

## **ADVISING ON PPP INFRASTRUCTURE PROJECTS IN TANZANIA: EMERGING ISSUES**

**Dr. Timothy Kyepa, LLD<sup>1</sup>**

Tanzania is experiencing upward mobility at a pace unmatched in the East African region. With an estimated population of 47.4 million in 2014, the population curve is keeping pace with economic growth. The political stability and well-structured fiscal policy have seen the inflation managed, from double digit figures in 2011- 20% to 6% in 2015. Nonetheless, the growing population has strained the existing infrastructure and is now a threat to further development.

The Country has taken steps to address the infrastructure deficit and various projects are on course to ensure that transport and energy infrastructure is enhanced. The World Bank reports that financing has been approved for various projects. These include; Tanzania Strategic Cities Project-USD 175.50 million, Tanzania Intermodal and Rail Development Project-USD 300 million, Dar es Salaam Metropolitan Development Project-USD 330 million and the Backbone Transmission Investment Project-USD 468 million. These are only a few examples of various infrastructure projects in the Country.

Infrastructure projects are capital intensive and require commitment of substantial resources. The trend towards Public Private Partnership projects is an attempt at including private actors in infrastructure development and reducing the Country's public debt portfolio. The Public Private Partnership Act has been amended twice to keep the legislation on track with efficiency demands in the market. In 2014, the Public Private Partnership (Amendment) Act amended the Public Private Partnership (Amendment) Act Cap 103, the Public Procurement Act No 7 of 2007 and the Tanzania Investment Act Cap 38.

The amendment has introduced key issues that should be noted by counsel advising on PPP infrastructure projects in Tanzania. These include;

1. The law establishes a PPP Centre in the office of the Prime Minister, as of September 2015, this is yet to be implemented. The Centre is tasked with among other things designing and implementing a fair, transparent, competitive and cost effective procurement process.

The Centre introduces another player in PPP infrastructure projects. Roles traditionally performed by the government party and attorney general's office are now complemented by roles to be performed by the PPP Centre.

2. The law also introduces a PPP Facilitation Fund. As of September 2015, the Fund is yet to be actualised. Funds for feasibility studies for PPP projects will in most cases be sourced from this Fund.

This is a positive development as it diversifies the sources of funds for feasibility studies. This will substantially increase the number of PPP projects in Tanzania. It will also reduce the financial burden on government entities.

3. The ambiguity created by the Public Procurement Regulations of 2013 with regard to competitive bidding procurement and unsolicited PPP projects has been cured. The law now clearly provides that unsolicited projects are exempted from open and competitive bidding except where the National Investment Steering Committee acting in the public interest orders that procurement of an unsolicited project be made on a competitive bidding basis.

This is a positive development and will benefit private parties who invest in innovative approaches to some of the infrastructure challenges in Tanzania.

The above discussion is only a synopsis of various direct and consequential effects that will shape the execution of PPP infrastructure projects in Tanzania. A more detailed discussion of these issues is available on request.

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<sup>i</sup> Timothy is a Mergers and Acquisitions attorney at Yakubu and Associates Chamber, he can be contacted on [timothy.kyepa@yakubuchambers.com](mailto:timothy.kyepa@yakubuchambers.com), Tel: +255 718160095.