



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Prime Minister's Office

No. /PM
Vientiane, _____

Decree
on Public Private Partnerships
in the Lao PDR

Pursuant to the Constitution of the Lao PDR No. 25/NA, dated 6 May 2003;
Pursuant to Law on Government of the Lao People's Democratic Republic No. 02/NA, dated 6 May 2003;
Pursuant to the Law on Making Legislation No. 19/NA, dated 12 July 2012;
Pursuant to the Law on Public Investment No. 08/NA, dated 5 July 2012;
Pursuant to the Law on Investment Promotion No. 02/NA, dated 8 July 2009.
Pursuant to the Law on the State Budget No. 02/NA, dated 26 December 2006;
Pursuant to the Law on State Assets No.14/NA, dated 05 July 2012
Pursuant to the Decree of the Prime Minister on Government Procurement of Goods, Construction, Maintenance and Services No. 03/PM, dated 09 January 2004;

Version: Draft 4

Date: 14 September 2014

The Prime Minister decrees that:

**CHAPTER I
General Provisions**

Article 1 Definitions

The following terms in this Decree mean:

Public Private Partnership	A Public Private Partnership is an agreement between the public sector and the private sector for the purpose of delivering a project or a service to implement a project with a public interest on the basis of a Public Private Partnership Contract.
Bidders	Domestic or foreign entities or groups of entities that have pre-qualified to participate in selection proceedings concerning a Public Private Partnership Project.
Contingent Liability	Payment obligations which arise from valid Public Private Partnership Contracts or Lao PDR law and whose occurrence, timing and amount depend on some uncertain future event or circumstance. Allocation of certain risks in a Public Private Partnership Contract to the Government may cause contingent liabilities to the Government.
Evaluation Committee	The Evaluation Committee is a sub-committee of the Project Executing Agency which performs in-depth reviews of selected evaluation issues.
Feasibility Study	Document specifying the mode for a proposed Public Private Partnership Project and providing the Government with sufficient information for proceeding or bidding of the project through an integrated assessment of the following: technical soundness, socio-economic benefits, legal and financial viability, risk characteristics, fiscal, social and environmental sustainability, and the extent of Government support (where required).
Financial Proposal	A Financial Proposal submitted by bidders in response to and meeting the requirements specified in the Request for Proposals or in the framework of a Direct Agreement or Unsolicited Proposal.
Government	Government of the Lao People's Democratic Republic.
Government Support	Any form of support, contribution, guarantee, subsidy, or other assistance, which the Government provides to a Public Private Partnership Project.
Initial Project Proposal	Brief project proposal complying with the requirements specified in this Decree and Annexes.
Investment Committee	The National Investment Promotion Committee pursuant to ...
Preferred Bidder	The bidder selected at the close of the bidding as the winner, who is invited by the Project Executing Agency authority to finalize the Public Private Partnership Contract.
Pre-Qualification Evaluation Report	An evaluation report of the pre-qualification process of bidders describing the evaluation of submissions against the qualification criteria and indicating the

	firms which have been shortlisted.
Project Cost	The total expenses for designing, constructing, maintaining and operating a Public Private Partnership Project, excluding the cost of already available facilities, land, and right-of-way.
Project Preparation Facility	xxx
Project Entity	Enterprise set up by the Private Sector with the purpose of concluding the Public Private Partnership Contract and to carry out the contract.
Project Executing Agency	Ministry or equivalent agency, provinces and local authorities responsible for preparing, tendering, execution and monitoring of the Public Private Partnership Contract.
Public Private Partnership Contract	Mutually binding agreement between the Government and the Private Contracting Party concerning a Public Private Partnership Project.
Public Private Partnership Project	A partnership created between the Government and a Private Contracting Party procured through a transparent and open tendering system for the creation and/or management of infrastructure or services for a public purpose and for a specified period of time.
Request for Expression of Interest	A request issued by the Government authority, including qualification requirements, inviting the private sector to apply to take part in the tendering of a Public Private Partnership Project.
Request for Proposals	A request issued by the Government authority to bidders, including the specific terms of the project requirements, the procedures for submission of bids, the criteria for the evaluation of bids and a model Public Private Partnership Contract.
Standstill Period	Period until which all bidders have time to submit complaints or any requests to Public Private Partnership Unit.
Technical Proposal	A proposal provided by the bidder to the relevant Project Executing Agency of the technical details of the project, which will be evaluated by the Project Executing Agency to assess the bidder and project suitability.
Tendering	Process organized for the purpose of a fair selection of a Private Contracting Partner to conclude the Public Private Partnership Contract in accordance with the Procurement Law and this Decree.
Unsolicited Proposal	Proposal relating to the implementation of an infrastructure or services project that has been prepared by the private sector at its own risk and cost and is not submitted in response to a request or solicitation issued by the government.
Value-for-money	Net benefit to the Government or the users of public infrastructure or services defined in terms of the cost, price, quality, quantity, risk transfer, or a combination offered.
Viability Gap Funding (VGF)	Financial support provided to a Public Private Partnership Project to achieve commercial viability.

Article 2 Objectives

This Decree determines principles, rules and measures in promoting and governing Public Private Partnerships for developing the infrastructure and related services within the scope of the Government

plan, ensuring transparency, efficiency and effectiveness, fair benefits to the private sector and Government, and sustainable development.

Article 3 Main Principles

The approach to Public Private Partnerships shall adhere to the following principles:

- 1) Ensure public awareness of the relative costs, benefits and risks of Public Private Partnerships and conventional tendering
- 2) Maintain key institutional roles and responsibilities and entrust Government entities involved with clear mandates
- 3) Ensure that all significant regulation affecting the operation of Public Private Partnerships is conducive, clear, transparent and enforced
- 4) Prioritize major investment projects at senior political level
- 5) Ensure consideration of value-for-money in deciding whether Public Private Partnerships or conventional public investment method is to be pursued for undertaking a public infrastructure project
- 6) Allocate the risks to party who is best positioned to control the likelihood of risk event occurrence, manage impact of the risk on the project, and absorb the risk at the lowest cost
- 7) Ensure transparent, competitive and rule-based tender process for solicited Public Private Partnerships and subjecting all unsolicited proposals to market challenge
- 8) Ensure that Public Private Partnership Projects are both socio-economically sound and commercially viable, as well as bankable
- 9) Treat Public Private Partnerships transparently in the budget process; value, provision, fund, monitor and adequately disclose in the budget documentation all costs and contingent liabilities arising from Public Private Partnerships
- 10) Guard against waste and corruption by ensuring the integrity of the tendering process
- 11) As a general rule, no renegotiation approach will be implemented by the Government
- 12) Ensure due diligence to mitigate negative impacts; socially, environmentally and on women and children and maximize their benefits within the control of Public Private Partnerships and their implementation.

Article 4 Scope

- 4.1 A Public Private Partnership is an agreement between the public sector and the private sector for the purpose of delivering a project or a service, conventionally provided by the public sector, to implement a project with a public interest.
- 4.2 A Public Private Partnership is a contractual arrangement and is characterized as:
 - 1) A contractual arrangement between a Project Executing Agency and a private body
 - 2) Concerning the delivery of a public service or infrastructure for which the Project Executing Agency remains accountable
 - 3) Where the required service or infrastructure is specified as an output
 - 4) Where significant risks are transferred to the private firm, making its private investment and financial returns linked to its performance
 - 5) Procured through a competitive tendering process or competitive conditions
 - 6) Often wholly or partly financed by the private sector
- 4.3 All Public Private Partnership Projects are to be approved by the Investment Committee and procured in accordance with the rules and provisions of this Decree unless formally exempted from this requirement by the Government.

- 4.4 Public Private Partnerships may not be undertaken in the sectors specified in the Negative List outlined in the Annex to this Decree, unless formally exempted from this requirement by the Government, which Annex may be updated from time to time.

Article 5 Responsibility of the Investment Committee

The Investment Committee is responsible for adopting the necessary Public Private Partnership regulations and standard documents to be used by Project Executing Agencies and supervising and approving Public Private Partnership initiatives prior to tendering and contracting. The Investment Committee, representing Government, has the sole mandate to supervise and approve Public Private Partnerships. After approval of the Public Private Partnership Contract according **article 18 of the Decree**, the Ministry of Planning and Investment will sign the contract on behalf of the Government.

Article 6 Establishment, Composition and Responsibilities of Public Private Partnership Unit

- 6.1 The Government shall establish a Public Private Partnership Unit for the purpose of supervision, facilitation and promotion of the Public Private Partnership Program and improving skills and knowledge in Public Private Partnerships. This unit will also serve as the secretariat of the Investment Committee.
- 6.2 The Government shall establish and issue a specific Decree for approving the establishment of the Public Private Partnership Unit.
- 6.3 The Ministry of Planning and Investment shall undertake the functions and responsibilities of the Public Private Partnership Unit prior to the establishment of the Public Private Partnership Unit.
- 6.4 The roles of the Public Private Partnership Unit include:
- 1) Supervision of tendering and contracting of Public Private Partnership Contracts;
 - 2) Focal point to coordinate with all related sectors for evaluation and identifying the initial project proposal for the Public Private Partnership and submission for approval from the Government through the Investment Committee;
 - 3) Creating the standard criteria for Public Private Partnership project selection;
 - 4) Selection of the Preferred Bidder through tendering process in compliance with the provisions outlined in this decree;
 - 5) Proceed the proposal for executing the Public Private Partnership Contract from the Government;
 - 6) Coordination of appraisal of Public Private Partnership Projects for approval by the Government through the Investment Committee;
 - 7) Facilitation of Public Private Partnership legal and regulatory environment and Public Private Partnership Program promotion;
 - 8) Public Private Partnership knowledge management, including through development of Public Private Partnership guidelines, tools and standard contract, management of a database on Public Private Partnerships and internet site;
 - 9) Administration of the Project Preparation Facility, and management of project preparation and transaction consultants recruited through the Project Preparation Facility;
 - 10) Project-based capacity building to Project Executing Agencies;
 - 11) Report the progress quarterly, semi-annually, annually to the Investment Committee on the status, progress of the implementation of the existing and future Public Private Partnership project(s) to be undertaking.

- 6.5 The Government will adopt statutes, working procedures and funding arrangements for the Public Private Partnership Unit, including Official Development Assistance.

Article 7 Project Executing Agency

- 7.1 The Project Executing Agency is responsible for identifying, developing, preparing, tendering and monitoring Public Private Partnerships within their areas of jurisdiction in accordance with this Decree.
- 7.2 The Project Executing Agency is responsible for establishing Public Private Partnership teams headed by a Public Private Partnership Project Officer in the rank of at least Deputy Director General to undertake Public Private Partnership Projects. The Project Executing Agency is required to establish appropriate management and monitoring arrangements for Public Private Partnership Contracts that have been entered into.

Article 8 Establishment, Roles and Responsibilities of Private Sector

- 8.1 The Private Parties shall be the contracting entity in the form of a sole company, limited company or public company or groups of companies.
- 8.2 Private Parties may be domestic or foreign.
- 8.3 Companies in which the Lao Government or a Lao State Owned Enterprise owns more than [49%] are not eligible Private Parties for Public Private Partnership projects. A Lao State Owned Enterprise holding equity in a Project Entity shall not be a sub-contractor to the Project Entity. A State Owned Enterprise, partly or entirely owned by the Project Executing Agency, is not allowed to participate in the project.
- 8.4 The Private Contracting Parties have the role to participate in the Public Private Partnership project development with the Government under the Public Private Partnership Contract, in accordance to this Decree and all relevant laws and regulations of Lao PDR.
- 8.5 The Private Party shall have the right to enter into the tendering and implement a Public Private Partnership project provided that it meets the criteria set forth in this Decree and Annexes.
- 8.6 The Private Party that has been awarded a Public Private Partnership Contract shall establish the Project Entity in accordance with the relevant investment s
- 1) The Private Party shall: Open a bank account with a commercial banks incorporated in Lao PDR and inject/repatriate the capital in accordance to the Lao laws.
 - 2) Inject the capital into the development of the Public Private Partnership project in accordance to the standard set-forth in the tendering document package and the Public Private Partnership Contract.
 - 3) Implement the Public Private Partnership Project and manage Public Private Partnership Project efficiently and effectively in accordance to the standard set-forth in the tendering document package and the PPP Contract.
 - 4) Monitor, evaluate, summarize and report the progress and result of the implementation of Public Private Partnership Project to the Investment Committee, the Project Executing Agency and related sectors.
 - 5) Unless express otherwise in the PPP contract, the Private Sector is not entitled to transfer or assign its partial or entire obligations and benefits related to the PPP contract to a third party without the written approval from the Investment Committee. The PPP Contract shall outline the detail and conditions for transferring and assigning its obligation.

- 6) Specific responsibilities of the private sector will be specified in each individual Public Private Partnership Contract.
- 7) Establish simplified and efficient mechanisms for handling claims submitted by its customers or users of the infrastructure facility
- 8) The Private Contracting Parties shall refrain from performing any of the acts prohibited by Article 73 of the Law on Investment Promotion or specifically prohibited by the Public Private Partnership Contract.
- 9) Conform with other rights set-forth in this decree and the PPP contract.

Article 9 Legal and Financial Facilitation

- 9.1 The Government promotes Public Private Partnerships through setting up a legal and regulatory framework that is conducive for private sector participation while taking public interests into account.
- 9.2 While respecting vested rights and obligations of public and private sector parties, and ensuring public interests, the Government, through the Investment Committee, is entitled to amend and supplement the legal and regulatory framework of the Lao PDR to accommodate future Public Private Partnerships.
- 9.3 The Government establishes a Project Preparation Facility to cover the cost of advisory and support services related to the preparation, structuring, tendering, award, and financial close stages of the Public Private Partnership Project. The Project Preparation Facility may be funded through the state budget and Official Development Assistance. The Project Preparation Facility shall be administered by the Public Private Partnership Unit as a revolving fund; thus the Public Private Partnership Unit may collect and receive fees and recover costs expended through the Project Preparation Facility. Such amount shall be retained and authorized to be used by the Public Private Partnership Unit for the purposes indicated above. The Project Preparation Facility governance and operations issues shall be described in Project Preparation Facility guidelines to be approved by the Investment Committee.
- 9.4 In order to facilitate access to global best practices in Public Private Partnerships and enhance quality of projects, the selection of consultants financed through the Project Preparation Facility shall be open to national and international firms. The Project Preparation Facility consultant selection and management guidelines shall be developed by the Public Private Partnership Unit for adoption by the Investment Committee.
- 9.5 The Government promotes Public Private Partnerships through setting up a financial framework that is conducive for private sector participation. This framework consists of the existing financial facilities in place as well as additional financial facilities that will be developed, such as subsidies and guarantees, amongst others to support the financial viability of Public Private Partnership Projects.
- 9.6 During preparation of the state budget, the Government shall prioritize budgeting of any amounts required to meet Project Executing Agency payment obligations under the Public Private Partnership Contracts.

CHAPTER II Project Identification and Appraisal

Article 10 Initial Project Proposal

- 10.1 Authorities, appointed by the Investment Committee as Project Executing Agencies, wishing to develop a Public Private Partnership Project for which a Feasibility Study was not already available upon effective date of this Decree shall prepare an Initial Project Proposal in conformity with the Annex to this decree, to be approved by the Public Private Partnership Unit.
- 10.2 Any Project Executing Agency wishing to prepare an Initial Project Proposal may request the advice of the Public Private Partnership Unit and may request technical or financial support from the Project Preparation Facility to prepare the Initial Project Proposal.
- 10.3 The Public Private Partnership Unit may on its own initiative identify and propose projects to a Project Executing Agency that may be developed as Public Private Partnership Projects.
- 10.4 The Public Private Partnership Unit may reject the Initial Project Proposal if it is inconsistent with the applicable Five-Year Socio-Economic Development Plan, as defined by the Law on Public Investment No. 08/NA, 26 November 2009 or as amended.

Article 11 Feasibility Study

- 11.1 If the Initial Project Proposal is approved by the Public Private Partnership Unit, the Project Executing Agency shall prepare a Feasibility Study for the Public Private Partnership Project in conformity with the Annex to this decree, to be approved by the Investment Committee.
- 11.2 Public Private Partnership Projects must comply with the Feasibility Study requirements as stated under these and other Public Private Partnership implementing regulations and guidelines. The requirements for feasibility studies as stated under other laws do not apply to Public Private Partnership Projects.
- 11.3 The Project Executing Agency must provide the Ministry of Finance with an estimation of any direct schedule of payments, guarantees or other obligations the Project Executing Agency or the Government may have through the full period of the Public Private Partnership Contract.
- 11.4 The Public Private Partnership Unit shall then inscribe the Public Private Partnership Project in the agenda of the next possible Investment Committee meeting and distribute the Feasibility Study to the Investment Committee together with a recommendation at least ten working days before the date of the meeting.
- 11.5 The Investment Committee shall review the Feasibility Study and the recommendation of the Public Private Partnership Unit and issue one of the following decisions:
 - 1) Approval: the Feasibility Study is approved and the Project Executing Agency is allowed to proceed with the elaboration of a Bidding Documentation Package;
 - 2) Rejection: the Feasibility Study is rejected and the project shall not be pursued as a Public Private Partnership Project;
 - 3) Delayed decision: the Feasibility Study is neither approved nor rejected as the Investment Committee requests further clarification and/or addition to the Feasibility Study.

- 11.6 The decision of the Investment Committee and its justification shall be specified in writing in the Investment Committee meeting minutes, to be published within five working days after the date of the meeting.
- 11.7 The approval of the Investment Committee shall be submitted to the National Assembly for endorsement, if the project will include guarantees, granting of exclusive rights or any exemptions from a law.
- 11.8 In case of a delayed decision, the Investment Committee will provide a timeframe for the Project Executing Agency to clarify and/or complement the Feasibility Study. After such time, the process described in 11.3 to 11.6 of this Decree shall be repeated.
- 11.9 The decision of the Investment Committee shall not be delayed more than two times.
- 11.10 If applicable, the Feasibility Study shall also be used for the purpose of applying for financial support pursuant to the applicable rules and procedures of the Viability Gap Funding.
- 11.11 If applicable, the Feasibility Study shall also be used for the purpose of applying for financial support for the tendering of transaction advisory services pursuant to the applicable rules and procedures of the Project Preparation Facility.

CHAPTER III Project Tendering and Contracting

Article 12 Scope

This Section sets out the process to be followed by the Project Executing Agency to tender and contract Public Private Partnership Projects. The tendering of all Public Private Partnership Projects approved by the Investment Committee will follow this Decree, including its Annex. With respect to Public Private Partnership Projects only, these regulations supersede all other laws or regulations on tendering.

Article 13 Principles

- 13.1 In the Lao PDR a Public Private Partnership tender shall be based on the following principles:
- 1) equity: equal rights for all Bidders, the objectivity and impartiality of the selection of a Private Contracting Party, mutually beneficial Public Private Partnership, coordinated distribution of authority, responsibility and risks;
 - 2) equality: the equal responsibility of Government and the Private Contracting Party before the law;
 - 3) impartiality: an unbiased and fair tendering and selection of the successful Bidder;
 - 4) transparency: an equal access of the private sector and the public to information in all stages of the tendering;
 - 5) healthy competition: no restrictions and abuses of the rights of parties to participate in the tendering;
 - 6) ethics: all Bidders, contractors, Government bodies, and other relevant parties shall observe the highest standard of ethics during the implementation of tendering proceedings and the execution of Contracts under public funds;
 - 7) rule of law: the unquestioning fulfilment of legal and regulatory requirements by all Government bodies, officials, private sector and other stakeholders in the tendering.
- 13.2 In accordance with this Decree and its implementing legislation, public and private sector parties may freely contract specific terms of a Public Private Partnership Contract observing the legislation in Lao. Public Private Partnership Contracts may integrate functions and cover design, build, finance, maintain and operate the infrastructure under one single contract. Project Executing Agencies have the power to contract out the provision of public services through Public Private Partnership Contracts.
- 13.3 Evaluation and award of the proposals within the tendering process takes place on the basis of economic, financial, social, including gender, and environmental criteria, established by the Project Executing Agency.

Article 14 Bidding Documentation Package

- 14.1 Following approval of the Feasibility Study by the Investment Committee, the Project Executing Agency shall prepare a Bidding Documentation Package for the Public Private Partnership Project in conformity with the Annex to this decree, to be approved by the Investment Committee.
- 14.2 The Project Executing Agency shall submit the Bidding Documentation Package to the Public Private Partnership Unit, which shall review it and, if necessary, make recommendations to the Project Executing Agency within thirty working days from the submission date. This process is to

be repeated until the Bidding Documentation Package is deemed acceptable by the Public Private Partnership Unit for submission to the Investment Committee or until the Public Private Partnership Unit refuses the submission to the Investment Committee. If the Public Private Partnership Unit refuses submission, the Public Private Partnership Unit will determine whether to cancel the Public Private Partnership Project or initiate a new Feasibility Study for the project.

- 14.3 The Public Private Partnership Unit shall then inscribe the Public Private Partnership Project in the agenda of the next possible Investment Committee meeting, preferably in combination with the Feasibility Study referred to in **Article [11] of this Decree**, and distribute the Bidding Documentation Package to the Investment Committee together with a recommendation at least ten working days before the date of the meeting.
- 14.4 The Investment Committee shall review the Bidding Documentation Package and the recommendation of the Public Private Partnership Unit and issue one of the following decisions:
 - 1) Approval: the Bidding Documentation Package is approved and the Project Executing Agency is allowed to proceed with Tendering;
 - 2) Delayed decision: the Bidding Documentation Package is not approved as the Investment Committee requires points of the Bidding Documentation Package to be clarified and/or complemented.
- 14.5 The decision of the Investment Committee and its justification shall be specified in writing in the Investment Committee meeting minutes, to be published within five working days after the date of the meeting.
- 14.6 In case of a delayed decision, the Project Executing Agency shall have no more than 15 working days to clarify and/or complement the Bidding Documentation Package and the process described in **article 14.2 to Article 14.5 of this Decree** shall be repeated.
- 14.7 In case the Bidding Documentation Package is substantially modified, the Project Executing Agency shall seek new approval from the Investment Committee and the process described in **article 14.2 to Article 14.5 of this Decree** shall be repeated.
- 14.8 The Project Executing Agency shall establish an Evaluation Committee comprising at least one representative of the Public Private Partnership Unit.

Article 15 Public Private Partnership Contract

- 15.1 For each Public Private Partnership Project a Public Private Partnership Contract will be entered into between the Government and the selected Private Party.
- 15.2 Public and private sector parties may negotiate and contract for the extent of the land rights pertaining to a Public Private Partnership Contract while taking the Land Law into account.
- 15.3 The Public Private Partnership Contract shall provide for all matters which Parties deem necessary, but definitely follow the terms and conditions set forth in this decree and the detail of the provisions outlined in the **Annex** to this decree.
- 15.4 Each Public Private Partnership Contract shall be governed under the laws of the Lao People's Democratic Republic, unless otherwise provided by the Contract.

- 15.5 The Public Private Partnership Contract may include direct payments and/or guarantees from the Government to the Private Party for infrastructure and/or services developed and delivered by the Private Party.
- 15.6 The Public Private Partnership Contract may allow a Private Party to have the right to charge, receive and/or collect levies and charges for making available the infrastructure and/or accommodation and/or delivering services in accordance with the terms of the Public Private Partnership Contract. The Contract shall provide for the methods and formulas to establish and adjust levies and charges in accordance with the conditions made applicable by the Project Executing Agency.
- 15.7 Subject to any restrictions that may be contained in the Public Private Partnership Contract and in accordance with the Secured Transactions Law No. 06/NA, dated 20 May 2005 and its implementing legislation, a Private Party shall have the right to create security interests over any of its assets, rights or interests, including those relating to Public Private Partnership Projects, as may be required to secure any financing needed for the partnership project, including the following:
- 1) Security over movable or immovable property owned by the private partner or its interests in the assets of the partnership project
 - 2) A pledge of future proceeds of, and receivables owed to the Private Party for the use of the partnership project
- 15.8 The shareholders of a Project Entity created by the private partner shall have the right to pledge or create any other security interest in their shares in the Project Entity.
- 15.9 The parties to a Public Private Partnership Contract may solidify their rights and security interests by entering into other applicable relevant security agreements such as: share pledge, charge over accounts, movables pledge, or receivables pledge agreements.
- 15.10 Each Contracting Party to a Public Private Partnership Contract shall observe any obligation it may have assumed with regard to investments.
- 15.11 The Government of Lao PDR guarantees not to expropriate any property or interests implicated in a Public Private Partnership Contract without providing just compensation to the Private Contracting Party.
- 15.12 The Government guarantees to pay compensation for any debt, lost profit and breakage costs to the Private Contracting Party when the Public Private Partnership Contract is terminated early due to default of the Government. The specific costs to be paid to the Private Contracting Party shall be provided in the Public Private Partnership Contract entered into by Public and Private Contracting Parties.
- 15.13 [Private sector parties may agree with approval of the Government to step-in-rights in favor of the lender(s) to the project in the event that the Project Entity or Public Private Partnership defaults under the Public Private Partnership Contract or a related loan agreement.] The Government may enter into direct agreements with lenders regarding step-in-rights.

- 15.14 In the event of lender(s) exercising their step-in-rights the lender(s) may make new arrangements and provisions for ownership and management of the Project Entity, provided that such arrangements and provisions comply with the related provisions of this Decree, that the Public Private Partnership Contract is not substantively changed. Land and assets allocated under the Public Private Partnership Contract will remain allocated in the event of a step-in-right.
- 15.15 The Government will ensure or cause to be ensured that the Project Entity will have access to foreign currency, will be able to convert local currency to foreign currency both for return repatriation and for debt payment, and will be able to transfer this foreign currency abroad in accordance with relevant Bank of Lao provisions.

Article 16 Pre-Qualification Process

The Project Executing Agency shall organize the Pre-Qualification Process in accordance with the process stated in the Annex to this Decree.

Article 17 Qualification Process

The Project Executing Agency shall organize the Qualification Process in accordance with the process stated in the Annex to this Decree.

Article 18 Final Approval Process

- 18.1 After the preferred bidder is selected the Project Executing Agency shall submit the Public Private Partnership Contract to be signed to the Public Private Partnership Unit, which shall review it and, if necessary, make recommendations to the Project Executing Agency within five working days from the submission date.
- 18.2 The Public Private Partnership Unit shall prepare a recommendation for the Investment Committee.
- 18.3 The Project Executing Agency must submit to the Ministry of Finance a final multi-year financing commitment that reflects (i) any direct schedule of payments, guarantees or other obligations the Project Executing Agency or the Government has through the full period of the Public Private Partnership Contract, and (ii) a Project Executing Agency commitment to include these payments, guarantees or other obligations, in a priority manner, in the annual budget requests of the authority submitted to the Government in terms of the established budgeting process. The multi-year financing commitment shall be submitted in a form complying with the requirements determined by the Ministry of Finance.
- 18.4 The Public Private Partnership Unit shall then inscribe the Public Private Partnership Project in the agenda of the next possible Investment Committee and distribute the final Public Private Partnership Contract to the Investment Committee together with its recommendation at least five working days before the date of the meeting.
- 18.5 The Investment Committee shall review the final Public Private Partnership Contract and the recommendation of the Public Private Partnership Unit and issue one of the following decisions:
- 1) Approval: the final Public Private Partnership Contract is approved and the Project Executing Agency is allowed to proceed with issuance of Notice of Award, for the Ministry of Planning and Investment to be able to signing the Public Private Partnership Contract on behalf of the Government; or

- 2) Rejection: the final Public Private Partnership Contract is not approved as the Investment Committee does not agree with all the proposed changes.
- 18.6 The decision of the Investment Committee and its justification shall be specified in writing in the Investment Committee minutes, to be published within five working days after the date of the meeting.
 - 18.7 If the project includes guarantees, granting of exclusive rights or any exemptions from a law that are new or different from those approved by the Investment Committee and endorsed by the National Assembly during the approval of the Feasibility Study, then the Investment Committee shall submit its approval to the national Assembly for endorsement.
 - 18.8 In case of a rejection, the process described in this article shall be repeated. In case the contract to be signed is adequately modified, the Project Executing Agency shall seek new approval from the Investment Committee.

Article 19 Award and Signing Process

- 19.1 Following approval of the final Public Private Partnership Contract by the Investment Committee, the Project Executing Agency shall issue a Notification of Award specifying at least the name of the selected Private Contracting Party and a brief description of the important terms and conditions of the Public Private Partnership Contract.
- 19.2 The Ministry of Planning and Investment shall then, on behalf of the Government, proceed with signature of the Public Private Partnership Contract at the earliest possible date.

Article 20 Direct Negotiations

- 20.1 Subject to approval of the Investment Committee based on a recommendation from the Public Private Partnership Unit, a Project Executing Agency may engage in Direct Negotiations on a Public Private Partnership Contract without using the tendering procedures described in this Decree in the following cases:
 - 1) when there is an urgent need for ensuring continuity in delivery of services and the circumstances that caused this urgent need were neither foreseeable by the Project Executing Agency nor the result of any dilatory conduct on its part;
 - 2) when the Public Private Partnership Project addresses issues of national defense or public security;
 - 3) when there is only one source that can provide the required services, including the services of intellectual property, trade secrets or other exclusive rights, which are owned or possessed by a certain person(s); or
 - 4) in other cases, where the Investment Committee approves such an exception for compelling reasons of national or public interest or in the cases of recognition in the interest of local Governmental body.
- 20.2 Direct Negotiations on a Public Private Partnership Contract are only permitted with parties whom the Project Executing Agency considers capable of implementing the Public Private Partnership Project.
- 20.3 Direct Negotiations on a Public Private Partnership Contract are only permitted in the presence of a representative of the Public Private Partnership Unit.

- 20.4 The Project Executing Agency engaging in Direct Negotiations on a Public Private Partnership Contract shall publish its decision to engage in Direct Negotiations on a Public Private Partnership Contract at least ten working days in advance via the official gazette and the websites of the Project Executing Agency and the Public Private Partnership Unit and shall respect any other conditions imposed by the Public Private Partnership Unit and the Investment Committee.
- 20.5 Beyond tendering, the Decree is applicable for the direct negotiated contract, unless the Investment Committee has reasons to deviate from this, which will be stated along the approval in Article 20.1 of this Annex.

Article 21 Unsolicited Proposals

- 21.1 The Project Executing Agency may receive, review and evaluate an unsolicited Proposal or a Proposal submitted on the private sector's own initiative on a Public Private Partnership Project if this Proposal:
- 1) was developed and submitted independently by a private party;
 - 2) is beneficial to the public;
 - 3) was prepared without any input from a Project Executing Agency or the Public Private Partnership Unit; and
 - 4) includes sufficient details and information required by a Project Executing Agency to prepare a Feasibility Study.
- 21.2 The Project Executing Agency may then either prepare a Feasibility Study or review and adapt the Feasibility Study prepared by the private party pursuant to **Article 11 of the Decree**.
- 21.3 Should the Feasibility Study be approved by the Investment Committee, unless the Public Private Partnership Project meets the requirements for Direct Negotiation described in **Article 12 of this Annex**, the tendering process described in the Decree shall be followed.
- 21.4 The Project Executing Agency may either compensate the initiator for its Unsolicited Proposal or give the initiator the right to match the winning bid that results from a tendering process following the submission of the Unsolicited Proposal.

Article 22 Changes or Amendment of Awarded Public Private Partnership Contracts

- 22.1 Should a change or amendment be required to an awarded Public Private Partnership Contract, such changes shall be undertaken following the relevant provisions of the Decree and the relevant provisions in the Public Private Partnership Contract.
- 22.2 The Project Executing Agency shall inform the Public Private Partnership Unit of any substantive changes or amendments proposed to be made to a Public Private Partnership Contract prior to making such changes or amendments, together with an explanation of the circumstances and need for such changes or amendments. The Public Private Partnership Unit shall review such proposed changes or amendments and either approve them, or may request the Project Executing Agency to provide further information or revised proposed changes or amendments.
- 22.3 If the Public Private Partnership Unit considers any proposed changes or amendments to a Public Private Partnership Contract to be of a fundamental nature that substantially affects the value-for-money, the allocation of risks between parties, or substantial implications for the direct or indirect

fiscal, payment, guarantee or other commitments of government, then the Public Private Partnership Unit shall refer the decision to the Investment Committee together with a recommendation.

Article 23 Confidentiality

Unless required by law or by a court order, the Project Executing Agency, the Public Private Partnership Unit and the Investment Committee shall not disclose to any third party the contents of Requests for Qualifications and Proposals received nor of any discussions, correspondence or negotiations between the Project Executing Agency and a Bidder, except for correspondence concerning questions and comments on a Pre-Qualification Documentation Package or a Request for Proposals.

Article 24 Record of Information

The Project Executing Agency shall keep an appropriate Record of Information on the tendering for at least the term of the Public Private Partnership Contract.

Article 25 Corrupt, Fraudulent, Collusive Practices

All related parties, including Public and Private Parties to the tendering, shall be transparent, accountable and do not have any conducts that lead to corruption, fraudulent or collusive practice that cause the adverse impact to the tendering or the regulations and criteria set forth in this Decree.

CONFIDENTIAL

CHAPTER IV
Final Provisions

Article 26 Violation of this Decree

Individuals and legal entities shall be held responsible for violation of this Decree in accordance with the legislation of the Lao PDR.

Article 27 Implementation

- 27.1 The Investment Committee, Public Private Partnership Unit, Ministries, equivalent agencies, local administration, and Project Entity, developers or investors involved in Public Private Partnership Projects shall strictly conform with this Decree.
- 27.2 The Prime Minister may issue further regulations, instructions and/or guidelines regarding the implementation of this Decree.
- 27.3 The Investment Committee may propose implementing regulations and amendments to this Decree to the Prime Minister for its consideration.
- 27.4 The Public Private Partnership Contracts that have been approved by the Government shall remain valid and in effect for the duration of the Contract, on the terms on which such agreements were concluded. Any amendment or change to this Decree or its implementing legislation shall only be effective on Public Private Partnership Contracts created after the new or amended legislation is adopted.

Article 28 Effectiveness

- 28.1 This Decree and the Annex to this decree shall constitute the entire Decree and shall be legally effective from 30 days after the date of signature.
- 28.2 This Decree shall be legally enforceable as the priority and in line with all laws and regulations.

Prime Minister of the Lao PDR