THE PUNJAB PUBLIC-PRIVATE PARTNERSHIP FOR INFRASTRUCTURE ACT 2010

(IX of 2010)

CONTENTS

CHAPTER-I
PRELIMINARY

1. Short title, extent and commencement
2. Applicability
3. Definitions

CHAPTER-II
INSTITUTIONAL ARRANGEMENTS

4. PPP Steering Committee
5. PPP Cell
6. Risk Management Unit
7. Government Agencies

CHAPTER-III
PROJECT DELIVERY PROCESS

8. PPP arrangements
9. Project identification and preparation
10. Project prioritization and approval
11. Approval of government support
12. Consideration by the Committee
13. Selection of the private party
14. Pre-qualification
15. Bidding
16. Bid evaluation
17. Bid security
18. Government support

19. Unsolicited proposals

20. Preparation and negotiation of PPP agreement

21. Project implementation and operation

22. Setting and adjustment of user levies

23. Dispute resolution

24. Termination of the PPP agreement

25. Vesting of the project in the private party

26. Transfer of the project

CHAPTER-IV
MISCELLANEOUS

27. Disclosure of generic risks

28. Public disclosure

29. Prescribing and enforcing standards

30. Indemnity by the private party

31. Recovery of costs, dues and fees

32. Protection of action taken in good faith

33. Power to make rules

34. Power to frame regulations

35. Applicability to Government Agencies

36. Power to amend a Schedule

37. Overriding provision

38. Transition provision

SCHEDULE-I

SCHEDULE-II

1. Build-and-Transfer (BT)

2. Build-Lease-and-Transfer (BLT)

3. Build-Operate-and-Transfer (BOT)

4. **Build-Own-and-Operate (BOO)**

5. **Build-Own-Operate-Transfer (BOOT)**

6. **Build-Transfer-and-Operate (BTO)**

7. **Contract-Add-and-Operate (CAO)**

8. **Develop-Operate-and-Transfer (DOT)**

9. **Rehabilitate-Operate-and-Transfer (ROT)**

10. **Rehabilitate-Own-and-Operate (ROO)**

11. **Management Contract (MC)**

12. **Service Contract (SC)**

TEXT

[1]THE PUNJAB PUBLIC-PRIVATE PARTNERSHIP FOR INFRASTRUCTURE ACT 2010

(IX of 2010)

[20th July, 2010]

An
Act

to create an enabling environment for private sector participation in infrastructure development in the Punjab through public-private partnership projects.

Preamble.– Whereas it is expedient to expand the provision of infrastructure services and improve their reliability and quality for accelerating economic growth and achieving the social objectives of the Government; to mobilize private sector resources for financing, construction, maintenance and operation of infrastructure projects; to improve efficiency of management, operation and maintenance of infrastructure facilities by introduction of modern technologies and management techniques; to incorporate principles of fairness, competition and transparency in public-private partnership projects; and to provide for ancillary matters;

It is enacted as follows:

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.– (1) This Act may be cited as the Punjab Public-Private Partnership for Infrastructure Act 2010.

(2) It extends to the whole of the Province.

(3) It shall come into force at once.

2. Applicability.– (1) Subject to the provisions of section 35, the Act shall apply to all infrastructure projects implemented through PPP in the sectors listed in Schedule I.

(2) The Government may, by notification, amend Schedule I and apply the provisions of this Act to an infrastructure project of any sector, not enumerated in Schedule I.

3. Definitions.– In this Act–

(a) “bid” means a technical and financial proposal submitted by a person who is eligible under the Act to undertake an infrastructure project;

(b) “Committee” means the PPP Steering Committee notified by the Government;

---

[1]This Act was passed by the Punjab Assembly on 12 July 2010; assented to by the Governor of the Punjab on 19 July 2010; and published in the Punjab Gazette (Extraordinary), dated 20 July 2010, pages 203-215, and repealed by the Punjab Public Private Partnership Act, 2014 (IX of 2014), w.e.f. 29.5.2014, section 43; and published in the Punjab Gazette (Extraordinary), pages 3559-3976.

(c) “company” means a company formed and registered under the Companies Ordinance 1984 (XLVII of 1984) and includes a company incorporated outside Pakistan or under any law prior to the Ordinance XLVII of 1984;

(d) "construction" includes reconstruction, rehabilitation, renovation, improvement, expansion, addition, alteration and related activities;

(e) “consortium” means a joint venture of persons desirous of entering into a PPP agreement;

(f) "Government" means the Government of the Punjab;

(g) “Government Agency” means a department, attached department, body corporate, autonomous body of the Government, local government or any organization or corporation owned or controlled by the Government;

(h) "infrastructure" means facilities and services in one of the sectors listed in Schedule I;

(i) "investment" includes development and pre-operative capital expenditure made or incurred on services, land, construction and equipment;

(j) "lender" means a financial institution, bank or an establishment providing financial support, with or without security;

(k) "local government" means a local government as defined in the Punjab Local Government Ordinance 2001 (XIII of 2001);

(l) "person" means a company, entity, firm, association, body of individuals, or a sole proprietor other than a Government Agency;

(m) "prescribed" means prescribed by the rules or the regulations;

(n) "private party” means a person who enters into a PPP agreement with a Government Agency;

(o) “project” means a project implemented on a PPP basis in one of the infrastructure sectors listed in Schedule I;

(p) “Province” means the Province of the Punjab;

(q) "PPP" means a partnership between the public sector represented by a Government Agency and a private party for the provision of an infrastructure facility or service with a clear allocation of risks between the parties;

(r) “PPP agreement” means a contractual arrangement of any one of the types described in Schedule II, which is made between a Government Agency and a private party;

(s) “PPP Cell” means the PPP Cell established under the Act;

(t) “regulations” means the regulations framed under the Act;

(u) “Risk Management Unit” means the Risk Management Unit established under the Act;

(v) "rules" means the rules made under the Act;

(w) "Schedule" means a Schedule appended to the Act; and

(x) "user levy" means a levy which may be collected by a private party under the PPP agreement and includes a tariff, toll, fee or charge.

CHAPTER II
INSTITUTIONAL ARRANGEMENTS

4. PPP Steering Committee.– (1) The Government shall, by notification, establish the Committee to promote, facilitate, coordinate and oversee infrastructure projects using the PPP approach to be known as the PPP Steering Committee.

(2) The Committee shall consist of the following members:

(a)	Minister for Planning and Development;	Chairperson
(b)	Minister for Finance;	Vice Chairperson
(c)	Minister for Local Government;	Member
(d)	Chairman, Planning and Development Board of the Government;	Member
(e)	Secretary to the Government, Finance Department;	Member
(f)	Secretary to the Government, Planning and Development Department;	Member
(g)	Secretary to the Government, Irrigation and Power Department;	Member
(h)	Secretary to the Government, Communications and Works Department;	Member
(i)	Secretary to the Government, Transport Department;	Member
(j)	Secretary to the Government, Housing, Urban Development and Public Health Engineering Department;	Member
(k)	Secretary to the Government, Commerce and Investment Department;	Member
(l)	Secretary to the Government, Education Department;	Member
(m)	Secretary to the Government, Health Department;	Member
(n)	Member (PPP), Planning and Development Board of the Government;	Secretary

(3) The Committee shall–

(a) formulate a PPP policy for approval of the Government;

(b) supervise and coordinate implementation of the PPP policy by the Government Agencies;

(c) approve, reject or send back for reconsideration the project proposal submitted by a Government Agency;

(d) decide on any direct or contingent support for a project requested by a Government Agency;

(e) approve, reject or send back for reconsideration the recommendation submitted by a Government Agency for the contract award to a private party;

(f) assist the Government Agencies in solving major problems impeding project preparation and implementation;

(g) be the final deciding authority for all the projects; and

(h) take all other steps necessary for giving effect to the provisions of this Act.

5. PPP Cell.– (1) The Government shall, by notification, establish the PPP Cell in the Planning and Development Department to promote and facilitate PPP development in the Province, assist a Government Agency in preparing and executing high-quality projects, and act as a PPP catalyst and advocate, knowledge manager, and policy and project advisor.

(2) The PPP Cell shall–

(a) provide technical support to the Committee and act as its secretariat;

(b) develop operating guidelines, procedures and model documents for projects for approval by the Committee;

(c) provide support and advice to a Government Agency throughout the PPP process;

(d) evaluate and prioritize project proposals submitted by the Government Agencies;

(e) evaluate, in close cooperation with the Risk Management Unit, the type and amount of government support sought for a project;

(f) review bid evaluation report, submitted by a Government Agency;

(g) prepare and regularly update a pipeline of the projects; and

(h) perform any other functions as may be assigned to it by the Committee.

6. Risk Management Unit – (1) The Government shall, by notification, establish a Risk Management Unit in the Finance Department to act as a fiscal guardian for projects using the PPP approach.

(2) The Risk Management Unit shall–

(a) develop risk management guidelines consistent with the PPP policy for approval by the Committee;

(b) examine whether requests for government support and the proposed risk sharing arrangements are consistent with the PPP policy and fiscally sustainable;

(c) ensure the inclusion of approved government support in the annual budget of the Province;

(d) monitor direct and contingent liabilities of the Government incurred through the projects; and

(e) perform any other functions as may be assigned to it by the Committee.

7. Government Agencies.– (1) A Government Agency shall manage the project throughout its life cycle consisting of identification, preparation, tendering, implementation and operation.

(2) The Government Agency shall–

(a) identify suitable projects and prioritize these within its sector or geographical area of responsibility;

(b) recruit transaction advisors for project preparation and tendering;

(c) supervise the preparation of the feasibility study and if its outcome is positive, submit the project proposal through the PPP Cell to the Committee;

(d) conduct a competitive tendering process consisting of pre-qualification and bidding to select the private party;

(e) carry out bid evaluation and submit recommendation on contract award to the Committee;

(f) negotiate and sign the PPP agreement; and

(g) monitor and evaluate implementation and operation of the project.

(3) The Government Agency may seek support and advice of the PPP Cell for performance of any of the functions under this section.

CHAPTER III
PROJECT DELIVERY PROCESS

8. PPP arrangements.– A Government Agency may–

(a) enter into a PPP agreement with a private party for the performance of functions in relation to the design and construction of a project, services relating to it or the provision of finance for the design, construction, operation or others;

(b) arrange or provide for a payment to the private party in accordance with the terms and conditions of the PPP agreement;

(c) enter into an agreement with a person for provision or arrangement of funding for a project;

(d) transfer an interest in a project or part of a project to the private party or subject to the approval of the Government, to a nominee of the private party by transfer, assignment, conveyance, lease, license or otherwise;

(e) enter into an arrangement with any other Government Agency, the Federal Government, a body, authority or entity owned or controlled by the Federal Government for a project; and

(f) subject to the PPP agreement, assume transfer of an interest of the private party or a nominee of the private party, in a project or part of a project, by transfer, assignment, conveyance, sale, grant or surrender.

9. Project identification and preparation.– (1) A Government Agency shall identify and prepare a project**,** and shall complete this phase before tendering.

(2) The Government Agency shall identify and conceptualize potential projects from its master plans and other planning documents.

(3) The Government Agency shall prioritize the projects within its sector or geographical area, using criteria such as supply and demand gaps, social and economic benefits, financial attractiveness, risks and uncertainties involved, and readiness for implementation.

(4) Preparation of a high-priority project shall consist of a feasibility study, initial environmental examination or environmental impact assessment, risk analysis, analysis of the need for government support, stakeholder consultations, determination of the PPP modality, and preparation of bid documents including a draft PPP agreement.

(5) The Government Agency shall submit a viable project proposal through the PPP Cell to the Committee.

10. Project prioritization and approval.– (1) The PPP Cell shall exercise quality control by reviewing the viability of a project proposal and its completeness in terms of documentation.

(2) The PPP Cell shall prioritize the projects that pass the review across sectors and the Province, by taking into account provincial development objectives, and submit them to the Committee for approval.

(3) The PPP Cell shall include approved projects in a priority list of the Province and widely publicize them.

11. Approval of government support.– (1) A Government Agency shall include all requests for government support described in section 18 as an integral part of a project proposal.

(2) The PPP Cell shall forward all requests for government support with budgetary implications to the Risk Management Unit, which shall review their justification and eligibility, and analyze the fiscal impact of the related direct and contingent liabilities.

(3) The Risk Management Unit shall, on the basis of review and analysis, make a recommendation to the Committee for approval, rejection or reconsideration of the requested government support.

(4) If approved by the Committee, the Risk Management Unit shall make the necessary arrangements for including such support in the annual budget of the Province.

12. Consideration by the Committee.– (1) The Committee shall, by taking into account the recommendations of the PPP Cell and the Risk Management Unit, consider a project proposal submitted by a Government Agency and may approve the proposal with or without modification, reject it or return it to the Government Agency for reconsideration.

(2) In case a project proposal is returned for reconsideration, the Government Agency shall take suitable action on the decision taken by the Committee and may resubmit the proposal for approval by the Committee.

13. Selection of the private party.– (1) After the approval of the project proposal by the Committee, the Government Agency shall select a private party for the project through competitive public tendering, using the two-stage process of pre-qualification and bidding.

(2) The Government Agency shall not enter into direct negotiations with any person without competitive public tendering.

14. Pre-qualification.– The Government Agency shall conduct pre-qualification for the project in the following manner:

(a) a public notice inviting participation in pre-qualification for undertaking the project and allowing up to forty-five days for the preparation of pre-qualification applications shall be published in at least two national daily newspapers twice within a period of ten days and shall also be published at least in one other means of mass communication such as website;

(b) for projects with a total cost equal to or exceeding four hundred million rupees, the pre-qualification notice shall also be published in at least one international newspaper;

(c) a person who intends to participate in the pre-qualification shall provide information with regard to his legal, technical, managerial and financial capacity to undertake the project in such form along with such particulars as may be specified by the Government Agency;

(d) in case the person is a consortium, its members and their roles and proposed shareholding shall be disclosed at the pre-qualification stage, and the members shall bind themselves that if awarded the contract, they shall be jointly and severally liable for the obligations of the private party.

(e) the Government Agency shall examine the information and other particulars submitted by the person within thirty days and decide as to whether such person fulfills the criteria for pre-qualification as laid down by the Government Agency;

(f) a person who fulfills the criteria shall be the pre-qualified person; if less than three persons are pre-qualified, the Government Agency shall analyze the reasons for this outcome, improve project structuring, and re-initiate the pre-qualification process for additional participants until at least two persons are pre-qualified;

(g) if a consortium is the pre-qualified person, the lead consortium member shall be allowed to be replaced not earlier than six years after project commissioning, subject to approval by the Government Agency; any other member may withdraw prior to award of the contract or during the term of the contract, provided that the remaining members are still legally, technically and financially capable of successfully carrying out the implementation and operation of the project, or that an acceptable substitute with equal or better qualifications is replacing such withdrawing member;

(h) any change in the shareholding of the consortium shall also be subject to approval by the Government Agency; and

(i) if the consortium fails to comply with the requirement of sub-clause (g), the consortium shall cease to be the pre-qualified person.

15. Bidding.– (1) After at least two persons have been pre-qualified, the Government Agency shall issue bid documents to them with an invitation to submit bids within ninety days.

(2) The bid documents shall include–

(a) instructions to bidders;

(b) minimum design and performance standards and specifications;

(c) draft PPP agreement;

(d) bid form, specifying the information required to evaluate the bid;

(e) bid security form and performance bond form; and

(f) any other documents relevant to the project, such as the feasibility study and environmental impact assessment.

(3) To provide clarifications to bidders and discuss the terms and conditions of the PPP agreement, the Government Agency shall conduct a pre-bid conference at least sixty days before the bid submission date and shall issue supplemental notices, as may be necessary.

(4) If only one valid bid is received on the specified date, the Government Agency shall undertake market sounding to determine reasons for the weak competition, restructure the project and government support accordingly, and conduct re-bidding.

(5) If only one valid bid is received even after the re-bidding, the Government Agency shall evaluate it; and depending on results of the evaluation, the Government Agency shall recommend through the PPP Cell to the Committee whether to negotiate the PPP agreement with the sole bidder or withdraw the project from the market and undertake it in the traditional way by the public sector.

16. Bid evaluation.– (1) The Government Agency shall carry out bid evaluation in two phases within forty-five days.

(2) In the first phase, the Government Agency shall assess the technical, operational, environmental and commercial responsiveness of the bids received, according to the requirements, criteria, minimum standards, and basic parameters specified in the bid documents, and shall reject non-responsive bids.

(3) In the second phase, the Government Agency shall evaluate responsive bids from the financial viewpoint; and depending on the type of the project, it shall use one of the following parameters for the evaluation:

(a) lowest proposed tariff, toll, fee or charge at the start of operation of the project if a parametric formula for periodical tariff adjustment is specified in the bid documents;

(b) lowest present value of the proposed tariffs, tolls, fees and charges for the period covered by the PPP agreement if there is no such formula;

(c) lowest present value of payments from the Government;

(d) lowest present value of government subsidy to be provided for the period covered by the PPP agreement;

(e) highest present value of the proposed payments to the Government, such as concession fees, lease or rental payments, fixed or guaranteed payments or variable payments and percentage shares of revenues for the period covered by the PPP agreement; or

(f) any other appropriate financial bid parameters approved by the Committee upon recommendation of the Government Agency, the PPP Cell, or the Risk Management Unit.

(4) The Government Agency may, for the reasons to be recorded in writing, reject a speculative or unrealistic bid as non-responsive; such rejection of a bid shall not lead to the termination of the bidding process.

(5) After the completion of the bid evaluation, the Government Agency shall submit through the PPP Cell to the Committee a bid evaluation report, including a recommendation on contract award.

(6) The Committee shall, after taking into account results of the PPP Cell's review of the bid evaluation report, decide on the contract award within thirty days from the submission of the bid evaluation report.

(7) The Government Agency shall announce results of the bidding and issue a notice of award to the selected private party within ten days of the Committee's decision.

17. Bid security.– (1) A pre-qualified person shall deposit with the Government Agency a bid security amount as determined by the Government Agency based on the project cost.

(2) The Government Agency shall, within thirty days, return the bid security amount to all unsuccessful bidders in the prescribed manner.

18. Government support.– (1) The Government Agency shall indicate the government support approved by the Committee for a project in the bid documents.

(2) The government support may take the following forms:–

(a) administrative support to the private party in obtaining licenses and other statutory and non-statutory clearances from the Federal Government, a public sector organization or a Government Agency for the purposes of the project on such terms and conditions as may be prescribed; provision of utility connections for power, gas and water at project site; acquisition of land necessary for the project; and rehabilitation and resettlement necessitated because of the execution of the project; this type of support shall be made available for all projects;

(b) asset-based support such as leasing land or infrastructure facilities owned by the Government or a Government Agency to the private party; the need for this type of support shall be determined on case to case basis;

(c) direct financial assistance through viability gap funding; this type of support shall be offered only for projects, which are economically and socially viable, but not financially attractive enough if constrained by affordable user levies; its amount shall be determined through bidding;

(d) Government guarantees for political risks under the Government's control such as changes in the PPP policy, delay of agreed user levy adjustments, early termination of the PPP agreement with no fault of the private party, and expropriation; this type of support shall be made available for all projects; and

(e) Government guarantees for other risks such as *force majeure*, demand risk, and default by a Government Agency on payments for works and services delivered by the private party (off-take risk); the need for this type of support shall be determined on case to case basis as part of the risk sharing analysis undertaken during project preparation.

19. Unsolicited proposals.– (1) A person may propose a project to a Government Agency, if the project is not included in the Provincial priority list mentioned in section 10(3) and is economically and financially feasible without any government support in the form of direct financial assistance described in section 18(c).

(2) An unsolicited proposal shall be accompanied by a feasibility study, environmental impact assessment, and draft PPP agreement.

(3) The Government Agency shall consider the unsolicited proposal from all aspects including technical and financial, and may modify the same in consultation with the person who made the proposal.

(4) The Government Agency shall require the person to submit details about legal, technical, managerial and financial capability of the person.

(5) The Government Agency shall evaluate the unsolicited proposal and, if its feasibility as well as the legal, technical and financial qualification of the person is confirmed, submit it through the PPP Cell to the Committee for approval.

(6) If the Committee approves the unsolicited proposal, the Government Agency shall invite comparative bids by following the procedure described in sections 13 to 17.

(7) The Government Agency shall give the person who made the unsolicited proposal first right to match the best bid and if the person fails to match the bid, the Government Agency shall direct the best bidder to reimburse to the person reasonable costs incurred in project preparation as may be specified in the bid documents.

(8) If valid comparative bids are not received, the Government Agency shall negotiate the PPP agreement with the person who made the unsolicited proposal.

20. Preparation and negotiation of PPP agreement.– (1) The draft PPP agreement shall form part of bid documents.

(2) The draft PPP agreement shall clearly define the legal relationship between the Government Agency and the selected private party, their rights and responsibilities including the specific government support for the project.

(3) The draft PPP agreement shall contain the following provisions, as applicable:-

(a) type of the project;

(b) term of the PPP agreement;

(c) scope of works and services to be provided under the project;

(d) main technical specifications and performance standards;

(e) environmental and safety requirements;

(f) implementation milestones and completion date of the project;

(g) cost recovery scheme through user levies, including mechanism for their periodical adjustment;

(h) performance bonds for construction works and operation;

(i) minimum insurance coverage;

(j) acceptance tests and procedures;

(k) rights and obligations of the parties to the PPP agreement, including risk sharing;

(l) type and amount of government support;

(m) transfer of assets at the end of the term of the PPP agreement (if any);

(n) warranty period and procedures after the transfer;

(o) requirements and procedure for variations of the PPP agreement;

(p) grounds for and effects of termination of the PPP agreement, including *force majeure*;

(q) procedures and venue for dispute resolution;

(r) financial reporting by the private party; and

(s) supervision mechanism of the Government Agency.

(4) A Government Agency shall not enter into a PPP agreement unless the procedure specified in this Act has been fulfilled.

(5) The Government Agency shall ensure conclusion of contract negotiations with the selected private party within sixty days; the negotiations shall focus on terms and conditions not specified in the bid documents; and post-bid changes are not allowed to be made during contract negotiations in those terms and conditions, which have been described in the bid documents as binding and have formed part of the bid evaluation.

21. Project implementation and operation.– (1) Before signing the PPP agreement with the Government Agency, the private party may establish, without changing its shareholding, a special purpose company for implementation and operation of the project, which shall assume all the rights and obligations of the private party.

(2) The private party shall prepare detailed engineering design and implementation plan in accordance with the main technical specifications contained in the PPP agreement, and shall submit these to the Government Agency for approval prior to the start of construction.

(3) The private party shall build the project in accordance with the performance standards and specifications contained in the approved detailed engineering design.

(4) To guarantee its performance in the construction works, the private party shall post a bond or furnish a bank guarantee, which shall be valid up to the acceptance of the completed works by the Government Agency; for projects, which include operation by the private party, the private party shall post or furnish another performance bond or bank guarantee upon the acceptance of the completed works to guarantee compliance with the operating parameters and standards specified in the PPP agreement.

(5) Within three hundred and sixty-five days of the signing of the PPP agreement, the private party shall achieve financial closure for the project, defined as a legally binding commitment of equity holders and lenders to provide funding for the entire construction cost.

(6) The Government Agency shall not allow variations in the PPP agreement during the implementation and operation of the project unless the following requirements are met:–

(a) there is no increase in the agreed tariffs except for the periodic formula-based tariff adjustments, unless the scope of works or performance standards are increased;

(b) there is no reduction in the scope of works or performance standards, fundamental change in the contractual arrangement or extension of the term of the PPP agreement, except in cases of breach by the Government Agency of its obligations;

(c) there is no additional government guarantee or increase in the financial exposure of the Government; and

(d) the variation in the PPP agreement is necessary due to an unforeseeable event beyond the control of the Government Agency or the private party.

(7) The Government Agency shall monitor and evaluate the project during its implementation and operation to ensure its conformity with the plans, specifications, performance standards and user levies set forth in the PPP agreement, and to assess its actual outcomes in terms of infrastructure services in relation to the expected outcomes.

(8) The Government Agency shall submit annual reports on project performance to the PPP Cell.

22. Setting and adjustment of user levies.– (1) The Government Agency shall set the user levies at levels that ensure financial viability of the project by fully covering the capital, operation and maintenance costs plus a reasonable rate of return to the private party or the Government Agency.

(2) Unless specified in the bid documents, the Government Agency shall determine the user levies through bidding and the user levies shall be adjusted periodically during the term of the PPP agreement, based on a formula using official price indices determined in the PPP agreement.

(3) If the Government Agency keeps the user levies at lower levels to make the infrastructure services affordable to the end users, the Government Agency shall compensate the private party for the difference through viability gap funding.

23. Dispute resolution.– (1) In case of any dispute between a Government Agency and a private party in relation to or arising out of the PPP agreement, the parties shall resolve the dispute in the following three stages:–

(a) deliberation between the parties to achieve a consensus;

(b) if no consensus on how to resolve the dispute has been achieved in the first stage, mediation by an independent and impartial person appointed by the Committee; and

(c) if no amicable settlement of the dispute has been reached in the second stage, arbitration in the city of Lahore or any other place agreed to by the parties in Pakistan or abroad and specified in the PPP agreement.

(2) The dispute shall be decided in accordance with the law of Pakistan or under any other law as may be specified in the PPP agreement.

24. Termination of the PPP agreement.– A party to the PPP agreement may terminate the agreement in the following cases:–

(a) if the Government Agency fails to comply with any major obligation specified in the PPP agreement, and such failure is not remediable or, if remediable, remains uncorrected for an unreasonable period of time, the private party may issue a prior notice to the Government Agency specifying the date of transfer of the PPP project to it; in such a case, the private party shall be compensated by the Government Agency in line with the PPP agreement; or

(b) if the private party fails to comply with the agreed milestone activities, or fails to achieve the prescribed technical and performance standards, or commits any substantial breach of the PPP agreement, the Government Agency shall notify the private party in writing and if the failure is not corrected within the time specified, may terminate the PPP agreement; in such a case, the Government Agency may either take over the project and assume all related liabilities or allow lenders of the private party to exercise their rights and interests as specified in the loan documents for the project; the lenders may replace the private party on the same terms and conditions, subject to approval of the substitute by the Government Agency.

25. Vesting of the project in the private party.– Subject to the PPP agreement and except for the build-own-and-operate and rehabilitate-own-and-operate arrangements described in Schedule II, the completed project may vest in the private party for a period not exceeding thirty years and on expiry of such period, the project shall vest in the Government Agency.

26. Transfer of the project.– If a project is transferred to the Government Agency in accordance with the provisions of the PPP agreement or this Act, all the rights granted under the PPP agreement to the private party in respect of the project shall stand transferred to the Government Agency.

CHAPTER IV
MISCELLANEOUS

27. Disclosure of generic risks.– (1) A Government Agency shall, as far as possible, provide in the PPP agreement, or any other ancillary or additional agreement, a list of generic risks involved in the project along with allocation and treatment of such generic risks.

(2) The Government or the Government Agency shall not be liable to any claim of the private party for a generic risk, which is not specified in the PPP agreement or any other ancillary or additional agreement.

28. **Public disclosure**.– (1) A PPP agreement or any other ancillary or additional agreement shall be a public document.

(2) The Government Agency shall make arrangements for inspection or copying a PPP agreement or any other ancillary or additional agreement subject to the payment of the prescribed fee.

(3) Any person may, subject to the payment of prescribed fee and any other reasonable restriction, inspect or obtain copies of a PPP agreement or any other ancillary or additional agreement.

29. Prescribing and enforcing standards.– The Government may–

(a) prescribe and enforce performance standards for a project including standards of performance of the private party in regard to the services to be rendered by it to the consumers;

(b) prescribe quality standards including standards of materials, equipments and other resources or processes relevant to infrastructure projects including planning criteria, construction practices and standards of such facilities, operating standards and maintenance schedules for regulating the working of the private party to ensure efficiency and adherence to the prescribed quality standards;

(c) prescribe the mode of output-based contracting, performance-based payment systems and output-based procurement procedures;

(d) establish a uniform system of accounts to be followed by the private party;

(e) take steps to promote effective competition and efficiency in projects using the PPP approach;

(f) prescribe the mode of conducting public hearing and consultation with stakeholders; and

(g) prescribe any other standard for regulating the infrastructure development through PPP.

30. Indemnity by the private party.– The private party shall indemnify the Government Agency against any defect in design, construction, maintenance or operation of the project and undertake to reimburse all costs, charges, expenses, losses and damages suffered by the Government Agency or an end user due to any such defect.

31. Recovery of costs, dues and fees.– (1) The Government Agency may recover a sum due from the private party, as ascertained through the dispute resolution under this Act, as if the same is recoverable as arrears of land revenue under the Punjab Land Revenue Act 1967 (XVII of 1967).

(2) The Government Agency shall designate an officer as collector to exercise the powers of collector under the Punjab Land Revenue Act 1967 (XVII of 1967).

32. Protection of action taken in good faith.– No suit, claim or other legal proceedings shall lie against the Committee, a Government Agency or a representative of the Committee or the Government Agency in respect of anything done or intended to be done in good faith under this Act or under the rules or the regulations.

33. Power to make rules.– The Government may, by notification, make rules for carrying out the purposes of this Act.

34. Power to frame regulations.– Subject to the rules, the Committee may, with the prior approval of the Government and by notification, frame regulations to give effect to the provisions of this Act.

35. Applicability to Government Agencies.– (1) The provisions of this Act shall apply to a project of any Government Agency if its estimated total cost, to be incurred by the Government Agency and the private party for services, land, construction and equipment, exceeds twenty million rupees.

(2) A Government Agency may request the Committee to process a project with an estimated total cost of twenty million rupees or less, and the Committee shall proceed with the project in the manner as if it falls within its jurisdiction.

36. Power to amend a Schedule.– The Government may, by notification, amend a Schedule.

37. Overriding provision.– Notwithstanding anything contained in any other law, the provisions in this Act shall prevail on the provisions of all other laws to the extent of a PPP project undertaken by any Government Agency.

38. Transition provision.– A PPP agreement signed with a private party prior to the coming into force of this Act shall be valid until the end of the term established in such agreement.

SCHEDULE I

[see sections 2(1) and 3(h) & (o)]

INFRASTRUCTURE SECTORS

(1) Canals or dams;

(2) Education facilities;

(3) Health facilities;

(4) Housing;

(5) Industrial estates;

(6) Information technology;

(7) Land reclamation;

(8) Power generation facilities;

(9) Roads (provincial highways, district roads, bridges or bypasses);

(10) Sewerage or drainage;

(11) Solid waste management;

(12) Sports or recreational infrastructure, public gardens or parks;

(13) Trade fairs, conventions, exhibitions or cultural centers;

[2][(14) Urban transport and bus terminal excluding mass transit and metro bus system;]

(15) Water supply or sanitation, treatment or distribution; and

(16) Wholesale markets, warehouses, slaughter houses or cold storages.

SCHEDULE II

[see section 3(r)]

TYPES OF PPP AGREEMENTS

1. Build-and-Transfer (BT): A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and after its completion hands it over to the Government Agency. The Government Agency will reimburse the total project investment, on the basis of an agreed schedule. This arrangement may be employed in the construction of any infrastructure project; including critical facilities, which for security or strategic reasons must be operated directly by the Government Agency.

2. Build-Lease-and-Transfer (BLT): A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and upon its completion hands it over to the Government Agency on a lease arrangement for a fixed period, after the expiry of which ownership of the project is automatically transferred to the Government Agency.

---

[2]Substituted by the Notification NO. SOE-III(P&D)1-51/2012, dated 2nd July, 2012; and published in the Punjab Gazette Part I, dated 11.7.2012.

3. Build-Operate-and-Transfer (BOT): A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project, and the operation and maintenance thereof. The private party operates the facility over a fixed term during which it is allowed to collect from project users' appropriate tariffs, tolls, fees, rentals, or charges not exceeding those proposed in the bid or negotiated and incorporated in the PPP agreement, to enable the private party to recover its investment and operating and maintenance expenses for the project. The private party transfers the facility to the Government Agency at the end of the fixed term that shall be specified in the PPP agreement. This shall include a supply-and-operate situation, which is a contractual arrangement whereby the supplier of equipment and machinery for an infrastructure project operates it, providing in the process technology transfer and training of the nominated individuals of the Government Agency.

4. Build-Own-and-Operate (BOO): A contractual arrangement whereby the private party is authorized to finance, construct, own, operate and maintain an infrastructure project, from which the private party is allowed to recover its investment and operating and maintenance expenses by collecting user levies from project users. The private party owns the project and may choose to assign its operation and maintenance to a project operator. The transfer of the project to the Government Agency is not envisaged in this arrangement. However, the Government Agency may terminate its obligations after the specified time period.

5. Build-Own-Operate-Transfer (BOOT): A contractual arrangement similar to the BOT agreement, except that the private party owns the infrastructure project during the fixed term before its transfer to the Government Agency.

6. Build-Transfer-and-Operate (BTO): A contractual arrangement whereby the Government Agency contracts out an infrastructure project to the private party to construct it on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the project is commissioned, the private party is given the right to operate the facility and collect user levies under the PPP agreement. The title of the project always vests in the Government Agency in this arrangement.

7. Contract-Add-and-Operate (CAO): A contractual arrangement whereby the private party expands an existing infrastructure facility, which it leases from the Government Agency. The private party operates the expanded project and collects user levies, to recover the investment over an agreed period. There may or may not be a transfer arrangement with regard to the added facility provided by the private party.

8. Develop-Operate-and-Transfer (DOT): A contractual arrangement whereby favorable conditions external to an infrastructure project, which is to be built by the private party, are integrated into the PPP agreement by giving it the right to develop adjoining property and thus enjoy some of the benefits the investment creates such as higher property or rent values.

9. Rehabilitate-Operate-and-Transfer (ROT): A contractual arrangement whereby an existing infrastructure facility is handed over to the private party to refurbish, operate and maintain it for a specified period, during which the private party collects user levies to recover its investment and operation and maintenance expenses. At the expiry of this period, the facility is returned to the Government

Agency. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and operating it.

10. Rehabilitate-Own-and-Operate (ROO): A contractual arrangement whereby an existing infrastructure facility is handed over to the private party to refurbish, operate and maintain with no time limitation imposed on ownership. The private party is allowed to collect user levies to recover its investment and operation and maintenance expenses in perpetuity.

11. Management Contract (MC): A contractual arrangement whereby the Government Agency entrusts the operation and management of an infrastructure project to the private party for an agreed period on payment of specified consideration. The Government Agency may charge the user levies and collect the same either itself or entrust the collection for consideration to any person who shall pay the same to the Government Agency.

12. Service Contract (SC): A contractual arrangement whereby the private party undertakes to provide services to the Government Agency for a specified period with respect to an infrastructure facility. The Government Agency will pay the private party an amount according to the agreed schedule.