

LEGAL UPDATES

INTELLECTUAL PROPERTY

Law No. 07/2017/QH14 on Technology Transfer

Effective date: 1 July 2018

- (1) Technology transfer means transfer of (a) the right to own technology or (b) the right to use technology from the party with the right to transfer such technology to the technology transferee.
- (2) A technology owner has the right to transfer the ownership of or right to use such technology. An entity with the right to use technology is permitted to transfer such right to another entity with the consent of the technology owner.
- (3) Technology objects eligible for transfer include
 - a) technical know-how and technological know-how;
 - b) technological plans and processes; technical solutions, parameters, drawings and diagrams; formulae, computer software, and data information;
 - c) solutions for rationalizing manufacture and for renewing technology; and
 - d) machinery and equipment to which any one of the objects prescribed above is attached.
- (4) The technology transfer may be
 - a) carried out independently; or
 - b) upon (i) capital contribution in the form of technology; (ii) commercial franchise; (iii) transfer of intellectual property rights; (iv) or purchase and sale of the machinery and equipment or (v) other forms prescribed by laws.
- (5) Transfer of technology shall be made in writing. Registration is required in case of (a) technology transfers from other countries into Vietnam; (b) technology transfers from Vietnam to other countries; and (c) technology transfers within Vietnam using State capital or the State budget. The State encourages entities to register technology transfer in other cases.

INVESTMENT**Decree No. 63/2018/ND-CP regarding Public Private Partnership Investment Form**

Effective date: 19 June 2018

- (1) Public private partnership investment form (“**PPP**”) means a form of investment conducted on the basis of a project contract between an authorized State agency and the investor and/or project enterprise in order to build, renovate, operate, commercially operate and manage infrastructure works facility or to provide equipment or public services.
- (2) Project contract can be Build-Operate-Transfer contract (BOT), Build-Transfer-Operate contract (BTO), Build-Transfer contract (BT), Build-Own-Operate contract (BOO), Build-Transfer-Lease contract (BTL), Build-Lease-Transfer contract (BLT) and Operate-Manage contract (O&M) or other contracts subject to approval of the authority.
- (3) The State encourages investment in the PPP form in sectors such as transportation, power plants and power transmission lines; health; education and other sectors.
- (4) The investor's equity ratio is determined on the following principles:
 - a) For a project with total investment capital up to 1,500 billion dong (approximately USD 66 million), the investor's equity ratio must not be lower than 20% of the total investment capital;
 - b) For a project with total investment capital above 1,500 billion dong, the investor's equity ratio is determined as follows:
 - (i) with respect to the capital portion up to 1,500 billion dong, the investor's equity ratio must not be lower than 20%; and
 - (ii) with respect to the capital portion above 1,500 billion dong, the investor's equity ratio must not be less than 10%.
- (5) The State portion for participation in a PPP project may be made in one or more of the following forms:
 - a) State capital contribution;
 - b) capital for payment to the investor;
 - c) land, working headquarters or infrastructure assets as payment to the investor or the right to commercially operate and/or exploit the facility and/or services assigned to the investor in a BT project;
 - d) capital for supporting construction of auxiliary works, compensation, site clearance and/or resettlement.
- (6) In general, a PPP project will be implemented in the following sequence:
 - a) formulation and evaluation of the pre-feasibility study report, issuance of the investment policy decision, and then announcement publication of the project;
 - b) formulation, evaluation and approval of the feasibility study report;
 - c) holding selection of investor;
 - d) negotiation, establishment of a project enterprise (if any), and execution of a project contract;
 - e) commencement of implementation of the project; accounting finalization and transfer of the facility.

COMMERCE**Decree No. 69/2018/ND-CP guiding the Law on Foreign Trade Management**

Effective date: 15 May 2018

- (1) This Decree governs international goods trading activities conducted in the forms of
 - a) import and export;
 - b) temporary import for re-export; temporary export for re-import; border gate transfer;
 - c) transit; and
 - d) other activities relating to international goods trading activities (such as processing goods or agency for sale and purchase of goods).
- (2) In general, foreign owned enterprises must comply with Vietnam's commitments in international treaties of which Vietnam is a member, the lists of goods and roadmap published by the authority, the provisions of this Decree and other relevant laws such as customs procedures, licenses applied to specific goods, permissible scope of trading activities, tax obligations and/or other relevant requirements.
- (3) Any licences or permits issued by the Ministries or other competent authorities to business entities pursuant to Decree No. 187/2013/ND-CP (regarding international purchases and sales of goods, agency for sale and purchase, processing and transit of goods involving foreign parties) and other relevant guiding legal instruments, prior to the effective date of this Decree, shall continue to be implemented by those entities in accordance with the contents and effective duration of such licences/permits.

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