

Circular of the General Office of the State Council on Guiding Opinions on Promoting the Public-Private Partnership Mode in the Public Service Fields

(22-MAY-2015)

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

Guo Ban Fa [2015] No.42

People's governments of all provinces, autonomous regions and municipalities directly under the Central Government, as well as all ministries and commissions of and all agencies directly under the State Council,

The Guiding Opinions of the Ministry of Finance, National Development and Reform Commission and People's Bank of China on Promoting the Public-Private Partnership Mode in the Public Service Fields, which have been approved by the State Council, are hereby issued to you for implementation.

Promoting the public-private partnership mode in the public services is an important reform measure to transform government functions, inspire market vitality and build new economic growth points. By focusing on the increase of supply of public products and services, the wide application of the public-private partnership mode in public service fields of energy, transportation, water conservancy, environmental protection, agriculture, forestry, science and technology, low-cost housing projects, medical treatment, sanitation, elderly care, education, culture, etc. is of strategic significance for generally stabilizing growth, boosting reform, adjusting structure, benefiting livelihood and preventing risks.

All local governments and departments shall, according to requirements for streamlining administration and delegating power to lower levels, strengthening regulation and optimizing services, simplify procedures of administration examination and approval, push forward legislation, further improve systems, regulate processes, intensify regulation, take different measures simultaneously, reinforce supports in respect of finance and taxation, price, land, finance, etc., guarantee common benefits of private partners and the

public, attract private partners to participate in the investment and operation management of projects of public products and public services through diversified financing channels such as capital market and development-oriented and policy-based finance, and enhance the supply capacity and efficiency of public products and public services.

All local governments and departments shall attach great importance, carefully organize implementation, intensify coordination, form joint work force, practically fulfill duties, and jointly conduct implementation.

General Office of the State Council

May 19, 2015

(This Circular is issued publicly)

Guiding Opinions on Promoting the Public-Private Partnership Mode in the Public Service Fields

Ministry of Finance, National Development and Reform Commission and People's Bank of China

With the view of building massive entrepreneurship and innovation by all, improving two engines of public products and public services, and making the masses enjoy high-quality and efficient public services, the Guiding Opinions on Promoting the Public-Private Partnership Mode in the Public Service Fields (hereinafter referred to as "the Opinions") are hereby given for reforming and innovating the supply mechanism of public services and vigorously promoting the public-private partnership (PPP) mode:

I. Fully Recognize the Great Significance of Promoting the PPP Mode

The PPP mode is a significant innovation of the supply mechanism of public services. That is to say, a government selects private partners with the capacity of investment and operation management in a competitive way; both parties arrive at a contract in the principle of equal negotiation to define the relations of responsibilities, rights and interests; the private partner provides public services, while the government pays the private partner corresponding consideration as per performance evaluation results of public services to guarantee reasonable earnings of the private partner. The PPP mode is favorable for giving full play to the role of market mechanism, enhancing the supply quality and efficiency of public services, and maximizing public interests.

(1) Be favorable for speeding up transforming government functions and realizing the separation of government functions from enterprise management and the separation of government functions from functions of public institutions. Domestic and overseas enterprises, social organizations and intermediaries as private partners undertake responsibilities for design, construction, investment, financing, operation, maintenance and so on involved in public services. Government, as supervisor and cooperator, reduces the

direct participation in micro affairs, consolidates duties of formulation of development strategies, social management, market supervision, performance assessment and so on, which is favorable for solving problems of dislocation, offside and omission of government functions, deepens the reform of investment and financing systems, and pushes forward the modernization of national government system and capability.

(II) Be favorable for breaking through industrial access restrictions and inspiring economic vitality and creativity. The PPP mode can effectively break through various unreasonable restrictions to the entry of private partners into public service fields, encourages state-owned holding enterprises, private enterprises, mixed ownership enterprises and enterprises of other different types to actively participate in the provision of public services, gives more participation opportunities to small- and medium-sized enterprises, largely expands the development space of private partners, especially private enterprises, inspires the vitality and development potential of market subjects, and is favorable for activating social stock capital, forming diversified and sustainable channels of capital investment in public services, building new economic growth points and reinforcing economic growth impetus.

(III) Be favorable for improving financial investment and management methods, and enhancing the use efficiency of financial capital. Under the PPP mode, government takes operation subsidies and so on as the consideration for private partners providing public services, takes performance evaluation results as the basis of payment of consideration, includes them into budget management, interim financial plan and financial report of the government, and can fairly allocate the investment of public capital between contemporary people and future generations in the principle of intergenerational equity, effectively making up insufficient financial investment in current period and favorable for alleviating the pressure of financial expenditures in current period, flattening fluctuations in financial expenditures among years, preventing and solving government debt risks.

II. General Requirements

(IV) Guiding thoughts. Carry out spirits of the 18th National People's Congress of the Communist Party of China and the Second, Third and Fourth Plenary Sessions of the 18th Central Committee of the Communist Party of China, use international mature experience for reference as per decisions and arrangements of the Central Committee of the Communist Party of China and the State Council, keep a foothold on actual domestic conditions, reform and innovate the supply mechanism of public services and investment methods, give play to the decisive role of market in resource allocation, better give play to the role of government, and guide and encourage private partners to actively participate in the supply of public services so as to provide the masses with quality and efficient public services.

(V) Basic principles.

Legitimacy and compliance. Bring the PPP to legal track, establish and perfect systems, protect legitimate rights and interests of all participants, define the management requirements in whole life cycle,

and ensure the standard implementation of projects.

Emphasize and keep promises. Government and private partners have equal legal status and equal rights and obligations, must set up contract idea, and insist on equal negotiation, mutual benefits, honesty and trustworthiness and strict performance of contract.

Openness and transparency. Implement sunny operation, lawfully and fully disclose the important information of PPP projects, guarantee the right to know of the public, and effectively supervise and constrain all the participants.

Public interests. Strengthen government supervision, organically combine policy objectives and social objectives of government with the operation efficiency and technical progress of private partners, promote the competition and innovation of private partners, and ensure the maximization of public interests.

Activeness and steadiness. Encourage local people's governments at different levels and competent departments of industries to adjust measures to local conditions, explore practices in line with local actual conditions and industrial characters, conclude and extract experience, and form a development mode suitable for national conditions of China. Insist on principles of necessary, reasonable and sustainable financial investment, orderly push forward project implementation, control the government payment responsibility of projects, prevent the government payment responsibility from aggravating contradictions between financial revenue and expenditure and bringing expenditure pressure.

(VI) Development objectives. Keep a foothold on reinforcing and improving public services, form a system effectively promoting the well-regulated and healthy development of the PPP mode, foster a uniform, open and transparent PPP market with orderly competition and powerful regulation. Try to relieve risks of local government debts, actively introduce private partners to participate in the transformation of stock projects of local financing platform companies, and strive to reduce local government debts via the PPP mode. In the public service projects of new construction, increase the proportion of use of the PPP mode step by step.

III. Establish a System Guaranteeing the Sustainable and Sound Development of the PPP Mode

(7) Define the management framework of project implementation. Establish and perfect a regulation system, implement whole life cycle management, and guarantee the quality of project implementation. Further improve operation guidance, regulate the operation processes of all the links of identification, preparations, procurement, implementation and transfer of or for projects, define operation requirements, and guide private partners to participate in implementation. Formulate contract guidelines, and promote the standardization of solutions of common problems. Formulate standard contract texts in sub-industries and sub-fields, and enhance the efficiency of contract preparation and negotiations. According to the Budget Law, Contract Law, Government Procurement Law and Implementing Regulations thereof, the Guiding Opinions of the General Office of the State Council on Purchase of Services by Government from Social

Forces (Guo Ban Fa [2013] No.96) and so on, establish and improve management rules, regulate procedures and methods for selecting partners, and maintain national interests, social public interests and legitimate rights and interests of private partners.

(VIII) Perfect financial management systems. Conduct demonstrations of financial capacity, generally evaluate and control responsibilities for financial expenditures of projects, and boost the sustainable development of medium- and long-term finance. Establish and improve financial management and accounting systems of public service costs, innovate combined resource development modes. In terms of different payment mechanisms such as government payments, user charges and viability gap funding, conduct accounting for the operation subsidies, charging rights, other considerations and so on involved in projects, conduct accounting as per the unified accounting system of the state, include them into annual budgets and interim financial plans, reflect and manage them in financial reports of governments, and report them to the people's congress or the standing committee thereof at the respective level. In the process of transformation of stocked public service projects into the PPP projects, make assets evaluations in accordance with the law, reasonably determine values, and prevent the loss and sales at a sacrifice of public assets. During implementation of projects, state-owned capital gains lawfully obtained by governments, excess gains sharing agreed upon and other public revenue shall be turned over the state treasury.

(IX) Establish multi-level supervision and management systems. Competent departments of industries may initiate the PPP projects as per economic and social development plans and special plans, while private partners may suggest such initiation according to needs of local economic and social development. Competent departments of industries shall formulate industry technical standards and technical specifications of public products or services in different fields, and consolidate the supervision over the quality and prices of public services. Establish a comprehensive evaluation system with the joint participation of governments and the public, establish a performance management mechanism in the whole life cycle with ex ante setting of performance objectives, interim performance track and ex post performance evaluation, link government payments and user charges to performance evaluation, and take performance evaluation results as important bases for price adjustments, so as to maximize public interests. Make full disclosure of the information on the project implementation in accordance with the law, guarantee the right to know of the public and receive public supervision.

(X) Improve the price adjustment mechanism of public services. Actively advance the price reform in public service fields, and speed up straightening out prices of public services in the principle of compensatory costs, reasonable earnings, resource conservation, high quality and preferential prices and fair burden. As per project operations and performance evaluation results, perfect the price adjustment mechanism of public services, improve the hearing system of price decisions of governments, widely listen to opinions of private partners, the public and relevant departments, and guarantee the scientificity of pricing

and price adjustments. Disclose the information including cost changes during the operation of projects and the quality of public services in a timely way, enhance the transparency of pricing and price adjustments.

(XI) Improve the system of laws and regulations. Advance relevant legislation, fill a legislation vacancy in the PPP field, focus on solving problems of connection and coordination between the operation of the PPP projects and existing laws, define legal bases and nature of government contribution, regulate the relations of responsibilities, rights and interests between government and private partners, specify responsibilities for supervision and management of relevant government agencies, and provide a good legal environment and stable policy expectations for the sound development of the PPP mode. Encourage conditional local governments to keep a foothold on local realities to promulgate local regulations or rules pursuant to the Legislation Law, so as to further targetedly regulate the application of the PPP mode.

IV. Regulate the Promotion of Implementation of PPP Projects

(XII) Widely apply the PPP mode to provide public services. In

public service fields of energy, transportation, water conservancy, environmental protection, agriculture, forestry, science and technology, low-cost housing projects, medical treatment, sanitation, elderly care, education, culture, etc., encourage the application of the PPP mode to attract the participation of private partners. In particular, if it is necessary to implement franchise in specific fields of energy, transportation, water conservancy, environmental protection, municipal works, etc., observe the Administrative Measures for the Franchising of Infrastructure and Public Utilities.

(XIII) Relieve risks of local government debts. Actively apply the methods of transfer-operate-transfer (TOT), rehabilitate-operate-transfer (ROT) and so on to transform the stocked public service projects of financing platform companies into the PPP projects, introduce private partners to participate in transformation and operation, and on the premise of obtaining the consent of creditor, convert government debts into non-government debts to alleviate the debt pressure of local governments and save and divert funds to the construction of major livelihood projects. Vigorously advance financing platform companies to disconnect with government, conduct marketization structuring, and perfect corporate governance structure. A financing platform company may participate in a local PPP project as private partners, and specify relations of responsibilities, rights and interests by concluding a contract with government, provided that local government debts undertaken by it have been included into the financial budget of government and properly disposed of and it clearly announces that it will not undertake any financing functions of government borrowings in future. The financing platform companies are forbidden to participate in any PPP project in the way of guaranteed promises and so on to conduct financing in a disguised way.

(XIV) Enhance the scientificity of decisions of new construction projects. According to needs of local economic and social development and in combination with the balance between financial revenue and expenditures, local governments shall generally demonstrate the economic efficiency and social efficiency of

new construction projects, and conduct demonstrations of financial capacity to guarantee decision quality. As per project implementation cycle, charging and pricing mechanism, return on investment, basic framework of risk allocation, government investment needed and other factors, reasonably choose operation methods such as build-operate-transfer (BOT) and build-own-operate (BOO).

(XV) Select the best project partners. For a project with financial funds as the consideration of public services provided by private partners, local government shall select a project partner according to laws and regulations including the Budget Law, Contract Law, and Government Procurement Law and the Implementing Rules thereof. By relying on a government procurement information platform, promptly and fully publish project procurement information to the society. Comprehensively evaluate professional qualifications, technical capacity, management experience, financial strength, credibility and other factors of project partner, and select the best partner in good faith in accordance with the law. Strengthen the supervision and management in government procurement link of projects, and guarantee the fairness, impartiality and openness of procurement processes.

(XVI) Reasonably determine rights and obligations of both parties of cooperation. Set up the idea of equal negotiation, reasonably allocate project risks in the principle of equal rights and responsibilities, scientifically design contract terms in the principle of inventive compatibility, define the output specification and performance requirements of projects, return mechanism, withdrawal arrangements, emergency and temporary takeover plan and other key links, and realize equal rights and responsibilities. Introduce a dynamic adjustment mechanism of prices and subsidies, and fully consider the reasonable earnings obtained by private partners. In case of unilateral default, the breaching party shall make corresponding compensations for the other party. Establish a collaboration mechanism of investment, subsidies and prices, and create conditions for private partners to obtain reasonable return.

(XVII) Strengthen the sense of responsibility and performance capability. Private partners shall combine its own demands for economic benefits with policy objectives and social objectives of government, keep reinforcing management and innovation, enhance operation efficiency, fulfill corporate social responsibilities in achieving economic value, provide services with quality and quantity guaranteed in strict accordance with agreements, and maintain public interests; actively conduct business transformation and upgrade, transform from engineering contractor or construction party to operator, and achieve the diversified development in different fields; and, keep enhancing operation strength and management experience, and strengthen the capability of providing public services. Intermediaries of consulting, law, accounting and so on shall provide services with high quality and low price, and impel the efficiency improvement and upgrade of projects.

(XVIII) Guarantee continuously effective public services. According to relevant contract, examine and accept project construction conditions and the quality of public services. If a project is not completed on time or is substandard, private partners shall complete it or make corrections within a prescribed period, and take remedial measures or make compensations for losses. Perfect the settlement mechanism of contract

disputes, and actively coordinate about the settlement of disputes in accordance with the law. If it is really necessary to change any contract content, extend contract period or change private partners, government shall negotiate with the private partners about settlement, provided that the continuity and stability of public services shall be kept. In the case of transfer of project assets, performance test, asset evaluation and registration and entry into account shall be conducted for the transferred assets, accounting shall be conducted as per the uniform accounting system of the state, and the assets shall be reflected and managed in the financial report of the government.

V. Policy Guarantee

(XIX) Simplify project review processes. Further reduce examination and approval links, establish the joint evaluation and review mechanism of project implementation programs, and enhance examination efficiency. After signature of project contracts, handle necessary examination and approval formalities simultaneously. Relevant departments shall simplify handling formalities, optimize handling procedures, and actively improve services, and shall not make substantive examination for contents already specified in implementation programs.

(XX) Guarantee project lands in several ways. Implement diversified land supply to guarantee the land for project construction. For a project included in allotted land category, land may be supplied in the way of allotment, and land use shall not be changed for the allotted land. A completed project may be mortgaged upon approval in accordance with the law, with the nature of land use right unchanged, and be transferred to government together with public facilities upon expiration of contractual operation period; if the project nature is changed after the right to mortgage is realized and the land use right shall be obtained in a paid way, formalities of paid land use shall be handled in accordance with the law. For a project not included in the allotted land category, if the land use right is obtained in the way of lease, rental revenue shall be included into the government fund budget management by reference to land transfer revenue. If the land use right is obtained in the way of contribution or buying shares, the people's government of relevant city or county shall, as contributor, formulate the scheme on contribution or buying shares, and implement the said scheme upon approval by itself.

(XXI) Improve finance and taxation support policies. Actively explore the effective ways of financial capital leveraging private partners and financial capital partners to participate in the PPP projects. The central finance shall make contributions to establish China PPP Financing Support Fund to participate in projects as private partner, thereby enhancing the availability of project financing. Explore the adoption of measures including rewards in lieu of subsidies to guide and encourage of transformation of stock projects of local financing platforms into the PPP projects. Carry out and improve preferential tax policies of the state to support public service causes. If a public service project adopts the PPP mode, it may enjoy relevant preferential tax policies according to regulations. Encourage local governments to jointly initiate the

establishment of funds with financial institutions experienced in investment management on the premise of bearing limited losses, and attract the participation of more private partners by introducing structured design.

(XXII) Provide financial services well. Financial institutions shall innovate in financial services in conformity to characters of the PPP mode, optimize credit appraisal methods, and actively provide financing supports for the PPP projects. Encourage developmental financial institutions to give play to advantages of medium- and long-term loans to participate in the transformation of the PPP projects, and guide commercial financial institutions to expand project financing channels. Encourage eligible project operation subjects to conduct financing on capital market by issuing corporate bonds, enterprise bonds, medium-term notes, directional notes and so on. Encourage project companies to issue project income bonds, project income notes, asset-backed notes and so on. Encourage social security funds and insurance funds to participate in the projects in the principle of marketization and by innovatively applying a creditor's right investment plan, an equity investment plan, a project asset backing plan and other methods. For projects meeting "going out" conditions, encourage policy-based financial institutions to grant medium- and long-term credit supports. By relying on various property right and equity transaction markets, provide diversified, well-regulated and market-oriented withdrawal channels for private partners. Financial regulatory departments shall reinforce supervision and management, guide financial institutions to correctly identify, measure and control risks, and support the financing of the PPP projects in the principle of risk controllability and commercial sustainability.

VI. Organization of Implementation

(XXIII) Strengthen organization and leadership. Relevant departments under the State Council shall, according to the division of functions, be responsible for concrete work in relevant fields, and strengthen the guidance for and supervision over local promotion of the PPP mode. The Ministry of Finance shall, together with relevant departments, reinforce communications and coordination about policies and information exchanges, and improve systems and mechanisms. Competent departments of industries of energy, science and technology, human resources and social security, territorial resources, environmental protection, urban-rural housing construction, transportation, water conservancy, agriculture, commerce, culture, health, family planning and so on shall, in combination with characters of respective industries, actively apply the PPP mode to provide public services, and explore and improve relevant supervisory systems. Local people's governments at all the levels shall issue concrete policy measures and carry out them in combination with existing plans and local practices; according to local realities, establish a work coordination mechanism, and promote the implementation of the PPP projects.

(XXIV) Reinforce talent cultivation. Vigorously cultivate professional talents, and speed up the formation of a mechanism of joint cultivation of talents by government departments, colleges and universities, enterprises and professional consulting agencies. Encourage various market subjects to reinforce talent trainings, and conduct trainings for business personnel so as to build a high-quality professional talent team. Encourage local governments with conditions to coordinate about reform demands of internal institutions,

and further integrate special force to undertake duties of promotion of the PPP mode and enhance professional level and capability.

(XXV) Build information platforms. Local people's government at all the levels shall practically fulfill duties of planning guidance, identification and evaluation, consulting services, publicity and trainings, performance evaluation, information statistics, construction of expert database and project library and so on, and establish a unified information release platform to disclose project implementation conditions and other relevant information in a timely way, thereby guaranteeing the openness and transparency of project implementation and orderly promotion.

The promotion of the PPP mode in public service fields relates to the vital interests of the masses, and is important work to guarantee and improve livelihood. All local governments and departments shall fully recognize the important significance of promoting the PPP mode, integrate thoughts and actions into the decisions and arrangements of the Central Committee of the CPC and the State Council, delicately organize implementation, consolidate coordination, form joint work force, and practically fulfill duties for joint implementation. The Ministry of Finance shall reinforce coordination, supervise, examine, track and analyze the implementation of the Opinions together with relevant departments, and report major issues to the State Council in a timely manner.