

PROCLAMATION NO ____/2022

**A PROCLAMATION TO AMEND THE PUBLIC/PRIVATE
PARTNERSHIP PROCLAMATION**

Whereas; it is found necessary to amend the Public/Private Partnership Proclamation No. 1076/2010,

Now therefore, in accordance with article 55 (1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

1. Short title

This Proclamation may be cited as “the Public/Private Partnership Proclamation (amendment) Proclamation No. - ---/2022”.

2. Amendment

1/ New paragraph (c) is added after paragraph (b) of sub article (2) of Article 4.

“ c) Business activity conducted by a joint venture or a company established by public enterprise in conjunction with a private investor or a foreign government or a public enterprise of a foreign government.”

2/ New sub articles (3), (4) and (5) are added after sub article (2) of article 39:

3/ Notwithstanding sub articles (1) and (2) of this article, the Board may, in accordance with understanding reached through bilateral inter-governmental economic diplomacy or through direct contact with a foreign company, endorse the implementation of a project proposal if it is satisfied that the implementation of the project proposal yields the benefit of public service by enabling to quickly secure finance for the project.

4/ A project proposal submitted to the Board for consideration of implementation by means of Public/Private Partnership using direct negotiation shall be consistent with the overall development plan and strategy of the country.

5/ A company or a consortium of companies proposing to implement a Public/ Private Partnership project by direct negotiation as a prospective private party shall meet the following minimum requirements:

- a) A certificate of incorporation evidencing that the company is duly established and registered as a company in accordance with the laws of its country of residence and a document certifying that the government of the country in which the company is constituted supports the participation of the company in the development and implementation of the project.
- b) Experience in accomplishing three or more projects in the sector and evidence of good financial standing to demonstrate that it has the requisite financial and technical capability to deliver the project.
- c) The project proposed by the company has to be developed in such a way that promotes the participation of domestic investors, the use of domestic products and the creation of job opportunity for Ethiopian Nationals.
- d) The company or its chief executive officer or its directors or shareholders having a participation interest representing more than five percent of the capital stock of the company must have clean track record of legal compliance in the last five years prior to the decision of the Board to endorse the project proposal for implementation by direct negotiation.
- e) The company has to produce evidence of financing from the lender or lenders for the portion of the total cost of the project that is financed by loan.
- f) The Ministry may prescribe by directive additional requirements.

3. New sub article (7) is added after sub article (6) of article 40.

- 7) Notwithstanding the provisions of sub articles (1) - (6) of this article,
 - a) A project proposal desired to be implemented by direct negotiation within the framework of Public/Private Partnership in accordance with understanding reached through bilateral inter-governmental economic diplomacy or through direct contact with a company, shall at first be evaluated by the Contracting Authority and Ministry for its special significance. If the Ministry determines that the project proposal is particularly beneficial to the public, it shall cause detailed pre-feasibility study to be conducted on the project proposal and the profile of the company giving general information on the technical, financial and legal standing of the company to be

prepared jointly by the PPP directorate General and the Contracting Authority.

- b) The Ministry shall evaluate the pre-feasibility study conducted on the project proposal and the profile of the company giving general information on the technical, financial and legal standing of the company proposing the project and report the result of the evaluation to the Board.
- c) The Board may, on the basis of the evaluation report of the Ministry, decide to endorse the project proposal for implementation by direct negotiation within the framework of Public/Private Partnership or may order the pre-feasibility study and the profile of the company showing the financial, technical and legal standing of the company to be revised or reject the project proposal. However, the decision of the Board to endorse the project proposal for implementation by means of Public/Private partnership does not in itself constitute final acceptance of the project proposal and award of the project to the company.
- d) If the Board decides to approve the implementation of the project by direct negotiation within the framework of Public/Private Partnership, it shall refer the project proposal to the Ministry for further study.
- e) The Directorate General for Public and Private Partnership shall cause detailed feasibility study to be conducted on the project proposal by the appropriate Contracting Authority and upon receipt of the feasibility study carried out by the Contracting Authority, conduct evaluation on the study. For this purpose, articles 17 and 18, as the case may be, of this proclamation shall apply.
- f) The Directorate General for Public and Private Partnership shall submit the report of the feasibility study to the Board for approval and upon approval, prepare draft project agreement that serves as base document for the negotiation in consultation with the Contracting Authority and send the document to the company before the negotiation to enable it prepare for the negotiation.
- g) Before embarking on the negotiation, parties to the negotiation shall agree on the timeframe within which the negotiation is to be completed and prepare a code of ethics governing the conduct of the negotiation and submit same for approval to the Minister.

- h) The Directorate General for Public and Private Partnership together with the Contracting Authority shall then conduct the negotiation with the company in accordance with this proclamation.
- i) Upon successful completion of the negotiation, the Directorate General for Public and Private Partnership shall report to the Board for approval the result of the negotiation and the acceptance of the company as a private partner for implementation of the project.
- j) The provisions of Article 34 and Articles 44 to 68 shall apply mutatis mutandis to the signing of the contract with the company and the process of implementation of the project.

3. Effective date.

This Proclamation shall inter into force on the date of its publication in the Federal Negarit Gazette.

Done in Addis Ababa this ___ day of ____ /2022

*Sahilework Zewde
President of the Federal Democratic
Republic of Ethiopia*