



Legal Alert | January 13, 2022

The Public Private Partnership Act, 2021

1. Introduction

The Public Private Partnership Act, 2021 (the Act) which came into effect on December 23, 2021 provides for the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships. The objects of the Act include:

- i. To prescribe procedures for participation of the private sector in public private partnerships;
- ii. To harmonize the institutional framework for the implementation of public private partnership projects;
- iii. To give effect to Article 227 of the Constitution on procurement relating to public private partnerships;
- iv. To streamline and rationalize the regulatory, implementation and monitoring mandates of the relevant agencies; and
- v. To provide for the participation of county governments in public private partnerships.

The Act emphasizes the role of the Attorney General as the chief legal advisor by requiring contracting parties to obtain the consent of the Attorney General and the Public Private Partnership Committee prior to cancelling a tender.

On May 31, 2021 we published a Legal Alert on the Public Private Partnerships Bill, 2021 (accessible here <https://kn.co.ke/the-public-private-partnerships-bill-2021/>). The purpose of this Legal Alert is to highlight the new inclusions in the Act that were not in the Bill.

2. Public Private Partnerships Procurement Methods

Other than direct procurement, privately-initiated proposals and competitive bidding, the Act provides for restricted bidding. Regardless of the procurement method used the contracting authority must be

guided by the principles of transparency, cost-effectiveness and equal opportunity. Contracting authorities are also required to use standard bidding documents issued by the Directorate of public private partnerships in all public private partnership procurements.

3. Conclusion

The implementation of the Act will ensure transparency in the manner in which public private partnerships are undertaken both at the county and the national level. This will hopefully enhance investor confidence resulting in increased uptakes of public private partnerships in Kenya.

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