

Cross-Cutting Issues

Legal Framework

While legal aspects of Public Investment Management Assessment (PIMA) institutions are discussed under each institution, it is also important to consolidate and summarize common legal themes under the cross-cutting issues section of the report. This section should comment on any critical gaps, inconsistencies, and overlapping competencies that have been identified in this area.

Countries vary widely in how they document and give force to public investment management (PIM) frameworks. The types of legal instruments used depend on each legal system. Civil law countries tend to put greater weight on enacting the PIM framework in a primary law and spelling it out in detailed rules and regulations with legal force.¹ Common law countries to a greater extent may rely on policy documents and administrative guidelines. In many common law countries, such guidelines and policy documents will not constitute a law or be part of the law, but they are often considered to be binding on the public officials and practitioners. Nevertheless, such a distinction is not always clear-cut. Many common law countries have also introduced specific legislation (for example, dedicated public-private partnership laws) or a component of broader public financial management law for a more binding form of PIM framework. PIMA teams must be aware of these differences between the legal systems. The assessments must consider the overall legal and regulatory framework for PIM, not just high-level legislation.

The legal and regulatory framework for PIM will often comprise three levels:

- The highest level will often be law-governing public investment activities, particularly, in civil law countries. Some countries have separate public investment laws, but often this area is incorporated in a broader budget system law, public financial management law, or fiscal responsibility law. The law will generally establish the legal authority for the PIM system, allocate the key roles and responsibilities, and define the most important functions and procedures related to public investment, including how it is integrated with the budget process. Some aspects of public investment may be governed by specialized laws, for instance, on public-private partnerships, procurement, debt management, and fiscal decentralization. In common law countries, this overarching law may be missing or public investment may only be partially regulated through legislation.
- In all countries, there will usually be one or more regulations covering the public investment functions. These will define procedures for project identification, preparation, appraisal, and selection, as well as for project management, monitoring, and evaluation. Budget process regulations will also be important for public investments, for instance, regulations on budget planning and implementation, commitment controls, and cash management.
- There will also often be technical guidelines and methodological documents. These may cover a range of different issues, including detailed advice on how to analyze project proposals, how to structure PPP contracts, or how to ensure efficient procurement of major investment projects. Technical standards for different types of assets may also be important. The guidelines will usually not be legally binding and in

¹ Civil law is based on Roman legal principles and was developed in continental Europe. Common law was developed in England during the Middle Ages; both forms of law spread to other parts of the world through colonialization and political influence. Common law countries include the United Kingdom, the United States, India, Australia, Canada, South Africa, New Zealand, and other former British colonies. Most of the other countries follow civil law.

most cases will not be considered under the institutional design assessment. However, the guidelines will often impact on the effectiveness of different institutions.

The key issue in the assessment of the legal and regulatory framework is whether this supports a robust institutional design for PIM:

- Are all the main features of the system covered by legal and regulatory instruments?
- Does the legal and regulatory framework support institutional arrangements, mandates, coverage, procedures, disclosure, and accountability for effective PIM?
- Are the legal provisions sufficiently clear and unambiguous? Have they been updated to reflect recent institutional and policy developments?
- Is the legal framework transparent and accessible, and can it be understood by stakeholders from different professional backgrounds?
- Do guidelines and methodological documents provide sufficient support to implement the specific legal provisions?

IMPORTANT DOCUMENTS

Documents	Uses
Laws governing public investment	Assess overall completeness and comprehensiveness of the legal framework
Regulations governing specific aspects of public investment	Assess the adequacy and specificity of the regulation of key functions
Guidelines and methodological documents for public investment functions	Assess whether the guidelines provide sufficient technical guidance for project development, analysis, and implementation

The legal and regulatory framework will also impact the assessment of PIM effectiveness. The formal requirements in laws and regulations, and the guidance provided in guidelines and similar documents, will contribute to defining the potential impact of PIM. However, the effectiveness will depend on compliance with legal requirements

and the attention given to technical guidelines, and several other factors.

However, in some cases the effectiveness of PIM may be negatively impacted by the design of a law or regulation. The legal framework may include significant exemptions from standard process and criteria, for example, too-permissive exceptions to mandatory public tender or significant exemptions from the standard process and criteria for priority projects or emergency projects. This will undermine the effectiveness of the relevant institutions.

Where PIM legal frameworks, rules, and procedures exist but are not followed, the effectiveness of PIM may require some legal adjustments. For instance, effectiveness can be improved by addressing weaknesses in the design of the legal frameworks for sanctions and internal and external audit. In other cases, the legal and regulatory framework may be too demanding, given the capacity of the country. In these cases, calibration of legal requirements to a more realistic level can improve the quality of PIM. This may include limiting the most extensive procedures to large and complex projects, with simplified procedures for small and routine projects.

The assessment of and recommendations related to specific legal and regulatory frameworks will usually be included under the relevant institutions. The cross-cutting discussion should summarize the relevant assessments and recommendations. In some cases, there could also be specific recommendations in the cross-cutting issues section, for example, related to the consistency between or integration of different pieces of legislation and regulations.

A useful part of the cross-cutting issue section could be a table listing for each PIMA institution the existing legal documents and guidelines, A second column could indicate year in which it came into effect. A third column may register institutional coverage (central government, public corporations, subnational governments) The last column could be used for comments by the PIMA team. The table could be part of this section or could be presented in an appendix.

Capacity

The cross-cutting analysis of staff capacity should build on and summarize the assessments of different PIMA institutions and dimensions for which there are identified capacity and skills gaps. Staff capacity is a critical factor in the implementation of public investment policies and has significant impact on the effectiveness of public investment institutions. As indicated in the generic theory of change for the PIMA framework (Figure 4.1), staff capacity will determine whether public investment activities are carried out as envisaged in the institutional design and whether the planned outputs are produced.

The organizations responsible for PIM will need staff with different expertise and skills in the different phases:

- In the planning phase, there is a need for planners, economists, engineers, social scientists, and project development specialists to help develop investment strategies and plans, coordinate these plans across levels of government, and appraise potential investment projects.
- During the budget allocation phase, budget and finance specialists are essential to ensuring adequate and transparent budgeting for investments, but there is also a need for engineers and other technical staff to determine maintenance needs, and for economists and social scientists to contribute to project selection.
- During project implementation, procurement specialists and contract lawyers play key roles in the procurement phase; control engineers, project managers, and monitoring and evaluation specialists contribute to project management and monitoring; and internal and

external auditors and accountants will be critical to ensure accountability.

Many countries have emphasized the need to build and retain staff capacity for PIM. In the absence of competent staff, even the best designed institutions are unlikely to produce the intended results. Box 8.1 summarizes the project delivery capability framework in the United Kingdom and Box 8.2 provides a summary assessment of staff capacity for public investment in Estonia.

Some countries establish project implementation units (PIUs) to manage major projects, often as part of agreements with international financial institutions. These PIUs will follow the institution's procedures and exhibit good practices, including rigorous project appraisal, independent review of project appraisal, transparent project selection criteria, systematic project monitoring, differentiated requirements across the project cycle by size of project, and dedicated funding for capacity building in key functions. The good practices developed in these PIUs can usefully be mainstreamed in the regular government organizations and applied also to projects financed from the national budget. PIMA evaluators could analyze (and possibly recommend) how a transfer of skills from externally financed investment projects to regular civil service structures could be beneficial. In many countries, the dual-track nature of the national PIM framework exacerbates the skills gap as scarce skills are often dedicated to externally financed projects. This discrepancy can be reduced by forming joint staffing teams, allowing skills transfer across externally financed projects and other government projects.

IMPORTANT DOCUMENTS

Documents	Use
Organizational charts for key ministries and institutions	Assess if overall capacity is consistent with institutional framework and workload
Overview of staff capacity and skills	Identify potential gaps in the performance of specific functions
Training programs and capacity development plans	Assess plans for reducing and eliminating skills gaps
Strategies to promote and reward performance	Assess existence and adequacy of performance incentives

Box 8.1. Project Delivery Capability Framework in the United Kingdom

The Project Delivery Capability Framework describes the job roles, capabilities, and learning for all government project delivery professionals across government. These professionals are responsible for delivery of major public investments in the United Kingdom. The PDCF contains three elements: a career pathway/common set of job roles, a set of competencies, and a signpost for development opportunities specific to job roles. It provides a common language to describe job roles, and the knowledge, skills and abilities needed to perform project work across all areas of government. It is a useful resource for both current project delivery professionals and anyone interested in moving into the profession. Figure 8.1.1 lists the different job roles covered by the Project Delivery Capability Framework.

Figure 8.1.1. UK Government Project Delivery Career Pathways

		Civil Service Grades								
		B1	B2		A		SCS			
		EO	HEO	SEO	G7	G6	SCS 1	SCS 2	SCS 3	
Project Delivery Career Pathways	Leadership	Head of Profession								
		SRO/Sponsor				●	●	●	●	●
		Portfolio Manager / Director				●	●	●	●	●
		Programme Manager / Director			●	●	●	●	●	●
		Project Manager / Director		●	●	●	●	●	●	●
	PMO Manager / Director				●	●	●			
	Project Delivery Specialists	Portfolio Analyst		●	●					
		Project Planner	●	●	●	●	●			
		Resource Manager		●	●	●	●			
		Business Case Manager	●	●	●	●	●			
		Assurance Manager	●	●	●	●	●			
		Configuration Manager	●	●						
		Project Support Officer	●	●	●	●				
		Governance & Reporting Manager	●	●	●	●	●			
	Risks & Issues Manager	●	●	●	●					
Business Analysis & Change Specialist	Advisor						●	●		
	Stakeholder Manager	●	●	●	●	●				
	Benefits Manager	●	●	●	●	●				
	Business Change Manager	●	●	●	●	●				
	Business Analyst	●	●	●	●					

Source: UK Infrastructure and Projects Authority 2018.

Any recommendations in this area should be based on a comprehensive assessment of capacity and skills compared with the key functions to be performed. Recommendations based on incomplete information should be avoided. In some cases, government staff may suggest that lack of staffing is a constraint, although overall staff numbers may be high by international comparison. One common challenge is that staff resources may be spent on low-value routine reporting activities instead of being reassigned to more important analytical tasks. Skills gaps may also be important. This implies that staff training and streamlining of

processes often is a more appropriate response than increased staff numbers.

USEFUL DATA SERIES

Data	Questions to Address
Staffing levels for key functions	Are approved resources adequate to perform key functions?
Vacancy rates for key functions	Are actual resources adequate to perform key functions?
Functional reviews	Is the organizational design, including incentives, adequate to support staff performance?

Box 8.2. Staff Capacity for Public Investment Management in Estonia

The Estonian Ministry of Finance consists of about 450 staff, of which 90 percent have higher education, and staff turnover is modest. There are currently 71 staff in the three departments of the fiscal sector that are involved in PIM, with 48 in the State Budget Department, 4 in the Local Governments Financial Management Department, and 19 in the Fiscal Policy Department. For recruitment to professional-level positions, a master's degree is generally required, and 64 percent of staff meet this requirement and a further 24 percent have bachelor's degrees. Staff turnover is less than 10 percent each year, and average time of service in the Ministry of Finance is more than 10 years. Salary levels are competitive: the policy is to offer salaries equivalent to the median of similar positions in the private sector.

Staff capacity in the Ministry of Finance is high, in terms of numbers, skills, and experience; the same appears to be the case in other agencies involved in PIM. The Estonian Ministry of Finance has a higher staff complement than many finance ministries in the Nordic countries, and the fiscal policy and budget functions have staff numbers similar to these countries. Staff are highly educated, and many have long experience from the ministry and other relevant organizations. Estonia's highly developed and well-managed public financial management system is also a clear indication of the high level of staff competencies.

There are no apparent capacity gaps in the Ministry of Finance that hamper efficient PIM, and the ministry and the government's shared service center are also providing training to other ministries and agencies. There is a potential for improvements in public investment practices, and this will require learning and development among the staff. Staff have in the past demonstrated a strong interest in and ability to continuously improve practices and strengthen their capacities, and it is expected that this also will be the case in future reform processes. The Ministry of Finance has also contributed to training staff in other ministries and organizations in their areas of responsibility, including in procurement and performance budgeting.

Source: Estonia PIMA 2019.

Information Systems

Many public investment functions are based on computerized systems, and the quality of these systems is essential for the public investment process. Robust information systems support efficient PIM and enhance the transparency of the process. PIM information systems may be independent and separate, but often they will be partially integrated with other government financial management information systems. The extent and quality of this integration will often be a key feature in this cross-cutting assessment.

The following IT functions will be particularly important for efficient PIM:

- Project pipeline development (identification, preparation, design, and presentation)
- Project development and appraisal
- Interface with budgeting system
- Interface with procurement system
- Interface with budget execution and accounting system

- Project management
- Portfolio monitoring
- Interface with asset management system

The assessment should provide a consolidated overview of the main information systems used for PIM and the interfaces between them and with other information systems. The analysis should build on the description of relevant information systems under different PIMA institutions and dimensions. The cross-cutting assessment should include a brief description of the overall program architecture and the key functions performed by the systems. Organizational responsibilities, including for data entry, verification, and consolidation, should be described. Key interfaces with other systems, including the mechanisms for data transfer and reconciliation, should be outlined. Tables and figures describing key aspects of the information system structure will be useful. Box 8.3 describes Ireland's investment projects and programs tracker, and Box 8.4 gives an overview of Chile's integrated project database.

IMPORTANT DOCUMENTS

Documents	Uses
<ul style="list-style-type: none"> Information system architecture Specifications for individual IT systems 	<ul style="list-style-type: none"> Assess comprehensiveness and integration Assess whether systems meet functional requirements of different PIMA institutions

USEFUL DATA SERIES

Data	Questions to Address
<ul style="list-style-type: none"> IT system performance data Public investment reports 	<ul style="list-style-type: none"> Is the IT system effective and available to users who need it? Do the reports meet the needs for effective management and coordination?

The quality of the information system may be a key determinant in the assessment of different PIMA institutions. Information systems design and comprehensiveness affect the institutional design of PIMA institutions, and information system effectiveness has direct results for the overall effectiveness of PIM.

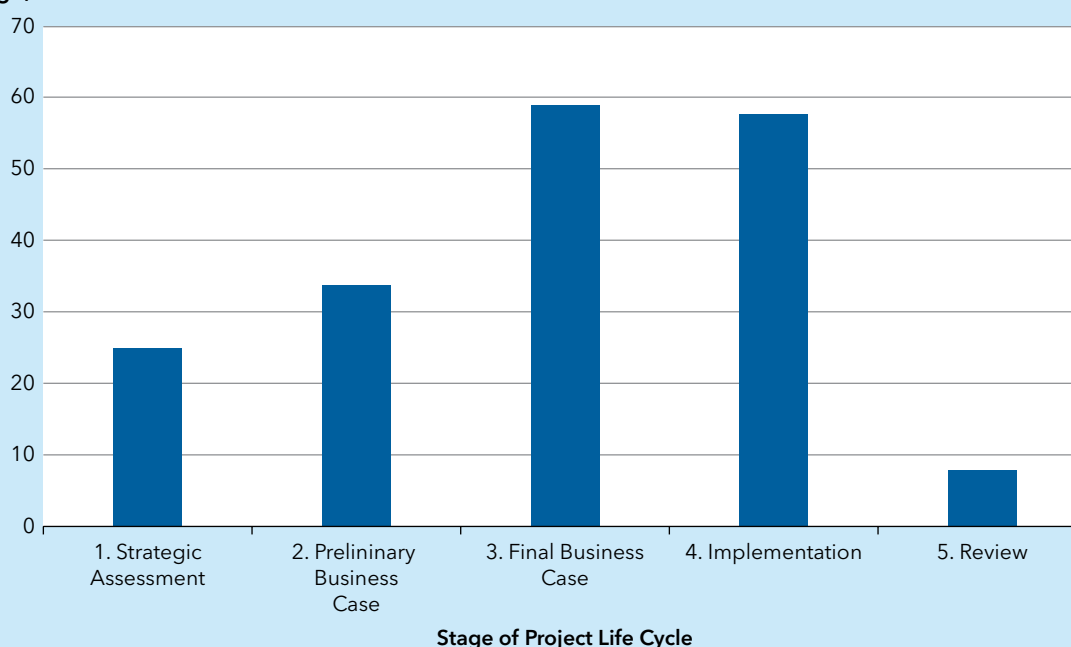
- Recommendations related to how the information system can improve the design or effectiveness of specific institutions should be discussed under that institution, with a summary under the cross-cutting issues section.
- Recommendations related to better integration or coordination between systems may be presented in the cross-cutting issues section.

Box 8.3. Investment Projects and Programs Tracker in Ireland

The Irish Investment Projects and Programs Tracker is an information system for monitoring of major investments through their different stages. The system is maintained by the Department of Public Expenditure and Reform, and data are provided by relevant government departments and agencies. The system is publicly available on the department's website.

The tracker reflects the portfolio of projects with estimated costs above €20 million in the pipeline. This includes projects at all stages in the project life cycle from strategic assessment through preliminary business case, final business case, implementation, and review. Figure 8.3.1 summarizes the number of projects at each stage.

Figure 8.3.1. Number of Projects in Ireland's Investment Projects and Programs Tracker, by Life Cycle Stage, 2020



Source: Government of Ireland 2020.

Box 8.4. Chile Integrated Projects Database

The Integrated Project Bank (BIP) is an information system for the registration of projects, programs, and basic studies that request annual financing through a report called the Investment Initiative File. The conceptual unit of the system is the investment initiative based on its life cycle, and it monitors the different phases of the process during the budget year: entry of initiatives, registration of their entry in the National Investment System (SNI), admissibility, technical-economic analysis and recommendation, creation of assignments, and their physical-financial execution.

The main objective of the BIP is to deliver, in a permanent and dynamic way, information on the management process of public investment as a whole, as well as each of the public institutions involved; link the institutions that participate in the public investment process and improve, through institutional coordination, decision-making, administration tasks, and planning tasks; and provide information to improve the formulation of investment initiatives. It also provides information of a diverse nature for operational control or management analysis activities.

The BIP comprises the following modules:

- *Consultation BIP* presents in a summarized and easily accessible way, available to all users of the web, the most relevant data of the current processes of public investment.
- *Work BIP* allows public sector users, previously registered, to enter or modify information on their investment initiatives. It also allows investment analysts from the Ministry of Social Development to issue the Result of the Technical Economic Analysis (RATE).
- *Management BIP* is a set of tools to which Work BIP users have access, and its objective is to extract information from current processes or previous processes directly from the database, in order to support the analysis and control tasks of the process of public investment.
- *Central Administrator BIP* allows maintenance of the BIP system, preventive corrections, and updates to the system information.
- *BIP Regional Administration* allows preventive corrections to system information, particularly to initiatives in the region of the country to which the administrator belongs.

Source: Government of Chile 2017.

This page intentionally left blank