



**EBONYI STATE OF NIGERIA**

**LAW NO. 002 OF 2019**

**EBONYI STATE**

**INVESTMENT PROMOTION, INVESTORS'  
PROTECTION, CONCESSION AND  
REGULATORY COMMISSION LAW, 2019**



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**EBONYI STATE OF NIGERIA**  
**LAW NO. 002 OF 2019**

**A Law to Establish Ebonyi State Investment Promotion, Investors' Protection, Concession and Regulatory Commission and provide for other matters related thereto.**

*Title*

**BE IT ENACTED** by the House of Assembly of Ebonyi State of Nigeria as follows:

*Enactment*

**PART I: PRELIMINARY PROVISIONS**

**SECTION 1**

This Law may be cited as Ebonyi State Investment Promotion, Investors' protection, concession and Regulatory Commission Law, **No. 002 of 2019**

*Citation*

**SECTION 2**

This Law shall be deemed to have come into Force on **Thursday, 2nd May, 2019.**

*Commencement*



### SECTION 3

In this Law, unless it is otherwise expressly provided for or the context otherwise requires:

#### *Interpretation*

**"Authorized Dealer"** in this Law except the context otherwise requires has the meaning assigned to it under the Foreign Exchange (Monitoring and Miscellaneous) provision Act.

**"Authorized Person"** includes a police officer, public infrastructure inspectors, designated officials of the commission and such other person as the commission may from time to time appoint.

**"Capital"** means all cash contributions, plant, machinery, equipment, buildings, spare parts, raw materials, land and other business assets other than goodwill;

**"Chairman"** means Chairman of the Governing Council of the Commission;

**"Commission"** means Ebonyi State Investment Promotion and Investors' Protection Commission and for other Allied Matters;

**"Commissioner"** means any of:

- I The commissioner for finance and economic development Ebonyi State or any person charged with the responsibility to oversee the Ministry of Finance and Economic

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- ii. Commissioner for Commerce and Industry.
- iii. Attorney General and Commissioner for Justice.

**"Concession Agreement"** means any agreement between the Government and any person, firm, company or limited liability partnership for the construction, maintenance, operation or management of public infrastructure, assets and facilities over an agreed period of time including but not limited to the following types of agreements:

- i. Design, Build, Operate and Transfer (DBOT)
- ii. Build, Own, Operate and Transfer (BOOT)
- iii. Rehabilitate, Operate and Transfer (ROT)
- iv. Joint Development Agreement (JDA); or
- v. Operation and Maintenance (OM)

**"Concession"** means the right of economic exploitation of land assets and rights granted pursuant to a concession agreement under the Law;

**"Concessionaire"** means the person or organization, with whom a concession agreement concerning a Investment Promotion and Infrastructure Concession arrangement has been entered into pursuant to this Law;



**"Council"** means the Governing Council established for the Commission under section 5;

**"Enterprise"** means an industry, project, undertaking or business to which this law applies or an expansion of that industry, undertaking, project or business or any part of that industry, undertaking, project or business and, where there is foreign participation, means such an enterprise duly registered with Nigerian Investment Promotion Commission;

**"Executive Secretary"** means the Executive secretary of the Commission;

**"Ex-officio Members"** means the Attorney General and Commissioner for Justice of Ebonyi State, Commissioner for Finance and Economic Development of Ebonyi State and Commissioner for Commerce and Industry of Ebonyi State;

**"Foreign Capital"** means convertible foreign plant, machinery, equipment, spare parts, raw materials and other business assets other than goodwill, that are brought into Nigeria with no initial disbursement of Nigeria foreign exchange and are intended for the production of good and services related to an enterprise to which this Law applies;

**"Foreign Loan"** means a loan obtained from outside Nigeria and denominated in any convertible currency;



**"Government"** means the Government of Ebonyi State of Nigeria;

**"Governor"** means the Governor of Ebonyi State of Assembly;

**"House"** means Ebonyi State House of Assembly;

**"Investment"** means investment made to acquire an interest in an enterprise operating within and or outside the economy of Ebonyi State;

**"Member"** means member of the Commission and includes the Chairman;

**"Negative List"** means the list of those sectors of investment prohibited to both foreign and Nigerian investors that is:

- a. Production of arms, ammunition, etc;
- b. Production of and dealing in narcotic drugs and psychotropic substances;
- c. Production of military and para military wears and accouterment including those of the police and the customs; Immigration and Prison Services.

**"Other Relevant Law"** includes Nigerian Investment Promotion Commission Act, Infrastructure Concession Regulatory Commission (Establishment, etc) Act, Ebonyi State Procurement Law, Pension Act etc;



**"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;

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

**"Preferred Mandate"** is a document issued in favour of a successful pre-qualified bidder;

**"Project Agreement"** means an agreement between the commission and private participant selected by the commission (and the State) to carry out investment promotion and Infrastructure concession including without limited to the generality of the foregoing; concessions, leases, management contracts, other forms of agreements with private sector entities, technical assistance contracts, consulting services contracts, franchises and regulatory agreements;

**"Public Asset"** includes the right of use of any property or economic opportunity of a public nature or arising from use of public property;

**"Public Infrastructure"** includes facilities and amenities including roads, bridges, highways, water transportation facilities, public water, works, housing, electric power stations, hospitals, recreation parks, motor parks waste disposal facility, amusement centers, agricultural facilities and any



other infrastructure or amenities for public use;

**"Rehabilitation"** means major repairs or maintenance requiring some changes in design or a form of reconstruction of infrastructure or asset to add strength thus renewing or extending the life span;

**"Road"** includes:

- a. Roads, the subject of project agreement;
- b. The land on each side of the roadway and water table up to the boundary of the road;
- c. The roadways, water table, bridges and fording on the line of the road;
- d. All traffic lanes, acceleration lanes, shoulder, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas maintenance;
- e. Any other areas on or adjacent to any public main road or parochial road, waterway or other routes used for public passenger transport and;
- f. Any private road designated for a toll under this Law or otherwise developed or conceded pursuant to a concession agreement.

**"Scheme"** means investment promotion and infrastructure concession;



"*Service Charge, User Fee or Toll*" means any fee, charge, levy, due or compensation payable in relation to the use of a public infrastructure of asset by any person;

"*State*" means Ebonyi State of Nigeria.

## PART II: ESTABLISHMENT OF THE COMMISSION

### SECTION 4

1. There is hereby established a body, to be known as the Ebonyi State Investment Promotion, Investors' Protection, Concession and Regulatory Commission (in this Law referred to as "the Commission")

*Establishment of the Commission*

2. The Commission:

- a. Shall be a body corporate with perpetual succession and a common seal;
- b. May sue or be sued in its corporate name; and
- c. May acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Law.



3. The Headquarters of the Commission shall be located in the State Capital at Abakaliki, Ebonyi State of Nigeria.

## SECTION 5

1. There is established for the Commission; a Governing Council (in this law, referred to as "the Council") which shall have overall control of the Commission

*Establishment of the  
Governing Council  
for the Commission*

2. The Commission shall consist of:

- a. part time Chairman, who shall be of impeccable character with a minimum of fifteen (15) years cognate experience in his field of specialization and registered with the relevant professional recognized body (ies), and who has shown capacity in industrial, commercial or financial matters or administration and shall be appointed by the Governor, subject to confirmation by the House of Assembly;
- b. the Attorney-General and Commissioner for Justice; as an ex-officio;
- c. the Commissioner for Finance and Economic Development; as an ex-



- officio;
  - d. the Commissioner for Commerce and Industry; as an ex-officio;
  - e. a representative of the Ebonyi State Chamber of Commerce and Industry; as an ex-officio;
  - f. two persons each from the three (3) Senatorial Zones of Ebonyi State who shall each have cognate experience and expertise in either law, business administration, engineering, economics or public administration and two of whom shall be women; as full time members;
  - g. an Executive Secretary who shall be of impeccable character with a minimum of ten (10) years cognate experience in his/her field of specialization, and shall be appointed by the Governor, subject to confirmation by the House of Assembly.
3. The Chairman and members of the Commission, other than the ex-officio members, shall be appointed by the Governor subject to confirmation by the House of Assembly.
4. The supplementary provisions set out in the schedule to this Law shall have effect with

*Schedule and  
Supplementary*



respect to the proceedings of the Commission and the other matters mentioned therein.

## SECTION 6

The Executive Secretary shall:

*The Executive  
Secretary*

1. Be the Chief executive and Accounting Officer of the Commission;
2. Be responsible to the Commission for policy direction and the day to day administration of the Commission;
3. Hold office upon such terms and conditions as may be contained in his/her letter of appointment;
4. Be a member and the secretary of the Governing Council of the Commission;
5. Arrange meetings of the Commission, prepare the agenda and minutes of such meetings;
6. Convey decisions of the Commission to its members; and
7. Perform all other duties affecting the Commission as may be assigned to him by the Chairman of the Commission.



**PART III: STAFF OF THE COMMISSION****SECTION 7**

1. The Commission shall appoint other number of employees as may be expedient for the proper and efficient performance of the functions of the Commission subject to the approval of the Governor.
2. The terms and conditions of service (including remuneration, allowances, benefits, pensions and gratuities) of the employees of the Commission shall be in accordance with the salary structure in the State Civil Service or other relevant Laws.
3. Notwithstanding the provisions of subsection (2) of this section, the Governor may, upon the recommendation of the commission, approve such remuneration, allowances and benefits for the Chairman, Executive Secretary and members of the Commission or any other employee of the Commission.
4. The Commission may engage such consultants and advisers, as it may require for the proper and efficient discharge of its functions.

*Appointment of  
other Staff of the  
Commission*



## SECTION 9

1. The Commission's conditions of service shall be in line with the conditions of service in the State Civil Service.
2. Notwithstanding the provisions of subsection (1) of this section, nothing in this Law shall prevent the appointment of a person to any office on terms which preclude the grant of pension or gratuity in respect of that office.

*Conditions Service*

## SECTION 10

The Chairman and other members of the Commission, other than ex-officio members, shall each hold office:

1. For a term of (4) four years in the first instance and may be re-appointed for a further term of (4) four years only; and
2. On such terms and conditions, as may be specified in their letters of appointment.

*Tenure of Office*



**SECTION 11**

- Causation of Membership*
1. Notwithstanding the provision of section 10 of this Law, the Chairman, the executive Secretary or any member of the council shall cease to hold office as a member of the council if:
    - a. He resigns his appointment as a member of the Commission by notice, under his hand addressed to the Governor;
    - b. He becomes of unsound mind;
    - c. He becomes bankrupt or makes a compromise with his creditors;
    - d. He becomes incapable of carrying out the functions of his office either arising from an infirmity of mind or body; or
    - e. The Governor is satisfied that it is not in the interest of the Commission or in the interest of the public for the person to continue in office and the Governor removes him from office.
  2. Where a vacancy occurs in the membership of the Commission, it shall be filled by the appointment of successor to hold office for the remainder of the term of office of his predecessor so however that the successor shall represent the same interest as his predecessor.



**SECTION 12**

The Chairman and members of the Commission other than ex-officio members shall be paid such emoluments, allowances and benefits as may be approved by the Governor.

*Emoluments of  
Members*

**PART III: OBJECTIVES AND SCOPE  
OF THE COMMISSION****SECTION 13**

The Commission shall give policy directions on the objectives, functions and powers of the commission pursuant to the provisions of this Law and shall:

*Objectives and Scope*

1. Be the policy making body on Investment Promotion and Infrastructure Concession scheme for the State Government;
2. Take decisions on all issues pertaining to the scheme in the state, subject to the provisions of the Law;
3. Identify priority sectors for the scheme;
4. Supervise the activities of the Investment Promotion and Investors' protection commission and liaise with the Governor on all issues pertaining to policy formulation, evaluation of operational guidelines and other required statutory provisions of the scheme;



5. Determine the framework of engagement of consultants, specialists and/or advisers for the scheme;
6. Plan and recommend budgets for the scheme; and
7. Create departments for the commission as it deems necessary
8. Be in custody of all documents of all properties of the state Government and Local Government Areas of the State;
9. Notify the Governor and the State Executive Council in writing every three (3) months of the existence of such documents.
10. May keep the documents in bank's custody for safety or any other manner as may be prescribed by the State Executive Council.



## PART IV: FUNCTIONS AND POWER OF THE COMMISSION

### SECTION 14

The Commission shall encourage, promote and coordinate investment in the economy of the State and accordingly shall:

*Functions and Powers*

1. Initiate procurement of Investment Promotion and Infrastructure Concession for the development of public infrastructure and public assets by conducting pre-qualification process for private investors.
2. Register and keep records of all enterprises in the State.
3. Advise the State Government on policy matters, including fiscal measures designed to promote the industrialization of Ebonyi State or the general development of the economy of the State.
4. Evaluate expression of Interest by private investors interested in Investment Promotion and Infrastructure concession with the state and issue a preferred mandate in accordance with the provisions of the Ebonyi State Public Procurement Law.



5. Initiate, organize and participate in promotional activities, such as exhibitions, conferences and seminars for the stimulation of investments.
6. Assist incoming and existing concessionaires or investors by providing support services, identify specific projects and invite interested investors for participation in those projects.
7. Maintain liaison between investors and ministries, Government departments and agencies, institutional lenders and other authorities concerned with Investments.
  - a. to acquire, purchase and take custody of Government shares and stocks in companies;
  - b. to invest its funds not immediately required for its purpose in such securities as it may deem fit;
  - c. to enter into any contract for the purpose of its functions and may in particular enter into and perfect any contract for securing the repayment of money lent by the Accountant-General, the Treasury or by any person authorized by the State Government;



- d. to accept or endorse negotiable instruments;
  - e. to acquire, purchase, hold and administer property for the Government within and outside the State;
  - f. to manage public debts;
  - g. to request and obtain from any Government body or private institution, statistical or other information relevant to the functions of the Commission;
  - h. to carry on the privatization and commercialization ventures on behalf of the Government;
8. Collect, collate, analyze and disseminate information about investment opportunities and sources of Investment capital and advise on request the availability, choice or suitability of partners in joint venture projects.
9. Act on behalf of the Government, or any of its agencies, in investment promotion and infrastructure concession under this law and develop optimal means of financing the cost of public investment projects in order to achieve value for money.



10. Ensure on behalf of the Government or any of its agencies that all aspects of financing, refinancing and insurance of public investment projects are duly undertaken by means of investment promotion and infrastructure concession within the public sector.
11. Prepare and develop on behalf of the state, strategic master plans for public private partnership.
12. Identify priority sectors for public private partnership.
13. Initiate the development of public infrastructure or public asset through public private partnership in and outside Ebonyi State through effective promotional means.
14. Determine the framework of engagement of consultants, specialists, advisers and committees as may be required to discharge the functions of the Commission in the State.
15. Verify and monitor performance of the terms and conditions of concession agreements by concessionaires or investors and make appropriate concessionaires or investors and make appropriate recommendations.



16. Advise the Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of public private partnership in the state and in particular to identify and make recommendations to the Government with respect to the acquisition of land required for such purposes.
17. Perform such other functions as are supplementary or incidental to the attainment of the objectives of the Law.
18. In relation to investment promotion and infrastructure concession initiated by the commission, it shall:
  - a. ensure the provision by the concessionaires or investors of such facilities and amenities that are necessary for the users of public infrastructure or public assets;
  - b. oversee the development, operation and maintenance, of public infrastructure or public assets provided by means of public private partnership and such other facilities necessary or adjacent to such public infrastructure or public assets; and
  - c. satisfy, discharge and perform the obligation of the Commission and the



- State to uphold and observe the terms of any concession agreement subject to the provisions of this Law.
19. Concession to private investors interested in public private partnership for design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public assets in accordance with the Ebonyi State Public Procurement Law.
  20. Negotiate with prospective private partners.
  21. Obtain from any government agency or private institutions, statistical or other information relevant to the functions of the commission.
  22. Designate a public infrastructure or public assets as a service charge, user fee or toll paying public infrastructure or public asset and specify the condition for the use of such infrastructure or assets.
  23. Pursuant to and in accordance with the provisions of this Law and the ratification of the House, approve the amount of money that may be charged by any private or public operator with respect to any public infrastructure, public assets or amenities as toll or user fees; and



24. Perform any other functions as may be assigned to it by the Governor under this Law.

## PART V: FINANCIAL PROVISIONS

### SECTION 15

The funds of the Commission shall consist of:

1. All subventions and budgetary allocations from the State Government;
- 2a. Gifts, loans, grants or aid from, any agency, institution, bilateral and multinational organizations or any Government.
- b. without prejudice to subsection 2 (c) of this section, the Commission shall not accept gift of land, money or other property on such terms and conditions deemed unlawful;
- c. The Commission shall not accept any gift if the conditions attached by the person or organization making the gift are inconsistent with the functions of the Commission under this Law,
3. A percentage of service charge, or user fees as may be prescribed in the Commission's regulation or agreed in the relevant concession agreement in the absence of such

*Funds of the  
Commission*



regulation; and

4. Interest from bank deposits, dividends from stock and shares, returns on investments etc,
5. all other sums which may become payable to or vested in the Commission in respect of any matter incidental to its functions.

## SECTION 16

The funds of the Commission shall be utilized for the following purposes:

*Application of Fund*

1. Salaries, remuneration, fees, allowances of staff, agents or consultants to the Commission.
2. For the development and maintenance of any property vested in or owned by the Commission.
3. To defray other expenses authorized by the Commission in carrying out its functions under this Law.



**SECTION 17**

The Commission shall keep and operate bank accounts for its funds with reputable bank(s) as may be duly authorized by the existing Financial Laws, and Regulations in the State. *Bank Account*

**SECTION 18***Borrowing Powers*

The Commission may:

1. With the written consent of the Governor, borrow by way of loan, or overdraft from any bank or source monies required by the Commission for meeting its obligations and discharging its functions under the Law.
2. Subject to the provisions of this Law and the conditions of any trust created in respect of any property, invest all or any of its funds with the consent or general authority of the Governor.
3. Invest any surplus fund of the Commission in security prescribed by the Trustees Investment Act or such other securities, as may be approved by the Governor.
4. Subject to the provisions of the Land Use Act, and any special or general direction which the



Governor may give in that behalf, the Commission may acquire or lease any land required for its purpose under this Law.

## SECTION 19

- Accounts and Audit*
1. The Commission shall keep a proper account of all its transactions in such form as the Auditor-General may direct, being a form that shall conform with standard commercial practice.
  2. The form of accounts shall be such as to secure the provision of separate information in respect of each of the main activities and divisions of the Commission,
  3. The accounts shall be audited annually by external auditors appointed by the Commission and approved by the Governor from a list of approved auditors provided by the Auditor-General of the State.

## SECTION 20

*Annual Reports*

The Commission shall prepare and submit an annual report in accordance with the prevailing audit policy of the State not later than the 30<sup>th</sup> day of June each year, a report on the activities of the Commission during the immediate preceding year and shall include in such report a copy of the audited accounts of the Commission and the Audit Report.



**SECTION 21**

1. The Commission shall prepare and submit to the Ministry of Finance and Economic Development an estimate of its income and expenditure in accordance with the call circular of that Ministry.
2. The Commission shall keep proper accounts in respect of each year from 1<sup>st</sup> January to 31<sup>st</sup> December in accordance with the prevailing audit policy of the State and shall forward its statement of Account of the preceding year to the Auditor-General for Audit purposes.

*Estimate of Income  
and Expenditure*

**SECTION 22**

1. It shall be an offence for any person to fail or refuse to pay service charge, user fee or toll in accordance with this Law, any regulations made under this Law or within the terms of concession agreement, and the offender shall be liable on conviction to a fine of One Hundred Thousand naira (N100, 000.00) or six (6) months imprisonment or both such fine and imprisonment.
2. If it appears to a person employed to collect service charge, user fee or toll that a person

*Offence and  
Penalties*



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. require him to vacate the public infrastructure or public asset or call where necessary, the assistance of law enforcement agents.
3. Where a person refuses to pay a service charge, user fee or toll with respect to the use of any public infrastructure or public asset, the person may be arrested. 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 or investor of the unpaid toll or the fine prescribed by subsection(1) of this Section and the demurrage to the appropriate authority, designated by the Commission or shall remain so impounded pending the trial of the offence committed under the said subsection.



**PART VI - GENERAL PROVISIONS ON  
INVESTMENT PROMOTION AND  
INDUSTRIALIZATION IN EBONYI STATE**

**SECTION 23**

Except as provided in this law and subject to this Law, a non Nigerian may invest and participate in the operation of an enterprise in the State.

*Enterprise Eligible  
For Participation*

**SECTION 24**

The provisions of this Law shall not apply to negative list as defined in this Law.

*Application of this  
Law*

**SECTION 25**

An enterprise in which foreign participation is permitted under this Law shall before commencing business, produce evidence of registration with Nigerian Investment Promotion Commission.

*Establishment of an  
Enterprise  
Registration with the  
Nigerian Investment  
Promotion  
Commission*

1. An enterprise in which foreign participation is permitted under this Law shall not commence business except it is incorporated or registered under the Companies and Allied Matters Act.



2. Subject to this Law, nothing in this Law shall be construed as precluding an enterprise to which this applies from obtaining such licence, lease, permits or any other approval as may be required for the establishment or operation of the enterprise.

### SECTION 26

A foreign enterprise may buy the shares of any company under this law in any convertible foreign currency.

*Purchase of the Shares  
of a Domestic  
Company by a Foreign  
Company*

### SECTION 27

For the purpose of promoting identified strategic or major investment, the Commission shall in consultation with appropriate government agencies, negotiate specific incentive packages for the promotion of investment as the Commission may specify.

*Incentive for Special  
Investment*

### SECTION 28

Subject to this section, a foreign investor in an enterprise to which this law applies shall be guaranteed unconditional transferability of fund through authorized dealer in freely convertible

*Investment  
Guarantees,  
Transfer of Capital,  
Profits and  
Dividends*



currency of

- a. dividend or profit (net of taxes) attributable to the investment.
- b. payments In respect of loan servicing where a foreign loan has been obtained; and
- c. the remittance of proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

### SECTION 29

1. Subject to subsections (2) and (3) of this section;

*Guarantees,  
Against  
Expropriation*

- a. no enterprise shall be expropriated by the State; and
- b. no person who owns whether wholly or in part the capital of any enterprise shall be compelled by law to surrender his interest in the capital to any other person.

2. There shall be no acquisition of an enterprise to which this law applies by the State Government, unless the acquisition is in the interest of the State or for a public purpose and under a Law which makes provision for

- a. payment of fair and adequate compensation; and



- b. a right of access to the Courts for the determination of the investor's interest or right and the amount of the compensation to which he is entitled.
3. Any compensation payable under this section shall be paid without undue delay and authorization for its repatriation in convertible currency shall where applicable be issued;
4. The State Government under this law may through the Commission and Ministry of Land and in line with the State Government policy or law on land acquisition, acquire land from private individuals, families, companies, Local Government Area(s), Community(ies) or village(s) for the purpose of investment by the Government, allocation to private investors for investment, development of infrastructure or services or utilities.
5. In the operation or application of sub section (4) of this section, compensation shall be paid in accordance with the State law or policy or Land Use Act.
6. Compensation when determined could be paid in part within 6 months but non payment or part payment shall not operate to stop full



acquisition of the land and immediate use of same.

7. The Commission shall in writing and/or through Radio/Television announcement invite such owner(s) of land for the operation of sub-sections (4) and (5) of this section.

8. Where such land owner(s) refuse(s) to appear or honour the invitation, the Commission shall apply and obtain an Order in a Court of competent jurisdiction, but without prejudice to the application of other laws on land acquisition in the State.

9. Upon such application to the court, the court shall grant an order authorizing the Commission to proceed to acquire the land and deposit in court the compensation due for such acquisition. The court shall further restrain the original owners of the land from preventing the developments of the land.

10. Any person(s) found guilty of preventing or obstructing the State Government, private investor(s) and Special Purpose Vehicle (SPV) company or companies from entering the land or developing the land shall be liable on conviction to five (5) years imprisonment or a fine of N5,000,000.00, or both such fine and imprisonment; in addition to the payment



of any damaged property of the investor or Government. Where a village or community is involved, the village or community shall pay for the cost of investment so destroyed.

11. Where the leadership of the village union or Community or Town Union President and/or the Traditional Rulers are found guilty of the disruption of land acquisition or destruction of property shall be liable on conviction to five (5) years imprisonment or N2, 000,000 fine or both such imprisonment and fine in addition to the loss of their respective positions/post(s) in the community or town union.
12. Any person(s), village(s), Community(ies) or Company(ies) who feel unfairly treated in the operation or application of this law may lodge a complain to the Commission through the Chairman or Executive Secretary. Where he is not satisfied with the decision of the Commission or if the decision is delayed more than 60 working days, may lodge an appeal to the State Governor and if decision on appeal is not acceptable or delayed beyond 90 working days, shall within the limit of this law, seek redress in the a Court of competent jurisdiction.



13. Notwithstanding anything in sub-section (10) of this section, no person(s), village(s), community(ies), family(ies) or Local Government Area or company(ies) shall prevent the acquisition of any land and its usage in accordance with the provisions of this Law.
14. Where a land is acquired for agricultural investment for private sector development, it shall be the property of the State Government who may lease same to private sector investors for an agreed period. The original owners of the land shall have equitable interest in the business. The percentage of equity which shall not exceed 10% of profit of the company after tax shall be negotiated by the Commission between the investors and original land owners. Where investment is for other business, the policy or law of the State Government on such acquisition or lease shall apply.
15. Any money or bond to be deposited in the court shall be transferred to an interest yielding account of any bank as the court may order and the beneficiaries may apply to the court at any time to claim the money and the court if satisfied with such application shall make an order releasing the money.



## SECTION 30

1. Upon any change of the Government of Ebonyi State or a prevailing Government in office, it shall not unnecessarily interfere with and/or interrupt the understanding already existing with an investor. *Irrevocable standing Payment Order (ISPO)*
2. The Ebonyi State Government shall at all times agree with the investor (if requested by an intending investor) and offer an Irrevocable Standing Payment Order (ISPO) to the effect that an investor is insulated from Government interference.
3. such investor who had registered his investment with the Commission may recover his investments from all funds accruing to the State Government from the Federation Account upon such interruption which leads to loss of investment, interest or property.
4. the provisions of sub-sections 1-3 of this section shall apply only to the intending/prospective investor who has
  - a. registered with the Commission.
  - b. declared initial cost of investment and updates on total investment from time to time of which the Commission shall have final say on the fair cost of such



- investment.
- c. complied with the laws and policies of the State Government.
  - d. had reported to the Commission any intending loss of investment or interest due to the State Government new policies or laws.
5. The Commission shall subject to sub-section (4d) of this section recommend to the State Government waivers to such investment and any waiver(s) granted shall be binding on the State Government.
6. The State Government through the Commission can enter into SPV with individuals or corporate bodies for the purpose of investment or offering of services. The SPV may require the State Government to irrevocably surrender her property or license under SPV. Where the property of State or Local Government Area is involved, the Governor shall obtain the approval of the Ebonyi State House of Assembly and the State Executive Council shall be notified. But where license or title is involved, the State Executive Council's approval shall be obtained.



7. Where sub-section (6) of this section applies, sub-sections (1-5) shall be operational and irrevocable.
8. Any staff or member(s) of the Commission who defraud(s) or mortgage(s) the interest of the State Government in the performance of his or her duties may be dismissed without benefit and if found guilty shall be liable on conviction to 2 years imprisonment or a fine of N1,000,000 or both such fine and imprisonment; in addition to the refund of that which was so defrauded.
9. Any staff or member of the Commission who is suspected to have defrauded or mortgaged the interest of the State Government in the performance of his or her duties may in the first instance be suspended from office and without pay for a period not exceeding 8 months.

### SECTION 31

The Commission shall provide an enterprise with such assistance and guidance as the enterprise may require and shall act as liaison, between the enterprise and relevant Government Departments, Agencies, Communities, Local Government Areas, Villages, Companies and such other public authorities.

*Assistance  
Enterprise*



**PART VII: GENERAL PROVISIONS FOR  
PRIVATE SECTOR PARTICIPATION IN  
INFRASTRUCTURE DEVELOPMENT IN  
EBONYI STATE**

**SECTION 32**

1. As from the commencement of this Law, any State Government Ministry, Agency, Corporation or body involved in the financing, construction, operation or maintenance of infrastructure by whatever name called may enter into a contract with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction operation or maintenance of any Infrastructure that is financially viable or any development facility of the State Government in accordance with the provisions of this Law.
2. This Law applies to investment and development projects relating to any infrastructure of any State Government Ministry, Agency, Corporation or body



**SECTION 33**

1. Every State Government Ministry, Agency Corporation or body shall prioritize its infrastructure projects and such priority projects may be qualified for concession under this Law. *Priority Projects*
2. The projects mentioned in Subsection (1) of this Section shall be submitted to the State Executive Council for approval on the recommendation of the relevant Ministry, Agency, Corporation or body, prior to entering into any contract under sub-Section 1 of this Law.
3. In entering into any contract or granting any concession under Section 32 of this Law, the State Government Ministry, Agency, Corporation or body shall ensure that the project proponent possesses the financial capacity, relevant expertise and experience in undertaking such infrastructure development or maintenance.
4. The Commission established under Section 5 of this Law shall publish in the State Gazette and in at least one national and the local newspapers having wide circulation, the list of projects eligible for contract for the financing, construction, operation, or maintenance of any infrastructure under this Law.



**SECTION 34**

1. Upon an approval for any project or contract for financing, construction, operation or maintenance of any infrastructure or development project under this Law, the State Government Ministry, Agency, Corporation or body concerned shall by publication in at least one national and one local newspapers having wide circulation in Nigeria and such other means of circulation invite open competitive public bid for such project or contract approved under this Law.

2. With respect to projects under this Law, the concession contract shall be awarded to the bidder who, having satisfied the prequalification criteria submits the most technically and economically comprehensive bid.

3. Where a consortium participates in a bid under this Section, there shall be proof by the consortium that all its members shall be bound jointly and severally under the contract and the withdrawal of any member of the consortium before, or during the implementation of the project may be a ground for review or possible cancellation of the contract.

*Competitive  
Public Bidding for  
Projects and  
Contracts*



**SECTION 35**

Notwithstanding Section 34 of this Law and if after advertisement in accordance with Section 34 of this Law,

1. Only one contractor or project proponent applied or submitted a bid or proposal or
2. Only one contractor or project proponent meets the prequalification requirements, the Ministry, Agency, Corporation or body may undertake direct negotiation without competitive bidding for any contract to be entered into pursuant to Section 32 of this Law.

*Circumstance  
where Competitive  
Bidding for  
Contracts May  
not be Necessary*

**SECTION 36**

The duration of any concession shall be as may be specified in the agreement or contract governing the concession.

*Duration of  
Concession*

**SECTION 37**

1. Any project proponent or contractor who enters into any contract for financing, construction, operation or maintenance may subject to the provision of the concession contract, recover his investment.

*Recovery of  
Investment, etc*



2. Notwithstanding Sub-section (1) of this section, the project; proponent or contractor shall:

- a. Undertake appropriate insurance policy on the concession with an Insurance Company approved by the National Insurance Commission; and
- b. Undertake the maintenance and repairs of the infrastructure or facility during the subsistence of the contract.

3. Subject to Subsection (4) of this section, the amount expended by any project, proponent or contractor who enters into any contract for financing, construction, operation or maintenance under any concession under this Law may be repaid by the relevant Ministry, Agency, Corporation or body to such proponent or contractor by way of amortization payments.

4. Any contractor whom any concession has been granted under this Law shall make payment to the State Government of such sum and at such intervals from the proceeds realized from the implementation of the concession as may be provided in the concession contract agreement.



### SECTION 38

Project cost shall be duly authenticated by the relevant Government Ministry, Department, Agency, Corporation or body and relevant qualified professional to determine correctly the amount to be repaid by amortization.

*Authentication  
of Project Cost*

### SECTION 39

There shall be a special concession account into which shall be credited money accruing to the Government and from which shall be defrayed monies to be paid in respect of the concession scheme.

*Establishment of  
Special Account, etc*

### SECTION 40

The Commission and State Government Ministry, Agency, Corporation or body shall have the power at any reasonable hour during day time to enter upon and inspect any land or asset comprised in any concession agreement or contract executed pursuant to this Law for the construction or erection of any infrastructure project or to inspect already business in operation under this law and it shall be the duty of the project proponent, the contractor or any one acting on its behalf to permit and give free access to enter and inspect.

*Power to Inspect*



**SECTION 41**

No agreement reached in respect of this Law shall be arbitrarily suspended, stopped, cancelled or changed except in accordance with the provisions of this Law.

*Arbitrary  
Variation of  
Agreements*

**SECTION 42**

Subject to the provision of this Law, the relevant State Government Ministry, Agency, Corporation or body shall supervise the project in respect of which concession has been granted by it under this Law.

*Supervision of  
Project under  
Concession*

**SECTION 43**

Every contractor to whom any concession has been granted under this Law shall have a right of way or easement in respect of any land or property near to or bordering the project site or facility as may be reasonably necessary for the proper implementation of the project under this Law.

*Right of Way, etc*

**SECTION 44**

1. The Commission may give letters of Procurement comfort or undertakings in respect of any Private Partnership or concession agreement.

*Procurement  
of the Investment  
Promotion and  
Infrastructure  
Concession,  
Commission*



2. The Commission shall be a procuring entity for the purpose of the Ebonyi State Public Procurement Law and shall comply with the intendment of that Law.
3. The Commission may undertake restricted or emergency procurement in accordance with the provisions of the Ebonyi State Public Procurement Law

#### SECTION 45

Any company that the Commission enters into Infrastructure Concession agreement with must be a company registered under the Companies and Allied Matters Act.

*Registration under  
Companies and  
Allied Matters Act*

#### SECTION 46

The Commission with the approval of the Governor may cause to be formed Limited Liability Partnerships or Limited Liability Companies for the purpose of financing Public Private Partnership projects or facilitating such project where in the opinion of the Commission it is necessary or expedient to do so in order to discharge its functions under this Law.

*Establishment  
of Special Purpose  
Companies or  
Limited Liability  
Partnership*



## SECTION 47

An Infrastructure Concession Agreement must not contain provisions for any financial guarantee from the State, any Ministry, Department or Agency but may include provisions for indemnity or undertaking that would be given in the ordinary course of business.

*No State, Ministry,  
Department, or  
Agency's Guarantee*

## SECTION 48

Without prejudice to the functions of the State under any other enactment, the State either itself or in conjunction with any other person (including another State) may:-

*Infrastructure  
Concession  
Agreement*

- a. Enter into an agreement with a person (referred to in this Law as a "Partner") for the performance of functions of the State specified in the agreement in relation to:
  - i. the design and construction of an asset together with operation of services relating to it and the provision of finance if required for such design, construction and operation;
  - ii. the construction of an asset together with the operation of services relating to and the provisions of finance if required for such construction and operation; and



- iii. the design and construction of an asset together with the provision of finance for such design and construction.
- b. Enter where appropriate into direct agreement with persons who have arranged or provided funding for the partner for carrying out the Public Private Partnership.

#### SECTION 49

As from the commencement of this Law, any Concession Agreement to be entered into by the Commission must be presented before the State Executive Council for ratification before implementation, provided that any concession agreement made by any Government Ministry, Agency, Corporation or Body before the commencement of this Law shall be valid.

*Ratification of  
Infrastructure  
Concession Agreement*

#### SECTION 50

Notwithstanding the provisions of any Law, the Commission may designate any public infrastructure or public asset, any road, bridge or highway within the State as public infrastructure or public assets with respect to which user fee or toll shall be payable for the purpose of this Law subject to the approval of the House of Assembly.

*Registration of  
Public Infrastructure  
or Public Assets*



**SECTION 51**

Notwithstanding the provisions of any Law, the Commission may in the relevant 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.

*Authorization to  
Collect User Fees or  
Tolls*

**SECTION 52**

1. The Commission may by Regulation specify the:-
  - a. service charge, user fees or tolls payable in respect of designated public infrastructure or public assets; and
  - b. establish fair and general conditions designating who, when and how the public infrastructure or public asset may be used and from whom service charge, user fee or toll may be collected; and

*Service Charge, User  
Fee or Toll  
Regulation*



2. A concessionaire or Investor shall, propose for the approval of the Commission, service charge, user fees or tolls or any review of same in relation to the use of public infrastructure or public assets by reference to such circumstances or combination of circumstances for classification as the Commission may after consultation with the concessionaire or investor specify.
3. The Commission 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 for a period when payment of service charge, user fees or tolls shall end;
  - a. on a date or at the end of a period specified in the Regulations; or
  - b. on a date determined by reference to:
    - i. the achievement of a specified financial objective; or
    - ii. such other factors or combination of factors as may be specified in the Regulations.
4. Where a concession agreement has been executed in accordance with this Law, the terms of the concession agreement shall be deemed to constitute a valid service charge, user fee or tolls Regulations for the purposes of this Section.



## PART VIII-DISPUTE RESOLUTION/ LEGAL PROCEEDINGS

### SECTION 53

1. Where a dispute arises between an investor and the State Government in respect of an enterprise, all efforts should be made through mutual discussion to reach an amicable settlement. *Dispute settlement Procedures*
2. Any dispute between an investor and the State Government in respect of an enterprise to which this Law applies which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration as follows:
  - a. In the case of a Nigerian Investor, in accordance with the rules of procedure for arbitration as specified in the Arbitration and Conciliation Act; or
  - b. In the case of a foreign Investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the Government of the country to which the investor is a National, are parties.



- c. Without prejudice to any terms as to dispute resolution as agreed in any relevant concession agreement and to any other right of recourse available at law, where any investor or concessionaire is dissatisfied with any omission or decision of or exercise of power by the Commission under this Law, the investor or concessionaire may appeal against the decision or exercise of power to the State Council on Public Procurement.

#### SECTION 54

1. No suit shall be commenced against the Commission, until at least one month after a written notice of an intention to commence the same has been served upon the Commission by intending plaintiff or his agent and such notice shall clearly and explicitly state the cause of action, the particulars of claims and the address of the intending plaintiff and the relief which he claims.
2. The Public Officer Protection Act shall apply in relation to any suit instituted against any member or officer or employee of the

*Limitation of Suits  
against the  
Commission, etc*



Commission.

3. A notice, summons or other documents required or authorized to be served on the Commission under the provisions of this Law or any other law or enactment may be served by delivering it to the Executive Secretary or by sending it by registered post addressed to the Executive Secretary at the principal office of the Commission.

*Service of Documents*

- 4a. In any action or suit against the Commission, no execution or attachment of processes in the nature thereof shall be issued against the Commission unless, not less than three months notice of the intention to execute or attach has been given to the Commission; and the procedure shall be subject to the sheriff and Civil Processes Law in force in Ebonyi State.

*Restriction on  
Execution Against  
Property of the  
Commission*

- b. Any sum of money which by the judgment of any court has been awarded against the Commission shall subject to any direction given by the court where no notice of appeal against the judgment has been given be paid from the fund of the Commission;
- c. Liquidation of any judgment against the Commission shall be by amortization;



A member of the Board, the Executive Secretary or any officer or employee of the Commission shall be indemnified out of the assets of the Commission against any liability incurred by him in defending any proceeding whether civil or criminal if the proceeding is brought against him in his capacity as a member, Executive Secretary, officer or other employee of the Commission.

**PART IX - MISCELLANEOUS PROVISIONS**

**SECTION 55**

The Governor may give to the Commission such directives of a general nature or relating generally to matters of policy with regards to the exercise of its or his functions under this Law as he may consider necessary and it shall be the duty of the Commission to comply with the directives or cause them to be complied with.

*Directive by the Governor*

**SECTION 56**

1. The Commission may with the approval of the Governor make such regulations as in his opinion are necessary or expedient for giving full effect to the provisions of this Law and for

*Power to make Regulations*



the due administration of its provisions,

2. Without prejudice to the generality of Subsection (1) of this Section, the Council may issue guidelines to give full effect to the provisions of this Law.
3. Any guideline, regulation or instrument issued pursuant to this law shall be under the signature of the Chairman of the Council or any other Officer of the Commission as may be designated by him.

#### SECTION 57

1. A member of the Council, the Executive Secretary or any other officer or employee shall *Secrecy*
  - a. not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his powers or is obtained by him in the ordinary course of his duty as a member of the Council or as the Executive Secretary officer or employee of the Commission;
  - b. treat as confidential any Information which has come to his knowledge in the exercise of his powers or is obtained by him in the performance of his duties



under this Law,

- c. not disclose any information referred to under paragraph (b) of this Subsection except as required by law.
2. Any person who contravenes the provisions of Subsection (1) of this Section commits an offence and shall on conviction be liable to a fine of not less than (Fifty Thousand Naira) ₦50,000 or imprisonment for a term not exceeding 2 years or both.

#### SECTION 58

The purpose of this Law is to establish Ebonyi State Investment Promotion, Investors' Protection, Concession and Regulatory Commission and provide for other matters related thereto.

*Object and Purpose*



**SCHEDULE I****SUPPLEMENTARY PROVISIONS  
RELATING TO THE COMMISSION  
PROCEEDINGS OF THE COUNCIL:**

1. Subject to this law and Section 27 of the Interpretation Act, the Council shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings and those of its committees, notices to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Commission may from time to time determine.
- 2a. There shall be at least four ordinary meetings of the Council in every calendar year and subject thereto, the Council shall meet whenever it is convened by the Chairman and if the Chairman is requested to do so by notice given to him by not less than 3 other members, he shall convene a meeting of the Council to be held within 14 days from the date on which the notice was given.
- b. Every meeting of the Council shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting



- shall elect one of their members to preside at the meeting.
3. The quorum of any meeting of the Council shall consist of the Chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this schedule) and four other members.
  4. The Council shall meet for the conduct of its business at such places and on such days as the Chairman may appoint.
  5. A question put before the Council at a meeting shall be decided by consensus and where this is not possible, by a majority of the votes of the members present and voting.
  6. The Chairman shall in the case of an equality of votes, have a casting vote the addition to his deliberative vote.
  7. Where the Council seeks the advice of any person on a particular matter, the Council may invite that person to attend for such periods as it thinks fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Council and shall not count towards the quorum for Committees.
  8. The Council may appoint one or more Committees to carry out on behalf of the



Council such of its functions as the Council may determine and report on any matter with which the Council is concerned.

9. A Committee, appointed under paragraph 8 of this Schedule shall be presided over by a member of the Council and consist of such number of persons (not necessarily all members of the Council) as may be determined by the Council and a person other than a member of the Council shall hold office on the Committee in accordance with the terms of his appointment.
10. A decision of a Committee of the Council shall be of no effect until it is ratified by the Council.
11. The fixing of the seal of the Commission shall be authenticated by the signature of the Chairman and the Executive Secretary or such other person authorized by the Council to act for that purpose.
12. A contract or an instrument which if made or executed by any person not being a body Corporate, would be required to be under seal, may be made or executed on behalf of the Commission by the Chairman or the Executive Secretary or by any person generally or specifically authorized to act for that purpose by the Council.



13. Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.
14. The validity of any proceeding of the Commission or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Commission or committee, or by any defect in the appointment of a member of the Commission or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Commission or Committee.



**SCHEDULE II**

**FORM A**

This printed impression has been carefully compared by me with the Bill which has been passed into Law by the Ebonyi State House of Assembly and found by me to be a true and correctly printed copy of the said Bill,

*AP*  
ANASI PATRICIA O. (MRS)  
CLERK OF HOUSE OF ASSEMBLY,  
EBONYI STATE OF NIGERIA.

Dated this *15th* day of *May* 2019

**FORM B**

Assented to by me this *15th* day of *May* 2019

*David Nweze Umahi*  
ENGR. CHIEF DAVID NWEZE UMAHI  
(FNSE, FNATE)  
GOVERNOR,  
EBONYI STATE OF NIGERIA

**FORM C**

I withhold my assent.

\_\_\_\_\_  
GOVERNOR  
EBONYI STATE OF NIGERIA

Dated this ..... day of ..... 2019