



# MINISTRY OF FINANCE AND NATIONAL PLANNING

## PPPS LEGAL FRAMEWORK IN ZAMBIA

PUBLIC-PRIVATE PARTNERSHIP OFFICE

(12<sup>th</sup> February, 2024)

# Presentation Outline

## Genesis

- PPP Act No. 18 of 2023
- Brief History


## Issues

- Weaknesses of the repealed Act of 2009
- Objectives of the new Act of 2023

## Latest

- Highlights of the new Act
- Next steps following enactment of 2023 Act





# PPPs Legal Framework in Zambia

PUBLIC PRIVATE PARTNERSHIP OFFICE

# The Public Private Partnership Act No.18 of 2023

- ▶ Principle law governing and regulating the implementation of public private partnerships in Zambia
- ▶ Assented to in December of 2023 by his Excellency the President Hakainde Hichilema
- ▶ Came into operation by virtue of the Public Private Partnership Act (Commencement) Order, 2024 dated 25<sup>th</sup> January 2024; published in the government gazette on 2<sup>nd</sup> February 2024
- ▶ Repealed and replaced the Public Private Partnership Act No.14 of 2009 as amended



# Brief history...

- ▶ Process of repealing and replacing the Public-Private Partnership Act No.14 of 2009 started as far back as 2020
- ▶ The Government of the Republic of Zambia in line with current policy is desirous of leveraging private sector investment to contribute to the economic transformation and development of the Republic through partnerships with the private sector
- ▶ The repealed Public-Private Partnership Act No.14 of 2009 was not adequate in addressing the myriad of issues relating to public private partnerships resulting in poor performance and/or delivery of sustainable public private partnerships for economic development

# Weaknesses of the repealed law of 2009

- ▶ weak institutional mandate and function of the Public-Private Partnership Department as the principal technical advisor and regulator of public private partnerships in Zambia
- ▶ lack of highly skilled transaction advisors especially during the early development phase of the project;
- ▶ lack of clarity in the extent of application of the PPP law
- ▶ lack of a project development facilitation fund which compounded the inability of the Public-Private Partnership Department to effectively support its activities
- ▶ lack of enforcement mechanisms and sanctions for the violation of provisions of the PPP law
- ▶ lack of provision for local participation in Public Private Partnerships;



# More weaknesses....

- ▶ lengthy and rigid processes in procurement and evaluation of unsolicited projects resulting in inefficiencies in determining timelines, first movers of a project innovation which did not take into account the time and expense incurred by a party who comes up with a project innovation;
- ▶ lack of well-defined synergies between contracting authorities and the public private partnership department; role of each party was not clearly defined resulting in inefficiencies in implementation, management, monitoring and evaluation of projects;
- ▶ lack of timelines for conclusion of negotiations of an agreement with a potential concessionaire
- ▶ limited grounds on which public private partnership projects can be procured without competitive procedures
- ▶ lack of provision for subcontracting

# Objectives of the new PPP law of 2023

- ▶ regulate and implement public-private partnerships in the Republic;
- ▶ promote, facilitate and provide for participation of the private sector in the design, financing, construction, development, operation or maintenance of infrastructure or delivery of services through public-private partnerships;
- ▶ provide for rehabilitation, modernisation, expansion and operation of existing infrastructure facilities and systems and their maintenance;
- ▶ strengthen the institutional framework for the implementation of public-private partnership projects;
- ▶ provide for the regulatory framework on Public-Private Partnerships in the Republic;
- ▶ provide for the establishment of the of the Public-Private Partnership Office;
- ▶ provide for a transparent project selection process, clear procurement procedures, effective regulatory approvals and expanded contractual models in order to promote private sector investment;
- ▶ provide for the implementation of Public-Private Partnership agreements between contracting authorities and concessionaires;
- ▶ provide for the establishment of the Public-Private Partnership Project Development Support Fund;
- ▶ Repeal and replace the Public-Private Partnership Act of 2009



# Highlights of the new Act No.18 of 2023

## Public Private Partnership Office

- ▶ Establishes the Public Private Partnership Office to be headed by a **Director General appointed by the President:**
  - i. a special self sustaining Office that plays a technical, advisory and regulatory role for PPPs in Zambia; .
  - ii. enhanced the powers and functions of the Office to include the collaboration in conceptualization and identification of projects; promoting investments in Public-Private Partnerships, facilitating internal and external audits
  - iii. oversee implementation, management, enforcement and monitoring of a project and public private partnership agreement
  - iv. manage the Project Development Fund
  - v. hiring of transaction advisors on a case by case basis

# Continued highlights...

## Governance structure

### PPP Council

- ▶ Overall apex body comprising of 9 members - 5 cabinet Ministers and 4 private members
- ▶ Approve or reject a project proposal, feasibility studie(s), PPP agreement, proposed variation or termination of PPP agreement by a party, give directions to any party to a PPP agreement or agency/authority
- ▶ Request any party to the PPP agreement or agency to furnish further information or documents relating to a PPP project

### PPP Technical Committee

- ▶ Comprises 9 members (reduced from 14) for good corporate governance
- ▶ Advises the PPP Council on all technical PPP matters and projects
- ▶ Enhanced functions to include consideration of award of contracts, feasibility studies; cancellation of procurements and appraisal and evaluation of projects



# Continued highlights...

## Expanded definitions & key terms

- ▶ The new legislation has enhanced the definition of key terms in the PPP process and has also introduced definitions of terms that are peculiar to the PPP process such as what is a “contracting authority”, “affordability”, “solicited proposal”, “unsolicited proposals”, “concessionaire”, “transaction advisor” and “local content”
- ▶ The enhanced definitions and introduction of other key terms is intended to make the legal framework on PPPs more comprehensive and eliminate ambiguities

Continued highlights...

## PPP Procurement Process

- ▶ PPP lifecycle clarified by detailing process from identification, evaluation, operation and management of projects, feasibility studies, project implementation and monitoring of projects ; will enable key stakeholders understand the process, their roles and responsibilities thereby enhancing efficiencies
- ▶ Comprehensive provision for solicited, unsolicited and direct procurement (procurement without competitive procedures) and makes processes for each mode of procurement clear



# Continued highlights...

## Feasibility Studies

- ▶ The new legislation requires in mandatory terms that contracting authorities to undertake feasibility studies for solicited projects in order to determine the viability of projects and identify risk factors

## Special Purpose Vehicle

- ▶ The new Act makes it mandatory for a preferred bidder (private party) to incorporate a special purpose vehicle prior to execution of the PPP agreement in order to ringfence the project assets and revenues and isolate the project from any financial and legal risks in connection with the private party

# Public – Private Partnership Project Development Support Fund

- ▶ PPPs are complex in nature and require substantial investment of resources and highly skilled expertise in the public sector as well as transaction advisors especially during the early development phase of the project. Budgetary constraints of the then PPP Department and contracting authorities negatively impacted on the ability to effectively undertake PPPs and fund certain core activities during the preparation phase of the project such as project identification, selection, appraisal, and project procurement
- ▶ Establishment of the **Project Development Support Fund** which will consist of:
  - a percentage of fees from a solicitation document issued by a contracting authority;*
  - percentage from government revenue share of the annual gross revenue for the duration of a PPP agreement; monies appropriated by parliament; monies received by way of grants or donations; monies that vest or accrue to the Fund*
- ▶ The Fund is established to be applied to support project development costs in the developmental stages of a project; capacity development; supporting the activities of the Public Private Partnership Office; and transaction advisory services where appropriate



# Continued highlights...

## Subcontracting

the new legislation has introduced a requirement for the concessionaire to subcontract at least 10% of the total value of the project to citizen contractors and suppliers. This provision is intended to implement Government's policy on subcontracting local contractors; facilitate transfer of skills and technology to citizen contractors; and also support local businesses and create employment

## Small and Medium Scale PPPs

new legislation has introduced PPPs for Small and Medium Scale (SME) projects to encourage private sector investment in smaller scale projects. Therefore, the new legislation establishes the legal framework for the facilitation of small and medium scale public-private partnerships with procedural requirements that are suited to the size of investments

## Local Content

the new legislation provides for preferential treatment for local businesses in PPP projects e.g. priority to be given to services or supplies provided/manufactured in the Republic, optimise opportunities for trade concessions for Zambian goods and services outside the Republic, ensure mechanisms for technology transfer locally

# Continued highlights...

## Final negotiations

- ▶ The new legislation has placed a cap on the period within which to conclude negotiations for a PPP agreement to three (3) months with a possibility of extension of the period, based on approval by the PPP Council. This seeks to ensure efficiency in the PPP procurement process by bringing finality to the process and avoiding disputes that may arise when project variables change due to prolonged negotiations



# Offences and Penalties

- ▶ The new legislation has introduced provisions that prohibit disclosure of information to unauthorised persons and third parties as well as inappropriate influence on officers during the evaluation process and includes officers of the PPP Office or contracting authority.
- ▶ the new legislation prohibits bidders from making unsolicited communications to a contracting authority or other persons involved in the procurement proceedings after the close of the bid and a bidder found wanting shall be disqualified from participating in existing and future procurement proceedings.
- ▶ Penalties include a fine or imprisonment not exceeding two years

# Continued highlights.....



## Performance Bond or Guarantee

- ▶ the new law has removed any requirement for payment of a performance guarantee or bond. The private sector players being the providers of financing should not be further subjected to further guarantees as it poses to affect the cost of a project and financing

## Appeals

- ▶ The new law has provided for the procedure on determining of appeals, by the PPP Council, and during which process, no agreement shall be entered into, until determination of the appeal by the PPP Council.
- ▶ the new legislation seeks to uphold the integrity and transparency of the PPP process as it is important that all aggrieved bidders are provided an opportunity to be heard by the PPP Council following a decision by a contracting authority before agreement is entered



# Next steps following enactment of PPP Act No.18 of 2023

- ▶ The Public Private Partnership Office is currently working on preparing the PPP Regulations targeting to have them in place by the end of the 1<sup>st</sup> Quarter of 2024.
- ▶ Thereafter general PPP guidelines will be rolled out followed by sector specific guidelines, some of which have already been developed (in draft form) in the Agriculture and water sector



THANK YOU FOR YOUR ATTENTION

ENDS