

# **Policy for Public Private Partnership** **in Kerala**

## **1. Preamble**

1.1 Provision of public services and infrastructure has traditionally been the exclusive domain of the government (Government will continue to be the main provider of public goods and services). However, with increasing budgetary demands for social welfare schemes coupled with growing aspiration of the people, the government's ability to adequately address infrastructure needs through traditional means has been severely constrained. This has led the governments across the world to increasingly facilitate the private sector to be a partner in supplementing public investments and provide public services through Public Private Partnerships (PPP).

1.2 Government of Kerala is committed to improving the level and the quality of economic and social infrastructure services across the State. Government of Kerala recognizes that a partnership approach under Public Private Partnership (PPP) should be one of the tools to deliver public goods and services to improve the quality of life of its people. State's XIIth Plan Approach paper implicitly recognizes the role of private sector in development of physical and social infrastructure. People in Kerala, including Non Resident Keralites are looking for avenues to invest their savings, in revenue generating projects. Some are willing to invest in the infrastructure development of the State but do not have the necessary know how. This policy aims to hand hold such potential investors.

1.3 In order to facilitate and promote increasing role of Public Private Partnership in creation of new infrastructure assets as well as for the management of existing ones, the Government of Kerala proposes to lay down

an explicit and comprehensive policy. The Policy being detailed herein will put in position a broad framework for implementation of PPP in the State in physical and social infrastructure, while being sensitive to public needs and environmental concerns.

## **2. Policy Objectives and Scope**

The main objective of this policy is to create an enabling environment and to facilitate private sector participation in upgrading, developing and expanding the physical and social infrastructure in the State of Kerala by

- i. Providing a fair and transparent framework to facilitate and encourage PPP mode of implementation for provision of public goods and services and to harness private sector efficiencies in asset creation, maintenance and service delivery;
- ii. Enabling affordable and improved services at an optimal cost to the users in a responsible and sustainable manner, and for better 'Value for Money' to the users.
- iii. Adopting an efficient, equitable, consistent, transparent and competitive process for selection of private partners, and to ensure efficient governance over the project life cycle, through appropriate monitoring and regulation.
- iv. Protecting the interests of users, project affected persons, private and public sector entities and other stakeholders.
- v. Preparing a shelf of projects to be offered on PPP and ensure technical, economic and financial viability of infrastructure projects

- vi. Creating a robust dispute redressal mechanism for PPP projects
- vii. Providing Viability Gap Funding (VGF), where projects are intrinsically unviable, but are critical for Kerala's Development.

### **3.Public Private Partnerships**

3.1 Public Private Partnership broadly refers to a long term contractual partnership between public and private sector agencies including co- Operative institutions and other non-government organizations specifically targeted towards financing, designing, implementing and operating infrastructure facilities and services that are traditionally provided by the government and/ or its entities. It is based on the rationale that Private Sector can operate more efficiently as lower overheads, innovative technology, managerial effectiveness etc are more likely in the private sector. Nevertheless, since a PPP Project deals with provision of public goods and services, government has a key and strategic role - government owns the asset, structures the project keeping public interest in view, regulates standards of delivery and fixes user charges. The other important features of PPP are allocation of risks to the partner best able to manage them thus minimizing the cost while improving the performance. Public sector normally assumes social, environmental and political risks whereas the private sector bears financial, construction and commercial risks.

3.2 In Kerala various models including the CIAL( Cochin International Airport Ltd) has been considered as PPP. The CIAL is a PPP company with 26% GoK share and rest of the shares are widely distributed. The management of the company vest with GoK. Such an arrangement does not bring in private sector efficiencies in management. As far as possible, the GoI definition of PPP will be kept in mind while structuring PPPs. This will enable GoK to avail of VGF and other Financial Assistance from the Centre. According to GoI, *PPP means an arrangement between a government or statutory entity or government owned*

*entity on one side and a private sector entity on the other, for the provision of public assets and/ or related services for public benefit, through investments being made by and/or management undertaken by the private sector entity for a specified time period, where there is a substantial risk sharing with private sector and the private sector receives performance linked payments that conform( or are bench marked) to specified, pre- determined and measurable performance standards.* Private Sector includes any non-Governmental organization including co-operatives and community groups.

#### **4. Infrastructure sectors covered under PPP**

Infrastructure refers to the creation of long term capital assets and essential services which have large sunk cost and long gestation periods and which has significant socio – economic benefits to the State. Under this policy the following sectors are considered.

- i. Agriculture Infrastructure
- ii. Development of Minor Minerals
- iii. Drinking and Industrial Water
- iv. Education related Infrastructure
- v. Fisheries
- vi. Gas and Gas Works
- vii. Health Infrastructure
- viii. Housing Development
- ix. Industrial Parks and SEZ
- x. IT related Projects
- xi. Inland Waterways
- xii. Irrigation
- xiii. Land Reclamation Projects
- xiv. Ports
- xv. Power Systems
- xvi. Road and Bridges

- xvii. Solid Waste Management
- xviii. Sports & Recreation Infrastructure
- xix. Tourism and Hospitality Projects
- xx. Urban Transportation Systems
- xxi. Waste Water, Sewerage systems.
- xxii. Any other long term asset as may be included by the Government from time to time.

## **5. Efficient Use of Assets and Resources**

5.1 Government of Kerala would look at the option of better utilization of existing assets before considering new investments. Focus would be on integrated infrastructure development through better co-ordination of all departments. GoK recognizes that key socially relevant projects may not always be financially viable and therefore may not attract private participation. In such cases, Government would consider provision of Viability Gap Funding (VGF) or annuity payments. GoK may also consider financing and building infrastructure projects upfront and then transfer operation of project and management of services to a Private Sector Participant (PSP) where feasible.

## **6. Payment for Services**

6.1 GoK recognizes that “provider-charges” and the “user-pays” principles are crucial to the success of PPPs in physical infrastructure. The Government would, where necessary and appropriate, consider levying user charges (fees, tariffs, cess etc.) to cover costs of infrastructure provisioning and create a stable and dedicated financial source for construction / redevelopment / rehabilitation / replacement of project assets and their ongoing operations and maintenance. The focus would be to provide efficient, sustainable and high quality services at affordable prices to users.

6.2 The levy of user charges would be based on following main considerations:

- saving to the users of improved / newly created facilities
- Recovery of investments
- Uniformity between various projects
- Willingness to pay

## **7. Institutional Framework for PPP**

7.1 A strong and well defined institutional structure is a cornerstone for the development of a sustainable PPP programme. In addition to governance and due diligence functions, the institutional framework nurtures and encourages new models and innovation and develops capacities to successfully discharge changing roles and responsibilities that PPPs require.

The Government proposes the creation of a two level PPP institutional framework for the State i.e.

1. Empowered Committee on PPP (ECPPP)
2. APEX Committee on PPP (ACPPP)

7.2 Empowered Committee on PPP (ECPPP): Empowered Committee on PPP consisting of a group of Secretaries under the Chairmanship of the Chief Secretary, Government of Kerala would be set up for facilitating infrastructure development in the State under PPP. The other members of ECPPP would be Secretaries of Finance, Revenue, Law, LSGD, PWD, Forest & Wild Life, the Secretary of concerned Department and State Nodal Officer for PPP. The Secretary, Planning would be the convener of this Committee. The Chairman of ECPPP may co-opt / invite any other officer including HoD/ representative of SPB(in case of plan projects) / expert to be a member of ECPPP or to participate in its meeting.

7.2.1 The powers and functions of ECPPP would be:-

- To consider and formulate policy directives for facilitation and acceleration of PPP mode of delivery of public services in the State.

- To consider and provide 'in principle' approval for projects to be taken up on PPP.
- To determine most preferred and optimal method, based on the detailed analysis presented on alternatives for procuring public services / utilities. Wherever, Govt. of India has prescribed specific procedures for sector / scheme or projects, these procedures would be followed and in case of any variation or where no GoI model documents are available, the ECPPP would recommend appropriate modifications. The key issue would be to decide on that method of procurement which would provide the best Value for Money (VfM), while determining the most appropriate method of delivery.
- To appraise and approve projects under PPP mode involving investment above 25 crores and up to Rs. 200 Crores and to recommend placing the project before the Cabinet for final approval
- To appraise PPP projects having concession period more than 20 year and / or involving investments above 200 crores and recommend(including those requiring VGF), to the APEX Committee on PPP.
- To approve bid documents, risk sharing principles, dispute resolution mechanism and bid processes.
- To resolve issues relating to project approval process.
- To formulate sectoral policies and model contract documents.
- To identify inter-sectoral linkages.
- To recommend fiscal incentives and other incentives to catalyze private sector investment.
- To prepare a road map for project development.
- To exercise authority for accepting or rejecting sole bid if received and/ or limited bids, for any project
- To prescribe time limits for clearances for any project.

- To decide issues pertaining to user levies including but not limiting to prescribing mechanism and procedure for setting, revising, collecting and/or regulating user levies and to decide and settle disputes relating to user levies.
- To review and monitor execution, operation and management of PPP Projects.

7.2.2 Project Financing Cell: The Government has already created a Project Financing Cell that would provide the requisite assistance to ECPPP and would have the following functions:-

- Serve as the repository of knowledge and information relating to PPP including best practices, guidelines, schemes etc.
- Identify and prioritize sectors and sub sectors for PPP projects and seek in principle approvals if required.
- Assist various Government Departments in preparation of feasibility / project report through hiring of Transaction Advisors.
- Standardize procedures and bid documents.
- Assist Departments in their recommendations of final bids of the projects for approval of the ECPPP, keeping in view the considerations of Public Sector Comparator (PSC) and Value for Money (VfM).
- Coordinate with GoI and line Departments of the State on all PPP issues. Relevant Departments in the State will coordinate with PFC at all stages of project and the Cell would keep itself informed of the status of the PPP proposals.
- Assess fund requirements for the development of projects, Viability Gap Funding (VGF) and any other related purpose for furthering the objectives of this policy.
- Organize training, workshops, seminar and conduct / recommend exposure visits for capacity building.

7.2.3 Director, PFC shall be the State Nodal Officer for PPP programs and relevant Departments shall designate a senior Officer as PPP Nodal Officer of that Department to interact / coordinate with PFC Cell and to take forward the PPP initiative. In addition, District Planning Officers will be the Nodal Officers for PPP in the Districts.

7.3 APEX Committee on PPP (ACPPP): This is a high power committee on PPP. The projects under PPP mode having concession period of more than 20 years and / or involving investment of more than Rs. 200 crores, shall be considered by the APEX Committee on PPP and approved on the basis of recommendations of the Empowered Committee on PPP (ECPPP).

7.3.1 APEX Committee on PPP (ACPPP) would be constituted under the Chairmanship of the Chief Minister. The other Members of the ACPPP shall be Minister in charge of Finance, Minister in Charge of Revenue, Vice Chairman of State Planning Board, Minister for....., Minister for..... (as may be decided by govt) and Minister in Charge of project sponsoring Department. The Chief Secretary shall be the Member Secretary.

7.3.2 The powers and functions of ACPPP would be:

- To examine and approve projects processed and forwarded by ECPPP for signing the Concession Agreement with the successful private investor and to recommend placing the project before the Cabinet for final approval
- To set out the broad policies and principles for enabling projects in PPP mode.
- To co-ordinate the cross-sectoral institutional architecture and mechanisms for facilitating and implementing PPPs
- To identify and mitigate possible challenges, if any, to mainstream, upscale, broaden and expedite PPPs
- To setup an independent and robust dispute redressal mechanism for PPP projects.

- To setup a Regulatory Framework for assuring user interests where required.
- To provide overall guidance and support to ECPPP.

7.4 The Planning Department, Kerala would deal with all policy matters relating to PPP.

## **8. Project Identification and Approval Process**

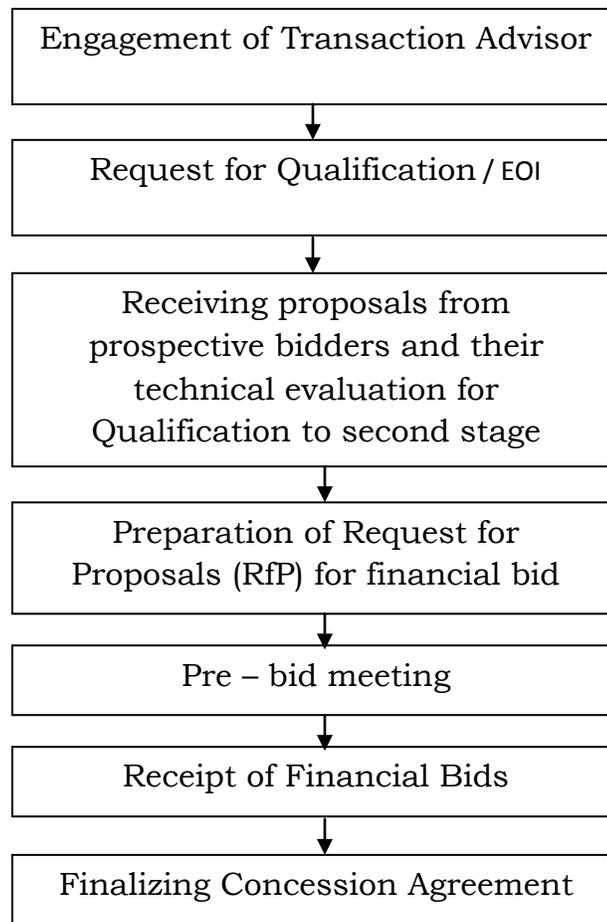
8.1 Project identification/ Conceptualization: All Administrative Departments, Public/ Government Agencies& Local Self Governments will identify a shelf of projects within a specific time frame for execution under PPP mode. These projects would be in addition to the projects under consideration already. The PFC shall assist departments to prioritize projects based on government priorities, availability of Plan funds, inter-linkages with existing projects and other relevant factors.

8.2 Preparation of Feasibility/ Project Report for PPP: State Government Departments, Government/ Public Agencies, and LSGs with the assistance of empanelled / non - empanelled Transaction Advisor(s) (engaged with the assistance of Project Financing Cell, if required), will get the Feasibility Reports and PPP project (s) prepared for the identified projects. The State Government may also engage consultants / Transaction Advisor on retainer basis in the interest of speedy delivery mechanism. The Project Report would establish the need for the project, project cost estimation and indicative financial viability (including VfM exercise with consideration of Public Sector Comparator, if required) of the proposed project including preliminary engineering studies, if any. In principle approval of the project would then be obtained from ECPPP after review by PPP Cell.

8.3 Preparation of Detailed Project Report (DPR) and Selection of Developers

8.3.1 The concerned Department, Government/Public Agency or the LSGs, as the case may be, shall prepare / get prepared the Detailed Project Report (DPR) if required, or if the DPR is to be prepared by the Developer, initiate the procurement process for selection of suitable Developer. The DPR should specifically indicate cost-benefits of the project considering social and environmental factors. In all cases, the award criteria would be spelt out upfront through a draft Concession Agreement. The Department(s) may use the services of suitably qualified independent consultant(s) with the requisite domain knowledge for Transaction Advice. It would however be ensured that the Transaction Advisor selected for the project would not be consultant / facilitator to any of the prospective bidders to avoid conflict of interest. Consultation with stakeholders would be part of project development.

Generally main stages in the procurement process would include (See Flow Chart):-



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Signing of Agreement & Award

If the two stage bidding process is not to be followed in any particular project, the approval of the ECPPP should be obtained. (*Detailed Guidelines for procurement procedure shall be issued separately*).

8.3.2 Competitive bidding process shall be adopted in all PPP Projects initiated by the concerned Department. The notice for inviting participation will be adequately publicized. The bid process will be designed to assist and ascertain, technical, financial, managerial and commercial capabilities of the Developer. All proposals shall be opened and evaluated at a common platform in a free and fair manner. The Sponsoring Department(s) will periodically inform the ECPPP of the progress of all Projects under process.

8.3.3 Treatment of Sole Bid: In case of the competitive bidding process resulting into a Sole Bid, the Department shall decide the matter only with the approval of ECPPP.

8.3.4 Treatment of Limited Response: In case the competitive bidding process does not generate sufficient response and if even a sole bid is not received, then the Department shall, with the approval of ECPPP, either modify the pre-qualification criteria and / or the risk sharing provisions and restart the bid process; or may cancel the competitive bid process.

8.3.5 LSGI Projects: Provisions in this Para (Para 8) will *mutatis mutandis* apply to PPP projects of Local Self Government Institutions as follows: Existing approval mechanism in LSGD shall be continued in respect of PPP projects of LSGI's. However, LSGI may approach PFC for technical consultation.

8.3.6 Detailed Guidelines for project formulation and approval shall be issued separately.

## **9. Monitoring of the Projects:**

ECPPP will monitor the progress of PPP projects. All the Departments/Agencies carrying out PPP projects will keep the PFC informed regarding the latest development through a periodic reporting mechanism. There should be a monitoring group for every project where PFC will be represented and periodic reports will be given to the ECPPP for oversight.

## **10. Contractual Arrangements**

10.1 A transparent process would be followed in the award of all PPP contracts. The process of project implementation would be appropriately backed by contractual arrangements. The GoK would develop contractual frameworks to allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerns of private investors. The attempt would be to allocate risks to the party best suited to bear the risks.

10.2 Approval of Contract Principles: In case a model contract for a Sector has not been adopted or in case there are deviations proposed vis-à-vis the approved model contract for a Sector, then, the ECPPP will formulate or approve the contract principles on merit of the case.

10.3 The contractual arrangement for existing infrastructure projects would typically include:

- Operations and Maintenance (O&M) contracts for defined periods.
- Lease of assets.
- Rehabilitate, Operate, Maintain and Transfer (ROMT) contracts.

- Partial divestiture of the undertaking.

10.4 Contractual arrangement depending on nature of project, for new infrastructure projects would typically include besides others, the options available under various common modes of PPP. The basic PPP contract types are:-

- Service Contracts;
- Management Contracts;
- Lease Contracts;
- Concessions;
- Build– Operate– Transfer (BOT) and similar arrangements;

10.5 Development through Special Purpose Vehicles (SPVs): Special Purpose Vehicles (SPVs) shall be formed, as and when required, to carry forward and realize the objectives of this Policy and get various clearances and permissions in the SPVs to speed-up the project. Where necessary, the Government may also participate in the equity of any SPV for the development and implementation of infrastructure projects. However the management should be in the hands of the private partner. The equity structure of the SPV would be decided on a case-to-case basis.

## **11. State Support**

11.1 It will be the endeavor of the GoKto create a conducive environment for attracting investment to infrastructure sector through the PPP mode. Accordingly, the State Government may formulate sector-specific policies, from time to time, for providing specific viability gap funding, incentives and also for establishing mechanism for tariff setting, pricing, dispute resolution mechanism, arbitration, guarantees, safety and operational standards etc. It also envisages coordination across infrastructure sectors. Necessary legislative support, including RegulatoryFramework, would be provided, as and when

required. State Support shall include Administrative support and financial support.

**11.2 Administrative Support:** State Government shall offer necessary administrative support to all the infrastructure projects developed in the State under the PPP.

- a) acquisition of land is necessary for projects. The land will be acquired strictly in accordance with the policy of the State Government prevalent at the time of acquisition of land for the project;
- b) rehabilitation& resettlement of affected families / persons, in case so required as per existing policy of the Government,
- c) shiftingof utilities, wherever required;
- d) the process of availing benefits under various Central Government and State Government schemes (as may be applicable) to facilitate private sector participation in physical and social infrastructure projects;
- e) obtaining the clearances from the Central / State Government, as may be required for the project;
- f) provision of supply of power and water at project site;
- g) in case land belonging to theState Government/Local Self Government is being made available for the project, the same shall be on leasehold basis for the duration of the project concession period. Annual lease charges shall be as specified by the State Government from time to time;

### **11.3 Financial Support**

11.3.1 Considering that infrastructure projects require special considerations in view of long gestation period and risks on return and other factors, GoI has provided incentives and support in terms of tax holidays, tax

exemptions, Viability Gap Funding (VGF). These would be available for all PPP projects of the State, which satisfy the eligibility condition.

11.3.2 The GoK may consider to providing Viability Gap Funding (VGF), in addition to the viability gap funding that may be available from the Government of India, for PPP projects in Infrastructure. The quantum of additional viability gap funding to be provided by GoK would not normally exceed 20% of the Total Project Cost and shall be determined for the project, after clearly and explicitly calculating all project costs (excluding cost of land and land related charges) and incentives/concessions, and provided that the quantum of total VGF does not exceed the limit prescribed by GoI for PPP projects.

11.3.3 GoK would make all the efforts to avail the facilities provided by GoI for PPP such as for project development and for enhancing the viability of projects.

11.3.4 PPP projects may require funds for the project development costs including the costs for feasibility studies, environmental impact studies, legal reviews, development of project documents, transaction advice etc. Funds would also be required to meet the costs for acquiring land and for other pre-construction / implementation activities. Plan funds will be provided to Project Financing Cell/ department based on requirement.

11.3.5 GoK recognizes that PPP model requires reasonable assurances that competing facilities would not be created which may materially adversely affect the technical and financial viability of infrastructure project.

## **12. Duration and Review of Policy**

12.1 This policy would come into force with effect from the date of issue of Government Order and would be effective till it is superseded by Government.

12.2 There could be a review of this Policy after one year of its announcement based on a critical assessment of feedback from stakeholders, and changes that would be deemed necessary and desirable, would be incorporated at that stage.

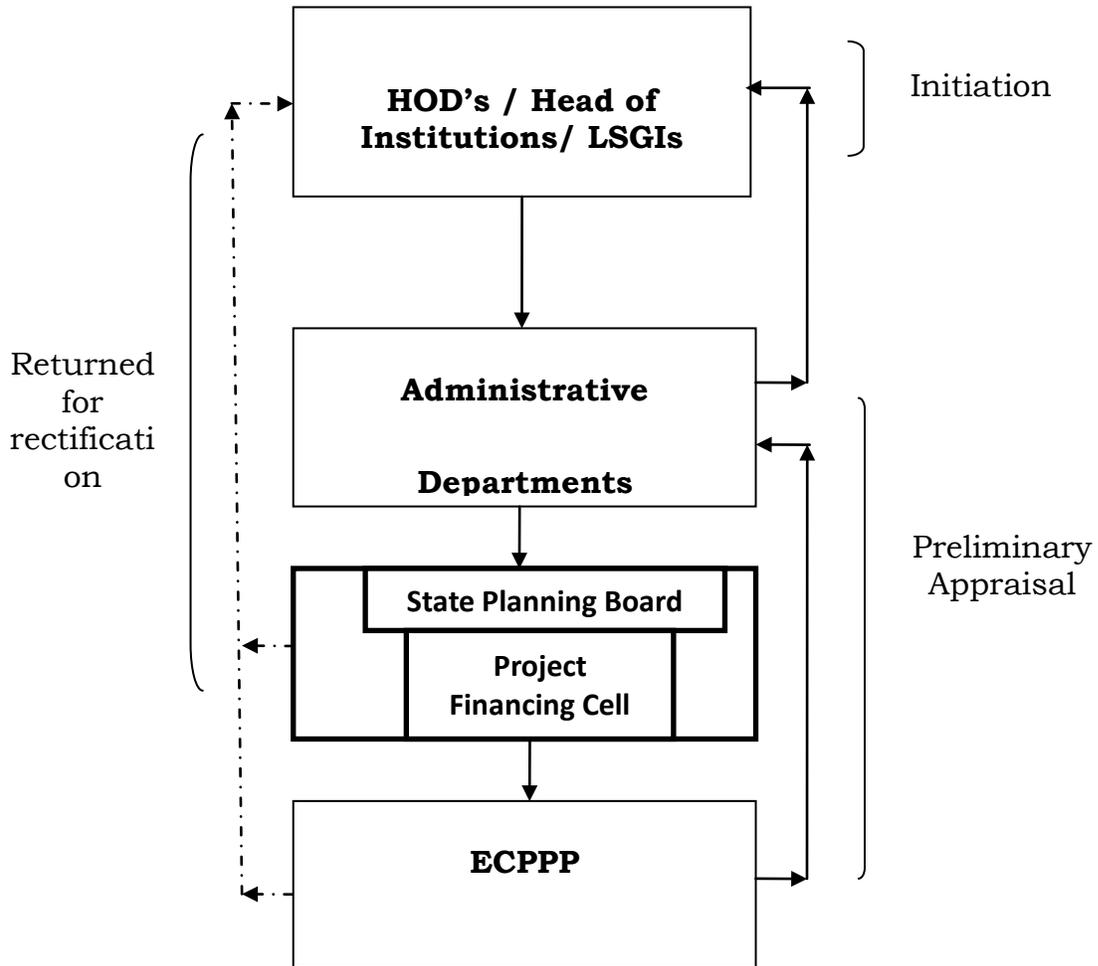
12.3 The government recognizes that expanding and institutionalizing the scope of PPP in provision of infrastructure may also necessitate appropriate changes in the existing legislative framework. The specific legislative constraints for PPPs would also be reviewed and addressed during implementation of this policy.

### **13. Sectoral Strategies**

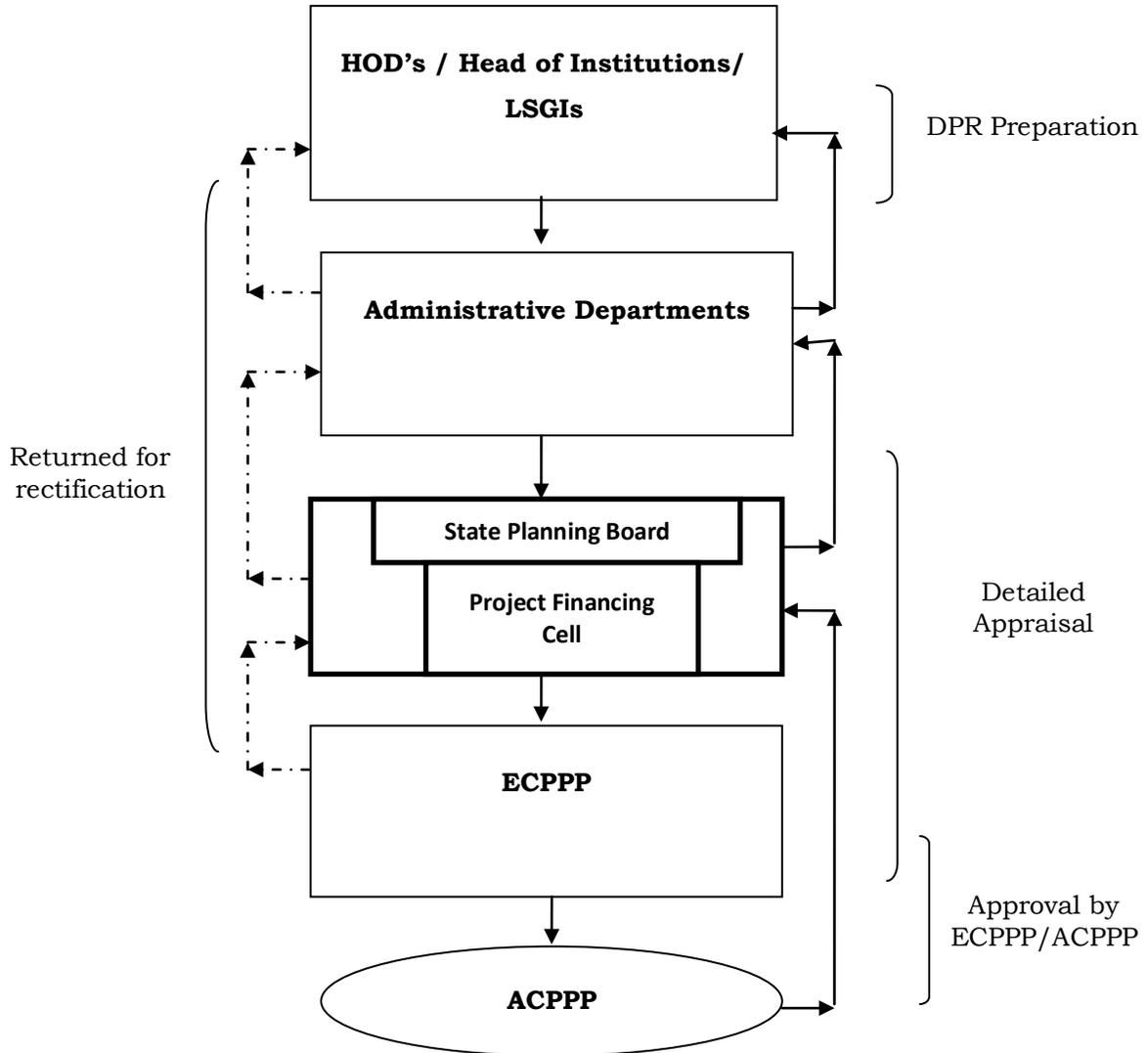
13.1 The broad principles set out in this document would govern the various strategies to be developed for each sector. The concerned administrative departments would finalize the sector strategies and plans there under within six months from the date this policy becomes operational. These strategies will be finalized after discussion in the ECPPP and publicly disclosed on their website.

# Institutional Framework

## Preliminary Appraisal Process



**Detailed Appraisal and Final Approval**



## THE KERALA INFRASTRUCTURE DEVELOPMENT BILL, 2014

A

### **BILL**

*to provide for an enabling and facilitative environment in the State for design, construction, financing, operation and maintenance of Infrastructure projects, through public investment and also through private sector participation, and to provide for an institutional framework for identification, prioritization and effective implementation of such projects.*

*Preamble .-* to provide for an enabling and facilitative environment in the State for design, construction, financing, operation and maintenance of Infrastructure projects, through public investment and also through private sector participation, and to provide for an institutional framework for identification, prioritization and effective implementation of such projects and to provide for the matters connected therewith and incidental thereto.

BE it enacted in the sixty third Year of the Republic of India, as follows:-

### **CHAPTER I Preliminary**

**1. Short title and commencement.** - (1) This Act may be called the Kerala Infrastructure Development Act, 2014.

(2) It shall come into force on such date as the Government may, by notification, appoint.

**2. Definition.** - In this Act, unless the context otherwise requires.-

(a) “Board” means the Kerala Infrastructure Development Board constituted under section 4;

(b) “concessionaire” means the private sector participant or consortium who has entered into a public-private partnership;

(c) “Concession agreement” means an agreement entered into between a public agency and a private sector participant for and in respect of a public-private partnership;

(d) “detailed Project study” means a detailed study of the project made after the preliminary investment decision, in order to ascertain the capital cost, technological parameters, plan schedule to assist the financial investment and the plan for implementation of the Project and such other information as may be prescribed in the regulations;

(e) “feasibility study” means a preliminary study made for investment decision making, to assess the technical, social, economic and financial viability and the social and environmental impact of a Project including the demand for the services, appropriate technology to be adopted, capital cost, time required for implementation, and such other information as may be prescribed in the regulations;

(f) “Government” means the Government of Kerala;

(g) “Government company” means any company in which not less than fifty one per cent of the paid-up share capital is held by the State Government or Governments and includes a company which is a subsidiary of a Government company as thus defined;

(h) “Infrastructure” means provision of assets or services in any one or more of the sectors specified in Schedule-I;

(i) “Local authority” means a Panchayat at any level constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(j) “Person” means an individual or body corporate with distinct legal entity under any Act and also includes a consortium.

(k) “private sector participant” means any person other than a public agency or the Central Government or a public sector undertaking of the Central Government;

(l) “Project” means an Infrastructure Project;

(m) “public-private partnership” means an arrangement between a public agency and private sector participant for the provision of infrastructure through investment made or through design, development, construction, maintenance or operation undertaken by the private sector participant, where risks are allocated between them such that the private sector participant takes on the risk beyond the stage of design and

construction and the payment for the services are performance linked, in the form of user charges, annuities or unitary payment;

(n) “public-private partnership project” means a Project implemented through public-private partnership;

(o) “public agency” means a department of the Government, a public sector undertaking of the Government, a body or corporation established by or under in law and owned or controlled by the Government and includes a local authority.

(p) “Public financial support” means financial support from the Central Government or the State support or both;

(q) “Public sector mode” means implementation of a Project directly by a public agency by its own resources or through the State Budgetary resources;

(r) “Regulations” mean the regulations made by the Board under this Act;

(s) “Rules” mean the rules made by the Government under this Act;

(t) “Schedule” means a Schedule, appended to this Act;

(u) “Sponsoring agency” means the public agency designated by the Board to implement a Project through public-private partnership;

(v) “State support” means the support extended by the Government to a concessionaire, which may include the following:-

(i) Subsidy or capital grant not exceeding such proportion of the cost of the Project, as may be prescribed in the rules;

(ii) Equity;

(iii) Loans;

(iv) Guarantee by the Government;

(v) Opening and operation of escrow account;

(vi) Conferment of right to develop any land;

(vii) Incentives in the form of exemption from the payment of, or deferred payment of, any tax or fees levied under any law or such other incentives, as may be prescribed in the rules.

(w) “User charge” means user charge or fee or any other amount, by whatever name called, payable by the user of an infrastructure facility.

**3. Application of the Act.**-This Act shall apply to all Projects of a value exceeding rupees 10 crore implemented by a public agency:

Provided that the Government may, by general or special order, apply the provisions of this Act, to any public-private partnership project, the project value of which is less than rupees 10 crore:

Provided further that it shall not apply to any Project undertaken by the Central Government or a public sector undertaking of the Central Government, either independently or as a joint venture with the State Government.

**Explanation.**—For the purpose of this section, in the case of a public-private partnership project, ‘project value’ means, where the private sector participant is,

(a) required to make capital investment, the value of the asset or facility to be created including the cost of land, if the cost of the land is to be borne by the private sector participant; or

(b) Not required to make capital investment, the current replacement value of the asset or facility, whose operation and maintenance shall be the responsibility of the private sector participant.

## **CHAPTER-II.**

### **THE KERALA INFRASTRUCTURE DEVELOPMENT BOARD.**

**4. Constitution and Composition of the Kerala Infrastructure Development Board.**- (1) As soon as may be, after the commencement of this Act, the Government may, by notification, establish a Board to be called the Kerala Infrastructure Development Board with effect from such date as may be specified in the notification.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and by the said name sue or be sued.

- (3) The Board shall consist of the following members, namely:-
- (a) The Chief Minister – *ex – officio*, who shall be the chairman of the Board;
  - (b) The Minister in charge of Finance Department – *ex – officio*, who shall be the Vice Chairman of the Board;
  - (c) The Minister in charge of the sponsoring Administrative Department – *ex – officio*;
  - (d) Vice Chairman of the State Planning Board- *ex-officio*;
  - (e) The Chief Secretary to Government – *ex – officio*, who shall be the Member Secretary of the Board;
  - (f) Principal Secretary to Government, Finance Department – *ex – officio*;
  - (g) The Secretary to Government Planning Department – *ex – officio*;
  - (h) The Secretary to Government Law Department - *ex – officio*;
  - (i) The Secretary to Government Revenue Department - *ex – officio*;
  - (j) The Secretary to Government of the sponsoring Administrative Department;
  - (k) Not more than four experts nominated by the Government from among the fields of Infrastructure Sector, Finance, Project Management and structuring from Banks/ Financial Institutions or other professional Infrastructure Bodies.
  - (l) The Chief Executive Officer of the Board – *Ex - officio*

(4) The nominated members of the Board shall hold office during the pleasure of the Government

(5) Any nominated member of the Board may, at any time, resign his office by letter of designation addressed to the Chairman.

(6) There shall be an executive committee for the Board consisting of the following members namely:-

(a) Chief Secretary or Additional Chief Secretary, as nominated by Government, who shall be the Chairman of the Executive Committee;

(b) The Secretary to Government, Finance Department - *ex officio*, who shall be the Vice Chairman of the Executive Committee;

(c) The Law Secretary - *ex officio*

(d) The Secretary to Government, Revenue Department - *ex officio*;

(e) The Secretary of the sponsoring administrative Department - *ex officio*;

(f) Not more than three members nominated by the Board from among the nominated members of the Board;

(g) The Chief Executive Officer of the Board - *Ex officio*

(7) The headquarters of the Board shall be at Thiruvananthapuram or at such other place as the Government may, by notification in the Official Gazette, specify.

(8) The Board and the Executive Committee shall meet at such time and place as the Chairman of the Board or Executive Committee, as the case may be, may decide and shall observe the procedures in regard to transaction of business at their meeting including quorum as may be prescribed by regulations.

(9) If any vacancy arises in the Board by reason of death, resignation or otherwise, the same shall be filled by the Government as soon as possible.

**5. Proceedings of the Board not to be invalidated.** - No act or proceedings of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

**6. Appointment of Chief Executive Officers, Officers and staff of the Board.**- (1) There shall be a Chief Executive Officer for the Board, in the rank of Secretary to Government appointed by the Government.

(2) The Board may appoint with the previous approval of the Government such officers and staff as it may consider necessary for the efficient discharge of its functions.

(3) The salary, allowances and conditions of service of the officers and staff of the Board shall be such as may be prescribed in the regulations.

(4) The Chief Executive of the Board shall exercise the power of supervision and control over all the officers and staff of the Board

**7. Public Private Participation Unit.**- (1) A Public Private Participation Unit (here in after referred as PPP Unit) shall be established by the Board to assist the Board and manage all activities related to policy, technical, legal and such other matters related to PPP projects.

(2) The functions and duties of the PPP unit shall be as may be prescribed in the Regulations.

(3) The Board may, with the previous approval of the Government, appoint such officers and qualified professionals in the PPP unit as it may require for carrying out the function of the PPP Unit in such manner as may be provided in the Regulations.

(4) The salary, allowances, conditions of service, etc. of the officers and professionals in the PPP unit shall be such as may be prescribed in the Regulations.

**8. Powers and Functions of the Board.**- Subject to the other provisions of this Act and the rules made there under, the Board shall have the following powers and functions, namely :-

(i) To act as a nodal agency to the Government,-

(a) to co-ordinate the efforts of the Government in regard to the development of the Infrastructure sectors in the State;

(b) in the development of PPP projects and programs and make suitable recommendation to the Government for its consideration and adoption;

(ii) Formulate policies related to the sectors specified in Schedule I, so as to ensure that Project risks are identified and allocated between the stakeholders;

(iii) Designate the public agency, which shall implement a Project through public sector mode or through a public-private partnership;

(iv) Scrutinize, evaluate, prioritize and finalize the scope and structure of the Projects having concession period of more than 20 Years and or of value more than Rupees.200 Crores, proposed by a public agency and the recommend to the Government for its implementation.

(v) Perform such other functions as may be entrusted to it by the Government.

**9. Powers and Functions of the Executive Committee:-** (1) The executive committee shall have the followings powers and functions

(i) Identify or conceptualize, prioritize and determine the sequence of Projects and recommend to the Government a shelf of Projects for implementation in the State;

(ii) Identify bottle necks in the Projects and recommend policy initiatives to rectify the same;

(iii) Co-ordinate with the departments concerned and the implementing agencies;

(iv) Prepare documents including feasibility study reports and detailed Project study reports, internally or through external consultants or experts;

(v) Scrutinize, evaluate, prioritize and finalise the scope and structure of the projects of value up to Rupees.200 Crores, proposed by a public agency and the recommend to the Government for its implementation.

(vi) Evaluate and recommend financial support from the Government or from the Central Government;

(vii) Co-ordinate with the Government, any Government agency and the sponsoring agency in the execution of public-private partnership projects;

(viii) Manage and utilize the Project Preparation Fund constituted under section 29.

(ix) Promote and oversee, capacity building for project appraisal, project management, procurement, and related areas in Government departments and public agencies; and

(x) to call upon the public agency or concessionaire of a project to furnish any information in regard to that Project;

(xi) to inspect, visit and monitor any Project and its execution, operation and management; and

(2) Subject to such restrictions, conditions and limitations as may be imposed by the Board, the executive committee shall also exercise all or any of the powers and functions of the Board under this Act.

(3) The executive committee shall also exercise such powers and functions as may be specified by regulations.

(4) Any reference in this Act to the Board shall, in relation to the powers and functions of the Executive Committee, be construed as a reference to the Executive Committee of the Board.

**10. Constitution of Committees by the Board.-** (1) The Board shall have the power to constitute such other committees as it considers necessary and to delegate to them such of their powers as it deems fit.

(2) The Board shall have the power to co-opt as members of any committee appointed under Sub-section (1) such number of persons who are not members of the Board as it may think fit and the persons so co-opted shall have the right to attend meetings of the committee and take part in its proceedings but shall not have the right to vote.

**11. Fees and allowances to non - official members and invitees.-** The non-official members of the Board or of any of its committees and the invitees to the meetings of the Board or of any of its committees shall be paid such fees and allowances, as may be prescribed in the rules.

**CHAPTER-III**  
**PROJECT IDENTIFICATION, PRIORITIZATION AND**  
**IMPLEMENTATION.**

**12. Project Identification and Prioritization.**- (1) The Board, on its own accord or on a study or survey caused to be conducted or based on inputs - received from a third party, on identifying or conceptualizing a Project to be developed, managed and operated in this State, shall seek the views of the public agency concerned thereon:

Provided that if the public agency does not furnish its views within thirty days from the date of receipt of the said communication from the Board, it shall be deemed that the public agency has no views to offer:

(2) Any public agency may also identify or conceptualize a Project to be developed, managed and operated in this State and send proposal therefore to the Board for its recommendation. The Board shall scrutinize, evaluate and where more than one such proposal is received, prioritize the same.

(3) The Board, on receipt of the views of the public agency under sub-section (1) or proposal from any public agency under sub-section (2), shall examine the same with reference to the following factors, namely:-

(i) the cost-benefit analysis of the Project including the socio-economic cost-benefit;

(ii) the cost effectiveness of implementation through public-private partnership with a value for money test, as may be prescribed in the regulations;

(iii) the possibility of specifying Project performance parameters and measuring their outcomes;

(iv) the risk sharing possibilities with the private sector participant;

(v) the technological and managerial advantages that may accrue due to private sector participation; and

(vi) the socio-economic factors which may affect investment by the private sector participant.

(4) The Board, shall cause the feasibility study and after satisfying itself as to the feasibility of the proposed Project, recommend the same to the Government, indicating specifically as to whether it may be implemented through public sector mode or through public – private partnership.

(5) The Board shall cause the details of projects recommended under subsection (4), to be published on its website and on such other websites, as may be prescribed in the rules:

Provided that the Board may, for reason to be recorded in writing, choose not to publish the details of any Project.

(6) On receipt of proposal for implementation of the Project under subsection (4), the Government shall consider the same and communicate its decision on the implementation of the Project including the mode of its implementation, to the Board ordinarily within thirty days.

**13. Project Implementation through public sector mode.-** (1) In respect of a Project identified by the Board and decided by the Government to be implemented through public sector mode, the Board shall designate the public agency which shall implement that Project, give direction for its implementation and monitor the progress of implementation.

(2) If the public agency does not commence the Project within three months from the date of receipt of such direction or expresses its inability to implement the Project, for any reason recorded in writing, the Board with the approval of the Government shall re-examine the Project as in sub-section (4) of section 11 and make a fresh recommendation to the Government.

**14. Project Implementation through Public Private Partnership.-** (1) In respect of project decided by the Government to be implemented through Public Private Partnership, the Board shall cause the Sponsoring Agency to prepare and submit a report regarding the project to the Board within such period as may be fixed by the Board.

(2) The Board, on receipt of the report from the Sponsoring Agency under sub section (1), shall in consultation with the Government and after causing the detailed Project study, if it considers necessary, finalize the scope and structure of the Project, either in its original form or with such modification, as it deems fit, also taking into account, the following aspects, namely:-

(a) Whether the Project needs any public financial support, and if so, the appropriate form of such support;

(b) the bidding criteria or variables relevant for evaluation of the bid; and

(c) the appropriate concession agreement or a combination thereof, from out of those listed in Schedule II.

**15. Procedure for concession Agreement.-** (1) No concession agreement for undertaking a project within the purview of this act shall be entered into with any person unless the procedure specified in section 16 and section 17 has been followed.

(2) The sponsoring agency shall, in respect of Projects identified by the Board, intimate the name and address of the dealer, whose bid has been accepted, to the board.

**16. Selection of private sector participant.-** (1) A concession agreement for undertaking a project may be entered into with a person who is selected through a competitive bidding as provided in section 17.

(2) The matters relating to competitive bidding shall be such as may be prescribed.

**17. Selection by competitive public bidding.-** (1) Where the structure of a project has been finalized by the board under section 14, the Sponsoring Agency shall select a private sector participant for the Project through a competitive bidding process

(2) The bid process shall be designed to assist and ascertain technical, financial, managerial and commercial capabilities of the developer.

(3) It shall be open for the Sponsoring Agency to adopt one or multi-stage process of competitive bidding process depending upon the complexity of the Project in the manner provided hereunder;

(a) A Public notice inviting Private Sector Participant to participate in competitive public bidding to undertake the project shall be published, in the manner as may be prescribed in the Regulations.

(b) Any person who intends to participate in competitive bidding process shall submit its proposal in the form and manner specified by the Sponsoring Agency.

(c) Sponsoring Agency shall examine the information and other particulars submitted by the person under Clause (b) and decide as to whether such person fulfils the criteria for pre-qualification as laid down by the Sponsoring Agency.

- (d) A person who fulfils the criteria as laid down under Clause (c) shall be the pre-qualified person and only the proposal or persons pre-qualified shall be considered for further evaluation.
- (4) All pre-qualified person shall be permitted to submit their Proposals to undertake the projects in such form and such manner (Containing Technical and Financial aspects) as may be specified by the sponsoring agencies.
- (5) On receipt of the proposals from the pre-qualified persons the sponsoring agency shall evaluate the proposal from technical aspect
- (6) If the proposals are in order from the technical aspect, the sponsoring agency shall evaluate the proposal from the financial aspect, having regarded the relevant factors, as may be prescribed by regulations, in respect of different nature of the agreements specified Scheduled II:

Provided that the sponsoring agency shall also consider such factors that may be recommended by the Board, in respect of a particular projects or nature of agreement.

(7) Where, -

(a) the proposal are evaluated under sub section (6) from the financial aspect having regard to the relevant factors prescribed under that subsection; and

(b) one of the proposals so evaluated satisfies the financial aspect having regard to the relevant factors,

the sponsoring agency may enter in to a concession agreement with the person who has submitted the proposal referred to the sub-section (4).

(8) Where no proposal stands the scrutiny from the technical or financial aspect, the competitive bidding shall stand cancelled.

(9) Nothing in section 8 shall prohibit the sponsoring agency from inviting persons to participate in subsequent bidding in respect of the

proposal that has been cancelled and in such eventuality, the sponsoring agency may, if necessary, revise the technical and financial criteria with the approval of the Board.

**18. Treatment of sole bid.**- If a competitive bidding process results in a Sole Bid, the Sponsoring Agency may in consultation with the Board, either:

- (a) accept the Sole Bid; or
- (b) Re-negotiate the financial offer; or
- (c) Reject the Sole Bid.

Provided that a Sole Bid shall be rejected only after ascertaining that the same is not in accordance with the reserve price or estimated return assessed by the Sponsoring Agency.

**19. Facilities to be provided by the Sponsoring Agency.**- The Sponsoring Agency shall provide all facility to the concessionaire, for obtaining statutory clearances at state level and provide best effort support for obtaining Central Government clearance and assistance in rehabilitation and resettlement activities, if any incidental to the project on such terms as may be prescribed.

**20. Appointment of Project Manager and Experts.** - (1) The Board may, if it considers necessary, direct the sponsoring agency to appoint a person, who has knowledge and experience in the working of public-private partnership modes and processes, for such period as may be prescribed in the regulations, as Project Manager for a public-private partnership Project and the Project Manager, so appointed shall be responsible for the management and tendering of the Project.

(2) A public-private partnership project for which a Project Manager is appointed, the sponsoring agency shall, make available the services of the officers serving in that agency who possess expertise in the fields of risk management, contingency planning, quality assurance and performance management, public sector accounting and financial management, to assist the Project Manager:

Provided that, if expert in a field is not available within the sponsoring agency, the agency may engage the services of a practicing consultant.

**21. Project Management Facility.** - (1) The Government may, by notification, constitute an agency with such number of members, with such qualification, as may be prescribed in the regulations to be called the Project Management Facility for the management and supervision of any Project.

(2) The Project Management Facility shall exercise such powers and perform such functions, as may be prescribed in the regulations.

**22. Monitoring of Project Implementation.** (1) The Board shall monitor the implementation of all Projects including the enforcement of concession agreements.

(2) The Board may, for the said purpose,-

(a) require the submission of periodical or special reports from the sponsoring agency, in such form and manner, as may be prescribed in the regulations;

(b) give directions to the sponsoring agency to maintain project documentation in such form and manner, as may be prescribed in the regulations; and

(c) give such other directions to the sponsoring agency as it deems fit.

(3) The Board shall ensure that the utilization of land in any project is consistent with the applicable laws and the land use-policies of the Government.

(4) The Board may make recommendations to the Government for corrective actions where projects appear to be failing to achieve their objectives.

**23. User charges and fees.-** The Board may levy user charges on the users of the infrastructure facility and fees for the services rendered, at such rates, as may be prescribed in the rules.

## **CHAPTER-IV**

### **FINANCE, ACCOUNTS AND AUDIT**

**24. Project Preparation Fund.** (1) The Government shall, by notification, constitute a Fund to be called the Project Preparation Fund with an initial corpus of such amount, as may be specified in that notification.

(2) The Fund may be credited with the grants made by the Government from time to time for the purpose, project development cost including consultants cost received back from the successful bidders and the amount collected as fees, and user charges.

(3) The Fund may, with the prior concurrence of the Government, also be credited with the contributions received from public bodies, multilateral lending agencies or other financial institutions.

(4) The Fund may be utilized for defraying the administrative expenses of the Board, to provide financial support for conducting studies, hiring the services of experts and consultants, preparing feasibility studies, detailed project studies, capacity building, research and for such other purposes, as may be prescribed in the rules.

(5) The Fund shall be managed and utilized by the Board in such manner, as may be prescribed in the rules.

**25. Accounts and audit.** (1) The accounts of the Board shall be maintained in such manner and in such form, as may be prescribed in the rules.

(2) The Board shall prepare an annual statement of accounts in such form, as may be prescribed in the rules.

(3) The accounts of the Board shall be audited once in a year by a person duly qualified to act as an auditor of a company under section 226 of the Companies Act.

(4) The accounts of the Board as certified by the auditor together with audit report along with the remarks of the Board thereon shall be forwarded to the Government within such time, as may be prescribed in the rules.

(5) The Government may, by order, direct the Board to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed in the audit report, and the Board shall comply with such direction.

**26. Annual report.-** (1) The Board shall, as soon as may be, after the end of each financial year, prepare and submit to the Government, before such date and in such form, as may be prescribed in the rules, a report giving an account of its activities during the previous year and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Board in the current financial year.

(2) The Government shall cause every such report to be laid before the Legislative Assembly, as soon as may be, after its receipt under sub-section (1).

## **CHAPTER-V**

### **MISCELLANEOUS**

**27. Members, officers and employees of the Board to be public servants.-** The Chairperson, Members, Member – Secretary and officers and employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or regulation or order or direction made or issued under this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

**28. Protection of action taken in good faith.-** No suit or other legal proceedings shall lie against the Government, the Board or any member thereof or any officer or employee or person acting under the direction of the Government or the Board in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rule or regulation or order or direction made or issued under this Act.

**29. Bar of jurisdiction of Civil courts.-** No civil court shall have jurisdiction to settle , decide or deal with any question or to determine any matter which is by or under this Act required to be settled ,decided or dealt with or to be determined by the Public agency or the Board or any officer authorized by them.

**30. Special provision regarding the applicability of the some provisions of this Act to Local Authorities.-** Notwithstanding anything contained in this Act, in respect of the projects initiated by the local Authorities, any reference to the Government under sub section (5) and (7) of section 12 and sub section(1) of section 14 shall be construed as the concerned Local Authority and any recommendation to / decided by / consultation with the Government required under the above provisions shall be construed as the recommendation to / decided by / consultation with the concerned Local Authority.

**31. Power to make Rules** (1) The Government may by notification in the gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the websites in which the list of Projects recommended by the Board for implementation under section 12 shall be published;

(b) the proportion of the cost of Project that may be provided as subsidy by the Government;

(c) incentives that may be provided to a concessionaire as State support;

(d) the tenure of non – official members the Board and the terms and conditions of their appointment;

(e) the fees and allowances payable to the non-official members of the Board or of any of its committees and to the special invitees to the meetings of the Board or of any of its committees;

(f) the rates at which the Board may levy fees, and user charges

(g) the purposes for which the Project Preparation Fund shall be utilized;

(h) the manner in which the Project Preparation Fund shall be managed and utilized;

(i) the manner and form in which accounts shall be maintained by the Board;

(j) the form in which the annual statement of accounts of the Board shall be prepared; under section 24

(k) the time limit within which the accounts and the audit report shall be forwarded by the Board to the Government Under section 25

(l) the form of the Annual report and the time limit within which it shall be submitted by the Board to the Government, under section 26

(m) any other matter which is to be, or may be, provided for in the rules.

**32. Power to make regulations.-** (1) The Board may with the previous approval of Government by notification in the gazette make regulations consistent with the provisions of this Act and the rules made there under.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the information that may be assessed or ascertained through feasibility study and detailed Project study;

(b) the time and place of meetings of the Board and of the Executive Committee, the procedure to be followed in regard to the transaction of business at such meetings and the quorum at such meetings;

(c) the posts, that may be created for appointment of officers and staff of the Board, their salary, allowances and conditions of service;

(d) The manner in which the officers and professionals in the PPP Unit to be appointed and their qualification and terms and conditions of service or employment.

(e) period of experience for appointment as Project Manager;

(f) the number of members of the Project Management Facility, their qualifications, powers and functions;

(g) any other matter which is to be, or may be provided for in the regulations.

(2) Every regulation made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly for a period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following the Legislative Assembly makes any modification in the rule or decides that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

**33. Power to amend Schedules.-** (1) The Government may, by notification in the *Gazette*, add to Schedule I any project or Schedule II nature of concession Agreement and thereupon the Schedules shall be deemed to amended accordingly for the purpose of this Act.

(2) Every notification published under sub-section (1) shall be laid before the Legislative Assembly as soon as may be after it is published.

**34. Power to remove difficulties.-** If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by

order, do anything not inconsistent with this Act or the rules made thereunder, which appears to them necessary for the purposes of removing the difficulty:

Provided that no such order shall be passed after two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before the legislative Assembly.

**35. Power to exempt.-** The Government may, by notification, exempt any Project or class of projects from all or any of the provisions of this Act, for reasons to be recorded.

**SCHEDULE - I.**  
**[See section 2 (h )]**  
**SECTORS.**

- i. Agriculture Infrastructure including Marketing and Post harvest infrastructure.
- ii. Airports, Airstrips and heliports.
- iii. Canals, dams, weirs and Irrigation systems.
- iv. Convention centers, trade fair, exhibition centers.
- V. Development of Minor Minerals
- vi. Education related Infrastructure.
- vii. Fisheries and related projects.
- viii. Health care Facilities.
- ix. Housing including slum development and development of satellite towns.
- x. Industrial/ Theme Parks viz. IT, BT, SEZ, Knowledge Parks.
- xi. Information Technology related Infrastructure.
- xii. Inland container depots and logistics hubs.
- xiii. Inland water Transport.

- xiv. Land reclamation projects.
- xv. Non-conventional energy.
- xvi. Ports (other than major ports) and Harbours thereof.
- xvii. Power Generation, Transmission and Distribution Systems.
- xviii. Public markets.
- xix. Roads and bridges other than those coming under the purview of Kerala Road Fund Act 2001 (Act 10 of 2001).
- xx. Sewerage & Drainage and Effluent Treatment plants.
- xxi. Solid Waste management.
- xxii. Sports and Youth related projects.
- xxiii. Tourism and related infrastructure.
- xxiv. Urban infrastructure including entertainment and recreational facilities.
- xxv. Urban Transportation Systems viz. Public transport, Bus-terminals.
- xxvi. Water supply, Treatment and Distribution.

**SCHEDULE – II.**  
**[See section 14]**  
**NATURE OF CONCESSION AGREEMENTS.**

**1. Investment or Financing related Agreements.**

*(i) Build-Operate-and-Transfer (BOT)* – A contractual arrangement whereby the concessionaire undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The concessionaire operates the facility over a fixed term during which they are allowed to charge the users appropriate tolls, fees, rentals and charges as incorporated in the contract to enable the recovery of investment in the Project. The concessionaire transfers the facility to the Government at the end of the fixed term that shall be specified in the Concession agreement.

**(ii) Build-Own-and-Operate (BOO)** – A contractual arrangement whereby the concessionaire is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the concessionaire is allowed to recover the total investment by collecting user levies from facility users. The ownership of the land will be vested with the Government. Under this mode, the concessionaire owns the assets of the facility and may choose to assign its operation and maintenance to a facility operator. The transfer of the facility to the Government is not envisaged in this structure; however, the Government may terminate its obligations after the specified time period.

**(iii) Build-Own-Operate-Transfer (BOOT)** – A contractual arrangement whereby the concessionaire is authorised to finance, construct, maintain and operate a Project and whereby such Project is to vest in the concessionaire for a specified period. During the operation period, the concessionaire will be permitted to charge user levies specified in the Concession agreement, to recover the investment made in the Project. The concessionaire is liable to transfer the Project to the Government after the expiry of the specified period of operation.

**(iv) Build-Transfer-and-Operate (BTO)** – A contractual arrangement whereby the Government contracts out an infrastructure facility to the concessionaire to construct the facility on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the facility is commissioned satisfactorily, the concessionaire is given the right to operate the facility and collect user levies specified in the Concession agreement. The title of the facilities always vests with the Government in this arrangement.

**(v) Design-Build-Finance-Operate-Transfer (DBFOT)** - A contractual arrangement whereby the concessionaire is bestowed with the responsibility of designing, building, financing and operating the facility before transferring the Project to the Government after the expiry of the specified period. The concessionaire operates the facility over a fixed term during which they are allowed to charge the users appropriate tolls, fees, rentals and charges as incorporated in the contract to enable the recovery of investment in the Project.

## **2. Operations and Maintenance related Agreements.**

**(i) Management Agreement** – A contractual arrangement whereby the Government entrusts the operation and management of a Project to the concessionaire for the period specified in the agreement on payment of specified consideration. In such agreement, the Government may charge the user levies and collect the same either by itself or entrust the collection for consideration to any concessionaire who shall after collecting the user levies, pay the same to the Government.

**(ii) Lease Management Agreement** – A contractual arrangement whereby the Government leases a Project owned by it to the concessionaire which is permitted to operate and maintain the Project for the period specified in the contract.

The concessionaire is allowed to charge the users appropriate fees, rentals and charges as specified in the agreement to enable the recovery of investment in the Project.

**(iii) Build-Lease-and-Transfer (BLT)** – A contractual arrangement whereby the concessionaire undertakes to finance and construct the Project and on its completion hands it over to the Government. The Government then gives the facility to the same operator on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Government.

**(iv) Rehabilitate-Operate-and-Transfer (ROT)** – A contractual arrangement whereby an existing facility is handed over to the concessionaire to invest, refurbish, operate and maintain for a period, at the expiry of which the facility is returned to the Government. The concessionaire operates the facility over a fixed term during which they are allowed to charge the users appropriate fees, rentals and charges as specified in the contract to enable the recovery of investment in the Project.

**(v) Rehabilitate-Own-and-Operate (ROO)** – A contractual arrangement whereby an existing facility is handed over to the concessionaire to invest, refurbish, operate and maintain the development facility from which the concessionaire is allowed to recover the total investment by collecting user levies from facility users. The ownership of the land shall be vested with the Government. The transfer of the facility to the Government is not envisaged in this arrangement; however, the Government may terminate its obligations after a specified time period.

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