

A BILL
FOR

AN ACT TO REPEAL THE INFRASTRUCTURE CONCESSION REGULATORY COMMISSION (ESTABLISHMENT) ACT 2005 AND ENACT THE PUBLIC PRIVATE PARTNERSHIP REGULATORY COMMISSION ACT, 2015 TO STRENGTHEN AND ENHANCE THE SUPERVISORY ROLE OF THE COMMISSION AND EFFECTIVELY POSITION IT IN REGULATING THE PARTICIPATION OF THE PUBLIC AND PRIVATE SECTORS IN THE FINANCING OF CONSTRUCTION, DEVELOPMENT, DESIGNING, OPERATION OR MAINTENANCE OF INFRASTRUCTURE OR DEVELOPMENT PROJECTS OF THE FEDERAL GOVERNMENT THROUGH PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS; AND FOR RELATED MATTERS

Sponsored by Senator Kabiru Gaya

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

PART I - PRELIMINARY

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- 1.-(1) A Ministry, Department, Agency or any other entity in which the Federal Government has interest in (in this Bill referred to as "the Public Infrastructure Entity") involved in the financing, construction, operation or maintenance of infrastructure, 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 planning, designing, financing, constructing, operating or maintaining any infrastructure, supply of infrastructure services or any development facility of the Public Infrastructure Entity in accordance with the provisions of this Bill.
- (2) A Public Infrastructure Entity proposing to enter into a Public Private Partnership arrangement with a private entity shall do so by means of

Private sector participation in Federal infrastructure

1 a duly executed contractual agreement in accordance with the provisions of
2 this Bill.

3 (3) The provisions of this Bill shall govern all Public Private
4 Partnership contracts or other similar arrangements involving every Public
5 Infrastructure Entity.

6 (4) Failure to comply with the provisions of this Bill or any regulation
7 made under this Bill in the negotiation and conclusion of any Public Private
8 Partnership agreement or other similar agreement shall render such contract or
9 arrangement unlawful and ineffective.

10 (5) This Bill applies to investment and development projects relating
11 to any Public Infrastructure Entity.

Objectives of
Public Private
Partnership

12 2. The objectives of Public Private Partnerships shall be to-

13 (a) facilitate private sector investment in the provision of
14 new and maintenance of existing infrastructure and other public assets in an
15 effective and efficient manner;

16 (b) attract private and public financial resources for investment in
17 necessary social services relevant to national development;

18 (c) ensure the provision of reliable public services by deploying
19 private sector skills in project financing, risk management, project planning,
20 use of new technologies and ensure greater efficiency and value for money in
21 the provision of public infrastructure and services;

22 (d) strengthen institutional governance by improving public
23 sector management skills and accountability in the construction, financing,
24 designing, rehabilitation and provision of infrastructure and services; and

25 (e) provide a clear, transparent, and well-defined legal regulatory
26 and institutional framework for enhancing investment and proper allocation
27 of risks in the provision of infrastructure and related services.

Prioritization
of projects

28 3.-(1) Every Public Infrastructure Entity shall prioritize its
29 infrastructure projects and identify priority projects that qualify for Public
30 Private Partnership under this Bill.

1 (2) In all Public Private Partnership project procurement, the Act No. 2007
2 Public Procurement Act, 2007, and the Public Procurement Regulations
3 shall apply.

4 (3) The qualified projects in subsection (1) of this section shall be
5 submitted to the appropriate authority of the Federal Government for
6 approval, on the recommendation of the Commission, prior to the Public
7 Infrastructure Entity entering into any contract under section 1 of this Bill.

8 (4) In entering into any contract or granting any concession under
9 sub-section (1) of this section, the Public Infrastructure Entity shall ensure
10 that the project proponent possesses the financial capacity, relevant
11 expertise and experience to undertake the infrastructure development or
12 maintenance, to the satisfaction of the Commission.

13 (5) The Commission shall publish periodically, in the official
14 Gazette and in at least 3 newspapers having wide circulation in Nigeria and
15 on the websites of the Federal Ministry of Finance and the Commission, the
16 list of infrastructure projects eligible for Public Private Partnership and
17 related arrangements under this Bill.

18 PART II - PROCUREMENT RULES RELATING TO PUBLIC PRIVATE
19 PARTNERSHIP AGREEMENTS

20 4. A Public Infrastructure Entity shall not give any guarantee, Guarantees and
21 letter of comfort or undertaking in respect of any concession agreement undertakings
22 made under this Bill, except with the approval of the appropriate authority of
23 the Federal Government.

24 5. Where approval is granted or the procurement of a project by Advertisement
25 way of Public Private Partnership under this Bill, the Public Infrastructure requirement
26 Entity shall, through publication in at least 3 newspapers having wide
27 circulation in Nigeria, and on the websites of the Federal Ministry of
28 Finance and the Commission, invite open competitive public bid for such
29 project or contract approved under this Bill.

Solicited bids	1	6. The Public Infrastructure Entity shall, give a letter of award to the
	2	bidder who, having satisfied the pre-qualification criteria, submits the most
	3	technically and financially responsive bid.
Unsolicited bids	4	7. Unsolicited proposals to the Public Infrastructure Entity shall be
	5	governed by the regulations and guidelines issued by the Commission, from
	6	time to time, which shall not be less stringent than the pre-qualification criteria
	7	prescribed for solicited bids.
Participation by consortium	8	8. Where a consortium participates in a bid under this Bill, the
	9	consortium shall give an undertaking that all its members shall be bound jointly
	10	and severally under the contract.
Duration of concession	11	9. The duration of any concession shall be as may be specified
	12	in the agreement or contract governing the concession.
Payment of incurred costs	13	10. The amount expended by any project proponent or contractor
	14	who enters into any contract for planning, designing, financing, construction,
	15	operation, maintenance of infrastructure services under any concession under
	16	this Bill, may be optimally repaid by user charges or by the Public
	17	Infrastructure Entity, to such proponent or contractor, by way of annuity, or
	18	availability payment.
Payment to Public Infrastructure Entity from proceeds of concession	19	11. Any concessionaire that has been granted a concession shall make
	20	payments to the Public Infrastructure Entity, of such sums and at such
	21	intervals, from the proceeds realized from the implementation of the
	22	concession as may be provided in the concession agreement.
Special Concession Account	23	12. There shall be a Special Concession Account into which
	24	shall be credited money accruing to the Government and from which
	25	shall be defrayed monies to be paid in respect of the concession Scheme
Supervision of projects	26	13. Subject to the provisions of this Bill, the Public Infrastructure
	27	Entity shall supervise the project in respect of which a concession has been
	28	granted by it under this Bill.
Inspection of projects	29	14. The Commission and the Public Infrastructure Entity or their
	30	representative shall on reasonable notice, have the power, at any time, to enter

1 into and inspect any land or asset comprised in any concession granted or
 2 contract executed pursuant to this Bill, and it shall be the duty of the
 3 concessionaire, the contractor or anyone acting on its behalf to permit and
 4 give free access to enter and inspect.

5 **15.** Agreements under this Bill shall not be suspended, stopped, Prohibition against
 6 cancelled or altered except as provided for in the contract or under the suspension,
 7 provisions of this Bill. cancellation, etc.
 of agreements

8 **16.** A concessionaire that has been granted a concession shall Right of way
 9 have a right of way or easement in respect of the concession area.

10 **PART III - ESTABLISHMENT OF THE PUBLIC PRIVATE PARTNERSHIP**

11 **REGULATORY COMMISSION**

12 **17.-(1)** There is established the Public Private Partnership Establishment of
 13 Regulatory Commission (in this Bill referred to as "the Commission"). the Public Private
 Partnership
 14 (2) The Commission- Regulatory
 Commission

15 (a) shall be a body corporate with perpetual succession and a
 16 common seal;

17 (b) may sue or be sued in its corporate name; and

18 (c) may acquire, hold or dispose of any property, movable or
 19 immovable for the purpose of carrying out any of its functions under this
 20 Bill.

21 (3) The head office of the Commission shall be situated in the
 22 Federal Capital Territory, Abuja.

23 **18.-(1)** There is established for the Commission, a Governing Establishment of
 24 Board (in this Bill referred to as "the Board") and shall have general the Governing
 Board
 25 supervision over the affairs of the Commission.

26 (2) The Board shall consist of-

27 (a) a part-time Chairman;

28 (b) the Attorney-General of the Federation;

29 (c) the Secretary to the Government of the Federation;

30 (d) the Minister of Finance;

	1	(e) the Minister of Trade and Investment;
	2	(f) the Governor of the Central Bank of Nigeria;
	3	(g) the Minister of National Planning;
	4	(h) one person each from the six geopolitical zones of Nigeria,
	5	with cognate experience and expertise in law, business administration,
	6	engineering, economics or public administration provided that not less than
	7	two of the six members shall be women; and
	8	(i) the Director-General of the Commission who shall be the
	9	Secretary of the Board.
	10	(3) The Chairman and members of the Commission, other than ex-
	11	officio members, shall be appointed by the President subject to confirmation by
	12	the Senate.
Schedule	13	(4) The supplementary provisions set out in the Schedule to this Act
	14	shall have effect with respect to the proceedings of the Board and the other
	15	matters mentioned therein.
Tenure of office	16	19. The Chairman and other members of the Commission, other than
	17	ex-officio members shall hold office-
	18	(a) for a term of 4 years in the first instance and may be re-appointed
	19	for another term of 4 years and no more; and
	20	(b) on such other terms and conditions as may be specified in their
	21	respective letters of appointment.
Cessation of membership	22	20.-(1) Notwithstanding the provisions of Section 19 of this Bill, a
	23	member of the Board shall cease to hold office if the member-
	24	(a) resigns his appointment as a member of the Board by notice, under
	25	his hand, addressed to the President;
	26	(b) becomes of unsound mind;
	27	(c) becomes bankrupt or makes a compromise with his creditors;
	28	(d) is convicted of a felony or of any offence involving dishonesty or
	29	corruption; or
	30	(e) becomes incapable of carrying out the functions of his office either

1 as a result of an infirmity of mind or body.

2 (2) The President may also remove a member if he is satisfied that it
3 is not in the interest of the Commission or in the interest of the public for the
4 member to continue in office.

5 (3) Where a vacancy occurs in the membership of the Board, it
6 shall be filled by the appointment of a successor to hold office for the
7 remainder of the term of office of his predecessor, so however that the
8 successor shall represent the same interest as his predecessor.

9 21. The Chairman and members of the Commission, other Remuneration of
10 than ex-officio members shall be paid such emoluments, allowances members
11 and benefits as may be recommended by the Revenue Mobilization
12 Allocation and Fiscal Commission.

13 PART IV - POWERS OF THE BOARD AND FUNCTIONS OF THE
14 COMMISSION

15 22. The Board shall have power to-

16 (a) set the general policy guidelines relating to the functions of the
17 Commission;

18 (b) superintend over the policies and management of the affairs of
19 the Commission;

20 (c) subject to the provisions of this Bill, make and alter rules and
21 regulations for carrying out the functions of the Commission;

22 (d) determine the terms and conditions of service of staff and
23 employees of the Commission;

24 (e) fix the remuneration, allowances and benefits of the staff and
25 employees of the Commission in consultation with the National Salaries,
26 Income and Wages Commission;

27 (f) prescribe a code of conduct for the Commission; and

28 (g) do such other things which in the opinion of the Board are
29 necessary to ensure the efficient performance of the functions of the
30 Commission under this Bill.

Power of the
Board

Functions of
the Commission

- 1 **23.** The Commission shall-
- 2 (a) set standards and guidelines for Public Private Partnership
- 3 Agreements;
- 4 (b) register, executed Public Private Partnership Agreements,
- 5 received from Public Infrastructure Entity that complies with the set guidelines
- 6 and standards;
- 7 (c) disclose information on salient feature of all Public Private
- 8 Partnership contracts to the general public in line with best practices
- 9 (d) keep, maintain and regularly update the register of Public Private
- 10 Partnership Agreements;
- 11 (e) advise and assist a Public Infrastructure Entity in planning,
- 12 designing, financing, constructing, operating, maintaining or servicing any
- 13 concession made under this Bill;
- 14 (f) ensure efficient implementation of concession agreements or
- 15 contracts entered into by the Public Infrastructure Entity for the provision of
- 16 infrastructure;
- 17 (g) enforce compliance with the provisions of this Bill in the
- 18 structuring of Public Private Partnership projects; and
- 19 (h) perform such other duties as may be directed by the President,
- 20 from time to time, and as are necessary or expedient to ensure the efficient
- 21 performance of the functions of the Commission under this Bill.

Power of the
Commission

- 22 **24.** In the exercise of its functions under this Bill, the Commission
- 23 shall have power to-
- 24 (a) advise on the review of the terms and conditions contained in any
- 25 Public Private Partnership Agreement where such review is deemed necessary;
- 26 (b) summon concessionaires and other parties to Public Private
- 27 Partnership Agreements for the purpose of obtaining information;
- 28 (c) inspect and monitor all Public Private Partnership contracts under
- 29 this Bill to ensure efficient execution and compliance of all parties with the
- 30 terms and conditions of contract;

- 1 (d) investigate any report or complaint of non compliance with the
2 provisions of any Agreement or a violation of any of the provisions of this
3 Bill;
4 (e) issue Letter of Compliance on Public Private Partnership
5 Projects;
6 (f) sanctions operators and licensees including revocation of such
7 licences and permits;
8 (g) issue licence to professionals that wish to provide professional
9 services on Public Private Partnership projects;
10 (h) engage the services of consultants and transaction and
11 technical advisers as may be required to effectively carry out the functions
12 of the Commission;
13 (i) facilitate a dispute resolution process arising from concessions
14 and Public Private Partnership arrangements through mediation,
15 conciliation and arbitration;
16 (j) impose sanctions or appropriate penalties to ensure compliance
17 with the provisions of this Bill or regulations made under this Bill;
18 (k) charge fees for its services; and
19 (l) exercise such other powers as are necessary to enable the
20 Commission effectively carry out its functions under this Bill.

21 PART V - STAFF OF THE COMMISSION

22 **25.-(1)** There shall be for the Commission a Director-General who
23 shall be-

Appointment of
the Director-General

- 24 (a) appointed by the President subject to confirmation by the
25 Senate;
26 (b) the chief executive and accounting officer of the Commission;
27 (c) responsible for the execution of the policy and day-to-day,
28 administration of the Commission; and
29 (d) a member and the secretary to the Board.
30 (2) The Director-General shall hold office-

1 (a) for a term of 4 years in the first instance, and may be reappointed
2 for another term of 4 years and no more; and

3 (b) on such other conditions as may be specified in his letter of
4 appointment.

5 (3) Notwithstanding the provisions of subsection (2) of this section,
6 the Director-General may-

7 (a) resign his appointment by a notice in writing under his hand,
8 addressed to the President through the Board; or

9 (b) be removed by the President for inability to discharge the
10 functions of his office whether arising from infirmity of mind or body or for
11 proven misconduct.

Other staff of
the Commission

12 **26.** The Commission may, subject to the approval of the Board,
13 appoint such other staff as it may deem necessary and expedient, from time to
14 time-

15 (a) for the proper and efficient performance of the functions of the
16 Commission; and

17 (b) on such terms and conditions as may be determined by the Board.

Pension

18 **27.-(1)** Officers and employees of the Commission shall be entitled to
19 pensions and other retirement benefits as provided under the Pension Reform
20 Act 2014.

21 (2) Without prejudice to the provisions of subsection (1) of this
22 section, nothing in this Bill shall prevent the appointment of a person to any
23 office on terms and conditions, which preclude the grant of pension, or other
24 retirement benefits in respect of that office.

Act No. 4, 2014

25 (3) For the purposes of the application of the provisions of the
26 Pension Reform Act in force, any power exercisable by a Minister or other
27 authority of a Public Infrastructure Entity, other than the power to make
28 regulations, under Section 23 of the Pension Reform Act, 2014, is vested in
29 and shall be exercisable by the Board and not by any other person or authority.

PART VI - FINANCIAL PROVISIONS

28. The Commission shall establish and maintain a Fund into Funds of the
Commission
which shall be paid-

(a) all subvention and budgetary allocations from the Federal
Government;

(b) grants from the Federal Government;

(c) gifts, loans and grant-in-aid from national, bilateral and
multilateral organizations and agencies; and

(d) fees and funds accruing from internally generated funds of the
Commission, including-

(i) signature bonus on Public Private Partnership projects,

(ii) penalties from violation of the provisions of this Bill,

(iii) fees that may be charged by the Commission for registering
Public Private Partnership Agreements under this Bill,

(iv) training, workshop, consultancy and advisory services fees,
and

(v) fees on publications and information bulletin.

29. The Commission shall, from time to time, apply the proceeds of Expenditure of
the Commission
the Fund established under section 28 of this Bill-

(a) to the cost of administration of the Commission;

(b) to the payment of the emoluments, allowances and benefits of
members of the Board and for reimbursing members of the Board or of any
committee set up by the Board and for such expenses as may be expressly
authorized by the Board;

(c) to the payment of the salaries, fees or other remuneration, or
allowances and pensions, and other benefits payable to the staff and other
employees of the Commission, provided that no payment of any kind
under this paragraph, except such as may be expressly authorized by
the Board, shall be made to any person who is in receipt of

1 emolument from any other Public Infrastructure Entity of the Federation or of a
2 State;

3 (d) for the development and maintenance of any property vested in or
4 owned by the Commission;

5 (e) for maintaining general financial reserves subject to general or
6 specific directives that may be given on that behalf by the President in
7 accordance with the provisions of this Bill; and

8 (f) for and in connection with all or any of its functions under this
9 Bill.

Annual estimate
and account

10 **30.**-(1) The Commission shall, not later than 30th September in each
11 year, submit to the President an estimate of its expenditure and income for
12 the next succeeding year.

13 (2) The Commission shall keep proper accounts in respect of each
14 year and proper records in relation to those accounts and shall cause its
15 accounts to be audited within six months after the end of each year by
16 auditors appointed from the lists and in accordance with the guidelines
17 supplied by the Auditor-General of the Federation.

Annual report

18 **31.** The Commission shall prepare and submit to the President not
19 later than 30th June in each year a report in such form as the President may
20 direct on the activities of the Commission during the immediate preceding
21 year, and shall include in the report a copy of the audited accounts of the
22 Commission for that year and of the auditors report.

Power to
accept gift

23 **32.**-(1) The Commission may accept gifts of land, money or other
24 property.

25 (2) The Commission shall not accept any gift if the conditions
26 attached by the person or organization making the gift are inconsistent with the
27 functions of the Commission.

28 PART VII - INCENTIVE FOR PUBLIC PRIVATE PARTNERSHIP PROJECTS

Financial incentives
or investment
support

29 **33.**-(1) Where it is necessary to attract private investment into a
30 specific Public Private Partnership project, the Federal Government may .

1 approve the grant of financial incentives or investment support to any
2 approved project on the recommendation of the Commission.

3 (2) The financial incentives or investment support referred to in
4 sub-section (1) of this section may include-

5 (a) equity participation by Public Infrastructure Entity in cash or in
6 kind not exceeding 49% of the total equity investment in the relevant
7 project;

8 (b) direct subsidies in respect to any project;

9 (c) reduction of or exemption from certain fiscal regimes and the
10 granting of loans and other similar support to specific projects; and

11 (d) any other incentive as may, from time to time, be approved by
12 the Government.

13 PART VIII - LEGAL PROCEEDINGS

14 34. A notice, summons or other document required or authorised
15 to be served on the Commission under the provisions of this Bill or any
16 other law or enactment may be served by delivering it to the office of
17 the Director-General or by sending it by registered post, addressed to the
18 Director-General at the head office of the Commission.

Service of
documents

19 35. -(1) In any action or suit against the Commission, a process
20 shall not be issued against the Commission except not less than one month
21 notice of the intention to commence the action has been given to the
22 Commission.

Pre-action
notice

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

27 36. A member of the Board, the Director-General, or any
28 officer or employee of the Commission shall be indemnified out of the
29 assets of the Commission against any liability incurred by him in his
30 official capacity in defending any proceeding, whether civil or criminal, if

Indemnity for
members of the
Board, the Director-
General and staff
of the Commission

1 the proceeding is brought against him in his capacity as a member, Director-
2 General, officer or employee of the Commission.

Jurisdiction

3 37. The Federal High Court shall have and exercise jurisdiction over
4 any matter arising from the application of the provisions of this Bill.

5 PART IX - OFFENCES AND PENALTIES

Offences

6 38. -(1) A person who-

7 (a) enters or attempts to enter into a collusive agreement, whether
8 enforceable or not, with a supplier, contractor or consultant where the prices
9 quoted in their respective tenders, proposal or quotations are or would be
10 higher than would have been the case had there not been a collusion between
11 the persons concerned;

12 (b) conducts or attempts to conduct procurement fraud by means of
13 fraudulent and corrupt acts, unlawful influence, undue interest, favour,
14 agreement, bribery or corruption;

15 (c) directly, indirectly influences or attempting to influence in any
16 manner the procurement process to achieve an unfair advantage in the award of
17 a procurement contract;

18 (d) splits the tenders to avoid the monetary thresholds set or for any
19 other unauthorized purpose;

20 (e) bid-rigs;

21 (f) alters any procurement document with intent to influence the
22 outcome of a tender proceeding;

23 (g) alters or uses fake documents or encourage their use;

24 (h) willfully refuses to allow the Commission or its officers to have
25 access to any procurement records;

26 (i) fails or refuses to furnish a return or to supply information, in the
27 manner and time, prescribed by the Commission;

28 (j) submits a false information or incomplete return to the
29 Commission;

30 (k) willfully delays or obstruct the Commission, any of its officers or

1 any duly authorized persons to exercise powers or duties conferred or
2 imposed upon him by this Bill; and

3 (l) fails or refuse, without reasonable cause, to provide information
4 as may be required by the Commission or any of its Officers, agents or duly
5 authorized persons; or

6 (m) gives a false or incomplete information to the Commission in
7 the exercise of its duties and responsibilities under this Act; commits an
8 offence under this Bill.

9 39. A person not being a public officer, who commits an offence Penalties
10 under section 38 of this Bill is liable on conviction to a term of imprisonment
11 not exceeding 2 years or to a fine of not less than N250,000.00 for an
12 individual and in the case of a corporate entity, a fine of not less than
13 N1,000,000.00.

14 PART X - MISCELLANEOUS PROVISIONS

15 40. The President may give to the Commission directives of a Directives by
16 general nature relating to matters of policy with regards to the exercise of its the President
17 functions under this Bill as he may consider necessary.

18 41.-(1) The Commission may with the approval of the President, Power to make
19 make regulations as in its opinion are necessary or expedient for giving full regulations
20 effect to the provisions of this Bill and for its due administration.

21 (2) Without prejudice to the provision of this Bill, the Commission
22 may make regulations prescribing the-

23 (a) type and extent of insurance to be procured by the parties to a
24 Public Private Partnership agreement; and

25 (b) criteria for qualification by the private sector for the grants of
26 incentives for investment support.

27 (3) The Board may issue guidelines when required to give effect to
28 the provisions of the Bill.

29 42. -(1) A member of the Board, the Director-General or any other Duty to keep
30 officer or employee of this Commission shall- confidential
information

1 (a) not uses for his personal gain, any information he obtains or
2 knowledge he acquires in the exercise of his duties or in the ordinary course of
3 his duty as a member of the Board, Director-General, officer or employee of the
4 Commission;

5 (b) treat, as confidential, any information which has come to his
6 knowledge in the exercise of his duties under this Bill; and

7 (c) not disclose any information referred to under paragraph (b) of
8 this section, except in the performance of his official duties or as required by
9 law.

Transitional
provision

10 **43.**-(1) A person who, immediately before the commencement of this
11 Bill was the holder of any office in the Infrastructure Concession Regulatory
12 Commission established under the Public Partnership Regulatory Commission
13 (Establishment, Etc.) Act 2005 shall continue in office and be deemed to have
14 been appointed to the office under this Bill.

Act No. 18, 2005

15 (2) Properties held immediately before the commencement of this
16 Bill by or on behalf of the Public Partnership Regulatory Commission
17 (Establishment) Act, No. 18, 2005 by any person shall by virtue of this Bill be
18 vested in the Commission.

19 (3) The Commission established under section 17 of this Bill shall be
20 subject to all the obligations and liabilities to which the former Infrastructure
21 Concession Regulatory Commission was subjected immediately before the
22 commencement of this Bill and all other persons shall have the same rights,
23 powers and remedies against the Commission established by this Bill as they
24 had against this Commission immediately before the commencement of this
25 Bill.

26 (4) Any proceeding or cause of action pending or existing
27 immediately before the commencement of this Bill by or against the
28 Infrastructure Concession Regulatory Commission in respect of any right,
29 interest, obligation or liability of the Public Partnership Regulatory
30 Commission may be continued or, as the case may be, commenced and any

1 determination of a court of law, tribunal or other Commission or person may
2 be enforced by or against the Commission established by this Bill to the
3 same extent that such proceeding, cause of action or determination might
4 have been continued, commenced or enforced by or against the
5 Infrastructure Concession Regulatory Commission as if this Bill had not
6 been made.

7 (5) Where an agreement was entered into before the
8 commencement of this Bill, and that agreement or arrangement would have
9 been a Public Private Partnership arrangement if this Bill was in operation
10 when the agreement or arrangement was entered into.

11 (6) An agreement entered into after the commencement of this Act
12 shall comply with the provision of this Bill.

13 **44.** -(1) The Infrastructure Concession Regulatory Commission
14 (Establishment, Etc.) Act 2005 is repealed.

15 (2) Without prejudice to section 6 of the Interpretation Act, the
16 repeal of the Act specified in subsection (1) of this section shall not affect
17 anything done under the repealed Act.

18 (3) Every order, requirement, certificate, notice, direction,
19 decision, authorization, consent, application, request or thing made, issued,
20 given or done under the repealed Act shall, if in force at the commencement
21 of this Bill, continue to be in force and have effect as if made, issued, given
22 or done in this Bill.

23 (4) Nothing in this Bill or any repeal effected shall affect the
24 provisions of any statute not expressly repealed by this Bill.

25 **45.** In this Bill-

26 "appropriate authority of the Federal Government" means the Federal
27 Executive Council or its equivalent;

28 "Board" means the Governing Board of the Commission established
29 under section 18 of this Bill;

~ 30 "Budget Office" means Budget Office of the Federation;

Repeal and
Savings

Interpretation

1 "Chairman" means the Chairman of the Governing Board of the
2 Commission appointed under section 19 of this Bill;

3 "Commission" means the Public Private Partnership Regulatory
4 Commission established under section 17 of this Bill;

5 "concession" means a contractual arrangement whereby the project
6 proponent or contractor undertakes the construction, financing of any
7 infrastructure, facility and the operation and maintenance, the supply of any
8 equipment and machinery for any infrastructure and the provision of any
9 services;

10 "concession agreement" includes;

11 (a) Design-Build-Finance-Operate(DBFO) and its variants,
12 including Build- Own-Operate(BOO);

13 (b) Buy-Build-Operate (BBO) and lease-Develop-Operate (LDO);
14 Land Swap Agreement(LSA);

15 (c) Build-Operate-Transfer (BOT), Build-Own-Operate-Transfer
16 (BOOT), Build-Lease-Operate-Transfer (BLOT) and Build-Transfer-Operate
17 (BTO); and

18 (d) Management Contract;

19 "contractor" means any person or body corporate who may or may not be a
20 project proponent who enters into a contract or has been granted a concession
21 by any Public Infrastructure Entity and undertakes to construct any
22 infrastructure or facility or supply any equipment for any infrastructure,
23 facility under this Bill;

24 "construction" means any form of engineering work whether civil, structural,
25 mechanical or electrical or rehabilitation, improvement, expansion, alteration
26 and related works and activities, supply and installation of equipment or
27 materials;

28 "CAMA" means the Companies and Allied Matters Act, CAP C21, Laws of the
29 Federation of Nigeria 2004;

30 "Debts Management Office" (DMO) means Debts Management Office of the

1 Federation;

2 "Director-General" means the Director-General of the Commission
3 appointed under section 25 of this Bill;

4 "infrastructure" includes development projects which, before the
5 commencement of this Bill, were financed, constructed, operated or
6 maintained by the Government and which, after the commencement
7 of this Bill, may be wholly or partly implemented by the private sector under
8 an agreement made under this Bill including power plants, highways,
9 seaports, airports, canals, dams, hydroelectric power projects, water supply,
10 irrigation, telecommunications facilities, railways, interstate transport
11 systems, land reclamation projects, environmental remediation and clean-
12 up projects, industrial estates or township development, housing, public
13 infrastructure entity buildings, tourism development projects, trade fair
14 complexes, warehouses, solid wastes management, satellite and ground
15 receiving stations, information technology networks and database
16 infrastructure, education and health facilities, sewerage, drainage,
17 dredging, and other infrastructure and development projects as may be
18 approved, from time to time, by the Federal Government;

19 "ex-officio member" means the Attorney-General of the Federation,
20 Minister of Finance, Secretary to the Government of the Federation and
21 Governor of Central Bank of Nigeria;

22 "equity participation" means equity participation defined under Companies
23 and Allied Matters Act, CAPC21 Laws of the Federation of Nigeria 2004.

24 "Government" means the Federal Government of Nigeria or anybody or
25 entity authorized to act for it under this Bill;

26 "Public Infrastructure Entity" means a Ministry, Department, Agency or
27 other entity with Federal Government participation whose primary role is to
28 provide infrastructure in the country;

29 "member" means a member of the Governing Board of the Commission, and
30 the Chairman;

- 1 "new investment and development projects" includes any project involving
2 any infrastructure-
- 3 (a) not existing at the time the concession is being made, that
4 will require the injection of substantial funds or resources to design,
5 construct, build, maintain or operate such infrastructure; or
- 6 (b) existing at the time the concession is being made, that will
7 require the injection of substantial funds or resources to repair, service,
8 overhaul, improve, maintain or sustain such infrastructure;
- 9 "President" means the President of the Federal Republic of Nigeria;
- 10 "private party" means a party to a Public Private Partnership Agreement, other
11 than the Contracting Authority or other public entity;
- 12 "project" means an arrangement for the construction of works or the provision
13 of goods and services which can be or is to be, implemented under Public
14 Private Partnership Agreement;
- 15 "project proponent" means any person or body corporate who has contractual
16 responsibilities for the project;
- 17 "preferred bidder" means the bidder, including any bidding consortium found
18 after a competitive bid process to be in the lead position to be the private party
19 to a Public Private Partnership Agreement;
- 20 "Public Private Partnership" means a commercial transaction between a Public
21 Infrastructure Entity and a private party in terms of which the private party-
- 22 (a) undertakes a project or performs an institutional function on
23 behalf of the Public Infrastructure Entity;
- 24 (b) acquires the use of public assets or public property for that
25 purpose;
- 26 (c) assumes substantial financial, technical, operational and
27 management risk in connection; and
- 28 (d) receives a benefit, by way of-
- 29 (i) consideration to be paid by the Public Infrastructure Entity through
30 an agreed payment mechanism; or

1 (ii) charges to be collected by the private party or users or customer

2 of a service provided to them;

3 "public sector" means the class to which all Public Infrastructure Entities

4 belong as defined in this Bill;

5 "viable" means affordability and value for money for Public Infrastructure

6 Entity and users as well as a reasonable return for private investors;

7 "Financing Agreement" means an agreement for financing the acquisition of

8 the assets constituted into a project of a Public Private Partnership

9 Agreement, and any agreement providing for the loan, a term sheet, fee

10 letter and any other document designated as between the loan agent the

11 security agent or the arranger, or lender under such an agreement and the

12 borrower;

13 "success fee" means a fee charged by the Commission upon assisting a

14 Public Infrastructure Entity to structure Public Private Partnership

15 Agreement projects; and

16 "service" means task, assignment or other functions that a Public

17 Infrastructure Entity is entitled or obliged to perform-

18 (a) in the public interest; or

19 (b) on behalf of the public generally;

20 46 This Bill may be cited as the Public Private Partnership Citation

21 Regulatory Commission Bill, 2015.

22 SCHEDULE

23 Section 18 (4)

24 PROCEEDINGS OF THE BOARD

25 1. Subject to this Bill and section 27 of the Interpretation Act, the

26 Board shall have power to regulate its proceedings and may make standing

27 orders with respect to the holding of its meetings, and those of its

28 committees, notices to be given, the keeping of minutes of its proceedings,

29 the custody and production for inspection of such minutes and such

30 other matters as the Commission may, from time to time, determine.

1 **2.-(a)** There shall be at least 4 ordinary meetings of the Board in every
2 calendar year and, the Board shall meet whenever it is convened by the
3 Chairman, and if the Chairman is requested to do so by notice given to him
4 by not less than 3 other members, he shall convene a meeting of the Board to be
5 held within 14 days from the date on which the notice was given; and

(b) Every meeting of the Board shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of their member to preside at the meeting.

10 3. The quorum of any meeting of the Board shall consist of the
11 Chairman or the person presiding at the meeting under paragraph 2 of this
12 Schedule and 4 other members.

13 **4.** The Board shall meet for the conduct of its business at such places
14 and on such days as the Chairman may appoint.

15 5. A question put before the Board at a meeting shall be decided by
16 consensus and where this is not possible, by a majority of the votes of the
17 members present and voting

18 **6.** The Chairman shall, in the case of an equality of votes, have a
19 casting vote in addition to his deliberative vote.

20 7. Where the Board seeks the advice of any person on a particular
21 matter, the Board may invite that person to attend its meetings for such periods
22 as it thinks fit, but a person who is invited by virtue of this paragraph shall not
23 be entitled to vote at any meeting of the Board and shall not count towards the
24 quorum.

25 Committees

26 8. The Board may appoint one or more committees to carry out its
27 functions as the Board may determine and report on any matter with which the
28 Board is concerned.

9. A committee appointed under paragraph 6 of this Schedule shall be presided over by a member of the Board and consist of such number of persons

1 not necessarily all members of the Board as may be determined by the
2 Board, and a person other than a member of the Board shall hold office on
3 the Committee in accordance with the terms of his appointment.

4 **10.** A decision of a Committee of the Board shall be of no effect
5 until it is confirmed by the Board.

6 *Miscellaneous*

7 **11.** The fixing of the seal of the Commission shall be
8 authenticated by the signature of either the Chairman, the Director-
9 General or such other person authorized by the Board to act for that purpose.

10 **12.** A contract or an instrument which, if made or executed by any
11 person not being a body Corporate, would not be required to be under seal,
12 may be made or executed on behalf of the Commission by the Chairman or
13 the Director-General or by any person generally or specifically authorized to
14 act for that purpose by the Board.

15 **13.** A document purporting to be a contract, an instrument or other
16 document signed or sealed on behalf of the Commission shall be received in
17 evidence and, unless the contrary is proved, be presumed without further
18 proof, to have been properly signed or sealed.

19 **14.** The validity of any proceedings of the Board or its Committees
20 shall not be affected by-

- 21 (a) any vacancy in the membership of the Board or its Committees;
22 (b) reason that a person not entitled to do so took part in the
23 proceeding; or
24 (c) any defect in the appointment of a member.

25 **15.** Any member of the Board or Committee who has a personal
26 interest in any contract or arrangement entered into or proposed to be
27 considered by the Board or any committee shall-

- 28 (a) promptly disclose his interest to the Board or Committee; and
29 (b) not vote on any question relating to the contract or arrangement.

EXPLANATORY MEMORANDUM

This Bill seeks to repeal the Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act, 2005 and enact the Public Private Partnership Regulatory Commission Act, 2015, to, among other things, strengthen and enhance the supervisory role of the Commission and effectively position it in regulating the participation of the public and private sectors in the financing of construction, development, designing, operation or maintenance of infrastructure or development projects of the Federal Government through Public Private Partnership arrangements.