REGULATORY UPDATE: PUBLIC PRIVATE PARTNERSHIPS

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Introduction

The Infrastructure Concession Regulatory Commission ("**ICRC**"), in August 2025 issued the PPP Regulatory Notice (the '**Notice**'), pursuant to the powers conferred on it under Section 34 of the Infrastructure Concession Regulatory Commission Act (the "**ICRC Act"**). The Notice introduced significant changes to the approval thresholds for PPP projects in Nigeria. In September 2025, the ICRC also released a new set of guidelines to regulate the development and implementation of Public-Private Partnerships (**PPP**s) in Nigeria ("the **Guidelines**").

This review focuses on the Notice and the Guidelines, examining the implication for investors, project developers and public institutions while highlighting the opportunities that were presented by the revised framework.

Highlights Of The Notice

The Notice introduces significant changes to the approval process for PPP projects undertaken by any Federal Ministry, Department or Agency ("**MDA**") involved in the financing, construction, operation, or maintenance of infrastructure in Nigeria under the PPP model. These changes apply exclusively to Federal level PPP projects within the ICRC's statutory mandate and cover both future projects and those currently undergoing approval.[1]

Under the ICRC Act, all PPP projects to be undertaken by any Federal MDA were subject to the approval of the Federal Executive Council ("**FEC**"). However, the Notice now delegates this authority to Project Approval Boards ("**PABs**")[2] established within the respective MDAs, subject to defined financial thresholds. The FEC, however, will remain the sole approving authority for PPP projects that (i) exceed the approved financial threshold or (ii) projects whose initiation and implementation necessitate the participation of multiple agencies and/or subnational governments, where applicable.

The approved financial thresholds are as follows:

S/N	MDA	Project Cost	Approving Authority
1.	MDA	Above ₦20,000,000,000.00.	Federal Executive Council.
2.	Ministries	₦20,000,000,000.00 and below.	The Project Approval Board of the Ministry.
3.	Parastatals/Agencies	Above ₦10,000,000,000.00 but below ₦20,000,000,000.00.	The Project Approval Board of the supervisory Ministry.

[1] Para 2.1.2 of the Notice.
[2] This is discussed below.

4.	Parastatals/Agencies	₦10,000,000,000.00 and below.	The Project Approval Board of the Parastatal or Agency.
5.	MDA	Any project that requires more than one agency to implement.	Federal Executive Council

By the Notice, key operational requirements to the application of the new approval thresholds are also introduced. Key among them is that all projects must be fully funded by the private sector, with no recourse to government financial support[3]. Accordingly, project proponents can no longer rely on, or request government guarantees, comfort letters, or direct public funding, but must ensure that financing is mobilized independently from private sources[4]. In addition, all PPP Agreements are now to be executed solely by the Project Owners (MDAs), as Grantors, to ensure sustainable service delivery, since PPPs are time-bound and require a hand-back of the project at the end of the concession period[5].

Notwithstanding the new approval thresholds and the changes, the ICRC remains responsible for:

- leading project negotiations and conducting due diligence on all prospective PPP partners;
- issuing the mandatory ICRC Certificate of Compliance for all PPP projects undertaken; as prerequisite for approval by either the FEC or the PABs of the respective MDAs;
- maintaining custody of executed PPP agreements;
- approving any proposed amendments to project terms and conditions; and
- preparing and submitting periodic reports to the President on the performance and status of PPP projects nationwide[6].

ICRC Guidelines 2025

The Guidelines introduce a revised financial approval threshold for **PPP** projects and establish a framework for constituting Project Approval Boards within Ministries, Departments, and Agencies (MDAs)[7]. They also provide directions on the preparation of key project documents such as, the Outline Business Case, Full Business Case, and financial model, and set out procedures for procurement routes, PPP agreement, among others. The Guideline comprises of 12 sub-guides and notices namely: Full Business Guide; Direct Negotiation; PPP Unit Governance Structure and Functions; PPP Project Financial Model Guide; Outline Business Case Guide; Unsolicited PPP Procurement Guide; Swiss Challenge Guide; Solicited PPP Procurement Guide; PPP

[3] Para 3.2 of the Notice
[4] Ibid-Para 3.2
[5] Para 3.5 of the Notice
[6] Par 3.9 of the Notice
[7] ICRC Guidelines 2025

Regulatory Notice; Project Approval Board Governance Structure and Functions; Modified Swiss Challenge Gude; and Financial Model Template.

Other provisions in the ICRC Guidelines include the following:

1. **Procedural Reforms:** The guidelines reinforce the need for clear documentation and institutional processes. MDAs must prepare OBCs and FBCs, submit all agreements for ICRC verification, and adhere to standardised templates for procurement and concession contracts.[8]

2. **The Outline Business Case (OBC) and Full Business Case (FBC)[9] Templates:** The ICRC included templates for OBC and FBC. OBC is the intermediate project development document that assesses the strategic need, technical feasibility, affordability, and value-for-money of a proposed project. It provides sufficient analysis for the approving authority to decide whether the project should proceed to detailed structuring and procurement. The FBC is the final, comprehensive project appraisal document prepared after procurement. It builds off the OBC, setting out the detailed technical, financial, legal, commercial, and risk structure of the project and demonstrates that the selected proposal is viable, bankable, and ready for implementation and contract execution.

3. **PPP Project Financial Model Guide**: The ICRC PPP Project Financial Model Guide 2025 sets out minimum requirements and standards for developing financial models for PPP projects in Nigeria. Notably, ICRC has pegged included its regulatory fees and has mandated that the financial model should contain the ICRC fees which fees may comprise a one-off charge of up to 5% of entry fee and a mandatory annual fee of 1% of the project's gross revenues[10].

4. **Unsolicited PPP Procurement Guideline**: This Guide outlines the process through which a Private Proponent can submit a Privately Initiated Infrastructure Proposal (PIIP) to an MDA[11]. For Unsolicited PPPs, (Privately Initiated Infrastructure Proposals), the private proponent must pay a non-refundable proposal fee to the ICRC based on the project cost as identified in the Guideline.[12]

5. **Solicited PPP Procurement Guideline:** This guide applies where projects originate from government MDAs. It is a government-initiated process where

[8] The Full Business Case Guide 2025, the Outline Business Case Guide 2025, and Para 3.8 of the Notice.
[9] Outline Business Case Guide 2025
[10] Para 10 PPP Project Financial Model Guide 2025
[11] Unsolicited PPP Procurement Guide 2025
[12] Para 1(i) Unsolicited PPP Procuerment Guide 2025

an MDA identifies and priorities infrastructure projects suitable for private sector participation.

6. **The PPP Unit Governance Structure and Functions:** Under this notice, the PPP Units MDAs are to be established to provide the specialized expertise required to assess, structure, and manage PPP projects[13].

Implication Of The Notice And The Guidelines

Decentralisation Of Approval Powers

As previously stated, prior to the regime of this Notice, all PPP approvals were to be obtained from FEC[14]. This regime affected project delivery timelines, causing an unnecessary delay in the execution of the Project.

The introduction of PABs within MDAs marks a major shift from the centralised approval regime that previously required all PPP projects to be vetted by FEC. This decentralisation is intended to reduce bureaucratic delays, enhance institutional efficiency, and empower line Ministries to take ownership of their PPP pipelines. It could significantly shorten project development timelines and promote faster execution of viable projects below ₦20 billion. Also, the mandatory requirement for the procurement of the ICRC's FBC certificate of compliance before approval by the PAB is aimed at maintaining federal oversight and legal accountability and uniformity in standards of PPPs across MDAS.

Post-Facto Regularisation Clause

The Notice now mandates MDAs to submit PPP projects already operational or executed outside ICRC oversight for "regularisation"[15]. While this provision effectively validates prior non-compliance and could be exploited to launder irregular or fraudulent contracts into legitimacy, its provision marks a legal shift from the tolerance of irregular PPPs to strict enforcement. Projects that were executed outside the ICRC's oversight now stand the risk of invalidation if not regularised through the MDAs.

Institutional Strengthening And Capacity Building

The Notice compels every MDA to establish a functional PAB and PPP Unit, for the administration of the provisions of the Notice[16]. This development enhances institutional capacity, promotes project ownership, and embeds PPP knowledge within the civil service. This could drive the professionalisation of PPP practice across the federal system and reduce overreliance on external transaction advisors.

[13] Para 2.0 PPP Unit Governance Structure and Functions
[14] Section 2(2) ICRC Act
[15] Para 4.0 of the Notice
[16] Para 2.1.2 of the Notice

The requirement of the Notice[17], that all PPP Agreements be executed solely by the Project Owner (as the Grantor) and that one original copy be lodged with ICRC also improves accountability, contract management, and data centralisation, supporting stronger national project monitoring and performance tracking.

The "No Guarantee" Clause: A Double-Edged Sword

PPPs within the newly approved thresholds are to be fully funded by the private sector without recourse to any form of guarantee, comfort letters, or government funding[18]. This is a bold attempt to mitigate fiscal risk on the government's side given the state of the Nigerian budgetary constraint. However, while the recent Notice adopts a policy stance discouraging the issuance of government guarantees and emphasizes the requirement of full private financing for PPP projects, it cannot be construed as an absolute prohibition. This is because, Section 3 of the ICRC Act expressly empowers the FEC to approve the issuance of guarantees, letters of comfort, or undertakings in respect of concession agreements. Thus, the Notice, as a subsidiary legislation or an administrative policy, cannot repeal or override the provisions of an Act of the National Assembly. In our view, the validity and necessity of any government guarantee will continue to be determined on a case-by-case basis, subject to FEC approval in accordance with the ICRC Act.

It therefore means that notwithstanding the threshold, any project requiring government guarantees must be approved by FEC. Beyond the legal position preserved under Section 3 of the ICRC Act, the issuance of government guarantees has increasingly become a matter of political will rather than statutory authority. The present administration has adopted a more conservative fiscal posture, reflecting its aversion to creating new contingent liabilities in light of past experiences where sovereign guarantees and comfort letters led to significant exposure or misuse. Consequently, while the legal framework still permits FEC-approved guarantees, in practice, such instruments are rarely granted and highly discouraged.

This pragmatic restraint signals a deliberate policy shift towards risk transfer and fiscal prudence, compelling PPP sponsors and lenders to rely more heavily on project revenues, credit enhancement instruments rather than full sovereign backing. In essence, the current environment treats government guarantees not as an entitlement under the Act, but as an exception justified only by compelling public interest or project bankability considerations.

Important to note is that the Financial Model Guide expressly acknowledges that certain forms of public sector support may be incorporated in project structuring to "improve the project's bankability and mitigate identified risks.[19]" This acknowledgment appears to temper the Notice's restrictive tone on guarantees and

[17] Para 3.8 of the Notice
[18] Para 3.2 of the Notice
[19] Para 4.4 PPP Project Financial Model Guide

underscores the continued relevance of targeted fiscal support mechanisms where necessary to make viable projects financeable.

Opportunities for Private Investors

The Notice presents significant opportunities for private investors and project developers by introducing streamlined approval processes, clearly defined cost thresholds, and a reduction in bureaucratic hurdles. Smaller PPP projects, especially in critical sectors such as health, housing, renewable energy, and logistics, can now obtain approvals more rapidly, which is expected to increase transaction velocity and improve overall deal flow. This acceleration not only encourages greater private-sector participation but also supports the timely delivery of crucial infrastructure.

Moreover, the continued involvement of the ICRC in conducting thorough due diligence, leading negotiations, and issuing Certificates of Compliance ensures that regulatory standards remain consistent and that investor interests are protected. This ongoing oversight fosters investor confidence by upholding transparency and adherence to best practices within the PPP framework.

Nonetheless, private investors must carefully assess the implications of operating within a “no guarantee” environment under this new regime. In the absence of government guarantees, investors will need to explore alternative risk mitigation strategies. These may include adopting risk-pooling mechanisms, securing appropriate credit insurance, or leveraging blended finance instruments that combine public and private resources to optimize risk-sharing, adopting risk management and allocation mechanisms in PPP arrangements, including forward sales, put options and indemnity clauses. Adapting financing and PPP structures in this manner will be crucial for attracting sustainable investment and ensuring project viability in this evolving landscape. In our next publication, we discuss blended finance and its potential to bridge the gap between private capital and public infrastructure needs, offering practical pathways for risk mitigation, fiscal prudence, and sustainable investment amidst Nigeria’s “no-guarantee” environment.

Conclusion

The PPP Regulatory Notice marks a significant evolution in Nigeria’s public-private partnership framework by decentralising project approvals, strengthening institutional structures within MDAs, and reaffirming the ICRC’s central regulatory and compliance role. By introducing financial thresholds and empowering Project Approval Boards, the Notice aims to accelerate project delivery and promote private-sector participation in infrastructure development. However, the reforms also raise critical legal and governance concerns, particularly regarding the delegation of FEC’s statutory approval powers and the absolute bar of guarantee from the Federal Government in respect to all concessions.

While the reforms embodied in the Notice and Guidelines mark a commendable step toward modernising Nigeria's PPP framework, there remains considerable work to be done to enhance the commercial robustness and financial credibility of projects. Experience has shown that a well-structured regulatory framework alone does not guarantee success, viability, bankability, and profitability remain the true determinants of whether projects advance beyond concept to financial close and sustainable operation. Strengthening project preparation, institutional capacity within MDAs, and access to innovative financing mechanisms, including blended finance and credit enhancement tools, will be essential to bridge this gap. Ultimately, the development of Nigeria's PPP market will depend on how effectively these reforms are translated into bankable transactions that deliver tangible value for both investors and more importantly, the public.

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