

# Three Departments Issue Circular to Regulate and Promote Asset Securitization of PPP Projects

(10-AUG-2017)

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

## Circular on Regulating Matters relating to Asset Securitization of Public-private Partnership Projects

Cai Jin [2017] No.55

Finance departments (bureaus) of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan, the Finance Bureau of Xinjiang Production and Construction Corps, the Shanghai Head Office, all branches, business management departments and central sub-branches of provincial capitals (capitals of autonomous regions) of the People's Bank of China, all local offices of the China Securities Regulatory Commission, the National Association of Financial Market Institutional Investors, the Shanghai Stock Exchange, the Shenzhen Stock Exchange, the Securities Association of China, and the Asset Management Association of China,

In order to implement 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 Model in the Public Services (Guo Ban Fa [2015] No.42) and regulate and promote asset securitization of Public-private Partnership (hereinafter referred to as the "PPP") projects, the relevant matters are hereby notified as follows:

### I. Steadily Promoting Asset Securitization of PPP Projects by Category

**1. Encouraging project companies to carry out asset securitization to optimize financing arrangements.** During the phase of project operation, project companies, as sponsors (originators), may issue asset securitization products by categories such as those with user pays, government payments and viability gap funding, with the right to earnings and contract creditor's rights that can bring in cash flows for projects concerned as underlying assets. Project companies shall make

overall planning of financing needs, project profit and other factors, rationally determine the size and maturity of asset securitization products issued, and strive to reduce the cost of integrated financing. It is imperative to actively explore the issue of asset securitization products by project companies by relying on the right to future earnings specified in PPP contracts in the project construction period, so as to further broaden project financing channels.

**2. Exploring asset securitization carried out by shareholders of project companies to revitalize stock assets.** Unless PPP contracts have restrictive provisions on such rights as the right to transfer or pledge equities of shareholders of project companies, after the project concerned have been completed and put into operation for two years, shareholders of project companies may issue asset securitization products with equities that can bring in cash flows as underlying assets, to revitalize stock equity assets and improve asset liquidity. Specifically, the sizes of asset securitization products issued by the controlling shareholder and by other shareholders shall not exceed 50% and 70% of the present value of cash flows brought in by equities, respectively.

**3. Supporting other related subjects of project companies to carry out asset securitization.** During the phase of project operation, creditors that provide financing support for project companies, contractors that provide construction support for project companies, and other enterprises, as sponsors (originators), may issue asset securitization products in accordance with regulatory provisions, with contract creditor's rights, right to earnings and other rights as underlying assets, to revitalize stock assets, realize multi-channel financing, and support the construction and implementation of PPP projects.

## **II. Strictly Screening PPP Projects Subject to Asset Securitization**

**4. PPP projects subject to asset securitization shall be standardized in operation and clear in ownership.** The projects shall feature scientific implementation plan, complete contract system, mature operation mode, and reasonable risk distribution, and shall pass the value-for-money evaluation and financial affordability assessment. Cash flows of project companies expected to be generated can cover financing interests of the projects concerned and investment income of shareholders. The right to earnings, equities, contract creditors' rights and other ownerships relating to the projects which are intended to be taken as underlying assets shall be independent and clear and shall have not been used to provide pledge or guarantee for other financing.

**5. Sponsors (originators) shall meet the relevant requirements respectively.** Where project companies serve as sponsors (originators), financing plans shall have been put in place, with the funds raised in the early stage truly deposited into the relevant accounts. Where project companies and their shareholders, as sponsors (originators), apply for acceptance via the green channel of competent departments of issuance, the projects concerned shall have been successfully operated for more than two years, and the sponsors (originators) concerned shall have stable credit standing and no major breach of contract or false information disclosure or bad credit record in the last three years.

## **III. Perfecting Procedures for Asset Securitization of PPP Projects**

**6. Independently carrying out asset securitization in accordance with contracts.** The government and the nongovernmental investor shall stipulate asset securitization-related rights and obligations

of the parties involved via the appropriate way in PPP contracts; sponsors (originators) may independently decide to carry out asset securitization in accordance with contracts and file issuance applications with competent departments of issuance. The parties involved in PPP projects shall, in accordance with contracts, offer cooperation in and accept due diligence, provide relevant materials, and assist in program design and credit rating concerning asset securitization products.

**7. Selecting the best PPP projects to carry out asset securitization.** Priority shall be given to supporting asset securitization in industries such as water services, environmental protection and transportation with the higher marketization degree, stable demand for public services and highly predictable cash flows. First support shall be given to asset securitization in regions with the better government solvency and higher level of credit and strictly fulfilling financial management requirements for PPP projects. Main support shall be given to asset securitization of PPP projects in line with national strategies such as coordinated development of Xiongan New Area and Beijing-Tianjin-Hebei region, "the Belt and Road" and Yangtze River Economic Belt. Industrial leading enterprises, as controlling shareholders of project companies, are encouraged to carry out asset securitization to revitalize stock project assets and improve the capacity for supplying public services.

**8. Recommending the best PPP projects to carry out asset securitization.** Provincial finance departments may, in concert with competent departments of industries, recommend the best projects to carry out asset securitization. Sponsors (originators) of asset securitization of PPP projects may independently file recommendation applications with provincial finance departments and competent departments of industries before filing applications with competent departments of issuance. Application materials include but are not limited to the implementation plan for a PPP project, PPP contract, value-for-money evaluation report, financial affordability assessment report, annual report on project operation, instruction on scheme for asset securitization of a project, trading structure chart, and legal opinions. Provincial finance departments may, in concert with competent departments of industries, issue recommendation opinions and copy the same to the Ministry of Finance in accordance with the relevant regulatory provisions and the requirements of the Circular.

**9. Further optimizing examination procedures for asset securitization of PPP projects.**

Competent departments of issuance shall examine and supervise the PPP projects declared in accordance with the provisions on asset securitization. With respect to projects recommended by provincial finance departments and projects invested by the Chinese PPP Fund, the National Association of Financial Market Institutional Investors, stock exchanges, the Asset Management Association of China and other entities shall research and establish green channels for acceptance, examination and record-filing, and assign dedicated personnel in special posts to take charge of the relevant work, to improve the efficiency of registration, record-filing, examination, issuance and listing. In addition, it is necessary to further improve the asset securitization system and instruct the relevant entities to study and improve self-discipline rules and negative lists based on the implementation of securitization of PPP projects.

**IV. Striving to Strengthen the Supervision and Administration of Asset Securitization of PPP Projects**

**10. Effectively arranging the isolation of risks.** Sponsors (originators) of asset securitization of PPP projects shall, in strict accordance with asset securitization rules and related plans and contracts, reasonably design the issuance and trading structure of asset securitization products, and make effective risk isolation between underlying assets and assets of sponsors (originators) via special purpose vehicles (SPV) and necessary credit enhancement measures and in the principle of true sale and bankruptcy isolation. Sponsors (originators) shall cooperate with intermediary agencies in fulfilling such related obligations as underlying asset transfer, cash flow collection, information disclosure and offering of credit enhancement measures; and may not change controlling shareholders' de facto control over and project operation responsibility for PPP project companies to realize "quit" in disguised form and affect the continuity and stability of public service supply through asset securitization. In case of any payment difficulty in asset securitization products, sponsors (originators) shall properly solve the difficulty with investors in accordance with asset securitization contracts, and shall not bear joint and several payment liability other than those agreed.

**11. Reasonably sharing costs and benefits of asset securitization.** The issuance costs related to asset securitization of PPP project companies shall be borne by project companies in accordance with contracts, and shall not be shifted to the government and the nongovernmental investor. PPP project companies and their shareholders are encouraged to provide necessary guarantee for generation of expected cash flows from underlying assets by strengthening daily operation, maintenance and management or providing reasonable support; PPP project companies and their shareholders may enhance credit by comprehensively adopting various means such as providing guarantee and holding subordinated securities to avoid the single credit enhancement way which would increase the burden of project companies or shareholders. Where PPP project companies optimize liability structure through the issuance of asset securitization products, the excess benefits brought in by saving comprehensive financing costs shall be distributed in accordance with contracts.

**12. Effectively guarding against the risk of rigid redemption.** Finance departments at the localities of PPP projects shall, in concert with competent departments of industries, strengthen the management of contract performance during the whole life cycle of projects, and make payment (including projects with user pays) in strict accordance with the performance evaluation results of projects to the extent of the payment liability specified in PPP contracts, so as to guarantee reasonable returns to nongovernmental investors. The liability for payment of asset securitization products shall be borne by special purpose vehicles (SPV) with the underlying assets held by them and credit enhancement arrangements, and shall not be shifted to the government or the public or affect the sustained and stable supply of public services.

**13. Fully disclosing information on asset securitization.** Financial institutions and intermediary service institutions shall effectively carry out due diligence to ensure that the asset securitization of PPP projects meets the relevant policy requirements. Sponsors (originators), managers and other parties assuming information disclosure obligations concerning asset securitization of PPP projects shall, in strict accordance with the relevant provisions on asset securitization, disclose project implementation information, the annual management report on asset securitization, income distribution report and other information on the integrated PPP information platforms and information disclosure websites accepted on the market, to ensure the open, transparent and

orderly implementation of projects and asset securitization, and accept social and market supervision.

**14. Vigorously building a favorable environment for development.** It is imperative to establish a diversified and sustainable fund guarantee mechanism, promote the development of real estate investment trusts (REITs), and encourage the investment of various market funds in asset securitization products of PPP projects. More efforts shall be made to conduct the publicity and training on policies for asset securitization of PPP projects, and improve the operation capability related to asset securitization business of all parties. The Ministry of Finance, the People's Bank of China and the China Securities Regulatory Commission shall set up a sound synergetic management mechanism for asset securitization of PPP projects, and strengthen communication and cooperation, to realize the sharing of information on implementation and risk monitoring of PPP projects. Provincial finance departments and local offices of the People's Bank of China and the China Securities Regulatory Commission shall attach great importance to, diligently organize the implementation of, and effectively carry out, work concerning asset securitization of PPP projects, to promote the sustained and healthy development of asset securitization of PPP projects.

Ministry of Finance    People's Bank of China    China Securities Regulatory Commission  
June 7, 2017

FROM: Ministry of Finance, China