

## Vietnam: New Decree on financial management for Public-Private Partnership (PPP) projects

On 26 March 2021, the government of Vietnam issued Decree No. 28/2021/ND-CP ("**Decree No. 28**"), providing regulations for the financial management of Public-Private Partnership (PPP) projects in Vietnam. Decree No. 28, which took effect on its signing date, does not mention which document it will replace, but it essentially supplants Circular No. 88/2018/TT-BTC of the Ministry of Finance on 28 September 2018 guiding the financial management and fees for selecting investors in PPP projects ("**Circular No. 88**"). As such, it clarifies some points of confusion and supplements the legal framework with additional guidance.

### Key takeaways

The scope of Circular No. 88 includes, among others, the management of pre-investment costs and implementation costs of PPP projects, the managerial regime and use of capital supporting the preparation of investment and financial plans for PPP projects, as well as the determination of the value of public assets in PPP projects.

Decree No. 28 basically keeps the spirit and most of the relevant financial management provisions under Circular No. 88. Other than that, the new decree introduces some key changes, as follows:

- Decree No. 28 removes fees for selecting investors in PPP projects. Provisions regarding these fees have been moved to another decree on the implementation of the PPP Law.
- Decree No. 28 proposes a stricter requirement in cases where the payment request dossier lacks certain documents.
- Decree No. 28 has several provisions, such as issuing corporate bonds, in relation to how investors can mobilize capital to implement the PPP project. The principles for calculating fees and costs for capital mobilization and relevant documents must be provided in the PPP contract.
- Decree No. 28 provides a new mechanism to settle the investment capital and distribute the risks in case of revenue reduction.

### In more detail

#### 1. Fees for selecting investors in PPP projects

Decree No. 28 removes provisions regarding the fees for selecting investors under Circular No. 88. Given that the government has issued another new decree regulating the selection of investors for implementing PPP projects,<sup>1</sup> the relevant provisions regarding investor selection fees have been moved to that decree to create comprehensive legal guidelines on the matter.

#### 2. Principles of formulating the financial plan

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<sup>1</sup> Decree No. 35/2021/ND-CP dated 29 March 2021 providing detailed regulation and guidelines on the implementation of the Law on PPP Investment.



Decree No. 28 provides that the actual revenue in the financial plan of a PPP project is the revenue from the provision of the public service and products and does not include value-added tax. In addition, Decree No. 28 expressly requires that the currency used in the financial scheme be Vietnam dong.

### **3. Procedure for controlling State capital payments in PPP projects**

Under Decree No. 28 and similar to Circular No. 88, the State Treasury of Vietnam will be the authority in charge of controlling state capital payments in PPP projects. The allocation and examination of the allocation of state capital in PPP projects will follow the same rules applicable to investment capital originating from the state budget. The payment request dossiers submitted by state agencies assigned to manage the state capital in PPP projects will be sent to the State Treasury for payment control purposes.

Under Circular No. 88, the State Treasury allowed the relevant state agencies to supplement documents not included in the payment request dossier. However, Decree No. 28 proposes a stricter requirement in this regard. In particular, the State Treasury can send a notice of refusal to pay, specifying its reasons for such refusal, within three days from the date of receipt of an incomplete payment request dossier. No specific provision in Decree No. 28 allows state-authorized agencies to supplement the documents, as previously provided in Circular No. 88.

Decree No. 28 also provides additional methods for submission of payment request dossiers. The application can either be submitted directly at the State Treasury or submitted online through the Public Service Information site of the State Treasury or National Public Service Portal (<https://dichvucong.gov.vn/>).

### **4. Mobilization of investors' capital**

Under Decree No. 28, the principles for calculating fees and capital mobilization costs under the financial model and relevant documents must be provided in the PPP contract to provide the basis for the settlement of investment capital in construction work, infrastructure systems, and future liquidation of the PPP contract.

In keeping with the new provision of the PPP Law, the PPP project company is allowed to issue corporate bonds to mobilize capital and implement PPP projects. Under Decree No. 28, the project company must follow the requirements and conditions of the PPP Law as well as government regulations on the private placement and offer of corporate bonds in domestic market and offer of corporate bonds to international market.<sup>2</sup>

### **5. Settlement of investment capital**

Under Decree No. 28, the report on completed work items must be audited when public capital is allocated and used for specific work items. The public capital portion's settlement value in a specific work item is determined as the disbursed investment capital for that item.

Decree No. 28 included a provision on the settlement of investment capital in projects with no construction component. This is different from the previous Circular No. 88, which provides for the settlement of investment capital in all PPP projects.

Additionally, unlike Circular No. 88, Decree No. 28 does not provide varying timelines for different projects (i.e., important national projects or projects under groups A, B and C) but

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<sup>2</sup> The current regulation on this matter is Decree No. 153/2020/ND-CP of the government dated 31 December 2020 on private placement and trading of corporate bonds in the domestic market and offering of corporate bonds in the international market.



classifies the timeline based on the competent authority approving the projects. The timelines under Decree No. 28 are likely applicable to all types of projects, with longer timelines than previously provided.

Decree No. 28 also classifies the timeline for each period of settlement:

- The investor needs to prepare and submit the settlement application to the signing authority for the PPP contract within the following timeframe:
  - For projects under the investment policy approval authority of the National Assembly or Prime Minister – nine months
  - For projects under the investment policy approval authority of ministers, head of central-level agencies, other authorities or Provincial People's Council – six months

The above timelines start when the signing authority for the PPP project acknowledges the completion of the project.

- The timeline for settlement appraisal and for settlement approval is no more than one month from the date of receipt of the full settlement application dossier until the date the decision is issued.

## **6. Risk-sharing mechanism in case of revenue reduction**

In case the actual revenue is less than the committed revenue in the PPP contract due to a change in plan, policy or law, the risk-sharing mechanism will be subject to the approval of competent authorities in accordance with the following procedure:

- The signing agency of the PPP contract must report to the competent authority to adjust the fee and cost of products and/or services or adjust the term of the PPP contract.
- After the above adjustment, when the actual revenue is less than 75% of the level set out in the PPP contract,<sup>3</sup> the signing agency of the PPP contract must propose to the State Audit office of Vietnam to audit the actual decreased revenue amount.
- On the basis of the report of the State Audit office of Vietnam and the PPP contract, the signing agency of the PPP contract must then report to the competent authority for review and approval of the risk-sharing mechanism.

For projects under the investment policy approval authority of the National Assembly, the Prime Minister, ministers, head of central-level agencies or other authorities, an application dossier must be submitted to the Ministry of Finance (MOF). The MOF will review and submit the application to the Prime Minister for final approval.

For projects under the investment policy approval authority of the Provincial People's Council, the signing agency of the PPP is required to submit the application dossier to the Provincial Department of Finance (DOF). The relevant DOF will review and submit the application to the relevant Provincial People's Committee for final approval.

The application results for risk-sharing mechanism will be issued within 60 days from the MOF's/DOF's receipt of a sufficient and valid application dossier.

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<sup>3</sup> Under Article 82.2 of the PPP Law, when the actual revenue is lower than 75% of the level set out in the financial plan, the state may share 50% of such difference with the private parties, subject to the satisfaction of the relevant conditions.



## **Effectiveness**

Decree No. 28 came into effect on 26 March 2021. Circular No. 88 is still applicable for PPP contracts signed before this date and for the investment capital settlement of such PPP contracts.

For PPP projects that have not completed investor selection, the selection process will be extended in order for the bidding agency to amend the bidding invitation and investor capability requirements to be in line with Decree No. 28.

For PPP projects that have completed the investor selection process but where the parties have not yet signed a PPP contract, the signing authority will negotiate the provisions of the PPP contract with the investor based on the new regulation of Decree No. 28.