



## **THE PUBLIC PRIVATE PARTNERSHIP ACT, 2015**

### **ARRANGEMENT OF SECTION**

#### **SECTIONS**

#### **TITLES**

#### **PART I**

#### **PRELIMINARY PROVISIONS**

1. Short Title and Commencement.
2. Interpretation.

#### **PART TWO**

#### **PUBLIC - PRIVATE PARTNERSHIPS**

3. Authority to Enter into a Public Private Partnership.
4. Scope and Form of Public Private Partnership.
5. Contract of a Public Private Partnerships.
6. Duration.
7. Ownership of Assets.
8. Financial Rights.

#### **PART THREE**

#### **INSTITUTIONAL FRAMEWORK AND RESPONSIBILITY**

9. Establishment of the Public Private Partnership Department.
10. Responsibilities of the Public Private Partnership Department.
11. Accessibility of rules or Regulations.
12. Establishment of the Public Private Partnership Technical Committee.
13. Functions of the Public Private Partnership Technical Committee.
14. Public Private Partnership Technical Committee Composition.
15. Roles and Responsibilities of the Ministry of Finance.
16. Roles and Responsibilities of the Authority.
17. Roles and Responsibilities of the Private Partner.
18. Roles and Responsibilities of users of a Public service or a Public Infrastructure.



**PART FOUR**  
**IDENTIFICATION OF POTENTIAL PROJECTS AND PROCEDURES FOR**  
**THE AWARD OF CONCESSIONS AND PUBLIC - PRIVATE**  
**PARTNERSHIP AGREEMENTS**

19. Identification of Potential Projects Through Pre-Feasibility and Feasibility Studies.
20. Project Development Fund.
21. Purposes of the Fund.
22. Funding for Project's Pre-Feasibility and Feasibility Studies.
23. Private sector Initiative.

**PART FIVE**  
**PROJECT TENDERING AND PRIVATE PARTNER SELECTION**

24. Selection stage of the Private Partner.
25. Purpose and Procedure of Prequalification.
26. Pre-Selection Criteria.
27. Conflicts of Interest.
28. Consortia.
29. Decision on Preselection.
30. Procedures for Solicited Proposals.
31. Contents of the Request for Proposals.
32. Bid Securities.
33. Clarification and Modifications.
34. Submission of Proposals.
35. Evaluation Criteria.
36. Comparison and Evaluation of Proposals.
37. Further Demonstration of Qualification Criteria.
38. Finalisation of Negotiation and Agreements.
39. Termination of Procurement Procedures.
40. Circumstances Authorizing Award without Competitive Procedures.
41. Procedures for Negotiation of Agreements.

**PART SIX**  
**UNSOLICITED PROPOSALS**

42. Admissibility of Unsolicited Proposals.
43. Procedures for Determinating the Admissibility of Unsolicited Proposals.
44. Initiation of Selection Procedure.



**PART SEVEN  
THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

- 45. Governing Law.
- 46. Contents of the Agreement.
- 47. Ownership of Assents.
- 48. Acquisition of Rights Related to the Project Site.
- 49. Easements.
- 50. Operation of Infrastructure.
- 51. Financial Provisions.
- 52. Organization of the Private Partner.
- 53. Transfer of Controlling Interest in the Private Partner.
- 54. Security.
- 55. Change of Law.
- 56. Revision of the Agreement.
- 57. Intentions by the Implementing Authority.
- 58. Substitution of the Private Partner.
- 59. Signing of Agreement.

**PART EIGHT  
DURATION, EXTENSION AND TERMINATION OF THE AGREEMENT**

- 60. Duration and Extension of the Agreement.
- 61. Expiry of the Agreement.
- 62. Early Termination of the Agreement by the Implementing Authority.
- 63. Early Termination of the Agreement by the Private Partner.
- 64. Early Termination of the Agreement for Other Reasons.
- 65. Compensation Upon Termination of the Agreement.
- 66. Wind-up and transfer measures.

**PART NINE  
DISPUTE RESOLUTION**

- 67. Disputes Between the Government and the Private Partner.
- 68. International Arbitration.
- 69. Disputes Involving Customers or Users of the Infrastructure Facility.



**PART TEN**  
**MISCELLANEOUS PROVISIONS**

- 70. Right of Bidders.
- 71. Regulations.
- 72. Repeal and Saving.

**SCHEDULE**



ACT NO. 8 OF 2015

I ASSENT

(DR. ALI MOHAMED SHEIN)  
PRESIDENT OF ZANZIBAR  
AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

*26 September*  
2015

**AN ACT TO REPEAL THE CONCESSION PROJECTS ACT, NO. 1 OF 1999  
AND ENACT A NEW LAW WHICH PROVIDES FOR THE  
ESTABLISHMENT AND MANAGEMENT OF PUBLIC PRIVATE  
PARTNERSHIPS AND OTHER MATTERS  
RELATING THERETO**

ENACTED by the House of Representatives Zanzibar.

**PART ONE  
PRELIMINARY PROVISIONS**

Short Title and  
Commencement.

1. This Act may be cited as the Public Private Partnerships, 2015 and shall come into operation on such date as the Minister may by notice published in the Gazette appoint.

Interpretation.

2. In this Act, unless the context otherwise requires:

"Agreement or Public Private Partnership Agreement" means a concession contract, a public-private-partnership contract, or an institutional arrangement that results in a Public-Private-Partnership;

"Bidder" means legal entity including groups thereof, which participate in a selection procedure concerning a concession or Public - Private Partnership Agreement;

"Commissioner" means a person appointed under subsection (2) of Section 9 of this Act;



- "Concession Agreement" means an agreement between the Government and a Private Partner relating to the implementation of a concession project;
- "Concession project" means an exclusive right granted by a Public Authority to a Private Partner for the purpose of building, setting up, owning, operating, renting, leasing, financing, modernising, managing, maintaining, developing, or transferring an Infrastructure Facility for a specified period of time in accordance with a concession agreement;
- "Consortium" means a group of Bidders;
- "Department" mean a Public - Private Partnership Department as established under Section 9 of this Act;
- "Financial Proposal" means the documentation as detailed in subsection (2) of Section 35 of this Act;
- "Government" means the Revolutionary Government of Zanzibar;
- "Greenfield Projects or Greenfield Public - Private Partnership" means a Project in which a Private Partner or a Public - Private Joint Venture finances, builds, and operates a new or expands facility for the period specified in the Agreement;
- "Implementing Authority" means a Public Authority that has entered into a Memorandum of Understanding with a Private Partner, as part of a Public - Private Partnership Agreement, in accordance with the provisions of this Act;
- "Infrastructure Facility", means physical infrastructure assets and systems that directly or indirectly provide services to the public;
- "Major Project" means a project which:
- (i) has investment costs of more than 10 million US dollars or a value as the Minister for Finance determines in the Legal Notice;
  - (ii) results in Government liabilities; or
  - (iii) is for the provision of monopolistic services;
- "Memorandum of Understanding" means an agreement between an Implementing Authority and a Private Partner which shall be a part of, and an appendix to, a Public Private Partnership Agreement;
- "Minister" means the Minister responsible for Public Private Partnerships Projects;
- "President" means President of Zanzibar and Chairman of the Revolutionary Council;
- "Private Partner" means the legal entity that enters into a Public Private Partnership Agreement with the Government to deliver infrastructure and services;
- "Project or Public Private Partnership Project", means activities or any combination, such as: the design, construction and development of new infrastructure facilities,



rehabilitation, modernization, and expansion of existing infrastructure facilities; or administration, expansion or other services pertaining to new or existing infrastructure facilities;

"Project Development Fund" means the Fund established under the section 20 of this Act;

"Public Authority" means a central, regional, municipal or other executive authority, public body, ministry, department, agency, or other authority that exercises executive, legislative, regulatory, public administrative or judicial powers;

"Public Contract" means a service contract, a supply or procurement contract, a construction or civil engineering contract, a public works contract, or an immovable property contract;

"Public Infrastructure" means physical infrastructure assets, structures, and systems that directly or indirectly provide public services;

"Public - Private Partnership" refers to Concessions, Greenfield Projects, or any of these combinations, and means any form of cooperation between one or more public authorities and one or more private partners, whereby the Private Partner:

- (a) provides a public service or public infrastructure on behalf of the Public Authority;
- (b) assumes financial, technical, construction and operational risks, including demand and or availability risks, in connection with the provision of the public service or the public infrastructure;
- (c) receives a benefit for providing the public service or the public infrastructure in form of payment made by the public authority from the budget of such Public Authority;
- (d) charges fees to be collected by the private partner from users or customers of a public service or a public infrastructure provided to them; or
- (e) a combination of such payment and such charges or fees.

"Project Initiator" means a legally recognized entity that establishes a projects which have not been established by the government;

"Public Service" means any service, task or function which a Public Authority is mandated by law to provide in the general public interest and which is of a non-industrial and non-commercial character;

"Regulations" means those regulations made under Section 71 of this Act;

"Small Project" or "Non-Major Project" means a project which is not a Major Project under this Act;



"Technical Committee" means a Technical Committee as established under Section 12 of this Act;

"Technical Proposal" means the proposal submitted in writing as detailed in subsection (1) of section 35 of this Act;

"Unsolicited Proposal" means any proposal for undertaking a Public - Private Partnership Project that is not submitted in response to a request or solicitation issued by the Implementing Authority within the context of a competitive selection process;

"Value for Money" means that the provision of public infrastructure or a public service by a Public Authority pursuant to a Public - Private Partnership which results in a growth of economic, social and financial benefit, including cost, price, quality, quantity, risk transfer, or a combination thereof, compared to the provision of such public infrastructure or public service in any other form;

"Minister" means Minister responsible for project management between public and private sector.

## **PART TWO PUBLIC - PRIVATE PARTNERSHIPS**

Authority to  
Enter into a  
Public Private  
Partnership.

**3.**-(1) The Ministry of Finance, on behalf of the Government, may enter into a Public - Private Partnership with a Private Partner, in accordance with the provisions of this Act.

(2) A Public Authority may enter into a Memorandum of Understanding with a Private Partner, provided such Public Authority is, by operation of law, directly responsible for the provision of a public service or a public infrastructure, in accordance with the provisions of this Act.

(3) In the event that a Public - Private Partnership Project involves the provision of public services or public infrastructure which is the responsibility of more than one Public Authority, the Technical Committee shall determine which Public Authority shall be the Implementing Authority for the corresponding Public - Private Partnership.

Scope and Form  
of Public Private  
Partnership.

**4.**-(1) A Public - Private Partnership may be implemented through a contractual form.

(2) The Public Authority shall select the contractual form which best reflects the desired allocation of risks and responsibilities for each Public - Private Partnership, including any of the following activities or any combination thereof:

- (a) the design, construction, financing, maintenance and operation of new public infrastructure project;
- (b) the rehabilitation, modernization, financing, expansion, maintenance and operation of existing public infrastructure; or



- (c) the administration, management, operation, maintenance or other services pertaining to public services or new or existing public infrastructure.

Contract of  
Public Private  
Partnership.

5.-(1) A contract of a Public - Private Partnership may be in the form of:

- (a) a Concession, or
- (b) a Public Contract, provided that pursuant to such contract the private partner:
  - (i) provides a public service or a public infrastructure on behalf of the Public Authority;
  - (ii) assumes financial, technical, construction or operational responsibilities and risks in connection with the provision of the public service or the public infrastructure;
  - (iii) receives regular payments from users of the infrastructure or services from the Public Authority in consideration for the provision of the public service or the public infrastructure, whereby such payments, which may be in the form of availability payments or unitary charges, reflect the availability, demand or construction risk assumed by the private partner.

(2) A Public - Private Partnership in the form of a Concession or contract shall be governed by this Act.

Duration.

6.-(1) The duration of a Public - Private Partnership shall be set out in the corresponding Agreement; the duration of a Public - Private Partnership shall be reasonably related to and reflect:

- (a) the lifecycle of the public infrastructure;
- (b) the rate of return required by private investors or operators; and
- (c) the value - for - money of each individual Public - Private Partnership Project.

(2) Subject to approval by the Technical Committee, or if the Agreement includes a clause for extension, an Implementing Authority may extend the duration of the Agreement for an additional period which does not exceed more than a quarter of the initial duration expressed in the Agreement for the following reasons:

- (a) delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;
- (b) project suspension brought about by acts of the Implementing Authority or other public authorities;
- (c) increase in costs arising from requirements of the Implementing Authority not originally foreseen in the Agreement, if the Private Partner would not be able to otherwise recover said costs without such extension;
- (d) any other reason required to safeguard the public interest.



Ownership of Assets.

7.-(1) During the term of the Agreement, the Implementing Authority may temporarily transfer to the Private Partner the right of use of the Public Infrastructure and other specified public assets directly related to the object of the Agreement, control of which shall be returned to the Implementing Authority upon expiry or termination of the Agreement in accordance with conditions set out in such Agreement. The ownership of the Public Infrastructure and other specified public assets always remains with the Government.

(2) A security interest may not be created by Agreement over publicly owned property or other publicly owned assets or rights needed for the provision of a public service or a public infrastructure.

(3) Notwithstanding subsection (2) of this Section, the shareholders of the Private Partner shall have the right to pledge or create any other security interest in their shares in the Private Partner.

Financial Rights

8. A Private Partner shall have the right to charge, receive or collect tariffs, fees and any other charges for the use of the Public Infrastructure or the provision of public services in accordance with the terms and conditions set out in the Agreement.

### **PART THREE INSTITUTIONAL FRAMEWORK AND RESPONSIBILITY**

Establishment of Public Private Partnership Department.

9.-(1) There is hereby established a Public - Private Partnership Department, within the Zanzibar Planning Commission.

(2) The Department shall be headed by the Commissioner who shall be appointed by the President.

(3) A person to be appointed as Commissioner under subsection (2) of this section, shall have the following qualifications:

- (a) a Zanzibari;
- (b) a holder of at least a first degree in economics, law, public management, engineering or a relevant field; and
- (c) a senior public officer or any person who has at least fifteen years experience of leadership in agreement.

(4) The Commissioner of the Department shall, in the performance of his functions, be responsible and answerable to the Executive Secretary of the Zanzibar Planning Commission.

(5) The Department shall be the coordinating entity responsible for ensuring that all Public - Private Partnership projects including those set out in the Schedule to this Act implemented in Zanzibar conform with the Government's objectives, that all proper procedures are followed and all relevant approvals are obtained during development and implementation of each project up to Agreement signing.



Responsibilities  
of Public Private  
Partnership  
Department.

**10.-(1)** The Department shall be primarily responsible for:

- (a) project review and consultation;
- (b) fiscal risk management and monitoring;
- (c) providing recommendations on unsolicited proposals for consideration;
- (d) approval of feasibility studies for Non-Major Projects;
- (e) reviewing Agreements prior to signing, and approval of re-negotiations;
- (f) providing ongoing support to Public Authorities in:-
  - (i) retention of technical and transaction advisors;
  - (ii) undertaking of feasibility studies;
  - (iii) project tendering and bid selection;
  - (iv) contract signing;
  - (v) monitoring and evaluating Public - Private Partnership projects being undertaken; and
  - (vi) resolving disputes.
- (g) to provide civil education and capacity building which will promote awareness and understanding of Public Private Partnership, including their purpose and processes, to relevant stakeholders.

(2) With respect to all documents and information relating to a Public - Private Partnership project the Department shall respect the intellectual property, trade secrets or other exclusive legal rights contained in, or arising from, those documents and information.

(3) An employee or member of the Department or member of any other department handling any document or having any information relating to a Public - Private Partnership project, shall not disclose any matter relating to the project to any unsuitable person without authority of the head of the Department.

Accessibility of  
Rule or Regula-  
tions.

**11.** The Department shall, if so requested in writing, make accessible to the public copies of any rule or regulation of general application relating to the bidding procedures for concession projects.

Establishment  
of Public Private  
Partnership  
Technical  
Committee.

**12.** There is hereby established a Public - Private Partnership Technical Committee which shall be responsible for reviewing project feasibility studies and Requests for Proposals and contracts for Major Projects, and recommending projects for approval or denial.



Functions of the  
Public Private  
Partnership  
Technical  
Committee.

**13.** The Technical Committee shall have the following functions:

- (a) review pre - feasibility studies for Major Projects;
- (b) recommend approval or disapproval to the Principal Secretary of the Ministry of Finance after review of the project feasibility study;
- (c) review and provide recommendations on the Request for Proposal documents for Major Projects to the Principal Secretary of the Ministry of Finance;
- (d) review and provide recommendations to the Principal Secretary of the Ministry of Finance for approvals made under subsection (1) (a) of Section 15 of this Act;
- (e) maintain confidentiality regarding any commercially-sensitive information in documents obtained under this Act until a time at which said information is available in the public domain;
- (f) maintain confidentiality regarding any discussions within the Technical Committee which occurred for the purposes of fulfilling duties under paragraphs (a) to (d) of Section 13 of this Act.

Public Private  
Partnership  
Technical  
Committee  
Composition.

**14.**-(1) The Public Private Partnership Technical Committee shall consist of the following members:

- (a) Executive Secretary of the Zanzibar Planning Commission, who shall be a Chairperson;
- (b) A representative to be appointed from the Ministry of Finance;
- (c) Deputy Attorney General;
- (d) Principal Secretary responsible for Land;
- (e) Principal Secretary responsible for Infrastructure;
- (f) Principal Secretary responsible for Environment; and
- (g) Executive Director of the Zanzibar Investment Promotion Authority.

(2) The Technical Committee may invite a representative of the Public and Private sector, which is envisaged to be the Implementing Authority for the implementation of the proposed Public - Private Partnership Project, Procurement, or Agreement, to be a temporary member of the Technical Committee.

(3) The temporary members of the Technical Committee shall participate in the proceedings of the Technical Committee only with respect to the specific project that requires their involvement but shall not take part in the decision-making process.



(4) The Executive Secretary of the Zanzibar Planning Commission shall direct and coordinate the activities of the Technical Committee.

(5) The Technical Committee shall take decisions concerning the approval of project feasibility studies, bidding documents, and Public - Private Partnership contracts by consensus.

(6) If a consensus is not reached, decisions will be made by majority vote.

(7) In the case of a tied votes under subsection (6) of this section, the Chairperson shall have a casting vote.

(8) The Department shall serve as the Secretariat for the Technical Committee.

Roles and Responsibilities of the Minister of Finance.

15. The Minister of Finance is responsible for:

- (a) approvals of all major agreements related to Public - Private Partnership, by way of the Principal Secretary of the Ministry of Finance's signature, including approval of feasibility studies, bidding documents, contracts, and contract renegotiation for Major Projects, based on the recommendations of the Technical Committee; and
- (b) providing ongoing advice and support to the Department on all budgeting and financing matters related to Public - Private Partnership projects under consideration.

Roles and Responsibilities of the Implementing Authority.

16.-(1) The Implementing Authority, on behalf of the Government, shall enjoy all rights set out in the Agreement, including without limit, the right to inspect the activities of the Private Partner under the Agreement and to ensure its strict compliance with the terms of the Agreement.

(2) The Implementing Authority shall comply with the terms of the Agreement and Memorandum of Understanding and shall fulfil its obligations.

(3) Additional responsibilities of the Implementing Authority include:

- (a) identifying projects, including development of project concept notes submitted to the Department;
- (b) ensuring pre-feasibility and feasibility studies are conducted for projects identified;
- (c) hiring technical and transaction advisors;
- (d) managing the tendering and selection process; and
- (e) hiring construction supervisors, and monitoring projects through the entire Agreement term or in some cases subcontracting monitoring to a third party.



(4) Implementing Authorities may choose to create specialized Public - Private Partnership units within their institutions to coordinate directly with the Department.

(5) Experts from within the Implementing Authority may be called upon by the Department to provide expertise and knowledge related to specific projects under consideration.

Roles and Responsibilities of the Private Partner.

17.-(1) The Private Partner shall enjoy all rights set out in the Agreement, including without limit, the exclusive right to utilize or exploit a Public Service or a Public Infrastructure in accordance with the terms and conditions stipulated in the Agreement.

(2) The Private Partner shall comply with the terms and conditions of the Agreement and fulfil its obligations as stipulated in the agreement.

(3) For the sole purpose of entering into an Agreement and implementing a Project, the Bidder selected in accordance with this Act shall establish a business organization in form of a joint stock company or a limited liability company incorporated under the applicable laws of Zanzibar, prior to formalizing an Agreement.

Roles and Responsibilities of User of a Public Service or a Public Infrastructure.

18.-(1) The public shall have access to public infrastructure and public services provided by a Private Partner under a Public - Private Partnership on a non - discriminatory basis and have the right to receive satisfactory and continuous services for a reasonable price, as agreed in the Public - Private Partnership Agreement.

(2) When so required by the terms of the Agreement, the users shall be required to pay charges or fees for the use of the public infrastructure or the public service.

#### **PART FOUR IDENTIFICATION OF POTENTIAL PROJECTS AND PROCEDURES FOR THE AWARD OF CONCESSIONS AND PUBLIC - PRIVATE PARTNERSHIP AGREEMENTS**

Identification of Potential Projects through Pre-Feasibility and Feasibility studies.

19.-(1) The identification of Potential Projects shall be done by the competent Public Authority, with the assistance from the Public - Private Partnership Department.

(2) Prior to tender, the Public Authority shall carry out a project pre - feasibility study to determine whether a Potential Project could be implemented.

(3) This analysis shall be based upon the principles of value for money, as well as on sector strategic objectives, the technical and commercial feasibility of the potential project, and its ability to attract potential private partners and private financing.

(4) In the event that a proposed Concession or Public - Private Partnership does not meet reasonable criteria confirming the Project's pre - feasibility and value for money, the Public Authority shall not be permitted to proceed to the feasibility analysis of the project.

(5) After receiving approval of the pre - feasibility study by the Department, the Public Authority shall conduct a full feasibility study.



(6) If the project is a Non-Major Project, the full feasibility study shall be submitted to the Department for review and approval, and approval by the Department shall signal approval of the full feasibility study for Non-Major Projects.

(7) If the project is a Major Project, the full feasibility study shall be submitted to the Technical Committee for consideration and potential recommendation for approval; The signature of the Principal Secretary of the Ministry of Finance shall signal approval of the full - feasibility study for Major Projects.

(8) In assessing the Project feasibility studies, the Department, Technical Committee, and the Principal Secretary of the Ministry of Finance should ensure the following:

- (a) the Public - Private Partnership Project is technically, economically, financially, socially, legally and environmentally sound;
- (b) the Public - Private Partnership Project's engineering and construction parameters are in accordance with international norms and best practices;
- (c) the Public - Private Partnership Project's operating parameters are in line with international norms and best practices;
- (d) the business plan and the main inputs to the financial model are assessed with respect to assumptions that affect the expected future cash flow of the project; and
- (e) the principal risks associated with the project are identified, that they are assessed according to how such risks may affect the project's financial viability, and that they are analysed according to how they can best be mitigated and allocated.

Project  
Development  
Fund.

**20.** There shall be a Project Development Fund within the Zanzibar Planning Commission which consist of:

- (a) all funds approved by the House of Representatives in the annual budget estimates;
- (b) grants approved by the Government;
- (c) guarantees, indemnities and capital contributions;
- (d) land tax incentives, guaranteed traffic, debts, operating grants;
- (e) subscriptions from the winning bidders;
- (f) subscriptions by the public;
- (g) any other funds accrued from the Special Fund and any other monies that may vest or accrue, whether in the course of its operation or otherwise.



Purpose of the Fund.

**21.** The Fund shall be used for the following purposes:

- (a) to finance project development costs including pre-feasibility and feasibility studies;
- (b) to hire technical and transaction advisors;
- (c) to recover funds spent during transitional period; and
- (d) other aspects, as determined by the Public-Private Partnership Department.

Funding for Project's Pre-Feasibility and Feasibility Studies.

**22.** The Ministry of Finance shall provide all necessary funding for the project's pre-feasibility and feasibility studies either through approval of budgetary spending from the relevant Public Authority, or through an application for the use of funds from the Project Development Fund.

Private Sector Initiative.

**23.** Potential Concessions or Public - Private Partnerships may also be identified by the private sector through unsolicited proposals, in accordance with the procedures set out in this Act.

#### **PART FIVE PROJECT TENDERING AND PRIVATE PARTNER SELECTION**

Selection Stages of the Private Partner.

**24.** The Private Partner shall be selected through a pre-qualification procedure, accompanied by a request for proposal procedure, as set out under this Act.

Purpose and Procedure of Prequalification.

**25.**(1) When the Department or Principal Secretary of the Ministry of Finance approves the project and authorizes the commencement of the bidding process as stipulated in this Act, the Public Authority shall engage in pre-selection proceedings with a view to identifying Bidders that are suitably qualified to successfully implement the envisaged concession or Public - Private Partnership Project.

(2) The invitation to bidders to participate and express their interest in the pre-selection proceedings shall be published promptly in the form and way best adapted for public use as specified in the Regulations.

(3) The invitation to participate in the pre-selection proceedings shall include at least the following:

- (a) a description of the Project;
- (b) an indication of other essential elements of the Project, such as the services and capabilities to be delivered by the Private Partner, basic performance measures, and the financial arrangements envisaged by the agreement and Public Authority;



- (c) a summary of the main terms and conditions of the proposed Agreement;
- (d) the manner and place for the submission of applications for pre - selection, including the deadline for the submission, expressed as a specific date and time;
- (e) the proposed timeline for the tendering process;
- (f) the manner and place for solicitation of the pre-selection documents; and
- (g) contact details for a relevant officer in the Public Authority should Bidders have questions.

(4) The Public Authority has complete discretion as to whether questions submitted pursuant to this Act will be answered.

(5) Any answers provided under subsection (4) of this section by the Public Authority will be provided in writing to all applicable Bidders.

Pre-Selection  
Criteria.

**26.-(1)** In order to qualify for the selection proceedings, interested Bidders must meet objectively justifiable criteria that the Public Authority considers appropriate in the particular proceedings, as stated in the pre-selection documents; These criteria shall include at least the following:

- (a) adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to successfully perform all services required for phases of the project;
- (b) sufficient capacity to manage and fulfil the financial requirements of the project; and
- (c) appropriate managerial and organizational capability, reliability and experience, including previous experience in the delivery of similar infrastructure and services.

(2) Interested qualified bidders are qualified to participate in a selection procedure when:

- (a) they are not subject to proceedings of bankruptcy, liquidation or controlled administration or termination of activity or of any other related situation, which according to the effective laws, brings about proceedings of the same character;
- (b) they have not been found guilty of producing false documents.

Conflicts of  
Interest.

**27.** As part of the pre-selection process, bidders must provide a statement that details any potential conflicts of interest that may reasonably foreseeably arise as a result of being awarded a Public - Private Partnership Agreement under this Act.



- Consortia.**                    **28.**-(1) The Public Authority, when first inviting the participation of Bidders in the pre-selection proceedings, shall allow them to form bidding consortia.
- (2) When considering the qualifications of bidding consortia, the Public Authority shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.
- Decision on Pre-Selection.**                    **29.**-(1) The Public Authority shall make a decision with respect to the qualifications of each Bidder that has submitted an application for pre-selection.
- (2) Subject to subsection (1) of this Section, the Public Authority shall apply only the criteria that are set out in the pre - selection documents, and shall consider the significance of any potential conflict of interest as detailed by Bidders.
- (3) All pre - selected Bidders shall thereafter be invited by the Public Authority to submit proposals in accordance with the provisions of this Act.
- Procedures for Solicited Proposals.**                    **30.** The procedures for solicited proposal shall take place as follows:
- (a) Against payment of any fee that might be applied or assessed, the Public Authority shall provide the pre-qualified bidders with a Request for Proposals, in accordance with the provisions of this Act.
- (b) Bidders shall submit proposals in accordance with this Act.
- Contents of the Request for Proposals.**                    **31.** The Request for Proposals shall include at least the following information:
- (a) general information as may be required by the Bidders in order to prepare and submit their proposals, including information on the deadline for submission of proposals;
- (b) a full and clear description of the project and technical requirements, project specifications and performance indicators, as appropriate, including the Public Authority's requirements regarding safety and security standards, and environmental protection;
- (c) the contractual terms proposed by the Public Authority, including an indication of which terms are deemed to be non-negotiable or essential;
- (d) the required investment, participation criteria, the proposed allocation of risks, risk matrix, output specification with required performance standard, conflict resolution mechanism, and remedies against non-performance;
- (e) criteria for evaluating proposals and the thresholds, if any, set by the Public Authority for identifying non-responsive proposals; the relative weight to be



accorded to each evaluation criterion; and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.

**Bid Securities.** 32. The Request for Proposals shall set out the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security.

**Clarification and Modifications.** 33.-(1) The Public Authority may, whether on its own initiative or as a result of a request for clarification by a Bidder, review and, as appropriate, revise any element of the request for proposals.

(2) Each change shall be communicated in writing to all candidates having requested the documents, in accordance with the Regulations.

(3) The Public Authority shall indicate in the record of the selection proceedings the justification for any revision to the request for proposals.

(4) Any such deletion, modification or addition shall be communicated to the Bidders in the same manner as the request for proposals.

**Submission of Proposals.** 34.-(1) The pre - selected Bidders shall submit their proposals in writing, signed and placed in sealed envelopes in accordance with the Regulations.

(2) A pre - selected bidder shall within forty days from the receipt of the Request for Proposals, submit its proposal to the Public Authority.

(3) A proposal received by the Public Authority after the deadline for submission of proposals shall not be opened and shall be returned to the Bidder that submitted it.

(4) The Bidder shall submit a proposal that consists of one Technical Proposal and one Financial Proposal.

**Evaluation Criteria.** 35.-(1) The criteria for the evaluation and comparison of the Technical Proposals may include, as appropriate, and without being limited to, at least the following:

- (a) technical soundness;
- (b) compliance with environmental standards;
- (c) operational feasibility and efficiency;
- (d) quality of services and measures to ensure their continuity; and
- (e) potential social and economic development offered by the proposals.

(2) The criteria for the evaluation and comparison of the Financial Proposals may, as appropriate, and without being limited to, include the following:



- (a) the present value of the proposed tolls, unit prices or other charges over the Agreement period;
- (b) any potential restrictions on the use of, or impacts on, associated markets;
- (c) operational feasibility and efficiency;
- (d) the present value of the concession fee to be paid to the Public Authority;
- (e) the costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;
- (f) the extent of economic support, if any, expected from a Public Authority;
- (g) the soundness and viability of the proposed financial arrangements;
- (h) potential economic and social development offered by proposals; and
- (i) the Bidder's project full financing plan, including due diligence and commitment from lenders.

Comparison and  
Evaluation of  
Proposals.

**36.**-(1) The Public Authority shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such criterion and the evaluation process set out in the request for proposals.

(2) For the purposes of this Act, the Public Authority may establish minimum thresholds with respect to quality, technical, financial and commercial aspects.

(3) Proposals that fail to achieve these minimum thresholds shall be regarded as non-responsive and disqualified.

Further Demon-  
stration of  
Qualification  
Criteria.

**37.**-(1) The Public Authority may require any Bidder that has been pre - selected to demonstrate again its qualifications in accordance with the same criteria used for pre - selection.

(2) The Public Authority shall disqualify any Bidder that fails to demonstrate again its qualifications, if reasonably requested to do so.

Finalisation of  
Negotiations and  
Agreements.

**38.**-(1) The Public Authority shall rank all responsive proposals on the basis of the evaluation criteria and invite for final negotiation of the Agreement the Bidder that has attained the best rating based on a weighted combined scoring of the technical and financial proposals, as established in the request for proposals.

(2) Final negotiations shall not concern those contractual terms, if any, that were stated as non - negotiable in the final request for proposals.

(3) Following completion of negotiations and prior to awarding the Agreement to the preferred Bidder, the Public Authority shall submit the Final Agreement to the Department and Technical Committee for their recommendation.



(4) The Technical Committee shall submit the Final Agreement and their recommendation to the Attorney General's Chamber.

(5) The Attorney General's Chamber shall provide a legal opinion within two months on the Agreement and the recommendation of the Technical Committee to the Ministry of Finance for final approval.

(6) Where the legal opinion of the Attorney General is not given to the Ministry of Finance within two months as prescribed by subsection (5) of this section, the recommendation of the Technical Committee shall be submitted directly to the Ministry of Finance, and it shall be assumed that the Attorney General has agreed with the text of the Agreement.

(7) The Ministry of Finance shall consider the legal opinion of the Attorney General's Chamber prior to approve an Agreement.

(8) In the event that the Ministry of Finance declines the approval, the Agreement shall not be awarded.

(9) Any agreement awarded without the Ministry of Finance's approval shall be legally invalid and shall produce no legal effects.

Termination of  
Procurement  
Procedures.

**39.**-(1) A Public Authority may terminate a procurement activity prior to the award of an Agreement for the following reasons:

- (a) during the conduct of a procurement activity, there are not less than two qualified Bidders;
- (b) all responsive tenders do not demonstrate sufficient value for money;
- (c) prior to the opening of bids in response to the request for proposals, the termination of the procurement activity has been made necessary due to objective and demonstrable events and or reasons that are beyond the Public Authority's control and that were not predictable at the time of the initiation of the procurement activity; or
- (d) any other reason stipulated in the Regulations.

(2) Immediately upon termination of the procurement procedure, the Public Authority shall publish a cancellation notice in accordance with the requirements set out in this Act, and shall include in the procurement records a written statement setting out in detail the factual reasons and the legal reasons for the termination.

Circumstances  
Authorizing  
Award without  
Competitive  
Procedures.

**40.** Subject to approval by the Technical Committee, the Public Authority is authorized to negotiate an Agreement without using the procedure set out in Sections 24 to 38 of this Act in the following instances:



- (a) the project involves matters of national security;
- (b) the award of additional services not included in the initial Agreement but which have, through unforeseen circumstances, become necessary for the performance of the work or services described therein, which the Public Authority has awarded to the Private Partner, provided that the award is made to the private partner performing such work or services.

Procedures for  
Negotiation of  
Agreements.

**41.** Where an Agreement is negotiated without using the competitive tender procedures set out in Sections 24 to 38 of this Act, the Public Authority shall:

- (a) except for Agreements negotiated pursuant to paragraph (a) of Section 40 of this Act, cause a notice of its intention to commence negotiations in respect of an Agreement to be published in accordance with the relevant provisions of this Act;
- (b) engage in negotiations with as many persons as the Public Authority judges capable of carrying out the project as circumstances permit;
- (c) establish evaluation criteria against which proposals shall be evaluated and ranked.

#### **PART SIX UNSOLICITED PROPOSALS**

Admissibility of  
Unsolicited  
Proposals.

**42.** The Department is authorized to review and accept unsolicited proposals pursuant to the procedures set out under this Act, provided that such proposals do not relate to a project for which selection procedures have been initiated or announced, or provided that such proposals do not relate to provision of monopolistic services or to matters of national security.

Procedures for  
Determining the  
Admissibility of  
Unsolicited  
Proposals.

**43.**-(1) Within three months of receipt and review of such unsolicited proposal, the Department shall determine whether the project is considered to potentially be in the public interest and to this end, inform the proponent.

(2) If the project is considered to be potentially in the public interest, the Department shall invite the proponent to submit as much information on the proposed project as is feasible to allow the Department to make a proper evaluation of the proponent's qualifications and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the Department.

(3) The proponent shall submit within four months of the request from the Department, a technical and economic pre-feasibility study, a preliminary environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal.



(4) In considering an Unsolicited Proposal, the Department shall respect the intellectual property, trade secrets or other exclusive legal rights contained in, or arising from, the proposal.

(5) The Department shall not make use of trade secrets provided by or on behalf of the proponent in connection with its unsolicited proposal without the consent of the proponent, for a period of twelve months from its receipt.

Initiation of  
Selection  
Procedure.

**44.**-(1) Within six months of receipt of an unsolicited proposal pursuant to Section 42 of this Act, the Department shall formally decide whether to accept or reject the potential project derived from the unsolicited proposal.

(2) If the unsolicited proposal is accepted, the Department shall request authorization from the Technical Committee prior to tendering the project, and only after the authorisation shall coordinate with the relevant Public Authority the initiation of a competitive selection procedure in accordance with this Act.

(3) If the proposal is refused, and the parties do not agree, the Public Authority shall return to the proponent the original and any copies of documents that the proponent submitted and prepared throughout the procedure.

(4) The proponent shall be invited to participate in any competitive selection procedure initiated in response to his unsolicited proposal. The proponent may only be awarded a contract associated with the unsolicited proposal in accordance with the competitive tendering procedures under this Act.

(5) If another bidder is selected, the proponent of the unsolicited proposal shall be compensated for the cost of feasibility studies undertaken for the project, only if those studies were performed by an independent, qualified third party.

## PART SEVEN THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT

Governing Law.

**45.**-(1) The Agreement shall be governed by the laws of the Revolutionary Government of Zanzibar, unless otherwise determined in the Agreement.

(2) The Private Partner, its shareholders, and other business partners shall be free to choose the law governing their relations.

Contents of the  
Agreement.

**46.**-(1) The Agreement shall be concluded between the Ministry of Finance, on behalf of the Government, and the Private Partner as stipulated under subsection (3) of Section 17 of this Act.

(2) The Agreement shall contain a Memorandum of Understanding, which shall form part of the Agreement and shall be concluded between the Implementing Authority and the Private Partner that concluded the Agreement under subsection (1) of this section.



(3) The Agreement and Memorandum of Understanding may provide for such matters as the parties deem appropriate, including, but not limited to:

- (a) the nature and scope of works to be performed and services to be provided by the Private Partner;
- (b) rights and obligations of the Private Partner, the Ministry of Finance, and the Implementing Authority;
- (c) the conditions for provision of those services and the extent of exclusivity, if any, of the Private Partner's rights under the Agreement;
- (d) the assistance that the Implementing Authority may provide to the Private Partner in obtaining licenses and permits to the extent necessary for the implementation of the project;
- (e) the extent to which the Private Partner may subcontract the services which the Private Partner is obliged to provide in accordance with the Agreement;
- (f) any requirements relating to the establishment of the business organisation, and minimum amount of capital of a legal entity incorporated in accordance with this Act;
- (g) the ownership of immovable property and other assets related to the project and the obligations of the parties, as appropriate, concerning the acquisition of the project site and any necessary easements;
- (h) the remuneration of the Private Partner, whether consisting of tariffs or fees for the use of the facility or the provision of services; the methods and formulas for the establishment or adjustment of any such tariffs or fees; and payments, if any, that may be made by the Implementing Authority or other Public Authority;
- (i) the requirements relating to the concession fees paid by the Private Partner to the Implementing Authority or Ministry of Finance;
- (j) procedures for the review and approval of engineering designs, construction plans and specifications by the Implementing Authority, and the procedures for testing and final inspection, approval and acceptance of the Infrastructure Facility;
- (k) the extent of the Private Partner's obligations to ensure, as appropriate, the modification of the service to meet the actual demand for the service, its continuity and its provisions are under essentially the same conditions for all users;
- (l) the Implementing Authority's or other Public Authority's right to monitor the works and services to be provided by the Private Partner and the conditions and extent to which the Implementing Authority or any other authorized Public Authority may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate



to ensure that the Infrastructure Facility is properly operated and the services provided in accordance with the applicable legal and contractual requirements;

- (m) the extent of the Private Partner's obligation to provide the Implementing Authority or any other Public Authority with reports and other information on its operations;
- (n) mechanisms to deal with additional costs and other consequences that might result from any order issued by the Implementing Authority or another Public Authority in connection with paragraphs (i) and (j) of this Section;
- (o) to the extent considered necessary, any rights of the Implementing Authority to review and approve major contracts to be entered into by the Private Partner, in particular with the Private Partner's own shareholders or other affiliated persons, including but not limited to the transfer of controlling interest in the private partner;
- (p) the creation of security interests over any of the Private Partner's assets, rights or interests under the Agreement as may be required to secure financing needed for the project;
- (q) guarantees of construction and performance to be provided and insurance policies should be maintained by the Private Partner in connection with the implementation of the project;
- (r) remedies available in the event of default of either party;
- (s) the extent to which either party may be exempt from liability for failure or delay in complying with any obligation under the Agreement owing to circumstances beyond its reasonable control;
- (t) the duration of the Agreement and the rights and obligations of the parties upon its expiry or termination, including any wind-up and transfer measures;
- (u) the manner for calculating compensation in the case of early termination;
- (v) the governing law and the mechanisms for the settlement of disputes that may arise between the Implementing Authority and the Private Partner;
- (w) the rights and obligations of the parties with respect to confidential information;
- (x) the conditions and procedures for the exercise of any step-in right by the Implementing Authority or a substitution of the Private Partner by the entities extending financing for the Project;
- (y) the identification of the institutions and personnel directly responsible for contract oversight and monitoring;
- (z) the conditions and procedures for the assignment of the Agreement by the Private Partner;



- (aa) the procedures for revising, amending, and modifying the terms of the Agreement;
- (bb) any restrictions on either the Implementing Authority or Private Partner to ensure conflicts of interest do not arise during the project; and
- (cc) outlining mediation and arbitration processes for circumstances of dispute resolution.

(4) The Department may establish additional elements to be included in an Agreement and may issue standard clauses and guidelines during the drafting of an Agreement.

**Ownership of Assets.**

**47.-(1)** The Agreement shall specify which assets are or shall be publicly owned and which assets are or shall be the property of the Private Partner.

(2) The Agreement shall in particular identify which assets belong to the following categories:

- (a) assets for which the Private Partner is required to return or transfer control or ownership to the Implementing Authority or to another entity indicated by the Implementing Authority in accordance with the terms of the Agreement;
- (b) assets that the Implementing Authority, at its option, may purchase from the Private Partner; and
- (c) assets that the Private Partner may retain or dispose of upon expiry or termination of the Agreement.

**Acquisition of Rights Related to the Project Site.**

**48.** The Implementing Authority or other Public Authority under the terms of the law and the Agreement shall make available to the Private Partner or, as appropriate, shall assist the Private Partner in obtaining such rights related to the project site as may be necessary for the implementation of the project.

**Easements.**

**49.-(1)** The Private Partner shall have the right to enter upon, transit through or do work or fix installations upon property of third parties, as appropriate and required for the implementation of the project in accordance with the provisions of the Agreement and the applicable law on property rights.

(2) Any easements that may be required for the implementation of the project shall be created in accordance with the applicable law on property rights.

(3) Easements for the purposes of construction may be temporary or time-limited in nature.

**Operation of Infrastructure.**

**50.-(1)** The Agreement may set out, as appropriate, the extent of the Private Partner's obligations to ensure:

- (a) the modification of the service so as to meet the demand for the service;
- (b) the continuity of the service;



- (c) the provision of the service under essentially the same conditions for all users;
- (d) the non - discriminatory access of other service providers to any public infrastructure network operated by the Private Partner.

(2) The Private Partner shall have the right to issue and enforce rules governing the use of the facility, subject to the approval of the Implementing Authority or any other authorized Public Authority.

Financial Provisions.

**51.-(1)** The Private Partner may be given the right under the Public - Private Partnership Agreement to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the Agreement, which shall provide for methods and formulas for the establishment and adjustment of those tariffs or fees in accordance with the rules established in the Agreement or by the competent Public Authority.

(2) When applicable, the Agreement shall expressly identify the terms and conditions of any and all payments, guarantees, subsidies or other financial supports to be provided by the Implementing Authority, or any payments by the Private Partner to the Government.

Organization of the Private Partner.

**52.** The Implementing Authority shall require that the successful Bidder establish an independent legal entity incorporated under the applicable laws, prior to formalizing an Agreement.

Transfer of Controlling Interest in the Private Partner.

**53.-(1)** A controlling interest in the Private Partner may not be transferred to third parties without the consent of the Implementing Authority, except as otherwise provided in the Agreement.

(2) The Agreement shall set out the conditions under which consent of the Implementing Authority shall be given.

Security.

**54.-(1)** Subject to any restriction that may be contained in the Agreement, the Private Partner has the right to create security interests over any of his assets, rights or interests, including those relating to the Project, as required to secure any financing needed for the project.

(2) The shareholders of the Private Partner shall have the right to pledge or create any other security interest in their shares in the Private Partner.

(3) A security under subsection (1) of this Section may not be created over public property or other property, assets or rights needed for the provision of a public service, where the creation of such security is prohibited by the applicable law.

Change of Law

**55.** The Agreement shall set out the extent to which the Private Partner is entitled to compensation in the event that the cost of the Private Partner's performance of his obligations deriving from the Agreement has substantially increased or that the value that the Private



Partner receives for such performance has substantially diminished as a result of changes in legislation or regulations specifically applicable to the Infrastructure Facility or the services he provides.

Revision of the Agreement.

56.-(1) The Agreement shall further set out the extent to which the Private Partner is entitled to an adjustment of the Agreement with a view to providing compensation in the event that the cost of the Private Partner's performance of the Agreement has substantially increased or that the value that the Private Partner receives for such performance has substantially diminished as a result of:

- (a) changes in economic or financial conditions; or
- (b) changes in legislation or regulations not specifically applicable to the Infrastructure Facility or the services it provides.

(2) In regard to subsection (1) of this section, the Private Partner is only entitled to an adjustment of the Agreement where the economic, financial, legislative or regulatory changes:

- (a) occur subsequent to the formalization of the Agreement;
- (b) are beyond the control of the Private Partner; and
- (c) are of such a nature that the Private Partner could not reasonably be expected to have:
  - (i) taken them into account at the time the Agreement was negotiated; or
  - (ii) to have avoided or overcome their consequences.

(3) The Agreement shall establish procedures for revising, amending, and modifying the terms of the Agreement in respect of the conditions specified in sub-section (1) of this section.

Intentions by the Implementing Authority.

57. Under the circumstances set out in the Agreement, the Implementing Authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of material breach by the Private Partner to both perform his obligations and to rectify the breach within a reasonable period of time after having been given notice by the Implementing Authority to do so.

Substitution of the Private Partner.

58.-(1) In accordance with the terms and conditions set out in the Agreement, the Implementing Authority may agree with the entities extending financing for a Project to provide for the substitution of the Private Partner by a new qualified entity or person appointed to perform under the existing Agreement upon serious breach by the Private Partner or other events that could otherwise justify the termination of the Agreement; Any such substitution shall require prior approval by the Technical Committee.



(2) In the event of substitution of a Private Partner under the circumstances described in subsection (1) of this section, the Implementing Authority, with the approval of the Technical Committee, may choose to conduct a competitive process for the substitution of the Private Partner.

(3) The level of competition required will be proportionate to the urgency of completion of the project, and the extent of completion of the Agreement.

Signing of Agreement.

**59.**-(1) The Agreement shall be signed by the authorized representative of the Private Partner and the Principal Secretary of the Ministry of Finance.

(2) The associated Memorandum of Understanding shall be signed by the authorized representative of the Private Partner and the highest representative of the Implementing Authority.

#### **PART EIGHT DURATION, EXTENSION AND TERMINATION OF THE AGREEMENT**

Duration and Extension of the Agreement.

**60.**-(1) The Agreement shall expressly set out its duration, which shall in no event exceed the limits set out in subsection (1) of Section 6 of this Act.

(2) The Implementing Authority may agree to extend the duration of the Agreement for an additional period in compliance with subsection (2) of Section 6 of this Act.

(3) Subject to prior authorization by the Technical Committee, which may be given through approval of the Public - Private Partnership Agreement, the Implementing Authority may agree to extend duration of the Agreement in the following circumstances:

- (a) delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;
- (b) project suspension brought about by acts of the Implementing Authority or other Public Authorities; or
- (c) increase in costs arising from requirements of the Implementing Authority not originally foreseen in the Agreement, if the Private Partner would not be able to otherwise recover said costs and realize a reasonable return on investment without such extension.

Expiry of the Agreement.

**61.** The Agreement shall be terminated at the end of the period specified in the Agreement and its revisions unless terminated earlier pursuant to the provisions of this Act.

Early Termination of the Agreement by the Implementing Authority.

**62.** Subject to the terms and conditions of the Agreement, the Implementing Authority may seek prior approval from the Technical Committee before terminating the Agreement:



- (a) in the event that it can no longer be reasonably expected that the Private Partner will be able or willing to perform its obligations; or
- (b) for compelling reasons of public interest, subject to payment of compensation to the Private Partner according to the terms of such compensation as set out in the Agreement.

Early Termination of the Agreement by the Private Partner.

**63.** Subject to the terms of the Agreement, the Private Partner may not terminate the Agreement except under the following circumstances:

- (a) in the event of material breach of Agreement by the Implementing Authority or other Public Authority and the mediation and arbitration processes outlined in the Agreement have been unsuccessful in addressing the said breach;
- (b) if the conditions for revision of the Agreement made in accordance with this Act are met, but the parties have failed to agree on a revision of the Agreement; or
- (c) if the cost of the Private Partner's performance of the Agreement has substantially increased or the value that the Private Partner receives for such performance has substantially diminished as a result of acts or omissions by the Implementing Authority or other Public Authorities and the parties have failed to agree on the legally appropriate remedies.

Early Termination of the Agreement for Other Reasons.

**64.**-(1) If there is no termination regime in the Agreement, either party shall have the right to terminate the Agreement in the event that the performance of its obligations is rendered impossible due to force majeure or circumstances beyond either party's reasonable control.

(2) The parties shall also have the right to terminate the Agreement by mutual consent, subject to the approval of the Technical Committee.

Compensation Upon Termination of the Agreement.

**65.** The Agreement shall stipulate how compensation due to either party is calculated in the event of termination of the Agreement, providing, where appropriate, for compensation for the fair value of works performed under the Agreement, costs incurred or losses sustained by either party, including, as appropriate, lost profits.

Wind-up and Transfer Measures.

**66.** The Agreement shall provide, as appropriate, for:

- (a) procedures for the transfer of control of public assets to the Implementing Authority;
- (b) the compensation to which the Private Partner may be entitled for the transfer or sale of assets to the Implementing Authority or to a new Private Partner;
- (c) the transfer of technology required for the operation of the facility;
- (d) the preparation and training of the Implementing Authority's personnel or of a successor of Private Partner in the operation and maintenance of the facility;



- (e) the provision, by the Private Partner, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the facility to the Implementing Authority or to a successor.

## PART NINE DISPUTE RESOLUTION

Disputes  
Between the  
Government and  
the Private  
Partner.

**67.** Any disputes between the Implementing Authority or Ministry of Finance and the Private Partner shall be settled through the dispute settlement procedures agreed by the parties in the Agreement.

International  
Arbitration.

**68.** Amongst the dispute resolutions mechanisms, the Agreement may provide for procedures for international arbitration, the resolution of which shall be binding and definitive on the parties, where so provided in the Agreement.

Disputes  
Involving  
Customers or  
User of the  
Infrastructure  
Facility.

**69.**(1) Where the Private Partner provides services to the public or operates infrastructure facilities accessible to the public, the Implementing Authority may require the Private Partner to establish simple and efficient procedures for handling claims submitted by its customers or users of the Infrastructure Facility.

(2) These procedures shall comply with the norms of natural justice, and shall include processes for appeals and review of decisions.

(3) Application of the procedures is subject to the approval of the Implementing Authority.

## PART TEN MISCELLANEOUS PROVISIONS

Right of Bidders.

**70.** A Bidder that claims to have suffered or that may suffer, loss or injury due to a breach of a duty imposed on the Public Authority by the law, may seek review of, and potential remedies for, the Public Authority's acts or failures to act in accordance with the relevant provisions of the applicable law.

Regulations.

**71.**(1) The Minister may make Regulations to give effect to the purpose and provisions of this Act.

(2) The Minister may, by Regulations, amend the Schedule.

Repeal and  
Saving.

**72.**(1) The Concessions Projects Act No.1 of 1999 is hereby repealed.

(2) Notwithstanding the provisions of subsection (1) of this section:

- (a) anything done under the Repealed Act shall continue to be valid until it is ceased or replaced by the relevant authority under this Act; and
- (b) anything initiated under the Repealed Act, which is still pending shall be completed and shall be deemed to have been done under the provisions of this Act.



**SCHEDULE**  
**PUBLIC PRIVATE PARTNERSHIP PROJECTS**  
**(Made under Section 9 (5))**

1. Telecommunication services, system and networks (public telephone service, public mobile radiophone service, nationwide public paging service, nationwide distribution and broadcast of public radio and television programs) not including closed circuit services.
2. Water supply, including production, management, cleaning and distribution, sewerage and drainage.
3. Generation, transmission and distribution of all types of energy.
4. Public roads, highways, expressways, bridges, tunnels and their engineering structures.
5. Airports, terminals and related aviation facilities.
6. Port development including terminals, piers, handling, storage, Freeport infrastructure and other facilities and services.
7. Environmental and solid waste management projects including composting plants, collection facilities, incinerators, landfill, recycling and other municipal and rural services.
8. Land and sea transportation system and facilities.
9. Development of Industrial zones, information and other export zones.
10. Leisure parks and theme parks, hotel and tourism related projects.
11. Storage infrastructure of bulk products.
12. Housing schetne project, public shelter and social work.
13. Health, education and scientific research projects.
14. Rehabilitation of land, and development on state lands allowing the provision of services to support commercial and non-commercial activities.
15. Shopping malls and retail centers.
16. Government and public buildings.
17. Municipality services.



18. Infrastructure's service and maintenance based on IT and data.
19. Oil, pipeline, gas pipeline, refinement and distribution.
20. Other projects to support development activities.

**PASSED** by the House of Representatives on 17<sup>th</sup> March, 2015

A handwritten signature in black ink, appearing to read 'Yahya Khamis Hamad'.

**YAHYA KHAMIS HAMAD**  
**CLERK THE HOUSE OF REPRESENTATIVES**  
**ZANZIBAR**