
THE UNITED REPUBLIC OF TANZANIA

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THE PUBLIC PRIVATE PARTNERSHIP ACT, 2010

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Public Private Partnership

NOTICE

This Bill to be submitted to the National Assembly is published for information to the general public together with a statement of its objects and reasons.

Dar es Salaam,
14th June, 2010

PHILLEMONT L. LUHANJO,
Secretary to the Cabinet

A BILL

for

An Act to give effect to the public-private partnership policy; to provide for institutional frameworks for the implementation of public-private agreements between public sector and private sector entities; to set rules, guidelines and procedures governing public-private procurement, development and implementation of public private partnership and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title
and
commence-
ment

1.-(1) This Act may be cited as the Public-Private Partnership Act, 2010.

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(2) This Act shall come into operation on such date as the Minister may, by order published in the *Gazette*, appoint.

Application

2. This Act shall apply to Mainland Tanzania in respect of projects undertaken in partnership between the public sector and private sector.

Interpretation

3. In this Act, unless the context otherwise requires:

“affordable” in relation to an agreement, means that the contracting authority shall meet any financial commitment likely to be incurred in relation to that agreement, from its inception to future budgetary funds;

“agreement” means a public private partnership agreement entered into in terms of this Act;

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

Cap. 38

“Centre” means the Tanzania Investment Centre established by the Tanzania Investment Act;

“contingent liability” includes Government guarantee for loan and foreign currency transfer and step-in function in the event of default by the relevant contracting authority;

“contracting authority” means any Ministry, government department, local authority or statutory corporation;

Caps. 287
and 288

“local government authorities” shall have the meaning ascribed to it under the Local Government (District Authorities) Act and the Local Government (Urban Authorities Act);

“Minister” means the Minister responsible for investment;

“private party” in relation to an agreement, means a party to the agreement other than a contracting authority;

“project” means a project to be implemented under an agreement entered into under this Act;

“private sector” means a sector other than a public sector;

“public sector” means the Central Government, local government

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authorities and any other person acting on behalf of the Central Government or local government authorities;

“public private partnership” means investment through private sector participation in a project undertaken in term of this Act;

“public private partnership agreement” means a contractual arrangement between a contracting authority and a private party entered into in terms of this Act;

“request for proposal” means the specific terms of the project requirements, the procedures for submission of bids, the criteria for the evaluation of bids and includes a model agreement;

“Unit” means the Public-Private Partnership Coordination Unit established under section 6.

PART II OBJECTIVES

Objectives

4.-(1) The objectives of this Act shall be to promote private sector participation in the provision of public services through public-private partnership projects in terms of investment capital, managerial skills and technology.

(2) Without prejudice to the generality of subsection (1), the specific objectives of this Act shall be to-

- (a) develop an enabling legal and institutional framework to guide investments in public-private partnership;
- (b) to implement effective strategy indicating specific obligations and rights for various stakeholders;
- (c) introduce fair, equitable, transparent, competitive and cost effective procurement processes for public private partnership;
- (d) adopt operational guidelines and criteria for public private partnership;

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- (e) develop institutional capacities for technical analysis and negotiation of public-private partnership and associated contracts; and
- (f) establish efficient and quality socio-economic public private partnership within the country.

Roles of
various
stakeholders

5. The roles of the public sector, private sector and other stakeholders and actors under this Act shall be as follows-

- (a) the public sector shall facilitate implementation of the public-private partnership projects by-
 - (i) identifying projects;
 - (ii) monitoring and evaluation;
 - (iii) putting in place appropriate enabling environment, including-
 - (aa) favourable policies;
 - (bb) implementation strategies;
 - (cc) legal and institutional framework;
- (b) private sector, shall play the role of identifying and implementing public-private partnership projects by:
 - (i) carrying of feasibility studies;
 - (ii) mobilizing resources;
 - (iii) risk sharing;
 - (iv) monitoring and evaluation;
 - (v) providing technical expertise and managerial skills;
- (c) other stakeholders, and public in general, shall support the implementation of public-private partnership projects through monitoring and evaluation, and dissemination of information.

PART III

ESTABLISHMENT AND ADMINISTRATION OF THE CO-ORDINATION AND FINANCE UNITS

Public Private Partnership

Public
Private
Partnership
Co-
ordination
Unit

6.-(1) There **is** established a Unit within the Tanzania Investment Centre to be an integral part of the Centre.

(2) The Unit shall deal with promotion and co-ordination of all matters relating to public-private partnership projects undertaken within the Mainland Tanzania.

(3) The projects referred to under subsection (2) shall be under- taken in productive and non-productive sector, including but not limited **to** the following sectors:

- (a) Agriculture:
 - (i) crop farming;
 - (ii) livestock;
 - (iii) poultry;
 - (iv) fisheries;
 - (v) irrigation;
- (b) Infrastructure:
 - (i) roads;
 - (ii) bridges;
 - (iii) railways;
 - (iv) airports
 - (v) aviation
 - (vi) shipping and navigation;
 - (vii) energy;
 - (viii) buildings
- (c) Industry and Manufacturing;
- (d) Exploration and Mining;
- (e) Education;
- (f) Health;
- (g) Environment and Waste Management;
- (h) Information and Communication Technology (ICT);
- (i) Trade; and

Public Private Partnership

Functions of
the Unit

(j) Sports, Entertainment and Recreation.

7. The functions of the Unit shall be to:

- (a) make an assessment of all projects submitted to it and give its recommendations to the Public-Private Partnership Finance Unit for purposes of ascertaining whether the project:
 - (i) is affordable to the contracting authority;
 - (ii) provides value for money;
 - (iii) presents operational and financial risks to the private party;
- (b) approve proposed projects and feasibility studies which are within the prescribed sums or costs;
- (c) examine the request for proposal to ensure conformity with the approved feasibility study;
- (d) advise the Government on administrative procedures and all matters relating to public-private partnership;
- (e) develop guidelines in relation to all matters relating to public private partnership;
- (f) advise on policy in relation to public-private partnership projects; and
- (g) develop and promote public-private partnership awareness in Mainland Tanzania.

Co-
ordinator

8. The Unit shall be headed by a Co-ordinator to be appointed in accordance with the Public Service Act.

Cap. 298

Public
Private
Finance
Partnership
Unit

9.-(1) The Permanent Secretary shall, establish within the organisation structure of the Ministry responsible for finance, a Unit to be known as a Public Private Partnership Unit.

(2) Subject to sub-regulation (1), the person to be appointed as a Co-ordinator shall have the following qualifications:

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- (a) possess a university degree or its equivalent in social science;
- (b) have at least seven years working experience in managerial post, particularly in administration, construction, finance, economy or in materials management;
- (c) have a knowledge in public-private partnership; and
- (d) any other qualification as the Minister may direct.

(3) The Unit shall deal with fiscal risk allocation and other financial matters of all public-private partnership under this Act.

(4) Without prejudice to the generality of subsection (3), the Unit shall consider and forward to the Minister responsible for finance all projects and feasibility studies submitted to it for purposes of appraising the Government and, where the project to be undertaken involved public finance, the Minister shall initiate funding process.

(5) The projects referred to under subsection (4) shall be dealt with, and the decision thereof be given within thirty days from the date of reception by the Unit.

(6) Where the decision is not made after expiration of thirty days and no reason for delay has been assigned by the Minister, it shall be deemed that the Government has consented to funding arrangement for the project.

PART IV

PARTICIPATION OF PRIVATE PARTY

Responsibilities of contracting authority

10.-(1) Subject to subsection (2), a contracting authority shall, for the purposes of this Act-

- (a) identify, appraise, develop and monitor a project to be implemented under this Act;
- (b) undertake or cause to be undertaken a feasibility study

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where it considers that the project is suitable for implementation under an agreement;

- (c) submit the proposed project together with the feasibility study to the Unit for consideration and approval; and
- (d) prepare a request for proposal on the approval of the feasibility study and, where the terms of the agreement involves public finance, seek approval of the Minister responsible for finance.

(2) Approval of the Minister responsible for finance required under subsection (1)(d) shall not be necessary for any project for which there is no financial or contingent liability to the Government.

(3) The Minister shall prepare regulations for better implementation of this section.

Feasibility
study

11.-(1) Every contracting authority shall undertake or cause to be undertaken a feasibility study where it considers that a project may be implemented under an agreement for purposes of assessing whether the proposed project is feasible as public private partnership project.

- (2) The feasibility study shall-
 - (a) identify and define the activity which the Government intends to outsource to a private party;
 - (b) assess the projected impact of intended outsourcing of the activity to a private party on the staff, assets, liabilities and revenues of the Government;
 - (c) assess the need for the Government in relation to such activity including:
 - (i) various options available to the Government to satisfy those needs;
 - (ii) the advantages and disadvantages of each option;
 - (d) demonstrate comparative advantage in terms of

Public Private Partnership

- strategic and operational benefits for implementation under a public private partnership agreement;
- (e) describe, in specific terms:
 - (i) the nature of the contracting authority's functions, the specific functions to be considered in relation to the project and the expected inputs and deliverables;
 - (ii) the extent to which those functions can lawfully and effectively be performed by a private party in terms of an agreement; and
 - (f) demonstrate that the agreement shall-
 - (i) be affordable to the contracting authority;
 - (ii) provide value for money; and
 - (iii) transfer appropriate technical, operational or financial risks to the private party;
 - (g) explains the capacity of the contracting authority to effectively enforce the agreement, including the ability to monitor and regulate project implementation and the performance of the private party in terms of the agreement; and
 - (h) assesses the capacity, resources and ability of the private party to implement the project.
- (3) The assessment under paragraph (c) of subsection (2) shall indicate comparative projections of-
- (a) the full costs to the Government for the activity if that activity is not outsourced through public-private partnership agreement; and
 - (b) the full costs to the Government for the activity if that activity is outsourced through a public private partnership agreement.
- (4) Where the project which is to be undertaken is of such a nature or type to which Environmental Impact Assessment is required under Part VI of the Environmental Management Act to be made, the contracting authority shall ensure that the Environmental

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Impact Assessment certificate is procured by the private party before undertaking the project.

(5) Any person who contravenes any provision of this section commits an offence and shall on conviction be liable to a fine of not less than shillings two million or to imprisonment for a term of two years and shall, in addition, be liable under the Public Officers (Recovery of Debts) Act for recovery of any loss incurred by the Government for an act or omission giving rise to the loss.

Cap. 76

Public
private
partnership
agreement

12.-(1) Notwithstanding the provisions of any other written laws, a contracting authority may enter into an agreement with a private party for the performance of one or more of the functions of that contracting authority.

(2) The agreement entered into pursuant to subsection (1) shall-

- (a) be made in writing;
- (b) specify the responsibilities of the contracting authority and the private party;
- (c) specify the relevant financial terms;
- (d) ensure the management of performance of the private party;
- (e) provide for assistance by the contracting authority to the private party in obtaining licence and permit which is necessary for the implementation of the project;
- (f) provide for the return of assets, if any, to the contracting authority, at the termination or expiry of the duration of agreement;
- (g) provide for the sharing of risks between the contracting authority and the private party, where relevant;
- (h) provide for the payment to the private party, by way of compensation from a revenue fund of charges or fees collected by the private party from users or

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- (i) customers of the service provided by it;
- (i) provide for remedies in the event of default by either party;
- (j) impose financial management duties on part of the private party, including process relating to internal financial control, budgeting, transparency, accountability and reporting;
- (k) provide for the termination of agreement in case of breach of terms and conditions by either party;
- (l) provide for the conditions for provision of service, where necessary;
- (m) provide for the period of execution; and
- (n) contain such other information as may be necessary.
- (3) Without prejudice to the provisions of subsection (2), the agreement shall contain conditions that shall ensure that-
 - (a) the private party undertakes to perform a contracting authority's function on behalf of the contracting authority for a specified period;
 - (b) the private party receives benefits for performing the function by way of-
 - (i) compensation from a revenue funds;
 - (ii) charges or fees collected by the private party from users or customers of services provided by it; or
 - (iii) a combination of compensation and charges or fees;
 - (c) the private party is liable for the risks arising from the performance of its functions;
 - (d) the Environmental Impact Assessment certificate has been issued in respect of the project;
 - (e) government facilities, equipment or other state resources may be transferred or made available to the private party; and
 - (f) the public and private assets are clearly specified.

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(4) Every agreement entered into under this Act shall be governed and construed in accordance with the laws of Mainland Tanzania or any other laws agreed by the parties.

(5) The rights, obligation and controlling interests of the private party in any project performed under the agreement shall not be transferred or assigned to a third party without the prior written consent of the contracting authority.

Land
acquisition

Caps. 113,
114, 116
and 118

13. Where, the project requires acquisition of land for its implementation, the acquisition shall be carried on in accordance with the Land Act, Village Land Act, the Land User Planning Act, Land Acquisition Act and any other relevant laws.

Disputes
resolution

14. Any dispute arising from the agreement entered into in terms of this Act shall be resolved through negotiation, mediation or arbitration.

Duration
and
extension of
an
agreement

15.-(1) The duration of an agreement shall be provided for in the agreement and shall not be extended unless-

- (a) there is a delay in completion or interruption of operations due to circumstances beyond any party's control;
- (b) the project was suspended by the Unit, contracting authority or any other public authority; or
- (c) there was an increase in costs arising from requirements of the Unit or contracting authority which were not fore seen or included in the agreement.

(2) A violation of the provisions of subsection (1) by either of the parties to an agreement shall render a defaulting party liable for any pecuniary loss incurred by the other party.

Vetting of
agreements

16.-(1) Every agreement intended to be entered into under this Act shall, before the approval of the Minister responsible for

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contracting authority or any other relevant authority, be submitted to the Attorney General for a legal opinion which shall be given within fourteen days.

(2) Where the opinion of the Attorney General is not given within fourteen days prescribed by subsection (1) and no reason is given, it shall be assumed that the Attorney General has agreed with the text of the agreement.

Procurement process

17.-(1) Where the Minister responsible for finance approves the terms of the agreement pursuant to paragraph (d) of subsection (1) of section 10, the contracting authority shall proceed with the procurement process.

Cap. 410

(2) All public-private partnership projects under this Act shall be procured through open and competitive bidding process in accordance with the Public Procurement Act.

(3) Notwithstanding subsection (2), unsolicited bids shall be received, considered, evaluated and accepted on case to case basis as provided for by the relevant laws.

Project officers

18.-(1) As soon as a contracting authority initiates a project that may be a public-private partnership, the accounting officer shall appoint a person with appropriate skills and experience, either from within or outside the contracting authority, as a project officer for the project.

- (2) The project officer shall be responsible for-
- (a) assisting the accounting officer in monitoring the performance of the private party and ensure that the agreement is properly enforced; and
 - (b) any other duties or powers delegated by the accounting officer to him pursuant to this Act.

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Signing of
public -
private
partnership
agreements

19.-(1) The public-private partnership agreements entered into under this Act shall be signed by the accounting officer of the relevant contracting authority.

(2) The accounting officer shall sign a public-private partnership agreement upon fully satisfying himself that the agreement has complied with the provisions of this Act and any other relevant laws.

(3) Any person who contravenes any provision of this section commits an offence.

Responsibilities of
accounting
officers

20. The accounting officer who has entered into a public-private partnership agreement shall, in addition to any other responsibility under this Act, take all necessary reasonable steps to ensure that-

- (a) the outsourced activity is effectively and efficiently carried out in accordance with the agreement;
- (b) any property which is placed under the control of the private party, in terms of the agreement, is appropriately protected against forfeiture, theft, loss, wastage and misuse; and
- (c) the entity has contract management and monitoring capacity.

Amendment
of public
private
partnership
agreements

21. A public-private partnership agreement may be reviewed and amended by parties, provided that-

- (a) the Minister responsible for contracting authority has consented to the review or amendment; and
- (b) other relevant stakeholders have been consulted.

Enjoyment
of benefits

22.-(1) A project undertaken in accordance with the provisions of this Act which ought to qualify for benefits granted to similar investment in respect of which a certificate has been granted

Cap. 38

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under the Tanzania Investment Centre Act, shall be entitled to such **benefits granted under** that Act.

(2) The benefits referred to in subsection (1) shall not apply to taxable incentives.

PART V

MISCELLANEOUS PROVISIONS

Monitoring
and
evaluation

23.-(1) All public-private partnership projects under this Act shall be co-ordinated and monitored by the Ministry, sector Ministries, Departments and Agencies under which they are carried out.

(2) The purpose of monitoring under subsection (1) shall be to incorporate coherent oversight and regular review mechanisms, that would include:

- (a) measurable performance targets;
- (b) meaningful incentives and rewards; and
- (c) effective penalties.

(3) The Ministry, sector Ministries, Departments and Agencies shall, as much as practicable, involve other relevant stakeholders specified under paragraph (c) of section 4 for better implementation and conduct of monitoring and evaluation.

Conflict of
interest

24.-(1) Where an officer of the Unit, the Public Private Partnership Finance Unit or the contracting authority has any pecuniary interest, direct or indirect, in any project, proposed project or other matter, and is involved or participating in a process at which the project, proposed project or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of that process, disclose that fact and shall not take part in or be present at the consideration or discussion of, or involved in any question relating to the project, proposed project or that other matter.

(2) Subject to this subsection, for the purposes of this

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section a person shall be treated as having direct or indirect pecuniary interest in a project or other matter, if-

- (a) he or his nominee is a member of a company or other body, or is the holder of debentures in a company with which the project is made or proposed to be made or he has a direct or indirect pecuniary interest in the project, proposed project or matter under consideration; or
- (b) he is a partner or in the employment of a person with whom the project is made or proposed to be made or who has a direct or indirect pecuniary interest in the project, proposed project or other matter under consideration.

(3) In this section a direct or indirect interest of a spouse or any members of the family of an officer of the Unit, the Public-Private Partnership Unit or the contracting authority shall, if known to that officer, be deemed to be a direct or indirect interest of the officer of the Unit, the Public-Private Partnership Unit or the contracting authority.

(4) A person who contravenes subsection (1) commits an offence and shall be the subject of criminal proceedings under the Prevention and Combating of Corruption Bureau Act.

Act No. 11
of 2007

Duty to take
care and
exercise due
diligence

25. Every public officer performing any functions, discharging any duty or exercising any power under this Act or any other written law having bearing on public-private partnership shall be under the obligation to take care and exercise due diligence in the performance of the functions and discharge of duties and exercise of powers in accordance with the provisions of this Act and any other relevant laws.

General
penalty

26. Any person who commits an offence under this Act to which no specific penalty is prescribed shall be liable to a fine not

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exceeding shillings five million or to imprisonment for a term not exceeding three years.

Regulations

27.-(1) The Minister shall make regulations for better carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations prescribing-

- (a) levying of fees and charges;
- (b) investment opportunities and promotion;
- (c) coverage and marginal areas under the Act;
- (d) functions of local government authorities under this Act and clear linkages of roles between the implementation; ministries and appropriate bodies at the local government;
- (e) evaluation, operation and management of projects under this Act; and
- (f) any other matter in the promotion and furtherance of objectives of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), the Minister may, in consultation with the Unit make rules and guidelines for the better implementation of this Act.

PART VI

CONSEQUENTIAL AMENDMENTS TO THE TANZANIA INVESTMENT ACT

Construction
in Cap. 38

28. This Part shall be read as one with the Tanzania Investment Act, hereinafter referred to as the “principal Act.”

Amendment
of section 6

29. The principal Act is amended in section 6, by-

- (a) inserting after paragraph (b), the following new paragraph:
 - “(c) promote private sector participation in the provision of public services through public-private partnership”;

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- (b) re-numbering paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (e), (f), (g), (h) and (i) respectively.

Amendment
of Section
11

30. The principal Act is amended in section 11, by -

- (a) inserting in subsection (1), a comma after the designation “Executive Director”, and inserting immediately after the comma the designation “the Co-ordinator; and
- (b) inserting in subsection (3) the words “other than the Co-ordinator” after the word “Centre”.

OBJECTS AND REASONS

The Bill makes legislative proposals for establishment of legal framework for the participation of private entities in Government projects through special agreements. The participation is aimed at implementing socio-economic reforms with the intention of stimulating rate of economic growth and poverty reduction goals.

The Bill is divided into V Parts.

Part I provides for preliminary matters including the title of the proposed law, provision for its commencement and interpretation of terms used in the Bill.

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Part II provides for the objectives of the Act and roles of various stakeholders in the implementation of the proposed Act.

Part III deals with the establishment of the Public Private Partnership Co-ordination Unit within the Tanzania Investment Centre. The Part also provides for the functions and appointment of the Co-ordinator. Further, the Part establishes another Unit within the Ministry responsible for finance to deal with financial aspects of the projects.

Matters relating to involvement of private parties in the projects, responsibilities of contracting authority, feasibility studies, procurement arrangements, public private partnership agreements, EIA requirements and tax benefits are proposed under the Part IV.

Part V provides for miscellaneous provisions which include powers of the Minister to make regulations, monitoring and evaluation, conflict of interest and general penalty.

Part VI makes proposals for consequential amendments to the Tanzania Investment Act, Cap.38 in order to add to the current functions of the Tanzania Investment Centre, the functions of promoting private sector participation in the public private partnership projects.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kuanzishwa kwa mfumo wa kisheria utakaosimamia ubia wa watu au kampuni binafsi katika miradi ya Serikali kupitia mikataba maalum. Ubia huo unalenga kutekeleza marekebisho ya kiuchumi na kijamii nchini kwa lengo la kusaidia kukuza uchumi na kupunguza umaskini.

Muswada huu umegawanyika katika Sehemu Tano.

Sehemu ya Kwanza inahusu masuala ya utangulizi ambayo yanajumuisha jina la Sheria inayopendekezwa, kuanza kutumika kwake na tafsiri ya baadhi ya maneno na misamiati iliyotumika katika Muswada.

Sehemu ya Pili ina masharti yanayohusu madhumuni ya Sheria inayokusudiwa kutungwa na majukumu ya wadau mbalimbali katika utekelezaji wa Sheria hiyo.

Sehemu ya Tatu inahusu kuanzishwa kwa Kitengo cha Uratibu wa Ubia baina ya Serikali na Sekta Binafsi katika Kituo cha Uwekezaji Tanzania. Sehemu hii pia ina masharti yanayoainisha kazi za Kitengo na uteuzi wa Mratibu. Pamoja na hayo, Sehemu hii pia inaanzisha Kitengo hicho kingine ndani ya Wizara yenye dhamana na masuala ya fedha. Kitengo hicho kitashughulikia masuala ya fedha ya miradi iliyo chini ya Sheria inayopendekezwa.

Masuala yanayohusu ushiriki wa watu na kampuni binafsi katika miradi, wajibu wa mamlaka zenye miradi, upembuzi yakinifu,

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mipangilio ya manunuzi, mikataba ya Ubia Baina ya Serikali na Sekta binafsi, Hati ya Tathmini ya mazingira na msamaha wa kodi yanapendekezwa katika Sehemu ya Nne.

Sehemu ya Tano inapendekeza masuala ya jumla ambayo yanajumuisha mamlaka ya Waziri kutengeneza Kanuni, ufuatiliaji na tathmini, mgongano wa maslahi na adhabu ya jumla.

Sehemu ya Sita inapendekeza kufanya marekebisho katika Sheria ya Uwekezaji, Sura ya 38, ili kuainisha majukumu ya Kituo cha Uwekezaji katika kuendeleza miradi ya ubia baina ya Serikali na Sekta Binafsi.

Dar es Salaam,
3 Juni, 2010

MIZENGO K. PINDA,
Waziri Mkuu