

GOVERNMENT OF KERALA

Law (Legislation-A) Department

NOTIFICATION

No. 15841/Leg.A1/2016/Law.

19th August, 2016

Dated, Thiruvananthapuram, 3rd Chingam, 1192

28th Sravana, 1938.

In pursuance of clause (3) of Article 348 of the Constitution of India, the Governor of Kerala is pleased to authorise the publication in the Gazette of the following translation in the English language of the Kerala Infrastructure Investment Fund (Amendment) Ordinance, 2016 (6 of 2016).

By order of the Governor,

B. G. HARINDRANATH,
Law Secretary.

[Translation in English of “2016-ലെ കേരള അടിസ്ഥാന സൗകര്യ നിക്ഷേപനിധി (ഭേദഗതി) ഓർഡിനൻസ്” published under the authority of the Governor.]

ORDINANCE No. 6 OF 2016

THE KERALA INFRASTRUCTURE INVESTMENT FUND (AMENDMENT) ORDINANCE, 2016

Promulgated by the Governor of Kerala in the Sixty-seventh Year of the Republic of India.

AN ORDINANCE

further to amend the Kerala Infrastructure Investment Fund Act, 1999.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Infrastructure Investment Fund Act, 1999 (4 of 2000) for the purposes hereinafter appearing;

AND WHEREAS, the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Kerala Infrastructure Investment Fund (Amendment) Ordinance, 2016.

(2) It shall come into force at once.

2. *Act 4 of 2000 to be temporarily amended.*—During the period of operation of this Ordinance, the Kerala Infrastructure Investment Fund Act, 1999 (4 of 2000) (hereinafter referred to as the principal Act), shall have effect subject to the amendments specified in sections 2 to 15.

3. *Amendment to section 2.*—In section 2 of the principal Act,—

“(i) after clause (a), the following clauses shall be inserted, namely:—

(aa) “concessionaire” means the private sector participant which has entered into a public-private partnership;

(ab) “concession agreement” means an agreement entered into between a public agency and a private sector participant for and in respect of a public-private partnership;

(ac) “detailed project study” means a detailed study of the project made after the decision for preliminary investment, in order to ascertain the capital cost, technological parameters, description of the technology to be used, technical specifications, plan schedule to assist the financial investment, and the plan for implementation of the project and such other information, as may be specified, in the Scheme;

(ad) “Executive Committee” means the committee constituted under section 6B;

(ae) “feasibility study” means a preliminary study to assess the technical and financial viability and to assess the social and environmental impact of a project for making a decision for investment which shall include the demand for the services, appropriate technology to be adopted, capital cost, time required for implementation and such other information, as may be specified in the Scheme.”.

(ii) after clause (e), the following clauses shall be inserted, namely:—

“(ea) “Government Company” means any company in which not less than fifty one percent of the paid-up share capital is held by the Government or other State Governments and includes a company which is a subsidiary of any Government Company;

(eb) “Infrastructure” means the assets or services in any one or more of the sectors specified in Second Schedule”;

(iii) for clause (f), the following clause shall be substituted, namely:—

(f) ‘Infrastructure projects’ includes projects in the sectors specified in Second Schedule and multipurpose projects comprising of one or more of the sectors specified therein”;

(iv) in clause (h), for the words “forty percent” and “fifty percent”, the words “twenty six percent” shall be substituted;

(v) in clause (i), for the words “fifty percent”, the words “fifty one percent” shall be substituted;

(vi) after clause (i), the following clauses shall be inserted, namely:—

“(ia) “private sector participant” means any person or entity other than a public agency or the Central Government or a public sector undertaking of the Central Government;

(ib) “project” means an Infrastructure Project and includes both physical and social Infrastructure Projects;

Explanation:—For the purpose of this clause ‘physical infrastructure projects’ means projects primarily intended for creation of tangible assets and ‘social infrastructure projects’ means intangible social assets such as schools, social services etc.

(ic) “public-private partnership” means an arrangement between a public agency and a private sector participant for providing infrastructure which includes investment, design, development, construction, maintenance or operation undertaken by the private sector participant, wherein risks are allocated between them such that the private sector participant takes the risk beyond the stage of design, construction and the payment for the services are performance linked, in the form of user charges, annuities or unitary payment;

(id) “public agency” means any department of the Government or any public sector undertaking of the Government, Government Company, statutory board formed by the Government, Local Self Government Institutions, co-operative institution, university, any society or trust formed, owned or controlled by the Government”;

(vii) after clause (k), the following clauses shall be inserted, namely:—

“(ka) “Special Purpose Vehicle” means the Public Agency, Public Sector undertaking or Public-Private Partnership formed for executing any work financed by the Board;

(kb) ‘sponsoring agency’ means the public agency designated by the Board to implement a project through public-private partnership”;

(viii) after clause (l), the following clause shall be inserted, namely:—

“(la) “State support” means the support extended by the Government to a concessionaire, which may include,—

(i) subsidy or capital grant not exceeding such proportion of the cost of the project, as may be specified in the scheme;

(ii) equity;

(iii) loans;

(iv) guarantee by the Government;

(v) opening and operation of escrow account;

(vi) conferment of right to develop any land;

(vii) incentives in the form of exemption from the payment of, or deferred payment of, any tax or fees levied under any law or such other incentives, as may be specified, in the Scheme.”.

(ix) after clause (m), the following clause shall be inserted, namely:—

“(ma) “user levy” means user charge or fee or any other amount, by whatever name be called, payable by the user of an infrastructure facility.”.

4. *Amendment to section 3.*—In section 3 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The fund corpus shall comprise of the net total of the amounts specified in sub-section (2) hereunder.”;

(b) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

“(a) the amounts released to the Board from the budget allocation under section 7.”;

(c) in clause (c), the words “the Government or” shall be omitted;

(d) in sub-section (3), the following words shall be added at the end “ in such manner as may be specified in the scheme.”

(e) in sub-section (4),—

(i) in clause (a), after the words “to finance”, the words “or leverage” shall be inserted;

(ii) in clause (c), for the words “bonds and debentures” the words “bonds, debentures or any other financial instruments” shall be substituted;

(iii) after clause (c), the following clauses shall be inserted, namely:—

“(ca) to finance or leverage investments and financial instruments relating to land acquisitions for infrastructure projects and other Government purposes;

(cb) to provide funding for projects that face significant funding barriers because of the need to combine resources across multiple sectors or parts thereof;

(cc) to provide direct loans and loan guarantees to eligible projects, programmes of any legal entity or instrumentality including public or other undertaking for their investments in infrastructure projects identified by the State as included in the National /State/Local Government plans”;

(f) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) All moneys specified in sub-section (2) other than money contributed by Government under section 7, shall be deposited with the approval of the Board in a Nationalized Bank or in such other prudent investment, with the concurrence of the Fund Trustee and Advisory Commission:

Provided that any portion of the money contributed by Government under section 7 may also be deposited/invested in any Nationalized Bank in sovereign bonds of the Union or States or in such other prudent investment other than in the State Treasury, with the specific approval of the Government and it shall be done with the concurrence of the Fund Trustee and Advisory Commission.

Explanation:—For the purpose of this sub-section, ‘prudent investment’ shall mean those investments which carry the highest rating from the appropriate regulatory body or credit rating agency for that class of investment.”;

(g) in sub-section (6),—

(i) for the word “schedule”, the words “first schedule” shall be substituted;

(ii) after sub-section (6), the following sub-section shall be inserted, namely:—

“(6A) The accounts of the Board shall be operated by the Fund Manager:

Provided that the Board may delegate the powers for operation of accounts to one or more officers of the Board and may set appropriate financial limits as it deems fit.”

(h) after sub-section (7), the following sub-section shall be inserted, namely:—

“(8) The Government shall lay before the State Legislative Assembly along with the presentation of the Annual budget the following documents,—

(a) a statement of the sources and application of the funds of the Board;

(b) a certificate from the Fund Trustee and Advisory Commission to the effect that the funds of the Board have been deployed for the purposes intended and that surplus funds have been managed as laid down under the provisions of this Ordinance.”

5. *Insertion of new section 3A.*—After section 3 of the principal Act, the following section shall be inserted, namely:—

“3A. *Eligible projects.*—(1) Projects eligible for financial assistance from the Fund shall be the projects referred to the Board by the Government and approved by the Board.

(2) Eligible projects shall be of a value exceeding 100,00,00,000 (Rupees One Hundred Crore) implemented by a public agency:

Provided that for the purpose of assessing the value, projects not less than Rupees Ten Crore may be grouped into tranches, each of which has to satisfy the stipulation on the value specified in sub-section (2):

Provided further that the Government may, by general or special order, apply the provisions of this ordinance to any public-private partnership project:

Provided also that it shall not apply to any project undertaken by the Central Government or any public undertaking of the Central Government independently, except as a joint venture with the State Government.

Explanation:—For the purpose of this sub-section, in the case of a public private partnership project, ‘project value’ means, where the private sector participant is,—

(i) required to make capital investment, the value of the asset or facility to be created including cost of land, if the cost of land is to be borne by the private sector participant ; or

(ii) not required to make capital investment, the current replacement value of the asset or facility, excluding land, whose operation and maintenance shall be the responsibility of the private sector participant.”.

6. *Amendment to section 4.*—In section 4 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The headquarters of the Board shall be Thiruvananthapuram.”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Board shall consist of the following members, namely:—

- | | | |
|--|----|------------------|
| (a) Chief Minister | .. | Chairperson |
| (b) Minister for Finance | .. | Vice-Chairperson |
| (c) Vice-Chairman, State Planning Board | .. | Member |
| (d) Chief Secretary | .. | Member |
| (e) Secretary (Law) | .. | Member |
| (f) Secretary (Finance) | .. | Member |
| (g) Secretary (Finance-Resources) | .. | Member |
| (h) Seven independent members who are experts, who have worked in an institution of national repute in one or more of the areas of Finance, Banking, Economics | .. | Members |
| (i) Chief Executive Officer | .. | Member Secretary |

Explanation:—For the purposes of the provisions of this Ordinance the term ‘Secretary’ shall denote Additional Chief Secretary, Principal Secretary, Secretary or Special Secretary to Government, as the case may be;”.

(c) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Board may, at the discretion, of the Chairperson seek the participation of any other Minister or Secretary of any Department whose project is under consideration of the Board for financing.”;

(d) sub-sections (5) to (7) shall be omitted.

7. *Insertion of new section 5A.*—After section 5 of the principal Act, the following section shall be inserted, namely:—

“5A. *Meetings of the Board.*—(1) The Board shall meet at such time and place and shall observe such rules of procedure in regard to transaction of business at its meetings, as may be specified in the Scheme.

(2) The Chairperson shall preside over the meetings of the Board. When the Chairperson of the Board is absent, the Vice-Chairperson shall preside over the meetings. The Chief Executive Officer shall be the Convener of the Board meetings.

(3) Agenda of a meeting of the Board shall be decided by a majority of two-third of the votes of the members present and voting and in case of any equality of votes, the person presiding shall have a second or casting vote.

(4) The quorum for a meeting shall be six.

(5) All investment decisions taken in the Board meetings in the absence of the Chairperson shall be ratified by the Chairperson before implementation.

(6) The members of the Board may, with the permission of the Chairperson, attend the meetings of the Board through video conferencing.

(7) No Act or proceedings of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

8. *Substitution of new sections for section 6.*—For section 6 of the principal Act, the following sections shall be substituted, namely:—

“6. *Functions of the Board.*—Subject to the provisions of this Ordinance, the Board shall have the following functions, namely:—

(a) approve the selection of eligible projects for financial assistance through the Fund;

(b) authorise the mobilization of resources for augmentation, maintenance and utilization of the Fund;

(c) approve the public agency which shall implement a project through public sector mode or through a Public-Private Partnership;

(d) co-ordinate the efforts of the Government, any public agency and sponsoring agencies in matters regarding the development of the infrastructure in the State including Public-Private Partnership projects;

(e) identify sources of financing, recommend and approve suitable modes of raising resources;

(f) identify bottlenecks in the Projects and recommend policy initiatives to rectify the same;

(g) formulate and recommend policies related to eligible projects so as to ensure that project risks are identified and allocated between the stakeholders;

(h) perform such other functions as may be entrusted to it by the Government.

6A. *General powers of the Board.*—The Board shall, for the purpose of carrying out its functions under this Ordinance, have the following powers, namely:—

(a) to call upon any public agency or concessionaire or any person to furnish information in regard to any project;

(b) to inspect or cause to inspect and monitor any Project and its execution, operation and management;

(c) to regulate its own procedures;

(d) to approve proposal and instruments to mobilise and deploy resources of the Fund;

(e) to sanction financial assistance based on eligibility norms as per the Scheme;

(f) to approve the Investment Prospectus, operational guidelines and oversight mechanism;

(g) to recover the amounts due to the Board from the assisted projects, project authority, undertakings, public agency and/or concessionaire as per the recovery schedule;

(h) to modify, revise or reschedule the recoveries as may be considered appropriate;

(i) to opt for revenue recovery proceedings, if found necessary, and appropriate, against any of the assisted project, project authority, undertakings, public agency and/or concessionaire in the interest of the Board;

(j) to disburse all expenses relating to the administration of the Fund including travel, interest on borrowings, fees, professional charges and other expenses;

(k) to invest any surplus fund of the Board, as may be available from time to time, in such manner as may be specified in the Ordinance and in the Scheme and also to realise the returns due from such investments;

(l) to review on a periodic basis the performance of any assisted project, project authority, undertakings, public agency and/or concessionaire receiving any assistance or loan from the Fund;

(m) to enter into Memorandum of Understanding or performance contract with any assisted project, project authority, undertakings, public agency and/or concessionaire under the purview of this Ordinance, on behalf of the Government;

(n) to enter into contracts on behalf of the Board;

(o) to exercise such powers and functions as may be specified in the Scheme;

(p) to exercise such powers and perform such functions as may be conferred on or entrusted to it by the Government for carrying out the purposes of this Ordinance;

(q) to do all acts necessary for and incidental to the carrying out of the function entrusted or delegated to it;

(r) to certify reports to the State Legislature;

(s) to certify other publications of the Fund including investment prospectus and tender documents.

6B. *Executive Committee*.—(1) There shall be an Executive Committee which shall exercise such powers and perform such functions as may be delegated to it by the Board.

(2) The Executive Committee shall consist of the following members, namely:—

- | | | |
|---|----|-------------|
| (a) Minister for Finance | .. | Chairperson |
| (b) Chief Secretary | .. | Member |
| (c) Secretary (Law) | .. | Member |
| (d) Secretary (Finance) | .. | Member |
| (e) Secretary (Finance-Resources) | .. | Member |
| (f) Three independent members
of the Board, to be nominated
by the Government | .. | Members |
| (g) Chief Executive Officer | .. | Member |

(3) The Secretary to Government of the administrative department in Government concerned with the project proposal placed before the Board for consideration shall be a special invitee to the meetings of the Executive Committee.

(4) The decision making shall be by a majority of not less than two-thirds of the members present and voting.

(5) The quorum for a meeting shall be four.

(6) The members of the Executive Committee may, with the permission of the Chairperson, attend the meeting through video conferencing.

(7) The Chief Executive Officer shall be the Secretary of the Executive Committee.

6C. *Fund Trustee and Advisory Commission (FTAC)*.—(1) The Board may, by general order, constitute with effect from such date, as may be specified, therein a Commission to be called the 'Fund Trustee and Advisory Commission'.

(2) The Commission shall comprise of not less than three and not more than five members including a Chairperson.

(3) The term of office of the Commission shall be for a period of two years.

(4) The members shall hold office at their pleasure and shall not be removed by Government or the Board except on grounds of conviction on any criminal charges involving moral turpitude by a court of law.

(5) The members shall be experts with proven experience at the national or international levels in any of the fields of banking, financial regulation, financial markets, administration or economics.

(6) The Board shall nominate one of the members as the Chairperson of the Commission.

(7) The members of the Fund Trustee and Advisory Commission may, with the permission of the Chairperson, attend the meeting through video conferencing.

(8) The Commission shall meet once before September and February of each financial year and as many times, as it deems fit, for carrying out its functions.

(9) The Chief Executive Officer shall be the Secretary to the Commission.

6D. *Functions of Fund Trustee and Advisory Commission.*—(1) The Commission shall act as the trustee of the fund and help to ensure that all investments of the fund serve the purpose and intent of the Ordinance and that there is no diversion of funds of the Board.

(2) The Commission shall with the approval of the majority of members issue a “Fidelity Certificate” every six months certifying that the application of funds and the investment of surplus funds are in conformity with the Ordinance and Scheme.”

6E. *Powers of Fund Trustee and Advisory Commission.*—The Fund Trustee and Advisory Commission shall have the following powers, namely:—

(a) to call for periodical reports from the Board;

(b) to call for any documents in possession of Board necessary for the discharge of its functions under this Ordinance;

(c) to supervise the implementation of the conditions regarding creation of the securities by the Board for the purpose of raising funds;

(d) to carry out such acts, as are necessary, for the protection of interest of the holders of the securities issued by Board;

(e) to do all things necessary to resolve the grievances of the holders of the securities issued by the Board;

(f) to ascertain that the funds necessary to discharge the interest and principal amount payable in respect of the securities is available with the Board as stipulated under this Ordinance;

(g) to ascertain that the funds so available with the Board are deployed in prudential investments;

(h) to direct the Chief Executive Officer to convene meetings of the Fund Trustee and Advisory Commission as many times, as it deems appropriate, in addition to the two meetings specified in sub-section (8) of section 6C:

Provided that the Chairperson shall issue such directions either on his own or at the request of at least two members.

6F. *Project identification, prioritization and implementation.*—(1) On identifying or conceptualizing a project to be developed, managed and operated in the State, the Board, on its own accord or based on a study or survey caused to be conducted or based on inputs received from a third party, may seek the views of the public agency concerned thereon:

Provided that if the public agency does not furnish its views within thirty days from the date of receipt of the said communication from the Board, it shall be deemed that the public agency has no view to offer.

(2) Any public agency may also identify or conceptualize a project to be developed, managed and operated in the State and send the proposal thereafter to the Board for its recommendation. The Board shall scrutinize, evaluate and where more than one such proposal is received, prioritize the same.

(3) The Board, on receipt of the views of the public agency under sub-section (1) or proposal from any public agency under sub-section (2), shall examine the project proposal with reference to the following factors, namely:—

(a) the cost benefit analysis of the project including the socio-economic cost benefit;

(b) the cost effectiveness of implementation through public-private partnership with a value for money test, as may be specified in the Scheme;

(c) the possibility of specifying project performance parameters and measuring their outcomes;

(d) the risk sharing possibilities with the private sector participant;

(e) the technological and managerial advantages that may accrue due to private sector participation;

(f) the socio-economic factors which may affect investment by the private sector participant;

(g) compliance with regulatory norms.

(4) The Board, shall cause a feasibility study of the proposed project and after satisfying itself as to its feasibility, recommend the same to the Government, indicating specifically as to whether it may be implemented through public sector mode or through public private partnership.

(5) The Board shall cause the details of projects recommended under sub-section (4), to be published on its website and on such other websites, as may be specified in the Scheme:

Provided that the Board may, for reasons to be recorded in writing, choose not to publish the details of a Project.

(6) On receipt of proposal for implementation of the Project under sub-section (4), the Government shall consider the same and communicate its decision on the implementation of the Project including the mode of its implementation, to the Board.

(7) In respect of a Project decided by the Government to be implemented through public sector mode, the Board shall designate the public agency which shall implement that Project, give direction for its implementation and monitor the progress of implementation.

(8) If the public agency does not commence the Project within three months from the date of receipt of such direction or expresses its inability to implement the Project, for any reason recorded in writing, the Board with the approval of the Government shall re-examine the Project as in sub-section (3) and make a fresh recommendation to the Government.

(9) In respect of Project decided by the Government to be implemented through public-private partnership, the Board shall cause the sponsoring agency to publish the details of the proposed projects in such form and in such manner, as may be specified in the Scheme, inviting objections and suggestions. The sponsoring agency shall, based on the objections and suggestions, if any, received, prepare and submit a report to the Board within such period, as may be specified in the Scheme.

(10) The Board, on receipt of the report from the sponsoring agency under sub-section (9), shall consider the project in consultation with the administrative department and after causing the detailed project study, if it considers necessary, finalize the scope and structure of the Project, either in its original form or with such modification, as it deems fit, also taking into account, the following aspects, namely:—

(a) whether the Project needs any public financial support, and if so, the appropriate form of such support;

(b) the tender criteria or variables relevant for evaluation of the tender; and

(c) the appropriate concession agreement or a combination thereof, from out of those listed in Third Schedule.”.

9. *Substitution of new section for section 7.*—For section 7 of the principal Act, the following section shall be substituted, namely:—

“7. *Budgetary allocation for repayment.*—(1) From, time to time, Government shall make provision in the Annual Budget to defray the expenses incurred for payment of annuity or other repayment obligation incurred in lieu of section 8:

Provided that Government shall set apart a share of the Motor Vehicle Taxes as contribution to the fund, reckoned on the basis of the Motor Vehicle Taxes collected for the previous year such share being ten percent in the first year and increased by ten percent each year upto fifty percent of the Motor Vehicle Tax in the fifth year:

Provided further that in addition, a cess of not less than one rupee levied on each litre of petrol shall also be contributed to the Fund by the Government from out of such cess levied during the previous year.

(2) The transfer of funds required for the successive twelve months shall be completed either in one or more installments, before the last working day of December of that year:

Provided that the revenue realised from any project shall be set-off from the appropriation so made at the end of the year and only the balance after defraying operational expenses need be provided as appropriation during the year.

(3) The Government may also at, its discretion, after due appropriation by law passed by the State Legislature from time to time make grants, advances and loans to the fund for the purposes of this Ordinance, on such terms and conditions as the Government may determine.”.

10. *Substitution of new sections for section 8.*—For section 8 of the principal Act, the following sections shall be substituted, namely:—

“8. *Power of the Board to borrow and lend.*—(1) The Board may, from time to time, with the previous sanction of the Government and subject to such conditions as the Government may by general or special order determine, borrow any sum required for the purposes of this Ordinance.

(2) For the purpose of such borrowing the Board may issue any financial instrument including but not limited to General Obligation Bonds, Revenue Obligation Bonds or any other appropriate financial instruments, or raise funds through any financial structures including but not limited to Alternative Investment Funds (AIF), Infrastructure Investment Trust (InvIT), Infrastructure Debt Fund (IDF), Revenue Bonds with structured payment mechanism, Land Bonds or any other appropriate financial instruments or by making arrangements with Banks, Multilateral Funding Agencies or Institutions approved by the Government in that behalf.

(3) The Board may act as the sponsor for setting up infrastructure investment structures, as are required for facilitating the mobilisation of resources for a project or group of projects:

Explanation:—For the purpose of this sub-section, the infrastructure investment structures may include, but are not limited to Alternate Investment Fund (AIF), Infrastructure Investment Trust (InvIT), Mutual Funds and Infrastructure Development Fund (IDF).

(4) The Financial instruments and securities issued by the Board under this section shall be issued, transferred, dealt with or redeemed in such manner as decided by the Board subject to the directions of the Government.

8A. *Power of the Board to delegate.*—The Board may delegate to the Executive Committee or the Chief Executive Officer such powers and functions under this Ordinance or scheme as it may consider necessary for the efficient administration of the fund, subject to such restrictions and conditions if any, as it may specify.”.

11. *Amendment to section 9.*—In section 9 of the principal Act, for sub-section (1) , the following sub-section shall be substituted, namely:—

“(1) The Government shall guarantee the payment of the principal and interest of any fund proposed to be raised by the Board under section 8:

Provided that the total guarantee issued by the Government under this Ordinance shall not exceed the limits set by the Kerala Ceiling on Government Guarantees Act, 2003 (30 of 2003) in force.”.

12. *Substitution of new section for section 10.*—For section 10 of the principal Act, the following section shall be substituted, namely:—

“10. *Appointment of officers and staff.*—(1) The Board may with the approval of Government, create such posts and appoint such number of officers and staff as it considers necessary to assist the Board in the discharge of its functions and duties under this Ordinance.

(2) There shall be a Chief Executive Officer (CEO) for the Board who shall be given the rank and status of a Secretary to the Government, appointed by the Government. The Chief Executive Officer shall be the Fund Manager of the Board.

(3) The Chief Executive Officer shall exercise the power of supervision and control over all the officers and staff of the Board.

(4) The method of appointment, salary and allowances and other conditions of service of the officers and the staff appointed under sub-section (1) shall be such, as may be specified, by the Government from time to time.”.

13. *Amendment to section 12.*—In section 12 of the principal Act,- after the words, “Every member of Board”, the words and symbol “Executive Committee, Fund Trustee and Advisory Commission” shall be inserted.

14. *Insertion of new section 17A.*—In the principal Act, after section 17, the following section shall be inserted, namely:—

“17A. *Power to appoint an Inspection Authority.*—(1) The Government may by general or special order, appoint an inspection authority comprising of such persons as it deems fit to inspect any projects and the documents of any Special Purpose Vehicle implementing the same that has been financed by the Board.

(2) Such Authority shall have the powers to call for documents from any Special Purpose Vehicle and inspect its office, site and premises of the projects implemented by it”.

15. *Amendment to the Schedule.*—The existing Schedule to the principal Act shall be renamed as First Schedule and in the First Schedule as so renamed,—

(a) under the heading of FIRST SCHEDULE, for the words, brackets and figures, “See Section 3(6)” the words, bracket, letters, symbol and figures “See Sections 2(ac), 2(ae), 3(6), 6A(k), 6A(o), 6F(3)(b), 6F(5), 6F(9)” shall be inserted;

(b) in item 12 the word ‘quorum’ shall be omitted.

(c) item 15 shall be omitted.

(d) existing item 16 shall be renumbered as item 23 and before item 23 as so renumbered, the following items shall be inserted, namely:—

“16. Other information with respect to which a detailed study of the project may be conducted after the decision for preliminary investment.

17. Other information with respect to which feasibility study may be conducted.

18. Other powers and functions of the Board.

19. Manner of investing surplus fund of the Board.

20. Value for Money Test.

21. The form and manner of publishing the details of proposed projects by the sponsoring agency, the period in which the report shall be prepared and submitted to the Board by the sponsoring agency in respect of the project.

22. Websites in which details of the project to be published.”.

(e) after the First Schedule as so renamed, the following schedules shall be inserted, namely:—

“ SECOND SCHEDULE

[See section 2 (eb)]

SECTORS

1. Agriculture Infrastructure.
2. Buildings.
3. Development of Minor Minerals.
4. Drinking and Industrial Water supply systems, Desalination Plants.
5. Education related Infrastructure.
6. Fisheries.
7. Gas and Gas Works.

8. Health Infrastructure.
9. Housing including Slum Development and Development of Satellite towns.
10. Industrial Estates including Industrial Parks and Special Economic Zones.
11. Information and Communication Technology related Projects.
12. Inland Navigation and Inland Waterways.
13. Irrigation including Dams, Irrigation Structures, Canals.
14. Land Reclamation Projects.
15. Ports and Harbours.
16. Power Generation, Transmission and Distribution.
17. Roads, Bridges, including Rail over and under Bridges and By-passes.
18. Solid Waste Management.
19. Sports and Recreation Infrastructure.
20. Tourism and Hospitality Projects.
21. Transport projects including road, rail and air transport.
22. Urban Transportation System, Bus terminals, Multi level parking facilities.
23. Waste Water, Sewerage treatment systems.

THIRD SCHEDULE

[See section 6F(10) (c)]

NATURE OF CONCESSION AGREEMENTS

I. Investment or Financing related Agreements

(i) *Build-Operate-and-Transfer (BOT)*—A contractual arrangement whereby the concessionaire undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The concessionaire operates the facility over a fixed term during

which they are allowed to charge the users appropriate tolls, fees; rentals and charges as incorporated in the contract to enable the recovery of investment in the Project. The concessionaire transfers the facility to the Government at the end of the fixed term that shall be specified in the Concession agreement.

(ii) *Build-Own-and-Operate (BOO)*—A contractual arrangement whereby the concessionaire is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the concessionaire is allowed to recover the total investment by collecting user levies from facility users. The ownership of the land will be vested with the Government. Under this mode, the concessionaire owns the assets of the facility and may choose to assign its operation and maintenance to a facility operator. The transfer of the facility to the Government is not envisaged in this structure; however, the Government may terminate its obligations after the specified time period.

(iii) *Build-Own-Operate-Transfer (BOOT)*—A contractual arrangement whereby the concessionaire is authorised to finance, construct, maintain and operate a Project and whereby such Project is to vest in the concessionaire for a specified period. During the operation period, the concessionaire will be permitted to charge user levies specified in the Concession agreement, to recover the investment made in the Project. The concessionaire is liable to transfer the Project to the Government after the expiry of the specified period of operation.

(iv) *Build-Transfer-and-Operate (BTO)*—A contractual arrangement whereby the Government contracts out an infrastructure facility to the concessionaire to construct the facility on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the facility is commissioned satisfactorily, the concessionaire is given the right to operate the facility and collect user levies specified in the Concession agreement. The title of the facilities always vests with the Government in this arrangement.

(v) *Design-Build-Finance-Operate-Transfer (DBFOT)*.—A contractual arrangement whereby the concessionaire is bestowed with the responsibility of designing, building, financing and operating the facility before transferring the Project to the Government after the expiry of the specified period. The concessionaire operates the facility over a fixed term during which they are allowed to charge the users appropriate tolls, fees, rentals and charges as incorporated in the contract to enable the recovery of investment in the Project.

2. Operations and Maintenance related Agreements

(i) *Management Agreement*.—A contractual arrangement whereby the Government entrusts the operation and management of a Project to the concessionaire for the period specified in the agreement on payment of specified consideration. In such agreement, the Government may charge the user levies and collect the same either by itself or entrust the collection for consideration to any concessionaire who shall after collecting the user levies, pay the same to the Government.

(ii) *Lease Management Agreement*.—A contractual arrangement whereby the Government leases a Project owned by it to the concessionaire which is permitted to operate and maintain the Project for the period specified in the contract. The concessionaire is allowed to charge the users appropriate fees, rentals and charges as specified in the agreement to enable the recovery of investment in the Project.

(iii) *Build-Lease-and-Transfer (BLT)*.—A contractual arrangement whereby the concessionaire undertakes to finance and construct the Project and on its completion hands it over to the Government. The Government then gives the facility to the same operator on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Government.

(iv) *Rehabilitate-Operate-and-Transfer (ROT)*.—A contractual arrangement whereby an existing facility is handed over to the concessionaire to invest, refurbish, operate and maintain for a period, at the expiry of which the facility is returned to the Government. The

concessionaire operates the facility over a fixed term during which they are allowed to charge the users appropriate fees, rentals and charges as specified in the contract to enable the recovery of investment in the Project.

(v) *Rehabilitate-Own-and-Operate (ROO)*.—A contractual arrangement whereby an existing facility is handed over to the concessionaire to invest, refurbish, operate and maintain the development facility from which the concessionaire is allowed to recover the total investment by collecting user levies from facility users. The ownership of the land shall be vested with the Government. The transfer of the facility to the Government is not envisaged in this arrangement; however, the Government may terminate its obligations after a specified time period.”.

P. SATHASIVAM,
GOVERNOR.