

Notification of the Office for the Development of the Eastern Economic Corridor
Re: Form and Details of the Project Feasibility Report B.E. 2560

Whereas it is expedient to prescribe the form and details of the project feasibility report of the public-private partnership or investment by private entities projects in the Eastern Economic Corridor.

By virtue of the provision of Clause 4 of the Notification of the Eastern Economic Corridor Policy Committee Re: Criteria, Methods, Conditions and Procedures for Public-Private Partnership or Investment by Private Entities B.E. 2560 (2017); the Office for the Development of the Eastern Economic Corridor hereby issues the Notification as follows:

Clause 1 This Notification is called “Notification of the Office for the Development of the Eastern Economic Corridor Re: Form and Details of the Project Feasibility Report B.E. 2560.”

Clause 2 In this Notification:

“Notification of the Policy Committee” means the Notification of the Eastern Economic Corridor Policy Committee Re: Criteria, Methods, Conditions and Procedures for Public-Private Partnership or Investment by Private Entities B.E. 2560 (2017).

Clause 3 The Project Owner Agency shall prepare a feasibility report in the form and details at least as follows:

(1) Executive summary, including the details at least the following:

(a) Detail summary of the project feasibility report under Clause 3 (2).

(b) The main proposal of the project submitting for the Policy Committee’s consent under Clause 8 of the Notification of the Policy Committee.

1) Project objectives.

2) Project Scope.

3) Obligations and responsibilities of the state agencies and private entities in project operation.

4) Time of the project.

5) Ownership of asset necessary for project operation during project duration;

6) Public-private profit-sharing.

7) Financial and non-financial supporting measures of the project.

8) Other issues as the Office deems appropriates.

(c) The tender proposing to the Cabinet for approval under Clause 9 of the Notification of the Policy Committee.

1) Spending of the government budget expenditure or loan for the project operation.

2) Other matters of the project operation which shall be approved by the Cabinet.

In the case that the project shall have the state agency or a private entity to be granted approval, permission, rights, concession, license, and consent; or to make registration or declaration to the state agency or the committee under the applicable law, or to the Minister or the Cabinet; or to receive any rights or benefits including tax exemption or tax deduction under the law on investment promotion, or use the land in possession of the state agency or the Ratchaphatsadu Land under Clause 7 Paragraph Two of the Notification of the Policy Committee; the Project Owner Agency shall also submit these matters as supporting information for consideration of the Policy Committee.

(2) The project feasibility study, which shall comprise at least the following details:

(a) The project background, consisting at least:

1) The compatibility to the strategic plans of the country including the national strategy, the national economic and social development plan, the government policy, the development plan of the Eastern Economic Corridor, and the country development plans in various aspects.

2) The project necessity which consists of principle and rationale of the project and benefits of the project to the Project Owner Agency, public sector, people, the development of the Eastern Economic Corridor, and the country.

3) The performance in the past and the approval concerning to the project.

(b) The project details which at least comprise objectives, goals, scope, and project duration, physical characteristics, location, buildings, machinery, equipment, used technology, product capacity and volume, project operation procedures and methods, initial capital and future investment throughout project duration, cost and expense for the project operation throughout project duration; project time frame from preparation of the feasibility report, project proposal, private entity selection, and project operation to expiration of the joint investment contract.

There shall be the market sounding concerning the project details according to the criteria and procedures prescribed in the Notification on the market sounding.

(c) The project readiness which demonstrates an effect on the project success shall comprise at least the following issues:

1) The compatibility and readiness of the projects that both are existing and expected in the future which is related and has an effect on the project success.

2) Readiness of the project areas, including acquisition of ownership or rights in using such area and appropriateness, as well as technical and legal limitation in using such areas;

3) Readiness of transportation and utilities related to and necessary for project operation;

4) Laws, rules, regulations, or orders that may affect the project successes;

5) Comments of the people being impacted by the project operation.

d) Project feasibility, which shall at least comprise the following issues:

1) Commercial feasibility, which at least considers overview and analyse related industrial condition, demand and supply, service fee forecast and revenue collection methods, project revenue forecast, together with background of assumption for acquiring such information.

2) Technical feasibility, which at least considers physical and engineer characteristics, and technical methodology in design, construction, operation, and safety e.g. appropriateness to geological conditions, climate conditions, road boundary, road alignment, characteristic and properties of area and land, construction materials and equipment, including the response to users' need, connection, and shared use.

3) Technological feasibility, which at least considers technological alternatives from various factors e.g. the compatibility to the project objectives and goals, physical appropriateness, technological reliability, cost and expense of investment, operation and maintenance, the number of manufacturers and suppliers, technology monopoly, future development, and use of intellectual properties and patents.

4) Environmental feasibility, which at least considers the environmental impact, management of environmental impact, and financial and non-financial cost of environmental impact management, including period of such implementation.

5) Legal feasibility, which at least considers problems and obstacles may incur from laws, rules, regulations, or orders relating to the project operation, impacts and measures for management of such problems and obstacles.

6) Financial feasibility, which at least considers cash flow forecast and project internal rate of return by calculating the project financial returns with and without

the supporting measures from public sectors, and sensitivity analysis, together with background of assumption for acquiring such information.

7) Economic feasibility, which at least considers positive and negative externality incurred in the project operation e.g. city development, economic growth in the project area, increase or decrease of power consumption, increase or reduction of travel time, and economic internal rate of return, and sensitivity analysis, together with background of assumption for acquiring such information.

There shall be the market sounding concerning the project feasibility according to the criteria and procedures prescribed in the Notification on the market sounding.

e) Project risk, which shall at least identify the risks and consider likelihood of risks and impact of the risks, as well as methods of risk management in the following aspects:

1) Project readiness

a) Risks from other related project e.g. the delay of related projects.

b) Risks in project area e.g. the acquisition of ownership or right in using such area.

c) Risks in transportation and utilities related to and necessary for the project operation e.g. the connectivity of transportation and utility system used in the project.

d) Risks in laws, rules, regulations, or orders about granting approval, permission, or rights relating to the project operation.

e) Risk from people being impacted from the project operation e.g. the acceptance of people affected by the project operation.

2) Project feasibility

a) Commercial risks e.g. the number of service users, adjustment of service fee, revenue collection, and competitiveness.

b) Technical risks e.g. technical limitations in design, construction, operation and maintenance, including use of shared system and equipment.

c) Technological risks e.g. technological change or monopoly.

d) Environmental risks e.g. environmental impact.

e) Legal risks e.g. unclear legislation, change of law, and force majeure.

f) Financial risks e.g. provision of financial sources for project operation, additional cost and expenditures due to construction delay.

g) Economical risks e.g. impacts on the project due to economic change, economic growth, and exchange rate fluctuation.

h) Political risks e.g. changes in government policy.

There shall be the market sounding concerning the project risks according to the criteria and procedures prescribed in the Notification on the market sounding.

f) Private partnership, which at least shall determine the forms of private partnership under the allocation of obligations and responsibilities, incentives, risks, and public-private profit-sharing in the following issues:

1) Public and private entities' obligations and responsibilities in project operation from designing, location supply, construction, financing, operation, maintenance, further investment through the term of a joint investment contract, and ownership of the project's assets during the term of a joint investment contract, including output specification and level of service to be delivered by private entities.

2) Privileges entitled to the project or private entities under the law, e.g. obtaining one or more incentives together, including tax exemption or tax reduction under the law on investment promotion or use of land in the custody of the state agency or the Ratchaphatsadu land. It also includes the reason and necessity why the project or private entities should obtain the privileges, as well as the procedure for acquiring such privileges together with the comments of the authorised state agencies responsible for the matters.

3) Regarding risk allocation between public and private entities under Clause 3 (2) (e), the parties with eligibility and readiness in management shall be identified to take responsibilities for each aspect of risk to prevent, reduce, or eliminate the risks to the best.

However, in case the risks are allocated to private entities but such risk taking do not attract private entities to investment, or limit the competitiveness of private entities to the joint investment, or deprive of financing from the financial institutions, or cause the higher operation cost and affect the financial feasibility of the project; the Project Owner Agency shall specify financial and non-financial supporting measures according to guidelines and procedures for determining the project supporting measures according to the attachment at the end of this Notification. There shall be comments from the authorised state agency responsible for the implementation under such measures.

4) Public-private profit sharing, which shall be appropriately specified to reflect the risks each party taking by taking into account the ability in finding source of funding of private entities.

However, in case the project does not have sufficient financial returns or the characteristics of returns do not attract private entities to investment, or limit the competitiveness of private entities to the joint investment, or deprive of financing from the financial institutions; the Project Owner Agency shall specify financial and non-financial supporting measures according to guidelines and procedures for determining the project supporting measures according to the attachment at the end of this Notification. There shall be comments from the authorised state agency responsible for the implementation under such measures.

5) In the case that the project shall have the private entity to be granted approval, permission, rights, concession, license, and consent, or to make registration or declaration to the state agency or the committee under the applicable law, it shall identify such details with comments from the authorised state agency relating to such matters.

6) In the case that the Project Owner Agency agrees not to apply the private entity selection with auction procedures, the Project Owner Agency shall prepare the additional information as specified and notified by the Officer under Clause 15 of the Notification of the Policy Committee together with comments of the Selection Committee.

7) The sensitivity analysis of cash flow and public-private returns, including the scenario analysis of obligations and responsibilities, risks, and the project supporting measures of the public sector.

There shall be the market sounding concerning the private partnership according to the criteria and procedures prescribed in the Notification on the market sounding.

g) Readiness of the state agencies, which at least considers the readiness of the Project Owner Agency and other relevant state agencies both in aspects of duties and authorities, personnel, and budget in the following issues:

1) The implementation according the criteria, methods, conditions, and procedures for public-private partnership or investment by private entities under the Notification of the Policy Committee.

2) The public-private project operation in the aspects of obligations and responsibilities of the state agencies, management of risks taking by the state agencies, the implementation of the project financial and non-financial supporting measures, including granting of privileges and approval, permission, rights, concession, licenses, consents, or registration or declaration.

3) Limitations and guidelines for reducing limitations in implementation under 1) and 2) of the state agencies.

4) Financial impacts to the Project Owner Agency and financial and fiscal burden of the public sector in the project operation, risk management, and project financial and non-financial supporting measures, including source of funding and guidelines for financing of such implementation.

There shall be the market sounding concerning the readiness of the state agencies according to the criteria and procedures prescribed in the Notification on the market sounding.

h) The comments of the working group under Clause 5 of the Notification of the Policy Committee and other relevant state agencies under Clause 6 of the Notification of the Policy Committee.

In the case that it is unable to specify the aforesaid details in the project feasibility report, the reasons shall also be identified in the report.

3) The appendices, which shall at least comprises details of commercial feasibility, financial feasibility, economic feasibility, and other supporting information, including financial models of base case, best case, worst case, and of any other cases, sensibility analysis, and scenario analysis, as well as other assumptions for acquiring information.

Clause 4 The Office shall have authorities to formulate practical guidelines for implementation under this Notification.

Clause 5 This Notification shall come into force from the day of notification onwards.

Issued on the 9th day of October B.E. 2560 (2017)

Kanit Sangsubhan

Secretary-General of the Eastern Economic Corridor

Policy Committee

Notification Attachment

Guidelines and Methods for Formulating Project Supporting Measures

The consideration for determining the project financial and non-financial supporting measures shall be based on the following basis:

(1) The project shall be compatible and important to the success of the Eastern Economic Corridor development.

(2) The project shall have technical and economic feasibilities but lack of financial feasibility to attract private entities to investment or bankability.

(3) In case that financial supporting measures are applied, financial mount, period of measure obligations, and source of funding shall be clearly stated by taking into account limitations and impacts of laws and government policies regarding the government budget and public debt, and it shall be applied under related laws, rules, regulations, and orders. Specifically, the spending of the government expenditure budget or loans for financial supporting measures shall comply with the Budgetary Procedure Act B.E. 2502 (1959) and its amendments and the Public Debt Management Act B.E. 2548 (2005) and its amendments.

(4) In case that the revenue or returns of a project is at the agreed level, it shall be shared such return to the public sectors by considering the motivation of private entities in operating the project.

To determine project supporting measures, the Project Owner Agency may apply one or more measures together.

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
1. Subsidies	The public entity will grant subsidies to support the project operation of the private entity e.g. giving financial support for construction cost to reduce burden of investment and funding, and reduce financial risks of the private entity. However, the private entity shall have to take other risks.	The Project Owner Agency shall undertake as follows: 1) Specify criteria and conditions for granting subsidies to motivate the private entity to operate a project efficiently e.g. giving financial support when project performance complying with the output specification and level of service as specified in the joint investment contract.

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
		2) Specify forms of subsidy granting. The payment may be made as upfront subsidy or in installment at specified period of the project. However, the subsidy payment shall be made when the project starts providing services.
2. Co-investment and part operation	The public entity will take responsibilities for investment or part operation in place of the private entity e.g. the public entity is responsible for investment and civil work instead of the private entity to reduce burden of investment and funding, and reduce financial risk of the private entity and risk in civil work operation.	The Project Owner Agency shall undertake as follows: 1) Consider the appropriateness for the public to take responsibility for investment and part operation substituting to the private entity. It shall take into account impacts to the project success, including risks incurred when the public entity taking responsibility of investment and part operation e.g. technical sharing, compatible period of investment and project operation, and comparison in term of worthiness and cost of co-investment and part operation between the public and private entity. 2) Clearly determine rights, duties, and responsibilities for the public co-investment and part operation in place of the private entities to avoid disputes between both parties. Technical requirements may be clearly specified for project operation between the public and private entities to prevent problems of unclear responsibility to incurred damages.

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
3. Entitle a private entity to use public assets for commercial purposes.	The public entity will entitle a private to make use of public assets in and out of a project for commercial purposes within the term of the joint investment contract to increase financial feasibility of the project.	The Project Owner Agency shall undertake as follows: 1) Consider using public assets for commercial purposes related to the project and has eligibility to make better profits to the project. 2) Grant the ownership or possession rights or any other rights to the private entity to use such assets for commercial purposes. The Project Owner Agency shall consider the government policies and legal requirements in granting such rights to the private entity e.g. laws on immovable property expropriation or laws on city planning.
4. Non-compete clause	The public entity agrees not to develop other projects which may cause competition to the project or affect a number of service users to reduce incurred commercial risks on demand and supply of the project.	The Project Owner Agency shall undertake as follows: 1) Clearly define the projects with competitive characteristics by taking into account necessity feasibility of the public to develop projects having negative impacts on demand and supply of the project. 2) Specify conditions that in any case where non-compete clause will be ended e.g. when the project's return is sufficient to the investment or when the project cannot response to a number of service users exceeding expected product capacity and lower the level of service or in the case of necessity to enhance the efficiency of public service in general. 3) Clearly specify financial amount of compensation and impact evaluation procedures in a joint investment contract in response to the compensation calculation in case the public entity cannot undertake according to this supporting measures.

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
5. Right for first refusal	Public entity agrees to entitle private entity party to consider operating other projects with competitive natures and may affect the number of service users prior to other private entities. Additionally, private entity party has right to match to reduce risks incurred from competitive projects and attract private entities to get lower returns for higher profits from the future projects. This also reduces risks in case that the public is necessary to build a project in the future which may have negative effect on demand and supply of the project.	The Project Owner Agency shall undertake as follows: 1) Clearly define the projects with competitive characteristics by taking into account necessity feasibility of the public to develop projects having negative impacts on demand and supply of the project. 2) Specify conditions that in any case where non-compete clause will be ended e.g. at the end of specified period or when the project's revenue or return reach the agreed point. 3) To operate projects at present and necessary projects in the future, the public entity shall express fair competition between the private party and other private entities. The private party shall participate in the private entity selection the same as other private sector to ensure the public sector that the private party possesses qualification and eligibilities to operate the future projects at least better than the best proposal of other private entities passing pre-qualification, technical proposals, and quotation proposals in the private entity selection procedures.

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
6. Public entities holding shares of special purpose vehicle operating the project	The public entity will hold part of the shares of a special purpose vehicle operating a project for controlling or supervising project operation as an additional shareholder as specified in a joint investment contract. This is to reduce burden in finding funding source or financial risks of private entities. However, public entity shares risks of special purpose vehicle and obtain excess profits from project operation equal to private entities as shareholders.	The Project Owner Agency shall undertake as follows: 1) Clarify reasons and necessities of public sector holding shares of special purpose vehicle adding from controlling or supervision project operation specified in a joint investment contract. 2) Specify portion of public shareholding. The public entity shall not hold shares at the portion making such special purpose vehicle to be a state agency according to related laws. This shall take into account public necessities and benefits, damages public entities may receive as shareholders of special purpose vehicle in case the special purpose vehicle is claimed for compensation for not undertaking the joint investment contract and flexibility in management of special purpose vehicle after public sector holding the shares. 3) Prepare a shareholders' agreement which at least consider the following issues: a) Requirements of public shareholders rights e.g. rights to receive dividend, right to appoint directors or representatives in executive board (if any), and rights of subscription for capital increase shares to maintain the public shareholding proportion. b) Requirements of minority shareholder protection of public shareholders e.g. reserved matters which specifying

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
		undertaking the special purpose vehicle may operate and have legal bind after approved by public shareholders. c) Requirements which public sectors can control revenue and expenditure of special purpose vehicle to the suitable level on the basis of efficiency and transparency e.g. determining standard cost or transfer pricing to maintain public benefits. d) Requirements about share distribution of a special purpose vehicle of the public. 4) Determine public entities holding shares with legal authorities. 5) Specify suitable measures for preventing conflicts of interest between the Project Owner Agency and the special purpose vehicle.
7. Financial supporting measures for construction or project development cost of private entities in case of force majeure during construction period.	Public entities will grant financial support for construction or project development cost exceeding expected construction or project development cost due to force majeure e.g. economic fluctuation or change of material price to reduce risks from cost overrun.	The Project Owner Agency shall undertake as follows: 1) Consider risk likelihood from increase of construction or project development cost due to force majeure. 2) Specify price range or exceeding cost due to fluctuation over control of the private entity and types of fluctuation that public entity will take responsibility, including setting price index for reference. 3) In case application of this measure, it shall specify the case when construction or project development cost lower than

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
		expected due to force majeure, public sectors shall obtain the returns vice versa.
8. Minimum Revenue Guarantee: MRG	Public entities will grant minimum revenue guarantee in case the revenue incurred lower than minimum revenue agreed by public and private entities in a joint investment contract. The fluctuation of revenue or the number of service users may be used as indicators for revenue guarantee. The public entity shall be responsible for commercial risks on demand and supply which may incur with the project to increase financial feasibility.	The Project Owner Agency shall undertake as follows: 1) Clearly specify minimum revenue guaranteed by public entities in a joint investment contract. The private entities shall share profits to public entities when the project revenue exceeding the agreed high level of revenue. 2) Specify criteria for minimum revenue guarantee e.g. (1) Using project gross revenue. This is the easiest way for the private entities to reduce cost. Although the incurred revenue still lowers than agreed minimum revenue, the private entities receive minimum revenue guarantee, so that they are motivated to manage cost efficiently. (2) Using project's net profit. This well reflects ability in managing project cash flow. However, public entities shall control revenue and expenditures of the project to suitable level on the basic of efficiency and transparency e.g. determining transfer pricing to maintain public benefits. (3) Using project internal rate of return as criteria. This method is quite complicated but it reflects cost of investment and time value of money throughout a joint investment contract. In any form of

Supporting Measures	Guidelines for determining supporting measures	Procedures and conditions for determining supporting measures
		payment, it shall specify conditions for payment using output specification and level of service as criteria. 3) Public entities can specify minimum revenue differently each year and may review such minimum revenue periodically to suitable for real conditions. Moreover, public entities can estimate budget or loan more efficiently.
9. Paying returns to private entities in form of availability payment	Public entities will pay returns to private entities by considering operation availability. Public entities are responsible for commercial risk on demand and supply which may incur.	The Project Owner Agency shall undertake as follows: 1) Clearly specify output specification and level of service as conditions for paying return to private entities in form of availability payment in the joint investment contract. The amount deducting in case of fail to comply with the condition shall also be specified. 2) In case applying more than one measures and the project return is less than cost the private entities have to use for managing commercial risk e.g. risk in demand and supply or in case such project cannot make commercial e.g. social projects, this measure may be applied.