

DRAFT

REGULATION
ON PUBLIC – PRIVATE PARTNERSHIP INVESTMENT PILOTING
(issued with Decision No.)

CHAPTER I
GENERAL PROVISIONS

Article 1. Scope of regulation and subjects of application

1. This regulation provides the conditions, procedures and principles pilotly applied for a number of infrastructure development and public services providing projects under the public – private partnership model.

2. This regulation shall apply to authorized state agencies, investors, individuals, organizations involved in the management, implementation of infrastructure development and public services providing pilot projects under the public-private model.

Article 2. Interpretation of terms

The below terms used in this Regulation are understood as follow:

1. Public-private partnership means the form of investment in which the state and the investor coordinate to implement infrastructure development or public service supply project on the basis of the project contract.

2. Authorized state agency means a party participating in the Project Contract and implementing rights, obligations and responsibilities as negotiated with the investor in the Project contract.

3. Project means pilot infrastructure development or public service supply project implemented in the form of public-private partnership.

4. Project proposal means the request of Authorized state agency or investor for a project invested in the form of public-private partnership.

5. The State Contribution can be in a wide range of forms including state capital, investment preference, investment subsidies as regulated by related financial laws and policies, included in the total investment of the Project, in

order to ensure investment effectiveness. Depending on the nature of each particular Project, the State contribution can be in one or more forms mentioned above. The State Contribution in the project can in no way be considered equity capital of the Project enterprise, not attaching to the dividend right from the revenue of the Project.

6. State owned capital as regulated by the laws includes: state budget, official development aid, government bonds, credit capital guaranteed by the State, state development investment credited capital, development capital investment of state-owned enterprises and other types of capital bearing public debts managed by the state.

7. Project special mechanism means commitment of the state upon negotiation and agreement with the investor to ensure the success of the Project, including commitments on foreign currency guarantee level, foreign exchange balance, exchange rate, and other commitments on handling risks that are out of the investor's control.

8. Project portfolio means the portfolio of projects by Ministry of Planning and Investment compiled from the proposals from Authorized state agencies to submit to the Prime Minister for approval as in Article 14 of this Regulation.

9. Project Contract means the contract signed by Authorized state agency and investor, in which the private sector is granted with the concessioned right to invest, exploit the infrastructure work, or provide public services in a certain time period. Based on the nature of particular Project, the Project Contract provides details of committed responsibilities, obligations and authorities of the investor and Authorized state agency, and of the relations between the state and the investor.

10. Project Enterprise means the Enterprise established by investor in compliance with enterprise laws and regulations to manage and implement the Project upon Investment Certificate and Project Contract.

Article 3. Piloting principles of public-private partnership investment

1. Achieving the goal of attracting private and foreign investment in infrastructure development to provide public services.

2. Private sector capital contribution to the Project (excluding the State Contribution as regulated in clause 6, Article 2 of this Regulation) is the capital mobilized from domestic and financial capital markets, ensuring that public debts will not occur.

Private sector capital contribution to the Project includes investor's equity in the Project and commercial loans.

3. Investor's equity capital needs to account for at least 30% of the private sector investment in the Project. Investor can seek for commercial loans, and the proportion of commercial loans (without Government guarantee) investing in the Project by the Investor can reach maximum 70% of the private sector investment in the Project.

4. Investors implementing the Project shall be selected on a competitive, fair, transparent, economic effective basis, in compliance with Vietnam's laws and international customs and practices.

Article 4. Areas of piloting public-private partnership investment

1. Roads, bridges, tunnels, ferry.
2. Railway, railway bridges, railway tunnels.
3. Urban transport.
4. Airports, seaports, river ports.
5. Fresh water supply system.
6. Power plant.

7. Other infrastructure development and public services supply projects as decided by the Prime Minister.

Article 5. Criteria for project selection

Public-private partnership project proposals shall be assessed and selected based upon the following criteria:

1. Of great significance, large scale, and urgent demand to the need of economic development.
2. Ability to repay investment capital to the investor through operation revenue.
3. Ability to exploit technological and management and operation experiences advantages, and especially ability to effectively mobilize financial capacity of the private sector.
4. Other criteria as decided by the Prime Minister.

Article 6. Investment preparation cost

1. Investment preparation cost involves the costs for developing and announcing the project portfolio, preparing feasible study report, organizing the selection of Investor and other costs relating to exercising tasks and authority by Authorized state agency and relevant agencies. These costs can be deprived from the state budget or other sources (if applicable).

2. Investor selected to implement the Project is entitled to cover the cost for preparing feasibility study report as mentioned in clause 1 of this Article.

Article 7. Focal point for Project implementation

Authorized state agency has the authority to establish a specialized unit or to appoint its subordinate unit to act as a focal point for carrying out the work relating to the Project, exercising its rights and obligations as specified in the Project Contract. In any case, Authorized state agency shall take full responsibility for its committed obligations under the Project Contract.

CHAPTER II

STATE CONTRIBUTION, PROJECT SPECIALIZED MECHANISM

Article 8. State Contribution

1. The State Contribution is decided by the Prime Minister basing on on the proposal of Authorized state agency and appraising opinions of Ministry of Planning and Investment.

2. The total value of the State Contribution shall not exceed 30% of the total project investment except otherwise decided by the Government.

Article 9. State capital for the State Contribution to the Project

1. State capital is used for building support construction work, land clearance and resettlement organization and compensation, or as needed. Depending on the nature of particular Project, State capital can be used to cover a part of the project costs.

2. The allocation of state capital for the State Contribution to the Project is carried out in compliance with the Budget Law and relevant laws.

3. The mobilization, memorandum signing, and allocation of concessionary loans and loans guaranteed by the government are carried out compliance with relevant laws and regulations.

Article 10. Project specialized mechanism

1. Project specialized mechanism is decided by the Prime Minister basing on the proposal of Authorized state agency and appraising opinions of Ministry of Planning and Investment.

2. The Project specialized mechanism regulated in clause 8, Article 2 of this Regulation is different from the State Contribution regulated in clause 6, Article 2 of this Regulation.

Article 11. Responsibility of implementing the State Contribution to the Project and Project specialized mechanism

Relevant Government agencies are responsible for implementing the State Contribution to the Project and Project specialized mechanism according to its functions and tasks.

**CHAPTER III
PROJECT PREPARATION**

Article 12. Project Proposal by the Authorized state agency

1. Based on approved infrastructure planning and development program, Authorized state agency develops the Project Proposal in accordance with the terms provided in clause 2 of this Article.

2. Project proposal includes the following contents:

a) Intended scale, capacity, venue, area of construction, construction items, land use demand;

b) Preliminary analysis and selection of technology and technique; conditions of supplying materials, equipment, energy, services, technical infrastructure; preliminary option for land clearance and resettlement (if applicable); preliminary assessment of the Project's impact on ecological and social environment;

c) Intended schedule for construction work (commencement, completion, acceptance, and delivery); exploitation time, business operation and management methods of the investor;

d) Preliminary determination of fees and prices of public goods and services intended to be collected from the exploitation of the construction work;

e) Conditions and methods for transferring and taking over the construction work;

g) Intended total amount of investment, initial determination of the State Contribution and proposed Project special mechanism;

h) Analysis of the Project's overall effectiveness including rationale, economic and social advantages and benefits brought by the Project in the form

of public-private partnership investment in comparison with the form of total state capital investment.

Article 13. Project proposal by the investor

1. In case the investor initiates Project proposal, provisions in clause 2, Article 14 of this Regulation shall apply.

2. The development of Project proposal by the investor needs to comply with the terms regulated in clause 2, Article 12 of this regulation.

Article 14. Developing project portfolio

1. The Project Proposal by Authorized state agency shall be sent to Ministry of Planning and Investment to compile, organize appraisal and submit to the Prime Minister for evaluation and decision to include the Project into the Project Portfolio.

2. The Project Proposal by investor shall be sent to Authorized state agency with state management function corresponding to the implementation area and field of the Project, with a carbon copy to Ministry of Planning and Investment for monitoring. The proposed Project shall be evaluated and included in the Project Portfolio in accordance with clause 1 of this Article.

3. Ministry of Planning and Investment take lead to consult Ministries, agencies, People's Committees of provinces and cities under central management (herein referred to as Provincial People's Committees) and relevant agencies for Project Proposal appraisal as a basis to submit to the Prime Minister for decision to include the Project into the Project Portfolio. Within 30 days since the receipt of the request by Ministry of Planning and Investment, relevant agencies shall provide their opinions in written form on issues under their functions, duties and authorities; if not, upon the deadline, they shall be considered as not having any opposing opinion.

Article 15. Publicizing the Project Portfolio

The Project Portfolio approved in accordance with Article 14 of this Regulation shall be publicized in the Bidding Newspaper, the electronic portal of Ministry of Planning and Investment, and can be published in electronic portals of other Ministries, Ministerial-level agencies, Provincial People's Committees to facilitate concerned organizations and individuals in accessing to information.

Article 16. Feasibility study report

1. Based on the approved Project Portfolio, the Authorized state agency is responsible to organize the development of the Project's feasibility study report.

2. Feasibility study report is developed in compliance with current laws and regulations and international practice to ensure the Project's ability to mobilize investment capital from domestic and foreign capital markets, and consists of the following basic contents:

a) Scale, capacity, venue, area of construction, construction items, land use demand;

b) Analysis and selection of technology and technique; conditions of supplying materials, equipment, energy, services, technical infrastructure; option for land clearance and resettlement (if applicable); assessment of the Project's impact on ecological and social environment;

c) Schedule for construction work (commencement, completion, acceptance, and delivery); exploitation time, business operation and management methods of the investor;

d) Total amount of investment;

đ) Determination of fees and prices of public goods and services intended to be collected from the exploitation of the construction work;

e) Conditions and methods for transferring and taking over the construction work;

g) Intended total amount of investment, initial determination of the State Contribution and proposed Project special mechanism;

h) Analysis of the Project's overall effectiveness including rationale, economic and social advantages and benefits brought by the Project in the form of public-private partnership investment in comparison with the form of total state capital investment.

Article 17. Formulation, evaluation and approval of feasibility report

1. Based on the approved project list as prescribed in Article 14 of this regulation, the authorized State bodies shall hold open international tendering to select consultants to facilitate formulation of feasibility report.

2. Within 30 days since approval of results of selection of consultants, the authorized State bodies or their dependent agencies shall perform signing and implementation of the contract with the selected consultants.

3. The Ministry of Planning and Investment shall organize evaluation of the feasibility report including main details of the Project such as total investment, the State's participation and specialized mechanism of the project, and other relevant contents, and make submissions to the Prime Minister for approval.

CHAPTER IV

SELECTION OF INVESTORS

Article 18. Tendering for selection of an investor

1. Based on the approved feasibility report, the authorized State body shall organize the preparation of tender invitation dossiers and hold open domestic or international tendering to select the project implementing investors in compliance with legal regulations on tendering and in accordance with international practices, ensuring competition, fairness, transparency and economic efficiency.
2. The tender invitation dossier includes details of proposal evaluation criteria, bidding procedures, draft Project Contract, attached with the approved feasibility report, the State's proposed participation in the project, proposed specialized mechanism of the project.
3. The Ministry of Planning and Investment shall organize evaluation of selection results of project implementing investor and submit to the Prime Minister for his approval.

Article 19. Completing and signing project contract

1. The authorized State body, within 30 days since the results of selection of investor are approved as set forth in Article 18 of this regulation, shall coordinate with relevant agencies to complete and initial the project contract with the selected investors. The State's participation and specialized mechanism of the project as prescribed in the project contract shall be respectively within the limits that are approved by the Prime Minister in the decision on selection of investors.
2. After the project has been granted with an investment certificate pursuant the provisions in Chapter V of this regulation, the investor and the authorized State body shall officially sign project contract. If there are changes to the project contract as compared with the initial contract, Authorized state agency must notify in writing such amendments to the Ministry of Planning and Investment

explaining these changes. The Ministry of Planning and Investment shall consult Ministries, agencies, Provincial People's Committees and relevant agencies to compile and report to the Prime Minister for consideration. At the Prime Minister's opinion, the parties finalize the Project Contract before officially signing.

CHAPTER V

ISSUANCE OF INVESTMENT CERTIFICATE AND IMPLEMENTATION OF PROJECT

Article 20. Investment certificate-issuing body

The Ministry of Planning and Investment shall issue investment certificate for pilot PPP projects.

Article 21. File, order and procedure for issuance of investment certificate, contents of the investment certificate

File, order, and procedure for evaluation and issuance of investment certificate, contents of investment certificate shall be made in compliance with corresponding provisions of the Investment Law and Articles 25, 26 of the Government's Decree 108/2009/NĐ-CP dated 27/11/2009.

Article 22. Project implementation

1. The investor shall carry out business registration to establish a project enterprise and implement the project after the project is issued with an investment certificate. File, order and procedure for business registration shall be implemented in accordance with the *Law on Enterprises*.

2. The organizational structure of the management apparatus, and rights and responsibilities of the project enterprises shall be as decided by the investor, consistent with the provisions of the project contract, the Law on Enterprises, the Law on Investment and relevant laws.

3. Rights and obligations of the project enterprise in the project implementation shall be negotiated and realized under one of following forms:

a) After its establishment, the Project Enterprise shall associate with the Investor to form a party to sign the Project Contract;

b) The authorized State body, the investor and the project enterprise shall sign an agreement that allows the project enterprise to receive and exercise their rights and obligations as prescribed in the project contract. This agreement shall

be an integral part of the project contract.

4. Parties of the project contract, relevant agencies shall be responsible for implementation of the project contracts as prescribed in this Regulation and other current legislation

CHAPTER VI

ORGANIZATION OF IMPLEMENTATION

Article 23. Duties of the Ministry of Planning and Investment

1. Advise the Prime Minister to provide direction over ministries, ministerial level agencies and the provincial people's committees to implement this regulation.

2. To preside over co-ordination with relevant agencies to evaluate proposals of the project to include them in the project list, feasibility report, results of selection of project implementing investors and make submissions to the Prime Minister for his approval.

3. To preside over co-ordination with relevant agencies to evaluate and make submissions to the Prime Minister for approval of the State's participation in the project and specialized mechanism of the project.

4. To engage and provide support to authorized State agencies to negotiate, complete and sign the project contract.

5. To preside over co-ordination with relevant agencies to supervise implementation of the project.

6. To provide its opinions on selection of investors, issuance of investment certificate, negotiation, signing of the project contract and other relevant issues arising during the pilot implementation.

7. To evaluate the plan for development and investment capital for preparation cost of investment, the State budget's contribution to the State's participation in the project and other necessary costs related to the implementation of project as established by an authorized State body.

8. Based on approved plan for development and investment capital, to arrange investment preparation capital for projects using the central state budget or to allocate the central state budget to support localities.

9. Based on the approved feasibility report (including the proposed State's participation) as stipulated in Article 17 of this regulation, to arrange

development and investment capital sources for the projects including projects managed by provincial people's committees in case of projects that are partly financed by the central State budget to conduct investment from the State's participation in the project

10. Take lead over mobilization, management of preferential loans provided by multilateral and bilateral donors and other appropriate capital sources as stipulated by current legislation to cover part of investment cost and contribute to the State's participation in the project.

11. To act as a focal point to mobilize, receive and manage non-refundable ODA sources financed by multilateral and bilateral donors as stipulated by current legislation for training activities, capacity building, improvement of legal framework of PPP investment, technical assistance, investment promotion during the process of preparation and implementation of the project.

12. To organize investment promotion activities to present the project list and individual projects to investors and domestic and international capital markets. Activity details shall be determined by Minister of Planning and Investment.

13. To organize training activities, build capacity for agencies on management, implementation of PPP investment.

14. To preside over coordination with concerned ministries, agencies to review, evaluate implementation of this regulation as a basis for improvement of legal framework for PPP investment.

15. To implement tasks and exercise powers as stipulated in Articles 9, 11 of this regulations, other regulation prescribed by law and upon the Prime Minister's determination.

Article 24. Duties of the Ministry of Finance

1. To provide opinions on evaluation and inclusion of the proposals for the project in the project list, the feasibility report, results of selection of project implementing investors.

2. To provide opinions on evaluation of the State's participation in the project and the project's specialized mechanism.

3. To provide support to the authorized State bodies to negotiate, complete and sign the project contract in respect of contents within management functions of the Ministry of Finance.

4. To preside over supervision of capital contribution of the project.

5. To provide guidance for authorized State bodies in implementation of reimbursement of the State's participation and specialized mechanism of the project.

6. To engage in formulation of budget plan for preparation cost of investment, the State budget contribution to the State's participation in the project and other essential costs related to implementation of the project.

7. To engage in mobilization, management and use of preferential loan capital financed by multilateral and bilateral donors and other capital sources as stipulated by current legislation to cover part of investment preparation cost and make contribution to the State's participation in the project.

8. To participate in reviewing and evaluating implementation of this regulation as a basis for improvement of legal framework for PPP investment.

9. To carry out tasks and exercise powers as prescribed in Articles 9, 11 of this Regulation, other regulations and upon the Prime Minister's determination.

Article 25. Duties of the Ministry of Justice

1. To coordinate with the Ministry of Planning and Investment to develop guidance for implementation of this regulation.

2. To provide assistance to the authorized state bodies to negotiate, complete and sign the project contract in respect of contents within functions and duties of the Ministry of Justice.

3. To participate in reviewing and evaluating implementation of this regulation as a basis for improvement of legal framework of PPP investment.

4. To carry out duties and exercise powers stipulated in Article 11 of this regulation, other regulation prescribed by law and upon the Prime Minister's determination.

Article 26. Duties of the State Bank of Vietnam

1. To provide opinions on security level of foreign currencies (foreign currency balance foreign exchange) and other relevant issues as a basis for evaluation of the State's participation in the project and specialized mechanism of the project.

2. To engage in mobilization, management, and use the preferential loan sources financed by multilateral, bilateral donors, and other capital sources as

stipulated by current legislation to cover part of cost of preparation of investment and contribute to the State's participation in the project.

3. To provide support to the authorized State agency to negotiate, complete and sign the project contract in respect of contents within the state management functions of the State Bank of Vietnam.

4. To provide opinions on establishment and use of project –related accounts

5. To supervise capital contribution and disbursement of the project.

6. To perform tasks and exercise powers as prescribed in Articles 9, 11 of this regulation, other regulations prescribed by law and upon the Prime Minister's determination.

Article 27. Duties of the Authorized State agency

1. Formulate a plan for development and investment capital used for investment preparation cost, the State contributions under the State's participation item in the project and other necessary costs related to the project implementation

2. Formulate the project proposals within its managerial sector in accordance with Article 12 of this regulation.

3. To receive the project proposals from investors, consider and propose to include the project in the project list as prescribed in Article 13 of this regulation.

4. To provide its opinions on proposals of the project, the feasibility report and other issues at the request of the Ministry of Planning and Investment.

5. To formulate the feasibility study report of the project as prescribed in Article 16 of this Regulation.

6. To put forward the State's participation in the project and proposed specialized mechanism for the project.

7. Based on approved plan for development and investment capital, to arrange capital sources for preparation of investment for the project using the central State budget capital or partly financed by the central state budget.

8. Based on the approved feasibility report (including the proposed State's participation) as stipulated in Article 17 of this regulation, to arrange development and investment capital sources for the projects (in case of investment projects managed by local authorities, provincial and municipal

people's committees shall take responsibility to prepare plans) to conduct investment from the State's participation in the project.

9. Hold tenders to select consultants, investors; negotiate, complete, sign and perform the project contract as prescribed in Article 17, Article 18, and Article 19 of this Regulation.

10. Make proposal on the State's participation in the project and specialized mechanism of the project based on results of tendering and negotiating with investors.

11. To implement tasks and exercise powers as stipulated in Articles 9, 10, 11 of this Regulation, other regulations prescribed by law and at the Prime Minister's determination.

Article 28. Enforcement provisions

1. This regulation shall be applicable within the pilot period till an official regulation on PPP investment is issued by the government to replace it.

2. Other contents not specified in this Regulation shall be governed by existing legislation in compliance with international practices as decided by the Prime Minister

3. In case of any other issues arising which are not governed by current legislation during the pilot implementation, the Ministry of Planning and Investment shall coordinate with relevant agencies to report to the Prime Minister for consideration and decision.

THE PRIME MINISTER

Nguyễn Tấn Dũng