

PPP Update Paper

Legal Framework

Public-private partnership (PPP) concept (but limited to build-operate-transfer (BOT), build-transfer-operate (BTO) and build-transfer (BT) in certain sectors) was firstly introduced in Vietnam in 1997 when Decree No.77/CP on BOT applicable to local investors was issued on 18 June 1997, and then Decree No.62/1998/ND-CP on BOT, BTO and BT applicable to foreign investors was issued on 15 August 1998. After that, Decree No.78/2007/ND-CP on BOT, BTO and BT was issued on 11 May 2007, in combination with and replacement of Decree 77 and Decree 62, and applicable to all local and foreign investors; Decree No.108/2009/ND-CP was issued on 27 November 2009 in replacement of Decree 78.

However, the full PPP concept was just introduced in Vietnam in 2010, when the Prime Minister (PM) issued his Decision No.71/2010/QĐ-TTg on 9 November 2010, providing a 3-5-year pilot mechanism for PPP investment. Decision 71 existed in parallel with Decree 108. For the first time, PPP was not only limited to BTO, BTO and BT, but also open to all forms of cooperation between public and (foreign and local) private investors, in all sectors. Upon the expiry of 5 years of pilot implementation provided by Decision 71, Decree No.15/2015/ND-CP was issued on 14 February 2015, providing a single legal basis for PPP investment. Decree 15 replaced both Decree 108 and Decision 71. Most recently, Decree No.63/2018/ND-CP was issued on 4 May 2018, in replacement of Decree 15, providing private investors making PPP investment with more incentives and protections.

In addition, to support PPP projects in Vietnam, a large number of new and updated laws has from time to time been introduced in Vietnam. The most relevant laws may include Land Law 2013, Bidding Law 2013, Investment Law 2014, Public Investment Law 2014, and Construction Law 2014.

Encouraged Sector

In principle, PPP projects can be made in all sectors. However, they are encouraged by the laws in the following sectors:

1. Transportation;
2. Power (including plant and transmission network);
3. Public lighting; clean water supply; drainage network; waste treatment facility; public park; vehicle parking area; cemetery;
4. Government office building; house for public servants; social housing; resettlement residential area;
5. Healthcare; education; culture; sport; tourism; science and technology; hydrometeorology; information technology (IT) application;
6. Commercial infrastructure; infrastructure for residential area, economic, industrial and IT park; high tech park; technical and working area, incubator for small and medium sized enterprises (SME);
7. Agricultural and rural development; services for linkage between agricultural production and processing.

It is important to note that the Government of Vietnam (GoV) may consider adjusting the list from time to time.

Project Category

In general, PPP projects are classified into four major groups:

1. Special group of national importance;
2. A;
3. B;
4. C.

Though State budget just contributes a part of total investment capital, the creation, implementation and closure of PPP projects are subject to the same conditions, requirements and procedures as those applicable to projects where State budget is fully paid. While:

1. Investment policy for projects of the special group

(regardless of investment capital and State budget contribution) will be approved by the National Assembly (NA);

2. Investment policy for group A projects (where State budget contribution is 30% or more of the total investment capital or less than 30% of the total investment capital, but over VND300 billion (about USD13 million, at foreign exchange rate of VND23,000/USD) will be approved by Prime Minister (PM).

The remaining projects will be approved by:

3. Relevant ministries in their own sectors, at national level;
4. People's councils or people's committees, at provincial level.

Project Proposal

At national level, PM has issued from time to time a list of national projects calling for foreign investment in different periods. For the period until 2020, PM issued Decision No.631/2014/QĐ-TTg dated 29 April 2014, attaching a list of 127 national projects calling for foreign investment. Decision 631 replaced Decision No.1290/QĐ-TTg, dated 26 September 2007, attaching a list of national projects calling for foreign investment in 2006-2010 period. The list divides 127 projects into five major groups, including (A) technical infrastructure (51 projects); (B) social infrastructure (20 projects); (C) agriculture (44 projects); (D) processing (8 projects); and (E) other services and production (4 projects). A majority of projects in the list was proposed in the form of PPP investment. Transportation projects are included in the first group (i.e. technical infrastructure), with 15 projects for roadways, 4 projects for railways, 4 projects for airports, 2 projects for sea ports) and 24 projects (out of a total of 25 projects) were proposed in the form of PPP investment. In addition to the list issued by PM, ministers also have their right to propose projects (including PPP projects) in their own sectors for foreign and local investment.

At local level, people's committees of provinces/ cities have

their right to propose projects (including PPP projects) in their own provinces/ cities for foreign and local investment. It is important to note that all PPP projects proposed by foreign and local investors are legally encouraged and Decree 63 provides a number of conditions, requirements and procedures for them to make proposals for such projects.

Project Publication

The GoV is nationally responsible for all aspects in connection with PPP projects in Vietnam, and the Ministry of Planning and Investment (MPI) is responsible for assisting GoV in doing that, including the record and publication of PPP projects proposed by all subjects as mentioned above. At this moment, certain PPP projects recorded and published by MPI can be found at its portal at <http://ppp.mpi.gov.vn/Pages/project-search.aspx#/CBDMDA>. However, only information in Vietnamese are now available. In transportation sector, certain PPP projects can be found at a portal administered by the Ministry of Transport (MoT) which is available at <http://ppp.mt.gov.vn/pppunit/Projects?search=y&status=1>. Again, only information in Vietnamese are available.

Investor Capital Threshold

For a PPP project, (foreign and/or local) investors must have their own capital which must be:

1. Not less than 20% of the total investment capital, if the project has its total investment capital of VND1,500 billion (about USD65 million, at foreign exchange rate of VND23,000/USD) or lesser;
2. Not less than 20% of the part of investment capital of up to VND1,500 billion and not less than 10% of the remaining part of investment capital of from VND1,500 billion, if the project has its total investment capital of over VND1,500 billion.

Major Steps in the Life Cycle of Project

In brief, a PPP project must go through the following major steps:

1. Project proposal (including pre-feasibility study) by investors or relevant authorities (as the case may be);
2. Project investment policy approval (if applicable) by relevant authorities (including NA, PM, ministers, provincial-level people's councils or people's committees);
3. Project proposal published by relevant authorities (through the portal administered by MPI);
4. Project feasibility study proposal by investors or relevant authorities (as the case may be);
5. Project feasibility study approval by relevant authorities (including PM, relevant ministers or chairpersons of people's committees);
6. Bidding for project investor selection by relevant authorities (including PM, relevant ministers or chairpersons of people's committees);
7. Project company incorporation by investors;
8. Project contract (including PPP project contract and all relevant contracts) negotiation and execution by investors and relevant authorities;
9. Project contract published by relevant authorities (through the portal administered by MPI);
10. Project construction site clearance by investors/ project company;
11. Project construction design proposal by investors/ project company;
12. Project construction design approval by relevant authorities;
13. Project construction and operation by investors/ project company;
14. Project construction capital verification and finalization (upon the completion of construction works) by investors and relevant authorities;
15. Project transfer (if applicable, upon the date of transfer

as agreed) by investors and relevant authorities.

It is important to note that foreign investors are entitled to select foreign laws as laws governing PPP project contract and other relevant contracts to which they are parties.

Applicable Incentive

In brief, PPP investors/ project companies are entitled to:

1. Enjoy applicable tax/ fiscal (including land rental) incentives;
2. Be provided with government guarantee in respect of input supplies, product/ service consumption as agreed in PPP project contract;
3. Be fully provided with or accessible to all available public services/ utilities;
4. Have full right to use land for project purpose;
5. Have full right over project assets, including right to mortgage over project assets. It is noted that in case where confiscation for special purpose (e.g. national defense, security or public interest) is requested, full compensation must be made;
6. Exploit projects;
7. Be provided with all legal demands for foreign currencies.

Dispute Resolution

In general, if there is any dispute arising out of or in connection with a PPP project, the dispute should first be resolved by negotiation between the parties on an amicable basis. If no result can be achieved after that:

1. A dispute between foreign investors/ their project companies and any authority of Vietnam, in connection with PPP project contract or any relevant contract to which they are parties, will be resolved by (A) an arbitration body in Vietnam; (B) a competent court in Vietnam or (C) an arbitration committee agreed by the parties;
2. A dispute among foreign investors or between foreign investors/ their project companies and any other foreign/

local entity/ individual, will be resolved by: (A) an arbitration body in Vietnam; (B) a competent court in Vietnam; (C) a foreign arbitration body; (D) an international arbitration body or (E) an arbitration body agreed by the parties.

Future Legal Framework

To create a more formal and comprehensive legal framework for PPP in Vietnam, a proposal on the PPP Law has recently been submitted by MPI to NA. As proposed, the PPP Law, which is now under drafting process, is expected to be passed by NA in 2021.

Highlights

1. Private enterprises entitled to open current accounts at banks

This is the outstanding content in Circular No. 02/2019/TT-NHNN dated 28 February 2019 of the State Bank of Vietnam ("Circular 02"), amending Circular No. 23/2014/TT-NHNN dated 19 August 2014, on opening and maintenance of current accounts at payment service providers ("Circular 23"). Accordingly, Organizations without legal entity status (duly established and operating) are entitled to re-open current accounts at banks and branches of foreign banks from 1 March 2019, particularly including:

- (a) Sole proprietorships;
- (b) Individual household businesses;
- (c) Other organizations (for example, branches, representative offices, law firms, etc.)

Previously, Circular No. 32/2016/TT-NHNN dated 26 December 2016, amending Circular 23 only allowed organizations that are legal entities to open accounts at banks and branches of foreign banks.

In the case where an organization without legal entity status has opened a current account before 1 March 2017, it is

necessary to change the account holder as an organization without re-execution of the contract, unless requested in writing by customer.

In addition, Circular 02 replaces Appendices No. 01 and 02 attached to Circular 23 and supplements Appendix No. 03 (Notice of change in information on current account opened at the State Bank).

This Circular shall take effect on 2 March 2019, cancelling Circular No.32/2016/TT-NHNN and Circular No. 02/2018/TT-NHNN of the State Bank.

2. Guidelines for cases subject to a permit for holding exhibition

This is a highlighted content of Decree No. 23/2019/ND-CP dated 26 February 2019, on Exhibition activities.

Accordingly, organizations and individuals when organising exhibitions shall need a permit to hold exhibitions in the following cases:

(a) Exhibitions organized overseas by Vietnamese organizations or individuals;

(b) Exhibitions organized in Vietnam by international organizations or foreign organizations and individuals.

In addition, the new Decree also provides cases of exhibitions requiring notification of organising exhibitions:

(a) Such notification shall be sent to the Ministry of Culture, Sports and Tourism in respect of:

(i) Exhibitions organized in Vietnam by central authorities;

(ii) Exhibitions jointly organized in Vietnam by organizations located in 2 or more than 2 provinces or cities.

(b) Such notification shall be sent to the provincial-level Department of Culture, Sports and Tourism or Department of Culture and Sports in respect of: Exhibitions organized by local organizations or individuals in localities.

Notes: The provisions mentioned above shall not apply to the following exhibitions:

(a) Art, photography exhibitions; exhibitions of publications,

precious objects, antiques; exhibitions included in the museum system; exhibitions of national and local socio-economic achievements;

(b) Displays of works, exhibits or documents of internal activities.

This Decree shall come into force on 15 April 2019.

3. Registration fee changed from 10 April 2019

On 21 February 2019, the Government issued Decree No. 20/2019/ND-CP, on amendments to a number of provisions of Decree No. 140/2016/ND-CP, on registration fee.

Accordingly, the registration fee applicable to vehicles carrying both passengers and goods (pickup trucks) with permitted transportation volume of less than 1,500 kg and with 5 seats or less, VAN trucks with permitted transportation volume of less than 1,500 kg shall be increased.

In particular, the first registration fee rate applicable to the above-mentioned vehicles is equal to 60% of the first registration fee rate for passenger vehicles of 9 seats or less.

Passenger vehicles from 9 or less seats are subject to the first registration fee rate of 10% and may be charged at a higher rate varying in localities but must not exceed 50% of the general rate.

Thus, in comparison with the current rate of 2%, there has been an adjustment for the two above-mentioned types of vehicles.

In addition, the new Decree adds provisions on the price for calculating registration fee (RF) applicable to the case of leasing land from the State with one-off payment of rent for the whole lease term, specifically: When the lease term is less than the duration of the land category specified in the Land price list, the land price of the land lease term for calculating RF shall be determined according to the following formula:

Land price of the land lease term for calculating RF = Land

price in Land price list/70 years X Land lease term

In addition, documents for declaration of RF applicable to land also requires the originals or valid copies of the following documents:

- (a) The original form on declaration of FR;
 - (b) Valid copies of documents that prove the eligibility of the property (or the proprietor) for exemption from RF (if applicable), unless the original has been submitted as stipulated by laws;
 - (c) Valid copies of documents proving the legal origin of the house or land; legal papers on property transfer signed between the property transferor and the property transferee.
- This Decree shall come into force on 10 April 2019.

4. Amending list of countries entitled to pilot issuance of e-visas and adding border gates for entry and exit of foreigners with these visas

These are noteworthy contents in Decree No. 17/2019/ND-CP dated 1 February 2019, amending regulations on grant of electronic visa (e-visa) to foreigners.

Accordingly, the list of 40 countries having citizens who are entitled to pilot grant of e-visas to enter Vietnam is reduced to 35 countries. Specifically, such countries as Austria, Iceland, Belgium, Portugal, Bosnia and Herzegovina, Brazil, Qatar, etc., are added thereto; while some countries such as: Azerbaijan, Argentina, the Republic of Korea, Russian Federation, etc. are removed therefrom.

The new Decree also adds 5 more border-gates for foreigners using E-visa upon entry or exit, including:

- (a) Land border gates:
 - (i) Tay Trang international border gate in Dien Bien Province.
 - (ii) Na Meo international border gate Thanh Hoa Province.
 - (iii) La Lay international border gate in Quang Tri Province.
- (b) Sea border gates:
 - (i) Duong Dong border gate in Kien Giang Province.
 - (ii) Chan May border gate in Thua Thien – Hue Province.

This Decree will last for 2 years from its issuance date.

5. Requirements for establishing vocational junior college with foreign investment

This content is mentioned in Decree No. 15/2019/ND-CP dated 1 February 2019, providing guidelines for a number of articles and implementation of the Law on Vocational Education (“Decree 15”).

Accordingly, requirements for establishing a vocational junior college with foreign investment in Vietnam are specified in Article 9 of this Decree, particularly:

(a) Having formulated an establishment proposal, which is suitable with the planning for Vietnamese vocational educational establishment network;

(b) Having obtained the investment registration certificate (for the cases where the foreign investors must apply for investment registration certificates as stipulated by the laws on investment);

(c) Having a location for construction of facilities with a minimum land use area of 20,000 m² for a junior college located in an urban area and 40,000 m² for such a junior college located in a rural area;

(d) The investment capital shall be formed by using lawful sources of at least VND100 billion (exclusive of the land values);

(e) Having specific proposals about the organizational structures; facilities and equipment; training programs and teaching materials; teaching staff and managerial officers satisfying the requirements for vocational education registration as stipulated by law; etc.

Decree 15 shall take effect on 20 March 2019.

6. Application procedures, documentation requirements and process for special sales tax refunds

On 1 February 2019, the Government has promulgated Decree No. 14/2019/ND-CP, on amendments and supplements to Decree No.

108/2015/ND-CP, providing guidelines for implementation of a number of articles of Law on Special Sales Tax.

The new Decree provides guidelines for application procedures, documentation requirements and process for special sales tax refunds as follows:

(a) Application procedures, documentation requirements and processes and authority for refunding special sales taxes on temporarily imported and re-exported goods will be implemented according to the provisions in Article 34 of Decree No. 134/2016/ND-CP dated 1 September 2016 (“Decree 134”);

(b) Application procedures, documentation requirements and processes and authority for refunding special sales taxes on raw materials imported for manufacturing and processing of exported goods will be implemented according to the provisions in Article 36 of Decree 134.

If import customs declarations have import taxes and special sales taxes to be claimed for refund, the documentation for import tax refund will also be the same for special sales tax refund.

This Decree is set to enter into force on 20 March 2019.

7. Incentives of import or export taxes for science and technology enterprises

On 1 February 2019, the Government has promulgated Decree No. 13/2019/ND-CP, regulating science and technology enterprises. According to the new Decree, science and technology enterprises will be entitled to incentives in terms of import or export taxes imposed on scientific research, technological development and business activities under the regulations on export or import taxes.

Science and technology enterprises will be given priority and exemption from fees for use of machinery, and equipment available in the national major laboratories, State-owned technology incubation facilities and sci-tech research institutions.

If costs are incurred from purchases of raw materials, these

enterprises will be liable for payment of such costs. In addition, if science and technology enterprises which have got the results efficiently transferred and applied in the reality, and recognized by the State management authorities, shall be entitled to subsidies funded by the State budget. If their results are significant for the socio-economic development and national defence and security maintenance, the State will consider purchasing them. This Decree shall be in force on 20 March 2019.

8. Principles of issuing health facility codes by the Ministry of Health

On 1 February 2019, the Ministry of Health issued Decision No.384/QĐ-BYT, on promulgation of principles for issuance of health facility codes.

Accordingly, health facility code comprises of 5 number characters, including:

(a) The first 2 characters are the code of a province or centrally-run city as prescribed in Decision No. 124/2004/QĐ-TTg dated 8 July 2004; particularly, health facilities directly under the Ministry of Defense use the code of 97, and those directly under the Ministry of Public Security use the code of 98;

(b) The following 3 characters are the order of the health facility in the corresponding province or city starting from 001.

For example, Health facility code of Bach Mai Hospital is: 01001; National Hospital of Traditional Medicine is 01047; Bac Kan General Hospital is 06001, etc.

Information on issuance of the code comprises: name of health facility; code of health facility; address; operating license number, etc.

Responsibilities for issuing code of health facility fall under the Departments of Health of the provinces and centrally-run cities; the Medical Service Corps – Ministry of Defense; the Department of Health – Ministry of Public

Security accordingly to their assigned scope of management. This Decision come into force from the date of signing.

Other sectors:

Finance – Banking

- Decree No. 16/2019/ND-CP dated 1 February 2019, amending the Decrees on business conditions under the State management of the State Bank of Vietnam.
- Circular No. 01/2019/TT-NHNN dated 1 February 2019 of the State Bank of Vietnam, on amendments to Circular No. 30/2015/TT-NHNN, on issuance of licenses to, organization and operations of non-bank credit institutions.

Trade

- Decision No. 822/QĐ-UBND dated 18 February 2019 of the People's Committee of Hanoi, publishing the list of cancelled administrative procedures in the field of food safety under the Department of Industry and Trade, and People's Committees at district and commune levels in the area of Hanoi.
- Decision No. 468/QĐ-UBND dated 1 February 2019 of the People's Committee of Ho Chi Minh City, publishing administrative procedures in the field of registration of collateral arrangements within the scope of management functions of Department of Justice of Ho Chi Minh City.

Education

- Decision No. 388/QĐ-BGDĐT dated 20 February 2019 of the Ministry of Education and Training, on Regulation on management and processing of electronic materials on the Electronic administrative management system of the Ministry of Education and Training.
- Circular No. 01/2019/TT-BGDĐT dated 25 February 2019 of the Minister of Education and Training, on amendments to Circular No. 06/2018/TT-BGDĐT, regulating the determination of enrolment criteria for intermediate and junior college levels of teacher training disciplines; and university, master and doctoral levels.

Transport

- Resolution No. 12/NQ-CP dated 19 February 2019 of the Government, on enhancing traffic safety and order and preventing traffic congestion in the period from 2019 to 2021.
- Decision No. 249/QD-BGTVT dated 13 February 2019 of the Ministry of Transport, publishing amended administrative procedures in the field of aviation within the scope of management functions of the Ministry of Transport.

Administration – Judiciary

- Decree No. 12/2019/ND-CP dated 1 February 2019, on the abolishment of a number of legal documents issued by the Government.
- Decision No. 268/QD-BTC dated 19 February 2019 of the Minister of Finance, on authority for establishing property ownership of the entire people and authority for making decision on approval of plan of handling properties, which are confiscated exhibits and means of administrative violations as stipulated in Decree No.29/2018/ND-CP.
- Decision No. 469/QD-UBND dated 1 February 2019 of the People's Committee of Ho Chi Minh City, publishing the list of administrative procedures in the field of judicial records within the scope of management functions of the Department of Justice of Ho Chi Minh City.
- Consolidated Document No. 01/VBHN-BCA dated 18 February 2019 of the Minister of Public Security, combining Circulars providing for the form of Citizen's Identity Card.
- Circular No. 15/2019/TT-BQP dated 11 February 2019 of the Minister of Defense, on the process of patrol, inspection, supervision of Vietnamese Coast Guard.

Agriculture – Forestry – Fishery

- Decision No. 678/QD-BNN-BVTV dated 28 February 2019 of the Ministry of Agriculture and Rural Development, publishing amended or cancelled administrative procedures in the field of plant protection within the scope of management functions of the Ministry of Agriculture and Rural Development.

- Decision No. 559/QD-BNN-BVTV dated 19 February 2019 of the Ministry of Agriculture and Rural Development, publishing new administrative procedures in the field of plant protection within the scope of management functions of the Ministry of Agriculture and Rural Development.
- Decision No. 758/QD-UBND dated 15 February 2019 of the People's Committee of Hanoi, publishing the list of cancelled administrative procedures in the field of Agriculture and Rural Development under the jurisdiction of the Department of Agriculture and Rural Development, and People's Committees at district and commune levels of Hanoi.
- Decision No. 172/QD-TTg dated 13 February 2019 of the Prime Minister, approving the "National Plan for prevention and control of Avian Influenza for the period from 2019 to 2025".
- Decision No. 501/QD-BNN-BVTV dated 12 February 2019 of the Minister of Agriculture and Rural Development, on removing pesticides containing active substance named Chlorpyrifos Ethyl and Fipronil from the List of plant protection products allowed to use in Vietnam.
- Decision No. 509/QD-BNN-TC dated 12 February 2019 of the Minister of Agriculture and Rural Development, on authority for repair, maintenance, renovation, upgrade and expansion of facilities; procurement to maintain regular operations; management and use of public assets in public administrative and non-business professional units under the management of the Ministry of Agriculture and Rural Development.

Miscellaneous

- Decision No. 745/QD-BYT dated 28 February 2019 of the Ministry of Health, publishing new, amended or replaced/ cancelled administrative procedures in the field of medical equipment within the scope of management functions of Ministry of Health.
- Decision No. 213/QD-TTg dated 21 February 2019 of the Prime Minister, on the Overall program of saving practices and waste-fighting in 2019.
- Decision No. 02/2019/QD-UBND dated 25 February 2019 of the

People's Committee of Hanoi, cancelling Decision No. 23/2013/QD-UBND on the collection, remittance, management and use of proceeds gained from sale of resettlement houses in the area of Hanoi.

- Decision No. 08/2019/QD-TTg dated February 15 2019 of the Prime Minister, providing for the functions, duties, powers and organizational structure of Directorate for Standards, Metrology and Quality directly under the Ministry of Science and Technology.

- Decision No. 584/QD-UBND dated 15 February 2019 of the People's Committee of Ho Chi Minh City, publishing the list of administrative procedures within the scope of management functions of the Department of Tourism of Ho Chi Minh City.

- Decision No. 163/QD-BTTTT dated 14 February 2019 of the Ministry of Information and Communications, publishing the result of systematizing legal documents in the fields under the State management of the Ministry of Information and Communications in the period from 2014 to 2018.

- Decision No. 281/QD-BCT dated 12 February 2019 of the Minister of Industry and Trade, on the price frame for electricity generation in 2019.

- Decision No. 470/QD-UBND dated 1 February 2019 of the People's Committee of Ho Chi Minh City, publishing the list of administrative procedures within the scope of management functions of the Department of Planning and Investment of Ho Chi Minh City.

- Decision No. 149/QD-TTg dated 1 February 2019 of the Prime Minister, on approval of National Remote Sensing Development Strategy up to 2030, with orientation to 2040.