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*Number 1 of 2002*

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**STATE AUTHORITIES (PUBLIC PRIVATE PARTNERSHIP  
ARRANGEMENTS) ACT, 2002**

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SCHEDULE  
STATE AUTHORITIES

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[No. 1.]

*State Authorities (Public Private  
Partnership Arrangements) Act,  
2002.*

[2002.]

ACTS REFERRED TO

Companies Act, 1963	1963, No. 33
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Harbours Act, 1946	1946, No. 9
Health Act, 1970	1970, No. 1
Local Government Act, 2001	2001, No. 37
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*Number 1 of 2002*

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**STATE AUTHORITIES (PUBLIC PRIVATE PARTNERSHIP  
ARRANGEMENTS) ACT, 2002**

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AN ACT TO MAKE FURTHER PROVISION IN RELATION TO THE FUNCTIONS AND POWERS OF CERTAIN STATE AUTHORITIES, IN PARTICULAR TO ENABLE THEM TO ENTER INTO PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS, AND TO PROVIDE FOR RELATED MATTERS. [21st February, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**1.—(1)** In this Act, except where the context otherwise requires— Interpretation.

“appropriate Minister” means any Minister of the Government on whom functions stand conferred or who has general responsibility in respect of or in connection with the public private partnership arrangement concerned;

“asset” includes an existing asset or an asset to be provided under a public private partnership arrangement;

“company” means a company within the meaning of section 2 of the Companies Act, 1963;

“construction” includes building, refurbishment, maintenance, repair, improvement, demolition, extension and replacement;

“direct agreement” has the meaning given to it by *section 3(1)(c)*;

“functions” includes powers and duties, and a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of the powers and the carrying out of the duties;

“local authority” means a county council, city council or town council for the purposes of the Local Government Act, 2001;

“operation” includes management and maintenance;

“partner” has the meaning given to it by *section 3(1)*;

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S.1 “public private partnership arrangement” has the meaning given to it by *section 3(1)*;

“State authority” shall be construed in accordance with *section 2*.

(2) In this Act—

(a) a reference to a section or Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended, and

(b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) In this Act, a reference to any other enactment shall be construed as a reference to that enactment as amended, extended or adapted by or under any subsequent enactment.

State authority. **2.**—Each person or body specified in the *Schedule* is, subject to *section 7*, a State authority for the purposes of this Act.

Public private partnership arrangements. **3.**—(1) Without prejudice to the functions of a State authority under any other enactment, a State authority may, either itself or in conjunction with any other person (including another State authority)—

(a) enter into an arrangement (in this Act referred to as a “public private partnership arrangement”) with a person (in this Act referred to as a “partner”) for the performance of functions of the State authority specified in the arrangement in relation to—

(i) the design and construction of an asset, together with the operation of services relating to it and the provision of finance, if required, for such design, construction and operation, or

(ii) the construction of an asset, together with the operation of services relating to it and the provision of finance, if required, for such construction and operation, or

(iii) the design and construction of an asset, together with the provision of finance for such design and construction, or

(iv) the provision of services relating to an asset for not less than 5 years and the provision of finance, if required, for such services,

(b) subject to *subsection (4)*, arrange or provide for a payment to a partner,

(c) enter, where appropriate, into an agreement (in this Act referred to as a “direct agreement”) with a person who has arranged or provided funding for the partner for the carrying out of the public private partnership arrangement,

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- (d) transfer an interest, or part of an interest, of the State authority in an asset or part of an asset, to the partner, or, subject to the prior consent of the appropriate Minister or, if the State authority is a Minister of the Government, subject to the consent of the Minister for Finance, to a nominee of the partner by transfer, assignment, conveyance, grant of lease or licence or otherwise, S.3
- (e) take a transfer of an interest of the partner or a nominee of the partner, in an asset or part of an asset, by transfer, assignment, conveyance, grant or surrender of lease or licence or otherwise.

(2) A State authority may, with the consent of the appropriate Minister—

- (a) either itself or in conjunction with any other person (including another State authority) cause a company to be formed and registered, or
- (b) become a shareholder in an existing company,

for the purposes of a public private partnership arrangement or of entering into such an arrangement.

(3) A public private partnership arrangement may include terms and conditions in relation to the performance by the partner concerned of the partner's obligations under the arrangement as agreed by the State authority.

- (4) (a) Where a payment is arranged or provided for pursuant to *section 3(1)(b)* the Minister for Finance may, at any time until entry into the public private partnership arrangement by the State authority, give directions to the appropriate Minister in relation to the aggregate value of exchequer moneys committed to such arrangements, as he or she considers necessary.
- (b) The appropriate Minister shall, in performing his or her functions, have regard to any directions given by the Minister for Finance under this section.

(5) Functions conferred on a State authority by this section are in addition to and not in substitution for any other functions of the authority.

4.—(1) For so long as it continues in force, a public private partnership arrangement shall operate to confer on the partner concerned the functions of the State authority specified in the arrangement, subject to any terms and conditions so specified.

Functions of partner and State authority.

(2) A function conferred on a partner by a public private partnership arrangement—

- (a) may be performed by the partner in the partner's own name, subject to the general superintendence and control of the State authority concerned, and
- (b) shall, notwithstanding such arrangement, continue to be vested in the State authority concerned concurrently with the partner and may be performed by either or both of them.

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S.4                      (3) The conferral of a function of a Minister of the Government on a partner by a public private partnership arrangement shall not affect the Minister's responsibility to Dáil Éireann or as a member of the Government for the performance of the function.

(4) In this section "functions", in relation to a State authority, includes functions of any other State authority to be performed by it pursuant to an agreement or arrangement duly made by it with that other authority.

Effect of public private partnership arrangements.

5.—Where an agreement or arrangement was entered into on a date before the commencement of this Act, and that agreement or arrangement would have been a public private partnership arrangement or direct agreement if this Act had been in operation on such date, then the agreement or arrangement, as the case may be, shall have effect and be taken always to have had effect as if this Act was in operation when the arrangement or agreement was entered into.

Directions.

6.—(1) In relation to a company to be formed and registered, or a company that is formed and registered under *section 3(2)*, an appropriate Minister may, either before, or at the time of entering into a public private partnership arrangement and, without prejudice to the requirements of the Companies Acts, 1963 to 2001, give written directions to either or both—

(a) the State authority concerned, and

(b) where the company has been so formed and registered, the company,

concerning the management, accountability, accounting and financial affairs of such a company and, in relation to such a company that is formed and registered, its participation in the relevant public private partnership arrangement.

(2) In relation to a company that is formed and registered under *section 3(2)*, an appropriate Minister may, without prejudice to the requirements of the Companies Acts, 1963 to 2001, at any time after the company enters into a public private partnership arrangement, give directions to either or both—

(a) the State authority concerned, and

(b) the company,

concerning matters of policy in relation to the public private partnership arrangement concerned or such arrangements generally.

(3) A State authority and a company shall comply with any directions given under this section.

(4) The appropriate Minister may amend or revoke a direction under this section.

Amendment of *Schedule*.

7.—(1) Where the Minister for Finance, following consultation with any appropriate Minister, is of the opinion that—

(a) a public authority not standing specified as a State authority in the *Schedule* ought, having regard to the purposes of this Act, to stand so specified, or

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- (b) having regard to the amalgamation, dissolution or change of name of a State authority, the State authority ought to cease to be specified in the *Schedule* or to be so specified under a different name or description, S.7

he or she may, by order, amend the *Schedule* by adding the name of a person or body to it or by deleting the name of a person or body specified in it or by so adding and deleting, as the case may be.

(2) Where an order is proposed to be made under this section, a draft of it shall be laid before each House of the Oireachtas.

(3) The order shall not be made if a resolution disapproving of the draft is passed by either such House within the next subsequent 21 days on which it has sat after the draft is laid before it.

(4) In this section “public authority” means—

(a) a person or body which at any time stood specified in the *Schedule*,

(b) a board, authority or other body (other than a company) established by or under statute,

(c) a company in which all the shares are held—

(i) by or on behalf of a Minister of the Government, or

(ii) by directors appointed by a Minister of the Government,

or

(d) a company in which all the shares are held by a board, authority or body referred to in *paragraph (b)* or by a company referred to in *paragraph (c)*.

8.—The expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas and those incurred by any other Minister of the Government shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of such moneys. Expenses.

9.—(1) This Act may be cited as the State Authorities (Public Private Partnership Arrangements) Act, 2002. Short title and commencement.

(2) This Act shall come into operation on the day that is four weeks after the date of its passing.

SCHEDULE

Section 2.

STATE AUTHORITIES

A Minister of the Government.

A local authority.

The Commissioners of Public Works in Ireland.

The National Roads Authority.

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SCH.

A health board established under the Health Act, 1970.

The Eastern Regional Health Authority.

A university within the meaning of the Universities Act, 1997, other than Trinity College and the University of Dublin.

The Dublin Institute of Technology.

A college within the meaning of section 2 of the Regional Technical Colleges Act, 1992.

A vocational education committee within the meaning of section 7 of the Vocational Education Act, 1930.

Courts Service.

A harbour authority within the meaning of the Harbours Act, 1946.