

PROPOSED AMENDMENTS TO DECREE NO. 15/2015/NĐ-CP ON PUBLIC PRIVATE PARTNERSHIPS (PPP)

On 2 August 2017, the Ministry of Planning and Investment (**MPI**) released the second working draft of a decree (**Updated Draft Decree**) amending and supplementing a number of articles of Decree No. 15/2015/NĐ-CP on investment in the form of a public private partnership (**Decree 15**). The Updated Draft Decree is not yet in its final form, and it is likely to undergo further editing and revisions before it is settled and promulgated. Some of the major proposed changes contained in the Updated Draft Decree, as compared to the currently applicable Decree 15, include:

1. **Key amendments to the sequence and procedures for the implementation of PPP projects.**

The Updated Draft Decree provides for the removal of the requirements for investors to obtain an Investment Registration Certificate (**IRC**) for a PPP project. While this amendment aims to simplify the procedures for the implementation of PPP projects, it will need to be carefully coordinated with the provisions of the Law on Investment which still require the issuance of an IRC for foreign investors.

2. **Minimum equity requirements to be maintained by investors of PPP projects.**

Under Article 10 of the Updated Draft Decree, the equity capital to be maintained by PPP investors shall be at least 15% of the total investment capital with respect to projects of national importance and “Group A” projects¹, and at least 20% of the total investment capital with respect to “Group B” and “Group C” projects.

3. **Publication of information on PPP projects upon signing of project contracts**

Under Article 36 of the Updated Draft Decree, the investors and the relevant authorised State agencies are required to make public certain key details on the project (including project name, contract signing date, contract term, identity and particulars of the investors, project implementation location, total investment capital, prices and fees of goods, services and other revenues, etc.).

¹ The classification of projects into Group A, B and C is regulated under Law No. 49/2014/QH13, entitled the Law on Public Investment, passed by the National Assembly of Vietnam on 18 June 2014, and is based on the importance, the objectives and the capital of each project.

4. Projects in the form of an O&M contract are not required to have a feasibility study report

Article 27 of the Updated Draft Decree provides that projects in the form of O&M contracts are not required to have a feasibility study report (but there must be a financial plan in the project proposal to provide the basis for investor selection and negotiation of the project contract).

5. Different procedures for PPP projects which involve new and complex technical and technological requirements

Article 9 of the Updated Draft Decree provides that PPP projects which involve new and complex technical and technological requirements are subject to different implementation procedures as compared to other projects. Specifically, for these projects, the feasibility study is to be prepared by the investor(s) themselves after being selected, instead of being prepared by the Ministries or provincial People's Committees as it is the case for other projects. However, the Updated Draft Decree does not clearly specify the criteria to determine whether a project may fall within this category.

6. Preparation of model contracts for PPP projects

According to Article 35.4 of the Updated Draft Decree, Ministries shall coordinate with the MPI to provide detailed guidelines on model project contracts that are consistent with the requirements applicable to the projects of each sector and that cover the detailed contents prescribed under Article 35.1.

7. Additional restrictions on investors' assignment of their rights

Article 38 of the Updated Draft Decree sets out a number of more stringent requirements that must be satisfied in order for the investors to be able to assign their rights and obligations in project contracts to their lender(s) or to other investors. Specific requirements must also be satisfied by the relevant assignee, and aim to prevent that the relevant rights could be assigned to unqualified investors thereby negatively affecting the project implementation.

Please contact us at legalenquiries@frasersvn.com if you are interested in receiving further updates on the Updated Draft Decree amending Decree 15, or would like an updated English or Vietnamese language version of the Updated Draft Decree.

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