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LEGAL UPDATE

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(15 July 2021 – 31 July 2021)

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A – NEWS IN FOCUS



Several highlights of the Law on Public-Private Partnerships

On 18 June 2020, the National Assembly approved the Law on Public-Private Partnerships No. 64/2020/QH14 (hereinafter referred to as “*Law on PPP 2020*”), taking effect from 01 January 2021. Law on PPP 2020 clarifies some provisions of Decree No. 63/2018/ND-CP.

In this legal update, we reveal several highlights of the Law on PPP 2020.





1.

Investment sectors

Law on PPP stipulates 5 sectors (*formerly 9 under Decree 63/2018/ND-CP*):

- a. Transportation;
- b. Power grids, power plants, except for hydropower plants and those subject to the state monopoly as provided in the Law on Electricity;
- c. Water resources and irrigation; clean water supply; water drainage and wastewater treatment; waste management and disposal;
- d. Healthcare; education – training;
- e. Information technology infrastructure.

The *minimum* capital of PPP projects towards sectors as follows:

- VND 200 billion: sector a, b, c and e;
- VND 100 billion: (i) sector d and (ii) projects executed in areas facing socio-economic difficulties or extreme socio-economic difficulties under the provisions of laws on investment.

2.

PPP contracts

a. Classification of PPP contracts



Law on PPP removes BT (build-transfer) contract as previously stipulated in Decree 63/2018/ND-CP and classifies into 2 main groups of contracts:

- *Group of contracts applying the mechanism for direct collection of fees from users or underwriting organizations for public products and services: BOT (build-operate-transfer); BTO (build-transfer-operate); BOO (build-own-operate); O&M (operate-maintain) contracts;*
- *Group of contracts applying the mechanism that the State makes payment on the basis of the quality of public products and services: BTL (build-transfer-lease) and BLT (build-lease-transfer) contracts;*

The parties can also enter into a contract as mixed-contracts in the form of a combination of the above types of contracts.

2.

PPP contracts (*continue*)

b. Laws governing contracts



- According to Law on PPP 2020, PPP contracts and their appendixes, other relevant documents are governed by the laws of Vietnam.
- In case there are issues that are not regulated by Vietnamese law, the parties can make specific agreements in the PPP contracts on the basis of not contrary to the basic principles of Vietnamese law.

(Previously, Decree 63/2018/ND-CP allowed the parties to make agreement on the application of foreign laws to govern project contracts and other related contracts and agreements in accordance with the provisions of the Civil Code.)

3.

PPP Appraisal Council

Classification of Appraisal Council to implement the appraisal of pre-feasibility study reports and feasibility study reports for PPP projects:

- State Appraisal Council: for projects approved by the National Assembly on investment policies;
- Interdisciplinary Appraisal Council: for projects approved by the Prime Minister on investment policies; and
- Local Appraisal Council: for projects approved by the Minister, Heads of central agencies, other agencies, and provincial-level People's Councils on investment policies, unless the appraisal task is assigned to units under competent agencies.



4. Use of state capital invested in a PPP project

- **Ratio of state capital invested in PPP projects:**

- *Must not exceed 50% of the project's total investment:* Towards cases using the state capital for:
 - (i) supporting the building of works, infrastructure systems which are parts of a PPP project; and
 - (ii) paying costs for compensation, site clearance, support, resettlement; costs for supporting the building of temporary works.
- *Is determined on the total investment of the component project invested under the PPP method:* towards projects with many component projects, including component projects invested under the PPP method.

- **Details on the management and use of the state capital in PPP projects:** are stipulated in detail at Chapter III of Decree No. 28/2021/ND-CP dated 26 March 2021.

5. Investor selection procedures

For the first time, the investor selection procedure is integrated in the provisions of the PPP Law 2020 instead of being referred to the Law on Bidding as before. In particular, the procedures includes steps as follows:

- i. Choose the shortlist (if applicable);
- ii. Make preparations for selection of the investor;
- iii. Select investor;
- iv. Evaluate the bidding dossiers;
- v. Submit, appraise, approve and publicly publish the selection results of investors;
- vi. Negotiate, finalize, sign PPP project contracts and publish the contracts' information.



6. Mechanism for sharing of increased and reduced revenues

- When the actual revenue is 125% **higher** than the revenue specified in the financial plan under a PPP project contract => the investor and the PPP project enterprise will share with the State 50% of the difference between the actual revenue and 125% of the revenue in the financial plan.
- When the actual revenue is 75% **lower** than the revenue specified in the financial plan under a PPP => the State will share with the investor and the PPP project enterprise 50% of the difference between the 75% of the revenue in the financial plan and the actual revenue.

The sharing of this increase or decrease in revenue of the State is applied after adjusting prices and fees for public products and services, modifying the duration of PPP project contracts and being audited the increased/reduced revenues by the State Audit.



B – NEW LEGAL DOCUMENTS



Legal documents	Enactment date	Effective date
INVESTMENT		
Decision No. 995/QD-BKHDT in 2021 announcing the list of administrative procedures under the jurisdiction of the Ministry of Planning and Investment implementing the receipt of dossiers and returning the settlement's results of administrative procedures for public postal service	20 July 2021	20 July 2021
Prime Minister's Directive No. 20/CT-TTg 2021 on building socio-economic development plan and the state budget estimate in 2022	23 July 2021	23 July 2021
TRAFFIC - CONSTRUCTION		
Decree No. 69/2021/ND-CP on renovating and rebuilding apartments	15 July 2021	01 Sep 2021
Minister of Transport's Circular No. 13/2021/TT-BGTVT amending Circular No. 21/2018/TT-BGTVT stipulating the registration of railway vehicles and the movement of railway vehicles in special cases	26 July 2021	01 October 2021
Minister of Transport's Circular No. Circular 14/2021/TT-BGTVT removing Article 22 of Circular No. 31/2018/TT-BGTVT providing the implementation of the system safety's assessment and certification for urban railways	28 July 2021	01 August 2021
Decree 76/2021/ND-CP regulating criteria for the classification of seaports	28 July 2021	10 Sep 2021

Legal documents	Enactment date	Effective date
FINANCE – BANKING		
The State Bank of Vietnam’s Circular 12/2021/TT-NHNN stipulating on credit institutions, foreign bank branches which buy and sell promissory notes, bills, certificates of deposit, bonds issued in domestic by other credit institutions, foreign bank branches	30 July 2021	27 October 2021
Minister of Finance’s Circular 59/2021/TT-BTC amending Article 8 of Circular 74/2016/TT-BTC stipulating the management and use of the proceeds from the lending fee and the deduction of guarantee fee at the Ministry of Finance within 2016-2020 and Article 10 of Circular 76/2016/TT-BTC stipulating the implementation of the financial and payroll’s management mechanism for the General Department of Taxation and the General Department of Customs within 2016-2020	14 July 2021	30 August 2021
Minister of Finance’s Circular 61/2021/TT-BTC guiding the development of state budget estimates in 2022, financial - state budget plans in 03 years from 2022 to 2024	26 July 2021	09 Sep 2021
Decree 67/2021/ND-CP amending Decree 167/2017/ND-CP regulating the rearrangement and handling of public property	15 July 2021	01 Sep 2021
COMMERCIAL		
Decree 70/2021/ND-CP amending Decree 181/2013/ND-CP on the guidance for the Law on Advertisement	20 July 2021	15 Sep 2021

Legal documents	Enactment date	Effective date
LABOR		
Minister of Industry and Trade's Circular 04/2021/TT-BCT stipulating working time and rest time for employees doing work in pits	16 July 2021	01 Sep 2021
The State Bank of Vietnam's Circular No. 10/2021/TT-NHNN regulating the refinance towards the Vietnam Bank for Social Policies in accordance with Decision No. 23/2021/QD-TTg providing the implementation of policies to support employees and employers facing difficulties due to the COVID-19 pandemic	21 July 2021	21 July 2021
Decision 3642/QD-UBND in 2021 implementing a number of policies to support employees and employers facing difficulties due to the COVID-19 pandemic in the area of Hanoi	21 July 2021	21 July 2021
Ministry of Labor - Invalids and Social Affairs' Official Telegram No. 05/CD-LDTBXH in 2021 on supporting employees and employers who face difficulties due to the COVID-19 pandemic and strengthening the implementation of measures to prevent and control the COVID-19 epidemic	20 July 2021	20 July 2021



THANK
YOU!

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