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PART-IV

PROVINCIAL ASSEMBLY OF SINDH NOTIFICATION KARACHI, THE 11TH APRIL, 2018

NO.PAS/LEGIS-B-06/2018-The Sindh Public-Private Partnership (Amendment) Bill, 2018 having been passed by the Provincial Assembly of Sindh on 02nd March, 2018 and assented to by the Governor of Sindh on 30th March, 2018 is hereby published as an Act of the Legislature of Sindh.

THE SINDH PUBLIC-PRIVATE PARTNERSHIP (AMENDMENT) ACT, 2018.

SINDH ACT NO. VIII OF 2018

AN ACT

to amend the Sindh Public-Private Partnership Act, 2010.

WHEREAS it is expedient to amend the Sindh Public-Private Partnership Act, 2010, in the matter hereinafter appearing; **Preamble.**

It is hereby enacted as follows:-

1. (1) This Act may be called the Sindh Public-Private Partnership (Amendment) Act, 2018. **Short title and commencement**
- (2) It shall come into force at once.
2. In the to amend the Sindh Public-Private Partnership Act, 2010, hereinafter referred to as the said Act, in section 2- **Amendment of section 2 of Sindh Act No. V of 2010.**
 - (i) in clause (b), after the words "local government", the words "but does not include Unit" shall be added:

(ii) in clause (f), after the words "variant of PPP", the words "in terms of Public-Private Partnership Agreement" shall be added;

(iii) for clause (g), the following shall be substituted:-

"(g) "Consortium" means a joint venture of private parties or majority controlled by private parties formed for the purpose of entering into a Public-Private Partnership Agreement directly or through a registered company formed therefor;"

(iv) in clause (j), for the words "which is authorized to identify Public-Private Partnership projects and carry out the initial screening and feasibility studies", the words "in accordance with section 7" shall be substituted;

(v) in clause (o), after the word "means", the words "and includes" shall be inserted;

(vi) in clause (q), after the word "association", the word "individual" shall be inserted and after for the word "Agency", the words "and Unit" shall be added;

(vii) after clause (u), the following shall be inserted:-

"(u-i) "Project Support Facility" means a non-profit company called as the Public Private Partnership Support Facility established by Government under section 42 of the Companies Act, 2017 (Act XIX of 2017), for the purposes enumerated in its Memorandum of Association.";

(viii) for clause (x), the following shall be substituted:-

"(x) "Public Private Partnership Agreements" means all agreements in writing between Government including the Agency and private parties for the purpose of Public Private Partnership;"

(ix) in clause (z), after the word "including", the word "feasibility" shall be inserted;

(x) in clause (bb), for the words "to cover revenue shortfalls through grants, subsidies or guarantees", the words "to support the Project including funds for covering revenue shortfalls through grants, subsidies or guarantees or any other mode as approved by Board under section 22" shall be substituted;

Amendment of section 3 of Sindh Act No. V of 2010.

3. in the said Act, in section 3, in sub-section (3), for the words "and its Agencies with the approval of Government", the words "or Agency with the approval of the Board" shall be substituted.

4. In the said Act, in section 4 - **Amendment of section 4 of Sindh Act No. V of 2010.**
- (i) in sub-section (2), after clause (xi), the following shall be added:-
 "(xii) Chief Executive Officer of Project **Member** Support Facility".
- (ii) in sub-section (3), the words "PPP Policy" shall be omitted;
- (iii) in sub-section (4), for the words "business community, civil society organizations, public sector or any other organization, society or company as Government may deem fit", the words "private sector and of public sector" and for the words "Business Community", the words "private sector" shall respectively be substituted;
- (iv) in sub-section (6), after the words "deciding vote", the words "The Board may also pass resolution by circulation to all members and is approved by a majority of members of the Board" shall be added;
- (v) in sub-section (7), after the word "Directors", the words "of the Unit" shall be inserted.
5. In the said Act, in section 5 - **Amendment of section 5 of Sindh Act No. V of 2010.**
- (i) in sub-section (1), for the words "The Boards", the words "Without prejudice to the functions and powers assigned to the Board under any of the provisions of this Act, the Board" shall be substituted;
- (ii) in sub-section (1), in clause (i), the word "guidelines" shall be omitted.
6. In the said Act, in section 6 - **Amendment of section 6 of Sindh Act No. V of 2010.**
- (i) for sub-section (1), the following shall be substituted:-
 "(1) Government shall, by notification, establish the Unit in the Finance Department to promote and facilitate the development of Public-Private Partnerships projects in the Province, assist an Agency in preparing and executing such projects, and act as a catalyst for Public-Private Partnerships. In the performance of its functions, the Unit may consult the Project Support Facility from time to time.";
- (ii) in sub-section (2) -

(a) in clause (IV), for the word "advice", the word "assistance" shall be substituted;

(b) after clause (V), the following shall be inserted:-

"(V-A) submit all project proposals for consideration to Project Support Facility for the purpose of approval of funding if deemed appropriate by the Project Support Facility;"

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

"(IX) prepare semi-annual review, annual consolidated reports and project completion reports on the Public-Private Partnership projects in the Province and submit the same to the Board; and";

(iii) in sub-section (3), after the words "provide technical", the words "support and" shall be inserted;

(iv) in sub-section (4), for the words "take up", the word "assist" shall be substituted.

Amendment of section 7 of Sindh Act No. V of 2010.

7. In the said Act, in section 7 -

(i) in sub-section (2) -

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

"II. procure the services of transaction advisors for project preparation and tendering, unless exceptional reasons exist for not doing so as recorded in writing, and recommend to the Government to enter into agreements for such services;"

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

"IV. conduct a competitive tendering process in accordance with the Sindh Public Procurement Act, 2009 and Rules made thereunder to select the private party";

(c) clause VIII shall be omitted;

(ii) after sub-section (2), the following new sub-section shall be added:-

"(3) The Public-Private Partnership Node may, if deemed appropriate, seek guidance from the Unit for the performance of any of its functions, provided, however, the ultimate responsibility shall vest with the Public-Private Partnership Node."

8. In the said Act, in section 8 -
- Amendment of section 8 of Sindh Act No. V of 2010.**
- (i) in sub-section (1), for the words "Contract awarded to a Public Private Partnership Company", the words "awarded under this Act" shall be substituted;
- (ii) in sub-section (2), for the words "Unit may", the words "Unit shall" shall be substituted and the words "as and when necessary" shall be omitted;
- (iii) in sub-section (3), for the word "Public Private Partnership Company", the word "private party" shall be substituted.
9. In the said Act, in section 9, for the words "an Agency", the words "such Agency" shall be substituted.
- Amendment of section 9 of Sindh Act No. V of 2010.**
10. In the said Act, in section 10 -
- Amendment of section 10 of Sindh Act No. V of 2010.**
- (i) in sub-section (5), for the word "Board", the words "Project Support Facility" shall be substituted;
- (ii) after sub-section (5), the following new sub-sections shall be added:-
- "(6) If the Project Support Facility approves the project for financial support, the Agency shall submit such project proposal through the Unit to the Board for approval.
- (7) If the Project Support Facility refuses to provide financial support to any project, the Project Support Facility shall provide its reasons for such refusal to the Agency. The Agency may submit such project proposal through the Unit to the Board to seek financial support from Viability Gap Fund. The Agency shall also set out the reasons for refusal by Project Support Facility and submit the basis for seeking support from Viability Gap Fund; provided that no such project shall be submitted to the Board under this sub-section after December 31, 2021."
11. In the said Act, in section 11, for sub-section (2), the following shall be substituted:-
- Amendment of section 11 of Sindh Act No. V of 2010.**
- "(2) The Unit shall prioritize the projects and submit, on behalf of Agency, such projects to Project Support Facility and the Board for approval."

Amendment of section 15 of Sindh Act No. V of 2010.

12. In the said Act, in section 15 -

(i) in sub-section (1) -

(a) in clause II, after the word "leasing", the comma and words "licensing or grant of right to use land" shall be inserted;

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

"III. Financial assistance through the Viability Gap Fund for the projects, which have not been approved by the Project Support Facility, shall be offered only for the projects which are economically and socially important but may not be viable financially if constrained by factors including, but not limited to, the affordable user fees, initial capital requirements and revenue needed to generate a fair return on investment for the Public-Private Partnership projects. The amount of such support shall be determined on the basis of bidding; provided that no support from Viability Gap Fund shall be provided to any new projects after December 31, 2021."

Amendment of section 17 of Sindh Act No. V of 2010.

13. In the said Act, in section 17, in sub-section (5), for the word "Concession", the words "Public-Private Partnership" shall be substituted.

Amendment of section 20 of Sindh Act No. V of 2010.

14. In the said Act, for section 20, the following shall be substituted:-

"20. **Unsolicited proposals.** A person may propose a project to an Agency on its own initiative by submitting a project proposal, and will be subject to the procurement procedures as may be prescribed under Sindh Public Procurement Act, 2009 and any rules or regulations framed thereunder from time to time."

Substitution of section 21 of Sindh Act No. V of 2010.

15. In the said Act, for section 21, the following shall be substituted:-

"21. **Financing:-**(1) Financing of a Public-Private Partnership project may be in such amounts and upon such terms and conditions as may be determined by the parties to the Public-Private Partnership Agreement. Without limiting the generality of the foregoing, the private party or the responsible Agency may utilize any financial resources which may be available to them including but not limited to:-

- I. proceeds of debt including finance facilities, equity, or other securities or obligations;
- II. funds raised by grant of leases or concessions;
- III. any designated funds;
- IV. grants from any source; and
- V. voluntary contributions, whether financial or non-financial by a private party including but not limited to charity, philanthropic funds, gifts and legacy.

(2) The private party or the responsible Agency, as the case may be, may secure any financing with a pledge or assignment of, security interest in, or lien on, any or all of its property, including all of its property interests in the facility.

(3) Government or an Agency may enter into an agreement with senior secured lenders of the private party pursuant to which, in the event of default of the private party, they or their duly appointed representative will have the right, but not the obligation, to step in and replace the private party or any of its contractors to cure the default and avoid termination of the Public-Private Partnership Agreement. Such agreement will be negotiated and signed at or before financial close.

(4) Government shall ensure that adequate resources are allocated including budgetary support and contingent liability funding in order to discharge all obligations undertaken by the Government or any Agency in respect of a Project."

16. In the said Act, in section 22 -

- (i) the existing section shall be renumbered as sub-section (1) and the full stop at the end shall be replaced with a colon and following provisos shall be added:-

"Provided that support from Viability Gap Fund shall only be provided to such projects which have not been approved by Project Support Facility for its financial support.

Provided further that no support from Viability Gap Fund shall be provided to any new projects after December 31, 2021.";

- (ii) after sub-section (1), the following new sub-section (2) shall be inserted:

Amendment of section 22 of Sindh Act No. V of 2010.

"(2) The Viability Gap Fund shall cease to exist on or after January 1, 2022, if so notified by the Government, in which case, all assets, liabilities, rights and obligations thereof shall stand transferred to Project Support Facility, without the need for any further action, deed or thing."

Insertion of section 22-A in Sindh Act No. V of 2010.

17. In the said Act, after section 22, the following shall be inserted:-

"22-A. Project Support Facility. (1) The Project Support Facility, as part of its objects, shall support Public-Private Partnership projects and finance the gap between the project revenues constrained by the factors including, but not limited to, affordability considerations, initial capital requirements and revenue needed to generate a fair return on investment for the Public-Private Partnership projects: Provided, however, the financial support for any Public-Private Partnership shall be with the discretion of the Project Support Facility.

(2) With effect from the date notified by Government pursuant to section 22(2), all assets, liabilities, rights and obligations of the Viability Gap Fund shall stand transferred to Project Support Facility, without the need for any further action, deed or thing.

(3) The Project Support Facility shall not provide any financial support to any project other than Public-Private Partnership projects under this Act nor its assets or funds shall be utilized for any purpose except as provided in subsection (1).

(4) Government shall ensure that adequate resources are allocated and disbursed to Project Support Facility to meet the annual obligations undertaken by the Project Support Facility in respect of projects being supported by Project Support Facility.

(5) All of the Project Support Facility support for the project shall be clearly indicated in the bidding documents and included in the Public-Private Partnership Agreement."

18. In the said Act, in section 24, for the words "To the extent required, the Agency may retain outside consultants and auditors to perform periodic reviews of the private party's accounts which may include the same reports submitted by the private party to its lenders", the words "The Agency, if deemed appropriate may retain outside consultants and auditors for the purposes of this section", shall be substituted.

Amendment of section 24 of Sindh Act No. V of 2010.

19. In the said Act, in section 25, for clause III, the following shall be substituted:-

Amendment of section 25 of Sindh Act No. V of 2010.

"III. link entitlement to support from the Viability Gap Fund, support from Project Support Facility, subsidy, annuity and other compensation and benefits with meeting certain performance standards as it may deem fit;"

20. In the said Act, in the Schedule, the following shall be inserted:-

Amendment of Schedule of Sindh Act No. V of 2010.

"Agriculture, horticulture and livestock facilities and services"

**BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF SINDH**

**G.M.UMAR FAROOQ
SECRETARY
PROVINCIAL ASSEMBLY OF SINDH**