seguimento de Projectos*). The PPP Unit is an administrative entity reporting directly to the Government member responsible for the Economy (Article 9).
- The PPP Unit's mission is to participate in the preparation, development, execution and global monitoring of partnerships, as well as to provide technical support to the Government member in charge of the economy (Article 10).
- The PPP Unit, within the scope of partnership processes, by determination of the members of the Government in charge of Economy and the project in accordance with the conditions defined by them, may provide technical support in the management of contracts signed by public partners (Article 11).

Definition

(Article 2 of the PPP Law)

- A public-private partnership is a contract through which a private entity, designated as a private partner, undertakes to a public partner, to ensure the development of an activity tending to satisfy a collective need, in which the responsibility for investment, financing, exploitation, and associated risks, are incumbent, in whole or in part, on the private partner.
- The public partners are: (i) the State; (ii) State public entities; (iii) autonomous funds and services; (iv) public companies; and (v) other entities created by the entities referred to herein.

General Principles

- No specific provision.

Tendering and Contracting procedures/Choice of the private partnership

- The process begins when a direct administration service or public partner submits a project proposal to the member of the Government responsible for the respective area, indicating,

(Articles 27, 29, and 48 of the PPP Law and Article 32 - 42 of the PC Code)

namely, the object of the partnership, the objectives to be achieved, its economic rationale, and the respective financial viability.

- The choice of procedure for the formation of the Public-Private Partnership Contract must comply with the regime provided for in the PC Code (Art. 25 (1) PPP Law).
- The PC Law establishes the following procedures: (i) open tender (Art. 34 PC Code); (ii) open tender with pre-qualification (Art. 35 PC Code); (iii) restricted tender (Art. 36 PC Code); (iv) two-stage tender (Art. 37 PC Code); and (v) direct award contract (Art. 42 PC Code).
- The Council of Ministers may resort to competitive dialogue when the object of the partnership and the concrete definitions of the type of services and their form is particularly complex, observing the following phases: (i) invitation to tender, or notice to pre-qualify bidders; (ii) pre-qualification of candidates (if applicable); (iii) presentation of the solutions proposed by the bidders; (iv) dialogue with the bidders; (v) preparation, analysis and evaluation of proposals; (vi) award of the successful tender.
- The decision to contract is taken by the Council of Ministers.

Project Evaluation

(Articles 25 and 30 of the PPP Law)

- Bidding and award of the partnership contract is defined by the Council of Ministers, in compliance with the PC Code.
- The environmental impact assessment, when required under the applicable law, must be obtained before the launch of the partnership.
- The criteria for selecting bids in the competitive dialogue procedure should result from a combination of several factors, such as (i) technical adequacy of the proposed solutions; (ii) level of satisfaction of public need inherent to the project; (iii) minimum risk to the public treasury; (iv) effective transfer of risk to the private partner; (v) impact of the proposals on improving people's living conditions.

Negotiation and Signature of PPP Contracts

(Articles 53 and 54 of the PPP Law)

- The Negotiation Commission is composed of an odd number of members, with a maximum of five, three of whom in representation of the Government member in charge of the economy and two from the project sector.
- It is up to the Negotiation Committee to develop the actions deemed necessary for the conclusion of the negotiations, namely: (i) represent the public partner in negotiation sessions with the private partner; (ii) promote, during the negotiation

process, effective articulation with the service or entity that represents the public partner in the respective contract, with a view to giving greater speed and efficiency to the development and conclusion of the corresponding process; (iii) negotiate the solutions and measures it considers most in line with the defence of the public interest; (iv) to prepare the draft report to be submitted for superior approval, justifying in it the consensus obtained and/or the solutions proposed; (v) present the minutes of the legal instruments that are necessary to conclude the negotiation process. The Council of Ministers decides on the approval of the negotiation report.

- No specific provision in the law regarding the signature.

Rights and Obligations of the public partner

(Article 5 of the PPP Law)

- The public partner is responsible for monitoring, evaluating and controlling the implementation of the object of the partnership, in order to ensure that the underlying objectives of public interest are achieved.

Rights and Obligations of the private partner

(Articles 5 and 7 of the PPP Law and Article 3 of the Investment Code)

- The private partner is responsible for carrying out the contracted activity, in accordance with the contracted terms, as well as for financing it, wholly or in part.
- The public private partnership contract must provide for the sharing of benefits and guarantees by the private partner.

Obligations of both public and private partners

(Articles 6 and 15 of the PPP Law)

- The sharing of risks between public and private partners must be clearly identified contractually, observing defined rules, including the following: (i) the different risks inherent to the partnership should be shared between the parties according to their respective capacity to manage them; (ii) a significant and effective transfer of risk to the private sector (Article 6).
- The public partner and the private partners shall provide the PPP Unit and the entities in charge of the supervision of the partnerships with all the collaboration that may be necessary, namely the supply of any information requested in relation to the partnership processes.

PPP COUNTRY PROFILE – GUINEA BISSAU

**Applicable
Resolution**

Law/Dispute - No specific provision.

EXAMPLES OF PROJECTS STRUCTURED AS PPP

Electricity

Electricidade e Águas de Guiné-Bissau