

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

No. 10

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THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) ACT,

(CAP. 103)

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THE UNITED REPUBLIC OF TANZANIA



NO. 3 OF 2014

I ASSENT,
JAKAYA MRISHO KIKWETE
President

[11th December, 2014]

An Act to amend the Public Private Partnership Act, Cap. 103 with a view to making better provisions intended to smoothen supervision and coordination of public private partnership projects and to amend the Tanzania Investment Act, Cap. 38 and the Public Procurement Act, in consequence thereof.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Public Private Partnership (Amendment) Act, 2014 and shall be read as one with the Public Private Partnership Act, hereinafter referred to as the "principal Act".

PART II
GENERAL AMENDMENTS

Amendment
to section 3

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

(a) deleting-

- (i) the definition of the designation "Co-ordinator";
- (ii) the designation "Co-ordinator", wherever it appears in the Act and substituting for it the designation "Executive Director";
- (iii) the definition of the term "Co-ordination Unit"
- (iv) the term "Co-ordination Unit" wherever it appears in the Act and substituting for it the term "PPP Centre";
- (v) the definition of the term "Finance Unit";
- (vi) "Finance Unit", wherever it appears in the Act and substituting for it the designation "PPP Centre";
- (vii) the definition of the term "contingent liability" and substituting for it the following-

- "contingent liability" means a legal or contractual obligation to make payment depending on the outcome of uncertain future event arising from project transaction including all other contingent liabilities that may be borne by the Government in relation to or associated with public private partnership projects; and
- (viii) the definition of the term "contracting party";
- (b) inserting the word "public" between the words "authority" and "or" appearing in the definition of the term "contracting authority"; and
- (c) inserting in its alphabetical order the following new definitions-
- "Executive Director" means the Executive Director for the PPP Centre appointed under section 6; and
- "Facilitation Fund" means the Public Private Partnership Facilitation Fund established under section 10A;"
- Cap. 14 "National Investment Steering Committee" means the National Investment Steering Committee established under the Tanzania Investment Act;"
- "Public Private Partnership Technical Committee" means the Private Public Partnership Technical Committee established under section 7;
- "PPP Centre" means the Public Private Partnership Centre established under section 4;"
- "public private partnership" means a contractual arrangement between a contracting authority and a private party in which the private party-

- (a) undertakes to perform for contracting authority function on behalf of the contracting authority for a specified period;
- (b) assumes substantial financial, technical and operation risks in connection with the performance on behalf of the contracting authority function or use of government property; or
- (c) receives a benefit for performing on behalf of contracting authority function or from utilizing the public property, either by way of:
 - (i) consideration to be paid by the contracting authority which derives from a revenue fund, or where the contracting authority is a central government or local government authority, from revenues of such authority;
 - (ii) charges or fees to be collected by a private party or its agent from users or customers; or
 - (iii) a combination of such consideration and such charges or fees; and

"PPP agreement" means a written contract defining terms of the public private partnership agreement concluded between a contracting authority and one or more private parties.

Amendment
to of Part
II

3. The principal Act is amended, by deleting the title to Part II and substituting for it the following title-

**"ESTABLISHMENT AND ADMINISTRATION OF
THE PPP CENTRE".**

Amendment
to of
section 4

4. The principal Act is amended in section 4, by -
- (a) deleting the marginal note and substituting for it the following-
"PPP Centre";
 - (b) deleting subsection (1) and substituting for it the following provisions-

"(1) There is established, a PPP Centre to be known as the Public Private Partnership Centre.

(2)(a) The PPP Centre shall be constituted within the Office of the Prime Minister.

(b) There shall be such other number of department as the Executive Director may determine.

(3) The centre shall be a body corporate with perpetual succession and common seal and shall, in its own name, be capable of-

(a) acquiring and holding movable property, to dispose of property and to enter into a contract or other transactions;

(b) suing and being sued; and

(c) doing or suffering to do all other acts and things which bodies corporate may lawfully do or suffer to do, for the proper performance of its functions under this Act."

(c) renumbering subsections (2),(3), (4) and (5) as subsections (3), (4), (5) and (6) respectively.

(d) in subsection (4) as renumbered, by deleting-

(i) the words "non-productive" and substituting for it the word "social"; and

(ii) figures "(2)", "(4)" and "(5)" and substituting for it figures "(3)", "(5)" and "(6)" respectively.

- (c) deleting subsections (5) and (6) as renumbered and substituting for it the following-

"(5) Every contracting authority shall, at the beginning of every budget cycle, submit to the PPP Centre a list of potential public private partnership projects.

(6) For the purposes of subsection (7), the Minister shall, at least two months before the beginning of the budget cycle, ask each contracting authority to submit to the PPP Centre a list of potential public private partnership projects.

(7) The Minister shall prescribe by regulations the scope, type and value of projects which local government authorities may undertake under this Act."

Repeal and
substitute
s. of
section 1

5. The principal Act is amended by repealing section 5 and substituting for it the following-

"Functions of
PPP Centre

5.-(1) The functions of the PPP Centre shall be to-

- (a) mobilize resources for project development and Government support to public private partnership projects;
- (b) develop a mechanism to ensure that all ministries, Government departments and agencies and local government authorities integrate public private partnership into their sector strategies and plans;

- (c) develop operational guidelines for contracting authorities;
- (d) design and implement a fair, transparent, competitive and cost effective procurement process;
- (e) deal with fiscal risk allocation and other financial matters of all public private partnership projects;
- (f) advise contracting authorities on all matters relating to public private partnership projects;
- (g) provide technical assistance to ministries, Government departments, agencies, local government authorities and private sector in planning, managing and appraising public private partnership projects;
- (h) examine requests for proposals to ensure conformity with the approved feasibility study;
- (i) monitor, review and evaluate implementation of Public Private Partnership Facilitation Fund;
- (j) ensure relevance and adequacy of proposals submitted to it by contracting authorities;

- (k) monitor and evaluate the performance of the public private partnership projects and prepare periodic performance reports;
- (l) design and implement programmes for public private partnership capacity building to public and private sectors;
- (m) develop and implement programmes intended to promote public awareness on public private partnership issues; and
- (n) undertake research on public private partnership matters.

(2) Without prejudice to the generality of subsection (1), the PPP Centre shall analyse projects submitted by contracting authorities within thirty working days from the date of receipt and forward to the Ministry responsible for finance.

(3) Subject to provisions of subsection (2), the Ministry responsible for finance shall undertake an analysis of fiscal risks, affordability and other financial matters and submit the projects to the PPP Centre within fifteen working days from the date of receiving such projects.

(4) The PPP Centre shall, after receiving recommendation from the Ministry responsible for finance, within seven working days, submit the projects to the Public Private Partnership Technical Committee.

(5) The PPP centre be a One Stop Center, and in so being, it shall, for effective discharge of its functions seek recommendations from the Ministries responsible for investment, finance, planning or any other ministry, department or agency.

(6) Nothing in this section shall prevent the contracting authorities from undertaking necessary technical analysis relevant for project within their jurisdiction.”

Repeal and
substitution
of section 6

6. The principal Act is amended by repealing section 6 and substituting for it the following:

Executive
Director
Cap. 298

6.-(1) The PPP Centre shall be headed by a Executive Director who shall be appointed on competitive basis in accordance with the Public Service Act.

(2) A person shall be qualified for appointment as Executive Director if that person-

- (a) possesses at least a degree in the field of project management, accounting, law, engineering, economics or other related fields; and
- (b) has knowledge and experience on the development, formation or implementation of projects or undertakings of a public or private nature.

(3) There shall be appointed to the PPP Centre such persons who are qualified and possess knowledge and experience on the formation, development or implementation of projects or undertakings of a public or private nature.

Cap. 258

(4) The appointment of persons to the PPP Centre shall be made on competitive basis in accordance with the Public Service Act.”

Repeal and
substitution
of section 7

7. The principal Act is amended by repealing section 7 and substituting for it the following provision:

Public
Private
Partnership
Technical
Committee

7.-(1) There shall be a Public Private Partnership Technical Committee comprised of-

- (a) the Permanent Secretary, Ministry responsible for Finance, who shall be the Chairman;
- (b) the Permanent Secretary Prime Minister's office;
- (c) the Permanent Secretary of the Ministry responsible for lands;
- (d) the Deputy Attorney General;
- (e) the Executive Secretary of the President's Office- Planning Commission;
- (f) the Executive Director of the Tanzania Investment Centre;
- (g) the Executive Director of the Tanzania Private Sector Foundation;
- (h) the Commissioner General of Tanzania Revenue Authority;

- (i) the Permanent Secretary, Ministry responsible for Local Government;
- (j) two persons from private sector nominated by the Minister on recommendation of Tanzania Private Sector Foundation.

(2) The Permanent Secretary of the sector Ministry whose project is the subject of deliberation shall attend meetings of the Public Private Partnership Technical Committee.

(3) The Public Private Partnership Technical Committee may co-opt any other person who has knowledge and experience in the subject matter of the deliberation.

(4) The Executive Director shall be the Secretary to the Public Private Partnership Technical Committee.

(5) The Public Private Partnership Technical Committee shall meet at least once in every three months.

(6) Notwithstanding subsection (5), the Public Partnership Technical Committee may meet as often as it may be necessary for effective discharge of its functions."

Addition of
sections 7A
and 7B

8. The principal Act is amended by adding immediately after section 7 as substituted the following new provisions:

Functions
of the Public
Private
Partnership
Technical
Committee

7A.- (1) The functions of the Public Private Partnership Technical Committee shall be to-

- (a) a review policy, legislation, plans and strategies pertaining to the promotion, facilitation and development of public private partnership and to advise the Minister accordingly;

- (b) advise the Minister on matters relating to implementation of the National Public Private Partnership Programme;
- (c) consider and approve Public Private Partnership projects, agreements and any amendment to the agreements;
- (d) approve allocation of project development funds from the Facilitation Fund or the Treasury; and
- (e) assign to contracting authorities terms and conditions for utilisation of the Facilitation Fund.

(2) Projects submitted to the Public Private Partnership Technical Committee shall be dealt with and approved within fifteen working days from the date of receipt.

(3) Subject to the recommendation made by the PPP Centre, the Public Private Partnership Technical Committee shall approve feasibility studies, selection of preferred bidder agreements and amendment to agreements.”

Submission
of projects
to the
National
Investment
Steering
Committee

7B-(1) The Public Private Partnership Technical Committee shall submit approved projects to the National Investment Steering Committee for scrutiny.

(2) Projects submitted to the National Investment Steering Committee by the Public Private Partnership Technical Committee shall be processed within fifteen days from the date of submission.

(3) Where a project to be undertaken requires public financing, the National Investment Steering Committee shall direct the Minister responsible for finance to initiate funding process.

(4) The Minister responsible for Finance shall monitor and manage fiscal risks and other financial matters related to the implementation of PPP projects in accordance with the agreement.

(5) The Minister shall notify the general public of approved projects in the official Gazette.

Amendment
of section 9

9. The principal Act is amended in section 9:

(a) in subsection (1) by-

(i) inserting the word "manage" between the words "develop" and "and" appearing in paragraph (a) of subsection (1); and

(ii) deleting paragraph (d);

(b) by adding after subsection (2), the following new subsection:

"(3) Sections 7A and 7B shall not be construed as removing or abrogating powers of the contracting authority or accounting officer for assuming overall responsibility on matters assigned to it under this section."

Addition of
sections
10A, 10B
and 10C.

10. The principal Act is amended by adding immediately after section 10 the following provisions:

*Facilitation
Fund

10A.-(1) There shall be a Facilitation Fund to be known as the Public Private Partnership Facilitation Fund.

(2) The PPP Centre shall open an account with a reputable investment bank into which shall be kept all moneys constituting the Facilitation Fund.

(3) The Executive Director shall be the accounting officer of the Facilitation Fund.

(4) The use of funds from the Facilitation Fund shall require approval of the Public Private Partnership Technical Committee.”

Sources of funds

10B.-(1) The sources of funds of the Facilitation Fund shall be such sums of moneys appropriated by Parliament for that purpose, and any other funds mobilized from any of following sources-

- (a) development partners, public entities, parastatal organizations and social security funds; and
- (b) funds previously advanced to contracting authorities wholly or partially recovered by the Facilitation Fund in accordance with agreements for project support.

(2) Upon approval by the Public Private Partnership Technical Committee, the Facilitation Fund shall be used for-

- (a) financing wholly or partly the feasibility studies and other project preparation costs as may be required by a contracting authority;
- (b) providing resources to enhance the viability of projects which have high economics benefits that have demonstrated to be of limited financial viability; and

(c) any such other purposes as may be prescribed in the regulations.

(3) The provisions of subsection (2) shall not be construed as limiting or preventing contracting authorities from using own funds to finance feasibility studies and other project preparation costs.

Books of accounts, records and annual reports

10C.-(1) The PPP Centre shall keep books of accounts and maintain proper records of operations of the Facilitation Fund in accordance with acceptable accounting standards.

(2) The PPP Centre shall, at any time, and at the end of each financial year, have the accounts of the Fund audited by the Controller and Auditor General.

(3) The PPP Centre shall submit to the Minister audited report and annual report containing detailed information regarding activities of the Facilitation Fund during the previous year ending on the 30th June.

(4) The Minister shall cause to be tabled to the National Assembly statement of audited accounts and report of the PPP Centre.

(5) The Minister shall prepare and submit to the Cabinet annual report on implementation of the Public Private Partnership programme.

Amendment of section 11

11. The principal Act is amended in section 11, by-

- (a) deleting subsection (5);
- (b) renumbering subsections (6) and (7) as subsections (5) and (6) respectively; and
- (c) adding immediately after subsection (6), as renumbered, the following new subsection:

"(7) The contracting authority shall ensure that an agreement involving public private partnership project is executed under procedures stipulated and through institutions specified under this Act."

Repeal and
substitution
of section 15

12. The principal Act is amended by repealing section 15 and substituting for it the following:

"15-(1) All public private partnership projects under this Act shall be procured through an open and competitive bidding process.

(2) All solicited and unsolicited projects shall be procured in a manner prescribed in the regulations made under this Act."

Amendment
of section 16

13. The principal Act is amended in section 16, by deleting the words "responsible for finance" appearing in subsection 4.

Amendment
of section 18

14. The principal Act is amended in section 18(1), by deleting the words "cleared by the finance unit, approved by the Minister responsible for finance" and substituting for them the words "approved by the Public Private Partnership Technical Committee."

Repeal and
replacement
of section
20

15. The principal Act is amended, by repealing section 20 and replacing for it the following new section-

"Amendment of
agreements

20. An agreement may be reviewed and amended by the parties if the review or amendment is consented to by the Public Private Partnership Technical Committee."

Amendment
of section 24

16. The principal Act is amended in section 24, by adding immediately the word "Where" appearing in the first line of subsection (1) the words "a member of the National Investment Steering Committee, Public Private Partnership Technical Committee."

Amendment
of section 28

17. The principal Act is amended in section 28-

- (a) by deleting the phrase "shall in consultation with the Minister responsible for finance" appearing in subsection (1) and substituting for them the word "may";
- (b) in subsection (2), by-
 - (i) deleting the word "and" appearing at the end of paragraph (d);
 - (ii) inserting immediately after paragraph (d) the following paragraphs:
 - "(e) the management of, and terms and conditions for accessing the Facilitation Fund;
 - (f) procedures for procurement of private parties and matters incidental thereto; and
 - (g) prescribe conditions under which projects submitted to the PPP Centre, Ministry responsible for finance and the Public Private Partnership Technical Committee may not be dealt with within the time prescribed in the Act."
 - (iii) renumbering paragraph (e) and (f) as paragraph (g) and (h) respectively.

PART III

CONSEQUENTIAL AMENDMENTS TO THE TANZANIA
INVESTMENT ACT

(CAP. 38)

Construction
Cap. 38

18. This part shall be read as one with the Tanzania Investment Act, hereinafter referred to as "the principal Act"

Amendment
of section 5

19. The principal Act is amended in section 5, by:

(a) designating the contents of that section as subsection (1);

(b) adding immediately after subsection (1), as designated, the following provisions:

"(2) For the purposes of effective promotion, facilitation and implementation investment projects in Tanzania, there shall be a National Investment Steering Committee comprised of-

(a) the Prime Minister who shall be the Chairman;

(b) the Minister of State responsible for investment, who shall be the Vice Chairman;

(c) the Attorney General;

(d) the Minister responsible for finance;

(e) the Minister responsible for lands;

(f) the Minister responsible for local government;

(g) the Minister responsible for planning;

(h) the Governor of the Bank of Tanzania;

(i) the Commissioner General of Tanzania Revenue Authority;

(j) the Executive Director of the PPP Centre, who shall be the Secretary to

- the Committee;
- (k) the Executive Director of Tanzania Investment Centre, who shall be a Secretary to the Committee when deliberating any other investment projects; and
- (3) Any other person co-opted by the Minister when needs arises.
- Cap 103 (4) The National Investments Steering Committee shall, among other things:
- (a) ensure development and maintenance of favourable climate for private sector investment including public private partnership projects;
- (b) provide leadership in investment policy and direction for clear consensus on a National Investment Programme; and
- (c) provide oversight for approved public private partnership projects and large projects of significant national impact in terms of size, capital, technological benefits and employment effects."
- (c) renumbering proposed subsection (3) as subsection (4);
- (d) deleting the word "Co-ordinator" appearing in subsection (1);
- (e) deleting the words "other than the Co-ordinator" appearing in subsection (3).

PART IV
CONSEQUENTIAL AMENDMENT OF THE PUBLIC
PROCUREMENT ACT,
(No. 7 of 2011)

Continuation
of Act No. 7 of
2011

20. This Part shall be read as one with the Public Procurement Act, hereinafter referred to as the "principal Act".

Amendment
of
section 9

21. The principal Act is amended in section 9, by-

- (a) adding immediately after paragraph (b) of subsection (1), the following new paragraph:
"(c) regulate procurement of public private partnership projects in accordance with the Regulations made under the Public Private Partnership Act."
- (b) renaming paragraphs (c) to (n) as paragraphs (d) to (o), respectively.

Amendment
of section 79

22. The principal Act is amended in section 79, by deleting subsection (3).

Repeal of
section 80

23. The principal Act is amended by repealing section 80.

Amendment
of section 81

24. The principal Act is amended in section 81, by adding immediately after the word "regulations" the phrase "made under the Public Private Partnership Act."

Repeal of
section 82

25. The principal Act is amended by repealing section 82.

Passed in the National Assembly on the 18th November, 2014.

DR. THOMAS D. KASHELIAN
Clerk of the National Assembly