

# Public Private Partnership Law of Afghanistan

Sr. No: 1322  
2018

**Disclaimer:** This English version of the Public Private Partnership Law is translated from the original in Dari. Whilst every effort was made to provide accurate information, in case of discrepancy, the Dari original published in Official gazette 1322 shall prevail.

## Public Private Partnership Law

Chapter One .....	6
General Provisions .....	6
The Basis.....	6
Article 1: .....	6
Objectives.....	6
Article 2: .....	6
Terminologies .....	6
Article 3: .....	6
1. Public Private Partnership (PPP).....	6
2. Partnership Contract .....	6
3. Standard Documents.....	6
4. Partnership Project .....	6
5. Concept.....	6
6. Entity Proposal .....	6
7. Unsolicited Proposal.....	6
8. Feasibility Study .....	7
9. Partnership Tender Process .....	7
10. Bidding Documents.....	7
11. Request for Proposal: .....	7
12. Bid.....	7
13. Value for Money (VfM):.....	7
14. Viability Gap Fund (VGF) .....	7
15. Project Development Fund (PDF).....	7
16. Investment Value .....	7
17. Person:.....	7
18. Proponent .....	7
19. Bidder.....	7
20. Preferred Bidder.....	7
21. Reserved Bidder:.....	7
22. Financial Closure: .....	7
23. Private Partner:.....	7
24. Transaction Advisor.....	7
25. Project Company (PC) .....	7
26. Competent Authority.....	8
27. Entity (Idaara) .....	8
Scope of Application.....	8
Article 4: .....	8
Lower Investment Value Projects .....	8
Article 5: .....	8
Sectors of Public Private Partnership .....	8
Article 6: .....	8
Development and Publication of Standard Documents.....	8
Article 7: .....	8
Analysis and Record of Risks and Liabilities: .....	8
Article 8.....	8
Chapter Two.....	9

Competent Institutions and their Responsibilities.....	9
Power and Functions of the Government (Cabinet).....	9
Article 9.....	9
Powers and Functions of High Economic Council .....	9
Article 10.....	9
Powers and Functions of Ministry of Finance .....	9
Article 11.....	9
Central Partnership Authority .....	10
Article 12.....	10
Article 13.....	10
Establishment of PPP Project Unit.....	11
Article 14.....	11
Functions and Powers of Entity .....	11
Article 15.....	11
Complains Assessment Committee.....	12
Article 16.....	12
Establishment of Project Company .....	12
Article 17.....	12
One - Stop Service .....	12
Article 18.....	12
Principles of Public Private Partnership.....	12
Rule of Law.....	12
Article 19.....	12
Good Governance.....	12
Article 20.....	12
Value for Money .....	12
Article 21.....	12
Risks Allocation .....	13
Article 22.....	13
Affordability and Protection of Users .....	13
Article 23.....	13
Transparency .....	13
Article 24.....	13
Competition.....	13
Article 25.....	13
Local Development and Technology Transfer.....	13
Article 26.....	13
Environment and Social Safeguard.....	14
Article 27.....	14
Stakeholders Consultation Process .....	14
Article 28.....	14
Ensuring Public Interest.....	14
Article 29.....	14
Chapter Four .....	14
Public Private Partnership Processes.....	14
The Project Cycle.....	14
Article 30.....	14
Project Selection Criteria .....	15

Article 31.....	15
Project Identification.....	15
Article 32.....	15
Project Preparation.....	15
Article 33.....	15
Partnership Project Procurement.....	15
Article 34.....	15
Unsolicited Proposal .....	16
Article 35.....	16
Chapter Five.....	16
Partnership Contract.....	16
Concluding Partnership Contract.....	16
Article 36.....	16
Type of Partnership Contracts (Models).....	16
Article 37.....	16
Management of Partnership Contract.....	17
Article 38.....	17
Ownership Rights.....	17
Article 39.....	17
Utilizing other Entity's Property.....	17
Article 40.....	17
Amendments .....	17
Article 41.....	17
Contract Extension.....	17
Article 42.....	17
Contract Termination .....	18
Article 43.....	18
Monitoring and Evaluation .....	18
Article 44.....	18
Dispute Resolution.....	18
Article 45.....	18
Chapter Six.....	18
Financial Securities .....	18
Government Support .....	18
Article 46.....	18
Revenue Collection Right .....	19
Article 47.....	19
Determining limit of Tariffs, Duties, Lease or Fees .....	19
Article 48.....	19
Project Development Fund.....	19
Article 49.....	19
Viability Gap Fund.....	19
Article 50.....	19
Proponent Rights.....	20
Article 51.....	20
Financial Audit and Report.....	20
Article 52.....	20
Chapter Seven .....	20

Transparency and Equitability .....	20
Participation in the Bidding without Discrimination .....	20
Article 53.....	20
Administrative Corruption .....	21
Article 54.....	21
Protection of Public Interest and Confidentiality .....	21
Article 55.....	21
Protection of Proponent Rights .....	21
Article 56.....	21
Conflict of Interest .....	21
Article 57.....	21
Debarment.....	22
Article 58.....	22
Chapter Eight .....	22
Final Provisions.....	22
Transitional Provisions.....	22
Article 59.....	22
Delegation of Authority .....	23
Article 60.....	23
Regulations and Procedures .....	23
Article61.....	23
Preference.....	23
Article 62.....	23
Entry into force .....	23
Article 63.....	23

## Chapter One

### General Provisions

#### The Basis

##### Article 1:

This law has been enacted pursuant to the provisions in paragraph 2 of Article 9 and Article 10 of the Constitution of the Islamic Republic of Afghanistan.

#### Objectives

##### Article 2:

The objectives of this law shall be:

1. To provide an enabling framework in regards for the partnership of private sector to finance, design, develop, construct and maintain infrastructures, facilities and public services.
2. To improve efficiency of existing and new infrastructures, facilities and the provision of public services utilizing the finance, capability, capacity, skills and technology of the private sector.
3. To identify and allow for the development of opportunities for joint public-private investments and, the provision of financial support, economical support, guarantees, and other commitments of government which may be required to ensure the development of such opportunities.
4. To provide the basis for the efficient utilization of public estates and assets through a Public Private Partnership.
5. To provide opportunity for rapid socio-economic growth and ensure such opportunities are in the public interests.

#### Terminologies

##### Article 3:

The terms in this law shall have the following meanings:

1. **Public Private Partnership (PPP):** Partnership between one or more Entities with one or more Private Parties for the introduction or development of infrastructure, facilities and provision of public services in a context that defines roles and responsibilities, risks sharing mechanism and returns in an appropriate manner to amongst parties. Terms and conditions are set out in the Partnership Contract.
2. **Partnership Contract:** Contract between an Entity (Public) and Private Partner in which the commercial terms, project specifications, and obligations (functions, commitments and responsibilities) of parties are defined.
3. **Standard Documents:** Partnership Contracts, forms, templates and guidance materials necessary for the solicitation, project proposal, design, tender evaluation, awarding/approval, implementation, extend/ amend and closing of Partnership Contract.
4. **Partnership Project:** Set of specific activities for providing infrastructure, facilities and delivery of public services through a Public Private Partnership.
5. **Concept:** Any proposal developed by an Entity and/or Proponent for execution of Partnership Project through a Public Private Partnership.
6. **Entity Proposal:** A proposal relating to a Partnership Project that is identified and submitted by an Entity for execution through a Public Private Partnership.
7. **Unsolicited Proposal:** A proposal for the purpose of Public Private Partnership that is not submitted in response to a Request for Proposal issued by an Entity or application;

8. **Feasibility Study:** A strategic, economic, financial, commercial, Value for Money, legal, technical, environmental, social and other risks studies required to appropriately design and structure a Partnership Project.
9. **Partnership Tender Process:** Any proceedings for the tendering and award of a Partnership Contract carried out by or on behalf of an Entity (from pre-qualification to award of Partnership Contract) as per the provisions of this law, regulation and procedure.
10. **Bidding Documents:** The prequalification notice, prequalification document and the Request for Proposals in respect of the procurement of a Partnership Project.
11. **Request for Proposal:** The document issued for the procurement of a Partnership Project in which the conditions and procedures for submission of Bid is described and includes the draft Partnership Contract.
12. **Bid:** Proposal submitted by a bidder in response to a Request for Proposal for award of a Partnership Contract.
13. **Value for Money (VfM):** A comparative analysis of implementing a Project through a Public Private Partnership or traditional procurement from quantitative and qualitative perspective and selection of method which ensures best value for the public interest.
14. **Viability Gap Fund (VGF):** Fund that the Ministry of Finance provides, in the form of grant or other method of financial assistance to support Projects that are economically viable but fall short financial not viable to ensure a project's sustainability.
15. **Project Development Fund (PDF):** Fund created by the Ministry of Finance as per the provisions of this law for conducting the pre-feasibility and feasibility studies, recruitment of experts, and other financial and economic analysis of Partnership Project.
16. **Investment Value:** The total of the present value of State assets to be transferred or leased to or managed by the Private Partner, the present value of the anticipated capital investment required to be made by the Private Partner and the present value of any state's support and commitment to be made or contributed to the Project, over the course of the Project.
17. **Person:** Shall include a real or legal persons (firms, Project Company, large scale companies, associations, partnerships, consortiums, joint ventures, trusts or other organizations of any kind).
18. **Proponent:** A person who has submitted the Unsolicited Proposal for Public Private Partnership as per the provisions of this law.
19. **Bidder:** A Person who has expressed interest to a pre-qualification notice, has submitted a pre-qualification response, and has been chosen by an Entity to participate in the Tender Process.
20. **Preferred Bidder:** A Bidder who has been selected for performing Partnership Contract as a partner of the Entity at the result of the Tender Process.
21. **Reserved Bidder:** A Bidder who has fulfilled the minimum bidding criteria but did not receive the highest marks and was not selected as a Preferred Bidder at a result of the evaluation process.
22. **Financial Closure:** A situation where all pre-conditions are met and funds in form of loans, equity, grants and government supports are available for actual commencement of the Partnership Project implementation as per the provisions set out in the Partnership Contract.
23. **Private Partner:** A Person who enters into a Partnership Contract with an Entity.
24. **Transaction Advisor:** A real or legal person who has the appropriate skills and experience to assist and advise an Entity on matters related to a Partnership Project including the preparation and conclusion of a Public Private Partnership Contract.
25. **Project Company (PC):** A legal person established in Afghanistan by the Private Partner with the sole purpose of execution of a Partnership Contract.

26. **Competent Authority:** A person who has the authority to notarize, reject, approve, amend and terminate a Partnership Contract.
27. **Entity (Idaara):** Ministries, Authorities with independent organogram and budget, Independent Commissions, Municipalities, State Owned Enterprises, Public Universities and corporations, where the State's shares are more than Twenty-Five percent (25%).

#### Scope of Application

##### Article 4:

- (1) The provisions of this law shall be applied to all projects that are, based on the Partnership Contract.
- (2) Where the rules and regulations of international organizations and donor agencies are in conflict with the provisions of this law, the Government may approve the use of the rules and regulations of such organizations; provided that the approval is prompted by the best interest and wellbeing of the public.

#### Lower Investment Value Projects

##### Article 5:

For the projects that have investment value lower than the minimum threshold and defining of powers or authorities of national and local administration in the process, the Ministry of Finance shall prepare a separate rules of procedure. The threshold for the minimum Investment Value will be suggested to the High Economic Council by the Ministry of Finance, and may be revised from time to time.

#### Sectors of Public Private Partnership

##### Article 6:

The Entity may enter into Partnership Contract with the private sector in the areas of infrastructure, water and energy, transportation, telecommunication, administrative buildings, housing, water supply, waste and sewage management, agriculture and irrigation, tourism, parks, sports, culture, education, higher education, health, environment, manufacturing, mines and industries and such other areas where the provisions of the law permits.

#### Development and Publication of Standard Documents

##### Article 7:

- (1) The Central Partnership Authority shall develop the Standard Documents and publish it on relevant and International website.
- (2) The Entity shall use the Standard Documents set out in paragraph (1) of this Article for processing Partnership Projects.

#### Analysis and Record of Risks and Liabilities:

##### Article 8

- (1) Entities shall not enter into contract with private parties until the risk and financial analysis for contingent and non-contingent liabilities has been conducted, approved and recorded by Ministry of Finance.
- (2) The Ministry of Finance shall control potential risks arising from the Partnership Project.



## Chapter Two

### Competent Institutions and their Responsibilities

#### Power and Functions of the Government (Cabinet)

##### Article 9

The Cabinet of the Government of Islamic Republic of Afghanistan may approve, amend, reject and/or review the Partnership Contract that has been attested by High Economic Council.

#### Powers and Functions of High Economic Council

##### Article 10

The High Economic Council shall have the following powers and functions in Public Private Partnership sector:

- 1- To provide guidance to Central Partnership Authority on regulating government's overall policy in Public Private Partnership and other areas in accordance with the GoIRA national strategic objectives.
- 2- To decide on financial and economic supports, guarantees, commitments of the State, and other aspects required for implementation of the Project as per the principles of Public Private Partnership in the light of provisions of this law.
- 3- To approve the request of a Private Partner for acquiring privileges in regards to the Project implementation and utilization, considering the public interests.
- 4- To approve, reject, and review the award of the Partnership Contract based on Public Private Partnership principals considering the provisions of this law.
- 5- To approve a procurement method other than competitive procurement for carrying out the procurement of the Partnership Project, to ensure the public interest.
- 6- To approve, reject and review the request for extension and amendment of the Partnership Contract as per the provisions of this Law, regulation and partnership contract.
- 7- To assess the report of the management of Partnership Contract, way, time and issue guidance for proper implementation of the Partnership Contract as per the relevant rules of procedure.
- 8- To take decisions on unpredicted and exceptional circumstances on the basis of internationally accepted practices, ensuring such decisions are made in the public interests.
- 9- To perform other powers and functions predicted in this law, the regulation and rules of procedure for Public Private Partnership.

#### Powers and Functions of Ministry of Finance

##### Article 11

The Ministry of Finance shall have the following powers and functions in Public Private Partnership sector:

- 1- To approve, reject and return for revision the Concepts which are submitted for processing.
- 2- To approve, reject or return for revision the Prefeasibility Study, Feasibility Study of Partnership Project which is submitted for processing.
- 3- Submission of Partnership Contract after the notarization of High Economic Council to the Government (Cabinet).
- 4- To perform other powers and functions predicted in this law, the regulation or rules of procedure for public private partnership.

## Central Partnership Authority

### Article 12

- (1) The Central Public Private Partnership Authority shall function within the Ministry of Finance for the purpose of regulating government policy, promotion, advisory and coordination, capacity and skills building; provision of technical assistance for the entities in the identification, development and preparation, selection of superior bidder, implementation, monitoring and evaluation of projects and other matters included in the law, regulation and rules of procedure of central partnership authority, and reports to Minister of Finance.
- (2) The Central Public Private Partnership Authority shall hereinafter be referred to as the Central Partnership Authority.

## Powers and Functions of Central Partnership Authority

### Article 13

The Central Partnership Authority shall have the following powers and functions:

1. To develop and prepare the Standard Documents, rules of procedures, guidelines, issuance of circulars and transparent standards for utilizing the government support for efficient implementation of partnership program as per the provisions of this law.
2. To develop Partnership Project selection criteria, project evaluation indicators, to review the Concept, provide technical recommendations to High Economic Council, prioritize, evaluate and decide on how to take forward the Partnership Project.
3. To review Partnership Project from the strategic, management, economic, financial, commercial, legal, social and environmental impact perspectives and to provide technical recommendations to the High Economic Council, Minister of Finance, Entity, Private Partner, and other involved stakeholders as appropriate.
4. To set up a national registry of the Partnership Projects at all phases.
5. To receive, review, and analyze the requests for government support, and the financial and non-financial impacts of such requests; and advise the relevant authorities on the decision making.
6. To assess the fiscal commitments and tangible and non-contingent liabilities of the Partnership Project in the different phases of the project cycle.
7. To provide technical support to the Entities for development and preparation of Projects after approval of Concept.
8. To review Prefeasibility Study, Feasibility Study and Bidding Documents including the draft Partnership Contract.
9. To assist Entities in the Project procurement phase of Partnership Project.
10. To review and assess any proposed award of Partnership Final Contract that has been submitted by the Entities for further process.
11. To strengthen relations and cooperate with Entities in the Project identification, preparation, development, assessment, procurement, and implementation, and organize public awareness programs and public discussions for the said purposes.
12. To manage the Project Development Fund; including evaluating requests and advising the relevant authorities on how to use the Project Development Fund.
13. To put in place an information technology usage policy relating to Public Private Partnership; to facilitate the possibility of information technology application in regards to Public Private Partnerships including the establishment of an information center (database) for registration,

facilitating procurement and publishing provisions of this law, Regulations, Rules of Procedures, circulars, other relevant legislative documents and partnership projects.

14. To assess the capacity and specialized skills of Entities or PPP Project Unit, and organize and deliver capacity building programs.
15. To consolidate annual reports from the Entities or PPP Project Units and present it to relevant authorities for improvement of affairs.
16. To monitor the procurement process of Partnership Project and implementation of Partnership Contract to ensure that partnership procurement principles are well maintained as per the provisions of this Law.
17. To perform other tasks assigned by the relevant authorities.

### Establishment of PPP Project Unit

#### Article 14

- (1) For better management of obligations mentioned in this law, regulations, and the rules of procedure, the Entity may establish PPP Project Unit in consultation with Central Partnership Authority.
- (2) The PPP Project Unit shall not sign any contracts by itself, or on behalf of a relevant Entity.

### Functions and Powers of Entity

#### Article 15

The Entity shall have the following functions and powers:

1. To identify a suitable Partnership Project and prioritize it in its relevant area of work; receive and assess the Unsolicited Concept.
2. To organize research programs and dialogues in order to know the public opinion in regards to project implementation through a Public Private Partnership.
3. To propose the identified Project for further process to relevant Entity.
4. To develop and prepare the Project; to prepare the draft Bidding Documents and submit them to Central Partnership Authority for assessment, and provision of appropriate facilities for further process.
5. To manage the Tender Process of Projects
6. To establish the bid evaluation committee from representatives of relevant and other Entities when need it in consultation with Central Partnership Authority.
7. To start Tender Process, approve award of contract and conclude partnership contract after the approval of the Central Partnership Authority.
8. To submit an evaluation report approved by the Competent Authority of Entity along with the proposals for further process to Central Partnership Authority.
9. To sign a Public Private Partnership Contract with the preferred bidder, after approval of award of contract.
10. To monitor and evaluate implementation of the Partnership Contract and to present the report to relevant authorities and the Central Partnership Authority.
11. To manage related affairs of the Entity based on the principle of unitary governance in order to provide convenience for the Bidder and the Private Partner.
12. To perform other assigned functions and powers as per the provisions of this law, regulations and the rules of procedure.

## Complains Assessment Committee

### Article 16

- (1) The Complains Assessment Committee shall be established for assessing and addressing complains in the preparation, procurement and contract management phases of Projects.
- (2) The Ministry of Finance shall propose members of the Complains Committee to the President for approval.

## Establishment of Project Company

### Article 17

- (1) The Entity may require the Private Partner to establish a Project Company for the proper execution of the Partnership Contract as per the provision of the laws of Afghanistan.
- (2) The terms and conditions applicable to the set-up of the Project Company shall be set out in the Request for Proposal and the Partnership Contract.

## One - Stop Service

### Article 18

- (1) The Central Partnership Authority and the PPP Project Unit shall be obliged to coordinate and deal with all the necessary approvals for the performance of Partnership Project in the project cycle diligently and expediently.
- (2) Entities shall be obliged to attend urgently to any application referred by the Central Partnership Authority and a PPP Project Unit for approvals necessary for the performance of a Project.

## Chapter Three Principles of Public Private Partnership

### Rule of Law

#### Article 19

- (1) The Public Private Partnership shall be regulated based on this law.
- (2) The projects included in paragraph (2) of Article 4 of this law shall be excluded from provisions of paragraph (1) of this Article.
- (3) The Entity shall ensure that all individuals, employees, contractors, and sub-contractors, other than circumstances set out in paragraph (2) of this Article, operate according to the Afghanistan laws.

### Good Governance

#### Article 20

The Entity shall regulate the Partnership Projects in a way that the criteria and standards of good governance, anti-corruption, assigning responsibilities and authorities to Parties to the Partnership Contract, professional capacities, managerial capacities and economic perspectives, are the benchmark for evaluating the performance.

### Value for Money

#### Article 21

- (1) The Value for Money assessment shall be used as a core Partnership Project selection criterion for the implementation of a Project.

- (2) The Value for Money shall take place on the basis of net profit assessment of project implementation through government or public private partnership considering the quantitative and qualitative benefits of various options, and propose an option which is the most beneficial to the GoIRA for the estimated costs, whether the Project is delivered by the private sector, the public sector, or Public Private Partnership.

## Risks Allocation

### Article 22

Risks shall be allocated to the party which can best manage and control it, so that the Value for Money of the Project is maximized.

## Affordability and Protection of Users

### Article 23

- (1) The Public Private Partnership and financial commitments by an Entity shall be developed under a Partnership Contract in such a way that to be incurred as follows:
  1. Be payable by the budget allocated in the state's budget for partnership project;
  2. Be payable by the budget which may be allocated to the associated Project in future;
  3. Be reasonably met by funds donated to the Partnership Project by donors.
- (2) The Public Private Partnership shall ensure the provision of public interest at the lowest and affordable cost; likewise, the Public Private Partnership deals shall protect user rights especially of the deserving and low-income classes.

## Transparency

### Article 24

- (1) The Entities shall clearly and accurately manage the Tender Process of Projects, and provide necessary instructions and information to the bidders. The information and instructions shall be presented in such a way which prevents the possibility of manipulation and misuse of the process.
- (2) Bidding conditions and evaluation standards shall achieve Value for Money and efficiency and need to be available to parties' involved and interested members of the private sector.
- (3) Interested citizens and bidders may have access to the Tender Process and commercially insensitive information as per the provision of legal framework of the country.

## Competition

### Article 25

In order to ensure the private sector participation and that commercial activities take place as per the principles of commerce or competition, the unnecessary barriers to entry, in addition to observance of competition rules, need to be removed. Public Private Partnership shall be subject to a competitive Tender Process in order to obtain Value for Money and effectiveness.

## Local Development and Technology Transfer

### Article 26

In order to facilitate the promotion of local industries in Afghanistan, the PPP shall be structured in a way to ensure the opportunity for the use of local capacity and transfer of technology to the country.

## Environment and Social Safeguard

### Article 27

- (1) The Entity shall ensure that the project for laws compliance and environmental standards and social safeguards are planned and implemented.
- (2) The Entity shall ensure that the project is designed in accordance with the Afghanistan Historical and Culture Heritage Preservation Law, in order to prevent damage and destruction of historical and archeological areas.

## Stakeholders Consultation Process

### Article 28

- (1) The Entity and Central Partnership Authority shall ensure secure, adequate, and broad stakeholder consultation, understanding, and support before the signing of Partnership Contract.
- (2) The Entity shall endeavor to identify relevant stakeholders and undertake comprehensive consultation and awareness programs on projects subject to implementation.

## Ensuring Public Interest

### Article 29

- (1) To ensure the public interest is met, the High Economic Council may, as required, take exceptional decisions in unpredictable circumstances.
- (2) The Entity and Central Partnership Authority shall provide technical recommendation to High Economic Council, in unpredictable circumstances included in paragraph (1) of this Article.

## Chapter Four

### Public Private Partnership Processes

#### The Project Cycle

##### Article 30

- (1) The Project Cycle shall include the following phases:
  1. Project Identification: This includes project planning, conducting pre-feasibility study and approval of Concept.
  2. Project Preparation: This includes conducting Feasibility Study, drafting Bidding documents and risk identification, allocation and translation into the Partnership Contract structure.
  3. Project Procurement: Which includes preparation of procurement strategy, marketing the project, selecting preferred bidders, manage bidding process till negotiation, award and signing of the Partnership Contract.
  4. Contract Management: which includes establishing contract management structure, monitoring and managing implementation and risks, amendments, closure and performing the commitments.
- (2) Central Partnership Authority shall regulate the conditions, standards and type of Partnership Projects for Feasibility Study considering the Investment Value, sector, type of contract.
- (3) All other related issues concerning to the phases listed in paragraph (1) of this article shall be regulated in regulations and the rules of procedure.

## Project Selection Criteria

### Article 31

- (1) The Central Partnership Authority shall prepare a project selection criteria procedure, which shall be approved by Minister of Finance, and published on its website.
- (2) The minimum criteria stipulated in paragraph(1) of this article shall be as follows:
  1. Ensuring Value for Money,
  2. Ensuring financial affordability and sustainability for the Entity; and
  3. Transfer of potential risks to the party best able to manage that it.

## Project Identification

### Article 32

- (1) The Entity shall identify the Project and submit the relevant Proposal for assessment to the Central Partnership Authority. And the Entity shall commence the next steps of the process observing provisions of this law and rule of procedure.
- (2) The Entity shall identify and prioritize Concept based on its plan using objective criteria such as national infrastructure or facilities and public services, supply and demand, expected industrial, economic and social benefits and readiness for implementation.

## Project Preparation

### Article 33

- (1) The Entity shall prepare a prioritized Project and draft Bidding Documents before the commencement of the Project procurement.
- (2) The Central Partnership Authority shall assist or prepare the Project if deemed necessary after the approval of the Minister of Finance for effective management and economies of scale.
- (3) The Entity shall submit the prepared Project and draft Bidding Documents to the Central Partnership Authority for review and the required approvals prior to the commencement of the Project procurement phase.

## Partnership Project Procurement

### Article 34

- (1) The Entity shall commence the Tender Process for the Project as per the provisions of this law, regulation and the rules of procedure.
- (2) The Entity shall prepare draft Bidding Documents for the Tender Processes and selection of the Private Partner.
- (3) The High Economic Council may authorize an Entity to procure Partnership Project and recommend award of Partnership Contracts for one or more Entities.
- (4) Where an Entity suggests procurement of Partnership Project and award of Partnership Contract pursuant to paragraph (3) of this Article, shall similar to the relevant entity be obliged to regulate the procurement process as per this law, regulations and the rules of procedure.
- (5) The Entity shall conclude the Partnership Contract for the Project with the Preferred Bidder after the required approvals.
- (6) The details of project procurement, securities and other matters related to the project procurement shall be regulated in the regulations and the rules of procedure.

## Unsolicited Proposal

### Article 35

- (1) The Proponent shall submit its Unsolicited Proposal as long as the project is in the public interest and aligned with national development plans/ sector plans to the Entity or/and Central Partnership Authority.
- (2) Unsolicited Proposal shall be registered as Concept of Partnership Project after the approval, the Feasibility Study of the proposed project shall be conducted as per the provisions of this law, regulation and the rules of procedure.
- (3) The procurement of Unsolicited Proposal shall be carried out based on the Partnership Project procurement methods. None of the Unsolicited Proposal shall be processed through direct-procurement, except for Projects that fulfill the conditions of direct-procurement or where it is in the public interest.
- (4) The Proponent shall submit full evidence of qualifications to carry out the Partnership Contract, as an annex to Unsolicited Proposal.
- (5) The further processes of the Unsolicited Proposal shall be regulated in the regulation and the rules of procedure.

## Chapter Five Partnership Contract

### Concluding Partnership Contract

#### Article 36

- (1) The parties shall conclude the Partnership Contract after the finalization, approval to award contract and its notarization by the Competent Authorities.
- (2) In case various contracts exist with different Entities, all contracts shall be deemed as a single contract and shall be concluded after approval of Partnership Contract award and notarization of Competent Authorities.
- (3) The parties to the Partnership Contract, after concluding the contract, shall embark on satisfying the conditions precedent of the Partnership Contract and to complete the Financial Closure of the Project.
- (4) The duration of the Partnership Contract and the rights and obligations of the parties upon its expiry or termination, including any wind-up and transfer measures of Partnership Project shall be stipulated in the Partnership Contract.
- (5) The duration of a Partnership Contract shall be regulated considering the following matters:
  - 1- The life-cycle of the public infrastructure project,
  - 2- Rate of return of partnership project/ and
  - 3- Value-for-Money of Partnership Project.

### Type of Partnership Contracts (Models)

#### Article 37

- (1) A Partnership Project may be implemented through various Public Private Partnership models considering the specifications, duration, asset type, payment source and the unique structure of the Project.
- (2) The types of Partnership Contracts or partnership models, its conditions and instructions shall be regulated in the regulation and the rules of procedure.



## Management of Partnership Contract

### Article 38

- (1) The Entity and other relevant entities shall be obliged to ensure that the Partnership Contract is implemented as per the provision of this law, regulation, rules of procedure and the Partnership Contract.
- (2) The Entity shall, with the assistance of the Central Partnership Authority, ensure that the Private Partner is satisfying its contractual obligations or amendments to the Partnership Contract, provisions of this law, regulation and the rules of procedure.
- (3) Implementation of Partnership Contract by another Entity shall not prevent the relevant Entity from making sure that the Partnership Contract efficiently and effectively serves the public interests.
- (4) The government may delegate the contract management responsibilities of different entities to one Entity to ensure proper contracts management.

## Ownership Rights

### Article 39

- (1) The Entity shall facilitate the utilization of the relevant Project site, and provide all necessary support to the Private Partner for utilization of Partnership Project site in accordance with provisions of relevant legislative documents and the Partnership Contract.
- (2) The Entity shall provide the Private Partner with rights to enter onto transit and carry out activities or install moveable assets on the property of a third Party, and procure necessary cooperation for exercising these rights in accordance with relevant legislative documents and the Partnership Contract.

## Utilizing other Entity's Property

### Article 40

Whenever the Private Partner needs the property (or part of it) of another Entity or person for project implementation, the Entity may either by means of leasing or expropriation as per the provisions of law, provide it to the private partner.

## Amendments

### Article 41

- (1) The Parties shall determine the amendment conditions in the Partnership Contract proportional to the contract duration, taking into account Investment Value and appropriate profit of the Project.
- (2) The Entity may not process the contract amendment, provided that the increase in total payment by Entity or the turnover of the private partner, exceeds 15 % within the duration of the Partnership Contract implementation. In case of several amendments, its value shall be assessed on the basis of net cumulative value.

## Contract Extension

### Article 42

- (1) The Entity may extend the duration of the Partnership Contract for an additional period which shall not exceed more than 25% of initial duration appointed in the Partnership Contract considering the following circumstances:
  - 1- Delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;

- 2- Project suspension brought about by acts of the relevant Entity or other competent public authorities;
  - 3- Increase in costs arising from requirements of the Entity originally not foreseen in the contract and the Private Partner would not be able to otherwise recover said costs without such extension;
  - 4- Any other reasons required to safeguard the public interest.
- (2) The conditions, obligations and duration extension of a Partnership Contract shall be regulated in the Partnership Contract.

## Contract Termination

### Article 43

- (1) The parties may terminate a Partnership Contract provided that the conditions are met for termination of the contract.
- (2) The Conditions for early termination of contract and the obligations of all parties involved in the Partnership Project and related affairs shall be set out in the Partnership Contract.
- (3) The minimum criteria for dealing with the early termination and the rights and obligations of parties, effects and termination costs in the cases of Force Majeure, Termination by the Grantor (Government Default), Voluntary Termination, Termination due to Breach, and Termination by the Private Partner (Private Partner Default), shall be set out in the Partnership Contract.

## Monitoring and Evaluation

### Article 44

- (1) The relevant Entity and Central Partnership Authority shall monitor the ongoing management and performance of the projects.
- (2) The monitoring and evaluation mechanism and specifics shall be regulated in the Partnership Contract as per the provision of the laws of the country and internationally accepted practices.

## Dispute Resolution

### Article 45

Disputes between the parties shall be resolved based on the dispute resolution mechanism set out in the Partnership Contract.

## Chapter Six Financial Securities

## Government Support

### Article 46

- (1) The Ministry of Finance, may provide or assist in the provision of economic and financial supports, guarantees and commitments to a project.
- (2) The Government supports for a Partnership Project shall be clearly indicated in the Feasibility Study, Bidding Documents and included in the Partnership Contract and shall be effective after the Minister of Finance and High Economic Council have approved the economic, financial and Value for Money analysis of the Project have been obtained.

## Revenue Collection Right

### Article 47

- (1) As per the terms of the Partnership Contract, a Private Partner shall be granted the right to receive and collect tariffs, transit fee, lease, rent, cost or fees for the infrastructure, facilities or/and delivered services from the Entity or users.
- (2) In cases where it is determined that revenue collection is not feasible for the Private Partner, the Entity may pay availability payments as per the provision of the laws and Partnership Contract.

## Determining limit of Tariffs, Duties, Lease or Fees

### Article 48

- (1) Limit of tariffs, duties, lease, transit fee, and other types of revenue shall be determined in the procurement phases of Partnership Project in accordance with provisions of legislative documents of Afghanistan and internationally accepted principals.
- (2) Methods and formulas of periodical adjustments to the limit of tariffs, duties, lease, fees, transit fees, and other types of revenue shall be set out in the Partnership Contract.
- (3) High Economic Council may fully or partly exempt or subsidize, based on the principle of supporting those in need, groups of consumers from the above-mentioned payments. In this case, for ensuring profitability of the project to the Private Partner, the government may make available Viability Gap Funds to the Private Partner to cover such exemption or subsidy.
- (4) The vulnerable groups mentioned in paragraph (3) of this article shall be identified during the Feasibility Study stage.

## Project Development Fund

### Article 49

- (1) The Ministry of Finance based on the suggestion of Central Partnership Authority, may create a special fund for project development with a specified opening balance taking into consideration the financial capability of the State.
- (2) The Project Development Fund shall only be used to provide financial support for partnership project identification and preparation, employing advisors and experts, processing transactions, capacity building or such other purposes as may be prescribed in the rules of procedure for the Project Development Fund.
- (3) The Central Partnership Authority shall be responsible for the management of the Project Development Funds in accordance with the procedure of Project Development Funds.
- (4) The Central Partnership Authority may transfer the project development cost to the Private Partner in different forms, the conditions of such transfer shall be set out in the Request for Proposal.
- (5) For efficient management and better arrangement of Project Development Funds, the Central Partnership Authority shall put in place separate rules of procedure.

## Viability Gap Fund

### Article 50

- (1) The Ministry of Finance based on the suggestion of Central Partnership Authority shall, constitute a Viability Gap Fund with a specified opening balance.
- (2) The Ministry of Finance shall, following its the analysis and approval of High Economic Council, pay the Viability Gap Fund to projects requiring development and growth from economic and social

perspectives but their implementation may not be viable in the absence of financial support of the government.

- (3) The Viability Gap Fund shall be administered by the Central Partnership Authority, who shall, for efficient utilization of the funds available therein, enact separate rules of procedure.

## Proponent Rights

### Article 51

- (1) To secure financial resources for a project, the Proponent may enter into agreements with financiers, which may include a requirement to provide to the financiers, guarantee in accordance with provision of this law. Such guarantee may include:
  1. Moveable or immovable assets of the Private Partner, or its shares in the assets of the Project.
  2. Revenues or recoverable loans due to operation of assets of the Project or services delivered.
- (2) Whenever a default arising from the actions of the Private Partner, or any other circumstances, justifies termination of the Partnership Contract, the Entity may select a replacement Private Partner for the implementation of the Partnership Contract.
- (3) The provisions for replacement included in paragraph (2) of this Article shall be specified in a tripartite agreement between the Entity, Private Partner and the lenders.
- (4) The Entity shall ensure there is no interference in the management of PPP Contract, protection of assets and the ownership rights of the Private Partner.

## Financial Audit and Report

### Article 52

- (1) The Entity shall be obliged to include the conditions and requirements for accounting and reporting in a Partnership Contract as per the provisions of country's law and internationally accepted standards.
- (2) The Private Partner shall be required to present financial reports according to the Partnership Contract terms to the Entity, and if required, to the Ministry of Finance.

## Chapter Seven Transparency and Equitability

### Participation in the Bidding without Discrimination

#### Article 53

- (1) The relevant Entity shall arrange the Tender Process in a manner that allows all bidders participate without discrimination and limitation.
- (2) The relevant Entity shall ensure that the criteria for participation in the Tender Process are the same for all bidders, without any discrimination.
- (3) The relevant Entity shall ensure that pre-qualification, Request for Proposal, and other relevant documents are prepared in a manner that does not include expressions which illegally benefit or harm any Bidder.
- (4) The Entity shall provide information regarding the Partnership Project to stakeholders at all phases of Partnership Project.

## Administrative Corruption

### Article 54

- (1) Individuals involved in the Project, Government officials, buyers, bidders, providers, contractors, sub-contractors, representatives, and advisors in affairs of Tender Process for Project and implementation of Partnership Contract shall avoid any activity which leads or may lead to corruption.
- (2) Bidders shall not be allowed to exercise influence directly, indirectly or through third party on government officials or Entity representatives, involved in Tender Process.
- (3) If private partner or entity, violates the provisions of this law in a way that the transparency of tender process is disrupted, the bidding shall be cancelled at any stage and the violators shall be introduced to law enforcement agencies for prosecution.

## Protection of Public Interest and Confidentiality

### Article 55

- (1) The relevant Entity shall ensure that public interests are protected from the Project Identification until the end of contract management phase.
- (2) The Entity and its employees shall maintain the principle of confidentiality in regards to the documents of the Project such as Concept, Prequalification, Bid and other documents that requires confidentiality in accordance with the rules of procedure. The following cases shall be deemed as exception:
  1. The publication of such documents is permitted by the law.
  2. Such documents are requested by audit authorities in accordance with the law.
  3. The documents are needed by advisors and employees in respect of the Project.
  4. Entities are involved in the Tender Process.

## Protection of Proponent Rights

### Article 56

- (1) The Entity shall protect the confidentiality of commercial and monopoly rights of information mentioned in the Unsolicited Proposal.
- (2) The Entity shall not use the information included in the Unsolicited Proposal for itself, or on behalf of the Proponent, without prior written permission of Proponent.
- (3) If the Unsolicited Proposal is rejected, the Entity shall return the original and copies of Unsolicited Proposal to the Proponent.

## Conflict of Interest

### Article 57

- (1) Whenever a Bidder, employee or Competent Authority has conflict of interest during the Tender Process, the individuals shall immediately inform the relevant Entity about the conflict of interest.
- (2) The following individuals shall not participate in the Tender Process:
  1. Ascendants, descendants, spouse, and second-degree relatives of the employee or Competent Authority involved in the Project.
  2. Any person who is involved in the Tender Process of Project, on behalf of the Entity.
  3. Where the bidder has notified the Entity of an actual, potential or perceived conflict of interest and the Bidder has failed to resolve such conflict of interest to the satisfaction of the Entity following such notification.

- (3) The Bidder has recruited individuals mentioned in paragraphs (1 and 2) of this article within 3 months prior to submission of the Bid or these individuals somehow provide technical assistance to the Bidder.

## Debarment

### Article 58

Whenever, the Bidder or Private Partner has been considered perpetrator in the following circumstances, they may be disqualified from Tender Process for the period of not less than 3 years and not more than 7 years:

1. If, it is proven that the Bidder directly or indirectly due to administrative corruption, force, collusion and fraud in competition process was selected as a Preferred Bidder, his/her bid shall be rejected;
2. If, the Bidder directly or indirectly through a third Party put influence on government official or Entity representative in Tender Process;
3. If, private partner or any Entity employees violate the provision of this law, in a way that eliminates the transparency of Tender Process.
4. If, Bidder rejects or abandons the implementation of the Project;
5. If the Private Partner covert Project revenue which is reflected in Partnership Contract or show inaccurate figures;
6. If, the Private Partner miss-uses the Project for illegal activities;
7. If, the Bidder refuses to provide performance guarantee;
8. If, the Private Partner sells the Project to the third Party;
9. Lack of financial viability of the bidder;
10. Non-Compliance of their bid to the Request for Proposal.

## Chapter Eight Final Provisions

### Transitional Provisions

#### Article 59

- (1) The provisions of this law shall not apply on Tender Processes or award of contracts that have taken place before enforcement of Public Private Partnership Law published in official gazette number 1228, provided that the Tender Processes and eligibility notice is advertised beforehand.
- (2) Those Projects that their processes are ongoing under the supervision of PPP law published in Gazette # 1228, its further processes shall be carried out based on the provisions of this law.
- (3) For preexisting Projects that were under the supervision of inter-ministerial committee established by the Cabinet before enforcement of Public Private Partnership Law published in official gazette number 1228, the mentioned committee shall continue to have the authority of contract award, approval, and rejection.
- (4) With exception of provision mentioned in paragraphs (1 and 3) of this Article, those Projects that are under process by the relevant entities, the entities shall proceed with the rest of their Tender Process as per the provisions of this law.

## Delegation of Authority

### Article 60

- (1) The Cabinet of IRoA, the High Economic Council, the Minister of Finance, and relevant entities may delegate their functions, powers and authorities, except implementation of the project. Provided that:
1. It is related to the tasks of the delegate, and the delegate shall fulfill it.
  2. Such delegation shall be in writing.
- (2) The delegator may terminate the delegation of authority in writing.

## Regulations and Procedures

### Article 61

For better implementation of the provisions in this law, the Ministry of Finance may suggest regulations and put in place rules of procedures.

## Preference

### Article 62

In case of conflict between provisions of this law and other laws of the country, the provisions of this law shall prevail.

## Entry into force

### Article 63

This law shall enter into force from the date it's published in the Official Gazette. Upon enforcement of this law, the Public Private Partnership Law published in official gazette number 1228 shall be nullified.