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***SUBSIDIARY LEGISLATION***

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**THE PUBLIC PRIVATE PARTNERSHIP ACT  
(No.18 OF 2010)**

**REGULATIONS**

*(Made under section 28)*

THE PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2011

**PART I  
PRELIMINARY PROVISIONS**

- Citation                    1. These Regulations may be cited as the Public Private Partnership Regulations, 2011.
- Application                2. These Regulations shall apply to all projects undertaken in partnership between the public sector and the private sector.
- Interpretation  
Act No.18  
of 2010                    3. In these Regulations unless the context otherwise requires-  
“Act” means the Public Private Partnership Act;  
“Coordination Unit” shall have the meaning ascribed to it under the Act;  
“Coordination Committee” means a committee established under regulation 19;  
“Minister” means the Minister responsible for investment;  
“public sector” shall have the meaning ascribed to it under the Act;  
“partnership” means an arrangement between a contracting authority and a private party in which the private party-

- (a) performs an institutional function on behalf of the institution;
- (b) acquires the use of public property for its commercial purposes;
- (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function or use of state property; and
- (d) receives a benefit for performing the institutional function or from utilising the public property, either by way of:
  - (i) consideration to be paid by the contracting authority which derives from a revenue fund or where the contracting authority is a central government or a local government authority, from the revenues of such authority;
  - (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
  - (iii) a combination of such consideration and such charges or fees;

“units” means the Coordination Unit and Finance Unit;

“unsolicited proposal” means a written proposal that is submitted to a relevant contracting authority on the initiative of the private party for the purpose of entering into a public private partnership agreement with the Government.

## PART II IDENTIFICATION OF PROJECTS

Projects for  
partnership

4.-(1) Subject to section 4 of the Act, the Minister shall determine and publish a notice in the *Gazette* specifying various projects that may be undertaken by the public sector in partnership with the private sector for a particular period as may be specified in the notice.

(2) After publication of specific projects under sub-regulation (1), a public sector shall, based on the published projects, select or identify specific project or projects which can be undertaken in partnership for a particular year or such period as the public sector may determine.

Pre-  
feasibility  
study

5.-(1) The contracting authority shall, after identifying a project for partnership under regulation 4, cause to be conducted a pre-feasibility study in respect of the project.

(2) The pre-feasibility study report shall be submitted to both the Coordination Unit and the Finance Unit for approval prior to undertaking of a feasibility study.

(3) The Coordination Unit, or as the case may be, the Finance Unit may upon consideration of the pre-feasibility study report:

(a) approve the pre-feasibility study report and advise the contracting authority to proceed with the feasibility study in respect of the project; or

(b) reject the report and advise the contracting authority in writing stating the reasons for the rejection.

(4) The pre-feasibility study report shall conform to the criteria that:

(a) the project is in line with government priorities as per national development plans;

(b) the project complies with the value for money requirement;

(c) the project complies with affordability requirement;

(d) the project presents a new and cost-effective methods of service delivery;

(e) the project will address acute social needs sustainably;

(f) the private sector participation in the project will result into net benefits and savings as compared to public procurement;

(g) the project adheres to the Act and other relevant laws;

(h) the project includes adequate risk analysis and sharing; and

(i) it complies with other conditions relevant to the public private partnership.

Funds for  
feasibility  
study

6.-(1) The Minister responsible for Finance may establish a Public-Private Partnership Project Development Facility with a limited life span, and set conditions for contracting authorities to access the funds from the facility.

(2) The Project development facility shall be an instrument to enable contracting authorities to finance project preparation costs, including financing of feasibility studies, costs of transaction advisors and procurement of public-private partnership projects.

(3) The funds advanced from the facility to the contracting authority may later be partly or fully recovered from the successful tenderer.

(4) Access to funds from the project development facility shall be subject to compliance by the contracting authority is criteria to be prescribed by the Minister responsible for Finance.

Feasibility  
study by  
Public Sector

7.-(1) After the approval of the pre-feasibility study under regulation 5, the contracting authority shall:

- (a) conduct or cause to be conducted a feasibility study in respect of each identified project; and
  - (b) prepare or cause to be prepared a report to that effect.
- (2) The contracting authority shall, for the purpose of this regulation, engage a consultant with knowledge and experience on the subject matter of the project to conduct a feasibility study under such terms and conditions as may be spelled out in the terms of agreement.
- (3) The word “cause” as used in this regulation, shall not be construed as to allow a private party to conduct a feasibility study on its own cost so as to enjoy privilege over other competitors.

Identification of unsolicited proposals

- 8.-(1) The feasibility study for unsolicited project proposals shall be undertaken by the private party.
- (2) Before undertaking the feasibility study, the private party shall submit a project concept to the contracting authority, and where the approval is granted, the detailed feasibility study shall be undertaken by the private party.
- (3) Where the private party has submitted the project concept to the contracting authority, the contracting authority shall undertake preliminary analysis to approve or reject the project concept and shall, in writing, respond within twenty one days.
- (4) Where the contracting authority fails to approve or reject a project concept within twenty one days it shall, in writing, give reasons for failure to approve the project concept.

Contents of project concept for unsolicited proposals

9. The project concept shall contain:
- (a) a private party’s name, postal and physical address, Tax Identification Number and VAT registration number where applicable;
  - (b) a company profile, audited accounts and evidence of financial capacity;
  - (c) the title and abstract of the proposed project;
  - (d) a statement of the objectives, approach and scope of the proposed project;
  - (e) a statement describing property rights or any confidential information or proprietary data not to be made public;
  - (f) a statement describing how the proposal is innovative and unique, supported by evidence that the proponent is the sole provider of the innovation;

- (g) a statement of the anticipated benefits or cost advantages to the contracting authority including the total estimated cost for developing the project and projected cash flow to allow a meaningful consideration;
- (h) a statement showing how the proposed project supports the Government's development plans; and
- (i) a statement to indicate compliance with other relevant laws and government policies.

Approval of project concepts for unsolicited proposals

10. The contracting authority shall select the project concepts based on criteria that:

- (a) the project is in line with government priorities and adequately meets the public interests;
- (b) the project complies with the value for money requirement;
- (c) the project complies with affordability requirement;
- (d) the project presents a new and cost-effective methods of service delivery;
- (e) the project will address acute social needs sustainably;
- (f) the private sector participation in the project will result into net benefits and savings as compared to public procurement;
- (g) the project exclusively belongs to the private party and there are intellectual property rights to protect;
- (h) the project adheres to the Act and other relevant laws;
- (i) the project includes adequate risk analysis and sharing; and
- (j) it complies with other conditions relevant to the public private partnership.

Rejection of project concept for unsolicited proposals

11.-(1) The contracting authority may reject the project concept if the project concept:

- (a) does not meet conditions set under regulation 9;
- (b) relates to institutional requirements that can be acquired by normal competitive bidding or any other method than public private partnership;

- (c) relates to products or services which are generally available and can be mobilized through normal investment procedures or public procurement;
- (d) does not fall under the priorities set by the contracting authority or the Government plans; and
- (e) the private party is not legally permitted to undertake the project due to financial incapability or is not a lawfully registered company.

(2) Where the contracting authority is satisfied that the project concept meets the criteria stipulated in regulation 9, the contracting authority may approve the project concept or may approve and require the private party to avail more information or undertake additional studies at private party's own cost.

(3) Where the project concept is approved, the contracting authority shall give formal recognition and the private party shall finalise the feasibility study.

Project officer

12.-(1) Immediately after initiation of the project, the accounting officer shall, in writing, appoint a project officer from within or outside the contracting authority.

- (2) The functions of the project officers shall be:
  - (a) to supervise the project;
  - (b) to act as a liaison officer between the accounting officer and the private party;
  - (c) to inquire into anything from the private party on any matter relating to the project;
  - (d) to prepare quarterly and annual reports to the accounting officer on the development of the project; and
  - (e) to perform any other duty arising from the nature and size of the project.

Contents of the feasibility study report

13. The feasibility study report under regulation 6 shall contain-

- (a) details regarding salient features of the proposed project;
- (b) explanation of the strategic and operational benefits of the proposed project in relation to its objectives;
- (c) description in specific terms -
  - (i) in the case of a performance of function, the nature of the function concerned and extent to which it may be performed by the private party;

- (ii) detailed specification of the services to be delivered;  
and
- (iii) in the case of use of government property, description of the property concerned and the types of use the property may be subjected to;
- (d) in case of incurring any financial commitments by the contracting authority, demonstration of the affordability of the project by the contracting authority;
- (e) proposals for allocation of financial, technical and operating risks between the partners;
- (f) demonstration of the anticipated value for money to be achieved;
- (g) public sector comparator test;
- (h) procurement plan;
- (i) recommendation or advice on the technical and economic viability of the project or projects;
- (j) description of environmental and social impact assessments;
- (k) the manner by which citizens may be empowered; and
- (l) any other information that is desirable to support the feasibility study.

Committees

14.-(1) Upon receipt of the feasibility study report under these Regulations, the contracting authority shall appoint a committee of experts to study the report and make recommendations or advice on the implementation of the project.

(2) The size, procedures and terms of reference to the committee of experts shall be as may be determined by the contracting authority.

(3) In making recommendations for implementation of the project, the committee shall have regard to:

- (a) needs analysis including specification of outputs and project scope;
- (b) analysis of viable options;
- (c) preliminary project due diligence, value for money assessment, proof of affordability and risk sharing;
- (d) profile of contracting authority's capacity for public private partnership project development, implementation and management including appointment of project officer;
- (e) appointment of project team, transaction advisors and conclusion of contract for project advisors.

Selection of the project

15.-(1) Upon the recommendations and advice of the committee of experts, the contracting authority may determine or select a project or projects to be implemented in partnership with the private sector.

Consultation with regulatory authority

16.-(1) The contracting authority shall, after selection of a project under regulation 15, consult with the relevant regulatory authority under which the selected project is regulated.

(2) For the purpose of sub-regulation (1), the contracting authority shall furnish the regulatory authority with a copy of the feasibility study report together with the recommendations or advice of the committee for implementation of the project.

(3) The regulatory authority may, after consideration of the contents of the report -

- (a) recommend or advice on the implementation of the project; or
- (b) specify or indicate other areas for reconsideration prior to implementation.

Determination by the public sector

17.-(1) Upon the advice and recommendation of the regulatory authority, the contracting authority, may finalize or confirm the selection of the project for implementation under public private partnership.

(2) The contracting authority shall, after the final selection of the project for implementation under partnership, submit the selected project to the Minister responsible for the contracting authority for approval, notification and further directions.

### PART III

#### RECOMMENDATION OF PROJECTS BY COORDINATION UNIT

Submission of projects by contracting authority

18.-(1) The contracting authority, shall, after satisfying itself with the selected project, submit an application to the Coordination Unit for recommendation of the project.

(2) An application under sub-regulation (1) shall be in the form prescribed in the Schedule and shall be accompanied by:

- (a) a feasibility study report;
- (b) brief report of the committee for the project containing advice and recommendations;
- (c) approval or recommendation by the National Environment Management Council on the aspects of Environmental Impact Assessment;
- (d) approval or recommendation of the regulatory authority responsible for the project;



- (e) approval of the Minister responsible for the contracting authority; and
- (f) such other information as may be required for that purpose.

Committee of the Coordination Unit

19.-(1) The Coordination Unit shall, within thirty days from the date of receipt of the application, process the application, and in so doing may form a committee of experts for studying and verifying the contents of application and for making recommendations or advice to the Coordination Unit.

(2) The size, composition, procedures and terms of reference of the committee shall be as may be determined by the Coordination Unit.

Consideration by committee

20.-(1) The committee of experts shall, in consideration of the project, have regard to:

- (a) the feasibility study reports;
- (b) evidence of the relationship between the functional mandate and the services to be delivered by the PPP project;
- (c) proof of capacity to manage PPP projects within the contracting authority;
- (d) evidence of compliance with affordability, value for money and risk sharing criteria;
- (e) consultation with the regulatory authorities.

(2) Upon consideration of the project, the committee of experts shall prepare a brief report on the project with recommendations and advice to the Coordination Unit.

(3) The committee may, where it is not satisfied with the contents of the application as submitted by the contracting authority, recommend for reconsideration of the project by the contracting authority.

(4) Where the committee recommends for reconsideration of the project as per sub-regulation (3), it shall indicate areas of the projects or application for reconsideration or rectification by the contracting authority.

Recommendation by the Coordination Unit

21.-(1) Upon receipt of the report from the committee, the Coordination Unit shall, after consideration of the recommendations and advice of the committee:

- (a) recommend the project for implementation in partnership with a private party; or
- (b) where necessary, require the contracting authority in writing to rectify specific matters of the project or to reconsider the implementation of the project.

- (2) Where the Coordination Unit recommends the implementation of the project under this regulation, it shall:
- (a) submit the project together with its recommendations for approval to the Finance Unit; and
  - (b) in writing, notify the contracting authority accordingly.
- (3) The Coordination Unit shall, in submitting the project to the Finance Unit attach particulars regarding:
- (a) the title type and location of the project;
  - (b) the Ministry or public sector responsible for the project
  - (c) cost and duration of the project;
  - (d) the name of the project officer;
  - (e) its findings and recommendations on the criteria of affordability, value for money and prevailing national development priorities; and
  - (f) any other information as may be required by the Finance Unit.

Projects to be kept in a register

22.-(1) The Coordination Unit shall, after acceptance of a project, record the particulars of the project in the register to be kept by the Coordination Unit.

(2) The register for recommended projects under sub-regulation (1) shall indicate:

- (a) the title of the project and its location;
- (b) the name of contracting Authority;
- (c) the name and address of private party, where applicable;
- (d) the duration of the project;
- (e) date of commencements of the project; and
- (f) such other particulars as the Coordination Unit may determine.

(3) The Coordination Unit shall, upon consultation with the Finance Unit and contracting authority, have power to amend and update the register, if necessary.

#### PART IV

##### APPROVAL OF PROJECTS BY THE FINANCE UNIT

Evaluation of approved project

23.-(1) The Finance Unit shall, upon receipt of the recommended project from the Coordination Unit, evaluate the project with a view to considering the fiscal risks involved, value for money, affordability and other financial matters.

(2) For the purpose of sub-regulation (1), the Finance Unit shall study and consider the feasibility study for the project and all financial implications relating to the implementation of the project.

Committee of Finance Unit

24.-(1) The Finance Unit may, for the purpose of facilitating the performance of its functions, form a committee of experts to:

- (a) study and consider the feasibility study in respect of the project; and
- (b) make recommendations to the Finance Unit on the financial implication risks involved and other financial matters surrounding the implementation of the project including-
  - (i) affordability of the project;
  - (ii) value for money;
  - (iii) risk sharing;
  - (iv) Government development priorities; and
  - (v) commercial viability.

(2) The size, composition, procedures, and terms of reference of the committee shall be as may be determined by the Finance Unit.

Consideration by Finance Committee

25.-(1) The Committee formed pursuant to regulation 24 shall, within thirty days, determine the feasibility study, criteria for government participation where applicable, the project and other relevant documents and make recommendations to the Finance Unit.

- (2) The report of the finance committee shall contain:
- (a) evidence on the relevance of the project to the functional mandate of the contracting authority and that the contracting authority has the capacity to manage and oversee the implementation of the project;
  - (b) proof of compliance with the criteria of affordability over the life cycle of the project before and after handing over to the Government;
  - (c) evidence of value for money;
  - (d) evidence of comprehensive analysis of the full range of risks and optimal risk sharing (which party is best suited to contain which risk, financial consequences of risks, and measures for risk mitigation);

- (e) evidence of commercial, technical and socio-economic as well as environmental viability;
- (f) evidence of compliance with criteria for government participation.

(3) For the purpose of sub-regulation (2), the criteria for government participation to any public private partnership project shall include-

- (a) government approval prior to commencement of bidding process;
- (b) compliant feasibility study;
- (c) prohibition of Government support for unsolicited project proposals;
- (d) a competitive bidding process resulting to a minimum of two compliant tenderers as a condition precedent; and
- (e) any other criteria as may be prescribed in the guidelines for public private partnership projects appraisal.

Consideration  
by the Finance  
Unit

26.-(1) The Finance Unit shall, upon receipt of report under regulation 25, consider the findings and recommendations of the finance committee and make decisions on the implementation of the project.

(2) Where the Finance Unit refuses to approve the project under sub-regulation (1), it shall:

- (a) return the feasibility study report and other attached documents to the Coordination Unit;
- (b) give reasons for refusal to approve the project; and
- (c) advice as to what should be done by the the contracting authority to rectify or remedy the situation.

Reconside-  
ration by the  
contracting  
authority

27.-(1) The Coordination Unit shall, immediately after receiving the returned documents from the Finance Unit under regulation 26, refer the matter to the contracting authority where it originates for reconsideration with the view to address issues as raised by the Finance Unit.

(2) After reconsideration of the matter, the contracting authority may resubmit the project for approval by the Coordination Unit, and the provisions of regulation 18 regarding submission of application for recommendation shall apply accordingly.

Approval by the Minister responsible for finance

28.-(1) The Finance Unit shall if it is satisfied with the contents of the feasibility study and findings regarding the financial implications and other financial matters, forward the feasibility study together with its recommendations to the Minister responsible for finance for approval.

(2) The Minister responsible for finance shall, subject to the provisions of the Act, and within thirty days from the date of receipt of the documents from the Finance Unit, approve the project for implementation under public private partnership.

(3) The Minister responsible for finance shall, where approval is not given within the time prescribed in this regulation, within seven days after the expiration of thirty days notify the contracting authority through the Finance Unit stating the reasons for such delay.

Funds for implementation of project

29. Upon approval of the project by the Minister responsible for finance under regulation 28 and where the approved project requires public funds for implementation, the Minister shall, if the public funds are available, initiate the funding process and notify the parties through the Finance Unit.

Suspension of project

30. The Minister responsible for finance may, where the approved projects requires public funding and such funds are not available for that purpose-

- (a) suspend the implementation of the approved project for such period as he may determine; or
- (b) in consultation with the private party, solicit for such funds required for implementation of the project.

31. The Minister responsible for finance shall, subject to the provisions of the Act, refer all approved projects to the contracting authority to proceed with advertisement for tenders and subsequent implementation.

Refusal by the Minister responsible for finance

32. The Minister responsible for finance may, if he is not satisfied with the findings and recommendations of the Finance Unit, refuse to approve the project and notify the parties accordingly and shall state the reasons for refusal.

## PART V PROCUREMENT BY CONTRACTING AUTHORITY

Advertisement  
Cap. 410

33.-(1) The contracting authority shall, after the approval of the project by the Minister responsible for finance under regulation 28 and subject to the provisions of the Public Procurement Act, advertise for tenders in respect of the projects calling upon interested parties from private sector to apply for the tender.

(2) Selection of the successful tenderer by the contracting authority shall be in accordance with the provisions of the Public Procurement Act.

Qualification  
for tenderers

34.-(1) A person who intends to tender in terms of the Act, shall have adequate resources or financial capacity and ability to manage the implementation of the project he has applied for.

(2) The contracting authority shall conduct or cause to be conducted a mandatory process of due diligence on the selected tenderer.

(3) A person who makes an application contrary to requirements under sub-regulation (1) commits an offence.

Role of  
selected  
tenderer

35. The selected tenderer shall, subject to the provisions of the Act-

- (a) ensure availability of resources, technical expertise, managerial skills and such other requirements as may be necessary for implementation of the project; and
- (b) communicate with the public sector on the progress and any significant matter pertaining to implementation of the project.

Procurement of  
unsolicited  
proposals  
Cap. 410

36.-(1) Subject to sub-regulation (2), the procurement process for unsolicited project proposals shall be conducted in accordance with regulations made under the Public Procurement Act.

(2) The contracting authority shall not conduct a procurement process for unsolicited project proposals which:

- (a) requires or would require the Government guarantee for cash flows;
- (b) provides for exclusivity clause;
- (c) exclude the Government from financing the project at initial stages; or
- (d) in any way, interferes with competitive tendering.

## PART VI NEGOTIATIONS, AGREEMENT AND AWARD

Agreement

37.-(1) The contracting authority may, for the purpose of implementing the approved project, and subject to the provisions of the Act, enter into a written agreement with the successful bidder.

(2) The contracting authority shall, after approval of the project by the Minister responsible for finance, process the agreement with the private party for implementation of project under partnership.

Negotiating Team

38.-(1) The accounting officer of a contracting authority shall, for the purpose of an agreement under regulation 37, form a multi-disciplinary negotiating team to negotiate with the private party on the significance, terms, conditions and other issues of an agreement.

(2) The negotiating team shall be comprised of persons with knowledge, experience and skills on the subject matter of the project.

(3) The negotiating team shall perform such functions as stipulated in the Act and advise the accounting officer accordingly.

(4) The accounting officer shall, upon the advice of the multi-disciplinary negotiating team, advise the Minister responsible for the contracting authority on the terms of agreement regarding the implementation of the project under public private partnership.

Drafting of agreement

39.-(1) Upon approval by the accounting officer and the Minister responsible for the contracting authority, the accounting officer shall cause the agreement to be drafted in line with such terms and conditions as agreed by the parties during negotiation.

(2) The draft agreement under sub-regulation (1) shall, subject to the provisions of the Act, include:

- (a) the name and address of the contracting authority;
- (b) the name and address of the private partner;
- (c) the title of the project;
- (d) re-negotiation of the agreement, where necessary;
- (e) effective date of the agreement;
- (f) such other terms and conditions as may be preferred by the parties.

(3) The agreement shall not be drafted in contravention of the provisions of the Act.

Approval of draft agreement by Finance Unit

40.-(1) The contracting authority shall forward a draft agreement to the Finance Unit for onward submission to the Minister responsible for finance for approval of the proposed terms of the agreement.

(2) Where the Finance Unit finds that:

- (a) there are eminent events outside the control of the partners, which may intervene with the execution of the project;
- (b) there are construction and operational risks which may cause the project to be delayed;
- (c) there are commercial and financial risks which affect the viability of the project;
- (d) other risks which may cause loss to the Government,

it may refuse to approve the draft agreement or specify measures to address such events and mitigate such risks.

Submission of a copy of the agreement to Attorney General

41. The contracting authority shall avail a copy of the draft agreement to the Attorney General.

Vetting of the agreement

42.-(1) The contracting authority shall submit the draft agreement as approved by the Minister responsible for finance and agreed by both parties to the Attorney General for vetting.

(2) The draft agreement submitted to the Attorney General under sub-regulation (1) shall be accompanied by such other documents as relating to the project or contracting parties as may be necessary for clarity during vetting.

(3) The Attorney General shall, in vetting the draft agreement, have regard to:

- (a) the legality of the project;
- (b) approvals by the Coordination Unit, Finance Unit and the Minister responsible for finance;
- (c) compliance with the existing laws;
- (d) attachments to the agreement as prescribed by sub-regulation (2);
- (e) anything which may have an impact on the agreement.

(4) The Attorney General shall, after consideration of the draft contract or agreement and any other attached documents, provide a legal opinion on the draft contract and return the draft to the contracting authority for final determination.

Approval and finalization of contract

43.-(1) The contracting authority shall, after receiving the opinion of the Attorney General on the draft contract, consider the opinion and prepare the final draft of the agreement.



(2) Where the opinion of the Attorney General have an impact on the terms and conditions of the draft agreement as agreed by the parties, the contracting authority shall immediately notify the private party on the new terms or consideration of new terms.

(3) Upon agreement by both parties, a final draft of the agreement shall be prepared for signature by the parties.

Signing of agreement

44.-(1) The accounting officer shall, upon being satisfied with the contents of the agreement, sign the agreement on behalf of the contracting authority.

(2) After the signing of the agreement, the contracting authority together with the private party shall commence the process for implementation of the project.

Copies of agreement

45.-(1) Upon signing of the agreement, the Accounting Officer shall, forward copies of the agreement to the Finance Unit and to the Coordination Unit for record keeping and monitoring of implementation of the project.

(2) Copies of the agreement shall be recorded and entered in the register maintained and prepared for such purpose.

Implementation of projects

46.-(1) After the signing of the agreement and commencement of the project, the accounting officer of the contracting authority shall ensure that the agreement is properly implemented, managed, enforced, monitored and reported on from its inception up to the expiry or its termination.

(2) Without prejudice to sub-regulation (1), the accounting officer shall maintain a mechanism or procedures for:

- (a) measuring the outputs of the project under the agreement;
- (b) monitoring the implementation of, and performance of the project under the agreement;
- (c) liaising with the private party;
- (d) resolving disputes and differences with the private party;
- (e) generally overseeing the day to day management of the project;
- (f) reviewing of costing and tariffs in view of the long lifetime involved for the project; and
- (g) preparation of annual report or any other report over the project at any time, if circumstances dictate.

(3) The accounting officer shall be responsible for the service delivery through the project facilities as if the facilities were being managed and operated directly by the Government, and in so doing shall ensure-

- (a) maintenance of the facilities developed by the project on regular basis;
- (b) service delivery is at an acceptable level in terms of quality and reliability;
- (c) regular and annual performance reports are submitted to the Government and Parliament;
- (d) the facilities are subjected to regular accounting and auditing;
- (e) technology transfer and training of counterpart management to take over the management of the facility; and
- (f) smooth transfer of assets.

#### PART VII TERMINATION OF PROJECTS

Termination of  
the project

47.-(1) The contracting authority shall have a right to terminate the project due to:

- (a) inefficient implementation of the project by the private party;
- (b) failure to meet the deadline set for the project by the private party;
- (c) unforeseen events, beyond control of the private party;
- (d) breach of agreement by the private party;
- (e) non performance of the private party in service delivery as per agreement; or
- (f) force majeure:

Provided that, where the project is terminated under sub-regulation (1)(c) and the private party suffers loss, he shall fairly be compensated.

(2) Where the project is terminated for the failure of the private party to meet its obligations set under the agreement, the private party shall, after the expiration of thirty days from the day of notification, compensate the contracting authority for damages or losses suffered.

(3) Upon termination of the project for reasons other than unforeseen events, the contracting authority may, in pursuance of the Act and these Regulations, engage another party.

48.-(1) The private party shall have a right to terminate the project if the contracting authority fails to fulfil its commitment set under the agreement.

(2) Before the project is terminated for the failure of the contracting authority to fulfil its commitment set under the agreement, the contracting authority shall, within thirty days, be required to remedy the inefficiencies.

(3) Where the contracting authority fails to remedy the inefficiencies under sub-regulation (2) within the prescribe period, the contracting authority shall compensate the private party for the damages or losses suffered.

## PART VIII GENERAL PROVISIONS

Monitoring and  
evaluation

49.-(1) Every public private partnership project shall be monitored and evaluated by the contracting authority to ensure that the project is implemented in accordance with the agreement.

(2) The contracting authority shall, in collaboration with the private party, prepare a monitoring and evaluation framework which shall be comprised of:

- (a) project Management Plan;
- (b) performance criteria;
- (c) external audit and reporting requirements;
- (d) submission of progress reports;
- (e) verification of project assets and value; and
- (f) stakeholders communications.

SCHEDULE

(Made under regulation 18(2))

PPPA FORM 1



THE UNITED REPUBLIC OF TANZANIA

APPLICATION FOR APPROVAL OF PROJECT

- 1. Name of Applicant .....
- 2. Title of Company .....
- 3. Physical Address .....
- 4. Registration No. ....
- 5. Title of Project .....
- 6. Location of the Project .....
- 7. Nature of the Project .....
- 8. Cost of the Project.....
- 9. Duration of the Project .....
- 10. Name of Transaction Officer .....
- 11. Name of the Project Officer .....
- 12. Ministry responsible for the project.....

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- 13. Determination: (a) Approved .....
- (b) Disapproved .....

due to/pending on

.....  
.....  
.....

NAME: .....

TITLE: .....

SIGNATURE: .....

DATE: .....

Dar es Salaam,  
....., 2011

HON. MIZENGO P. PINDA (MP),  
*Prime Minister*

Permanent Secretary,  
Office of Prime Minister,  
DAR ES SALAAM.

RE: PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2011

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The heading above refers.

Please refer to your letter with Ref. No. EA. 296/349/01 dated 23<sup>rd</sup> May, 2011.

Attached herewith are the afore mentioned Regulations for your perusals and the Hon. Minister's signature. Kindly, after the signing of the Regulations by the Hon. Minister, the original and one copy should be returned to our Office for publication purposes.

In fostering our cooperation.

S.A. Nzori  
For: DEPUTY ATTORNEY GENERAL