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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN
PUBLIC PRIVATE PARTNERSHIP AUTHORITY

NOTIFICATION

Islamabad, the 3rd January, 2023

S. R. O. 04 (1)/2023.—In exercise of the powers conferred under Section 25A read with Section 31 of the Public Private Partnership Authority Act, 2017 (Act No. VIII of 2017), the Board of the Public Private Partnership Authority is pleased to notify the following regulations, namely:

**The Public Private Partnership Authority
(Direct Contracting of IFIs as Transaction Advisers) Regulations, 2023**

PART I

General

I. Short title and commencement. — (1) These Regulations shall be called the Public Private Partnership Authority (Direct Contracting of IFIs as Transaction Advisers) Regulations, 2023.

(2) These regulations shall come into force at once.

(7)

Price: Rs. 10.00

2. **Definitions.** — (1) In these regulations, unless there is anything repugnant to the subject *or* context: —

- (a) “**Act**” means the Public Private Partnership Authority Act, 2017 (Act No. VIII of 2.017), as amended from time to time;
- (b) “**Advisory Services Agreement**” means a contract executed between the implementing agency and an IFI pursuant to these Regulations for the purpose of provision of transactional advisory services by the IFI with respect to a PPP transaction;
- (c) “**Authority**” means the Public Private Partnership Authority established under Section 3 of the Act;
- (d) “**Board**” means the Board constituted in accordance with Section 6 of the Act;
- (e) “**implementing agency**” has the meaning ascribed to it in Section 2(g) of the Act;
- (f) “**international financial institution**” or “**IFI**” means the advisory wing of such multilateral development bank, multilateral financial institution, regional development bank, or sub-regional development bank of which Pakistan is a member, and which are specified as such in Schedule-1 to these Regulations by the Board (which may be updated by the Board from time to time);
- (g) “**Pakistani Entities**” means any natural or legal person either being a resident national of Pakistan or duly registered legal entity’ under the laws of Pakistan;
- (h) “**public private partnership**” or “**PPP**” has the meaning ascribed to it in Section 2(t) of the Act;
- (i) “**Regulations**” mean these Public Private Partnership Authority (Direct Contracting of IFIs as Transaction Advisers) Regulations, 2023;
- (j) “**transaction advisory services**” mean advisory services to be provided by an IFI to an implementing agency under the Advisory Services Agreement.

(2) Any expression used but not defined in these Regulations shall have the same meaning as assigned to it in the Act, or if not defined in the Act, as in common usage.

PART II**Approval of Transaction for Direct Contracting of IFIs as Transaction Advisers****3. Approval of Transaction for Direct Contracting of IFIs.—(1)**

Pursuant to Section 31 of the Act, implementing agencies may, in accordance with the approvals process set out in these Regulations, hire an IFI on direct contracting basis to provide such transaction advisory services as may be agreed in the Advisory Services Agreement.

4. Applicability.—Implementing agencies may request for approval for hiring of IFIs as transaction advisers under these Regulations for projects satisfying any one of the following criteria:

- (a) projects that are of large-scale (*i.e.* project cost of which exceeds PKR 10 Billion);
- (b) projects that are complex in nature and for which transaction advisers of requisite high quality are generally not available within Pakistan; or
- (c) projects that have not been undertaken before under the PPP mode at the federal level within Pakistan.

5. Approval Process.—(1) An implementing agency desirous of hiring an IFI to provide transaction advisory services for a PPP transaction shall submit a request to the Board, providing the concept of the proposed PPP transaction and the rationale for hiring an IFI.

(2) The Board shall, upon receipt of the request, evaluate the request to determine whether it is sufficiently sound and compliant with the requirements of these Regulations, so as to justify hiring of an IFI for providing transaction advisory services for the proposed PPP transaction. The Board may approve (including conditional approval) or reject the request, or return it to the implementing agency with comments (and allowing resubmission in the event the deficiency is curable).

(3) The Secretary of the Board shall forward the decision of the Board to the implementing agency promptly, and in no event, later than fifteen (15) working days of such decision.

PART III**Direct Contracting of IFIs as Transaction Advisers**

6. Selection of IFI as Transaction Adviser. —(1) Subject to the Board's approval of the request for hiring an IFI, the implementing agency shall commence the selection process under sub-regulation (2).

(2) While conducting the selection process, the implementing agency may, inter-alia, consider the following aspects with respect to the capabilities of the IFI:

- (a) ability to develop projects that guarantee long-lasting benefits for the public;
- (b) number of previous transactions (similar to the proposed PPP transaction) directly handled by the IFI; and
- (c) experience possessed by key team members in handling transactions similar to the proposed PPP transaction.

(3) In the event more than one IFI is eligible to perform or render the services, the implementing agency shall require such IFIs to provide relevant information within a period of ten days from the issuance of such request (in this case, only those IFIs that provide the required information within this stipulated timeframe shall be eligible for further consideration).

(4) Subsequently, the implementing agency shall negotiate with respect to the required transaction advisory services with eligible IFI(s) in order to discuss the terms upon which such IFIs may be engaged.

(5) After discussions and negotiations as above, the implementing agency shall select an IFI for provision of transaction advisory services with respect to the PPP transaction, recording reasons for the decision with respect to the selection of the particular IFI.

(6) Thereafter, the implementing agency shall negotiate advisory fees with the selected IFI, which may be a combination of milestone-based payments and success-fee (to be paid at financial close).

(7) Notwithstanding anything to the contrary contained in these Regulations, and IFI may be hired by an implementing agency pursuant to these Regulations for no more than three PPP transactions at a time. It shall be the responsibility of the implementing agency to ensure that the IFI being selected under these Regulations is not already providing transaction advisory services with respect to three PPP transactions (which have yet to achieve financial close):

Provided, however, that in the event the implementing agency considers it necessary to hire such an IFI, the implementing agency may, through its line ministry, seek an exemption from the Federal Government by providing reasons for such exemption.

7. Advisory Services Agreement.—(1) An implementing agency hiring an IFI under these Regulations shall be required to execute an Advisory

Services Agreement with the selected IFI, which shall contain terms and conditions governing the parties' relationship, including the scope of transaction advisory services and the advisory fees to be paid to the IFI agreed to in accordance with Regulation 6 above. The implementing agency shall be required to seek all necessary approvals in connection with the execution of the Advisory Services Agreement, including any internal approvals as well as any other such approvals required by the Federal Government (such as those required in relation to the execution of agreements with international entities).

(2) The Advisory Services Agreement may contemplate technical assistance for capacity building (including through utilization of any grants available with the IFI for such purposes) to be provided in conjunction with transaction advisory services.

(3) The Advisory Services Agreement shall be made in accordance with these Regulations, and for the avoidance of doubt, these Regulations shall be read together with (and form an integral part of) the Advisory Services Agreement between the implementing agency and the IFI.

(4) An implementing Agency shall, no later than fourteen days from the execution of the Advisory Services Agreement, submit a certified copy thereof to the Authority.

8. Consulting Staff.—The transaction advisory services in connection with the PPP transaction shall be performed by the IFI in a manner so as to ensure transfer of knowledge and capacity building of local resources. It is recommended that the IFI hired under these Regulations to have at least one-third members of its consulting workforce tasked with working on the PPP transaction are Pakistani Entities.

9. Reporting.—(1) Implementing agencies shall notify the Authority within fourteen days of the engagement of an IFI under these Regulations, and shall be obligated to share aT1 such information and- documents as may be required by the Authority in this regard.

(2) The Authority shall have the right to, directly or through a third party, monitor the progress of a PPP transaction for which an IFI has been hired under these Regulations.

[Notification No. (.J/2023. J

MOHAMMAD AWAIS,
Head Legal Affairs
Public Private Partnership Authority.

Schedule-I**List of International Financial Institutions**

International financial institutions recognized under these Regulations shall include the advisory wings, if any, of the following IFIs:

- (1) The World Bank;
- (2) International Finance Corporation;
- (3) Asian Development Bank;
- (4) Asian Infrastructure Investment Bank;
- (5) Islamic Development Bank; and
- (6) Any other IFI approved by the Board from time to time.