

**THE PUBLIC-PRIVATE PARTNERSHIP
(AMENDMENT) BILL, 2018**

MEMORANDUM

The object of this Bill is to amend the Public-Private Partnership Act, 2009, so as to—

- (a) revise the functions of the Public-Private Partnership Unit in the Department of the ministry responsible for finance;
- (b) revise the functions of the Public-Private Partnership Council; and
- (c) provide for matters connected with, or incidental to, the foregoing.

A. MWANSA,
Solicitor-General

N.A.B. 7, 2018
27th March, 2018

A BILL

ENTITLED

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

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 word 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

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. 5</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— 10</p> <p>(a) recommend to the Government on the use of public-private partnerships in the financing, construction, maintenance and operation of any project;</p> <p>(b) advise Government on administrative procedures in relation to project development and on matters of policy relating to publicprivate partnerships; 15</p> <p>(c) categorise projects for purposes of this Act and prepare a project register as may be prescribed;</p> <p>(d) coordinate with contracting authorities in respect of any project; 20</p> <p>(e) develop technical and best practice guidelines in relation to all aspects of publicprivate partnerships, standardised bidding documents and publicprivate partnership agreement provisions for purposes of this Act; 25</p> <p>(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 30</p> <p style="padding-left: 40px;">(i) is affordable to a contracting authority;</p> <p style="padding-left: 40px;">(ii) provides value for money for the Republic; and</p> <p style="padding-left: 40px;">(iii) presents optimum transfer of technical, operational and financial risks to the 35 concessionaire;</p> <p>(g) examine the request for proposals to ensure conformity with the feasibility study and legal and regulatory requirements;</p>

- (h) monitor the competitive selection process and provide for review of the process, if so required, under this Act;
- 5 (i) in liaison with the ministry responsible for national planning and development, monitor progress of implementation of publicprivate partnership agreements in order to facilitate timely completion;
- 10 (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—
- 20 (a) formulate policies relating to publicprivate 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;
- 25 (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 Department, approve or reject a project or award of an agreement.

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

- 35 (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;
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	(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.	5
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 ViceChairperson;.	10
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 PublicPrivate Partnership Technical Committee	10. (1) There is constituted the PublicPrivate Partnership Technical Committee, which consists of the following parttime members:	15
	(a) the Secretary to the Treasury, as Chairperson;	
	(b) a representative of the AttorneyGeneral;	
	(c) the Permanent Secretary of the ministry responsible for national planning and development;	20
	(d) the Permanent Secretary of the Ministry responsible for industry;	
	(e) the Permanent Secretary in the Ministry responsible for infrastructure;	
	(f) the Permanent Secretary of the Ministry responsible for land;	25
	(g) the Permanent Secretary of the Ministry responsible for local government;	
	(h) a representative of the Engineering Institution of Zambia;	30
	(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;	35