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PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN

LAW AND JUSTICE DIVISION

Islamabad, the 7th July, 2020

No. F. 2(1)/2020-Pub.—The following Ordinance Promulgated on 7th July, 2020 by the President is hereby published for general information:—

ORDINANCE NO. VIII OF 2020

AN

ORDINANCE

to amend the Public Private Partnership Authority Act (VIII of 2017)

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

(429)

Price: Rs. 40.00

[5689(2020)/Ex. Gaz.].

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE in exercise of his powers conferred by clause (1) of the Article 89 of the Constitution of Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance shall be called the Public Private Partnership Authority (Amendment) Ordinance, 2020.

(2) It shall come into force at once.

2. **Substitution of long title and preamble, Act VIII of 2017.**—In the Public Private Partnership Authority Act, 2017 (VIII of 2017), hereinafter called as the said Act, for the long title and the preamble 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 an agreement;
- (f) "ECNEC" means the executive committee of the National Economic Council;
- (g) "implementing agency" means any of the line ministries, divisions, attached departments, executive departments, sub-ordinate offices, 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 and shall exclude such companies, institutions or corporate bodies in which the Federal Government holds a controlling equity interest, either directly or indirectly;

- (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 un-solicited 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 un-solicited 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, telephone 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;
- (v) any or a mix of subsidy or guarantee or financial assistance or support, including any cash transfers and creation of security over government or implementing agency's assets, during any stage of the project cycle; and
- (vi) 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."

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
- (b) in sub-section (4), for the expression "Ordinance, 1984 (XLVIII of 1984)" the expression "Act, 2017 (XIX of 2017)" shall be substituted.

6. **Amendment of section 4, Act VIII of 2017.**—In the said Act, in section 4,—

- (a) in sub-section (1), for the word "helping", the word "facilitating" shall be substituted; and

(b) in sub-section (2),—

(i) in clause (a), after the word “that”, the word “qualified” shall be inserted;

(ii) for clauses (b) to (1), the following shall be substituted, namely:—

- “(b) ensure value for money by conducting an analysis to evaluate qualified projects in the manner as may be 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;
- (f) subject to the rules and regulations made hereunder, advise, facilitate and actively support the implementing agency to develop and structure, as needed, the qualified projects at all stages of the project cycle such as identification, planning, tendering, bidding and contract award and implementation;
- (g) prescribe and receive fees and charges in respect of qualified projects;
- (h) standardize contractual provisions and develop sector specific provisions and templates including a model public private partnership agreement for qualified projects;
- (i) analyze and assess annuity, user-based, hybrid and other financial models for qualified projects;
- (j) ensure that public private partnership agreements are consistent with the provisions of this Act and applicable laws; and

- (k) interact, collaborate and liaise with international agencies”.

7. Amendment of section 6, Act VIII of 2017.—In the said Act, in section 6,—

(a) for sub-section (1), the following shall be substituted, namely:—

“(1) There shall be a Board of Directors of the Authority comprising the following, namely:—

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

(b) sub-section (2) shall be omitted;

(c) in sub-section (3),—

- (i) for the words “and shall be entitled”, the word “subject” shall be substituted; and
- (ii) for the words “the Federal Government may prescribe”, the words “may be prescribed” shall be substituted;

(d) for sub-section (4), the following shall be substituted, namely:—

“(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

regulations, 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.”;

- (e) for sub-section (6), the following shall be substituted, namely:—

“(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. In case of a tie, the Chairperson or Vice-Chairperson, as the case may be, shall have a casting vote.”;

- (f) in sub-section (7), after the full-stop, the following shall be added, namely:—

“In respect of a Board's meeting where a project proposal or matters relating to a qualified project are being considered by the Board, the Secretary of the concerned line Division (or such nominee of the same that meets any prescribed requirements) shall be required to be present in such Board's meeting as an observer to perform such roles and functions as are prescribed.”; and

- (g) in sub-section (8), for the words “it may prescribe”, the words “may be prescribed” shall be substituted.

8. **Amendment of section 7, Act VIII of 2017.**—In the said Act, in section 7,—

- (a) in sub-section (1),—

(i) after the word “shall” occurring for the first time, the expression “, on the recommendation of the Board,” shall be inserted;

(ii) after the words “affairs of”, the word “the” shall be inserted;

- (b) in sub-section (2), for the word “Board”, occurring twice, the word “Authority” shall be substituted;

- (c) in sub-section (3),—

(i) for the words “the Federal Government may prescribe:”, the words “may be prescribed.” shall be substituted; and

- (ii) for the colon a full stop shall be substituted and thereafter the proviso shall be omitted;
- (d) after sub-section (3), amended as aforesaid, the following new sub-section (4) shall be added, namely:—

“(4) The Chief Executive Officer shall be the principal accounting officer of the Authority”.

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

- (a) the expression “which may include,” shall be omitted;
- (b) after the word “following”, the word “functions” shall be inserted;
- (c) for clauses (a) to (i), the following shall be substituted, namely:—
 - “(a) monitoring, in respect of qualified projects, the implementation of public private partnership agreements, including in terms of the financial situation and the construction of physical assets and service delivery;
 - (b) allowing renegotiation, if necessary in respect of qualified projects, of public private partnership agreements or contracts to the extent prescribed;
 - (c) considering for approval or otherwise the project proposal for a qualified project;
 - (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”.

10. **Amendment of section 9, Act VIII of 2017.**—In the said Act, for section 9, the following shall be substituted, namely:—

“9. **Dis-qualification to become a member and conflict of interest.**—(1) The dis-qualifications 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 dis-qualified 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.

- (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”.

11. **Amendment of section 10, Act VIII of 2017.**—In the said Act, in section 10,—

- (a) for the marginal heading “Fund”, the heading “P3A Fund” shall be substituted;
- (b) in sub-section (1),—
 - (i) after the words “established a”, the words “non-lapsable” shall be inserted;
 - (ii) after the word “fund”, the words “through upfront grant-in-aid in the amount to be recommended by the Board” shall be inserted;
 - (iii) for the words “Public Private Partnership Authority Fund”, the expression “P3A Fund” shall be substituted; and
 - (iv) the words “to meet the charges” shall be omitted;
- (c) in sub-section (2),—
 - (i) for the words “Fund of the Authority”, the expression “P3A Fund” shall be substituted;
 - (ii) in clause (b), for the word “grants”, the words “grants-in-aid” shall be substituted;
 - (iii) in clause (d), the word “the” shall be omitted; and

(iv) in clause (f),—

(A) after the word “any”, the word “other” shall be inserted;

(B) for the words “approved by the Federal Government”, the words “as may be prescribed from time to time” shall be substituted;

(d) in sub-section (3),—

(i) for the words “Fund and accounts of the Authority”, the words “P3A Fund” shall be substituted; and

(ii) for the words “the prescribed offices of the Authority in the prescribed manner”, the words “such officers of the Authority and in such manner as may be prescribed” shall be substituted; and

(e) sub-section (4) shall be omitted.

12. **Amendment of section 11, Act VIII of 2017.**—In the said Act, for section 11, the following shall be substituted, namely:—

“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”.

13. **Amendment of section 12, Act VIII of 2017.**—In the said Act, for section 12, the following shall be substituted, namely:—

“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".

14. **Amendment of Chapter-III, Act VIII of 2017.**—In the said Act, for the title of CHAPTER-III, the following shall be substituted, namely:—

"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 in the manner as may be prescribed.
- (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 prescribed by the Authority in consultation with the Finance Division.
 - (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".

15. **Amendment of section 13, Act VIII of 2017.**—In the said Act, in section 13,—

- (a) in the marginal heading, for the word "Responsibilities", the word "Responsibility" shall be substituted;
- (b) in sub-section (1),—

- (i) for the words "Implementing Agency", the words "implementing agency" shall be substituted; and
- (ii) for the word "Project", the words "qualified project" shall be substituted; and
- (c) for sub-section (2), the following shall be substituted, namely:—
 - "(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;
 - (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.

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;
 - (b) granting approval of the project qualification proposal submitted to it by the Authority; and
 - (c) performing such other functions as may be prescribed from time to time.
 - (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”.

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

- “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;
 - (b) approval of the project by the risk management unit in accordance with section 12A;
 - (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.
- (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”.

17. **Insertion of new section 14 A, Act VIII of 2017.**—In the said Act, for the heading of the existing Chapter-IV, the following shall be substituted, namely:—

“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:

Provided that in respect of qualified projects, the implementing agencies shall seek participation from the private sector in accordance with this Act and the rules and regulations made thereunder.

- (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 and arrangements including but not restricted to user fees, subsidies, revenue shortfall guarantees and may allocate budget and appropriate monies for such purposes”.

18. **Amendment of section 15, Act VIII of 2017.**—In the said Act, in section 15,—

- (a) in sub-section (1), after the word “agreement”, the words “relating to projects” shall be inserted; and
- (b) for sub-section (2), the following shall be substituted, namely:—

“(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”.

19. **Amendment of section 16, Act VIII of 2017.**—In the said Act, in section 16,—

- (a) in sub-section (1),—
 - (i) for the expression “project”, the expression “qualified project, unless otherwise approved by the Board,” shall be substituted;
 - (ii) after the words “a company as”, the letter “a” shall be inserted;
 - (iii) after the words “undertake the”, the word “qualified” shall be inserted; and
 - (iv) after the word “project”, occurring at the end, the expression “in accordance with the rules and regulations prescribed under this Act” shall be inserted;

- (b) in sub-section (2), for the word "project", the words "qualified project" shall be substituted;
- (c) after sub-section (2), amended as aforesaid, the following new sub-section (3) shall be added, namely:—

"(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".

20. **Amendment of section 17, Act VIII of 2017.**—In the said Act, in section 17,—

- (a) after the word "rules", the words "and regulations" shall be inserted;
- (b) for the word "an", the word "the", shall be substituted;
- (c) for the words "to which this Act applies", the words "approved in accordance with Chapter-III of this Act and only to the extent consistent with the approved project qualification proposal and the approved project proposal" shall be substituted;
- (d) in the proviso to clause (a), for the word "the", occurring for the first time, the word "any" shall be substituted;
- (e) in clause (b), after the word "agreement", the expression "and as provided in the said agreement" shall be inserted;
- (f) in clause (c),—
 - (i) for the word "Project", the word "project" shall be substituted;
 - (ii) after the word "project", occurring at the end, the expression "as provided in the public private partnership agreement" shall be inserted; and
 - (iii) after the semi-colon, the word "and" shall be inserted;
- (g) in clause (d),—

- (i) after the word "project" the expression "after obtaining such approvals as may be prescribed by the Authority in this regard" shall be inserted;
- (ii) for the semi-colon and the word "or", a full stop shall be substituted; and
- (h) clause (e) shall be omitted.

21. **Substitution of section 18, Act VIII of 2017.**—In the said Act for section 18, the following section shall be substituted, namely:—

- "18. **Settlement of disputes.**—(1) All disputes arising between an implementing agency and a private party shall be referred to the Authority, to serve as the first tier of the dispute resolution mechanism, in the manner prescribed by the rules including the timeframe for the Authority to hear and dispose off all such complaints and grievances.
- (2) All such complainants, who are still not satisfied with the decisions of the first tier of the dispute resolution mechanism, may seek the appropriate remedies before the courts of Pakistan:

Provided that, subject to the rules prescribed under this Act, recourse to the courts of Pakistan shall be a mandatory requirement for any complainants seeking recourse to alternative methods of dispute resolution, such as international arbitration under the public private partnership agreement, which dispute resolution clauses shall strictly adhere to the settlement of disputes provision of law".

22. **Substitution of section 19, Act VIII of 2017.**—In the said Act,—

- (a) for the existing heading "CHAPTER-V" the heading "CHAPTER-VI" shall be substituted; and
- (b) for section 19, the following section shall be substituted, namely:—

- "19. **Negotiation of the agreement.**—The implementing agency shall, after all applicable approvals have been obtained in accordance with section 17 invite the successful private party bidder for negotiation of the public private partnership agreement on such terms and conditions as may be prescribed from time to time".

23. **Substitution of section 20, Act VIII of 2017.**—In the said Act, for section 20, the following shall be substituted, namely:—

“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”.

24. **Amendment of section 21, Act VIII of 2017.**—In the said Act, in section 21,—

- (a) after the expression “immovable properties,” the word “the” shall be inserted;
- (b) after the word “party”, occurring for the first time, the words “or the implanting agency” shall be inserted;
- (c) after the words “partnership agreement”, occurring for the second time, the words “as provided for in the said agreement” shall be inserted;
- (d) in the first proviso,—
 - (i) the word “however” shall be omitted;
 - (ii) after the word “that” the expression “in respect of a qualified project,” shall be inserted;
 - (iii) after the word “prior” the words “consent and” shall be inserted;
 - (iv) after the words “approval of the”, the words “implementing agency and the” shall be inserted; and
 - (v) after the word “Board” the words “or except as may have been approved as part of the project proposal” shall be inserted;
- (e) in the second proviso,—
 - (i) after the word “after”, the word “the” shall be inserted; and
 - (ii) after the word “agency”, the words “or the private party” shall be inserted; and

(f) sub-section (2) shall be omitted.

25. **Amendment of section 22, Act VIII of 2017.**—In the said Act,—

(a) after section 21, amended as aforesaid, for the existing heading “CHAPTER-VI”, the heading “CHAPTER-VII” shall be substituted; and

(b) in section 22, after the words “The Federal Government”, the expression “the Authority, the Board” shall be inserted.

26. **Amendment of section 23, Act VIII of 2017.**—In the said Act, in section 23,—

(a) for the words “a sum”, the words “any sums” shall be substituted; and

(b) the words “as if the sum is recoverable” shall be omitted.

27. **Substitution of section 25, Act VIII of 2017.**—In the said Act, for section 25, the following shall be substituted, namely:—

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

“25A. **Power to make regulations.**—Subject to this Act and the rules made thereunder, the Board may, by notification in the official gazette, make regulations for carrying out purposes of this Act”.

28. **Amendment of section 26, Act VIII of 2017.**—In the said Act, in section 26,—

(a) the word “intended” shall be omitted; and

(b) after the word “rules”, the words “or regulations” shall be inserted.

29. **Amendment of section 28, Act VIII of 2017.**—In the said Act, in section 28,—

(a) after the word “agreements”, the words “for qualified projects” shall be inserted; and

(b) after the words “progress on”, the words “qualified” shall be inserted.

30. **Addition of section 29, Act VIII of 2017.**—In the said Act, after section 28, amended as aforesaid, the following new section 29 shall be added, namely:—

“29. **Overriding effect.**—Except as provided in this Act, the provisions of this Act and the rules and regulations made hereunder shall have effect in respect of matters relating to the projects notwithstanding anything to the contrary contained in any other law, including but not limited to the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002) and the rules and regulations made thereunder”.

DR. ARIF ALVI,
President.

MUHAMMAD KHASHIH-UR-REHMAN,
Secretary.

**GOVERNMENT OF PAKISTAN
PLANNING COMMISSION
MINISTRY OF PLANNING, DEVELOPMENT AND SPECIAL INITIATIVES

STATEMENT OF OBJECTS AND REASONS

**THE PUBLIC PRIVATE PARTNERSHIP AUTHORITY
(AMENDMENT) BILL, 2020**

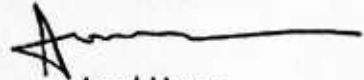
The Public Private Partnership Authority Act, 2017 (VII of 2017) was enacted by Parliament and notified in the Gazette of Pakistan on 29th March 2017. The Public Private Partnership Authority was originally established under this Act.

The Act, as originally promulgated had a rigid structure and required simple transactions (including straight-forward outsourcing and management contracts) to be approved by the Board of the Authority; The Act was also narrow in scope and did not fully reflect the vision of the Government of Pakistan to attract and harness the potential of local and international private sector investment. Further, the Act did not provide for any legal and administrative linkages with the Planning Commission in terms of concept clearance, initial approvals and other regulatory approvals.

In order to address the aforementioned gaps, certain amendments to the Act have been proposed and a Public Private Partnership Working Party (P3WP) has also been established in order to fast-track project approvals. Under the proposed amendments, administrative approval shall first be required from P3WP and ECNEC, to be followed by formal procurement of PPP projects through the Board of the Public Private Partnership Authority. The inclusion of apex project approval bodies like ECNEC in the process is designed to ensure that PPP projects are in perfect alignment with national development priorities.

The proposed Ordinance has also established a regulatory and enabling framework for unsolicited proposals, a Risk Management Unit and a Project Development Facility. These interventions will further facilitate line ministries in successfully developing and structuring PPP projects.

Under the Ordinance, Ministries and line agencies will be empowered to undertake projects through a streamlined and efficient approvals and appraisal process, allowing them to mobilize private capital for public infrastructure and services.


Asad Umar
Federal Minister

Islamabad:
The 20th July, 2020