

Public-Private Partnership Projects Law (17) for the Year (2020)

Article (1)

This Law shall be called (Public-Private Partnership Law of 2020) and shall come into force after 30 days from the date of its publication in the Official Gazette.

Article (2) The following terms and phrases, wherever they appear in this Law, shall have the meanings designated hereunder unless the context otherwise indicates:

“High Committee” means the committee formed pursuant to the provisions of this Law.

“Unit” means the PPP unit established pursuant to the provisions on this Law.

“Registry” means the national register of public investment projects established at the Ministry of Planning and International Cooperation

“Public Authority” Any ministry, department, official public institution, public institution, commission, council, authority, municipality, or a company wholly owned by the government or which the government shareholding exceeds (50%).

“Contracting Authority” means the Public Authority that that concludes the PPP Contract.

“Project Company” means the company established for the purpose of implementing the PPP Project in accordance with the provisions of this Law.

“PPP Contract” means the agreement concluded by and between the Public Authority and the Project Company for the purpose of implementing the PPP Project in accordance with the provisions of this Law in which the terms, conditions, procedures, and the rights and obligations of the parties are specified.

“PPP Project” means any activity which aims to provide a public service with an economic, social, or service impact, or to enhance the provision of public services, under the supervision and responsibility of the Public Authority and is listed in the Registry

“Project Advisor” A person, whether natural or legal person appointed by the Public Authority in accordance with the provisions of this Law and the regulations issued pursuant thereto. .

“Technical Committee” means the technical committee for Fiscal Commitments formed at the Ministry of Finance in accordance with the provisions of this Law, to evaluate the Fiscal Commitments of PPP Projects.

“Fiscal Commitments” means the long-term fiscal impacts of the PPP Project on the general budget whether directly or indirectly.

“Fiscal Commitments Report” means the report prepared by the Technical Committee in consultation with the Public Authority, which specifies the long-term impacts and Fiscal Commitments which will be borne by the Contracting Authority.

“Preliminary -Feasibility Study” means a preliminary analysis of the economic feasibility of a PPP Project.

“Feasibility Report” means the detailed analysis of a PPP Project’s feasibility from an institutional, legal, technical, environmental, social, economic, financial, public safety aspects and reviewing the sustainability, and verifying the Value for Money, the Affordability of the Contracting Authority of the PPP Project, analyzing the risks of the project and the reduction and allocation of its risks to the party best able to manage them.

“Value for Money” means the additional economic return for the Contracting Authority throughout the project’s cycle phases

Article (3)

Public-private partnership aims to contribute in the following:

A. The construction, rehabilitation, operation, maintenance, management and development of public infrastructure and public utilities.

B. Provide public services and financing for government Projects.

C. Implementing PPP Projects which achieve Value for Money and quality of services.

D. Benefiting from the private sector's expertise and technical and technological knowledge in the construction and management of PPP Projects.

Article (4)

The National Register of Public Investment Projects shall be established in the Ministry of Planning and International Cooperation.

Article (5)

The provisions of this Law shall apply to projects listed as potential PPP Projects in the Registry.

Article (6)

A. The High Committee shall be formed by a decision of the Council of Minister and consist of a number of Ministers provided that the Minister of Finance, Minister of Planning and Industrial Cooperation and the Minister of Industry, Trade and Supply are part thereof, and the decision shall specify the number of members as well as the High Committee's chairman and his/her deputy.

B. The High Committee shall assume the following duties and powers:

1. Providing the general policy for PPP Projects and identifying prioritized activities and sectors.
2. Selecting potential PPP Projects based on the reports prepared by the Ministry of Planning and International Cooperation, the Ministry of Finance and the Unit.
3. Approving the Preliminary Feasibility Studies, Feasibility Reports, terms of reference and the appointment of Project Advisors and the sources of financing for their dues.
4. Recommending for the Council of Ministers' decision on the following:
 - a. Tender awarding.
 - b. The final PPP Contract and the authorization of its execution.
 - c. The Project Company benefitting from the exemptions provided for in the applicable laws.
5. Reviewing the Unit's recommendations regarding the disagreements arising between the Contracting Authorities and the private sector in relation to PPP Projects.
6. Recommending to the Council of Ministers for the preliminary approval of the draft regulations necessary for this Law for their final approval.

7. Issuing the necessary instructions for the implementation of this Law.

C. The High Committee shall meet once every 3 months or whenever the need arises, upon the invitation of its chairman or, if absent, his/her deputy, Its meeting shall be valid if the majority of its members is present and its decisions shall be taken by a majority of the members present, and in the case the votes are equal the side with which the chairman voted shall prevail.

D. The High Committee shall invite the representative of the Public Authority, which is concerned with the PPP Project, to attend its meetings on that project without having any voting rights.

Article (7) . An organizational unit called the PPP Unit shall be formed within the Prime Ministry and directly linked with the Prime Minister.

B. The Unit shall undertake the following duties:

1. Assisting Public Authorities in identifying and prioritizing potential PPP Projects and in preparing a project concept note for the PPP Project.

2. Submitting a report of potential PPP Projects to the High Committee listing it in the Registry after its approval.

3. Providing technical support to Public Authorities in relation to the preparation of Preliminary Feasibility Studies and Fiscal Commitments Reports and reviewing the same, and submitting the Feasibility Report and its recommendations thereon to the Minister of Finance.

4. Reviewing draft PPP Contracts and submitting its recommendation thereon to the High Committee for its approval.

5. Preparing guidelines for PPP Contracts and the implementation of their procedures, and submitting its recommendations thereon to the High Committee for adoption.

6. Preparing standardized requirements for Fiscal Commitments Reports and the periodic reports on PPP Projects.

7. Receiving periodic reports on PPP Projects from Contracting Authorities and providing its recommendations thereon to the High Committee.

8. Providing technical support to the Contracting Authorities during the implementation phases of the PPP Project.

9. Updating the information relating to PPP Projects on the Registry and documenting the studies, documents, reports and contracts of PPP Projects.

10. Publishing a report on each PPP Project after its financial close on the Unit's website and in the Official Gazette, provided that such report shall include the following:

a. The name of the PPP Project and the procedures followed in it including the tendering process.

b. The name and address of the entity with whom PPP Project's financial close has been achieved or the beneficiaries or local agents of such entity (if any).

c. A summary of the PPP Project's scope, including its subject, term and pricing.

11. Preparing draft regulations necessary for this Law and instructions which regulate its function and submitting the same with the High Committee.

12. Undertaking any other duties in relation PPP Projects as assigned to it by the High Committee or the Prime Minister.

Article (8)

A. A separate account shall be established for the Unit's expenditures in the preparation of PPP Projects, and the following shall be deposited in it; the amounts the Government may allocate for PPP Projects, gifts, grants, aid, donations and any other resources received provided that they are approved by the Council of Ministers if they are from a non-Jordanian source.

B. The amounts in the account shall be spent for the purposes of funding studies and reports in relation to PPP Projects, contracting with advisors, seeking assistance

from experts, tendering and covering the expenses which may arise after the execution of PPP Contracts.

C. All matters relating to the account, including the formation of a supervisory committee, shall be determined by a regulation issued for this purpose.

Article (9)

A. The Prime Minister shall appoint the head of the Unit to undertake all duties necessary for managing and supervising the Unit including the following:

1. Following up on the implementation of the decisions made by the High Committee and the Council of Ministers with regards to PPP Projects, in cooperation and coordination with the Public Authorities and the Contracting Authorities.

2. Preparing the annual report on the PPP Unit's activities, the financial statements of the account and other reports and submitting the same to the High Committee for approval.

3. Submitting the studies and recommendations made by the Unit to the High Committee.

4. Managing the account and disbursements made from it under the supervision of the committee mentioned under paragraph (c) of Article 7 of this Law.

5. Undertaking any other duties relating to PPP Projects as assigned by the Prime Minister.

B. The head of the Unit may delegate any of his/her powers specified in this Law to any employee of the Unit provided that such delegation is made in writing, specific and approved of by the Prime Minister.

Article (10)

A. A technical committee called the (Technical Committee for Fiscal Commitments) shall be established at the Ministry of Finance to submit its recommendations to the Minister of Finance in respect of and undertake the following duties and powers:

1. Evaluating, following-up with and monitoring Fiscal Commitments for each PPP Project and any updates to it and monitoring any governmental support provided and providing the same to the Unit for listing in the Registry.

2. Monitoring the impact of any contingent liabilities on public finances and public debt, updating their financial effect on Fiscal Commitments and proposing suggestions to avoid their potentially negative effects.

3. Ensuring the inclusion of financial resources necessary for developing and implementing of PPP Projects when preparing the general budget including the medium-term expenditure framework.

4. Following-up on the allocations in the general budget for installments which are directly due, the Fiscal Commitments realized during the implementation of the PPP Project and the governmental support needed for such projects.

5. Ensuring that any installment to be made by the Contracting Authority is consistent with the allocated resources to such Contracting Authority in the general budget.

6. Reviewing any proposed Government support for a PPP Project whether direct or indirect and aligning such support with the government's ability to sustain it.

7. Conducting a comparison between the PPP Contracts that have been agreed and the that amendments made to them after execution to ensure that there has been no material change to the allocation of risk, Fiscal Commitments or the proposed governmental support.

B. The Minister of Finance shall submit his/her recommendations in respect of the Technical Committee's recommendation to the High Committee.

C. The Minister of Finance shall, at the outset of each year, specify the total cap on Fiscal Commitments which the Ministry of Finance can allocate to cover Fiscal Commitments resulting from PPP Projects.

D. All matters relating to the Technical Committee including its members, meetings and all other matters relating to it shall be regulated by virtue of instructions issued by the Minister of Finance for this purpose.

Article (11)

The entity who is awarded a PPP Project in accordance with the provisions of this Law shall, prior to the execution of a PPP Contract, establish a company for the implementation of PPP Project in accordance with the applicable laws, and which company shall be called the Project Company.

Article (12)

Any entity from the private sector shall have the right to submit a PPP Project concept through a direct proposal to any Public Authority, and in the event such project qualifies as a PPP Project, it shall be listed in the Registry and proceeded with in accordance with the PPP Projects' phases mentioned under paragraph (A) of Article 20 of this Law. And subject to the proposed project not being listed in the Registry at any previous time.

Article (13)

All PPP Contracts shall have a limited duration suited to the Feasibility Report and the requirements of the PPP Project, provided that such duration does not exceed (35) years.

Article (14)

The Project Company shall have the right to collect what i the end-user pays in exchange for public services or from the Contracting Authority in accordance with the provisions of the PPP Contract.

Article (15)

All PPP Contracts shall be governed by Jordanian Law, and the resolution of disputes concerning PPP Contracts may be agreed to be through alternative dispute resolution in accordance with the parties' agreement in the PPP Contract.

Article (16)

A. The Council of Ministers may, upon the recommendation of the High Committee, approve any amendment or change to a PPP Contract in the event such amendments would materially affect the allocation of risks under the PPP Contract or the assumptions set out in the Feasibility Report for the PPP Project.

B. In the event that the proposed amendment to a PPP Contract is material and would result in a (20%) or more increase in the total cost of the PPP Project, such PPP Contract shall be terminated and retendered or any additional works shall be tendered separately.

Article (17)

A. It is prohibited for a chairman or a member of the High Committee, Technical Committee or any employee of the Unit, the Public Authority, the Contracting Authority or the committees formed for the purpose of implementing PPP Projects, including employees, consultants and experts, to participate, whether directly or indirectly, in any PPP Project, and this prohibition shall apply to their spouses, immediate descendants and relatives up to the second degree.

B. Any person mentioned under paragraph (A) of this Article shall notify the chairman of the High Committee, prior to the commencement of the tendering process for a PPP Project, of any direct or indirect benefit may be gained by such person or his/her spouse, immediate descendants or relatives up to the first degree in exchange for services provided to any entity related whether directly or indirectly to the PPP Project.

C. The chairman of High Committee shall have the right to discharge any person mentioned under paragraph (A) of this Article from working on the relevant PPP Project in the event there are reasons or circumstances which may affect such person's impartialness.

D. The prohibition mentioned in paragraph (A) of this Article shall remain in effect for a period of one year from the date of expiry/termination of membership or employment.

Article (18)

It is prohibited for any person who has obtained any information relating to a PPP Project and designated as confidential to disclose such information in any way except for the purposes specified in this Law.

Article (19)

This Law shall not apply in respect of PPP Projects for which a tender process had commenced prior to the entry into force of this Law. As for PPP Projects which have been prepared for but have not yet entered the tendering process, the Unit shall review the procedures followed for such PPP Projects and shall submit its recommendation to the High Committee for its decision as it sees fit.

Article (20)

The Council of Ministers shall issue the necessary regulations for the implementation of this Law including the following:

A. The PPP Project lifecycle and the obligations of the Public Authority and the Contracting during it.

B. The procedures of the tendering process in a way that guarantees the principles of fairness and transparency, the clarity and comprehensiveness of tender documents and that all information relating to the tender is made public save for information of a security nature.

C. The phases and procedures for PPP Projects with a total capital expenditure of less than a certain amount determined by the Council of Ministers.

D. The essential terms and conditions which must be included in the PPP Contract.

E. The mechanisms and conditions of implementing PPP Projects which are proposed through direct proposals and the manner by which the direct proposer shall participate in the tendering process.

Article (21)

The Public-Private Partnership Law (31) [2014] shall be repealed subject that the regulation issued thereunder shall remain in effect until repealed, amended or replaced in accordance with the provisions of this Law.

Article (22)

No provision of any other legislation that contradicts with the provisions of this law shall be enforced

Article (23)

The Prime Minister and the ministers shall enforce the provisions of this Law.