

SUMMARY OF

BANGLADESH PRIVATE SECTOR INFRASTRUCTURE GUIDELINES

1. Organisational Framework for Private Infrastructure Development

An infrastructure Project may be carried out through public sector financing or through private financing. Until recently, there were no guidelines for Government officials to follow for developing and facilitating private infrastructure projects in Bangladesh. In October 2004, the Government of Bangladesh has issued the "Private Sector Infrastructure Guidelines" (or "Guidelines" in short) for rapidly developing the country's infrastructure with private sector financing, management and operation. The Guidelines serve three basic purposes:

- to establish procedures to segregate and earmark Private Infrastructure Projects;
- to document a set of guidelines for private sector Investors and Government, and;
- to establish institutional arrangements for monitoring and expediting implementation.

The Guidelines establishes the formation of a national Private Infrastructure Committee (the "PICOM"), under the Prime Minister's Office, with the Principal Secretary as the Chairman. PICOM will act as the focal point for promoting and progressing Private Infrastructure Projects. Its main functions will be:

- (a) The publication of the Private Infrastructure Project List (the "List"), which will signify the Government reserving and earmarking particular Projects for private investment;
- (b) Overseeing and monitoring the progress of Projects, for reducing implementation delay;
- (c) Expediting decisions by resolving complex inter-ministerial issues;
- (d) Preparing and implementing plans for the development of expertise and capacity of Government officials to understand and manage Private Infrastructure Projects;
- (e) Creating enabling conditions an supportive framework for encouraging Investors by promoting new policies, regulations and laws;
- (f) Monitoring the contingent liabilities of Private Infrastructure Projects.

PICOM shall consist of the following members:

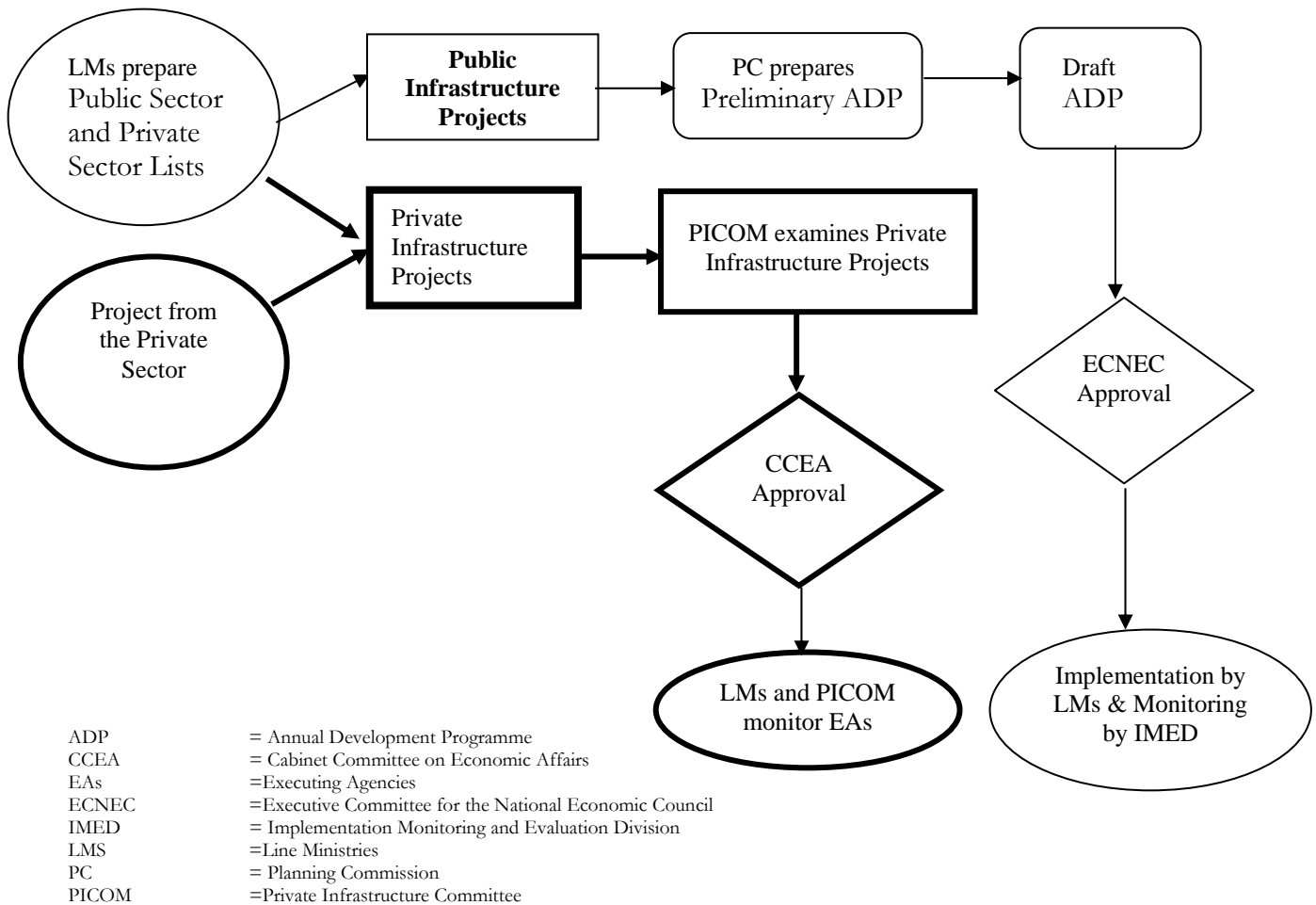
1.	Principal Secretary to the Honourable Prime Minister	Chairman
2.	Secretary, Finance Division	Member
3.	Secretary, Economic Relations Division	Member
4.	Secretary, Internal Resources Division	Member
5.	Concerned Member, Planning Commission	Member
6.	Secretary, Ministry of Law, Justice and Parliamentary Affairs	Member
7.	Secretary, Line Ministry for the Project	Member
8.	Governor/Representative, Bangladesh Bank	Member
9.	President, Federation of Bangladesh Chambers of Commerce & Industry (FBCCI)	Member
10.	President, Foreign Investors Chamber of Commerce and Industry (FICCI)	Member
11.	Executive Chairman/Member, Board of Investment (BOI)	Member-Secy.

The BOI, serving as its secretariat, will perform the functions of preparing documents, agendas, minutes of meetings etc. PICOM will meet at least once every three (3) months to review the progress of projects. The Guidelines define the progress of a project according to seven typical stages. The progress review by PICOM shall be against the milestones in the seven stages. The Executing Agency shall provide to PICOM, the timeline/barchart of planned activities against each milestone in each stage for a project.

2 Segregating Public and Private Infrastructure Projects

The Guidelines create a new processing train for identifying and earmarking Private infrastructure Projects. Projects so identified will appear in the government approved List. PICOM will act as the custodian of the List. For inclusion in the List, Projects may be initiated by a Line Ministry or by the private sector. The Guidelines therefore allow the private sector to become proactive in proposing projects that they prefer. After a Project appears in the List, PICOM will liaise with the Line Ministries, with the view that the approved Projects are initiated and implemented without delay. BOI will promote the Projects to potential local and foreign Investors.

SEGREGATION OF PUBLIC AND PRIVATE INFRASTRUCTURE PROJECTS



3 Eligible Sectors

The sectors or sub sectors in which Private Infrastructure Projects may be implemented are: telecommunication, energy, power, port development (sea, river and land), communications, airports and terminals, tourism industry, water supply and sewerage, industrial estates and parks, city and property development, land reclamation, dredging of rivers, health and educational facilities, waste management and urban, municipal and rural infrastructure.

4 Specific Support Provided

The development of private infrastructure requires support from ministries other than the Line Ministry for carrying out the project. Some specific supports identified in the Guidelines are:

- Priority for land acquisition or other land matters in Private Infrastructure Projects;
- Expeditious transfer of land from one ministry to another;

- In property development projects, a Line Ministry or Executing Agency may convert its full ownership of land to a partial ownership of land and buildings, and cash;
- Priority and allocation of funds for public sector projects associated or linked to a private sector project.

2 Capacity Building

The Guidelines gives emphasis on capacity building. PICOM is required to prepare a comprehensive plan, in consultation with the Line Ministries and Executing Agencies, for developing the skills of Government officials for build-operate-transfer (BOT), build-ownoperate (BOO) etc. projects. PICOM shall review skill gaps and identify appropriate training courses on private sector development. Personnel possessing the above skills shall be retained within the appropriate infrastructure Line Ministries.

3 Technical Advisers for Private Infrastructure Projects

Consultants used for Private Infrastructure Projects must possess experience in private sector infrastructure transactions. Local expertise shall be promoted and developed. If possible, Government funds shall be used for the hire of high-level commercial, contractual and negotiation consultants. Consultants or advisers may be engaged through success fees recovered from the Investors. Such consultants may have an advantage of being results-based.

4 Commercial Aspects

The Executing Agency and/or the Line Ministry, and the winning tenderer/the Project Company shall enter into a Contract for a Project. The Contract must lay out in detail, the rights and obligations of the Executing Agency, the Government and the Project Company. The allocation of risk between the Government and the Project Company shall be based upon the principle that the party best able to manage a risk should bear that risk. In the first few flagship projects in a particular sector, the Government may need to assume more risks. Such risks to the Government shall however reduce over time as a sector matures with more private investment.

The Executing Agency shall carry out a feasibility study with broad functional specifications on technical matters but shall give emphasis on commercial aspects, assessing risks and regulatory frameworks very carefully. An Investor shall have the responsibility for the assessment of viability including commercial risks, detailed feasibility and engineering parameters.

The term of a BOT Project shall be up to 20 years for infrastructure projects involving process plant and machinery. For infrastructure projects dominated by civil construction such as bridge, road, port, water supply etc, the term could be up to 30 years. The Government may seek a Royalty on a Project, through a combination of fixed and variable components, including escalation indices or adjustments.

Financing a Project shall be the sole responsibility of the private Investor. The Government shall not provide any direct guarantee of the Investor's loans for the repayment of its debts in the event of default in its loan obligations. The termination liability of the Government for all Large Infrastructure Projects shall be monitored by PICOM. The Bangladesh Bank or a suitable organisation will monitor the macro economic and foreign exchange impact arising from Private Infrastructure Projects.

5 Recommended Good Practices for Line Ministries

The Guidelines recommend certain good practices for Line Ministries. These are:

- (a) Standard model Contracts for infrastructure shall be prepared, to be used consistently or improved) in similar types of projects. The standard model Contracts shall cover the responsibilities and risks allocation between the government and the investor;

- (b) The Line Ministries and Executing Agencies shall always prepare Contract Documents with their own lawyers and experts;
- (c) The broad design parameters and specification shall be finalised before tendering. All tenders submitted must have the same scope, performance and design quality;
- (d) Local Investors shall be encouraged through awareness creation, motivation etc, to participate in infrastructure projects;
- (e) Local goods, equipment and services shall be encouraged, where it is possible in terms of cost, quality and timely delivery;
- (f) Executing Agencies will be encouraged to become more commercially oriented and carry out Projects through joint ventures with the private sector;
- (g) The focus of the Government will be to speed up new infrastructure *and avoid the approach of maximising revenues* at the expense of slower infrastructure delivery.
- (h) A local point for Private Infrastructure Projects shall be set up in each Line Ministry;

6 Tender and Award Process

In keeping with its focus on reducing implementation delay and promoting transparency, the Guidelines specify the tender evaluation committees for infrastructure projects as a mix of members from the Executing Agency/Line Ministry, other Ministries and investor representatives/non-government.

The following criteria will be used for pre-qualification in a Large Infrastructure Project:

- (a) Establishment as a legal entity in Bangladesh
- (b) Sufficient technical and managerial capability
- (c) Financial capability to carry out the Project
- (d) Experience in developer similar projects
- (e) Experience in operating similar projects
- (f) Experience in ownership of similar projects

For Small Infrastructure Projects, a relaxation of the requirements in (c), (d) and (e) above has been specified to ensure that local entrepreneurs do not face discrimination. The required experience and ownership shall be for process or industrial plants or other non-infrastructure investments.

A tenderer for a Private Infrastructure Project shall submit two envelopes - a technical envelope and a financial envelope. Keeping parity with the Public Procurement Regulations 2003, the two envelopes will be opened together. The evaluation criterion for the financial envelope may be:

- (a) lowest present value of tariff, tolls, fees or charges;
- (b) highest present value or percentage of revenue sharing;
- (c) lump-sum amount of cash to the Government;
- (d) shortest Contract term;
- (e) lowest present value of subsidy over the contract period;
- (f) firm commitment for ongoing investment, capacity expansion, more connection etc.;
- (g) highest present value of lease payment or rent;
- (h) lowest present value of management fees.

In order to reduce implementation delay, indicative times have been given for each activity and government approval during the tender process. Implementation is segregated into seven stages from conception to commercial operations. Unique milestones separate these stages. PICOM will monitor and expedite the movement of Projects through these stages, using good project management techniques and this will lead to early project completion.