

LAW 64
ON
PUBLIC PRIVATE PARTNERSHIP
[PPP] INVESTMENT FORM

18 JUNE 2020

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[Ha Noi, 18 June 2020]

**LAW
ON
PUBLIC PRIVATE PARTNERSHIP
[PPP]¹ INVESTMENT FORM**

Pursuant to the Constitution of the Socialist Republic of Vietnam;

The National Assembly hereby promulgates the Law on Public Private Partnership [PPP] Investment Form.

CHAPTER 1

General Provisions

Article 1 *Governing scope*

This Law regulates investment activities in the form of Public Private Partnership (PPP); State administration; and the rights, obligations and responsibilities of agencies, organizations and individuals involved in investment activities in the PPP form.

Article 2 *Applicable entities*

This Law applies to parties to investment contracts in the PPP form, State administrative agencies, and agencies, organizations and individuals involved in investment activities in the PPP form.

Article 3 *Definitions*

In this Law, the following terms are construed as follows:

- 1 *Pre-feasibility study report* means a document expressing the contents of preliminary research regarding the necessity, feasibility and effectiveness of the investment project in the form of public private partnership (hereinafter referred to as the PPP project), as the basis for the authorized level to make an investment policy decision.
- 2 *Feasibility study report* means a document expressing the contents of research regarding the necessity, feasibility and effectiveness of the PPP project, as the basis for the authorized level to approve the project .
- 3 *Tender guarantee [or security]* means that the investor performs any of the measures including security deposit, escrow deposit or guarantee by a credit institution, foreign bank branch or insurer lawfully operating in Vietnam before bid closing as the security for contract performance of the investor.
- 4 *Performance security* means that the PPP project enterprise performs any of the measures including security deposit, escrow deposit or guarantee by a credit institution, foreign bank branch or insurer

¹ Allens footnote: Square brackets contain translator's comments only.

lawfully operating in Vietnam as security for the responsibility of the investor [and/or] PPP project enterprise to perform the contract.

- 5 *Lender* means an organization or individual lending capital to the investor/PPP project enterprise in order to perform the PPP project contract.
- 6 *Party inviting tenders* means a specialized and capable unit assigned by the authorized agency to organize selection of investor.
- 7 *Short list* means the list of investors who have won pre-qualification tendering in a case of open tendering with pre-qualification, or the list of investors invited to participate in competitive negotiation.
- 8 *PPP project enterprise* means an enterprise established by an investor with the sole aim of entering into and performing a PPP project contract.
- 9 *PPP project* means a collection of proposals relevant to investment in order to provide products and public services via conducting one or more of the following activities:
 - (a) Construction, operation and commercial operation of infrastructure works and/or systems;
 - (b) Improving, upgrading, expanding, modernizing, operating and commercial operation of existing infrastructure works and/or systems;
 - (c) Commercial operation of existing infrastructure works and/or systems.
- 10 Investment in the form of Public Private Partnership (hereinafter referred to as the PPP form) means the investment form to be performed on the basis of definite term co-operation between the State and an investor via signing and implementation of a PPP project contract aimed at attracting private investors to participate in the PPP project.
- 11 *Project preparation unit* means the unit assigned by the authorized agency to prepare the pre-feasibility study report and feasibility study report and to undertake other relevant tasks
- 12 *Pre-qualification application* means all the documents which an investor prepares and lodges with the party inviting tenders in accordance with the requirements set out in the pre-qualification tender invitation documents.
- 13 *Tender* means all the documents which the investor prepares and lodges with the party inviting tenders in accordance with the requirements set out in the tender invitation documents.
- 14 *Pre-qualification tender invitation documents* means all the documents setting out requirements on capacity and experience of investors as the basis for the party inviting tenders to select a short list.
- 15 *Tender invitation documents* means all the documents used for selection of investor comprising the requirements for project implementation as the basis for investors to prepare their tenders and for the party inviting tenders to arrange an assessment of such tenders and to negotiate a contract aimed at selecting an investor who satisfies the requirements to perform the project.
- 16 *PPP project contract* means a written agreement between the agency entering into the contract with an investor/PPP project enterprise regarding concessions in order to implement a PPP project in accordance with the provisions of this Law, including the following types of contract:
 - (a) Build - Operate – Transfer Contract, hereinafter referred to as the BOT contract;
 - (b) Build - Transfer – Operate Contract, hereinafter referred to as the BTO contract;
 - (c) Build - Own – Operate Contract, hereinafter referred to as the BOO contract;
 - (d) Operate – Manage Contract, hereinafter referred to as the O&M contract;

- (dd) Build - Transfer – Lease Contract, hereinafter referred to as the BTL contract;
 - (e) Build - Lease – Transfer Contract, hereinafter referred to as the BLT contract;
 - (f) Mixed contract prescribed in article 45.3 of this Law.
- 17 *Selection of investor* means the process of determining that an investor has sufficient capacity, experience and feasible solutions in order to perform the PPP project on the principles of ensuring competitiveness, fairness, transparency and economic efficiency.
- 18 PPP investor (hereinafter referred to as *investor*) means an independent legal entity established in accordance with law or a partnership between a number of legal entities to jointly participate in conducting investment activities in the PPP form
- 19 *State capital* comprises State budget capital and capital from lawful income reserved for investment expenditure and regular expenditure belonging to the tasks of expenditure of the State budget.

Article 4 *PPP investment sectors, size and classification of PPP project*

- 1 The PPP investment sectors are:
- (a) Transportation;
 - (b) Power grids, power plants, except for the hydroelectric plants and the cases of monopoly by the State as prescribed by the Law on Electricity;
 - (c) Irrigation, clean water supply; water drainage and waste water; waste treatment;
 - (d) Health; education and training;
 - (dd) Information technology [IT] infrastructure works.
- 2 Minimum total investment amounts of a PPP project are prescribed as follows:
- (a) Not less than 200 billion VND in respect of the projects which are within sectors regulated in sub-clauses (a), (b), (c) and (dd) of clause 1 of this article; or not less than 100 billion VND in the case of those in areas with difficult socio-economic conditions or areas with specially difficult socio-economic conditions as prescribed in the law on investment;
 - (b) Not less than 100 billion VND in respect of projects which are within the sectors prescribed in cause 1(d) above;
- The provisions on the sizes of the minimum total investment amount in sub-clauses (a) and (b) above shall not apply to projects in the O&M contract form.
- 3 PPP projects classified in accordance with authority to make the investment policy decision comprise:
- (a) Projects for which the National Assembly has authority to make the investment policy decision [in-principle approval];
 - (b) Projects for which the Prime Minister has authority to make the investment policy decision;
 - (c) Projects for which a minister or head of a central agency or other agency has authority to make the investment policy decision prescribed in article 5.1 of this Law;
 - (d) Projects for which a provincial people's committee has authority to make the investment policy decision.
4. The Government shall provide detailed regulations on the investment sectors referred to in clause 1 and the minimum total investment amounts for each sector referred to in clause 2 above.

Article 5 *Authorized agencies and agencies entering into PPP project contracts*

1 Authorized agencies comprise:

- (a) Ministries, ministerial equivalent agencies, Government agencies, central agencies of political organizations, the People's Supreme Procuracy, the People's Supreme Court, the State Auditor, the State President's Office, the National Assembly Office, central agencies of Vietnam Fatherland Front and of socio-political organizations (hereinafter all referred to as *ministries and central agencies*);
- (b) Provincial people's committees;
- (c) Agencies and organizations established by either the Government or the Prime Minister and which are assigned budget estimates in accordance with the law on State budget (hereinafter referred to as other agencies).

2 Agencies entering into PPP project contracts comprise:

- (a) The authorized agencies prescribed in clause 1 above;
- (b) Agencies and units authorized by an authorized agency to enter into contracts in accordance with the provisions in clause 4 below.

3 If the project falls within the managerial authority of a number of the authorized agencies prescribed in clause 1 above, or if there is a change of the authorized agency, then such former agencies shall report to the Prime Minister for his decision assigning one (1) agency to act as the authorized agency.

4 An authorized agency may authorize its subsidiary organization or unit to act as the agency entering into the PPP project contract which falls within the former's authority.

Article 6 *PPP project Evaluation Council*

1 Evaluation Councils for a PPP project (*Evaluation Councils*) comprises:

- (a) The State Evaluation Council which evaluates the pre-feasibility study report and the feasibility study report of a PPP project for which the National Assembly makes the investment policy decision;
- (b) An inter-branch Evaluation Council which evaluates the pre-feasibility study report and the feasibility study report of a PPP project for which the Prime Minister makes the investment policy decision;
- (c) An Evaluation Council at the grassroots level which evaluates the pre-feasibility study report and the feasibility study report of a PPP project for which a minister or head of a central or other agency or provincial people's committee makes the investment policy decision, except for the case where the tasks of evaluation is assigned to the subsidiary units under the authorized agency prescribed in clause 3 below.

2 The Prime Minister makes the decision establishing an Evaluation Council for the PPP projects prescribed in sub-clause (a) and (b) of clause 1 above on a proposal from the Ministry of Planning and Investment [MPI].

3 Depending on the scale and nature of each project, a minister or the head of a central or other agency or provincial people's committee may establish an Evaluation Council at the grassroots level or may assign one of its subsidiary units to evaluate the pre-feasibility study report and the feasibility study report of the PPP project.

4 A PPP project Evaluation Council and a subsidiary unit undertaking the evaluation task may hire consultants to assist them.

5 The Government shall provide detailed regulations on this article.

Article 7 *Principles for managing investment in the PPP form*

- 1 Compliance with the strategy and plan on development of the whole nation and relevant master plans in accordance with the law on master planning.
- 2 Ensuring effective and efficient management and use of State resources in PPP projects.
- 3 Conduct of checks, inspections, State audits and supervision of PPP projects [in accordance with the provisions of this Law] must ensure no hindrance to normal business investment activities of the investors/PPP project enterprises.
- 4 Ensuring investments are publicized, transparent, fair, sustainable and effective.
- 5 Ensuring harmonization of the interests of the State, the investors, users and the community.

Article 8 *Contents of State administration of investment in the PPP form*

- 1 Issuing, disseminating, popularizing and organizing implementation of legal instruments on investment in the PPP form.
- 2 Collating, assessing and reporting the status of implementation of investment activities in the PPP form.
- 3 Conducting checks, inspections and supervising compliance with provisions of the law on investment in the PPP form.
- 4 Resolving complaints and denunciations; dealing with breaches relating to investment activities in the PPP form; and resolving recommendations during selection of investor.
- 5 Arranging and implementing investment promotion activities and international cooperation regarding investment in the PPP form.
- 6 Providing guidance and support, and resolving difficulties regarding procedures when requested by investors and PPP project enterprises conducting investment activities in the PPP form.

Article 9 *Publicity and transparency during investment in the PPP form*

- 1 Information which must be announced on the national tendering network system comprises:
 - (a) Information being investment policy decisions, and decisions approving PPP projects;
 - (b) Information about selection of investors namely notices inviting pre-qualification tenders, notices inviting tenders, short lists and results of selection of investor;
 - (c) Information being investors which have been selected and PPP project enterprises;
 - (d) Main contents of a PPP project contract comprising total investment amount; structure of capital sources in the project; type of contract; term (if any) for project implementation; price/fees and charges of products and public services; form and location for collecting fees and charges (if any) and other necessary information;
 - (dd) Values of public investment capital finalization (if any used) in the PPP project using public investment capital;
 - (e) Legal instruments on investment in the PPP form;
 - (g) Databases on investors;
 - (h) Information about resolution of complaints and denunciations, recommendations, and dealing with breaches of the law on investment in the PPP form;

- 2 The information prescribed in sub-clauses (a), (b), (c) and (d) of clause 1 above must, in addition to being announced on the national tendering network system, also be announced on the website (if any) of the authorized agency.
- 3 It is encouraged to publish the information prescribed in clause 1 above on other mass media.

Article 10 *Strictly prohibited conduct during investment in the PPP form*

- 1 Issuing an investment policy decision incompatible with the strategy, master planning or plans, or which fails to identify the sources of State capital in the PPP project if there is a request for State capital funding; or [issuing an investment policy decision] contrary to authority and the sequence and procedures stipulated by this Law.
- 2 Approving the PPP project prior to there being an investment policy decision, or contrary to such investment policy decision, or contrary to the authority, sequence and procedures stipulated by this Law.
- 3 Collusion by the authorized agency and/or agency entering into the contract with consultants or the investor resulting in an investment policy decision or approval of the PPP project causing a loss of State capital and assets and of national resources, causing loss and damage to or infringing the interests of the citizens and of the community.
- 4 Failing to ensure fairness and transparency during selection of an investor, comprising the following practices:
 - (a) Submitting a tender as an investor in a project for which such tenderer is the party inviting tenders, the authorized agency or the agency entering into the contract, or when the tenderer [also] undertakes the tasks of the party inviting tenders, the authorized agency or the agency entering into the contract;
 - (b) Participating both in preparation of the pre-qualification invitation documents and evaluation of same, or participating in preparation of tender invitation documents and evaluation of same; participating in assessment of tenders and also evaluation of the results of selection of investor for the same project;
 - (c) As an individual being part of the party inviting tenders, authorized agency or agency entering into the contract but at the same time directly participating in the process of selection of investor or as a member of an expert group or the group evaluating the results of selection of investor; or acting as head of the authorized agency or agency entering into the contract or party inviting tenders for a project in which one of the following people submits a tender or where one of the following people is the legal representative of the investor submitting a tender namely the spouse, parent-in-law, natural or adopted child, sibling or in-law [of the former individual];
 - (d) As an individual submitting a tender for a project when the individual worked for the authorized agency, agency entering into the contract or party inviting tenders, applicable within the period of 12 months from the date on which such individual stopped working for such agency or organization.
- 5 Disclosing or receiving the following documents and information regarding the process of selection of investor:
 - (a) Contents of pre-qualification invitation documents or tender invitation documents prior to the stipulated time of issuance, except where market research or prior consultation with the investor must be conducted in order to prepare such documents;
 - (b) Contents of pre-qualification applications, tenders, sets of proposals, reports of the party inviting tenders, reports of expert groups, evaluation reports, reports of consultants, reports of specialized agencies involved in the process of selection of investor, pre-qualification results or results of selection of investor, prior to publication of same;

- (c) Other documents during the process of selection of investor which are determined to contain State secrets in accordance with law.
- 6 Collusion, comprising the following practices:
 - (a) Agreeing to withdraw a previously submitted tender in order for one or more participating parties to win the tendering;
 - (b) Agreeing for one or more parties to prepare tenders for all participating tenderers to ensure that one or more parties participating in such agreement win the tendering.
- 7 Assigning shareholding, capital contribution portion or rights and obligations incorrectly in terms of the provisions of this Law and the PPP project contract.
- 8 Stopping supply of products and public services outside the scope of the provisions of the PPP project contract.
- 9 Giving, receiving or broking bribes during investment activities in the PPP form.
- 10 Abusing position and powers to conduct an act of appropriation, self-interest or corruption during management and use of State capital in a PPP project; illegally interfering with the process of a PPP project.
- 11 Fraud, comprising the following practices:
 - (a) Forging or falsifying information, files and documents relating to the investment policy decision, approval of the PPP project, selection of investor, or implementation of the PPP project for the purpose of obtaining unlawful benefits or for the purpose of avoiding any obligation;
 - (b) Deliberately providing a false or non-objective report or information falsifying the investment policy, approved PPP project, results of selection of investor, or results of an inspection, check, supervision or audit, or results of accounting finalization of public investment capital, or results of liquidation of a PPP project contract;
 - (c) Deliberately providing false or non-objective information distorting data on revenue of a PPP project, aimed at gaining unlawful profit.
- 12 Hindering the discovery of or dealing with acts in breach of the law on investment in the PPP form.

Article 11 *Sequence for implementing PPP projects*

- 1 Except for the cases prescribed in clause 2 below, the sequence for implementing a PPP project is provided as follows:
 - (a) Preparation and evaluation of the pre-feasibility study report; investment policy decision; announcement of the project;
 - (b) Preparation, evaluation of the feasibility study report, and approval of the project;
 - (c) Selection of investor;
 - (d) Establishment of the PPP project enterprise and entering into [signing] the PPP project contract;
 - (dd) Commencing implementation of the PPP project contract.

- 2 A PPP project for application of high-tech on the list of high-tech prioritized for investment in development in accordance with the law on high-tech or for application of new technology in accordance with the law on transfer of technology is implemented in the following sequence:
 - (a) Preparation and evaluation of the pre-feasibility study report; investment policy decision; announcement of the project;
 - (b) Selection of investor;
 - (c) Preparation of the feasibility study report (conducted by the selected investor);
 - (d) Evaluation of the feasibility study report and approval of the project;
 - (dd) Undertaking the steps prescribed in sub-clauses (d) and (dd) of clause 1 above.
- 3 If a PPP project with any building works requires a competition for an architectural plan, such competition is considered and approved in the investment policy decision prescribed in clause 1 or 2 above. The competition for the architectural plan is implemented in accordance with the law on architecture.
- 4 Projects in the public investment plan which are considered for converting to PPP projects are implemented in accordance with the sequence prescribed in clause 1 or 2 above.
- 5 The Government shall provide detailed regulations on the items in the sequence of PPP projects.

CHAPTER 2

PPP Project Preparation

Section 1

PPP Projects Established by an Authorized Agency

Article 12 *Authority to make the investment policy decision for a PPP project*

- 1 The National Assembly makes the investment policy decisions for PPP projects falling within any one of the following criteria:
 - (a) Using public investment capital from 10,000 billion VND;
 - (b) With a large impact on the environment or the potential for such large impact, comprising a nuclear power plant; use of land requiring conversion of the land use purpose of specialized use forest land; upstream protective forest or border protective forest of fifty (50) hectares or more; protective forest as windbreak, shelter from sand or breakwater and protective forest for breakwater or for reclamation from the sea with an area of five hundred (500) hectares or more; or a forest for production with an area of 1,000 hectares or more;
 - (c) Use of land with the requirement for conversion of the land use purpose for wet rice cultivation on two (2) harvests in an area of five hundred (500) hectares or more;
 - (d) Relocation and resettlement of 20,000 people or more in mountainous areas, or 50,000 people or more in other areas;
 - (dd) Projects which require application of a special mechanism or special policy requiring a decision by the National Assembly.

- 2 Except for the projects prescribed in clause 1 above, the Prime Minister makes the investment policy decisions for PPP projects falling within one of the following criteria:
 - (a) Resettlement of 10,000 citizens or more in a mountainous area or of 20,000 citizens or more in other regions;
 - (b) Projects funded by the central State budget managed by a ministry or central agency and with total investment capital equivalent to a Group A project as stipulated in the law on public investment, [and] projects using ODA loan capital and/or preferential loan capital of foreign donors;
 - (c) Investment in construction of a new airport or aerodrome; of runways of an airport or aerodrome; of an international airport passenger terminal; of an airport or aerodrome cargo terminal with an output of one (1) million tonnes per year or more;
 - (d) Investment in construction of a new seaport or port area under a special seaport; or a seaport or port area under a special seaport of Grade 1 with total investment capital equivalent to a Group A project pursuant to the law on public investment.
- 3 The minister or head of a central or other agency makes the investment policy decision for PPP projects under his or her management, except for the projects prescribed in clauses 1 and 2 above.
- 4 Provincial people's councils make the investment policy decisions for PPP projects managed by their locality, except for the projects prescribed in clauses 1 and 2 above.
- 5 If an investment policy decision for a PPP project is amended, then article 18.2 of this Law applies to authority to make such amending decision.

Article 13 *Sequence for making the investment policy decision for a PPP project*

- 1 The sequence for making the investment policy decision for PPP projects which fall within the authority of the National Assembly is regulated as follows:
 - (a) The PPP project preparatory unit prepares the pre-feasibility study report as the basis for the authorized agency to submit same to the Government and to MPI;
 - (b) MPI makes a proposal to the Prime Minister to establish a State Evaluation Council;
 - (c) The State Evaluation Council evaluates the pre-feasibility study report. If the project uses public investment capital, then the law on public investment applies to evaluation of capital sources and the ability to balance capital;
 - (d) The Government completes the file and submits it to the National Assembly for its consideration and decision;
 - (dd) An agency of the National Assembly assesses the project file submitted by the Government;
 - (e) The National Assembly considers and passes a resolution on the investment policy for the project.
- 2 The sequence for making the investment policy decision for a PPP project which fall under within the authority of the Prime Minister is regulated as follows:
 - (a) The PPP project preparatory unit prepares the feasibility study report providing the basis for the authorized agency to send it to MPI;
 - (b) The Minister of MPI makes a proposal to the Prime Minister to establish an inter-branch Evaluation Council;
 - (c) The inter-branch Evaluation Council evaluates the pre-feasibility study report;

- (d) MPI presides over an evaluation of capital sources and the ability to balance capital with respect to the central budget capital portion in accordance with the law on public investment if the PPP project is funded by the central budget, and sends same to the inter-branch Evaluation Council;
 - (dd) The professional agency managing public investments in the locality presides over evaluation of capital sources and the ability to balance local budget funding in accordance with the law on public investment if the PPP project is funded by the local budget, and sends same to the inter-branch Evaluation Council;
 - (e) The inter-branch Evaluation Council completes and sends its evaluation report to the authorized agency;
 - (g) The authorized agency finalizes the file and submits it to the Prime Minister for his consideration and decision;
 - (h) The Prime Minister makes the investment policy decision.
- 3 The sequence for making the investment policy decision for PPP projects which fall within the authority of a minister or head of a central or other agency is regulated as follows:
- (a) The project preparatory unit prepares the pre-feasibility study report as the basis for a submission to the minister or head of the central or other agency to make a decision;
 - (b) An Evaluation Council at the grassroots level or an assigned unit evaluates the pre-feasibility study report for the project;
 - (c) The professional agency managing public investments under the ministry, central or other agency presides over evaluation of capital sources and the ability to balance public capital in accordance with the law on public investment if the PPP project uses public investment capital, and sends same to the Evaluation Council at the grassroots level or the assigned unit for evaluation;
 - (d) The Evaluation Council at the grassroots level or the assigned unit completes the evaluation and sends its evaluation report to the PPP project preparatory unit;
 - (dd) The PPP project preparatory unit completes the file and sends it to the minister or head of the central or other agency for his decision;
 - (e) The minister or head of the central or other agency then makes the investment policy decision.
- 4 The sequence for making the investment policy decision for PPP projects which fall within the authority of the provincial people's council is regulated as follows:
- (a) The PPP project preparatory unit arranges formulation of the pre-feasibility study report and submits it to the provincial people's committee;
 - (b) An Evaluation Council at the grassroots level or the assigned unit evaluates the pre-feasibility study report;
 - (c) The professional agency managing public investments in the locality presides over evaluation of capital sources and the ability to balance public investment capital in accordance with the law on public investment if the PPP project is funded by public investment, and sends same to the Evaluation Council at the grassroots level or to the assigned evaluation unit;
 - (d) The Evaluation Council at the grassroots level or the assigned unit completes and sends its evaluation report to the project preparatory unit;
 - (dd) The PPP project preparatory unit completes the file as the basis for the provincial people's committee to make a submission to the provincial people's council to make the decision;

- (e) The provincial people's council makes the investment policy decision.
- 5 In the case of PPP projects using regular expenditure capital or lawful proceeds reserved for regular expenditure of a State agency or public professional unit to make payment to the PPP project enterprise or using State budget reserves to pay the portion of turnover [revenue] shortfall, all level finance agencies evaluate the ability to balance the budget in accordance with the law on State budget and then send same to the Evaluation Council for PPP projects or the assigned unit for the latter to compile and submit same to the authorized level to make the investment policy decision.

Article 14 *Selection of project and preparation of pre-feasibility study report for a PPP project*

- 1 Conditions for selection of a project for investment in the PPP form comprise:
- (a) Necessity for the investment;
 - (b) The project is in a sector prescribed in article 4.1 and it has the minimum total investment amount prescribed in article 4.2 of this Law;
 - (c) The project does not overlap with other projects for which there is an investment policy decision or approved feasibility study report;
 - (d) Advantages as opposed to other investment forms;
 - (e) Ability to fund State capital where there are requirements for State capital funding.
- 2 The bases for preparing the pre-feasibility study report comprise:
- (a) Strategy and plan on socio-economic development of the whole nation, and relevant master plans in accordance with the law on planning;
 - (b) Provisions of this Law and of other laws relevant to the investment sector of the project;
 - (c) Any other relevant legal documents.
- 3 The pre-feasibility study report comprises the following basic items:
- (a) Necessity for the investment and advantages of investment in the PPP form as opposed to other investment forms and impact of implementation of the project in the PPP form on the community and residents within the scope of the project;
 - (b) Objectives; proposed scale, location and duration of project implementation; and other land use and natural resources requirements;
 - (c) Preliminary design plan in accordance with the law on construction in the case of a project with a construction component or in accordance with other relevant law in the case of a project without a construction component, and a preliminary explanation of the technical and technological plan/options; preliminary division into component projects (if any);
 - (d) Preliminary assessment of socio-economic effectiveness of the project; and preliminary environmental impact assessment in accordance with the law on environmental protection the same as for a public investment project;
 - (dd) Preliminary total investment amount; preliminary assessment of the financial plan of the project; proposed State capital (if any) to be used in the project and proposed method of making payment to the investor in the case of a project in the contractual forms of BTL or BLT contract;
 - (e) Proposed type of PPP project contract; forms of investment incentive and guarantee/security; and regime on sharing revenue shortfall/losses.

Article 15 *Evaluation of pre-feasibility study report for a PPP project*

- 1 The file to evaluate the pre-feasibility study report comprises:
 - (a) Written request for evaluation;
 - (b) Draft submission requesting the investment policy decision;
 - (c) Pre-feasibility study report;
 - (d) Other legal documents relevant to the project.
- 2 An evaluation of a pre-feasibility study report comprises the following basic contents:
 - (a) Conformity with the conditions for selection of a project for investment in the PPP form prescribed in article 14.1 of this Law;
 - (b) Conformity with the bases for preparing the pre-feasibility study report prescribed in article 14.2 of this Law;
 - (c) Effectiveness of the investment; ability of the investor to recover its capital;
 - (d) Conformity with the type of PPP project contract;
 - (dd) Regime on sharing turnover [revenue] shortfall;
 - (e) Capital sources and ability to balance capital in the case of PPP projects using State capital.

Article 16 *.File proposing the investment policy decision for a PPP project*

- 1 Submission requesting the investment policy decision.
- 2 Draft investment policy decision.
- 3 Pre-feasibility study report.
- 4 Report evaluating the pre-feasibility study report; and report examining and verifying a project for which the National Assembly makes the investment policy decision.
- 5 Other relevant legal data on the project.

Article 17 *Contents of investment policy decision for a PPP project*

- 1 An investment policy decision comprises the following basic items:
 - (a) Name of the project;
 - (b) Name of the authorized agency;
 - (c) Objectives, proposed scale, location and duration/term of project implementation, and land use and other resources requirements;
 - (d) Proposed type of PPP project contract;
 - (dd) Preliminary total investment amount and preliminary financial plan; structure of capital sources in the project, and proposed price or fee range for products and/or public services in the case of a project applying the regime of direct collection of fees from users;
 - (e) Regimes on investment security and on sharing turnover shortfall.
- 2 In the case of a project applying high-tech or application of new technology, the contents of the investment policy decision, in addition to the items prescribed in clause 1 above, also include the

name of the party inviting tenders, the form of selection of investor, and the duration of such selection.

Article 18 *Adjustment of the investment policy of the PPP project*

- 1 The investment policy of a PPP project shall be adjusted in the case of a change of the investment objective, location, scale or contract type of the PPP project; or increase of the total investment amount by 10% or more or increase in the value of State capital in the PPP project in the following cases:
 - (a) The project is [adversely] affected by a force majeure event;
 - (b) There is a change in a relevant master plan or policies of the law;
 - (c) There is an amendment to the feasibility study report;
 - (d) In other cases as prescribed by relevant laws.
- 2 The agency authorized to make the investment policy decision for the PPP project is the same level authorized to adjust such policy and shall be liable for its decision.
- 3 The sequence for making a submission to the authorized level to amend the investment policy decision is implemented in accordance with article 13 of this Law.
- 4 A file requesting amendment of the investment policy comprises:
 - (a) Submission requesting amendment to the investment policy;
 - (b) Amended items of the pre-feasibility study report;
 - (c) Evaluation report of, and report verifying the amended items of the pre-feasibility study report;
 - (d) Other relevant legal data on the project.

Article 19 *Contents of the feasibility study report for a PPP project*

- 1 The PPP project preparatory unit formulates the feasibility study report based on the investment policy decision.
- 2 The feasibility study report comprises the following basic contents:
 - (a) Necessity of the investment, advantages of investment in the PPP form as opposed to other investment forms; results of opinions on impact of investment in project implementation when there are opinions from the people's council, the people's committee [and/or] Vietnam Fatherland Front at the provincial level where the project will be implemented, and from professional associations of the relevant investment sector.
 - (b) Compliance of the project with the nation's strategy and plans on socio-economic development and with other master plans in accordance with the law on master planning.
 - (c) Objectives; scale; location; and land use and other natural resources requirements.
 - (d) Schedule; duration/term of project implementation including the term of the contract and duration of construction of works if the project has a construction component;
 - (dd) An explanation on the requirements regarding technical and technological plans, of the quality standards of the infrastructure works or facility or of the products and public services; design file in accordance with the law on construction and other relevant laws; the link between component projects (if any);
 - (e) Type of PPP project contract; risk analysis and measures for controlling project risks;

- (g) Forms of investment incentives and guarantee; regime on sharing turnover shortfall;
- (h) Total investment amount; financial plan of the project; proposed State capital (if any) in the project and corresponding form of management and use; the survey result on interest of investors and lenders (if any); ability to raise capital to implement the project; and plan on arranging management and commercial operation [of the completed infrastructure works or facility] or provision of products and public services;
- (i) Socio-economic effectiveness; and environmental impact assessment report in accordance with the law on environmental protection.

Article 20 *File and contents for evaluation of the feasibility study report for a PPP project*

1 The file requesting evaluation of the feasibility study report comprises:

- (a) Request for evaluation;
- (b) Draft submission requesting approval of the project;
- (c) Feasibility study report;
- (d) Investment policy decision;
- (e) Other legal documents relevant to the project.

2 The evaluation of a feasibility study report comprises the following basic contents:

- (a) Compliance with the legal bases;
- (b) Necessity for the investment;
- (c) Compliance with the requirements regarding technical and technological plans, quality criteria of the infrastructure works or facility or of the products or public services. The evaluation of the contents on design, technical and technological files and quality criteria is implemented in accordance with the law on construction and other relevant laws;
- (d) Compliance with the PPP contract type;
- (dd) Financial feasibility; plan on arranging management and commercial operation or provision of the products or public services;
- (e) Socio-economic effectiveness.

Article 21 *Authority to approve the PPP project*

- 1 The Prime Minister approves the projects prescribed in article 12.1 of this Law.
- 2 The minister or head of the central or other agency approves the projects within such minister's or head's managerial scope as prescribed in clauses 2 and 3 of article 12 of this Law.
- 3 The chairperson of a provincial people's committee approves the projects within his or her managerial authority as prescribed in clauses 2 and 4 of article 12 of this Law.

Article 22 *File requesting approval of the PPP project*

- 1 Submission requesting approval of the project.
- 2 Draft decision approving the project.
- 3 Feasibility study report.
- 4 Report evaluating the feasibility study report.

- 5 Investment policy decision.
- 6 Other relevant data and legal documents of the project.

Article 23 *Contents of the decision approving the PPP project*

The decision approving the PPP project comprises the following main contents:

- 1 Name of the project.
- 2 Name of the agency entering into the contract;
- 3 Objectives, scale, location and time/duration for implementation of the project; and land use and other resources requirements.
- 4 Type of contract.
- 5 Total investment capital, structure of capital sources; tariffs and/or costs and fees of products and public services in the case of a project applying the type of contract via the regime of direct collection of fees from users.
- 6 Name of the party inviting tenders, the form of selection of investor, and the duration of such selection, except in the cases prescribed in article 17.2 of this Law.

Article 24 *Amendment of the PPP project*

- 1 The feasibility study report may be amended in the following cases:
 - (a) The project is affected by a force majeure event;
 - (b) Other factors occur which bring higher financial and socio-economic effectiveness to the project;
 - (c) There are changes in planning, policy or relevant laws which directly affect the project's objectives, location or scale;
 - (d) An investor was unable to be selected to implement the project.
- 2 Where the amendment of the feasibility study report results in a change of the objective, scale [amount], location or type of PPP project contract, increase of the total investment amount by 10% or more or increase of State capital in the PPP project, the sequence and procedures for a decision amending the investment policy must be implemented before the amendment to the project is submitted to the authorized level for decision approving such amendment.
- 3 The authority and sequence for evaluation and approval of an amendment to a PPP project is implemented in accordance with the provisions in articles 19 to 23 inclusive of this Law as applicable to the amended items.
- 4 A file for amendment of the project comprises:
 - (a) Submission requesting approval to amend the project;
 - (b) Draft decision approving the amendment of the project;
 - (c) An evaluation report of the amended items of such report;
 - (d) Any other legal data relevant to the project.

Article 25 *Announcement of information about PPP projects*

- 1 Within ten (10) days after the date of the investment policy decision, of the decision amending the investment policy (if any), the decision approving the project, and of the decision approving the

amendment to the project (if any), the authorized agency shall arrange announcement of information about the project as prescribed in clause 2 below.

- 2 Information about a project to be announced comprises:
 - (a) Investment policy decision or amended such decision (if any);
 - (b) Decision approving the project and decision approving amendments to the project (if any);
 - (c) Information being the contact address of the authorized agency, of the agency entering into the contract, and of the party inviting tenders.

Section 2

PPP Projects Proposed by Investors

Article 26 *Conditions for an investor to propose a PPP project*

- 1 A PPP project proposed by an investor must satisfy the following conditions:
 - (a) [The proposed project] conforms with the conditions for selection of projects for investment in the PPP form prescribed in articles 14.1(a), (b), (c) and (d) of this Law;
 - (b) [The proposed project] does not overlap with a PPP project for which an authorized agency is organizing formulation of the pre-feasibility study report or has consented to another investor formulating the pre-feasibility study report;
 - (c) [The proposed project] conforms with the national socio-economic development plans and strategies and relevant planning in accordance with the law on planning.
- 2 Open tendering or competitive negotiation must be held pursuant to articles 37 or 38 respectively of this Law for any project proposed by an investor.

Article 27 *Sequence for preparation of an investor-proposed project*

- 1 The sequence for preparing a file proposing the project is implemented as follows:
 - (a) The investor sends a written proposal to implement a PPP project to the authorized agency, and if the authorized agency has not yet been ascertained then the investor submits the file to the State administrative agency for investment in the PPP form;
 - (b) The authorized agency considers and replies with a written approval or non-approval for the investor to prepare the pre-feasibility study report. The contents of such approval document comprise the method to co-ordinate with any subsidiary organizations or units of the authorized agency, the requirement on the deadline for submission of the investor's file proposing the project, and other relevant items; and specifies the reasons in the case of non-approval.
 - (c) Where approved by the authorized agency, the investor prepares the file proposing the project comprising the pre-feasibility study report and a file on legal entity status, capability and experience of the investor;
 - (d) The investor sends the file proposing the project to the authorized agency.
 - (dd) If the file proposing the project is not approved, the investor [must] bear all costs and risks.

2. Evaluation and investment policy decision for an investor-proposed project are carried out in accordance with articles 6, 12, 13, 14, 15, 16 and 17 of this Law.
3. The sequence for formulation and evaluation of the feasibility study report and approval of the project is carried out as follows:
 - (a) The investor arranges formulation of the feasibility study report in accordance with article 19 of this Law;
 - (b) Evaluation of the report formulated by the investor is organized in accordance with article 20 of this Law;
 - (c) The project is approved in accordance with articles 21, 22 and 23 of this Law;
 - (d) If the project is not approved, then the investor [must] bear all costs and risks.
4. The sequence for project announcement is implemented as follows:
 - (a) After the authorized level makes the investment policy decision for and approves the investor-proposed project, the authorized agency announces information about the project as prescribed in article 25 of this Law and also announces the name of the investor proposing the project;
 - (b) If the project contains items related to intellectual property rights, trade secrets, technology, or an agreement on raising capital for project implementation required to be kept confidential, then the investor reaches agreement with the authorized agency on what information will not be published.
5. Adjustment of an investment policy decision for a PPP project is carried out in accordance with article 18 of this Law; and adjustment of a PPP project is carried out in accordance with article 24 of this Law.
6. The costs for formulation of the pre-feasibility study report and the feasibility study report are included in the total investment capital of the project. Where the investor proposing the project is not selected, the costs for formulation of the pre-feasibility study report and the feasibility study report will be refunded by the selected investor.
7. The Government shall provide detailed regulations on this article.

CHAPTER 3

Selection of Investor

Section 1

General Provisions on Selection of Investor

Article 28 *Procedure for selection of investor*

- 1 Selection of investor is carried out in accordance with the following procedure:
 - (a) Selection of a shortlist (where applicable);
 - (b) Preparation of selection of investor;
 - (c) Holding selection of investor;
 - (d) Assessment of tenders;
 - (dd) Submission, evaluation, approval and public announcement of the results of selection of investor;

- (e) Negotiation, completion and signing of the PPP project contract, and public announcement of information about the contract.
- 2 Based on the specific conditions of each project, the authorized agency carries out the selection of a shortlist after making the investment policy decision in accordance with article 11.1(a) of this Law or after project approval in accordance with article 11.1(b) of this Law.
- 3 Selection of investor in accordance with the process in clause 1 above on the national tendering network system shall be held in accordance with a roadmap provided by the Minister of Planning and Investment.
- 4 An investor with an approved file proposing a project is given priority during assessment of tenders.
- 5 An investor undertaking to use local contractors, goods, supplies, materials or equipment is given priority during assessment of tenders.
- 6 The Government shall provide detailed regulations on this article.

Article 29 *Valid status of an investor*

An investor has valid status on satisfaction of the following conditions:

- 1 Its establishment and operation registration is issued by the competent authority of the country or territory where such investor is currently operating.
- 2 It conducts independent cost accounting, and ensures competition during selection of investor.
- 3 It is not currently in the process of dissolution, or is not within the cases of insolvency as stipulated in the law on bankruptcy.
- 4 It is not currently prohibited from participating in investment activities in the PPP form.
- 5 A State owned enterprise in which the State holds 100% charter capital must have a partnership with an investor in the private sector in order to participate in tendering.
- 6 An investor established pursuant to foreign law must satisfy the conditions on market access when participating in selection of investor for a project in an industry or trade with conditions on market access stipulated by the law on investment.

Article 30 *Ensuring competition during selection of investor*

When participating in tendering, investors must be legally and financially independent from the following parties:

- 1 Consultants for formulation of the pre-feasibility study report and the feasibility study report, except where the project is proposed by the investor;
- 2 Consultants for evaluation of the pre-feasibility study report and the feasibility study report;
- 3 Consultants for formulation and/or evaluation of the pre-qualification invitation documents, tender invitation documents, or for assessment or evaluation of the pre-qualification results or results of selection of investor.
- 4 The authorized agency, the agency entering into the contract, and the party inviting tenders.

Article 31 *Domestic selection of investor or international selection of investor*

- 1 Domestic selection of investor is implemented in the forms prescribed in articles 37 to 40 inclusive of this Law, where only investors established pursuant to the law of Vietnam are entitled to participate.

- 2 International selection of investor is implemented in the forms prescribed in articles 37 to 40 inclusive of this Law, where both investors established pursuant to foreign law and investors established pursuant to the law of Vietnam are all entitled to participate.
- 3 International selection of investor applies to all PPP projects except for the following:
 - (a) Projects in industries and trades where market access does not yet apply to foreign investors pursuant to the law on investment;
 - (b) Projects where national defence and security requirements and State secret protection must be ensured.

Article 32 *Language to be used during selection of investor*

The Vietnamese language shall be used in domestic selection of investor; and English, or English and Vietnamese in the case of international selection of investor.

Article 33 *Tender guarantee [or security]*

- 1 Depending on the size and nature of each project, the value of a tender guarantee shall be specified in the tender invitation documents at a fixed rate from 0.5% to 1.5% of the total investment capital of the project.
- 2 The effective term of a tender guarantee shall be specified in the tender invitation documents as equal to the effective term of a tender plus an additional thirty (30) days.
- 3 If the effective term of tenders is extended, the party inviting tenders must require investors to extend the effective term of their tender guarantees for the corresponding period, on condition that the contents of lodged tenders are not changed. If any investor refuses to so extend, then such investor's tender shall no longer be valid and shall be rejected.
- 4 In the case of a tender submitted by a partnership, each member of such partnership may provide a separate tender guarantee or the partners may reach agreement on one member/partner to be responsible for the tender guarantee for itself and for other members in the partnership. The total value of tender guarantees must not be less than the value stipulated in the tender invitation documents. If any member of the partnership breaches the provisions in clause 6 below then the tender guarantees of all members in the partnership shall not be refunded.
- 5 The party inviting tenders must refund or release the tender guarantees to non-selected investors within the deadline prescribed in the tender invitation documents but no later than fourteen (14) days from the date the result of selection of investor is approved. In the case of the selected investor, the tender guarantee shall be refunded or released after the PPP project enterprise established by the investor provides the guarantee for contractual performance in accordance with article 48 of this Law.

If any investor refuses to extend in accordance with clause 3 above, the party inviting tenders must refund or release the tender guarantee to the investor within fourteen (14) days from the date of receipt by the party inviting tenders of the written refusal to extend.
- 6 The tender guarantee shall not be refunded in the following cases:
 - (a) The investor withdraws its tender within the effective term of such tender;
 - (b) The investor breaches the law on tendering resulting in the tendering having to be cancelled in accordance with article 34.1(dd) of this Law;
 - (c) The investor fails or refuses to negotiate and finalize a contract within thirty (30) days after receipt of notice that the investor has won the tendering from the party inviting tenders, or negotiates and finalizes a contract but refuses to enter into [sign] the contract except in a case of force majeure;

- (d) The PPP project enterprise established by the investor fails to provide the guarantee for contractual performance in accordance with article 48 of this Law;

Article 34 *Cancellation of tendering*

- 1 Tendering shall be cancelled in the following cases:
 - (a) All the pre-qualification applications or tenders failed to satisfy the requirements set out in the pre-qualification invitation documents or tender invitation documents respectively;
 - (b) The objectives and scope recorded in the pre-qualification invitation documents or tender invitation documents were changed;
 - (c) The pre-qualification invitation documents or tender invitation documents failed to comply with the provisions of this Law or other relevant laws resulting in the selected investor failing to satisfy requirements for project implementation;
 - (d) Selection of investor failed to comply with the provisions of this Law or other relevant laws resulting in limited competition between investors;
 - (dd) There is evidence of giving, receiving or broking bribes, of collusion, fraud, abuse of power and position to illegally interfere in the tendering, resulting in falsification of the results of selection of tenderer.
- 2 Any organization or individual whose conduct in breach resulted in cancellation of the tendering as prescribed in sub-clauses (c), (d) and (dd) of clause 1 above must pay compensation for costs to the parties involved and shall be dealt with in accordance with law.

Article 35 *Responsibility of the party inviting tenders in the process of selection of investor*

- 1 To be responsible before the law and the authorized agency for the process of selection of investor.
- 2 To ensure truthfulness, objectivity and fairness.
- 3 To compensate for loss in accordance with law.
- 4 To keep data confidential.
- 5 To store relevant information in accordance with the law on archives.

Article 36 *Dealing with an [abnormal] situation of selection of investor during project implementation process*

- 1 *Dealing with an [abnormal] situation of selection of investor during the project implementation process* means resolving any issue arising which is not yet specifically and clearly regulated in this Law.
- 2 The authorized agency and the party inviting tenders are responsible before the law for a decision dealing with an abnormal situation on the basis of ensuring the following principles:
 - (a) Competition, fairness/equality, transparency and economic efficiency;
 - (b) Reliance on the decision on investment policy; the decision approving the project; the pre-qualification invitation documents and tender invitation documents; the pre-qualification applications or tenders; pre-qualification results, the results of selection of investor; the contract signed with the selected investor; and the actual status of implementation of the project.
- 3 The Government shall provide detailed regulations on this article.

Forms of Selection of Investor

Article 37 *Open tendering*

- 1 *Open tendering* means the form of selection of investor in which the number of participating investors is unlimited.
- 2 Open tendering must be applied to all PPP projects except in the cases prescribed in articles 38, 39 and 40 below.

Article 38 *Competitive negotiation*

Competitive negotiation applies in the following cases:

1. No more than three investors satisfying the requirements for project implementation are invited to participate.
2. Projects applying high-tech on the list of high-tech prioritized for investment in development in accordance with the law on high-tech.
3. Projects applying new technology in accordance with the law on technology transfer.

Article 39 *Direct appointment of investor*

- 1 Direct appointment of investor applies in the following cases:
 - (a) The project requires ensuring national defence and security or State secret protection;
 - (b) The project needs a replacement investor to be selected immediately in accordance with clause 4(a) of article 52 of this Law in order to ensure continuity in the process of project implementation.
- 2 The level authorized to approve a project decides on direct appointment of investor; where direct appointment of investor applies to a project prescribed in clause 1(a) above, prior to direct appointment of investor, consent of the Prime Minister on the basis of an opinion from the Ministry of Defence or from the Ministry of Public Security in the case of the requirement to ensure national defence or security, or State secret protection, must be obtained.

Article 40 *Selection of investor in special cases*

- 1 If special and one-off conditions arise in a PPP project where it is impossible to apply the forms of selection of investor prescribed in articles 37, 38 and 39 of this Law, the authorized agency shall make a submission to the Prime Minister for his decision on a plan on selection of investor.
- 2 The file submitted to the Prime Minister shall comprise the following items:
 - (a) Basic information about the project;
 - (b) An explanation of the special and one-off conditions of the project;
 - (c) Plan on selection of investor in the special case comprising the steps to be implemented during such selection, and specific solutions to deal with the special and one-off nature of the project proposed to ensure the investment efficiency of the project.

Assessment Criteria and Assessment Method for Pre-Qualification Tenders and for Tenders

Article 41 *Assessment criteria and method for pre-qualification tenders*

- 1 Pre-qualification tenders are assessed by the method of giving a points score of up to 100 or 1,000 points as prescribed in the pre-qualification invitation documents. The scoring method is formulated on the basis of the criteria for assessing pre-qualification tenders prescribed in clause 2 below.
- 2 The criteria for assessing pre-qualification tenders comprise the following basic items:
 - (a) Financial-commercial capacity and experience, ability to arrange finance; and experience in implementing similar projects.

In the case of a partnership tender, the capacity and experience of the investor is determined as the total capacity and experience of the members of the partnership; the head investor in the partnership must have a minimum 30% equity contribution, and each member of the partnership must have a minimum 15% equity contribution;
 - (b) The preliminary plan on commencing implementation of the project and undertakings on project implementation;
 - (c) The history of disputes and any claims or litigation in previously implemented or current contracts.

Article 42 *Criteria and method for assessing tenders*

- 1 Assessment of capacity and experience is based on a points score up to 100 or up to 1,000 points as prescribed in the tender invitation documents. The criteria for assessing capacity and experience are implemented in accordance with article 41.2 of this Law.
- 2 Assessment of technical matters is based on a points score up to 100 or up to 1,000 points, or by the method of awarding Pass or Fail stipulated in the tender invitation documents.

The criteria for assessing technical matters comprise criteria on quality, output and productivity; criteria on operation, management, commercial operation, warranty and maintenance; criteria on the environment and safety; and other technical criteria.
- 3 Assessment of financial-commercial matters is based on the method of comparison and ranking prescribed in the tender invitation documents. The method of comparison and ranking is built on the criteria for assessing financial-commercial matters, comprising one of the following criteria:
 - (a) The of the price of products and/or fees of public services;
 - (b) The criterion of State capital support for construction of the works or infrastructure system;
 - (c) The criterion of social and State benefits;
- 4 The Government shall provide detailed regulations on this article.

Article 43 *Approval of results of selection of investor*

An investor must satisfy the following conditions in order to be recommended as selected investor:

- 1 Having a valid tender;
- 2 Satisfying the requirements on capacity and experience;
- 3 Satisfying the requirements on technical matters;

- 4 Satisfying the requirements on financial-commercial matters;
- 5 Having the tender which is ranked first.

CHAPTER 4

Establishment and Operation of the PPP Project Enterprise and the PPP Project Contract

Article 44 *Establishment and operation of the PPP project enterprise*

- 1 After the decision approving the results of selection is made, the investor establishes the PPP project enterprise in the form of a limited liability company or a non-public shareholding/joint stock company with the sole objective of entering into and performing the PPP project contract. The application file for enterprise registration includes the contents in accordance with the law on enterprises and the decision approving the results of selection of investor.
- 2 A PPP project enterprise is permitted to issue enterprise bonds in accordance with article 78 of this Law.
- 3 In addition to the provisions in clauses 1 and 2 above, the establishment and organization of management, operation, dissolution and bankruptcy of a PPP project enterprise shall accord with the law on enterprises, provisions of other relevant laws, and the PPP project contract.

Article 45 *Classification of PPP project contracts*

- 1 The group of project contracts applying the mechanism of direct fee collection from users or a public services or product offtake organization, comprises:
 - (a) *BOT contract* means a contract in which the investor and/or PPP project enterprise is granted a concession/permitted to build, commercially operate and operate an infrastructure system/works [facility] within a specified period [for a fixed term]; upon expiry of such term, the investor and/or PPP project enterprise transfers over such facility to the State;
 - (b) *BTO contract* means a contract in which the investor and/or PPP project enterprise is granted a concession/permitted to build an infrastructure system or works [facility]; and upon completion of construction, the investor and/or PPP project enterprise transfers same to the State and has the right to commercially operate the facility for a fixed term;
 - (c) *BOO contract* means a contract in which the investor and/or PPP project enterprise receives a concession/is permitted to build, own, commercially operate and operate the infrastructure system/works [facility] for a fixed term; and upon expiry of such term, the investor and/or PPP project enterprise terminates the contract;
 - (d) *O&M contract* means a contract in which the investor and/or PPP project enterprise receives a concession to commercially operate and manage in part or the whole existing works/infrastructure system [facility] for a fixed term, and upon expiry of such term, the investor and/or PPP project enterprise terminates the contract.
- 2 The group of project contracts applying the State mechanism of payment on the basis of the quality of the products or public services, comprises:
 - (a) *BTL contract* means a contract in which the investor and/or PPP project enterprise receives a concession to build works/infrastructure system [facility], upon completion of which the facility is transferred to the State and [the investor and/or project enterprise] has the right to provide products and/or public services on the basis of operating and exploiting such facility for a fixed term; and the agency entering into the contract hires [such] services and makes payment to the investor and/or PPP project enterprise;

- (b) *BLT contract* means a contract in which the investor and/or PPP project enterprise receives a concession to build works or an infrastructure system, and to provide products and/or public services on the basis of operating and exploiting such works or infrastructure system for a fixed term; the agency entering into the contract hires such services and makes payment to the investor and/or PPP project enterprise and upon expiry of the term, the investor and/or PPP project enterprise transfers such works or infrastructure system or to the State.
- 3 *Mixed contract* means a contract combining the contract types prescribed in clauses 1 and 2 of this article.
- 4 The mechanism of direct fee collection from users shall not apply to the projects prescribed in article 3.9(b) of this Law [for the improvement of existing infrastructure works/facility].

Article 46 *PPP project contract file*

- 1 A PPP project contract file comprises the following basic materials:
 - (a) The PPP project contract with both general and specific conditions;
 - (b) Any appendices to the contract;
 - (c) Minutes of contractual negotiation;
 - (d) Decision approving the results of selection of investor;
 - (dd) The tender of the selected investor together with data clarifying same;
 - (e) Tender invitation documents and any data amending or supplementing same;
- 2 When there is any change to the contents of the contract, the parties must enter into/sign an appendix to the contract.

Article 47 *Basic contents of the PPP project contract*

- 1 A PPP project contract comprises the following basic items:
 - (a) The objectives, scale, location and schedule of project implementation; the duration of construction of the works or infrastructure system; the time when the contract takes effect, and the term of the contract;
 - (b) The scope of and requirements regarding technical matters and technology, and the quality of the works or infrastructure system or of the products or public services to be supplied;
 - (c) Total investment capital, structure of capital sources; the project's financial plan including a plan on arranging finance; the price or charges of products or public services including methods and formulae for establishing or adjusting same; State capital (if any) in the PPP project and the form of management and use of it;
 - (d) Conditions for using land and other natural resources; plan on building auxiliary works; requirements for paying compensation, assistance, and resettlement; plan on ensuring safety and protecting the environment; events of force majeure and plan for dealing with a case of force majeure;
 - (dd) Responsibilities to carry out procedures for requesting a licence in accordance with relevant law; [responsibilities for] design; organizing building work; checks, supervision and quality control during the construction phase; check and acceptance, and accounting finalization for investment capital in the works or infrastructure system and confirmation of completion of the works or infrastructure system; and [responsibilities for] providing main input raw materials for the production and/or business activities of the project;

- (e) Responsibilities during operation including commercial operation of the project facility so that products or public services are provided continuously and stably; conditions, sequence and procedures for handover/transfer of the facility;
 - (g) Contract performance security/guarantee; right to ownership and right to manage and operate assets related to the project; rights and obligations of the investor and the PPP project enterprise; agreements on use of guarantee services of a third party covering obligations of the agency entering onto the contract;
 - (h) Plan on dealing with the situation where the circumstances change fundamentally in accordance with civil law in order to continue to perform the contract; and measures for dealing with, compensating for or imposing a fine for a contractual breach by one of the parties;
 - (i) Responsibilities of the parties regarding confidentiality of information; reporting regime; provision of relevant information and data and explanation of the performance of the contract at the request of the authorized agency or of an inspecting, checking, auditing or supervising agency;
 - (k) Principles and conditions for amending, supplementing or early termination of the project contract; transfer of rights and obligations of the parties; rights of the lender; procedures, rights and obligations of the parties on liquidation of the contract.
 - (l) Investment incentives and guarantee, plans for sharing any revenue increase or decrease, foreign currency balance guarantee, and the various types of insurance (if any);
 - (m) The governing law of the contract and dispute resolution regimes.
- 2 A PPP project contract must specify the rights and obligations of the contract-signing agency, the investor and the PPP project enterprise.
 - 3 The Government shall stipulate standard form contracts for the types of contracts prescribed in article 45 of this Law.

Article 48 *Guarantee [security] for performance of the PPP project contract*

- 1 The PPP project enterprise must implement security measure for performance of the PPP project contract prior to the effective date of the contract.
- 2 Depending on the size and nature of the project, the value of the contract performance guarantee shall be stipulated in the tender invitation documents within the range of 1% to 3% of the total investment amount of the project.
- 3 The effective term of the project performance guarantee is calculated from the effective date of the contract up until the date on which the PPP project enterprise completes discharge of its contractual obligations in the phase of construction of the works or infrastructure system; if the period for construction needs to be extended, then the investor must make a similar extension of the effective term of the contract performance guarantee.
- 4 The PPP project enterprise shall be refunded or released from the contract performance guarantee upon completion of the obligation to build the works or infrastructure system except for the case prescribed in clause 5 of this article; in the case of an O&M contract, the contract performance guarantee shall be refunded or released after the investor has completed discharge of its contractual obligations.
- 5 The PPP project enterprise shall not be refunded or released from the contract performance guarantee in the following cases:
 - (a) Refusal to perform the contract after it has signed the contract;

- (b) Breach of the agreements in the contract resulting in early termination of the contracts in accordance with article 52.2(d) of this Law;
 - (c) Failure to extend the effective term of the contract performance guarantee in accordance with clause 3 of this article.
- 6 The Government shall provide detailed regulations on the ratio of value of the contract performance guarantee prescribed in clause 2 of this article.

Article 49 *Entering into [signing] the PPP project contract*

- 1 The contract is signed on the basis of the decision approving the results of selection of investor, the results of negotiating the contract, the still valid tender and information on the capacity of the investor updated until the time of signing the contract, and the tender invitation documents.
- 2 The investor and the PPP project enterprise become one party and jointly sign the contract with the agency entering into the contract.
- 3 In the case of a partnership of investors, all members must directly sign and seal (if they have a seal) the contract.

Article 50 *Amendment of the PPP project contract*

- 1 The amendment of the PPP project contract must be stipulated in the contract and considered by the parties in any one of the following cases:
 - (a) The project is affected by a force majeure event, or the circumstances change fundamentally, or there is a change of relevant master planning or legal policies causing a serious impact on the technical and financial plans of the project, [or] on the price of products or cost of public services which the PPP project enterprise supplies;
 - (b) There is a change of one of the parties which signed the contract;
 - (c) There is an adjustment of the term of the PPP project contract in accordance with clauses 2 and 3 of article 51 of this Law;
 - (d) In other circumstances within the authority of the agency entering into the contract which do not change the investment policy and will bring more effective financial and/or socio-economic benefits to the project.
- 2 The sequence for amending the PPP project contract is regulated as follows:
 - (a) One of the contracting parties provides a written request to amend the contract in which it sets out the circumstance in which consideration may be given to such amendment;
 - (b) The parties arrange a negotiation of the contractual items it is proposed to amend including prices of products and fees for public services; the contractual term, and other contractual items when there is a change;
 - (c) The parties sign an appendix to the contract setting out the items to be amended.
- 3 If the amendment of the contract results in a change to the objectives, location, scale or type of the PPP project contract, or an increase of 10% or more of the total investment capital, or an increase in the value of the State capital in the PPP project after the reserve [fund] has been used up, it is required to carry out the procedures for amending the investment policy as prescribed in article 18 of this Law before signing an appendix to the contract in respect of the amended items.

Article 51 *Term of the PPP project contract*

- 1 The term of the contract shall be as agreed by the parties based on the decision approving the project and the results of selection of investor.
- 2 The contracting parties are permitted to amend the term of the contract but must ensure the total term of the contract comprising the time for amending does not exceed the time for allocating or leasing land in accordance with the law on land and must not change other contents of the investment policy decision.
- 3 The term of the contract may be amended in the following cases:
 - (a) There is a delay in the construction phase or there is an interruption during the process of operation of the works/infrastructure system [facility] as a result of a fundamental change of the civil law due to circumstances beyond the reasonable control of one party;
 - (b) The authorized agency or another authorized/competent State agency suspends the project except where such suspension was due to the fault of the PPP project enterprise;
 - (c) There are increased costs as a result of a request from the authorized agency or the agency entering into the contract which were not determined at the time of signing the contract, and unless the [contractual term] is extended the PPP project enterprise will be unable to recover such costs;
 - (d) There is a change in the relevant master planning or legal policies which reduce turnover to below 75% of the turnover set out in the financial plan stipulated in the contract;
 - (dd) Turnover increases by 125% or more compared to the level of turnover in the financial plan stipulated in the contract.

Article 52 *Termination of the PPP project contract*

- 1 Termination of the PPP project contract is implemented in accordance with the provisions in the contract and provides the basis for liquidation of the contract.
- 2 Early termination of the PPP project contract only applies in the following cases:
 - (a) The project is affected by an event of force majeure and despite the parties having taken remedial measures [they] are unable to ensure continued performance of the PPP project contract;
 - (b) [The project contract must be terminated] in the national interest or to ensure requirements on national defence and security and protection of State secrets;
 - (c) When the PPP project enterprise becomes insolvent as prescribed by the law on bankruptcy;
 - (d) When one of the contracting parties seriously breaches its contractual obligations;
 - (dd) In other cases where circumstances change substantially as stipulated in the civil law [and] the contracting parties reach agreement on termination of the contract.
- 3 The agency signing the contract must make a report to the authorized level before terminating the contract.
- 4 In the case of early termination of the PPP project contract, the agency signing the contract shall perform the following duties:
 - (a) Coordinate with the lender in arranging selection of a replacement investor in order to sign a new PPP project contract;
 - (b) While the plan for dealing with the issue has not yet been implemented or a substitute investor has not yet been selected, the agency signing the contract is responsible to ensure safety and protection

against deterioration of the works/infrastructure system if the project is currently in the construction phase; or arrange operation and commercial operation of the works/infrastructure system for the purpose of ensuring the continued provision of products or public services if the project is currently in the operational phase.

- 5 The agency signing the contract which performs the duties prescribed in clause 4 above may use the capital source prescribed in article 73.3 of this Law and other lawful revenue sources.
- 6 In the case of early termination of the PPP project contract as prescribed in clause 2(b) of this article or due to a material breach of the contractual obligations by the agency signing the contract as prescribed in clause 2(d) of this article, the funding for acquiring the PPP project enterprise or for compensating for termination of the contract shall be allocated from State capital in accordance with law; in the case of termination due to the fault of the investor as prescribed in sub-clauses (c) and (d) of clause 2 of this article, the investor is responsible to transfer its shares or capital contribution portion to the replacement investor.
- 7 The Government shall provide detailed regulations on this article.

Article 53 *Rights of the lender*

- 1 During implementation of the PPP project contract, the rights of the lender shall be exercised in accordance with agreements between the parties in the agreement on extension of credit and/or the PPP project contract and in accordance with relevant law.
- 2 If the PPP project contract is terminated early and it is required to select an investor for replacement, the lender shall coordinate with the agency signing the contract to select such replacement investor in accordance with article 39.1(b) of this Law.
- 3 The matters prescribed in clause 2 above must be agreed in writing between the agency entering into the contract, the lender and the investor and/or PPP project enterprise.

Article 54 *Assignment of shareholding, capital contribution portions, and rights and obligations in the PPP contract*

- 1 If the PPP project enterprise was established by a partnership of investors, then the members have the right to transfer shares or their capital contribution portions as between themselves, but must ensure that the minimum equity ratios of each member/partner are maintained as prescribed in article 41.2(a) of this Law.
- 2 The investor has the right to assign its shareholding [or] capital contribution portion after completion of construction of the facility if the project has a construction component or upon entering into the operational phase in the case of a project without a construction component.
- 3 An assignment as prescribed in clauses 1 and 2 above must satisfy the following requirements:
 - (a) It does not change the performance of the signed PPP project contract;
 - (b) It complies with provisions of relevant laws;
 - (c) The agency entering into the PPP contract consents;
 - (d) The lender and members of the partnership (in the case of a partnership of investors) consent.
- 4 An assignee must satisfy the following requirements:
 - (a) Its right to receive an assignment as stipulated by law must not be restricted;
 - (b) Having financial and managerial capacity to implement the PPP project contract and relevant contracts;

- (c) Undertaking to continue to exercise the rights and discharge the obligations of the assignor in accordance with the PPP project contract and relevant contracts.
- 5 If the assignment prescribed in clauses 1 and 2 above results in a change to the contents of enterprise registration, then the PPP project enterprise must implement the relevant provisions of the law on enterprises.

Article 55 *Law governing PPP project contracts*

A PPP project contract, appendices to the contract and other related documents signed as between the Vietnamese State agency and the investor/PPP project enterprise shall be governed by the law of Vietnam. With respect to issues for which the law of Vietnam does not have regulations, the parties may reach specific agreements in the PPP project contract on the basis that they are not contrary to the basic principles of the law of Vietnam.

CHAPTER 5

Commencing Implementation of PPP Project Contracts

Section 1

Constructing the Works/Infrastructure System [Facility]

Article 56 *Preparation of the construction site*

The provincial people's committee presides over co-ordination with the authorized agency and the agency entering into the contract to arrange payment of compensation, assistance, resettlement and completion of the procedures for allocation or lease of land or site handover to implement the project in accordance with the law on land, the PPP project contract and related contracts.

Article 57 *Formulation, evaluation and approval of designs after the preliminary design and estimated budget*

- 1 The PPP project enterprise must, based on the feasibility study report and the provisions in the PPP project contract, undertake either or both of the following matters:
 - (a) Formulate construction designs after the preliminary design or formulate an estimated budget in the case of a sub-project or an item using public investment capital and send them to the specialized agency for construction as stipulated by the law on construction in order to arrange evaluation;
 - (b) Formulate designs or formulate an estimated budget in the case of a sub-project or an item using public investment capital and send them to the specialized agency as stipulated by other relevant laws in order to arrange evaluation.
- 2 The PPP project enterprise approves the designs and the estimated budget prescribed in clause 1 above and sends them to the agency signing the contract together with the following data for monitoring and supervisory purposes:
 - (a) The approved design file or estimated budget;
 - (b) The file of the specialized agency on evaluation of the design or of the estimated budget.

Article 58 *Selection of contractor to implement the PPP project*

The PPP project enterprise must issue rules on selection of contractor for uniform application throughout the enterprise based on the following principles:

- 1 Ensuring fairness, transparency and economic efficiency.

- 2 It must not adversely impact or have a negative affect on national defence and security, State secrets, the national interest, the community interest, or the interest of the authorized agency or agency entering into the contract.
- 3 The selected contractor must fully satisfy (the requirements for) capacity and experience and have feasible solutions to implement the tender package or project; must be responsible for quality and [compliance with] the schedule for implementing the project in accordance with the contract entered into with the PPP project enterprise which must contain a provision on mandatory liability if the quality of the works/infrastructure system fails to satisfy the requirements set out in the PPP project contract. The PPP project enterprise is responsible for quality and [compliance with] the schedule for implementing the project.
- 4 [The project enterprise] is encouraged to use domestic contractors for work which domestic contractors are capable of implementing.
- 5 Foreign labour may only be used if domestic labour is unable to satisfy requirements.

Article 59 *Quality control and supervision of works/infrastructure system*

- 1 The PPP project enterprise is responsible to arrange quality control and supervision, and to test all items of works and the entire works/infrastructure system [facility] in accordance with law.
- 2 The agency entering into the contract supervises implementation of the contract during the process of commencing construction of the facility pursuant to the contract, and has the following responsibilities:
 - (a) To check that the PPP project enterprise supervises execution of building works/infrastructure system [facility];
 - (b) To inspect compliance with the process, standards and regulations on execution of building the facility;
 - (c) To organize testing of the quality of sections of the works, items of works and of the entire facility if there is any doubt about quality or when requested by a competent State administrative agency;
 - (d) To propose the PPP project enterprise require a contractor to adjust or suspend execution of the building works if it is considered that the quality of work carried out does not satisfy the requirements.
- 3 The agency entering into the contract may hire consultants to assist the former to discharge the responsibilities prescribed in clause 2 above.
- 4 The costs of hiring consultants to conduct quality control and other relevant costs are regulated as follows:
 - (a) If the agency entering into the contract concludes that the quality of the facility fails to satisfy the requirements stipulated in the contract due to the fault of the PPP project enterprise [and/or] the contractor, then the PPP project enterprise is responsible to pay the costs;
 - (b) If the agency entering into the contract concludes that the quality of the facility satisfies the requirements stipulated in the contract or concludes that the quality fails to satisfy the requirements stipulated in the contract but it is not due to the fault of the PPP project enterprise or the contractor, then the former agency shall use the costs for commencing implementation of the project prescribed in article 73.3 of this Law for payment.

Article 60 *Accounting finalization for investment capital in the works/infrastructure system*

- 1 After completion of the infrastructure works or system, the agency entering into the contract must conduct accounting finalization of public investment capital in the PPP project as follows:
 - (a) If there was public investment capital in the PPP project managed and used in accordance with article 70.5(a) and 72.2 of this Law, then the agency entering into the contract and the PPP project enterprise must conduct accounting finalization of public investment capital in the PPP project in accordance with the law as public investment projects;
 - (b) If there was public investment capital in the PPP project managed and used in accordance with article 70.5(b) of this Law, then the agency entering into the contract collates the values disbursed to the PPP project enterprise and audited by an independent auditor, as the basis for accounting finalization of public investment capital in the PPP project. The public investment capital in the PPP project for which accounting finalization is conducted must not exceed the level of State capital determined in the contract.
- 2 After completion of the works or infrastructure system, the agency entering into the PPP contract and the PPP project enterprise conduct accounting finalization of investment capital in construction of such works or infrastructure system. The accounting finalization value of investment capital in building the works or infrastructure system or the accounting finalization value of investment capital in the case of a project without a construction component is based on the signed contract.
- 3 The agency entering into the contract and the PPP project enterprise shall reach agreement on selection of an independent auditor with sufficient capacity and experience to conduct an audit of investment capital spent on construction of the facility.
- 4 The Government shall provide detailed regulations on this article.

Article 61 *Certification of completion of the works/infrastructure system [facility]*

- 1 After completion of the facility, the PPP project enterprise arranges a check and acceptance of the facility in accordance with the law on construction or other relevant laws, as the basis for preparing an application file for certification of completion.
- 2 Based on the application file requesting certification of completion of the facility as prescribed in clause 1 above, the agency entering into the contract checks and certifies completion for the PPP project enterprise. If the PPP project enterprise achieves early completion of the construction phase or achieves a saving on investment costs, then certification of completion of the facility shall not impact the contractual term or the level of costs for products or fees for public services stipulated in the contract.
- 3 The Government shall regulate the application file and deadline for certification of completion of the facility.

Section 2

Management, Operation and Commercial Operation of the Works/Infrastructure System [Facility]

Article 62 *Management of PPP projects*

The management of the works/infrastructure system and other assets during implementation of a PPP project must comply with this Law, other relevant laws and the PPP project contract.

Article 63 *Conditions for operation and commercial operation of the infrastructure works or system*

- 1 Except for the case prescribed in clause 2 of this article, the PPP project enterprise is permitted to operate and commercially operates the facility as from the date the agency entering into the contract certifies completion in accordance with article 61 of this Law.
- 2 If the PPP project applies the O&M contract form, then the PPP project enterprise operates and commercially operates the facility as from the effective date of the PPP project contract.

Article 64 *Supply of goods and public services*

- 1 During the process of operating and commercially operating the facility, the PPP project enterprise has the following responsibilities:
 - (a) To exercise the right and perform the obligation to provide products and public services and [to implement] other agreements in the contract;
 - (b) To ensure use of the facility in accordance with the conditions prescribed in the contract;
 - (c) To provide equal treatment to all users of products and public services provided by the PPP project enterprise; not to refuse provision of products and public services to users;
 - (d) To receive and promptly deal with any feedback from users of the products and public services provided by the PPP project enterprise;
 - (dd) To conduct periodical maintenance and repairs, and to ensure that the facility operates safely in accordance with the design or process undertaken [committed to] in the contract.
- 2 The authorized agency and the agency entering into the contract shall co-ordinate with the PPP project enterprise to discharge the responsibilities prescribed in clause 1(d) above.

Article 65 *Charges and fees of products and public services*

- 1 The charges and fees of products and public services, and the conditions and procedures for adjusting same shall be stipulated in the PPP project contract on the principles of harmonizing the interests of the investor, PPP project enterprise, users and the State, and of facilitating the investor to recover investment capital and generate profit. The plan on the fees and charges and/or on the range of fees and charges for products and public services in accordance with the term of the PPP project contract must specifically set out the commencement price and the amount of the price for each periodic cycle ensuring correct and full calculation and publicity and transparency of the price components.
- 2 Application of measures for assistance [subsidy] for the charges and fees of products and public services shall be implemented in accordance with provisions of law.
- 3 Any agreement on and/or adjustment of charges and fees for products and public services for each periodical cycle in the PPP project contract must comply with the law on fees and charges.
- 4 When adjusting charges and fees for products and public services, the adjustment shall be publicly disclosed as follows:
 - (a) No later than ten (10) days before applying the adjusted charges and fees for products and public services, the agency signing the contract shall disclose information in accordance with article 9 of this Law;
 - (b) The PPP project enterprise shall display the adjusted charges and fees for products and public services at locations where products and public services are provided in accordance with the law on charges and fees.

Article 66 *Supervision of quality of products and public services*

- 1 The PPP project enterprise must ensure and is liable for the quality of products and public services pursuant to the PPP project contract.
- 2 The agency signing the contract is responsible to supervise the quality of products and public services which the PPP project enterprise provides pursuant to the PPP project contract.
- 3 If the agency entering into the contract considers that the quality of products and public services fails to satisfy the requirements set out in the PPP project contract, then it shall require such PPP project enterprise to remedy the problem within the term as prescribed in the contract. If such enterprise fails to remedy the problem or is late in doing so, then the agency signing the contract shall apply the measures for dealing with the breach stipulated in the contract.
- 4 The agency entering into the contract may hire consultants to support it in discharging the responsibilities prescribed in clause 2 above. The costs of hiring consultants shall be paid in accordance with article 59.4 of this Law.

Section 3

Transfer of the Works/Infrastructure System [Facility] and Liquidation of the PPP Project Contract

Article 67 *Transfer of the works/infrastructure system [facility]*

- 1 The transfer of the project facility and a determination of the quality and value of such facility prior to transfer shall be implemented in accordance with the provisions in the PPP project contract. The residual value of the facility after transfer shall be collated into the State assets and the State budget in accordance with the laws on management, use of public assets, and State budget.
- 2 The law on management and use of public assets shall apply to dealing with assets transferred/handed over.
- 3 The Government shall provide detailed regulations on clause 2 of this article.

Article 68 *Liquidation of the PPP project contract*

- 1 The PPP project contract is liquidated as follows:
 - (a) If the parties have completely discharged their contractual obligations, the contracting parties shall confirm completion and termination of the rights and obligations of the parties;
 - (b) If the contract is terminated early in accordance with article 52.2 of this Law, the contracting parties shall certify which obligations are completed and the responsibilities of the parties for uncompleted work.
- 2 The deadline for liquidation of the PPP project contract shall be as agreed by the parties in the contract but must not exceed one hundred and eighty (180) days as from the date the parties complete their contractual obligations or as from the date on which the parties reach agreement on early termination of the contract.
- 3 Where costs or expenses arise during liquidation of the contract as prescribed in clause 1 above, the contents of contractual liquidation must specify the obligations of the agency signing the contract and of the PPP project enterprise with respect to such costs or expenses.

CHAPTER 6

Capital Sources for Implementation of PPP Projects

Section 1

State Capital in PPP Projects

Article 69 *Use of State capital in PPP projects*

- 1 State capital is used for the following purposes:
 - (a) To assist construction of the works/infrastructure system belonging to the PPP project [the facility];
 - (b) To make payment to the PPP project enterprise supplying products or public services;
 - (c) To provide the funding for payment of compensation, site clearance, assistance, resettlement, and assistance for building auxiliary works;
 - (d) To pay any revenue shortfall;
 - (dd) To pay the costs of discharge of duties by the authorized agency, by the agency signing the contract, by the PPP project preparatory unit and by the party inviting tenders undertaking their duties as prescribed in article 11 of this Law;
 - (e) To pay the costs of the PPP project Evaluation Council and of any unit assigned to evaluate a PPP project.
- 2 The ratio of State capital participating in the PPP project as prescribed in sub-clauses (a) and (c) of clause 1 above must not exceed 50% of the total investment capital of the project. In the case of a project which consists of multiple component projects in which there is a component investment project in the PPP form, the ratio of State capital prescribed in this clause shall be determined on the basis of the total investment capital of such component project.
- 3 The Government shall provide detailed regulations on management and use of State capital in PPP projects.

Article 70 *State capital to assist construction of the works/infrastructure system [facility]*

- 1 State capital to assist construction of the project facility is used to assist/support project performance during the construction phase aimed at increasing the financial efficiency of the project.
- 2 The ratio of State capital assisting construction of the PPP project facility is determined on the basis of the preliminary financial plan in the pre-feasibility study report when making the investment policy decision.
- 3 The ratio and value of State capital assisting construction of the project facility is paid in accordance with the PPP project contract.
- 4 State capital assisting construction of the project facility is arranged from the following sources:
 - (a) Public investment capital in accordance with the provisions of the law on public investment;
 - (b) The value of public assets in accordance with the law on management and use of public assets.
- 5 State capital allocated from public investment capital sources to assist construction of the project facility is managed and used by either of the following methods:
 - (a) It is split into a sub-project in the PPP project. State capital is managed and used in accordance with the law on public investment;

- (b) It is allocated to specific items of works in accordance with the ratio, value, schedule and conditions prescribed in the contract.

Article 71 *State capital for payment to the PPP project enterprise supplying products or public services*

State capital for payment to the PPP project enterprise to be used in the BLT or BTL contract on the basis of the quality of products or public services is allocated from the State capital source in the PPP project and other lawful capital sources in accordance with law.

Article 72 *State capital for compensation and site clearance, for assistance and resettlement; and for assisting construction of temporary [auxiliary] works*

- 1 State capital for compensation and site clearance, for assistance and resettlement, and for support/assistance in constructing temporary works is allocated from public investment capital sources in accordance with the law on public investment capital.
- 2 Based on the scale and nature of each project, the agency entering into the contract separates the State capital for compensation and site clearance, for assistance and resettlement, and for support in building the temporary works to formulate a component project or sub-project and implements same in accordance with the provisions of the law on public investment and the law on land.

Article 73 *Costs of the authorized agency, of the agency entering into the contract, of the PPP project preparatory unit, of the party inviting tenders, of the PPP project Evaluation Council and of any unit assigned to evaluate a PPP project*

- 1 Costs of project preparation of the authorized agency and of the PPP project preparatory unit; costs of arranging an evaluation by the PPP Project Evaluation Council and of any unit assigned to evaluate the PPP project; costs of holding selection of investor and of entering into the contract by the authorized agency, and costs of the party inviting tenders are allocated from public investment capital sources and other lawful capital sources, and are included in the total investment capital of the project.
- 2 The selected investor is responsible to refund the costs prescribed in clause 1 above to the State budget in accordance with the law on State budget or to the lawful capital sources which were used for preparation of the project.
- 3 Costs for commencing implementation of the project after signing the contract by the authorized agency [or] of the agency entering into the contract are allocated from regular expenditure of such agencies.

Article 74 *Formulating a plan on public investment capital to be used in a PPP project*

The plan on public investment capital to be used in the PPP project is regulated as follows:

- 1 Based on the investment policy decision provided by the authorized level, public investment capital to be used in the PPP project is collated into the medium-term public investment plan.
- 2 Based on the medium-term public investment plan, on the feasibility study report approved by the authorized level and the results of selection of investor, public investment capital in the PPP project is collated into the annual public investment plan.
- 3 If the PPP project needs to use public investment capital but is not on the list of projects in the medium-term public investment plan, then the authorized agency shall consider and add [the project] to such list and it shall be permitted to use reserve sources of the medium-term public investment plan. The sequence and procedures for amending the medium-term public investment plan shall comply with the law on public investment.

- 4 If the PPP project applies the BTL or BLT contractual form and uses public investment capital to pay the PPP project enterprise, then collation of such capital into the medium-term public investment plan is implemented in accordance with clauses 1 and 2 above. Depending on the term of the PPP project contract, that part of capital being public investment capital continues to be allocated to the following medium-term periods.

Article 75 *Preparing an estimated budget of regular expenditure capital and lawful revenue sources for regular expenditure of State agencies and of public professional units*

- 1 Based on the investment policy decision, the feasibility study report approved by the authorized level and the results of selection of investor, the agency entering into the contract prepares an annual estimated budget of regular expenditure capital or of lawful revenue for regular expenditure of State agencies and professional public units in order make payment to the PPP project enterprise in accordance with the law on State budget.
- 2 With respect to regular expenditure items prescribed in article 73.3 of this Law, the authorized agency [and/or] the agency entering into the contract prepares an annual estimated budget and submits it to the authorized level to approve in accordance with the law on State budget.

Section 2

Capital for Implementation of PPP Projects by Investors and PPP Project Enterprises

Article 76 *Financial arrangements for implementation of PPP project*

- 1 The investor and/or PPP project enterprise are responsible to contribute equity and to raise loan capital and other lawful capital sources in order to implement the project in accordance with the provisions in the PPP project contract. The total amount of loan capital obtained via forms of borrowing loans must not exceed the total amount of loan capital stated in the PPP project contract.
- 2 Within twelve (12) months after the date of signing the contract, the investor and/or PPP project enterprise must complete the financial arrangements. This deadline may be extended but must not exceed eighteen (18) months in the case of a project within the authority of the National Assembly or Prime Minister to make the investment policy decision.
- 3 The form of dealing with an investor and/or PPP project enterprise which fail to make financial arrangements within the time-limit prescribed in clause 2 above must be set out in the tender invitation documents.

Article 77 *Contribution of equity*

- 1 The investor must contribute equity at a minimum fifteen per cent (15%) of the total investment project amount, excluding the State capital contribution prescribed in articles 70 and 72 of this Law.
- 2 The investor must contribute equity in accordance with the schedule agreed in the PPP project contract.

Article 78 *Issuance of PPP project enterprise bonds*

- 1 A PPP project enterprise is permitted to make a private placement of bonds and redeem such bonds issued by it in accordance with this Law and the laws on enterprises and on securities in order to raise capital to implement the PPP project; and is not permitted to issue privately placed convertible bonds or privately placed bonds with warrants.
- 2 An issuance of bonds as prescribed in clause 1 above must satisfy the following conditions:
 - (a) The amount of capital raised by an issue [private placement] of bonds must not exceed the value of the loan portion prescribed in the PPP project contract;

- (b) Capital raised from an issue of bonds must not be used for any purpose whatsoever other than implementation of the project in accordance with the PPP project contract or for restructuring debts of the enterprise;
 - (c) The PPP project enterprise must open an escrow account to receive payments for purchase of bonds. The disbursement of capital from issue of bonds is implemented in accordance with sub-clause (b) above.
- 3 When a PPP project enterprise which has not yet operated for one (1) year issues bonds in accordance with clause 1 of this article, it is exempt from providing the audited financial statements for the year preceding the year of issue as prescribed in the law on enterprises.
- 4 The Government shall provide detailed regulations on this article.

CHAPTER 7

Investment Incentives and Guarantees

Article 79 *Investment incentives*

The investor and PPP project enterprise are entitled to incentives regarding tax, land use fees and land rent and other incentives in accordance with the laws on tax, land, investment and other relevant laws.

Article 80 *Investment guarantees*

- 1 The investor and PPP project enterprise are entitled to investment guarantees in accordance with this Law and the law on investment.
- 2 The guarantee of the right to access land, land use rights and other public assets is regulated as follows:
- (a) The State shall allocate or lease land to the PPP project enterprise or shall permit it to use other public assets in order to implement the PPP project contract in accordance with the provisions of the law on land and the law on management and use of public assets;
 - (b) The purpose of land use for the project is guaranteed (assured) not to be changed for the entire duration of implementation of the contract, even if the lender exercises its right pursuant to article 53 of this Law.
- 3 The guarantee of provision of public services is regulated as follows:
- (a) The PPP project enterprise is permitted to use public works/facilities and other ancillary works in order to implement the project in accordance with law;
 - (b) If there is a shortage of public services or if there are restrictions on users of public works, then the PPP project enterprise shall be given priority to use public services or shall be granted priority to exercise the right to use public works/facilities to implement the project;
 - (c) The authorized agency is responsible to assist the PPP project enterprise to carry out necessary procedures in order to obtain priority use of public services and public facilities.
- 4 The guarantee of the right to mortgage assets and of the right to commercially operate the infrastructure works or system [facility] is regulated as follows:
- (a) The PPP project enterprise is permitted to mortgage assets, land use rights and the right to commercially operate the works or infrastructure system with a lender in accordance with the law on land and the civil law. The term of a mortgage may not exceed the term of the [PPP] contract, unless there is some other agreement reached in the contract;

- (b) An agreement on mortgaging assets or the right to commercially operate the project facility must be prepared in writing and signed by the lender and the parties which signed the [PPP] contract;
 - (c) A mortgage of assets or of the right to commercially operate the project facility must not adversely affect the objectives, scale, technical specifications and schedule for implementation of the project or other conditions agreed in the contract.
- 5 The agency signing the contract or the authorized agency is responsible to coordinate with the authority in the locality where the PPP project is implemented in order to ensure security, order and safety for the people and assets of the PPP project enterprise and the contractor during implementation of the PPP project.

Article 81 *Guarantee of foreign currency balancing for an important PPP project*

- 1 The Government may issue a decision applying the regime on foreign currency balancing for projects for which the National Assembly or Prime Minister makes the investment policy decision on the basis of the foreign exchange control policy and the ability to balance foreign currency in each period.
- 2 Where the PPP project enterprise implementing the project prescribed in clause 1 above has already exercised its right to purchase foreign currency in order to meet the requirements of current transactions, capital transactions and other transactions or in order to remit capital, profit and other investment liquidation items overseas in accordance with the law on foreign exchange, but the market was unable to satisfy the lawful foreign currency requirements of the PPP project enterprise, then it shall be provided with a guarantee regarding foreign currency balancing of a maximum 30% of the project's revenue in VND after deducting expenses in VND.

Article 82 *Regime on sharing turnover [revenue] increase or shortfall*

- 1 When the actual turnover is higher than 125% of the level of turnover set out in the financial plan in the PPP project contract, the investor and PPP project enterprise shall share with the State 50% of the difference between the actual turnover and 125% of the level of turnover specified in the financial plan. Sharing turnover increase shall apply after there has been an adjustment of the costs of products or public service fees or an amendment to the PPP project contractual term in accordance with articles 50, 51 and 65 of this Law, and the State Audit Office has audited the turnover increase.
- 2 When the actual turnover is lower than 75% of the level of turnover set out in the financial plan in the PPP project contract, the State shall share with the investor and PPP project enterprise 50% of the difference between 75% of the level of turnover set out in the financial plan and the actual turnover. Sharing turnover shortfall shall apply upon satisfaction of the following conditions:
- (a) The project applies the contract type being BOT, BTO or BOO;
 - (b) The relevant master planning, policies and/or law changed resulting in a turnover shortfall;
 - (c) All measures have already been taken being adjustment of the costs of products or public service fees or adjustment of the term of the PPP project contract prescribed in articles 50, 51 and 65 of this Law but still the minimum 75% level of turnover was not ensured;
 - (d) The State Audit Office has audited the turnover shortfall.
- 3 The regime prescribed in clause 2 above must be set out in the investment policy decision. Funding for dealing with the regime on sharing revenue shortfall is sourced from the central budget reserve source in the case of a project for which the National Assembly, the Prime Minister, a minister or head of a central or other agency makes the investment policy decision, or from the local budget reserve source in the case of a project for which the provincial people's council makes the investment policy decision.

- 4 On an annual basis, the parties to the PPP project contract shall determine the actual turnover and send same to the financial agency authorized to implement the regime on sharing revenue increase or shortfall. When sharing revenue increase or shortfall, the State budget income and expenditure shall be accounted for in accordance with the law on State budget.
- 5 The Government shall provide detailed regulations on this article.

CHAPTER 8

Checks and Inspections, State Audit and Supervision of Investment Activities in the PPP Form

Section 1

Checks and Inspections and State Audit of Investment Activities in the PPP Form

Article 83 *Checks of investment activities in the PPP form*

- 1 The contents of a check of investment activities in the PPP form comprise:
 - (a) Issuance of guidelines on investment in the PPP form by the authorized agency;
 - (b) Investment preparation; selection of investor, of entering into and performance of contracts;
 - (c) Other checks related to investment in the PPP form.
- 2 Checks of investment activities in the PPP form are carried out on a regular or one-off basis pursuant to a decision of the head of the agency authorized to carry out checks.

Article 84 *Inspections of investment activities in the PPP form*

- 1 Inspections of investment activities in the PPP form means specialized branch inspections in accordance with the law on inspections.
- 2 Specialized branch inspections shall be carried out of the authorized agency, the agency entering into the contract, the investor, PPP project enterprise, and other agencies, organizations and individuals involved in investment activities in the PPP form pursuant to the provisions of this Law.

Article 85 *State audits of investment activities in the PPP form*

- 1 An audit of management and use of public finance and public assets, and activities relating to the management and use of public finance and public assets involved in the PPP project is conducted in accordance with the law on State audit.
- 2 An audit is conducted when implementing the regime on sharing turnover increase or shortfall as prescribed in article 82 of this Law.
- 3 There shall be an audit of the entire value of the assets of the PPP project when [the project] is transferred to the State.

Section 2

Supervision of Investment Activities in the PPP Form

Article 86 *Supervision by State administrative agencies of investment in the PPP Form*

- 1 State administrative agencies of investment in the PPP Form at the central level shall supervise the process of implementing any PPP project as prescribed in sub-clauses (a), (b) and (c) of article 4.3 of this Law and other projects when assigned by the National Assembly or Prime Minister.

- 2 State administrative agencies for investment in the PPP Form at the local level shall supervise the process of implementing any PPP project as prescribed in article 4.3(d) of this Law.

Article 87 *Contents of supervision by State administrative agencies of investment in the PPP form*

- 1 Tender invitation documents.
- 2 Results of selection of investor.
- 3 Implementation of PPP project contracts.
- 4 Results of testing quality of the project facility as prescribed in article 59.2(c) of this Law.
- 5 Results of assessing quality of products and public services as prescribed in article 66.2 of this Law.
- 6 Other items when requested by the National Assembly or the Prime Minister in cases prescribed in article 86.1 of this Law, or by a provincial people's council in cases prescribed in article 86.2 of this Law.

Article 88 *Supervision by Vietnam Fatherland Front and the community*

Vietnam Fatherland Front at all levels shall preside over arranging supervision and guidance on supervision of investment by the community in the area where a PPP project is implemented in accordance with the law on Vietnam Fatherland Front and the law on supervision of investments by the community.

CHAPTER 9

Duties, Powers and Responsibilities of State Administrative Agencies during PPP Investment

Article 89 *Duties and powers of the Government and Prime Minister*

- 1 The Government has the following duties and powers:
 - (a) To exercise uniform State administration of investment in the PPP form;
 - (b) To issue in accordance with its authority or to submit to the authorized level to issue legal instruments on investment in the PPP form;
 - (c) To conduct checks and inspections of implementation of investment in the PPP form.
- 2 The Prime Minister has the following duties and powers:
 - (a) To issue in accordance with his authority legal instruments on investment in the PPP form;
 - (b) To issue decisions terminating or suspending contracts for PPP projects for which the National Assembly or Prime Minister has authority to make the investment policy decision.

Article 90 *Duties and powers of the Ministry of Planning and Investment [MPI]*

- 1 To undertake the function of the State administrative agency for investment in the PPP form at the central level with responsibility to the Government to exercise State management of investment in the PPP form throughout the entire country.
- 2 To issue in accordance with its authority or to submit to the authorized level to issue legal instruments relating to investment in the PPP form.
- 3 To preside over coordination with other competent agencies in conducting supervision, checks and inspections and annually to provide overall assessments of the status of implementation of PPP projects throughout the entire country.

- 4 To formulate and manage an information system and database on investment in the PPP form.
- 5 To undertake other duties and exercise other powers as stipulated by law.

Article 91 *Duties and powers of the Ministry of Finance*

- 1 To issue in accordance with its authority or submit to the authorized level to issue legal instruments on the financial regime for investment in the PPP form.
- 2 To preside over formulation and implementation of the regime on sharing revenue increase or shortfall in the case of projects within the authority of the National Assembly, Prime Minister, minister or head of a central or other agency to make the investment policy decision.
- 3 To undertake other duties and exercise other powers as stipulated by law.

Article 92 *Duties and powers of ministries, central and other agencies*

- 1 To manage and guide investment in the PPP form in the sectors and within the scope under their management.
- 2 To undertake the responsibilities of authorized agencies as prescribed in article 94 of this Law with respect to PPP projects within their authority.
- 3 Annually, to provide overall assessments of and reports on the status of implementation of PPP projects within the scope of branch management.
- 4 To undertake other duties and exercise other powers as stipulated by law.

Article 93 *Duties and powers of provincial people's committees*

- 1 To undertake the function of the State administrative agency for investment in the PPP form within the locality [of the province].
- 2 To undertake the responsibilities of the authorized agency as prescribed in article 94 of this Law with respect to PPP projects within their authority; and to make decisions on termination or suspension of PPP project contracts in the case of projects within the authority of the provincial people's council to make the investment policy decision.
- 3 Annually, to provide overall assessments of and reports on the status of implementation of PPP projects within the scope of managerial authority in the locality.
- 4 To preside over coordination with PPP project enterprises in arranging payment of compensation, site clearance, assistance and resettlement of citizens in the case of PPP projects managed by the locality; and to preside over coordination with ministries, central and other agencies, and PPP project enterprises in arranging payment of compensation, assistance and resettlement in the case of PPP projects within the managerial authority of these latter-mentioned agencies;
- 5 To undertake other duties and exercise other powers as stipulated by law.

Article 94 *Responsibilities of the authorized agency*

- 1 To arrange formulation of the pre-feasibility study report and of the feasibility study report for a PPP project, to arrange selection of investor, and to negotiate and sign a PPP project contract within the scope of authority stipulated in this Law.
- 2 To cancel or suspend tendering, or not to recognize the results of selection of investor, or to declare invalid the decision of the party inviting tenders on discovery of a breach of the law on investment in the PPP form or of the regulations on selection of investor or other regulations.

- 3 To make a decision terminating or suspending a PPP project contract of any project for which such agency has authority to make the investment policy decision in accordance with this Law.
- 4 To require the party calling for tenders or the agency entering into the PPP contract to provide files and data to serve the work of checks and inspections, supervision, monitoring, and resolution of protests or in order to deal with any breach of the law on investment in the PPP form.
- 5 To pay compensation in accordance with law.
- 6 To provide an explanation on the agency's implementation of any of the provisions in this article when requested by a higher level authority or by an agency conducting a check or inspection, an audit or supervision, or by the State administrative agency for investment in the PPP form.
- 7 To publicize information about PPP projects and to provide periodical reports to the State administrative agency for investment in the PPP form at the central level regarding the status of implementation of projects within its authority.
- 8 To undertake other duties as stipulated in this Law.

CHAPTER 10

Resolution of Protests and Disputes, and Dealing with Breaches

Article 95 *Resolution of protests about selection of investor*

- 1 An investor who considers that its lawful rights and interests are affected, has the following rights:
 - (a) To make a protest to the party calling for tenders and/or the authorized agency about the process of selection of investor, or about the results of selection of investor in accordance with the procedures for resolution of protests stipulated in article 96 of this Law;
 - (b) To initiate a legal action at a court within the statutory limitation period prescribed in the civil law.
- 2 The party calling for tenders and/or the authorized agency shall not consider and resolve the protest if the investor has initiated a legal action at a court; if [the protest] is being considered and resolved in accordance with the process prescribed in article 96 of this Law, the agency currently resolving the protest shall issue a notice terminating the consideration and resolution.

Article 96 *Procedures for resolution of protests in selection of investor*

- 1 The procedures for resolution of a protest on any issue during selection of investor are implemented as follows:
 - (a) The investor sends a written protest to the party calling for tenders from the time the issue occurs until the notice of the results of selection of investor is issued;
 - (b) The party calling for tenders must, within seven (7) working days after the date of receipt of the written protest from the investor, send a letter to the investor resolving the protest;
 - (c) If the party calling for tenders does not provide a letter resolving the protest or the investor disagrees with the results of resolution of the protest, the investor has the right to send the written protest to the authorized agency within five (5) working days from the date of expiry of the time-limit for reply or from the date of receipt of the letter from the party calling for tenders resolving the protest;
 - (d) The authorized agency must, within seven (7) working days after the date of receipt of the written protest from the investor, send a letter to the investor resolving the protest.

- 2 The procedures for resolution of a protest on the results of selection of investor are implemented as follows:
- (a) The investor sends a written request to the party calling for tenders within ten (10) days after the date or receipt of the notice of the results of selection of investor;
 - (b) The party calling for tenders must, within fifteen (15) days after the date of receipt of the written protest from the investor, send a letter to the investor resolving the protest;
 - (c) If the party calling for tenders does not provide a written resolution [results] of the protest or the investor disagrees with the results of resolution of the protest, the investor has the right to send the written protest to both the authorized agency and the standing agency of the Consulting Council for Resolution of Protests within five (5) working days from the date of expiry of the time-limit for reply or from the date of receipt of the letter from the party calling for tenders resolving the protest.
- The Consulting Council for Resolution of Protests ["the Council"] at the central level is established by MPI; at the level of a ministry, central agency or other agency it is established by the head of such ministry or agency; and at the local level it is established by the chairman of a provincial people's committee.
- (d) Upon receipt of the written protest, the Council has the right to request that the investor, the party calling for tenders and relevant agencies provide information for its review and, within thirty (30) days from the date of receipt of the written protest from the investor, it sends a written report to the authorized agency on the plan for and contents of reply to the protest.
 - (dd) Where necessary, the Council relies on the written protest of the investor to request that the authorized agency consider temporarily suspending the tendering. In the case of approval, the authorized agency shall, within five (5) working days from the date of receipt of the letter from the Council, provide a written notice of the temporary suspension of the tendering. The document on temporary suspension of the tendering must be sent to the party calling for tenders and the investor within five (5) working days after the date of the written notice. The duration of temporary suspension of the tendering is calculated from the date on which the party calling for tenders receives the notice of temporary suspension up to the date on which the authorized agency issues a letter resolving the protest.
 - (e) The authorized agency issues a decision resolving the protest about the results of selection of investor within ten (10) days from the date of receipt of the written opinion from the Consulting Council for Resolution of Protests.
- 3 If a tenderer or investor sends a written protest directly to the authorized agency without complying with the procedures for resolution of protests stipulated in this article, such written protest shall not be considered and resolved.

Article 97 *Dispute resolution*

- 1 Any dispute between the authorized agency or agency signing/entering into the PPP contract on the one hand and an investor or PPP project enterprise on the other, and any dispute between a project enterprise on the one hand and other economic organizations participating in project implementation is resolved through negotiation, conciliation, arbitration or a court.
- 2 Any dispute between the authorized agency or agency entering into the PPP contract on the one hand and a domestic investor or PPP project enterprise established by a domestic investor on the other, or any dispute between domestic investors or any dispute between a domestic investor or a PPP project enterprise established by a domestic investor on the one hand and Vietnamese economic organizations on the other, is resolved at a Vietnamese arbitration [agency] or court.

- 3 Any dispute between the authorized agency or agency entering into the PPP contract on the one hand and a foreign investor or PPP project enterprise established by a foreign investor on the other is resolved at a Vietnamese arbitration [agency] or Vietnamese court, unless otherwise agreed in the contract or unless otherwise stipulated in an international treaty of which Vietnam is a member.
- 4 Any dispute between investors in which there is at least one (1) foreign investor or any dispute between an investor or PPP project enterprise on the one hand and a foreign organization or individual on the other is resolved at one of the following agencies and organizations:
 - (a) Vietnamese arbitrator;
 - (b) Vietnamese court;
 - (c) Foreign arbitrator;
 - (d) International arbitrator;
 - (dd) Arbitration on which the parties in dispute reach agreement to establish.
- 5 Any dispute which is resolved by arbitration in accordance with the PPP project contract and relevant contracts is a commercial dispute. The verdict of a foreign arbitrator is recognized and enforced in accordance with the law on recognition and enforcement of verdicts in Vietnam of foreign arbitrators.

Article 98 *Dealing with breaches in conducting PPP investment*

- 1 Any organization or individual in breach of the provisions of article 10 of this Law shall be prohibited from participating in investment activities in the PPP form.
- 2 Cancellation of the tendering or suspension of the tendering, or not recognizing the results of selection of investor or declaring invalid a decision of the authorized agency or of the agency signing the PPP contract or of the party calling for tenders on discovery of a breach of the provisions of this Law or other relevant law.
- 3 Termination or suspension of the contract on discovery of a contractual breach or a breach of the provisions of this Law or other relevant laws.
- 4 In addition to the forms of dealing with breaches prescribed in clauses 1, 2 and 3 above, any organization or individual in breach of the law on the PPP investment form shall also be disciplined, subject to an administrative penalty or prosecuted for criminal liability in accordance with law, depending on the nature and seriousness of the breach.
- 5 The Government shall provide detailed regulations on this article.

CHAPTER 11

Implementing Provisions

Article 99 *Amendment to relevant Laws*

- 1 The following articles of *Law 43/2013/QH13 on Tendering* as amended by *Law 03/2016/QH14*, *Law 04/2017/QH14* and *Law 40/2019/QH14* are amended as follows:
 - (a) Article 1.3 [of the Law on Tendering] is amended as follows:

"3. Selection of investor to implement an investment project using land.";
 - (b) Article 3.2 [of the Law on Tendering] is amended as follows:

- "2. In a case of selection of a contractor to provide raw materials, fuel, other materials and supplies, consultancy or non-consultancy services to ensure continuity of business and production activities and for procurement aimed at maintaining regular activities of a State owned enterprise, then the enterprise must issue rules on selection of contractor for uniform application throughout the enterprise on the basis of ensuring the objectives of fairness, transparency and economic efficiency.";
- (c) Clause 10 of article 4 [of the Law on Tendering] is amended as follows:
- "10. *Project Enterprise* means an enterprise which the investor establishes to implement the project using land."
- (d) Clause 12 of article 4 [of the Law on Tendering] is amended as follows:
- "12. *Tendering* means the process of selection of contractor to enter into and perform a contract for the provision of consultancy or non-consultancy services, for procurement of goods, for construction and installation; or selection of investor to enter into and perform an investment project using land on the basis of ensuring competition, fairness, transparency and economic efficiency.";
- (dd) Article 6.4 [of the Law on Tendering] is amended as follows:
- "4. Investors participating in tendering must be legally independent and financially independent of the following parties:
- (a) Bidding/tendering consultants in the case of a project using land up until the date of entering into the project contract;
- (b) The authorized State agency and the party inviting tenders.";
- (e) Article 8.1(i) [of the Law on Tendering] is amended as follows:
- "(i) List of investment projects using land.";
- (g) Article 15.2 [of the Law on Tendering] is amended as follows:
- "2. Investment projects using land, except in the case of limited tendering as stipulated on the law on tendering.".
- (h) Article 68 is repealed.
- 2 Clause 4 of article 40 of *Law 39/2019/QH14 on Public Investment* is amended as follows:
- "4. The principles, authority, contents, sequence and procedures for formulation, evaluation and making the decision on the feasibility study report for the project in the case of a PPP project shall be implemented in accordance with the law on investment in the PPP form.".
- 3 Clause 2 of article 20 [*Principles for price determination by the State*] of *Law 11/2012/QH13 on Pricing* as amended by *Law 61/2014/QH13* is amended as follows:
- "2. Prompt adjustment of prices when their constituent elements change, in particular the price of products and public services in a PPP project shall be adjusted at each cycle/period stipulated in the project contract.".
- 4 The following articles of *Law 04/2017/QH14 on Support of Small and Medium-Sized Enterprises* are amended as follows:

- (a) Clause 2 of article 12 [*Support for technology; and support for incubators, technical facilities and common working areas*] is amended as follows:
- "2. Ministries, ministerial equivalent agencies and provincial people's committees shall establish incubators, technical facilities and common working areas. Other enterprises and investment and business organizations are permitted to establish incubators, technical facilities and common working areas.";
- (b) Clause 1 of article 13 [*Support for market expansion*] is amended as follows:
- "1. Ministries, ministerial equivalent agencies and provincial people's committees shall establish product distribution chains. Other enterprises and investment and business organizations are permitted to establish product distribution chains.".
- 5 Clause 2 of article 39 of *Law 90/2015/QH13 on Hydro-meteorology* as amended by *Law 35/2018/QH14* is amended as follows:
- "2. Public professional hydro-meteorological organizations shall provide hydro-meteorological services within the scope of their functions and duties stipulated by competent State agencies in accordance with this Law and relevant laws; and may exploit hydro-meteorological products and services of other organizations and individuals on the basis of order placement or agreement in accordance with law.
- Other organizations and individuals shall provide hydro-meteorological services in accordance with this Law and relevant laws.".
- 6 The following articles of *Law 65/2014/QH13 on Residential Housing* as amended by *Law 40/2019/QH14* are amended as follows:
- (a) Clause 3 of article 36 [*Forms of residential housing arrangement for resettlement*] is amended as follows:
- "3. The State directly invests in construction of residential housing with capital from the State budget, national bonds, bonds, official development aid, preferential loans of donors, and credit capital for investment and development of the State on areas of land identified for construction of residential housing for resettlement according to approved zoning for lease, hire purchase or sale to people entitled to resettlement.";
- (b) Clause 1 of article 53 [*Forms of social residential housing development for lease, hire purchase or sale*] is amended as follows:
- "1. The State invests in construction of social residential housing with the State budget capital, national bonds, bonds, official development aid capital, preferential loans from donors, and credit capital for investment and development of the State on areas of land identified for construction of social residential housing as prescribed for lease and hire purchase.";
- (c) Sub-clause (b) of article 40.3 and sub-clause (b) of article 114.1 are repealed.
- 7 Clauses 4(c) and 5 of article 30 and clause 4 of article 51 of *Law 15/2017/QH14 on Management and Use of Public Assets* are repealed.

Article 100 Effectiveness

- 1 This Law is of full force and effect as from 1 January 2021, except for article 101.6 of this Law.

- 2 The Government and competent State administrative agencies shall provide detailed regulations on the articles assigned to them in this Law.

Article 101 *Transitional provision*

- 1 Projects which are in the sectors prescribed in article 4.1 of this Law and satisfy the minimum total investment capital amounts prescribed in article 4.2 of this Law are implemented as follows:
 - (a) If the authorized level issued the investment policy decision prior to the effective date of this Law, the next steps shall be implemented in accordance with this Law. If the investment policy is required to be amended, article 18 of this Law shall apply.
 - (b) If the authorized level approved the feasibility study report prior to the effective date of this Law, the next steps shall be implemented in accordance with this Law and the procedures for approval of the project in accordance with this Law are not required to be carried out; it is required to approve additional items in accordance with article 23.6 of this Law where selection of investor has not yet been held;
 - (c) In the case of a project falling into the case prescribed in sub-clause (a) or (b) above, if the State capital ratio in the PPP project is higher than the ratio prescribed in article 69.2 of this Law, it is not required to adjust the State capital ratio.
- 2 The implementation of projects which are not in the sectors prescribed in article 4.1 of this Law or do not satisfy the minimum total investment capital amounts prescribed in article 4.2 of this Law and for which the results of pre-qualification of investors have not yet been approved or the tender invitation documents or set of requirements in the case of a project not applying pre-qualification has not yet been issued as at the effective date of this Law, shall be stopped.
- 3 A PPP project which is currently holding selection of investor is implemented as follows:
 - (a) If the results of pre-qualification of investors were approved prior to the effective date of this Law, the project shall continue to be implemented in accordance with this Law;
 - (b) If the tender invitation documents or set of requirements was issued prior to the effective date of this Law but the closure of tenders occurs after 31 December 2020, the party inviting tenders is responsible to extend the period for closure of tenders for the purpose of amending the tender invitation documents or set of requirements in accordance with this Law without amending the approved investment policy decision and feasibility study report;
 - (c) If the results of selection of investor were provided but the negotiation and/or execution of the contract is carried out after the effective date of this Law, the agency signing the contract is responsible to organize negotiation and/or signing of the contract on the basis of the results of selection of investor, the tender, the set of proposals, the tender invitation documents and the set of requirements in accordance with this Law without amending the approved investment policy decision and feasibility study report.
- 4 Any project contract which was signed prior to the effective date of this Law shall continue to be implemented in accordance with the provisions of the project contract.
- 5 From the effective date of this Law, the transition for implementation of a project applying the form of Build-Transfer (BT) contract is as follows:
 - (a) A project for which the tender invitation documents or set of requirements has not yet been issued shall be stopped; if the tender invitation documents or set of requirements has been issued, the project shall continue to be implemented on the basis of the tender invitation documents or set of requirements and the law at the time of issuance of the tender invitation documents or set of requirements;

- (b) If the results of selection of investor for the project were provided prior to the effective date of this Law, the agency signing the contract is responsible to organize negotiation and/or signing of the contract on the basis of the results of selection of investor, the tender, the set of proposals, the tender invitation documents, the set of requirements and the provisions of law at the time of issuance of the tender invitation documents or set of requirements;
 - (c) A project for which the contract was signed prior to the effective date of this Law shall continue to be implemented and payment shall continue to be made in accordance with the signed BT contract and the provisions of law at the time of signing the contract;
 - (d) Implementation of a new project applying the form of BT contract shall be stopped.
- 6 Implementation of projects applying the form of BT contract for which investment policy approval has not yet been provided shall be stopped as from 15 August 2020.
- 7 Implementation of projects not in the sectors prescribed in article 4.1 of this Law or not satisfying the minimum total investment capital amounts prescribed in article 4.2 of this Law shall be stopped as from the effective date of this Law.
- 8 The Government shall provide detailed regulations on this article.

This Law was passed by Legislature XIV of the National Assembly of the Socialist Republic of Vietnam at its 9th session on 18 June 2020.

Chairperson of the National Assembly
NGUYEN THI KIM NGAN