

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

Bill

to amend the Public Private Partnership Authority Act, 2017

WHEREAS it is expedient to amend the Public Private Partnership Authority Act, 2017 (VIII of 2017) to create an enabling environment for public private partnership by streamlining the project approval process and providing an effective framework for policy guidelines;

1. **Short title and commencement.** – (1) This Act shall be called the Public Private Partnership Authority (Amendment) Act, 2021.

(2) It shall come into force at once.

2. **Amendment of preamble, Act VIII of 2017.**– In the Public Private Partnership Authority Act, 2017 (VIII of 2017), hereinafter called as the said Act, the following shall be substituted, namely:-

“An Act to create an enabling environment for private sector participation in development projects and in the provision of public infrastructure and related services in Pakistan through public private partnership projects.

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.”

3. **Amendment of section 2, Act VIII of 2017.** – In the said act, for section 2, the following shall be substituted, namely:-

“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);

(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/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) "P3A fund" means the fund established under section 11;

(j) "P3WP" means the public private partnership working party established under section 16;

(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 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;

(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 13;
- (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 an 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 14;

(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."

4. **Amendment of Chapter II, Act VIII of 2017.** – In the said Act, for the heading of Chapter II, the following shall be substituted, namely:-

"CHAPTER II
Institutional Framework
PART-I
Authority and its Board"

5. **Amendment of section 3, Act VIII of 2017.** – In the said Act, in section 3,-

- (a) in sub-section (1), after the word "establish", the word "the" shall be inserted, and