

Disclaimer: this document is an unofficial English translation of the original Arabic text of Law No 116 of 2014 published in the Official Gazette No. (1197) dated (17 / 08 / 2014). This unofficial English translation is only provided for guidance and the Arabic text is the only one which should be relied upon. In the event of any contradiction or discrepancy between the English and Arabic versions or in the event of any ambiguity in the interpretation of the Law, the original Arabic version shall prevail.

Law No 116 of 2014

Regarding Public Private Partnerships

Having reviewed:

- the Constitution, and;
- Emiri Decree No. 5 of 1959 regarding Real Estate Registration law, and any amendments thereto, and;
- Emiri Decree No. 12 of 1960 regarding the law regulating the Legal Advice and Legislation Department of the Kuwaiti Government, and any amendments thereto, and;
- Law No. 4 of 1962 regarding Patents, Designs and Industrial Models, and any amendments thereto, and;
- Law No. 30 of 1964 establishing the State Audit Bureau, and any amendment thereto, and;
- Law No. 37 of 1964 regarding Public Tenders, and any amendments thereto, and;
- Law No. 18 of 1969 regarding the Delimitation of the Public Domain outside of the Public Demarcation Line, and any amendments thereto, and;
- Decree-Law No. 31 of 1978 regarding the rules for the Preparation of the Public Budgets and Monitoring their implementation and the State's final account, and any amendments thereto, and;

- Decree-Law No. 15 of 1979 regarding Civil Service, and any amendments thereto, and the Decree issued on 04/04/1979 regarding the Civil Service Regime and its amendments, and;
- Decree-Law No. 67 of 1980 regarding the Civil Code, and any amendments thereto, and;
- Decree-Law No. 68 of 1980 regarding the Commercial Code, and any amendments thereto, and;
- Decree-Law No. 105 of 1980 Regarding the State Property Regime, and any amendments thereto, and;
- Law No. 94 of 1983 establishing the Public Authority for Agriculture Affairs and Fish Resources, and any amendments thereto, and;
- Law No. 1 of 1993 regarding the Protection of Public Funds, and any amendments thereto, and;
- Law No. 47 of 1993 regarding Housing Welfare, and any amendments thereto, and;
- Law No. 21 of 1995 establishing the Public Authority of Environment, and;
- Law No. 11 of 1995 regarding Judicial Arbitration with respect to Civil and Commercial Matters, and any amendments thereto, and;
- Law No. 27 of 1995 regarding the Contribution of the Private Sector to the Development of State-owned Lands for Housing Welfare purposes, and any amendments thereto, and;
- Law No. 56 of 1996 regarding the Industrial Code, and any amendments thereto, and;

- Law No. 66 of 1998 regarding the Annulment of the Provisions Prohibiting the Submission of certain Public Authorities and Institutions to the Control of the State Audit Bureau or the Public Tenders Law, and;
- Law No. 64 of 1999 regarding Intellectual Property Rights, and any amendments thereto, and;
- Law No. 19 of 2000 regarding the Support and Promotion of National Labor to Work in Non-Governmental Entities, and any amendments thereto, and;
- Law No. 39 of 2002 regarding the provisions pertaining to the Protection of the State's Real-Estate Property Rights, and any amendments thereto, and;
- Law No. 5 of 2003 ratifying the Gulf Cooperation Council's Unified Economic Agreement, and;
- Law No. 5 of 2005 regarding Kuwait Municipality, and;
- Law No. 7 of 2008 regarding the Regulation of Build, Operate and Transfer (BOT) Operations, and the Amendment of certain Provisions of the Decree-Law No 105 of 1980 on the Regulation of State Property Regime, and any amendment thereto, and;
- Law No. 9 of 2010 regarding the Issuance of the State's Development Plan (2011/2012 – 2012/2013 – 2013/2014), and;
- Law No. 37 of 2010 regarding the Regulation of Privatization Programs and Transactions, and;
- Law No. 39 of 2010 regarding the Incorporation of Kuwaiti Joint-Stock Companies to Undertake the Building and Execution of Electrical Power and Water Desalination Plants in Kuwait, and any amendments thereto, and;
- Law No. 40 of 2010 regarding the Incorporation of Kuwaiti Joint-Stock Companies to Undertake the Design, Execution, Operation and Maintenance of Labor Cities under Build, Operate and Transfer system, and;

- Decree-Law No. 24 of 2012 regarding the General Anti-corruption Authority and Special Provisions in connection with Financial Disclosure, and;
- Decree-Law No. 25 of 2012 regarding the Companies Law, and any amendments thereto, and;
- Law No. 116 of 2013 regarding the Promotion of Direct Investment in the State of Kuwait, and;
- Decree No. 145 of 2008 regarding the establishment of the Higher Committee for Projects Built on State-owned Real Property , and;
- Decree No 146 of 2008 regarding the Establishment of the Partnerships Technical Bureau, amended by Decree No 8 of 2009;

The National Assembly approved the following Law, and hereby endorses and promulgates it:

DEFINITIONS

Article 1

In the application of this Law, each of the following terms shall have the meaning hereby assigned to it:

1. **"Public Private Partnership Project" or "PPP Project"**: a project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service, procured by the Authority in cooperation with the Public Entity and in accordance with the PPP Model after the approval of the Higher Committee, provided it does not contradict with the provisions of Articles 152 and 153 of the Constitution.
2. **"Public Private Partnership Model" or "PPP Model"**: a model whereby a private Investor invests in State-owned real property – if required– in one of the projects procured by the Authority in collaboration with one of the Public Entities after signing an agreement with the Investor to implement or build or

- develop or operate or rehabilitate a service or an infrastructure project, and to provide financing thereto and operate or manage and develop the project, for a specified term, after which the project shall be transferred to the State; the foregoing shall be carried out in one of two forms: 1) the implementation of the project in consideration for fees – for services or works performed - to be paid to the Investor by the beneficiaries or by the Public Entities who have entered into an agreement with the Investor, and whose objectives are in compliance with the project or by both the beneficiaries and the Public Entities; and 2) the purpose of the project is for the Investor to implement a project with strategic importance to the national economy and to exploit it for a specified term. In both cases, the Investor shall pay a fee for the use of any State-owned real property allocated for the project.
3. **"Concept"**: a concept for a PPP Project comprising an initial feasibility study, in line with the State's strategy and its development plan, proposed by a natural or a legal person, either Kuwaiti or non-Kuwaiti;
 4. **"Initiative"**: an innovative and creative Concept of a PPP Project, unprecedented in the State of Kuwait, approved by the Higher Committee, based on a comprehensive feasibility study and submitted by the Concept proposer to the Authority, providing an economic return or social benefits in line with the State's strategy and development plan.
 5. **"Distinguished Project"**: a PPP Project approved by the Higher Committee, based on a comprehensive feasibility study presented by the Concept proposer and having an economic return or a social benefit that is in line with the State's strategy and development plan.
 6. **"Higher Committee"** or **"HC"**: the Higher Committee for PPP Projects undertaking the powers and functions of the Authority's board of directors.
 7. **"Authority"**: Kuwait Authority for Partnership Projects "KAPP".
 8. **"Public Sector"** or **"Public Entities"**: include any government, Ministry or Department, or any public entity with a supplementary or an independent budget, that enters into an agreement with a private Investor to carry out a project in pursuance of the PPP Model and in compliance with the provisions of this Law or that participates in the investment through a portion of the

shares of the public joint stock company established for the implementation of the PPP Project.

9. **"Investor"**: a private local or foreign legal person, or several private legal persons forming a Consortium, whose qualification was approved by the Higher Committee, to submit a proposal for a PPP Project.
10. **"Preferred Investor"**: the Investor with whom it was decided to negotiate, in accordance with this Law, as the submitter of the best proposal in accordance with the Terms of Reference on the basis of which the project was procured for investment.
11. **"Successful Investor"**: the Preferred Investor with whom the negotiations successfully lead to a final agreement for the implementation of the PPP Project.
12. **"Contracting Investor"**: the Successful Investor with whom the Partnership Agreement(s) are executed, either directly or by acquiring shares in the Project Company.
13. **"Consortium"**: the grouping of several private local or foreign legal persons, the qualification of whom was approved by the Higher Committee for the submission of an offer for one of the PPP Projects, and who shall form a consortium company to implement the project or to acquire shares allocated to the Successful Investor in accordance with the provisions of this Law.
14. **"Project Company"**: the company established for the implementation of one of the PPP Projects procured in accordance with the provisions of this Law.
15. **"Lenders"**: institutions, companies, banks and credit agencies, which have among their objectives the investment and the financing of projects or the transfer of funds for the purpose of lending.
16. **"Financial Close"**: the date on which the financing agreement is entered into with the Project Company for the implementation of the project.

17. **"Public Private Partnership Agreement" or "PPP Agreement"**: the set of agreements executed for the implementation of a PPP Project between the Public Entity and the Project Company in accordance with this Law.
18. **"Terms of Reference" or "ToR"**: the set of terms drafted by the Public Entity in collaboration with the Authority according to the nature of each project and approved by the Higher Committee according to which interested Investors shall submit a proposal to compete on a PPP Project being procured in compliance with the provisions of this Law.
19. **"Competition"**: the process approved by the Higher Committee, to procure the PPP Project either through a competitive bidding process or a competitive tender process ensuring fairness and transparency. Under a competitive bidding process, the Project shall be awarded to the party offering the highest return to the State in accordance with the Terms of Reference of the project. Under a competitive tender process, the Preferred Investor shall be selected based on the weighted technical and financial criteria indicated in the formula provided for in the Terms of Reference, taking into account the high quality and lowest cost of the service, as well as financial, technical and legal risks and other factors that need to be considered in PPP Projects.
20. **"Total Cost"**: capital expenditure(s) for implementing the project or preparing it for operation, in order to determine the method according to which the PPP Project shall be procured.

THE HIGHER COMMITTEE AND ITS COMPETENCES

Article 2

In accordance with this Law, a Higher Committee called the "Higher Committee for Public-Private Partnership Projects" shall be established by a decree (and shall replace the Higher Committee for projects built on state-owned property established by Decree No 145 of 2008), and shall assume the powers and authorities of the Authority's board of directors provided for under this Law. The Higher Committee shall be chaired by the Minister of Finance and shall consist of the following members:

1. Ministers holding the following ministerial portfolios:

- a. Public works;
 - b. Commerce and industry;
 - c. Electricity and water;
 - d. Municipality;
2. The Director General of the Environment Public Authority.
 3. The Director General of the Authority, as member and rapporteur.
 4. Three experienced specialists appointed by the Council of Ministers from among State's employees.

The Higher Committee shall develop bylaws organizing its meetings and decision making process.

A representative of the relevant Public Entity relating to the PPP Project shall be invited to meetings without having a voting right.

The decisions of the Higher Committee shall only be effective upon their approval by the Minister of Finance.

Article 3

The Higher Committee shall have the following competences:

1. Setting the general policies for projects and initiatives of strategic importance to the national economy, identifying priorities and approving detailed documentation related thereto.
2. Approving the request of the relevant Public Entity for the procurement of PPP Projects in accordance with the PPP Model and proposing PPP Projects to the Public Entities.
3. Approving the Authority's proposed budget and final accounts before submission of the same to the competent authorities.

4. Approving the financial and administrative statutes as well as the Authority's employees' regulations and its organizational structure.
5. Identifying the relevant Public Entity which shall participate in the procurement of the project with the Authority, in preparation for the execution of the PPP Agreement by the Public Entity for the monitoring, implementation and operation of the project.
6. Approving the requests for the allocation of land necessary for the implementation of PPP Projects in coordination with the competent authorities.
7. Approving the studies and Concepts of PPP Projects and approving the procurement thereof in accordance with the PPP Model.
8. Approving the Successful Investor based on the recommendation of the Authority.
9. Approving the PPP Agreements to be executed by the Public Entity.
10. Deciding upon the request of the contracting Public Entity for contract termination (including for public interest).
11. Examining the semi-annual report of PPP Projects.

And it shall also exercise all the other competences stipulated in this Law.

THE AUTHORITY AND ITS COMPETENCES

Article 4

A public authority called “Kuwait Authority for Partnership Projects” shall be established and shall be attached to the Minister of Finance.

Without prejudice to the provisions of Articles 5 and 38 of Law No. 15 of 1979, the Authority shall have a body of employees and such employees shall be appointed in accordance with the rules set by the Higher Committee in exception to the Civil Service Law and its regime, including the rules of appointment and promotion, the

disciplinary sanctions, the salaries and in-kind and monetary bonuses granted to the employees of the Authority. The Minister of Finance shall issue, within six months as of the date of entry into force of this Law, the required decisions for the transfer of whom he deems appropriate from the Partnership Technical Bureau employees to the Authority.

The Authority shall have a supplementary budget, with its fiscal year starting with the State's fiscal year and ending on the end thereof, provided that the first fiscal year shall start at the date of entry of this Law into force and shall end at the end of the fiscal year. The Authority's resources shall be formed by the amounts allocated to it by the State in the public budget and the fees for the services it renders in compliance with the provisions of this Law.

Article 5

The Authority shall have a Director General who represents it in its relations with third parties and before judiciary authorities. The Council of Ministers shall issue a decision appointing the Director General and determining his tier and his allocations based on the nomination proposed by the Minister of Finance, for a term of four years renewable once.

The Director General shall have one or more assistants appointed by decree based on the nomination of the Minister of Finance for a term of four years, renewable for no more than two terms, and the Director General may delegate his powers to any of his assistants.

The Director General of the Authority shall carry out the competences of the Minister in the affairs related to the employees of the Authority and those working therein.

The Director General shall submit to the Higher Committee, the estimated budget for the income and expenses of the Authority, and its final account, as well as a semi-annual report of the work performed by the Authority, and any other reports and studies required by the Higher Committee.

The Director General shall be responsible for the implementation of the general policies, regulations and decisions issued by the Higher Committee and his actions undertaken in the management and administration of the Authority.

Without prejudice to the provisions of this Law, the Director General and the employees of the Authority as well as their spouses or relatives of first degree are

prohibited from having any direct or indirect personal interest in any project or service rendered by the Authority and they shall disclose any such interest, whether related to them, to their spouses or to their relatives of first degree.

Article 6

The Authority shall collaborate and cooperate with the Public Entities for the implementation of PPP Projects in compliance with the provisions of this Law, and shall carry out the following:

1. Conduct surveys and preliminary studies to identify projects that may be procured under this Law and submit reports regarding the same to the Higher Committee.
2. Review and study projects and Initiatives prepared by the Public Entities or Concept proposer and submit appropriate recommendations regarding the same to the Higher Committee.
3. Assess the comprehensive feasibility studies of PPP Projects and proposed Concepts, prepare and complete these studies as needed, submit appropriate recommendations in relation to the same to the Higher Committee in preparation for the procurement of the project.
4. Prepare a guidebook for PPP Projects.
5. Set the mechanism for the submission of Initiatives as well as their methods of evaluation and procurement, in accordance with the provisions of this Law.
6. Set out approaches to follow up and evaluate the performance of approved PPP Projects.
7. Develop contract templates, including required terms and provisions, to be submitted to the Higher Committee for approval.
8. Prepare the legal drafting of PPP Agreements and the Terms of Reference thereof.

9. Submit recommendations to the Higher Committee for the approval of the Successful Investor after a successful negotiation.
10. Incorporate public joint-stock companies for the implementation of PPP Projects and determine the capital thereof in accordance with the provisions of this Law.
11. Develop PPP Projects programs and follow up on their completion and issue necessary decisions in relation thereto.
12. Compile and submit a semi-annual report on PPP Projects to the Higher Committee for its approval, prior to the Minister of Finance presenting the same to the Council of Ministers.
13. Follow up on the implementation of PPP Agreements and work on overcoming implementation obstacles in collaboration with the entity under which the project is subjected.
14. Propose the exemption of the project from taxes and custom duties and raise such recommendation to the Higher Committee.

And it shall also exercise all other competences stipulated in this Law.

PROJECTS EXISTING BEFORE THE ENTRY OF THIS LAW INTO FORCE

Article 7

1. The implementation of agreements and licenses in relation to State-owned real property in accordance with the partnership model applicable thereto prior to the entry of this Law into force, shall resume in accordance with the terms of such agreements and licenses until the expiry of the term stated in the agreement or until the date on which the contract is terminated (including for public interest). Upon the entry of this law into force, no amendment may be introduced to agreements or licenses of such projects, nor may they be renewed or extended, in contradiction with this Law.

2. Expired agreements and licenses may be extended once in accordance with their respective provisions for a period not exceeding one year as a transition period and subject to the approval of the Higher Committee.
3. Upon the expiry of the agreement or the license, all real property, buildings and facilities developed in accordance with such agreement or license shall be transferred to the State as of the expiration date of the agreement or the license or any renewal of either of them in accordance with their terms.
4. The management or the management and development of projects transferred to the State shall be re-procured in accordance with Article 30 of this Law.

ANNOUNCEMENT AND PROJECTS PROCUREMENT PROCEDURES

Article 8

The selection of the Investor shall be subject to the principles of transparency, openness, freedom of competition, equal opportunity and equality in accordance with the rules and procedures provided for under this Law and its executive regulations.

The Authority shall announce the projects approved by the Higher Committee for procurement in accordance with the PPP Model, in the Official Gazette and at least two Kuwaiti dailies, both in Arabic and English, as well as other local and international media that are convenient to the nature of the project and through announcement on the website of the Authority.

The announcement shall include the Public Entity identified as responsible for the project, a short description of the project and its objectives, incentives to be provided to the contracting party, the PPP Model, its term and the deadline to receive the project documentation and to apply for qualification and the deadline for the submission of proposals in accordance with the qualification documents and the Terms of Reference and other related documents.

The executive regulations shall determine the announcement proceedings and the requests for expression of interest.

Article 9

In exception to Law No 37 of 1964 on Public Tenders, the executive regulations shall regulate - in addition to the provisions required under this Law - the procurement and award procedures; the rules and procedures for the submission of proposals and their technical and financial evaluation and the competent authority to undertake such evaluation; the procedures for opening the envelopes and the essential documents that shall be submitted within each envelope and the pre and post qualification; the authority competent to undertake the qualification process and resolve objections as to its decisions; the procedures and the deadlines; and the rules and procedures of competitive dialogue.

INCORPORATION OF THE PROJECT COMPANIES

Article 10

The Authority or the Successful Investor shall establish the Project Company, with the main purpose of implementing the announced project and to which all the Successful Investor's rights and obligations shall be transferred.

The capital for the establishment of the Project Company shall be determined in light of the offer presented in the Successful Investor's proposal.

The type of the PPP Model to be procured, the mechanisms for the procurement and the implementation of the project shall be determined based on the approval of the Higher Committee and in accordance with the provisions of this Law.

Article 11

Any Consortium which is awarded a project that was procured in accordance with the provisions of this Law shall establish one or more consortium company(ies) in accordance with the laws of the State of Kuwait and according to the needs and requirements of the project. The Partnership Agreement may not be entered into until such consortium company(ies) has been established.

When a public joint stock company is required to be incorporated, the consortium company shall own the shares allocated to the Investor in such company which has been procured in accordance with the provisions of this Law and all the rights and obligations of the Successful Investor shall be transferred thereto.

Article 12

The Authority, in collaboration with the Public Entity, shall procure the PPP Projects in which the Total Cost does not exceed sixty million Kuwaiti Dinar (60 million KWD) through Competition between Investors willing to invest in the project in compliance with the provisions of this Law and the Successful Investor shall establish the Project Company.

Article 13

A Partnership Project with a Total Cost exceeding sixty million Kuwaiti Dinar (60 million KWD) shall be procured in a Competition between Investors willing to invest in the project.

The Authority shall establish a public joint-stock company following the procurement of the project and selection of the Successful Investor, and shall distribute its shares as follows:

1. A percentage of shares no less than six percent (6%) and no more than twenty-four percent (24%) shall be allocated to the Public Entities entitled to acquire such shares.
2. A percentage of shares no less than twenty-six percent (26%) of the shares shall be allocated to the Successful Investor for subscription in accordance with this Law, taking into account the percentage of shares allocated to the Initiative proposer under Article 20 of this Law.
3. Fifty percent (50%) shall be allocated for subscription through an initial public offering to living Kuwaitis listed in the register of the Public Authority for Civil Information on the date of the invitation to pay the price of the shares in compliance with the provisions of the following Article.

Article 14

The Authority shall subscribe to the shares allocated to Public Entities and Kuwaitis, and shall have all the shareholders' rights relating to the shares it has subscribed to on their behalf, unless the Higher Committee decides that the Public Entity shall subscribe directly to the shares of the company.

The ownership of and the subscription by the Authority to the shares of a company incorporated in compliance with the provisions of the previous clause or its management on behalf of third-parties shall not result in considering the assets of the company as public assets in accordance with Law No. 1 of 1993 regarding the protection of public assets.

Upon full operation of the project, the Authority shall:

1. Invite the Public Entities and Kuwaitis on behalf of whom the Authority subscribed to pay the price of such subscription to the State, including the nominal value of the shares and the issuance fees, without any further amounts; the invitation shall be made in the Official Gazette and Kuwaiti media channels determined in the decision to issue the invitation, in accordance with the procedures and method provided for in the executive regulations of this Law, provided that the subscription price is paid within sixty (60) days from the first day of the month following the month in which the invitation for subscription was issued.
2. The shares shall be transferred in the names of each of the Public Entities and Kuwaitis who paid the price of the shares allocated to them upon the crediting and collection of such value.

Public Entities and citizens shall be deprived from their right to the shares for which they have not paid the price within the period prescribed by this Article.

Article 15

The Authority shall offer the shares for which the price has not been paid within the period prescribed by the previous Article, as well as the fractional shares resulting from the distribution process, for sale based on their market value to Public Entities, the Investor or on the stock market, as the Authority deems fit. The surplus over the nominal value of the shares resulting from their sale shall be transferred to the State's public treasury.

If the shares could not be sold in accordance with the terms of the previous paragraph, then, such shares shall remain registered in the name of the Authority on behalf of the State until disposal thereof.

Article 16

In exception to the provisions of Article 13 of this Law, the Council of Ministers may, upon a proposal made by the Higher Committee, issue a justified decision to procure certain development projects of a special nature the Total Cost of which as estimated in the comprehensive feasibility study does not exceed two hundred fifty million Kuwaiti Dinar (250 million KWD) for Competition between Investors.

The Successful Investor undertakes to establish the Project Company.

If the Total Cost exceeds such amount, a Kuwaiti public joint stock company shall be established in accordance with the provisions of Article 13.

Article 17

Negotiations may be carried out with the Preferred Investor for certain clarifications and details regarding the technical and financial requirements, however, such negotiations may not include any contractual terms considered non-negotiable according to the Terms of Reference. No modification may be allowed regarding the technical and financial criteria according to which the proposals were evaluated.

Should the negotiations with the Preferred Investor be unsuccessful, the investor(s), based on their ranking order, shall be invited to negotiate on the same basis until a final agreement is reached with one of them in accordance with the terms of the PPP Agreement; otherwise, they will all be rejected. The Public Entity shall not resume negotiations with any investor with whom negotiations were ended pursuant to the provisions of this paragraph. The foregoing shall not prejudice the right of the State to cancel the procurement or re-procure the project, provided there is a justification for any decision leading to the exclusion of the Preferred Investor, the cancellation of the procurement or re-procurement of the project.

INVESTMENT TERM AND TRANSFER OF THE PROJECT TO THE STATE

Article 18

The term of the investment in PPP Projects procured in accordance with this Law shall be determined in the Terms of Reference taking into account the nature of the project and its requirements.

The term of the investment in projects procured in accordance with this Law shall not exceed fifty (50) years starting as of the date stated in the agreement for the completion of construction, installation and development works.

In the event that the project is being implemented on State-owned property, the term of the agreement, and the value and term of the usufruct right over the land shall be determined in advance in the Terms of Reference, and the term of the usufruct right over the land shall be aligned with the investment's term. In such case, the value of the usufruct right shall be evaluated in accordance with the nature of the project, its usage and the feasibility study.

The agreements shall determine the assets to be owned by the Investor amongst the assets of the PPP Project, and shall determine as well any State-owned assets allocated to the project for the agreement's term, and any assets added thereto during the term of the project.

Upon expiry of the agreement's term, the ownership of the project and facilities shall be transferred to the State along with any and all its components at no cost or compensation, excluding the assets owned by the Investor as set out in the agreements, which shall not be transferred to the State or which may be transferred to the State for a specified price or compensation. The agreement shall regulate the liquidation of the project and its transfer to the State.

Any agreement in contradiction with the provisions of this Article shall be considered null and void, as well as any consequences arising of such agreement.

Article 19

The Higher Committee may approve the termination of the agreement at the request of the Authority or the Public Entity for reasons based on public interest, provided that the Higher Committee justifies its decision and demonstrates the benefits of such termination and provides an estimate of the fair compensation to be paid to the Contracting Investor in accordance with the PPP Agreement.

INITIATIVES AND DISTINGUISHED PROJECTS

Article 20

A Concept proposer shall submit a feasibility study to the Authority for its review in order to present recommendations to the Higher Committee, which shall take one of the following justified decisions:

- Approve the study and consider it an Initiative.
 - Approve the study and consider it a Distinguished Project.
 - Reject the study.
1. If the Higher Committee approves the study and considers it an Initiative, the Concept proposer shall have the following rights:
 - a) Reimbursement of the costs of the feasibility study included in the project's documentation conditional on its approval by the Higher Committee, plus 20% of these costs or two hundred thousand Kuwaiti Dinars (200,000 KWD), whichever is less. Such amount shall be mentioned in the Terms of Reference and shall be paid by the Project Company at Financial Close.
 - b) An advantage of five percent (5%) over the value of the best proposal, provided that the proposal satisfies all requirements and that the project is not implemented through a public joint stock company.
 - c) If the project is implemented through a public joint stock company, an allocation of a percentage not exceeding ten percent (10%) of the public joint stock company's shares at their nominal value in addition to the issuance fees, which shall be deducted from the percentage allocated to the Investor provided for under Clause 2 of Article 13; if the shares are not subscribed for fully or partially, the provisions of Clause 2 of Article 13 shall apply.
 2. If the Higher Committee approves the study and considers it a Distinguished Project providing an added value to the State, then the Concept proposer shall have the right to reimbursement only of the costs of the study plus ten percent (10%) of its value or one hundred thousand Kuwait Dinar (100,000

KWD) whichever is less, and such amount shall be mentioned in the Terms of Reference and shall be paid by the Project Company at Financial Close.

In all cases, the Concept proposer shall complete the final feasibility studies of the project if its Concept was approved and considered an Initiative or a Distinguished Project in accordance with the provisions stated in the executive regulations.

Article 21

The Authority shall communicate with the parties involved in the project to complete the requirements of the study within appropriate periods of time. These parties shall urgently communicate their responses to the Authority. The executive regulations shall set out and specify the appropriate periods of time in all cases.

The Authority shall initiate the review of the Concept as soon as it receives the responses of the Public Entities and shall submit its recommendations to the Higher Committee, and it shall respond to the party presenting the Concept within five working days from the date of issuance of the Higher Committee's decision approving or rejecting the Concept.

Article 22

The Concept proposer shall benefit, pursuant to the provisions of this Law, from the principles of confidentiality in relation to all technical, economic and financial information in connection with its project and the reservation of its intellectual property rights in accordance with the provisions of the Law regarding Intellectual Property Rights and the law relating to patents in the State of Kuwait.

PROJECT FINANCE

Article 23

1. The Contracting Investor or the Project Company may not sell or mortgage the land on which the project is established.
2. The Contracting Investor or the Project Company may, for the purpose of financing the implementation of the project, mortgage or grant in kind security on any assets they own from among the assets comprising the project.

3. The Contracting Investor or the Project Company may, for the purpose of granting security in favor of one or more of the Lenders, grant security on any amounts due to the Contracting Investor or to the Project Company in return for the services rendered under the PPP Agreement or over the income generated from the project in any other manner.
4. The Contracting Investor may pledge its shares in the Project Company or in the consortium company, in favor of the Lenders only, for the purpose of financing the implementation of the project with the prior approval of the Higher Committee, even if the pledge takes place in the first two years following the incorporation of the company.
5. The pledge agreement may, with the approval of the Higher Committee, comprise terms and conditions allowing the creditor pledgee – in the event of breach of the lending terms by the Investor – to acquire the pledged shares or request the sale thereof. Any such cases require the approval of the Higher Committee and the new Investor shall satisfy all conditions and qualification requirements according to the Terms of Reference.
6. In all cases, in accordance with the previous two paragraphs, the term of the security shall not exceed the term of the project agreement or the remaining period thereof. Moreover, the debt ratio shall not exceed the ratio identified in the Terms of Reference.
7. The Authority shall provide the Investor with the Terms of Reference to the extent necessary to make the information available to Lenders in order to facilitate the financing of the project set forth in these documents.

DISSOLUTION OF THE COMPANY OR ASSIGNMENT OF THE PROJECT

Article 24

The Project Company or the consortium company may not be dissolved, its legal form may not be changed and its capital may not be decreased except after the approval of the Higher Committee, and the Contracting Investor may not assign the project or its shares in the project, in full or in part, to third parties, nor may it change the legal form of the Project Company or the consortium company, except after the

lapse of an appropriate period of time starting as of the commencement of the operations as provided for under the agreement's terms and after the approval of the Higher Committee.

In case of any such assignment, the assignee shall replace the Contracting Investor in the Project Company or in the consortium company in all the assignor's rights and obligations.

SUBSTITUTION OF THE INVESTOR

Article 25

If the Contracting Investor fails to perform its contractual obligations or if it commits gross or material errors affecting the regular and steady course of the project or leading to the cessation of work or to its bankruptcy, the Higher Committee may, at the request of the Authority or the Public Entity supervising the project or the Lenders, if any, substitute the Contracting Investor with another Investor, who takes its place to complete the remaining term of the agreement.

The new Investor shall meet all the requirements relating to the qualification requirements and the Terms of Reference on the basis of which the project was awarded or exceed these requirements, as shall be provided for in a written agreement between the Public Entity and the Investor or the Project Company or the consortium company or the Lenders, if any, and such agreement shall not include any additional or supplemental obligations of the Public Entity or anything that contradicts the awarding terms and conditions. The executive regulations shall govern the conditions and the procedures of such substitution, its announcement and the necessary terms thereof.

Without prejudice to Article 19 of this Law and with the exception of the situations stated in the first paragraph, the Public Entity may only terminate the agreement based on a court decision.

HINDERED PROJECTS

Article 26

If a project is hindered and the Project Company cannot overcome the events leading to such situation within the period provided for in the PPP Agreement after

notification thereof, the Higher Committee may, at the request of the Contracting Investor or the Authority or the Public Entity, issue a justified decision to put the project under the direct administration of the Public Entity or another specialized company to manage it in return for a fee under the supervision of the Authority, provided that the investment shall be in the name and for the account of the Contracting Investor without prejudice to the commitment of the Project Company to compensate the Public Entity for any damages resulting from any breach of the PPP Agreement.

The replacement Investor responsible for the management undertakes to compensate for damages occurring due to its management default, and this management shall expire if the reasons for the project's hindrance no longer exist or if the project was liquidated. The executive regulations shall determine the hindrance criteria.

THE EXECUTIVE REGULATIONS

Article 27

In addition to the requirements of the Law, the executive regulations shall set forth the following:

1. The general rules for project procurement and announcements in the media.
2. The general rules for setting the terms of PPP Agreements in accordance with the project's nature and requirements.
3. The general rules in connection with the qualification of companies, applicants and proposers and the means of submission and evaluation.
4. The identification of the elements of the Total Cost in accordance with which the comprehensive feasibility study of the project shall be prepared.
5. The determination of the agreement documentation providing for the detailed formulae based on which the Investor collects fees for services rendered through the project from the contracting Public Entity or the beneficiaries from the public, or both.
6. The specific rules that enable the contracting Public Entity to collect fees from the Investor in return for any rights or assets provided by the entity for use in

the project and any fee the Investor may have to pay for being granted the right to implement the project.

The Authority shall set the proposed timetable for the contracting and implementation proceedings and stages in accordance with the nature of the procured projects from the beginning of the announcement thereof in accordance with the provisions of this Law.

INCENTIVES AND EXEMPTIONS

Article 28

The Terms of Reference issued to the Investors for the submission of their proposals shall include the incentives provided to the Successful Investor including exemption from income tax, any other taxes, custom duties or any other fees based on the decision of the Higher Committee as well as any other benefits provided for under Law No 116 of 2013. The executive regulations shall set out the mechanism for granting such exemptions.

DISPUTE RESOLUTION

Article 29

PPP Projects and the agreements thereof shall be subject to the provisions of this Law and its executive regulations, as well as the provisions of applicable laws in the State of Kuwait, provided they do not contradict with the provisions of this Law. The agreement shall regulate the mechanism for dispute resolution in relation to its interpretation or its implementation. Kuwaiti courts shall be the competent authority to examine all the disputes arising from the implementation of the provisions of this Law. In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee's approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration.

RE-PROCUREMENT OF PROJECTS TRANSFERRED TO THE STATE

Article 30

At the end of PPP Agreements, the Authority shall assess the project to determine the return to the State or to the Investor, as the case may be, and the Higher Committee shall undertake the following:

1. The Higher Committee shall task the Authority in collaboration with the relevant Public Entity to procure the management or the management and development of projects transferred to the State, in accordance with the provisions of this Law, one year prior to such transfer, through Competition according to the nature of the project.
2. Announced project documents shall include its audited balance sheets for the last three (3) years.
3. The project management contract term in the new agreement may not exceed ten (10) years.

In case of a management and development agreement comprising project renovation or introduction of modern operating systems or introduction of new assets to increase the efficiency of the provided service or improve it or reduce its costs, the term of the agreement shall not exceed twenty (20) years.

The Terms of Reference shall identify the development criteria and the appropriate terms of each agreement on case-by-case basis.

4. The executive regulations shall set out the specific rules for the re-procurement and the award proceedings. Priority for awarding shall be given to the Investor offering the best proposal to the State in accordance with the Terms of Reference of the project provided it satisfies all the requirements set forth in those terms. The Investor whose agreement has expired shall be given an advantage of five percent (5%) over the best proposal in case it participates in the Competition. Such advantage shall be ten percent (10%) if the Investor whose agreement has expired was a public joint stock company. The executive regulations shall establish a schedule stating the appropriate percentages that are consistent with the nature of Partnership Projects and the value of capital invested in them.

In all cases, the Investor commits – at the expiry of the term of the agreement – to return the project to the State according to the agreed conditions as per the Partnership Agreement.

This Article shall not prejudice the right of the State to manage the project or manage and develop it directly or terminate the activity thereof.

FINANCIAL AND ADMINISTRATIVE SUPERVISION

Article 31

PPP Agreements executed in accordance with the provisions of this Law, including consultancy agreements, shall be subject to ex ante and ex post auditing of the State Audit Bureau according to rules of supervision set forth in Law No 30 of 1964.

The Higher Committee shall define the annual accounting rules and procedures for the Authority. The Authority shall have one or more financial auditors, appointed by decision of the Minister of Finance for the fiscal year of the appointment, and determining their fees in relation thereto.

GRIEVANCE

Article 32

1. A Grievance Committee shall be established by a decision of the Council of Ministers and comprised of six members for a term of four years renewable once taking into account the replacement of one third of the members who have spent four years or more in the membership of the committee at the end of each year. The committee shall also comprise specialized legal, financial and technical experts. The decision shall also determine the president of the committee from amongst its members, and the committee may use other experts depending on the nature of each project. The Council of Ministers shall determine the remuneration of the members of the committee.
2. The committee shall receive grievances from concerned persons in connection with any decision issued in violation of the provisions of this Law or its executive regulations. Every interested party may file a complaint or grievance before the committee in connection with any error with regards to any of the contracting procedures carried out by the Authority or any decision issued by the Higher Committee.

- Grievances shall be submitted within fifteen (15) days from the date of issuance of the objected decision or the execution of the objected proceeding and the notification thereof to the complainant. The Grievance Committee shall notify immediately the Higher Committee or the Authority of the submission of such complaint or grievance.
3. The Grievance Committee shall issue a justified decision accepting or rejecting the grievance within fifteen (15) working days from the date of its submission, and shall notify each of the complainant and the respondent immediately after its issuance. In case the Grievance Committee does not issue any decision, the complaint shall be considered rejected. The decision of the Grievance Committee shall then be raised to the Higher Committee whose decision thereon shall be final in this regard.
 4. The Grievance Committee may, at the request of the complainant, issue a decision suspending the contracting proceedings until the complaint is ruled upon. The proceedings shall resume if the grievance was expressly or implicitly rejected.
 5. The Grievance Committee shall evaluate the fair compensation in all cases where compensation is due to the Investor, the Project Company or the State in accordance with the provisions of this Law and shall notify its decision to the Higher Committee for the latter to take actions it deems appropriate.
 6. The executive regulations shall govern the proceedings for the submission of grievances and the rulings thereon in accordance with the provisions of this Law.

RELEVANT MINISTER'S REPORT

Article 33

The Minister of Finance shall present to the Council of Ministers an annual report on all the projects that have been executed or implemented in accordance with the provisions of this Law, and shall send a copy of such report to the National Assembly.

A drawing showing the location, the surface and borders of the contracted land shall be attached to the report of each of the aforementioned projects in the previous paragraph, whenever the project is implemented on State-owned land.

The Minister shall also indicate in his report the extent to which the Contracting Investor (Project Company) is committed to the agreement's terms and the breaches it committed – if any – and the actions taken by the government in this regard.

The relevant ministers shall provide the Minister of Finance with all the data, documents, files and information he requires in connection with PPP Projects that have been executed with their ministries for the preparation of the report.

GENERAL PROVISIONS

Article 34

The provisions of Decree Law No. 25 of 2012 and the amendments thereto shall apply with regards to companies established in accordance with the provisions of this Law, with respect to matters which are not addressed herein.

These companies shall be exempted from the nationality requirement provided for under Law No. 68 of 1980 regarding the Commercial Code and the amendments thereto, if the winning Consortium includes foreign companies which were approved in accordance with this Law.

The first board of directors of the public joint stock companies established in accordance with the provisions of this Law shall also be exempted from the required percentage specifying the number of shares that must be owned by the members of the board of directors in accordance with the provisions of Decree Law No 25 of 2012, until the registration of the company's shares on the stock exchange market.

FORM OF THE PARTNERSHIP AGREEMENT

Article 35

The Partnership Agreement shall include the following in particular:

1. The nature and the scope of work and services to be performed or provided by the Project Company and the terms and conditions of performance.

2. The ownership of the project's funds and assets, the obligations of the parties relating to the hand-over of the project site, terms of the transfer of ownership at the end of the project.
3. The responsibility for obtaining licenses, permits and approvals.
4. Mutual financial obligations and their relation to the financing method.
5. The sale price of produced products or the consideration for services provided under the project, and the principles and rules of calculation thereof, the means and rules for amending either through increase or decrease and the means to deal with and how to address inflation rates if necessary.
6. Means of quality assurance and monitoring methods, supervision and follow up on financial, administrative and technical matters in relation to the operation, exploitation and maintenance of the project.
7. Regulate the Public Entity's right to modify and amend the terms of construction, equipping, maintenance, operation, exploitation and other obligations of the Project Company, and the principles and mechanisms for compensation of such amendments.
8. Types and amounts of insurance on the project and the risks associated with its exploitation and operation, performance guarantees issued in favor of the Public Entity, and terms and procedures of return.
9. The basis for risk allocation associated with changes in laws or unforeseen events or force majeure and the determined compensation, as per the circumstances.
10. The term of the agreement, of the investment, of the construction and equipping or the completion of development works.
11. Cases of early or partial termination, the rights of the parties associated therewith, cases where the Public Entity may solely terminate the agreement and the financial obligations arising from usage of this right.

12. The rules for project transfer at the end of the contracting period or in cases of unilateral early or partial termination, including the mechanism for the transfer of assets to the State and the technology required to operate the project, training of the employees of the contracting Public Entity or the new Investor, and the provision of technical support for the continuity of services provision during the period of retrieval of the project including the supply of spare parts.
13. Cases allowing the same contracting company to implement other PPP Agreements subject to the approval of the Higher Committee.
14. The competence of the Kuwaiti courts with regards to disputes arising between the contracting parties.
15. Recourse to arbitration based on the agreement of the contracting parties.
16. The executive regulations shall set out the other terms that shall be comprised in the PPP Agreement.

AUTHORITY TO AMEND TERMS OF THE AGREEMENT

Article 36

The Public Entity may amend the terms of the construction, equipping and development as well as other works or consideration for the services agreed upon in the PPP Agreement; it may also, if the agreement granting the operation or exploitation of the project to the Project Company includes the same, amend the terms of the exploitation and operation of the project, when the public interest so requires, including prices for the sale of the products and the consideration paid for the services, within the limits agreed upon in the agreement, and after the approval of the Higher Committee, and without prejudice to the right of the Project Company to compensation as the case may be and according to the principles and rules provided for under the agreement. In case the price for product sale or the consideration for provided services is amended, such amendment shall only have an immediate effect.

The amendment of the Partnership Agreement may be agreed upon in accordance with the principle and the rules provided for under the agreement, if unforeseen circumstances occurred after the conclusion of the Partnership Agreement, including

amendments to the laws in force at the time of conclusion of this agreement and leading to a financial imbalance of the agreement.

CANCELLATION OF THE PROJECT

Article 37

Procurement proceedings shall be cancelled if it is determined that the project is no longer needed or if the public interest so requires, and the procurement proceedings may also be cancelled if all or most of the offers were coupled with reservations that do not comply with the terms and conditions of the procurement or which cannot be financially evaluated.

The cancellation shall take effect through the decision of the Higher Committee based on the proposal of the Authority, and the decision shall comprise the reasons underlying its issuance.

In all cases, the applicants may not claim any compensation for the cancellation whatsoever.

SCOPE OF THE LAW

Article 38

The implementation of this Law shall not prejudice the provisions of other laws with regards to the management, sale, lease, allocation or licensing of any State-owned real property under any title, which shall remain governed by laws, rules and regulations regulating them.

AUTHORITY TO CONCLUDE THE PPP AGREEMENT

Article 39

Each Public Entity shall be competent to conclude and enter into the PPP Agreements that fall within the scope of its jurisdiction with the Project Company, subject to the provisions of this Law and its executive regulations.

PPP Agreements shall be drafted in the Arabic language and may be drafted in a foreign language subject to the approval of the Higher Committee.

THE PRINCIPLE OF EQUALITY

Article 40

The Project Company shall commit to guarantee absolute equality between the end-users of the services offered through the project, both in terms of the terms of the sale of products or the provision of services.

The Project Company may, after the approval of the relevant authority when the public interest so requires, decide to provide special treatment for certain categories of end-users who are equal as to their legal positions, provided it is in accordance with predefined general terms and rules, and the provided equality between persons of the same category is secured.

The Project Company shall be liable to compensate for damages caused due to the violation of the provisions of this article.

QUALITY CERTIFICATE

Article 41

The Project Company shall not start receiving any monetary amounts for the sale of products or the provision of services according to the performance level provided for in the agreement until the issuance of a certificate from the party set forth in the PPP Agreement approving the quality of the works, products and services made available, unless the terms of the PPP Agreements state otherwise.

FINAL PROVISIONS

Article 42

In all cases where compensation is due to the Investor, the Project Company, the consortium company or the State in accordance with the provisions of this Law, the Higher Committee may use a specialized local or international consultancy firm(s) to estimate such compensation.

Article 43

I: Articles No. 15 and 16 of Law No. 105 of 1980 regarding the State Property Regime shall be amended according the first Article of Law No. 7 of 2008.

II: The first paragraph of Article 2 of Law No. 7 of 2008 shall be annulled, whilst the second paragraph thereof shall be added to Article 17 of Law No. 105 of 1980 regarding the State Property Regime and shall read as follows: “In all cases, State-owned property may not be exchanged against the property of others.”

Third: Articles No. 7, 9 and 19 of Law No. 7 of 2008 shall be amended and added to Law No. 105 of 1980 regarding the State property regime under the numbers 19 *bis*, 19 *bis* (a) and 19 *bis* (b) as follows:

1. A new Article 19 *bis* shall be added to Law No. 105 of 1980 regarding the State Property Regime and shall read as follows:

“Neither the Public Entities nor companies wholly owned by the State managing State-owned real property on the State’s behalf, shall have the right to dispose of such property whether through the waiver of the usufruct right or its exchange or any other form of disposal to others, except in accordance with the provisions of Law No. 105 of 1980. Any act of disposal to third parties taking place on such property in contradiction with the provisions of this Article and any implications and effects thereof shall be null and void.”

2. A new Article 19 *bis* (a) shall be added and it shall read as follows:

“If the role of the Investor who contracted with the Public Entity is limited to the execution of infrastructure works for the project on State-owned property for consideration, in this case the infrastructure works shall be tendered through public tender according to the provisions of Law No. 37 of 1964.”

3. A new Article 19 *bis* (b) shall be added and it shall read as follows:

“The government shall submit to the National Assembly during the month of January of each year a statement indicating cases of trespassing or violation on state owned property, with an indication of the actions and proceedings that have been taken to remove such trespassing or violation in accordance with the provisions of Article 19 of Decree Law No. 105 of 1980.”

Article 44

Without prejudice to the first and second paragraphs of Article 7 of this Law, the Higher Committee may, based on a justified proposal of the Authority, exclude from the scope of this Law contracts granting the right to use State-owned land and the leases entered into prior to the entry into force of Law No. 7 of 2008 and which have been renewed as build, operate and transfer contracts subjected to the provisions of the law, once it considers that such contracts lack the characteristics of the PPP Model. The Committee shall indicate in its decisions the appropriate legal regime which will govern the contract at its expiration.

Concerned persons shall apply to adjust their situation – according to the provisions of the previous paragraph – to the Authority within six (6) months from the date of entry of this Law into force, and the Authority shall present its proposal to the Higher Committee within six (6) months from the date of submission of such application, and the Committee shall issue its decision within six (6) months from the date of receipt of the Authority’s proposal.

The Authority shall notify the concerned persons and the competent authorities of the decision of the Higher Committee if the application was approved. The Higher Committee shall submit its report with regards to the amendment of the contracts to the Council of Ministers and send a copy thereof to the National Assembly.

Article 45

Law No. 7 of 2008 shall be annulled as well as any text contradicting the provisions of this Law.

Law No. 40 of 2010 concerning the establishment of one or more Kuwaiti shareholding companies to undertake the design, execution, operation and maintenance of labor cities under the Build, Operate and Transfer (BOT) system, shall also be annulled.

Article 46

The executive regulations of this Law shall be issued by decree, upon the proposal of the Minister of Finance, within six months of the date of publication of this Law in the Official Gazette.

Article 47

This Law shall take effect from the date of the issuance of the executive regulations except for Articles 2 to 6 which shall take effect from the date of publication of the Law in the Official Gazette.

Article 48

The Prime Minister and the Ministers shall, each within his competences, implement this Law.

The Emir of Kuwait

Sabah Al-Ahmad Al-Jaber Al-Sabah