



# LEGAL BRIEFING

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## PPP LAW

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On June 18, the National Assembly approved the Public-private partnership Law (PPP) with a 92.75% majority. Investment through Public-private partnership (PPP) has in the past been implemented for numerous projects such as transport infrastructure BOT projects, yet it is the first time that a bill has been proposed and submitted to the National Assembly. In comparison to Decree 63 and previous drafts of PPP Law, the approved version has been changed significantly to reflect the expectations of the private sectors. This update will focus on the governing law and dispute resolution provisions in the PPP Law.

### **1. Governing Law**

Under previous drafts of PPP Law, PPP contracts and other relevant documents signed between Vietnamese state agencies and investors are governed by Vietnamese law. Many foreign investors believe that application of foreign laws will ensure the solvency of the project, as foreign credit institutions tend to decline loans for PPP projects with contracts governed by Vietnamese law. They are also concerned that this provision would be detrimental to them if any disputes arise. However, the State prefers retaining the provision as the application of foreign laws to PPP contracts will put state agencies at a disadvantage because they might not be familiar with the laws of the investor's home country.

In response to foreign investors' concerns, the drafting team of PPP Law has successfully harmonised the expectations of both sides and eliminated the Governing Law clause. It means that parties are free to choose the governing law for their contract. However, investors should note that since PPP contracts are signed between private investors and a public authority, it is unlikely that the latter will agree to be made subject to a foreign law. Consequently, even if the law is silent on the matter, foreign law could hardly be the governing law of PPP contracts.

### **2. Resolving Disputes by Arbitration**

Similarly to Decree 63, the PPP law allows the dispute between a regulatory agency and an investor/special purpose entity, or the dispute between a special purpose entity and an economic organization participating in the project, to be resolved by negotiation, mediation, arbitration or at a Vietnamese

court. However, while Decree 63 obliges the parties to resolve their disputes through negotiation and mediation prior to resorting to arbitration or litigation, the PPP Law does not impose such requirement.<sup>1</sup> Therefore, parties could select to resolve their disputes via arbitration or litigation without first going through negotiation or mediation.

For contractual disputes related to PPP projects, in principle regardless of their nationality, the parties should have the freedom to choose the method to settle their disputes. However, in contrast with the principle, previous drafts of PPP Law restricted the right of domestic investors to settle disputes by foreign arbitration or international arbitration. It was suggested that the provision should be amended to allow parties to choose foreign arbitration in all contracts related to PPP projects regardless of the investor's nationality. Regretfully, the suggestion has been ignored and there is no change in this respect. In particular, Article 97 states that: "Disputes between competent agencies, agencies that sign contracts with domestic investors or PPP project enterprises established by domestic investors; disputes between domestic investors; disputes between domestic investors or PPP project enterprises established by domestic investors with Vietnamese economic organizations shall be settled by Vietnam arbitration or at Vietnamese courts."<sup>2</sup> The provision could deter domestic investors from participating in PPP projects as it limits their right in choosing the method of dispute settlement.

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<sup>1</sup> Article 67.1 Decree 63/ 2018/ND-CP; Article 97.1 PPP Law

<sup>2</sup> Article 97.2 PPP Law

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