

Law No. (2) of 2019 Concerning The Organisation of Public-Private Partnership

We, Khalifa bin Zayed Al Nahyan, Ruler of Abu Dhabi

Having reviewed:

- Law No. (1) of 1974 concerning the reorganisation of the Governmental body in the Emirate of Abu Dhabi and its amendments;
- Law No. (2) of 1971 concerning the National Advisory Council and its amendments;
- Law No. (1) of 2017 concerning the Financial System of Abu Dhabi Government;
- Law No. (7) of 2018 concerning the reorganisation of the Economic Development Department;
- Law No. (1) of 2019 concerning the Establishment of Abu Dhabi Investment Office;
- Federal Law No. (4) of 2012 concerning the Regulation of Competition;
- Federal Law No. (2) of 2015 concerning the Commercial Companies and its amendments;
- Chairman of the Executive Council Resolution No. (22) of 2018 concerning Additional Competencies of the Economic Development Department; and
- Based on what was presented to and approved by the Executive Council,

Issued the following Law:

Definitions

Article (1)

In the implementation of the provisions of this Law, the following words and phrases shall have the meanings corresponding thereto, unless the context requires otherwise:

State : The United Arab Emirates.

Emirate	: The Emirate of Abu Dhabi.
Government	: The Government of Abu Dhabi.
Executive Council	: The Executive Council of the Emirate.
Office	: Abu Dhabi Investment Office.
Governmental Entity	: The local departments and every legal person affiliated to the Government and having full legal capacity to act and manage a public utility or aiming to provide a public service.
Public Sector	: All Governmental Entities in the Emirate.
Private Sector	: Private establishments and companies.
Partnership Project	: The project executed and managed by the Project Company or the subject of the Partnership Contract.
Project Company	: Any sole proprietorship or company licensed to operate in the Emirate, which shall undertake the execution of the Partnership Contract.
Partnership Contract	: A contract concluded between the Governmental Entity and the Project Company, governing and regulating the parties thereof.
Public-Private Partnership	: A contractual relationship within an administrative, economic and social concept, based on the principle of distribution and organisation of roles between the Public and Private Sectors in the identification and implementation of the objectives and programmes of the sustainable economic and social development plans through a complementary and contractual relationship between them, to share the responsibilities and benefits, in order to raise economic efficiency and achieve the development objectives of the community.

Objectives of the Law

Article (2)

This Law aims to regulate the Public-Private Partnership in order to achieve the following:

1. Encourage the Private Sector to participate in the development projects and increase investment in its various fields, which serves the economic and social development in the Emirate.
2. Enable the Government to implement its strategic projects efficiently and effectively.
3. Take advantage of the potentials and the financial, administrative, organisational, technical and technological expertise available in the Private Sector, which enables the community members to obtain the best services at the lowest costs.
4. Increase productivity and improve the quality of public services while ensuring an effective management for the development of these services.
5. Transfer knowledge and experience from the Private Sector to the Public Sector, train and qualify the national employees of the Governmental Entities on the management and operation of the projects.
6. Execute the projects which add value to the public funds at a distinctive level and ease the financial burdens on the public budget of the Government by bearing the projects' costs whether in their establishment, operation or maintenance phases.
7. Reduce the burdens of financial risks for the Government, which may result from the implementation of some high-risk projects.
8. Convert, in the management of some infrastructure and public services projects from implementation, operation and direct management to other forms of government performance that are related to the adoption of policies and legislations and control of the quality of provision of public services according to the governance requirements.
9. Provide a higher competitive capacity for projects in the local, regional and global markets.
10. Promote the principles of governance in managing the economic activity and activate the financial resources management procedures.

Applicability of the Law

Article (3)

- The provisions of this Law shall apply to all Governmental Entities.
- The provisions of this Law shall not apply to Partnership Contracts signed before its entry into force.

Partnership Projects Mechanism and Selection Criteria

Article (4)

The following shall be taken in consideration in the Partnership Project:

1. The Partnership Project shall be of economic, financial or social feasibility.
2. It shall achieve the Government's benefit and the public benefit of the community members.
3. It shall have a positive impact on the approved development plans of the Emirate.
4. The volume of risks that may result from the implementation of the project through Partnership and in particular in the field of environment.
5. Volume of capital investment and technical expertise that will effectively contribute in improving the performance of public utilities and ensuring the quality of services.
6. Global best practices in the field of implementation of projects through Partnership.

Partnership Methods

Article (5)

The Partnership Projects shall be completed by following any of the methods below:

1. Establishment of the Project Company for the joint project, and financing owning, commercially benefiting from and operating of the project for the time period agreed upon in the Partnership Contract, then its assignment and the transfer of its full ownership to the Governmental Entity upon expiry of the period set forth in the Partnership Contract.
2. Establishment of the Project Company for the joint project and the transfer of its ownership to the Governmental Entity while keeping the right of commercially benefiting from and operating of the project for the time period agreed upon in the Partnership Contract.
3. Transfer of the project's benefit from the Governmental Entity to the Project Company in order to enable it to commercially benefit from and operate the project for the period agreed upon in the Partnership Contract.
4. Establishment of a Project Company between the Governmental Entity and the partner from the Private Sector to implement the Partnership Contract.

5. Any other method suggested by the Office.

Principles of Partner Selection

Article (6)

1. The process of partner selection in the project shall be subject to the principles of openness, transparency, freedom of competition, equal opportunities, equality, announcement of the competition and achievement of the public interest requirements. It shall be prepared according to the rules and procedures set forth in this Law and the resolutions issued thereunder.
2. The partner shall meet the approved financial and technical standards, controls and requirements, as well as the ability and competence in its field of work.
3. A joint venture of more than one qualified private company or establishment may apply for one bid, provided that the bid is submitted in the name of the joint venture.

Competent Authority for the Approval of the Partnership Project

Article (7)

1. The Partnership Project shall be suggested by the office, the Governmental Entity or the Private Sector.
2. The Office shall study the Partnership Project in its initial stages and may approve the same and proceed with its approval procedures according to the rules in force.
3. The Partnership Project shall be approved according to the provisions of the financial delegation of authority in force in the Emirate.
4. The Governmental Entity shall not take any action to contract with the partner in the Partnership Project before the approval of the Partnership Project and floating it for tender by the Office.

Role of the Governmental Entity in the Partnership Project

Article (8)

The Governmental Entity shall:

1. Propose the Partnership Project and prepare a detailed report including the reasons of entering into partnership and its expected positive effect

as well as the risks thereof, provided that the report includes the financial, economic and other feasibility study and submit them to the Office for study.

2. Prepare all technical specifications related to the Partnership Projects and submit them to the Office.
3. Cooperate and coordinate with the Office to implement the Partnership Projects in the Emirate.
4. Oversee the implementation of the Partnership Contract and supervise the proper performance by the Project Company of its obligations and take necessary and immediate measures to address any violation or breach in the implementation of these obligations.
5. Prepare periodic reports on the progress of the Partnership Projects and submit them to the Office.

Role of the Office in the Partnership Project

Article (9)

The Office shall, in coordination with the Governmental Entity:

1. Prepare and issue the rules and procedures to be followed by the Governmental Entity to enter into Partnership Projects.
2. Determine the foundations upon which the Private Sector is invited to enter into a Partnership Project.
3. Prepare the terms of reference and specifications of the project subject of the Partnership Contract in coordination with the Governmental Entity.
4. Float bids of the Partnership Project.
5. Open and evaluate the offers.
6. Accept the offers that meet all the conditions and specifications from the technical and financial aspect.

Amendment of the Project Specifications

Article (10)

The Office may, before the float of the tender, amend the project's specifications and conditions related to the method of partnership after coordination with the Governmental Entity, without prejudice to the standards of qualification of the private companies or establishments.

Cancellation of the Bid

Article (11)

The Office may cancel the bid procedures for the partnership in any of the following cases:

1. If only one accepted offer is submitted or one offer remains after elimination of the unaccepted offers.
2. If all the offers include reservations that are not consistent with the required conditions and specifications and it was difficult to evaluate them technically or financially.
3. If the value of the lowest offer exceeds, in an unjustifiable manner, the primary estimates determined by the Governmental Entity or the value of the highest offer is less than these estimates for the revenue generating contracts.
4. If the public interest requires the cancellation of the bid.
 - The decision of cancellation of the bid shall be justified and none of the bidders shall have the right to claim compensation for the cancellation.
 - Notwithstanding the provisions of paragraph 1 of this Article, the Office may coordinate with the Governmental Entity to accept the single offer or the offer of which the value is less or exceeds the estimated value, in the cases determined by it.

Content of the Partnership Contract

Article (12)

The Partnership Contract shall include the basic provisions that organise the partnership and the mutual obligations between the parties, including for example and without limitation:

1. The nature and scope of works and services that the Project Company shall carry out and implement.
2. The ownership of the project's assets and intellectual property rights and the obligations of the parties related to the taking over and handing over of the project site, as well as the provisions of transfer of ownership at the end of the project.
3. Obligation for obtaining the licences, permits and approvals.
4. The mutual financial and technical obligations between the parties to the contract as well as the financing methods.

5. Rules for the sale price of the product or the fees of the service covered by the project, as well as the principles and rules of their determination and amendment.
6. Means of quality assurance and the tools of control, supervision and financial, administrative and technical follow-up for the operation, exploitation and maintenance of the project, and the performance evaluation indicators of the Project Company.
7. Organisation of the rights in case of termination of the Partnership Contract, amendment of the conditions of this Contract by agreement or due to force majeure, and the principles and mechanisms of compensation in such event.
8. Types and amounts of insurance on the Partnership Project, the risks of its operation or exploitation, the performance bonds issued in favour of the Governmental Entities and the provisions of their recovery.
9. Determination of the principles of distribution of risks related to the project in case of force majeure, emergency circumstances or financial difficulties and the determination of the principles of estimation of the compensation therefor.
10. Period of the contract and cases of early termination thereof in whole or in part, and the parties' rights and obligations.
11. Determination of the cases where the partners may solely terminate the contract.
12. The procedures and penalties that may be imposed upon the Project Company in case of violating its contractual obligations.
13. Organisation of the rules and procedures of recovery of the project either upon the end of the contract period or in cases of unilateral, early or partial termination.
14. Procedures of continuity of the project and the works subject of the Partnership Contract upon expiry of the contract period, termination of the contract or violation of the Project Company's contractual obligations.
15. Provisions related to the benefit from the services of the Governmental Entity's employees in the Project Company and determination of the Emiratisation ratios therein.
16. Measures to be taken by the Project Company to preserve the environment.

17. Specifications of the final product and level of the services that the Project Company shall provide, including the performance indicators, standards of safety, security, protection of environment and other standards, as well as the electronic systems and programmes to be used by it.

Fees of Services

Article (13)

The Project Company shall be prohibited to run the project or receive any fees, allowances, tariffs, prices or any other financial amounts of any type for the works and services agreed upon by virtue of the Partnership Contract, unless the Governmental Entity issues a written certificate for the acceptance of the quality level of works or services available, according to the level of performance agreed upon in the Partnership Contract.

Obligations of the Project Company

Article (14)

In addition to the obligations set forth in this Law, the resolutions issued thereunder and the clauses of the Partnership Contract, the Project Company shall abide by the following:

1. Not to dissolve, liquidate or change the legal form of the Project Company, reduce its capital or assign the company to others without the prior consent of the Office.
2. Preserve and maintain the project's assets and use the same for the objective thereof.
3. Not to sell the facilities, assets, movable and immovable properties of the project owned by it as per the conditions of the Partnership Contract, except for the sale aiming for the replacement and renewal programme as per the conditions stated in the Partnership Contract and after obtaining the prior consent of the Office and the Governmental Entity.
4. Provide all the documents, information and data required by the Office or the Governmental Entity, collaborate with their employees and allow them to access its sites for inspection thereof at any time.
5. Transfer knowledge and expertise to the Governmental Entity and train and qualify the employees of this entity as agreed upon in this regard.

6. Submit periodic reports on the works of implementation of the project, such as the construction, equipment, development, operation, maintenance, management and any other matters required by the Governmental Entity.
7. Abide by the environmental and health requirements as well as the safety requirements for the project's workers and beneficiaries.
8. Not to contract with subcontractors unless otherwise agreed in the Partnership Contract.

Arbitration

Article (15)

Subject to the legislations in force, it may be agreed in the Partnership Contract to settle the disputes arising therefrom through arbitration.

Financing of the Project Company

Article (16)

The Governmental Entity may, without contradicting the legislations in force in the Emirate, allow the Project Company to conclude contracts with banking institutions to finance or restructure the financing of its works and activities, provided that the Project Company bears alone, in such event, all the obligations resulting therefrom.

Regulations

Article (17)

- The Office shall issue the necessary regulations for the implementation of the provisions of this Law after obtaining the approval of the Executive Council.
- The Office shall issue the resolutions necessary for the implementation of the provisions of this Law.

Repeals

Article (18)

Any provision that is contrary to or inconsistent with the provisions of this Law shall be repealed.

Publication and Applicability

Article (19)

This Law shall be published in the Official Gazette and shall be effective from the date of its publication.

Khalifa bin Zayed Al Nahyan
Ruler of Abu Dhabi

Issued by us in Abu Dhabi

On: 10 January 2019

Corresponding to: 4 Jumada Al-Awwal 1440 Hijri