



# REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT ON THE PUBLIC PRIVATE PARTNERSHIPS BILL 2012.

## 1.0. INTRODUCTION

The Public Private Partnerships Bill 2012 was read for the first time on 19th February 2013 and referred to the Committee on Finance, Planning and Economic Development for scrutiny. The Committee has in accordance with Rule 118 of the Rules of Procedure of Parliament scrutinized the Bill and now presents its findings to the House.

### 1.1 Methods of work

The Committee held consultative discussions with-

- (a) The Minister of Finance, Planning and Economic Development;
- (b) The Auditor General;
- (c) The Public Procurement and Disposal of Assets Authority;
- (d) The Uganda Investment Authority;
- (e) The Office of the Prime Minister;
- (f) The Senior Presidential Adviser to the President on Public Private Partnerships; and
- (g) The Private Sector Foundation.

### 1.2 The object of the bill.

The object of the Bill is to provide for the legal and institutional framework for Public private partnerships (PPPs).

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### 1.3 Understanding Public Private Partnerships

According to the National Framework Policy for Public Private Partnerships (PPPs) 2010 a "public-private partnership" generally:

- (a) refers to a medium to long-term contractual arrangement between public and private sector to finance, construct/renovate, manage and/or maintain a public infrastructure, or the provision of a public service;
- (b) involves the sharing of risks and rewards;
- (c) delivers desired policy outcomes that are in the public interest.

Clause 4 of the Bill describes Public Private Partnerships (PPPs) as:

"a commercial transaction between a contracting authority and a private party where the private party performs a function of the contracting authority on behalf of the contracting authority, for a specified period, and

- (a) acquires use of the property, equipment or other resource of the contracting authority for the purposes of executing the agreement;
- (b) assumes substantial financial, technical and operational risks in connection with the performance or use of the property; or
- (c) receives a benefit for performing the function through payment by the contracting authority or charges or fees collected by the private party from the users of the infrastructure or service, or both".

### 1.4 Public Private Partnership Projects in Uganda

PPPs are relatively new in Uganda. As such not many projects have been developed in this manner. The following are some of the key projects undertaken under PPP arrangements;

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- (a) Serviced accommodation for the Uganda Police Force
- (b) Rift Valley Railways involved in a concession and operation of railway tracks and wagon ferries in Lake Victoria
- (c) Management of Kilembe mines
- (d) Construction of Bujagali power dam
- (e) Kalangala Infrastructure Services Project
- (f) Electricity for Rural Transformation (ERT) project- Management of power lines and distribution
- (g) Nakawa –Naguru housing project
- (h) Provision of Education services (UPE, USE)

**2.0 KEY OBSERVATIONS ON THE BILL.**

**2.1 Justification for the Bill**

Despite the existence of the policy, the implementation of PPPs projects in infrastructure development (e.g. energy, transport) and concessions of assets in energy, transport, water and tourism, without a clear legal and institutional framework has led to adoption of adhoc processes and responsibilities thereby leading to mixed results.

The committee recommends that a PPP legislation should therefore-

- (a) provide legal capacity for public bodies including local governments to enter into PPP contracts;
- (b) create more certainty and investor confidence;
- (c) streamline the institutional framework for the management of PPPs

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- (d) address the overlap and confusion with other laws covering procurement and privatization;
- (e) overcome procedural, legal impediments, that have hampered the operation of PPPs in Uganda;
- (f) introduce funding for economically viable projects which may not be financially viable without Government support.

## 2.2 Application of the Act excludes Local Governments

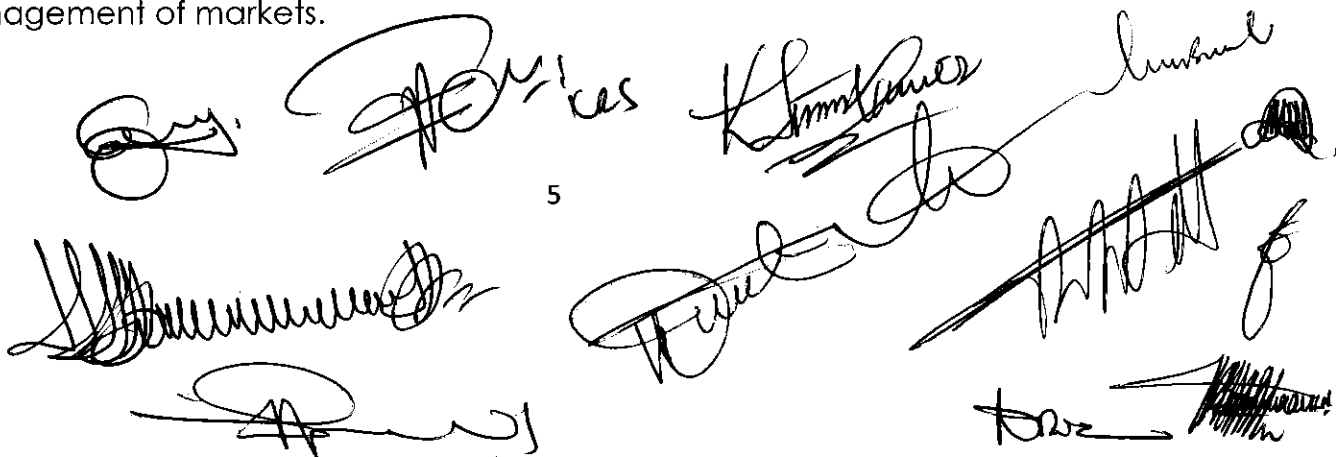
Clause 4 defines a Contracting Authority as a Ministry, department of Government or any other body established by Government and mandated to carry out a public function but does not include a local government.

The committee notes that this is a departure from the Policy, wherein, local governments are recognized as having contracting capacity to enter into public private partnerships. Secondly, under the Local Government Act, the powers assigned to local governments include, (a) making local policies and regulating the delivery of services; and (b) formulating development plans based on locally determined priorities.

With this understanding, local governments have direct responsibility in implementing the policy since they are mandated to deliver services and, to some degree, provide infrastructure to their residents.

Furthermore the committee is aware that the Ministry of local government has developed PPP guidelines for local governments in line with the Policy and these are being used by some local governments especially in the operation and management of markets.

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Since 1997 the main challenge to the decentralization policy has been; the financing of projects to deliver better infrastructure and services to the citizens. The Committee is convinced that local governments are essential in designing, constructing, maintenance and operation of infrastructure or services that are developed in their areas of jurisdiction. Therefore PPPs would provide an opportunity for local governments to achieve initiative unique to their areas of jurisdiction such as working on community roads, valley dams, agriculture, forestry etc.

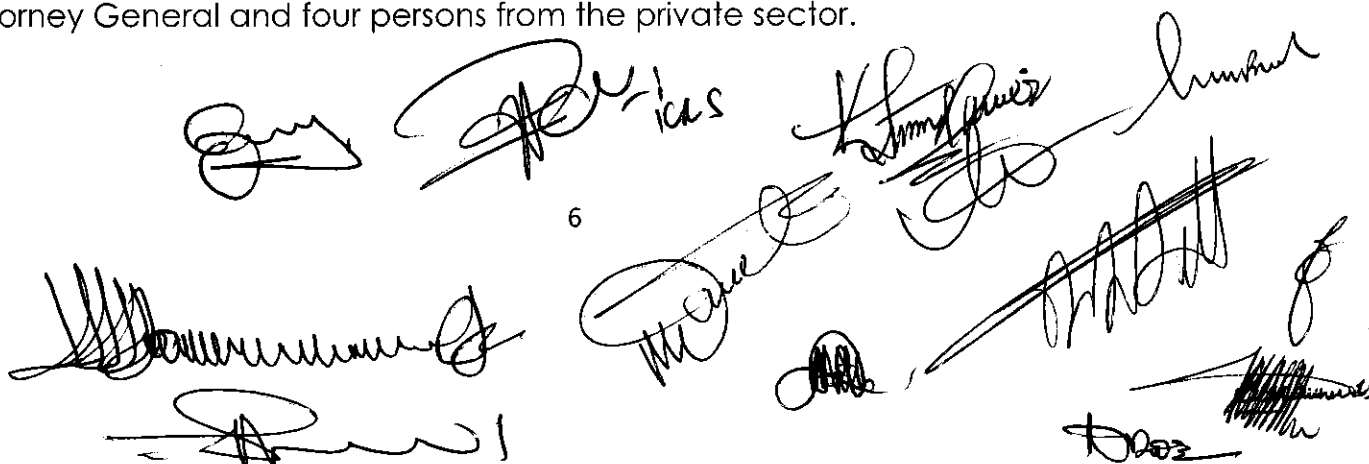
The Committee recommends that clause 4 be amended to extend the application of the Act to local governments.

### 2.3 Institutional Framework for managing Public private Partnerships.

Under clause 12, the Bill envisages the creation of a Department in the Ministry of Finance Planning and Economic Development for the purpose of managing the PPPs. However, the bureaucracies and well known inefficiencies in the public sector, may affect the effective operation of PPPs. PPPs are driven through having a quick responsive relationship when dealing with the private sector.

The Committee recommends that the envisaged institutional framework for the management of PPPs in Uganda needs to be reviewed. The committee proposes that a PPP committee be established to formulate policy guidelines and ensure that all projects are consistent with national priorities. This PPP committee would consist of; the permanent secretaries of the ministries responsible for finance, land, office of the prime minister, local governments, the Attorney General and four persons from the private sector.

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This PPP committee would be supported by a PPP unit within the Ministry of Finance to serve as the secretariat and technical arm of the committee, as well as provide technical, financial and legal expertise to the committee and contracting authorities.

The committee further proposes that, in order to avoid conflicts with other departments within the Ministry, the Permanent Secretary shall, in consultation with the Public Service Commission, make rules for the administrative and financial framework of the unit as well the relationship of the unit with other departments in the Ministry. This arrangement creates the required efficiencies, accountability, quick enforcement and effectiveness envisaged in the National Framework Policy.

The Committee recommends that new clauses establishing a PPP committee as well as a PPP unit be introduced as part of the bill.

## 2.4 The Role of Parliament.

The Committee notes that the bill is silent on the role of Parliament in the development of PPPs. PPPs have a potential risk of creating future contingent liabilities and in most cases involve implicit financing i.e. guarantees, subsidies, tax waivers or incentives.

The Committee therefore recommends that Clause 18 be amended to provide for the approval of Parliament to be sought before an accounting officer signs any agreement. This process ensures that proposed PPPs are; affordable; provide value for money; and commitments arising thereof are within the debt management limits; and above all, are consistent with national budget and policy priorities.

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## 2.5 Project Development Facilitation Fund.

The PPP project process is very complex and involves the use of substantial resources. The process involves identifying projects with PPP potential; structuring and appraising feasibility studies; designing PPPs contracts, conducting competitive PPPs procurements and monitoring and enforcing pp contracts. The feasibility studies act as a basis for initiating and negotiating PPPs, as well as offering guidance on processes on competitive bidding, evaluation and negotiations between the public and private sector entities

These are very expensive studies and in absence of funding, cannot be undertaken. The Committee notes that most contracting agencies cannot afford resources to conduct reliable feasibility studies, undertake evaluation or preparation of bid documents and where required the hiring of consultants.

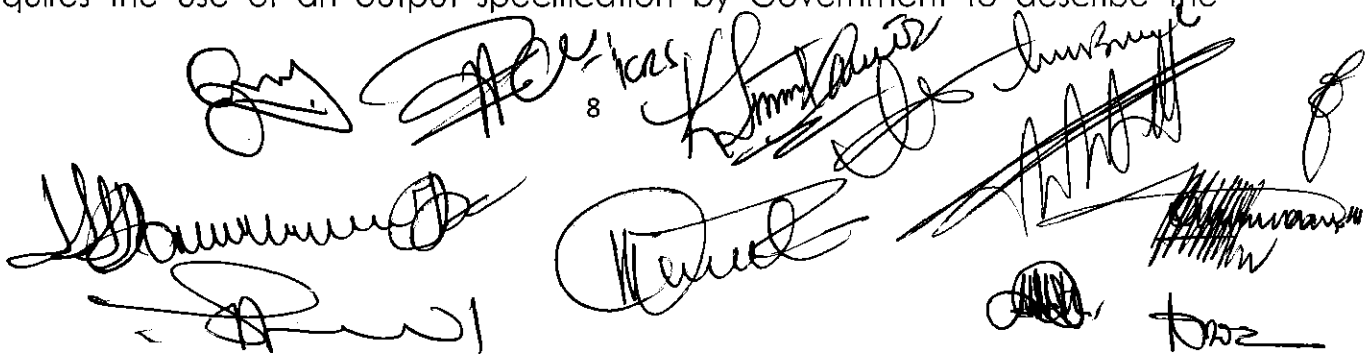
The Committee therefore recommends that a deliberate project development facilitation fund be created. The Fund would be used to support contracting authorities in the preparation phase of a project, the procurement process and project appraisal; and also provide a source of liquidity to meet any contingent liabilities arising from a project. The Fund may also be used to settle costs for the transaction advisors. (*experience shows that these costs are very high*)

## 2.6 PPP vs. Traditional Public Procurement Methods

The Committee observes that the procurement of public private partnerships shifts away from the traditional conventional approach to procurement. In fact the policy recognizes that "PPPs will be used alongside conventional public expenditure and funding forms to achieve new investment in public service".

The key difference between traditional procurement and PPP is that; PPPs requires the use of an output specification by Government to describe the

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outputs the private sector must provide as part of the complete service, whereas, conventional procurement involves the procurement of distinct elements of a particular project through an input-based specification.

**The table below presents the major differences between conventional/traditional and PPP Approach**

<b>Conventional</b>	<b>PPP</b>
Procurements are funded directly via public budget.	Funding via private financial resources without public sector's explicit guarantee.
Short-term design and construction contracts (two to four years)	One long-term contract integrating design, build, finance and maintenance
Input based specifications	Output based specifications
Immediate impact on public sector financial position.	Impact on public budget spreads over the duration of the concession.
Government retains whole-of-life-asset risk	Private sector retains whole-of-life-asset risk
Extensive public sector involvement at all stages of project life.	Public sector's involvement is through enforcement of pre-agreed Key Performance Indicators.
Handover quality less defined	End of term handover quality defined
Applicable for projects with high socio-economic returns and those justified on strategic considerations.	Applicable for projects with commercial viability.
Government is usually liable for construction time and cost overruns	Private contractor is usually liable for construction time and cost overruns

### 3.0 CONCLUSION.

The Committee notes that public private partnerships are a strategic tool for economic development.

While the public sector is accountable for ensuring that the public services get delivered, it is not, in many cases, the best services provider in terms of cost, quality and ability to manage commercial risks.

PPPs offer better value for public money. Rather than simply cut back on these services in the face of budget deficits, government can work with the private sector to transform the way such services are delivered and reduce on the financial burden.

PPPs help government shift the risks and costs of operating expensive assets onto private sector operators who have the expertise and capacity to operate those assets more efficiently and effectively. This allows government to focus on its core competencies of delivering public services.

However, PPPs are not without significant challenges. The committee notes that the following are prerequisites for an effective PPPs agenda;

- (a) A supporting and enforceable legal and regulatory framework. For example there should be respect for commercial laws. This improves predictability for all parties as regards likely outcomes, thus augmenting investor confidence.
- (b) Clear cut institutional roles and responsibilities which minimizes confusion and promotes efficiency.
- (c) Quantifiable economic benefits arising out of the PPPs outweighing the financial costs and accruing to the majority of Ugandans.

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(d) Consistent government policies to ensure viability. The government system of budgeting should be clear and transparent to avoid bias towards public private partnerships.

(e) Efficient, effective and coordinated PPP processes, built around the project cycle, that minimize transaction costs.

(f) Existence of strict accounting practices strictly for public private partnerships that are consistent with good governance and international accounting standards.

The Committee recommends that the Public Private Partnerships Bill 2012 be passed by Parliament subject to the following amendments.

I beg to report.

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## PROPOSED AMENDMENTS

### CLAUSE 2.

- **In sub clause (1) (a).**

Insert "subway" between rail and water.

Justification. Subways should also be included.

- **Sub clause (1) (i).**

Delete "prospecting for and mining"

Justification. This is dealt with under the Petroleum (Exploration, Development and Production) Act and The Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act.

- **Sub clause (1) (j).**

Substitute for paragraph (j) the following

"(j) Agricultural processing industries

Justification.

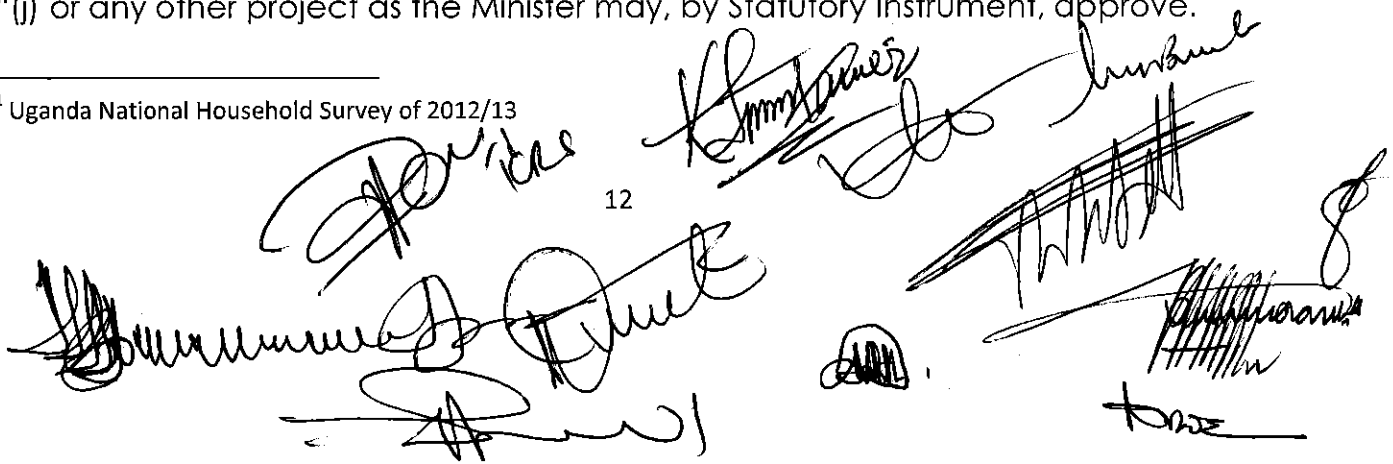
Strategic industries are ambiguous or vague and should be specified.

Agricultural processing industries should be included in priority PPP projects for they would add value to agricultural produce hence enhancing the economic contribution of the agricultural sector that employs over 66.5%<sup>1</sup> of the population in Uganda.

- **Insert sub clause (1) (k)**

"(j) or any other project as the Minister may, by Statutory Instrument, approve.

<sup>1</sup> Uganda National Household Survey of 2012/13

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Justification. There is need to encompass the other infrastructure that are not enumerated.

**CLAUSE 3. Principles to govern implementation of PPP Partnerships**

• **Clause 3(c):**

Insert the word "transparency by" immediately before the word "ensuring"

Justification. Need to improve on the action of ensuring transparency in the PPP process and not restrict it to only bidding but include the whole process of bidding, evaluation, development and implementation stages of the PPPs.

• **Clause 3(d):**

Delete paragraph (d)

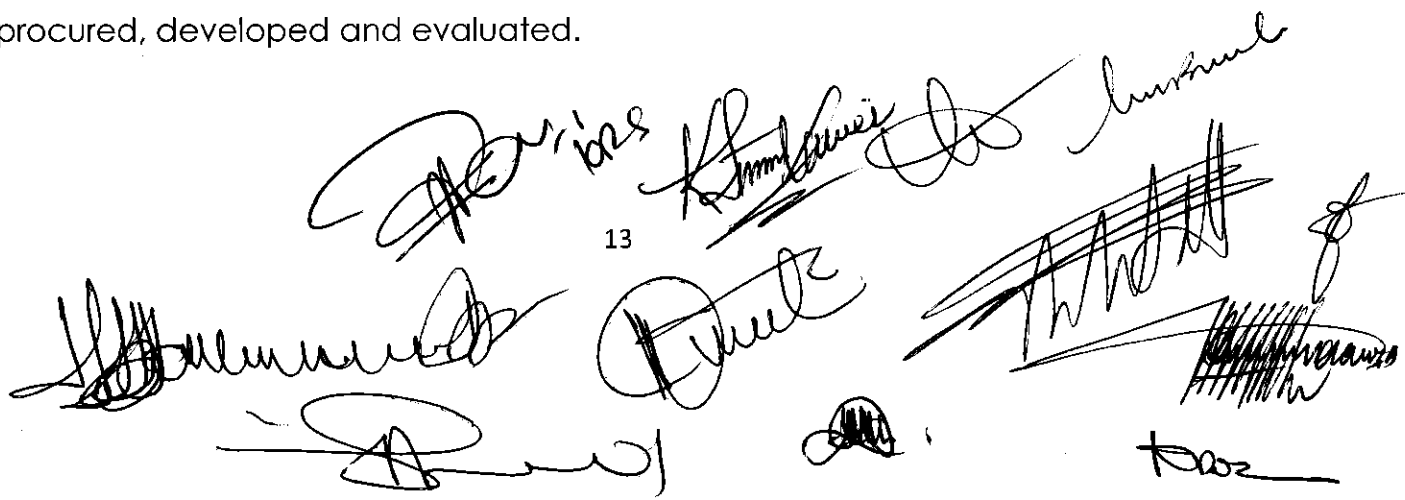
Justification. It is covered in paragraph (c)

• **Insert new paragraphs as follows**

- "(i) Stimulating growth and development through harnessing private sector innovation and efficiency;
- (j) Providing policy stability in order to reduce private sector uncertainty on investment returns;
- (k) Developing institutional capacities for technical analysis, negotiation, monitoring and management of public private partnerships contracts;

**Justification.** The enhancement of the principles would create an enabling environment of PPPs and set standards against which they are processed, procured, developed and evaluated.

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**CLAUSE 4. Interpretation**

**1. definition of Contracting Authority**

Delete the words "but does not include a local government.

Justification. Local governments are essential in designing, constructing, maintenance and operation of infrastructure or services that are developed in their areas of jurisdiction. They should be allowed to use a private party if they deem feasible.

**2. definition of public private partnerships agreement,**

Substitute for the word "contracting party" with the words," contracting authority" and Insert words "**made under this Act**" at the end of the definition of PPP agreement.

Justification. To correct an error and ensure clarity.

**3. Replace the definition of transaction advisor as follows ;**

"transaction advisor" means a person appointed in writing by a contracting authority who has the appropriate skill and experience to assist and advise the contracting authority or the department on matters related to a public private partnership, including the preparation, accession and conclusion of a project agreement and the financial close.

Justification. The definition of transaction advisor is not definitive enough.

**4. Insert new words as follows**

"project team" means a project team constituted under this Act;

"unit- means the public private partnerships unit established under this Act.

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- (a) be appointed by the Minister who shall ensure that at least one-third of the persons are of either gender; and
- (b) hold office for a term of five years renewable for only one further term.

**Terms and conditions of service.**

The members of the Committee shall hold office on such terms and conditions as the Minister shall, in consultation with the Public Service Commission, determine.

**Functions of the Committee**

- (1) The functions of the Committee are to —
  - (a) ensure that each project agreement is consistent with the provisions of this Act;
  - (b) formulate policy guidelines on public private partnerships;
  - (c) ensure that all projects are consistent with the national priorities specified in the national policy on public private partnerships;
  - (d) approve project proposals submitted to it by a contracting authority;
  - (e) authorise allocations from the Fund;
  - (f) formulate standards, guidelines and procedures for awarding contracts and standardized bid documents;
  - (g) examine and approve the feasibility study conducted by a contracting authority under this Act;
  - (h) review the legal, institutional and regulatory framework of public private partnerships;
  - (i) approve the organisational structure of the unit;
  - (j) oversee the monitoring and evaluation by contracting authorities, of a public private partnership from the commencement to the post completion stage;

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- (k) ensure approval of, and fiscal accountability in the management of, financial and any other form of support granted by the Government in the implementation of projects under this Act;
- (l) ensure the efficient implementation of any project agreement entered into by contracting authorities; and
- (m) perform any other function as may be conferred on it by this Act or any other written law.

**Powers of the Committee.**

The Committee shall have all the powers necessary for the proper discharge of its functions under this Act and specifically;

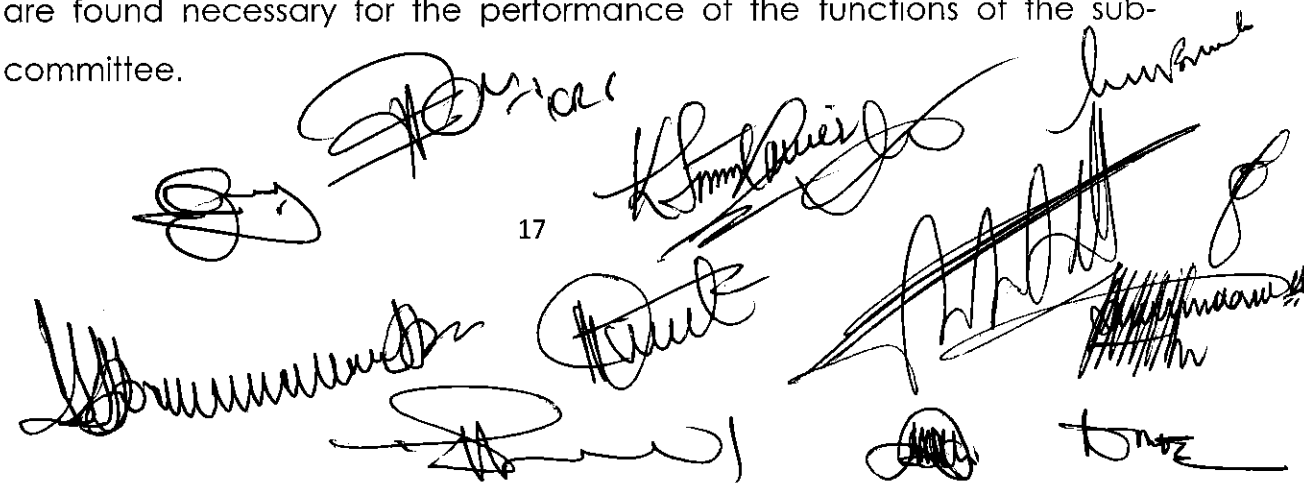
- (a) oversee the implementation of policies formulated under section 7(b);
- (b) require any information from any party to a project on any matter relating to a public private partnership; and
- (c) take custody of a project agreement made under this Act; and
- (d) monitor compliance with the terms and conditions of the public private partnership agreement.

**Delegation by the Committee.**

(1) The Committee may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Committee may in co-opt into the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

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(3) The Committee may in writing, delegate to any sub-committee or to any member, officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act.

(4) The business of the Committee shall be regulated under regulations made under this Act.

### Establishment of the Public Private Partnership Unit

(1) There is established, within the Ministry responsible for finance, a unit to be known as the Public Private Partnerships Unit.

(2) The Public Private Partnerships Unit shall consist of-

(a) a Director; and

(b) such staff as the Secretary to Treasury may, in consultation with the Director, consider necessary for the performance of the functions

(3) The Director and staff of the unit shall be competitively recruited and appointed on such terms and conditions as Minister shall, in consultation with the Public Service Commission, determine.

### Functions of the unit.

(1) The functions of the unit are to -

(a) serve as the secretariat and technical arm of the Committee; and

(b) provide technical, financial and legal expertise to the Committee and any project team established under this Act.

(2) In the performance of its functions under subsection (1), the unit shall—

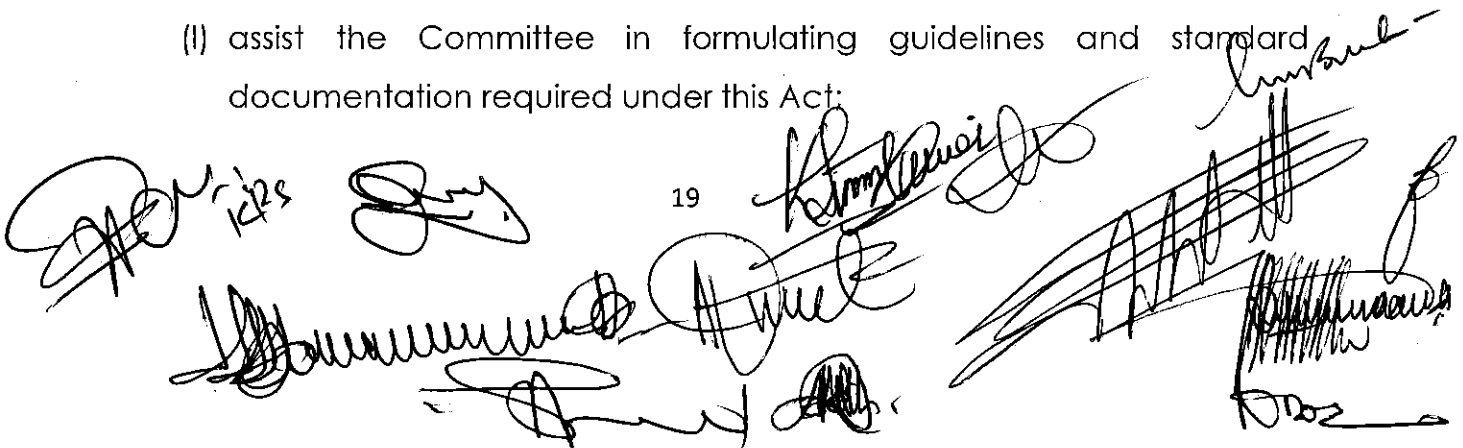
(a) serve as a resource centre on matters relating to public private partnerships;

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- (b) conduct civic education to promote the awareness and understanding of the public private partnerships process amongst stakeholders;
- (c) provide capacity building to, and advise contracting authorities or other parties involved in the planning, co-ordinating, undertaking or monitoring of projects under this Act;
- (d) rate, compile and maintain an inventory of public private partnership projects that are highly rated and which are likely to attract private sector investment;
- (e) develop an open, transparent, efficient and equitable process for managing the identification, screening, prioritization, development, procurement, implementation and monitoring of projects, and ensure that the process is applied consistently to all projects;
- (f) conduct research and gap analysis to ensure continuous performance improvement in the implementation of public private partnerships;
- (g) collate, analyse and disseminate information including data on the contingent liabilities of the Government in relation to a project;
- (h) make recommendations on the approval or rejection of projects prior to submission to the Committee for approval;
- (i) assist contracting authorities, where the unit considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate projects;
- (j) maintain a record of all project documentation;
- (k) review and assess requests for Government support in relation to a project and advise the Committee on the support that should be accorded in relation to the project;
- (l) assist the Committee in formulating guidelines and standard documentation required under this Act;



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- (m) liaise with, and assist the contracting authorities in their roles in the various stages of a project cycle;
- (n) ensure that the procurement process relating to a project conforms to this Act and to procurement best practices;
- (o) put in place measures to eliminate constraints limiting the realisation of benefits expected from a public private partnership;
- (p) monitor contingent liabilities and accounting and budgetary issues related to public private partnerships with the relevant offices within the Ministry; and
- (q) carry out such other functions as may be conferred on it by the Committee under this Act.

(4) The unit shall prepare financial accounts and an inventory of any monies allocated to it, any financial support received by it and any fees received by it from a private party or project company as the case may be, under this Act.

(5) The Permanent Secretary of the Ministry shall make rules for the administrative and financial framework of the unit as well the relationship of the unit with other departments in the Ministry.

**Establishment of Public Private Partnership Project Teams**

(1) A contracting authority that intends to enter into a public private partnership arrangement with a private party shall establish a public private partnership project team.

(1) A project team established under subsection (1) shall be headed by the project officer and shall be composed of officials with the required technical skills appointed from the staff of the contracting authority, as

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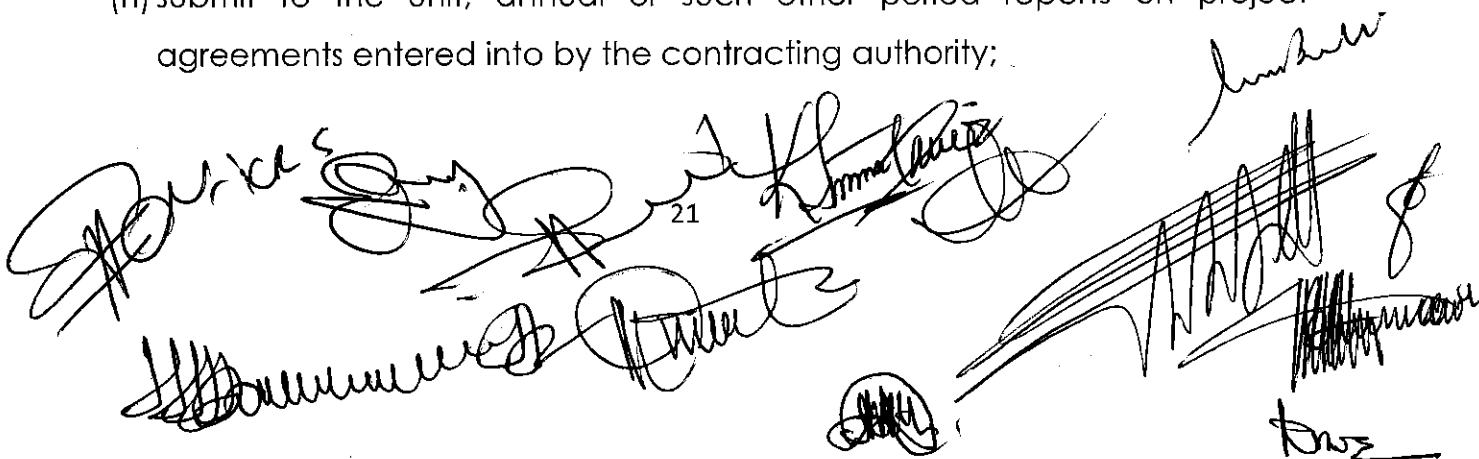
the authority shall, in consultation with the unit, consider necessary for the performance of its functions in relation to a project under this Act.

(2) Where due to the technical requirements of a public private partnerships, a contracting authority does not have the appropriate officials to be appointed as project officer, process auditor or transaction advisor, the contracting authority shall, under the Public Procurement and Disposal of Public Assets Act, procure a person with the appropriate skills and experience from outside the contracting authority, to act as such.

### Functions of a project team.

(1) A project team shall, on behalf of the contracting authority -

- (a) identify, screen and prioritize projects based on guidelines issued by the Committee;
- (b) prepare and appraise each project agreement to ensure its legal, regulatory, social, economic and commercial viability;
- (c) ensure that the parties to a project agreement comply with the provisions of this Act;
- (d) undertake the procurement process in accordance with this Act and where applicable, the Public Procurement and Disposal of Public Assets Act;
- (e) monitor the implementation of a project agreement entered into with the contracting authority;
- (f) liaise with all key stakeholders during the project cycle;
- (g) oversee the management of a project in accordance with the project agreement entered into by the contracting authority;
- (h) submit to the unit, annual or such other period reports on project agreements entered into by the contracting authority;



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- (i) maintain a record of all documentation and agreements entered into by the contracting authority relating to a project under this Act;
- (j) prepare projects in accordance with guidelines and standard documents issued by the Committee under this Act;
- (k) where the project agreement involves a transfer of assets, ensure that the transfer of assets at the expiry or early termination of a project agreement is consistent with the terms and conditions of the project agreement; and
- (l) carry out such other functions as may be assigned to it by the contracting authority.

(2) In performing its functions under subsection (1), a project team shall report to the unit and shall —

- (a) implement the recommendations and guidelines issued by the unit; and
- (b) submit such information as shall be required by the unit.

**CLAUSE 5. Contracting Authority**

**Delete sub clauses (5) and (6)**

Justification. These have been handled in detail under new clauses establishing Public Private Partnership Project Teams

**CLAUSE 6. Functions of accounting officer**

- In sub clause (1), rephrase paragraph (a) as follows;

“(a) to appoint the project team and any other person required for the implementation of the project.

- In sub clause (1), insert new paragraph immediately before paragraph (a) as follows;

“(a) to solicit for a private party for a project

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**Justification.** The actual solicitation of a private party is done by the contracting authority for which accounts the accounting officer is responsible.

- In sub clause (1), insert new paragraph (e) as follows;

"(e) to take custody of a project agreement made under this Act and monitor compliance with the terms and conditions of the agreement contained therein".

**Justification**

To enhance functions of accounting officer and ensure efficient monitoring of PPP project.

**CLAUSE 7.**

Delete sub clause (1) c.

**Justification.** The actual solicitation of a private party is done by the contracting authority for which accounts the accounting officer is responsible. Transferred to clause 6.

**Clause 8: Functions of the process auditor**

In sub clause (2) insert the words "to the Accounting Officer" between the words "report" and "indicating" appearing on the 2<sup>nd</sup> line.

**Justification.** It is important to specify where the process auditor will report.

**Insert new clause immediately after Clause 8 as follows;**

**New Clause: Functions of the Transaction Advisor**

- The functions of the Transaction Advisor are to:

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- a) undertake a comprehensive feasibility study for a Project including commercial, financial and legislative work required for a public private partnerships agreement;
- b) ensure optimum risk allocation in a public private partnerships agreement;
- c) design and negotiate a public private partnerships agreement that guarantees long lasting social benefits; and
- d) safeguard the interests of a contracting authority in the management and execution of a project; and
- e) any other function as may be determined in his or her instrument of appointment.

**Justification**

Though mention is made of transaction advisor in Clauses 5 and 6, the Bill needs to define functions of a transaction advisor in a PPP. This will ensure provision of the requisite expertise and skill to develop successful PPP projects.

**Clause 9. Functions of the project team**

Delete clause 9.

Justification. This is handled under new clauses establishing the Project teams.

**Clause 10. Evaluation committee**

- In sub clause (1), delete " on the recommendation of the project team"

Justification. To avoid conflict of interest.

- In sub clause (3), delete the word "law" and replace it with the words "regulations made under this Act."

**Justification.** To be more specific

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**Clause 11. Private Party.**

**Clause 11(2)** delete the words "and the Minister of the contracting authority and insert "in consultation with the Minister of the contracting authority.

**Justification.** Two approvals make the process laborious and time consuming. In a world where time is of essence, these projects will become non bankable.

**Clause 11(4)**

Replace the sub clause with the following-

(4) the private party shall, prior to signing the agreement, furnish the Accounting Officer with evidence of the funding available to the private party for the performance of the obligations to be undertaken by the private party under the project"

**Justification.** It is not practical to request for evidence of funding i.e. credit facilities from banks, before contract award.

**Clause 12. Role of the Ministry.**

Delete clause 12.

**Justification.** It has been handled in detail under new clauses 6 -12, establishing the Public Private Partnerships Unit.

**Clause 13. Project inception**

**In sub clause (3),** replace "Ministry" with "Unit"

Justification. The Unit is responsible for the examination of the project proposals.

**Clause 14. Feasibility Study**

**Clause 14(2):**

*[Handwritten signatures and scribbles covering the bottom half of the page, including the number 25.]*

Insert new paragraph as follows

(i) Indicate any envisaged future contingent liability

**Justification.** PPP's have a potential risk of creating future liabilities. It is proposed that a clause to cater for reporting an envisaged future contingent liability be included within the feasibility study report.

**Clause 14 (4), (5) , (6) and (7)**

Replace "Ministry "with "Committee

Justification. The authority responsible for approval of the feasibility study should be explicitly stated ie "the committee.". The Ministry is too vague.

**Clause 15. Procurement of public private partnerships**

**Clause 15(6)**

Delete.

Justification. This is provided for in detail under Part IV. More so the provision is ambiguous where it refers to "the most economically advantageous or the criteria of the lowest prices as may be described by law.

**Clause 16. Disqualification of bidders**

- Insert new paragraph as follows

"(i) is disqualified by the Public Procurement and Disposal of Public Assets Authority.

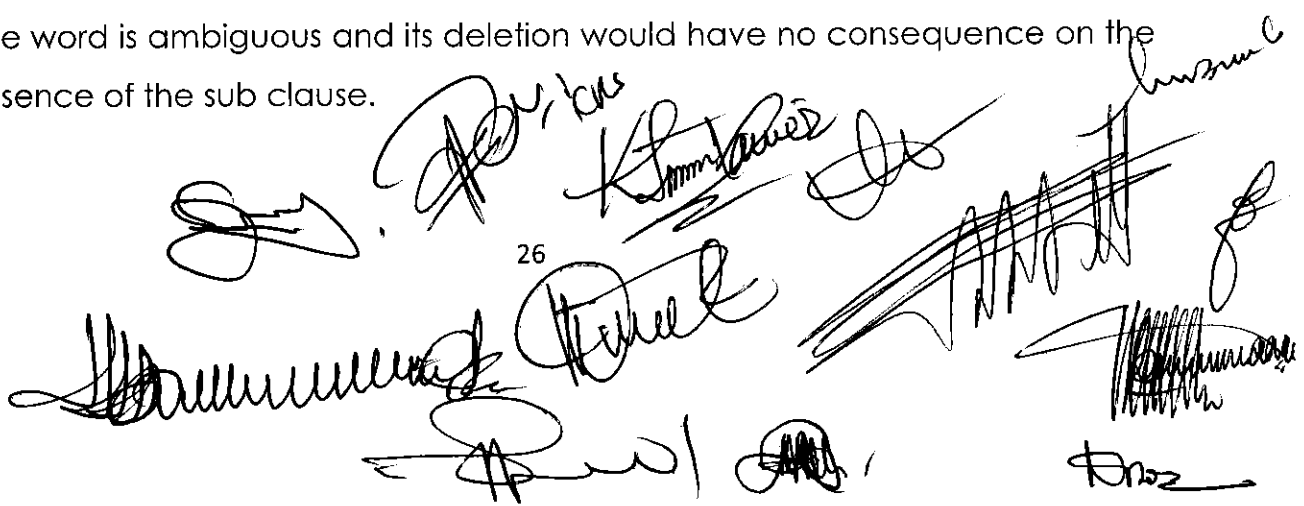
- **In 16(g):**

Delete the word 'serious'.

**Justification**

The word is ambiguous and its deletion would have no consequence on the essence of the sub clause.

26

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**Clause 17. Evaluation of bids**

In sub clause (2), insert

Replace "Ministry "with "Committee

Justification. The authority responsible for approval of the feasibility study should be explicitly stated ie "the committee.". The Ministry is too vague.

**Clause 18. Public Private Partnerships Agreements**

- **replace sub clauses (1) and (2), as follows;**

"(1) An accounting officer shall not sign a public private partnership agreement without the approval of Parliament.

- In sub clause (3), replace the words "an agreement shall be forwarded to Cabinet for approval where the contracting authority confirms that" with "The Minister shall submit with the proposed agreement, a statement confirming that"

**Justification.** Public private partnership agreements are of very high value and in most cases creates contingent liabilities for Government. Parliament should examine them for consistency with national budget and policy priorities.

- Delete sub clause (4)

Justification. All agreements will be approved by Parliament.

**Clause 18 (6):**

- Insert the word " among others" between the words "shall" and "specifically"

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Justification. The highlighted areas are not the only provisions of the contract.

- **Replace paragraphs (j), (n) with the following-**

(j) the mode of operation, maintenance and exploitation of the project and penalties for failure to meet performance standards;

(n) the substitution of the private party or by the creditor by the contracting authority and the circumstances under which the substitution may be permitted;

- **Insert new paragraphs as follows**

(x) Minimum capital of the private party and share transfer restrictions;

(y) Rights of the private party to guarantee securities to creditors;

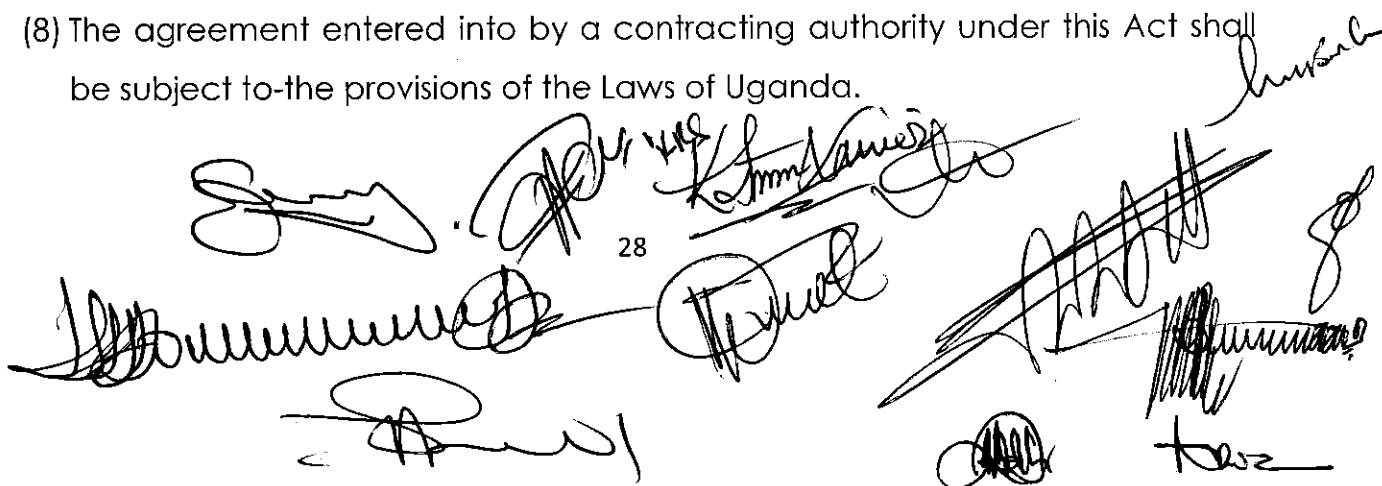
(z) Direct agreements and step in rights of lenders where applicable.

Justification. These are key provisions of PPP agreements.

- **Insert new sub clauses as follows-**

(7) The Minister may by regulations, specify the form in which a project agreement under this Act shall be drawn.

(8) The agreement entered into by a contracting authority under this Act shall be subject to the provisions of the Laws of Uganda.



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(9) The agreement shall only be amended or varied with the approval of the Parliament.

(10) Parliament shall not approve an amendment, or variation to a project agreement under subsection (9) unless the agreement, if so amended or varied—

- (a) the project continues to provide value for money;
- (b) the project continues to be affordable, where such amendment, variation or waiver has a financial implication;
- (c) the continued transfer of appropriate risks to the private party;
- (d) the continued provision of efficient and effective service to the public; and;
- (e) the continued protection and preservation of the environment.

**Justification.**

The prior approval of Parliament is required for any material amendments to a public private partnerships agreement including any material variations to the outputs therein, or any waivers contemplated or provided for in the public private partnerships

**Clause 19. Monitoring of public private partnerships**

Insert new paragraph as follows

"(f) prepare periodic reports and submit them to the Minister, and the Minister of the contracting authority"

**Justification**

Periodic reports would help to provide accountability and status updates on PPP project.

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**NEW CLAUSE. Accounting and reporting:**

Insert a new clause immediately after clause 19 as follows-

**Accounting and reporting**

- (1) A private party shall keep proper books of accounts and records in relation to the project which shall be open for scrutiny by the contracting authority.
- (2) The contracting authority shall prepare financial statements and an annual report within two months after the end of the financial year.
- (3) The Accountant General shall prescribe accounting and financial reporting rules to be adopted for public private partnerships.
- (4) The annual report including the audited financial statements in subsection (2) shall be submitted to the Minister within six months after the end of the financial year.

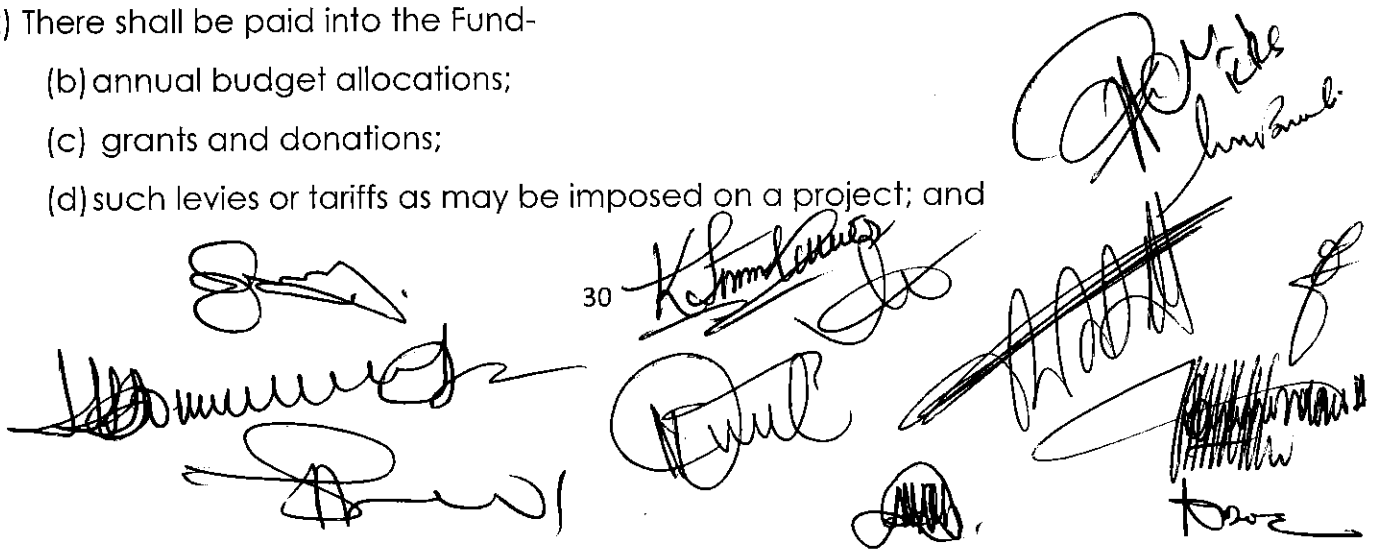
**Justification.** Inadequate provision has been made for accounting and reporting.

**NEW CLAUSE.**

**Establishment of a Project Development Facilitation Fund.**

- (1) There is established a Fund to be known as the Project Development Facilitation Fund.
- (2) There shall be paid into the Fund-
  - (b) annual budget allocations;
  - (c) grants and donations;
  - (d) such levies or tariffs as may be imposed on a project; and

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(e) any other source as may be authorized by the Minister.

(3) The moneys received into the Fund shall only be applied to-

- (a) support contracting authorities in the preparation phase of a project, the procurement process and project appraisal; under this Act;
- (b) support the activities of the unit under this Act;
- (c) provide a source of liquidity to meet any contingent liabilities arising from a project;

**Justification.** There is need to deliberately create a PPP fund from which some of the contracting authorities with limited resources may draw upon, especially for conducting reliable feasibility studies which shall act as a basis for guiding processes on competitive bidding, evaluation and negotiations between the public and private sector entities.

#### Clause 20: Audit

Insert new sub clause as follows;

(3) The Auditor General shall within nine months of the end of the Audit, report to Parliament.

Justification. The reporting period needs to be specified as well as the authority to be reported to.

#### Clause 21. Open bidding

- In sub clause (1):

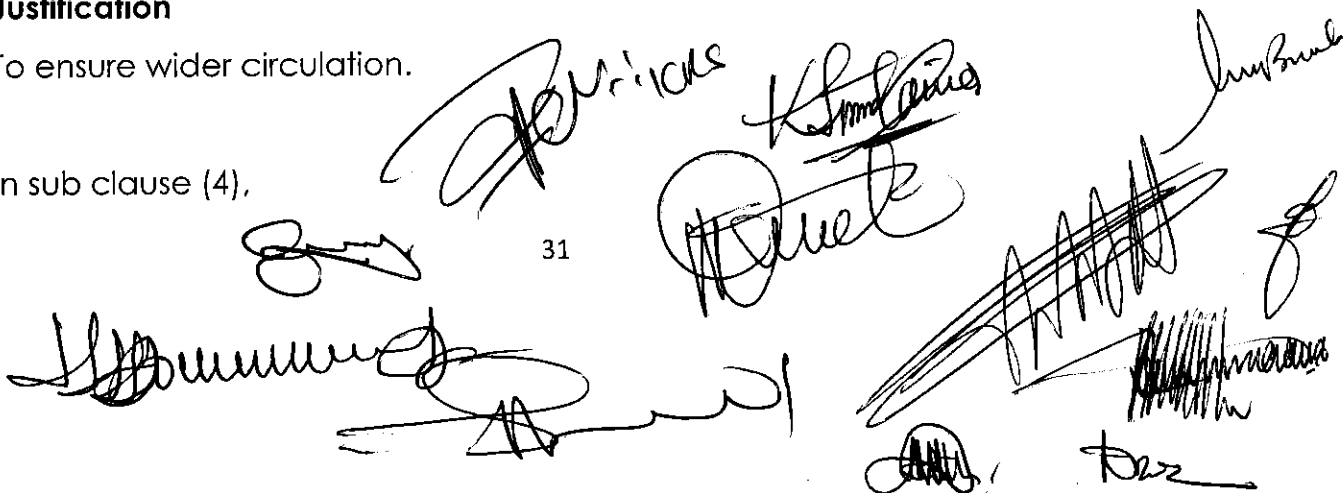
Replace the words 'one newspaper' with "two newspapers".

#### Justification

To ensure wider circulation.

- In sub clause (4),

31

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Substitute for "law" the words, "regulations made under this Act."

**Justification** . For clarity

**Clause 22. Open bidding**

Substitute for "law" the words, "regulations made under this Act."

**Justification** . For clarity

**Clause 23. Direct procurement**

Insert a new sub clause as follows-

(3) The procurement of a private party under the direct procurement method shall be with Cabinet approval and under regulations made under this Act.

**Justification.** Direct procurement should be hardly used and subject to Cabinet approval to eliminate any abuse.

**Clause 24. Unsolicited proposals**

In sub clause (3)(a) (ii),

Redraft the sub clause to read

(ii) a feasibility study of the project as provided for in section 14(2) of this Act".

**Justification.** For consistency.

**Clause 37: Confidentiality**

Insert new sub clause as follows-

(3) Subject to subsection (2), all public private partnerships agreements shall be published on the website of the Ministry.

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(4) An official of a contracting authority or of the department or a member of the project team or the evaluation committee who violates the provisions of subsection (2) commits an offence and is liable on conviction, to a fine not exceeding two hundred currency points or imprisonment not exceeding two year or both.

**Justification.** To encourage transparency and criminalize any breach of confidentiality

**Clause 38(1-3): Disclosure of Interest**

In each of the sub clauses, delete the words 'a member of the project team or the evaluation committee' and replace them with "a person appointed under Section 6(1) (a)".

**Justification**

To cater for all persons appointed by the accounting officer. The current provisions do not apply to a project officer, transaction advisor and process auditor.

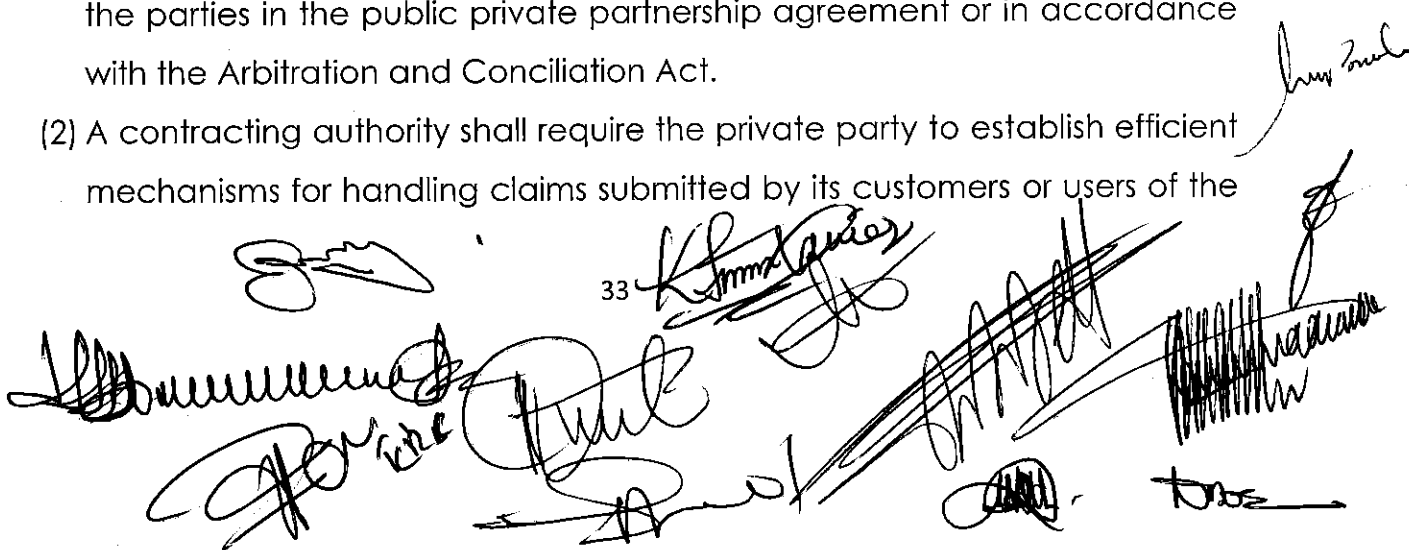
**New clauses**

**Insert new clauses immediately after clause 38 as follows-**

**Dispute resolution**

- (1) Any disputes between a contracting authority and the private party shall be settled through the dispute settlement mechanisms agreed upon by the parties in the public private partnership agreement or in accordance with the Arbitration and Conciliation Act.
- (2) A contracting authority shall require the private party to establish efficient mechanisms for handling claims submitted by its customers or users of the

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public private partnership project where the private party provides services to the public or operates infrastructure which is accessible to the public.

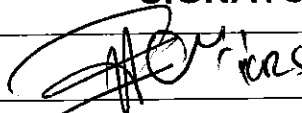




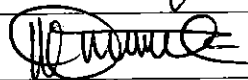
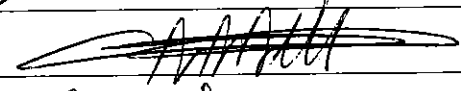
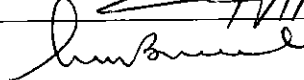


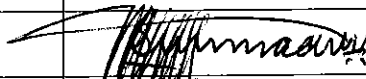
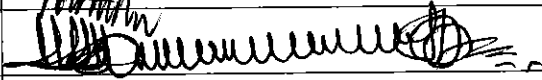
### Justification

There is a possibility for unforeseen disputes to arise during the execution of the PPP agreement. Disputes may arise from PPP scope, contract terms and conditions as well as the private partner being acquired by another company or going out of business, effectively resulting in project schedule delays and additional costs to the government. These would require a mechanism of resolving disputes that may arise during the PPP project implementation.

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**SIGNATURES FOR MEMBERS OF THE COMMITTEE ON FINANCE  
PLANNING AND ECONOMIC DEVELOPMENT ON THE REPORT ON  
THE PUBLIC PRIVATE PARTNERSHIPS BILL 2012**

NO.	NAME	SIGNATURE
1.	Hon. Kasule Robert Sebunya	
2.	Hon. Okello Anthony	
3.	Hon. Adong Lily	
4.	Hon Akello Judith Franca	
5.	Hon. Akol Rose Okullu	
6.	Hon. Akora Maxwell	
7.	Hon. Amos Lugolobi	
8.	Hon. Ayepa Michael	
9.	Hon. Bagoole John	
10.	Hon. Emma Boona	
11.	Hon. Ekanya Geofrey	
12.	Hon. Katoto Hatwib	
13.	Hon. Kakooza James	
14.	Hon. Kyooma Xavier	
15.	Hon. Lwanga Timothy	
16.	Hon. Musasizi Henry	
17.	Hon. Nsubuga Mathias	
18.	Hon. Ochwa David	
19.	Hon. Sejjoba Isaac	
20.	Hon. Ssasaga Isaiah	
21.	Hon. Odo Tayebwa	