



**Lao People's Democratic Republic**  
Peace Independence Democracy Unity Prosperity

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Government of Lao PDR

No. /PM  
Vientiane, \_\_\_\_\_

**Decree**  
**on Public Private Partnerships**  
**in the Lao PDR**

Pursuant to the Law on Government of the Lao PDR No. 02/NA, dated 6 May 2003;  
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;

**Version: Draft 7**

**Date: June 2015**

## The Government decrees that:

### CHAPTER I General Provisions

#### Article 1 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 2 Scope

- 2.1 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.
- 2.2 A Public Private Partnership is a contractual arrangement and is characterized as:
  - 1) A contractual arrangement between a Project Executing Agency and a Project Entity;
  - 2) Concerning the delivery of a public service and infrastructure for which the Project Executing Agency remains accountable;
  - 3) Where the required service and infrastructure is specified as an output;
  - 4) Where significant risks, meaning at least construction risk in combination with demand risk and/or availability risk, are transferred to the Project Entity, making its private investment and financial returns linked to its performance;
  - 5) Procured through an international competitive Tendering process or competitive conditions;
  - 6) Often wholly or partly financed by the private sector.
  - 7) Possibly involving Government Support and Official Development Assistance.
- 2.3 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.
- 2.4 The Government ~~may~~shall decide Public Private Partnerships may not be undertaken in particular projects that ~~may~~ affect national defense and public security.

#### Article 3 Main Principles

- 3.1 The approach to Public Private Partnerships shall adhere to the following principles:
  - 1) Adherence to the legislation of Lao PDR
  - ~~2)~~ Ensure public awareness of the relative costs, benefits and risks of Public Private Partnerships and conventional Tendering.
  - ~~3)~~ Maintain key institutional roles and responsibilities and entrust Government entities involved, such as the Project Executing Agencies, with clear mandates.
  - ~~4)~~ Ensure that all significant regulation affecting the operation of Public Private Partnerships is conducive, clear, transparent and enforced.
  - ~~5)~~ Prioritize major investment projects at senior political level.
  - ~~6)~~ 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~~7) Allocate the risks to the party who is best positioned to control the likelihood of risk event occurrence, manage impact of the risk on the Public Private Partnership Project, and absorb the risk at the lowest cost.
- ~~7~~8) Ensure a fair, equal, transparent, competitive and rule-based Tendering process for solicited Public Private Partnerships and subjecting all Unsolicited Proposals to market challenge.
- ~~8~~9) Ensure that Public Private Partnership Projects are both socio-economically sound and commercially viable, as well as bankable.
- ~~9~~10) 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~~11) Ensure Public Private Partnership Projects that are initiated and will be carried out are fiscally affordable from the Government perspective.
- ~~11~~12) Encouragement of the participation of Lao companies and natural persons .
- ~~12~~13) Guard against waste and corruption by ensuring the integrity of Tendering .
- ~~13~~14) As a general rule, no renegotiation approach will be implemented by the Government.
- ~~14~~15) 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 Definitions**

The following terms in this Decree mean:

Public Private Partnership means a partnership between the public sector and the private sector for the purpose of delivering a project or a service with a public interest on the basis of a Public Private Partnership Contract.

Bidder means domestic or foreign entities or groups of entities that have been pre-qualified to participate in Tendering concerning a Public Private Partnership Project.

Bidding Documentation Package means the documents required for interested parties to express interest in the Public Private Partnership Project and for Bidders to submit a Technical and Financial Proposal for the Public Private Partnership Project.

Bid Security means security underwritten by a bank and delivered by the Bidder as a guarantee that the validity of the proposal will be maintained until the Public Private Partnership Contract is signed or until the expiration of the period of validity.

Complaint means any objection submitted by any interested party or Bidder to the Project Executing Agency on the Tendering procedure done in writing and in accordance to the instruction of the Project Executing Agency.

Contingent Liability means 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.

Donor means a country or international financial institution extending loans/credits and/or technical or financial assistance to promote economic, social and environment development.

Evaluation Committee means individuals officially appointed by the Project Executing Agency to be responsible for and carry out the Tendering process starting from preparation until award of Public Private Partnership Contract.

Evaluation Report means description in writing of the evaluations against criteria of Pre-Qualification, Technical and Financial Proposal carried out by the Evaluation Committee, including shortlisting or selection of the Preferred Bidder.

Feasibility Study means document specifying the mode for a proposed Public Private Partnership Project and providing the Government with sufficient information for proceeding and Tendering of a potential Public Private Partnership Project through an integrated assessment of the following: technical soundness, socio-economic benefits, legal and financial viability, risk characteristics, fiscal, social, environmental and gender sustainability, and the extent of Government Support (where required).

Financial Proposal means a proposal submitted by the Bidder to the relevant Project Executing Agency in response to the requirements specified in a Request for Proposals which will be evaluated by the Evaluation Committee to assess the financial terms.

Government means the Government of the Lao People's Democratic Republic.

Government Support means any form of support, contribution, guarantee, subsidy, or other assistance (including Viability Gap Funding), which the Government provides to a Public Private Partnership Project.

Instructions to Bidders means information for Bidders on the Tendering process.

Initial Project Proposal means brief project proposal complying with the requirements specified in this Decree and its Implementing Rules and Regulations.

Investment Committee means the National Investment Promotion Committee established pursuant to the Law on Investment Promotion.

National Budget means domestic funds and funds derived from external aid and loans of foreign countries and financial institutions.

Notice of Award means written notification of the Project Executing Agency to inform a bidder he is the Preferred Bidder.

Official Development Assistance means technical and financial assistance, including grant assistance and loans, where the Government officially receives from Donors to be used for national socio-economic development of the Lao PDR.

Performance Undertaking means a guarantee issued by the Government that the Project Executing Agency involved in a project will comply with all its obligations to the Project Entity.

Preferred Bidder means the Bidder selected at the close of the bidding as the winner, who is invited by the Project Executing Agency to finalize the Public Private Partnership Contract.

Pre-Qualification Process means process intended to lead to a shortlisting of Bidders.

Project Entity means enterprise set up by the Preferred Bidder with the purpose of concluding the Public Private Partnership Contract and to carry out the Public Private Partnership Contract.

Project Executing Agency means Ministry or equivalent agency, provinces and local authorities responsible for preparing, Tendering, executing and monitoring of the Public Private Partnership Contract, possibly using funds of the National Budget.

Project Preparation Facility means a fund to cover the costs of project preparation and transaction.

Public Private Partnership Contract means a mutually binding written agreement between the Project Executing Agency and the Project Entity concerning a Public Private Partnership Project.

Public Private Partnership Project means a project for a Public Private Partnership procured through a transparent and open Tendering process for the creation and/or management of infrastructure and services for a public purpose and for a specified period of time.

Public Private Partnership Unit means a unit established within the Ministry of Planning and Investment with responsibilities as set out in this Decree for supervision, facilitation and promotion of the Public Private Partnership program, projects and improving skills and knowledge in Public Private Partnerships.

Qualification Process means process intended to lead to the Preferred Bidder.

Regulatory Body means government authority entrusted with the power to issue and enforce rules and regulations governing the infrastructure and services of the Public Private Partnership Project.

Request for Expression of Interest means a request issued by the Project Executing Agency, including qualification requirements, inviting the private sector to apply to take part in the Tendering of a Public Private Partnership Project.

Request for Proposals means a request issued by the Project Executing Agency 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 means period until which all Bidders have time to submit complaints or any requests to Public Private Partnership Unit.

State Owned Enterprise means a business entity established and managed by the Lao PDR or in joint venture with other business entities which the Lao PDR holds at least 51% of the shares.

Technical Proposal means a proposal submitted by the Bidder to the relevant Project Executing Agency in response to the requirements specified in a Request for Proposals, which will be evaluated by the Evaluation Committee to assess the technical project suitability.

Tendering means process organized for the purpose of a fair selection of a Preferred Bidder to conclude the Public Private Partnership Contract in accordance with this Decree.

Unsolicited Proposal means proposals relating to the implementation of a Public Private Partnership 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 Project Executing Agency.

Value-for-Money means the relationship between the quality and/or quantity of service provided, the risk for Government, and the price of a Public Private Partnership Project

Viability Gap Funding (VGF) means financial support provided by the Government to a Public Private Partnership Project to achieve commercial viability.

## **Article 5 Project Executing Agency**

- 5.1 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.
- 5.2 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 the Public Private Partnership Contracts that have been entered into.

## **Article 6 Establishment, Roles and Responsibilities of the Private Sector**

- 6.1 The Project Entity shall be established by the Preferred Bidder and shall be the contracting entity in the form of a sole company, limited company or public company or groups of companies established under Lao laws.
- 6.2 Private Parties may be domestic or foreign, natural and legal persons.
- 6.3 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.
- 6.4 The Private Party shall have the right to enter into the Tendering process and implement a Public Private Partnership project provided that it meets the criteria set forth in this Decree and its Implementing Rules and Regulations.
- 6.5 The Private Party that has been awarded a Public Private Partnership Contract shall establish the Project Entity in accordance with the relevant investments
  - 1) The Private Party shall open a bank account with a commercial banks incorporated and operating 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 Bidding Documentation 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 Bidding Documentation Package and the Public Private Partnership Contract.
  - 4) Monitor, evaluate, summarize and report the progress and result of the implementation of Public Private Partnership Projects to the Investment Committee, the Project Executing Agency and related sectors.

- 5) Unless expressed otherwise in the Public Private Partnership Contract, the Private Sector is not entitled to transfer or assign its partial or entire obligations and benefits related to the Public Private Partnership Contract to a third party without the written approval from the Investment Committee. The Public Private Partnership Contract shall outline the detail and conditions for transferring and assigning its obligations.
- 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 Public Private Partnership Contract.

## **Article 7 Legal and Financial Facilitation**

- 7.1 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.
- 7.2 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.
- 7.3 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 Public Private Partnership Projects. The Project Preparation Facility may be funded through the state budget and Official Development Assistance. The Project Preparation Facility may 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 will be governed by the Ministry of Planning and Investment and managed by the Public Private Partnership Unit. Reimbursement from the Project Preparation Facility will be done by the Public Private Partnership Unit after clearance of the Ministry of Finance. The Project Preparation Facility Guidelines, entailing governance and operations issues, shall be developed by the Public Private Partnership Unit, to be approved by the Investment Committee.
- 7.4 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, to be approved by the Investment Committee.
- 7.5 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 Government Support and financial facilities in place, as well as additional financial facilities that will be developed, such as subsidies, guarantees, Performance Undertakings, long-term loans, tax

facilities and contributions in-kind, amongst others to support the financial viability of Public Private Partnership Projects (Viability Gap Funding).

- 7.6 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 8 Initial Project Proposal

- 8.1 The Project Executing Agency 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 Implementing Rules and Regulations to this Decree, to be approved by the Public Private Partnership Unit.
- 8.2 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 and financial support from the Project Preparation Facility to prepare an Initial Project Proposal.
- 8.3 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.
- 8.4 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.
- 8.5 In exceptional cases, if there is an unforeseen need for a Public Private Partnership Project which is not included in the Five-Year Socio-Economic Development Plan, the Project Executing Agency may, through the Ministry of Planning and Investment, request for a separate approval of the Cabinet of Ministers and the Assemblée Government Office and National Assemblée respectively.

#### Article 9 Feasibility Study

- 9.1 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 Implementing Rules and Regulations to this Decree, to be submitted to the Public Private Partnership Unit and approved by the Investment Committee.
- 9.2 Any Project Executing Agency wishing to prepare a Feasibility Study may request the advice of the Public Private Partnership Unit and may request technical and financial support from the Project Preparation Facility to prepare a Feasibility Study.
- 9.3 The Project Executing Agency must provide the Ministry of Planning and Investments and the Ministry of Finance with an estimation of any direct schedule of payments, Government Support, guarantees or other obligations the Project Executing Agency or the Government may have through the full period of the Public Private Partnership Contract.



- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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 9.3 to 9.6 of this Decree shall be repeated.
- 9.8 The decision of the Investment Committee shall not be delayed more than two times.
- 9.9 If applicable, the Feasibility Study shall also be used for the purpose of applying for Government Support pursuant to the applicable rules and procedures.
- 9.10 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 guidelines of the Project Preparation Facility.

## CHAPTER III

### Project Tendering and Contracting

#### Article 10 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 Implementing Rules and Regulations. In the case that Official Development Assistance is involved in the preparation, development and realization of a Public Private Partnership Project and the related Donor prescribes certain Tendering procedures, these may be made applicable after subject to approval by the Investment Committee, if this does not contradict with Lao Law.

## **Article 11 Principles**

- 11.1 In the Lao PDR a Public Private Partnership tender shall be based on the following principles:
- 1) equity: equal rights for all interested parties and Bidders, the objectivity and impartiality of the Tendering process and the selection of a Preferred Bidder, mutually beneficial Public Private Partnerships, coordinated distribution of authority, responsibility and risks.
  - 2) equality: the equal responsibility of Project Executing Agencies and the Project Entity before the law.
  - 3) transparency: an equal access of the private sector and the public to information in all stages of the Tendering process.
  - 4) healthy competition: International Competitive Bidding, no restrictions and abuses of the rights of parties to participate in the tendering.
  - 5) ethics: all interested parties, 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 Public Private Partnership Contracts.
  - 6) rule of law: the unquestioning fulfillment of legal and regulatory requirements by all Government bodies, officials, private sector and other stakeholders in the Tendering process.
- 11.2 In accordance with this Decree and its implementing regulations, public and private sector parties may freely contract specific terms of a Public Private Partnership Contract observing the legislation in Lao PDR, and, if relevant, the policies and regulations of Donors may be made applicable, after approval by the Investment Committee, if this does not contradict with Lao Law.. Public Private Partnership Contracts may integrate functions and cover design, build, finance, maintain and operate the infrastructure under one single contract. The Project Executing Agency has the power to contract out the provision of public services through Public Private Partnership Contracts.
- 11.3 Evaluation and award of the proposals within the Tendering process take place on the basis of technical, economic, financial, social, including gender, and environmental criteria, established by the Evaluation Committee.

## **Article 12 Promotion of Local Enterprises and Products**

- 12.1 Local enterprises established and registered in the Lao PDR that are not affiliated to foreign firms and have the capacity to carry out the Public Private Partnership Contract with equal quality may be given marginal preferential rights in competitive biddings. These preferential rights are open and transparent, and described unambiguously in the Bidding Documentation Package.
- 12.2 The use of the National Budget for the procurement of foreign goods will not be authorized if such goods may be produced locally at equal or better quality and price.
- 12.3 In the Tendering of a Public Private Partnership Contract that is financed in full with domestic funds local firms may be given priority. These preferential right are open and transparent, and described unambiguously in the Bidding Documentation Package.

## **Article 13 Evaluation Committee**

- 13.1 The Project Executing Agency shall establish an Evaluation Committee to be responsible for and to carry out the Tendering process.

- 13.2 The Project Executing Agency shall ensure that the Evaluation Committee has the required knowledge and expertise to carry out the evaluation and is unbiased throughout the Tendering process.
- 13.3 The Evaluation Committee shall consist of representatives of the Procurement Executing Agency, at least one representative of the Public Private Partnership Unit and independent experts. At the central level, members of the Evaluation Committee will be appointed by the Minister and at the provincial level appointed by the Governor.
- 13.4 The Evaluation Committee coordinates and guides the Tendering process, prepares the Tender Documentation Package, evaluates Expressions of Interest and proposals and submits the award decision for approval. The Tender Committee shall maintain all records of Tendering proceedings and documentation, including the Evaluation Report, for respective cases in a procurement file, for at least the duration of the Public Private Partnership Contract. Such records shall be made available on request to the Investment Committee, the Ministry of Finance and the Procurement and Monitoring Office. The Evaluation Committee shall after signing the Public Private Partnership Contract with the successful bidder post contract award information in the offices of the Project Executing Agency for view by the public.

#### **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 Implementing Rules and Regulations to this Decree, to be approved by the Investment Committee. The Investment Committee may delegate the approval on the Bidding Documentation Package to the Public Private Partnership Unit, that will follow the similar procedure as stated under articles 14.2 to 14.6.
- 14.2 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 Bidding Documentation Package to the Investment Committee together with a recommendation at least ten working days before the date of the meeting.
- 14.3 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 the Tendering;
  - 2) Rejection: the Bidding Documentation Package 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 Bidding Documentation Package.
- 14.4 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.
- 14.5 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 14.2 to 14.6 of this Decree shall be repeated.
- 14.6 The decision of the Investment Committee shall not be delayed more than two times.

## 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 Project Entity.
- 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 its Implementing Rules and Regulations.
- 15.4 Each Public Private Partnership Contract shall be governed under the laws of the Lao PDR, unless parties explicitly agree otherwise in the Public Private Partnership Contract.
- 15.5 Each Public Private Partnership Contract shall include a dispute resolution mechanism that shall be governed under the laws of the Lao PDR, unless contracting parties agree otherwise in the Public Private Partnership Contract. The dispute resolution mechanism shall include a dispute resolution by amicable settlement and if such settlement cannot be reached a resolution by Lao or foreign arbitration can be used and if the settlement cannot be reached by arbitration, the parties can bring the dispute to the court.
- 15.6 The Project Executing Agency may grant Government Support through the Public Private Partnership Contract, if endorsed by the Government.
- 15.7 The Public Private Partnership Contract may allow a Private Party to have the right to charge, receive and collect levies and charges for making available the infrastructure and accommodation and delivering services in accordance with the terms of the Public Private Partnership Contract. The Public Private Partnership 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.
- 15.8 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 Project Entity 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 Public Private Partnership project after written approval of the Project Executing Agency, if endorsed by the Government or National Assemblée, including the following:
- 1) Security over movable or immovable property owned by the Project Entity or its interests in the assets of the Public Private Partnership Project
  - 2) A pledge of future proceeds of, and receivables owed to the Project Entity for the use of the Public Private Partnership Project
  - 3) other applicable relevant security agreements such as: share pledge, charge over accounts, movables pledge, or receivables pledge agreements.
- 15.9 Each party to a Public Private Partnership Contract shall observe any obligation it may have assumed with regard to investments.

- 15.10 The Government guarantees not to expropriate any property or interests implicated in a Public Private Partnership Project without providing just compensation to the Project Entity.
- 15.11 The Government guarantees to pay compensation to the Private Entity when the Public Private Partnership Contract is terminated early. The specific costs to be paid to the Project Entity shall be provided in the Public Private Partnership Contract entered into by the parties.
- 15.12 The Project Entity may agree with approval of the Government to step-in-rights in favor of the lender(s) to the Public Private Partnership 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.
- 15.13 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 without a new Tendering process, provided that such arrangements and provisions comply with the related provisions of this Decree and that the Public Private Partnership Contract is not substantively changed. Land and assets allocated under the Public Private Partnership Contract will remain allocated under the same terms in the event of a step-in-right.
- 15.14 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 Implementing Rules and Regulations to this Decree.

#### **Article 17 Qualification Process**

The Project Executing Agency shall organize the Qualification Process in accordance with the process stated in the Implementing Rules and Regulations 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 Planning and Investments and 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 endorsed by the Investment Committee and approved by the Government respectively, the Project Executing Agency is allowed to proceed with the issuance of Notice of Award and to sign the Public Private Partnership Contract, provided the Preferred Bidder still meets the Pre-Qualification criteria; or
  - 2) Rejection: the final Public Private Partnership Contract is not approved as the Investment Committee does not agree with the contents of the Public Private Partnership Contract.
- 18.6 In principle the Investment Committee shall not withhold its approval on the basis of the contents of the Public Private Partnership Contract on elements that were part of the Public Private Partnership Contract when the Investment Committee approved the Bidding Documentation Package, unless relevant circumstances changed meanwhile.
- 18.7 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.
- 18.8 If the project includes exemptions from a law, then the Investment Committee shall submit its approval to the National Assembly for consideration and endorsement.
- 18.9 In case of a rejection, the process described in this article shall be repeated. In case the Public Private Partnership Contract to be signed is substantially 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 Notice of Award specifying at least the name of the Preferred Bidder and a brief description of the important terms and conditions of the Public Private Partnership Contract.
- 19.2 The Project Executing Agency shall then, on behalf of the Government, proceed with signing of the Public Private Partnership Contract at the earliest possible date.

#### **Article 20 Unsolicited Proposals**

- 20.1 The Project Executing Agency may receive, review and evaluate an Unsolicited Proposal 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 and Lao PDR;

- 3) was prepared without Government Support ~~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.
- 20.2 The Project Executing Agency may then either prepare a Feasibility Study pursuant to Article 9 of the Decree or review and adapt the Feasibility Study prepared by the private party.
  - 20.3 Should the Feasibility Study be approved by the Investment Committee the Tendering process described in the Decree shall be followed.
  - 20.4 The Project Executing Agency may compensate the initiator for its Unsolicited Proposal.

#### **Article 21 Changes or Amendment of Awarded Public Private Partnership Contracts**

- 21.1 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.
- 21.2 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.
- 21.3 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 the Government, then the Public Private Partnership Unit shall refer the decision to the Investment Committee together with a recommendation.

#### **Article 22 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 the Expression of Interest and the Proposals received nor of any discussions, correspondence or negotiations between the Project Executing Agency and an interested party or Bidder, except for correspondence concerning questions and comments on the Bidding Documentation Package..

#### **Article 23 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 this Decree and its Implementing Rules and Regulations.

## Chapter IV

### Management Authorities relating to Public Private Partnership

#### Article 24 Responsibility of the Investment Committee

- 24.1 The Investment Committee is responsible for adopting the necessary Public Private Partnership regulations, guidelines and standard documents to be used by Project Executing Agencies and supervising and approving Public Private Partnership initiatives prior to and during Tendering and Contracting. The Investment Committee, representing the 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 Project Implementing Agency will sign the contract on behalf of the Government.
- 24.2 The Investment Committee has the right to evaluate the functioning of this Decree or of a particular Tendering and all parties involved are obliged to cooperate with such an evaluation and render all information required for this evaluation.

#### Article 25 Establishment, Composition and Responsibilities of the Public Private Partnership Unit

- 25.1 The Government shall establish a Public Private Partnership Unit to be located in the Ministry of Planning and Investment and headed at least by a vice minister 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 serve as the secretariat of the Investment Committee.
- 25.2 The Government shall establish and issue a specific decree implementing regulation for approving the establishment of the Public Private Partnership Unit.
- 25.3 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.
- 25.4 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) Proceed the proposal for executing the Public Private Partnership Contract from the Government.
  - 5) Coordination of appraisal of Public Private Partnership Projects for approval by the Government through the Investment Committee.
  - 6) Facilitation of Public Private Partnership legal and regulatory environment and Public Private Partnership program promotion.



- 7) Public Private Partnership knowledge management, including through development of Public Private Partnership guidelines, tools and standard contracts, management of a database and internet site on Public Private Partnerships.
  - 8) Administration of the Project Preparation Facility, and management of project preparation and transaction consultants recruited through the Project Preparation Facility.
  - 9) Project-based capacity building to Project Executing Agencies.
  - 10) 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 undertaken.
- 25.5 The Government will adopt statutes, working procedures and funding arrangements for the Public Private Partnership Unit, including Official Development Assistance.

## **CHAPTER V**

### **Final Provisions**

#### **Article 26 Violation of this Decree**

- 26.1 Individuals and legal entities shall be held responsible for violation of this Decree and its Implementing Rules and Regulations in accordance with the legislation of the Lao PDR.
- 26.2 Any individual, legal entity or organization breaching or acting inconsistently with the provisions of this Decree and its Implementing Rules and Regulations will be punished through educational measures, warnings and disciplinary measures provided under the civil service rules, fined or punished as provided by law according to the seriousness of such acts.
- 26.3 Any breach to this Decree and its Rules and Regulations constituting a criminal offense, such as falsification of documents, abuse of authority, negligence in the performance of duties will entail criminal proceedings.
- 26.4 In case of collusion with firms or individuals in the unrealistic design and costing of works or in favoring awards of contracts for joint or personal interest, thereby causing loss to national or collective property, court proceedings and punishments will be carried out as provided by law.
- 26.5 Public Private Partnership Contracts that are entered without passing through any of the Tendering procedures described under this Decree, its Implementing Rules and Regulations and Public Private Partnership Contracts entered on the basis of Tendering procedures lacking transparency are considered as void.
- 26.6 Any Interested party and Bidder bribing or promising material or other rewards either directly or indirectly to the Evaluation Committee or an individual involved in decision making for the purpose of obtaining the contract through non-transparent bidding and improper Tendering procedures may be disqualified by the Project Executing Agency. A report will also be made and sent to all bidders or court proceedings may be induced.

#### **Article 27 Implementation**

- 27.1 All related parties, including 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 adhere to this Decree and its Implementing Rules and Regulations.

- 27.2 The Government may issue further Implementing Rules and Regulations Decrees regarding the implementation of this Decree.
- 27.3 The Investment Committee may propose implementing regulations and amendments to this Decree to the Government of Lao PDR 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 Public Private Partnership Contract, on the terms on which such agreements were concluded. Any amendment or change to this Decree or its Implementing Rules and Regulations shall only be effective on Public Private Partnership Contracts created after the new or amended legislation is adopted. For Public Private Partnership Projects for which Tendering has been started, being the day of the public announcement of the Tendering at the date on which this Decree becomes legally effective, this Decree shall not be valid for that Public Private Partnership Project until the Tendering for that project has been finalized or terminated for any reason.

**Article 28 Effectiveness**

- 28.1 This Decree is effective from the date of signature and after 15 days of publication in the official gazette.
- 28.2 This Decree shall be legally enforceable as the priority and in line with all laws and regulations.

Government of Lao PDR