

PUBLIC PRIVATE PARTNERSHIP AUTHORITY (P3A)

**AN INTRODUCTION TO THE
P3A ORDINANCE 2020**

THE 2017 PPPA ACT

- Public Private Partnership Authority (“P3A”) was established through the P3A Act of 2017
- The Infrastructure Project Development Facility (IPDF) had previously carried out a subset of the P3A’s functions, primarily focusing on facilitating P3 transactions
- Pursuant to the 2017 Act, the assets, powers, rights, obligations, and employees of IPDF were transferred to P3A

THE 2020 P3A ORDINANCE

- P3A 2020 Ordinance was promulgated by the President on July 7, 2020
- It will expire 120 days from the date of promulgation
- Currently a Bill laid before the Parliament, requires approval of both Houses of the Parliament.
- The main purpose of the 2020 P3A Ordinance is make the P3A a much more effective and efficient body

P3A'S MANDATE

*“An Act to create an **enabling environment** for private sector participation in development projects and in the provision of public infrastructure and related services in Pakistan through public private partnership projects.*

WHEREAS it is expedient to establish a **regulatory framework** to execute **public private partnerships** in Pakistan so as to promote **domestic and foreign private investment** in development projects to increase the availability of public infrastructure and service delivery ... and achieving the **social objectives** of the government, to **mobilize private sector resources** for financing, construction, operations and maintenance of development projects...to reduce transaction costs, ensure **appropriate regulatory controls** and promote **transparency and accountability** in carrying out development projects.”

P3A'S REGULATORY MANDATE

“implementing agency”

...means any of the line ministries, attached departments, executive departments, sub-ordinate offices, body corporate, autonomous body of the Federal Government or any organization or corporation owned or controlled by the Federal Government

SCOPE

“qualified project”

2017 ACT	2020 ORDINANCE
<p>N/A</p> <p>All P3 projects of implementing agencies require P3A approvals</p>	<p>Only <i>qualified</i> projects require P3A approvals. Qualified projects include:</p> <ul style="list-style-type: none">i. Projects supported by any facility established by the government for the purpose, including VGF;ii. Projects requiring sovereign guarantees (in accordance with the criteria prescribed by rules or regulations);iii. Projects supported by the project development facility (PDF); andiv. Any additional criteria, as prescribed. <p>P3WP has the power to designate a project as a qualified project, even if it does not meet the prescribed criteria.</p>

INSTITUTIONAL FRAMEWORK

The P3A Board

2017 ACT	2020 ORDINANCE
<p>The Board comprises of the following 8 members:</p> <ul style="list-style-type: none"> ▪ Minister, Planning (Chairperson) ▪ Secretary, Finance (Vice-Chairperson) ▪ Secretary, Planning ▪ Secretary, BOI ▪ Two members from the private sector ▪ CEO (Secretary) ▪ Secretary Concerned Division <p>Quorum: Any three members of the Board</p>	<p>The Board comprises of the following 10 members:</p> <ul style="list-style-type: none"> ▪ Deputy Chairman, Planning Commission (Chairperson) ▪ Secretary of Division to which business of P3A allocated (Vice-Chairperson) ▪ Secretary, Finance ▪ Member – Private Sector Development, Planning Commission ▪ Five members from the private sector ▪ CEO (Secretary) <p>Secretary of concerned division observer at relevant meetings</p> <p>Quorum: 5 members, including two private sector members and the member from the Financial Division</p>

INSTITUTIONAL FRAMEWORK

P3 Working Party (P3WP)

2017 ACT	2020 ORDINANCE
N/A. Did not exist under the 2017 Act.	<p>Establishes P3WP comprising of members appointed by the Federal Government (on the Board's recommendation). The P3WP shall be responsible for:</p> <ul style="list-style-type: none">a. approving project concept proposalsb. approving project qualification proposalsc. performing any other prescribed functions <p>P3WP may constitute committees and delegate its functions, as considered appropriate.</p>

INSTITUTIONAL FRAMEWORK

Risk Management Unit (RMU)

2017 ACT	2020 ORDINANCE
N/A. Did not exist under the 2017 Act.	RMU created under the Finance Division of the Federal Government which will be responsible for “fiscal oversight and for evaluation of fiscal and contingent liability exposure for all qualified projects”

APPROVAL PROCESS

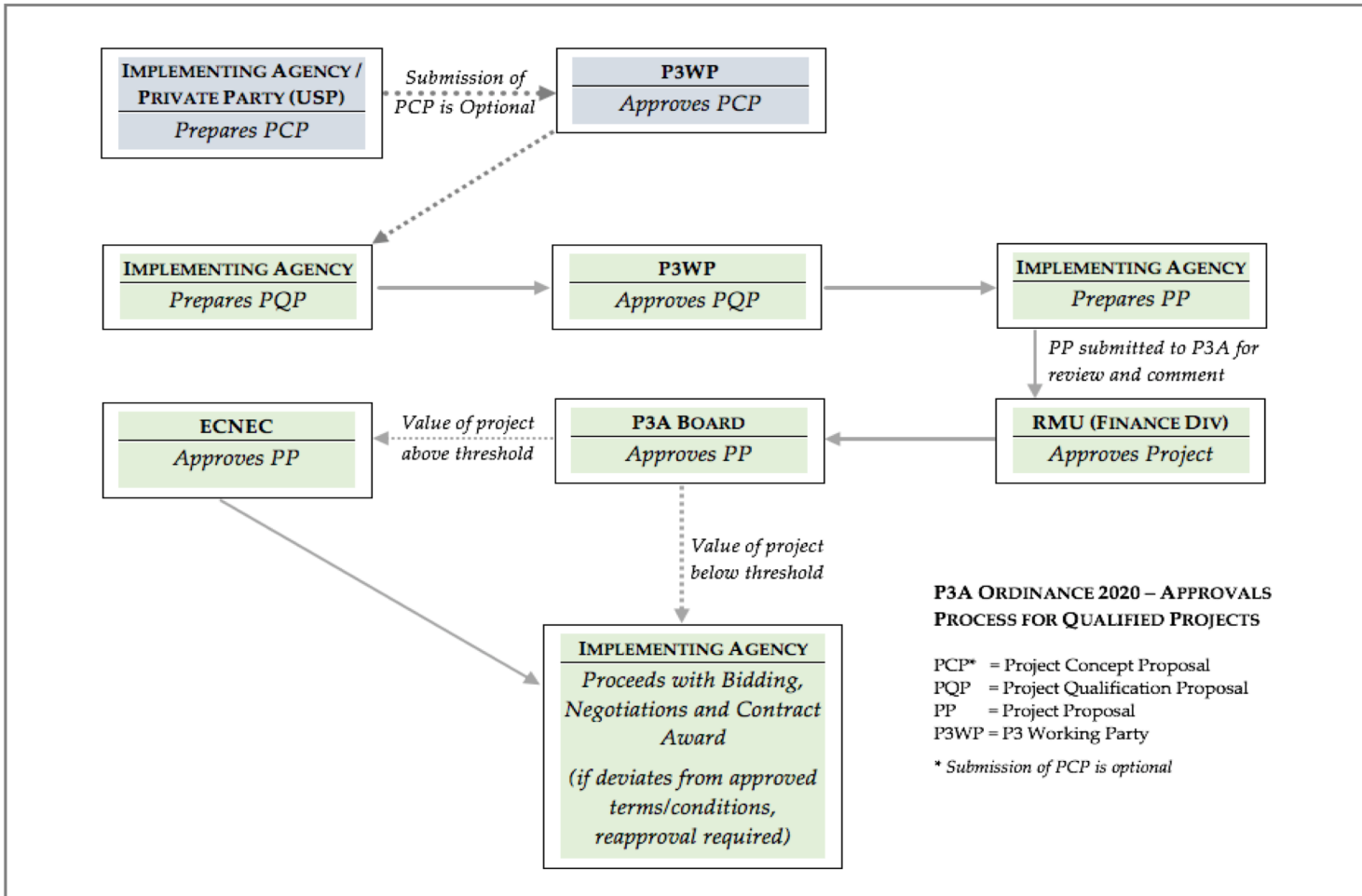
Types of Proposals

2017 ACT	2020 ORDINANCE
<p>Only one type of proposal is specified, the 'project proposal,' defined as being received from an implementing agency. The Board has the power to approve.</p>	<p>Three types of proposals (submission requirements to be specified through regulations):</p> <p>A. Project Concept Proposal (PCP)</p> <ul style="list-style-type: none"> ▪ Received from implementing agency, a private party (on an unsolicited basis), or forwarded from CDWP ▪ Not mandatory to submit (can submit project qualification proposal directly) ▪ P3WP has the power to approve. <p>B. Project Qualification Proposal (PQP)</p> <ul style="list-style-type: none"> ▪ Received from implementing agency (directly or prepared on the basis of an unsolicited proposal from a private party) or forwarded from CDWP ▪ P3WP has the power to approve. <p>C. Project Proposal (PP)</p> <ul style="list-style-type: none"> ▪ Detailed proposal received from implementing agency after PQP approval ▪ The Board (and in some cases also ECNEC) has the power to approve.

APPROVAL PROCESS

Required Approvals

2017 ACT	2020 ORDINANCE
<p>The Board is the sole approving body, for each of the following for <i>all P3 projects</i> of implementing agencies:</p> <ul style="list-style-type: none">i. Feasibility study;ii. Bid documents;iii. Proposal of project; andiv. Public-private partnership agreement.	<p>The following approvals shall be required for all <i>qualified projects</i>:</p> <ul style="list-style-type: none">(a) Approval of project qualification proposal by the P3WP;(b) Approval of Risk Management Unit;(c) Approval of project proposal by the Board;(d) If qualified project meets certain criteria, project proposal to be approved by ECNEC.



PROJECT DEVELOPMENT FACILITY (PDF)

2017 ACT	2020 ORDINANCE
N/A. Did not exist under the 2017 Act.	Sets up a “project development facility” created through grant-in-aid, and to include other funding such as from donor agencies, to be utilized, <i>inter alia</i> , to support preparation of proposals for qualified projects.

SETTLEMENT OF DISPUTES

2017 ACT	2020 ORDINANCE
<p>Disputes between implementing agencies and private parties to be decided in accordance with the public private partnership agreement (after exhaustion of remedies under the agreement, may initiate judicial and quasi - judicial remedies).</p>	<p>Makes the P3A the first tier of dispute resolution for purposes of mediation between implementing agencies and private parties.</p> <p>Those not satisfied with the first tier may seek appropriate remedies before the courts of Pakistan. Subject to rules which shall specify conditions, recourse to courts of Pakistan required before seeking recourse to alternative methods.</p>

POWER TO MAKE REGULATIONS

2017 ACT	2020 ORDINANCE
Only the power to make rules (by the Federal Government) was permissible.	In addition to rules made by the Federal Government, the Authority can make regulations to carry out purposes of the Act.

OVERRIDING EFFECT

2017 ACT	2020 ORDINANCE
N/A	Gives the provisions of the Act overriding effect over other laws and regulations including the PPRA Ordinance and the rules and regulations made thereunder.