



Special Alert

July 2020

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New Public - Private Partnership (PPP) Law Will Promote Infrastructure Development in Vietnam

Investment projects in the form of public-private partnership (“**PPP**”) have played a significant role in developing Vietnam’s infrastructure and large-scale construction projects. Following the Government’s report on PPP investment, there have been 336 PPP projects implemented over the last 20 years. However, the legal framework for PPP projects is scattered in different pieces of legislation, including the Law on Public Investment, the Law on Bidding, the Law on Pricing, and Government Decree No. 63/2018/ND-CP dated 4 May 2018 on investment in form of PPP (“**Decree 63**”). Furthermore, several regulations remain unclear, overlapping or inconsistent.

On 18 June 2020, the law on public-private partnership investment has been adopted by the National Assembly (the “**PPP Law**”). The new law, which will take effect from 1 January 2021, intends to create a unique regulatory framework for PPP and to ensure the effectiveness in management of PPP projects. Below is a summary of some noteworthy points of the PPP Law.

Investment sectors and scale of PPP projects

Unlike the wide range of fields open to investment in the form of PPP prescribed in Decree 63, the PPP Law narrows this scope to focus on important areas such as infrastructure development, social security, essential services used for promoting socio-economic development, improvement of living standards of people and adaption to the 4.0 industrial revolution. In particular, as prescribed by Article 4.1 of the PPP Law, PPP projects may only be conducted in five sectors:

- (i) Transport;
- (ii) Electricity grid, power plant (not include the hydropower plant and/or any case which subject to the State monopoly);
- (iii) Irrigation, clean water supply, water drainage and sewage treatment, waste disposal;

- (iv) Health, education and training; and
- (v) Information technology infrastructure.

Moreover, Article 4.2 of the PPP Law also specifies the minimum level of total investment capital of PPP projects, in particular: (i) VND100 billion with respect to PPP projects implemented in areas with difficult or extremely difficult socio-economic conditions or in the field of health, education and training; and (ii) VND200 billion in other cases. PPP projects implemented in the form of Operation & Maintenance Contracts (O&M Contracts) are not subject to the above limitation.

Under Article 69.2 of the PPP Law, state capital in PPP projects is limited. State capital for the support of construction, payment of compensation, site clearance, resettlement expenses and support of the construction of temporary works in a PPP project, may not exceed 50% of the total investment.

The Government shall be responsible for preparing and issuing detailed guidance on the specific investment sectors and detail minimum levels of the total investment capital in PPP projects.

Selection of PPP investor

The PPP Law applies the mechanisms described in the Law on Bidding but develops several specific amendments and supplements to create a legal framework for the selection of investors in PPP projects. Because of these changes, the selection of PPP investors is excluded from the scope of regulation of the Law on Bidding.

Under the PPP Law, investors may participate in PPP projects through the following methods:

No.	Forms of investor selection	Number of investor participation	Applicable PPP projects
1.	Open bidding	Unlimited	All PPP projects, except for cases required to be conducted in the form of competitive negotiation, assignment of investor or special cases.
2.	Competitive negotiation	Limited	(i) Projects on the application of high technology prescribed in the list of high technology which must be prioritized for development; or (ii) Projects requesting new technology.
3.	Assignment of investor	Limited	(i) Projects ensuring the national defense, security and secrets; or (ii) Projects which need to immediately select alternative investors to ensure continuity of construction of works and infrastructure systems, provision of public products and services as prescribed by the PPP Law.
4.	Selection of	Limited	Projects which cannot apply the above forms of

No.	Forms of investor selection	Number of investor participation	Applicable PPP projects
	investors in special cases		investor selection and are subject to decision of the Prime Minister.

In order to ensure the publicity and transparency of PPP projects, as required by the PPP Law, the main information related to selection of the qualified investor must be disclosed on the National Bidding Network System.

PPP project enterprises and capital mobilization

Per the PPP Law, upon receiving approval of the investor selection, an investor must establish a PPP project enterprise, which must be in the form of a limited liability company or private joint stock company. This enterprise is for the sole purpose of signing and executing PPP project contracts. This is to ensure the PPP project enterprises focus on their PPP projects and achieve optimal efficiency and timely performance.

Besides turning to banks to raise capital, the PPP Law allows PPP project enterprises to issue corporate bonds for project implementation. However, the issuance of convertible bonds or warrant-linked bonds is not allowed.

New mechanism of sharing increase or decrease in revenue

Investors implementing PPP projects may receive investment assurance from the State in accordance with the PPP Law and laws on investment. The investor shall be assured access to land use rights and other public assets; to receive public services; and to receive a assurance for the mortgage of assets or business rights of the construction or infrastructure system to the lender.

For the purpose of investment assurance and investment incentives, the PPP Law introduces a new preferential mechanism to attract private investment capital to participate in PPP projects through the sharing of changes of estimated revenue with the State. Specifically, investors and PPP project enterprises will share with the State 50% of the revenue increase when the actual revenue reaches more than 125% of the revenue stated in the financial plan under the PPP project contracts. The State also shares with investors and PPP project enterprises 50% of any reduction between actual revenue and committed revenue if certain conditions are met.

The PPP Law is expected to create a legal framework for the consistency, transparency and effectiveness of PPP investment in Vietnam to boot development and financing of large-scale infrastructure and energy projects in the country.

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