



GUIDELINES FOR THE MANAGEMENT OF CONTINGENT LIABILITIES

JUNE 2020



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TABLE OF CONTENTS

LIST OF ACRONYMS	4
DEFINITIONS	5
FOREWORD	8
PREFACE	9
CHAPTER 1 – INTRODUCTION	11
1.1 Aim of the Guidelines	12
1.2 Scope of the Guidelines	12
1.3 Review of the Guidelines	12
1.4 Structure of the Document	13
CHAPTER 2 – LEGAL AND POLICY FRAMEWORK	15
2.1 Primary Legislation	15
2.2 Other Acts and Policies	17
CHAPTER 3 – PROCEDURE FOR APPROVAL OF LOAN GUARANTEES	19
3.1 Objectives of Loan Guarantees	19
3.2 Eligibility Criteria for Guarantee Beneficiaries	19
3.3 Ineligibility for Beneficiaries	20
3.4 Approval Process of Loan Guarantees	21
3.5 Setting of Loan Guarantee Terms	23
CHAPTER 4 – MONITORING OF LOAN GUARANTEES	28
4.1 Monitoring of Loan Guarantees	28
4.2 Required Information Sharing by Beneficiaries	29
CHAPTER 5 – PUBLIC PRIVATE PARTERSHIPS	31
5.1 Overview of Direct and Contingent Liabilities from Public Private Partnerships	32

5.2	Management of Contingent Liabilities	33
5.2.1	During Project Development Stage	34
5.2.2	Approval and Acceptance	38
5.2.3	During Project Implementation Stage	39
CHAPTER 6 – UNGUARANTEED LIABILITIES OF PUBLIC ENTITIES		44
6.1	Key Principles for the Assessment of Unguaranteed Debt Requests	44
6.2	Eligibility Criteria for Beneficiaries of Authorizations-to-Borrow	45
6.3	Approval Process of Requests for Authorizations-to-Borrow	45
6.4	Monitoring of Unguaranteed Debt Liabilities	47
6.5	Required Information Sharing by Beneficiaries	47
CHAPTER 7 – RISK ASSESSMENT OF LOAN GUARANTEES AND UNGUARANTEED DEBT LIABILITIES		49
7.1	General Benchmarks for Loan Guarantees	49
7.2	Identification and Mapping of Overall Risk Profile	49
7.3	Credit Risk Quantification and Benchmarks of Beneficiaries	51
7.4	Expected Loss from Contingent Liabilities	54
7.5	Affordability Indicators for PPP Projects	55
7.6	Qualitative Benchmarks	55
CHAPTER 8 – LEGAL ACTION AND COURT CASES		57
8.1	Recording of Legal Claims	57
8.2	Monitoring of fiscal risks from legal claims	57
8.3	Reporting on Contingent Liabilities from Legal Proceedings	58
CHAPTER 9 – REPORTING ON CONTINGENT LIABILITIES		60
CHAPTER 10 – INSTITUTIONAL ARRANGEMENTS		63
10.1	Arrangements for Loan Guarantees and Unguaranteed Debt	63
10.2	Arrangements for Direct and Contingent Liabilities from PPPs	64

ANNEX 1. Overview Information-Sharing by Guarantee Beneficiaries	66
ANNEX 2. Overview Information-Sharing by Contracting Authorities of Commitments and Fiscal Risks from PPP Arrangements	68
ANNEX 3. Overview Information-Sharing by Beneficiaries of Authorizations-to-Borrow	70
ANNEX 4. Scorecard for the Credit Rating of Beneficiaries	72
ANNEX 5. Overview Information-Sharing by Ministries on Legal Proceedings and Court Cases	73

LIST OF ACRONYMS

AG	-	Accountant General
CA	-	Contracting Authority
DARC	-	Development Assistance and Regional Corporation Department
DB	-	Directorate of Budget
DDCP	-	Directorate Debt and Cash Policy (Management)
DEA	-	Directorate of Economic Affairs
DMFAS	-	Debt Management and Financial Analysis System
DPID	-	Debt Policy and Issuance Department
FRS	-	Fiscal Risk Statement
GoU	-	Government of Uganda
GDP	-	Gross Domestic Product
IAS	-	International Accounting Standards
ICPAU	-	Institute of Chartered Public Accountants Uganda
MoFPED	-	Ministry of Finance, Planning and Economic Development
NDP	-	National Development Plan
OAG	-	Office of the Auditor General
PDMF	-	Public Debt Management Framework 2013
PFM Act	-	Public Finance & Management Act 2015
PPP	-	Public Private Partnership
PPP Unit	-	Public Private Partnership Unit
PS/ST	-	Permanent Secretary and Secretary to the Treasury
SOEs	-	State-owned enterprises
TOP	-	Treasury operations
TSD	-	Treasury Services Directorate

DEFINITIONS

In this document, unless the context otherwise requires:

“Accountant General” means the person appointed as such in the public service.

“Appropriation” means an authorization made under an Appropriation Act permitting payment out of the Consolidated Fund or the Petroleum Fund under specified conditions or for a specified purpose.

“Central government debt” means a financial claim on the central government that requires payment by central government, of the principal, or the principal and the interest, to a creditor.

“Contingent liability” means a possible obligation that arises from past events whose existence will only be confirmed by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of an entity.

“Development expenditure” means a cost incurred in order to create assets that will provide long-term public goods, including roads, hospitals, schools and airports.

“Expenditure” means a non-repayable and a non-repaying payment by government, whether required or unrequired and whether for current or capital purposes.

“Explicit contingent liabilities” means contingent obligations based on contracts, laws or clear policy commitment.

“Financial distress” means a condition in which a company cannot meet, or has difficulty paying off, its financial obligations to its creditors.

“Financial year” means a period of twelve months commencing on the 1st day of July and ending on the 30th day of June of the following year.

“Guarantee” is a commitment by the government to repay the financial liabilities of another entity should that entity default.

“Guarantee beneficiary” means the entity that intends to borrow.

“Guaranteed entity” means the creditor.

“Guarantor” means the issuer of the guarantee, i.e. the Government.

“Government” means the central government.

“Implicit contingent liabilities” means political and moral obligations arising from expectations that government would intervene in the event of a crisis or disaster or when the opportunity cost of not intervening is considered to be unacceptable.

“Investment” means an expenditure on the creation or acquisition of fixed assets, inventories, other valuable physical stocks or securities.

“Liability” means a liability measured in accordance with generally accepted accounting practice and includes a liability that is contingent on an uncertain future event depending on the circumstances of the case.

“Loan guarantee” means a commitment by the government to repay the financial liabilities of another entity should that entity default.

“Minister” means the Minister responsible for finance.

“Ministry” means the Ministry responsible for finance.

“Private sector” means the part of a country’s economic system that is run by individuals and companies, rather than the government.

“Public corporation” means (i) an authority established by an Act of Parliament other than a local government, which receives a contribution from public funds, or the operations of which may, under the Act establishing it or any act relating to it, impose or create a liability upon public funds, or (ii) a public body which in a financial year receives any income from public funds.

“Public debt” means a financial claim on the public sector (including all local governments and state-owned enterprises/public corporations) that requires payment of the principal, and the interest, to a creditor.

“Public Private Partnership” (PPP) means a commercial transaction between a contracting authority and a private party where the private party performs a function of the contracting authority on behalf of the contracting authority for a specified period, and;

- Acquires the use of the property, equip or other resource of the contracting authority for the purpose of executing the agreement.
- Assumes substantial financial, technical and operational risks in connection with the performance of the function or use of the property.
- Receives a benefit for performing the function through payment by the contracting authority or charges or fees collected by the private party from the users of the infrastructure or service or both.

“Public resources” includes public money and the stores, property, assets and the loans and investments of government.

“Recurrent Expenditure” means expenditure which does not result in the creation or acquisition of fixed assets (new or second-hand). It consists mainly of expenditure on wages, salaries and supplements, purchases of goods and services and consumption of fixed capital.

“Sector” means a group of institutions or votes that have common functions, objectives and mandates.

“State-owned enterprise” means:

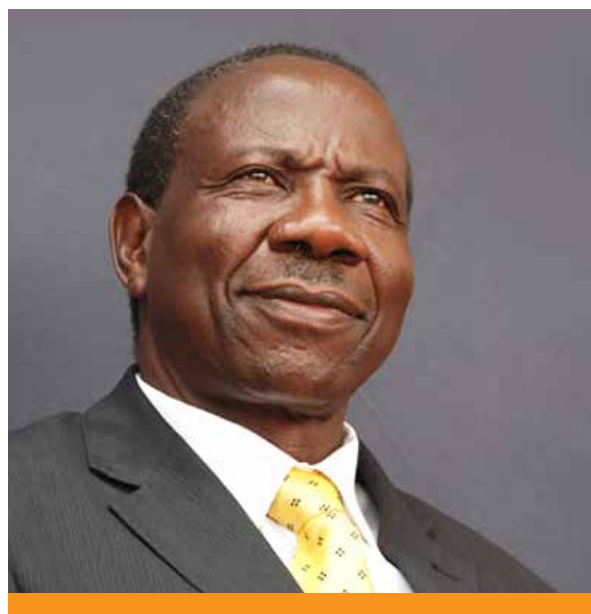
- A corporate body established under any Act other than the Companies Act or a local government council.
- A company registered under the Companies Act in which the government is able to;
- Control the composition of the board of directors of the company;
- Cast or control the casting of more than fifty percent of the maximum number of votes that might be cast at a general meeting of the company; and,
- Control more than fifty percent of the issued share capital of the company, excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital.

FOREWORD

The 2008 Global Financial Crisis increased the interest of governments to manage risks from contingent liabilities. Numerous governments faced difficulties to finance materializing contingent liabilities, like bail-outs of banks and financial support to state-owned enterprises. With these guidelines, the Government of Uganda (GoU) aims to take control and mitigate risks from contingent liabilities in Uganda.

According to the Public Finance Management Act (2015), the Ministry of Finance, Planning and Economic Development is mandated to mobilize financial resources, regulate their management and formulate policies that enhance overall economic stability and development. Essential for the Ministry 's ability to fulfill this mandate is to maintain prudent and sustainable levels of public debt. Contingent liabilities are considered part of public debt, as they may result in additional financing needs and affect the sustainability of public finances if they materialize.

These guidelines present a framework that the Government of Uganda will apply in assessing the acceptability, monitoring and reporting of Government's contingent liabilities. The main focus of the guidelines is on guarantees for credit facilities (loans), contingent liabilities from Public Private Partnerships (PPPs), and unguaranteed debt liabilities of public entities. In addition, reporting on contingent liabilities from legal action (court cases) is captured.



The guidelines have been developed in conjunction with other policy documents - like the Public Finance Management Act (2015), Public Private Partnerships Act (2015) and Public Debt Management Framework (PDMF) - and the Ministry received valuable contributions of various partners , to whom we are grateful. Implementation of the guidelines is an important milestone in the broader plan of the Government to monitor and report on all Government's contingent liabilities. This document is dynamic and will be refined and revised periodically as the Ministry of Finance expands its capacity and management activities to other types of contingent liabilities.

For God and my Country,

Matia Kasajja

Minister of Finance Planning and Economic Development



PREFACE

The Ministry of Finance, Planning and Economic Development has developed the Guidelines on the management of contingent liabilities in order to limit and mitigate the fiscal risks they pose.

The guidelines are coming at a critical time when Government finances are becoming more complex. Government is venturing into Public Private Partnerships (PPPs) as a means of seeking alternative sources of funding, as well as supporting the private sector. In addition, debt crises throughout the region have taught us that contingent liabilities can be dangerous to a country's finances if not well managed.

This document therefore, provides a systemised procedure and a set of standardised criteria for approval, monitoring and reporting of loan guarantees and unguaranteed debt liabilities as well as the management of contingent liabilities arising from PPP arrangements.

This document therefore, provides a systemised procedure and a set of standardised criteria for approval, monitoring and reporting of loan guarantees and unguaranteed debt liabilities as well as the management of contingent liabilities arising from PPP arrangements. They also provide guidance on the monitoring and reporting of contingent liabilities arising from court cases.

Regular reviews of the guidelines will be carried out in order to align them to the new developments in the financial market.

For God and my Country,

A handwritten signature in black ink, appearing to read 'Muhakanizi'.

Keith Muhakanizi
Permanent Secretary/Secretary of the Treasury

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CHAPTER 1

INTRODUCTION



CHAPTER 1 - INTRODUCTION

Given that contingent liabilities may materialize in actual spending, they may affect future public finance sustainability of the Government of Uganda. Therefore, the Government aims to limit and mitigate fiscal risks from contingent liabilities. In line with the Public Finance Management Act (2015), the Ministry of Finance, Planning and Economic Development is mandated to manage, monitor and report on contingent liabilities and their risks to fiscal sustainability.

These guidelines are coming at a critical time when the GoU is seeking alternative sources of funding to support the country's development agenda. As a means of supporting public institutions and the private sector, government may offer loan guarantees or authorisations-to-borrow,

especially where it is a pre-condition by the creditors to the institutions for accessing the funding. In addition, the government is expediting relatively new project structures, such as public private partnerships, in order to share project risks with the private sector. Such arrangements between public and private entities may also entail contingent liabilities for central government, including guarantees and termination payments. Furthermore, potential legal claims from pending court cases are a major source of contingent liabilities of the GoU.

To ensure correct monitoring and reporting practices, the use of the right terminology by the government and its stakeholders is important. Box 1 presents a set of internationally-recognized definitions for terms that are often used interchangeably.

Box 1. Distinction between liabilities, contingent liabilities, arrears and commitments

A liability is a present obligation as a result of past events, the settlement of which is expected to result in an outflow of resources (payment).

A contingent liability is a possible obligation depending on whether some uncertain future event occurs.

There are two types of contingent liabilities:

- 1. Explicit contingent liabilities:** these are possible government obligations defined by contract, law or policy. The government is legally mandated to settle an obligation in the event a policy prescribed to do so or if a beneficiary fails to settle their dues. Most common explicit contingent liabilities are loan guarantees, government-backed guarantee schemes, legal proceedings and termination clauses in PPPs.

2. Implicit contingent liabilities: these are possible government obligations not bound by contract, law or policy. They are rather political or moral obligations and arise from expectations of government intervention or when the opportunity cost of not intervening is considered to be unacceptable. Most common are financial system bail-outs, natural disasters, and support to state-owned enterprises, local governments and other publicly-aided institutions.

Expenditure arrears (including domestic arrears) are a liability, not a contingent liability, because there is a current obligation to pay.

In case of **on-lending**, the government borrows funds and on-lends proceeds to a beneficiary. On-lending is not a contingent liability, but creates a direct liability matched by an asset on a government's balance sheet, contingent on the ability and willingness of the beneficiary to service its obligations.

A commitment is a current obligation to make a payment in future on the delivery of a service or good. It is not a liability or a contingent liability, because the service or good has not been delivered, and the obligation is current and not dependent on a future event.

1.1 Aim of the Guidelines

These guidelines aim to provide public officials of the Ministry of Finance, Planning and Economic Development with a systemized procedure and a set of standardized criteria for the approval, monitoring and reporting of loan guarantees and unguaranteed debt liabilities, as well as the management of contingent liabilities from PPP arrangements and legal action (court cases). These guidelines will form part of the broader Public Debt Management Framework of the GoU.

1.2 Scope of the Guidelines

The scope of these guidelines has been limited to loan guarantees, authorizations for unguaranteed debt liabilities, and contingent liabilities from PPP arrangements and legal action (court cases).

1.3 Review of the Guidelines

These guidelines shall be reviewed periodically, and at least once every two years, and refined and revised to include a guiding framework for other contingent liabilities in the future as well.

1.4 Structure of the Document

The remainder of the document is set out as follows:

- Chapter 2 presents the current legal and policy framework.
- Chapter 3 sets out the approval process for loan guarantees.
- Chapter 4 introduces the monitoring for loan guarantees.
- Chapter 5 guides on the management of contingent liabilities from PPP arrangements.
- Chapter 6 presents guidelines for unguaranteed debt liabilities of public entities.
- Chapter 7 provides a risk assessment framework for guarantees and unguaranteed debt.
- Chapter 8 sets out the guidelines for legal action and court cases.
- Chapter 9 provides the reporting framework on contingent liabilities.
- Chapter 10 includes the institutional arrangements.

CHAPTER 2

LEGAL AND POLICY FRAMEWORK



CHAPTER 2 – LEGAL AND POLICY FRAMEWORK

This chapter provides an overview of the existing legal and policy framework pertaining to contingent liabilities.

2.1 Primary Legislation

The Constitution of the Republic of Uganda (1995)

Uganda’s current legal framework for debt management is anchored in the Constitution of the Republic of Uganda. Article 159(1) of the Constitution gives the GoU the authority to borrow from any source. Article 159(2) states that “Government shall not borrow, guarantee, or raise a loan on behalf of itself or any other public institution, authority or person except as authorized by or under an Act of Parliament.” Such an Act of Parliament “shall provide that the terms and conditions of the loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of Parliament” (Article 159(3) (a)).

The Public Finance Management Act (2015)

Section 23(1) of the PFM Act (2015) states that “a vote shall not enter into a contract, transaction, or agreement that binds the Government to a financial commitment for more than one year or which results in a contingent liability, except where the financial commitment or contingent liability is authorised by Parliament.”

In addition, Section 36(1) states that the authority to raise money by loan and to issue guarantees for and on behalf of the Government shall vest solely in the Minister of Finance and no other person, public corporation, state enterprise or local government council shall, without the prior approval of the Minister, raise any loan, issue any guarantee, or take any other action which may in any way either directly or indirectly result in a liability being incurred by the Government.

Section 39(1) requires the Minister, with the approval of Parliament, on behalf of the GoU, to guarantee the repayment of the principal and interest and the other charges on a loan raised within or outside Uganda, by; (a) a state owned enterprise, (b) a local government council, (c) any entity other than a local government council, which is required to be audited by the Auditor General, (d) or any private sector entity. Section 39(2), provides that, the Minister, prior to guaranteeing a loan shall determine that: (a) the intended purpose of the loan is consistent with government policy and is in public interest, and (b) the borrowing entity is capable of servicing the loan.

Section 39(3) states that a guarantee shall not exceed (a) the amount approved by Parliament in the Appropriation Act or Supplementary Appropriation Act of the financial year, or (b) exceed the targets for guarantee specified in the Charter for Fiscal Responsibility. However, no targets for guarantees have yet been defined in the latest official Charter for Fiscal Responsibility (2016).

Section 39(4) requires that the Minister tables before Parliament, by 1st April of each Financial Year, a report of the existing guarantees, which shall include an analysis of the risk, associated with those guarantees.

Public Private Partnerships Act (2015)

The Public Private Partnerships Act (2015) provides the legal and regulatory framework for the participation of the private sector in the design, construction, maintenance and operation of infrastructure or services through PPP agreements. Several sections of the Act relate to the approval, management and reporting on contingent liabilities from public private partnerships.

- Section 7(k) states the PPP Committee's roles and states that the Committee has to ensure the approval of, and fiscal accountability in the management of, financial and any other form of support granted by Government in the implementation of projects under the Act.
- Section 11 specifies the functions of the PPP Unit. According to Section 11((2) (g)) the Unit has to collate, analyse and disseminate information including data on contingent liabilities of the Government in relation to a project. Section 11((2) (k)) states that the Unit has to review and assess requests for Government support in relation to a project and advise the Committee on the support that should be accorded in relation to the project. Also, according to Section 11((2) (p)) the PPP Unit has to monitor contingent liabilities and accounting and budgetary issues related to public private partnerships with relevant offices within the Ministry.
- Section 13(2) specifies the role of the accounting officer, stating that an accounting officer shall not enter into an agreement that in any way binds the contracting authority to a future financial commitment or which results in a contingent liability, except where the future financial commitment or contingent liability is authorised by Parliament in the budget of the contracting authority.
- Section 22((2) (i)) states that the feasibility study of a considered project has to indicate any envisaged future contingent liability.
- Section 26((6) (p)) state that a PPP agreement shall among others provide for the grounds for termination of the agreement and the consequences of this termination.
- Section 29(2) provides for the establishment of a Project Development

Facilitation Fund, stating that the money received into the Fund shall be applied to (c) provide a source of liquidity to meet any contingent liabilities arising from a project.

The Charter for Fiscal Responsibility (2016)

Section 6.5 of the Charter for Fiscal Responsibility (2016) requires the MoFPED to include a Fiscal Risk Statement (FRS) in the annual Budget Framework Paper of the Ministry of Finance. The FRS needs to identify and analyse risks in public debt management and specific risks such as loans and guarantees, PPP, natural disasters and any other contingent liabilities. Section 6.6 requires the FRS to include a strategy for managing the fiscal risks, including Government's decisions on bearing, mitigating and absorbing the risks identified.

2.2 Other Acts and Policies

The ***Public Debt Management Framework (2018)*** requires the MoFPED to produce and publish annual estimates of contingent liabilities, including guarantees. Such guarantees should be recorded and analysed in such a manner that provides a fair estimate of the current and future budgetary implications to provide an early warning signal of any future pressures.

The Local Government Act (1997) alongside other relevant Acts state the borrowing powers of local governments and other institutions. However, these Acts are contradicted by Section 36 of the Public Finance Management Act (PFMA) 2015, which states that the prior approval of the Minister of Finance is required. The PFMA (2015) renders these Acts obsolete in this regard because the PFMA (2015) takes precedent over them.

CHAPTER 3

PROCEDURE FOR APPROVAL OF
LOAN GUARANTEES

A close-up photograph of a hand holding a metal file folder labeled "Loans" in a filing cabinet. The folder is white with black text. In the background, other folders are visible, one labeled "Consulting". The filing cabinet is made of light-colored wood or cardboard. The lighting is warm and focused on the hand and the "Loans" folder.

Loans

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CHAPTER 3 – PROCEDURE FOR APPROVAL OF LOAN GUARANTEES

This chapter sets out the approval process of guarantees for credit facilities issued by the government. Since loan guarantees may impact debt sustainability, a guarantee request or proposal should be examined in a similar manner as a request or proposal for a loan, taking into account the creditworthiness of the borrower, the amount and risks sought to be covered, and the terms of the borrowing. In addition, the justification and public purpose to be served, probabilities of the guarantee being called and the possible costs of such liabilities have to be assessed.

A guarantee referred to in this document is a ‘commitment by the government to repay the financial liabilities of another entity should that entity default’. It is a secondary obligation legally binding the government to take on an obligation, contingent upon the guarantee beneficiary’s primary contractual obligation. The management of guarantees and other contingent liabilities from PPP arrangements are covered in Chapter 5 in detail.

Guarantee arrangements are formalised in agreements between the following three parties:

- i. *Guarantor*: the government
- ii. *Guarantee beneficiary*: the entity that intends to borrow
- iii. *Guaranteed entity*: the creditor

3.1 Objectives of Loan Guarantees

A guarantee is normally extended by the government for the purpose of achieving the following:

- i. To support priority projects that may not be directly funded by the government.
- ii. Where government finds the issuance of a guarantee more cost effective than using other financial support mechanisms, like subsidies, on-lending facilities or capital injections.
- iii. If the prospective financier of the project, in the absence of a guarantee, is unwilling to take on the risk of the project, or is proposing to charge an interest rate that makes the project economically unviable. The provision of a loan guarantee should reduce the lender’s risk exposures, and therefore avail the borrower with a lower cost of finance on more favourable terms.

3.2 Eligibility Criteria for Guarantee Beneficiaries

In order to limit and mitigate risks from loan guarantees, government shall consider the issuance of guarantees to institutions only if the following criteria and principles are met:

- i. In accordance with the PFMA section 39, guarantees can be issued to a state

enterprise, a local government council, a private sector entity, or any entity other than a local government council, which is required to be audited by a reputable audit firm or an auditing firm registered by ICPAU.

- ii. Loan guarantees shall be issued to sectors that have been identified in the National Development Plan as being of 'national strategic importance' and are expected to deliver a net positive economic benefit.
- iii. Loan guarantees shall only be provided if the proceeds of the underlying facility are earmarked to fund development expenditure and not recurrent expenditure.
- iv. Any entity requesting for a loan guarantee must have existed for at least 5 years, except for the case of a special purpose vehicle under PPP arrangements that will be assessed according to the PPP Act.
- v. An entity requiring a loan guarantee by government shall only be considered if it doesn't have any outstanding non-performing obligations to the GoU.

3.3 Ineligibility for Beneficiaries¹

- i. In line with the PFMA 2015 and Section 3.2(i) of these guidelines, no loan guarantee shall be provided to private individuals, since this may raise considerable risks around accountability and transparency.
- ii. No loan guarantee shall be provided to any entity in financial distress. The entity must have met all its financial obligations, including to the government, on time in the last 3 years.
- iii. The credit risk quantification and benchmarks in section 7.3 shall be considered and any entity with an overall internal risk rating above 4 or with any individual risk indicator rated above 6 is considered as ineligible. As a minimum measure, the MoFPED shall request for additional information from the entity about how the entity plans to overcome potential financial difficulties as reflected by credit rating. If the plan presented is not satisfactory, MoFPED shall decline the request for a loan guarantee.

¹ When a beneficiary is ineligible to receive a loan guarantee, Government may still want to support the entity and its projects. Government may consider other support mechanisms, like subsidies, capital injections, on-lending or grants.

3.4 Approval Process of Loan Guarantees

The process below shall be followed for a loan guarantee to be approved.

Step 1: Submission of Application

The entity applying for a loan guarantee shall submit a request to the sector line ministry with the following documents:

- i. A profile description of the entity requesting for the guarantee.
- ii. A description of the project to be financed, including the rationale and justification.
- iii. A profile description of the lender.
- iv. Audited accounts covering the last three years. These accounts should have been audited by the Auditor General or an auditing firm registered by ICPAU.
- v. Cash flow statements of the entity covering both 3-year historical trend and projections.
- vi. Information on the debt service performance and status of credit facilities of preceding loan guarantees (if any).
- vii. Credit facility term sheet, including; the amount to be borrowed, interest rate, maturity, service charges, security/collateral, or any other terms as required by the creditor.
- viii. Proof of readiness to start the project, which shows that all conditions prerequisite to project commencement have been met.

Step 2: Sector Ministry Analysis

- i. Before any guarantee proposal is tendered, the sector line ministry shall thoroughly analyse the project and demonstrate that it is in line with the sector's strategic plan, priorities and the national planning framework and that the project cannot be financed without government's assistance (guarantee). The sector line ministry shall assess the guarantee beneficiary's eligibility on the criteria outlined above in section 3.2.
- ii. The minister responsible for the sector shall submit the proposals as well as a report with their recommendation and analysis to the MoFPED for technical analysis and assessment. The submission to MoFPED shall also include all the documents submitted.

Step 3: MoFPED Analysis and Reporting

MoFPED shall receive the same documents as outlined in step 1 above from the sector line ministry in order to carry out an assessment of the financial position of the entity. The assessment shall be carried out in consultation with other stakeholder institutions. The following elements are studied:

- i. Rationale and justification:** Have the purpose of the underlying facility and the requirement for government support been justified satisfactorily? Have other government support options such as subsidies, direct funding, on-lending and others been considered? Is a loan guarantee the best option to proceed with?
- ii. Size of exposure:** The maximum obligation for the government under the loan guarantee agreement, in case the guarantee is to crystallise. This shall be calculated over the time the guarantee is enforced.
- iii. Credit facility terms under the guarantee:** It's the mandate of MoFPED to analyse and advise on the concessionality of the financing terms of the prospective credit facility. In addition, the MoFPED can get involved in the negotiations with creditor(s) on the terms and conditions of the credit facility.
- iv. Fiscal risk and likelihood of crystallisation:** MoFPED shall assess the beneficiary's creditworthiness by considering a number of financial risk indicators and applying an internal risk rating methodology (as presented in section 7.3). Once a rating has been assigned, the rating is aligned to the Moody's risk rating methodology and a probability of financial distress is assigned. Then, this probability shall be used to analyse the expected loss from a guarantee over its lifetime

and the budgetary implications of the guarantee if a range of scenarios were to materialise. The methodology to calculate the expected loss is presented in section 7.4.

- v. Affordability and debt sustainability:** MoFPED shall assess the implication of a guarantee's maximum and expected loss on the public debt sustainability.
- vi. Risk mitigation measures:** MoFPED shall assess which measures can be taken to mitigate risks, including the issuance of partial guarantees, required collateral, covenants, and guarantee fees.

A report with the findings shall then be prepared and a memorandum with recommendations will be sent to the Minister of Finance through the PS/ST.

Step 4: Preparation of Project Financing Documents by Sector Ministry

Where the Minister of Finance agrees to support a guarantee request, the MoFPED shall request the sector ministries to prepare the project's financing documents in liaison with the creditors and beneficiaries. The sector ministry shall be involved in the implementation and procurement process of the project at the level of steering and technical committee.

Step 5: Solicitor General

The documentation shall be sent to the Solicitor General for clearance, before

approval by Cabinet and Parliament. If the guarantee agreement is cleared, the entity will prepare the final guarantee agreement and send it for Cabinet and Parliamentary Approval.

Step 6: Cabinet and Parliamentary Approval

When the documentation is prepared, the Minister of Finance shall proceed to Cabinet and subsequently table before Parliament (as required by the PFM Act 2015) for consideration.

Step 7: Signing of Loan Guarantee Agreement

The loan guarantee agreement will be signed between the GoU as guarantor, the guarantee beneficiary (borrower) and the guaranteed entity (lender). Prior to signing the guarantee agreement, a legal opinion will be sought from the Attorney General to confirm the validity of the guarantee agreement. Any entity whose credit facility has been guaranteed by the government requires to obtain the approval of the Minister prior to amending the facility agreement or prior to borrowing any further amounts as long as all or part of the guaranteed facility is outstanding.

Step 8: Record in Debt Management System

The loan guarantee will then be recorded in the Debt Management System (DMFAS), detailing the following information:

- i. The name of the beneficiary
- ii. The guarantee/transaction amount
- iii. The signature date
- iv. The issue and maturity dates

- v. Currency denomination
- vi. Conditions attached to the transaction
- vii. Relevant fees payable, including administrative fees
- viii. Repayment profile including grace periods, interest rates, interest rate types, reference rates and disbursements as and when they occur.

3.5 Setting of Loan Guarantee Terms

The loan guarantee agreement shall specify the terms and conditions of the guarantee. The terms of the guarantee contracts shall be drafted in such a way that the government's risk exposure is defined and limited in time and scope. These terms include:

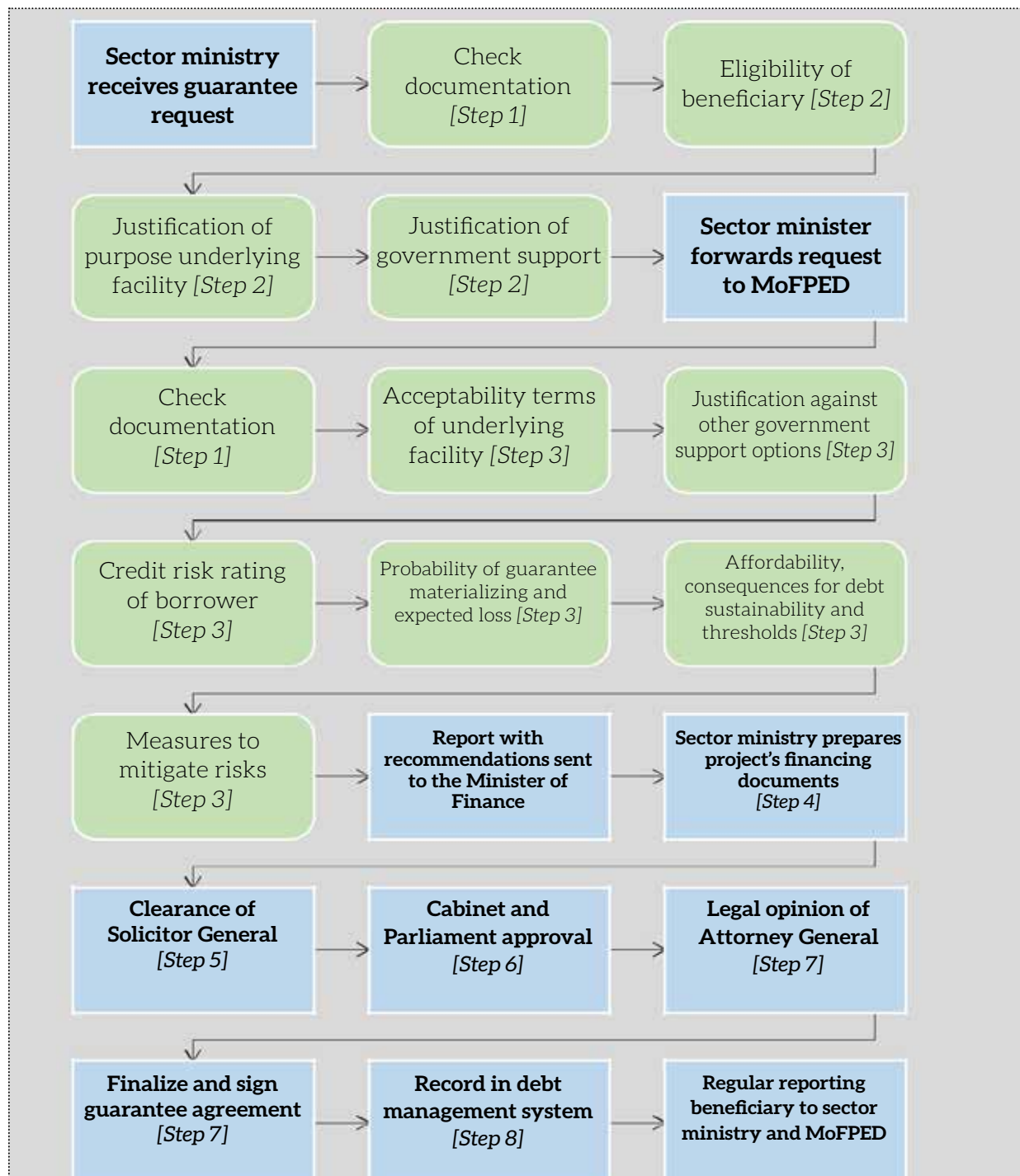
- i. Amount to be borrowed and the amount to be guaranteed:** the amount which the beneficiary borrows and the amount that will be covered by the guarantee shall be specified in the agreement. For private sector project financing, the government may choose to guarantee the whole or a part of the total required investment capital.
- ii. Intended purpose of the facility:** the use of the credit facility to be obtained should be well stipulated in the contract. It should also be well laid out that the guaranteed facility amount shall only be used for the mentioned purpose.
- iii. Guarantee coverage:** GoU shall only cover principal and interest payments of the credit facility and shall not be liable to pay any penalties and fines. The agreement should therefore stipulate the actual coverage of the guarantee.

- iv. Payment of a called guarantee:** in case of a call of any loan guarantee, the guarantee agreement should allow GoU to take on the payment schedule that is in default or restructure the guaranteed amount so that it is not payable immediately. The guarantee agreement should outline the process to determine and pay a guaranteed amount, should a guarantee be called, including a time limit for calling the guarantee and any cure period for the default.
- v. Guarantee fee:** GoU shall charge a guarantee fee of 0.3% per year of the guarantee duration on the beneficiary. This shall be charged on the total nominal value of the guaranteed facility ². The cumulative fee for any guarantee is capped at 2% of the nominal value. The GoU monitors the financial position and credit rating of the beneficiary regularly and reviews the debt service performance on the underlying credit facility. In case the beneficiary's financing position is inadequate or deteriorating, the risk rating increases or the debt service performance is unsatisfactory, the GoU can decide to charge an ad-hoc additional fee of up to 0.7% per year, which is not bound by the 2% cap.
- vi. Payment of guarantee fee:** The fees for the entire duration of the guarantee arrangement shall be payable upfront. The beneficiary shall complete the payment within 30 days after the issue date of the guarantee agreement. Ad-hoc additional fees are also payable within 30 days after the communication. The proceeds from these fees shall be deposited into a separate account as specified in the agreement. This account shall be opened, managed and monitored by the Office of the Accountant General.
- vii. GoU recourse (reimbursement) of a called guarantee:** In case a guarantee is called, the GoU shall be obliged to pay dues up to an amount equal to the total outstanding credit facility amount at that time. The creditor shall invoke the guarantee within a time limit not exceeding 90 days of the default. Guarantee agreements should identify and agree on a credible plan outlining how GoU will seek recourse should a guarantee be called. The plan could include:
- Capitalization of any guaranteed amount, paid by GoU on behalf of a beneficiary, as a debt owing to GoU on the beneficiary's balance sheet.

² There are several reasons for charging a risk-based guarantee fees, including to (i) limit moral hazard by the beneficiaries and lenders and (ii) avoid the perception of market intervention by the government. Moral hazard might arise from a guarantee as a guarantee decreases the incentive for the lender to monitor a borrower to ensure their solvency and reduce the likelihood of default. Where the credit facility is guaranteed, the lender does not face the same risk, as the facility and interest will be repaid irrespective of whether the borrower takes excessive risks which increase the probability of default.

- Where possible, security/possession should be taken over guarantee beneficiary's assets to align incentives between the beneficiary and the guarantor and to reduce the negative financial impact on the guarantor should a guarantee be called.
 - Deem the entity ineligible for future guarantees or on-lending arrangements.
 - With respect to private companies, clauses should be included in the agreement which will provide for the transfer of assets that have been encumbered to GoU.
- viii. Additional borrowing:** any entity whose credit facility has been guaranteed by the government requires to obtain the approval of the Minister prior to amending the facility agreement or prior to borrowing any further amounts from any financial institution as long as all or part of the guaranteed facility is outstanding..
- ix. Reporting requirements:** the guarantee agreement shall specify the reporting requirements of the guarantee beneficiary to MoFPED and the respective sector ministry. An overview of all information that the beneficiaries need to make available is provided in Annex 1. These requirements shall be in line with the monitoring requirements set out in chapter 4.

Box 2. Schematic approval process loan guarantees [More detail in the text of chapter 3.4]



CHAPTER 4

MONITORING OF LOAN GUARANTEES



CHAPTER 4 – MONITORING OF LOAN GUARANTEES

Regular monitoring and reporting on loan guarantees ensure that the GoU is aware of the changing risks and conditions associated with guarantees and should influence decisions on risk mitigation measures on current guarantees as well as on the approval of future guarantees. Furthermore, the government shall set controls on risk-taking for the parties involved to limit moral hazard.

4.1 Monitoring of Loan Guarantees

Below are the measures for monitoring loan guarantees. These measures shall all be explicitly included in all loan guarantee agreements.

- i. The MoFPED, through the Accountant General, shall ensure that a register of loan guarantees is maintained:
 - To keep a record of guarantees.
 - To retain information required from time to time in respect to guarantees.
 - To keep a record of the periodical reviews.

This register shall include information on:

- i. The contractual terms and conditions on guarantees and credit facilities.
- ii. The performance of underlying obligations in respect to guarantees.

- ii. In order to monitor the performance of loan guarantees, the beneficiary shall be required to provide information quarterly or upon request of the sector ministry or the MoFPED, as outlined in section 4.2.
- iii. In order to safeguard its interest and mitigate moral hazard, GoU shall regulate and monitor the use of the guaranteed funds. The Government may choose to put restrictions on the usage of resources under the guarantee. This could help to mitigate any incentive for wilful default.
- iv. If a loan guarantee is deemed more likely than not to crystallise (50%), then the GoU shall provision for the guarantee. In other words, if it is estimated that it is more likely than not that the entity covered by the guarantee will be unable to repay the credit facility, the government shall provide for the guarantee on its balance sheet.
- v. All guarantee beneficiaries shall be required to be audited annually by the Auditor General or an auditor appointed by ICPAU in recommendation of the Auditor General.
- vi. The sector line ministry shall be involved in periodic monitoring of these projects to ensure attainment of sector strategies and goals.

4.2 Required Information Sharing by Beneficiaries

The guarantee beneficiaries shall provide periodic information, including audited financial statements, payment advice or any statements showing payments of the outstanding amount in both nominal and present value terms and an estimate of the nominal cash out-flows. The information is provided on a quarterly basis, or a period that may be agreed upon by MoFPED. This shall provide a reliable basis to monitor

the guarantees' solvency and liquidity risk exposures respectively. An overview of all information that the guarantee beneficiaries need to make available to MoFPED is provided in Annex 1.



CHAPTER 5

PUBLIC PRIVATE PARTNERSHIPS



CHAPTER 5 – PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships (PPPs) are cooperative arrangements between government and a private party, in which project risks are shared between the public and private sector. Financing is secured by the private party for the construction, operation and maintenance of an asset in return for direct promised payments from government or indirect payments from users over the agreed period of time.

PPPs provide an important alternative source of investment from the private sector in the infrastructure and services sectors in particular. In addition, PPPs introduce private sector expertise, operational efficiency, technology, and innovation in often government-dominated sectors. Therefore, PPPs have the potential to accelerate better-quality infrastructure and service delivery, provided that risk allocation between the Government and the private entities is appropriate.

However, even with appropriate risk allocation, the public sectors' contributions to the "partnership" of PPPs inevitably give rise to liabilities for the Government which must be managed effectively. PPPs can provide private sector financing which can help to meet financing gaps – and the available public funds can be spread over a longer period of time – but in the long term the Government still has to repay the private party for the investment. Under a PPP arrangement, the Government almost always bears some risk

or provides financial support that give rise to an on-going fiscal commitment - either an actual direct liability or a contingent liability. In this regard, Uganda aspires to a fiscally responsible implementation of its PPP programme.

This chapter introduces guidelines that need to ensure that (contingent) liabilities are identified and managed through all stages of a PPP project. Overall, it is important to note that Government commitments to PPPs are materially different to central government debt and require a different management approach. When a government borrows, it uses the borrowed funds and the Government is obliged to repay the debt regardless of how well the borrowed funds are used. In contrast, Government liabilities to PPPs are in the nature of payments for services delivered. Payments are linked to the availability of an asset and performance of the service provider.

5.1 Overview of Direct and Contingent Liabilities from Public Private Partnerships

Various direct and contingent liabilities are involved in PPP arrangements. Table 1 provides an overview of all direct and contingent liabilities that can be found in PPP agreements.

Table 1. Overview of direct, explicit and contingent liabilities from PPP arrangements

Direct liability	Explicit Contingent liability
1. Upfront viability gap payment: a capital contribution for economically-desirable but commercially-unattractive project.	1. Credit facility guarantee (covered in Chapter 4).
2. Land acquisition and resettlement.	2. Revenue guarantee.
3. Annuity or availability payments: regular unitary payments over the project lifetime, conditional on the service or asset availability.	3. Guarantee over periodical payment by state-owned enterprise, local or subnational government entity.
4. Output-based payments or payments made per unit or user of a service.	4. Guarantee on a specific risk variable e.g. exchange rate, inflation, prices and traffic.
	5. Increase of existing obligations or creation of new obligations from contract adjustments and renegotiations. ³
	6. Force majeure.
	7. Termination payments: payments in the event of termination. GOU default will result in a compensation for debt due and compensation for equity. Private partner default will result in payout of only debt due.
	Implicit Contingent Liability
	1. Unguaranteed debt (authorizations-to-borrow, covered in Chapter 6).
	2. Recovery of any liability in the case of political or social sensitive projects which may be expected to be rescued by Government if financial distress occurs.
	3. Changes to the agreement due to renegotiations.
	4. Damages caused outside the scope of the contract.

³ Section 26(9) of the PPP Act 2015 states that Cabinet shall not approve an amendment or variation to a Project Agreement unless (amongst others) the amendment is necessary for the project to continue to be affordable, where such amendment, variation or waiver had a financial implication or is necessary for the project to continue to provide value for money. This obligates the accounting officer, PPP Unit and the DDCP to assess the financial implications of any amendment and variation of the project agreement to ensure that the project continues to be affordable.

Note that even though direct liabilities are often considered to be more predictable than contingent liabilities, this is not always the case for PPP projects. Direct liabilities can also include uncertain components within its structure. For example, the project agreement of a toll road project may include a service payment defined as an annual payment to be made by the Government to the concessionaire in function of availability characteristics. This service payment can change due to movements in inflation, exchange rate, local interest rate, change of scope, increase of road size, and other components. This shows that direct liabilities can have a significant amount of uncertainty for Government.

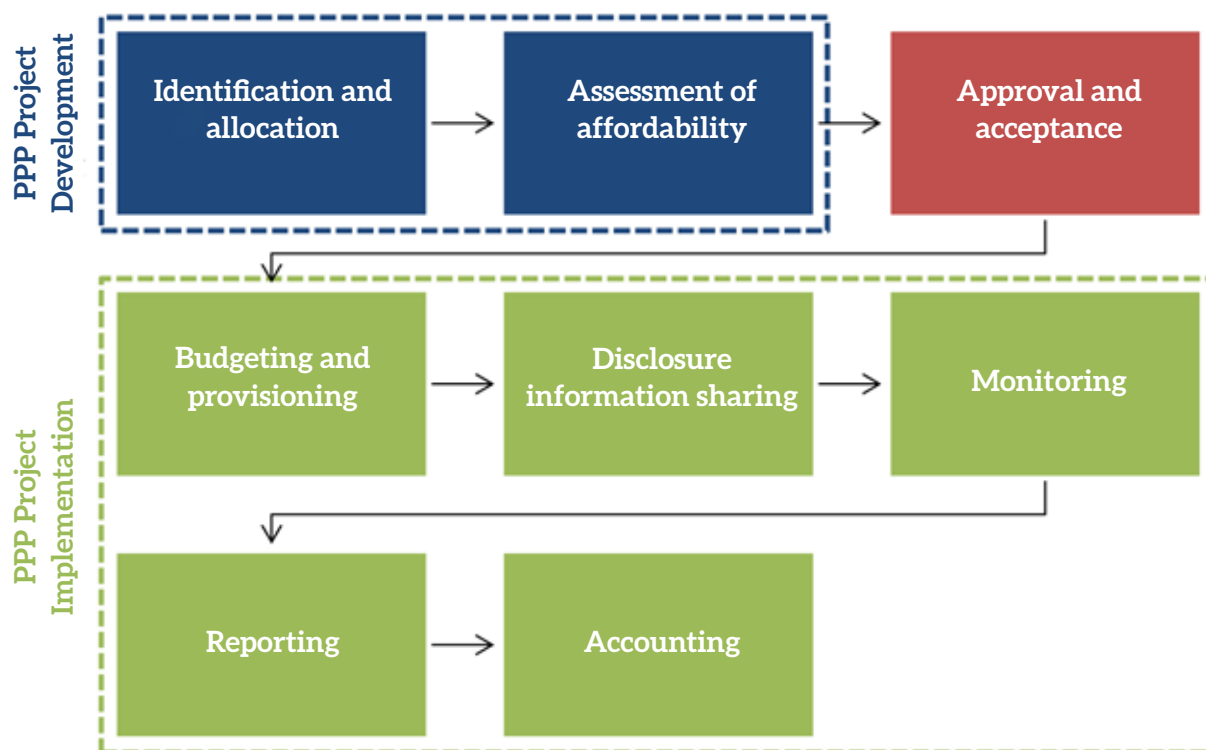
Other Fiscal Risks

Other sources of fiscal risk are outside the scope of liabilities to be paid by the Government to the private partners. For instance, a reduction of user-based revenues used by the Government to fund a project. This reduction does not affect the liabilities of the Government owned to the concessionaire (that may be fixed and independent of user-revenues performance) but it does have a fiscal impact.

5.2 Management of Contingent Liabilities

The management of contingent liabilities is carried out in two stages, both in the (1) PPP project development stage and (2) PPP project implementation stage. In between the two stages, the PPP structure gets approved and accepted by the Government. Figure 1 shows the different functions to be undertaken in context of the broader PPP project development and implementation process. In Chapter 10.2 the roles and responsibilities of the various institutions in the management of direct and contingent liabilities during a PPP project lifecycle are presented.

Figure 1. Functional components of managing direct and contingent liabilities



5.2.1 During Project Development Stage

The project development stage covers all the steps taken to design, evaluate, and tender the project. The management process of contingent liabilities for the project development stage consists of four steps:

1. Identification and allocation of contingent liabilities and fiscal risks using the fiscal risk register and summary risk profile;
2. Identification of contingent liabilities and fiscal risks using the fiscal commitment register;
3. Assessment of the risks and advice from sector ministries, agencies and other experts;
4. Assessment of affordability.

Following all steps will help the involved parties to take well-informed decisions regarding the financial structure, risk allocation, and approval of the project.

Step 1: Identification and allocation of (contingent) liabilities and fiscal risks using the fiscal risk register and summary risk profile.

Firstly, Contracting Authorities should identify the various types of contingent liabilities and fiscal risks involved within the project structure. In practice, the base information needed shall be found in the risk analysis and risk matrix within feasibility studies. Contracting Authorities therefore need to ensure that identification of contingent liabilities and risks is a task specified in the terms of reference for the transaction advisor, as appointed under Section 21(3) of the PPP Act. For already active projects, these liabilities and risks would be found in the project and financing agreements.

The establishment of a fiscal risk register for every PPP will allow the Government to identify risks and any corresponding mitigation and monitoring measures. The fiscal risk register shall complement the project agreement and identifies risks and mitigation measures specifically. Table 2 shows an example of such a fiscal risk register. The register shall contain only risks that are allocated partially or totally to the Government. It describes the risk, allocation, cost, likelihood of materializing and potential fiscal impact, as well as mitigation actions Government can take.

Table 2. Format of the fiscal risk register

Risk	Description	Allocation of risks	Cost	Likelihood	Fiscal impact	Government mitigation measures
Project	XXX					
Risk A	Describe nature of risk	Which entity carries the risk (can be multiple entities) (Central Government /SOE/Local authority/ other)	Estimated fiscal impact on Government when risk materializes	Probability or risk materialising for Government (low/medium high)	Impact of the estimated cost of risk on the Government budget or GDP (low/medium high)	List possible mitigation measures for Government (see Box 3)
Risk B	-	-	-	-	-	-

Table 11 Section 7.3 can be used as a guide for filling in the fiscal risk register for grading on likelihood and fiscal impact.

Box 3. Risk mitigation measures for Government

Risk mitigation measures for Government are important to formulate management responses and actions to reduce and control identified and materializing risks. The benefits of managing risk appropriately are (i) to facilitate informed and systematic decision making, (ii) minimise consequences of risks, and (iii) give an improved understanding of the project's risks.

The following three types of mitigation measures Government can take:

1. **Preventive measures:** to limit the possibility of an undesirable outcome. Some examples are: insurances, partial guarantees (such as those provided by financial institutions to mitigate the risk of public entity failing to perform its financial obligations), financial instruments (to mitigate financial risks, such as interest rate, exchange rate, commodity prices) and cap-provisions.
2. **Corrective measures:** to correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of termination of contract.
3. **Detective measures:** to identify occasions of undesirable outcomes. Here we find all monitoring activities and reports. For example, if Government provides a termination payment in case of default of contracting authority, it shall monitor financial performance and compliance of obligations of contracting authority.

In addition to the fiscal risk register, it is recommended that the Contracting Authority also create a Summary Risk Profile for each project (like illustrated in Figure 2 in Section 7.2). This summary of the risk profile will allow the Government to compare the different risks in terms of impact and likelihood. The information in the column likelihood and fiscal impact in Table 2 is used to map the risk to the appropriate cells in the summary risk profile. The fiscal risks to the right-hand side of the risk tolerance line are the ones that will have a significant fiscal impact on the Government.

Step 2: Registration of (contingent) liabilities and fiscal risks in the fiscal commitments register.

Direct and contingent liabilities for every PPP project shall be consolidated in a fiscal commitment register. The development of the register shall be carried out by a project's Transaction Advisor. An example of such a register is shown in Table 3. The fiscal commitments register contains the type of liability (whether direct, explicitly contingent or implicitly contingent), a description of adjustment factors and trigger events, and the location of the information (which will depend on the stage of the project).

Table 3: Format of the fiscal commitments register

Fiscal commitment	Type of fiscal commitment	Adjustment factors/trigger events	Location
Project XXX			
Payment 1	Define type (direct/explicitly contingent/implicitly contingent) and explain payment concept, periodicity, and form of calculation	Detail adjustment factors (for direct liabilities, e.g. inflation and FX fluctuations) and trigger events (for contingent liabilities, e.g. event of default or termination)	Specific location where this information was taken (like from feasibility study, PPP agreement, etc.)
Payment 2	-	-	-

Step 3: Assessment of the risks and advice from sector ministries, agencies and other experts.

Advice from experts will be required regarding all aspects of the project's specific sector (i.e. water and sanitation, transport, energy, etc.) and the project's specific financial structure. The various direct and contingent liabilities need to be separated in whether they have any linkage to any risk factors or not. For those which haven't, like upfront and availability payments, the liabilities are simple to compute and their payment and timing are certain and known. For those which have risk factors, a scenario analysis and/or a stochastic analysis may be conducted by the Contracting Authority with the support of the Transaction Advisor.

- **Scenario analysis** involves calculating the fiscal impact to the Government under different scenarios by making assumptions regarding the outcome of events or variables that affect the value of the contingent liability and calculating the cost given those assumptions. Usually, fiscal impact is computed for a risk under various

categories – like, best-case, likely-case and worst-case scenarios – and the values are multiplied with the probabilities of these scenarios occurring, to arrive at an expected fiscal impact of the risk event occurring.

- **Stochastic analysis** is a class of computational algorithms that rely on repeated random sampling to obtain a range of possible outcomes and the probabilities they will occur for any choice of event or action. In this analysis, input parameters are considered as variables that change according to an assigned probability distribution function. Through numerical equations the causal relationship between the output parameters and the input variables is established. Thereafter, random sampling is done to obtain an estimate of loss with each value of risk variable. Usually, several repetitions are done to arrive at loss estimates at different levels of confidence.

The PPP Guidelines and associated annexures provide information and tools on how these analyses can be undertaken. The tools will allow the users to calculate direct and contingent liabilities, and provides cash flow and Government accounting statements.

Step 4: Assessment of their affordability.

With the estimations of fiscal costs, the Government shall now assess whether the project is affordable. The three following instruments shall be used for this assessment:

1. **Cost estimates against projected budget:** the first instrument entails the Contracting Authority assessing whether the project is aligned with its internal budget constraints and priorities. This is achieved by assessing if the commitments allow the Contracting Authority to achieve their fiscal targets or surplus. Also, the Directorate of Budget and the Directorate of Debt and Cash Policy Management shall be involved to ensure that the affordability analysis is consistent with the overall liability and fiscal risk management of the Government.
2. **Debt sustainability:** the Directorate of Debt & Cash Policy shall consider the consistency of the (contingent) obligations within the overall public debt management framework. (Contingent) obligations shall be included in debt measures to determine a project's impact on overall debt sustainability. The Department of Macroeconomic Policy within the Directorate of Economic

Affairs – which undertakes the annual debt sustainability analysis – shall include the PPP (contingent) obligations from debt instruments in this analysis.

3. **Limits and benchmarks:** for guarantees, the benchmarks of Section 7.1 apply. In addition, the affordability indicators for PPP projects as presented in Table 12 of Section 7.5 are considered.

5.2.2 Approval and Acceptance

Under Section 23(4) of the PPP Act, where a project is to be financed by a Contracting Authority, the Contracting Authority shall, prior to procuring a private party, obtain written confirmation from the Minister that the financing required shall be available for the implementation of the project. In practice, this recommendation will be provided by a multi-department review team established for each project including DDCP, PPP Unit, DB and DEA, who will review the relevant documentation and give advice to the Minister through a PPP Project Fiscal Affordability Report. The PPP Committee approves the project based on the recommendation of the multi-department review team and other considerations with respect to socio-economic benefits, value for money and affordability. The contingent liabilities and fiscal risks of the project are formally accepted after the Contracting Authority signs the PPP agreement with the private party, subject to Cabinet approval of the project if required in line with Section 26(1) of the PPP Act.

5.2.3 During Project Implementation Stage

The project implementation stage covers all

the steps taken to budget, pay, monitor, report, disclose and account for commitments and fiscal risks from PPP projects. The following steps should be considered to manage commitments and risks.

1. Budgeting and provisioning.
2. Information sharing.
3. Monitoring.
4. Reporting.
5. Accounting.

Step 1: Budgeting and provisioning for (contingent) liabilities from PPP projects

Budgeting for direct payments is done through an annual budget allocation of the Contracting Authority. The Contracting Authority has to build in its direct fiscal commitments into its annual budget request. Actual payments to the private party can also be made to a centrally controlled account to avoid delays. Some PPP agreements may require escrow accounts to provide assurance that resources are available to meet payments when needed.

Paying for contingent liabilities as they occur may require appropriations from existing allocations or through approvals for supplementary appropriations. Governments can create contingency reserves in the budget to meet calls on contingent liabilities. The key consideration in the process is the timeliness and coordination by which DDCP and the CA provides information to the DB with the

estimates on contingent liabilities that are expected to materialize in a particular year. Provisioning for contingent liabilities should be activated in case the contingent liability is more likely than not (50%) to materialize. DDCP and the PPP Unit shall inform DB about this.

Step 2: Information sharing by Contracting Authority

The Contracting Authorities shall provide information to the MoFPED on a semi-annual basis, or a period that may be agreed upon by MoFPED.⁴ This shall provide a reliable basis to monitor the fiscal exposures of the GoU to the PPP portfolio. The Contracting Authorities shall provide the MoFPED, and specifically the PPP Unit and the Directorate of Debt and Cash Policy, with information about the PPP project, commitments and fiscal risks as outlined in Annex 2.

Step 3: Monitoring.

Adequate monitoring of (contingent) liabilities and fiscal risks will allow the GoU to prevent undesirable events from occurring, mitigate their impact, and making informed decisions during the operation phase.

This stage will require gathering project financial parameters, risks and performance,

⁴ In line with Section 27(2) of the PPP Act that obligates each CA to submit periodic reports on the project agreement implementation to the Minister of Finance.

and country macroeconomic information, and any other input that may affect the (contingent) liabilities for a PPP project or any fiscal risks for Government. The objective will be to ensure that updated information is reported at the right time to the relevant gate keeping entities.

The minimum information that shall be collected and registered by the CAs for each

PPP project and reported to the MoFPED, and specifically to the PPP Unit and the DDCP, is listed in Table 4. The information collected at Step 2 (information sharing) can be used to populate this table by the Contracting Authority.

Table 4: Minimum information collected by CAs

Fiscal commitment	Required information / Periodicity	Entity who must send information	Obligation to submit information set at: (PPP agreement, Financing agreement, etc.)	Follow-up of mitigation activities of fiscal risk register
Project XXX				
Direct Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Contingent Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Other fiscal risks				
Risk A	-	-	-	-

It must be noted that the estimations of liabilities and follow-up activities must be updated in an ongoing basis. Estimates should be updated at least during the following project milestones:

- Approval by budgetary department
- After feasibility study
- Before signing
- After signing
- After financial closure
- During construction years (they are the riskiest years)
- During operation (checking on financial performance of firm)

Step 4: Reporting.

Table 5 shows the information to be publicly reported by the MoFPED on direct and contingent liabilities from PPP projects. The description of the (contingent) liabilities shall include (i) a description of the liability, (ii) estimate of the value of the liability, (iii) annual cost and present value (for direct liabilities), and (iv) maximum exposure (for contingent liabilities). This reporting shall be included in the reports on contingent liabilities as outlined in Chapter 9.

Table 5: Reporting of direct and contingent liabilities by project

PPP project	Description of direct liabilities	Annual payments value for 3-year budget			Present value of all payments
		T	T + 1 year	T + 2 years	T
Project 1	E.g. annuity payment indexed quarterly by inflation.				
Project 2	-				
PPP project	Description of contingent liabilities	Estimated annual payments value for 3-year budget			Present value of maximum exposure
		T	T + 1 year	T + 2 years	
Project 1	E.g. revenue Guarantee E.g. termination payment (In case of default of contracting authority)				
Project 2	-				

Step 5: Accounting.

Under Section 28(3) of the PPP Act, the Accountant General shall prescribe accounting and reporting rules to be adopted for PPPs. The Government of Uganda, and the Accountant General in particular, needs to decide whether and when fiscal commitments should be recognised in financial statements through creation of public assets, liabilities or expenses. This is important because fiscal responsibility is usually examined in relation to thresholds over Government's liabilities and expenditures. It must be taken into account that adequate accounting and reporting tackle the perception bias that PPPs attract immediate private financing without increasing Government spending and debt. Determining how PPP commitments are to be recognised is important as it defines

whether such liabilities count toward debt management limits. International public-sector accounting standards, such as IPSAS 32, and international government financial reporting and statistics guidelines, such as IMF's Government Finance Statistics Manual (2014), and IMF's Guide on Public Sector Debt Statistics (2013) provide a framework for accounting and statistics of PPP transactions.

IPSAS 32 defines when PPP assets and liabilities should be recognised, assuming Government is following accrual accounting standards (as opposed to cash accounting standards). Assets and liabilities appear in Government's balance sheet if:

- The Government controls or regulates the services the operators must provide through a PPP agreement, and,
- The Government control any residual interest in the asset at the end of the project agreement.

Under these guidelines, the assets provided by the concessionaire are recognised, as well as its correspondent liabilities, either if the assets are funded by users-tariffs

or by Government. Regarding contingent liabilities, IPSAS 19 states that the expected cost of a contingent obligation should be recognised only if:

- It is more likely than not (50%) that the event will occur; and,
- The amount of the obligation can be measured with sufficient reliability. Further guidance on how to measure this obligation can be found in the PPP Guidelines and associated annexures.

CHAPTER 6

UNGUARANTEED LIABILITIES OF
PUBLIC ENTITIES



CHAPTER 6 – UNGUARANTEED LIABILITIES OF PUBLIC ENTITIES

This chapter considers the approval, management and reporting of debt liabilities obtained by public and publicly-aided entities – including state-owned enterprises, local governments, and educational institutions – where these liabilities have not explicitly been guaranteed by the GoU.

As stated in the PFMA (2015), all persons, public corporations, state-owned enterprises

or local government councils that intend to raise any loan, issue any guarantee, or take any other action - which may in any way either directly or indirectly result in a liability being incurred by the GoU - should seek for permission from the Minister of Finance before acquiring any loan or issuing any bond. Therefore, public entities that plan to raise any loan shall request the Ministry of Finance to issue an authorization-to-borrow.

6.1 Key Principles for the Assessment of Unguaranteed Debt Requests

- An explicit guarantee arrangement shall be preferred over an authorization-to-borrow (unguaranteed debt), except where the MoFPED can credibly and sensibly pre-commit to not honouring the unguaranteed debt liability (in which case the liability would not be considered to be a contingent liability). There should be no legal basis or expectation of the lender that government will step in when the beneficiary is in default.
- **Therefore, MoFPED shall clearly communicate in its authorizations and reports that any authorization-to-borrow or a statement of no objection to borrow by the GoU implies neither a guarantee nor any implicit legal obligation on the part of the GoU.** Consequently, any financial obligation shall fully be taken on by the management boards or committees of the beneficiary entities and GoU will not be liable for any outstanding payments arising from transactions for which these authorisations are issued.
- In case the expectation for government intervention becomes credible and sensible, the GoU will consider cost-effective means to convert unguaranteed liabilities into explicitly guaranteed liabilities.
- Whereas such unguaranteed debt liabilities may not carry any legal obligation, it should not be issued lightly. The additional borrowing does have an impact on the debt sustainability of the public sector as a whole and might put public entities under financial pressure. As such, the authorisation given by the Minister of Finance must be drafted carefully to ensure that no legal obligation is implied for the Government.

6.2 Eligibility Criteria for Beneficiaries of Authorizations-to-Borrow

Although the GoU does not guarantee this debt, it is particularly important to ensure that the following criteria are met before the Minister of Finance gives authorisation.

- i. The beneficiary entity shall be public or publicly-aided. GoU should be a full or part controller of the entity.
- ii. GoU must be satisfied that the beneficiary is financially sound enough to fulfil its commitment under the letter. No authorisation shall be provided to any entity in financial distress.
- iii. The methodology for assessing a beneficiary's credit risk and the appropriate benchmarks as presented in section 7.3 shall be considered to assess the creditworthiness of the beneficiary. Any entity with an overall internal risk rating above 4 or with any individual risk indicator rated above 6 is considered as ineligible. As a minimum measure, the MoFPED shall request for additional information from the entity about how the entity plans to overcome potential financial difficulties as reflected by credit rating. If the plan presented is not satisfactory, MoFPED shall decline the request for an authorization-to-borrow.
- iv. Authorisation to borrow shall only be provided if the proceeds of the underlying credit facilities are earmarked to fund development and not recurrent expenditure.

6.3 Approval Process of Requests for Authorizations-to-Borrow

Six steps have to be followed before authorisation for borrowing is given.

Step 1: Submission of Application

The entity applying for a credit facility shall submit a request to the sector line ministry. The following documents shall be provided:

- i. The profile of the entity requesting authorization to borrow. In case of a state-owned enterprise, the entity has to provide information about the ownership of the GoU (clarify the classified category: i) public enterprise the government intends to retain 100 percent ownership in, ii) public enterprise government intends to maintain a majority share, and iii) public enterprise the government intends to fully divest of).
- ii. A description of the project to be financed including the rationale and justification.
- iii. Broader government imperatives, such as economic development, employment and economic growth, and alignment to the broader Government planning framework.

- iv. A profile description of the lender.
- v. Audited accounts covering the last three years. These accounts have to be audited by the Auditor General or an auditing firm registered by ICPAU/ Auditor General.
- vi. Cash flow statements of the company covering both 3-year historical trend and the project lifetime.
- vii. Information on the debt service performance of preceding unguaranteed borrowing and statement(s) of the creditor(s) that the preceding borrowing has been fully serviced.
- viii. Credit facility term sheet, including; the amount to be borrowed, interest rate, maturity, service charges, security/collateral, or any other terms as required by the creditor.
- ix. Proof of readiness to start the project. Show that all conditions prerequisite to project commencement have been met.

Step 2: Sector Ministry Analysis

Before the Minister of Finance gives any authorisation, the sector line ministry must thoroughly analyse the project and demonstrate that it is in line with the sector strategies and priorities. The sector line ministry shall assess the entity's eligibility based on the criteria outlined in section 6.2.

The request shall then be submitted through the sector line ministry to MoFPED, with their recommendation.

Step 3: MoFPED Analysis

MoFPED shall proceed to assess the financial viability of the beneficiary institution and this analysis shall be similar to that applied for guarantees (refer to financial analysis of guarantee beneficiaries in chapter 3).

Step 4: Approval of Minister of Finance

After the financial analysis, a memorandum with recommendations shall be prepared and sent to the Minister of Finance, through the PS/ST with recommendations. Where MoFPED is in agreement and the Minister of Finance has approved, written authorisation shall be provided to the beneficiary.

Step 5: Record in File of Department

The Department responsible for debt policy will then keep a record, detailing the following information:

- i. The beneficiary entity
- ii. The credit facility amount
- iii. The signature date
- iv. The issue and maturity dates
- v. Currency denomination
- vi. Conditions attached to the support

6.4 Monitoring of Unguaranteed Debt Liabilities

Below are the measures for monitoring the performance of beneficiaries, which received an authorization-to-borrow.

- i. The MoFPED shall ensure that a register of all authorizations-to-borrow is kept. This register shall include information on:
 - The contractual terms and conditions of the underlying credit facilities.
 - The performance of the beneficiary.
- ii. The MoFPED shall regularly cooperate and coordinate with other government entities responsible for the monitoring of beneficiaries to assess the performance of beneficiaries, including the Parastatal Monitoring Unit and the Privatization Unit for state-owned enterprises, the Ministry of Local Government for local governments, the Ministry of Education and Sports for educational institutions and the Ministry of Health for hospitals and health clinics.
- iii. In order to monitor the performance and risks associated with authorizations-to-borrow, the beneficiary shall be required to provide information periodically, directly to MoFPED or indirectly through another government entity responsible for their monitoring, as outlined in section 6.5.
- iv. The sector line ministry shall as well be involved in periodic monitoring of projects and the performance of the beneficiaries to ensure attainment of sector strategies and goals.

6.5 Required Information Sharing by Beneficiaries

The beneficiaries of authorizations-to-borrow shall provide periodic information, including audited financial statements and financial performance reports. The information is provided on an annual or semi-annual basis or a period that may be agreed upon by MoFPED, depending on their

auditing requirements and the availability of documentation. This shall provide a reliable basis to monitor the beneficiaries' performances. An overview of all information that the guarantee beneficiaries need to make available to MoFPED is provided in Annex 3.

CHAPTER 7

RISK ASSESSMENT OF LOAN
GUARANTEES AND UNGUARANTEED
DEBT LIABILITIES



CHAPTER 7 – RISK ASSESSMENT OF LOAN GUARANTEES AND UNGUARANTEED DEBT LIABILITIES

This chapter outlines the elements of the risk assessment framework to manage and mitigate risks from guarantees, PPP arrangements and unguaranteed debt liabilities of public entities. Next to two general benchmarks for guarantees and

a risk rating methodology with a set of credit risk indicators and benchmarks for all beneficiaries, the MoFPED assesses the risks from PPP arrangements and maps the likelihood and fiscal impact for the contingent liabilities' portfolio periodically.

7.1 General Benchmarks for Loan Guarantees

To ensure that Uganda's total public debt exposure remains sustainable, government shall ensure that the benchmarks below are observed before approving a new loan guarantee arrangement. If one of these

benchmarks is exceeded owing to unforeseen circumstances, the Minister of Finance shall report the rationale and the need for an exemption to Cabinet and Parliament.

Table 6. Limiting thresholds for guarantees

Ratio	Thresholds
% of nominal publicly-guaranteed disbursed and outstanding debt to GDP	5%
% of the nominal amount of new publicly-guaranteed debt to GDP in any financial year	0.5%

7.2 Identification and Mapping of Overall Risk Profile

Periodically, the MoFPED assesses two sets of information - the likelihood of a risk event and the fiscal impact on GoU - to map the risk profile of the loan guarantee portfolio.

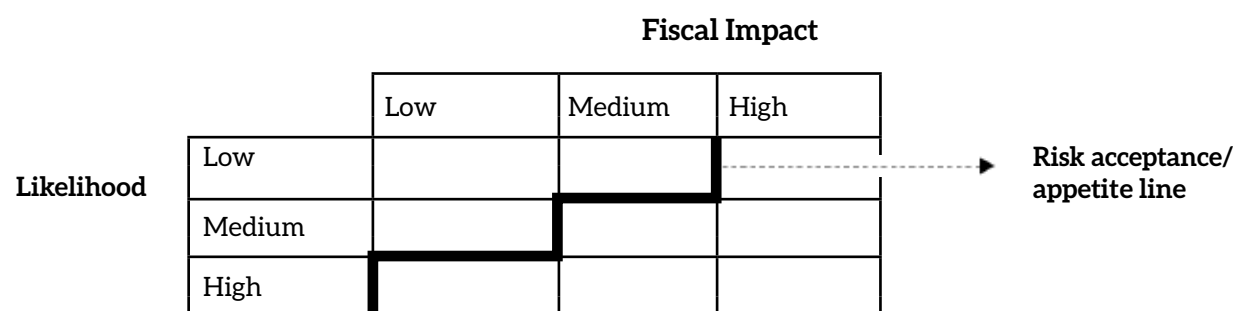
- i. "Likelihood of risk event" refers to the probability of the risk materialising for Government, in case of guarantees this refers to the probability of the guarantee being called upon. It is based on an analysis of the risk, historic information and expert judgment. The likelihood is categorized into bands of Low, Medium, and High.
- ii. "Fiscal impact on Government" refers to the impact of the estimated cost of risk on the Government budget or GDP. For guarantees, this refers to the guaranteed amount. Similar to likelihood, the fiscal impact is categorized into bands of Low, Medium, and High.

Table 7: Guide for grading likelihood and fiscal impact

	Likelihood of risk event	Fiscal impact on government
Low	<ul style="list-style-type: none"> • Remote likelihood • Strong mitigation measures in place 	<ul style="list-style-type: none"> • Negligible impact on GDP or government budget • Low reputational risk
Medium	<ul style="list-style-type: none"> • Likely chance • Past occurrence (country/ region) • Risk mitigation may not be sufficient 	<ul style="list-style-type: none"> • Between 0.1% to 0.5% of GDP or 0% to 2% of government budget • Some reputational risk
High	<ul style="list-style-type: none"> • High likely chance • Recurrent occurrence (country/ region) • Risk mitigation may not be sufficient or in place 	<ul style="list-style-type: none"> • Above 0.5% of GDP or 2% of government budget • Substantial reputational risk

The information in the column likelihood and fiscal impact in Table 11 is used to map the risk to the appropriate cells in the Summary Risk Profile as illustrated in Figure 2. The fiscal risks to the right-hand side of the risk tolerance line are the ones that will have a significant fiscal impact on the government.

Figure 2. Summary Risk Profile



The risk mapping in the Summary of the Risk Profile will inform future decision-making on new guarantees, to ensure that the GoU’s overall portfolio remains within the risk acceptance and risk appetite line. The MoFPED will report on this mapping and profile in its various contingent liabilities reports as outlined in chapter 9.

7.3 Credit Risk Quantification and Benchmarks of Beneficiaries

Only institutions that have the capacity and willingness to service their debt shall be considered for a credit facility. The MoFPED shall analyse the financial status, debt servicing capacity and willingness, and the creditworthiness of a beneficiary by making use of a credit rating framework.

This framework scores and aggregates an entity's risk indicators to arrive at an ordinal risk rating. The overall risk rating of the beneficiary equals the aggregate of the weighted risk ratings of the selected individual risk indicators (as listed in Table 7). All risk indicators shall be rated using a scale 1 to 9, with the various extents of risk exposure associated as listed in table 8.

Table 8. Financial risk indicators of the credit rating framework and their weights

Financial risk indicators		Formula	Weight
Profitability			
1. Operating profit margin	Measures how much earnings an entity makes from its operations relative to its income from sales.	Operating earnings {before taxes}/revenue	7.5%
2. Net profit margin	Measures how much net profit (after tax) is generated as percentage of its sales.	Net profit {revenue - operating expenses - other expenses - taxes}/revenue	10
3. Revenue growth	Illustrates sales increases/decreases over time and measures how an entity develops.	(Revenue at t/revenue at t-1)-1	5%
Debt capacity			
4. Debt to assets ratio	Measures an entity's assets that are financed by debt and shows the entity's financial leverage.	Total debt/total assets	15%
5. Debt to equity ratio	Measures the degree to which an entity is financing operations through debt versus wholly owned funds. Also a leverage ratio.	Total liabilities/total shareholders' equity	5%
6. Interest cover ratio	Determines the capability of an entity to pay interest on its debt.	Operating earnings {before interest and taxes}/interest expenses	15%

Financial risk indicators		Formula	Weight
Efficiency			
7. Cost to income ratio	Measures an entity's costs relative to its operating income and shows an entity's degree of efficiency.	Operating expenses / operating earnings {after interest, before tax}	15%
8. Cash flow adequacy	Measures whether cash flows generated by an entity's operations are sufficient to settle expenses.	Cash flows from operations/ (routine asset purchase + debt repayments + dividends)	7.5%
Liquidity			
9. Cash ratio	Measures an entity's ability to meet short-term obligations.	(Cash + cash equivalents + bank account balances)/ current liabilities	10%
10. Quick ratio	Measures an entity's ability to meet short-term obligations with its most liquid assets.	(Cash and equivalents + marketable securities + accounts receivable)/ current liabilities	5%
11. Current ratio	Measures an entity's ability to pay short-term obligations or those due within one year.	Current assets/current liabilities	5%

Table 9. Internal risk ratings and the associated extent of risk exposure

Risk rating	Extent of risk exposure	Likelihood of materialization
1	Extremely low risk	Remote
2	Low risk	
3	Moderate risk	
4	Marginal risk	
5	Special attention	Possible
6	Substandard	
7	High risk	Probable
9	Very high risk	
10	Imminent default/in default	

The following credit quantitative benchmarks shall apply for the rating of the financial indicators.

Table 10. Beneficiary's credit risk quantitative benchmarks

Risk rating	1	2	3	4	5	6	7	8	9
Indicator	Remote			Possible			Probable		
Profitability									
1. Operating profit margin	>42%			26%	25%	12%	11%		<=5%
2. Net profit margin	>40%			11%	10%	5%	4%		<=1%
3. Revenue growth	>40%			11%	10%	5%	4%		<=1%
Debt capacity									
4. Debt to assets ratio	<=15%			28%	29%	58%	59%		>=80%
5. Debt to equity ratio	<=0.4x			1x	1.1x	2x	3.0x		>=4.0x
6. Interest cover ratio	>=20x			16x	15x	3x	2x		<1x
Efficiency									
7. Cost to income ratio	<=16%			49%	50%	80%	81%		<=100%
8. Cash flow adequacy	>=40%			20%	19%	12%	11%		<1%
Liquidity									
9. Cash ratio	>=1.0x			0.8x	0.7x	0.4x	0.3x		<=0.1x
10. Quick ratio	>=5.0x			2x	1x	0.5x	0.4x		<=0.1x
11. Current ratio	>=5.0x			3x	2.0x	1.0x	0.9x		<=0.1x

The financial indicators shall be rated in a scorecard, as presented in Annex 4. After all risk indicators have been rated, an aggregated risk rating for the entity is calculated in the scorecard. Finally, this overall risk rating is aligned to the risk rating of rating agency Moody's. This alignment enables the MoFPED to assign a probability of financial distress

(default) to the entity as Moody's provides probabilities of default for their risk rating categories. Table 10 presents this alignment and the associated probabilities of financial distress. The estimate for the probability of financial distress can be used to calculate the expected loss of the contingent liability.

Table 11. Internal rating alignment with Moody's rating and probabilities of financial distress

Internal rating	Moody's rating	Year 1 (%)	Year 2 (%)	Year 3 (%)	Year 4 (%)	Year 5 (%)	Year 6 (%)	Year 7 (%)	Year 8 (%)	Year 9 (%)	Year 10 (%)
1	Aaa	0.00	0.01	0.02	0.05	0.08	0.14	0.22	0.31	0.41	0.52
2	Aa2	0.02	0.07	0.14	0.25	0.39	0.54	0.69	0.83	0.96	1.08
3	A2	0.06	0.21	0.40	0.65	0.97	1.32	1.68	2.04	2.39	2.72
4	Baa2	0.17	0.53	0.88	1.32	1.83	2.38	2.94	3.51	4.07	4.64
5	Ba2	1.11	3.22	5.17	7.47	9.89	12.23	14.37	16.25	17.93	19.47
6	B2	3.90	9.63	14.10	18.99	23.86	28.37	32.30	35.59	38.29	40.55
7	Caa2	15.89	27.65	34.99	42.01	48.31	53.66	58.00	61.41	64.06	66.13
8	Ca	54.15	65.12	70.44	74.86	78.43	81.23	83.36	84.96	86.16	87.08
9	C	100	100	100	100	100	100	100	100	100	100

7.4 Expected Loss from Contingent Liabilities

The expected loss is estimated by multiplying three variables:

- 1. Exposure at default (EAD):** if the beneficiary defaults, how much is at risk? In case of a guarantee, the total outstanding amount of the underlying credit facility and the accrued interest are the EAD.
- 2. Loss given default (LGD):** if the default occurs, what percentage of the exposure will be lost? To calculate the LGD, consider the assets and the reserves of the beneficiary and estimate what percentage of the EAD can be covered by the assets and reserves.
- 3. Probability of default (PD):** what is the probability of the beneficiary defaulting? The probability of financial distress as derived by the use of the methodology in section 7.3 is used as an estimate for the probability of default of the beneficiary.

These three variables are multiplied to calculate the expected loss.

$$\text{Expected loss (EL)} = \text{EAD} \times \text{LGD} \times \text{PD}$$

7.5 Affordability Indicators for PPP Projects

Table 12 shows the indicators that the MoFPED shall use to assess the affordability of (contingent) liabilities and fiscal risks of PPP projects.

Table 12: Affordability indicators for PPP projects

Fiscal commitment	Cost	Indicator of fiscal affordability (Including projections over PPP agreement time horizon)
Direct liabilities ⁵	<ul style="list-style-type: none"> - Estimated annual payments - Net present value 	<ul style="list-style-type: none"> - Cost as percentage of ministry or sector agency, and domestic revenue / deficit-surplus budget - Cost as percentage of government public debt - Cost as percentage of GDP
Guarantees	<ul style="list-style-type: none"> - Estimated annual payment, or expected average payment - Net present value 	<ul style="list-style-type: none"> - Cost as percentage of ministry or sector agency, domestic revenue / deficit-surplus budget - Cost as percentage of government public debt - Cost as percentage of GDP
Termination payments	<ul style="list-style-type: none"> - Estimated worst-case payment or expected average payment - Net present value 	<ul style="list-style-type: none"> - Cost as percentage of government's budget - Cost as percentage of GDP
Other fiscal risks	<ul style="list-style-type: none"> - Estimated worst-case payment or expected average payment - Net present value 	<ul style="list-style-type: none"> - Cost as percentage of ministry or sector agency, and domestic revenue / deficit-surplus budget - Cost as percentage of GDP

7.6 Qualitative Benchmarks

In addition to the above quantitative benchmarks, MoFPED and the sector line ministry will carry out qualitative assessments of institutions depending on their operational, industrial and managerial environment.

⁵ Under Section 23(4) of the PPP Act, where a project is to be financed by a Contracting Authority, the Contracting Authority shall, prior to procuring a private party, obtain written confirmation from the Minister of Finance that the financing required shall be available for the implementation of the Project. In practice, this recommendation will be provided by a multi-departmental review team established for each individual project including DCP, PPP Unit, DB and DEA, who will review the relevant documentation and give advice to the Minister.

CHAPTER 8

LEGAL ACTION AND COURT CASES



CHAPTER 8 – LEGAL ACTION AND COURT CASES

Legal proceedings against the Government (or any Government entity) are a major source of contingent liabilities and they are difficult to control. Contingent liabilities from litigious activities derive from settlements ruled against the government and in favour of third parties. Key drivers of these court claims include land compensation cases, contractual disputes, human right cases, and claims of negligence on the part of public officials.

The Government does not have the control to approve a contingent liability from legal proceedings, like is the case for guarantees and unguaranteed debt liabilities from public entities. When an individual or entity decides to sue the Government, the contingent liability is born. Therefore, no approval process is in place and the Government can only monitor, assess risks, take risk-mitigation measures and report on contingent liabilities from legal proceedings.

8.1 Recording of Legal Claims

The recording of legal claims was decentralized to each individual Ministry in 2016/2017. The Accountant General has specified that each Ministry shall maintain a register of court proceedings to which it is exposed. The registers contain a valuation of each court proceedings, reflecting the amount for which the lawsuit was filed by the plaintiff. The MoFPED shall compile in cooperation with the Ministry of Justice the registers of the various ministries, departments and agencies semi-annually.

The government entities shall provide the Ministry of Justice and the MoFPED with information about court cases as outlined in Annex 5.

8.2 Monitoring of fiscal risks from legal claims

Compilation and analysis of data on legal claims and court cases will allow for the identification of key drivers and opportunities for mitigation, and to improve budgeting and reporting practices. MoFPED shall conduct a quantitative analysis of legal proceedings which shall yield information on average outcomes, duration, and amounts awarded by courts or settled for. Historical data shall be used to estimate the outcomes of current legal proceedings and may be overlaid with a qualitative assessment for each current proceeding.

These measures may provide estimates for the court awards from ongoing court cases. This will improve the ability to budget for the estimated expected cash cost of claims in the next budget year and helps to reduce the serious problem of arrears of court awards.

8.3 Reporting on Contingent Liabilities from Legal Proceedings

The analysis and valuation of contingent liabilities from legal proceedings shall in no way influence or verdict the outcome of the court case. Nor will the analysis and valuation influence the settlement amount.

Therefore, any communication or reporting of information on the gross contingent liabilities' exposure from legal claims shall come with a disclaimer:

“Where contingent liabilities have arisen as a consequence of legal action being taken against the Government of Uganda, the amount shown is the amount claimed and this the maximum potential cost. It does not represent either an admission that the claim is valid or an estimation of the amount of any award against the Government of Uganda.”

CHAPTER 9

REPORTING ON CONTINGENT
LIABILITIES



CHAPTER 9 – REPORTING ON CONTINGENT LIABILITIES

The Government of Uganda needs to account for and report on their direct and contingent liabilities and other fiscal risks. Proper reporting incentivises the Government to scrutinise its own financial position. Also, making reports available to other parties, such as lenders, rating agencies, PPP stakeholders, and the public, enables them to make informed opinions on the Government's fiscal management and performance.

A report on Government's exposure to contingent liabilities, including the performance of loan guarantees, exposure to unguaranteed debt liabilities of public and publicly-aided entities, and the risks related to PPP projects, will be produced by the Directorate responsible for Debt on a semi-annual basis. This report will feed into the 'Contingent Liabilities Report', 'Debt Statistical Bulletins' and 'Debt Statistical Bulletin'. The information will also be input

for the 'Report on Public Debt, Guarantees and other Financial Liabilities', 'Report on Treasury Operations' (TOP) and the 'Fiscal Risk Statement' (FRS), which shall be tabled before Parliament and subsequently circulated to different MDAs.

In addition to these, internal periodic (ad-hoc) reports shall be circulated within MoFPED and to the relevant stakeholders, so as to inform about any risks associated with contingent liabilities as well as any proposed measures for mitigating these risks.

As the creditworthiness of beneficiaries evolve and more information about contingent liabilities may be compiled, more assessments shall be carried out and reports shall be produced to inform the likely impact of contingent liabilities on the budget and debt sustainability.

Table 13. Overview of Guarantee-related Reporting

	Reports	Main author	Recipients	Frequency
1.	Guarantee Performance Report	DPID	• Members MoFPED	2x per year
2.	Contingent liabilities Report	DPID	• Members MoFPED	1x per year
3.	Debt Statistical Bulletin	DPID	• Members MoFPED • Published on website MoFPED	4x per year
4.	Report on Public Debt, Guarantees and other Financial Liabilities	DARC	• Parliament, part of annual Budget Framework Paper • Members MoFPED • Published on website MoFPED	1x per year
5.	Debt Sustainability Analysis Report	Macroeconomic Department MoFPED	• Members MoFPED	1x per year
6.	Report on Treasury Operations	OAG	• Parliament • Published on website AG	1x per year
7.	Fiscal Risk Statement	Macroeconomic Department MoFPED	• Parliament, part of annual Budget Framework Paper	1x per year
8.	Financial Statements	TSD	• Parliament • Consolidated Accounts • Published on MOFPED website	3x per year
9.	Ad-hoc reports	DPID	• Members MoFPED	Ad-hoc

CHAPTER 10

INSTITUTIONAL ARRANGEMENTS



CHAPTER 10 – INSTITUTIONAL ARRANGEMENTS

The mandate of strategy development and assessment of contingent liabilities shall lie within the Department responsible for Debt Policy & Issuance in MoFPED. This shall, however, be done in conjunction with other stakeholders and institutions as outlined below.

10.1 Arrangements for Loan Guarantees and Unguaranteed Debt

Ministry of Finance, Planning & Economic Development	
<i>Minister of Finance</i>	
i.	Signing authority of loan guarantee agreements on behalf of Government after approval of Cabinet and Parliament.
ii.	Approval and signing authority of letters with an authorization-to-borrow for unguaranteed debt liabilities.
<i>Directorate of Debt and Cash Policy (Management)</i>	
i.	Assessment of acceptability of guarantee and unguaranteed debt liability requests.
ii.	Part of negotiations with creditor(s) on terms and conditions of credit facility.
iii.	Credit risk analysis and valuation of guarantees and unguaranteed debt liabilities.
iv.	Analysis of contingent liabilities from legal proceedings.
v.	Analysis of potential defaults of beneficiaries from guarantees and authorizations-to-borrow.
vi.	Preparation of report on contingent liabilities.
vii.	Preparation of loan guarantee agreements.
viii.	Preparation of authorizations-to-borrow
ix.	Presentation of the guarantee requests and agreements to Cabinet and Parliament.
<i>Accountant General</i>	
i.	Recording of guarantees into the debt management system.
ii.	Servicing of debt once a loan guarantee is called.
iii.	Collection of data from government ministries, departments and agencies on contingent liabilities from legal proceedings.
<i>PPP Unit</i>	
i.	Provide performance reports on existing PPP guarantees.
ii.	Provide advice on contingent liabilities arising out of these PPPs.

Parastatal Monitoring Unit and Privatization Unit
<ul style="list-style-type: none"> i. Collect financial statements and other information on the performance of state-owned enterprises. ii. Conduct analysis on the performance of state-owned enterprises.
Sector Line Ministry
Analyse projects for which loan guarantees and authorisations-to-borrow are sought and demonstrate that they are in line with the sector strategies and priorities. Also, the ministry has to assess the guarantee's eligibility.
Solicitor General
Considers clearance of any loan guarantee agreement.
Attorney General
Provides a legal opinion on any loan guarantee agreement.
Parliament
Final approval loan guarantee agreements.

10.2 Arrangements for Direct and Contingent Liabilities from PPPs

Minister of Finance:
Approval: Written approval must be obtained from the Minister of Finance where a project is to be financed by a contracting authority.
Contraction Authorities
<ul style="list-style-type: none"> i. Identification: Completion of project feasibility studies and implementation plans. Development of Fiscal Risk Register and Summary Risk Profile. ii. Assessment: Determine whether the project is aligned with internal budget constraints. iii. Accepting: Execution of formal instruments such as project agreements, issuing letters of support or performance undertakings with the purpose of guaranteeing that they will honour its obligations and commitments. iv. Provisioning: Establish a well-defined system for budgeting and paying for liabilities at the individual Contracting Authority level. v. Disclosure: Report on exposures to direct and contingent liabilities. vi. Monitoring: Help Government track its exposure to fiscal risk, actively manage exposure to contingent liabilities, and improve its ability to take action to reduce the cost or likelihood of an event triggering a payment occurring should risks emerge.

PPP Committee

Accepting: Central approval to ensure that PPPs are focused on the Government's policy priorities, represents value for money, and are consistent with good fiscal management.

Multi-department review team

- i. **Affordability:** recommendations to the Minister of Finance on the project's affordability and fiscal risks to Government.
- ii. **Assessment:** Develop and apply fiscal risk assessments and other tools for analysing liabilities. The team analyses direct and contingent liabilities before submission to the PPP Committee for approval.

PPU Unit

Monitoring: Help Government track its exposure to fiscal risk, actively manage exposure to contingent liabilities, and improve its ability to take action to reduce the cost or likelihood of an event triggering a payment occurring should risks emerge.

Directorate of Debt and Cash Policy (Management)

- i. **Monitoring:** Help Government track its exposure to fiscal risk, actively manage exposure to contingent liabilities, and improve its ability to take action to reduce the cost or likelihood of an event triggering a payment occurring should risks emerge.
- ii. **Reporting:** Publish information on all direct and contingent liabilities, including the annual Loans and Grants Report.

Directorate of Budget

Provisioning: Use its budgeting system for provisioning and paying for liabilities on a holistic Government level to ensure the Government has the resources available to meet its obligations and mitigate the fiscal or budgetary impact of contingent liabilities.

Cabinet

Approval: Cabinet approval is required if the project value of the PPP is above USD 10 million.

Approval: If the PPP involves borrowing or a credit guarantee by Government, the loan or guarantee documents must be approved by Parliament.

Parliament

Approval: If the PPP involves borrowing or a credit guarantee by Government, the loan or guarantee documents must be approved by Parliament.

Accountant General

Accounting: Shall prescribe accounting and reporting rules to be adopted for PPPs

ANNEX 1. Overview Information-Sharing by Guarantee Beneficiaries

Information about beneficiary	
1.	Name of beneficiary
2.	Legal structure of beneficiary (public, publicly-aided or private)
3.	Sector of beneficiary (agriculture, education, energy, financial, gender, health, ICT, property and construction, tourism, transport, or other)
4.	Date of financial position reported (date of financial statement, DD-MM-YYYY)
5.	Total debt
6.	Total direct domestic debt
7.	Total direct external debt
8.	Total on-lending GoU
9.	Net operating income
10.	Income from subsidies, grants or transfers of GoU
11.	Profit (loss) after tax
12.	Revenue
13.	Total assets
14.	Current assets
15.	Cash and bank balances
16.	Total liabilities
17.	Current liabilities
18.	Any statement of the board about the financial position of the entity, indicating whether the board foresees any financial difficulties/stress and the need/probability to call on a guarantee.
Information about loan guarantee	
19.	Name of creditor of underlying credit facility
20.	Residency of creditor of underlying credit facility (domestic or external)
21.	Total guaranteed credit facility amount (including undisbursed)
22.	Currency of credit facility
23.	Interest rate of credit facility
24.	Outstanding and disbursed credit facility amount
25.	Required principal and interest payments

26.	Any fees or penalties incurred
27.	Actual debt service payments of the credit facility
28.	Absorption statements, showing the use of the disbursements out of the credit facility
29.	Any statement on delays/changes in the project funded by credit facility
30.	Any usage of the guarantee funds

ANNEX 2. Overview Information-Sharing by Contracting Authorities of Commitments and Fiscal Risks from PPP Arrangements

1. Project details	
Project name	
Date of commencement	
Public entity involved in PPP	
Private entity involved in PPP	
Government entity responsible for monitoring PPP (PPP Unit or specify)	
Project location	
Sector	
Project value	
Description of the asset the project will provide	
Description of services to be provided	
Description of the approximate demand for the services	
Feasibility study conducted? (Yes/no and by who conducted)	
Status of the PPP	Under negotiation/Commercial close / Financial close
Status of the actual project asset/services	Pre-feasibility/Feasibility study/Negotiated/ Under construction/Completed/Operational
2. Contingent liabilities and fiscal risks for GoU	
Capital subsidies received by private entity from GoU	
Operating subsidies received by private entity from GoU	
Service payments received by private entity from GoU	
Land transfer by GoU to private entity (please provide approximate value)	

	Description of direct liabilities	Annual payments value for 3-year budget			Present value of all payments
		T	T + 1 year	T + 2 years	T
Project 1	E.g. annuity payment indexed quarterly by inflation.				
Project 2	-				
PPP project	Description of contingent liabilities	Estimated annual payments value for 3-year budget			Present value of maximum exposure
		T	T + 1 year	T + 2 years	
Project 1	E.g. revenue Guarantee E.g. termination payment (In case of default of contracting authority)				
Project 2	-				

ANNEX 3. Overview Information-Sharing by Beneficiaries of Authorizations-to-Borrow

Information about beneficiary	
1.	Name of beneficiary
2.	Legal structure (public, publicly-aided or private) and types of entity (state-owned enterprise, local government, educational institution, hospital, health clinic, etc.) of the beneficiary.
3.	In case of a state-owned enterprise, the classified category: i) public enterprise the government intends to retain 100 percent ownership in, ii) public enterprise government intends to maintain a majority share, and iii) public enterprise the government intends to fully divest of
4.	Sector of beneficiary (agriculture, education, energy, financial, gender, health, ICT, property and construction, tourism, transport, or other)
	property and construction, tourism, transport, or other)
5.	Date of financial position reported (date of financial statement, DD-MM-YYYY)
6.	Total debt
7.	Total direct domestic debt
8.	Total direct external debt
9.	Total on-lending GoU
10.	Net operating income
11.	Income from subsidies, grants or transfers of GoU
12.	Profit (loss) after tax
13.	Revenue
14.	Total assets
15.	Current assets
16.	Cash and bank balances
17.	Total liabilities
18.	Current liabilities
19.	Any statement of the board about the financial position of the entity, indicating whether the board foresees any financial difficulties/stress and the need/probability to call on a guarantee.

Information about underlying facility	
20.	Name of creditor of underlying credit facility
21.	Residency of creditor of underlying credit facility (domestic or external)
22.	Total facility amount (including undisbursed)
23.	Currency of facility
24.	Interest rate of facility
25.	Outstanding and disbursed facility amount
26.	Required principal and interest payments
27.	Any fees or penalties incurred
28.	Actual debt service payments of the facility
29.	Absorption statements, showing the use of the disbursements out of the facility
30.	Any statement on delays/changes in the project funded by facility

ANNEX 4. Scorecard for the Credit Rating of Beneficiaries

Date:	DD-MM-YYYY		
Name of beneficiary:			
Date of establishment:	DD-MM-YYYY		
Type of entity:	Local government/government agency/state-owned enterprise/ extra budgetary unit/(semi-)public school/private entity/other		
Year of financial statement:	FYXXXX/FYXXXX		
Risk indicators	Weight	Rating (1 to 9)	Rating x Weight
Profitability			
1. Operating profit margin	7.5%	-	-
2. Net profit margin	10	-	-
3. Revenue growth	5%	-	-
Debt capacity			
4. Debt to assets ratio	15%	-	-
5. Debt to equity ratio	5%	-	-
6. Interest cover ratio	15%	-	-
Efficiency			
7. Cost to income ratio	15%	-	-
8. Cash flow adequacy	7.5%	-	-
Liquidity			
9. Cash ratio	10%	-	-
10. Quick ratio	5%	-	-
11. Current ratio	5%	-	-
Weighted risk rating:			-

ANNEX 5. Overview Information-Sharing by Ministries on Legal Proceedings and Court Cases

Information about legal proceedings	
1.	Date and number of claim
2.	Name of entity claim is lodged against
3.	Name of plaintiff
4.	Name of defender
5.	Category of claim
6.	Whether claim is quantifiable in Ugandan Shillings or non-quantifiable. Where quantifiable, the gross exposure (and the currency) of the claim
7.	The current stage of the court process (e.g. 1) date of request for instructions, 2) mediation/alternative dispute resolution, 3) out of court settlement, 4) in court, 5) judgement, 6) appeal, 7) final judgement, 8) ratio of final settlement to initial claim, 9) final judgement and amount awarded to plaintiff)



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