The Ceylon Chamber of Commerce
Comments and Recommendations for the Draft Public-Private Partnership Bill

1. Introduction

The Ceylon Chamber of Commerce welcomes the opportunity to provide feedback on the Draft Public–Private Partnership (PPP) Bill. We acknowledge the Government's efforts to establish a comprehensive legal and institutional framework to enhance Sri Lanka's capacity to attract private capital for infrastructure and service delivery.

This submission consolidates expert feedback received from members of our Committees on Economic Policy, Finance and Capital, Legislation and Governance, PPP, and Public Sector Reforms. It highlights the positive features of the Bill, identifies key concerns, and provides recommendations for strengthening the framework to ensure transparency, accountability, investor confidence, and alignment with international best practices.

2. Background

Sri Lanka has utilized PPPs since the 1990s, particularly for infrastructure projects like ports, power, and transport. However, the effectiveness of PPPs has been hampered by inconsistent institutional frameworks and a preference for government-funded projects. Recent efforts include a dedicated PPP Unit in the Ministry of Finance to improve the enabling environment for private sector investment in infrastructure. The need to address infrastructure gaps and leverage private sector capital for sustainable development drives the use of PPPs in Sri Lanka.

3. Alignment with International Best Practices

3.1 Strengths of the Bill

- **Value-for-Money (VfM) and Feasibility Tests:** Mandates pre-feasibility/feasibility studies, VfM analysis, cost–benefit assessment, and fiscal sustainability tests (aligns with OECD and World Bank PPP frameworks).
- **Transparency:** Requires stakeholder consultation, public disclosure, and National Procurement Commission (NPC) guidelines for procurement.
- **Risk Allocation:** Private sector bears defined risks, subject to VfM assessment.
- **Contract Management & Step-in Rights:** Provides lender step-in, government step-in, and refinancing benefit-sharing, aligned with UNCITRAL PPP model law.
- **Institutional Setup:** Creates a National PPP Agency with clear functions (policy support, project registry, guidelines, appraisal).

3.2 Gaps

- **Independence of Agency:** Minister appoints the majority of Board members; risks political capture.

- **Procurement Integrity:** Competitive safeguards around unsolicited proposals (USPs) are weak.
- **Fiscal Transparency:** Bill references PFM Act but does not require publication of a consolidated annual PPP fiscal commitments report.
- **Dispute Resolution:** Mentions dispute guidelines but does not guarantee neutral international arbitration or specialized PPP tribunal.

4. Summary of Recommendations

1. **Standalone Framework**
   The PPP Act should serve as a comprehensive, standalone law to avoid overlaps with the PFMA, BOI Act, UDA Act, and procurement guidelines. This will create legal clarity and streamline governance.
2. **Project Scope & Eligibility**
   The eligibility thresholds should not exclude smaller but nationally important projects. Environmental, Social, and Governance (ESG) criteria should be included alongside financial thresholds to attract international funding and ensure sustainability.
3. **Institutional Independence & Governance**
   - Strengthen independence of the National Agency for PPPs by reducing ministerial control.
   - Board appointments should follow defined qualifications and relevant PPP experience, with oversight by Parliament/Constitutional Council.
   - Extend Board members' tenure from three to five years to align with long PPP lifecycles.
   - Separate CEO and Secretary-to-the-Board roles to ensure sound governance.
   - Introduce conflict-of-interest safeguards (e.g., cooling-off period before former officials join bidders).
4. **Transparency & Disclosure**
   - Mandate proactive publication of the national PPP pipeline, feasibility summaries, and signed contracts (redacted), in line with the RTI Act.
   - Remove blanket secrecy clauses; limit confidentiality strictly to trade secrets or IP.
5. **Project Evaluation & Approval**
   - Strengthen project evaluation by establishing dedicated Technical and Commercial Evaluation Committees.
   - Project teams should have authority equivalent to Cabinet Appointed Negotiation Committees.
   - Require annual publication of a **PPP Fiscal Risk Report** annexed to the Budget.
6. **Unsolicited Proposals (USPs)**
   - Establish clear, time-bound procedures for USPs.
   - Restrict them to exceptional cases, subject to Swiss challenge, strict timelines, and full disclosure of proponents and financing sources.
7. **Contract Management & Flexibility**
   - Allow limited, controlled post-award negotiations for complex projects (instead of outright prohibition).
   - Define thresholds for material contract variations and require disclosure of changes.
   - Strengthen provisions on step-in rights with clear triggers, timelines, and approval mechanisms.
8. **Exclusivity & Competition**
   - Exclusivity should only be permitted where essential for project bankability.

  - Must be time-bound, justified by value-for-money tests, and subject to a public-interest review.
  - Exclusivity terms should be published and open to review/withdrawal if harmful to competition or public interest.

9. **Dispute Resolution**
  - Provide flexibility for international arbitration to meet financier requirements.
  - Explicitly integrate mediation as a complementary dispute resolution mechanism, aligning with Sri Lanka's commitments under the Singapore Convention.

10. **Non-Retroactivity**
  - Ensure that existing PPP projects are not subjected retrospectively to new obligations under the Act, protecting investor confidence.

5. Section-wise In-depth Comments

No.	Section No.	Observations and Recommendations
1.	Preamble of the Act, Section 2, 3, 4, 6, 32 and 84	According to these provisions, the draft Act is intended to supplement the existing legal framework governing public-private partnerships ("PPPs"). It also refers to the prevailing government procurement guidelines and is subject to the provisions of the Public Finance Management Act. While this approach seeks to align the draft Act with existing regulatory instruments, it may inadvertently lead to legal ambiguity and operational confusion. The coexistence of multiple overlapping frameworks could hinder clarity, consistency, and efficiency in the implementation of PPP projects. Further, the draft Act does not clearly articulate how it will harmonize or address overlaps with other sector-specific legislation such as the Board of Investment Act and the Urban Development Authority Act - which also provide for investment facilitation and infrastructure development. Given that this draft Act is specifically designed to regulate PPPs, it is recommended that it serves as a comprehensive and standalone legal framework – a "one-stop shop" – for all matters related to PPPs. To achieve legal clarity and streamline governance, the Act should consolidate and, where appropriate, replace the existing laws, rules, and procedures applicable to PPPs. This would ensure a more coherent and predictable legal environment for both public and private sector stakeholders. Further, to ensure its effectiveness and global credibility, it is recommended that the Act be aligned with international

		best practices, particularly those outlined by the World Bank and UN ESCAP. FDI attraction should be explicitly recognized as a core objective. Section 3–4 (Application, Objects & Purposes): Require publication of VfM study summaries before procurement. (UK HM Treasury Green Book requires VfM disclosure; South Africa PFMA mandates affordability tests.) Subparagraph 6.(a) states that any PPP shall "be long-term in nature and be implemented on the basis of a contract". PART XIII MISCELLANEOUS, under Section 80 Interpretation, long term is defined as "Long term" means a period that extends beyond five years but does not exceed thirty years. In rare instances, a period beyond thirty years may be considered within this definition". Large-scale PPPs (e.g., Ports, terminals, refineries, mining, shipyards, etc.) are long-term, and more often will require a well over 30-year time horizon to attract FDI. So, the definition may restrict the attraction of large-scale PPPs. Also, who and what criteria will define the so-called "rare instances", unless it is duly addressed in this Bill and/or in the subsequent Regulations/Rules, etc. Subparagraph 6.(d) states that "allocation of project-related risks between the public and private partners of the public-private partnership throughout its term". Again, this amplifies concerns expressed above. By and large, the commercial risks, both local and international, including technological obsolescence, which is happening more frequently now, are risks that are primarily taken by the private party— a 30-year period may not give sufficient comfort to reinvest in long-term (beyond 30-years) sustainability of the project.
2.	Section 2 (1)	As per this provision, the Act applies only to projects that exceed a minimum value prescribed by the Minister. While this helps prioritize larger investments, the threshold should be set carefully to avoid excluding smaller projects of national importance. In determining project eligibility, the Act should also consider Environmental, Social, and Governance (ESG) factors, which are increasingly critical for securing international funding and ensuring sustainable outcomes. A framework that balances financial thresholds with strategic and ESG considerations will help ensure that all impactful projects, regardless of size, are brought under the PPP process.

3.	Section 12, 13, 15, 16, 19 and 22 (1) – appointment of NAPP members	The PPP bill vests significant power in the Minister, to appoint and remove members of the NAPPP and the Chairman of the NAPPP (Sections, 12, 13, 16). It also vests the Minister with the power to determine the remuneration of the members of the Board (Section 19). The Chief Executive Officer is also appointed by the Board in consultation with the Minister (Section 22(1)). These features materially weaken the Agency's operational and political independence and raise predictable risks (political capture, weak scrutiny of unsolicited proposals, fiscal risk and corruption). Recommendations: ▪ Subject the appointment of the members of the Board to Parliamentary oversight or approval by the Constitutional Council. ▪ Stipulate that the remuneration of the Board shall be determined by Parliament, charged on the Consolidated Fund and shall not be diminished during their terms of office. ▪ Criteria for Appointed Members (Section 12(1)(b) - The criteria for the four appointed members should be clearly defined, as the current wording is overly broad. Appointment guidelines should specify minimum qualifications, professional expertise, and relevant experience in PPP project development, structuring, or management. This will ensure that the Board benefits from members with the necessary technical and commercial competence. ▪ Tenure of Appointments (Section 15 (1)- The current three-year term for members is insufficient to allow for effective knowledge transfer and continuity. It is recommended that the tenure be extended to at least five years, aligning with the long gestation period of PPP projects and enabling members to contribute meaningfully across project lifecycles.

		▪ Governance role conflict: Section 22(5) makes the CEO the Secretary to the Board which is not good governance and recommend separation. ▪ Section 19 (Conflict of Interest): Best Practice: OECD integrity guidance: require ongoing annual disclosures and cooling-off periods. Recommendation: Add 2-year cooling-off before ex-officials can join PPP bidders. EU directives impose similar restrictions.
4.	Section 25 (1) (n) (i) (m)	This provision provides for the establishment of a national PPP project pipeline. To promote transparency, public accountability, and stakeholder engagement, it is recommended that this pipeline be publicly available and regularly updated. Making the pipeline accessible to the public will also help attract investor interest, align public expectations, and support better coordination across government agencies and private parties. Section 25. (1) (m) identifies that the agency shall "assist with the constructive resolution of problems and issues during the implementation of public-private partnerships". Mere. Assistance may not suffice; the agency and its officers must play a proactive and leading facilitation role for any project to materialize. Rewording suitably may be of value.
5.	Section 35	This provision provides for the appointment of a project team to evaluate proposed PPP projects. While this is a positive step toward institutionalizing project assessment, the scope of authority and decision-making powers granted to this team remains unclear. Under the current procedure, Cabinet Appointed Negotiation Committees (CANC), which comprise Secretaries of all the relevant Ministries, play a pivotal role in evaluating and approving PPP projects, often with significant influence over strategic decisions. Accordingly, it is recommended that the project team appointed under this provision is vested with the same level of authority as the CANC under the current procedure.
6.	Section 40	Section 40(2)(e) – Technical Requirements The obligation on contracting authorities to identify technical requirements, deliverables, and long-term adaptability is ambitious, but in practice, many authorities lack the technical expertise to perform such studies

		effectively. It is recommended that the PPP Agency work jointly with contracting authorities, providing the necessary technical and commercial expertise to ensure feasibility, innovation, and value-for-money are properly assessed. Section 40(2)(m) – Licenses, Permits, and Authorisations The requirement for contracting authorities to identify all licenses and approvals is a major bottleneck. Licenses and permits are spread across multiple ministries under outdated frameworks, creating delays that deter investors. To address this, the PPP Agency should establish a **single-window facilitation mechanism** to coordinate and fast-track approvals, cut through bureaucratic inconsistencies, and ensure that private investors can secure necessary authorisations within a reasonable timeframe.
7.	Part VI, Section 46 (Appraisal & Approval) – Agency reviews and PIC/Minister approve; PFM Act prevails.	Introducing Evaluation Committees during the Procurement Phase - It is recommended that the Bill provides for the establishment of project-oriented evaluation committees at the procurement stage, comprising both a Commercial Evaluation Committee (CEC) and a Technical Evaluation Committee (TEC). Given the complexity and long-term nature of PPP projects, a structured approach to evaluation is vital. The procurement phase is a critical component of any PPP project, as it directly impacts value for money, transparency, and project continuity & sustainability. Effective evaluation mechanisms are therefore essential to ensure that both technical (qualitative aspects) and commercial (quantitative aspects) dimensions are properly assessed prior to contract award. Technical Evaluation Committee(TEC): To assess technical feasibility, project design standards, operational capacity etc. Commercial Evaluation Committee (CEC): To evaluate financial models, commercial viability, risk allocation etc. Both committees may serve in an advisory capacity to the NAPPP/ Contracting Authority, thereby ensuring that the procurement process is transparent, comprehensive, and receiving benefits from specialized expertise. This structure would also promote consistency in decision-making, and strengthen confidence of both public stakeholders and private investors in the PPP framework.

		Mandate an annual PPP Fiscal Risk Report annexed to the Budget. (UK OBR & NAO report on PPP liabilities; South Africa requires Treasury disclosure of PPP guarantees.)
8.	Part VII - Unsolicited Proposals	Part VII of the Act deals with unsolicited proposals. Section 32 of the draft PPP Bill stipulates that USPs may be undertaken in accordance with the Act, the Public Finance Management Act, and the Procurement Guidelines. Section 49(1) requires that all projects follow a competitive tendering process, as outlined in the procurement guidelines. However, the 2025 procurement guidelines are silent on USPs and permit direct negotiations. The guidelines fail to stipulate a clear, regularised process or adequate accountability measures for handling USPs. Without specific legal transparency rules, USP projects can proceed with minimal public scrutiny. Therefore, it is recommended that the Act establishes a clear, transparent, and time-bound procedure for the submission, evaluation, and approval of unsolicited proposals. A more enabling framework would help foster innovation, expand project opportunities, and strengthen private sector engagement in national development efforts. Consider utilizing the Swiss challenge with publishing of all USPs online (Philippines, Colombia use Swiss challenges).
9.	Section 51 (3)	This provision states that there shall be no negotiations or amendments to the contract after the bid winner has been selected. While this may be intended to uphold transparency and fairness, such a rigid approach can be counterproductive. In practice, limited negotiations and practical amendments are often necessary for complex PPPs to ensure successful project delivery. A strict prohibition on post-award adjustments may deter credible investors, particularly foreign investors. It is recommended that the Act allows for clearly defined and controlled post-award negotiations, subject to safeguards that maintain transparency and accountability.
10.	Section 57 (1)	This provision refers to step-in rights, which are useful for ensuring continuity and protecting public interest in PPP projects. However, the Act does not clearly outline the conditions, timelines, or the approval mechanism for exercising these rights.

		To avoid uncertainty and ensure proper governance, it is recommended that the Act includes clear and detailed provisions on how and when step-in rights may be triggered, the process for approval, and the duration and scope of such intervention. This will help safeguard project outcomes while maintaining investor confidence. UNCITRAL endorses lender step-in, but with transparent criteria. Require qualification standards for substitutes; provide fast-track dispute resolution. (UK PFI "special administration" and Chile concession substitution provide comparators.)
11.	Section 59 (Exclusivity) - Exclusive rights may be granted to the private partner to perform activities specified in the PPP contract. No limits or safeguards mentioned. No competition safeguards: exclusivity may prevent future entrants. No link to public-interest review: language suggests "facilitating financial viability" as main basis. No disclosure obligations for exclusivity terms. No provisions for termination/waiver of exclusivity if public interest is harmed.	Best Practice: OECD, UNCITRAL: exclusivity should be **narrowly tailored**, time-bound, and justified by VfM/fiscal tests. Overbroad exclusivity risks monopolies and conflicts. International best practice: exclusivity should not bar future competition unless strictly required. Philippines PPP Code requires competition policy review before granting exclusivity. State must balance investor viability with user rights and affordability. UNCITRAL: contracts must allow government step-in/renegotiation if exclusivity undermines public interest. Recommendation: Require exclusivity only if: (a) necessary for bankability, (b) subject to VfM test, (c) time-bound. Example: **EU Concessions Directive** allows exclusivity only where proportionate. Add a Section: exclusivity **cannot prevent entry of other service providers** unless essential for project viability. Add a mandatory **public-interest test**: exclusivity cannot result in abuse of dominant position or unreasonable tariffs. India's **Competition Act** and CCI have reviewed PPP concessions for anti-competitive effects (e.g., airports)' Require **publication of exclusivity scope & duration** in Gazette/Agency website. (Chile's concession contracts publish exclusivity clauses openly.). Add a section: Government may **modify/withdraw exclusivity** with compensation if needed to protect essential services or competition. (Seen in UK PFI renegotiation frameworks and Chile's rebalancing mechanisms.)
12.	Section 65 (Contract Expiry & Handover) – Provides for handback, inspection, training.	Best Practice: UK NAO recommends 5-year expiry readiness planning; ADB also stresses lifecycle monitoring.

		Recommendation: Add **mandatory expiry readiness plan 5 years before handback** with joint inspections. (UK "PFI expiry playbook.")
13.	Section 66 (1)	This section permits the creation of security interest to secure any financing needed for the Public Private Partnership project. However, sub section 66 (2) states that the creation of security interest shall only be for the restructuring or refinancing of the Public Private Partnership project. While the intention appears to be the prevention of creating such a security interest for the benefit of the Private entity, this wording might create confusion as to whether the wording leaves room for an interpretation that such security is limited for restructuring and refinancing and not for initial financing required for the project. This will have an impact on financing as the financiers would prefer clear enabling provisions. It is also noteworthy that security cannot be created over public property or any other property needed for provision of public service. We need to see whether this effectively excludes the cashflows or any joint property used for the service like for example is it possible to finance the vehicles or machinery required for the project by creating security over such assets. It is recommended to provide greater clarity on the creation of security, particularly in relation to the mortgage of leasehold rights granted by the State as part of the PPP project. In the recent past, the Government has been reluctant to allow creation of land leased to the Private Project Company for funding purposes. Consider the following: (1) A private partner or SPV may create, in favour of its financiers, security interests over: (a) its contractual rights under the public private partnership contract; (b) receivables and cashflows arising from the project, including user charges and availability payments; (c) movable property, including vehicles, machinery, and equipment procured for the project; and (d) shares, debentures, or other equity interests in the project company. (2) No security interest shall be created over State-owned immovable property, or any asset indispensable for the continuous delivery of essential public services, except as otherwise expressly provided in the public private

		partnership contract. (3) Security interests may be created for the purposes of initial financing, refinancing, or restructuring of the project. (4) Any enforcement of security by financiers shall be subject to step-in rights, substitution rights, and continuity of service obligations in accordance with this Act and the public private partnership contract.
14.	Section 70 – Dispute Resolution	This section states that the arbitration forum shall not be at the choice of the private partner's financier. This provision is restrictive and impractical, especially for large-scale projects that rely on international financing. Financiers often require dispute resolution mechanisms that are neutral, familiar, reliable, and enforceable across jurisdictions. Restricting their ability to influence the choice of arbitration forum may limit access to international capital and deter credible foreign investors. Therefore, it is recommended that the Act allows for flexibility in selecting arbitration forums, particularly in cases involving international project financing, while ensuring fairness and transparency in the dispute resolution process. The current provisions of the PPP Bill place primary reliance on arbitration (Part XI). Although dispute avoidance steps are mentioned, mediation is not expressly recognized as a first-line or complementary mechanism for resolving disputes. In light of the above, it is suggested to recognize mediation as an initial or alternative step in the dispute resolution process, prior to or alongside arbitration. This would provide faster, cost-effective resolution of disputes while preserving long-term working relationships between public and private partners. This would also align the PPP framework with Sri Lanka's treaty commitments and would enhance investor confidence by offering multiple structured dispute resolution options. This would also create an opportunity to align with international best practices and leverage the already enacted legislation (i.e. Recognition and Enforcement of International Settlement Agreements Resulting from Mediation Act, No. 5 of 2024) to fulfil Sri Lanks's commitments to Singapore Convention.

15.	Section 82	It is recommended that existing PPP projects are not retrospectively subjected to these new obligations. Applying the requirements under this Act to existing projects retroactively could lead to legal and contractual complications and would undermine the confidence of current investors and project partners.

The Bill aligns broadly with international PPP frameworks (UNCITRAL, ADB, World Bank) and modernizes Sri Lanka's PPP regime while tying it to fiscal responsibility under the PFM Act. However, Agency independence, parliamentary financial control, USPs, renegotiation limits, step-in rights, fiscal risk transparency, and dispute resolution mechanisms require strengthening.