

Public Private Partnership Act B.E. 2562

The NLA passed the Public Private Partnership Act B.E. 2562 (“**PPPA**”) on the 31st of January 2019. It was published in the Government Gazette on the 10th of March 2019 and came into force on the 11th of March 2019. It replaces the Private Investment in State Undertakings Act B.E. 2556. We summarized some major provisions of the PPPA as follows:

1. A PPP Project means an investment project of one or several state entities in the form of: (1) a joint investment with a private sector entity by any means; or (2) a unilateral investment of a selected private sector entity under a license, concession or the grant of any kinds of rights by a state entity.
2. The PPPA lists 12 categories of PPP Projects as follows: (1) roads, highways, motorways; (2) railways; (3) airports, air transport; (4) seaports; (5) water management, irrigation, water supply; (6) energy; (7) telecommunications; (8) hospitals, public health; (9) schools, education; (10) housing or facilities for low-income earners, the underprivileged, the elderly or the disable; (11) exhibitions and convention centers; and (12) other categories to be prescribed by a future royal decree.
3. Any PPP Project with an investment value of THB5 billion or more must comply with the terms and conditions of the PPPA. A PPP Project with an investment value lower than THB5 billion must comply with the specific rules and procedures prescribed by the PPP Policy Board.
4. The state entity responsible for each PPP Project (“Host Agency”) must prepare a term of reference of the PPP Project and a report which includes a feasibility study and an analysis of the project pursuant to the provisions of the PPPA for project approval. A state entity may determine that supporting measures for the objectives of the investment to be achieved if necessary, such as BOI privileges, rights to lease land or immovable property in the PPP Project for not more than 50 years, or other financial or non-financial supports measures may be necessary to achieve the investment’s objectives.
5. Selection of the private sector entity for each PPP Project must be made by an auction, unless approved otherwise by the Cabinet. A draft of the PPP Agreement must be reviewed by the Office of the Attorney General and approved by the minister of the ministry in charge of the Host Agency (“Minister”) and the Cabinet. The Minister and the Cabinet must also consider and approve the result of the private sector entity’s selection and the major terms and conditions of the PPP Agreement.
6. A supervision committee must be appointed by the Minister to monitor the operation of each PPP Project, give recommendations in relation to problems that may arise from the investment, and prepare a report on the progress of the project to present to the relevant Minister amongst other duties.
7. A Host Agency with approval from the Cabinet may exercise its powers to solve the problems of the project, the safety of lives and property of the people or any other causes which hinder a Project that drastically impacts the people, economy or society by (1) engaging in the project or authorizing others to for a temporary period; (2) amending the PPP Agreement, or (3) canceling the PPP Agreement.
8. The Host Agency must pay a fair compensation to the private sector entity if the ground of its actions above is not caused by the default of the private sector party.



Kowit Somwaiya
Managing Partner
kowit.somwaiya@lawplusltd.com



Nattaya Lohasomboon
Associate
nattaya.lohasomboon@lawplusltd.com

LawPlus Ltd.
Unit 1401, 14th Fl., Abdulrahim Place, 990 Rama IV Road, Bangkok 10500, Thailand
Tel. +66 (0)2 636 0662 Fax. +66 (0)2 636 0663
www.lawplusltd.com

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