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Briefing

Public private partnerships in Tanzania: the new regime explained

This is the first of the monthly projects and construction briefings which Clyde & Co aims to publish on the legal and regulatory framework, and developments affecting projects and construction in Tanzania. This issue outlines and analyses the process put in place by the new legislation for initiating and developing Public Private Partnership (**PPP**) projects.

The legal framework

In 2010 and 2011 the Tanzanian government overhauled the country's legal framework on Public Private Partnership (PPP) projects to facilitate and encourage more private sector participation in the provision of public services:

Public Private Partnership Act No. 18 of 2010 (the **Act**): brought into force in 2010 as the main governing act regarding PPPs in mainland Tanzania

Public Private Partnership Regulations: introduced in 2011 to give effect to the Act, and regulate the manner in which PPP projects are identified, parties selected and agreements implemented.

The Act establishes various public sector entities; each allocated a specific role in the PPP process:

PPP Co-ordination Unit (**PPCU**): based in the Tanzanian Investment Centre, to promote and co-ordinate all matters relating to PPP projects

PPP Finance Unit (**PPFU**): based in the Ministry of Finance, to assess fiscal risk allocation and other financial matters

Contracting Authority (**CA**): the body that enters into the PPP project agreement with the private sector

In theory PPP projects can either be proposed by the government (solicited bids) or by private parties (unsolicited bids) however, in practice, most recent applications have been made on an unsolicited basis. Although, the processes have many similarities e.g. that a feasibility study must be carried out before the project can be submitted for public sector approval, there are key differences e.g. the party responsible for progression of the project through the phases of the process, and the point in the process the CA selects a party to develop the project differs.

The new regime in particular, applies to the following sectors:

- agriculture
- education
- energy
- environment and waste management
- exploration and mining
- health
- industry and manufacturing
- information and communication technology
- infrastructure
- natural resources and tourism
- trade marking
- sports and recreation

Current PPP projects include:

- Chalinze super highway in Dar es Salaam
- Arusha to Moshi Toll Road
- Mbegani Port project in Bagamoyo
- Mwambani Port project in Tanga
- Kisarawe Cargo Freight Station
- Expansion of the Mtwara Port
- Improvement of the Kilwa Port
- Expansion of Kasanga and Kigoma ports

In our next update we will focus on the feasibility and pre-feasibility studies that must be carried out before PPP projects can be submitted for public sector approval: in this we will look at the practical and financial areas the studies must cover.

Solicited bid: phases of the PPP project cycle

Initial project selection
Minister responsible for investment establishes a list of potential PPP projects.

Pre-feasibility study
CA undertakes pre-feasibility study.

Feasibility study
CA undertakes or orders feasibility study.

Final approval
CA submits project to Minister responsible for the CA/PPPCU/PPPFU and the Minister responsible for Finance for approval/rejection of the projects.

Procurement and contract award
CA conducts procurement process and signs contract.

Implementation
CA performs contract management for the duration of the contract.

Unsolicited bid: phases of the PPP project cycle

Project concept
Private party submits a project concept to the CA. CA has 21 days to accept or reject project concept.

Feasibility study
Private party carries out a feasibility study.

Public tender
CA must invite tenders from interested private parties. CA can give advantage to submitter of the project concept pursuant to the Procurement Act. CA selects a successful party.

Approval of project agreement
CA submits draft project agreement to Minister responsible for the CA/PPCU/PPFU/Minister responsible for Finance for approval/rejection and to Attorney General who provides legal opinion.

Project agreement
CA alters project agreement in line with Attorney General's legal opinion and signs agreement (CA can terminate agreement at any time).

Implementation
CA performs contract management for the duration of the contract.

Further information

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