

POLICY GUIDELINES FOR ENHANCEMENT OF PRIVATE PARTICIPATION IN THE POWER SECTOR, 2008

1. Preamble:

- (a) In 1996, Government of Bangladesh (GoB) adopted the Private Sector Power Generation Policy (PSPGP) to promote private sector participation in the generation of electricity with a view to promote economic growth;
- (b) In 2000, GoB issued a vision statement on power sector reforms with the objective of providing access to affordable and reliable electricity to all by the year 2020;
- (c) Augmenting generation capacity is a priority for GoB to meet existing power shortage and demand-growth in future years. To meet this goal, GoB has adopted a combination of measures: large generation capacity addition through the public-sector entities and Independent Power Producers (IPPs); tendering out small power plants on fast-track basis; and encouraging procurement of surplus power from Captive Power Plants (CPPs) and Small Power Plants (SPPs).

2. Objectives:

- (a) GoB desires to (1) promote further private participation in the power sector, harness competition, ensure optimal use and conservation of country's limited natural gas resources; and (2) develop new power plants and rehabilitate some of its Old and Inefficient Power Plants through Public Private Partnership;
- (b) GoB is keen to develop local private sector entrepreneurship to develop power projects in Bangladesh;
- (c) GoB intends to allow the private sector to:
 - (1) set up Commercial Power Plants (i) to supply electricity to Large Consumers on mutually negotiated tariffs; and (ii) to supply electricity to the Distribution Licensees at tariffs determined by the Bangladesh Energy Regulatory Commission (BERC);

- (2) use transmission and distribution lines of Power Grid Company of Bangladesh (PGCB) and Distribution Licensees on a non-discriminatory basis for wheeling of power produced in their existing as well as new Commercial Power Plants;
 - (3) rehabilitate Old and Inefficient Power Plants owned by the Public Sector Power Utilities on Rehabilitate, Own and Operate (ROO) or Rehabilitate, Operate and Transfer (ROT) model ; and
 - (4) develop new Joint Venture Power Plants in partnership with Public Sector Power Utilities.
- (d) It is expedient to formulate necessary Guidelines to achieve the above objectives. Now therefore, GoB has adopted these Guidelines for introducing competition and enhancing public-private partnership in the power sector. These Guidelines will be known as Policy Guidelines for Enhancement of Private Participation in the Power Sector, 2008. These Guidelines will become effective from the date of publication in the official gazette.

Part I.
Definitions

3. Definitions

(a) Unless the context otherwise requires:

“**BERC**” means Bangladesh Energy Regulatory Commission established under the Bangladesh Energy Regulatory Commission Act, 2003.

“**Build-Own-Operate (BOO)**” means a contract whereby an investor undertakes to design, finance, build, operate and maintain a project and such project is to vest in the investor for specified period(s).

“**BPDB**” means Bangladesh Power Development Board established under Bangladesh Water and Power Development Boards Order, 1972 (P.O. No. 59 of 1972).

“**Bangladeshi Private Investors**” means Bangladeshi entrepreneurs including Non-resident Bangladeshis (as defined by the Board of Investment or Bangladesh Bank from time to time) and Public Sector Power Utilities listed in the Stock Exchanges of Bangladesh. Such investors may enter into joint venture agreement with foreign companies.

“**Coal Policy**” means the Bangladesh Coal Policy to be adopted by GoB.

“**Commercial Power Plants**” means power plants developed, owned and operated by the Private Investors under Part-II of these Guidelines.

“**Consideration Money**” means the market value of the existing assets of Old and Inefficient Power Plants, as assessed by the independent valuer under Section 5(e) of these Guidelines.

“**CPPs**” means Captive Power Plants as defined in the Policy Guidelines for Power Purchase from Captive Power Plant, 2007.

“**Department of Environment**” means a department of the Ministry of Environment and Forest established under Bangladesh Environment Conservation Act, 1995.

“**Distribution Licensee**” means any power distribution entity that has obtained necessary license from BERC under BERC Act, 2003 to distribute electricity.

“Export Processing Zones” means specified zones as defined and regulated under Bangladesh Export Processing Zone Authority Act, 1980.

“Generation Licensee” means any power generation entity that has obtained necessary license from BERC under BERC Act, 2003 to generate electricity.

“GoB” means Government of the People’s Republic of Bangladesh.

“Grid Code” means the technical standards adopted by PGCB for installation and operation of transmission system.

“Independent System Operator” means an entity established to take over the responsibilities as provided under Section 7(g) of these Guidelines.

“IPPs” means Independent Power Producers under Private Sector Power Generation Policy of Bangladesh, October 1996.

“Joint Venture Power Plants” means power plants developed under Part-IV of these Guidelines.

“Large Consumers” means consumers as defined in Annexure-I to these Guidelines.

“Old and Inefficient Power Plants” means the existing power plants owned by the GoB or Public Sector Power Utilities, especially, those: (i) operating inefficiently for the last three years with the average heat rate of maximum 3500 kcal/kwh for gas turbines, 3200 kcal/kwh for steam turbines and 2500kcal/kwh for combined cycles; or (ii) operating with availability of less than 50% percent for the last three years from the date of approval under Section 5(b) of these Guidelines and/or are in need of major overhauling or refurbishment in order to get into operation.

“PGCB” means Power Grid Company Ltd. of Bangladesh, incorporated under the Companies Act 1994.

“PPA” or **“Power Purchase Agreement”** refers to an agreement executed between Public Sector Power Utilities and power plants established under these Guidelines.

“Private Economic Zones” means specified zones established under the provisions of Bangladesh Private Economic Zones Act, 1996.

“Private Investors” includes Bangladeshi Private Investors or foreign Private Investors or joint venture comprising Bangladeshi Private Investors and foreign Private Investors.

“PPP” or **“Public Private Partnership”** means long term risk sharing arrangements entered into between the public and the private sectors to meet a service typically provided by the public sector. These include joint venture or partnership or other arrangements where the private sector provides investments with the public sector providing support and commitments that make the project feasible.

“PSPGP” means Private Sector Power Generation Policy, 1996.

“PSIG” means Private Sector Infrastructure Guidelines, 2004.

“Public Sector Power Utilities” include BPDB, Rural Electrification Board, Dhaka Power Distribution Company Ltd., Dhaka Electric Supply Company Limited, PGCB, West Zone Power Distribution Company Ltd., Ashuganj Power Station Company Limited, Electricity Generation Company of Bangladesh Limited, South West Zone Power Distribution Company Ltd., North West Zone Power Distribution Company Ltd. and other such boards, authorities, companies formed and successor thereof as well as any other bodies involved in generation, transmission and distribution of power in which GoB ownership is more than 50% (fifty percent).

“ROO” means a contract under which the existing Old and Inefficient Power Plants of Public Sector Power Utilities is transferred to Bangladeshi Private Investors to Rehabilitate, Own and Operate as long as the operator is complying with the terms of the contract.

“ROT” means a contract under which the existing Old and Inefficient Power Plants of GoB and Public Sector Power Utilities are turned over to Bangladeshi Private Investors to Rehabilitate, Operate and Transfer for a concession period, at the expiration of which the legal title to the facility will be transferred to the original owner.

“Special Economic Zones” means economic zones, as defined by the GoB from time to time.

“SPV” refers to a separate legal entity established through joint venture/partnership between public and private sectors to develop/Rehabilitate, Own, Operate/Rehabilitate, Own, Transfer a power plant under these Guidelines.

"Wheeling of Power" means evacuation or transmission of power generated as per provisions under Section 7 of these Guidelines subject to the payment of applicable wheeling charges.

(b) Whenever the following capitalized terms are used in the Guidelines, whether in the singular or plural, in the future or past, they shall have the meaning ascribed to each of them,

Part II

Commercial Power Plants

4. Commercial Power Plants :

- (a) Private Investors can establish and operate Commercial Power Plants subject to provisions under Section 10(a) and 10(b) of these Guidelines.
- (b) Commercial Power Plants shall comply with applicable technical standards of grid connectivity and operation.
- (c) Such investors shall find their own buyer(s) to sell the electricity generated. They will be free to negotiate the applicable tariff with the Large Consumers.
- (d) Distribution Licensees may purchase power from Commercial Power Plants, as needed, subject to approval by BERC, but GOB will not provide any guarantee in favour of any Distribution Licensee.
- (e) Given the fast depleting condition of domestic natural gas, the new power plants shall preferably rely on coal, imported gas, liquid fuel, or renewable energy sources like solar, wind, hydro, biomass, municipal waste, and others, as fuels, instead of domestic natural gas. Any fuel supply or source of energy has to be arranged by developers for Commercial Power Plants.
- (f) Except for the power plants for which GoB has committed guaranteed fuel supply, GoB will not be responsible to supply fuels, or provide guarantee in favour of any fuel supplier to supply fuels to Commercial Power Plants.

(g) Private Investors will :

- (i) pay wheeling charge to Public Sector Power Utilities under section 7(a) of these Guidelines;
- (ii) pay surcharge, as shown in Annexure II, to respective Distribution Licensee; and
- (iii) sell electricity, as shown in Annexure II, at price regulated by BERC to Public Sector Power Utilities.

Part III.

PPP for Old and Inefficient Power Plants

5. Rehabilitation of Old and Inefficient Power Plants through PPP

- (a) Subject to the terms and conditions of these Guidelines and BERC Act 2003, Public Sector Power Utilities may allow its Old and Inefficient Power Plants to be available to the Bangladeshi Private Investors on ROO or ROT basis.
- (b) Such decision to make Old and Inefficient Power Plants to be available on ROO or ROT basis will require approval of respective Board of Public Sector Power Utilities.
- (c) Public Sector Power Utilities will invite Public Private Partnership in Old and Inefficient Power Plants through a tender and award process in accordance with provisions under the Private Sector Infrastructure Guidelines, 2004 or Public Procurement Act, 2006 or both, as applicable.
- (d) The assets, of the relevant power plants will be valued by Public Sector Power Utilities through an independent valuer (with proven experience of valuing large infrastructure projects) to assess the market value of such assets. The valuation report determining the market value of the existing assets of such plants will be made available to all bidders.
- (e) The successful bidders will be required to pay the Consideration Money upfront to Public Sector Power Utilities. Alternatively, subject to GoB's approval, the Consideration Money may be adjusted against the tariff.

- (f) Any liabilities related to Old and Inefficient Power Plants will be set off against Consideration Money or adjusted against tariff.
- (g) Following pre-qualification and successful submission of bids, power tariff offered by the bidders will form the basis for awarding a ROO or ROT Project.
- (h) Following award of the contract, the Bangladeshi Private Investors would Rehabilitate, Own and Operate, or Rehabilitate, Operate and Transfer the Project as per provisions of the PPA.
- (i) Public Sector Power Utilities will have the right to (i) terminate a ROO or ROT contract if the Bangladeshi Private Investors fail to rehabilitate and operate the Project, as per the PPA and (ii) seek compensation for loss, damage and any other relief under the agreement or law, as applicable and appropriate.
- (j) Qualified existing staff of the Old and Inefficient Power Plants will have priority for recruitment in ROO and ROT projects.

Part IV.

PPP for Joint Venture Power Plants

6. Requirements of Joint venture/partnership:

- (a) Public Sector Power Utilities can form joint venture or partnership with Bangladeshi Private Investors to develop new power plants on BOO Basis. A Special Project Vehicle (SPV) shall be established to implement and operate such projects.
- (b) Terms and conditions of the joint venture/partnership will be stipulated in a joint venture/partnership deed.
- (c) The nature of the SPV will be determined under the relevant laws of Bangladesh and other applicable legal instruments.
- (d) Such joint venture/partnership will require approval of the Board of the respective Public Sector Power Utilities and BERC.

- (e) Contribution of Public Sector Power Utilities i.e. project land and other assets will be monetized and added to the cash contribution, if any, and shall form the basis for determining its share in the joint venture/partnership.

Part V.

Wheeling of Power

7. Wheeling of Power

- (a) PGCB and all Distribution Licensees shall provide non-discriminatory open access, to their transmission and/or distribution system for use by any Generation Licensee subject to payment of transmission/distribution wheeling charges determined by BERC.
- (b) Open access, as per Section 7(a), will be, subject to availability of adequate capacity of transmission and/or distribution facilities, on first come first served basis.
- (c) Any dispute regarding the availability of adequate transmission and distribution facilities will be settled/adjudicated upon by BERC, which shall specify the manner in which such applications for settlement/adjudication of any disputes shall be filed by disputing parties and resolved.
- (d) Applicable transmission loss for open access transactions, shall be applied under the regulations of BERC in this regard.
- (e) Commercial Power Plants will be responsible to establish their dedicated transmission facilities in compliance with the Grid Code to reach the transmission facilities of PGCB or other Distribution Licensees.
- (f) Private Investors may build their dedicated transmission line from their power stations to Large Consumers according to provisions under the Grid Code.
- (g) The responsibilities of the Independent System Operator are the following:
- i. to ensure and deal with efficient power flow in coordination with national load dispatch centre; and

- ii. to deal with mismatch and imbalance in power trading under BERC regulations.
- (h) Initially, PGCB will act as an Independent System Operator until the wheeled power under these Guidelines reaches 500 MW. Thereafter, a newly created agency will take over the functions of the Independent System Operator from PGCB

Part VI.

Qualification of Investors

8. Qualifications:

- (a) The interested Private Investors should possess, among others, the following qualifications for installation of Commercial Power Plant under Part II of these Guidelines:
- i. proven financial capacity to arrange financing for development of Commercial Power Plant.
 - ii. proven experience in developing and operating power plant of same or higher capacity as IPP, Rental Power Plant, SPP or CPP and selling power to Large Consumers.
- (b) The interested Bangladeshi Private Investors should possess, among others, the following qualifications for ROO/ROT project under Part III of these Guidelines:
- i. proven financial capacity to arrange financing for any large project;
 - ii. proven experience in developing and operating power plant of same or higher capacity as IPP, Rental Power Plant, SPP or CPP;
 - iii. proven experience in rehabilitating a power plant or that they will form a consortium with qualified third party having adequate experience in rehabilitation of power plants.
- (c) The interested Bangladeshi Private Investors should possess, among others, the following qualifications for development of Joint Venture Power Plants under Part IV of these Guidelines:
- i. proven financial capacity to arrange financing for any large project;

- ii. Proven experience in developing and operating power plant of same or higher capacity as IPP, Rental Power Plant, SPP or CPP or they will form a consortium with qualified third party having adequate experience in developing and operating power plants as IPP, Rental Power Plant, SPP or CPP.

Part VII

Power Purchase, Fuel Supply and Land Lease/Transfer by GoB

9. Power Purchase, Fuel Supply and Land Lease/Transfer by GoB:

- (a) Public Sector Power Utilities will purchase power from ROO or ROT project(s) under Part-III and Joint Venture Power Plants under Part-IV under a PPA. In this case, provisions under Section 4 of the PSPGP will be applicable.
- (b) Any PPA under Section 9(a) of these Guidelines, except for agreement between Commercial Power Plants and Public Sector Power Utilities for sale of power Under Annex II of these Guidelines, will require GoB approval.
- (c) ROO or ROT projects will benefit from the existing fuel supply arrangements that will be formalized through a Fuel Supply Agreement (FSA). Specification of the fuels will be provided in the PPA or FSA.
- (d) GoB may arrange transfer, acquisition or leasing out of the project land to the Bangladeshi Private Investors for a ROO or ROT Project under Part-III and Joint Venture Power Plants under Part-IV of these Guidelines.

Part VIII

Licensing/ Approval/ Clearance

10. Licensing/ Approval/ Clearance:

- (a) Private Investors, Bangladeshi Private Investors or SPV, as applicable, will obtain necessary License from BEREC, as Independent Power Producer for

Commercial Power Plants under Part II, ROO or ROT Project under Part-III and Joint Venture Power Plants under Part-IV of these Guidelines.

- (b) Private Investors, Bangladeshi Private Investors or SPV will be required to submit environmental impact assessment report along with mitigation measures undertaken for Commercial Power Plants under Part II, ROO or ROT Project under Part-III and Joint Venture Power Plants under Part-IV under these Guidelines to Department of Environment and shall comply with environmental and other related laws, rules and regulations.

Part IX

GoB Support and Fiscal Incentives

11. GoB Support and Fiscal Incentives

- (a) All projects under these Guidelines will be eligible for all GoB support and incentives as provided in Sections 5 and 6 of PSPGP.
- (b) GoB will issue necessary permission to import fuels for Commercial Power Plants according to existing rules and regulations.
- (c) The Commercial Power Plants will get preference in developing coal mines and purchasing coal from existing coal mines, as per provision of the Coal Policy.
- (d) Bangladesh Bank will waive or relax the single exposure limit for the Banks and Financial Institutions to finance all power plants under these Guidelines.
- (e) Subject to the availability, GoB may lease out suitable land to the Private Investors for setting up Commercial Power Plants.

Part X

Miscellaneous

12. Non-competition:

Private investors under these guidelines will be entitled to a fair return on their investments. Therefore, until the contract between such Private Investors and Large Consumer is terminated, Public Sector Power Utilities will not compete with Private Investors to sell power to Large Consumers.

13. Right to Interpretation:

- (a) Section headings are for convenience only and shall not affect interpretation of any section.
- (b) In case of ambiguity with regard to interpretation of any provision of these Guidelines, GoB interpretation shall be final.

Annexure I

1. Large Consumers shall include, large industrial enterprise, Export Processing Zones, Special Economic Zone, Private Economic Zones, High Tech Parks, Large Real Estate etc. meeting the following voltage level and load characteristics :

- (a) consumers connected to the national grid through transmission lines of 33 KV and above having connected load not less than 5MW;
- (b) consumers connected at 33 KV or 11 KV lines of distribution utilities having connected load not less than 1 MW;
- (c) consumers connected at 11 KV or 0.4 KV lines of distribution utilities having connected load not less than 1 KW in case of renewable energy projects.

Annexure II

1. Commercial Power Plants under Part-II of these Guidelines will:
 - (a) pay a surcharge based on the value of the wheeled power to the concerned Distribution Licensees along with wheeling charge to cover cross subsidy, as determined by BERC.
 - (b) sell 20% of its electricity produced to Public Sector Power Utilities at prevailing bulk tariff determined by BERC.
2. To encourage Commercial Power Plants in a particular location GoB may reduce or waive this requirement of mandatory power sales under 1(b) above.
3. Subject to maximum limit set by BERC, as shown above in 1(a), Government may revise the surcharge and amount of energy to be sold, as shown above in 1(b), to Public Sector Power Utilities from time to time. In case of Commercial Power Plants in operation, any increase in the amount of energy to be sold will be fixed in consultation with Private Investors.