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CHAPTER 103

THE PUBLIC PRIVATE PARTNERSHIP ACT

[PRINCIPAL LEGISLATION]

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Dodoma,
30th November, 2018

ADELARDUS L. KILANGI
Attorney General

CHAPTER 103

THE PUBLIC PRIVATE PARTNERSHIP ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 103

THE PUBLIC PRIVATE PARTNERSHIP ACT

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.

[26th May, 2011]
[G.N. No156A of 2011]

Acts Nos.
18 of 2010
3 of 2014
9 of 2018
GN. No.
483 of 2018

**PART I
PRELIMINARY PROVISIONS**

- Short title 1. This Act may be cited as the Public Private Partnership Act.
- Application 2. This Act shall apply to Mainland Tanzania in respect of projects undertaken in partnership between the public sector and private sector.
- Interpretation
Acts Nos.
3 of 2014
s.2
9 of 2018
s.2 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 account in g 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;
- "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;
- "contracting authority" means any Ministry, government department or agency, local government authority, public or statutory corporation;
- "Executive Director" means the Executive Director for the PPP Centre appointed under section 6;
- "Facilitation Fund" means the Public Private Partnership Facilitation Fund established under section 10A;
- "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 public private partnership;
- "Ministry" means the Ministry responsible for public private partnership;
- "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;
- "PPP Centre" means the Public Private Partnership Centre established under section 4;
- "private party" in relation to an agreement, means a party to

Caps. 287 and
288

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 private partnership" or known in its acronym as "PPP" 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;

"Public Private Partnership Steering Committee" means the Private Public Partnership Steering Committee established under section 7;

"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 proposals " means the specific terms of the project requirement, 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;

"small scale PPP project" means a PPP project approved under this Act of an amount not exceeding twenty million US dollars.

PART II ESTABLISHMENT AND ADMINISTRATION OF THE PPP CENTRE

PPP Centre
Acts Nos.
3 of 2014
s.4
9 of 2018
s.4
GN. No
483 of 2018

4.-(1) There is established a PPP Centre to be known as the Public Private Partnerships Centre.

(2) 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.

(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.

(4) The PPP Centre shall deal with promotion and co-ordination of all matters relating to public private partnership projects

(5) The projects referred to under subsection (4) shall, subject to subsections (6) and (7), be undertaken in productive and social 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.

(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.

(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.

(7) For the purposes of subsection (6), the Minister shall, at least two months before the beginning of the financial year, ask each contracting authority to submit to the PPP Centre a concept note and prefeasibility study of potential public private partnership projects.

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

Functions of
PPP Centre
Acts Nos.
3 of 2014
s.5
9 of 2018
s. 5

- 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.

(3) 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.

(4) 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.

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

(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.

Executive
Director
Act No.
3 of 2014
S.6
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.

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

Public Private
Partnership
Steering
Committee
Acts Nos.
3 of 2014
s.7
9 of 2018
s. 6

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

- (a) the Permanent Secretary of the Ministry 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) a representative of authority responsible for national planning;
- (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 Steering Committee.

(3) The Public Private Partnership Steering 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 Steering Committee.

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

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

Functions of
Public Private
Partnership
Steering
Committee
Acts Nos.
3 of 2014
s.8
9 of 2018
s. 7

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

- (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) approve feasibility study, detailed project report and design, selection of preferred bidder, public private partnership agreement or any amendment to the agreement;
- (d) approve allocation of project development

funds from the Facilitation Fund; and

- (e) assign to contracting authorities terms and conditions for utilisation of the Facilitation Fund.

(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.

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

Public
funding and
other support
of PPP project
Act No.
9 of 2018
s. 8

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.

Cap. 134

(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.

Powers of Minister generally Act No. 9 of 2018 s. 9

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.

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;
 - (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.

Responsibilities of contracting authority
Act No. 3 of 2014
s.9

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

- (a) identify, appraise, develop, manage 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; and
- (c) submit the proposed project together with the feasibility study to the PPP Centre for consideration.

(2) The contracting authority shall make consultation with the relevant regulatory authorities prior to submission of feasibility study of the proposed project to the PPP Centre.

(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.

Feasibility Study
Act No. 9 of 2018
s. 10

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 or 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) 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.

(6) 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

Facilitation
Fund
Acts Nos.
3 of 2014
s.10
9 of 2018
s. 11

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

(2) The PPP Centre shall open a bank account 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 Steering Committee.

Sources of funds
Acts Nos. 3 of 2014
s.10
9 of 2018
s. 2

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 Steering 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
Act No. 3 of 2014
s.10

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.

Agreement .
Act No.
3 of 2014
s.11

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 shall ensure that the agreement is made in writing and-

- (a) specifies the responsibilities of the contracting of 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;
 - (k) provides for the termination of the agreement in case of breach of terms and conditions by either party;
 - (l) provides for the conditions for the provision of service, where necessary;
 - (m) provides for the period of execution; and
 - (n) 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) Every agreement entered into under this Act shall be governed and construed in accordance with the laws of Mainland Tanzania.

(6) 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.

(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.

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
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.

Procurement
process
Acts Nos.
3 of 2014
s.12
9 of 2018
s. 12

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

(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.

(4) The Minister may make regulations prescribing procedure for deposit and refund of

commitment deposits under subsection (3)

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

(6) 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.

Unsolicited
bids
Act No.
3 of 2014
s.13

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 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 Acts Nos. 3 of 2014 s.14 9 of 2018 s. 12

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 approved by the Public Private Partnership Steering Committee 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
Agreements
Act No.
9 of 2018
s.13

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.

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.

Dispute
resolutions
Act No.
9 of 2018
s. 14

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.

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 sub-section (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.

Periodic
performance
reports
Act No.
9 of 2018
s. 15

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.

Conflict of
Interest
Acts Nos.
3 of 2014
s.16
9 of 2018
s. 2
Cap 4
s.8

24.-(1) Where a member of the Public Private Partnership Steering Committee, an officer of the PPP Centre 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 PPP Centre or the contracting authority shall, if known to that officer, be deemed to be a direct or indirect interest of the officer of the PPP Centre or the contracting authority.

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

Empowerment
of 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.

Projects
relating to
natural wealth
and resources
Acts Nos
5 of 2017
6 of 2017
9 of 2018
s. 16

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.

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
Act No.
9 of 2018
s.16

27. Any person who commits an offence under this Act to which no specific penalty is prescribed shall be liable to a fine 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.

Regulations
Act No.
3 of 2014
s.17
9 of 2018
s.17

28.-(1) The Minister may 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;
- (e) the management of, and terms and conditions for accessing the Facilitation Fund;
- (f) procedures for procurement of private parties and matters incidental thereto;
- (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;
- (i) the manner in which the Empowerment of the citizens of Tanzania may be implemented; and
- (j) 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 make rules and guidelines for the better implementation of this Act.

Saving
provisions

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.