

THE PRIME MINISTER

No. 71/2010/QĐ-TTg

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom – Happiness

Hanoi, November 09, 2010

DECISION

PROMULGATING THE REGULATION ON PILOT INVESTMENT IN THE PUBLIC-PRIVATE PARTNERSHIP FORM

THE PRIME MINISTER

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Investment Law;

Pursuant to the November 29, 2005 Bidding Law;

At the proposal of the Ministry of Planning and Investment,

DECIDES:

Article 1. To promulgate together with this Decision the Regulation on pilot investment in the public-private partnership form for implementation of a number of projects as a basis for further improving mechanisms, policies and regulations on investment in the public-private partnership form.

Article 2. This Decision takes effect on January 15, 2011.

Article 3. The Minister of Planning and Investment, other ministers, heads of ministerial-level agencies, heads of government-attached agencies, and chairpersons of People's Committees of provinces or centrally run cities shall implement this Decision. The Ministry of Planning and Investment shall summarize and report any problems arising in the course of implementation of this Decision to the Prime Minister for consideration and decision.

PRIME MINISTER

Nguyen Tan Dung

REGULATION

ON PILOT INVESTMENT IN THE PUBLIC-PRIVATE PARTNERSHIP FORM

(Promulgated together with the Prime Minister's Decision No. 71/2010/QĐ-TTg of November 9, 2010)

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation and subjects of application

1. This Regulation provides for the conditions, procedures and principles to be applied on a pilot basis to a number of investment projects on development of infrastructure or provision of public services in the public-private partnership form in the sectors specified in Article 4 of this Regulation.
2. This Regulation applies to competent state agencies, investors, organizations and individuals involved in the management and implementation of projects on development of infrastructure and provision of public services invested in the public-private partnership form on a pilot basis.

Article 2. Interpretation of terms

In this Regulation, the terms below are construed as follows:

1. Investment in the public-private partnership form means that the State and investor jointly implement projects on development of infrastructure or provision of public services on the basis of project contracts.
2. Project means a project on development of infrastructure or provision of public services invested in the public-private partnership form on a pilot basis.
3. Project proposal means a competent state agency's or an investor's proposal on a project to be invested in the public-private partnership form.
4. State participation portion means a combination of all forms of state participation, including state capital, investment incentives and relevant financial policies which are included in the total investment level (total investment capital) of a project with a view to increasing its feasibility. Based on the characteristics of each project, the state participation portion may cover one or more of the above forms. The state participation portion is neither the contributed equity capital in the project enterprise nor associated with the right to receive profits from the project's revenues.
5. State capital under current law includes state budget capital, official development assistance, government bonds, state-guaranteed credit, state development investment credit, development investment capital of state enterprises and other capital sources which give rise to public debts managed by the State.
6. Project list means a list of projects which the Ministry of Planning and Investment summarizes from project proposals of competent state agencies and submits to the Prime Minister for approval under Article 14 of this Regulation.
7. Project contract means a contract signed between a competent state agency and an investor under which the State franchises investment in and operation of a work or provision of a public service to the investor within a specified period of time. Based on the characteristics of each project, a project contract stipulates commitments on the responsibilities, obligations and powers of the investor and competent state agency and the relationship between the State and investor.
8. Project enterprise means an enterprise established by an investor under law to manage and implement the project in accordance with the investment certificate and project contract.
9. Feasibility study report (work construction investment project) means a combination of proposals related to the investment of capital in designing, building, operating and managing an infrastructure facility in the public-private partnership form.

Article 3. Principles of pilot investment in the public-private partnership form

1. Attracting capital sources of the domestic and foreign private sector for infrastructure development and provision of public services.
2. Raising the private sector capital in projects (excluding the state participation portion under Clause 0, Article 2 of this Regulation), including the investor's equity capital, domestic and foreign commercial capital and capital of other sources without giving rise to public debts.
3. The investor's equity capital in a project must represent at least 30% of the private sector capital in this project. The investor may raise commercial loans and capital of other sources (without government guarantee) which account for up to 70% of the private sector capital in a project.

4. Selecting investors to implement projects on the basis of competitiveness, fairness, transparency, economic efficiency and conformity with Vietnamese law and international practices.

Article 4. Sectors for pilot investment in the public-private partnership form

1. Roads, road bridges, road tunnels and ferry landings.
2. Railways, railway bridges and railway tunnels.
3. Urban transport.
4. Airports, seaports and river ports.
5. Clean water supply systems.
6. Power plants.
7. Healthcare (hospitals).
8. Environment (waste treatment, plants).
9. Other projects on development of infrastructure and provision of public services under the Prime Minister's decisions.

Article 5. Project selection criteria

To be invested in the public-private partnership form, a project must satisfy any of the following criteria:

1. Being important and large-sized and urgently required for economic development under the Prime Minister's Decision No. 412/QĐ-TTg of April 11.2007.
2. Being capable of refunding capital to the investor from reasonable revenues collected from users.
3. Being capable of tapping technological advantages and management and operation experience and effectively utilizing the financial capacity of the private sector.
4. Other criteria as decided by the Prime Minister.

Article 6. Investment preparation expenses

1. Investment preparation expenses include expenses for making and announcing the project list, making feasibility study reports and selecting investors, and other expenses related to the performance of tasks and exercise of powers by competent state agencies and relevant agencies. Investment preparation expenses come from the state budget and other revenues (if any).
2. Investors selected to implement projects shall pay to the State expenses for making feasibility study reports specified in Clause 1 of this Article.

Article 7. State agencies competent to sign and perform project contracts

1. State agencies competent to sign and perform project contracts include ministries, ministerial-level agencies, government-attached agencies and People's Committees of provinces or centrally run cities (below collectively referred to as ministries, sectors and provincial-level People's Committees).
2. Competent state agency may act as a party to a project contract and shall exercise the rights and perform the obligations and responsibilities as agreed with the investor in the project contract.
3. A competent state agency shall form a full-time section or designate one of its professional units to act as the focal point in performing jobs related to the project and exercising the rights and performing the obligations stipulated in the project contract. In all circumstances, the competent state agency shall take full responsibility for its obligations committed in the project contract.

Article 8. Inter-sector working team

1. An inter-sector working team shall be set up by the Minister of Planning and Investment to assist competent state agencies in formulating and implementing projects.

The inter-sector working team is composed of representatives of the Ministries of Planning and Investment; Finance; Justice; Industry and Trade; Transport; and Construction, the State Bank of Vietnam and other relevant agencies. Members of the inter-sector working team shall assist their ministries, sectors or agencies in giving opinions on the projects in the sectors under the management of their ministries, sectors or agencies.

2. The inter-sector working team is tasked to:

a/ Appoint its members to join the bidding expert group for selecting consultants to make feasibility study reports and the bidding expert group for selecting investors to implement projects;

b/ Take part in appraising feasibility study reports and results of selecting investors to implement projects;

c/ Take part in negotiating and finalizing project contracts;

d/ Assist competent state agencies in settling problems arising during project implementation:

e/ Review experience from pilot projects to improve policies on investment in the public-private partnership form, build capacity and develop human resources for sectors and localities:

f/ Assist competent state agencies in determining state participation portions in projects:

g/ Perform other tasks under this Regulation and instructions of the Minister of Planning and Investment.

Chapter II

STATE PARTICIPATION PORTION

Article 9. State participation portion

1. The Prime Minister shall decide on state participation portions at the proposal of competent state agencies and appraisal opinions of the Ministry of Planning and Investment.

2. The total state participation portion must not exceed 30% of the total investment level of a project, except other cases decided by the Prime Minister.

Article 10. State capital within state participation portion

1. Based on the characteristics of each project, state capital may be used to cover part of the project's expenses, build supporting works, pay compensation for, ground clearance and resettlement or perform other jobs when necessary.

2. State capital within the state participation portion in a project shall be planned under the Law on the State Budget and guiding documents.

3. The raising, signing and allocation of concessional credit capital and government-guaranteed loans comply with current law. Government guarantee and the state participation portion shall be considered and decided for each project to ensure its financial feasibility and the State's macro-balancing capacity.

Article 11. Realization of state participation portions

1. Ministries, sectors and relevant agencies shall realize state participation portions in projects under the Prime Minister's decisions under Article 9 of this Regulation.

2. Competent state agencies shall exercise the rights and perform the obligations related to the use of state participation portions under project contracts.

Chapter III

PROJECT PREPARATION

Article 12. Project proposals of competent state agencies

1. Based on approved infrastructure development investment master plans, plans and programs, competent state agencies shall make project proposals according to the contents specified in Clause 2 of this Article.

2. A project proposal covers:

a/ Expected size, capacity, location, construction area, work items and land use needs;

b/ The project's compliance with the sectors and criteria for project selection:

c/ Analysis and preliminary selection of technologies and techniques: conditions for the supply of equipment, materials, energy, services and technical infrastructure: preliminary plan on ground clearance and resettlement (if any): preliminary assessment of the project's impacts on the ecological and social environment;

d/ Set schedule for work construction (commencement, completion, takeover test and operation): operation duration, and the investor's management and business methods:

e/ Preliminary determination of goods prices and service charges to be collected from the operation of the work under current regulations;

f/ Conditions and methods for the transfer and receipt of the work;

g/ Expected total investment level; preliminary determination of the state participation portion; and proposals on incentives and the investment security mechanism for the project;

h/ Analysis of the project's overall effectiveness, covering the project's necessity: advantages and socio-economic benefits of its implementation in the public-private partnership form as compared with projects wholly invested with state capital: and the feasibility of raising investment capital.

Article 13. Investors' project proposals

1. Investors may make their own project proposals in accordance with Clause 2 of Article 14.

2. An investor's project proposal must cover the contents specified in Clause 2. Article 12 of this Regulation.

Article 14. Making of the project list

1. Competent state agencies shall send project proposals to the Ministry of Planning and Investment for summarization, appraisal and submission to the Prime Minister for deciding to include the projects in the project list.

2. Investors shall send project proposals to competent state agencies based on the latter's functions of state management of the sectors or territories corresponding to the sectors and geographical areas of project implementation, and concurrently to the Ministry of Planning and Investment for monitoring. Project proposals of investors shall be considered and included in the project list under Clause 1 of this Article.

3. The Ministry of Planning and Investment shall assume the prime responsibility for collecting opinions of ministries, sectors, provincial-level People's Committees and agencies related to the projects in order to appraise the project proposals as a basis for submitting to the Prime Minister for deciding to include the projects in the project list. Within 30 working days after receiving a request from the Ministry of Planning and Investment, relevant agencies shall give (their written opinions on the matters falling within the ambit of their functions, tasks and powers. Past this time limit, if failing to give opinions, they will be regarded as having no objection.

Article 15. Announcement of the project list

The project list approved under Article 14 of this Regulation shall be publicized on the Bidding Newspaper, the Planning and Investment Ministry's e-portal, websites of ministries, sectors and provincial-level People's Committees and in other mass media (when necessary).

Article 16. Contents of a feasibility study report

A feasibility study report shall be made in accordance with current law and international practices to ensure that the project is capable of raising investment capital from domestic and international capital markets. Such a report contains:

1. Size, capacity, location, construction area, work items and land use needs;
2. The project's compliance with the sectors and criteria for project selection;
3. Analysis and selection of technologies and techniques: conditions for the supply of equipment, materials, energy, services and technical infrastructure; plan on ground clearance and resettlement; assessment of the project's impacts on the ecological and social environment;
4. Set schedule for work construction (commencement, completion, takeover test and operation): operation duration, and the investor's management and business methods;
5. Total investment;
6. Determination of goods prices and public-service charges to be collected from the operation of the work under current regulations;
7. Conditions and methods for the transfer and receipt of the work;
8. Expected state participation portion in the project; incentives and investment security mechanism for the project;
9. Risk analysis, rights and obligations of the involved parties.
10. Analysis of the project's overall effectiveness, covering the project's necessity: advantages and socio-economic benefits of its implementation in the public-private partnership form as compared with projects wholly invested with state capital: and the feasibility of raising investment capital.

Article 17. Making, appraisal and approval of feasibility study reports

1. Making of feasibility study reports

a/ Based on the project list approved under Article 14 of this Regulation, competent state agencies shall organize bidding under regulations to select consultants for making feasibility study reports.

b/ Within 30 working days after approving the results of selection of consultants to make feasibility study reports, competent state agencies or their authorized dependent units shall sign and perform contracts with the selected consultants.

2. Appraisal and approval of feasibility study reports

Feasibility study reports shall be appraised and approved under current regulations on investment and construction applicable to state-funded projects.

Article 18. Approval of state participation portions, investment security mechanism and other matters

1. Before approving a feasibility study report under Clause 2 of Article 17 (after appraising a project), the competent state agency shall submit to the Prime Minister the proposed state participation portion, investment security mechanism and other matters which fall beyond the competence of ministries, sectors or localities. A dossier of proposals comprises a written explanation of the above contents, the feasibility study report and other relevant documents.

2. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with the Ministry of Finance and concerned ministries and sectors in, appraising state participation portions, investment security mechanisms and other matters which fall beyond the competence of ministries, sectors or localities within 30 working days after receiving competent state agencies' complete dossiers specified in Clause 1 of this Article.

3. The Prime Minister shall decide on state participation portions, investment security mechanisms and other matters which fall beyond the competence of ministries, sectors or localities at the proposal

of competent state agencies and based on the appraisal reports of the Ministry of Planning and Investment.

Chapter IV

SELECTION OF INVESTORS AND SIGNING OF PROJECT CONTRACTS

Article 19. Bidding to select investors

1. Based on the approved feasibility study report, a competent state agency shall make a bidding dossier and organize a domestic or international open bidding to select an investor for project implementation. Such bidding must comply with the bidding law and international practices and ensure competitiveness, fairness, transparency and economic efficiency,
2. A bid dossier must state the method of assessing the bid dossier, bidding order and procedures and draft project contract, enclosed with the approved feasibility study report, expected state participation portion in the project and the project's investment security mechanism.
3. A competent state agency shall appraise investor selection results and consult the Ministry of Planning and Investment before approving investor selection results under current regulations.

Article 20. Negotiation, finalization and signing of project contracts

1. Within 30 working days after approving investor selection results under Article 19 of this Regulation, a competent state agency shall coordinate with relevant agencies in negotiating, finalizing and initialing the project contract with the selected investor. Contents of an initialized project contract must conform to the decision approving investor selection results.
2. After a project is granted an investment certificate under Chapter VI of this Regulation. the investor and competent state agency shall officially sign the project contract. In case the investment certificate-granting agency requests modification of the project contract, the competent state agency and investor shall modify relevant contents of the contract before officially signing it.
3. The project's state participation portion and investment security mechanism specified in the project contract must not exceed those indicated in the Prime Minister's approving decision.

Chapter V

PROJECT CONTRACTS

Article 21. Contents and form of a project contract

A project contract must stipulate the purposes, scope and contents of the project; and the rights and obligations of the involved parties in designing, building, commercially operating and managing the project work.

Article 22. Right to receive a project

1. The involved parties may agree on the lender's receipt of some or all the rights and obligations of the project enterprise (below referred to as right to receive a project) in case the project enterprise or investor fails to fulfill the obligations stipulated in the project contract or loan contract. After receiving a project, the lender shall fulfill the project enterprise's or investor's all relevant obligations stipulated in the project contract.
2. Conditions and procedures for the lender to receive a project and contents of the his/her/ its right to receive a project must be stipulated in the loan contract, loan security document or another agreement signed between the project enterprise or investor and the lender, and approved by a competent state agency.

Article 23. Transfer of rights and obligations under project contracts

1. The investor may transfer some or all his/ her/its rights and obligations under the project contract.

2. Transfer under Clause I of this Article must be approved by a competent state agency and must not affect the objectives, size, technical standards and implementation schedule of the project and other conditions agreed in the project contract.

Article 24. Modification of project contracts

1. A project contract may be modified as a result of changes in the agreed size, technical standards or total investment capital of the work or due to force majeure circumstances or in other cases stipulated in the project contract.
2. The involved parties shall agree in the project contract conditions for contract modification.
3. Modifications to a project contract must be approved by the investment certificate-granting agency.

Article 25. Term of a project contract

The involved parties shall agree on the term of a project contract as suitable to the sector, size and characteristics of the project, which may be extended or shortened under the conditions stipulated in the contract.

Article 26. Termination of project contracts

1. A project contract's validity will expire upon the expiration of the agreed term or ahead of schedule due to violations committed by any of the parties without taking effective remedies due to force majeure events or in other cases stipulated in the project contract.
2. The involved parties shall agree in the project contract conditions for contract termination and measures to be taken when the contract terminates ahead of schedule in the cases specified in Clause 1 of this Article.

Article 27. Application of foreign law to project contracts and relevant contracts

1. Foreign law may apply to each specific project and referred, to in the bidding dossier.
2. Application of foreign law under Clause 1 of this Article must not contravene Vietnamese law.

Article 28. Security for the project contract performance obligation

1. Measures to secure the project contract performance obligation shall be applied in the form of bank guarantee or other obligation security measures under the civil law.
2. The sum to secure the project contract performance obligation must not be lower than 2% of the project's total investment capital.
3. Security for the project contract performance obligation is valid from the date the project contract is officially signed to the date the work is completed.

Chapter VI

GRANT OF INVESTMENT CERTIFICATES AND IMPLEMENTATION OF PROJECTS

Article 29. Investment certificate-granting agency

The Ministry of Planning and Investment shall grant investment certificates to projects to be invested in the public-private partnership form on a pilot basis.

Article 30. Dossiers, order and procedures for verification of dossiers, and grant of investment certificates

1. An investor shall submit 10 dossier sets, including at least one original set. to the investment certificate-granting agency defined in Article 29 of this Regulation for verification of the dossier and grant of an investment certificate.
2. A dossier of application for an investment certificate comprises:
 - a/ An application for a certificate;
 - b/ The initialed project contract and contracts related to the project implementation (if any):

- c/ The feasibility study report;
- d/ The joint-venture contract and project enterprise's charter (if any).

3. Verification shall be conducted on:

- a/ Rights and obligations of the involved parties to the project contract;
- b/ Project implementation schedule;
- c/ Land use needs;
- d/ Environmental solutions;
- e/ State participation portion, investment incentives and project implementation security mechanism.

4. The investment certificate-granting agency shall verify the dossier and grant an investment certificate to the investor within 45 working days after receiving a valid dossier.

Article 31. Details of an investment certificate

1. An investment certificate contains:

- a/ Name and address of the investor;
- b/ Name of the project;
- c/ Objectives and size of the project;
- d/ Project location and land area;
- e/ Project's total investment capital;
- f/ Project implementation duration and schedule; capital raising schedule under the project contract;
- g/ Investment incentives and security mechanism (if any).

2. Payment conditions must be specified in the project contract.

Article 32. Implementation of projects

1. After a project is granted an investment certificate, the investor shall make business registration for establishing a project enterprise to implement the project. Business registration dossiers, order and procedures comply with the Law on Enterprises.

2. The investor shall decide on the managerial apparatus, powers and responsibilities of the project enterprise in conformity with the project contract, the Law on Enterprises, the Investment Law and guiding documents.

3. The rights and obligations of a project enterprise during the implementation of a project shall be agreed as follows:

a/ After its establishment, the project enterprise shall sign a project contract to join the investor in forming a party to the project contract; or

b/ The competent slate agency, investor and project enterprise shall sign an agreement to permit the project enterprise to receive and exercise the rights and perform the obligations of the investor stipulated in the project contract.

Such agreement constitutes an integral part of the project contract.

4. The parties to a project contract and relevant agencies shall perform the project contract under this Regulation and current law.

Article 33. Selection of contractors for project implementation

1. The project enterprise shall select consultancy, procurement, engineering and other contractors for project implementation. The selection of contractors is regulated by the Bidding Law and must comply with bidding regulations.

2. Contractor selection results must be notified to the competent state agency within 15 working days after a contractor selection decision is issued.

Article 34. Preparation of construction grounds

Provincial-level People's Committees shall clear the ground and complete land allocation or lease procedures for implementation of projects under law and land use conditions specified in project contracts.

Article 35. Technical designing, supervision and management of the construction of project works

1. Based on the feasibility study report and project contract, the project enterprise shall make a technical design and send it to the competent state agency for supervision and examination. In case the technical design is modified as compared to the feasibility study report, the project enterprise shall submit such modifications to the competent state agency for consideration and decision.

2. The project enterprise may itself manage and supervise or hire an independent consultancy unit to manage and supervise construction and least work items and the whole work before takeover according to the agreed design in accordance with the construction law and agreements in the project contract.

3. The competent state agency shall supervise and assess the investor's and project enterprise's response to the requirements on planning, objectives, size, technical standards, quality, capital raising and project implementation schedule, environmental protection and other matters as agreed in the project contract.

4. Adjustment of the total investment capital and modification of the technical design and other conditions agreed in the project contract may be considered only in the following cases:

a/ The project is affected by a natural disaster or another force majeure circumstance;

b/ There appear elements which bring more benefits to the project;

c/ Changes in the master plan directly affect the location, size, characteristics or objectives of the project;

d/ Other cases prescribed by the Government.

Article 36. Management and commercial operation of works

1. The project enterprise shall manage and commercially operate the work in conformity with law and conditions agreed in the project contract.

2. The project enterprise may hire a managerial unit to perform the jobs specified in Clause 1 of this Article but shall take full responsibility for such unit.

3. During the commercial operation of a work, the project enterprise is obliged to:

a/ Equally treat all lawful users of its products and services: refrain from using the right to commercially operate the work to practice discrimination or refuse to provide products or services to users;

b/ Regularly maintain and repair the work under the project contract, ensuring that the work operates according to design;

c/ Provide products and services of quantity and quality and within the time limit agreed in the project contract;

d/ Ensure that the work is utilized under the conditions specified in the project contract.

Article 37. Goods prices, service charges and revenues

1. Prices of goods and charge rates of services provided by the project enterprise shall be indicated in the project contract on the principle of covering all expenses, taking into account market prices and assuring the interests of the project enterprise, users and the State.

2. The project enterprise may only adjust goods prices, service charge rates and other revenues under the conditions specified in the project contract.

3. When adjusting goods prices, service charge rates and other revenues (if any), the project enterprise shall notify such adjustment 30 working days in advance to the competent state agency. Adjustment of goods prices, service charge rates and other revenues managed by the State must be approved by the competent state agency.

Article 38. Reporting on project implementation

1. During the project implementation, the project enterprise shall report on the project implementation progress to the investment license-granting agency in January and July every year. The deadlines for submitting such reports are January 31 and July 31 respectively.

A report on project implementation contains:

a/ Administrative procedures already carried out in the reporting period;

b/ Charter capital contribution progress and investment capital disbursement situation;

d Construction progress (if any);

d/ Employment situation;

e/ Land use situation (for projects that lease land directly from the State);

f/ Situation of import and installation of equipment and machines for the creation of fixed assets to form the investment project (if any);

g/ Production and business situation;

h/ Achievement of the project's objectives;

i/ Realization of the state participation portion and investment security mechanism;

j/ Difficulties and problems arising during the project implementation (if any).

Chapter VII

FINANCIAL SETTLEMENT AND TRANSFER OF PROJECT WORKS

Article 39. Financial settlement of project works

1. Within 6 months after completing a project work as agreed in the project contract, the investor shall make a dossier for finalizing the value of the work construction investment capital in accordance with the construction law.

2. The competent state agency shall agree with the investor on the selection of a capable and experienced independent audit institution to audit the value of the project work's construction investment capital.

Article 40. Transfer of project works

1. Depending on the form of each specific project contract, a project work shall be transferred based on the characteristics of such form.

2. Transfer of a work must satisfy the following conditions:

a/ One year before the date of transfer or within the time limit agreed in the project contract, the investor or project enterprise shall publicize such transfer and relevant matters.

b/ The competent state agency shall assess the quality, value and status of the work as agreed in the project contract, make a list of assets to be transferred, determine damage (if any), and request the project enterprise to repair and maintain the work.

c/ The investor and project enterprise shall ensure that transferred assets will not be used to guarantee the fulfillment of financial obligations or mortgaged or pledged to secure other obligations

of the investor or project enterprise arising before the transfer, unless otherwise specified in the project contract.

d/ The project enterprise shall conduct technology transfer, training, regular maintenance and overhaul to ensure technical conditions for normal operation of the work in conformity with requirements of the project contract.

e/ After receiving the project work, the competent state agency shall manage and operate it according to its functions and powers or assign the investor to do so as agreed in the project contract.

Chapter VIII

INVESTMENT INCENTIVES AND SECURITY

Article 41. Investment incentives

1. The project enterprise is entitled to enterprise income tax incentives under the law on enterprise income tax.
2. Goods imported for project implementation are eligible for incentives under the law on import duty and export duty.
3. The project enterprise is entitled to exemption from land use levy for land areas allocated by the State or exemption from land rents throughout the project implementation duration.

Article 42. Taxes imposed on contractors participating in project implementation

1. Foreign contractors (if any) participating in project implementation shall pay taxes and are entitled to tax exemption or reduction under tax laws applicable to foreign contractors.
2. Vietnamese contractors shall fulfill tax obligations under tax laws applicable to Vietnamese enterprises.

Article 43. Right to mortgage assets

1. The project enterprise may pledge or mortgage assets and land use rights under law.
2. Asset pledge or mortgage by the project enterprise must be approved by the competent state agency and not affect the project's objectives, progress and operation as stipulated in the project contract and by law.

Article 44. Right to buy foreign currencies

1. During the construction and commercial operation of a work, the investor or project enterprise may buy foreign currencies at a licensed credit institution for its current transactions, capital transactions and other transactions under the law on foreign exchange management, covering:

a/ Payment for equipment and machines hired from abroad:

b/ Import of machines, equipment and other products and services for project implementation:

c/ Payment of foreign debts (both principal and interest);

d/ Payment of bank debts (both principal and interest) in foreign currency for the import of machines and equipment and other products and services for project implementation;

e/ Remittance of capital, profits, investment liquidation amounts and amounts paid for the provision of techniques, services, intellectual property rights and other lawful incomes abroad (applicable to foreign investors).

2. For some important projects in the fields of energy, construction of traffic works and waste treatment, based on project implementation requirements and opinions of the State Bank of Vietnam, the competent state agency shall submit to the Prime Minister the foreign currency balance security or support according to the procedures specified in Article 18 of this Regulation for consideration and decision.

Article 45. Security for the provision of public services

1. The project enterprise may use land, roads and other supporting works to implement the project under law.
2. In case public-utility services are scarce or public work users are limited, the project enterprise will be prioritized to be provided with services or to be granted the right to use public works for project implementation.
3. The competent state agency shall assist the project enterprise in carrying out necessary procedures to be prioritized to use services and public works.

Article 46. Guarantee for obligations of investors, the project enterprise and other enterprises

When necessary and depending on the characteristics of a project, the competent state agency shall submit to the Government for consideration and decision the designation of a competent agency to guarantee the supply of materials, sale of products and other contractual obligations for investors, the project enterprise or other enterprises participating in the project implementation and guarantee the obligation of state enterprises to sell materials to or buy products and services from the project enterprise.

Chapter IX

ORGANIZATION OF IMPLEMENTATION

Article 47. Tasks of the Ministry of Planning and Investment

1. To assume the prime responsibility for, and coordinate with relevant agencies in appraising project proposals, state participation portions, investment security mechanisms and other matters which fall beyond the competence of ministries, sectors or localities, and submitting them to the Prime Minister for approval.
2. To give opinions on investor selection results to competent state agencies.
3. To join and assist competent state agencies in implementing projects.
4. To assume the prime responsibility for, and coordinate with relevant agencies in, supervising the implementation of projects.
5. To guide regulations on investor selection, negotiation and conclusion of project contracts and other relevant matters.
6. To guide competent state agencies in planning development investment capital to be used for projects, including investment preparation capital, state capital within state participation portions in projects and other expenses related to the implementation of projects.
7. To plan central budget funds to be used for projects.
8. To raise and manage concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.
9. To act as the focal point in raising, receiving, and managing the use of, non-refundable official development assistance of bilateral and multilateral donors under current law for training, capacity building, and building a system of laws and institutions on investment in the public-private partnership form, technical assistance, and investment promotion during the preparation and implementation of projects.
10. To organize investment promotion activities to introduce the project list and specific projects to investors and commercial capital markets at home and abroad. The Minister of Planning and Investment shall decide on specific investment promotion.
11. To organize training and capacity building activities for agencies and units regarding the management and implementation of investment in the public-private partnership form.

12. To assume the prime responsibility for, and coordinate with relevant ministries and sectors in, reviewing and assessing the implementation of this Regulation as a basis for improving the legal system on investment in the public-private partnership form.

13. To perform the tasks and exercise the powers under this Regulation, other laws and the Prime Minister's instructions.

Article 48. Tasks of the Ministry of Finance

1. To join in appraising project proposals for inclusion of projects in the project list.

2. To join in appraising state participation portions in projects, investment security mechanisms for projects and other matters which fall beyond the competence of ministries, sectors or localities.

3. To assist competent state agencies in negotiating, finalizing and signing project contracts with regard to matters under its management.

4. To supervise the progress of contribution of capital for realization of state participation portions in projects.

5. To guide competent state agencies in disbursing state participation portions.

6. To coordinate with the Ministry of Planning and Investment in planning development investment capital for projects, including investment preparation expenses, state capital within state participation portions in projects and other necessary expenses related to the implementation of projects.

7. To join in raising and managing concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.

8. To join in reviewing and assessing the implementation of this Regulation as a basis for improving the legal system on investment in the public-private partnership form.

9. To perform the tasks and exercise the powers defined in this Regulation, other laws and the Prime Minister's instructions.

Article 49. Tasks of the Ministry of Justice

1. To coordinate with the Ministry of Planning and Investment in guiding the implementation of this Regulation.

2. To give opinions on the application of foreign law (if any) indicated in bidding dossiers.

3. To join in negotiating, and give opinions on other legal matters of, project contracts at the request of competent state agencies on a case-by-case basis.

4. To join in reviewing and assessing the implementation of this Regulation as a basis for improving the legal system on investment in the public-private partnership form.

5. To perform the tasks and exercise the powers defined in this Regulation, other laws and the Prime Minister's instructions.

Article 50. Tasks of the State Bank

1. To give opinions on foreign currency security ratios, matters related to capital sources, foreign exchange management, and other matters as a basis for appraising state participation portions in projects.

2. To join in raising and managing concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.

3. To assist competent state agencies in negotiating, finalizing and signing project contracts with regard to matters under its management.

4. To coordinate with the Ministry of Finance in supervising the progress of contribution of capital for realizing state participation portions in projects.
5. To perform the tasks and exercise the powers defined in this Regulation, other laws and the Prime Minister's instructions.

Article 51. Tasks of competent state agencies

1. To plan development investment capital for projects under their management, including investment preparation expenses, state capital within state participation portions in projects and other necessary expenses related to the implementation of projects.
2. To make project proposals in the sectors and domains under their management under Article 12 of this Regulation.
3. To receive project proposals from investors, consider and propose the addition of projects to the project list under Article 14 of this Regulation.
4. To give opinions on project proposals, projects* feasibility study reports and other matters at the request of the Ministry of Planning and Investment.
5. To make project feasibility reports under Article 17 of this Regulation.
6. To propose state participation portions in projects and investment security mechanisms for projects.
7. Based on approved plans (in development investment capital, to allocate investment preparation capital for central budget-funded or -supported projects.
8. Based on feasibility study reports (including proposed state participation portions) approved under Articles 17 and 18 of this Regulation, to allocate development investment capital for projects (for investment projects managed by localities and planned by provincial-level People's Committees) for investment with state capital within state participation portions in projects.
9. To organize bidding to select investors negotiate, finalize, sign and perform project contracts under Articles 19 and 20 of this Regulation.
10. To take responsibility before law for the implementation of projects.
11. To perform the tasks and exercise the powers defined in (his Regulation, other laws and as the Prime Minister's instructions.

Article 52. Implementation provisions

1. This Regulation shall be implemented for between 3 and 5 years after it takes effect until the Government issues a replacing decree on investment in the public-private partnership form,
2. Matters not specified in this Regulation must comply with current law and international practices under the Prime Minister's decisions.
3. The Ministry of Planning and investment shall coordinate with relevant agencies in reporting any matters arising during the implementation of this Regulation which are not yet regulated by current law to the Prime Minister for consideration and decision.-