

FOREIGN PRIVATE SECTOR POWER IN VIETNAM

*Presented by
Mr. Tony Foster
Head of Infrastructure Working Group*

1. OVERALL ISSUE

1.1 Over the years Vietnam has made substantial investments in infrastructure. Investment on electricity, water supply, waste treatment, transport and communications in Vietnam amounted to about 12 percent of GDP from 2006 to 2010, which is a high percentage by comparison with other regional countries, including China. Successful countries build the infrastructure needed to maintain growth.

1.2 However, despite this high level of investment, Vietnam's infrastructure is still regularly rated by businesses and chambers of commerce in Vietnam as a constraint on growth. Vietnam is still far behind other Asian emerging economies in terms of infrastructure development, possibly because Vietnam started with much poorer infrastructure and therefore has to invest heavily to catch up. But the mismatch between spending and performance indicates that there has often been inefficient implementation.

1.3 More importantly, the money is no longer there to sustain high levels of investment. There are several interlinked reasons for this including the tightening of government policies on foreign debt and the shifting of Vietnam to a mid-income economy in the eyes of donor agencies. In addition, the past few years of macroeconomic instability has shown that the expansionary monetary and fiscal policies that supported this investment cannot be sustained by the underlying fundamentals of Vietnam's economy. The government has already decided to reduce total investment from more than 40 percent of GDP in the past to 34 percent in 2012. Infrastructure investment should be reduced to 8 or 9 percent of GDP, which is more in line with regional standards.

1.4 If the public investment process is to be more limited, the question is whether private investment can take its place to any meaningful extent.

1.5 One aspect of this is foreign private sector investment and the other is domestic Vietnamese private sector investment. The former brings in foreign funds to support the Vietnamese economy. The latter often relies on State-owned banks, which in an era of limited credit, can have a negative knock-on effect for other sectors.

1.6 There are currently at least 15,000 MW of power currently under development by foreign private sector developers. This represents potential investment of about \$25 billion.¹ Assuming that these projects are at least as efficient as projects built by the State, this would save the State from having to find an equivalent amount of money. Yet nearly all of these projects are unexpectedly slow to develop. Some have commercial negotiations (even before financing) that have been going on for well over five years without an end yet in sight.

¹ The total investment capital required for 2011–30 is estimated to be around VND2,359 trillion (approximately US\$123.8bn). Vietnam Electricity is unlikely to be able to contribute all of this investment capital, especially considering its financial situation. PetroVietnam has recently played an increasing role in this sector, and has helped to fill some of the needs left open by EVN's financial issues. Yet the Government now requires that State-owned companies focus on their core competencies. The VBF sub-group would request the views of the Government on whether power is a core area for PetroVietnam, and whether it expects PetroVietnam to play an increasing or a reduced role in this sector.

In other Asian economies, similar projects typically take 24 months to negotiate and reach financial close. Ground can only be broken on a project once financial close is reached. Usually construction runs another four years after commencement of work. This means that the total development time for an infrastructure project can be in excess of a decade before Vietnam sees any direct benefit from such project. With other Asian economies such as Indonesia, Philippines and Myanmar making significant reforms in their investment policies, such as the rapid development of PPP in Indonesia and Philippines and the strong U.S. focus on Myanmar's economy, Vietnam could well find itself as a less than attractive investment environment, unless significant steps are taken to speed up the time it takes to tender and implement infrastructure projects in the country.

2. VBF SUGGESTIONS

If Vietnam wishes to attract private foreign funds to finance infrastructure, its projects need to offer an attractive commercial proposition to foreign investors and lenders. To do this, the projects will need to deliver an acceptable return and legal security to foreign investors and lenders.

The VBF infrastructure group would like to focus on a few steps in each of the BOT, PPP and Renewables areas that could encourage much-needed foreign private sector investment. The goal of this paper is simply to hit the high points, the ones that are holding up progress. By solving them, the Government could remove the barriers that are preventing billions of dollars in needed investment from flowing into the country and create a more positive profile for the country.

2.1 BOT Projects

Recommendation 1: Issue Government guarantees of foreign exchange to solid projects with solid sponsors and lender groups.

- (a) In practice, the Vietnamese Government has entered into five or six Government guarantee agreements for BOT projects, including for the Phu My 2-2 BOT power project, the Phu My 3 BOT power project and the AES - Mong Duong 2 BOT power project. The Vietnamese Government has also issued Government guarantee agreements in respect of upstream/midstream gas projects (Nam Con Son and tie-ins to the Nam Con Son pipeline). There have been no calls on these guarantees. This compares positively to the guarantees issued by the State for loans provided to SOEs for infrastructure projects. According to official correspondence 17164 of the MOF dated 15 December 2011, 88 projects had received government guarantees, including 37 power projects, 10% of them had loan repayment difficulties. A solid government guarantee is fundamental to obtaining foreign lending on infrastructure projects.
- (b) One particular area of concern for foreign lenders to power projects is foreign exchange convertibility, remittability and availability. Unfortunately, Official Correspondence 1604 (**OC 1604**) entrenches a position on government guarantees for foreign exchange that is very difficult for foreign lenders and developers to live with.
- (c) OC 1604 provides that the guarantee of foreign exchange will only extend to 30 per cent of revenues after deducting expenses incurred in Vietnamese dong. This does not provide foreign developers and foreign lenders sufficient comfort. The only

power projects of any size in Vietnam that have been financed to date have been financed on the basis of 100% foreign exchange guarantees.

- (d) There is an additional problem that stems from lack of uniform applicability of guarantee principles. Some power projects have been licensed (or, in the case of Nghi Son 2, have been tendered), on the basis of 100% foreign exchange guarantees. As the commercial project finance markets are extremely narrow in Asia (and getting narrower all the time), banks can be very choosy about which project to fund. If they have a choice of a project that has a 100% foreign exchange guarantee and one with a 30% foreign exchange guarantee, then if everything else is roughly equal they will fund the former. As a result no project with a 30% foreign exchange guarantee is likely to be financeable in the near future in the commercial market.
- (e) Please see our comments in section 2.2(c) below on guarantees in the PPP context. The comments there apply to BOT as well.

Recommendation 2: Assume the cost of land

The VBF sub-group would request a stronger commitment of the Government to prepare for land transfer in advance and to allocate appropriate budgets to the process. Otherwise, the risk is shifted to the private sector, which results in a passing through of the costs, which will necessarily be higher than the costs to the Government in the first place.

Recommendation 3: Allow mortgages of land

There is an indirect financing cost of not being able (according to certain arms of the Government) to mortgage land for which no payment has been made. This is an easily soluble issue.² All that is needed is a regulation that states that land that is leased at no rent is deemed to have been paid for in full when it is leased. There is a compromise in OC 1604 issued by the Prime Minister on 12 September 2011, which states that investors have the right to mortgage the assets attached to the land. And *“if the assets attached to the land are assigned, then the assignee shall inherit the use right of the land to which the assets are attached for the residual term of the project contract term [or duration].”* While this may eventually give banks the comfort that they need, by adding to the overall impression of Vietnam as an eccentric legal jurisdiction, it does not assist in Vietnam’s goal of obtaining the best terms for its borrowings.

Recommendation 4: Provide necessary supporting infrastructure

All power projects require certain infrastructure in order to operate and produce electricity. For example, they need water and they need transmission lines to take electricity to the national grid. As the issue of infrastructure sharing is currently not specifically regulated, the VBF would suggest that it would be more efficient if the Ministry of Industry and Trade procured the completion of any infrastructure outside the boundary of the power plant. This would have cost benefits as well as avoid any delays to the estimated project schedules.

² Indeed, the VBF sub-group does not believe the issue should have arisen at all. Land rent exemptions for BOT projects are an investment incentive, and should not prejudice investors’ entitlement to grant security interests over the land they need for their project.

Recommendation 5: Reduce administrative complexity

The Phu My 2-2 and Phu My 3 projects took about 7 years to get to financing. The Mong Duong 2 project took about 6 years. The Nghi Son 2 project has been going for over 4 years and the investment licence has not been issued so the financing stage has not even begun. The Block B – 0 Mon gas to power project has been going on for a lot longer than any of the above. The VBF acknowledges that the government has made an effort centralise negotiations for BOT projects. In particular, it notes that in BOT power projects, the MOIT acts as the convener of general meetings and requests the presence of different ministries and bodies. But ministries and other bodies do not necessarily act with a unity of national purpose. Every stakeholder seems to have a veto or at least substantial delaying power. The VBF would suggest that it may be better not to wait another 10 years to address the issue.

The VBF would suggest that it is time for some radical action. This could take the form of improving the substance of the BOT regulations to provide greater support for investors. In addition, there should be a serious examination of the cost/benefits of so called inter-ministerial working groups where participants have veto rights on projects but little incentive to promote the speedy development of the project. Or at least the imprecision of existing regulations could be eliminated so as to remove administrative discretion (and hence reduce delays). Many investors who are willing to commit hundreds of millions of dollars find it unnecessarily tiresome that the regulations contain so few clear answers and that everything depends on administrative discretion. The cost of these delays to the Vietnamese State and people can be substantial.

2.2 PPP

Recommendation 1: Establish a structure

The VBF would welcome further clarity on the organisational structure that the Government anticipates for PPP, and in particular what scope and authority the PPP office will have in working across ministry lines to facilitate PPP projects. The most successful PPP programs in the world have very clear institutional structures for promoting, selecting, tendering, negotiating, implementing and then monitoring PPP projects. Vietnam has to date received significant support from the donor community to structure its PPP program, and the VBF recognizes that key elements of a PPP program are coming together at this very moment. However, details of what is happening are not known to the general business community. The VBF would welcome a public dialogue that informs the investor community of the current status of PPP and when investors can expect to see tangible projects tendered under this alternative to BOT.

Recommendation 2: Formulate appropriate procurement regulations

Attached as Schedule 1 are the VBF's comments on the draft Procurement Law relating to PPP.

Recommendation 3: Determine what support the State can provide

Under Decision 71, the Government can fund up to 30 per cent of the required investments, unless otherwise decided by the Prime Minister. This has given rise to numerous questions, such as:

- (a) Are the costs of land rental, land clearance and compensation and land preparation to be counted within the 30 per cent? The general market consensus would probably be that land rights contributed by a public authority should not count within the calculation of public support or viability gap fund usage (where a viability gap fund is established).

- (b) Is capital contributed by State-owned companies considered to be part of the 30 per cent? The Government expects State-owned companies to act as private, commercial enterprises. In the absence of some sort of capital injection for a specific PPP project, their participation in such project should presumably not be viewed as a State contribution.
- (c) How are guarantees from the Government to be valued? An issue with guarantees under the nascent PPP program is whether the guarantee is counted into the cap on State contribution to the project. For example, Decision 71 seeks to limit State contribution to a maximum of 30% of the total investment cost of a PPP project. Given the current state of Vietnam's development and economy, it is difficult to imagine any large scale PPP project where at least some form of government guarantee will not be required. When analysing the need for guarantees in infrastructure projects, the actual needs of the project to make it bankable and viable should be weighed without limitations imposed by an arbitrary cap on State contribution. There is a clear trend in other economies, such as Korea, where greater government guarantees are needed early on in the economy's PPP program to kick start the economy with fewer guarantees being needed at later, healthier stages in such economy's development.
- (d) Are tax incentives to count as State contributions?
- (e) Should the State participation be in the form of equity (and if so, how except through State-owned companies), debt, grants, provision of other projects necessary for the viability of the PPP project (and if so, how does one limit the determination of what is "necessary") or any of the above?

Recommendation 4: Determine responsibility for risks

The pilot projects are supposed to provide the experience on which fuller regulations can be based. The VBF realises that these regulations are open-ended in order to leave maximum flexibility for creation of pilot projects of different types. But it appears to be very difficult for projects to be developed without clear guidelines about what is and is not permissible. The most important issue is what risks the State will bear and what risks will be allocated to the private sector. But all of the above issues on the meaning of State contribution have to be worked out as well in these guidelines. The VBF sub-group would welcome some further detail about the likely timing and content of these guidelines. If the goal is to have guidelines that are comprehensive, in order to make Decision 71 framework a complete force, this would of course be welcomed by the PPP community. But it is a goal that has eluded the BOT sector.

2.3 Renewables

Recommendation 1: Revise the Renewable Energy Targets in the Master Plan VII to a more modest, and achievable level.

Recommendation 2: Develop a comprehensive Renewable Energy Plan including, solar thermal, solar PV, biomass and biogas in addition to wind.

Recommendation 3: Issue effective feed-in tariffs for each energy source that deliver a cost plus reasonable economic profit to investors.

Unfortunately the Circular issued in mid-November 2012 relating to the wind market is unlikely to be sufficient. It confirms that the PPA and feed-in tariff will be a maximum of US 7.8 cents and all will be paid by EVN, which will then recover the feed-in tariff US 1 cent from the Vietnam Environmental Protection Fund. The VBF welcomes the clarification that the prescribed 7.8 cents will be converted into VND to be paid at the market rate on the date of payment each month, not at a fixed rate, thus removing exchange rate risk in the PPA. Unfortunately, the tariff is still not at an economically viable income level to result in foreign private wind power projects in Vietnam.

The Circular also contains provision for adjustment of the tariff each October, which will be recommended by the Department of Energy of the MOIT and must be approved by the Prime Minister. This adds nothing to helping an investor define future cash-flows, as neither the basis for the recommended adjustment (whether it be up or down) or the basis for the use of the Prime Minister's discretion to approve it are defined. There is just a vague reference to "costs" (we assume the power projects' costs) and to the "general tariff of the whole system" as subjects that MOIT will consider.

Recommendation 4: Enhance the incentives to manufacturing of renewable energy equipment in Vietnam to promote employment and inward investment to Vietnam.

SCHEDULE 1 LAW ON PROCUREMENT

1. BASIC REVIEW

- (a) Review of the draft (amended) Law on Procurement (the *Draft Law*) as it relates to the procurement of public-private partnership (*PPP*) projects in Vietnam.
- (b) Consideration of the fundamental principles which PPP procurement law should cover, including a review of:
 - (i) EBRD Core Principles for a Modern Concession Law;
 - (ii) OECD Basic Elements of a Law on Concession Agreements;
 - (iii) European Commission Guidelines for Successful Public-Private Partnerships; and
 - (iv) Country's PPP laws which have launched successful PPP programmes.
- (c) The application of lessons previously learnt from the cases of Phu My 2-2 and Nghi Son 2 should be applied in order to make the Draft Law clear and transparent, avoiding the potential of investor confusion.
- (d) Review of whether the Draft Law adequately addresses those fundamental elements and in a manner that will mean that the Draft Law can support a successful PPP programme, and any subsequent recommendations for improvement.
- (e) Suggestions include clarifying the procedures set out in the law in order to boost the confidence that potential investors will have in the law (prompting them to participate in PPP tenders) and ultimately impacting upon the law's success as a platform for Vietnam's PPP programme.

2. THE PURPOSE AND VALUE TO VIETNAM OF THE DRAFT LAW

- (a) Dual purpose of PPP legislation:
 - (i) Robust enough for PPP participants (both potential investors and financiers) to have confidence in the process
 - (ii) Flexible enough to allow the Government and other ministries to customise it to specific projects
- (b) Any recommended changes are simply to aid consistency with procurement laws in other jurisdictions and established PPP principles, aiding confidence in the Draft Law amongst investors and financiers
- (c) Suggestions include clarifying the procedures set out in the law in order to boost the confidence that potential investors will have in the law (prompting them to participate in PPP tenders) and ultimately impacting upon the law's success as a platform for Vietnam's PPP programme.

3. SUMMARY OF KEY RECOMMENDATIONS

- (a) The Government's objectives should be clearly stated at the start.
- (b) "PPP Projects" should be a clearly defined concept, with provisions related to them addressed in a standalone section.

- (c) The mandatory nature of the Draft Law for PPPs should be clarified.
- (d) Responsibilities for overseeing the procurement of, negotiating and implementing PPPs to be a transparent streamlined process, with procuring agencies empowered by the new procurement law clearly identified, and “powers” clarified.
- (e) Suggested new central independent body or 'task force' monitoring the PPP procurement process would help international investor confidence in the process.
- (f) Evaluation criteria and selection process should be clearly determined by the 'most economically advantageous tender' and not restricted to price considerations only.
- (g) Draft Law should explain how the new procurement law sits alongside existing regulations and address any conflict of laws in the context of PPPs.

4. CORE ELEMENTS

- (a) Objectives and policy statement
- (b) Scope of Draft Law
- (c) Place of the Draft Law within the overarching legislative framework
- (d) Empowered entities and procuring authorities
- (e) The selection criteria and procedure
- (f) Challenging the procedure

5. OBJECTIVES AND POLICY STATEMENT – PPP IN PROCUREMENT LAW

- (a) Fundamental principle
 - (i) The law is the cornerstone for the government to develop both a stable and sustainable investment environment, so the policy and objectives should be clear.
- (b) Application of principle to the Draft Law
 - (i) Although scope and authority are addressed, there are no clear objectives.
- (c) Recommendations
 - (i) The Government's objectives should be clearly stated at the start and established as an overriding principle. This allows any other provisions of the Draft Law to be interpreted against them in the event of ambiguity.
 - (ii) Objectives would typically include:
 - (A) establishing legislation to promote and facilitate PPP projects by enhancing transparency, fairness and long-term sustainability in infrastructure development and operation;
 - (B) to maximise efficiency and value for money of PPP schemes;
 - (C) the division of improved risk allocation and sharing among public and private sectors; and
 - (D) the advancement of Government policy objectives generally, such as the decentralisation of public sector.

6. PPP SCOPE – DRAFT LAW

- (a) Fundamental principle
 - (i) As the primary legislation the Draft Law should clearly describe the platform for both PPPs and the subsequent successful implementation of projects.

- (ii) The EBRD Core Principles state “The [PPP] law should clearly define the scope of its application, i.e. the legal relations to which the law extends. Such clarity is essential for the predictability of the [PPP] regime, for the stability and validity of the [PPP] agreement as well as for the prevention of ungrounded arbitrary actions by the contracting authorities. With this purpose, the [law] should provide an exhaustive definition of “concession” [or “PPP projects”], a list of sectors concerned, contracting authorities, and eligible concessionaires.”
- (b) Application of principle to the Draft Law
 - (i) It is not expressly clear that the Draft Law covers PPP projects.
- (c) Recommendations
 - (i) The definition of “Investor” and the type and scope of projects applicable to them should be clarified.
 - (ii) “PPP Projects” or a similar term should be defined to indicate key elements such as relevant sectors, contracting authorities and eligible investors. Additionally, different types of projects, including between ECA-backed IPPs and ODA funded projects should be distinguished from PPPs.
- (d) Further recommendations
 - (i) Provisions relating to PPP projects should be categorised and provided for in a separate chapter of the Draft Law rather than addressed alongside the bidder process for ‘State funds developments’.
 - (ii) Investor should be clearly defined once in relation to PPP Projects. The eligibility requirements of any such ‘Investor’ should be revisited in order to remove any uncertainty or overly onerous requirements.
 - (iii) Articles 85 to 96 should refer expressly to the defined concept of PPP Projects, the competent agency and its relevant authority.
 - (iv) It is highly unusual that the minutes of contract negotiation are included as if not expressly incorporated into the contract, negotiations do not usually have direct application on the contract terms. This inclusion will only confuse investors.

7. PLACE OF THE DRAFT LAW WITHIN THE PPP/BOT LEGISLATIVE FRAMEWORK

- (a) Fundamental principle
 - (i) Any new law should aim to identify and clarify any conflicting provision of existing national law, and, if necessary, amend it.
 - (ii) If conflicting laws remain in force without such clarification then confusion and potential disagreement will arise in relation to the basis for procurement, potentially deterring investors.
 - (iii) Inconsistencies and ambiguities among existing laws and the Draft Law will impact bidders’ costs, which is ultimately passed onto the Government
- (b) Application of principle to the Draft Law
 - (i) The Draft Law refers to some previous laws but not all those with which some interaction will be required, such as Decree 71 and specific BOT contracts.
 - (ii) “Concession” and “BOT” contracts are referred to by the Draft Law, but it is not clear if PPP fall under these concepts.
 - (iii) The interaction of Decree 71 with the Draft Law is unclear, while Decree 71 itself requires substantial clarification in relation to the application of 30 per cent Government funding capability.

- (c) Recommendations
 - (i) Clarify the relationship between the Draft Law and the BOT regulations and Decree 71.
 - (ii) Decree 71 should be fully explained through specific Government guidelines, including the interaction of it with the Draft Law.
 - (iii) Inclusion of a statement that in the event of inconsistency the Draft Law will prevail.

8. PPP – EMPOWERED ENTITIES AND PROCURING AUTHORITIES

- (a) Fundamental principle
 - (i) It is important to identify and empower those entities responsible for implementation of the PPP programme.
 - (ii) A sound PPP legislative framework will also provide the procuring ministry/agency's officials with a basis for negotiating the terms of the project documents and the inclusion of governmental support therein.
- (b) Application of principle to the Draft Law
 - (i) It is not clear which entities are empowered under the Draft Law, and there appears to be overlaps between the mandates and authorities of different Government ministries.
 - (ii) Confusion as to empowered entities may cause potential investors to lose confidence in the Draft Law as an authoritative piece of legislation (detering the participation of key players).
 - (iii) Currently there are no express rights for competent authorities to offer Governmental financial support or guarantees, which could aid the chances of success in financing a project.
- (c) Recommendations
 - (i) The PPP law should expressly identify those government agencies which are authorised and empowered to procure a project under the PPP law.
 - (ii) The Draft law should expressly allow 'competent persons' to negotiate, including the ability to offer Government financial support and undertakings.
 - (iii) Further flexibility should be included to allow 'competent persons' to be responsive to the specific comments and feedback of financiers (in particular ECAs/MLAs given the potential importance of them to Vietnam's PPP programme with the dearth of liquidity amongst commercial banks for PPP projects in the region).
 - (iv) It is critical that potential investors are confident relying on the authority given to a procuring agency by the law. As such, there should be a clear delineation of responsibilities and authority in the Draft Law.
 - (v) The interaction of ministries and agencies should be a streamlines process addressed by provisions within the Draft Law, allowing decisions to be made if no answers have been received in respect of a particular issue within a stated time.
 - (vi) The creation of a central independent body or 'task force' monitoring the PPP procurement process would further improve international investor confidence in the Draft Law.

9. PPP SELECTION CRITERIA AND PROCEDURE

- (a) Fundamental principle
 - (i) The procurement law should set out a selection procedure which will guarantee a fair, transparent and competitive PPP selection process

- (including exceptions from competitive procedure), equal treatment of potential investors, opportunity to challenge the rules and decisions of procuring ministries/agencies and competitive rules for unsolicited proposals.
- (ii) The procedures and rules should be: objective and accessible (made public); a solid framework with sufficient flexibility for adaptation; and reviewable by an independent body with appropriate remedies.
- (b) Application of principle to the Draft Law
- (i) Although provisions are included which are intended to address the eligibility and selection of investors, there are several aspects where the Draft Law could be improved.
- (c) Recommendations
- (i) It should be explicit exactly which provisions are intended to specifically apply to investors and PPP projects, and the selection criteria clarified.
 - (ii) There should also be a more selective criteria applied to PPPs which looks beyond price as the primary or sole criterion, and identifies the 'most economically advantageous tender'.
 - (iii) A provision should be included to explicitly state that procuring ministries/agencies are prohibited from favouring SOEs or domestic bidders for PPPs (including ensuring that definitions of 'international bidding' and 'national bidding' do not inadvertently exclude foreign bidders from bidding).
 - (iv) The conflict of interest provisions should be broader in order to cover more instances of individuals having a financial interest in potential investors, which subsequently may effect impartiality.
 - (v) It is not necessary for time periods to be included within the Draft Law in relation to decisions relating to selection of an investor. This can be addressed in each relevant procurement plan for the relevant project.
- (d) Further Recommendations
- (i) In addition to the list of prohibited acts under Article 33 a requirement should be included that all investors comply with all laws of Vietnam dealing with anti-corruption and all anti-corruption laws, and otherwise applicable to the investor.
 - (ii) It is advisable for the Draft Law to include a 'proposal clarification process', requiring the 'competent person' to clarify the reasons in writing where bidders may take divergent views (especially on issues such as bankability).

10. CHALLENGING THE PROCEDURE

- (a) Fundamental principle
- (i) Private sector parties will expect a PPP procurement law to have a dispute settlement mechanism that is regarded by the participating parties as appropriate to the nature of the project.
- (b) Application of principle to the Draft Law
- (i) The Draft Law includes a review/dispute resolution process (with adequate remedies) but is flawed in that:
 - (ii) the ultimate deciding member is the competent person (which means they are not independent); and
 - (iii) the role of consulting counsel is not clear.

(c) Recommendations

- (i) The Draft Law should make the arbiter of complaints an independent entity while expressly permitting the final recourse of a complaining investor to binding international arbitration.
- (ii) Remedies (i.e. damages/retendering rather than recourse through the courts) available to a complaining investor should be set out in the Draft Law in order to avoid ambiguity.