



BENUE STATE OF NIGERIA

2023 NO: -----

**A LAW TO ESTABLISH THE BENUE
INVESTMENT PROMOTION AND
PROPERTY MANAGEMENT AGENCY
(BIPPMA) AND FOR OTHER
MATTERS CONNECTED THEREWITH**



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Date of Commencement

BE IT ENACTED by the House of Assembly of Benue State as follows: -

Enactment

PRELIMINARY

1. This Law may be cited as the Benue Investment Promotion Agency (BIPPA) Law, 2023.

Short Title

2. This Law shall come into operation on the day of 2023.

Commencement

3. In this Law:

Interpretation

“Agency” means the Benue Investment Promotion and Property Management Agency established under Section 4 of this Law;

“Board” means the Governing Board of the Agency established under section 6 of this Law;

“Chairman” means the Chairman of the Board;

“Commercialization” means the adoption of commercial and competitive profit objectives in the management of government enterprises and involves the reorganization

of a public enterprise in such a manner that will improve its efficiency, and effectiveness and maximize profit.

“Concessionaire” means the person or organization with whom a concession agreement concerning a Public-Private Partnership has been entered into pursuant to this law;

“Concession” means a contractual license formalized by a project agreement, which may be linked to a separate interest or right over real property, entitling a person who is granted the license to make use of the specified infrastructure or undertake a project and to charge user fees, receive availability payments or both such fees and payments during the term of the concession;

“Concession Agreement” means any agreement between the government and any person, firm, company, or limited liability partnership for financing, constructing, maintaining, operating or managing of public infrastructure, asset and facilities over an agreed period of time;

“Contracting Authority” means the Ministry, Department or Agency, which intends to have a function undertaken by it performed by a private party;

“Executive Secretary” means the Chief Executive and Accounting Officer of the Agency;

“Government” means the Government of Benue State;

“Governor” means the Governor of Benue State;

“Greenfield” means a type of investment that involves building a new business, project, or facility from scratch, often in a previously undeveloped or unused area.

"Member" means the members of the Board and includes the Chairman and the Vice Chairman;

"PPP Models" means a partnership between the public sector and the private sector for the purpose of delivering a project or a service traditionally provided by the public sector.

"Person" means an individual and shall include a limited liability company, a limited liability partnership or any organization duly registered under the Companies and Allied Matters Act, 2020;

"Private Party" means a party that enters into a project agreement with a contracting authority and is responsible for undertaking an infrastructure or development facility as a public private partnership;

"Plan" means a technical working drawing, which shows the design of the project;

"Privatisation" means the transfer of ownership and control of a public asset, service, or enterprise from the government to the private sector.

"Project Agreement" means an agreement concluded between a contracting authority and a private party, including without limiting the generality of the foregoing, concessions, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises in relation to an agreement;

"Public Private Partnership or PPP" means an arrangement between a contracting authority and a private party under which a private-party:

- (a) undertakes to perform a public function or provide a service on behalf of the contracting authority;
- (b) receives a benefit for performing a public function by way of:

- (i) compensation from public fund;
 - (ii) charges or fees collected by the private party from users or consumers of a service provided to them; or
 - (iii) a combination of such compensation and such charges or fees;
- and

(c) is generally liable for risk arising from the performance of the function in accordance with the terms of the project agreement; and

"State" means Benue State of Nigeria.

ESTABLISHMENT OF THE AGENCY AND GOVERNING BOARD

4. (1) There is hereby established a body to be known as the Benue Investment Promotion and Property Management Agency (in this Law referred to as "the Agency").

Establishment of the Agency

(2) The Agency:
(a) shall be a body corporate, with perpetual succession and a Common Seal;

(b) may sue and be sued in its corporate name; and

(c) may acquire or hold any property movable or immovable for the purpose of carrying out any of its functions under this Law.

5. The purpose of the Agency is to initiate, promote, facilitate, and coordinate investment in the State through Greenfield, Public Private Partnerships, Privatisation, Commercialization of State-owned assets and Build, Operate and Transfer.

Purpose of the Agency

6. (1) There is hereby established for the Agency a Governing Board which shall consist of:

Establishment and Composition of the Governing Board

- (a) Chairman who shall be the Deputy Governor of the State;
- (b) a Vice Chairman who shall be appointed from the private sector and who shall be a respected person of good character with sound knowledge of the business and investment in trade and related environment;
- (c) A Commissioner or representative not below the rank of a Director of the following:
 - (i) Planning Commission;
 - (ii) Ministry of Finance;
 - (iii) Ministry of Commerce and Trade;
 - (iv) Public Infrastructure;
 - (iv) Ministry of Justice and Public Order;
 - (v) Bureau of Local Government Affairs;
 - (vi) Ministry of Lands, Survey and Solid Minerals;
 - (vii) President of the Benue Chamber of Commerce, Industry, Mines and Agriculture;
- (b) four (4) persons, two of whom shall be women, to be chosen from various professional backgrounds; and
- (c) the Managing Director of Benue Investment and Property Company (BIPC);
- (d) the Executive Secretary of the Agency who shall be the Secretary of the Board;
- (e) a representative of Civil Society Organisations (CSOs) nominated by Benue

7. The Board shall:

- (a) be the policy-making body on investment promotion and public-private partnerships for the State Government;
- (b) promote policies and transparent procedures that enable the State Government to work with potential investors and business partners to develop the natural resource base and assets of the State;
- (c) develop appropriate legal, institutional and regulatory framework for Public Private Partnership, investment, investment promotion, and facilitation in the State;
- (d) articulate clear growth strategies for providing needed support and appropriate incentives to grow the local private sector and enlarge the economic base of the State in line with the priorities of the State;
- (e) engage international agencies and development partners to facilitate the establishment of special funds to support projects in the State;
- (f) develop and implement a comprehensive strategy and action plan to attract and facilitate new investments in the State; and
- (g) foster sustainable economic growth and create job opportunities for the residents of the State.

8. (1) The Board shall meet at least once every quarter to review the progress of the various programmes and projects on the roadmap and to consider any special issues as may be directed by the Governor.

(2) Where the Chairman and Vice Chairman are unable to attend any Board Meeting, the members present shall

select a chairman for the meeting from the members present.

(3) At every Board Meeting, a quorum shall be formed when a simple majority of the members are in attendance.

(4) In the event of a stalemate on any vote relating to any matter, the chairman of the meeting shall have a casting vote.

(5) Where any Board member has any direct or indirect interest on any matter before the Board, the member shall declare his interest to the Board following which the member shall be excused from participating in discussions or voting on the particular matter under consideration.

9. (1) A member of the Board shall hold office for a term of four (4) years and may be reappointed for another term of four (4) years only.

Remuneration of
Board Members

(2) Members of the Board shall be paid such remunerations and allowances as may be approved by the Governor.

10. The office of a member of the Board shall become vacant where:

Cessation of Membership

(1) the term of appointment has expired;

(2) a month's notice of resignation in writing has been given to the Governor.

11. (1) The Governor may revoke the appointment of a member where he is satisfied that such a member:

Removal from Office

(a) is incapacitated or unable to discharge his duties diligently by reason of mental or bodily infirmity;

(b) has been adjudged bankrupt; or

- (c) has been convicted of an offence involving fraud or dishonesty.

12. The Agency shall:

Functions of the Agency

- (a) advise and conduct risk or benefit assessments that will assist the Government in the implementation of all projects and programmes in the State Investment Promotion Strategy;
- (b) advise and assist the government in creating an attractive and competitive climate for business that will lead to robust economic activities in the State;
- (c) source on behalf of the Government, finance for investment from multilateral and bilateral development partners as well as private investors – both domestic and foreign – through public private partnerships and other financial arrangements as well as, where appropriate acting as lead negotiator in deals with private investors that ensure the needs of the State and those of its citizens are well represented;
- (d) monitor the implementation, execution and delivery of projects as contained in agreements between the State Government and respective investors;
- (e) assist the State in building capacity for investment project identification, evaluation, planning, execution and management;
- (f) advise and assist in the establishment of a framework for monitoring and evaluating the progress of the State's strategic economic investment programmes and projects for effective implementation;

- (g) establish a framework for identifying and pro-actively engaging the Federal Government and its agencies in the investment promotion drive of the State;
- (h) articulate clear growth and development strategies for providing needed support and appropriate incentives to grow the local private sector and enlarge the economic base of the State in line with the priorities of the State;
- (i) advise and assist the government in developing and maintaining a comprehensive and reliable database on investment opportunities for effective planning especially in areas where the State has demonstrable comparative and competitive advantages;
- (j) publish and periodically revise data and information on the investment status of the State in order to assist prospective investors – both domestic and foreign – to evaluate the State’s potential as an investment destination;
- (k) develop a database of reputable prospective and potential investors both in Nigeria and abroad with a view to reaching out to them when opportunities arise;
- (l) plan and organise targeted and well-researched investment promotion activities including tours and road shows aimed at promoting specific investment projects in areas when the State has demonstrable comparative and competitive advantages;
- (m) based on the State’s resources the focus of the approved Agency strategy, identify and document available land for agricultural, housing, mining, industrial and other uses so that it can be speedily made available to qualified investors in a manner that protects the rights of all stakeholders (land owners, occupiers, communities) and provides opportunities for optimal land use for investment and job creation;

- (n) act as the State's lead negotiator for all PPP, Build-Operate-Transfer and privatisation transactions even where they are identified and/or project managed by other Ministries, Departments and Agencies; and
- (o) be a one-stop resource and coordination centre for all investment and Public-Private Partnership related activities;
- (p) perform such other functions as the Governor may from time to time direct or as may be deemed necessary to achieve its primary purpose under this Law;

13. The Agency shall have powers to:

Powers of the Agency

- (a) conclude arrangements with any person for the effective implementation of any programme or project and to enter into such other contracts as it may deem necessary to facilitate its functions under this Law;
- (b) request the Head of any Ministry, Department or Agency of the Government to furnish it with any document, explanation or other information it may require for the due execution of its functions under this Law;
- (c) regulate its own proceedings;
- (d) do such other things as are reasonably incidental, supplemental or conducive to its functions under this Law;

14. (1) There shall be an Executive Secretary to be appointed by the Governor who shall be the Chief Executive and Accounting Officer of the Agency.

Appointment of
Executive Secretary

- (2) The Executive Secretary shall be a person with cognate experience in investment promotion, finance and economic planning or another related field.
- (3) The Executive Secretary shall hold office for a term of four (4) years and may be re-appointed for one further term of four years.
- (4) The Managing shall be paid such remuneration and allowances as may be determined from time to time by the Governor.

15. The Executive Secretary shall:

Functions of the
Executive Secretary

- a) prepare a Four-year rolling State Development Plan strategy and a 12-month action plan and budget based on the functions of the Agency for review and approval by the Board;
- b) monitor the progress of the strategy and prepare quarterly reports for the Board's review;
- c) liaise with Ministries, Departments and Agencies of Government for the purpose of continually collecting,

compiling and collating information with a view to developing an economic database and investment information repository for the State;

- (d) provide information and technical input to the Board for the purpose of defining appropriate policy directions and high-level reform priorities;
- (e) develop a prioritised comprehensive reform strategy, which identifies roles and responsibilities for reform, time bound targeted action plans, outputs and supporting budgets for effective management and investment promotion;
- (f) prepare policy and strategy papers on key investment issues as may be directed by the Board;
- (g) carry out activities aimed at building the institutional capacities of Ministries, Departments and Agencies of Government and other relevant stakeholders in the area of investment promotion;
- (h) work with relevant government agencies to periodically review broad sector policies to ensure consistency with economic management and investment promotion initiatives in the State;
- (i) coordinate the implementation of the various recommendations of the State Executive Council on investment issues;
- (j) provide support in the development of feasibility studies on investment projects in small and medium enterprise supported sectors;
- (k) coordinate all activities of the Agency including the execution of its Work Plan and Annual Budget and ensure the maintenance of accurate accounting records; and
- l) undertake any other tasks relating to investment promotion as may be directed by the Board or the Governor.

16. The Governor shall appoint a Legal Adviser who shall be a Corporate Business Legal practitioner with at least ten (10) years post-call and cognate experience. Secretary/Legal Adviser
17. (1) The Agency may with the approval of the Governor employ such number of employees as it may deem necessary for the efficient discharge of the functions of the Agency under this Law or may request for the posting of employees from the Public Service. Staff of the Agency
- (2) The Agency shall have power to make, with the approval of the Board, Staff Regulations governing the conditions of service of the Agency employees until such regulations are made, the regulations and conditions of service applicable to employees in the State Public Service shall apply subject to such modifications as the Board may, in its discretion, make.
18. Service in the Agency shall be approved service for the purpose of the State Pension Law and accordingly, the Staff of the Agency shall be entitled to pension and other retirement benefits as prescribed under the State Pension Law. Pensions
19. The Agency may appoint a consultant where the Agency lacks the technical competence. Appointment of Consultant

FINANCIAL PROVISIONS

20. (1) The Agency shall establish and maintain a fund from which there shall be defrayed all expenditure incurred by it. Funds of the Agency
- (2) There shall be paid and credited into the fund established pursuant to sub-section (1) of this Section:
- (a) all subventions and budgetary allocations from the State Government;
- (b) gifts, loans, endowments, grants or aid from any agency, institution, bilateral and multilateral organisations or any government and entitlements from privatisation proceeds;

(c) such monies as may be payable to the Agency for services rendered in the course of any matter incidental to the discharge of its functions under this Law; and

(d) monies raised in any other manner as permitted under this Law.

(3) The Management shall propose to the Board for approval a performance bonus from its revenue at the end of each financial year.

21. The funds of the Agency shall be utilized for the following purposes:

Application of Funds

(1) allowances, salaries, and other emoluments of members and staff of the Agency;

(2) all other expenses incurred by the Agency in the discharge of its functions under this Law or any other enactment.

22. (1) The Agency shall keep accounts of its income and expenditure for each financial year and shall cause the accounts to be properly audited annually.

Annual Estimates,
Accounts and Audit
of the Agency

(2) The Agency shall also appoint reputable External Auditors from a list of approved Auditors provided by the Auditor-General of the State who shall audit the accounts of the Agency at the end of each financial year.

(3) The Agency shall forward a report of the external audit to the office of the Auditor-General of the State not later than two weeks after the submission of report by the External Auditor.

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

23. The Agency shall ensure that of all PPPs and other models such as joint ventures, privatization shall be in conformity with the PPP Policy and Manual, Fiscal Commitments and Contingent Liabilities (FCCL), or other regulations as may be issued by the Agency from time to time.
24. The Agency shall be responsible for conducting the bidding process with respect to any PPP project in an equitable, transparent, cost effective and competitive manner subject to Public Procurement Law of the State.
25. The Agency may without prejudice to the functions of the State under any other enactment the state either by itself or in conjunction with any other person (including another State);
 - (a) enter into an agreement with any person for the performance of functions of the State specified in the agreement;
 - (b) enter, where appropriate, into direct agreement as an affirming party with any persons who have been selected to enter into a PPP arrangement with an MDA.
26. The Agency shall ensure that a contracting Authority shall prior to entering into a public private partnership arrangement pursuant to this Law shall undertake a sector diagnostic study and assessment in accordance with the PPP Manual.
27. All privatizations, joint venture, management contracts or leases with the private sector must be procured through the Agency. These include the delivery of public assets, service provision or procurement of supplies on behalf of the State for profitable gain.
28. All contracting Authorities that are seeking partnerships with the private sector, whether solicited or unsolicited, must submit all such partnership projects to the Agency to be developed and executed in conjunction with the originating contracting Authority.
29. The Agency may in a concession or other agreements, authorize any person, in return for undertaking such obligations

as may be specified in a concession or project agreement with respect to the design, construction, maintenance, operation, improvement or financing of public infrastructure or public assets, to enjoy specific rights as may be stated in the concession or project agreement including the right to levy, collect and retain service charges, user fees or tolls in respect of the use of the public infrastructure or public assets.

30 Any company that the Agency enters into a public private partnership agreement with must be a company registered under the Companies and Allied Matters Act, 2020

31. (1) The Agency may specify the:

(a) service charge, user fees or tolls payable in respect of designated public infrastructure or public assets; and

(b) conditions under which a member of the public will access the use of public infrastructure or public assets

(2) A concessionaire shall propose for the approval of the Agency, service charge, user fees or tolls or any review of same in relation to the use of public infrastructure or assets by reference to such circumstances or combination of circumstances or classification at the Agency, after consultation with the concessionaire.

(3) The Agency may provide for service charge, user fees or tolls to be charged for a period, specified in, or determined in accordance with, the regulations, which may provide that payment of service charge, user fee or tolls shall end: on a date, or at the end of a period specified in this regulation or on a date determined by reference to:

(a) the achievement of a specific financial objective, or

(b) such other factors or combination of factors as may be Specified.

(4) Where a concession agreement has been executed in accordance with the Law, the terms of the concession agreement shall be deemed to constitute a valid service charge, user fee or tolls regulation for the purpose of this section.

32. The service charge, user fees or tolls:

(a) Shall be paid to the concessionaire as may be agreed with the concessionaire and incorporated into the relevant concession agreement.

(b) Levied in respect of public infrastructure or public assets is valid only if it is charged by the concessionaire in accordance with the provisions of the Law.

33. (1) The setting of application and compliance on service charge, user fees and tools shall be in accordance with the provisions of this section.

(2) The service charge, user fee or toll which may be levied and collected by the concessionaire pursuant to any concession agreement shall in every case be the service charge, user fee or toll specified or calculated in accordance with any formula or other provision stated in the concession agreement with the Agency, where the concession agreement is entered into prior to regulations made by the Agency.

(3) Each concession agreement shall set out the procedures, circumstances and formulae by which service charge, user fee or toll to be charged by the concessionaire shall be calculated, varied or adjusted and such provisions shall be observed and agreement fully implemented.

(4) Where the concession agreement does not set out the provisions for calculation and adjustment or variation of the service charge, user fee or toll, such provisions are declared invalid, void, unenforceable or of no effect by any competent court or authority, the concessionaire shall have the right to make the application to the Agency from time to time for adjustment or variation to the service charge, user fee or toll and the Agency shall promptly approve or reject any such application, having taken into account all relevant circumstances.

(5) The Agency shall have the power to vary or adjust or to require the adjustment of any service charge, user fee or toll charged by the concessionaire in respect of a public infrastructure or asset in accordance with the provisions of the Law or as may have been agreed and incorporated into any relevant concession agreement.

OFFENCES AND PENALTIES

34. (6) It shall be an offence for any person to fail or refuse to pay service charge, user fee or toll in accordance with this regulation or within the terms of the concession agreement and the offender shall be liable on conviction to a fine of not less than Fifty Thousand Naira (N50,000.00) or a term of imprisonment of not less than six months, or to both.

If it appears to a person employed to collect service charge, user fee or toll that a person has refused or failed to pay, the person so employed may:

(i) refuse to permit the defaulter to use, or prevent him from using the public infrastructure or public asset with respect to which service charge, user fee, or toll are payable; and

(ii) requires him to vacate the public infrastructure or public assets, or call where necessary, the assistance of law enforcement agents.

(7) Where a person refuses to pay a service charge, user fee or toll with respect to the use of any public infrastructure or public assets the person may be prosecuted. Where the infrastructure is a road or bridge, the vehicle driven by the person shall be impounded by an authorized person and removed to a vehicle park provided for that purpose, and such vehicle shall remain so impounded until the payment to the concessionaire of the unpaid toll and the demurrage to the appropriate authority designated by the Agency, or shall remain so impounded pending the trial of the offence committed.

MISCELLANEOUS

35. The Governor may give to the Agency directives of a general nature as are necessary to make the Agency comply with the general policies of the Government.

Governor's General
Directives and Guidelines

36.(1) The Agency shall, as soon as possible after its establishment, provide itself with a Common Seal.

(2) The fixing of the Common Seal of the Agency shall be authenticated by the signature of the Executive Secretary or some other member authorised generally or specifically by the Board.

(3) Any document purporting to be a contract, instrument or other document signed or sealed on behalf of the Agency shall be received in evidence and unless the contrary is provided, be presumed, without further proof to have been so signed or sealed.

37. (1) Subject to the provisions of this Law, no suit shall be commenced against the Agency before the expiration of thirty (30) days after written notice of intention to commence such suit has been served upon the Agency by the intending claimant or his agent, and the notice shall clearly state:

Legal Proceedings

- (a) the cause of action;
- (b) the particulars of claim; and
- (c) the relief sought.

(2) No member or staff of the Agency shall be sued in his personal capacity for any act done or omitted to be done in the lawful performance of his duties under this Law.

38. The Agency may with the approval of the State Executive Council make Regulations as may be considered necessary for the effective discharge of its functions under this Law.


39. The rights, interests, obligations, assets and liabilities of the Benue Investment Promotion and Property company before the commencement of this Law under any contract or instrument are hereby vested in the Agency.

Savings

This Printed impression has been carefully compared by me with the Bill which passed the State Legislature and found to be a true and correctly printed copy of the said Bill.


BARR. BERNARD I. NULE
Clerk of the House

This printed impression has been endorsed by me to be correct.


HON. HYACINTH AONDONA DAJOH
Speaker
Benue State House of Assembly

I assent / withhold assent this 29 day of 12 2023.


REV.FR. DR. HYACINTH IORMEM ALIA
Governor
Benue State of Nigeria.