

GENERAL INFORMATION

Capital: São Tomé	Population: 223,107 (2021)	GDP (USD): 526,7 Million (2021)
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LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts	- Law No. 06/2018, of 10 April – Law on Public-Private Partnerships (“PPP Law”)
Other applicable sectoral Laws	- Law No. 8/2009, of 26 August, which approves the Regulation on Public Tenders and Contracting
PPP Unit (Articles 2 (1) and 11 PPP Law)	<ul style="list-style-type: none"> - PPP Technical Support Unit (<i>Unidade Técnica de Apoio às PPPs – “UTAP”</i>) - The Ministry of Finance houses UTAP. However, PPP projects are coordinated between the Ministry of Finance and the relevant sectorial ministry.
Definition (Article 2 (1) PPP Law)	- Public-private partnership is understood as the contract or the union of contracts, whereby private entities, designated as private partners, undertake, on a long-term basis, to a public partner, to ensure the development of an activity tending to satisfy a collective need, and in which the financing, the responsibility for the investment, the exploitation and the associated risk are wholly or partially incumbent upon the private partner.
General Principles (Article 4 PPP Law)	<p>The contracting and execution of PPPs are subject to observance of the following guiding principles:</p> <ul style="list-style-type: none"> - Efficiency and compliance with the policy, strategy and development plans of the respective economic or social sector - Respect for the interests and rights of users and private entities - Non-delegation of regulatory and jurisdictional functions, exercise of police powers and other activities of State authority - Fiscal responsibility on the execution of PPPs - Accountability, transparency, and financial sustainability - Contribution to the development of the effective capacity for efficient and rational exploration and economic valorisation of national assets and resources

- Equity in the sharing of benefits
- Commitment to risk prevention and mitigation, and risk sharing
- Creation and maintenance of jobs, the professionalization and transfer of know-how to national employees and managers
- Contribution to the development of the national capital market and the promotion of greater economic inclusion of nationals in each venture
- Establishment of business partners between projects and local small medium enterprises (“SMEs”), as well as the transfer of technology and know-how
- Pursuit of programmes, projects or actions related to responsibility, sustainability and social development in local communities
- Adaptation to the existing legal frameworks, and to the procedures and measures for monitoring legality and conformity by the Court of Auditors

Tendering and Contracting procedures/Choice of the private partnership
(Article 16 PPP Law)

- The identification and selection of a private partner for a PPP project is carried out through competitive bidding, except in exceptional circumstances provided by law
- The tender can follow one of the following modalities: (i) public tender; (ii) tender with pre-qualification; or a (iii) two-stage tender where it would not be practicable to describe the whole characteristics of the PPP project in the request for proposals. The choice of a direct award procedure is only allowed in exceptional circumstances duly justified by the Government.

Project Evaluation
(Articles 7 and 17 PPP Law)

- Before any PPP is launched, it is compulsory to obtain the required authorisations and administrative licenses, such as, among others, those relating to the environment and urban planning, on which the development of the project depends; a technical-economic-financial study; and environmental licensing, when required by law
- UTAP carries out the evaluation of the bids. UTAP may appoint an evaluation committee to assist the process.

Negotiation and Signature of PPP Contracts
(Articles 16 (6), 19 and 36 PPP Law)

- According to the PPP Law, in PPP bidding procedures a bid negotiation phase to be regulated in the bidding documents is always possible, prior to the submission of the revised binding bids.
- UTAP represents the public partner in the negotiation sessions

with the private partner (Art. 35). The Negotiation Report is approved by the members of the Government responsible for finance and the project sector (Art. 36)

- Once the bidder is selected, UTAP will forward the partnership project file, together with the draft contract, for approval by the minister responsible for finance and the relevant sectorial minister or their representatives (Art. 19.1)
- After approval, the contract must be signed by representatives of the ministry responsible for finance and the relevant sectorial minister representing the State (Art. 19.2)

Rights and Obligations of the public partner

(Article 18 (2) PPP Law)

- At any time, the public partner can interrupt or cancel the process of selecting the private partner in the event of a breach of the public interest objectives underlying the establishment of the partnership

Rights and Obligations of the private partner

(Articles 20 and 24 (a) PPP Law)

- Provide financial guarantees of commitment and performance of the contract
- Permanent obligation in the prevention and mitigation of risks inherent/deriving from the professional, technical, technological, commercial or management capacity, throughout the process of the undertaking

Obligations of both public and private partners

(Article 6, 24 (b), and 25 (2) PPP Law)

- Under the PPP Law, the public partner is preferably responsible for monitoring and controlling of the execution of the object of the partnership, to ensure that the underlying public interest is achieved, and the private partner is responsible for financing, as well as the exercise and management of the contracted activity.
- Prevention and mitigation of political, legislative and conflict of interest risks of institutional and land concession and public planning nature that, should they occur, imply effective damage or loss to the undertaking
- Under the PPP Law, the Government assumes the implications arising from granting or facilitating the access of PPP undertakings to guarantees of financial facilitations

Applicable Law/Dispute Resolution

(Article 38 PPP Law)

- National or international arbitration, under the terms of the Voluntary Arbitration Act (*Lei sobre a Arbitragem Voluntária*) in force.
- In the absence of an agreement between the parties, the parties may submit the case to the competent Court of the judicial region of São Tomé.

EXAMPLES OF PROJECTS STRUCTURED AS PPP

Power

Sinergie Concession Contract; Empresa de Água e Electricidade (prior to the enactment of the PPP Law).