



IMO STATE OF NIGERIA

2018, LAW NO. 11

A Bill for a law to provide for Public Private Partnerships and establish the office of Public Private Partnerships to enhance infrastructural development and service delivery in Imo State and other related matters.

Long Title

BE IT ENACTED by the House of Assembly of Imo State of Nigeria as follows:

Enactment

PART 1 PRELIMINARY

1. This Law may be cited as the Imo State Public Private Partnership Law, 2018.

Citation

2. In this law, unless the context otherwise requires –

Interpretation

"Authorized Person" includes a Police Officer and any officer from the relevant security agencies, designated officials of the office of the Public Private Partnership and such persons as the Office or Governor may from time to time appoint;

"Concession" means a contractual arrangement whereby the project proponent or contractor undertakes the construction including financing of any infrastructure, facility and the operation and maintenance thereof and shall include the supply of any equipment and machinery for any infrastructure and the provision of any service;

"Concessionaire" means a Limited Liability Company, Firm, Limited Liability partnership or any Organization duly registered under the Companies and Allied Matters Act; to whom the Government grants a Concession based on a Public Private Partnership arrangement pursuant to this Law;

"Concession Agreement" means an agreement between the Government and a concessionaire for the construction, maintenance, operation or management of Public Infrastructure, assets and facilities over an agreed period of time including but not limited to, the following types of agreements:-

- (a) Design, Build, Operate and Transfer (DBOT);
- (b) Build, Own, Operate and Transfer (BOOT);
- (c) Rehabilitate, Operate and Transfer (ROT);
- (d) Joint Development Agreement (JDA);
- (e) Operate and Maintain (OM);
- (f) Build, Operate and Transfer (BOT);
- (g) Build, Own, Operate (BOO).

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

"Contractor" means any person or body corporate who may or may not be the project proponent who enters into a contract or has been granted a Concession by any Imo State Government Ministry, Agency, Corporate or Body and undertakes to construct any infrastructure or facility or supply any equipment for any infrastructure or facility under this Law;

"Director-General" means the Director-General of the Office of Public Private Partnership appointed under section 9 of this Law;

"Ex-officio" means and includes the Attorney-General of Imo State, Commissioner of Finance and Secretary to the Government of Imo State;

"Governor" means the Governor of Imo State of Nigeria;

"Government" means the Government of Imo State of Nigeria;

"House of Assembly" means the Imo State House of Assembly;

"New Investment and development projects" include
(a) 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, build, maintain or operate such infrastructure;
or

- (b) any project involving any infrastructure, existing at the time concession is being made, that will require the injection of substantial funds or resources to repair, service, overhaul, improve, maintain or sustain such infrastructure;

"Person" includes a limited liability company, a firm, a limited liability partnership or any organization duly registered under the Companies and Allied Matters Act and shall also include a Concessionaire;

"Plan" means a technical working drawing, which shows the design of a project;

"Preferred mandate" means a document issued to a successful pre-qualified bidder;

"Private Partner" includes a Limited Liability Company, a Limited Liability Partnership or any organization duly registered under the Companies and Allied Matters Act and shall include a concessionaire.

"Project Agreement" means an agreement between the State and a Private Sector partner to carry out a Public Private Partnership project including but not limited to concessions, Leases, Management Contracts and other forms of agreements technical assistance contracts, Franchises and regulatory agreements;

"Project Proponent" means any person or body corporate that has contractual responsibilities for the project and has adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide sufficient credit lines to cover the total estimated cost of the project after being awarded the contract;

"Public Asset" includes all property belonging to or paid for by the Government and shall include all public infrastructure;

"Public Infrastructure" includes development projects which, before the commencement of this Law, were financed, constructed, operated or maintained by the Government and which, after the commencement of this Law, may be wholly or partly implemented by the private sector under an agreement pursuant to this Law, and shall include power plants, highways, seaports, airports, canals, dams, road, bridges, public water works, public toilets, recreational parks, motor parks, agricultural facilities, amusement centres, hydroelectric power projects, water supply irrigation, telecommunications, Revenue and Revenue infrastructure, railways, inter-state and intra transport systems,, land reclamation projects, environmental remediation and clean-up projects, industrial estates or township development, housing, government buildings, tourism development projects, trade fair complexes, warehouses, solid waste management, satellite and ground receiving stations, information technology network and database infrastructure, education and health facilities, sewerage, drainages, dredging and other infrastructure and development projects as may be approved, from time to time, by the Imo State Executive Council;

"Rehabilitation" means repairs or maintenance requiring some changes in design or any form or re-construction of infrastructure or asset to add strength, thus renewing and extending the life span;

"Roads" include –

- (i) the roads which are subject of project agreement;
- (ii) the roadways, water tables, bridges and fording on the line of the road;
- (iii) the lands on each side of the roadway and water tables up to the road boundaries;
- (iv) all traffic lanes, acceleration lanes, shoulder median strips, overpasses, underpasses, interchanges, approaches, entrances and exit ramps, service/maintenance areas;
- (v) any other area on or adjacent to any public main road or parochial road, waterway, railway or other routes used for public passenger transport; and

(vi) any private road designated as a toll road, under this law or otherwise developed or concessioned pursuant to a Concession Agreement;

"Service charge, user fee or toll" means any fee, levy, due or compensation payable by the public in relation to the use of a public infrastructure or State assets;

"State Executive Council" comprises members of the Government Cabinet duly charged with the administration of the Government of Imo State;

"The Office" means the Office of Public Partnerships established under section 4 of this law.

3.(1) There is established, the Public Private Partnership system in the State to enhance infrastructural development and service delivery.

*Establishment
of Public
Private
Partnership
System*

4.(1) There is established, the Office of the Public Private Partnerships (hereinafter called "the Office") to coordinate and facilitate Public Private Partnerships in the State and ensure that the objectives of this Law are realized.

*Establishment
of the Public
Private
Partnership*

(2) The office shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its Corporate name and shall have the power to do the following –

*Establishment
of the Public
Private
Partnership*

(a) enter into contracts and incur obligations;

(b) acquire, hold, mortgage, purchase and deal howsoever with property whether movable or immovable, real or personal and;

(c) do all such things as are necessary or incidental to the carrying out of its functions and duties under this Law.

5.(1) The Primary objective of the Office shall be to ensure the development and enhancement of public infrastructure, public assets and other facilities in the State through Public Private Partnerships.

*Objective of
the Office*

(2) In furtherance of its primary objective the office shall –

- (a) initiate, propose and develop policies and strategies for the development of public infrastructure and public assets and development strategies for the provision of social amenities and public services in the State by means of the Public Private Partnerships;
- (b) advise the Government on policies that will promote and sustain Public Private Partnerships in the development of public infrastructure or public assets in the State;
- (c) co-ordinate policies and programmes of the State with respect to the adoption of Public Private Partnerships for the provision and development of public infrastructure or public assets in the State; and
- (d) ensure that the adoption of Public Private Partnerships for the provision and development of public infrastructure or public assets in the State is in accordance with prevailing Government policies and public interest.

6. The Office shall –

- (a) co-ordinate the policy making on Public Private Partnerships for the State Government;
- (b) be part of the Government's decision-making process on all issues pertaining to Public Private Partnerships in the State;
- (c) identify priority sectors for Public Private Partnership initiatives
- (d) initiate and facilitate procurement of Public Private Partnerships for the development of public infrastructure and public assets including conducting the pre-qualification process for private investors willing to enter into Public Private Partnerships with the State;

*The functions
of the Office*

- (e) evaluate expressions of interest by private investors interested in Public Private Partnerships with the State and issue preferred mandate to pre-qualified bidders in accordance with the provisions of the Public Procurement Law of Imo State;
- (f) act on behalf of the Government or any of its Agencies in Public Private Partnership undertakings with private sector entities;
- (g) ensure that all aspects of financing, and insurance of public investment projects are undertaken by means of Public Private Partnerships within the public sector;
- (h) prepare and develop on behalf of the State, strategic master plans for Public Private Partnerships;
- (i) determine the framework for the engagement of consultants, specialists and advisers for Public Private Partnerships in the State;
- (j) verify and monitor performance of the terms and conditions of concession agreements by concessionaires;
- (k) satisfy, discharge and perform the obligations of the State Government under the terms of any concession agreement subject to the provisions of this Law.
- (l) monitor and oversee the development operation and maintenance of public infrastructure or public assets provided by means of Public Private Partnerships and such other facilities necessary or adjacent to such public infrastructure or public assets or social amenities;
- (m) advise the Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of Public Private Partnerships in the State, and on all issues pertaining to policy

formulation, evaluation of operational guidelines and other required statutory provisions of the Public Private Partnership Office;

- (n) undertake or conduct research, investigations or inquiries and collect information relating to public infrastructure or public assets in general; and establish, operate an information and management system concerning public infrastructure or public assets projects;
- (o) do such other things as would enable the office to achieve it's objectives under this Law

7. The Office shall have powers to –

*Powers of the
Office*

- (a) negotiate and enter into project agreements with private partners; and for the design, construction, operation, management, control, maintenance, rehabilitation and financing of any public infrastructure or public assets in accordance with the guidelines of the office;
- (b) take custody of every Concession agreement made under this Law and monitor compliance with the terms and conditions of such agreement;
- (c) obtain from any government ministry, department or private institution, statistical or other information relevant to the functions of the Office;
- (d) inspect and monitor concessionaires to ensure compliance with the terms of any concession agreement;
- (e) designate a public infrastructure or public asset as a service charge, user fee or toll paying infrastructure or public asset and specify the conditions for the use of such infrastructure or assets;
- (f) pursuant to and in accordance with the provisions of this Law, approve the amount of money that may be

charged by any private or public operator with respect to any public infrastructure or public assets as toll, user fee or service charge;

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

(h) do all other things that are necessary or expedient for the performance of its functions, including the engagement from time to time of consultants and advisers and other service providers, with the approval of the Governor.

8. The Office may give letters of Procurement, comfort or undertakings in respect of any project agreement.

*Power of
Procurement*

9.(1) The Governor shall, subject to the confirmation of the House of Assembly, appoint for the Office, a Director-General who shall be a person of impeccable character with a minimum of ten years cognate experience in any of the following fields; Commerce, Accounting, Finance, Banking, Engineering or Law and registered with the appropriate professional bodies.

*Appointment
of the
Director-
General of the
Office*

(2) The Director-General shall -

(a) be the Chief Executive Officer and Chief Accounting Officer of the Office;

(b) be responsible for the execution of the policies and the day to day administration of the Office;

(c) be answerable to and responsible to the Governor in the discharge of his functions;

(d) upon invitation, attend meetings of the State Executive Council where Public Private Partnerships or activities of the Office are to be discussed;

- (e) hold office for a period of four years in the first instance and may be re-appointed for another term of *FOUR YEARS ONLY, AND*
 - (f) hold office upon such terms and conditions as may be contained in his letter of appointment.
10. The Director-General shall cease to hold office if –
- (a) he resigns his appointment as Director-General by notice under his hand addressed to the Governor;
 - (b) he is removed by the Governor for inability to discharge the functions of his office because of an infirmity of either mind or body or for misconduct or corruption in relation to his duties or otherwise;
 - (c) he becomes bankrupt or makes a compromise with his creditors; or
 - (d) he is convicted of a felony or any offence involving dishonesty or corruption or any other criminal offence whatsoever;
 - (e) in the opinion of the Governor, his continuation in office is not in the public interest.
- 11.(1) The Governor shall appoint for the Office, a Secretary who shall be Civil Servant of the cadre of a Director or above;
- (2) The Secretary shall –
- (a) arrange meetings of the Office and prepare the agenda and minutes of such meetings;
 - (b) convey decisions of the Office regarding Public Private Partnerships to the Ministries, Department and Agencies of the State; and
 - (c) perform all other duties affecting the Office as may be assigned to him by the Director-General.

The Secretary
of the Office

12.(1) The Governor shall approve the appointment of such other staff for the Office as may be expedient for the proper and efficient performance of the functions of the Office.

Other Staff of
the Office

(2) For the purpose of this section, appointment shall include secondments, deployments, transfers and contract appointments.

(3) The terms and conditions of service (including remuneration, allowances, benefits and pensions) of the staff of the office shall be in accordance with the salary structure of the State Civil/Public Service.

(4) Notwithstanding the provisions of subsection (3) of this Section, the Governor may approve such remuneration, allowances and benefits for the Director-General or any other staff of the Office as he deems fit.

13. The funds of the Office shall consist of –

Funds of the
Office

(a) all subventions, grants and budgetary allocations from the State Government;

(b) gifts, loans, grants or aid from any agency, institution, bilateral and multinational organizations or any Government;

(c) a percentage of the service charges or user fees as may be prescribed in the Regulations of the Office or agreed in the relevant concession agreements in the absence of such Regulations; and

(d) other monies that may become payable to or vested in the Office in respect of any matter incidental to its functions.

14. The Office shall keep and operate Bank Accounts for its funds with reputable banks as may be authorized by or allowed under the extant financial laws and regulations of the State.

Bank
Accounts

*Application of
Funds and
Accounts of
the Office*

- 15 The funds of the Office shall be utilized for –
- (a) the payment of salaries, remuneration, fees and allowances of staff, agents or consultants to the Office;
 - (b) the development and maintenance of any property vested in or owned by the Office;
 - (c) human capital development;
 - (d) defraying of other expenses incurred by the Office in carrying out its functions under this Law; and
 - (e) such other additional purposes as the Governor shall direct.
- (1) The Office shall prepare and submit to the Ministry of Economic Planning and Budget, an estimate of its income and expenditure in accordance with the call circular of the Ministry.
- (2) The Office shall keep proper accounts in respect of each Year from 1st January to 31st December in accordance with the prevailing audit policy of the State and shall forward its statement of account of the preceding year to the Auditor-General of the State for audit purposes.
- (3) The Office shall keep proper accounts of all its transactions in respect of each year from 1st January to 31st December in accordance with the prevailing audit policy of the State in such form as shall conform to standard commercial practice and as prescribed by extant financial laws and regulations of the State, and shall forward its statement of Account for the preceding year to the Auditor-General of the State for audit purposes.
- (4) The form of accounts shall be such as to secure the provision of separate information in respect of each of the main activities and divisions of the Office.
- (5) The accounts shall be audited annually by external auditors appointed by the Office from a list of approved auditors by the Auditor-General of the State. The Office shall prepare and submit an annual report in accordance with the prevailing audit policy of the State not later than 30th day of

June each year being a report on the activities of the Office during the immediate preceding year and shall include with the report a copy of the audited accounts of the Office and the Auditor's report.

16. Without prejudice to the functions of the State under any other enactment, the State either by itself or in conjunction with any other Private Partner or another State may –

*Role of the
State*

(a) enter into an agreement with a Private Partner (referred to in this Law as "a Partner") for the performance of functions of the State specified in the agreement;

(c) enter where appropriate into direct agreement with persons who have arranged or provided funding for the Partner for carrying out the Public Private Partnership in relation to –

(i) the design and construction of an asset together with operation of services relating to it and the provision of finance if required for such design, construction and operation;

(ii) the construction of an asset together with the operation of services relating to it and the provision of finance if required for construction and operation; and

(iii) the design, construction or operation of an asset, together with the provision of finance and operation.

17. The Office, with the approval of the Governor may cause to be formed, Limited Liability Partnerships or Limited Liability Companies for the purpose of financing Public Private Partnership projects or facilitating such projects where in the opinion of the Office it is necessary or expedient to do so in order to discharge its functions under this Law.

*Establishment
of Special
Purpose
Companies or
Limited
Liability
Companies/
Partnerships*

18. The Office shall enter into Public Private Partnership Agreements only with a company registered under Companies Allied Matters Act.
- Office to enter into Agreements with only Registered Companies*
19. A Public Private Partnership Agreement may contain provisions that a financial guarantee or indemnity or undertaking or Letter of Comfort would be given by the State or any Ministry, Department or Agency of the government provided that no such financial guarantee, indemnity, undertaking or Letter of Comfort in respect of any Concession Agreement made pursuant to this Law shall be given, without the approval of the Governor.
- Financial Guarantees by the State MDAs may form part of a PPP agreement only with approval of the Governor*
- 20.(1) Notwithstanding the provisions of any Law, the Office in consultation with the Ministry, Agency or Department of Government that has control over the particular asset may designate any public infrastructure or public asset within the State as public infrastructure or public asset with respect to which User fee, Service charge or Toll shall be payable for the purpose of this Law.
- Designation of a public asset as a fee, or toll paying asset*
- (2) In or public asset with respect to which sense of belonging and the existence of its power under this section, the Office shall have regard to the rights and interest of the community where the public infrastructure or asset is situate with a view to giving them opportunity to participate, have sense of belonging and being given due consideration in determining the service charges, user fees or tolls.
- Host Communities to benefit from Concession agreements*
21. The Office may by Regulations stipulate –
- The Office may stipulate Service Charges, User Fees, Tolls and conditions for public assets by Regulations*
- (a) the Service charges, User fees or Tolls payable in respect of designated public infrastructure or public assets; and
- (b) conditions under which members of the public may access the use of such public infrastructure or public assets.

Concessionaire
to propose user
fees/tolls for
public
infrastructure

22.(1) A Concessionaire may propose for the approval of the Office, the Service charge, User fee or Tolls, or any review of same in relation to the use of public infrastructure or public assets by reference to such circumstances or combination of circumstances or classification as the office may in consultation with the Concessionaire specify.

(2) The Office may provide the Service charge, User fees or Tolls to be charged for a period specified or determined in accordance with the Regulations. Regulations may provide for a period when payment of Service charge, User fees or Tolls shall end which may be -

(a) on a date, or at the end of a period specified in the Regulations; or

(b) on a date determined by reference to -

(i) the achievement of a specified financial objective; or

(ii) such other factors or combination of factors as may be specified in the Regulations.

(3) A Concession agreement shall be valid if -

(a) the Concession Agreement has been executed in accordance with this Law. and

(b) there is a provision therein for Service Charge, User Fee or Toll and such service charge, user fee or toll has been fixed in accordance with the provisions of this section and is not in conflict with the provisions of the Regulations of the Office in that regard;

(4) The service charge, user fee or toll which may be levied and collected by the Concessionaire pursuant to any concession 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 concession agreement as agreed with the Office where the concession agreement is entered into prior to the regulations made by the Office.

- (5) Each Concession agreement shall set out the procedure, circumstances and formulae by which the Service charge, User fee or Toll to be charged shall be circulated, varied or adjusted.
- (6) Where the Concession agreement does not set out the provisions for calculation, adjustment or variation of the Service charge, User fee or toll or such provisions are declared invalid, void or unenforceable by any competent Court or Authority, the Concessionaire shall apply to the Office for a calculation of or an adjustment or variation to the Service charge, User fee or Toll and the Office shall provide the necessary guidelines for the assessment of the applicable service charge, user fee or toll, taking into account all relevant circumstances.
- (7) The Office shall have power to vary or adjust, or to require the adjustment of any Service Charge, User fee or toll charged by Concessionaire in respect of a public infrastructure or assets only in accordance with the provisions of this Law or as may have been agreed and incorporated into any relevant Concession agreement
23. The Office shall ensure that Concessionaires or private sector partners for Public Private Partnership projects shall be selected through a vigorously transparent, efficient and competitive procedure, adapted to the peculiarities of the different projects selected for the Public Private Partnership arrangement.
24. The Office shall consult and collaborate with the Ministry, Agency or Department of the Government that has control over the particular infrastructure or asset to determine a risk allocation structure that is best suited to the project and best serves the interest of the public, the private sector partner and the project.

*Selection of
Concessionaire
or Private
Sector Partners*

*Risk
Allocation
Structure*

25.(1) The appropriate share of the Service charge, User fee or Tolls shall be paid to the Concessionaire and adjusted in accordance with regulations made by the Office or in the absence of such regulations, as may be agreed with the Concessionaire and incorporated into the relevant Concession Agreements.

Service
Charge,
User Fee or
Toll to be
paid

(2) A Service charge, User fee or Toll levied in respect of public infrastructure of public assets is valid only if it is levied in accordance with the provisions of this Law.

26. Notwithstanding the provisions of any Law, the Office may in the relevant Concession or Project agreement authorize any person in return for undertaking such obligation as may be specified in a Concession or Project agreement with respect to the design, construction, maintenance, operation, improvement or financing of public infrastructure or public assets to enjoy specific rights as may be stated in the Concession or Project agreement including the right to levy, collect and retain Service charges, User fees or Tolls in respect of the use of the public infrastructure or public assets.

Authorisation
to collect,
retain or levy
Service
Charges,
User Fees or
Toll

27.(1) It shall be an offence for any person to fail or to refuse to pay a Service charge, User fee or Toll in accordance with this law or any regulations made under this Law within the terms of the Concession Project Agreement and the offender shall be liable on conviction to a fine of not less than Fifty Thousand Naira only (N50,000) or six months imprisonment or any non-custodial sentence provided by law. If it appears to an authorized person employed to collect Service charge, User fee or Toll that an individual has refused or failed to pay, the person so employed may –

Offences

(a) refuse to permit the defaulter to use, or prevent him from using or continuing to use the public infrastructure or public asset with respect to which the service charge, user fee or toll are payable;

(b) require him to vacate the public infrastructure or public asset or where necessary call for the assistance of other *authorized persons; and*

(2) where an individual refuses to pay a service charge, user fee or toll with respect to the use of any public infrastructure or public asset, the person, may be arrested by an Authorised person or Designated Officer and charged before a competent court as soon as reasonably possible without prejudice to the right of the person to be admitted to bail. Where the infrastructure is a road or bridge, the vehicle driven by the person shall be impounded by an 'authorized person and removed to a vehicle park provided for that purpose, and such vehicle shall remain so impounded until the payment of the unpaid toll, the fine prescribed by subsection (1) of this Section and the demurrage paid to the appropriate authority designated by the office committed under the said subsection.

28. The Office may subject to this Law and the approval of the Governor make and publish such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this law and for Pre-Existing Concessions, and of Appeals from decisions of the office the due administration of its provisions especially for the purpose of –

*Power to
make
Regulations
by the Office*

(a) designating a public infrastructure or public asset as a Service charge, User fee or Toll paying infrastructure or asset and;

(b) establishing fair and general conditions designating who, when and how the public infrastructure of the public asset may be used and from whom a Service charge, User fee or Toll may be collected.

29.(1)As from the commencement of this Law, any Imo State Government Ministry, Agency, Corporation or body involved in the financing, construction, operation or maintenance of infrastructure or service, by whatever

name called, may enter into a contract with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction, operating, management or maintenance of any infrastructure or any development facility of the Imo State Government in accordance with the provision of this Law.

(2) This Law applies to investment and development projects relating to any infrastructure of any Imo State Government Ministry, Agency, Corporation or Body.

30.(1) Every Imo State Government Ministry, Agency, Corporation or Body shall prioritise its infrastructural projects and such priority projects may be qualified for Concession under this Law.

Priority
Projects

(2) The Projects mentioned in subsection (1) of this section shall be submitted to the Imo State Government Executive Council for approval on the recommendation of the relevant sector Ministry or Agency prior to entering into any contract or granting any Concession in accordance with the provisions of this Law.

(3) In entering into any contract or granting any concession under Sub-Section (1) of this Section, the Imo State Government Ministry, Agency, Corporation or Body shall ensure that the project proponent possesses the financial capacity, relevant expertise and experience in undertaking such infrastructure development or maintenance

(4) The Office of Public Private Partnership established under this Law shall publish, in the Imo State Gazette and at least three national newspapers having wide circulation in Nigeria, and such other means of circulation, the list of projects eligible for contract for the financing, construction, operation or maintenance of any infrastructure under this Law.

31. No Imo State Government Ministry, Agency, Corporation or body shall give any guarantee, letter of comfort or undertaking in respect of any concession agreement made pursuant to this Law, except with the approval of the Imo State Government Executive Council and on the recommendation of the office of Public Private Partnership.

*Guarantee on
Concession
Agreement*

- 32.(1) Upon an approval for any project or contract for financing, management construction, operation or maintenance of any infrastructure or development project under this Law, the Imo State Government Ministry, Agency, Corporation or body concerned shall, by publication in at least three national newspapers having wide circulation in Nigeria, and such other means of circulation, invite an open competitive public bid of such project or contract approved under this Law.

*Competitive
Public
Bidding for
Project and
Contracts*

- (2) With respect to projects under this Law, the concession contract shall be awarded to the bidder who, having satisfied the pre-qualification criteria, submits the most technically and economically responsive bid.

- (3) Where a consortium participates in a bid under this section, there shall be proof by the consortium that all its members shall be bound jointly and severally under the contract and the withdrawal of any member of the consortium before or during the implementation of the project may be a ground for review or possible cancellation of the contract.

33. Notwithstanding any section of the Law, and if after advertisement in accordance with the provisions of this Law –

*Circumstance
where
competitive
bidding for
contract may
be necessary*

- (a) only one contractor or project proponent applies or submits a bid or proposal; or
- (b) only one contractor or project proponent meets the pre-qualification requirements, the Ministry, Agency, Corporation or Body may undertake direct negotiation without competitive bidding for any contract to be entered into pursuant to this Law.

34. The duration of any Concession shall be as may be specified in the agreement or contract governing the Concession.

Duration of
Concession

35.(1) Any project proponent or contractor who enters into any contract for managing, financing, construction, operation or maintenance may, subject to the provisions of the concession contract recover his investments.

Recovery of
Investment,
etc

(2) Notwithstanding subsection (1) of this section, the project proponent or contractor shall-

(a) undertake appropriate insurance policy on the Concession with an insurance company approved by the National Insurance Commission; and

(b) undertake the maintenance and repairs of the infrastructure or facility during the subsistence of the contract.

(3) Subject to subsection (4) of this section, the amount expended by any project proponent or contractor who enters into any contract for financing, construction, operation or maintenance under any concession under this Law may be repaid by the relevant Ministry, Agency, Corporation, or body to such proponent or contractor by way of amortization.

(4) Any Contractor to whom any concession has been granted under this Law shall pay to the Imo State Government, such sums and at such intervals, from the proceeds realised from the implementation of the concession as may be provided in the Concession contract or agreement.

36.(1) It shall be the duty of the certain specified Concessionaries to expend their own resources to design, finance, build, install and operate an entirely new structure for any specific sector, in the State, including but not limited to investments in -

Statutory
Protection of
Concessionaires
with Special
Investment In
Infrastructure

- a) recruitment, training, deployment and placement of manpower in operations throughout Imo State;
 - b) deployment of computerized software and hardware in all relevant areas and offices throughout Imo State;
 - c) provision of buildings and physical infrastructure throughout Imo State
- (2) Such Special Concession Agreement shall expressly recognize the duty of the concessionaire to design, finance, build, install and operate specified infrastructure throughout the State, and the extensive considerable cost incurred in the course of carrying out the appointment into effect.
- (3) The designing, financing, building, installation and operation of any infrastructure in Imo State by the Concessionaire shall be supported by the following statutory investment incentives –
- (a) any breach of contract of any kind, whether by express or implied non-performance, partial performance or want of performance shall instantly attract a refund of the investment by the consultant within one week;
 - (b) the sum representing the investment shall be fixed by mutual agreement, in the appointment contract documents;
 - (c) the penalty shall be supported by an irrevocable standing payment order from the source, on the accounts of the Imo State Government, in the sum of the agreed investment cost above;
 - (d) the agreed investment sum above shall carry a penalty of 5% interest compounded per month in the event of failure to pay as at when due;

(e) the concessionaire shall be entitled to –

- (i) collect and receive all revenue into a single designated account as may be agreed upon; and
- (ii) deduct approved fees from the same source as stated above.

(4) The Concessionaire shall only be entitled to any of the above statutory investment incentives, if the revenue (where applicable) to the State is increased by 100%, arising from its intervention.

(5) Additional bonuses or graduated increases in fees shall be agreed upon, in the event that Concessionaire generated Revenue (where applicable) which exceeds 200% and so on accordingly.

37. Project cost shall be duly authenticated by the relevant Ministry or Government department and relevant qualified professionals shall determine the correct amount to be paid by amortization.

*Authentication
of Project Cost*

38. There shall be a Special Concession Account into which shall be credited money accruing to the Government and from which shall be defrayed monies to be paid in respect of the Concession scheme.

*Establishment
of Special
Account, etc.*

39. The Office of Public Private Partnership and the relevant Imo State Government Ministry, Agency, Corporation or Body shall have the power at any reasonable hour during the day time to enter upon and inspect any land or asset comprised in any concession granted or contract executed pursuant to this Law for the construction or erection of any infrastructure project and it shall be the duty of the project proponent, the contractor or anyone acting on its behalf to permit and give free access to enter and inspect.

*Power to enter
and inspect*

40. No agreement reached in respect of this Law shall be arbitrarily suspended, stopped, cancelled or changed except in accordance with the provisions of this Law. *Arbitrary Variation of Agreement*
41. Subject to the provisions of this Law, the relevant Imo State Government Ministry, Agency, Corporation or Body shall supervise the project in respect of which Concession has been granted by it under this Law. *Supervision of Project under Concession*
42. Every Contractor to whom any concession has been granted under this Law shall have a right of way or easement in respect of any land or property near to or around the border of the project site or facility as may be reasonably necessary for the proper implementation of the project under this Law. *Right of Way, etc.*
- 43.(1)The Office of Public Private Partnership shall be approved for the purpose of the Pension Laws, and accordingly, officers and employees of the office of Public Private Partnership shall be entitled to pensions, gratuities and other retirement benefits as are prescribed under the Pension Act and Laws. *Pensions Law*
- (2)Without prejudice to the provisions of subsection (1) of this section, nothing in this Law shall prevent the appointment of a person to any office on terms and conditions, which preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.
- (3)For the purposes of the application of the provision of the Pensions Law, any power exercisable by a Director-General or other authority of the Imo State Government, other than the power to make regulations under section 28 thereof, is hereby vested in and shall be exercisable by the Office and not by any other person or authority.
- 44.(1)The Office of Public Private Partnership may accept gifts of land, money or other property on such terms and conditions, deemed lawful. *Power to accept Gifts*

(2) The Office of Public Partnership shall not accept any gift if the condition attached by the person or organization making the gift are inconsistent with the functions of the Office Public Private Partnership under this Law.

45. (1) Subject to the provisions of this Law, the provisions of the Public Officers Protection Law shall apply in relation to any suit instituted against any officer or employee of the Office of Public Private Partnership.

*Limitation of
Suits against
the Office of
Public Private
Partnership*

(2) Notwithstanding anything contained in enactment, no suit against any officer or employee of the Office in pursuance or execution of this Law or any other Law in respect of any alleged neglect or default in the execution of this Law or any other enactment or law shall lie or be instituted in any court unless it is commenced –

(a) within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof;

(3) No suit shall be commenced against any officer or employee of the Office before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Office by the intending plaintiff or his agent

(4) The notice referred to in sub-section (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

46. A notice, summons or other document required or authorized to be served on the Office of Public Private Partnerships under the provisions of this Law or any other law or enactment may be served by delivering it to the

*Service of
Documents*

Director-General or sending it by registered post addressed to the *Director-General* at the principal office of the Office of Public Private Partnerships.

- 47.(1) In any action or suit against the Office of Public Private Partnerships, no execution or attachment of any nature thereof shall be issued against the Office of Public Private Partnerships unless at least three months notice of the intention to execute or attach has been given to the Office of Public Private Partnership.

Restriction
on
Execution
against
Property of
the Office of
Public
Private
Partnership

- (2) Any sum of money which by the judgment of any court has been awarded against the Office of Public Private Partnerships shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from the Funds of the Office of Public Private Partnerships.

48. The Director-General or any officer or employee of the Office of Public Private Partnerships shall be indemnified out of the assets of the Office of Public Private Partnerships 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 Office of Public Private Partnerships.

Indemnity
Of Officers

49. The Governor may give to the Office of Public Private Partnerships such directives of any nature or relating to matters with regard to the exercise of its or his functions under this Law as he may consider necessary and it shall be the duty of the Office of Public Private Partnerships to comply with the directives or cause them to be complied with.

Directives
by the
Governor,
etc

- 50.(1) The Office of Public Private Partnerships may, with the approval of the Governor, make such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Law and for the due administration of its provisions.

Power to
make
Regulations

(2) Without prejudice to the generality of subsection (1) of this section, the Office may issue guidelines to give full effect to the provisions of this Law.

51.(1) The Director-General or any other officer or employee shall –

Confidentiality
of information
obtained in the
exercise of
official duties

(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 the Director-General, officer or employee of the Office of Public Private Partnerships;

(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 Law; and

(c) not disclose any information referred to under paragraph (b) of this subsection, except as required by law.

(2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and shall on conviction be liable to a fine of not less ₦50,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

52. The provisions of this Law shall apply to Concessions and Public Private Partnership Project Agreements entered into before the commencement of this Law and shall preserve and protect all rights, properties, interests and obligations existing under those contracts and any Law applicable when the Public Private Partnership Agreement was entered or the Concession awarded.

Application/
Savings

53. (1) Without prejudice to any terms as to dispute resolution as agreed in any relevant Concession Agreement and to any other right of recourse available at law, where any Concessionaire is dissatisfied with any decision or omission or exercise of power by the Office under this law, the Concessionaire may appeal against such decision or exercise of power to the State Executive Council through the Secretary to the State Government. Response shall be given within twenty-one days from date of receipt of complaint by the Secretary to the State Government.

Appeals to
the State
Executive
Council

(2) Where the office of the Secretary to Government fails to respond to appeal by Concessionaire against the exercise of Power by the office of Public Private Partnerships, appeal shall lie to the Governor.

54. This Law shall have exclusive jurisdiction over issues relating to or connected with Public Private Partnerships in Imo State.

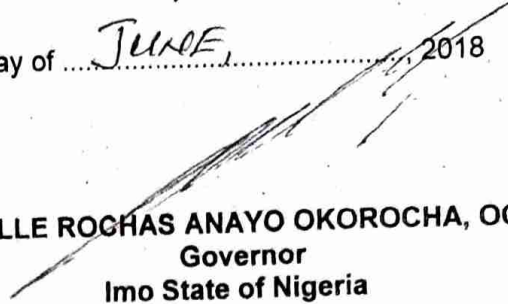
Jurisdiction
over PPP
Matters

This printed impression has been carefully compared by me with the Bill which has been passed by the House of Assembly and found by me to be a true and correct printed copy of the said Bill.


BARR. CHRISTOPHER O. DURU
Clerk/Perm Sec of the House of Assembly
Imo State of Nigeria

Assented to by me this 18TH day of JUNE, 2018




OWELLE ROCHAS ANAYO OKOROCHA, OON
Governor
Imo State of Nigeria

Assent withheld by me this day of, 2018

OWELLE ROCHAS ANAYO OKOROCHA, OON
Governor
Imo State of Nigeria

Passed again by the Imo House of Assembly by two-thirds majority this
Day of 2018.



RT. HON. IHIM IHEANACHO CELESTINE
Speaker
Imo State House of Assembly



IMO STATE OF NIGERIA

2018, LAW NO. 12

A Law to amend the Imo State Public Private Partnership Law No.11 of 2018 and other related matters.

Long Title

BE IT ENACTED by the House of Assembly of Imo State of Nigeria as follows:

Enactment

1. This Law may be cited as the Imo State Public Private Partnership (Amendment) Law, 2018.

Citation

2. In this Law, unless the context otherwise requires –

Interpretation

"Principal Law" means the Imo State Public Private Partnership Law No.11 of 2018.

3. The Principal Law is amended by –

*Amendment
of Law No.11
of 2018*

(a) deleting Section 3 and replacing as follows –

*"Policy
declaration
on Public
Private
Partnership*

3.(1) There shall be for Imo State, Partnership initiatives between the Public Sector (in this case, the State) and Private Entities for the planning, designing, financing, development, construction, provision, operation, maintenance and development of designated Public infrastructure/Public assets and the supply of certain goods, services and facilities in the State (hereinafter referred to as "Public Private Partnership" or "PPP")

(2) Where the State wishes to enter into a Public Private Partnership with a Private Entity, it shall cause the Partnership to be undertaken through a contract procured in accordance with the provisions of this Law".

(b) deleting Section 16 and replacing as follows –

"Frame
Work for
PPP

16.(1) Without prejudice to the functions of the State Government under any enactment, the State Government may –

- (a) enter into an Agreement with a Private Sector Entity (referred to in this Law as a "Partner") for the performance of specific functions of the State Government as prescribed in the said Agreement;
 - (b) where it deems appropriate, enter into direct Agreement with any Private Sector Entity who has arranged or provided funding for the Partner referred to in paragraph (a) of this sub-section for the purpose of the Public Private Partnership;
- (2) The Office, with the approval of the Governor, shall work out the structure and framework under which Public Private Partnerships shall be executed and implemented in the State which shall include but not be limited to –
- (a) registration of a potential PPP project;
 - (b) review of proposal;
 - (c) first stage approval;
 - (d) feasibility study and second stage approval;
 - (e) preparation to bid and third stage approval;
 - (f) choosing a preferred bidder;
 - (g) collaboration with concerned MDAs; and
 - (h) implementation and execution.

(3) The Agreements referred to in subsection (1) of this section may be in relation to any of the following –


- (a) the design and construction of a Public infrastructure or asset, the operation of services relating to it and the provision of finance if required, for such design, construction and operation;
- (b) the construction of a Public infrastructure or asset, the operation of services relating to it and the provision of finance if required, for such construction and operation; or
- (c) the design and construction of a Public infrastructure or asset and the provision of finance if required, for such design and construction"

Printed impression has been carefully compared by me with the Bill which has been
passed by the House of Assembly and found by me to be a true and correct printed copy
of the said Bill.



BARR. CHRISTOPHER O. DURU
Clerk/Perm Sec of the House of Assembly
Imo State of Nigeria

Assented to by me this 17TH day of DECEMBER, 2018



OWELLE ROCHAS ANAYO OKOROCHA, OON
Governor
Imo State of Nigeria

Assent withheld by me this day of, 2018

OWELLE ROCHAS ANAYO OKOROCHA, OON
Governor
Imo State of Nigeria

Passed again by the Imo House of Assembly by two-thirds majority this
Day of, 2018.



RT. HON. IHIM IHEANACHO CELESTINE
Speaker
Imo State House of Assembly



IMO STATE OF NIGERIA

LAW NO. 24 OF 2020

IMO STATE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) LAW, 2020

ARRANGEMENT OF SECTIONS

Long Title

Enactment

1. Citation
2. Interpretation
3. Amendment of Section 9 of the Principal Law
4. Amendment of Section 11 of the Principal Law
5. Amendment of Section 16 of the Principal Law



IMO STATE OF NIGERIA

LAW NO. 24 OF 2020

A Law to amend the Imo State Public Private Partnership Law No. 11 of 2018.

Long Title

Enacted by the Imo State House of Assembly of Nigeria as follows -

Enactment

1. This Law may be cited as the Imo State Public Private Partnership (Amendment) Law, 2020

Citation

2. In this Law, unless the Context otherwise requires

Interpretation

"Principal Law" means the Imo State Public Private Partnership Law No. 11 of 2018.

3. Insert a new Section 6A immediately after Section 6 of the Principal Law as follows -

"Location of the Office" 6.A(1) The Office shall be domiciled in the Governor's Office."

4. Delete Section 9(1) of the Principal Law and replace as follows -

Amendment of Section 9 of the Principal Law

"9(1) The Governor shall appoint a Director General for the Office who shall be a person of impeccable character with a minimum of Ten(10) years Cognate experience in any of the following fields: Commerce, Accounting, Finance, Banking, Engineering or Law".

(2) Insert a new paragraph (g) to Section 9(2) of the Principal Law to read as follows -

"9.(2)(g) report directly to the Governor."

5. Delete Section 11(1) of the Principal Law and replace as follows –

*Amendment
of Section 11
of the
Principal Law*

"11(1) The Governor shall appoint a Secretary for the Office who shall be a legal practitioner with not less than Ten(10) years post call experience."

6. Delete Section 16 of the Principal Law and replace follows –


*Amendment
of Section
16 of the
Principal
Law*

*"Frame
work for
PPP*

- 16.(1) The Governor may approve –

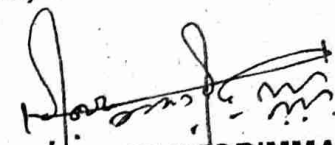
- (a) that the State Government enters into an agreement with a private sector entity (referred to in this Law as a "Partner") for the performance of specific functions of the State Government as prescribed in the said agreement; and
 - (b) if he deems it appropriate, that the State Government enters into direct negotiation and agreement with a private sector entity willing to invest or provide funding for specific projects in the State for the purpose of Public Private Partnership".
- (2) Notwithstanding the provisions of this Section, the Governor's office or the office shall work out the framework under which Public Private Partnerships shall be executed and implemented in the State.

This printed impression has been carefully compared by me with the Bill which has been passed by Imo State House of Assembly and found to be a true and correct printed copy of the said Bill.


BARR. CHINELO ADAORA EMEGHARA
Clerk of the House of Assembly
Imo State of Nigeria

Assented to by me this 23RD day of DECEMBER
2020




SEN. HOPE UZODIMMA
Governor
Imo State of Nigeria

Assent withheld by me this day of
2020

SEN. HOPE UZODIMMA
Governor
Imo State of Nigeria

Passed again by the Imo House of Assembly by two-thirds majority this
Day of, 2020.



RT. HON. PAUL EMEZIEM
Speaker
Imo State House of Assembly

IMO STATE OF NIGERIA

LAW NO.....2023

IMO STATE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) LAW, 2023

ARRANGEMENTS OF SECTIONS

Long Title

Enactment

1.Citation

2.Interpretation

3. Amendment of Section 6 of the Principal Law

IMO STATE OF NIGERIA

LAW NO..2023

A Law to amend the Imo State Public Private Partnership Law No ... of 2023

Enacted by the Imo State House of Assembly as follows:

- 1. This law may be cited as the Imo State Public Private Partnership (Amendment) Law, 2023**
- 2. In this Law, unless the context otherwise requires**
Principal Law' means the Imo State Public Private Partnership Law No .11 of 2018
- 3. Delete Section 6(d) of the Principal Law and replace as follows**
6(d) Initiate the Procurement of all forms and types of Public Private Partnerships (PPP) for the development of public infrastructure and public assets by conducting pre-qualification process for private investors willing to enter into Public Private Partnerships with the State based on request for expression of interest;
- 4. Insert a new paragraph (p) to section 6 of the Principal Law to read as follows: -**
6(p) Provide and issue the PPP Manuals and Guidelines, Fiscal Commitment and Contingent Liability Framework, PPP Disclosure framework, including Governance frameworks and other regulations necessary for procurement and implementation of PPP Projects in Imo State