THE TELANGANA INFRASTRUCTURE DEVELOPMENT ENABLING ACT, 2001.

(ACT NO. 36 OF 2001)

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THE TELANGANA INFRASTRUCTURE DEVELOPMENT ENABLING ACT, 2001.[1]

ACT No.36 OF 2001.

CHAPTER - I
PRELIMINARY

Short title, extent, application and commencement.

1. (1) This Act may be called the [2]Telangana Infrastructure Development Enabling Act, 2001.

(2) It extends to the whole of the State of [2]Telangana.

(3) It shall apply to all Infrastructure Projects implemented through Public Private Partnership in the sectors enumerated in Schedule III of the Act and to such other sectors as may be notified by the Government under the Act from time to time. The Act will not apply to any Infrastructure Project which is undertaken by any joint venture between the State or Central Government Departments or between the State or Central Government and any Statutory Body or between any Statutory Bodies or between the State or Central Government or Statutory Body and any Government Company or any Infrastructure Project which may be taken over by any private party or private sector undertaking upon privatisation or dis-investment by the State or Central Government or Government Agency or by any Statutory Corporation or any Government Company or any Infrastructure Project which does not involve fresh,

1. The Andhra Pradesh Infrastructure Development Enabling Act, 2001 received the assent of the Governor on the 9th October, 2001. The said Act in force in the combined State, as on 02.06.2014, has been adapted to the State of Telangana, under section 101 of the Andhra Pradesh Reorganisation Act, 2014 (Central Act 6 of 2014) vide. the Telangana Adaptation of Laws Order, 2016, issued in G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

2. Substituted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

new, additional investment being made by a private sector participant or any Infrastructure Project which is expressly notified to be excluded from the provisions of the Act by the Government.

(4) It shall be deemed to have come into force with effect on and from the 20th August, 2001.

Definitions.

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

(a) "Act" means the [3]Telangana Infrastructure Development Enabling Act, 2001;

(b) "Best Effort" means best efforts made in the circumstances;

(c) "Bidder" means any entity including any Bidding Consortium who has submitted a proposal to undertake an Infrastructure Project under Public Private Partnership;

(d) "Bidding Consortium" means if the proposal for the Project is made jointly by more than one entity, then such group of entities shall be referred to as a Bidding Consortium;

(e) "Categories of Projects" means categories specified in Schedule II of the Act and such other categories as may be notified by the Government from time to time;

(f) "Charges for Abuse or Abuser Charges" means the levy of charges by the Infrastructure Authority on any Developer if any Developer abuses any right accorded under the Concession Agreement, in the course of development, implementation, operation, maintenance, management and transfer of any Infrastructure Project, to

3. Substituted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

the extent as may be specified in the Concession Agreement or such other agreement as may be prescribed by the Government;

(g) "Company" means any entity incorporated by memorandum of association under the *Companies Act, 1956 or incorporated under any other statute or deemed to be incorporated under the laws of India or the laws of any other country of the World;

Central Act 1 of 1956.

(h) "Concession Agreement" means a contract of the nature specified in Schedule-I between the Developer and the State Government or Government Agency or the Local Authority relating to any Infrastructure Project or such other contract as may be prescribed from time to time by the Government;

(i) "Conciliation Board" means the Conciliation Board established under section 32 of the Act;

(j) "Construction" means any construction, reconstruction, rehabilitation, improvement, expansion, addition, alteration and related works and activities including supply of any equipment, materials, labour and services related to build or rehabilitate any Infrastructure Project comprising of physical structures or systems or commodities or for utilization of resources or provision of services;

(k) "Developer" means any Private Sector Participant who has entered into a contract for the Infrastructure Project with the Government or Government Agency or Local Authority under the Act;

* See the Companies Act, 2013 (Act No.18 of 2013).

(l) "Generic Risks" means circumstances that have the potential to adversely affect the development of a Project or interest of the participants to the Project or interest of the Government or Government Agency or Local Authority and in the nature of construction period risk, operation period risk, market and revenue risk, finance risk, legal risk and miscellaneous risks as enumerated in Schedule IV of the Act;

(m) "Government" means the State Government of 4Telangana;

(n) "Government Agency" means any department of the Government or any corporation or body owned or controlled by the Government by reason of the Government holding not less than fifty one percent of paid-up share capital in such corporation or body;

(o) "Government Company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or

more State Governments and includes a company which is a subsidiary of a Government company as defined;

(p) "Fund" means the Infrastructure Projects Fund established under section 54 of the Act;

(q) "Infrastructure Authority" means the Authority constituted under section 3 of the Act;

(r) "Infrastructure" means public woks relating to infrastructure for utilising the natural resources and providing services by either public works of physical

4. Substituted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

structure or systems for facilities or commodities or utilisation of resources or provision of services;

(s) "Infrastructure Project or Project" means a Project in the sectors as notified under the Act by the Government;

(t) "Investment" means preliminary and pre-operative expenses, capital expenditure, lease on land and equipment, interest during construction, administrative expenses, all operating and maintenance expenses including expenses incurred on recovery of User Levies;

(u) "Lead Consortium Member" means in case of a Bidding Consortium, that consortium member vested with the prime responsibility of developing a Project, holding not less than 26% equity stake in the Bidding Consortium and also holding the highest equity stake amongst all other consortium members. In the event of two or more consortium members holding the highest equal equity stake, the Bidding Consortium shall clearly indicate in the Bid which consortium member is to be considered the Lead Consortium Member and the consortium member so indicated or named shall be the Lead Consortium Member;

(v) "Lender" means any financial institution or bank or any entity providing financial assistance with or without security or giving any advances to any Developer for completing or implementing any Project under the Act;

(w) "Linkage Infrastructure Project" means from any Project under the Act any road link to the nearest State highway, national highway or rail link or water transmission link to the nearest practical water source including an existing pipeline or canal or water body or sewerage link to the nearest practical sewerage transmission line or sewerage treatment facility or such other facility;

(x) "Mega Infrastructure Project" means any Project implemented or undertaken through Public Private Partnership under the Act requiring an investment as may be prescribed by the Infrastructure Authority;

(y) "Local Authority" means any municipal corporation or municipal council or any panchayat or any other statutory body formed, elected or appointed for local self-Government;

(z) "Local Laws" means laws other than central laws and applicable to the State;

(aa) "Member" means a member of the Infrastructure Authority which includes the Chairperson, the Vice Chairperson and any other member of the Infrastructure Authority;

(bb) "Non Profit Organisation" means any organisation formed for promoting commerce, art, science, religion, charity or any other useful object and

applies its income in promoting its objects and prohibits the payment of any dividend to its members and does not allow its corpus or income to be lent or advance or diverted or utilised or exploited by its members or office bearers or any other company in which they or any of them may be interested or connected;

(cc) "Notification" means a notification published in the [5]Telangana Gazette and the word "notified" shall be construed accordingly;

(dd) "Person" shall include any company or association or body of individuals, whether incorporated or not;

5. Substituted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

(ee) "Polluter Charges" means levy of prescribed charges by the Infrastructure Authority on any Developer, if any Developer pollutes the environment or does not adhere to the specifications and measures for environment preservation and conservation agreed under the contract with the Government or the Government Agency or the Local Authority or fails to stop polluting the environment within 30 days of receipt of notice in writing from the Infrastructure Authority or the Government Agency or the Local Authority;

(ff) "Prioritised Project" means any Project, which is notified by the Infrastructure Authority as a prioritised project under the Act;

(gg) "Private Sector Participant" means any person other than Central Government or State Government or Government Agency or any joint venture between Central Government or State Government Departments or any, Statutory Body or Authority or Local Authority or any Corporation or Company in which Central Government or State Government or Government Agency, Statutory Body or Authority or Local Body is holding not less than fifty one percent paid-up share capital;

(hh) "Prescribed" means prescribed by rules or regulations made under this Act;

(ii) "Prospective Lenders" means financial institutions, banks or any other entities of such project financing track record as may be prescribed, who in principle or agreeable to provide guarantees or finance to the Bidder under any of the financing documents;

(jj) "Public Private Partnership" means investment by Private Sector Participant in an Infrastructure Project of the Government Agency or the Local Authority in the State;

(kk) "Regulation" means regulations made under section 78 of the Act;

(ll) "Responsive Bid" means a bid from an eligible Bidder which complies with all the requirements prescribed by the tender documents or other documents as the case may be;

(mm) "Rules" means rules made under section 79 of the Act;

(nn) "Sectors" means sectors as notified under Schedule III of the Act and as may be notified from time to time by the Government;

(oo) "Sector Regulator" means the regulatory authority for a Sector or Sectors as may be notified by the Government from time to time;

(pp) "Sole Bid" means when in competitive bidding process there is only one Responsive Bid received by the Government Agency or the Local Authority;

(qq) "State" means the State Government of [6]Telangana;

(rr) "State Support" means grant by the State of any administrative support, asset-based support, foregoing revenue benefits support, undertaking contingent liabilities by

providing guarantees or financial support to the Developer as enumerated in Schedule V of the Act;

(ss) "Swiss Challenge Approach" means when a private Sector Participant (Original Project Proponent) submits an Unsolicited or suo-motu proposal and draft

6. Substituted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

contract principles for undertaking a category II Project, not already initiated by the Government Agency or the Local Authority and the Government Agency or the Local Authority then invites competitive counter proposals in such manner as may be prescribed by the Government. The proposal and contract principles of the Original Project Proponent would be made available to any interested applicants, however, proprietary information contained in the original proposal shall remain confidential and will not be disclosed. The applicants then will have an opportunity to better the Original Project Proponent's proposal. If the Government finds one of the competing counter proposals more attractive, then the Original Project Proponent will be given the opportunity to match the competing counter proposal and win the Project. In case the Original Project Proponent is not able to match the more attractive and competing counter proposal, the Project is awarded to the Private Sector Participant, submitting the more attractive competing counter proposal;

(tt) "Unsolicited or suo-motu Proposal" means a proposal in respect of a Project not already initiated by the Government or Government Agency or Local Authority and which proposal is submitted by any Private Sector Participant to the Government Agency or Local Authority in respect of any Infrastructure in the State supported by project specifications technical, commercial and financial viability and prima facie evidence of the financial and technical ability of such Private Sector Participant to undertake such Project with full details of composition of the Private Sector Participant and his financial and business background; and

(uu) "User Levies" means the right or authority granted to the Developer by the Government Agency or the Local Authority to recover investment and fair return on

investment and includes toll, fee, charge or benefit by any name.

CHAPTER - II
ESTABLISHMENT, CONDUCT OF BUSINESS AND EMPLOYESS OF THE INFRASTRUCTURE AUTHORITY.

Constitution of Infrastructure Authority.

3. (1) The Government may, by notification and with effect on and from such date as may be specified therein constitute an authority to be called, "the Infrastructure Authority".

(2) The Authority constituted under sub-section (1) shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property both movable and immovable to do all things incidental to and necessary for the purposes of this Act and to contract and may by the said name sue and be sued.

(3) The headquarters of the authority shall be at Hyderabad or at such other place as may be notified.

Composition of the Authority.

4. (1) The Authority shall consist of a Chairperson, 7[Vice Chairperson] and such other members not exceeding fifteen in the aggregate including Ex-officio members.

[8][(2) The Chief Secretary to the Government or any other person with equivalent experience shall be the Chairperson of the authority.]

[7][(2A) The Principal Secretary to Government, Infrastructure and Investment Department shall be the Vice Chairperson of the Authority.]

7. Inserted by Act No.9 of 2006.

8. Substituted by Act No.18 of 2002.

(3) The Ex-officio members of the Authority shall be the following:-

(i) Secretary to the Government, Finance and Planning (Finance Wing) Department;

(ii) Secretary to the Government, Transport, Roads and Buildings Department;

(iii) Secretary to the Government, Municipal Administration and Urban Development Department;

(iv) Secretary to the Government, Information Technology Department;

[9][(v) Managing Director, Infrastructure Corporation of [10]Telangana];

[11][(vi) [XXX]]

(4) The Members other than those specified in sub-section (3) shall be appointed by the Government in the manner prescribed.

Term of Office of the Members.

5. Every member other than the Ex-officio member shall hold office during the pleasure of the Government.

Terms and conditions of service.

6. The terms and conditions of service of the members of the Authority including the honoraria and the allowances to be paid to them shall be such as may be prescribed.

9. Substituted by Act No.9 of 2006.

10. Substituted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

11. Omitted by Act No.9 of 2006.

Meetings of the Authority.

7. The Authority shall meet at such times and places and observe such procedure in regard to transaction of business at the meetings including the quorum as may be provided by the regulations.

Appointment of officers and staff of the Authority.

8. The Authority may appoint such officers and members of staff as it may require in carrying out its functions and discharging its duties under this Act in such manner as may be prescribed.

Constitution of Committees.

9. (1) The Authority may, from time to time constitute such committee or committees consisting of such members for performing such of its functions as may be provided by the regulations.

(2) The Authority shall invite such persons from the fields of banking, commerce, industry, environment, law, technology and the like as may be nominated by the Government from time to time to assist the Authority in carrying out its functions under this Act on such terms and conditions as may be prescribed.

Functions of the Infrastructure Authority.

10. The functions of the Infrastructure Authority shall be as follows:-

(a) to conceptualise and identify projects and ensure their conformance to the objectives of the State;

(b) to receive and consider projects under the Act from the Government or Government Agency or Local Authority and process the same;

(c) to advise the Government or Government Agency or Local Authority, as the case may be, on the project and give recommendations or suggestions in that behalf;

(d) to co-ordinate between concerned department of the Government and Government Agency for a project;

(e) to monitor the competitive bidding process for Category II Projects and provide for course correction, if required;

(f) to provide enablers for projects;

(g) to prioritise and categorise projects and to prepare a project shelf;

(h) to prepare road map for project development;

(i) to identify inter-sectoral linkages;

(j) to approve the terms of reference for consultancy assignments in Category II projects and the consultant selection process thereof;

(k) to decide financial support and approve allocation of contingent liabilities for projects;

(l) to recommend and approve bid documents, risk sharing principles and bid processes for Category II projects;

(m) to approve the scale and scope of a suo-motu proposal or project undertaken through Swiss-Challenge Approach and to recommend modifications of a non financial nature if required;

(n) to resolve issues relating to project approval process;

(o) to prescribe time limits for clearances necessary for any project;

(p) to review periodically the status of clearances and ensure that clearances are accorded within specified time frames and grant clearances if not granted within time frames or if denied, as may be specified;

(q) to decide issues pertaining to user levies including but not limiting to prescribing mechanism and procedure for setting, revising, collecting and/or regulating user levies and to decide and settle disputes relating to user levies;

(r) to approve sectoral policies and model contract principles;

(s) to issue and/or amend guidelines needed to effectively implement the Act;

(t) to coordinate with sector regulator/s;

(u) to administer and manage the Fund and its assets;

(v) to coordinate execution of the projects with Government, Government Agency and Local Authority;

(w) to supervise or otherwise ensure adequate supervision over the execution, management and operation of project;

(x) to build public opinion;

(y) to fix and provide for recovery of fees, levies, tolls and charges as may be specified from time to time;

(z) to levy and recover charges for abuse and polluter charges from the developer;

(aa) to prescribe regulations to regulate its own procedures;

(bb) to take all steps necessary for enforcing the provisions of the Act and realising the objectives of the Act.

Powers of the Infrastructure Authority.

11. (1) Notwithstanding anything contrary in any other laws for the time being in force, the Infrastructure Authority shall have the power to grant any clearance or permission required for any project save and except sanction to the project by the Government as provided under this Act and such clearance or permission when granted shall be final, binding and conclusive on the concerned state level statutory bodies or administrative bodies or authorities, as the case may be.

(2) Notwithstanding anything contrary in any law for the time being in force, the Infrastructure Authority may give directions to any Government Agency or Local Authority or other Authority or Developer or Person with regard to implementation of any project under the Act or for carrying out its functions under this Act and such Government Agency or Local Authority or other Authority or Developer or Person shall be bound to comply with such directions.

(3) The Infrastructure Authority shall have power to call upon any Government Agency, Local Authority or any other Body or Authority or Developer or Person to furnish information, details, documents and particulars as may be required by the Infrastructure Authority in connection with or in relation to any project, which such Government Agency, Local Authority or Body or Authority, Developer or Person, shall furnish to the Infrastructure Authority without any delay or default.

(4) The Infrastructure Authority shall have power to inspect, visit, review and monitor any project and its implementation, execution, operation and management through its official or officials and the persons in charge of

the project shall be bound to give full cooperation to the Infrastructure Authority.

(5) The Infrastructure Authority shall have all powers to enable to carry out its functions under the Act.

Report to the Government.

12. The Infrastructure Authority shall submit quarterly report as regards its working and operation to the State Government.

CHAPTER - III
INFRASTRUCTURE PROJECT DELIVERY PROCESS

Participation in project.

13. Any private sector participant may participate in infrastructure financing construction, maintenance, operation and management of Infrastructure Projects covered under the Act.

Identification.

14. Either the Infrastructure Authority or the Government Agency or the Local Authority may identify or conceptualise any Infrastructure Project. If the Authority identifies or conceptualises any Infrastructure Project, then the same will be referred by the Authority to the concerned Government Agency or the Local Authority for its consideration and further action. If the Government Agency or Local

Authority identifies or conceptualises any infrastructure project, then the same will be referred to Infrastructure Authority for its consideration, evaluation and further action as may be required.

Prioritisation of Projects.

15. The Infrastructure Authority will prioritise projects based on demand and supply gaps, inter-linkages and any other relevant parameters and create a project shelf.

Recommen-dations by the Infrastructure Authority.

16. The Government Agency or the Local Authority in accordance with the advice, recommendations and suggestions of the Infrastructure Authority shall submit the

project to the Government along with the proposed concession agreement relating thereto for its consideration and sanction.

Sanction by the Government.

17. The Government shall consider the proposal submitted by the Government Agency or Local Authority and the proposed Concession Agreement and either accept the proposal and Concession Agreement with or without modification or return the proposal and concession agreement to the Government Agency or the Local Authority for reconsideration or reject the proposal within such time as may be prescribed. The Government Agency or the Local Authority will take suitable action on the decision taken by the Government on the proposal and the concession agreement including revising and resubmitting the proposal and the concession agreement if returned by the Government for reconsideration by the Government Agency or the Local Authority:

Provided that if the Bidder whose proposal submitted for sanction is not in a position to implement the project, the Government may at the request of the Government Agency or the Local Authority with the approval of the Infrastructure Authority consider the proposal of the Bidder offering the second most competitive bid for sanction.

Consultant selection.

18. The Government Agency or the Local Authority shall ensure adequate competition in the consultant selection process for any project. They may, frame the terms of reference for consultant studies and in case of Category II projects and present the same for approval and modification, if necessary, by the Infrastructure Authority:

Provided that in the case of such selection process adequate weightage shall be given to the technical capabilities.

Developer selection processes.

19. The Government Agency or the Local Authority may adopt appropriate Developer Selection Process including any of the following processes, namely:-

(I) DIRECT NEGOTIATIONS:

(i) The Government Agency or the Local Authority may directly negotiate with a Bidder for implementing:-

(a) Category-I projects initiated by a Bidder; or

(b) the projects which involve proprietary technology or franchise which is exclusively available with the Bidder globally; or

(c) the projects where competitive bid process has earlier failed to identify a suitable Developer; or

(d) the projects in prescribed social infrastructure sectors where a non-profit organisation seeks to develop a project; or

(e) a linkage Infrastructure Project with the concerned Developer of Mega Infrastructure Project;

(ii) In case a developer is selected through direct negotiations, the Government Agency or the Local Authority may renegotiate the financial offer or recommend that all subsequent procurement for the project is made through the competitive bidding, procurement process, the cost of the project be determined after such competitive bidding procurement process and renegotiate the financial offer based on the revised cost of the project.

(II) SWISS CHALLENGE APPROACH:

(i) The Swiss Challenge Approach will be followed in any project belonging to Category -II initiated by a private sector participant who is hereinafter referred to as „Original Project Proponent", by a suo-motu proposal;

(ii) The Original Project Proponent must submit to the Government Agency or Local Authority:-

(a) details of his technical, commercial, managerial and financial capability;

(b) technical, financial and commercial details of the proposal;

(c) principles of the concession agreement;

(iii) The Government Agency or the Local Authority would first evaluate the Original Project Proponent's technical, commercial, managerial and financial capability as may be prescribed and determine whether the Original Project Proponents capabilities are adequate for undertaking the project;

(iv) The Government Agency or the Local Authority shall forward such suo-motu proposal to the Infrastructure Authority along with its evaluation within the prescribed time for the approval of the Infrastructure Authority;

(v) The Infrastructure Authority would then weigh the technical, commercial and financial aspects of the Original Project Proponent"s proposal and the concession agreement along with the evaluation of the projects by the Government Agency or the Local Authority and ascertain if the scale and scope of the project is in line with the requirements of the State and whether the sharing of the

risks as proposed in the Concession Agreement is in conformity with the risk-sharing frame work as adopted or proposed by the Government for similar projects, if any and if the project is in conformity with long term objective of the Government;

(vi) If the Infrastructure Authority recommends any modification in the technical, scale, scope and risk sharing aspects of the proposal or the Concession Agreement, the Original Project Proponent will consider and incorporate the same and resubmit its proposal within prescribed time to the Government Agency or the Local Authority;

(vii) If the Infrastructure Authority finds merit in such suo-motu proposal, the Infrastructure Authority will then require Government Agency or the Local Authority to invite competing counter proposals using the Swiss Challenge Approach giving adequate notice as may be prescribed. The Original Project Proponent will be given an opportunity

to match any competing counter proposals that may be superior to the proposal of the Original Project Proponent. In case the Original Project Proponent matches or improves on the competing counter proposal, the project shall be awarded to the Original Project Proponent, otherwise the bidder making competing counter proposal will be selected to execute the project;

(viii) In the event of the Project not being awarded to the Original Project Proponent and being awarded to any other Bidder, the Government Agency or the Local Authority will reimburse to the Original Project Proponent reasonable costs incurred for preparation of the suo-motu proposal and the Concession Agreement. The suo-motu proposal and the Concession Agreement prepared by the Original Project Proponent shall be the property of the Government Agency or the Local Authority as the case may be;

(ix) The reasonable costs of preparation of the suo-motu proposal and the Concession Agreement shall be determined as per the norms prescribed by the Government and shall be binding upon the Original Project Proponent.

III. COMPETITIVE BIDDING:

(i) Competitive Bidding will be adopted in all Projects initiated by the Government Agency or the Local Authority. The notice inviting participation will be adequately publicised by the Government Agency or the Local Authority as may be prescribed;

(ii) The bid process will be designed to assist and ascertain, technical, financial, managerial and commercial, capabilities of the Developer;

(iii) In case of a two stage process being adopted for a Mega Infrastructure Project, the Government Agency or the Local Authority may require all Bidders to obtain from their Prospective Lenders, financial terms, expectations regarding State Support, comments on the Concession Agreement and other project documents (hereinafter called "Deviations");

(iv) Any Deviations proposed shall be enclosed in a separate envelope and shall not be part of the envelope containing the financial or the commercial offer with regard to a Project. The procedure for determining the common set of Deviations and the effect to be given to such common set of Deviations shall be as may be prescribed;

(v) All proposals shall be opened and evaluated at a common platform in a free and fair manner;

(vi) It will be open for the Government Agency or the Local Authority to adopt one or two stage process depending upon the complexity of the Project;

(vii) The Government Agency or the Local Authority will periodically inform the Infrastructure Authority of the progress of all Projects undertaken through a two-stage bid process.

Approval of contract principles.

20. In case a model contract for a Sector has not been adopted or in case there are Deviations proposed vis-a-vis the approved model contract for a Sector, then, the Infrastructure Authority will formulate or approve the contract principles as the case may be.

Selection criteria.

21. The Government Agency or the Local Authority will first satisfy itself about the technical ability of the Developer to undertake and execute the Project and will follow,-

(a) one or combination of one or more of the following criteria for Developer selection through competitive bidding in Build Own Operate and Transfer, Build Operate and Transfer and Build Own and Operate Projects,-

(i) Lowest bid in terms of the present value of user fees;

(ii) Highest revenue share to the Government;

(iii) Highest up front fee;

(iv) Shortest concession period;

(v) Lowest present value of the subsidy;

(vi) Lowest capital cost and Operation & Management cost for Projects having a definite scope;

(vii) Highest equity premium; and

(viii) Quantum of State Support solicited in present value;

(b) For Build Transfer, Build Lease and Transfer and Build Transfer and Lease Projects selection criteria used will be the lowest net present value of payments from the Government.

(c) Such other suitable selection criteria the Infrastructure Authority may allow or determine.

Treatment of Sole Bid.

22. In case of the competitive bidding process resulting into a Sole Bid, the Government Agency or the Local Authority shall in consultation with the Infrastructure Authority, either,-

(i) accept the Sole Bid, or

(ii) re-negotiate the financial offer, or

(iii) reject the Sole Bid.

Treatment of generate limited response.

23. In case the competitive bidding process does not sufficient response and if even a Sole Bid is not received, then the Government Agency or the Local Authority shall in consultation with the Infrastructure Authority either,-

(i) modify either the pre-qualification criteria and/or the risk sharing provisions and restart the bid process; or

(ii) may cancel the competitive bid process; or

(iii) in case of (ii) above, may have direct negotiation with any Private Sector Participant.

Treatment of Bid submitted by a consortium.

24. (a) All proposals submitted by a Bidding Consortium shall enclose a memorandum of understanding, executed by all consortium members setting out the role of each of the consortium members and the proposed equity stake of each of the consortium members with regard to a Project;

(b) The Lead Consortium Member of a pre-qualified Consortium cannot be replaced except with the prior permission of the Infrastructure Authority and which permission will be considered only in case of acquisition or merger of the Lead Consortium Member Company. Further, after a Bidding Consortium is selected to implement any Project, the Lead Consortium Member shall maintain a minimum equity stake of 26% for a period of time, as specified in the Sector Policy or the Concession Agreement;

(c) Replacement of other Consortium Members may be permitted, provided the same is not prejudicial to the original strength of Consortium as determined in course of the evaluation of original bid or proposal;

(d) Any change in the shareholding or composition of a Consortium shall be with the approval of the Infrastructure Authority.

Speculative bids.

25. The Government Agency or the Local Authority with the approval of the Infrastructure Authority will be entitled to treat the speculative or unrealistic bids as non-responsive and reject the same. By reason of any speculation or unrealistic bid or rejection of such bid, shall not necessarily lead to termination of the bid process. The Infrastructure Authority will prescribe the norms for determining the speculative or unrealistic bids.

No negotiation on proposal.

26. Save as otherwise provided in the Act the Government, financial or or the Government Agency or the Local Authority will not commercial

negotiate with the Bidder on the financial or commercial aspect of the proposal submitted by the Bidder.

Bid security.

27. (1) The Bidder will be required to submit a bid security along with the proposal for undertaking the Infrastructure Project, the bid security amount will be determined based on the Project cost by the Government Agency or the Local Authority.

(2) The procedure for refund of bid security will be specified in the request for proposal. In any event, the bid security of unsuccessful Bidder would be returned within 30 calender days from the date of selection of the Developer.

CHAPTER - IV
GENERIC RISKS DISCLOSURE AND ALLOCATION, SECURITISATION, RIGHT OF LENDERS AND FACILITIES TO BE PROVIDED BY THE GOVERNMENT AGENCY OR THE LOCAL AUTHORITY.

Generic Risks Disclosure and its allocation and treatment.

28. The Government Agency or the Local Authority will as far as possible disclose Generic Risks involved in a Project and a list of such Generic Risks along with allocation and treatment of such Generic Risks may be provided in the Concession Agreement or other contract to be entered into between the Government Agency or the Local Authority and the Developer. The Government Agency or the Local Authority will make optimum disclosure of the Generic Risks, however if any risk is not disclosed due to inadvertence or due to circumstances beyond the control of the Government Agency or the Local Authority, then the same shall not be a ground for any claim, demand or dispute by the Developer.

Facilitation of securitisation.

29. The Government Agency or the Local Authority may facilitate a Developer to securitise Project receivables and Project assets in favour of Lenders subject to such terms as

may be fixed by the Government or by the Infrastructure Authority to safeguard the successful implementation, completion, working, management and control of the project.

Rights of Lenders.

30. The Lenders will be entitled to recover their dues from the Developer and Project receivables in the form of User Levies and in the event of default by the Developer in completing or implementing a Project, the Lenders will have the right to substitute the Developer with the consent of the Government and subject to the approval of such substituted Developer by the Government Agency or the Local Authority and by the Infrastructure Authority, on the same terms and conditions as applicable to the previous Developer or with such modifications as may be specifically approved by the Infrastructure Authority.

Facilities to be provided by the Government Agency or the Local Authority.

31. The Government Agency or the Local Authority will provide all facilities to the Developer for obtaining statutory clearances at state level, for providing power and water at Project Site during construction on such terms as may be prescribed and provide best effort support for obtaining Central Government clearances and assistance in rehabilitation and resettlement activities, if any, incidental to the Project on such terms as may be prescribed.

CHAPTER - V
CONCILIATION BOARD

Establishment of the Board.

32. The State Government may, by notification, establish a Board to be called the “Conciliation Board” with effect from such date as may be specified.

Constitution of the Board.

33. The Board will comprise of 3 members and will have a retired High Court Judge acting as its Chairperson and two other members who shall be experts in the field of either infrastructure or finance or banking or law.

Head Quarters.

34. The Board will have its permanent Head Quarters at Hyderabad and the Board shall meet under the Chairpersonship of the Chairperson.

Term of Office of the members.

35. Every member of the Board shall hold office for a term of 3 years from the date of appointment. The State Government shall be entitled to reappoint any member or members for one more term of 3 years.

Terms and conditions of appointment.

36. The terms and conditions of appointment, remuneration and perquisites of the members shall be such as may be prescribed by the Government.

Functions of the Board.

37. The functions of the Board shall be as follows,-

(a) To assist the Government Agency or Local Authority and any Developer in an independent and impartial manner to reach an amicable settlement of their disputes arising under the Act or the Concession Agreement;

(b) The Board shall be guided by principles of the objectivity, fairness, obligations of the parties, the usages of the trade and the circumstances governing the disputes including the good business practice prevalent in the

national and international field covered by the dispute between the parties;

(c) The Board may conduct the conciliation proceedings in such a manner as it may consider appropriate, taking into account the circumstances of the case, the wishes of the parties that may be expressed and for reaching a speedy settlement of the dispute;

(d) The Board may, at any stage of the conciliation proceedings, make proposals for settlement of dispute. Such proposal need not be in writing and need not be accompanied by any statement of reasons therefor.

Administrative assistance.

38. In order to facilitate the conduct of the conciliation proceedings, the Board with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Powers of the Board.

39. The Board shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while Central Act 5 of 1908. dealing with the conciliation proceedings in respect of the following matters, namely:-

(i) The summoning and enforcing the attendance of any party or witness and examining the witness on oath;

(ii) The discovery and production of any document or other material as evidence;

(iii) The reception of evidence on oath;

(iv) The requisitioning of the report of any body or any analysis or decision from the appropriate forum or laboratory or other relevant sources;

(v) The issuing of any commission for examining any witness;

(vi) The power to regulate its own procedure and prescribe rules; and

(vii) any other matter, which may be prescribed.

Judicial proceeding.

40. Every proceeding before the Board shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and the Central Act 45 of 1860. Board shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XIV of the Code of Criminal Central Act 2 of 1974. Procedure, 1973.

CHAPTER - VI
CONCILIATION PROCEEDINGS.

Application and scope.

41. Any dispute, claim or difference arising out of or in connection with or in relation to any Concession Agreement or contract between the Government Agency or Local Authority on the one hand and the Developer on the other hand, shall as far as possible, be amicably settled between the parties. In the event of any dispute, claim or difference not being amicably resolved, such dispute, claim or difference shall be referred to the Conciliation Board.

Commencement of conciliation

42. (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this part,

briefly identifying the subject matter of the dispute, claim and/or difference. The party initiating conciliation shall file the invitation with the Board, in such Form as may be prescribed. proceedings.

(2) The conciliation proceedings shall commence when the other party receives the written invitation from the party initiating conciliation.

(3) If the other party does not reply or does not participate in the conciliation proceedings, then the Board shall have power to call upon the other party to file its reply or give notice to the other party and proceed further without reply.

(4) The Board may request each party to submit to it further written statement of their position and the facts and grounds in support thereof, supplemented by any document and other evidence as such party deems appropriate. The parties shall send a copy of such statement, documents and other evidence to the other party.

The Board and certain Enactments Central Act 26 of 1996

43. The provisions of section 66 of the Arbitration and Conciliation Act, 1996 shall apply to the Board as regards the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

Central Act 5 of 1908
Central Act 1 of 1872.

Co-operation of the parties with the Board.

44. The parties shall co-operate with the Board and in particular, shall comply with requests by the Board to submit written materials, give evidence and attend meetings.

Suggestions by parties for settlement of dispute.

45. Each party may on his own initiative or at the invitation of the Board, submit to the Board suggestions for the settlement of the dispute.

Settlement agreement.

46. (1) When it appears to the Board that there exists a possibility of a settlement, the terms and conditions of which may be acceptable to the parties, the Board shall formulate the terms and conditions of the possible settlement and submit the same to the parties for their observations. After receiving the observations of the parties, if any, the Board may reformulate the terms and conditions of the possible settlement.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the Board may draw up or assist the parties in drawing up the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The Board shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

Status and effect of settlement agreement.

47. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an Arbitral Tribunal under section 30 of the Arbitration and Conciliation Act, 1996 or its amendment or re-enactment as the case may be. Central Act 26 of 1996.

48. The conciliation proceedings shall be terminated,- Termination of conciliation proceedings.

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by an order of the Board, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the order; or

(c) by a written communication of the parties jointly addressed to the Board to the effect that the conciliation proceedings are terminated on the date of the communication; or

(d) on the expiry of the period of 3 months from the date of the commencement of the conciliation proceedings, if the parties to conciliation proceedings request in writing to continue conciliation, such conciliation proceedings shall stand terminated on the expiry of period of 90 days from the date of such joint communication in writing to the Board requesting the Board to continue conciliation.

49. (1) The parties shall not initiate during the conciliation proceedings any arbitral or judicial proceedings in respect of any dispute, claim or difference i.e. the subject matter of the conciliation proceedings. Resort to Arbitral or Judicial Proceedings.

(2) Notwithstanding the provisions of sub-section (1) herein the party may initiate arbitral or judicial proceedings, where, in his opinion, such proceedings are necessary for preserving his rights during the conciliation proceedings.

Commencement of arbitral or judicial proceedings.

50. No party shall commence any arbitral or judicial proceedings in respect of any dispute, claim or difference arising out of or in connection with or in relation to any contract or concession agreement, without first initiating the conciliation proceedings and commencing the conciliation proceedings by sending to other party a written invitation to conciliate and filing the same with the Board.

Costs.

51. (1) Upon termination of the conciliation proceedings the Board shall fix the costs of the conciliation and give written notice thereof to the parties.

(2) For the purpose of sub-section (1) "costs" means reasonable costs relating to,-

(a) the fees of the Board as may be prescribed and expenses of the Board and witnesses requested by the Board with the consent of the parties;

(b) any expert advice requested by the Board with the consent of the parties;

(c) any assistance provided by the Conciliation Board;

(d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

(3) The costs shall be borne equally by the parties unless the Settlement Agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

Deposits. 52. (1) The Board may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 51, which the Board expects, will be incurred.

(2) During the course of the conciliation proceedings, the Board may direct supplementary deposits in an equal amount from each party.

(3) If the required deposits under sub-sections (1) and (2) are not paid in full by the parties within thirty days of the direction, the Board may suspend the proceedings or may make a written order of termination of the proceedings to the parties, effective on the date of that order.

(4) Upon termination of the conciliation proceedings, the Board shall render an account to the parties of the deposits received and shall return any unexpended balance to the parties.

Admissibility of evidence in other proceedings. Central Act No.26 of 1996.

53. The provisions of section 81 of the Arbitration and Conciliation Act, 1996 shall apply to the matters before the Board relating to admissibility of evidence in other proceedings.

CHAPTER - VII
INFRASTRUCTURE PROJECTS FUND.

Establishment of the fund.

54. The Government shall establish a fund to be called the "Infrastructure Projects Fund" and shall contribute a sum of Rs. 100 lakhs to the fund. The Government will make such further contributions to the fund as it may deem appropriate from time to time.

Fees and charges to be credited to the fund.

55. The Government Agency or the Local Authority will inter-alia levy fees and charges on the application for the projects and project fee on the developer under the Concession Agreement as may be prescribed from time to time and which fees shall be credited to the fund.

Administration of the fund. 56. The fund will be administered and managed by the Infrastructure Authority and the Infrastructure Authority will be entitled to appoint an officer or officers for the management, control and administration of the fund.

Utilisation of the fund. 57. The Infrastructure Authority will utilise the fund for achieving objects and purposes of this Act and for financing the activities of the Infrastructure Authority for realising the objects and purposes of the Act from time to time.

Operation of the fund. 58. The fund will be operated by and under the name of the Infrastructure Authority.

Formulation of policy and regulations for the fund. 59. The Infrastructure Authority shall formulate its policy and regulations for financing, working, administration and management of the fund.

Audit report of the fund. 60. The working of the fund shall be subject to audit by Comptroller and Auditor General and the Infrastructure Authority shall submit a report every year as regards the working and operation of the fund to the State Government who will present the same before the Legislature of the State.

CHAPTER - VIII
MISCELLANEOUS

Control by the Government. 61. (1) The Infrastructure Authority shall exercise its powers, and perform its functioning under the Act in accordance, with the policy framed and guidelines laid down from time to time, by the Government and it shall be bound to comply with such directions, which may be issued, from time to time, by the Government for efficient administration and effective implementation of the Act.

(2) If, in connection with the exercise of the powers and the performance of the functions of the Infrastructure

Authority under the Act, any dispute arises between the Infrastructure Authority and the Government, the Government shall decide the matter and the Government's decision shall be final.

Transparency. 62. The Infrastructure Authority shall ensure transparency while exercising its powers and discharging its functions.

Abuser charges. 63. (1) The Infrastructure Authority shall be entitled to levy abuser charges for abuse, on the Developer, if any Developer abuses the rights granted to the Developer under the Concession Agreement:

Provided that the Infrastructure Authority shall give an opportunity of not less than fifteen days from the date of service of a notice to the Developer to show cause in writing, why such abuser charges should not be levied on him, before passing the order under this section.

(2) The Concession Agreement will provide what will constitute abuse of rights granted to the Developer. The abuser charges will be as prescribed by the Infrastructure Authority from time to time:

Provided that the abuser charges levied under this section shall be final and conclusive subject to provisions of section 66 of the Act.

Polluter Charges. 64. (1) The Infrastructure Authority shall be entitled to levy Polluter Charges for pollution of the environment on the Developer, if the Developer pollutes the environment and/or does not adhere to the specified mitigation measures as provided in the Concession Agreement.

(2) The Infrastructure Authority shall give an opportunity of not less than fifteen days from the date of service of notice to the Developer to show cause in writing,

why such Polluter Charges should not be levied on the Developer, before passing the order under this section.

(3) The Polluter Charges will be as prescribed by the Infrastructure Authority:

Provided that the Polluter Charges levied under this section shall be final and conclusive subject to provisions of section 66 of the Act.

Appeal. 65. (1) An appeal shall lie to the Government against the order passed by the Infrastructure Authority under sections 11, 63 and or section 64 of the Act within 30 days from the date of receipt of the order subject to the rules prescribed by the Government in this regard.

(2) The decision of the Government under sub-section (1) shall be final and conclusive.

Indemnity by the Developer.

66. The Developer shall be bound to indemnify the Government Agency or the Local Authority against any defect in design, construction, maintenance and operation of the Project and shall undertake to reimburse all costs, charges, expenses, losses and damages in that behalf.

Recovery of costs, charges, dues, fees and fines.

67. The Infrastructure Authority or the Government Agency or the Local Authority or the Conciliation Board shall be entitled to recover all sums due to it under the Act, whether by way of costs, charges, dues, fees or fines, in accordance with the provisions of the [12]Telangana Revenue Recovery Act, 1864 as if any such sum may be recovered in the same manner as arrear of land revenue under the provisions of the said Act and remit the same to the Infrastructure Projects Fund as it may direct.

Act II of 1864.

12. Adapted by G.O.Ms.No.45, Law (F) Department, dated 01.06.2016.

Application of fines and charges.

68. The Infrastructure Authority or the Government Agency or the Local Authority or the Conciliation Board imposing the costs, charges, fees and fine under the Act may direct that the whole or any part thereof shall be applicable towards payment of the costs of the proceedings.

Penalties.

69. (1) Whoever fails or omits to comply with or contravenes any of the provisions of the Act or order or directions of the Infrastructure Authority shall be liable for each of such failure or omission or contravention for fine which shall not be less than Rs. 50,000/- (Rupees Fifty Thousand) but which may extend up to Rs. 100,00,000/- (Rupees One Crore) or shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with both.

(2) Whoever fails or omits to comply with or contravenes any of the provisions of the Act or order or directions of the Board shall be liable for each of such failure or omission or contravention for fine which shall not be less than Rs. 50,000/- (Rupees Fifty Thousand) but which may extend upto Rs. 1,00,00,000/- (Rupees One Crore) or shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to two years or with both.

Offences by companies.

70. (1) Where an offence under the Act has been committed by a company, every person who at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his

knowledge or that he had exercised all due diligence to prevent the commission of such an offence.

(2) Notwithstanding anything contained in sub-section (1), wherein an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this section,-

(a) "Company" means a body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

Power to compound offences.

71. The Infrastructure Authority and the Conciliation Board may for reasons to be recorded in writing either before or after the institution of proceedings compound any offence relating to contravention of any provisions of the Act or order made by it.

Cognizance of offences.

72. (1) No Court shall take cognizance of any offence punishable under the Act, except upon a complaint in writing made by an officer of the Infrastructure Authority or the Conciliation Board generally or specially authorized in this behalf by the Infrastructure Authority or Conciliation Board as the case may be and no Court other than the Metropolitan Magistrate or a Judicial Magistrate of First Class or a Court superior thereto shall try any such offence.

(2) The court may, if it sees reasons so to do dispense with the personal attendance of the officer of the Infrastructure Authority or the Conciliation Board filing the complaint.

Penalties and proceedings not to prejudice other actions.

73. The proceedings and actions under this Act against a person contravening the provisions of the Act or orders passed by the Infrastructure Authority or the Conciliation Board shall be in addition to and without prejudice to actions that may be initiated under other Acts.

Protection of action taken in good faith.

74. No suit, claim or other legal proceedings shall lie against the Infrastructure Authority or Conciliation Board or the Chairman or other members of the Infrastructure Authority or Conciliation Board or the staff or representatives of the Infrastructure Authority or Conciliation Board in respect of anything which is in good faith done or intended to be done under the Act or any rules or regulations or orders made thereunder.

Members and staff of Infrastructure Authority or Conciliation Board to be public servants.

75. The Chairman, other members and officers and other employees of the Infrastructure Authority or Conciliation Board appointed for carrying out the objects and purposes of the Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Central Act 45 of 1860.

Bar of Jurisdiction.

76. Any order or proceeding under the Act including but not limiting to any notification of a Project as Infrastructure

Project, categorisation or prioritisation of Projects, Concession Agreement, bid process, selection of Developer, modification of any proposal, sanction of any proposal, implementation and execution of any Project, actions of Infrastructure Authority, actions of the Government or the Government Agency or the Local Authority, actions of the Board, grievance or objection of any party or person or group in respect of any Infrastructure

Project, validity, legality, efficacy of any action or decision in respect of any Infrastructure Project of Infrastructure Authority or the Government or the Board, dispute settlement or dispute resolution in respect of any matters under the Act shall be heard only by the High Court and by no other court or courts subordinate to the High Court.

Power to remove difficulties.

77. (1) If any difficulty arises in giving effect to the provisions of the Act or the rules, regulations, scheme or orders made hereunder, the State Government may by order published in the Official Gazette, make such provision, not inconsistent with the provisions of the Act as appears to it to be necessary or expedient for removing the difficulty.

(2) All orders made under sub-section (1) shall, as soon as may be after they are made, be placed on the Table of the Legislature of the State and shall be subject to such modification by way of amendments or repeal as the Legislature may make either in the same session or in the next session.

Power to make regulations.

78. The Infrastructure Authority and Conciliation Board may make regulations, with the approval of the Government, by notification in the Official Gazette, for the proper performance of their respective functions under the Act.

Power to make rules.

79. (1) The Government may, by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall, immediately after it is made, be laid before the Legislature of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following, the Legislature agrees in making any

modifications in the rule or in the annulment of the rule, the rule shall from the date on which the modification or the annulment is notified, have effect only in such modified form or shall stand annulled 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.

Delegation of power Powers.

80. The Government may by notification, direct that any exercisable by the Government under the Act shall be exercisable by an officer of the Government, subject to such terms as may be specified in such notification.

Act to override other State Laws.

81. If any provision contained in any State Act is repugnant to any provision contained in the Act, the provision

contained in the Act shall prevail and the provision contained in any such State Act shall to the extent of repugnancy be void.

82. The Andhra Pradesh Infrastructure Development Enabling Ordinance, 2001 is hereby repealed. Repeal of Ordinance 4 of 2001.

SCHEDULE - I

(see section 2(h))

The following Concession Agreement or arrangements with their variations and combinations may be arrived at by the Government Agency or the Local Authority for undertaking Infrastructure Projects. The arrangements enumerated hereinafter are indicative in nature and the Government Agency or the Local Authority shall be entitled to evolve and arrive at such Concession Agreement or arrangement incorporating any of the arrangements enumerated hereinafter or any other arrangements as may be found necessary or expedient for any specific Project:

(i) Build - and Transfer (BT) - A contractual arrangement whereby the Developer undertakes the financing and construction of a given infrastructure or development facility and after its completion hands it over to the Government, Government Agency or the Local Authority. The Government, Government Agency or the Local Authority would reimburse the total Project investment, on the basis of an agreed schedule. This arrangement may be employed in the construction of any infrastructure or development Projects, including critical facilities, which for security or strategic reasons, must be operated directly by the Government or Government Agency or the Local Authority;

(ii) Build - Lease - and - Transfer (BLT) –A contractual arrangement whereby a Developer undertakes to finance and construct Infrastructure Project and upon its completion hands it over to the Government or Government Agency or the Local Authority concerned on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Government or Government Agency or the Local Authority concerned;

(iii) Build – Operate – and - Transfer (BOT) – A contractual arrangement whereby the Developer undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The Developer operates the facility over a fixed term during which he is allowed to a charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in the bid or as negotiated and incorporated in the contract to enable the recovery of investment in the Project. The Developer transfers the facility to the Government or Government Agency or the Local Authority concerned at the end of the fixed term that shall be specified in the Concession Agreement. This shall include a supply-and-operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government, Government Agency or the Local Authority so requires, operates the facility providing in the process technology transfer and training to Government, Government Agency or the Local Authority nominated individuals;

(iv) Build - Own - and - Operate (BOO) –A Contractual arrangement whereby a Developer is authorised to finance, construct, own, operate and maintain an infrastructure or Development facility from which the Developer is allowed to recover his total investment by collecting user levies from facility users. Under this Project, the Developer 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, Government Agency or Local Authority is not envisaged in this structure, however the Government, Government Agency or Local Authority may terminate its obligations after specified time period;

(v) Build - Own - Operate - Transfer (BOOT) - A contractual arrangement whereby a Developer is authorised to finance, construct, maintain and operate a Project and

whereby such Projects is to vest in the Developer for a specified period. During the operation period, the Developer will be permitted to charge user levies specified in the Concession Agreement, to recover the investment made in the Project. The Developer is liable to transfer the project to the Government, Government Agency or the Local Authority after the expiry of the specified period of operation;

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

(vii) Contract-Add-and-Operate (CAO) - A contractual arrangement whereby the Developer adds to an existing infrastructure facility which it rents from the Government, Government Agency or the Local Authority and operates the expended Project and collects user levies, to recover the investment over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the Developer;

(viii) Develop- Operate - and - Transfer (DOT) - A contractual arrangement whereby favourable conditions external to a new Infrastructure Project which is to be built by a Developer are integrated in the BOT arrangement by giving that entity the right to develop adjoining property and thus, enjoy some of the benefits the investment creates such as higher property or rent values;

(ix) Rehabilitate - Operate - and -Transfer (ROT) - A contractual arrangement whereby an existing facility is handed over the private sector to refurbish, operate (collect user levies in operation period to recover the investment) and maintain for a franchise period, at the expiry of which the facility is turned over to the Government or Government Agency or the Local Authority. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country;

(x) Rehabilitate - Own - and - Operate (ROO) - A contractual arrangement whereby an existing facility is handed over to the operator to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility and collect user levies in perpetuity.

SCHEDULE - II

[see section 2 (e)]

CATEGORIES OF PROJECTS

All Infrastructure Projects may be categorized based on the extent of Government support required and the exclusivity of the rights granted. The Government Agency or the Local Authority with the approval of the Infrastructure Authority will be entitled to evolve any further category or categories of the Project having combination of categories as per the priority and other requirements of the Government Agency or the Local Authority. The Government Agency or the Local Authority with the approval of the Infrastructure Authority may divide the Projects into following categories:

1. CATEGORY - I PROJECTS shall be Projects where,-

(i) no fiscal incentives in the form of contingent liabilities or financial incentives are required;

(ii) the Project is viable even when land is granted at the market rates;

(iii) no exclusive rights are conferred on the Developer;

(iv) minimal inter-linkages are required.

2. CATEGORY - II PROJECTS shall be Projects where,-

(i) Government or Government Agency will be required to provide asset support;

(ii) financial incentives in the form of contingent liabilities or direct financial support are required to be provided;

(iii) exclusive rights are conferred on the Developer;

(iv) extensive linkages i.e. support facilities for the project such as water connection etc., are needed.

SCHEDULE - III

[see section 2 (nn)]

SECTORS

1. Roads (State Highways, Major District Roads, Other District Roads & Village Roads), Bridges and Bypasses 2. Health
3. Land reclamation
4. Canals, Dams
5. Water Supply, treatment and distribution
6. Waste management
7. Sewerage, drainage
8. Public Markets
9. Trade Fair, Convention, Exhibition and Cultural Centres 10. Public buildings
11. Inland water transport
12. Gas and Gas Works
13. Sports and recreation infrastructure, public gardens and parks
14. Real Estate
15. Any other Projects or sectors as may be notified by the Government.

SCHEDULE - IV

[see section 2(l)]

GENERIC RISKS

The Government Agency or the Local Authority will endeavour to disclose, allocate and provide for the treatment of the following risks in the Concession Agreement as may be applicable to a Project.

I. Construction Period Risks:
(i) Land Expropriation.
(ii) Cost Overruns.
(iii) Increase in Financing Cost.
(iv) Time & Quality Risk.
(v) Contractor Default.
(vi) Default by the Developer.
(vii) Time, Cost & Scope of identified but related Work, and variations.
(viii) Environmental Damage – Subsisting/On going.

II. Operation Period Risks:
(i) Government Agency Default.
(ii) Developer Default.

(iii) Termination of Concession Agreement by Infrastructure Authority or Government or Government Agency.
(iv) Environmental Damage - Ongoing.
(v) Labour Risk.
(vi) Technology Risk.

III. Market & Revenue Risks:
(i) Insufficient Income from User Levies.
(ii) Insufficient Demand for Facility.

IV. Finance Risks:
(i) Inflation
(ii) Interest Rate
(iii) Currency Risk

V. Legal Risk:
(i) Changes in Law
(ii) Title/Lease rights
(iii) Security Structure
(iv) Insolvency of Developer
(v) Breach of Financing Documents

VI. Miscellaneous Risks:
(i) Direct Political Force Majeure
(ii) In-direct Political Force Majeure
(iii) Natural Force Majeure
(iv) Sequestration
(v) Exclusivity
(vi) Development Approvals
(vii) Adverse Government Action/In-Action
(viii) Provision of Utilities
(ix) Increase in Taxes

(x) Termination of Concession by the Government (xi) Payment Failure by the Government

SCHEDULE - V

[see section 2(rr)]

STATE SUPPORT

The Government will consider the grant of following forms of State Support, ranked in its order of preferences i.e.:

(i) Administrative Support

(ii) Asset Support

(iii) Foregoing Revenue Streams

(iv) Guarantees for contingent liabilities; and

(v) Financial Support

I. Administrative Support:

(i) The State Government will offer the following administrative support to all the Projects covered under the Act, namely:-

(a) Provide State level statutory clearances within specified time limits after the Project is sanctioned in favour of the Developer;

(b) Automatically grant non-statutory State level clearances, if a Project meets specifications as may be prescribed;

(c) Provide Best Effort support for obtaining all central level clearances;

(d) Undertake all rehabilitation & resettlement activities and recover the cost from Developer;

(e) Provide construction power and water at Project site;

(f) Acquire land necessary for the Project, if the same does not already belong to the Government.

II. Asset Based Support:

(i) The State Government will offer asset based support to all Category II Projects covered under the Act. The Category I Projects will receive asset based support only if the sector policy specifically provides for the same. The asset based support comprises:

(a) Government owned land would be provided at concessional lease charges for Projects where ownership would revert to the Government, within a maximum period of 33 years from the date of grant of land;

(b) The State Government will commit/facilitate development of linkage Infrastructure for Projects.

III. Foregoing Revenue Streams:

(i) The Government will forego revenue streams in case of all Category II Projects. Government will forego revenue streams in case of Category I Projects only if the sector policy specifically provides for the same. Such support would be in the form of,-

(a) exemption of sales tax on all inputs required for Project construction.

(b) exemption of stamp duty and registration fees on the first transfer of land, from the Government to the Developer and on Project agreements registered in the State;

(c) exemption from payment of seigniorage fees i.e. cess on minor minerals during construction period.

IV. Guarantees:

(i) The Government may guarantee receivables only in the case of Category II Projects, provided they are not collected directly from users;

(ii) The Government may also provide off take guarantees if it is the service distributor and is responsible for collection of user levies.

V. Financial Support:

(i) Direct financial support may be considered only in the case of Category II Projects;

(ii) The Government will have the final authority to approve direct financial support;

(iii) Infrastructure Authority will ensure that appropriate Project structuring will eliminate, to the extent possible, the need for financial support;

(iv) Extent of financial support will be used as one of the selection criteria whenever financial support is to be provided.

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