

## **Act Governing Private Sector Participation in or Operation of the State Activities (Summary)**

### **Introduction**

The Act Governing Private Sector Participation in or Operation of the State Activities B.E. 2556 (2013) (the “Act”) establishes a framework for government agencies (“Project-Ownning Agencies”) to propose projects that involve new private party investment, with the exception of petroleum concessions under the Petroleum Act, and mining leases under the Minerals Act. The Act came into force 4 April 2013.

### **Update as of 1 November 2015**

As of 1 November 2015, no new PPP project has been approved under the new Act.

Under Section 67 of the new Act, 15 ministerial regulations and notifications have been issued. See Annex 1.

The five-year Strategic Plan was announced on 10 June 2015. See Annex 2.

According to press releases, the Cabinet has agreed to fast-track 8 PPP projects at its meeting on 3 November 2015. There is mention of shortening the initial PPP process from 23 months to 9 months.

The government has 66 PPP projects under its five-year investment plan from 2015 to 2019.

The State Enterprise Policy Office of MOF is responsible for administration of the PPP Act.

### **Comparison with the Act Governing Private Sector Participation in or Operation of State Activities B.E. 2535 (1992) (the “Old Act”)**

During 1992 – 2013, there were 40 projects approved under the Old Act.

The new Act provides for a more practical roadmap for private party participation in state run activities such as project submission, implementation as well as supervision and followup. The following changes have occurred as result of this Act coming into force:

- The Act Governing Private Sector Participation in or Operation of State Activities B.E. 2535 (1992) was repealed.
- A Committee of Private Investment in State Activities has been appointed to set up the policies and strategic plans for PPP projects and approve such projects (instead of the Cabinet).
- The terms and processes in the new Act are more specific compared to the old Act
- The approval process of new PPP projects will be shortened, and a time period is set.
- There is a process for the amendment and renewal of existing agreements.

### **Strategic Plan**

The Committee prepared a Strategic Plan to create a policy-frame for private party participation in state activities in their respective ministries. The Strategic Plan includes: an investment policy of state activities in various disciplines, goals for private party participation in investment, investment estimates of the state and private sectors. Cabinet and the Committee must adhere to the Strategic Plan as the basis of considering project approval.

## **Project Submission Steps**

The steps for project submission under the Act are as follows:

1. The Project-Owning Agency will prepare a “project study and analysis” with a consultant approved by the Committee. This includes all projects over Baht 1 Billion, though in a recent effort to streamline the process, many projects worth between TBH1-5 Billion do not need to go through the approval process (Sections 24-25)
2. The Project-Owning Agency will present the results of the study to the Minister of the responsible ministry for approval. Approval will occur within sixty (60) days. (Section 26)
3. The Project-Owning Agency will present the results of the study to the Office. Assessment will be complete within sixty (60) days. Within thirty (30) days, the Office may ask the Project-Owning Agency to amend certain details or to provide additional relevant documents. (Section 26)
4. If the Office agrees to the proposal, the proposal will be sent to the Committee to ensure that the proposal is in compliance with principals set out in the Act and the Strategic Plan. (Section 27)

If a project requires the spending of a national budget or the budget of the Project-Owning Agency, an additional approval is required from Cabinet. (Section 28)

The Budget Bureau will assess the preliminary possibility in preparing the project for private party participation as well as coordinate with the state agency to propose the project when:

1. the state agency does not propose a project; and,
2. has the powers and duties in relation to the state activities found in the Strategic Plan; and,
3. the state agency is required to have private party participation.

If an agency wishes to operate a project designated under the Strategic Plan using the total cost of the national budget or the budget of that state agency, that agency must submit a comparison of costs between having private party participation and not having private party participation with their proposal. If the Committee decides that having private party participation would be best, the Project-Owning Agency must comply.

## **Project Implementation**

Upon approval by the Committee:

1. The Project-Owning Agency must provide an invitation notice, a document of proposal for joint investment, a method for announcing the invitation, a selection method by the selection committee, a stipulation of tender security and a “contractual security” including other rules in accordance with the Notification.(Section 33)
2. Create a Selection Committee with representatives from various government agencies which will have the following duties:
  - Consider/Approve the draft invitation notice, draft project scope and draft contract;
  - Determine the tender security and contractual security;
  - Negotiate and consider the selection of a private entity for joint investment;
  - Correspond with the project-owning agency or private entity to clarify or submit relevant documents; and
  - To consider other operations pertinent to the project as appropriate (Sections 35-36).
3. Within fifteen (15) days from the day of receiving the results of the private entity selection and negotiation together with the completion of the preparation of the draft joint investment contract, the selection committee will proceed as follows:

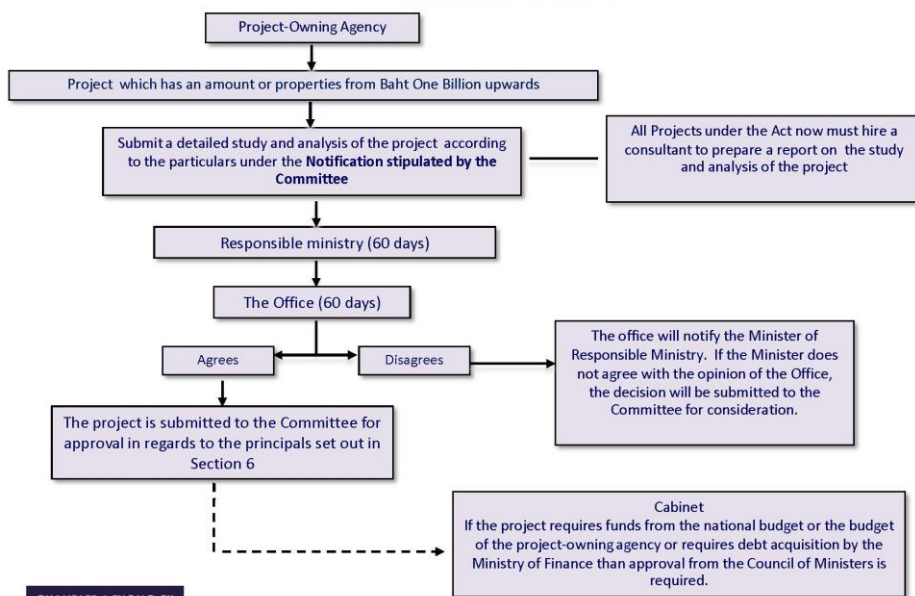
- Submit the results to the Office; and
  - Submit the draft joint investment contract which has been negotiated with the selected private entity to the Office of the Attorney General for examination and consideration.
4. Within thirty (30) days of receiving feedback from the Office and the Office of the Attorney General, the Minister of responsible ministry will create an opinion supplement and present the proposal to Cabinet for consideration.
  5. When the Cabinet approves the private entity selection and draft of the joint investment contract, the Project-Owning Agency shall proceed with the signing of the joint investment contract with the selected private entity.

### **Supervision and Follow-Up Action**

The Minister of the responsible government will appoint a supervisory committee which shall have powers and duties as follows:

- Ensure compliance with joint investment contract and plan to counter problems that may arise from the project implementation;
- Be involved in solving problems arising from the project implementation and prescribe that a consultant be engaged to solve such problems if necessary;
- Communicate with Project-Owning Agency to clarify or procure documents or information;
- Submit progress reports to the Minister of the Responsible Ministry and the Office; and
- Consider amendments to the joint investment contract under Chapter 7.

# 1. PROJECT SUBMISSION under the NEW ACT



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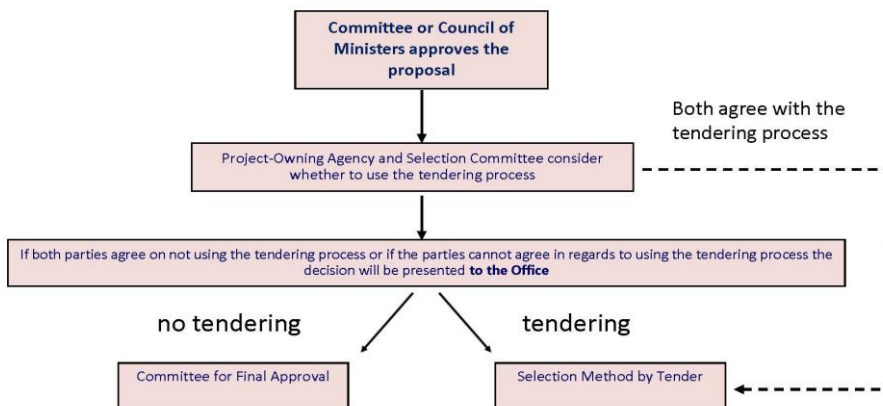
# 2. PROJECT IMPLEMENTATION under the New Act



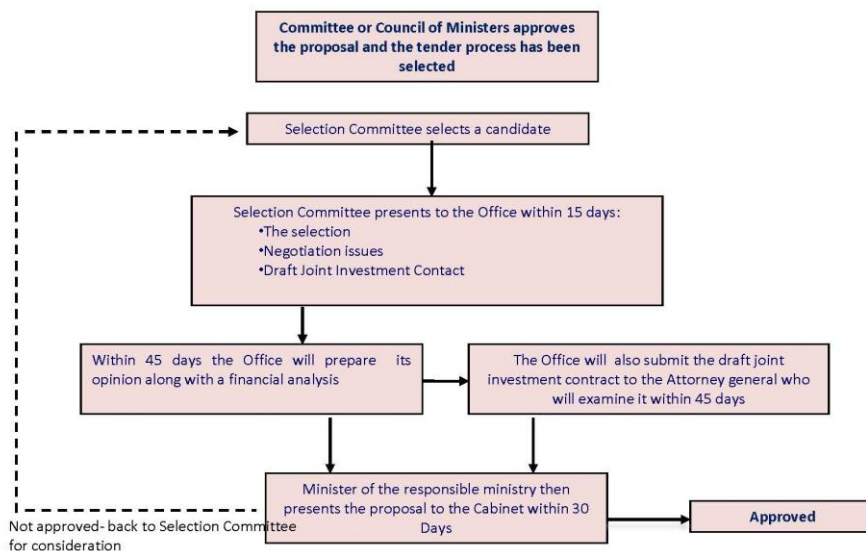
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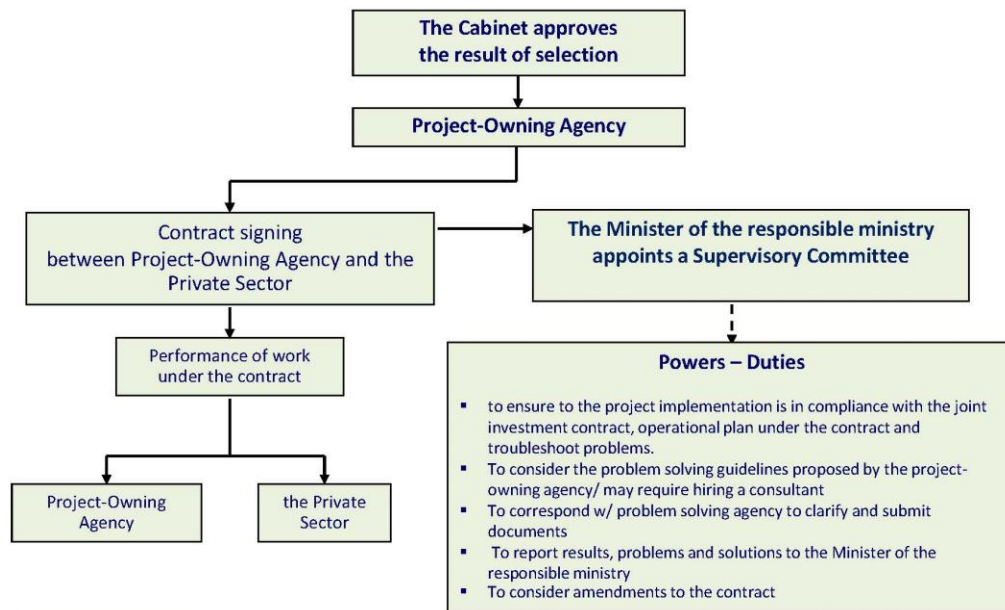
### 3. PROJECT IMPLEMENTATION under the New Act (Tendering)



### 4. PROJECT IMPLEMENTATION under the New Act after the selection of Tendering



## 5. SUPERVISION & FOLLOW-UP ACTION under the New Act



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- Annex 4: Amendment to Investment Partnership Contract
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- Annex 6: Act Governing Private Party Participation in Investment in State Business B.E. 2556 (2013)

**Annex 1**  
**Listing of Legislation**

*(Translation)*

**The Act Governing Private Party Participation in Investment in State Business B.E. 2556 (2013)**  
**and Notifications Issued thereunder**

No.	Thai	English	Issued Date	English Translation Available	Attachment/Notes
	พระราชบัญญัติ	Act			
1.	พระราชบัญญัติการให้เอกชนร่วมลงทุนในกิจการของรัฐ พ.ศ. 2556	Act Governing Private Party Participation in Investment in State Business B.E. 2556	29 March 2013	✓	
No.	ประกาศ	Notifications			
1.	หลักเกณฑ์วิธีการสรรหากรรมการผู้ทรงคุณวุฒิในคณะกรรมการนโยบายการให้เอกชนร่วมลงทุนในกิจการของรัฐ	Rules and Procedures for Selection of Qualified Persons in the board on policy of Private Participation in Investment in State Business	26 June 2013		
2.	หลักเกณฑ์และวิธีการจัดทำบัญชีรายชื่อผู้เชี่ยวชาญที่จะได้รับการแต่งตั้งเป็นกรรมการผู้ทรงคุณวุฒิในคณะกรรมการคัดเลือกและคณะกรรมการกำกับดูแล พ.ศ. 2556	Rules and Procedures for Preparing the List of Experts to be Appointed As Qualified Members in the Selection Committee and the Supervisory Committee B.E. 2556	15 Oct 2013		
3.	รายละเอียดที่ต้องมีในผลการศึกษาและวิเคราะห์โครงการของหน่วยงานเจ้าของโครงการ พ.ศ. 2557	Details Required in Results of Project Study and Analysis of the Project-Owner Agency B.E. 2557	29 Jan 2014		
4.	ลักษณะของเอกชนที่ไม่สมควรให้ร่วมลงทุนในกิจการของรัฐ และบุคคลที่ไม่สมควรได้รับแต่งตั้งเป็นที่ปรึกษา พ.ศ. 2557	Characteristics of Private Party Disqualified for Participation in the State Business, and of the Person Disqualified for Appointment as Consultant B.E. 2557	29 Jan 2014		



5.	หลักเกณฑ์และวิธีการรับฟังความคิดเห็นในการจัดทำแผนยุทธศาสตร์การให้เอกชนร่วมลงทุนในกิจการของรัฐ	Rules and Procedures for Gathering of Opinions in Preparing the Strategic Plan for the Private Participation in the State Business	29 Jan 2014		
6.	คุณสมบัติและลักษณะต้องห้ามของที่ปรึกษา พ.ศ. 2557	Qualifications and Prohibited Characteristics of the Consultant B.E. 2557	29 Jan 2014		
7.	ประโยชน์ตอบแทนของกรรมการ อนุกรรมการ และผู้เชี่ยวชาญตามพระราชบัญญัติการให้เอกชนร่วมลงทุนในกิจการของรัฐ พ.ศ. 2556	Remuneration of the Committee Members, Subcommittee Members and Experts under the Act Governing Private Party Participation in Investment in State Business B.E. 2556	7 Feb 2014		
8.	รายละเอียดประกาศเชิญชวน เอกสารข้อเสนอการร่วมลงทุน วิธีการประกาศเชิญชวน วิธีการคัดเลือกของคณะกรรมการคัดเลือก การกำหนดหลักประกันซองและหลักประกันสัญญา พ.ศ. 2558	Details of invitation notice , document of proposal for investment participation, method for announcing the invitation, selection methods of the selection committee prescription of bidding security and performance security	30 Jan 2015		
9.	ข้อกำหนดมาตรฐานของสัญญาร่วมลงทุน พ.ศ. 2558	Standard provisions of the investment participation contract	30 Jan 2015	✓	
10.	ลักษณะการแก้ไขสัญญาร่วมลงทุนในส่วนที่เป็นสาระสำคัญ พ.ศ. 2558	Characteristics of amendment to the joint investment contract in material content	11 Feb 2015	✓	
11.	หลักเกณฑ์และวิธีการคำนวณมูลค่าของโครงการการลงทุนในกิจการของรัฐ พ.ศ. 2558	Rules and procedures for calculation of the project value of investment in the state business	11 Feb 2015		
12.	ประกาศสำนักงานคณะกรรมการนโยบายรัฐวิสาหกิจ เรื่องแนวทางปฏิบัติสำหรับการคำนวณมูลค่าของโครงการลงทุนในกิจการของรัฐ	Announcement of the Office of State Enterprise Policy Board Re: Practice Guidelines for Computation of value of an Investment Project in State Business	6 March 2015		
13.	หลักเกณฑ์และวิธีการให้เอกชนร่วมลงทุนในโครงการที่มีวงเงินมูลค่าต่ำกว่าที่กำหนดในมาตรา 23 แห่ง พ.ร.บ.การให้เอกชนร่วมลงทุนในกิจการของรัฐ พ.ศ. 2556 พ.ศ. 2558	Rules and Procedures for Private Party Participation in Investment in State Business with Value Limit Lower Than that Prescribed in Section 23 of The Act governing PPP in Investment in State Business 2013	17 March 2015		

14.	แผนยุทธศาสตร์การให้เอกชนร่วมลงทุนในกิจการของรัฐ พ.ศ. 2558-2562	Strategic Plan for Public-Private Partnership in State Undertaking B.E. 2558-2562	10 June 2015	✓	
No.	<b>ระเบียบ</b>	<b>Regulations</b>			
1.	ว่าด้วยการบริหารกิจการกองทุนส่งเสริมการให้เอกชนร่วมลงทุนในกิจการของรัฐ พ.ศ. 2557	Management of the Fund for Promotion of the Private Party Participation in the State Business B.E. 2557	3 March 2014		

Annex 2  
Strategic Plan

*(Translation)*

**Notification of the Public-Private Partnership in State Undertaking Policy Board**  
**Re: Strategic Plan for Public-Private Partnership in State Undertaking**  
**B.E. 2558-2562 (2015-2019)**

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Whereas it is appropriate to provide a strategic plan for private partnership in the State undertaking, each has a term of five years, to determine the private partnership in compliance with the provisions governing fundamental policy of the Constitution of the Kingdom of Thailand and the National Economic and Social Development Plan.

By virtue of the provisions of Section 16 (7), Section 19 and Section 21 of the Act on Public-Private Partnership in State Undertaking B.E. 2556, the Public-Private Partnership in State Undertaking Policy Board has prepared a Strategic Plan for Public-Private Partnership in State Undertaking B.E. 2558-2562 (2015-2019). The plan was submitted to, and approved by, the Cabinet on May 26, 2015. Contents thereof are as attached herewith.

Please be informed accordingly.

Given on this 10<sup>th</sup> day of June, 2015

**M.R. Preediyathorn Devakula**  
Deputy Prime Minister  
Chairman of the Public-Private Partnership in State Undertaking Policy Board

**Strategic Plan for Public-Private Partnership in State Undertaking  
B.E. 2558-2562 (2015-2019)**

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Whereas the Act on Public-Private Partnership in State Undertaking B.E. 2556 prescribes that a plan for private partnership shall be prepared for use as a clear and definite state policy to determine the state undertaking which requires and promotes private partnership under the timeframe of the Strategic Plan for Public-Private Partnership in State Undertaking, and for stimulating private interest and investment in the said state undertaking. The plan was approved by the Cabinet on May 26, 2015. Details thereof are as follows:

**Type and Nature of the Undertaking Requiring Private Partnership**

Group 1: 6 undertakings that require private partnership (Opt-out):

- 1.1 City mass transit system by rail
- 1.2 City toll way
- 1.3 Cargo port
- 1.4 High-speed train system
- 1.5 Telecommunication network
- 1.6 High-speed internet system

Group 2: 14 undertakings the State promotes private partnership (Opt-in):

- 2.1 Inter-city toll way
- 2.2 Station for transporting, containing, separating and distributing goods
- 2.3 Common ticket
- 2.4 Airport area management
- 2.5 Water quality management system
- 2.6 Irrigation system
- 2.7 Waste disposal system
- 2.8 State educational facility
- 2.9 Public health infrastructure
- 2.10 Drug and medical equipment
- 2.11 Infrastructure for science, technology and innovation
- 2.12 Digital economy
- 2.13 Large convention center
- 2.14 Residence for the low-income, aged, disable and underprivileged.

**Aim of the Private Partnership and Scope of Time**

Under the five-year plan, the State aims to implement the 6 undertakings under Group 1 primarily in private partnership and promotes the private partnership in 14 undertaking under Group 2, for rapid development of the said businesses, thereby restrictions on investment from state budget and state loan can be reduced and public service in that business will be more efficient.

**Estimate of Investments during 2015-2019**

The total value of the public-private partnership in the state projects during the said time under the plan is estimated at Baht 1.41 trillion.

The state investment in each fiscal year depends on the form of private partnership in each project in detail, and complies with the budgetary procedures of the relevant year.

**Business Connection under the Plan 2015-2019**

Development of the project in each business takes into consideration the connection between the scope of work and time for developing and implementing the project to prevent duplication of investment and to enable the public to receive service continuously, for maximum efficiency of the project implementation. The business connection has 3 levels:

1. Inter-connection: For example, development and implementation of the rail transit system takes into consideration the connection to other rail routes, which give rise to common interest from station inter-connection and mass carriage by the routes.
2. Intra-connection: For example, development and implementation of the project in the business relating to transport, cargo port, station for containing, separating and distributing goods, inter- city toll way and high-speed train takes into consideration the common interest of the projects to enhance the intra-transport system and to prevent duplication of investment.
3. Extra-connection: For example, development and implementation of the State's educational facility project in educational area takes into consideration the high-speed internet system in communication area so that such educational facility is able to use the high-speed internet in educational development.

**Public-Private Partnership in State Undertaking Policy Board  
June, 2015**

Annex 3Standard Provisions of an Investment Partnership Contract*(Translation)*

**Announcement of the Office of State Enterprise Policy Board  
Re: Standard Provisions of an Investment Partnership Contract  
B.E. 2558 (2015)**

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Whereas it is appropriate to prescribe standard provisions of an investment partnership contract in regard to a project which private party partnership in investment is allowed,

By virtue of Section 34 of the Act on Public-Private Partnership in State Undertaking B.E. 2556 (2013), the Office of State Enterprise Policy Board with approval of the Public-Private Partnership in State Undertaking Policy Board thus issues this Announcement as follows:

**Clause 1.** This Announcement shall be called “Announcement of the Office of State Enterprise Policy Board Re: Standard Provisions of an Investment Partnership Contract B.E. 2558 (2015)”.

**Clause 2.** This Announcement shall become effective on the day following the date of its publication in the Government Gazette.

**Clause 3.** An investment partnership contract in regard to a project which private party partnership in investment is allowed pursuant to Section 33 of the Act on Public-Private Partnership in State Undertaking B.E. 2556 (2013) shall at least contain standard provisions under Clause 4.

**Clause 4.** Standard provisions required to be contained in the investment partnership contract shall comprise details in the following subjects whereby they shall be in accordance with the rules stipulated herein and the practice guidance stipulated by the Office under Clause 7:

- (1) Project duration;
- (2) Service provision and project implementation;
- (3) Rights and duties of each contract party;
- (4) Investment of the project-owner agency and the private party, including the source of fund of the private party;
- (5) Assets which include project’s ownership and computation of assets value of the project, should there be the use of the state’s property in project implementation; the rights and duties of each contract party in relation to the utilization and maintenance of such property shall be stated as well;
- (6) Restoration and development of the project’s assets;
- (7) Rate of service charges and alteration to such rate, payment method made by the private party or the project-owner agency, benefits in return between the private party and the project-owner agency which includes benefits in return which are variable in operational result, and the rights in deduction of the costs or taxes and fees from income generated; provided that the examination of the correctness and completeness in income so generated shall also be stated;

- (8) Granting of support of the state sector for implementation under the contract of the private party partnership in investment;
- (9) A change in the nature of service provision of the project, a change in the party to the contract, contractor, sub-contractor and assignment of claims;
- (10) Force majeure and action taken in case of occurrence of force majeure, including payment of compensation;
- (11) Causes of contract termination, method for contract termination, effects of termination other than the case of expiration of the contract term, including details in regard to the operational method for subsequent provision of services if the project is suspended, and payment of damages in connection to contract termination;
- (12) Performance security, guaranty; conditions for the return or forfeit of the performance security shall also be stated;
- (13) Insurance and payment of indemnity;
- (14) Dispute resolution which shall not bind the project-owner agency to use the method therefor by arbitration, except the project-owner agency will have shown the rationale and necessity owing to normal practice of the type of such investment partnership contract or any other unavoidable cause;
- (15) Applicable law which is required to be prescribed that the investment partnership contract and documents in relation thereto, including the project implementation shall be subject to Thai laws;
- (16) Rights of the project-owner agency in entry for project implementation;
- (17) Intellectual property;
- (18) Taxes, duties and fees;
- (19) Other matters as stipulated in the practice guidance by the Office.

The parties may prescribe details in relation to any of the standard provisions in the principal contract or attachment to the investment partnership contract. In case of prescribing in the attachment to the investment partnership contract, the parties shall prescribe in the principal contract that such attachment shall be deemed integral part of the investment partnership contract.

**Clause 5.** The investment partnership contract shall not contain provisions or contents in the following characteristics:

- (1) A renewal or extension of the project duration in the investment partnership contract shall be made immediately without negotiation between the parties;
- (2) The private party shall have exclusive right to adjust or change conditions for project implementation which will effect the provision of public services or the state's benefits.

**Clause 6.** The investment partnership contract and other documents which are integral part thereof are required to be prepared in Thai language. However, the preparation of such can be made in English language; specifically in necessary parts for which the project-owner agency has shown the

rationale and necessity owing to normal practice of the type of such contract, or any other unavoidable cause.

In case of preparation of any content of the investment partnership contract is made in English under paragraph one, it shall be stated in the said contract that in case of appearance of the statements in English language containing content which is inconsistent with or contradictory against those in Thai language, the parties shall retain to statements in Thai language.

In case of preparation of the investment partnership contract for translated to a foreign language, it shall be stated in the investment partnership contract that contents in the translation of such shall not be adjusted for use and interpreted with the mentioned investment partnership contract.

**Clause 7.** For the benefit of compliance herewith, the Office is empowered to stipulate the practice guidance on the preparation of standard provisions and of the investment partnership contract hereunder.

Announced on this 30<sup>th</sup> January 2015

**Kulit Sombatsiri**

Director-General, Office of State Enterprise Policy Board



Annex 4Amendment to Investment Partnership Contract*(Translation)*

**Announcement of the Public-Private Partnership in State Undertaking Policy Board  
Re: Characteristics of Amendment to Investment Partnership  
Contract in Material Content  
B.E. 2558 (2015)**

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Whereas it is appropriate to stipulate the characteristics of amendment to the investment partnership contract in material content so that the amendment to the provisions requested therefor, effects from the amendment to the investment partnership contract and other related particulars are considered in details, with carefulness and state's benefits are taken into account.

By virtue of Section 47, paragraph four, of the Act on Public-Private Partnership in State Undertaking B.E. 2556 (2013), the Public-Private Partnership in State Undertaking Policy Board hereby issues this Announcement as follows:

**Clause 1.** This Announcement shall be called "Announcement of the Public-Private Partnership in State Undertaking Policy Board Re: Characteristics of Amendment to Investment Partnership Contract in Material Content B.E. 2558 (2015)".

**Clause 2.** This Announcement shall become effective on the day following the date of its publication in the Government Gazette.

**Clause 3.** Amendment to the investment partnership contract in material content means amendment to any of the following characteristics:

- (1) Amendment to the nature of the project, alteration to the scope of work, alteration to the service provision, or alteration to project implementation whereby the amendment to the characteristics stipulated in this Clause shall result in terms of the provision of public services under the goal which are to be changed from its original or being an increase of benefits to the private party;
- (2) Amendment in relation to the state's benefits whether in any form which includes a change in benefits in return in the form of money or portion of income, a change to ownership in the project's property and a change in relation to dispute resolution;
- (3) A change in entity of a contract party or organizational structure which results in inability to implement the project further;
- (4) A change in the contract term;
- (5) A change in performance security;
- (6) A change in service fee rate or service quality;

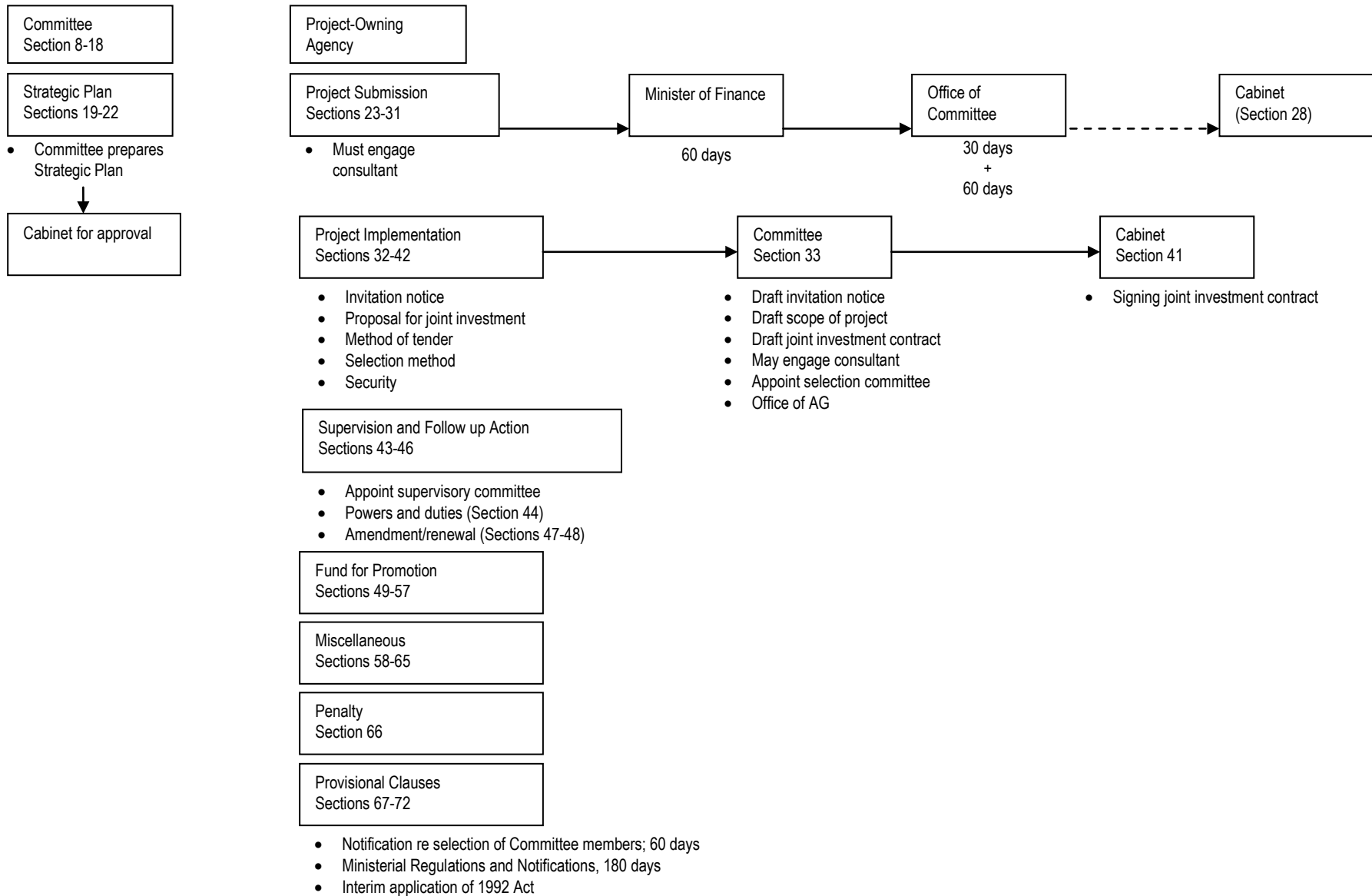
**Clause 4.** For the benefit of compliance herewith, the Office shall be empowered to stipulate the practice guidance on consideration of characteristics of any of amendment as stipulated in Clause 3.

Announced on this 11<sup>th</sup> February 2015

**M.R. Pridiyathorn Devakula**

Chairman of the Public-Private Partnership in State Undertaking Policy Board

**Annex 5**  
**Outline of new PPP Law**



Annex 6**Act Governing Private Party Participation in Investment in State Business B.E. 2556 (2013)***(Translation)***ACT ON PUBLIC-PRIVATE PARTNERSHIP****IN STATE UNDERTAKING****B.E. 2556 (2013)**

BHUMIBOL ADULYADEJ, REX.  
Given on the 29<sup>th</sup> day of March B.E. 2556  
Being the 68<sup>th</sup> Year of the Present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that,

Whereas it is appropriate to promulgate a law governing private party partnership in or operation of state business.

This Act contains certain provisions concerning the restriction of personal rights and freedoms, which, under Section 29, together with Section 43 of the Constitution of the Kingdom of Thailand, can be done by virtue of the provisions of law.

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the Parliament, as follows:

**Section 1.** This Act shall be called “The Act on Public-Private Partnership in State Undertaking B.E. 2556”

**Section 2.** This Act shall come into force from the day following the date of its publication in the Government Gazette.

**Section 3.** The Act Governing Private Party Partnership in or Operation of State Business B.E. 2535 (1992) shall be repealed.

**Section 4.** In this Act,

“State Undertaking” means the business with any one of the following natures:

- (1) business which any one or several altogether of the government authority, state enterprise, other state agency or local administrative body has the power and duty to perform under the law;
- (2) business which is to use natural resources or properties of any one or several altogether of the government authority, state enterprise, other state agency or local administrative body.

“Partnership” means investment partnership with a private party by any means, or investment granted solely to the private party by means of permission, concession or right of any nature.

“Project” means investment in state business.

“Project-Owner Agency” means the government authority having the status of department or equivalent, state enterprise, other state agency or local administrative body, which a private party is allowed to participate in investment in the state business.

“State Enterprise” means:

- (1) government organization under the law governing establishment of government organizations, state business under the law establishing such business, or business agency owned by the government;
- (2) company or juristic partnership in which the Ministry of Finance or state enterprise under (1) or other state agency has capital of more than fifty per cent.

“Other State Agency” means an agency under supervision of the state, public organization or agency established under specific law, or other agency which has juristic person status other than the government authorities and state enterprises which are under supervision of the Administration.

“Local Administration Body” means the Provincial Administration Organization, Municipality, Tambon Administration Organization, Bangkok Metropolitan Administration, Pattaya City or other local administrative body established by law.

“Responsible Ministry” means:

- (1) In the case of government authorities, means ministry or sub-ministry to which government authorities are attached under the law governing improvement of ministries, sub-ministries and departments.
- (2) In the case of state enterprises, means:
  - (a) For state enterprises other than companies, means ministry or sub-ministry which the Minister is in charge under the law governing the establishment of that state enterprise or the Minister responsible for operation of that state enterprise.
  - (b) For companies, means the Ministry of Finance, ministry or sub-ministry authorized by the Ministry of Finance to exercise the right of holding shares in a company on the Ministry of Finance’s behalf for the purpose of acting as the responsible ministry under this Act.
- (3) In the case of other state agency, means ministry or sub-ministry in charge of the enforcement by the minister under the law governing establishment of such agency or the responsible minister of such agency.
- (4) In the case of local administrative body, means the Ministry of Interior.

“Private Party” means a person or juristic person other than state agencies or other agencies of the Thai government.

“Strategic Plan” means Strategic Plan for Public-Private Partnership in State Undertaking.

“Fund” means the Public-Private Partnership in State Undertaking Promotion Fund.

“Board” means the Public-Private Partnership in State Undertaking Policy Board.

“Fund Committee” means the Public-Private Partnership in State Undertaking Promotion Fund Committee.

“Office” means the State Enterprise Policy Office.

“Minister” means the minister in charge of the enforcement of this Act.

**Section 5.** The Minister of Finance is in charge of the enforcement of this Act and empowered to issue ministerial regulation to ensure compliance with this Act.

That ministerial regulation shall come into force upon publication in the Government Gazette.

## CHAPTER 1 General Provisions

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**Section 6.** Private partnership in State Undertaking shall take into account the following principles:

- (1) Efficiency and cost-effectiveness in operating state business and resources;
- (2) Observance of the financial and monetary discipline;
- (3) Benefits to society and economy from project operation;
- (4) Transparency in the decision-making process concerned;
- (5) Allocation of risks appropriated to the project between the state and private party;
- (6) Rights and benefits of service recipient and service provider;
- (7) Promotion of fair competition between private entities wishing to participate in investment.

**Section 7.** This Act shall apply to the private partnership in investment in state business except the award of concession under the petroleum law and the award of Prathanabat (mining lease) under the minerals law.

In the case where any state business has the law sufficiently prescribing the consideration process for private partnership as well as for monitoring the implementation of the project, a royal decree shall be enacted in order to exempt the application of this Act to the private partnership in investment in that state business.

## CHAPTER 2 The Public-Private Partnership in State Undertaking Policy Board

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**Section 8.** There shall be a Board called the “The Public-Private Partnership in State Undertaking Policy Board” comprising the Prime Minister as chairman, Minister of Finance as vice-chairman, Permanent Secretary of the Ministry of Finance, Secretary-General of the Council of State, Secretary-General of the National Economic and Social Development Board, Director of the Budget Bureau, Director-General of the Comptroller General’s Department, Director of the Public Debt

Management Office, the Attorney General and qualified persons appointed by the Council of Ministers of not more than seven persons, as members.

Director of the State Enterprise Policy Office shall be member and secretary and no more two officials appointed by the Director of the State Enterprise Policy Office as deputy secretaries.

**Section 9.** Appointment of qualified members under Section 8 shall be considered by the Council of Ministers from the name list of persons nominated from the selection method in accordance with rules and procedures prescribed by the Minister.

**Section 10.** A qualified member under Section 8 must be Thai nationals and possess no prohibited characteristics as follows:

- (1) Being incompetent or quasi-incompetent;
- (2) Being a bankrupt or having been a dishonest bankrupt;
- (3) Having been imprisoned by the final court judgment, except for an offense committed by negligence or a petty offense;
- (4) Having been adjudicated or ordered by the court to vesting his/her property in the state for being unusually rich or unusual increase in the property;
- (5) Having been dismissed, discharged or ordered to leave the government service, state agency or state enterprise or private agency on charge of malfeasance in office;
- (6) Being or having been a member of the House of Representatives, member of the Senate, member of the local council, local administrator or holder of other political office, except that he/she vacates office for not less than one year.
- (7) Holding or having held a position in a political party, unless he/she vacates the position for not less than one year.
- (8) Being a person subject to a period barred from holding political office or having been removed from, or vacated the office by the Senate resolution.

**Section 11.** Qualified members under Section 8 have has an office term of four years. A qualified member who vacates office may be re-appointed but cannot hold the office for more than two consecutive terms.

If a qualified member under Section 8 vacates the office upon completion of the term but the appointment of a new qualified member has not been carried out, that qualified member shall remain in office until the new qualified member is appointed, provided that he shall further perform the duties not exceeding one hundred and twenty days.

**Section 12.** Besides vacating the office upon completion of the term, a qualified member under Section 8 shall vacate the office upon:

- (1) Death;
- (2) Resignation;
- (3) Having seventy years;

- (4) Lacking qualifications or having any one of prohibited characteristics under Section 10;
- (5) Being absent from meetings of the Board for more than three consecutive times without reasons;
- (6) Being dismissed by the Council of Ministers.

**Section 13.** In the case where a qualified member under Section 8 vacates the office before completion of the term and a new qualified member is not yet appointed to replace the vacancy, the remaining board members shall continue to perform their duties.

When a qualified member under Section 8 vacates office before the completion of the term, the selection of a qualified member shall be made within sixty days from the date the position becomes vacated, unless the office term of the qualified member so vacated is less than one hundred and eighty days, appointment of qualified member for such replacement may not be made.

A qualified member under Section 8 who is appointed to replace the vacancy shall have the term in office equal to the remaining term of the qualified member whom he is appointed to replace.

**Section 14.** At meetings of the Board, at least one half of the board members present at a meeting shall constitute a quorum.

The Chairman of the Board shall be the Chairman of meetings. If the Chairman of the Board is absent or unable to perform duties, the Vice-Chairman shall be the Chairman of the meeting. If both the Chairman and Vice-Chairman are absent or unable to perform duties, the meeting shall select one member to serve as Chairman for that meeting.

Decisions shall be made by majority vote. Each member is entitled to one vote. If the vote is tie, the Chairman of that meeting shall cast an additional vote.

A board member who has an interest in the matter for consideration shall not attend the meeting or cannot vote on such matter.

**Section 15.** Within a period of two years from the date of vacation of office, board members under Section 8 are prohibited to do the following acts:

- (1) To be a director, person with managerial power or advisor of the private business selected for investment partnership in the project approved in principle by the board during the tenure of their office;
- (2) To hold shares in the private party under (1) of more than zero point five per cent of the paid-up capital.

Prohibition under paragraph one includes a director, person with managerial power or advisor of, or the holding of shares of more than zero point five per cent of paid up capital in, a juristic person in which the private party under paragraph one holds shares of more than twenty-five per cent, or in a juristic person which holds shares in the private party under paragraph one of more than twenty-five per cent.

**Section 16.** The Board shall have powers and duties as follows:

- (1) To prepare strategic plan and propose for approval from the Council of Ministers;



- (2) To approve principles of the project in which the private party will participate in investment and implementation as prescribed herein;
- (3) To suggest monetary or financial measures or guidelines for promoting private party partnership in investment in state business to the Council of Ministers;
- (4) To approve or make decision not to use the selection method by bidding method under Section 38;
- (5) To provide recommendations or opinions to the Council of Ministers prior to promulgation of the Royal Decree under Section 7;
- (6) To determine rules and procedures for the private party partnership in investment in the projects having value below the prescription in Section 23 for practice by state agencies under Section 58;
- (7) To issue notifications as prescribed in this Act;
- (8) To prepare reports as prescribed in this Act;
- (9) To decide problems in regard to compliance with this Act;
- (10) To perform other duties under this Act or under other law prescribing as powers and duties of the Board or as assigned by the Council of Ministers.

**Section 17.** The Board shall have the power to appoint a subcommittee or any person with expertise or experience beneficial for the performance of duties of the Board to perform any duty or carrying out any act as assigned by the Board.

Performing duties of the subcommittee or person under paragraph one shall be as prescribed by the Board.

Section 14 shall apply to the subcommittee, *mutatis mutandis*.

**Section 18.** The Office of State Enterprise Policy Board shall be responsible for administrative function of the Board and shall have powers and duties as follows:

- (1) To prepare draft strategic plan and propose to the Board;
- (2) To study and analyze the project and provide opinions to the Board for approval;
- (3) To prepare draft financial or monetary measures or guidelines for supporting the private party partnership in investment in state business, and propose to the Board;
- (4) To provide opinions to the Board in case of not using the selection method by bidding method under Section 38;
- (5) To prepare draft notification prescribing rules and procedures for private party partnership in investment in state business for the project with value below the prescription in Section 23, and propose to the Board under Section 58;
- (6) To cooperate technique, research and development with state agencies, research and development agencies and private organizations inside and outside the country whose duties are related to investment partnership in the state business, arrange to have development of potentials of

personnel in the state agency in order to equip them with knowledge and expertise for efficient performance under this Act;

- (7) To study, research, develop and establish the database relating to private party partnership in investment in state business for dissemination of knowledge and advise to state agencies and general public to promote and build up understanding of private party partnership in investment in state business;
- (8) To consider and establish practice guidelines relating to implementation of this Act;
- (9) To report problems and difficulties in implementation of this Act to the Board;
- (10) To do other act as prescribed by this Act or other laws as powers and duties of the Office or as assigned by the Council of Ministers, Minister or the Board.

### CHAPTER 3 Strategic Plan for Public-Private Partnership in State Undertaking Policy Board

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**Section 19.** There shall be a strategic plan for the purpose of formulating policies of the private party partnership in investment in state business in compliance with the provisions governing the State's fundamental policy of the Constitution of the Kingdom of Thailand and the National Economic and Social Development Plan, which each plan shall have a term of five years.

The strategic plan under paragraph one shall include at least the following particulars:

- (1) Investment policy in state business in various fields, and type and nature of the business where the private party partnership in investment is required, together with its importance, urgency and order of priority, provided that operational ability of the state agency and the private party concerned shall be taken into account.
- (2) Objectives of the private party partnership in investment and timeframe for operation;
- (3) Estimate of investment of the state and the private party, and the estimated use of the budget by the state must be stated in each fiscal year;
- (4) Connection of the activities which the private party partnership in investment is required.

**Section 20.** In preparation of the strategic plan, the minister of the responsible ministry shall propose the policy scope of the private party partnership in investment in the state business under the responsibility of the ministry to the Board according to the time prescribed by the Board, as information in support of preparation of the strategic plan of the Board.

The policy scope proposed by each ministry shall provide an overview, nature of the project and order of priority of the state business under the responsibility of the ministry, necessary or suitable for the private party partnership in investment.

In preparation of the strategic plan, opinions of the state agencies and the public concerned shall be gathered under rules and procedures prescribed by the Board.

**Section 21.** When the Board has already prepared the strategic plan under Section 19, the plan shall be proposed to the Council of Ministers for approval and publication in the Government Gazette.

The strategic plan so published shall bind the state agencies in preparing and submitting of the project consistent to the strategic plan. In approving the project, the Council of Ministers and the Board shall base its consideration primarily on the strategic plan.

Where it is appropriate to improve the strategic plan, the Council of Ministers may assign the Board to, or the Board may propose to the Council of Ministers for approval of, improvement of the strategic plan. Upon approval by the Council of Ministers, the strategic plan so improved shall be published in the Government Gazette.

**Section 22** Upon completion of three years of the publication date of the strategic plan, the Board shall prepare the report on results of implementation under the strategic plan and submit it to the Council of Ministers, provided that problems and difficulties in the implementation and guidelines for solving or preventing such problems and difficulties must be stated in support of preparation of the next strategic plan.

#### **CHAPTER 4** **Project Submission**

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**Section 23.** A project with value of one billion baht or more, or increasing value prescribed by ministerial regulation, is required to proceed with the rules and procedures prescribed in this Act.

Rules and procedures for calculation of the project value under paragraph one shall be as announced and prescribed by the Board.

**Section 24.** In submitting the project, the project-owner agency must submit results of study and analysis of the project according to the description announced and prescribed by the Board.

The announcement under paragraph one shall contain at least the following details:

- (1) Reasons, necessities and benefits of the project and compatibility with the strategic plan;
- (2) Operation cost. Where it is a project under which spending of the state budget is included, necessary state budget for the duration of project must be stated.
- (3) Comparison between spending of the state budget or the government agency's budget and the private party partnership in investment, in respect of costs and cost effectiveness in operation;
- (4) Choices for private party partnership in investment in various forms and interest and readiness of the private party in each form;
- (5) Impacts from the project;
- (6) Relevant risks and guidelines for management of risks of the project;
- (7) In case the project-owner agency will spend its budget for operation, its financial position, source of budget, total budget burden to be used in other projects and ability to seek budget for the purpose of carrying out the project without affecting its overall financial position must be stated.

**Section 25.** The project-owner agency must engage a consultant to prepare a report of results of study and analysis of the project. The consultant must prepare a specific report according to the description prescribed by the Board in Section 24 together with other material contents which the

consultant deems appropriate. The project-owner agency shall also submit the report of the consultant for use in support of consideration under Section 26.

Qualifications and prohibited characteristics of the consultant shall be as announced and prescribed by the Board.

The Office shall prepare the name list of consultants who have qualifications and have no prohibited characteristics under paragraph two according to rules and procedures stipulated by the Minister.

**Section 26.** The project-owner agency shall submit results of study and analysis of the project to the minister of the responsible ministry for approval, provided that consideration shall be completed within sixty days from the date of receipt of the results from the project-owner agency, then the project-owner agency shall further propose the same to the Office.

Within thirty days from the date of receipt of results of study and analysis of the project, the Office may request the project-owner agency to revise some particulars of the project or to provide additional relevant documents. If such act causes a need to revise results of study and analysis of the project accordingly, the project-owner agency shall carry out such revision simultaneously, then propose to the minister of the responsible ministry for approval of the revision again. However, the project-owner agency is required to deliver the revision to the Office according to the time prescribed by the Office.

**Section 27.** When the Office receives results of study and analysis of the project together with complete related documents, the Office shall proceed as follows:

- (1) If the Office agrees to the project, the project shall be proposed to the Board for approval of the principle;
- (2) If the Office does not agree to the project, opinion of the Board shall be notified to the minister of the responsible ministry and the project-owner agency. If the minister of the responsible ministry does not agree to the opinion of the Office, the project shall be submitted to the Board for further decision.

In proposing the matter to the Board under (1) or (2), opinions of the Office of the National Economic and Social Development Board and related agencies shall be concurrently submitted in support of consideration. In the case where the project has to spend the state expenditure budget, opinions of the Budget Bureau must be provided in support of consideration as well.

The Office shall complete the consideration of the project under this Section within sixty days from the date of receipt of results of study and analysis of the project together with complete relevant documents. Upon the lapse of the said period, it shall be deemed that the Office agrees to the project.

**Section 28.** If any project is to spend the state expenditure budget or the budget of the project-owner agency, or is to incur debts by borrowing or guaranteed by the Ministry of Finance for expense in operation of the project, when the Board approves the principle of the project, the project and the amount of expenditure budget or the amount of debts to be incurred under the project shall be submitted to the Council of Ministers for approval. Approval by the Council of Ministers shall be deemed an approval under the law governing budgetary procedure, the law governing the national economic and social development or the law governing public debt management in relevant parts, as the case may be.

**Section 29.** If the Office considers that any state agency having the power and duty relating to the state business, which the private partnership in investment is required under the strategic plan, fails to propose the project for private partnership in investment, the Office shall preliminarily assess the

project feasibility for the purpose of private partnership in investment, and coordinate with such a state agency to propose the project. When such state agency, as the project-owner agency, completely prepares results of study and analysis of the project under Section 24, such project shall be submitted to the minister of the responsible ministry for consideration before submitting to the Office, and Section 26, Section 27 and Section 28 shall apply, *mutatis mutandis*.

If the Office considers that any project has more than one involving agency and an agreement cannot be made, it shall be proposed for the Board to determine the agency with ultimate responsibility for the state business for private partnership in investment to be the project-owner agency, and relevant agencies shall comply accordingly.

In assessing the project feasibility under paragraph one, the Office may engage a consultant with qualifications and without prohibited characteristics under Section 25.

In engaging a consultant under paragraph three, if the state budget has not been allocated to the Office, or the budget is insufficient to cover the operation, the Office may apply for the allocation from the fund as consultation fee.

**Section 30.** In the case where the project has the nature of business and is in the type and field prescribed in the strategic plan but the state agency proposing the project wishes to proceed with operation by using the state budget or the budget of that state agency as a whole, that agency shall compare the costs, risks and cost-effectiveness of the said operation with the case of private party's investment partnership, and propose it to the Board for consideration alongside with the proposal of the project.

If the Board deems that the private partnership is appropriate, the state agency which proposes the project shall operate in compliance with this Act.

If the Board agrees to the state agency proposing the project, it shall further propose to the Council of Ministers for approval.

Comparison of costs, risks and cost-effectiveness in the operation under paragraph one shall comply with the rules announced and prescribed by the Board.

**Section 31.** If the government authority, state enterprise, local administration organization or other state agency is to operate a state business and the Council of Ministers issues a resolution allowing the private partnership in such a state business, the said agency shall proceed with the resolution of the Council of Ministers and complies with this Act.

## CHAPTER 5

### Project Implementation

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**Section 32.** Invitation notice, document of proposal for investment partnership, method for announcing the invitation, selection method of the Selection Committee, prescription of bidding security and performance security including other rules necessary for private partnership in investment shall be as announced and prescribed by the Office with approval of the Board.

In the invitation notice under paragraph one, the following particulars shall be stated:

- (1) fee for sale of bidding document;
- (2) fee for assessment of the proposal for investment partnership;

- (3) fee for signing the investment partnership contract.

**Section 33.** Upon the Board's approval of the principle of any project or upon the case approved by the Council of Ministers under Section 28, the project-owner agency shall proceed with preparation of the draft invitation notice for the private party partnership in investment, the draft scope of the project and the draft investment partnership contract in respect of the project which the private party partnership in investment is allowed.

The project-owner agency may engage a consultant with qualifications and with no prohibited characteristics as announced and prescribed by the Board to prepare the draft invitation notice for investment partnership, the draft scope of the project and the draft investment partnership contract.

**Section 34.** The draft investment partnership contract under Section 33 must comprise standard provisions of the investment partnership contract announced and prescribed by the Office with the approval of the Board, and must contain at least:

- (1) project duration;
- (2) service provision and project implementation;
- (3) service charge rates, payment method of the private party or project-owner agency or remuneration payable by the private party to the project-owner agency;
- (4) change in nature of service provision of the project, change in party to the contract, contractor, sub-contractor and assignment of the claim;
- (5) project assets which include ownership and computation of value of assets of the project;
- (6) force majeure and action taken in case of occurrence of force majeure including payment of compensation;
- (7) reasons for termination of the contract, method for termination of the contract and payment of damages;
- (8) guarantee, insurance and payment of indemnity;
- (9) settlement of dispute.

**Section 35.** The project-owner agency shall appoint the Selection Committee which comprises representative of the project-owner agency as Chairman, representative of the Budget Bureau, representative of the State Enterprise Policy Office, representative of the Office of the Attorney General and qualified persons of not more than 4 persons as Committee members, and one representative of the project-owner agency as Committee member and secretary.

The Committee members and qualified persons under paragraph one shall be the persons who have knowledge, expertise and experience which directly benefit consideration of the project, and must have qualifications and have no prohibited characteristics under Section 10.

**Section 36.** The Selection Committee shall have the powers and duties as follows:

- (1) To approve the draft invitation notice for private party partnership in investment, the draft scope of the project and the draft investment partnership contract;

- (2) To determine the bidding security and performance security;
- (3) To negotiate and select the private party for investment partnership;
- (4) To summon the project-owner agency or private party to clarify or furnish relevant information or documents;
- (5) To proceed with other acts pertinent to the project as appropriate.

Section 14 and Section 15 shall apply to the Selection Committee, *mutatis mutandis*.

**Section 37.** The project-owner agency may engage a consultant who has qualifications and has no prohibited characteristics as announced and prescribed by the Board to conduct risk assessment, suggest guidelines for risk management and support the performance of duties of the Selection Committee.

**Section 38.** In selecting the private party for investment partnership, if the project-owner agency and the Selection Committee have consistent opinion that the selection method shall not be by the bidding method, it shall propose to the Office for consideration. If the Office so agrees, it shall propose to the Board for approval.

If the project-owner agency and the Selection Committee have different opinion that the selection method shall not be by the bidding method, the matter shall be proposed to the Office for consideration. If the Office considers that the selection method shall be by the bidding method, the selection method by the bidding method shall apply. If the Office considers that the selection method by the bidding method shall not be used, the matter shall be referred to the Board for decision.

**Section 39.** In any invitation notice for private party partnership in investment, if there is one proposer or there are several proposers, but only one proposal is correct according to items in the documents for investment partnership, if the Selection Committee considers that the state will gain benefits, it shall proceed with the procedures prescribed in this Act.

**Section 40.** Within fifteen days from the date of receipt of the result of selection of the private party and result of negotiation, and preparation of the draft investment partnership contract with the selected private party has been completed, the Selection Committee shall proceed as follows:

- (1) submit to the Office the result of selection of the private party, negotiated issues on benefits of the state, draft investment partnership contract which has been discussed with the selected private party and related documents. The Office shall then propose its opinion in regard to the result of the selection of a private party as well as the financial and fiscal burden to the state and submit opinions and relevant documents to the minister of the responsible ministry within forty-five days from the date of receipt of the result of selection of the private party from the Selection Committee; and
- (2) submit the draft investment partnership contract which has been discussed with the selected private party for investment partnership to the Office of Attorney General for examination. The Office of Attorney General shall complete its examination and submit the draft investment partnership contract so examined to the minister of the responsible ministry within forty-five days from the date of receipt of the draft investment partnership contract.

**Section 41.** Upon receipt of opinions and documents together with the draft investment partnership contract under Section 40, the minister of the responsible ministry shall give opinion in support of all matters and present to the Council of Ministers for consideration within thirty days.

**Section 42.** When the Council of Ministers considers the result of selection of the private party, the financial and monetary burden of the state, the draft investment partnership contract which has been examined by the Office of the Attorney General including opinions of the minister of the responsible ministry, if the Council of Ministers does not agree, the matter shall be returned to the minister of the responsible ministry to inform the Selection Committee for review, provided that Section 40 and Section 41 shall apply, *mutatis mutandis*, and the result of consideration shall be referred to the Council of Ministers for final decision.

When the Council of Ministers approves the result of selection of the private party and the draft investment partnership contract, the project-owner agency shall proceed with signing of the investment partnership contract with the selected private party.

## CHAPTER 6 Supervision and Follow-up Action

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**Section 43.** After signing of the investment partnership contract, the minister of the responsible ministry shall appoint a Supervisory Board comprising representative of the responsible ministry who is an official in the responsible ministry holding high executive position in the agency other than the project-owner agency as Chairman of the Board, representative of the State Enterprise Policy Office, representative of the Office of Attorney General and no more than four qualified persons appointed by the minister of the responsible ministry as members, and representative of the project-owner agency who is official, staff or executive of the project-owner agency as member and secretary.

Qualified members under paragraph one must be the persons who have knowledge, expertise and experience which will benefit the supervision and follow-up of operational results of the project.

Section 10, Section 11, Section 12 and Section 13 shall apply to the qualified persons under paragraph one, *mutatis mutandis*.

**Section 44.** The Supervisory Board shall have powers and duties as follows:

- (1) To ensure the project implementation in compliance with the investment partnership contract, operational plan under the investment partnership contract and the plan for solving problems that may arise from operation of the project;
- (2) To suggest guidelines for solving problems arising from operation of the project to the project-owner agency, and may designate the project-owner agency to engage a consultant to analyze the guidelines for solving problems in the project operation and to prepare the plan for solving problems which may arise from operation of the project;
- (3) To summon the project-owner agency or the private party to the contract to clarify or submit related documents or information;
- (4) To report the result of operation, progress, problems and solutions thereto to the minister of the responsible ministry, and submit the copy of such report and related documents to the Office;
- (5) To consider the amendment to investment partnership contract under Chapter 7.

Qualifications and prohibited characteristics of the consultant under (2) shall be as announced and prescribed by the Board.



Time of report under (4) shall be as prescribed by the Supervisory Board, which must be at least once every six months.

Section 14 and Section 15 shall apply to the Supervisory Board, *mutatis mutandis*.

**Section 45.** For the purpose of solving problems which may arise from operation of the project, the Office may order the project-owner agency to prepare the plan to solve problems which may arise from the project operation, and the private party may be also ordered to prepare the action plan under the investment partnership contract.

In undertaking the works prescribed in the investment partnership contract, if it appears that there are events preventing compliance with the investment partnership contract, the project-owner agency and the private party shall propose guidelines for solving problems to the Supervisory Board for consideration of the solutions thereto.

**Section 46.** If it appears that the project-owner agency ignores or fails to comply with conditions and obligations of the investment partnership contract, the Supervisory Board shall propose the report together with opinions to the minister of the responsible ministry for the minister to order the project-owner agency to comply with the investment partnership contract.

If the minister of the responsible ministry fails to proceed with paragraph one, the Supervisory Board shall report to the Office for submitting it to the Board for consideration. If the case is serious, the Board shall propose the matter together with opinions to the Council of Ministers for consideration.

## CHAPTER 7 Amendment to and Renewal of Contract

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**Section 47.** In the case where amendment to the contract is needed, the project-owner agency shall propose rationale and necessity for the amendment to the Supervisory Board for consideration.

If the Supervisory Board considers that the amendment to the contract is not in material content, the Supervisory Board shall notify the minister of the responsible ministry for information.

If the Supervisory Board considers that the amendment to the contract is in material content, the project-owner agency shall propose the issues for amendment, effects from amendment to the investment partnership contract and other related details to the Supervisory Board for consideration. If the Supervisory Board agrees to the amendment, the project-owner agency shall submit the draft investment partnership contract to the Office of Attorney General for examination prior to submitting opinions of the Supervisory Board alongside with the new draft investment partnership contract so examined by the Office of Attorney General to the minister of the responsible ministry to further propose for approval from the Council of Ministers.

The Board shall announce and prescribe characteristics of the amendment to the contract in material content.

The project-owner agency may engage a consultant who has qualifications and has no prohibited characteristics as announced and prescribed by the Board to provide advice on amendment to the contract.

**Section 48.** The project-owner agency shall prepare guidelines for operation of the state business after expiration of the investment partnership contract, by comparing between the state business carried out by the state agency itself, the case where any private party participates in investment and

the case where the existing private party participates in investment, and submit such guidelines to the minister of the responsible ministry at least five years prior to expiration of the investment partnership agreement, taking into consideration benefits of the state and continuity of operation of the state business, for submitting it to the minister of the responsible ministry for further submit to the Board. The Board shall further propose its opinion to the Council of Ministers.

If the Council of Ministers passes a resolution, ordering to proceed with the operation of the state business after expiration of the investment partnership contract by having the private party participate in investment, and if it appears that the project has value as prescribed in Section 23, the project-owner agency shall proceed as if it were a new project, and it shall commence from the procedures under Chapter 4, Project Submission, by proposing results of study and analysis of the project according to details in Section 24(4), (5) and (6).

## CHAPTER 8

### The Public-Private Partnership in State Undertaking Promotion Fund

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**Section 49.** A fund shall be set up in the Ministry of Finance called the “The Public-Private Partnership in State Undertaking Promotion Fund” to support preparation of the strategic plan and support state agencies in proposing projects consistent with the strategic plan, preparation of results of study and analysis of the project and engagement of the consultant.

**Section 50.** The Fund comprises moneys and assets as follows:

- (1) Money subsidized by the government or received from the annual expenditure budget;
- (2) Fee for sale of bidding documents, fee for assessment of proposals for investment partnership and fee for signing of investment partnership contracts;
- (3) Money or assets from operation of the Fund;
- (4) Money or assets from donation or contribution to the Fund;
- (5) Fruits from money or assets of the Fund.

Moneys and assets under paragraph one shall be remitted to the Fund without remitting to the treasury under the law governing budgetary procedures and the law governing treasury reserve.

**Section 51.** Money of the Fund shall be spent to the extent necessary in the following cases:

- (1) Research of information, and preparation or adjustment of the strategic plan;
- (2) Engagement of consultants under Section 25, Section 29, Section 33 and Section 37;
- (3) Expense in the Fund management and other expenses relevant to operation of the Fund;

**Section 52.** Proceeds of the Fund shall be deposited with the Ministry of Finance or the bank which is a state enterprise as prescribed by the Fund Committee.

**Section 53.** There shall be a committee called the “The Public-Private Partnership in State Undertaking Promotion Fund Committee” comprising Permanent Secretary of the Ministry of Finance as chairman, Secretary-General of Office of the National Economic and Social Development Board,

Director of the Bureau of the Budget, Director-General of the Comptroller General's Department as members.

The Director of the State Enterprise Policy Office shall be member and secretary and an official of the Office appointed by the Director of the State Enterprise Policy Office as deputy secretary.

**Section 54.** The Fund Committee has the powers and duties as follows:

- (1) To oversee the fund management in compliance with the objectives of the fund;
- (2) To prescribe rules, conditions and procedures for request for allocation from the fund;
- (3) To approve the use of the fund as prescribed herein;
- (4) To issue regulations or orders in respect of the fund management, rules and procedures for keeping and disbursing the fund, expense in fund management and other expenses relating to operation of the fund.

Section 14 shall apply to the Fund Committee, *mutatis mutandis*.

**Section 55.** The accounting year of the Fund shall be consistent to the fiscal year. The accountancy of the Fund shall be prepared according to the accounting standards for state agencies as prescribed by the Ministry of Finance.

**Section 56.** The Fund Committee shall report operational results and financial position of the Fund to the Board at least once a year.

**Section 57.** The Fund Committee shall prepare financial statements to show operational results and financial position of the Fund to Office of the Auditor General for audit within ninety days from the end of the accounting year.

The Fund Committee shall submit the financial statements audited by Office of the Auditor General together with the audited report to the Board for further consideration.

## CHAPTER 9 Miscellaneous

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**Section 58.** The Board shall make an announcement prescribing rules and procedures for private partnership in investment in the projects having value less than the amount prescribed in Section 23 for practice by state agencies. However, if the Office considers that any project for private party partnership in investment so having value less than the amount prescribed in Section 23 is important or consistent to the strategic plan and is appropriate to proceed under this Act, the Office shall propose opinion for the Board to order the project-owner agency to operate under the procedures prescribed in this Act, provided that Section 29 shall apply *mutatis mutandis*.

**Section 59.** For the purpose of preparing database of the investment partnership contract, the project-owner agency shall submit copy of the investment partnership contract and related documents to the Office within thirty days from the date of signing the contract or upon amendment to the contract.

**Section 60.** If it appears to the Office that any project fails to duly comply as prescribed in Chapter 4 Project Submission, or Chapter 5 Project Implementation, the Office shall notify the

project-owner agency to clarify facts and give proper guidelines for operation to the Board for issuing an order, provided that the Board shall take into account the continuity of public service and effects on the people.

If the Board deems it appropriate to terminate or amend the investment partnership contract, it shall propose to the Council of Ministers for approval.

If the Board orders to proceed with the investment partnership contract without amendment, or with amendment under paragraph two, provisions in Chapter 6 Supervision and Follow-up Action, shall apply to the proceeding.

**Section 61.** Qualified members under Section 35 and Section 43 must be the persons in the list of names of experts in various fields prepared by the Office under the rules prescribed by the Board.

**Section 62.** In engagement of a consultant under Section 25, Section 33 or Section 37, if the project-owner agency has not allocated the state budget or the budget is insufficient for operation, the project-owner agency may request for allocation from the Fund as consultation remuneration.

Request for allocation of the Fund under paragraph one shall be in accordance with rules and procedures prescribed by the Fund Committee.

**Section 63.** If the project-owner agency receives the allocation from the Fund for engagement of a consultant under Section 25, Section 33 or Section 37, the project-owner agency shall remit the fee for sale of bidding documents, fee for assessing proposals for investment partnership and fee for signing the investment partnership contract under Section 32 paragraph two, into the Fund within fourteen days from the date of receipt of the fees.

**Section 64.** The Board shall announce and prescribe characteristics of the private entities who are not required for investment partnership in state business and the persons who are not required for appointment as consultants, and such private entities and consultants with the mentioned characteristics are not entitled to be selected as a contractual party in investment in state business or appointed as a consultant hereunder, as the case may be.

Private entities and persons under paragraph one shall include the Board members or authorized persons of those persons.

**Section 65.** The Public-Private Partnership in State Undertaking Policy Board, the Supervisory Board, the Public-Private Partnership in State Undertaking Promotion Fund Committee, the Subcommittee and experts appointed under Section 17 shall receive remuneration as prescribed by the minister with the approval from the Council of Ministers.

## CHAPTER 10 Penalty

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**Section 66.** Any member of the Board or the Selection Committee or Supervisory Board violates Section 15 or Section 36 paragraph two, together with Section 15 or Section 44 paragraph four together with Section 15 shall be subject to an imprisonment for a term of not more than three years or a fine of not more than six hundred thousand baht, or both.

### Provisional Clause

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**Section 67.** Within sixty days from the effective date of this Act, the minister shall propose the draft notification of rules and procedures for selection of qualified board members under Section 9 for approval from the Council of Ministers, and shall complete the selection and appointment of the qualified members within sixty days from the date of issuance of the said notification.

Ministerial regulations and notifications necessary for the implementation of this Act shall be issued within one hundred and eighty days from the effective date of this Act.

**Section 68.** If a project is proposed during one hundred and eighty days from the effective date of this Act, rules under the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992) shall apply *mutatis mutandis*. When ministerial regulations and notifications necessary for implementation of this Act have been issued, further implementation shall be in compliance with this Act.

**Section 69.** Any project under the process of operation under the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992) on the effective date of this Act shall be deemed a project under this Act, provided that it shall proceed as follows:

(1) For the project which is under the process under Chapter 2 Project Submission, or Chapter 3 Project Implementation, of the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992), the project-owner agency shall continue to comply with provisions under the aforesaid chapters until completion, then proceed with the procedures under this Act.

(2) For the project which is under the process under Chapter 4 Supervision and Follow-up Action, of the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992), the minister of the responsible ministry shall appoint the Supervisory Board within one year from the effective date of this Act. During the absence of the Supervisory Board hereunder, the Coordinating Committee under Section 22 of the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992) shall continue to act as the Supervisory Board of the said project until the Supervisory Board is appointed under this Act.

**Section 70.** Within one hundred and twenty days from the effective date of this Act, the project-owner agency which is under the process of operation under the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992) shall prepare guidelines for operation of the state business after expiration of the investment partnership contract, by comparing the operation of state business in the case where the state agency operates by itself, in the case where a private sector participates in investment and in the case where the original private sector participates in investment, then present the minister of the responsible ministry to consider and further present to the Council of Ministers, unless the said project has the remaining duration under the investment partnership contract beyond five years, Section 48 shall be enforced *mutatis mutandis*.

**Section 71.** The project-owner agency which has signed the contract for private sector partnership in or operation of state activities under the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992) and is under the project implementation, shall submit a copy of the contract as well as the meeting minutes of the Coordinating Committee under Section 22 of the mentioned Act to the Office within one hundred and twenty days from the effective date of this Act.

**Section 72.** If it appears that any project has to comply with the Act Governing Private Sector Partnership in or Operation of State Activities B.E. 2535 (1992), but the operation has not been carried out, or carried out incorrectly or incompletely in any step and a dispute settlement process

under the contract or a legal action has not been initiated, the minister of the responsible ministry shall appoint a committee comprising the Permanent Secretary of the responsible ministry as chairman, representative of the Office of the Council of State, representative of the National Economic and Social Development Board, representative of the Budget Bureau, representative of the State Enterprise Policy Office, representative of the Office of Attorney General, as members; and representative of the project-owner agency who is official, staff or executive of the agency as member and secretary, to consider and determine guidelines for appropriate action which may include cancellation of, amendment to, and continual enforcement of, the contract.

The committee under paragraph one shall present results of the consideration and opinion to the minister of the responsible ministry for presenting to the Council of Ministers for consideration and order, provided that provisions in Section 60, paragraph one, shall be used in support of consideration.

Section 14 shall apply to the committee under paragraph one, *mutatis mutandis*.

The committee under paragraph one shall receive remuneration as stipulated by the minister with approval from the Council of Ministers.

Countersigned by:

***Yingluck Shinawatra***  
Prime Minister

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