

GOVERNMENT OF ZAMBIA

**ACT**

**No. 9 of 2018**

Date of Assent: 28th July, 2018

**An Act to amend the Public-Private Partnership Act, 2009.**

[31st July, 2018

ENACTED by the Parliament of Zambia.

Enactment

**1.** This Act may be cited as the Public-Private Partnership (Amendment) Act, 2018, and shall be read as one with the Public-Private Partnership Act, 2009, in this Act referred to as the principal Act.

Short title  
Act No. 14  
of 2009

**2.** Section 3 of the principal Act is amended by the—

Amendment  
of section 3

(a) deletion of the definitions “local authority” and “Unit”;  
and

(b) insertion of the following definitions in the appropriate places:

“Consolidated Fund” means the consolidated fund established under the Constitution;

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“Department” means the department established under section 4 which performs the functions of a Public-Private Partnership Unit for the purposes of Public-Private Partnerships undertaken under this Act; and

“local authority” has the meaning assigned to the words in the Constitution.

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**3.** The principal Act is amended by the deletion of section 4 and the substitution therefor of the following:

Amendment  
of section 4

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Establishment of Department	<p>4. (1) There is established the Public-Private Partnership Department, which is responsible for the implementation of the provisions of this Act.</p> <p>(2) The department shall be under the control and supervision of the Ministry responsible for finance.</p>
Repeal and replacement of section 5	<p>4. The principal Act is amended by the repeal of section 5 and the substitution therefor of the following:</p>
Functions of Department	<p>5. (1) The functions of the Department are to—</p> <ul style="list-style-type: none"><li>(a) recommend to the Government on the use of public-private partnerships in the financing, construction, maintenance and operation of any project;</li><li>(b) advise Government on administrative procedures in relation to project development and on matters of policy relating to public-private partnerships;</li><li>(c) categorise projects for purposes of this Act and prepare a project register as may be prescribed;</li><li>(d) coordinate with contracting authorities in respect of any project;</li><li>(e) develop technical and best practice guidelines in relation to all aspects of public-private partnerships, standardised bidding documents and public-private partnership agreement provisions for purposes of this Act;</li><li>(f) receive and make an assessment of any proposed project submitted to it and give its recommendations to the contracting authority as to whether the project or facility—<ul style="list-style-type: none"><li>(i) is affordable to a contracting authority;</li><li>(ii) provides value for money for the Republic; and</li><li>(iii) presents optimum transfer of technical, operational and financial risks to the concessionaire;</li></ul></li><li>(g) examine the request for proposals to ensure conformity with the feasibility study and legal and regulatory requirements;</li></ul>

- (h) monitor the competitive selection process and provide for review of the process, if so required, under this Act;
- (i) in liaison with the ministry responsible for national planning and development, monitor progress of implementation of public-private partnership agreements in order to facilitate timely completion;
- (j) approve terms of reference for consultancy assignments for a project; and
- (k) facilitate training and provide advisory services to contracting authorities.

(2) The Department shall exercise and perform such other powers and functions as are conferred or imposed on it by, or under, this Act or any other law.

5. The principal Act is amended by the repeal of section 7 and the substitution therefor of the following:

Repeal and replacement of section 7

7. (1) The functions of the Council are to—
- (a) formulate policies relating to public-private partnerships for purposes of this Act;
  - (b) approve projects for purposes of this Act as prescribed;
  - (c) approve the award of agreements under this Act;
  - (d) ensure competition, transparency and equity in the selection process under this Act; and
  - (e) give directives to any contracting authority, or concessionaire regarding the implementation of any project.

Functions of Council

(2) The Council shall, on receipt of a recommendation from the Technical Committee, approve or reject a project or award of an agreement.

(3) The Council may, in the discharge of its functions under this Act—

- (a) commission any study relevant to the determination of the award of any agreement;
- (b) request any contracting authority, regulatory agency, concessionaire or any other body or person to furnish the Council with information, details, documents and particulars required in connection with or relating to any project;

(c) request any professional or technical assistance from any appropriate body or person in Zambia or elsewhere; and

(d) inspect, visit, review and monitor any project and its implementation, execution, operation and management.

Amendment of section 8

**6.** Section 8 of the principal Act is amended by the deletion of paragraph (b) and the substitution therefor of the following:

(b) five Ministers appointed by the President, one of whom shall be designated the Vice-Chairperson;.

Repeal and replacement of section 10

**7.** The principal Act is amended by the repeal of section 10 and the substitution therefor of the following:

Constitution of Public-Private Partnership Technical Committee

**10.** (1) There is constituted the Public-Private Partnership Technical Committee, which consists of the following part-time members:

(a) the Secretary to the Treasury, as Chairperson;

(b) a representative of the Attorney-General;

(c) the Permanent Secretary of the Ministry responsible for national planning and development;

(d) the Permanent Secretary of the Ministry responsible for industry;

(e) the Permanent Secretary of the Ministry responsible for infrastructure;

(f) the Permanent Secretary of the Ministry responsible for land;

(g) the Permanent Secretary of the Ministry responsible for local government;

(h) a representative of the Engineering Institution of Zambia;

(i) a representative of the National Council for Construction;

(j) a representative of the Zambia Environmental Management Agency;

(k) a representative of the Zambia Public Procurement Authority;

(l) a representative of the Zambia Institute of Chartered Accountants;

(m) a representative of the Economics Association of Zambia; and

(n) one person appointed by the Minister.

(2) The Minister shall appoint the members under subsection (1) (b), (h), (i), (j), (k), (l) and (m).

(3) The members shall elect the Vice-Chairperson from amongst themselves.

(4) Subject to subsection (2), the members of the Technical Committee appointed by the Minister under subsection (2) shall hold office for a period of three years from the date of appointment and are eligible for appointment for a further term of three years.

(5) The office of a member becomes vacant —

(a) if the member is absent, without reasonable excuse, from three consecutive meetings of the Technical Committee of which the member has had notice;

(b) upon the member's death;

(c) if the member is adjudged bankrupt;

(d) if the member ceases to hold the office by virtue of which the member was appointed;

(e) if the member becomes incapable of performing the duties of a member;

(f) if the member is removed by the Minister;

(g) if the member is convicted of an offence involving dishonesty or fraud under this Act or any other law; or

(h) upon the expiry of one month's notice of the member's intention to resign from office, given by the member to the Minister.

(6) A member may resign from office by giving one month's notice in writing to the Minister.

(7) Where a vacancy occurs in terms of subsection (4), the Minister shall appoint another person to replace the member who vacates office, but that person shall hold office for the remainder of the outgoing member's term.