

Draft Law No. () of 2022
On
Regulating of Public-Private Partnership

After reviewing:

- ◆ Emiri Decree No. (11) of 2011 On Issuance of the Financial Law of the Ajman Government and the Executive Regulation thereof;
- ◆ Federal Law No. (32) of 2021 On Commercial Companies;
- ◆ Emiri Decree No. (15) of 2012 On Department of Finance in Ajman;
- ◆ Emiri Decree No. (5) of 2017 Regarding the Financial Supervision Authority in Ajman;
- ◆ Emiri Decree No. (2) of 2018 Regarding Forming the Legislation Committee in the Emirate of Ajman; and
- ◆ Emiri Resolution No. (1) of 2019 Regarding the Financial Powers in the Ajman Government.

Based on the Legislation Committee's approval and according to the public interest, we hereby promulgate the following Law:

Article (1)
Definitions

In applying this Law, the following terms and words shall have the meanings assigned to them, unless the context requires otherwise:

Department	means the Department of Finance.
Government body	Any of the Government departments; public agencies and corporations; councils; authorities, including free zone authorities; or other entities affiliated to the Government.
Competent authority	The entity responsible for approving a Partnership Project in

	accordance with this Law.
Director General	The director general of a Government Entity, including the executive director, chief executive officer, or secretary general of that entity; or any other person holding a similar position.
Project	Any facility, service, activity, or product supervised, provided, or produced by a Government Entity.
Public sector	Includes Government Entities.
Private sector	Includes private establishments and companies.
Partnership	A contractual relationship between the Public Sector and the Private Sector, which arises in accordance with this Law, the resolutions issued in pursuance hereof. This relationship aims at implementing a Project in whole or in part to ensure quality services; and its financial, technical, or other capabilities.
Partnership Contract	A Contract concluded by a Government Entity and a Project Company, whereby the Project Company undertakes to implement a Project in accordance with this Law, the resolutions issued in pursuance hereof, and the terms of that Contract, in return for a lump sum or in return for all or part of the revenue of the Project for a specific period.
Project Company	A sole proprietorship, or a local or foreign company licensed to operate in the Emirate or country, which implements a Partnership Contract and meets the conditions stipulated in the resolutions issued in implementation hereof.
Partner	Any legal person, or a consortium of legal persons, from the Private Sector who is a party to a Partnership Contract.

Partnership Committee	A committee formed at a Government Entity in accordance with this Law.
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Article (2)

Objectives of the Law

This Law aims to:

- 1- Regulate the Partnership between the Public Sector and the Private Sector;
- 2- Encourage the Private Sector to participate in development Projects and to boost investment in various relevant fields, thus promoting economic and social development in the Emirate;
- 3- Enable the Government to implement its strategic Projects in an efficient and effective manner;
- 4- Utilise the financial, administrative, regulatory, technical, and technological potential and experience of the Private Sector, thus enabling community members to avail of quality services at the lowest cost;
- 5- Increase productivity, improve the quality of public services, and adopt efficient management practices to develop such services;
- 6- Transfer knowledge and experience from the Private Sector to the Public Sector, and train and qualify UAE national employees of Government Entities to manage and operate Projects;
- 7- Implement Projects which provide significant added value to public property, and alleviate the financing burden on the general budget of the Government in relation to the construction, operating, or maintenance costs of Projects;

- 8- Reduce the financial risk that may be assumed by the Government as a result of the implementation of high-risk Projects;
- 9- Shift the management of certain infrastructure and public services Projects from direct implementation, operation, and management to other forms of government involvement related to policy approval and quality control of public services, in accordance with governance requirements;
- 10- Boost the competitive edge of Projects in local, regional, and international markets; and
- 11- Promote governance principles for managing economic activities, and apply financial resource management procedures.

Article (3)

Scope of Application

This Law will apply to all Projects, regardless of its type, form, or activities, which are governed by a Partnership Contract between the Public Sector and the Private Sector in the Emirate, concluded by any of the government entities or any of the Private Sector companies, after the effective date of this Law and in accordance with the provisions thereof. This will not include any Contracts determined by the Ruler Representative pursuant to the resolutions issued by it in this respect.

Article (4)

Terms of Partnership

- a- A Partnership between the Public Sector and the Private Sector will be formed pursuant to a Partnership Contract and in accordance with the provisions of this Law, decisions and guides.
- b- To conclude a Partnership Contract in accordance with this Law, the relevant Project must have economic, financial, technical, and social benefits.

c- A Partnership Contract under which a Government Entity incurs expenses may only be concluded if appropriations are allocated in the budget of the Government Entity to cover these expenses.

Article (5)

Criteria for Selecting Project

When selecting Partnership Projects, the following must be taken into account:

- 1- The extent to which the Project serves the interest of the Government, and the public interest and the public benefit of members of society;
- 2- The economic feasibility of the Project and its positive influence on the approved development plans of the Emirate;
- 3- The risks, especially environmental risks that may arise as a result of implementing the Project through a Partnership;
- 4- The volume of capital investment and the technical expertise that may effectively improve the performance of public facilities and ensure quality services;
- 5- International best practices in implementing Projects through Partnerships; and
- 6- The priority and operational impact of the Project, and the extent to which it meets the needs of the Emirate.

Article (6)

Methods of Partnership

A Partnership may be formed in any of the following methods:

- 1- A Partner implements, finances, owns, reaps commercial benefits from, and operates a Project for the term agreed upon in the Partnership Contract; then assigns the Project and fully transfers its ownership to a Government Entity upon expiry of the term stipulated in the Partnership Contract;

- 2- A Partner implements, finances, reaps commercial benefits from, and operates a Project for the term agreed upon in the Partnership Contract; then assigns the benefit of the Project to a Government Entity upon expiry of the term stipulated in the Partnership Contract;
- 3- A Partner implements a Project then transfers its ownership to a Government Entity while preserving his right to operate the Project and reap commercial benefits from it for the term agreed upon in the Partnership Contract;
- 4- A Government Entity transfers the benefit of a Project to a Partner, thus allowing him to operate it and reap commercial benefits from it for the term agreed upon in the Partnership Contract; or
- 5- Any other method approved by the Ruler Representative upon the recommendation of the Government Entity and the DOF, including the maintenance, expansion, or rehabilitation of an existing Project.

Article (7)

Functions of the DOF

For the purposes of this Law, the DOF will have the duties and powers to:

- 1- Prepare a general manual containing the rules and procedures that must be followed where a Government Entity wishes to conclude a Partnership Contract;
- 2- Propose updates and developments to the legislation regulating Partnerships based on the relevant best practices, the outcomes of Partnership Projects implemented by Government Entities, and the

comments and proposals of these entities; taking into consideration the interests of the Public Sector and the Private Sector;

3- Approve the feasibility studies for the Company's projects and submitting a recommendation thereon to the ruler representative;

4- Provide support and assistance to Government Entities in the preparation and development of Partnership initiatives;

5- Contribute to creating a favourable environment to invest in Partnership Projects, in coordination with competent entities in the Emirate; and

6- Perform any other duties that are required for the achievement of the objectives of this Law.

Article (8)

Functions of Governmental Entities

For the purposes of this Law, a Government Entity will:

1- Prepare the studies required for determining the rationale behind implementing any proposed Project through partnership. These studies must cover the financial, economic, technical, and social feasibility and the beneficiaries of the Partnership Project, appropriate criteria for selecting a Partner, a Project implementation programme, and an implementation risk analysis;

2- Determine the human, financial, and technical resources required for any Project; the methods of financing that Project and contributions of both parties to the same; the distribution of Project dividends; the service charges and exemption from these charges; the intellectual property rights; and other relevant matters;

- 3- Coordinate with the Government Entities concerned in any Project to determine its impact on their own plans, and on the strategic plans of the Government in general;
- 4- Study and evaluate all financial aspects of any Partnership Contract and have these aspects approved by the ruler representative, based on the DOF recommendation;
- 5- Propose the standards that must be met by the entities with which Contracts will be concluded, and propose preliminary Partnership Contracts and their addenda;
- 6- Select qualified consultancy companies to conduct studies related to Projects;
- 7- Supervise the proper performance by Project Companies of their obligations under Partnership Contracts, and take immediate and appropriate measures to remedy any breach or omission in the performance of such obligations in a manner that ensures that Projects continue to achieve their objectives;
- 8- Report to the Financial Audit Department any financial breaches committed by a Project Company; and
- 9- Prepare quarterly reports on work progress throughout the performance of Partnership Contracts, and any obstacles hindering such performance; propose appropriate solutions to these obstacles; and submit the reports to the ruler representative.

Article (9)

Formation of Partnership Committee

a- An internal committee named the "Partnership Committee" will be formed at each Government Entity. Members of this committee will be nominated pursuant to a resolution of the Director General of that entity. the members of the Partnership Committee must include a representative from the DOF nominated by its Director General. These committees will be responsible for performing all the duties stipulated in this Law and the resolutions issued in pursuance hereof. The resolutions forming these committees will determine their terms of reference and the procedures for holding their meetings.

b- For the purposes of performing its duties, a Partnership Committee may seek assistance from any experts and specialists it deems appropriate.

Article (10)

Proposing Partnership Projects

A Partnership Project may be proposed by a Government Entity or by the Private Sector.

Article (11)

Auditing Partnership Projects

The Financial Audit Department will audit the performance of Partnership Contracts in accordance with its establishing law, this Law, the resolutions issued in pursuance hereof, the terms of these Partnership Contracts, and the legislation in force in the Emirate.

Article (12)

Criteria for Selecting Partners

a- The process of selecting a Project Partner will be subject to the principles of openness, transparency, fair competition, equal opportunity, equality, announcement of competition, and achieving the public interest. This process must be conducted in accordance with the rules and

procedures stipulated in this Law and the resolutions issued in pursuance hereof.

b- A Partner must meet the approved financial and technical standards, rules, and requirements; and must have the capabilities and competencies required for working in his field of specialisation.

c- Notwithstanding the provisions of paragraph (a) of this Article, a Government Entity may, upon the ruler repetitive approval of the competent authority recommendation, directly contract with a Project Company where the Project is solely created by that company.

Article (13)

Prequalification of Companies

Subject to paragraph (c) of Article (12) of this Law, a Government Entity must follow the prequalification procedures required to shortlist the companies eligible for entering into Partnership with that Government Entity, provided that it must comply with the provisions and procedures stipulated in this Law and the resolutions issued in pursuance hereof.

Article (14)

Preliminary Meetings

a- A Government Entity may hold preliminary meetings with prequalified Partners to discuss matters related to the preliminary specifications and conditions of a Project, and other relevant matters.

b- For confidentiality purposes, a prequalified Partner may request a Government Entity not to publish or disclose the data relating to his economic or financial forecasts which are relevant to a Partnership Project.

c- For purposes of ensuring equality and equal opportunity, prequalified Partners will be treated in accordance with the rules and principles stated in Article (12) of this Law.

d- A Government Entity may, based on valid reasons and the approval of the ruler representative, vary certain Project specifications and terms of

Partnership without affecting prequalification criteria. Such variation must be clearly and expressly announced in various media sufficient time prior to receiving the tenders.

Article (15)

Terms and Guarantees

An invitation to tender for a Partnership must contain all the details relating to the Project, including the financial, administrative, and technical requirements of the Partnership; the type of Project; the method of Partnership; the terms of participation in the Tender and the required financial guarantees to be provided by the Project Company.

Article (16)

Tender Documents

A Government Entity will prepare the Tender documents of the Project, the subject of the Partnership Contract. The Tender documents of a Project must contain:

- 1- Information on the Project, as necessary to enable bidders to prepare and submit their bids;
- 2- The Project specifications and the technical and financial requirements that must be met by bids;
- 3- Specifications of the final product and required service level, including performance indicators; safety, security, and environmental protection standards; and other standards;
- 4- The basic and supplementary terms of the Partnership Contract;
- 5- The documents, forms, and time frames related to the Partnership;
- 6- The amount of the bid bond and the performance bond;
- 7- The grounds on which submitted bids will be assessed; and
- 8- The deadline for receiving bids.

Article (17)

Tendering Process

Upon approval of a Project by the ruler representative, the Government Entity will, in accordance with the principles, rules, and procedures stipulated in the resolutions issued in implementation of this Law, invite prequalified Partners to collect the Tender documents of the Partnership Project. Bidders must be given sufficient time to submit their bids in accordance with the Tender documents of the Project.

Article (18)

Accepting Bids

To be accepted, a bid for a Partnership must meet all the technical and financial requirements and specifications stipulated in the Tender documents of the Project. Any bid that does not meet these requirements and specifications will be disqualified.

Article (19)

Consortiums of Companies

a- A separate bid must be submitted by each company, a bid may be submitted by a consortium of prequalified companies in the name of this consortium, unless the Tender documents stipulate otherwise.

b- No member of the consortium may submit a separate bid directly or through another consortium; and no bids may be submitted by a company in which a member of this consortium owns majority of the capital or by a company which is controlled by that member, unless the Tender documents stipulate otherwise or the Ruler Representative approves otherwise.

Article (20)

Assessment of Bids

The Partnership Committee will review and assess the technical, financial, and legal aspects of bids; determine accepted and disqualified bids; and assess their conformity to the announced terms and specifications. Each

bid will be awarded an assessment score in accordance with the rules and procedures stipulated in the Tender documents of the Project.

Article (21)

Bid Opening

A Partnership Committee will invite bidders or their legal representatives to a session in which bids are opened. A Project will be awarded to the bidder who submits the best bid, from a technical and financial perspective, after applying the relative weight factors of each of the financial and technical elements set out in the Tender documents of the Project.

Article (22)

Competent authority of Awarding and Final Approval

The award and final approval of the winning bid for the Partnership Project shall be carried out according to the following authorities:

- a- The Director General of the government entity in the event that the Partnership Contract achieves revenue or financial savings.
- b- The Director General of the government entity in the event that the total cost to be borne by the government entity for the Partnership Contract does not exceed 20 million Dirhams.
- c- DOF in the event that the total cost to be borne by the government entity for the Partnership Contract exceeds 20 million Dirhams and up to 50 million Dirhams.
- d- Ruler Representative in the event that the total cost to be borne by the government entity for the Partnership Contract exceeds 50 million Dirhams.
- e- The government entity may not take any action to contract with the partner before the project is approved by the competent authority.

Article (23)

Cancellation of Tenders

a- A Tender for a Partnership Project may be cancelled by the Partnership Committee in the following cases:

1- Where a sole bid is submitted, or only one (1) bid remains after disqualifying unacceptable bids;

2- Where all or most of the bids contain reservations that contradict with the prescribed terms and specifications, and these bids are difficult to assess technically or financially;

3- Where the lowest bid unjustifiably exceeds the initial estimate of the Government Entity; or where, for revenue-generating Contracts, the value of the highest bid is unreasonably less than that estimate; or

4- Where the public interest requires cancelling the Tender.

b- The Tender cancellation decision must be reasoned, and no bidder will be entitled to claim any compensation as a result of the cancellation.

c- Notwithstanding the provisions of paragraph (a) of this Article, a Partnership Committee may, in special cases, upon the approval of the Ruler Representative and where the public interest so requires, accept a sole bid or a bid whose value exceeds, or is below, the initial value estimated by the government body.

Article (24)

Establishment of Project Companies

a- The Government Entity responsible for a Project may establish a Project Company jointly with the Private Sector. This company must take the form of a limited liability company.

b- Where a Government Entity does not wish to participate in the Project Company, the bidder to whom the Partnership Contract is awarded must establish a Company called "Project Company", whose sole purpose is to implement the Project covered by the Partnership Contract. The resolutions issued in pursuance of this Law will determine the requirements that must be met by the Project Company.

c- Notwithstanding paragraph (b) of this Article, a Government Entity may, subject to the approval of the DOF, authorise a bidder who is

awarded a Partnership Contract to implement the Partnership Project without having to establish a Project Company where that winning bidder is, under the then current situation, capable of implementing the Project using his own financial and technical resources, and of providing sufficient financial guarantees. In this case, the Partner will be treated as a Project Company.

Article (25)

Contents of Partnership Contract

A Partnership Contract must contain the basic provisions governing the Partnership, and the mutual obligations of the parties to the Contract, which mainly include:

- 1- The type and scope of the works and services that must be performed and executed by the Project Company;
- 2- The ownership of assets and intellectual property rights pertaining to the Project, the obligations of parties with respect to the handover of the Project site, and the provisions governing the transfer of ownership upon completion of the Project;
- 3- The responsibility for obtaining licences, permits, and approvals;
- 4- The mutual financial and technical obligations of both contracting parties, and the relevant financing methods;
- 5- The sale prices of products, or charges of the services, provided under the Project; and the principles and rules of determining and changing these prices or charges;
- 6- The quality assurance methods; the financial, administrative, and technical audit and supervision tools required for operating, utilising, and maintaining the Project; and the performance indicators of the Project Company;
- 7- The rules regulating the right of the Government Entity to revoke or amend the Partnership Contract and the compliance by the Project Company with these amendments; and the grounds and methods of compensation in the event of such a revocation or amendment;

- 8- The types and amounts of insurance covering the Partnership Project and its operational and utilisation risks, the performance guarantees provided to the Government Entity, and the provisions and procedures related to refunding these guarantees;
- 9- Determine the grounds for distribution of Project risks in cases of force majeure, emergency, or material hardships; and the grounds for assessment of the relevant compensation;
- 10- The term of Contract, cases of early partial or complete termination, and rights and obligations of the contracting parties;
- 11- The cases where the Government Entity may unilaterally terminate the Contract;
- 12- The procedures and penalties that may be imposed on the Project Company if it fails to meet its contractual obligations;
- 13- Regulate the rules and procedures for recovering the Project upon expiry, unilateral termination, or early or partial termination of the Contract;
- 14- The procedures for ensuring the continuity of the Project and works covered by the Partnership Contract upon expiry or revocation of the Contract, or upon failure by the Project Company to meet its contractual obligations;
- 15- The provisions related to using the services of the employees of the Government Entity by the Project Company, and those related to determining the percentage of UAE nationals in the company;
- 16- The measures that must be taken by the Project Company to preserve the environment;
- 17- The specifications of the end products or service levels that the Project Company must comply with, including any performance indicators; safety, security, and environmental protection standards, and other standards; or electronic systems and programmes that must be used by the Project Company; and
- 18- Any other obligations determined by the ruler representative, in accordance with the resolutions issued by these entities in this respect.

Article (26)

Term of a Partnership Contract

a- The term of a Partnership Contract will be agreed upon by the Government Entity and the Project Company. This term may not exceed thirty (30) years commencing from the date on which the Contract is executed.

b- Notwithstanding paragraph (a) of this Article, the Ruler Representative may, for the exigencies of public interest and upon the recommendation of a Partnership Committee, authorize the conclusion of Partnership Contracts for terms in excess of thirty (30) years.

Article (27)

Service Charges

No Project Company may operate a Project or collect any charges, fees, tariffs, prices, or any other amounts of money whatsoever in return for the works or services agreed upon under the Partnership Contract unless in accordance with the provisions stipulated in this Law and the resolutions and guides issued in pursuance hereof and pursuant to the Partnership contract, and unless the Government Entity issues a certificate of acceptance of the completed works or services in accordance with the performance level agreed upon in the Partnership Contract.

Article (28)

Equality amongst Beneficiaries

a- A Project Company must not discriminate amongst beneficiaries of the services provided by the Project, and must comply with the legislation regulating the provision of service and with the relevant terms of the Partnership Contract.

b- A Project Company may, upon the request of the Government Entity and DOF recommendation, subject to obtaining the approval from the

Ruler Representative and where the public interest so requires, adopt preferential treatment and terms for certain categories of beneficiaries.

Article (29)

Amendments to Partnership Contracts

A Partnership Committee may, subject to obtaining the approval from the Ruler Representative and within the limits agreed upon in that Partnership Contract or where the public interest so requires, amend a Partnership Contract in writing pursuant to a Contract addendum concluded for this purpose.

Article (30)

Emergencies

A Partnership Contract may, in emergencies, be amended in accordance with the rules and principles stipulated in that Contract and the resolutions issued in implementation of this Law.

Article (31)

Obligations of Project Companies

In addition to the obligations stipulated in this Law, the resolutions issued in pursuance hereof, and the terms of the Partnership Contract, a Project Company must:

- 1- Not dissolve or liquidate itself, change its legal form, decrease its capital, or be assigned to a third party, unless it first obtains the relevant approval of the ruler representative;
- 2- Protect, maintain, and preserve the assets of the Project and use them only for their intended purpose;
- 3- Not sell the Project establishments, assets, and moveable and immovable property it owns under the Partnership Contract. This will not apply to any sale conducted in implementation of a replacement and renovation programme, in accordance with the terms of the Partnership

Contract and after first obtaining the relevant approval from the ruler representative;

4- Submit all the documents, information, and data required by the ruler representative, or the Financial Audit Department; cooperate with their employees; and provide them with access to its sites for inspection at any time;

5- Transfer knowledge and expertise to the Government Entity, and train and qualify the employees of that entity as agreed upon by the parties in this respect;

6- Submit periodic reports to the Government Entity on the Project implementation, including any construction works, provision of supplies, development, operation, maintenance, management, and other work required by the Government Entity;

7- Comply with the environmental and health standards, and meet the requirements for the safety of Project workers and beneficiaries; and

8- Not enter into any Contract with any sub-contractors unless it first obtains the relevant written approval from the Government Entity. This Contract must not affect the obligations of the Project Company prescribed by this Law, the resolutions issued in pursuance hereof, and the terms of the Partnership Contract.

Article (32)

Breach of Obligations

Where a Project Company commits a material or gross breach of its obligations, or fails to meet the quality standards prescribed by this Law and the resolutions issued in pursuance hereof, or prescribed by a Partnership Contract, the Government Entity may, without prejudice to its right to claim compensation and impose the penalties prescribed by the Partnership Contract, implement that Partnership Contract by itself or through any other party it deems appropriate, after notifying the Project Company of its breach or omission and failure by the Project Company to

remedy that breach or omission within the time frame prescribed in the notification .

Article (33)

Due Diligence of Project Companies

Without prejudice to the functions of the Financial Audit Department, a Government Entity will follow up the implementation of, and provision of supplies to, the Project and the provision of services under the Partnership Contract; and will ensure that prescribed quality standards are met. For this purpose, it may, in accordance with the terms and provisions of the Partnership Contract and the legislation in force in the Emirate, appoint representatives to monitor the implementation of the Project. A Government Entity must submit periodic work progress reports to the ruler representative, in accordance with the procedures, rules, and time frames stipulated in the resolutions issued in implementation hereof.

Article (34)

Governing Law

a- A Partnership Contract and all its terms, rules, and obligations will be governed by the provisions of this Law and the resolutions and guides issued in pursuance hereof. Where the Partnership Contract is silent, the legislation in force in the Emirate will apply.

b- Exception to paragraph (a), in special cases and upon the recommendation of the Legal Affairs Department of the Government of Ajman and the approval of, to agree in the Partnership Contract to settle the disputes arising thereof through Arbitration.

Article (35)

Financing Project Companies

A Government Entity may, upon obtaining the approval of Ruler Representative and subject to the legislation in force in the Emirate, authorize a Project Company to enter into Contracts with financial

institutions to finance the works and activities of the Project Company, in accordance with the principals and rules provided in the resolutions and guides issued in implementation hereof.

Article (36)

Grievances

a- Any affected party may submit a written grievance to the DOF against any decision or procedure taken by a Government Entity against him under this Law, the resolutions issued in pursuance hereof, or the Partnership Contract, within thirty (30) days from the date on which the contested decision or procedure is taken. The grievance must be accompanied by supporting documents. The DOF must review the grievance and submit its recommendations to the ruler representative.

b- The Ruler Representative must render the appropriate decision in this respect, which shall be final.

Article (37)

Issuing Implementing Resolutions

The Ruler Representative will issue the resolutions and guides required for the implementation of the provisions of this Law.

Article (38)

Repeals

Any provision in any other legislation will be repealed to the extent that it contradicts the provisions of this Law.

Article (39)

Publication and Commencement

This Law will be published in the Official Gazette and will come into force sixty (60) days after the date of its publication.