

THE KERALA INFRASTRUCTURE INVESTMENT FUND

ACT, 1999

(Act 4 of 2000)

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THE KERALA INFRASTRUCTURE INVESTMENT FUND

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An

Act

to provide for the constitution of a fund for investments in the infrastructure projects in the State and for matters connected therewith or incidental thereto.

Preamble —WHEREAS it is expedient to constitute a fund for investments in the infrastructure projects in the State and for matters connected therewith or incidental thereto.

BE it enacted in the Fiftieth Year of the Republic of India as follows:—

1. *Short title, extent and commencement* —(1) This Act may be called the Kerala Infrastructure Investment Fund Act, 3999.

(2) It extends to the whole of the State of Kerala

(3) It shall be deemed to have come into force on the 11th day of November, 1999.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) ‘Board’ means the Kerala Infrastructure Investment Fund Board constituted under section 4;

*(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 preliminary decision for 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, 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;

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

(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 services, appropriate technology to be adopted, capital cost, time required for implementation and such other information as may be specified in the Scheme.”

- (b) ‘Financial assistance’ means the types of assistance specified in the Scheme;
- (c) ‘Fund’ means the Kerala Infrastructure Investment Fund established under section 3 and the scheme;
- (d) ‘Fund Manager’ means the Fund Manager of the Board;
- (e) ‘Government’ means the Government of Kerala;

*(ea) “Government Company” means any company in which not less than fifty one per cent of the paid-up share capital is held by the Government or Central 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 the Second Schedule”;

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

- (g) ‘Local Self Government Institution’ means a Panchayat at any level constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994), or a Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(h) ‘Other undertakings’ means Public Companies established in the State under the Companies Act, 1956 (Central Act 1 of 1956) in joint sector, where the investment of the Government is not less than *# twenty six percent of the total paid up share capital, or societies established under Travancore-Cochin Literacy, Scientific and Charitable Societies Registration Act, 1955 (XII of 1955) or the Societies Registration Act, 1860 (Central Act 21 of 1860) and where Government, Local Self Government Institutions of any Public Sector Undertaking, as the case may be, have not less than *@ twenty six per cent of interest in its assets, ownership and management;

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

** Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

*# Vide Amendment Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016 the words “forty per cent” substituted with “twenty six per cent”.

*@ Vide Amendment Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016 the words “fifty per cent” substituted with “twenty six per cent”.

- (i) 'Public Sector Undertakings' means any Government Company established in the State under the Companies Act, 1956 (Central Act 1 of 1956) or a Co-operative Society registered or deemed to have been registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969) where the Government holds not less than *fifty one per cent of the share capital, and substantial control over its management and includes public undertakings established under a statute;

** (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 Projects 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, where in risks are reallocated between them such that the private sector participant takes the risks 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 the Central Government or other State Governments or public sector undertaking, Government Company, statutory board formed by the Government or the Central Government or other State Governments, Local Self Government Institutions, co-operative institution, university, any society or trust formed, owned or controlled by the Government or the Central Government or other State Governments";

- (j) 'Schedule' means the Schedule to this Act;

- (k) 'Scheme' means the scheme framed under this Act;

*# (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";

* Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

*# Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

(l) 'State' means the State of Kerala;

*(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."

(m) 'Undertakings' means public sector undertakings or other undertakings,

**(ma) "user levy" means user charge or fee or any other amount, by what ever name be called, payable by the user of an infrastructure facility."

(n) 'Year' means the financial year,

3. *Kerala Infrastructure Investment Fund Scheme* — (1) The Government may, by notification in the Gazette, frame a scheme to be called the 'Kerala Infrastructure Investment Fund Scheme' for the establishment of a fund under this Act for investments in the infrastructure projects of the State and there shall be established, as soon as may be after the framing of the, scheme, a fund in accordance with the provisions of this Act and the scheme.

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

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

*# Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

(2) There shall be credited to the fund, —

*(a) The amounts released to the Board from the budget allocation under section 7;

(b) the amount borrowed by the Board under section 8;

(c) grants or loans or advances made by ** any institution;

(d) any amount raised by the Board from other sources to augment the resources of the Board;

(e) any other amount which, under the provisions of the scheme, shall be credited to the-fund.

(3) The fund shall vest in, and be administered by the Board constituted under section 4 *#in such manner as may be specified in the scheme.

(4) The fund may be utilised for all or any of the following purposes, namely. —

(a) to finance *@ or leverage investments in infrastructure projects in the State;

(b) to provide financial assistance to public sector undertakings and other undertakings for their investments in infrastructure projects;

(c) *%to redeem the bonds or debentures or any other Financial instrument used to raise resources for the Fund and to repay the loans availed from co-operative banks, other commercial banks and any institution to implement the infrastructure project

* Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, the words “the Government or” omitted.

*# Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

*@ Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

*% Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

- *(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 advances 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
- (d) for implementation of any other purpose specified in the scheme.

** (5) All moneys specified in sub-section(2) other than money contributed by Government under section7, shall be deposited with the approval of the Board in a Nationalized Bank or in such other prudent investment:

Provided that any portion of the money contributed by the Government under section7 may be deposited or invested in any Nationalized Bank or in sovereign bonds of the Union or States or in such other prudent investment other than in the State Treasury.

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.;

(6) Subject to the provisions of this Act, the scheme framed under sub-section (1) may provide for all or any of the matters specified in sub-section (4) and in the *# first schedule.

*@ (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.

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

*# Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, the words “schedule” substituted with “first schedule”.

*@ Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

(7) The scheme shall be laid, as soon as may be, after it is framed, before the Legislative Assembly while it is in session for a total period of fourteen days which may be in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the scheme, the scheme shall thereafter have effect only in such modified form, so however that any such modification shall be without prejudice to the validity of anything previously done under the scheme.

*(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 Act.

****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 Act 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, -

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

(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.

4. Constitution of Board.—(1) The Government may, by notification in the Gazette, constitute with effect from such date as may be specified therein, a Board to be called “the Kerala Infrastructure Investment Fund Board” for the administration of the fund and to supervise or carry out the activities financed from the fund

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue or be sued.

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

** (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 |

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

Explanation: -For the purposes of the provisions of this Act the term 'Secretary' shall denote Additional Chief Secretary, Principal Secretary, Secretary or Special Secretary to Government, as the case may be;

*(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;

**

5. *Term of office of members.* —(I) A member appointed under clause (h) of sub-section (3) of section 4 shall hold office during the pleasure of the Government-
- (2) Any member appointed under clause (h) of sub-section
- (3) of section 4 may resign his member

ship by giving notice in writing to the Government but shall continue in office until his resignation is accepted by the Government

*# 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 eight and at least one independent member shall attend the meeting.

(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.

* Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

** Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, sub-sections (5) to (7) omitted.

*# Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

**6. Functions of the Board.* -Subject to the provisions of this Act, 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, 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 Act, 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;

* Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016.

- (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 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 Act 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 Act, 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 Act;
- (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 submitted 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 five.

(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 shall 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 or corruption 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 Act and that there is no diversion of funds of the Board.

(2) The Commission shall with the approval of the majority of members issue "Fidelity Certificate" every six months certifying that the application of funds and the investment of surplus funds are in conformity with the Act 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 Act;
- (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 Act;

(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 Government Department 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 Government Department under sub-section (2), shall examine the project proposal with reference to the cost benefit analysis of the project including the socio-economic cost benefit and shall appraise the project proposal with sufficient details;

(4) Where the public agency or the Government Department has proposed a project through Public-Private Partnership, the Board shall further examine the project with reference to the following factors, namely-

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

- (b) the possibility of specifying project performance parameters and measuring their outcomes;
- (c) the risk sharing with the participants;
- (d) the technological and managerial advantages due to participation;
- (e) the socio-economic factors which may affect investment by the participant;
- (f) compliance with regulatory norms.

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

(6) The Board shall cause the details of projects recommended under sub-section (5), 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.

(7) On receipt of proposal for implementation of the Project under sub-section (5), 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.

(8) 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.

(9) 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 may re-examine the Project as in sub-section (3) and make a fresh recommendation to the Government.

(10) 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.

(11) The Board, on receipt of the report from the sponsoring agency under sub-section (10), 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.

**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 and to meet operational and administrative expenses of the Board:

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 per cent in the first year and increased by ten percent each year upto fifty per cent of the Motor Vehicle Tax in the fifth year:

Provided further that in addition, the cess levied on petroleum products shall also be contributed to the Fund by the Government on the basis of the amount of cess collected 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:

* Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

Provided that the revenue realised from any project including user levy 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 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 Act, on such terms and conditions as the Government may determine.

**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 Act.

(2) For the purpose of such borrowing the Board may issue any financial instrument including General Obligation Bonds, Revenue Obligation Bonds or any other appropriate financial instruments or raise funds through any financial structures including Revenue Bonds with structured repayment mechanism, Land Bonds and 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.

* Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

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 Act 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.

9. Guarantee by Government of loans* - (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 Act shall not exceed the limits set by the Kerala Ceiling on Government Guarantees Act, 2003 (30 of 2003) in force.

(2) The Government shall, so long as any such guarantee is in force lay before the State Legislature in every year during the budget session, a statement of the guarantee, if any, given during the current financial year and up to date accounts of the total sums, if any, which have been paid out of the Consolidated Fund of the State by reason of any such guarantee or paid into the said fund towards repayment of any moneys so paid out.

**#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 Act.

(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 subsection (1) shall be such, as may be specified, by the Government from time to time.

* Vide Act 5 of 2002, the words “rupees one thousand crores” substituted with “rupees two thousand crores”.

** Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

*# Substituted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

11. *Mode of recovery of money due to Board* —All sums payable by any person to the Board or recoverable by at under this Act or the scheme and all charges or expenses incurred in connection therewith shall, without prejudice to any other mode of recovery, be recoverable as arrears of public revenue due on land under the provisions of the Revenue Recovery Act for the time being in force.

12. *Members of Board etc..to be public servants.* —Every member of the Board, *Executive Committee, Fund Trustee and Advisory Commission the Fund Manager and staff of the Board appointed under sub-section (1) of section 10 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

13. *Protection for acts done in good faith*—No suit or other legal proceeding shall lie against any member of the Board or any other person in respect of anything which is done in good faith or intended to be done in good faith under this Act or under the scheme.

14. *Power of Government to issue directions*—(1) Notwithstanding anything contained in this Act it shall be lawful for the Government to issue directions to the Board in matters relating to State and National Policies and such directions shall be binding on the Board.

(2) The Government may, after consultation with the Board, give to the Board general directions to be followed by the Board.

(3) In the exercise of the powers and performance of its duties under this Act, the Board shall not depart from any general direction issued under sub-section (2) except with the previous permission of Government.

15. *Accounts and Audit*— (1) The Board shall cause to be maintained such books of accounts and other books in relation to its accounts and prepare an annual statement of accounts and balance sheet in such form and in such manner as may be specified in the scheme.

(2) The accounts of the Board shall be audited by such auditor in such manner and at such time as the Government may, by general or special order, direct and the auditor so appointed shall have such powers of requiring the production of documents and the furnishing of information in respect of such matters.

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

(3) The accounts of the Board as certified by the auditor together with the audit report thereon shall be forwarded annually to the Government who may issue such directions to the Board as they may deem fit and the Board shall comply with such directions.

16 Annual report and audited statement of accounts —(1) The annual report of the Board shall be prepared under the direction of the Board and after approval by the Board, a copy of the report shall be submitted to Government before the end of July every year.

(2) The Government shall, as soon as the annual report is received, cause the same together with the audited statement of accounts to be laid on the table of the Legislative Assembly.

17. Power to order inquiry. —(1) The Government may, at any time appoint any person to inquire into the working of the Board and to submit a report to the Government.

(2) The Board shall give the person so appointed all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts and information in the possession of the Board as he may require.

**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.

18. Dissolution of the Board—(1) If the Government for any reason are of opinion that it is not necessary to continue the Board they may, by notification in the Gazette, dissolve the Board from such date as may be specified therein.

(2) Upon the publication of a notification under sub-section (1) dissolving the Board,

(a)

* Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

(a) the Chairman and all the other Members of the Board shall, as from the date of dissolution, vacate their offices as such;

(b) all the powers and functions which may, by or under the provisions of this Act be exercised and performed by or on behalf of the Board and the Chairman shall, as from the date of dissolution, be exercised and performed by the Government or such authority or person as they may appoint in this behalf.

(c) all funds and other property vested in the Board shall vest in the Government, and

(d) all liabilities legally subsisting and enforceable against the Board shall be enforceable against the Government to the extent of the funds and properties vested in them

(3) Nothing in this section shall affect the liability of the Government in respect of bonds or debentures guaranteed by the Government.

19. *Bar of jurisdiction of civil Courts.*—No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or scheme required to be settled, decided or dealt with or to be determined by the Government or the Board or any officer authorised by the Government or the Board.

20. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with this Act or the scheme made thereunder, which appears to them necessary for the purpose of removing the difficulty.

(2) Every order made under sub-section (1) shall be laid before the State Legislature.

21. *Modification of the Scheme.*—(1) The Government may, by notification in the Gazette, add to, amend or vary the scheme either prospectively or retrospectively.

(2) Every notification under sub-section (1) shall be laid, as soon as may be after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the notification or decides that the notification should not be issued, the notification, shall thereafter have effect only in such modified form or be of no effect, 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 that notification.

22. *Repeal and saving*— (1) The Kerala Infrastructure Investment Fund Ordinance, 1999 (5 of 1999), is hereby repealed.

(2) Notwithstanding such repeal anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act.

*FIRST SCHEDULE

**[See Sections 2(ac), 2(ae), 3(6), 6A(k), 6A(o), 6F(4)(a), 6F(6), 6F(10)]

MATTER FOR WHICH PROVISIONS MAY BE MADE IN THE
SCHEME

1. Eligibility of undertakings for assistance
2. The purposes for which the assistance may be given
3. Modes of assistance
4. Interest and penal charges
5. Security for the assistance
6. Appraisal and sanction procedure
7. Disbursement procedure
8. Guidelines for memorandum of understanding/performance contract
9. Recovery procedure
10. Monitoring system
11. Investment of surplus funds
12. Board meetings, *# fees and allowances to members of the Board
13. The method of keeping accounts shall be kept, the preparation of the budget, the audit of accounts and the submission of reports to the Government.
14. The procedure for defraying the expenditure incurred in the administration of the fund
- *@15. Other information with respect to which a detailed study of the project may be conducted after the decision for preliminary investment.
16. Other information with respect to which feasibility study may be conducted.
17. Other powers and functions of the Board.

* Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, the word “Schedule” renamed as “First Schedule”.

** Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

*# Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, the word “quorum” omitted.

*@ Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, item 15 omitted and new items inserted.

18. Manner of investing surplus fund of the Board.
19. Value for Money Test.
20. 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.
21. Websites in which details of the project to be published.
- *22. Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the scheme

**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, Multilevel parking facilities.
23. Waste Water, Sewerage treatment systems.

* Vide Act 15 of 2016 notification no. 15841/Leg. A1/2016/Law dated 05.11.2016, item 16 renumbered as item 22.

** Inserted vide Act 15 of 2016, notification no. 15841/Leg. A1/2016/Law dated 05.11.2016

THIRD SHEDULE
[See section 6F(1 1) (c)]
NATURE OF CONCESSION AGREEMENTS

1. 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.