

SINDH ACT NO.V OF 2010
THE SINDH PUBLIC-PRIVATE PARTNERSHIP ACT, 2010

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[17th March, 2010]

An Act to create an enabling environment for private sector participation in infrastructure development projects in the province of Sindh through public-private partnership projects.

Whereas it is expedient to expand the provision of infrastructure services and improve their reliability and quality for accelerating economic growth and achieving the social objectives of the Government; to mobilize private sector resources for financing, construction, maintenance and operation of infrastructure projects; to improve efficiency of management, operation and maintenance of infrastructure and development facilities by introduction of modern technologies and management techniques; to incorporate principles of fairness, competition and transparency in public-private partnership projects; and to provide for the matters ancillary there to,

Preamble

It is hereby enacted as follows:

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Sindh Public-Private Partnership Act, 2010.

Short title, extent and commencement.

(2) It extends to the whole of the Province of Sindh.

(3) It shall come into force at once.

2. In this Act unless there is anything repugnant in the subject or context -

Definitions.

a) "Act" means the Sindh Public-Private Partnership Act,2010;

b) "Agency" means a department, attached department, body corporate, autonomous body of the Government, local government, or any organization or corporation owned or controlled by the Government or local government;

c) "Bid" means a bid tendered by a person who is eligible under this Act to submit a proposal to undertake a project;

d) "Board" means the Public-Private Partnership Policy Board

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established under section 4;

- e) "Change of control" means and includes any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results directly or indirectly in a change in possession of the power to direct or control, or cause the direction or control of the management of the affected company or a significant aspect of its business;
- f) "Concession" means grant of a right of a public asset by an agency through the approval of Government in return for stipulated services or a promise that the right will be used for a specific purpose in the form of Build Operate Transfer (BOT), Design Build Finance Operate (DBFO) and any other variant of PPP.
- g) "Consortium" means a joint venture of persons, jointly and severally liable, controlled by private investors or at least majority thereof controlled by private investors, created for the purpose of forming a private party and entering into a Public-Private Partnership Agreement;
- h) "Construction" includes, reconstruction, rehabilitation, renovation, improvement, expansion, addition, alteration and related activities;
- i) "Conflict of interest" means a situation where any member of the Board receives or gives any financial or other remuneration in connection with the assigned position other than as authorized by the Board; (2) engages in any consulting or other activities that conflict with the interests of the Agency or the Board; or (3) has a direct or indirect financial interest in the outcome of any proposal before the Board.
- j) "Departmental Public-Private Partnership Node" means the cell established within an Agency which is authorized to identify Public-Private Partnership projects and carry out the initial screening and feasibility studies.
- k) "Director General" means the head of the Public-Private Partnership Unit appointed by the Government;
- l) "Government" means the Government of Sindh;
- m) "Infrastructure" includes facilities and services in one of the sectors listed in Schedule I;

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- n) "Investment" includes development and pre-operative capital expenditures made or incurred on services, land, construction and equipment;
- o) "Lender" means a financial institution, bank, or establishment providing financial support with or without security;
- p) "Local government" means a local government as defined in the Sindh Local Government Ordinance, 2001 (XXVII of 2001);
- q) "Person" means a company, entity, firm, association, body of individuals, or a sole proprietor other than an Agency;
- r) "Prescribed" means prescribed by rules or regulations made under this Act;
- s) "Private party" means a person who enters into a Public-Private Partnership Agreement with an Agency.
- t) "Project" means a project implemented as a Public-Private Partnership in one of the infrastructure sectors listed in Schedule I;
- u) "Project Development Facility" means a pool of funds including contributions from donor international agencies, which are available to pay for consulting services required for the preparation and execution of Public-Private Partnership Projects;
- v) "Province" means the province of Sindh in Pakistan.
- w) "Public-Private Partnership" means a partnership carried out under a Public-Private Partnership Agreement between the public sector represented by an Agency and a private party for the provision of an infrastructure facility, management functions and / or service with a clear allocation of risks between the two parties;
- x) "Public Private Partnerships Agreements" are arrangements between government and private sector entities for the purpose of providing public infrastructure, community facilities and related services
- y) "Public property" means any movable or immovable assets or rights which are in the public domain pursuant to law or

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contract ;

- z) "Risk" means any event or circumstance affecting the project which can adversely affect performance and costs of any of the contractual obligations related thereto including design, construction, financing, operation and/or maintenance;
- aa) "Sindh Public Procurement Rules" means the Sindh Public Procurement Rules, as may be framed by the Government from time to time;
- bb) "Viability Gap Fund" means the funds from the Government which are made available to the private party to cover revenue shortfalls through grants, subsidies or guarantees;
- cc) "Unit" means the Public-Private Partnership Unit established under section 6;
- dd) "User fee" means a levy, unitary charge, annuity, shadow toll or fee whether paid by the Government or the public, which may be charged by a private party under a Public-Private Partnership Agreement.

3. (1) Notwithstanding anything to the contrary in the laws in force, the Government, its Agencies and local governments will be authorized to seek participation from the private sector in appropriate projects subject to the provisions of this Act.

Private sector participation.

(2) Subject to the provisions of this Act and the procedures outlined in Chapters III and IV hereto, the Government and its Agencies shall be fully empowered to enter into agreements and arrangements with private parties under mutually agreed terms and conditions in one or several project planning and management functions such as designing, financing, building, constructing, owning, operating and maintaining different infrastructure projects.

(3) The Government and its Agencies with the approval of the Government may enter into a Public-Private Partnership Agreement to vest public property in private parties for development and other appropriate purposes. The Government may transfer title in Public Properties to private parties on appropriate terms and conditions as the Government may deem fit.

(4) The Government shall be competent to pay any fees for services performed by private parties under duly authorized Public-Private Partnership Agreements including

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but not restricted to user fees, subsidies, revenue shortfall guarantees and may appropriate monies for such purposes.

CHAPTER II
ORGANIZATIONAL FRAMEWORK

4. (1) There shall be a Public-Private Partnership Policy Board in the Province to formulate Public-Private Partnership policy based on strategic goals and ensure its implementation in the Province. **Policy Board.**

(2) The Board shall consist of –

(i)	Chief Minister	Chairman
(ii)	Advisor/Minister P&D	Vice Chairman
(iii)	Chief Secretary	Member
(iv)	Minister of concerned department	Co-opted Member
(v)	Two(2) Members of Provincial Assembly to be nominated by the Assembly	Member
(vi)	Additional Chief Secretary (Dev:), Planning and Development	Member
(vii)	Secretary Finance	Member/ Secretary
(viii)	Secretary of the concerned Department	Co-opted Member
(ix)	Director General Public-Private Partnership Unit	Ex officio Member
(x)	Three(3) members from the private sector to be nominated by the Chief Minister	Members
(xi)	Sectoral Specialist to be nominated by the Chief Minister	Member

(3) The Board shall frame and approve Public-Private Partnership policies and accord final approval to all the projects selected for implementation under the Public-Private Partnership modality. PPP Policy Board, however, shall not entertain a local government project without the consent of the concerned authority.

(4) The members of the private sector shall be appointed for a period of two years and shall be eligible for reappointment for two terms only. Members of the Business Community and of public sector shall be selected after careful consideration of any actual or potential conflicts of interest. If any conflict of interest arises during the tenure of any member from the Business Community or the public sector, the

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Chairman of the Board shall order such member removed from the Board and replaced by another member.

(5) The meetings of the Board shall be presided over by the Chairman and in his absence by the Vice-Chairman.

(6) The decisions of the Board shall be taken by the majority of its members present. In case of a tie, the presiding member shall cast the deciding vote.

(7) All orders, determinations, and decisions of the Board shall be rendered in writing and signed by the Director General or any of the Directors on his behalf subject to approval of Chairman or Vice Chairman, as the case may be.

5. (1) The Boards shall :-

**Functions of
the Board.**

- I. formulate a Public-Private Partnership policy, guidelines and rules for the Government;
- II. supervise and coordinate implementation of the Public Private Partnership policy by the Agencies;
- III. approve, reject or send back for reconsideration the project proposal submitted by an Agency within six(6) months;
- IV. decide on any direct or contingent support for a project proposal submitted by an Agency;
- V. approve , reject or send back for reconsideration the recommendation submitted by an Agency for the contract award to a private party;
- VI. issue risk management guidelines, to assess that the government support for projects is included in the annual budget of the Province and that such support is fiscally sustainable, and establish procedures to implement such guidelines consistent with this Act;
- VII. assist the Agencies in solving major problems impeding project preparation and implementation.;
- VIII. approve funding for projects receiving support through the Project Development Facility ;
- IX. be the final deciding authority for all the projects; and
- X. take all other steps necessary to give effect to the provisions of this Act.

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(2) The Board shall frame and publish a clear and comprehensive Public-Private Partnership policy outlining criteria for selection of projects and giving general principles for selection of private parties. The policy shall work as the basis for allowing private sector participation in projects.

6. (1) The Government shall, by notification, establish the Unit in the Finance Department to promote and facilitate the development of Public-Private Partnerships in the Province, assist an Agency in preparing and executing mega projects which could afford the cost of project structuring and due-diligence, and act as a catalyst for Public-Private Partnerships.

**Public-
Private
Partnership
Unit.**

(2) To achieve the objectives in subsection (1), the Unit shall:

- I. assist the Board in formulating, implementing the Public Private Partnership Policy and provide technical support to the Board and act as its secretariat;
- II. develop operating guidelines, procedures and model documents for projects for approval by the Board;
- III. develop technical and human resources to support Public-Private Partnership initiatives at the Agencies;
- IV. provide technical support and advice to the Agencies throughout the Public-Private Partnership process;
- V. evaluate and prioritize project proposals submitted by the Agencies;
- VI. evaluate the type and amount of government support sought for a project;
- VII. review the bid evaluation report submitted by an Agency;
- VIII. prepare and regularly update a pipeline of projects ;
- IX. oversee project implementation and issue semi-annual review and annual consolidated reports on the Public-Private Partnership projects in the Province; and
- X. perform any other functions and duties which may be assigned to it by the Board.

(3) The Unit may procure for consideration or for free, technical and professional assistance and advice which it deems necessary from other governmental authorities,

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multilateral agencies, professional bodies and private firms. The Unit may also provide technical assistance and advisory services to the persons and entities in the Province and elsewhere for consideration or for free, as it deems appropriate.

(4) PPP Unit, however, may take up project structure activities mentioned at section 7 (2), either on the request of an agency or if the PPP policy Board assign this task to PPP Unit.

7. (1) The administrative head of each Agency which seeks to implement a project on a Public-Private Partnership basis, shall form a Public-Private Partnership Node with the approval of concerned Minister consisting of officers from within the Agency or other Agencies as the case may be, which may include representative from the Finance Department, and independent technical and legal experts if deemed appropriate to develop the project.

Departmental Public-Private Partnership Nodes.

(2) The Public-Private Partnership Node shall:

- I. identify suitable projects and prioritize these within its sector or geographical area of responsibility;
- II. recruit transaction advisors for project preparation and tendering;
- III. supervise the preparation of the feasibility study and if its outcome is positive, submit the project proposal through the Unit to the Board;
- IV. conduct a competitive tendering process consisting of pre-qualification and bidding to select the private party;
- V. carry out bid evaluation and submit recommendation on contract award to the Board;
- VI. negotiate and sign the Public-Private Partnership Agreement;
- VII. monitor and evaluate implementation and operation of the project;
- VIII. if needed, seek support and advice from the Unit for the performance of any of the above function; and
- IX. prepare periodic progress reports on the Agency's projects to be submitted to the PPP Policy Board through Unit.

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8. (1) For each Concession Contract awarded to a Public Private Partnership Company, there shall be a Project Implementation Unit, to oversee day to day implementation, particularly during the construction period, of the project in terms of the Public-Private Partnership Agreement and the laws in force.

**Project
Implementat
ion Unit.**

(2) The Project Implementation Unit may be established, as and when needed, at the discretion of the administrative head of the Agency consisting of its officers. The administrative head may appoint outside officers, professionals and consultants to serve on the Project Implementation Unit if so required.

(3) The Project Implementation Unit shall also liaise between the Government and the Public-Private Partnership Company for effective project implementation.

(4) The Departmental Public-Private Partnership Node shall be responsible to the administrative head of the Agency and shall provide it and the Unit with periodic progress reports.

CHAPTER III
PROJECT DELIVERY PROCESS

9. Subject to obtaining all required approvals and completing the necessary due diligence and appraisal of the project and the prospective private party, an Agency may -

**Public-
Private
Partnership
arrangement
s.**

- I. enter into a Public-Private Partnership Agreement with the private party, through its administrative secretary or officer with equivalent rank and status, for the performance of any of the various tasks related to design, construction, operation and maintenance of infrastructure facilities;
- II. arrange or provide for a payment to the private party in accordance with the terms and conditions of the Public-Private Partnership Agreement;
- III. enter into an agreement with any entity for funding or guaranteeing a Public-Private Partnership project;
- IV. transfer, through the Administrative Secretary, an interest in a Public-Private Partnership project to a private party or subject to the approval of the Government, to a nominee of the private party by

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transfer, assignment, conveyance, lease, license or otherwise;

V. enter into an arrangement with any other Agency, the Government Department or a body, board or entity owned or controlled by the Government for a Public-Private Partnership project; and

VI. subject to the Public-Private Partnership Agreement, assume or transfer an interest in a private party or a nominee of the private party by transfer, assignment, conveyance, sale, grant or surrender,.

10. (1) An Agency shall identify and prepare a project, and shall complete this phase before tendering.

(2) The Agency shall identify and conceptualize potential projects from its master plans and other planning documents.

(3) The preparation of the projects shall consist of a feasibility study, initial environmental examination, environmental impact assessment in line with Industry international best practices if required, risk analysis, analysis of the need for Government support, stakeholder consultations, determination of the appropriate Public-Private Partnership modality, and preparation of bidding documents including a draft Public-Private Partnership Agreement.

(4) The Agency shall prioritize the projects within its sector and, or geographical area using criteria such as supply and demand gaps, social and economic benefits, financial attractiveness, risks and uncertainties involved, and readiness for implementation.

(5) The Agency shall submit each viable project proposal through the Unit to the Board.

11. (1) The Unit shall exercise quality control by reviewing the viability of the project proposals and completeness in terms of documentation.

(2) The Unit shall prioritize the projects that pass the review across sectors and the Province, by taking into account provincial development objectives, and submit them to the Board for approval.

(3) The Unit shall include approved projects in a priority list of the Province and widely publicize them.

**Project
identification
and
preparation.**

**Project
prioritization
and
approval.**

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12. (1) Requests for government support described in Section 15 shall be an integral part of the project proposals submitted by the Agencies. **Approval of government support.**

(2) The Unit shall review and analyze all requests for government support with budgetary implications and shall evaluate the justification and eligibility for such support and the fiscal impact of the related direct and contingent liabilities.

(3) Based on this review and analysis, the Unit shall make a recommendation to the Board for approval, rejection or reconsideration of the requested support.

(4) After approval of the Board, the Unit shall make necessary arrangements for including such support in the budget of the Province.

13. (1) After the approval of the project proposal by the Board, the Agency shall select the private party for the project through open competitive bidding. **Selection of the private party.**

(2) The Agency shall not enter into direct negotiations with any person without open competitive bidding. Clarifications may take place during the bid evaluation process subject to principles of integrity, transparency and equal opportunity.

14. (1) If a Consortium is the pre-qualified person, it shall notify the Agency of all changes in the shareholding of the Consortium prior to contract award. Such changes may be approved by the Agency, provided they are carried out in conformity with the terms and conditions of the bidding and do not jeopardize the Consortium's pre-qualification; **Change of control and transfer restrictions.**

(2), If the consortium fails to comply with requirement of subsection 14(1),the consortium shall be disqualified

(3) After the contract award, the members of the Consortium may, with the prior approval of the Government and subject to conditions set forth in the Public-Private Partnership Agreement, voluntarily or involuntarily cause, permit or undergo any change of control; or transfer their interests in the private party to third parties, provided they are able to be replaced by an entity or entities at least as legally, technically and financially qualified to meet their project obligations.

15. (1) Government support approved by the Board for a **Government**

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project may include any of the following:

support.

- I. Administrative support to the private party consistent with the private party's responsibilities under the Public-Private Partnership Agreement in obtaining licenses and clearances from the Government, a public sector organization or an Agency, for the purposes of the project on such terms and conditions as may be prescribed; provision of utility connections for power, gas and water at project site; acquisition of land or rights of way necessary for the project; rehabilitation and resettlement of displaced persons directly required to execute the project; and any other administrative responsibility;
- II. Asset-based support such as leasing land and / or infrastructure facilities owned by the Government or an Agency to the private party. The need for this type of support shall be determined on a case-by-case basis;
- III. Direct financial assistance through the Viability Gap Fund. This type of support shall be offered only for projects which are economically and socially viable but not financially attractive if constrained by affordable user fees; its amount shall be determined through bidding.
- IV. Government guarantees for political risks under the Government's control such as changes in the Public-Private Partnership policy, delay of agreed user fee adjustments, early termination of the Public-Private Partnership Agreement with no fault of the private party, and expropriation; this type of support shall be made available for all projects; and
- V. Government guarantees for other risks such as force majeure, demand risk, and default by an Agency on payments for works and services delivered by the private party (off-take risk); the need for this type of support shall be determined on a case-by-case basis as part of the risk sharing analysis undertaken during project preparation.

(2) All of the government support for the project shall be clearly indicated in the bidding documents and included in the Public-Private Partnership Agreement.

16. (1) The draft Public-Private Partnership Agreement **Preparation**

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shall form a part of bidding documents.

**and
negotiation
of Public-
Private
Partnership
Agreement.**

(2) The draft Public-Private Partnership Agreement shall clearly define the legal relationship between the Agency and the selected private party, as well as their respective rights and responsibilities, including the specific government support for the project.

(3) The draft Public-Private Partnership Agreement shall include but not limited to the following provisions, as applicable:

- I. Type of project;
- II. Term of the Public-Private Partnership Agreement;
- III. Scope of work and services to be provided under the project;
- IV. Main technical specifications and performance standards;
- V. Environmental and safety requirements;
- VI. Implementation milestones and completion date of the project;
- VII. Cost recovery scheme through user fees, including a mechanism for periodical adjustment;
- VIII. Performance bonds for construction works and operation;
- IX. Minimum insurance coverage;
- X. Acceptance tests and procedures;
- XI. Rights and obligations of the parties to the Public-Private Partnership Agreement, including risk sharing;
- XII. Penalties and liquidated damages provisions for delays;
- XIII. Type and amount of Government support;
- XIV. Hand back requirements at the end of the term of the Public-Private Partnership Agreement, if any;
- XV. Warranty period and procedures after the hand back;

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- XVI. Requirements and procedure for variations of the Public-Private Partnership Agreement;
- XVII. Grounds for and effects of termination of the Public-Private Partnership Agreement, including *force majeure*;
- XVIII. Compensation formula for early termination scenarios;
- XIX. Procedures and venue for dispute resolution;
- XX. Financial reporting by the private party; and
- XXI. Supervision mechanism of the Agency.

(4) The Agency shall not enter into a Public-Private Partnership Agreement unless the procedure specified in this Act has been followed.

(5) Contract negotiations for the conclusion of a Public-Private Partnership Agreement shall be completed between the Agency and the private party within six months after the contract award.

17. (1) Before signing the Public-Private Partnership Agreement with the Agency, the private party may establish, without changing its shareholding and subject to conditions set forth in the bidding documents, a special purpose company for implementation of the project, which shall assume all the rights and obligations of the private party.

**Project
implementation
and
operation.**

(2) For major construction works, the private party shall prepare a detailed engineering design and implementation plan in accordance with the main technical specifications prescribed in the Public-Private Partnership Agreement and submit it to the Agency for approval prior to the start of construction.

(3) The private party shall carry out the construction for the project in accordance with the performance standards and specifications prescribed in the approved engineering design.

(4) To guarantee its performance in the construction works, the private party shall post a bond or furnish a bank guarantee, which shall be valid up to the end of the warranty period under the construction contract and acceptance by the Agency; for projects, which include operation by the private party, the private party shall post or furnish another

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performance bond or bank guarantee upon the acceptance of the completed works to guarantee compliance with the operating parameters and standards specified in the Public-Private Partnership Agreement.

(5) Within twelve months of the signing of the Public-Private Partnership Agreement, the private party shall achieve financial close for the project or as the case may be in the Concession Agreement, defined as a legally binding commitment of equity holders and lenders to provide funding for the entire investment. Any delay in reaching financial close beyond such period shall be reported by the Agency to the Board, with an explanation for the delay so that the Board can determine if the project is capable of being financed under the proposed Public-Private Partnership modality or whether other alternatives including traditional procurement should be considered.

CHAPTER IV
PROCUREMENT

18. (1) The procurement process shall be governed under Sindh Public Procurement Rules framed from time to time by the Government.

Public procurement laws to apply.

(2) The Agency shall ensure that the Sindh Public Procurement Rules have been followed in letter and spirit from the pre-qualification stage through bidding and contract signing. In all instances, the procedures shall be transparent with full disclosure of the procedures and results of the pre-qualification and bidding.

(3) In view of the special characteristics of procurement for Public-Private Partnership projects, the Board shall periodically review, with assistance of the Unit, the Procurement Rules which apply to Public-Private Partnerships, and seek any changes which are needed for successful operation of the Public-Private Partnership program.

(4) On completion of the private party's selection process, the Board shall certify that in its opinion, the selection of the private party has been made in compliance with the Sindh Public Procurement Rules.

19. Public competitive bidding shall be applied for the award of all Public-Private Partnership projects strictly in accordance with the provisions of the Act.

Award through open bidding.

20. A person may propose a project to an Agency on its own initiative, and will be subject to the procurement

Unsolicited proposals.

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procedures as may be prescribed.

CHAPTER V
FINANCE

21. (1) Financing of a Public-Private Partnership project may be in such amounts and upon such terms and conditions as may be determined by the parties to the Public-Private Partnership Agreement. Without limiting the generality of the foregoing, the private party and the responsible Agency may propose to utilize any or all revenues which may be available to them by law to:- **Financing.**

- I. issue debt, equity, or other securities or obligations;
- II. enter into leases, concessions, and grant and loan agreements;
- III. access any designated funds;
- IV. borrow or accept grants from any source; and
- V. secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the facility.

(2) The Government may enter into an agreement with senior secured lenders of the private party pursuant to which, in the event of default of the private party, they or their duly appointed representative will have the right, but not the obligation, to step in and replace the private party or any of its contractors to cure the default and avoid termination of the Public-Private Partnership Agreement. Such agreement will be negotiated and signed at or before financial close.

22. The Government may establish a Viability Gap Fund to support Public-Private Partnership projects and finance the gap between project revenues constrained by affordability considerations and revenues needed to generate a fair return on investment for the Public-Private Partnership projects. **Viability Gap Fund.**

23. (1) The Government may impose and revise, through a notification in the official gazette, single or multiple user fees for different uses of the Public-Private Partnership projects by different classes of the users. **User fee.**

(2) The Government may exempt, through notification in the official gazette, certain classes of users from payment of the user fees.

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(3) The Government may entrust the private party with collection of user fees.

(4) The Government shall set the user fees at levels that ensure the financial viability of the project and fully cover the operations and maintenance expenses, plus a fair return to the private party. Notwithstanding the foregoing, if the Government elects to maintain the user fees at levels below levels that would ensure financial viability as described herein, then it shall compensate the private party for the difference through the Viability Gap Fund.

(5) Unless specified otherwise in the bidding documents, the Agency shall determine, through bidding, the user fees which shall be adjusted periodically during the term of the Public-Private Partnership Agreement based on a formula using official price indices set forth in the Public-Private Partnership Agreement.

24. The Agency shall include appropriate reporting and audit requirements in the Public-Private Partnership Agreement, taking into consideration the nature of the project, its business structure, the source of financing and the financial commitments of the Government to the private party. To the extent required, the Agency may retain outside consultants and auditors to perform periodic reviews of the private party's accounts which may include the same reports submitted by the private party to its lenders.

Reports and audits.

CHAPTER VI
Other Issues

25. The Government may –

- I. prescribe and enforce performance standards for a Public-Private Partnership project, including standards of performance for a private party with regard to different aspects of the services to be rendered to the users and the Government;
- II. prescribe quality standards, including standards for the materials, equipment, processes and resources used, or persons employed, during all stages of the project to ensure sustainable delivery of services and adherence to the prescribed quality standards;
- III. link entitlement to the Viability Gap Fund, subsidy, annuity and other compensation and benefits with meeting certain performance standards as it may

Power to prescribe standards.

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deem fit;

- IV. issue and enforce accounting guidelines for proper accounting of the projects; and
- V. prescribe any other standard for regulating the Public-Private Partnership projects.

26. (1) The private party or its sub-contractor shall, subject to subsection **Indemnity.**

(2), be responsible for, and shall release and indemnify the Agency, its employees, agents and contractors on demand from and against all liability for -

- (a) death or personal injury;
- (b) loss of or damage to property, including property belonging to the Government or Agency or for which it is responsible;
- (c) breach of statutory duty; and
- (d) actions, claims, demands, costs, charges and expenses , including legal expenses on an indemnity basis;

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the assets; the performance or non-performance by the private party or its sub-contractor of its obligations under the Public-Private Partnership Agreement; or the presence on the Government's property of the contractor, a subcontractor, or their employees or agents.

(2) The private party or its sub-contractors shall not be responsible or be obliged to indemnify the Agency for -

- I. any of the matter referred to in paragraphs (1) (a) to (d) above which arises as a direct result of the private party or its sub-contractor acting on the instruction of the Agency;
- II. any injury, loss, damage, cost and expense caused by the negligence or wilful default of the Agency, its employees, agents or contractors, or a breach by the Agency of its obligations under the Public-Private Partnership Agreement, or
- III. any claims made under the Act in respect of the

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Government's property.

27. (1) If a dispute arises out of or relates to the Public-Private Partnership Agreement, or the breach thereof, and if that dispute cannot be settled through direct discussions, the parties shall first endeavor to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Board, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to the Public-Private Partnership Agreement, or breach thereof, shall be settled by arbitration in the city of Karachi or any other place in Pakistan or as agreed to by the parties specified in the Public-Private Partnership Agreement. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Dispute
resolution.**

(2) Disputes shall be decided in accordance with the law in force in Pakistan.

28. The Public-Private Partnership Agreement may be terminated in the following cases:

**Termination
of the Public-
Private
Partnership
Agreement.**

- I. **End of the term of the Public-Private Partnership Agreement.** Upon completion of the term of the Public-Private Partnership Agreement, the private party will hand back any public property to the Government, free and clear of all encumbrances and in satisfactory condition as determined by the Government following an inspection. The procedures for the hand back and indemnities if any shall be set forth in the Public-Private Partnership Agreement.
- II. **Unilateral termination of the Public-Private Partnership Agreement by the Government** acting in the public interest. Following notice and subject to the procedures set forth in the Public-Private Partnership Agreement, the Government shall compensate the private party for any investments made in the project, including any debts incurred and a sum which fairly represents the lost profit on such investments;
- III. **Default by the Agency under the Public-Private Partnership Agreement** of its obligations and expiration of any cure period, causing the private party to rescind the Public-Private Partnership Agreement. Following

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notice and subject to the procedures set forth in the Public-Private Partnership Agreement, the Agency shall compensate the private party for any investments made in the project, including any debts incurred and the fair market value of the equity, or any amount that fairly compensates the private party for its lost revenues in accordance with the terms of the Public-Private Partnership Agreement;

- IV. **Default by the Private Party under the Public-Private Partnership Agreement.** If the private party fails to comply with the agreed milestone activities, or fails to achieve the prescribed technical and performance standards, or commits any substantial breach of the Public-Private Partnership Agreement, the Agency shall give written notice of the breach and notice to terminate to the private party and following expiration of any cure period may: (1) take over the project and assume all related liabilities of the private party, including its debt obligations; (2) allow lenders of the private party to exercise their step-in rights and security interests as specified in the loan documents for the project and replace the private party on the same terms and conditions, subject to approval of the substitute private party by the Agency; (3) take over the project and auction the remaining term of the Public Private-Partnership Agreement through an open competitive bidding to interested qualified investors and apply the proceeds to pay the debts of the private party; or (4) invoke its other contractual remedies such as liquidated damages which fairly represent the degree of loss incurred by the Government.
- V. **The occurrence of a force majeure event** in the Public-Private Partnership Agreement shall be grounds for early termination at the request of either party and shall allow for a reasonable allocation of the risk of loss between the Government and the private party. The allocation of the risk and compensation formulae to be applied in such instance shall be set forth in the Public-Private Partnership Agreement.

29. No suit, claim or other legal proceedings by a private party or by any person shall lie against the Board, the Unit, an Agency or an officer of the Board, the Unit, and other government officers or consultants, in respect of anything done or intended to be done in good faith and in accordance with this Act and other laws in force.

Immunity to acts done in good faith.

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30. For systemic and transparent enforcement of this Act and towards meeting its objectives the Government may, by notification in the official gazette, make rules for carrying out the purposes of this Act. **Power to make rules.**

31. Subject to this Act and the rules made hereunder, the Board may approve regulations, procedures and guidelines to make operations under this Act, efficient, transparent and effective. **Power to frame regulations and guidelines.**

SCHEDULE I

[see sections 2 (j)]

INFRASTRUCTURE SECTORS

Canals or dams;
Education facilities;
Health facilities;
Housing;
Information technology;
Land reclamation;
Power generation facilities; including Coal and power generation
Roads (provincial highways, district roads, bridges or bypasses);
Sewerage or drainage;
Solid waste management;
Sports or recreational infrastructure, public gardens or parks;
Trade fairs, or cultural centers;
Urban transport including mass transit or bus terminals;
Water supply or sanitation, treatment or distribution; and
Wholesale markets, warehouses, slaughter houses or cold storages.
Tourism and Resort Development