

In the name of Allah, the Gracious, the Merciful

The Public and Private Sector Partnership Act, 2021

Be it hereby, passed by the Sovereignty Council and the Council of Ministers, in the Joint Session, in accordance with the provisions of the Transitional Period Constitutional Instrument, 2019, the following Act:-

Chapter I

Preliminary Provisions

Title and Commencement

1. This Act may be cited as the, “Public and Private Sector Partnership Act, 2021,” and shall come into force, as of the date of signature.

Application and Saving

- 2.(1) The provisions of this Act, shall apply to all projects that are subject matter of a contract of partnership between the public and private sector irrespective of type, form or activity nature thereof.
- (2) All biddings, awards, contracting and other procedures carried out, in accordance with the provisions of this Act, shall be excluded from application of the provisions of the Purchasing, Contracting and Surplus Disposal Act, 2010.
- (3) The provisions of this Act, shall not apply to privatization processes under the provisions of the Public Section Utilities Disposal Act, 1990.
- (4) in case of inconsistency between the provisions of this Act and any other law, the provisions of this Act shall prevail to the extent of removing such inconsistency.

Interpretation

3. In this Act, unless the context otherwise requires:-

- "Government Body or Public Sector";** means every government facility belonging to the government at any of the governance level in the Sudan, public corporations and companies 100% owned by the Government and the commissions established in accordance with the provisions of the Transitional Period Constitutional Instrument, 2019;
- "Contracting Body";** means any government body concluding a partnership contract with the private sector, or with a project company, as the case may be, in accordance with the provisions of this Act;
- "Private Sector";** means any national or foreign corporate body having financial or technical capacity, qualifying it to enter into a partnership with the government body in a partnership project; provided that the same shall not be 100% owned by the public sector;
- "Partnership or Contract";** means a partnership contract or a long-term contract concluded in accordance with the provisions of this Act, by and between a contracting body and the private sector, or a project company, as the case may be, for the development or management of assets or public services, under which the private party shall take the highest rate of risks relating to finance, management and maintenance, throughout the period of validity of the contract, and under which the financial benefits of the private party

- shall closely be correlated with levels of performance and volume of demand for the provided goods or services, or on the degree of the use of such assets or public services by the public;
- “Council”;** means the Higher Council for the Public and private sector Partnerships, established under the provision of Section 6;
- "Central Unit";** means the Central Unit of the Public and private sector Partnership, established under the provision of Section 8;
- "Project Company";** means the single-purpose Company registered under the provisions of the State laws by a winning bidder, in accordance with the provisions of Section 29;
- "Partnership Project";** means any project for implementing one of the activities by which the State aims at providing a public service or building infrastructure facilities of an economic, financial, service, social or productive importance, or improving or developing a public service or existing infra-structural installations, or reducing cost, or upgrading efficiency thereof;
- "Project committee";** means the Committee that assume the preparation of comprehensive feasibility studies for partnership projects and which is constituted in accordance with the provisions of Section 14;
- “Tenders Committee”;** means the committee that assume the preparation of competition, and bidding which is constituted in accordance with the provisions of Section 19;

"Competition;"	means inviting for partnership projects tenders and the procedures associated therewith, including qualifying bidders , sorting out tenders , procedures for winners selection and signing partnership contracts;
"Bid documents";	means documents prepared by the government body to present invitation for competition partnership projects tenders, in accordance with the provisions of Chapter VII of this Act;
"Competitor or bidder";	means the private sector which participates in the procedures of bidder competition;
"Winning Bidder or private partner";	means the private sector which has been awarded partnership contract the Council approval;
"Pre-qualification"	means the procedures under which bidders capacity, technical and financial qualifications necessary for the implementation of the partnership contract are verified before submission and receipt of offers;
"Post-qualification";	means procedures under which bidders capacity, technical and financial qualifications necessary for the implementation of the partnership project are verified after submission and receipt of offers and before approval of award and signature of partnership contract;
"Standstill period";	means the period starting as of the date of notifying the bidders with the competition results, in accordance with the provision of Section 28;
"Regulations";	means the executive regulations of this Act.

Chapter II
Objects and General Principles

Objects

4. This Act aims to:-
- (a) organize all the processes and procedures pertaining to partnership programmes and projects, supervision, follow-up, control and development thereof, and what as may be required thereof of coordination between the government bodies having connection with such projects; and strive to promote and develop partnership programmes targeted sectors as to the State strategies from time to time, and develop the measures as may be capable to limit the risks resulting from such projects;
 - (b) assists in realizing strategic objects of various government sectors, raise the national economy efficiency and increase competitiveness;
 - (c) increase the transparency, justice and integrity level of the procedures connected to partnership projects, and inclusiveness level, service quality, and efficiency of government assets related to the partnership projects and improve standards of management thereof;
 - (d) motivate the national and foreign private sector to investment and actively participate in strengthening the substrates and stimulating the national economic growth, increase local product, take advantage of the modern technical and technological expertise and knowledge possessed by the private sector in the establishment of partnership projects, operation and management thereof;

General Principles

5. There shall be committed, when implementing the partnership projects, with the following principles:-

Justice: by treating all private sector competitors objectively, neutral and equal;

Transparency: by implementing partnership projects transparently and avoid conflict of interests and enable both, the private sector, government bodies and the public in general, to access to the information pertaining to partnership projects at all stages without prejudice to the requirements of public interest;

Respecting contractual obligations: by considering that the contracts concluded in a manner consistent with the provisions of this Act, are the key reference that govern and organize the relation between the contracting parties;

Planning: by preparing, bidding and implementing the partnership projects under plans and studies to be prepared in a scientific and organized manner to realize the State feasibility requirements and the value for money, and to enable the private sector to provide sufficient resources sufficient to participate therein, maximizing the opportunities of success thereof and achievement of the desired objects thereof;

Feasibility: Partnership projects shall realize the feasibility development objectives, and trade feasibility requirements for the private sector.

Chapter III

The Council

Establishment, constitution and term of the Council

6.(1) There shall be established a council to be known as the, “Public and Private Sector Partnership Higher Council” and shall be constituted by a decision of the Council of Ministers, upon recommendation by the Minister of Finance and Economic Planning, to be presided by the Prime Minister, and shall consist of the following members:-

(a) the Minister of Finance and

Economic Planning:

Deputy Chairperson

(b) the Minister of Justice

Member

- (c) the Ministers of economic development Sectors
at the Council of Ministers Members
 - (d) the Minister of Federal Government Member
 - (e) Governor of the Central Bank of Sudan Member
 - (f) Director of the Central Unit Member and Rapporteur
 - (g) three persons of experience and competence in the fields of infrastructure projects, partnership contracts and project finance to be selected by the Council Chairperson from non-State employees
- (2) The Prime Minister may call any other Minister or State official to attend the meetings of the Council to consult thereof, in accordance with the rules and procedures, as may be specified by the regulations.
- (3) The term of the Council shall be four years, renewable only once.
- (4) The Council shall make the internal regulations to organize the business and meetings thereof, and decision making mechanisms.

Functions and powers of the Council

7. The Council shall have the following functions and powers, to:-
- (a) lay down and approve recommendations pertaining to the national strategy for Public and Private sector, specify the priorities thereof, approve private initiatives of strategic importance to the national economy, and approve the partnership project bid documents;
 - (b) endeavor to provide the funds which is the responsibility of the State to guarantee the satisfaction of the financial obligations under the partnership contract;
 - (c) approve the Central Unit budget draft and its final accounts, and approve the financial and administrative structures and internal regulations thereof;
 - (e) approve the studies and proposals pertaining to partnership projects and approve bidding thereof, in accordance with the provisions of this Act;

- (f) approve the allocation of the necessary lands application for implementation of partnership projects upon recommendation by the Central Unit, in coordination with the government bodies concerned;
- (g) approve granting privileges, facilities, exemptions and guarantees to partnership projects upon recommendation by the Central Unit, in coordination with the government bodies concerned;
- (h) approve project award to winning bidder upon recommendation by the Central Unit.
- (i) assume any other functions as may be assigned thereto by the Council of Ministers.

Chapter IV

The Central Unit of partnership between the Public and Private Sector

Unit establishment

- 8.(1) There shall be established a unit to be known as the, “Central Unit of Partnership between the Public and Private Sector”, and shall be affiliated to the Ministry of Finance and Economic Planning, and it shall be under the direct supervision of the Minister of Finance and Economic Planning; and the regulations shall specify the relation thereof with the other State organs.
- (2) The Central Unit shall have a team of employees, from those who possess competence and specialty, to be appointed competitively, in accordance with the rules and procedures as may be specified by the regulations, and the terms of service and financial remuneration, shall be specified by a decision issued by the Council, without being restricted with the provision of the National Civil Service Framework Act, 2018.
- (3) The Central Unit Shall consist of :-
- (a) a manager;
 - (b) The work team as may be necessary needed, to discharge the Central Unit duties and functions, in accordance with the provisions of this Act.

The Central Unit Budget and financial resources

- 9.(1) The Central Unit shall have an independent financial accounts and an attached budget, the financial year shall start with the end of State financial year, and end with the end of the State budget financial year .
- (2) The Manager of the Central Unit shall assume preparing an estimated budget of revenue, expenditure, annual account , in addition to the preparation of the final accounts, and submit the same to the Council for approval.
- (3) Resources of the Central Unit shall consist of:-
 - (a) such amounts as may be allocated by the State;
 - (b) amounts received by the Project Company, or from the private party against services rendered thereby, in accordance with the rules and procedures, as may be specified by the Regulations;
 - (c) Financial subsidies and donations by domestic and foreign bodies, in accordance with the rules and procedures, as may be specified by the Regulations.
- (4) The Central Unit shall make such regulations as may organize the business thereof, and the operational model thereof and submit the same to the Council for approval.

Central Unit Functions

9. The Central Unit shall have the following functions:
 - (a) develop the national strategy of Public and Private Sector Partnership to be approved by the council and endeavor to implement the same, in coordination with various government bodies, in accordance with the provisions of this Act;

- (b) assist government bodies in the preparation of primary and comprehensive detailed studies pertaining to the proposed partnership projects, aiming to specify the projects that may be offered for bidding as partnership projects, in accordance with the provisions of this Act, and present a report thereon to the Council for approval;**
- (c) receive special initiatives, and receipt and study of partnership project applications submitted thereto by the government bodies and present the recommendation thereof to the Council to decide thereon;**
- (d) work with the government bodies to publish a list of partnership projects, in accordance with rules and procedures, as may be specified by the regulations;**
- (e) endeavor to build capacity, conduct research, and lay down training plan and programmes in the field of partnership contracts and projects;**
- (f) promote partnership projects and strive to raise the community awareness of the benefits and role thereof, as an effective tool for socioeconomic development;**
- (g) strive to lay down effective and sustainable policy to communicate with the local and foreign private sector, for the purpose of consultation to make use of the private sector capabilities and with respect to partnership projects;**
- (h) establish a database and a digital record of partnership projects in the State, and establish in collaboration with the government bodies, a digital platform to keep all documents related to partnership projects at all phases , to use the same for advertising the proposed partnership projects and communicate with the public;**
- (i) assist government bodies with respect to procedures of partnership projects bidding, and contract award, and follow-up of partnership contract implementation;**
- (j) receipt of periodic and annual reports pertaining to implementation and operation of partnership projects from government bodies and submit the same to the Council;**

- (k) prepare and publish provisions and procedures manual of the Public and private sector partnership contracts and submit the same to the Council for approval;
- (l) prepare partnership contracts models and submit the same to the Council for approval;
- (m) prepare regulations, rules, orders and circulars necessary for the implementation of the provisions of this Act and submit the same to the Council for approval;
- (n) recommend to the Council to approve the decision of awarding contract to the winning bidders and to grant concession, facilities, exemptions and guarantees to partnership projects, in coordination with the competent bodies, in accordance with rules and procedures, as may be specified by the regulations;
- (o) form technical committees to assist thereof in performing the business thereof;
- (p) coordinate on the programmes and projects of implementation of the partnership with the Ministry of Investment and International Cooperation and the bodies having connection;
- (q) exercise any other functions may be assigned thereto by the Council..

Chapter V

Contracting body

Responsibility of a contracting body

- 10.(1) The Government bodies shall be allowed, upon approval of the Central Unit and the Council, to enter into, and conclude partnership contracts, in accordance with the provisions of the Act.
- (2) The Government bodies shall be committed with all the decisions, directives and recommendations made by the Central Unit on all matters pertaining to the application of the provisions of this Act.

Initiatives of Partnership Projects

- 12.(1) Every government body desirous to propose a project falling within the scope of its specialty, may on its own, or upon proposal by the private sector, apply to the Central Unit, supported by an initial

feasibility study of the project, in accordance with the rules and procedures, as the regulations may specify.

- (2) Without prejudice to the provisions of Sub-section (1), the Central Unit may, after approval of the Council, propose a partnership projects, and for this purpose, shall prepare an initial feasibility study of the proposed partnership project, in cooperation and coordination with a government body, in such case the government body shall provide the necessary data, documents and studies, and likewise, the Central Unit shall, for this purpose, seek the assistance of whoever it may deem fit as to the project nature and technical requirements.

Private Initiative

- 13.(1) The Central Unit may approve to consider the private initiative offers pertaining to the implementation of partnership projects, which have not been tendered, in accordance with the provisions of Section VII of this Act.
- (2) The regulations shall specify the conditions to be met, to accept private initiatives.

Project Committee

- 14.(1) The government bodies, with the approval of the Central Unit shall form a committee for every individual partnership project to be known as the, "Project Committee".
- (2) The Project Committee shall assume the preparation of a comprehensive feasibility study on the partnership project addressing the technical, economic, environmental, marketing, social, legal and financial aspects including the qualification standards, and the extent of investors interest of the partnership project and the possibility of attracting the necessary funding, in accordance with the rules and procedures, as may be specified by the regulations; and the Committee Project shall submit a report including its recommendation to the Council through the Central Unit to decide with respect thereon.
- (3) The regulations shall organize the Project Committee membership terms, the tasks, functions, and working system thereof.

- (4) Without prejudice to the provision of Sub-section (2), the Central Unit, in cooperation with the government body, may assume a comprehensive feasibility study pertaining to partnership project, in accordance with the rules and procedures, as may be specified by the regulations.

The Government Support for the Partnership Project

13. The contracting body with the Council approval, and upon recommendation of the Central Unit, may provide financial and economic support, or any other type of support to any of the partnership projects; provided that this support shall in advance be designed and announced, in accordance with the rules and procedures, as may be specified by the regulations.

Chapter VI

Control and Supervision

Control and Supervision by contracting bodies

14. Contracting bodies shall exercise the supervisory and control powers, of all the facilities and services subject matter of the partnerships contract, as it assume the follow-up of partnership project implementation phase, and management thereof, and ascertain the quality of products and services level provided by the project company, or by the private party, as the case may be, in accordance with the rules and procedures, as may be specified by the regulations.

The Right to Inspection and Supervision

- 15.(1) The contracting body employees shall have the right to access to the partnership project site, or any site or another quarters related thereto, at any time, for the purpose of exercising their control and supervision powers, and they for this purpose, have the right to peruse the progress and efficiency of work, inspect all what related to technical, financial, and administrative aspects of the project, and

evaluate the procedures taken to achieve the health and safety conditions and ascertain the satisfaction of the requirements of environmental conservation; the Project Company or the private party, as the case may be, shall provide whatever may enable the contracting body employees, to perform their duties.

- (2) The project Company shall furnish to the contracting body, all what may be requested of information, documents and other data in relation to the implementation of the partnership project, and the contracting party shall have the right to use any such received information, data and documents for the purposes as may be consistent control and supervisory functions and powers provided for by the provisions of this Act or any other law.
- (3) The contracting body, upon approval of the Central Unit, may seek the assistance of whoever it may deem fit, to assist in the discharging of the control and supervisory responsibility, as provided for in Sub-section (1).
- (4) Without prejudice to the provision of Sub-section (1), the Central Unit may on its own, or by assigning a third party, exercise some of the control and supervisory powers provided for in this Section, as well as the right to take or order any other measure, as it may deem necessary, within the functions or powers provided for by the provisions of this Act, to ensure that the partnership contract shall realize the State strategic objects, and shall for this purpose, it coordinate with other government bodies to ensure that such bodies perform any obligations within the limits of its functions with regard to the partnership contract.

Chapter VII

Procedures of the bidding and selection of

Partnership projects

Competition

- 16.(1) Processes of the bidding and selection of partnership projects and selection of winning bidders, shall be in accordance with the principles of transparency, publicity, equal opportunities, equality,

free competition and avoid conflict of interests, a winning bidder shall fulfill the required competition conditions, in accordance with the stated standards, financial and technical conditions.

- (2) Notwithstanding the provision of Sub-section (1), the government body may directly contract with a private sector, or with the project company as the case may be, in accordance with the rules and procedures, as may be specified by the regulations.

Tenders Committee

- 17.(1) There shall be constituted, by a decision of the government body, after approval of the Central Unit, for every individual project, a committee to be known as the, "Tender Committee"; The to be composed from a technical, financial and legal experience; provided that it shall include in its membership, one or more representative of the Central Unit and project team, and the regulations shall organize the tender committee membership conditions, duties, functions and system of the work thereof.
- (2) The government body, through the Tender Committee and in coordination with the Central Unit, shall assume advertisement and preparation for bidding of partnership projects, in accordance with the rules and procedures, as may be specified by the regulations.
- (3) The government body, in coordination with the Central Unit, may enter into contracts with companies or individuals those who meet the conditions of technical competence, good will, and international experience in the field of partnership contracts to provide consultancy services pertaining to bidding of partnership projects and competition management, in accordance with the rules and procedures, as may be specified by the regulations.

Call and advertisement for Competition and specifying the bidding conditions

- 18.(1) The government body shall, through the Tender Committee, and in coordination with the Central Unit, assume the preparation of competition documents pertaining to the partnership projects, in

accordance with the rules and procedures, as may be specified by the regulations.

- (2) The advertisement of call for competition and offering tenders shall include all the details related to the partnership project, among which, are the partnership requirements, as from the financial and technical aspects, project type, partnership mode, terms of participation in the competition, financial guarantees required to be submitted in cases where they are needed, and terms, procedures and cases such guarantees may be confiscated or refunded.
- (3) The Bid documents may include concession to be granted to winning bidders, including taxes, or customs duty exemptions or other privileges by a decision of the Council, upon recommendation by the Central Unit, in accordance with the rules and procedures, as may be specified by the regulations.
- (4) The government body shall, in coordination with the Central Unit, ascertain that a sufficient period of not less than sixty days shall be granted to enable private sector companies invited for bidding, to study the project offer and the bids documents, and preparation and presentation of their offers, and the regulations shall specify the requirements and safeguards for extending such a period.

Competition bidder for partnership projects

- 19.(1) The partnership projects competition shall be offered accordance by one of the following methods:-
 - (a) one phase open competition;
 - (b) two-phase competition;
 - (c) limited competition
 - (d) competitive dialogue
 - (e) any other method as may be prescribed by the regulations or a decision made thereof, by the Council.
- (2) The Regulations shall specify the procedures and rules of bidder competition.

Qualification of Competitors

- 20.(1) The government body, through Tender Committee, and in coordination with the Central Unit, shall conduct pre-qualification or post-qualification of the competitors, and pre-qualification or post-qualification shall be on objective standards and related to the technical, financial and administrative capabilities of competitors, and the nature of contractual obligations and evaluable as may be consistent with the nature of partnership project, subject of competition, the size and value thereof.**
- (2) In the case of conducting pre-qualification, in accordance with the provision of Sub-section (1), invitation for competition shall be restricted to competitors who passed pre-qualification.**
- (3) The government body shall, through Tender Committee study application of pre-qualification, as to the advertised standard and submit a grounded report thereon to the Central Unit including a recommendation with the names of qualified and non-qualified competitors to take appropriate decision, in accordance with the rules and procedures as may be specified by the regulations.**
- (4) The government body shall, through Tender Committee announce the results of qualification; provided that the number of the qualified competitors shall not be less than three, and in the case, where three competitors at least does not qualify, it may, with the approval of the Central Unit, repeat the advertisement for public invitation for qualification; as well as the Central Unit shall have the right to recommend to take as it may deem fit otherwise, in accordance with the rules and procedures as may be specified by the regulations.**
- (5) The government body shall, through Tender Committee notify non-qualified competitors of decision and reasons for their disqualification in accordance with the rules and procedures, as may be specified by the regulations.**

Preliminary meetings

- 21.(1)The government body, through Tender Committee, and in coordination with the Central Unit, may hold preliminary meetings with the qualified competitors to discuss matters related to the partnership project specifications, the conditions and other matters related thereto, in accordance with the rules and procedures, as may be specified by the regulations.
- (2) The government body shall not publish or disclose any date or information pertaining to qualified competitors expectations related to the partnership project subject of bidding, on matters of trade, technical or financial nature, and take all the necessary measures to ensure confidentiality requirements.
- (3) There shall dealt with the qualified competitors, in accordance with the basics and principles provided for by Section 18, in order to ensure equal opportunities and complete equality among them.
- (4) The government body may, before starting the procedures of bidding and with the approval of the Central Unit, amend some of the partnership project specifications and conditions of competition, as may not affect the for qualification standards; provided that the government body shall announce such amendment clearly and transparently and before sufficient time to start the procedures of bidding, in accordance with the rules and procedures, as may be specified by the regulations.

Participation in Competition by coalition

22. Unless the competition documents otherwise provided, a coalition comprising more than one competitor may participate in the competition, in accordance with the rules and procedures, as may be specified by the regulations.

Award decision announced

- 23.(1) The government body, through Tender Committee, shall invite bidders or their representatives to attend bids sorting sessions, and the regulations shall specify the rules and procedures organizing the sorting process.
- (2) The project shall be awarded to the bidder who submits the best offer, in accordance to the evaluation standard provided for, in the bidding documents.
- (3) The government body shall, through Tender Committee, present the recommendation by determining the winning bid to the Central Unit before announcing the results of the competition, or notifies the winning bidder. The Central Unit shall submit the bidding results to the Council supported by its recommendation to approve the award decision, in accordance with the rules and procedures, as may be specified by the regulations.
- (4) Subject to the provisions of Sub-section (3), the government body, through Tender Committee, and in coordination with the Central Unit, shall notify the winning bidder with the award decision, and the announcement of such decision, together with notifying other bidders whose tenders have not been accepted, with the reasons of non-acceptance, in accordance with the rules and procedures, as may be specified by the regulations.

Cancellation of Competition

- 24.(1) The government body, with the Central Unit approval, may cancel a competition, cease bidding procedures, or reject all bids and offers submitted by bidders at any time, before deciding thereon or award, in any of the following cases:
- (a) where a single bid is presented, or where only one bid remains after exclusion of other bids;

- (b) where all or the majority of presented bids are associated with substantial reservations that are inconsistent with the terms and specifications provided for in bid documents, or where they are difficult to evaluate, technically or financially;
 - (c) for public interest;
 - (d) in any other cases, as may be specified by the bid documents.
- (2) The government body shall, in all cases, issue a written statement on the reasons for competition cancellation, and the government body shall, notify the bidders of the cancellation decision, by any means, as may acknowledge the information.
- (3) No bidder in the case of competition cancellation shall claim any compensation or refund of any expenses incurred in bids preparation or presenting offers, unless otherwise provided for by the bids documents or competition cancellation decision.

Implementation guarantees

- 25. The winning bidder shall submit a final guarantee of not more than 10% of the partnership contract value, within thirty working days as of the date of being notified with the award, and the government body, with the Central Unit approval, may extend this period to a similar period; and the regulations shall specify the provisions and conditions of implementation guarantee.

Cessation period and objection guarantee

- 28.(1) The government body, after announcement of the competition results, shall be obliged with a cessation period for ten working days, during which award decision may not be approved, nor partnership contract may be signed, in order to enable bidders whose bids have not been accepted to object and grievance against award decision, in accordance with the rules and procedures, as may be specified by the regulations.
- (2) All objections shall be referred to the Partnership Projects complaint and Grievance Committee, which have been constituted under provision of Section 40.

- (3) There shall be, for presenting an objection against the award decision, to provide a bank guarantee of not less than 2% of the value of partnership contract, for the interest of the government body, in accordance with the rules and procedures, as may be specified by the regulations.

Chapter VIII

Project Company

Establishment of a Project Company

- 29.(1) A winning bidder shall establish a project company; provided that the sole object thereof, shall be the implementation of the project, subject matter of partnership, and the regulations specify type of company, value of the capital, and all the provisions related thereto, including the cases where it may be allowed to conclude other partnership contracts.
- (2) Notwithstanding the provision of Sub-section (1), the contracting body may, the Council approval and upon recommendation by the Central Unit, permit the winning bidder to implement the project subject matter of partnership without establishing a project company, where the winning bidder provide what proves his ability to implement the project depending on his available financial and technical capabilities, in accordance with the rules and procedures, as may be specified by the regulations.
- (3) The contracting body may, with the approval of the Council and upon recommendation by the Central Unit, enter into partnership with the winning bidder to establish and own a percentage of shares of the project company, in accordance with the rules and procedures, as may be specified by the regulations.

Project company obligations

- 30.(1) Without prejudice to the obligations provided for by the partnership contract, the project company shall be committed with the following:-

- (a) use of the assets pertaining to the partnership project, for the purpose for which it has been prepared, and take all procedures and measures necessary to maintain and reserve thereof;**
- (b) commitment with all the laws, and systems enforced in the State, including public health, safety and environmental conservation requirements;**
- (c) present periodic reports to the contracting body and the Central Unit on the implementation of obligations thereof under the partnership contract;**
- (d) not to sell or dispose the assets of partnership project by any means, save in accordance with partnership contract and provisions, and after obtaining a written approval from the Central Unit;**
- (e) present all documents, information and statements as may be required by the contracting body and /or the Central Unit, and cooperation with its employees or any of its advisors, and allow them access to its sites for inspection and for the affairs thereof at any time;**
- (f) not to sell or mortgage the land on which partnership project is established, waive any right or obligation as may be arise from the partnership contract, assign others to implement, or arrange for mortgage or any other corporeal right for any purpose, other than obtaining the necessary financing or re-financing for the project company save, after obtaining a prior written approval by the Central Unit, in accordance with the rules and procedures, as may be specified by the regulations;**
- (g) not to sell or mortgage the shares owned by the project company shareholders for any purpose other than financing or re-financing of the partnership project;**
- (h) not to conduct any amendment to the legal form of the project company, reduce the capital thereof, amend of shareholders shares, enter into any merger operation, or acquire , or allow**

new shareholders to be admitted; save after obtaining a prior written approval by the Central Unit ;

- (i) commitment to transfer expertise, technology and knowledge to the contracting body, train and qualify the employees thereof, on managing and operating of partnership project, as to the conditions agreed upon in the partnership contract, and in accordance with the rules and procedures, as may be specified by the regulations.**
- (2) There shall be void, every procedure or disposal carried out in contravention of the provisions of this section.**

Equality between public beneficiaries

- 31. The project company shall ensure total equality between public beneficiaries in products or services provided or made available by the partnership project, However, preferential treatment may be granted to some groups of public beneficiaries, particularly, those of equal legal positions whenever public interest requires so to do; provided that a written approval shall be obtained from the Central Unit.**

Levy of financial consideration and issuance of quality certificate

- 32.(1) The private sector or the project company may, as the case may be, collect fees or realizes revenues or financial returns from the project or any of assets, or employees thereof, in accordance with the provisions of the partnership contract.**
- (2) Notwithstanding the provision of Sub-section (1), the private sector or the project company, as the case may be, shall not receive or collect any money in consideration for the sale of products, or performing services, subject matter of the partnership contract, save for after the contracting body, in coordination with the Central Unit, issue a certificate of level acceptance of the quality of products or services, in accordance with provisions of performance measurement provided for by the partnership contract .**

Chapter IX

Provisions Pertaining to Partnership Contract

Partnership Contract Models

33.(1) The partnership shall be entered into, by one of the following methods:-

- (a) contracting in the form on which the private partner of the partnership project designs, establishes, finances, operates, and commercially benefits therefrom, and maintenance thereof; and transfer and hand over the project to the contracting body, upon expiry of the period specified in the partnership contract;
- (b) contracting in the form on which the private partner of the partnership project designs, establishes, finances, operates, and commercially benefits therefrom, and maintenance thereof; and waive and transfers completely its ownership, and hand over the project to the contracting body upon expiry of the period specified in the partnership contract;
- (c) contracting in the form on which the private partner of the partnership project designs, establishes, finances, operates; and transfers ,and hands over the project to the contracting body upon expiry of the period specified in the partnership contract;
- (d) contracting in the form on which the private partner rehabilitates the assets of the partnership project and finance the same; manages, maintain, commercially benefits therefrom, transfer and hand over the project to the contracting body upon expiry of the period specified in the partnership contract;
- (e) contracting in the form on which the private partner of the project rents the partnership project assets , manages , rehabilitates, finances , maintain, and commercially benefits therefrom; and transfers and hand over the project to the contracting body upon expiry of the period specified in the partnership contract;
- (f) contracting in the form on which the private partner of the project assumes the operational and maintenance duties;
- (g) contracting in the form of joint partnership;

- (h) contracting in the form as may be approved by the Council upon recommendation by the Central Unit;
- (2) Every one of the government bodies shall be competent to conclude partnership contracts that fall within its competence; in accordance with the rules and procedures as may be specified by the regulations.

Contents of Partnership Contract

- 34.(1) The partnership contract shall include the basic provisions that organize the partnership project, and the mutual obligations of the two parties; provided that it shall in particular, include the following provisions:-
- (a) specify the parties to the contract and their detailed data;
 - (b) nature, scope of business or services, subject matter of the partnership contract, and the conditions of implementation thereof.
 - (c) ownership of the partnership project funds, business, assets and rights associated therewith, the parties obligations, with respect to handing and taking over the partnership project funds, business and assets; and the provisions organizing the rules of the recovery thereof, and arrangements of ownership transfer and /or devolution of ownership thereof for the interest of the State;
 - (d) conditions pertaining to the partnership project's insurance policies as may be proportional with risks associated with nature, operation and exploitation thereof.
 - (e) conditions pertaining to the guarantees of proper implementation issued on favor of the contracting body, and rules and procedures related to liquidation and recovery thereof;
 - (f) mutual financial obligations of the contracting parties, including arrangements pertaining to the provision of financing and re-financing;
 - (g) responsibility of obtaining permits, licenses and approvals in connection with the implementation of the partnership project;

- (h) considerations against service performance or sale price of products, basis and rules of calculation and amendment thereof, and how to treat inflation rates;
- (i) mechanisms of distribution of the project risks and treatment of imbalances of the contract consequential to amendment of laws, or an accident, or force majeure, and basis for fixing and calculation of due compensations as may be required;
- (j) identification of methods of supervision, technical, financial and administrative follow-up which ensure proper operation, exploitation and maintenance of the partner project, and indicators of evaluation of the company project or private party performance, as the case may be;
- (k) the right of the contracting body to amend scope and volume of services or business, subject matter of the contract, and other obligations of the project company or the private party, as the case may be, and specify the basis and rules for estimating compensation where required;
- (l) commitment of the project company or the private party, as the case may be, with the conditions of health, safety and environmental protection requirements;
- (m) term of contract and procedures for extension and cases of early termination;
- (n) cases where the contracting body shall have the right to terminate the contract on its solo will and the consequential effects thereof;
- (o) the applicable law and dispute resolution mechanisms.

Term of the partnership contract

- 35.(1) The term of Partnership contract shall be specified as to what agreed upon between the contracting body and the private sector, or the project company, as the case may be; provided that it shall not exceed forty years.
- (2) Notwithstanding the provision of Sub-section (1), the Council may, according to the requirement of public interest, and upon

recommendation by the Central Unit, approve the conclusion of partnership contracts for more than forty years.

- (3) The regulations shall specify the provisions and conditions of specifying the contract term and the extension thereof.

Amendment of partnership Contract

- 36.(1) There shall not conduct any amendment on the term set out in the partnership contract, save as to the rules and limits provided for therein, or by the agreement of the parties and after obtaining a written approval by the Central Unit.
- (2) Notwithstanding the provision of Sub-section (1), the contracting body may, after obtaining a prior written approval by the Central Unit, amend any of the conditions set out in the partnership contract and the rules related to the operation or exploitation of the partnership project, including amendment of products sale prices, or collection of money in consideration for services; without prejudice to the project company or the private right, as the case may be, to obtain fair compensation, where required.

Non-permissibility of seizure

- 37.(1) There shall not seize the assets, facility, devices, tools, machinery, equipment, or anything as may be used in the operation or exploitation of the partnership project, save after obtaining a written permission therefor from the Council, and any procedure or disposal taken to the contrary, shall be deemed null and void.

Expiry of Contract

- 38.(1) The partnership contract shall expire at the expiration of its term; as it may be terminated before the expiry of such term, in the cases specified as to the provisions thereof.
- (2) Where the contract term expires or where the contract is terminated before expiry of its term, as to the provisions thereof, ownership of the partnership project assets and whatever deemed as requirements thereof, shall be vested to the State, without the need to take any

judicial proceedings, after excluding the assets that are agreed upon in the partnership contract not to be vested to the State, or in the cases where the partnership contract provides for vesting the same to the State against a consideration or a compensation, and there shall be deemed null and void any procedure or disposal taken to the contrary.

- (3) They may re-bidding the company projects which have been vested to the State, in accordance with the provisions of this Act, subject to the Council approval upon recommendation by the Central Unit, in accordance with the rules and procedures as may be specified by the regulations.

Applicable Law and Dispute Resolution Mechanism

- 39.(1) The partnership contract shall be subject to the provisions of the Sudanese Law, and the Sudanese Court shall have the jurisdiction to adjudicate disputes arising between the parties thereto.

Consider and Adjudication grievances committee

- 40.(1) The Council constitute an independent committee to be known as the, "Committee for Consideration and Adjudication of Complaints and Grievances of Partnership projects", to be competent to consider and adjudicating complaints, objections and grievances related to the bidding and award of the partnership projects, in accordance with the provisions of Chapter VII of this Act, and the decisions made thereby, shall be final and not subject to appeal.
- (2) The committee shall be consisted from five members from those possess of experience and competence.
- (3) The regulations shall state the procedures for constitution of the committee, and the membership terms thereof, and the procedures for submission of the grievances, considering and adjudication thereof.

Chapter X
Final Provisions

Publication of information pertaining to Partnership Projects

- 4 1.(1) Subject to the provision of the Right to access to Information Act , 2015, there shall provide the information related to partnership projects promptly, to any citizen at a reasonable cost upon request, in accordance with the rules and procedures, as may be specified by the regulations.
- (2) The Central Unit and the government body, as the case may be, shall publish the following information via an electronic platform, or in any other way, in accordance with the rules and procedures, as may be specified by the regulations:-
- (a) summary of the basic information for the partnership project;
 - (b) actual dates for completion of the main phases of the project;
 - (c) summary of the competition and award procedures;
 - (d) final partnership contract.

Power to make regulations, orders and rules

42. (1) The Council may make such regulations, orders and rules as may be necessary for implementation of the provisions of this Act.
- (2) The Council of Ministers shall issue the executive regulations of this Act.