

I ASSENT THIS 25th DAY OF Dec 2023


HON. MAI MALA BUNICON,
EXECUTIVE GOVERNOR
YOBE STATE

A BILL FOR A LAW TO PROVIDE FOR THE ESTABLISHMENT, FUNCTIONS AND POWERS OF YOBE STATE AGENCY FOR PUBLIC PRIVATE PARTNERSHIP AND INVESTMENT PROMOTION; TO PROVIDE FOR THE PARTICIPATION OF THE PRIVATE SECTOR IN THE FINANCING, CONSTRUCTION, DEVELOPMENT, OPERATION, MANAGEMENT OR MAINTENANCE OF INFRASTRUCTURE OR DEVELOPMENT PROJECTS OF THE GOVERNMENT THROUGH CONCESSION OR OTHER CONTRACTUAL ARRANGEMENTS AND OTHER MATTERS RELATED THERETO.

PART I – PRELIMINARY

ENACTED by the Yobe State House of Assembly as follows:-

Short Title and
Commencement

1. This Law may be cited as the Yobe State Agency for Public Private Partnership and Investment Promotion Law, 2023 and shall come into operation on the 25th Day of Dec 2023.

Interpretation.

2. In this Law, unless the context otherwise requires:-
“Agency” means the Yobe State Agency for Public Private Partnership and Investment Promotion (YAPPIP) under section 3 of this Law;
“Affordability” means that-
(a) the financial commitments to be incurred by a contracting authority in terms of a project agreement that can be met by funds-
(i) designated within the existing budget of the contracting authority for which the agreement relates; and
(ii) assigned to the contracting authority in accordance with its relevant future budgetary allocation:

“Agreement” means a public private partnership agreement embodying the terms and conditions concluded between a Contracting authority and Private party.

“Assets” means an existing asset of a Contracting party or a new asset to be acquired for the purposes of entering into an agreement.

“Approving Officer” means any person in charge of a Contracting authority or so designated to perform such function.

“Concession” means a contractual license formalized by a project agreement, which may be linked to a separate interest or right over real property, entitling a person who is granted the license to make use of the specified infrastructure or undertake a project and to charge user fees, receive payments or both such fees and payments during the term of the concession.

“Concession Agreement” shall include but not limited to Public Private Partnership schemes such as:-

- (a) Design-Build-Operate and Transfer (DBOT) in its variants;
- (b) Build-Own-Operate (BOO);
- (c) Build-Own-Operate and Transfer (BOOT);
- (d) Joint Development Agreement (JDA);
- (e) Build-Operate-Transfer (BOT);
- (f) Build-Transfer (BT); or
- (g) Operation and Maintenance (OM);
- (h) Design, Build, Own, Operate and Transfer (DBOOT).

“Contingent Liability” includes government guarantee for loan and foreign currency transfer and step-in function by the relevant contracting authority in the event of default by private party.

“Contracting Authority” means a Ministry, State Department, Agency, State Government, Board or Local Government which intends to have a function undertaken by it performed by private party.

“Contracting Authority’s Property” includes all movable and immovable property belonging to the contracting authority and the intellectual property rights vested in the contracting authority.

“Feasibility Study” means a study undertaken to explore the technical, financial, legal, social and environmental feasibility of undertaking an infrastructure or development facility as a Public Private Partnership.

“Gap Funding” means funds invested into a Public Private Partnership project by Government of Yobe State for the purpose of making the project commercially viable.

“Governor: means the Executive Governor of Yobe State.

“House” means the Yobe State House of Assembly.

“Institutional Functions” means:-

- (a) A service, task, assignment or other function that a contracting authority is entitled or obliged to perform in the public interest or on behalf of the public generally; or
- (b) Any part or commitment of any service, task, assignment or other function performed or to be performed in support of such service, task, assignment or other function.

“Investment Incentives” means compendium of incentives that the State Government approved and grants to Investors who brings in direct investment to the State.

“Private Party” means a party that enters into a project agreement with a contracting authority and is responsible for undertaking a project on behalf of the contracting authority under this Law.

“Privately Initiated Investment Proposal” means a proposal that is originated by a private party without the involvement of a contracting authority and may include information that enables a complete evaluation of the proposal as if it were a bid.

“Profit Sharing” means arrangement between the Contracting Authority and the Private Party such that net distributable profits realized from project shall be shared according to well defined ratio.

“Project” means the design, construction, development or operation of a new infrastructure, asset or facility or the rehabilitation, modernization, expansion, operation or

management of an existing infrastructure, asset or facility.

“Project Agreement” means a contract concluded between a contracting authority and a private party and includes any ancillary agreement entered into by the parties in relation to a project.

“Project Appraisal Team” means a project appraisal team constituted under this Law.

“Project Company” means a company undertaking a project in accordance with a project agreement executed by the parties under this Law.

“Project Officer” means a person identified by the contracting authority who is capable and appropriately qualified to manage a public private partnership to which that contracting authority is a party from its inception to its expiration or termination.

“Proposal Evaluation Team” means a proposal evaluation team constituted under this Law.

“Public Private Partnership (PPP)” means an arrangement between a contracting authority and a private party under which a private party:-

(a) undertakes to perform a public function or provide a service on behalf of the contracting authority.

(b) receives a benefit for performing a public function by way of:-

(i) compensation from a public fund;

(ii) charges or fees collected by the private party from users or consumers of a service provided to them; or

(iii) a combination of such compensation and such charges or fees; and is generally liable for risks arising from the performance of the function in accordance with the terms of the project agreement.

“Request For Proposal” means invitation for proposals from interested investors or private parties to undertake the execution of a public private partnership project.

“State” means Yobe State of Nigeria.

“State Executive Council” means the Yobe State Executive Council.

“Transaction Adviser” means a person appointed in writing by a contracting authority who has the appropriate skill and experience to assist and advise the contracting authority on matters related to public private partnership, including the preparation and conclusion of a project agreement.

“User Fee” means the rate, toll, fee, or other charge imposed for the use of all or part of an infrastructure or development facility or service.

“Value For Money” means that the undertaking of a public function of the contracting authority by a private party under a public private partnership results in a net benefit accruing to that contracting authority defined in terms of cost, price, quality, quantity, timeliness or risk transfer.

PART II

ESTABLISHMENT, STRUCTURE, FUNCTIONS AND POWERS OF THE AGENCY

Establishment of the Agency.

3. (1) There is established for the State an Agency to be known as the “Yobe State Agency for Public Private Partnership and Investment Promotion YAPPPIP (in this Law referred to as the “Agency”).

(2) The Agency shall be a body corporate with a perpetual succession and a common seal.

(3) The Agency may sue and be sued in its corporate name; and may acquire, hold and dispose of any moveable or immovable property, including the power to enter into contract in its corporate name for the purpose of its functions under this Law.

Mandate of the Agency

(4) The Agency shall be placed under the Office of the Executive Governor.

4. The core mandate of the Agency is to Initiate, promote, Facilitate, coordinate, Appraise, Evaluate and Approve Investment in the State through Greenfield, Public Private

Partnership, Concession, Privatization, Commercialization of State Owned Enterprises under most expedient operational and ownership schemes

Departments of the Agency.

5. (1) The Agency shall have the following departments to be headed by an Officer not below the rank of a Director:-

- (a) Department of Marketing, Investor Relation and Advocacy
- (b) Department of Legal Services and strategy
- (c) Department of Rating, Monitoring and Evaluation
- (d) Department of Finance and Administration

(e) Such other departments as may be determined and approved by the Board for the proper performance of the functions of the Agency.

Functions of the Agency

(2) The departments shall have relevant sections/units under them to facilitate project implementation.

6. The functions of the Agency shall be to:-

(1) initiate, facilitate and consummate public private partnership for the development of public infrastructure and public assets by conducting pre-qualification process for private investors willing to enter into partnership with the state based on request for expression of interest;

(2) evaluate expression of interests by private investors interested in public private partnership with the state and issue a preferred mandate in accordance with the provisions of this Law;

(3) act on behalf of the government or any of its agencies in public private partnerships under this law and develop optimal means of financing the cost of public investment projects in order to ensure value for money;

(4) ensure that all aspects of financing, re-financing and insurance of public investment projects are duly undertaken by means of public private partnerships within the public sector;

(5) prepare and develop on behalf of the state, strategic master plan for infrastructure development and public private partnership.

(6) identify priority sectors for the development of infrastructure projects across the State;

(7) verify and monitor performance of the terms and conditions of concession agreement by concessionaries;

(8) advise the State Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of public private partnership in the State;

(9) undertake or conduct any research, investigations or inquiries and collect information relating to public infrastructure or public assets;

(10) facilitate the issuance or renewal of permits, licenses and other regulatory approvals for infrastructure development and public private partnership projects from all government agencies and authorities;

(11) liaise with bodies of professional persons and private and public agencies performing work with regard to public infrastructure or public assets; and

(12) in relation to public private partnership initiated by the Agency:-

(a) ensure the provision of facilities and amenities that are necessary for the users of public infrastructure or public assets;

(b) oversee the development, operation and maintenance of public infrastructure or public assets provided by means of public private partnership and such other facilities necessary; and

(c) satisfy, discharge and perform the obligation of the Agency and the State, uphold and observe the terms and conditions of concession agreement subject to the provision of this Law.

(13) oversee the monitoring and evaluation by contracting authorities, of a public private partnership project from the commencement to the post completion stage;

(14) ensure approval of, and fiscal accountability in the management of financial and any other form of support granted by the Government in the implementation of projects under this Law;

- (15) ensure the efficient implementation of any project agreement entered into by contracting authorities;
- (16) Promote policies and procedures that would enable the State to woo potential Investors and Business Partners.
- (17) Develop appropriate institutional and regulatory framework for Investment Promotion, Facilitation and Protection in the State.
- (18) Foster sustainable economic growth and create job opportunities to the teeming youth population in the State.
- (19) to represent the State at all forum and functions related to improving the business environment in the State.
- (20) Provide One-Stop-Shop resource and coordination center for investors willing to do business in State
- (21) perform any other function as may be conferred on it by this Law or any other written Law;

Powers of the
Agency

7. The Agency shall have powers to:-

- (1) Give concession to private investors in infrastructure development and public private partnerships for design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public assets in accordance with the Laws of the State;
- (2) Negotiate with prospective private investors;
- (3) Obtain from any government agency or private institutions, statistics or other information relevant to the functions of the Agency;
- (4) Inspect and monitor compliance with the terms and conditions of any concession agreement;
- (5) Designate a public infrastructure or public asset as a service charge, user fee or toll paying public infrastructure or public asset and specify the conditions for the use of such infrastructure or assets subject to approval by the House;

- (6) Liaise and cooperate with all Government Agencies and Parastatals with respect to private investors' participation in the provision and development of public infrastructure or public assets;
- (7) Pursuant to provisions of this Law, and the approval of the House, determine the amount of money that may be charged by any private or public operator with respect to infrastructure or amenities as tool or user fees;
- (8) Establish and operate an information and management system concerning public infrastructure and projects;
- (9) Advise and conduct risk/cost/benefit assessment that will assist Government on the Implementation of all projects and programmes in the State Investment Promotion Strategy;
- (10) Advise and assist the Government in creating an attractive and Competitive climate for business that will lead to robust economic activities in the State;
- (11) establish a framework for identifying and proactively engaging the Federal Government and its Agencies in the investment promotion drive of the State;
- (12) plan and organize targeted investment promotion activities including tours, road shows, exhibitions and fairs aimed at promoting specific investment projects in areas where the State has comparative advantages.
- (13) Act as the State Lead Negotiator for all PPP, Concessions Agreements and privatization transactions.
- (14) Perform any other functions as may be assigned to it by the Governor under this Law; and
- (15) Do all things that are necessary or expedient for the overall performance of its functions.

Appointment of
Director General.

8. (1) The Governor shall appoint for the Agency, a Director General who shall be the Chief Executive and Accounting Officer of the Agency subject to confirmation by the State House

of Assembly.

(2) The Director General shall:-

- (a) Be a person of impeccable character;
- (b) Be responsible for the day-to-day activities of the Agency;
- (c) Be subject to the supervision of the Board;
- (d) Be a Degree holder or its equivalent from any recognized institution in any of the following disciplines;

- (i) Public Administration Law, Accounting, Economics, Finance, Business Administration/Management and Engineering,
- (ii) Any related discipline provided the person has cognate and not less than Ten Years post qualification

(e) Be from the Public Service not below Grade Level 16 or from the private sector with relevant cognate experience

Tenure of Office 9. Hold office for a period of Four (4) Years in the first instance and may be reappointed by the Governor for another term of Four (4) Years only

Vacation of Office. 10. (1) The Director General shall cease to hold office if he:-
(a) resigns his appointment by a notice under his hand addressed to the Governor;
(b) becomes incapacitated by reason of infirmity of mind or body;
(c) becomes bankrupt or makes compromise with Creditors;
(d) is convicted of a criminal offence involving dishonesty, or fraud;
(e) is guilty of gross misconduct in relation to his duties;
(f) is disqualified or suspended from practicing his professions in any part of Nigeria by the order of any competent body made in respect of him personally.

(2) The Governor may in his discretion direct in writing that the Director General shall cease to hold office if he is satisfied that the person is unable to discharge his duties.

PART III

ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE BOARD

Establishment of the Board.

11. There shall be established for the Agency a Board as the decision making body which shall consist of the following members to be appointed by the Governor, subject to confirmation by the Hon. House as follows:-

- (a) A Part Time Chairman who shall be any person of impeccable character with a minimum of Ten (10) years cognate experience in the Nigerian business and investment environment
- (b) Three other members one from each Senatorial zone with requisite knowledge in finance, banking, engineering and law, and related discipline with at least ten (10) years cognate experience in their field of specialization
- (c) Six Ex-Officio members representing the following:-
 - (i) The Ministry of Justice
 - (ii) The Ministry of Finance
 - (iii) The Ministry of Budget & Economic Planning
 - (iv) The Ministry of Local Government & Chieftaincy Affairs.
 - (v) The Ministry of Commerce, and
 - (vi) Yobe state Chambers of Commerce, Industry and Tourism
- (d) The Director General of the Agency shall serve as the Secretary of the Board

Tenure of Office. 12. (1) A member of the Board other than Ex-Officio shall hold office for a term of four years and shall be eligible for re- appointment for another term of four years only.

(2) Notwithstanding the provisions of subsection (1) the Governor may at any time direct in writing that a member shall cease to hold office if he is satisfied that the member is unable to discharge his duties.

Functions of the Board

13. The Board shall have the following functions:-

- (a) make plans on infrastructure development, public private partnerships and Investment Promotion for the State Government;
- (b) take decisions on all issues relating to infrastructure development, public private partnerships and Investment

Promotion;

(c) identify priority sectors for infrastructure development and public private partnership initiatives;

(d) supervise the activities of the Agency and liaise with the Governor on all issues pertaining to Policy formulation, evaluation of Operational Guidelines and other required statutory provisions of the Agency;

(e) plan and recommend budget for the Agency of public private partnership in infrastructure development;

(f) create departments/committees for the Agency as it deems necessary.

(g) co-ordinate policies and programmes of the State with respect to public private partnerships for the provisions and development of public infrastructure or public assets and Investment Promotion in the State;

(h) ensure that public private partnerships for the provision and development of public infrastructure or public assets in the State are in accordance with the prevailing government Policy and Public interest;

(i) perform any other functions as may be assigned to it by the Governor under this Law; and

(j) Do all things that are necessary or expedient for the performance of its functions.

Powers of the Board.

14. (1) The Board shall:-

(a) be responsible for ensuring transparency and equity in all PPP bidding process and procedures in the State;

(b) examine and evaluate the bids received;

(c) make recommendations to the contracting authority for entering into negotiations with the preferred bidder; and

(2) In the discharge of its functions under this Law, the Board may:-

(a) commission any study relevant to the determination of the award of a project;

(b) request any professional or technical assistance from any appropriate body or person in the State or elsewhere;

(c) in relation to the examination and evaluation of bids, refer the bids to the appropriate contracting authority for examination and evaluation provided that the Board is satisfied that the contracting authority has the necessary expertise to do so.

(3) Where bids are referred to a contracting authority under subsection (2)(c), the contracting authority shall examine and evaluate the bids and submit to the Board its findings within such time as may be determined by the Board.

(4) Request the Chairman, supervising officer or Chief Executive Officer of a contracting authority to:-

- (i) furnish any information or produce any records or other documents relating to a project;
- (ii) answer all relevant questions;
- (iii) Examine such records or other documents and take copies or extracts there from.

Remuneration of Members of the Board.

15. A member other than Ex-Officio shall be paid such remuneration and allowance subject to such terms and conditions as the Governor may approve from time to time.

Conduct of affairs of the Board.

16. The Board shall meet at such times and place but not less than four times in a year; and may observe such rules of procedure in its proceedings as set out in the First Schedule to this Law.

Secretary/Legal Adviser to the Agency.

17. (1) There shall be a Secretary/Legal Adviser to the Agency appointed by the Governor, who shall be a Civil Servant and a qualified legal practitioner of not less than ten years post call experience.

(2) The Secretary shall:-

- (a) arrange the meetings of the Board, prepare the agenda and take minutes of meetings;
- (b) convey decisions of the Board to the Staff and other members of the Agency;
- (c) take custody of the Seal;
- (d) be responsible for the preparation of all contract documents subject to vetting by the Ministry of Justice and also witness signature of the Executive Director on contract documents and
- (e) perform all other duties as may be assigned to him by the Chairman.

Appointment of other Staff of the Agency.

18. (1) The Board shall approve the appointment for the Agency as may be expedient for the proper and efficient performance of its duties such number of employees.

(2) The terms and conditions of service (including remuneration,

termination of appointments, allowances, benefits and pensions) of the employees of the Agency shall be in accordance with the salary structure in the State Civil Service.

(3) Notwithstanding the provisions of subsection (2) of this section, the Governor may upon the recommendation of the Board approve such remuneration, allowances and benefits for the Director General or any other employee of the Agency.

Application of
Pension of the State

19. (1) It is declared that service in the Agency shall be approved service for the purpose of the state pension law and accordingly, employees of the Agency shall be entitled to pension, gratuities, and other retirement benefits as prescribed under the Pension Law of the State.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this Law shall prevent the appointment of a person to any office on terms and conditions which shall preclude the grant of pension, gratuity, or other retirement benefits in respect of that office.

(3) For the purposes of the application of the Pension Law of the State any power exercisable by a Commissioner or other Agency of the Government, other than the power to make regulations under the pension law of the State is hereby vested in and shall be exercisable by the Agency and not by any other person or body.

PART IV

FUNDS AND FINANCIAL PROVISIONS OF THE AGENCY

Funds of the
Agency.

20. (1) The Agency shall maintain a separate account which shall consist of and to which shall be credited:-

(a) Such monies as may from time to time be granted to the Agency by Federal, State or Local Governments or other Donor Agencies provided such grants are not intended for purposes contrary to the objects and functions of the Agency.

(b) Such monies as may from time to time be granted to the Agency by way of grants-in-aid and gifts, testamentary dispositions, endowment and contributions from any lawful organisation.

(c) Such administrative fees to be paid by the private sector and Government Agencies to the Agency, subject to the approval of the Board, may from time to time prescribe for the purpose of carrying out its functions.

(2) The Agency shall keep and operate Bank accounts for its funds with reputable Bank(s) within Nigeria as may be duly authorised by the existing Financial Laws and Regulations in the State.

(3) The Director General, Secretary and Director of Finance and administration, Supply and Procurement shall be signatories to the account(s). The funds in the account shall be used for the recurrent and capital expenditure of the Agency as the Board may approve.

Budget. 21. The Agency shall cause to be prepared not later than 31st October each year, a budget of its income and expenditure for the succeeding year for the purpose of approval through the Board to the House.

Accounts and Audit. 22. The Agency shall cause to be kept such proper accounts and financial records which shall be audited by External Audit Firm appointed by the Auditor-General for the State.

Annual Reports. 23. The Agency shall prepare and submit to the State Executive Council through the Board not later than 30th June of each year, a report on the activities of the Agency during the immediate preceding year and shall include in such report a copy of the audited accounts of the Agency and of the Auditors' Report.

Borrowing and other Financial arrangements. 24. Subject to the approval of the State Executive Council, the Agency may from time to time borrow fund in any currency as may be necessary for the financing of public private partnership and Investment Promotion projects subject to resolution by the House.

Establishment of Special Purpose Company. 25. (1) Subject to the approval of the Governor the Agency shall form or cause to be formed Special Purpose Committees for the purpose of raising long term debt and equity from the public as may be necessary for the financing of Public Private Partnership projects and Investment Promotion where in the opinion of the Agency it is necessary or expedient to do so in order to discharge

its functions under this Law.

(2) The funding and management of special purpose committees shall be as prescribed by the State Executive Council.

(3) The practice and management of special purpose companies created under this Law with respect to dealings in the Capital Market shall be in accordance with the Investment and Securities Act, Laws of the Federation of Nigeria, 2007.

Infrastructure credit
guarantee.

26. (1) The State may upon the recommendation of the Agency guarantee the credit of a special purpose company if it intends to obtain a Loan from a Financial Institution for the execution of a public private partnership project.

(2) The State Executive Council shall upon the recommendation of the Commissioner of Finance give guidelines with regard to the method and types of guarantee, maximum amount of guarantee, and other matters concerning the conditions of the guarantee with respect to any particular infrastructure development under public private partnership project.

(3) Subject to the approval of the State Executive Council upon the recommendation of the Commissioner of Finance the Agency shall set aside an amount to be used as guarantee.

(4) The amount referred to in subsection (3) of this section shall be from one or more of the following:-

- (a) budgetary allocation from the Federal, State or Local Governments;
- (b) investment from entities other than government;
- (c) revenue from guarantee fees; and
- (d) loans from other financial institutions, grants, funds or aids.

Use of
infrastructure credit
guarantee.

27. Any guarantee referred to in Section 26(1) shall be used to:-

- (i) fulfill the obligations with respect to loans guaranteed by the State;
- (ii) repay the principal and interest with respect to loans and equity under subsection 26(1) of this Law;
- (iii) pay for the cost, operation, promotion and management of the Infrastructure Credit Guarantee.

Operation of credit
guarantee.

28. (1) The Agency shall not later than the first quarter of each

year, set before the Commissioner of Finance, a statement setting out the details of each guarantee given during the year or given at any time before and in force at the commencement of the year.

(2) The Commissioner of Finance shall report same to the Board for onward submission to the State Executive Council.

(3) Except upon the approval of the State Executive Council, the combined net aggregate of the principal of all monies guaranteed by the government and outstanding (including the equivalent of monies raised in a currency other than the Naira) shall not exceed fifty (50) Billion Naira.

Government,
Guarantee

29. A public private partnership agreement must not contain provisions for any financial guarantee from the State, Local Government, Ministry, Agency, Department, Commission, or Board for the Public Private Partnership but may include provisions for indemnity or undertaking that would be given in the ordinary course of business.

Other Government
support and
incentives for PPP
projects.

30. (1) The State shall provide financial incentives and support as may be necessary in the interest of the public, in order to attract private investment in infrastructure and essential services in the State which may include:-

- (a) Equity participation as considered appropriate by the Government for investment in a public private partnership project upon the recommendation of the Agency;
- (b) Reduction or exemption of taxes and levies;
- (c) Subsidies with respect to any particular project; and
- (d) The grant of a loan by the Government.

(2) The Agency shall issue specific guidelines with respect to:-

- (a) criteria for qualification by the private party for the incentives;
- (b) method of application; and
- (c) appraisal and approval process.

Viability gap
funding.

31. The State shall finance only commercially viable projects. Viable projects may also include those projects that will become viable after receiving viability gap funding upon approval of the State Executive Council subject to the recommendation of the Agency.

Minimum revenue
guarantee

32. The State may upon the recommendation of the Commissioner of Finance subject to the approval of the State Executive Council, issue minimum revenue guarantee to the Private Party with respect to a public private partnership project.

PART V
PUBLIC PRIVATE PARTNERSHIP PROPOSAL, BIDS
AND APPROVAL PROCESSES:

Registration of PPP
Projects.

33. (1) Where a Contracting Authority intends to implement a Project under this Law, it shall register the project as a Solicited Proposal (in this Law referred to as the (“**Proposal**”) with the Agency. The Agency shall register a Proposal if:-

(a) The Proposal:

- (i) contains information on the availability of the necessary expertise in the Contracting Authority to proceed with the project and a detailed profile of the members of its team;
- (ii) give details of the appointment of a Project Office from within or outside the Contracting Authority or Transaction Advisor if so deemed necessary by the Contracting Authority; and
- (iii) contains a pre-feasibility study.

(b) If the applicable registration fee in accordance with the guidelines to this Law has been paid, and

(c) The Proposal has complied with all requirements of this Law.

(2) Any project proposal for the provision of infrastructure and services which is not in accordance with the Master Plan shall be referred to as an “Unsolicited Project Proposal”.

(3) Every unsolicited project proposal shall be accompanied with an amount tagged “non-refundable deposit” to be determined by the Agency and to be paid in the form of a certified bank draft.

(4) Upon the receipt of an unsolicited project proposal by the Agency and payment acknowledged, it shall forward same to the Board for onward presentation to the State Executive Council for deliberation and approval.

(5) Upon the approval of an unsolicited project proposal by the

State Executive Council, it shall be deemed to be a “**Solicited Project Proposal**” and shall comply with this Law.

Designation of Proposal.

34. Upon registration of the Proposal, the Agency shall make an assessment of the Proposal submitted to it, make recommendations where necessary and shall:-

(i) forward the Proposal to the Board for its review and onward presentation to the State Executive Council.

(ii) the State Executive Council shall notify the Board of its decision to proceed or not to proceed with the Proposal as a PPP or Investment Promotion Project.

Agency Approval No. 1

35. (1) Upon the decision to proceed with the proposal by the State Executive Council, the Agency shall issue **PPP Agency Approval No. 1** to the Contracting Authority.

(2) The Contracting Authority shall proceed with a detailed feasibility study with respect to the Proposal and submit same to the Agency in accordance with guidelines issued by the Agency.

Feasibility Study.

36. (1) Every Contracting Authority shall undertake a feasibility study when it is considered that a Proposal shall be implemented as a PPP Project.

(2) The feasibility study shall particularly give details as regards to the following:-

(a) the comparative advantage in terms of the strategic and operational benefits of the proposed project if implemented as a PPP Project or Investment Promotion project.

(b) it shall describe in specific terms that:-

(i) social and environmental impact of the proposed PPP Project;

(ii) expected outputs and deliverables by the private sector;

(iii) the extent to which these functions shall be efficiently performed by the private sector in terms of Agreement; and

(iv) most appropriate option by which the Contracting Authority may implement the project as a PPP Project or Investment Promotion Project.

(c) the capacity of the Contracting Authority to effectively enforce the agreement including the capacity to monitor project execution, and supervise performance of the private sector under the terms of the agreement; and

(d) demonstrate that the proposed PPP Project or Investment Promotion Project shall provide:-

(i) value for money for the State;

(ii) affordability;

- (iii) how to transfer appropriate financial, operational and technical risk to the private sector; and
- (iv) how to generate substantial employment opportunities and improve the living standard of the people of the State.

Agency Approval
No. 2

37. The Agency shall review the feasibility study and if satisfied issue **PPP Agency Approval No. 2**

Procurement

38. (1) A Contracting Authority shall subject to the procurement law of the state seeks and obtains approval from the Agency with respect to the financial terms of the model PPP Agreement.

(2) The Contracting Authority shall design a fair, equitable, transparent and cost effective procurement process. The procurement process may include the following:-

- (a) the project launch formally releasing details of the project in an official publication;
- (b) a request for a pre-qualification in order to determine the technical and financial capacity of interested private sector participants; and
- (c) request for proposal from qualified private sector partners.

(3) The request for Proposal shall include the following:-

- (a) the estimated investment amount of the project, and matters concerning construction, such as the cost, duration, location and scale where applicable;
- (b) the proceeds to be paid to the private party such as user fees, or by Government or a combination of both and supplementary Projects where applicable;
- (c) the method involved in the PPP Project including the designation or non-designation of the facility as a Revertible Facility;
- (d) any subsidies that may apply and the amount and method of the financial support;
- (e) the management and operation of the proposed PPP Project;
- (f) the eligibility criteria for the private sector partner; and
- (g) other matters which the Contracting Authority considers necessary.

(4) The Contracting Authority shall give consideration to Local Content in formulating the Request for Proposal.

Agency Approval

No. 3A.

39. (1) The Agency
shall after a review
of the Procurement
Plan

and Model PPP Agreement, issue **PPP Agency Approval No. 3A** to enable the Contracting Authority proceed with the procurement process.

(2) The Agency shall notify the Department of Rating, Monitoring and Evaluation of its **PPP Agency Approval No. 3A** issued to the Contracting Authority in order to enable it advertise, invite, solicit or call for Bids.

Pre-selection of Bidder.

40. The Contracting Authority shall work with the Department of Rating, Monitoring and Evaluation in carrying out the pre-selection exercise and may request for professional or technical assistance where it deems necessary or expedient.

Invitation to Bid.

41. (1) The Contracting Authority shall prepare and submit a Request for Proposal to the Department of Rating, Monitoring and Evaluation for written approval.

(2) No document pertaining to a Request for Proposal shall be issued to pre-selected bidder(s) unless approved by the Department of Rating, Monitoring and Evaluation

Contents of a Bid.

42. (1) Every bid with respect to a PPP Project shall include:-

- (a) A plan that enhances the employment generation potential of the State;
- (b) A skill transfer plan that allows professional and competent indigenes of the State to be included at all phase of the PPP Project; and
- (c) Socio-economic impact.

Procurement Report.

43. (1) After the evaluation of the bid but before appointing the preferred bidder, the Department of Rating, Monitoring and Evaluation shall submit a report as regards the evaluation of the bid (in this Law referred to as “Evaluation Report”) for approval by the Agency.

(2) The Evaluation Report shall contain the following:-

- (a) the bid criteria for affordability;
- (b) the method used in the Value for Money Analysis;
- (c) substantial financial, technical and operational risk transfer to the preferred bidder;
- (d) reasons for the choice of the preferred bid; and
- (e) any other information as may be required by the Agency.

Agency Approval
No. 3B

44. (1) The Agency shall upon satisfactory examination of the Evaluation Report issue PPP Agency Approval No. 3B.

(2) Upon the issuance of **PPP Agency Approval No. 3B**, the Attorney-General and Commissioner for Justice Yobe State shall draft the final terms of the PPP Agreement or Concession Agreement between the Private Party and the Contracting Authority and forward same to the State Executive Council for approval and award of contract.

(3) Every Agreement shall meet the requirements of affordability, value for money and transfer of economic, financial, technical and operational risk to the private party and shall particularly state the minimum contractual obligations required to be specified in a project agreement as contained in the third schedule of this Law.

(4) Upon the approval and award of contract, the State Executive Council shall forward the approved final terms of the PPP Agreement and the award of contract to the Attorney-General and Commissioner for Justice of Yobe State for drafting of the final PPP Agreement or Concession Agreement for execution by the Contracting Authority and Private party. After execution of the PPP Agreement a copy of the executed agreement be forwarded by the Attorney-General and Commissioner for Justice of Yobe State to the Agency.

Agency Approval
No. 4.

45. (1) The Agency shall upon the receipt of the executed copy of the Agreement issue PPP Agency Approval No. 4.

(2) No PPP Agreement shall commence prior to the issuance of **PPP Agency Approval No. 4.**

Notice of Contract
award.

46. (1) The Contracting Authority shall issue a notice of the contract award to be published pursuant to the relevant Laws of the State.

(2) The notice shall identify the successful bidder and include the essential terms and conditions of the Proposed Agreement.

Entering into
project agreement.

47. (1) A contracting authority that intends to finance, operate, acquire or invest in infrastructure facility or provide a service may enter into a project agreement with any qualified private party for the financing, construction, operation, equipping or maintenance of the infrastructure or development facility or provision of the service of the Government in accordance with the provisions of

this Law.

(2) A contracting authority under subsection (1) of this Section may, where it considers it appropriate, designate its assets for the use by private party, in relation to, and for the duration of a project on such terms and conditions as the contracting authority shall consider appropriate.

Public Private
Partnership
Arrangements.

48. Subject to the provisions of this law, a contracting authority may enter into a public private partnership arrangement with a Private party in accordance with the Second Schedule or in accordance with such other arrangement as may be approved by the State Executive Council.

Duration of Public
Private Partnership.

49. In determining the duration of a public private partnership, a contracting authority shall take into account the following factors:-
(a) the provisions of any relevant written law;
(b) the life span of the technology to be employed;
(c) the investment standards that are required to be maintained by each party to the project agreement throughout the duration of the partnership;
(d) the economic and financial viability of the project and the economic life of the facilities to be provided;
(f) the period of time that may be required by the parties to the partnership to:-
(i) meet and maintain throughout the duration of the partnership, the service delivery standards; and
(ii) Recoup their investment.

Extension of Public
Private Partnership
Agreement.

50. (1) The State Executive Council may on the advice of the Agency extend the duration of the project term as provided in the PPP Agreement.
(2) The State Executive Council shall take into account the public interest of the State in granting extension to any existing project.

Termination of PPP
Agreement by the
Contracting
Authority.

51. (1) The Contracting Authority may recommend to the State Executive Council through the Agency for the termination of any PPP Agreement in the event that the private party can no longer perform its obligations due to fundamental breach or insolvency of the private party.

(2) The Contracting Authority may during the term of the project step in or intervene in the interest of the public and may recommend through the Agency to the State Executive Council for the termination of any PPP Agreement.

Provided that it ensures fairness to the private party especially in the case of termination for reasons of public interest, the private party shall be compensated in accordance with the provisions of the Contract Agreement.

Termination of PPP Agreement by the Private Party.

52. The private party may terminate the Contract Agreements in any of the following circumstances:-

(a) in the event of fundamental breach; or

(b) if the parties fail to agree on a revision of certain conditions in the PPP Agreement where it stipulates that at the end of the concession or project term there shall be the revision of such conditions.

Provided that the private party shall be compensated through mechanisms agreed to by both parties in the Agreement.

PART VII MISCELLANEOUS PROVISIONS

Directive by the Governor.

53. The Governor may give to the Board and the Agency, such directives of a general or specific nature or relating generally to matters of Policy with regards to the exercise of their functions as he may consider necessary.

Power to make regulations.

54. The Board may make regulations not inconsistent with the provisions of this Law and the Rules made there under, for enabling it to discharge its functions under this Law and the efficient conduct of the affairs of the Agency.

Exemption from Liability.

55. The Director General and staff of the Agency and rating authority shall not be personally liable for any action lawfully done by them in the course of carrying out their functions under this Law.

Notice of suit to be given to the

56. (1) No suit shall be commenced against the Agency until 30

Agency.

Days written notice of intention to commence the same has been served upon the Agency by the intending plaintiff or his agent.

(2) Such notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims.

Savings and
Transitional
provisions.

57. (1) Notwithstanding anything to the contrary in this Law or any other Law at the commencement of this Law, all ongoing or completed projects involving partnerships between the public and private sectors for the provision of infrastructure shall be registered with the Agency.

(2) The provisions of this Law shall apply to the projects referred to in sub-section (1) of this section subject to any agreement between the public and private sectors with respect to the projects.

(3) The Attorney-General and Commissioner for Justice may in the interest of the public, exclude any Agreement or Project executed prior to the commencement of this Law from complying with the provisions of this Law.

FIRST SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.

1. (1) The Board shall meet at such times and place as the Chairman may determine and the meetings shall be convened by the Chairman.
- (2) The Board shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.
- (3) Unless three quarters of the members otherwise agree, at least seven days notice in writing of a meeting shall be given to every member by the Secretary of the Agency.
- (4) The Chairman may, at his discretion or at the written request made by at least half of the members of the Board and within seven days of the request, convene an extraordinary meeting at such time and place as he may appoint.
- (5) Meetings shall be presided over by the Chairman or in his absence by the Vice-Chairman.
- (6) The members of a Board shall elect a Vice-Chairman from among themselves:-
 - (a) at the first sitting of the Board; and
 - (b) whenever it is necessary to fill the vacancy in the office of the Vice-Chairman.
- (7) Where the Chairman or Vice-Chairman is absent, the members shall appoint from among themselves, a person to chair the meeting of the Board.
- (8) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

Conflict of interest.

2. (1) If any person has a personal or fiduciary interest in a project, proposed contract or any matter before the Board, and is present at a meeting of the Board at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.
- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Quorum.

3. (1) Subject to subparagraph (2), the quorum of the meeting shall not be less than half of the appointed members of the Board.

(2) Where the persons present at a meeting of the Board do not constitute the quorum necessary to hold a meeting under this Law or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Board shall postpone the consideration of the matter in question until there is a quorum.

Voting.

4. A question before the Board shall be decided by simply majority of the members present and voting and the Chairman shall, in the case of an equality of votes, have a casting vote.

Rules of Procedure and Minutes.

5. The Board shall:-

- (a) Determine rules of procedure for the conduct of its business; and
- (b) Keep minutes of its proceedings and decisions.

SECOND SCHEDULE

PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS

1. Management contract where a private party is responsible for the management and performance of a specified obligation, within well-defined specifications for a specified period of time not exceeding ten years, and the contracting authority retains ownership and control of facilities and capital assets and properties.

2. Output performance based contract where the private party responsible for the operation, maintenance and management of an infrastructure facility for a specified period of time not exceeding ten years and the contracting authority retains ownership of the facility and capital assets.

3. Lease whereby the private party pays the contracting authority rent or royalties and manages, operates and maintains the facility or utilizes the leased property for the purpose of exploration, production and development of minerals and receives fees, charges or benefits from consumers for the provision of the service or sale of products for specified period of time not exceeding thirty years.

4. Concession where contracting authority issues a contractual license to the private party to operate, maintain, rehabilitate or upgrade an infrastructure facility and to charge a user fee while paying a concession fee to the contracting authority.
5. Build-Own-Operate-Transfer scheme where the private party designs, constructs, finances, operates and maintains an infrastructure facility owned by the private party for a specified time period not exceeding thirty years, or such longer period as may be agreed, after which private party transfers the facility to the contracting authority.
6. Build-Own-Operate scheme where the private party designs, finances, constructs, operates and maintains the infrastructure facility and provides services for a specified period of time.
7. Build-Operate-and-Transfer scheme where the private party finances, constructs, operates and maintains an infrastructure facility and transfer the facility to the contracting authority at the end of a specified term which shall not exceed thirty years.
8. Build-Lease-and-Transfer where the contracting authority authorizes the private party to finance and construct an infrastructure or development facility upon it.
9. A description of any property to be contributed by a party to the project agreement.
10. A description of any utilities to be provided in relation to the project and the responsibility thereof.
11. The ownership of the project assets, the obligations of parties related to the handover and receipt of the project site.
12. The responsibility for obtaining authorizations, permits and approvals.
13. A description of any sharing revenue between the contracting authority and the private party.
14. Mutual financial obligations and their relation to the funding mechanism including the requirements relating to performance bonds and guarantees.
15. The preparation and submission of financial and another reports and the carrying out of financial audits in relation to the project.

16. The product sale price or the service availability payment on which the project is based and the rules for its determination and amendment either by an increase or decrease, as well as the indexation mechanisms to reflect inflation or changes in the interest rate, required.

17. The means of quality assurance and quality control, and supervision as well as administrative, financial and technical monitoring of project operation, utilization, and maintenance.

18. The extent of the right of the contracting authority to vary the conditions of the project and other obligations imposed on private party, and the basis and mechanisms of compensation for any loss resulting from such variation order.

19. The types of insurance to be taken out on the project and the risks of its operation or utilization, executive warranties issued in favor of the contracting authority, and provisions and procedures for their release.

20. The basis of risk allocation in respect of a change in the law, unforeseeable accidents, force majeure, or discovery of antiquities, as the case may be, and the resultant compensation.

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This printed impression has been carefully compared by me with the bill passed the Yobe State House of Assembly and found by me to be the true and correctly printed copy of the said bill.

Mohammed A.B. Yusuf
Clerk of the House
Yobe State House of Assembly