

PUBLIC-PRIVATE PARTNERSHIP ACT,
B.E. 2562 (2019)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;

Given on the 6th Day of March B.E. 2562;

Being the 4th Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on private participation in State undertakings;

Whereas this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 26 in conjunction with section 40 of the Constitution of the Kingdom of Thailand so permits by virtue of provisions of law;

Whereas the reasons and need for the restriction of rights and liberties of persons under this Act lie in ensuring that the selection of private parties for partnership in investment projects of the State shall proceed in a manner guaranteeing transparency, accountability and freedom from interests in the selection thereof under this Act, thereby benefiting the public in acquiring efficient public services and, in this regard, the enactment of this Act duly complies with the conditions provided in section 26 of the Constitution of the Kingdom of Thailand;

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly serving as the National Assembly, as follows.

Section 1. This Act is called the “Public-Private Partnership Act, B.E. 2562 (2019)”.

Section 2.¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. The Private Participation in State Undertakings Act, B.E. 2556 (2013) shall be repealed.

Section 4. In this Act:

“project” means an investment project of the State involving an undertaking in respect of which any particular State agency, or several State agencies, has or have duties and powers to carry out under the law or by-law or has or have duties and powers to carry out in accordance with the objects for its or their establishment;

“enter into partnership” means the act of entering into partnership with a private party by any means or authorising a private party to invest alone by way of permission, concession or licensing in any form whatsoever;

“partnership project” means a project which involves partnership;

“State agency” means a Government agency, a State enterprise, a local government organisation or any other State agency;

“State enterprise” means:

(1) a governmental organisation under the law on the establishment of governmental organisations or a State-owned undertaking under the law establishing such undertaking or a Government-owned business organisation;

¹ Published in Government Gazette, Vol. 136, Part 29a, dated 10th March B.E. 2562 (2019).

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(2) a company or juristic-person partnership of which more than fifty percent of the capital is also contributed by a Government agency or a local government organisation or any other State agency;

(3) a company or juristic-person partnership of which more than fifty percent of the capital is also contributed by a Government agency or a local government organisation or any other State or a State agency under (1) or (2);

“local government organisation” means a *Changwat* administrative organisation, a municipality, a *Tambon* administrative organisation, the Bangkok Metropolitan Administration, the Pattaya City or any other local government organisation established by law;

“other State agency” means an agency under superintendence of the State, a public organisation, an agency established under a specific law or any other agency which is ascribed the status of a juristic person and which is neither a Government agency nor a State enterprise, only if it is under superintendence of the Executive;

“project-handling agency” means a State agency which intends to enter into partnership, or enters into partnership, with a private party under a partnership project;

“responsible ministry” means:

(1) in the case of a Government agency: the ministry or sub-ministry to which a Government agency that is the project-handling agency is attached under the law on organisation of ministries, sub-ministries and departments;

(2) in the case of a State enterprise:

(a) for any State enterprise other than a company: the ministry or sub-ministry of which the minister has charge and control of the execution of the law establishing such State enterprise, or the minister who is responsible for affairs of such State enterprise;

(b) for a company:

1) in the case where the Ministry of Finance is a shareholder: the Ministry of Finance or the ministry or sub-ministry entrusted by the Ministry of Finance to be the responsible ministry under this Act;

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2) in the case where the Ministry of Finance is not a shareholder: the minister who is responsible for affairs of such State enterprise;

(3) in the case of any other State agency: the ministry or sub-ministry of which the minister has charge and control of the execution of the law establishing such agency or the minister who is responsible for affairs of such agency or the Prime Minister in the case where any other State agency does not have any minister in charge and control of the execution of the law or any minister who is responsible for affairs of such agency;

(4) in the case of a local Government organisation: the Ministry of Interior;

“private party” means a juristic person that is not a State agency and shall also include a natural person;

“Fund” means the Public-Private Partnership Promotion Fund;

“Commission” means the Public-Private Partnership Policy Commission;

“Fund Committee” means the Public-Private Partnership Promotion Fund Committee;

“Office” means the State Enterprise Policy Office;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 5. The Minister of Finance shall have charge and control of the execution of this Act and shall have the power to issue Ministerial Regulations in the execution of this Act.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

CHAPTER I GENERAL PROVISIONS

Section 6. Operations under this Act shall be carried out for the purpose of achieving goals of public-private partnership as follows:

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- (1) consistency with partnership project preparation plans;
- (2) partnership between the State and private parties, whereby allocation of risks and remunerative benefits to private parties shall be made in a fair manner, having regard to the achievement of partnership projects and value for the operation thereof;
- (3) the observance of State fiscal and financial disciplines;
- (4) the application of knowledge, ability, expertise and innovations of private parties to the provision of public services under partnership projects and the transfer of knowledge, ability and expertise to agencies and personnel in the public sector;
- (5) transparency and accountability in the preparation and operation of partnership projects and also decision-making processes concerned;
- (6) rights and benefits of those receiving services from partnership projects.

Section 7. A project-handling agency which intends to carry out a partnership project in an undertaking relating to the following infrastructure and public services shall comply with this Act:

- (1) roads, highways, express ways or transport by road;
- (2) railways, mass transit or transport by rail;
- (3) airports or transport by air;
- (4) ports or transport by water;
- (5) water management, irrigation, waterworks or water treatment;
- (6) energies;
- (7) telecommunications or communications;
- (8) hospitals or public health;
- (9) schools or education;
- (10) residences or facilities for low-income or middle-income people, the elderly, underprivileged people or people of disabilities;
- (11) exhibition centres and conference centres;

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(12) any other undertaking as prescribed in the Royal Decree.

Undertakings under paragraph one shall also include incidental undertakings necessary for the achievement of the objects of the operation of such undertakings, as prescribed in the Notification of the Commission with the approval of the Council of Ministers.

Section 8. A partnership project which has the value of five thousand million Baht upwards or the value additionally prescribed by the Ministerial Regulation shall be pursued in accordance with the rules, procedures and conditions prescribed in this Act.

Rules and procedures for calculating the value of the partnership project under paragraph one shall be as prescribed in the Notification of the Commission.

Section 9. A partnership project which has the value below five thousand million Baht or below the value additionally prescribed by the Ministerial Regulation shall be pursued in accordance with the rules and procedures prescribed in the Notification of the Commission.

If the Commission considers that the partnership project under paragraph one is a partnership project which is essential or consistent with the partnership project preparation plan under section 12, the Commission may require the project-handling agency to pursue it in accordance with the rules, procedures and conditions prescribed in this Act.

Section 10. For the purpose of the execution of this Act, in the case where any partnership project involves more than one State agency and no agreement can be reached as to the project-handling agency, the Office shall refer the matter to the Commission for designating the State agency which assumes largest responsibilities under such partnership project as the project-handling agency and State agencies concerned shall be bound by such designation and have the duty to lend support and provide facilities to the project-handling agency in the further preparation and operation of the partnership project.

Section 11. In the case where a problem, obstacle or delay occurs in the preparation or operation of a partnership project, the project-handling agency shall discuss with agencies concerned with the problem, obstacle or delay in the preparation or operation thereof and take action as follows:

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(1) suggesting solutions to such problem, obstacle or delay to the Commission for consideration and submission thereof to the Council of Ministers for giving directions, as to which the agencies concerned with such problem, obstacle or delay shall be bound to take action in accordance with the directions given by the Council of Ministers;

(2) suggesting accelerating timeframes for any operation in the interest of the success of the partnership project to the Commission for consideration and submission thereof to the Council of Ministers for giving directions, as to which the agencies concerned with such problem, obstacle or delay shall be bound to take action in accordance with the directions given by the Council of Ministers.

In the case where the pursuit of activities under (1) entails the revision of any law, by-law, rule, regulation, notification or order or entails any new law, the agencies concerned with such problem, obstacle or delay shall consider and carry out the revision of such law, by-law, rule, regulation, notification or order or put forth new law.

CHAPTER II

PARTNERSHIP PROJECT PREPARATION PLANS

Section 12. The Office shall prepare partnership project preparation plans in a manner consistent with the national masterplan for the development of infrastructure and for social affairs as prepared by the Office of the National Economic and Social Development Council and submit the same to the Commission for consideration and approval.

A partnership project preparation plan under paragraph one shall at least consist of particulars as to the project in respect of which the State intends to enter into partnership with private parties in accordance with the goals, policies and directions specified in the national masterplan for the development of infrastructure and for social affairs as prepared by the Office of the National Economic and Social Development Council, the priority of and urgent need for the preparation of the partnership project, objectives of the project, brief information on the project, the project-handling agency, the total investment amount for the project and the timeframe for the preparation and operation of the project.

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Upon the Commission's approval of a partnership project preparation plan, it shall be published, for the dissemination purpose, via the Office's information technology network and State agencies shall take action as specified in the partnership project preparation plan.

The Commission shall prescribe details of a partnership project preparation plan and directions for its preparation and revision as well as the follow-up of its implementation. A partnership project preparation plan shall be revised on every occasion of the revision of the national masterplan for the development of infrastructure and for social affairs as prepared by the Office of the National Economic and Social Development Council. In this regard, State agencies shall have the duty to give co-operation on the preparation and revision of the partnership project preparation plan as determined by the Commission.

In preparing a partnership project preparation plan, the Office may employ advisers for carrying out the tasks jointly.

Qualifications and prohibitions of advisers shall be as prescribed in the Notification of the Commission.

CHAPTER III

THE PUBLIC-PRIVATE PARTNERSHIP POLICY COMMISSION

Section 13. There shall be a commission called the "Public-Private Partnership Policy Commission", consisting of the Prime Minister as Chairperson, the Minister of Finance as Vice Chairperson, the Permanent Secretary for Finance, Director of the Bureau of the Budget, Secretary-General of the Council of State, Secretary-General of the National Economic and Social Development Council, Secretary-General of the Board of Investment, Attorney-General, President of the Board of Trade of Thailand, President of the Federation of Thai Industries, President of the Thai Bankers' Association and not more than five qualified persons appointed by the Council of Ministers, as members.

The Director of the State Enterprise Policy Office shall be a member and secretary and not more than two Government officials of the Office appointed by the Director of the State Enterprise Policy Office shall be assistant secretaries.

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Section 14. In appointing qualified members, the Council of Ministers shall consider the list of persons nominated through the selection, in accordance with the rules and procedures prescribed by the Minister with the approval of the Council of Ministers.

Section 15. A qualified member shall be of Thai nationality and shall not be under the prohibitions as follows:

- (1) being an incompetent person or quasi-incompetent person;
- (2) being a bankrupt or having previously been a dishonest bankrupt;
- (3) having been sentenced to imprisonment by a final judgment, except for an offence committed through negligence or a petty offence;
- (4) having been sentenced by a judgment or an order of the Court to the effect that the property shall vest in the State by reason of unusual wealthiness or an unusual increase of property;
- (5) having previously been expelled or dismissed from or ordered to leave a State agency or a private agency by reason of any corruption in office;
- (6) being or having previously been a member of the House of Representatives, a senator, a member of a local assembly, a local administrator or a holder of any other political position, except that the office has been vacated for a period of not less than one year;
- (7) being or having previously been a holder of a position in a political party, except that the office has been vacated for a period of not less than one year;
- (8) being prohibited from holding a political position or having been, by a resolution of the Senate, removed from or ordered to vacate office.

Section 16. A qualified member shall hold office for a term of four years. A qualified member who vacates office may be re-appointed but may not serve for more than two consecutive terms.

In the case where qualified members vacate office on the expiration of the term but new qualified members have not yet been appointed, such qualified members shall continue to perform duties for the time being until new qualified members are appointed,

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provided that their continuance of the performance of duties shall not exceed one hundred twenty days.

Section 17. In addition to the vacation of office upon the expiration of the term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being of seventy-five years of age;
- (4) being disqualified or being under any of the prohibitions under section 15;
- (5) being absent from meetings of the Commission on more than three consecutive occasions without any reasonable cause;
- (6) being removed by the Council of Ministers on the ground of corruption in office, misbehaviour or grave deficiency in official duties.

Section 18. When the office of a qualified member becomes vacant before the expiration of the term, action shall be taken for the selection of a qualified member within sixty days as from the date of the vacancy except that in the case where there remain less than one hundred eighty days in the term of office of the vacating qualified member the appointment of a replacing qualified member may be omitted.

A replacing qualified member shall be in office for the remaining term of the replaced qualified member.

In the case where all qualified members vacate office before the expiration of the term, the Commission shall consist of the total existing members until replacing qualified members are appointed.

Section 19. At a meeting of the Commission, the presence of not less than one half of the existing members is required to constitute a quorum.

The Chairperson shall preside over a meeting. If the Chairperson is not present or is unable to perform the duty, the Vice Chairperson shall preside over a meeting. But, if both

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the Chairperson and the Vice Chairperson are not present or are unable to perform the duty, one member at the meeting shall be elected to preside over the meeting.

A decision shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

A member who has any interest in any matter to be considered shall not attend the meeting or cast vote in such matter.

Section 20. The Commission shall have the duties and powers as follows:

(1) to give opinions to the Minister before the enactment of Royal Decrees or issuance of Ministerial Regulations as provided in this Act;

(2) to approve partnership project preparation plans and lay down directions for their preparation and revision as well as the follow-up of their implementation;

(3) to consider and designate a State agency as a project-handling agency under section 10;

(4) to consider and prescribe rules and procedures for the preparation of a partnership project which has the value below five thousand million Baht or below the value additionally prescribed by the Ministerial Regulation;

(5) to consider and approve principles of a partnership project;

(6) to suggest to the Council of Ministers directions for resolving problems or obstacles in the preparation and operation of a partnership project and accelerating timeframes for the operation of a partnership project;

(7) to consider and approve amendment to partnership contracts under section 48;

(8) to issue Notifications as provided in this Act;

(9) to give decisions upon questions in connection with the execution of this Act;

(10) to instruct State agencies or private agencies carrying out partnership projects to give explanations, provide opinions or furnish information or documents pertinent to the partnership projects;

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(11) to appoint sub-committees or working groups for considering matters, performing duties or carrying out any particular act as entrusted by the Commission, provided that the provisions of section 19 shall apply to sub-committees *mutatis mutandis*;

(12) to perform other activities as provided by this Act or other law to be the duties and powers of the Commission or as entrusted by the Council of Ministers.

Section 21. The Office shall be responsible for clerical work of the Commission and shall have the duties and powers as follows:

(1) to prepare and submit to the Commission partnership project preparation plans for consideration and approval;

(2) to propose to the Commission the designation of State agencies as project-handling agencies;

(3) to develop necessary databases and bodies of knowledge and provide dissemination, training, education and advice in connection with public-private partnership;

(4) to give opinions or advice to, or lay down practices for, agencies in connection with the execution of this Act;

(5) to report problems and obstacles in regard to the execution of this Act to the Commission;

(6) to perform other activities under this Act or as entrusted by the Council of Ministers or the Commission.

CHAPTER IV

PREPARATION AND OPERATION OF PROJECTS

PART I

SUBMISSION OF PROJECTS

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Section 22. In submitting a project in respect of which partnership is intended to be entered into, the project-handling agency shall prepare a feasibility study report therefor in accordance with the particulars prescribed in the Notification of the Commission, which shall at least consist of:

(1) backgrounds of the project, principles and reasons for the preparation of the project and also the consistency with the partnership project preparation plan;

(2) key substances of the project, including the objectives, goals, scope and duration of the project as well as estimates of costs and expenses for the operation of the project;

(3) readiness for the preparation and operation of the project, with an indication of impacts on the success of the project, including readiness in the aspect of the acquisition of ownership in and rights to use property, impacts on the public from the operation of the project and laws, by-laws, rules, notifications or orders affecting the success of the project;

(4) feasibility of the project in the aspects of technicality, technology, environment, law, finance or economics, with an indication of the hypothesis for the study of feasibility of the project as well;

(5) risks involving the project, with an indication of risks, considerations of risk opportunities, impacts from the occurrence of risks and methods for the management of risks in varying aspects;

(6) options and forms of public-private partnership, allocation of duties and responsibilities, allocation of risks and public-private profit-sharing, having regard to the application of private parties' knowledge, ability, expertise and innovations to the partnership project;

(7) readiness of State agencies concerned with the preparation and operation of the project, opinions of State agencies concerned, problems or obstacles likely to affect the success of the project and directions for resolving such problems or obstacles;

(8) results of public hearings from the private sector concerned.

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In preparing a project feasibility study report, the project-handling agency shall also take into account opinions of State agencies as well as agencies in the private sector, in accordance with the rules and procedures prescribed in the Notification of the Commission.

Section 23. In the case where the project-handling agency considers that it is necessary to lay down supporting measures in facilitation of the achievement of objectives of the project, the project-handling agency shall also indicate, in the project feasibility study report under section 22, details of supporting measures, together with reasons and need for such support as well as opinions of agencies concerned with the supporting measures.

Supporting measures under paragraph one are:

(1) rights and benefits under the law on investment promotion;

(2) the right to take a lease of land or immovable property in the partnership project for a term not exceeding 50 years, provided that the provisions of section 540 of the Civil and Commercial Code shall not apply thereto;

(3) other financial and non-financial supporting measures as prescribed in the Notification of the Commission, insofar as they are not contrary to the law relating to such support.

In the case where any supporting measure entails the funding out of the State appropriations or the budget of the project-handling agency or entails debt creation by way of a loan or a guarantee by the Ministry of Finance for the purpose of financing the support to be given to such partnership project, the project-handling agency and agencies concerned shall strictly proceed in accordance with the law on budgetary procedures, the law on public debt administration and the law on State fiscal and financial disciplines.

Section 24. In the case where the Council of Ministers approves supporting measures under section 23 in favour of any project, agencies concerned with the supporting measures shall proceed in accordance with their duties and powers.

Section 25. In the case where, at the stage of the project feasibility study, it is apparent that the selection of private parties should not be made by way of bidding, the project-handling agency shall also indicate, in the project feasibility study report under section

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22, reasons and need therefor, advantages and disadvantages and benefits to be derived by the public and civic sectors.

The rules for considering the selection of private parties by a method other than bidding shall be as prescribed in the Notification of the Commission.

Section 26. For the purpose of, and in the interest of speediness in, the submission of a project, the Commission may, in respect of any particular project, require the project-handling agency to appoint a working group, consisting of representatives of State agencies concerned with the preparation and operation of the partnership project, for giving opinions on the preparation of a project feasibility study report or may set a timeframe for the submission of the project.

Section 27. The project-handling agency shall employ advisers for taking part in the preparation of a partnership-project feasibility study report under section 22.

Qualifications and prohibitions of advisers shall be as prescribed in the Notification of the Commission.

Section 28. The project-handling agency shall prepare principles of a partnership project for submission to the Minister of the responsible ministry for consideration and approval together with the project feasibility study report.

The principles of the partnership project under paragraph one shall contain details as follows:

- (1) objectives of the project;
- (2) the scope of the project;
- (3) the form of public-private partnership, which shall at least consist of duties and responsibilities of the State agency and the private party in the operation of the project, the duration of the project, ownership in property under the project and the sharing of benefits between the State agency and the private party;
- (4) supporting measures for the partnership project under section 23;

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(5) reasons and need for the selection of private parties by a method other than bidding under section 25;

(6) directions for resolving problems and obstacles in the event of problems and obstacles arising from lack of readiness of State agencies concerned or problems and obstacles likely to affect the success of the project;

(7) other matters as prescribed in the Notification of the Commission.

Upon approval by the minister of the responsible ministry under paragraph one, the project-handling agency shall furnish the principles of the partnership project and the project feasibility study report as approved to the Office for submission to the Commission for further consideration.

In the case where the minister of the responsible ministry disapproves the submission by the project-handling agency, reasons therefor shall be notified to the project-handling agency and the time shall be fixed for the revision and amendment of the principles of the partnership project or the partnership-project feasibility study report for re-submission to the minister of the responsible ministry.

Section 29. When the Office considers that the principles of the partnership project and the project feasibility study report are complete, the Office shall submit the same to the Commission for considering and approving the principles of the partnership project.

The submission under paragraph one shall simultaneously be accompanied by opinions of the Office of the National Economic and Social Development Council and agencies concerned for assisting the consideration and in the case where the project in question entails the funding out of the State appropriations, there shall be opinions of the Bureau of the Budget, or in the case where it entails the funding out of a loan which constitutes a public debt, there shall be opinions of the Public Debt Management Office, for assisting the consideration.

Upon the Commission's approval of the principles of the partnership project, the Commission shall notify the result of its consideration to the minister of the responsible ministry for submitting the principles of such partnership project to the Council of Ministers for further considering and approving the operation of the partnership project in accordance with such principles.

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In the case where the Commission disapproves the principles of the partnership project, reasons therefor shall be notified to the minister of the responsible ministry and the time shall be fixed for the revision and amendment of the principles of the partnership project in order that the project-handling agency shall take action and re-submit the same to minister of the responsible ministry under section 28.

In the case where the project-handling agency proposes supporting measures for the partnership project, the selection of private parties by a method other than bidding or directions for resolving problems and obstacles in respect of the project, the Commission shall also submit its opinions for assisting the consideration and approval of the principles by the Council of Ministers.

Section 30. When the Council of Ministers has approved the principles of the partnership project under section 29, together with the approval of the appropriation or the amount for the creation of a debt in respect of the project, it shall be deemed that the approvals by the Council of Ministers are the approvals under the law on budgetary procedures, the law on national economic and social development or the law on public debt administration insofar as it deals with the matters concerned, as the case may be.

Section 31. The Commission shall, by Notification, prescribe rules, procedures and timeframes for the submission of projects in accordance with this Part.

PART II

SELECTION OF PRIVATE PARTIES

Section 32. The selection of private parties shall be made by way of bidding with the exception only of the case where the Council of Ministers has approved the selection of private parties by a method other than bidding under section 25 and section 34.

The rules, procedures and conditions for the selection of private parties under paragraph one shall be as prescribed in the Notification of the Commission.

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Section 33. The Commission shall, by Notification, prescribe descriptions of private parties which should not be allowed to enter to partnership in partnership projects under this Act. Private parties of such descriptions are not eligible for being selected as parties to partnership agreements in partnership projects.

Section 34. In the selection of private parties for the purpose of partnership, if the project-handling agency and the selection committee share the opinion that the selection should not be made by way of bidding, the project-handling agency shall submit the matter to the minister of the responsible ministry for consideration. If the minister of the responsible ministry concurs therewith, the matter shall be submitted to the Office for submission to the Commission for consideration.

In the case where the project-handling agency and the selection committee are of different opinions as to the undesirability of the selection by way of bidding or the minister of the responsible ministry does not concur therewith, the project-handling agency shall submit the matter to the Office for submission to the Commission for consideration and if the Commission considers that the selection should be made by way of bidding, the selection shall be made by way of bidding.

When the Commission concurs that the selection should not be made by way of bidding, the Commission shall notify the result of the consideration to the responsible ministry for further submission of the matter to the Council of Minister for consideration and approval.

Section 35. The project-handling agency shall prepare a draft invitation, draft documents for the selection of a private party and a draft partnership agreement for submission to the selection committee for consideration and approval.

In preparing the documents under paragraph one, the project-handling agency shall hear opinions of private sectors concerned and also take such opinions into consideration in facilitation of the preparation of the documents under paragraph one. In this regard, the hearing of opinions of private sectors shall be in accordance with the rules and procedures prescribed in the Notification of the Commission.

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The project-handling agency may employ advisers for taking part in the activities under paragraph one and assisting the performance of duties of the project-handling agency and the selection committee.

Qualifications and prohibitions of advisers shall be as prescribed in the Notification of the Commission.

Details of a draft invitation and draft documents for the selection of a private party and key substances of a partnership agreement shall be as prescribed in the Notification of the Commission.

Section 36. When the Council of Ministers has granted approval for the operation of a partnership project, the project-handling agency shall appoint a selection committee consisting of a representative of the project-handling agency as Chairperson, a representative of the responsible ministry, a representative of the Office of the Attorney-General, a representative of the Office and two qualified persons possessing knowledge and expertise in regard to the partnership project, as members, and one representative of the project-handling agency as a member and secretary.

In the case where the operation of such partnership project entails the funding out of the State appropriations, there shall also be a representative of the Bureau of the Budget as an additional member or, in the case where the operation of such partnership project entails the funding out of a loan which constitutes a public debt, there shall also be a representative of the Public Debt Management Office as an additional member.

Qualified members under paragraph one shall possess the qualifications and shall not be under the prohibitions under section 15.

The provisions of section 17 and section 19 shall apply to the selection committee *mutatis mutandis*.

Section 37. During the period of holding office and within a period of two years as from the date on which the project-handling agency signs a partnership agreement with the private party selected under section 42, a member of the selection committee shall not do the following acts:

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(1) being a director, person with the managerial authority or adviser of the private party selected to enter into partnership in the partnership project for which he has served as a member of the selection committee;

(2) holding shares in the selected private party in an amount exceeding zero point five percent of the paid-up capital, whether the shareholding is by himself, his spouse or his children who are not yet *sui juris*.

The acts under paragraph one shall include being a director, person with the managerial authority or adviser, or holding shares in an amount exceeding zero point five percent of the paid-up capital, in a juristic person of which more than twenty-five percent of shares are held by the selected private party or in a juristic person which holds more than twenty-five percent of share in the selected private party.

Section 38. The selection committee shall have the duties and powers as follows:

(1) to consider and approve the draft invitation, draft documents for the selection of a private party and draft partnership agreement;

(2) to fix a fee for the sale of documents for the selection of a private party, a fee for assessment of a proposal and a fee for the signing of a partnership agreement;

(3) to prescribe security for the tendering and security for a partnership agreement;

(4) to carry out negotiations and consider as well as select a private party for entering into the partnership project;

(5) to negotiate a draft partnership agreement;

(6) to request the project-handling agency, private parties or State agencies concerned with the project to give explanations or opinions or furnish relevant information or documents;

(7) to consider and perform other activities pertinent to the selection of a private party for a partnership project, as it may deem appropriate.

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Section 39. When the selection committee has approved the draft invitation, draft documents for the selection of a private party and draft partnership agreement, the project-handling agency and the selection committee shall proceed with the selection of a private party in accordance with the rules, procedure and conditions prescribed by the Commission under section 32.

Section 40. In the course of any invitation, if only one private party submits a proposal or several private parties submit proposals but the proposal of only one private party correctly complies with the particulars in the documents for the selection of a private party, the selection committee shall proceed in accordance with the procedures provided in this Act where it considers that the State shall be benefited thereby.

Section 41. When the result of the selection of a private party and the draft partnership agreement as already negotiated with the selected private party have been obtained, the project-handling agency shall, within fifteen days, furnish such draft partnership agreement to the Office of the Attorney-General for scrutiny and the Office of the Attorney-General shall complete the scrutiny thereof and return the same to the project-handling agency within forty-five days as from the date of receipt of the draft partnership agreement.

Section 42. The project-handling agency shall submit the result of the selection of a private party, the draft partnership agreement as scrutinised by the Office of the Attorney-General and essential terms and conditions thereof to the minister of the responsible ministry for consideration and approval prior to submission to the Council of Ministers for considering the result of the selection of the private party and essential terms and conditions of the partnership agreement, as specified by the Commission.

The minister of the responsible ministry shall complete the consideration of the result of the selection of the private party, the draft partnership agreement and the essential terms and conditions of the partnership agreement under paragraph one within thirty days as from the date of receipt thereof.

In the case where the minister of the responsible ministry disapproves the result of the selection of the private party or the draft partnership agreement, reasons therefor shall be notified to the project-handling agency and the selection committee and the time shall be

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fixed for a review of the result of the selection of the private party or the draft partnership agreement for re-submission to the minister of the responsible ministry prior to submission to the Council of Ministers.

If the project-handling agency and the selection committee affirm the result of the selection of the private party or the draft partnership agreement, the minister of the responsible ministry shall submit the result of the selection of the private party and the draft partnership agreement together with the opinion of the minister of the responsible ministry to the Council of Ministers for consideration.

Upon the Council of Ministers' approval of the result of the selection of the private party and essential terms and conditions of the partnership agreement, the project-handling agency shall sign the partnership agreement with the selected private party.

PART III
SUPERVISION OF PARTNERSHIP PROJECTS

Section 43. When a partnership project has been signed, the minister of the responsible ministry shall appoint a supervisory committee consisting of a representative of the responsible ministry, who is a Government official in an agency of the responsible ministry other than the project-handling agency and holds not lower than a primary-level executive position, as Chairperson, a representative of the Office of the Attorney-General and a representative of the Office, as members, and one representative of the project-handling agency, as a member and secretary.

Section 44. The supervisory committee shall have the duties and powers as follows:

(1) to supervise and monitor the partnership project to ensure its operation as specified in the partnership agreement;

(2) to consider, and make suggestions to the project-handling agency, directions for resolving problems possibly arising from the operation of the partnership project as specified in the partnership agreement;

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(3) to request the project-handling agency, the private contractual party or State agencies concerned with the project to give explanations or opinions or furnish relevant information or documents;

(4) to report operation results, progress, problems and directions for resolutions thereof in the operation of the partnership project as specified in the partnership agreement to the minister of the responsible ministry for information and furnish a copy of the report and relevant documents to the Office at such time as specified by the supervisory committee at least once every six months;

(5) to give opinions on amendment of the partnership agreement.

The project-handling agency may employ advisers, or the supervisory committee may require the project-handling agency to employ advisers, for studying directions for resolving problems in the operation of the partnership project, giving opinions on amendment of the partnership agreement or assisting the performance of duties of the supervisory committee.

Qualifications and prohibitions of advisers shall be as prescribed in the Notification of the Commission.

The provisions of section 19 shall apply to the supervisory committee *mutatis mutandis*.

Section 45. In the case where it appears that the project-handling agency neglects or fails to comply with the terms and conditions as well as obligations of the partnership agreement without any reasonable cause, the supervisory committee shall prepare a report together with opinions thereon for submission to the minister of the responsible ministry for the purpose of ordering the project-handling agency to take action in accordance with the partnership agreement.

In the case where the minister of the responsible ministry fails to take action under paragraph one, the supervisory committee shall report it to the Office for referring the matter to the Commission for further consideration and, in the case of a serious event, the Commission shall refer the matter together with opinions thereon to the Council of Ministers for consideration.

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PART IV

PARTNERSHIP AGREEMENT AMENDMENT AND RE-CONCLUSION OF AGREEMENTS

Section 46. In the case where a partnership agreement requires amendment, the project-handling agency shall submit reasons and need therefor, issues for the amendment, impacts from the amendment and other necessary information to the supervisory committee for consideration and giving opinions before referring the draft amended partnership agreement on which negotiations have been carried out with the private contractual party to the Office of the Attorney-General for scrutiny. In this regard, the Office of the Attorney-General shall complete the scrutiny of the draft amended partnership agreement and return the same to the project-handling agency within forty-five days as from the date of receipt thereof.

Section 47. The project-handling agency shall submit reasons and need, issues for the amendment, impacts from the amendment, opinions of the supervisory committee, the draft amended partnership agreement as scrutinised by the Office of the Attorney-General and other necessary information to the minister of the responsible ministry for consideration and approval. When the minister of the responsible ministry has approved the amendment of the partnership agreement, the project-handling agency shall proceed with the signing of the amended partnership agreement.

In the case where the minister of the responsible ministry disapproves the amendment of the partnership agreement, reasons therefor shall be notified and the time shall be fixed for a review of the amendment of the partnership agreement.

Section 48. In the case where the supervisory committee considers that the amendment of the partnership agreement as submitted by the project-handling agency under section 46 has different principles from those of the partnership agreement or results in essential terms and conditions of the partnership agreement being different from those of the partnership agreement as approved by the Council of Ministers, the minister of the responsible ministry shall, upon giving approval to the amendment of the partnership agreement under section 47, refer the matter to the Commission for considering and approving the amendment

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of the partnership agreement in the part containing different substances from those previously approved by the Council of Ministers.

When the Commission has approved the amendment of the partnership agreement under paragraph one, the Commission shall notify the result of the consideration to the minister of the responsible ministry for referring the matter to the Council of Ministers for consideration. When the Council of Ministers has approved the amendment of the partnership agreement in the part containing different substances from those previously approved by the Council of Ministers, the project-handling agency shall proceed with the signing of the amended partnership agreement.

In the case where the Commission disapproves the amendment of the partnership agreement under paragraph one, reasons therefor shall be notified and the time shall be fixed for a review of the amendment of the partnership agreement for re-submission to the minister of the responsible ministry under section 47.

Section 49. The project-handling agency shall prepare directions for the operation of the project in furtherance of the partnership project after the termination of the partnership agreement, on the basis of a comparison of the case where the State agency undertakes it and the case where a private party is allowed to enter into partnership, for submission to the minister of the responsible ministry at least 5 years prior to the termination of the partnership agreement, having regard to interests of the State, continuity of the delivery of public services and impacts on the public.

In the case where the minister of the responsible ministry requires the operation of the project in furtherance of the partnership project after the termination of the partnership agreement by way of partnership, the project-handling agency shall proceed in accordance with this Act as if it were a new partnership project.

PART V

EXERCISE OF POWERS FOR PUBLIC INTERESTS

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Section 50. In the interest of order maintenance, safety of lives and property of members of the public, public danger prevention or national security or in the case of any event causing the operation of the project to be so interrupted as to have severe impacts on the public or the economy or social affairs of the country, the project-handling agency, with the approval of the Council of Ministers, has the power to perform any or the combination of the following acts as a solution to the ensuing problem:

- (1) to undertake the partnership project or entrust any other person to undertake the partnership project for a temporary period of time;
- (2) to amend the partnership agreement;
- (3) to terminate the partnership agreement.

In the case where the cause leading to the exercise of the power under paragraph one is not attributable to the private contractual party, the project-handling agency shall make fair compensation to the private contractual party.

PART VI

PUBLIC-PRIVATE PARTNERSHIP PROMOTION FUND

Section 51. There shall be established in the Ministry of Finance a fund called the “Public-Private Partnership Promotion Fund” for the purpose of supporting the execution of this Act.

Section 52. The Fund consists of money and property as follows:

- (1) the money and property transferred under section 66;
- (2) subsidies from the Government;
- (3) fees for the sale of documents for the selection of private parties and fees for the assessment of proposals;
- (4) money or property acquired from the operation of the Fund;
- (5) money or property donated or given to the Fund;

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(6) fruits of money or property of the Fund.

The money and property under paragraph one shall be remitted to the Fund without being required to be remitted to the Treasury as the State revenue.

Section 53. Money of the Fund shall be expended to the extent necessary in the following cases:

(1) the employment of advisers as provided in this Act;

(2) the development of databases and bodies of knowledge as well as the dissemination, training, education and provision of advice in connection with public-private partnership;

(3) costs of the management of the Fund.

Section 54. In employing advisers as provided in this Act, if the project-handling agency is unable to finance it out of its own money, the project-handling agency may request for allocation of monetary support from the Fund for financing remuneration of advisers, in accordance with the rules, procedures and conditions prescribed by the Fund Committee.

The project-handling agency to which money from the Fund is allocated shall remit money acquired from fees for the sale of documents for the selection of private parties and fees for the assessment of proposals to the Fund as prescribed by the Fund Committee.

Section 55. Money of the Fund shall be deposited at the Ministry of Finance or a bank which is a State enterprise as prescribed by the Fund Committee.

Section 56. There shall be a committee called the “Public-Private Partnership Promotion Fund Committee” consisting of the Permanent Secretary for Finance as Chairperson and the Secretary-General of the National Economic and Social Development Council, Director of the Bureau of the Budget and Director-General of the Comptroller-General’s Department, as members.

The Director of the State Enterprise Policy Office shall be a member and secretary and one Government official of the Office appointed by the Director of the State

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Enterprise Policy Office shall be an assistant secretary and the Office shall be responsible for clerical work of the Fund Committee.

Section 57. The Fund Committee has the duties and powers as follows:

(1) to supervise the management of the Fund to ensure its compliance with its objects;

(2) to prescribe rules, conditions and procedures for requesting allocation of money from the Fund;

(3) to consider and approve the use of money of the Fund as provided in this Act;

(4) to issue Rules or orders in connection with the administration of affairs of the Fund as well as rules and procedures for the retention, receipt and payment of money of the Fund and costs to be incurred in the management of the Fund;

(5) to report results of the operation and the financial status of the Fund to the Commission at least once a year;

(6) to prepare an annual financial report for submission to the State Audit Office for auditing within ninety days as from the end of the accounting year and furnish the financial report as audited by the State Audit Office together with the audit report to the Commission for further consideration.

Section 58. The provisions of section 19 shall apply to the Fund Committee *mutatis mutandis*.

Section 59. The accounting year of the Fund shall be by reference to the budget year and the accounting of the Fund shall be carried out in accordance with the accounting standard for public-sector agencies as prescribed by the Ministry of Finance.

PART VII

MISCELLANEOUS PROVISIONS

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Section 60. Within thirty days as from the date of the signing of the partnership agreement under section 42 or the amended partnership agreement under section 48, the project-handling agency shall carry out the following acts:

(1) furnishing a copy of the partnership agreement or a copy of the amended partnership agreement, as the case may be, to the responsible ministry and the Office;

(2) preparing information on the partnership project, the process for the selection of a private partner, the result of the selection of a private partner, the partnership agreement and also the amendment of the partnership agreement in order that agencies with the duties and powers to examine the same can carry out the examination thereof at all times;

(3) to disclose a summary of information on the partnership project, in a form facilitating ease of understanding, to the public for the purpose of acquiring general knowledge thereof, by publication via an information technology system of the project-handling agency, provided that, in the disclosure of information, regard shall also be had to the law on official information.

Section 61. Members of the Commission, the selection committee, the supervisory committee, the Fund Committee and sub-committees shall receive remunerative benefits as prescribed by the Minister with the approval of the Council of Ministers.

Section 62. The Office shall prepare an action plan on the development of databases and bodies of knowledge in connection with public-private partnership and an action plan on the dissemination, training, education and provision of advice in connection with public-private partnership in order to facilitate efficient formation and operation of partnership projects in accordance with partnership project preparation plans.

The Office may employ advisers or enter into co-operation with State agencies and private agencies both domestically and overseas for performing activities in the implementation of the action plans provided under paragraph one. In this regard, requests may be made for the allocation of money from the Fund for financing the performance of such activities in accordance with the rules, procedures and conditions prescribed by the Fund Committee.

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Qualifications and prohibitions of advisers shall be as prescribed in the Notification of the Commission.

PART VIII

PENALTY

Section 63. Any member of the selection committee who violates section 37 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding six hundred thousand Baht or to both.

TRANSITORY PROVISIONS

Section 64. All Ministerial Regulations, Notifications or Rules issued under the Private Participation in State Undertakings Act, B.E. 2556 (2013) as in force on the day prior to the date on which this Act comes into force shall continue to be in force insofar as they are not contrary to or inconsistent with this Act until Ministerial Regulations, Notifications and Rules are issued under this Act and come into force. The issuance of Ministerial Regulations, Notifications and Rules necessary for the execution of this Act shall be completed within one hundred eighty days as from the date on which this Act comes into force.

Section 65. Qualified members of the Private Participation in State Undertakings Policy Commission under the Private Participation in State Undertakings Act, B.E. 2556 (2013) holding office on the day prior to the date on which this Act comes into force shall remain in office until qualified members are appointed under this Act.

Section 66. All money, property, rights and debts incidental to the Private Participation in State Undertakings Promotion Fund in the Ministry of Finance under the Private Participation in State Undertakings Act, B.E. 2556 (2013) shall be transferred to the Public-Private Partnership Promotion Fund under this Act.

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Section 67. In the case where any law which is in force on the day prior to the date on which this Act comes into force makes any reference to the law on private participation in State undertakings, the reference in such law shall be deemed to be the reference to this Act.

Section 68. In the case where any project is in progress under the Private Participation in State Undertakings Act, B.E. 2556 (2013) on the date on which this Act comes into force and such project is the one governed by this Act, it shall be proceeded as follows:

(1) in the case where the project is being proceeded at the stage in Chapter IV, Submission of Projects, or in Chapter V, Operation of Projects, of the Private Participation in State Undertakings Act, B.E. 2556 (2013), the project-handling agency shall further proceed with it in accordance with the provisions of such Chapter until its completion and shall proceed with it at subsequent stages in accordance with the requirements provided in this Act;

(2) in the case where the project is being proceeded at the stage in Chapter VI, Supervision and Follow-ups, of the Private Participation in State Undertakings Act, B.E. 2556 (2013), the minister of the responsible ministry shall appoint a supervisory committee within ninety days as from the date on which this Act comes into force and, while a supervisory committee has not yet been appointed under this Act, the supervisory committee under section 43 of the Private Participation in State Undertakings Act, B.E. 2556 (2013) shall continue to serve as the supervisory committee until a supervisory committee is appointed under this Act;

(3) in the case where the project is being proceeded at the stage in Chapter VII, Amendment of Agreements and Re-Conclusion of Agreements, of the Private Participation in State Undertakings Act, B.E. 2556 (2013), the project-handling agency shall further proceed with it in accordance with the provisions of such Chapter until its completion and shall proceed with it at subsequent stages in accordance with the requirements provided in this Act;

(4) in the case where the project is being proceeded in accordance with the Notification of the Private Participation in State Undertakings Policy Commission Re: Rules and Procedures for Private Participation in Projects Having the Value Below the Value Prescribed under Section 23 of the Private Participation in State Undertakings Act, B.E. 2556 (2013), B.E. 2559 (2016), it shall be further proceeded with in accordance with such rules and procedures

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until its completion and shall be proceed with at subsequent stages in accordance with the rules and procedures for projects as prescribed in the Notification of the Commission under section 9.

Any action under paragraph one which is specified to be the power of the Private Participation in State Undertakings Policy Commission under the Private Participation in State Undertakings Act, B.E. 2556 (2013) shall be the power of the Commission under this Act.

Section 69. In the case where any project is being proceeded at the stage in Chapter V, Operation of Projects, of the Private Participation in State Undertakings Act, B.E. 2556 (2013) but such project is not the one governed by this Act, the project-handling agency shall further proceed with it in accordance with the provisions of such Chapter until its completion and shall proceed with it at subsequent stages in accordance with other laws relating to the preparation and operation of such project.

Any action under paragraph one which is specified to be the power of the Private Participation in State Undertakings Policy Commission under the Private Participation in State Undertakings Act, B.E. 2556 (2013) shall be the power of the minister of the responsible ministry.

Section 70. The Commission appointed under section 72 of the Private Participation in State Undertakings Act, B.E. 2556 (2013) and performing duties on the day prior to the date on which this Act comes into force shall continue to perform duties until a direction is given by the Council of Ministers at the recommendation of such Commission.

Countersigned by:

General Prayut Chan-o-cha
Prime Minister

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