

# **LAW PROVIDING FOR FISCAL RESPONSIBILITY AND THE BUDGET SYSTEMS**

## **PART XI - SELECTION AND IMPLEMENTATION OF PUBLIC INVESTMENT PROJECTS**

### **Basic principles and interpretation**

82.- (1) For purposes of selecting and implementing a public investment project of the Republic (hereinafter the "Project"), including a project of public-private partnerships, there shall be compliance with –

(a) the principles of public financial management under section 4 ; and

(b) the fiscal rules under section 40 or other rules and policies set out in the Fiscal Strategy Statement regarding the funding of this project.

(2) In this Part, unless the context otherwise requires, –

“public-private partnership” means a project with commercial transactions between an economic entity and a private partner which aims to ensure the funding, construction, renovation, management or maintenance of an infrastructure project or the provision of services, through which the private partner undertakes the operation on behalf of the economic entity, but does not include authorizations or permits issued by an economic entity and determine the conditions for the exercise of economic activity, the procurement of specific works or services, land leases or contracts for land use permits, with which the Republic or the economic entity shall determine the general terms and conditions of use;

“cost-benefit analysis” means the analysis of calculation and comparison of costs with the benefit of a project, the methodology of which is determined by the Minister's instructions;

"value for money" means optimal performance of an investment project, the methodology of calculation of which is determined by the Minister's instructions;

“affordable” means that the financial obligations for the implementation of a project to be incurred by an economic entity may be met by appropriations –

"(a) that have been included in the Budget or the Medium Term Budgetary Framework of the economic entity for the implementation of the development project or for a public - private partnership; or

(b) destined for the economic entity in accordance with the relevant financial projections:

Provided that the methodology of evaluating whether a project is affordable shall be

determined by the Minister's instructions.

"economically viable" means that the project is feasible and determined that it has more benefits than costs, based on cost-benefit analysis.

### **Application of Sections 84-88**

83.-(1) Sections 84 to 88 shall apply only to a project with financial significance.

(2) All public-private partnerships shall be deemed to have financial significance and shall be subject to the provision of this Part.

Provided that the authorizations or permits which are issued by the economic entity and establish the terms and conditions for the exercise of the economic activity, the provision of specific works or services, land leases or contracts for land use permits, which are excluded from the definition of the term "public-private partnership" are not subject to the provisions of this Part, however, they shall be submitted to the Minister for approval.

(3) Subject to subsection (2), the criteria for determining whether a project has financial significance shall be provided by the guidelines of the Minister.

### **Project screening**

84.-(1) When the head of an economic entity intends to propose the implementation of project, he shall prepare and submit to the Minister a report with all the parameters of the project, which are specified in the Minister's guidelines. The report shall include:

- (a) a description of objectives, activities, and expected outcomes of the project;
- (b) estimates of total public revenues and expenditures and any other use of public resources for the project;
- (c) an assessment of whether the project is in conformity with the policy priorities of the government;
- (d) any other matters as may be specified by the guidelines of the Minister.

(2) The Minister's opinion to be issued under subsection (1) shall include the Minister's assessment of whether the project is affordable and economically viable, on the basis of preliminary estimates.

### **Project appraisal**

85.-(1) The head of the economic entity that intends to implement the project deemed to be

economically viable shall prepare and submit to the Minister a project appraisal report for all projects considered to be economically viable under section 84.

(2) The project appraisal referred to in subsection (1) shall include a feasibility study conducted in accordance with the Minister's guidelines, and shall be forwarded for assessment to the Minister.

(3) The Minister, by his guidelines, shall determine whether the project is affordable and economically viable.

(4) The Minister shall maintain and publish from time to time a list of all projects which have satisfied the criteria under subsection (3), and the projects in the list shall be eligible for the budgeting in accordance with the procedures under section 86.

### **Project selection**

86.-(1) A head of an economic entity may propose to the Minister a project for inclusion in the Budget under his responsibility, on condition that the proposed project is included in the list under section 85 (4).

(2) A project proposal under subsection (1) shall be included in the budget proposal of the economic entity in a form to be specified in the current budget circular.

(3) When a head of an economic entity proposes the project as a public-private partnership, he shall provide the Minister with the results of a value-for-money assessment conducted in accordance with the guidelines of the Minister.

(4) The Minister shall determine ceilings in the total budget of each economic entity for the annual commitments in respect of public-private partnerships, by Regulations issued for this purpose.

(5) If the proposed project is a public-private partnership, under subsection (1), the Minister may include the project in the Budget only when –

- (i) the project may be deemed able to achieve value-for-money in terms of economic, social and environmental criteria as specified by the guidelines of the Minister; and
- (ii) the approval of the project does not cause the ceilings set under subsection (4) to be exceeded.

(6) The Minister shall prepare a table for inclusion in the budget documents, which shall comprise –

- (i) a list of all projects to be proposed in the budget for approval;

- (ii) estimates of annual expenditures and revenues in the Budget for each project which is newly proposed to be included in the budget (hereinafter called “new project”) over the entire period of the project implementation;
- (iii) updates of estimates of annual expenditures and revenues in respect of projects which have been approved in the budgets of the preceding years (hereinafter called “existing projects”) over the entire period of the project implementation;
- (iv) if there is significant difference between the estimates of annual expenditures referred to in subsection (c) that are shown in the current budget and the budget of preceding years, an explanation of the cause of such difference;
- (v) a summary of the annual expenditures and revenues of all existing and new projects;
- (vi) a summary of the results of monitoring made under section 88(3) in respect of all existing projects; and
- (vii) any other matters as may be specified by the Minister.

(7) The Minister shall submit by order of priority a statement of projects selected in the framework of the procedure for the submission of the Budget and the Medium -Term Budgetary Framework to the Council of Ministers for approval.

### **Project implementation**

87.-(1) When a project falls within the scope of the public procurement legislation, the tendering procedure for implementing the project shall be in accordance with the provisions of the said legislation.

(2) In respect of any project, no contract or agreement shall be entered into and no obligation shall be undertaken by economic entities unless –

- (a) such project is approved with the Budget; and
- (b) the Minister has approved such contract, and project agreement, under subsection (3).

(3) The Minister shall not approve any contract or agreement unless such contract or agreement-

- (a) has been prepared in accordance with the procedures and requirements and under the guidelines of the Minister; and
- (b) in the Minister’s opinion, is affordable and economically viable and satisfies any other criteria as specified by the guidelines of the Minister.

## **Project monitoring and changes in the contracts**

88.-(1) Any substantial changes in contracts or agreements which have an impact on the viability and affordability of the projects shall be approved by the Minister prior to such changes under subsection (2).

(2) The Minister shall provide the criteria for determining whether a change in a contract or agreement under subsection (1) is substantial, taking into account the legislation on public procurement.

(3) A head of an economic entity, in accordance with the Minister's instructions shall monitor –

(a) the implementation of all projects under his responsibility; and

(b) the performance of all public-private partnerships under his responsibility against their contractual and delivery service obligations,- and shall annually submit to the Minister a report which shall include the results of the monitoring in such form and manner as specified by the guidelines of the Minister.

(4) The Auditor General may audit a report submitted to the Minister under subsection (3) and the performance of any public-private partnerships against their contractual and delivery service obligations in such manner and frequency as may be determined by the Auditor General.

## **Guidelines**

89.-(1) The Minister shall prescribe the procedures, methodologies, criteria, and other requirements, and any other matters necessary for implementing this Part, by issuing regulations and/or instructions.