

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL AGENCY FOR PUBLIC PRIVATE PARTNERSHIPS, TO PROMOTE AND FACILITATE PUBLIC PRIVATE PARTNERSHIPS IN SRI LANKA AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble

WHEREAS in furtherance of the Directive Principles of State Policy enshrined in the Constitution of the Democratic Socialist Republic of Sri Lanka, which requires the State to ensure the rapid development of the country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such activity;

WHEREAS the Government of Sri Lanka has considered it necessary in the national interest to develop and **implement** public private partnerships as a tool for infrastructure development and the provision of services to the public;

WHEREAS the Government of Sri Lanka as a matter of national policy considers it desirable to provide for a legal framework that would enhance transparency, fairness, stability and predictability of public private partnerships; promote proper management, integrity and competition in public and private economic activity and ensure long-term sustainability;

WHEREAS, the Government of Sri Lanka has also resolved to establish a dedicated agency to facilitate public private partnerships, and to advise and assist the Government of Sri Lanka and its affiliates, including public corporations, with establishing and implementing public private partnerships across a wide range of sectors to achieve accelerated **economic** development of the country.

WHEREAS the Government of Sri Lanka having recognized that public private partnerships fall under the domain of public finance has brought the management and approval of public private partnership projects under the public investment project approval and management mechanism laid down in the Public Finance Management Act, No. 44 of 2024 and vested the Minister, the Cabinet of Ministers and the Public Investment Committee of the Ministry of Finance, with authority to consider, recommend and approve a proposed project as a public private partnership project and provide for its implementation in the upcoming budgetary period;

AND WHEREAS the Government of Sri Lanka having laid down the public investment projects development and approval gateway in the Public Finance Management Act, No. 44 of 2024 is desirous of providing for the key elements for consideration in developing a public private partnership project together with the rights and obligations of parties and provide a legal framework for the planning and execution of public private partnerships in Sri Lanka.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

Short Title

1. This Act may be cited as the Public private partnership Act, No. of 2025.

Application of the Act

2. (1) This Act shall apply to any public private partnership established, or to be established after the date of commencement of this Act, where the total project cost or the anticipated investment value of such public private partnership exceeds the minimum amount prescribed by the Minister. In prescribing such minimum amount, the Minister shall specify the criteria based on which the total project cost of a public private partnership shall be determined for the purposes of this section.

(2) The provisions of the Public Finance Management Act, No. 44 of 2024, (hereinafter referred to as the Public Finance Management Act.), specifically sections 40 to 45 shall govern the manner in which the Government of Sri Lanka shall undertake a public private partnership project and the necessary approvals and reporting requirements through the life cycle of a public private partnership project.

(3) In the event of any inconsistency between the provisions of this Act and the provisions of the Public Finance Management Act, and subordinate legislations made thereunder, the provisions of the Public Finance Management Act, and the subordinate legislation made thereunder shall prevail.

PART I

OBJECTS AND PURPOSES OF THE ACT

Objects and
purposes of the Act

3. The objects and purposes of this Act shall be to –

- (a) establish a comprehensive legal framework for public private partnerships in Sri Lanka and the contracts that give effect to such public private partnerships;**
- (b) supplement the existing procedures, requirements and rules related to the identification, selection, preparation, appraisal and implementation of public private partnerships in Sri Lanka;**
- (c) supplement the existing institutional arrangements applicable to public private partnerships in Sri Lanka;**
- (d) prevent the adoption of the public private partnership method of project design as the starting point, of any**

public service project and require a full appraisal of such project in accordance with the provisions of the Public Finance Management Act and this Act to prevent any decision to adopt a public private partnership method of implementation until that appraisal has been undertaken and concluded so that, a public private partnership method will achieve the best value for money;

- (e) provide for the full appraisal and evaluation of a proposed project for the delivery of a public service or maintenance of a public asset giving due regard to all matters including project specific details, issues, risks and value for money and only adopt the public private partnership model if such model is the optimal delivery method for achieving value for money;
- (f) ensure that all actions relating to a public private partnership are carried out in accordance with the principles of transparency, fairness, long-term sustainability, stability and prudent management of public and project finances;
- (g) ensure that all decisions made regarding the undertaking of a public private partnership comply with the framework established under the Public Finance Management Act, No. 44 of 2024;
- (h) ensure that all decisions regarding the procurement of the private party in a public private partnership is performed under and according to the procurement guidelines issued by the National Procurement Commission;

- (i) establish a National Agency for Public private partnerships and provide for its role and functions; and
- (j) enable a contracting authority to implement public private partnerships efficiently and effectively throughout the public private partnership life cycle, adopting sustainable development and good governance practices;
- (k) initiate and undertake skills development and training of public sector officials to initiate, screen, prepare, appraise, procure and manage public private partnership contracts; and
- (l) provide certainty and consistency through an operational framework for the identification, initiation, screening, appraisal, preparation, approval, procurement and contract management of public private partnerships by supplementing the existing legal framework and establishing clear principle-based approach.

Fundamental
requirements for a
public private
partnership

4. (1) Any public private partnership project undertaken in Sri Lanka shall comply with all applicable requirements of this Act, Public Finance Management Act, and the procurement guidelines issued by the National Procurement Commission for public private partnerships.

(2) Any public private partnership project undertaken in Sri Lanka shall be designed and structured to accomplish the relevant public interest purposes and objectives referred to in the Preamble to

this Act and in particular to be compatible with and give effect to the guiding principles characterised by five specific outcomes; namely;

- (a) access and equity;**
- (b) economic effectiveness and fiscal sustainability;**
- (c) environmental sustainability and resilience;**
- (d) replicability; and**
- (e) stakeholder engagement.**

PUBLIC PRIVATE PARTNERSHIP

Main
characteristics of a
public private
partnership

5. Main characteristics of a public private partnership shall be as follows :-

- (a) the private partner's compensation shall be provided either by the contracting authority in the case of Government-pay public private partnerships or, by the end users in the case of concessions or, by a combination of both; and**
- (b) public private partnership projects may involve the creation of tangible or intangible assets that support the delivery of a public service.**

public private
partnership criteria

6. Any public private partnership shall:-

- (a) be long-term in nature and be implemented on the basis of a contract;**
- (b) have a minimum initial estimated value, established and calculated in accordance with the relevant criteria and methodology set out in this Act and/or in the relevant regulations made thereunder;**

- (c) involve the design, development, construction, reconstruction or rehabilitation, operation or maintenance of any public infrastructure and shall relate to the provision of any public service or services;
- (d) involve the long-term participation of a private partner on a risk-bearing basis, and a sharing or allocation of project-related risks between the public and private partners of the public private partnership throughout its term;
- (e) involve an element of private finance, unless deemed otherwise; and
- (f) be implemented in accordance with the terms of the public private partnership contract and subject to the provisions of any applicable written law.

Authority to award
and enter into
public private
partnerships

7. Any public authority having the legal right to develop, procure and implement projects involving assets and services of the kind comprised in public private partnerships, in sectors in which public private partnerships are permitted, and to enter into contracts with private sector persons in connection therewith, shall be deemed to have the power and authority under this Act to award and enter into public private partnerships, except to the extent that this Act, the Public Finance Management Act and any other applicable law or the public private partnership contract itself, specifically provide otherwise.

Permitted sectors
and activities.

8. Unless otherwise expressly stated in this Act or in any regulations made under this Act, public private partnerships may be undertaken in all sectors engaged in public service activities.

parties to a public
private partnership
contract

9. The parties to a public private partnership contract are the contracting authority and the private partner, unless the applicable law requires any other party to be added.

PART II

NATIONAL AGENCY FOR PUBLIC PRIVATE PARTNERSHIPS

Establishment of
the Agency

10. (1) There shall be established an Agency which shall be called and known as the National Agency for Public private partnerships (hereinafter referred to as the “Agency”).

(2) The Agency shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

Management and
administration of
the Agency

11. (1) The general supervision, control, management and administration of the Agency shall be vested in a Board.

(2) The Board shall, for the purpose of administering and managing the affairs of the Agency in a manner expedient for the achievement of the objects and purposes of this Act, exercise, perform and discharge the powers, duties and functions conferred on, assigned to, or imposed on the Agency by this Act.

Constitution of the
Board

12. (1) The Board shall consist of –

(a) three *ex-officio* members, namely –

(i) the Secretary to the Ministry of the Minister assigned the subject of Investment;

(ii) a Deputy Secretary to the Treasury nominated by the Secretary to the Treasury; and

(iii) a Chartered Accountant nominated by the Institute of Chartered Accountants of Sri Lanka established under the Institute of Chartered Accountants Act, No. 23 of 1959; and

(b) four members appointed by the Minister who shall possess professional expertise, specialised knowledge, wide experience and proven competency in the fields of law, finance, engineering, accounting, economics, logistics, project management or business in order to reflect the multidisciplinary character of the Agency (hereinafter referred to as “appointed members”).

(2) In appointing the members under subsection (1), the Minister shall have regard to –

(a) that person’s integrity and standing; and

(b) the likelihood of any conflict between the interests of the Agency and any interest or interests which that person has or represents.

Chairperson of the
Board

13. (1) The Minister shall appoint one of the appointed members to be the Chairperson of the Board.

(2) The Chairperson may at any time resign from the office of Chairperson by a letter addressed to the Minister and such resignation shall be effective from the date on which it is accepted by the Minister.

(3) The Minister may, for reasons assigned therefor, remove the Chairperson from the office of Chairperson.

(4) Subject to the provisions of subsection (2) and (3), the term of office of the Chairperson shall be his period of membership of the Board.

(5) Where the Chairperson is temporarily unable to exercise, perform and discharge the powers, duties and function of his office due to ill health, other infirmity, absence from Sri Lanka or any other cause for a period exceeding four weeks, the Minister may appoint any other appointed member to act as the Chairperson in addition to his normal duties as an appointed member during the absence of the Chairperson.

Disqualifications
from being a
member of the
Board

14. (1) A person shall be disqualified from being appointed, or from continuing as a member of the Board if he –

- (a) is or becomes a member of Parliament, a member of any Provincial Council or any local authority;
- (b) has been previously removed from office as a member of the Board;
- (c) is not or ceases to be a citizen of Sri Lanka;
- (d) is or becomes of unsound mind or incapable of carrying out his duties;

(e) is a person who having been declared insolvent or bankrupt under any law in force in Sri Lanka and is an undischarged insolvent or bankrupt;

(f) is subject to an ongoing investigation in respect of an offence under any other written law;

(g) is serving or has served a sentence of imprisonment of more than six months imposed by any court in Sri Lanka or any other country;

(h) holds or enjoys any right or benefit under any contract made by or on behalf of the Agency; or

(i) has any financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Board.

Term of office

15. (1) Every appointed member of the Board shall, unless he vacates office earlier by death, operation of law, resignation or removal, hold office for a term of three years from the date of his appointment and unless removed from office, shall be eligible for reappointment for not more than one further term, whether consecutive or otherwise.

(2) The members of the Board, both appointed and *ex-officio*, shall not join or provide services to any private partner who has or who will enter in to a public private partnership contract with the Government, for a period of two years upon vacating office as a Board member of the Agency.

Resignation and
removal

16. (1) Any appointed member of the Board may at any time, resign from his office by a letter to that effect, addressed to the Minister and such

resignation shall be effective from the date on which it is accepted by the Minister in writing.

(2) Where any appointed member by reason of illness, infirmity or absence from Sri Lanka is temporarily unable to discharge the duties of his office for a period exceeding three months, the Minister may, having regard to the provisions of paragraph (b) of section 12, appoint a person to act in his place during his absence.

(3) The Minister may for reasons assigned therefor, remove an appointed member from office. An appointed member who has been removed from office shall not be eligible for reappointment as a member of the Board or to serve the Board in any other capacity.

(4) Where an appointed member dies, resigns or is removed from office, the Minister may having regard to the provisions of paragraph (b) of section 12, appoint a person in his place and the person so appointed shall hold office for the unexpired period of the term of office of the member whom he succeeds.

(5) A member of the Board who, without leave of the Board first being obtained, absents himself from three consecutive meetings of the Board shall be deemed to have vacated his office.

Quorum and
meetings of the
Board

17. (1) Meetings of the Board shall be held at least once in every three month and the quorum for a meeting of the Board shall be five members.

(2) The Chairperson shall preside at every meeting of the Board. In the absence of the Chairperson from any meeting of the Board, a member elected by the members present shall preside at such meeting.

(3) A meeting of the Board may be held either –

(a) by the number of members who constitute a quorum being assembled at the place, date and time appointed for the meeting; or

(b) by means of audio-visual linkage by which all members participating and constituting a quorum can simultaneously see and hear each participating member for the duration of the meeting.

(4) All questions for a decision at any meeting of the Board shall be decided by the vote of the majority of the members present at such meeting. In the case of an equality of votes, the Chairperson shall, in addition to his vote have a casting vote.

(5) Subject to the preceding provisions of this section, the Board may regulate the procedure in relation to the meetings of the Board and the transaction of business at such meetings.

Acts or
proceedings of the
Board deemed not
to be invalid by
reason of any
vacancy

18. The Board may act notwithstanding any vacancy among its members and any act or proceeding of the Board shall not be or deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the appointment of a member thereof.

Remuneration of
the members of the
Board

19. The members of the Board shall be paid remuneration in such manner and at such rates as may be determined by the Minister.

Seal of the Agency

20. (1) The seal of the Agency shall be in the custody of such person as the Board may decide from time to time.

(2) The seal of the Agency may be altered in such manner as may be determined by the Board.

(3) The seal of the Agency shall not be affixed to any instrument or document except with the sanction of the Board and except in the presence of the Chief Executive Officer of the Agency and one other member of the Board who shall sign the instrument or document in token of their presence:

Provided however, where the Chief Executive Officer is unable to be present at the time when the seal of the Agency is affixed to any instrument or document, any other member of the Board authorised in writing by the Chairperson in that behalf shall be competent to sign such instrument or document in accordance with the preceding provision of this subsection.

(4) The Board shall maintain a register of the instruments and documents to which the seal of the Agency has been affixed.

(5) A person who knowingly or wilfully misuses the seal of the Agency under this Act, commits an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding two million rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Conflicts of
Interest

21. (1) Every member of the Board, when being appointed, shall be required to make a declaration to the Minister of any conflicts of interest they may have at the time of appointment.

(2) A member who is directly or indirectly interested in any decision that is to be taken by the Board on any matter shall disclose the nature of such interest at the meeting of the Board where such decision is being taken. Such disclosure shall be recorded in the minutes of the meeting of the Board and such member shall not take part in any deliberation or decision of the Board with regard to that matter and shall withdraw from

such meeting while such deliberation is in progress and such decision is being made.

PART III
CHIEF EXECUTIVE OFFICER AND THE STAFF OF THE
AGENCY

Appointment of the
Chief Executive
Officer of the
Agency

22. (1) There shall be a Chief Executive Officer of the Agency appointed by the Board in Consultation with the Minister.

(2) The person appointed as the Chief Executive Officer of the Agency shall –

- (a) be a citizen of Sri Lanka;
- (b) be physically and mentally fit and be competent, of high moral integrity and of good repute;
- (c) not be a person who is under any law in force in Sri Lanka or any other country found or declared to be of unsound mind;
- (d) not be an undischarged insolvent or bankrupt under any law in force in Sri Lanka;
- (e) not be a person who is subject to an ongoing investigation in respect of an offence under any other written law;
- (f) not be a person who is serving or has served a sentence of imprisonment of more than six months imposed by any court in Sri Lanka or any other country;

- (g) not be a person who holds or enjoys any right or benefit under any contract made by or on behalf of the Agency;
- (h) not be a person who has any financial or other interest as is likely to affect prejudicially the discharge by him of his functions as the Chief Executive Officer of the Agency;
- (i) be not more than fifty five years of age at the date of appointment;
- (j) not be a person who has previously been lawfully dismissed from office; or
- (k) not be a person who has committed a breach of any of the provision of this Act, regulations, rules or directives made thereunder.

(3) The Chief Executive Officer, unless he vacates office earlier by death, by operation of law, resignation or removal shall hold office for a term of three years and unless removed from the office, shall be eligible for reappointment subject to a maximum period of any three terms of office whether consecutive or otherwise.

(4) The Chief Executive Officer shall, subject to the general or special directions of the Board, –

- (a) be charged with the conduct of the day to day administration of the affairs of the Agency including the administration and control of the staff;
- (b) be responsible for the execution of all decisions of the Board; and

(c) carry out all such functions as may be assigned to him by the Board.

(5) The Chief Executive Officer shall be the Secretary to the Board and entitled to be present and speak at any meeting of the Board, but shall not be entitled to vote at such meeting.

(6) The Chief Executive Officer may, with the approval of the Board, wherever he considers it necessary to do so, delegate in writing to any officer or employee of the Agency any of his functions referred to in subsection (4) and the officer or employee to whom any such function is delegated shall discharge same subject to the directions of the Chief Executive Officer.

(7) The Board may remove the Chief Executive Officer from office –

(a) if he becomes permanently incapable of performing his duties;

(b) if he had done any act which the Board has decided to be of a fraudulent or illegal character or is prejudicial to the interests of the Agency; or

(c) if he has failed to comply with any direction issued by the Board:

Provided that, the Board shall grant the Chief Executive Officer an opportunity of being heard, prior to his removal.

(8) The Chief Executive Officer shall be paid such remuneration as may be determined by the Board with the concurrence of the Minister assigned the subject of Finance.

23. (1) (a) Subject to the provisions of this Act, the Agency may appoint such officers and employees as may be necessary for the purposes of the Agency; and

(b) In appointing such officers and employees, the Agency shall require a prospective staff member to have requisite academic qualifications of a bachelor's degree or its equivalent or higher qualifications with a minimum number of years as specified by the Agency as work experience or specialized knowledge in areas relevant to the work of the Agency, such as in the fields of finance, accounting, economics, law, engineering, project management, procurement or business.

(2) The Board shall have the power subject to the provisions of this Act to –

- (a) exercise disciplinary control over and dismiss the officers and employees of the Agency appointed under subsection (1);
- (b) determine the terms and conditions of service of officers and employees of the Agency appointed under subsection (1); and
- (c) fix the rates at which such officers and employees shall be remunerated, with the concurrence of the Minister.

(3) All officers and employees of the Agency shall, within one month of employment, declare in writing to the Agency of their personal direct or indirect interest to the affairs and transactions of the Agency including those of their close relations or, concerns in which such officer or employee has a substantial interest.

(4) The Agency may establish and regulate pension and provident funds and schemes for the benefit of the Chief Executive Officer and its officers and employees and their dependants and nominees with the concurrence of the Minister assigned the subject of Finance and may make contributions to any such fund or scheme.

(5) The Agency shall promote and sponsor the training of the officers and employees of the Agency and for this purpose, the Agency shall be authorized to defray the costs of study, in Sri Lanka or abroad of the officers and employees of the Agency who are of proven merit as determined by the Agency.

(6) The Agency shall establish a code of conduct by way of rules which shall be applicable to the officers and employees of the Agency.

(7) The Agency shall not appoint any person to the staff of the Agency under subsection (1), where such person –

(a) has been previously found guilty of serious misconduct by a court or tribunal or has been subject to a disciplinary action by a regulatory body;

(b) has been previously dismissed from office; or

(c) has committed a breach of the provisions of this Act, regulations or rules made thereunder.

(8) At the request of the Agency, any officer in the public service may, with the consent of the officer and the Public Service Commission established under the Constitution, be temporarily appointed to the staff of the Agency for such period as may be determined by the Agency or with like consent, be permanently appointed to such staff.

(9) Where any officer in the public service is temporarily appointed to the staff of the Agency, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991 shall *mutatis mutandis* apply to and in relation to such officer.

(10) Where any officer in the public service is permanently appointed to the staff of the Agency, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall *mutatis mutandis*, apply to and in relation to such officer.

(11) Where the Agency employs any person who has agreed to serve the Government for a specified period, any period of service to the Agency by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such agreement.

(12) The Agency may with the consent of such officer or employee propose secondment of its officers or employees to other State institutions or regulatory authorities in Sri Lanka or abroad for a period determined by the Agency on an assignment agreed upon between such institution or the authority and the Agency. The period of secondment shall be deemed to be considered as service to the Agency.

Appointment of
officers of public
corporations as
staff of the Agency

24. (1) At the request of the Agency, any officer or any member of the staff of a public corporation may, with the consent of such officer or such member of the staff and the governing board of such corporation, be temporarily appointed to the staff of the Agency for such period as may be determined by the Agency or with like consent be permanently appointed to the staff of the Agency on such terms and conditions, as may be agreed upon by the Agency and the governing board of such corporation.

(2) Where any person is appointed, whether temporarily or permanently, under subsection (1) of this section to the staff of the

Agency, he shall be subject to the same disciplinary control as any other officer or member of the staff of the Agency.

PART IV

POWERS, DUTIES AND FUNCTIONS OF THE AGENCY

The Powers, duties
and functions of
the Agency

25. (1) The Agency shall –

- (a) prepare and publish methodologies, procedures and guidelines for structuring and implementing public private partnerships, including the dissemination of international best practice and methodologies and tools facilitating the initiation and the development of sustainable public private partnerships;**
- (b) facilitate by building capacity, providing training and materials relevant to the preparation, appraisal, award, and implementation of public private partnerships in accordance with the requirements of this Act and the applicable methodologies;**
- (c) make policy recommendations to the Cabinet of Ministers in respect of public private partnerships and assist in implementing and giving effect to the Government's public private partnership policies;**
- (d) review and comment on proposed policy and strategy changes and refinements relating to public private partnerships as required by the Government;**

- (e) identify potential improvements and refinements to the structuring and implementation of public private partnerships, addressing the most common issues that cause public private partnership projects to fail to deliver the designated outcome due to reasons such as improper risk allocations or private sector risks being allocated to public sector and make recommendations accordingly;**
- (f) review and confirm the proper completion of the feasibility study and other key reports and studies for individual public private partnerships and the conformity of preparation work with the requirements and procedures, as provided for in this Act and the regulations made thereunder ;**
- (g) assist contracting authorities with the coordination and development of individual public private partnership projects and public private partnership related activities;**
- (h) maintain an upto date registry of all public private partnership projects, containing relevant details of their progress, in coordination with the Ministry of Finance;**
- (i) act as a point of contact and source of information for parties implementing or seeking to implement public private partnerships, whether public or private and provide guidance, advice, consultations and clarifications as necessary;**

(j) assist contracting authority in assessing the potential impact of public private partnership projects on contingent liabilities on public obligations and public debt;

(k) observe and oversee the monitoring and oversight by contracting authorities, of the implementation of public private partnerships for which they are responsible;

(l) ensure that the documentation referred to in this section is publicly available and published as required or appropriate;

(m) assist with the constructive resolution of problems and issues during the implementation of public private partnerships;

(n) with the concurrence of the Ministry of Finance, establish and maintain –

(i) a national public private partnership project pipeline; and

(ii) a centralized public private partnership database with public private partnership data that can be accessed as appropriate by public and private sector parties, subject to any confidentiality requirements and undertakings;

- (o) enter into contracts with any person as may be necessary in the exercise, performance and discharge of its powers, duties and functions;
- (p) engage the services of consultants or advisors as may be necessary to assist the Agency in the exercise, performance and discharge of its powers, duties and functions in such manner as may be determined by the Agency in consultation with the Minister;
- (q) manage the funds of the Agency and open, operate and close bank accounts;
- (r) maintain an official website for the Agency;
- (s) collect data in respect of public private partnerships, including commercial and financial data related and within private partner's knowledge, from contracting authorities and other Government entities to the extent required to perform its functions; and
- (t) do all such other acts or things as are necessary or expedient for the proper and effective carrying out of the objects and purposes of this Act, within the scope of authority provided under this Act.

PART V FINANCE

Fund of the
Agency

26. (1) The Agency shall have its own Fund (hereinafter referred to as "the Fund").

(2) There shall be credited to the Fund –

- (a) all such sums as money as may be voted from time to time by Parliament, for the use of the Agency;
- (b) all such sums of money as may be received by the Agency in the exercise and discharge of its powers, duties and functions under this Act;
- (c) all such sums of money as may be received by the Agency by way of income, fees, charges, grants, gifts or donations from any source whatsoever whether within or outside Sri Lanka:

Provided that, the Agency shall obtain the prior written approval of the Department of External Resources of the Ministry of the Minister assigned the subject of Finance, in respect of all foreign grants, gifts or donations made to the Agency; and

- (d) any multilateral agency development assistance received by the Government of Sri Lanka and allocated through the External Resources Department at the Ministry of Finance for training, research, development and resources improvement of the Agency

(3) There shall be paid out of the Fund –

- (a) all such sums of money as are required to defray any expenditure incurred by the Agency in the exercise, performance and discharge of its powers, duties and functions under this Act; and

(b) all such sums of money as are required to be paid out of the Fund by or under this Act.

Financial year and
audit of accounts

27. (1) The financial year of the Agency shall be the calendar year.

(2) The Board shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Agency.

(3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of public corporations shall apply to the audit of accounts of the Agency.

(4) The Board shall submit the audited statement of accounts together with the auditor's report to the Minister within five months of the end of the financial year to which such report relates. The Minister shall place such statement and the report before Parliament within two months of the receipt thereof.

Delegation of the
powers of the
Board

28. (1) The Board may in writing and subject to such conditions as may be specified therein, delegate to the Chief Executive Officer the powers, duties and functions conferred on the Board under paragraph (a) and (b) of subsection (2) of section 23 and the Chief Executive Officer shall exercise, perform and discharge such powers, duties and functions in the name and on behalf of the Board.

(2) The Board may, notwithstanding any delegation made under subsection (1), by itself exercise, perform or discharge any power, duty or function so delegated and may at any time revoke any such delegation.

Protection for
action taken under
this Act

29. No civil or criminal proceedings shall be instituted against the Chief Executive Officer, any officer or employee of the Agency or any member of the Board, for any act which in good faith is done or purported

to be done by him under this Act or on the directions of the Agency or the Board as the case may be, if he proves that he acted in good faith and exercised all due diligence, reasonable care and skill in doing such act.

Duty to maintain
Secrecy

30. (1) Every member of the Agency, the Chief Executive Officer, and every officer or employee of the Agency shall, before entering into the duties of his office sign a declaration that he will not disclose any information received by him or coming to his knowledge in the exercise, performance and discharge of his powers, duties and functions under this Act except for the purpose of giving effect to the provisions of this Act to the extent permitted under the provisions of Right to Information Act, No. 12 of 2016.

(2) Any person who contravenes the provisions of subsection (1), commits an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

State property both
movable and
immovable be
made available to
the Agency

31. (1) In terms of the provisions of this Act, where any immovable property of the State is required for the purposes of the Agency, such purpose shall be deemed to be a purpose for which a special grant or lease of such property be made to the Agency under section 6 of the Crown Lands Ordinance (Chapter 454) and accordingly the provisions of that Ordinance shall apply to a special grant or lease of such property to the Agency for such purpose.

(2) Where any movable property of a Government Department or any public corporation is required for the purposes of the Agency, the Minister may by Order published in the *Gazette* transfer to and vest in the Agency the possession and use of such movable property.

(3) No Order affecting any movable property of any Government Department or public corporation shall be made by the Minister under subsection (2) without the concurrence of the Minister assigned the subject relevant to that Department or public corporation.

PART V
INITIATING, IDENTIFYING AND PREPARING PUBLIC
PRIVATE PARTNERSHIPS AND ROLE OF THE
CONTRACTING AUTHORITY

identification,
preparation etc. of
public private part
nerships

32. All work of identifying, preparing, appraising, and approving public private partnerships, including those based on unsolicited proposals, shall be carried out in accordance with the procedures and framework referred to in this Act, Public Finance Management Act and in the Procurement Guidelines issued by the National Procurement Commission.

Initiation of public
private partnership

33. Any proposed public private partnership shall be initiated by the contracting authority.

No
predetermination

34. There shall be no predetermination of a project for implementation through a public private partnership unless a pre-feasibility study or feasibility study has been undertaken in accordance with the provisions of this Act.

Project team

35. The contracting authority shall set up a project team comprising a range of skills, expertise, and experience with a view to enabling it to perform its functions and responsibilities effectively and efficiently. Appropriate skills, expertise and experience may include but shall not be limited to competency in public private partnerships, procurement, public infrastructure and services, procuring construction and service contracts, public administration, and legal expertise in understanding the applicable laws and its implementing regulations and guidelines, including the role

of the Public Investment Committee established under subsection (2) of section 40 of the Public Finance Management Act, and the Agency.

Pre-requisites

36. (1) The Agency and the contracting authority shall ensure that the following three steps are completed prior to recommending a project to the Public Investment Committee, to be undertaken through a public private partnership modality:-

(i) preparation and lodging of an identification report with the Public Investment Committee for the inclusion of the project in the National Infrastructure Plan;

(ii) for all projects, a preparatory study shall be done in order to determine its economic feasibility, the potential risks and the allocation of such risks, its potential financial viability as a public private partnership project, the indicative best value for Money approach for the delivery of the project, and its potential for implementation through the public private partnership modality; and

(iii) for a major project, making of a feasibility study in accordance with the provisions of this Act identifying all options for project implementation and determining that the best and highest value for money is project implementation through the public private partnership modality;

(2) In this section major project means a project that has an estimated full cost value derived from the prefeasibility study of more than the prescribed amount and for a project which does not qualify as a major project only a preparatory study is required.

(3) The prescribed amount shall be as prescribed.

Responsibility for
identification and
detailed
preparation

37. (1) The identification and preparation of any public private partnership with the inclusion of any public private partnership proposed by a private initiator shall be carried out by the contracting authority.

(2) In this section, -

“identification and preparation” refers to the action of commencing the process of defining and assessing a potential public private partnership and seeking any preliminary approvals and consents needed under this Act and other applicable written laws, to progress it further; and

“detailed preparation of a public private partnership project” refers to and includes the detailed work of documenting, describing and specifying it, and setting out its principal scope, characteristics and features, including its key performance indicators, in sufficient detail enabling the project to be appraised in accordance with the provisions of this Act and the provisions of Public Finance Management Act to form an adequate basis for detailed proposals by bidders or a private initiator and the procedures to be followed in granting approval and the awarding. The detailed aspects of such work, including documentation requirements and applicable appraisal criteria used in accordance with section ... and the steps and procedures applicable to them may differentiate between different types or scale of the public private partnership project and different project

characteristics and where necessary, shall as prescribed;

(3) For the avoidance of doubt, “preparation” shall not mean the work of final and definitive design of a project which accompanies its actual implementation.

Identification
report

38. On receipt of a proposal for a public private partnership under section 33, the contracting authority shall prepare an identification report. An identification report shall include but not be limited to -

- (a) a summary of the scope of the proposed infrastructure and services to be improved or created, including their main functionalities and characteristics, together with an assessment of issues that may arise over the life of the project such as proposed technological solutions becoming obsolete and socio-economic conditions evolving such that they may have a negative impact on the proposed project;
- (b) the project’s relative priority over the other public infrastructure and service obligations;
- (c) the identification of the range of public private partnership delivery options with factors which would justify the choice between a public private partnership delivery and a traditional public procurement, including but not limited to anticipated cost, need for Government support if any complexity and its capacity to deliver, sustainability, and social and economic benefits;

- (d) the project's principal anticipated technical and economic features and needs, including the costs, revenues, funding and financing requirements, and the market for the project;
- (e) a review of a land requirement of the project including resettlement if any and an assessment of how the land for the project shall be acquired;
- (f) the acceptability of the proposed infrastructure and/or services to users, local communities, and other stakeholders; and
- (g) any other relevant preliminary information deemed prudent for identifying and summarising the proposed project.

Recommendations
on improvement of
identification
report

39. (1) The contracting authority shall submit the identification report referred to in section 38 to the Agency for its consideration and recommendations, together with an indicative assessment of whether it has been prepared in accordance with the requirements of this Act and other applicable written laws and the provisions of the Public Finance Management Act, as to whether the proposed project is deemed appropriate to be carried out as a public private partnership , and whether public private partnership is the anticipated best option by comparison with other procurement methods.

(2) For avoidance of doubt, requirements specified under this section are separate and additional to the requirements specified under the Public Financial Management Act, for the approval of a public private partnership project.

Preparatory studies

40. (1) The contracting authority shall ensure that the detailed preparation of a public private partnership project shall include a set of

studies to be used to appraise a project, covering its material elements and aspects, including in particular those referred to in the relevant appraisal criteria set out in section ... and showing how those criteria will be satisfied.

(2) the studies prepared for appraisal and referred to above shall include-

- (a) further elaborated, developed, and detailed applicable items contained in the identification report;
- (b) assessment of the proposal's 'value for money' proposition, its anticipated social, economic, and environmental impact, including a cost-benefit analysis, a quantitative assessment of the positive and negative externalities, its "value for people", and long-term sustainability;
- (c) assessment of the proposal's capital and operating costs, affordability, and long-term sustainability, including fiscal sustainability, budgetary implications and any public-sector contingent liabilities;
- (d) the manner of which the proposed project aligns with the Government's wider sector objectives, plans and strategies for infrastructure and service delivery;
- (e) the identification of the technical requirements and expected inputs and deliverables, including any options relating to technological solutions and their long-term adaptability and affordability;

- (f) identifying the climate impacts of the project and options to ensure that the design and construction of the project will ensure sustainability and resilience;
- (h) identify, where necessary, the gender impacts and the options to enhance exclusivity;
- (i) identifying the anticipated key performance indicators and the indicative payment terms;
- (j) identifying relevant stakeholders, any stakeholder consultations to be carried out, any known stakeholder issues and any stakeholder input or suggestions put forward, with particular emphasis on environmental and social impact and any vulnerable or marginalized persons or groups;
- (k) consideration of the extent to which the project activities can be performed by a private partner under a contract with the contracting authority;
- (l) assessment of the project's legal, regulatory, and institutional basis and its feasibility and viability;
- (m) identifying the licences, permits or authorisations that may be required in connection with the approval or implementation of the proposed project;
- (g) identifying the conditions of land use and related issues concerning land acquisition and resettlement as applicable;

- (n) identification and assessment of the main project risks and describe the proposed risk allocation under the public private partnership contract, together with any steps or options to address or mitigate them;
- (o) identifying any proposed forms of Government support and guarantees needed for the implementation of the proposed project, and their budgetary implications and specifically including contingent liabilities and foreign currency exchange risks and their mitigation;
- (p) determine the capacity of the contracting authority to enforce the public private partnership contract effectively, including the ability to monitor and regulate project implementation and the performance of the private partner;
- (q) describe the preferred choice of procurement process and tender structure;
- (r) include any other relevant background studies, taking into account where appropriate of any other public private partnership project or public service with which the proposed project is closely associated or linked; and
- (s) in the case of concessions and Government-pay contracts, particular attention shall be paid to the following:-
 - (i) the potential impact of long-term economic and societal changes, including, on the scope and pricing of the public service ;

- (ii) the possible development of other public services that may compete with the proposed project;
- (iii) the acceptability of the proposed public private partnership to end users, supported by communications strategies that demonstrate the long-term benefits;
- (iv) the identification of user categories, including vulnerable or priority groups, and any differentiated service or pricing requirements, ensuring adherence to principles of equality and non-discrimination;
- (v) methods for adapting the public service to future needs and affordability considerations, focusing on the need to resolve resulting issues and maintain the continuity of the public service;
- (vi) mechanisms for optimising the long-term service provision;
- (vii) detailed procedures and standards of asset condition for reverting and handing back the public service to the contracting authority ; and

(viii) the means by which the financial and economic equilibrium is maintained in the event of exceptional circumstances.

feasibility study

41. A feasibility study submitted by the contracting authority as referred to in section 36 shall include but not limited to the following: -

- (a) the technical requirements of the proposed public private partnership ;
- (b) a value for money assessment;
- (c) an economic analysis that determines the economic internal rate of return or the net present value of the project;
- (d) observations on tax exemptions, revenue and payment incentives, termination rights and other contingent financial liabilities of the Government, third party revenue opportunities, direct contributions to capital work costs, contributions through land and the provision of guarantees or other forms of Government support;
- (e) a list of regulatory approvals that may be required for the development and implementation of the proposed public private partnership or aspects of the proposed public private partnership ;
- (f) the proposed procurement method and the rationale for adopting such procurement method;
- (g) the proposed risk allocation to be included in the public private partnership contract; and

(h) heads of terms.

stakeholder
consultations

42. (1) The preparation of a public private partnership project shall be subject at the relevant stages, to all requirements for formal consultation with stakeholders, other relevant authorities and the general public, including public hearings where appropriate, as may be required pursuant to the applicable written law.

(2) The consultation process shall be structured to enable a genuine dialogue to take place concerning all significant issues of concern to stakeholders, and available remedies to be pursued, to resolve such issues and to allow suggestions from third parties for improving the proposed public private partnership project.

~~(3) Key points raised by stakeholders shall be accurately recorded and responded to as appropriate.~~

changes during the
preparatory stage

43. A public private partnership proposal may be re-designed, changed or revised as often and in as many ways as necessary during its preparation under this Part in order to ensure that it is fully compliant with the requirements of this Act, and the appraisal criteria and review and approval procedures set out in this Act and in the Public Finance Management Act.

Proposals initiated
by the Agency

44. (1) Where, as a matter of national importance or for the rapid enhancement of the economic and social development of Sri Lanka, the Agency considers it expedient that a private public partnership shall be initiated, the Agency shall formulate a preliminary project proposal containing the following:-

(a) a preliminary project plan;

(b) an evaluation of such project in terms of the criteria set out in this Act;

(c) identification of a suitable contracting authority to implement and give effect to such project; and

(d) all other matters that the Agency may consider necessary for a preliminary project plan.

(2) A preliminary project proposal shall be submitted by the Agency through the Minister to the Ministry of the relevant contracting authority for its consideration.

(3) The relevant contracting authority shall, in consultation with the relevant Minister and any other appropriate Government agency or department, decide whether it is appropriate for the contracting authority to undertake such project. The contracting authority shall through the relevant Minister, inform its decision, with reasons, to the Agency.

(4) Where the contracting authority decides to undertake the proposed project, it shall proceed to prepare a detailed proposal in terms of this Part and such detailed proposal shall be deemed to be a proposal initiated by such contracting authority for the purposes of this Act.

PART VI

APPRAISAL AND APPROVAL OF PUBLIC PRIVATE PARTNERSHIP PROPOSALS

Public private
partnership
compliance

45. Where any public private partnership project initiated under this Act is being implemented, it shall comply with the requirements set out in Part V and the applicable appraisal criteria and approval procedures laid down in section 46.

46. (1) The Agency shall be responsible for reviewing and appraising public private partnership project proposals and the preparatory work proposed by the contracting authorities and advising the contracting authorities to comply with appraisal requirements stipulated herein Agency shall be responsible in particular, for -

- (a) confirming that the public private partnership project proposal has been prepared in accordance with the requirements of Part V;
- (b) confirming that the proposed public private partnership project meets the specific appraisal criteria applicable to it;
- (c) reviewing the contracting authority's capability for carrying out the proposed public private partnership project and making appropriate recommendations; and
- (d) reviewing and recommending changes to the draft tender documents prepared by the contracting authority to ensure conformity with the approved proposal.

(2) The appraisal criteria applicable to any proposed public private partnership shall include the proposed project's compliance with the criteria and requirements set out in Part I of the Act and may include any of the following, as may be appropriate, according to the nature of the project :-

- (a) the proposed project's anticipated value for money, socio- economic and public-service net benefits and value for people;
- (b) the extent and urgency of the need and demand for the proposed project;

- (c) the proposed project's alignment with the Government's wider sector objectives, plans and strategies for infrastructure and economic development and achievement of sustainable development;
- (d) the economic and financial feasibility and viability;
- (e) technical feasibility and strengths including implementation timescales;
- (f) legal, regulatory, and institutional viability, including the procedures to be used for selection of a private partner within a reasonable time period;
- (g) environmental and social sustainability and impact manageability, taking account of the proposed project's long-term resilience and adaptability;
- (h) the cost-effectiveness, acceptability, and affordability of the proposed project for the users;
- (i) the need and scope for any anticipated public sector payments, finance, guarantees or other monetary support for the proposed project;
- (j) the appropriateness of the proposed project's risk-allocation and incentive profile;
- (k) the extent to which the proposed project is expected to meet the purposes and objectives set out in the documents drawn up as part of its preparation under Part V; and

(l) any other relevant requirements under applicable written law relating to public investments.

(3) (a) In appraising any public private partnership project, the Agency shall have due regard, *inter alia*, to the contents of the feasibility study or the pre-feasibility study and any related reports prepared under Part V. Due regard shall also be had to the results of all public consultations and public hearings which have taken place at that stage of the appraisal process or preparation process in relation to the proposed project; and

(b) Where necessary, the Agency shall–

(a) require the contracting authority to submit any further information or clarification as may be required, within a stipulated period; or

(b) require the contracting authority to make such variations or amendments to the detailed proposal and resubmit the same to the Agency within a stipulated period, for its evaluation.

(4) The detailed procedures applicable to any proposed project during its identification, preparation and appraisal and approval under Part V and this Part shall be as prescribed and shall include, *inter alia*, relevant timescales, documentation and reporting requirements, notification and publicity requirements, relevant formalities, the relative weightings and priority of applicable criteria and tests.

Communication of
appraisal results

47. (1) Where a proposed public private partnership project has complied with the applicable appraisal criteria, the Agency shall issue a

formal Board resolution to that effect in the form and substance as prescribed.

(2) A resolution shall include the following information and components:-

- (a) the name and official address of the contracting authority responsible for the proposed project;
- (b) a clear description of the public infrastructure and public services of the subject matter of the proposed project;
- (c) the proposed project's principal commercial, financial and economic characteristics and features;
- (d) a summary of the material conclusions reached about the proposed project, identifying the key criteria applied in reaching them, including in particular the extent to which the proposed project is expected to satisfy and advance the requirements stipulated under this Act, the public benefits expected to result therefrom, and the outcome of the feasibility or pre-feasibility study as the case may be;
- (e) the rationale for implementing the project as a public private partnership , as opposed to any other form of procurement, and justifying the proposed public private partnership structure as the most appropriate basis for implementing it;
- (f) the anticipated amount and nature of any private financing expected to be used;

- (g) the anticipated amount and nature of any public funding or other public support such as guarantees, expected to be used, together with the anticipated amount of any sovereign debt or contingent liabilities and foreign currency exchange risks and their mitigation which may be implied by the private financing of the project;
- (h) the procedures to be used for selection of the private partner and the period within which such anticipation to be made;
- (i) a summary description of the consultations held, the material issues raised, and the conclusions reached ~~in response to at such consultations and them, as well as of the~~ at such consultations and mechanisms available to stakeholders for addressing objections and grievances to the proposed project; and
- (j) any other matters which the Agency considers relevant.

(3) (a) The Agency shall communicate the resolution issued under ~~the~~ subsection (2) to the contracting authority and require the contracting authority to submit the resolution along with the proposed project details to the Ministry of Finance for the consideration of the Public Investment Committee and others relevant as required for the approval of the undertaking and the implementation of the proposed project according to the provisions of the Public Finance Management Act.

(b) The sole authority to recommend the implementation of a public private partnership project for the purpose of the Act, ~~to the Government of Sri Lanka~~ rests with the Minister who shall take necessary steps in that respect ~~will act~~ on the advice of the Public Investment Committee as provided in the Public Finance Management Act. ~~No. 44 of~~

2024. No contracting authority may shall implement a public private partnership project contrary to these provisions and the relevant provisions in the Public Finance Management Act.

PART VII

Procurement of the Private Partner and Special Provisions for Unsolicited Proposals

Procurement of the private partner

48. (1) Contracting authority shall refer to the procurement guidelines issued by the National Procurement Commission and the procedures enumerated therein for the procurement of the private partner for a public private partnership project.

(2) The Agency shall not be involved in the selection of the private partner.

(3) The Agency shall not engage in the procurement of the private partner or in direct negotiations with the private partner.

Unsolicited proposals

49. (1) No unsolicited proposals for public private partnerships shall be entertained unless the procurement guidelines issued by the National Procurement Commission applicable to public private partnerships ~~provide for the acceptance of unsolicited proposals have been followed with respect to such proposals- and those provisions shall be followed in such an instance.~~

(2) In the event where unsolicited proposals are received from a private entity while no procurement guidelines or laws provide for the consideration of such unsolicited proposals, the ~~steps~~ procedure specified in subsection (3) shall be followed by a contracting authority in that respect.

(3) (a) An unsolicited proposal shall only be deemed eligible for consideration and review if it does not already appear in selection procedures that have been announced or a plan or pipeline of future projects developed on behalf of the contracting authority or the Government and if it is considered of public interest.

(b) Any proposed unsolicited proposal shall describe the proposed public private partnership project ~~including~~ in terms of the infrastructure, technology, and scope of the public service it involves with sufficient details ~~it to be given a preliminary review~~ enabling the contracting authority to get a preliminary review of the project and shall be accompanied by all documents necessary for ~~this~~ that purpose. The contracting authority shall carry out any preliminary review of the proposal that it decides to make, reach a decision as to whether it is considered to be potentially in the public interest and intends to proceed further with it, and notify the private initiator accordingly.

(c) Following ~~the~~ decision of the contracting authority to proceed with the unsolicited proposal, the detailed work of preparation of the public private partnership project shall then be carried out in accordance with the requirements of the Act to give effect to the unsolicited proposal by the contracting authority. The contracting authority shall invite the private initiator to submit as much information on the proposed public private partnership project as is necessary to allow the contracting authority to make a proper evaluation of the private initiator's qualifications and the technical and commercial feasibility of the public private partnership project, and to determine whether the public private partnership project is likely to be successfully implemented in the manner proposed on terms acceptable to the contracting authority. For this purpose, the private initiator shall, if and to the extent reasonably required by the contracting authority, submit a technical and commercial conceptual study, and satisfactory information regarding the concept,

technology and public service contemplated in the proposal, and any other assessments reasonably necessary including preliminary social or environmental impact studies.

(d) Where in the opinion of the contracting authority all the requirements of the preparation phase have been complied with in accordance with the requirements in Part V of this Act, and are duly contained in the feasibility study, it shall submit the relevant detailed reports to the Agency for its appraisal under the same conditions as the ones applicable to any other public private partnership project. The Agency shall communicate its recommendations by way of a Board resolution to the contracting agency. The contracting agency may follow the steps for approval of the proposed project following the same steps as for any other public private partnership project proposal.

(e) Where the required approval has been received, the award of the public private partnership contract for the unsolicited proposal by the contracting authority shall be subject to ~~testing the potential competition for the relevant public private partnership project by organising a competitive tendering procedure in accordance with the applicable procurement guidelines.~~ a competitive tender procedure to be followed in accordance with the applicable procurement guidelines, in order to determine the potential competition for the proposed project.

PART VIII

PUBLIC PRIVATE PARTNERSHIP CONTRACT

~~Major Principles~~
for Requirements
to be followed in
the preparation of a
public private
partnership
contract

50. (1) The preparation of a public private partnership contract shall commence with the preparation of heads of terms that are included in the feasibility study.

(2) The heads of terms shall reflect the feasibility study and specifically allocate project risk according to the feasibility study and the

value for money analysis that provided the feasibility study recommendation that a public private partnership is the best value for money option for the project implementation.

(3) The final preparation of the public private partnership contract will be completed based on the heads of terms after Public Investment Committee decision to recommend the project and the Cabinet of Ministers approving the same.

No negotiations of contract clauses with the successful bidder

51. (1) The public private partnership contract that forms part of the procurement documents shall not be amended to shift the assessed value for money assessment of the project.

(2) The contract may be amended during the procurement stage after due consultation with all bidders. The amendment's cumulative effect shall not affect the value for money assessment by more than fifteen *per centum*.

(3) There shall be no negotiations or amendments to the contract after the bid winner has been selected.

(4) Amendments may be made during contract operation but prior to amendments being made. A business case shall be undertaken by the contracting authority to determine the net present value impact on the Government and the designation of any additional contingent liabilities or actual liabilities on Government.

(5) The contracting authority may require the private partner to refinance its investment and loan related to the public private partnership project to take advantage of cost of funds changes. The refinancing arrangement may require the sharing of benefits between the Government and the private partner. In this section "sharing of benefits" includes

reducing any tariff or charge on the public for the use of the public private partnership project.

(6) In the event there is a discrepancy between this Act and the applicable procurement guidelines for the selection of the private partner on the point of negotiations with the successful bidder, the absolute bar on negotiations imposed in this section will prevail.

Amendment,
variation or
termination of the
public private
partnership
contract

52. (1) The parties may amend or vary any terms of the public private partnership contract or terminate it by mutual consent at any time, but subject always to its provisions, the terms of any direct agreement and any conditions or restrictions under this Act and the Public Finance Management Act, No. 44 of 2024, including as to any further consents or authorisations required.

(2) Any amendment or modification, other than one already provided for in clear and precise terms in the contract, which would materially alter any of the fundamental or essential elements or aspects of the public private partnership project or its terms and conditions, and which were substantial in either its appraisal and approval under this Act and the Public Finance Management Act, No. 44 of 2025 and the decision to award the project to the private partner, pursuant to any competitive tendering process, shall require the recommendation of the Agency and the Public Investment Committee and the Minister before such amendment or modification becomes effective. Such approval or endorsement may be subject to further specific conditions, including in certain cases the re-tendering of the public private partnership contract.

(3) For the purposes of this section, an amendment or modification shall be deemed to be substantial where it meets one or more of the following conditions:-

- (a) the total value of the remuneration of the private partner resulting from the amendment or modification would exceed ----- per *centum* of the total value of all remuneration which the private partner is expected and entitled to receive from the public private partnership project over its term, assessed on a comparable, present value basis. Where several successive amendments or modifications are made, such value shall be assessed on the basis of the net cumulative value of the successive modifications, over a period of ----- ;
- (b) the amendment or modification shall not introduce conditions which, had they been part of the initial contract award procedure for the public private partnership project, would have allowed for the admission of bidders other than those initially selected or for the acceptance of a proposal other than that originally accepted or would have attracted additional participants in the contract award procedure;
- (c) the modification extends the scope of the works to be carried out and services to be supplied by the private partner under the contract by more than *per cent*; and
- (d) where a new private partner replaces the one to which the contracting authority had initially awarded the contract in other cases than those provided for under this Act.

Termination of
public private
partnership
contract

53. (1) Any public private partnership contract shall terminate upon the expiry of its term, subject to any provisions specifically expressed to extend after its ~~expressed to survive~~ termination. An early termination may occur where the terms of the contract ~~agreement~~ so permits and in

accordance with the contract ~~conditions~~ and requirements and the provisions of the applicable written law.

(2) The public private partnership contract may provide, for any of the following, upon ~~or following~~ its termination or expiry:-

- (a) a procedure and activities and their timelines for the full inspection of all assets which are the subject of the public private partnership contract for the purpose of determining ~~to—determine~~ their prevailing condition, the need for upgrades or repair and the cost of the upgrade or repair;
- (b) where the contracting authority has stepped-in to a public private partnership contract as a precursor to a termination event, a procedure and rights and obligations of the private partner for securing the project assets and for their continued supply of personnel for the operation of the service and assets until a new private partner is appointed;
- (c) mechanisms and procedures for the transfer of assets of the subject matter of the public private partnership to the contracting authority;
- (d) compensation to which the private partner or the contracting authority of the public private partnership may be entitled in respect of assets transferred to the contracting authority or to a new private partner or purchased by the contracting authority;

- (e) transfer of technology required for the operation and maintenance of the public private partnership project;
- (f) obligations on the private partner for the condition of the asset at handover which includes remaining asset life according to the public private partnership contract;
- (g) training of the contracting authority's personnel or of any successor to the private partner in the operation and maintenance of the public private partnership project;
- (h) provision, by the private partner, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the public private partnership project to the contracting authority or to a successor of the private partner;
- (i) mechanisms and procedures for the decommissioning of the public private partnership project, including the preparation of a decommissioning plan, the parties' respective obligations for carrying it out and their financial obligations in that respect.

Provision of
necessary property
and right of access

54. (1) The contracting authority shall be responsible for ensuring the effective provision to the private partner of any and all existing land, buildings, facilities, structures, parcels or plots of land, easements, rights of access and egress, and all other real property-related assets, which are needed by it for the purpose of implementing the public private partnership project, as defined and established in the feasibility study.

This subsection shall have no application where the private partner is required to obtain land for its purposes in the implementation of the project specified in the feasibility study.

(2) The contracting authority shall also make available to the private partner or as appropriate, assist it to enjoy the right to enter upon, transit through, do work or fix installations upon property of third parties, as appropriate and required for the purpose of implementing the public private partnership project in accordance with applicable written law.

(3) The contracting authority shall be entitled to transfer to the private partner the use and occupation, of any available real property in its possession or under its control or operational management and which it is not precluded by law from transferring, including public infrastructure and any related land, buildings or similar property, which is needed for the purposes of the public private partnership project, as provided in the feasibility study and in accordance with the terms of the public private partnership contract and any related documents.

(4) Where any property or assets referred to above are in the ownership or possession of third parties, the contracting authority may-

- (a) acquire or obtain the same by agreement with the relevant third parties;
- (b) arrange for their compulsory acquisition or alienation in accordance with the applicable written law and subject to the requirements of payment of any thereof, compensation; ~~and or~~
- (c) otherwise acquire or procure such other rights over such property and other assets in accordance with applicable written law as may be necessary for the

purposes of the public private partnership project and the discharge of its responsibilities under this Act.

(5) When implementing the provisions of subsection (4), the actions needed to be taken by the contracting authority ~~will~~ shall not create any additional liabilities on such contracting authority other than the risk allocated in the feasibility study or pre-feasibility study and such action shall not change the value for money findings in the feasibility study or pre-feasibility study.

Identification of
assets

55. (1) The public private partnership contract shall identify which assets comprised in the public private partnership project are public property or the property of the private partner, with the associated obligations on operation and maintenance thereof ~~thereto~~.

(2) The public private partnership contract shall provide for the following categories:-

- (a) assets, if any, that the private partner is required to return or transfer to the contracting authority or another entity;
- (b) assets, if any, that the contracting authority may, at its option, purchase from the private partner; and
- (c) assets, if any, that the private partner may retain or dispose of.

Payments under the
public private
partnership
Contract

56. (1) Where any payments are to be made to or levied by the private partner for the performance of its responsibilities, under any public private partnership contract, such public private partnership contract shall provide the ~~form~~ and amounts involved and the manner of making such payments in accordance with applicable written law and the conditions as may be

agreed to by the parties and not prohibited by the applicable law. such payments These may include, as applicable to concession or Government-~~pay public private partnerships, as the case may be:-~~

(a) payments from end users, such as tolls, tariffs, fees, and other forms of usage or “direct user” payments;

(b) payments from the contracting authority to the private partner; and

(c) any other permissible forms and types of payment.

(2) The public private partnership contract shall provide for the methods and formulas for the establishment and adjustment of any such payments as is referred to in subsection (1).

(3) The public private partnership contract shall also provide that the private partner shall make certain payments to the contracting authority, such as public private partnership fees, rents, royalty payments, revenue, or profit shares, whether lump-sum or periodic, or such other form of payment consistent with the applicable written law as may be agreed to by the parties to the public private partnership contract.

(4)The public private partnership contract may provide for a combination of any of the ~~types or~~ forms of payments referred to above.

(5) The value for money considerations and the risk allocation established in the feasibility study shall be adhered to ~~in providing for the situations contemplated in~~ in making payments specified under paragraphs (a) to (c) of subsection (1).

Step-in rights and
substitution

57. (1) The parties to ~~the~~ any public private partnership contract shall be entitled to include provisions in the contract and any related documents, including any “direct agreement” with a third party, ~~the lenders~~, which allow the contracting authority and third party (hereafter referred to as the "lender"), ~~the lenders, in specifically defined~~ under specified circumstances and subject to the applicable written law, temporarily to take over and manage, in whole or in part, the operation of ~~the any facility and-or~~ provision of any ~~the~~ service comprised in the public private partnership project (hereinafter referred to as “step-in rights”) during the term of the public private partnership contract, to ensure the continued operation and provision, and the effective functioning of the public private partnership project, subject to ~~the~~ any agreed conditions and procedures. Such conditions and procedures may, *inter alia*, require the parties to take all reasonable care to exercise any step-in rights in such a way as to avoid or minimise any material adverse impact on the provision of ~~any~~ the relevant public service to end users or the ~~their~~ use of any relevant public infrastructure.

(2) The lenders’ step-in rights under ~~their~~ the direct agreement may include-

- (a) the right to prevent any threatened termination of the public private partnership contract by the contracting authority from proceeding for the specified period of time and subject to specified conditions;
- (b) the right to substitute the private partner, in whole or in part, temporarily with another legal person, who shall be entitled to exercise the rights ~~obliged~~ to perform the duties of the private partner under the public private partnership contract for a specified period of

time, without transferring the public private partnership contract to another party;

(c) the right to substitute the private partner altogether with another private partner on behalf of the lenders for the unexpired period of the public private partnership contract term, and to transfer the public private partnership contract and all the rights and obligations of the private partner under the public private partnership contract to the private partner introduced by the lender as specified under paragraph (b); and ~~thereunder to it; or~~

(d) the right to be paid termination compensation payments directly from the contracting authority in satisfaction of amounts owing to the private partner who is being substituted in relation to the public private partnership project.

~~(3) Where the contracting authority has stepped-in, The appointment of a new private partner under paragraph (c) shall be subject to a procurement process according~~ shall be in compliance with the procurement guidelines specified thereunder .

(4) Where the lender has stepped-in, a procurement process is not required provided that the contracting authority and the lender have agreed on qualifications for a replacement and the private partner and the lender can demonstrate to the contracting authority that the proposed private partner meets all the required qualifications.

(5) In relation to assets or services of significant, strategic with security value to Sri Lanka, the Government shall be entitled to determine the step-in process, approval process and procurement process to be undertaken.

(6) The Agency shall advise all bidders of the status of any asset or services referred to in subsection (5) during the procurement process.

Public private
partnership
contract
management guide

58. (1) The Agency shall formulate and publish by way of rules a public private partnership contract management guidelines applicable to contracting authorities for the management and supervision of a public private partnership throughout its life time and shall include, without limitation—

- (a) guidelines for establishing and maintaining a contract management team and structure;
- (b) a mechanism for the evaluation and monitoring of the performance and implementation of the public private partnership contracts;
- (c) dispute resolution guidelines;
- (d) a mechanism to manage the implementation of the public private partnership contract including but not limited to payments, scope variations and other relevant changes to be made in the implementation of the contract;
- (e) any approval or decision matrix specifying which government parties need to be informed, consulted with or grant approval in taking decisions relating to the ongoing management of the public private partnership contract;

(f) guidelines on preparing for the expiry of the public private partnership contract; and

(g) requirements for in taking periodic progress reports, data collection and disclosure in respect of the public private partnership , including ~~in relation to~~ amendments if any to the public private partnership contract, its sustainability, social and environmental targets and key performance indicators.

PART X

SUPPORT, PROTECTIONS AND GUARANTEES

Exclusivity

59. The contracting authority may grant the private partner in a public private partnership contract exclusive rights to perform the activities specified in the public private partnership contract, subject to the applicable written law, in order to strengthen the technical, financial, and economic viability of the public private partnership project and facilitate the achievement of its objectives, including the public benefits envisaged under it.

Licenses and permits

60. The private partner in a public private contract shall have primary responsibility for obtaining and maintaining the necessary licences and permits for the public private partnership relating to its own activities, in accordance with the applicable written law. The contracting authority shall provide all appropriate assistance to the private partner in connection therewith, and shall obtain or provide any relevant licences or permits in accordance with ~~their~~ the terms for which the contracting authority is responsible.

Exceptional events.

61. A public private partnership contract may also contain ~~such provisions listing certain types of special event, including changes in law, force majeure, or other exceptional events, which may trigger certain consequences under the contract designed to protect the party affected by such event and~~ by either party to the contract under unforeseen circumstances such as force majeure, to compensate for the costs incurred or losses sustained ~~as a result~~, including financial or economic costs or losses, under unforeseen circumstances such as force majeure and ~~such as~~ and such provisions may provide for:-

- (a) relief from liability of a party prevented from performing its obligations under the agreement;
- (b) amendments to the terms of the public private partnership contract, including amendments changing the scope of work, the time for performance, applicable standards or the contract's duration subject to the requirements of section 52.
- (c) adjustments to charging and payment rates, amounts, and levels;
- (d) obligations to provide financial compensation; or
- (e) unilateral rights of early termination of the public private partnership contract and the payment of related compensation.

No replacement
without consent

62. Except as otherwise provided in the public private partnership contract, a controlling interest in the private partner or the interest of a shareholder whose participation therein is reasonably deemed to be essential for the successful implementation of the public private partnership project, shall not be transferred to third parties without the

consent of the contracting authority. The public private partnership contract shall set forth the conditions under which the consent and approval of the contracting authority may be given under the circumstances specified above.

Forms of support

63. (1) The contracting authority ~~and the Government~~ shall be entitled to provide, contribute, or make available ~~to or~~ for the benefit of any public private partnership, such forms and means of public support, assets and commercial or financial commitments, as may either be generally permitted or available under the applicable law or as the public private partnership regulations may specifically provide for from time to time, ~~such as~~ including -

(a) ~~any of the~~ forms of payments provided for under the Act;

(b) construction and operational grants;

(c) subsidies;

(d) contributions of physical assets and property;

(e) guarantees and incentives, including guarantees of public private partnership revenues, whether from end users, off-takers or otherwise;

(f) guarantees of minimum quantities of off-take or consumption by the contracting authority;

(g) financial guarantees;

(h) loans and other forms of funding or investment;

(i) compensation or direct responsibility for certain types of costs and risks;

(j) tax and customs benefits and exemptions; and

(k) other guarantees, indemnities and incentives.

(2) Any such support, assets or commitments specified under subsection (1) shall be consistent with the provisions of the Public Finance Management Act, No. 44 of 2024 and any other applicable written law and the approval criteria specified in this Act and the tender documents for the public private partnership project for which they are to be used. The terms and conditions applicable to any such support, assets or commitments shall be set out in the public private partnership contract or in any related agreement.

Protection of
public service
provision and end
users

64. (1) Equality of treatment for the users, continuity of the public service, and where justified by the public interest, the adaptability of the public service to the needs of the project and users over time shall be provided for as appropriate in the contract. The following criteria shall be considered in this regard:-

(i) all users of the service in equivalent circumstances shall be offered the same service on the same basis and for the same price without discrimination;

(ii) the private partner shall ensure the continuous delivery of the public service in accordance with the applicable performance parameters, save only where exceptional circumstances specified in the contract, such as force majeure or permit otherwise. A failure to do so may give rise to

contractual or statutory remedies, including a right of the contracting authority temporarily to step in and take over the operation of the facility in order to ensure such delivery;

(iii) unexpected changes in economic, political, or financial circumstances which adversely impact the economic and financial viability of the project, subject to any specified thresholds, may be addressed through contractual mechanisms which allow the parties to restore the economic and financial viability of the project and provide for appropriate relief or compensation. These events may include certain changes in law, changes in the tax or customs regime, unforeseen economic circumstances that cause hardship, or events of force majeure, as the contract may provide; or

(iv) in response to the changing needs of the public during the term of the project, the private partner ~~may be obliged in the contract~~ may be obliged to make proposals to the contracting authority, from time to time, to change and adapt the delivery of the public service in accordance with such changing needs. ~~as necessary~~. The terms of the contract may entitle the contracting authority, when public interest justifies it, to impose such changes and adaptations unilaterally, but subject to a proper business case assessment that considers the economic and financial impact on the private partner and the government, the economic equilibrium safeguards and

mechanisms and other relevant conditions set out in the contract's terms, such as extensions of deadlines or increases in tariffs, in compliance with the applicable written law.

(2) The ~~public private partnership~~ project's economic and financial assumptions, and its the investment and service provision requirements, of any public private partnership project as established in the feasibility study and reflected in the public private partnership contract, shall be designed in such a way so as to make the public private partnership project practically, economically, and financially viable, including an appropriate return for the private partner, and in particular-

- (i) the public private partnership contract shall include principles and mechanisms for setting, calculating, or adjusting tariffs and charges payable under the contract to enable a reasonably efficient private partner to perform its obligations and deliver the public services over the life of the contract;
- (ii) unexpected changes in economic, political or financial circumstances which adversely impact the economic and financial viability of the project, subject to any specified thresholds, may be addressed through contractual mechanisms which allow the parties to restore the economic and financial viability of the project and provide for appropriate compensation. These events may include certain changes in law, changes in the tax or customs regime, unforeseen economic circumstances that cause hardship, or events of force majeure, as the contract may provide.

(3) Any public private partnership project contract may include a maintenance and monitoring programme with respect to the delivery and operation of the public service which is the subject matter of the contract and the associated assets, subject to any requisite contracting authority approval. This may require the private partner of the contract to renovate, refurbish, or replace the relevant infrastructure on a multiyear basis with regular programme up-dates.

(4) The parties to~~the~~ any public private partnership contract shall, based *inter alia* on the common objective of satisfying the end users of the service, meet on a regular basis and in a structured manner to monitor the implementation of the contract and the project's practical, commercial and financial performance.

(5) (a) In order to ensure the continuity of public services to the requisite standard on a hand-over of the public private partnership project to the contracting authority, whether at the end of its term or before, a public private partnership contract, especially one relating to a service provision, or provision of any concession, may need to contain specific provisions relating to-

- (i) the identification of all assets which is the subject matter of the public private partnership contract, to be transferred to the contracting authority on a termination or expiry of the contract, including fixed assets and infrastructure, movable assets, inventory, know-how, intellectual property, supplies and equipment necessary for the continued delivery of the public service, and the condition in which such assets must be in typically good operating condition, free of defects and of any liens, encumbrances, or other security;

(ii) the transfer or training of the staff; and

(iii) distinguish between assets to be transferred without compensation and others which the contracting authority has an option to purchase from the private partner.

(b) Above provisions may also apply ~~on~~ to an early termination of the contract before the expiry of its term, including where the contracting authority has a right of public interest termination, exercisable without fault on the part of the private partner.

Protection of
private partner's
lenders and
investors rights

65. Subject to the rights of the State, the public private partnership contract or any direct agreement may, provide for such protections, rights and powers of the private partner's lenders and investors as the parties thereto may agree, with the applicable law, as may be necessary and appropriate to ensure the successful financing of the public private partnership project.

Permitted security
interests

66. (1) Subject to the rights of the State to the public assets and any restrictions that may be contained in the public private partnership contract or applicable law, the private partner may grant or create any form of security interest over any of its assets, rights and interests comprised in or related to the public private partnership project, which are available under the applicable law, as may be required to secure any financing needed for the public private partnership project. These may include property mortgages, security over movable and immovable property and over tangible and intangible assets, enterprise mortgages, fixed and floating charges, assignments, pledges of bank accounts, pledges of the proceeds of the public private partnership project or of receivables owed to the private partner, and other available forms of security. No such security may be created over public property, or any other property, asset or rights needed for the provision of a public service.

(2) The creation of a security interest or encumbering of assets, rights or interest provided for in the subsection (1) shall only be for the restructuring or refinancing of the public private partnership project and not for restructuring or refinancing of the private partner.

Shareholder's
security

67. The private partner's shareholders and other owners may grant or create any form of security interest over their shares or ownership interests in the private partner, that may be available under the any applicable written law.

No replacement of
the private partner
without consent

68. The rights and obligations of the private partner under the public private partnership contract shall not be assigned and transferred to any third party in place of the private partner, without the contracting authority's consent. The public private partnership contract shall set forth the conditions under which such consent and approval may be given, including valid acceptance by the relevant third party of all obligations transferred to it, their enforceability against it and evidence of its technical, managerial and financial capability to perform them:

Provided that no such restriction shall prevent the private partner from sub-contracting or sub-leasing its rights and obligations under the public private partnership contract in accordance with its terms.

Protection of end
users and public

69. (1) Any detailed procedures relating to the selection, preparation, appraisal, procurement and implementation of public private partnership projects shall take due and reasonable account as appropriate, of the legitimate needs and best interests of members of the public and end users of the public services to which the relevant public private partnership contract relates and who stand to be affected by the same.

(2) Procedures for the adoption of suitable mechanisms for lodging formal objections or other complaints or grievances by members of the public and end users on any aspect of public private partnership implementation, by which they may be adversely affected shall be as prescribed. No such mechanisms shall in any manner limit or prejudice any other rights and remedies available to such members of the public or end users under applicable written law in relation to any public private partnership or its selection, preparation, appraisal, procurement or implementation. Any such procedures shall take account as appropriate of and without prejudice to such other rights and remedies available in respect thereof.

(3) Where any public private partnership project involves the provision by the private partner of services to the public or the operation of infrastructure facilities accessible to the public, the contracting authority shall require the private partner to establish simplified and efficient mechanism for handling claims submitted by the members of the public receiving the services or using the infrastructure facility, as well as any other parties affected by the public private partnership project. The and the public private partnership contract shall provide for such requirements. The private partner shall maintain accurate and complete records of the operation of any such mechanisms and the claims submitted and handled thereunder.

(4) Where the public private partnership project involves or relates to the use by third parties or members of the public of an infrastructure facility, the private partner shall have the right to issue ~~and enforce rules~~ guidelines governing such use of the facility, which shall be subject to any requisite approvals of the contracting authority or other relevant public authority such as a regulatory body. The public private partnership contract may provide for the making of any such ~~rules~~ guidelines and their ~~enforcement~~ application.

PART XI
GOVERNING LAW AND DISPUTE RESOLUTION

| | |
|--------------------|---|
| Governing Law | <p>70. (1) The public private partnership contract shall be governed by the laws of Sri Lanka.</p> <p>(2) Other contracts and documents entered into in relation to the public private partnership project, including any direct agreement, shall be governed by the laws of Sri Lanka, except as determined by the Government of Sri Lanka.</p> |
| Dispute resolution | <p>70. Any difference or dispute arising out of the contracts or documents relating to a public private partnership project shall be resolved through arbitration, except as determined by the Government of Sri Lanka. The arbitration forum shall not be at the choice of the private partner's financier.</p> |
| Dispute avoidance | <p>71. The parties to the any public private partnership may agree on a partnering process to promote the long-term development and success of the project, which may include-</p> <ul style="list-style-type: none">(a) meetings organized on a regular basis;(b) involvement of personnel with the necessary skills, specialisms, and levels of responsibility for the parties to resolve issues;(c) the establishment of any necessary procedures designed to foster a spirit of partnership, based on a consensus of the parties; and |

- (d) a duty to disclose any potential issues and discuss any actual or potential disputes during partnering meetings before any other dispute resolution steps may be taken.

PART XII

IMPLEMENTATION AND MONITORING OF PUBLIC PRIVATE PARTNERSHIPS

Monitoring and
Reporting on the
implementation of
the public private
partnerships

72. (1) Subject to the terms of the any public private partnership contract, the contracting authority shall be entitled to exercise such powers of supervision and monitoring of any public private partnership, as may be necessary to satisfy itself that it is being implemented in accordance with its terms, including by means of regular reports, reasonable access to the site and physical assets comprised in it, access to and copies of any documentation and by way of independent audits.

(2) Contracting authority shall prepare regular reports on the implementation of the public private partnership projects for which it is responsible, which shall be made available to the Agency and the Ministry of Finance.

(3) Contracting authority shall also provide any additional information to the Agency, Public investment Committee or Ministry of Finance as it may reasonably be required from time to time, in relation to the implementation of any public private partnerships for which such contracting authority is responsible.

Maintaining
records

73. Each The contracting authority shall maintain accurate and complete records in reasonable detail of the procedures followed, decisions made, and conclusions reached by it in connection with the identification, selection, preparation, procurement, and implementation of any public private partnership for which it is responsible.

Database

74. The agency shall maintain a detailed database covering all public private partnerships implemented in Sri Lanka, after the date of commencement of this Act, containing such information as may be required by the public private partnership regulations. The database shall be designed to provide a reasonably comprehensive, up-to date, and clear compendium of material information about the public private partnership projects that have been or are being implemented in Sri Lanka at any one time.

Obligation to
provide data

75. The Agency shall be required to provide any information about existing public private partnerships as required by the Public Investment Committee, Ministry of Finance, Cabinet of Ministers in their decision making or any other Government agency or department with reasonable requests for such information for official purposes.

Availability of data

76. ~~The~~ Any public private partnership database shall be publicly available, subject to any applicable confidentiality or non-disclosure restrictions permitted by the public private partnership regulations or applicable law. Such information shall include, signed public private partnership contracts removing from which commercially sensitive information have been removed where necessary, the summaries of fiscal commitments such as Government guarantees, any other guarantees, subsidies, termination payments, availability payments, and performance reports.

PART XIII MISCELLANEOUS

Members, Chief
Executive Officer,
officers and
employees of the
Agency deemed to
be public servants

77. All members of the Board, the Chief Executive Officer and all officers and employees of the Agency shall be deemed to be public servants within the meaning and for the purposes of the Penal Code (Chapter 19).

Agency deemed to
be a Scheduled
Institution within
the meaning of the
Anti-Corruption
Act

78. The Agency shall be deemed to be a Scheduled Institution within the meaning of the Anti-Corruption Act, No. 9 of 2023 and the provisions of that Act shall be construed accordingly.

Regulations

79. (1) The Minister may, with the concurrence of the Agency, make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorised to be made and such regulation ~~In doing so, the Minister may ensure that such regulations are~~ shall not be in contravention of the provisions of the Public Finance Management Act.

(2) Without prejudice to the generality of the provisions contained in subsection (1) of this section, the Minister may make regulations with respect to the following matters:-

- (a) additional procedures to be followed in the initiation, screening, preparation, procurement and contract management of public private partnership s;
- (b) the mandatory requirements of a feasibility study;
- (c) the annual progress reports to be submitted by a contracting authority to the Agency;
- (d) maintenance of records by a contracting authority in relation to public private partnership contracts; and
- (e) any other matter connected with public private partnerships.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, within a period of three months from the date of its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.

Interpretation

80. In this Act, unless the context otherwise requires -

“contracting authority” means a Ministry, a Department of the Government, or any Provincial Council, which has the power or authority to enter into a public private partnership contract;

“Government” means the Government of the Democratic Socialist Republic of Sri Lanka;

“Long term” means a period that extends beyond five years but does not exceed thirty years. **In rare instances, a period beyond thirty years may be considered within this definition;**

“Minister” means the Minister assigned the subject of Finance under Article 44 or 45 of the Constitution;

“prescribed” means prescribed by regulations made under this Act;

“private entity” means any person other than a contracting authority;

“private partner” means a private entity or any one or more private entities acting jointly but excludes any entity ~~where the Government has any form of equity loan, asset ownership or shareholding~~ that enters into a public private partnership contract with the contracting authority but does not include any entity in which the Government has any from of equity loan, asset ownership or shareholding;

“Provincial Council” means a Provincial Council established for a province under Article 154A of the Constitution;

“public asset” means any tangible or intangible asset which-

(a) is owned by or on behalf of the State or is of public interest; and

(b) is designed and operated for the purpose of directly or indirectly delivering public services, including, but not limited to, physical facilities and systems;

“public corporation” shall have the same meaning assigned to it under Article 170 of the Constitution;

“Public Investment Committee” means the Public Investment Committee established under the

provisions of Public Financial Management Act,
No. 44 of 2024;

“public private partnership ” means a long term agreement entered into between a contracting authority and a private party for providing a public ~~asset~~ or service, in which the private party bears significant risk and management responsibility, where remuneration is linked to performance and meeting the criteria and requirements stipulated in Part I of this Act. Reference to public private partnership in this Act apply to both concession and Government pay public private partnerships;

“public service” means an activity or function performed for the benefit of the general public or the public good or otherwise in the public interest which is customarily provided by or on behalf of public authorities or for which a contracting authority is primarily responsible;

“unsolicited proposal” means any proposal submitted by a private entity relating to the implementation of a public private partnership that is not submitted in response to a request or solicitation issued by a contracting authority within the context of a selection procedure; and

“value for money” means securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. When applied to public private partnerships, value for money involves comparing; whole-of-life costs (design,

build, finance, maintain); risk allocation (including monetized risk transfer); quality of service delivery (outputs and outcomes) and long-term efficiency and innovation. Value for money will involve a multi-criteria analysis, combining quantitative analysis with qualitative factors such as flexibility, accountability, resilience and long-term public interest.

Chapter IX

TRANSITIONAL PROVISIONS

Avoidance of
doubt

82. This Act shall apply to any public private partnerships or any equivalent or similar projects implemented, or tenders or similar procedures held and substantially completed for their award, or agreements or binding commitments entered into by the contracting authority prior to the date of commencement of this Act.

Monitoring
antecedent
projects.

83. The Government shall be entitled to require that any existing public private partnerships or equivalent or similar projects implemented before the date of commencement of this Act be subject to the monitoring and reporting requirements provided under the provisions of this Act, but without limiting any rights of cost recovery that the parties to any relevant agreements may have as a result of meeting any such requirements.

In the event of any
conflict or
inconsistency, the
application of this
Act

84. In the event of any conflict or inconsistency between the provisions of this Act and any any other law relating to or applying to public private partnerships in Sri Lanka, the provisions of this Act shall prevail:

Provided that, this Act shall always be subject to the provisions of the Public Finance Management Act.

Sinhala text to
prevail in case of
inconsistency

85. In the event of any inconsistency between the Sinhala and Tamil
texts of this Act, the Sinhala text shall prevail.

2025.08.29

