
THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE PUBLIC PRIVATE PARTNERSHIP ACT, 2010

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THE UNITED REPUBLIC OF TANZANIA



NO. 18 OF 2010

I ASSENT.

JAKAYA MRISHO KIKWETE
*President*25th July, 2010

An Act to provide for the institutional framework for the implementation of public private partnership agreements between the public sector and private sector entities; to set rules, guidelines and procedures governing public private partnership procurement, development and implementation of public private partnerships and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONSShort title
and
commence-
ment

1.-(1) This Act may be cited as the Public Private Partnership Act, 2010.

(2) This Act shall come into operation on such date as the Minister may, by order published in the *Gazette*, appoint.

Applica-
tion

2. This Act shall apply to Mainland Tanzania in respect of projects undertaken in partnership between the public sector and private sector.

Interpreta-
tion

3. In this Act, unless the context otherwise requires:

"accounting officer" means a Permanent Secretary or a Chief Executive of a Contracting authority and includes accounting officers of a local government authority;

"affordable" in relation to an agreement, means that the contracting party shall meet any financial commitment to be incurred in relation to that agreement;

"agreement" means a public private partnership agreement entered into in terms of this Act;

"asset" includes an existing asset of a relevant Contracting authority or a new asset to be acquired for the purposes of entering into an agreement;

"Co-ordinator" means co-ordinator of the co-ordination Unit appointed under section 6;

"Co-ordination Unit" means Public Private Partnership Co-ordination Unit established under section 6;

"contingent liability" includes Government guarantee for loan and foreign currency transfer and step-in function in the event of default by the relevant Contracting authority;

"contracting authority" means any Ministry, government department or agency, local government authority or statutory corporation;

"Contracting party" means parties to an agreement entered into under this Act;

"Finance Unit" means the Public Private Partnership Finance Unit established within the Ministry responsible for finance;

"local government authorities" shall have the meaning ascribed to it under the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act;

"Minister" means the Minister responsible for investment;

"Ministry" means the Ministry responsible for investment;

Caps. 287
and 288

- “private party” in relation to an agreement, means a party to the agreement other than a Contracting authority;
- “project” means a project or service to be implemented under an agreement entered into under this Act;
- “private sector” means a sector other than a public sector including non-profit making non-governmental organisations;
- “public sector” means a government ministry, department or agency, local government authority and any other person acting on behalf of the government ministry, department or agency or local government authority;
- “request for proposal” means the specific terms of the project requirements, the procedures for submission of bids, the criteria for the evaluation of bids and includes a model agreement;
- “sector Ministry” means a ministry responsible for the Contracting authority.

PART II

ESTABLISHMENT AND ADMINISTRATION OF THE CO-ORDINATION AND FINANCE UNITS

Co-
ordination
Unit

4.-(1) There is established a Co-ordination Unit within the Tanzania Investment Centre to be an integral part of the Centre.

(2) The Co-ordination Unit shall deal with promotion and co-ordination of all matters relating to public private partnership projects.

(3) The projects referred to under subsection (2) shall, subject to subsections (4) and (5) be undertaken in productive and non-productive sectors, including but not limited to the following sectors:

- (a) agriculture;
- (b) infrastructure;
- (c) industry and manufacturing;
- (d) exploration and mining;
- (e) education;

- (f) health;
- (g) environment and waste management;
- (h) information and communication technology (ICT);
- (i) trade and marketing;
- (j) sports, entertainment and recreation;
- (k) natural resources and tourism; and
- (l) energy.

(4) Notwithstanding subsections (2) and (3), the Minister shall have the power to determine and publish in the *Gazette* projects to be undertaken by any other sector for a particular period of time.

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

Functions
of the Co-
ordination
Unit

5. The functions of the Co-ordination Unit shall be to:

- (a) make an assessment of all projects submitted to it and make recommendations to the Finance Unit for purposes of ascertaining whether the project:
 - (i) is affordable to the Contracting authority;
 - (ii) provides value for money;
 - (iii) transfers appropriate technical, operational and optimal financial risks to the contracting parties;
- (b) examine the request for proposal to ensure conformity with the approved feasibility study;
- (c) co-ordinate all public private partnership projects;
- (d) advise the Government on administrative procedures and all matters relating to public private partnership;
- (e) develop guidelines in relation to all matters relating to public private partnership;
- (f) advise the Contracting authority on all matters in relation to public private partnership projects; and
- (g) develop and promote public private partnership awareness.

Submitted
P.D. No. 30/2014

Co-
ordinator
Cap. 298

6. The Co-ordination Unit shall be headed by a Co-ordinator to be appointed in accordance with the Public Service Act.

Finance
Unit

7.-(1) The Permanent Secretary of the Ministry responsible for finance shall, establish within the organisational structure of that Ministry, the Finance Unit.

(2) Where, in terms of section 11, the Co-ordination Unit has submitted the project and the feasibility study to the Finance Unit, it shall deal with fiscal risk allocation and other financial matters of all public private partnership under this Act.

(3) Without prejudice to the generality of subsection (2), the Finance Unit shall consider and forward to the Minister responsible for finance for approval, all projects and feasibility studies submitted to it for purposes of appraising the Government and, where the project to be undertaken involves public finance, that Minister shall initiate the funding process.

(4) The projects referred to under subsection (3) shall be dealt with, and approval thereof be given by the Minister responsible for finance within thirty days from the date of reception by the Finance Unit.

(5) Where the approval is not given within thirty days the Minister responsible for finance shall within seven days of the expiration of thirty days inform the private party about the reason for delaying to approve the project.

PART III

PARTICIPATION OF THE PUBLIC AND PRIVATE PARTY

Roles of
public and
private
sector

8.-(1) The public sector shall facilitate the implementation of the public private partnership projects by:

- (a) identifying projects;
- (b) carrying out feasibility studies;
- (c) monitoring and evaluation;
- (d) risk sharing; and
- (e) putting in place an appropriate enabling environment, including:

- (i) favourable policies;
- (ii) implementation strategies; and
- (iii) the legal and institutional framework;

(2) The private sector, shall play the role of identifying and implementing public private partnership projects by:

- (a) carrying out feasibility studies;
- (b) mobilizing resources;
- (c) risk sharing;
- (d) monitoring and evaluation; and
- (e) providing technical expertise and managerial skills.

(3) The public sector and private sector shall, have the duty to prepare a communication strategy for awareness creation and consensus building for acceptance by all stakeholders of public private partnerships and their outcomes benefits and associated costs and risks.

Responsi-
bilities of
contracting
authority

9.-(1) The contracting authority shall, for the purposes of this Act:

- (a) identify, appraise, develop and monitor a project to be implemented under this Act;
- (b) undertake or cause to be undertaken a feasibility study where it considers that the project is suitable for implementation under an agreement;
- (c) submit the proposed project together with the feasibility study to the Co-ordination Unit for consideration; and
- (d) prepare a request for proposal and, where the terms of the agreement involves public finance, seek approval of the Minister responsible for finance.

(2) The contracting authority shall make consultation with the relevant regulatory authorities prior to submission of feasibility study of the proposed project to the Co-ordination Unit.

Feasibility
study

10.-(1) Every contracting authority shall undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under Public Private Partnership agreement for purposes of assessing whether the proposed project is feasible.

(2) The feasibility study shall:

- (a) identify and define the activity which the Government intends to outsource from a private party;
- (b) assess the projected impact of intended outsourcing of the activity to a private party on the staff, assets, liabilities and revenues of the Government;
- (c) assess the need for the Government in relation to such activity including:
 - (i) options available to the Government to satisfy those needs;
 - (ii) the advantages and disadvantages of each option;
- (d) demonstrate comparative advantage in terms of strategic and operational benefits for implementation under the agreement;
- (e) describe, in specific terms:
 - (i) the nature of the contracting authority's functions, the specific functions to be considered in relation to the project and the expected inputs and deliverables;
 - (ii) the extent to which those functions can lawfully and effectively be performed by a private party in terms of an agreement;
- (f) demonstrate that the agreement shall:
 - (i) be affordable to the Contracting authority;
 - (ii) provide value for money;
 - (iii) transfer appropriate technical, operational or financial risks to the private party;

- (g) assess the capacity of the contracting authority to effectively implement the agreement, including the ability to monitor and regulate project implementation and the performance of the private party in terms of the agreement; and
- (h) assess the capacity, resources and ability of the private party to implement the project.

(3) For the purposes of subsection (2), the feasibility study shall include technical and socio-economic impact analysis.

(4) The assessment under paragraph (c) of subsection (2) shall indicate comparative projections of:

- (a) the full costs to the Government for the activity if that activity is not outsourced through Public Private Partnership agreement; and
- (b) the full costs to the Government for the activity if that activity is outsourced through a Public Private Partnership agreement.

(5) Where the project which is to be undertaken is of such a nature or type for which an environmental impact assessment is required under Part VI of the Environmental Management Act, to be carried on the contracting authority shall ensure that the environmental impact assessment certificate is obtained by the private party before undertaking the project.

Cap. 191

Agreement

11.-(1) Notwithstanding the provisions of any other written laws, a contracting authority may enter into an agreement with a private party for the performance of one or more of the functions of that contracting authority.

(2) For the purposes of subsection (1), the accounting officer of a contracting authority shall, for the purposes of advising the Minister responsible for contracting authority, form a multi disciplinary negotiating team possessing knowledge, skills and experience on the subject matter of the proposed project.

- (3) Without prejudice to subsection (2), the negotiating team shall ensure that the agreement is made in writing and-
- (a) specifies the responsibilities of the contracting authority and the private party;
 - (b) specifies the relevant financial terms;
 - (c) ensures for the management of performance of the private party;
 - (d) provides for undertaking by the Contracting authority to the private party in obtaining licences and permits which may be necessary for the implementation of the project;
 - (e) provides for the return of assets, if any, to the contracting authority, at the termination or expiry of the agreement;
 - (f) specifies the roles and risks undertaken by either party;
 - (g) provides for the payment to the private party, by way of compensation from a revenue fund of charges or fees collected by the private party from users or customers of the service provided by it;
 - (h) specifies payment of the private party to the contracting authority;
 - (i) provides for remedies in the event of default by either party;
 - (j) imposes financial management duties on part of the private party, including procedures relating to internal financial control, budgeting, transparency, accountability and reporting; provides for the termination of the agreement in case of breach of terms and conditions by either party;
 - (k) provides for the conditions for the provision of service, where necessary;
 - (l) provides for the period of execution; and
 - (m) contains such other information as may be necessary.

(4) Without prejudice to the provisions of subsection (3), the agreement shall contain conditions that ensures that:

- (a) the private party undertakes to perform a contracting authority's function on behalf of the contracting authority for a specified period;
- (b) the private party is liable for the risks arising from the performance of its functions;
- (c) the environmental impact assessment certificate has been issued in respect of the project;
- (d) government facilities, equipment or other state resources which are necessary for the project and are transferred or made available to the private party on a timely basis; and
- (e) the public and private assets are clearly specified.

(5) Where the contracting authority has, in terms of section 9, submitted the proposed project together with the feasibility study to the Co-ordination Unit, the Co-ordination Unit shall process the project within thirty days and submit the same to the Finance Unit for consideration.

(6) Every agreement entered into under this Act shall be governed and construed in accordance with the laws of Mainland Tanzania.

(7) The rights, obligation and controlling interests of the private party in any project performed under the agreement shall not be transferred or assigned to a third party without the prior written consent of the contracting authority.

Land
acquisition

Caps. 113,
114, 116
and 118

12. Where the project requires acquisition of land for its implementation, the acquisition shall be carried out in accordance with the Land Act, the Village Land Act, the Land Use Planning Act, the Land Acquisition Act and any other relevant laws.

Duration
and
extension
of an
agreement

13.-(1) The duration of an agreement shall be provided for in the agreement and shall not be extended unless:

- (a) there is a delay in completion or interruption of operations due to circumstances beyond any party's control;
- (b) there was an increase in costs arising from requirements of the Co-ordination Unit or contracting authority which were not foreseen or included in the agreement; and
- (c) the service is required and the contracting authority has no capacity or immediate intention to take over and run the project.

(2) A violation of the provisions of subsection (1) by either of the parties to an agreement shall render a defaulting party liable for any pecuniary loss incurred by the other party.

Vetting of
agreements

14. Every agreement intended to be entered into under this Act shall be submitted to the Office of the Attorney General for a legal opinion.

Procure-
ment
process

15.-(1) Where the Minister responsible for finance approves the terms of the agreement pursuant to paragraph (d) of subsection (1) of section 9, the contracting authority shall proceed with the procurement process for a private partner.

(2) All public private partnership projects under this Act shall be procured through an open and competitive bidding process in accordance with the Public Procurement Act.

Cap. 410

Unsolicited
bids

16.-(1) The private party shall undertake a feasibility study in respect of unsolicited project proposals and submit the feasibility study to the relevant contracting authority.

(2) The feasibility study undertaken under subsection (1) shall take into consideration technical, financial, social environmental impact, economic or any other relevant issues as may be required under this Act.

(3) Without prejudice to the generality of subsection (2), the feasibility study of unsolicited project proposal shall:

- (a) specify the proposed project activities;
- (b) prescribe environmental issues;
- (c) explain the significance and benefits of the proposed project to the government; and
- (d) explain the financial capacity and ability of the private party in the implementation and management of the proposed project.

(4) The Minister responsible for finance shall make regulations prescribing procedures for handling public private partnership project proposals initiated through unsolicited bids under this Act.

Project
officers

17.-(1) As soon as a contracting authority initiates a project that may be a public private partnership, the accounting officer shall appoint a person with appropriate skills and experience, either from within or outside the contracting authority, as a project officer for the project.

- (2) The project officer shall be responsible for:
 - (a) assisting the accounting officer in monitoring the performance of the private party and ensure that the agreement is properly implemented; and
 - (b) any other duties or powers delegated to him by the accounting officer under this Act.

Signing of
agreements

18.-(1) The agreements entered into under this Act shall be signed by the accounting officer of the relevant contracting authority after it has been considered and cleared by the Finance Unit, approved by the Minister responsible for finance and vetted by the Office of the Attorney General.

(2) The accounting officer shall sign an agreement upon fully satisfying himself that the agreement has complied with the provisions of this Act and any other relevant laws.

(3) Any person who contravenes any provision of this section commits an offence.

Responsibilities of accounting officers

19. The accounting officer who has entered into an agreement shall, in addition to any other responsibilities under this Act, take all necessary and reasonable steps to ensure that:

- (a) the outsourced activity is effectively and efficiently carried out in accordance with the agreement;
- (b) any public property which is placed under the control of the private party, in terms of the agreement, is appropriately protected against forfeiture, theft, loss, wastage and misuse; and
- (c) the Contracting authority has adequate contract management and monitoring capacity.

Amendment of the agreements

20. The agreement may be reviewed and amended by the parties, provided that:

- (a) the Co-ordination Unit and the Finance Unit have approved the amendments;
- (b) the Minister responsible for the contracting authority, or as the case may be, the Minister and the Minister responsible for finance have consented to the review or amendment; and
- (c) other relevant stakeholders have been consulted.

Enjoyment of benefits

Cap. 38

21.-(1) A project undertaken in accordance with the provisions of this Act which ought to qualify for benefits granted to similar investment under the Tanzania Investment Act, shall be entitled to such benefits granted under that Act.

(2) The benefits referred to under subsection (1) shall not apply to tax incentives.

Disputes resolution

22. Any dispute arising during the course of the agreement shall be resolved through negotiation, mediation or arbitration.

PART IV
MISCELLANEOUS PROVISIONS

Monitoring
and
evaluation

23.-(1) All public private partnership projects under this Act shall be monitored by the Ministry, Sector Ministries, Government Departments, Agencies or local government authorities under which they are carried out.

(2) The purpose of monitoring under subsection (1) shall be to incorporate coherent oversight and regular review mechanisms, that would include:

- (a) measurable performance targets;
- (b) meaningful incentives and rewards; and
- (c) effective penalties.

(3) The Ministry, sector ministry, Department, Agency or local government authority shall, as much as practicable, involve other relevant stakeholders for better implementation and conduct of monitoring and evaluation.

Conflict of
interest

24. (1) Where an officer of the Co-ordination Unit, the Finance Unit or the contracting authority has any pecuniary interest, direct or indirect, in any project, proposed project or other matter, and is involved or participating in a process at which the project, proposed project or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of that process, disclose that fact and shall not take part in or be present at the consideration or discussion of, or involved in any question relating to the project, proposed project or that other matter.

(2) Subject to this subsection, for the purposes of this section a person shall be treated as having direct or indirect pecuniary interest in a project or other matter, if:

- (a) he or his nominee is a member of a company or other body, or is the holder of shares or debentures in a company with which the project is made or proposed to be made or he has a direct or indirect pecuniary interest in the project, proposed project or matter under consideration; or

- (b) he is a partner or in the employment of a person with whom the project is made or proposed to be made or who has a direct or indirect pecuniary interest in the project, proposed project or other matter under consideration.

(3) In this section a direct or indirect interest of a spouse or any members of the family of an officer of the Co-ordination Unit, the Finance Unit or the contracting authority shall, if known to that officer, be deemed to be a direct or indirect interest of the officer of the Co-ordination Unit, the Finance Unit or the contracting authority.

(4) A person who contravenes the provision of this section, commits an offence.

Empowerment of the citizens

Cap. 386

25. Public private partnerships agreements, shall endeavour to provide opportunity for empowerment of the citizens of Tanzania as provided for under the National Economic Empowerment Act.

Duty to take care and exercise due diligence

26. Every public officer performing any functions, discharging any duty or exercising any power under this Act or any other written law related to a public private partnership shall be under the obligation to take reasonable care and exercise due diligence in the performance of the functions and discharge of duties and exercise of powers in accordance with the provisions of this Act and any other relevant laws.

General penalty

27. Any person who commits an offence under this Act to which no specific penalty is prescribed shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years.

Regulations

28.-(1) The Minister shall, in consultation with the Minister responsible for finance, make regulations for better carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations prescribing:

- (a) levying of fees and charges;
- (b) investment opportunities and promotion;
- (c) functions of local government authorities under this Act and clear linkages of roles between the implementing ministries and appropriate bodies at the local government;
- (d) evaluation, operation and management of projects under this Act; and
- (e) the manner in which the Empowerment of the citizens of Tanzania may be implemented; and
- (f) any other matter in the promotion and furtherance of objectives of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), the Minister may, in consultation with the Co-ordination Unit, make rules and guidelines for the better implementation of this Act.

Saving
provision

29. All existing agreements or memoranda of understanding entered into by any contracting authority with the private party before the commencement of this Act, shall not be affected by the coming into force of this Act.

PART V CONSEQUENTIAL AMENDMENTS TO THE TANZANIA INVESTMENT ACT

Construction
Cap. 38

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

Amendment
of section 6

31. The principal Act is amended in section 6, by-

- (a) inserting after paragraph (b), the following new paragraph:
 "(c) promote private sector

participation in the provision of public services through public private partnership”;

- (b) re-numbering paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (e), (f), (g), (h) and (i) respectively.

Amendment
of Section 11

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

- (a) inserting in subsection (1), a comma (,) after the designation “Executive Director”, and inserting immediately after the comma the designation “the Co-ordinator; and
- (b) inserting in subsection (3) the words “other than the Co-ordinator” after the word “Centre”.

Passed in the National Assembly on the 15th July, 2010.

DR. THOMAS D. KASHILILAH,
Clerk of the National Assembly