

**THE PUBLIC PRIVATE PARTNERSHIPS
(AMENDMENT) BILL, 2026**

A Bill for

AN ACT of Parliament to amend the Public Private Partnerships Act; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Public Private Partnerships (Amendment) Act, 2026.

Amendment of section 2 of Cap. 430.

2. Section 2 of the Public Private Partnerships Act (in this Act referred to as the “principal Act) is amended in the definition of “contracting authority” by inserting the following new paragraph immediately after paragraph (a)—

No. 25 of 2025.

(aa) at the national government level, a Government Owned Enterprise as defined in section 2 of the Government Owned Enterprises Act, 2025, which intends to have its functions undertaken by a private party.

Amendment of section 4 of Cap. 430.

3. Section 4 of the principal Act is amended by deleting subsection (3).

Amendment of section 6 of Cap. 430.

4. Section 6 of the principal Act is amended in subsection (1), by inserting the following new paragraph immediately after paragraph (a)—

(aa) the Principal Secretary in the State department responsible for matters relating to public private partnerships.

Amendment of section 19 of Cap. 430.

5. Section 19 of the principal Act is amended in subsection (2) by deleting the words “and tender evaluation reports” appearing in paragraph (g).

Amendment of section 21 of Cap. 430.

6. Section 21 of the principal Act is amended by deleting subsection (2).

Amendment of section 29 of Cap. 430.

7. Section 29 of the principal Act is amended in subsection (3), by inserting the word “development” immediately after the words “recoverable project”.

Amendment of section 31 of Cap. 430.

8. Section 31 of the principal Act is amended in subsection (2), by deleting the words “a representative” and substituting therefor the words “at least one”.

Amendment of section 32 of Cap. 430.

9. Section 32 of the principal Act is amended in subsection (1), by deleting the words “under the direction of” and substituting therefor the words “in consultation with”.

Amendment of section 38 of Cap. 430.

10. Section 38 of the principal Act is amended by deleting paragraph (b).

Amendment of section 43 of Cap. 430.

11. Section 43 of the principal Act is amended in the opening words of subsection (7), by deleting the words

“contracting party” and substituting therefor the words “contracting authority”.

Amendment of section 48 of Cap. 430.

12. Section 48 of the principal Act is amended—

- (a) in subsection (1), by deleting the expression “section 44” and substituting therefor the expression “section 46(6)”;
- (b) in subsection (2), by deleting the words “project appraisal team” and substituting therefor the words “project implementation team”.

Amendment of section 55 of Cap. 430.

13. Section 55 of the principal Act is amended in subsection (4), by deleting the words “than an” appearing immediately after the words “shall submit” and substituting therefor the word “the”.

Amendment of section 58 of Cap. 430.

14. Section 58 of the principal Act is amended in subsection (2), by deleting the words “for approval” appearing immediately after the words “the Directorate”.

Amendment of section 59 of Cap. 430.

15. Section 59 of the principal Act is amended in subsection (2), by deleting the word “Committees” and substituting therefor the word “Committee”.

Amendment of section 61 of Cap. 430.

16. Section 61 of the principal Act is amended—

- (a) by inserting the following proviso immediately after subsection (2)—

Provided that the Committee shall, on the recommendation of the Directorate, grant an extension of time where the extension is justified.

- (b) in subsection (3), by deleting the word “attached” appearing after the words “liability shall” and substituting therefor the word “attach”.

Amendment of section 65 of Cap. 430.

17. Section 65 of the principal Act is amended—

- (a) by deleting the word “assemblies” appearing in the marginal note and substituting therefor the words “executive committees”;
- (b) in subsection (1), by deleting the word “county assembly” and substituting therefor the words “county executive committee”.

Amendment of section 68 of Cap. 430.

18. Section 68 of the principal Act is amended in subsection (1) by deleting the words “contracting authority and”.

Amendment of section 73 of Cap. 430.

19. Section 73 of the principal Act is amended in subsection (7) by deleting the expression “section 71” and substituting therefor the expression “section 72”.

Amendment of section 75 of Cap. 430.

20. Section 75 of the principal Act is amended in subsection (5), by deleting the words “seven days” and substituting therefor the words “fourteen days”.

Amendment of
section 76 of
Cap. 430.

21. Section 76 of the principal Act is amended in subsection (1), by inserting the word “Petition” immediately after the words “Secretary to the”.

Amendment of
section 77 of
Cap. 430.

22. Section 77 of the principal Act is amended by inserting the word “Petition” immediately after the words “members of the”.

Amendment of
section 78 of
Cap. 430.

23. Section 78 of the principal Act is amended by inserting the word “Petition” immediately after the words “before the”.

Amendment of
section 79 of
Cap. 430.

24. Section 79 of the principal Act is amended in subsection (1)—

- (a) by inserting the word “Petition” immediately after the words “member of the” appearing in paragraph (a);
- (b) by inserting the word “Petition” immediately after the words “by the” appearing in paragraph (b);
- (c) by inserting the word “Petition” immediately after the words “by the” appearing in paragraph (c);
- (d) by inserting the word “Petition” immediately after the words “information to the” appearing in paragraph (d);
- (e) by inserting the word “Petition” immediately after the words “member of the” appearing in paragraph (e);
- (f) by inserting the word “Petition” immediately after the words “member of the” appearing in paragraph (f).

Amendment of
section 80 of
Cap. 430.

25. Section 80 of the principal Act is amended by deleting the words “The Committee” and substituting therefor the words “The Petition Committee”.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Public Private Partnerships (Amendment) Bill, 2026, is to amend the Public Private Partnerships Act (Cap. 430).

Clause 1 of the Bill sets out the short title.

Clause 2 of the Bill proposes to amend section 2 of the principal Act to include Government Owned Enterprises in the definition of “contracting authority;

Clause 3 of the Bill proposes to amend section 4 of the Public Private Partnerships Act (the Principal Act) to omit reference to the Public Procurement and Asset Disposal Act (Cap. 412C).

Clause 4 of the Bill proposes to amend section 6 of the principal Act to include the Principal Secretary in the State department responsible for public private partnerships as a member of the Public Private Partnerships Committee.

Clause 5 of the Bill proposes to amend section 19 of the principal Act to provide that the Public Private Partnerships Directorate shall not be responsible for reviewing tender evaluation reports prepared by contracting authorities.

Clause 6 of the Bill proposes to amend section 21 of the principal Act by deleting subsection (2) which provided that the tenure of a public private partnership contract would be thirty years and to align the section with the tenures of the different kinds of contracts provided for in the Second Schedule to the principal Act.

Clause 7 of the Bill proposes to amend section 29 of the principal Act to provide that the costs to be paid into the Project Facilitation Fund shall be recoverable project development costs rather than recoverable project costs.

Clause 8 of the Bill proposes to amend section 31 of the principal Act to provide that the membership of a project implementation team of a contracting authority may have more than one representative of the contracting authority.

Clause 9 of the Bill proposes to amend section 32 of the principal Act to provide that a contracting authority shall consult the Directorate when conducting a feasibility study rather than be under the direction of the Directorate.

Clause 10 of the Bill proposes to amend section 38 of the principal Act to omit the condition that in order for a contracting authority to use the direct procurement method, works or services should only be available from a limited number of private parties.

Clause 11 of the Bill proposes to amend section 43 of the principal Act to clarify that a public private partnerships agreement is between a contracting authority and a private party.

Clause 12 of the Bill provides for the amendment of section 48 of the principal Act to correct a cross-referencing mistake and clarify that the contracting authority may constitute the project implementation team as the prequalification committee to review applications for prequalification by potential bidders.

Clause 13 of the Bill proposes to amend section 55 of the principal Act to correct a grammatical error.

Clause 14 of the Bill proposes to amend section 58 of the principal Act to clarify that the approval of the Directorate is not required when the contracting authority submits the project and financial risk assessment report to the Directorate.

Clause 15 of the Bill proposes to amend section 59 of the principal Act to correct a grammatical error.

Clause 16 of the Bill proposes to amend section 61 of the principal Act to provide for the extension of time by the Committee, on the recommendation of the Directorate and for good reason, for when the private party shall commence a project after executing the project agreement.

Clause 17 of the Bill proposes to amend section 61 of the principal Act to correct a grammatical error.

Clause 18 of the Bill proposes to amend section 65 of the principal Act to require that project agreements by county governments shall be approved by county executive committees rather than county assemblies which is similar to the requirement for the national government.

Clause 19 of the Bill proposes to amend section 68 of the principal Act to provide that the private party shall be responsible for incorporating the project company rather than it being the joint responsibility of the private party and contracting authority.

Clause 20 of the Bill proposes to amend section 73 of the principal Act to correct a cross-referencing mistake.

Clause 21 of the Bill proposes to amend section 75 of the principal Act to extend the time for filing a petition with the Petition Committee from seven days to fourteen days.

Clause 22 of the Bill proposes to amend section 76 of the principal Act to clarify that the Committee referred to in the section is the Petition Committee.

Clause 23 of the Bill proposes to amend section 77 of the principal Act to clarify that the Committee referred to in the section is the Petition Committee.

Clause 24 of the Bill proposes to amend section 78 of the principal Act to clarify that the Committee referred to in the section is the Petition Committee.

Clause 25 of the Bill proposes to amend section 79 of the principal Act to clarify that the Committee referred to in the section is the Petition Committee.

Clause 26 of the Bill proposes to amend section 80 of the principal Act to clarify that the Committee referred to in the section is the Petition Committee.

Dated the, 2026.

HON. FCPA JOHN MBADI NG'ONGO EGH,
Cabinet Secretary for the National Treasury.

Section 2 of Cap. 430 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"affordability" means that—

(a) the financial commitments to be incurred by a contracting authority in terms of a project agreement are sustainable and do not impose an unreasonable burden to the contracting authority and may be met by funds—

(i) designated within the existing budget of the contracting authority for its function for which the agreement relates; and;

(ii) assigned to the contracting authority in accordance with its relevant future budgetary allocation; and

(b) the cost of delivering a facility or service in relation to the project by the contracting authority does not impose an unreasonable financial burden on the end users;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to finance;

"Committee" means the Public Private Partnership Committee established under section 6;

"concession" means a contractual licence formalized by a project agreement, which may be linked to a separate interest or right over real property, with or without a fee to Government, entitling a person who is granted the licence to make use of the specified infrastructure or undertake a project and to charge user fees, receive availability payments or both such fees and payments during the term of the concession;

"contracting authority", means—

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county government level, the county government or county corporation which intends to have its functions undertaken by a private party;

"contracting authority's property" includes all movable and immovable property belonging to the contracting authority and the intellectual property rights vested in the contracting authority;

"Directorate" means the Directorate of Public Private Partnerships established under section 15;

"feasibility study" means a study undertaken to explore the technical, financial, legal, social and environmental feasibility of undertaking an infrastructure or development facility as a public private partnership;

"financial close" means the date when all conditions precedent required to be met to achieve first draw down on Senior Debt under a project agreement are met, as specified under a project agreement;

"Fund" means the Public Private Partnership Project Facilitation Fund established under section 81;

"local content" means the added value brought to the Kenyan economy from project-related activities by way of local distribution of accruing benefits including through the procurement of locally available workforce, services and supplies and systematic development of national capacity and capabilities;

"private party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Act;

"privately-initiated proposal" means a proposal that is originated by a private party without the involvement of a contracting authority and may include information that enables the complete evaluation of the proposal as if it were a bid;

"project" means the design, construction, development or operation of a new infrastructure, asset or facility or the rehabilitation, modernization, expansion, operation or management of an existing infrastructure, asset or facility;

"project agreement" means a contract concluded between a contracting authority and a private party and includes any ancillary agreement entered into by the parties in relation to an agreement;

"project company" means a special purpose vehicle company incorporated by a successful bidder for the purpose of undertaking a project in accordance with a project agreement executed by the parties;

"Public Debt Management Office" means the Public Debt Management Office established by section 62(1) of the Public Finance Management Act (Cap. 412A);

"public private partnership" means a contractual arrangement between a contracting authority and a private party under which a private party—

(a) undertakes to perform a public function or provide a service on behalf of the contracting authority;

(b) receives a benefit for performing a public function by way of—

(i) compensation from a public fund;

(ii) charges or fees collected by the private party from users or consumers of a service provided to them; or

(iii) a combination of such compensation and such charges or fees;

(c) is generally liable for risks arising from the performance of the function in accordance with the terms of the project agreement; and

(d) transfers the facility to the contracting authority;

"transaction advisor" means a person who has the appropriate skill and experience to assist and advise the contracting authority or the Directorate on matters related to a public private partnership;

"user fee" means the rate, toll, fee, or other charge imposed for the use of all or part of an infrastructure or development facility or service; and

"value for money" means that the undertaking of a public function of the contracting authority by a private party under a public private partnership

results in a net benefit accruing to that contracting authority defined in terms of cost, price, quality, quantity, timeliness or risk transfer.

Section 4 of Cap. 430 which it is proposed to amend—

4. Application of Act

(1) This Act shall apply to every project agreement for the financing, design, construction, rehabilitation, operation, equipping or maintenance of a project or provision of a public service undertaken as a public private partnership.

(2) The provisions of the Public Procurement and Asset Disposal Act (Cap. 412C), shall not apply to a public private partnership.

(3) Without prejudice to the generality of subsection (2), the provisions of the Public Procurement and Assets Disposal Act (Cap. 412C) shall—

(a) not apply to a public private partnership project, if all the monies for the project are from the private party;

(b) apply if there is counterpart funding that is, including public funds, for the public private partnership project.

Section 6 of Cap. 430 which it is proposed to amend—

6. Public Private Partnership Committee

(1) There is established the Public Private Partnership Committee which shall consist of —

(a) the Principal Secretary in the State department responsible for matters relating to finance, who shall be the chairperson;

(b) the Principal Secretary in the State department responsible for matters relating to planning;

(c) the Principal Secretary in the State Department responsible for matters relating to infrastructure;

(d) the Solicitor-General;

(e) two persons nominated by the Council of County Governors;

(f) three persons, not being public officers, appointed by notice in the Gazette by the Cabinet Secretary; and

(g) the Director-General, who shall be the secretary.

(2) The Committee shall co-opt the Principal Secretary responsible for the contracting authority whose public private partnership project is the subject of discussion at a meeting.

(3) The Committee may co-opt any person or public officer whose knowledge or experience is necessary for the public private partnership under discussion.

(4) A person who is co-opted shall not vote at a meeting and shall only be a member of the Committee for a period not exceeding one year.

(5) The members referred to under paragraphs (1)(a), (b), (c), (d), (e) and (f) shall attend the Committee's meetings in person and may designate in writing an officer to represent them in sub-committees of the Committee.

Section 19 of Cap. 430 which it is proposed to amend—

19. Functions of the Directorate

(1) The Directorate shall be the lead institution in the implementation of a public private partnership project under this Act and, in this regard, shall be responsible for—

(a) originating, guiding and co-ordinating the selection, ranking and prioritization of public private partnership projects within the public budget framework;

(b) overseeing project appraisal and development activities of contracting authorities including providing technical expertise in the implementation of projects under this Act;

(c) guiding and advising contracting authorities in project structuring, procurement and tender evaluations;

(d) leading contracting authorities in contract negotiations and deal closure;

(e) on its own motion, originating and leading in project structuring and procurement, in liaison with a contracting authority;

(f) supporting the development of public private partnerships programmes in the country;

(g) overseeing contract management frameworks for projects under this Act; and

(h) undertaking any other activity necessary for the fulfilment of any of the functions of the Directorate.

(2) In the performance of its functions, the Directorate shall—

(a) establish an open, efficient and equitable process for the management of the identification, screening, prioritization, development, procurement, implementation and monitoring of projects;

(b) serve as the national resource centre on public private partnerships;

(c) conduct capacity-building for contracting authorities;

(d) create public awareness on public private partnerships;

(e) provide advisory and support services to contracting authorities in national and county governments at all stages of a project under this Act;

(f) on behalf of contracting authorities, retain transaction advisors and to enter into agreements for that purpose to assist contracting authorities during project appraisal and implementation;

(g) review and approve project proposals and tender evaluation reports;

(h) establish a national register of projects implemented under this Act;

(i) monitor contingent liabilities and accounting and budgetary issues related to public private partnerships in conjunction with relevant government departments; and

(j) conduct research and publish findings on public private partnerships in order to ensure the continuous improvement of public private partnership projects.

(3) The Directorate shall issue standard bidding documents for use by contracting authorities.

(4) The Directorate shall prepare financial accounts and inventory of any monies allocated to it, and on any financial support received by it under this Act.

Section 21 of Cap. 430 which it is proposed to amend—

21. Public private partnership arrangements

(1) Subject to the provisions of this Act, a contracting authority may enter into a public private partnership arrangement with a private party in accordance with the Second Schedule.

(2) Without prejudice to the periods specified under the Second Schedule, a contracting authority shall not enter into a public private partnership arrangement for a period exceeding thirty years.

Section 29 of Cap. 430 which it is proposed to amend—

29. Success fees and recoverable project development costs

(1) The Directorate shall impose a success fee not exceeding one per cent of the total project cost of a transaction payable by a private party that achieves financial close on a project.

(2) Where the Directorate or a contracting authority incurs costs for transaction advisory services offered in support of project preparatory and procurement activities or any other recoverable project development costs, such costs shall be recoverable in full, without any inflation adjustment, from the private party that enters into a project agreement with the contracting authority.

(3) Success fees and recoverable project costs under subsection (2) shall be payable into the Public Private Partnership Project Facilitation Fund.

(4) The Directorate may issue guidelines on the allocation of costs and disbursements on success fees imposed under this section in relation to recoverable project costs.

Section 31 of Cap. 430 which it is proposed to amend—

31. Project preparation and implementation

(1) A contracting authority shall, under the direction of the Directorate, constitute a project implementation team for overseeing the structuring and implementation phases of the project including—

- (a) overseeing the conduct of feasibility studies;
- (b) preparing the project for procurement;
- (c) conducting the tender stage of the project; and
- (d) negotiating project agreements for the project.

(2) A project implementation team constituted under subsection (1) shall consist of a representative of the Directorate and such technical, financial and legal experts of the contracting authority as the contracting authority and the Directorate shall determine.

Section 32 of Cap. 430 which it is proposed to amend—

32. Feasibility studies

- (1) A contracting authority shall, under the direction of the Directorate, undertake a feasibility study of the project it intends to implement under this Act in order to determine the viability of the project.
- (2) The contracting authority shall consider the following matters when undertaking the feasibility study—
 - (a) the technical requirements of the project;
 - (b) the legal requirements to be met by the parties to the project;
 - (c) the social, economic and environmental impact of the project;
 - (d) the affordability and value for money proposition in the project; and
 - (e) the project's land requirements and required site preparatory activities necessary for effective and efficient project initiation.

Section 38 of Cap. 430 which it is proposed to amend—

38. Direct procurement

A contracting authority may, in consultation with the Directorate, use direct procurement if any of the following conditions are satisfied—

- (a) the private party possesses the intellectual property rights to the key approaches or technologies required for the project;
- (b) the works or services are only available from a limited number of private parties;
- (c) a particular private party has exclusive rights in respect of the works or services, and no reasonable alternative or substitute is available;
- (d) the contracting authority determines that there are operational and strategic advantages and or reasons linked to particular private parties on the basis of national interest, bilateral or international cooperation, or external trade;
- (e) the direct engagement of a private party shall significantly lower the cost of delivering the works or services on the basis of the project's qualifying for funding on such terms as the Government shall approve without such outcomes becoming part of the public debt;
- (f) there is an urgent need for the works or services, and any other procurement method is impractical:

Provided that the circumstances giving rise to the urgency were not foreseeable by the contracting authority or the result of dilatory conduct by the contracting authority;

- (g) the contracting authority, having procured goods, equipment, technology or services from a private party, determines that additional supplies shall be procured from that private party for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the—
- (i) effectiveness of the original procurement in meeting the needs of the contracting authority;

(ii) limited size of the proposed procurement in relation to the original procurement; and

(iii) reasonableness of the price and the unsuitability of alternatives to the goods or services in question;

(h) the works or services are procured from a public entity:

Provided that the acquisition price shall be fair and reasonable and compare well with known prices of works or services in the circumstances; or

(i) any other reason that may be prescribed by the Cabinet Secretary.

Section 43 of Cap. 430 which it is proposed to amend—

43. Project development of privately-initiated proposals

(1) Where the Committee approves a privately-initiated proposal, the proposal shall proceed to the project development phase, during which a private party shall prepare specific project development activities before the project can be approved.

(2) The project development phase shall be completed within six months from the date of the approval by the Committee.

(3) Despite subsection (2), a contracting authority may apply in writing to the Directorate for the extension of time for the completion of the project development phase, specifying the justification for the application for additional time, and proposing a new timeframe and mitigation measures to prevent any further delays.

(4) Where the Directorate is satisfied with the justifications of the contracting authority under subsection (3), it shall grant the application.

(5) The project development phase consists of the activities necessary to enable the contracting authority and other appropriate decision-making agencies, under the guidance of the Directorate, to undertake a detailed evaluation of the proposed project before contracting, including the development of—

(a) a detailed geographical, temporal and functional scope of the proposed project, including any right of way or land acquisition or human resettlement plan, where applicable;

(b) a technical feasibility study, including a technical design and technical specification schedule that is capable of supporting pricing and socio-environmental impact assessments;

(c) a financial feasibility study, including a detailed risk assessment, fiscal impact assessment or affordability assessment and a funding and financial plan;

(d) a legal feasibility study, including an assessment of legal risks and uncertainties;

(e) a social and environmental impact assessment where applicable;

(f) an economic feasibility study;

(g) private public partnership suitability assessment or value for money assessment;

(h) a comprehensive risk matrix;

- (i) a preliminary private public partnership structure; and
 - (j) a plan for stakeholder outreach to ensure social acceptability of the project.
- (6) At the request of a private party, the contracting authority may enter into a project development agreement with the private party that shall outline the terms under which the private party will undertake project development activities.
- (7) A project development agreement between the contracting party and the private party shall provide for the—
- (a) objectives of the project and project development agreement;
 - (b) responsibilities of the contracting authority and the private party under the agreement;
 - (c) compensation principles specifying that—
 - (i) if the project is eventually awarded to the private party, there shall be no compensation;
 - (ii) if the project is awarded to another private party, the costs of the private party that submitted the proposal for completing the project development phase, shall be paid by the private party, at financial close; and
 - (iii) if the project does not progress beyond the project development phase, there shall be no compensation liability on the part of the Government;
 - (d) modalities for coordination and communication between the contracting authority and the private party;
 - (e) timelines for project development;
 - (f) conditions under which the agreement may be terminated;
 - (g) legal or regulatory obligations of the contracting authority and the private party; and
 - (h) policies related to transparency and disclosure, accountability, confidentiality and conflicts of interest.
- (8) The Directorate shall develop standardized contract documents for a project development agreement with respect to privately-initiated proposals.
- (9) All documents resulting from the project development phase shall be evaluated by the contracting authority in accordance with the evaluation criteria specified in section 42 and the Directorate shall make recommendations thereon to the Committee for approval within twenty working days of completing the project development phase.
- (10) The contracting authority, in co-ordination with the Directorate, may hire external advisors to review and provide an independent opinion regarding the studies conducted by the private party regarding the privately-initiated proposal.
- (11) The Committee may, on the recommendations of the contracting authority, and any independent reviews or advice that the Committee may solicit in that regard, make a determination that—

(a) the project meets the public interest, public private partnership suitability, project feasibility and affordability criteria, and grant approval for the project to be procured under this Act;

(b) the project does not meet public private partnership suitability criteria and give guidance on alternative methods by which the project may be implemented; or

(c) the project does not meet any of the relevant criteria and should be abandoned.

(12) Where the Committee determines that the project should be abandoned under paragraph (11)(c), the contracting authority may elect to restructure the project to meet the evaluation criteria and resubmit the project to the Committee for a fresh determination.

(13) The Committee shall render its decision under this section within fourteen days of receiving the report under subsection (9).

(14) Following the determination of the Committee, the contracting authority shall publish the feasibility studies and project documentation used to evaluate the project, subject to any applicable disclosure guidelines on public private partnership projects for the time being in force.

(15) For the purposes of this section—

(a) "public interest" means the proposed project aligns with stated infrastructure needs, policy objectives and priorities of the Government, addresses a defined societal need, and contributes to the country's socio-economic agenda; and

(b) "project feasibility" means the proposed project has been confirmed to be technically, financially, socially, environmentally and legally feasible.

Section 48 of Cap. 430 which it is proposed to amend—

48. Prequalification committees

(1) The contracting authority shall, upon issuing a notice under section 44, constitute a pre-qualification committee for the purpose of pre-qualifying bidders.

(2) The contracting authority may, where it considers it appropriate, constitute the project appraisal team as the prequalification committee for purpose of prequalifying bidders under subsection (1).

Section 55 of Cap. 430 which it is proposed to amend—

55. Evaluation of bids and evaluation reports

(1) The proposal evaluation team shall evaluate the technical and financial bids within twenty-eight days in accordance with the procedure specified in the tender documents and guidelines prescribed by the Directorate and prepare an evaluation report specifying—

(a) the evaluation criteria;

(b) the manner in which the first-ranked bidder has satisfied the requirements specified in the tender documents in comparison with the other bidders;

(c) such other information as the contracting authority shall consider necessary; and

(d) the first-ranked and reserve bidder.

(2) The proposal evaluation team shall submit the evaluation report together with its recommendations thereon to the accounting officer of the contracting authority for approval.

(3) If the accounting officer is not satisfied with the recommendations of the evaluation committee, the accounting officer may return the evaluation report to the proposal evaluation team with recommendations for the review of the report.

(4) The contracting authority shall submit than an evaluation report to the Directorate for no objection within seven days of conclusion of the evaluation.

Section 58 of Cap. 430 which it is proposed to amend—

58. Project and risk assessment reports

(1) The negotiating committee shall, upon concluding negotiations under section 57, submit to the contracting authority a project and financial risk assessment report which shall specify the negotiated terms, the contingent liability in respect of the project and the committee's recommendations.

(2) If the contracting authority is satisfied with the recommendations of the negotiating committee, it shall submit the project and financial risk assessment report to the Directorate for approval.

(3) If the Directorate is not satisfied with the recommendations of the negotiating committee, it shall notify the contracting authority in writing and specify the reasons thereof.

(4) Where the contracting authority has been notified under subsection (3), it shall refer the project and financial risk assessment report back to the negotiating committee together with the Directorate's notification under subsection (3) and request the committee to review the report.

(5) Subsections (1), and (2) shall apply, with the necessary modifications, to the review of the report under subsection (4).

Section 59 of Cap. 430 which it is proposed to amend—

59. Approval of project and financial risk assessment reports by the Committee

(1) The Directorate shall submit the project and financial risk assessment report and its recommendations thereon to the Committee for approval.

(2) The Committees shall consider the report submitted to it under subsection (1) and if satisfied, approve the execution of a project agreement between the contracting authority and the successful bidder within twenty-eight days after receiving the report under subsection (1).

Section 61 of Cap. 430 which it is proposed to amend—

61. Execution of project agreements

(1) On the approval under section 60, the contracting authority shall execute the project agreement with the successful bidder.

(2) A private party that executes a contract under subsection (1) shall commence the project within twelve months from the date of execution of the contract.

(3) If the private party fails to commence the project in accordance with subsection (2), the contracting authority shall terminate the contract and no liability shall be attached to the contracting authority or the Government.

Section 65 of Cap. 430 which it is proposed to amend—

65. Approved by county assemblies

(1) Subject to section 64 (5), each county government intending to undertake a public private partnership project shall obtain the approval of the respective county assembly before undertaking the project.

(2) Where a public private partnership project by a county government requires a government support measure, the county government shall not undertake the project or enter into a project agreement before obtaining the written approval of the Cabinet Secretary.

Section 68 of Cap. 430 which it is proposed to amend—

68. Project companies

(1) On the execution of a project agreement, the contracting authority and successful bidder shall establish a project company in accordance with the Companies Act (Cap. 486) for the purpose of undertaking the project.

(2) A project company established under subsection (1)—

(a) may include a public entity as a minority shareholder in the company; and

(b) shall provide such performance security and fulfil such conditions as may be specified in the project agreement and prescribed by the Cabinet Secretary in accordance with Regulations made under this Act.

(3) The directors of a project company shall not wind up the company, alter the legal structure or reduce the share capital of the company without the written approval of the contracting authority, which approval shall not be unreasonably withheld.

(4) A majority shareholder of a project company shall not transfer any shares held in the project company or permit the dilution of its majority stake in the project company to a point where the shareholder loses such majority standing before the issuance by the contracting authority of a certificate confirming the contracting authority's acceptance of the quality of the project undertaken in accordance with the project agreement.

(5) Notwithstanding subsection (4), any party to a project agreement may, with the approval of the Cabinet Secretary, restructure the project company's shareholding as may be necessary to secure the equity component of a transaction:

Provided that the restructuring of the project company's shareholding shall not—

(a) alter the overall split between debt and equity approved under the project agreement; and

(b) dilute the majority position of the lead member of a consortium within the shareholding structures of the project company.

(6) Notwithstanding the provisions of the Companies Act (Cap. 486) where the transfer of shares results in the transfer of control of a project company

to a third party, the transfer shall not be valid unless the shareholder has applied for, and obtained, the written approval of the contracting authority.

(7) A project company shall not pledge its shares except for the purpose of financing the project.

(8) In granting approvals under this section, the Cabinet Secretary shall, on the recommendation of the Committee, do so, but may also decline to issue an approval if there are reasonable grounds to determine that the requested shareholding alterations would impair the assurance of delivery of the public facility or service.

(9) The Cabinet Secretary shall, in consultation with the Directorate, make Regulations for the better implementation of this section.

Section 73 of Cap. 430 which it is proposed to amend—

73. Project management

(1) A contracting authority that is party to a project agreement shall, together with sector regulators, and with the guidance of the Directorate, establish and implement a contract management framework for the project agreement for the purpose of—

- (a) monitoring the implementation of the project agreement;
- (b) measuring the output of the project;
- (c) liaising with the other party to the agreement, users of the facility or service and other relevant stakeholders;
- (d) overseeing the management of the project agreement;
- (e) preparing bi-annual reports on project implementation;
- (f) submitting reports on project implementation to the Directorate;
- (g) implementing the recommendations and guidelines relevant hereto issued under the Act;
- (h) submitting of such information as may be required by the Directorate with respect to project oversight; and
- (i) submitting of such information as may be required by the Public Debt Management Office with respect to contingent liability management.

(2) The project parties shall, in co-ordination with the Directorate, appoint an independent expert to manage the implementation of the project agreement under such terms as the Directorate shall prescribe.

(3) The cost of hiring an independent expert under subsection (2) shall form part of the project cost to be borne by the private party.

(4) A project agreement involving the performance of a function of a contracting authority by a private party shall not divest the contracting authority of the responsibility for ensuring that the function is effectively and efficiently performed.

(5) A project agreement involving the use of a contracting authority's assets by a private party shall not divest the contracting authority of the responsibility of ensuring that the assets are protected against factors which may negatively affect the assets including forfeiture, theft, loss and wastage.

(6) The Directorate shall monitor and provide necessary guidance to contracting authorities on the implementation of each project under this Act.

(7) Where the Directorate determines in accordance with this section and section 71 that there has arisen an imbalance in the distribution of benefits, and for the purpose of promoting the sustained transfer of project-linked economic benefits to the citizens of Kenya, the Directorate shall, in consultation with contracting authority, initiate the amendment or variation of the project agreement in accordance with section 71.

(8) Sector regulatory authorities shall monitor the performance of contracting authorities and private parties in the implementation of projects under this Act in accordance with the Regulations prescribed by the Cabinet Secretary under this Act.

Section 75 of Cap. 430 which it is proposed to amend—

75. Petition Committee

(1) There is established a committee to be known as the Petition Committee which shall hear and determine petitions regarding any decision by the Committee, Directorate or a contracting authority under this Act.

(2) The Petition Committee shall consist of the following persons appointed by the Cabinet Secretary—

(a) the chairperson, who shall be a person qualified to be appointed as a judge of the High Court;

(b) four other persons with such relevant knowledge and experience as the Cabinet Secretary shall consider appropriate; and

(c) two persons, not being a member of county executive committees, and possessing such relevant knowledge and experience as the Cabinet Secretary shall consider appropriate, nominated by the Council of County Governors.

(3) The members of the Petition Committee shall hold office for a term of three years and may be eligible for re-appointment for one further term.

(4) A person who is aggrieved by a decision of the Directorate, Committee or a contracting authority regarding a tender process or project agreement may lodge a petition to review the decision with the Petition Committee in the prescribed form and after paying the prescribed fee.

(5) A petition under this section shall be made within seven days from the date of the decision of the Directorate, Committee or a contracting authority.

(6) The Petition Committee shall hear and determine the petition within twenty-eight days from the date the petition was lodged.

(7) A person aggrieved by the decision of the Committee may, within seven days of the decision, make an application for review to the Committee in the prescribed form.

(8) A person aggrieved by the decision of the Petition Committee may appeal to the High Court within fourteen days from the date of the Committee's decision.

(9) The Cabinet Secretary may, by Regulations, provide for the procedure for hearing and determining a petition and the applicable fees under this section.

Section 76 of Cap. 430 which it is proposed to amend—

76. Secretary

(1) The Cabinet Secretary shall designate a public officer to serve as the Secretary to the Committee.

(2) A person designated under subsection (1) shall be an Advocate of the High Court of Kenya of at least seven years standing.

Section 77 of Cap. 430 which it is proposed to amend—

77. Remuneration

The members of the Committee shall be paid such salaries and allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Committee, determine.

Section 78 of Cap. 430 which it is proposed to amend—

78. Conflict of interest

A member of the Committee who has a direct or indirect interest in a matter before the Committee shall declare the interest and shall not participate in any proceedings of the Committee on the matter.

Section 79 of Cap. 430 which it is proposed to amend—

79. Offences

(1) A person shall not—

(a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of the Committee acting under this Act;

(b) without justification, fail to provide information required by the Committee under this Act;

(c) without justification, fail to provide information within reasonable time that is required by the Committee under this Act;

(d) submit false or misleading information to the Committee;

(e) misrepresent to or knowingly mislead a member of the Committee acting under this Act; or

(f) interfere with or exert undue influence on any member of the Committee.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Section 80 of Cap. 430 which it is proposed to amend—

80. Decree

The Committee shall issue a decree setting out its decision in a particular matter and the decree shall be enforceable in the same manner as a decree of the Court.