

[AS PASSED BY THE SENATE]

A
Bill

to provide a regulatory and enabling environment for private participation in provision of public infrastructure and related services through fair and transparent procurement processes

WHEREAS it is expedient to establish a regulatory framework to execute public private partnership in Pakistan so as to promote domestic and foreign private investment in infrastructure to increase availability of public infrastructure, reduce transaction costs, ensure appropriate regulatory controls, and provide legal and economic mechanisms to enable the resolution of contract disputes, among others through transparent and fair procurement process;

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.

(4) It shall apply to all kinds of projects undertaken by an implementing agency under public private partnership.

2. Definitions. – In this Act, unless there is anything repugnant in the subject or context,-

(a) “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;

(b) “Authority” means the Public Private Partnership Authority established under section 3;

(c) “Board” means the Board constituted by the Federal Government in accordance with section 6;

(d) “bid documents” means request for proposal or pre-qualification, issued by implementing agency under the provisions of this Act;

(e) “Company” means Infrastructure Project Development Facility (IPDF), a corporate entity registered and operating under the provisions of the Companies Ordinance, 1984;

(f) “dispute” means any monetary claim or contractual dispute between a private party and an implementing agency under an agreement;

- (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) “person” includes an individual, a company, a statutory body corporate, an association of persons whether incorporated or not, a trust and a partnership;
- (j) “prescribed” means prescribed by rules;
- (k) “private party” means a person who is eligible to bid for a public private partnership project with an implementing agency;
- (l) “project” means an infrastructure project, provision of infrastructure related services or both, under a public private partnership;
- (m) “project proposal” means the proposal received by implementing agency from a private party for a project;
- (n) “project support” means any or a mix of subsidy or guarantee or financial assistance, during any stage of a project cycle;
- (o) “public private partnership” means a commercial transaction between an implementing agency and a private party in terms of which the private party—
 - (i) performs an implementing agency’s functions on behalf of it;
 - (ii) assumes the use of public property for a project; and
 - (iii) assumes substantial financial, technical and operational risks in connection with performance of the implementing agency’s functions or use of the 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.
- (p) “request for proposals” means a publicly advertised tender inviting proposals for a project prepared in accordance with the provisions of this Act;
- (q) “users” means users of a project, whether upon payment of charges, fee or otherwise; and
- (r) “viability gap fund” means fund to be established by the Board to provide project support to an implementing agency for those projects, for which a feasibility study has found to be economically or socially justified but are not financially viable because of lack of affordability.

CHAPTER II
Public Private Partnership Authority

3. **Establishment of the Authority.**—(1) As soon as it deems appropriate after the commencement of this Act, the Federal Government shall establish 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 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 Ordinance, 1984 (XL VII of 1984) 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 interests 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 contracts 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 favourable 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 helping realization of the concept and methods of public private partnership.

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

- (a) ensure that projects are consistent with national and sectoral strategies;

- (b) ensure value for money by conducting an analysis to evaluate projects. A public private partnership (PPP) arrangement yields value for money if it results in a net positive gain to society;
- (c) adhere to the principle of budget affordability in the context of medium term budgetary framework;
- (d) make assessment of fiscal risks;
- (e) advise and facilitate the implementing agency to identify, develop, structure and procure the projects;
- (f) prescribe and receive fee ad charges;
- (g) standardize the contractual provisions and to develop the sector specific provisions of the model public private partnership agreements;
- (h) develop annuity, user-based and hybrid financial models for the projects;
- (i) ensure that public private partnership agreement is consistent with the provisions of this Act;
- (j) interact, collaborate and liaise with international agencies;
- (k) play the role of gatekeeper at all stages of project cycle such as planning, tendering, bidding and contract; and
- (l) notify, from time to time, a limit on the size of PPP projects that an implementing agency may undertake in relation to its annual spending.

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 prescribed manner and on prescribed terms and conditions.

(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).

(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. – (1) There shall be a Board of Directors of the Authority comprising the following members, namely:-

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| (a) | Minister of Planning, Development and Reform, | Chairperson |
| (b) | Secretary, Finance Division..... | Vice-Chairperson |
| (c) | Secretary, Planning, Development and Reform Division | Member |
| (d) | Secretary Board of Investment | Member |
| (e) | two members from private sector to be nominated by the Federal Government | Members |
| (f) | Chief Executive Officer | Member |
| (g) | Secretary Concerned Division | Co-opted Member |

