



## ROYAL KRAM

NS/RKM/1121/018

WE,

**PREAHKARUNA PREAHBATH SAMDECH PREAH BOROMNEATH NODODOM  
SIHAMONI SAMANPHOUM CHEATSASNA RAKHATKHATEYA  
KHEMERAROTHREAS PUTHINTHREA THOREAMOHAKSAT KHEMREACHNEA  
SAMOHORPHEAS KAMPUCH EKREACHROATHBORANAKSANTEH  
SOPHEAKMONGKULEA SEREYVIBOLAR KHEMARASREYPIREAS PREAH  
CHAO KRONG KAMPUCHEA THIPADEY,**

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Kram NS/RKT/0918/925, dated 6 September 2018, on the Appointment of the Royal Government of Cambodia;
- Having seen the Royal Kram NS/RKT/0320/421, dated 30 March 2020, on the Appointment and Revision of the Composition of the Royal Government of Cambodia;
- Having seen the Royal Kram NS/RKM/0618/012, dated 28 June 2018, promulgating the Law on Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram NS/RKM/0196/18, dated 24 January 1996, promulgating the Law on the Establishment of the Ministry of Economy and Finance; and
- Having seen the Request from Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister of the Kingdom of Cambodia

### HEREBY PROMULGATES

The **Law on Public-Private Partnerships** adopted by the National Assembly on 25 October 2021 at its 6<sup>th</sup> plenary session of the 6<sup>th</sup> mandate, entirely approved by the Senate on its form and legal concepts on 2 November 2021 at its extraordinary session of the 4<sup>th</sup> mandate, and which has its full substance as follows:

**LAW**  
**ON**  
**PUBLIC-PRIVATE PARTNERSHIPS**

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### **Article 1 . \_**

The purpose of this Law is to promote the management of the Public-Private Partnerships (PPP) mechanism for the preparation and development of public infrastructure and public service projects in an efficient, effective, sustainable, transparent, accountable, and fair manner for the greater benefit of socio-economic development in the Kingdom of Cambodia by:

- Determining competent institutions for the systematic management and implementation of PPP Projects;
- Establishing the framework for developing, implementing, management and monitoring PPP Projects;
- Establishing regulations, methodologies, procedures and management structures and the implementation of the procurement procedures within the framework of PPP Projects; and
- Determining the financial support mechanisms and the investment incentives for PPP Projects.

#### **Article 2 . \_**

The scope of this Law shall govern the management of the development and implementation of PPP Projects within all eligible sectors, in accordance with the Article 8 of this Law, for developing public infrastructure and/or provision of public services.

#### **Article 3 . \_**

Key terminologies being used under this Law are defined in the Glossary as Annex I of this Law.

## **CHAPTER II**

### **COMPETENT INSTITUTIONS**

#### **Article 4 . \_**

The Ministry of Economy and Finance as a competent institution for leading and managing the PPP mechanism in the Kingdom of Cambodia has the following roles and responsibilities such as:

- 1- Act as the secretariat and “One-Stop Service” of the Royal Government to manage PPP projects in all phases of the project cycle;

- 2- Propose policy for the development of PPP mechanism and lead the preparation of regulations, standard operating procedures (SOPs), legal documents relating to PPP project development and management in cooperation with Implementing Agencies (IAs);
- 3- Prepare risk management guidelines on PPP projects consistent with the overall framework for managing the PPP mechanism;
- 4- Review and approve eligible PPP project proposals based on relevant criteria;
- 5- Review the risk allocations of the PPP projects between the State and the Private Partner to ensure its compliance with the applicable laws and regulations of Cambodia, and to ensure fiscal sustainability;
- 6- Review and provide recommendations on fiscal commitments and State Support for PPP Projects;
- 7- Review and provide recommendations on PPP Contract and other relevant agreements;
- 8- Cooperate with Implementing Agencies (IAs) and relevant institutions to review and monitor obligations and performance of project implementation as stipulated in the PPP Contract;
- 9- Review and approve the preparation of the annual budget of the Implementing Agencies (IAs) related to the fiscal commitments and the approved State Support under the framework of PPP projects;
- 10- Prepare an annual report on the update of fiscal commitments under the PPP Contract, obligated to be fulfilled by the Royal Government;
- 11- Budget, manage and operate the Project Development Facility (PDF); and
- 12- Budget, manage and operate the Viability Gap Financing (VGF) Facility.

#### **Article 5 . \_**

The Ministry of Economy and Finance shall have a General Department acting as the secretariat in leading and managing the PPP mechanism in the Kingdom of Cambodia. The organization and functioning of this General Department shall set forth in sub-decree.

#### **Article 6 . \_**

Implementing Agencies (IAs) as the competent institution in the development of projects and/or act as the representative of the State in signing the PPP Contract with the Private Partner shall have the following roles and responsibilities such as:

- 1- Identify and prioritize projects within its eligible sectors or purview and request the Ministry of Economy and Finance for review, approval and selection as an Eligible Project as prescribed in the Article 8 of this Law;
- 2- Select and manage consultants to support the development and implementation of PPP projects;
- 3- Implement or supervise the implementation of the Pre-feasibility Study and Full Feasibility Study, then review and endorse the feasibility report;
- 4- Submit proposals to the Ministry of Economy and Finance for the review of the report of the Feasibility Study before proceeding further in accordance with applicable processes;
- 5- Lead the Royal Government's working group in the selection of the Private Partner to implement the PPP Contract;
- 6- Lead the Royal Government's working group to negotiate and sign the PPP Contract as a representative of the Royal Government;
- 7- Manage and implement its obligations under the PPP Contract;
- 8- Request the preparation of the annual budget to the Ministry of Economy and Finance related to the fiscal commitments and the approved State Support under the framework of PPP projects
- 9- Monitor, supervise and evaluate the overall implementation and operation of the PPP Projects.

Implementing Agencies (IAs) shall perform the roles and responsibilities as stipulated in the above Paragraph 1 of this Article in accordance with the following principles:

- 1- Shall exercise rights and fulfil responsibilities under the framework of the PPP Projects with integrity and in accordance with applicable laws and regulations of the Kingdom of Cambodia, and in accordance with terms and conditions of the PPP Contract;
- 2- Shall be primarily responsible for requesting the financing to prepare, implement, monitor and supervise the PPP Projects.

### **CHAPTER III**

#### **RIGHTS TO ENTER INTO PPP CONTRACT AND ELIGIBILITY OF PPP PROJECTS**

##### **Article 7 .-**

Public entities with the rights to enter into the PPP Contract, acting as the Implementing Agency, include ministries, institutions, equivalent public entities, public administration establishments, public enterprises and sub-national administrations.

These public entities are authorized to enter into the PPP Contract that falls within their respective purview in accordance with applicable laws and regulations.

Entities with the rights to enter into the PPP Contract, acting as the Private Partner, pursuant to Chapter VI of this Law, are defined as follows:

- 1- Any firm legally registered in the Kingdom of Cambodia;
- 2- Any foreign commercial firm registered in accordance with foreign laws;
- 3- Any public enterprise that is not the Implementing Agency, and has received the delegation of power in accordance with other applicable laws and regulations.

The entity, as stipulated in Point 2, Paragraph 2 above which has entered into the PPP Contract, and which is not obligated to establish a Special Purpose Company as stipulated in Article 22 of this Law, is required to legally register in the Kingdom of Cambodia.

#### **Article 8 . \_**

Eligible sectors that are related to the construction and/or services for PPP projects include as follows:

- Public infrastructure and public services for the transport and logistics sector such as roads, bridges, rails, airports, ports, public parking and canals;
- Public infrastructure related to telecom, posts, information and communication technology (ICT), and digital technology;
- Production, transmission and distribution of electricity, oil and gas pipelines, and other public services in mines and energy sector;
- Clean water supply and sanitation infrastructure, sewage system, drainage system, restoration system, wastewater treatment, waste management and other public services for the environmental protection;
- Public infrastructure and public services related to the health sector, education sector, labor and vocational training sector, tourism sector, culture and arts sector, sport sector and social housing;
- Public infrastructure related to the industry, science, technology and innovation sector such as special economic zones (SEZs), small- and medium-sized enterprises (SMEs) clusters, and technology and innovation parks;
- Public infrastructure related laboratories, processing, product storage, and trade promotion;
- Public infrastructure and public services related to the agriculture sector and irrigation system;
- Other public infrastructure and public services as permitted by separate laws.

## Article 9 . \_

PPP Project identification and selection of Eligible PPP Projects shall meet all of the following criteria:

- 1- The development and implementation of the project shall fall within the responsibility and purview of the Implementing Agency;
- 2- The objective of the project is for the development of public infrastructure and/or provision of public services within an Eligible Sector;
- 3- The project is capable of risk allocation between the State and Private Partner to ensure benefits based on the principal of Value for Money (VfM);
- 4- The project has the potential to attract resources from the private sector as the basis for the rationalization of the public expenditure for project development; and
- 5- The project shall have an operational period of at least 5 (five) years and is capable of providing stable and sustainable services to users, for the entirety of its lifespan under the framework of the PPP Contract.

Guidelines for Project Identification and Selection of PPP Projects shall be determined by the Royal Government.

## CHAPTER IV

### PPP PROJECT CYCLE

## Article 10 . \_

The Project Cycle for Solicited PPP Projects are determined as follows:

- 1- **Project Identification:** Implementing Agency shall identify potential projects for the preparation and implementation via the PPP mechanism.
- 2- **Project Selection:** Implementing Agency with the intention to develop and implement projects through the PPP mechanism shall evaluate the potential and priority of the project prior to requesting the Ministry of Economy and Finance for review, selection, and approval of the project proposal as an Eligible Project, and to be included in the Priority PPP Project List. The project appraisal made by the Implementing Agency and project

selection by the Ministry of Economy and Finance shall be based on the criteria as stipulated in Article 9 of this Law.

- 3- **Project Preparation:** Implementing Agency with the purview in its related sector of the eligible project shall manage the undertaking of the feasibility study of that project.
- 4- **Project Approval:** If the Implementing Agency endorses the findings of the Feasibility Study, the Implementing Agency shall propose to the Ministry of Economy and Finance for review before proceeding further in accordance with the applicable procedures.
- 5- **Procurement Procedures:** Following the Project Approval, the Implementing Agency shall conduct the procurement procedures as stipulated in Chapter VI of this Law for the selection of the candidates of the Private Partner to implement the PPP Project.
- 6- **PPP Contract Negotiation:** Following the selection of the candidates of the Private Partner, Implementing Agency shall lead the Royal Government's working group to negotiate terms and conditions of the draft PPP Contract.
- 7- **Approval of the Final Draft of the PPP Contract:** After the conclusion of negotiation on the draft PPP Contract, Implementing Agency shall request to the Royal Government for approval on the final draft of the PPP Contract after the Ministry of Economy and Finance has provided its in-principle approval as stipulated in Point 2, Paragraph 1, Article 21 of this Law.
- 8- **Signing of the PPP Contract:** Implementing Agency which has obtained the delegation of power in accordance with applicable laws and regulations as the representative of the State, and the selected Private Partner shall sign the PPP Contract and witnessed/counter-signed by the Ministry of Economy and Finance.
- 9- **Implementation and Management of the PPP Contract:**
  - a- The Private Partner shall be primarily responsible for the financing, detailed engineering design, selection of the contractors, construction, operations and/or maintenance in accordance with terms and conditions of the PPP Contract and pursuant to Chapter IX of this Law.
  - b- Implementing Agency shall manage, monitor and report on the performance of the implementation of the PPP Contract signed pursuant with Article 40 of this Law.

The Standard Operating Procedures for PPP Projects shall be determined by the Royal Government.

## **Article 11 . \_**

Implementing Agencies (IAs) may retain the service of consultants to assist with the preparation, development and/or project appraisal, the selection of the Private Partner and other related tasks. The payment of services for the consultants may be

drawn from the national budget, sub-national budget, budget of the public administration establishment, budget of the public enterprises, Project Development Facility (PDF), Official Development Assistance (ODA) and/or other legitimate sources of funds.

The procedures for the selection of consultants shall be determined by the Royal Government.

## CHAPTER V

### FINANCIAL SUPPORT MECHANISMS

#### Article 12 . \_

Establish the Project Development Facility (PDF) to provide funding to Implementing Agencies (IAs) to cover the costs of the consultant(s) to assist with the project development and/or appraisal, the selection of Private Partner and other relevant tasks.

The guidelines for managing the operations of PDF shall be determined by the Royal Government.

#### Article 13 . \_

State Support provided to PPP projects may include the following:

- 1- **Viability Gap Financing (VGF):** is the Royal Government's subsidy provided to the Private Partner to reduce its capital expenditure, while increasing the financial viability of the project. The payment for such a subsidy shall be based on specific performance milestones after the commencement of construction and can be renewed for up to 2 (two) years after the completion of construction. Detailed principles for the VGF shall be implemented in accordance with the procedures for the management of the VGF Facility.
- 2- **Availability Payment:** is the payment made in full or in part for the service fees of the Private Partner for the operation of PPP project Asset(s), and/or the provision of public services to public users. The availability payment can be made in cases where the Royal Government has agreed that the service fees to be collected by the Private Partner from the public users are insufficient, or cannot, or should not be collected from the public users. Availability payments shall be made only after the construction, if applicable, is completed, and the operation has commenced.
- 3- **Government Contingent Liabilities:** are the types of guarantees provided to the Private Partner or related entities in special cases in addressing potential impacts from unforeseen circumstances and/or risks as stipulated in the PPP contract. The decision of the Royal

Government to provide guarantees shall be in accordance with the applicable laws and regulations of the Kingdom of Cambodia. Depending on the nature of each PPP project, the Royal Government may grant guarantees in the following forms:

- a- **Performance guarantee:** is a type of guarantee that grants compensation in the event that the Implementing Agency or any other public entities have not fulfilled obligations as stipulated in the PPP Contract or relevant agreements.
  - b- **Sovereign or political risk guarantee:** is a type of guarantee that grants compensation in the event that political actions or the government policies resulted in adverse impact on the Private Partner, mainly including expropriation, nationalization and violence driven by the political activities.
  - c- **Other guarantees:** are other types of guarantees approved by the Royal Government of Cambodia in accordance with applicable laws and regulations.
- 4- **Asset Contributions:** is the contribution of state asset(s) to the PPP Project.
- 5- **Investment Incentives:** is the provision of investment incentives, and/or the issuance of policies favorable for investments in accordance with Chapter VIII of this Law.

#### **Article 14 . \_**

Financial State Support to a PPP Project may be funded from the following sources:

- 1- National budget, sub-national budget, budget of the equivalent public entities, budget of the public administration establishments and/or the budget of public enterprises;
- 2- Official Development Assistance (ODA) such as loan or grant provided to the Royal Government from Development Partners;
- 3- The VGF Facility as stipulated in Article 15 of this Law.

#### **Article 15 . \_**

Establish the VGF Facility which is a special source of capital to fulfill the financial needs of the PPP Projects.

The procedures for managing the operations of the VGF Facility shall be determined by the Royal Government.

## **Article 16 . \_**

Any PPP projects that receive the Financial State Support or are required to make payments due to the State shall do so via a designated bank account in the Kingdom of Cambodia, as specified by the applicable law and regulations. PPP Contract may specify additional designated bank accounts as necessary.

## **CHAPTER VI**

### **SELECTION OF PRIVATE PARTNER**

## **Article 17. \_**

The selection of Private Partner may be carried out for solicited projects and unsolicited projects.

## **Article 18 . \_**

The selection of Private Partner for the solicited projects may be implemented through a competitive bidding methodology or through a direct negotiation/selection methodology.

The procedures for the selection of the Private Partner for the solicited projects shall be determined by the Royal Government.

## **Article 19 . \_**

The process of negotiating the PPP Contract for the solicited projects undertaken through the competitive bidding methodology shall be specified as follows:

- 1- The first ranking bidder shall be invited to negotiate the draft PPP Contract with the Royal Government's working group led by the Implementing Agency, as stipulated in Point 6, Paragraph 1 of Article 10 in this Law. In case the first ranking bidder fails to attend the invited negotiation, the Implementing Agency can invite the next ranking bidder to negotiate the PPP Contract instead.
- 2- In case the negotiation on the draft PPP Contract, as stipulated in Point 1, Paragraph 1 of this Article, fails to complete negotiation within 6 (six) months of the date invited for negotiation, the Implementing Agency may invite the next ranking bidder to negotiate the draft PPP Contract instead.

- 3- The Request for Proposals may specify in advance the non-negotiable terms and conditions of the draft PPP Contract.

Detailed principals for the negotiation of the draft PPP Contract through competitive bidding methodology for solicited projects shall be specified in the procedures for the selection of the Private Partner.

#### **Article 20 . \_**

The Implementing Agency may pursue the direct negotiation/selection methodology for solicited projects if approved by the Royal Government via the jointed proposal by the Ministry of Economy and Finance and the Implementing Agency.

The detailed principles for the negotiation of the draft PPP Contract through the direction negotiation/selection methodology shall be set forth in the procedures for the selection of the Private Partner.

#### **Article 21 . \_**

The process of finalization and signing of PPP Contract for solicited projects are determined as follows:

- 1- Following the negotiation on terms and conditions of the draft PPP Contract have been finalized, the Implementing Agency shall request for approval on the final draft of the PPP Contract as stipulated in Point 7, Paragraph 1, Article 10 of this Law.
- 2- Prior to the request for an approval as stipulated in Point 1 above, the Ministry of Economy and Finance shall review terms and conditions of the draft PPP Contract associated with fiscal commitments and State Support before proceeding further in accordance with the applicable laws and regulations. Terms and conditions associated with fiscal commitments and State Support in the PPP Contract mainly include as follows:
  - a. Risk structure and risk allocation between the State and the Private Partner;
  - b. State Support as stipulated in Article 13 of this Law,
  - c. Royal Government's obligations as stipulated in Article 34 of this Law.
- 3- Following the approval of the draft PPP Contract as stipulated in Point 1 and Point 2, Paragraph 1 of this Article, the PPP Contract shall be signed by the Implementing Agency and the Private Partner, and witnessed/countersigned by the Ministry of Economy and Finance.

The detailed principles for finalization and approval of final draft of the PPP Contract shall be prescribed in the procedures for the selection of the Private Partner.

## **Article 22 . \_**

A Special Purpose Company may be established to act as the Private Partner in the PPP Contract based on the necessity of individual projects.

The establishment of Special Purpose Company as the Private Partner of the PPP Contract shall be pursuant to the following conditions:

- 1- The Special Purpose Company shall be established as a Commercial entity legally registered in the Kingdom of Cambodia.
- 2- The establishment and registration of the Special Purpose Company shall be completed within a maximum of 60 (sixty) working days after the signing of the PPP Contract.
- 3- Within 14 (fourteen) working days after the establishment and registration of the Special Purpose Company, the parties to the PPP Contract and Special Purpose Company shall sign a Novation Agreement to transfer the contractual position of the Private Partner to the Special Purpose Company, while retaining the same terms and conditions.

## **Article 23 . \_**

Implementing Agency may consider Unsolicited Proposals to review the possibility of development and implementation as a PPP Project. The review and selection of Unsolicited Proposals shall be pursuant with the following principles and conditions:

- 1- The Unsolicited Proposal shall introduce new concept, technology or innovation that may be beneficial to the Kingdom of Cambodia. In case the Implementing Agency seeks to further pursue the preparation and development of any Unsolicited Proposals, the Implementing Agency shall submit a request for in-principle approval from the Royal Government through the Ministry of Economy and Finance.
- 2- Following the in-principle approval from the Royal Government, the Implementing Agency shall lead the Royal Government's working group in preparing a framework agreement or an equivalent agreement to prescribe the cooperation between the State and the Private Proponent for the project study and project development. All expenses and risks associated with the project study and project development shall be borne by the Private Proponent.
- 3- The Implementing Agency and the Ministry of Economy and Finance may arrange for an independent agency to conduct due diligence or

evaluate the findings of the Feasibility Study of the Unsolicited Proposal.

- 4- Based on the due diligence of the Feasibility Study, the Implementing Agency and the Ministry of Economy and Finance may request for the approval from the Royal Government for the selection of the Private Partner through the competitive bidding methodology or through the direct negotiation/selection methodology.
- 5- The Ministry of Economy and Finance may decide to utilize funds from the PDF for undertaking the due diligence of the Feasibility Study on the commercial and financial aspects for the negotiation on terms and conditions of the draft PPP Contract, and for undertaking other relevant tasks.

The procedures for the selection of Private Partner for Unsolicited Proposals shall be determined by the Royal Government.

## **CHAPTER VII**

### **PPP CONTRACT**

#### **Article 24 . \_**

The principles of the PPP Contract are prescribed as follows:

- 1- The PPP Contract shall be prepared in accordance with specific project features as specified in the result of the Feasibility Study that shall be agreed upon by the Royal Government and the Private Partner.
- 2- The PPP Contract shall be an agreement of a commercial nature between the Implementing Agency and the Private Partner. The Implementing Agency shall be accountable for ensuring the contract is entered into through transparent and fair practices for all and any PPP Projects, both Solicited Projects and Unsolicited Projects.
- 3- The PPP Contract shall allocate PPP project-related risks between the Royal Government and the Private Partner, enabling the Royal Government to benefit from the principle of Value for Money while maintaining a reasonable commercial return for the Private Partner.
- 4- The determination of the Private Partner's benefits in a PPP Contract shall be based on the performance of the project implementation.

## **Article 25 . \_**

Each draft PPP Contract shall be formed based on any of appropriate PPP Models. The selection of appropriate PPP Models is determined by the unique features and specific requirements of each PPP Project; and selected by the Implementing Agency and the Ministry of Economy and Finance based on the findings of the Feasibility Study.

Common PPP models for the preparation of draft PPP Contract shall be prescribed in Annex II of this Law.

## **Article 26 . \_**

All charges and fees collectable under the framework of a PPP project, including adjustment formulas thereof shall be stipulated in the PPP Contract. Such specifications within the PPP Contract shall be based on the principle of ensuring a reasonable rate of return for the Private Partner while ensuring affordability to end-users and the State.

The Private Partner has the rights to collect and receive revenues from the usage fees and other service charges, and the rights to revise charges and fees in accordance with terms and conditions as stipulated in the PPP Contract and/or relevant agreement(s).

## **Article 27 . \_**

The PPP Contract shall be governed by applicable laws and regulations of the Kingdom of Cambodia.

The Private Partner may select which governing law would apply to the ancillary agreement relating to the implementation of the PPP Contract, except for the case where a public entity of the Kingdom of Cambodia is a party of the agreement.

## **Article 28 . \_**

The assignment of rights and obligations of the Private Partner within the PPP Contract to any third party shall require prior approval from the Royal Government, except for the case of step-in rights as stipulated in Article 29 of this Law.

The PPP Contract shall specify the conditions, including conditions that both consignee and consignor shall fulfill to obtain the approval of the Royal Government on the assignment of rights and obligations of the Private Partner within the PPP Contract.

## **Article 29 . \_**

Both parties to the PPP Contract may agree on the provision of step-in rights in favor of the lender(s) to the Project and/or the Royal Government. The receiver of the step-in rights may obtain and renew the rights and obligations as stipulated in the PPP Contract to ensure continued performance of the Private Partner's obligations under the framework of the PPP Contract and/or loan agreements relating to the Project.

## **Article 30 . \_**

The PPP Contract shall specify the conditions for the contract amendment. Conditions which are permitted to amend the PPP Contract relating to construction, and/or services may include changes in laws or legal provisions, changes in size or output specifications of the project construction, changes in service fees, changes in service demands, force majeure or other circumstances, as stipulated in the PPP Contract.

The Implementing Agency shall request the decision of the Ministry of Economy and Finance on the amendment of the PPP Contract pursuant with applicable laws and regulations, prior to signing any agreements on the amendment on the PPP Contract with the Private Partner.

The amendment of the PPP Contract shall be complied with the PPP Contract management guidelines which shall be determined by the Royal Government.

## **CHAPTER VIII**

### **INVESTMENT INCENTIVES FOR PPP PROJECTS**

## **Article 31 . \_**

Entities implementing any PPP Project shall be subject to the existing taxation regime law and be entitled to any incentives and exemptions in accordance with applicable laws and regulations of the Kingdom of Cambodia.

## **Article 32 . \_**

The Private Partner may request for investment incentives for the PPP project, pursuant with regulations stipulated in the Law on Investment of the Kingdom of Cambodia and other applicable laws.

## **Article 33 . \_**

The establishment of security rights relating to the Project Asset(s) shall comply with the following conditions:

- 1- Within the period of the PPP Contract, the Private Partner may establish security rights on the Project Asset(s), on the rights, or on its benefits relating to the PPP Contract, including:
  - a- Security over movable or immovable asset(s) relating to the project owned by the Private Partner;
  - b- Security over the pledge of proceeds or accounts receivable of the Private Partner from the operations of the Project Asset(s) or the services for users;
  - c- Mortgage on real rights related to the use of the land in accordance with applicable laws and regulations.
- 2- The Investor(s) may establish security rights on their shares of a Special Purpose Company.
- 3- The establishment, registration and perfection of security rights, as stipulated in Point 1 and 2, Paragraph 1 of this Article, shall be in accordance with terms and conditions in the PPP Contract and shall be in accordance with applicable laws and regulations of the Kingdom of Cambodia.

The implementation of security rights shall be in accordance with the applicable laws and regulations of the Kingdom of Cambodia.

#### **Article 34 . \_**

The Royal Government may undertake various obligations to the Private Partner or other entities relevant to the PPP project, including lenders, to ensure the Project is financially viable, bankable, and capable of undergoing construction and operations in a timely manner. These obligations include for example:

- 1- Government guarantees to the Private Partner as stipulated in Point 3, Paragraph 1, Article 13 in this Law;
- 2- Direct agreements between the Implementing Agency and the lender for acknowledging the obligations of the Implementing Agency as stipulated in the PPP Contract;
- 3- Assurance of the availability of public services necessary for the Private Partner to perform its obligations under the framework of the PPP Contract;
- 4- Other government obligations as stipulated in the PPP Contract.

The approval and implementation of all government obligations under the framework of the PPP Projects shall be pursuant with applicable laws and regulations of the Kingdom of Cambodia.

### **Article 35 . \_**

The land acquisition, resettlement and the provision of rights relating to the use of state asset(s) for PPP projects to the Private Partner shall comply with applicable laws and regulations of the Kingdom of Cambodia.

The PPP Contract shall address real rights related to the use of the land, allocation of costs associated with the land acquisition and real rights related to the use of the land, and costs relating to the of use of state asset(s) for PPP projects.

### **Article 36 . \_**

The Private Partner shall have the rights to purchase foreign currencies and to remit abroad these currencies through the banking system as the intermediary, for commercial transactions, capital transactions and other transactions relating to the investment in the PPP project, which mainly includes:

- 1- Payment for import of goods and services abroad;
- 2- Repayment of principal and interest on foreign loans;
- 3- Payment for license fees and management fees to overseas entities;
- 4- Payment for lease of equipment and machinery abroad;
- 5- Applicable only for foreign Investors, remittance abroad of capital, profit, proceeds from investment liquidation, and other lawful incomes.

Activities on foreign exchange by the Private Partner shall be undertaken in accordance with applicable laws and regulations of the Kingdom of Cambodia.

## **CHAPTER IX**

### **PROJECT IMPLEMENTATION AND MONITORING**

### **Article 37 . \_**

The Private Partner may implement a PPP project by itself or through its Contractor(s).

The Private Partner's candidate(s) shall clearly specify its Key Contractor(s) within the request for proposals in the selection process of the Private Partner. The definition of Key Contractor(s) is based on the features and scope of each PPP Project and shall be specified in the tender documents. Changes in Key Contractor(s) shall not be permitted, without the prior approval by the Implementing Agency and the Ministry of Economy and Finance.

The Private Partners shall have full rights on the selection and changes of contractor(s) that is not a Key Contractor, without the prior approval of the Implementing Agency.

With or without the Contractor(s), the Private Partner shall be wholly liable for the performance of its obligations as stipulated with terms and conditions of the PPP Contract.

#### **Article 38 . \_**

If the PPP project requires the Private Partner to provide an operating performance security, the Private Partner shall provide the security to the Implementing Agency to ensure proper implementation of operations in accordance with the operating parameters and other specifications as stipulated in the PPP Contract. The tender documents for the selection of the Private Partner and the PPP Contract shall specify the form, value and validity of the performance security for operations required from the Private Partner.

#### **Article 39 . \_**

The management, operations, and maintenance of commercial Project Asset(s) in accordance with applicable laws and regulations and as specified by terms and conditions as stipulated in the PPP Contract may be directly implemented by the Private Partner or through its management Contractor(s) on its behalf. In case Contractor(s) assumes management roles on behalf of the Private Partner, the Private Partner shall remain wholly liable for the management, operation and maintenance of the project asset(s) as stipulated in the PPP Contract.

During the period of management, operations and maintenance of Project Asset(s), the Private Partner shall fulfill the following obligations such as:

- 1- Implement operating/commercial rights on the Project Asset(s) to ensure the provision of services to the lawful users of the Project Asset(s) is equal and non-discriminatory, or without refusal of service to any users agreeing to pay the publicly available usage rate of the Project Asset(s).
- 2- Ensure that Project Asset(s) can be operated and are available for use in accordance with the technical specifications and other specifications as stipulated in the PPP Contract;
- 3- Ensure the provision of products and/or services in the quantity, quality and within the time-limit agreed upon as stipulated in the PPP Contract.
- 4- Other obligations as stipulated in the PPP Contract.

#### **Article 40 . \_**

The Implementing Agency shall be responsible for the management, monitoring and progress report, completion report on the post-project implementation, and other relevant reports based on obligations as stipulated in the PPP Contract, submitted to Ministry of Economy and Finance in order to prepare a consolidated report to the Royal Government to ensure the implementation by both parties has complied with terms and conditions as stipulated in the PPP Contract. With regard to the implementation of those responsibilities, the Implementing Agency may prepare the project management structure, which may include support from relevant public institutions and consultants within the areas of competences, such as technical, legal, financial and contract management.

The Private Partner shall be responsible for reporting to the Implementing Agency and to the Ministry of Economy and Finance on the status, progress and performance of the project implementation, including financial performance when necessary as stipulated in the PPP Contract.

### **CHAPTER X**

#### **CONTRACT PERIOD, TERMINATION AND HANDBACK**

#### **Article 41 . \_**

The PPP Contract shall specify the contract period and conditions to extend the contract period. The determination of the initial contract period shall be based on the factors of Project Asset(s)' life expectancy and the duration the Private Partner requires to recover its cost of investment. The initial contract period shall not exceed 30 (thirty) years from the date of signing of the Contract. In case of necessity and based on the model of the PPP Projects, the Royal Government may determine the initial contract period beyond 30 (thirty) years.

#### **Article 42 . \_**

The PPP Contract shall specify the circumstances for contract termination prior to its expiry, such as in the event either party to the PPP Contract defaults on its obligations, force majeure, and/or early termination by the Royal Government.

The PPP Contract shall specify the rights and obligations of both parties to be fulfilled, mechanisms and formulas for calculating compensation in the event of early termination of the contract.

#### **Article 43 . \_**

In the event the Private Partner has the obligations to hand back the Project Asset(s) to the Royal Government, the PPP Contract shall specify the conditions, and procedures for the hand-back of that Project Asset(s). When handing back the Project Asset(s), the Private Partner shall ensure that the Project Asset(s) is in a specified condition as agreed in the PPP Contract.

The hand-back of the Project Asset(s) shall comply with the contract management guidelines which shall be determined by the Royal Government.

### **CHAPTER XI**

#### **DISPUTE RESOLUTIONS**

#### **Article 44 . \_**

Any dispute arising between the Implementing Agency and the Private Partner related to the PPP Contract shall be resolved in accordance with a dispute resolution mechanism as stipulated in the PPP Contract.

#### **Article 45 . \_**

In the case a PPP Contract or a Concession Agreement fails to prescribe a dispute resolution mechanism, the dispute between the Implementing Agency and the Private Partner related to the PPP Contract or Concession Agreement shall be resolved through the consultation between the Implementing Agency and the Private Partner under the mediation by the Ministry of Economy and Finance except for the land disputes.

Within 2 (two) months from the date of written complaint filed by either party requesting for mediation, if both parties fail to resolve the dispute through mediation, both parties may agree to send the dispute to the Commercial Arbitration of the Kingdom of Cambodia or international commercial arbitration. In case both parties are unable to send the dispute to the Commercial Arbitration of the Kingdom of Cambodia or international commercial arbitration, either party may file a complaint with the court of the Kingdom of Cambodia.

### **CHAPTER XII**

#### **PENALTIES**

#### **Article 46 . \_**

Natural persons who violate the provisions of this Law shall be punishable in accordance with applicable laws and regulations of the Kingdom of Cambodia.

Legal persons shall also be punishable in accordance with applicable laws and regulations of the Kingdom of Cambodia in case the officials, employees or agents under their management conduct the activities within the framework of fulfilling their functions in violation of the provisions of this Law.

Civil servants conducting their roles and duties in violation of the provisions of this Law shall be punishable by the disciplinary measures in accordance with the applicable laws and relations relating to PPP projects, regardless of criminal penalties and other civil liabilities.

## **CHAPTER XIII**

### **TRANSITIONAL PROVISIONS**

#### **Article 47 . \_**

Law on PPPs shall not apply to priority projects which have been granted in-principle approvals from the Royal Government before the this Law comes into force. The mechanism and procedures for the development of those priority projects shall remain effective based on the mechanisms and procedures to be implemented before the effectiveness of this Law.

Except the provisions related to the dispute resolutions as prescribed in Chapter XI of this Law, other provisions of the Law on PPPs shall not apply to the Concession Agreements or the Contracts equivalent to the PPP Contracts signed prior to the date of the effectiveness of this Law.

## **CHAPTER XIV**

### **FINAL PROVISIONS**

#### **Article 48 . \_**

The Law on Concession, promulgated by Royal Kram No. NS/RKM/ 1007/027, dated 19 October 2007, and other provisions contrary to this Law shall be abrogated by this Law.

**Article 49 . \_**

This Law shall be promulgated urgently.

Royal Palace, 18 November 2021

Signature

**NORODOM SIHAMONI**

Has taken the request to the KING to sign

**Prime Minister**

Signature

**SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN**

Has taken the request to SAMDECH TECHO PRIME MINISTER

**Deputy Prime Minister**

**Minister of Economy and Finance**

Signature

AKKA PUNDIT SOPHEACHA **AUN PORNMONIROTH**

Has correctly copied based on the original version

**Permanent Deputy Prime Minister**

**Minister in Charge of the Office of the Council of Ministers**

Signature and Stamp

KITTI NITE KORSAL BANDIT **BIN CHHIN**

## ANNEX I

### GLOSSARY

- 1- **State Support** refers to financial and non-financial support, provided by the State to support the implementation of the PPP project. State Support may include the direct commitments (e.g. capital subsidies), contingent liabilities (e.g. guarantees), contributions of state asset(s) and other forms of assistance.
- 2- **Direct Negotiation/Selection** refers to procurement methodology for the selection of Private Partner required to directly negotiate a contract with the Private Partner's candidate to implement a PPP Project.
- 3- **Viability Gap Financing (VGF)** refers to a type of State Support, which is a direct subsidy on capital expenditures of a PPP Project in order to increase the financial viability of the Project for the Private Partner.
- 4- **Feasibility Study** refers to the study undertaken to assess possibility for procurement and project implementation through the PPP mechanism. The Feasibility Study shall analyze the technical, legal, market, commercial, economic, financial, environmental and social viability; including an analysis on the PPP model selection, risk assessment and allocation between the State and Private Partner, and analysis on the need for State Support.
- 5- **Novation Agreement** refers to the agreement in which both parties of a PPP Contract and a Special Purpose Company sign in accordance with applicable laws and regulations of the Kingdom of Cambodia to transfer the rights and obligations in full of the Private Partner in the PPP Contract to the Special Purpose Company while retaining the same terms and conditions of the PPP Contract.
- 6- **Ancillary Agreement** refers to the agreement between the Private Partner and Contractor(s) to implement the obligation of the Private Partner in accordance with the terms and conditions stipulated in the PPP Contract. The Implementing Agency is not required to sign the Ancillary Agreement but shall review and comment on the agreement to ensure consistency with terms and conditions of the PPP Contract.
- 7- **Relevant Agreement** refers to the agreement between a public entity, which is a party to an agreement, with the Private Partner or relevant entity in order to support the implementation of a PPP Project relating to the construction, financing, operations and maintenance.

- 8- Concession Agreement** refers to the agreement made in accordance with the Law on Concession.
- 9- PPP Contract** refers to the mutually binding agreement between an Implementing Agency and the Private Partner that sets forth terms and conditions for the implementation of a PPP project. The common PPP models used as the basis for setting the form of PPP Contracts are provided in Annex II of this Law.
- 10-Special Purpose Company** refers to an enterprise that shall be established in the Kingdom of Cambodia by investors in accordance with terms and conditions of the PPP Contract as pursuant with Article 22 of this Law, to act as the Private Partner of the PPP Contract for the implementation of the PPP project.
- 11-Solicited Project** refers to the PPP Project that has been proposed, prepared and advocated by the Implementing Agency, and has the potential to be implemented under the PPP mechanism. If the Project is approved by the Royal Government, the Implementing Agency shall issue a request for proposal for the selection of the Private Partner pursuant to Chapter VI of this Law.
- 12-Unsolicited Project** refers to a PPP Project that has potential to be implemented under the PPP mechanism and proposed by the private sector through the Implementing Agency.
- 13-Public Infrastructure Project** refers to design, construction, maintenance or operations of new infrastructure facilities or modernization, expansion, management, or operations of the existing infrastructure facilities.
- 14-Public Service Project** refers to services provided by public entities within their applicable functions and duties aiming at serving the public interest, and either natural or legal persons. This activity may be operated by the government itself or delegated to the private sector to implement but under the supervision of the government.
- 15-PPP Project** refers to infrastructure development projects and/or provision of public services implemented in accordance with the framework of the PPP Contract pursuant to this Law.
- 16-Private Partner** refers to the entity that enters into the PPP Contract with the Implementing Agency. In the event the Special Purpose Company is formed in accordance with Article 22 of this Law, the Private Partner shall therefore refer to the Special Purpose Company.
- 17-Value for Money** refers to the potential gains that can be provided to the State through the implementation of any Project under the PPP mechanism rather than through the public procurement. These gains may be evaluated

through qualitative and/or quantitative analysis of benefits and costs over the project's lifespan to demonstrate whether there are any positive benefits of the entire project life cycle. Guidelines for evaluating Value for Money shall be determined by the Royal Government.

**18-Consultant(s)** refers to consulting firms, experts, and/or service providers experienced in, such as financial, legal and technical aspects, in preparing and implementing PPP projects.

**19-Project Asset(s)** refers to physical facilities or systems to be built and/or operated under the PPP Contract that directly or indirectly provides public services.

**20-Priority PPP Project List** refers to a list of Eligible Projects identified and prioritized by the Implementing Agency, and approved by the Ministry of Economy and Finance in accordance with Article 10 of this Law.

**21-Public-Private Partnerships** refers to the agreement between the State and the Private Partner to restore, repair, expand, build, operate and/or maintain public infrastructure or Project Asset(s) or to provide public services within a specified period. Under this agreement, the Private Partner shall invest, bear part of the risks, and receive benefits based on performances in accordance with terms and conditions stipulated in the PPP Contract.

**22-Unsolicited Proposal Proponent** refers to the entity that prepares the Unsolicited Proposal pursuant to Article 23 of this Law.

**23-Project Development Facility (PDF)** refers to the financial State Support mechanism, funded by the use of national budget and other sources of fund, to finance studies, project preparation, procurement and other relevant tasks, which shall be determined by the Royal Government.

**24-Investor(s)** refers to any entity providing funds in the form of equity to the Private Partner in the implementation of the PPP Contract in accordance with applicable laws and regulations of the Kingdom of Cambodia.

**25-Step-in Rights** refers to the rights provided to lenders and/or the Royal Government to take over the PPP Contract for a specified period in the event that the Private Partner or the Special Purpose Company is unable to fulfill its obligations, which adversely affects the sustainability of the implementation of the PPP project.

**26-Real Rights** refers to the rights that have been defined under the Civil Code.

**27-Implementing Agency** refers to any ministries-institutions, equivalent public entities, public administration establishments, public enterprises and sub-national administrations that are responsible for the development of the PPP project and/or acting as the State entering into the PPP Contract with a Private Partner for the implementation of the PPP project.

**28-Unsolicited Proposal** refers to a written proposal by an Unsolicited Proposal Proponent to the Implementing Agency to develop a new project as a PPP project that offers new concepts, technologies, or innovation for the Kingdom of Cambodia.

**29-Contractor(s)** refers to contracting firms, suppliers or service providers selected by the Private Partner to support the implementation of the PPP Contract.

## ANNEX II

### COMMON PPP MODELS

- 1- Build-Operate-Transfer (BOT):** The Implementing Agency grants the Private Partner a right for design, finance, construct, operate and maintain Project Asset(s) and collect fees, tolls, rentals and other user charges from users of the Project's facilities or services for an agreed Contract Period as stipulated in the PPP Contract. After the expiry of the Contract Period, the Private Partner shall transfer all rights and benefits relating to the Project and the Project Asset(s) back to the Implementing Agency, in accordance with the terms of the PPP Contract. Variants of the BOT model include:

  - **Build-Lease-Transfer (BLT)**, wherein the Private Partner designs, finances and constructs the Project Asset(s) and after which leases the Project Asset(s) back to the Implementing Agency for a lease fee as stipulated in the PPP Contract. All other aspects of the BOT model remain the same under this variant.
  - **Build-Transfer-Operate (BTO)**, after the construction completion of Project Asset(s), the Private Partner shall transfer the title of the Project Asset(s) to the Implementing Agency. All other aspects of the BOT model remain the same under this variant.
- 2- Build-Own-Operate-Transfer (BOOT):** The Implementing Agency grants the Private Partner a right to design, finance, construct, operate and maintain Project Asset(s) and collect fees, tolls, rentals and user charges from users of the Project Asset(s) or services for an agreed contract period as stipulated in the PPP Contract. The BOOT model is distinct from the BOT model, where the Private Partner owns the rights to the Project Asset(s) during the contract period. After the expiry of the contract period, the Private Partner shall transfer all rights and benefits relating to the Project and the Project Asset(s) back to the Implementing Agency in accordance with terms and conditions of the PPP Contract.
- 3- Build-Own-Operate (BOO):** The Implementing Agency grants the Private Partner a right to design, finance, construct, own and operate Project Asset(s) in perpetuity or for an indefinite period, in accordance with terms and conditions of the PPP Contract. The Private Partner shall be entitled to make commercial use of the Project Asset(s), including collecting fees and other incomes from users of the Project's Asset(s) or services. Variants of the BOO model include:

- **Rehabilitate-Own-Operate (ROO):** This model has the same characteristics as BOO model, but the Private Partner shall obtain ownership rights of the existing Project Asset(s) for rehabilitation of that Project Asset(s);
- **Modernize-Own-Operate (MOO):** This model has the same characteristics as BOO model, but the Private Partner shall obtain ownership rights of the existing Project Asset(s) for modernization of that Project Asset(s);

**4- Management Agreement/Operations and Maintenance Agreement (O&M):**

The Private Partner shall provide daily services relating to operations and maintenance of existing Project Asset(s) or other state assets owned by the Implementing Agency, in return for service charges payable by Implementing Agency or other parties in accordance with terms and conditions of the PPP Contract. In general, this agreement does not require the Private Partner to invest its own capital and hold any rights to the Project Asset(s) or other state assets. In the event that Project requires the Private Partner to invest their own capital, the Private Partner can recover such investment from payments from the Implementing Agency or other parties in accordance with terms and conditions stipulated in the PPP Contract.

**5- Design-Build-Finance-Operate-Maintain (DBFOM):** The Implementing Agency grants the Private Partner a right to design, build, finance and provide operations and maintenance services for the Project Asset(s) in accordance with terms and conditions of the PPP Contract. The Private Party shall have the rights to collect revenue through the provision of services mentioned from the Implementing Agency or other parties in accordance with terms and conditions of the PPP Contract. At the end of the contract period, the Private Partner shall transfer the Project Asset(s) back to the Implementing Agency.

**6- Design-Build-Lease (DBL):** The Implementing Agency grants the Private Partner a right to design, build and lease the Project Asset(s) from the IA, operate, and provide maintenance in accordance with terms and conditions of the PPP Contract.

**7- Other PPP Models.**