

**DRAFT KARNATAKA INFRASTRUCTURE
DEVELOPMENT AND REGULATION BILL, 2011**

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**KARNATAKA INFRASTRUCTURE
DEVELOPMENT AND REGULATION BILL, 2011**

A

BILL

The purpose of this Bill is to provide for a legal framework for infrastructure development through Public Private Partnerships, incorporating contractual arrangements to design, finance, construct, operate and maintain Infrastructure Projects, provide for a fair and transparent selection process, set out rights and obligations of the Government and private sector in the implementation of Infrastructure Projects, reduce administrative and procedural delays, set out incentives, specify project delivery process, establish an Infrastructure Authority with a view to present bankable projects to the private sector and generally to improve the delivery of public services in the state of Karnataka and for matters connected therein or incidental thereto.

Be it enacted by the legislative assembly of the state of Karnataka in the sixty first year of the Republic of India as follows:-

CHAPTER I - PRELIMINARY

1. SHORT TITLE, EXTENT, APPLICATION AND COMMENCEMENT:

- (1) This Act may be called the Karnataka Infrastructure Development and Regulation Act, 2011.
- (2) It extends to the whole of the State of Karnataka.
- (3) It shall apply to all Infrastructure Projects, which are of Public Need and undertaken on a Public Private Partnership framework in the Infrastructure Sectors enumerated in Schedule I and such other Infrastructure Sectors, as may be notified by the Government from time to time.
- (4) The Act shall not apply to an Infrastructure Project where private participation is sought through a disinvestment process.
- (5) It shall come into force on such date as the State Government may, by Notification in the Official Gazette, notify.

2. DEFINITIONS:

In the Act, unless the context otherwise requires:

- a. **“Best Effort”** means best efforts made in the circumstances.
- b. **“Bidder”** means any entity including any Bidding Consortium, which has submitted a proposal to undertake a Project.
- c. **“Bidding Consortium”** means if the proposal for a Project is made jointly by more than one entity, then such group of entities shall be referred to as a Bidding Consortium.
- d. **“Company”** means any entity incorporated by memorandum of association in accordance with the law in force within its jurisdiction.
- e. **“Concession”** shall mean the right granted by the Contracting Authority to a Developer for the purpose of designing, financing, constructing, operating, and maintaining the Infrastructure Facility as per the terms specified in the Concession Agreement.
- f. **“Concession Agreement”** means a contract of the nature specified in Section 20 of the Act between a Developer and Contracting Authority relating to any

Project or such other contract as may be Prescribed from time to time, by the Government.

- g. **“Construction”** means any construction, reconstruction, rehabilitation, improvement, expansion, addition, modification and related works and activities including supply of any equipment, materials, labour, and services related to build or rehabilitate any Project comprising physical structures or systems or for utilization of resources or provision of services.
- h. **“Contracting Authority”** means the Government Agency that enters into a Concession Agreement.
- i. **“Developer”** means a person with whom a Concession Agreement is entered into by the Contracting Authority under the Act.
- j. **“Financial Support”** means the financial mechanism offered by a Contracting Authority to ensure the financial viability, and/or sustainability of a Project, which may take any reasonable form, including the following:
 - (i) direct payments to the Developer as a substitute for, or in addition to, tariffs, or fees, or charges by any name, for the use of the facility or its services. These may include cash subsidies, capital grant, minimum revenue guarantee, payment guarantee and off-take and purchase agreement;
 - (ii) contributions-in-kind, including asset transfers and land usage rights; and
 - (iii) other financial support and guarantees.
- k. **“Fund”** means the Karnataka Viability Gap Fund constituted under Section 34 of the Act.
- l. **“Generic Risks”** means circumstances that have the potential to adversely affect the development of a Project or interest of the participants to the Project or interest of the Contracting Authority and in the nature of construction period risk, operation period risk, market and revenue risk, finance risk, legal and miscellaneous risks amongst others.
- m. **“Government or State Government”** means the State Government of Karnataka.
- n. **“Government Agency”** means a Department of the State Government, a Government Undertaking, Local Authority or Board, Body or Corporation established by or under any law and owned or controlled by the Government and any other body or authority owned or controlled by the Government by

reason of the Government holding not less than 51% of paid-up share capital in such corporation or body.

- o. **“Independent Regulatory Authority”** means an authority constituted by the Government under Section 10 of the Act.
- p. **“Infrastructure Authority”** means the Authority constituted under Section 3 of the Act.
- q. **“Infrastructure Facility”** means physical assets and systems that directly or indirectly provide service to the public.
- r. **“Infrastructure”** means any public work relating to facilities for utilization of natural resources or provision of services, by way of physical structures or systems.
- s. **“Infrastructure Project or Project”** means a project undertaken in each of the following activities or any combination, such as: the design, Construction, development, rehabilitation, modernization, and expansion or other services pertaining to new or existing Infrastructure Facilities in the Infrastructure Sectors provided in Schedule 1 of the Act and as may be notified by the Government from time to time.
- t. **“Infrastructure Sectors”** means sectors as provided under Schedule I of the Act and as may further be notified from time to time by the Government.
- u. **“Lender(s)”** means financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees or debenture holders, who have agreed to provide guarantee or provide finance to a Developer, under a contractual arrangement, for meeting in full or part of the cost of a Project under the Act.
- v. **“Linkage Infrastructure Project”** means in connection to any Project that links:
 - (i) any road to the nearest state highway; or
 - (ii) national highway; or
 - (iii) other roads; or
 - (iv) railway line; or
 - (v) water transmission link to the nearest practical water source including an existing pipeline; or
 - (vi) canal; or
 - (vii) water body; or
 - (viii) sewerage link to the nearest practical sewerage transmission line; or
 - (ix) sewerage treatment facility; or

- (x) power supply provision; or
 - (xi) any such other facility.
- w. **“Local Authority”** means any Panchayat, Municipal Corporation, Municipal Council, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Union or State Government with, the control or management of any area or local fund.
- x. **“Mega Infrastructure Project”** means any Infrastructure Project implemented or undertaken through Public Private Partnership under the Act requiring a minimum investment as may be Prescribed by the Government from time to time.
- y. **“Notification”** means a notification published in the Karnataka Gazette and the word “notified” shall be construed accordingly.
- z. **“Person”** shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial judicial person.
- aa. **“Private Sector Participant”** means any Person other than the following:
- (i) Central Government
 - (ii) State Government
 - (iii) Contracting Authority
 - (iv) any joint venture between Central Government or a Government Agency
 - (v) any corporation or Company in which Central Government or State Government or Government Agency, Statutory Body or Authority or local body is holding not less than 51% paid-up share capital.
- bb. **“Prescribed”** means prescribed by Rules or Regulations made under the Act.
- cc. **“Public Need”** means a substantial or obvious community need for the Project based on all attendant circumstances as compared to a mere convenience. The determination of “Public Need” shall be taken by the relevant Contracting Authority after considering (a) common use and needs of the community; (b) appropriateness of the project in relation to the development plans drafted already, under implementation or under discussions by/in the Contracting Authority concerned; and (c) possibility of the project otherwise not being taken up.
- dd. **“Public Private Partnership” or “PPP”** means an arrangement between Government Agency on one side and a Private Sector Participant on the other, for the provision of public assets and/or related services for public benefit, through investments being made by and/or management undertaken

by the Private Sector Participant for a specified period of time, where there is a substantial risk sharing with the Private Sector Participant and the Private Sector Participant receives performance linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards.

- ee. **“PPP Unit”** means a unit established under Section 11 of the Act.
- ff. **“Regulations”** means regulations made under Section 46 of the Act.
- gg. **“Rules”** means rules made under Section 47 of the Act.
- hh. **“Schedule”** means a schedule to the Act or Regulation in which the word occurs.
- ii. **“Section”** means a section of the Act or Regulation in which the word occurs.
- jj. **“Sole Bid”** means when in competitive bidding process there is only one responsive bid received by the Contracting Authority.
- kk. **“State”** means the State of Karnataka.
- ll. **“Suo-Moto Proposal” or “Swiss Challenge Approach”** means a proposal initiated by a Private Sector Participant on its own for undertaking an Infrastructure Project as per Section 24 of the Act.
- mm. **“User Levies”** means the right or authority granted to the Developer by the Contracting Authority to recover investment and return on investment and includes toll, fee, charge or benefit by any name.
- nn. **“Value for Money” or “VfM”** is a measure that aids a Government Agency/Contracting Authority in determining whether to pursue a project as a PPP versus a regular contract as defined in Section 18 (2) of the Act.

Words and expressions used in this enactment and not specifically defined shall have the meanings generally assigned to them with specific regard to the spirit of the Act.

Explanation: For ascertainment of general assignment of meaning reference to General Clauses Act or various existing enactments relevant to infrastructure development may be used.

CHAPTER II - ESTABLISHMENT OF INFRASTRUCTURE AUTHORITY AND REGULATORY AUTHORITY

3. Constitution of Infrastructure Authority

- (1) The Government shall, on commencement of the Act by Notification, and with effect on and from such date as may be specified therein, constitute an authority to be called the “Karnataka Infrastructure Authority” (“Infrastructure Authority”) for the purpose of the Act.

Provided that till the Infrastructure Authority is constituted under the Act, the PPP Cell set up by the Government in Infrastructure Development Department, the Single Window Agency and the State High level Committee constituted under Section 3 of the Karnataka Industries (Facilitation) Act 2002 shall continue to function.

- (2) The headquarters of the Infrastructure Authority shall be at Bangalore or at such other place as the State Government may specify by Notification in the Official Gazette.

4. COMPOSITION OF THE INFRASTRUCTURE AUTHORITY

- (1) The Infrastructure Authority shall consist of a Chairman, Vice-Chairman and such other members including ex-officio members.
- (2) The Chief Secretary to the Government shall be the Chairperson of the Infrastructure Authority.
- (3) The Principal Secretary, Infrastructure Development Department shall be the Vice Chairman of the Infrastructure Authority.
- (4) The ex-officio members of the Infrastructure Authority shall be the following:
 - (a) ACS and Development Commissioner, Member;
 - (b) Principal Secretary, Planning Department- Member;
 - (c) Principal Secretary, Finance Department- Member;
 - (d) Principal Secretary, Commerce and Industries Department – Member;
 - (e) Principal Secretary, Public Works, Ports and Inland Water Transport Department –Member;
 - (f) Principal Secretary, Urban Development Department – Member;
 - (g) Principal Secretary, Department of Transport;
 - (h) Principal Secretary, Department of Water Resources; and
 - (i) Director, Infrastructure Development Department – Member Secretary.

- (5) The Infrastructure Authority shall consist of at least three experts from outside the Government, to be appointed by the Government in the manner Prescribed.
- (6) The Infrastructure Authority may, invite officer(s) of any Government Department as a special invitee during the proceedings of its meetings.

5. TERM OF OFFICE OF THE MEMBERS

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

6. POWERS OF CHAIRPERSON

The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Infrastructure Authority. The Chairperson shall, preside over the meetings of the Infrastructure Authority as well as exercise and discharge the powers and functions of the Infrastructure Authority vested in him in accordance with the Regulation.

7. TERMS AND CONDITIONS OF SERVICE

The terms and conditions of service of the members of the Infrastructure Authority including the honorarium and the allowances to be paid to them shall be such as may be Prescribed.

8. MEETINGS OF THE INFRASTRUCTURE AUTHORITY

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

9. APPOINTMENT OF OFFICERS AND STAFF OF THE INFRASTRUCTURE AUTHORITY

The Infrastructure Authority may appoint such officers and members of staff as it may require for carrying out its functions and discharging its duties under the Act, in such manner as may be Prescribed.

10. CONSTITUTION OF INDEPENDENT REGULATORY AUTHORITIES

- (1) The Government may in its discretion, set up Independent Regulatory Authorities for some of the key Infrastructure Sectors.

- (2) The Independent Regulatory Authorities so constituted under sub section (1) above shall be responsible for setting norms for entry and exit, tariff fixation, to establish standards for Construction, operations and maintenance for the facilities/services in respect of the Infrastructure Sectors for which the same is constituted.

Provided that while setting out such norms, the Independent Regulatory Authorities shall consider, the terms and conditions of the agreements already executed between the Contracting Authorities and Developers.

- (3) The constitution, term of office of the members, powers and functions, salaries and allowances of the officers and such other details of the Independent Regulatory Authorities shall be such as may be Prescribed by the Government.

11. PPP UNIT

- (1) A PPP Unit shall be established by the Infrastructure Authority to assist the Infrastructure Authority and manage all activities related to policy, technical, legal and such other matters related to PPP projects.
- (2) The PPP Unit shall carry out the following duties;
- a. develop and promulgate procedures and standardize best practices;
 - b. render and review opinion regarding viability of projects;
 - c. disseminate information regarding PPP programs and individual projects;
 - d. undertake public education campaigns on PPP to stakeholders;
 - e. require that Concessioning Authority provide details of projects being proposed, being prepared for tender, given for tender or that are in the process of implementation;
 - f. prepare and distribute information and directives about PPP projects;
 - g. prepare and issue standardized documents in order to harmonize tender procedures and Concession Agreements;
 - h. submit proposals to the Infrastructure Authority for strengthening legislative, regulatory, institutional and policy frameworks for PPP ;

- i. coordinate technical assistance for relevant Concessioning Authorities;
 - j. scrutinize project-proposals, tenders and contracts and systems of governance of contractual structures;
 - k. monitor and issue opinions on the level of compliance of Concessioning Authority and the Developer to the terms of Concession Agreement; and
- (3) The key positions in the PPP Unit shall be filled with suitably qualified professionals and their service conditions shall be as provided by the Infrastructure Authority.

12. FUNCTIONS OF THE INFRASTRUCTURE AUTHORITY

- (1) The functions of the Infrastructure Authority shall be as follows:-
- a. to act as a nodal agency to the Government in the development of PPP policies and programme, and make suitable recommendations to the Government for its consideration and adoption;
 - b. to conceptualise and identify Projects and ensure their conformance to the objectives of the State;
 - c. to receive and consider Projects under the Act from Contracting Authorities and process the same;
 - d. to advise the Government or the Contracting Authority as the case may be, on the Project and give recommendations or suggestions;
 - e. to encourage participation of Persons in financing, Construction, maintenance and operation of Projects;
 - f. to co-ordinate between the concerned departments/ agencies of the Government;
 - g. to monitor the competitive bidding process and suo-moto proposals and provide for course correction, if required;
 - h. to prioritise projects to be undertaken by the Contracting Authority, as the case may be, and prepare an inventory of Projects to be taken up for implementation;
 - i. to identify inter-sectoral linkages;

- j. review and approve or disapprove Project proposals on the basis of Value-for Money and other considerations;
- k. review and suggest amendments and modifications to Concession Agreements on the basis of Value-for-Money and similar considerations;
- l. to decide Financial Support and approve allocation of the Fund for Projects;
- m. to approve scale and scope of a suo-moto proposal or Project undertaken through Swiss-Challenge Approach and to recommend modifications of a non financial nature, if required;
- n. to resolve issues relating to project approval process;
- o. not being inconsistent to other applicable laws, prescribe time limits for clearances for any Project and assist the Contracting Authority and the Concessionaire in obtaining statutory and other clearances and approvals in a timely manner;
- p. to review periodically the status of clearances and ;
- q. to develop model documents/agreements for the Infrastructure Sectors;
- r. to recommend projects for grant of viability gap fund under the relevant scheme(s) of Government of India;
- s. review and monitor PPP projects during implementation, execution, operation and management;
- t. to issue and/or amend guidelines needed to effectively implement the Act;
- u. to co-ordinate with Independent Regulatory Authority/ies;
- v. to administer and manage the Fund and its assets;
- w. to take all steps necessary for enforcing the provisions of the Act and realizing the objectives of the Act.

(2) A Contracting Authority shall have the right to make recommendations to the Infrastructure Authority regarding the development of policies and directives and the Infrastructure Authority shall have the duty to duly consider said recommendations, prior to making its decisions.

13. POWERS OF THE INFRASTRUCTURE AUTHORITY

- (1) The Infrastructure Authority shall have the power to direct the State level statutory bodies or administrative bodies concerned to expedite the process for grant of any clearance or permission required for any Project and the State level statutory bodies or administrative bodies or authorities concerned shall, subject to applicable laws, make all efforts to comply with such directions.
- (2) The Infrastructure Authority may give directions to any Contracting Authority or Developer or Person with regard to implementation of any Project under the Act or for carrying out its functions under the Act and such Contracting Authority or Developer or Person shall, subject to applicable laws, make all efforts to comply with such directions.
- (3) The Infrastructure Authority may call upon any Contracting Authority or Developer or Person to furnish all relevant information, as may be required by the Infrastructure Authority, in connection with or in relation to any Project, which shall be expeditiously provided by the Contracting Authority.
- (4) The Infrastructure Authority shall have power to inspect, visit, review, and monitor any Project and its implementation; execution, operation and management through its official or officials and the Persons in charge of the Project shall extend full cooperation.
- (5) The Infrastructure Authority shall have the power to direct the Contracting Authority to comply with the principles of Value-for-Money and to meet minimum standards set forth by the Independent Regulatory Authority in the document and/or in formalizing any Concession Agreement for any Project.
- (6) The Infrastructure Authority shall have all powers to enable it to carry out its functions under the Act.

14. REPORT TO THE GOVERNMENT

The Infrastructure Authority shall submit quarterly reports of its working and operations to the State Government.

CHAPTER III - CONTRACTING AUTHORITY

15. RESPONSIBILITIES OF CONTRACTING AUTHORITY

- (1) The responsibilities of a Contracting Authority shall include the following:
- a. undertaking feasibility studies, preparation of financial models, Value-for-Money analysis and other studies necessary to structure a technically and financially viable Infrastructure Project;
 - b. submission of proposed Infrastructure Projects and seek Financial Support from the Infrastructure Authority;
 - c. preparation of bidding documents, technical details and specifications in accordance with applicable norms issued in this regard by the concerned authorities from time to time;
 - d. appropriation of budgetary allocation made for an Infrastructure Project in accordance with the conditions attached thereto;
 - e. selection of Developer in accordance with the procedures set out under the Act;
 - f. establishment of an effective monitoring mechanism to ensure compliance by the Developer the terms and conditions of the Concession Agreement ;
 - g. provide required information to the Infrastructure Regulatory Authority, Infrastructure Authority in accordance with the provisions hereunder and as may be reasonably requested by them; and
 - h. coordination of activities and compliance with directives issued by Infrastructure Regulatory Authority and the Infrastructure Authority.

CHAPTER IV - INFRASTRUCTURE PROJECT DELIVERY PROCESS

16. PARTICIPATION IN INFRASTRUCTURE PROJECT

The Contracting Authority may invite any Private Sector Participant to participate in financing, Construction, maintenance, operation and management of Infrastructure Projects covered under the Act.

17. PRIORITISATION OF PROJECTS

The Infrastructure Authority will in consultation with the Contracting Authority prioritise Projects based on demand and supply gaps, inter-linkages and any other relevant parameters and create inventory of Projects.

18. PROJECT IDENTIFICATION

- (1) The Contracting Authority while identifying or conceptualizing any Infrastructure Project shall give priority to Projects listed in the inventory of Projects prepared by the Infrastructure Authority. In addition the Contracting Authority shall carry out a feasibility study, as well as a viability and bankability analysis to decide whether an Infrastructure Project be implemented through PPP or otherwise. Such analysis may take into consideration the sector strategic objectives, technical and commercial feasibility, Value for Money principles and the Project's ability to attract capable Private Sector Participants.
- (2) Value for Money is the optimum combination of lifecycle costs and quality (or fitness for purpose) of the good or service to meet the user's requirement. VfM is therefore not just the lowest cost bid, but accounts for the costs and savings throughout the lifetime of the project. The comparator from the public sector will be a regular contract cost, which will consider the all-inclusive costs of the contract, including contract price, attributed cost of overheads and supervision, escalations, time delays, contingencies, arbitration & litigation, and opportunity cost of public sector funds. The VfM assessment should also ensure that Contracting Authorities focus on the quality of the work and the competency of the private sector and not the lowest bid to meet the objectives set forth in the project statement. VfM is thus associated not only with 'economy,' but also efficiency and effectiveness.
- (3) On identifying and conceptualizing any Infrastructure Project under subsection (1) above, the Contracting Authority shall refer the same to the Infrastructure Authority for its consideration, evaluation and further action as may be required under the Act.

19. RECOMMENDATIONS AND APPROVAL BY INFRASTRUCTURE AUTHORITY

- (1) The proposal prepared by the Contracting Authority and the proposed Concession Agreement shall be submitted to the Infrastructure Authority for its consideration and approval.
- (2) The Infrastructure Authority shall consider the proposal and the proposed Concession Agreement submitted to it under sub-section (1) and may either recommend with or without modifications or not recommend, or return the proposal and Concession Agreement for reconsideration to the Contracting Authority within such time as may be Prescribed.
- (3) The Contracting Authority will take suitable action on the decision taken by the Infrastructure Authority on the proposal and the Concession Agreement including revising and re-submitting the proposal and the Concession Agreement if returned by the Infrastructure Authority for reconsideration by the Contracting Authority.
- (4) Section 19 shall be applicable to Mega Infrastructure Projects only.

20. NATURE OF CONCESSION

- (1) The Contracting Authority shall select the nature of Concession which best reflects the desired allocation of risks and responsibilities of each parties. It may include, amongst others, Management Agreement, Lease Management Agreement, Service Contract Agreement, Build and Transfer, Build-Lease and Transfer, Build-Operate and Transfer, Build-Own and Operate, Build-Own-Operate and Transfer Build-Transfer and Operate, Develop-Operate and Transfer, Rehabilitate-Operate and Transfer, Rehabilitate-Own and Operate, Build-Own-Operate and Maintain and any other contractual structure that involves the transfer to the Developer of some level of economic and/or performance risk relating to the delivery of public infrastructure and services.
- (2) Duration of the Concession shall be set forth in the corresponding Concession Agreement, but no Concession Agreement shall provide for transfer of Concession rights for more than 30 years from the date of agreement except with the prior written approval of Infrastructure Authority. This condition shall not apply to the concession agreements already signed prior to the date of the Act.
- (3) Disputes that may arise during the execution of the Project shall be settled through arbitration and the Concession Agreement shall contain an arbitration clause to this effect.

21. FINANCIAL RIGHTS

- (1) The Developer shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the terms and conditions set forth in Concession Agreement, which shall additionally provide the methods and formulas for the establishment and adjustment of those tariffs or fees, in accordance with the rules established by the competent authority.
- (2) When duly justified and required on the basis of Value-for-Money and with prior approval of Infrastructure Authority, the Contracting Authority may provide Financial Support and guarantees to ensure sustainability and/or financial viability of the Project. The Financial Support shall be as indicated during the procurement process.

22. SELECTION OF PRIVATE SECTOR PARTICIPANT

- (1) The Contracting Authority may adopt appropriate process for selection of private sector as provided under Section 23 and Section 24.
- (2) The Contracting Authority shall enter into a Concession Agreement for undertaking a project with such Private Sector Participants, by following selection process provided in Sections 23 and 24 of the Act.

23. SELECTION BY COMPETITIVE BIDDING

- (1) On the acceptance of the recommendation of the Infrastructure Authority made under Section 19, the Contracting Authority shall select a developer for the Project through a competitive bidding process.
- (2) It will be open for the Contracting Authority to adopt one or multi-stage process of competitive bidding process depending upon the complexity of the Project in the manner provided hereunder:
 - (a) A public notice inviting Private Sector Participant to participate in competitive public bidding for undertaking the project shall be published:
 - (i) in at least one national newspaper and one Kannada newspaper having wide circulation in Karnataka including the local area in which the Project is to be undertaken; and
 - (ii) by any other means of mass communication.

- (b) Any person who intends to participate in competitive bidding process shall submit its proposal in the form and manner specified by the Contracting Authority.
 - (c) Contracting Authority shall examine the information and other particulars submitted by the person under Clause (b) and decide as to whether such person fulfils the criteria for pre-qualification as laid down by the Contracting Authority.
 - (d) A person who fulfils the criteria as laid down under Clause (c) shall be the pre-qualified person. Only the proposal of persons pre-qualified shall be considered for further evaluation.
- (3) The Contracting Authority shall evaluate the proposals from technical aspect and financial aspect, having regard to the nature of the Concession Agreement. Contracting Authority may consider the following criteria in its process of selection, provided that the value of the proposal for final selection of a Developer shall be the single objective financial parameter:
- (i) Level of Service, quality of assets offered;
 - (ii) Lowest present value of Viability Grant support;
 - (iii) Lowest quantum of land;
 - (iv) Lowest present value of asset based support from the Government;
 - (v) Highest share (or present value of) of revenue;
 - (vi) Lowest unit value or present value of payments by Government;
 - (vii) Highest upfront payment (or present value of upfront payment);
 - a. Highest present value of future payment;
 - b. Lowest concession period;
 - (viii) Lowest unit value or present value of user fees;
 - (ix) Highest premium on (or present value of) equity shares offered; or
 - (x) Highest annuity payment.
- (4) Contracting Authority may enter into a Concession Agreement with the person selected through a competitive bid process.
- (5) Where no proposal stands the scrutiny from the technical or financial aspect, the competitive bidding shall stand cancelled.
- (6) Nothing in sub-section (5) shall prohibit the Contracting Authority from inviting Persons to participate in a subsequent bidding process in respect of a proposal that has been cancelled. In such eventuality, the Contracting Authority may, if necessary, revise the technical and financial criteria.

- (7) The Contracting Authority will periodically inform the Infrastructure Authority of the progress of all Projects undertaken under the Act.

24. SELECTION BY SWISS CHALLENGE APPROACH

- (1) The Swiss Challenge Approach shall be followed in any Infrastructure Project initiated by a Private Sector Participant who is hereinafter referred to as 'Proposal Initiator', by submitting a Suo-Moto proposal.
- (2) The Proposal Initiator shall submit an application for Swiss Challenge Approach along with the details prescribed in the rules made under the Act to the Contracting Authority.
- (3) The Contracting Authority shall scrutinize the application of the Proposal Initiator on the following grounds:
 - (a) whether the project falls into the purview of the department's development plan;
 - (b) whether 'Public Need' is established;
 - (c) whether there is any ongoing process (PPP or otherwise), that is addressing the same Public Need.
 - (d) whether the project is 'innovative' or 'Suo-Moto'
- (4) The Contracting Authority on being satisfied that the application of the Proposal Initiator satisfies with the conditions under the Act and the Rules made thereunder, shall forward such application in prescribed format to the Infrastructure Authority for approval;
- (5) The Infrastructure Authority would then weigh the technical, commercial and financial aspects of the Proposal initiator's application along with the recommendations given by the Contracting Authority and ascertain if the application prima facie satisfies the conditions prescribed under the Act and the Rules made thereunder.
- (6) If the Infrastructure Authority recommends any modification in the Project Proponent's application, the Project Proponent shall consider and incorporate the same and re-submit its application within prescribed time to the Contracting Authority.
- (7) If the Infrastructure Authority finds merit in such application the Infrastructure Authority will then require the Contracting Authority to issue a letter to Proposal initiator, requesting the Proposal Initiator to furnish the

offer within [180 days] in such form and manner as may be Prescribed under the Rules.

- (8) Where the Proposal Initiator fails to furnish the details in accordance with sub-clause (7) above within the stipulated period, the Contracting Authority may at its discretion allow an additional period not exceeding 90 days from such stipulated period or may develop the project on its own or through its agencies or any third party.
- (9) Where under the sub-section (8) the Contracting Authority decides to undertake the project on its own or through any third party, the Proposal Initiator shall have no claim on the Contracting Authority whatsoever.
- (10) Where the Proposal Initiator submits the details in accordance with sub-section (7) or (8) to the Contracting Authority, it shall undertake the following;
 - (a) detailed examination of the document submitted by Proposal Initiator;
 - (b) examination of technical feasibility or DPR to identify aspects of the technology;
 - (c) any other additional studies as may be required to determine the project cost, project revenues, viability and risk analysis, Value for Money;
 - (d) the cost to be paid for preparation of DPR; and
 - (e) preparation of the transaction documents for bidding.
- (11) The Contracting Authority shall then refer the offer of the Proposal Initiator in the form prescribed under rules to the Infrastructure Authority for approval.
- (12) If the Infrastructure Authority finds merit in such offer, the Infrastructure Authority will then require the Contracting Authority to invite competing counter offers through open competitive bidding process wherein the Bidder through global tender process would be requested to quote counter offers.
- (13) The counter offers received in response to the procurement would be evaluated along with the offer from Proposal Initiator by the Contracting Authority. If the competitive bidding process results in a superior offer, the Proposal Initiator would be given an opportunity to match the competing

counter offer only if the Proposal Initiator's bid value is within 15% of the superior bid value and be selected as the Concessionaire.

- (14) If the Proposal Initiator declines to match the superior counter offer, then the applicant that has made the superior offer would be selected as the Concessionaire. Upon such selection of successful bidder other than the Proposal Initiator, Contracting Authority concerned shall cause/arrange to reimburse to the Proposal Initiator, the cost of detailed project report through successful bidder.

25. PPP FOR CONNECTIVITY TO INDUSTRIES

If an industrial development area/industrial cluster/industry association/industry intends to develop a linkage project to provide connectivity to a defined area, they shall make an application to the Contracting Authority clearly stating therein the description of the linkage project, defined area, connectivity required, estimated cost and such other details. The application shall be made in the manner Prescribed. The Contracting Authority shall assess the essentiality of the linkage project and if the same is required, may enter into direct contractual arrangements with a Company set up by the applicant for this purpose. The linkage project shall be developed subject to following conditions:

- (a) The linkage project should be available for public use;
- (b) Government shall not have an equity stake in the Company set up by the applicant for the linkage project;
- (c) At least 50% of cost of such project should be met by the applicant;
- (d) The applicant should ensure that user fee is adequate to meet operations and maintenance of the linkage project. Such user fee could be in the nature of toll/ usage or direct contribution from the industries;
- (e) The user fee for general public shall be at rates not higher than the rates usually charged for similar linkage projects and the same shall be fixed with prior approval of Government/Contracting Authority.

26. TREATMENT OF SOLE BID

If a competitive bidding process results in a Sole Bid, the Contracting Authority may in consultation with the Infrastructure Authority, either:

- (a) accept the Sole Bid; or

- (b) re-negotiate the financial offer; or
- (c) reject the Sole Bid.

Provided that a Sole Bid shall be rejected only after ascertaining that the same is not in accordance with the reserve price or estimated return of the Contracting Authority.

27. TREATMENT OF BID SUBMITTED BY A CONSORTIUM

- (1) All proposals submitted by a Bidding Consortium shall enclose a memorandum of understanding, executed by all consortium members setting out the role of each of the consortium members and the proposed equity stake of each of the consortium members with regard to a Project.
- (2) Replacement of consortium members other than the lead member may be permitted in terms of procurement documents, provided the same is not prejudicial to the original strength of consortium as determined in course of the evaluation of original bid or proposal.

28. BID SECURITY

- (1) The Bidder will be required to submit a bid security along with the proposal for undertaking a Project. The bid security shall be valid for the specified period, but in no case it will exceed one hundred and twenty days following the opening of the bids, unless specifically decided by the Contracting Authority for a particular Infrastructure Project.
- (2) The procedure for refund of bid security will be specified in the bid document.

**CHAPTER V - GENERIC RISKS DISCLOSURE AND ALLOCATION, SECURITISATION,
RIGHT OF LENDERS AND FACILITIES AND ASSET BASED SUPPORT TO BE PROVIDED
BY THE CONTRACTING AUTHORITY**

29. GENERIC RISKS DISCLOSURE AND ITS ALLOCATION AND TREATMENT

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

30. FACILITATION OF SECURITISATION

The Contracting Authority may facilitate a Developer to securitize Project receivables and Project assets in favour of Lenders subject to such terms as may be fixed by the Government or by the Infrastructure Authority to safeguard the successful implementation, completion, working, management, and control of the Project.

31. RIGHTS OF LENDERS

The Lenders will be entitled to recover their dues from the Developer and Project receivables in the form of User Levies and Financial Support. In the event of default by the Developer, the Lenders will have the right to substitute the Developer with the consent of the Contracting Authority, on the same terms and conditions as applicable to the previous Developer or with such modifications as may be specifically approved by the Infrastructure Authority.

32. FACILITIES TO BE PROVIDED BY THE CONTRACTING AUTHORITY

- (1) The Contracting Authority shall acquire the land required for the Project.
- (2) The Contracting Authority will provide all facilities to the Developer for obtaining statutory clearances at State level, provide utilities at the Project site on such terms as may be Prescribed and provide Best Effort support for obtaining Central Government clearances and assistance in rehabilitation and resettlement activities if any incidental to the Project on such terms as may be Prescribed.

33. ASSET BASED SUPPORT TO BE PROVIDED BY THE CONTRACTING AUTHORITY

- (1) Subject to availability, the Contracting Authority may in its discretion provide Government land on concessional rates.
- (2) Where the project is not viable on its own, Contracting Authority may provide for acquisition of additional land on the same terms as the land for the main project by the Developer for undertaking suitable commercial activities to ensure a reasonable composite internal rate of return.
- (3) Provided that the development on such additional land shall be consistent with applicable laws including land-use conditions.
- (4) The Contracting Authority shall undertake all rehabilitation & resettlement.
- (5) The Contracting Authority may develop Linkage Infrastructure, for Projects that need critical linkages.

CHAPTER VI - KARNATAKA VIABILITY GAP FUND

34. ESTABLISHMENT OF THE FUND

The Government shall establish a Fund to be called the “Karnataka Viability Gap Fund” and shall contribute an initial corpus of Rs.500 Crores to the Fund.

35. DEPOSITS TO THE FUND

The following will be the inflows to the Fund

- (a) Government will remit an amount of at least Rs. 100 Crore every year from the Infrastructure Initiative Fund or the State Budget as the case may be;
- (b) success fee recovered from the Developers;
- (c) specified payments, if any, provided under the Concession Agreement;
- (d) any other tax, cess etc., that may be levied by the Government for the purpose of Infrastructure development; and
- (e) any grant, aid, bequest, subsidy, donation, gift, subscription, loan or other sums lawfully received.

36. ADMINISTRATION OF THE FUND

The Fund will be administered and managed by the Infrastructure Authority as Prescribed and the Infrastructure Authority may appoint suitable officers and external advisors for the management, control and administration of the Fund.

37. UTILISATION OF THE FUND

The Infrastructure Authority will utilise the Fund for following purposes;

- (a) to meet the administrative and other expenses of the Infrastructure Authority including the PPP Unit;
- (b) to make payment to consultants/advisors etc. for carrying out the services assigned to them by the Infrastructure Authority; and
- (c) to provide Financial Support for projects approved by the Infrastructure Authority.

38. FORMULATION OF VIABILITY GAP SCHEME FOR THE FUND

The Infrastructure Authority shall formulate the scheme called “Karnataka Viability Gap Scheme” providing for eligibility conditions, eligible expenditure, and quantum of assistance, approval of project proposal under the scheme, appraisal and monitoring mechanism, disbursement of grant administration and management of the Fund.

39. AUDIT REPORT OF THE FUND

The working of the Fund shall be subject to audit by Comptroller and Auditor General and the Infrastructure Authority shall submit a report every year as regards the working and operation of the Fund, to the State Government which will present the same before the Legislative Assembly of the State.

CHAPTER VII - MISCELLANEOUS

40. CONTROL BY GOVERNMENT

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

41. INDEMNITY BY THE DEVELOPER

The Developer shall be bound to indemnify the Contracting Authority against any defect in design, Construction, maintenance and operation of the Project and shall undertake to reimburse all costs, charges, expenses, losses and damages in that event.

42. PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, claim, or other legal proceedings shall lie against the Infrastructure Authority or the Chairman or other members of the Infrastructure Authority or the staff or representatives of the Infrastructure Authority in respect of anything which is in good faith done or intended to be done under the Act or any Rules or Regulations or orders.

43. MEMBERS AND STAFF TO BE PUBLIC SERVANTS

Except the external experts, every member and every officer and other employee of the Infrastructure Authority and the Independent Regulatory Authority, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

44. BAR OF JURISDICTION

Any order or proceedings under the Act including but not limiting to any Notification of a Project as Infrastructure Project, categorization or prioritisation of Projects, Concession Agreement, bid process, selection of Developer, modification of any proposal, sanction of any proposal, implementation and execution of any Project, actions of Infrastructure Authority, actions of the Government or the Contracting Authority, grievance or objection of any party or person or group in respect of any Infrastructure Project, validity, legality, efficacy of any action or decision in respect of any Infrastructure Project of Infrastructure Authority or the Government, dispute settlement or dispute resolution in respect of any matters

under the Act shall be heard only by the High Court and by no other court or courts subordinate to the High Court.

45. POWER TO REMOVE DIFFICULTIES

- (1) If any difficulty arises in giving effect to the provisions of the Act or the rules, regulations, scheme or orders made hereunder, the State Government may by order published in the Official Gazette, make such provision, not inconsistent with the provisions of the Act, as appears to it to be necessary or expedient for removing the difficulty.
- (2) All orders made under Sub-section (1) shall, as soon as may be after they are made, be placed on the table of the Legislative Assembly of the State and shall be subject to such modification by way of amendments or repeal as the Legislative Assembly may make either in the same session or in the next session.

46. POWER TO MAKE REGULATIONS

The Infrastructure Authority may make Regulations, with the approval of the Government, by Notification in the Official Gazette, for the proper discharge and smooth performance of their respective functions under the Act.

47. POWER TO MAKE RULES

- (1) The Government may by Notification make Rules for carrying out all or any of the purposes of the Act.
- (2) Every rule made under the Act shall be, immediately after it is made be laid before the Legislative Assembly of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modifications in the rule or in the annulment of the rule, the rule shall from the date on which the modification or the annulment is notified, have effect only in such modified form or shall stand annulled as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

48. DELEGATION OF POWERS

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

49. ACT TO OVERRIDE OTHER STATE LAWS

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

SCHEDULE I - INFRASTRUCTURE SECTORS

The Act shall be applicable to the following sectors provided that the Project satisfies a Public Need and is not on a purely commercial basis.

Agri- infrastructure	<ul style="list-style-type: none">• Agriculture and horticulture market• Floriculture parks and markets• Agro-food processing and allied Infrastructure (including common-user cold storage facilities)
Education	<ul style="list-style-type: none">• Infrastructure and facilities for educational institutions
Energy	<ul style="list-style-type: none">• Power generation, including captive power generation, as per the provisions of the Electricity Act 2003, and co-generation projects, transmission, distribution and power trading services• Oil and Gas (origination, terminals, transmission, and gas works)• Renewable and non-conventional energy sources (Wind, Hydro, Solar, tidal, biomass, and MSW)
Healthcare	<ul style="list-style-type: none">• Infrastructure and facilities for healthcare
Industrial Infrastructure	<ul style="list-style-type: none">• Industrial Parks (including Biotechnology, Information Technology parks)• Special Economic/ Free Trade and Export Promotion Zones• Industrial Estates and Industrial Townships
Irrigation	<ul style="list-style-type: none">• Canals, dams and weirs
Public Markets	<ul style="list-style-type: none">• Infrastructure and facilities for public markets
Tourism	<ul style="list-style-type: none">• Amusement , Entertainment, Theme park• Hotels/ Resorts• Convention & Exhibition Centres• Trade fairs• Cultural centres

**Transportation
& Logistics**

- Roads (including bridges, interchanges, and flyovers)
- Railway systems
- Urban transport systems: MRTS, LRTS, Monorail, High-capacity bus systems
- Airports and airstrips
- Minor ports and harbours
- Inland water transport
- Bus/ Truck/ Urban Transport Terminals and associated public facilities such as Public Amenities Centres
- Warehousing infrastructure (including container freight stations, container depots, cold storage facilities and tank farms)
- Mechanised and Multi-storey Parking facilities

**Urban and
Municipal
Infrastructure**

- Township development
 - Commercial development with common-user facilities
 - Water Supply & Sewerage
 - Desalination
 - Wastewater recycling and reuse
 - Underground drainage
 - Solid waste/ Bio-medical waste/ Hazardous waste: Collection, transportation, treatment and disposal facilities
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