

PPP Law 48 (07/09/2017) - Unofficial translation

Article I:

For the purposes of this law, the following definitions shall have the following meanings:

Public Entity:	The State or public institutions including regulatory bodies or municipalities or federations of municipalities and all moral persons of public law.
Private Partner:	A private sector company, or a consortium of local and/or foreign private companies, which has been awarded the Partnership Agreement.
PPP Project:	Any public benefit project in which the private sector contributes financing and management and at least one of the following activities: design, installation, construction, development, restoration, equipment, maintenance, rehabilitation and operation.
Partnership Agreement:	The collection of contracts, annexes, undertakings and guarantees that govern the contractual relationship between the Public Entity, the Project Company and other concerned parties.
The Council:	The High Council for Privatization and PPP.
Project Company [SPV]:	The Lebanese joint stock company established by the Private Partner for the purposes of carrying out the PPP Project.
Concerned Minister:	The minister in charge of the administrations or supervising the public institutions, including the regulatory bodies or municipalities or federations of municipalities, under which the PPP Project falls.
Formation Phase:	The period from the date of signing the Partnership Agreement by the parties to it till the date of the completion of the design and installation and/or construction, and/or development, and/or restoration, and/or equipment, and/or maintenance and/or rehabilitation processes, as stipulated in the Partnership Agreement.
Operational Phase:	The period from the start of service provision and operation and maintenance till the completion date as stipulated in the Partnership Agreement.

Article II:

- 1- The provisions of this law shall govern all PPP Projects undertaken by the State and public institutions and all moral persons of public law, with the exception of municipalities and federations of municipalities, which may choose to subject their PPP Projects to the provisions of this law.
- 2- Any other text notwithstanding, the provisions of this law shall govern PPP Projects stipulated in the laws regulating the telecommunications sector, the electricity sector and the civil aviation sector.
- 3- Should the Council decide to proceed with a PPP Project, the regulatory authority of the sector would exercise its duties regarding the issuance of licenses through its membership in the Project Committee. In case the positions of the chairman and members of the [relevant] regulatory authority were vacant, the approval of the Council of Ministers shall be considered de facto as an issued license.
- 4- The [relevant] regulatory authority exercises its duties as per the regulatory law establishing it, provided that these duties do not violate the provisions of this law and the provisions and terms of the Partnership Agreement, especially those related to the amendment of prices of services set in the agreement, and those related to the imposition of fines and the suspension and amendment and renewal and cancellation and withdrawal of licenses.

Article III:

- 1- The designation of the "High Council for Privatization", established pursuant to Law No. 228 dated May 31, 2000, is replaced wherever mentioned by that of the "High Council for Privatization and PPP". The Council shall in addition to the powers granted to it pursuant to the above-mentioned law handle the duties stated in this law.
- 2- The Concerned Minister shall automatically join the Council [as a member].
- 3- The "Secretary General of the High Council for Privatization" title mentioned in Decree No. 5540 dated May 23, 2001 is replaced by the title "Secretary General of the High Council for Privatization and PPP" [the "Secretary General"]. The Secretary General heads the Secretariat General of the Council and conducts and manages the regular work of the Council.

Article IV:

- 1- PPP Projects may be proposed by the President of the Council or by the Concerned Minister, and PPP Projects of municipal nature may be proposed by the president of the municipal council or by the president of the federation of municipalities. The proposal is made through the submission of a file to the Council, which shall include a preliminary study of the project.
- 2- In preparation for the Council to decide whether to accept or reject the proposal, the Secretariat General of the Council shall prepare an adequate review of the proposed PPP Project and shall submit to the Council a report including its recommendation regarding the feasibility of executing the proposed PPP Project through a Partnership Agreement and the extent of the interest of the private sector in financing it and investing in it.
- 3- Should the Council decide to accept the proposal and thus to proceed with the project, the Council shall form a Project Committee, which is chaired by the Secretary General of the Council and which includes a representative of the Concerned Minister, a representative of the Ministry of Finance nominated by the Minister of Finance, and the chairman of the sector's regulatory authority, if it exists, and the president of the municipal council or the president of the federation of municipalities when considering projects of a municipal nature which have been subjected to the provisions of this law. The Project Committee shall also select financial, legal and technical consultants to assist it in its work. These consultants would be retained by the Council.
- 4- The Project Committee will be supported by a Working Team, whose work shall be coordinated by a delegate of the Secretariat General of the Council named by the Secretary General of the Council; [the Working Team] shall include representatives of the Public Entity benefitting from the PPP Project and representatives of the retained financial, legal, and technical consultants as well as experts of specific competence, as may be necessary, selected from the concerned ministries and existing regulatory authorities and any moral person of public law which the Project Committee deems that some aspects of the PPP Project fall within the scope of his/her powers.

The Public Entity, to whom the Project Committee's or Working Team's member is affiliated, shall bear the cost of any additional remuneration due to him/her and shall make such compensation as per its own bylaws.

Article V:

The Project Committee, assisted by the Working Team, shall be responsible for preparing a comprehensive study on the PPP Project covering its technical, economic, legal and financing aspects, including the prequalification criteria and the extent of investor interest and the possibility of attracting the necessary financing and shall submit a report with its recommendation to the Council.

Article VI:

After the Council agrees to proceed with the PPP Project, for projects undertaken by the State or public institutions, and any moral person of public law with the exception of municipalities or federations of municipalities, the President of the Council shall refer the project file to the Council of Ministers. After the

Council of Ministers agrees to proceed with the PPP Project, the Project Committee shall launch the process of selection of the Private Partner in accordance with the principles set out in this law.

After the Council agrees to proceed with a PPP Project of municipal nature, which has been subjected to the provisions of this law, the President of the Council shall refer the project file to the president of the municipal council or the president of the concerned federation of municipalities to obtain the required endorsements in accordance to the provisions of the legislative decree number 118 dated 30 June 1977. Once endorsements have been obtained, the Project Committee shall launch the process for selection of the Private Partner in accordance with the principles set out in this law.

Article VII:

- 1- The process of the selection of the Private Partner shall be subject to the principles of transparency, freedom of participation by competing bidders and equal treatment of the same; and sufficient publicity should be assured to ensure a multitude of competing bids.
- 2- The process of the selection of the Private Partner shall start with the publication of a public invitation to parties interested in being candidates for the award of the PPP Project. This invitation shall include the prequalification criteria commensurate with the size and nature of the PPP Project. This invitation shall be published in the local and international press as well as in specialized magazines and on the Council's website, at least a month prior to the deadline of submission of the expression of interest.
- 3- The Project Committee shall provide the parties interested in being prequalified with the necessary information and instructions, which would serve as a basis for their pre-qualification applications. It is forbidden to prequalify or to select a Private Partner that has been declared bankrupt, and was in a state of liquidation, or have been convicted according to local or foreign judgments for acts of collusion or illicit practices. In case the Private Partner were a consortium, each of the consortium's members shall satisfy these conditions. It is also prohibited to enter into a contract with a Project Company whose president or one of its board members have been convicted by a final verdict of a felony or misdemeanor.
- 4- The Project Committee, assisted by the Working Team, shall study the submitted pre-qualification applications and examine their supporting documents. The Project Committee shall evaluate the prequalification applications based on the published prequalification criteria and shall submit a report to the Council including the names of the prequalified candidates as well as of those who did not prequalify and the basis for their decision. Once the Council has taken the appropriate decision, the prequalification results shall be published, provided that the number of prequalified candidates shall be no less than three.
- 5- In case less than three candidates were prequalified; the public invitation to those interested in being prequalified shall be published again.
- 6- The Project Committee shall justify its decision to the candidates who were not prequalified.
- 7- The Project Committee, assisted by the Working Team, shall prepare a draft tender document. This draft shall include, without being limited to:
 - a. The evaluation criteria specific to the PPP Project, which should be objective and commensurate with the size and nature of the project and should be directly related to it and should be auditable and verifiable.
 - b. The project information, which includes the procedures for bid submission and the financial, technical and administrative elements of the project and the mechanisms for inquiries, objections and their settlement.
 - c. The draft Partnership Agreement and its annexes.
- 8- The Project Committee shall send the draft tender document to prequalified candidates.
- 9- The Project Committee, assisted by the Working Team, shall conduct consultations with all of the prequalified candidates and lenders in a neutral and transparent way to reach a comprehensive and final

conception of the technical requirements, the practical means and the best financial structure to undertake the PPP Project. The draft tender document shall be amended, if necessary, by the Project Committee in light of these consultations.

- 10- The Project Committee shall submit the tender document, in its final form, to the Council. Once the Council approves the tender document, the President of the Council shall submit it to the Council of Ministers for final approval. With regards to PPP Projects of municipal nature which have been subjected to the provisions of this law, and once the Council approves the tender document, the President of the Council shall refer it to the president of the relevant municipal council or federation of municipalities to obtain the required endorsements in accordance with the provisions of Legislative Decree No. 118, dated June 30, 1977.
- 11- The Project Committee shall send the tender document to the prequalified candidates.
- 12- The prequalified candidates shall prepare their technical and financial proposals and shall submit them to the Project Committee in accordance with the principles set out in the tender document.
- 13- In case less than three proposals were submitted, the tender for the PPP Project shall be launched again. In case this does not result in the submission of at least three proposals, two proposals may be deemed sufficient to proceed, subject to the approval of the Council of Ministers.
- 14- The Project Committee shall open the technical proposals in the presence of the bidders to check for their compliance with the submission requirements stipulated in the tender document. The Project Committee may ask the bidders to provide necessary clarifications, missing information and confirmation of commitments, if any, subject to a defined deadline.
- 15- The technical proposals which are not compliant with the requirements of the tender document shall be rejected and their related financial proposals shall be returned unopened to their bidders who presented them. The reason for non-compliance shall be notified to the bidders.
- 16- The Project Committee, assisted by the Working Team, shall evaluate the remaining technical proposals according to the criteria defined in the tender document, and shall identify the accepted technical proposals in light of this evaluation. In case less than two technical proposals were accepted, the tender is launched again to ensure competition.
- 17- The Project Committee shall open the financial proposals related to the accepted technical proposals in the presence of the bidders and shall submit afterwards a report to the Council classifying the bidders in light of the technical and financial evaluation. The Project Committee shall attach to the report its recommendation with respect to the best bid based on the evaluation criteria stated in the tender document.

The Project Committee, with the authorization of the Council, may engage the best bidder in negotiations aimed at improving the proposal from a technical aspect.

Article VIII:

The winning bidder is the bidder who submitted the best proposal as per the evaluation of the Project Committee based on the evaluation criteria stated in the tender document, and as approved by the Council. The Project Committee shall announce the outcome of the bidding process and shall notify the remaining bidders of the reason for their failure.

Article IX:

- 1- The Private Partner shall establish a Lebanese joint-stock company (the Project Company), all of whose shares shall be nominative and which shall be subject to the provisions of the Code of Commerce, enacted by Legislative Decree No. 304, dated December 24, 1942. [The Project Company] shall be exempted from the nationality requirement stipulated in Articles 78 and 144 and from the requirement of appointing an additional auditor; and the [Project Company's] Chairman and or CEO shall be exempted from the obligation of obtaining a work permit.

- 2- Regarding PPP Projects undertaken by the State or public institutions and any moral person of public law with the exception of municipalities or federations of municipalities, the Private Partner shall not have the right to relinquish its shares in the Project Company before the project reaches the operational stage, as defined in the Partnership Agreement, without the approval of the Council of Ministers. The approval of the municipal council or the federation council shall be required for projects of a municipal nature.
- 3- The Public Entity shall be allowed to participate in the Formation of the Project Company and to contribute to its capital, and its in-kind contributions shall be exempted from the verification treatment provided for in Article 86 of the Code of Commerce such that the valuation is performed by an independent entity with international experience. The members of the board of directors shall be selected by the General Assembly and the Public Entity shall be represented for the duration of its contribution by at least one member appointed by the Council of Ministers based on the suggestion of the Concerned Minister.
- 4- The Project Company shall not be subject to the oversight of the Court of Accounts.

Article X:

The Partnership Agreement shall be signed by the authorized signatory on behalf of the Public Entity and by representatives of the Project Company. When necessary the Private Partner and any other concerned party shall as well sign the Partnership Agreement. The Partnership Agreement shall include the following:

- 1- Each party's rights and obligations;
- 2- The financing basis of the PPP Project;
- 3- The duration of the Partnership Agreement, which shall not exceed thirty-five years starting from the date of signature;
- 4- All revenues that the Project Company will receive from the Public Entity, or revenues that the Public Entity will receive from the Project Company, depending on the nature of the PPP Project, for the performance of the works entrusted to the Project Company pursuant to the Partnership Agreement, as well as the methods of payment of these revenues;
- 5- The fees and tariffs and royalties related to the PPP Project that the Government or the municipal council or the federation council may authorize the Project Company to collect on behalf of and for the account of the Public Entity;
- 6- The key performance indicators of the Project Company;
- 7- The reports that the Project Company should prepare in connection with the execution of the PPP Project and should submit to the Public Entity and the Council;
- 8- The allocation of risks between the Public Entity and the Project Company, in addition to the actions to be taken and procedures to be followed to reduce the impact of such risks;
- 9- The rules for amending the Partnership Agreement's main conditions;
- 10- The guarantees, commitments and obligations which may be given by the Project Company and/or the Private Partner and/or the Public Entity for the implementation of the PPP Project;
- 11- The money and properties of the Public Entity which is put at the disposal of the Project Company throughout the term of the Partnership Agreement for the performance of its obligations, in addition to the rights and obligations of the Project Company in respect of such money and properties;
- 12- The procedure of transfer of the PPP Project in due course to the Public Entity, when the nature of the Project requires such transfer;
- 13- The procedures required to ensure the continuity of the PPP Project and the works performed under the Partnership Agreement upon termination of the Partnership Agreement, whether due to its expiration or early termination or in the event of failure by the Project Company to perform any of its contractual obligations;
- 14- The procedures and penalties that may be imposed on either party in the event of any breach of its contractual obligations and the detailed mechanisms to execute such procedures;
- 15- The dispute resolution mechanism, which can include mediation and domestic and international arbitration.

Article XI:

The Public Entity shall be responsible for overseeing the execution of the PPP Project in all its aspects as stipulated in the Partnership Agreement. The oversight applies to two phases, the Formation Phase and the Operational Phase.

1- The Formation Phase

- a. Immediately following the signature of the Partnership Agreement by its parties, the Public Entity shall appoint:
 - i. A steering committee, chaired by a representative of the Public Entity and including representatives of the Concerned Minister (in case the Public Entity was other than the State), the Council's Secretariat General, the Ministry of Finance and the regulatory authority of the sector, if one exists.
 - ii. A project management office for the Formation Phase, which includes in addition to its appointed members, specialized experts and local and/or international consultants as deemed necessary in accordance with the nature of the PPP Project. The project management office plays the role of interface between the steering committee and the Project Company.
- b. The project management office shall receive and evaluate the reports submitted by the Project Company in connection with the execution and progress of works, and shall prepare quarterly monitoring reports and submit them to the steering committee. The monitoring reports shall show the extent of compliance of the Project Company with the execution timetable stipulated by the Partnership Agreement and shall include suggestions regarding urgent matters requiring settlement.
- c. The steering committee shall meet on a quarterly basis, and whenever an urgent matter arises, in order to review the monitoring reports submitted by the project management office and to issue necessary instructions and submit reports to the Public Entity, and the Concerned Minister (in case the Public Entity was other than the State), and the Council's Secretariat General.
- d. The Public Entity other than the State, and upon approval by the Concerned Minister, may take necessary measures and decisions based on the reports of the steering committee and the project management office.

2- The Operational Phase

- a. Before this phase starts, the Public Entity shall appoint a project management office for the Operational Phase, which includes in addition to its concerned members, a representative of the regulatory body of the sector if it exists and specialized experts and local and/or international consultants as deemed necessary.
- b. The tasks of the project management office shall include, but are not limited to:
 - i. Monitoring the operations of the Project Company with regards to output and level and quality of the requested services relative to the required standards and with regards to risk allocation.
 - ii. Proposing measures to remedy any breach of obligations by the Project Company and to impose sanctions as per the Partnership Agreement.
 - iii. Contributing to resolving disputes, should they arise.
 - iv. Ensuring the general compliance of the Project Company with the terms stipulated in the Partnership Agreement.
- c. The project management office for the Operational Phase shall present the monitoring results in reports on a bi-annual basis and whenever necessary. A copy of these reports shall be sent to the Public Entity for it to take appropriate decisions, and to the Concerned Minister in case the Public Entity was other than the State, and to the Council's General Secretariat for their information and opinion and referral to the Council whenever necessary.

Article XII:

The Council's Secretariat General shall:

- 1- Prepare annual reports regarding the program of PPP Projects, and proposals aiming at developing and encouraging public private partnerships in general, and submit them to the Council for referral to the Council of Ministers.
- 2- Train the staff of the public sector to develop their capabilities and enable them to effectively study and manage PPP Projects.

Article XIII:

- 1- Contrary to any other text, the Public Entity shall have the right to put at the disposal of the Project Company real estate properties that it owns and that it deems necessary for the execution of the PPP Project for the duration of the Partnership Agreement.
- 2- If the implementation of the PPP Project requires the expropriation of private properties, either the Council or the Project Company shall request from the Public Entity to expropriate these properties. In this case, the expropriation rules shall apply and the decisions for the seizure and the transfer of ownership shall be issued within 6 months of the issuance of the decree declaring public benefit. The expropriated properties shall be registered in the name of the Public Entity in the land registry, and the Project Company shall be given the right to use such expropriated properties for the duration of the Partnership Agreement.
- 3- The Project Company or the Private Partner has the right to fully or partially finance, with the Public Entity, the compensation for the expropriation of the real estate properties required for the PPP Project, such that this financial contribution is considered an integral element of the financing of the PPP Project.

Article XIV:

The expenses of the PPP Project that are to be borne by the State shall be reflected in the national budget.

Article XV:

Each of the Council and the Public Entity shall retain the experts and consultants referred to in this law based on their respective bylaws whenever they exist, otherwise, based on the provisions of the general accounting law.

Article XVI:

The provisions of this law shall not prevent the Private Partner and the Project Company from benefiting from the provisions of Law No. 360 dated August 16, 2001 and relating to the development of investments in Lebanon, and from the provisions of Law No. 705 dated December 9, 2005 and relating to the securitization of assets.

Article XVII:

The implementation details of this law shall be set, when necessary, by virtue of decrees adopted by the Council of Ministers, upon proposal by the President of the Council.

Article XVIII:

This law shall become effective immediately upon its publication in the Official Gazette.

The next section describes the current tendering process for PPPs in Lebanon, consistent with the PPP law.