

**Decree No. 15/2015/ ND-CP dated  
14/02/2015  
on Public-Private Partnership  
Investment Form (PPP)**

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# CONTENTS

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**1**

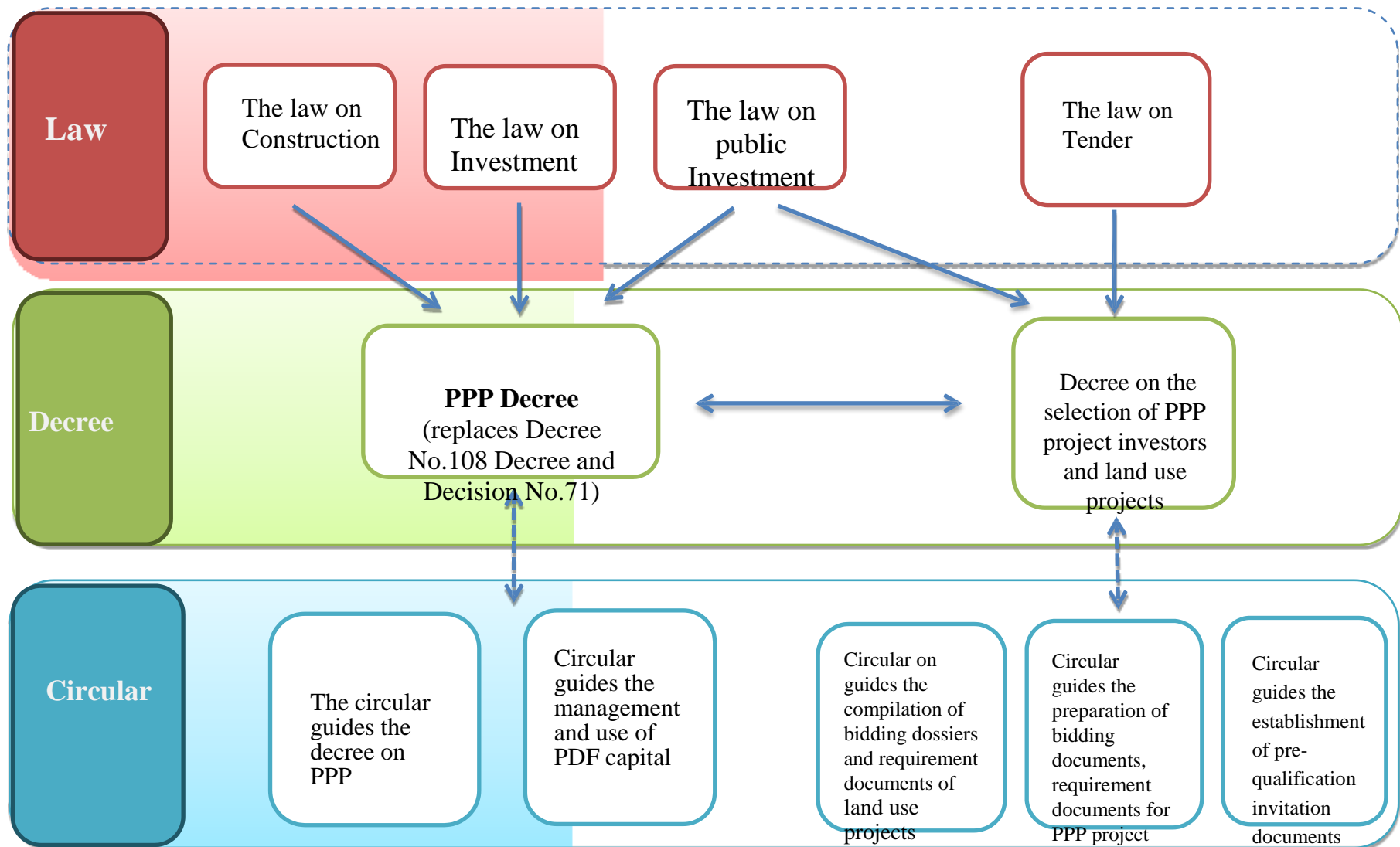
**PPP**

**Overview of the legal framework for**

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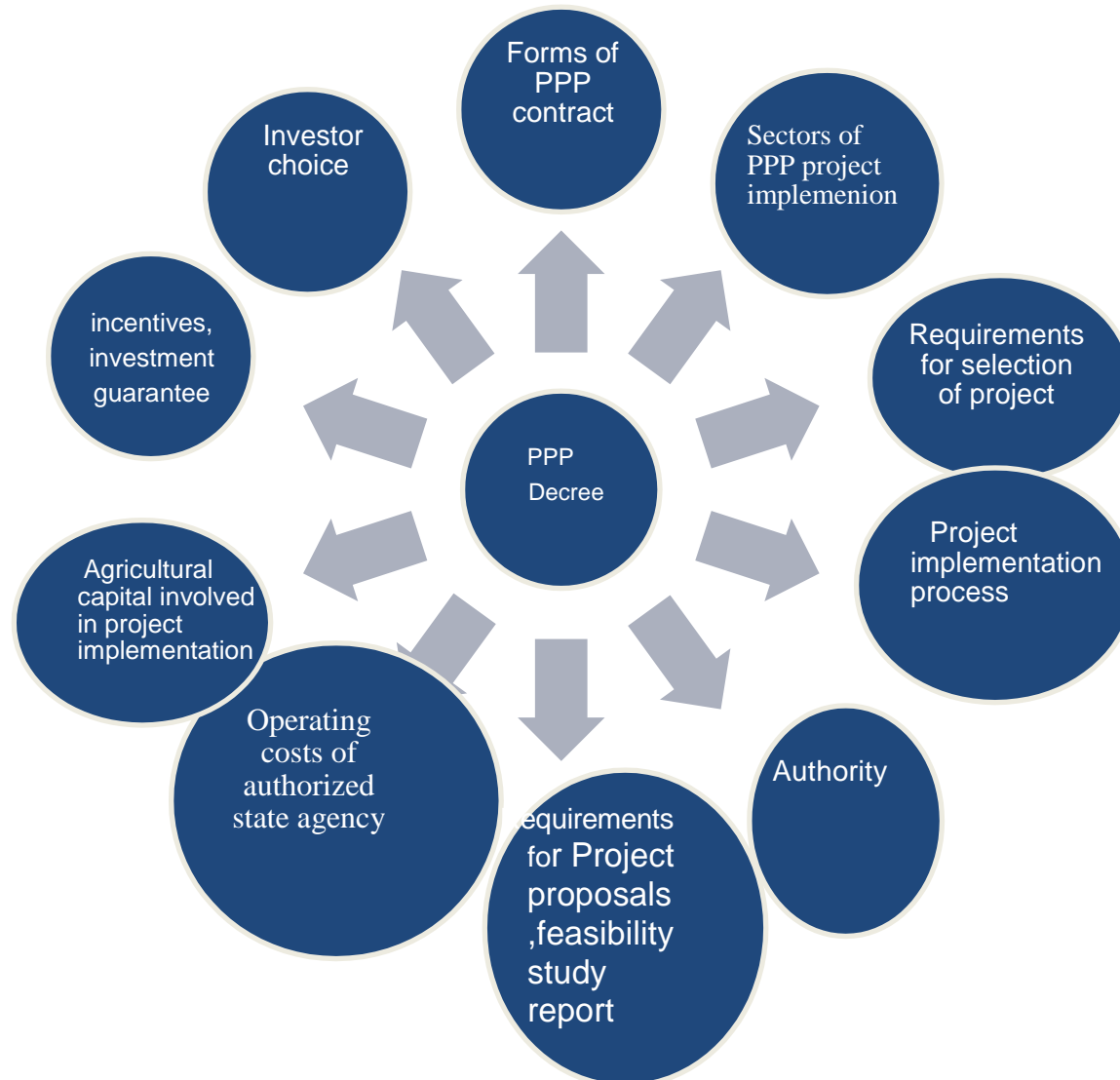
**The main contents of PPP Decree**

# I. Overview of the legal framework for PPP



## II. The main content of PPP Decree

PPP decree has ***11 chapters, 73 articles*** with the main contents as follows



## *1. Forms of PPP contract*

In order to meet the practical demands, the PPP decree extends PPP contracts in comparison with previous stipulations:

Previous stipulation (108 Decree & 71 Decision)	New stipulations in Decree
<ol style="list-style-type: none"><li>1. BOT (<b>Build- Operate- Transfer</b>)</li><li>2. BTO (<b>Build- Transfer- Operate</b>)</li><li>3. BT (<b>Build- Transfer</b>)</li></ol>	<ol style="list-style-type: none"><li>1. BOT</li><li>2. BTO</li><li>3. BT</li><li>4. <b>BOO (Build- Own- Operate)</b></li><li>5. <b>O&amp;M (Operate- Manage)</b></li><li>6. <b>BLT(Build - Lease- Transfer)</b></li><li>7. <b>BTL(Build- Transfer- Lease)</b></li><li>8. <b>Similar contract ( considered by Prime Minister)</b></li></ol>

## *2. Sectors of PPP project implementation*

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The sector of PPP implementation (Article 4) in the PPP Decree has been expanded in comparison with previous stipulations in Decree 108/2009/ ND-CP and Decision 71/2010 / QD-TTg. Specially, new added stipulations allows the application of investment under Public-Private Partnership form to most sectors of the agriculture, including:

*1. Projects for the construction, renovation, operation, conduct of business, management of infrastructure facilities and provision of equipment or public services:*

- The infrastructure constructions for agriculture, countryside and development services, link production associated with processing, consume agricultural products
- The other sectors pursuant to Prime Minister's decision

2. At the same time, stipulate: **“Ministries and ministerial-equivalent bodies shall preside, coordinate with the Ministry of Planning and Investment to provide detailed guidelines on investment sectors within the management scope of the Ministries and branches.**

### 3. Project selection requirements for implementation in the PPP form

- Widened for PPP projects in agriculture "Allow implementation of projects with total investment below 20 billion VND" and unlimited to the lower bound (Article 15).  
- Conditions for selection of the project as shown:

Accordance with the planning, development plans

Accordance with investment sector

Ability to attract and receive commercial capital, technology, management experience of investors

To be able to provide products and stable services with high quality and meet the needs of users

**Total investment capital of 20 billion VND and more, except for O & M investment projects and agricultural projects**

**The project is capable of recovering capital from revenue of priority users selected**

**In case**, State enterprises propose projects, state enterprises must cooperate with non-state enterprises in proposing projects

## 4. PPP project implementation

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### 1 Project proposed by the State

*The state organizes the formation, appraisal, approval and publication of contents of the project proposal. After the State finalizes the feasibility study report, investors shall be selected in accordance with the law on tendering (Article 16, 17, 18).*

### 2 Project proposed by investor

All new projects are proposed by the investor, in addition to the projects announced by the State (Articles 20, 21, 22, 23)

### 3 Group C project

***1. The project shall be implemented in accordance with the shortened procedures: And does not have to carry out the procedures for the issuance of investment certificate (Article 39). Suitable for specific and shorten the time and procedures for agricultural PPP project, as the project is usually proposed by the investor, project scale is small).***



## 4. PPP project implementation

### I. Project proposed by the State

Authorized state authority organizes formulation of project proposal, according to requirements for selection of project so as to implement in the PPP (*Articles 15, 16*)

Approve the policy on the use of investment capital of the State participating in project implementation (if any); appraisal and approval of project proposal (*Article 17*)

Authorized state agency announces the project (*Article 18*)

Authorized state agency forms feasibility study report (*Article 24*)

Appraisal, approval feasibility study report (*Articles 26, 27*)

Selection of investor (*Article 29*)

Parties sign the investment agreement, project contract and implementation

## 4. PPP implementation process

### II. The new projects proposed by investor( in addition to published projects)

The investor forms project proposal in order to submit authorized state agency approving (*Article 21*)

Authorized state agency evaluate, approve proposal project of the investor, announce project proposal approved(*Article 24*)

Authorized state agency entrust investor of project proposal establishing feasibility study report (*Clause 2 Article 24*)

Evaluate and approve BCNCKT (*Articles 26, 27*)

Select investor (*Article 29*)

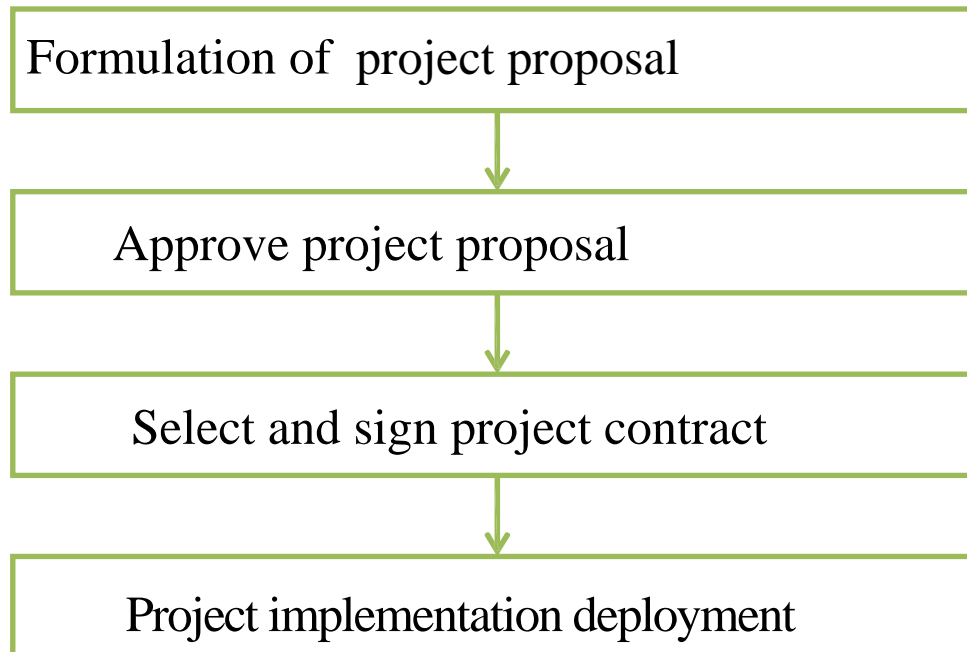
Sign investment agreement, project contract and implementation

## 4. PPP implementation process

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### III. The process of Group C project shortened more than Group A & B project

*(in both cases, Authorized or investor organizes formulation of project proposals)*



## *5. Authority in the PPP preparation and implementation*

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- **Athorized feasibility study report (Article 26):**

Project	Assessment Authority
Project of national importance	State Appraisal Council
Group A & B project	The ministers, the heads of the ministerial-level agencies and the provincial-level People's Committees shall organize the appraisal

## *5. Authority in the PPP preparation and implementation*

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- **Approval authority of feasibility study report (Article 27):**

Project	Assessment Authority
National importance project	Prime Minister
Group A and B projects except for projects using ODA capital and preferential loans of foreign donors in the fields of security, national defense and religion	The ministers, the heads of the ministerial-level agencies and the provincial-level People's Committees

- **Authorized State Agency sign and carry out project contracts (Article 8):** Ministries, branches and provincial-level People's Committees

## *5. Authority in the PPP preparation and implementation*

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- **Authority issue investment registration certificates (Article 39)**

Project	Authority issue registration certificates of investment
National importance project	Ministry of Planning and Investment
Projects are contracted by the ministries, branches or agencies authorized by the ministry or branch	
Project carried out in provinces and cities	
The remaining project	Provincial People's Committee

## ***6. Requirements for project proposals and feasibility study report***

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### **Project proposals must contain the following main contents:**

1. The necessity of the project and the advantages of implementing project under Public- Private Partnership form in comparison with other forms of investment;
2. Expected objectives, scale, project implementation area, land use demand;
3. Preliminary requirements about technique, construction qualification of project or supply service, management organization method and business or provide service;
4. Estimate progress and duration of project implementation; Time of construction and exploitation of the construction;
5. Anticipate conditions for implementation of other projects ( For BT contract)
6. Preliminary financial plan of the project;
7. Suggestion for investment incentives and guarantees (if any);
8. Preliminary expectation of risks during project implementation process and risk division among parties involved in the contract
9. Preliminary anticipation about socio-economic efficiency of the project
10. In case, the project has a construction component, in addition to the above-mentioned contents, the project proposal includes a preliminary design method in accordance with the law on construction

## ***6. Requirements for project proposals và feasibility study report***

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The feasibility study report should have the following main contents (1):

1. The necessity, the advantages of the implementation of the project in comparison with the form of other investment
2. Conformity with the planning, investment plan and requirements of selecting project; types of contract and the basic requirements of the project contract;
3. Objectives, scales, components (if any) and locations for project implementation and land use demand;
4. Technical and technological explanations to satisfy the quality requirements and exploitation of project construction or service supply;
5. Present condition of project, machinery, equipment, value of assets (in case of O & M contract); other requirements for project implementation (for BT contracts);
6. Progress and duration of project implementation; Business management and business plans;



Feasibility study reports should include the following main contents (2):

7. Financial plan: investment capital total; price, service charge and other legal revenues of the project; payback period; profit; Investment capital of the State participating in project implementation;

8. Ability to raise funds for project implementation; assess needs, payment capability of the market;

9. Analysis of risk and responsibilities of the parties of risk management in the project implementation process

10. Suggestion for investment incentives and guarantees (if any);

11. The socio-economic efficiency of the project and the impact on the issues of environment, society and national defense and security.

12. Regarding projects with construction components, feasibility study reports should be included the contents in accordance with the law on construction.

## *7. The cost of investment preparation and project implementation of authorized State agency*

Cost	Capital
1. The cost of formulation, appraisal, approval of the project proposals, feasibility study report;	1.The State budget capital shall be balanced according to the annual development investment spending of authorized State Agency;
2. The cost of organizing the selection of investors	2. Capital for investment preparation
3. The operating cost of project management unit of authorized State agency	3. The proceeds from the sale of bidding documents for Selection of investor
	4. Capital returned by the investor selected for implementation of the project;
	5. Other legal capital sources
4. The cost of announcing the project	State budget source in non- business plan of ministries, branches and provincial-level People's Committees
5. The operating cost of PPP management agency	

6. Expenses for hiring consultants to support the implementation of a number of activities falling under the responsibility of the competent State bodies defined in Clause 5 Article 8 of this Decree

7. Expenses for conferences, seminars, negotiations

8. The other costs

## *8. Use of State's investment capital in project implementation*

### *Purpose of use (Article 11)*

**Decree No.108 + Decision No.71**

**PPP Decree**

**1. Support for the construction of auxiliary works, compensation, ground clearance and resettlement**

**2. Perform other tasks to support implementation of the project**

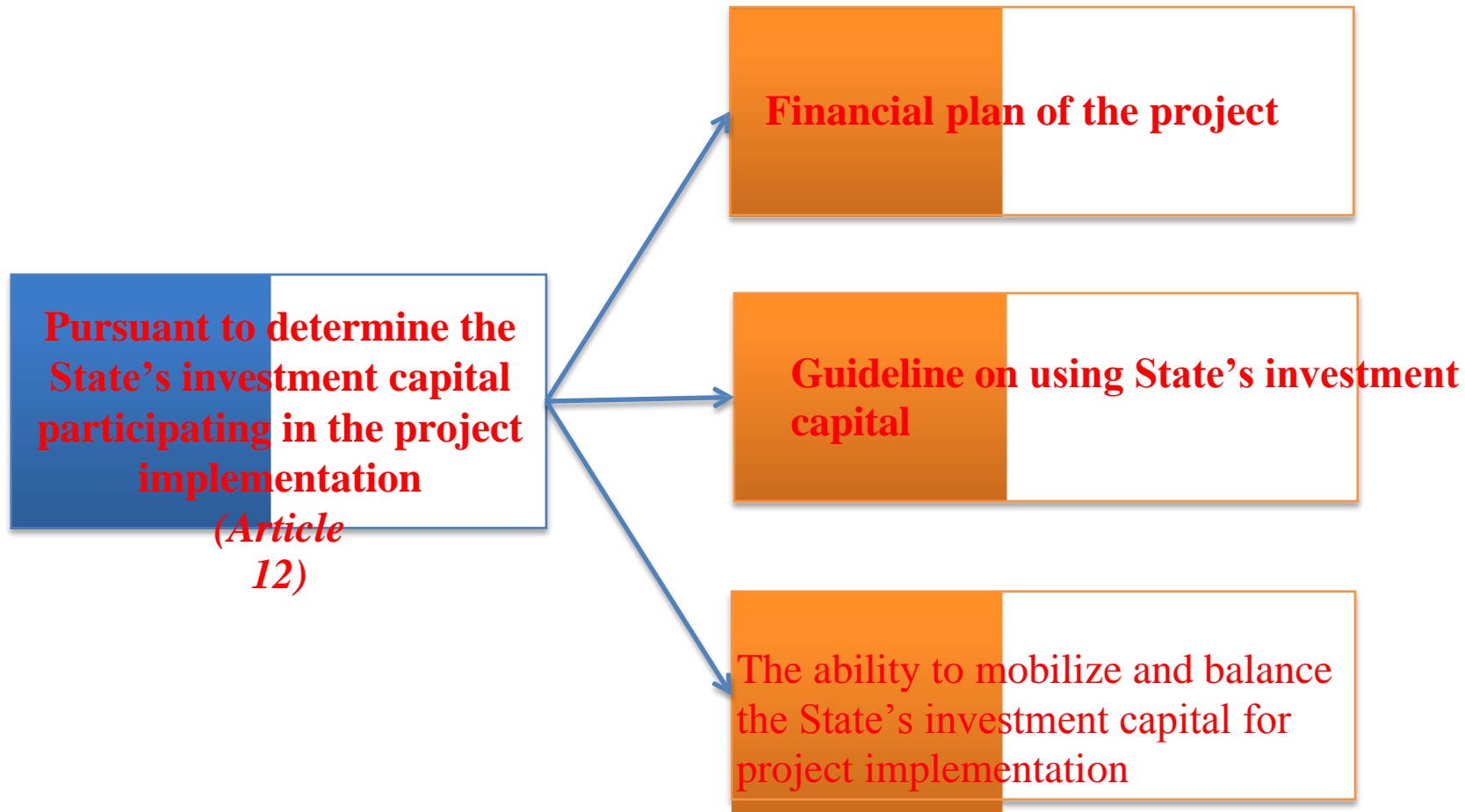
**1. Contribute capital to support the construction of works for business projects, collecting fees from users, but the revenues are not enough to recover investment capital and profits.**

**2. Payment for investors performing BTL & BLT contracts and similar contracts**

**3. Support for the construction of auxiliary project, compensation organization, ground clearance and resettlement**

## *8. Use of State's investment capital in project implementation*

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## *8. Use of State's investment capital in project implementation*

*Competence to determine the portion of State's investment capital participated in the project implementation (Article 13)*

<b>Project</b>	<b>Approval authority of the State's investment capital policy participating in the project (if project proposal approved)</b>	<b>Authority to determine the State's investment capital participating in project implementation ( if the feasibility study report approved)</b>
<b>National importance project</b>	Parliament	Prime Minister
<b>Group A project</b>	Prime Minister	Ministers, Heads of ministerial-level agencies and provincial-

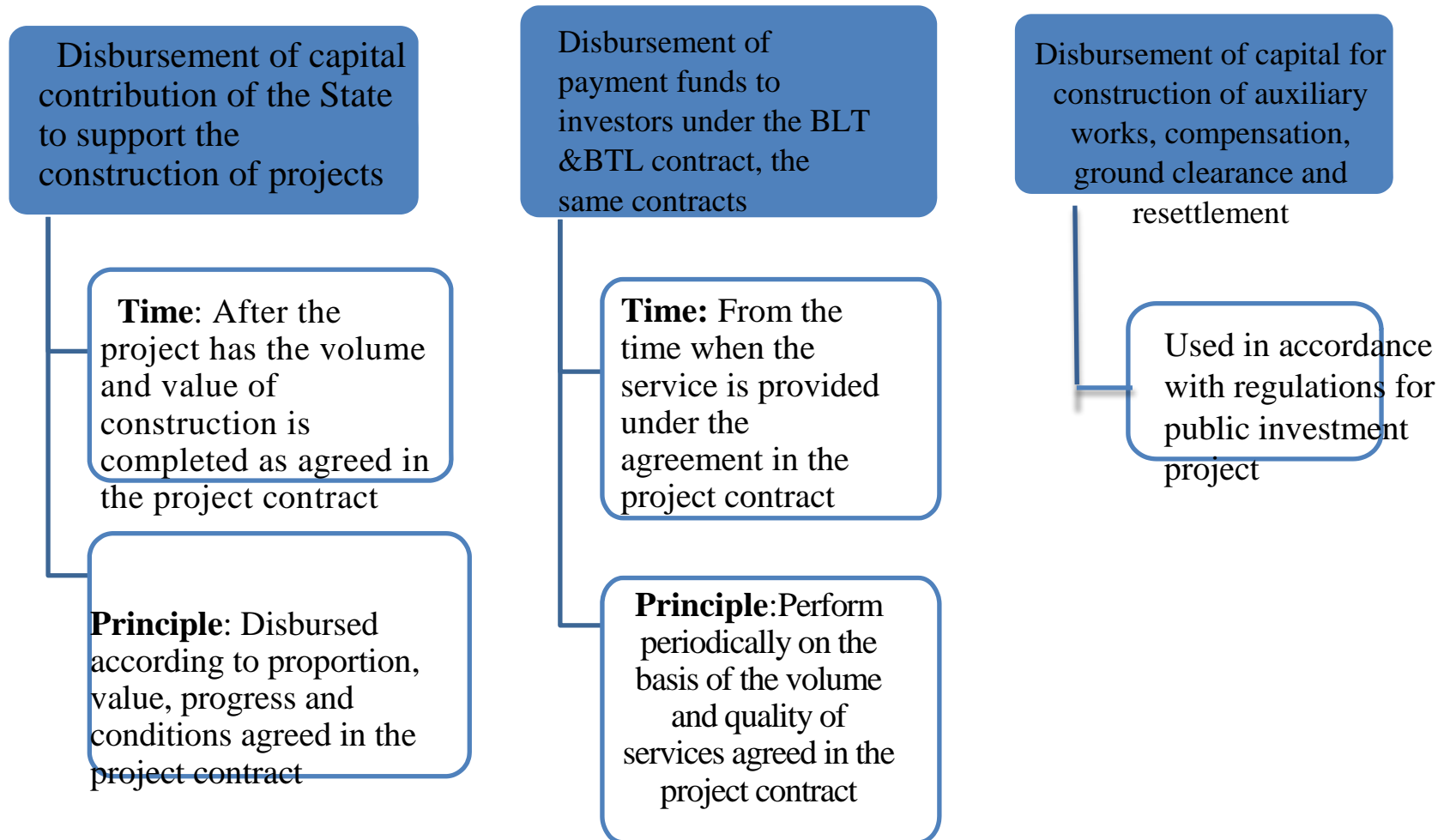
## *8. Use of State's investment capital in project implementation*

<b>Group B &amp; C project</b>	Heads of ministries, central agencies	level People's Committees (except for projects using ODA capital and preferential loans of foreign donors in the fields of security, national defense and religion approved by the Prime Minister)
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## 8. Use of State's investment capital in project implementation

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### *Disbursement of State's investment capital participating in project implementation (Article 14)*





## *9. Investment incentives and guarantees*

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**1. Tax incentives, obligation guarantees**

**2. Ensure the balance of foreign currency**

**3. The project approval authority**

**4. Applicable law and dispute settlement**

## ***9. Investment incentives and guarantees***

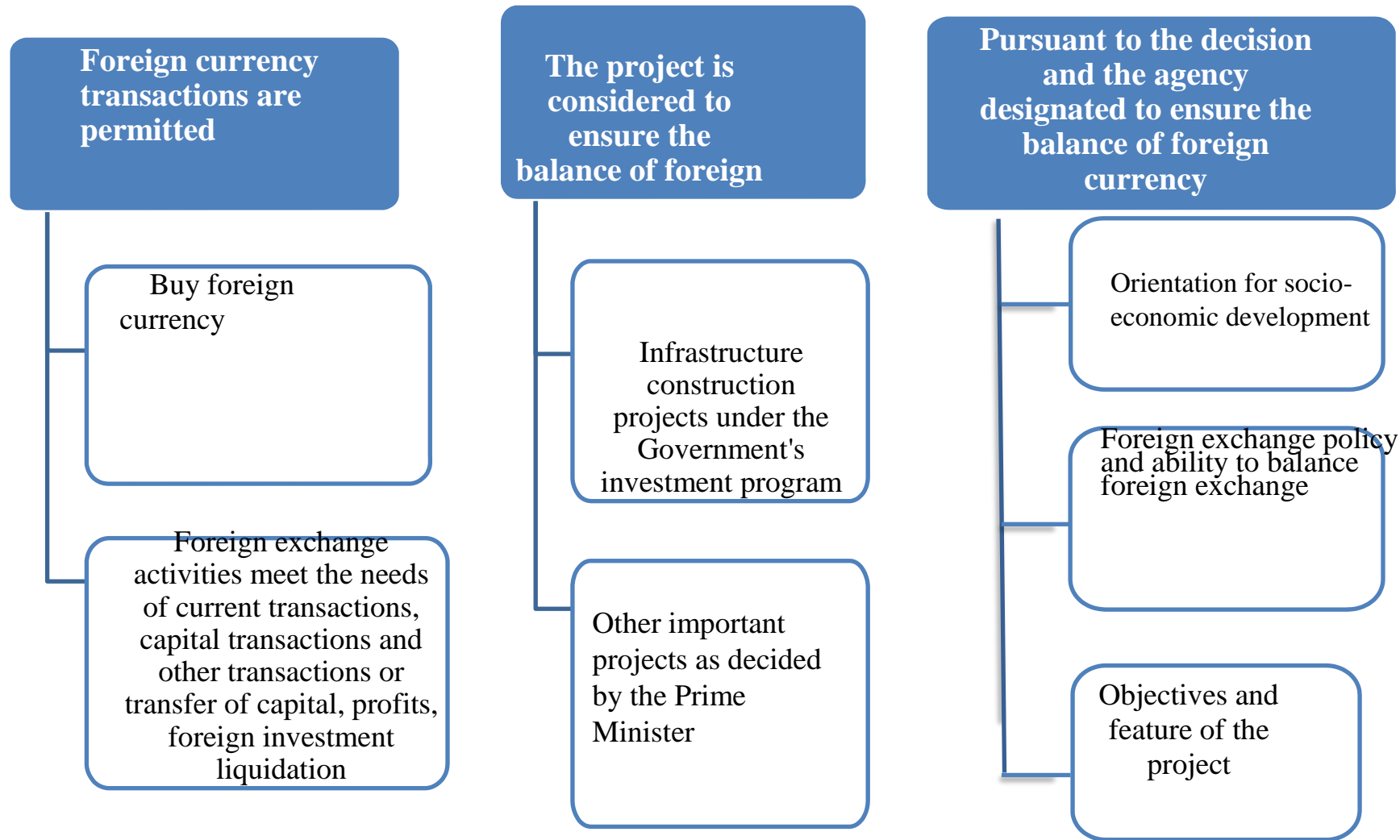
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Apart froms of investment incentives and guarantees such as tax incentives, guarantee of property mortgage, balance guarantee of foreign currency, capital and assets guarantee..., **The Decree additionally provides other forms of guarantee such as:**

- *Investors and project enterprises are entitled to other incentives in accordance with the law (including preferential policies attracting enterprises to invest in current agriculture and rural areas) (Article 55).*
- **Ensure implementation of land use rights (Article 59):** The purpose of use of land for the project is guaranteed not to change for the entire duration of the project agreement and in case the lenders receive project.
- Allow the investor to mortgage property rights, land use rights and business rights to the project works (Article 58)

## 9. Investment incentives and guarantees

### *Balance gurantee of foreign currency*

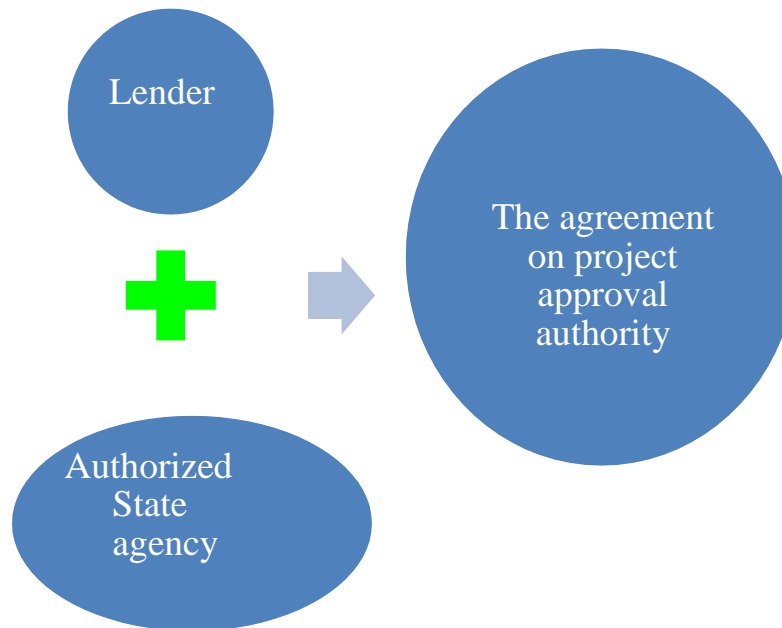


- *No guarantee on the exchange rate of foreign currency*

## 9. Investment incentive and guarantees

### Project approval authority

***The lender has the right to receive or appoint a qualified body to accept part or all of the rights and obligations of the investor or project enterprise (referred to as the right to receive the project) in the case of investor or project enterprises fail to fulfill the obligations stipulated in the project contract or loan contract.***



## *9. Investment incentives and guarantees*

### *Applicable law and dispute settlement*

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- 1. Applicable law (Article 37):** The parties sign the agreement on the applicable law to the project contract and the contract guaranteed by the Government shall not be contrary to the provisions of the law of Vietnam on the selection and application of foreign law.
- 2. Settlement of disputes (Article 63):**
  - Method of settlement: Negotiation, mediation, settlement through court or arbitration
  - Foreign arbitrator's awards are recognized and enforced in accordance with the law on the recognition and enforce the judgment of foreign arbitrator

## ***10. Transition mechanism***

Projects do not have to comply with the PPP Decree:

- ***List of projects announced*** and approved by ***the Prime Minister***
- ***Feasibility study report approved***
- The available projects ***decide to select investors***
- ***The project contract has been signed off***
- ***The project has been granted an investment certificate or a project contract***
- ***The project is committed or approved in writing by the Prime Minister or ministries***, branches and provincial-level People's Committees on the use of State's investment capital participating in project implementation, priority and investment guarantee and other contents related to the project implementation before the effective date of this Decree continued to comply with such documents.

## *11. Selection of the PPP implementation investors*

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In parallel with the Decree on investment under Public-Private Partnerships form, the Government issued Decree No. 30/2015 / ND-CP dated March 17, 2015 stipulated specifically about the implementation of some articles of the Law on Tender on the selection of investor, including the selection of investors to implement PPP project.

The forms of selection, detailed procedures and preferences for investors are clearly defined in this Decree.



# *THANK YOU!*

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For more information, please contact us;

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*Planning Department*

*International Cooperation  
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