



VIETNAM



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New guidance on PPP in Vietnam

Decree No. 15/2015/ND-CP of the Government on public private partnership investment forms (the 'PPP') went into effect on April 10, 2015 ('Decree 15'). Ministries and other competent authorities of Vietnam have been promulgating legal documents guiding and/or detailing Decree 15 so as to fully establish the legal infrastructure for deploying PPP in practice.

On June 28, 2016, the Ministry of Planning and Investment (the 'MPI') officially promulgated Circular No. 06/2016/TT-BKHDT guiding a number of articles of Decree 15 ('Circular 06') which will take effect on September 20, 2016 and repeal Circular No. 03/2011/TT-BKHDT of the MPI guiding a number of articles of Decree 108/2009/ND-CP on investment under the form of Build – Operate – Transfer contract ('BOT'), Build – Transfer – Operate contract ('BTO') and Build – Transfer contract ('BT'). Accordingly, the governing scope of Circular 06 will not only include BOT, BTO and BT, but also four new types of PPP contract being Build – Own – Operate ('BOO'), Build – Lease – Transfer ('BLT'), Build – Transfer – Lease ('BTL') and Operate – Manage ('O&M').

Circular 06 states two noticeable points, including (i) the procedure of obtaining the Investment Registration Certificate (the 'IRC') distinctly applicable to the PPP, and (ii) the project contract for implementation of the Project which shall be entered by the investor and the competent authority being the party to the contract.

Under Article 14.2 of Circular 06 and Article 39 of Decree 15, the MPI receives

the application dossier submitted by the investor and issues the IRC for (i) projects of national importance in accordance with laws on public investment, (ii) projects for which ministries sign project contracts, or for which agencies authorized by ministries being competent authorities sign project contracts and (iii) projects implemented in two or more provinces. For other cases, the provincial Department of Planning and Investment will issue the IRC for projects under authorisation of the provincial People's Committee by

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which it is directly administrated. Within 25 days from receipt of the proper application dossier, the competent authority will issue the IRC for the investor.

As PPP is a specific investment form conducted on the basis of a contract between a competent authority and the investor in order to implement, manage and operate an infrastructure project or to pro-

vide public services, Circular 06 stipulates in detail the main items of a project contract. Under Article 10.2 of Circular 06, although the parties to the project contract (including the investor and the competent authority) can have an agreement on the documents to be attached to the project contract, such documents, theoretically, cannot exceed the items of the project contract and be used just for detailing and interpreting these items.

With respect to the items of the project contract, the most noticeable point is the responsibility of compensation, site clearance and resettlement. Decree 15 only states the responsibility of the competent authority to organise compensation, site clearance and resettlement. Therefore, under Item 8(c), Annex I of Circular 06, the investor must guarantee to arrange and prepare the capital for payment of expenses for compensation, site clearance and resettlement.

Moreover, under Article 13 of Circular 06, the investor has the right to assign part or all of its rights and obligations in the project contract to another investor. Nevertheless, the assignment shall be approved by the competent authority being the party to the project contract and the lender being the organisation which extends credit to an investor in order to implement a project. The assignee of the transferred project must (i) have the financial and managing ability to conduct the project contract and other related contracts (if any), (ii) undertake to continue implementing the rights and obligations of the investor in accordance with the project contract and other related contracts (if any) and (iii) satisfy other requirements under the project contracts, loan agreement and other related agreements between the competent authority and the investor.