
Projects

A New Law on Public-Private Partnerships

Introduction

The Public-Private Partnership Act B.E. 2562 (2019) (**PPP Act**) came into force on 11 March 2019, revoking the Private Investment in State Undertakings Act B.E. 2556 (2013) (**Previous PPP Act**).

The stated purpose for the promulgation of the PPP Act is to have a clear and certain state policy in arranging infrastructure and public services by aiming for public-private joint investment on the basis of public-private partnership, and to determine mechanisms for solving problems, obstacles or delays in undertaking joint investment projects.

The Minister of Finance is in charge of the execution of the PPP Act. A summary of the provisions of the PPP Act is set out below.

Definitions

The PPP Act provides many definitions, including the following:

“Project” refers to an investment project of the State in an undertaking in which one or many state agencies collectively have the duty and power to comply with the laws, regulations or the objectives of its establishment.

“Joint Investment” refers to a joint investment with a private entity irrespective of any method, or assigning a private entity to make an investment solely by means of granting permission or a concession, or granting a right therefor in any description.

“Joint Investment Project” refers to a Project having a Joint Investment.

Chapter 1 General Provisions

An agency which is a Project owner (**Project Owner**) wishing to arrange a Joint Investment Project in a business relating to the specified infrastructure and public services shall comply with the PPP Act.

A Joint Investment Project with a value of THB 5 billion or more shall proceed according to criteria, procedures and conditions prescribed in the PPP Act (which means the PPP Act lifts the value threshold from THB 1 billion prescribed in the Previous PPP Act to THB 5 billion). Joint Investment Projects with

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a value less than THB 5 billion shall proceed according to criteria and procedures determined and notified by the Public-Private Partnership Policy Committee (**PPP Committee**).

Chapter 2 Arrangement Plan for Joint Investment Project

This chapter is a new concept added to the PPP Act. The State Enterprise Policy Office (**SEPO**) shall prepare the arrangement plan for the Joint Investment Project which is consistent with the master plan on the development of infrastructure and the social aspects of the country prepared by the Office of the National Economic and Social Development Council, and further propose this plan to the PPP Committee for approval.

Once the arrangement plan for the Joint Investment Project has been approved by the PPP Committee, it shall be disseminated through the SEPO's information network system. The state agency shall proceed with such arrangement plan for the Joint Investment Project.

Chapter 3 Public-Private Partnership Policy Committee

The Public-Private Partnership Policy Committee shall be established (i) to provide opinions to the Finance Minister prior to the enactment of Royal Decrees or Ministerial Regulations; (ii) to approve the arrangement plan for the Joint Investment Project; (iii) to determine the criteria and procedures for the arrangement and proceeding of the Joint Investment Project with a value less than THB 5 billion; (iv) to approve the revision of the Joint Investment contract; and (v) to give decisions on problems pertaining to the implementation of the PPP Act, etc.

Chapter 4 Preparation and Implementation of the Project

Part 1 Project Proposal

When proposing a Project with a proposed Joint Investment, a Project Owner shall prepare a study and analysis report on the Project containing the details notified by the PPP Committee. In this regard, the Project Owner shall engage a consultant to jointly prepare the report.

The Project Owner shall submit the principle of the Joint Investment Project, together with the study and analysis report to the responsible Minister, and further to the PPP Committee, for consideration and approval.

Once approved, the responsible Minister will propose the principle of the Joint Investment Project to the Cabinet for approval to proceed with the Joint Investment Project.

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Part 2 Private Entity Selection

The selection of a private entity shall be made by bidding, unless the Cabinet has approved other selection methods. The Project Owner shall prepare the draft invitation to tender, draft document for selection of private entity and draft Joint Investment contract and propose them to a selection committee for approval. The Project Owner and the selection committee shall then proceed with the selection of the private entity.

After obtaining the private entity selection result and a draft Joint Investment contract which has been negotiated with the selected private entity, the Project Owner shall submit the draft Joint Investment contract to the Office of the Attorney-General for review. Further, the Project Owner shall propose the aforementioned documents to the responsible Minister and, finally, the Cabinet. Once the Cabinet approves, the Project Owner is able to enter into the Joint Investment contract with the selected private entity.

Part 3 Joint Investment Project Supervision

Upon signing the Joint Investment contract, the responsible Minister shall appoint a supervisory committee, having the duty and power to supervise and monitor the Joint Investment Project, as well as render opinions in support of the revision of the Joint Investment contract.

Part 4 Amendment of the Joint Investment Contract and Making a New Contract

Where the amendment of the Joint Investment contract is necessary, the Project Owner shall provide the reasons for amendment, as well as other required information to the supervisory committee for consideration and, further, provide the draft amended Joint Investment contract to the Office of the Attorney-General for review.

Finally, the Project Owner shall propose the aforementioned documents to the responsible Minister. Once the responsible Minister approves, the Project Owner is able to sign the amended Joint Investment contract.

Chapter 5 Exercise of Power for Public Benefit

This chapter is a new concept added to the PPP Act. In order to resolve any problems which may arise, the Project Owner, with the Cabinet's approval, has the power to (i) engage in the Joint Investment Project or assign another person to engage in such Joint Investment Project for a temporary period; (ii) amend the Joint Investment contract; and (iii) terminate the Joint Investment contract.

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Chapter 6 Public-Private Partnership Promotion Fund

A fund shall be established within the Ministry of Finance, called the “Public-Private Partnership Promotion Fund”, so as to support the implementation of the PPP Act.

Chapter 7 Miscellany

Within 30 days from the date of execution of the Joint Investment contract, the Project Owner shall disclose a summary of the Joint Investment Project’s details to the public.

Chapter 8 Penalty

A member of the selection committee who acts contrary to Section 37 of the PPP Act shall be subject to imprisonment not exceeding three years and/or a fine not exceeding THB 600,000. Section 37 makes it an offence for the member to conduct the following acts during his or her tenure as member and within two years from the date on which the Project Owner entered into a Joint Investment contract with the selected private entity:

- (1) becoming a board member, person having management authority or advisor in a private entity that has been selected for investment in a Joint Investment Project for which he or she acted as a member of the selection committee; and
- (2) holding shares in a private entity under (1) in an amount exceeding zero point five percent of the paid up share capital, whether by himself or herself or by his or her spouse or a non sui juris child.

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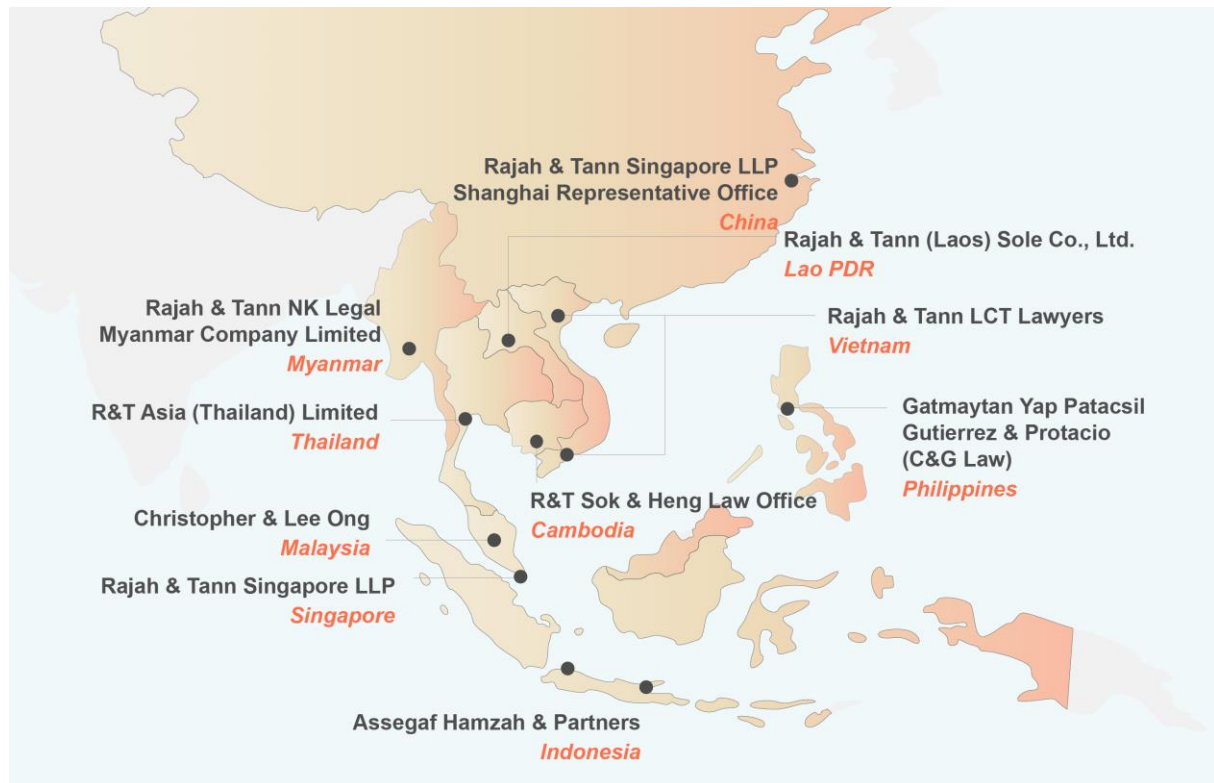
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