

NOTIFICATION.

Dated Quetta, the 30th November, 2021.

No.PAB/Legis:V(24)/2021/7/31 The Balochistan Public Private Partnership Bill, 2021 (Bill No.24 of 2021), having been passed by the Provincial Assembly of Balochistan on 22nd November, 2021 and assented to by the Governor Balochistan, on 29th November, 2021 is hereby published as an Act of the Balochistan Provincial Assembly.

THE BALOCHISTAN PUBLIC PRIVATE PARTNERSHIP ACT, 2021

ACT No XXV of 2021.

**AN
ACT**

to create an enabling environment for private sector participation in the provision of infrastructure projects and delivery of related services in Balochistan through public private partnership projects.

Preamble.

WHEREAS it is expedient to establish a framework for facilitating and regulating the involvement of the private sector in improving the coverage, quality and affordability of infrastructure, public services and other public-interest projects; to achieve socio-economic development objectives of the Government of Balochistan; to promote cost-effective, sustainable and efficient solutions for bridging gaps in infrastructure and public service delivery; to harness private sector strengths in asset creation, maintenance and operation, and service delivery; to mobilize private sector resources for financing, construction, operations and maintenance of development projects; to encourage innovation and technological improvements in the provision of infrastructure and public services; and to incorporate principles of fairness, competition and transparency in projects executed under public private partnership mode;

It is hereby enacted as follows:

**CHAPTER I:
PRELIMINARY**

**Short title, extent,
commencement,
and application.**

1. (1) This Act may be called the Balochistan Public Private Partnership Act, 2021.
(2) It shall extend to the whole of Balochistan.
(3) It shall come into force at once.

(4) This Act does not apply to:

- (a) projects undertaken between two or more Government Agencies;
- (b) privatization or disinvestment projects which may be taken over by any private sector entity; and
- (c) mineral exploration projects where the Government is engaged on a free-carried basis.

(5) This Act shall apply to all projects in all sectors conceived, developed, approved and implemented through Public Private Partnership in Balochistan.

(6) This Act shall also apply to any other project as the PPP Board may approve, at their discretion, to undertake via PPP mode.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context; -

- (a) “**Act**” means the Balochistan Public Private Partnership Act, 2021;
- (b) “**Asset**” means an existing or newly-planned infrastructure facility, property or any other tangible or intangible resource that has a financial value and is owned by a Government Agency.
- (c) “**Bid**” means a technical and financial proposal submitted by a bidder in response to a ‘Request for Proposal’ issued by the Implementing Agency under the provisions of this Act;
- (d) “**Bidder(s)**” means an entity, including a person, groups of persons or a company or a firm or a consortium thereof, that participates in procurement processes undertaken by the Implementing Agency following the provisions of this Act;
- (e) “**Concessionaire**” means the successful Bidder that will enter into PPP Agreement with the Implementing Agency through a formal arrangement and will undertake the project;
- (f) “**Feasibility Study**” means a study undertaken to examine and analyse the technical, financial, economic, legal, social, environmental, and other aspects of a project to determine its viability and practicality;
- (g) “**Government**” means the Government of Balochistan;
- (h) “**Government Agency**” means a department, attached department *or* autonomous body (Authority) of the Government, *or* any organization *or* corporation owned *or* controlled by the Government;
- (i) “**Implementing Agency**” means the PPP Authority established under section 8 of this Act or any Government Agency having a functional Board of Directors such as an Authority or a Public Sector Company or a Corporation;

- (j) **“Lender”** means a financial institution as defined in the ‘Financial Institutions (Recovery of Finances) Act, 2001(XLVI of 2001) or an establishment providing all kinds of financial support or loan, with or without security;
- (k) **“Member”** means a Member of the Balochistan PPP Board constituted under sub-section (1) of section 3 of this Act;
- (l) **“Multilateral Financial Institution”** means a financial institution that is established by multiple member countries and is governed under international law;
- (m) **“Negotiation Committee”** means a working group created specifically for finalising negotiation of the PPP Agreement with the concessionaire under sub-section (4) of section 14;
- (n) **“P&D Department”** means the Planning and Development Department of the Government;
- (o) **“Prescribed”** means prescribed by the rules or regulations or guidelines made under this Act;
- (p) **“PPP Board”** means the Public Private Partnership Board constituted under section 3 of this Act;
- (q) **“PPP Unit”** means the Public Private Partnership Unit established in the Finance Department of the Government under section 6 of this Act;
- (r) **“Project”** means a project implemented on PPP mode;
- (s) **“Province”** means the Balochistan Province;
- (t) **“Public Private Partnership”** or **“(PPP)”** means a commercial transaction between the Implementing Agency and a Concessionaire in terms of which the Concessionaire:
- (i) undertakes to perform a public function, provides a public service, or develop a public property on behalf of a Government Agency; and
 - (ii) assumes pre-determined financial, technical, operational, environmental or any other associated risks in connection with the performance of a public function, provision of public service, or responsible use of public property; or
 - (iii) receives a benefit for performing a public function, provision of public service, or responsible use of public property either by way of:

- (a) Consideration to be paid by the Implementing Agency from budget or revenue; or
- (b) Charges or fees to be collected by the Concessionaire from users or customers of a service provided to them; or
- (c) A combination of (a) and (b);
- (u) **"Public Private Partnership Agreements"** are written agreements between the Implementing Agency and the Concessionaire for implementation of a PPP project and any other agreement subsidiary or incidental to it;
- (v) **"Public Private Partnership Authority"** means the Balochistan Public Private Partnership Authority established under section 8 of this Act;
- (w) **"Request for Proposal"** means a publicly advertised tender inviting proposals for a PPP project prepared as per the provisions of this Act and the rules and regulations made thereunder;
- (x) **"Rules"** means the rules made under this Act;
- (y) **"Unsolicited Proposal"** means a proposal to undertake a PPP Project submitted by a private party on its own initiative rather than in response to a request for proposal from the Implementing Agency;

CHAPTER 2 PPP INSTITUTIONAL ARRANGEMENTS

Establishment of the Public Private Partnership Board.

3. (1) A "Balochistan Public Private Partnership Board", referred to as the "PPP Board" or the "Board", shall be constituted to promote, approve and supervise PPP projects in the Province. The Board shall comprise the following members:

(i)	Minister, Finance to the Government	Chairperson
(ii)	Minister, Planning & Development to the Government	Co-Chairperson
(iii)	Senior Member, Board of Revenue (SMBR) to the Government	Member
(iv)	Additional Chief Secretary (Dev.) to the Government	Member
(v)	Secretary Finance to the Government	Member
(vi)	Secretary Law and Parliamentary Affairs to the Government	Member

(vii)	CEO, Balochistan Board of Investment & Trade	Member
(viii)	Two members from the private sector to be nominated by the Chairperson on the recommendation of the MD, PPP Unit	Member
(ix)	Representative of Chambers of Commerce & Industry to be nominated by the Chairperson on the recommendation of the Secretary Industries as per provisions of sub-section (4) of section 3 of this Act	Member
(x)	CEO, Public Private Partnership Authority	Member
(xi)	Managing Director, PPP Unit	Member / Secretary

(2) In case of projects where the Implementing Agency is a Government Agency with a functional board other than the PPP Authority, then the head of such Implementing Agency shall be a special invitee of the Board to answer any questions of the Board members concerning the submitted PPP project.

(3) Depending on the territorial domain of the project, a representative from the relevant Chamber of Commerce may be invited as a special invitee of the Board.

(4) The representative of the Chamber of Commerce & Industry shall be appointed for two years. Nomination for this position shall be made based on rotation among the top three Chambers of Commerce & Industry in the Province. No Chamber of Commerce & Industry shall hold the position for two consecutive terms.

(5) Sector Specialist(s), to be nominated by the Chairperson on the recommendation of the MD, PPP Unit, shall be a special invitee(s) of the Board. They shall be nominated on an honorary and project-to-project basis for the project duration, considering the nature or type of projects.

(6) The private sector members shall have expertise in finance, law, engineering, business, or any other relevant field and shall be appointed for two years and may be eligible for re-appointment for two terms only. Members of the private sector shall possess at least sixteen years of education in the relevant field and must have good integrity and repute. The Members of the Private Sector shall be nominated after careful consideration of any actual or potential conflict of interest.

(7) If a conflict of interest arises with respect to a public and/or private member, such member(s) shall, to the extent of that project, not be eligible to participate in any decisions made by the Board. If the conflict of interest is of such nature or degree that it cannot be remedied, such member(s) may be removed. The public

member of the PPP Board shall cease to hold membership only to the extent of the duration of the project, which is the source of the conflict of interest.

(8) The Chairperson may order the removal of 'the member from the private sector' if a case of misconduct is established.

(9) 'The member from the private sector' may tender resignation to the Chairperson of the PPP Board by mentioning valid reasons for his resignation.

Meetings of the PPP Board.

4. (1) All meetings of the PPP Board shall be convened by the Secretary on the instructions of the Chairperson, on such a day and time as may be determined by the Chairperson. In cases where approval of the PPP Board is required for processing a PPP project, the Secretary of the PPP Board may initiate a request for convening a meeting. The Chairperson or Co-Chairperson shall be bound to convene a meeting of the Board within 30 days after such request has been received.

(2) The meetings of the PPP Board shall be presided over by the Chairperson. In absence of the Chairperson, the Co-Chairperson shall preside over the meetings.

(3) Presence of seven (7) members shall constitute a quorum with the condition that at least one (1) of the private members is in attendance.

(4) All decisions of the PPP Board 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 the member presiding the meeting shall have a casting vote.

(5) All orders, decisions, and recommendations of the PPP Board shall be recorded in writing and duly signed by the Secretary of the PPP Board, subject to the approval of the Chairperson or Co-Chairperson, as the case may be.

Functions of the Public Private Partnership Board.

5. (1) The PPP Board shall:

- (a) formulate and approve policies, bills, rules, regulations, and guidelines related to public private partnerships for the Government;
- (b) supervise and coordinate the implementation of the policies, Act, rules, regulations, and guidelines;
- (c) periodically review the PPP framework in the Province including legal, regulatory, institutional, and financial matters;
- (d) review and approve a medium-term and long-term 'Public Private Partnership Investment Plan' submitted by the PPP Authority through the PPP Unit;
- (e) ensure that PPP projects are consistent with the provisions of this Act and aligned with development priorities of the Government as specified in sectoral plans, public development plans, provincial investment policies, and/or PPP investment plans;

- (f) approve, reject or send back for reconsideration the PPP project documents submitted by the Implementing Agency via the PPP Unit;
- (g) ensure that the PPP projects approved by the Board shall not be pursued by a Government Agency by availing public funds unless otherwise allowed in writing by the Board;
- (h) approve, reject or send back for reconsideration the Implementing Agency's recommendations related to user fee/levy or Government support or VGF funding or any contingent support or availability based payments for a PPP Project, whichever apply to a particular PPP project;
- (i) establish and notify an 'Executive Committee' to supervise the administrative functions of the PPP Authority. The 'Executive Committee' shall, among the others, perform the following functions:
 - i. review and approve 'Project Development Facility' funding requests for the PPP Authority up to a maximum limit of Pakistani Rupees 50.0 million, and in case a PDF funding request exceeds this limit, the 'Executive Committee' shall seek approval of the PPP Board;
 - ii. approve annual budget of the PPP Authority;
 - iii. monitor budgets and accounts of the PPP Authority;
 - iv. review and approve requests submitted by the CEO, PPP Authority for hiring of new professional, supporting, and technical staff;
 - v. approve the perks, privileges, terms and conditions of the staff of PPP Authority;
 - vi. approve the appointment of transactions advisors and consultants for the PPP Authority;
 - vii. perform such other functions as maybe assigned by the PPP Board.
- (j) approve PDF funding requests of the PPP Authority exceeding the limit of Pakistani Rupees 50.0 million;
- (k) during negotiation of the PPP Agreement, in case of changes to the earlier approved standard terms of the PPP Agreements, the Board may approve, reject or send back for reconsideration the recommendations submitted by the Implementing Agency via the PPP Unit;
- (l) be the final deciding authority in case a disagreement or conflict arises between the PPP Unit and the Implementing Agency on any aspect of PPP projects;
- (m) provide general directions, oversight and supervision on the affairs and administration of the PPP Authority and PPP Unit;

- (n) supervise the performance and progress of the PPP Authority and the PPP Unit. If required, the Board may constitute Committees / Working Groups to supervise the progress of the PPP Authority and the PPP Unit;
- (o) The Board may constitute such number of working groups comprising of its members or other persons, as required, and take all other steps necessary for giving effect to the provisions of this Act.

Establishment of the Balochistan Public Private Partnership Unit.

6. (1) A Balochistan Public Private Partnership Unit, hereinafter referred to as the PPP Unit, shall be established in the Finance Department of Government of Balochistan to act as the Secretariat of the PPP Board and perform the functions of project appraisal and risk assessment for PPP projects.

(2) All the functions and administration of the PPP Unit shall vest with the Managing Director, PPP Unit. The Managing Director shall report to the Secretary, Finance Department, and Government of Balochistan.

(3) Managing Director, PPP Unit shall be recruited on a competitive basis by the following Selection Committee:

(a)	Chief Secretary to the Government.	Chair
(b)	Additional Chief Secretary(Dev;) to the Government	Member
(c)	Secretary Finance to the Government	Member
(d)	Secretary S&GAD to the Government	Member/Secretary
(e)	Any other member co-opted by the Chair, preferably a PPP Specialist	Member

(4) The PPP Unit will consist of a team of qualified professionals including financial, technical, legal, risk, and other professionals/advisors/specialists and analysts along with the ancillary staff to carry out the functions of the PPP Unit efficiently. This team shall be hired through the following committee:

(a)	Secretary Finance to the Government	Chair
(b)	Secretary S&GAD to the Government	Member
(c)	Managing Director, PPP Unit	Member/Secretary
(d)	Any other member co-opted by the Chair, preferably a PPP Specialist	Member

Functions of the Public Private Partnership Unit.

7. (1) The functions of the PPP Unit are to:
- (a) serve as the secretariat, administrative and technical arm of the PPP Board;
- (b) assist the Board in preparation and implementation of policies, rules, regulations, and guidelines related to the PPP framework in the Province;

- (c) develop comprehensive risk management guidelines for approval by the Board;
- (d) review medium-term and long-term 'Public Private Partnership Investment Plan' submitted by the PPP Authority and submit to the PPP Board for approval;
- (e) appraise PPP project documents submitted by the PPP Authority and recommend the projects for consideration by the Board as required under Chapter 3 of this Act;
- (f) appraise PPP projects submitted by the Government Agencies with functional boards and recommend the projects for consideration by the Board;
- (g) provide support and advice to the Implementing Agency with regard to risk management in a project throughout the public private partnership process;
- (h) For submitted PPP projects, examine and assess whether requests for Government support including VGF financing and the proposed risk sharing arrangements are consistent with the Act, rules and regulations and are fiscally sustainable;
- (i) risk assessment covering fiscal risks, project risks and all such related risks associated with the PPP project;
- (j) review and assess the type and amount of Government support that may be made available for a PPP project;
- (k) while performing risk management function, facilitate the PPP Board to process cases for consideration and subsequent approval of all kinds of the Government Support;
- (l) recommend and seek approval of the PPP Board for inclusion of approved Government Support/donor grant in the budget of the Province;
- (m) make recommendations for making annuity payments as referred in clause (h) in subsection (1) of section 17 of this Act, to the concessionaire of a project before placing the same in-front of the Board for decision;
- (n) subject to the approval by the Board and signing of the PPP Agreement for a project, the PPP Unit shall work out the annual budget requirements for annuity payments referred in clause (l) above for inclusion in the annual budget of the Province;

- (o) monitor direct and contingent liabilities of the Government incurred through the PPP projects;
- (p) conduct research and gap analysis to ensure continuous improvement in the implementation of public private partnerships;
- (q) publish/submit bi-annual progress reports after approval from the Board and share information on the media; and
- (r) carry out such other functions as may have conferred on it by the Board under this Act;

Establishment of the Balochistan Public Private Partnership Authority.

8. (1) A Balochistan Public Private Partnership Authority, hereinafter referred to as the 'PPP Authority' shall be established in the Planning & Development Department of the Government of Balochistan.

(2) All the functions of the PPP Authority including administrative functions, shall vest with the Chief Executive Officer, PPP Authority who shall exercise such powers and perform such functions diligently.

(3) The CEO, PPP Authority shall be recruited on a competitive basis by the Selection Committee as prescribed in section 6(3).

(4) The PPP Authority shall consist of a team of qualified professionals including financial, technical, legal, and other professionals/advisors/specialists and support staff, hired from the private sector, to carry out the functions of the PPP Authority efficiently. This team shall be hired through the following Committee:

(a)	Additional Chief Secretary (Dev.) to the Government	Chair
(b)	Secretary S&GAD to the Government	Member
(c)	Chief Executive Officer, PPP Authority	Member/Secretary
(d)	Any other member co-opted by the Chair, preferably a PPP Specialist	Member

Functions of the Balochistan Public Private Partnership Authority.

9. (1) The PPP Authority shall have the mandate to originate, prioritize, initiate, structure, develop, procure, negotiate, execute and implement PPP Agreements with the concessionaire for design and construction of a project, or provision of services relating to a project, or management of a project, or the provision of finance or technology for the design and construction of a project, or the operation of a project, or for any other functions for both existing and new assets, as required. The PPP Authority may also arrange or provide for any applicable payment to the concessionaire in accordance with the terms and conditions of the PPP Agreement;

- (2) The PPP Authority shall:
- (a) pro-actively participate to achieve the overall objectives of the PPP framework for the Province;
 - (b) develop a medium-term and long-term 'Public Private Partnership Investment Plan' identifying pipeline of priority projects in line with sectoral plans, public development plans, development priorities of the Government and potential opportunity in various sectors of the Province;
 - (c) Update the PPP Investment Plan annually by raising call for proposals and active engagement with the Government Agencies;
 - (d) develop capability and capacity to facilitate fund raising for PPP projects from various channels including but not limited to debt markets, bank financing, international and multilateral financial institutions and equity markets;
 - (e) undertake regular key stakeholder consultations and engagements for marketability of the PPP projects;
 - (f) develop management structures, operating guidelines, procedures and model documents for PPP projects;
 - (g) maintain and administer a Project Development Facility (PDF) fund for financing the engagement of transaction advisers and consultants for project development;
 - (h) maintain a panel of transaction advisers and consultants for PPP projects;
 - (i) Originate/Initiate PPP projects by evaluating prospective projects. For projects where outcome of a concept note is positive, prepare or cause to prepare project documents for onward assessment of the PPP Unit and eventual approval by the PPP Board;
 - (j) manage the project throughout its life cycle including but not limited to project identification, project proposal preparation including feasibility, tendering, supervising the implementation and operation of the project, and if applicable, take over the project under a PPP Agreement;
 - (k) recruit transaction advisors for project preparation and tendering;
 - (l) appoint technical, professional and other experts, advisers, agents and consultants, including but not limited to accountants, bankers, engineers, lawyers for the PPP Authority, as required;
 - (m) constitute working groups consisting of the employees of the PPP Authority, Government Agencies and such other persons as may be required for carrying out designated tasks pertaining to PPP Projects;

- (n) evaluate and propose the type and amount of Government support that may be required and made available for a project;
- (o) assess whether requests for Government support and the proposed risk sharing arrangements are consistent with the Act, the rules and the regulations, and are fiscally sustainable;
- (p) assess and recommend appropriate measures for the project pertaining to the regulatory and social impediments involved in the planning, development, financing, implementation, management, supervision and delivery of a project;
- (q) conduct a competitive tendering process for PPP project that has been approved by the PPP Board;
- (r) conduct pre-qualification process;
- (s) carry out the bidding process according to the PPP Rules to select the concessionaire and undertake bid evaluation;
- (t) Lead negotiations of PPP Agreement with the concessionaire and sign it once negotiations are over. In case there is modification with respect to terms of agreement, re-submit such re-negotiated terms for approval to the Board via PPP Unit;
- (u) Pursue implementation of the project post-execution of the PPP Agreement with the Concessionaire;
- (v) monitor and evaluate the operations of the PPP project;
- (w) prepare bi-annual progress reports of PPP projects to be submitted to the PPP Board through PPP Unit;
- (x) prepare the PPP Authority Budget and seek approval of the same from the PPP Board;
- (y) administer and manage the Funds of the PPP Authority in the manner prescribed by the PPP Board;
- (z) hire professional and supporting staff for the PPP Authority;
- (aa) Assist the Government Agencies in preparing PPP projects, if required;
- (bb) The PPP Authority shall, for every project, enter into an integrity pact with the concessionaire along with the PPP Agreement;
- (cc) provide information about and guidance on PPP interventions in the Province and to act as a resource centre;

(dd) provide such project information as required by the PPP Unit or the PPP Board; and

(ee) perform any other functions as may be assigned to it by the PPP Board.

PPP Authority Fund.

10. (1) The Finance Department shall establish a revolving fund, to be called the 'PPP Authority Fund'. The fund shall be administered and managed by the PPP Authority under the direct supervision of the Executive Committee.

(2) The Fund will be used to promote provincial PPP Authority activities as well as support its administrative and operational activities.

(3) The sources of the fund may comprise of the following:

- (a) grants from the Federal Government;
- (b) grants from the Government;
- (c) grants and donations from the international donor agencies;
- (d) revenue share and income from PPP Projects;
- (e) dividend income from PPP Projects;
- (f) Success fee from PPP Projects, as approved by the PPP Board; and
- (g) any other lawful sources approved by the Government.

(4) PPP Authority shall prepare detailed guidelines for sources, utilization and audit of the PPP Authority Fund.

CHAPTER 3 PUBLIC PRIVATE PARTNERSHIP PROCESSES

Project Initiation and Development.

11. (1) The PPP Authority is mandated to originate, initiate, structure, develop, procure, negotiate, execute and implement PPP Agreements with the concessionaire. The process for projects initiated and implemented by the PPP Authority is as follows:

- (a) The PPP Authority shall identify and conceptualize potential projects from development plans, sectoral plans, policies and strategies of the Government. A Government Agency may also identify a potential PPP Project within its sector or geographical area and recommend the same to the PPP Authority for further consideration and processing.
- (b) The PPP Authority shall review and screen identified projects and prioritize the most important projects on the basis of 'Value for Money' analysis, readiness for implementation, and expected impact on improving public access to infrastructure and services.
- (c) The PPP Authority shall prepare or cause to prepare proposals for the prioritized projects and submit the same to the Executive Committee for review and approval. Detailed guidelines regarding the structure of project proposals shall be prepared separately by the PPP Authority and approved by the PPP Board.

- (d) While the PDF funding requests up to PkR 50.0 Million will be approved by the Executive Committee, in case of projects where the PDF funding request exceeds the ceiling of PkR 50.0 Million, the PPP Authority shall seek approval of the PPP Board through the PPP Unit.
- (e) Upon approval of PDF fund request, the PPP Authority shall prepare or cause to prepare all the required project documents including but not limited to: an analysis of the feasibility and sustainability of the project including technical, financial, and socio-economic viability over the expected duration of the project, environmental impact assessment, analysis of the need for Government support, affordability of the project, determination of the appropriate PPP modality, risk analysis and risk management strategy, bidding documents, a draft PPP Agreement and any other documents that may be required to justify the placement of the case before the PPP Board. However, as a first step, a detailed financial feasibility and market study shall be prepared to ascertain the viability of the project. In case the project meets a certain threshold of financial viability, only then the remaining project documents shall be prepared. The PPP Authority shall exercise quality control and assurance of the project documents. Detailed guidelines pertaining to requirements of project documents shall be prepared by the PPP Authority and approved by the PPP Board.
- (f) In case of large and complex projects, the PPP Authority may directly hire the services of a 'Multilateral Institution' to provide transaction and financial advisory services, subject to approval of the Executive Committee or the PPP Board, as the case maybe. The procedure for such a hiring shall be explained in detail in the PPP Rules.
- (g) After the PPP Authority prepares the project documents, it shall submit the same, including all request for Government support, to the PPP Unit for review and onward submission to the PPP Board for final approval.

(2) In addition to the PPP Authority, the Government Agencies that have a functional Board of Directors may also initiate, structure, develop, and implement PPP projects, provided that such Government Agency needs access to neither the 'Project Development Facility' Funds nor the 'Viability Gap Fund'. In case of projects where access to either PDF or VGF is required, the PPP Authority shall be the Implementing Agency and the concerned Government Agency with a functional Board of Directors will have to submit such project proposal to the PPP Authority for initiation, development, negotiation and implementation.

Project Approval.

12. (1) The PPP Unit shall critically evaluate the project documents, assess project risks and analyze the fiscal impact as well as the related direct and potential contingent liabilities. The PPP Unit may make recommendations to the Implementing Agency with regard to the project proposal before submitting it to the PPP Board for approval.

(2) The PPP Unit shall, within 45 days, make appropriate recommendations to the PPP Board for approval, rejection or reconsideration of the project documents, especially the request for Government support.

(3) The Board shall review the submitted project documents on the basis of the recommendation of the PPP Unit and may, within 30 days from the receipt of such proposal, approve the proposal with or without modification, or reject it or return it to the Implementing Agency for amendment and resubmission. In case a project is returned by the PPP Board for amendment, the Implementing Agency shall take suitable action to amend the proposal and resubmit to the PPP Board for approval via the PPP Unit.

(4) The PPP Board shall recommend a PPP project to the Provincial Cabinet for final approval where:

- (a) the project cost equals or exceeds PkR 5.0 billion; or
- (b) where VGF contribution equals or exceeds PkR 500.0 million; or
- (c) where Government is providing the land and the land cost equals or exceeds PkR 500.0 million; or
- (d) where the Government is providing Provincial guarantees that equal or exceed PkR500 million; or
- (e) where contingent liabilities exceed PkR500 million.

(5) The frequency and timelines of such matters which are to be referred to the provincial cabinet will be elaborated in the PPP Rules;

(6) In case of projects where a Government Agency with a functional Board of Directors is the Implementing Agency and does not need access to PDF or VGF funds, such Government Agency may, after obtaining due approval from the Board of Directors, directly submit project documents to the PPP Unit for review and onward submission to the PPP Board for approval. Once a project proposal is approved by the PPP Board, such Government Agencies may proceed to the procurement phase and select the concessionaire through open competitive bidding following the provisions in section 13 of this Act. Furthermore, the Government Agency may enter into PPP Agreement with the concessionaire after getting due approval from its Board of Directors. In case there is a major change in the final PPP Agreement compared to the draft that was approved by the PPP Board, then the revised PPP Agreement shall be resubmitted to the PPP Board for approval via the PPP Unit.

Selection of the Concessionaire.

13. (1) After approval of the project documents, including bidding documents and a draft PPP Agreement, by the PPP Board or the Provincial Cabinet, as the case maybe, the Implementing Agency shall take all the steps for selecting the Concessionaire through open competitive bidding. The advertisement shall be made within 30 days of the approval of project documents by the Board. Subject to sub-section (3), the Implementing Agency shall not enter into direct negotiations with any party without open competitive bidding.

(2) Upon conclusion of the bidding process, the PPP Authority shall share results with the 'Executive Committee' for review and approval and announce results of the bidding and enter into formal negotiations with the Concessionaire. In case of a Government Agency with functional Board of Directors, the results may be shared with the Board of Directors for approval and formal negotiations with the Concessionaire may be commenced and concluded.

(3) Subject to approval of the PPP Board and the Cabinet and any other approvals required by the law, the requirement related to open competitive bidding set forth in sub-section (1) of this section may be waived in case a project is undertaken as a result of a direct arrangement or Agreement of the Government with a foreign state or states.

(4) Details regarding the procurement process shall be elaborated in the PPP Rules to be made under this Act.

Negotiation of
Public Private
Partnership
Agreement.

14. (1) The draft PPP Agreement which forms part of the bidding documents shall clearly define the legal relationship between the Implementing Agency and the concessionaire, their rights and responsibilities including the specific Government support for the project, if any. Once the applicable approvals have been obtained in accordance with the provisions of this Act, the Implementing Agency shall invite the successful bidder for negotiation of the PPP Agreement.

(2) The draft PPP Agreement shall include, but not limited to, the following provisions, as applicable:

- (a) Type of project;
- (b) General terms and conditions of the PPP Agreement;
- (c) Scope of work and services to be provided under the project;
- (d) Key technical parameters and specifications;
- (e) Implementation milestones and completion date of the project;
- (f) Performance standards and indicators to monitor project progress;
- (g) Environmental and safety requirements;
- (h) Type and amounts/size of Government support;
- (i) Cost recovery scheme (including a mechanism for periodic adjustment);
- (j) Performance bond for construction works and operations;
- (k) Minimum insurance coverage;
- (l) Acceptance tests and procedures;
- (m) Rights and obligations of the parties including risk sharing matrix;
- (n) Amount of availability-based payments (on annuity basis);
- (o) Transfer of assets, if any, at the conclusion of the term of PPP Agreement;
- (p) Warranty periods and procedures after transfer;
- (q) Requirements and procedures for amendments in the PPP Agreement;
- (r) Grounds for and effects of termination of PPP Agreement including force majeure;
- (s) Applicable law and dispute resolution mechanism;
- (t) Financial reporting by the concessionaire;
- (u) Supervision mechanism of the Implementing Agency.

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

(4) Contract negotiations for the conclusion of a PPP Agreement shall be completed between the Implementing Agency-led Negotiation Committee and the Concessionaire within three months after the approval for the award of the contract. In case the PPP Agreement is not concluded within three months after the contract award, the Negotiation Committee may request for extension in duration of the project conclusion, on plausible grounds, from the PPP Board. Negotiation Committee shall be led by the Implementing Agency and have a member from the PPP Unit and the other Government Departments.

(5) If post-bid changes are made in the terms and conditions of the Agreement as a consequence of negotiations, then the Implementing Agency shall resubmit the revised PPP Agreement to the PPP Unit for review and onward submission to the PPP Board for approval. In case the terms and conditions of the Agreement remain unchanged at the end of the negotiations, the Implementing Agency may sign and execute the PPP Agreement.

Project
implementation
and operation.

15. (1) The PPP Agreement shall be executed by the Implementing Agency with the Concessionaire through a formal arrangement as laid down in the PPP Agreement. This arrangement may take the form of a 'Special Purpose Vehicle' or any other arrangement as the case maybe. The Concessionaire sponsors shall be required to maintain their respective shareholding in a PPP project. The specific conditions under which a change in shareholding may be allowed shall be prescribed in the PPP Rules made under this Act.

(2) The concessionaire shall prepare a detailed design, development, implementation, and monitoring plan in accordance with the provisions and technical specifications contained in the PPP Agreement, and shall submit the same to the Implementing Agency for approval prior to the start of the work.

(3) The concessionaire shall provide all performance bonds and/or bank guarantees in accordance with the terms and conditions of the bidding documents to secure its rights and 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 term of PPP Agreement.

(4) Within 12 months of the signing of the PPP Agreement, the concessionaire shall achieve financial closure for the project or as the case may be in the PPP Agreement.

(5) The Implementing Agency shall supervise and monitor the project throughout the implementation phase and ensure conformity with the plans, specifications, performance standards and user levies agreed in the PPP Agreement. The Implementing Agency shall also assess and evaluate the actual outcomes of the project.

(6) The Implementing Agency shall submit bi-annual reports on PPP project progress and performance to the PPP Board via the PPP Unit.

16. (1) A person or an entity may submit a PPP project proposal to the PPP Authority on its own initiative. An unsolicited proposal shall be accompanied by project documents, including detailed feasibility study, environmental impact assessment, and a draft PPP Agreement. The feasibility study shall contain all the information as defined in sub-section (1)(e) of section 11 of this Act.

(2) The PPP Authority shall review and evaluate an unsolicited proposal, especially the technical, financial, legal, and environmental aspects of the proposal, and may endorse or reject the unsolicited proposal or return to the private party for amendment and resubmission. In case of endorsement of the unsolicited proposal, the PPP Authority shall submit the same to the PPP Unit for review and appraisal and onward submission to the PPP Board.

(3) Open and competitive procurement procedure shall be followed for unsolicited proposals.

(4) Detailed guidelines for dealing with unsolicited proposals, including process for appraisal and approval of such projects, shall be covered in PPP Rules.

17. (1) The Government support for the PPP project may take the following forms:

- (a) Administrative support to the concessionaire in obtaining licenses and other statutory and non-statutory clearances from the Government or the Federal Government, any public sector organisation or a Government Agency or Authority for purposes of the project on such terms and conditions as may be prescribed.
- (b) Provision of utility connections for power, gas, telephone, water, and internet facility at project site; clearance of right of way or acquisition of land necessary for the project; rehabilitation and resettlement necessitated because of the execution of the project; and any other administrative responsibility;
- (c) Asset-based support such as leasing, licensing or grant of right to use land and / or infrastructure facilities owned by the Government or the Federal Government or a Government Agency. The need for this type of support shall be determined on a case-by-case basis;
- (d) Government equity, in the form of land or infrastructure facilities owned by the Federal Government, Government or a Government Agency or Implementing Agency, value of which is to be calculated with reference to the prevalent market value of land or infrastructure or future value of discounted cash flows accruing or arising from assets being offered. In cases where the project requires creation of security over the land in favour of the lender, the same would be allowed only after due approval of the PPP Board, as prescribed in the PPP Rules;

Unsolicited
Proposals.

Government
Support.

- (e) Compensation of actions under the Government's control such as changes in the law, delay of agreed user levy adjustments, early termination of the PPP Agreement owing to no fault of the concessionaire. Such support shall be available for all projects;
 - (f) Government guarantees along with facilitation in arranging guarantees provided by the Multilateral Development Banks, Multilateral Financial Institutions and lenders for enhancing a project's overall creditworthiness. The need for this type of support shall be determined on case to case basis as part of the risk sharing analysis undertaken during project preparation and negotiations. Detailed guidelines and procedures for such arrangements shall be covered in the PPP Rules;
 - (g) Direct financial assistance through the Viability Gap Fund for projects which are economically and socially viable but may not be viable financially, subject to due approvals from the competent forums as specified in this Act. The Government shall ensure that adequate resources are annually allocated to the VGF so that annual obligations can be effectively met with regards to the projects approved for such funding by the PPP Board;
 - (h) In case of availability based payments, subject to approval by the competent forum, the Implementing Agency shall ensure payments to the concessionaire through budgetary allocations made by the Government during lifecycle of a PPP project (by means of annuity payments) to cover the approved bid cost of provision of infrastructure and/or services, fully or partially, in accordance with the approved terms and conditions of the PPP Agreement. On the recommendation of PPP Unit as referred in clause (m) of section 7 thereof, the Finance Department shall ensure provision of requisite funds for making annuity payments to the concessionaire, in the annual budget of the Province.
 - (i) 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 concessionaire (off-take risk); the need for this type of support shall be determined on a case-by-case basis.
 - (j) A PPP project 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 project
- (2) Government support for a project shall be indicated clearly in the bidding documents as well as in the draft PPP Agreement.

CHAPTER 4 FINANCING

Project
Financing.

18. (1) Financing of a PPP project may be in such amounts and upon such terms and conditions as may be determined by the parties to the PPP Agreement. The concessionaire or the implementing Agency may utilize any financial resources which may be available to them, including but not limited to:

- (a) Debt financing from commercial banks;
- (b) Financing through capital markets;
- (c) Equity funds;
- (d) Development Financial Institutions;
- (e) Bilateral and Multilateral Development Banks and agencies;
- (f) Sovereign wealth funds;
- (g) Financing by way of Grants available.

(3) The concessionaire or the Implementing Agency, as the case may be, with prior approval of the competent forum, and as mutually agreed upon in the PPP Agreement, may secure financing with a pledge or assignment of, security interest in, or lien on, any or all of its property, including all of its property interests in the facility.

Viability Gap
Fund.

19. (1) At any time after the commencement of this Act, the Finance Department shall establish a Viability Gap Fund to support PPP projects, which shall be administered by the PPP Unit.

(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 international donor agencies;
- (c) grants from Multilateral Institutions;
- (d) income from investments; and
- (e) 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. VGF shall not be used for joint venture projects that are purely commercial in nature and have limited socio-economic benefits. Detailed guidelines and procedures for processing VGF funds shall be elaborated in the VGF guidelines to be prepared by the PPP Unit and approved by the PPP Board.

(5) The Finance Department shall conduct regular audit of the VGF in accordance with the requirements of law for the time being in force.

Project
Development

20. (1) The Finance Department shall establish a revolving fund, to be called Project Development Facility, which will be available to pay for consulting

services / transaction advisory services required for the preparation of project documents and execution of PPP projects. The cost incurred on the preparation of project documents may be funded from PDF and shall be recovered from the Concessionaire.

(2) The PPP Authority will administer PDF under the direct supervision of the Executive Committee.

(3) The PPP Authority shall prepare guidelines for utilization of PDF and submit to the PPP Board for approval.

**Infrastructure
Project Financing
Facility (IPFF).**

21. (1) The Finance Department with the approval of the Government may establish an 'Infrastructure Project Financing Facility', a non-banking financial institution, if financial markets' position so demands. The PPP Board will recommend to the Government, with justification, for establishing the IPFF. The purpose of establishing such an institution will be to provide financial assistance in shape of loan to the Concessionaire. 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 Finance Department would be made through its Board of Directors.

**Setting of User
Levies.**

22. (1) The Implementing Agency may set the user levies at levels that ensure financial viability of the project by fully covering the capital, operational and maintenance costs plus a reasonable rate of return to the concessionaire or the Implementing Agency or both. Notwithstanding the foregoing, if the Implementing Agency elects to maintain the user fees at levels below those that would ensure financial viability of the PPP project as described herein, then it shall compensate the concessionaire for the difference through VGF.

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

(3) Unless specified otherwise in the bidding documents, the Implementing Agency shall adjust user levies periodically during the term of the PPP Agreement in accordance with the terms and conditions of the PPP Agreement.

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

CHAPTER 5 MISCELLANEOUS

23. (1) A complaint redressal mechanism will be developed to enable the Bidders and the Concessionaire to raise any concerns or complaints pertaining to the public private partnership process or projects. The constitution of the complaint redressal body and the procedure to be followed for such complaint redressal will be prescribed through guidelines by the PPP Board.

24. (1) If a dispute arises out of or relates to the PPP 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 PPP Agreement, or breach thereof, shall be settled by arbitration in a place as specified in the PPP Agreement. The award rendered by the arbitrator(s) may be entered in relevant courts having jurisdiction thereof as defined in the PPP Agreement.

(2) Further procedure to be followed for such dispute resolution will be prescribed through guidelines by the PPP Board.

25. (1) The concessionaire shall indemnify the PPP Authority against any defect in design, construction, maintenance or operation of the project and be liable to reimburse all costs, charges, expenses, losses and damages suffered by the PPP Authority or an end user due to any such defect.

26. (1) A party to the PPP Agreement may terminate the Agreement in the following cases:

(a) Upon completion of the term of the PPP Agreement, the concessionaire will hand back any public property to the PPP Authority, free and clear of all encumbrances and in satisfactory condition as determined by the PPP Authority following an inspection. The procedures for the hand back and indemnities if any shall be set forth in the PPP Agreement.

(b) If the Implementing 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 concessionaire may terminate the Agreement with written notice to the PPP Authority as provided in the PPP Agreement and, in the event of such termination, the project shall be transferred to the PPP Authority and the concessionaire shall be entitled to compensation by the PPP Authority as provided in the PPP Agreement;

Complaint
Redressal
Mechanism.

Dispute
Resolution
Mechanism.

Indemnity by the
Concessionaire.

Termination of
Public Private
Partnership
Agreement.

- (c) Unilateral termination of the PPP Agreement by the PPP Authority acting in the public interest. Following notice and subject to the procedures set forth in the PPP Agreement, the PPP Authority shall compensate the concessionaire for any investments made in the project, including any debts incurred and a sum which fairly represents the lost profit on such investments;
- (d) If the concessionaire 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 unremedied for an unreasonable period of time, the PPP Authority may terminate the agreement with written notice to the concessionaire as provided in the PPP Agreement and, in such a case the Implementing Agency may take over the project and claim compensation from the Concessionaire as provided in the PPP Agreement.
- (e) In case of termination due to force majeure, the allocation of the risk and compensation formulae to be applied in such instance shall be set forth in the PPP Agreement.

prescribing and
enforcing
standards.

27. (1) The Implementing Agency may:
- (a) prescribe and enforce performance standards for a project including standards or performance of the concessionaire 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 concessionaire to ensure efficiency and adherence to the prescribed quality standards;
 - (c) link entitlement to support from the VGF, subsidy, annuity and other compensation and benefits with meeting certain performance standards as it may deem fit;

(d) prescribe the mode of output-based contracting, performance-based payment system and output-based procurement procedures; and

(e) prescribe any other standards for regulating the PPP Project.

Protection of actions taken in good faith.

28. (1) No suit, claim or other legal proceedings shall lie against the PPP Board or the PPP Authority or the Executive Committee or any member, officer, servant, adviser or a representative of the Board or PPP Authority or Executive 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.

29. (1) The Government may, by notification in official Gazette and with the recommendation of the PPP Board, make rules for carrying out the purposes of this Act.

Power to make Regulations and Guidelines.

30. (1) Subject to this Act and the rules made thereunder, the PPP Board may, by notification in the official Gazette, make regulations, procedures and guidelines to give effect to the provisions of this Act.

Applicability to Government Agencies.

31. (1) Subject to approval of the Board, the PPP Authority may, directly or through a committee, seek inclusion of the Government Agency for a project in such way as may be required by the PPP Authority or to assist and facilitate the PPP Authority in connection with a project in such way as may be required by the PPP Authority. The Government Agency, in such cases, will be obligated to assist the PPP Authority in such manner, as required by the PPP Authority;

(2) The provisions of this Act shall apply to a project if the estimated total cost of such project exceeds PkR300 million.

(3) The PPP Authority may request the Board to process a project with an estimated total cost of PkR300 million or less, and the Board shall proceed with the project in the manner as if it falls within its jurisdiction.

Public Servants

32. The Chairperson, Co-Chairperson, non-official Members, Directors and Employees of the PPP Authority shall, when acting or purporting to act in pursuance of any of the provisions of the Act, be deemed to be public servants within the meanings of section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

Overriding provision.

33. Notwithstanding anything contained in any other law, the provisions in this Act shall have overriding effect to the extent of the project under this Act.

Repeal and Savings.

34. (1) The Balochistan Public Private Partnership (Act No. 1 of 2018) is hereby repealed.

(2) Any PPP project being pursued by the Government Agency or submitted as Unsolicited Proposal prior to the enforcement of this Act, shall remain valid. Such proposals should be adequately accommodated and pursued under this Act with all prior approvals standing intact.

(3) Any hiring made in the PPP Unit prior to the enforcement of this Act, shall remain valid until the end of the term established in respective contracts and the resources shall continue to perform their functions and duties diligently, as required under this Act.

(4) Any rules, regulations and guidelines that have been notified and consistent with the provisions of this Act, shall remain valid and applicable until amended or repealed.

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(TAHIR SHAH KAKAR)
Secretary.

No.PAB/Legis:V(24)/2021.

Dated Quetta, the 30th November, 2021.

A copy is forwarded to the Chief Controller, Government Printing Press, Balochistan, Quetta for favour of publication in next issue of Balochistan gazette. Before final printing a copy thereof be sent to this Secretariat for proof reading. After proof reading fifty copies of the said Act may please be provided to this Secretariat for record.

(ABDUL REHMAN)
Special Secretary (Legis:)

No.PAB/Legis:V(24)/2021.

Dated Quetta, the 30th November, 2021.

Copy for information to:-

1. The Principal Secretary to Governor Balochistan, Quetta.
2. The Principal Secretary to Chief Minister Balochistan, Quetta.
3. The Additional Chief Secretary (Dev:), Government of Balochistan, Planning and Development Department, Quetta.
4. The Secretary, Government of Balochistan, Law and Parliamentary Affairs, Department.
5. The Director General, Public Relations, Balochistan, Quetta.
6. The System Analyst, Balochistan Provincial Assembly.


Special Secretary (Legis:)