

Circular on Issuing the Interim Measures for the Administration of Finance for Public-private Partnership Projects

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Note: English version for reference only, Chinese version shall prevail.

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The financial departments (bureaus) of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan, the Financial Supervision Commissioner Offices of the Ministry of Finance in all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan, and the financial bureau of Xinjiang Production and Construction Corp.,

In accordance with the Budget Law, the Government Procurement Law and implementing regulations thereof, the Law on Enterprise State-owned Assets as well as the Circular of the General Office of the State Council on Forwarding the Guiding Opinions of the Ministry of Finance, the National Development and Reform Commission and the People's Bank of China on Promoting the Public-Private-Partnership (PPP) Mechanism in the Public Services (Guo Ban Fa [2015] No.42), the Interim Measures for the Administration of Finance for Public-private Partnership Projects are hereby issued for your implementation in order to **reinforce** the financial management of public-private partnership, **standardize** the performance of duties by the finance departments and **safeguard** the legitimate rights and interests of both partners.

Ministry of Finance

Appendix:

Interim Measures for the Administration of Finance for Public-private Partnership Projects

Chapter I General Provisions

Article 1 In order to reinforce the financial management of public-private partnership ("PPP") projects, define the work requirements of the finance departments in the whole life cycle of the PPP projects, standardize the performance of duties by the finance departments and safeguard the legitimate rights and interests of both partners, the Interim Measures for the Administration of Finance for Public-private Partnership Projects (these "Measures") are hereby formulated in accordance with the Budget Law, the Government Procurement Law, the Law on Enterprise State-owned Assets and other laws and regulations.

Article 2 These Measures apply to various PPP projects conducted in public service fields such as the energy, transportation, municipal utilities, agriculture, forestry, water conservancy, environmental protection, low-cost housing projects, education, science and technology, culture, sports, medical treatment and public health, elderly care and tourism in the People's Republic of China.

Article 3 The finance departments at all levels shall, in concert with the relevant departments, overall arrange financial funds, state-owned assets and all the other public assets and resources to conduct the equal and mutual-benefit cooperation of the PPP projects, and practically fulfill duties including project identification and demonstration, government procurement, budgetary revenues and expenditures and performance management, asset-liability management, information disclosure, supervision and inspection to guarantee the standard implementation and efficient operation of the projects in the whole life cycle.

Chapter II Definition and Assessment of Projects

Article 4 The finance departments at all levels shall strengthen the cooperation with competent departments of relevant industries to jointly conduct the preliminary definition and assessment of the projects.

With regard to a PPP project initiated by the government, the competent department of the relevant industry shall make project proposals; the project implementing agencies authorized by the people's government at the county level or above shall prepare a project implementation program; and the finance department at the same level shall perform the value-for-money evaluation and financial affordability assessment.

With regard to a PPP project initiated by a corporate partner, the said corporate partner shall submit a project proposal to the competent department of the relevant industry. Upon review and approval by the said department, the corporate partner shall prepare a project implementation program, and the project implementing agency authorized by the people's government at the county level or above shall propose the finance department at the same level to perform the value-for-money evaluation and financial affordability assessment.

Article 5 The project implementation program of a new construction, reconstruction or expansion project shall be prepared according to preliminary demonstration documents such as the project proposal and feasibility study report; the implementation program of a stock project shall be prepared also according to historical materials of construction and operation maintenance of stocked public assets as well as the asset evaluation report issued by a third party.

The project implementation program includes basic conditions of a project, risk allocation framework, operation method, transaction structure, contract system and regulatory framework.

Article 6 A project implementing organization may lawfully entrust an expert or a third-party professional organization by means of government procurement to prepare a value-for-money evaluation report for the project. The entrusted expert or third-party professional organization shall perform project evaluation and demonstration in an independent, objective and scientific way, and be responsible for the contents of the report.

Article 7 A finance department shall, together with the competent department of the relevant industry, jointly review the value-for-money evaluation report according to the project implementation program. If the value-for-money evaluation fails to pass the review, the project implementing organization concerned may propose

the finance department at the same level and the competent department of the relevant industry to conduct the review again, after adjusting the implementation program.

Article 8 If a project passes the value-for-money evaluation upon review, the finance department at the same level shall prepare a financial affordability assessment report as per the project implementation program and value-for-money evaluation report, make overall arrangements for the annual expenditure responsibilities for the PPP projects already implemented and about to be implemented at the same level in all the years, and after comprehensively considering the industrial balance and development plans of PPP projects, give review opinions on the financial affordability assessment reports.

Article 9 The finance departments at all levels shall establish the PPP project development directory of respective regions, and integrate the projects passing the value-for-money evaluation and financial affordability assessment upon review into the PPP project development directory for management.

Chapter III Government Procurement Management for the Projects

Article 10 For the projects integrated into the PPP project development directory, the project implementing agencies shall improve the project implementation program according to the review results of the value-for-money evaluation and financial affordability assessment, and submit them to the people's governments at the same levels for review. After review and approval by the people's governments at the same level, the project implementing organizations shall organize the procurement of corporate partners in light of the relevant provisions on government procurement management.

The project implementing agencies may delegate the procurement agencies to handle the procurement.

Article 11 The project implementing agencies shall give priority to competitive ways including openbidding, competitive negotiation and competitive consultation to select corporate partners, and encourage the active participation and full competition of corporate partners. If a single source procurement method must be adopted according to project demands, legal conditions and procedures shall be conformed to strictly.

Article 12 As per project characteristics and construction and operation demands, project implementing organizations shall reasonably set qualifications and conditions of corporate partners after comprehensively

considering professional qualifications, technical capacity, management experience, financial strength and other factors, in order to guarantee the equal participation of state-owned enterprises, private enterprises and foreign-funded enterprises.

Article 13 Project implementing organizations shall reasonably set procurement appraisal standards after comprehensively considering the technical schemes, commercial quotations, financing capacity and other factors of social capital competitors, so as to ensure the long-term stable operation and improvement of the quality and efficiency of the projects.

Article 14 If the technical scheme put forward by a corporate partner participating in procurement appraisal is ultimately adopted in whole or in part but is not selected, the finance department concerned shall, together with the competent department of the relevant industry, pay reasonable compensation for its preliminary costs.

Article 15 The finance departments at all levels shall strengthen supporting services, supervision and management for the PPP project procurement activities, and relying on the government procurement platforms and National PPP Integrated Information Platform, promptly and fully disclose the PPP project procurement information to society, including prequalification documents and results, procurement documents, the submission situation of response documents and review results, guaranteeing the public and transparent procurement processes and results.

Article 16 After the publicity of procurement results and the formal conclusion of a PPP project contract, a project implementing organization shall submit the said contract to the competent department of the relevant industry, finance department, legal department and other relevant functional departments for review, and then submit it to the people's government at the same level for approval.

Article 17 In reviewing a PPP project contract, the relevant project implementation program, value-for-money evaluation report, financial affordability assessment report and procurement documents shall be referred to so as to check whether there is any material change in contract content, and it shall be primarily reviewed whether the contract meets the following requirements:

1. the contract shall, as per the risk allocation scheme in the implementation program, reasonably allocate project risks between government and corporate partner, and ensure the effective transfer of risks to be undertaken by the corporate partner;
2. the contract shall specify the concrete output standards and performance evaluation indicators of the project, and linkage of payments to performance evaluation results;
3. the contract shall comprehensively consider the cost accounting scope and cost change factors in the whole life cycle of the project, and set the standard costs of the project;
4. a contract shall, as per standard costs of the project and the internal yield rate of capitals, reasonably calculate subsidies or charging and pricing standards of the project by reference to engineering completion settlement. Operating risks beyond the scope of revenue standards of the project are undertaken by the project company; and
5. the contract shall reasonably set out the adjustment period, conditions and procedures for subsidies or charging and pricing as bases for the competent department of the relevant industry and finance department adjusting subsidies or charging and pricing in the cooperation period.

Chapter IV Financial Budget Management for the Projects

Article 18 According to budget management requirements, a competent department of industry shall include cross-year financial expenditure responsibilities of government set out in a PPP project contract in a medium-term financial plan, and upon review and summarization by the relevant finance department, report it to the people's government at the same level for review, in order to guarantee the performance capability of the government in the whole life cycle of the relevant project.

Article 19 Concerning a PPP project that is approved by the people's government at the same level to be included in a medium-term financial plan, the relevant competent department of industry shall, as per preparation procedures and requirements, include the revenue and expenditure of the financial funds of the subsequent year meeting the budget management requirements in the relevant contract in budget management, include them in a budget draft after submission to the relevant finance department for review,

and upon approval by the government at the same level, submit it to the people's congress at the same level for deliberation.

Article 20 A competent department of industry shall prepare the revenue and expenditure budget of a PPP project as per budget preparation requirements:

1. Revenue and expenditure estimation. Prior to the end of each July, a competent department of industry shall estimate revenue and expenditure amounts of PPP projects to be included in the budget in the subsequent year, according to the PPP project contracts in the current year and in combination with the situation of budget implementation, expenditure and performance evaluation results and so on in the current year.

2. Expenditure preparation. A competent department of industry shall include the responsibilities of PPP project expenditures needing to be arranged from budget in the expenditure budget as per the revenue and expenditure items, and expenditure budget standards and requirements of the relevant government.

3. Revenue preparation. A competent department of industry shall include revenues obtained by the relevant government from PPP projects in the budget.

4. Submission requirements. A competent department of industry shall submit the budget including the revenues and expenditures of all the PPP projects to the finance department at the same level as per unified time requirements.

Article 21 A finance department shall carefully review the application for financial revenue and expenditure budget of PPP projects submitted by a competent department of industry, take factors including performance evaluation and price adjustment into comprehensive consideration, and reasonably determine the budget amount.

Article 22 Government revenues from PPP projects include the transferred rights and interests of assets, transferred franchise rights, dividends, distributed excessive earnings, liquidated damages from corporate partners and insurance claims as well as special PPP reward revenues appropriated by a superior finance

department as obtained by a government according to laws and regulations in the whole life cycle of the PPP projects.

Article 23 Government expenditures in PPP projects include equity investment, operation subsidies, supporting investment, risk taking as well as special PPP reward expenditures arranged by a superior finance department that need to be arranged by a government from financial funds according to laws and regulations in the whole life cycle of the PPP projects.

Article 24 A competent department of industry shall, together with the finance departments at all levels, monitor the costs of the projects in the whole life cycle. Before the first quarter of each year, a project company (or corporate partner) shall submit financial reports audited by a third party and explanatory materials of project construction and operation costs of the previous year to the relevant competent department of industry and finance department. Project cost information shall be published through the National PPP Integrated Information Platform to receive social supervision.

Article 25 The finance departments at all levels shall, together with competent departments of industries, monitor the performance operation of the PPP projects, conduct tracking management of and regularly check the operation situation of performance objectives to ensure the matching of phased objectives with payment of funds, and perform medium-term performance evaluations to ultimately achieve the aforesaid objectives. If it is found out through monitoring that performance operation deviates from given performance objectives, measures shall be taken to make corrections.

Article 26 If a corporate partner violates a PPP project contract, deteriorating operation conditions of the project concerned and endangering national security and major public interests or seriously impacting the continuous and stable supply of public products and services, the people's government at the same level will be entitled to designate a project implementing organization or any other organization to temporarily take over the project until the restoration of normal operation or premature termination of the project. All the expenses arising from the temporary takeover of the project shall be borne by the breaching party independently or all the parties liable pursuant to the relevant cooperation agreement.

Article 27 The finance departments at all levels shall, together with competent departments of industries, carry out performance evaluations in respect of project output, actual effects, cost benefits, sustainability,

etc. as per performance objectives previously agreed upon in the whole life cycle of the PPP projects, or entrust a third-party professional organization to give evaluation opinions.

Article 28 The finance departments at all levels shall reasonably arrange financial budget funds as per the performance evaluation results.

For projects reaching the performance evaluation standards, the finance departments shall arrange relevant expenditures in full and in time for project companies or corporate partners in accordance with the relevant contracts.

For projects not reaching the performance evaluation standards, the finance departments shall deduct corresponding expenses or subsidy expenditures in accordance with the relevant contracts.

Chapter V Asset-liability Management for the Projects

Article 29 The finance departments at all levels shall, together with relevant departments, consolidate the state-owned asset management involved in the PPP projects, and supervise project implementing organizations to establish asset management ledgers of the PPP projects. Assets formed by governments by means of shareholding with stock state-owned assets or equities as consideration, contribution in cash, direct investment, etc. in the PPP projects shall be reflected and managed in the comprehensive financial report of the government as state-owned assets.

Article 30 If any stock state-owned assets or equities are transferred in a stock PPP project, the project implementing organization concerned shall, together with the relevant competent department of industry and finance department, perform asset evaluations according to the administrative measures for state-owned assets and relevant laws, to prevent the loss of state-owned assets.

Article 31 If any franchise right is granted or transferred in a PPP project, the project implementing organization concerned shall, as per the future revenue situation of the franchise right and by reference to similar market standards, determine the value of the franchise right through competitive procedures, and hold shares, or grant or transfer the franchise right at a reasonable value.

Article 32 Project implementing organizations and project parties shall determine the ownership of the assets of project companies according to laws and regulations and the PPP project contracts. Upon approval by the competent departments of industries and finance departments, the ownership and the right to earnings of assets and equities attributed to project companies may be mortgaged or pledged, be set with any security interest or be used for structured financing in accordance with the law, provided that they shall be published on the National PPP Integrated Information Platform of the Ministry of Finance. After projects are completed and enter into a stable operation period, corporate partners may exit in whole or in part through structured financing, provided that public security and the continuous and stable provision of public services are not impacted.

Article 33 The finance departments at all levels shall transfer project assets well together with competent departments of industries.

In the case of transfer upon expiration of the cooperation period of a project, the relevant government and corporate partner shall conduct such transfer as per the relevant contract to ensure the continuous and stable supply of public services in the transition period of the transfer. Before expiration of a project contract, the relevant project implementing organization or any other organization designated by the relevant government shall establish a project transfer work group to conduct performance tests, asset evaluations, and registration and entry in accounts of transferred assets. If project assets fail to meet the transfer standards set out in the relevant contract, the corporate partner concerned shall take remedial measures or compensate for any losses.

If a project is terminated prematurely due to the government's reason or force majeure, in addition to the aforesaid transfer work, corresponding compensation shall be paid to the corporate partner according to the relevant contract, the remaining debts of the project company shall be disposed of properly, and the legitimate rights and interests of creditors shall be guaranteed; if a project is terminated prematurely due to the act of a corporate partner, the said partner will be required to pay corresponding compensation according to the relevant contract.

Article 34 The finance departments at all levels shall reinforce the monitoring of debts of PPP projects together with the competent departments of industries. If debts arise during the implementation of a PPP project, such debts shall be debts of the project company concerned, and the said company shall fulfill its

repayment obligation independently. At the time of transfer of a project upon expiration, debts of the project company concerned shall not be transferred to the government.

Chapter VI Supervision and Management

Article 35 The finance departments at all levels shall, together with competent departments of industries, intensify the supervision and management of the PPP projects, and practically guarantee project operation quality, and shall not generate government debts in the name of the PPP projects.

The finance departments shall, together with relevant departments, consolidate project compliance review, ensure the projects are in public service fields, and fulfill relevant preliminary demonstration and examination procedures according to laws, regulations and relevant provisions. The building-transfer method shall not be adopted for project implementation.

If a government and corporate partner jointly establish a project company, the said company shall operate pursuant to the Company Law and other laws as well as the relevant PPP project contract, and it shall not be specified in a shareholder agreement that the government shareholder or any other organization designated by the relevant government can make a repurchase arrangement for equities of private capital shareholders.

According to the financial capacity demonstration results and the PPP project contracts, the finance departments shall strictly control and fulfill their payment responsibilities of the projects, and shall not replace the responsibilities for medium- and long-term payments for PPP projects with government expenditures for service purchase in the current period, for the purpose of avoiding relevant evaluation and demonstration procedures of the PPP projects.

Article 36 By relying on the National PPP Integrated Information Platform, the finance departments at all levels shall establish PPP project libraries, and publish the information of the PPP projects in the whole life cycle in a bid to guarantee the right to know of the public and receive social supervision.

Contents of the information disclosed in the project preparation, purchase and construction phases include the basic information and procurement information of the PPP projects, procurement documents and procurement dealing results, but do not include project contract texts involving any national secret or

business secret, starting date, the date of completion and entering into operation or government transfer date. Contents of the information disclosed in the project operation phase include the cost monitoring and performance evaluation results of the PPP projects.

Contents of the information disclosed by the finance departments include the directory of the PPP projects at the same level, and the budget, implementation and settlement of governments for the PPP projects as approved by the people's congresses at the same levels.

Article 37 The Finance Supervision Commissioner Offices of the Ministry of Finance in all regions shall reinforce the whole-course supervision and management of the financial management of the PPP projects, and focus on the value-for-money evaluation and financialaffordability assessment, government procurement, budget management, state-owned asset management, debt management, performance evaluation and other links of the PPP projects to practically prevent financial risks.

Article 38 If a PPP project is implemented in violation of these Measures, the relevant persons will be pursued for liability in accordance with the Budget Law, the Government Procurement Law and implementing regulations thereof, the Regulations on the Penalties and Sanctions against Illegal Financial Conduct and other laws and regulations; if any person is suspected of a crime, the said person will be transferred to a judiciary authority for treatment.

Chapter VII Supplementary Provisions

Article 39 These Measures shall be interpreted by the Ministry of Finance.

Article 40 These Measures shall come into force as of the date of issue.

FROM: Ministry of Finance