Rwanda has enacted a Law governing Public-Private Partnerships

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Introduction

Rwanda, like many other countries has set up a law governing PPP projects. This law was adopted in line with the National Development Program embodied in “Vision 2020” and the Second Economic Development and Poverty Reduction Strategy (EDPRS II). This plan aims to transform Rwanda into a “middle-income country “, particularly through the realization of key projects, but being capital intensive projects, they cannot be fully financed by the Government due to budget constraints.

It is expected that the enactment of the PPP law will strengthen the legal and regulatory environment of business in the country, and thus, boost investment climate in order to attract FDI in key sectors, public infrastructure and services.

Prior to the enactment of the PPP Law, PPP projects were conducted under various legal instruments, such as the Public Procurement Law and the Privatization Law.

It is recognized that PPPs take a wide range of forms varying in the extent of involvement of and risk taken by the private party. The terms of a PPP are typically set out in a contract or agreement to outline the responsibilities of each part and clearly allocate risk.

Key Provisions of PPP Law

The purpose of the law is to govern Public Private Partnerships

Article 2 defines key terms used in the law, such as PPP agreement, unsolicited proposal, special purpose vehicle, etc.

As for the scope of the law, it applies to the following arrangements (Art. 3):

1º management contract, whereby a Contracting Authority awards a partner the right to manage and perform a specific service with respect to an infrastructure facility or other asset for an agreed time period;

2º “Build-Operate-Own” “BOO”, whereby a private partner finances, designs, constructs, owns and operates an infrastructure facility or other asset to provide services;

3º “Build-Operate-Transfer” or “BOT”, whereby a partner finances, designs, constructs an infrastructure facility or other asset to provide services and maintains it for an agreed time period after which a transfer of the infrastructure facility or other asset is made to the Government;

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1 Law Nº14/2016 OF 02/05/2016 governing Public-Private Partnerships was published in Official Gazette of the Republic of Rwanda No. 22 of 30th May 2016. It can be accessed at file:///C:/Users/Administrator-PC/Downloads/Official_Gazette_no_22_of_30.05.2016.pdf

4º “Lease-Operate-Develop” “LOD”, whereby the Contracting Authority grants a Partner a lease to operate and develop an existing infrastructure facility or other asset for an agreed time.

The PPP Law, however, does not apply to:

1° contracts subject to the law governing public procurement;

2° the privatization or divestiture of enterprises, assets and any infrastructure facility owned by the Government. (Art.4)

Article 5 of the Law states potential sectors for PPPs in infrastructure and services. These are:

1° transportation, including roads, railways, airports, bridges, tunnels, waterways and inland ports;

2° energy including water energy, gas energy, solar energy, wind energy, geothermal energy, biogas energy and peat;

3° social affairs, including those related to education, culture, health, sports and leisure;

4° tourism, including tourism related to history, hotels, parks and tourism attractions;

5° natural resources and environment, including those related to forestry, oil and oil products, minerals, water sanitation and waste disposal;

6° telecommunication and information technology;

7° any other sectors as may be determined by an Order of Prime Minister.

Chapter 2 of the Law deals with Public institutions playing a role in PPP and their responsibilities.

These institutions are:

- the Steering Committee composed of the Minister in charge of finance and economic planning; the Minister in charge of infrastructure; the Chief Executive Officer of the Rwandan Development Board; and the Head of the Contracting Authority depending on the PPP project under study.
- The Contracting Authority; and
- The Rwandan Development Board

The role and responsibilities of these institutions are respectively spelt out in Article 8 for the Steering Committee, Article 9 for the Contracting Authority and Article 10 for the Rwandan Development Board.

Chapter 3 on PPP Agreement contains provisions on the authorization to enter into PPP contracts (Article 11) and key elements comprising a PPP agreement (Article 12).
In its Chapter 4 on **Competitive procurement procedure for a PPP contract**, the Law provides that prior to a tender notice; the Contracting Authority must conduct a feasibility study in connection with the PPP contract (Article 13). The PPP project feasibility study must be approved by the Steering Committee (Article 14).

Another key provision of the Law is Article 15 which provides that a competitive procurement procedure for PPP project is governed by the following principles:

1. competition; 2. transparency; 3. fairness and non-discrimination; 4. efficiency and effectiveness;
5. protection of public property and public interest; 6. accountability.

Chapter 5 deals with **PPP Procurement Procedure for unsolicited proposal**.

Under Chapter 6 on **Miscellaneous and Final provisions**, the Law addresses the matter of confidentiality of PPP contract (Article 29). In addition, grounds under which the Rwandan Development Board can disqualify a partner from PPP projects are spelt out (Article 30).

As in other countries that are using PPP to boost investment in public infrastructure and services, the success of PPP in Rwanda will depend on the effective implementation of the legal framework now in place and the availability of experienced personnel to handle PPP issues as they may be complex. Moreover, transparency in PPP projects is very vital as this is a driver to their success or failure.