

THE PUNJAB PUBLIC PRIVATE PARTNERSHIP ORDINANCE 2019

(XI of 2019)

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THE PUNJAB PUBLIC PRIVATE PARTNERSHIP ORDINANCE 2019

(XI of 2019)

[30th August, 2019]

**An
Ordinance**

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

It is necessary to create an enabling environment for promoting the private sector participation and investment in partnership with the public sector for provision of public infrastructure or services for accelerated economic growth; to abridge the gap in demand and supply of such public infrastructure or services; to harness the substantive role of public private partnership as a means of mobilizing private sector funding, resources and expertise; and for the matters connected therewith or ancillary thereto.

Provincial Assembly of the Punjab is not in session and Governor of the Punjab is satisfied that circumstances exist which render it necessary to take immediate action.

In exercise of the powers conferred under clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, Governor of the Punjab is pleased to make and promulgate the following Ordinance:

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.— (1) This Ordinance may be cited as the Punjab Public Private Partnership Ordinance 2019.

(2) It extends to whole of the Punjab.

(3) It shall come into force at once.

2. Applicability.— The Ordinance shall apply to all projects conceived, developed, approved and implemented through Public Private Partnership in Province of the Punjab.

3. Definitions.— In the Ordinance:

(a) “Authority” means the Punjab Public Private Partnership Authority established under the Ordinance;

(b) “availability based payments” means predetermined performance based payments to the private party committed by

¹This Ordinance was Promulgated by the Governor of the Punjab on 30 August 2019; and, was published in the Punjab Gazette (Extraordinary), dated: 30 August 2019, pp. 643-673.

the Government to cover the approved cost of provision of infrastructure and / or service(s) made available / rendered by the private party, during lifecycle of the PPP project;

- (c) “bid” means a technical and financial proposal submitted by a person who is eligible under the Ordinance to undertake a project;
- (d) “Board” means the Public Private Partnership Policy and Monitoring Board constituted under the Ordinance;
- (e) “Company” means a company registered under the Companies Act, 2017 or any other relevant law for the time being in force;
- (f) “Executive Committee” means the managing committee of the Authority constituted under the Ordinance;
- (g) “concession” means grant of right of a public property by the Authority upon the approval of the Board and the Government in return for stipulated services or a promise to exercise such right for a specified purpose, in such manner as may be prescribed;
- (h) “construction” includes construction, reconstruction, rehabilitation, renovation, improvement, expansion, addition, alteration and related activities;
- (i) “consortium” means an association of persons who have entered into a legally enforceable contractual arrangement for purposes of entering into a Public Private Partnership Agreement;
- (j) “Director” means a Director of the Executive Committee;
- (k) “*force majeure*” means occurrences beyond the control of any party affected, including but not limited to acts of God, flood, war, invasion, revolution, insurrection, or other acts of similar nature;
- (l) “Fund” means the fund established under section 45 of the Ordinance;
- (m) “Government” means Government of the Punjab;
- (n) “Government Agency” means a department, attached department of the Government, a local government, or a body corporate, statutory body or corporation owned or controlled by the Federal Government or the Government;
- (o) “Investment” includes financing, development and pre-operative capital expenditure made or incurred on services, facilities, land, construction and equipment;
- (p) “lender” means a financial institution as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001 (*XLVI of*

2001) or an establishment providing financial support with or without security;

- (q) “local government” means a local government as defined in the Punjab Local Government Act 2019 (*XIII of 2019*) or any other law for the time being in force;
- (r) “Member” means a Member of the Board, its Chairperson and Vice Chairperson;
- (s) “Ordinance” means the Punjab Public Private Partnership Ordinance 2019;
- (t) “person” includes a company, statutory body, entity, firm, association of persons, body of individuals, corporation, or a sole proprietor other than a Government Agency;
- (u) “PPP agreement” means a contract between the public sector represented by the Authority and a private party for the provision of an infrastructure facility or service through a project;
- (v) “Project Development Facility (PDF)” means a facility including but not limited to grants, loans, contributions from international donor agencies for project development which includes financing the engagement of transaction advisers, consultants and services for preparing proposals for projects by the Authority;
- (w) “prescribed” means prescribed by the rules or the regulations made or framed under the Ordinance;
- (x) “private party” means a person or Government agency who enters into a PPP agreement with the Authority;
- (y) “project” means a public project implemented on Public Private Partnership basis;
- (z) “Public Private Partnership” means a commercial agreement between the Authority and a private party pursuant to which the private party:
 - (a) 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
 - (b) 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.
- (aa) “risk” means any event or circumstance affecting the project which can adversely affect performance and costs of any

contractual obligation related thereto including design, construction, financing, operation or maintenance;

- (bb) “regulations” means the regulations framed under the Ordinance;
- (cc) “rules” means the rules made under the Ordinance;
- (dd) “Special Purpose Vehicle (SPV)” means a special purpose company established by the private party for implementation and operation of the project to assume all the rights and obligations of the private party under the PPP agreement;
- (ee) “User Levy” means a levy, without limitation, including annuity, charge, fee, tariff, toll, which may be collected under a PPP Agreement; and
- (ff) “Viability Gap Fund (VGF)” means the funds or other assets from the Government which are made available to the private party to support the project including funds for covering revenue shortfalls by means of grants, subsidies, guarantees, or any other mode approved by the Board.

CHAPTER II INSTITUTIONAL ARRANGEMENTS

4. The Board.– (1) There shall be a Public Private Partnership Policy and Monitoring Board to promote, facilitate, coordinate, direct and oversee Public Private Partnership projects.

(2) The Board shall consist of the following:

- | | |
|--|------------------|
| (a) Chief Minister, Punjab | Chairperson |
| (b) Minister for Planning and Development, Punjab or any other person nominated by the Chief Minister | Vice Chairperson |
| (c) Minister for Finance, Punjab | Member |
| (d) Minister of the concerned Department | Member |
| (e) Two members of the Provincial Assembly of Punjab to be nominated by the Speaker of the Assembly for the term of the Assembly | Member |
| (f) Chief Secretary, Punjab | Member |
| (g) Chairman Planning and Development Board | Member |
| (h) Senior Member, Board of Revenue | Member |
| (i) Secretary to the Government, Finance Department | Member |

- | | | |
|-----|---|----------------------|
| (j) | Secretary to the Government, Law and Parliamentary Affairs Department | Member |
| (k) | Secretary to the Government of the Department administratively concerned with reference to a project | Member |
| (m) | Representative of Chambers of Commerce and Industry to be nominated by the Government for the term of three years | Member |
| (n) | Three experts from private sector each with the background of finance, law and engineering industry to be nominated by the Government for the term of three years | Member |
| (o) | Chief Executive Officer, Punjab Board of Investment and Trade (PBIT) | Member |
| (p) | Chief Executive Officer of the Authority | Member |
| (q) | Member (PPP), Planning and Development Board | Member/
Secretary |

(3) An ex-officio Member shall hold office as Member till such time he holds office by virtue of which he is a Member and upon his transfer therefrom or retirement or resignation, the person appointed in place of such member shall be the Member.

(4) The Government shall not nominate a person as expert Member unless he has at least sixteen years education in the relevant field, is of known integrity and repute and possesses such experience in the relevant field as may be prescribed.

(5) The Board may co-opt for a project any person who is an expert in the relevant field.

(6) The Board shall meet once in every three months and otherwise as often as may be necessary for the implementation of the provisions of the Ordinance or performance of its functions.

(7) The quorum for the meeting of the Board shall be one half of the Members present and voting including the Chairperson and the Vice Chairperson:

Provided if an ex-officio Member is unable to attend the meeting of the Board he may authorize an officer, not below the rank of an Additional Secretary of his Department for the purpose.

(8) The Board may constitute such number of committees as it may consider necessary or expedient to assist it in the performance of its functions under the Ordinance.

(9) A meeting of the Board may be called if:

- (a) directed by the Chairperson or Vice Chairperson, as the case may be;
- (b) requested by Members representing three fourths of the Members of the Board; and
- (c) requested by the Authority and approved by the Chairperson or Vice Chairperson.

5. Disqualifications to become a Member.- (1) No person shall be appointed or continue as a Member of the Board who:

- (a) is or, at any time, has been convicted of an offence involving moral turpitude;
- (b) is or, at any time, has been adjudicated insolvent;
- (c) is found to be a lunatic or of unsound mind;
- (d) has become physically or mentally incapable of acting as a Member;
- (e) has committed gross negligence or willful misconduct;
- (f) has been dismissed from public or private employment;
- (g) has been convicted of corruption, financial embezzlement, mismanagement or malpractices;
- (h) receives or is found to have received any illegal gratification from a private party; or
- (i) having any interest, either monetary or otherwise, directly or indirectly in any private party tendering for PPP or involved in the process in any way and failed to disclose such interest in writing to the Government.

(2) Subject to subsection (1), appointment of any Member may, at any time, be revoked and such member shall stand removed from his office by order of the Government.

(3) A Member may at any time resign from his office by a written notice addressed to the Chairperson.

6. Functions of the Board.- (1) The Board shall:

- (a) formulate the policies relating to the PPP projects for implementation pursuant to the Ordinance;
- (b) supervise and coordinate the implementation of the Ordinance, rules and regulations;
- (c) approve a three years rolling business plan and annual plan of the Authority;
- (d) review three year rolling business plan and annual plan of the Authority quarterly;

- (e) approve execution of projects proposed by the Authority under the Ordinance, so that the concerned Government Agency shall not seek execution of such projects by availing public funds unless otherwise allowed in writing by the Board;
- (f) be the final deciding authority for all the PPP projects;
- (g) issue guidelines for the Authority or a Government Agency in resolving major problems impeding preparation and implementation of PPP projects;
- (h) approve, reject or send back for reconsideration any project proposal submitted by the Authority;
- (i) approve, reject or send back for reconsideration the recommendations submitted by the Authority for a PPP agreement to be awarded to a private party on the rates or terms and conditions different from the original approval;
- (j) approve, reject or send back for reconsideration any recommendations of the Authority received through PPP Cell for any direct or contingent support/ availability based payments for a project;
- (k) determine projects that may be undertaken on priority basis by the Authority;
- (l) determine the maximum limit of Government support referred to in section 25 of the Ordinance for any project;
- (m) approve Viability Gap Fund (VGF) requests upon recommendation of the PPP Cell;
- (n) approve PDF funding requests of the Authority exceeding limit of thirty million rupees;
- (o) accord approval for review and re-negotiation of PPP Agreements, if necessary;
- (p) monitor PPP projects during concession period through PPP Cell;
- (q) constitute such committees, comprising of its members or other person(s) as deemed relevant to the working of such committees, as it considers necessary or expedient to assist it in the performance of its function under the Ordinance;
- (r) recommend the terms and conditions and performance incentives, if any, of the employment of the Chief Executive Officer and Chief Operating Officer of the Authority;
- (s) provide general directions, oversight and supervision on the affairs and administration of the Authority; and
- (t) take all other steps necessary for giving effect to the provisions of the Ordinance.

(2) In case of contingent liability(ies) or financial commitment(s) of the Government spanning beyond the ongoing financial year or allocated resources, prior approval of the Government shall be solicited before approval of such PPP projects by the Board.

(3) The Board may change any timeline provided in the Ordinance except the timelines mentioned in sections 20 and 24 of the Ordinance.

7. The PPP Cell.– (1) The Government shall, by notification in the official Gazette, establish the PPP Cell in the Planning and Development Board of the Government to act as Secretariat of the PPP Policy and Monitoring Board.

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

(3) The PPP Cell shall:

- (a) provide administrative / secretarial support to the Board;
- (b) review and strengthen the institutional and regulatory framework for the effective implementation and operation of PPPs in the Punjab;
- (c) appraise PPP project proposal(s) submitted by the Authority including feasibility study, business and financial model, initial environment impact assessment and draft PPP Agreements;
- (d) seek input of Risk Management Unit on the PPP project proposal(s) submitted by the Authority in terms of (including but not limited to) risk assessment and contingent liabilities;
- (e) appraise the requests for Viability Gap Fund (VGF) financing received from the Authority in consultation with Risk Management Unit and place the recommendations thereof to the Board;
- (f) assist the RMU in working out the annual budget requirements for annuity payments;
- (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;
- (h) make recommendations to the Board for appropriate decision;
- (i) monitor the PPP projects during concession period; and
- (j) perform such other functions as may be prescribed or assigned by the Board.

8. Punjab PPP Authority.– (1) The Government shall, by notification in the official Gazette, establish an Authority to be known as the Punjab Public Private Partnership Authority with such composition as may be prescribed.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with powers to enter into contracts, acquire or, subject to subsection (3), dispose of both movable and immovable property, and may, by the said name, sue or be sued.

(3) The Authority shall not dispose of any immovable property without prior approval of the Government.

9. Functions of the Authority.– (1) The Authority shall:

- (a) take necessary steps for the implementation of the provisions of the Ordinance and to achieve the objectives of the Ordinance;
- (b) ensure that projects are consistent with the decisions of the Government, the Board and sectoral development policies;
- (c) facilitate debt markets, bank financing, international financial institutions and equity markets for financing the public infrastructure/ services projects;
- (d) enhance capacity of the financial and capital markets to encourage healthy competition for projects;
- (e) enhance capacity of the engineering and construction industry to encourage healthy competition for projects;
- (f) encourage key stakeholder consultations and engagements to raise confidence of the private sector for participation in the projects;
- (g) develop expertise to raise financing for the projects through various financial instruments including but not limited to Bonds, Sukook, T-bills, Securities, Pension Funds, and promote establishment of Infrastructure Finance Company(ies);
- (h) prepare and execute a three year rolling business plan (to be updated annually) / an annual plan of the Authority;
- (i) develop management, operating guidelines, procedures and model documents for projects;
- (j) identify suitable projects and prioritize them within its sector or geographical area of responsibility;
- (k) maintain a Project Development Facility (PDF) fund for financing the engagement of transaction advisers and consultants;
- (l) maintain a panel of transaction advisers and consultants, for use by the Authority for PPP projects;
- (m) prepare a feasibility for the project and, if its outcome is positive, submit to the Board, through PPP Cell, a project proposal along with estimated cost of the project, type of

PPP agreement and the details of Government support if required;

- (n) evaluate and prioritize project proposals;
- (o) conduct a competitive tendering process for a project approved by the Board, including a pre-qualification process and bidding by the pre-qualified bidders to select the suitable private party;
- (p) carry out bid evaluation and make recommendations thereof for consideration of the Board;
- (q) negotiate and sign on behalf of the Government the PPP agreement with the private party as approved by the Board;
- (r) monitor and evaluate implementation and operation of the project;
- (s) evaluate the type and amount of Government support that may be made available for a project in consultation with RMU and make recommendations to the Board for appropriate decision;
- (t) assess whether requests for Government support and the proposed risk sharing arrangements are consistent with the Ordinance, the rules and the regulations, and are fiscally sustainable;
- (u) assess regulatory and social impediments involved in the planning, development, financing, implementation, management, supervision and delivery of a project and recommend mitigation measures to the Board;
- (v) administer and manage the Funds of the Authority in the manner determined by the Board;
- (w) constitute one or more committees or sub-committees consisting of the Members of the Authority, the employees of the Authority, Government Agencies and such other persons as it may deem fit and assign functions to each such committee or sub-committee;
- (x) hire professional and supporting staff from public/ private sector for the Authority as approved by the Executive Committee, from time to time;
- (y) appoint technical, professional and other experts, advisers, agents and consultants, including but not limited to accountants, bankers, engineers, lawyers, valuers for the Authority as approved by the Executive Committee;
- (z) manage the project throughout its life cycle including but not limited to project identification, project proposal preparation

including feasibility, tendering, supervising the implementation and operation of the project, and if applicable, take over the project under a PPP agreement.

- (aa) review and re-negotiate PPP Agreements, subject to prior approval of the Board;
- (bb) establish a complaint cell for speedy redressal of complaints of general public relating to the projects 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; and
- (cc) perform such other functions as may be prescribed or assigned by the Board.

(2) The Authority shall prepare and submit its annual performance report to the Government in the prescribed manner.

10. Chief Executive Officer.- (1) The Government shall appoint a Chief Executive Officer of the Authority from public or private sector.

(2) The age, experience, qualifications, terms and conditions and performance incentives, if any, of employment of the Chief Executive Officer shall be such as may be prescribed or until so prescribed as the Government, on the recommendations of the Board, may determine.

(3) The Chief Executive Officer shall exercise such powers and perform such functions as may be assigned or delegated to him by the Authority.

11. Executive Committee.- (1) The Government shall, on the recommendations of the Board, constitute, by notification in the official Gazette the Executive Committee of the Authority comprising not less than nine Directors.

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

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| (a) Minister for Planning and Development, Punjab or such person as may be nominated by the Chief Minister | Chairperson |
| (b) Chairman, Planning and Development Board | Vice Chairperson |
| (d) Secretary, Planning and Development Board | Director |
| (e) Secretary to the Government, Finance Department | Director |
| (f) Member (Infrastructure), Planning and Development Board | Director |
| (g) Member (PPP), Planning and | Director |

Development Board

- | | |
|---|---------------------|
| (h) A nominee of the Board amongst its three expert members | Director |
| (i) Chief Executive Officer, PPP Authority | Director |
| (j) Chief Operating Officer, PPP Authority | Director/ Secretary |

(3) An ex-officio Member shall hold office as Director till such time he holds office by virtue of which he is a Director and upon his transfer therefrom or retirement or resignation, the person appointed in place of such Director shall be the Director.

(4) The Executive Committee shall meet once in every month and otherwise as often as required for the implementation of the provisions of the Ordinance or performance of its functions.

(5) The quorum for a meeting of the Executive Committee shall be one half of the Directors present including the Chairperson:

Provided if an ex-officio Director is unable to attend a meeting of the Executive Committee, he may authorize an officer, not below the rank of an Additional Secretary of his Department for the purpose.

- (6) A meeting of the Executive Committee may be called:
- (a) if directed by the Board;
 - (b) if requested by Directors representing at least three fourths of the Directors of the Executive Committee;
 - (c) if requested by the Chief Executive Officer of the Authority and approved by the Chairperson/ Vice-Chairperson.

12. Functions and Powers of the Executive Committee.– (1) The Executive Committee shall be responsible for the management and administrative functions of the Authority as may be decided by the Board.

(2) The Executive Committee shall perform, amongst others, the following, namely:

- (a) approve PDF funding requests for the Authority up to a maximum limit of thirty million rupees and in case a PDF funding request exceeds this limit, the Executive Committee shall seek approval of the Board;
- (b) approve relevant accounting policies and financial reporting standards and templates for contracting parties;
- (c) approve annual budget of the Authority;
- (d) monitor budget and accounts of the Authority;
- (e) approve the hiring of professional and supporting staff from public sector for the Authority as deemed necessary for the

performance of the functions of the Authority from time to time;

- (f) approve the hiring of professional and supporting staff from private sector for the Authority as deemed necessary for the performance of the functions of the Authority from time to time on competitive market based salaries;
- (g) approve the Human Resource (HR) requirements along with HR manual of the Authority: including recruitments, terms and conditions and perks/ privileges as well as performance incentives, if any, of the employees;
- (h) approve the appointment of technical professionals and other experts, advisers, agents and consultants, including but not limited to accountants, bankers, engineers, lawyers, valuers for the Authority; and
- (i) perform such other functions as may be prescribed or assigned by the Board.

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

(2) The Risk Management Unit shall:

- (a) develop risk management guidelines for approval by the Board;
- (b) provide support and advice to the Authority or 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 Ordinance, rules and regulations, and are fiscally sustainable;
- (d) make recommendations to the Board through the PPP Cell;
- (e) recommend the inclusion of approved Government support, in the annual budget(s) of the Province as referred in section 25;
- (f) make recommendations for making annuity payments as referred in clause (a) and (b) of subsection (5) of section 25 of the Ordinance, to the private party of a project (as elaborated in the project proposal) referred to it by PPP Cell before placing the same in the Board for decision;
- (g) subject to the approval by the Board and signing of the PPP Agreement for a project, RMU shall work out the annual budget requirements for annuity payments referred in subsection (f) above and forward the same to the Finance

Department for inclusion in the annual budget(s) of the Province;

- (h) monitor direct and contingent liabilities of the Government incurred through the projects; and
- (i) perform such other functions as may be prescribed or as the Board may assign.

CHAPTER III PROJECT DELIVERY PROCESS

14. PPP Arrangements.— Subject to the Ordinance, the Authority 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 recommendation of the PPP Cell, seek approval of the Board to 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.

15. Project Identification and Preparation.— (1) The Authority shall identify and conceptualize potential projects which relate to development activities falling within sector or geographical area of the PPP project.

(2) The Authority 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.

(3) The Authority shall identify and prepare a project proposal, obtain approval of the Board and shall complete this phase before tendering.

(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, risk analysis, initial environmental impact

assessment, 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 Authority may seek approval of the Board through PPP Cell, for availing the Project Development Facility (PDF) funds exceeding the ceiling of thirty million rupees for hiring of transaction advisor(s) / consultant(s) (if required) for preparation of PPP project proposals.

(6) The money spent by the Authority through PDF funds for project preparation shall be reimbursed to the Authority by the successful bidder before financial close.

16. Project Prioritization and Approval.– (1) The Authority 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 to the Board through PPP Cell 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 Authority may exercise quality control of project proposals by reviewing the viability of a project and the completeness of the proposal in terms of documentation.

17. Approval of Government Support.– (1) The Authority shall include all requests for Government support as an integral part of a project proposal.

(2) The Authority shall forward all requests for Government support through the PPP Cell 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 thirty days, make through the PPP Cell, appropriate recommendations to the Board for approval, rejection or reconsideration of the proposed Government support / availability based payments.

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

18. Consideration by the PPP Policy and Monitoring Board.– (1) The Board shall, by taking into account the recommendations of the PPP Cell and the Risk Management Unit, consider a project proposal submitted by the Authority and may, within thirty days from the receipt of such proposal, either approve the proposal with or without modification, or reject it or return it to the Authority for amendment and resubmission.

(2) In case a project proposal is returned for amendment, restructuring and resubmission, the Authority shall take suitable action to amend the project

proposal and resubmit the proposal for consideration and approval within thirty days of such resubmission by the Board and any decision concerning such resubmitted proposal shall be taken by the Board.

19. Selection of the Private Party.– (1) After the approval of the project proposal by the Board, the Authority shall select a private party for the project through competitive public tendering, using a process of prequalification and bidding.

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

20. Pre-qualification.– The Authority 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 Authority and Public Procurement and Regulatory Authority (PPRA), and also in at least two daily 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 Authority;
- (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 Authority 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 Authority;
- (f) a person who fulfills the criteria shall be a pre-qualified person;
- (g) if less than three persons are pre-qualified, the Authority may analyze the reasons for such response and either proceed for bidding after recording the reasons, or revise project

structuring, and reinstate 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 Board 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 Board through the PPP Cell, 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;
- (j) any change in the shareholding of the consortium shall also be subject to approval of the Board; 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.

21. Bidding.– (1) After selecting pre-qualified persons, the Authority shall, within seven 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 Authority 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 Authority shall, within such period as it deems reasonable, conduct a pre-bid meeting with the bidders and 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 Authority may evaluate it, and depending on the results of such evaluation and after recording reasons:

- (a) negotiate or 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 Board.

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

22. Single stage three envelope bidding.– (1) Notwithstanding anything contained in section 20 and 24, the Authority may, with prior approval of Board, combine the processes of pre-qualification and bidding through single stage three envelopes process in the prescribed manner.

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

- (a) the Authority 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 PPP Cell, Risk Management Unit and the Authority shall observe such timelines as may be prescribed.

23. Bid evaluation.– (1) The Authority shall, within fifteen days from the receipt of the bids, evaluate the bids.

(2) On receipts of bids, the Authority 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 Authority 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 Board on the recommendation of the PPP Cell, or the Risk Management Unit.

(4) The Authority with the prior approval of the Board may 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 Board, the Authority 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 Board for approval.

(7) The lowest / successful bidder may, at his own motion without any negotiation by the Government, voluntarily reduce the bid amount at any stage before entering into PPP Agreement with prior notice to the Board. However, such voluntarily reduction must not affect any change in the approved terms and conditions of his prequalification and bid document.

(8) The Authority 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 Board, if applicable.

24. Bid security.– (1) A pre-qualified person shall deposit with the Authority the bid security along with financial bid equivalent to the amount as determined by the Authority based on the project cost.

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

25. Government support.– (1) The Authority shall indicate the Government support, if any, approved by the Board 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 by public sector organization 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 PPP projects;

- (c) Government equity, in the form of land or infrastructure facilities owned by the Federal Government or 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 Board may identify projects 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 referred by the Authority through PPP Cell for a decision of the Board and in such projects, the Board may (by recording the reasons in writing) approve Government support on first come first served basis, for specific duration or window of opportunity;
- (e) Government grants 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;
- (f) Government guarantees for other risks such as demand risk, and default by the Authority 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 after approval of the Board, the Authority decides to offer Government support on first come first serve basis, it shall invite proposals through wide publicity.

(4) (a) Direct financial assistance from the Viability Gap Fund: such support may be offered for projects which, in the opinion of the Board, are economically and socially viable, but may not be financially attractive enough for investment; and

(b) Government shall ensure that adequate resources are annually allocated through Annual Development Program (ADP) and disbursed to PPP Cell as Viability Gap Fund to meet its annual obligations for the projects approved for such funding by the Board.

(c) All the Viability Gap Fund support for the PPP project(s) shall be clearly indicated in the bidding documents and included in the PPP Agreement with the approval of the Board.

(5) (a) In case of availability based payments, subject to approval by the Board, the Authority shall ensure payment to the private party through budgetary

allocations made by the Government during lifecycle of the Project (by means of annuity payments) to cover the approved bid cost of provision of infrastructure and/or service(s) fully or partially (as the case may be) in accordance with the approved terms and conditions of the PPP Agreement.

(b) On the recommendation of RMU as referred in section 13(g) hereof, Finance Department of the Government shall ensure provision of requisite funds to the Authority for making annuity payments to the private party as set out in section 25(5)(a) hereof, in the annual budget(s) of the Province with prior approval of the Government.

26. Unsolicited proposals.– (1) A project proposal submitted by a person to the Authority for a project, 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 Authority shall consider an unsolicited proposal from all aspects including technical, environmental and financial aspects, and in case of requirement of additional information, the Authority may request for the submission of an amended or modified proposal.

(4) Within seven days from the receipt of an unsolicited proposal, the Authority 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 Authority within seven days from the receipt of such requirement.

(5) Within seven days from the receipt of information required under subsection (4), the Authority 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 Authority may submit the unsolicited proposal to the PPP Cell and Risk Management Unit. Thereafter the PPP Cell will submit its recommendations to the Board along with input of the Risk Management Unit. The Board, thereafter, shall make a decision on such proposal.

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

(7) If the Board approves the unsolicited proposal, the Authority shall invite competitive bids for the project identified in such proposal by following the bid procedure described in sections 19 to 24 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 Authority shall give the person who made the unsolicited proposal five percent additional weightage in technical scoring and first right to

match or improve the best bid received in response to the call for bids, if its bid is not the best bid.

(9) If the person who submitted the unsolicited bid fails to match the best bid, the Authority 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 Authority.

(10) If other valid competitive bids, except the bid of the person who submitted the unsolicited proposal, are not received, the Authority may negotiate the PPP Agreement with the person who submitted the unsolicited proposal or decide with prior approval of the Board to undertake the bidding process afresh by following the procedure described in sections 19 to 24, after recording the reasons for re-bidding.

(11) In case more than one unsolicited proposals are submitted for a specific project to the Authority, the Board may accept the best case option out of the said proposals on the recommendations of the PPP Cell, and thereafter, such proposals shall be processed in the manner as stated in subsection (2) to (10) herein above.

27. Non observance of timelines.– Subject to section 6(3), if the PPP Cell, the Risk Management Unit or the Authority fails to observe the timelines mentioned in the Ordinance or the rules, the Board after a prior notice may direct the PPP Cell to place the proposal before the Board and the Board may consider the proposal assuming that the Authority and Risk Management Unit have no objection to the project proposal.

28. 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 Authority 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) Amount of availability based payments (on annuity basis);
- (o) Transfer of assets, if any, at the conclusion of the term of the PPP Agreement;
- (p) Warranty period and procedures after the transfer;
- (q) Requirements and procedure for variations of the PPP Agreement;
- (r) Grounds for and effects of termination of the PPP Agreement including *force majeure*;
- (s) Procedures and venue for disputes resolution;
- (t) Financial reporting by the private party; and
- (u) Supervision mechanism of the Authority.

(3) The Authority shall not enter into a PPP Agreement except in accordance with the procedure mentioned in the Ordinance and the rules prescribed.

(4) The Authority shall ensure conclusion of contract negotiations with the selected private party within thirty days of receipt of the approval of the bid by the Board.

(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.

29. Project implementation and operation.– (1) Before signing the PPP agreement with the Authority, the private party may establish, without changing its shareholding, a Special Purpose Vehicle (SPV) for implementation and operation of the project and such SPV 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 Authority 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 Authority 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 one hundred and eighty 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 Authority 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 Authority of its obligations;
- (c) There is no additional government guarantee or increase in the financial exposure of the Government;
- (d) The variation in the PPP Agreement is necessary due to an unforeseeable event beyond the control of the Authority or the private party; and
- (e) Any such change is approved by the Board.

(7) The Authority shall supervise 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 Authority shall submit biannual reports on project performance to the Board.

30. Setting and adjustment of user levies.– (1) The Authority 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 Authority.

(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 Authority.

(3) Unless specified in the bid documents, the Authority 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 Authority keeps the user levies at lower levels to make the services provided by the project affordable to the end users, the Authority shall

compensate the private party for the difference by making appropriate payments as agreed in the PPP Agreement through Viability Gap Fund.

31. Dispute resolution.– (1) In case of any dispute between Authority 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 Board; 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 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 and pursuant to the Arbitration Act, 1940 (*X of 1940*), or any amending/repealing law thereof or under any other law as may be specified in the PPP Agreement.

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

- (i) If the Authority fails to comply with any major obligation in the PPP Agreement, and such failure is not remediable or, if remediable, remains un-remedied for a period of time as set out in the agreement, the private party may terminate the agreement with written notice to the Authority as provided in the PPP Agreement and, in the event of such termination, the project shall be transferred to the Authority and the private party shall be entitled to compensation by the Authority as provided in the PPP Agreement; or
- (ii) 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 a period of time as set out in the agreement, the Authority may terminate the agreement with written notice to the private party as provided in the PPP Agreement and, in such a case, the Authority will 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; or
- (iii) (a) If, either party to PPP Agreement is unable to perform in whole or in part(s) its obligations as set forth in the PPP Agreement due to *force majeure*, then such party shall give the other party prompt

written notice of such cause, and will be relieved of those obligations to the extent it is unable to perform for as long as such cause continues or for a period as set forth in the PPP Agreement, whichever is less;

- (b) If after expiry of such period, the party affected by such *force majeure* is unable to continue performance of its obligations, the PPP Agreement may be terminated in accordance with procedure laid down in the PPP Agreement;
- (c) In case of termination due to *force majeure*, the allocation of the risk and compensation formulae to be applied in such instance shall be set forth in the PPP Agreement.

33. Vesting of the project in the private party.— Subject to the PPP Agreement, the completed project may vest in the private party for a period not exceeding thirty years and on expiry of such period, the project shall vest in the Authority.

34. Transfer of the project.— Upon completion of the tenure of a PPP Agreement for a project and transfer of such project to the Authority, all assets, benefits, claims, rights, and obligations (if any) of the said project shall be transferred by the Authority to the respective Government Agency subject to the approval by the Board.

CHAPTER IV MISCELLANEOUS

35. Conflict of interest.— (1) A Member or Director shall not, directly or indirectly, receive any profit from his position as a Member or Director 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 or Director shall also be considered the pecuniary interests of the Member or Director.

(3) A Member or Director 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; or
- (b) owns, controls, or has direct or indirect interest in a business venture of a private party or a member of a consortium; or
- (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 Board or the Authority.

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

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

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

(7) A Member or Director shall not take part in the proceedings of the Board or Executive 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 Board or Executive Committee shall be recorded in the minutes of the meeting of the Board or Authority.

36. Disclosure of generic risks.– (1) The Authority shall, as far as possible, provide in the PPP Agreement, or any other ancillary or additional agreement(s), a list of generic risks involved in the project along with allocation and treatment of such generic risks.

(2) The Government or the Authority 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(s).

37. Integrity pact.– The Authority shall, for every project, enter into an integrity pact with the private party along with the PPP Agreement.

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

(2) The Authority shall make arrangements for inspection or provision of copies of a PPP Agreement or any other ancillary or additional agreement(s).

(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(s).

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

39. Prescribing and enforcing standards.– The Authority with the approval of the Board 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.

40. Indemnity by the private party.– The private party shall indemnify the Authority 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 Authority or an end user due to any such defect.

41. Recovery of costs, dues and fees.– (1) The Authority may recover the sum due from the private party as ascertained through the dispute resolution procedure under the Ordinance as arrears of land revenue under the Punjab Land Revenue Act, 1967 (*XVII of 1967*).

(2) The Authority 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).

42. Protection of actions taken in good faith.– No suit, claim or other legal proceedings shall lie against the Board or the Authority, as the case may be, the Authority or any member, director, officer, servant, adviser or a representative of the Board or Authority in respect of anything done or intended to be done in good faith under the Ordinance or under any rules or regulations made under the Ordinance.

43. Power to make rules.– The Board on the recommendation of the Executive Committee may by notification in official Gazette, make such rules as may be required to carry out the purposes of the Ordinance.

44. Power to frame regulations.– Subject to the Ordinance and the rules, the Authority may, with the prior approval of the Board, by notification in the official Gazette, frame regulations for carrying out its functions under the Ordinance.

45. Applicability to Government Agencies.– The Authority, with the approval of the Board, may seek inclusion of a Government Agency for undertaking the role assigned to the Authority for a project.

46. Appointment by transfer.— (1) The Government may, on the request of the Authority, allow transfer of the services of a Government employee to the Authority on the terms and conditions as approved by the Board in case of Chief Executive Officer; and as approved by the Executive Committee, in case of other categories of the officers / officials respectively, which shall not be less favorable than those admissible to him immediately before his transfer to the Authority.

(2) An employee transferred under subsection (1) shall continue to be the employee of the Government, liable to be transferred back to the Government as and when required by the Government.

47. Public servants.— The Chairperson, Vice Chairperson, Members, Directors, Employees of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of the Ordinance, be deemed to be public servants within the meanings of section 21 of the Pakistan Penal Code, 1860 (*XLV of 1860*).

48. Authority Fund.— (1) The Authority will administer and manage a Fund to be known as the Authority Fund comprising of the following:

- (a) such sums as the Federal Government may from time to time grant or lend;
- (b) such sums as the Government may from time to time grant or lend;
- (c) such sums as the Board may allow as operational cost of the Authority - to be charged from private party in accordance with its approved terms and conditions of the PPP Agreement during concession period of the project, provided that such sums must not exceed one percent of the total approved project cost, and in case such sums in a financial year exceed the operational expense of the Authority-the excess amount shall be transferred to PDF/ VGF funding accounts as may be prescribed by the Finance Department;
- (d) grants or funds provided to the Authority by international donor agencies, bodies through Government; and
- (e) grants or loans raised or otherwise obtained by the Authority from any lender for the purposes of the Ordinance or the working of the Authority with prior approval of the Government.

(2) The Authority shall meet its operational expenses from the Authority Fund as may be prescribed in the Rules.

(3) The Authority shall open and maintain its accounts at such scheduled banks as may be prescribed by the Finance Department of the Government and until so prescribed as the Executive Committee may determine.

(4) Revenue share from PPP Agreement(s), if any, shall not constitute part of the Authority Fund and shall be maintained in a separate account(s) as prescribed by the Finance Department of the Government.

49. Budget and accounts.— (1) The Authority shall maintain proper accounts and other records relating to its financial affairs including its income and expenditures, and its assets and liabilities in such form and manner as may be prescribed.

(2) The financial year of the Authority shall be the same as that of the Government and upon the conclusion of a financial year, the Authority shall, in the manner prescribed, cause to be prepared for each financial year, statements of accounts of the Authority which shall include a balance sheet and an account of income and expenditure.

(3) No expenditure for which provision has not been made in the approved budget shall be incurred without prior approval of the Policy Board.

50. Audit.— (1) The Auditor General of Pakistan shall annually audit the accounts of the Authority.

(2) The Authority shall, if required take appropriate remedial or other actions in the light of the audit report prepared by the Auditor General of Pakistan.

51. Overriding provision.— Notwithstanding anything contained in any other law, the provisions of the Ordinance shall have effect to the extent of the projects under the Ordinance.

52. Transition provision.— A PPP Agreement signed with a private party prior to the coming into force of the Ordinance, shall be valid until the end of the term established in such agreement.

53. Repeal and savings.— (1) The Punjab Public Private Partnership Act 2014 (*IX of 2014*) is hereby repealed.

(2) Notwithstanding repeal of the Punjab Public Private Partnership Act 2014 (*IX of 2014*), anything done or any action taken or purported to have been done or taken under Act IX of 2014 shall, in so far as it is not inconsistent with the provisions of the Ordinance, be deemed to have been done or taken under the corresponding provisions of the Ordinance.

(3) Notwithstanding the repeal of the Punjab Public Private Partnership Act 2014 (*IX of 2014*), the Government's Notification dated October 10, 2007, bearing reference No. E&A (P&D)1-285/2007 and other related notifications issued from time to time establishing the PPP Cell shall continue to remain in force.

(4) Notwithstanding anything contained in the Ordinance or any other law for the time being in force or in any agreement, deed, document or other instrument, all employees of the Risk Management Unit shall be deemed to be employees of the Risk Management Unit as mentioned in section 13 of the Ordinance, on the terms and conditions not less favourable than the existing terms and conditions of the service, rights and privileges and other matters as

were applicable to them immediately before such continuance in office or transfer under the Ordinance.

(5) All debts and obligations incurred or contracts entered into or rights acquired and all matters and things engaged to be done by, with or for the PPP Cell / Risk Management Unit shall be deemed to have been incurred, entered into, acquired or engaged to be done under the Ordinance.

(6) All suits and other legal proceedings instituted by or against the PPP Cell shall be deemed to be suits and proceedings under the Ordinance and shall be proceeded or otherwise dealt with accordingly.

(7) A reference to the PPP Cell/RMU in any statutory instrument or document shall, unless the context otherwise requires, be read and construed as reference to the Ordinance.