



# THE PUBLIC PRIVATE PARTNERSHIP AUTHORITY ACT, 2017



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**THE PAKISTAN CODE**

# THE PUBLIC PRIVATE PARTNERSHIP AUTHORITY ACT, 2017

(ACT NO. VIII OF 2017)

[31<sup>th</sup> March, 2017]

<sup>1</sup>[<sup>2</sup>*An Act to create an enabling environment for development projects and the provision of public infrastructure and related services in Pakistan through private sector participation.*]

WHEREAS it is expedient to establish a regulatory framework to execute public private partnerships in Pakistan so as to promote domestic and foreign private investment in development projects to increase the availability of public infrastructure and service delivery and improve their reliability and quality for accelerating economic growth and achieving the social objectives of the government, to mobilize private sector resources for financing, construction, operations and maintenance of development projects, to improve efficiency of management, operation and maintenance of development projects in the public sector by introduction of modern technologies and management techniques, to reduce transaction costs, ensure appropriate regulatory controls and promote transparency and accountability in carrying out development projects.]

It is hereby enacted as follows:—

## CHAPTER I Preliminary

1. **Short title, extent, application and commencement.** — (1) This Act may be called the Public Private Partnership Authority Act, 2017.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

<sup>3</sup>[\* \* \* \* \*]

<sup>4</sup>2. **Definitions.** — In this Act, unless there is anything repugnant in the subject or context,

- (a) “Authority” or “P3A” means the Public Private Partnership Authority established under section 3;
- (b) “Board” means the Board constituted in accordance with section 6;
- (c) “CDWP” means the central development working party.
- (d) “company” or “IPDF” means Infrastructure Project Development Facility a corporate entity registered and operating under the provisions of the Companies Act, 2017 (XIX of 2017);

<sup>1</sup>Subs. by Act VI of 2021, s. 2.

<sup>2</sup>Subs. by Act No. XVIII of 2022, s.2. which was previously Subs. by Act VI of 2021 s.2.

<sup>3</sup>Omitted Sub-sec (4) by Act No. XVIII of 2022, s.3.

<sup>4</sup>Subs. by Act VI of 2021, s. 3.

- (e) “dispute” means any monetary claim or contractual dispute between a private party and an implementing agency under a public private partnership agreement;
- (f) “ECNEC” means the executive committee of the National Economic Council;
- (g) “implementing agency” means any of the line ministries, attached departments, body corporate, autonomous body of the Federal Government or any organization or corporation owned or controlled by the Federal Government;
- (h) “lender” means a financial institution that provides loan to a private party for implementation of a project;
- (i) “P3A fund” means the fund established under section 10;
- (j) “P3WP” means the public private partnership working party established under section 13A;
- (k) “person” includes an individual, a company, a statutory body corporate, an association of persons whether incorporated or not, a trust and a partnership;
- (l) “prescribed” means prescribed by rules or regulations made under this Act;
- (m) “private party” means a person who is eligible to bid for a project with an implementing agency in accordance with the rules and regulations prescribed under this Act;
- (n) “project” means a development project, provision of related services or both, under a public private partnership arrangement;
- (o) “project qualification <sup>1</sup>[proposal]”, in each case, in the form and in the manner and meeting such requirements as are prescribed from time to time, means —
- (i) a proposal received by the Authority from an implementing agency for a qualified project;
  - (ii) a proposal received by the Authority from an implementing agency for a qualified project that is prepared and submitted on the basis of a proposal from a private party for a project on an unsolicited basis; or
  - (iii) a proposal forwarded to the Authority from CDWP for a qualified project;
- (p) “project concept proposal”, in each case, in the form and in the manner and meeting such requirements as are prescribed from time to time, means a conceptual proposal—
- (i) received by the Authority from an implementing agency for a qualified project;

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<sup>1</sup>Subs. by Act No. XVIII of 2022, s. 4.

- (ii) received by the Authority from a private party for a qualified project on an unsolicited basis; or
  - (iii) forwarded to the Authority from CDWP for a qualified project;
- (q) “project development facility” means the facility established under section 12;
- (r) “project proposal” shall mean the detailed proposal submitted by the implementing agency to the Authority after it has received approval of the project qualification proposal prepared in respect of a qualified project, to be submitted in the form and in the manner and meeting such requirements as are prescribed from time to time;
- (s) “project support” means the financial or non-financial support for the project that may include the following, namely: —
  - (i) administrative support to the private party consistent with the private party’s responsibilities under the public private partnership agreement and applicable laws for obtaining licenses and clearances from the government, a public sector organization or an implementing agency, for the purposes of the project on such terms and conditions as may be prescribed; provision of utility connections for power, gas and water at the project site, acquisition of land or rights of way necessary for the project and rehabilitation and resettlement of displaced persons directly required to execute the project, environmental impact assessment, safeguards and approvals and any other local permitting and approvals;
  - (ii) asset-based support such as leasing, licensing or grant of right to mortgage and use land / or infrastructure facilities owned by the government or on implementing agency to the private party;
  - (iii) financial assistance through the viability gap fund;
  - (iv) sovereign guarantees for political or other risks; and
  - (v) any other support prescribed in respect of a qualified project:

Provided that any funding or financial support provided through the project development facility shall not form part of project support;
- (t) “public private partnership” means a commercial transaction between an implementing agency and a private party in terms of which the private party—
  - (i) performs part of an implementing agency’s functions on behalf of it;
  - (ii) assumes the responsible use of public property for a project;
  - (iii) assumes substantial financial, technical and operational risks in connection with performance of certain functions of the implementing agency or the responsible use of public property; or

- (iv) receives a benefit for performing the implementing agency's functions or from utilizing the public property, either by way of —
  - (a) consideration to be paid by the implementing agency from its budget or revenue; or
  - (b) charges or fees to be collected by the private party from users or customers of a service provided to them; or
  - (c) a combination of such consideration and such charges or fees.
- (u) “public private partnership agreement” means a written agreement between an implementing agency and a private party for implementation of a project and any other agreement subsidiary or incidental to it;
- (v) “qualified project” means a project undertaken on public private partnership basis that meets any of the following criteria, namely: —
  - (i) support is required for the project in the form of funding from any facility established by the government for the purpose, including the viability gap fund;
  - (ii) a sovereign guarantee is required for the project in accordance with any rules or regulations that may be prescribed under this Act;
  - (iii) project receives funding through the project development facility;
  - (iv) any additional criteria for qualifying projects, as prescribed from time to time:

Provided that a project not fulfilling the aforementioned criteria may be deemed as a qualified project if so designated by the P3WP for reasons to be recorded in writing;
- (w) “request for proposal” means a publicly advertised tender, inviting proposals for a qualified project prepared in accordance with the provisions of this Act and the rules and regulations made thereunder;
- (x) “risk management unit” means the unit established under section 12A;
- (y) “users” means users of a project, whether upon payment of charges, fee or otherwise; and
- (z) “viability gap fund” means the fund established under section 11.]

**<sup>1</sup>[CHAPTER II  
Institutional Framework  
PART-I  
Authority and its Board]**

**3. Establishment of the Authority.**—(1) As soon as it deems appropriate after the commencement of this Act, the Federal Government shall establish <sup>1</sup>[the] Public Private Partnership Authority for carrying out the purposes and objectives of this Act.

(2) The Authority shall be an independent body corporate having perpetual succession and common seal, subject to the provisions of this Act, to acquire and hold property, both moveable and immovable, and shall by its name and sue and be sued.

(3) The headquarters of the Authority shall be at Islamabad and it may establish its offices at such other place or places as it may consider appropriate.

(4) Notwithstanding anything contained in the Companies <sup>1</sup>[Act, 2017 (XIX of 2017)] and any other law for the time being in force, on the date of commencement of this Act, the Company shall cease to exist and —

- (a) all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash and bank balance, reserve funds, investments and all other interest and rights in, or arising out of, such property and all debts, liabilities and obligations of whatever kind of the Company subsisting immediately before the commencement of this Act, shall stand transferred to and vest in the Authority;
- (b) all contract entered into or rights acquired and all matters and things engaged to be done by, with or for the Company before the commencement of this Act shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the Authority, as the case may be;
- (c) all suits and other legal proceedings instituted by or against the Company before the commencement of this Act shall be deemed to be suits and proceedings by or against the Authority as the case may be and may proceed and be dealt with accordingly; and
- (d) all employees of the Company shall be deemed to be employees of the Authority on not less favorable than the existing terms and conditions of the service, rights and privileges and other matters as were applicable to them before the conversion.

**4. Functions and powers of the Authority.**—(1) Subject to the provisions of this Act, the Authority may take such measures and exercise such powers as may be necessary for promoting and <sup>1</sup>[facilitating] realization of the concept and methods of public private partnership.

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<sup>1</sup>Subs. & Ins. by Act VI of 2021, ss. 4, 5 & 6.



(2) Without prejudice to the generality of the powers conferred by sub-section (1), the Authority may—

- <sup>1</sup>[(a) provide advisory services in the manner prescribed, either directly or by engaging such international or local consultants as may be deemed appropriate, to implementing agencies, provincial or other governments within Pakistan and entities owned or controlled by such governments, or to such other entities as may be determined by the Board, and may charge fees for the provision of the aforesaid services;]
- <sup>2</sup>[(b) ensure value for money by conducting an analysis to evaluate qualified projects in the manner prescribed;
- (c) conduct appraisal and project risk analysis for qualified projects, including with respect to legal risk and receive and take into consideration the overall fiscal risk assessment and view submitted by the risk management unit for qualified projects;
- (d) assess funding requirements, excluding the project development facility, taking into account such assessment undertaken by the risk management unit;
- (e) assess funding requirements with respect to the project development facility;
- <sup>1</sup>[(f) subject to any rules or regulations made hereunder, advise, facilitate and support, as needed, implementing agencies to develop and structure qualified projects;]
- (g) prescribe and receive fees and charges;
- (h) standardize contractual provisions and develop sector specific provisions and templates including a model public private partnership agreement for projects;
- <sup>3</sup>[\* \* \* \* \*]
- <sup>3</sup>[\* \* \* \* \*]
- (k) interact, collaborate and liaise with international agencies.]

**5. Appointment of officers and staff of the Authority.** — (1) The Authority may appoint such officers, experts, advisers, consultants and members of staff as it may consider necessary for the efficient performance of its functions in the <sup>1</sup>[manner and on such terms and conditions as the Board may prescribe by regulations].

(2) The officers, members of staff, advisers, consultants and experts and other persons appointed by the Authority shall not be civil servants within the meaning of the Civil Servants Act, 1973 (LXXI of 1973).

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<sup>1</sup>Subs. by Act No. XVIII of 2022, ss.5 & 6.

<sup>2</sup>Subs. by Act No. VI of 2021, s. 6.

<sup>3</sup>Omitted *ibid*.

(3) The officers, advisers, consultants, employees and staff of the Authority when acting or purporting to act under any of the provisions of this Act or rules made there under shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

6. **Board of the Authority.**—<sup>1</sup>[(1) There shall be a Board of Directors of the Authority comprising the following, namely: —

- |    |   |                             |
|----|---|-----------------------------|
| 1. | Minister of the Division to which business of this Act stands allocated   | <b>Chairperson</b>          |
| 2. | Deputy Chairman, Planning Commission  | <b>Vice- Chairperson</b>    |
| 3. | Secretary, Finance Division or his nominee or not below the rank of Additional Secretary or equivalent                              | <b>Member</b>               |
| 4. | Secretary of the Division allocated with business of this Act his nominee not below the rank of Additional Secretary or equivalent. | <b>Member</b>               |
| 5. | Member – Private Sector Development, Planning Commission  | <b>Member</b>               |
| 6. | Five members from private sector to be nominated by the Federal Government  | <b>Member</b>               |
| 7. | Chief Executive Officer of the Authority  | <b>Member/Cum-Secretary</b> |

(2) The Chief Executive Officer shall also act as Secretary of the Board <sup>1</sup>[or an officer of the Authority authorized in this behalf by the Authority].

(3) The members from the private sector shall be appointed by the Federal Government for a period of three years <sup>1</sup>[subject] to such terms and conditions as <sup>1</sup>[may be prescribed].

<sup>1</sup>[(4)The Board shall meet at least once in a-quarter in a meeting convened by the Chairperson, provided that the Chairperson may convene a meeting at any time as deemed necessary. The Secretary of the Board may, in accordance with the prescribed regulation, take approval of the Board through circulation among members of the Board, which shall be subsequently placed for ratification in the first Board's meeting occurring immediately after such approval.]

(5) The meetings of the Board shall be presided over by the Chairperson and in his absence by the vice-Chairperson.

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<sup>1</sup>Subs. & ins. by Act VI of 2021.s. 7.

<sup>1</sup>[(6) The quorum for a meeting of the Board shall be five members with at least two members from the private sector and the member from the Finance Division and the decisions of the Board shall be made with the majority of members of the Board present. In case of a tie, the Chairperson or Vice-Chairperson, as the case may be, shall have a casting vote.]

(7) The Board may co-opt such members, as it deems appropriate, for rendering advice on case-to-case basis. <sup>1</sup>[In respect of a Board meeting where a project proposal or matters relating to a qualified project are being considered by the Board, the Secretary of the concerned line ministry (or such nominee of the same that meets any prescribed requirements) shall be required to be present in such Board meeting as an observer to perform such roles and functions as are prescribed.]

(8)The Board may, for carrying out its functions, constitute such committees, from time to time, as may be considered appropriate and delegate its powers as <sup>1</sup>[may be prescribed.]

**7. Chief Executive Officer.**— (1) The Federal Government shall appoint a Chief Executive Officer <sup>1</sup>[on the recommendation of the Board] to serve as a member of the Board and shall be responsible for administration of the affairs of <sup>1</sup>[the] Authority.

(2) The Chief Executive Officer shall be answerable to the Board for all administrative, financial and technical matters of the <sup>2</sup>[Authority].

(3) The Chief Executive Officer shall be appointed for a term of three years on such salary, terms and conditions of service as <sup>1</sup>[may be prescribed.]

<sup>1</sup>[\* \* \* \* \*]

<sup>1</sup>[(4) The Chief Executive Officer shall be the principal accounting officer of the Authority.]

**8. Functions and powers of the Board.**— (1) The general directions and superintendence of the Authority and its affairs shall vest in the Board which may exercise all powers, perform all functions and do all acts which may be exercised, performed or done by the Authority.

(2) Without prejudice to the generality of powers given in sub-section (1), the Board shall perform, *inter-alia* <sup>1</sup>[\*\*\*] the following <sup>1</sup>[functions], namely:—

- <sup>1</sup><sup>3</sup>[(a) formulating the investment policy, establishing standards and procedures for investment of any amounts from the P3A Fund, the viability gap fund and the project development facility, including investment in bonds or other financial instruments issued by the Federal Government;]
- (b) Allowing renegotiation, if necessary in respect of qualified projects, of public private partnership agreements or contracts to the extent prescribed;
- <sup>3</sup>[(c) considering the project proposal for a qualified project for purposes of according its approval or otherwise with respect to the transaction structure of the project;]

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<sup>1</sup>Subs., added, ins and omitted by Act VI of 2021, ss.7 & 8.

<sup>2</sup>Subs. by Act No. XVIII of 2022, s.7. (The word “Ward” amended by the Act VI of 2021, s. 8, but in the original text of sub-sect. (2) such word is not found.)

<sup>3</sup>Subs. by Act No. XVIII of 2022, s.8, which was previously Subs. by Act VI of 2021 s.9.

- (d) Reviewing and strengthening the institutional and regulatory framework for the effective implementation and operation of the public private partnership arrangements by implementing agencies;
- (e) Approving the yearly budget of the Authority;
- (f) Establishing viability gap fund to perform such functions as may be prescribed;
- (g) Establishing project development facility to perform such functions as are prescribed;
- (h) Approving funding for support provided through the project development facility for qualified projects in the manner prescribed; and
- (i) subject to applicable laws, and as may be prescribed, establishing such other funds, trusts, schemes, companies or facilities for the purpose of carrying out the mandate under this Act.]

**<sup>1</sup>[9. Disqualification to become a member and conflict.**— (1) The disqualifications of certain persons to become or hold office in any corporate entity under the provisions of the Companies Act, 2017 (XIX of 2017) shall, *ipso facto*, apply to the members of the Board. In addition, a person shall be disqualified from acting as a member of the Board, if he—

- (a) has become physically or mentally incapable of acting as a member of the Board;
- (b) has engaged in gross misconduct;
- (c) has been involved in corruption or malpractices;
- (d) receives any illegal gratification from a private party; or
- (e) fails to meet any other criteria as may be prescribed.

(2) To the extent that any member of the Board has any interest, either monetary or otherwise, directly or indirectly, in any private party that is tendering for a project or that is involved in the process in any way for a qualified project, such member of the Board shall, to the extent of that project, not be eligible to participate in the following, namely: —

- (a) any decision making of the Board;
- (b) in any discussions of the Authority or the Board; or
- (c) other relevant matters of the Authority, the Board and the relevant implementing agency.

**9A. Accounts and audit.**— (1) The Authority shall prepare its own budget in respect of each financial year and shall maintain complete and accurate books of accounts of its actual expenses in the prescribed manner.

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<sup>1</sup>Subs. by the Act No. VI of 2021, s. 10

(2) The management, operation and maintenance of the accounts of the Authority shall be done by such officers of the Authority and in such manner as may be prescribed. The accounts of the Authority shall be maintained in such forms as may be prescribed and shall be consistent with the requirements of the applicable provisions of the Constitution and laws for the time being in force.

(3) The accounts of the Authority shall be audited in the manner prescribed in accordance with the provisions of the (constitution and the laws in that behalf for the time being in force.

## Part II

### P3A Fund, Viability Gap Fund and Project Development Facility]

**10. <sup>1</sup>[P3A Fund].** — (1) There is hereby established a <sup>1</sup>[non-lapsable] fund <sup>1</sup>[through upfront grant-in-aid in the amount to be recommended by the Board], to be called the <sup>1</sup>[P3A Fund] which shall vest in the Authority and shall be utilized by the Authority <sup>1</sup>[\*\*\*\*] in connection with its functions under this Act.

(2) The <sup>1</sup>[P3A fund] shall comprise of the following, namely:—

- (a) such sum as the Federal Government may, from time to time, allocate to it in the annual budget;
- (b) <sup>1</sup>[grants-in-aid] from the Federal Government;
- (c) donations and grants from the international donor agencies;
- (d) income from <sup>1</sup>[\*] investment;
- (e) fees; and
- (f) any <sup>1</sup>[other] sources <sup>1</sup>[as may be prescribed from time to time].

(3) The management, operation and maintenance of the <sup>1</sup>[P3A Fund] shall be done by <sup>1</sup>[such officers of the Authority and in such manner as may be prescribed].

(4) <sup>1</sup>[\* \* \* \* \*]

**<sup>1</sup>[11.Viability gap fund].**— (1) There shall be established a non-lapsable fund through upfront grant-in-aid vested in the Authority known as the “viability gap fund” which shall be managed, controlled and administered by the Authority in the prescribed manner.

(2) The viability gap fund shall be established by an amount specified by the Board and the fund may be replenished from time to time in the prescribed manner.

(3) The viability gap fund shall be utilized, *inter alia*, to provide support to those qualified projects for which a feasibility study has found them to be economically or socially justified but not financially viable.]

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<sup>1</sup>Subs., ins. & Omitted by Act VI of 2021, ss. 11 & 12.

<sup>1</sup>**12. Project development facility.**—(1) There shall be established a non-lapsable facility through upfront grant-in-aid vested in the Authority known as the “project development facility” which shall be managed, controlled and administered by the Authority in the prescribed manner.

(2) The project development facility shall be a pool of funds, including contributions from international donor agencies, which shall be utilized, *inter alia*, to support the preparation of any proposals for qualified projects.

(3) The project development fund shall be established by an amount specified by the Board and the fund may be replenished from time to time in the prescribed manner.]

### <sup>1</sup>[CHAPTER III

#### Part I

#### Risk Management Unit

**12A. Risk management Unit.** —(1) There shall be established a risk management unit which shall be managed, controlled and administered by the Finance Division of the Federal Government <sup>2</sup>[\*\*\*].

(2) The risk management unit shall be responsible for fiscal oversight and for evaluation of fiscal and contingent liability exposure for all qualified projects. The evaluation shall be required to be undertaken as may be determined by Finance Division in consultation with the Authority.

(3) In respect of any project that is not a qualified project, each implementing agency shall provide the risk management unit all such information about such project as may be prescribed by the Authority in consultation with the Finance Division.

#### “PART II

#### Implementing Agencies]

**13. <sup>1</sup>[Responsibility] of an implementing agency.**—(1) The responsibilities of the <sup>1</sup>[implementing agency] in relation to the planning, development, procurement, implementation, execution and monitoring of a <sup>1</sup>[qualified project] shall be such as may be prescribed <sup>1</sup>[by rules or regulations under this Act].

<sup>1</sup>[(2) Without prejudice to the generality of sub-section (1) in respect of qualified projects, the implementing agency shall, *inter alia*, for the purpose of this Act,—

- (a) identify, conceptualize and develop the project and, in case of a project that is not a qualified project, appraise the same;
- (b) undertake or cause to be undertaken a feasibility study for a project;
- (c) develop and issue or cause to be developed and issued a request for proposal including draft of the public private partnership agreement;

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<sup>1</sup>Subs. & Ins. by Act VI of 2021, ss.13-15.

<sup>2</sup>Omitted by Act XVIII of 2022, s.9.

- (d) if deemed necessary or appropriate by the implementing agency, develop and submit to the Authority a project concept proposal for the P3WP's approval or otherwise, prior to developing and submitting the project qualification proposal for approval to the Authority, provided, that it shall not be a requirement to submit a project concept proposal before submitting the project qualification proposal for approval to the Authority;
  - (e) solicit approval for a project and its related project qualification proposal from P3WP, in the manner prescribed and, subsequent to receipt of approval, undertake the required steps in accordance with chapter III of this Act and the rules and regulations made thereunder;
  - (f) subject to requisite approvals, procure and conduct competitive bidding for a project in accordance with the provisions of this Act and the rules and regulations made hereunder;
  - (g) monitor and implement the project in accordance with the public private partnership agreement; and
  - (h) provide such information to the authority as may be prescribed from time to time in respect of projects of the implementing agency, whether qualified or not qualified.]
- (3) <sup>1</sup>[\* \* \* \* \*]
- (4) <sup>1</sup>[\* \* \* \* \*]

**PART III**  
**PUBLIC PRIVATE PARTNERSHIP (P3) WORKING PARTY (P3WP)**

13A. **P3WP.**— (1) There shall be established a ‘Public Private Partnership Working Party’ to be called the “P3WP” comprising such members as may be prescribed by rules under this Act.

(2) The quorum requirements, manner of conduct of the P3WP meetings and the eligibility requirements to be a member of the P3WP shall be, in each case, as are prescribed from time to time.

(3) The P3WP shall be responsible for—

- (a) granting approval of the project concept proposal submitted to it by the Authority;
- <sup>1</sup>[(b) considering the project qualification proposal for a qualified project for purposes of according its approval or otherwise with respect to the transaction structure of the project;]
- (c) performing such other functions as may be prescribed from time to time.

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<sup>1</sup>Omitted & Subs. by Act XVIII of 2022, s.10 & 11.

(4) Subject to the rules and regulations prescribed under this Act, the P3WP may, for carrying out its functions, constitute such committees, from time to time and delegate its powers, as may be considered appropriate.

## CHAPTER IV

### Approvals and Process Flow For Qualified Projects]

<sup>1</sup>[**14. Approval of qualified projects and related matters.**—(1) For all qualified projects, subject to the rules and regulations made under this Act, the following approvals shall be required prior to the execution of the public private partnership agreement by the implementing agency, namely: —

- (a) the project qualification proposal shall require approval of the P3WP;
- <sup>2</sup>[(b) the project shall require approval of the CDWP;]
- (c) the project proposal shall require approval of the Board;
- (d) in the event the qualified project meets certain prescribed criteria, the project proposal shall also require approval of ECNEC; and
- (e) any other approvals as may be prescribed from time to time <sup>2</sup>[:]

<sup>2</sup>[Provided that the evaluation by the risk management unit pursuant to sub-section (2) of section 12A shall be provided as part of the approvals process in the manner prescribed.]

<sup>2</sup>[(1A) For the avoidance of doubt , where, prior to the commencement of the Public Private Partnership Authority (Amendment) Act, 2022, any approvals had been granted with respect to any project qualification proposals and project proposals, such approvals shall continue to be in force unless amended withdrawn or rescinded by an authority competent to do so under this Act.]

(2) During any stage of the process leading to the execution of the public private partnership agreement, in the event there is a deviation from any of the terms of the proposals or documents approved in terms of sub-section (1) or from any conditions that the approving entity may have placed in respect of the qualified project, the implementing agency shall be required to re-obtain such approvals as may be prescribed.

(3) The process flow for approvals, bidding and contract award shall be as may be prescribed from time to time,]

<sup>2</sup>[(4) Notwithstanding anything contained in this Act, where prior to the commencement of the Public Private Partnership Authority (Amendment) Act, 2021 (VI of 2021), the Board has approved a project or proposal with regard to a project, any subsequent process with respect to the approval of such project or proposal thereof shall continue to be dealt with as if the Public Private Partnership Authority (Amendment) Act, 2021 (VI of 2021) was not in force.]

## <sup>1</sup>[CHAPTER V

### Legal and Contractual Framework

**14A. Private sector participation.**—(1) Notwithstanding anything to the contrary contained in any other laws for the time being in force, the implementing agencies shall be authorized to seek participation from the private sector in appropriate projects in accordance with this Act.

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<sup>1</sup>Subs. by Act VI of 2021, ss. 16 & 17.

<sup>2</sup>Subs., Added & Ins. by Act No. XVIII of 2022, s.12.



(2) Subject to the provisions of this Act and the rules and regulations made thereunder, the implementing agencies shall be fully empowered to enter into public private partnership agreements and arrangements with private parties under mutually agreed terms and conditions in one or several projects and may provide project support to private parties on such conditions as deemed mutually fit for the purposes of such projects.

(3) The implementing agencies shall be competent to pay any fees for services performed by private parties under duly authorized public private partnership agreements.

(4) A private party may submit a proposal for a project on an unsolicited basis to the Authority or an implementing agency in the manner meeting such requirements as prescribed, which shall be subject to the procurement procedures prescribed from time to time.]

**15. Contents of public private partnership agreements.**—(1) The contents of a public private partnership agreement <sup>1</sup>[relating to projects] shall be such as may be prescribed.

<sup>1</sup>(2) Unless otherwise provided in the public private partnership agreement, every agreement shall be governed, construed and interpreted in accordance with the laws of Pakistan.]

(3) <sup>1</sup>[\* \* \* \* \*]

**16. Contractual relationship.**—(1) For the purposes of implementation of the <sup>1</sup>[qualified] project,<sup>1</sup>[unless otherwise approved by the Board,] the private party shall, with or without the participation of the implementing agency, incorporate a company as <sup>1</sup>[a] special purpose vehicle to undertake the <sup>1</sup>[qualified] project <sup>1</sup>[in accordance with the rules and regulations prescribed under this Act].

(2) Without prejudice to the generality of the foregoing provision and subject to the decision of the Board, the implementing agency and private party may enter into any contractual relationship that is capable of providing value for money and affordability for the implementing agency and the users of the <sup>1</sup>[qualified project].

<sup>1</sup>(3) Subject to laws applicable to the implementing agency, the implementing agency and a private party may, in respect of projects that are not qualified projects, enter into any contractual relationship that is capable of providing value for money and affordability for the implementing agency and the users of the project.]

**17. Protection of interests.**—Notwithstanding anything contained in any other law for the time being in force and subject to compliance with the provisions of this Act and the rules <sup>1</sup>[and regulations] made there under, <sup>1</sup>[the] implementing agency may, in respect of a project to which this Act applies, —

(a) transfer an interest, or part of an interest, of the implementing agency in any present or future assets comprised in the project to the private party:

Provided that title of <sup>1</sup>[any] immovable property of an implementing agency shall not be transferred to the private party;

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<sup>1</sup>Subs., Omitted, Ins. & Added by Act VI of 2021, ss.18-20.

- (b) transfer to the private party the right to receive directly revenues or receivables of the project during the subsistence of public private partnership agreement <sup>1</sup>[and as provided in the said agreement];
- (c) permit the private party to create security interests over or in respect of the present or future assets created by it, revenues, or receivables, comprised in or expected, in connection with the <sup>1</sup>[project] in favour of any lender providing loans for the project <sup>1</sup>[as provided in the public private partnership agreement]; <sup>1</sup>[and]
- (d) enter into agreements with lenders to the project <sup>2</sup>[in accordance with applicable law]<sup>1</sup>[.]<sup>1</sup>[\*]
- (e) <sup>1</sup>[\* \* \* \* \*]

<sup>1</sup>**[18. Settlement of disputes.**—(1) All disputes arising between an implementing agency and a private party shall be decided in accordance with the terms and conditions of the public private partnership agreement:

Provided that the Federal Government may, subject to such conditions as it may deem appropriate to prescribe, including with respect to any time limit, require that the private party submit its claim before the relevant domestic courts or administrative bodies in order to exhaust domestic remedies before seeking recourse to international arbitration:

Provided further that the aforesaid requirement shall be applicable only to public private partnership agreements executed after the Federal Government has prescribed the requirement.

(2) Dispute may also be referred to the Authority to facilitate their resolution and settlement by mediation. Recourse to such mediation be governed by prescribed rules or regulations.

(3) Neither the private or its agents, its contractor or sub-contractors, shall stop, impede, suspend, either in whole or in part, or cause the suspension of or otherwise delay the provision of, the service to the users on account of pendency of any dispute under public private partnership agreement.]

## <sup>1</sup>[CHAPTER VI]

### **Public Private Partnership Project Procurement**

<sup>3</sup>**[19. Negotiation of the agreement.**—The implementing agency shall, after obtaining applicable approvals and subject to terms and conditions of such approvals, invite the successful private party bidder for negotiation of the public private partnership agreement.]

<sup>1</sup>**[20. Negotiated procurement of project.**—Subject to the rules and regulations prescribed under this Act, an implementing agency may enter into a negotiated procurement of a project in case the Federal Government authorizes such an exception, for reasons to be recorded in writing, in the public interest.]

<sup>1</sup>Ins., Subs. and Omitted by Act VI of 2021, ss. 20-23.

<sup>2</sup>Subs. by Act No. XVIII of 2022, s. 13 which was previously Ins. by Act VI of 2021 s.20.

<sup>3</sup>Subs. by Act No. XVIII of 2022, s. 14 which was previously Subs. by Act VI of 2021 s.22.

**21. Vesting of project.**—(1) Subject to the public private partnership agreement, the project along with all the movable and immovable properties <sup>1</sup>[the], project’s physical assets, licenses, goodwill, trademarks, patents, leases, all rights including intellectual property rights and interests associated with the project shall vest in the private party <sup>1</sup>[or the implementing agency] during the tenure of the public private partnership agreement <sup>1</sup>[as provided for in the said agreement]:

Provided <sup>1</sup>[\*] that <sup>1</sup>[in respect of a qualified project] the private party shall not create any lien, charge or encumbrance, in favor of the lenders, over the immovable properties of the implementing agency as collateral, except with the prior <sup>1</sup>[consent and] approval of the <sup>1</sup>[implementing agency and the] Board <sup>1</sup>[or except as may have been approved as part of the project proposal]:

Provided further that after <sup>1</sup>[the] expiry of the public private partnership agreement all the properties as aforesaid shall stand transferred, without any lien, charge or encumbrance, to the implementing agency <sup>1</sup>[or the private party] in accordance with the provisions of the public private partnership agreement.

(2) <sup>1</sup>[\* \* \* \* \*]

## <sup>1</sup>[CHAPTER VII]

### Miscellaneous Provisions

**22. No compensation for risks not covered.**—The Federal Government <sup>1</sup>[the Authority, the Board] or the implementing agency shall not be held liable for any claim of the private party for a risk, which is not specified in the public private partnership agreement.

**23. Compensation and recovery of costs, dues and fees.**—Notwithstanding anything contained in public private partnership agreement or in any other law for the time being in force, the Federal Government or the implementing agency may recover <sup>1</sup>[any sums] due from a private party <sup>1</sup>[\*\*\*\*\*] as arrears of land revenue under the provisions of the West Pakistan Land Revenue Act, 1967 (W. P. Act No. XVII of 1967).

**24. Transparency and public disclosure.**—The public private partnership agreement shall be a public document. Any interested person shall be entitled to obtain a copy of it in accordance with the applicable laws.

<sup>1</sup>[**25. Power to make rules.**—The Federal Government may, by notification in the Gazette and with the recommendation of the Board, make rules for carrying out the purposes of, this Act.

<sup>2</sup>[**25A. Power to make regulations.**—The Board may, by notification in the official Gazette, make regulations for carrying out purposes of this Act which shall not be inconsistent with the provisions of this Act and, if prescribed, any rules made thereunder.]]

**26. Indemnity.**—Without prejudice to the obligations incurred by an implementing agency under a public private partnership agreement, no <sup>1</sup>[suits], prosecution or other legal proceedings shall lie against the Federal Government, the Board, the Authority or any of its officers acting for and on its behalf in furtherance of the functions of the Authority or Board, as the case may be, which is in good faith done or <sup>1</sup>[\*] to be done under this Act or rules <sup>1</sup>[or regulations] made thereunder.

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<sup>1</sup>Ins., Omitted and subs. by Act VI of 2021, ss. 24-28.

<sup>2</sup>Subs. by Act No. XVIII of 2022, s. 15, which was previously Subs. by Act VI of 2021 s.27.

**27. Removal of difficulties.**—If any difficulty arises in giving effect to any provision of this Act, the Federal Government may, by notification in the official Gazette, make such provisions as may appear to it to be necessary for the purpose of removing such difficulty.

**28. Annual Report.**—Within one hundred and twenty days from the end of each financial year, the Authority shall cause a report to be prepared on its activities including public private partnership agreements <sup>1</sup>[for qualified projects], progress on <sup>1</sup>[qualified] projects, utilization of funds under this Act during that financial year and shall be laid before the Parliament.

<sup>1</sup>**29. Overriding effect.**—Except as provided in this Act, the provisions of this Act and the rules and regulations made hereunder shall have effect <sup>2</sup>[\*\*\*] notwithstanding anything to the contrary contained in any other law, including but not limited to the Public Procurement Regulatory Authority Act, 2002 (XXII of 2002) and the rules and regulations made <sup>2</sup>[thereunder].]

<sup>1</sup>**30. Authority to be exempted from taxation.**—(1) Notwithstanding anything contained in any other law, for a period of five years starting from the commencement of the Public Private Partnership Authority (Amendment) Act, 2021, the Authority shall be exempted from income tax.

(2) The Federal Government may, by notification in the Official Gazette, extend the exemption mentioned in sub-section (1) to such extent and on such terms and conditions as it may deem appropriate.]

<sup>2</sup>**31. Hiring of consultants and experts.**— Notwithstanding anything contained in the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), any rules and regulations made thereunder or any similar laws, the Board may, by regulations, prescribe the manner, method and procedures for—

- (a) the hiring of transaction advisers by implementing agencies in connection with public private partnership projects or certain classes thereof, and such prescribed conditions, once notified, shall govern the hiring of consultants by implementing agencies for providing such transactional advisory services to the extent prescribed therein, including with respect to the direct contracting of international financial institutions as transaction advisers for certain public private partnership projects or classes of public private partnership projects, to the extent and on such terms and conditions as prescribed therein; and
- (b) the hiring of international and local consultants and experts by the Authority, and such prescribed conditions, once notified, shall exclusively govern the hiring of consultants and experts by the Authority.

**32. Prior consent of the Board with respect to certain legal actions.**— Notwithstanding anything contained in any law for the time being in force, no legal action shall be initiated against any member, officer or official by any government agency for acts of omission or commission in his official capacity, pertaining to this Act, or the rules or regulation made thereunder, unless the said agency obtains prior consent of the Board by an intimation in writing to the Board along-with supporting evidence to the charges. The Board shall constitute an inquiry committee for the purpose, which shall determine whether there is *prima facie* cause for the legal action on the charges. The committee shall give its findings and recommendations to the Board and the decision of the Board on the matter, whether to allow the proposal legal action or not shall be deemed to final.]

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<sup>1</sup>Ins. & added by Act VI of 2021, ss. 29 to 31.

<sup>2</sup>Omitted, Ins. and added by Act No. XVIII of 2022, ss. 16-17.