

No. 4 of 2022.

Public Private Partnership (Amendment) Act 2022.

Certified on : 4 MAR 2022



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No. 4 of 2022.

AN ACT

entitled

Public Private Partnership (Amendment) Act 2022,

Being an act to amend the ***Public Private Partnership Act 2014***, 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.

1. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended in Subsection (1) -

(a) by repealing the definition of “partner” and replacing it with the following:

““partner” means a person other than a Relevant Public Body and includes a nominee of the partner agreed to by the Relevant Public Body;” and

(b) by inserting after the definition of “partner” the following:

““PPP” means Public Private Partnership;” and

(c) by repealing the definition of “project” and replacing it with the following:

““project” includes the design, construction, development, financing and operation of new infrastructure and rehabilitation, modernisation, expansion or operation of an existing infrastructure that originates a solicited proposal or an unsolicited proposal;” and

(d) by repealing the definition of “State Owned Entity”; and

(e) by inserting after the definition of “remuneration” the following:

““solicited proposal” means a proposal made by a partner to undertake a public private partnership arrangement that is submitted the initiative of the partner rather than response to a request solicited by a Relevant Public Body;”.

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2. REPEAL AND REPLACEMENT OF SECTION 11.

The Principal Act is amended by repealing Section 11 and replacing it with the following new section:

“11. PUBLIC PRIVATE PARTNERSHIP ANALYSIS AND PROCUREMENT.

(1) Procurement of a project by way of a public private partnership arrangement shall, whether originating as a solicited or unsolicited proposal, only be carried out in accordance with this Act and the regulations.

(2) For the avoidance of doubt, the following Acts do not apply to the procurement of infrastructure by way of a public private partnership arrangement -

- (a) the *National Procurement Act 2018*; and
- (b) Part VIA of the *Kumul Consolidated Holdings Act 2002*.”.

3. OBLIGATION ON RELEVANT PUBLIC BODY TO REGISTER PROJECT WITH PUBLIC PRIVATE PARTNERSHIP CENTRE (AMENDMENT OF SECTION 12).

Section 12 of the Principal Act is amended by repealing Subsection (4) and replacing it with the following:

“(4) Where the initial assessment indicated that the project is suitable for procurement as a public private partnership arrangement, the Relevant Public Body will register the project in the manner prescribed with the Public Private Partnership Centre and seek the advice of the Public Private Partnership Centre on that project.”.

4. ESTABLISHMENT OF THE PUBLIC PRIVATE PARTNERSHIP CENTRE (AMENDMENT OF SECTION 14).

Section 14 of the Principal Act is amended by inserting immediately after Subsection (2) the following:

- “(2A) The Public Private Partnership Centre -
- (a) is a legal entity with perpetual succession; and
 - (b) shall have a seal; and
 - (c) may acquire, hold or dispose of property and may sue and be sued in its own name.

(2B) All courts judges and persons acting in a judicial capacity shall take judicial notice of the seal of the Public Private Partnership Centre affixed to a document, and shall presume that it was duly affixed, until the contrary is proved.”.

5. REPEAL AND REPLACEMENT OF SECTION 17.

Section 17 of the Principal Act is repealed and replaced with the following new section:

“17. PUBLIC PRIVATE PARTNERSHIP CENTRE NOT A DEPARTMENT.

The Public Private Partnership Centre is not a department of the National Public Service for the purposes of the employment of the staff of the Public Private Partnership Centre.”.

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6. APPOINTMENT OF CHIEF EXECUTIVE OFFICER (AMENDMENT OF SECTION 20).

Section 20 of the Principal Act is amended by repealing Subsection (5) and replacing it with the following:

“(5) The Public Private Partnership Centre Appointment Committee shall, after selecting the successful candidate under Section (4), advise the Head of State to make the appointment of the selected candidate to the position of the Chief Executive Officer.”.

7. REPEAL AND REPLACEMENT OF SECTION 22.

The Principal Act is amended by repealing Section 22 and replacing it with the following new section:

“22. VACANCY IN THE OFFICE OF THE CHIEF EXECUTIVE OFFICER.

(1) The office of the Chief Executive Officer becomes vacant where the person holding office -

- (a) dies; or
- (b) resigns; or
- (c) is suspended from office; or
- (d) is terminated from office; or
- (e) completes the term of office and not re-appointed at the end of a term of office; or
- (f) becomes incapable due to illness; or
- (g) is absent from a prolonged period; or
- (h) becomes bankrupt; or
- (i) is convicted of an offence under this Act or any offence under any other law punishable by a term of imprisonment for one year or longer; or
- (j) otherwise becomes incapable of performing his duties.

(2) Where the office of the Chief Executive Officer is vacant or is likely to become vacant under Subsection (1), the Public Private Partnership 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.

(3) The Public Private Partnership Steering Group and the Public Private Partnership Appointments Committee shall follow merit-based appointment process specified under Section 20.”.

8. ACTING CHIEF EXECUTIVE OFFICER (AMENDMENT OF SECTION 23).

Section 23 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following:

“(1) In the event of a vacancy in the office of the Chief Executive Officer, or in the interim period before the inaugural Chief Executive Officer is appointed, the Head of State, acting on advice of the Public Private Partnership Centre Appointments Committee, may appoint a person as the Acting Chief Executive Officer to perform the functions of the Chief Executive Officer.; and

(1A) The appointment under Subsection (1) shall be published in the National Gazette.”; and

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(b) by repealing Subsection (2) and replacing it with the following:

“(2) An Acting Chief Executive Officer shall not hold office for a term more than 12 months unless the term is extended by the Head of State, acting on advice of the Private Public Partnership Centre Appointments Committee.

(2A) Any such extension must be published in the National Gazette and include the duration of such extension which will not exceed 6 months.”.

9. PUBLIC PRIVATE PARTNERSHIP CENTRE APPOINTMENTS COMMITTEE (AMENDMENT OF SECTION 24).

Section 24 of the Principal Act is amended -

(a) by repealing Subsection (3) and replacing it with the following -

“(3) The Private Public Partnership Centre Appointments Committee shall consist of -
(a) the responsible Minister; and
(b) the Minister of National Planning and Monitoring; and
(c) the Minister for Treasury; and
(d) the Minister for Justice and Attorney-General; and

(b) by inserting immediately after Subsection (3) the following:

“(4) The Chairperson of the Public Private Partnership Centre Appointments Committee shall be the responsible Minister.

(5) At a meeting of the Public Private Partnership Centre Appointments Committee -
(a) three members constitute a quorum on the condition that one of the members is the Chairperson; and
(b) the Chairperson shall preside; and
(c) matters arising shall be determined by a majority of the members present and voting except where otherwise prescribed; and
(d) the person presiding has a deliberative vote and in the event of an equality of vote, also a casting vote.”.

10. PUBLIC PRIVATE PARTNERSHIP CENTRE PROCEDURES, GUIDELINES AND INSTRUCTIONS (AMENDMENT OF SECTION 26).

Section 26 of the Principal Act is amended -

(a) by repealing Subsection (3) and replacing it with the following:

“(3) The notice of the making, varying or revoking of a procedure, guideline or instruction shall be published as soon as practicable in such a manner which is easily accessible to the public as determined by the Public Private Partnership Center from time to time.”; and

(b) in Subsection (5) by repealing Paragraph (a) and replacing it with the following:

“(a) takes effect on the date on which it is published or such date as is specified by the Public Private Partnership Centre in the procedures, guidelines or instructions; and”.

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11. REPEAL AND REPLACEMENT OF SECTION 27.

Section 27 of the Principal Act is repealed and replaced with the following new section:

“27. PUBLIC PRIVATE PARTNERSHIP CENTRE TENDERS AND CONTRACTS.

The procurement of goods, works and services by the Public Private Partnership Centre for its operations shall be procured in accordance with the *National Procurement Act 2018* and the *Public Finances (Management) Act 1995*.”.

12. PUBLIC PRIVATE PARTNERSHIP CENTRE SIX MONTHLY REPORT (AMENDMENT OF SECTION 28).

Section 28 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following:

“(1) Subject to this section, the Public Private Partnership Centre shall, within three months after the end of each six monthly period, furnish to the responsible Minister a report of the affairs of the Public Private Partnership Centre during that monthly period, and a copy of that report shall be furnished to the departmental head of the department of the responsible Minister.”; and

- (b) by repealing Subsection (2) and replacing it with the following:

“(2) The first six monthly report is to be for the period after the commencement date of the appointment of the inaugural Chief Executive Officer of the Public Private Partnership Centre and ends on 30 June or 31 December immediately following the six month anniversary of the appointment date, and thereafter each subsequent six monthly report ends on each subsequent 30 June or 31 December.”.

13. PUBLIC PRIVATE PARTNERSHIP CENTRE ANNUAL REPORT (AMENDMENT OF SECTION 29).

(1) Section 29 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following:

“(1) The Public Private Partnership Centre shall, within 12 months after the appointment of the inaugural Chief Executive Officer to the Public Private Partnership Centre and afterwards, within four months after each balance date of the Public Private Partnership Centre, furnish -

- (a) to the responsible Minister, an annual report on the affairs of the Public Private Partnership Centre during the accounting period ending on that date; and
(b) to the departmental head of the department of the responsible Minister, a copy of the annual report.”; and

- (b) in Subsection (3) by repealing Paragraph (g) and replacing it with the following:

“(g) signed on behalf of the Public Private Partnership Centre by the Chief Executive Officer.”.

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14. FUNCTIONAL ASSESSMENT (AMENDMENT OF SECTION 40).

Section 40 of the Principal Act is amended in Subsection (1) by repealing Paragraph (a) and replacing it with the following:

“(a) the last day of February following one year after the appointment of the inaugural Chief Executive Officer; and”.

15. ESTABLISHMENT OF PUBLIC PRIVATE PARTNERSHIP STEERING GROUP (AMENDMENT OF SECTION 41).

Section 41 of the Principal Act is amended in Subsection (2) by repealing and replacing it with the following:

“(2) The Public Private Partnership Steering Group shall comprise of the following *ex-officio* members -

- (a) the departmental head, acting departmental head or any person nominated or delegated from the department under the portfolio of the responsible Minister, as Chairman; and
- (b) the departmental head, acting departmental head or any other person nominated or delegated from the department responsible for treasury matters; and
- (c) the departmental head, acting departmental head or any other person nominated or delegated from the department responsible for national planning matters; and
- (d) 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.”.

16. MEETINGS OF PUBLIC PRIVATE PARTNERSHIP STEERING GROUP (AMENDMENT OF SECTION 42).

Section 42 of the Principal Act is amended in Subsection (2) by repealing Paragraph (a) and replacing it with the following:

“(a) two members constitute a quorum; and”.

17. CONVENING OF PROCEEDINGS AT PUBLIC PRIVATE PARTNERSHIP FORUM (AMENDEMNT OF SECTION 48).

Section 48 of the Principal Act is amended by repealing Subsection (6) and replacing it with the following:

“(6) The Chief Executive Officer shall ensure that after the inaugural Public Private Partnership Forum convenes in the second calendar year after the establishment of the Public Private Partnership Centre and the appointment of the Chief Executive Officer.

(6A) The Chief Executive Officer shall ensure that after the inaugural Public Private Partnership Forum is convened, the Public Private Partnership Forum convenes at least once in each calendar year and more frequently when circumstances require or funding permits, in response to reasonable request.”.

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18. PROOF OF CERTAIN MATTERS (AMENDMENT OF SECTION 52).

Section 52 of the Principal Act is amended by repealing Paragraph (a) and replacing it with the following:

“(a) the existence of the Public Private Partnership Centre; or”.

19. REPEAL AND REPLACEMENT OF SECTION 60.

The Principal Act is amended by repealing Section 60 and replacing it with the following new section:

“60. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing -

- (a) all matters that by this Act are permitted or required to be prescribed whether necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
- (b) matters in general for the better control and management of the procurement of infrastructure by way of public private partnership arrangements and implementation of the objectives and functions of this Act; and
- (c) fees and penalties of fines not exceeding K10,000.00 and default penalties of fines not exceeding K1,000.00 for infringements of the regulations.”.

20. REPEAL AND REPLACEMENT OF SCHEDULE 1.

The Principle Act is amended by repealing Schedule 1 and replacing it with the following:

“SCHEDULE 1. - RELEVANT PUBLIC BODY.

Section 4.

1. The State.
2. A body, authority or instrumentality (corporate or unincorporated) established under an Act of Parliament or howsoever otherwise for governmental or official purposes, which is not a Provincial or Local-level Government entity.
3. A Provincial or Local-level Government entity.
4. An entity in relation to which the State, the trustee of a trust, beneficiary of which is the State, a Provincial or a Local-local Government entity or another Relevant Public Body that -
 - (a) controls the composition of the board of directors or the entity; or
 - (b) controls more that 50 percent of the voting power in the entity; or
 - (c) holds more than 50 percent of the issued share capital of the entity (excluding any part of its share capital that carried right to participate beyond a specific amount in a distribution of either profits or capital).”.

21. REPEAL AND REPLACEMENT OF SCHEDULE 3.

The Principal Act is amended by repealing Schedule 3 and replacing it with the following:

“SCHEDULE 3. - PUBLIC PRIVATE PARTNERSHIP ARRANGEMENT.

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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 operation of finance, for design, construction and operation; or
- (c) 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 -
 - (i) arrangement to procure a project with a size or value of less than the referral threshold in Section 2; or
 - (ii) mining projects under the *Mining Act 1998* and associated development agreements; or
 - (iii) gas projects and petroleum projects under the *Oil and Gas Act 1998* and associated development agreements; or
 - (iv) 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 (Amendment) Act 2022*, which has been made by the National Parliament.

Clerk of the National Parliament.

4 MAR 2022

I hereby certify that the *Public Private Partnership (Amendment) Act 2022*, was made by the National Parliament on 19 January 2022.

Speaker of the National Parliament.

4 MAR 2022