

No. 30 of 2014.

*Public Private Partnership Act 2014.*

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No. of 2014.

*Public Private Partnership Act 2014.*

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No. of 2014

An Act

entitled

***Public Private Partnership Act 2014.***

Being an Act to provide for -

- (a) the procurement and delivery of infrastructure facilities and services through public private partnership arrangements and to give power to certain public bodies to enter into public private partnership arrangements; and
- (b) the establishment of the Public Private Partnership center of Papua New Guinea and the functions of which include the promotion, coordination and analysis of public private partnership arrangements; and
- (c) the establishment of the Public Private Partnership Steering Group and the Public Private Partnership Forum; and
- (d) the specification of their respective functions and powers, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations conferred by Section 47; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (e) the right to reasonable privacy conferred by Section 49; and
- (f) the right of reasonable access to official documents conferred by Section 51; and
- (g) the right of freedom of movement conferred by Section 52,

of the *Constitution* is a law that is made under Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and the Basic Social Obligations, for the purpose of giving effect to the public interest in public order and public welfare.

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(2) For the purposes of Section 53(1) (*Protection from Unjust Deprivation of Property*) of the ***Constitution*** and the ***Land Act 1996*** and any other relevant law, the purpose and reason for which this Act permits possession to be compulsorily taken for any property and permits any interest in or rights over property to be compulsorily acquired including -

- (a) the construction, operation, maintenance or provision of infrastructure and ancillary or supporting facilities by way of a public private partnership arrangement; and
- (b) the acquisition of land or other property and rights and interests in land, including the granting of easement rights for activities in connection with a public private partnership arrangement,

are declared and described to be a public purpose, whether pursued by the State, the PPP center, a partner, or any other person exercising rights under this Act for the purposes of a public private partnership, and to be a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind.

(3) For the purposes of Section 53(2) of the ***Constitution***, this Act and each of the activities described in Subsection (3) is expressed to be made in the national interest.

(4) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is declared that this Act relates to a matter of national interest.

## **2. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears -

“appropriate Minister” in relation to -

- (a) a Relevant Public Body means the Minister who, in the responsible Minister’s opinion, is responsible for the Relevant Public Body; and
- (b) Section 4(3) means the Minister or Ministers who, in the responsible Minister’s opinion, is or are responsible for the entity or class of entities which is proposed to be excluded or included within the definition of Relevant Public Body having regard to the functions and ministerial responsibilities assigned to that other Minister;

“asset” includes an existing asset or an asset to be provided under a public private partnership arrangement;

“balance date” means the close of 31 December;

“certificate of compliance” means a certificate of compliance issued in accordance with the regulations, by the PPP center under this Act;

“Chief Executive Officer” means the Chief Executive Officer appointed under Section 19 and includes, in relation to any function of the PPP center that the Chief Executive Officer has authorised an officer of PPP centre to perform, that officer;

“company” means a body incorporated under the ***Companies Act 1997***;

“concession” means a contractual licence, whether linked to an interest in or right over real property or not, entitling the licensee to use certain infrastructure and to charge user fees, if approved, during the term of the concession;

“construction” includes building, refurbishment, maintenance, repair, improvement, demolition, extension and replacement;

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- “design” means the preparation of any drawings, specifications and other information, samples, models and patterns;
- “direct agreement” has the meaning given to it by Section 5(6)(c);
- “function” includes a power or duty, and a reference to the performance of a function includes the exercise of a power or the carrying out of a duty;
- “functional assessment” in relation to the PPP centre, means an assessment of the progress of the PPP centre in meeting the functions set out in Section 15;
- “Government” means the National, a Provincial or a Local-level Government or any of them as the context requires;
- “infrastructure” means any asset, facility or service provided for the benefit of members of the public or any section of the public and includes, without limitation, those assets, facilities and services listed in Schedule 2;
- “partner” has the meaning given to it by Schedule 3 and includes a nominee of the partner where that has been agreed to by the Relevant Public Body;
- “PPP Center” means the Public Private Partnership Centre of Papua New Guinea as established under Section 14(1);
- “PPP Forum” means the Public Private Partnership Forum as established under Part VI;
- “PPP Steering Group” means the Public Private Partnership Steering Group as established under Part V;
- “project” includes the design, construction, development, financing and operation of new infrastructure and rehabilitation, modernisation, expansion or operation of an existing infrastructure;
- “Provincial or Local-level Government” means a Provincial Government or a Local-level Government established under the *Organic Law on Provincial and Local-level Governments*;
- “public private partnership arrangement” has the meaning given to it by Schedule 3;
- “publish” means publication in print or electronic media and includes publication on a website;
- “referral threshold” means the threshold for consideration of a project for procurement as a public private partnership as set out in the regulations made in accordance with Section 60;
- “Relevant Public Body” has the meaning given to it in Section 4;
- “responsible Minister” means the Minister designated by the Prime Minister under Section 148 of the *Constitution* to be the Minister responsible for the administration of this Act;
- “remuneration” includes allowances for expenses, benefits-in-kind and superannuation and pension;
- “the State” means the Independent State of Papua New Guinea and includes the departments, agencies, branches, divisions, administrative units, instrumentalities, commissions and boards which are not separate legal entities from the Independent State of Papua New Guinea but does not include a Provincial or a Local-level Government;
- “State Owned Entity” means -
- (a) a statutory body established by an Act which is not a Provincial or Local-level Government entity; or



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- (b) an entity in relation to which the State, the trustee of a trust, a beneficiary of which is the State, a Provincial or a Local-level Government entity or another State Owned Entity that –
- (i) controls the composition of the board of directors or the entity; or
  - (ii) controls more than fifty percent of the voting power in the entity; or
  - (iii) holds more than fifty percent of the issued share capital of the entity (excluding any part of its share capital that carries no right to participate beyond a specific amount in a distribution of either profits or capital);

“the regulations” means a regulation made under this Act;

“user fee” means the rate, toll, fee or other charges imposed for the use of an infrastructure.

- (2) A reference in this Act to any other Act includes –
- (a) any regulations made under that other Act; and
  - (b) any Act that is substituted for or that replaces that other Act; and
  - (c) any regulations made under any such substitute or replacement Act.

### **3. ACT BINDS THE STATE.**

- (1) This Act binds the State.

(2) Any directions as to policy given to the PPP Centre under this Act or any other Act shall not be inconsistent with the provisions of this Act or that other Act.

## **PART II. - PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS.**

### *Division 1. - Powers in Relation to Public Private Partnership Arrangements.*

#### **4. RELEVANT PUBLIC BODY.**

(1) An entity or each member of a class of entity specified in Schedule 1 is a Relevant Public Body for the purposes of this Act.

(2) Notwithstanding any provision to the contrary in any other law and without regard to any exceptions, limitations, conditions, additions or modifications contained in any other law, this Act applies to all Relevant Public Bodies.

(3) Where the responsible Minister, following a recommendation of the PPP Steering Group and after consultation with the appropriate Minister, is of the opinion that having regard to the purposes of this Act, an entity or class of entity should or should not be a Relevant Public Body, the responsible Minister may, by notice published in the National Gazette, amend the Schedule by adding or excluding that entity or class of entity in accordance with the recommendation.

#### **5. PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS.**

(1) The arrangements specified in Schedule 3 are public private partnership arrangements for the purposes of this Act.

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(2) Where the responsible Minister, following a recommendation of the PPP Steering Group, is of the opinion that having regard to the purposes of this Act, an arrangement or class of arrangement should not be a public private partnership arrangement for the purposes of this Act, the responsible Minister may, by notice published in the National Gazette, amend the schedule by adding or excluding that arrangement or class of arrangement in accordance with the recommendation.

(3) Where the Relevant Public Body is the State, the appropriate Minister and the responsible Minister, acting in accordance with the approval of the National Executive Council, have the power to execute an agreement for a public private partnership arrangement or a direct agreement on behalf of the State.

(4) Subject to the arrangement or agreement being approved by the National Executive Council, where the Relevant Public Body is a Provincial or a Local-level Government or a State Owned Entity, then a public private partnership arrangement or a direct agreement shall be executed by the Relevant Public Body.

(5) Subject to the arrangement or agreement being approved by the National Executive Council, where a public private partnership arrangement is being entered into by a company referred to in Section 5(8) which is not a Relevant Public Body, a public private partnership arrangement or a direct agreement must be executed by the person or persons authorised by law to execute such arrangement or agreement.

(6) Subject to the approval of the National Executive Council, a Relevant Public Body may, either itself or in conjunction with any other person, or another Relevant Public Body, finalise an agreement to be executed in the manner as provided for under Subsections (3),(4) or (5) which commits the Relevant Public Body to -

- (a) enter into a public private partnership arrangement; and
- (b) subject to Subsection (11), arrange for or make a payment to a partner; and
- (c) where appropriate, enter into an arrangement in this Act referred to as a direct agreement with a person who has arranged or provided funding for the partner for the carrying out of the public private partnership arrangement; and
- (d) where appropriate, enter into such other arrangements with others including operators, service providers, contractors and sub-contractors for the purpose of the public private partnership arrangement; and
- (e) transfer an interest or part of an interest of the Relevant Public Body in an asset or part of an asset to the partner or a nominee of the partner by transfer, assignment, conveyance, grant of lease or licence or otherwise; and
- (f) take a transfer of an interest of the partner or a nominee of the partner in an asset or part of an asset by transfer, assignment, conveyance, grant or surrender of a lease or licence or otherwise; and
- (g) take other actions incidental to the matters set out above.

(7) This Act -

- (a) applies to the grant of a licence, including a concession or a lease as part of a public private partnership arrangement; and

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(b) does not apply to the grant of a licence, lease or rights in respect of any other matter that is subject to regulation or licensing under any other legislation and the grant of such a licence, lease or right must be made in accordance with the terms of that other legislation.

(8) A Relevant Public Body may, with the consent of the appropriate Minister and the responsible Minister -

(a) itself or in conjunction with any other person or another Relevant Public Body cause a company to be formed and registered; or

(b) become a shareholder in an existing company,  
for the purposes of a public private partnership arrangement or of entering into an arrangement.

(9) An agreement for a public private partnership arrangement may include terms and conditions in relation to the performance, by the partner, of obligations under the arrangement.

(10) An agreement for a public private partnership arrangement may include provision for-

(a) the charging of a user fee; or

(b) the payment by a Relevant Public Body; or

(c) a combination of user fee and payment by a Relevant Public Body.

(11) Where a payment is arranged or provided for under Subsection (6)(b), the responsible Minister may, at any time until entry into the public private partnership arrangement by the Relevant Public Body, give directions to the appropriate Minister in relation to the aggregate value of public monies committed to those arrangements as the responsible Minister considers necessary.

(12) A function conferred on a Relevant Public Body by this section is in addition to and not in substitution for any other function of a Relevant Public Body.

(13) A Relevant Public Body or a company referred to in Subsection (8) shall not -

(a) enter into a public private partnership arrangement; or

(b) exercise any of the functions set out in this section,

whether those functions are carried out under the powers given in this section or in any other Act, unless the public private partnership arrangement has been approved in compliance with this Act or the regulations.

(14) An agreement for or in connection with a public private partnership arrangement that has not been approved in compliance with this Act or the regulations is of no effect.

#### **6. CERTIFICATE OF COMPLIANCE.**

(1) A Relevant Public Body or a partner to a public private partnership arrangement may apply to the PPP Centre for confirmation that a public private partnership arrangement has been approved in compliance with this Act or the regulations.

(2) On receiving an application referred to in Subsection (1), the PPP Steering Group may, in their discretion, issue a certificate of compliance in accordance with the regulations, confirming that a public private partnership arrangement has been approved in compliance with this Act or the regulations.

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(3) A certificate of compliance issued under Subsection (2) shall be executed by the Chief Executive Officer on behalf of the PPP Centre.

(4) A certificate of compliance purporting to be signed by the Chief Executive Officer stating that a public private partnership arrangement has been approved in compliance with this Act or the regulations is *prima facie* evidence of that matter.

(5) Notwithstanding any other provision, a public private partnership arrangement shall not be void or unenforceable for non-compliance with this Act or the regulations where a certificate of compliance has been issued in relation to the public private partnership arrangement if the National Executive Council subsequently ratifies the arrangement pursuant to this section.

### **7. DEALING WITH PROPERTY IN CONNECTION WITH A PUBLIC PRIVATE PARTNERSHIP ARRANGEMENT.**

(1) Subject to Subsections (2) and (3), a Relevant Public Body may, as part of and for the purposes of a public private partnership arrangement whether or not for consideration, grant, transfer, convey or assign an interest in any real or personal property or a leasehold interest owned or held by a Relevant Public Body, to -

(a) a company referred to in Section 5(8); or

(b) a company connected with a public private partnership arrangement,

to enable that company to carry out its financing functions in connection with the public private partnership arrangement.

(2) A Relevant Public Body shall not grant, convey, assign or transfer any interest in property to a company under Subsection (1) unless the prior approval of the responsible Minister and the appropriate Minister has been obtained.

(3) A Relevant Public Body may attach terms and conditions as it considers appropriate to any grant, transfer, conveyance or assignment under Subsection (1) with the prior approval of the responsible Minister and the appropriate Minister.

(4) A Relevant Public Body may, as part of and for the purposes of a public private partnership arrangement, take such steps as may be available to it under any relevant law -

(a) to assist a partner or a company referred to in Section 5(8) in obtaining rights related to land, including title; or

(b) to enjoy the right to enter on, transit through or do work or fix installations on property of third parties in accordance with the provisions of that law.

### **8. FUNCTIONS AND RESPONSIBILITY IN PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS.**

(1) Subject to the terms and conditions of the agreement, for as long as it continues in force, a public private partnership arrangement confers on the partner the right to exercise those functions of the Relevant Public Body as are specified in the agreement for the purposes of the public private partnership arrangement.

(2) Subject to the terms of the public private partnership arrangement, a function conferred on a partner by a public private partnership arrangement under this section -

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- (a) may be performed by the partner in the partner's own name, subject to the general superintendence and control of the Relevant Public Body concerned; or
- (b) may also be performed by the Relevant Public Body.

(3) The conferral of a function of any Minister or Relevant Public Body on a partner by a public private partnership arrangement does not affect that Minister's responsibility for the performance of that function to National Parliament or as a member of the National Executive Council.

(4) In this section, a function of a Relevant Public Body includes a function of any other Relevant Public Body to be performed under an agreement or arrangement made with that other Relevant Public Body.

### **9. EFFECT OF PRIOR PUBLIC PRIVATE PARTNERSHIP ARRANGEMENT.**

(1) Where an agreement or arrangement was entered into on a date before the commencement of this Act and that agreement or arrangement would have been a public private partnership arrangement or a direct agreement if this Act had been in operation on that date, the agreement or arrangement as the case may be, is deemed to have had effect and is to be taken always to have had effect, as if this Act had been in operation at the time the arrangement or agreement was entered into.

(2) Where there is an inconsistency between any arrangement or agreement referred to in Subsection (1) and this Act or the regulations, the terms of that arrangement or agreement prevail.

### **10. DIRECTIONS REGARDING PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS.**

(1) In relation to a company referred to in Section 5(8) that is wholly owned or controlled by a Relevant Public Body, the responsible Minister after consultation with the appropriate Minister may -

- (a) either before or at the time of entering into a public private partnership arrangement, and without prejudice to the requirements of the *Companies Act 1997*, give written directions to either or both -
  - (i) the Relevant Public Body concerned; or
  - (ii) the company,concerning the management, accountability, accounting and financial affairs of the company and its participation in the relevant public private partnership arrangement; or
- (b) at any time after the company enters into a public private partnership arrangement and without prejudice to the requirements of the *Companies Act 1997*, give written directions to either or both -
  - (i) the Relevant Public Body concerned; or
  - (ii) the company,concerning matters of policy in relation to the public private partnership arrangement concerned or public private partnership arrangements generally.

(2) A Relevant Public Body and a company referred to in Section 5(8) shall comply with

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any directions given under this section, whilst the company is wholly owned or controlled by a Relevant Public Body.

(3) The responsible Minister, after consultation with the appropriate Minister, may amend or revoke a direction under this section, whilst the company is wholly owned or controlled by a Relevant Public Body.

(4) A direction or amendment or revocation of a direction made under this section shall be published in the National Gazette.

### *Division 2. - PPP Project Analysis, Procurement, Audit and Assessment.*

#### **11. PUBLIC PRIVATE PARTNERSHIP PROJECT ANALYSIS AND PROCUREMENT.**

(1) A Relevant Public Body must conduct an initial assessment in the manner and form prescribed by the PPP Centre where it intends to procure infrastructure either directly or by a company referred to in Section 5(8) as a public private partnership arrangement unless the project has been analysed, evaluated and approved for procurement by way of a public private partnership as prescribed by this Act and the regulations.

(2) Procurement of a project by way of a public private partnership arrangement shall only be carried out in accordance with this Act and the regulations.

(3) For the avoidance of doubt, Part VII of the *Public Finances (Management) Act 1995* does not apply to the procurement of infrastructure by way of a public private partnership arrangement.

#### **12. OBLIGATION ON RELEVANT PUBLIC BODY TO REGISTER PROJECT WITH PPP CENTRE.**

(1) Subject to any regulations made under this Act in respect of a public private partnership arrangement, a Relevant Public Body must conduct an initial assessment in the manner and form prescribed by the PPP Centre where it intends to procure either directly or by a company referred to in Section 5(8) a project with a value or size at or above the referral threshold.

(2) An initial assessment under Subsection (1) must include –  
(a) details as to the type of project and its estimated value; and  
(b) whether the project is suitable for procurement as a public private partnership arrangement.

(3) A Relevant Public Body shall submit the initial assessment conducted under Subsection (1) to the PPP Centre within 30 days of conducting the initial assessment.

(4) Where the initial assessment indicates that the project is suitable for procurement as a public private partnership arrangement, the Relevant Public Body may, subject to the approval of the National Executive Council, register that project in the manner prescribed with the PPP Centre and seek the advice of the PPP Centre on that project.

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- (5) A Relevant Public Body -
- (a) must not make any preparations for procurement of a project through a public private partnership arrangement before registering the project with the PPP centre and seeking advice; and
  - (b) shall not form a public private partnership arrangement or carry out any project under a public private partnership arrangement except in accordance with this Act; and
  - (c) shall at all times while carrying out a project under a public private partnership arrangement comply with the provisions of this Act; and
  - (d) shall certify that the Relevant Public Body in preparing a project for procurement as a public private partnership arrangement has complied with this Act before seeking approval to enter into a public private partnership arrangement.

(6) A Relevant Public Body that either enters into a public private partnership arrangement or carries out a project under a public private partnership arrangement without complying with this Act commits an offence.

### **13. PUBLIC FINANCE EXPOSURE TO PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS.**

For each project or group of projects that are the subject of a public private partnership arrangement, the responsible Minister shall publish, on a quarterly basis, a statement of payments and receipts, including contingent payments and receipts, financial support, guarantees and other support provided by or on behalf of the State.

## **PART III. - THE PUBLIC PRIVATE PARTNERSHIP CENTRE.**

### *Division 1. - Public Private Partnership Centre.*

### **14. ESTABLISHMENT OF THE PUBLIC PRIVATE PARTNERSHIP CENTRE.**

- (1) The Public Private Partnership Centre is hereby established.
- (2) The PPP Centre is an unincorporated statutory body with the powers and functions set out in this Act.
- (3) Subject to this Act, the PPP Centre is an organ and instrument of the State and is entitled to the benefit of any immunity or privilege enjoyed by the State.

### **15. FUNCTIONS OF THE PPP CENTRE.**

- (1) The functions of the PPP Centre are to -
- (a) encourage a Relevant Public Body to consider public private partnership arrangements as a method of procuring infrastructure; and
  - (b) advise and assist Relevant Public Bodies on all aspects of public private partnership arrangements; and
  - (c) act as a secretariat to the PPP Steering Group and the PPP Forum; and
  - (d) review and evaluate proposals for projects and advise the PPP Steering Group on identifying if public private partnership is the most appropriate means of implementing a project; and

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- (e) advise and assist the PPP Steering Group -
  - (i) in reviewing public private partnership policy and programmes; and
  - (ii) on policy, pricing and regulatory issues that may have an impact on public private partnership arrangements having consulted with the appropriate regulatory authorities; and
  - (iii) on options and reforms, including regulatory reforms, to remove barriers and make public private partnership arrangements more efficient; and
  - (iv) on mechanisms for financing investment in public private partnership arrangements; and
- (f) coordinate the implementation of public private partnership policy, programme and projects by the National Government, Provincial Government and Local-level Governments; and
- (g) build capacity in Relevant Public Bodies for public private partnership arrangements and promote good practice and knowledge sharing with Relevant Public Bodies and the private sector; and
- (h) maintain a central repository of all documentation and records, including agreements about public private partnership arrangements; and
- (i) compile and submit to the responsible Minister, on a quarterly basis, a record of payments, receipts, liabilities including contingent liabilities, guarantees and other information connected with the public private partnership arrangements; and
- (j) advise the PPP Steering Group on the issuance of a certificate of compliance in accordance with Section 6; and
- (k) issue procedures, guidelines and instructions in relation to public private partnership arrangements; and
- (l) perform any other function concerning public private partnership arrangements or infrastructure procurement or development that -
  - (i) the responsible Minister requests the PPP Centre in writing to perform; or
  - (ii) is incidental or ancillary to any of the functions set out in this section.

### **16. POWERS OF THE PPP CENTRE.**

- (1) The PPP Centre has power to be exercised on behalf of the State -
  - (a) to require a Relevant Public Body or a partner, by written notice, to furnish information, details, documents and particulars as may be required in connection with a public private partnership arrangement and the Relevant Public Body or partner shall comply with such notice without any delay; and
  - (b) subject to providing reasonable notice, to take full and free access to all premises, works, materials, accounts and records of a partner that relate, directly or indirectly, to a public private partnership arrangement for the purpose of inspection, inquiry, investigation or examination and without limiting the same, may take photographs, samples, copies and extracts; and
  - (c) subject to the prior approval of the responsible Minister, to give directions to a Relevant Public Body in relation to a public private partnership arrangement and the Relevant Public Body shall comply with those directions; and
  - (d) to engage consultants and advisers; and
  - (e) to charge fees on any person, including a Relevant Public Body or a partner, in connection with costs incurred by the PPP Centre in the assessment,



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- procurement, monitoring, evaluation and other work related to a public private partnership arrangement, but the fees shall not amount to taxation; and
- (f) to manage and administer funds in connection with public private partnership arrangements on behalf of the State.

(2) The PPP Centre has, in addition to the powers otherwise conferred on it by this Act and any other law, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(3) In exercising its powers or carrying out its functions, the PPP Centre shall exercise due care, skill, prudence, integrity and diligence and act in good faith.

### **17. PPP CENTRE NOT A DEPARTMENT.**

(1) The PPP Centre is not a department of the National Public Service for the purposes of employment of the staff of the PPP Centre.

(2) For the avoidance of doubt, except as otherwise provided under this Act, the ***Public Finances (Management) Act 1995*** applies to the PPP Centre.

### **18. CODE OF PRACTICE.**

(1) Subject to Subsection 3, within 3 months from the date of being appointed, the Chief Executive Officer must prepare a code of practice for approval by the responsible Minister.

(2) The code of practice prepared by the Chief Executive Officer and approved by the responsible Minister under Subsection (1) shall apply to officers, employees, agents and advisers of the PPP Centre, Relevant Public Bodies, members of the PPP Steering Group and members of teams appointed by the PPP Steering Group.

(3) The code of practice shall include the following matters -

- (a) the conduct of officers, employees, agents and advisers of the PPP Centre, Relevant Public Bodies, members of the PPP Steering Group and members of teams appointed by the PPP Steering Group that are engaged in functions or tasks connected with public private partnership arrangement; and
- (b) prescribing misconduct; and
- (c) the procedures for investigation of a person suspected of misconduct; and
- (d) the procedures for sanction or suspension of a person from duties for misconduct.

(4) Every person to whom the code of practice applies shall have regard to and be guided by that code in the performance of his functions and in relation to any other matters to which the code relates.

(5) The Chief Executive Officer shall publish the code of practice.

(6) In so far as the code of practice applies to public officers, it must be consistent with the ***Public Services (Management) Act 1995*** and the ***General Orders*** made under that Act.

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### *Division 2. - PPP Centre Management and Employment.*

#### **19. PPP CENTRE CHIEF EXECUTIVE OFFICER.**

(1) There shall be a Chief Executive Officer of the PPP Centre to be appointed by the Head of State acting on advice of the PPP Centre Appointments Committee.

(2) The Chief Executive Officer is to be engaged under a contract of employment for 3 years, on such terms and conditions as the responsible Minister, acting under and in accordance with the *Salaries and Conditions Monitoring Committee Act 1998*, determines.

(3) For the avoidance of doubt, the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* does not apply to the appointment of the Chief Executive Officer.

#### **20. APPOINTMENT OF CHIEF EXECUTIVE OFFICER.**

(1) The Chief Executive Officer shall be appointed in accordance with a prescribed merit-based appointment process which shall include the following -

- (a) the advertisement of a vacancy in the office of the Chief Executive Officer in the prescribed format together with a minimum person specification for applicants to the position; and
- (b) the assessment of each applicant's curriculum vitae, submitted in a prescribed format, and their competency to perform the prescribed duties as measured against the minimum person specification for the position; and
- (c) a ranked ordered assessment of all applicants for the advertised position in terms of their relative competency to perform the prescribed duties.

(2) The merit based assessment, referred to in Subsection (1) shall be the primary consideration of the PPP Centre Appointments Committee, who will make a recommendation to the Head of State and all other considerations not related to the processes described in this section shall have no bearing on the recommendation of the PPP Centre Appointments Committee.

(3) The PPP Steering Group shall prepare a list, using the merit-based process, of not less than three suitable candidates in the order of preference, from the original applicants to the position, and shall submit this list with the original documentation to the PPP Centre Appointments Committee.

(4) On the receipt of the list under Subsection (3), the PPP Centre Appointments Committee shall deliberate and select one successful candidate from the three shortlisted candidates within (1) month of the receipt of the list from the PPP Steering Group.

(5) The PPP Centre Appointments Committee after selecting the successful candidate under Subsection (4), shall then advise the Head of State to make the appointment of the selected candidate to the position of Chief Executive Officer.

#### **21. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER.**

(1) Subject to Subsection (2), the Chief Executive Officer shall -

- (a) manage and direct the administrative affairs of the PPP Centre; and

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(b) be responsible to the responsible Minister for ensuring that the PPP Centre performs its functions and exercises its powers in accordance with this Act.

(2) The responsible Minister may, after consultation with, and acting on the advice and recommendation of, the National Executive Council, give to the Chief Executive Officer general or specific directions as to policy.

(3) In the exercise of his functions under this Act, the Chief Executive Officer shall act in accordance with, and shall give effect to, any general or specific directions as to policy given to him from time to time by the responsible Minister under Subsection (2).

(4) Notwithstanding anything else in this Act, the Chief Executive Officer has the sole right and responsibility to supervise and direct the staff of the PPP Centre in the exercise of all powers, functions and discretions in respect of the administration and enforcement of this Act.

(5) The Chief Executive Officer may, in writing, delegate to any person, any or all of his powers, duties, functions and authorities, except this power of delegation.

(6) The PPP Centre is to act through, and its functions are to be performed in the name of the PPP Centre by, the Chief Executive Officer, or another officer of the PPP Centre, duly authorised, in writing, by the Chief Executive Officer.

(7) Any delegation under Subsections (5) and (6) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Chief Executive Officer.

### **22. VACANCY IN THE OFFICE OF THE CHIEF EXECUTIVE OFFICER.**

(1) Where the office of the Chief Executive Officer is vacant, or is likely to become vacant due to the completion of the term of the Chief Executive Officer, the PPP Steering Group shall –

- (a) by notice in the National Gazette and in at least one newspaper circulating generally in Papua New Guinea, declare the office vacant; and
- (b) advertise the vacancy and invite applications for appointment to the office.

(2) The PPP Steering Group and the PPP Appointments Committee shall follow the merit-based appointment process specified under Section 20.

### **23. ACTING CHIEF EXECUTIVE OFFICER.**

(1) In the event of absence or incapacity through illness, or the suspension from office of the Chief Executive Officer, the Head of State, acting on advice of the PPP Centre Appointments Committee, may appoint a person, who is to be known, and is referred to in this section, as the Acting Chief Executive Officer, to perform the functions of the Chief Executive Officer.

(2) An Acting Chief Executive Officer shall not hold office for a term in excess of 12 months.

(3) The Acting Chief Executive Officer is to hold office for a period and subject to other

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terms and conditions, including terms and conditions about remuneration, as may be determined by the responsible Minister.

(4) The Head of State, acting on advice of the PPP Centre Appointments Committee may, on reasonable grounds -

(a) suspend the Acting Chief Executive Officer from office; or

(b) terminate the appointment of the Acting Chief Executive Officer, on being satisfied that the Chief Executive Officer is unable to resume the performance of his functions.

### **24. PUBLIC PRIVATE PARTNERSHIP CENTRE APPOINTMENTS COMMITTEE.**

(1) There is established the Public Private Partnership Centre Appointments Committee.

(2) The Public Private Partnership Centre Appointments Committee is established for the purpose of appointment of the Chief Executive Officer and for related purposes.

(3) The Public Private Partnership Centre Appointments Committee shall consist of -

(a) the responsible Minister, who shall be Chairperson; and

(b) the Leader of the Opposition; and

(c) the Head of the Papua New Guinea Chamber of Commerce and Industry.

### **25. STAFF OF THE PPP CENTRE.**

(1) The Chief Executive Officer may appoint persons to be employees of the PPP Centre, in accordance with procedures approved by the responsible Minister, for the purpose of giving effect to this Act and carrying out the functions of the PPP Centre.

(2) Employees appointed under Subsection (1) shall be appointed on such terms and conditions as the Chief Executive Officer, with the prior approval of the responsible Minister and subject to the *Salaries and Conditions Monitoring Committee Act 1988*, determines.

(3) The Chief Executive Officer may dismiss any employee of the PPP Centre in accordance with procedures established by him and approved by the responsible Minister.

(4) Where an employee of the PPP Centre was, immediately before engagement, an officer of the Public Service, service as an employee of the PPP Centre is to be counted as service in the Public Service for the purpose of determining the member's rights (if any) in respect of -

(a) leave of absence on the grounds of illness; and

(b) furlough or pay in lieu of furlough (including pay to dependants on the death of the employee).

(5) The Chief Executive Officer may engage such persons as are considered necessary as temporary and casual employees of the PPP Centre and these employees shall be employed on terms and conditions in accordance with any applicable employment law and as the Chief Executive Officer determines with the prior approval of the responsible Minister.

(6) The PPP Centre may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory or other public body.

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(7) The Chief Executive Officer may engage persons with suitable qualifications and experience as advisers and consultants to the PPP Centre under such terms and conditions as the Chief Executive Officer, with the approval of the responsible Minister, determines.

(8) The Chief Executive Officer and the employees appointed under Subsections (1) and (4) constitute the staff of the PPP Centre.

(9) The Chief Executive Officer is to direct and control the employees of the PPP Centre.

(10) The staff of the PPP Centre (including the Chief Executive Officer) are not officers in the National Public Service.

### **26. PPP CENTRE PROCEDURES, GUIDELINES AND INSTRUCTIONS.**

(1) Subject to the regulations and with the approval of the responsible Minister and the PPP Steering Group, the PPP Centre may issue procedures, guidelines and instructions as it considers necessary for the purposes of this Act and may vary or revoke a procedure, guideline or instruction.

(2) Before making, varying or revoking a procedure, guideline or instruction, the PPP Centre shall consult with -

- (a) the responsible Minister; and
- (b) the PPP Steering Group; and
- (c) such Relevant Public Bodies that the PPP Centre determines appropriate; and
- (d) such other persons as the PPP Forum may recommend.

(3) The notice of the making, varying or revoking of a procedure, guideline or instruction shall be published in the National Gazette.

(4) The procedures, guidelines or instructions shall clearly state to whom the procedures, guidelines and instructions apply and compliance obligations.

(5) A procedure, guideline or instruction, or variation or revocation of a procedure, guideline or instruction -

- (a) takes effect on the date on which it is published in the National Gazette or such later date as is specified by the PPP Centre in the procedure, guideline or instruction; and
- (b) shall be published and accessible on the website of the PPP Centre; and
- (c) issued under this section must be consistent with this Act and the regulations.

(6) The PPP Centre shall keep the contents and operation of procedures, guidelines and instructions, or variations or revocations of a procedure, guideline or instruction, under review to ensure continued relevance and effectiveness.

(7) All Relevant Public Bodies and their officers must comply with the procedures, guidelines and instructions.

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### **27. PPP CENTRE TENDERS AND CONTRACTS.**

(1) The Chief Executive Officer may, after advising the responsible Minister, establish a Supply and Tenders Board for the PPP Centre, to control and regulate -

- (a) the purchase and disposal of property and stores; and
- (b) the supply of works and services,

for the PPP Centre.

(2) Procurement of works, supplies and services by the PPP Centre must be as prescribed by this Act or the regulations and must not be inconsistent with the *Public Finances (Management) Act 1995*.

(3) The members of the Supply and Tenders Board shall comprise the members of the PPP Steering Group.

(4) Section 27 of the Act does not apply to the procurement of a public private partnership arrangement.

(5) For the avoidance of doubt, Part VII of the *Public Finances (Management) Act 1995* does not apply to -

- (a) purchase and disposal of property and stores; and
- (b) the supply of works and services,

for the PPP Centre.

### *Division 3. - PPP Centre Reporting Requirements and Supervision.*

### **28. PPP CENTRE SIX MONTHLY REPORT.**

(1) The PPP Centre shall, within 3 months after the end of each six monthly period, furnish to the responsible Minister a report of the affairs of the PPP Centre during that six monthly period, and a copy of that report shall be furnished to the departmental head of the department responsible for treasury matters.

(2) The first six monthly report is to be for the period commences on the date of the commencement of this Act and ends on the 30 June or 31 December immediately following the six month anniversary of the date of commencement of this Act, and each subsequent six monthly report ends on each subsequent 30 June or 31 December.

(3) The responsible Minister shall table each six monthly report at the first sitting of the National Parliament subsequent to his receipt of the six monthly report.

(4) The PPP Centre shall publish each six monthly report within one week of submitting the report to the responsible Minister.

(5) Each six monthly report shall include the following information for the relevant period -

- (a) a list of all projects registered with the PPP Centre and the actions taken in respect of those projects; and
- (b) a description of the operations of the PPP Centre including information or statistics about the performance of its functions, details of actions taken, advice

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- given, achievements and problems encountered; and
- (c) a list of all meetings of the PPP Steering Group; and
- (d) a report of meetings of the PPP Forum; and
- (e) a schedule of income and expenditure; and
- (f) a report by the Chief Executive Officer on the PPP Centre's compliance with any general direction or guideline issued by the responsible Minister under Section 31(3); and
- (g) any other matter directed by the responsible Minister or the PPP Steering Group in writing.

(6) The responsible Minister may, at any time and from time to time by written notice to the Chief Executive Officer, require the PPP Centre to report to him on any matter relevant to the performance of its functions under this Act and the PPP Centre must comply with that notice without delay.

### **29. PPP CENTRE ANNUAL REPORT.**

- (1) The PPP Centre shall, within 4 months after each balance date of the PPP Centre, furnish to the responsible Minister an annual report on the affairs of the PPP Centre during the accounting period ending on that date, and a copy of the annual report shall be furnished to the departmental head of the department responsible for treasury matters.
- (2) The responsible Minister shall -
- (a) table the report at the first sitting of the Parliament subsequent to his receipt of the annual report; and
  - (b) cause the report to be gazetted within one week of the receipt of the report.
- (3) The annual report is to be in writing and dated and is to -
- (a) include a report on the performance and management of the operations and activities of the PPP Centre during the accounting period, including the activities of the PPP Steering Group and the PPP Forum; and
  - (b) include financial statements for the accounting period completed and signed in accordance with Section 33; and
  - (c) describe any change in accounting policies made during the accounting period; and
  - (d) state, in respect of the Chief Executive Officer, the total of the remuneration and the value of other benefits received by him during the accounting period; and
  - (e) state the number of employees or former employees of the PPP Centre who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which in aggregate was or exceeded K150,000.00 per annum, and is to state the number of such employees or former employees in brackets of K10,000.00; and
  - (f) state the total amount of any donations made or commissions paid by the PPP Centre during the accounting period; and
  - (g) be signed on behalf of the PPP Centre by the Chief Executive Officer and the Chief Financial Officer.

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(4) The PPP Centre must, whenever requested by the responsible Minister, furnish information in relation to matters the responsible Minister may specify concerning or about the scope of its activities or its strategy generally or in respect of any account prepared by the PPP Centre or any report specified in this section or the policy and activities of the PPP Centre.

### **30. PPP CENTRE ANNUAL PLAN AND CORPORATE PLAN.**

(1) The PPP Centre shall, not later than 3 months before the end of each financial year, submit to the responsible Minister and the PPP Steering Group a plan in respect of the activities of the PPP Centre for the next financial year containing information in a form and regarding matters as the responsible Minister may direct.

(2) The PPP Centre plan shall include -

- (a) the proposed statement of objectives for the next year and the impact of achieving those objectives; and
- (b) the methods and measures by which the PPP Centre intends to assess the extent to which it meets those objectives; and
- (c) a commitment to include the assessment of the extent to which it is meeting objectives in the next six monthly report; and
- (d) a report and assessment of the State's direct or indirect exposure to existing and new liabilities including contingent liabilities that may arise during the year through public private partnership arrangements; and
- (e) a list and brief description of proposals for public private partnership arrangements which have been registered with the PPP Centre with a timetable showing the actions to be taken in respect of those proposals and the resources required for implementation; and
- (f) an estimate of the receipts and expenditures for the PPP Centre for the next financial year.

(3) The PPP Steering Group and the responsible Minister must approve or amend and return with comments the annual plan of the PPP Centre within one month of receipt of the annual plan and if an annual plan is returned with comments, the PPP Centre must amend the annual plan in response to those comments and resubmit the amended annual plan within one month of its return.

(4) The PPP Centre must prepare a five year corporate plan in a manner to be determined by the Chief Executive Officer in consultation with the responsible Minister and which forms the background for each annual plan which is updated each year when the annual plan is prepared.

### **31. SUPERVISION AND EXTERNAL GOVERNANCE OF PPP CENTRE.**

(1) The management and administration of the PPP Centre is to be performed subject to the control and general supervision of the responsible Minister who is accountable to the National Parliament for the PPP Centre.

(2) The PPP Centre shall -

- (a) report to the PPP Steering Group on public private partnership policy, programme and projects; and



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- (b) carry out the decisions of the PPP Steering Group and National Executive Council on these matters.
- (3) The responsible Minister may give general directions or guidelines to the PPP Centre, not inconsistent with this Act, on matters of policy but may not give directions concerning a particular public private partnership arrangement, project, partner or person.
- (4) General directions or guidelines on policy given by the responsible Minister to the PPP Centre under Subsection 3 shall be published in the six monthly report and annual report of the PPP Centre with a statement setting out the action taken by the PPP Centre in response to those directions and guidelines.

### **PART IV. - FINANCIAL REPORTING, ACCOUNTING RECORDS AND AUDIT.**

#### *Division 1. - Interpretation.*

#### **32. INTERPRETATION.**

In this Part -

- “accounting period” means the period commencing on the coming into operation of this Act and ending on the next succeeding balance date, and thereafter means the period of one year ending on a balance date;
- “balance date” means the close of 31 December;
- “financial statements” in relation to the PPP Centre and a balance date, means –
  - (a) a balance sheet for the PPP Centre as at the balance date; and
  - (b) an income and expenditure statement for the PPP Centre in relation to the accounting period ending at the balance date; and
  - (c) a statement of cash flows for the PPP Centre in relation to the accounting period ending at the balance date, together with any notes or documents giving information in relation to the balance sheet, income and expenditure statement or statement of cash flows;
- “generally accepted accounting practice” has the meaning given to it by Section 172 of the *Companies Act 1997*, as if the PPP Centre were a reporting company within the meaning of that expression in that section and any provision referred to in that section.

#### *Division 2. – Preparation of Financial Statements.*

#### **33. PREPARATION OF FINANCIAL STATEMENTS.**

- (1) The Chief Executive Officer is to ensure that, within 4 months after the balance date of the PPP Centre, financial statements that comply with Subsection (2) are -
  - (a) completed in relation to the PPP Centre as at that balance date; and
  - (b) dated and signed on behalf of the PPP Centre by the Chief Executive Officer.
- (2) The financial statements of the PPP Centre are to comply with generally accepted accounting practices.

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(3) For the purposes of this section, where, in complying with generally accepted accounting practice, the financial statements do not give a true and fair view of the matters to which they relate, the Chief Executive Officer shall add such information and explanations as will give a true and fair view of those matters.

### *Division 3. – Accounting Records.*

#### **34. ACCOUNTING RECORDS TO BE KEPT.**

- (1) The Chief Executive Officer is to cause accounting records to be kept that –
  - (a) correctly record and explain the transactions of the PPP Centre; and
  - (b) will, at any time, enable the financial position of the PPP Centre to be determined with reasonable accuracy; and
  - (c) will enable the responsible Minister to ensure that the financial statements of the PPP Centre comply with this section; and
  - (d) will enable the financial statements of the PPP Centre to be readily and properly audited.
  
- (2) Without limiting the generality of Subsection (1), the accounting records are to contain –
  - (a) entries of all money received and spent and the matters to which it relates; and
  - (b) a record of the assets and liabilities of the PPP Centre.
  
- (3) The accounting records are to be kept -
  - (a) in written form; or
  - (b) in a form or manner in which they are easily accessible and convertible into written form.
  
- (4) The PPP Centre shall keep accounting records for the current accounting period and for the last five completed accounting periods of the PPP Centre.

#### **35. FUNDS OF THE PPP CENTRE.**

- (1) The funds of the PPP Centre consist of -
  - (a) all monies appropriated by an Act of the National Parliament for the purposes of carrying out or giving effect to this Act; and
  - (b) all monies received by the PPP Centre by way of grants and subscriptions; and
  - (c) all monies received by the PPP Centre for goods or services provided by the PPP Centre; and
  - (d) any monies paid or payable to the PPP Centre under any law (other than this Act) in respect of any fee or levy; and
  - (e) all other monies received by the PPP Centre in the exercise and performance of its powers, functions and duties under this Act.
  
- (2) The PPP Centre shall pay any surplus funds accruing from its operations or activities in a given year to the Consolidated Revenue Fund at the end of the given year.
  
- (3) The funds of the PPP Centre may be expended only -
  - (a) in payment or discharge of expenses, obligations and liabilities of the PPP Centre; and

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- (b) in payment of the remuneration of the staff of the PPP Centre; and
- (c) for such other purposes as are consistent with the functions of the PPP Centre as the Chief Executive Officer, after consultation with the responsible Minister, determines.

(4) The PPP Centre has power to open, manage and operate a bank account or bank accounts with the approval of the responsible Minister and shall at all times maintain at least one bank account into which all PPP Centre monies shall be paid.

(5) For the avoidance of doubt, if any monies received or made payable to the PPP Centre under Subsection (1) are in the nature of monies out of or on behalf of the Consolidated Revenue Fund, then those moneys shall be treated and shall remain part of the Consolidated Revenue as that term is used in the ***Public Finances (Management) Act 1995***.

### **36. LIABILITY TO TAXATION.**

For the purposes of Section 24(1) of the ***Income Tax Act 1959***, the PPP Centre is a public authority constituted under this Act.

### **37. STATE GUARANTEE.**

(1) A company referred to in Section 5(8) is not entitled to render the State liable for its or their debts, liabilities or obligations.

(2) The State does not and shall not -

- (a) guarantee or indemnify any company referred to in Section 5(8) in respect of any of its or their assets or liabilities (including any overdraft or other financial accommodation) arising out of a PPP arrangement unless, in each particular instance, the National Executive Council, expressly agrees that the State shall do so; and
- (b) guarantee or indemnify any third person in respect of any debt or liability of any company referred to in Section 5(8) unless, in each particular instance, the National Executive Council, expressly agrees that the State shall do so.

### **38. AVAILABILITY OF ANNUAL REPORT.**

(1) Any annual report of the PPP Centre that is furnished to the responsible Minister under Section 29 is a public document.

(2) At the request of any person at any time, the PPP Centre is to provide that person with a copy of its most recent annual report on payment by that person of such fee (if any) as is determined by the PPP Centre.

(3) The fee under Subsection (2) may not exceed K10.00 or such other higher amount as may be prescribed.

## ***Division 4. - Audit.***

### **39. AUDIT.**

(1) The PPP Centre is subject to the ***Audit Act 1989***.

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- (2) The PPP Centre must -
  - (a) submit its financial statements, once prepared in accordance with Section 33, to the Auditor General for audit within 4 months after the end of the financial year to which they relate; and
  - (b) present a copy of the financial statements, as audited, to the responsible Minister as soon as possible and the responsible Minister shall table a copy of the audited financial statements at the next sitting of the National Parliament; and
  - (c) publish the financial statements within a reasonable period after the financial statements are tabled in Parliament.
  
- (3) The Auditor-General has power to -
  - (a) audit and report on a public private partnership arrangement; and
  - (b) audit and report on the process by which a public private partnership arrangement was procured; and
  - (c) when practicable, assess and report whether the procurement of a project through a public private partnership arrangement has realised the objectives and satisfied the criteria which formed the basis for the decision to procure that project by public private partnership and in doing so, shall consider reports prepared by any independent auditor under Section 40.
  
- (4) In carrying out its functions under this section, the Auditor General has, available to it, all powers under the *Audit Act 1989*.
  
- (5) The Auditor-General is to submit a report made under this section to the National Parliament and shall publish the report in the National Gazette within two weeks of submitting the report to the National Parliament.

### **40. FUNCTIONAL ASSESSMENT.**

- (1) The PPP Centre must, before -
  - (a) the last day of February following one year after the establishment of the PPP Centre; and
  - (b) each 5 year anniversary of the day referred to in Subsection (1)(a) while the PPP Centre continues in existence,engage, a firm that is a registered company auditor under the *Accountants Act 1996*, to conduct a functional assessment and furnish to the PPP Centre with a report of their findings in relation to that functional assessment, within 4 months of being engaged.
  
- (2) The PPP Centre must -
  - (a) present a copy of the report referred to in Subsection (1) to the responsible Minister as soon as possible following receipt and the responsible Minister shall table a copy of the report at the next sitting of the National Parliament; and
  - (b) publish the report referred to in Subsection (1) in the National Gazette within a reasonable period after the report is tabled in the National Parliament.

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### PART V. - PUBLIC PRIVATE PARTNERSHIP STEERING GROUP.

#### 41. ESTABLISHMENT OF PUBLIC PRIVATE PARTNERSHIP STEERING GROUP.

(1) There is established a supervisory committee for the procurement and development of infrastructure by way of public private partnership arrangements to be called the PPP Steering Group.

- (2) The PPP Steering Group shall comprise the following *ex officio* members -
- (a) the Departmental Head, Acting Head, or any person nominated or delegated from the Department responsible for treasury matters or its successor at law, as Chairman; and
  - (b) the Departmental Head, Acting Head, or any person nominated or delegated from the Department responsible for national planning matters or its successor at law; and
  - (c) the State Solicitor or Acting State Solicitor, or any person from the Office of the State Solicitor nominated or delegated in writing by the State Solicitor.

(3) Subject to Subsection (4), the Chief Executive Officer is entitled to attend all meetings of the PPP Steering Group as an adviser and observer but not as a member.

- (4) The PPP Steering Group may -
- (a) co-opt any person to be a member of the PPP Steering Group during such period and on such terms and conditions as the PPP Steering Group is considering a project within a Department's area of responsibility, the departmental head of that Department; or
  - (b) invite any person to attend a meeting of the PPP Steering Group for the purpose of presenting information or advice.

(5) The PPP Centre is to act as the Secretariat for the PPP Steering Group and is to analyse and comment on all submissions to the PPP Steering Group and provide secretarial services to the PPP Steering Group.

#### 42. MEETINGS OF PPP STEERING GROUP.

(1) The PPP Steering Group may meet and transact business at such times and places as are determined by the Chairman or on request by two members of the PPP Steering Group, by the responsible Minister.

- (2) At a meeting of the PPP Steering Group -
- (a) three members constitutes a quorum; and
  - (b) the Chairman is to preside; and
  - (c) in the absence of the Chairman, the members present are to elect one of their number to be the Chairman; and
  - (d) matters arising are to be determined by a majority of the members present and voting except where otherwise prescribed; and
  - (e) the person presiding has a deliberative and in the event of an equality of votes, also a casting vote.

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(3) The PPP Steering Group is to cause minutes of its meetings to be kept on its behalf by the PPP Centre and the minutes are to be kept in such manner as is determined by the PPP Steering Group.

### **43. DECISIONS WITHOUT MEETINGS.**

- (1) The PPP Steering Group is taken to have made a decision at a meeting if -
- (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision in the manner determined by the PPP Steering Group under Subsection (2); and
  - (b) all members were given written notice of the proposed decision.
- (2) Subsection (1) applies only if the PPP Steering Group -
- (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which members are to indicate agreement with proposed decisions under this section.

(3) The Chief Executive Officer shall keep a record of decisions made in accordance with this section noting the manner in which the decisions were made.

### **44. FUNCTIONS OF THE PPP STEERING GROUP.**

The functions of the PPP Steering Group are -

- (a) to coordinate and monitor the public private partnership policy and programme of the National Executive Council; and
- (b) to ensure that the public private partnership policy and programme of the National Executive Council are implemented in a manner to achieve the aims of the policy and programme; and
- (c) to recommend to and advise the National Executive Council on measures that may be taken to further public private partnership policy and programme generally; and
- (d) to consider matters relating to public private partnership arrangements that are referred to it by the responsible Minister or the National Executive Council or that are brought to its attention by the Chief Executive Officer and make recommendations to and advise the National Executive Council on these matters; and
- (e) to make recommendations to the National Executive Council on an individual public private partnership project or group of projects; and
- (f) to appoint members of a team to carry out tasks in connection with public private partnership arrangements and to specify the tasks to be carried out; and
- (g) to ensure that the public private partnership policy and programme and the implementation of projects under that policy and programme are conducted with integrity in a fair, transparent and accountable manner; and
- (h) to ensure that public communications and interaction with the private sector on public private partnership is successful in building understanding and confidence among the general public, potential investors and lenders; and
- (i) to ensure that the highest standards of probity are maintained in the procurement of public private partnership arrangements; and

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- (j) generally to do such supplementary, incidental or consequential acts and things as are necessary or convenient for carrying out its functions.

### **45. POWERS OF THE PPP STEERING GROUP.**

The PPP Steering Group has power to do all things as are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

### **46. COMMITTEES.**

(1) The PPP Steering Group may, from time to time, establish such committees to advise it on matters relating to its objectives or the performance of its functions as it considers necessary or convenient.

- (2) In establishing a committee under Subsection (1), the PPP Steering Group may -
  - (a) appoint such persons, including members of the PPP Steering Group, as it considers necessary; and
  - (b) specify the functions and procedures of the committee.

(3) If the PPP Steering Group establishes a committee under this section, the PPP Steering Group shall notify the responsible Minister, and cause a notice to be published in the National Gazette of the establishment, the membership and the functions of the committee.

### **47. DELEGATION.**

(1) The PPP Steering Group may, by an unanimous decision, delegate to the Chief Executive Officer, or to any other person or group of persons, any of its powers and functions other than this power of delegation.

- (2) A delegation under Subsection (1) -
  - (a) shall be in writing; and
  - (b) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and
  - (c) may be restricted to a particular matter or class of matters; and
  - (d) is revocable at will by resolution of the PPP Steering Group in writing; and
  - (e) does not affect or prevent the performance of a function or the exercise of a power by the PPP Steering Group.

## **PART VI. - PPP FORUM.**

### **48. CONVENING OF PROCEEDINGS AT PPP FORUM.**

(1) The Chief Executive Officer shall convene and hold a forum to be called the PPP Forum in accordance with this section.

(2) The PPP Forum may be convened to discuss specific issues, including public private partnership legislation, policy and procedures or any proposals for change.

(3) The purpose of the PPP Forum is to provide an opportunity for all persons in society, business and government that -

- (a) are involved with; or

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- (b) may be affected by; or
- (c) have an interest in, the procurement or development of infrastructure by way of public private partnership arrangements and the implementation of PPP projects (in this section called "stakeholders"), where the stakeholders can meet to; or
- (d) discuss and exchange views on relevant issues; or
- (e) ensure the fairness of the procurement processes,

but the PPP Forum shall not discuss projects that are in the procurement phase of the PPP project cycle.

(4) The Chief Executive Officer shall not convene a PPP Forum for the purpose of discussing any specific public private partnership arrangement.

(5) The Chief Executive Officer shall invite -

- (a) the significant private sector interest groups in Papua New Guinea that represent consumers and users of infrastructure facilities and services, business and financial sectors, and other persons from within Papua New Guinea and overseas that have a particular interest in infrastructure development and PPP policy in Papua New Guinea; and
- (b) members of the PPP Steering Group and senior representatives of State Authorities involved in infrastructure development and the implementation of PPP policy,

to attend the PPP Forum's deliberations.

(6) The Chief Executive Officer shall ensure that the PPP Forum convenes at least once in each calendar year and more frequently when circumstances require or funding permits, in response to reasonable requests.

(7) Prior to convening the initial PPP Forum, the Chief Executive Officer shall discuss with relevant private sector interest groups on such matters as he considers relevant to ensure that the PPP Forum provides an effective means of exchanging and commencing relevant views of the stakeholders, including but not limited to -

- (a) the selection of a Chairman who shall be from the private sector; and
- (b) items to be placed on the PPP Forum agenda; and
- (c) a means of identifying formal, but effective and convenient means of communication between the private sector and the PPP Centre between meetings of the PPP Forum; and
- (d) such other matters as are desirable to assist the PPP Forum to fulfill its purpose as a vehicle for -
  - (i) the communication of private sector views on public private partnership policy and implementation; and
  - (ii) receiving the PPP Centre's reporting of its performance and the development of public private partnership legislation, policy, programme and projects.

(8) Prior to convening each subsequent PPP Forum, the Chief Executive Officer shall invite relevant private sector interest groups to suggest topics for the agenda and shall prepare an agenda which reflects the expressed views and concerns.



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(9) The Chief Executive Officer and other PPP Center personnel shall attend the PPP Forum and present a report detailing -

- (a) the PPP Center's activities and outcomes; and
- (b) the tasks undertaken by the PPP Center, PPP Steering Group and Relevant Public Bodies; and
- (c) problem and opportunities being encountered; and
- (d) steps being taken to overcome identified problems and to realise opportunities; and
- (e) future plans of the PPP Centre.

(10) The PPP Forum may make proposals and suggestions for improving the public private partnership and the implementation of that policy which the PPP Centre shall be obliged to examine and report on to the groups that attended the PPP Forum which raised those proposals or suggestions and the Chief Executive Officer may form a task force of public sector and private sector members to carry out that examination and report.

(11) The PPP Centre shall act as a secretariat to the PPP Forum.

### **PART VII. - MISCELLANEOUS.**

#### **49. DISCLOSURE OF INTERESTS.**

(1) The Chief Executive Officer must give written notice to the responsible Minister of all material personal interests that the Chief Executive Officer has or acquires that conflict or could conflict with the proper performance of his duties.

(2) Each member of the PPP Steering Group, officer, employee, agent, consultant or adviser to the PPP Centre or a Relevant Public Body undertaking a public private partnership arrangement must give written notice to the Chief Executive Officer of all material personal interests that person has or acquires that conflict or could conflict with the proper performance by that person of his duties about a public private partnership arrangement.

(3) The disclosure under Subsections (1) and (2) must be made as soon as possible after the relevant facts have come to the knowledge of the person involved and must be recorded in a register maintained by the PPP Centre.

(4) A person who has disclosed a conflict or possible conflict of interest in respect of a matter related to a public private partnership arrangement must not be present during any deliberation on the matter and must not take part in any recommendation or decision about the matter.

(5) This section does not apply to the extent that the interest of a person is only as a result of the supply of goods and services that are available to members of the public on the same terms and conditions.

(6) A failure to comply with this section does not affect the validity of an act or a decision of the PPP Steering Group, PPP Center or a Relevant Public Body.

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(7) A failure, without reasonable excuse, by a person to comply with requirements of this section is guilty of an offence and is liable, on conviction, to a fine not exceeding K50,000.00.

### **50. CONFIDENTIALITY.**

(1) The PPP Centre, the PPP Steering Group and a Relevant Public Body must take all reasonable steps to protect itself from unauthorised use or disclosure of information given to it in confidence or in connection with the performance of its functions or the exercise of its powers.

(2) The Chief Executive Officer, an officer, employee, agent or adviser of the PPP Centre, Relevant Public Body or Ministry, or a member of the PPP Steering Group who receives information in that capacity, being information that would not otherwise be available to him, shall not disclose that information to any person, or make use of or act on that information, except for the purposes of the PPP Centre, Relevant Public Body or PPP Steering Group, or as required by law or in accordance with this Act.

(3) A person may -  
(a) when authorised to do so in writing by the PPP Centre, a Relevant Public Body, the responsible Minister or the PPP Steering Group; and  
(b) where such disclosure, use or act will not, or will not be likely to, prejudice the interest of the State, or any project in which the State is interested,  
disclose, make use of or act on information referred to in this section.

(4) Particulars of any disclosure, use or act authorised under this section shall be recorded in writing by the PPP Centre.

(5) The use or disclosure of any information as required and permitted by any law or court of competent jurisdiction is to be taken to be an authorised use and disclosure of that information.

(6) The use or disclosure of any information by a person for the purposes of performing his functions as an officer, employee, agent or adviser of the PPP Centre or Relevant Public Body or member of the PPP Steering Group is to be taken to be an authorised use and disclosure of that information.

(7) A person who acts in contravention of any of the provisions of this section is guilty of an offence and is liable, on conviction, to a fine not exceeding K50,000.00.

### **51. OFFENCE OF LOBBYING.**

(1) Subject to Subsections (3) and (4), a person who communicates, on behalf of another person, with -

- (a) a member of the PPP Steering Group; or
- (b) the PPP Centre; or
- (c) a Relevant Public Body; or
- (d) the responsible Minister; or
- (e) the appropriate Minister; or
- (f) an officer or employee of any of the foregoing; or
- (g) an entity or person providing services or advice to the PPP Centre or a Relevant Public Body; or

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(h) an entity or person that may be interested in participating in a public private partnership arrangement,  
with the intention of influencing the making of a decision in relation to a public private partnership arrangement commits an offence.

(2) Without limiting to the generality of Subsection (1), a reference to a decision in relation to a public private partnership arrangement includes a decision relating to -

- (a) the engagement of the services of an expert adviser or other service provider; or
- (b) a tender; or
- (c) a project or a public private partnership arrangement; or
- (d) the purchase, sale, lease or licence of an interest in property; or
- (e) any other matter that could give rise to an advantage or benefit to a person other than the PPP Centre or a Relevant Public Body.

(3) It is not an offence under Subsection (1) -

- (a) if the communication -
  - (i) is published and made without an intention to benefit or confer an advantage on any specific person; or
  - (ii) is made in the public interest; or
  - (iii) is permitted to be made by the PPP Centre or a Relevant Public Body; or
- (b) if the person who made the communication concerned acted in a professional capacity or in the course of his or her employment and did so in that capacity.

(4) A person who has been communicated with in contravention of Subsection (1) shall, as soon as is convenient, report to the -

- (a) Chairman of the PPP Steering Group, if the communication is made to the Chief Executive Officer; or
- (b) Chief Executive Officer, if the communication is made to any other person, giving details of the communication and the name of the person who made the communication.

(5) A person who fails to comply with Subsection (4) commits an offence.

(6) A person who commits an offence under this section is liable, on conviction, to a fine not exceeding K50,000.00.

(7) Any person who obstructs, prevents or interferes with the exercise by the PPP Centre of its functions is guilty of an offence and is liable, on conviction, to a fine not exceeding K50,000.00.

### **52. PROOF OF CERTAIN MATTERS.**

In any proceedings by or against the PPP Centre, proof is not required, unless evidence is given to the contrary, of -

- (a) the constitution of the PPP Centre; or
- (b) the appointment of the Chief Executive Officer or any officer of the PPP Centre.

### **53. SERVICE OF PROCESS.**

Any notice, summons, writ or other process required to be served on the PPP Centre may be

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served by being delivered at the office of the PPP Centre or, in the case of a notice, by being sent by post.

### **54. RECOVERY OF MONIES DUE.**

Any money due to the PPP Centre, including all funds of the PPP Centre under Section 33, may be recovered by the PPP Centre as a debt.

### **55. PROTECTION FROM PERSONAL LIABILITY.**

An officer or employee or servant or agent of the PPP Centre is not personally liable for any act or default by himself or the PPP Centre, done or omitted to be done in good faith in the course of the activities or operations of the public private partnership arrangement or for the purposes of the PPP Centre.

### **56. GENERAL PENALTY.**

(1) A person who acts in contravention of or fails to comply with any provisions of this Act is guilty of an offence.

(2) A person who commits an offence against this Act for which no penalty is provided elsewhere in this Act, is liable to a penalty of a fine not exceeding K25,000.00 or imprisonment for a term not exceeding 2 years or both, and where the offence is a continuing offence, is further liable to a default penalty of a fine not exceeding K2,500.00 for each day during which the offence continues after conviction.

### **57. INFORMATION.**

(1) Where, in the opinion of the Chief Executive Officer -

- (a) any information, book or record in the possession or custody or under the control of a Relevant Public Body or a public private partnership arrangement is relevant to the exercise or performance of a power or function of the PPP Centre or to the achievement of the purposes of the Act; and
- (b) it is desirable that the information be furnished to the PPP Centre or that the book or record be produced for inspection by the PPP Centre, the PPP Centre may issue to the Relevant Public Body or a partner to a public private partnership arrangement, a written notice to that effect specifying the relevant information, book or record and specifying the place and time at which any information, book or record is to be furnished or produced to the PPP Centre.

(2) A Relevant Public Body or a partner to a public private partnership arrangement who receives a notice under Subsection (1) is to furnish or produce for inspection at the place and at the time specified in the notice the information, book or record specified in the notice and copies of or extracts from the information, book or record so furnished or produced may be made and retained by the PPP Centre.

(3) The PPP Centre or its employees may take copies of and extracts from any information, book or record furnished or produced under Subsection (2).

(4) Subsection (2) does not affect the operation of any law by or under which any information, book or record is to be kept confidential.

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(5) Subject to Subsection (6), a Relevant Public body or a partner to a public private partnership arrangement who, without reasonable excuse (proof of which is on them), refuses or fails, after receiving a notice under Subsection (1), to furnish any information or to produce for inspection any book or record, or who furnishes any information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K1,000.00.

(6) It is a defence to a charge of an offence against Subsection (5) if the Relevant Public Body or a partner to a public private partnership arrangement charged proves that the information, book or record was not relevant to the exercise or performance of a power or function of the PPP Centre to the achievement of the purposes of this Act.

### **58. FALSE STATEMENTS.**

A person who, in a statement made or information furnished under or for the purpose of this Act, makes, without reasonable excuse (proof of which is on him), a statement, or gives information that is false or misleading in a material particular, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

### **59. PROSECUTIONS.**

(1) Subject to the approval of the Public Prosecutor, the PPP Centre may prosecute any offence against this Act or any other Act the administration of which is the responsibility of the PPP Centre from time to time.

(2) A prosecution under this Act shall be made on indictment to the National Court.

(3) In any action brought under this Act by the PPP Centre or against the PPP Centre, the Court may award costs against any party or claimant other than the PPP Centre, which costs may be recovered by the PPP Centre, as a debt due to the PPP Centre.

(4) Any fine or penalty or any default fine or penalty to be paid by a person as a result of an action brought by the PPP Centre is to be paid to the PPP Centre and, in addition to any other remedy, may be recovered by the PPP Centre as a debt due to the PPP Centre.

### **60. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act, and in particular for prescribing fees and for prescribing penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K1,000.00 for infringements of the regulations.

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### SCHEDULES.

#### SCHEDULE 1. - RELEVANT PUBLIC BODY.

1. The Independent State of Papua New Guinea.
2. Provincial or Local-Level Governments.
3. State Owned Entities.

Section 4.

#### SCHEDULE 2. - INFRASTRUCTURE.

“infrastructure” includes, without limitation, assets, facilities and services -

- (a) for the provision of power or electricity (whether provided directly to the public or to any intermediate entity) including generation, transmission, distribution and supply and ancillary facilities including dams for hydro power; and
- (b) for gas transmission and public distribution, gas and gas works; and
- (c) for transport including airport runways, air traffic control, terminals and other air side and land side facilities, rail, roads, bridges, highways, tunnels and other road facilities, port or harbour facilities on water or land, canals, dams, channel dredging and terminals, traffic management; and
- (d) for telecommunications includes fixed or mobile local telephony, domestic long distance telephony, internet and broadband and facilities related to the launching, operation or use of satellites, broadcasting facilities; and
- (e) for the supply, distribution and delivery of potable water, desalination, water or waste water treatment or disposal facilities, drainage, irrigation, sewerage and sewage collection and treatment facilities, solid waste management including waste collection and disposal; and
- (f) for real estate projects, land reclamation projects, environmental management, remediation and clean-up projects, urban development, industrial estates, housing including social and government housing, street lighting, government and public buildings including office accommodation, prisons, courts, sport, recreation and leisure facilities, tourism development projects, trade fair complexes, convention, exhibition and cultural centers, public markets, gardens and parks, warehouses, property management; and
- (g) for the health sector including hospitals; and
- (h) for the correctional management sector including prisons and remand centers; and
- (i) for the education and training sector including schools, colleges and residential facilities, training, research and development; and
- (j) any other project or sector which may be notified by the responsible Minister in the National Gazette.

Section 2.

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**SCHEDULE 3 - PPP ARRANGEMENT.**

Section 5.

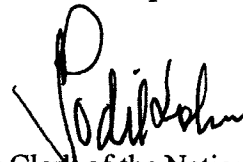
“public private partnership arrangement” means an arrangement with a person, other than a Relevant Public Body, in this Act referred to as a partner, for the performance of functions specified in the arrangement in relation to -

- (a) the design and construction of infrastructure, together with the operation of services relating to it and the provision of finance, if required, for design, construction and operation; or
- (b) the construction of infrastructure, together with the provision of finance, for design and construction and operation; or
- (c) the design and construction of infrastructure, together with the provision of finance, for design and construction; or
- (d) the provision of services, including maintenance, relating to infrastructure for not less than 5 years and the provision of finance, if required, for services,

but does not include -

- (e) arrangement to procure a project with a size or value of less than the referral threshold in Section 2; or
- (f) mining projects under the *Mining Act 1992* and associated development agreements; or
- (g) gas projects and petroleum projects under the *Oil and Gas Act 1998* and associated development agreements; or
- (h) an infrastructure project in relation to which the expenditure is predominantly comprised of expenditure deemed under Section 219C of the *Income Tax Act 1959* to be income tax in any income tax year.

I hereby certify that the above is a fair print of the *Public Private Partnership Act 2014* which has been made by the National Parliament.



Acting Clerk of the National Parliament.

**21 OCT 2014**

I hereby certify that the *Public Private Partnership Act 2014* was made by the National Parliament on 2 September, 2014 by an absolute majority in accordance with the *Constitution*.



Speaker of the National Parliament.

**21 OCT 2014**