THE PUNJAB PUBLIC PRIVATE PARTNERSHIP ACT 2014

(IX of 2014)

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TEXT

[1]THE PUNJAB PUBLIC PRIVATE PARTNERSHIP ACT 2014

(IX of 2014)

[29th May 2014]

An
Act

to foster an enabling environment for private sector participation in development in the Punjab through public private partnership.

Whereas it is expedient to expand the provision of physical and infrastructure services in the Punjab and improve their reliability and quality for accelerating economic growth and achieving the social objectives of the Government; to harness the substantive role of public private partnership as a means of mobilizing private sector resources for financing, construction, maintenance and operation of projects for delivery of physical and social infrastructure services; to improve the 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 the procurement of public private partnership; 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 Act 2014.

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

(3) It shall come into force at once.

2. Applicability.– Subject to the provisions of section 39, the Act shall apply to all the projects implemented through public private partnership in the sectors listed in First Schedule.

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 a project;

(b) "Committee" means the PPP Steering Committee established by the Government;

(c) "company" means a company registered or deemed to be registered under the Companies Ordinance, 1984 (XLVII of 1984) or a foreign company under the Companies Ordinance, 1984 (XLVII of 1984);

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[1]This Act was passed by the Punjab Assembly on 21 May 2014; assented to by the Governor of the Punjab on 27 May 2014; and, was published in the Punjab Gazette (Extraordinary), dated 29 May 2014, pages 3559-3976.

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

(e) “consortium” means an association of persons who have formed the association under a legally enforceable contractual arrangement for purposes of entering into a PPP agreement;

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

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

(h) “investment” includes financing, development and pre-operative capital expenditure made or incurred on services, facilities, land, construction and equipment;

(i) “lender” means a financial institution, bank or an establishment providing financial support with or without security;

(j) “local government” means a local government as defined in the Punjab Local Government Act 2013 (XVIII of 2013) or any other law;

(k) “Member” means a Member of the Committee and includes its Chairperson and Vice Chairperson;

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

(m) “PPP” means public private partnership;

(n) “prescribed” means prescribed by the rules or the regulations;

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

(p) “project” means a public project implemented on PPP basis;

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

(r) “public private partnership” means a commercial agreement between a Government Agency and a private party pursuant to which the private party–

  (i) undertakes to perform a public function, provides a public service or develops use of a public property on behalf of a Government Agency by, amongst other things, designing, constructing, financing, operating, marketing or maintaining such public property; and

  (ii) assumes substantial financial, technical, operational or environmental risks in connection with the performance of such a public function or provision of such public services or use of such a public property;

(s) “PPP agreement” means a contract between the public sector represented by a Government Agency and a private party for the provision of an infrastructure facility or service through a project and includes a contract described in Second Schedule;

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

(u) “PPP node” means a unit established by a Government Agency responsible for identifying projects suitable for development as PPP projects, carrying out the initial screening and feasibility studies in connection with such projects, liaising with the PPP Cell with regard to development and submission of project proposals, and monitoring related coordination throughout the project life;

(v) “risk” means any event or circumstance affecting the project which can adversely affect performance and costs of any contractual obligations related thereto including design, construction, financing, operation or maintenance;

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

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

(y) “rules” means the rules made under the Act;

(z) “Schedule” means a Schedule appended to the Act;

(aa) “user levy” means a levy which may be collected under a PPP agreement and includes a tariff, toll, fee or charge; and

(ab) “viability gap fund” means the fund established by the Government for purposes of compensating, on the recommendation of the Committee, the private party to a PPP agreement for any revenue shortfalls, through grants, subsidies or guarantees.

CHAPTER II
INSTITUTIONAL ARRANGEMENTS

4. PPP Steering Committee.– (1) There shall be a Steering Committee to promote, facilitate, coordinate and oversee projects.

(2) The Committee shall consist of the following:

(a)	Minister for Planning and Development;	Chairperson
(b)	Minister for Finance;	Vice Chairperson
(c)	two members of Provincial Assembly of the Punjab to be nominated by the Speaker of the Assembly;	Members
(d)	Chairman, Planning and Development Board of the Government;	Member
(e)	Secretary to the Government, Finance Department;	Member
(f)	Secretary of the concerned Government Agency;	Member
(g)	Secretary to the Government Communications & Works Department;	Member
(h)	Secretary to the Government, Law and Parliamentary Affairs Department;	Member

(i) two experts from private sector to be nominated by the Government for a term of two years; and — Member

(j) Member (PPP), Planning and Development Board. — Secretary/Member

(3) The Government shall not nominate a person as expert Member unless he has at least sixteen years academic qualification in the relevant subject.

(4) Six Members including Chairperson or Vice Chairperson shall constitute the quorum for a meeting of the Committee but a Secretary to the Government may be represented in the meeting by an officer of the Department not being below the rank of an Additional Secretary.

(5) The Committee may co-opt an expert in the relevant field for a project.

(6) The Committee shall–

(a) formulate the policies relating to the projects for approval of the Government;

(b) supervise and coordinate the implementation of the Act, rules and regulations;

(c) approve, reject or send back for reconsideration any 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 a PPP agreement to be awarded to a private party on the rates or terms and conditions different from the original approval;

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

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

(h) notify, with the approval of the Provincial Cabinet, critical sectors as also the duration or window of opportunity during which the Government shall undertake to extend preferential facilitation to projects falling under critical sectors;

(i) determine the maximum limit of government support referred to in section 19 for any project; and

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

(7) The Committee may change any timeline provided in the Act except the timelines mentioned in sections 14 and 18.

5. PPP Cell.– (1) The Government shall, by notification published in the official Gazette, establish the PPP Cell in the Planning and Development Department of the Government to promote and facilitate projects in the Province.

(2) The composition of the PPP Cell shall be as prescribed and until so prescribed, as the Government may determine.

(3) The PPP Cell shall–

(a) facilitate the preparation of a project by a Government Agency;

(b) act as a PPP catalyst and advocate, knowledge manager, and policy and project advisor in the Province.

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

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

(e) provide support and advice to any Government Agency regarding PPP projects throughout the public private partnership process;

(f) assist the Committee to evaluate and prioritize project proposals submitted by the Government Agencies;

(g) evaluate, in close consultation with the Risk Management Unit, the type and amount of Government support that may be made available for a project and make recommendations to the Committee for appropriate decision;

(h) prepare and regularly update a pipeline of the projects in consultation with the Government Agencies and make available updated lists of the said PPP projects to the Government Agencies; and

(i) perform such other functions as may be prescribed or assigned by the Committee.

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

(2) The Risk Management Unit shall–

(a) develop risk management guidelines for approval by the Committee;

(b) provide support and advice to any Government Agency with regard to risk management in a project throughout the public private partnership process;

(c) examine, in consultation with the PPP Cell, whether requests for Government support and the proposed risk sharing arrangements are consistent with the Act, rules and regulations, and are fiscally sustainable;

(d) make recommendations to the Committee through the PPP Cell;

(e) recommend the inclusion of approved Government support in the annual budget of the Province;

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

(g) perform such other functions as may be prescribed or as the Committee may assign.

7. Government Agency.– (1) A Government Agency shall manage the project throughout its life cycle consisting of project identification, project proposal preparation including feasibility, tendering, supervising the implementation and operation of the project, and if applicable taking over the project under a PPP agreement.

(2) The Government Agency shall–

(a) form a PPP node if it intends to undertake a project;

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

(c) submit a project concept paper in the form of pre-feasibility study through the PPP Cell to the Committee for its consideration and approval, if it intends to avail itself of a project development facility from the Government for transaction advisory services;

(d) where necessary, hire transaction advisors for the preparation of project proposal and tendering;

(e) prepare a feasibility for the project and, if its outcome is positive, submit a project proposal along with estimated cost of the project, type of PPP agreement and the details of Government support, if required, to the Committee;

(f) conduct a competitive tendering process for a project approved by the Committee, including a pre-qualification process and bidding by the pre-qualified bidders to select the suitable private party;

(g) carry out bid evaluation;

(h) negotiate and sign the PPP agreement with the selected private party;

(i) monitor and evaluate implementation and operation of the project; and

(j) establish a complaint cell for speedy redressal of complaints of general public relating to the project and a system of acknowledgment of complaints within fifteen days from the date of receipt of a complaint along with stipulated timeline for disposal of the complaint.

CHAPTER III
PROJECT DELIVERY PROCESS

8. PPP arrangements.– Subject to the Act, 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, or provision of services relating to a project, or management of a project, or the provision of finance or technology for the design and construction of a project, or the operation of a project, or for any one or more of the said functions;

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

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

(d) subject to the PPP agreement, accept the 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, lease, grant or surrender.

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

(2) The Government Agency shall identify and conceptualize potential projects which relate to development activities falling within its sector or geographical area.

(3) The Government Agency shall prioritize the projects and prepare project proposals, using criteria such as supply and demand gaps, social and economic benefits, financial attractiveness, risks and uncertainties involved, and readiness for implementation.

(4) A project proposal shall consist of, amongst other things, an analysis of feasibility and sustainability of the project including detailed business case and financial model justifying project's financial and economic viability over the expected duration of the project, initial environmental examination or environmental impact assessment, risk analysis, analysis of the need for Government support, the affordability of the project, determination of the public private partnership modality, and preparation of bid documents including a draft PPP agreement.

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

10. Project prioritization and approval.– (1) The PPP Cell shall–

(a) prioritize the projects that pass the review across sectors and the Province by taking into account the policy and the development objectives of the Government and submit them, within thirty days, to the Committee for its consideration and approval; and

(b) maintain a list of approved projects and publicize the list by publishing it on the web.

(2) The PPP Cell may–

(a) exercise quality control of project proposals received from Government Agencies by reviewing the viability of a project and the completeness of the proposal in terms of documentation; and

(b) make observations and recommendations to the Government Agency with regard to the project proposal before submitting it to the Committee for its consideration and approval.

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

(2) The PPP Cell shall forward all requests for Government support 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, within fifteen days, make, through the PPP Cell, appropriate recommendation to the Committee for approval, rejection or reconsideration of the proposed Government support.

(4) If approved by the Committee, the Government shall make necessary arrangements for the availability of funds during project life cycle through its inclusion in the annual budgetary process.

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, within thirty days from the receipt of such proposal, approve the proposal with or without modification, or reject it or return it to the Government Agency for amendment and resubmission.

(2) In case a project proposal is returned for amendment, restructuring and resubmission, the Government Agency shall take suitable action to amend the project proposal and resubmit the proposal through the PPP Cell for consideration and approval by the Committee and any decision concerning such resubmitted proposal shall be taken by the Committee within thirty days of such resubmission.

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 a process of prequalification 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 prequalification, where necessary, in the following manner:

(a) a public notice, inviting participation in pre-qualification for undertaking a project shall be published on the websites of the Government Agency, PPP Cell and Public Procurement and Regulatory Authority, and also in at least two national newspapers for national competitive bidding and additionally in one international paper for international competitive bidding providing at least fifteen days for national competitive bidding and thirty days for international competitive bidding for preparation of pre-qualification application;

(b) for a project with a total cost equal to or exceeding four billion 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 consortium shall provide a written and legally enforceable undertaking from its members to be jointly and severally liable if awarded the contract, for the obligations of the private party;

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

(f) a person who fulfills the criteria shall be a pre-qualified person;

(g) if less than three persons are pre-qualified, the Government Agency may analyze the reasons for such response and either proceed for bidding after recording the reasons, or revise project structuring, and reinitiate the pre-qualification process for additional participants;

(h) if a consortium is a pre-qualified person, the lead consortium member shall not be replaced earlier than four years after the commissioning of the project without the approval of the Government Agency and no such approval shall be given unless the consortium finds a suitable replacement with equal or better qualifications for replacing the withdrawing member;

(i) subject to approval by the Government Agency, any other member of a consortium may, prior to execution of the PPP agreement or during the term of the PPP agreement, withdraw, 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 available to replace the withdrawing member; and

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

(k) if the consortium fails to comply with the requirement of clause (h), clause (i) or clause (j), the consortium shall cease to be a prequalified person.

15. Bidding.– (1) After selecting pre-qualified persons, the Government Agency shall, within fifteen days from the completion of the pre-qualification process, issue bid documents to the prequalified persons and shall give adequate time to pre-qualified persons for preparation and submission of bids.

(2) The Government Agency may adopt single stage two envelop or two stage two envelop bidding process in the prescribed manner.

(3) The bid documents shall include–

(a) instructions for bidders;

(b) minimum design and performance standards and specifications;

(c) draft PPP agreement;

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

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

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

(4) To provide clarifications to bidders and to discuss the terms and conditions of the PPP agreement, the Government Agency shall, within such period as is deemed reasonable, conduct a pre-bid meeting with the bidder sand may, if necessary, issue addendum to the bidding documents.

(5) If only one valid bid is received up to the last date for submission of bids, the Government Agency may evaluate it, and depending on the results of such evaluation and after recording reasons–

(a) negotiate or enter into the PPP agreement or negotiate and enter into the PPP agreement with the said single bidder; or

(b) after a market research to ascertain the reasons for the poor response to the call for bids, restructure the project proposal and the proposed Government support and submit the revised proposal to the Committee.

(6) The Committee shall deal with the revised proposal in the same manner as is prescribed for a new proposal for a project.

16. Single stage three envelope bidding.– (1) Notwithstanding anything contained in section 14 and 15, the Government Agency may, with prior approval of the Committee, combine the processes of pre-qualification and bidding through single stage three envelope process in the prescribed manner.

(2) In case of single stage three envelope bidding process–

(a) the Government Agency shall first open the envelope relating to pre-qualification of a person, and if the person is not prequalified, the other two envelopes submitted by such person shall not be opened at any stage; and

(b) the Government Agency, PPP Cell and Risk Management Unit shall observe such timelines as may be prescribed.

17. Bid evaluation.– (1) The Government Agency shall, within fifteen days from the receipt of the bids, evaluate the bids.

(2) On receipts of bids, the Government Agency shall assess the technical, operational, and environmental 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) After the technical evaluation of the bids, the Government Agency shall conduct a financial evaluation of the responsive bids; and, depending on the type of the project, it may use one or more 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 under 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 under 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) such other parameters as are determined by the Committee on the recommendation of the Government Agency, the PPP Cell, or the Risk Management Unit.

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

(5) If the result of bidding process leads to a bid conforming to the project estimate, type of PPP agreement and Government support if approved by the Committee, the Government Agency may proceed with execution of the PPP agreement.

(6) If the lowest bid is higher than project estimate or in case there is a need to restructure the project or type of PPP agreement, the same shall be submitted to the Committee for approval.

(7) The Government Agency shall announce the result of the bidding process and issue a notice for execution of PPP agreement to the selected private party within ten days of the bid evaluation or approval of the Committee, if applicable.

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

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

19. Government support.– (1) The Government Agency shall indicate the Government support, if any, approved by the Committee for a project.

(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, any public sector organization or a Government Agency for purposes of the project on such terms and conditions as may be prescribed: such support shall be available for all types of projects;

(b) provision of utility connections for power, gas and water at project site; clearance of right of way or acquisition of land necessary for the project; and, rehabilitation and resettlement necessitated because of the execution of the project: such support shall be available for all types of projects;

(c) Government equity, in the form of land or infrastructure facilities owned by the Government or a Government Agency, to be calculated with reference to the current market value of land or infrastructure or future value of discounted cash flows accruing or arising from asset to be offered, with reference to the project cost and its capital structure or debt equity ratio: such support on first come first served basis shall be available for the projects where the bidding competition is not instantly expected;

(d) the Committee may, with the approval of the Provincial Cabinet, identify projects of critical sector in the areas where there appears to be a supply side constraint, leading to no competition or little room for competition and standard terms and rates are to be offered to all private parties: the projects falling under such sector, requiring Government support as specified in this section including Government equity participation, direct financial assistance through viability gap fund or other asset based facilitation, may be presented by the Government Agency to the Committee for decision and in such projects, the Committee may extend Government support on first come first served basis, for specific duration or window of opportunity;

(e) direct financial assistance from the viability gap fund: such support may be offered for projects which, in the opinion of the Committee, are economically and socially viable, but may not be financially attractive enough for investment;

(f) Government guarantees for political risks under the Government's control such as changes in the law, delay of agreed user levy adjustments, early termination of the PPP agreement owing to no fault of the private party, and expropriation: such of support shall be available for all projects; and

(g) Government guarantees for other risks such as demand risk, and default by a Government Agency on payments due under a PPP agreement: 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 negotiations.

(3) Where the Government Agency decides to offer Government support on first come first serve basis, it shall invite proposals through wide publicity.

20. Unsolicited proposals.– (1) A project proposal submitted by a person to a Government Agency for a project not included in the priority list mentioned in section 10, together with a written confirmation that it is economically viable, shall be considered as an unsolicited proposal.

(2) An unsolicited proposal shall be accompanied by a feasibility study, environmental impact statement, and a draft PPP agreement, need for Government support and determination of the public private partnership modalities.

(3) The Government Agency shall consider an unsolicited proposal from all aspects including technical, environmental and financial aspects, and in case of requirement of additional information, the Government Agency may request for the submission of an amended or modified proposal.

(4) Within ten days from the receipt of an unsolicited proposal, the Government Agency shall require the person to submit details about legal, technical, managerial and financial capability of the person, as well as the cost of preparing the unsolicited bid with relevant supporting evidence for its consideration and such

information shall be submitted to the Government Agency within fifteen days from the receipt of such requirement.

(5) Within fifteen days from the receipt of information required under subsection (4), the Government Agency shall evaluate the unsolicited proposal and, if it is found to be economically, technically and environmentally feasible and the information submitted by the person about his own legal, technical, managerial and financial capability is satisfactory, the Government Agency may submit the unsolicited proposal together with its recommendations to the PPP Cell which shall seek the input of the Risk Management Unit before submission of the proposal to the Committee for decision.

(6) The decision of the Committee with regard to an unsolicited proposal shall be communicated in writing by the Government Agency to the person who submitted such proposal within seven days from the receipt of the decision of the Committee.

(7) If the Committee approves the unsolicited proposal, the Government Agency shall invite competitive bids for the project identified in such proposal by following the bid procedure described in sections 13 to 18 and, if prequalification is conducted, the person submitting the unsolicited proposal shall not be required to be pre-qualified and may directly participate in the bidding process.

(8) The Government Agency shall give the person who made the unsolicited proposal five percent additional weight age in technical scoring and first right to match or improve the best bid received in response to the call for bids, if his bid is not the best bid.

(9) If the person who submitted the unsolicited bid fails to match the best bid, the Government Agency shall direct the successful bidder to reimburse to the person who submitted the unsolicited proposal the amount specified in the bid documents as the cost of preparing the unsolicited bid but the reasonability of the cost of preparation of unsolicited proposal shall be determined by the Government Agency.

(10) If other valid competitive bids, except the bid of the person who submitted the unsolicited proposal, are not received, the Government Agency may negotiate the PPP agreement with the person who submitted the unsolicited proposal or decide to under take the bidding process afresh.

21. Non-Observance of the timelines.– Subject to section 4, if the PPP Cell or the Risk Management Unit fails to observe the timelines mentioned in this Act or the rules, the Government Agency may request the PPP Cell to place the proposal before the Committee and the Committee may consider the proposal assuming that the PPP Cell and Risk Management Unit have no objection to the project proposal.

22. Preparation and negotiation of PPP agreement.– (1)The draft PPP agreement which forms part of the bid documents 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.

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

(a) type of the project;

(b) general terms and conditions of contract;

(c) special conditions of contract;

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

(e) main technical specifications and performance standards;

(f) environmental and safety requirements;

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

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

(i) performance bonds for construction works and operation;

(j) minimum insurance coverage;

(k) acceptance tests and procedures;

(l) rights and obligations of the parties including risk sharing;

(m) type and amount of Government support;

(n) transfer of assets, if any, at the conclusion of the term of the PPP agreement;

(o) warranty period and procedures after the transfer;

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

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

(r) procedures and venue for disputes resolution;

(s) financial reporting by the private party; and

(t) supervision mechanism of the Government Agency.

(3) A Government Agency shall not enter into a PPP agreement except in accordance with the procedure mentioned in this Act and the rules.

(4) The Government Agency shall ensure conclusion of contract negotiations with the selected private party within sixty days.

(5) The negotiations shall focus on the terms and conditions not specified in the bid documents but no post-bid changes in the terms and conditions mentioned in the bid documents as binding and which formed part of the bid evaluation shall be allowed as a consequence of contract negotiations.

23. 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 vehicle for implementation and operation of the project and such special purpose vehicle shall assume all the rights and obligations of the private party under the PPP agreement.

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

(3) The private party shall execute the project in accordance with the performance standards and technical specifications contained in the PPP agreement and the design and implementation plans approved in accordance with the PPP agreement.

(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 and for projects which include operation by the private party, the private party shall also 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 or such other period as is specified in the PPP agreement, the private party shall achieve financial closure for the project.

(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 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.

(8) The Government Agency shall submit biannual reports on project performance to the Committee.

24. 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) Notwithstanding anything contained in any other law, the private party shall have the right to receive or collect tariffs or payments in accordance with and at the rates set forth in the PPP agreement, either from end users or from the Government Agency.

(3) 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 in accordance with the terms and conditions of the PPP agreement.

(4) If the Government Agency keeps the user levies at lower levels to make the services provided by the project affordable to the end users, the Government Agency shall compensate the private party for the difference by making appropriate payments as agreed in the PPP agreement through viability gap fund.

25. 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 manner:

(a) the parties shall first deliberate to achieve a consensus;

(b) if no consensus is achieved, the parties shall settle the dispute in an amicable manner by mediation by an independent and impartial person appointed by the Committee; and

(c) if no amicable settlement of the dispute has been reached by mediation, the parties shall resolve the dispute by arbitration in the city of Lahore or any other place agreed to by the parties in Pakistan or abroad in accordance with the arbitration clause contained in the PPP agreement and the arbitral award may be enforced in any court of competent jurisdiction.

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

26. 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 in the PPP agreement, and such failure is not remediable or, if remediable, remains un-remedied for an unreasonable period of time, the private party may terminate the agreement with written notice to the Government Agency as provided in the PPP agreement and, in the event of such termination, the project shall be transferred to the Government Agency and the private party shall be entitled to compensation by the Government Agency as provided in the PPP agreement; or

(b) if the private party fails to perform the agreement, or fails to achieve the prescribed technical and performance standards, or fails to comply with any major obligations in the PPP agreement, and such failure is not remediable or, if remediable, remains un-remedied for an unreasonable period of time, the Government Agency may terminate the agreement with written notice to the private party as provided in the PPP agreement and, 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 agreements relating to the project.

27. 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 PPP arrangements described in Second Schedule, the completed project may vest in the private party for a period not exceeding thirty years as agreed in the PPP agreement and on expiry of such period, the project shall vest in the Government Agency.

28. 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

29. Conflict of interest.— (1) A Member shall not, directly or indirectly, receive any profit from his position as a Member except the reasonable expenses incurred by him in the performance of his duties.

(2) The pecuniary interests of immediate family members or close personal or business associates of a Member shall also be considered the pecuniary interests of the Member.

(3) A Member shall be in conflict of interest if he:

(a) is an employee, or a paid consultant of a private party or a consortium or lender of the private party or consortium;

(b) owns, controls, or has direct or indirect interest in a business venture of a private party or a member of a consortium;

(c) receives any income from a business venture of a private party or a member of a consortium; or

(d) himself, or one or more members of his family, business partners or close personal associates, may personally benefit either directly or indirectly, financially or otherwise, from his position on the Committee.

(4) A Member shall disclose a potential, real or perceived conflict of interest as soon as he becomes aware of the potential conflict to the Committee or its Chairperson and Vice Chairperson, if the meeting of the Committee has not been convened.

(5) If a Member is not certain about the conflict of interest situation, he shall bring the matter before the Committee for advice.

(6) The decision of the Committee on conflict of interest shall be final.

(7) A Member shall not take part in the proceedings of the Committee in which any question of his conflict of interest is on the agenda.

(8) The disclosure of conflict of interest and the decision of the Committee shall be recorded in the minutes of the meeting of the Committee.

30. 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.

31. Integrity pact.– The Government Agency shall, for every project, enter into an integrity pact with the private party along with the PPP agreement.

32. **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 provision of copies of a PPP agreement or any other ancillary or additional agreement.

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

(4) The Committee may, by recording reasons in writing, declare the complete or part of a document not to be a public document.

33. 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 end users;

(b) prescribe quality standards including standards of materials, equipment 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 public private partnership approach;

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

(g) prescribe any other standards for regulating the infrastructure development through public private partnership.

34. 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 be liable to reimburse all costs, charges, expenses, losses and damages suffered by the Government Agency or an end user due to any such defect.

35. Recovery of costs, dues and fees.– (1) The Government Agency may recover the sum due from the private party as ascertained through the dispute resolution procedure under this Act 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 the Collector under the Punjab Land Revenue Act, 1967 (XVII of 1967) for recovery of arrears under subsection (1).

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

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

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

39. Applicability to Government Agencies– (1) The provisions of this Act shall apply to a project of any Government Agency if the estimated total cost of such project 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.

40. Power to amend a Schedule.– The Government may, by notification in the official Gazette, amend a Schedule.

41. Overriding provision.– Notwithstanding anything contained in any other law, the provisions in this Act shall have effect to the extent of the project under this Act.

42. 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.

43. Repeal and savings.– (1) The Punjab Public Private Partnership for Infrastructure Act 2010 (IX of 2010) is hereby repealed.

(2) Notwithstanding repeal of the Punjab Public Private Partnership for Infrastructure Act 2010 (IX of 2010), anything done or any action taken or purported to have been done or taken under that Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of the Act.

44. Repeal.– The Punjab Public Private Partnership Ordinance 2014 (II of 2014) is hereby repealed.

FIRST SCHEDULE

[*see section 2*]

SECTORS

(1) Canals or dams;

(2) Education facilities;

(3) Health facilities;

(4) Housing;

(5) Industrial estates;

(6) Information technology;

(7) Land reclamation;

(8) Mining

(9) Power generation facilities;

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

(11) Sewerage or drainage;

(12) Solid waste management;

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

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

(15) Urban transport including mass transit or bus terminals;

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

(17) Wholesale markets, warehouses, slaughter houses or cold storages, grain silos and street lights etc.

SECOND SCHEDULE

[*see sections 3(s) & 27*]

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.

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. Joint Venture (JV): Joint venture is a form of public private partnership in which both the Government Agency and the private party make equity contributions and pool their resources towards the project development and implements the project by forming a new company (joint venture company) or assuming joint ownership of an existing company through the purchase of shares. When the joint venture company is established, it will have a separate legal identity and it is through this company that the common enterprise of the public and private partners will be carried out. The Government Agency and the private party will own the shares of the joint venture company and there will be a board of directors, usually made up of representatives of the shareholders.

10. 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.

11. 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.

12. 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.

13. 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.