## THE PUBLIC-PRIVATE PARTNERSHIPACT, 2010

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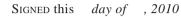
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# DR. ERNEST BAI KOROMA, President.





2010

Sierra Leone

The Public-Private Partnership Act, 2010.

Short title.

Being an Act to promote and facilitate the implementation of public-private partnership transactions for infrastructure projects and social sector service projects; to establish a Public-Private Partnership Council and a Public-Private Partnership Unit; and to provide for matters incidental thereto.

> ] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

2	No.	Public-Private Parntership Act	2010	No.	Public-Private Parntership Act	2010
Interpretation.	1.	PART I–PRELIMINARY In this Act, unless the context otherwise requires– "affordable" in relation to a PPP Project, means an arrangement where a contracting authority is able to meet any financial commitment likely to be incurred under the PPP Agreement from the contracting authority's existing or future budgetary funds;			"contract finalisation phase" means that phase of a PPP transaction which takes place following the issuance by the Council, of the approval required by section 59(1), and prior to the commencement of the implementation phase, and shall include the achievement of both the commercial close and, where financing is required, the financial close of the PPP transaction;	
		authority's existing or future budgetar	Tunds;		"contracting authority" means a public a	uthority;
		"asset" includes an existing asset of contracting authority or a new asset t for the purposes of entering into a PP	o be acquired		"Council" means the Public-Private Council established by section 25;	Partnership
	"bid" means a tender, an offer, a proposal or price quotation, given in response to an invitation to		"Director" means the Director appointed under section 34;			
		quotation, given in response to an invitation to participate in a PPP Project;"feasibility study" means undertaken by a contract to the Council in accord to the Council in accord"bidder" means any person, including a group of persons, that participates in selection proceedings relating to a PPP Project;"financial close" means subsequent to commer partner has obtained to required for a PPP Project, on the basis of which bidders are to prepare their bids;"financial close" means subsequent to commer partner has obtained to required for a PPP transa without conditionality reached between the contracting authority;			"feasibility study" means a study comm undertaken by a contracting authority for to the Council in accordance with section	r submission
			"financial close" means the event the subsequent to commercial close, whe partner has obtained the financing to required for a PPP transaction, and a finan- without conditionality as to financing reached between the private part contracting authority;	en a private hat may be al agreement, ag, has been		
	· · ·	making a proposal for a PPP Project, consortia" shall be construed accordi	-		"implementation phase" means that pha transaction which takes place fol	
		"commercial close" means the event tha a contracting authority and a private	authority and a private partner have ment on all terms of the PPP Agreement, v to the private partner obtaining the proposed PPP transaction where g is required;transaction;the private partner obtaining the proposed PPP transaction where g is required;"infrastructure proj construction, develop infrastructure faci modernisation, expansion	achievement of the financial close transaction;	of the PPP	
		reached agreement on all terms of the PI subject only to the private partn financing for the proposed PPP trans such financing is required;			"infrastructure project" means the construction, development and operation infrastructure facility or the rehat modernisation, expansion or operation of infrastructure facility, where	n of any new abilitation,

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e project, of	<ul><li>(a) in the case of a new facility, the fa have been, prior to the start of th a type that would be within the re of a contracting authority; and</li></ul>		
ject, within	(b) in the case of an existing facility was, prior to the start of the pro- the responsibility of a contractin		
1 to it under	cal authority" has the meaning assigne ne Local Government Act, 2004;		
nent which partner has	aterial default" means any failure of a properform any duty under a PPP Agreed emains unsatisfied after the private ecceived written notice of the failur contracting authority;		
for finance;	inister" means the minister responsible		
ity and the	rties" means the contracting author rivate partner in a PPP Agreement ;		
undertaken	P Project" means an infrastructure proje ector service project, as applicable, etween a contracting authority and a pri nder this Act;		
thority for	re-feasibility study" means a study con r undertaken by a contracting au ubmission to the Unit in accordance y 2;		
	eferred bidder" means a bidder, inc idding consortium, selected as a succe uring the procurement phase;		

"private partner" means a person from the private sector who undertakes a PPP Project;

"procurement phase" means that phase of a PPP transaction which takes place following the issuance, by the Council, of the approval required by section 42;

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- "project identification phase" means the initial phase of a PPP transaction prior to the issuance, by the Council, of the approval required by section 42;
- "public authority" means a Ministry, Government department, local authority or other statutory body;
- "public function" means a function lying within the area of responsibility of a public authority;
- "public-private partnership" or "PPP" means private sector participation in a project under this Act;
- "regulatory agency" means a public authority that is entrusted with the power to issue and enforce the laws governing infrastructure developments or the provision of social sector services;
- "Sierra Leone Investment and Export Promotion Agency" has the meaning assigned to it in the Sierra Leone Investment and Export Promotion Agency Act, 2007;
- "social sector service project" means the design, development or operation of any systems, including utilities, that directly or indirectly provide social services to the general public over a period of at least five years, where such systems were within the responsibility of a contracting authority prior to the start of the project;
- " Unit" means the Public-Private Partnership Unit established by section 32;

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- "unsolicited proposal" means any proposal relating to the implementation of a PPP project that is not submitted in response to a request or solicitation issued by a contracting authority under sections 45 to 59;
- "user levy" means the right or authority granted to a private partner by a contracting authority to recover investment and a fair return on investment through collections from users of a PPP Project, and includes tolls, fees, tariffs, charges or any other benefit whatsoever called; and
- "value for money" means the carrying out of the public function of a contracting authority or the use of public property by a private partner, under a PPP Agreement, which results in a net benefit to the contracting authority or consumer, defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.

Application. **2.** (1) This Act applies to infrastructure projects and social sector service projects, undertaken between a public authority and a private partner, under a PPP Agreement.

(2) A PPP Agreement may be in the form of a concession transaction, a lease transaction, a management contract transaction or a long-term service contract transaction, as described in the Schedule, or may be in such other forms of public-private partnerships as may be prescribed by the Council.

(3) Where this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory under an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, this Act shall apply to all public-private partnership transactions, other than those transactions which have been expressly excluded from the provisions of this Act. No. Public–Private Parntership Act 2010 7

**3.** (1) This Act does not apply to the purchases of goods, Exclusion of public procurement Act, 2004 nor to the privatization or divestiture of public infrastructure or publicly privatizations, etc.

(2) This Act does not apply to the granting of any mineral rights under the Mines and Minerals Act, 2009.

#### PARTII-PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

**4.** (1) A Public-Private Agreement (PPP Agreement) is an Nature of agreement between a contracting authority and a private partner, made in accordance with this Act in which the private partner–

- (a) agrees to perform or undertake any infrastructure project or social sector service project;
- (b) assumes financial, technical or operational risks in connection with the performance of a public function or the use of public property; and
- (c) receives consideration for performing a public function or utilising public property, by way of-
  - (i) a fee from any revenue fund or budgetary fund of the Government;
  - (ii) user levies collected by the private partner from end-users or customers for a service provided by the private partner; or
  - (iii) a combination of the consideration paid under subparagraphs (i) and (ii).