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PART-IV

PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 17TH MARCH, 2010

NO.PAS/Legis-B-1/2010- The Sindh Public-Private Partnership Bill, 2010 having been passed by the Provincial Assembly of Sindh on 18th February, 2010 and assented to by the Governor of Sindh on 10th March, 2010 is hereby published as an Act of the Legislature of Sindh.

THE SINDH PUBLIC-PRIVATE PARTNERSHIP ACT, 2010

SINDH ACT NO: V OF 2010

(First published after having received the assent of the Governor of Sindh in the Gazette of Sindh (Extra-Ordinary) dated 17th March, 2010.)

AN
ACT

To create an enabling environment for private sector participation in infrastructure development projects in the province of Sindh through public-

private partnership projects.

Preamble.- Whereas it is expedient to expand the provision of infrastructure services 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, maintenance and operation of infrastructure projects; to improve efficiency of management, operation and maintenance of infrastructure and development facilities by introduction of modern technologies and management techniques; to incorporate principles of fairness, competition and transparency in public-private partnership projects; and to provide for the matters ancillary there to,

It is hereby enacted as follows:

CHAPTER I PRELIMINARY

1. Short title, extent and commencement. – (1) This Act may be called the Sindh Public-Private Partnership Act, 2010.

(2) It extends to the whole of the Province of Sindh.

(3) It shall come into force at once.

2. Definitions.– In this Act unless there is anything repugnant in the subject or context -

- a) “Act” means the Sindh Public-Private Partnership Act, 2010;
- b) “Agency” means a department, attached department, body corporate, autonomous body of the Government, local government, or any organization or corporation owned or controlled by the Government or local government;
- c) “Bid” means a bid tendered by a person who is eligible under this Act to submit a proposal to undertake a project;
- d) “Board” means the Public-Private Partnership Policy Board established under section 4;

- e) "Change of control" means and includes any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results directly or indirectly in a change in possession of the power to direct or control, or cause the direction or control of the management of the affected company or a significant aspect of its business;
- f) "Concession" means grant of a right of a public asset by an agency through the approval of Government in return for stipulated services or a promise that the right will be used for a specific purpose in the form of Build Operate Transfer (BOT), Design Build Finance Operate (DBFO) and any other variant of PPP.
- g) "Consortium" means a joint venture of persons, jointly and severally liable, controlled by private investors or at least majority thereof controlled by private investors, created for the purpose of forming a private party and entering into a Public-Private Partnership Agreement;
- h) "Construction" includes, reconstruction, rehabilitation, renovation, improvement, expansion, addition, alteration and related activities;
- i) "Conflict of interest" means a situation where any member of the Board receives or gives any financial or other remuneration in connection with the assigned position other than as authorized by the Board; (2) engages in any consulting or other activities that conflict with the interests of the Agency or the Board; or (3) has a direct or indirect financial interest in the outcome of any proposal before the Board;
- j) "Departmental Public-Private Partnership Node" means the cell established within an Agency which is authorized to identify Public-Private Partnership projects and carry out the initial screening and feasibility studies.

- k) "Director General" means the head of the Public-Private Partnership Unit appointed by the Government;
- l) "Government" means the Government of Sindh;
- m) "Infrastructure" includes facilities and services in one of the sectors listed in Schedule I;
- n) "Investment" includes development and pre-operative capital expenditures made or incurred on services, land, construction and equipment;
- o) "Lender" means a financial institution, bank, or establishment providing financial support with or without security;
- p) "Local government" means a local government as defined in the Sindh Local Government Ordinance, 2001 (XXVII of 2001);
- q) "Person" means a company, entity, firm, association, body of individuals, or a sole proprietor other than an Agency;
- r) "Prescribed" means prescribed by rules or regulations made under this Act;
- s) "Private party" means a person who enters into a Public-Private Partnership Agreement with an Agency.
- t) "Project" means a project implemented as a Public-Private Partnership in one of the infrastructure sectors listed in Schedule I;
- u) "Project Development Facility" means a pool of funds including contributions from donor international agencies, which are available to pay for consulting services required for the preparation and execution of Public-Private Partnership Projects;

- v) "Province" means the province of Sindh in Pakistan.
- w) "Public-Private Partnership" means a partnership carried out under a Public-Private Partnership Agreement between the public sector represented by an Agency and a private party for the provision of an infrastructure facility, management functions and / or service with a clear allocation of risks between the two parties;
- x) "Public Private Partnerships Agreements" are arrangements between government and private sector entities for the purpose of providing public infrastructure, community facilities and related services
- y) "Public property" means any movable or immovable assets or rights which are in the public domain pursuant to law or contract ;
- z) "Risk" means any event or circumstance affecting the project which can adversely affect performance and costs of any of the contractual obligations related thereto including design, construction, financing, operation and/or maintenance;
- aa) "Sindh Public Procurement Rules" means the Sindh Public Procurement Rules, as may be framed by the Government from time to time;
- bb) "Viability Gap Fund" means the funds from the Government which are made available to the private party to cover revenue shortfalls through grants, subsidies or guarantees;
- cc) "Unit" means the Public-Private Partnership Unit established under section 6;
- dd) "User fee" means a levy, unitary charge, annuity, shadow toll or fee whether paid by the Government or the public, which may be charged by a private party under a Public-Private Partnership Agreement.

3. Private sector participation. (1) Notwithstanding anything to the contrary in the laws in force, the Government, its Agencies and local governments will be authorized to seek participation from the private sector in appropriate projects subject to the provisions of this Act.

(2) Subject to the provisions of this Act and the procedures outlined in Chapters III and IV hereto, the Government and its Agencies shall be fully empowered to enter into agreements and arrangements with private parties under mutually agreed terms and conditions in one or several project planning and management functions such as designing, financing, building, constructing, owning, operating and maintaining different infrastructure projects.

(3) The Government and its Agencies with the approval of the Government may enter into a Public-Private Partnership Agreement to vest public property in private parties for development and other appropriate purposes. The Government may transfer title in Public Properties to private parties on appropriate terms and conditions as the Government may deem fit.

(4) The Government shall be competent to pay any fees for services performed by private parties under duly authorized Public-Private Partnership Agreements including but not restricted to user fees, subsidies, revenue shortfall guarantees and may appropriate monies for such purposes.

CHAPTER II

ORGANIZATIONAL FRAMEWORK

4. Policy Board. (1) There shall be a Public-Private Partnership Policy Board in the Province to formulate Public-Private Partnership policy based on strategic goals and ensure its implementation in the Province.

(2) The Board shall consist of—

(i) Chief Minister	Chairman
(ii) Advisor/Minister P&D	Vice Chairman
(iii) Chief Secretary	Member
(iv) Minister of concerned department	Co-opted Member
(v) Two(2) Members of Provincial Assembly to be nominated by the Assembly	Member
(vi) Additional Chief Secretary (Dev:), Planning and Development	Member
(vii) Secretary Finance	Member/ Secretary
(viii) Secretary of the concerned Department	Co-opted Member
(ix) Director General Public-Private Partnership Unit	Ex officio Member
(x) Three(3) members from the private sector to be nominated by the Chief Minister	Members
(xi) Sectoral Specialist to be nominated by the Chief Minister	Member

(3) The Board shall frame and approve Public-Private Partnership policies and accord final approval to all the projects selected for implementation under the Public-Private Partnership modality. PPP Policy Board, however, shall not entertain a local government project without the consent of the concerned authority.

(4) The members of the private sector shall be appointed for a period of two years and shall be eligible for reappointment for two terms only. Members of the Business Community and of public sector shall be selected after careful consideration of any actual or potential conflicts of interest. If any conflict of interest arises during the tenure of any member from the Business Community or the public sector, the Chairman of the Board shall order such member removed from the Board and replaced by another member.

