

**THE BALOCHISTAN PUBLIC PRIVATE PARTNERSHIP
ACT, 2018**

(Baln. Act I of 2018)

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¹THE BALOCHISTAN PUBLIC PRIVATE PARTNERSHIP ACT, 2018

(Balochistan Act No. I of 2018)

[19th April, 2018]

An Act to promote, facilitate and encourage participation of the private sector's investment in the development, financing, construction/reconstruction, operation & maintenance of public infrastructure, land or other development projects, including but not limited to procurement of public asset or services arising out of such public assets, through Public Private Partnerships modality in a fair, transparent and competitive process.

Preamble.

WHEREAS recognizing the growing infrastructure gap in the province of Balochistan, growing urgency to procure, implement the infrastructure projects and to improve overall service delivery through innovation and efficiency, in order to remove the budgetary constraints, achieving the value for money in infrastructure projects and related services thereto through principles of fairness, competition and transparency in the procurement of public private partnerships, and to provide for the matters ancillary thereto; it is hereby enacted as follows:

CHAPTER 1 PRELIMINARY

Short title, extent,
commencement
and application.

1. (1) This Act may be called the Balochistan Public Private Partnership Act, 2018.

(2) It extends to the whole of Balochistan; except the Tribal Areas.

(3) It shall come into force at once.

(4) This Act does not apply to the following infrastructure projects or infrastructure facilities:

- (a) (i) projects between any statutory body and any Government department / attached department / Authority / local authority;

¹ This Act was passed by the Provincial Assembly of Balochistan on 10th April, 2018; assented to by the Governor of Balochistan on 18th April, 2018; and first published in the Balochistan Gazette (Extraordinary) No. 59, dated 19th April, 2018.

- (ii) projects which may be taken over by any concessionaire or private sector entity on privatization or disinvestment by any Government department, attached department, statutory body, State corporation, local authority or agency; *or*
 - (iii) projects which have been expressly excluded from the provisions of this Act or which are not prescribed by the Government; *and*
- (b) the procurement of goods, works or services contemplated in Balochistan Public Procurement Regulatory Authority Act, 2009 (Act No VIII of 2009).

Definitions.

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

- (a) “Act” means the Balochistan Public Private Partnership Act-2018;
- (b) “Asset” means an existing infrastructure asset of a relevant government agency or a new asset to be acquired through Public Private Partnership Agreement;
- (c) “Bid” means request for proposal or pre-qualification, issued by Government Agency under the provisions of this Act;
- (d) “Bidder” or “Bidders” means a person, including groups of persons or a company or a firm or a consortium thereof, other than a Government Agency, that participate in procurement process undertaken by a Government Agency in accordance with the provisions of this Act;
- (e) “BPPRA” means Balochistan Public Procurement Regulatory Authority, constituted under the Balochistan Public Procurement Regulatory Authority Act, 2009 (Balochistan Act VIII 2009);

- (f) “Committee” means the Steering Committee constituted under Section 6 of this Act;
- (g) “Concessionaire” means, subject to the approval of Steering Committee, a successful Bidder in the procurement process with whom a Government Agency executes a Public Private Partnership Agreement;
- (h) “Concession Contract” means a written agreement between a Government Agency and a private party for implementation of a project and any other agreement subsidiary or incidental to it;
- (i) “Consortium” means an association of persons / companies who have formed the association under a legally enforceable contractual arrangement for purposes of entering into a PPP Agreement;
- (j) “Construction” includes reconstruction, rehabilitation, renovation, improvement, expansion, addition, alteration and related activities;
- (k) “Prescribed” means prescribed by the rules or regulations;
- (l) “Departmental PPP Node” means a unit established by Government Agency for development of PPP Project(s) under Section 13 of this Act;
- (m) “Feasibility Study” means, without limitations a pre-feasibility study, a study undertaken to explore the technical, financial, legal, social and environmental aspects of a Public Private Partnership project;
- (n) “Government” means the Government of Balochistan;
- (o) “Government Agency” means a department, attached department, autonomous body of the Government, authority, or any organization or corporation owned or controlled by the

Government;

- (p) “Infrastructure Project Financing Facility-IPFF” means a non-banking financial institution;
- (q) “Lender” means a financial institution, bank or an establishment providing financial support or loan to a private party for implementation of a PPP project;
- (r) “Member” means Member of the Balochistan PPP Steering Committee;
- (s) “P&D Department” means Planning and Development Department of the Government;
- (t) “PDF” means Project Development Facility, a pool of funds, which may include contribution from international development partners, which are available to pay for consulting services required for the preparation and execution support of PPP Projects;
- (u) “PPP Board” means a final approving authority established under Section 5 of this Act;
- (v) “PPP Unit” means the Public Private Partnership Unit established under this Act in Planning and Development Department of Government of Balochistan;
- (w) “Private party” means an eligible Bidder who enters into a public private partnership agreement with a Government Agency;
- (x) “Project” means an infrastructure project, provision of infrastructure related services or both, under a public private partnership;
- (y) “Province” means the Province of Balochistan;
- (z) “Public Private Partnership” or “(PPP)” means a contractual arrangement between a Government Agency and a Concessionaire, made in accordance with this Act, in which the Concessionaire:

- (i) undertakes to perform or undertake any infrastructure project or infrastructure facility as specified in the First Schedule or as prescribed;
 - (ii) undertakes to provide or provides such social sector services as may be prescribed;
 - (iii) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function or use of Government property; *and*
 - (iv) receives consideration for performing a public function or utilizing Government property, either by way of:
 - (a) a fee from any revenue fund or a department's/attached department/authority's budgetary funds; *or*
 - (b) user levies collected by the concessionaire from users or customers for a service provided by it; *or*
 - (c) a combination of the consideration paid under sub-paragraphs (a) and (b);
- (aa) "Public Private Partnership Agreements" are written agreements between Government Agency and private sector entity for the purpose of providing public infrastructure, general public facilities and related services or both in accordance with the provisions of this Act;
- (bb) "Public Property" means any movable or immovable assets or rights which are in public domain pursuant to law or contract;
- (cc) "Regulatory Agency/Body" means a public authority that is entrusted with the power to issue and enforce the laws governing infrastructure

development or the provision of services;

- (dd) "Risk Management Unit" means the Risk Management Unit established in Finance Department of Government of Balochistan under this Act;
- (ee) "Rules" means the rules made under the Act;
- (ff) "Schedule" means a Schedule appended to the Act;
- (gg) "Unsolicited proposal" means any proposal relating to the implementation of an infrastructure project or infrastructure facility or for provision of a public service, based on genuine innovative solution / idea, that is not submitted in response to a request for proposal or solicitation issued by Government Agency within the context of a competitive selection procedure;
- (hh) "User Fee" means fee, rate, toll or other charges imposed for the use of all or part of a government infrastructure or land or development facility or public service; *and*
- (ii) "Viability Gap Fund (VGF)" means the fund established by the Government for the purposes of compensating, on the recommendation of the Committee, the private party to a PPP agreement for any revenue shortfalls, through grants, subsidies or guarantees.

Private Sector
Participation.

3. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the Government and its agencies will be authorized to structure, procure, implement the projects thereby seeking participation from private sector in appropriate projects, subject to the provisions of this Act;

(2) Subject to provisions of this Act, the Government and its agencies will be fully empowered to enter into PPP Agreements with private parties under mutually agreed terms and conditions, subject to that all the terms and conditions are duly

approved by the Committee;

(3) Subject to the approval of the Committee, the Government Agency may enter into Public Private Partnership Agreement with the Private Party to vest public property, without transferring the title to the public property, for development, procurement, implementation, rehabilitation, construction, operation, maintenance of the Projects and for any other appropriate purposes as may have been decided by the Committee.

Principles of probity
and
transparency.

4. Every Government Agency must adhere to the following principles of probity and transparency during the initiation, preparation, procurement, management and implementation of the Public Private Partnership Projects:

- (a) a Government Agency must carry out its responsibilities relating to the initiation, preparation, procurement, management and implementation of public private partnership project(s) with complete probity and in a fair and transparent manner;
- (b) a Government Agency may not include in the procurement document, any condition or specification, which favours or likely to favour any individual bidder or a group of bidders unduly;
- (c) the project officers, transaction advisors, procurement committee members, and members of the management team, may not have direct or indirect interest in public private partnership project(s), which the Government Agency is intending to implement and must disclose such interest to the principal accounting officer before any decision is taken by the Government Agency with respect to a public private partnership;
- (d) the principal accounting officer of the Government Agency must:
 - (i) evaluate the conflict of interest contemplated in clause (c) and must

formulate and implement appropriate responses to the such conflict of interests, such as recusal by the person concerned from any position where the conflict or interest could influence a decision by the Government Agency; *and*

- (ii) keep or cause to be kept a record of disclosures made in terms of clause (c);
and
- (e) the principal accounting officer must keep or cause to be kept a record of actions and decisions taken by the Government Agency in respect of public private partnership project(s), including tender proceedings.

CHAPTER 2

ORGANIZATIONAL ARRANGEMENT

ESTABLISHMENT AND FUNCTIONS OF THE BALOCHISTAN PUBLIC PRIVATE PARTNERSHIPS ENTITIES

Establishment of the
PPP Board.

5. (1) The PPP programme in Balochistan shall run under the following institutional arrangements. Final cost of the projects, contractual and financial arrangements including any subsidies or concessions etc. will be approved by the following PPP Board:

- | | | |
|-----|---|----------------------|
| (a) | Chief Minister Balochistan. | Chairperson |
| (b) | Minister, P&D Department. | Member |
| (c) | Minister, Finance Department. | Member |
| (d) | two Members of Provincial Assembly, nominated by the Speaker. | Member |
| (e) | Chief Secretary, Balochistan. | Member |
| (f) | Additional Chief Secretary (Dev:). | Member |
| (g) | Secretary, Government of Balochistan, Finance Department. | Member |
| (h) | Managing Director, PPP Unit. | Member/ Secretary |

(2) The PPP Board may amend, if deemed necessary, the “First Schedule” of this Act.

Establishment of the
Steering
Committee.

6. (1) A committee to be known as “Balochistan Public Private Partnerships Steering Committee”, hereinafter referred to as the Committee, shall be notified in the official Gazette, with a mandate to promote, facilitate, coordinate and supervise private investment in infrastructure and other development projects by using the Public Private Partnership approach. The Committee shall be comprised of the following:

- | | | |
|-----|--|--------------|
| (a) | Chief Secretary, Balochistan. | Chairperson. |
| (b) | Additional Chief Secretary (Dev:) P&D Department. | Member. |
| (c) | Senior Member, Board of Revenue. | Member. |
| (d) | Secretary, Government of Balochistan, Finance Department. | Member. |
| (e) | Secretary, Government of Balochistan, Law Department. | Member |
| (f) | Secretary (Planning), Government of Balochistan, P&D Department. | Member |
| (g) | Secretary, Government of Balochistan, Concerned Department/ Chairman, Director General of the concerned authority. | Member |
| (h) | President Lasbela Chamber of Commerce & Industries. | Member |
| (i) | President of any other Chamber of Commerce & Industries of Balochistan (by election from amongst them). | Member. |
| (j) | Managing Director, Balochistan Board of Investment. | Member. |
| (k) | Chief Economist, P&D Department, Balochistan. | Member. |
| (l) | MD, Balochistan Public | Member. |

Procurement Regulatory
Authority.

- (m) Sector Specialist(s) from Private Sector. Member.
- (n) Managing Director, PPP Unit. Member/
Secretary.

(2) The sector specialist(s) will be nominated on honorary basis and project to project by the chairperson keeping in view the type of projects being considered.

(3) In the absence of the chairperson, the Additional Chief Secretary (Dev) shall preside over the meeting.

Meetings of the
Steering
Committee.

7. (1) All meetings of the Committee shall be convened by the Secretary, on the instructions of the Chairperson, on such day and time as may be determined by the Chairperson in this behalf. At least seven members present shall constitute a quorum.

(2) Meetings of the Committee shall be convened as and when required in a financial year on such day, at such time and place as the Chairperson may determine.

(3) All decisions of the Committee shall be expressed in terms of the opinion of the majority of its members present and voting. In the event of an equality of votes, the Chairperson or, as the case may be, the Member presiding the meeting shall have a casting vote.

(4) All orders, decisions, recommendations of the Committee shall be recorded in writing and duly signed by the Chairperson.

Functions of the
Steering
Committee.

8. (1) Without prejudice to the generality of the following, the Committee shall:

- (a) formulate policies, rules and regulations relating to the public private partnerships for the purpose of this Act;
- (b) supervise and coordinate the implementation of the Act, policy, relevant

rules and regulations;

- (c) periodically, review the legal, institutional and regulatory framework of public private partnership with the objective to promote PPP in Balochistan;
- (d) advise and facilitate the agencies to identify, develop, structure and procure the projects;
- (e) approve pipeline of PPP Projects for Balochistan to the PPP Board and ensure that the pipeline projects are consistent with provincial plans, policies and programs. moreover, prioritize the list of pipeline projects for implementation;
- (f) approve or reject or send back for reconsideration PPP project proposals, including project concept note and feasibility studies, submitted by the agencies;
- (g) ensure value for money by conducting an analysis to evaluate projects;
- (h) examine and approve or disapprove the feasibility study conducted by a Government agency and recommend the feasibility study for final approval by the PPP Board;
- (i) recommend funding for PPP projects through Viability Gap Funding and/or Infrastructure Project Financing Facility (IPFF);
- (j) evaluate any direct or contingent support for a project proposal submitted by any Government agency and place the same for consideration by the PPP Board;
- (k) approve standardized contractual

provisions and the sector specific provisions of the model public private partnership agreements;

- (l) ensure that each project agreement is consistent with the provisions of this Act and in line with the provincial priorities specified in the relevant policy on public private partnerships or as presented in development plans or strategies;
- (m) determine the maximum limit of government support with regards to bids for any PPP project and have the limit approved by the PPP Board;
- (n) review user levies proposed and rationalize, reject or recommend the same for approval by the PPP Board;
- (o) perform any other function as may be conferred on it by this Act; *and*
- (p) take all other steps necessary for giving effect to the provisions of this Act.

(2) The Committee may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

Establishment of the Balochistan Public Private Partnership Unit.

9. (1) A Balochistan Public Private Partnership Unit, hereinafter referred to PPP Unit, shall be established in the Planning and Development Department, Government of Balochistan.

(2) All the functions and administration of the PPP Unit shall vest with the Managing Director, PPP Unit of the Planning and Development Department of the Government of Balochistan who shall be assisted and supported by a coordinator. The Managing Director shall report to the Additional Chief Secretary (Dev.).

(3) Managing Director, PPP Unit and technical, financial and legal professionals/ advisers shall be recruited on

competitive basis by the following Selection Committee:

- (a) Chief Secretary, Balochistan. Chair.
- (b) One member each from the PPP Units/Risk Management unit of other Provinces. Member
- (c) Addl: Chief Secretary (Dev:) Member
- (d) Secretary, Government of Balochistan, Finance Department. Member
- (e) Secretary, Government of Balochistan S&GA Department. Member/
Secretary

Functions of PPP
Unit.

10. The functions of the PPP Unit are to:

- (a) serve as the secretariat and technical arm of the Committee;
- (b) assist the Committee in preparation of policies, rules, regulations and guidelines related to the PPP;
- (c) provide technical, financial and legal etc. inputs through relevant experts/ PPP Unit, established under this Act, to the Committee;
- (d) provide information about and guidance on PPP interventions in the province and to act as resource center;
- (e) provide support to the agencies throughout the project life cycle;
- (f) prepare and regularly update a pipeline of the projects in consultation with the agencies and recommend the same to the Committee and thereafter make available updated lists of the pipeline PPP projects to the Government Agencies;
- (g) recommend the projects for consideration by the

Committee under this Act;

- (h) in consultation with the Risk Management Unit, coordinate / facilitate the Committee to process cases for consideration / approval of subsidy, grant user fee, availability of payments or annuity payment by the PPP Board;
- (i) recommend to the Committee award of contracts cases;
- (j) provide capacity building and to advice government agencies involved in the planning, co-ordinating, undertaking or monitoring of projects under this Act;
- (k) assist government agencies, where the Unit considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate projects;
- (l) ensure that the procurement process relating to a project conforms to this Act and to that of Balochistan Public Procurement Regulatory Authority's best procurement practices;
- (m) conduct research and gap analysis to ensure continuous improvement in the implementation of public private partnerships;
- (n) publish/submit periodical reports after approval from the Committee and share information on the media;
- (o) facilitate smooth transfer of assets at the expiry or early termination of a project; *and*
- (p) carry out such other functions as may have conferred on it by the Committee under this Act;

Establishment of
Risk
Management
Unit.

11. (1) The Government shall, by notification, published in the official Gazette, establish a Risk Management Unit in the Finance Department of Government of Balochistan to act as a financial guardian for the PPP projects.

- (2) The Risk Management Unit shall consist of;
- (a) Risk Management Specialist, who shall report to the Secretary, Government of Balochistan, Finance department through Additional Secretary (Resource);
 - (b) Legal and Regulatory Specialist;
 - (c) Risk Analyst;
 - (d) Financial Analyst; *and*
 - (e) Such staff/ professionals considered necessary for better service delivery and effective performance of the functions, as assigned under this Act, of the Risk Management Unit.

(3) Risk Management Specialist (head of Risk Management Unit) and professional staff shall be recruited on competitive basis by the Selection Committee constituted as per clause 9 (3) of this Act.

Functions of Risk Management Unit.

12. (1) The Risk Management Unit shall:
- (a) develop risk management guidelines for approval by the Committee;
 - (b) provide support and advice to any agency with regard to risk management in a project throughout the public private partnership process;
 - (c) examine, in consultation with the PPP Unit, whether requests for Government support and the proposed risk sharing arrangements are consistent with the Act, rules and regulations, and are fiscally sustainable;
 - (d) recommend the inclusion of approved Government support in the budget of the Province;
 - (e) monitor direct and contingent liabilities of the Government incurred through the PPP

projects; *and*

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

(2) The Risk Management Unit will forward its recommendations on any PPP projects or financial issue to PPP Unit for placement of the same before the Committee for consideration.

Establishment of
Departmental
PPP Nodes.

13. (1) A Government Agency that intends to enter into a Public Private Partnership arrangement in form of a concession contract with a concessionaire shall establish a Public Private Partnership Node with the approval of Committee. The PPP Node shall be headed by the head of the government agency and may consist of senior representatives, not below BPS-19, from other departments and such other financial, technical, procurement and legal etc. personnel.

(2) The PPP Node shall:

- (a) identify suitable projects and prioritize these within its sector or geographical area of responsibility;
- (b) recruit transaction advisors for project preparation and tendering in consultation with PPP Unit;
- (c) supervise the preparation of the feasibility study and if its outcome is positive, submit the project proposal through the PPP Unit to the Committee;
- (d) conduct a competitive tendering process, including pre-qualification and bidding to select the private party;
- (e) carry out bid evaluation and submit recommendations on contract award to the Committee;
- (f) negotiate and sign the PPP agreement after clearance from the Committee;

- (g) monitor and evaluate implementation and operation of the project;
- (h) if needed, seek support and advice from the PPP Unit and Risk Management Unit for the performance of any of the above functions;
- (i) prepare monthly and annual progress reports (PC-III A and PC-III B) on the Agency's projects to be submitted to the Committee through PPP Unit;
- (j) implement the recommendations and guidelines approved by the Committee;
- (k) table such information as shall be required by the PPP Unit, Risk Management Unit or the Committee; *and*
- (l) perform such other functions as may be assigned to it by the Committee.

CHAPTER 3

Public Private Partnership Process.

- Project Inception.
14. (1) No Government Agency shall select, prioritize, structure, procure and implement a project unless it complies with the following conditions:
- (a) subject to the policy of the Government concerning the infrastructure or related services projects falling within its several sectoral priorities, the Government Agency shall identify a potential project and intimate its initial decision to PPP Unit for undertaking the project under the Public Private Partnership modality; *and*
 - (b) conduct or cause to conduct a preliminary economic cost-benefit analysis of the project through its PPP Node from its own available resources, which may include public sector comparator. The analysis, *inter-alia*, may include:

- (i) The strategic objectives of implementing the project as a public private partnership;
- (ii) The projected cost of the project;
- (iii) The benefit of the project to the government agency;
- (iv) Value for Money to the Government and the users of the Project throughout the lifecycle of the Project;
- (v) The rationale for the project;
- (vi) The projected policy outcomes of the project; *and*
- (vii) How the project is to be managed by government agency.

(2) Where a government agency confirms from the preliminary economic cost-benefit analysis under sub-section (1) that the project is suitable for implementation as a public private partnership, the government agency shall submit a concept paper, containing preliminary economic analysis, in the form a report along with all the relevant information and data, to the PPP Unit.

(3) The PPP Unit, after due consideration and evaluation of the aforesaid report, considers that there exists a need for further studies and analysis are required for the development and implementation of the project shall give its consent to the Government Agency to further the project development and implementation under PPP modality by conducting detailed feasibility studies. Upon consent and initial approval by the PPP Unit, the PPP Unit shall:

- (a) register the public private partnership project, specifying the type of the project, the value or size of the project and any other information that is relevant to the project, *and*
- (b) recommend the concept note for approval

by the Committee.

(4) The PPP Unit shall assess the expertise available within the Government Agency for the purposes of the PPP project. In case the Government Agency lacks necessary expertise, the PPP Unit shall point out categories of experts, advisers or consultants required by the Government Agency for further development of the project in accordance with the provisions of this Act.

(5) In case the Committee approves the recommendations of the PPP Unit, the Government Agency shall, within the PPP Node, designate a project team headed by a project officer for the entire duration of the PPP project.

Feasibility
Assessment.

15. (1) After the initial screening of a PPP project by the PPP Unit, the Government Agency shall, for the purposes of a PPP project, undertake the following steps for further development of the PPP project:

- (a) Preparation of feasibility assessment; Upon initial screening by the PPP Unit, Risk Management Unit and the Committee, the PPP project is considered as a viable option, the Government Agency shall undertake or cause to undertake the pre-feasibility or feasibility study, as the case may be, for in-depth analysis for determining that aforesaid PPP project is financially and economically feasible capable of providing value for money to the Government and users of a PPP project; *and*
- (b) The feasibility study, *inter-alia*, shall:
 - (i) identify and define the activity which the Government of Balochistan intends to outsource to a private party as public private partnership;
 - (ii) project the impact of performing the function by private party, on the

staff, assets, liabilities and revenues of the government agency;

- (iii) assess the need of the government agency in relation its functions including the options available to the government agency to satisfy the needs, and the advantages and disadvantages of each of the options identified;
- (iv) demonstrate comparative advantage in terms of strategic and operational benefits for implementation under a public private partnership agreement; *and*
- (v) describe in specific terms:
 - (a) indicate any envisaged future contingent liability;
 - (b) the nature of the functions of the government agency, the specific functions to be performed by the private party under the project, and the expected inputs and outputs of the project;
 - (c) where the project involves the transfer of the performance of a function of the government agency to the private party, the nature of the functions to be transferred;
 - (d) the extent to which the function in paragraph (b) (ii) may be legally and effectively performed by a

- private party;
- (e) the most appropriate type of public private partnership which the government agency should use to implement the project; *and*
- (f) where the project involves the use of property of the Government Agency or of Government of Balochistan, a description of property, the current use, if any, of the property and a description of the type of use that the private party may legally subject the property;
- (vi) demonstrate that the project will:
 - (a) be affordable to the government agency;
 - (b) transfer appropriate financial, technical and operational risk involved to the private party; *and*
 - (c) provide value for the money for the government agency;
- (vii) explains the capacity of the government agency to effectively enforce the agreement, including the ability to monitor the project; *and*
- (viii) assess the capacity, resources and ability of the private party to implement the project.

(2) The assessment under clause (b) of subsection (1) shall indicate the comparative projections of:

- (a) the full costs to the Government for the activity if that activity is not outsourced through public private partnership agreement; *and*
- (b) the full costs to the Government for the activity if that activity is outsourced through a public private partnership agreement.

(3) The Government Agency shall submit a report of the feasibility study to the Committee through the PPP Unit for approval together with the documents to be used to procure the project, the evaluation criteria to be used and the draft PPP Agreement. The PPP Unit shall have the feasibility study reviewed by the Risk Management Unit.

(4) The Government Agency shall not proceed with or initiate a procurement process unless the Committee has approved the feasibility study of the PPP Project. While considering the feasibility study, the Committee suggests amendments or revisions in the feasibility study, inter-alia, concerning assumptions as to the affordability, value for money, financial model and substantial technical, operational and financial risk transfer. The Government Agency after due incorporations of the aforesaid shall re-submit the feasibility study to PPP Unit for approval of the Committee.

(5) The Government Agency, as far as possible, shall complete the whole process commencing from initial screening up to the approval of feasibility study within a period of six months. In exceptional circumstances concerning the complexity of a PPP Project, the PPP Unit may extend the time to a reasonable timeframe required for the completion of the feasibility study.

Procurement of
public private
partnership.

16. (1) Within a time frame specified by the Committee in consultation with the PPP Unit, the Government Agency shall prepare all the bidding documents along with the draft of the PPP Agreement. Subject to the approval of the PPP Unit, in accordance with the directions of the Committee, if any, the

Government Agency shall advertise the bidding documents in English and Urdu national newspapers of repute and in English language only in International newspapers in case the Government Agency opts for an International competition. Advertisement and the bidding shall also be uploaded on the website of BPPRA in case of both national and international competitive bidding.

(2) As far as applicable to the extent provided in BPPRA Act or rules framed there under with respect to fairness, competition and affordability, the Government Agency, while preparing and advertising the bidding documents, including but not limited to, setting the evaluation criteria, procurement mode and process and any of the terms and conditions of the bidding documents, shall adhere to such principles during all stages of the procurement process.

(3) Without prejudice to the generality of the foregoing, the Committee in consultation with the PPP Unit may prescribe specific rules and regulations for the procurement of PPP projects in accordance with the international best practices. During the intervening period, all the rules and regulations issued by Balochistan Public Procurement Regulatory Authority for the procurement of projects shall be applicable to the PPP projects.

Unsolicited
Proposals.

17. (1) The PPP Unit in consultation with and under the supervision of the Committee shall prescribe special guidelines for unsolicited proposals, which shall take care of, *inter-alia*, the following:

- (a) areas, sectors and projects for which proposals may be taken as unsolicited proposals;
- (b) application process;
- (c) treatment of unsolicited proposals;
- (d) approval process; *and*
- (e) prioritization and implementation strategy.

(2) Unless decided otherwise by the Government, there shall be a presumption against the grant of subsidy,

financial or fiscal support for unsolicited proposals.

(3) Subject to the guidelines prescribed by the PPP Unit under sub-section (1), the Committee may:

- (a) accord its preliminary acceptance of the unsolicited proposal in principle and while doing so may propose further steps or prescribe furnishing of more information including further market or economic analysis required for proper development of the project; *or*
- (b) subject to the overall approval of the PPP Board accept the unsolicited proposal in totality keeping in view of the best interests of the public; *or*
- (c) reject the unsolicited proposal; *or*
- (d) postpone the unsolicited proposal for procurement;

(4) The PPP Unit shall, as far as possible and in accordance with the guidelines prescribed under sub-section 1, protect, preserve and wherever required secure the interests of the proponent of the unsolicited proposal.

(5) The unsolicited proposal shall pass through all stages of project preparation, appraisal and approval and subsequently implementation as per rules and regulations. Competitive procurement procedure shall be followed, however, the project proponent will be given five percent additional weighting on the combined secured score in evaluation.

Preparation and
negotiation of
Public-Private
Partnership
Agreement.

18. (1) The draft Public-Private Partnership Agreement shall form a part of bidding documents.

(2) The draft Public-Private Partnership Agreement shall clearly define the legal relationship between the Government 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:

- (a) Type of project and applicable PPP mode;
- (b) Term of the Public-Private Partnership Agreement;
- (c) Scope of work and services to be provided under the project;
- (d) Main technical specifications and performance standards;
- (e) Environmental (including heritage resource protection, if applicable) and safety requirements;
- (f) Implementation milestones and completion date of the project;
- (g) Financial model (in soft form also);
- (h) Cost recovery scheme through user fees, including a mechanism for periodical adjustment;
- (i) Performance bonds for construction works and operation;
- (j) Minimum insurance coverage and identification of risks which may be uninsurable;
- (k) Performance monitoring regime encompassing, *inter alia*, acceptance / quality tests and procedures;
- (l) Risk designing and sharing between the parties;
- (m) Penalties and liquidated damages provisions for delays;
- (n) Type and amount of Government support;
- (o) Hand back requirements at the end of the

term of the Public-Private Partnership Agreement, if any;

- (p) Warranty period and procedures after the hand back;
- (q) Requirements and procedure for variations of the Public-Private Partnership Agreement;
- (r) Grounds for and effects of termination of the Public-Private Partnership Agreement, including force majeure;
- (s) Compensation formula for early termination scenarios;
- (t) Procedures and venue for dispute resolution;
- (u) Financial reporting by the private party;
- (v) Supervision mechanism of the Agency;
and
- (w) Governing law and jurisdiction.

(4) The Government 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 Government Agency and the private party within six months after the contract award. The Government Agency shall not execute the PPP Agreement unless the final negotiated draft is duly approved by the Committee.

(6) The agreement shall only be amended or varied with approval of the Committee.

(7) The Committee shall not approve an amendment, or variation to the project agreement under sub section (6) unless the agreement, if so amended or varied, ensures that:

- (a) The project continues to provide value for

money;

- (b) The project continues to be affordable, where such amendment, variation or waiver has a financial implication;
- (c) The transfer of appropriate risks to the private party continues;
- (d) The continued provision of efficient and effective services to the public continues;
and
- (e) The protection and preservation of the environment continues.

Project
implementation
and operation.

19. (1) The PPP Agreement shall be executed by the Government Agency with the special purpose vehicle company established by the private party in Pakistan keeping in line with the principles of project finance. The private party sponsors shall not be allowed to change their respective shareholding interests in the special purpose vehicle during the debt service period.

(2) Development, implementation, construction, commissioning, rehabilitation, operations and management of the PPP project or any other activity taken by the private party thereunder shall be in accordance with the terms and conditions of the PPP Agreement.

(3) The private party shall give all performance bonds and guarantees in accordance with the terms and conditions of the bidding documents to secure its obligations under the PPP Agreement in respect of the PPP project and additionally shall procure at its own cost all types of insurances for works and project assets during the subsistence of PPP Agreement.

Government
Support.

20. (1) Subject to the extent, limitations and conditions attached thereto of the Government support approved by the PPP Board, the Government Agency shall indicate the Government support for a project in the bidding documents as well as in the PPP agreement.

(2) The Government support may take the following

forms:

- (a) Administrative support to the private party in obtaining licenses and other statutory and non-statutory clearances from the Government, any public sector organization or a Government Agency for purposes of the project on such terms and conditions as may be prescribed: such support shall be available for all types of projects;
- (b) Provision of utility connections for power, gas, telephone and water etc. at project site; clearance of right of way or acquisition of land necessary for the project; and rehabilitation and resettlement necessitated because of the execution of the project: such support shall be available for all types of projects; *and*
- (c) Government equity, in the form of land or infrastructure facilities owned by the Government or a Government Agency, without transferring the title there to the private party or the special purpose vehicle company, to be calculated with reference to the current market value of land or infrastructure or future value of discounted cash flows accruing or arising from asset to be offered, with reference to the project cost and its capital structure or debt equity ratio: such support on first come first served basis shall be available for the project where the bidding competition is not instantly expected. However, the private party shall not be entitled to create any mortgage, charge or lien over such land or infrastructure to secure its repayment obligations of any loan obtained or to be

obtained by the private party for the PPP project.

(3) PPP projects may be eligible for provincial tax exemptions and reduction of or exemption from various appropriation charges as prescribed on case-to-case basis. However, such exemptions shall not be extended beyond the period of debt service period of the private party of the commercial debt component of its financing requirements for the implementation of the PPP project.

Matters incidental to fixation of user charges etc.

21. (1) The Government Agency shall set the user levies at levels that ensure financial viability of the project by fully covering the capital, operation and maintenance costs plus a reasonable rate of return to the private party or the Government Agency or both.

(2) Notwithstanding anything contained in any other law, the private party shall have the right to receive or collect tariffs or payments in accordance with and at the rates set forth in the PPP Agreement.

(3) Unless specified in the bid documents, the Government Agency shall determine the user levies and any other applicable charges through bidding and the user levies and any other charges shall be adjusted periodically during the term of the PPP Agreement in accordance with the terms and conditions of the PPP Agreement.

(4) If the Government Agency keeps the user levies at lower levels to make the services provided by the PPP project affordable to the end users, the Government Agency shall compensate the private party for the difference by making appropriate payments as agreed in the PPP Agreement through VGF or alternatively may extend the duration of the PPP Agreement to such an extent that private party stands fully compensated.

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

CHAPTER 4

- Viability Gap Fund. 22. (1) At any time after the commencement of this Act, the Government shall establish a Viability Gap Fund to support PPP projects and finance the gap between project revenues constrained by affordability considerations and revenues needed to generate a fair return on investment for the PPP projects.
- (2) The VGF shall be established by an amount specified by the PPP Board as prescribed.
- (3) The Balochistan VGF shall be a revolving fund replenished by the Government from time to time or as may be prescribed. The other sources of the fund may comprise of the following:
- (a) grants from the Federal Government;
 - (b) grants and donations from the international donor agencies;
 - (c) income from the investments; *and*
 - (d) any other lawful sources approved by the Government.
- (4) VGF shall be used for PPP projects that have a strong economic and social justification but fall short of financial viability because of affordability constraints imposed on tariffs. VGF mechanism will be elaborated in VGF Guidelines by the Risk Management Unit.
- (5) The Government shall conduct regular audit of the VGF in accordance with the requirements of law for the time being in force.
- Project Development Facility (PDF). 23. (1) The Government shall establish a revolving fund, to be called Project Development Facility-PDF, which is available to pay for consulting services required for the preparation and execution of Public Private Partnership projects. The cost incurred on the feasibility or the project preparation may be funded from the PDF and will be recovered from the winning bidder of the PPP intervention(s).
- (2) The PDF will be administered by PPP Unit and

shall be utilized by the PPP Nodes for project development.

(3) PPP Unit shall prepare guidelines for utilization of the PDF.

Infrastructure
Project
Financing
Facility (IPFF).

24. The Government may establish, at least after eight years of the promulgation of this Act, Infrastructure Project Financing Facility, a non-banking financial institution, if financial markets' position so demands. The Committee will recommend to the Government, with justification, the establishment of IPFF when pressing need emerges. The purpose of establishing such institution will be to provide financial assistance in shape of loan to the private partners. The IPFF will be established with the financial assistance of multilateral and bilateral development partners. The IPFF will make equity contributions in the local currency to PPP projects or provide residual for 15-20-year funding at commercial rates through fixed-rate rupee-based loans if the financing needs of the private sponsors cannot be fully met by the market. The IPFF would set minimum quality standards for project proposals. Its day-to-day operations would be independent from the Government, and reporting to the Government would be made through its Board of Directors.

CHAPTER 5 MISCELLANEOUS

Power to prescribe
standards.

25. The Government may:

- (a) 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;
- (b) 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;
- (c) link entitlement to the Viability Gap Fund, subsidy, annuity and other compensation and

benefits with certain performance standards as it may deem fit;

- (d) issue and enforce accounting guidelines for proper accounting of the projects; *and*
- (d) prescribe any other standard for regulating the Public-Private Partnership projects.

Indemnity.

26. (1) The private party or its sub-contractor shall, subject to sub-section (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 Government 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:

- (a) any of the matter referred to in clause (a) to (d) of sub section (1) above which arises as a direct result of the private party or its sub-contractor acting on the instruction of

the Government Agency;

(b) any injury, loss, damage, cost and expense caused by the negligence or wilful default of the Government Agency, its employees, agents or contractors, or a breach by the Government Agency of its obligations under the Public-Private Partnership Agreement, *and*;

(c) any claims made under the Act in respect of the Government's property.

No compensation for risks not covered.

27. The Provincial Government or the Government Agency shall not be held liable or entertain any claim of the private party for a risk, which is not specified in the public private partnership agreement.

Termination of PPP agreement.

28. A party to the PPP Agreement may terminate the agreement in the following cases:

(a) If the Government Agency fails to comply with any major obligation in the PPP agreement, and such failure is not remediable or, if remediable, remains un-remedied for an unreasonable period of time, the private party may terminate the agreement with written notice to the Government agency as provided in the PPP agreement and, in the event of such termination, the project shall be transferred to the Government Agency and the private party shall be entitled to compensation by the Government Agency as provided in the PPP Agreement; *and*

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

as provided in the PPP agreement and, in such a case the Government Agency may either take over the project and assume all related liabilities or allow lenders of the private party to exercise their rights and interests as specified in the (loan) agreements relating to the project.

Public disclosure. 29. (1) A PPP Agreement or any other ancillary or additional agreement shall be a public document.

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

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

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

Prescribing and enforcing standards.

30. (1) The Government may:

(a) prescribe and enforce performance standards for a project including standards or performance of the private party with regard to the services to be rendered by it to the end users;

(b) prescribe quality standards including standards of materials, equipment and other resources or processes relevant to infrastructure projects including planning criteria, construction practices and standards of such facilities operating standards and maintenance schedules for regulating the working of the private party to ensure efficiency and adherence to the prescribed quality standards;

(c) prescribe the mode of output-based

contracting, performance-based payment system and output-based procurement procedures;

- (d) establish a uniform system of accounts to be followed by the private party;
- (e) take steps to promote effective competition and efficiency in projects using the public private partnership approach;
- (f) prescribe the mode of conducting public hearing and consultation with stakeholders;
and
- (g) prescribe any other standards for regulating the infrastructure development through public private partnership.

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| Recovery of costs, dues and fees. | 31. (1) The Government Agency may recover the sum due from the private party as ascertained through the dispute resolution procedure under this Act as arrears of land revenue under the Balochistan Land Revenue Act, 1967 ¹ . (2) The Government Agency shall designate an officer as Collector to exercise the powers of the Collector under the Balochistan Land Revenue Act, 1967 ¹ for recovery of arrears under this Act. |
| Protection of action taken in good faith. | 32. No suit, claim or other legal proceedings shall lie against the Committee, a Government Agency or any member, officer, servant, adviser or a representative of the Committee in respect of anything done or intended to be done in good faith under this Act or under any rules or regulation made under the Act. |
| Power to make rules. | 33. The Government may, by notification in official Gazette, make rules for carrying out the purposes of this Act. |
| Power to frame regulations. | 34. Subject to this Act and the rules, the Committee may, with the prior approval of the Government and by notification in the official Gazette, frame regulations to give effect to the provisions of this Act. |
| Applicability to | 35. (1) The provisions of this Act shall apply to a project |

¹ i.e. West Pakistan Act XVII of 1967; as adopted by Balochistan Laws (Adaptation) Order, 1970; and amended by Balochistan Acts from time to time.

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| Government Agencies. | of any Government Agency if the estimated total cost of such project exceeds fifty million rupees. (2) A Government Agency may request the Committee to process a project with an estimated total cost of twenty million rupees or less, and the Committee shall proceed with the project in the manner as if it falls within its jurisdiction. |
| Power to amend a Schedule. | 36. To meet the development objectives, the Government may, by notification in the official Gazette, amend a Schedule. |
| Power to frame guidelines. | 37. Subject to this Act, the rules made hereunder, the Committee may approve procedures and guidelines to make operations under this Act, efficient, transparent and effective. |
| Overriding provision. | 38. Notwithstanding anything contained in any other law, the provisions in this Act shall have effect to the extent of the project under this Act. |
| Removal of difficulties. | 39. If any difficulty arises in giving effect to any provision of this Act, the Government may, by notification in the official Gazette, make such provisions as may appear to it to be necessary for the purpose of removing such difficulty. |

*See **Schedule** on next page*

FIRST SCHEDULE

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| Sectors. | <ol style="list-style-type: none"> 1. Transportation including mass transit projects; 2. Communication (roads and bridges) projects; 3. Water including desalination plants, water distribution systems, collection of user charges, sanitation, irrigation, drainage, sewerage and solid waste management projects; 4. Power generation projects including those based on alternate energy sources; 5. Health and education sectors projects (construction, management, operation and maintenance etc.); 6. Housing and facilities management contract(s); 7. Logistics warehousing, wholesale markets, silos, slaughter houses, agriculture and livestock farms etc; 8. Food operations; |
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9. Relief, rehabilitation and reconstruction;
10. Automation to improve public service delivery;
11. Public service delivery and management;
12. Industrial projects including industrial parks / estates and special economic zones;
13. Mining projects, excluding those which are sub-judice in any court of law; *and*
14. Tourism projects including cultural centers, entertainment facilities, sports facilities, recreational facilities and other tourism-related infrastructure, particularly with reference to development of tourism along Balochistan coastline (in context of CPEC).

SECOND SCHEDULE.

Types of PPP
Agreements
may include.

1. **Build and Transfer (BT).** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and after its completion hands it over to the Government Agency. The Government Agency reimburses the total project investment, on the basis of an agreed schedule. This arrangement may be employed in the construction of any infrastructure project, including critical facilities, which for security or strategic reasons must be operated directly by the Government Agency.
2. **Build Lease and Transfer (BLT).** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and upon its completion hands it over to the Government Agency on a lease arrangement for a fixed period, after the expiry of which ownership of the project is automatically transferred to the Government Agency.
3. **Build Operate and Transfer (BOT).** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and the operation and maintenance thereof. The private party operates the facility over a

fixed term during which it is allowed to collect from project users' appropriate tariffs, tolls, fees, rentals, or charges not exceeding those proposed in the bid or negotiated and incorporated in the PPP agreement to enable the private party to recover its investment and operation and maintenance expenses for the project. The private party transfers the facility to the Government Agency at the end of the fixed term that shall be specified in the PPP agreement. This includes a supply-and-operate situation, which is a contractual arrangement whereby the supplier of equipment and machinery for an infrastructure project operates it, providing in the process technology transfer and training of the nominated individuals of the Government Agency.

4. **Build Own and Operate (BOO).** A contractual arrangement whereby the private party is authorized to finance, construct, own, operate and maintain an infrastructure project, from which the private party is allowed to recover its investment and operation and maintenance expenses by collecting user levies from project users. The private party owns the project and may choose to assign its operation and maintenance to a project operator. The transfer of the project to the Government Agency is not envisaged in this arrangement. However, the Government Agency may terminate its obligations after the specified time period.

5. **Build Own Operate Transfer (BOOT).** A contractual arrangement similar to the BOT agreement, except that the private party owns the infrastructure project during the fixed term before its transfer to the Government Agency.

6. **Build Transfer and Operate (BTO).** A contractual arrangement whereby the Government Agency contracts out an infrastructure project to the private party to construct it on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the project is commissioned, the private party is given the right to operate the facility and collect user levies under the PPP agreement. The title of the project always vests in the Government Agency in this arrangement.

7. **Contract Add and Operate (CAO).** A contractual arrangement whereby the private party expands an existing infrastructure facility, which it leases from the Government Agency. The private party operates the expanded project and

collects user levies to recover the investment over an agreed period. There may or may not be a transfer arrangement with regard to the added facility provided by the private party.

8. **Develop Operate and Transfer (DOT).** A contractual arrangement whereby favourable conditions external to an infrastructure project, which is to be built by the private party, are integrated into the PPP agreement by giving it the right to development adjoining property and thus enjoy some of the benefits the investment creates such as higher property or rent values.

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

10. **Management Contract (MC).** A contractual arrangement whereby the Government Agency entrusts the operation and management of an infrastructure project to the private party for an agreed period on payment of specified consideration. The Government Agency may charge the user levies and collect the same either itself or entrust the collection for consideration to any person who shall pay the same to the Government Agency.

11. **Rehabilitate Operate and Transfer (ROT).** A contractual arrangement whereby an existing infrastructure facility is handed over to the private party to refurbish, operate and maintain it for a specified period, during which the private party collects user levies to recover its investment and operation and maintenance expenses. At the expiry of this period, the facility is returned to the Government Agency. The term is also used to describe the purchase of an existing facility from abroad,

importing, refurbishing, erecting and operating it.

12. **Rehabilitate Own and Operate (ROO).** A contractual arrangement whereby an existing infrastructure facility is handed over to the private party to refurbish, operate and maintain with no time limitation imposed on ownership. The private party is allowed to collect user levies to recover its investment and operation and maintenance expenses in perpetuity.

13. **Service Contract (SC).** A contractual arrangement whereby the private party undertakes to provide services to the Government Agency for a specified period with respect to an infrastructure facility. The Government Agency will pay the private party an amount according to the agreed schedule.
