THE TAMIL NADU INFRASTRUCTURE DEVELOPMENT ACT, 2012.

THE TAMIL NADU INFRASTRUCTURE DEVELOPMENT ACT, 2012[1].

(TAMIL NADU ACT No. 22 OF 2012)

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 31st May 2012 and is hereby published for general information:—

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

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-third Year of the Republic of India as follows:-

CHAPTER – I.

PRELIMINARY.

1. Short title, extent, application and commencement.— (1) This Act may be called the Tamil Nadu Infrastructure Development Act, 2012.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall apply to all Projects of a value exceeding rupees five hundred crore implemented by a public agency:

Provided that the Government may, by general[2] or special order, apply the provisions of this Act, to any public- private partnership project, the project value of which is l ess than rupees five hundred crore:

[2]Applies to all Public-Private Partnership projects of a value in excess of Rupees ten crores. [Notification No..II(2)/FIN/747(a)/2012 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.314, dated the 7th November 2012. – G.O. Ms.No.391, Finance(BPE) Department, dated 7-11-2012.]

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

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

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

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

(4) It shall come into force on such date[1] as the Government may, by notification, appoint.

2. Definitions.— In this Act, unless the context otherwise requires,-

(*a*) "administrative department" means the department of the Secretariat which is administratively c er the Tamil

Nadu Government Business Rules, 1978, and more than one department may also be administratively concerned with a Project;

(*b*) "Board" means the Tamil Nadu Infrastructure Development Board established under section 3 of this Act;

(*c*) "concessionaire" means the private sector participant which has entered into a public–private partnership;

1 Appoints 15th day of June 2012 as the date on which the said Act shall come into force. [Notification No.II(2)/FIN/308(a-1)/2012 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.159, dated the 15th June 2012. - G.O. Ms.No.211, Finance (BPE) Department, 14-6-2012.]

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(*d*) "concession agreement" means an agreement entered into between a public agency and a private sector participant for and in respect of a public-private partnership;

(*e*) "detailed Project study" means a detailed study of the Project made after the preliminary investment decision, in order to ascertain the capital cost, technological parameters, description of the technology to be used, technical specifications, plan schedule to assist the financial investment and the plan for implementation of the Project and such other information as may be prescribed in the regulations;

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

(*g*) "Government" means the State Government;

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

(*i*)"Infrastructure" means provision of assets or services in any one or more of the sectors specified in Schedule-I;

(*j*) "Local authority" means any municipal corporation or municipal council or panchayat union council or village panchayat constituted under the relevant law for the time being in force;

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

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(*l*) "Project" means an Infrastructure Project;

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

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

(*n*) "public-private partnership project" means a Project implemented through public-private partnership;

(*o*) "public agency" means any department of the Government or any public sector undertaking of the Government, a Government Company, Statutory Board formed by the Government, Local authority, Co-operative Institution, State University, any Society or Trust formed, owned or controlled by the Government;

(p) "public financial support" means financial support from the Central Government or the State support or both;

(*q*) "public sector mode" means implementation of a Project directly by a public agency by it's own resources or through the State Budgetary resources;

(*r*) "regulations" mean the regulations made by the Board under this Act;

(*s*) "rules" mean the rules made by the Government under this Act;

(*t*) "Schedule" means a Schedule, appended to this Act;

(*u*) "sponsoring agency" means the public agency designated by the Board to implement a Project through public-private partnership;

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

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

(*ii*) equity;

(*iii*) loans;

(*iv*) guarantee by the Government;

(*v*) opening and operation of escrow account;

(*vi*) conferment of right to develop any land;

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

(*w*) "Tender Act" means the Tamil Nadu Transparency in Tenders Act, 1998 (Tamil Nadu Act 43 of 1998);

(*x*) "user levy" means user charge or fee or any other amount, by whatever name called, payable by the user of an infrastructure facility.

CHAPTER-II.

THE TAMIL NADU INFRASTRUCTURE DEVELOPMENT BOARD.

3. Establishment of the Tamil Nadu Infrastructure Development Board.— (1) As soon as may be, after the commencement of this Act, the Government may, by notification, establish a Board to be called the Tamil Nadu Infrastructure Development Board with effect from such date as may be specified in the notification.

(2) The head quarters of the Bo

(3) The Board shall consist of the following members, namely:-[2]

(*a*) the Chief Minister, who shall be the Chairperson, ex-officio;

(*b*) the Minister in-charge of Finance, who shall be the Vice-Chairperson, ex-officio;

(*c*) the Chief Secretary to Government, ex-officio;

(d) the Secretary to Government, Finance Department, who shall be the Member-Secretary, ex-officio; and

(*e*) the Chief Executive Officer of the Board, ex-officio.

4. Meetings of the Board.— (1) The Board shall meet at such time and place and shall observe such rules of procedure in regard to transaction of business at its meetings, including the quorum at such meetings as may be provided in the regulations.

(2) When the Chairperson of the Board, or in his absence the Vice-Chairperson, and in the absence of both the Chairperson and the Vice-Chairperson, any other member chosen by the members present from amongst themselves shall preside over the meeting of the Board.

(3) All questions at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

(4) The Minister-in-charge of the administrative department and the Secretary to Government of the administrative department shall be the special invitees at the meetings of the Board:

Provided that the Chairperson may allow any person as he deems necessary to be a special invitee.

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

6. Appointment of Chief Executive Officer, officers and staff of the Board.[1]— (1) There shall be a Chief Executive Officer for the Board appointed by the Government.

(2) The Board may, create such posts and appoint such number of persons as it may require, to carry out its functions and duties under this Act.

(3) The salary, allowances and the conditions of service of the persons appointed under sub-section (2), shall be such as may be prescribed in the regulations.

[1]The Tamil Nadu Infrastructure Development Board was established with effect from the 15th day of June 2012. [Notification No.II(2)/FIN/308(a-2)/2012 published in 15th June 2012. - G.O. Ms. No.212, Finance(BPE) Department, dated 14-6-2012.]

[2]Amended vide Tamil Nadu Infrastructure Development (Amendment) Act, 2022 Act No. 37 of 2022

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

1Amended vide Tamil Nadu Infrastructure Development (Amendment) Act, 2022 Act No. 37 of 2022

7. Functions of the Board.— The Board shall,—

(1) act as a nodal agency to co-ordinate the efforts of the Government in regard to the development of the Infrastructure sectors in the State;

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

(3) identify bottlenecks in the Projects and recommend policy initiatives to rectify the same;

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

(5) co-ordinate with the departments concerned and the implementing agencies;

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

(7) scrutinize, evaluate and prioritize the Projects proposed by a public agency and recommend to the Government for its implementation;

(8) prescribe the form of tender documents for all Projects;

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

(10) approve concession agreements in respect of the Projects identified by the Board;

(11) evaluate and recommend financial support from the Government under the Tamil Nadu Infrastructure Development Fund or from the Central Government;

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

(13) manage and utilise the Project Preparation Fund;

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

(15) perform such other functions as may be entrusted to it by the Government.

8. Powers of the Board.— The Board shall, for the purpose of carrying out its functions under this Act, have the following powers, namely:-

(*a*) to call upon any public agency or concessionaire or any person to furnish any information in regard to any Project;

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

(*c*) to regulate its own procedures.

9. Executive Committee.— (1) There shall be an Executive Committee of the Board. It shall exercise such of the powers and perform such of the functions as may be delegated to it by the Board.

(2) The Executive Committee shall consist of the following members, namely:-[1]

(*a*) the Chief Secretary to Government, who shall be the Chairperson, ex-officio;
(*b*) the Secretary to Government, Finance Department, ex-officio;
(*c*) the Chief Executive Officer of the Board, who shall be the Member-Secretary, ex-officio; and (*d*) experts in the fields of finance, economics, commerce, infrastructure and the like not exceeding two, as may be nominated by the Chairperson of the Executive Committee.

(3) The tenure and the terms and conditions of appointment of the experts shall be as prescribed in the regulations.

[1]Amended vide Tamil Nadu Infrastructure Development (Amendment) Act, 2022 Act No. 37 of 2022

10. Meetings of the Executive Committee.— (1) The Executive Committee shall meet at such time and place and shall observe such rules of procedure in regard to transaction of business at its meetings, including the quorum at such meetings as may be provided in the regulations.

(2) When the Chairperson of the Executive Committee is absent, any other member chosen by the members present from amongst themselves shall preside over the meeting of the Executive Committee.

(3) All questions at a meeting of the Executive Committee shall be decided by a majority of the votes of the members present and voting and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

(4) The Secretary to Government of the administrative department shall be the special invitee at the meetings of the Executive Committee.

(5) The Chairperson of the Executive Committee may invite any other person as he may consider necessary to attend a meeting of the Executive Committee.

11. Proceedings of the Executive Committee not to be invalidated.— No act or proceedings of the Executive Committee shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

12. Constitution of Other Committees.— The Board shall have the power to constitute such other committees as it considers necessary and to delegate to them such of their powers as it deems fit. Such Committees shall consist of members of the Board and of such other persons if any, as the Board in each case deems fit.

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

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CHAPTER-III.

PROJECT IDENTIFICATION, PRIORITIZATION AND IMPLEMENTATION.

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

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

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

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

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

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

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

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

[1] Delegated full powers to Executive Committee vide B.P.No. 470 Dated. 26.07.2022

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

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

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

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

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

(6) On receipt of proposal for implementation of the Project under sub-section (4), the Government shall consider the same and communicate its decision on the

implementation of the Project including the mode of its implementation, to the Board ordinarily within thirty days.

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

(2) Deleted[2]

16. Project implementation through public-private partnership[3] — In respect of Projects decided by the Government to be implemented through public-private

[1]Delegated full powers to Executive Committee vide B.P.No. 470 Dated. 26.07.2022 [2]Deleted vide Tamil Nadu Infrastructure Development (Amendment) Act, 2022 Act No. 37 of 2022

[3]Delegated full powers to Executive Committee vide B.P.No. 470 Dated. 26.07.2022

partnership, the Board shall cause the sponsoring agency to publish the details of the proposed project in such form and in such manner, as may be prescribed in the regulations, inviting objections and suggestions. The sponsoring agency shall, based on the objections and suggestions, if any, received, prepare and submit a report to the Board within such period, as may be prescribed in the regulations.

17. Detailed Project study and Project structuring[1]—The Board, on receipt of the report from the sponsoring agency under section 16, shall consider in consultation with the administrative department and after causing the detailed Project study, if it considers necessary, finalise the scope and structure of the Project, either in its original form or with such modification, as it deems fit, also taking into account, the following aspects, namely:-

(*a*) whether the Project needs any public financial support, and if so, the appropriate form of such support; (*b*) the tender criteria or variables relevant for evaluation of the tender; and

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

18. Procuring entity for Projects[2]— (1) Every public agency designated by the Board to implement a Project shall be a procuring entity under the Tender Act (Tamil Nadu Act 43 of 1998):

Provided that the Board may, for any class of Project as may be prescribed in the rules, be the procuring entity under the Tender Act.

(2) No procurement under this Act shall be made by the procuring entity except by tender, following the provisions contained in the Tender Act.

(3) The tender documents shall be in the form and manner as may be prescribed in the regulations:

Provided that for any class of Project as may be prescribed in the regulations, the procuring entity shall submit the tender documents for prior approval of the Board.

[1]Delegated full powers to Executive Committee vide B.P.No. 470 Dated. 26.07.2022
[2]Delegated full powers to Executive Committee vide B.P.No. 470 Dated. 26.07.2022

(4) The procuring entity shall, in respect of Projects identified by the Board, intimate the name and address der has been

accepted, to the Board and shall also obtain its approval on the concession agreement to be entered into with such tenderer.

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

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

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

20. Project Management Facility — The Government may, by notification, constitute an agency with such number of members, with such qualification, as may be prescribed in the regulations to be called the Project Management Facility for the management and supervision of any Project. The Project Management Facility shall exercise such powers and perform such functions, as may be prescribed in the regulations.

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

[1]Delegated full powers to Executive Committee vide B.P.No. 470 Dated. 26.07.2022

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

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

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

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

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

22. Infrastructure cess, user charges and fees.— (1) The Government may levy Infrastructure cess at such rates and for such period, as may be prescribed in the rules.

(2) The Board may levy user charges on the users of the infrastructure facility and fees for the services rendered, at such rates, as may be prescribed in the rules.

23. Abuser charge.— The Board may levy abuser charge at such rate, as may be prescribed in the rules, on any concessionaire for abuse of any right accorded in the concession agreement:

Provided that no such abuser charge shall be levied unless the concessionaire is given a reasonable opportunity of showing cause against such levy.

CHAPTER-IV.

FINANCE, ACCOUNTS AND AUDIT.

24. Tamil Nadu Infrastructure Development Fund.— (1) The Government shall, by notification, constitute a Fund[1] to be called the Tamil Nadu Infrastructure Development Fund with an initial corpus of such amount, as may be specified in that notification.

(2) The Fund may be credited with the grants made by the Government from time to time for thepurpose and the amount collected as infrastructure cess.

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

(4) The Fund may, with the recommendation of the Board, be utilised for providing financial support to facilitate design, development, working, administration, management of Projects. The Fund may also be utilised for such other purposes, as may be prescribed in the rules.

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

25. Project Preparation Fund.— (1) The Government shall, by notification, constitute a Fund[2] to be called the Project Preparation Fund with an initial corpus of such amount, as may be specified in that notification.

(2) The Fund may be credited with the grants made by the Government from time to time for the purpose and the amount collected as fees, user charges and abuser charges.

1 Tamil Nadu Infrastructure Development Fund was constituted with an initial corpus of Rs.10,00,00,000/- (Rupees Ten crores only). [Notification No.II(2)/FIN/193(a-1)/2013 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.43, dated the 15th February 2013. - G.O. Ms.No.39, Finance(Infrastructure Cell) Department, dated 14-2-2013.]

2Project Preparation Fund was constituted with an initial corpus of Rs.5,00,00,000/- (Rupees Five crores only). [Notification No.II(2)/FIN/193(a-2)/2013 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.43, dated the 15th February 2013. - G.O. Ms.No.40, Finance(Infrastructure Cell) Department, dated 14-2-2013.]

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

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

(5) The Fund shall be managed and utilised by the Board in such manner, as m .

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

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

(3) The accounts of the Board shall be audited once in a year by a person duly qualified to act as an auditor of a company under section 226 of the Companies Act, 1956 (Central Act 1 of 1956).

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

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

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

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

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CHAPTER-V.

MISCELLANEOUS.

28. Members, officers and employees of the Board to be public servants.— The Chairperson, Vice-Chairperson, Members, Member – Secretary and officers and employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or regulation or order or direction made or issued under this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

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

30. Power to make Rules.— (1) The Government may make rules for carrying out the purposes of this Act.

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

(*a*) the websites in which the list of Projects recommended by the Board for implementation under section 14 shall be published;

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

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

(*d*) the tenure of experts in the Executive Committee and the terms and conditions of their appointment;

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

(*f*) the class of Projects for which the Board shall be the procuring entity under the Tender Act;

(*g*) the rate and period for which Infrastructure cess may be levied;

(*h*) the rates at which the Board may levy fees, user charges and abuser charge;

(*i*) the purposes for which the Tamil Nadu Infrastructure Development Fund and the Project Preparation Fund shall be utilised;

(*j*) the manner in which the Tamil Nadu Infrastructure Development Fund and the Project Preparation Fund shall be managed and utilised;

form in which accounts shall be maintained by the Board;

(*l*) the form in which the annual statement of accounts of the Board shall be prepared;

(*m*) the time limit within which the accounts and the audit report shall be forwarded by the Board to the Government;

(*n*) the form of the Annual report and the time limit within which it shall be submitted by the Board to the Government;

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

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31. Power to make regulations.— (1) The Board may make regulations consistent with the provisions of this Act and the rules made thereunder.

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

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

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

(*c*) the form and manner of tender documents and the class of Projects in respect of which, the tender documents require prior approval of the Board;

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

(*e*) the 'value for money test' to ascertain the cost of implementation of a Project through public sector mode and through public-private partnership, in order to compare and adopt the mode of implementation, which is cost effective;

(*f*) the form and manner in which the details of the proposed Project shall be published by the sponsoring agency under section 16;

(*g*) the period within which the sponsoring agency shall submit a report to the Board under section 16;

(*h*) period of experience for appointment as Project Manager;

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

(*j*) the form and manner of submission of periodical and special reports by the sponsoring agency to the Board under section 21;

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

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32. Power to amend Schedules.— The Government may, by notification, in the *Tamil Nadu Government Gazette* amend any of the Schedules to this Act.

33. Power to remove difficulties.— If any difficulty arises in giving effect to the p overnment may, by notification, make

such provision not inconsistent with the provisions of this Act as may appear to them to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such notification shall be issued after the expiry of two years from the date of commencement of this Act.

34. Power to exempt.— The Government may, by notification, exempt any Project from all or any of the provisions of this Act, for reasons to be recorded.

35. Publication of rules, regulations and notifications and placing them before the Legislature.— (1) (*a*) All rules or regulations made or notifications issued under this Act shall be published in the *Tamil Nadu Government Gazette* and, unless they are expressed to come into force on a particular date, shall come into force on the date on which they are so published.

(2) Every rule or regulation made or notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly agrees in making any modification in any such rule or regulation or notification or the Legislative Assembly agrees that the rule or regulation or notification should not be made or issued, the rule or regulation or notification shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

36. Act to override other State laws.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other State law for the time being in force.

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SCHEDULE - I.

[See section 2(*i*)]

SECTORS.

(1) Agriculture Infrastructure including Marketing and Post harvest infrastructure.

(2) Development of Minor Minerals.

(3) Drinking and Industrial Water supply systems, Desalination Plants.

(4) Education related Infrastructure.

(5) Fisheries.

(6) Gas and Gas Works.

(7) Health Infrastructure.

(8) Housing including Slum Development and Development of Satellite towns.

(9) Industrial Estates including Industrial Parks and Special Economic Zones.

(10) Information and Communication Technology related Projects.

(11) Inland Waterways other than National Waterways. (12) Irrigation including Dams, Irrigation Structures, Canals.

(13) Land Reclamation Projects.

(14) Ports (other than major ports) and Harbours thereof. (15) Power Generation, Transmission and Distribution Systems.

(16) Roads, Bridges, including Rail over and under Bridges and By-passes.

(17) Solid Waste Management.

(18) Sports & Recreation Infrastructure.

(19) Tourism and Hospitality Projects.

(20) Urban Transportation System, Bus terminals, multi level parking facilities.

(21) Waste Water, Sewerage treatment systems.

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SCHEDULE – II.

[See section 17]

NATURE OF CONCESSION AGREEMENTS.

1. Investment or Financing related Agreements.

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

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

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

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

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

2. Operations and Maintenance related Agreements.

(i) Management Agreement – A contractual arrangement whereby the Government entrusts the operation and management of a Project to the concessionaire for the period specified in the agreement on payment of specified consideration. In ment may

charge the user levies and collect the same either by itself or entrust the collection for consideration to any concession aire who shall after collecting the user levies, pay the same to the Government.

(ii) Lease Management Agreement – A contractual arrangement whereby the Government leases a Project owned by it to the concessionaire which is permitted to operate and maintain the Project for the period specified in the contract. The concessionaire is allowed to charge the users appropriate fees, rentals and charges as specified in the agreement to enable the recovery of investment in the Project.

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

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

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

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Notifications issued

1. In exercise of the powers conferred by sub-section (4) of Section 1 of the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act No. 22 of 2012), the Governor of Tamil Nadu hereby appoints the 15th day of June 2012, as the date on which the said Act shall come into force.

   [Notification No.II(2)/FIN/308(a-1)/2012 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.159, dated the 15th June 2012. - G.O.

   Ms.No.211, Finance(BPE) Department, dated 14-6-2012.]

2. In exercise of the powers conferred by sub-section (1) of Section 3 of the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act 22 of 2012), the Governor of Tamil Nadu hereby establishes the Tamil Nadu Infrastructure Development Board with effect from the 15th day of June 2012.

   [Notification No.II(2)/FIN/308(a-2)/2012 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.159, dated the 15th June 2012. - G.O.

Ms. No.212, Finance(BPE) Department, dated 14-6-2012.]

3. In exercise of the powers conferred by the first proviso sub-section (3) of section 1 of the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act 22 of 2012), the Governor of Tamil Nadu hereby issues a general order that the provisions of the Tamil Nadu Infrastructure Development Act, 2012 shall apply to all Public Private Partnership projects of a value in excess of Rupees ten crores.

[Notification No.II(2)/FIN/747(a)/2012 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.314, dated the 7th November 2012. – G.O. Ms.No.391, Finance(BPE) Department, dated 7-11-2012.]

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4. In exercise of the powers conferred by sub-section (1) of Section 24 of the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act 22 of 2012), the Governor of Tamil Nadu hereby constitutes the Tamil Nadu Infrastructure Development Fund with an initial corpus of Rs.10,00,00,000/- (Rupees Ten Crores only).

[Notification No.II(2)/FIN/193(a-1)/2013 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.43, dated the 15th February 2013. - G.O. Ms.No.39, Finance(Infrastructure Cell) Department, dated 14-2-2013.]

5. In exercise of the powers conferred by sub-section (1) of Section 25 of the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act 22 of 2012), the Governor of Tamil Nadu hereby constitutes the Project Preparation Fund with an initial corpus of Rs.5,00,00,000/- (Rupees Five Crores only).

[Notification No.II(2)/FIN/193(a-2)/2013 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.43, dated the 15th February 2013. - G.O. Ms.No.40, Finance(Infrastructure Cell) Department, dated 14-2-2013.]

6.In exercise ofthe powers conferred by Section 34 of the Tamil Nadu Infrastructure Development Act, 2012 (Tamil Nadu Act 22 of 2012), the Governor of Tamil Nadu hereby notifies that the Chennai Monorail Project is exempted from the said Act, since the Project was conceived and the Project related activities have commenced prior to the commencement of the said Act.

[Notification No.II(2)/FIN/299(a)/2014 published in Part II–Section 2 of the Tamil Nadu Government Gazette Extraordinary No.78, dated the 7th April 2014. - G.O. Ms.No.99, Finance(Infrastructure Cell) Department, dated 7-4-2014.]