

DRAFT
March 2020

[HKBAV General Comments:

Overall, the draft Law on Public-Private Partnership (“Draft”) is comprehensive and is a good legal framework for PPP projects in Vietnam. Some of the positive changes are:

1. The Draft gives emphasis to transparency in the selection of investors and access to information on bidding.
2. It allows for English to be used as the language for proposals and bidding documentation where foreign investors are involved.
3. There are detailed provisions on the various ways investor is selected.
4. There is recognition of termination payments to be made by the Government if contracts are terminated due to Government default to be paid from State capital.
5. There is recognition of the step-in rights of lenders.
6. Investors can issue corporate bonds to raise funds and can IPO upon completion of construction.
7. Incentives are also available as well as investment guarantees. For important PPP projects there is a 30% foreign exchange availability guarantee.
8. The Government and investors and PPP project companies will share 50% of revenue risks in the event of decrease in revenue but conversely when there is an increase, this must also be shared on a 50-50 basis.

However, there are a few issues we would like to highlight for reconsideration.

1. Offshore lenders should have the right to take security over land and buildings and we recommend an exception be made for PPP projects. The step-in rights are not exactly the same as rights over security. Allowing offshore lenders to take security over land and assets on land for PPP projects will help create favorable conditions for PPP projects to raise funding.
2. Governing law in offshore loan agreements should remain foreign law as is the current practice. The Draft requires VN law to govern and this will be very difficult to raise financing from offshore lenders and is contrary to current practice. For the

main PPP contract we suggest the governing law language currently used in foreign-invested BOT contracts.

3. We are unsure as to whether the cap of 30% on foreign exchange availability guarantee for “important” PPP projects will be acceptable to offshore lenders. We do recognize that this is a tremendous effort by the Government to provide this in the Law. If the bidding documents are prepared so that the project is viable, this may mitigate the risks for lenders and investors. That is why as set out below, we believe capacity building and transparency are key to the success of the program and highly recommend the Government to look at examples of other ASEAN countries.
4. Finally, the success of a PPP program depends also on capacity building and ensuring that bidding documents and contracts are prepared so that the projects are financeable to bridge the funding gap.

In this regard, we highly recommend that the Government consider the model that the Philippines Government has put in place since 1994 that has enabled it to encourage more than PHP2.1 trillion in PPP projects in 143 projects. These are some of the actions they took:

- They set up a PPP Center for “providing advisory services, technical assistance, training and capacity development to agencies in PPP project preparation and development.” With this, the Center institutionalized a capacity building program that would promote an environment conducive to the promotion of PPP projects as a viable option for development.
- There is also a Project Development & Management Facility (PFMF) a revolving fund of about 54 million USD established by the Government aimed at enhancing the investment environment for PPP projects and building a robust pipeline of viable and well prepared PPP projects with the assistance of a list of approved consultants.
- The PPP Center has a comprehensive website that covers all PPP-related issues: <https://ppp.gov.ph>. The website sets out clear guidelines about: the PPP Center Programs, Projects, Project Development and Monitory Facility (PDMF) discussed below, Resources, Local PPPs, Investors’ Corner as well as a list of PPP Center’s Partners. We believe the MPI will be the equivalent of the PPP Center. We recommend that it creates a website similar to that in the Philippines so investors and stakeholders can access clear information on process, guidelines.
- The website also include an excellent Generic Preferred Risk Allocation Matrix (a table of the common contractual issues with recommendations as to how risks are allocated (https://ppp.gov.ph/?press_releases=generic-preferred-risks-allocation-matrix-gpram)).
- We recommend the drafters to have a look at the website both in terms of how issues are dealt with as well as the depth of the information provided to the public.

- Finally, we recognize that one size does not fit all and the law should keep a certain amount of flexibility so that all issues can be considered appropriate to each type of project.]

LAW ON PUBLIC - PRIVATE PARTNERSHIP INVESTMENT

Pursuant to the Constitution of the Socialist Republic of Vietnam, the National Assembly hereby promulgates the Law on Public – Private Partnership Investment.

Chapter I

GENERAL PROVISIONS

Article 1. Governing scope

This Law shall govern to investment activities in public private partnership; management activities of the State; rights, obligations and responsibilities of the agencies, organizations and individuals relating to public private partnership investments.

Article 2. Applicable entities

This Law applies to the stakeholders in PPP contract, the State management agencies, organizations and individuals involved in investment activities under PPP form.

Article 3. Application of the Law and international treaties

1. Investment activities in PPP form shall comply with provisions herein and other regulations of relevant Laws.

2. In case of any discrepancies between this Law and other laws in terms of investment process and procedures of PPP project; PPP project enterprise's activities; applicable laws; guarantees; mechanism for management of State budget for PPP projects, this Law shall prevail.

3. In case the international treaties where the Socialist Republic of Vietnam is a member have different provisions to this Law, such international treaties shall prevail.

Article 4. Interpretation of terms

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

1. *Public private partnership investment form (hereinafter referred to as PPP)* means investment model conducted on basis of time-limited partnership between State/public sector and private/private sector by signing and implementing PPP contract, in order to engage the private/private sector in providing public goods, services of state's responsibility.

2. *Project delivered under public private partnership investment form (hereinafter referred to as PPP project)* means a collection of proposals relating to investment in order to provide public goods, services through implementing one or several activities, as follows:

a) Constructing, operating, conducting business activities of infrastructure facilities, infrastructure systems;

b) Renovating, upgrading, expanding, modernizing, operating, conducting business activities of existing infrastructure facilities and systems;

c) Operating the existing infrastructure facilities and systems.

3. *PPP project contract* means agreement in writing between a contract signing agency and an investor, project enterprise on concession of a PPP project in accordance with provisions herein.

4. *Pre-feasibility study* means a document presenting the contents of preliminary study on the necessity, feasibility and effectiveness of PPP project.

5. *Feasibility study* means a document presenting contents on study on the necessity, feasibility and effectiveness of PPP project.

6. *PPP Investor (hereinafter referred to as Investor)* mean an organization with juridical status established in accordance with laws and regulations which participate in PPP investment. Investor may either be an independent legal entity or partnership of a number of legal entities to jointly participate in PPP investment.

7. *PPP Project enterprise* means an enterprise established by PPP investor for the only purpose of signing and implementing one PPP project contract.

8. *Lender* means an organization, individual providing loans to investors, PPP project enterprises to implement a PPP project contract. *JHKBAV: Please confirm offshore lenders are included in this definition.*

9. *PPP Project preparation unit* means an unit assigned by the competent agency or an investor to prepare pre-feasibility study report, feasibility study report and undertake other relevant tasks.

10. *Investor selection* means the process of identifying investor(s) who have sufficient capacity, experience, and feasible solutions to implement PPP projects on the principle of ensuring competition, fairness, transparency and economic efficiency.

11. *Procuring Entity* means an unit with expertise and capability, assigned by the competent agency to organize the investor selection.

12. *Pre-qualification documents* mean all documents requiring proof of capacity and experiences of investors for the procuring entity to select an short-list.

13. *Application for pre-qualification* mean all documents prepared and submitted by investor to the procuring entity as requested by pre-qualification documents.

14. *Request for proposals* mean all documents including project requirements, serving as a basis for investors to prepare bids; for the procuring entity to evaluate bids and negotiate contract in order to select investor who qualifies the project performance requirements.

15. *Proposals* mean all documents prepared and submitted by investors to the procuring entity as requested in the request for proposals.

16. *Short list* means a list of investors passing pre-qualification in case of open bidding with pre-qualification or a list of investors who are invited for competitive negotiation.

17. *State capital in PPP project* includes state budget capital and other legitimate revenue sources from state agencies and public non – business units.

Article 5. PPP investment sectors, scale and classification of PPP projects

1. PPP investment sectors include:

a) Transport;

b) Power plants, power grids;

c) Water supply; drainage, and wastewater treatment; waste treatment;

d) Office buildings for the State agencies; *[HKBAV: Does this include State-owned enterprises, the army and navy?]*

dd) Infrastructure for healthcare; education; training;

e) Infrastructure for application of information technology;

2. In case a project does not fall within the sector specified in Clause 1 of this Article, the competent agency shall report to the Prime Minister for permission to carry out the project under PPP form provided that all of the following conditions are fully met:

a) Project falls within sectors prescribed in law on public investment;

b) Ability to be balanced in state capital when delivered under PPP model;

c) Being more feasible than public investment.

3. Based on demand and resources for socio – economic development in each period, the Government shall provide detailed regulation on the investment sector stipulated in clause 1 of this Article and the minimum total investment capital of a PPP project for each sector, but not below VND 200 billion, except for projects applying Operate – Manage contract.

4. PPP projects are categorized as below:

- a) Project for which the National Assembly having the authority to decide on investment policy;
- b) Project for which the Prime Minister having the authority to decide on investment policy;
- c) Project for which the Ministries, central agencies and other agencies having the authority to decide on investment policy;
- d) Project for which the Provincial People's Councils having the authority to decide on investment policy.

Article 6. The Competent Agencies and the Contract Signing Agencies
[HKBAV comments on Articles 6-7: We stress that capacity to appraise, approve projects and arrange for bid documentation to be prepared that are financeable is key to the success of a PPP program. In light of this, as discussed in the General Comments above, we would like to draw your attention to the model the Philippines has adopted. A total of PHP2.1 trillion has been invested in PPP projects there.]

1. The Competent Agencies include:

- a) Ministries, ministerial-level agencies, the Government's agencies, the central agencies of political organizations, the Supreme People's Procuracy, the Supreme People's Court, the State Audit, Office of the President, Office of the National Assembly, the central agencies of Vietnamese Fatherland Front and socio-political organizations (hereinafter referred to as ministries and central agencies);
- b) Provincial People's Committee;
- c) Other agencies include: agencies, organizations established by the Government and the Prime Minister and assigned budget estimates according to the law on State budget.

2. The agencies signing PPP project contracts include:

- a) The competent agencies defined in clause 1 of this Article;
- b) The agencies and units authorized by competent agencies to sign contracts according to the provisions of clause 4 of this Article.

3. In case projects are under management of many ministries, central agencies, and Provincial People's Committees or in case of changing the competent agencies, these agencies shall report to Prime Minister to decide one competent agency.

4. The competent agencies stipulated in clause 1 could authorize their belonged agencies or units to act as the contract signing agency.

Article 7. Appraisal Councils of PPP projects

1. Appraisal Councils of PPP projects include:

- a) State Appraisal Council shall appraise pre-feasibility study and feasibility study of PPP projects of which the investment policy is approved by the National Assembly;

b) Inter-sectorial Councils shall appraise pre-feasibility study and feasibility study of PPP projects of which the investment policy is approved by the Prime Minister.

c) Internal Appraisal Council shall appraise pre-feasibility study and feasibility study of projects of which the investment policy is approved by the ministries, central agencies, other agencies and the Provincial People's Council.

2. The Prime Minister shall decide on the establishment of Appraisal Councils of PPP projects as regulated in Point a and b Clause 1 of this Article, at the request of the Minister of Planning and Investment.

3. Based on project size and project nature, the ministries, central agencies and other agencies, Provincial People's Committees shall establish the Internal Appraisal Council as stipulated in Point c Clause 1 of this Article or assign one belonged unit to appraise pre-feasibility study and feasibility study of PPP project.

4. The Appraisal Councils of PPP projects are allowed to hire consultant to assist implementation of their tasks.

5. The Government shall provide guidance for this Article.

Article 8. Management principles for PPP investment

1. Conform to the socio-economic development strategies and plans of the country and relevant planning schemes in accordance with laws and regulations on planning.

2. Management and use of State budget in PPP projects in accordance with provisions herein and other provisions of relevant laws and regulations.

3. The implementation of state inspection and auditing activities, supervision of PPP projects in accordance with provisions herein, ensuring not preventing the normal business activities of PPP investors, project enterprises.

4. Ensure that the investment is public transparent, equal, sustainable and effective.

5. Ensure the harmony of interest among the State, investors, users and the community.

Article 9. Contents of state management on PPP investment

1. Promulgating, propagating, disseminating and organizing implementation of legal documents on PPP investment

2. Summarizing, assessing and reporting on the status of implementation of PPP investment activities.

3. Checking, inspecting, and supervising the implementation of the laws and regulations on PPP investment.

4. Handling violations of organizations and individuals related to PPP investment activities; resolving petitions of investor selections.

5. Organizing and conducting investment promotion, international cooperation on PPP investment.

6. Providing guidance, support and resolution of procedure issues as required by investors, PPP project enterprises while implementing investment activities under PPP form.

Article 10. Openness and transparency in PPP investment

1. The main information shall be published in the National Procurement Network System, includes:

a) Information on investment policy decision, decision on the approval of feasibility study of PPP projects;

b) Information on investor selection, including: invitation for pre-qualification, bid invitation, short lists, results of investor selection;

c) Information on the selected investors, PPP project enterprises;

d) Basic contents of PPP project contracts;

dd) The settlement value of public investment capital in PPP projects (if any);

e) Legal documents about PPP investment;

g) Database about the investors;

h) Information on handling of violation of legal regulations on PPP investment;

2. In addition to the publication on the National Procurement Network System, the information specified at Point a, b, c and d, Clause 1 of this Article must be published on the website of the Authorized State Agencies (if any).

3. Other information specified in Clause 1 of this Article is encouraged to be published in other mass media.

Article 11. Prohibited acts in PPP investments

1. The decision on investment policy of PPP project is inconsistent with strategies, planning and plans; the sources of State capital in PPP projects are not defined in case the project require to use; beyond the scope of authority, processes and procedures according to the regulation of this Law.

2. Approval of feasibility studies without obtaining the decision of investment policy; inconsistent with the decision of investment policy; beyond the scope of authority, processes and procedures according to the regulation of this Law.

3. The competent agencies, the contract signing agencies collude with consultants and investors leading to approval of investment policies, approval of feasibility study of

PPP projects which cause wastes and losses of State capital or assets, national resources, damages to the benefits of citizens and communities;

4. Not ensuring the fairness and transparency in investor selection, including the following acts:

a) Participate in the procurement as an investor in the project for which they are the procuring entity, the competent agency, the contract signing agency or implement the duties of the procuring entity, the competent agency and the contract signing agency;

b) Participate in the preparation, at the same time appraise the request for pre-qualification, request for proposal; participate in evaluating bidding documents and the result of investor selection for the same project;

c) Being an individual belonging to the procuring entity, the competent agency, the contract signing agency but directly participating in the process of investor selection or participating in the expert group, the appraisal team of investor selection result or is the head of the competent agency, the contract signing agency, the procuring entity for projects that their parents/parents-in-law, wife/husband, offspring/adopt children, daughter-in-law, son-in-law, siblings name as bidder or is the legal representative of the investor participating in the procurement;

d) Bidding name of the project in which the competent agency, the contract signing agency or the procuring entity is the agency/organization where he/she has worked within 12 months from the termination date of job in that agency/organization.

5. Disclosure, receipts of following documents and information related to investor selection process:

a) Contents of request for prequalification, request for proposals before the stipulated time of issuance, except for cases where the project must conduct market surveys to prepare request for prequalification, request for proposals;

b) Contents of application for prequalification, bids, proposals, report of the procuring entity, report of the expert team, appraisal report, report of the consulting firm, report of professional agency involving in the process of investor selection, result of prequalification, result of investor selection before being publicized according to regulations.

c) Other documents in the selection process that are marked as confidential as prescribed by law.

6. Collusion, including the following practices:

a) Agreeing to withdraw from bidding or to withdraw the submitted bids so that one or more parties involving in the agreement to win the bidding;

b) Agreeing to let one party or more parties prepare bids for other parties in order

for one party to win the bidding.

7. Assignment of rights and obligations under PPP contract without compliance with the provisions herein.

8. Stop supplying the public products or services, except the case stipulated in the PPP project contract.

9. Send, receive and brokerage of bribes in investment activities under PPP form.

10. Abuse positions and powers to appropriate, make profit, and corrupt in managing and using the state capital in PPP projects; illegal intervention in the PPP project implementation process.

11. Fraud in PPP investment activities, including following behaviors:

a) Produce fake and incorrect information, documents and records related to the decision on investment policies, decisions on approval for feasibility study, investor selection, and project implementation to gain financial benefits or other benefits or to avoid any obligations;

b) Deliberately report or provide inaccurate and unobjective information to falsify the investment policies, the approved feasibility study, investor selection results, inspection, supervision, examination and audit results, the finalization of public investment capital, liquidation of PPP project contract results.

c) Deliberately providing untruthful and unobjective information falsifying data on the project's revenue in order to gain illicit profits.

12. Obstructing the detection of violations of the PPP investment regulations.

Article 12. Procedures for PPP project implementation

1. Procedure of PPP project implementation shall be as following:

a) Formulation, appraisal of pre-feasibility study, decision on investment policy, publication of the project;

b) Formulation, appraisal and approval of the feasibility study;

c) Selection of investor;

d) Establishment of PPP project enterprise and signing of contract;

dd) Implementation of the project.

2. For PPP projects applying high technology according to the list of high technology prioritized for development investment as regulated by the laws and regulations on high technology shall be as following:

- a) Formulation, appraisal of the pre-feasibility study, decision on investment policy, publication of the project;
- b) Investor selection;
- c) Formulation of the feasibility study (by the selected investors);
- d) Organization of appraisal and approval of the feasibility study;
- dd) Implementation of other steps as stipulated in Point d and dd Clause 1 of this Article.

3. For a BT contract type project, after the feasibility study report is approved, it is required to prepare, appraise and approve the design and cost estimate as the basis for organizing the investor selection. *[HKBAV: We assume that the BOT decree will be replaced by this Law or will it remain a separate piece of legislation? In this regard, how will current BOT projects licensed under the current Decree be treated?]*

4. In case the PPP project shall carry out contest and selection of architectural designs, the organization of contest and selection shall be conducted in accordance with laws on architecture and shall be considered and decided by the competent level in the decision on investment policy.

5. The Government shall provide detail regulations on this Article.

Chapter II

PREPARATION OF PROJECT

Section 1

PPP PROJECTS PROPOSED BY COMPETENT AGENCIES

Article 13. Authority to issue decisions on investment policy for PPP projects

1. The National Assembly shall make decisions on investment policy of PPP projects falling under one out of the following criterias:

- a) Using public investment capital of 10.000 billion VND or more;
- b) Having greatly affected on the environment or potentially serious affected on the environment, including: nuclear power plants; used land with requirement of changing the purpose of using national park land, nature conservation areas, landscape protection areas, scientific research or experimental forests of 50 hectares or more, headwater protection forest of 50 heactares or more; protective forest against wind, sand, wave break sea encroachment, environmental protection of 500 hectares or more; production forests of 1.000 hectares or more;
- c) Using land with the requirement of changing the purpose of use of wet rice land for two or more crops with a scale of 500 hectares or more;

d) Project moving and resettling at least 20.000 inhabitants in mountainous areas, at least 50.000 inhabitants in other regions;

dd) Projects requiring the application of special mechanism and policies to be decided by the National Assembly.

2. The Prime Minister shall make decisions on investment policy of PPP projects falling under one out of the following criterias, except projects stipulated in clause 1 of this Article:

a) Projects moving and resettling at least 10,000 inhabitants in mountainous areas or at least 20,000 inhabitants in other regions;

b) Project using the central state budget capital managed by ministries or central agencies, with a total investment equivalent to group A project stipulated in the law on public investment, project using ODA loans and concessional loans of foreign donors;

c) Projects for construction of new airports, airfields, terminals of international gateway airports;

d) Projects for construction: new airports, airfields; runways of airport and airfields; passenger terminal international airport; cargo terminal of airport and airfields with an annual capacity of at least 1 million tons;

dd) Projects with total investment of 10.000 billion VND or more;

e) Project applied BT contract with total investment equivalent to group A according to the law on public investment and using land fund for payment.

3. Ministers, the head of the central agencies and other agencies shall make decisions on investment policy of PPP projects under their management scope, except for projects stipulated in clause 2 of this Article.

4. The Provincial People's Council shall make decisions on investment policy of PPP projects under province's management, except for projects stipulate in clause 2 of this Article.

5. In case of adjusting the decision for investment policy of PPP project, the competence to decide on the adjustment of PPP project investment policy shall comply with clause 2, Article 19 of this Law.

Article 14. Procedures for approval on the investment policy of PPP projects

1. Regarding project of which investment policy is approved by the National Assembly:

a) The project preparation unit shall organize the preparation of pre-feasibility study as the basis for the competent agency to submit to the Government and send to Ministry of Planning and Investment in paralel;

b) Minister of Planning and Investment proposes Prime Minister to establish the State Appraisal Council;

c) The State Appraisal Council shall organize appraisal of the pre-feasibility study of the project. In case the project uses public investment capital, the appraisal of funding sources and balance capability of public investment capital shall be in accordance with the laws and regulations on public investment;

d) The Government shall submit a dossier requesting for approval on investment policy of the project to the National Assembly for consideration;

dd) The National Assembly's agency shall review the project dossier submitted by the Government;

e) The National Assembly shall consider, issue Resolution on approval of investment policy of the project.

2. Regarding project of which investment policy is approved by the Prime Minister:

a) The project preparation unit shall organize the preparation of pre-feasibility study as the basis for the competent agencies submits to Ministry of Planning and Investment;

b) The Ministry of Planning and Investment proposes Prime Minister to establish the Inter-Sectorial Appraisal Council;

c) The Inter-Sectorial Appraisal Council shall organize appraisal of the pre-feasibility study of the project;

d) The Ministry of Planning and Investment shall preside over the appraisal of funding sources and capacity for balancing funds for central budget capital in accordance with the laws and regulations on public investment in case the PPP project uses central budget's capital and send results to the Inter-Sectorial Appraisal Council;

dd) The agency specialized in management of public investment at the provincial level shall preside over the evaluation of funding sources and capacity for balancing funds for local budget's capital in accordance with laws and regulations on public investment in case the PPP project uses local budget's capital; send results to the Inter-Sectorial Appraisal Council;

e) The Inter- Sectorial Appraisal Council finalizes and submits the appraisal report to the competent agency;

g) The competent agency completes and submits all documents to the Prime Minister for consideration and decision.

h) The Prime Minister shall make decision on investment policy of PPP project.

3. Regarding project of which investment policy is approved by the Minister, the head of central agencies and other agencies:

a) The project preparation unit shall organize the preparation of pre-feasibility study of the project as the basis for submission to Minister, the head of central agencies and other agencies;

b) The internal Appraisal Council or the assigned units for appraisal shall organize the appraisal of pre - feasibility study of the project;

c) The agency specialized in management of public investment at Ministries, central agencies, other agencies shall preside over the appraisal of funding sources and capacity for balancing public investment funds in accordance with the law on public investment in case the PPP project use public investment fund, send results to the internal Appraisal Council;

d) The internal Appraisal Council or the assigned unit for appraisal completes and submits the appraisal report to the project preparation units;

dd) The project preparation unit finalizes all documents and submits to Minister, head of central agencies and other agencies for consideration;

e) Ministers, head of central agencies and other agencies shall make decision on investment policy of PPP project.

4. Regarding project of which investment policy is approved by the Provincial People's Council:

a) The project preparation unit shall organize the preparation of pre-feasibility study; submit to the Provincial People's Committee;

b) The internal Appraisal Council established by the Provincial People's Committee or the assigned unit for appraisal shall organize the appraisal of pre-feasibility study of the project;

c) The agency specialized in management of public investment at the provincial - level shall preside over the evaluation of funding sources and capacity for balancing funds for local budget's capital in accordance with laws and regulations on public investment in case the PPP project uses local budget's capital; send results to the internal Appraisal Council or the assigned unit for appraisal;

d) The internal Appraisal Councils or assigned unit for appraisal shall finalize and submit the appraisal report to the project preparation unit;

dd) The project preparation unit complete the pre-feasibility study, as the basis for the Provincial People's Committee submit to the Provincial People's Council on consideration and decision;

e) The Provincial People's Council shall make decision on the investment policy of the project.

5. For projects using recurrent capital sources or legal revenue sources of state agencies or public non-business units for payment to PPP project enterprises, the competent agencies shall determine the balance ability of budget as prescribed by law on state budget, submit to competent authorities for decision on investment policy.

Article 15. Formulation of Pre-feasibility study of PPP projects

1. Basis for formulation of the pre-feasibility study

a) Strategies and plans for socio-economic development of the country and relevant planning in accordance with legal regulations on planning;

b) Provisions herein and relevant laws and regulations relating to the investment sectors;

c) The project shall not overlap with projects already obtaining the investment policy or approved feasibility study;

d) Other relevant legal documents (if any).

2. The pre-feasibility study includes the following main contents:

a) Necessity for investment and advantages of investment under PPP form in comparison with public investment;

b) Anticipated objectives, scale, location, project duration; and demand for use of land and other resources;

c) Preliminary design option in accordance with the laws and regulations on construction for project including construction components or in accordance with the laws and regulations of specialized laws for projects without construction components; preliminary explanation on technical and technology options;

d) Preliminary evaluation of socio-economic efficiency of the project; preliminary assessment of the environmental impacts of the projects as required by the laws and regulations on environmental protection as public investment project;

dd) Preliminary total investment capital; preliminary assessment of financial model of the project; tentative portion used of the State capital in PPP projects (if any); tentative mechanism of payment for investors under projects applied BT, BTL, BLT type of contracts;

e) Expected types of PPP project contract; forms of investment incentive and guarantee; mechanism of sharing revenue decrease (if any).

Article 16. Appraisal of pre-feasibility study

1. The dossier for the appraisal of pre-feasibility study include:

- a) A written document requesting appraisal of pre-feasibility study;
- b) Draft submission requesting appraisal of pre-feasibility study;
- c) Pre-feasibility study;
- d) Other legal documents relating to the projects (if any).

2. Contents of the appraisal report of the pre-feasibility study include:

- a) Conformity with the legal basis for formulation of pre-feasibility study;
- b) Necessity for investment;
- c) Conformity with the investment size and sectors set out in Article 5 herein;
- d) Investment effectiveness; Ability to recover the investor's capital;
- dd) Appropriateness of selected PPP contract type;
- e) Other necessary contents.

3. In case the PPP project request use of state capital, the appraisal of funding sources and capacity for balancing fund is one of appraisal content.

Article 17. Dossier requesting for the decision on investment policy

- 1. A proposal requesting for the decision on investment policy.
- 2. The draft decision on investment policy of PPP project.
- 3. Pre-feasibility study of the project.
- 4. Appraisal report for the pre-feasibility study of the project.
- 5. Other legal documents relating to the project (if any).

Article 18. Contents of the investment policy decision

1. The decision on investment policy shall include the following main contents:

- a) Name of the project;
- b) Name of the competent agency;
- c) Objectives, scale, location, and project implementation duration;
- d) Type of PPP contract;

dd) Preliminary total investment capital, preliminary financial plan; structure of capital sources in the project (if any); tentative plan of tariff, fees of public products and services for project applying the mechanism of fee collection directly from the users;

- e) Mechanisms for ensuring and sharing revenue decrease for projects (if any);
- g) Responsibilities, costs, and duration of pre-feasibility study preparation;

2. For projects applying high technology, in addition to provisions under Clause 1 of this Article, contents of decision of investment policy shall include the procedures of investor selection, time for investor selection.

Article 19. Adjustment of investment policy of PPP projects

1. Investment policy of PPP projects shall be adjusted when changing investment objectives, scale, and location, contract type of PPP projects; increasing the amount of state capital in PPP project or increasing in the total investment capital of at least 10% in the following cases:

- a) Project is affected by force majeure events;
- b) Change in plan, relevant regulations;
- c) Adjustment of pre-feasibility study;
- d) Other cases according to the relevant regulations.

2. The competent authority for approval of investment policy shall be the competent authority for adjusting investment policy and shall be responsible for such decisions on adjustment.

3. Procedure for submission to the competent authority for adjustment of investment policy shall be in accordance with the content of adjustment regulated in Article 14 of this Law.

4. Dossier for adjustment of investment policy include:

- a) A submission for approval of adjustment of investment policy.
- b) Modifications of the pre-feasibility study report of the project.
- c) Appraisal report of adjustments to the pre-feasibility study report of the project.
- d) Other relevant legal documents of the project (if any).

Article 20. Contents of feasibility study

Based on the decision of investment policy, the project preparation unit shall prepare feasibility study including the following contents:

1. Necessity for investment and advantages of investment under PPP form in comparison with public investment; results of gathering opinions and social criticism of relevant agencies, organizations and individuals on the impacts of the project.

2. Conformity of the project to strategies, country's socio-economic development planning, and relevant plans according to the law on plans.

3. Investment objectives, sector, scale, location, demand for for use of land and other resources.

4. Explanations on requirements in terms of technical and technological option, quality standards of infrastructure work and systems or public goods and services to be provided; basic designs in accordance with the laws and regulations on construction (for project with construction components) and specialized laws (for project without construction components).

5. Socio-economic effectiveness of the project; assessment report on the environmental impacts of the project in accordance with the laws and regulations on environmental protection.

6. Total investment amount; financial plan of the project; estimated State capital in the project and corresponding management and use form (if any); public assets, the right to exploit, doing business facilities and services to pay investors for BT project contracts; ability to raise capital to implement projects; management, business, or service provision plan.

7. Type of PPP project contract; risk analysis and project risk mitigation measures.

8. Forms of investment incentives and guarantee, mechanism of sharing the decreased revenue.

9. Project implementation progress and time, including: contract duration, time for construction of works (for projects with construction components);

10. Other necessary contents set out in specialized laws and regulations.

Article 21. Dossier, contents for appraisal of feasibility study

1. Dossiers of the appraisal of feasibility study include:

- a) Request for the appraisal of feasibility study;
- b) Draft submission for the approval of feasibility study;
- c) Feasibility study of the project;
- d) Decision on approval of investment policy of the project.
- dd) Other relevant legal documents of the project (if any).

2. Contents of the appraisal of feasibility study include:

- a) Conformity with the legal basis;
- b) The necessity for investment;
- c) The appropriateness of requirements on technical and technological option, quality standards of infrastructure work and systems or public goods and services;
- d) Socio-economic effectiveness of the project;
- dd) The financial feasibility of the project; management and business plan or plan for provision of public goods and services;

- e) The appropriateness of PPP project contract type;
- g) Other necessary contents in the feasibility study.

Article 22. Authority for approving feasibility study

1. The Prime Minister shall approve feasibility study of the projects set out in Clause 1 Article 13 herein.

2. Ministers, head of central agencies and other agencies shall approve feasibility study of projects within their management scope as prescribed in clause 2 and 3, Article 13 of this Law.

3. Chairman of the Provincial People's Committees shall approve feasibility study of projects within their local management scope as prescribed in clause 2 and 4, Article 13 of this Law.

Article 23. Dossiers of the approval of feasibility study

- 1. Submission for the approval of project's feasibility study;
- 2. Draft decision on approval of project's feasibility study;
- 3. Feasibility study of the project;
- 4. Appraisal report for the feasibility study of the project;
- 5. Decision on approval of investment policy of the project;
- 6. Other documents or relevant legal documents (if any).

Article 24. Contents of the decision on approval of feasibility study

The Decision on approval of feasibility study includes the following contents:

- 1. Name of the project.
- 2. Investment objectives.
- 3. Scale, capacity; location; implementation duration.
- 4. Type of PPP project contract.
- 5. Total investment capital, structure of capital sources, State capital in the project (if any); prices, fees of public products, services for projects applied type of contracts which directly collect fees from the users.
- 6. Form of investor selection, time for investor selection.
- 7. Name of the contract signing agencies; and name of the procuring entities.

Article 25. Adjustment of feasibility study

- 1. The feasibility study of project shall be adjusted in the following cases:
 - a) The project is affected by force majeure events;

b) Emergence of factors that provide higher socio-economic and financial efficiency for the project;

c) Changes of planning and relevant laws that cause direct impacts on the objectives, location, and scale of the project;

d) Failure on investor selection as a result of feasibility study;

dd) Other cases as stipulated by relevant laws.

2. The procedure of appraisal and approval for adjustment of a feasibility study report of PPP project complies with Articles 20, 21, 22, 23 and 24 of this Law regarding to the adjusted contents.

3. Dossiers of adjustment of feasibility study include:

a) Submission requesting approval on the adjusted feasibility study;

b) Adjusting contents of feasibility study of project;

c) Appraisal report of adjusting contents of project's feasibility study;

d) Other relevant legal documents of the project (if any).

Article 26. Formulation, appraisal of the design and cost estimate of BT project contracts

1. The competent agency assigns the project preparation unit to prepare design and cost estimate.

2. The specialized agencies on construction according to the laws and regulations on construction or the assigned unit for appraisal according to the specialized law shall appraise design and cost estimate.

3. The competent agency or the authorized agencies for contract signing shall approve design and cost estimate.

Article 27. Publication of PPP project information

1. Within 10 working days after the issuance of the decision on investment policy or the decision on approval of feasibility study, the competent agency shall publish project information specified in clause 2 of this Article.

2. Project information published on the National Procurement network system include:

a) Decision on investment policy, decision on adjusted investment policy (if any);

b) Decision on approval of the feasibility study, decision on approval of the adjusted feasibility study (if any);

c) Information on contact of the competent agency, the contract signing agency, the procuring entity.

Section 2

UNSOLICITED PROPOSAL *[HKBAV: How will an investor be sure that its IP will be protected in the event it is not selected? Will the Govt commit to pay the investor if such technology is used or undertake not to use the same?]*

Article 27. Conditions for PPP unsolicited proposal

1. The PPP project proposed by investors must fully qualify the following conditions:

a) Proposed project is in PPP investment sector but not include in the project list announced by the competent agencies as stipulated in Article 27 herein;

b) Proposed project shall not overlap with projects of which the pre-feasibility studies are being formulated by the competent agencies or by other investors;

c) In accordance with the basis for preparing pre-feasibility study as prescribed in clause 1 Article 5 of this Law.

2. Projects proposed by the investor shall be procured under open bidding or competitive negotiation in accordance with Article 38, 39 of this Law.

3. Investors shall bear with all costs and risks if the project proposals are not approved.

Article 29. Procedures for preparing PPP projects proposed by investors

1. Formulation of project proposal:

a) Investor shall submit a written request for implementing a PPP project to the competent agency; in case of unidentified competent agencies, investors shall send it to the State administration agency on PPP investment.

b) The competent agency shall consider and issue an written response either acceptance or not acceptance of the investor's request for pre-feasibility study. The contents of the document include coordination mechanism with organizations and units of the competent agency, requirements on the deadline for submission of project proposals and other related contents.

c) Investor shall formulate project pre – feasibility study report.

d) Investor submit the project proposal including pre-feasibility study report, profile of the legal status, capacity and experience of the investor to the competent agency.

2. Appraisal and approval of investment policy of the project proposed by investor

a) Investment policy of project proposed by investor shall be appraised and approved in accordance with procedures set out in Article 14, 15, 16 and 17 herein.

b) Decentralization of authority for appraisal and approval of investment policy of projects proposed by investors shall be in accordance with Article 7 and Article 13 herein.

3. Formulation, appraisal and approval of the feasibility study report

a) Investor prepares the feasibility study report as stipulated in Article 20 of this Law;

b) The feasibility study report formulated by the investor shall be appraised in accordance with the procedures stipulated in Article 21, 22, 23 and 24 of this Law;

c) Investor shall bear with all costs and risks if the feasibility study report is not approved.

4. If the investor proposing project is not selected, the winner bidder shall refund the cost of formulating feasibility study report to that investor.

5. Publication of projects proposed by investors

a) Upon approval of investment policy by competent authority, the competent agency shall organize publication of information of the projects in accordance with Article 27 herein and name of the project proponent.

b) Regarding the projects relating to intellectual property rights, trade or technology secrets, or confidential agreements on capital mobilization for project implementation, the investor and the competent agency may agree on the project contents which shall not be disclosed.

6. The Government shall provide guidance on this Article.

Chapter III

SELECTION OF INVESTORS

Section 1

General provisions on investor selection

Article 30. Overall process of investor selection

1. Overall process

a) Preparation of investor selection;

b) Organization of investor selection;

c) Evaluation of bids;

d) Submission, appraisal, approval and publication of the investor selection result;
dd) Negotiation, finalization and execution and publication of the contract information.

2. The overall process of investor selection stipulated in clause 1 of this Article on the national procurement network system shall be implemented according to the schedule.

3. The Government shall provide guidance on this Article.

Article 31. Eligibility of investors

An investor shall be eligible if it fully meets the following conditions:

1. Having a valid establishment, business registration license issued by the competent agency in the respective jurisdiction where the contractor/investor operates;

2. Having financially autonomous status; ensuring the fair competition on investor selection.

3. Neither being in the process of dissolution; nor belong to the case of insolvency as regulated by laws;

4. Not being debarred from PPP investment activities;

5. A State-owned company with the charter capital funded 100% by the State capital shall associate with investors of private sectors to participate in bidding.

6. Investors established according to foreign laws must meet market accessibility conditions when participating in bidding for projects of conditional market accessibility sectors and fields subject to laws and regulations of investment.

Article 32. Conflict of interest

An investor participating in bidding shall be legally and financially autonomous from the following parties:

1. Consultant in charge of formulation of pre-feasibility study; feasibility study, design and cost estimate (if any); except the projects proposed by investors.

2. Consultant in charge of appraisal of pre-feasibility study; feasibility study, design and cost estimate (if any).

3. Consultant in charge of formulation, appraisal of request for pre-qualification, request for proposals; evaluation, appraisal result of pre-qualification, result of investor selection.

4. The competent agencies, the contract signing agencies, the procuring entity.

Article 33. Selection of the domestic and foreign investors

1. The foreign investor selection shall be implemented by methods stipulated in

Article 38, 39, 40 and 41 of this Law, in which investors established according to foreign laws and Vietnamese law are allowed to participate.

2. The domestic investor selection shall be implemented by methods stipulated in Article 38, 39, 40 and 41 of this Law, in which only investors established according to Vietnamese law are allowed to participate.

3. The international investor selection shall be applied for all PPP projects, except the following cases:

a) Projects fall within sectors or lines of fields have not been market accessible by the foreign investors in accordance with the laws and regulations on investment;

b) Projects have requirement of ensuring national defense and security, national confidentials.

Article 34. Language used in investor selection

The language to be used in the investor selection is Vietnamese for domestic investor selection; is English or Vietnamese and English for foreign investor selection. For competitive negotiation and direct appointment, the competent person shall decide the suitable language to be used in the investor selection when approving request of proposals and bidding documents.

Article 35. Bid security

1. Bid security means an investor undertaking one of the measures of deposit, encrow or submission of the guarantee letter of credit institution, branches of foreign bank or legally insurance organization in Vietnam before the time of bid closure, in order to ensure the investor's responsibility for bidding. *JHKBAV: Should include offshore banks as a foreign investor may not be able to secure this from a local bank*

2. Bid security applised in the case of open bidding and competitive negotiation.

3. The value of bid security shall be stipulated in request for proposals, bidding documents in accordance with the amount of 0,5% to 1,5% of totoal investment amount based on the scales and nature of each project.

4. The valid time of bid security shall be stipulated in the request for proposals and is equal to the valid time of bid dossiers plus 30 days.

5. In case of extension the valid time of bid dossiers after the time of bid closure, the procuring entity has to request the investor to extend the corresponding valid time of bid security with conditions of unchanged submitted bid dossier's contents. In case the investor refuses to extend, the bid dossier shall be invalid and disqualified; the procuring entity have to return or release the bid security to the investor within 20 days after receiving a written of extend refusal.

6. In the case of a joint – venture participating in bid, each member of the joint - venture could perform a separate bid security or agree to one member is responsible for providing bid security on behalf of all members. The total amount of bid security is not lower than the value requested in the bidding documents. In case any member of the joint – venture violates the provisions of clause 8 of this Article, the bid guarantee of all members shall not be refunded.

7. Bid security shall not be refunded in the following cases:

a) Investors withdraw their bids after the deadline for bid closure and during the valid time of bids; *[HKBAV: Withdrawal not due to this fault of the investor should be excluded.]*

b) The investor violates the law on procurement, which leads to the cancellations of the bid according to the provisions of point dd, clause 1, Article 36 of this Law;

c) Investors do not implement the contract performance guarantee as prescribed in Article 49 of this Law;

d) Investors do not implement or refuse to implement contract negotiation within 30 days from the date of receiving the award notification from the procuring entity or has negotiated and finalized the contract but refuse to sign contract, except for force majeure circumstances.

Article 36. Cancellation of bidding process *[HKBAV: What happens if the Govt cancels this bid w/o the fault of the investor?]*

1. Cases for cancellation of bidding process

a) All bids or proposals fail to meet the requirements stated in request for prequalification, request for proposal;

b) Change in the objective and scope of investment stated in request for prequalification, request for proposal;

c) The application for pre-qualification, bids do not comply with this Law and other related laws and regulation, resulting in the selected investor does not satisfy requirements of the project.

d) The organization of investor selection does not comply with the provisions of this Law or other relevant law, leading to restriction of competition among investors and not ensure the economic efficiency of the project pursuant to the State Audit's conclusion as prescribed in clause 1, Article 86 of this Law;

dd) Evidence of giving, receiving or brokering of bribery, collusion, fraud, abuse of position or power to illegally intervene in procurement, leading to distorted results in investor selection.

2. Responsibility of cancellation of bidding process

Organizations or individuals having violation activities that lead to bid cancellation as stipulated in Point c and d of Article 17 herein shall compensate the relevant parties for the costs incurred and be sanctioned in accordance with relevant laws.

Article 37. Handling of complicated circumstances in investor selection

1. Handling of complicated circumstances in investor selection means solving problems arising in procurement which are not clearly regulated in this Law.

2. The competent agencies, the procuring entities shall be in charge of handling complicated circumstances and shall be liable for their decisions with respect to following principles:

a) Ensuring competition, fairness, transparency and economy efficiency;

b) Adhering to the pre-qualification, request for proposals; application for pre-qualification, bids; results of investor selection, contract signed with the selected investors; the actual implementation of the project.

3. The Government shall provide guidance on this Article

Section 2

Investor selection forms

Article 38. Open Bidding

1. Open bidding means a form of investor selection which does not limit the number of investors.

2. Open bidding must be applied to all PPP projects, except for the case specified in Articles 39, 40 and 41 of this Law.

Article 39. Competitive Negotiation

1. Competitive negotiation means a method of investor selection, in which only a few investors who meet the requirement of project implementation are invited to bid.

2. Competitive negotiation shall be applied in the following cases:

a) Projects related to national defense and security and must obtain agreement of the Ministry of National Defense on projects related to national defense; Ministry of Public Security for projects related to national security.

b) High – tech application projects on the list of high technologies prioritized for investment in accordance with the law on high technology or projects requiring new technologies.

Article 40. Direct appointment

1. Direct appointment shall be applied in one of the following cases:

a) Projects with direct objective of ensuring the national defense and security, State confidential;

b) Projects that must be implemented immediately to ensure continuity in the provision of public products and services.

2. The direct appointment of investor for project stipulated in point a, clause 1 of this Article when meeting the following conditions:

a) Having an approved feasibility study report;

b) Being approved by Prime Minister based on the agreement of Ministry of National Defense with the requirements on national security assurance, Ministry of Public Security with the requirements on national security, the line Ministries with requirements on State confidential assurance.

3. The direct appointment for the projects stipulated in point b, clause 1 of this Article shall be applied when meeting the following conditions:

a) The signed contract has been terminated ahead of the closing date or in danger of being terminated ahead of closing date exclusive of competent agencies or contract signing agencies default;

b) The investor selection methods specified in Article 38 and 39 of this Law could not be applied;

c) Having the agreement from the lender.

Article 41. Investor selection in special cases

1. In case the project with specific conditions is not likely apply any methods prescribed in Articles 38, 39 and 40 of this Law, the competent agency proposes to Prime Minister to consider and decide a method of investor selection.

2. Proposal submitted to the Prime Minister to request the application of investor selection in special case includes the following contents:

a) Basic information of the project;

b) Explanation on the specific conditions of project causing inability to apply any methods of investor selection stipulated in Article 38,39 and 40 of this Law;

c) Option for investor selection in special cases, including: procedure of implementing investor selection; solution to address the specific characteristics of the proposed project to ensure the investment efficiency of the project.

Section 3

Methods and criteria for evaluating the application of prequalification and bids

Article 42. Methods and criteria for evaluating the application of prequalification

1. The evaluation of the prequalification application shall be based on the method of scoring on the scale of 100 or 1.000 regulated in the request for prequalification in order to evaluate the application of prequalification. The scoring method is built on the criteria for evaluation of prequalification application mentioned in clause 2 of this Article.

2. Criteria for evaluation of prequalification application include the following basic contents:

a) Criteria for evaluation of capacity and experience include: criteria on financial and commercial capacity, capital arrangement capacity; experience standards for similar projects.

In case of joint - venture, capacity, experience of the investor is determined by the total capacity and experience of the joint - venture members; Investors in joint-venture must have a minimum equity contribution rate of 30%, each member of the joint-venture has a minimum equity contribution rate of 15% in the joint-venture;

b) Criteria for evaluation of preliminary project implementation plan and commitment to project implementation;

c) Criteria for evaluating the history of disputes and lawsuits against contracts that has been and is being performed.

3. For BT projects applying prequalification, the request for prequalification should regulate preliminary standards on the capacity and experience of the investors according to the provisions of the legislation on investment, construction, houses, real estate business and relevant laws to implement other projects.

Article 43. Methods and criteria for evaluation of bids

1. Methods of evaluation of bids include:

a) For requirements on capacity and experience: The assessment of capacity and experience shall be based on the method of scoring on a scale of 100 or 1.000 regulated in the bidding documents for evaluation of capability and experience. The scoring method is built on the criteria for evaluation of bidding dossiers prescribed in clause 2 of this Article.

b) For technical requirements: The technical evaluation is based on a 100 or 1.000-point scoring method or a pass/fails assessment method stated in the request for proposals for evaluation technical of investor. The scoring method or the pass/fail assessment method is based on the criteria for evaluation of prequalification dossier specified in Clause 3 of this Article.

c) For financial - commercial requirements: The financial - commercial evaluation is based on the comparison and ranking method stated in the bidding dossier for financial - commercial evaluation of the investor. The method of comparison and ranking is built on the financial and commercial evaluation criteria mentioned in clause 4 of this Article.

2. Criteria for evaluation of capacity and experience include the criteria specified in Clause 2, Article 42 of this Law.

3. Technical evaluation criteria include: Quality, capacity and efficiency standards; Standard operation, management, business, maintenance and maintenance; Environmental and safety standards; other technical standards (if necessary).

When preparing bidding documents, standards of technical evaluation must be formulated based on the criteria prescribed in this Clause, suitable to each specific project and ensuring that the selected investor meets the requirements of project implementation.

4. Criteria for evaluation of finance and trade:

Based on the scale, nature and specific type of PPP contract, the financial-commercial evaluation criteria include one of the following criteria:

a) Criteria for price of public products and services: The evaluation of tenders shall be based on the criteria of price and price of products and services for comparison and ranking of bids. Other relevant contents have been clearly defined in the bidding documents.

b) Criteria of capital to support the construction of works and infrastructure: The evaluation of bids shall be based on the criteria of the State's capital contribution level for evaluation to compare and rank the bids. Other relevant contents have been clearly defined in the bidding documents.

c) Criteria of social benefits, state benefits: The evaluation of bids shall be based on the criteria of payment to the state budget in cash or the duration of contract performance to compare and rank the bids. . Other relevant contents have been clearly defined in the bidding documents.

d) Combination criteria: The evaluation of bid documents shall be based on a combination of criteria specified in points a, b and c of this clause, including: combination of price criteria of public products and services and capital standards to support the construction of infrastructure and works; combining product price standards, public services and standards of social benefits and state benefits.

5. The Government shall provide guidance on this Article.

Article 44. Principles for approving investor selection results

Investors are proposed to select when they meet the following conditions:

1. Valid bids.
2. Meet the requirements of capacity and experience.
3. Meeting the technical requirements.
4. Meeting financial - trade requirements.
5. Having the bid dossier ranked first.

Chapter IV

ESTABLISHMENT OF PPP PROJECT ENTERPRISES AND SIGNING CONTRACT

Article 45. Establishment and operation of PPP project enterprises

1. Upon approval of results of investor selection, investors shall establish PPP project enterprises with a single purpose to sign and implement PPP projects contract following the model of limited company or joint stock company.

2. PPP Project enterprises established in accordance with clause 1 of this Article shall be allowed to issue only corporate bonds as regulated in Article 79 herein.

3. Except regulation in clause 1 and 2 of this Article, the establishment, organization to manage, operation, dissolution of PPP project enterprises shall follow provisions of laws and regulations on enterprises, related regulations and PPP project contracts.

Article 46. Classification of PPP project contracts *[HKBAV: We assume the BOT laws will be replaced by these Regulations?]*

1. The group of project contracts which applied mechanism of collecting fees directly from end-users or organization committed to buy the products and services of projects, shall include:

a) Build – Operation – Transfer contract (hereinafter referred to as BOT contract) means a PPP project contract that the investor(s), the project enterprise(s) shall be franchised to build, business, operate such facilities, infrastructure system for a fixed term; upon expiry of such term, the investor(s) and the PPP project enterprise(s) shall transfer the facility and infrastructure system to the State.

b) Build – Transfer – Operate contract (hereinafter referred to as BTO contract) means a PPP project contract that investor(s), the project enterprise(s) shall be franchised to build, own, business and operate such facility, infrastructure system for a fixed term;

c) Build - Own - Operate Contract (hereinafter referred to as BOO contract) means a PPP project contract to which the investor or project enterprise shall be franchised to build, own, business or operate public submission, infrastructure system within fixed term; Upon expiry of such term, the PPP investor(s) or project enterprise(s) terminate its activities;

d) Business - Management contract (hereinafter referred to as O&M contract) means a PPP project contract that the investor(s) or project enterprise(s) shall be franchised to do business, manage part or the whole of such facility, available infrastructure system for a fixed term; upon expiry of such term, the PPP investor(s) or project enterprise(s) terminate its activities.

2. The group of project contracts which apply the payment mechanism based on the quality of public products and services provided include:

a) Build-Transfer-Lease contract (hereinafter referred to as BTL contract) means a PPP project contract that (an) investor(s), (a) PPP project enterprise(s) shall be franchised to build facility, infrastructure system; after the completion of the facility, the investor(s), the project enterprise(s) shall transfer such facility to the competent agency and shall have the right to provide public products, services on the basis of operation and exploitation of such infrastructure facility for a fixed term; the contract signing agency shall lease the services and make payments to the investor(s), the PPP project enterprise(s).

b) Build-Lease-Transfer contract (hereinafter referred to as BLT contract) means a PPP project contract that (an) investor(s), (a) PPP project enterprise(s) shall be franchised to build an infrastructure facility; after the completion of the facility, the investor(s), the PPP project enterprise(s) shall have the right to provide public services on the basis of operation and exploitation of such facilities for a fixed term; the contract signing agency shall lease the services and make payments to the investor(s), the project enterprise(s); upon expiry of such term, the investors, the PPP project enterprise(s) shall transfer the facility to State.

3. Build – Transfer contract (hereinafter referred to as BT contract) means means a PPP project contract to build infrastructure facilities; After the project is completed, the investor transfers the project to the contract signing agency, be responsible for long-term maintenance; support the organization and such facility operating unit (if any). The investor shall be paid by the contract signing agency by one of the following methods:

a) By public assets in accordance with the law on management and use of public asset;

b) By the right to commercially exploit the facilities and services;

c) By proceeds from the auction of public assets.

4. A mixed contract is the project contract combining several types of contracts described in Clause 1, 2 and 3 of this Article.

5. Other types of contract mean the project contracts in addition to the contract types described in Clause 1, 2, 3, and 4 of this Article proposed by the competent agencies to the Prime Minister for consideration and approval based on appraisal opinions of State management agency on PPP before deciding the investment policy.

In case the project of which investment policy is approved by the National Assembly and Prime Minister, the application of other types of contract shall be reported to the Prime Minister, the National Assembly for consideration and approval in the dossier requesting approval on investment policy.

6. Regarding project set out in Point b clause 2 Article 4 herein, the contract type shall not apply the mechanism of collecting fee from end-users.

Article 47. PPP project contract dossiers

1. PPP project contract dossiers shall consist of the main following documents:

a) PPP project contract includes general conditions and specific conditions;

b) Contract annexure (if any);

c) Minutes of contract negotiation;

d) Decision on approval of investor selection results;

dd) Bids and documents providing clarification of bids and proposals submitted by the successful investors;

e) Bidding documents and documents revising and supplementing the bidding documents and the requests for proposals.

2. Upon changes in contents of the contract, the parties shall sign an annex to the contracts.

Article 48. Basic contents of contracts

1. Based on the objectives, nature, and type of contract, the parties shall set agreement on general conditions and specific conditions of contract includes the following basic contents:

a) Objectives, scale, location, and implementation progress of the project; construction duration of the project facilities, infrastructure system; contract duration.

b) Scope and technical and technological requirements, requirements on quality of project facilities and infrastructure system, products and services to be provided.

c) Total investment capital; capital structure; financial model (including financial arrangement plans); price, fees of products and services (including method and formula

to establish and adjust the price, fee); State capital in PPP project and corresponding form of usage and management (if any).

d) Conditions for the use of land, resources; plans on organization of construction of auxiliary works; requirements on compensation, support and resettlement; insurance of safety and environmental protection.

dd) Responsibilities in completing liensing procedures in accordance with relevant laws; designing; organization of construction; inspection, supervision, quality management in the construction phase; acceptance, finalization of investment capital for infrastructure facilities and systems and certification of completion of infrastructure facilities and systems; supplying key input materials for production and business activities of the projects.

e) Responsibilities in operation and business of infrastructure facilities and systems for public goods and services to be provided continuously and stably; conditions, procedures, process transfer of infrastructure facilities and systems; responsibility of long term maintaince, support on operation for projects applied BT contracts.

g) Performance security; assurance of property rights related to the projects and obligations of parties; Agreement on using the thir party's guarantee service with respect to obligations of the contract signing agencies.

h) Solutions in case the circumstances for contract performance change substantially as stipulated in civil law; remedies and compensation measures in case of breach of contract by either party.

i) Other rights and obligations of parties relating to confidentiality; reporting mechanism.

k) Principles and conditions for modifying, supplementing and terminating contracts ahead of time; assignment of rights and obligations of the parties; conditions and procedures for step-in of lenders; procedures, rights and obligations of the parties when liquidating the contract.

l) Investment incentives, guarantees and insurance (if any).

m) Applicable law and dispute resolution.

n) Other necessary contents.

2. The Government shall regulate the issuance of standard contracts for the group of contracts stipulated in Article 46 of this Law.

Article 49. Performance guarantee of PPP project contracts

1. Contract performance guarantee means that the selected investor shall implement one of the deposit measures or submit a letter of guarantee from a credit

institution, foreign bank's branch or insurance organization operating legally in accordance with the laws of Vietnam to ensure the investor's contract performance.

2. The selected investors must take measures to ensure contract performance before the valid date of the contract.

3. Based on the scale and nature of project, the value of contract performance guaranteed is specified in the bidding dossier at a determined level of between 1% and 3% of the total project investment.

4. The valid time of contract performance guarantee shall be from the valid date of the contract until the date when the parties fulfill their contractual obligations or the date they transfer to perform warranty or maintenance obligations with respect to the BT project contract. In case it is necessary to extend the term of the contract, the investor must request the extension of the corresponding period of validity of the contract performance guarantee.

5. An investor shall not be refunded a contract performance guarantee in the following cases:

a) Refuse to perform the contract when the contract comes into effect;

b) Violating the agreement in the contract, leading to the termination of the contract ahead of time as prescribed at point d, clause 2, Article 54 of this Law;

c) Request the contract signing agency to extend the term of the contract but refuse to extend the validity of the contract performance guarantee.

Article 50. Conditions for contract signing

1. The contract is signed pursuant to the decision on approval of investor selection results, contract negotiation results, the valid bidding documents and the capacity of investors which has been updated at the time of contract signing, request for proposals.

2. The competent agencies, the contract signing agencies shall ensure conditions of the State capital in the PPP project (if any), availability of the project sites and other necessary conditions for implementing project timely as required in contract.

Article 51. Signing PPP project contracts

1. The investors, the PPP project enterprises shall join as one party to sign the project contracts with the contract signing agencies. The investors and the PPP project enterprises shall be responsible for rights and obligations under the contract.

2. Regarding a joint-venture investor, all members of the joint-venture shall sign and stamp (if any) directly in the contract.

3. After signing contract, the investors, the PPP project enterprises shall implement contract performance security measures as stipulated in Article 49 of this Law.

Article 52. Revision and supplement of PPP project contracts

1. Revision and supplement of PPP project contract shall be considered by parties in the following cases:

a) The project is affected by force majeure events or change in plans and relevant regulations that lead to significant impact on technical and financial plans of the projects, charges of goods and services provided by the project enterprises;

b) Adjustment one of parties signing contracts;

c) Adjustment of the PPP project contract duration as stipulated in clause 2 and 3 Article 53 herein;

d) Other cases under the authority of the contract signing agency without changing the investment policy and bring more effective in finance, socio – economy for the project.

2. Cases which considered for revision and supplement of PPP contract shall be specified in the contract.

3. Procedures of revision and supplement of PPP project contracts:

a) One of two parties under PPP project contract has proposal for revising and supplementing the contract, in which clarifying the case to be applied for consideration of contract revision and supplements;

b) The parties negotiate the proposed revised and supplemented contents, including prices, fees of public products and services; contract duration; other contents of contract when changing;

c) The parties shall sign the variation order of contract for the revision and supplement contents.

Article 53. PPP Contract duration

1. The contract duration shall be agreed by the parties based on the decisions on approval of feasibility study and result of investor selection.

2. The parties are allowed to adjust the contract duration ensuring that the total contract duration, including the adjustment time not exceed the duration of land allocation or land lease in accordance with the land law and not change other contents of the decision on investment policy of project.

3. The case of adjustment on contract duration:

a) Delays in completion of construction phase or interruption in operation period of infrastructure facilities, systems due to basic changing circumstances according to the civil law beyond reasonable control of one party;

b) The competent agencies or other State authorities suspend the project, except for cases where the suspension is due to the fault of the PPP project enterprises.

c) Increase in costs as request of the competent agencies, the contract signing agencies which is not estimated when contract signing and if the project duration is not extended, the PPP project enterprise is not able to recover those costs.

d) When there is a change in the plan and related laws and policies, the revenue reduces by less than 75% compared to the turnover in the financial plan specified in the contract;

dd) When the revenue increases by 125% or more compared to the turnover in the financial plan specified in the contract. *[HKBAV: We thinks investors should benefit for this rather than having the terms reduced or adjusted]*

Article 54. Termination of PPP project contract

1. Termination of PPP project contract shall be implemented according to the regulation in contract, is the basis for contract liquidation.

2. Early termination of PPP project contract only applies in the following cases:

a) Project is affected by the force majeure events, in which the revision and supplement of contract could not ensure the continuous implementation of project.

b) Contract must be terminated due to the interests of the nation, targets of national defense and security;

c) When PPP project enterprise is insolvent in accordance with the bankruptcy law;

d) When one of the parties seriously violates the performance of obligations according to contracts;

dd) The parties may agree on terminating the contract based on the approval of the competent authority which approve the investment policy.

3. In case of early termination of contracts due to Government default, the cost of the acquisition of PPP project enterprises shall be allocated from the State capital according to the provisions of law. If it is determined that the project needs to be continued in order to maintain the provision of public products or services, laws and regulations on management and use of state capital in production and doing business activities in the enterprise shall govern.

4. The Government shall provide guidance on this Article.

Article 55. Project step-in rights of lenders

1. A lender shall have rights to take over the whole or a part of properties of the investors, the PPP project enterprises (hereinafter referred to as the project step-in rights)

that formed under the contract if the investors or the PPP project enterprises fail to perform their obligations stipulated in the project contract or the loan agreement.

2. The lender proposes a competent agency to appoint another investor to sign the contract and continuously implement the project to ensure continuity in the provision of public products and services as stipulated in point b, clause 1, Article 40 of this Law.

3. The lender shall carry out procedures for transferring partly or wholly the properties received under the provisions of clause 1 of this Article to investors designated by competent agency according to the provisions of point b, clause 1 of Article 40 of this Law.

4. The agreement of content stipulated in clause 1, 2 and 3 of this Article shall be made in written between the lender(s) and the contracting parties. This agreement shall be an integral part of PPP contract.

5. For the reception and the handling of collateral related to projects of credit institutions, branches of foreign bank, complying with the provisions of clauses 1 and 3 of this Article, and the provisions of banking law and the law on collateral.

Article 56. Assignment of shares, rights and obligations of PPP project contract

1. In a PPP project enterprise established by a joint venture investor, shareholders have the right to assign shares to each other, but ensure the minimum equity ratio of each member in accordance with Article 42 of this law based on the results of investor selection.

2. The investor has the right to assign part of its shares to another investor after completion of construction for project with construction components or upon commencement of the operation phase for project without construction components.

3. The investor has the right to assign its rights and obligations under the signed contract to another investor after completing the construction for project with construction phase or upon commencement of the operation phase for project without construction components.

4. Assignment as stipulated in clause 1,2 and 3 of this Article shall ensure:

a) Not to change the implementation of the signed PPP contract;

b) To conform to the relevant laws and regulations;

c) Be approved by the contract signing agencies;

d) To obtain agreements of lenders and members of the joint-venture (if the investor is a joint-venture).

5. The assignee shall satisfy the following requirements:

a) There is no restriction on the right to receive a transfer in accordance with the law;

b) Having sufficient financial and managerial capacity to perform PPP contract and other relevant contracts;

c) Committing to continue exercising the rights and obligations of the assignor according to the provisions of the PPP contract and other relevant contracts.

6. In case the assignment of contractual rights and obligations as prescribed in clause 1, 2 and 3 of this Article leads to changes in the contents of business registration, the PPP project enterprise shall follow relevant provisions of laws and regulations on enterprises.

7. In case the assignment of contractual rights and obligations under clause 1,2 and 3 of this Article generates income, the assignee shall fulfil financial obligations as prescribed in laws and regulations on taxation and conditions of PPP contract.

Article 57. Governing law for PPP contract

PPP contract, its annexures and other relevant documents signed between the Vietnam State agencies and investors, PPP project enterprises shall be governed by Vietnamese laws. For issues not yet regulated in Vietnamese law, the parties may agree and specify in the PPP contract on the basis of not contrary to the basic principles of Vietnamese law. *[HKBAV: Offshore Lenders would want the governing law to be foreign law in loan documentation. We suggest a carve out be made as this is the current practice in any case for all offshore loans.]*

Chapter V

PROJECT IMPLEMENTATION

Section 1

CONSTRUCTION OF INFRASTRUCTURE FACILITIES AND SYSTEMS

Article 58. Preparation of construction site

The Provincial People's Committee shall chair and incorporate with the competent agency, the contract signing agency to organizing land clearance and completing procedures for land allocation or lease of land to implement the project in accordance with the laws on land, PPP project contract and other relevant contracts.

Article 59. Preparation, appraisal and approval of designs

1. Except the project applying BT contract, pursuant to the feasibility study and provisions of PPP contract, the project enterprises shall carry out one or several tasks as below:

a) Formulate the construction design and submit it to the construction- specialized agencies for appraisal in accordance with laws and regulations on construction;

b) Formulate other designs and submit them to the specialized agency for appraisal in accordance with specialized laws and regulations.

2. The PPP project enterprise approves designs stipulate in clause 1 of this Article and submits to the contract signing agency the following documents in order to monitor and supervise:

a) The approved design;

b) The design appraisal documents of the specialized agency as regulated by laws.

Article 60. Selection of contractor for project implementation

PPP project enterprise shall issue regulation on selection of contractors to be applied consistently in the project enterprise which ensures the fairness, transparency and economic efficiency, as follow:

1. The selection of contractor must ensure that it does not impact or negatively affect national interests, community interests and interests of competent agencies and contract signing agencies.

2. Selected contractors must fully meet the requirements for qualification, experience and have feasible solutions for implementation of procured packages and project. The PPP project enterprise is responsible for the quality and progress of the project.

3. Domestic contractors must be selected for the part of the work that domestic contractors are able to perform. If domestic contractors are unable to perform the work leading to the compulsory use of foreign contractors, the foreign contractors must associate with domestic contractors or use domestic subcontractors. *[HKBAV: Investors should have the option to select contractors and not be mandated to do so. We suggest requiring them to use reasonable effects to use domestic contractors]*

4. Labor, goods, supplies, equipment, machinery and vehicles supplied by foreign contractors shall only be used in case the mentioned elements cannot be supplied by domestic contractors.

Article 61. Supervision of project contract implementation in construction phase

1. The PPP project enterprise is responsible for quality of infrastructure facilities and systems, self - monitoring and management or recruit independent consultants for

supervision and management of construction, acceptance of items and entire works according to the designs and business plan specified in the contract.

2. During the construction of infrastructure facility and system as specified in the contract, the contract signing agency is responsible for:

a) Monitoring the implementation of rights and obligation fulfillment of PPP project enterprise according to the provisions of the contract.

b) Organizing the inspection on the PPP project enterprise's supervisor on the construction process of infrastructure facility and system according to the requirements in the contract;

c) Inspecting the compliance with procedures, standards and norms for the construction according to the contract;

d) Carrying out the verification of the quality of a part or all, components and all of the construction facilities and systems when there is any suspicion of the quality or at the request of a state management agency;

dd) Proposing the PPP project enterprise to request the contractor to adjust or suspend construction when it considers that the quality of work performed does not meet the requirements.

3. The contract signing agency may recruit consultants to assist in their fulfillment of the obligations specified in clause 2 of this Article. The costs of recruiting consultant to verify the quality and other expenses related to determine the level of violations shall be paid by the following mechanism:

a) If the contract signing agency concludes that the quality of infrastructure facilities and systems does not meet the requirements of the contract due to the fault of the PPP project enterprise, the PPP project enterprise makes payment to the consultant;

b) In case the contract signing agency concludes that the quality of infrastructure facilities and systems does not meet the requirements of the contract not due to the fault of the PPP project enterprise, the contract signing agency using the project implementation expenses prescribed in clause 3, Article 74 of this Law to pay to the consultant.

Article 62. Finalization of investment capital for the construction of infrastructure facilities and systems

1. Upon the completion of construction of infrastructure facilities and systems, the contract signing agency shall perform the finalization of public investment capital in the PPP projects as below:

a) In case the portion of public investment capital in PPP project is managed and used as prescribed in point a clause 5 Article 71 and clause 2 Article 73 herein, the contract signing agency and the PPP project enterprise shall carry out procedures to finalize public investment capital in PPP project pursuant to the laws and regulations on public investment projects;

b) In case the portion of public investment in PPP project is managed and used as prescribed in point b clause 5 Article 71 herein, the contract signing agency shall aggregate the amount which has been disbursed to the PPP project enterprise and audited periodically as the finalized amount of public investment capital in PPP projects. The public investment capital in PPP project must be finalized not over the limit of state capital determined in the contract based on the results of investor selection.

2. Upon the completion of construction of infrastructure facilities and systems, the contract signing agency and the PPP project enterprise shall carry out procedures to finalize the investment capital for construction of infrastructure facilities and systems. The amount of investment capital for construction of infrastructure facilities and systems or the finalized amount for project without construction component shall be determined based on the signed contract as result of investor selection.

3. The contract signing agency and the PPP project enterprise shall agree on selecting an independent qualified auditing organization to audit the investment capital for construction of infrastructure facilities and systems.

Article 63. Certification of completion of infrastructure facilities and systems

1. Upon completion of infrastructure facilities and systems, the PPP project enterprise shall carry out acceptance of the facilities and systems with the contractors as per the laws and regulations on construction or specialized laws, to form the basis to formulate the dossier requesting for certification of completion.

2. Based on the dossier requesting for certification of completion of infrastructure facilities and systems as per clause 1 of this Article, the contract signing agency shall inspect and issue the certification of completion to the PPP project enterprise. In case a PPP project enterprise completes the construction phase before duration or saves investment costs, the certification of completion of a project or infrastructure must not affect the contract duration or price level, public product and service charges are determined in contracts.

3. The Government shall regulate on dossiers and deadlines for issuance of certification of completion of infrastructure facilities and systems.

Section 2

OPERATIONS, BUSINESS OF INFRASTRUCTURE FACILITIES AND SYSTEMS

Article 64. Conditions for commercial operation of infrastructure facilities and systems

1. Regarding PPP projects applying BOT, BTO, BOO, BTL, BLT contract, project enterprises are allowed to commercially operate the infrastructure facilities and systems upon the certification of completion by the contract signing agency as stipulated in Article 63 herein.

2. Regarding PPP projects applying O&M contract, PPP project enterprises shall commercially operate the infrastructure facilities and systems when the PPP contracts take effect.

3. Regarding items of component projects specified at point a, clause 5, Article 71 herein, PPP project enterprise shall receive this item for synchronous commercial operation in the PPP projects.

Article 65. Provision of public goods and services

During the commercially operation of infrastructure facilities and systems, PPP project enterprises shall have the following responsibilities:

1. Supply public goods, services and fulfil other obligations as per the requirements, conditions agreed in the contract.

2. Ensure the use of infrastructure facilities and systems in accordance with the conditions specified in the contract.

3. Treat all users of goods and public services provided by PPP project enterprise fairly; do not use the right to conduct business of infrastructure facilities and systems to refuse provision of services to the users.

4. Receive and promptly handle with user' comments on the quality of public products and services provided by PPP project enterprises.

5. Conduct periodical repairing and maintenance to ensure the safe operations of infrastructure facilities and systems as following designs or processes committed in the contract.

Article 66. Tariff and fee of goods and services, and other income

1. Tariff, fees, other income and conditions, procedures, adjustment procedure shall be specified in the contract on the principle of ensuring the interests of the investor, PPP project enterprise, end-users and the State and enabling the investor to recover investment capital and gain profits.

2. The application of subsidy of tariff, fees of public goods and services shall subject to laws and regulations.

3. Agreement on adjustment of tariffs, fees for goods and services and other income regulated by the State must comply with the laws on tariffs, fees and be in accordance with the conditions as provided under contract.

3. When adjusting the tariffs, fees for goods or services and other income (if any), the PPP project enterprise shall notify the organizations and individuals using the public goods and services in accordance with the laws on tariffs, fees and provisions of the PPP project contract.

Article 67. Supervision of contract implementation during the commercial operation phase

1. PPP project enterprises shall be responsible for the quality of goods and services as per the provisions under the contracts.

2. The contract signing agency shall be responsible for carrying out supervision:

a) The fulfillment of rights and obligations of PPP project enterprise according to the provisions of the contract.

b) Quality of goods and services provided by the PPP project enterprise according to the requirements in the contract.

3. In case of considering that the PPP project enterprise does not meet the quality requirements of goods and services as stipulated in the contract, the contract signing agency shall make a written record requesting the PPP project enterprise to rectify by the deadline specified in the contract. In case the PPP project enterprise fails to remedy or delay the rectification, the corresponding penalty measures as stipulated in the contract shall be applied.

4. In case the contract signing agency considers that the PPP project enterprise fails to comply with the contractual obligations, such agency shall report to the competent agency to decide on the handling of violations according to the provisions of Chapter X herein.

5. The contract signing agency may recruit consultant to assist in their fulfillment of the obligations specified in clause 2 of this Article. The costs of recruiting the consultants and other expenses related to the verification of violation level shall be paid in accordance with the mechanism stipulated in clause 3 Article 61 of this Law.

Section 3

TRANSFER OF INFRASTRUCTURE FACILITY AND SYSTEM, CONTRACT LIQUIDATION

Article 68. Transfer of infrastructure facility and system

1. Transfer of infrastructure facility and system and verification of the quality, value of infrastructure facility and system before transferring to operation phase shall be implemented due to the regulation in the PPP project contract. The remaining value of infrastructure facilities and systems after being transferred is aggregated into the state budget according to the provisions of law on state budget.

2. Process and procedure of handling the transferred assets shall comply with the provisions of laws and regulations on management and use of public assets.

Article 69. Contract liquidation

1. The PPP contracts shall be liquidated in the following cases:

- a) The parties have fulfilled their contractual obligations;
- b) The contract is terminated in accordance with Article 53 herein.

2. The deadline for liquidation of a PPP contract shall be agreed by the parties in the contract, but must not exceed 180 days from the date the parties fulfil the contractual obligations in the contract or the date of the parties agreed to early termination of contract.

3. Contents of contract liquidation:

a) In case of liquidation of contracts according to the provisions of Point a, Clause 1 of this Article, the contract signing agency and the PPP project enterprise shall certify the completion and termination of the rights and obligations of the parties;

b) In case of liquidation of the contract according to the provisions of Point b, Clause 1 of this Article, the contract signing agency and the PPP project enterprise shall certify the completed obligations and the parties' responsibilities for the parts that have not been finished;

c) Responsibilities and obligations of the contract signing agency and PPP project enterprise in case of incurred expenses when liquidating the contract.

Chapter VI

SOURCES OF CAPITAL FOR PPP PROJECT IMPLEMENTATION

Section 1

STATE CAPITAL IN PPP PROJECTS

Article 70. The use of State capital in PPP projects

1. The purpose of using State capital in PPP projects

a) To provide support to the construction of infrastructure facilities and system of PPP projects.

b) To make payment to the PPP project enterprises for provision of public goods and services in PPP projects;

c) To pay the cost of compensation, land acquisition, support and resettlement; support on constructing the temporary facilities.

d) To pay the revenue decrease;

dd) Expenditures of the competent agencies, the contract signing agencies, the project preparation units, the procuring entities in order to implement their duties as stipulated in Article 12 of this Law;

e) Expenditures of the Appraisal Council of PPP projects, the assigned units for appraisal of PPP projects as stipulated in Article 7 of this Law.

2. The Government shall provide guidance on the use and management of State capital in PPP projects.

Article 71. State capital for supporting the construction of infrastructure facilities and system

1. State capital for support to the construction of infrastructure facilities and system means the state capital used for support to the implementation of the project during the construction period to increase the financial efficiency of the project.

2. Percentage and value of State capital for support to the construction of infrastructure facilities and system are determined on the basis of the preliminary financial plan included in pre-feasibility study when deciding the investment policy.

3. Percentage and value of State capital for support to the construction of infrastructure facilities and system to be paid as PPP contract shall be based on the result of investor selection.

4. State capital for support to the construction of infrastructure facilities and system is allocated from one of the following sources:

a) Public investment capital as regulated in the laws and regulations on public investment;

b) Value of public assets as regulated in the laws and regulations on the use and management of public assets.

5. The use and management of State capital for support to the construction of infrastructure facilities and systems which is allocated from public investment funds shall be carried out in one of the following forms:

a) Separating into a component project using public investment in PPP projects.

b) Disbursing to the PPP project enterprise according to the specific item, percentage, value, schedule and conditions specified in the contract.

Article 72. State capital for payment to the PPP project enterprises for provision of public goods and services in PPP projects

1. State capital for payment on the basis of quality of public goods and services means the State capital used in BLT, BTL to make payment to the PPP project enterprises on the basis of meeting the requirements of the contract.

2. State capital for payment on the basis of quality of public goods and services is allocated from one or several sources:

a) Public investment capital;

b) Recurrent expenditures[SN1];

c) Lawful incomes of state agencies and public non-business units;

d) Other lawful capital sources as prescribed by laws and regulations.

3. State capital for payment on the basis of quality of public goods and services allocated from receivables from provision of public services shall be applicable to PPP projects at non-business public unit.

Article 73. State capital for compensation, land clearance, support on resettlement; support on construction of temporary facilities

1. State capital for compensation, land clearance, support on resettlement; support on construction of temporary facilities (if any) shall be allocated from public investment capital in accordance with the law on public investment.

2. Based on the size and nature of each project, the contract signing agency shall consider the separation of State capital for for compensation, land clearance, support on resettlement; support on construction of temporary facilities (if any) into component project(s) and implement such project(s) in accordance with the law on public investment.

Article 74. Expenditures of the competent agencies and the contract signing agencies, the project preparation units, the procuring entities, the Appraisal Council of PPP project, the unit assigned to appraise PPP project

1. The expenditures for project preparation of the competent agencies, the project preparation units; the cost for organizing appraisal of the Appraisal Council of PPP

projects and the unit assigned to appraise PPP projects; the cost for organizing the investor selection and signing contract of the competent agencies, the procuring entities shall be allocated from public investment capital and included in the total investment of the projects.

2. The selected investor is responsible for refunding these expenditures stipulated in clause 1 this Article into the state budget in accordance with the law on state budget.

3. The cost of project implementation after signing the contract with the competent agency, the contract signing agency shall be allocated from the regular capital source of these agencies.

Article 75. Planning for public investment capital in PPP projects

1. In case public investment capital in PPP projects is managed and used in the form prescribed at point a, clause 5, Article 71 and clause 2, Article 73 herein, the contract signing agency shall implement the component project(s) in accordance with the law on public investment.

2. In case public investment capital in PPP projects is managed and used in the form prescribed at Point b, Clause 5, Article 71 herein:

a) Pursuant to the investment policy decided by the competent authority, public investment capital in PPP projects is consolidated in the medium-term public investment plan;

b) Pursuant to the medium-term public investment plan, the feasibility study approved by the competent authority, the result of investor selection, public investment capital in PPP projects is consolidated in the annual public investment plan.

c) In case the PPP project is not included in the list of medium-term public investment plan approved by the competent authority, the competent agency shall make another plan to adjust the medium-term public investment plan and use provision sources under the mid-term public investment plans, and submit to competent authorities for decision according to the law on public investment.

3. In case the PPP project applying BTL, BLT contract type uses public investment capital to pay for the PPP project enterprise, the public investment synthesis in the medium-term and annual public investment plans follow the rules. defined at Points a and b, Clause 2 of this Article. This public investment capital will continue to be arranged in the next medium term based on the PPP project contract term.

4. In case PPP project is decided by the competent authority to apply the revenue decrease-sharing mechanism, the expenses for handling the revenue decrease-sharing mechanism shall be aggregated in the general budget reserve of the Central Government. national medium-term public investment plan for projects approved by the National

Assembly, the Prime Minister, ministers, heads of central agencies and other agencies on investment policies or general provisions for investment plans medium-term public funding for local budgets of projects for which investment policies are decided by provincial-level People's Councils.

Article 76. Estimating the recurrent expenditures and lawful incomes of the state agencies and public non-business units

1. Base on the decision on investment policy, the feasibility study report approved by the competent authorities and the result of investor selection, the contract signing agency estimates the annual state budget of the recurrent expenditure or the lawful incomes of the state agencies, the public non-business units as stipulated in clause 2 Article 72 of this law in order to pay for PPP project enterprise according to the law on state budget.

2. For the recurrent expenditure stipulated in clause 3 Article 74 of this Law, the competent agencies, the contract signing agencies shall estimate the annual budget and submit to the competent authorities for approval according to the law on state budget.

Section 2

**CAPITAL FOR PROJECT IMPLEMENTATION
OF INVESTORS AND PPP PROJECT ENTERPRISES**

Article 77. Financial arrangement for project implementation

1. Investors, PPP project enterprises are responsible for the contribution of equity and mobilization of loans and other lawful sources of capital to implement the project in accordance with provisions under the contracts.

2. Within 12 months from the contract signing date, the investors, PPP project enterprises shall complete the financial arrangement; for project which investment policy approved by the National Assembly, the Prime Minister, the duration time is not exceed 18 months. PPP contract only comes into effect if the investor and/or PPP project enterprise has completed financial arrangement. *JHKBAV: The timing is reasonable if the bid documentation is financeable in the first place. Thus, we stress that the preparation of bid documentation is key.*

3. Forms of handling in case the investors and PPP project enterprises cannot arrange their finance according within the duration prescribed in clause 2 of this Article must be specified in bidding documents and PPP project contracts.

Article 78. Contribution of equity

1. The investor must contribute equity of at least 15% of the total project investment excluding the state capital stipulated in Article 71 and 73 of this law.

2. Regarding BT projects, in addition to the ratio prescribed in Clause 1 of this Article, investors must meet additional requirements on equity (if any) in accordance with the law on investment, construction, housing, real estate business and other relevant laws and regulations to implement other Projects.

3. Equity of investor is contributed according to the agreed progress in the project contract. In case a PPP project enterprise is established, at the time of project registration, the investor determines the proportion of equity to be contributed to the charter capital of the project enterprise in accordance with the provisions of the law on enterprise. In case the charter capital of the PPP project enterprise is less than the equity committed to be mobilized by the investor, the project contract must include the roadmap for raising charter capital of the PPP project enterprise in accordance with the progress of project implementation.

Article 79. Issuance of PPP project enterprise bond

1. The PPP project enterprise shall be allowed to issue separate bond to the professional security investors *[HKBAV: Please clarify what entities are allowed to purchase these bonds as language is unclear]* according to the provisions of law on enterprises and securities in order to mobilize capital for implementation of PPP project, except convertible bonds and warrant-linked bonds.

2. The issuance of bonds under the provisions of clause 1 this Article must fully meet the following conditions:

a) The amount of capital mobilized through the issuance of separate bonds does not exceed the value of the loan amount determined in the PPP project contract;

b) Using an issuance organization in accordance with the law on securities to open offering, receive money to buy bonds to blockade accounts and disburse capital for PPP project enterprises in the following of the project implementation schedule.

3. After completion of construction of projects with construction components or after moving to operation phase for projects without construction components, the PPP project enterprise shall be allowed to public offering, except the convertible bonds and warrant-linked bonds. *[HKBAV: Please confirm convertible bonds and warrant-linked bonds can be issued before construction completion.]*

4. The capital mobilized in accordance with clause 1 and 3 of this Article is not allowed to be used for any purposes rather than serving the project as per the contract.

5. The Government shall provide detailed regulations on this Article.

Chapter VII

INVESTMENT INCENTIVES AND GUARANTEES

Article 80. Investment incentives

Investors and the PPP project enterprises are entitled to incentives on taxes, land use fee and other incentives as prescribed by laws and regulations on taxation, land, investment and other relevant regulations.

Article 81. Investment assurance

1. Assurance of access to land, exercise of land use rights and rights to use public assets

a) The PPP project enterprises are allocated or leased out the land by the State or are allowed using other public assets to implement PPP contract;

b) The use of land and other public assets prescribed in Clause 1 of this Article shall comply with the laws and regulations on land and on the use and management of public assets;

c) The land use purpose of the project shall remain unchanged in the entire implementation term of the contract; even in the case the lenders exercise their step-in rights as prescribed in Article 54 herein.

2. Assurance of the provision of public services

a) The PPP project enterprise is permitted to use public facilities and other ancillary works to implement the project in accordance with law;

b) Where public services are scarce or where public facilities are limited to certain users, the project enterprises shall be given priority to be provided with such services or to be granted the right to use such public facilities to implement the project;

c) The competent agency shall be responsible for assisting the PPP project enterprises in conducting necessary procedures in order to obtain the priority in using public services and facilities.

3. Mortgage of assets and the rights to commercially operate the infrastructure facilities and systems *[HKBAV: Please consider allowing offshore lenders to take security over land & assets on land. The step-in rights is good but we recommend an exceptions be made here to allow offshore lenders to take security to facilitate the financing and success of the PPP program.]*

a) The investor and PPP project enterprise are permitted to mortgage assets, land use rights and the right to commercially operate the infrastructure facility and system with the lender in accordance with the law on land and the Civil Codes. The term of a mortgage must not exceed the term of the contract, unless the contract stipulates otherwise.

b) The agreement to mortgage assets or the rights to commercially operate the infrastructure facility and system must be made in writing and signed by the lender and the contract signing parties.

c) The mortgage of assets or of the rights to commercially operate the infrastructure facility and system must not adversely affect the objectives, scale, technical specifications, project implementation schedule or other conditions already agreed in the project contract.

4. Investors, PPP project enterprises are entitled to other investment assurance as prescribed in the laws and regulations on investment.

Article 82. Ensuring the balance of foreign currency for important PPP projects

1. The Government shall decide on the application of guarantee mechanism on the balance of foreign currency for the project of which the investment policies shall be approved by the National Assembly, the Prime Minister, based on the foreign exchange management policy, the ability to balance foreign currency in each period. *[HKBAV: we recommend that this decision be made in advanced and set out the bid documentation to give investors clarity on this issue.]*

2. Conditions for the application of guarantee on the balance of foreign currency:

a) The project enterprise that made the right to purchase foreign currency at credit institutions licensed to conduct foreign exchange activities to meet the demand for current transactions, capital transactions and other transactions or transferring capital, profits and other liquidation of oversea investment in accordance with the law on foreign exchange management but the market does not meet the legal foreign currency demand of project enterprises;

b) The guarantee limit for foreign currency balance: no more than 30% project revenue in Vietnam Dong after subtracting the expenditure in Vietnam Dong.

Article 83. Mechanism for sharing revenue increase and decrease *[HKBAV: We recommend views be taken from investors and lenders on commercial issues set out in this Draft.]*

1. The investors, PPP project enterprises shall share with the State 50% of the increase between actual revenue and committed revenue in the contract. These parties agree the amount of committed revenue in the contract but not exceed 125% the revenue of financial plan. Sharing the increased revenue shall be applied after adjusting the term of PPP contract as prescribed at point dd, clause 3, Article 53 of this Law.

2. The State shall share with the investors, the PPP project enterprises 50% of the decrease between actual revenue and committed revenue in the contract for the project fully meets the following conditions:

a) Project is formulated by the competent agency; apply the BOT, BTO, BOO contract type and not using the state capital for supporting the construction of infrastructure facilities and systems regulated in Article 71 of this law;

b) Change in plans, policies, relevant laws result in the actual revenue is lower than the committed revenue in the contract. The parties agree the amount of committed revenue but not higher than 75% the amount of revenue in financial plan;

c) Having implemented all measures to adjust the tariff, fee of products, services or adjust the term of PPP contract as prescribed in Articles 52 and 53 of this Law but failed to ensure the revenue specified in Point b of this clause.

d) For project which investment policy is approved by the Provincial People's Council, the sharing of revenue decrease is allocated from the local state budget.

3. Mechanism of sharing the revenue increase and decrease regulated in clause 1 and 2 this Article shall be determined in the investment policy decision.

4. Annually, the parties confirm the actual revenue of PPP project. Every 3 years, the parties shall determine the difference between actual revenue and committed revenue in the PPP project contract based on the annual data, which serves as a basis for the competent authorities to consider and apply the sharing mechanism of revenue increase and decrease.

5. The Government shall provide guidance on this Article.

Chapter VIII

EXAMINATION, SPECIALIZED INSPECTION, STATE AUDIT AND SUPERVISION OF PPP INVESTMENT ACTIVITIES

Section 1

EXAMINATION AND SPECIALIZED INSPECTION, STATE AUDIT OF PPP INVESTMENT ACTIVITIES

Article 84. Examination of PPP investment activities

1. Examination activities include: Examination of the issuance of the written guidance on PPP investments of ministries and localities; examination of investment preparation; examination of organization of investor selection, contract signing, and implementation of contracts and other activities related to PPP investment.

2. Examination of PPP investment shall be conducted regularly or at the discretion of the head of the competent authority for the examination

Article 85. Specialized – sector inspection of PPP investment activities

1. Inspection of PPP investment activities means the specialized inspection on planning and investment sector according to law on inspection.

2. Inspection of PPP investment activities is carried out to the competent agencies, the contract signing agencies, the PPP investors, the PPP project enterprises, organizations or individuals involved in PPP investment activities specified in this Law.

Article 86. State audit in PPP investment

1. Before signing the contract, the State Audit performs the audit in compliance with the law on state audit of the project preparation process, the results of investor selection for PPP projects using public finance, public property

2. After signing the contract, the State Audit shall perform the audit in accordance with the law on state audit of the use of public finance and public assets in PPP projects, including:

a) Financial audit and audit for the use of state capital for compensation, site clearance, support, resettlement, support for temporary construction (if any) prescribed in Article 73 of this Law, supporting the construction of works, infrastructure systems when being separated into a component project prescribed at Point a, Clause 5, Article 71 of this Law, using public properties to pay investors implemented BT projects as prescribed in Clause 3, Article 46 of this Law;

b) Audit activities to evaluate the economy, effectiveness and efficiency on the basis of service quality evaluation indicators for PPP projects using public finance and public assets

Section 2

SUPERVISION OF THE STATE ADMINISTRATION AGENCY ON PPP INVESTMENT

Article 87. Supervision of the State administration agency on PPP investment

1. The State administration agency on PPP investment at the central level shall supervise the process of implementing PPP projects of which investment policies are approved by the National Assembly and the Prime Minister and other projects as delivered by the National Assembly and the Prime Minister.

2. Local State administration agency on PPP investment shall supervise the implementation process of PPP projects of which investment policies are approved by provincial-level People's Committees.

Article 88. Contents of supervision of the State administration agency on PPP investment

The State administration agency on PPP investment shall supervise the following contents:

1. Bidding documents or request for proposals.
2. Result of investor selection.
3. Basic contents of contract.
4. The results of the construction, infrastructure facilities quality accreditation as prescribed in Point d, Clause 2, Article 61 herein.
5. Evaluation results of products and services quality according to the provisions of Clause 3, Article 67 herein.
6. Other contents at the requests of the Prime Minister for cases prescribed in Clause 1 Article 87 herein; at the requests of provincial-level People's Committee for cases prescribed in Clause 2 Article 87 herein.

Article 89. Supervision responsibilities of State administration agency on PPP investment

1. Acting independently and complying with legal regulations, ensuring integrity, objectivity, timeliness and keeping confidential of information.
2. Do not intervene, do not cause troubles, hinder the process of implementing PPP projects; do not affect the performance of responsibilities of the competent agency, the contract signing agency, investors and PPP project enterprises.
3. Requesting the competent agencies to provide information and documents related to the monitoring contents prescribed in Article 88 herein;
4. In case of detecting signs of violation of legal regulations, propose to the competent authorities the remedial direction and handling measures.

Section 3

PUBLIC SUPERVISION

Article 90. Supervision of the community in project area

1. PPP projects are subject to supervision of the community in the implementation project sites. The Vietnamese Fatherland Front Committees at all levels shall be responsible for social criticism implementation of PPP project in the preparation phase; community supervision duties for PPP project during the contract implementation stage.

2. The competent Agencies shall consider, respond and take opinions of inhabitants living at project sites as to projects posing risks of causing huge environmental impacts, those projects directly impacting socio-economic lives of communities in terms of policies on investment, investment guidelines, construction, land, waste treatment and environmental protection, compensation, site clearance and agricultural and residential resettlement plans as per legal regulations.

3. Contents of public supervision:

a) Compliance with legal regulations on investment, construction, land, waste treatment and environmental protection;

b) Compensation, site clearance and agricultural and residential resettlement plans that assure rights and legislation interests of the People whose land is acquired;

c) Implementation and progress of projects;

d) Public disclosure and transparency of investment;

dd) Discovery of acts that may harm public benefits; negative impacts of projects on the living environment of the public during the period of investment in and operation of projects; activities that inflict any loss and waste of capital and assets of projects.

Article 91. Procedures for public supervision

1. Vietnamese Fatherland Front Committees shall preside over and cooperate with other socio-political organizations and other members of the Front, agencies involved in performing the following tasks:

a) Preparing annual plans for the public supervision over PPP projects implemented at localities as prescribed in clause 3 of Article 90 herein;

b) Establishing a Public Supervision Commission in charge of each PPP projects needing supervision;

c) Informing the competent agencies, the contract signing agencies about supervision plans and the composition of Public Supervision Commission within the duration of 45 days before the supervision commences.

2. The Public Supervision Commission shall be responsible for:

a) Requesting relevant state management agencies respond to issues under their management as prescribed in legal regulations;

b) Requesting the competent agencies provide information about progress and plans of investment, land occupation and land use area; detailed ground plan and architectural plan; compensation, site clearance and resettlement plans; waste treatment and environmental protection plans.

c) Receive documents of citizens' feedback and proposals; explain to citizens about the project implementation rules and regulations;

d) In case through citizens' feedback and proposals, detecting signs of acts and contents inconsistent with current legal provisions, The Public Supervision Commission shall report to Vietnamese Fatherland Front Committees at responding levels to provide information to competent agencies, contract signing agencies, PPP project enterprises and relevant agencies and units to consider handling and explain to citizens;

dd) In case of considering that the handling and explanation of competent authorities specified at Point d of this Clause are inadequate, report to the Vietnamese Fatherland Front Committees of the corresponding levels in order to propose to competent agencies to conduct examination activities in accordance with Article 83 herein.

Chapter IX

DUTIES, POWERS AND RESPONSIBILITIES OF AGENCIES, ORGANIZATIONS, INDIVIDUALS INVOLVED IN PPP INVESTMENT

Article 92. Duties and powers of the National Assembly

1. Promulgate laws and resolutions regarding public investment.
2. Issue decisions on investment policies for projects under its authority.
3. Supervise the implementation legal regulations on PPP investment, implementation of PPP projects of which the investment policies under its authority.

Article 93. Duties and powers of the Government, the Prime Minister

1. Duties and powers of the Government

a) Carry out the consistent state management of PPP investment.

b) Propose to the National Assembly to promulgate laws and resolutions; Propose to the National Assembly Standing Committee to promulgate ordinances and resolutions on PPP investment;

c) Promulgate legislative documents on management of PPP investment;

d) Propose to the National Assembly to issue decisions on investment policies of PPP projects;

dd) Decide on the application of Government guarantees for PPP projects;

e) Organize the examination, inspection of implementation PPP investment.

2. Duties and powers of the Prime Minister

a) Promulgate legislative documents on management of PPP investment;

b) Issue decisions on investment policies, approval of feasibility study of PPP projects under Prime Minister's authority;

c) Decide on termination or suspend PPP contracts for projects of which the investment policies are approved by the National Assembly and the Prime Minister;

d) Performing other duties and powers stipulated in this Law.

Article 94. Duties and powers of the Ministry of Planning and Investment

1. Perform the function of the state management agency on PPP investment under the PPP at the central level, take responsibilities before the Government for uniformly administration of investment activities in the PPP form nationwide.

2. Issue or submit requests to competent authorities to issue legislative documents relating to PPP investments.

3. Preside over to appraise the fund sources and the availability of fund for the public investment in projects according to its authority;

4. Preside over and coordinate with the competent agencies to supervise, examine, inspect and consolidate, evaluate the implementation of PPP projects nationwide.

5. Develop and manage the information system and database on PPP investments.

6. Perform other duties and exercise other powers stipulated by legal regulations.

Article 95. Duties and powers of the Ministry of Finance

1. Preside over the coordination with relevant ministries and branches to provide guidance on the use of fund for investment preparation and project implementation of the competent agencies, the contract signing agencies; financial plans of projects;

disbursement of state capital in PPP projects; finalization of capital for construction of infrastructure facilities and systems and other relevant issues within the scope of its authority as prescribed in this Law.

2. Provide guidance on process, procedures, conditions and the ability of balancing source when applying the mechanism of sharing increased or decreased revenue as prescribed in Article 83 of this Law. To assume the prime responsibility for elaborating a sharing plan of increased/decreased revenue as prescribed in Article 83 of this Law for projects which investment policy are approved by the National Assembly, the Prime Minister, ministries and central agencies, other agencies.

3. Provide guidance on formulating estimates and using recurrent expenditures and revenues from the provision of public services in PPP projects.

4. Perform other duties and exercise other powers stipulated by legal regulations.

Article 96. Duties and powers of ministries, central agencies, and other agencies

1. Exercise the management and provide guidance on PPP investments in sectors within its managerial scope.

2. Undertake the responsibilities of the competent agency in PPP projects stipulated in Article 98 herein.

3. Collate and assess status of project implementation within its managerial scope.

4. Perform other duties and exercise other powers stipulated by legal regulations.

Article 97. Duties and powers of Provincial - level People's Council and People's Committees

1. Duties and powers of provincial – level People's Council

a) Decision on the investment policy and supervision on the PPP project implementation under their authorities;

b) Decision on state capital allocation in PPP project under the local state budget.

2. Duties and powers of provincial – level People's Committees

a) Perform function of the state management agency of local PPP investment;

b) Undertake the responsibilities of the competent agency in PPP projects stipulated in Article 98 herein; decide to terminate or suspend PPP contracts for projects which investment policy is approved by the provincial People's Councils;

c) Collect and assess status of project implementation within its managerial scope;

d) Preside to organize compensation, land clearance, support onresettlement for project under local management scales; preside and incorporate with ministries, central agencies and other agencies to organize compensation, support on resettlement for project under their management scales.

dd) Perform other duties and exercise other powers stipulated by legal regulations.

Article 98. Responsibilities of the competent agencies

1. Organize to formulate, appraise the pre – feasibility studies, feasibilities studies of PPP projects and submit to the competent authorities for approval.

2. For projects that the competent agency is the contract signing agency, undertake responsibilities of the contract signing agency as prescribed in Article 99 herein.

3. Handle petitions in the course of investor selection; sanctioning violations of provisions on PPP investment as stipulated in this Law.

4. Cancel the procurement process, suspend the procurement process, reject investor selection results or nullify decisions of procuring entities when violations of regulations on PPP investments, investor selection or other relevant legislations are detected.

5. Decide to terminate, suspend PPP contracts of projects of which the investment policies are under their authorities.

6. Requesting the procuring entities, contract signing agencies to provide materials and documents for the examination, supervision and monitoring, handling petitions, sanctioning violations of PPP investments.

7. Compensate the concerned parties for damage according to law provisions if such losses are caused by their faults within the scope of their responsibilities prescribed in the contracts. Reporting to competent authorities for consideration and decision on cases beyond their competence;

8. Be accountable for the implementation of the stipulations in this Article at request of the supervisory agency, inspection and examination body, and the state administration agency on PPP investment.

9. Publicize PPP project information; periodically report to the PPP State administration agency on the implementation of PPP projects under their authority.

10. Perform other responsibilities stipulated by this Law.

Article 99. Responsibilities of contract signing agencies

1. Exercise rights and obligations under the signed PPP contract.

2. Ensure agreements on service prices committed to PPP project enterprises.
3. Compensate for damages as prescribed by law to concerned parties if such damages are caused by the faults of such Agency.
4. Organize the supervision of contract performance, impose penalty in case in case the PPP project enterprise fails to perform the obligations under the signed PPP contract.
5. Publicize PPP project information; periodically report to the competent agencies on the implementation of PPP projects of which the contracts are assigned to them for contract signing.
6. Perform other responsibilities stipulated by this Law.

Article 100. Duties of the procuring entities

1. To prepare the investor selection; organize the investor selection; organize the evaluation of the application of pre-qualification, bids according to the regulation of this law.
2. Decide to establish the expert team.
3. Request the investor on clarification of the application of pre – qualification, bids, and proposals in the assessment progress.
4. Submission of prequalification application, prequalification results, bidding dossiers, and investor selection results.
5. Negotiate and finalized contract with the investors.
6. To compensate damages to related parties if such damages are caused by their faults according to the provisions of law.
7. Confidentiality of documents in the investor selection process.
8. Storing relevant information in the investor selection process in accordance with the law on archiving and the Government's regulations.
9. Resolution of recommendations in the investor selection process.
10. To be responsible to law and competent agencies for the process of investor selection.
11. Ensuring honesty, objectivity and fairness in the process of investor selection.
12. Supplying information for the Procurement Reviews and the National Procurement Network System; supply relevant information and documents and explain the implementation of the provisions of this Clause at the request of competent agencies,

inspection, examination agencies and state management agencies in charge of bidding activities.

Article 101. Responsibilities of investors and PPP project enterprises

1. Exercise rights and obligations under the signed PPP contract.
2. Raise petitions, complaints and denouncements during procurement process; request the procuring entities to clarify prequalification documents, bidding documents and request for proposals.
3. Comply with PPP investment legislation and other relevant legislation in project implementation process.
4. Ensure honesty, accuracy in the procurement participation, implementation of contracts, petitions, complaints, and denouncements.
5. Compensate for damages as prescribed by law to concerned parties if such damages are caused by the faults of the investors and the project enterprises.
6. Provide information, documentation, and explanation relating to the implementation of the provisions of this Article at the requests of competent Agencies, inspection and examination agencies, State administration agencies for procurement activities.
7. Perform other responsibilities in accordance with this Law and other provisions of the relevant laws.

Chapter X

RESOLUTION OF PETITIONS, DISPUTES AND VIOLATIONS

Article 102. Resolution of petitions in investor selection

1. When an investor sees that their legitimate rights and benefits are affected, the investor has the rights to:
 - a) Raise petitions to the procuring entity, the competent agency about the investor selection process; investor selection result in compliance with the resolution procedures defined in Article 103 herein;
 - b) Initiate a lawsuit at the Court at any time, including in the process of resolving a petition or after the resolution of a petition has had results.
2. The investor who initiates a lawsuit at the Court shall not send a petition to the procuring entity and the competent agency. In case the investor initiates a lawsuit at the Court while the process of settling a petition is happening, the resolution of the petition

shall be terminated immediately.

Article 103. Procedure to settle a petition in selection of investor

1. The investor sends the petition letter to the procuring entity in a period of 10 days from the announcement date of the investor selection result;

2. The procuring entity must send written petition resolution to the investor within 15 days from the date of receipt of the investor's petition letter;

3. In case the procuring entity has no written response, or the investor does not agree with the results of the petition resolution, the investor has the right to send the written petition simultaneously to the competent person and advisory board to resolve the petition within 05 working days from the deadline for response or the date of receipt of the written response of the procuring entity;

4. Upon receipt of the written petition, the petition resolution advisory board has the right to request the investor, the procuring entity and the relevant authorities to provide the information for consideration and to submit the written report to the competent agency on the response options within a period of 30 days from the date of receipt of the investor's petition;

5. If needed, based on the petition contents, the petition resolution advisory board may request the competent agency to consider temporary suspension of the selection process. If the request is approved, within 10 days from the date of receipt of the written request from the advisory board, the competent agency shall issue a written notice of the temporary suspension of selection process. Such notice shall be sent to the procuring entity and investor within 5 working days from the date of the notice of temporary suspension of selection process. The temporary suspension duration shall be calculated from the date that the procuring entity receives the notice of temporary suspension of selection process until the competent agency issues the petition resolution letter;

6. The competent agency issues petition resolution letter on investor selection result within 10 days from the receipt date the written response from the petition resolution advisory board.

7. In case the investors send petition letters directly to the competent agency without compliance with the resolution procedures specified in this Article, such petition letters shall not be reviewed and handled.

Article 104. Dispute resolution

1. The disputes between the competent agency, the contract signing agency and an investor or PPP project enterprise and any disputes between a project enterprise and other economic organizations participating in project implementation shall be resolved by negotiation, mediation, arbitration or court.

2. Disputes between parties shall be resolved by negotiation and mediation at first. If a dispute is unable to be resolved by negotiation and mediation, the parties may refer the dispute for resolution to a court or an arbitration organization or in accordance with Clause 3, 4 and 5 of this Article.

3. Disputes between the competent agency, the contract signing agency and a domestic investor or a PPP project enterprise established by a domestic investor; disputes between domestic investors; disputes between a domestic investor and/or PPP project enterprise established by a domestic investor with a Vietnamese economic organization shall be resolved by a Vietnamese arbitration or Vietnamese court.

4. Disputes between the competent agency, the contract signing agency and a foreign investor or a PPP project enterprise established by a foreign investor shall be resolved by a Vietnamese arbitration or courts of Vietnam, except agreed otherwise in the contract or the international treaty that the Socialist Republic of Vietnam is a member stipulates otherwise.

5. Disputes between investors where at least one foreign investor involves; Disputes between investors or PPP project enterprises with a foreign individual or organization shall be resolved by one of the following organizations:

- a) A court of Vietnam;
- b) An arbitration of Vietnam;
- c) A foreign arbitration;
- d) An international arbitration;
- dd) An arbitration as agreed by the disputed parties.

6. Disputes resolved by arbitration defined in the signed PPP contracts and relevant contracts are commercial disputes. The decisions of the foreign arbitrators shall be recognized and enforced in accordance with the law on the recognition and enforcement of decisions of foreign arbitrators.

Article 105. Settlement of procurement disputes at court

1. The settlement of procurement disputes at court shall be handled according to the civil procedure code.

2. Once the lawsuit has been filed at the court, the parties may request the court to implement provisional measures, including: suspension of the bid closing, approval of shortlist, approval of investor selection results, signing of contract, contract execution and other provisional measures as stipulated by laws.

Article 106. Handling of violations in PPP investments

1. Warnings and penalties shall be applied to organizations or individuals who

violate the legislation on investment in compliance with the legislation on administrative sanctions for violations in planning and investment.

2. Individuals shall be prohibited to participate in investment activities for violating the provisions in Article 11 herein.

3. Cancel the procurement process, suspend the procurement process, reject investor selection results or nullify decisions of procuring entities, the competent agency, the contract signing agency when violations of regulations herein and other relevant legislations are detected.

4. Terminate contracts, suspend the implementation of contracts when breach of contract or violations of regulations herein and other relevant legislations are detected.

5. Bringing criminal prosecution against the individuals for violations of the legislation of PPP investment that constitute crime according to the criminal law.

6. Cadres and civil servants who violate the legislation on PPP investment shall also be handled in compliance with the law on cadres and civil servants.

7. The Government shall provide guidance on this Article.

Chapter XI

IMPLEMENTING PROVISIONS

Article 107. Transitional provisions

1. Project of which investment policy has been approved by the competent authorities or feasibility study report has been approved prior to the effective date of this Law, shall not be subject to the procedure of obtaining decisions on investment policies prescribed in this Law, except cases stipulated in clause 2 this Article.

2. Stop implementing projects which are not in the sector and scales of PPP investment as specified in Article 5 of this Law, its investment policy approved by the competent authorities or its feasibility study report approved prior to the effective date of this law but not issue the request for prequalification, request for proposals.

3. Projects which are not in the fields and scales of PPP investment as stipulated in Article 5 of this law, issued the request for prequalification, request for proposal, shall continuous implement following the regulation of this law.

4. Project contract official signed prior to the effective date of this law, shall continuous implement following the regulation of this law.

5. Project for which a written commitment or agreement of the Prime Minister or Ministries, branches and provincial-level People's Committees on investment incentives, guarantees and other contents relating to project implementation has been obtained, prior to the effective date of this Law, shall be implemented in accordance with such commitment or agreement.

Article 108. Amendments and supplements to other relevant Laws

Amendments to the regulations on investor selection for PPP projects in the Procurement Law No. 43/2013/QH13 dated November 26, 2013, including:

1. Amend clause 3, Article 1 of the Procurement Law as follows:

“3. Select the investor to implement land – used investment projects”

2. Amend clause 2, Article 3 of the Procurement Law as follows:

“In case of selection of bidding to supply raw materials, fuels, materials, supplies, consulting services and non-advisory services to ensure continuity of production, business and procurement activities in order to maintain maintain the regular operation of state-owned enterprises; to execute bidding packages of investment projects using land of selected investors, enterprises must promulgate regulations on contractor selection to uniformly apply in enterprises on the basis of ensuring fair objectives, transparency and economic efficiency.”

3. To amend clauses 10 and 12, Article 4 of the Procurements Law as follows:

"10. *Project enterprise* means an enterprise established by an investor to execute an investment project that uses land.

12. *Bidding* is the process of selecting contractors to sign and perform contracts on the provision of consultancy services, non-advisory services, goods procurement and construction and installation; select investors to sign and execute contracts of investment projects using land on the basis of ensuring competition, fairness, transparency and economic efficiency. "

4. To amend clause 4, Article 6 of the Procurement Law as follows:

“4. Investors participating in bidding must be legally independent and financially independent from the following parties:

a) Bidding consultancy contractors for investment projects that use land until the date of signing project contracts;

b) Competent agencies, procuring entities.

5. To amend point i, clause 1, Article 8 of the Procurement Law as follows

"i) List of land – used investment projects".

6. To amend clause 2, Article 15 of the Bidding Law as follows:

"Land – used investment projects, except for restriction cases of investment in accordance with the investment law”.

Article 109. Effectiveness

1. This Law shall take effect as of 01/01/2021

2. The Government, competent authority shall provide detailed regulations on the Articles, Clauses as assigned in this Law.

This Law has been passed by the National Assembly XIV, Session ... on the date of/.

CHAIRPERSON OF THE NATIONAL ASSEMBLY

