

**GENERAL INFORMATION**

<b>Capital:</b> Lilongwe	<b>Population:</b> 20,308,502 (2021)	<b>GDP (USD):</b> 12,63 billion (2021)
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**LEGAL AND INSTITUTIONAL FRAMEWORK**

<b>PPP Law</b>	<ul style="list-style-type: none"><li>- Public Private Partnership Act No. 23 of 2022, ('PPP Act, 2022')</li><li>- The Public-Private Partnership Bill, 2010 that came into force in 2013</li><li>- The Public-Private Partnership Policy Framework, 2011</li></ul>
<b>Other Applicable Sectoral Law</b>	<ul style="list-style-type: none"><li>- The Public Enterprises Act, 1996</li></ul>

**PPP Unit** The Public Private Partnership Commission (PPPC)

**Definition**  
**(Art. 2 of PPP Act, 2022)**

A “public-private partnership” means a contractual relationship in which a Contracting Authority partners with a Private Party to build, expand, improve, or develop infrastructure or service wherein the Contracting Authority and Private Party contribute one or more of the following: technical know-how, financial support, facilities, logistical support, operational management, investment or other input required for the successful deployment of a product or service, and for which the Private Party is compensated in accordance with a pre-agreed plan, typically in relation to the risk assumed and the value of the result to be achieved (Art. 2 Definitions – Part I, PPP Act 2022)

**General Principles****(Art. 4 of PPP Act, 2022)**

- Improve the delivery of public infrastructure and services in Malawi;
- Assist in achieving better value for procurement of infrastructure and public expenditure by the Government;
- Leverage on private sector financing, management, technical know how and technological innovation;
- Encourage participation by resource owners in Public-Private Partnerships and provide assurance for private interests in those partnerships;
- Encourage competitive and efficient markets for the provision of public infrastructure and services in Malawi;
- Minimize the fiscal burden of providing infrastructure development and service delivery; and
- Promote private sector contribution towards the attainment of positive social indicators.

(Objectives, Art. 4, Part II of PPP Act 2022)

**Tendering and contracting procedures/ Choice of the private partnership****(Art. 42 to 56 of PPP Act, 2022)**

- The Commission shall be responsible for the procurement of a Private Party for a PPP project but the Commission may, where it deems appropriate to do so, taking into account the size and nature of the PPP project, delegate the procurement to a Contracting Authority, if in the opinion of the Commission, the Contracting Authority has capacity to carry out the procurement. (Art. 44 PPP Act 2022)
- Expression of interest and request for proposals (Art. 46 and 48 PPP Act 2022)
- Direct negotiations, unsolicited bids and initiation of PPP project procurement by a Private Party (Art. 52 to 56 PPP Act 2022).

**Project Evaluation****(Art. 42 and 43 of PPP Act, 2022)**

The Commission shall assess each PPP project and determine the nature of a feasibility study which may be required and the manner in which such feasibility study may be conducted. Every feasibility report shall be approved by the Minister prior to its implementation. (Art. 42 PPP Act 2022)

**Negotiation and Signature of PPP Contracts**  
(Art. 57 and 58 PPP Act 2022)

The Commission may consider engaging an interested Private Party to carry out the whole or part of a feasibility study where the project is highly technical and the Private Party possesses the necessary technical expertise to carry out the feasibility study. (Art. 43 PPP Act 2022)

The Commission shall, in liaison with the Contracting Authority and unless otherwise agreed between the Commission and the Contracting Authority, initiate contract negotiations with the preferred private party. (Art. 57(1) PPP Act 2022)

Prior to signing of a PPP contract, the Commission shall obtain the written approval of the Minister. (Art. 57 (6) PPP Act 2022)

Where the Commission has delegated the procurement of a Private Party to a Contracting Authority the Contracting Authority may, with the approval of the Commission, conduct contract negotiations with the preferred Private Party and shall submit to the Commission for its approval the final draft PPP contract. (Art. 58 (1) PPP Act 2022)

The Contracting Authority shall submit to the Commission a copy of the duly executed PPP contract together with all annexes and addenda, if any, for its record and registration. (Art. 60 (1) PPP Act 2022)

**Rights and Obligations of the public partner**  
(Art. 28 to 33 of PPP Act, 2022)  
(Art. 64 to 66 PPP Act, 2022)

The power, duties and functions listed under Art 28 of the PPP Act, 2022

Power to transfer property (Art. 29 PPP Act, 2022)

Duty to conduct periodic needs assessment. (Art. 31 PPP Act, 2022)

Duty to include PPP project costs in annual budget (Art. 32 PPP Act, 2022)

Right to monitor the works to be performed and services to be provided by the Private Party (Art. 33 PPP Act, 2022)

Right to review and approve any major contracts to be entered by the Private Party (Art. 33 PPP Act, 2022)

Right of temporary project takeover (Art 64 PPP Act, 2022)

Duty to monitor and oversee implementation of a PPP contract (Art 65 PPP Act, 2022)

**Rights and Obligations of the private partner**

Right to initiate a project procurement (Art. 53 PPP Act 2022)

Obligation to provide the Contracting Authority or any regulatory

(Art. 33 PPP Act, 2022)

authority with reports and other information on its operations.

**Obligations of both public and private partners**

Right of the Parties to agree such terms and conditions of the PPP contract as they may deem necessary.

(Art. 33 PPP Act, 2022)

**Applicable resolution**

**Law/**

**Dispute**

The Laws of Malawi. Dispute resolution mechanism to be provided by PPP contract.

(Art. 35 PPP Act, 2022)

## EXAMPLES OF PROJECTS STRUCTURED AS PPP

**Railway**

Railway Network/Concessions (including the Nacala Railway)

**Tourism**

Liwonde and Nkhotakota National Parks Project