

The Rules Governing the PSP Projects' Appeals Committee

Chapter 1

Definitions

Article (1)

Unless the context otherwise indicates, the words and terms of these Rules shall have the same specified meanings as in the Law, Governing Rules, and Implementing Regulation, and the following words and terms shall have the meanings specified herein:

Law:	Private Sector Participation Law.
Governing Rules:	The PSP Governing Rules issued pursuant to the Law.
Implementing Regulations:	The Implementing Regulations of the Law.
Rules:	The Rules Governing the PSP Projects Appeals Committee.
NCP:	The National Center for Privatization.
Board of Directors:	NCP's Board of Directors.
Committee:	The Committee formed to review appeals against the PSP Project tendering and awarding procedures.
Member/Members:	Member/Members of the Committee.
Chairman:	Chairman of the Committee.
Secretariat:	Secretariat of the Committee.
Secretary:	Secretary of the Committee.

Chapter 2

Committee Governance

Article (2)

By a decision of the Board of Directors, a committee - or more – shall be formed, and shall consist of at least five (5) Members, including the Chairman and deputy Chairman, where at least two of them must have appropriate legal qualifications, with sufficient experience, knowledge, skills, and independence that enable them to perform their duties competently and skillfully, and all members shall:

- 1- Have a Saudi Nationality.
- 2- Have a bachelor's degree as a minimum.
- 3- Have at least ten years of experience in their field of specialization, and the Chairman shall have at least fifteen years in his field of specialization.
- 4- Have sufficient technical skills in the PSP field.
- 5- Have no conflict of interest.
- 6- Not have been convicted of a legal punishment, qisas, imprisonment, or a penalty that violates honor and trust, unless rehabilitated.

Article (3)

The Chairman, deputy Chairman, and Members shall be appointed pursuant to a decision by the Board of Directors for a renewable term of (3) years for one time, and the decision shall identify one or more alternative Members.

Article (4)

- 1- The Chairman shall supervise the Committee's sessions, the progress of its work, and the accomplishment of its tasks, and in particular, shall have the following responsibilities:
 - a. Presiding over and managing Committee sessions.
 - b. Inviting Members to the meetings whenever the need arises.

- c. Determining the dates of the Committee's sessions and their agenda, in coordination with the Members and the Secretariat.
- 2- The deputy Chairman shall take the place of the Chairman in his absence.

Article (5)

The Member shall adhere to the following:

- 1- Impartiality in all activities to be undertaken.
- 2- Upholding to the provisions of the Law, Governing Rules, Implementing Regulations, and these Rules, while carrying out his work.
- 3- Allocating sufficient time to carry out his responsibilities, including preparing for the meetings.
- 4- Participating in the Committee's deliberations and discussions and voting on the issues presented to it.
- 5- Attending the meetings regularly and notifying the Chairman and the Secretariat, in advance, of any impediments preventing attendance.
- 6- Maintaining the confidentiality of the Committee's work, and refraining from disclosing any matter circulated to him or which came to his knowledge by virtue of his Membership in the Committee, to any individual or entity, except in accordance with the applicable laws and regulations.
- 7- Avoiding conflict of interest and disclosing any occurrence as soon as he becomes aware of it, and stepping down and not participating, attending meetings, or voting on any decision related to such conflict, and the Secretary must document the event of stepping down in the minutes of the Committee.

Article (6)

- 1- The Committee shall have a Secretariat that includes specialized consultants and administrators, and a Secretary other than its Members.
- 2- A Secretary shall be appointed pursuant to a decision by the Board of Directors, and shall have the sufficient professional competence, experience, knowledge, skills, and independence, which will enable him to perform his duties competently and efficiently, and shall in particular:

- a. Have a Saudi Nationality.
 - b. Have a bachelor's degree in Sharia or law from one of the Kingdom's universities or one of the recognized international universities.
 - c. Have at least ten years of experience in the legal field.
 - d. Be able to record, organize, and accurately store the minutes of meeting and decisions of the Committee.
 - e. Have sufficient expertise in the PSP field.
 - f. Be of good conduct.
 - g. Have no conflict of interest.
 - h. Be fluent in both Arabic and English.
- 3- The administrative structuring of the Secretariat and its needed employees shall be determined pursuant to a decision by the Board of Directors based on the recommendations of the Secretary.

Article (7)

The Secretariat shall undertake the following responsibilities:

- 1- Preparing the Committee's work procedures and organizing its sessions.
- 2- Administrative and preparatory works, technical assistance, and supporting tasks, including notifying the receipt of appeals, exchange of notes, dates of review sessions, and communicating the Committee's decision.
- 3- Conducting research, studies, and consultations related to appeals submitted against the PSP Project tendering and awarding procedures.
- 4- Recording appeals; organize, number, store and archive all appeal records, including keeping a record of meeting minutes, controlling activities, correspondence, dates, notifications, and decisions, and archiving them in paper and electronically.
- 5- Contacting stakeholders and relevant parties to facilitate the Committee's duties, coordinating between the Committee and other entities, and receiving and responding to public inquiries.
- 6- Submitting periodic reports to the Board of Directors and the Chairman containing the Committee's work, achievements, and proposals, after being approved by the Chairman.

- 7- Monitoring the Committee's work, and ensuring compliance with these Rules.
- 8- Managing and following-up on the work submitted to the Committee.
- 9- Any other responsibility determined by the Chairman.

Article (8)

- 1- The Chairman may evaluate the Members periodically, and submit to the Board of Directors for approval of the termination of a Member, and replace him with an alternate Member or appoint a new Member in the Committee, if necessary, or take what he deems appropriate in any of the following cases:
 - a. If the Member violates his obligations.
 - b. If the Member's membership in the committee cannot continue.
 - c. If the Member fails to attend (4) consecutive sessions or (10) separate sessions during the same year without a valid reason.
 - d. The existence of an irremediable conflict of interest.
 - e. The death of the Member.
 - f. If the Member loses his eligibility or suffers a disability that prevents him from completing his work.
 - g. If one of the terms of appointment is broken.
 - h. If the alternate Member failed to attend three sessions to which he was invited during one year.
- 2- The alternate and/or new Member shall sit on the Committee upon notice from the Chairman.

Chapter 3

The Committee's Meetings

Article (9)

- 1- The Committee's meetings shall be held at its headquarters under the Chairmanship of the Chairman or, in the Chairman's absence, his deputy. The Committee meeting may be held in any other place within the Kingdom when needed.

- 2- The Chairman shall coordinate annually, at the beginning of each calendar year, with the Members to approve an annual schedule of the Committee's meetings. The Secretariat shall coordinate communication with the Members, edit the meeting schedule, and make any amendments to it based on the approval of the Members, and the Committee shall prepare the schedule of its meetings to commence the hearing of the appeals submitted and to expedite their decision.
- 3- The Committee shall meet on the days specified for each meeting, or upon the invitation of its Chairman or his deputy, in the absence of the Chairman, in urgent cases that are not accommodated by scheduled meetings - in accordance with Paragraph (2) of this Article - The invitation shall include, if possible, all documents and information to be discussed, and the complete files of the appeals submitted, and it shall be sent to all Members at least (three) working days before the date of the meeting by any means the Committee deems appropriate, in order to maintain the confidentiality of relevant documents and information.
- 4- The Committee meeting shall be valid if attended by the majority of the Members, including the Chairman, or his deputy in the event of the Chairman's absence, provided that one of the attendance shall have legal qualifications.
- 5- If the legal quorum for the Members is not met due to a Member's recusal or non-attendance, the meeting will be rescheduled to the nearest time that the Members are able to attend to meet the quorum.
- 6- The Committee may invite whomever it deems fit - if necessary - to attend its meetings without having the right to vote, and without having the right to see confidential information or documents except within the limits of what achieves the purpose of his attendance, after signing the declaration -prepared by the Secretariat - of non-disclosure of the information and documents that will be seen.
- 7- The Committee, when needed, may hold its meetings using electronic means, including video or telephone communication, so that each Member can hear the discussion of the Members and ask questions about the appeals.

Chapter 4

Powers of the Committee

Article (10)

The Committee has the authority to hear appeals against the PSP Project tender and awarding procedures, including the following:

- 1- Appeals against the conditions and requirements contained in the RFQ or the RFP.
- 2- Appeals against the results of the SOQs evaluation and the shortlist of bidders qualified to the bid submission.
- 3- Appeals against the results of proposals' evaluation, identification of the preferred bidder.
- 4- Appeals against the results of the award procedures.

Chapter 5

Conditions for Submission of Appeals

Article (11)

Bidders may appeal against the PSP Project tender and awarding procedures in the following circumstances:

- 1- If the appellant informed the Contracting Authority - within the specified period of submission of the SOQ response to the RFQ, or the specified period of submission of the proposal to the RFP – that there is a defect in the RFQ or the RFP that would unjustifiably impede or limit competition, and the Contracting Authority does not take any corrective action.
- 2- If the appellant submitted the SOQ in response to the RFQ, within the period specified in the RFQ, and if he complied with qualification requirements and his name was not included in the shortlist of qualified bidders for the bid submission stage.
- 3- If the appellant submitted a bid in compliance with the conditions specified in the RFP, and it was not selected as the preferred bidder, where as they should be the preferred bidder in accordance with the evaluation criteria specified in the RFP.

- 4- If the appellant was selected as the preferred bidder, and passed the final negotiation stage, and the award procedures were not completed with him.

Article (12)

The Appeal(s) is to be submitted to the Committee within (10) working days of the date of the appealed procedure. When calculating the period, the following shall be taken into account:

- 1- The Appeals against the conditions and requirements contained in the RFQ or the RFP shall be submitted within (ten) working days of the date of publication of the application on the website of the Contracting Authority and the NCP.
- 2- The Appeals against the results of the SOQ evaluation and the shortlist of bidders qualified to the bid submission shall be submitted within (ten) working days from the date of the announcement the results and the list based on the Contracting Authority and the NCP websites.
- 3- The Appeals shall be submitted from the results of proposals' evaluation and identifying the preferred bidder within (ten) working days from the date of announcing the Contracting Authority the results of the competition and the preferred bidder.
- 4- The Appeals against the results of awarding shall be submitted within (ten) working days from the date of the end of the negotiation procedures.

Article (13)

The Committee shall in all cases verify the eligibility and correctness of the representation of the appellant or his representative.

Article (14)

Appeals Procedures:

- 1- Appeals shall be submitted to the Secretariat with a copy of the documents, and the original for conformity, if necessary. Appeals may be submitted through the technical means provided by the Secretariat, in accordance with the requirements set out therein.
- 2- Appeals shall include the following requirements:

- a. Appeals shall include - at a minimum - the following:
 1. The capacity of the appellant (principal, agent, or legal representative).
 2. The full name of the appellant or claimant, his profession or job - if any -, his place of residence, his identification or commercial registration number - if any -, and the name, profession, residence, and identification number of his representative.
 3. The appellant's contact information (physical address - national address - e-mail address - phone number), and contact information for his agent or legal representative.
 4. The date of submitting the appeal.
 5. A description of the PSP Project subject of appeal.
 6. A detailed description of the procedures taken before submitting the appeal.
 7. A detailed description of the facts and reasons for the appeal.
 8. The supporting documents, proofs, and evidence of the appeal's reasons.
 9. The appellant's requests.
 10. An irrevocable and unconditional bank guarantee in favor of NCP issued by a licensed bank operating in the Kingdom.
 - b. Combining several non-related topics, PSP Projects, or requests in the appeal application is not acceptable.
- 2- The Secretariat shall notify the appellant if any of the requirements stipulated in Paragraph (2) of this Article are not met, and the appellant must fulfill those requirements within (ten) working days from the date of the notification, otherwise the appeal request will not be considered.
 - 3- If the Committee finds that the appeal request prepared by the appellant in accordance with paragraph (2) of this Article is not written in the form necessary to consider and decide on the appeal, the Secretariat shall notify the appellant of what is necessary to complete his appeal within (ten) working days from the date of the notification.
 - 4- In the event that the appellant is unable to complete his appeal in accordance with the requirements of these Rules or refuses to do so, the Committee may issue a decision dismissing his claim.

Article (15)

- 1- The value of the guarantee provided by the appellant shall be (1%) of the estimated value of the PSP Project, and if the value of the PSP Project cannot be estimated, the appellant will provide a bank guarantee of (5,000,000) SAR. In all cases, the value of the guarantee shall not be less than (1,000,000) SAR and not exceeding (5,000,000) SAR.
- 2- The guarantee shall be valid for a period of not less than (90) days from the date of the filing of the appeal to the Committee, unless the Committee decides to ask the appellant to extend the guarantee.
- 3- The appeal shall not be valid if the bank guarantee is not submitted in accordance with the requirements stipulated in the Law.

Article (16)

- 1- The Secretariat shall notify the party required to be notified through at least two of the following means of notification, and the notification shall produce their legal effects from the date of its issuance:
 - a. Registered letter by mail.
 - b. Official email.
 - c. Registered phone call.
 - d. Announcement via the official website of the Committee.
 - e. Any other means approved in the Kingdom as means of judicial notification.
 - f. Any other means of communication that the Committee deems appropriate and fulfills the purposes of notification.
- 2- Notification in accordance with subparagraph (a) of paragraph (1) of this Article shall be made at one of the following addresses:
 - a. The National address, or the recorded address chosen by the parties or their legal representatives in the data of the appeal or any of the submitted notes or documents.
 - b. The address registered with the Ministry of Interior.

- c. The address recorded in the commercial register. And for companies where the notification is directed to one of its branches, the notification shall be through the address recorded in the commercial register of that branch.
 - d. The address contained in the documents submitted by the appellant.
 - e. The address chosen by foreigners in the Kingdom.
- 3- If the place of residence or address of the party to be notified is unknown, or if the notification was not possible to be delivered, the Chairman - after coordination with the Secretariat - may decide the method he deems appropriate and satisfactory for the purposes of delivering the notification, and may, for that purpose, notify through the competent authorities, or publish in the Official Gazette or any of the local newspapers.

Article (17)

The appellant and the respondent shall be notified of the appeal submitted to the Committee in accordance to the following:

- 1- With regard to government entities, the notification shall be handed over the heads of such entities or their representatives.
- 2- With regard to commercial companies and private establishments, the notification shall be handed over to one of the partners, to the Chairman of the Board of Directors or anyone who takes their place, or to the owner of the private establishment or someone acting on his behalf.
- 3- With regard to foreign companies that have a branch or agent in the Kingdom, the notification shall be handed over to the manager of this branch or agent or his representative.
- 4- With regard to those residing outside the Kingdom, the notification shall be handed over through the official e-mail address, or through the Ministry of Foreign Affairs, and in this case, it is sufficient to receive a response indicating the notification.

Article (18)

Once the appeal has been received, and if the requirements of paragraph (2) of article (14) have been met, the Secretariat shall issue a written receipt to the appellant specifying the appellant and the respondent, and the date and time of receiving the appeal, and a copy of the receipt shall be kept in the Committee records.

Chapter 6

Hearing and Deciding on Appeals

Article (19)

- 1- The Committee shall commence its review of the completed appeals in accordance with the requirements of these Rules within a period not exceeding (2) working days from the date of their entry in the Committee's records.
- 2- The Committee shall hold the session to hear the appeals in the presence of its Members and Chairman, and the parties shall be notified of the session's date at least (5) working days before the session's set date. These sessions shall be closed to the public, unless the Committee determines otherwise.
- 3- Any of the parties may directly submit to the Committee the interlocutory requests that the Committee authorizes to submit, which are related to the original request.
- 4- With the approval of the Committee, appellants and any other parties or witnesses deemed necessary may attend the appeal review sessions through available technological means.
- 5- The appellant or his representative must attend the session on time. If he fails to attend the session without a reason that is acceptable to the Committee, the appellant will have been deemed to have withdrawn his appeal.
- 6- The Contracting Authority's representative shall attend the session on time. If he fails to attend the session without a reason that is acceptable to the Committee, the Committee shall continue consider the appeal and issue a decision thereon as it deems fit based on the documents submitted thereto.
- 7- Requests and defenses shall be submitted before the Committee in clear written briefs, and the Committee may be satisfied with what any of the parties testify verbally, and the Committee may request the parties to write down their statements and pleas to eliminate ignorance or ambiguity.

8- The Committee's minutes of meetings shall be prepared under the supervision of the Committee's Chairman in a special record prepared for this purpose. The minutes shall record the meeting's date, opening time, closing time, place, and the names of the Members and the appeal's parties present, as well as all the procedures and proceedings during the session and the testimonies heard therein, and the parties' statements, requests, and responses. The minutes shall be signed by the Members and Secretary.

Article (20)

Evidence may be presented before the Committee through all legal means of proof in force in the Kingdom.

Article (21)

While considering appeals, the Committee may take the following:

- 1- Ask for clarifications from the appeal parties, and any individual or party related to the Contracting Authority or to the appellant, and request information, papers, documents, and reports relevant to the appeal subject of consideration.
- 2- Summon the appeal parties and any party or individual related to the Contracting Authority or to the appellant to hear their statements or testimonies.

Article (22)

- 1- The Committee may seek the assistance of one or more experts to provide support to the Committee, and the decision to appoint the expert determines the deadline for submitting his report, as well as the expert's expenses and fees, and it may request the expert's opinion orally in the session, in which case his opinion shall be recorded in the session minutes.
- 2- In appointing experts, the Committee shall take into account the following:
 - a. The expert is licensed to practice his/her profession in accordance with the applicable laws in the Kingdom.
 - b. The expert's technical qualifications are compatible with the duty to be delegated thereto.
 - c. The expert is independent of the parties to the appeal subject of consideration.

- d. The expert does not have any conflict of interest.
- 3- If the Committee's decision is not in favor of the appellant, the appellant shall bear all the expert's reasonable and properly incurred expenses and fees, and shall deposit the amount to the Committee's account within (5) working days from the date of receiving the Committee's notification of the expenses incurred.

Article (23)

- 1- Considering appeals, conducting hearing sessions, and recording the session's minutes shall be done in Arabic, and the Committee may transcribe them - in addition to the Arabic language - in English if it deems it necessary, and the Committee's decision regarding the appeal shall be in Arabic.
- 2- The Committee may request the translation of documents that it deems necessary, provided that the translation is certified by a legally licensed body, and such translation shall be attached to the appeal documents.

Article (24)

- 1- The Committee shall decide on the appeals submitted thereto in a timely manner and issue its decision within thirty (30) working days from the date of submission, and complete them in accordance with the requirements of these Rules, and the Committee may extend such period for another thirty (30) working days once and for justified reasons.
- 2- The Committee's decisions shall be issued by the majority of its Members' votes, and a Member may not abstain from voting, or delegate another Member to vote in his absence. In the event of a tie, the Committee's Chairman shall have the casting vote, and all Members shall sign the decision. If the decision is taken by the majority of votes, this shall be noted in the decision, and the opposing opinion shall be submitted in writing and with justification, and it shall be added to the decision.
- 3- The Committee's decision must be reasoned and in writing and must include, in particular, the decision's number, date, and place of issuance, and a summary of the parties' statements and their names and their documents, the names and titles of Members and the manner in which they are

present, the decision's grounds and wording, including compensation payable (if any), and the appeal procedures against the decision issued by the Committee.

- 4- The Committee shall notify the parties of its decision within (5) working days from the date of issuance thereof, and shall deliver a copy of the same to the appeal parties, and the copy shall be signed by the Committee's Chairman and Members.
- 5- The Committee shall correct the material, written, or arithmetical errors in the decision by issuing a decision on its own, or at the request of one of the parties. The correction shall be written on the original copy of the decision and shall be signed by the Committee's Chairman and Members.
- 6- Committee decisions are effective from the date of their issuance.

Article (25)

When hearing and deciding the appeal, the Committee shall comply with the Law, Governing Rules, Implementing Regulations, and these Rules. And Where there is no provision in the legal instruments previously specified; the Committee shall apply the laws and regulations applicable in the Kingdom in line with the nature of the appeal submitted to the Committee.

Article (26)

If the appeal involves a legal violation, the Committee shall provide NCP with a written notification to take necessary action, and the Committee shall continue considering the appeal and issue a decision thereon.

Article (27)

- 1- The Committee's decision shall not provide for granting the appellant a compensation if the Committee's decision to accept the appeal as valid was issued prior to signing the Contract.
- 2- The Committee must return the appellant's bank guarantee if its decision to accept the appeal as valid was issued prior to signing the contract.
- 3- The Committee's decision shall be implemented in accordance with applicable laws, regulations, and rules in force in the Kingdom.

Article (28)

- 1- If the Committee's decision to accept the appeal as valid was issued after signing the Contract, the Committee shall specify in its decision the compensation due to the appellant for the actual direct damage incurred as a result of the act subject to the appeal, according to the evidence provided by the appellant, including the costs, expenses and fees incurred by the appellant for filing the appeal and litigating. And the decision shall also require release of the bank guarantee.
- 2- If the Committee's decision was to reject and invalidate the appeal, the decision must include the confiscation of the full or partial value of the bank guarantee submitted by the appellant, as decided by the Committee, and it shall be deposited in the State treasury.
- 3- The compensation shall not, in any case, exceed (5,000,000) SAR Riyals.
- 4- The Committee's decision on the compensation shall be implemented in accordance with applicable Laws and regulations in force in the Kingdom.
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Chapter 7

Application of the Rules

Article (29)

These Rules shall enter into force based on the decision pursuant to which they are approved and issued.