REGISTERED No. M - 302
L.-7646

The Gazette of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, FRIDAY, MARCH 31, 2017

PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 29th March, 2017

No. F. 22(20)/2016-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 27th March, 2017 is hereby Published for general information:—

ACT NO. VIII OF 2017

An Act 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:—

Price : Rs. 10.50

[419 (2017)/Ex. Gaz.]

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 partnerships;

(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;

(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 (XLVII 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 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 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 and 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:—

(a)	Minister of Planning, Development and Reform,	Chairperson
(b)	Secretary, Finance Division	*Vice-*Chairperson
(c)	Secretary, Planning and 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

(2) The Chief Executive Officer shall also act as Secretary of the Board.

(3) The members from the private sector shall be appointed by the Federal Government for a period of three years and shall be entitled to such terms and conditions as the Federal Government may prescribe.

(4) The Board shall meet at least once in a quarter. The Secretary of the Board may take approval of any decision through circulation among members of the Board, which shall be subsequently placed for ratification in the first Board's meeting occurring immediately after such decision.

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

(6) The quorum for a meeting of the Board shall be at least three members and decisions of the Board shall be made with majority of total membership of the Board. In case of a tie, the Chairperson or Vice-Chairperson, as the case may be, shall have a casting vote:

Provided that the Ministry of Finance shall have the power to reject any proposal approved by the Board in case the fiscal risks associated with the proposal are considered unacceptable.

(7) The Board may co-opt such members, as it deems appropriate, for rendering advice on case-to-case basis.

(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 it may prescribe.

7. **Chief Executive Officer.**—(1) The Federal Government shall appoint a Chief Executive Officer to serve as a member of the Board and shall be responsible for administration of the affairs of Authority.

(2) The Chief Executive Officer shall be answerable to the Board for all administrative, financial and technical matters of the Board.

(3) The Chief Executive Officer shall be appointed for a term of three years on such salary, terms and conditions of service as the Federal Government may prescribe:

Provided that he shall be eligible for re-appointment for one more term but shall cease to hold office on attaining the age of sixty-five years or the expiry of the term, whichever is earlier.

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,* which may include, the following, namely:—

(a) monitoring the implementation of public private partnership agreements, both in terms of the financial situation and the construction of physical assets and service delivery;

(b) approving relevant accounting policies and financial reporting standard and templates for contracting agencies;

(c) renegotiating, if necessary, public private partnership agreements or contracts;

(d) approve rules for the purposes of this Act;

(e) approve feasibility study, bid documents and proposal of a project;

(f) approve public private partnership agreement to be executed by the implementing agency;

(g) review and strengthen the institutional and regulatory framework for the effective implementation and operation of the public private partnerships of the Federal Government;

(h) approve the yearly budget of the Authority; and

(i) establish viability gap fund and risk management unit, to perform such functions as it may prescribe.

9. **Disqualifications to become a member.**—(1) The disqualifications of certain persons to become or hold office in any corporate entity under the provisions of the Companies Ordinance, 1984 (XLVII of 1984) shall, *ipso facto,* apply to the members of the Board in addition to the following disqualifications, namely:—

(a) has become physically or mentally incapable of acting as a Member; or

(b) gross misconduct; or

(c) involved in corruption or malpractices; or

(d) receives or is accused of receiving any illegal gratification from a private party; or

(e) having any interest, either monetary or otherwise, directly or indirectly in any private party tendering for public private partnership or involved in the process in any way."

10. **Fund.**—(1) There is hereby established a fund, to be called the Public Private Partnership Authority Fund which shall vest in the Authority and shall be utilized by the Authority to meet the charges in connection with its functions under this Act.

(2) The Fund of the Authority shall comprise of the following, namely:—

(a) such sums as the Federal Government may, from time to time, allocate to it in the annual budget;

(b) grants from the Federal Government;

(c) donations and grants from the international donor agencies;

(d) income from the investments;

(e) fees; and

(f) any sources approved by the Federal Government.

(3) The management, operation and maintenance of the Fund and accounts of the Authority shall be done by the prescribed offices of the Authority in the prescribed manner.

(4) The accounts of the Authority shall be maintained in such forms as may be prescribed by the Board and consistent with the requirements of the applicable laws.

11. **Viability Gap Fund.**—(1) There shall be established a Viability Gap Fund which shall be managed, controlled and administered by the Authority in prescribed manner.

(2) Viability Gap Fund shall be established by an amount specified by the Board within the Public Private Partnership Authority Fund.

(3) Viability Gap Fund snall be utilized to provide support to the projects deemed feasible, socially and economically but not financially viable because of lack of affordability. The Board shall consider a project eligible for grant of subsidy or financial support from the Viability Gap Fund.

12. **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 their actual expenses in the prescribed manner.

(2) The accounts of the Authority shall be audited by a reputable firm of chartered accountants, within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), appointed by the Board from a panel of Chartered Accountants proposed by the Authority on such terms and conditions as the Board may prescribe.

(3) The Auditor General of Pakistan may conduct audit of the Authority.

CHAPTER III

Functions of the Implementing Agency and Government Support

13. **Responsibilities of an implementing agency.**—(1) The responsibilities of the Implementing Agency in relation to the planning, development, procurement, implementation, execution and monitoring of a Project shall be such as may be prescribed.

(2) Without prejudice to the generality of sub-section (1), the implementing agency, *inter-alia,* shall, for the purposes of this Act,—

(a) identify, conceptualize, appraise and develop the project;

(b) undertake or cause to be undertaken a feasibility study;

(c) develop and issue or cause to be developed and issued a request for proposal including draft of the public private partnership agreement;

(d) procure a project only through a competitive bidding process as prescribed; and

(e) monitor and implement the project in accordance with the public private partnership agreement.

(3) The implementing agency shall submit the bid documents and the project proposal for approval of the Board.

(4) Once the project proposal is approved by the Board, the implementing agency shall procure the project in accordance with the provisions of this Act.

14. **Approval of project support.**—(1) The implementing agency, requiring the project support to implement the Project, shall submit all relevant documentation to the Board for consideration. The implementing agency shall submit an undertaking that the project falls within the spending limit notified by public private partnership authority from time to time.

(2) The Board shall review the project proposal and evaluate the need and amount of Government support requested and send its recommendations to the Federal Government for provision of project support.

CHAPTER IV

Legal and Contractual Frameworks

15. **Contents of public private partnership agreements.**—(1) The contents of a public private partnership agreement shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the implementing agency may follow their applicable laws on the following issues, namely:—

(a) the scope of activities of the parties to the agreement;

(b) the duration of the agreement;

(c) the payment arrangements for the private party, including where applicable, the factors based on which and the manner in which user charges or tariffs may be revised;

(d) the rights and obligations of the parties and the respective risks to be borne by each party;

(e) the penalties for non-compliance with the provisions of the public private partnership agreement;

(f) dispute resolution mechanisms;

(g) exit clauses specifying procedure of early termination of the public private partnership agreement;

(h) termination payments and compensations, if agreed and provided in the public private partnership agreement;

(i) the debt-equity ratio;

(j) the monitoring;

(k) project insurances and treatment of insurance proceeds;

(l) operation and maintenance requirements; and

(m) reversion, transfer or handing back of the project, wherever applicable and all the associated assets to the implementing agency upon expiry or termination of the public private partnership agreement.

(3) Unless otherwise provided in the Public Private Partnership Agreement, every agreement shall be governed, construed and interpreted in accordance with the laws of Pakistan.

16. **Contractual relationship.**—(1) For the purposes of implementation of the project, the private party shall, with or without the participation of the implementing agency, incorporate a company as special purpose vehicle to undertake the project.

(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 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 made there under, an 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 the immovable property of an implementing agency shall not be transferred to the private party;

(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;

(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 Project in favour of any lender providing loans for the project;

(d) enter into agreements with lenders to the project; or

(e) agree to pay compensation for early termination of the public private partnership agreement in the manner stated therein.

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

(2) Subject to the terms and conditions of the Public Private Partnership agreement, neither the implementing agency nor the private party shall initiate any judicial or quasi-judicial proceedings unless the remedies provided in the public private partnership agreement have been fully exhausted:

Provided that, no dispute, as aforesaid, shall remain unsettled between the implementing agency and the private party beyond the period prescribed under the terms of the public private partnership agreement.

(3) Neither the private party nor 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 services to the users on account of pendency of any dispute under the public private partnership agreement.

CHAPTER V

Public Private Partnership Project Procurement

19. **Negotiations of the agreement.**— (1) The implementing agency, after the project proposal has been approved by the Board, shall invite the successful Private Party bidder for negotiation of the public private partnership agreement.

(2) The Authority may nominate any of its officers or employees to be part of the negotiations.

(3) Subject to final approval of the Board, the implementing agency shall execute the Public private partnership agreement.

20. **Negotiated procurement of project.**—The implementing agency may enter into a negotiated procurement of a public private partnership project, in case of the following circumstances, namely:—

(a) where the project is being undertaken on the basis of any Federal Government's bilateral treaty or arrangement; or

(b) in any other case where the Federal Government authorizes such an exception, for reasons to be recorded in writing, in the public interest.

21. **Vesting of project.**—(1) Subject to the public private partnership agreement, the project along with all the movable and immovable properties, project's physical assets, licences, goodwill, trademarks, patents, leases, all rights including intellectual property rights and interests associated with the project shall vest in the private party during the tenure of the public private partnership agreement:

Provided however that the private party shall not create any lien, charge or encumbrance, in favour of the lenders, over the immovable properties of the implementing agency as collateral, except with the prior approval of the Board:

Provided further that after 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 in accordance with the provisions of the public private partnership agreement.

(2) Without prejudicing the interests of the lenders, the private party shall not assign, transfer, sublet or part with its possession either in whole or in part, the project or its related services to any of the third parties, except to the extent provided for in the public private partnership agreement.

CHAPTER VI

Miscellaneous Provisions

22. **No compensation for risks not covered.**—The Federal Government 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 a sum due from a private party as if the sum is recoverable 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.

25. **Power to make rules.**—The Federal Government may, by notification in the official Gazette and with the approval of the Board, make rules for carrying out purposes of this Act.

26. **Indemnity.**—Without prejudice to the obligations incurred by an implementing agency under a public private partnership agreement, no suit, 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 intended to be done under this Act or rules made thereunder.

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, progress on projects, utilization of funds under this Act during that financial year and shall be laid before the Parliament.

QAMAR SOHAIL LODHI,
Acting Secretary.

PRINTED BY THE MANAGER, PRINTING CORPORATION OF PAKISTAN PRESS, ISLAMABAD.
PUBLISHED BY THE DEPUTY CONTROLLER, STATIONERY AND FORMS, UNIVERSITY ROAD, KARACHI.