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Thailand's Newly Proposed Public-Private Partnership Law

Development of public infrastructure has been increasing in line with Thailand's economic growth, and the private sector has played an important role in this regard. However, the existing law governing Public-Private Partnerships (PPP) is somewhat unclear and unsuitable for the current economic climate.

PPP refers to a government or state enterprise's project in which the private sector participates or jointly invests. Generally, PPP involves infrastructure development in sectors such as power and electricity, telecommunications, water, sanitation, and transport. PPP in Thailand is governed by the Private Participation in State Undertaking Act B.E. 2535, which has been effective since April 1992. The purpose of this legislation is to prevent corruption, because in the past, granting approvals or concessions for private sector entities to participate in government projects was subject to the consideration of only one government agency. In relation to private participation, the government may grant the concession, approval, or rights to a private sector entity via different forms, depending on the appropriateness of each project. Examples of high-profile PPP projects in Thailand include the Electricity Generating Authority of Thailand, the BTS SkyTrain, and the Don Muang Tollway.

The Private Participation in State Undertaking Act

The Private Participation in State Undertaking Act applies to private participation in state projects which involve funds or assets valued at THB 1 billion or more. However, state undertakings with funds or assets worth less than THB 1 billion may have to comply with this law if the Council of Ministers (i.e., the Cabinet) deems appropriate.

The procedures for PPP projects under this statute are divided into three steps: (1) project initiation; (2) selection of a private sector entity; and (3) project monitoring. The approval process of a PPP project is summarized below:

1. **Project Study.** The project agency must conduct a study and analysis of the project and present it to the responsible Minister of the project agency for approval. It will then be submitted to the Office of National Economic and Social Development or the Ministry of Finance, depending on whether the project is a new or existing project.
2. **Approval by the Cabinet.** After consideration by the Office of National Economic and Social Development or the Ministry of Finance, the project will be submitted to the Cabinet for approval.
3. **Invitation for Private Participation.** Once the Cabinet grants approval, the project agency will prepare an invitation letter for private participation in the project. A committee will also be appointed by the project agency for the next stage of the selection of private sector entities.
4. **Selection Process.** Once selection of a private sector entity, conducted by the appointed committee, is final, a draft agreement between the project agency and the selected private entity must be prepared and approved by the Office of the Attorney General.

5. **Final Approval by the Cabinet.** The result of the selection, draft agreement, and relevant information must be submitted to the Cabinet again for final approval.

As the law stipulates a long consideration process and the involvement of many government agencies, it may take up to two years to initiate a PPP project. In addition to these approval delays, there are also some practical problems with the application of the current law to PPP projects. The Private Participation in State Undertaking Act contains only 25 sections, while the number of PPP projects is dramatically increasing. The definitions of many terms in the Act are not provided or clearly specified, for example, "project," "the project's value or asset," or "new and existing project." The calculation of a project's value is not defined, the consideration process is lengthy, the governing framework is unclear, and there is no provision for the amendment or renewal of an agreement between the public and private sector. In addition, there is no central agency to provide support to PPP projects.

Newly Proposed PPP Law

In order to repeal the existing legislation and help address the problems in connection with PPP projects, a new PPP law has been proposed, called the "Private Joint Investment in State Undertaking Act." The bill was approved by the Cabinet on April 10, 2012, and sent to the House of Representatives for their approval on a fast-track consideration basis. If the draft is approved by the House of Representatives, it will be further sent to the Senate for final approval, and once granted, announced in the *Government Gazette* by the Prime Minister and will subsequently become effective. The draft new PPP law, as it currently stands, contains the following key provisions:

- The Private Participation in State Undertaking Act B.E. 2535 will be repealed.
- The Committee of Private Investment in State Undertaking will be appointed to set up policies and strategic plans in connection with PPP projects and to approve PPP projects, instead of the Cabinet.
- More specific definitions of terms will be provided (e.g., "state undertaking").
- The consideration procedure will be shortened and a time period for consideration will be set. Only approval from the Cabinet is required, while approval of the draft agreement between the project agency and the selected private entity by the Office of the Attorney General will no longer be required. The entire process for approval of a PPP project will be approximately seven to twelve months, instead of two years.
- Projects will not be classified as a new or existing project.
- The conditions and criteria to calculate a project's value will be subsequently announced by the Ministry of Finance.
- Clauses to amend and renew an agreement between the public and private sector will be provided.
- The project development funds to support the PPP project will be established as a source of funds for the government, rather than an annual government statement of expenditures. The funds will be used for the preparation of a strategic plan and consideration of the project's feasibility.

With more streamlined procedures and clearer guidelines, if and when the bill is passed by the relevant authorities, it will be a significant development for Thailand's PPP projects, and will hopefully strengthen the country's infrastructure sector. 🏗️