



THE SENATE  
FEDERAL REPUBLIC OF NIGERIA

**PUBLIC PRIVATE PARTNERSHIP REGULATORY  
COMMISSION BILL, 2022  
(SB. 823)**

A BILL

FOR AN ACT TO REPEAL THE INFRASTRUCTURE CONCESSION REGULATORY COMMISSION (ESTABLISHMENT) ACT 2005 AND ENACT THE PUBLIC PRIVATE PARTNERSHIP REGULATORY COMMISSION ACT, 2022 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.

FIRST READING

WEDNESDAY, 6<sup>TH</sup> OCTOBER, 2021

SECOND READING

WEDNESDAY, 24<sup>TH</sup> NOVEMBER, 2021

THIRD READING AND PASSAGE

WEDNESDAY, 22<sup>ND</sup> JUNE, 2022

# PUBLIC PRIVATE PARTNERSHIP REGULATORY COMMISSION BILL, 2022



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SCHEDULE

A  
BILL FOR

AN ACT TO REPEAL THE INFRASTRUCTURE CONCESSION REGULATORY COMMISSION (ESTABLISHMENT) ACT 2005 AND ENACT THE PUBLIC PRIVATE PARTNERSHIP REGULATORY COMMISSION ACT, 2022 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

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Commencement

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

PART I -PRELIMINARY

1. (1) As From the commencement of this Bill any Federal Government Ministry, Department, Agency Corporation or Body” (in this Bill referred to as Public Infrastructure Entity) involved in the financing, construction, operation, management or maintenance of infrastructure by whatever name called may enter into a Public Private Partnership Contract with any project proponent in the private sector for the design, finance, construction, operation, management or maintenance of any infrastructure, service or any development facility of the Public Infrastructure Entity in accordance with the provisions of this Bill.

Private Sector  
Participation In  
Federal  
Infrastructure

(2) A Public Infrastructure Entity proposing to enter into a Public Private Partnership arrangement with a private entity shall do so by means of a duly executed contractual agreement in accordance with the provisions of this Bill.

(3) The provisions of this Bill shall govern all Public Private Partnership contracts involving every Public Infrastructure Entity.

(4) In all Public Private Partnership project procurement, the provisions of this Bill shall prevail. If any other law on Public Private Partnership project procurement is inconsistent with the provisions of this Bill, that other law shall to the extent of the inconsistency be void.

(5) Failure to comply with the provisions of this Bill or any regulation issued by the Commission under this Bill in Public Private Partnership contract shall render such contract unlawful and ineffective.

PART II- OBJECTIVES OF PUBLIC PRIVATE PARTNERSHIP

2. (a) facilitate private sector investment in the provision of new and maintenance of existing infrastructure and other public assets in an effective and efficient manner;
- (b) attract private and public financial resources for investment in necessary social services relevant to national development;
- (c) ensure the provision of reliable public services by deploying private sector skills in project

Objectives of Public  
Private Partnership

financing, risk management, project planning, use of new technologies and ensure greater efficiency and value for money in the provision of public infrastructure and services;

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

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

3.

(1) Every Public Infrastructure Entity shall prioritize its infrastructure projects and identify priority projects that qualify for Public Private Partnership under this Bill. Annually every Federal Government Ministry, Department, Agency, Corporation or body shall prioritize its infrastructure projects and identify projects that qualify for Public Private Partnership under and this Bill in line with the guidelines that may be issued by the Commission from time to time to time.

Prioritization of projects

(2) In all Public Private Partnership project procurement relating to Transaction Advisory Services, the Public Procurement Act 2007, and the Public Procurement Regulations shall apply.

(3) The National Public Private Partnership pipeline of projects shall be submitted to the Federal Executive Council for approval by the Commission.

(4) The Federal Executive Council shall approve the Full Business Case for projects above the given threshold as stipulated in the regulations to be issued by the Commission.

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

(6) (1) There is hereby established a National Council on Public Private Partnerships (in this Bill referred to as the "Council")

(2) Except as otherwise provided under this Bill, the Council shall provide advice generally to the Board having regard to the objects of the Commission under this Bill

(3) The Council shall, in the discharge of its duties, observe the independence of the of the Board and officers of the Commission.

(4) The Council shall hold meetings as frequently and at intervals as required but not less than one (1) meeting every quarter.

(5) Unless otherwise stated in this Bill, any resolution of the Council shall be passed by simple majority vote of members of the Council.

(6) The Public Private Partnership Approval Committee shall consist of:

(a) The Secretary to the Government of the Federation

- (b) The Minister of Budget and National Planning
- (c) The Minister of Finance
- (d) The Minister of Justice and Attorney General of the Federation
- (e) The Minister of Trade and Investment
- (f) The Governor of the Central Bank of Nigeria
- (g) The Director-General of the Commission who shall be the Secretary to the Committee.

(7) The National Council on Public Private Partnerships shall consist of:

- (a) The Vice-President, as Chairman
- (b) The Secretary to the Government of the Federation, as Vice-Chairman
- (c) The Minister of Budget and National Planning
- (d) The Minister of Finance
- (e) The Minister of Justice and Attorney General of the Federation
- (f) The Minister of Trade and Investment
- (g) The Governor of the Central Bank of Nigeria
- (h) The Director-General of the Commission who shall be the Secretary to the Committee

(8) The Public Private Partnership Approval Committee shall have powers to approve final business case for projects below a given threshold as stipulated in the regulations to be issued by the Commission.

9) The Commission shall provide, at least every 12 months, a report, in writing, on its performance and issues relating to the Commission's objectives under this Bill.

(10) Notwithstanding the provisions of clause 3(5) of this clause, the Council may co-opt the supervising Minister of an affected Public Infrastructure Entity to attend relevant meetings of the council.

#### PART III – PROCUREMENT RULES RELATING TO PUBLIC PRIVATE PARTNERSHIP AGREEMENTS.

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

Guarantees on Undertakings

(b) A Public Infrastructure Entity shall not give any guarantee, letter of comfort or undertaking in respect of any Public Private Partnership Agreement, except with the approval of the Federal Executive Council

5. Where approval is granted under clause 1 subclauses (2) and (3) for the procurement of a project by way of Public Private Partnership under this Bill, the Public Infrastructure Entity shall, through advertisement in at least 3 newspapers having wide circulation in Nigeria invite public bids for such a Project approved under this Bill.

Advertisement Requirement

All projects above the threshold approval pursuant to this Bill shall be advertised in at least one internationally recognized publication.

2) Notwithstanding subclause (1) above and if after advertisement in accordance with clause 5 (1) where

(i) only one Private sector Entity apply or submit s a bid or proposal, or

(ii) only one private sector entity meets the prequalification requirements,

The Public Infrastructure Entity may undertake direct negotiation without competitive bidding for any contract to be entered into pursuant to clause 1 of this Act.

6. A project which is a solicited or unsolicited project may be presented to Federal Executive Council by the relevant Public Infrastructure Entity for approval on recommendation of the Commission to enter into contract with the Private Sector Entity by direct invitation and direct appointment without undergoing the bidding process in clause 5 in the following instance; Solicited bids

(a) where the project is for public benefit or public interest and involves the protection of national security and where the Federal Executive Council authorizes such an exception, the Commission shall issue guidellnes on direct invitation and direct appointment of Private Sector Entities by the Public Infrastructure Entities.

7. Unsolicited proposals to Public Infrastructure Entity shall be governed by the regulation and guidelines issued by the Commission, from time to time. Unsolicited bids

8. (a) Where a consortium participates in a bid under this Bill, the consortium shall give an undertaking that all its members shall be bound jointly and severally under the contract. Participation by Consortium

(b) Where a consortium has been contracted, 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.

9. The duration of any Public Private Partnership Agreement shall be as may be specified in the agreement or contract governing the Public Private Partnership Agreement. Duration of Concession

10. The amount expended by any Private Sector Entity who enters into and executes any contract for planning, designing, financing, construction, operation, maintenance of infrastructure or services under any Public Private Partnership Agreement under this Bill, may subject to the Public Private Partnership Agreement be recovered by user chargesand/or by payments from the Public Payment of Incurred Costs

Infrastructure Entity, to such proponent or contractor, by way of annuity, availability, or performance payment.

11. There is hereby established in the Central Bank of Nigeria an account to be known as the Special Public Private Partnership Account into which shall be paid the net proceeds of money accruing to the Government and received from Public Private Partnership Projects in such sums and at such intervals as may be provided in the Public Private Partnership Agreement, including but not limited to payments such as signature fees, license fees, royalties, leases and penalties.

Payment to Public Infrastructure Entity from Proceeds of concession

12. Any Private Sector Entity that has been granted a Public Private Partnership Agreement shall make payments to the Special Public Private Partnership Account established by Clause 11 of this Act, under the name of the relevant Public Infrastructure Entity, of such sums and at such intervals, from the proceeds realized from the implementation of the Project as may be provided in the Public Private Partnership Agreement.

Special Concession Account

Provided that statutory payment such as taxes and other statutory fees which are subject to any other legislation shall not be paid in the Special Public Private Partnership Account.

13. Subject to the provisions of this Bill, the Public Infrastructure Entity shall supervise the Project in respect of which a Private Partnership Agreement has been granted by it under this Bill.

Supervision of Projects

14. The Commission or the Public Infrastructure Entity shall on reasonable notice to the Private Sector Entity, have the power at any time, to demand or inspect any documents, enter into and inspect any land or asset comprised in any Project granted or Private Partnership Agreement executed pursuant to this Bill, and it shall be the duty of the Private Sector Entity, the Contactor or any one acting on its behalf to permit and grant access for any such purposes.

15. Public Private Partnership Agreements under this Bill shall not be suspended, stopped, cancelled or altered except as provided for in the Agreement, or under the provisions of this Bill or other legislation.

Prohibition against suspension, cancellation, Etc of agreements

16. A Private Sector Entity that has been awarded a Public Private Partnership Contract shall have a right of way or easement in respect of the project area and it shall be the responsibility of the Public Infrastructure Entity to ensure that the Private Sector Entity has unfettered access to the project area.

Right of way

#### PART IV- ESTABLISHMENT OF THE PUBLIC PRIVATE PARTNERSHIP REGULATORY COMMISSION

17. (1) There is established the Public Private Partnership Regulatory Commission (in this Bill referred to as "the Commission").

Establishment of the Public



(2) The Commission-

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

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

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

(3) The head office of the Commission shall be situated in the Federal Capital Territory, Abuja, and the Commission may establish other offices as may be necessary.

18. (1) There is established for the Commission, a governing Board (in the Bill referred to as "the Board") and shall have general supervision over the affairs of the Commission

Establishment of the  
Governing Board

(2) The Board shall consist of -

(a) a part-time Chairman;

(b) part-time members consisting of one person each from the six geo-political zones of Nigeria, with cognate experience and expertise in law, business administration, engineering, economics, public administration, or any other relevant qualification, provided that not less than two of the six members shall be women,

(c) the Director-General of the Commission who shall be the Secretary of the Board.

(3) The Chairman and members of the Commission, other than ex-officio members, shall be appointed by the President subject to confirmation by the Senate.

(4) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters mentioned therein.

19. The Chairman and other members of the Commission, other than ex-officio members shall hold office-

Tenure of Office

(a) for a term of 4 years in the first instance and may be re-appointed for another term of 4 years and no more; and

(b) on such other terms and conditions as may be specified in their respective letters of appointment.

20. (1) Notwithstanding the provisions of Clause 19 of this Bill, a member of the Board shall cease to hold office if the member-

Cessation of  
membership

(a) resigns his appointment as a member of the Board by notice, under his hand, addressed to the President;

(b) becomes of unsound mind;

(c) becomes bankrupt or makes a compromise with his creditors;

(d) is convicted of a felony or of any offence involving dishonesty or corruption; or

e) becomes incapable of carrying out the functions of his office either as a result of an infirmity of mind or body.

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

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

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

Remuneration of members

#### PART IV – POWERS OF THE BOARD AND FUNCTIONS OF THE COMMISSION

22. The Board shall have power to-

Power of the Board

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

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

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

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

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

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

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

23. The Commission shall-

(a) set policies and guidelines for Public Private Partnership Projects.

Functions of the Commission

(b) take custody of every Public Private Partnership Contract, and monitor compliance with the terms and conditions of such contracts

(c) disclose information on key features of all Public Private partnership Contracts to the general public in line with the Commission's guidelines on disclosure.

(d) provide regulatory guidance to a Public Infrastructure Entity or Private Sector Entity in planning, designing, financing, constructing, operating, maintaining or managing any Public Private Partnership Project and Public Private Partnership Contract

(e) ensure efficient implementation of concession agreements or contracts entered into by the Public Infrastructure Entity for the provision of infrastructure;

(f) enforce compliance with the provisions of this Bill in the structuring of Public Private Partnership projects; and

(g) perform such other duties as may be directed by the President, from time to time, and as are necessary or expedient to ensure the efficient performance of the functions of the Commission under this Bill.

24. In the exercise of its functions under this Bill, the Commission shall have power to-

Power of the  
Commission

(a) provide guidance on the review of any Public Private Partnership Agreement where the Commission considers such review necessary;

(b) direct any parties to Public Private Partnership Contract to provide any necessary information that may be required;

(c) inspect and monitor performance of Public Private Partnership Agreement under this Bill to ensure the fulfilment of obligations and the efficient execution and compliance of all parties with the terms and conditions of the contract;

(d) investigate any report or complaints of noncompliance with the provision of any contract or violation of any of the provision of this Bill;

(e) issue certificate of compliance on Public Private Partnership Projects where the project satisfies the provisions of this Bill, the National Policy on Public Private Partnership, and other guidelines issued by the Commission from time to time.

(f) engage the services of consultants and technical advisers as may be required to effectively carry out the functions of the Commission

(g) facilitate an Alternative Dispute Resolution Process arising from the Public Private Partnership procurement process or Public Private Partnership Agreement;

(h) impose sanctions or appropriate penalties to ensure compliance with the provisions of this Bill,

regulations or guidelines issued by the Commission;

(i) approve outline business cases submitted to the Commission by Public Infrastructure Entities.

(j) recommend to the Federal Executive Council projects which Public Infrastructure Entities may enter into by direct invitation and direct appointment as provided by clause 5(1).

(k) develop guidelines and policies for PPP practitioners involved in the delivery of PPP projects.

(l) carry out Public Private Partnership development capacity and programmes.

(m) charge fees for its services; and

(n) exercise such other powers as are necessary to enable the Commission to effectively carry out its functions under this Bill.

#### PART V – STAFF OF THE COMMISSION

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

Appointment of  
Director-General

(a) appointed by the President subject to confirmation by the Senate;

(b) the chief executive and accounting officer of the Commission;

(c) responsible for the execution of the policy and day-to-day, administration of the Commission; and

(d) a member and the secretary to the Board

(2) The Director-General shall hold office-

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

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

(3) Notwithstanding the provisions of subclause (2) of this clause, the Director-General may-

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

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

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

Other staff of the  
Commission

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

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

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

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

(3) For the purposes of the application of the provisions of the Pension Reform Act in force, any power exercisable by a Minister or other authority of a Public Infrastructure Entity, other than the power to make regulations, under Clause 23 of the Pension Reform Act, 2014, is vested in 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 which shall be paid- Funds of the Commission

(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) amount due to the Commission from the Special Public Private Partnership Account,

(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 the Fund established under clause 28 of this Bill- Expenditure of the Commission

(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 in accordance with the amount prescribed by the Revenue Mobilization Allocation and Fiscal Commission;

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

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

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

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

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

Annual estimate and account

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

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

Annual Report

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

Power to accept gift

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

#### PART VII – INCENTIVE FOR PUBLIC PRIVATE PARTNERSHIP PROJECTS

33. (1) Where it is necessary to attract private investment into a specific Public Private Partnership project, the Federal Government may approve the grant of financial incentives or investment support to any approved project on the recommendation of the Commission.

Financial incentives or Investment Support

(2) The financial incentives or investment support referred to in sub-clause (1) of this clause may

include:

- (a) equity participation by Public Infrastructure Entity as may be determined by the Federal Ministry of Finance
- (b) direct subsidies in respect to any project;
- (c) granting of loans and other similar support to specific projects; and
- (d) reduction of or exemption from certain fiscal regimes and incentives to investors which are provided for in existing laws.
- (e) any other incentive as may, from time to time, be approved by the Government

#### PART VIII –LEGAL PROCEEDINGS

34. A notice, summons or other document required or authorised to be served on the Commission under the provisions of this Bill or any other law or enactment may be served by delivering it to the office of the Director-General or by sending it by registered post, addressed to the Director-General at the head office of the Commission. Service of document
35. (1) In any action or suit against the Commission, a process shall not be issued against the Commission except not less than one month notice of the intention to commence the action has been given to the Commission. Pre-action notice
- (2) Any sum of money which by the judgment of any court has been awarded against the Commission shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from the Fund of the Commission.
36. The Chairman or member of Council, or the Chairman member of the Board, the Director-General, or any officer or employee of the Commission shall be indemnified out of the assets of the Commission against any liability incurred by him in his official capacity 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 employee of the Commission. Indemnity for members of the Board, the Director-General and staff of the Commission
37. (1) Subject to the provisions of this Bill, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member, officer or employee of the Commission. Jurisdiction
- (2) Notwithstanding anything contained in any other law or enactment, no suit against the Chairman or member of Council, or the Chairman or member of the Board, Director-General or any other officer

or employee of the Commission for any act done in pursuance or execution of this Bill or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Bill or any other law or enactment, duty or authority, shall lie or be instituted in any court unless it is commenced-

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

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

(3) No suit shall be commenced against the Chairman or member of Council, or the Chairman or member of the Board, Director-General or any other officer or employee of the Commission 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 Service by the intending plaintiff or his agent.

(4) The notice referred to in subclause (3) of this clause shall clearly and explicitly state the-

(a) cause of action;

(b) particulars of claim;

(c) name and place of abode of the intending plaintiff; and

(d) relief which he claims.

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

#### PART IX –OFFENCES AND PENALTIES

38. (1) A person who-

Offences

(a) willful refuses to allow the Commission or its officers to have access to any procurement records;

(b) fails or refuse to furnish a return or to supply information, in the manner and time, prescribed by the Commission;

(c) submits a false information or incomplete returns to the Commission;

(d) uses fake documents or encourages their use during the PPP procurement process;

(e) enters or attends to enter into a collusive agreement with a consultant, transaction adviser, project proponent or any other party related to the to the project, or

(f) alters any procurement document with the intent to influence the outcome of a PPP procurement process by means of fraudulent and corrupt acts, unlawful influence, undue interest, favour, agreement, bribery or corruption,

(g) directly or indirectly attempts to influence in any manner the PPP procurement process to obtain an unfair advantage in the award of a PPP contract.

(h) willfully delays or obstructs the Commission or any of its officers or any fully authorized persons to excise powers or dues conferred or imposed upon him by this Bill.



(i) split the tenders to avoid the monetary threshold set or for any other unauthorized purpose.

(j) bid-rigging.

39. (1) Any person who contravenes the provisions of 38(1) (a), (b), (c), and (h) of this Bill, shall be liable to a fine not below the sum of N1,000,000.

Penalties

(2) any person who contravenes the provision of clause 38(1) (d), (e), (f), (i), (j) and (g) shall be liable on conviction to imprisonment for a term not exceeding two calendar years without an option of fine.

(3) Violations of the provisions of clause 38 of this Bill may also constitute grounds for blacklisting.

#### PART X – MISCELLANEOUS PROVISIONS

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

Directives by the President

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

Power to make regulation

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

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

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

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

42. (1) A member of the Board, the Director-General or any other officer, employee of this Commission shall-

Duty to keep confidential information

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

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

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

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

Transitional provision

been appointed to the office under this Bill.

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

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

(4) Any proceeding or cause of action pending or existing immediately before the commencement of this Bill by or against the Infrastructure Concession Regulatory Commission in respect of any right, interest, obligation or liability of the Infrastructure Concession Regulatory Commission may be continued or, as the case may be, commenced and any determination of a court of law, tribunal or other Commission or person may be enforced by or against the Commission established by this Bill to the same extent that such proceeding, cause of action or determination might have been continued, commenced or enforced by or against the Infrastructure Concession Regulatory Commission as if this Bill had not been made.

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

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

Repeal and savings

(2) Without prejudice to clause 6 of the Interpretation Act, the repeal of the Act specified in subclause (1) of this clause shall not affect anything done under the repealed Act.

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

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

45. In this Bill-  
"appropriate authority of the Federal Government" means the Federal Executive Council or its equivalent;

Interpretation

"Bid-rigging" means and includes circumstances where:

(i) persons collude so that a contractor can secure a contract at pre-determined

price;

(ii) a commercial contract is promised to one party even though for the sake appearance several other parties also present a bid;

(iii) competitors in a bid collude to fix prices or bids;  
or in other circumstances as may be determined by the Commission

"Blacklisting" means placing a firm, company or natural person on a list of persons ineligible to participate in any PPP procurement process under this Bill;

"Board" means the Governing Board of the Commission established under clause 18 of this Bill;

"Budget Office" means Budget Office of the Federation;

"Certificate of compliance" means the certificate issued by the Commission where an Outline Business Case or Full Business Case meets the Commission's requirements;

"Chairman" means the Chairman of the Governing Board of the Commission appointed under clause 19 of this Bill;

"Commission" means the Public Private Partnership Regulatory Commission established under clause 17 of this Bill;

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

"Concession Contract" includes but limited to the following;

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

(b) Buy-Build-Operate (BBO) and Lease – Develop-Operate (LDO);

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

(d) Management Contract;

"contractor" means any person or body corporate who may or may not be a project proponent who enters into a contract or has been granted a Public Private Partnership Agreement by any Public Infrastructure Entity and undertakes to construct any infrastructure or facility or supply any equipment for any infrastructure, facility under this Bill; "construction" means any form of engineering work whether civil, structural, mechanical or electrical or rehabilitation, improvement, expansion, alteration and related works and activities, supply and installation of

equipment or materials;

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

"Debts Management Office" (DMO) means Debts Management Office of the Federation;

"Direct appointment" means the appointment of Private Sector Entity without undergoing the process of open competitive bidding

"Director-General" means the Director-General of the Commission appointed under clause 25 of this Bill;

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

"ex-officio member" means the Attorney-General of the Federation, Minister of Finance, Minister of Trade and Investment, Minister of Budget & Planning, Secretary to the Government of the Federation and Governor of Central Bank of Nigeria;

"equity participation" means equity participation defined under Companies and Allied Matters Act, CAP C21 Laws of the Federation of Nigeria 2004.

"Full Business Case- (FBC)" means the deliverable from the procurement phase of the PPP circle. Full Business Case is detailed recommendation o/justification of a prefer PPP partner or bidder from a competitive process usually managed by a qualified consultant or transaction adviser. The Full Business case is usually approved by the Feral Executive Council and Public Private Approval Committee after which a formal PPP contract can be signed by the Private and Public sectors

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

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

"National Public Private Partnership Pipeline of Projects" means projects or a list of projects approved

by the Federal Executive Council of projects proposed for Public Private Partnerships of eligible Public Private Partnership Projects approved by the Federal Executive Council from within priority projects eligible for Public Private Partnership submitted by Public Infrastructure Entities to the Commission

"National Public Private Partnership Pipeline of Projects" means a list of proposed Public Private Projects submitted by the Public Infrastructure Entity to the Commission and approved by the Federal Executive Council

"new investment and development projects" includes any project involving any infrastructure-

(a) not existing at the time the Public Private Partnership Agreement is being made, that will require the injection of substantial funds or resources to design, construct, build, maintain or operate such infrastructure; or

(b) existing at the time the Public Private Partnership Agreement is being made, that will require the injection of substantial funds or resources to repair, service, overhaul, improve, maintain or sustain such infrastructure;

"Outline Business Case-(OBC)" means a feasibility study deliverable from a project development phase of the PPP cycle that identifies the asset/service need via a detailed need analysis and global option analysis for delivering the needed assets/service via various ways including PPP procurement. The OBC normally demonstrates financial and economic viability of the preferred option for the asset/service delivery via PPP procurement and its potential to attract Private sector investors via appropriate financial and economic indices like return on Investment (ROI) etc

"President" means the President of the Federal Republic of Nigeria;

"Private Sector Entity" means any person or body corporate that has contractual responsibilities for the project;

"project" means an arrangement for the construction of works or the provision of goods and services which can be or is to be, implemented under Public Private Partnership Agreement;

"project proponent" means any person or body corporate who is proposing a Public Private Partnership project;

"preferred bidder" means the bidder, including any bidding consortium found after a competitive bid process to be in the lead position to be the private party to a Public Private Partnership Agreement;

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

"Public Private Partnership" means a transaction between a Public Infrastructure Entity and a Private Sector Entity in which the Private Sector Entity –

(a) undertakes a project or performs an institutional function on behalf of the Public Infrastructure

Entity for service delivery;

(b) acquires the use of public assets or public property for that purpose;

(c) assumes substantial financial, technical, operational and management risk in connection; and

(d) receives a financial or other benefit by way of-

(i) consideration to be paid by the Public Infrastructure Entity through an agreed payment mechanism; or

(ii) charges to be collected by the Private Sector Entity or users or customer of a service provided to them; or

(iii) grants, donation, endowment, charity, aid, corporate social responsibility or from other sources

“public sector” means the class to which all Public Infrastructure Entities belong as defined in this Bill;

“viable” means affordability and value for money for Public Infrastructure Entity and users as well as a reasonable return for private investors;

“Financing Agreement” means an agreement for financing the acquisition of the assets constituted into a project of a Public Private Partnership Agreement, and any agreement providing for the loan, a term sheet, fee letter and any other document designated as between the loan agent the security agent or the arranger, or lender under such an agreement and the borrower.

“service” means task, assignment or other functions that a Public Infrastructure Entity is entitled or obliged to perform-

(a) in the public interest; or

(b) on behalf of the public generally;

“Threshold” means the maximum value set by guidelines to be issued by the Commission for projects which fall under the approving powers of the of the Public Private Partnership Approval Committee

“User charge” means the fees charged for use of service

46. This Bill may be cited as the Public Private Partnership Regulatory Commission Bill, 2022.

Citation

## SCHEDULE

### PROCEEDINGS OF THE BOARD

1. Subject to this Bill and clause 27 of the Interpretation Act, the Board shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, notices to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Commission may, from time to time, determine.

- (a) There shall be at least 4 ordinary meetings of the Board in every calendar year and, the Board shall meet whenever is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than 3 other members, he shall convene a meeting of the Board to be 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 members to preside at the meeting.
3. The quorum of any meeting of the Board shall consist of the Chairman or the person presiding at the meeting under paragraph 2 of this Schedule and 4 other members.
4. The Board shall meet for the conduct of its business at such places and on such days as the Chairman may appoint.
5. A question put before the Board at a meeting shall be decided by consensus and where this is not possible, by a majority of the votes of the members present and voting
6. The Chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.
7. Where the Board seeks the advice of any person on a particular matter, the Board may invite that person to attend its meetings for such periods as it thinks fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

#### COMMITTEES

8. The Board may appoint one or more committees to carry out its functions as the Board may determine and report on any matter with which the Board is concerned.
9. A Committee appointed under paragraph 8 of this Schedule shall be presided over by a member of the Board and consist of such number of persons not necessarily all members of the Board as may be determined by the Board, and a person other than a member of the Board shall hold office on the Committee in accordance with the terms of his appointment.
10. A decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

#### MISCELLANEOUS

11. The fixing of the seal of the Commission shall be authenticated by the signature of either the Chairman, the Director-General or such other person authorized by the Board to act for that purpose.
12. A contract or an instrument which, if made or executed by any person not being a body Corporate, would not be required to be under seal, may be made or executed on behalf of the Commission by the Chairman or the Director-General or by person generally or specifically authorized to act for that purpose by the Board.
13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Commission shall be received in evidence and, unless the contrary is proved, be presumed without further proof, to have been properly signed or sealed.
14. The validity of any proceedings of the Board or its Committees shall not be affected by-

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

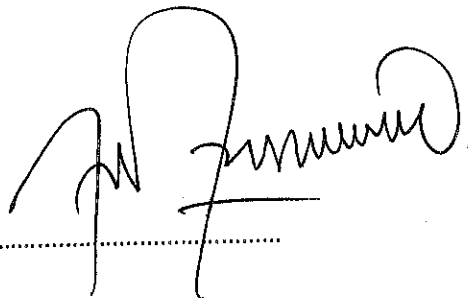
15. Any member of the Board or Committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or any committee shall-

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

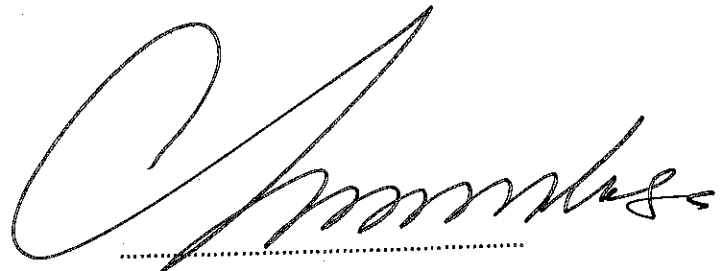
#### EXPLANATORY MEMORANDUM

This Bill seeks to repeal the Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act, 2005 and enact the Public Private Partnership Regulatory Commission Act, 2022, 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.

**THIS BILL WAS PASSED BY THE SENATE ON WEDNESDAY, 22<sup>ND</sup> JUNE, 2022**



.....  
President,  
Senate of the Federal Republic of Nigeria



.....  
Clerk,  
Senate of the Federal Republic of Nigeria