



THE PRIVATE POWER AND INFRASTRUCTURE BOARD ACT, 2012

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THE PRIVATE POWER AND INFRASTRUCTURE BOARD ACT, 2012.

ACT No. VI OF 2012

[6th March, 2012]

An Act to provide for establishment of the Private Power and Infrastructure Board.

WHEREAS it is expedient to establish the Private Power and Infrastructure Board for implementing the power policies, the development and implementation of Power projects and related infrastructure in the private sector and public-private partnership basis and to provide for matters connected therewith or incidental thereto;

AND WHEREAS it is expedient to establish the aforesaid Board to promote, encourage, facilitate private sector investment in the power sector and to safeguard the investments already made therein and to provide one window facility to investors;

It is hereby enacted as follows:—

PART I

GENERAL

1. Short title, extent and commencement.— This Act may be called the Private Power and Infrastructure Board Act, 2012.

(1) It extends to the whole of Pakistan.

(2) It shall come into force at once.

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

(a) "Board" means the Private Power and Infrastructure Board, hereinafter referred to as the PPIB;

(b) "Chairman" means the Chairman of the Board;

(c) "Fund" means the PPIB fund established under section 14;

(d) "Managing Director" means the Managing Director appointed under section 7;

(e) "member" means a member of the Board designated under section 6 or appointed under section 7, as the case may be;

- (f) "person" includes an individual, partnership, trust association, company, body corporate or body of individuals, whether or not having separate legal personality, ¹[* * *]
- (g) "prescribed" means prescribed by rules or regulations;
- (h) "private power" means all activities concerning generation, transmission and distribution of electricity and the related infrastructure, which may be carried out by or on behalf of private sector under power related policies and applicable laws;
- (i) "property" includes any right, title or interest in property, moveable or immovable, tangible or intangible and in whole or in part;
- ²["(j) Public Sector Power Projects" means power generation, transmission or distribution facilities constructed or to be constructed, owned, managed or controlled by the Federal Government, a Provincial Government, a local authority or any entity owned or controlled by any such Government or authority where such facilities are specifically sanctioned by Federal Government to be established under the applicable power policies to be processed by Private Power and Infrastructure Board;".]
- (k) "reulations" means the regulations made under section 24;
- (l) "rules" means the rules made under section 23;
- (m) "sponsor" means a person, including consortium from the private or public sector who intend to invest or have already invested in the power sector as per provisions of power policies; and
- (n) "staff" means the officers and employees of PPIB and includes deputationists and regular and contract employees.

PART II

PRIVATE POWER AND INFRASTRUCTURE BOARD

3. Establishment of the Private Power and Infrastructure Board.—(1) There is hereby established the Private Power and Infrastructure Board for carrying out the purposes and objectives of this Act.

(2) The PPIB shall be independent in the performance of its functions and shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Act, to enter into agreements and contracts, acquire and hold property and to sue and be sued in its own name.

4. Location of office.— The principal office of PPIB shall be at Islamabad and it may establish regional offices at such other place or places in Pakistan, as it deems appropriate.

5. Functions and Powers of PPIB.—(1) The PPIB shall exercise all powers which shall enable it to effectively perform its functions as specified in sub-section (2).

¹Omitted by Ord.XVI of 2015,s.2 (valid upto 20-03-2016).

²Renumbered, Ins. by Ord.XVI of 2015,s.2 (valid upto 20-03-2016).

- (2) In particular and without prejudice to the generality of the foregoing power the PPIB shall—
- (a) recommend and facilitate development of power policies;
 - (b) consult the concerned Provincial Government, prior to taking a decision to construct or cause to be constructed a hydroelectric power station in any Province and to take decisions on matters pertaining to power projects set up by private sector or through public private partnership and other issues pertaining thereto;
 - (c) coordinate with the Provincial Governments, local governments, Government of Azad Jammu and Kashmir (AJ and K) and regulatory bodies in implementation of the power policies, if so required;
 - (d) coordinate and facilitate the sponsors in obtaining consents and licences from various agencies of the Federal Government, Provincial Governments, local governments and Government of AJ&K;
 - (e) work in close coordination with power sector entities and play its due role in implementing power projects in private Sector or through public private partnership ¹[or for public sector power projects] as per power system requirements;
 - (f) function as a one-stop organization on behalf of the Federal Government and its Ministries, Departments and agencies in relation to private power companies, ¹[* * *] sponsors, lenders and whenever necessary or appropriate, other interested ¹[person];
 - (g) draft, negotiate and enter into security package documents or agreements and guarantee the contractual obligations of entities under the power policies;
 - (h) execute, administer and monitor contracts;
 - (i) prescribe and receive fees and charges for processing applications and deposit and disburse or utilize the same, if required;
 - (j) obtain from sponsors or private power companies, as the case may be security instruments and encash or return them, as deemed appropriate;
 - (k) act as agent for development, facilitation and implementation of power policies and related infrastructure in the Gilgit-Baltistan areas and AJ and K;

¹ Ins, omitted sales by Ord.XVI of 2015,s.3 (valid upto 20-03-2016).

- (l) prescribe, receive, deposit, utilize or refund fees and charges, as deemed appropriate;
- (m) open and operate bank accounts in local and foreign currencies as permissible under the laws of Pakistan;
- (n) commence, conduct, continue and terminate litigation, arbitration or alternate dispute resolution mechanisms at whatever levels may be necessary or appropriate and hire and pay for the services of lawyers and other experts therefor;
- (o) appoint technical, professional and other advisers, agents and consultants, including accountants, bankers, engineers, lawyers, valuers and other persons in accordance with section 11;
- (p) hire professional and supporting staff and, from time to time, determine the emoluments and terms of their employment, provided always that at no stage shall such emoluments be reduced from such as are agreed in the contracts with such persons; and
- (q) perform any other function or exercise any other power as may be incidental or consequential for the performance of any of its functions or the exercise of any of its powers or as may be entrusted by the Federal Government to meet the objects of this Act.

PART III

MANAGEMENT AND ADMINISTRATION

6. Composition of the PPIB.—(1) The general management and administration of affairs of the PPIB shall vest in the Board, which shall consist of the following, namely:—

- (a) Minister for Water and Power, Government of Pakistan-*Chairman*;
 - (b) Secretary, Ministry of Water and Power, Government of Pakistan-*Member*;
 - (c) Secretary, Ministry of Finance, Government of Pakistan or his nominee not below the rank of Additional Secretary or equivalent-*Member*;
 - (d) Secretary, Ministry of Petroleum and Natural Resources, Government of Pakistan or his nominee not below the rank of Additional Secretary or equivalent — *member*;
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- (e) Secretary, Planning Commission, Government of Pakistan or his nominee not below the rank of Additional Secretary or equivalent- *Member*;
- (f) Chairman, Federal Board of Revenue - *Member*;
- (g) Chairman WAPDA - *Member*;
- (h) Managing Director, PPIB - *Member*;
- (i) Chief Secretaries of Provinces and AJ and K or their nominees not below the rank of Additional Secretary or equivalent - *Member*;
- (j) One representative each from Gilgit-Baltistan (G.B) and FATA to be nominated by Chief Minister, G.B and Governor Khyber Pakhtunkhwa respectively; and
- (k) One representative from private sector from each Province to be nominated by the respective Provincial Government.

(2) The Board shall appoint a Secretary to the Board.

(3) The Federal Government may increase or decrease the number of members of the Board from time to time as it may consider appropriate and specify the qualifications and procedure of appointment of the members.

(4) No act or proceedings of the Board shall be invalid by reason only of the existence of a vacancy in or defect in the constitution of the Board.

7. Managing Director and other members.—(1) There shall be a Managing Director of PPIB who shall be appointed by the Federal Government.

(2) The Managing Director shall be responsible for the day-to-day administration of the affairs of PPIB and shall, subject to the regulations, be assisted by the staff in carrying out the functions of PPIB.

(3) The Managing Director shall be a Pakistani professional of known integrity and competence with a minimum of twenty years of related experience in law, business, engineering, finance, accounting, economics or the power industry.

(4) The Managing Director shall be paid such remuneration and allowances and shall be entitled to such privileges and facilities as may be determined by the Board and the same shall not be varied to his disadvantage during his term of office. The members shall be entitled to such privileges and facilities as may be prescribed by regulations.

(5) The Managing Director shall, unless he resigns or is removed from office earlier by the Federal Government, hold office for three years or for such period as may be extended by the Federal Government or on attaining the age of sixty-five years, whichever is earlier.

(6) The members of the Board other than the *ex-officio* members shall, unless they resign or are removed from office earlier by the Federal Government, hold office for three years or for such period as may be extended by the Federal Government or on attaining the age of sixty-five years, whichever is earlier.

(7) No person shall be appointed or continue as managing Director or a member, if—

- (a) he has been convicted of an offence involving moral turpitude or has been found guilty of misconduct;
- (b) he has been or is adjudged insolvent;
- (c) he is incapable of discharging his duties by reason of physical or mental unfitness and has been so declared by a special medical board appointed by the Federal Government; or
- (d) he fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravenes any of the provisions of Act pertaining to unauthorized disclosure of information.

(8) A member other than *ex-officio* member may, at anytime, resign from his office by written notice addressed to the Federal Government. The office of a private sector member shall become vacant upon the death or resignation of such member. A vacancy caused by resignation or any other reason shall be filled by the appointment of a person qualified to fill such vacancy.

(9) The Managing Director shall not, during his term of office in the PPIB, engage himself in any other service, business, vocation or employment and enter into the employment of or accept any advisory or consultancy relationship.

(10) Subject to section 9 and any policy of the Board made in this behalf, the Managing Director may, at his discretion, delegate any of his functions to any other officers of PPIB.

8. Meeting of the Board.—(1) The meetings of the Board shall be presided over by the Chairman and in his absence a member designated by the Chairman shall preside over the meeting of the Board.

(2) At least fifty *per cent* of the total membership of the Board shall constitute a quorum for meetings of the Board.

(3) The meetings of the Board shall be held at such time and place as the Chairman of the Board or a majority of members may from time to time determine. The members shall have reasonable notice of the time and place of the meeting and the matters on which a decision by the Board is to be taken in such meeting.

(4) Decisions of the Board shall be taken by the majority of its members present and in case of a tie the Chairman or the member presiding over the meeting shall, as the case may be, have a casting vote.

(5) The Secretary shall keep minutes of the proceedings of every meeting of the Board. The decisions of the Board shall be recorded in writing.

9. Delegation.—(1) The Board may, for carrying out its functions, constitute such committees, from time to time, as may be considered necessary. The Board or any of its committees may invite any technical expert or other representative of a government or reputable private institution for assistance in the performance of its functions. The proceeding of the committees shall be duly reduced in writing and recommendation etc., shall be sent to the Board for approval.

(2) The Board may, subject to such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers to the Managing Director or one or more members of the Board or any officer of PPIB, except—

(a) the power to approve the audited accounts;

(b) the power to incur annual expenses in excess of any limits set out in the regulations;

(c) the power to commit anything involving financial liability or impact on the Federal Government; and

(d) the power to make or repeal regulations.

(3) A delegation under this section shall not prevent the concurrent performance or exercise by the Board of the functions or powers so delegated.

10. Employees.—(1) To carry out the purposes of this Act, PPIB may, from time to time, employ persons to be staff of PPIB who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be prescribed by regulations.

(2) The staff of PPIB shall be liable to disciplinary action in accordance with the regulations.

11. Employment of agents, advisers and consultants.—(1) Subject to subsection (2) the PPIB may employ any technical, professional and other advisers, agents and consultants, including accountants, bankers, engineers, lawyers, valuers and other persons to transact any business or to do any act required to be transacted or done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Act.

(2) The decision to employ and the terms of employment of advisers, agents and consultants shall be made by PPIB in accordance with the regulations.

12. Public servants.— The Chairman, Managing Director, members, staff and other persons employed or authorized to perform or exercise any function or power under this Act or rendering services to PPIB as advisers, agents or consultants shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

13. Disclosure of interest.—(1) Where a person is present at a meeting of the Board or any committee of the Board and that person or his family or his professional or business partner or associate has direct or indirect interest in the subject for consideration in that meeting, such person shall-

(a) forthwith disclose such interest; and

(b) not take part in any consideration on that matter unless the Board or the committee thereof otherwise directs.

(2) Where a member or staff, including an adviser, agent, consultant or family member of such person has a direct or indirect interest in any matter relating to PPIB, such person shall forthwith disclose such interest to the PPIB and the PPIB shall take such action as it deems appropriate.

PART IV

FINANCIAL PROVISIONS

14. Fund of the PPIB.—(1) There is hereby established, for the purposes of this Act, a Private Power and infrastructure Board Fund to be administered and controlled by the PPIB. The operation of the PPIB shall be funded from the Fund. The Fund shall consist of—

(a) grants and loans from the Federal Government and by donor agencies;

(b) proceeds from encashment of security instruments;

(c) other loans or funds obtained by the PPIB subject to prior approval of the Federal Government;

- (d) fees and all other sums collected by it as prescribed from time to time;
- (e) all other sums or property which may in any manner become payable to or vested in the PPIB in respect of any matter incidental to the exercise of its functions and powers; and
- (f) returns and profits on the investments.

(2) It shall be the duty of the PPIB to conserve the Fund while performing its function and exercising its powers under this Act.

15. Expenditure to be charged on Fund.—The Fund shall be expended for the purposes of—

- (a) paying any expenditure lawfully incurred by the PPIB, including the remuneration and allowances of the Chairman, Managing Director, members, staff, employees, accountants, advisers, agents, consultants, lawyers, valuers and other experts appointed and employed by PPIB, including provident fund contributions, superannuating allowances or gratuities and legal fees and costs and other fees and costs, if any;
 - (b) paying for expenditure incurred on-
 - (i) marketing and publicity;
 - (ii) capacity building, seminars and conferences, and
 - (iii) restructuring;
 - (c) purchasing or hiring equipment, machinery and any other materials, acquiring land and constructing buildings and carrying out any other work and undertakings by PPIB in the performance of its functions or the exercise of its powers under this Act.
 - (d) re-paying any financial accommodation received or moneys borrowed under or pursuant to or by virtue of this Act and the profit, mark-up or return due thereon; and
 - (e) paying any other expenses, costs or expenditure properly incurred or accepted by the PPIB in the performance of its functions or the exercise of its powers under this Act.
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16. Investment.— The PPIB may, in so far as its moneys are not required to be expended under this Act, invest amounts in such manner as prescribed by the Board from time to time.

17. Bank accounts.— The PPIB may open and maintain its accounts in local and foreign currencies in such scheduled banks and other financial institutions as it may from time to time determine in accordance with the instruction of the Federal Government in this regard.

18. Account.—(1) The PPIB shall maintain proper accounts and other records relating to its financial affairs and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year statements of accounts of the PPIB which shall include a balance sheet and an account of income and expenditure.

(2) The financial year of PPIB shall be the period of twelve months ending on the 30th June in each year.

19. Audit.— The accounts of PPIB shall be audited annually by a reputable firm of chartered accountants approved by the Board from amongst the approved list of Auditor General of Pakistan:

Provided that the Federal Government may also require the Auditor-General of Pakistan to conduct special audit of the PPIB, as and when it considers necessary.

PART V

MISCELLANEOUS

20. Information.— The PPIB may call for any information required by it for carrying out the purposes of this Act or as is required under contracts entered into by the PPIB from any person involved, directly or indirectly, in the power sector or any matter incidental or consequential thereto and any such person shall provide the required information called by the PPIB.

21. Annual report.—(1) As soon as practicable but no later than three months after the end of each financial year, Secretary shall prepare and submit to the Board an annual report concerning its activities during the financial year within three months. The Chairman of the Board shall submit the same before the Council of Common Interests and both Houses of the Majlis-e-Shoora (Parliament).

(2) The report referred to in sub-section (1) shall include—

- (a) activities of PPIB during the financial year;
- (b) an audited statement of income and expenditure;
- (c) an audited balance sheet; and

(d) any other matter which the PPIB may consider appropriate.

22. Indemnity.— No suit, prosecution or other legal proceedings shall lie against the Chairman, Managing Director, members, consultants, officers or other employees of PPIB in respect of anything done or intended to be done in good faith under this Act.

23. Power to make rules.— The Board may, by notification in the official Gazette, make rules, not inconsistent with the provisions of this Act, for exercising its powers and carrying out of its functions under this Act and any other matter incidental or consequential to the implementation of this Act.

24. Power to make regulations.— The Managing Director may, with the approval of the Board, make regulations, not inconsistent with this Act and the rules, concerning the internal affairs of PPIB.

25. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

26. Common seal.— The PPIB shall have a common seal and such seal shall be kept in the custody of the Managing Director or such other person as may be authorized by the regulations. Documents required or permitted to be executed under seal shall be specified in and authenticated in such manner as shall be authorized by regulations.

27. Support of the Federal Government.— The Federal Government and all its agencies, particularly the concerned enterprises owned and controlled wholly or partially, directly or indirectly by the Federal Government shall render such support to the PPIB as may be necessary to fulfill its objective and functions under this Act.

28. Removal of difficulties.—If any difficulty arises in giving effect to any provision of this Act the Federal Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty.

29. Dissolution of the Board.—(1) Upon commencement of this Act, the Private Power and Infrastructure Board established and reconstituted *vide* the Federal Government's Notification No. PPC-3(33)/94, dated the 2nd August, 1994 and other related notifications issued from time to time hereinafter referred to as the former board, shall stand dissolved and upon such dissolution:—

- (a) all assets, rights, powers, authorities and privileges and all property, cash and bank balances, reserve funds, investment and all other interests and rights in or arising out of such property and all debts, liabilities and obligations of whatever kind of the former board subsisting immediately before its dissolution shall stand transferred to and vest in PPIB constituted under this Act;

- (b)** notwithstanding anything contained in this Act or any other law for the time being in force or in any agreement, deed, document, or other instrument,—
- (i)** Chairman of the former board shall continue as the Chairman of PPIB;
 - (ii)** the Managing Director of the former board shall continue as the Managing Director unless and until a Managing Director is appointed under section 7;
 - (iii)** a member of the former board shall continue to be a member of the PPIB unless and until such member is appointed under section 7; and
 - (iv)** all officers, consultants, advisers, auditors and other employees and staff of the former board shall stand transferred to and be officers consultants, advisers, auditors and employees and staff of PPIB;
- (c)** the persons mentioned in clause (b) shall be deemed to have been appointed or engaged by PPIB in accordance with the same terms and conditions of service as were applicable to them, immediately before such continuance in office or transfer under this Act and shall not be entitled to compensation because of such continuance or transfer:

Provided that the civil servants appointed to or working in the former board shall upon their transfer to the PPIB continue to be governed by the Civil Servants Act, 1973 (LXXI of 1973) and rules made thereunder;

- (d)** all debts and obligations incurred or contracts entered into, rights acquired and all matters and things engaged to be done by, with or for the former board shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the PPIB;
 - (e)** all suits and other legal proceedings instituted by or against the former board before its dissolution shall be deemed to be suits and proceedings by or against the PPIB and shall be proceeded or otherwise dealt with accordingly; and
 - (f)** any reference to the former board in any statutory instrument or document shall, unless the context otherwise requires, be read and construed as reference to be PPIB.
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(2) All rules, regulations, notifications, orders or instructions in force pertaining to or in anyway concerned with or affecting the former board immediately before the commencement of this Act, shall, so far as they are not inconsistent with any of the provisions of this Act, continue to be in force until repealed, altered or rescinded by rules or regulations made under this Act.
