

# ACT

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## *THE PUBLIC-PRIVATE PARTNERSHIP ACT, 2010*

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SCHEDULE

SIGNED this    day of    , 2010

DR. ERNEST BAI KOROMA,  
*President.*

No.

2010



**Sierra Leone**

**The Public-Private Partnership Act, 2010.**

Short title.

**Being an Act to promote and facilitate the implementation of public-private partnership transactions for infrastructure projects and social sector service projects; to establish a Public-Private Partnership Council and a Public-Private Partnership Unit; and to provide for matters incidental thereto.**

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

## PART I—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires—

“affordable” in relation to a PPP Project, means an arrangement where a contracting authority is able to meet any financial commitment likely to be incurred under the PPP Agreement from the contracting authority’s existing or future budgetary funds;

“asset” includes an existing asset of a relevant contracting authority or a new asset to be acquired for the purposes of entering into a PPP Agreement;

“bid” means a tender, an offer, a proposal or price quotation, given in response to an invitation to participate in a PPP Project;

“bidder” means any person, including a group of persons, that participates in selection proceedings relating to a PPP Project;

“bidding documents” means the tender solicitation documents or other documents for solicitation of bids for a PPP Project, on the basis of which bidders are to prepare their bids;

“bidding consortium” means a group of persons making a proposal for a PPP Project, and “bidding consortia” shall be construed accordingly;

“commercial close” means the event that occurs when a contracting authority and a private partner have reached agreement on all terms of the PPP Agreement, subject only to the private partner obtaining financing for the proposed PPP transaction where such financing is required;

“contract finalisation phase” means that phase of a PPP transaction which takes place following the issuance by the Council, of the approval required by section 59(1), and prior to the commencement of the implementation phase, and shall include the achievement of both the commercial close and, where financing is required, the financial close of the PPP transaction;

“contracting authority” means a public authority ;

“Council” means the Public-Private Partnership Council established by section 25;

“Director” means the Director appointed under section 34;

“feasibility study” means a study commissioned or undertaken by a contracting authority for submission to the Council in accordance with section 42 (3);

“financial close” means the event that occurs, subsequent to commercial close, when a private partner has obtained the financing that may be required for a PPP transaction, and a final agreement, without conditionality as to financing, has been reached between the private partner and a contracting authority;

“implementation phase” means that phase of a PPP transaction which takes place following the achievement of the financial close of the PPP transaction;

“infrastructure project” means the design, construction, development and operation of any new infrastructure facility or the rehabilitation, modernisation, expansion or operation of any existing infrastructure facility, where

- (a) in the case of a new facility, the facility would have been, prior to the start of the project, of a type that would be within the responsibility of a contracting authority; and
- (b) in the case of an existing facility, the facility was, prior to the start of the project, within the responsibility of a contracting authority;

“local authority” has the meaning assigned to it under the Local Government Act, 2004;

“material default” means any failure of a private partner to perform any duty under a PPP Agreement which remains unsatisfied after the private partner has received written notice of the failure from the contracting authority;

“Minister” means the minister responsible for finance;

“parties” means the contracting authority and the private partner in a PPP Agreement ;

“PPP Project” means an infrastructure project or a social sector service project, as applicable, undertaken between a contracting authority and a private partner under this Act;

“pre-feasibility study” means a study commissioned or undertaken by a contracting authority for submission to the Unit in accordance with section 42;

“preferred bidder” means a bidder, including any bidding consortium, selected as a successful bidder during the procurement phase;

“private partner” means a person from the private sector who undertakes a PPP Project;

“procurement phase” means that phase of a PPP transaction which takes place following the issuance, by the Council, of the approval required by section 42;

“project identification phase” means the initial phase of a PPP transaction prior to the issuance, by the Council, of the approval required by section 42;

“public authority” means a Ministry, Government department, local authority or other statutory body;

“public function” means a function lying within the area of responsibility of a public authority;

“public-private partnership” or “PPP” means private sector participation in a project under this Act;

“regulatory agency” means a public authority that is entrusted with the power to issue and enforce the laws governing infrastructure developments or the provision of social sector services;

“Sierra Leone Investment and Export Promotion Agency” has the meaning assigned to it in the Sierra Leone Investment and Export Promotion Agency Act, 2007;

“social sector service project” means the design, development or operation of any systems, including utilities, that directly or indirectly provide social services to the general public over a period of at least five years, where such systems were within the responsibility of a contracting authority prior to the start of the project;

“ Unit” means the Public-Private Partnership Unit established by section 32 ;

“unsolicited proposal” means any proposal relating to the implementation of a PPP project that is not submitted in response to a request or solicitation issued by a contracting authority under sections 45 to 59;

“user levy” means the right or authority granted to a private partner by a contracting authority to recover investment and a fair return on investment through collections from users of a PPP Project, and includes tolls, fees, tariffs, charges or any other benefit whatsoever called; and

“value for money” means the carrying out of the public function of a contracting authority or the use of public property by a private partner, under a PPP Agreement, which results in a net benefit to the contracting authority or consumer, defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.

Application.

**2.** (1) This Act applies to infrastructure projects and social sector service projects, undertaken between a public authority and a private partner, under a PPP Agreement.

(2) A PPP Agreement may be in the form of a concession transaction, a lease transaction, a management contract transaction or a long-term service contract transaction, as described in the Schedule, or may be in such other forms of public-private partnerships as may be prescribed by the Council.

(3) Where this Act conflicts with the procurement rules of a donor or funding agency, the application of which is mandatory under an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, this Act shall apply to all public-private partnership transactions, other than those transactions which have been expressly excluded from the provisions of this Act.

**3.** (1) This Act does not apply to the purchases of goods, services and works under the Public Procurement Act, 2004 nor to the privatization or divestiture of public infrastructure or publicly owned enterprises. Exclusion of public procurements, privatizations, etc.

(2) This Act does not apply to the granting of any mineral rights under the Mines and Minerals Act, 2009.

#### PART II—PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

**4.** (1) A Public-Private Agreement (PPP Agreement) is an agreement between a contracting authority and a private partner, made in accordance with this Act in which the private partner— Nature of PPP Agreement.

- (a) agrees to perform or undertake any infrastructure project or social sector service project;
- (b) assumes financial, technical or operational risks in connection with the performance of a public function or the use of public property; and
- (c) receives consideration for performing a public function or utilising public property, by way of—
  - (i) a fee from any revenue fund or budgetary fund of the Government;
  - (ii) user levies collected by the private partner from end-users or customers for a service provided by the private partner; or
  - (iii) a combination of the consideration paid under subparagraphs (i) and (ii).

(2) A PPP Agreement shall provide for such matters as the parties consider appropriate, but shall include—

- (a) the nature and scope of works to be performed and services to be provided by the private partner;
- (b) the conditions for provision of services and the extent of exclusivity, if any, of the private partner's rights under the PPP Agreement;
- (c) the assistance that a contracting authority may provide to the private partner in obtaining licences and permits to the extent necessary for the implementation of the PPP Project;
- (d) the return of assets, if any, to a contracting authority, at the termination or expiry of the PPP Agreement, in such manner as may be provided for in the PPP Agreement;
- (e) in the case of a PPP Project for infrastructure, procedures for the review and approval of engineering designs, construction plans and specifications by the contracting authority and the procedures for testing and final inspection, approval and acceptance of the PPP Project;
- (f) the rights of the contracting authority, or of a regulatory agency, to monitor the works to be performed and services to be provided by the private partner, and the conditions and extent to which the contracting authority or the regulatory agency 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 PPP Project is properly operated and the services are provided in accordance with the applicable legal and contractual requirements;

- (g) the extent of the private partner's obligation to provide the contracting authority or regulatory agency, as appropriate, with reports and other information on its operations;
- (h) mechanisms to deal with additional costs and other consequences that might result from any order issued by contracting authority, or another public authority, including any compensation to which the private partner might be entitled;
- (i) any rights of the contracting 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;
- (j) guarantees of performance to be provided and insurance policies to be maintained by the private partner in connection with the implementation of the PPP Project;
- (k) remedies available in the event of default of either party;
- (l) the extent to which either party may be exempt from liability for failure or delay to comply with any obligation under the agreement owing to circumstances beyond its reasonable control;
- (m) the duration of the PPP Agreement and the rights and obligations of the parties upon its expiry or termination;
- (n) the manner for calculating compensation under this Act as provided under section 22;

- (o) the governing law and the mechanisms for the settlement of disputes that may arise between the contracting authority and the private partner;
- (p) the rights and obligations of the parties with respect to confidential information;
- (q) the relevant financial terms;
- (r) the sharing of risks between the contracting authority and the private partner;
- (s) the payment to the private partner by way of compensation from a revenue fund or of user levies collected by the private partner for a service provided by it as provided under section 9; and
- (t) such other information as may be prescribed.

Governing law.

**5.** A PPP Agreement shall be governed by and construed in accordance with the laws of Sierra Leone, unless otherwise provided in the PPP Agreement.

Ownership of assets.

**6.** (1) A PPP Agreement shall specify, which assets are or shall be public property and which assets are or shall be the private property of the private partner.

(2) A PPP Agreement shall, in particular, identify which assets belong to the following categories-

- (a) assets, if any, that the private partner is required to return or transfer to the contracting authority or to another entity indicated by the contracting authority in accordance with the terms of the PPP Agreement;

- (b) assets, if any, that the contracting authority, at its option, may purchase from the private partner; and
- (c) assets, if any, that the private partner may retain or dispose of upon expiry or termination of the PPP Agreement.

**7.** (1) A contracting authority or other public authority, under the terms of any relevant law and a PPP Agreement, shall make available to the private partner or, as appropriate, shall assist the private partner in obtaining such rights related to the PPP Project site, including title thereto, as may be necessary for the implementation of the PPP Project .

Acquisition of rights related to project site.

(2) Any compulsory acquisition of land that may be required for the implementation of a PPP Project shall be carried out in accordance with such procedures as the Minister may specify by regulations, provided that those persons having an interest in or rights over the land so acquired shall be paid fair and adequate compensation by the private partner undertaking the PPP Project.

**8.** A contracting authority or other public authority under the terms of any law and a PPP Agreement shall make available and assist the private partner to enjoy the right to enter upon, transit through or do work or fix installations upon property of third parties required for the implementation of the PPP Project.

Easements.

**9.** (1) A PPP Agreement may permit a private partner to have the right to charge, receive or collect user levies for the use of a PPP Project in accordance with the terms of the PPP Agreement, which shall provide for methods and formulas for the establishment and adjustment of user levies in accordance with any rules established by a competent regulatory agency.

Financial arrangements.

(2) A contracting authority may agree to make direct payments to the private partner as a substitute for, or in addition to, user levies for the use of the PPP Project.

Security interest.

**10.** (1) Subject to any restriction that may be contained in a PPP Agreement, a private partner shall have the right to create security interests over any of its assets, rights or interests, including those relating to a PPP Project, as shall be required to secure any financing needed for the PPP Project, including, in particular, the following:—

- (a) security over movable or immovable property owned by the private partner or its interests in PPP Project assets; and
- (b) a pledge of the proceeds of, and receivables owed to the private partner for, the use of the PPP Project.

(2) The shareholders of a private partner’s company shall have the right to pledge or create any other security interest in their shares in the company.

(3) No security under subsections (1) and (2) may 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 laws of Sierra Leone.

Assignment of PPP Agreement.

**11.** (1) Except as otherwise provided in section 11, the rights and obligations of the private partner under a PPP Agreement may not be assigned to a third party without the prior written consent of the contracting authority.

(2) A PPP Agreement shall set out the conditions under which a contracting authority shall give its consent to an assignment of the rights and obligations of the private partner under the PPP Agreement, including the acceptance by the new private partner of all obligations thereunder and evidence of the new private partner’s technical and financial capability as shall be necessary for undertaking the PPP Project.

Transfer of controlling interest in private partner.

**12.** (1) Except as otherwise provided in a PPP Agreement, a controlling interest in the private partner’s company shall not be transferred to third parties without the consent of the contracting authority.

(2) A PPP Agreement shall set forth the conditions under which the consent of a contracting authority shall be given under subsection (1).

**13.** (1) A PPP Agreement shall set out the extent of a private partner’s obligations to ensure— Operation of PPP Project.

- (a) the modification of the PPP Project so as to meet the public demand for the PPP Project;
- (b) the continuity of the PPP Project;
- (c) the provision of the PPP Project under essentially the same conditions for all users; and
- (d) the non discriminatory access, as appropriate, of other service providers to any PPP Project operated by the private partner.

(2) A private partner shall have the right to issue and enforce rules governing the use of the PPP Project, subject to the approval of the contracting authority and the concerned regulatory agency.

**14.** A PPP Agreement shall set out the extent to which a private partner is entitled to compensation in the event that the cost of the private partner’s performance of the PPP Agreement has substantially increased or that the value that the private partner receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in legislation or regulations specifically applicable to the PPP Project. Compensation for specific changes in legislation.

**15.** (1) Without prejudice to section 15, a PPP Agreement shall set out the extent to which a private partner is entitled to a revision of the PPP 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 the private partner receives for such performance has substantially diminished as compared with the costs and the values of performance originally foreseen , as a result of – Revision of PPP Agreement



- (a) changes in economic or financial conditions; or
- (b) changes in legislation or regulations not specifically applicable to the PPP Projects; provided that the economic, financial, legislative or regulatory changes
  - (i) occur after the conclusion of the PPP Agreement;
  - (ii) are beyond the control of the private partner; and
  - (iii) are of such a nature that the private partner could not reasonably be expected to have taken them into account at the time the PPP Agreement was negotiated or have avoided or overcome their consequences.

(2) A PPP Agreement shall establish procedures for revising the terms of the PPP Agreement following the occurrence of the circumstances described in subsection (1).

Takeover of  
PPP Project.

**16.** (1) A contracting authority shall have the right, under the prescribed circumstances set out in a PPP Agreement, to take over the operation of a PPP Project, for the purpose of ensuring the effective and uninterrupted delivery or timely completion of the PPP Project in the event of a-

- (a) material default by the private partner in the performance of its obligations; and
- (b) failure by the private partner to rectify the breach within a reasonable period of time after having been given notice by the contracting authority to do so.

(2) The duration of a takeover referred to in subsection (1) and the residual rights- (if any) of the private partner shall be as set out in the PPP Agreement.

(3) When a contracting authority elects to take over a PPP Project under subsection (1), the contracting authority, in accordance with the terms of the PPP Agreement—

- (a) shall collect and pay any revenues that are subject to lien to satisfy any obligation;
- (b) may develop and operate the PPP Project, impose user levies and comply with any existing service contract; and
- (c) may solicit proposals, as appropriate, for the construction, maintenance or operation of the PPP Project.

**17.** (1) A contracting authority may agree with any entity extending financing for a PPP Project and a private partner to provide for the substitution of the private partner with another person appointed to perform under the existing PPP Agreement, upon a material default by the private partner or other event that could otherwise justify the termination of the PPP Agreement.

Substitution  
of private  
partner.

(2) A contracting authority may facilitate a private partner to securitise any receivables and assets of the PPP Project in favour of a lender, subject to such terms as the contracting authority may determine in order to safeguard the successful implementation, completion, working, management and control of the PPP Project.

**18.** The duration of a public private partnership shall be set out in the PPP Agreement, and the contracting authority may not agree to extend its duration except as a result of the following circumstances-

Duration and  
extension of  
PPP Agree-  
ment.

- (a) delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;
- (b) suspension of the PPP Project brought about by acts of the contracting authority or other public authority;

- (c) an increase in costs arising from requirements of the contracting authority not originally foreseen in the PPP Agreement, if the private partner would not be able to recover such costs without such extension; or
- (d) on agreement with the private partner, for reasons of national or public interest, as justified in the record to be kept by the contracting authority.

Termination of PPP Agreement by contracting authority.

**19.** A contracting authority may terminate a PPP Agreement-

- (a) when it can no longer be reasonably expected that the private partner will be able or willing to perform its obligations, owing to insolvency, material default or otherwise; or
- (b) for compelling reasons of national or public interest, subject to payment of compensation to the private partner as agreed in the PPP Agreement.

Termination of PPP Agreement by private partner.

**20.** A private partner shall not terminate a PPP Agreement except under the following circumstances:-

- (a) when there is material default by the contracting authority or other public authority of its obligations under the PPP Agreement;
- (b) if the conditions for a revision of the PPP agreement under subsection (1) of section 15 are met, but the parties have failed to agree on a revision of the PPP Agreement; or

- (c) if the cost of the private partner's performance of the PPP 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 of the contracting authority or other public authority, and the parties have failed to agree on a revision of the PPP Agreement.

**21.** Either party has the right to terminate a PPP Agreement with the consent of the other party or if the performance of its obligations is rendered impossible by circumstances beyond a party's reasonable control. Termination of PPP Agreement by either party.

**22.** A PPP Agreement shall stipulate how compensation due to either party shall be calculated in the event of termination of the PPP Agreement and shall provide, where appropriate, for compensation for the fair value of works performed under the PPP Agreement, costs incurred or losses sustained by either party, including, as appropriate, lost profits. Compensation upon termination of PPP Agreement.

**23.** A contracting authority shall be responsible for ensuring that PPP Agreements executed by the contracting authority are properly implemented, managed, enforced, monitored and reported on by the private partner. Management of PPP Agreements.

**24.** A PPP Agreement shall provide for- Winding up and transfer measures.

- (a) mechanisms and procedures for the transfer of assets to a contracting authority in case of a winding up;
- (b) the compensation to which the private partner may be entitled in respect of assets transferred to a contracting authority or to a new private partner or purchased by a contracting authority;
- (c) the transfer of technology required for the operation of a PPP Project;

- (d) the training of a contracting authority's personnel or of a successor private partner in the operation and maintenance of the PPP Project; and
- (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 PPP Project to a contracting authority or to a successor private partner.

### PART III—ESTABLISHMENT OF PUBLIC-PRIVATE PARTNERSHIP COUNCIL

Establishment  
of Council.

**25.** There is hereby established a body to be known as the Public-Private Partnership Council.

Membership  
of Council.

**26.** The Council shall consist of the following members:—

- (a) Minister responsible for finance who shall be the Chairman;
- (b) Minister responsible for trade;
- (c) a representative of the Office of the President, who shall be appointed by the President;
- (d) Minister responsible for lands,
- (e) Attorney-General and Minister of Justice; and
- (f) Chief Executive Officer of the Sierra Leone Investment and Export Promotion Agency;
- (g) a representative of the civil society movement; and
- (h) Minister responsible for local government.

**27.** When the Council is considering the issuance of an approval for a proposed PPP Project under section 28(2) (c), (d) or (e), the minister with responsibility for the sector affected by the proposed PPP Project shall, on a temporary basis, be a voting member of the Council for the purposes of such approvals.

Temporary  
membership  
of Council

**28.** (1) Subject to this Act, the object for which the Council is established shall be to oversee the operation of the public-private partnership system in Sierra Leone .

Functions of  
Council.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Council to—

- (a) consider for approval, modification or rejection all policies relating to public-private partnership transactions proposed by the Unit under section 33(b);
- (b) ensure competition, transparency, fairness and equity in the PPP transaction selection processes under this Act;
- (c) consider for approval, modification or rejection all PPP Project initial proposals made by a contracting authority under section 42(3), taking into account the results of the required feasibility study and the recommendations of the Unit made under section 33(i);
- (d) consider for approval, modification or rejection all requests for proposals made by a contracting authority under sections 51 and 52, taking into account recommendations of the Unit made under section 33(l);
- (e) consider for approval, modification or rejection all proposed PPP Agreements submitted by a contracting authority under section 59, taking into account the recommendations of the Unit made under section 33(m);

- (f) review the quarterly reports of the Unit submitted under section 33(p) and provide directions to the Unit and the concerned contracting authority regarding the PPP Projects referenced therein, including directions as to the management of such PPP Projects during the procurement phase, the contract finalisation phase, or the implementation phase;
- (g) resolve, on an emergency basis, any issues relating to the management of PPP Projects during the procurement phase, the contract finalisation phase, or the implementation phase, as may be raised by the Unit or as may be raised by the members of the Council on their own initiative, and provide such directions to the Unit and the concerned contracting authority as may be required;
- (h) refer any unsolicited proposals received by it to an appropriate contracting authority for examination and evaluation under section 67;
- (i) set time limits for the approval of PPP Project initial proposals, requests for proposals and proposed PPP Agreements, and review the time limits periodically; and
- (j) carry out such other activities connected with or incidental to the other functions of the Council.

Powers of Council.

**29.** In the discharge of its functions under this Act, the Council –

- (a) shall take into consideration the recommendations of the Unit and, where appropriate, the relevant contracting authority;
- (b) may commission any study relevant to the determination of the award of any agreement;

- (c) may request any contracting authority, regulatory agency, private partner or any other body or person to furnish the Council with information, details, documents and particulars required in connection with or relating to any PPP Project;
- (d) may direct the Unit to engage additional professional or technical assistance on terms of reference approved by the Council;
- (e) may inspect, visit, review and monitor any PPP Project;
- (f) may direct the Unit to investigate the performance of a contracting authority in respect of any PPP Project; and
- (g) shall monitor and provide oversight in respect of the activities of the Unit.

**30.** (1). The Council shall meet for the discharge of its business at such time and place as the Chairman may determine but shall meet at least once every three months. Meetings of Council.

(2) A special meeting of the Council shall be summoned by the Chairman at the written request of not less than four members of the Council.

(3) The Chairman shall preside at meetings of the Council at which he is present and in his absence, a member elected by the members present from among their number shall preside.

(4) Each member shall have one vote but where there is equality of votes, the Chairman or other member presiding shall have a casting vote.

(5) All acts, matters or things authorised or required to be done by the Council shall be decided at a meeting where a quorum is present and the decision is supported by votes of a majority of the members.

(6) The quorum for a meeting of the Council shall be four.

(7) The Council may co-opt any person to attend and participate in its deliberation on any matter but such person shall not vote on any matter for decision by the Council.

(8) The Director shall attend all meetings and deliberations of the Council but shall not be entitled to vote.

(9) The Council shall cause minutes of all its meetings to be signed and kept in proper form as a public record.

(10) Subject to this Act, the Council shall regulate its own procedure.

Disclosure of interest.

**31.** Any member of the Council having a personal interest, whether pecuniary or otherwise, direct or indirect, in any matter to be considered by the Council, shall disclose the fact of such interest and the nature thereof, and such disclosure shall be recorded in the minutes of the Council and such member shall take no part in any deliberation or discussion of the Council relating to such matter.

#### PART IV-PUBLIC-PRIVATE PARTNERSHIP UNIT AND OTHER RELATED PROVISIONS

Establishment of Unit.

**32.** There is hereby established the Public Private Partnership Unit which shall be a department in the Ministry responsible for finance.

Functions of Unit.

**33.** Subject to this Act, the Unit shall perform the following functions:-

- (a) serve as the secretariat for the Council, and provide such logistical support for the Council as the Council may require;

(b) develop, for consideration by the Council, policies relating to public-private partnerships for the purposes of this Act.

(c) develop technical and best practice guidelines in relation to all aspects PPP transactions;

(d) co-ordinate with and provide assistance to contracting authorities in respect of all PPP Projects;

(e) provide training for contracting authorities in respect of PPP initiatives;

(f) consider for approval, modification or rejection all pre-feasibility studies submitted by contracting authorities under section 43(2);

(g) upon request from a contracting authority, assist the contracting authority with the preparation of a feasibility study for a proposed PPP Project as required by section 43(3);

(h) consider each PPP Project initial proposal developed by a contracting authority, with the accompanying feasibility study, and give the Unit's recommendations to the applicable contracting authority as to whether the proposed PPP Project-

(i) is affordable to the contracting authority;

(ii) provides value for money; and

(iii) is otherwise feasible;

- (i) make recommendations to the Council in respect of PPP project initial proposals and feasibility studies submitted by contracting authorities under section 42(3);
- (j) consider for approval, modification or rejection all requests made by contracting authorities for written authorization to issue a request for submission of expressions of interest, under section 46(2);
- (k) consider for approval, modification or rejection all pre-selection reports submitted by contracting authorities under section 50;
- (l) make recommendations to the Council in respect of requests for proposals submitted by contracting authorities under sections 51 and 52, based on a full legal and financial analysis of each proposed PPP Agreement, including an analysis of any investment incentives offered to a private partner by or on behalf of a contracting authority;
- (m) make recommendations to the Council in respect of proposed PPP Agreements submitted to the Council by contracting authorities under section 59;
- (n) monitor all ongoing PPP Projects managed by contracting authorities, in respect of the procurement phase, the contract finalisation phase, and the implementation phase of each such PPP Project, and provide advice and support to contracting authorities for all ongoing PPP Projects;

- (o) ensure that each contracting authority develops and implements a public awareness strategy, to educate the public on the objectives, structure and progress of each PPP Project being undertaken by the contracting authority;
- (p) provide quarterly reports to the Council regarding the management by contracting authorities of all ongoing PPP Projects, in respect of the procurement phase, the contract finalisation phase, and the implementation phase of each such PPP Project;
- (q) provide emergency reports, as required, to the Council regarding the management by a contracting authority of any PPP Project under stress, in respect of the procurement phase, the contract finalisation phase, or the implementation phase of any such PPP Project;
- (r) prepare, when appropriate, standardised terms of reference for consultants retained by contracting authorities, standardised bidding documents and standardised PPP Agreement provisions;
- (s) in liaison with the Sierra Leone Investment and Export Promotion Agency, facilitate and market investments in public-private partnerships; and
- (t) perform such other functions provided for under this Act, or as may be assigned by the Council.

**34.** (1) The Unit shall have a Director who shall be appointed <sup>Director.</sup> by the Council on such terms and conditions as the Council may determine.

- (2) The Director shall be a person with—
- (a) formal qualifications in any profession relevant or appropriate to the functions of the Unit;
  - (b) proven ability in public administration and management; and
  - (c) extensive legal or financial experience related to complex commercial transactions.

(3) The Director shall, subject to the general or specific directions of the Council—

- (a) be responsible for the day-to-day administration of the Unit;
- (b) act as the Secretary for the Council; and
- (c) exercise such other duties as may be determined by the Council.

(4) The Director shall not be removed from office, except for reasons which would justify his removal from the public service.

Other staff of Unit.

**35.** (1) There shall be appointed by the Council, on such terms and conditions as the Council may determine, other staff of the Unit as the Unit may require for the efficient discharge of its functions under this Act.

Consultants and experts.

**36.** The Council may engage the services of such consultants or experts as it may consider necessary for the proper and efficient performance of the functions of the Unit.

#### PART V—FINANCIAL PROVISIONS

Funds of Unit

**37.** The activities of the Unit shall be financed by funds consisting of—

- (a) moneys appropriated by Parliament for the purposes of the Unit; and
- (b) donations from interested parties.

**38.** (1) The Unit shall keep proper books of account and proper records in relation to them in a form approved by the Auditor-General.

Accounts and audit.

(2) The books of account referred to in subsection (1), shall be audited by the Auditor-General or an auditor appointed by him within three months after the end of each financial year.

**39.** The financial year of the Unit shall be the same as the financial year of Government.

Financial year of Unit.

**40.** (1) Following the end of each financial year, the Director shall, as soon as possible but not later than three months after the end of each financial year, submit to the Council a report of the activities, operations, undertakings, properties and finances of the Unit for that year, including the Auditor-General's report.

Annual report.

(2) The Minister shall lay a copy of the report referred to in subsection (1) before Parliament within thirty days of receipt of the report.

#### PART VI—CONTRACTING AUTHORITIES

**41.** Contracting authorities shall have primary responsibility for the management of the project identification phase, the procurement phase, the contract finalisation phase, and the implementation phase of each PPP Project within their respective areas of authority.

Responsibilities of contracting authority.

**42.** (1) A contracting authority shall obtain the approval of the Unit before commissioning or undertaking a feasibility study.

Council approval following project feasibility study.

(2) A contracting authority shall commission or undertake, and submit to the Unit, a pre-feasibility study for each proposed PPP Project.

(3) A contracting authority shall submit a project proposal, including the completed feasibility study, to the Council for evaluation and approval after –

(a) completion of the feasibility study; and

(b) consultation with the Unit regarding the feasibility study.

(4) A contracting authority shall obtain the approval of the Council before proceeding to the procurement phase of any proposed PPP Project.

Revision of  
feasibility  
study.

**43.** If the Council has given approval for a PPP Project to proceed to the procurement phase and a key assumption in the feasibility study is materially revised after such approval, including any assumption concerning affordability, value for money and substantial technical, operational and financial risk transfer, the contracting authority shall immediately–

(a) provide the Unit with details of the intended revision including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and

(b) provide the Unit with a revised feasibility study for submission to the Council.

Directions  
given by  
Council.

**44.** (1) The Council may give directions to a contracting authority in respect of the management of any phase of a PPP Project after consultation with the Minister responsible for the sector affected by the PPP Project.

(2) A contracting authority shall adhere to any directions given by the Council referred to in subsection (1).

#### PART VII–COMPETITIVE SELECTION PROCESS AND AWARD PROCEEDINGS

**45.** (1) The procurement procedure relating to a PPP Projects shall be as follows:– Procurement principles.

(a) the procurement procedure shall be fair, equitable, transparent, competitive and cost effective; and

(b) notwithstanding any provision in any other legislation, the procurement procedure shall be in accordance with this Act and any regulations or rules made thereunder.

**46.** (1) A contracting authority shall prepare a request for submission of expressions of interest and the associated pre-selection bidding documents, after receiving approval from the PPP Council under section 28(1)(c). Requests for expressions of interest and pre-selection bidding documents.

(2) A contracting authority shall submit the request for submission of expressions of interest and the associated pre-selection bidding documents prepared by it to the Unit for written authorisation to advertise, invite, solicit or call for bids for the purposes of engaging in pre-selection proceedings.

(3) A contracting authority shall not issue a request for submission of expressions of interest for a public private partnership unless it obtains the written authorisation of the Unit.

(4) The request for submission of expressions of interest shall be published in accordance with the regulations and rules issued under this Act.

(5) The request for expressions of interest shall include at least the following:–

(a) a description of the proposed PPP Project;



- (b) an indication of the essential elements of the PPP Project, such as the-
  - (i) services to be delivered by the private partner; and
  - (ii) financial arrangements envisaged by the contracting authority;
- (c) a summary of the main required terms of the PPP Agreement to be entered into;
- (d) the manner and place for the submission of applications for pre-selection and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their expressions of interest;
- (e) the manner and place for solicitation of the pre-selection bidding documents; and
- (f) an appropriate statement to the effect that the contracting authority reserves the right to request proposals upon completion of the pre-selection proceedings only from a limited number of bidders that best meet the pre-selection criteria.

(6) The pre-selection bidding documents shall include at least the following information:

- (a) the pre-selection criteria in accordance with section 47;
- (b) whether the contracting authority intends to waive any limitation on the participation of consortia in accordance with section 48;

- (c) whether the contracting authority intends to request only a limited number of pre-selected bidders to submit proposals upon completion of the pre-selection proceedings and, if applicable, the manner in which this selection shall be carried out; and
- (d) whether the contracting authority intends to require the preferred bidder to establish an independent legal entity under any other law in accordance with section 66.

**47.** Any person who meets the criteria stated in the pre-selection bidding documents shall qualify for the pre-selection proceedings, which criteria shall include the following:— Pre-Selection criteria.

- (a) adequate professional and technical qualifications, human and physical resources as may be necessary to carry out all aspects of the PPP Project;
- (b) appropriate managerial and organisational capability, reliability and experience, including previous experience in operating similar PPP Projects;
- (c) adequate financial capacity to fund, or experience in arranging financing, for the investment required for the PPP Project, and
- (d) no involvement in litigation that could materially affect the ability to carry out the PPP Project.

**48.** (1) A contracting authority, when requesting the submission of expressions of interest, may allow bidders to form bidding consortia in accordance with the terms and conditions imposed by the contracting authority and, in such a case, the bidding consortium shall demonstrate its qualifications, in accordance with section 47 relating to the consortium as a whole as well as to its individual members. Participation of consortia

(2) Unless otherwise authorised by a contracting authority in the pre-selection bidding documents, each member of a consortium may participate, either directly or indirectly, in only one consortium at the same time.

(3) When considering the qualifications of bidding consortia, a contracting authority shall consider the capabilities of each of the consortium's members and assess whether the combined qualifications of the consortium's members are adequate to meet the needs of all aspects of the project.

Evaluation of qualifications

**49.** (1) A contracting authority shall evaluate the qualifications of each bidder that has submitted an expression of interest for pre-selection, applying only the criteria that are set forth in the pre-selection bidding documents and this Act, and the contracting authority shall then prepare a pre-selection report for consideration by the Unit, as specified in section 50.

(2) Each pre-selected bidder shall be invited by the contracting authority to submit a proposal in accordance with this Act after the approval of the contracting authority's pre-selection report by the Unit as specified in section 50.

Approval of pre-selection report by Unit.

**50.** (1) After the evaluation of the pre-selection bids pursuant to section 49, the contracting authority shall submit its pre-selection report to the Unit for approval, demonstrating how the pre-selection criteria have been met.

(2) The pre-selection report shall contain the following statements:-

- (a) that the bids explain the capacity of the private partner to effectively implement, manage, enforce, monitor and report on the proposed PPP Project;
- (b) that a satisfactory due diligence analysis has been completed by the Unit, in consultation with the concerned contracting authority, in

relation to the capacity and qualifications of the selected private partners to complete the proposed PPP Project; and

- (c) that the contracting authority has developed and is implementing a public awareness strategy, to educate the public on the objectives, structure and progress of the PPP Project.

**51.** (1) A contracting authority shall prepare a Request for Proposals after the Unit has approved the pre-selection report. Requests for Proposals.

(2) A Request for Proposals shall include the following -

- (a) general information as may be required by the bidders in order to prepare and submit their proposals;
- (b) criteria for evaluating technical offers, and the thresholds, if any, set by the contracting 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;
- (c) the date by which the bidders' proposals must be submitted, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their proposals in response to the final version of the Request for Proposals;
- (d) a set of tender documents emphasizing functional requirements and performance criteria of the PPP Project, rather than input

specifications for the PPP Project, and a draft of all proposed PPP Agreements for the proposed PPP Project; and

- (e) the requirements with respect to the issue of, and the nature, form, amount and other principal terms and conditions of, the required bid security.

(3) A Request for Proposals shall request the submission of both a technical offer and a financial offer, which shall be two separate documents as follows:-.

- (a) the emphasis of the technical offer shall be on the overall design of the PPP Project as well as on the related quality and conditions of delivery, including the contracting authority's requirements regarding safety and security standards and environmental protection;
- (b) the emphasis of the financial offer shall be on the lowest average price for the service over the lifetime of the PPP Project.

(4) The contracting authority shall submit the Request for Proposals to the Council and the Unit for review, prior to issuing the Request for Proposals to the pre-selected bidders.

(5) A contracting authority shall not issue a Request for Proposals to any pre-selected bidder unless it receives approval from the Council to issue such Request for Proposals.

(6) In support of a request for the approval, by the Council, of the issuance of a Request for Proposals, the contracting authority shall provide the Unit and the Council with a full legal and financial analysis of each proposed PPP Agreement to be attached to the final Request for Proposals, including an analysis of any investment incentives offered to a private partner by or on behalf of a contracting authority.

**52.** (1) A contracting authority may use a two-stage procedure when the contracting authority does not consider it to be feasible to describe fully the characteristics of the PPP Project in the initial Request for Proposals.

Two-stage bidding procedure.

(2) A two-stage procedure shall take the following steps:-

- (a) a pre-selected bidder may submit suggestions and amendments relating to all aspects of the initial Request for Proposals, including a mark-up of the draft PPP Agreement, on a specified date prior to bid submission
- (b) the contracting authority shall –
- (i) review the comments of the pre-selected bidder on the initial Request for Proposals;
- (ii) submit the final version of the Request for Proposals to the Council for approval;
- (iii) issue the final version of the Request for Proposals to the pre-selected bidders; and
- (iv) after receiving the proposals of bidders in response to the final version of the Request for Proposals, evaluate the technical and financial proposals in accordance with section 55.

**53.** A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of a–

Bid securities.

- (a) withdrawal or modification of a proposal after a specified deadline;

- (b) failure to sign the PPP Agreement, if required by the contracting authority to do so, after the proposal has been accepted; or
- (c) failure to provide the required security for the fulfilment of the PPP Agreement after the proposal has been accepted or to comply with any other condition prior to signing the PPP Agreement as specified in the Request for Proposals.

Clarifications and revisions of Request for Proposals.

**54.** (1) A contracting authority may, whether on its own initiative or as a result of a request for clarification by a bidder, review and, as appropriate, clarify or revise any element of a Request for Proposals.

(2) A contracting authority shall indicate in the record of the selection proceedings to be kept pursuant to section 64 the nature of, and the justification for, any clarification or revision to the Request for Proposals, which shall be communicated to all bidders, in the same manner as the Request for Proposals, at a reasonable time prior to the deadline for submission of proposals.

Evaluation of proposals.

**55.** (1) A contracting authority shall establish an evaluation committee to evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such proposal criterion and the evaluation process set out in the Request for Proposals.

(2) An evaluation committee shall include a representative of the Unit.

(3) For the purposes of subsection (1), a contracting authority may establish thresholds with respect to minimum acceptable technical and financial offers.

Evaluation criteria.

**56.** (1) The criteria for evaluating technical offers shall include the following:—

- (a) technical soundness;
- (b) compliance with environmental standards under any law;
- (c) operational feasibility;
- (d) quality of services and measures to ensure their continuity;
- (e) timetable and work plan for the delivery of the PPP Project; and
- (f) any other prescribed criteria.

(2) The criteria for evaluating financial offers shall include—

- (a) the present value of proposed user levies, unit prices, and other charges over the full term of the PPP Agreement;
- (b) the present value of proposed direct payments by the contracting authority, if any;
- (c) the present value of the costs for design and construction activities plus annual operation and maintenance costs;
- (d) the extent of financial support, if any, expected from a public authority in Sierra Leone;
- (e) the soundness of the proposed financial arrangements;
- (f) the social and economic development potential offered by the proposals; and
- (g) any other prescribed criteria.

Reconfirmation of qualifications. **57.** (1) A contracting authority may require any bidder that has been pre-selected to reconfirm its qualifications in accordance with the same criteria used for pre-selection.

(2) A contracting authority shall disqualify any bidder that fails to reconfirm its qualifications if requested to do so.

Approval of evaluation report by Council. **58.** (1) A contracting authority shall rank all responsive proposals on the basis of the evaluation criteria and prepare an evaluation report, identifying the preferred bidder.

(2) A contracting authority shall submit its evaluation report to the Council for approval after obtaining the advice of the Unit.

Council approval prior to contract finalisation. **59.** (1) After the approval of the evaluation report submitted under section 58, the contracting authority shall submit the proposed PPP agreements to the Council for evaluation and approval after seeking the advice of the Unit.

(2) Where a PPP Project involves a financial close in addition to a commercial close, the contracting authority shall, following the achievement of the commercial close and after seeking the advice of the Unit, submit to the Council any revision to the proposed PPP Agreement proposed by the private partner as a result of discussions between the private partner and its financiers for evaluation and approval .

(3) A contracting authority shall obtain the approval of the Council before proceeding to the commercial or financial close of any proposed PPP Project.

Circumstances authorizing award without competitive procedures. **60.** Subject to the approval of the Council and, after obtaining the advice of the Unit, a contracting authority may negotiate a PPP Agreement without using the procedure set out in sections 45 to 59, in the following exceptional situations:—

- (a) when there is an urgent need for ensuring continuity in the provision of the service and engaging in the procedures set out in this Part would be impractical; provided that the circumstances giving rise to the urgency were neither foreseeable by the contracting authority nor the result of any dilatory conduct on its part;
- (b) where the project is of short duration and the anticipated initial investment value does not exceed an amount prescribed by the Council;
- (c) where the project involves national defense or national security;
- (d) where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights owned or possessed by a certain person or persons;
- (e) where pre-selection bidding documents or a request for proposals has been issued but no responses were received, or all proposals failed to meet the evaluation criteria set out in the request for proposals, and if, in the opinion of the contracting authority, issuing new pre-selection bidding documents and a new request for proposals is not likely to result in an award within the required time frame; or
- (f) in any other case where the Council authorises such an exception for compelling reasons of national or public interest.

Negotiation of PPP agreement not competitively procured.

61. Where a PPP Agreement is negotiated without using the procedures set out in sections 45 to 59, a contracting authority shall—

- (a) undertake or commission a pre-feasibility study and a feasibility study, in accordance with section 42;
- (b) except for an agreement negotiated under paragraph (c) of section 60, cause a notice, of its intention to commence negotiations in respect of the agreement, to be published in the prescribed manner;
- (c) engage in negotiations with as many persons as the contracting authority considers capable of carrying out the PPP Project, as circumstances permit; and
- (d) establish evaluation criteria against which proposals shall be evaluated and ranked.

Confidentiality

62. (1) A contracting authority, the Council and the Unit shall treat proposals in such a manner as to avoid the disclosure of their content to competing bidders, and any discussion, communication or negotiation between the contracting authority and a bidder shall be confidential, save for communications concerning the clarification of a request for submission of expressions of interest, a pre-selection bidding document or a request for proposals.

(2) Unless required by law or by a court order or permitted by the Request for Proposals, a party to a negotiation shall not disclose, to any other person, any technical or financial matter or any other information in relation to any discussion, communication or negotiation submitted, received or done, as the case may be, under this Act, without the consent of the other party.

Notice of contract award.

63. (1) Except for a contract awarded under paragraph (c) of section 60, a contracting authority shall cause a notice of the contract award to be published in the prescribed manner.

(2) A notice issued under subsection (2) shall identify the private partner and include a summary of the essential terms of the agreement.

64. A contracting authority shall keep an appropriate record of information pertaining to the selection and award proceedings, in the prescribed manner. Record of selection and award proceedings.

65. A bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on a contracting authority under this Act or any other written law, may seek a review of the matter by the Council, prior to having recourse to the dispute resolution procedures in section 68. Review procedures.

66. (1) A contracting authority may require that the preferred bidder establish a legal entity incorporated under the laws of Sierra Leone. Organization of private partners.

(2) Where a preferred bidder establishes a legal entity in accordance with subsection (1), the bidder shall make a statement to that effect in the pre-selection bidding documents or in its technical proposal, as appropriate.

(3) Any requirement relating to the minimum capital of a legal entity established under subsection (1) and the procedures for obtaining the approval of a contracting authority to the legal entity's articles of association or any significant changes in the articles shall be set out in the PPP Agreement in a manner consistent with the terms of the Request for Proposals

67. (1) A contracting authority may receive, consider, evaluate and accept an unsolicited proposal for a public-private partnership if the proposal— Unsolicited proposal.

(a) is independently originated and developed by the proposer;

(b) shall be beneficial to the public;

- (c) has been prepared without the supervision of the Unit or a contracting authority; and
- (d) includes sufficient detail and information for a contracting authority to prepare a feasibility study.

(2) After preparing a feasibility study for an unsolicited proposal, and after receiving the advice of the Unit, a contracting authority shall submit the unsolicited proposal and the feasibility study to the Council, with a recommendation as to whether the procurement follow the procedures set out in sections 45 to 59 or, alternatively, the exceptional procedure set out in sections 60 and 61.

#### PART VIII—SETTLEMENT OF DISPUTES AND GENERAL PROVISIONS

Disputes between contracting authority and private partner.

**68.** Any disputes between a contracting authority and the private partner shall be settled through the dispute settlement mechanisms agreed by the parties in the PPP Agreement or, in the event of a failure of such mechanisms, in accordance with section 16 of the Investment Promotion Act, 2004.

Disputes involving customers or users,

**69.** A contracting authority may require the private partner to establish efficient mechanisms for handling claims submitted by its customers or users of the PPP Project where the private partner provides services to the public or operates a PPP Project which is accessible to the public.

#### PART IX—MISCELLANEOUS

Regulations.

**70.** (1) Subject to the approval of the Council, the Minister may, by statutory instrument, make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister, with the approval of the Council, may make regulations for—

- (a) any thresholds relating to the procurement process;
- (b) any matter relating to competitive public bidding and direct negotiations;
- (c) mechanisms for settling of disputes under this Act;
- (d) the imposition, revision and collection of user levies; and
- (e) anything that is required to be prescribed under this Act.

**71.** If a contracting authority—

- (a) enters into a PPP Agreement with a private partner without having received all required approvals from the Council and the Unit, as set out in Parts III and IV; or
- (b) enters into a PPP Agreement with a private partner in contravention of a direction given by the Council under section 44,

Unenforceability of PPP agreements entered into without authorisation.

the PPP Agreement shall be a nullity and unenforceable as against either the contracting authority or the private partner.

**72.** (1) A person shall not publish or disclose to any unauthorised person, other than in the course of that person's duties, the contents of any documents, communication or information which relates to or which has come to the knowledge of that person in the course of his duties under this Act unless it is with the written consent of the Council. Offences.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five thousand United States Dollars or its equivalent in leones, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding five thousand United States Dollars or its equivalent in leones, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Transitional provision.

**73.** (1) Where an agreement was entered into before the commencement of this Act, and that agreement or arrangement would have been a public-private partnership transaction if this Act was in operation on such date, then the agreement shall have effect as if this Act was in operation when the agreement or arrangement was entered into, and shall be deemed to have complied with this Act.

(2) A public-private partnership transaction entered into after the commencement of this Act shall comply with this Act.

Consequential amendments.

**74.** (1) The Public Procurement Act, 2004 is amended (1) by the insertion of the following subsection at the end of section 1:—

“(6) This Act shall not apply to public-private partnership transactions made under the Public-Private Partnership Act, 2010.”

(2) The National Commission for Privatization Act, 2002 is amended as follows:—

(a) section 10 is repealed and replaced as follows:—

“10. The object for which the Commission is established is to develop policies for recommendation to the Government with regard to the divestiture of public enterprises.”;

(b) sections 11, 13 and 14 are repealed;

(c) section 17 is repealed and replaced as follows:—

“17. The Executive Secretary shall be responsible for assisting the Commission in developing the policy recommendations referred to in section 10.”;

(d) sections 20, 21, 22, 23, 24, 25 and 26 are repealed;

(e) section 32(1) is repealed; and

(f) the First Schedule, the Second Schedule and the Third Schedule are repealed.

#### SCHEDULE

(Section 2)

#### ILLUSTRATIVE PUBLIC-PRIVATE PARTNERSHIP ARRANGEMENTS

The following public-private partnership transactions, with variations and combinations, may be entered into by a contracting authority for undertaking a PPP Project. The transactions enumerated in this Schedule are for illustration only, and do not constitute an exhaustive list of potential PPP transactions.

1. An arrangement whereby a contracting authority defines and grants specific rights to a private partner to build and operate a facility, or otherwise provide a public service, for a fixed period of time. In certain concession arrangements, ownership of the facility may revert to the contracting authority at the end of the contractual period, as is the case in Build-Operate-Transfer (BOT) or Rehabilitate-Operate-Transfer (ROT) transactions. Alternatively, ownership of the facility may remain with the private partner, as is the case in a Build-Own-Operate (BOO) transaction. In concession transactions, payments can take place in either direction, in that a private partner may make payments to the contracting authority for the concession rights, including the right to charge end-users, or the contracting authority may make payments to the private partner to compensate the private partner for the cost of providing the facility or service.

Concession transaction.



Lease transaction. 2. An arrangement whereby a contracting authority leases a project owned by the Government to a private partner, who is permitted to operate and maintain the project for the period specified in the PPP Agreement. Pursuant to the terms of the lease, the private partner makes lease fee payments to the contracting authority, and is entitled to charge end-users for the service provided.

Management contract transaction. 3. An arrangement whereby a contracting authority entrusts the operation and management of a project to a private partner for the period specified in the agreement, on payment by the contracting authority of a specified fee to the private partner, which may involve incentive payments.

Long-term service contract transaction. 4. An arrangement whereby a contracting authority outsources the supply of a specific service to a private partner for an extended period of time, in excess of three years. The service may be provided either to the contracting authority or directly to public end-users.

Passed in Parliament this    day of    , in the year of our Lord two thousand and Ten.

VICTOR A. KAMARA,  
*Clerk of Parliament.*

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

VICTOR A. KAMARA,  
*Clerk of Parliament.*