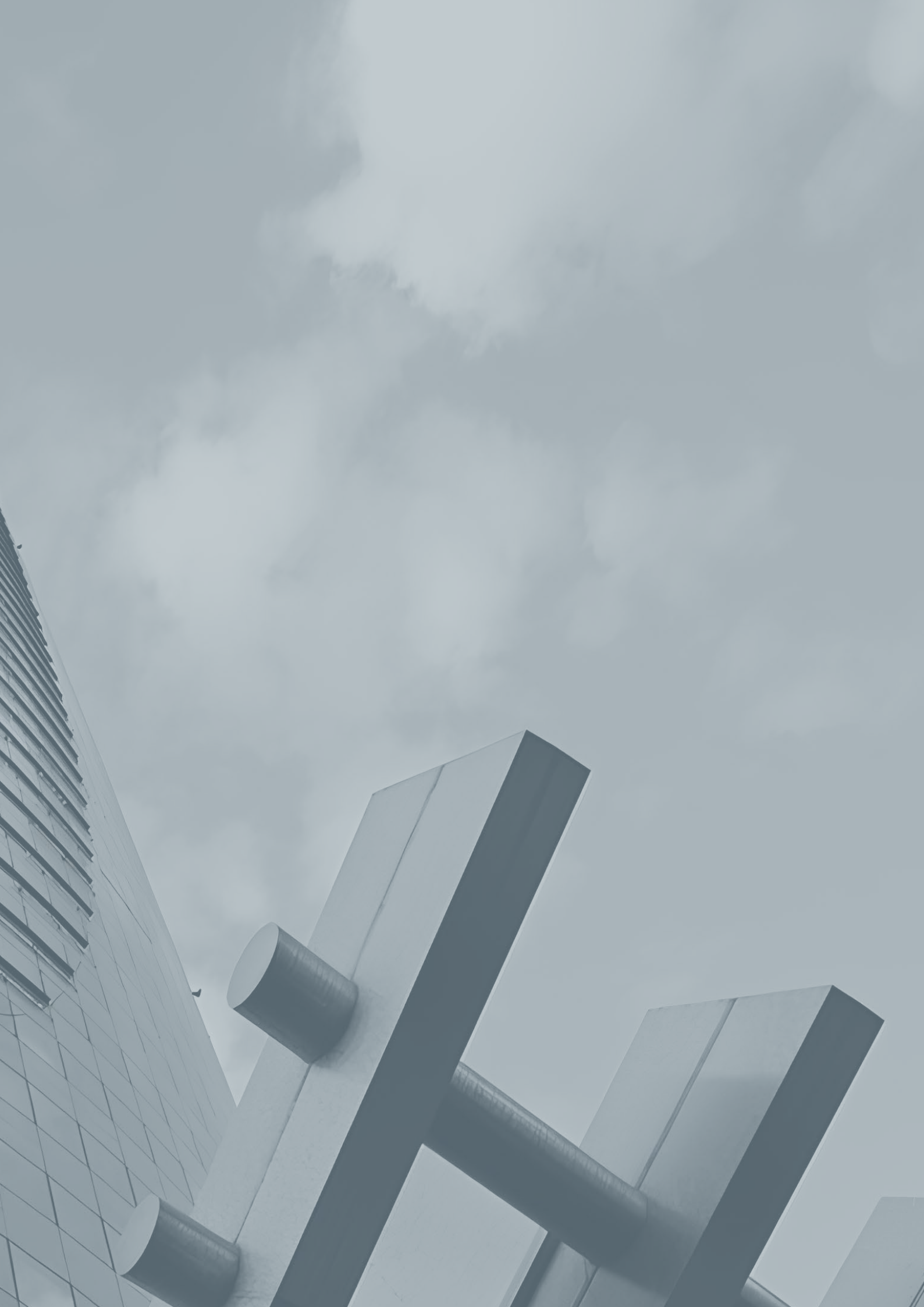




The Private Sector

Participation Governing Rules





General Provisions

01





Article (1):

Wherever mentioned herein, the following terms and phrases shall have the meanings assigned thereto, unless otherwise required by the context:

| | |
|----------------------------------|--|
| Governing Rules: | The PSP governing rules. |
| Law: | Private Sector Participation Law. |
| Implementing Regulations: | The Implementing Regulations of the Law. |
| CEDA | The Council of Economic and Development Affairs. |
| Approving Authority: | The entity/entities authorized to issue the necessary approvals for the PSP projects, including the approval to tender and award projects, enter into contracts, or exercise any other powers or functions in accordance with the Law. |
| Contracting Authority: | The entity/entities responsible for studying and preparing the PSP projects, perform activities linked to tendering and awarding PSP projects, enter into contracts, or exercise any other powers or functions in accordance with the Law. |
| NCP: | The National Center for Privatization. |
| Board of Directors: | NCP's Board of Directors. |
| Supervisory Committee: | The Supervisory Committee formed pursuant to the Governing Rules. |
| Concerned Entity: | Each ministry, government body, public body or authority, or body with an independent public juristic personality responsible for a PSP project subject to the provisions of the Law, including companies whose contracts are subject to the rule of Article (4) of the Law. |
| Contract: | The PSP contract, including any ancillary contracts related to it. |

Article (2):

The Governing Rules shall be applicable to PSP projects and Contracts subject to the provisions of the Law, and the Concerned Entities concerned with such projects and Contracts.

**The Approving
Authority for
Issuing Approvals
for PSP Projects**

02





Article (3):


1. Except where there is a special provision in this Governing Rules, the Council of Ministers shall be the Approving Authority regarding granting approvals for the Project Business Case Documents; tendering; awarding; and the signing of relevant Contracts related to Divestment projects, and PPP projects involving the transfer of ownership of assets owned by any Concerned Entity to the Private Party, whatever the value of the project.
2. The Council of Ministers shall be the Approving Authority regarding the approval of any of the contracts referred to in Paragraph (1) of this Article, which were signed without obtaining prior approval of the Council of Ministers.
3. The following decisions shall require an order of the Prime Minister:
 - a. Issuing approval for any PPP contract entered into by a Concerned Entity and had been signed without obtaining approval from the Approving Authority.
 - b. Approving the Project Business Case Documents and the tendering of a PSP project through direct contracting, whatever the value of the project.
 - c. Approving the Project Business Case Documents; and the tendering of a Divestment project; and a PPP project that involves the transfer of ownership of assets, through limited competition, whatever the value of the project.

Article (4):

1. CEDA shall be the Approving Authority regarding approving the ownership through shares or stocks, by any Concerned Entities, in the capital of a PSP project company.
2. As an exception to the rule of Paragraph (1) of this Article, in the event that the ownership through shares or stocks in the capital of a PSP project company is by NCP; the approval shall be given by the Board of Directors.

Article (5):

1. The Board of Directors shall be the Approving Authority for PPP projects, within the following limits:
 - a. Except where there is a special provision in this Governing Rules, granting all approvals required under the Law for PPP projects with a value of SAR 500,000,000 or more per Contract, including approving the Project Business Case Documents, tendering, awarding and Contract signing.
 - b. Approve cancelation of the tender process for PPP project with a value of SAR 500,000,000 or more per Contract, at any time prior to signing the Contract.
 - c. Approving the inclusion in the Contract of an arbitration clause to settle disputes arising therefrom, or enter into an arbitration agreement to settle an existing dispute arising therefrom, or if the arbitration agreement or clause specifies a foreign law to be the governing law for the subject matter of the dispute.

- 
- d. Approving the following regarding any PPP project, regardless of its value:
 - 1). The tendering of the PPP project through limited competition.
 - 2). Awarding the PPP project where appeals against the tendering and awarding procedures are still under consideration, or directing that the award process be suspended until such appeals are resolved.
 - 3). Not to deem an act of the Private Party during exercising a right granted to him or fulfillment of an obligation under the PPP contract, a monopolistic practice, even if it influences or restricts competition.
 - 4). The original term of the PPP contract, or after renewal or extension, exceeds thirty (30) years.
 - 5). The termination of the PPP contract and any of its ancillary contracts unilaterally by the Contracting Authority.
 - 6). Granting any approval required under the Law when an issue occurs with the Contracting Authority in identifying the Approving Authority to grant the required approval for a PPP project.

 - 2 The Board of Directors shall be the Approving Authority for Divestment projects, and the PPP project that involves the transfer of ownership of assets owned by any Concerned Entity to the Private Party, whatever its value, and within the following limits:
 - a. Approving the cancelation of the tendering process for the Divestment project and the PPP project that involves the transfer of ownership of assets, before signing the Contract, provided that the Board of Directors informs the Council of Ministers of this action and provides the rationale for such a cancelation.
 - b. Granting approval to the Private Party to the Divestment contract or the PPP contract that involves the transfer of ownership of assets, to transfer or mortgage its shares or stocks in the PSP project company, in the event that the Contract does not include such provisions or controls.
 - c. Allowing the Contracting Authority to issue a certificate to the Private Party to the Divestment contract, and the PPP contract that involves the transfer of ownership of assets, upon the Private Party's request, confirming that the Contract has been approved by the Approving Authority and that the Contract and any relevant documents signed or to be signed are subject to the provisions of the Law.
 - d. Approving the award of the Divestment project and the PPP project that involves the transfer of ownership of assets, where appeals against the tendering and awarding process are still under consideration, or directing the Contracting Authority that the award process be suspended until such appeals are resolved.



3. The Board of Directors shall be the Approving Authority regarding approving the Private Party, if it is a foreign investor, to lease property inside Makkah or Madinah for a period equivalent to the Contract's term for the purpose of implementing the PSP project.

Article (6):

The Supervisory Committee shall be the Approving Authority regarding the following:

1. Except where there is a special provision in this Governing Rules, granting all the approvals required under the Law for a PPP project that falls under its supervision, with a value of less than SAR 500,000,000 per Contract, or under which no annual direct financial obligations are incurred by the government, including approving the Project Business Case Documents, tendering, awarding and Contract signing.
2. Approve cancellation of the tender process before signing the Contract for a PPP project with a value of less than SAR 500,000,000 per Contract, or under which no annual direct financial obligations are incurred by the government.

Article (7):

For the purpose of implementing the Governing Rules and identifying the Approving Authority according to the value of a PPP project, the value of a PPP project shall be calculated based on the value of the annual direct financial obligations incurred by the Government pursuant to the Contract.

Article (8):

The Ministry of Finance shall be the Approving Authority regarding approving the Contract to include granting the Private Party any of the following rights:

1. Collecting charges directly for its benefit from the beneficiaries of the goods and services provided in accordance with the PPP contract.
2. Collecting public revenues, including fees and taxes, related to the PPP contract for the benefit of the State's Treasury.
3. Collecting public revenues, in whole or part, directly for its benefit as specified in the Contract.

Article (9):

1. Each entity specified here shall exercise the powers granted to it in the Law and the Governing Rules without prejudice to the competence of other entities. Furthermore, each entity shall issue the approvals that it has the power to issue within limits stipulated in the Governing Rules, and each entity shall, in all matters that fall outside its competence, submit to the entity entitled by the Governing Rules the power to approve, with its recommendations for the purposes of obtaining the required approval.
2. Without prejudice to the powers or functions of the Supervisory Committee and the Contracting Authority stipulated in the Governing Rules, the Supervisory Committee and the Contracting Authority shall coordinate with NCP before submitting to the Approving Authority to approve a PSP project.

Article (10):

1. The Council of Ministers or CEDA may delegate to others some of its powers that are stipulated herein, and the delegation shall specify the powers included in it, the PSP project(s) for which the delegation was made, the duration of the delegation, and any conditions or controls associated with the delegation.
2. The powers specified in Articles (5) and (6) of the Governing Rules shall be exclusive and not subject to any delegation.
3. Without prejudice to the rule of Paragraph (2) of this Article, the decisions issued by the Approving Authority, according to this section, shall determine the powers and functions of the Supervisory Committee and other competent entities to implement those decisions.



The Contracting Authority



03



Article (11):

1. Except where there is a special provision in this Governing Rules, the sector Supervisory Committee shall be the Contracting Authority for PSP projects implemented within the sector, and it has the powers and functions of the Contracting Authority, and issuing approvals stipulated in the Law and the Governing Rules.
2. The Supervisory Committee may form one or more work team, and assign the work team the functions or tasks that the Supervisory Committee deems appropriate. The Supervisory Committee may, after obtaining the approval of the Board of Directors and without prejudice to the rule of Article (12), delegate the Concerned Entity or its work team to exercise the powers granted to the Supervisory Committee as a Contracting Authority, provided that the Supervisory Committee specifies the Concerned Entity or its work team's limits with respect to its powers when exercising those functions and powers, and the powers that are not subject to delegation, in accordance with the controls contained in the Implementing Regulations.

Article (12):

1. As an exception to the rule of Paragraph (1) of Article (11), and without prejudice to the powers, competencies and functions of the entities specified in the Governing Rules, the sector Concerned Entity shall be the Contracting Authority regarding the following functions linked to the sector PSP project:
 - a. Preparing the Project Business Case Documents, preparing the PSP project tender documents, and submitting them to the sector Supervisory Committee to obtain the necessary approvals.
 - b. Managing the PSP project tendering process, including expression of interest (EOI), request for qualification (RFQ), request for proposals (RFP), and the evaluation of the same, negotiation with bidders, and any other functions related to the tendering process, and submitting the outcomes to the sector Supervisory Committee to obtain the necessary approvals.
 - c. Managing the award stage and signing the contract with the Private Party, and finalizing the related procedures after obtaining the necessary approvals from the Supervisory Committee and the Approving Authority.
 - d. Managing the PSP contract implementation stage and monitoring the Contract following signature.
 - e. Preparing a report, in coordination with the competent Government entity, in case that the issuance of a license, authorization, or permit required for any PSP project could not be completed, or is being delayed by the relevant Government entity which is legally authorized for its issuance, including a description of the situation and the reasons for such a failure or delay, costs involved, the proposed solutions, and submitting the report to the sector Supervisory Committee to take the appropriate action.



- f. Where the PPP project has a value of less than SAR 500,000,000 per Contract or does not entail any direct annual financial obligations on the government, submit to the sector Supervisory Committee to direct what it deems appropriate regarding the following:
 - 1). Request approval to cancel the tendering process of the PPP project before signing the Contract.
 - 2). Request approval to enter into direct agreements with another entity related to the PPP project, or make commitments thereto, which specify the rights and obligations of such an entity.
 - 3). Request approval to issue a certificate to the Private Party to the PPP contract, at its request, that includes that the Approving Authority has approved the PPP contract, and that the Contract and any related documents, bonds or any relevant documents signed or to be signed, are subject to the provisions of the Law.
 - 4). Request approval to amend or suspend the PPP contract.
2. The Concerned Entity, when exercising its role as a Contracting Authority, shall be responsible for the PSP project, and directly bears full responsibility for any violation, omission or failure to carry out the functions and responsibilities assigned to it, and for incorrect or inaccurate data, information and documents that it provides to the authorities concerned with granting approvals specified in the Governing Rules.

Article (13):

As an exception to the rule of Paragraph (1) of Article (12), the Supervisory Committee may re-assign to its work team the powers granted to the Concerned Entity, in any of the following cases:

- a. The Concerned Entity's negligence, in its capacity as the Contracting Authority, in relation to the powers mandated to it, and continuation of the negligence after having been notified by the Supervisory Committee.
- b. The Concerned Entity's inability to identify the government body concerned with the PSP project within the Concerned Entity.
- c. Lack of qualifications and/or competencies related to PSP in the Concerned Entity

Article (14):

The powers and functions exercised by the sector Concerned Entity or the Supervisory Committee work team, as specified in Paragraph (1) of Article (12), are exclusive and not subject to delegation.

**Article (15):**

Subject to Paragraph (2) of Article (11), Paragraph (1) of Article (12), and Article (14); the Supervisory Committee shall decide on any dispute that arises regarding the identification of the Concerned Entity or its concerned work team mandated the powers and functions of the Contracting Authority stipulated in this Article.

Article (16):

1. The head of the Supervisory Committee shall update the Board of Directors every three (3) months on the PSP projects undertaken by the Contracting Authority, indicating the work carried out; their progress; the difficulties encountered and suggestions to overcome such difficulties; its future plans; and all the information related to such projects. Based on these updates, NCP shall submit a comprehensive update to CEDA bi-annually, within (45) days from the middle and end of the fiscal year, containing a summary of the key contents of the Supervisory Committees' updates, and any feedback by NCP thereon.
2. The Contracting Authority and its work teams and advisors shall provide NCP with any documents, studies or data requested by NCP with respect to the PSP projects undertaken by the Contracting Authority.



**Supervisory
Committee
Governance**



04



Article (17):

The Board of Directors may:

- a. Modify the scope of PSP projects within the purview of an existing Supervisory Committee, after coordinating with the concerned Supervisory Committee, by adding new PSP projects within its purview, or transferring PSP projects from one Supervisory Committee to another.
- b. Establish a new Supervisory Committee, whether for a specific sector, a specific PSP project in any sector, or a set of PSP projects in any sector, provided that the decision clearly identifies the PSP projects within the purview of that Supervisory Committee.
- c. Eliminate any existing Supervisory Committee, after coordination with the concerned Supervisory Committee.

Article (18):

1. A Supervisory Committee shall consist of:
 - a. The main members:
 - The line Minister, or whoever is acting in a similar capacity, or his delegatee (Chairman of the Committee).
 - Minister of Finance or his delegatee (member).
The Board of Directors may add an additional member, provided the Board of Directors shall set in its decision, the powers of such an additional member.
 - b. Additional members:
The main members may, unanimously, add up to two additional members to the Supervisory Committee or terminate their membership where the membership is for a specific or several projects; the decision to add such an additional member shall specify the powers of that member.
2. All (main and additional) members must be government employees and none of them shall have a rank of less than (15) or its equivalent.
3. In the event that the chairman of any Supervisory Committee is the Minister of Finance; the Board of Directors may add another member to the Supervisory Committee along with its chairman.



Article (19):

NCP shall assume the functions and responsibilities of the Supervisory Committees' secretariats, and the Board of Directors may delegate the same to whomever it deems fit from the Supervisory Committees, provided that the secretariat specified for any of these Supervisory Committees shall follow the procedures and templates approved by NCP.

Article (20):

The Board of Directors shall issue the rules and procedures governing the Supervisory Committees' meetings, including the number of meetings, the quorum, decision making mechanisms, delegation of attendance, the casting vote in case of equal votes, and other provisions.

The Development of the Sector

05





Article (21):

1. The sector Concerned Entity shall develop a PSP plan for the sector, after coordination with other entities included in the sector and NCP, during the period specified by the Board of Directors, provided that it does not exceed (13) months from the effective date of the Governing Rules for sectors with existing Supervisory Committees. The plan must include the following:
 - a. Objectives of PSP projects in the sector, list of proposed PSP projects, proposed implementation priorities, and proposed timelines for their implementation.
 - b. Review of the legal and regulatory framework of the sector, and propose its development in order to encourage the private sector to invest in the sector, and achieve the PSP objectives.
2. The sector Concerned Entity shall, through the Supervisory Committee, submit the PSP plan which has been prepared, to the Board of Directors for approval. The Board of Directors, as it deems appropriate and after obtaining the approval of the Chairman of the Supervisory Committee, may publish the sector's approved PSP plan or any part of it, to the public or inform any other persons or entities designated by the Board of Directors of its contents or parts thereof.
3. If the approved PSP plan requires certain legislative procedures to be undertaken to complete the development of the sector's legal and regulatory framework, the sector Concerned Entity shall undertake these procedures.
4. It is not permissible to study the Project Business Case Documents, tender, or implement any PSP project not included in the list of proposed projects within the sector's approved PSP plan.
5. The sector Concerned Entity shall, after coordination with NCP and other relevant entities in the sector, update the PSP plan at least once every (5) years or whenever necessary, and submit the updated plan as specified in Paragraph (2) of this Article.
6. Paragraph (4) of this Article does not apply to sectors that have existing Supervisory Committees, or to any other sectors for which new Supervisory Committees are formed in accordance with the provisions of Article (17) of the Governing Rules; except after the lapse of (19) months following the effective date of the Governing Rules, the creation of the Supervisory Committee, or the approval of the sector's PSP plan, whichever is earlier.

Final Provisions

06





Article (22):

The Board of Directors shall, in agreement with Ministry of Finance, develop the necessary rules and mechanisms to cover the expenses of Supervisory Committees' secretariats, and work teams, and advisors and other administrative expenses associated with the PSP projects, and the provisions related to recovery of such expenses by the Concerned Entity or NCP, in accordance with the established legislative procedures, and within the available financial capabilities and authorities, provided that such expenses may not exceed the ceilings set for public expenditure.

Article (23):

The Governing Rules shall replace the Rules Governing the Supervisory Committees for the PSP-targeted Sectors and their Functions (as amended) issued pursuant to the Council of Ministers' Decision No. (55) dated 20/1/1442AH.

Article (24):

The Governing Rules shall come into force as at the date on which they are approved.



المركز الوطني للتخصيص
NATIONAL CENTER FOR PRIVATIZATION & PPP



Contact US

+966118352354

info@ncp.gov.sa

www.ncp.gov.sa

@NCPSaudi | @NCPSaudi_en

in National Center for Privatization & PPP