

Draft Private Sector Participation Law

About this Law

Privatization Program is one of the programs which was launched with the aim of contributing to achieving the Saudi Vision 2030 which targets to create a thriving economy - investing for the long-term.

Privatization Program's overarching objective is to strengthen the role of the private sector by unlocking state-owned assets for investment, it will also help the government to refocus its efforts on its legislative and organizational roles.

The Privatization Program encompasses three strategic pillars, the first strategic pillar is establishing the legal and regulatory basis through developing the general legislative frameworks for Private Sector Participation (PSP), with the aim of enabling the implementation of the PSP Projects, also, addressing the obstacles and legislative gaps that exist in the regulatory environment in general.

As part of the efforts to build the first strategic pillar, the Council of Ministers has issued its Resolution No. 665 dated 8/11/1438H approving of the Rules of Conduct of the Supervisory Committees of PSP Targeted Sectors, this resolution also included Council of Ministers' instruction to the National Center for Privatization (NCP) to draft a Law that includes all rules governing PSP and all exclusions from valid Laws.

Following that, the Board of Directors of NCP has issued the Privatization Projects Manual by its resolution No. (2/5/2018) dated 03/08/1439H, and The Rules Governing the Work of the Supervisory Committees, their Teams and Advisors by its resolution No. (3/5/2018) dated 03/08/1439H.

And now, the efforts to build the first strategic pillar continues by the preparation of the Private Sector Participation Law, a Law that is aiming to establish the legal basis which will

further enable the implementation of the PSP programs and Projects, whether it is a sale of assets or PPP.

In order to implement the directives of the Council of Ministers regarding the inclusion of the necessary exemptions in the draft Law, the draft included a number of exemptions from a number of laws. Such exemptions were emerged after performing a general study on a number of laws, and the aim of this inclusion is to explore the public opinion at the present stage on those proposed exemptions.

Private Sector Participation Law (upon its issuance in accordance with the legislative procedures), will not prejudice the valid and implemented institutional and governance regime, or the current PSP Projects which have been launched, or decisions made by the Supervisory Committees, will all remain valid and applicable. This Law will be implemented side-by-side to the Rules of Conduct of the Supervisory Committees of PSP Targeted Sectors, Privatization Projects Manual, and The Rules Governing the Work of the Supervisory Committees, their Teams and Advisors. The Law will not be considered as an exception from the aforementioned legislations, nor will it prevail any of it, as this Law will enhance the PSP legal system and providing further legal enablers for PSP.

Finally, we would like to emphasize that what have been previously issued (i.e. the Rules of Conduct of the Supervisory Committees of PSP Targeted Sectors issued by the Council of Ministers Resolution No. 665 dated 08/11/1438H, the Privatization Projects Manual, and The Rules Governing the Work of the Supervisory Committees, their Teams and Advisors) have enabled PSP Projects. This draft Law aims to further enable PSP Projects.

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CHAPTER 1: DEFINITIONS

ARTICLE 1: DEFINITIONS

The following terms and phrases, wherever mentioned in this Law, shall have the meanings assigned thereto, unless the context requires otherwise:

The Law: The Private Sector Participation Law.

The Regulations: The regulations, rules, instructions and procedures issued by NCP's Board of Directors to implement the Law.

CEDA: The Council of Economic and Development Affairs.

NCP: The National Center for Privatization.

NCP's Regulations: The Regulations of the National Center for Privatization implemented by Resolution of the Council of Ministers Resolution No. 355 dated 7/6/1438H.

Supervisory Committee: A Supervisory Committee formed in accordance with the Supervisory Committees' Regulations.

Supervisory Committees' Regulations: The Rules of Conduct of the Supervisory Committees of PSP Target Sectors implemented by Resolution of the Council of Ministers Resolution No. 665 dated 8/11/1438H, which is approved by Royal Decree No. 52631 dated 15/11/1438H.

Governmental Entity or Public Sector: Any Government body in the Kingdom including:

1. Public institutions and public bodies with independent juristic personality;
2. All ministries, departments, and other public institutions; and
3. GOCs.

GOC: Any company established or incorporated in accordance with the Companies Law or any other regulation instrument considered in the Kingdom and all or some of its capital, no less than (51%) fifty-one percent, is directly or indirectly owned by the Government, and the purpose of which is the implementation of a Project or Projects related to the PSP.

Private Party: A person of a special or private status (Private sector) who is a party to a Contract with any Governmental Entity (Public sector) where PSP Project is the subject of that Contract.

Person with Private Status or Private Sector: Any person who does not have public legal status, or any person who has the public legal capacity and seeks to enter into a PPP Contract as a Private Party.

Foreign Entity: A natural or legal person who is not a Saudi national in accordance with the applicable laws and regulations in the Kingdom.

Infrastructure: Any facility or facility's assets which directly or indirectly provide services to the public.

Private Sector Participation (PSP): Any Infrastructure-related contractual arrangement results in SOA or PPP.

Public Private Partnership (PPP): Any Contractual arrangement related to Infrastructure which results in a relationship between a Governmental Entity and a Private Party containing the following elements:

1. The contractual arrangement lasts for five (5) or more years.
2. The Private Party, pursuant to this contractual arrangement, provides a public service which includes construction, management, operation or maintenance of assets whether owned by the Governmental Entity or the Private Party or both.
3. There is a qualitative distribution of risks between the Governmental Entity and the Private Party, and the Regulations specify the cases in which the qualitative distribution of risks is achieved.
4. The monetary amount(s) owed by or to the Private Party under this arrangement shall principally be calculated on the basis of and adjusted for the performance of its obligations.

Sale of Assets (SOA): Any transfer of ownership of assets, shares, or rights from the Governmental Entity, who is the owner or operator of such assets, shares, or rights to the Private Party.

Public Service: any service provided, directly or indirectly, by the Governmental Entity through a contract or grant. Such services may be internal (i.e., to support government operations), or external (i.e., to provide goods or services to the public), or both.

Asset: Includes any asset owned whether permanent or temporary, fixed or movable, tangible or intangible.

PPP Project: Any project which is the subject of a PPP Contract or proposed PPP Contract.

SOA Project: Any project which is the subject of an SOA Contract or proposed SOA Contract.

Contract: Any PPP or SOA contract including any extension or amendment to an existing contract.

Unsolicited Proposal: Any offer related to the implementation of an Infrastructure project that has not been submitted in response to a RFP from a Supervisory Committee.

CHAPTER 2: GENERAL PROVISIONS

ARTICLE 2: PURPOSE OF THE LAW

1. This Law, the Regulations issued thereunder, the Supervisory Committee Regulations, and the NCP Regulations shall constitute the legal basis for regulating, coordinating policy and practice in the preparation and implementation of PSP Projects, and concluding and executing agreements on PSP.
2. The purpose of this Law is to:
 - A. Organize all process and procedures related to the PSP program and Projects, supervising and monitoring them, developing them including the required coordination

among the relevant government agencies and working on developing PSP programs for the PSP targeted sectors, and developing procedures to reduce risks resulting from PSP Projects.

- B. Assist in achieving the strategic objectives of Governmental Entities, and raising the efficiency of the national economy and increase its competitiveness to meet regional and international challenges and competition related to PSP Projects.
- C. Raise the transparency, fairness and integrity of the process associated with contracts related to PSP Projects.
- D. Improve the quality of services and efficiency of assets related to PSP Projects provided or owned by Governmental Entities and improve their level of management, and to work on the processing or restructuring of the sectors, equipment, assets and general services subject to PSP.
- E. Stimulate the local or foreign Private Sector to invest and participate actively in the national economy and increase its share of gross domestic product in order to achieve growth in the national economy and work to expand the participation of citizens in the ownership of government assets.

ARTICLE 3: PSP PRINCIPLES

The implementation of the PSP Projects shall be subject to the following principles:

1. Justice: All competitors from the Private Sector shall be treated objectively and impartially.
2. Transparency: Implementing PSP Projects transparently, and enabling Private Parties and Governmental Entities to access information on PSP Projects at all stages of the PSP Project.
3. Contract Enforcement: Contracts and ancillary contracts concluded in accordance with the provisions of this Law and Regulations are the basis for determining the rights and obligations of the Contracting parties concerned; the provisions of those Contracts are the principal governing authority of the relationship between the parties involved.
4. Planning: PSP Projects are initiated and implemented under plans and studies prepared in advance so as to enable the Private Sector to prepare for them and to prepare sufficient resources before the implementation of such Projects.
5. Feasibility: The PSP Projects should achieve sustain development of infrastructures and economic benefits to the Private Sector.

ARTICLE 4: TYPES OF PSP PERMITTED

All methods of PPP Projects that fall within the definition of PPP are permitted, and all methods of SOA Projects are permitted in accordance with the provisions and requirements of this Law and the Regulations issued thereunder.

ARTICLE 5: SECTORS WITHIN WHICH PSP IS PERMITTED

Subject to the Supervisory Committees' Regulations, no PSP Project nor any Contract may be initiated before the issuance of the provision that the sector in which the services or assets are located is a PSP target sector, or that such asset or service is targeted.

ARTICLE 6: EXPLORING PSP OPPORTUNITIES

In the event of any approvals for Infrastructure projects of the Governmental Entity by the Government or Governmental Entity, and the expected value of the project exceeds the amount determined by a decision of the Council of Ministers, NCP shall conduct a study on the appropriate involvement of the private sector through PSP in this project, and submit such study to CEDA for guidance as it deems appropriate.

CHAPTER 3: POWERS AND FUNCTIONS

ARTICLE 7: POWERS AND FUNCTIONS OF CEDA

1. The Council of Ministers or CEDA shall exercise their powers to approve PSP Projects in accordance with the Supervisory Committees' Regulations and within their competence.

2. CEDA may – on the recommendation of the relevant Supervisory Committee and for the purposes of implementing the PSP Projects – grant any licenses, permits or approvals normally granted by any other governmental body.
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ARTICLE 8: POWERS AND FUNCTIONS OF NCP

NCP shall exercise the powers and carry out the functions set out for it in the NCP Regulations, the Supervisory Committees' Regulations and this Law and the Regulations issued thereunder which powers shall include, but not be limited to the followings:

1. Developing policies and plans, conducting of studies and the promulgating Regulations under this Law and publishing them prior to their promulgation, and amending them, which in particular include requirements and procedures relating, but not limited, to the followings:
 - A. Prioritization, preparation, procurement and implementation of PSP Projects.
 - B. Taking all necessary measures to reduce monopoly in PSP Projects.
 - C. Setting restrictions on Government personnel participation in any procurement.
 - D. The issuance of standards and provisions to monitor the implementation of Contracts and the organization of ongoing contractual obligations between the parties to the Contract.

2. The issuance of standards and provisions to monitor the implementation of Contracts and the organization of ongoing contractual obligations between the parties to the Contract.
 3. NCP's Board of Directors shall have the power to not consider any project or contractual arrangement as a PPP or SOA Project even if the definition of PPP or the definition of SOA contained in Chapter (1) of this Law applies to it.
 4. NCP's Board of Directors shall have the power to set a minimum value for projects that may be considered as PSP Projects.
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ARTICLE 9: POWERS AND FUNCTIONS OF SUPERVISORY COMMITTEES

The Supervisory Committee shall undertake the tasks of preparing and implementing the PSP Projects in accordance with the provisions of this Law, the Regulations and the Supervisory Committees' Regulations.

ARTICLE 10: POWERS AND FUNCTIONS OF A GOVERNMENTAL ENTITY

1. The Governmental Entity, in respect of PSP Projects, shall have all the powers delegated to it by the relevant Supervisory Committee, in a manner not inconsistent with the provisions of this Law, the Regulations issued thereunder, and the Supervisory Committees' Regulations.

2. If the approval for the signing of the Contract was granted, the Supervisory Committee mandated by CEDA, or the Governmental Entity authorized by it to sign the Contract, Has the authority to transfer, divide, amend or terminate any previously existed Contract – relevant, or necessary to implementation of the PSP contracts.

CHAPTER 4: PSP PROJECTS REGISTRY

ARTICLE 11: PSP PROJECTS REGISTRY

1. NCP shall establish and maintain a record of the PSP Projects. The purpose of maintaining that record is to maintain a complete, up-to-date and accurate record of all information relating to PSP Projects in the Kingdom. NCP may make the data contained in the Registry available to the public provided that it does not contain information of a commercial or security sensitivity.
2. NCP shall establish regulations governing the establishment, availability of data and maintenance of the PSP Registry. NCP may amend such regulations whenever it deems appropriate.
3. Subject of Paragraph (1) of this Article, the Supervisory Committees, Governmental Entities and Private Parties shall comply with any request by NCP to submit, modify or disclose any documents, information or data as soon as possible.

CHAPTER 5: GOVERNMENT SUPPORT FOR PPP

ARTICLE 12: GOVERNMENT FINANCIAL SUPPORT FOR PPP PROJECTS

The Government, in accordance with established procedures, may provide financial and economic or any other type of support to any PPP Project. Such support shall be designed and published in advanced in accordance with the Regulations.

Note:

The Regulations shall include provisions specifying types of support, procedures, principles and conditions, such that such support may include, example but not limited to, the following:

1. Providing loans in accordance with the preferential conditions necessary for the implementation of a PPP Project.
2. Providing bank guarantees.
3. Contribution to the share of the PPP Project.
4. Providing guarantees on revenues.
5. Support for projects that are economically desirable but not commercially successful.
6. Providing guarantees on the quality of performance related to the obligations of the Governmental Entity.

7. Providing guarantees for the delay of the Governmental Entity in the performance of its obligations.
8. Providing guarantees on the termination of the Contract by the Governmental Entity.
9. Provision of tariff subsidies.
10. Provision of the financial resources necessary for PPP Project implementation.
11. Granting tax benefits and/or tax postponements and/or payment of tax by instalments on terms and on conditions provided for in the legislation of the Kingdom.
12. Granting customs duties preferences and/or postponements and/or instalments on terms and on conditions provided for in the legislation of the Kingdom.
13. Provision of foreign exchange and interest rate fluctuation guarantees.
14. providing rights, (including the right to use or occupy), to movable or immovable property in accordance with the legislation of the Kingdom
15. Assisting in obtaining licenses, permits, approvals;
16. Providing easements in respect of publicly owned movable or immovable property;
17. Granting the right to collect tariffs or user fees and to generate revenues from other types of activities directly or indirectly associated with the implementation of the

PPP Project;

18. Setting discounted rental payments for use of publicly owned property;
19. Granting exclusive rights to engage in the activity in the framework of the concluded PPP Contract.

The relevant laws, regulations and the impact on competitiveness of the Private Sector shall be considered when preparing the Regulations.

ARTICLE 13: RIGHTS OF THE PRIVATE PARTY

Subject to the provisions of the Contract, the Private Party shall have, for example but not limited to, the following rights:

1. Non-interference by the Governmental Entity with the business of the Private Party, except as stipulated in the PPP Contract and by the legislation of the Kingdom.
2. Protection of the property of the Private Party from nationalization or any other measure of similar effect in the manner envisaged by the legislation of the Kingdom.
3. The right to freedom of ownership, use and disposal of the investments made in the PPP Project provided it is in accordance with the PPP Contract and the freedom of disposition

of profits and proceeds received from such investments for the purposes not prohibited by the legislation of the Kingdom.

4. The right to freely dispose of the financial returns from the PPP Project, including the conversion of the national currency of into any other foreign currencies and transferring them abroad in accordance with the provisions of the contract.
5. The right to recover losses incurred as a result of any change in the Law or unlawful action or the failure of public authorities to take an action which they should have taken, which caused loss to the Private Party, in accordance with the conditions of the PPP Contract.

CHAPTER 6: TENDERS

ARTICLE 14: TENDERS

Subject to the provisions of this Law, PSP Projects shall be submitted through tenders or RFP in accordance with competitive procedures and shall be awarded to the best bidder as specified by the Regulations.

CHAPTER 7: PPP AND SOA CONTRACTS

ARTICLE 15: THE CONTENT OF PPP AND SOA CONTRACTS

A Contract shall include the basic provisions governing the rights and obligations of the parties to the agreement in accordance with the best practices in this field, and in accordance with the Regulations.

Note:

The Regulations shall include provisions specifying the minimum contents of the Contract. Such provisions shall include – for example but not limited to - the following:

1. the nature and scope of work and services to be performed by the Private Party.
2. ownership of Project assets, intellectual property rights, parties' obligations relating to delivery of the Project site and transfer of ownership provisions at the end of the Project.
3. the responsibility to issue the necessary licenses, permits and approvals.
4. mutual financial and technical obligations between Contracting parties and funding methods.
5. the pricing rules for the sale of the products and services or the criteria for providing the service on which the Project is based and the principles and rules for determining and modifying them.
6. quality assurance and supervision tools, financial, administrative and technical monitoring of Project operation, exploitation, maintenance, and performance indicators

for the Private Party.

7. organizing the Supervisory Committee's right to terminate the PPP Contract or amend its conditions, and the Private Party's compliance with these amendments and the principles of compensation and its mechanisms, and identify cases where the Supervisory Committee may terminate the Contract unilaterally.
8. operational, exploitation, recovery or performance bonds issued to the Supervisory Committee risks.
9. determining the fundamentals of risk allocation related to the Project which may include urgent circumstances, material difficulties or legislative changes that would prejudice the rights of the Private Party and determining the basis for estimating compensation.
10. term of the Contract, early termination - whether partial or whole - and the rights and obligations of the parties.
11. procedures and penalties that may be imposed on the Private Party if it breaches any of its Contractual obligations.
12. organization of the rules and procedures for the recovery of the Project either at the end of service or the unilateral termination or the early or partial termination of the Contract.
13. procedures for ensuring the continuity of the Project, upon expiry of the Contract or if the Private Party breaches its Contractual obligations.

14. provisions for the use and determination of the rate of Saudization of the Governmental Entity's employees.

15. measures to be taken by the Private Party for the preservation and protection of the environment.

16. final product specifications, level of services to be provided by the Private Party, performance indicators, security and safety measures and other relevant standards and systems.

Such provisions will be designed in general to accommodate the nature of the Contract, its needs and the structuring the Project.

ARTICLE 16: AMENDMENT OF THE CONTRACT

1. As required by the public interest or in urgent cases, and within the limits and controls agreed upon in the Contract, the Supervisory Committee may – after coordination with NCP and obtaining the approval of CEDA – amend the terms and conditions of the Contract, provided that such amendment is in writing.
2. Without prejudice to Paragraph (1) of this Article, in the event of amending the terms and conditions of the Contract, the Private Party shall be entitled to the compensation agreed upon under the Contract. If the Contract does not specifically specify the

compensation payable, such compensation shall be calculated as determined by the Regulations.

ARTICLE 17: CONTRACTING LANGUAGE

The Supervisory Committee may conclude Contracts in Arabic or any other language, and such language agreed upon by the parties to the Contract shall prevail in the event of dispute.

ARTICLE 18: PROVISIONS GOVERNING PPP AND SOA CONTRACTS

1. Subject to Paragraph (3) of Article (8) of this Law, the Contract shall be subject to the provisions of this Law and Regulations issued thereunder, and the Supervisory Committees' Regulations.
 2. PPP and SOA Contracts shall not be considered as administrative contracts and shall not be subject to any of its regulations.
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ARTICLE 19: THE APPLICATION OF THE PROVISIONS OF THE LAW TO CONTRACTS OF GOVERNMENT AGENCIES

1. Subject to the provisions of Article 37 of this Law, the provisions of this Law shall not apply to contracts concluded by any government agency in the exercise of its principal function or the exercise of a specific task issued by a special governmental instrument that provides for its authority to enter into PSP Projects without being subject to this Law.

2. The provisions of this Law shall apply to contracts entered into by any government agency whose regulations provide for their ability to invest their resources and funds.
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ARTICLE 20: IMPOSING CHARGES

The Private Party may not impose any additional charges on any type of work and services agreed upon in the PPP Contract unless the PPP Contract provides for such amounts and in accordance with the established procedures.

ARTICLE 21: EQUALITY OF BENEFICIARIES

The Private Party shall be fully committed to equally in handle and provide services or work to the beneficiaries of the Project, in accordance with the terms and conditions of the relevant PPP Contract unless the terms and conditions of the contract include the creation of rights and conditions for certain categories of beneficiaries.

ARTICLE 22: PRIVATE PARTY FINANCING

The Private Party may, without prejudice to any applicable laws in the Kingdom, enter into any Contract with banking and financial institutions and companies in order to finance the process of carrying out the business and services related to the Project. The Private Party shall individually bear all obligations and disputes arising therefrom.

ARTICLE 23: OBLIGATIONS OF THE PRIVATE PARTY

Subject to the provisions of this Law and Regulations, unless the contract otherwise provides, the Private Party shall abide by the following:

1. The Private Party may not dissolve, liquidate, change the legal form, reduce the capital or assign the Project company to a third party – in the event that the Private Party owns the controlling interest –, unless it obtains prior approval from CEDA and the relevant Supervisory Committee.
2. The Private Party must preserve, retain and use the Project assets for the purposes for which they were prepared.
3. The Private Party may not sell or dispose the movable and non-movable facilities and assets of the Project, which are the subject of the PPP Contract, except for the sale or disposal carried out in accordance with the provisions of the Contract, provided that such sale or disposal shall not take place without the prior approval from CEDA and the relevant Supervisory Committee.
4. The Private Party shall provide all documents, information and data requested by CEDA, the relevant Supervisory Committee, NCP and any other relevant Government agency, and cooperate with its employees and grant them access to their sites for inspection at any time.

5. The Private Party shall transfer knowledge and experience to the Governmental Entity related to the project and train and qualify the employees of that Governmental Entity in accordance with the agreement reached in this regard.
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ARTICLE 24: MONITOR THE PRIVATE PARTY'S PERFORMANCE

1. Without prejudice to the responsibilities and functions of the relevant government agencies, the Supervisory Committee may:
 - A. monitor the stages and steps of Project implementation, including construction, processing and service delivery according to the Contract; and
 - B. check the Private Party's compliance with the required quality standards.
 2. Subject to Sub-paragraph (A) of Paragraph (1) of this Article, the Supervisory Committee may assign to a third party the functions of monitoring the implementation of the Project by the Private Party in accordance with the terms and conditions of the PPP Contract, the relevant Regulations and Resolutions.
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ARTICLE 25: BREACH OF OBLIGATIONS

Without prejudice to provisions provided for on this regard in the PPP Contract, the Supervisory Committee may terminate the Contract in the event that the Private Party breaches its Contractual obligations substantially or fails to achieve the required quality levels according to

the Contract, after notifying the Private Party in writing of the aspects of the breach or failure to perform and not correct the conditions during the period specified in the notice.

ARTICLE 26: VALIDITY OF PPP AND SOA CONTRACTS

1. If the Contract is approved in accordance with the provisions of the Supervisory Committees' Regulations, such Contract shall be a valid, binding and effective Contract after the parties sign it.
 2. Any Contract, subject to the provisions of this Law, shall be void if it is not approved in accordance with the provisions of the Supervisory Committees' Regulations.
 3. Where no compliant appeal against the selection of a preferred bidder has been received by the PSP Appeals Committee by the date which is 10 Days after publication of the notice of preferred bidder in accordance with the Regulations, the final approval for signature from CEDA shall be confirmation that the procurement or sale process was in compliance with the requirements of the Regulations.
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ARTICLE 27: RATIFICATION

The relevant Supervisory Committee shall, at the request of the Private Party, submit a certificate to the Private Party in connection with the PPP or SOA Contract, subject to the provisions of this Law, in which it shall confirm the following:

1. That the Contract has been approved by an authorized person, whenever possible; or
 2. That the Contract, any related documents or bonds signed or to be signed are subject to the provisions of this Law.
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ARTICLE 28: DURATION OF THE PPP CONTRACT

1. The duration of the PPP Contract shall be determined as agreed between the Supervisory Committee and the Private Party provided that the original, renewed or extended, duration of the Contract shall not exceed (30) thirty years from the date of signing the PPP Contract.
2. Notwithstanding the provisions of Paragraph (1) of this Article, CEDA may, in accordance with the requirements of the public interest and upon the recommendation of the relevant Supervisory Committee or NCP, approve the conclusion or extension of a PPP Contract for a period exceeding (30) thirty years in any of the following cases:
 - A. Delay of the completion of the Project or interruption of operation due to a force majeure event;
 - B. Suspension of the Project by the Governmental Entity or other Government agencies;
 - C. Allow the Private Party to recover the additional costs arising from the requirements of the Governmental Entity that the Private Party is not expected to be able to recover during the normal Contract duration of the PSP Project; or

- D. If, upon the approval of CEDA, the Supervisory Committee or the Governmental Entity changes or modifies some of the specifications of the Contract in accordance with the justifiable public interest and in accordance with the negotiation sessions with the Private Party.
 - E. Any other case approved by CEDA.
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ARTICLE 29: CALCULATION OF CONTRACTS TERM

1. For purposes of calculating the duration of any Contract to which a Governmental Entity is a party, in order to determining whether it is a PPP Contract or not, the duration of the contractual relationship of Contracts automatically renewed for a similar period, or any potential renewal period for such Contracts shall be calculated. This Law shall apply to renewal or extension of Contracts prior to the Government taking any action to renew or extend any of these Contracts.
 2. In the event where the term of a PPP Contract has expired, and the PPP Project has been re-launched by a new tender process resulting in re-awarding the same former Private Party, such re-awarding shall not be considered as a renewal or extension of the Contract term.
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ARTICLE 30: GOVERNMENT CONTRACTING PARTY

All Contracts, subject to the provision of this Law, shall be concluded on behalf of the Government and the relevant Supervisory Committee shall be the representative of the Government in all matters related to the Contract.

CHAPTER 8: PSP PROJECT COMPANY OR SPV

ARTICLE 31: PSP PROJECT COMPANY OR SPV

1. An agreement may be reached between the Supervisory Committee and the Private Party stating that the Private Party shall establish a company or an SPV wholly owned by the Private Party in order to be a party to the contract.
 2. With the approval of the CEDA, the relevant Governmental Entity may be the owner of such company or SPV in whole or in part.
 3. The Regulations shall specify the rules, procedures and provisions related to PSP Project Company/SPV.
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CHAPTER 9: UNSOLICITED PROPOSALS

ARTICLE 32: UNSOLICITED PROPOSALS

1. The Supervisory Committee may approve the consideration of Unsolicited Proposals related to the implementation of an infrastructure project, which has not been submitted in response to an RFP issued by the Supervisory Committee.
 2. For approval of the consideration of the Unsolicited Proposals, they must meet the following conditions:
 - A. The submission of Unsolicited Proposals must be permitted by a decision of NCP's Board of Directors, whether in general or for a specific sector.
 - B. the proposal submitted is not included in the PSP Projects of the Governmental Entity;
 - C. the proposal should offer creative or innovative solutions or ideas for new projects or for one of the existing PSP Projects in the Governmental Entity;
 - D. the bidder of the Unsolicited Proposal shall not be a Government employee or consultant designated for the same purpose; and
 - E. Any other condition approved by NCP.
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ARTICLE 33: OFFER AND COSTS ACCEPTANCE

1. If the Unsolicited Proposal satisfies the conditions of Article (32) of this Law, and the consideration of such proposal has been accepted by the relevant Supervisory Committee, such proposal shall be subject to the provisions of this Law and the Regulations issued

thereunder and the Supervisory Committees' Regulations; and the bidder shall be entitled to the costs of preparing and providing such proposal provided that such costs are fair and acceptable and shall not exceed (5%) five percent of the interest earned to the Government through the implementation of the proposal on the relevant PSP Project.

2. Without prejudice to the provisions of Paragraph (1) of this Article, the estimation of fair and acceptable costs, which are awarded against unsolicited offers, shall be in accordance with the Regulations and the decisions of the Supervisory Committee after being guided by the opinions of experts in the relevant fields.

CHAPTER 10: TRANSFER OF EMPLOYEES AND CONTRACTS

ARTICLE 34: TRANSFER OF EMPLOYEES

Government employees or public servants affected by any PPP Project shall be shall be treated in accordance with the applicable provisions in the Kingdom.

ARTICLE 35: TRANSFER OF EXISTING CONTRACTS

1. If the implementation of the PSP Project requires the transfer of existing contracts between the Governmental Entity and other parties (such as suppliers and contractors) to the Private Party, subject to the Private Party's approval, the Supervisory Committee may decide to transfer such contracts to the Private Party.

2. Subject to paragraph (1) of this Article, the transfer of existing contracts to the Private Party shall not require the conclusion of additional transfer agreements or the consent of the counterparty Contracting with the Governmental Entity. The counterparty shall not be entitled to any compensation for such transfer.

CHAPTER 11: PARTICIPATION OF FOREIGN ENTITIES IN PPP

ARTICLE 36: PARTICIPATION OF FOREIGN ENTITIES IN PPP

Without prejudice to the applicable laws and regulations in the Kingdom and any international or regional treaty or convention to which the Kingdom is a party, foreign legal entities shall be entitled to the same treatment as national entities in respect to any procedures, conditions, rights and obligations arising from this Law and any Contract. Foreign legal entities are admitted to the procedures for selecting a Private Party to conclude the Contract on an equal footing with national entities in accordance with the Regulations.

CHAPTER 12: JOINT COMMITTEE OF PSP PROJECTS

ARTICLE 37: FORMING JOINT COMMITTEE OF PSP PROJECTS

1. Without prejudice to the provisions of this Law, a Joint Committee of PSP Projects shall be formed by the membership of both the NCP and two governmental bodies to be determined by the Council of Ministers.
2. The Joint Committee for PSP Projects shall have the right, by unanimous decision, to consider any project or contractual arrangement as a PPP or SOA Project, subject to this Law, even if the definition of PPP or the definition of SOA in Chapter (1) of This Law does not apply to it.
3. Subject to paragraph (2) of this Article, NCP shall submit to the Joint Committee for PSP Projects in respect of each existing or potential project or contractual arrangement between the Governmental Entity and the Private Party for consideration and decision as to whether to consider it as a PPP or SOA Project.
4. The Joint Committee shall not review previously concluded Contracts and the decisions of this Committee shall not affect existing Contracts prior to their formation.
5. The Joint Committee for PSP Projects shall, if it deems appropriate, monitor the performance of the Private Parties in the implementation of the PSP projects.
6. Decisions taken by the Joint Committee for PSP Projects in accordance with the provisions of this Article shall be final and effective with respect of the Supervisory Committee, Governmental Entities and Private Parties.

7. The Regulations shall specify the mechanism of work, decision-making and all provisions relevant to the Joint Committee for PSP Projects.
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CHAPTER 13: PSP APPEALS COMMITTEE

ARTICLE 38: PSP APPEALS COMMITTEE

1. Under this Law, an independent committee called the "PSP Appeals Committee" shall be established and shall be competent to adjudicate complaints or objections to the public right and the private right falling within the scope of the provisions of this Chapter of this Law and the Regulations issued thereunder. It shall have all the powers necessary to investigate and adjudicate objections, including the power to summon witnesses, issue decisions, and request for evidence and documents. The Regulations shall determine the mechanism and operation of this committee and its governance.
 2. PSP Appeals Committee shall be composed of five members with expertise in matters of Contract law and PSP projects, and shall include both international and Saudi experts in these fields. Two of the five members, at least, shall be attorneys.
 3. CEDA shall appoint the members of the PSP Appeals Committee, upon nomination by the NCP's Board of Directors, for a period of (3) three years renewable for additional periods.
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ARTICLE 39: APPEALS

1. All appeals arising out of or in connection with the procedure of selection of Private Parties must be referred to the PSP Appeals Committee within the following cases and time limits:
 - A. For an appeal against the selection of a preferred bidder, the appeal must be received by the PSP Appeals Committee within (10) ten Days of publication of notice of best bidder on the Governmental Entity's website or NCP's website.
 - B. For an appeal of the shortlist selection of the shortlist of preferred bidders, the appeal must be received by the PSP Appeals Committee within (10) ten Days of publication of notice of shortlist of preferred bidders on Governmental Entity's website or NCP's website.
 - C. For an appeal of the RFQ or RFP bidding requirements, the appeal must be received by the PSP Appeals Committee prior to the closing date for RFQ or RFP responses.
 2. Appeals may only be made by Eligible Appellants who:
 - A. Have grounds for appeal in accordance with article (42) of this Law.
 - B. Lodge the appeal within the time limits set out in Paragraph (1) of this Article.
 - C. Provide an Appeal Bond in accordance with Article (44) of this Law.
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ARTICLE 40: FINAL PSP APPEALS COMMITTEE

1. An independent committee shall be formed under this Law to consider challenges against the appeal decisions. It shall have all the powers necessary for the investigation and adjudication of appeals, including the authority to summon witnesses, issue decisions, order evidence and documents.
2. The Final PSP Appeals Committee shall be composed of five members with expertise in matters of Contract law and PSP projects, and shall be appointed by a decision of the Council of Ministers.
3. Any decision of the PSP Appeals Committee may be challenged at the request of the authorized Governmental Entity or any Eligible Appellant, provided that such request is made within 10 working Days of notification of the PSP Appeals Committee decision. Challenges shall be referred to a Final PSP Appeals Committee which shall be established by this Law.
4. The decisions of the Final PSP Appeals Committee shall be final.

ARTICLE 41: ELIGIBLE APPELLANTS

Subject to the provisions of Paragraph (2) of Article (39) of this Law, Private Parties will only be eligible appellants in any of the following cases:

1. If the Private Party is acting as a prime bidder, he/she submitted a timely response to an RFQ, in the form of an SOQ conforming with all RFQ requirements in accordance with

the provisions of the Law and Regulations, and he/she were not selected to participate as a shortlisted bidder.

2. If the Private Party is acting as a prime bidder, and he/she submitted a timely response to an RFP, in the form of a tender conforming with all RFP requirements in accordance with the provisions of the Law and Regulations, and he/she were not selected as the preferred bidder.
3. If there are potential bidders in the RFQ or RFP, who inform the relevant Supervisory Committee or its authorized representative in due course of the existence of deficiencies in the RFQ or RFP, and that such aspects will unduly obstruct or limit such competition, but the relevant Supervisory Committee or its authorized representative have not dealt adequately with these shortcomings.

ARTICLE 42: GROUNDS FOR APPEAL

1. Private parties have grounds to appeal the outcome of a PPP or SOA procurement at the shortlist or selection of preferred bidder phase (as set out in the Regulations) if any of the following occurred:
 - A. If the appellants can demonstrate that the relevant Supervisory Committee was not fully compliant with NCP requirements in its conduct of the RFP, and that remedying these deficiencies may be expected to materially affect the selection of the preferred bidder.

- B. If the appellants can demonstrate that the relevant Supervisory Committee was not fully compliant with NCP requirements in its conduct of the RFQ, and that remedying these deficiencies may be expected to materially affect the selection of the shortlisted bidders.
 - C. If the appellants can demonstrate that the selection of the preferred bidder or shortlisted parties was influenced by corrupt activities.
2. Private parties have grounds to appeal the PPP or SOA procurement at the RFQ or RFP phase of the procurement process (as set out in the Regulations) if they can demonstrate that the bidding requirements were unduly restrictive or unreasonable and materially affected their ability to submit a responsive SOQ or bid, and that the procuring agency failed to address the issue(s) after receipt of timely notification.
 3. The grounds for an appeal must be clear and specific, and identify the specific act(s) or failure(s) to act that justify remedial action on the part of the relevant Supervisory Committee.
 4. If the PSP Appeals Committee finds that the objection is fictitious and not genuine, it must reject it, and the PSP Appeals Committee must reject any vague or unwarranted objections.

ARTICLE 43: REMEDIES

Without prejudice to the provisions of Article (42) of this Law, the remedies of valid appeals shall be in accordance with the with the forms and limits of compensation determined by the

Regulations and in accordance with the decisions of the PSP Appeals Committee or the Final PSP Appeals Committee.

ARTICLE 44: APPEAL BOND

1. Eligible Appellants must provide an irrevocable and unconditional financial appeal bond in favour of NCP from a licensed bank in the Kingdom in a form set out in the Regulations.
 2. The amount of the appeal bond shall be equivalent to (2%) two percent of the potential Contract value of the PPP or SOA Contract the subject of the appeal provided that the minimum amount of the bond shall be (1,000,000) one million SAR and a maximum amount shall be (5,000,000) five million SAR
 3. In the event that the Eligible Appellant's appeal is successful, the appeal bond shall be returned to the Eligible Appellant.
 4. In the event that the Eligible Appellant's appeal is unsuccessful, the appeal bond may be called by NCP for the total sum of the bond and such sum must be placed in a separate account to be set up by NCP and must be used towards payment of the costs of the PSP Appeals Committee as approved by NCP's Board of Directors.
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CHAPTER 14: DISPUTES

ARTICLE 45: DISPUTES RESOLUTION

Disputes resulting from any Contract shall be settled in accordance with the dispute settlement procedures provided for in the applicable laws and regulations in the Kingdom unless the parties agree to arbitration after the approval of CEDA.

ARTICLE 46: SCOPE OF DISPUTES RESOLUTION

Without prejudice to the provisions of this Law and the Regulations issued thereunder, disputes arising between the project Contractor and the Private Party, the financiers, or the suppliers and disputes arising between the consumer and the Private Party in the context of PSP projects shall not be governed by the provisions of this Law.

CHAPTER 15: OTHER LEGISLATION AND THE LAW¹

¹ This Chapter includes a list of exemptions from applicable laws and regulations for the purpose of consulting the public on that regard. This list does not necessarily reflect the views of NCP or any other governmental body. The assessment of the need for such exemptions will be subject to the consideration of the competent authorities after coordination with the relevant authorities responsible for the implementation of those laws and regulations.

ARTICLE 47: GOVERNMENT TENDERS AND PROCUREMENT LAW

1. The Government Tenders and Procurement Law and any subsequent amendments thereto shall not apply to all PPP or SOA Projects and Contracts which are subject to the provisions of this Law and the Regulations issued thereunder
2. Without prejudice to the provisions of this Law, the Governmental Entity and the Private Party may agree to subject any of the PPP or SOA Projects and Contracts to the Government Tenders and Procurement Law.

ARTICLE 48: THE IMPLEMENTING REGULATIONS FOR LAW OF EMINENT DOMAIN AND TEMPORARY TAKING OF PROPERTY

Regardless of what is stated in the Implementing Regulations for Law of Eminent Domain and Temporary Taking of Property, public utilities and services shall include all infrastructure services and services provided in all PSP targeted sectors or any PPP Project, or a combination of PPP Projects.

ARTICLE 49: THE LAW OF REAL ESTATE OWNERSHIP AND INVESTMENT BY NON-SAUDIS

As an exception from what is stated in the Law of Real Estate Ownership and Investment by Non-Saudis or any applicable regulations in the Kingdom that restrict foreign ownership of real estate, if be approved by the Council of Ministers, in the PSP Projects:

1. Non-Saudis may own real estate in whole or in part, except for properties located within the boundaries of the cities of Makkah and Medina.
 2. Real estate may be leased to the Private Party within the boundaries of the cities of Makkah and Madinah for a period equal to the term of any PPP Contract for the purpose of implementing the PPP Contract for real estate which is the subject of the PPP Contract.
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ARTICLE 50: THE LABOR LAW

As an exception from what is stated in the Labor Law and any regulation or other regulations issued thereunder, NCP may coordinate with the Ministry of Labor and Social Development to establish the appropriate ranges for national employment and to determine the need for any exemption from the Labor Law and the Nitaqat Guide in relation to employment in any PPP Project.

ARTICLE 51: THE COMPANIES LAW

1. A Private Party shall be exempted from the application of Articles (150) and (181) of the Companies Law. Such exemption shall elapse three years after the Service Commencement Date as specified in the PPP Contract. CEDA shall have the power to extend the exemption period. Any provision stated in any other law or regulation that is concerned with substantial losses of capital shall be treated as this Article treats Articles (150) and (181) of

the Companies Law. Nothing in this Article shall be deemed to affect other private parties' rights.

2. Without prejudice to paragraph (1) of this Article, CEDA shall have the power to take any appropriate action in the event that the Private Partner incurs significant losses during the first three years from the date of commencement of service as specified in the PPP Contract.

ARTICLE 52: THE COMPETITION LAW

The Competition Law shall not apply to the actions of any Private Party insofar as such actions are directly related to a PPP Contract or PPP Project.

ARTICLE 53: THE LAW OF THE BOARD OF GRIEVANCES

Subject to the provisions of Paragraph (2) of Article (18) of this Law, PPP and SOA Contracts shall be excluded from the application of the provisions of Paragraphs (B, C, D and F) of Article (13) of The Law of the Board of Grievances.

ARTICLE 54: ARBITRATION LAW

As an exception from what is stated in the Arbitration Law, CEDA may approve allowing Contracting Parties to agree on arbitration in respect of settlement of disputes arising from a Contract or any other contract entered into with respect to the assignment Project except for contracts relating to real estate within the Kingdom.

ARTICLE 55: ENFORCEMENT LAW

PSP Projects shall be excluded from the application of the provisions of paragraph (1) of Article (21) of the Enforcement Law and any regulations issued thereunder.

ARTICLE 56: LAW ON PRIVATE HEALTHCARE INSTITUTIONS

Regardless of what is stated in the Law on Private Healthcare Institutions is hereby, health institutions may be owned by non-Saudis for a period equal to any PPP Contract for healthcare institutions which are the subject of the PPP Contract.

ARTICLE 57: PRIVATE SCHOOL REGULATIONS

As an exception from what is stated in the Private Schools Regulations, non-Saudis may own private schools for a period equal to any Public-Private Partnership Contract for private schools which are the subject of the PPP Contract.

ARTICLE 58: LAW OF REAL PROPERTY REGISTRATION

Subject to the provisions of Article (37) of the Law of Real Property Registration, Private Party may enter into leases and bonds that related to a real estate's benefit of more than five-year duration, charges and remittances more than three years in advance, and final provisions

evidenced by any of the above. Such rights do not apply to third parties in excess of those periods in real estate subject to PPP Contracts.

ARTICLE 59: EXEMPTIONS FROM OTHER LAWS AND REGULATIONS

Except as provided for in Articles 47, 48, 50, 53, 54, 56 and 57 of this Chapter, the other exemptions in this Chapter shall apply to PSP Projects only on the basis of the following:

1. An analysis and a comprehensive study for each Project during all phases of the preparation of the PSP Project to determine the need to apply such exemptions.
2. An approval by CEDA or the Council of Ministers – as applicable – of such exemptions within the approval for signing the Contract in accordance with the Regulations.

ARTICLE 60: OTHER LEGISLATION

1. In the event of conflict between this Law and any existing or future legislation, including Royal Decrees and regulations, or if the application of these regulations impairs the operation of this Law, the provisions of this Law, the Regulations issued thereunder, the Supervisory Committee Regulations, and NCP's Regulations shall prevail.
2. Without prejudice to the provisions of paragraph (1) of this Article, the conflicting or obstructive regulations shall be suspended as long as they contradict with this Law and the Regulations issued thereunder, the Supervisory Committee Regulations, and NCP's

Regulations unless, in the case of future legislation, it expressly states that it is to apply to the PSP Law and Regulations.

CHAPTER 16: PUBLICATION AND ENFORCEMENT

ARTICLE 61: PUBLICATION AND ENFORCEMENT

This Law shall be published and effective from the date of its publication in the Official Gazette.

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