Indian Ports Association

Dated: 16-03-2022

To
All Concerned Stakeholders (List attached as Annexure I)

Sub: Inviting Comments/Inputs from Stakeholders on Industrial Policy Document

Sir,

Ministry of Port, Shipping and Waterways vide Letter No. PD- 13/66/2020-PPP/e-341758 dated 08-12-2020 has constituted a committee under the Chairmanship of Chairman VOCPT for drafting a **PPP Policy for Major Port Land Industrialization.** Based on the discussions, detailed benchmarking study, and internal deliberation among the committee members, the draft **Industrial Policy** have been proposed

Stakeholders are invited to offer their comments/inputs on the draft policy. The comments/inputs may kindly be sent to nirav.vidwans@pwc.com, sandeep.kumar.mohanty@pwc.com, abhijitsingh.ipa@nic.in and psmd.ipa@nic.in within 15 days, latest by 24.03.2022. The policy document also been uploaded on IPA website (www.ipa.nic.in).

Yours faithfully,

Abhijit

(Dr. Abhijit Singh)
Executive Director

Encl: As above

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4	The Secretary, Ministry of Food Processing Industries, Panchsheel Bhawan, August Kranti Marg, Khelgaon, New Delhi-110049
5	The Secretary, Department of Heavy Industry, Govt of India, Udyog Bhawan, Rafi Marg, New Delhi
6	The Joint Secretary (Sagarmala) Ministry of Shipping Transport Bhawan New Delhi
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9	The Chairmen of all Major Ports
10	Chairman, National Shipping Board, M/o Shipping, Transport Bhawan, New Delhi
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Draft PPP Policy for Major Port Land Industrialization

Ministry of Ports, Shipping and Waterways

2021

Ministry of
Ports, Shipping and Waterways
Government of India

Foreword

<Inclusion of Foreword by Hon'ble Union Minister>

Government of India has developed the Maritime India Vision (MIV) 2030 and aims to strengthen the Ports, Shipping and Waterways sectors of India through concerted interventions. There are over 150 initiatives identified under the MIV 2030 to take forward the vision under each segment. 'Port Led Industrialization' is one of the focus areas and way forward for Port sector growth under the MIV.

Port Led Industrialization has been one of the key development area under various other plans and programs including the Sagarmala Program through the Coastal Employment Unit development initiative. MIV 2030 has identified over 6000 acre of land that is spread across the major ports which can be potentially industrialized to contribute to various other national objectives of increase in the contribution of manufacturing GDP, generation of various avenues of employment, attracting FDI, increase in exports from the country.

As a target, MIV 2030 aims to attract investment of over INR 45,000 crore and creation of over INR 10,000 crore in revenues for ports through port led industrialization. This target aims to contribute to the other objectives under the 'Aatma Nirbhar Bharat Abhiyan' and 'Make In India – Make for the world'.

To take forward this agenda of 'Port Led Industrialization', Ministry of Ports, Shipping and Waterways has also undertaken periodic revision to the 'Policy Guidelines for Land Management (PGLM)' for Major Ports of India. Taking cognizance of the fact that private sector investment is one of the driving force and plays a significant role in industrial infrastructure development of the country, PGLM considers PPP based port land industrial area development as a key. To enable PPP investments beyond port operations, this 'PPP Policy for Major Port Land Industrialization 2021' provides the much needed platform for enabling private investments to partner with various Major Ports of India and take forward the industrialization agenda of MIV 2030 and Government of India.

Content

1. Introduction

Maritime India Vision (MIV) 2030 has identified, ‘Port Led Industrialization’ as a focus area under its pillar for Port development. MIV 2030 aims to achieve ‘Port Led Industrialization’ by way of industrializing land inventory of over 6000 acres spread across major ports of India by 2023. It also aims to achieve industrial investment of over INR 45,000 crore and contribute to port revenue to a tune of over INR 10,000 crore.

Major Ports of India have been developing industrial land and contributing to the objectives of various programs and plans including the Sagarmala Program that enabled ports to develop ‘Coastal Employment Units’ to take forward the agenda of ‘Port Led Industrialization’. With an aim to reduce logistics cost and time for the movement of EXIM and domestic cargo with development of port-proximate industrial capacities near the coast, Ministry of Ports, Shipping and Waterways (MoS) enabled port led industrialization under Sagarmala program by way of setting up of multi-modal logistics hubs, Coastal Economic Units (CEUs), Port Linked Industrial & Maritime Clusters and Smart Industrial Port Cities in India.

The effective development of land bank available at major ports in India could open the doorway to growth of port traffic, exim cargo and domestic trade. Ministry of shipping through PGLM aims to ensure optimum use of the port land to make it as a preferred investment destination.

In order to achieve the objectives of MIV 2030 and PGLM, enabling private sector participation in industrial infrastructure development will be essential. To facilitate participation of private investment in port industrialization beyond the port projects, MoS has developed this PPP Policy.

This policy is developed to enable Major Ports of India to achieve the industrialization of port land by facilitating access to private sector expertise and financing for industrial area development. The policy gives way to strengthen the competitiveness of major ports and enable them to create value proposition for both trade and industrialization.

2. Objectives

Objectives of the proposed revision to the Policy Guidelines for Land Management at Major Ports (PGLM) issued by the Ministry of Shipping, Government of India that follows the PGLM 2014 and the clarification thereto (as defined under Section 2(m) of the Major Port Trusts Act, 1963 ("MPT Act") enable in defining the objectives of this PPP Policy. The policy objectives are hereunder:

a) Enabling optimum utilization of port land for industrial activity while adhering and aligning with the port master plan and land use plan as may be developed by the port authority.
b) Facilitating in development of port led industrial clusters that strengthen the position of major ports in global trade
c) Promote port led industrialization for creation of world class industrial infrastructure
d) Enable industrialization to contribute to cargo generation for enhancing port utilization by way of exim trade contribution
e) Enable in realizing the objective of logistic cost efficiency in the hinterland
f) To contribute by way of enabling industries to participate in Global Production Networks and Global Value Chains for various industries
g) Contribute to the national objective of enhancing contribution of manufacturing GDP of 25% and creation of over 100 job opportunities

3. Establishing the need for PPP Policy

Proposed revision to the PGLM identifies that PGLM 2014 and the clarifications issued thereto had limited impact on attracting industrial investment at the major ports. Key features of the proposed revisions to PGLM for promoting port led industrialization includes prescribing 'Ready Reckoner Rates as the 'Reserve Price' for land allotment and moving away from the earlier mechanism of 'Highest of the five factors', allotment of fresh lease and license for less than three years without inviting competitive bids, special provision for attracting port led industry, renewal of existing leases and licenses on ready reckoner rates with right of first refusal (RoFR) to the existing allottees, leases in special cases (government bodies), ease of doing business interventions (easing the transfer charges and procedures).

In addition to providing affordable lease rentals to promote industrialization, proposed revisions to PGLM also aim to address the issue ailing the ports viz. establishing forward and backward linkages in port led industries, moving away from revenue generation from land to generating highest cargo for growth in trade, simplifying processes for leasing and licensing of port land for industrial activity, pricing methodology for computation for land lease etc.

PGLM clause 7 and the proposed revisions to PGLM identify PPP allotment as special case of allotment and provides the space for enabling private sector participation and investment to promote port led industrialization. Introduction of a PPP Policy is essential due to the following reasons:

i. Port authority needs to focus on port operations and management as its core business and should only provide support as a facilitator for industrial area development.
ii. Development and operation of industrial area is a capital intensive business. Such capital could thus be unlocked by port authority to invest in port development projects.
iii. Managing multiple allotments and recovery of lease rentals needs dedicated team. In the past ports have faced challenges in managing leases and faced various technical and legal issues (disputes and litigations).
iv. Existing framework of industrial area development at ports was limited to mere long term lease (30 years), offering limited opportunity to private developers to participate in any form of industrialization initiative of port.
v. Reserve price determination for PPP allotment follows the same mechanism for regular port land allotment thus making it unaffordable for private developers to participate.
vi. Lease tenure for port land allotment was limited to 30 years making it unviable for PPP developer participation. Given that industrial area development models are built on long term gestation and are capital intensive in nature, thus the limited lease tenure is identified as a deterrent to PPP development of industrial area.
vii. While PGLM contains provision to offer land for a cumulative tenure of 99 years and; however, it does not provide the requisite framework under which the intended PPP industrial area development shall be operated.
viii. Given that both domestically and internationally, industrial area PPP development models have evolved significantly, it is important to provide the Port Authorities the requisite opportunity to explore and adopt suitable PPP

development models that can contribute to the objectives of both the PGLM and this PPP Policy.

ix. Given that industrial area development through PPP is based on sub leasing model which is already identified in the clarifications issued to PGLM 2014 it is important to recognize the same and make necessary provision in this PPP Policy beyond the provisions of PGLM.

PPP Policy for Port Led Industrialization thus takes forward the agenda of PGLM and creates the much needed space for attracting private sector and other sources of funding and financing industrial area programs.

4. Definitions

i. The expression **"Commercial"** means a building or premises which is used for commercial activities such as shops/markets, shopping/commercial centres, professional offices, work places/offices, banks, ATMs, financial institutions, guest houses, restaurants, cafes, hotels, clubs, research/ training institute, auditoriums, nursing homes, medical clinics, service centres, garages, workshop, petrol pumps, advertising, real estate activities, insurance, IT and communication, tour and travels operators and includes any building or premises used for any other commercial activities and which do not fall under the expression 'industry' and 'residential' and as defined under the Urban and Regional Development Plans Formulation (URDPFI) Guidelines issued by TCPO, MoHUA, GoI 2015 and clarifications thereto and as may be further clarified by Ministry from time to time.

ii. The expression **"Custom Bonded Area"** shall mean any land area which has been demarcated as a Custom Bonded Area in the Master Plan of the Port and shall align with the definition as prescribed in Section 8 of the Customs Act 1962 and PGLM cl. 10.

iii. The expression "**Empowered Committee (EC)**" shall mean the committee constituted by Ministry for evaluation of industrial area projects that shall be promoted by Port Authorities under this policy. The EC shall be constituted and disseminate its functions as detailed in section 11 and as prescribed under Policy Guidelines for Land Management.

iv. The expression **"EOU"** shall mean an Export Oriented Unit for which a letter of permit has been issued by the Development Commissioner under the Foreign Trade Policy (Chapter 6 under the 2009-2014 Foreign Trade Policy).

v. The expression **"Fixed Capital Investment (FCI)"** shall mean the capital investment by major industry(ies) on buildings, structures, plant and machinery for the proposed investment. The maximum tenure of capitalization of this capital investment shall be 5 (five) years from the date of award of project by the Board.

vi. The expression **"industry"** means a building or premises wherein products or material are fabricated, assembled, manufactured or processed, such as assembly plants, refineries, gas plants, and factories and includes a building or premises used primarily for storage or shelter of goods, warehouse, cold storage, freight depot, transit shed, store house (The term salt pans has been excluded from the definition) and under the Urban and Regional Development Plans Formulation (URDPFI) Guidelines issued by TCPO, MoHUA, GoI 2015 and clarifications thereto and in compliance with the applicable environmental guidelines issued from time to time by competent authority(ies) and in alignment with the National Industries Classification (2008 and the subsequent amendments thereto) as may be adopted by Ministry from time to time.

vii. The expression **"Industrial Park/ Industrial Area"** shall mean an estate which is developed primarily for establishment of manufacturing/ service units, with basic infrastructural facilities like developed plots (either on as-is basis or levelled plots), internal roads, water distribution facilities, sewage, power distribution, common effluent treatment plants, communication facilities and other such facilities/services as may be required and as defined under Press Note. 3 of 2008 by DPIIT, Ministry of Commerce and Industries, Government of India and as may be amended from time to time. This shall also include various projects like Multi Modal Logistics Park, Multi Modal Logistics Hubs and Industrial clusters as may be specified by Ministry of Shipping from time to time.

viii. The expression **"Land Allotment Appraisal Committee"** shall mean the committee constituted by the Board headed by the Deputy Chairman of the Board and comprising of the Heads of Finance, Civil, Estate and Traffic.

ix. The expression "**Land Use Plan**" shall have the meaning ascribed to it in Para 4.2 of the PGLM and as may be amended from time to time.

x. The expression "**lease**" shall have the meaning assigned to it as in Section 105 of the Transfer of Property Act, 1882. Accordingly, lease is defined as transfer of a right to enjoy immovable property, made for a certain time, expressly provided for, in consideration of a price paid or promised, or of money to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

xi. The expression "**License**" shall have the same meaning assigned to it as in Section 52 of the Indian Easements Act, 1882. Accordingly, license is defined as a right granted to another person by the grantor, to do or continue to do upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.

xii. The expression "**Major Industry(ies)**" shall mean any industry within the Custom Bonded Area or the Port and Port Allied Area being set up with a fixed capital investment of equal to or exceeding Rs. 1000,00,00,000 (Rupees One Thousand Crores).

xiii. The expression **"Master Plan"** shall mean the plan which demarcates/ categorizes port lands into 'Custom Bonded Area', 'Port and Port Allied Area' and the 'Township Area' as defined under the PGLM and as defined under the Urban and Regional Development Plans Formulation (URDPFI) Guidelines issued by TCPO, MoHUA, GoI 2015 and clarifications thereto.

xiv. The expression **"MGT"** wherever used in this Policy shall mean Minimum Guaranteed Traffic ("MGT"). The Port would have the option to prescribe MGT as conditions for concession / lease if deemed fit.

xv. The expression **"MGR"** wherever used in this Policy shall mean Minimum Guaranteed Revenue ("MGR"). The Port would have the option to prescribe MGR as conditions for concession in conjunction with Revenue Share (Royalty). MGR shall have the meaning ascribed to it in Clause 6.1 (c) (v).

xvi. The expression '**Non-Port Related Industries**" shall mean any industry set up in the Port and Port Allied Area which is not 'Port and Cargo Related Industries', or 'Port Related Major Industries'.

xvii. The expressions "**Port**" and "**Board**" wherever used in the Policy shall connote the Port Administration and Board of Trustees/Directors or their successors in interest(s) and assigns respectively of the concerned Port and as defined under the Major Port Authorities Act 2021.

xviii. The expression "**Port and Port Allied Area**" shall mean any land outside the Custom Bonded Areas which has been demarcated as a Port and Port Allied Area in the Master Plan and as defined under Section 25 of the Major Port Authorities Act 2021.

xix. The expression "**Port's Own Use**" in relation to this Policy shall mean such use of land identified by the Port for its own use for any purpose of the Port under the Land Use Plan or to meet the objectives identified under Chapter 2 of this Policy or for public interest or for such other purpose as may be determined by the Board, from time to time.

xx. The expression "**Port and Cargo Related Industries**" shall mean industries set up within the Custom Bonded Areas or the Port and Port Allied Areas which support the Port's functions and the Port's cargo business or for such other purpose as may be determined by the Board, from time to time.

xxi. The expression "**Port Related Major Industries**" shall mean any Major Industry, which is also a Port and Cargo Related Industry or for such other purpose as may be determined by the Board, from time to time.

xxii. The expression "**PPP Project**" in relation to this Policy shall mean any project being developed on Public Private Partnership basis under applicable laws and guidelines on Port land within the Custom Bonded Areas or the Port and Port Allied Areas and as defined under the National PPP Policy, DEA, Ministry of Finance, GoI.

xxiii. The expression **"Private Developer"** shall mean any Industrial association/ industrial house or institution registered under the Societies Registration Act 1860, Indian Partnership Act 1932, The Limited Liability Partnership Act 2008 or the Companies Act 2013 (or other similar/replacement acts/laws prevalent from time to time within the policy validity period) that proposes to develop (and subsequently executes) Industrial Parks as defined under this policy.

xxiv. The expression "**Public Utilities/ Services**" shall mean the utilities/social amenities and services pertaining to water storage, water pipeline, waste treatment plant, sewage pipeline, police stations, sub-stations, transformers, electricity lines, sanitation facilities, public healthcare, fire stations, public community center, government schools, parks and play grounds, bus stops and other public transport services and other such public utilities / services as defined under the Urban and Regional Development Plans Formulation (URDPFI) Guidelines issued by TCPO, MoHUA, GoI 2015 and clarifications thereto.

xxv. The expression "**Public Private Partnership Appraisal Committee (PPPAC)**" shall mean the committee responsible for the appraisal of PPP project in Central Sector and dissemination of approval(s) as defined under notification number 2/10/2004-INF dated 12th January 2006 issued by Department of Economic Affairs, Ministry of Finance, Government of India and corresponding circulars and clarifications notified thereunder.

xxvi. The expression "**Ready Reckoner Rates**" shall mean, for the purposes of computing the Reserve Price, the concerned State Government's stamp duty valuation rates (such as ready reckoner rates, circle rates, Jantri rates, etc.) for similar usage/classification/activities as published by the concerned State Government from time to time and as defined under the Indian Stamp Act, and Income Tax Act 1961 (including clarification issued thereto).

xxvii. The expression "**Reserve Price**" shall have the meaning ascribed to it in Para 13 of the PGLM.

xxviii. The expression "**Royalty**" means the revenue share payable by the Concessionaire to the Concessioning Authority and as defined in Clause 6.2 of this Policy.

xxix. The expression **"residential"** means a building or premises in which sleeping accommodation is provided for normal residential purposes, with or without cooking or dining facilities, apartment houses, flats, and private garages of such buildings/premises and as defined under the Urban and Regional Development Plans Formulation (URDPFI) Guidelines issued by TCPO, MoHUA, GoI 2015 and clarifications thereto.

xxx. The expression "**transfer**" shall mean and include transfer by way of amalgamation, merger, demerger, acquisition, direct or indirect change in control (including change in control due to change in shareholding) and any other type of transfer as defined under applicable law, except transfer by way of testamentary / intestate succession.

xxxi. The expression "**Upfront Rent**" shall mean one-time upfront rent to be paid in accordance with the provisions of this Policy by the lessee/licensee for the entire lease/license period in addition to a nominal lease/license rent of Re. 1 (Rupee one) per square meter which shall be payable every year for the lease/license period.

xxxii. The expressions "**Valuer**" or "**Approved Valuer**" shall mean any valuer approved/ empaneled by any Government authority as may be appointed by the Board from time to time and as defined under chapter XVII of the Companies Act 2013.

5. Land delineation for PPP Industrial Area development

i. Land area for PPP allotment shall be delineated in the Master Plan and the Land Use Plan that shall be developed and approved by the Board of the Port. This shall be read in alignment with 'Chapter 4: Master Plan and Land Use Plan' of the PGLM.

ii. PPP area delineation in the Master Plan and Land Use Plan shall be the condition precedent for Port Trust to conceptualize, develop and implement PPP industrial area project.

iii. Land delineation for such PPP industrial area project shall include lands that are free from encumbrance and available for allotment. For avoidance of doubt such land parcels shall not be under any form of litigation/ dispute.

iv. In accordance with the provision(s) PGLM the PPP area shall be clearly demarcated with appropriate categorization of land into 'Custom Bonded Area', 'Port and Port Allied Area' and the 'Township Area'. Further, the Port shall undertake review of such PPP area delineation as part of its Land Use Plan revision prescription under the PGLM and in line with orders/ notifications/ circulars issued by Ministry and applicable environmental regulations from time to time.

v. Frequency of revision of land area delineation for PPP Industrial Area development may be aligned with frequency of the revision of Port Master Plan and Port Land Use Plan. For avoidance of doubt the delineation for PPP area shall be undertaken through a separate technical and commercial feasibility study.

vi. In the event the Port does not have a Master Plan and a Land Use Plan, the Port shall identify and delineate area for PPP under existing plans viz. Coastal

Employment Unit, Smart Industrial Port City or similar proposed / existing developments.

vii. The PPP area delineated and planned under such Port Master Plan and Land Use Plan shall adhere to the applicable development control regulations as prescribed by the concerned state government during planning, design, development and operation stage.

6. Potential PPP development model

As part of the development process of this policy, various PPP models adopted both domestically and internationally were studied for industrial area development. This provided an understanding of potential PPP models that may be considered by ports for development of industrial area to drive the agenda of port led industrialization. Given the nature of industrial infrastructure development, there are various options that may be explored. For ease of understanding, industrial area projects may be green field in nature, brownfield industrial area project where operation and maintenance may be the key requirement, large industrial project where individual unit acts as the anchor investor and can be identified as a standalone project. Thus, considering these circumstances of development requirements, ports may adopt the suitable model for implementation. Further, based on benchmarking from various sources like The World Bank, UNESCAP, UNCTAD it is identified that the traditional long term lease model may not be considered as PPP. Traditional long term lease model referred here is with regard to port land offered on long term lease for development of industrial parks/ SEZs/ FTWZ/ MMLP and provided under Issue and clarification 11.2 (c) (i) of circular no. 1 of 2019-20 (dated: 29th April 2019). Following are the models that have been detailed further for to provide ports with options. Ports, thus under the institutional provision may require necessary approvals from Board, Empowered Committee, Ministry of Shipping, PPPAC and other concerned authority.

i. SPV model with Port land as equity contribution for greenfield industrial area development
ii. Development through long term concession model for greenfield industrial area
iii. Holding company model with development through concession route or long term lease route for greenfield development
iv. Swiss challenge model for greenfield industrial area development (multi product, sector specific) and greenfield anchor industrial investment (large industry(ies))
v. Operation and Maintenance through management contract for brownfield industrial area (competitive bidding and swiss challenge route)

6.1. SPV model with Port land as equity contribution for greenfield industrial area development

Based on benchmarking of various domestic and international industrial areas and zones, one of the model is where the authority contributes land as equity in establishing a Special Purpose Vehicle (SPV) company. Under the model, the authority undertakes valuation exercise for the land, in case of ports this will be governed under the provisions of PGLM according to the prescribed five methods. This valuation is adopted as equity contribution of the Port for establishing an SPV with private developer/ investor. The authority shall undertake competitive bidding for identifying private developer for establishing the SPV for development of industrial area. The bidding parameter for such competitive bidding shall be the highest equity share offered by private developer in setting up of such SPV. Key considerations for port to undertake such model include (and are not limited to) the following:

a) Port shall undertake project identification i.e. delineate the area for industrial area development
b) Undertake master planning for development of such proposed industrial area and financial feasibility study to estimate key financial covenants for the project
c) Estimate the minimum equity i.e. baseline equity for undertaking bidding
d) Determining the tenure of such SPV in alignment with the PGLM and its provisions clarifications issued by Ministry of Shipping from time to time
e) Developing relevant SPV agreements and bidding document. Standard bidding documents and agreements may be developed by Ministry of Shipping for the ports to adopt for undertaking such model.

Based on benchmarking it is observed that industrial areas developed on PPP model(s) where land is contributed as equity have delivered limited success to the development authority in achieving the objective(s) of industrialization. Further, such development model(s) have brought forth various implementation risks and exit challenges for the sponsoring authority. Some of the key challenges in such model(s) where land is contributed as equity include valuation of land during exit, vulnerability of land to financing obligations of the PPP development, sponsoring authority vulnerable to various circumstances of PPP partner event of default. Further, considering the above circumstances where land management is regulated under PGLM and the tenure of SPV may be constrained under applicability of provisions of PGLM, attractiveness of such model may be limited. Thus this model may be considered by Ports in case it is established that the other PPP models are not identified suitable for the proposed project. Port shall seek approval of the Empowered Committee to adopt this model with adequate justification. Empowered Committee shall reserve the right to approve / reject the representation of the Port for adoption of this model and also reserves the right to review such request to its satisfaction.

6.2. Development through long term concession model for greenfield industrial area .

In order to manage the potential risk vulnerabilities of the Port and enable PPP participation beyond the traditional long term leasing model under the PGLM, this policy provides long term concession model for consideration by the Ports. Drawing learnings from the Model Concession Document of Port Projects, this policy provides Ports with the opportunity to implement industrial area projects through PPP route.

It is important to note that industrial area development can be identified as a single project or it can be identified as a combination of various projects. For ease of understanding, an industrial area may include projects like water treatment and water supply, waste water treatment and management, captive power generation projects, logistics and warehousing projects etc.

Based on the benchmarking of domestic and international industrial area projects and benchmarking other sectors (port projects, airports, highways) it is observed that there is a need for development of standard framework for implementation of such large industrial area development projects. It is important to note that the PGLM is implemented through tender-cum-auction process for allotment of port land for various port related and non-port related activities. However, this mechanism is faced with the limitation of land lease management by Port for each allotment putting the responsibility on Port for recovery of land lease rental, provision of infrastructure and facilities, management of lease tenure etc. Further, the current framework of tender-cum-auction at Major Ports is not well equipped to develop and operate a PPP industrial area and is limited to implement long term lease model under the PGLM.

Under this form of PPP model, long term concession may be awarded by ports to private developers through competitive bidding route. This competitive bidding shall be undertaken through a Model Concession Agreement with applicability of PGLM. Such concession shall be for a minimum tenure of 30 years and may span up to 99 years in alignment with the provisions of PGLM and the clarifications issued thereto. The key bidding parameter under such model is ‘Revenue Share’ where the private partner offers gross revenue share to the sponsoring authority. The Model Concessions Agreement regulates the conceptualization, development, financing, operation, risk sharing, safeguards for the interest of parties of such concession. Further, a ‘Minimum Guaranteed Revenue’ may be prescribed as part of the concession to mitigate potential financial risk to the Ports.

In order to implement this model, the Port shall undertake feasibility study for determining the suitability of PPP model. Such feasibility study shall cover aspects (including but not limited to) of PPP industrial area delineation, master planning of the PPP industrial area, land use plan for such industrial area, priority industries in accordance with the applicable development control regulations/ Ministry of Shipping issued guidelines, environmental and coastal regulation zone considerations as may be prescribed by competent authority. It may be noted that such industrial area can be a multi-product industrial area, single sector industrial area (industrial cluster), logistics park, MMLP (Multi Modal Logistic Park), MMLH (Multi Modal Logistic Hub) etc. The board may define the proposed form of development in the project feasibility study. The Port shall seek necessary approval for adoption of preferred development model and the implementation of the PPP Industrial Area through the EC and PPPAC in accordance with procedure prescribed in Clause 11, PGLM and the guidelines issued by PPPAC and Ministry of Shipping from time to time.

Thus, a separate Model Concession Agreement shall be developed under this policy by Ministry of Shipping drawing learnings from the port projects MCA. However, given that the nature of business model for industrial area is different than that of port use/ cargo operations, this MCA shall be customized considering the specific business circumstances for industrial area development and shall be eligible for revisions/ amendments/ modifications by Ministry of Shipping from time to time subject to applicable governing laws. Following are some of the key considerations for development of Model Concession Agreement for PPP industrial area.

i. **Tenure of Concession**:

The tenure of PPP concession shall be minimum 30 years and maximum 99 Years. The tenure of concession shall be governed in alignment with the PGLM and this PPP Policy.

ii. **Sub leasing and sub-leasing charges**:

Given that industrial area development is based on sub-leasing model, PPP development under the MCA shall enable sub-leasing in accordance with the PGLM clause 17. Further sub-leasing shall be permissible with due approval from the Land Allotment and Appraisal Committee. Charges for such sub-leasing and further sub-leasing shall be payable to the Port Authority (Concessioning Authority). MCA shall determine the terms of such payment and in accordance with the PGLM and the clarifications/ amendments issued thereto. Tenure of sub-leasing(s) shall be coterminous with the tenure of the PPP concession.

iii. **Financial Consideration**:

The financial consideration will be in form of Royalty i.e. a Guaranteed 'Revenue Share' as percentage of the Gross Revenue that shall accrue to the Concessionaire from leasing and operation and maintenance activities from the industrial area.

iv. **Minimum Guaranteed Revenue:**

To safeguard the cash flow to the Port authority from the project, the Concessionaire shall provide the higher of the two – a) Guaranteed 'Revenue Share' or b) The amount equal to the reserve price as applicable during the year in accordance with clause 18 of PGLM. The same shall be payable in accordance with the conditions that may be prescribed in the MCA.

v. **Escrow Account:**

All the project related transactions shall be maintained through an Escrow Account established through an 'Escrow Agreement'. The MCA shall define and detail the mechanism of establishing and operating such 'Escrow Account'.

vi. **Condition Precedent (Concessioning Authority)**:

Condition precedent for Concessioning authority shall cover (including but not limited to) provisioning of land free of encumbrance for PPP development, facilitating the availability of all the trunk infrastructure including last mile road linkage, power linkage, water linkage. The MCA shall detail the necessary Condition Precedent and the time line for the same including applicable schedules and service level benchmarks. These Condition Precedent may vary based on the project conditions on case to case basis.

vii. **Condition Precedent (Concessionaire)**

Condition precedent for Concessionaire shall cover (including but not limited to) opening of Escrow Account and execution of escrow agreement, demonstration of financial closure to the concessioning authority, furnishing appropriate guarantees to the concessioning authority. The Condition Precedent and their timelines shall be detailed by the MCA.

viii. **Concessionaire Event of Default**:

The MCA shall adequately cover the concessionare event of default. The concessionaire event of default may include circumstances (including but not limited to) like default of debt servicing for project financing, default on adherence to the land use plan for sub-leasing, default on payment to the concessioning authority on royalty payments, default on adherence to the project development timelines. The MCA shall also cover the implying penalties and remedies for concessionaire event of default.

ix. **Concessioning Authority Event of Default**:

The MCA shall adequately cover the concessioning authority event of default. The concessioning authority event of default may include circumstances (including but not limited to) like hand over of PPP delineated land area, default on project facilitation and approvals like sub-leasing approval. The MCA shall also cover the implying penalties and remedies for concessioning authority event of default.

x. **Project timelines**

The feasibility study for industrial area PPP project shall serve as the baseline for project development timelines. The MCA shall adopt the EC and PPPAC approved project feasibility study for prescribing the project development timelines.

6.3. Holding Company model with development through concession route or long term lease route for greenfield development ~~area~~

It is observed that industrial area development projects are a combination of multiple components. For illustration with reference to the Coastal Employment Unit/ Smart Industrial Port City format of development, such projects may include components like logistics zone, captive renewable power project, water treatment (desalination) and water supply projects etc. To enable ports to bundle/ un-bundle project components an alternative route is provided such that ports can prepare separate projects or combination of project through PPP route. Ports may undertake incorporation of a fully owned Special Purpose Company (SPC) for implementation of such industrial area PPP projects. Such SPC shall be established under the Companies Act 2013 and the amendments issued thereto. Creation of SPC and thus implementing projects under such structure will provide financial and governance advantages to the port. Some of such advantages can be identified as follows:

i. Bundling and un-bundling of various PPP projects within an industrial area
ii. Sub-projects within an industrial area (e.g. water supply, waste water management, solid waste management, renewable captive power generation etc.) can be implemented through separate modes i.e. concession route, swiss challenge route, annuity based O&M contracts etc. based on financial viability of separate sub-projects
iii. Enable port to leverage private sector efficiency across various type of projects thus reducing reliance on single developer-operator.
iv. Governance efficiency can be enhanced by creating an independent board that can be adequately overseen by the Port. The governance structure will be provided by Ministry to the ports to enable governance harmonization across ports for such SPCs
v. Ministry and Port as regulator of port are also at arms length in projects implemented by such SPC and play the role of facilitator

Such SPC shall enable Port to participate in PPP projects where the development model and financial considerations may differ across category of projects under the proposed industrial area development. For instance, such SPC can explore opportunity to participate in Water Supply PPP project where the nature of financial and operational considerations differ than that from an industrial area development and operation; however, the coverage of this policy is limited to industrial area development and does not extend to other form of projects beyond the activity of industrial land leasing and sub-leasing model. Key characteristics of such SPC are as follows:

i. The SPC shall be 100% owned by the Port for development of various PPP projects. However the intent of such SPC under this policy is for development of PPP Industrial area(s) and projects therein only.
ii. The Port authority shall lease land to SPC at nominal lease rental for the tenure that shall be commensurate with that of the PPP project(s). The nominal lease rental shall be 1 Rs./sq.m./annum and governed in accordance with the PGLM.
iii. Port may lease land to SPC in separate packages based on projects that it may identify and bundle/ un-bundle based on project structuring that it may want to adopt. For ease of understanding and as illustration, Port may lease land to SPC in two separate package i.e. one package for industrial area development and another package for setting-up of desalination for water supply.
iv. Such SPC shall by authorized by the Port and Competent authority to develop various PPP projects within the PPP area delineated under this policy.
v. This SPC shall be granted the rights to mortgage the land governed by the conditions of PGLM for mortgage of land under further sub-leases.
vi. Such SPC can undertake projects either through concession mode i.e. through revenue share mode or long term lease mode (long term lease mode shall be governed under the provisions of PGLM and the clarifications issued thereto) and levy of nominal lease rental as prescribed in accordance with the PGLM.

Any other functions and roles of such SPC may be revised by the Port with the approval of Board and the EC.

6.4. Swiss challenge model for greenfield industrial area development (multi product, sector specific) and greenfield anchor industrial investment (large industry(ies))

Swiss Challenge approach for industrial area development is seen in light of the existing provisions of applicable institutional framework for development of PPP projects recommended by Department of Economic Affairs, Ministry of Finance, Government of India and the National PPP Policy.

It is observed under the PPP toolkit issued by Ministry of Finance, GoI, that the Swiss Challenge mode of PPP development has been provided limited encouragement. Similar observations have been made under the 'Report of The Committee on Revisiting And Revitalising Public Private Partnership Model of Infrastructure – 2015 (Kelkar Committee Report), Ministry of Finance, GoI'. The Swiss Challenge method (as per PPP Tool Kit issued by Ministry of Finance) is defined as – "Swiss Challenge is a procurement strategy used specifically when the government authority receives an unsolicited proposal for a project. The private entity submitting the unsolicited proposal is termed as the Original Project Proponent (OPP). The government evaluates the proposal submitted by the OPP and, if it finds merit in the proposal, it invites other parties to submit competing proposals. The other parties are expected to match or better the terms of the OPP's proposal. In turn, and to compensate for its effort in bringing the original proposal, the OPP is given a chance to match or better any competing proposal at par with the original."

However, the National PPP policy and the PPP guidelines provide for adoption of Swiss Challenge mode for project development in exceptional circumstances. The excerpts of the provision for exception are presented below.

"In exceptional circumstances, in sectors not traditionally associated with PPP structures or where procurement of proprietary technology is involved, variants of the approach could be considered for development, with prior approval of the competent authority, provided the VfM analysis establishes such a decision."

This PPP policy, provides for consideration of development of industrial infrastructure projects in alignment with the guidelines and regulations for development of PPP project issued by Ministry of Finance, GoI from time to time.

It is further observed and recommended that in case Ports adopt Swiss Challenge mode of development, they shall evaluate such proposals in light of key considerations including (but not limited to) innovative land use by the project proponent to maximize economic returns in terms of employment, cargo for port, value added manufacturing contribution etc., demonstration of technology/ disruption that port may not have otherwise adopted/ implemented. While the evaluation shall be subjective in nature, the Port shall thus establish justified reasoning to the satisfaction of Board, EC and the Ministry of Shipping for seeking approval for adoption of Swiss Challenge model.

Port may undertake implementation of Swiss Challenge mode of development either through i) Long Term Concession model route or ii) Through SPC route or through iii) Long Term Lease Route as provided under section 6.2, 6.3 and Long Term Lease route under PGLM. Given the complex nature of industrial area development projects, the development of such projects can be seen in three different formats under the Swiss Challenge route as follows.:

a) Greenfield Industrial Park Projects proposed by Private Developers

Under this category, it is proposed that unsolicited proposals for industrial area development may be considered by the Port for development of industrial area. The recommended minimum threshold for development of such industrial area shall be a project with minimum land area of 500 Acre. Such area can be a multiproduct industrial area. However, the Port shall undertake evaluation of the merit of such proposal considering factors (including but not limited to) such as employment creation, cargo generation for port and MGT that may be generated, type of industries and environmental considerations, funding and financing structure, innovative land use model etc. This form of development may be undertaken as part of Swiss Challenge model through the through i) Long Term Concession model route or ii) Through SPC route or through iii) Long Term Lease Route as provided under section 6.2, 6.3 and Long Term Lease route under PGLM. All such proposals shall be referred to the Empowered Committee for approval pursuant to the review and approval of the Board.

b) Greenfield Sector Specific Cluster / Industrial Area Project proposed by Private Developers

Under this category, it is proposed that unsolicited proposals for industrial area development may be considered by the Port for development of industrial area. However, such industrial area shall be sector specific and in alignment with the port land use plan and port master plan. For such form of development, Port shall specify the preferred sector (e.g. textile manufacturing, electronics manufacturing, automotive manufacturing etc.) for development. The recommended minimum threshold for development of such industrial area shall be a project with minimum land area of 200 Acre. Such area has to be a single sector specific area. However, the Port shall undertake evaluation of the merit of such proposal considering factors (including but not limited to) such as employment creation, cargo generation for port and MGT that may be generated, type of industries, innovative land use model and environmental considerations etc. This form of development may be undertaken as part of Swiss Challenge model through the through i) Long Term Concession model route or ii)

Through SPC route or through iii) Long Term Lease Route as provided under section 6.2, 6.3 and Long Term Lease route under PGLM. All such proposals shall be referred to the Empowered Committee for approval pursuant to the review and approval of the Board.

c) <u>Single industrial unit investment / large investment proposed by Industrial investor</u>

PGLM proposes allotment of land on Swiss Challenge mode for industrial investments with fixed capital investment of more than INR 1,000 crore (definition of eligible investment under the 1,000 Crore threshold shall be as defined in the PGLM and this policy). In alignment with the provision of PGLM, this category of Swiss Challenge mode proposals may be considered by the Port for encouraging port based industries that shall contribute to the port growth. However, similar to the other two categories, Port shall undertake evaluation of the merit of such proposal considering factors (including but not limited to) such as employment creation, cargo generation for port and MGT that may be generated, type of manufacturing/ industrial activity, environmental considerations etc. All such proposals shall be referred to the Empowered Committee for approval pursuant to the review and approval of the Board.

The implementation of such project(s) on Swiss Challenge shall also adopt seek approval of PPPAC as may be recommended by the EC. Port shall adopt the following process for inviting and evaluating proposal(s) for Swiss Challenge mode.

a) Suo motu proposal may be received by the Port for delineated PPP industrial area in accordance with the Port Master Plan and Land Use Plan.
b) Such proposal that may be received by the Port would be reviewed and evaluated by EC and PPPAC, as per the provisions of the PGLM and the Guidelines issued by DEA, MoF, GoI.
c) Parameters for finalization and assessment of proposal submitted through Swiss Challenge route will be undertaken by the Land Allotment and Appraisal Committee and further reviewed by EC pursuant to the requisite approval by the Board of Port.
d) Review of such proposal shall be conducted on parameters including (but not limited to) proposed type of industries, minimum guaranteed throughput, project features (infrastructure) and facilities, tenure of concession.

6.5. Operation and Maintenance through management contract for brownfield industrial area (competitive bidding and swiss challenge route)

The policy envisions PPP intervention beyond the development partnership format and includes long term management, operation and maintenance (O&M) of the projects. Based on benchmarking of various domestic and international industrial parks and zones it is observed that private developers are also engaging with various industrial infrastructure development authorities for marketing and operating and managing the developed industrial areas. In order to bring in private sector efficiency for marketing and operation and maintenance where Port intends to undertake capital development of industrial area, long term PPP concessions will enable creation of sustainable competitive industrialization and industrial infrastructure.

Ports may consider granting O&M concession through Management Contract for various tenure ranging from 10 – 30 years. Such concession can be granted through a MCA that shall be customized to cater to management and O&M requirement of industrial areas developed by Ports. It is understood that there are two separate aspects of Management i.e. a) marketing and branding services and b) operation and maintenance services that may be procured by Ports for industrial area that it shall develop. It is also clarified that this model is only applicable where Port undertakes capital development on its own and intends to leverage private sector efficiency during the marketing and operations phase.

Key considerations for implementing the concession under such management contract include (but are not limited to) the following:

i. Port may consider procuring only Operation and Maintenance service or a combination of Marketing services and O&M services. The policy does not provide for granting concession only for marketing services.

ii. Port can determine the tenure of such concession between a period ranging from 10 – 30 years and shall be further aligned with the applicable provisions of PGLM that may be issued from time to time in regard to such concession(s).

iii. Financial consideration (bidding parameter) in case the port intends to procure marketing services and O&M services through a concession can be an Annuity payable to the private partner or Revenue share payable to the private partner of the accruals to the port through lease rentals and maintenance charges (that shall be determined by the port and revised from time to time as per applicable policies).

iv. Financial consideration (bidding parameter) in case the port intends to procure O&M services through a concession can be an Annuity payable to the private partner or Revenue share payable to the private partner of the accruals to the port through maintenance charges (that shall be determined by the port and revised from time to time as per applicable policies).

v. The Port is responsible for determining the rates and charges for allotment of lease and O&M of the industrial area for various facilities and services that shall be levied on various users of the industrial area.

vi. The concessioning authority is responsible for recovery of such rent and charges and thereby making annuity payment or payment of revenue share to the concessionaire. Revision of rates and charges (including O&M charges), schedule of O&M services, service level benchmarks are prescribed by the concessioning authority for the tenure of the concession. In such a concessions any capital investment on periodic maintenance is undertaken by the concessioning authority.

vii. Concessioning authority shall define the service level benchmarks: As part of the O&M concession the Port Authority will determine the service level benchmarks across various utilities/ facilities/ services that shall be provided to the users of the industrial area where the Port Authority shall levy rates/ tariffs/ charges.

viii. Escrow account: Port Authority shall be responsible for creation and operation of Escrow Account including Escrow Agreement through which the concession shall be operated.

ix. A Model Concession Agreement will include articles for O&M concession detailing (including but not limited to) Concessionare and Concessioning Authority condition precedent, Concessionaire and Concessioning Authority event of default and remedies, Termination conditions, Force majeure, Payments and obligations, Schedules to the concession, Monitoring and control guidelines including institutional arrangement, rates and charges revision formula.

In order to determine the suitable management contract (concession model) the Port shall undertake a feasibility study for award of such concession. The feasibility study shall typically cover (including but not limited to) financial feasibility of annuity model vs. revenue share model, service level benchmarking, determination of mechanism for revision of rates and charges, performance KPIs for concessionaire etc. The feasibility study shall be approved by the Board and EC for undertaking such management contract (concession) for the industrial area. Industrial area covered under such concession shall be classified as PPP industrial area of the Port.

7. General considerations for PPP industrial area development

The PPP policy in addition to the provisions herein will follow the provisions of PGLM to enable Port to undertake harmonized development within the delineated PPP industrial area and outside.

7.1. Alignment with other industrial area development programs

With various development viz. Coastal Employment Unit, Smart Industrial Port City, Employment and Economic Enclaves the underlying principle remains the same i.e. development of port led industrialization. This policy aims to enable PPP based developments under such programs promoted by the Ministry of Shipping and implemented by the Port. As part of the PPP industrial area delineation process, the Master Plan and the Land Use Plan shall clearly name the PPP area in alignment with the programs and initiatives promoted by Ministry of Shipping. In case there are programs and plans promoted by Ministry of Shipping that provide differentiated benefits to such area (these differentiated benefits can be in form of funding support for internal infrastructure creation, EoDB enablers for cargo movement etc.) the Port shall identify the same and facilitate access to such support with due approval of the Board and the EC. For avoidance of doubt, in case such benefits are provided during the course of project conceptualization, project bidding, project development the Port shall endeavour to facilitate the project. The Port shall however not be bound to facilitate such support and will be at its discretion to facilitate such support to the project.

7.2. Allotment of Land in Port Allied Area and Custom Bonded Area

PGLM identified three type of areas viz. Custom Bonded Area, Port Allied Area and Township Area. It is understood that the PGLM excludes the ‘Township Area’ and only covers the ‘Custom Bonded Area’ and ‘Port Allied Area’. The PPP Policy in alignment with

PGLM excludes the 'Township Area' and only covers the 'Custom Bonded Area' and 'Port Allied Area'. The PPP area may be developed solely on 'Port Allied Area' or a combination of 'Port Allied Area' and 'Custom Bonded Area'. Procedure of management (including but not limited to) for movement of cargo, movement of persons, exchange of business activities between 'Port Allied Area' and 'Custom Bonded Area' shall be separately developed by the Ministry of Shipping and prescribed as an integral part of the MCA in case the Port proposed for inclusion of 'Custom Bonded Area' in such PPP industrial area development. The decision on development of PPP industrial area with combination of 'Port Allied Area' and 'Custom Bonded Area' remains with the Port and shall be included in the feasibility study for such development.

a) License/Lease in relation to the Port and Cargo Related Industries and Commercial and other activities

The PPP policy aims to provide allotment flexibility to the PPP developer for various activities in the industrial area. Thus, in order to enable such feature, PPP policy proposes to deviate from the license/ lease procedure for fresh allotment as prescribed under PGLM. Given that PPP industrial area development is a sub-leasing based development, the PPP developer shall be provided with the right to undertake sub-leasing without adopting the tender-cum-auction process. The allotment process will however adhere to guidelines provided in this policy, conditions in the MCA and any provisions that may be prescribed by the Board and the EC as part of the concession prior to the project development.

b) General conditions for allotment of License/ Lease in relation to the Port and Cargo Related Industries, Non – Port related industries and Commercial and other activities in PPP industrial area

   i. Industrial activity/ commercial activity for which the PPP developer may allot the land (license/ lease) shall adhere to the Master Plan and Land Use Plan approved by the Port and the EC for development of PPP industrial area and the Port. The Master Plan and the Land Use Plan for the PPP industrial area shall determine the category of use across various zones (e.g. pollution based classification of zones in the PPP industrial area, industrial sector based classification of zones) that shall be adhered by the PPP developer for allotment of license/ lease

ii. For allotment of land on license the MCA shall prescribe specific conditions applicable if any that shall be adhered by the PPP developer. More specifically these conditions shall be applicable in case there exists custom bonded area as a part of the PPP industrial area.

iii. In alignment with PGLM and the proposed revision, the PPP industrial area may be permitted allotment of land for Major Industry (Major Industry is defined as industry setting up with a minimum fixed investment of more than INR 1000 Crore) with lease rental lower than that prescribed for the PPP industrial area by way of providing an option of MGT commitment. The MGT shall be such that it is commensurate with the upfront lease rental applicable for the allottable land parcel. The MGT commitment shall be optional, and the PPP developer shall seek approval of Board and EC for such allotment. Port shall determine the MGT for such allotments on case to case basis. Further, any other relevant conditions as prescribed in the policy shall be adhered for such allotments. For avoidance of doubt, such discount / reduction on the reserve price (upfront lease rental) will be calculated as the product of applicable port charges per ton of the proposed commodity and the MGT committed per annum for the tenure of proposed lease and the NPV of such cash flow. The Port shall reserve the right to determine the estimation of applicable port charges, escalation, discounting rate for such computation. However, in no circumstance these estimations shall be in contravention to applicable laws and policies. For ease of understanding and as illustration, the discounting rate for cash-flows is the G-Sec rate as prescribed in the PGLM, the same shall be adopted by the Port for treatment of cash-flows for the PPP concession awarded under this Policy.

iv. In cases of lease / license is provided for land where there exists port structures, applicable conditions PGLM shall be adhered to by the PPP developer.

v. PPP industrial areas that may include water front shall be treaded as the same as other areas and there will be no separate pricing for such land parcels. However, the PPP developer shall adhere to conditions that may be prescribed in the MCA and shall provide suitable technical conditions for management of water front, conditions that may be prescribed by Port and the EC and any other condition that may be prescribed by the Ministry of Shipping.

7.3. Co-development of industrial area with Government bodies

In accordance with PGLM, the Port may opt for Co-development of Industrial area with Government Departments, Statutory Local Bodies, Statutory Authorities / Autonomous Organizations under State / Central Ministries, Central Public Sector Undertakings (CPSUs) and State Public Sector Undertakings (SPSUs)/ a joint venture where the government body is a majority shareholder. Such a development may not be classified as PPP development; however general principles that may be adopted for such co-development are as follows:

i. Port may allot land to such co-developer agency on long term lease at reserve price and provide the flexibility to such co-development agency for further sub-leasing terms as may be awarded to a private PPP developer under this policy.
ii. The priority order for preference in case of more than one such applicant will be in accordance with the PGLM.
iii. The Port under such development model may opt for revenue share model on mutually agreed terms and conditions as may be approved by the Port and the EC.
iv. It is clarified that co-development under this clause is intended for industrial area development only and any allotment for industrial/ commercial use by such government agency/ entity shall be treated in accordance with end use conditions as prescribed in the PGLM.

7.4. Right of Way for utilities / services / facilities (common / specific)

In accordance with the provision of Chapter 8 of PGLM, the PPP industrial area shall make provision for providing Right of Way (RoW) for common and specific unit use. The RoW may be required for laying of conveyors/ pipes/ cables/ ducts etc. for common / specific use. In case of common use utilities / facilities/ services like water supply, waste water network, OFC (Optic FIber Cable), power lines the RoW shall be master planned as part of the PPP industrial area. In case there is a requirement of RoW for specific use for laying of conveyor/ pipeline by users (sub-lessees in the industrial area), the master plan to the maximum possible extent shall provide for such need. Such provision shall be made in the RoW provided for circulation (roads), utilities RoW that can cater to such specific requirement. The Port shall include such modifications/ amendments arising due to such RoW requirement in the Port Land use and Port Master Plan and seek necessary approval of the Board. Issuance of RoW for specific use will be governed under Chapter 8 of PGLM and Annexure-1 thereunder.

8. Special considerations for PPP industrial area development

The PPP policy shall provide rights and concessions to enable PPP participation by private developers and operators. While the special considerations largely provide for development and O&M of industrial area, the Port through Ministry of Shipping and EC may from time to time include provisions for O&M concession for developed industrial areas vide the MCA and the PPP policy.

8.1. Tenure of PPP concession

PGLM and the proposed revision provides an option for 99 years or lower lease tenure for allotment of land on lease/ license basis. In alignment with the same, the PPP policy provides for minimum 30 years and maximum 99 years of lease tenure to the PPP developer with rights to sub-lease and further sub-lease given that industrial area development is based on sub-leasing model. The detailed terms and conditions including timelines for execution of such concession shall be constituted in the MCA.

8.2. Land ownership to vest with the Port with mortgage rights to PPP developer

In alignment with the provisions of PGLM and the proposed revision, the PPP developer shall be granted No Objection Certificate (NOC) for creation of mortgage on the land allotted for development. The Land Allotment and Appraisal Committee of the Port shall grant such NOC and will form part of the MCA. The MCA will adequately cover the terms of execution of such NOC while being aligned with the other terms and conditions of the PGLM including (but not limited to):

i. Such mortgage is made subject to this Policy and the concession agreement between the Port and the PPP developer;
ii. Collection of nominal administration charges as fixed by the Board from time to time;
iii. Mortgage is created for a period lesser than the total concession period balance at that time;
iv. The concessionaire has paid all its outstanding dues and amounts up to the date of such application; and
v. Port retains the first charge on the property.
vi. All the limitations as prescribed in PGLM and the MCA shall be applicable for permitting such mortgage to the concessionare.

8.3. Reserve price for allotment of land to PPP developer

Reserve price for allotment of land under PPP concession for development of industrial area will be determined in accordance with the PGLM. The 'Reserve Price' shall be based on the applicable land lease rentals determined by the Port as per PGLM to the identified PPP industrial area. As prescribed in the PGLM, the Land Allotment and Appraisal Committee shall be responsible for determining the Reserve Price and recommending the same to the Board for approval. In case port intends to undertake separate rate identification exercise for PPP industrial area development, procedure as prescribed in PGLM shall be adopted for fixing the reserve price.

Reserve price for PPP allotment is intended only for determining the MGR under the concession that may be granted for PPP industrial area development. The condition of 'Revenue Share'/'Royalty' shall be adopted for determining the financial consideration under the PPP concession.

8.4. Sub-leasing / pricing and levy of O&M fees and charges

To enable PPP development and enhance the attractiveness of such industrial area, it is proposed that the PPP developer shall be granted rights to sub-lease and determine the sub-leasing lease/ license reserve price. The principles to be adopted for granting such sub-leasing rights and determine the sub-leasing reserve price shall be as provided below:

a) The PPP developer may be granted right to determine the reserve price for allotment of land for a maximum of 30 years or 99 years lease (commensurate with the residual lease tenure of the PPP development concession and aligned with the lease tenure granted by the Port for development of such industrial area)

b) The determination of reserve price by PPP developer however does not absolve them from the obligation of payment of Royalty and/or MGR to the concessioning authority.

c) The mechanism of granting the PPP developer the right to determine the reserve price for further sub-leasing allows to create a differential pricing strategy. For ease of understanding, the PPP developer through this form of right is enabled for offering differential reserve price for anchor investments and subsequently by development of industrial area is able to leverage on generating premium on subsequent allotments.

d) As part of the granting right for determination of reserve price by the PPP developer, it is also provided that the PPP developer is granted the right to determine the reserve price for sub-leasing higher or lower than the reserve price identified as MGR.

e) PPP developer will be granted the right to sub-lease land for tenure lower than 99 years or on annual sub-lease basis in accordance with the formula prescribed under the PGLM. The PPP developer may request deviation from this principle for setting of annual lease rental for sub-leasing. The same shall be approved by the Land Allotment and Appraisal Committee and further approved by the EC as may be prescribed by Ministry of Shipping.

f) In circumstance where PPP developer intends to sub-lease the land for tenure lower than the maximum permissible tenure or on annual sub-lease basis, the same shall be approved by the Land Allotment and Appraisal Committee and the Board. Further, the consideration payable to the Port (Concessioning Authority) by the Concessionaire shall be guided by the applicable ‘Royalty’/’MGR’ rules defined in the policy and the MCA. For avoidance of doubt and ease of understanding should the PPP developer intend to sub-lease the land on annual sub-lease basis, the ‘Royalty’/’MRG’ payable shall be the committed percentage of the annual sub-lease accrued to the PPP developer.

g) Sub-lease transfer and further sub-leasing and applicable charges shall be permitted in accordance with PGLM.

h) This policy does not cover the land allotment to Government Departments, Statutory Local Bodies, Statutory Authorities / Autonomous Organizations under State / Central Ministries, CPSUs and SPSUs for construction of Public Utilities. Port shall make provision for development of such utilities and facilities outside the delineated PPP industrial area.

i) The PPP developer shall be granted the right to levy and collect Operation and Maintenance charges from the sub-lessees in the industrial area. The PPP developer shall be granted the right to determine the O&M charges; however the same shall be determined through a pre-agreed formula that may be prescribed in the MCA and the applicable provisions of this policy.

j) The change in land use if any shall be in alignment with the PGLM and on case-by-case basis. The approval shall be granted by the Board of Port Trust.

k) The PPP developer will be granted permission of renewal of sub-lease to industrial units/ allottes in the industrial area in cases where the tenure of sub-lease is lower than the tenure of the original concession granted to the PPP developer by the Concessioning authority. For avoidance of doubt the charges for renewal shall be levied as prescribed in the PGLM and the tenure in any circumstance shall not exceed the tenure of the concession granted to the PPP developer for development and operation and maintenance of industrial area.

8.5. Upper ceiling for land allotment to single entity by PPP developer

To ensure that the industrial area under such PPP development is available for various Port based industries that shall contribute to the objectives of port led industrialization, it is prescribed that the Port shall prescribe a ceiling (limit) of extend of land that may be sub-leased by the PPP developer to a single entity. The recommended limit of such allotment is 10% of the allottable land within the PPP industrial area to single entity (contiguous or in multiple parcels). The PPP developer may request relaxing this condition and the same shall be approved by the Port and the EC after detailed review of such proposed allotment. In case the Port authority intends to permit and undertake such allotment the Land Allotment and Appraisal Committee shall seek approval from the Board and the EC.

8.6. External infrastructure support

The Port authority shall be responsible for facilitating the external infrastructure linkage to the PPP industrial area. As part of the condition precedent for concessioning authority the MCA shall provide details of the external infrastructure linkage that need to be facilitated by the port authority. The external infrastructure linkage shall include (but not limited to) last mile road linkage, trunk water supply, waste water outflow infrastructure, power linkage. It is clarified that the Port authority shall either undertake on its own or coordinate with relevant agency for facilitating such infrastructure provision.

9. Financing and funding support for PPP industrial area development

For industrial area development, there are various programs and schemes promoted by various ministries and departments of Government of India (e.g. TIES, MSME-EDC, EMC 2.0, Mega Textile Park, Mega Food Park etc.). In order to enhance the attractiveness of PPP developer for participating in such development, Port shall endeavour to facilitate access to such schemes and programs from time to time as part of it EoDB support. The Port shall act as a facilitator for PPP developer to access such schemes and program and may partner with the PPP developer in various structures as may be required under such schemes and program. The Port with approval of the Board shall access and leverage such schemes. In circumstances where requisite approval of Ministry is desired, the Port through EC may seek such approval(s).

In addition to the schemes and program alternative financing support can be further explored by Ports to finance such developments. REITs (Real Estate Investment Trusts) are a type of fund that invest in the real-estate company or the operating vehicle of developed properties in form of equity or debt or other intermediary products. In such financing products, the developers and real estate funds take a construction period and off-take risks and transfer their operational and income generating assets into Real Estate Investment Trusts (REITs). REITs attract long-term, low-risk, and moderate-return investors, who want assured rental income over a long period of time (often assumed to be perpetuity). They are regulated by Securities and Exchange Board of India (SEBI) and required to distribute at least 90 percent of the rental income to their investors. Development Financing Institution (DFI) model is an alternative tool that can be explored by Ports where the Government of India has set up the National Infrastructure Investment Fund (NIIF) and National Bank for

Financing Infrastructure and Development (NaBFID) to channel long-term capital into infrastructure. Infrastructure Debt Funds (IDFs) and Infrastructure Investment Trusts (InvITs) have also been enabled to bring long-term capital into operational infrastructure projects that industrial area projects may consider. Additionally, sustainability funds are a fast-growing source of capital. Such funds, however, have priority areas aligned with ESG (Environment Sustainability and Governance) goals across areas like pollution of air, water, and ground; improving working conditions in the manufacturing sector; and broadening employment opportunities (with emphasis on gender participation) in the country. Various multilaterals are currently promoting adoption of such funds. Ports may explore the potential of leveraging such funds to finance sustainability infrastructure.

10. Risk management and mitigation

For implementation of the PPP industrial area development, the MCA will adequately cover various project risks; however some of the notable risks have been identified under the policy for consideration of the port for adequate management and mitigation.

a) Project time line delay risk: Port authority may seek security deposit @10% of the estimated upfront consideration in form of Bank Guarantee. This is a deviation from the existing provision of PGLM . This security deposit shall ensure and enable the port authority to either take over the development or recover the payment obligation under agreed payment terms in case of default(s). *(Note for deliberation: The security deposit in form of Bank Guarantee may be enhanced beyond 10% given that the estimated upfront consideration may not be adequate as it may be based on the ready reckoner rate and fall short to cover the liability created in concessionaire event of default. This may be linked to the estimated project cost that may be agreed as part of the MCA for PPP industrial area development)*

b) Payment defaults: The port authority in the concession agreement (MCA) shall build the conditions of land surrender for the concessionaire and further, as schedule to the concession the sub-lease agreement will ensure re-possession of land by the port authority in cases of event of default by the concessionaire and the sub-lessee(s).

c) Risk of inflated project capex by PPP developer: Before considering the project for nomination to seek VGF support, both parties (the port authority and the PPP developer) may seek support of existing schemes and programs for industrial infrastructure development (MSE-CDP, MIIUS, State level IP policy incentives for industrial park development, EMC-MEiTY etc.). Ministry of Shipping as part of incentive mechanism may consider creation of corpus to incentivize project component(s). e.g. incentivizing sustainability driven projects (solar roof-tops, captive wind generation, STP, rain water harvesting etc.)

d) Development of competing facility on the Port land and port land outside the PPP delineated area: It is recognized that PPP industrial area development will typically occupy certain proportion of the available port land for industrialization while balance land will be available for the Port to allot for other uses (industrial (port based and non-port based)/ commercial/ residential etc.). For the balance land i.e. Port land other than the PPP industrial area land, the Port Authority (Concessioning Authority) can undertake allotment at reserve price through tender cum auction process as permissible and defined under the applicable PGLM and the clarifications/ amendments thereto.

11. Institutional mechanism

Policy Guidelines for Land Management prescribe the constitution of Empowered Committee at the Ministry headed by Additional Secretary and Financial Advisor (Shipping) and comprising of the Joint Secretary (Ports), Joint Secretary of the Department of Economic Affairs or his representative, Chairman of the Board and the concerned Advisor of NITI Aayog or his representative, for discharge of functions under the PGLM. This PPP Policy adopts this Empowered Committee mechanism for various appraisal and approval as required for implementation of PPP industrial area projects. The functions of this Empowered Committee will be in alignment with the PGLM and the MCA that shall be drafted for implementation of PPP industrial area project(s).