

**A  
BILL  
FOR**

**A LAW TO PROVIDE FOR PUBLIC  
PRIVATE PARTNERSHIP FOR PLATEAU  
STATE AND FOR RELATED MATTERS**

**2016**

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A  
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A LAW TO PROVIDE FOR PUBLIC PRIVATE PARTNERSHIP LAW FOR PLATEAU  
STATE AND FOR RELATED MATTERS 2016

BE IT ENACTED BY THE PLATEAU STATE HOUSE OF ASSEMBLY AND BY THE  
AUTHORITY OF SAME AS FOLLOWS:-

**PART I: PRELIMINARY**

**Citation and commencement**

1. This Law may be cited as the Plateau State Public Private Partnership Law, 2016 and shall be deemed to have come into operation on the ..... day of.....2016.

**Interpretation**

2. In this Law, unless the context otherwise required:-

“Accountant-General” means the Accountant-General of the State;

“Agency” means the Plateau Infrastructure Promotion and Regulatory Agency established under section 13 of this Law;

“Attorney-General” means the Attorney-General and Commissioner for Justice of the State;

“Auditor-General” means the Auditor-General of the State;

“bid” means a tender, an offer, a proposal or price or quotation given in response to an invitation to participate in a public private partnership infrastructure or project;

“bidder” means any person or group of persons that participates in a selection process relating to a public partnership infrastructure of project;



“bidding documents” means the tender solicitation documents or other documents for solicitation of bids for a public private partnership infrastructure or project;

“Chairman” means the Chairman of the Plateau State Council on Public Private Partnership appointed under section 5 of this Law;

“Commissioner” means the chief Executive of any Government Ministry Department and Agency charged with the responsibility for any infrastructure under consideration under this Law;

“construction” means any form of engineering works whether civil, structural, mechanical or electrical and includes rehabilitation, improvement, expansion, alteration and related works and activities, supply and installation of equipment or materials;

“Council” means the Plateau State Council on Public Private Partnership established under section 4 of this Law;

“Governor” means the Governor of Plateau State;

“infrastructure” means a public infrastructure and includes projects or development projects which before the commencement of this Law were financed, constructed, operated or maintained by the State Government and which after the commencement of this Law, may be wholly or partly implemented by the private sector under an agreement pursuant to the provisions of this Law including power plants, supply of electricity and energy, hydroelectric power projects, water supply and sanitation, provision of sewages, agricultural services, irrigation, telecommunications, interstate transport systems, roads and bridges, land reclamation projects, environmental remediation and clean-up projects, tourism development projects, recreational facilities, trade fair complexes, warehouses, solid wastes management, satellite and ground receiving stations, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, mechanical systems and other infrastructure

and development projects as may be approved from time to time by the State Executive Council;

“member” means a member of the Council and includes the Chairman;

“new investment and development project” includes any project involving any infrastructure not existing at the time the concession is being made, that will require the injection of substantial funds or resources to design, construct, maintain or operate such infrastructure;

“Panel” means the Public Private Partnership Arbitration Panel established under section 67 of this Law;

“private partner” or “concessionaire” means any person, project component, contractor or body corporate who or which has contractual responsibilities to the project and who or which has adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project;

“public authority” includes the State Government and any of its Ministries, Departments and Agencies;

“public private partnership agreement or concession agreement” means an agreement between a public authority and a private partner for the construction of public infrastructure or project over an agreed period of time including but not limited to the following:-

- (a) build, own and transfer (BOT);
- (b) build, own, operate and transfer (BOOT);
- (c) design, build, operate and transfer (DBOT);
- (d) joint development agreement (JDA);
- (e) operation and maintenance (OM);

- (f) rehabilitate, operate and transfer (ROT): and
- (g) management contracts.

“Public Private Partnership (PPP)” or “concession” means a collaboration between a public authority and a private Sector partner selected through competitive bidding procedures to carry out private sector participation that sets the terms and conditions of such participation including without limiting the generality of the foregoing, concession, leases, management contracts, Build Own and Transfer (BOT); Build Own Operate and Transfer (BOOT); Design, Build, Operate and Transfer (DBOT); Joint Development Agreement (JDA); Operations and Maintenance (OM) and Rehabilitate, Operate and Transfer (ROT) Agreements, Technical Assistance Contracts, Consulting Services Contracts, Franchise, Bulk Supply of Services and Purchase Agreements and Regulatory Agreements;

“road” includes:-

- (a) roads, the subject of a public private partnership agreement;
- (b) roadways, water tables, bridges and fording on the line of a road;
- (c) land on each side of a roadway and water table up to the boundary of a road;
- (d) traffic lines, acceleration lanes, shoulder, median strips, overpasses, interchanges, approaches, entrance and exit ramps, service areas;
- (e) areas on or adjacent to any public main road, waterway, railway or other routes used for public passenger transport; and
- (f) private road designated as a toll under this Law or otherwise developed or conceded to a public private partnership agreement.

"service charge, user fee or toll" means any fee, charge, levy, due or compensation payable in relation to the use of a public infrastructure or project.

"strategic investor" means a reputable ore investor or group of investors having the reputable expertise, the managerial experience and the financial capacity to effectively contribute to the management of the enterprise to be privatized.

### **Application of this Law and Public Procurement Law**

3. (1) This Law shall apply to:-

- (a) government infrastructure development through public-private partnership as it relates to
  - (i) investment and development projects relating to any Infrastructure of any public authority;
  - (ii) the investments or development of any infrastructure or development projects shall be through public partnership;
  - (iii) public private partnership shall be for the purpose of maintenance, upgrading, construction and management of either an existing or proposed infrastructure or development project as shall be presented by the private partner;
  - (iv) provision for funding and responsible for the management of the infrastructure and development project; and
  - (v) investment by a private partner shall be amorted in the course of the operation of the infrastructure.
- (b) the control, supervision and regulation of infrastructure subject to public private partnership.

(2) Where any of the provisions of this Law whose provisions are mandatory and conflicts with any provisions of the Public Procurement Law, such the mandatory provisions shall prevail over the similar provisions of the Procurement Law.

## **PART II: ESTABLISHMENT, POWERS, FUNCTIONS, ETC OF THE PLATEAU STATE COUNCIL ON PUBLIC PRIVATE PARTNERSHIP**

### **Establishment of the Plateau State Council on Public Private Partnership**

4. There is hereby established a body to be known as the Plateau State Council on Public Private Partnership (hereinafter in this Law referred to as "the Council").

### **Composition of the Council**

5. The Council shall comprise:

- (a) the Governor as Chairman;
- (b) Commissioner, Ministry of Finance;
- (c) Commissioner, Ministry of Water Resources and Energy;
- (d) Commissioner, Ministry of Housing and Urban Development;
- (e) Commissioner, Ministry of Works and Transport;
- (f) Commissioner, Ministry of Commerce and Industries;
- (g) Commissioner, Ministry of Justice;
- (h) Commissioner, Ministry of Environment and Minerals Development;
- (i) Commissioner, Ministry of Lands, Surveys and Town Planning;
- (j) Commissioner, Ministry of Agriculture and Rural Development;
- (k) the Secretary to the State Government;
- (l) Chairman, Plateau State Planning Commission;

(m) a representative from each of the following

- (i) the Nigerian Society of Engineers, Plateau State Branch;
- (ii) Manufacturers Association of Nigeria, Plateau State Branch;
- (iii) Plateau Chamber of Commerce, Industries, Mines and Agriculture.

(n) The Director General of the Agency as Secretary.

(2) The members of the Council mentioned in subsection (1) (m) of this section shall be appointed by the Governor.

(3) Notwithstanding the provisions of subsection (1) of this section, the Council may co-opt the supervising Commissioner of an affected public enterprise to attend relevant meetings of the Council.

#### **Remuneration for members of the Council**

6. (1) The members of the Council mentioned in subsection (1) (m), of section 5 of this Law shall be paid such remuneration, allowances and other benefits as the Governor may from time to time determine.

(2) The members of the Council mentioned in subsection 1 (a) of section 5 of this Law shall be paid such allowances and other benefits as the Governor may from time to time determine.

#### **Tenure of office of members of the Council**

7. The members of the Council mentioned in subsection (1) (m) of section 5 of this Law shall hold office for a period of four years and shall be eligible for reappointment for one further period of four years and no more.

#### **Vacation of office by members of the Council**

8. The members of the Council mentioned in subsection (1) (m) of section 5 of this Law shall vacate office on the happening of any of the following:-

- (a) if member resigns his appointment by notice in writing to the Governor;
- (b) if the period of the member's appointment has expired;
- (c) if a member has become incapable by reason of mental or physical infirmity of discharging his duties;
- (d) if a member has become unfit for membership of the Council by reason of the fact that he has an interest in a contract entered into by Council and has not discussed that fact;
- (e) if a member has been absent for three consecutive meetings of the Council without leave of the Council or good excuse;
- (f) if a member is convicted of an offence involving dishonesty, ineptitude; or
- (g) if a member has been removed from office by the Governor for any cause

#### **Proceedings of the Council**

9. The proceedings of the Council shall be governed by the rules contained in the Schedule to this Law.

#### **Disclosure of interest**

10. (1) A member of the Council who directly or indirectly has an interest in any infrastructure subject to public private partnership, the affairs of which are being deliberated upon by the Council, or is interested in any contract made or proposed to be made by the Agency shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under subsection (1) of this section shall be recorded in the minutes of meeting of the Council and the member shall:-

- (a) not take part after such disclosure in any deliberation or decision of the Council with regards to the subject in respect of which his interest is thus disclosed; and
- (b) be excluded for the purpose of constituting a quorum of any meeting of the Council for any such deliberation.

### **Powers of the Council**

11. The Council shall have power to:-

- (a) provide the policy guide in respect of the promotion and development State infrastructure through public private partnership and the regulation of State infrastructure;
- (b) undertake supervisory role on the activities and functions of the Agency under this Law;
- (c) set standards and guidelines for infrastructure development through public private partnership;
- (d) provide the general policy guidelines relating to the function of the Agency;
- (e) manage and superintend the policies of the Agency;
- (f) subject to the provisions of this Law make, alter and revoke rules and regulations for carrying out the functions of the Council;
- (g) determine the terms and conditions of service of the employees of the Council;
- (h) fix the remuneration, allowance and benefits of the employees of the Council in consultation with the Civil Service Commission;
- (i) liaise with relevant bodies or institutions for the effective performance of its functions under this Law; and



- (j) do such other things which in its opinion are necessary or expedient to ensure the efficient performance of the functions of the Council.

### **Functions of the Council**

12. The functions of the Council are to:-

- (a) approve the legal and regulatory framework for the public private partnership programmes;
- (b) determine whether the shares of a listed public enterprise should be by public or private issue or otherwise and advise the State Government accordingly;
- (c) determine the time and when an infrastructure may be subject to public private partnership;
- (d) approve the appointment of the advisers and consultants on public private partnership including their remuneration;
- (e) determine policies for infrastructure development by engaging private partners in concession arrangement;
- (f) appoint as and when necessary, committees comprising persons from private and public sectors with requisite technical competence to advise on the development of infrastructure through public private partnership;
- (g) approve the budget of the Agency;
- (h) supervise the activities of the Agency and issue directions on the implementation of public private programmes;
- (i) receive and consider, for approval, the audited accounts of the Agency;
- (j) submit to the Governor in each year a report on the activities of the Agency;

- (k) receive regular and periodic reports from the Agency on programme implementation and give appropriate directions; and
- (l) perform such other functions as may, from time to time, be necessary to achieve its objectives.

### **PART III: ESTABLISHMENT, POWERS AND FUNCTIONS OF THE PLATEAU STATE INFRASTRUCTURE PROMOTION AND REGULATORY AGENCY**

#### **Establishment of the Plateau State Infrastructure Promotion and Regulatory Agency**

13. (1) There is hereby established a body to be known as the Plateau State Infrastructure Promotion and Regulatory Agency (hereinafter in this Law referred to as the Agency).
- (2) The Agency shall be a body corporate with perpetual succession and common seal and may sue or be sued in its corporate name.
- (3) The Agency may acquire, hold or dispose of any property, moveable or immovable for the purpose of carrying out its functions under this Law.

#### **Functions relating to infrastructure development through public private partnership**

14. The functions of the Agency with respect to public private partnership shall be to:-
- (a) promote and develop State infrastructure through public private partnership;
  - (b) set and maintain standards regarding infrastructure and new development projects as permissible under this law;
  - (c) take custody of every public private partnership agreement made under this Law and monitor compliance with the terms and conditions of such agreement;

- (d) ensure efficient execution of any public private partnership agreement or contract entered into by Government, Ministries, Departments and Agencies;
- (e) promote infrastructure development through public private partnership;
- (f) ensure compliance with the provisions of this Law; and
- (g) perform such other functions as may be directed by the Governor from time to time, and as are necessary and expedient to ensure the efficient performance of the functions of the Agency under this Law.

**Functions relating to regulation of infrastructure subject to public private partnership**

15. (1) The functions of the Agency with respect to the regulation of infrastructure subject to public private partnership shall be to:-

- (a) regulate the generation, transmission, distribution and marketing of energy in the State through public private partnership;
- (b) ensure the promotion of infrastructure in other sectors of the economy under public private partnership arrangements;
- (c) ensure the reliability of services provided by private partners operating infrastructure under public private partnership;
- (d) monitor and investigate services provided under public private partnership;
- (e) formulate, regulate and review of infrastructure tariffs, fees, levies, tolls and taxes;
- (f) promote policies that are transparent, efficient and environmentally friendly;

- (g) form and enforce standards execution of public private partnership infrastructure and use of their services;
- (h) protect the interests of consumers and users of services provided by private partners under public private partnership agreements
- (i) protect existing and future consumers and users' interests in relation to benefits derived from the provision of services by private partners and
- (j) impose mandatory reliable standards for services provided by private partners and to impose penalties for contravention of any of the provisions of this Law or public private partnership agreements.

#### **Other functions**

16. The Agency shall:-

- (a) implement the provisions of this Law;
- (b) responsible to the Council;
- (c) provide secretarial support to the Council; and
- (d) carry out such other duties as may be as signed from time to time by the Council.

#### **PART IV: STRUCTURE AND STAFF OF THE AGENCY**

##### **Structure of the Bureau**

17. (1) There shall be established for the Agency the following Departments to be headed by Directors, namely;-

- (a) Department of Water Supply and Sanitation;
- (b) Department of Energy;
- (c) Department of Housing;

- (d) Department of Transportation;
- (e) Department of Environment and Minerals Development;
- (f) Department of Infrastructure Regulation; and
- (g) Department of Administration and Finance.

(2) The Agency may establish the following Units for the purpose of carrying out its functions under this Law:-

- (a) Media and Public Relations;
- (b) Audit Unit; and
- (c) Legal Unit.

(3) Notwithstanding the provisions of subsection (1) and (2) of this section, the Agency may subject to the approval of the Council establish additional departments or units whenever the need shall arise.

#### **Functions of Departments and Units**

18. The functions of the Departments and Units shall be determined by the Agency subject to the approval of the Council.

#### **Director General**

19. (1) There shall be appointed by the Governor a Director General for the Agency who shall not be below the rank of a Permanent Secretary in the Public Service or its equivalent with cognate experience in Engineering, Law, Construction or Business Sciences.

(2) The appointment of the Director General shall be subject to the confirmation of the House of Assembly.

(3) The Director General shall be:-

- (a) the Chief Executive and Accounting Officer;
- (b) responsible to the Council for the day-to-day execution of policies;

(4) The Director General Executive shall hold office in the first instance for a period of four years and shall be eligible for the appointment for such further term of four years and no more as the Governor may from time to time determine subject to confirmation of the House of Assembly.

(5) Subject to the provision of this section, the Director General shall hold office on such terms as to emoluments, allowances and benefits as may be specified in his letter of appointment.

(6) Notwithstanding the provision of subsection (4) of this section, the Director General may:-

(a) resign his appointment by a notice in writing under his hand addressed to the Governor through the Council or

(b) be removed by the Governor for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct or corruption.

#### **Staff of the Agency**

20. The Agency may subject to the approval of the Council appoint such staff as it may deem necessary and expedient from time to time for the proper and efficient performance of the functions of the Agency and on such terms and conditions as may be determined by the Council.

#### **Transfer and secondment**

21. Notwithstanding the provisions of section 20 of this Law, any other officers or employees of the Agency may be appointed by the Agency subject to the approval of the Council by way of transfer or secondment from any of the public services in the Federation.

#### **Promotion, discipline, etc**

22. Subject to the provision of section 20 and 21 of this Law, the Agency shall have power to promote and exercise disciplinary control over such officer, servants and agents of the Agency as it may deem necessary following due process in accordance with the Public Service Rules until such a time the

Council approves the terms and conditions of service for the employees of the Agency.

### **Pension rights**

23. (1) Service in the Agency shall be approved service for the purpose of the Pension Law and accordingly, officers and other persons employed in the Agency shall be entitled to pension, gratuities and other benefits as are prescribed thereunder, so however that nothing in this Law shall prevent the appointment of a person in any office on terms which preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

(2) For the purpose of the application of the provision of the Pension Law, any power exercisable thereunder by an appropriate authority of the State Government, other than the power to make regulations under section 93 of this Law, is hereby vested in and shall be exercisable by the Agency and not by any other person or authority.

## **PART V: FINANCIAL PROVISIONS**

### **Funds of the Agency**

24. There is hereby established and maintained for the Agency a fund into shall be paid and accredited:-

- (a) such sums, subventions, budgetary allocations and grants as may be provided by the State;
- (b) any loan granted to the Agency by the State Government or any Local Government in the State or any other person or institution, with the approval of the Governor;
- (c) such sums as may be paid to the Agency by way of grants-in-aid from national, bilateral and multilateral organizations, agencies, national and international development partners;
- (d) subsidies, donations, gifts, fees, subscription, rent, interest and royalties due to the Agency;

- (e) any sums derived from the sale of any property held by or on behalf of the Agency and allocations and other internally generated revenues from the services provided by the Agency;
- (f) any property which may be donated to the Agency;
- (g) donations from national and international development partners, communities and individuals;
- (h) 2.5 per cent of all utilities bills, fees, levies, tolls and taxes collected from services provided by infrastructure subject to public private partnership;
- (i) any other lawful sources.

#### **Expenditure**

25. The Agency may, from time to time, apply the proceeds of the fund established in under section 24 of this law:-

- (a) for the payment of remuneration, allowances and other benefits of the members of the Council;
- (b) for reimbursing members of the Council or of any committee set up by the Council or Agency for such expenses as may be expressly authorized by the Council;
- (c) for the payment of salaries, fees or other remuneration, allowances and other benefits including pensions and gratuities payable to the staff and employees of the Agency;
- (d) cost of the administration of the Agency;
- (e) assets acquisition for the Agency
- (f) for the maintenance of any property vested in or acquired by the Agency; and
- (g) for and in connection with all or any functions of the Agency under this Law.



#### **Bank accounts**

26. (1) The Agency shall operate such number of bank accounts as may be approved by the Accountant-General and all monies of the Agency shall be paid into any of such accounts.
- (2) No charge or other instruments for withdrawal of money from any of such accounts shall be made unless it is signed by the Director General and Director of Administration and Finance.

#### **Annual estimates, accounts and audit**

27. (1) The Agency shall submit to the Council not later than September an estimate of its expenditure and income for the next succeeding year.
- (2) The Agency shall keep proper accounts in respect of each year and proper records in relation thereto and shall cause the accounts to be audited by an auditor appointed from the list and in accordance with the guidelines supplied by the Auditor-General.

#### **Annual report**

28. The Agency shall prepare and submit to the Council, not later than March in each year a report, in such form as he may direct, on the activities of the Agency during the immediate preceding year, and shall include in such report, a copy of the audited accounts of the Agency for that year and the Auditor-General's report thereon.

#### **Power to accept gift**

29. (1) The Agency may accept any gift of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making gift.
- (2) The Agency shall not accept any gift if the condition attached by the person or organization making the gift is inconsistent with the functions of the Agency.

**Power to borrow**

30. The Agency may with the approval of the Governor, borrow by way of loan or draft from any source, monies required by the Agency for meeting its obligations and discharging its function under this Law.

**PART VI: PUBLIC PRIVATE PARTNERSHIP IN STATE INFRASTRUCTURE DEVELOPMENT**

**Public Private Partnership**

31. (1) A public private partnership may include the following:-

- (a) the management of an infrastructure;
- (b) the performance of an infrastructure of the public authority; and
- (c) the execution of an infrastructure for a public authority.

(2) The types of contracts provided for in this Law, as well as the other types of contracts provided for in any law in force, may be used separately, jointly or simultaneously in a single public private partnership infrastructure, and may be submitted to one or more bidding processes.

(3) In the event of carrying out a public work project, upon completion of the public private partnership, the public authority shall retain ownership of the real estate or other asset(s), regardless of compensation, except otherwise stipulated in the public private partnership agreement.

**Specific rules for public private partnership arrangement**

32. A public private partnership arrangement shall contain the following-

- (a) a period of validity compatible with the amortization of the investments made;
- (b) penalties to be applied to a public authority, and also to the private sector partner, in the event of failure to fulfil the contractual obligations;

- (c) possible circumstances for contract termination prior to the end of the term of the contract, as well as criteria for calculating the required compensation payments over; and
- (d) any conditions as the parties may consider necessary

#### **Guarantee by public authority**

33. (1) The public authority may provide guarantees for meeting obligations assured by a private partner, as a result of public private partnership agreements.

(2) The public private partnership agreement may stipulate that commitments related to counterpart instalment payments owed by the public authority may be paid off on behalf of the institution that financed the partnership project, as a guarantee for meeting, financing conditions.

(3) In order to meet the payment conditions stipulated in the public partnership agreement resulting from a public private partnership, the earmarking of revenues or the creation or use of special funds shall be allowed, so long as these are provided in any law.

(4) In order to grant additional guarantee for meeting the obligations assured by the public authority, the State Government shall make full payments into a trust fund to encourage public private partnership created by a financial institution.

#### **Private sector participation in construction, maintenance, etc**

34. As from the commencement of this Law, any public authority involved in the financing, construction, operation or maintenance of an infrastructure, by whatever name called, may enter into a public private partnership arrangement to any duly pre-qualified private partner in the private sector for the financing, construction, operation or maintenance of such an infrastructure that is financially viable or any development facility of the State Government in accordance with the provisions of this Law.

### **Prioritization of infrastructure development**

35. (1) Every public authority shall prioritize its infrastructures or development projects and such prioritized projects may be qualified for concession under this Law.

(2) The projects mentioned in subsection (1) of this section shall be submitted to the Council by the Agency based on the recommendation of the relevant public authority prior to entering into any public private partnership arrangement under the provisions of this Law.

### **Financial capacity for infrastructure development**

36. In entering into any public private partnership arrangement under the provisions of this Law, a public authority shall ensure that the project proponent possesses the financial capacity, relevant expertise and experience in undertaking such infrastructure development or maintenance.

### **Publication of the list of infrastructures or projects**

37. The Agency shall publish in the official Gazette the list of infrastructures eligible for contract that are to be financed, constructed, operated or maintained under this Law or that may be subject to review or possible termination or cancellation under any contract.

### **Designation of infrastructure and collection of user fee or toll**

38. (1) Notwithstanding the provisions of this Law or any law, the Council may designate any public infrastructure or road or bridge or a State highway as a public infrastructure or project with respect to which a user fee or toll shall be payable subject to the approval of the Council.

(2) Pursuant to the provisions of subsection (1) of this section, the Council may in any public private partnership agreement make provisions for authorizing any person, in return for any undertaking under the public private partnership agreement as may be specified with respect to design, construction, maintenance, operation, improvement or financing of the infrastructure or project the right to levy, collect and retain service charges,

user fees or tolls in respect of the use of the public infrastructure or project.

(3) An agreement made pursuant to the provisions of subsection (2) of this section may state the formula for sharing any collection made thereunder.

**Payment of Service charge, User fee or toll**

39. (1) There shall be paid to the private partner service charge or user fee or toll by the user.

(2) The service charge or user fee or toll payable under the provisions of subsection (1) of this section may be adjusted in accordance with regulations made by the Agency or in the absence of such regulations as may be agreed with the private partner and incorporated into the public private partnership agreement.

**Rate for service charge, fees or toll**

40. (1) The service charge, user fee or toll, which may be levied and collected by the private partner pursuant to any public private partnership agreement, shall in every case be the service charge, user fee or toll specified or calculated in accordance with any index or formula or other provision stated in the public private partnership agreement as agreed with the Agency where the public private partnership agreement is entered into prior to the regulations made by the Agency.

(2) Every public private partnership agreement shall set out the procedures, circumstances and formula by which service charge, user fee or toll to be charged by the private partner shall be calculated, varied or adjusted and such provisions shall be observed and the agreement fully implemented.

(3) Where the public private partnership agreement does not set out the provisions for calculation and adjustment or variation of service charge, user fee or toll or such provision are declared invalid, void, unenforceable or of no effect, by any competent court or authority, the private partner

shall have the right to make an application to the Agency from time to time for an adjustment.

#### **Recovery of investment**

41. (1) Any private partner who enters into any public private partnership agreement for financing, construction, operation or maintenance may, subject to the provisions of the public private partnership agreement, recover his investments.

(2) Notwithstanding subsection (1) of this section, the private partner shall-

(a) undertake appropriate insurance policy on the public private partnership arrangement with an insurance company approved by the National Insurance Commission; and

(b) undertake the maintenance and repairs of the infrastructure during the subsistence of the public private partnership agreement.

(3) Subject to subsection (4) of this section, the amount expended by any private partner who enters into any public private partnership financing, construction, operation or maintenance under any concession under this Law may be repaid by way of amortization payments through the Special Accounts.

(4) Any private partner to whom any public private partnership has been granted under the provisions of this Law shall make payment to the State Government, of such sum and at such intervals, from the proceeds realized from the implementation of the public private partnership as may be provided in the public private partnership agreement.

#### **Authentication of the cost of an infrastructure or project**

42. The cost of an infrastructure or development project shall be duly authenticated by the relevant public authority or relevant qualified

professional duly authorized by the Council to determine correctly the amount to be repaid by amortization.

#### **Special purpose vehicle**

43. The Agency shall establish a special purpose vehicle for the purpose of meeting specific objectives as shall be contained in the public private partnership agreement for the management of the assets of the equity holders under the agreement.

#### **Establishment of Special Public Private Partnership accounts**

44. (1) The Agency shall establish a Special Public Private Partnership Account into which shall be credited money accruing to the State Government and from which shall be defrayed monies to be paid in respect of the public private partnership arrangement.

(2) The Special Public Private Partnership Account shall be operated by the Agency and the private partner.

#### **Power to inspect**

45. The Agency or a public authority shall have power at any reasonable hour during the day time to enter upon and inspect any land or assets comprised in any public private partnership concession granted or executed pursuant to the provisions of this Law for the construction or erection of any infrastructure, it shall be the duty of the private partner or anyone acting in that behalf to permit and give free access to enter and inspect.

#### **Supervision of infrastructure under public private partnership**

46. Subject to the provision of this Law, the relevant public authority shall supervise the infrastructure in respect of which a public private partnership has been granted by it.

#### **Right of way**

47. Every private partner to whom any public private partnership has been granted under the provisions of this Law, shall have a right of way of easement in respect of any land or property near to or bordering the

project site or infrastructure as may be reasonably necessary for the proper implementation of the infrastructure under this Law.

#### **Registration of companies engaged in public private partnership arrangement**

48. A company engaged in any public private partnership arrangement under the provisions of this Law, shall be registered with the Corporate Affairs Commission pursuant to the provisions of the Companies and Allied Matters Act.

### **PART VII: PUBLIC PRIVATE PARTNERSHIP PROCESSES AND AWARDS**

#### **Procurement principles,.**

49. (1) The procurement procedure relating to a public private partnership projects shall be as follows:—

- (a) the procurement procedure shall be fair, equitable, transparent, competitive and cost effective; and
- (b) notwithstanding any provisions in any other law, the procurement procedure shall be in accordance with the provisions of this Law and any regulations or rules made thereunder.

#### **Competitive bidding for infrastructure development**

50. (1) Upon an approval for any contract for financing, construction, operation or maintenance of any infrastructure or development project under this Law, the public authority concerned shall, by publication in at least three national newspapers having wide circulation in Nigeria, and such other means or circulation, invite open competitive public bid for such infrastructure approved under the provisions this Law.

(2) With respect to infrastructures under the provisions of this Law, the public private partnership agreement shall be awarded to the bidder who having satisfied the pre-qualification criteria, submits the most technical, economical and practical bid.



(3) When a consortium participates in a bid under this section, there shall be a proof by the consortium that all its members shall be bound jointly and severally under the public private partnership arrangement and the withdrawal of any member of the consortium before or during the implementation shall be duly communicated to relevant public authority.

#### **Bid process**

51. (1) The contracting of a public private partnership shall be proceeded by abiding process based on the following:-
- (a) public notice of the request for bid proposals shall expressly indicate that the bid process and contract shall abide by the provisions of this Law;
  - (b) the competition shall be carried out under a pre-qualification system;
  - (c) the notice requesting for bid proposals shall:-
    - (i) require guarantee for the bid proposal and execution of the contract that are greater than those established by law, provided that they are consistent with the financial burden resulting from failure to comply with the terms of the contract;
    - (ii) require that the bidder present a financial pledge made by companies or financial institutions that meet the requirement of strength and safety as established in the notice;
    - (iii) require, as a condition for entering into the public private partnership arrangement, that the winning bidder must create a company for the specific purpose of setting up and managing the partnership activities and also that it must adopt standardized accounting practices and financial statement;

- (iv) provide that the winning bidder shall be put in charge of preparing the project plan for achieving the purpose of the partnership activity that was the subject of the bidding process, or allow an alternative project plan to be presented in the bidding process and;
- (v) allow the possibility of adopting arbitration for the execution of the contract.

(2) After the prequalification stage, the bidding process shall comply with the following:-

- (a) the public authority entity shall receive technical bid proposals from the bidders and may request that changes be made that are suitable to serve public interest;
- (b) a reasonable and sufficient period of time shall be established for satisfying the requests made by public sector authority;
- (c) once the stage for improving technical bid proposals is completed, the public authority shall receive the price proposals from the bidders;
- (d) the bidders may present new and successive price proposals until one is declared to be the winner under the terms and conditions stipulated in the public notice;
- (e) the public notice may limit the right to present new and successive price proposal to bidders that are included in a specific range established in the public notice, relative to the proposal that initially places first; and
- (f) if there are not at least three proposals included in the range established in the public notice, those who present the three best proposals may present new and successive price proposals.

(3) In order to judge the bid proposals, the following criteria may be adopted:-

- (a) the lowest rate;
- (b) the best techniques; and
- (c) the lowest counterpart instalment payments for the government or public sector.

#### **Opening of the bid**

52. The opening of a public private partnership contract bidding process shall be contingent upon compliance with the following:-

- (a) preparing the estimate of the financial and budgetary impact in the fiscal years when public private partnership agreement will be in effect;
- (b) demonstrating the source of funds to defray its cost; and
- (c) a statement from those ordering the expenses that the resulting increase is consistent with the annual budget, in terms of both finances and budget.

#### **Request for expressions of interest and pre-qualifications bidding documents**

53. (1) A public authority shall prepare a request for submission of expressions of interest and the associated pre-qualification bidding documents, after receiving approval from the Plateau State Council on Public Private Partnership.

(2) A public authority shall submit the request for submission of expressions of interest and the pre-qualification bidding documents prepared by it to advertise, invite, solicit or call for bids for the purposes of engaging in pre-qualification process.

(3) The request for submission of expressions of interest shall be published in accordance with the regulations and rules issued under this Law.

- (4) The request for expressions of interest shall include the following:—
- (a) a description of the proposed public private partnership infrastructure;
  - (b) an indication of the essential elements of the public private partnership infrastructure, such as the—
    - (i) services to be delivered by the private partner; and
    - (ii) financial arrangements envisaged by the contracting authority;
  - (c) a summary of the main required terms of the public private partnership agreement to be entered into;
  - (d) the manner and place for the submission of applications for pre-qualification and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their expressions of interest; and
  - (e) an appropriate statement to the effect that the public authority reserves the right to request proposals upon completion of the pre-qualification process only from a limited number of bidders that best meet the pre-qualification criteria.

**Pre-qualification criteria**

54. Any person who meets the criteria stated in the pre-qualification bidding documents shall qualify for the pre-qualification process, which criteria shall include the following:—

- (a) professional and technical qualifications, human and physical resources as may be necessary to carry out all aspects of the public private partnership infrastructure;
- (b) appropriate managerial and organizational capability, reliability and experience, including previous experience in operating similar public private partnership infrastructures;

- (c) adequate financial capacity to fund, or experience in arranging financing, for the investment required for the public private partnership infrastructure, and
- (d) no involvement in litigation that could materially affect the ability to carry out the public private partnership infrastructure.

#### **Evaluation of qualifications**

55. (1) A public authority shall evaluate the qualifications of each bidder that has submitted an expression of interest for pre-qualification, applying only the criteria that are set forth in the pre-qualification bidding documents, and the public authority shall then prepare a pre-qualification report for consideration by the Agency.

(2) Each pre-qualified selected bidder shall be invited by the public authority to submit a proposal in accordance with the provisions of this Law after the approval of the public authority's pre-qualified report by the Agency.

#### **Approval of pre-qualification report by public authority**

56. (1) After the evaluation of the pre-qualification bids pursuant to section 55, the public authority shall submit its pre-qualification report to the Agency for approval.

- (2) The pre-qualification report shall contain the following statements:-
- (a) that the bids explain the capacity of the private partner to effectively implement, manage, enforce, monitor and report on the proposed public private partnership infrastructure; and
  - (b) that a satisfactory due diligence analysis has been completed by the public authority, in consultation in relation to the capacity and qualifications of the selected private partner to complete the proposed public private partnership infrastructure or project.

#### **Bidder's security**

57. A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of a:-

- (a) withdrawal or modification of a proposal after a specified deadline;
- (b) failure to sign the public private partnership agreement, if required by the public authority to do so, after the proposal has been accepted; or
- (c) failure to provide the required security for the fulfillment of the public private partnership agreement after the proposal has been accepted or to comply with any other condition prior to signing the public private partnership agreement as specified in the request for proposals.

**Criteria for evaluation of bids**

58. (1) The criteria for evaluating technical offers shall include the following:—

- (a) technical soundness;
- (b) compliance with environmental standards under any law;
- (c) operational feasibility;
- (d) quality of services and measures to ensure their continuity;
- (e) timetable and work plan for the delivery of the public private partnership infrastructure or project; and
- (f) any other prescribed criteria.

(2) The criteria for evaluating financial offers shall include:—

- (a) the present value of proposed user levies, unit prices, and other charges over the full term of the public private partnership agreement;
- (b) the present value of proposed direct payments by the public authority, if any;

- (c) the present value of the costs for design and construction activities plus annual operation and maintenance costs;
- (d) the extent of financial support, if any, expected from a public authority;
- (e) the soundness of the proposed financial arrangements;
- (f) the social and economic development potential offered by the proposals; and
- (g) any other prescribed criteria.

**Circumstances where competitive contracts not be necessary**

59. Notwithstanding section 50 (1) of this Law and if after advertisement in accordance with section 50 (2) of this Law.

- (a) only one private partner applies or submits a bid or proposal;  
or
- (b) only one private partner meets the prequalification requirements;

the public authority may undertake direct negotiation without competitive bidding for any public private partnership to be entered into pursuant to the provisions of this Law.

**Confidentiality**

60. (1) A public authority and the Agency shall treat proposals in such a manner as to avoid the disclosure of their content to competing bidders, and any discussion, communication or negotiation between the contracting authority and a bidder shall be confidential, save for communications concerning the clarification of a request for submission of expressions of interest, a pre-qualification bidding document or a request for proposals.

(2) Unless required by law or by a court order or permitted by the request for proposals, a party to a negotiation shall not disclose, to any other person, any technical or financial matter or any other information in relation to any

discussion, communication or negotiation submitted, received or done, as the case may be, under this Law, without the consent of the other party.

## **PART VIII: PUBLIC PRIVATE PARTNERSHIP AGREEMENTS**

### **Nature of public private partnership agreements**

61. (1) A public private partnership agreement shall be an agreement between a public authority and a private partner made in accordance with the provisions of this Law in which the private partner-
- (a) agrees to perform or undertake any infrastructure or social sector service;
  - (b) assumes financial, technical or operational risks in connection with the performance of a public function or the use of public property; and
  - (c) receives consideration for performing a public function or utilising public property, by way of:-
    - (i) a fee from any revenue fund or budgetary fund of the Government; or
    - (ii) levies collected by the private partner from end-user or customers for a service provided by the private partner.
- (2) A public private partnership agreement shall provide for such matters as the parties consider appropriate, but shall include:-
- (a) the nature and scope of works to be performed and services to be provided by the private partner;
  - (b) the conditions for provision of services and extent of exclusiveness, if any, of the private partner's rights under the public private partnership agreement;



- (c) the assistance that a public authority may provide to the private partner in obtaining licences and permits to the extent necessary for the implementation of the public private partnership agreement;
- (d) the return of assets, if any, to a public authority, at the termination or expiration of the public private partnership agreement, in such manner as may be provided for in the public private partnership agreement;
- (e) in the case of a public private partnership infrastructure, procedures for the review and approval of engineering designs, construction plans and specifications by the public authority and the procedures for testing and final inspection, approval and acceptance for the public private partnership infrastructure or project;
- (f) the rights of the public authority, or of a regulatory agency, to monitor the works to be performed and services to be provided by the private partner, and the conditions and extent to which the public authority or the regulatory agency may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate to ensure that the public private partnership infrastructure or project is properly operated and the services are provided in accordance with the applicable legal and contractual requirements;
- (g) the extent of the private partner's obligations to provide the public authority or regulatory agency, as appropriate, with reports and other information on its operations;
- (h) mechanisms to deal with additional costs and other consequences that might result from any order issued by the public authority, or another public authority, including any compensation to which the private partner might be entitled;

- (i) any rights of the public authority to review and approve major contracts to be entered into by the private partner, in particular with the private partner's own shareholders or other affiliated persons;
- (j) guarantees of performance to be provided and insurance policies to be maintained by the private partner in connection with the implementation of the public private partnership infrastructure or project;
- (k) the extent to which either party may be exempt from liability for failure or delay to comply with any obligation under the agreement owing to circumstances beyond its reasonable control;
- (l) the duration of the public private partnership agreement and the rights and obligations of the parties upon its expiry or termination;
- (m) the sharing of risks between the public authority and the private partner;
- (n) assist the private partner to enjoy the right to enter upon, transit through or do work or fix installations upon property of third parties required for the implementation of the public private partnership infrastructure; and
- (o) such other information as may be prescribed.

**Acquisition of rights related to infrastructure or project site**

62. A public authority, under the terms of any law and private partnership agreement, shall make available to the private partner such rights related to the public private partnership infrastructure site, including title thereto, as may be necessary for the implementation of the public private partnership infrastructure.

### **Security to be provided by private partner**

63. Subject to any restriction that may be contained in a public private partnership agreement, a private partner shall have the right to create security over any of its assets, rights or interest, including those related to a public private partnership project, as shall be required to secure any finances needed for the public private partnership infrastructure, security over movable or immovable property owned by the private partner or its interest in public private partnership assets.

### **Assignment of a public private partnership agreement**

64. (1) The rights and obligations of the private partner under a public private partnership agreement may not be assigned to a third party without the prior written consent of the public authority.

(2) A public private partnership agreement shall set out the conditions under which a public authority shall give its consent to an assignment of the rights and obligations of the private partner under the public private partnership agreement, including the acceptance by the new private partner of all obligations thereunder and evidence of the new private partner's technical and financial capability as shall be necessary for undertaking the public private partnership infrastructure.

### **Operation of public private partnership infrastructure or project**

65. (1) A public private partnership agreement shall set out the extent of a private partner's obligations to ensure:-

(a) the modification of the public private partnership infrastructure so as to meet the public demand for the public private partnership infrastructure;

(b) the continuity of the public private partnership infrastructure.

(2) A private partner shall have the right to issue and enforce rules governing the use of the public private partnership infrastructure, subject to the approval of the public authority and the Agency.

### **Revision of public private partnership agreement**

66. A public private partnership agreement shall set out the extent to which a private partner is entitled to a revision of the public private partnership agreement with a view to providing compensation in the event that the cost of the private partner's performance of the agreement has substantially increased or that the value the private partner receives for such performance has substantially diminished as compared with the costs and the value of performance as a result of:-

- (a) changes in the economy;
- (b) changes in legislations or regulations in situations where:-
  - (i) they occur after the conclusion of the public private partnership agreement;
  - (ii) it is beyond the control of the private partner; and
  - (iii) they are of such nature that the private partner not reasonably be expected to have taken them into account at the time the public private partnership agreement was negotiated.

### **Arbitrary variation agreements**

67. No agreement reached pursuant to the provisions of this Law shall be arbitrarily varied, modified, suspended, cancelled or changed except in accordance with the provisions of this Law.

## **PART IX: DISPUTES RESOLUTION AND PLATEAU STATE INFRASTRUCTURE PROMOTION AND REGULATORY ARBITRATION PANEL**

### **Dispute involving public authority, private partner and users**

68. (1) Any dispute between a public authority and the private partner shall be settled through the dispute settlement mechanisms agreed by the parties in the public private partnership agreement.

(2) A public authority may require the private partner to establish efficient mechanisms for handling claims submitted by its customers or

users of the public private partnership infrastructure where the private partner provides services to the public or operates a public private partnership infrastructure which is accessible to the public.

### **Establishment and members of the Plateau State Infrastructure Promotion and Regulatory Arbitration Panel**

69. (1) There is hereby established under this Law an ad hoc body to be known as the Plateau State Infrastructure Promotion and Regulatory Arbitration Panel (hereinafter in this Law referred to as "the Panel) which shall be responsible for effecting prompt settlement of any dispute arising between a private partner and public authority or Agency arising from a concession agreement or from any of the provisions of this Law.
- (2) The panel shall comprise of five persons who shall be persons of proven integrity one of whom shall be the Chairman.
- (3) The members of the panel shall be paid such remuneration and allowances as may be determined by the Governor.
- (4) The Board shall appoint the members of the Panel on such terms and conditions as it may deem fit.

### **Powers of the Panel**

70. (1) The panel shall power to arbitrate-
- (a) in any dispute raising question as to the interpretation of any of the provisions of a performance agreement or concession agreement;
  - (b) in any dispute on the performance or non-performance by any public enterprise of its undertaking under a performance agreement or concession agreement
- (2) A dispute on the performance and non-performance by any of the parties to the performance agreement or public private partnership agreement, shall lie to that Panel provided that such reference may be

made after all reasonable efforts to resolve the dispute have been made and have not been proved.

### **Proceedings of the Panel**

71. (1) Subject to the provisions of this section and the relevant provisions of the Interpretation Law, the panel may make standing orders regulating its proceedings.
- (2) The Chairman of the Panel shall preside at every session of the Panel.
- (3) The quorum at any session of the panel shall be the Chairman and two other members.

### **PART X: OFFENCES AND PENALTIES**

#### **Contributing to economic adversity of an infrastructure subject to public private partnership**

72. (1) A person who has contributed to the economic adversity or failure of an infrastructure subject to public private partnership in a material particular is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years.
- (2) A person convicted under this section shall be liable to refund to the the Agency the amount determined by the Court as the equivalent in monetary terms or loss suffered by the public enterprise as a result of the offence or of such other forms as the Court may deem fair and just in the public interest.

#### **Failure to execute contract, etc**

73. A person who, having entered into a contract to execute any public work, including buildings, roads, or to supply goods, materials or services in respect of an infrastructure subject to public private partnership, without just cause:-
- (a) fails to execute the public work or to supply the goods, materials or services; or

- (b) otherwise abandons or fails to complete the performance of the contract, is guilty of an offence and liable on conviction to a fine of N500,000 or to imprisonment for a term of three year, or to both such fine and imprisonment.

#### **Failure to pay service charge or user fee or toll**

74. Any person who fails or refuses to pay service charge, use fee or toll in accordance with this Law or regulations made thereunder commits an offence and shall be liable on conviction to a fine N50,000.00 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) If it appears to a person employed to collect service charge, user fee or toll that a person has refused or failed to pay, the person so employed may;

- (i) refuse to permit the defaulter to use, or prevent him from using the public infrastructure or public asset with respect to which service charge, use fee or toll are payable; and
- (ii) require him to vacate the public infrastructure or public asset, or call, where necessary, the assistance of law enforcement agents.

#### **Contravention of provision relating to confidentiality**

75. Any person who contravenes the provisions of section 60 of this Law commits an offence and shall be liable on conviction to a fine of N50,000.00.

#### **Obstruction of official**

76. Any person who obstructs or assaults any officer or employee of the Agency or an agent of the Agency authorized in that behalf in the course or carrying into effect any provisions of this Law, omits an offence and shall be liable on conviction to a fine of N50,000.00 or imprisonment for six months or to both such fine and imprisonment.

#### **Contravention of the provisions relating to secrecy**

77. Any person who contravenes the provisions of section 91 of this Law, commits an offence and shall be liable on conviction to a fine of not less than N20,000.00 or imprisonment for a term of three months or to both such fine and imprisonment.

**Attempt to commit offence,etc**

78. A person who attempts to commit any of the offences specified in this Law is guilty of an offence and shall be liable on conviction to the same punishment as is prescribed for the full offence.

**Conspiracy, procurement, instigation, aiding, abetment, etc**

79. Any person who conspires with procures, instigates, aids, abets or facilitates another person to do anything or at prohibited under the provisions of this Law, omits an offence and shall be liable under the relevant provisions of this Law relating to such offence and shall be punished as if he omitted the offence himself.

**Provisions where offence is not specifically provided**

80. A person is guilty of an offence under the provisions of this Law and regulations made thereunder who contravenes or fails to comply with any of these provisions for which no penalty is specifically provided, shall be liable on conviction to a fine of N50,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

**Offences by bodies corporate**

81. Where an offence under this Law or the regulations made thereunder is omitted by a body corporate, firm or association;

- (a) any director, manager, secretary or other officer of the body corporate;
- (b) any partner or firm;
- (c) any person concerned in the management of the association;

shall be liable to be prosecuted and punished for the offence as provided under this Law and the regulations made there under,



unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

## **PART XI: LEGAL PROCEEDINGS**

### **Limitation of actions against the Agency**

82. (1) Subject to the provision of this Law, the provisions of the Public Officers Protection Law shall apply in relation to any action instituted against any member, officer or employee of the Bureau.

(2) No action against the Director General or any officer or employee of the Agency for any act done in pursuance or execution of the provisions of this Law or any other law, or of any public duties or authority or in respect of any alleged act done in the execution of this Law or any other law or public duties by a public authority, shall lie or be instituted in any court unless it is commenced-

- (a) within three months after the act, neglect or default complained of; or
- (b) in the case of a continuation or damage or injury, within six months next after the ceasing thereof.

(3) No action shall be commenced against the Director General or any other officer or employee of the Agency before the expiration of a period of one month after written notice of the intention to commence the action by the intending plaintiff or his agent.

(4) The notice referred to in sub-section (3) of this section shall clearly and explicitly state-

- (a) the cause of action;
- (b) the particulars of claim;
- (c) the name and place of abode of the intending plaintiff; and
- (d) the relief which he claims.

### **Service of notice**

83. A notice, summons or other document required or authorized to be served on the Agency under the provisions of this Law or any other law may be served by delivering it to the Director General or by sending it by registered post addressed to the Director General at the head office of the Agency.

### **Legal representation**

84. (1) In an action by or against the Agency, the Agency may be represented in court at any stage of the proceedings by a law officer from the Ministry of Justice or by a private legal practitioner with the written authorization of the Attorney-General.

(2) In this section "action" includes any action or any civil proceeding commenced by writ of summons or by such other manner as may be prescribed by rules of court, but does not include criminal proceedings.

### **Restriction of an execution against property of the Agency**

85. (1) In any action against the Agency, no execution or attachment of processes in the nature thereof shall be issued against the Agency unless not less than three month notice of the intention to execute or attach has been given to the Agency.

(2) Any sum of money which by the judgment of any court has been awarded against the Agency shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from Fund of the Agency.

### **Indemnity of officers**

86. A member of the Director General or any officer or employee of the Agency shall be indemnified out of the assets of the Agency against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director General, officer or other employee of the Agency to comply with the directives or cause for them to be complied with.

## **PART XII: MISCELLANEOUS**

### **Standing and ad-hoc committees**

87. (1) The Agency may appoint standing or ad-hoc committees to perform such functions as the Council or such the Agency may consider necessary .
- (2) A committee appointed under the provisions of this section, shall consist of such number of members as may be determined by the Council.
- (3) Any decision of such committees shall have no effect until same is confirmed or approved by the Council.

### **Executive of contractual documents**

88. (1) Any contract or document which if entered into or executed by a person not being a body corporate, not required to be under seal may be entered into or executed on behalf of the Agency by the Director General or by any person generally or specifically authorized by the Council for that purpose.
- (2) Any document purporting to be a document duly executed or issued under the seal of the Agency shall unless the contrary is proved, be deemed to be so executed or issued, as the case may be.

### **Validation of certain acts**

89. No act done or proceeding taken under the provisions of this Law shall be questioned on the ground of:
- (a) the existence of any vacancy in or any defect in the constitution of the Council or any omission; and
  - (b) defect or irregularity not affecting the merits of the case.

### **Immunity**

90. No officer or employee of the Agency may be personally liable for any act of omission or commission in the discharge of his duties under the provisions of this Law that was in good faith.

**Secrecy**

91. The Director General or any other officer or employee of the Agency shall-

- (a) not for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a an officer or employee of the Agency;
- (b) treat as confidential any information, which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties under the provisions of this Law;
- (c) not disclose any information referred to under paragraph (b) of this subsection, except as required by law.

**Directives by the Governor**

92. The Governor may give to the Agency such directives of a general or specific character with respect to the performance of its function and its procedure as the Governor may consider necessary, and it shall be the duty of the Agency to comply with such directives.

**Power to make regulations**

93. (1) The Agency may subject to the approval of the Governor make regulations for carrying into effect the provision of this Law and for the due administration of its provisions and may in particular, make regulations-

- (a) setting standards to be complied with under the provisions this Law;
- (b) providing methods of ensuring compliance with standards set;
- (c) providing appropriate sanctions for non compliance with standards set down;
- (d) prescribing the forms for returns and other information required under the provisions of this Law or any other law;

- (e) prescribing the procedure for obtaining any information required under this Law or any other law; and
  - (f) for offences and penalties.
- (2) The Agency may as it relates to public partnership arrangements make regulation specifying:-
- (a) approved service charge, user fees or tolls payable in respect of designated public infrastructure or project as shall be recommended by the private partner;
  - (b) period within which service charge or user fees or tolls shall be paid; and
  - (c) conditions under which a member of the public may access the use of public infrastructure or project.
- (3) The Agency may make regulation in respect of the appointment, discipline, pension and gratuities and other retirement benefits, conditions of service and for the general welfare of the employees of the Agency.
- (4) The Agency may subject to the approval of the Governor, review, modify or amend any regulations made pursuant to the provisions of this Law.

**PROCEEDINGS OF THE COUNCIL****1. Standing Order.**

The Council, with the approval of the Governor may make standing orders regulating the proceedings of the Council or any of its committees.

**2. Meetings of the Council**

(a) The Council shall hold a minimum of four general meetings and such emergency meetings in any given year for the transaction of business, and such meetings shall be held at such places as the Council may consider necessary.

(b) At every meetings of the Council, the minutes of the previous meetings which has been duly signed, shall be taken to have been duly convened and free from any defect or irregularity and to be served on members at least 48 hours before the next meetings.

**3. Quorum.**

The quorum for the meetings of the Council shall be ten members including the Chairman or the presiding member.

**4. Presiding over meetings**

At any meeting of the Council, the Chairman shall preside and in his absence, the members present at the meeting shall appoint any of their members to preside at such meeting.

**5. Voting during meetings**

Any decision requiring a vote at a meeting shall be determined by a majority of the votes of the members present and voting on the decision and in case of any equal division of votes, the Chairman of the meeting shall have a second or casting vote.