

## GENERAL INFORMATION

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| <b>Capital:</b> Lusaka | <b>Population:</b> 16,211,767<br>(2015) | <b>GDP:</b> USD 21,154 Million<br>(2015) |
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## LEGAL AND INSTITUTIONAL FRAMEWORK

### PPP Law and other applicable texts

- The Public-Private Partnership Act, 2009
- The Public Procurement Act, 2008

### Other applicable sectoral laws

- The Energy Regulation Act, 1995
- The Electricity Act, 1995
- The Railways Act, 2002

### PPP Unit

- Public-Private Partnership Unit (PPP Unit) under the Zambia Development Agency (ZDA)
- Public-Private Partnership Council (PPP Council)
- Public-Private Partnership Technical Committee (PPP Tech Committee)

### Definition

#### (Art. 3 of the PPP Act, 2009)

"Public-private partnership agreement" means a contractual arrangement between a contracting authority and a concessionaire, made in accordance with this Act, in which the concessionaire:

- undertakes to perform or undertake any infrastructure project or infrastructure facility as specified in the First Schedule or as prescribed;
- undertakes to provide or provides such social sector services as may be prescribed;

- (c) assume substantial financial, technical and operational risks in connection with the performance of the institutional function or use of State property; and
- (d) receives consideration for performing a public function or utilising State property, either by way of :
  - (i) a fee from any revenue fund or a Ministry's budgetary funds;
  - (ii) user levies collected by the concessionaire from users or customers for a service provided by it; or
  - (iii) a combination of the consideration paid under subparagraphs (i) and (ii).

## General Principles

**(Art. 20 – procurement procedure of the PPP Act, 2009)**

- The procurement system shall be fair, equitable, transparent, competitive and cost effective;
- Relevant authorities shall take into account the Citizens Economic Empowerment Act, 2006 regarding preferential treatment for certain categories of disadvantaged or marginalized citizens in accessing and being awarded tenders for the procurement of goods and services.

## Tendering and contracting process / Choice of the private partner

**(Art. 20 to 38 of the PPP Act, 2009)**

- Competitive selection (art. 20-34)
- Non-competitive selection may be adopted in case of urgent need of provision, project with short duration and limited initial investment, national security, exclusive capacity of service provider, unsatisfied pre-selection results etc. (art. 35, 36)
- Unsolicited proposal received by the contracting authority may be advertised for competing proposals. After reviewing the proposals the contracting authority may award the project to the original proposal proponent, the competing proposal proponent, neither, or both. (art. 42)

The project award needs to be approved by the PPP Unit while the project contract needs to be approved by the PPP Council. (art.38(2))

## Project Evaluation

**(Art. 19 of the PPP Act, 2009)**

A contracting authority shall, after undertaking a feasibility study and in accordance with the advice of the PPP Unit, submit a project proposal together with the proposed agreement to the PPP Technical Committee for evaluation. The PPP Technical Committee will submit the feasibility study, the project proposal

and the proposed agreement to the PPP Council for approval. Similar procedures and approvals need to be done immediately when any assumption in the feasibility study is materially revised. (art.19)

## **Rights and Obligations of the public partner**

**(Art. 46, 47, 55 and 56 of the PPP Act, 2009)**

- Obligation to make available to the concessionaire or, as appropriate, shall assist the concessionaire in obtaining such rights related to the project site. (art. 46)
- Obligation to assist the concessionaire with obtaining easements, ie. to enjoy 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. (art. 47)
- Right to temporarily take over the operation of an infrastructure project or facility upon a material default by the concessionaire. (art. 55)
- Right of the PPP Unit to agree with any entity extending financing for a project and a concessionaire to provide for step in rights. (art.56(1))

Obligation to facilitate a concessionaire to securitize any project receivables and assets in favor of a lender subject to terms and conditions to safeguard the implementation, completion, working, management and control of the project. (art.56(2))

## **Rights and Obligations of the private partner**

**(Art. 43, 48, 49, 50, 52, 53 and 54 of the PPP Act, 2009)**

- Obligation to guarantee the performance of and maintain insurance policies for the implementation of the project. (art.43 (j))
- Right to charge, receive or collect user levies, or direct payments from the contracting authority as a substitute (full or partial), for the use of an infrastructure facility or its services in accordance with an agreement (art.48)
- Right of a concessionaire to create security interests over any of its assets, rights or interests, including those relating to the project (art.49 (1))
- Right of the shareholders of a concessionaire's company to pledge or create any other security interest in their shares in the company (art.49 (2))
- The rights and obligations of the concessionaire may not be assigned to a third party without the prior written consent of the appropriate contracting authority. (art.50 (1))A

controlling interest in the concessionaire's company shall not be transferred to third parties without the consent of the appropriate contracting authority. (art.51 (1))

- The concessionaire shall have the right to issue and enforce rules governing the use of the infrastructure governing (art.52 (1))
- Obligation related to the operation of infrastructure facility (art. 52 (1))
- Right to be entitled compensation for costs/losses due to the change of laws specifically applicable to the project. (art.53)

Right to revise the agreement and be compensated for costs/losses due to changes in economic conditions or unforeseeable changes in laws not specifically applicable to the project. (art.54)

## Obligations and Rights of Both Public and Private Partners

(Art. 37, 42, 54 and 58 of the PPP Act, 2009)

- Obligation of non-disclosure (art.37 (1)(2), art.42(3))
- Right to terminate the agreement in some circumstances, e.g. material default by the other party, or failed to agree on a revision of the agreement (under art.54) or circumstances beyond either party's control. A contracting authority or the Unit can also terminate the agreement for public interest, subject to compensation to the concessionaire. (art.58)

## Applicable Law

### Dispute resolution

(Art. 44, 64 and 67 of the PPP Act, 2009)

- Law of Zambia (art.44)
- Dispute settled through the agreed dispute settlement by the parties and by default in accordance with Arbitration Act, 2000. (art.64)
- The PPP Act also applies to PPP agreements entered into before the commencement of the Act. (art.67)

## EXAMPLES OF PROJECTS STRUCTURED AS PPP

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### Energy Sector

Kabompo Gorge Hydropower Plant of 40 MW

### Urban Transports

Chingola-Solwezi-Lumwana-Jimbe freight railway line

### Roads

Toll road project Lusaka-Livingstone in BOOT

Kaliba-Mwenda Road Project