

Private Financing in Build and Operation of Infrastructures, 2063 (2006)

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Act No. 30 of the year 2063 (2006)

The Act Enacted to make provisions on Private Financing in Build and Operation of Infrastructure

Preamble : Whereas, it is expedient to make necessary provisions on making the services and facilities available to the general public in a reliable, cost-effective and easily available manner by getting the private sector involved in the build, operation and transfer of the infrastructures in consistent with the liberal economic policy pursued by the country:

Now, therefore, be it enacted by the House of Representatives in the first year of the Proclamation of the House of Representatives, 2063 (2006).

Chapter - 1

Preliminary

1. **Short Title and Commencement** : (1) This Act shall be called "Private Financing in Build and Operation of Infrastructures, 2006".

(2) This Act shall be deemed to have come into force from 27 shrawan 2063 (12 August, 2006)

2. **Definitions** : Unless the subject or the context otherwise requires, in this Act

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(a) "Infrastructure" means the Road, Tunnel, Bridge, Hospital, Canal, Powerhouse, Transmission line, Cable Car Line, Railway

Line, Trolley Bus Structure, Tramway, Dry Port, Waterway, Transit spot, Airport, Exhibition ground, Park, Reservoir, Dam, Sewage disposal, solid waste processing and management Plant, Energy production and distribution, Stadium, Public conference hall, Multi residential building or Public godown and this expression also includes other infrastructures of similar nature.

- (b) "Project" means a project to be implemented according to this Act to build and operate the infrastructures.
- (c) "Build" means construction, development or rehabilitation works of infrastructure.
- (d) "Rehabilitation" means the rehabilitation works of maintenance, expansion or reconstruction of existing infrastructure.
- (e) "Operation" means the management works required for the operation of infrastructure.
- (f) "Expression of Interest" means an Expression of Interest invited pursuant to Section 4 in respect of the implementation of the project.
- (g) "Survey" means a survey to be carried out for implementing the project and it includes the feasibility study, engineering design work of the project and also the exploration to be made therefor.
- (h) "Proposal" means a plan, program and other pertinent details prepared in respect of the implementation of the project.

- (i) "Proponent" means a person who submits a proposal pursuant to Section 6 or a person who files an application pursuant to Sub-section (2) of Section 9.
- (j) "Agreement" means an agreement made with the proponent pursuant to Section 13 to implement the project.
- (k) "License" means a license issued pursuant to Section 16 to implement the project.
- (l) "Licensee" means a person who has obtained license to implement the project.
- (m) "Board" means Fees Review Board constituted pursuant to Section 35 to review fees.
- (n) "Fees" means a service fee permitted to receive from the users by the licensee for the services and facilities provided.
- (o) "User" means a person who uses the services and facilities as referred to in this Act.
- (p) "Committee" means a Project Coordination Committee constituted pursuant to Section 38.
- (q) "Ministry" means the concerned Ministry of Nepal Government which implements the project.
- (r) "Prescribed" or "as Prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter - 2

Provisions Relating to Implementation of Project

3. **Project may be implemented on private investment:** The project may be implemented on private investment by any of the following modes:
- (a) Build and transfer,
 - (b) Build, operate and transfer,
 - (c) Build, own, operate and transfer,
 - (d) Build, transfer and operate,
 - (e) Lease, operate and transfer,
 - (f) Lease, build, operate and transfer,
 - (g) Develop, operate and transfer,
 - (h) By other methods of similar kind.
4. **Expression of Interest may be invited:** (1) Nepal Government may, if it deems appropriate to implement any project with a cost more than twenty million rupees, invite an Expression of Interest in accordance with this Act by setting out the prescribed matters therein and publishing a notice publicly.
- (2) A person desirous to submit an Expression of Interest pursuant to Sub-section (1) shall submit to the Government of Nepal the Expression of Interest by setting out the following details within the time-limit referred to in the notice published pursuant to that Sub-section.

- (a) Name and address of the person submitting the Expression of Interest;
 - (b) Financial and technical capacity of the person submitting to implement the project;
 - (c) Experience pertaining to the construction and operation of the infrastructure;
 - (d) Such other details as prescribed.
5. **To prepare a short list:** Government of Nepal shall, no later than one month of the date of receipt of the Expression of Interest, select based on the prescribed grounds the persons submitting the Expressions of Interest and prepare a short-list thereof.
6. **Proposal may be invited :** (1) Government of Nepal may, after preparation of the short list pursuant to Section 5, publish a notice publicly setting out there in the matters prescribed in respect of the implementation of the project, thereby inviting proposals from the persons submitting the Expressions of Interest, who have been included in that list.
- (2) A person interested to submit a proposal pursuant to Sub-section (1) shall submit the proposal, setting out therein the following matters, to Government of Nepal within the time limit mentioned in the notice published pursuant to that Sub-section.
- (a) Preliminary feasibility study of the project;
 - (b) Preliminary engineering design of the project;
 - (c) Cost estimate of the project;

- (d) Proposed financial source of the project;
- (e) Preliminary environmental study report of the project;
- (f) Details on the implementation of the project;
- (g) Possible risks in the implementation of the project and proposed measures to mitigate the risks;
- (h) Procedures on the implementation of the project;
- (i) Such other details as prescribed.

(3) Notwithstanding anything contained in Sub-section (1), if the survey of any project has already been carried out previously, Government of Nepal may, by publishing a public notice setting out the matters prescribed in respect of the implementation of the project, directly invite a proposal from the persons submitting the Expression of Interest who are included in the list as referred to in Section 5.

(4) A person desirous to submit a proposal pursuant to Sub-section (3) shall submit the proposal, setting out therein the prescribed matters, to Government of Nepal within the time limit mentioned in the notice published pursuant to that Sub-section.

7. **Selecting a Proposal** : (1) After receipt of proposals pursuant to Section 6, Government of Nepal shall select a proposal on the following grounds within sixty days of receipt of the proposal.

- (a) Financial status of the proponent;
- (b) Technical capacity of the proponent;
- (c) Environmental study report of the project;

- (d) Proposed amount of royalty to be paid to Government of Nepal;
- (e) Proposed fees to be collected from the users while implementing the project,
- (f) Such other details as prescribed.

(2) Government of Nepal shall, prior to the submission of proposals, make available the proponents with the grounds for the selection of proposal pursuant to Sub-section (1).

(3) After selection of the proposal pursuant to Sub-section (1), Government of Nepal shall provide information thereof to the selected proponent by quick means.

8. **Conducting a detailed feasibility study by negotiations:** (1) Notwithstanding anything contained elsewhere in this Act, any person may file an application to Government of Nepal for conducting detailed feasibility study of the project not having surveyed.

(2) Upon necessary examination of the application filed pursuant to Sub-section (1), Government of Nepal may, if it deems appropriate to issue license, negotiate with the applicant and issue license to conduct or cause to be conducted detailed feasibility study of such a project.

(3) The cost incurred while conducting or causing to be conducted the detailed feasibility study pursuant to Sub-section (2) shall be borne by the person who has conducted or caused to be conducted such a detailed feasibility study.

(4) While causing a competition to be done for implementation of any project of which detailed feasibility study is

conducted pursuant to this Section, if a person conducting or causing to be conducted the detailed feasibility pursuant to Sub-section (2) cannot be selected, the person, whose proposal selected for implementation of such a project is approved, shall bear the cost borne by that person conducting or causing to be conducted the detailed feasibility study of such a project.

(5) Government of Nepal may, by constituting a committee as per necessity, determine the amounts to be borne pursuant to Sub-section (4).

9. **Implementing a Project by negotiations:** (1) Notwithstanding anything contained elsewhere in this Act, Government of Nepal may, in the following circumstances, cause any project to be implemented by negotiations:

- (a) The Expressions of Interest or proposals cannot be selected in the required number even if the Expression of Interest or proposal has been invited at least twice pursuant to this Act; or
- (b) There exists no possibility of competition; or
- (c) Having contained a new concept or technology; or
- (d) Having a cost estimate more than two billion rupees; or
- (e) Having recommended by the Committee to implement through negotiations; or
- (f) Not having seen, owing to any reason, appropriate to follow other procedures as referred to in this Act.

(2) A person desirous to implement any project as referred to in Sub-section (1) by negotiations shall file an application, setting out therein the prescribed matters, to Government of Nepal.

(3) Upon examination of the application received pursuant to Sub-section (2), Government of Nepal may, if it deems appropriate to implement such a project by negotiations, cause the project to be implemented by negotiating with the applicant.

(4) When implementing the project by negotiations pursuant to this Section, Government of Nepal shall ask with the applicant the details as referred to in Sub-section (2) of Section 6.

10. **Memorandum of understanding may be made**: After selection of proposal pursuant to Section 7 or if it deems appropriate to implement the project based on the details asked pursuant to Sub-section (4) of Section 9, Government of Nepal may conclude a memorandum of understanding with the proponent in respect of the implementation of the project.

Provided, however, that Government of Nepal may, in view of the nature of the project, conclude a preliminary project agreement with the proponent.

11. **Submitting a detail of project** : (1) The proponent shall submit the following details on the implementation of the project to Government of Nepal within the time limit mentioned in the memorandum of understanding or preliminary project agreement if such memorandum or agreement has been concluded pursuant to Section 10 and within such time limit not exceeding six months as specified by Government of Nepal upon considering the nature of the project if such memorandum or agreement has not been concluded.

(a) Details of the project;

(b) Detailed feasibility study of the project;

- (c) Detailed engineering design of the project;
- (d) Environmental study report of the project;
- (e) If the project is to be implemented in a phase-wise basis, the details thereof;
- (f) Mode of implementation of the project;
- (g) Projection of the incomes and expenditures in the project implementation period;
- (h) Institutional arrangement for the implementation of the project;
- (i) Proposed fees to be collected from the users when implementing the project;
- (j) If any agreement has been concluded with any other person on the implementation of the project, the details thereof;
- (k) Proposed royalty to be paid to Government of Nepal while implementing the project;
- (l) Details on possible source of financing;
- (m) Provision on insurance of the project;
- (n) Area where the project is to be implemented;
- (o) Provisions on financial procedures to be followed by the proponent on the implementation of the project;
- (p) Such other details as prescribed.

(2) If the proponent files an application, showing any reasonable grounds for being unable to submit such details within such time limit as referred to in Sub-section (1), to Government of Nepal for extension of the time limit, Government of Nepal may extend the time limit not exceeding three months.

(3) If the proponent files an application, showing grounds for being unable to submit the details as referred to in Clauses (b) and (c) of Sub-section (1) within the time limit as referred to in Sub-section (1) or (2), to Government of Nepal and it appears to be reasonable upon examination, Government of Nepal may, in the case of any specific project, waive such a proponent from the requirement of submission of such details on condition that s/he may submit the same after conclusion of agreement.

12. Termination may be made: (1) If the proponent declines to submit the details within the time limit as referred to in Sub-section (1) or (2) of Section 11 or if the project, on study of the details so submitted, does not appear to be feasible and appropriate for implementation, Government of Nepal may, setting out the reasons therefor, terminate the memorandum of understanding or preliminary project agreement where such memorandum of understanding or preliminary project agreement has been concluded with the proponent and his/her proposal where the memorandum of understanding or preliminary project agreement has not been concluded.

(2) If the memorandum of understanding, preliminary project agreement or proposal is terminated pursuant to Sub-section (1), the proponent shall not be allowed to make a claim for loss and damage against Government of Nepal.

Chapter - 3

Provisions Relating to License

13. **To make an agreement** : (1) If it deems appropriate, based on the details received pursuant to Section 11, to conclude an agreement with the proponent, Government of Nepal shall enter into negotiations as required and conclude the agreement with the proponent on suggestions of the committee.

(2) The proponent shall submit the details as referred to in Clauses (b) and (c) of Sub-section (1) of Section 11 within the time limit specified by Government of Nepal. If the proponent declines to submit such details within that time limit, the agreement concluded by Government of Nepal with the proponent shall be deemed to have *ipso facto* been terminated.

14. **Matters to be set out in agreement**: The following matters shall be set out in the agreement:

- (a) Project description;
- (b) Date of commencement of the project implementation and completion;
- (c) Matters relating to the facilities and concessions to be received by the licensee while building or operating the project;
- (d) Validity period of License;
- (e) Phase-wise description of the project implementation and schedule of implementation;

- (f) Technical quality and standards of the project,
- (g) Details relating to the operation of the project,
- (h) If the project is given on lease, the details thereof and terms of the lease;
- (i) Terms of operation or transfer of the project;
- (j) Provisions relating to the fees allowed collecting from the users while operating the project;
- (k) Provisions relating to insurance of the project;
- (l) The condition and quality standards of the machine installed in the project and the project at the time of transfer of the project;
- (m) The royalty to be paid to Government of Nepal and mode of payment,
- (n) Conditions to terminate the agreement due to failure of any party to fulfill the obligation when implementing the project;
- (o) Other necessary matters.

15. **Provisions relating to performance bond**: The proponent shall furnish such amount as mentioned in the agreement for a performance bond subject not to be less than 0.50 percent of the total project cost or a bank guarantee equivalent to that amount to Government of Nepal within the time limit mentioned in the agreement.

16. **Issuing a license**: After conclusion of the agreement pursuant to Section 13, Government of Nepal shall issue the license to the proponent to implement the project.

17. **License not to be issued to another person**: Once the license is issued to any proponent to implement a project in any area, no license shall be issued to another person to implement the project of similar kind in the same area thereby causing adverse impacts on that project.
18. **Validity period of license**: (1) The Validity period of license shall be as specified in the agreement without exceeding thirty years.
- (2) Notwithstanding anything contained in Sub-section (1), if the licensee files an application for the extension of the Validity period of the license, setting out the reasons showing the need to extend the Validity period owing to any special circumstance and, if the contents of that applicant appear to be reasonable, Government of Nepal may extend the Validity period of the license for a maximum period of five years.
- (3) The Validity period of the license shall be fixed on the basis of the prescribed grounds.
19. **License may be termination** : (1) If the licensee declines to commence the implementation of the project in accordance with the agreement or does any other act in contravention of this Act or the Rules framed there under or the agreement, Government of Nepal may, by giving a notice to the licensee, terminate the license issued to him/her.
- (2) If the license is revoked pursuant to Sub-section (1), the agreement concluded with the licensee shall be deemed to have *ipso facto* been revoked.
- (3) If the license is revoked pursuant to this Section, the licensee shall not be allowed to make any kind of claim against Government of Nepal.

20. **Not to be nationalized**: No project and land, building, equipment and structure related thereto shall be nationalized during the term of the license.
21. **Royalty to be paid** : If the agreement is concluded with a provision of payment of royalty, the licensee shall pay such a royalty to Government of Nepal in such manner as mentioned in the agreement.
22. **Project to be transferred** : (1) The licensee shall transfer the project to Government of Nepal as mentioned in the agreement.
- (2) When transferring the project pursuant to Sub-section (1), the machine, equipment and structure installed in such a project should be in such capacity, situation and running condition as mentioned in the agreement.
23. **Having Ownership of Government of Nepal**: The ownership of the project transferred pursuant to Section 22 and the house, land and equipment related thereto shall be of Government of Nepal.
24. **Project may be implemented in joint investment**: (1) Notwithstanding anything contained elsewhere in this Act, any specific project included in the priority of Government of Nepal may be implemented in joint financing of Government of Nepal and the private sector.

Provided, however, that the financing to be made by Government of Nepal shall not exceed twenty five percent of the total project cost.

(2) If the private sector implementing the project with financing as referred to in Sub-section (1) intends to assume the portion of Government of Nepal, it may be provided accordingly by calculating it at the prevailing value of the project.

Chapter - 4

Rights of Licensee

25. **Agreement may be made with other person:** (1) The licensee may, with the approval of Government of Nepal, enter into an agreement with another person in respect of the implementation of the project.

Provided, however, that the licensee shall not be relieved of his/her obligation to implement the project by virtue of conclusion of such an agreement.

(2) If the licensee makes any agreement pursuant to Sub-section (1), s/he must submit a copy of that agreement to Government of Nepal within fifteen days from the date of conclusion of such an agreement.

26. **Entering into house, land etc.:** (1) In the course of implementation of the project, the licensee may, by giving an advance notice to the concerned owner, enter into any house, land etc. for purposes of doing geographical and scientific survey and measurement of any house, land, industry, factory etc., testing other natural resources and means including soil, installing equipment as per necessity therefor and using such equipment, portioning land, erecting border lines or fences or marking out.

(2) While entering into any house, land etc. pursuant to Sub-section (1), if the crops planted or plants and trees grown up in that land have to be cut or root out or any fence, wall, machinery, tool etc. situated in that land have to be removed, demolished or erected, the licensee may do so by providing reasonable compensation therefor to the concerned owner.

(3) While entering into any house, land etc. pursuant to Sub-section (1), it shall be done, to the extent possible, in the presence of

the concerned owner, concerned person and the person to be affected from such entry.

Chapter - 5

Facilities to be Provided to Licensee

27. Prohibiting from using a house, land or doing any construction or

work : (1) In the course of the implementation of the project, if the agreement contains a provision that any other person may be prohibited from using any house, land situated in the project site and within a certain distance therefrom for any specific purpose or from doing any construction or other work in that land or the licensee files an application to Government of Nepal for prohibiting from using such house, land for a such purpose or from doing any construction or other work in such house, land, and the contents of the application so made appear to be reasonable, Government of Nepal may, in accordance with the prevailing law, prohibit from using such house, land in such a manner or from doing any construction or other work therein.

Provided, however, that the licensee shall bear compensation for any loss and damage caused to the concerned person from such prohibition.

(2) There shall be a Compensation Fixation Committee as prescribed to fix the compensation to be provided pursuant to Sub-section (1) or Sub-section (2) of Section 26; and the Committee shall fix the compensation by assessing the loss and damage actually suffered by the concerned person.

(3) A person not satisfying with the amount of compensation fixed pursuant to Sub-section (2) may file a complaint to Government of

Nepal within thirty five days from the date of receipt of information of that decision.

(4) A decision should be taken within three months on the complaint filed pursuant to Sub-section (3) and the decision taken in respect of such a complaint by Government of Nepal shall be final.

28. Having house, land acquired: (1) The licensee shall purchase such house and land as required for the implementation of the project on his/her own. If the licensee is not able to so purchase and the agreement has a provision of requiring the acquisition of any house and or land, Government of Nepal shall, at the request of the licensee, acquire such house and or land for that person in the same manner as any land requires to acquire for an institution in accordance with the prevailing law.

(2) The concerned licensee shall bear the compensation to be provided to the owner on acquisition of the house and land pursuant to Sub-section (1).

(3) Notwithstanding anything contained elsewhere in this Section, if any land owned by Government of Nepal or any public land is required for the implementation of the project, Government of Nepal may provide such land to be used on lease or rent as provided for in the agreement.

(4) If the public land is provided to be used on lease or rent pursuant to Sub-section (3), a fifty percent of the amounts received from such a lease or rent shall be made available to the concerned Municipality or Village Development Committee.

29. Providing security to project :(1) The security of the project shall be made by the licensee on his/her own.

(2) If the licensee makes, showing a special reason, a request to Government of Nepal for any specific kind of security of the project, Government of Nepal may arrange for security of such project in such manner that the licensee shall bear the expenses to be incurred for such a security.

30. Providing assistance: (1) Government of Nepal shall, in such manner and within such period as mentioned in the agreement, provide, issue or perform such assistance, approval or act as required to be provided or issued or performed by it to/for the licensee in the course of the implementation of the project.

(2) In the course of the implementation of the project, if the licensee requests for any assistance and such assistance may be provided in accordance with the prevailing law, Government of Nepal may provide such assistance in such manner that the licensee shall bear the expenses and liability required to be borne for such assistance.

31. Foreign exchange facility: If foreign currency is invested in the form of a loan or share capital for the implementation of the project, such foreign currency as may be required to repay the principal or interest of such a loan or to divest the investment shall be provided to the licensee at the prevailing exchange rate in accordance with the prevailing law.

32. Visa related facility: If a foreign investor obtains the license to implement the project under this Act, s/he shall be provided with a residential visa in accordance with the prevailing law.

33. Use of explosive substance: If any explosive substance is to be used for the implementation of the project, Government of Nepal shall, at the request of

the licensee, issue a license to him/her to use such explosive substance in accordance with the prevailing law.

34. **Provisions on income tax** : Following the conclusion of the agreement, the income tax related provisions in force under the prevailing law at the time of the conclusion of the agreement shall remain in force during the term of the agreement.

Chapter - 6

Provisions Relating to Formation of Board and Fees

35. **Formation of Board** : (1) Government of Nepal may constitute an Infrastructure Service Fees Review Board, as prescribed, consisting of representation of the licensees including of the users to review the fees which the licensee is authorized to collect while implementing the project under this Act.

(2) The qualifications and appointment of, and facilities to be obtained by the members of the Board to be constituted pursuant to Sub-section (1) and the procedures of the Board shall be as prescribed.

(3) The Board shall, while reviewing the fees pursuant to Sub-section (1), review the fees as prescribed, based on the actual expenses incurred by the licensee for the implementation of the project and the reasonable return that may be received there from.

(4) The rate of fees reviewed by the Board pursuant to Sub-section (3) shall be applicable after having approved by Government of Nepal.

36. **Collection of Fees**: The licensee may collect fees from the users for making the services and facilities available.

37. **Specifying the terms of services and facilities**: (1) While providing the services and facilities to the users, the licensee may specify necessary terms under this Act or the agreement.

(2) The users shall not use the services and facilities in contravention of the terms specified pursuant to Sub-section (1).

Chapter - 7

Formation of Committee and other provisions

38. **Formation of Committee**: (1) There shall be a Project Coordination Committee to make coordination in respect of the implementation of the projects and give suggestions to Government of Nepal to identify projects and set priority.

(2) The formation of the Committee shall be as follows:

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| (a) | Vice-chairperson, National Planning Commission | - Chairperson |
| (b) | Member, National Planning Commission
(Responsible for related sector) | - Member |
| (c) | Chief Secretary, Government of Nepal | - Member |
| (d) | Secretary, Ministry of Finance | - Member |
| (e) | Secretary, Ministry of Law, Justice and
Parliamentary Affairs | - Member |

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|-----|--|-----------------------|
| (f) | Secretary, Ministry of Physical Planning and Works | - Member |
| (g) | Secretary, Office of the Prime Minister and Council of Ministers | - Member |
| (h) | Secretary, Concerned Ministry | - Member |
| (i) | Secretary, National Planning Commission Secretariat | - Member
Secretary |

(3) The secretariat of the Committee shall be seated in the National Planning Commission Secretariat.

(4) The Committee may invite any person who has gained expertise in the concerned subject to attend its meetings as an observer.

39. Meeting and decision of the Committee: (1) The meeting of the Committee shall be held as per necessity.

(2) The meeting of the Committee shall be held at such date, time and place as specified by the Chairperson of the Committee.

(3) The Member-Secretary of the Committee shall furnish a notice of the meeting along with the agenda of the meeting to the members of the Committee three days prior to holding the meeting.

(4) The presence of more than fifty percent of the total number of members of the Committee shall be deemed to constitute a quorum for the meeting.

(5) The meeting of the Committee shall be presided over by the Chairperson of the Committee and, in his/her absence, the meeting shall be presided over by a member selected by the members of the Committee from amongst themselves.

(6) A majority opinion at a meeting of the Committee shall be valid and in the event of a tie, the person presiding over the meeting shall exercise the casting vote.

(7) Other procedures relating to the meeting of the Committee shall be as determined by the Committee itself.

40. To monitor project: (1) The Committee may monitor the project implementation and President of the concerned District Development Committee and a women member shall be involved while so monitoring.

(2) It shall be the duty of the concerned licensee to comply with the directions given by the Committee in the course of monitoring the project pursuant to Sub-section (1).

41. Directions may be given: The Committee may, from time to time, give necessary directions to the concerned Ministry in respect of the project implementation.

42. Technical Committee: (1) Government of Nepal shall constitute a Technical Committee comprising a maximum of five members including an expert of the concerned subject under chairpersonship of the Secretary at the concerned Ministry to give suggestions to Government of Nepal in respect of the project implementation.

(2) Any officer employee of the concerned Ministry as designated by the chairperson of the Technical Committee shall act as the secretary of the Committee.

(3) The procedures relating to the meeting of the Technical Committee shall be as determined by the Committee itself.

Chapter - 8

Provisions Relating to Settlement of Disputes and Compensation

43. Settlement of disputes: (1) If there arises any dispute between Government of Nepal and the licensee in respect of the project implementation, such a dispute shall be settled through mutual understanding.

(2) If the dispute is not settled through mutual understanding pursuant to Sub-section (1), the dispute shall be settled as per the provisions provided for in the agreement if so provided, and if not, by arbitration.

(3) While settling the dispute by arbitration pursuant to Sub-section (2), the arbitral proceedings shall be as provided for in the agreement if so provided, and if not, as per the prevailing law.

44. Provisions relating to compensation: (1) If any party does any act contrary to this Act or the agreement in respect of the project implementation, thereby causing any loss and damage to the other party, the party doing such act shall provide the other party with compensation in a reasonable sum for the loss and damage so caused.

(2) If Government of Nepal is to bear the compensation as referred to in sub-section (1), Government of Nepal may extend the term of license by calculating the amount for such compensation.

Chapter - 9

Miscellaneous

45. **Project details to be maintained:** (1) Government of Nepal may, on suggestions of the Committee, identify the projects to be implemented pursuant to Section 3 and maintain updated details thereof.

(2) While maintaining the details pursuant to sub-section (1), Government of Nepal shall maintain separate details of the projects surveyed or not surveyed.

46. **Giving on lease or rent or selling:** (1) Government of Nepal may lease or rent any house or land owned or controlled by it or by an institution owned by Government of Nepal or sell or lease or rent any machine, tool or infrastructure to the licensee.

(2) The terms of the lease or rent to be made pursuant to Sub-section (1) shall be as referred to in the agreement.

47. **Local resource, means and manpower to be used:** In the course of the implementation of the project, the licensee shall, to the extent possible, use the local resource, means and human resource and the goods and services to be produced in the country.

48. **Existence of right over study report:** The proponent shall have the full rights over the document related with the study report submitted by him/her along with the proposal pursuant to Section 6. Such document related with

the study report shall not, without the written consent of the proponent, be used or published for any other purpose.

49. **Powers to frame Rules:** Government of Nepal may frame necessary Rules in order to implement the objectives of this Act.

50. **Consequence after inoperativeness of the Ordinance on Private Financing in Build and Operation of Infrastructures, 2005 (2062) :**

After inoperativeness of the Ordinance on Private Financing in Build and Operation of Infrastructures 2005 (2062), if the inoperativeness otherwise intends, such inoperativeness shall not:

- (a) arise any matter which is not in existence or prevalence at the time of inoperativeness of the Ordinance;
- (b) affect any matter in existence pursuant to the Ordinance or any act already done or any matter already enjoyed by fulfilling requirement accordingly;
- (c) affect any entitlement, facility, duty or responsibility enjoyed/assumed pursuant to the Ordinance;
- (d) affect any punishment or confiscation made pursuant to the Ordinance;
- (e) affect any act, action or remedy pursued in respect to any such entitlement, facility, duty, responsibility or punishment as referred to above and such legal action or remedy may, as in the case of existence of the Ordinance, be commenced, existed or enforced.