



شعبة الترجمة الرسمية
Official Translation Department

Private Sector Participation Law

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Translation of Saudi Laws



NOTE:

The translation of Saudi laws takes the following into consideration:

- Words used in the singular form include the plural and vice versa.
- Words used in the masculine form include the feminine.
- Words used in the present tense include the present as well as the future.
- The word “person” or “persons” and their related pronouns (he, his, him, they, their, them) refer to a natural and legal person.



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Private Sector Participation Law

Article 1

In this Law, the following terms and phrases shall have the meanings assigned thereto, unless the context requires otherwise:

Law: Private Sector Participation Law.

CEDA: Council of Economic and Development Affairs.

Ministry: Ministry of Finance.

NCP: National Center for Privatization.

Statute: Statute of the National Center for Privatization.

Implementing Regulations: Implementing regulations of the Law.

Private Party: A private legal person that is party to a privatization contract with the government.

Infrastructure: Public utilities or assets that directly or indirectly provide public services.

Asset: Any asset, whether permanent or temporary, movable or immovable, tangible or intangible, including rights.

Public Service: Any service directly or indirectly provided by a government agency, whether essential services, for the purpose of providing goods or services to the public, or non-essential services, for the purpose of supporting governmental activities and functions.

Public-Private Partnership (PPP): An arrangement relating to infrastructure or public service whereby a contract between the government and a private party is concluded; it shall fulfill the following contractual stipulations:

1. The contract is for a term of 5 years or more.
2. The private party carries out two or more of the following arrangements: design, build, manage, operate, maintain, or finance assets, whether such assets are owned by the government, the private party, or both.
3. The risks are qualitatively and quantitatively allocated between the government and the private party.
4. The financial consideration owed by or to the private party is based on the performance of its obligations under the contract.

Divestment: An infrastructure or public service contractual arrangement whereby the ownership of an asset is transferred from a government agency to a private party.

Private Sector Participation (PSP): PPP or divestment.

Contract: PSP contract.

Ancillary Contract: A contract relating to a PSP contract which is necessary for the execution of a PSP project and which is concluded on behalf of the government with a private party or a third party.



Prequalification: The verification process carried out by the executive agency prior to submission of bids to ensure that bidders are qualified and capable of executing the works associated with the PSP project.

Unsolicited Proposal: A proposal relating to a privatization project which is not submitted in response to a Request for Proposal (RFP).

Article 2

1. The governing rules shall, as per the type of the PSP project, determine the agency, or agencies, having the authority to issue the necessary approvals for the PSP project, including approvals for tendering and awarding projects; concluding contracts; or exercising other powers or performing other duties in accordance with this Law, and the rules for exercising such powers and performing such duties. Said agency shall hereinafter be referred to as the “relevant agency”.
2. The governing rules shall, as per the type of the PSP project, determine the agencies entrusted with reviewing and preparing PSP projects and having the powers relating to tendering and awarding projects and concluding contracts, as well as other powers or duties in accordance with this Law, and the rules for exercising such powers and performing such duties. Said agency shall hereinafter be referred to as the “executive agency”.
3. The governing rules shall determine the relevant agencies in charge of executing the PSP project, as per their powers and duties and the type of the PSP project.
4. The Council of Ministers shall issue the governing rules referred to in paragraphs (1), (2), and (3) of this Article.

Article 3

PSP projects shall aim to:

1. achieve the strategic objectives of government agencies, rationalize public spending, increase State revenues, and increase the efficiency of the national economy in the face of challenges and regional and international competition;
2. improve the coverage and quality of services, ensure they are readily available at reasonable costs, increase the efficiency of assets relating to PSP projects and improve their management, and organize or restructure the sectors, bodies, assets, and public services set for privatization;
3. encourage local and foreign private sectors to invest and actively participate in the national economy through projects that achieve the development objectives of the government and the economic viability of the public and private sectors, and increase the private sector’s contribution to the GDP; and
4. expand citizens’ ownership of public assets, increase job opportunities, and achieve optimal utilization of the national workforce.

Article 4

This Law shall apply to contracts concluded by ministries and other government



agencies as well as companies which the government establishes or directly or indirectly owns more than 50% of their capital for the purpose of executing a PSP project. This Law shall not apply to contracts concluded prior to its entry into force; however, it shall apply to such contracts if they are amended, extended, or renewed after its entry into force. PSP projects which are approved prior to this Law's entry into force and the contracts of which have not been concluded shall be subject to the provisions applicable at the time of approval, unless the NCP's board of directors decides otherwise.

Article 5

The Implementing Regulations shall determine the applicable methods for PPP or divestment, and the terms and conditions required for each method.

Article 6

1. The executive agency shall, as specified by the Implementing Regulations, conduct the necessary analysis and review prior to seeking the Ministry's or the relevant agency's approval of the tasks assigned thereto under this Law.
2. The relevant agency shall approve PSP projects after the executive agency obtains the Ministry's approval, in accordance with this Law.

Article 7

1. If the relevant agency approves an infrastructure or public service project for a government agency, and the estimated value of said project exceeds the limit set by the Council of Ministers, or if the term of the original, extended, or renewed contract is five years or more, the Ministry shall, prior to project tendering, or concluding, renewing, or extending the contract, as the case may be, refer the project-related matter to the NCP to conduct a preliminary study on the viability of privatizing the project and submit the results to the Ministry within 60 business days from the date of referral to take necessary action.
2. A mechanism for the implementation of paragraph (1) of this Article shall be set by the Ministry in coordination with the NCP and shall be complied with by relevant agencies.

Article 8

The Ministry shall assume the following powers and duties:

1. Ensuring the availability of adequate funds for the PSP project prior to tendering.
2. Securing necessary allocations, as determined by the Ministry, to cover the financial obligations incurred by any government agency under the contract or any ancillary contract on their due dates, and making necessary arrangements therefor.
3. Approving any additional financial obligations to be incurred by the State Treasury, resulting from the amendment, suspension, extension, renewal, or termination of a PPP contract, prior to submitting any of such requests by the executive agency to the relevant agency or taking any action in this



regard.

4. Approving and providing the financial and credit support necessary for the PSP project stipulated in the contract or the ancillary contract, and making any arrangement or concluding any agreement necessary for such support.

Article 9

CEDA may, upon the recommendation of the NCP's Board of Directors, review any infrastructure or public service project to determine whether it constitutes a PPP or divestment project subject to the provisions of this Law, irrespective of whether or not the definition of PPP or divestment applies thereto.

Article 10

Financial and credit support may, pursuant to a resolution by the Council of Ministers or its designee and upon the Ministry's recommendation, be provided to a PSP project if such support is not stipulated in the contract or its ancillary contracts, subject to applicable laws.

Article 11

Without prejudice to contract provisions relating to risk allocation among parties to the contract, if the license, authorization, or permit required for any PSP project is not issued or the issuance of which is delayed by the government agency responsible therefor, CEDA shall, based on a report prepared by the executive agency in coordination with the government agency, instruct said agency to take the appropriate action. Said report shall include a description of the case, reasons for the failure or delay, incurred costs, and recommendations.

Article 12

1. A PSP project shall be offered through public tender; it may also be offered through limited tender, direct award, or through other awarding methods as per the nature of the project.
2. The NCP's Board shall specify in the Implementing Regulations the provisions, rules, and procedures regulating each awarding method, the timeframes for each method, as well as the provisions relating to non-compliance.

Article 13

The executive agency may, at any time prior to signing the contract and upon approval of the relevant agency, cancel the tendering of the PSP project if it is in the public's interest. In such case, bidders shall not be entitled to compensation, unless the NCP's Board decides otherwise upon a recommendation by the executive agency.

Article 14

1. The executive agency may require the highest bidder to establish a company for the PSP project; such company shall be the private party to the contract



- or the ancillary contract, provided that such requirement is included in the tender documents. The executive agency and the highest bidder may agree on the company's capital, shareholders, and relevant provisions.
2. Without prejudice to the provisions of Article 16(2) of this Law, the relevant agency may allow any government agency or public entity to own stocks or shares in the PSP project company.
 3. Without prejudice to applicable laws, any transfer of ownership of a private party's stocks or shares in a PSP project company, or a pledge thereof, shall be deemed void, unless it is consistent with the contract or the ancillary contract or approved by the relevant agency.
 4. Without prejudice to the Companies Law and this Law, the Implementing Regulations shall determine the provisions governing the PSP project company.

Article 15

If the losses of the PSP project company amount to the limit set by the law at any time during the term of the contract, the company shall not be dissolved, required to increase or decrease its capital, nor be deemed terminated by law. The executive agency shall, upon coordination with the PSP project company, submit its recommendations to CEDA to decide whether to grant the company a specified period to rectify its situation. If the company fails to rectify its situation within the specified period, it shall be subject to applicable laws.

Article 16

1. Contracts subject to this Law shall be concluded in the name of the government. The executive agency shall represent the government in all matters related to the contract and any ancillary contract, unless the contract approval decision states otherwise.
2. Contracts subject to this Law shall only be concluded with a private party. A public entity having a legal personality may not conclude a contract with the government as a private party.

Article 17

A government agency may not conclude a PSP contract without the approval of the relevant agency. Any contract made in violation of this stipulation shall be deemed null and void, unless the relevant agency decides to approve it.

Article 18

1. Upon obtaining the executive agency's written approval, a private party may:
 - a) conclude financing contracts for works and services subject of the PSP project with a bank or financing entity, provided the private party be solely liable for all obligations and disputes arising from said contracts, unless otherwise agreed upon by the executive agency and the private party following the Ministry's approval; and
 - b) pledge an asset it owns in the PSP project in order to obtain financing for the works and services subject of the project. In any case, the private party may not sell or pledge any state-owned asset.



2. The executive agency or the Ministry may, upon the approval of the relevant agency, conclude agreements directly with any other entity related to the PSP project or provide undertakings defining the rights and obligations of such entity.

Article 19

The executive agency shall provide the private party upon its request and upon the approval of the relevant agency with a certificate stating that:

1. the relevant agency has approved the contract or the ancillary contract; and
2. the contract or the ancillary contract and any related documents or deeds, whether signed or to be signed, are subject to this Law.

Article 20

1. The term of the PPP contract shall be agreed upon by the parties, provided that the term of the contract, including any extension or renewal thereof, does not exceed 30 years from the date of signing the contract or the agreed-upon effective date. The relevant agency may, upon a recommendation by the executive agency, approve that:
 - a) the original term of the PPP contract exceeds 30 years; and
 - b) the original term of the PPP contract and any extension or renewal thereof exceeds 30 years.
2. If a private party in an expired PPP contract is awarded the same project in a new tender, the new awarding shall not be deemed an extension or renewal of the term of the expired contract for the purpose of applying paragraph (1) of this Article.

Article 21

1. The executive agency may, in line with the contract terms and conditions and as dictated by public interest, carry out the following upon obtaining the approval of the relevant agency:
 - a) Amend the terms and conditions of the PPP contract in writing.
 - b) Suspend the execution of the PPP project.
2. The Implementing Regulations shall specify the effects of the amendment or suspension referred to in paragraph (1)(a) and (b) of this Article, as well as specify the compensation to which the private party is entitled, unless the contract includes special provisions to this effect.

Article 22

The relevant agency may approve the extension or renewal of the PPP contract in any of the following cases:

1. The PSP project is interrupted or its completion is delayed due to circumstances beyond the parties' control.
2. The PSP project is suspended.
3. The extension or renewal enables the private party to recover costs arising from additional requirements that he is not expected to recover during the contract's original term.
4. Public interest dictates amendment of the specifications of the contract or



the ancillary contract upon obtaining necessary approvals, subject to this Law.

Article 23

1. The private party shall afford equal treatment to all beneficiaries of goods and services it provides in accordance with the terms and conditions of the contract or the ancillary contract, unless the contract or the ancillary contract establishes special rights for specific categories of such beneficiaries or the contract stipulates otherwise.
2. The private party may not deny the provision of works and services to beneficiaries, or tie the provision of certain works and services to the utilization of other services or impose other restrictive practices, unless the contract or ancillary contract stipulates otherwise.

Article 24

The private party may, upon the approval of the relevant agency, be entitled to:

1. collecting fees from beneficiaries for provided works and services, pursuant to the PPP contract; the contract shall specify the relevant rules;
2. collecting public revenues, including fees and taxes, related to the PPP contract for the benefit of the State Treasury. The PPP contract shall specify the relevant rules and the mechanism for transferring such revenues to the State Treasury; and
3. collecting public revenues or part thereof for its benefit, in accordance with the contract;

In all cases, the private party may not impose additional fees on beneficiaries for works and services it provides under the PPP contract, unless the contract stipulates otherwise.

Article 25

1. The private party may not wholly or partially assign the PPP contract or the ancillary contract to a third party without the written approval of the executive agency.
2. The private party may, without prejudice to its obligations under this Law and the PPP contract, subcontract any work related to the PPP project. The private party shall remain directly liable before the executive agency, unless the contract stipulates otherwise.

Article 26

The private party shall provide all information, documents, and reports which enable the executive agency to monitor the execution of the contract, or the ancillary contract, and enable the authorized representatives of the executive agency to carry out their monitoring duties under the contract. The contract, or the ancillary contract, shall specify the relevant terms and conditions.

Article 27

1. The contract or the ancillary contract may provide for the imposition of a



delay penalty, a penalty clause, or indemnification for breach of a contractual obligation by either party. The contract or the ancillary contract shall state the method of determining the same, whether as a lump sum, a percentage of the contract value, or any other method stipulated in the contract or the ancillary contract.

2. Without prejudice to the rights of the executive agency under the PPP contract, the executive agency may, if stipulated in the contract, undertake, directly or through another party designated thereby, the execution of the PPP contract in order to ensure the continuous provision of goods and services in case the private party breaches its contractual obligations or fails to meet the agreed upon level of quality, provided that the private party is notified in writing of such breach and of his failure to rectify the situation within the period specified in the notice. The PPP contract shall determine the cases and rules related to the execution of the contract directly by the executive agency or through a third party and the effects thereof.

Article 28

1. Subject to the relevant contractual provisions, the executive agency may, upon obtaining the approval of the relevant agency, unilaterally terminate the PPP contract or the ancillary contract, or both, prior to its expiration in any of the following cases:
 - a) The private party's breach of his substantial contractual obligations or failure to meet the agreed upon quality level following a written notice of such breach and his failure to rectify the situation within the period specified in the notice. The contract shall specify the private party's substantial obligations.
 - b) Bankruptcy or liquidation of the private party.
 - c) Dictates of public interest.
 - d) Any other case specified in the contract.
2. The PPP contract or the ancillary contract shall determine the effects of a unilateral termination prior to the expiration of its term in the cases referred to in paragraph (1) of this Article. The contract may include the scope of compensation to which the private party is entitled as a result of terminating the contract or the method for determining such compensation.
3. Subject to the relevant contract provisions, the contract may define the scope of compensation for any lost revenues to which the private party is entitled if the PPP contract is terminated by the executive agency without a breach by the private party.

Article 29

If the execution of the PSP project requires transferring to the private party existing contracts for services, construction, or supply of goods between a government agency and other contracting parties, or amendment or termination thereof, the executive agency may:

1. transfer such contracts, including any associated rights and obligations, to the private party, subject to his approval, without the need to conclude additional agreements or obtain the consent of the party contracting with the government agency; or



2. divide, amend, or terminate such contracts without the need to conclude any additional agreements or obtain the consent of the party contracting with the government agency.

In all cases, the action taken by the executive agency shall not affect the rights of the party contracting with the government agency to seek compensation for any damage resulting therefrom.

Article 30

1. The private party's exercise of a right granted thereto or compliance with any obligation under the contract shall not be deemed a monopolistic practice even if it affects or restricts competition, unless such exercise or compliance can be achieved by non-monopolistic or non-restrictive means, subject to the approval of the relevant agency and compliance with the rules set thereby.
2. The NCP's Board of Directors may set anti-monopoly policies relating to PSP projects in coordination with the General Authority for Competition and other relevant agencies.

Article 31

1. The NCP shall establish a register for PSP projects that includes a complete, up to date, and accurate database.
2. The executive agency and the private party shall provide the NCP with documents, information, and data relating to PSP projects, update the same, and disclose any information the NCP requests within the time and in the manner it specifies.
3. The register of PSP projects shall be made available to government agencies, public agencies and institutions, private parties, and the public. The NCP's Board of Directors shall specify the data of the register that may not be made available to the public or published.
4. Subject to applicable laws, any documents, information, or data relating to PSP projects may not be published or disclosed prior to the NCP's publication of the same through the register, except with the prior approval of the executive agency and upon coordination with the NCP.

Article 32

1. The NCP's Board of Directors shall set the rules governing tenders and procurements for all contracts necessary for the execution of PSP operations.
2. The NCP's Board of Directors shall, in coordination with the State Properties General Authority, set the rules governing the State's leasing and vacating of real properties for PSP projects.
3. Absent a specific provision in the provisions issued by the NCP's Board of Directors in accordance with paragraphs (1) and (2) of this Article, the provisions governing government tenders and procurements and State leasing and vacating of real properties shall apply to PSP projects subject to the provisions of this Law, unless the NCP's Board of Directors decides otherwise.



Article 33

A PSP project may, with the approval of the Ministry of Human Resources and Social Development, be excluded from the application of certain provisions regulating personnel affairs, upon the request of the executive agency and in coordination with the NCP. Such exclusion may include provisions relating to the percentage of labor localization, termination of the employment contract by the employer, and the term of the employment contract, provided that the rights of workers transferred under the PSP project are protected. The Ministry of Human Resources and Social Development shall, in coordination with the NCP, prepare substitute provisions.

Article 34

1. The contract and any ancillary contract shall be subject to the provisions of this Law and other laws applicable in the Kingdom that are not inconsistent therewith, including provisions relating to settlement of disputes.
2. Without prejudice to the statutory provisions governing non-monetary disputes relating to a real property located in the Kingdom, the contract may, upon the approval of the relevant agency, include:
 - a) a condition stipulating that any dispute arising therefrom or from any other ancillary contract be settled through arbitration or the conclusion of an arbitration agreement to settle an existing dispute arising from the contract or any ancillary contract; and
 - b) the law governing the subject matter of the dispute.
3. Disputes arising between the private party and third parties regarding PSP projects shall not be subject to this Law.

Article 35

Tender documents and contracts or ancillary contracts shall be drafted in the Arabic language. However, they may, upon the approval of the relevant agency, be drafted in any other language.

Article 36

Without prejudice to applicable laws or to the Kingdom's commitments under international or regional conventions to which the Kingdom is party, a foreign investor shall be subject to the same standards, rules, and procedures applied to local investors with respect to tendering and awarding of PSP projects. A foreign investor shall be entitled to the same treatment afforded to local investors with respect to any procedure, condition, right, or obligation arising from this Law, the contract, or the ancillary contract.

Article 37

A foreign private party may, for the purpose of executing a PSP project and upon the approval of the relevant agency, lease a real property within the limits of the cities of Mecca and Medina for a period equal to the term of the contract; in such case, said party shall:



1. use the real property only for executing the PSP project; and
2. comply with the terms specified in the contract.

If the private party violates paragraph (1) or (2) of this Article, the executive agency shall notify said party of the violation to rectify it within a period specified by the executive agency. If the violation is not rectified within said period, the lease contract shall terminate.

Article 38

1. A real property may, if required for the execution of a PSP project, be expropriated or temporarily taken in accordance with the provisions regulating expropriation and temporary taking of real property for public use.
2. The private party may, subject to the agreement of the parties to the contract, bear all or part of the compensation resulting from the expropriation or the temporary taking of a real property for executing the PSP project.

Article 39

1. A committee, or more, shall be formed pursuant to a decision by the NCP's Board of Directors and shall be composed of at least five members, two of whom shall be qualified legal experts. The membership term shall be for a period of three renewable years. The formation decision shall name the chairman of the committee and his deputy and shall determine the remuneration of its members and secretary.
2. The committee shall review objections to procedures of tendering and awarding PSP projects, and shall issue its decision to reject invalid objections or to accept valid objections and order compensations therefor.
3. The objection shall be filed with the committee within ten business days from the date of the disputed procedure. Said objection shall include an irrevocable and unconditional bank guarantee for the benefit of the NCP, issued by a licensed bank in the Kingdom. In all cases, the value of the guarantee shall not be less than one million riyals and not more than five million riyals.
4. Filing and reviewing an objection shall not result in the suspension of the tendering and awarding procedures of the PSP project. The executive agency shall notify the relevant agency of such objection prior to awarding the project, and the relevant agency may take appropriate action.
5. If the committee decides to accept a valid objection prior to signing the contract, the executive agency shall, if feasible, rectify any procedures in violation of this Law; otherwise, the tendering procedures of the PSP project shall be canceled. If the objection is accepted after signing the contract, the acceptance decision shall determine the compensation due to the objector and shall return the bank guarantee.
6. If the committee rejects an invalid objection, the rejection decision shall provide for the forfeiture of the bank guarantee in whole or in part as determined by the committee. The amount of the bank guarantee shall be deposited in the State Treasury.
7. Committee decisions shall be binding on the executive agency and shall be subject to appeal before the competent court in accordance with applicable legal procedures. The appeal shall, upon signing the contract, be limited to



compensation and return of the bank guarantee.

8. The NCP's Board of Directors shall issue the committee's work procedures and governance rules, including procedures for filing appeals with the committee, filing and eligibility requirements, manner of determining the bank guarantee, eligibility for compensation, and method for determining and paying compensation, and the maximum limit thereof.

Article 40

1. The Implementing Regulations shall determine the provisions, rules, and criteria necessary for the implementation of this Law, including the following:
 - a) Provisions relating to the PSP project document, and the manner of communication with the private sector.
 - b) Bases for the prioritization of PSP projects.
 - c) Criteria for the selection of work teams and consultants.
 - d) Rules for managing and monitoring the execution of contracts.
 - e) Provisions relating to the impact of exigent circumstances on tendering procedures, PSP project execution, and the PSP contract.
 - f) Criteria for classifying a project as a PSP project subject to this Law, including setting a minimum amount for the PSP project.
2. For the application of paragraph (1)(e) of this Article, an exigent circumstance shall refer to a situation where an unanticipated threat to public safety, security, or health is imminent; life or property is jeopardized; or public services are interrupted, and such circumstance cannot be addressed through tendering procedures.

Article 41

1. The Implementing Regulations shall determine the provisions governing unsolicited proposals, including:
 - a) the infrastructure and public service sectors that may be subject to unsolicited proposals;
 - b) the requirements to be satisfied in the proposal;
 - c) the rules and procedures relating to submitting, receiving, reviewing, and deciding on unsolicited proposals;
 - d) the cases where fees may be charged for reviewing unsolicited proposals;
 - e) the rights of the bidder of an unsolicited proposal, which may include any due compensations; and
 - f) the rules relating to intellectual property rights, trade secrets, and other rights relating to unsolicited proposals.
2. Unsolicited proposals shall be submitted to the relevant executive agency for preliminary review. If said agency determines that the project subject of the unsolicited proposal is acceptable in principle, it shall proceed with the review, preparation, tendering, and awarding of the project, in accordance with the provisions of this Law.

Article 42

Any person who, by virtue of his work or position, becomes privy to confidential information or possesses classified documents relating to the PSP project shall take necessary measures to maintain the confidentiality of said information or



documents and may not disclose them except as permitted by this Law and other laws.

Article 43

1. An employee of or advisor to the executive agency, or any other public officer involved in the activities relating to the PSP project, or his spouse, ascendants, or descendants, may not have a direct or indirect personal interest in the PSP project.
2. A person having a conflict of interest must immediately disclose such conflict and refrain from participating in any procedure or voting in any decision relating to the PSP project until such conflict no longer exists.

Article 44

The NCP's Board of Directors shall issue the following:

1. The Implementing Regulations.
2. Templates for tenders, tender documents, and contracts relating to PSP projects.
3. Templates for mandatory and guiding contractual terms relating to PSP projects.

Article 45

This Law shall repeal all provisions inconsistent therewith, and shall enter into force 120 days following the date of its publication in the Official Gazette.