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PART - IV
GOVERNMENT OF MEGHALAYA
LAW (B) DEPARTMENT
ORDERS BY THE GOVERNOR

NOTIFICATION

The 6th April, 2011.

No.LL(B) 131/2010/85.—The Meghalaya Infrastructure Development Finance Board Act, 2011 (Act No. 11 of 2011) is hereby published for general information.

MEGHALAYA ACT NO. 11 OF 2011.

(As passed by the Meghalaya Legislative Assembly)

Received the assent of the Governor on 6th April, 2011.

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MEGHALAYA INFRASTRUCTURE DEVELOPMENT FINANCE BOARD ACT, 2011

AN

ACT

to provide for constitution, establishment, and sustained operation of a Board for financing of all types of infrastructure in the State and to provide for matters connected therewith or incidental thereto.

Be it enacted by the Legislative of the State of Meghalaya in the Sixty-second Year of the Republic of India as follows: -

**CHAPTER – I
PRELIMINARY****Short title, extent
commencement
and applicability.**

1. (1) This Act may be called the Meghalaya Infrastructure Development Finance Board Act, 2011.

(2) It extends to the whole of the State of Meghalaya.

(3) It shall come into force on such date as the State Government may by way of notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different sections of this Act.

(4) It shall apply to such Infrastructure Projects as are implemented by or through the Board under the provision of this Act.

Definitions.

In this Act, unless the subject or context otherwise requires, -

- (a) "Act" means the Meghalaya Infrastructure Development Finance Board Act, 2011;
- (b) "Approved Detailed Project Report" means the Approved Detailed Project Report adopted and published by the Board in accordance with Section 23;
- (c) "Bankable Projects" means those Infrastructure Projects which are determined by the Board to be viable for the purpose of financing;
- (d) "Board" means the Meghalaya Infrastructure Development Finance Board constituted under Section 3(1);
- (e) "Central Government" means the Government of India, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of India;

- (f) "Chairperson" means the chairperson of the Board appointed under Section 4(1);
- (g) "Concession" means grant of financial assistance or conferment of right on government property and public assets to a person other than the State Government or Government Agency as per the terms specified in the Concession Agreement;
- (h) "Concessionaire" means a person with whom Concession Agreement is entered into by the State Government, the Government Agency or the Specified Government Agency;
- (i) "Concession Agreement" means the agreement of the nature and parameter specified in Schedule II that may be entered by and between the Concessionaire and the State Government, the Government Agency or the Specified Government Agency;
- (j) "Consultant" means the consultancy agency, whether belonging to the State Government or any other person(s) which is entrusted by the Board with preparing of the Detailed Project Report;
- (k) "Detailed Project Report" means the Detailed Project Report prepared by the Consultant in accordance with Section 22;
- (l) "Escrow Account" means a bank account in which cash is deposited or from which cash is withdrawn in the manner specified in the Concession Agreement;
- (m) "Financial Year" means the period of twelve months commencing on the 1st of April of each year and ending on the 31st March of the following year;
- (n) "Fund" means the Meghalaya Infrastructure Development Fund constituted under Section 20 (1);
- (o) "Government Agency" means a corporation or a body owned or controlled by the State Government or an authority established by or under any law and includes Local Authority;
- (p) "Infrastructure Projects" means the infrastructure projects specified in Schedule-I and such other projects as may be notified by the State Government from time to time;

- (q) "Local Authority" means a municipal board or corporation, municipal council, municipal town committee or notified areas committee;
- (r) "Member" means a Member of the Board including Chairperson;
- (s) "prescribed" means prescribed by rules or regulation made under this Act;
- (t) "Specified Government Agencies" means the State Government and Government Agencies participating jointly;
- (u) "State" means the State of Meghalaya;
- (v) "State Government" means the Government of the State of Meghalaya and its departments, agencies and instrumentalities functioning under its direction or control;
- (w) "State Government Guarantee" means a guarantee given by the State Government to a Concessionaire;
- (x) "Subsidy" means financial assistance in cash or kind provided by the Board, State Government, Government Agencies or Specified Government Agencies; and
- (y) "User Charges" means the right or authority granted to the developer by the State Government to recover investment and fair return on investment and shall include toll, fee, charge, rentals or benefit by whatever name called.

CHAPER II
MEGHALAYA INFRASTRUCTURE DEVELOPMENT FINANCE BOARD

**Establishment of
the Board.**

3. (1) As soon as may be after the commencement of this Act; the State Government may, by notification in the Official Gazette constitute and establish a Board to be called the Meghalaya Infrastructure Development Board and the Board shall become operational from such date the State Government may notify in the Official Gazette.

(2) The Board shall:

- (a) be a body corporate having a perpetual succession;
- (b) have a common seal;
- (c) have the power to acquire, purchase, lease, rent or otherwise take possession of any property or assets, both movable and immovable, in its own name.

Provided that any transaction on land shall be subject to the provisions of Meghalaya Transfer of Land (Regulation) Act, 1971;

- (d) be capable of suing and being sued; and
- (e) have the power to do or perform all such acts and things as a body corporate may legally do or perform.

(3) The head office of the Board shall be situated at Shillong or at such other place as the State Government may specify by a notification in the Official Gazette. The Board may establish branch or other offices at such other places in the State as it may deem fit.

**Composition of
Board.**

4. (1) The Board shall consist of a Chairperson and not less than two and not more than seven other Members to be appointed by the State Government by notification in the Official Gazette.

(2) The composition of the Board established under sub-section (1), shall be as follows: -

- (a) The Minister of Finance of the State Government ... Chairperson
- (b) The Chief Secretary to the State Government ... Member
- (c) The Additional Chief Secretary/
The Principal Secretary,
Department of Finance ... Member

- | | | |
|-----|---------------------------------------------------------------------------------|------------------------|
| (d) | The Additional Chief Secretary/
Principal Secretary to the Chief
Minister | ... Member |
| (e) | The Additional Chief Secretary/
Principal Secretary,
Planning Department | |
| (f) | Three technical experts to be
nominated by the State
Government | ... Members |
| (g) | The Minister-in-charge of the
concerned Administrative
Department | ... Special
Invitee |

(3) The appointment of the Chairperson and all other Members of the Board as first constituted and every subsequent change thereafter shall be published in the Official Gazette.

(4) The term and other conditions relating to salary and fee of Members, Secretary, officer and employees of the Board shall be such as may be prescribed.

**Qualification of
Members.**

5. (1) The Members appointed under clause (f) of section 4 shall be persons of ability, integrity and standing and qualified in the fields of management of Infrastructure Projects, law, finance, economics or commerce.

(2) The minimum qualification and experience in the fields of management of Infrastructure Projects, law, finance, economics or commerce, namely, -

- (a) qualifications and experience in the field of management of Infrastructure Projects, -

relevant professional qualification and a minimum work experience of ten years after acquiring the professional qualification, in a government department or public sector organization or in a private sector engaged in Infrastructure Projects and having adequate financial credentials in respect of conceptualizing, appraisal, development, financing or implementation of Infrastructure Projects.

- (b) qualifications and experience in the field of Law -

a serving or a retired District and Sessions Judge or a person qualified to be a District and Sessions Judge.

(c) qualifications and experience in the field of Finance, Economics or Commerce –

- (i) membership of the Institute of Chartered Accountants of India or Post Graduation in Economics, Commerce or Management; and
- (ii) ten years' of work experience after acquiring the said qualification in a government department, public sector organization or in a private sector organization having adequate financial credentials, or ten years' teaching experience in a university or a college, recognized by the University Grants Commission or All India Council of Technical Education in the stream of finance, economics or commerce.

(3) Before appointing any person as the Member under clause (f) of section 4(2), the State Government shall satisfy itself that the person does not have any financial or other interest, which may affect prejudicially his functioning as a Member of the Board.

(4) Notwithstanding anything contained in this Act, the State Government may, by order, remove any Member of the Board from his office if such Member:

- (a) is an un-discharged insolvent; or
- (b) is found guilty under the laws of India of a criminal offence of a dishonest or fraudulent nature; or
- (c) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) has become physically incapacitated to hold the office; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (g) in case of employees of the State Government or any of the Government Agency or any Specified Government Agencies, has resigned, or been removed or dismissed from the service for any reason whatsoever; or
- (h) in the case of a person having professional qualifications, is disqualified or suspended from practising his or her profession by order of any competent authority made in respect of him or her personally; or

- (i) is judged by the Board as behaving with gross misconduct capable of bringing the Board into disrepute; or
- (j) has failed to disclose his or her interests or potential interests in an Infrastructure Project or a Bankable Project in the State as required under Section 11; and
- (k) has in the opinion of the State Government, such financial or other interest in an Infrastructure Project or a Bankable Project in the State as is likely to affect prejudicially the discharge by him of his functions as a Member.

(5) Any Member of the Board shall cease to hold office in the Board if he is removed in accordance with the provisions of subsection (4) or relinquishes his office by giving a written notice of at least three calendar months to the State Government.

Powers of Chairperson.

6. The Chairperson, shall have the powers of general superintendence and directions in the conduct of the affairs of the Board and shall, preside over the meetings of the Board:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Board, as he may think fit, to any other Member or officer of the Board.

Member's nominees.

7. Every Member of the Board may appoint a nominee to attend a meeting of the Board on his behalf as an observer. Such a nominee may speak on behalf of the Member but is not entitled to vote.

Tenure of Members.

8. (1) Every Member appointed under section 4(2) (f) shall hold office for 3 years or during the pleasure of the State Government.

(2) The Chairperson and every other Member shall, before entering upon his office, make and subscribe an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.

Filling up of casual vacancies.

9. A vacancy caused by the resignation or removal of any Member or by death or otherwise shall be filled up within a period of two months by fresh appointment in accordance with the provisions of this Act.

Meetings of Board

10. (1) The Board shall meet at such times and such places, and shall observe such rules of procedure in regard to the transaction of business at its meeting as may be provided by the regulations:

Provided that the Board shall meet at least once every three months.

(2) The meetings of the Board shall be presided over by its Chairperson or, in his or her absence by the senior most Member nominated by the Members who are present at the meeting from among themselves.

(3) The quorum required for transacting any business by the Board at its meeting shall be at least four, who shall be present in all the meetings of the Board. Meetings of the Board shall be suspended or terminated if the number of Members present becomes less than the quorum.

(4) A decision of the majority of Board Members present at a meeting of the Board shall be the decision of the Board and, in the event of an equality of votes; the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(5) The Members of the Board shall discharge their obligations under this Act and the rules made under this Act on an honorary basis and the expenses incurred in connection with such discharge of obligations and conduct of meetings shall form part of the administrative expenses of the Board.

Disclosure of interest.

11. (1) If any Member of the Board, or a Member of a committee, or his relative is a director, shareholder, proprietor or partner in the contracting entity or the Concessionaire or is in any way directly or indirectly interested in any project or contract or Concession Agreement entered into or proposed to be entered into or under consideration by the Board, or in any other matter which is the subject of consideration by the Board, and which may cause a conflict of interests in the performance of his or her duties as a Member of the Board, or a Member of a Committee, he or she shall fully disclose the nature of such interest as soon as possible after the commencement of the meeting of the Board or that of the Committee at which the project or the contract or the Concession Agreement or other matter is a subject of consideration, and that Member of the Board, or Member of the Committee shall not take part in the consideration of, or vote on, any question relating to that contract, proposed contract or matter.

Explanation: For the purpose of this Section, the term "relative" shall bear the meaning as assigned to it under Section 2 (41) of the Companies Act, 1956.

(2) If a Member of the Board, or a Member of a Committee referred to in sub-section (1) fails to disclose a conflict of interest as required by sub-section (1) and is present at a meeting of the Board or a Committee, or in any manner participates in the consideration of, or vote on, any question relating to the contract or other matter referred to in sub-section (1), the proceedings in relation to that contract or matter shall, as soon as such non-disclosure is discovered, be rendered invalid and thereafter be reviewed by the Board or the Committee, as the case may be, in the absence of the Member of the Board, alternate Member of the Board, or Member of the Committee concerned.

Appointment of secretary, experts, professionals and officers and other employees of Board.

12. (1) The Board may appoint a secretary and such other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to and other terms and conditions of service of the secretary and officers and other employees of the Board and the number of such officers and other employees shall be such as may be prescribed.

(3) The Board may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge and experience in the sector, to assist the Board in discharging of its functions under this Act.

Temporary association of persons with Board.

13. The Board may associate with any person whose assistance or advice is required in performing any of its functions under this Act.

Constitution of Committees.

14. The Board may constitute Committees consisting of such number of Members, and other employees, professionals and officers for performing such of its functions, as may be determined by the Board and such Members, employees, professionals and officers shall be the members of the Committee so constituted.

Providing information to Board.

15. The Board may obtain information in relation to the progress of any Bankable Project which has been undertaken as per the provisions of this Act.

Acts and proceedings of Board not to be invalid.

16. No act or proceeding of the Board or of any of its Committees shall be invalid merely by reason that any vacancy therein or any defect in the constitution of the Board, or any defect in appointment of a person acting as Chairperson or a Member or any irregularity in its procedure not affecting the merit of the case.

Board accountability.

17. The Board shall be accountable to the State Govt.

CHAPTER III
DUTIES, FUNCTIONS AND POWERS OF THE BOARD

**Duties and
Functions of the
Board.**

18. (1) The Board shall have the following duties and functions; namely, -

- (a) finance, procure finance and provide credit facilities for construction, development, operation, maintenance, rehabilitation and up gradation of Bankable Projects in the State;
- (b) administer and manage the Fund for the purpose of undertaking or assisting any financial commitments or Subsidy envisaged under any Concession Agreement or other arrangement and for the performance of its duties and functions including its own administrative expenditure;
- (c) determine whether an Infrastructure Project is a Bankable Project and decide on the mode and manner of financing such Bankable Project in accordance with the provisions of this Act;
- (d) perform such other functions as may be entrusted to it by the State Government;

(2) The duties and functions of the Board shall be exercised in an independent, transparent and efficient manner and shall disseminate all relevant information about its operations to the public, in such manner as may be determined by the Board.

**Powers of the
Board.**

19. (1) The Board shall have the following powers, namely:-

- (a) to finance construction, development, operation, maintenance, rehabilitation and up gradation of Bankable Projects in the State in accordance with the provisions of this Act;
- (b) to provide credit facilities for financing construction, development, operation, maintenance, rehabilitation and up gradation of Bankable Projects which are to be extended through the State Government, Government Agencies, Specified Government Agencies or through Public Private Participation;
- (c) to borrow and raise money with or without security by issue of bonds, debentures, loans or such other instruments as it may deem fit and to receive money from Indian or foreign sources and deposit at interest or otherwise in such manner as the Board may think fit;

- (d) to draw, issue, accept and to endorse, discount and negotiate promissory notes, hundies, and other negotiable or commercial or mercantile or transferable instruments connected with the business of the Board;
- (e) to invest and deal with the money of the Fund in banks, cooperative banks, financial institutions, deposit accounts etc. and in such manner as may from time to time be expedient or be determined by the Board;
- (f) to authorise and make payments from the Fund;
- (g) to receive grants, loans, advances, or other moneys or deposit or otherwise, from State or Central Government, banks, companies, trusts or individuals with or without allowance or interest thereon;
- (h) to buy, sell, lease, assign, mortgage, hypothecate, pledge or otherwise acquire or dispose any property whether movable or immovable or any description whatsoever and other valuable securities of the Board in such manner as may from time to time be determined by the Board:

Provided that any transaction on land shall be subject to the provisions of Meghalaya Transfer of Land (Regulation) Act, 1971;

- (i) subject to the provisions of Meghalaya Transfer of Land (Regulation) Act, 1971, to buy, lease, assign, mortgage or otherwise acquire or dispose land, buildings and other movable or immovable properties on such terms conditions as the Board may think fit;
- (j) to invest, apply for and acquire, or otherwise employ money belonging to or entrusted to or at the disposal of the Board upon securities and shares or without securities, upon such terms as may be thought proper and from time to time to vary such transactions in such manner as the Board may think fit;
- (k) to issue or to request and advise the State Government to issue State Government Guarantee for the payment of money or become sureties for the performance of any contracts or obligations including Concession Agreements;

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- (l) to negotiate and enter into any contract or arrangement for the more efficient conduct of the business of the Board or any party thereof and to sublet any contract from time to time;
 - (m) encourage investment of capital in Bankable Projects in the State, consider proposals for private participation and grant Subsidy and exclusive rights to any person to develop any Infrastructure Project and Set parameters for Concession Agreements or arrangements and negotiate and formulate the terms of any Concession Agreement (including the User Charges) or any other agreement or arrangement in relation to such Bankable Projects in accordance with the provisions of this Act;
 - (n) to charge fees for carrying out any of its duties or functions;
 - (o) to form special purpose vehicles in the form of companies or other form of entities on its own or as joint ventures as may be deemed necessary for the purpose of implementation of Bankable Projects;
 - (p) to undertake and conduct or direct committee or Consultants or any other person, to conduct surveys, feasibility studies, collect data and prepare Detailed Project Reports;
 - (q) to do all or any other things and perform such other acts as are incidental or may be thought conducive for attainment of the above objects or consequential upon the exercise of the powers or discharge of its functions and duties.

CHAPTER IV
MEGHALAYA INFRASTRUCTURE DEVELOPMENT FUND

**Meghalaya
Infrastructure
Development
Fund.**

20. (1) The State Government shall constitute a fund to be known as the Meghalaya Infrastructure Development Fund which shall vest in the Board.

(2) The Fund shall consist of:

- (a) contribution from the State Government or the Central Government;
- (b) amount charged by the Board under Section 25;
- (c) amounts borrowed or mobilised by the Board from capital or debt markets by any instrument whatsoever from both domestic and international entities including financial institutions, banks, multilateral lending agencies and international and domestic grant providers, for Infrastructure Projects;
- (d) all money received for Bankable Projects;
- (e) any other income accruing to the Fund/Board, including by way of investments;
- (f) money accruing to the Fund/Board through sale, lease or rent of any assets of the Board;

(3) In case amounts allocated for the Fund remain un-committed at the end of any Financial Year for any reason whatsoever, then such amounts shall continue to vest with the Fund and shall be available for utilisation in the next Financial Year.

(4) The State Government may make advances to the Fund in order to meet a deficit or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Government may determine.

(5) The monies comprising the Fund shall be utilised or applied for:

- (a) financing construction, development, operation, maintenance, rehabilitation and up gradation of Bankable Projects;
- (b) meeting administrative and other expenses in relation to the functioning of the Board;
- (c) meeting any financial commitments or Subsidy envisaged under any Concession Agreement or any other agreement or arrangement for development of infrastructure in the State;

(6) Notwithstanding anything contained in this Act, the Board shall have the powers, to spend such sums as it thinks fit to cover administrative expenses and for the performance of its duties and functions and such sums shall be treated as expenditure payable out of the Fund of the Board.

CHAPTER V BANKABLE PROJECT IDENTIFICATION & IMPLEMENTATION

- Identification.** 21. For the identification of Infrastructure Projects that may be funded or financed, the Board may consider suggestions from State Government, Government Agencies, Specified Government Agencies or persons engaged in the business of developing or implementing of Infrastructure Projects.
- Detailed Project Report.** 22. (1) The Board may itself conduct or have conducted by one or more Committee, Consultants or any other person such preliminary investigations and feasibility study as are necessary to establish the viability of the Infrastructure Project and the Committee or the Consultants or any other person appointed by the Board for this purpose shall prepare and submit a Detailed Project Report to the Board in such form and containing such details as may be determined by the Board.
- (2) The Board shall review each Detailed Project Report to determine whether it has been prepared according to the Board's requirements. If the Board finds deficiencies it may direct the Consultants to present a revised Detailed Project Report within a prescribed period.
- Approved Detailed Project Report.** 23. (1) Detailed Project Report once approved by the Board shall be adopted and published by the Board as Approved Detailed Project Report. The Board shall provide a copy of the Approved Detailed Project Report to the concerned departments of the State Government and to the concerned Government Agency or the Specified Government Agency. The Board shall also publish the Approved Detailed Project Report on its website.
- (2) The Board shall determine on the basis of the Approved Detailed Project Report whether an Infrastructure Project is a Bankable Project or not and shall also take into consideration any comments offered by the concerned departments of the State Government or the concerned Government Agency or the Specified Government Agency.
- Implementation of Bankable Projects.** 24. (1) In deciding the mode and manner in which an identified Bankable Project is to be financed, the Board shall have regard to its own capabilities, offers available for collaboration by other Government Agencies and any Concession Agreement, or arrangement entered into by the State Government for this purpose with any person and form such special purpose vehicles, companies or entities on its own or as joint ventures as may be prescribed by the regulations.

(2) In inviting private sector participation, the Board shall follow a competitive bidding process which adheres to accepted norms of transparency and cost effectiveness and the Board shall frame the regulations to lay down the situations where competitive bidding method or other methods shall be followed. The Board may grant first right of refusal to the person developing the Bankable Project. However, such first right of refusal shall be granted only on the basis of an appropriate procedure, which adheres to accepted norms of transparency and cost effectiveness. The Board shall have the right to cancel any adopted process without citing any reason and initiate a fresh process.

(3) In considering a proposal for development of a Bankable Project by private sector participation, the Board shall ensure that any exclusive right for such project development conferred on such persons is limited to a specified period.

(4) In order to ensure implementation of a Bankable Project, developed under this Act, the Board may form such special purpose vehicles, companies or entities on its own or as joint ventures as are deemed necessary for this purpose.

(5) The Board shall ensure that any Concession Agreement or arrangement formulated by Board is in consonance with the nature and parameters given in Schedule II and contains all necessary covenants to take care of the risks associated with the concerned Bankable Project and that the Concession Agreement or arrangement shall strive for the optimum contractual structure with regard to the need to balance the risks of stakeholders, maximize efficiency and minimize costs as may be prescribed.

(6) The Concessionaire may, charge, recover and appropriate the User Charges for use of any facility or product or service related to or arising out of a Bankable Project, where such project is undertaken by the Concessionaire. The Board shall specify the mode and manner of determination and variation of User Charges.

(7) Once any Bankable Project has been finalized, or a Concession granted, the State Government and the Board shall ensure that they do not act in any manner, which results in material adverse impact on the viability of the Infrastructure Project or the Concession Agreement.

(8) In case the State Government, Government Agencies, or the Specified Government Agencies wishes to terminate any Concession, it shall take such action only in consultation with the Board or as per the guideline provided by the Board in this behalf:

Provided that where a Concession Agreement is terminated with or without the consent of the Concessionaire, the Concessionaire shall be entitled to such amount of compensation for such termination, as is specified in the Concession Agreement.

Fees.

25. The Board may charge such fee, for carrying out any of its duties and functions, as prescribed by regulations or in terms of any agreement or arrangement entered into by it.

CHAPTER VI ACCOUNTS, AUDIT AND REPORT

Accounts and Audits.

26. (1) The accounts of the Board shall be prepared and maintained in such form and in such manner as may be provided by the rules.

(2) The Board shall cause to be prepared for each Financial Year an annual statement of accounts in such form as may be provide by the rules.

(3) The accounts of the Board shall be audited by an auditor duly qualified to act as an auditor of Companies under Section 226 of the Companies Act, 1956. (1 of 1956)

(4) The auditor shall include in their report assessments relating to the achievement of the purpose of the Fund, compliance with the policies and procedures established by the Board, and the effectiveness of the management of the Fund.

(5) The auditor shall send copy of the report together with audited copy of accounts to the Board which shall, as soon as may be, after the receipt of the audit report forward the same to the State Government.

(6) The State Government shall cause the audit report together with audited copy of accounts to be laid before the State Legislature, as soon as may be, after the receipt of the same under sub-section (5).

(7) All expenses, costs and charges including fees payable to Auditors pursuant to this Section shall be paid out of the Fund in accordance with sub-section (5) of Section 20.

Reports

27. (1) The Board shall during each Financial Year prepare in such form and at such time as may be provided by regulations, an annual report giving a true and full account of its activities during the previous Financial Year and an account of the activities likely to be undertaken by it in current Financial Year and copies of such report shall be forwarded to the State Government.

(2) The State Government shall cause every such report to be laid before the State Legislature, as soon as may be, after the receipt of the report under sub-section (1).

CHAPTER VII MISCELLANEOUS

Banking and Withdrawal.

28. All sums received for the purposes of the Fund shall be paid into an account or accounts with such banks as are agreed with the State Government and no amount shall be withdrawn there from except under the authority of the Board and by means of:

- (a) cheques signed by such persons as are authorized in that behalf by the Board; or
- (b) transfer of money electronically certified by such persons authorised in that behalf by the Board.

Members, officers and servants to be public servants.

29. All Members and employees and officers of the Board shall, while acting or purporting to act in pursuance of the provisions of this Act or any rules or regulations made thereunder, be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code 1960 and Section 2(c) of the Prevention of Corruption Act, 1988.

Protection of action taken in good faith.

30. No suit, prosecution or other legal proceeding shall lie against the Board or any member and officer or servant of the Board for anything which is in good faith done or intended to be done in pursuance of the provisions of this act or any rules and regulations made thereunder.

Powers to make Rules.

31. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely, -

- (a) the matters relating to competitive public bidding, inviting comparative bids and direct negotiation under this Act;
- (b) the manner in which the developer for any Bankable Project shall be selected under this Act;
- (c) the scheme for concession agreement;
- (d) the other factors having regard to which charges may be revised and the manner in which they may be revised;
- (e) the manner in which an opportunity of being heard shall be given to the developer;

- (f) the form and manner in which the accounts of the Board shall be prepared and maintained;
- (g) the form in which an annual statement of accounts of the Board shall be prepared;
- (h) the form in which and the time at which an annual report of the Board shall be prepared;
- (i) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as after it is made, before the State Legislature.

Power to make regulations.

32. (1) The Board may make regulations not inconsistent with provisions of this act and the rules made thereunder, for enabling it to discharge its functions under this Act.

(2) In particular and without prejudice to the foregoing powers, such regulations may provide for all or any of the following matters, namely, -

- (a) the manner in which a proposal shall be submitted to the Board under the Act;
- (b) the time and the place at which the Board shall meet and rules of procedure the Board shall observe in regard to transaction of its business at its meeting;
- (c) the other Committees which the Board may constitute, the number of Members which the Executive Committee and other Committees may consist of and the functions of the Board which they may perform under this Act;
- (d) the remuneration, allowances and conditions of service of Members, secretary, experts, professionals and officers and other employees of Board;
- (e) any other matter which is, or may be, necessary to be prescribed for the efficient conduct of the affairs of the Board.

(3) Every regulation made under this Act shall be laid, as soon as after it is made, before the State Legislature.

Act to have overriding effect.

33. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force in the State.

Power to remove difficulties.

34. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of period of two years from the date on which this Act come into force.

(2) Every order made under this Act shall be laid, as soon as after it is made, before the State Legislature.

SCHEDULE I
[See section 2(o)]

INFRASTRUCTURE PROJECTS

1. Power generation, transmission and distribution Systems.
2. Transportation Roads, Bridges, By-passes and related areas for the benefit of public including agricultural and industrial sector
3. Urban and Rural Projects including housing, water supply, sewerage disposal and treatment, urban and rural roads and lighting, solid waste management, parks, mass transit, markets, etc.
4. Dams, Irrigation, Canals, waterways, water storage.
5. Land Reclamation Projects.
6. Tourism Projects.
7. Education.
8. Health care infrastructure and allied facilities.
9. Fisheries.
10. Development of Minor Minerals.
11. Gas and Gas Works.
12. All infrastructure facilities required for industrial, agricultural and overall growth of the State.
13. Industrial estates, Industrial parks, Industrial Townships, Special Economic Zones, IT Parks, etc.
14. Other industrial infrastructure for promotion of core industries such as coal, steel, cement, petroleum, manufacturing, and others.
15. Other agricultural and related infrastructure including post harvest facilities like warehousing, cold storage, marketing of agricultural produce.
16. Any other sector which may be notified by the State Government.

SCHEDULE II
[See Section 2(i), 24(5)]

CONCESSION AGREEMENT

A. NATURE OF CONCESSION AGREEMENT

1. Build Operation and Transfer Agreement: - An agreement 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 it is allowed to charge User Charges not exceeding those proposed in its bid or as investment, and operating and maintenance expenses in the project. The Concessionaire transfers the facility to the State Government, Government Agency or Specified Government Agencies unit concerned at the end of the fixed terms.

2. Build Own Operate and Transfer Agreement: - An agreement whereby the developer undertakes to finance, construct, maintain and operate an Infrastructure Project and whereby such Infrastructure Project is to vest in the developer for a specified period. During the period of operation of the Infrastructure Project by the developer, he may be permitted to charge user charges as specified in an agreement. The developer is required to transfer the project to the State Government, the Government Agency or Specified Government Agency, as the case may be, after the expiry of the period of operation.

3. Build-Own-and Operate Agreement: - An agreement whereby a Concessionaire is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting User Charges.

4. Build Own Operate and Maintain Agreement:- An agreement whereby a developer undertakes to finance, construct, operate and maintain an Infrastructure Project and whereby such project is to vest in the developer for specified period. During the period of operation of the project, he may be permitted to charge User Charges as specified in the agreement.

5. Build and Transfer Agreement: - An agreement whereby developer undertakes to finance and construct an Infrastructure Project. After the completion of the project, the developer is required to transfer the project to the State Government, the Government Agency or, the Specified Government Agency as the case may be. The developer shall be paid such amount as is fixed in amortization schedule specified in the agreement.

6. Build Lease and Transfer Agreement: - An agreement whereby a developer undertakes to finance and construct the Infrastructure Project. On completion of the project, the developer hands it over to the State Government, the Government Agency or, as the case may be, the Specified Government Agency for operation under a lease agreement for period specified in the agreement after the expiry of which the project stands transferred to the State Government, the Government agency or, as the case may be, the Specified Government Agency.

7. Build Transfer and Operate Agreement: - An agreement whereby the developer undertakes to finance and construct the Infrastructure Project. On completion of the project, the developer transfers the project to the State Government, the Government Agency or, as the case may be, a Specified Government Agency which permits the developer to operate the project on its behalf for a period specified in the agreement.

8. Contract-Add-and-Operate Agreement: - An agreement whereby the Concessionaire adds to an existing infrastructure facility, which it is renting from the State Government. It operates the expanded project over an agreed franchise period. There may, or may not be, a transfer arrangement in regard to the facility.

9. Develop operate and Transfer Agreement: - An agreement whereby favorable conditions external to a new Infrastructure Project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.

10. Lease Management Agreement: - An agreement whereby the State Government, the Government Agency or the Specified Government Agency leases a project owned by the State Government, the Government Agency or, as the case may be, the Specified Government Agency to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user charges therefore.

11. Management Agreement: - An agreement whereby the State Government, the Government Agency or the Specified Government Agency entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement the State Government, the Government Agency or, as the case may be, the Specified Government Agency may charge the User Charges and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the User Charges pay the same to the State Government, the Government Agency or, as the case may be, the Specified Government Agency.

12. Rehabilitate Operate and Transfer agreement: - An agreement whereby an existing project is vested in a person to renovate, operate and maintain for the period specified in the agreement after the expiry of which the Infrastructure Project is required to be transferred to the State Government, the Government Agency or, as the case may be, the Specified Government Agency. During the period of operation of the project by the developer, he may be permitted to charge User Charges as specified in the agreement.

13. Rehabilitate Own Operate and Maintain Agreement: - An agreement whereby an existing project is vested in a person to renovate, operate and maintain. The developer shall be permitted to charge User Charges as specified in the agreement.

14. Service Contract Agreement: - An agreement whereby a person undertakes to provide services to the State Government, the Government Agency or the Specified Government Agency for a specified period. The State Government, the Government Agency or, as the case may be, the Specified Government Agency shall pay him an amount according to the agreed schedule.

15. Supply Operate and Transfer Agreement: - An agreement whereby a person supplies to the State Government, the Government Agency or the Specified Government Agency the equipment and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, he shall undertake to train employees of the State Government, the Government Agency or, as the case may be, the Specified Government Agency to operate the Infrastructure Project.

16. Joint Venture Agreement: - An agreement whereby the State Government, the Government Agency or the Specified Government Agency enters into an agreement with a developer to jointly finance, construct, operate and maintain a project for a period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government Agency or, as the case may be, the Specified Government Agency.

17. Agreement of any other nature which the Board may determine in consultation with the State Government and notify in the Official Gazette.

B. Parameters for Concession Agreement or Arrangement:

The following parameters for a concession agreement or arrangement shall define the suitability of a project for inviting private sector participation namely: -

(a) the Concession Agreement or arrangement may provide for the transfer of a project taken up with the private sector participation to the State Government, the Government Agency or, as the case may be, the Specified Government Agency, not later than a period of 40 years from the date of agreement or arrangement of implementation of a project;

(b) the Concession Agreement or arrangement may provide for financial participation by the State Government, the Government Agency or, as the case may be, the Specified Government Agency in any project up to a maximum of 30% of the project cost and the actual nature and quantum of this financial participation shall be based on the processes of due diligence and competitive bidding provided in the regulations framed by the Board for this purpose;

(c) the Concession Agreement or arrangement may provide for such incentives to the project as are admissible under the concerned sectoral policy of the Government to promote private sector participation or investment;

(d) the Concession Agreement or arrangement may provide for State Government Guarantee in respect of liability of State Government, the Government Agency or, as the case may be, the Specified Government Agency with regard to an Infrastructure Project;

- (e) the Concession Agreement or arrangement may provide for opening and operation of an Escrow Account with respect to any payments to be made to the project by the State Government, the Government Agency or, as the case may be, the Specified Government Agency or any other person or persons;
- (f) the Concession Agreement or arrangement may provide for appropriate modes and terms for transfer of Government land and acquisition of private land for the purposes of project implementation;
- (g) the Concession Agreement or arrangement may provide for right to develop land for such purposes as are admissible under the relevant statute;
- (h) the Concession Agreement or arrangement may provide for the levy of the User Charges for the facilities or services provided by the project.
- (i) the transfer of a project taken up with the private sector participation to the Government or its agencies the transfer of a project taken up with the private sector participation to the State Government, the Government Agency or, as the case may be, the Specified Government Agency the transfer of a project taken up with the private sector participation to the State Government, the Government Agency or, as the case may be, the Specified Government Agency. and
- (j) any other parameters which the Board may determine in consultation with the State Government and notify in the Official Gazette.

L. M. SANGMA,
Secretary to the Government of Meghalaya,
Law Department.