

A Primer on PNG's PPP Act

Written by Paul Toua, Evelyne Tohora and Damian Kelly

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Key Points

- The *Public Private Partnership Act 2014* was passed on 2 September 2014, certified on 21 October 2014 (**PPP Act**) but it is still awaiting gazettal for it to come into force.
- The PPP Act reflects the principles that were outlined in the National Public Private Partnership Policy endorsed in 2008 by the National Executive Council.
- The Private Public Partnership Centre, to be established under the PPP Act, is an unincorporated statutory body that will be responsible for assisting the government in developing, tendering and implementing PPP's. When the PPP Centre comes online, it will provide a robust and predictable process through which the private sector can engage with the government on infrastructure projects.

Introduction

In recent years, the Government of Papua New Guinea (**PNG**) has promoted a policy emphasising the need for infrastructure development. In part, this renewed enthusiasm for the development of high quality infrastructure was seen as “*critical to ensure that there is effective service delivery*”.¹

The focus on infrastructure is unsurprising as PNG has a, “*substantial unmet need for infrastructure investment and service delivery*.”² To address this, whilst ensuring PNG's economic growth, the PNG Government in 2008 endorsed the National Public Partnership Policy (“**the Policy**”) that reflects the Government's desire to improve the quality, cost-effectiveness and timely provision of infrastructure and services in PNG.

Emphasis was placed on establishing the key elements to encourage the engagement of the private sector for the delivery of public services. The Policy also provides the institutional framework for governance and accountability in delivery of PPP's and the PPP Project Process.

This culminated in the passing of the PPP Act in September 2014.

What is a PPP?

The Policy defines the term ‘public private partnership’ to mean “*a method to procure and deliver infrastructure and services through cooperation between a public institution and one or more private enterprises*.”³ It's the “cooperation” between public and private enterprises, which is the basis of the modern PPP. At it's core, a PPP is, “*a risk-sharing relationship between the public and private sectors which exist to bring about a desired public policy outcome though the delivery of public infrastructure based services involving private sector capital investment*...”⁴

¹ “Papua New Guinea Vision 2050” *National Strategic Plan Taskforce* cl. 1.23.1, 13

² “Public-Private Partnerships” *Institute of National Affairs*.

³ *National Public Private Partnership Policy 2008* cl 2.1.

⁴ C.F. Duffield, PPP's in Australia. <http://www.civil.hku.hk/cicid/3_events/32/papers/2.pdf> 1

The PPP Act

The PPP Act provides a regulatory framework for the procurement and delivery of infrastructure facilities and services through public private partnership arrangements (**PPPA**). A PPPA is an arrangement that allows the Independent State of Papua New Guinea, Provincial and Local Level Governments or State Owned Entities (who are defined under the PPP Act as '**Relevant Public Bodies**'), to carry out infrastructure projects.⁵

The mechanism by which the Government has set up to manage PPPA's is via the Public Private Partnerships Centre (**PPP Centre**).

The PPP Centre

The PPP Centre is established under section 14 of the PPP Act, which, along with its other functions, will assist the Government in encouraging, advising, and assisting relevant public bodies on all aspects of PPPAs.⁶

The PPP Act requires that the PPP Centre be involved in all stages of investment, from applying for a PPPA to termination of the contract, as such familiarity with how such bodies work and assess potential projects will be necessary to ensuring a successful application.⁷

It was envisaged that the establishment of the PPP Centre would encourage even greater participation by the private sector through providing a predictable framework and added scrutiny in respect of PPPs.⁸

The Assessment Process

The PPP Act requires a Relevant Public Body to conduct a prescribed *initial assessment* when it intends to procure infrastructure through a PPPA. This initial assessment must include:

- details as to the type of project and its estimated value; and
- whether the project is suitable for procurement as a PPPA.

This initial assessment conducted must be submitted to the PPP Centre within 30 days.⁹ Where the result indicates that it is suitable for procurement as a PPPA, the Relevant Public Body may, subject

⁵ *Public Private Partnership Act 2014 (PNG)* schedule 3; State, Provincial and Local Level Governments or State Owned Entities are referred to as 'Relevant Public Bodies' under *Public Private Partnership Act 2014 (PNG)* schedule 1.a

⁶ The Public Private Partnership Centre is an entity created under the portfolio of the Minister for Treasury.

⁷ *National Public Private Partnership Policy 2014 (PNG)*, parts 8-11.

<<http://www.treasury.gov.pg/html/misc/Special%20Projects/PPP/PNG%20National%20PPP%20Policy%202014.pdf>>.

⁸ Asian Development Bank, Pacific Private Sector Development Initiative, "News Release: ADB welcomes new Public Private Partnership Act in Papua New Guinea", 7 September 2014, <http://www.adbpsdi.org/2014/09/PNGPPPAActpasses.html>, accessed 20 December 2016.

⁹ *Public Private Partnership Act 2014 (PNG)* s 12 (3).

to the approval of the NEC, register that project.¹⁰

This added assessment stage is important to lessen risks which may arise during the implementation stage. Further, the PPP Centre's powers and functions under the Act will ensure that the requirements under each of the stages are correctly implemented, alleviating part of the risks associated with PPPA implementation.¹¹ This streamlining conducted by the Centre will attempt to rectify some of the key issues that have hampered PPP activities in PNG, especially surrounding an historic lack of pre-qualifications and financial viability assessments for potential PPP projects.¹²

DELAYS IN IMPLEMENTATION

There have been delays in implementing the key aspects of the PPP Act and specifically, the PPP Centre. Whilst the Act has been passed and certified, there is no gazettal notice to confirm that it is in force. We understand that the PPP Act is currently under review.

That is not to say that the delay to the implementation of the PPP Act has delayed the use of PPP's in PNG. In fact, PPP's are being implemented and are gaining traction as a favoured means of infrastructure development in PNG.

The shining light in this space is Kumul Consolidated Holdings ("**KCH**"). KCH is the statutory body charged with overseeing government infrastructure projects and manages a number of key infrastructure projects in PNG with a total value of in excess of USD 7 billion of which USD 6 billion will be delivered through PPPs including:

- Karimui Hydro Power Project
- Ramu 2 Hydro Power Project
- Mendi Hydro Power Project
- Port Moresby waterfront redevelopment Project
- Pacific Marine Industrial Zone Development
- Port Moresby Sewerage System Upgrade
- City Tower real estate Development
- Sepik Agro Industries chicken/grain/beef/cocoa project
- Coffee industry rehabilitation project

Currently, the KCH works with the Government and private investors facilitating PPP's in PNG.

However, the growth in major infrastructure projects risks stagnating while the PPP Centre remains unformed. As such, it is important to consider the impact of PPP framework on infrastructure projects in the future and the risks that exist if the Government does not move forward with its policy. Particularly, how the process (and timing) concerning the implementation of large-scale infrastructure projects with the PNG Government may be beneficially affected through structured frameworks and assessment guidelines.

¹⁰ *Public Private Partnership Act 2014 (PNG) s 12 (4) .*

¹¹ *Public Private Partnership Act 2014 (PNG) ss 16-17.*

¹² *World Bank Group, (2016) "Benchmarking PPP Procurement 2017 in Papua New Guinea", World Bank Group*

<<http://bpp.worldbank.org/data/exploreindicators/~-/media/WBG/BPP/Documents/PPP2017-CountryFiles/Papua-New-Guinea.pdf>>.

Contact

For more information please contact:

Paul Toua

Special Counsel

T +61 409 769 785

E p.toua@pln.com.au

Evelyna Tohora

Lawyer

T +675 321 4470

E etohora@fairfax.com.pg

Damian Kelly

Paralegal

T +61 424 067 184

E d.kelly@pln.com.au



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