

[AS PASSED BY THE NATIONAL ASSEMBLY]

An

Act

further to amend Public Private Partnership Authority Act, 2017

WHEREAS it is expedient further to amend the Public Private Partnership Authority Act, 2017 (Act VIII of 2017), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.-(1) This Act shall be called the Public Private Partnership Authority (Amendment) Act, 2022.

(2) It shall come into force at once.

2. Substitution of long title, VIII of 2017.-In the Public Private Partnership Authority Act, 2017 (Act VIII of 2017), hereinafter referred to as the said Act, for the long title, the following shall be substituted, namely:-

“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.”.

3. Amendment of section 1, Act VIII of 2017.- In the said Act, in section 1, sub-section (4) shall be omitted.

4. Amendment of section 2, Act VIII of 2017.- In the said Act, in section 2, in paragraph (o), for the word “proposer” the word “proposal” shall be substituted.

5. Amendment of section 4, Act VIII of 2017.- In the said Act, in section 4, in sub-section (2),-

(a) for the clause (a), the following shall be substituted, namely:-

“(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;”;

(b) for the clause (f), the following shall be substituted, namely:-

“(f) subject to any rules or regulations made hereunder, advise, facilitate and support, as needed, implementing agencies to develop and structure qualified projects;” and

(c) clauses (i) and (j) shall be omitted.

6. Amendment of section 5, VIII of 2017.- In the said Act, in section 5, in sub-section (1), for the words “prescribed manner and on prescribed terms and conditions”, the words “manner and on such terms and conditions as the Board may prescribe by regulations” shall be substituted.

7. Amendment of section 7, VIII of 2017.- In the said Act, in section 7, in sub-section (2), for the word “Board”, occurring second time, the word “Authority” shall be substituted.

8. Amendment of section 8, Act VIII of 2017.- In the said Act, in section 8, in sub-section (2),-

(a) for clause (a), the following shall be substituted, namely:-

“(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 investments in bonds or other financial instruments issued by the Federal Government;” and

(b) for clause (c), the following shall be substituted, namely:-

“(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;”.

9. Amendment of section 12A, Act VIII of 2017.- In the said Act, in section 12A, in sub-section (1), the words, “in the manner prescribed” shall be omitted.

10. Amendment of section 13, Act VIII of 2017.- In the said Act, in section 13, the sub-sections (3) and (4) shall be omitted.

11. Amendment of section 13A, Act VIII of 2017.- In the said Act, in section 13A, in sub-section (3), for clause (b), the following shall be substituted, namely:-

“(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;”.

12. Amendment of section 14, Act VIII of 2017.- In the said Act, in section 14,-

(1) in sub-section (1),-

(a) for clause (b), the following shall be substituted, namely:-

“(b) the project shall require approval of the CDWP;” and

(b) in clause (e), for full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“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.”; and

(2) after sub-section (1), amended as aforesaid, the following new sub-section shall be inserted, namely:-

“(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.”.

13. Amendment of section 17, Act VIII of 2017.- In the said Act, in section 17, in clause (d), for the words “after obtaining such approvals as may be prescribed by the Authority in this regard”, the words “in accordance with applicable law” shall be substituted.

14. Amendment of section 19, Act VIII of 2017.- In the said Act, for section 19, the following shall be substituted, namely:-

“19. Negotiation of the agreement.- The implementing agency shall, after obtaining applicable approvals and subject to the terms and conditions of such approvals, invite the successful private party bidder for negotiation of the public private partnership agreement.”.

15. Amendment of section 25A, Act VIII of 2017.- In the said Act, for section 25A, the following shall be substituted, namely:-

“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.”

16. Amendment of section 29, Act VIII of 2017.- In the said Act, in section 29,

(a) the words, “in respect of matters relating to the projects” shall be omitted; and

(b) after the words “regulations made” at the end, the word “thereunder” shall be inserted.

17. Insertion of new sections 31 and 32, Act VIII of 2017.- In the said Act, after section 30, the following new sections 31 and 32 shall be added, namely:-

“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 a 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 proposed legal action or not shall be deemed to be final.”.

STATEMENT OF OBJECTS AND REASONS

The Board of the Public Private Partnership Authority (the, "P3A"), in exercise of its powers conferred upon the Board under the Act VIII of 2017, approved the road infrastructure project titled "Sialkot (Sambrial)-Kharian Motorway Project by authorizing the procuring agency, i.e., the National Highway Authority, to procure the project through competitive bidding under Public Procurement Rules, 2004. Meanwhile, the Public Private Partnership Authority (Amendment) Act, 2021 was passed by the Parliament. Subsequently, a legal question arose regarding validity of the approval process since the approval fora had changed under the said Amendment Act of 2021. Hence, upon the advice received from the Ministry of Law & Justice, a saving provision may be added, as sub-clause (1A) in Section 14 of the Act VIII of 2017 as amended by the Amendment Act of 2021, as under:

"(1A) For the avoidance of doubt, where, prior to the commencement of the Public Private Partnership Authority (Amendment) Act, 2022, any approvals that 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. Award of strategic projects of national importance including "Sialkot (Sambrial)-Kharian Motorway Project" in public private partnership mode is being delayed due to the legal issues arisen after notification of the Amendment Act of 2021. The insertion of 'saving clause' mentioned above along with some other amendments in the Act VIII of 2017 as amended by the Amendment Act of 2021, therefore, is urgently required.

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Minister