

# For unified PPP legislation in Vietnam

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With the goal of developing a comprehensive and unified legal framework for public-private partnership (PPP) model for infrastructure projects, the Vietnamese government recently released a draft decree on PPP investment forms (*Draft Decree*) which, once approved and promulgated, will replace (1) Decision No. 71/2010/QĐ-TTg (*Decision 71*) dated November 9th, 2010 on the pilot scheme for investments using PPP model and (2) Decree No. 108/2009/ND-CP dated November 27th, 2009 on investment in the form of build - operate - transfer (BOT), build - transfer - operate (BTO) and build - transfer (BT) contracts.

### PPP investment forms

Under the Draft Decree, PPP investment means an investment form based on contracts signed between the competent State authorities and investors to build or improve, upgrade, expand, manage, and operate infrastructure projects or to provide public services in the sectors which are eligible for PPP investments. In which:

- (a) Investors eligible for participation in PPP projects must be organization or individuals carrying out investment activities in accordance with the relevant laws of Vietnam; and
- (b) PPP investment contracts between the competent State authorities and investors shall comprise: (i) BOT, (ii) BTO, (iii) BT, (iv) build - own - operate (BOO), (v) design - build - finance - operate - maintain - transfer (DBFMOT); (vi) build - finance - operate - maintain (BFOM), and (vii) operate - manage (O&M).

Investment sectors being eligible for PPP investment are broadened in contrast to those as set out under current provisions of Decision 71. Particularly, the proposed eligible sectors include, inter alia, road, road bridges and tunnels, ferry land for road traffic, urban traffic infrastructure; railway, railway bridges, railway stations; airports, seaports, logistic service posts; and infrastructure projects for health, education, vocational training, culture, and sport.

### Selection of investors

To prevent corruption and make the process more transparent, investors seeking to pursue a PPP investment project will be selected by open international tendering, except for:

- (a) Open domestic tendering shall be conducted in case where (i) the

law and international treaties have other provisions restricting foreign investors from participating in implementation of projects, (ii) no foreign investors registered in the preliminary selection of investors, or (iii) projects having total investment capital under VND1,000 billion; and

- (b) Appointment of investor shall be carried out when (i) there is only one investor registered for implementation of the project in the preliminary selection of investors, or (ii) the investor who proposes the project is assigned to prepare a feasibility study report in accordance with the relevant provisions under the Draft Decree.

### Projects proposed by investors

Under the Draft Decree, the competent authorities will prepare, select and announce a list of projects approved for implementation under PPP model (*Project List*). A project not yet listed in the Project List may also be proposed by the investor for approval of the competent authorities. In such case, the investor has to prepare a pre-feasibility study report and submit the same to the relevant State authority for approval.

### State participation

According to the Draft Decree, investors and project enterprises are responsible for contribution and mobilization of capital for implementation of projects. The State participation in such projects is to support and increase the feasibility of the financial perspective of the projects. The participation of the State may include State capital, assets, value of land use right, and other financial sources. The value of State participation into a project shall not exceed 50 percent of the total investment capital of a project.

The State capital contributing to a project may come from various sources; and may only be disbursed after 50 percent of the total investment capital of the project is disbursed under the schedule as agreed in the project contract and as approved by the plan of State capital usage.

This Draft Decree is currently under the public comments and it is expected to be submitted for approval in 2014.

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