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ACT SUPPLEMENT

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THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) ACT, 2023

ARRANGEMENT OF SECTIONS

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THE UNITED REPUBLIC OF TANZANIA



NO. 4 OF 2023

I ASSENT

SAMIA SULUHU HASSAN

President[5th July, 2023]**An Act to amend the Public Private Partnership Act.****ENACTED** by the 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, 2023 and shall be read as one with the Public Private Partnership Act, hereinafter referred to as the “principal Act”.

PART II
AMENDMENT OF VARIOUS PROVISIONSAmendment
of section 2

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

“(2) Notwithstanding any provision to the contrary, the provisions of this Act shall not prejudice the implementation of an agreement that provides for special arrangement for

development of a strategic project in the United Republic where such agreement has been approved by the Cabinet:

Provided that, the agreement shall, prior to submission to the Cabinet for approval, be vetted by the Attorney General.”

Amendment
of section 3

3. The principal Act is amended in section 3-
- (a) by inserting in their appropriate alphabetical order the following new definitions:
- ““special purpose vehicle” means a private company established by a successful private party prior to the execution of an agreement for the purpose of implementing a PPP project and such company may have other parties including a public entity as members, whose liabilities and financial risk exposure are limited by shares;”;
- “standard document” includes standard request for qualification, standard request for proposal and standard PPP agreement;”;
- “strategic project” means a strategic project determined as such by the authority responsible for national planning;”;
- (b) in the definition of the term “public sector”, by deleting the words “and any other person acting on behalf of the government ministry, department, agency or local government authority” and substituting for them the words “regional secretariat or any other public institution and any other person acting on behalf of the government ministry, department, agency, local government authority or regional secretariat”; and
- (c) in the definition of the term “request for proposals”, by deleting the words “a model agreement” and substituting for them the words “standard documents”.

Amendment
of section 4

4. The principal Act is amended in section 4-
- (a) in subsection (3)(a), by adding the words “and immovable” between the words “movable” and “property”;
 - (b) by deleting subsection (6) and substituting for it the following:

“(6) Every contracting authority shall, at the beginning of every budget cycle, submit to the Minister a prefeasibility study of potential public private partnership projects for consideration in the National Development Plan:
Provided that-

 - (a) the potential public private partnership project complies with the national development priorities; and
 - (b) the prefeasibility study of potential public private partnership project is approved by the respective Minister.”;
 - (c) by deleting subsection (6A) and substituting for it the following:

“(6A) The Minister shall, within seven working days, upon receipt of prefeasibility study of potential public private partnership project from the contracting authority, cause such study to be forwarded to the PPP Centre for analysis.”;
 - (d) by adding immediately after subsection (6A) the following:

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

- (e) by deleting subsection (7); and
- (f) by renumbering subsection (8) as subsection (7).

Amendment
of section 5

5. The principal Act is amended in section 5 by deleting subsection (2) and substituting for it the following:

“(2) Without prejudice to the generality of subsection (1), the PPP Centre shall, within thirty working days from the date of receiving the prefeasibility study of potential public private partnership project, request for proposal, evaluation reports for selection of preferred bidder and PPP agreements submitted by contracting authorities, analyse them.”

Amendment
of section 7

6. The principal Act is amended in section 7(6) by adding the word “Private” immediately after the word “Public”.

Amendment
of section
7B

7. The principal Act is amended in section 7B by adding immediately after subsection (3) the following:

“(4) For the purpose of this section, “public funding” means government financial support that constitutes fiscal commitment or contingent liabilities in relation to a PPP project.”

Amendment
of section 9

8. The principal Act is amended in section 9(1) by adding immediately after paragraph (c) the following:

“(d) submit after every three months to the PPP Centre implementation report of the recommendations issued by the PPP Centre.”

Amendment
of section 13

9. The principal Act is amended in section 13(1) by deleting the words “Co-ordination Unit or” appearing in paragraph (b).

Amendment
of section 15

10. The principal Act is amended by in section 15-
(a) by deleting subsections (3) and (4) and substituting for them the following:

“(3) Upon recommendation from the PPP Steering Committee, the Minister may exempt procurement of solicited project from competitive bidding process where the project meets criteria prescribed under subsection (2) and any of the following conditions are satisfied:

- (a) the project deliverable is of an urgent need, and any other procurement method is impracticable:

Provided that, the circumstances giving rise to the urgency were not foreseeable by the contracting authority;

- (b) the private party possesses the intellectual property rights to the key approaches or technologies required for the project; or

- (c) a particular private party has exclusive rights in respect of the project, and no reasonable alternative or substitute is available.

(4) Upon exemption of an unsolicited project from competitive bidding process, the Government and the private proponent shall commence negotiations of terms and conditions of the agreement.”;

- (b) in subsection (6), by-

- (i) adding immediately after paragraph (c) the following:

“(d) timeframe within which negotiation of terms and conditions of an agreement shall commence;”

- (ii) renaming paragraphs (d) and (e) as paragraphs (e) and (f) respectively.”

Addition of section 18A

11. The principal Act is amended by adding immediately after section 18 the following:

“Establishment of special purpose vehicle”
Cap. 212

18A.-(1) The private party shall, before the signing of the PPP agreement, establish a special purpose vehicle in accordance with the Companies Act for the purpose of undertaking the project.

(2) A special purpose vehicle established under subsection (1) may include a public entity as a minority shareholder provided that the public entity shall-

- (a) hold shares not exceeding 25 percent of equity contribution in the special purpose vehicle;
- (b) demonstrate financial capacity on the contribution of equity in the special purpose vehicle; and
- (c) demonstrate capacity to bear and mitigate risk associated with the implementation of the project.”

Amendment of section 21

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

- (a) deleting subsection (2); and
- (b) designating the contents of subsection (1) as section 21.

Repeal and replacement of section 22

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

“Settlement of disputes”

22.-(1) Where the dispute arises during the implementation of the PPP agreement, efforts shall be made to amicably settle the dispute through negotiations.

(2) A dispute which is not amicably settled through negotiations may, by mutual agreement between the parties, be submitted for arbitration-

- (a) in accordance with arbitration laws of Tanzania;
- (b) in accordance with the rules of procedure for arbitration of the International Centre for Settlement of Investment Disputes; or
- (c) within the framework of any bilateral or multilateral agreement on investment protection entered into by the Government of the United Republic and the Government of the country where the investor originates.”

Amendment
of section 23

14. The principal Act is amended in section 23, by-
- (a) adding the words “and evaluated” immediately after the word “monitored” appearing in subsection (1); and
 - (b) adding the words “and evaluation” immediately after the word “monitoring” appearing in subsection (2).

Amendment
of section
23A

15. The principal Act is amended in section 23A, by-
- (a) adding the words “and annual” immediately after the word “mid-year” appearing in subsections (1) and (2); and
 - (b) adding the words “to the PPP Steering Committee before being submitted” between the words “report” and “to the Minister” appearing in subsection (2).

Amendment
of section 28

16. The principal Act is amended in section 28(2)(b) by adding the word “PPP” before the word “investment”.

Addition of
section
28A

17. The principal Act is amended by adding immediately after section 28 the following:
- “Inconsistency 28A. Where there is any

with other laws inconsistency between the provisions of this Act and the provisions of any other written law in relation to development, procurement and implementation of public private partnerships, the provisions of this Act shall prevail.”

Passed by the National Assembly on the 13th June, 2023

NENELWA J. MWIHAMBI
Clerk of the National Assembly

