



Ministry of Finance, Trade and Economic Planning  
Liberty House, P.O Box 313/ Victoria/ Mahé, Seychelles

## **PUBLIC-PRIVATE PARTNERSHIP ACT, 2017**

*(Act No.[-] of 2017)*

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## PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the **Public-Private Partnership Act, 2017** and shall come into operation on such date as the Minister of Finance may appoint by Notice published in the *Gazette*.

Interpretation

2. In this Act -

"**accounting officer**" has the same meaning given to it in the Public Finance Management Act;

"**affordability**" means the financial commitments (if any) to be incurred by a contracting authority under a PPP which can be met by -

- (a) funds designated in the contracting authority's budget for the current year for the performance of a public function or the management and use of public property in terms of the PPP agreement; and
- (b) funds approved by the Minister in terms of this Act as being available for the PPP;

"**Cabinet**" means the Vice-President and the Ministers referred to in section 67 of the Constitution;

"**contracting authority**" means either a public body or a public enterprise;

"**Development Committee**" means the National Development Committee established in the Ministry and tasked with the review and approval of PPPs as set out in this Act;

"**Government**" means the Government of Seychelles;

"**Government Financial Support**" means any guarantee issued by the Government in respect of a contracting authority's obligations under a PPP Agreement, involving a financial liability;

"**initial screening criteria**" in relation to public-private partnerships, means PPPs that fall within –

- (a) the priority areas for development program expenditures; and
- (b) the budget limits for the total spending on these areas,

as set out in the National Development Strategy;

"**line ministry**" means, if the contracting authority is not a ministry or a department, the ministry into which the contracting authority reports;

"**Minister**" means the Minister to whom responsibility for the subject of finance

is assigned;

“**Ministry**” means the Ministry responsible for the subject of finance;

“**National Development Strategy**” means the framework document adopted by Cabinet from time to time guiding policy makers and contracting authorities on the types and areas for focus of public investment projects;

“**preferred bidder**” means the bidder, including any bidding consortium, to be appointed as preferred bidder by the contracting authority;

“**private party**” means a party to a PPP agreement established as a special purpose vehicle registered under the Companies laws of Seychelles, other than a contracting authority to which this Act applies;

“**procurement documentation**” means collectively the request for proposals, the draft PPP agreement and any other standard bidding documents issued by the Procurement Oversight Unit and which bidders are required complete as part of the bid response;

“**project proposal documentation**” means the documentation containing preliminary information regarding the proposed PPP, to be completed by the contracting authority in the form prescribed from time to time in the PIMM;

“**public body**” has the same meaning given to it in the Public Finance Management Act, 2013;

“**public enterprise**” means an organisation specified in column 1 of Schedule 1 of the Public Enterprise Monitoring Commission Act, 2013, and any subsidiary of such organisation;

“**public function**” means -

- (a) a service, task, assignment or other function that a contracting authority is entitled or obliged to perform –
  - (i) in the public interest; or
  - (ii) on behalf of the public service generally; or
- (b) any part or component of or any service, task, assignment or other function performed or to be performed in support of such a service, task, assignment or other function;

“**public investment project**” means a commercial transaction between a public body or a public enterprise, and the private sector, where the investment by the private sector in developing or acquiring public property or providing a public function has the effect, either directly or indirectly, of promoting the economic and social development and growth of the people of Seychelles, as contemplated in the National Development Strategy;

**“Public Investment Management Unit”** or **“PIMU”** means the unit established in the Ministry to perform the functions set out in Section 5(2) of this Act;

**“Public Investment Management Manual”** or **“PIMM”** means the project investment management manual, a policy document issued by the Minister and updated from time to time;

**“public property”** includes all assets and resources owned by the Government or in the custody of the State including movable and immovable property belonging to the State as well as intellectual property rights vested in the State;

**“public-private partnership”** or **“PPP”** means a public investment project between a contracting authority and a private party in terms of which the private party –

- (a) performs a public function on behalf of the contracting authority; and
- (b) where relevant, acquires the use of public property for its own commercial purposes; and
- (c) assumes substantial financial, technical and operational risks in connection with the performance of the public function and/or use of public property; and
- (d) receives a benefit for performing the public function or from utilising the public property, either by way of -
  - (i) consideration to be paid by the contracting authority which derives from the Consolidated Fund or, where the contracting authority is a public enterprise, from the revenues of such enterprise; or
  - (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;

**“PPP agreement”** means a written contract recording the terms of a PPP concluded between a contracting authority and a private party;

**“PPP agreement management plan”** means the plan prepared by the contracting authority for the effective management of the PPP agreement after its conclusion;

**“PPP Approval II report”** means the report prepared by the contracting authority prior to the award of the PPP agreement describing the matters referred to in Section 11(10) of this Act;

**“PPP Approvals”** means collectively PPP Approval : I and PPP Approval : II

issued by the Minister under this Act;

**"PPP Approval : I"** means the approval granted in terms of section 10(4) of this Act;

**"PPP Approval : II"** means the approval granted in terms of section 11(14) of this Act;

**"PPP guidelines and best practices"** means, other than the PPP procurement guidelines issued by the Procurement Oversight Unit in terms of the Public Procurement Act, the manual and other materials issued by the Development Committee in terms of Section 18 to provide assistance and guidance to contracting authorities in implementing PPPs;

**"PPP officer"** means the person appointed by the contracting authority in terms of Section 8(1) of this Act;

**"PPP project cycle"** means the following four phases in the project cycle of a PPP –

- (a) initial screening;
- (b) project development;
- (c) project procurement; and
- (d) project implementation monitoring and oversight;

**"request for proposal"** means the document prepared by the contracting authority containing the specific terms of the PPP requirements, the procedures for submission of bids, the criteria for the evaluation of bids;

**"request for qualification"** means the document prepared by the contracting authority which shall include a public invitation for applicants to apply for pre-selection of a proposed PPP;

**"State"** means all branches of the sovereign democratic Republic of Seychelles, as recognised in the Constitution;

**"transaction advisor"** means a person or persons appointed in writing by a contracting authority, who has or have appropriate skills and experience to assist and advise the contracting authority in connection with a PPP, including the preparation and conclusion of a PPP agreement;

**"value for money"** means that the performance of the public function or the use of public property by a private party in terms of the PPP agreement results in a net benefit to the contracting authority defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof; and

**"value for money report"** means the report prepared by the contracting

authority demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, and demonstrating how these criteria were satisfied in the preferred bid.

Application of this Act

**3.**

- (1) This Act, subject to Sub-section (2), applies to all contracting authorities whose public investment projects constitute a PPP.
- (2) This Act shall not apply where a contracting authority has, before the commencement of this Act either -
  - (a) concluded a public investment project that is a public-private partnership; or
  - (b) issued a request for proposal in respect of a PPP.

**PART II – INSTITUTIONAL STRUCTURES**

Development Committee

**4.**

- (1) The Development Committee is established in the Ministry to regulate and approve financial matters relating to public investment projects, including public investment projects that are public-private partnerships.
- (2) The Development Committee consists of -
  - (a) the Principal Secretary in the Ministry;
  - (b) the Principal Secretary in the Ministry responsible for the subject of economic planning;
  - (c) the Principal Secretary in the Ministry responsible for the subject of public infrastructure;
  - (d) a representative of the Attorney-General's Office;
  - (e) two representatives not being public officers; and
  - (f) two other persons qualified in the fields of:
    - (i) engineering; and
    - (ii) quantity surveying.
- (3) The persons referred to in Sub-sections (2)(e) and (f) shall –

- (i) at the time of the Development Committee's establishment be appointed by the Principal Secretary in the Ministry; and
  - (ii) at any other time be appointed or replaced by the Development Committee.
- (4) The Development Committee may co-opt such other persons as may be of assistance in relation to any matter before it.
- (5) The Development Committee shall meet as often as is necessary at such time and place as the Chairperson thinks fit.
- (6) The Development Committee shall regulate its meetings and proceedings in such manner as set out in the PIMM.
- (7) In addition to the powers granted to it under this Act, the Development Committee shall have the power to –
- (a) recommend policy in relation to PPP projects to the Minister; and
  - (b) provide recommendations to the Minister and the Cabinet on any PPP and the PPP programme generally.

Project Investment  
Management Unit

**5.**

- (1) The PIMU is established as a unit within the Ministry and is mandated to oversee and support the development of PPPs by contracting authorities.
- (2) The PIMU will be responsible for –
- (a) appraising project proposal documentation and providing all available technical, financial and legal support to contracting authorities in developing and advancing their PPPs, throughout the PPP project cycle in accordance with this Act;
  - (b) making recommendations on the approval or rejection of PPPs to the Development Committee prior to submission by the relevant contracting authority to the Development Committee;
  - (c) disseminating information and providing training to contracting authorities on the PPP guidelines and best practices; and
  - (d) in partnership with the Seychelles Investment Board, developing



awareness of PPP projects as an investment vehicle in Seychelles.

- (3) The PIMU shall at all time consist of such suitably qualified experts in the disciplines as is necessary to fulfill its functions under this Act.

Responsibilities of  
a Contracting  
Authority

**6.**

- (1) A contracting authority shall for the purposes of this Act –
- (a) identify, develop, procure and monitor a PPP to be implemented under this Act;
  - (b) subject to the Development Committee's approval in term of Section 7(8), undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented as a PPP;
  - (c) submit the feasibility study to the PIMU and the Development Committee for its approval;
  - (d) conduct a procurement process through its Procurement Unit in accordance with the Public Procurement Act;
  - (e) prepare a request for qualification upon the approval of the feasibility study;
  - (f) evaluate and short-list pre-qualified bidders;
  - (g) seek the approval of the National Tender Board to the list of pre-qualified bidders;
  - (h) prepare a request for proposal and a draft PPP agreement, and obtain the approval of the Procurement Oversight Unit and, where the terms of the draft PPP agreement impact on public finance, seek the approval of the Development Committee;
  - (i) evaluate bidder proposals and prepare a value for money report for the approval of the Development Committee;
  - (j) appoint a preferred bidder and a reserve bidder and conduct a negotiations process with the preferred bidder;
  - (k) submit the final negotiated draft PPP agreement to the Attorney General's Office for its approval;
  - (l) prior to the award of the PPP agreement by the National Tender Board, obtain the Minister's approval of the financial commitments

under the PPP agreement;

- (m) through the accounting officer, sign the PPP agreement;
  - (n) prepare a PPP agreement management plan and draft the close out report;
  - (o) facilitate financial closing of the PPP;
  - (p) generally do all things necessary under this Act to develop, procure and manage PPPs to which it is a party.
- (2) In this Act, unless otherwise stated, the contracting authority shall be represented by the accounting officer of such contracting authority or an official to whom his or her powers have been duly delegated or to the body within the contracting authority empowered under applicable law to perform such function.
- (3) Any project for which there is no financial or contingent liability for the State shall be exempt from the approval of the Development Committee.

### **PART III – INITIAL SCREENING AND PROJECT DEVELOPMENT**

Initial screening

**7.**

- (1) In the initial screening phase of the PPP project cycle, a contracting authority will be responsible for the completion of –
- (a) the project proposal documentation, and where applicable, a pre-feasibility study, in the form prescribed in the PIMM; and
  - (b) a legal opinion from a duly qualified legal expert confirming that the public investment project complies with the requirements of a PPP as defined in this Act,
- for submission to its line ministry and the Development Committee.
- (2) The legal expert referred to in Sub-section (1)(b) may be a member of the contracting authority's Procurement Unit, the PIMU or an external consultant.
- (3) The PIMU shall render all necessary assistance to the contracting authority in the preparation, completion and submission of the project proposal documentation referred to in Sub-section (1).

- (4) The Development Committee shall review the project proposal documentation and provide its recommendations to the line ministry in respect of whether or not the proposed PPP complies with the initial screening criteria.
- (5) If in the opinion of the contracting authority's line ministry the project proposal documentation substantially complies with the initial screening criteria, and is satisfied that the proposed project is a PPP as defined in this Act, it shall promptly notify the contracting authority of its approval.
- (6) If the contracting authority's line ministry rejects the project proposal documentation on the grounds that -
  - (a) it fails substantially to comply with the initial screening criteria it shall record in writing its reasons for such rejection, and the contracting authority shall be permitted, within a reasonable period, to amend and/or supplement its project proposal documentation to address the grounds for rejection; and / or
  - (b) it is not satisfied that the proposed project is a PPP as defined in this Act, the contracting authority shall refer the matter to the Attorney General for determination. The opinion issued by the Attorney General shall be final and binding.
- (7) The contracting authority may re-submit its amended proposal for approval by its line ministry, provided that where its line ministry further rejects its project proposal documentation, the contracting authority may approach the Development Committee for a final determination.
- (8) If the Development Committee approves the project proposal documentation on the basis that it meets the initial screening criteria, and provided where relevant, that the Attorney General has confirmed that the proposed project is a PPP as defined in this Act, the contracting authority shall advance to preparing a feasibility study in accordance with Section 9 subject to any conditions set down in the Development Committee's approval.
- (9) This Act shall not apply to any public investment project that does not meet the initial screening criteria and is not a PPP as defined in this Act.

Appointment of  
PPP officer and  
transaction advisor

**8.**

- (1) Before a contracting authority initiates a feasibility study for a public-private partnership contemplated in Section 9, the contracting authority

must appoint a person with appropriate skills and experience, either from within or outside the contracting authority, as the PPP officer for the public-private partnership.

- (2) The PPP officer is responsible for –
  - (a) managing a PPP to which that contracting authority is party from its inception to its expiration or termination; and
  - (b) performing any other duties required by the contracting authority in terms of this Act.
- (3) Where it is a condition of the Development Committee's approval in terms of Section 7(8), a contracting authority shall appoint a transaction advisor to assist and advise the contracting authority through all or some of the phases in the PPP project cycle.

Feasibility study

**9.**

- (1) To determine whether the proposed PPP is in the best interests of a contracting authority, the contracting authority must undertake a feasibility study that –
  - (a) demonstrates comparative advantage in terms of strategic and operational benefits of the proposed PPP for the contracting authority in terms of its strategic objectives and State policy;
  - (b) describes in specific terms—
    - (i) in the case of a PPP involving the performance of a public function, the nature of the public function concerned;
    - (ii) the extent to which this public function, both legally and by nature, may be performed by a private party; and
    - (iii) in the case of a PPP involving the use of public property, a description of the public property concerned, the uses, if any, to which such public property has been subject prior to the approval of the proposed PPP in terms of Section 9 and a description of the types of use that a private party may legally subject such public property to;
  - (c) assesses the needs of the contracting authority in respect of such public function, including –

- 
- (i) the various options available to the contracting authority to satisfy those needs; and
  - (ii) the advantages and disadvantages of each option;
- (d) assesses the projected impact of the proposed performance of the public function to a private party on the staff, assets, liabilities and revenue of the contracting authority, which must include an assessment of –
- (i) the number of officials of the contracting authority that would become redundant as a result of the performance of the public function by a private party;
  - (ii) the cost to the contracting authority of any staff retrenchments or the retention of redundant staff;
  - (iii) any assets of the contracting authority proposed to be placed under the control of the private party;
  - (iv) any assets of the contracting authority that would become obsolete as a result of the performance of the public function by a private party;
  - (v) any debt of the contracting authority attributed to the public function to be performed by a private party which the contracting authority would retain or transfer to the private party; and
  - (vi) any revenue to be foregone by the contracting authority as a result of the performance of the public function by a private party;
- (e) sets out the proposed allocation of financial, technical and operational risks between the contracting authority and a private party;
- (f) demonstrates the anticipated value for money to be achieved by the PPP; and
- (g) explains the capacity of the contracting authority to effectively monitor, manage and enforce the PPP agreement.
- (2) A feasibility study conducted in terms of Sub-section (1), in addition to

the matters specified in that Section, must recommend an appropriate plan for the procurement of the proposed PPP agreement, if the performance of the public function or the use of public property by a private party is the preferred option.

- (3) An assessment in terms of Sub-section (2) must show comparative projections of –
  - (a) the full costs to the contracting authority for the public function if that function is not performed through a public-private partnership agreement; and
  - (b) the full costs to the contracting authority for the public function if that function is performed through a PPP agreement.
- (4) The PIMU shall assist the contracting authority in carrying out and assessing its feasibility studies.
- (5) If at any time after PPP Approval : I has been granted in respect of the feasibility study of a PPP, but before the grant of PPP Approval: II, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the contracting authority must immediately –
  - (a) provide the Development Committee 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) ensure that the Development Committee is provided with a revised feasibility study after which the Development Committee may grant a revised PPP Approval: I.

Approval of  
feasibility study

**10.**

- (1) When a feasibility study has been completed, the contracting authority must submit the report on the feasibility study together with all other relevant project documentation to the line ministry for review and a recommendation on whether the contracting authority should continue with the proposed public-private partnership on the basis that the PPP –
  - (a) is affordable to the contracting authority;
  - (b) provides value for money;

- (c) transfers appropriate technical, operational or financial risk to the private party; and
  - (d) explains the capacity of the contracting authority to effectively enforce the PPP agreement, including the ability to monitor and regulate project implementation and the performance of the private party in terms of the PPP agreement.
- (2) Following Sub-section (1), the contracting authority must submit the report issued by the line ministry together with the feasibility study and all other relevant project documentation, to the Development Committee for a recommendation to the Minister on whether the PPP may advance to the project procurement phase on the basis of the report issued by the line ministry, and taking into consideration the requirements listed in Sub-Sections (1)(a) – (d).
- (3) The Development Committee shall thereafter submit to the Minister a report containing its final recommendation on whether the contracting authority should continue with the proposed public-private partnership, and the Minister shall either confirm or reject the Development Committee's recommendation.
- (4) The approval referred to in Sub-section (3) shall be regarded as PPP Approval : I.
- (5) The contracting authority may not proceed with the project procurement phase of a PPP without first having obtained PPP Approval : I.

#### **PART IV – PROJECT PROCUREMENT**

Procurement

#### **11.**

- (1) The Public Procurement Act applies to the procurement of public-private partnerships.
- (2) When complying with the Public Procurement Act, the contracting authority must solicit the views and recommendations of the Procurement Oversight Unit on –
- (a) the proposed request for qualification document before bids are publicly invited;
  - (b) the draft procurement documentation document before bids are publicly invited;

- 
- (c) the evaluation of the bids received and of any preferred bidder;
  - (d) the value for money report prior to submission to the Development Committee;
  - (e) the PPP Approval II report prepared by the contracting authority;
  - (f) the final draft of the PPP agreement before any award is made;
  - (g) the contracting authority's PPP agreement management plan; and
  - (h) the legal opinion procured by the contracting authority attesting to the preferred bidder's -
    - (i) competency to enter into the PPP agreement; and
    - (ii) capacity to comply with its obligations in terms of the PPP agreement.
- (3) The contracting authority shall obtain the approval of the National Tender Board to any list of pre-qualified bidders to whom a request for proposal shall be made available.
- (4) Should the National Tender Board reject the list of pre-qualified bidders, or the procedure followed in short-listing prospective bidders, the contracting authority shall commence the pre-qualification process afresh.
- (5) Prior to the issuing of any procurement documentation to any pre-qualified bidders, the contracting authority must obtain approval for such documentation from the Procurement Oversight Unit, and where the terms of the draft PPP agreement impact on public finance, seek the approval of the Development Committee.
- (6) In granting the approval in Sub-section (5) the Procurement Oversight Unit shall have regard to any standards, guidelines or instruction notes issued by it or by the Minister under this Act, and the compliance with the procurement documentation including the draft PPP agreement with such standards, guidelines and instruction notes, and the Procurement Oversight Unit may withhold its approval until the procurement documentation substantially complies with the same.
- (7) The Development Committee may withhold its approval of the procurement documentation, where the project documentation is not aligned with risk allocation and other financial assumptions that were



approved under the feasibility study.

- (8) After the evaluation of the bids, but prior to appointing the preferred bidder, the contracting authority must submit a value for money report including any other information as required by the PIMU, for approval by the PIMU.
- (9) The contracting authority shall not announce the appointment of the preferred bidder until it receives the approval of the Development Committee under Sub-section (8).
- (10) After the procurement procedure has been concluded but before the accounting officer of a contracting authority concludes a PPP agreement, the contracting authority must prepare the PPP Approval II report, describing in specific terms –
  - (a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of Section 10 or revised in terms of Section 9(8) of this Act;
  - (b) all sources and conditions of funding, and contingent liabilities under the PPP agreement;
  - (c) the PPP agreement management plan that explains the capacity of the contracting authority, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP; and
  - (d) that a satisfactory due diligence including a legal due diligence has been completed in respect of the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement; and
- (11) When the PPP Approval report II has been completed, the contracting authority must submit –
  - (a) the report together the final draft PPP agreement and the PPP agreement management plan to the line ministry for its review and a recommendation on whether the contracting authority should conclude the PPP agreement; and
  - (b) the final draft PPP agreement to the Attorney General's Office for an opinion on the capacity and authority of the contracting authority to

conclude the PPP agreement, and the enforceability of terms of the PPP agreement under the laws of Seychelles.

- (12) Following Sub-section (11), the contracting authority must submit the PPP Approval II report together with the recommendation from the line ministry, as well as the enforceability opinion prepared by the Attorney General's Office, to the Development Committee for a final recommendation to the Minister on whether the PPP may be concluded by the contracting authority.
- (13) The Development Committee shall thereafter submit to the Minister a report containing its final recommendation on whether the contracting authority should conclude the PPP agreement, and the Minister shall either confirm or reject the Development Committee's recommendation.
- (14) Where the Minister confirms the Development Committee's recommendation, such approval shall be referred to as PPP Approval: II.
- (15) The contracting authority may not proceed with the signature of the PPP Agreement without having received the PPP Approval II.

Public-Private  
Partnership  
Agreement

**12.**

- (1) A PPP agreement between a contracting authority and a private party must comply with the following basic requirements -
  - (a) describe in specific terms the nature of the private party's role in the public-private partnership;
  - (b) identify the rights and responsibilities of the contracting authority and the private party in relation to the project, and where applicable, lenders in relation to step in rights of lenders;
  - (c) specify the manner in which the PPP will be funded and the relevant financial terms;
  - (d) ensure the management of performance of the private party;
  - (e) provide for the return of public property, if any, to the contracting authority, at the termination or expiry of the PPP agreement, in such manner as may be provided for in the PPP agreement;
  - (f) provide for the sharing of risks between the contracting authority and the private party;

- (g) provide for the payment to the private party by way of compensation from the Consolidation Fund or of charges or fees collected by the private party from users or customers of a service provided by it, or a combination of the two, which shall be detailed in a payment mechanism schedule;
  - (h) provide for its duration; and
  - (i) contain such other information as may be prescribed.
- (2) Every PPP agreement shall be governed by and construed in accordance with the laws of Seychelles.
- (3) Every PPP agreement shall provide for disputes between the private party and the contracting authority to be settled by arbitration, according to the rules defined in the PPP agreement.

PPP Agreement  
binding on the State

**13.**

- (1) A PPP agreement or an agreement amending a PPP agreement, binds the State only if the agreement was entered into on behalf of a contracting authority –
- (a) by the accounting officer of that contracting authority; and
  - (b) if all PPP Approvals required in terms of this Act have been granted by the Minister in respect of the PPP.

**PART V – MANAGEMENT AND AMENDMENT OF PPP AGREEMENT**

Management of  
PPP Agreements

**14.**

- (1) The accounting officer of the contracting authority that is party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in PPP Approval II for –
- (a) measuring the outputs of the PPP agreement;
  - (b) monitoring the implementation of the PPP agreement and performances under the PPP 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 PPP agreement; and
  - (f) reporting on the PPP agreement in the contracting authority's annual report
- (2) A PPP agreement involving the performance of a public function does not divest the accounting officer of the contracting authority concerned of the responsibility for ensuring that such public function is effectively and efficiently performed in the public interest or on behalf of the public service.
  - (3) A PPP agreement involving the use of public property by a private party does not divest the accounting officer of the contracting authority concerned of the responsibility for ensuring that such public property is appropriately protected against forfeiture, theft, loss, wastage and misuse.

Amendment of the  
PPP Agreement

**15.**

- (1) The prior written approval of the Development Committee is required for any material amendments to a PPP agreement including any material variations to the outputs therein, or any waivers contemplated or provide for in the PPP agreement.
- (2) The Development Committee will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide –
  - (a) value for money;
  - (b) affordability; and
  - (c) substantial technical, operational and financial risk transfer to the private party.
- (3) The contracting authority must substantially follow the procedure prescribed by Section 10 for obtaining such approval.

**PART VI – MISCELLANEOUS PROVISIONS**

Government  
Financial Support

**16.**

- (1) Any Government Financial Support provided in respect of a PPP Agreement shall not be binding on the Government unless given in accordance with Part III of the Public Debt Management Act, 2008.

- Regulations **17.**
- (1) The Minister or Development Committee may make regulations or issue guidelines, and instruction notes applicable to all contracting authorities to which this Act applies concerning any other matter that may facilitate the application of this Act including without limitation PPP guidelines and best practices.

- Amendments to the Public Procurement Act, 2008 **18**
- (1) The Public Procurement Act is amended by -
- (a) removing the definition of “*parastatals*”;
- (b) replacing the definition of “*public body*” with the following definition -
- “*public body*” has the same meaning given to it in the Public Finance Management Act, 2013
- (c) inserting a new definition for “*public enterprises*” as follows -
- “*public enterprise*” means an organisation specified in column 1 of Schedule 1 of the Public Enterprise Monitoring Commission Act, 2013, and any subsidiary of such organization
- (d) inserting in Schedule 1 (*Procurement Thresholds*), the following table –

<b>COLUMN 1</b>	<b>COLUMN 2</b>
<b>Thresholds</b>	<b>Approval Procedures</b>
None – applies to all PPPs irrespective of value	Approval is given by the Board