

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) ACT, 2018

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THE UNITED REPUBLIC OF TANZANIA



NO. 9 OF 2018

I ASSENT,

JOHN POMBE JOSEPH MAGUFULI
President[24th SEPTEMBER, 2018]**An Act to amend the Public Private Partnership Act.****ENACTED** by Parliament of the United Republic of Tanzania.PART I
PRELIMINARY PROVISIONS

Short title

Cap.103

1. This Act may be cited as the Public Private Partnership (Amendment) Act, 2018 and shall be read as one with the Public Private Partnership Act, hereinafter referred to as the “principal Act”.

PART II
GENERAL AMENDMENTSGeneral
amendments

2. The principal Act is amended generally by-

(a) deleting the words “Ministry responsible for finance” wherever it appears in the Act and substituting for it the word “Ministry”; and

- (b) deleting the words “Public Private Partnership Technical Committee” wherever it appears in the Act and substituting for it the phrase “Public Private Partnership Steering Committee.”

Amendment
of section 3

3. The principal Act is amended in section 3, by-

- (a) deleting the definitions of the terms “Minister” and “Ministry” and substituting for them the following:
 “Minister” means the Minister responsible for public private partnership;
 “Ministry” means the Ministry responsible for public private partnership;”;
- (b) deleting the definition of the term “National Investment Steering Committee”;
- (c) adding in the appropriate alphabetical order the following new definitions:
 “small scale PPP project” means a PPP project approved under this Act of an amount not exceeding twenty million US dollars;” and
- (d) in the definition of the term “Public Private Partnership” by inserting between the words “Public Private Partnership” and “means” the words “or known in its acronym as “PPP”.

Amendment
of section 4

4. The principal Act is amended in section 4-

- (a) by deleting subsection (2) and substituting for it the following:
 “(2) The PPP Centre shall be under the general supervision of the Ministry.”;
- (b) by adding immediately after subsection (2) the following:
 “(2A) There shall be such other number of departments as the Executive Director may, upon approval of the authority responsible for establishment in the public service, determine.”;

- (c) deleting subsection (6) and substituting for it the following:

“(6) Every contracting authority shall, at the beginning of every budget cycle, submit to the PPP Centre concept note and prefeasibility study of potential public private partnership projects:

Provided that-

- (a) the potential public private partnership project complies with the national development priorities; and
(b) the concept note and prefeasibility study of potential public private partnership projects is approved by the respective Minister.”

- (d) adding immediately after subsection (6) the following:

“(6A) The PPP Centre shall, within twenty one working days, analyse the potential public private partnership project received in terms of subsection (6) and forward to the Public Private Partnership Steering Committee”;

- (e) in subsection (7) by deleting the word “list” and substituting for it the words “concept note or prefeasibility study”; and

- (f) deleting subsection (8) and substituting for it the following:

“(8) In this section, the term “budget cycle” shall have the meaning ascribed to it under the Budget Act.”.

Cap. 439

Amendment
of section 5

- 5.** The principal Act is amended in section 5,-

- “(a) by deleting the words “and forward to the Ministry responsible for finance” appearing in subsection (2)”;
- (b) by deleting subsection (3);
- (c) by deleting subsection (4) and substituting for it the following:

“(4) The PPP Centre shall, upon completion of analysis under subsection (2), submit the feasibility study, selection of preferred bidder and PPP agreements to the Public Private Partnership Steering Committee for approval.”;

(d) renumbering subsections (4) to (6) as subsections (3) to (5) respectively; and

(e) by adding immediately after subsection (5) as renumbered the following:

“(6) The Minister shall, for the purpose of ensuring investment in PPP projects and in consultation with the Minister responsible for investment, prepare programmes for development and maintenance of favourable environment for investment through public private partnership arrangement.”.

Amendment
of section 7

6. The principal Act is amended in section 7(1) by deleting paragraph (e) and substituting for it the following:

“(e) a representative of authority responsible for national planning;”.

Amendment
of section 7A

7. The principal Act is amended in section 7A-

(a) in subsection (1), by-

(i) deleting paragraph (c) and substituting for it the following:

“(c) approve feasibility study, detailed project report and design, selection of preferred bidder, public private partnership agreement or any amendment to the agreement;”

(ii) deleting the words “or the Treasury” appearing in paragraph (d);

(b) by deleting subsection (2) and substituting for it the following:

“(2) Subject to the recommendation made by the PPP Centre, the Public Private Partnership Steering Committee shall, within twenty one working days, approve feasibility

studies, detailed project report and design, selection of preferred bidder, agreements and amendment to agreements.”

(c) by deleting subsection (3).

Repeal and replacement of section 7B

8. The principal Act is amended by repealing section 7B and replacing it with the following:

Public funding and other support of PPP project

7B.-(1) Notwithstanding the provisions of section 7A, the Public Private Steering Committee shall, where a project requires public funding, any other government support or determination of matters of policy, refer the matter to the Minister for determination.

(2) The Minister shall, within twenty one working days from the date of receipt of matters from the Public Private Partnership Steering Committee in terms of subsection (1)-

(a) in the case of matters requiring public funding, process the matter in the manner prescribed under the Government Loans, Guarantees and Grants Act;

(b) in the case of matters requiring any government support or determination of matters of policy, make determination and direct the Public Private Partnership Steering Committee accordingly.

(3) Notwithstanding subsection (2), the Minister shall, where a matter has not been determined within twenty one working days, notify the Public Private Partnership Steering Committee with reasons thereof.

Cap. 134

Addition of
section 7C

9. The principal Act is amended by adding immediately after section 7B a new section 7C as follows:

“Powers of
Minister
generally

7C.-(1) The Minister shall, through the official *Gazette*, newspaper of wide circulation or public media, notify the general public of all approved projects under this Act.

(2) The Minister shall monitor and manage fiscal risks and other financial matters relating to the implementation of PPP projects in accordance with the respective agreement.

(3) Subject to the provisions of this Act, the Minister shall issue directives to accounting officers of contracting authorities on the analysis and approval or disapproval of small scale PPP projects.”

Amendment
of section 10

10. The principal Act is amended in section 10 by adding immediately after subsection (4) the following:

“(4A) Without prejudice to the provisions of subsection (2), the Minister may, by regulations, prescribe additional or detailed contents of a concept note and feasibility study as may be required under a PPP project.”

Amendment
of section
10A

11. The principal Act is amended in section 10A (2) by deleting the words “an account with a reputable investment bank” appearing in subsection (2) and substituting for them the words “a bank account”.

Amendment
of section 15

12. The principal Act is amended in section 15, by-

(a) adding immediately after subsection (1) the following:

“(2) Notwithstanding subsection (1), the Minister may exempt procurement of an unsolicited project from competitive bidding process where it meets the following criteria:

- (a) the project shall be of priority to the Government at the particular time and broadly consistent with the government strategic objectives;
- (b) the private proponent does not require Government guarantee or any form of financial support from the Government;
- (c) the project shall have unique attributes that justify departing from a competitive tender process;
- (d) the project is of significant size, scope and requires substantial financing as per conditions provided in the regulations;
- (e) the project shall demonstrate value for money, affordability and shall transfer significant risks to the private proponent;
- (f) the project has wide social economic benefits including improved services, employment and taxation; and
- (g) the proponent commits to bear cost of undertaking a feasibility study.

(3) Upon approval of project concept for unsolicited proposals, the private proponent shall make a commitment to undertake the project by depositing a refundable amount of not exceeding three percent of the estimated cost of the project to be conducted.

(3A) The Minister may make regulations prescribing procedure for deposit and refund of commitment deposits under subsection (3).”

- (b) renumbering subsection (2) as subsection (4);
- (c) adding immediately after subsection (4) as renumbered the following:

“(5) The regulations under this section, shall among other things, prescribe the following-

- (a) inclusion of local firms and experts in consultancy contracts;
- (b) use of local goods and experts in works and non-consultancy services;
- (c) preference to local goods in process of evaluation;
- (d) capacity building of local firms; and
- (e) any other matter relating to empowerment of local company and Tanzanian citizens.”

Amendment
of section 20

13. The principal Act is amended by deleting section 20 and substituting for it the following:

“Amendment of
agreements

20. Subject to section 7B, an agreement may be reviewed and amended by parties if the review or amendment is consented to by the Public Private Partnership Steering Committee and vetted by the Attorney General.”

Repeal and
replacement
of section 22

14. The principal Act is amended by repealing section 22 and replacing for it the following:

“Dispute
resolutions

22. Any dispute arising during the course of the agreement shall-

- (a) be resolved through negotiation; or
- (b) in the case of mediation or arbitration, be adjudicated by judicial bodies or other organs established in the United Republic and in accordance with laws of Tanzania.”

Addition of
section 23A

15. The principal Act is amended by adding immediately after section 23 a new section 23A as follows:

“Periodic
performance
reports

23A.-(1) An accounting officer shall submit to the PPP Centre mid-year performance report on the implementation of public private partnership projects in the manner prescribed in the Regulations.

(2) The PPP Centre shall consolidate mid-year performance reports of contracting authorities and submit the report to the Minister.”

Addition of
section 25A

16. The principal Act is amended by adding immediately after section 25 the following:

“Projects
relating to
natural
wealth and
resources
Acts Nos
5 of 2017
6 of 2017

25A. The public private partnership project that relates to natural wealth and resources shall take into account the provisions of the Natural Wealth and Resources (Permanent Sovereignty) Act and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act.”

Amendment
of section 27

17. The principal Act is amended in section 27 by deleting the words “not exceeding five million shillings or to imprisonment for a term not exceeding three years” and substituting for them the phrase “not less than five million shillings and not exceeding fifty million shillings or to imprisonment for a term of not less than three months and not exceeding three years or both.”

Amendment
of section 28

18. The principal Act is amended in section 28-

(a) in subsection (2), by-

(i) deleting paragraph (g) and substituting for it the following:

“(g) the manner in which the

empowerment of citizens of Tanzania may be implemented including provision of goods and services by Tanzanian entrepreneurs, training and technology transfer, employment of Tanzanians and corporate social responsibility;

(h) process and procedure for scrutiny and analysis of projects that require provision of Government support;”;

“(ii) renaming paragraphs (h) and (i) as paragraphs (i) and (j) respectively.”

(b) deleting the words “in consultation with the Co-ordination Unit” appearing in subsection (3).

PART III CONSEQUENTIAL AMENDMENTS

(a) *Amendment of the Tanzania Investment Act, Cap. 38*

Construction
Cap. 38

19. This Part shall be read as one with the Tanzania Investment Act hereinafter referred to as the “principal Act”.

Amendment
of section 5

20. The principal Act is amended in section 5(4), by deleting-

(a) the word “including” appearing in paragraph (a) and substituting for it the word “and”;

(b) the words “approved public private partnership projects and” appearing in paragraph (c).

(b) *Amendment of the Public Procurement Act, Cap. 410*

Construction
Cap. 410

21. This Part shall be read as one with the Public Procurement Act hereinafter referred to as the “principal Act”.

Amendment
of section 9

22. The principal Act is amended in section 9(1) by deleting paragraph (c) and substituting for it the following:

“(c) regulate procurement of consultancies, transaction advisors and private party in respect of public private partnership projects in accordance with the regulations made under the Public Private Partnership Act and guidelines issued by the Authority in collaboration with the PPP Centre.”

*(c) Amendment of the Budget Act,
Cap.439*

Construction
Cap. 439

23. This Part shall be read as one with the Budget Act hereinafter referred to as the “principal Act”.

Amendment
of section 7

24. The principal Act is amended in section 7(3) by deleting the words “public private partnership” appearing in the fourth line.

*(d) Amendment of the Petroleum Act,
Cap.392*

Construction
Cap.392

25. This Part shall be read as one with the Petroleum Act hereinafter referred to as the “principal Act”.

Amendment
of section 9

26. The principal Act is amended in section 9(2) by deleting paragraph (i) and substituting for it the following:

“(i) participate in the-

- (i) joint venture projects for optimization of shareholder value under strategic partnership arrangement; or
- (ii) projects under public private partnership arrangement in accordance with Public Private Partnership Act;”.

Cap.
103

Passed by the National Assembly on the 12th September, 2018.

STEPHEN KAGAIGAI
Clerk of the National Assembly