

ベトナム社会主義共和国
ベトナムPPPインフラプロジェクトに係る調査
報 告 書

平成23年5月
(2011年)

独立行政法人国際協力機構
(JICA)

株式会社日本経済研究所

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ADB	Asian Development Bank	アジア開発銀行
ADBI	Asian Development Bank Institute	アジア開発銀行研究所
AES	AES Corporation	
ASEAN	Association of Southeast Asian Nations	アセアン、東南アジア諸国連合
BIDV	Bank for Investment and Development of Vietnam	ベトナム投資開発銀行
BLT	Build-Lease-Trnsfer	建設・リース・譲渡方式
BOO	Build-Own-Operate	建設・所有・運営方式
BOT	Build-Operate-Transfer	建設・運営・譲渡方式
BT	Build-Transfer	建設・譲渡方式
BTO	Build-Transfer-Operate	建設・譲渡・運営方式
capex	Capital Expenditure	資本支出
CDM	Clean Development Mechanism	クリーン開発メカニズム
CIC	China Investment Corporation	中国投資有限責任公司
CII	Ho Chi Minh City Technical Investment Fund JSC.	ホーチミン市インフラ投資株式会社
CLP	China Light and Power Co., Ltd.	中華電力有限公司
COWASU	Thua Thien Hue Construction and Water Supply State-One Member Company Limited	フエ水道公社
CT&D	Central Trading & Development Group	中央貿易開発関連企業（台湾）
DAWACO	Da Nang Water Supply Company	ダナン水道供給会社
DCA	Development Credit Authority	USAIDの債務保証機関
DEG	Deutsche Investitions- und Entwicklungsgesellschaft German Investment Corporation	ドイツの援助機関KfWグループの一部で途上国の民間向け投資を担当
ECFA	Engineering and Consulting Firms Association, Japan	社団法人海外コンサルティング企業協会
EVN	Electricity of Vietnam	ベトナム電力総公社
FS	Feasibility Study	事業化可能性調査
GDP	Growth Domestic Products	国内総生産
GSEC	GS Consulting & Engineering Corp.	
HCMC	Ho Chi Minh City	ホーチミン市
HIFU	Ho Chi Minh City Infrastructure Investment Joint Stock Company	
HPP	Hydro Power Plant	水力発電所
IATA	International Air Transport Association	国際航空運送協会
ICAO	International Civil Aviation Organization	国際民間航空機関
IDFC	Infrastructure Development and Finance Corporation, ltd.	インドのインフラ専門ノンバンク
IDICO	Vietnam Urban and Industrial Zone Development Corporation	ベトナム都市・工業団地投資開発総公社
IFC	International Finance Corporation	国際金融公社。世銀グループの一部で途上国の民間向け投融資を担当

IIDF	India Infrastructure Debt Fund	インド政府が設立検討中のインフラ融資買い取りファンド
IIF	PT Indonesia Infrastructure Finance	インドネシアのインフラ専門ノンバンク
IIFCL	India Infrastructure Finance Corporation Limited	インド政府100%出資のインフラ専門ノンバンク
IIGF	PT Indonesia Infrastructure Guarantee Fund	インドネシアにおけるPPP保証機関
IL&FS	Infrastructure Leasing & Financial Services Ltd.	インドの民間開発・金融業者
IOE	Institute of Energy	ベトナムエネルギー研究所
IPP	Independent Power Producer	独立系発電事業者
JETRO	Japan External Trade Organization	日本貿易振興機構
JICA	Japan International Cooperation Agency	国際協力機構
JSC	Joint Stock Company	合弁株式会社
LDIF	Local Development Investment Fund	地方開発投資基金
LICOGI	Infrastructure Development and Construction Corporation	
LVWC	Lyonnais Vietnam Water Company Ltd.	
MARD	Ministry of Agriculture and Rural Development	農業・農村開発省
MOC	Ministry of Construction	建設省
MOF	Ministry of Finance	財務省
MOIT	Ministry of Industry and Trade	産業貿易省
MOT	Ministry of Transportation	交通省
MPI	Ministry of Planning and Investment	計画投資省
NHA	National Highway Authority of India	インドの高速道路担当官庁
NRW	Non Revenue Water	無収水
ODA	Official Development Assistance	政府開発援助
opex	Operation Expenditure	事業費
PDF	Project Development Facility	PPPプロジェクト組成を行う政府機関
PDP	Power Development Plan	国家電力開発マスタープラン
PDP7	7th Power Development Plan	第7次国家電力開発マスタープラン
PFC	Project Finance Company	JICAが提案するベトナムにおけるインフラ専門ノンバンク
PFI	Private Finance Initiative	民間資金活用公共事業
PIDG	Private Infrastructure Development Group	欧州の援助機関による民間インフラ整備の支援機関
PPC	Provincial People's Committee	地方人民委員会
PPP	Public Private Partnerships	官民連携
PSIF	Private Sector Investment Finance Division	国際協力機構民間連携室
PVN	Petrovietnam	ベトナム石油総公社
SAWACO	Saigon Water Corporation	サイゴン水道会社
SBN	State Bank of Vietnam	ベトナム国家中央銀行
SBV	State Bank of Vietnam	ベトナム国家銀行

SCIC	State Capital Investment Corporation	国家資本投資会社
SGI	Saigon Investment group	サイゴンインベストメントグループ
SPC	Special Purpose Company	特別目的会社
TPP	Thermal Power Plant	火力発電所
USD	United State dollar	アメリカ・ドル
VCB	Joint Stock Commercial Bank for Foreign Trade of Vietnam	ベトナム商業貿易銀行
VDB	Vietnam Development Bank	ベトナム開発銀行
VGf	Viability Gap Funding	経済性補填補助金
VIDIFI	Vietnam Infrastructure Development and Finance JSC	
Viwaseen	Vietnam Water Supply Sewerage and Environment Construction Investment Corporation	
VND	Vietnam Dong	ベトナム・ドン
WACO	Water & Environment Joint Stock Company	
WB	World Bank	世界銀行
WSC	Water Supply Corporation	水道供給会社

1. インフラへの資金ニーズ

ここではインフラ整備の現況と動向について検討し、資金ニーズについての分析を行う。電力、水道、道路、交通などのセクター別に、個別セクターでの整備状況や課題を記す。

ADB(Asian Development Bank Institute)が2010年9月に出したレポート「Estimating Demand for Infrastructure in Energy, Transport, Telecommunications, Water and Sanitation in Asia and the Pacific: 2010-2020」によれば、2010年から2020年の間にベトナムで必要とされるインフラへの投資額は109,761百万ドル(年間9,978百万ドル)と推定されている。これを国民一人当たりになると1,273ドルであり、2008年での一人当たりGDP(647ドル、2000年基準)の倍近い金額となる。この推計で対象となったインフラは交通(空港、港湾、鉄道、道路)、通信(固定および携帯電話)、エネルギー(電力)および水(上下水道)の4分野であるが、各分野への投資額は、交通が27,989百万ドル(全体の25.5%)、通信が32,160百万ドル(同29.3%)、エネルギーが42,258百万ドル(38.5%)、そして水が7,354百万ドル(6.7%)となっている。

1-1. 電力セクター

1-1-1. 電力需要の現況と予測

近年の電力消費をみると経済成長や近代化を背景として消費量は急速に増加しており、2006年から2009年での伸び率は13.5%である。他方で発電実績も、同期間で12.8%増加しているが、送電ロスや地域間アンバランスなどの問題もあり、絶対的な電力量は依然として不足している。当方がヒアリングを行った日系企業でも電力不足は大きな問題であり、操業中の突然の停電や計画断電などにより企業活動に深刻な影響を与えている模様である。特に電力の不足は産業発展の度合いが進んでいる南部において大きい。このため新たに造成される工業団地へ入居を検討する企業は、自家発電設備があるか否かも条件として重要視しているとのことである。

Power Consumption 2001-2009									
	2001	2002	2003	2004	2005	2006	2007	2008	2009
Power Consumption(GWh)	25,858	30,228	34,841	39,596	44,837	51,368	58,412	65,923	74,479
Growth Rate	15.4%	16.9%	15.3%	13.6%	13.2%	14.6%	13.7%	12.9%	13.0%

source: IOE (Institute of Energy)

Power Generation 2001-2009									
	2001	2002	2003	2004	2005	2006	2007	2008	2009
Power Generation(GWh)	27,040	31,137	36,410	41,275	46,790	60,533	68,699	75,955	86,948
Growth Rate	15.2%	16.9%	13.4%	13.4%	14.7%	12.8%	13.5%	10.6%	14.5%

source: IOE (Institute of Energy)

今後についても、MPI(Ministry of Planning and Investment)などが予測する経済成長率に基づいて IOE (Institute of Energy) が想定する電力消費量は、経済成長率を上回る率で増えていくものと予想されている。例えば Base のケースでは、今後5年間の経済成長率を年7.5%と見込んでいるが、この間での電力消費量は13.4%と経済成長の倍近い伸びになると予想しており、深刻な電力不足が悪化すると想定されている。これからもわかるように発電、送電、配電など各事業における基盤の整備は、必要な国家課題である。

GDP Growth Rate and Growth Rate of Power Consumption							
	GDP Growth Rate (%)				Growth Rate of Power		
	Scenario				Scenario		
	Low	Base	High		Low	Base	High
2011-15	7.1	7.5	9.1		12.1	13.4	16.1
2016-20	7.7	8.1	9.6		9.0	9.7	11.4
2021-30	7.6	8.9	9.8		7.7	8.2	11.6
source: IOE (Institute of Energy)							

1-1-2. 国家電力開発計画と発電所建設

ベトナム政府は5年ごとに国家電力開発マスタープラン (PDP: Power Development Plan) を策定している。これは経済成長予測などを踏まえて電源開発の計画を定めるものであり、MOIT (Ministry of Industry and Trade)内部の組織である Institute of Energy(IOE)が起草したものを政府内で討議した上で首相が承認するとのプロセスにより策定される。この計画に基づいて発電所の建設などが実施されていく。現在は、2030年までを視野に入れて2011年から2020年を計画期間とするPDP7(第7次国家電力開発マスタープラン)が政府内で検討されているが、まだ承認されておらず未公表である。

PDP6は2007年に Decision No. 110/2007/QĐ-TTgとして承認されたものである(後添)。PDP6の計画と実績を比較したのが下表であるが、計画の2/3程度しか開発が進んでおらず、遅延が顕著である。この原因として IOE は、1)同期間での世界不況 (Impact on Global Economy)、2)多数のプロジェクトが同時進行していることによる資金不足 (Lack of Investment capital for many project under construction at the same time)、3)入札や契約、工事監理などの経験不足 (Lack of capacity and experience of bidding, contract and project management, などを IOE は挙げている。

また個別の案件でもPDP6の主要案件52件中で35件(割合67%強)の開発の進捗が遅れている。特に水力以外の石炭やガスなどを熱源とする発電所の開発が進んでいない。

この原因には、前述の理由の他に熱源となる石炭やガスを発電所まで運搬するのに必要な道路や港湾流などのインフラ整備の遅れも指摘されている。

Power Plant Development under PDP6						
Additional capacity(MW)	2006	2007	2008	2009	2010*	2006-2010
Approved capacity (MW)	861	2,096	3,271	3,393	4,960	14,581
Implemented capacity(MW)	756	1,297	2,251	1,789	3,737	9,830
Percentage of implementation	87.8%	61.9%	68.8%	52.7%	75.3%	67.4%
				*estimated by IOE		
				source: IOE (Institute of Energy)		

Planned Power Plants in PDP 6							
Planned Year of COD	Type	MW	Expected Year of COD	Planned Year of COD	Type	MW	Expected Year of COD
2006				2009			
Se San 3	Hydro	260	2006	Song Con 2	Hydro	63	Unclear
Se San 3A #1	Hydro	54	2006	Se San 4 #1	Hydro	120	2009
Srok Phumieng	Hydro	51	2006	An Khe Kanak	Hydro	173	Unclear
2007				2010			
Se San 3A #2	Hydro	54	2007	Cam Pha1	Coal	300	2010
QuangTri	Hydro	64	2007	Hai Phong1#2	Coal	300	2011
Tuyen Quang #1	Hydro	114	2008	Quang Ninh1#1,2	Coal	600	2010
Dai Ninh	Hydro	300	2008	O Mon 1#1	Gas	300	2009
Cao Ngan	Coal	100	2006	Hai Phong 2 #1	Coal	300	2013
Uong Bi #1 ext.	Coal	300	2007	Mao Khe #1	Coal	220	2012
Ca Mau 1	Gas	750	2008	Nong Son	Coal	30	2012
2008				2010			
Tuyen Quang #2,3	Hydro	228	2008	Srepok 3	Hydro	220	2010
Pleikrong #1	Hydro	50	2009	Se San 4 #2,3	Hydro	240	2010
Pleikrong #2	Hydro	50	2010	Song Tranh 2	Hydro	190	2011
A Vuong	Hydro	210	2008	Na Le	Hydro	90	2011
Song BaHa	Hydro	220	2009	Dak Rtih	Hydro	141	2011
Buon Kuop	Hydro	280	2007	Thac Mo ext.	Hydro	75	Unclear
Ban Ve #1	Hydro	50	2010	Se San 4A	Hydro	63	2011
Son Dong	Coal	220	2009	Dong Nai 4	Hydro	340	2011
HaiPhong1#1	Coal	330	2010	Son La #1	Hydro	400	2010
Ca Mau 2	Gas	750	2008	Se Kaman 3	Hydro	248	2011
NhonTrach1	Gas	450	2008	Quang Ninh2 #1	Coal	300	2011
2009				2011			
Ban Ve #2	Hydro	150	2010	Haiphong 2 #2	Coal	300	2014
Buon Tua Sah	Hydro	86	2009	Cam Pha 2	Coal	300	2011
Cua Dat	Hydro	97	2010	Vung Ang 1#1	Coal	600	2013
Dong Nai3 #1,2	Hydro	180	2010	Mao Khe #2	Coal	220	2013
				O Mon 1#2			
				Gas			
				300			
				2014			
				Nhon Trach 2			
				Gas			
				750			
				2011			
				Blue shaded plants are delayed			
				Source : JETRO Report on PDP 7			

1-1-3. 発電能力の推移と構成

2009年での方式別の構成比は、水力が36.0%、石炭が10.5%、石油が3.3%、ガスが18.5%、

ディーゼル&小規模水力が 2.6%、IPP/BOT/Import が 29.1%である。1999 年では、水力が 49.9%、石炭および石油で 21.4%、ガスが 20.6%、ディーゼルが 8.1%であった。10 年前と比較すると、ほぼ全体の半分を占めていた水力の割合が大きく低下しており、経済成長に伴う需要拡大に対応すべく、これまでも発電方式の多様化を図ってきたことが伺える。

さらに 2005 年から 09 年までの総発電能力およびその方式別の構成推移をみると、同期間に総発電能力は 11,576MW から 17,652MW へと 6,076MW 増加している。また 05 年から 09 年での増加能力（すなわち新規に開発された電源）の内訳を大きい順に並べると、IPP/BOT/Import が 2,620MW、水力が 2,313MW、石炭が 600MW、石油が 384MW、ガスが 179MW となっている。増加分のうち 43.1%を IPP/BOT/Import が占めており、水力の占める割合(38.1%)を上回っている。伸び率でみると、IPP/BOT/Import は 05 年の 2,524MW が 09 年には 5,144MW と倍増している。これは従来の主力パターンであった「EVN（Electricity of Vietnam）による水力発電開発」だけでは需要を賄うだけの電力を確保することができないことから、発電方式の多様化の展開とベトナム企業や外資による発電所建設に依存せざるを得なくなってきたことを表している。

発電方式に関しては、上の PDP6 での発電所整備計画にも石炭火力発電所の計画が多く計上されている。ベトナムには石炭資源が豊富に存在しており、その資源の殆どは北東部のクアンニン（Quang Ninh）省に集中して賦存している。資源量は 2,067.55 億トンとされている。炭質は低揮発分（10%以下）、低硫黄分（1%以下）、高発熱量（6,000～8,000kcal/kg）の優良炭である。2007 年での石炭生産量は、41.2 百万トン（BP 統計 2008）。これまでは、輸出も行っており 2006 年での輸出量は 21.6 百万トンで、その 8 割強が中国向けであった。しかし、電力を中心とする需要に対して国内での石炭生産が追い付かない状況になりつつあり、数年内に石炭の純輸国となると予測されている。計画されている石炭火力発電所も海外炭の活用には依存したものであり、輸入のための港湾施設などのインフラ整備が重要となってくる。

Installed Capacity 2005 - 2009															
Year	Total Capacity	Hydropower		Coal Thermal		Oil Thermal		Gas Turbines		Diesel & Small HPPs		IPP/BOT & Import		Added Capacity	Peak Demand
	MW	MW	%	MW	%	MW	%	MW	%	MW	%	MW	%	MW	MW
2005(a)	11,576	4,049	35.2	1,245	10.8	200	1.7	3,084	26.6	454	3.9	2,524	21.8	949	9,255
2006	12,270	4,383	35.7	1,245	10.1	200	1.6	3,248	26.6	454	3.7	2,726	22.2	694	10,187
2007	13,513	4,393	32.5	1,545	11.4	205	1.5	3,248	24.0	454	3.4	3,668	27.1	1,243	11,286
2008	15,763	5,257	33.4	1,545	9.8	200	1.3	3,263	20.7	454	2.9	5,044	32.0	3,493	12,636
2009(b)	17,652	6,362	36.0	1,845	10.5	584	3.3	3,263	18.5	454	2.6	5,144	29.1	4,139	13,952
b - a	6,076	2,313		600		384		179		0		2,620		3,190	4,697

source: IOE (Institute of Energy)

1-1-4. 今後への計画（IPP および BOT の動向）と課題

現在の時点で建設が公表されている主要な発電所の概要を纏めたのが次表である。これをもとに発電所整備の計画の特徴について整理を行い、合わせて将来への動向および民間企業や外資を活用した整備の可能性につき分析する。

計画されているプロジェクトのリストから読み取れる整備方針は以下の通りである。

a) 水力中心からのシフト

発電方式別でみると水力が 30 基（揚水式の 3 基を除く）、ガスが 5 基、石炭が 38 基、そして原子力が 2 基となっている。予定している運転開始時期が早いものに水力発電が多く、後年度分になると石炭やガス、さらには原子力などの方式によるものが計画されている。これは当面は従来と同様の水力で需要を賄い、将来での絶対的な不足は同方式では賄いきれないので発電方式の多様化での対応を計画していることを示すと思われる。なおベトナム国内の水力発電の立地は既に限界であり、現在計画されているもの以外の新規の大型立地は困難と言われている。

b) 発電所規模の大型化

上とも関係するが、方式別での 1 基当たり平均発電能力をみると、水力が 238MW、ガスが 594MW、石炭が 1,021MW、原子力が 4,000MW であり、今後の重点的な発電方式である石炭や原子力での発電所の規模は水力のものに比して遥かに規模が大きい。さらに個別でも原子力 2 基がそれぞれ 4,000MW であるのに加えて、石炭でも Kien Luong 2#3 (3,200MW)、Quang Tranch (36,000MW)、Song Hau (5,200MW) など超大型の発電所が計画されている。運転開始が後年度の案件ほど発電規模が大きいものとなっており、将来の需要増への対応が要因であると判断される。

c) 発電事業者の多様化

急増する電力需要に対応するためベトナム政府は発電市場への新規参入の促進を進めている。ベトナム政府は EVN (Electricity of Vietnam) が発電、送電、配電の全てを一元的に行う方式から、徐々に電力市場の自由化を進めているが、絶対的な発電量を確保するために発電事業での新規参入が最も進展している。EVN と同様の大手の国営企業である TKV (Vinacomin)、PVN (Petrovietnam)、IDICO (Vietnam Urban and Industrial Zone Development Corporation、建設省系)、Construction Corporation No1 (建設省系)などが既に発電所の建設や運営を行っている他に、Son Da Construction Group、Bitexco、Trung Nam Construction Investment Group、Hoang Anh Gia Lai Group、Tan Tao Group、Cong Thanh Group、Saigon Investment Group などの私企業も発電所の整備運営事業に参画し

ている。

d) 外資の参入

ベトナムでの発電事業の事業に外資が従来関わったのは Phu My 2#2 および 3 の 2 つの事業だけであるが、今後には運転が開始される発電所の事業者としては、台湾の Formosa Plastic Group および CT&D (Central Trading & Development Group)、マレーシアの Janakuasa および JAKS Resources、米国の AES、韓国の Taekwang Industrial、中国の China Southern Grid や CLP (China Light & Power Co., Ltd.) などが名前を連ねている。日本勢では住友商事が Van Phong 1 #1 (石炭火力) の、三菱商事が CLP との合弁会社である One Energy として Vinh Tan 3 (石炭火力) および Vung Ang 2 (石炭火力) の事業者となっている他、近く再入札が予定されている Nghi Son 2 (石炭火力) にも複数の日本企業が事業権獲得に強い関心を寄せている。なお Nghi Son 2 に関しては、2011 年 3 月 4 日に入札参加予定者に Project Documents が 交付され、同年 6 月末に入札実施との日程が同年 2 月下旬に公表された。さらに既に事業者が決まっている案件においても、共同事業者としての参画を企図している日本勢を含めた企業もあるとのことである。例えば米国の AES が TKV (Vinacomin) と Mong Duong 2 発電所 (石炭火力) の建設運営のために設立した AES-TKV Mong Duong Power Company は、AES が株式の 90% を、TKV が 10% を保有していたが、韓国の POSCO グループの Posco Power と中国の CIC (China Investment Corporation) へ両者が保有する株式の譲渡を行った。その結果、新たな株式構成は AES が 51%、Posco Power が 30%、CIC が 19% となり TKV は株主の座から降りた。この背景には、事業資金の調達の問題などがあるとのこと。このように事業権が既に降りているケースでも日本企業などが事業に参画する可能性がある。

以上のような状況を踏まえて、ベトナムでの発電整備計画を順調に進ませるための課題および日本企業の比較優位を発揮し得る点としては以下のようなことが考えられる。

a) 関連インフラ整備

ベトナム政府は石炭やガスによる発電を推し進めようとしているが、現在は自国内の資源で賄っている石油やガスも現下の経済成長を前提とすれば近い将来には輸入に頼らざるを得なくなってくる。これは資源輸入に必要となる港湾や臨海地域の開発を、発電所整備と少なくとも並行的に行わねばならないことを意味する。このための資金確保もベトナム政にとって大きな課題である。他方でベトナムは発展途上国からの卒業の段階に入っており、従来と同様な形での支援国からの ODA (Official Development Assistance) は期待することが難しくなる。そこで外資も含めた民間資金の活用により、こうした関連インフラ整備を行うことの必要性が一層に高まってくると見込まれる。

b) 大規模発電所の建設

既述のように今後に計画している発電所の発電規模は飛躍的に大きくなる。これには多大な額の資金調達を必要とする。また大型施設建設のための技術や工程管理など、ベトナムが未経験あるいは不得手な分野での技術やノウハウを確保する必要がある。例えば MOIT (Ministry of Industry and Trade) によればベトナムの既存の石炭火力発電所のエネルギー変換率は 28-32%で、先進国に比して 10%程度低いとのことである。¹原料を有効に活用し、かつ発生する CO2 を抑えて環境負荷を下げることなどを実現させるために、ベトナムでも今後は日本などの先進国で採用されている超臨界圧発電技術の導入などが検討されていく必要があると思料される。

c) 民間事業者の活用

ベトナムでも発電所整備（下表では 6 件）に、同国の民間企業が事業者として既に参加している。この中で、予定される運転開始時期が比較的遅い Tan Tao Energy Corporation による Kien Luong1 (1,200MW)と Saigon Investment Group による Son My (2,400MW) は大型の火力発電であるが、残りの Bitexco による Nho Que 3 (110MW)、Viet-Lao Power and Development による Se Kaman 3 (250MW)、Trung Nam Construction & Development による Dong Nai 2 (70MW)、および Hoang Anh Thanh Hoa HPP による Ba Thuoc 2 (80MW)は、いずれも水力発電方式であり、規模も比較的小さいものである。

今後も民間事業者の発電所整備への参入促進の方針に変更はないと推察されるが、こうした民間事業者はベトナム国内の民間企業としての規模は大きいですが、EVN や PVN、TKV に代表される国営企業に比して事業規模は小さく、多様化し大規模化する発電所建設に必要な技術や資金を賄うことは容易ではないと思料される。このことからすると日本を含めた外資事業者にとって、自らのリソースを活用できる機会はより大きくなると見込まれる。さらに外資が単独ではなく、ベトナムの民間企業に対して発電に関する技術やノウハウ、さらに資金を提供して、彼らと共に事業へ参画することも将来的にはあり得よう。

d) 中小水力発電所事業の整備

上に関連して 2009 年度に社団法人海外コンサルティング企業協会 (ECFA: Engineering and Consulting Firms Association, Japan) と東北電力とが共同で実施したベトナムの中小の水力発電所に関する調査 (「Preliminary Study on Small-Medium sized Hydropower Development under Build-Lease-Transfer Scheme in Vietnam」) によれば、ベトナムの中小規模の水力プロジェクトについては、近年の投資ブームの中で民間企業が参入して事業権を獲得、工事には着手したものの資金不足により途中で遅延したり放棄されたりした

¹ EVN : <http://www.evn.com.vn/DEFAULT.ASPX?TABID=60&TOPICLD=22&LANGUAGE=EN-US>

ものも多いとのことである (EX. Sre Pok 4A)。

ECFA および東北電力は、こうしたプロジェクトの中には技術支援と資金調達の見地さえ立てば再開可能なプロジェクトが多いと報告している。地方に建設される中小規模の水力発電所は、電力供給の確保への貢献のみならず、CDM (Clean Development Mechanism) による恩恵や地方経済の活性化に資するものとしても位置付けられる。上述の報告書では、既に事業権が付与されながら着工や工事が遅れている複数の中小水力発電所事業を日本企業が関与して整備した上で、パッケージ化して BLT (Build-Lease-Transfer)方式で EVN に譲渡することを提言している。こうした方策も地方における電力整備への支援となり得る。

Power Development Plan					
COD 2011	Type	MW	Province	Owner	Business Affiliation
An Khe	Hydro	80	GiaLai	EVN	EVN
Dak My 4	Hydro	190	QuangNam	IDICO	MOC
Dak Rthi	Hydro	144	DakNong	Construction corporation No.1	MOC
Dong Nai 4	Hydro	340	Lam Dong	EVN	EVN
KheBo #1	Hydro	50	Nghe An	Viet Nam Electricity Development JSC	EVN
Na Le (Bac Ha)	Hydro	90	Lao Cai	LICOGI	MOC
Nam Chien	Hydro	200	Son La	Nam Chien HPP JSC	Song Da Group
Nho Que3	Hydro	110	Ha Giang	BitexcoJSC	Bitexco
Se Kaman 3	Hydro	250	Laos (XeKong)	Viet –Lao power and development JSC	Son Da Group
Se San 4A	Hydro	63	Kon Tm	Se San 4A HPP JSC	
Song Tranh 2# 2	Hydro	95	QuangNam	EVN	EVN
Son La #2, 3	Hydro	800	Son La	EVN	EVN
Cam Pha 2	Coal	300	Quang Ninh	Cam Pha TPP JSC	TVK (Vinacomin)
Hai Phong 1# 2	Coal	300	Hai Phong City	Hai Phong TPP JSC	EVN
Quang Ninh 2 # 1	Coal	300	Quang Ninh	Quang Ninh TPP JSC	EVN
Nhon Trach2	Gas	750	Dong Nai	Nhon Trach 2 power JSC	PVN (Petrovietnam)
COD 2012	Type	MW	Province	Owner	Business Affiliation
A Luoi	Hydro	170	ThuaThien Hue	Central Region Hydropower JSC	
Ban Chat	Hydro	220	Lai Chau	EVN	EVN
Dong Nai 2	Hydro	70	Lam Dong	TrungNam Construction & Development JSC	Trung Nam Group
Hua Na	Hydro	180	Nghe An	Hua Na HPP JSC	PVN
KheBo # 2	Hydro	50	Nghe An	Viet Nam Electricity Development JSC	EVN
Son La # 4,5,6	Hydro	1200	Son La	EVN	EVN
Ta Thang	Hydro	60	Lao Cai	Vietramex	MOT
Formosa #2	Coal	150	HCMC	Hiep Phuoc Power Co.	Formosa Plastic Group (Taiwan)
Mao Khe #1	Coal	220	Quang Ninh	Mao Khe Power JSC	TVK
Nong Son	Coal	30	Da Nang	TKV	TKV
Quang Ninh 2 #2	Coal	300	Quang Ninh	Quang Ninh TPP JSC	EVN
Uong Bi ext. #2	Coal	300	Quang Ninh	EVN	EVN
COD 2013	Type	MW	Province	Owner	Business Affiliation
Ba Thuoc 2	Hydro	80	Thanh Hoa	Hoang Anh Thanh Hoa HPP JSC	Hoang Anh Gia Lai Group
Dak Drinh	Hydro	125	Quang Ngai	PVN	
Sre Pok 4A	Hydro	64	Dak Lak	Buon Don HPP JSC	PVN
Hai Phong 2 # 1	Coal	300	Hai Phong City	Hai Phong TPP JSC	EVN
Mao Khe# 2	Coal	220	Quang Ninh	TKV	TKV
Vung Ang1 # 1	Coal	600	Ha Tinh	PVN	PVN
COD 2014	Type	MW	Province	Owner	Business Affiliation
BaThuoc1	Hydro	40	Thanh Hoa	Hoang Anh Thanh Hoa HPP JSC	Hoang Anh Gia Lai Group
HuoiQuang	Hydro	520	Lai Chau	EVN	EVN
DuyenHai1 # 1	Coal	600	TraVinh	EVN	EVN
Hai Phong 2 # 2	Coal	300	Hai Phong City	Hai Phong TPP JSC	EVN
KienLuong1	Coal	1200	Kien Giang	Tan Tao Energy Corporation	Tan Tao Group
Luc Nam # 1	Coal	50	-	IPP	
Nghi Son 1	Coal	600	Thanh Hoa	EVN	EVN
Vinh Tan 2	Coal	1200	Binh Thuan	EVN	EVN
Vung Ang1 # 2	Coal	600	Ha Tinh	PVN	PVN
Hiep Phuoc 2 # 1	Gas	390	HCMC	Hiep Phnoc Power Co.	CT&D (Taiwan)
O Mon 1# 2	Gas	330	Can Tho	EVN	EVN
O Mon 3	Gas	750	Can Tho	EVN	EVN

COD 2015	Type	MW	Province	Owner	Business Affiliation
Dong Nai5	Hydro	140	Lam Dong	TKV	TKV
Song Bung 2	Hydro	100	Quang Nam	EVN	EVN
Song Bung 4	Hydro	156	Quang Nam	EVN	EVN
Thuong Kon Tum #1	Hydro	110	Kon Tum	Vinh Son-Song Hinh HPP JSC	EVN
Trung Son	Hydro	250	Thanh Hoa	Trung Son Hydropower PMU	EVN
Duyen Hai 1 # 2	Coal	600	Tra Vinh	EVN	EVN
Long Phu1 # 1	Coal	600	Soc Trang	PVN	PVN
Mong Duong 1	Coal	1000	Quang Ninh	EVN	EVN
Mong Duong 2	Coal	1200	Quang Ninh	AES-VCM Mong Duong Power Company	AES (US), TKV
Thai Binh2 #1	Coal	600	Thai Binh	PVN	PVN
Van Phong1 # 1	Coal	660	Khanh Hoa	Sumitomo Corporation	Sumitomo Corporation (JP)
Vinh Tan 1	Coal	1200	Binh Thuan	EVN & China Southern Grid	EVN, CSG (CH)
Vinh Tan 3	Coal	1980	Binh Thuan	One Energy	GLP (CH), Mitsubishi (JP)
Vung Ang 2	Coal	1200	Ha Tinh	One Energy	GLP (CH), Mitsubishi (JP)
O Mon 4	Gas	750	Can Tho	EVN	EVN
After COD 2015	Type	MW	Province	Owner	Business Affiliation
Lai Chau	Hydro	1200	Lai Chau	EVN	EVN
Phu Yen Dong*	Hydro	1200	Son La	* Pumped Water Storage Power	
Phu Yen Tay*	Hydro	1200	Son La	* Pumped Water Storage Power	
Bac Ai*	Hydro	1200	Ninh Tuan	* Pumped Water Storage Power	
Duyen Hai2	Coal	1200	Tra Vinh	Janakuasa	Janakuasa (MY)
Duyen Hai 3	Coal	1200	Tra Vinh	EVN	
Nghi Son 2	Coal	1200	Thanh Hoa	-	-
Hai Duong #1	Coal	600	Hai Duong	Jack Resource	Jack Resource (MY)
Kien Luong 2,3	Coal	3200	Kien Giang	-	
Nam Dinh	Coal	2400	Nam Dinh	Taekwang	Taekwang Vina Industrial (KR), Heshinco(VN)
Quang Trach	Coal	3600	Quang Binh	PVN	PVN
Song Hau	Coal	5200	Hau Giang	PVN	PVN
Son My	Coal	2400	Binh Thuan	Sai Gon Investment Group	VDB, Vietcombank, Vinaconex, et al.
Thang Long	Coal	600	Quang Ninh	-	
Nuclear PP 1	Nuclear	4000	Ninh Thuan	EVN	EVN
Nuclear PP 2	Nuclear	4000	Ninh Thuan	EVN	EVN
				Blue shaded plants are committed by foreign investors	
				Source : JETRO Report on PDP 7 revised by JERI	

1-1-5. 電力料金の課題

ベトナムの電気や水道などの公共料金は経済および社会政策上の観点から低位に抑えられており、製造コストを十分に賄うことができない構造である。電力の小売り料金は首相決定により定められるのが原則であるが、2009年12月に出された首相決定 Decision No.21/2009/QD-TTg (Decision on Electricity Sale Prices in 2009 and 2010-2012 under the Market Mechanism) により(後添)、2009年から2012年の期間においては小売り価格の引き上げ額が前年度の平均価格の5%以下ならば MOIT(Ministry of Industry and Trade)と MOF(Ministry Finance) の承認によって決められることになった(引き上げ額が5%超の場合は、従来通り MOIT が MOF の承認を得たうえで、首相により決定される)。これは市場メカニズムに基づいて電力料金を決定する方式を導入することで、電力使用の効率化および電力インフラ整備の原資確保を達成するためのものであると評価されていた。しかし世界的なエネルギー資源の高騰とベトナム通貨のドン²の下落²により、ベトナム政府

² ベトナムでは2月11日に、中央銀行である State Bank of Vietnam(SBV) が対ドル為替のインターバンクでの取引レートを9.3%引き下げて、1ドル=18,932VNDであったものを20,693VNDへと変更した。同時に管理フロート制度(自国通貨の変動幅を制限した上で、その幅の範囲内での自由取引を認める)を導入した。通貨引き下げは2009年11月での5.44%、10年2月での3.36%、同年8月での2.09%に引き続

は 2011 年 3 月 1 日から通常の家計用の電力料金(0-100 k Hw)を 15.3% (VND165) 引き上げて 1,242VND とするなどの大幅な料金改定を実施した。これに関して MOIT の電気配電および管理部長 (Head of Electrical Distribution and Control Department) である Mr.Pham Manh Thang は「製造コスト見合いの料金にするためには 60%の値上げが必要であるが、今回はこの幅に留めざるをえなかった。」と説明している。³電力関係者の間では、今後も料金の引き上げは行われていくものと予想されている。また MOIT は、政府はこの電力料金の改定によって外資による電力セクターへの投資が促進されることも期待しているともコメントした。今回の料金改定は、エネルギー価格の高騰などを背景としているが、電気料金を EVN などの電気事業者のコストや新規投資をも賄うものにするのに重要な意味を持つと思われる。

くもの。この 1 年強 (09 年 11 月~11 年 2 月) の間だけでも 20%近い切り下げが実施されたことになる。

³ Viet Nam News 2011 年 2 月 28 日

参考 : PDP 6 (Power Development Plan 6)

THE PRIME MINISTER OF
GOVERNMENT
No: 110/2007/QĐ-TTg

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness
Ha Noi, day 18 month 07 year 2007

DECISION

Approving the Planning on national electricity development in the 2006-2015 period, with a vision to 2025 taken into consideration

THE PRIME MINISTER

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the December 14, 2004 Electricity Law;

Considering the Industry Ministry's Report No. 5523/TTr-BCN of October 3, 2006, Official Letters No. 2080/BCN-NLDK of May 11, 2007, and No. 2944/BCN-NLDK of June 27, 2007, and opinions of ministries and branches on the planning on national electricity development in the 2006-2015 period, with a vision to 2025 taken into consideration,

DECIDES:

Article 1. To approve the Planning on national electricity development in the 2006-2015 period, with a vision to 2025 taken into consideration (referred to as the Electricity Planning VI), with the following principal contents:

1. Objectives:

- Forecasts about load demands:

To satisfy the requirements of national socio-economic development with an annual GDP growth rate of around 8.5%-9% or higher in the 2006-2010 period, Vietnam's electricity demands are forecasted to increase at an annual rate of 17% (basic plan) or

20% (high-level plan) in the 2006-2015 period, of which the high-level plan is the to-be-executed plan and a plan for an annual increase of 22% shall be prepared for cases of extraordinary increase.

- Development of electricity sources

+ To develop electricity sources to satisfy the above-said load demands. To keep to the schedule of construction of hydroelectric power plants for multiple purposes of flood control, water supply and electricity production; to rationally and effectively develop gaseous and thermal electricity sources; to boost the construction of coal-fired thermoelectric plants; to develop small hydropower plants, new and renewable energy sources for deep-lying, remote, mountainous and border areas and islands; to take the initiative in effectively exchanging electricity with regional countries; to ensure national energy security and sustainable development. To complete investment preparations for a project on a nuclear power plant before submission to the Prime Minister for approval.

+ To develop electricity centers in all regions across the country in order to ensure local electricity supply, reduce loss on the national electricity system, ensure economic efficiency of projects and contribute to regional and national socio-economic development.

+ To develop new electricity sources in parallel with formulating plans on intensive investment in, and technology renewal of, existing power plants; to satisfy environmental standards; and to use modern technologies in new electric power plants.

+ To develop electricity sources under the forms prescribed by the State, with a proper proportion of projects to be implemented in the BOT or BOO form as determined by the Industry Ministry.

+ Electricity source projects under the basic plan are listed in Appendix IA while those under the high-level plan are listed in Appendix IB to this Decision (not printed herein).

- Development of electricity grids:

+ To develop electricity transmission and distribution grids in synchrony with programs

on development of electricity sources. To modernize and gradually place underground electricity grids in cities and towns so as to improve the landscape and environment. To apply measures to reduce electricity loss according to regulations.

+ Electricity grid projects are listed in Appendix II to this Decision (not printed herein).

2. Electricity in rural and mountainous areas and islands:

a/ To continue implementing investment programs for rural electricity development already approved by the Prime Minister, striving for the target that 95% and 100% of communes will have electricity by 2010 and 2015, respectively.

b/ The Ministry of Industry shall assume the prime responsibility for, and coordinate with concerned branches and localities in, formulating relevant mechanisms and policies and promulgating documents guiding their implementation.

3. Investment capital sources:

To encourage domestic economic sectors and foreign investors to participate in projects on development of electricity sources and projects on electricity distribution grids in investment forms specified by law.

4. Financial mechanisms:

a/ Capable domestic investors may raise capital for investment in electricity source and grid projects under the mechanism of self-borrowing and self-payment.

b/ To continue implementing the Prime Minister's Decision No. 276/2006/QĐ-TTg of December 4, 2006, on electricity selling prices.

c/ To set market-driven electricity selling and buying prices and encourage domestic and foreign investors to invest in electricity source projects.

5. Renewal of organization and management to raise the efficiency of electricity-related activities:

a/ The State owns 100% of charter capital in enterprises operating in the national electricity-transmission system or engaged in large-scale electricity generation of special socio-economic, defense and security significance.

b/ The State holds over 50% of total shares in electricity-producing enterprises having the function of ensuring great balances of the economy and stabilizing the market.

c/ The equitization of units within the Vietnam Electricity Group shall be carried out carefully in appropriate steps.

Article 2.- Responsibilities of concerned ministries, branches, localities and units:

1. The Ministry of Industry:

a/ To direct, inspect and urge investors and concerned units to effectively implement this Planning according to schedule.

b/ To regularly monitor and evaluate electricity demand and supply and the implementation of electricity source and grid projects in order to adjust or supplement the list of projects, project investors and implementation schedules in line with the practical development of the electricity industry.

c/ To approve a location planning and a detailed planning on coal-fired electricity centers and a planning on hydroelectric power plants for calling for investment from domestic and foreign investors. To direct the development of natural gas sources for electricity generation for both industrial and civil use.

d/ To assume the prime responsibility for, and coordinate with concerned ministries and branches in, formulating financial mechanisms to encourage investment in the development of new and renewable energy projects.

e/ To assume the prime responsibility for, and coordinate with concerned ministries and branches in, negotiating and signing documents on cooperation and electricity exchange with neighboring countries as well as those on Vietnam's participation in the electricity system of the Mekong river delta sub-region countries.

f/ To direct and urge localities and investors to well implement rural energy projects according to plan and schedule.

g/ To direct the study and manufacture of synchronous equipment for projects on building coal-fired thermoelectric power plants and hydroelectric power plants.

2. The Ministry of Planning and Investment: To formulate mechanisms and policies to attract investment and rationally use ODA capital for the electricity industry to develop in a synchronous, balanced, rational and sustainable manner.

3. The Ministry of Finance: To assume the prime responsibility for, and coordinate with concerned ministries and branches in, formulating mechanisms for raising capital for the development of the electricity industry in order to promptly and fully meet electricity demands of the whole society under the Electricity Planning VI.

4. The State Bank of Vietnam: To assume the prime responsibility for, and coordinate with concerned ministries and branches in, formulating proper mechanisms and policies to accelerate investment in electricity works and ensure sustainable development of the electricity industry.

5. The Vietnam Electricity Group:

a/ To play the key role in ensuring stable and safe supply of electricity for socio-economic development. To invest in the development of synchronous electricity grids in order to improve investment efficiency; to invest in electricity source projects according to its assigned duties.

b/ To concentrate efforts on studying a location planning and a detailed planning on coal-fired electricity centers before submitting them to the Ministry of Industry for consideration and approval.

c/ To assume the prime responsibility for building infrastructure works in coal-fired electricity centers where electricity source projects are invested partially or wholly by the Group.

d/ To coordinate with consultancy units of the Ministry of Transport in:

- Making an investment report on the renovation of Quan Chanh Bo canal to ensure timely coal transport for coal-fired electricity plants in the region.

- Studying and making an investment report on the selection of locations of depots of imported coal and reporting it to the Prime Minister for decision.

e/ To apply solutions to further reducing electricity loss and implement programs on thrifty use of electricity in production and life for sustainable development.

6. Other localities, organizations and individuals:

a/ Localities shall assume the prime responsibility for, and coordinate with investors in, implementing the work of ground clearance, compensation, relocation and resettlement for electricity source and grid projects.

b/ Units, organizations and individuals engaged in electricity-related activities shall implement the Prime Minister's Decision No. 79/2006/QĐ-TTg of April 14, 2006, approving the national target program on economical and efficient use of energy, and Directive No. 19/2005/CT-TTg of June 2, 2005, on thrift practice in electricity use.

Article 3.- Projects on electricity sources and transmission lines connected to the national electricity system in the 2006-2015 period invested by domestic enterprises shall be executed in accordance with the Prime Minister's Decision No. 1195/QĐ-TTg of November 9, 2005.

For investment projects implemented in the form of BOT or BOO by foreign investors, international biddings are required. If it is necessary to appoint contractors, the Ministry of Industry shall coordinate with the Ministry of Planning and Investment in considering and submitting the case to the Prime Minister for decision.

Article 4.- The Ministry of Industry shall base itself on the Prime Minister's directing opinions to draft a decision on the establishment of the State Steering Board for the Electricity Planning VI and submit it to the Prime Minister for approval.

Article 5.- This Decision takes effect 15 days after its publication in "CONG BAO."

Article 6.- The Minister of Industry, heads of concerned ministries and branches, presidents of provincial/municipal People's Committees, the Board of Directors, the president of the Board of Directors and the general director of the Vietnam Electricity Group, and concerned units and individuals shall implement this Decision.

**THE PRIME MINISTER OF GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung

参考：電気料金引き上げに関する Decision

THE PRIME MINISTER

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

No. 21/2009/QĐ-TTg

Hanoi, February 12, 2009

DECISION

ON ELECTRICITY SALE PRICES IN 2009 AND DURING 2010-2012 UNDER THE MARKET MECHANISM

THE PRIME MINISTER

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the December 3, 2004 Law on Electricity and the Government's Decree No. 105/2005/ND-CP of August 17, 2005, detailing and guiding the implementation of a number of articles of the Law on Electricity;

Pursuant to the April 26, 2002 Ordinance on Prices, the Government's Decree No. 170/2003/ND-CP of December 25, 2003, detailing the implementation of a number of articles of the Ordinance on Prices, and Decree No. 75/2008/ND-CP of June 9, 2008, amending and supplementing a number of articles of the Government's Decree No. 170/2003/ND-CP of December 25, 2003, detailing the implementation of a number of articles of the Ordinance on Prices;

At the proposal of the Minister of Industry and Trade,

DECIDES:

Article 1. To approve electricity sale prices in 2009 and during 2010-2012 under the market mechanism, with the following principal contents:

1. From March 1, 2009, the average retail price of electricity is VND 948.5/kWh, exclusive of value-added tax (8.92% higher than the average electricity price in 2008).
2. From January 1, 2010, electricity sale prices shall accord with market prices.

Article 2. To approve the following principles for adjusting the electricity retail price bracket:

1. In 2009:

a/ To adjust the progressive prices of daily-life electricity with the first grade of 1-50 kWh. The level of price subsidy for the grade of 1-50 kWh is equal to 35-40% of the average sale price of electricity in 2009. The price of electricity at the grade of between 51-100 kWh is equal to the average cost price without profits.

b/ To increase production electricity prices at rates lower than the average increase rate of the electricity sale price while increasing daily-life electricity prices at rates higher than the average increase rate of the electricity sale price in order to step by step eliminate cross-subsidy from production electricity prices to daily-life electricity prices and provide electricity price subsidies to eligible beneficiaries which are low-income households and poor households.

c/ To apply a progressive price bracket for daily-life electricity sold in rural areas by all types of rural daily-life electricity retail business organizations so as to implement the Government's policy on electricity price subsidies for eligible beneficiaries which are low-income households and poor households. The wholesale price of electricity at each grade is equal to the retail price applicable to this grade minus 25%-30% for electricity loss and reasonable expenses for management of operation of rural electricity grids.

d/ To apply the time-of-use (TOU) price bracket to high- and medium-voltage electricity customers and low-voltage electricity customers in localities where technical conditions permit.

e/ To apply common electricity sale prices nationwide to all customers in regions covered by the national electricity grid.

2. From 2010 on, to study and make the following adjustments:

a/ To apply two-constituent prices, including capacity price and electricity price, to appropriate subjects in localities where technical conditions permit.

b/ To provide price subsidies to poor households and low-income households that use under 50 kWh per month through directly reducing their monthly electricity bills (in localities where technical conditions permit). The price of electricity at the grade of

51-100 kWh shall be kept at the average cost price without profits.

c/ To step by step apply a ceiling electricity retail prices to customers being production and service businesses; permit electricity companies to sell electricity to customers at prices lower than the prescribed ceiling price as agreed upon with customers depending on the consumption volume under the guidance of electricity regulatory authorities. Particularly, daily-life electricity prices in regions covered by the national electricity grid shall still apply nationwide as prescribed by the State.

Article 3. To approve the mechanism for adjusting electricity prices according to market prices

1. Annually, the Ministry of Industry and Trade shall, based on production and business activities of the electricity industry and the market price levels, coordinate with the Ministry of Finance in deciding to adjust (increase or decrease) electricity prices according to the market mechanism.

2. In case the average electricity sale price is proposed to increase (or decrease) at most 5% higher than the approved average sale price of the previous year, the electricity sale price administration group (comprising the Industry and Trade Ministry's Electricity Regulatory Authority of Vietnam and the Finance Ministry's Price Management Department) shall appraise and submit the proposal to the Minister of Industry and Trade for approval. If the two ministries hold divergent opinions, the Minister of Industry and Trade shall decide on the price adjustment and take responsibility before the Prime Minister.

3. In case the average electricity sale price is proposed to increase (or decrease) over 5% higher than the approved average sale price of the previous year, the Ministry of Industry and Trade shall consider and submit the proposal and the Ministry of Finance shall appraise and report it to the Prime Minister for approval; pending the Prime Minister's decision, the Minister of Industry and Trade may approve the increase (or decrease) of the electricity sale price by 5% compared to the ceiling rate under the Prime Minister's authorization.

Article 4. Electricity retail prices in rural areas

1. From 2009, to apply a common progressive price bracket for daily-life electricity in all regions covered by the national electricity grid, without any discrimination among rural

electricity business organizations.

2. Rural electricity business organizations incapable of selling electricity according to the progressive price bracket may apply the ceiling electricity price of VND 700/kWh, which is currently applied in rural areas. By September 1, 2009, these units shall shift to sell electricity at progressive prices prescribed in Clause 1 of this Article. Past the above deadline, if rural electricity business organizations are still incapable of selling electricity at progressive prices, provincial-level People's Committees shall direct the transfer of electricity business activities to electricity companies under the Electricity of Vietnam for investment, upgrading and direct sale of electricity to rural inhabitants.

2. Electricity retail prices in regions not yet covered by the national electricity grid shall be formulated by electricity sellers on the basis of business principles and then submitted to provincial-level People's Committees for decision after obtaining opinions of the Ministry of Industry and Trade.

Article 5. Organization of implementation

1. To assign the Ministry of Industry and Trade:

a/ To assume the prime responsibility for, and coordinate with the Ministry of Finance in, issuing a circular to prescribe and guide the 2009 electricity retail price bracket with the average retail price of VND 948.5/kWh on the principles for adjusting the electricity retail price bracket prescribed in Article 2 of this Decision, provide for wholesale electricity prices applicable to rural areas, residential quarters and industrial parks and guide the application of the 2009 retail price bracket.

b/ To assume the prime responsibility for, and coordinate with the Ministry of Finance in, issuing a circular to provide for the implementation of the mechanism for formulating and adjusting electricity sale prices according to the market mechanism in line with the principles approved in Article 3 of this Decision.

c/ To formulate a Regulation on methods for formulation, the order of and procedures for appraisal and promulgation of electricity sale prices according to the market mechanism from January 1, 2010, and submit it to the Prime Minister for approval in the second quarter of 2009.

d/ To promulgate targets for electricity loss reduction in subsequent years for use in electricity price calculation.

e/ To direct the electricity industry to apply measures to save expenses and reduce electricity loss.

f/ To disseminate and explain the strategy on adjustment of electricity prices for enterprises and people to understand and advocate the Government's policy.

2. The Minister of Industry and Trade shall base on the Law on Electricity and current regulations to direct the implementation of this Decision.

3. The Ministry of Finance shall coordinate with the Ministry of Industry and Trade in issuing a circular to provide for the implementation of the mechanism for formulating and adjusting electricity sale prices according to the market mechanism in line with the principles approved in Article 3 of this Decision and perform the state management of electricity prices.

4. Presidents of provincial-level People's Committees shall direct and organize the examination and supervision of the observance of the mechanism on electricity retail prices in rural areas prescribed in Article 4 of this Decision by business units selling electricity to peasant households in their localities.

Article 6. Effect

This Decision takes effect on February 12, 2009.

Ministers, heads of ministerial-level agencies, heads of government-attached agencies, presidents of provincial-level Peoples Committees and concerned units shall implement this Decision.-

PRIME MINISTER

Nguyen Tan Dung

1-2. 水道セクター

1-2-1. 水道整備の状況

ベトナムの上水道の大まかな概要は以下の通りである (source: 「Global Water Market 2011」)。

- ・ 給水総量 (Total utility water supply) : 820 百万m³/年
- ・ 普及率 (Water service coverage) : 22.2%
- ・ 対象人口 (Water population served) : 19.6 百万人
- ・ 水道管総延長距離 (Water network length) : 35,900km
- ・ メーター普及率 (Metering penetration) : 99.7%
- ・ 無収水率 (Non-revenue water) : 32.7%
- ・ 平均水道料金 (Average water tariff) : \$0.26/m³

Water utility data	
Total utility water supply:	820.00 million m ³ /yr
Water service coverage:	22.2%
Water population served:	19.6 million
Water network length:	35,900 km
Metering penetration:	99.7%
Non-revenue water:	32.7%
Average water tariff:	\$0.26/m ³

これによれば水道料金は低くてメーター普及は進んでいるものの、普及率が低い。さらに無収水率が 30%を超えており、水道ネットワークの整備が不十分であることが数字で証明される。

また下水道の概要は下の通り (source: 「Global Water Market 2011」)。

- ・ 総下水処理能力 (Total wastewater capacity) : 56 百万 m³/年
- ・ 普及率 (Wasterawater service coverage) : 18.0%
- ・ 対象人口 (Wasterwater population served) : 15.9 百万人
- ・ 下水道管総距離延長距離 (Wastwater network length) : 10,100km
- ・ 平均料金 (Average wastewater tariff) : 0.00 ドル/m³

明らかに下水道の普及率は今後の課題であることが伺える。

さらに以上の現況を踏まえて上水および下水の分野でどれほどの設備投資などが必要となるかを予測したのが下の表である(Global Market 2011)。

Water market data (\$ million)

Municipal water	2010	2011	2012	2013	2014	2015	2016
Water resources	28.9	32.6	37.1	41.7	45.6	47.5	52.0
Network expansion capex	4.9	5.1	5.4	5.7	5.8	5.6	5.7
Network rehabilitation capex	22.6	25.4	28.9	32.4	35.4	36.8	40.1
Treatment plants capex	18.8	21.4	24.5	27.9	30.8	32.4	35.7
Total water capex	75.1	84.5	95.9	107.7	117.6	122.3	133.5
Municipal water opex	60.1	61.2	62.4	63.6	64.8	66.1	67.3
Municipal wastewater	2010	2011	2012	2013	2014	2015	2016
Network expansion capex	9.4	11.3	14.3	18.8	25.1	33.4	43.4
Network rehabilitation capex	4.6	5.3	6.5	8.2	10.4	13.3	16.9
Treatment plants capex	4.1	5.0	6.3	8.1	10.3	12.9	17.3
Other wastewater	2.2	2.6	3.3	4.3	5.8	7.7	10.0
Total wastewater capex	20.3	24.2	30.5	39.5	51.7	67.3	87.6
Municipal wastewater opex	15.5	16.6	18.0	19.8	22.0	24.8	28.3
Total municipal market	171.0	186.5	206.8	230.6	256.1	280.4	316.8

Source: Global Water Market 2011 (Global Water Intelligence)

これによると上水道は2010年-16年の7年間で総額736.6百万ドルが見込まれている。この中では水源開発が285.4百万ドル（全体の38.7%）、既存の管路網の改修が221.6百万円（同30.1%）、浄水施設が191.5百万ドル（同26.0%）などである。時系列でみると水源開発が直近の課題であるが、後年度になるにつれて管路改修や浄水場整備などの比重が絶対金額でも比率的にも高くなっていく。これは上水の絶対量の確保が当面の課題だが、次第に水質の改善（浄水場整備）やシステム運営の改善（管路網の改修）が重要な位置を占めていくことになることを意味する。量の確保から質および効率改善へとニーズが変わってくる。

下水道は、2010年-16年で全体投資額は321.1百万ドルと予想されている。この中で管路網新設が最大を占め、155.7百万ドル（全体の48.5%）である。これに次ぐのが、既設管路網の改修で65.2百万ドル（同20.3%）および下水処理場の整備で64百万ドル（同19.9%）である。上水道と異なり下水道は、新規敷設自体が未だ十分に行われていないことから、新設が最重要課題であることを示している。

上水道と下水道を比べると、全体投資額は前者が倍以上である。これは上水道の方が下水道よりも当面は重要な政策であることを示している。しかし年度毎でみると、下水道への投資額は、2010年が20.3百万ドルであるのに対して16年には87.6百万ドルと4.3倍にも伸びるのに対して、上水道は1.8倍である。これは、下水道の整備のほうが遅れており、将来的にはこちらに重点を置いていかざるをえないことを示している。

水道は地方分権が進んでいる分野である。後述する「The Orientation for the National Urban Water Supply to the Year 2020」の策定とそれに続く政府の決定によって、水道行政は全国的な中央集権的な方法から、中央政府は政策立案や全体の監視を担当し、地方政府が資産保有や水道供給会社（Water Supply Corporation）が提供するサービスに責任を

持つ体制へと移行した。中央省庁レベルでの水道行政に関しては、都市地域は MOC (Ministry of Construction) が、農村などの地方は MARD (Ministry of Agriculture and Rural Development)が一義的には各々担当している。ただし実際の水道事業は、各省や特別市の人民委員会 (PPC: Provincial People's Committee) が水道供給会社 (ほとんどが水道公社) を管轄している。

1-2-2. 水道セクターに関する基本方針と政策の動き

1992年に制定されたベトナム国憲法に基づき、1998年5月20日に「水資源法 (The Law on Water Resources No. 08/1998/QH10)」が国会で成立した。この法は国家による水資源の管理、採取、利用および保護などを定めている。また同98年には都市の水道セクターに関して「The Orientation for the National Urban Water Supply to the Year 2020」が作成され、Hanoi や Ho Chi Minh City (以下では、HCMC と略す)などの都市水道に関する目標や政策が定められた。この指針 (The Orientation for the National Urban Water Supply to the Year 2020 (以下では、The Orientation 1998 と略す)) 以後の展開や状況を踏まえて、新しい指針 (The Orientation on Development of Water Supply of Urban areas and Industrial zones in Vietnam up to 2025) が既に準備されているとの情報もあるが、正式に政府決定を得てはいない模様である。

「The Orientation 1998」は速やかに達成すべき目標として、

- a) 都市水道の供給区域を拡大すると同時に水質の改善を図り、2020年までに都市部人口の80%までが1人1日当たり80-100リットルの清浄な水を利用できるようにすること。特に Hanoi, HCMC, Hai Phong といった大都市では、住民の100%が1人1日当たり120-150リットルの水が利用できるようにすること、
- b) 都市中心部の産業、文化および社会施設に十分な水を供給すること、改善すること、
- d) 2000年までに既存の給水地域での Non Revenue Water (以下では、NRW と略す) の比率を40%にまで下げ、また新たに整備する都市中心区域においては30%とすること、
- e) 水道供給会社 (WSC) を公益企業と位置付け、徐々に補助金を削減し、水道料金で運営費用や設備投資原資を十分に賄えるようにすること、

などを掲げていたが、実際には設備の整備や水道事業の改善などは進んでおらず、目標は現在 (2011年時点) でも達成されているとは言い難い。

1-2-3. 水道料金

ベトナムの水道料金の決定の方法は Decree No.117/2007ND-CP に定められている。これによると財務大臣が許容される料金の範囲を circular で告知し、この範囲の中において各自治体の PPC が当該自治体における水道料金の許容範囲を定める。個別の水道供給会社は PPC が設定した範囲内において民生、産業、公共などの用途別の料金を具体的に設定する。

2009 年に財務省が Circular No.100/2009/TT-BTC によって定めた料金範囲は最小が 3,000VND/m³であり、最大が 12,000VND/m³である。前述の Decree No.117 は料金については、Clean water prices must be accurately and fully calculated with reasonable production costs in the course of clean water production and distribution to ensure the lawful rights and interests of water supply units and water-using customers. (Article 51-1) と記述しており、また Clean water prices must ensure that water supply units can maintain, develop and raise the quality of services and contribute to the thrifty use of water, taking into account of support for the poor. (Article 51-3) とも記している。

これによれば水道料金は弱者を含めた最終需要者の利益を尊重しつつ、製造コストをベースに水道施設の維持整備の負担をも担うように定めることとなっている。しかし実際においてベトナムでの水道料金は社会政策などの観点から、低料金による利用者への便益を重視するものに設定されており、製造コストはむろんのこと設備の整備維持を賄うだけの水準には設定されていない。

この料金の低さも水道事業会社が水道ネットワークを整備するために必要な資金が確保できない原因の一つであり、また民間の事業者が BOT (Build-Operate-Transfer) 方式などで水道事業へ参入することを難しくしている要因である。

ADB (Asian Development Bank)が 2004 年に公表した「Water in Asian Cities」にはアジアの都市での水道料金の比較が報告されている (下表)。ベトナムの都市ではホーチミン市が掲載されている。なお同市の水道料金はベトナムで一番高い。これによると同市の水道料金は、クアランプールやプノンペンなどの ASEAN 諸国の都市に比して低く、ジャカルタとほぼ同じで、マニラよりも高い水準にある。但し、使用量が増えてくるとマニラとの料金差も小さくなっていく。単純な比較はできないが、プノンペンに比して料金が低く、また大口需要家の課金負担が相対的に軽いことからして、ホーチミン市においても水道料金が政策的に低位に抑えられていることが伺える。この低料金政策の見直し、あるいは料金を前提とした上水道普及のための政策的な方策が必要である。

Table 4: COST OF WATER FOR DOMESTIC USE (HOUSE CONNECTIONS)
(10, 20, 30 & 50 m³/month)

City	Cost of 10 m ³ (US\$)	City	Cost of 20 m ³ (US\$)	City	Cost of 30 m ³ (US\$)	City	Cost of 50 m ³ (US\$)
Osaka ¹	8.04	Osaka ¹	16.26	Osaka ¹	26.76	Osaka ¹	55.22
Hong Kong ²	3.74	Hong Kong ²	13.29	Hong Kong ²	24.90	Hong Kong ²	48.12
Seoul ¹	2.85	Seoul ¹	6.01	Seoul ¹	11.19	Seoul ¹	23.21
Phnom Penh ³	1.93	Phnom Penh ³	4.52	Kuala Lumpur ³	8.93	Phnom Penh ³	13.94
Karachi	1.59	Kuala Lumpur ³	4.43	Phnom Penh ³	7.44	Colombo	13.77
Kuala Lumpur ³	1.50	Karachi	3.18	Karachi	4.77	Kuala Lumpur ³	13.43
Chengdu	1.27	Chengdu	2.54	Colombo	4.11	Karachi	7.95
Shanghai	1.24	Shanghai	2.48	Chengdu	3.81	Kathmandu ¹	6.89
Ho Chi Minh	1.13	Jakarta	2.28	Jakarta	3.78	Jakarta	6.78
Jakarta	1.00	Ho Chi Minh	2.26	Kathmandu ¹	3.77	Ho Chi Minh	6.39
Ulaanbaatar	0.95	Kathmandu ¹	2.21	Shanghai	3.72	Chengdu	6.35
Dhaka	0.79	Ulaanbaatar	1.90	Ho Chi Minh	3.39	Shanghai	6.20
Kathmandu ¹	0.65	Dhaka	1.58	Ulaanbaatar	2.85	Manila ⁴	5.15
Manila ⁴	0.52	Manila ⁴	1.16	Dhaka	2.37	Ulaanbaatar	4.75
Vientiane	0.26	Colombo	0.62	Manila ⁴	2.37	Dhaka	3.95
Tashkent	0.23	Vientiane	0.54	Vientiane	0.89	Delhi	3.23
Colombo	0.13	Tashkent	0.46	Tashkent	0.69	Vientiane	1.59
Delhi	0.07	Delhi	0.28	Delhi	0.59	Tashkent	1.15

Notes:

¹ Subject to minimum charge.

² Cost of equivalent monthly volume based on 4-month billing practiced in Hong Kong.

³ Cost of equivalent monthly volume based on bi-monthly billing practiced in Phnom Penh and Kuala Lumpur.

⁴ Average tariffs of two concessionaires. Also subject to minimum charge.

1-2-4. 水道料金の課題

既述の通り、水道料金も経済政策や社会政策などの観点から、最終需要者への適用料金は製造コストを賄えない低位の水準に設定されている。しかしこの赤字ギャップは水道公社などが負担していることから彼らの財政状態を圧迫している。加えて近代化や都市化や伴い新たな水道施設の整備に必要な資金が必要となっていることから、最近では徐々にではあるが、水道料金の適正化への動きが出てきつつある。

ホーチミン市は2009年に、2013年までの期間において毎年水道料金の改定を行い料金の適正化を実施していくと宣言した。当時の家庭向けの基本料金は4,000VNDでありこれは2004年に設定され、以後のインフレなどにもかかわらず据え置かれているものであった。これが、まず2010年3月に4,000VNDへと48%もの大幅な値上げを実施した。さらに2011年1月には、同じく家庭向け基本料金が10%値上げされて4,400VNDになった。ちなみに同じタイミング（2011年1月）で製造業向けは6,700VNDから7,400VNDへ、サービス業向けは7,100VNDから8,100VNDへ、ビジネス向けは12,000VNDから13,500VNDへと同様に引き上げられた。こうした料金の見直しは来年度以降も実施される見込みである。

こうした背景には、1) 水道公社の経営状況の悪化、2) 絶対的な上水道の不足、3) 地下水だけでは補えないことから新たに表流水などを水源とせざるを得なくなっていること、4)

水質の悪化阻止や改善、などにより社会政策の観点による水道料金の抑制がもはや保持できなくなっていることがあると推察される。さらに水道需要を満たすためには民間の参加による水道インフラの整備の必要性がベトナムでも論じられているが、同国の水道料金の低さが民間参入を妨げている要因であると外国企業は指摘している。こうした料金改定の動きは、民間の水道事業への参画の障害を下げていくことになると期待される。

1-2-5. 水道への PPP (Public Private Partnerships) 導入のニーズと実績

ベトナムの水道事業は急速な近代化や都市化に追いつくための整備が求められている。しかし上述のように利用料金を低位に設定していることにより、水道事業会社の経営基盤は脆弱で、経営および新規投資資金の不足しており水道ネットワークの整備は進んでいない。かかる課題を解決するために水道事業への民間参加は 1990 年代から検討されていたが、実際にベトナムにおいて PPP 方式で水道事業が実施されたのは、まだ数例しかない。

a) Binh An Water Supply Project

ベトナムで第一号の民間による水道事業は、マレーシアの Sadeq Malaysian Consortium による BOT 方式での HCMC (Ho Chi Minh City) へ飲料水を供給するための浄水場設備である。1996 年 3 月に投資承認 (investment license) が、本プロジェクトのために設立された Binh An Water Corporation Limited におりた。同社の株主は前述の企業グループ内の会社である IJM Corporation Bhd (持株比率: 36%)、Salcon Bhd (同: 36%)、Malaysia South-South Corporation (同: 18%) などである*。

本プロジェクトはビンズオン省 (Binh Duong province) のドンナイ河 (The Dong Nai River) 西岸 (west bank) で表流水 (surface water) を取水、送水管によって 3.2km 離れた KMBinh An Hill まで運び、100,000m³/day の飲料水を造水して 6.5km 離れた HCMC の Thu Duc District にある貯水場へ送水するもの。1999 年に工事が完成、8 月から給水を始めている。事業期間は 2018 年までの 20 年間である。現在は 115,000m³/day の飲料水を HCMC の水道事業会社 (SAWACO : Saigon Water Corporation) へと卸供給している。

* <http://ppi.worldbank.org/explore/Report.aspx>

b) Thu Duc Water Supply Project

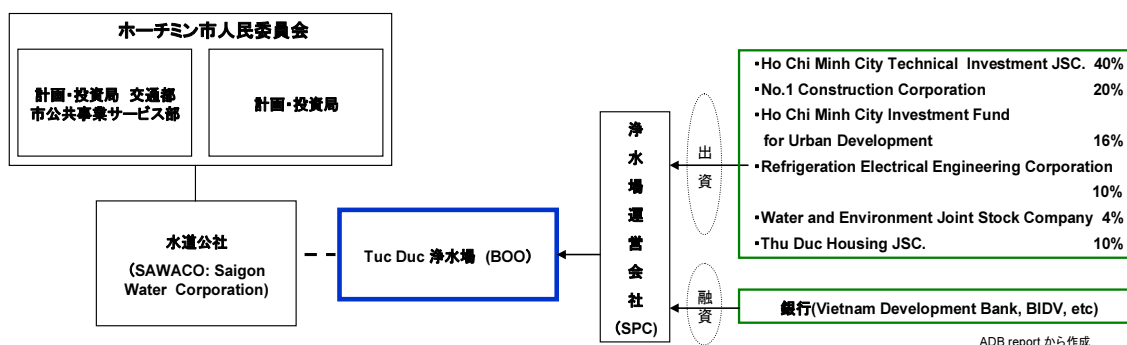
本プロジェクトは、当初は水道メジャーの Suez Lyonnaise des Eaux とマレーシア企業の Pilecon Engineering Bhd が設立した Lyonnaise Vietnam Water Company Ltd. (LVWC) が、300,000m³/day 規模の浄水場を事業期間 25 年間の BOT 方式で整備するとの事業であった。投資承認 (investment license) は 1997 年におりたが、その後のベトナム側と事業体側との調整が決着しなかったことから、2003 年に LVWC が事業からの撤退を宣言した。同年 10 月に HCMC の人民委員会 (People's Committee) が BOO (Build-Own-Operate)

方式での事業の再入札を実施したところ 4 つの consortium が応募したが、Ho Chi Minh City Infrastructure Investment Joint Stock Company(HIFU)を中心とする地元の事業体が落札した。

事業会社として2004年にThu Duc Water Plant BOO Joint-Stock Companyが資本金500十億 VNDで設立された。出資者は、HCMCのLDIF(Local Development Investment Fund)であるHIFU(Ho Chi Minh City Investment Fund for Urban Development) および同傘下企業、ならびに民間企業。出資比率は以下の通りである。

・ Ho Chi Minh City Technical Investment Fund JSC. (CII)	40%
・ No1. Construction Corporation	20%
・ Ho Chi Minh City Investment Fund for Urban Development (HIFU)	16%
・ Refrigeration Electrical Engineering Corporation	10%
・ Water and Environmental JSC.	4%
・ Thu Duc Housing JSC.	10%

総事業費は入札資料によれば1,490十億VND。契約期間は25年。作られた水は全量を事業会社からSAWACO (Saigon Water Corporation)へ卸販売する (bulk sale) 。売却料金は2,242VND/m³で、2年毎に5%の値上げを認めることになっている。ドンナイ省 (Dong Nai Province) で取水を行い、HCMCのトゥドゥック区 (Thu Duc District) の浄水場で300,000m³/dayの造水を行うものである。作られた水はSAWACOが敷設した25.7kmの水道管網を通じて、7区、8区およびニャベ県 (Nha Be District) に送られる。2005年に工事が着工され、2009年5月に浄水場が稼働を開始した。浄水場の工事は、韓国のHyundai Corporationに競争入札方式により決定した。



c) Kenh Dong Water Supply Project

Kenh Dong water Supply Project は HCMC のクチ県 (Cu Chi District) に 200,000m³/day の浄水場および送水設備を BOO 方式で整備し、同市西部の 12 区(District12)、ゴーヴァツ

プ区(Go Vap District)、ホクモン県 (Hoc Mon District) 所在の工業団地 (industrial parks) や住民に水を供給するもの。原水 (raw water) はタイニン省 (Tay Ninh Province) のダウチエン湖 (Dau Tieng Lake) で取水され、Kenh Dong Canal を通じて浄水場まで運ばれる。

事業主体である Kenh Dong Water Supply Joint Stock Company は、HIFU(Ho Chi Minh City Investment Fund for Urban Development)や CII(Ho Chi Minh City Infrastructure Investment company)などの出資により 2003 年に設立した会社。事業費予算は 956 十億 VND。2008 年に工事は着工されて 2010 年 6 月に完成の予定であったが、送水管工事が遅れて竣工されていない。

d) Song Da Water Supply Project

本プロジェクトは、政府の持株会社である State Capital Investment Corporation (SCIC) が 51.3% を保有する Vinaconex (Vietnam Construction & Import-Export Joint Stock Corporation) がスポンサーとなっている BOO プロジェクト。同社が株式の 94.8% を保有する事業会社の Song Da water supply Joint Stock Corporation が北部ホアンビン省 (Hoa Binh Province) のハノイから南西の地点に、最終的には 600,000m³/day の能力を有する浄水場を整備、ハノイの西部地域まで Lang - Hoa Lac 高速道路沿いに水道管を敷設して、沿線地域の水需要に対応するものである。

第一期および第二期で各々 300,000m³/day の浄水場を建設する予定。第一期の工事費は 161 百万ドルと見込まれていた。水源は Da 川 (Da River) の表流水。第一期工事は 2006 年 5 月に開始され、2008 年 8 月から浄水場が稼働した。2010 年 1 月に当方が Hanoi 地域で 2 号目の PPP 案件を準備している Viwaseen (Vietnam Water Supply Sewerage and Environment Construction Investment Corporation) の関係者にヒアリングをしたところでは、第一期工事は完成したものの給水地域までの水道管の敷設が遅れており、稼働率は 20% 前後に止まっているとのことであった。

e) Dong Tam BOO Water Supply Project

本件はメコンデルタ地域に位置するティエンザン省 (Tien Giang Province) の Co Cong や My Tho などの街を給水対象とする 90,000m³/day (Phase I は 50,000m³/day) の浄水場および水道管ネットワークなどを BOO 方式で整備するものである。本件は CII (Ho Chi Minh City Technical Investment Fund JSC.、当社株式の 49% を保有) などが設立した Dong Tam Water BOO Corporation が実施するもので、2008 年 7 月から工事が行われている。

1-2-6. 民間参画の可能性のある水道事業

既述のように水道事業は中央から地方政府への分権が進んでいる分野であり、各地域における水道事業は各地方政府の管轄下にある。そのため、民間が参画できる可能性のあるプロジェクトを把握することは難しい。個別自治体の当該部局に接触して、非公式な情報を収集するのは容易ではない。当方が面談した JETRO (Japan External Trade Organization) ハノイ事務所からも「水道については地方の管轄なので、個別に聞きまわるしか情報が取れない。また下水事業はまだ暫くは出てこないのでは」とのコメントであった。

かかる中で厚生労働省が 2008 年に実施した「平成 20 年度水道国際貢献推進調査業務」の報告書においては、今後ベトナムにおいて民間による上水道事業の展開が期待される地域として、フエ(Hue)、ハイフォン(Hai Phong)、ダナン(Da Nang)、クイニョン(Quy Nhon)、ニャチャン(Nha Trang)、カントー (Can Tho) などの名前が記載されている。しかし報告書には具体的なプロジェクトに関する記載はない。これらの地域に、首都である Hanoi と最大都市の HCMC を加えた都市（あるいは省）は、経済規模が大きく潜在的に民間活用が実施され得る地域であると推察される

そこで複数の組織と面談を行い、彼らが有する上述地域での案件動向について纏めたものを以下に記す（フエ、ハイフォン、ダナン、カントー、ハノイ）。これらの中には日本政府が既に様々な支援を行っているプロジェクトもあり、相応の民間参画のポテンシャルティはあるものと思料される。

a) フエ

NEDO「省水型・環境調和型水循環プロジェクト」の採択案件として、メタウォーターター (METAWATER Co., Ltd.) がフエ省で「水資源管理技術の国内外への展開に向けた実証研究」を実施している。同社はフェーズ III での実証実験としてセラミック膜を用いた小規模浄水場（能力 1,000M³/day）の建設を行い、日本企業の技術力を示すショーケースとしたいとのことである。さらに横浜市の水道局は、2002 年から現在までフエ市のフエ水道公社 (COWASU) から研修生の受け入れなどを行い、技術支援を行ってきており両都市の水道を通じての関係は深い。横浜市は現在海外での事業展開を図っており、フエは有力なターゲット先の一つである。

他方で観光都市であるフエ市は水道水の品質への関心が高く、旧市街地は「ベトナムで唯一蛇口から水が飲める街」を宣言している。また自治体財政も相対的にゆとりがあることから、水道料金なども課題も他地域に比べて交渉の余地があり得る。かかる状況からして、フエにおいて民間が参画した水道事業が実施される可能性はあり得ると思われる。

b) ハイフォン

ハイフォン市は、ベトナム第三の都市であり、同国北部最大の港湾都市である。近年はハノイとハイフォン間の高速道路などを整備すると共に、沿線開発を図る計画が実施段階に入っており、ハイフォンは、ベトナム北部の重要な開発拠点と位置付けられている。上のような事情を背景に同市は人口増加も大きく、水道などの整備が追いつかない状況にあり、生活インフラへのニーズが高い。

同市のハイフォン市水道公社 (Hai Phong Water Supply One Member Co. Ltd.) が 2010 年 7 月に作成した「戦略計画 (Strategy Plan)」に記載された中期的 (-2015 年) に整備される浄水場には、以下のものがある。

- ・ Upgrade of An Duong Water Treatment Plant from 100,000m³/day to 200,000m³/day
- ・ Construction of Kim Son Water Treatment Plant with capacity of 25,000m³/day
- ・ Construction of Ngu Lao Water Treatment Plant with capacity of 25,000m³/day

2011 年 11 月にハイフォンで開催されたベトナム水道展に参加した企業によれば、ハイフォン市では急激な都市化に伴うインフラ整備に民間を活用することの必要性は感じており、水道関連では上述の浄水場やその他のプロジェクトに PPP の手法を導入することを検討しているとの発言が水道公社の幹部からあったとのことである。同市とは北九州市が協力協定を結んでおり、昨年も北九州水ビジネス協議会 (Kitakyushu Water Business Council) がミッションを派遣して事業での日越の官民での事業協力についての討議が行われた。同市での PPP プロジェクトの可能性につき留意する必要があると思われる。

c) ダナン

ダナン市は人口 80,000 人の都市。ADB (Asia Development Bank) が DAWACO (Da Nang Water Supply Company) を含めた同市の水道事業の改善のために Technical Assistance を実施した (ADB 承認: 2008 年 10 月)。その中には普及率向上のために Cu De Water Treatment Plant (Capacity 120,000m³/day) の bankable な形での整備も課題となっている。今後の動向に留意する必要がある。

d) カントー

カントー市の Binh Thuy 区 (Binh Thuy District) に所在する Can Tho Water Treatment Plant の浄水能力を現状の 40,000m³/day から 60,000m³/day に増強する事業が PPP として計画されている。これは WACO (Water & Environment Joint Stock Company) が中心となって設立した事業会社である CTWACO Water Supply BOT Co. Ltd. が 15 年間の浄水事業を担うものである。水源は Hau 川 (Hau River) の表流水である。工事を 2008 年から 09 年に実施して 2010 年から浄水開始との計画であったようだが、実際にはまだ事業は

実施されていない模様である。

e) ハノイ

都市化および市域の拡大により水需要が急速に高まっている。従来は地下水に依存していたが、水量確保の限界、地盤沈下、水質悪化などの事情から、表流水を水源とする上水の確保へのニーズが質量共に高まっている。民間が参画した浄水場整備プロジェクトとしては、既に前述の Song Da Water Supply Project が行われているが、第二号案件として注目されているのが Da 川 (Da River) の支流である Duong 川 (Duong River) の表流水を取水して浄化 (purification) した上で、ハノイ市の紅河 (Red River) より北の地区や近隣の Hunng Yen、Hai Duong、 Bac Ninh などの省に給水するものである。

2008 年からプロジェクトを前提とした調査が実施されており、2010 年 4 月に Viwaseen を本件への投資事業主体とすることへの許可が首相からおりた。本プロジェクトは最終的には 600,000m³/day の浄水を可能とする計画であるが、第一期として 300,000m³/day の浄水場の建設に 2012 年から着手することになっている。

ベトナムの水道事業での民間参加は国営企業などを核とした BOOTやBOOが行われ始めている段階であり、本格的なPPPの展開はこれからである。同国での水道事業は、前述のように水道料金が社会政策などの観点から低く抑えられていることから事業性が低いことに加えて、1)既存の水道管ネットワークが老朽化などにより漏水率が高いこと、2)原水の絶対量および水質の確保の前提条件が日本とは異なること、3)求められる技術が日本の水準とは異なること（日本基準ではオーバースペックになりかねないこと）、などの課題がある。

1-2-7. 下水道の状況

既述のようにベトナムでの下水道普及率は未だ18%に過ぎず、その整備はこれからの課題である。また優先順位も、現時点では上水道整備より劣後に置かれている。先進国においても同様であるが、下水道は汚水と同時に雨水などをも処理する役割を担っており、便益者から適切な利用負担を課すことが難しい。ベトナムでは、下水道使用の対価として上水道利用者から徴収した水道料金の一部を省あるいは特別市の会計に納め、これらの地方政府はこの資金と一般財源からの資金をもって下水道整備および運営を行っている。すなわち下水道は、純粋な公共サービスに近いものとして運営されており、必要資金とその原資との関係は明確とはなっていない。

これらからすると下水道事業において民間が参画する余地は採算性の面からして現状では限られている。あり得る形態としては、公的セクターが整備した下水処理場の運営管理と民間事業者が受託する方式、あるいは下水処理過程の一部だけを切り出して民間が整備し

て運営を担う方式が考えられる。後者は、汚水からコンポスト (compost) を抽出すると同時にCDMを活用して排出権を獲得し、これらを施設整備および運営費用に充当するものである。この場合でも、自治体からの運営委託収入が前提となる。いずれにせよ下水道事業におけるPPP導入は将来的な課題であると考えられている。

1-2-8. 事例研究 (HCMC の水道)

ベトナム都市における水道の状況を理解する補助のために、ここでは HCMC の水道状況について記述する。

HCMC の水道サービスは、主として SAWACO(Saigon Water Corporation)およびその子会社によって行われている。SAWACO の概要 (2007 年末)を略述すると、スタッフ数は 3,637 人で、売上高は 1,112,700 百万 VND(≒69,500 千 USD)、利益が 84,600 百万 VND(≒5,300 千 USD)、そして資産額は 804,500 千 VND(≒50,300 千 USD)となっている。

HCMC での水道事業の歴史の概要は下の通りである。

1874 年：サイゴンに水道事業体が初めて設立される

1945 年：地下水を主水源として総供給能力 120 千立方メートル/日となる
給水人口 450 千人となる。

1959 年：サイゴン水道局 (Saigon Water Authority) が設立される

1975 年：ホーチミン市水道供給会社が設立される

2005 年：ホーチミン市水道供給会社が、親会社のサイゴン水道会社(SAWACO)とその子会社へと改組される

HCMC での 2007 年での水道普及率は 88%であり、内訳は、SAWACO(および子会社)が全体の 78%を、そしてそれ以外の地域水道システムによるものが 10%である。SAWACO の全給水能力は 1,236 千立方メートル/日であり、総供給戸数は 614,809 件である。NRW (Non Revenue Water: 無収水) は 40.39%。料金体系は下表の通りであり、家庭向けは 1 立方メートル当たりが 4 立方メートルまでが 2,700VND、4-6 立方メートル単位では 5,000VND、6 立方メートル超で 8,000VND である。

HCMC の水道料金 (2007 年)

	Domestic			Office	Industrial	Commercial
	4 m3/cap/mth	> 4 - 6 m3/cap/mth	> 6 m3/cap/mth			
VND	2,700	5,400	8,000	6,000	4,500	8,000
USD	0.17	0.34	0.50	0.38	0.28	0.50

2007 年における HCMC が掲げた 2025 年に向けての計画目標は以下のようなものである。

- ・旧市街の 95%、新市街地の 80%そして周辺地域の 60%が 1 人 1 日あたり 120-180 リットルの水を消費できるようにすること
- ・給水能力を日産 1,800 千立方メートルにまで増強すること
- ・1,300Km に新たな配水網を構築すること
- ・NRW 比率を、2015 年までに 32%、25 年までには 25%に引き下げること

またこれらの目標を達成するために必要となる、中期において実現されるべき具体的な設備投資としては下のようなものが計画されている (2007 年)。

1. Thu Duc 浄水場

整備方式：BOO

計画工事費：1,650 十億 VND (≒ 103 百万ドル)

2. East Canal 浄水場

整備方式：BOO

計画工事費：1,000 十億 VND (≒62.5 百万ドル)

竣工予定時期：2010 年

3. Thu Duc 浄水場 (第 3 期)

整備方式：合弁事業

計画工事費：1,147 十億 VND (≒72 百万ドル)

竣工予定時期：2010 年

4. 第 1 次および第 2 次送水管網整備

計画工事費：4,451 十億 VND (≒278 百万ドル)

5. 第三次配水管網整備

計画工事費：615 十億 VND (≒38.5 百万ドル)

6. 既設水道管網の修繕

計画工事費：1,536 十億 VND (≒96 百万ドル)

7. NRW 削減対策 (HCMC の 6 区域中の 2 区域)

計画事業費：44 百万ドル

ベトナムで最も近代化が進んでいるHCMCでも、先進国に比して水道の普及状況は遅れており、1人当たり使用料の増大や無収水への対応が依然として課題となっている。さらに都市化や人口増大のために水道ネットワークの新規整備が不可欠な状態である。かかる状況下においては、HCMCのみならずベトナム全国の都市や地域において水道セクターでの設備投資は喫緊の課題であり、公的セクターのみによる整備だけでなく、民間事業体の参画も期待されている。但し、水道は既述のように社会政策などの観点から料金が低位に抑えられていることから純粋に民間のみによる事業では採算に乗らない。公的セクターからの適切な支援と組み合わせた、民間の活用が望まれている。

参考：都市水道の整備指針

THE PRIME MINISTER OF GOVERNMENT
VIET NAM

SOCIALIST REPUBLIC OF

No. 63/1998/QD-TTg

Hanoi, March 18, 1998

DECISION

RATIFYING THE ORIENTATION FOR THE DEVELOPMENT OF NATIONAL
URBAN WATER SUPPLY SYSTEM TILL THE YEAR 2020

THE PRIME MINISTER

Pursuant to the Law on Organization of the Government of September 30, 1992;
At the proposal of the Minister of Construction in Report No.02/BXD-KTQH of February
7, 1998,

DECIDES:

Article 1. - To ratify the orientation for the development of national urban water supply
system till the year 2020 with the following principal contents:

I. OBJECTIVES:

To set orientation for the development of the urban water supply system in service of
the national industrialization and modernization; thereby draw up appropriate
investment plans to develop the urban water supply systems in a stable and sustainable
manner for each period.

1. The immediate objectives:

- To expand the scope and raise the quality of urban water supply services; to ensure
that by the year 2000, 80% of the urban population shall be supplied with clean water
with an average of 80-100 liters per head per day. For such major cities as Hanoi, Hai
Phong and Ho Chi Minh City, to strive to supply clean water to 100% of the population
with an average of 120-150 liters per head per day;

- To ensure the adequate supply of water for industrial, cultural and social activities in urban centers;
- To renovate and upgrade the water supply projects which are too old or have not yet achieved their designed capacities;
- To reduce the percentages of water loss and uncollected water charge down to 40% in the existing urban areas and 30% in new urban centers by the year 2000;
- To classify the water supply companies as public-utility enterprises; to step by step abolish the subsidy regime; to correctly and adequately calculate the water supply charges so as to cover the costs of construction and development investment;
- To restore the discipline in the urban water supply sector in all aspects, from technological processes, production, business, finance and services to the State management; to resolutely eliminate negative phenomena in the water supply sector; to step up the dissemination work and raise the people's intellectual level while imposing sanctions and fines according to law; to promote the mastery role of the people in the construction, management and use of the urban water supply system.

2. The long-term objectives:

- To conduct survey, prospection and exploitation in parallel with the protection of the national water resources, including: surface water, underground water, rivers, natural and artificial lakes in different areas, with attention being paid to urban centers in coastal areas, drought-stricken areas, mountainous and high-land areas and other areas with peculiar conditions;

To raise the quality of water supply services for the production and people's life in urban areas, to create conditions for water supply companies to operate with financial autonomy and at the same time fulfill their public utility obligations and tasks in service of social policies;

- To strive to achieve by the year 2020 the water supply for 100% of the urban population with an average of 120-150 liters per head per day; particularly, 180-200 liters per head per day in such major cities as Hanoi, Hai Phong and Ho Chi Minh City;

- To train personnel and reform the management in line with the industrialization and modernization policy of the Party and the State; to enhance the capabilities of the consulting companies, making them fully capable of drawing up projects and designing water supply systems;
- To step up technical and scientific development, to intensify the application of new technologies through technology transfers, to modernize step by step the water supply system in urban centers;
- To step up investment in domestic manufacture of high-quality equipment, supplies and accessories which can be accepted by domestic and foreign markets;
- To apply the advanced standards, processes and norms; to integrate Vietnam's water supply sector into the regional countries in line with the open-door and international cooperation development policy of the Party and the Government.

II. THE MAJOR SOLUTIONS:

1. The rational exploitation and use and protection of water resources and environmental hygiene:

To meet the increasing water demand of the urban population and to ensure adequate water supply for production and socio-cultural activities in urban areas, there should be a program for further inspection, survey and concrete assessment of water resources on the basis of available documents; a planning for rational exploitation and use of water resources; and a strategy for water resource reserve.

It is necessary to carry out projects for combating the pollution of water resources and the consequences of the unplanned exploitation of underground water; to strictly control the sectional exploitation of water wells. For all water supply projects, there must be reports on the assessment of their impacts on the environment.

2. The reform of organizational structure of the water supply sector, from the central to grassroots levels:

On the basis of the existing organizational structure, to restructure inappropriate

organizations, including branch directing and managing bodies at the central level; to raise the role of the local authorities of all levels in managing the water supply activities in their respective localities and especially to enhance the capabilities of the water supply companies.

3. The renovation of financial policies and creation of capital sources for the urban water supply activities:

- To socialize the development of the urban water supply sector by mobilizing contributions from all economic sectors and the population; to access to the assistance and financial support of foreign governments and international organizations;

- To set new water supply charges, so as to ensure the financial autonomy for water supply companies and proceed to cover expenses for waste water drainage in urban areas.

4. The technological modernization and manufacture of equipment and supplies:

To apply modern technologies to the water supply systems in such major cities as Hanoi, Hai Phong and Ho Chi Minh City, new urban centers, industrial parks, export processing zones, tourist sites as well as service and trade centers.

To apply appropriate and widely used technologies in various localities in close combination with the existing projects in order to renovate and upgrade the water supply system to meet the urgent needs and make full use of domestic equipment, facilities and supplies, thus reducing investment costs.

The technologies and equipment in the water supply systems must be synchronous and uniform so that their parts can be easily replaced.

5. The development of human resources and training of officials and employees:

To work out the program for the comprehensive training of personnel from leading officials, managerial, scientific, technical, economic and financial personnel to operators, maintenance workers of the water supply sector; to enhance and strengthen capabilities of the schools and establishments for training of specialists of the water supply sector.

On the other hand, to work out policies in order to encourage and stimulate the contributions of Vietnamese experts residing and working in foreign countries.

By the year 2005, to strive to sufficiently supply trained managerial officials and technicians to water supply establishments of from central to grassroots levels.

Article 2.- The Ministry of Construction shall assume the prime responsibility and coordinate with the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Agriculture and Rural Development, the Ministry of Science, Technology and Environment, the Ministry of Industry, the Ministry of Health and the concerned ministries and branches in materializing the orientation for the development of the urban water supply system, concretizing the orientation's contents and drawing up immediate and long-term plans so as to ensure the effective implementation of the program for construction investment and development of the national urban water supply system.

Article 3.- This Decision takes effect after its signing. The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and cities directly under the Central Government shall have to implement this Decision.

THE PRIME MINISTER OF GOVERNMENT

DEPUTY PRIME MINISTER

Ngo Xuan Loc

1-3. 道路セクター

道路、空港、鉄道および港湾セクターは交通省（MOT: Ministry of Transportation）が管轄する分野である。以下に記載する該当セクターでの、民間が関与することを期待するプロジェクトおよびそれらの優先度に関するものは、MOT の Mr.Nguyen Hoang (Director General, Dept. of Planning and Investment) および Ms.Nguyen Thanh Hang (Deputy Director General, Dept. of Planning and Investment)との面談および 彼らから受領した資料に基づいている。

1-3-1. 道路整備の計画

現在のベトナムで喫緊の大型プロジェクトと考えられているものには次のようなものがある。

a) 南北高速道路 (North South Highway along coastline)

南北に細長いベトナムを縦貫する高速道路を建設するもので、事業費は 1.52 十億ドル。新設工事と既存道路の改良によって実施される。2010 年から 2020 年に 892Km を整備する計画である。

b) Hanoi - Lao Cai 高速道路 (Hanoi - Lao Cai Highway)

首都のハノイと中国と隣接する Lao Cai 省を結ぶ全長 264Km の高速道路。事業費は 1.25 十億ドルであり、ADB などから資金を調達する。建設工事の一部は既に韓国の POSCO などにより実施されることが決まっている。

c) Hanoi - Haiphong 高速道路 (Hanoi-Haiphong Expressway)

ベトナム北部の産業および交通の産業拠点として整備が図られている Haiphong と Hanoi との相互アクセスの改善を目的するもの。VDB (Vietnam Development Bank)などが出資して設立された VIDIFI (Vietnam Infrastructure Development and Finance JSC) が事業実施主体となっている案件。

d) Hanoi - Lang Son 高速道路 (Hanoi - Lang Song Highway)

Hanoi から中国国境の Lang Song 省までの全長 130Km を結ぶもの。事業費は 900 百万ドルで、ADB などのからの資金調達が予定されている。プロジェクト主体 (project developer) は VEC (Vietnam Express Corporatuin)である。

e) HCMC-Long Thanh- Dau Giay 高速道路 (HCMC-Long Thanh-Dau Giay Highway)

HCMC と Dong Nai 省を結び、Long Tanh 国際空港へのアクセス改善を図るもの。全長 51Km で、事業費は 932 百万ドル。ADB などから資金調達を行う。

f) 中部ベトナム道路整備

中部の拠点都市である Danang と Quang Ngai 省とを結ぶ、全長 140Km の道路を整備するもの。世銀などからの資金調達を予定している。

これらとは別に、MOT が民間による整備を期待するプロジェクトとして掲げているものには次の表のようなものがある。これは MOT が新たに民間参加を認めたプロジェクト(市場)であるが、事業総額は全 17 件で 510 十億 VND である。この中で、特に PPP 方式により整備を優先的に図りたいとしたものは、Ninh Binh - Thanh Hoa Expressway および Thanh Hoa - Ha Tinh Expressway である (Mr.Nguyen Hoang)。

区分	No.	プロジェクト名	プロジェクト所在地	概要	計画工事費 (M VND)
Road					
	1	Hanoi - Lang Song Expressway	Hanoi, Bac Ninh, Lan Son	118Km, 4 Lanes	21,800
	2	Noi Bai - Ha Long Expressway	Hanoi, Bac Ninh, Quang Ninh	110Km, 4 Lanes	22,100
	3	Ha Long - Mong Cai Expressway	Quang Ninh	180Km, 4 Lanes	17,000
	4	Ninh Binh - Thanh Hoa Expressway	Ninh Binh - Thanh Hoa	121Km, 8 Lanes (Phase I: 6 Lanes)	28,000
	5	Thanh Hoa - Ha Tinh Expressway	Thanh Hoa - Ha Tinh	96Km, 6 Lanes (Phase I: 4 Lanes)	23,000
	6	Upgrading HW1 section La Son - Lang Co and Phu Gia, Phuoc Tuong Tunnel	Thua Thien Hue	48.4Km, 4 Lanes, 900m tunnels x 2	3,500
	7	Quang Tri - Hue - Da Nang (Cam Lo - Tuy Loan) Expressway			
		Cam Lo - La Son section	Quan Tri - Hue	115Km, 4 Lanes	17,000
		La Son - Tuy Loan section	TT Hue - Da Nang	83Km, 4 Lanes	15,300
	8	Quang Ngai - Quy Nhon Expressway	Quang Ngai - Quy Nhon	180Km, 4-6 Lanes	35,000
	9	Quy Nhon - Nha Trang Expressway	Quy Nhon - Nha Trang	215Km, 4 Lanes	30,000
	10	Dau Giay - Phan Thiet Expressway	Dong Nai - Binh Thuan	98.3Km, 6 Lanes	15,500
	11	Phan Thiet - Nha Trang Expressway	Binh Thuan - Khanh Hoa	226Km, 4-6 Lanes	30,000
	12	Dau Giay - Da Lat Expressway	Dong Nai - Lam Dong	189Km, 4 Lanes	43,000
	13	Hanoi Ringroad No.3 (section Noi Bai - Mai Dich)	Hanoi	20.4Km, 4 Lanes	5,000
	14	Hanoi Ringroad No.4	Hanoi	135Km, 6 Express Lanes & 2 Urban Lanes	64,893
	15	Hanoi Ringroad No.5	Hanoi	320 Km, 4 Express Lanes	34,000
	16	Ho Chi Minh City Ringroad No.3	HCMC	90.6 Km, 6-8 Lanes Urban Expressway	42,000
	17	Ho Chi Minh City Ringroad No.4	HCMC	148 Km, 6-8 Lanes Urban Expressway	62,000
	18	Upgrading Highway No.6 Ba La - Xuan Mai	Hanoi	Highway & Urbanway, 4 Lanes, designed speed of 70Km/h	1,218
				Total	510,311

1-3-2. BT 方式による整備

最近、道路建設や市街地開発などでは BT (Build- Transfer) 方式を活用した民間によるプロジェクトが実施されている。これは韓国の POSCO や GSEC (GS Consulting & Engineering Corp.)が行っているもの。ベトナム政府から事業権を付与された企業が自前の得資金負担により道路整備を行い、完成後はベトナム側に道路を引き渡す。企業は工事費用の見返りとして土地開発権をもらい、当該土地に商業ビルや住宅施設を建設して、これらからの収入で資金回収を行う方式である。具体的な案件としては、GSEC による HCMC で

の環状1号線（整備距離 10Km）や POSCO によるハノイと同市に隣接するホン河北部を結ぶ道路の整備などである。

在越の日本企業に、このような方式（BT と開発権の組み合わせ）によるインフラ整備への参画可能性について問うたところでは、「現下のインフレ下での思惑的な投機が過熱しているベトナムで土地開発権をインフラ整備の対価として受け取ることは、日本企業にとってはリスクが大きい」、「この方式を行使できるのは、取得した土地開発権を元に不動産開発を行った経験がある企業に限られる」といった評価が一般的であった。また BT 方式において必要となるインフラ整備資金の手当てに関して、民間資金だけでは難しいとの指摘も多かった。

1-4. 空港セクター

ベトナムの主要な空港は下の通りである。この中で Tan Son Nhat (HCMC), Noi Bai (Hanoi) および Da Nang (Da Nang)で全体の航空客および貨物取扱量の8割以上を占める。規模が小さく、滑走路が短い空港が多く、交通インフラ整備の重要課題の一つである。

Aiports in Vietnam

Name	ICAO(IATA) Code	Location
Buon Ma Thuot Airport	VVBM (BMV)	Buon Ma Thuot
Cat Bi Airport	VVCI (HPH)	Hai Phong
Cam Ly Airport	VVCL	Da Lat
Ca Mau Airport	VVCM (CAH)	Ca Mau
Cam Ranh Airport	VVCR (CXR)	Nha Trang
Co Ong Airport	VVCS (VCS)	Con Dao
Tra Noc Airport	VVCT (VCA)	Can Tho
Dien Bien Phu Airport	VVDB (DIN)	Dien Bien Phu
Lien Khuong Airport	VVDL (DLI)	Da Lat
Da Nang International Airport	VVDN (DAD)	Da Nang
Gia Lam Airbase	VVGL	Hanoi
Noi Bai International Airport	VVNB (HAN)	Hanoi
Na San Airport	VVNS (SQH)	Son La
Nha Trang Airport	VVNT (NHA)	Nha Trang
Phu Bai Airport	VVPB (HUI)	Hue
Phu Cat Airport	VVPC (UIH)	Qui Nhon
Pleiku Airport	VVPK (PXU)	Pleiku
Duong Dong Airport	VVPQ (PQC)	Phu Quoc
Phan Thiet Airport	VVPT (PHH)	Phan Thiet
Rach Gia Airport	VVRG (VKG)	Rach Gia
Dong Tac Airport	VVTH (TBB)	Tuy Hoa
Tan Son Nhat International Airport	VVTS (SGN)	Ho Chi Minh City
Vinh Airport	VVVH (VII)	Vinh

Source: IATA, ICAO

空港関係での最優先プロジェクトは Long Thanh International Airport であり、MOT の Mr.Nguyen Hoang も JICA などの日本の官民の協力への期待を述べていた。彼が提示した民間関与が期待される空港プロジェクトは下の通り。民間参画を認めた新規の市場規模としては、3 件 154 十億 VND である。日本企業の空港整備への関心も高い。但し、空港関連施設で民間による整備および運営への関与が期待できるのはターミナル部分であり、それ以外の施設に関しては他国での事例からしても公的セクターが事業資金を負担する仕組みがなければ整備を進めることは難しい。円借款などと組み合わせたスキーム構築が必要である。

区分	No.	プロジェクト名	プロジェクト所在地	概要	計画工事費 (M VND)
Aviation	1	Chu Lai International Terminal	Quang Nam Province	4F Level, Capacity 4M passengers/year & 5M tons /year	38,000
	2	Long Thanh International Terminal	Don Nai Province	4F Level, Capacity 80–100M passengers/year & 5M tons /year (1st: 20M passengers/year)	102,600
	3	Upgrading of Phu Bai International Terminal	Hue City	4F Level, Capacity 5M passengers/year	13,300
				Total	153,900

ベトナムでは HCMC および Hanoi が 2 大重要航空拠点であるが、南北に細長く伸びた国土においては経済発展につれて航空交通の果たす役割が大きくなっていくものと見込まれる。かかる前提においては、国内での主要航空拠点である Da Nang (Da Nang International Airport)、Vinh (Vinh Airport)、Tam Ky (Chu Lai International Airport)、Quang Ngai (Quang Ngai Airport)、Pleiku (Pleiku Airport)、Tuy Hoa (Dong Tac Airport)、Nha Trang (Nha Trang Airport)、Phan Thiet (Phan Thiet Airport)、Can Tho (Tra Noc Airport)、Rach Gia (Rach Gia Airport)、そして Ca Mau (Ca Mau Airport) などの空港の整備および拡充が重要な課題となってくると推測される。

1-5. 鉄道セクター

南北新幹線の整備が南北高速道路および Hoa Lac 工業団地の整備と並んで国家重要プロジェクトとして喧伝されているが、現地においては Hanoi や HCMC などの都市圏交通および国内での物流網の整備を目的とする鉄道部門でのインフラ投資が期待されている。前者に関しては、Hanoi および HCMC での地下鉄整備やこれらの都市から空港など主要インフラ施設へのアクセス改善、あるいは近郊都市とのリンケージの強化などが具体的な整備へのニーズである。

Mr.Nguyen Hoang との面談においても、Hanoi-Noi Bai 間の鉄道改善が民間参画を期待する最重要プロジェクトとして言及されている。またそれ以外の PPP 方式での整備を計画する

プロジェクトをみても、主要都市での都市圏内鉄道および近距離鉄道案件が殆どを占めている。物流のみならず通勤などにおいても車やバイクに過度に依存した現状を公共交通に置き換えて、運輸の潤滑化やスケールメリットの発揮を達成することを図っているものと推察される。この分野での MOT が新たに民間参入を認めている市場は 14 件で 141 十億 VND である。

区分	No.	プロジェクト名	プロジェクト所在地	概要	計画工事費 (M VND)
Railway					
	1	Upgrading of Hanoi – Noi Bai Route	Hanoi	47Km (New Construction 12.5Km) from Ngoc to Noi Bai Airport (1st: 37Km from Noi Bai to Ha Dong (New Construction 8Km)), Electricity, 1435mm gauge	13,330
	2	Hai Phong New International Gate Port Access Railway	Hai Phong City	New Construction 57km, 2 Lanes, 1435mm gauge	15,000
	3	Kep – Luu Xa Route Improvement	Ba Giang, Thai Nguyen Province	56Km, Improvement of Existing Route	500
	4	Acess Railway to Thach Khe Iron Quarry	Ha Tinh Province	New Construction 60Km, 1 Lane, 1000 mm gauge	3,360
	5	Don Ha – Lao Bao – My Thuy Port New Route	Quang Tri Province	New Construction 114Km, 1 Lane	4,560
	6	Hai Van Railway Tuned	Hue, Danag City	New Construction 8–10Km Tunnel	2,500
	7	Van Phong New International Transshipment P	Khanh Hoa Province	New Construction 28Km, 2Lanes, 1435mm gauge	1,700
	8	Thap Cham – Da Lat Route Impeovement	Lam Dong, Ninh Thuan Province	84Km Improvement Existing Route	4,000
	9	Dak Nong – Binh Thuan New New Route for	Dak Nong, Binh Thuan Province	New Construction 253Km, 2 Lanes, 1435mm gauge	14,500
	10	Bien Hoa – Vung Tau New Route	HCMC, Dong Nai, Vung Tau Province	New Construction 114Km, 2 Lanes Electricity, 1435mm	15,000
	11	Di An – Loc Ninh New Route	HCMC, Binh Duong, Binh Phuroc	128Km, 2 Lanes Basement, 1435mm gauge(1st: 1 Lane 1000mm gauge in comply with Asia Railway)	8,600
	12	TP. Ho Chi Minh – Cau Tho Highspeed New Route	HCMC, Lon An, Vinh Long, Tien Giang, Can Tho	50Km, 2 Lanes, 1435mm gauge, Electricity, Design Speed 200Km/h	28,800
	13	Trang Bang – Tan Thoi Hiep New Route	HCMC, Tay Ninh	New Construction 33Km, 2 Lanes, Electricity, 1435mm gauge	7,900
	14	South West Lake – Ngoc Khanh – Lang – Hoa Lac Urban New Route in Hanoi	Hanoi	33Km, 2 Lanes, 1435 mm gauge	21,000
				Total	140,750

1-6. 港湾セクター

持続した経済成長を果たすためには貿易の発展が不可欠である。そのための港湾を整備することの重要性は言うまでもない。現下のベトナムにおいては、産業や民生からの需要が急増している電力の不足が深刻である。電力セクターの分析で既に説明したように、新規の大型水力発電所の建設は極めて限られており、また国内のガスや石炭による火力発電も限界に近付いていることから、海外のエネルギーを輸入しての発電所建設が不可欠となっている。これも港湾整備が喫緊の課題である要因である。

現下での最大の港湾プロジェクトは JICA などの日本の官民も事業に関与しているラクフエン港 (Lach Huyen port) の整備である。これ以外で MOT (Mr. Nguyen Hoang) が新しく民間関与を期待する重要なプロジェクトとして掲げたものは以下の 3 つである。3 件で 26 十億 VND である。いずれも近い将来での事業実施を計画しているとのことであった。

区分	No.	プロジェクト名	プロジェクト所在地	概要	計画工事費 (M VND)
Maritime					
	1	Da Nang Port Phase II	Da Nang City	Expansion of Danang Port to Serve 50,000 DWT Vessel	2,090
	2	Van Phong New International Transshipment Port	Khanh Hoa Province	Construction and Operation of Berths to Serve 15,000 T	10,000
	3	Hai Phong New International Gate Port (Lac Huyen Port)	Hai Phong City	Construction and Operation of Berths after Initiation	13,500
			Total	25,590	

2. 民間資金活用の現状

2-1. 法的枠組み

ベトナムにおける外資を含む BOT、BTO、BT 方式のプロジェクトについては、外国投資法の付則的位置づけとなる Decree62/1998/ND-CP により明確に規定され、その後、2006 年に制定された内資・外資共通の「共通投資法」の下で、Decree78/2007/ND-CP（以下、「旧 BOT 法」という。）及び同 Decree の改訂となる Decree108/2009/ND-CP（以下、「新 BOT 法」という。Appendix1 参照）によりプロジェクト実施・運営体制の整備が進められた。

また、BOT、BTO、BT 方式を含む PPP プロジェクトに関しては、2010 年に制定（2011 年 1 月施行）された Decision71/2010/QD-TTg（以下、「PPP パイロット法」という。Appendix2 参照）によって、パイロットプロジェクト試行のための暫定的な枠組みが制定された。それぞれの法令の内容等は以下の通り。

2-1-1. 新 BOT 法

主な内容は下表の通り（2011.2 に公布された下位法規である Circular No.03/2011/TT-BKH の内容も含む）。旧 BOT 法からの主要な変更点としては、以下の事項が挙げられる。

- ・国側業務分掌、権限の明確化（地方への一部権限委譲）
- ・プロジェクト準備段階での費用負担及び国の関与の明確化
- ・プロジェクト選定手続きにかかる透明性の向上（原則、競争入札とする）
- ・BT プロジェクトにかかる投資家の権利等の保護

図表：新 BOT 法（旧 BOT 法からの変更内容）

項目	条文	内容	旧 BOT 法からの 変更内容
1. 概要			
対象 (規制範囲)	Article1	建設運営譲渡方式 (BOT)、建設譲渡運営方式 (BTO)、建設譲渡方式 (BT) 契約形態による投資プロジェクト 類似する契約形態の場合、首相決定を得たもの	変更無し
対象となる投資分野	Article4	1)道路、橋・トンネル（道路用）、フェリー埠頭 2)鉄道、橋・トンネル（鉄道用） 3)空港、海港、河川港 4)給水システム、排水システム、下水収集・処理システム、廃棄物処理システム	概ね同一（旧 BOT 法に含まれていたもののうち、道路・橋トンネル関連施設及び路面電車が対象外）

		5) 発電設備、送電線 6) 首相が決定するその他インフラ施設	
プロジェクト 管理にかかる 業務分掌	Article 46~50	計画投資省、財務省、法務省、その他省庁及 び支所、地方人民委員会の役割と権限をそれ ぞれ規定。	旧 BOT 法では規定なし。
権限委譲	Article3	グループ B,C プロジェクトについて、各省 庁・支所・地方人民委員会は関連機関に対し て、契約相手方とする権限を与えることがで きる。	旧 BOT 法では規定なし。
投資許可証発 行部局	Article24	以下①～③については計画投資省、それ以外 は地方人民委員会。 ①国家プロジェクト、②契約者が省レベルの もの、③複数の省・市にまたがるもの	旧 BOT 法では計画投資省の み。
2. 資金調達			
資金調達（自 己資金割合）	Article5	①総投資額 1.5 兆 VND 以内のプロジェクトー 自己資金は 15%以上 ②総投資額 1.5 兆 VND 超のプロジェクトー 1.5 兆 VND 部分までは 15%、1.5 兆 VND を超え る部分は 10%以上	旧 BOT では以下の通りであ り、新 BOT 法では若干緩和。 ①750 億 VND 以内のプロジ ェクトー自己資金 30%以上 ②750 億 VND～1.5VNDー自 己資金 20%以上 ③1.5 兆 VND 以上のプロジ ェクトー自己資金 10%以上
政府支援（公 的資金）の割 合・内容	Article6	上限 49%。緊急性の高いプロジェクトに関し ては土地収用・補償等に関して政府支援（公 的資金）の使用は可能（49%の枠外）。 政府支援は、国家予算、政府保証による信用 供与、国家による開発投資の信用供与、国有 企業による開発投資資本、及びその他。	変更無し
保証	Article23	1.5 兆 VND までは 2%、1.5 兆 VND を超える部 分は総投資額の 1%について銀行等による保 証が必要。	旧 BOT では以下の通り（大 きな変更無し） 750 億 VND 以下は 3%、750 億～1.5 兆 VND までは 2%、 1.5 兆 VND 以上は 1%につい て銀行等による保証が必 要。

3. プロジェクト準備段階			
プロジェクト 提案書、FS の 評価・承認	Article12	<p>担当機関はプロジェクトの規模、性質に従ってFSを実施、又は以下の内容を含むプロジェクト提案書を作成する。</p> <ul style="list-style-type: none"> ・BOT, BTO, BT とすることの意義（メリット）。 ・BOT, BTO プロジェクトについては運営管理方法を記載。 ・BT プロジェクトについては、支払条件又は他プロジェクト実施条件を記載。 <p>FS 及びプロジェクト提案書承認権限は以下の通り。</p> <p>A) 首相：①国会で承認された国家プロジェクト、②200ha 以上の土地を使用するプロジェクト、③政府保証を要するプロジェクト、④1.5 兆 VND 以上のグループ A プロジェクト</p> <p>B) 各省大臣及び省レベル機関の長、地方人民委員会の長：上記以外のグループ A, B, C プロジェクト</p>	旧 BOT 法では規定なし。
プロジェクト 準備段階の費 用負担	Article8	<p>プロジェクト準備段階の費用分担は以下の通り。</p> <ul style="list-style-type: none"> ①プロジェクトリスト作成及び投資家選定費用は公的資金にて支弁。 ②プロジェクト準備段階における FS 及び FS 評価にかかる費用は公的資金等により支弁。 ③プロジェクト規模、性質によっては、選定された投資家がプロジェクト準備段階の費用を支払う。 	旧 BOT 法では規定なし。
建設準備	Article30	<p>地方人民委員会が土地整備等所要の準備作業を実施し、プロジェクト実施会社が総投資の中で土地整備費用、移転補償金等を支払う。</p>	旧 BOT 法では、建設準備に関して「プロジェクト会社が一義的な責任を負う」とされていたが、当該文言を削除。
4. プロジェクト選定			
競争入札	Article13	<p>2 以上の投資家が応募した場合、国内又は国際競争入札を実施する。</p>	変更無し

競争入札無しに選定するケース	Article14	<ul style="list-style-type: none"> 指定期限内に1社しか応募しなかった場合。 投資家提案によるプロジェクトで指定期間内に対抗する応募が無かった場合。 MPI の評価報告に基づき、緊急性の高いプロジェクトとして首相承認された場合。 	旧 BOT 法では、「担当省庁による事前審査により1社のみしか適格でなかった場合」も含まれていたが、当該文言を削除。
投資家提案によるプロジェクト	Article11	投資家は自らプロジェクト提案ができる。当該プロジェクトが関係省庁により承認されプロジェクトリストに加わった場合、Article9 に従って公示を行い、30 日以内に他の投資家から応募がなければ、提案投資家がプロジェクト実施者となる。他の投資家が応募した場合は、Article13 の競争入札手続きを実施する。	旧 BOT 法では、2 以上の投資家が同一プロジェクトの提案をした場合を除き、担当省庁が関係省庁のコメントを徴した上で競争入札無しに提案プロジェクトの当否を決定できたが、新 BOT 法では競争入札が義務づけられた。
5. その他（主な変更点）			
BT プロジェクト	Article26	BT プロジェクトについては、支払条件又は他プロジェクト実施条件を記載する。	旧 BOT 法では規定なし。
	Article38	BT プロジェクトについては、輸入税に関するインセンティブあり。	旧 BOT 法では規定なし。

2-1-2. PPP パイロット法

① 新 BOT 法との関係

本法は政府と投資家が契約に基づいて協調して事業を実施する形態である PPP モデルにより実施されるインフラ開発及び公的サービスの提供を取り扱う。新 BOT 法との棲み分けは明確でないが、本法では BOT 法で対象していたプロジェクトの一部及びその他（BOT 法対象外の BOO 等）を取り扱うものと考えられる。

② 主な内容

主な内容は下表の通り。新 BOT 法と相違している点（PPP パイロット法における変更点）は多いが、上述の通り本法が新 BOT 法を完全に置き換える趣旨のものでないため、プロジェクト毎にいずれの法に従うべきか留意が必要。

図表：PPP パイロット法（新 BOT 法からの変更内容）

項目	PPP パイロット法		新 BOT 法との相違点
	条文	内容	

1. 概要			
対象（規制範囲）	Article1	官民連携(PPP)方式で実施されるインフラ開発プロジェクト	対象範囲の拡大
対象となる投資分野	Article4	1)道路、橋・トンネル（道路用）、フェリー埠頭 2)鉄道、橋・トンネル（鉄道用） 3)都市交通 4)空港、海港、河川港 5)給水システム 6)発電設備 7)ヘルスケア（病院） 8)環境（廃棄物処理施設） 9)首相が決定するその他インフラ施設	都市交通、ヘルスケア（病院）、環境（廃棄物処理施設）が追加
プロジェクト管理にかかる業務分掌	Article47～50	計画投資省、財務省、法務省、国家銀行、担当政府機関の役割と権限をそれぞれ規定。	計画投資省の権限強化、国家銀行の役割新設等。
権限委譲	Article7	権限委譲に関する記載無し。	プロジェクトグループの別による権限委譲が削除された。
投資許可証発行部局	Article29	計画投資省	パイロット法では計画投資省に限定。
2. 資金調達			
資金調達（自己資金割合）	Article3	自己資金は、民間資金負担分（総投資額の70%以上）のうち、30%以上。	必要とする自己資金の割合増加（10～15%→21%以上）
政府支援（公的資金）の割合・内容	Article2, 9	上限 30%（首相決定による変更はあり）。プロジェクトの性質によっては土地収用・補償等に関して政府支援（公的資金）の使用は可能（30%の枠内）。政府支援は、配当の権利等を付与されない性質のもので、内容は、国家予算、ODA、政府債、政府保証による信用供与、国家による開発投資の信用供与、国有企業による開発投資資本、及びその他。	政府支援割合（上限）の縮小。公的資金として認識されるものの範囲拡大及び明確化。

政府支援の承認	Article18	<ul style="list-style-type: none"> ・ MPI は MOF 等と協力し、政府支援に関する評価を取りまとめる。 ・ 担当機関は、FS 承認の前に政府支援（保証等含む）の内容について首相承認を得る。 	政府支援の評価・承認にかかる規定を新設。
保証	Article28	民間投資資金の2%について銀行等による保証が必要。	計算基礎を政府支援を除く民間投資資金とし、保証率も2%に変更。
3. プロジェクト準備段階			
FS の評価・承認	Article17	FS 実施コンサルタントは入札によって選定され、FS の評価・承認は、国家予算による投資・建設プロジェクトと同様の扱いとなる。	PPP パイロット法では、国家プロジェクトと同等の FS を事前に実施することとなった（但し、FS 費用は最終的に投資家負担）。
プロジェクト準備段階の費用負担	Article8	プロジェクト準備費用には FS 作成、投資家選定費用を含み、これらは公的資金等にて支弁する。選定された投資家は FS 作成費用を事後的に支払う。	PPP パイロット法では FS は投資家負担、その他準備費用は国家負担という形で、費用分担が明確になっている。
4. プロジェクト選定			
競争入札	-	規定無し	競争入札実施にかかる規定削除
競争入札無しに選定するケース	-	規定無し	無競争の規定削除
投資家提案によるプロジェクト	Article13	投資家は自らプロジェクト提案する場合、提案書をプロジェクト分野の政府担当部署に送付。政府担当部署は当該プロポーザルを評価し、（結果に応じ）プロジェクトリストに加える。	政府担当部署受付以降は、他のプロジェクトと全く同一の扱い。
選定基準	Article5	<ol style="list-style-type: none"> 1. 経済発展の為に早急に必要で大規模案件 2. 利用者からの収入で投資資金を回収可能 3. 技術・管理経験に優れており、民間資金を効果的に活用可能 4. その他首相決定による基準 	BOT 法では記載がないが、パイロット法において明示。（2010.3 公布の BOT 法下位規定に記載あり）

5. その他（主な変更点）			
タスクフォース 組成	Article8	プロジェクト組成・実施の為に省庁横断のタスクフォースを組成する。主な役割は以下。 <ul style="list-style-type: none"> ・FS 実施コンサルタント及び投資家の選定メンバーを招集 ・FS 及び投資家評価、契約締結にかかる関与（アドバイス） ・政府担当機関に対し、政府支援及び諸問題解決にかかるサポート 	評価・選定にかかるメンバー選定等役割を強化し、プロジェクト準備段階から関与する組織とした。
外国法の適用	Article27	案件によりケースバイケース（プロジェクト契約以外にも適用可能性あり）	公示段階で外国法の適用を明示、かつ適用可能範囲も広がった。
インセンティブ	Article41	プロジェクト実施企業は税優遇等のインセンティブを享受できる。	インセンティブをBOT, BTO, BO プロジェクト以外に対しても拡大。
外貨両替権	Article44	特定のケースでの外貨両替を許可。 エネルギー、交通、廃棄物処理セクターについては、国家銀行の意見も踏まえ、外貨バランスについて支援するよう首相に依頼する。	一部プロジェクトに関して政府による外貨バランス支援が付加された

事業段階	関与者	参照条文 (Article)	関与内容
1. 事前準備・プロジェクトリスト作成			
1.1 事業提案1	投資家	13.1、13.2	政府担当部署にプロポーザルを送付
1.2 事業提案2	政府担当部署	14.1	投資家提案、自己提案をMPIに送付
1.3 事業提案審査	MPI	13.1、13.2	事業提案審査、首相宛プロジェクトリスト提出
1.4 承認	首相	13.1	プロジェクトリスト承認
2. FS(Feasible Study)			
2.1 コンサル雇用	ITF	8.2	FS実施コンサル選定メンバー招集
	政府担当機関	17.1	FS実施コンサルタント雇用
2.2 FS実施	コンサルタント	17.1	FS実施
3. 政府支援の審査・承認			
3.1 政府支援提案	政府担当機関	9.1	政府支援の提案
	ITF	8.2	政府担当機関を補助
3.2 審査	MPI	9.1、18.2、47.1	評価意見
	MOF	18.2、48.2	審査参加
	SBV	18.2、50.1	審査参加
	関係省庁	18.2	審査参加
3.3 承認	首相	9.1、18.3	承認
4. 入札及び評価・選定			
4.1 入札準備	政府担当機関	19.1	入札書類準備
4.2 応札	投資家	-	(特段の記載無し)
4.3 入札・評価選定	政府担当機関	19.3	投資家選定結果取りまとめ
	MPI	19.3	意見提出
	ITF	8.2	評価に参加
5. 契約・投資承認			
5.1 契約交渉・締結	政府担当機関	20.2	当事者として契約交渉・締結
	投資家	20.2	当事者として契約交渉・締結
	ITF	8.2	契約交渉参加
5.2 投資許可	MPI	29	投資許可証発行
6. 事業実施			
6.1 事業会社設立	投資家	32.1	企業法に基づき事業会社設立
6.2 建設業者選定	事業者	33.1	建設業者選定、政府担当機関宛通知
	政府担当機関	33.2	建設業者選定結果の通知を受ける
6.3 実施準備	地方人民委員会	34	土地整備義務を負う
	事業者	35.1	技術仕様作成
	政府担当機関	35.2	事業者作成の技術仕様を監査

2-2. 実施済み PPP 案件

PPP パイロット法施行前は PPP 案件に関しては、明示的に規定する制度的枠組みは存在しなかったが、世銀資料 (<http://ppi.worldbank.org>) によると、民間資金が投入されたインフラ案件 (Private Participation in Infrastructure) として下表の各案件が紹介されている。(注：地方案件や少額案件は含まれておらず)

紹介されている全 32 案件のうち、エネルギー関連案件が 17 件と過半を占めているが、電

力不足を背景として、国内唯一の送電事業者であるベトナム電力公社（EVN）による買取価格が高めに設定されることが、相対的に多い民間参入につながっているものと考えられる。

下表は大型案件のみであるが、多くの案件が競争入札でなく直接交渉により投資家が選定されており、BOT 案件については 2003 年の Phu My3 以降、BOO 案件でも 2005 年の Thu Duc Water Project 以降、競争入札案件がない。新 BOT 法施行（2010.1）以前は競争入札にかかる原則性が弱かったとはいえ、関係者ヒアリングにおいても近時の BOT 等のプロジェクトで競争入札となった事例は皆無とのことであり、PPP 関連手続きにおいて投資家選定の不透明性は大きな問題といえる。加えて、Phu My 橋のように政府系企業が落札するケースでは官民の適切なリスク分担という PPP の本旨が曖昧になっているとも言え、合わせて改善が必要と考えられる。

図表 ベトナムにおける PPI (Private Participation in Infrastructure) 案件一覧

	Project	financial closure	type of PPI	subtype of PPI	Contract method	Contract period (year)	Primary Sector	% of Private
1	Phu My Port	09/1994	Greenfield project	BOT	N.A	25	Transport	60
2	Vietnam Mobile Telecom Service Company	07/1995	Concession	BROT	N.A	10	Telecom	80
3	Hiep Phuoc Power Company	01/1996	Concession	ROT	N.A	50	Energy	70
4	Bourbon Sugar Mill Power Plant	01/1996	Greenfield project	BOO	Direct negotiation		Energy	100
5	Nomura Haiphong Industrial Zone Power Plant	06/1996	Greenfield project	BOO	N.A		Energy	100
6	Ho chi Minh City Airport Cargo Services	01/1996	Greenfield project	BOT	N.A		Transport	30
7	Amata Power Bien Hoa Ltd.	12/1997	Greenfield project	BOT	N.A	30	Energy	100
8	Tan Thuan Dong container port	05/1997	Greenfield project	BOT	N.A		Tranceport	N.A.
9	Binh An Water Corp Ltd.	07/1998	Greenfield project	BOT	N.A	20	water and sewerage	100
10	Phu My I Power Plant	12/1999	Greenfield project	BOT	N.A	20	Energy	100
11	Hung Nghiep Formosa power plant	06/2001	Greenfield project	BOO	Direct negotiation		Energy	100
12	Thu Duc Water Project	07/2001	Greenfield project	BOT	N.A	25	water and sewerage	100
13	Nam Con Son Gas Pipeline	12/2002	Greenfield project	BOO	competitive bidding		Energy	49
14	Phu My 2.2	10/2002	Greenfield project	BOT	competitive bidding	20	Energy	100
15	S-Fone Network	06/2003	Greenfield project	Merchant	N.A	15	Telecom	50
16	Phu My 3	06/2003	Greenfield project	BOT	competitive bidding	23	Energy	100
17	Vinh Son-Song Hinh Hydropower JSC	03/2005	Divestiture (partial)	-	competitive bidding		Energy	40
18	Khanh Hoa Power Company	03/2005	Divestiture (partial)	-	competitive bidding		Energy	49
19	Pha Lai Thermal Electricity Power JSC	11/2005	Divestiture (partial)	-	competitive bidding		Energy	1
20	Thac Ba Hydropower JSC	12/2005	Divestiture (partial)	-	competitive bidding		Energy	35
21	Thu Duc Water Project(Second Contract)	12/2005	Greenfield project	BOO	competitive bidding		water and sewerage	100
22	Hutchison Telecom Vietnam	01/2006	Greenfield project	Merchant	Direct negotiation	15	Telecom	50
23	Phu My Bridge	11/2006	Greenfield project	BOT	N.A	29	Transport	100
24	Xiaozhong River Hydropower Station	11/2007	Greenfield project	BOT	Direct negotiation		Energy	N.A.
25	Thac Mo Hydropower Company	03/2007	Divestiture (partial)	-	competitive bidding		Energy	20
26	Ninh Binh Thermal Power Company	04/2007	Divestiture (partial)	-	competitive bidding		Energy	31.8
27	Ba Ria Thermal Power Company	03/2007	Divestiture (partial)	-	competitive bidding		Energy	20
28	Saigon International Terminals Vietnam Ltd	12/2007	Greenfield project	BOT	Direct negotiation	50	Transport	70
29	Ba Ria-Vung Tau International Container Terminal	05/2008	Greenfield project	BOT	Direct negotiation		Transport	49
30	Saigon Premier Container Terminal	01/2008	Greenfield project	BOT	Direct negotiation	44	Transport	80
31	GTEL-Mobile Joint Stock Company	07/2009	Greenfield project	Merchant	Direct negotiation	15	Telecom	100
32	Cai Mep International Terminal(CMIT)	02/2009	Greenfield project	BOT	Direct negotiation		Transport	49

(*)Type of PPI で Divestiture(partial)となっているものは全て国営企業株式の一分売却案件（単純価格競争入札実施）

2-3. BOT 案件に対する政府支援

2-3-1. 政府支援

BOT 法と PPP パイロット法においては、政府支援の上限が異なり（それぞれ各プロジェクト総投資額の 49%以内、30%以内）、また、政府支援として当該枠内で計上するものの範囲も異なる。両法の施行はそれぞれ 2010 年、2011 年と新しいため、過去のプロジェクトでは旧 BOT 法（Decree78/2007）等に従って政府支援が実施されたことになるが、広い意味で政府支援をとらえればその形態は以下のようにになると考えられる。

新 BOT 法においては以下のうち、政府支援として計上するのは概ねプロジェクト本体資金にかかるもののみであるのに対し、PPP パイロット法では、Feasibility Study を除くすべての事項が政府支援として計上されることになっている。

政府支援			ドナー支援
プロジェクト 本体資金	付随費用	権利付与	
補助金	土地収用・補償	土地使用权	ODA（贈与）
出資(*)	土地整備	開発権	ODA（借款）
融資(*)	フィージビリティスタディ	道路料金収受権	
保証			

(*)政府系金融機関であるベトナム開発銀行経由。地方案件の場合は、各省の地方開発投資基金（LDIF：後述＜参考＞参照）が出融資の役割を担う。

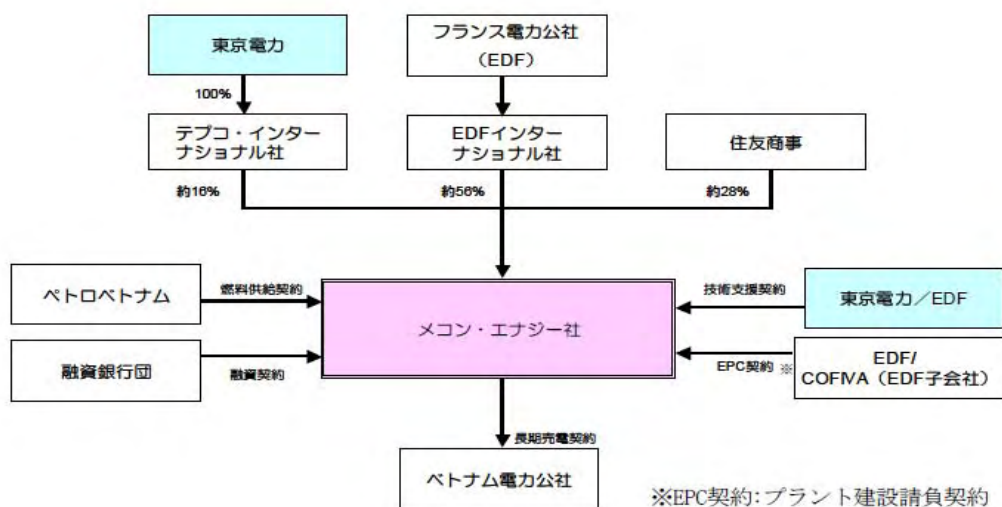
2-3-2. プロジェクト事例

①フーミー第2火力発電所第2期プロジェクト

過去の BOT 案件のうち、補助金的な政府支援はなく、完全な国際入札によって投資家が選定された稀有な事例としては、フーミー第2火力発電所第2期プロジェクトがある（前頁図表 No.14 のプロジェクト）。

本プロジェクトは 1997 年に入札公示され、東京電力、住友商事、フランス電力公社（EDF）のコンソーシアムが落札し、プロジェクト実施主体となる「メコン・エナジー社」を設立した。プラント請負会社は EDF の子会社 COFIVA とし、工業省（MOI）と BOT 契約を締結した上で、ペトロベトナムと燃料供給契約、ベトナム電力供給公社（EVN）と 20 年の長期売電契約をそれぞれ締結したもの。運転開始は 2005 年で 20 年間の事業期間満了後、ベトナム政府に譲渡することとなっている。

フーミー第2火力発電所第2期プロジェクト概要イメージ図



(出所) 東京電力ホームページ

■政府支援の内容

- ・本プロジェクトについては、直接の政府支援は特になし。
 - ・ドナー支援としては本プロジェクト実施前に、円借款によって発電計画の策定や第1発電所・送電線の建設がなされた。
- なお、本プロジェクトはこれら基盤設備が整備された後に実施されたものであり、PPPの中でもODAによる基盤整備が先行して後続の発電設備拡張がなされた、ということで「前後型」に分類される。

②ナムディン省バイパスプロジェクト

- 1.事業主体：Thanh Cong Joint Stock Company (TASCO)
- 2.対象事業：My Loc-国道10号線バイパス（全長3.9km、4レーン）
- 3.契約形態：ナムディン省人民委員会を相手方とするBOT契約（競争入札を経ない随意契約）
- 4.資金調達：
 - a)資本金：TASCO100%（72,880百万VND）
 - b)借入：VDB 255,000百万VND、商業銀行 36,432百万VND

■政府支援の内容

- ・ベトナム開発銀行による融資（政府資金）

③ハノイーハイフォン高速道路プロジェクト

- 1.事業主体：Vietnam Infrastructure Development and Finance Investment JSC(VIDIFI)
- 2.対象事業：ハノイーハイフォン間高速道路（全長 105.5Km、6 レーン）
- 3.契約形態：Ministry of Transportation を相手方とする BOT 契約（競争入札を経ない随意契約）
- 4.事業運営期間：35 年
- 5.資金調達：
 - a)資本金：ベトナム開発銀行（VDB）が 51%、その他民間企業
 - b)その他プロジェクト資金：VDB、ベトナム銀行（VCB）より借入（両行の調達にあたっては政府保証付与）

(注) 首相決定 2007/1621QD-TTg によると上記の通りであるが、関係者ヒアリングによれば、VDB が持分増加予定、また借入は VDB に一本化されたとのこと。（詳細後述）

■政府支援の内容

- ・ベトナム開発銀行による出融資（政府資金）
- ・ベトナム開発銀行による本プロジェクト関連資金調達の際のベトナム政府による保証
- ・VIDIFI は、高速道路プロジェクトとは別にハノイの新都市等、工業団地の開発権（Land Development Right）を取得
- ・VIDIFI は、プロジェクト実施期間中、国道 5 号(*)の通行権収受の権利を取得（Toll Collection Right）

(*)ハノイとハイフォンを結ぶ既存の国道

<参考：地方開発投資基金（以下、LDIF）について>

LDIF は、1997 年に設立された Ho Chi Minh City Investment Fund for Urban Development (HIFU) をはじめとして 2007 年時点で各地方政府出資の下、10 数機関が活動していたが、2007 年の Decree No.138/2007/ND-CP により、法的な位置づけ及び活動範囲・目的等が明確にされた（以下参照）。

1. 法的位置づけ：

LDIF は開発投資を行う地方ベースの国家金融機関であり、それぞれ各省名の後に Development Investment Fund を付した名称とする。

2. 活動内容：

- ① 国内外の機関及び個人からの中長期資金調達
- ② 社会経済インフラ投資プロジェクトに対する投資（プロジェクト会社への出資、融資含む）
- ③ 投融資及び負債の管理、地方政府承認下での地方債発行、又は投融資及び負債管理の委託

3. その他：

- ・ 各 LDIF の自己資本は 1,000 億ドン以上必要。
- ・ 1 プロジェクトに対する投資は原則総資本の 10%以下、融資は 15%以下（いずれも地方政府の承認があれば上限超過可能）。
- ・ 1 プロジェクト会社に対する出資は、原則総資本の 10%以下（同上）。
- ・ 貸出期間はプロジェクト毎に設定するが、原則 15 年以内（同上）。
- ・ 貸出金利は State Investment Credit（ベトナム開発銀行による政策融資）金利より低く設定してはならない。
- ・ 直接投資、融資、プロジェクト会社への出資の上限はそれぞれ総資本の 50%、15%、20%。

財務省からのヒアリングによると LDIF は 2010 年 12 月現在ホーチミン、ハノイ等 24 機関あり、総資本は約 10 兆 VND。全 24 機関合計で直接投資 1.2 兆 VND、融資総額は 25 兆 VND。

中央政府の政策金融機関であるベトナム開発銀行については、現行法ではインフラプロジェクトが融資対象に含まれていないため、インフラプロジェクトに対する国内公的資金の供給（出融資）は専ら LDIF に依存することになる。しかしながら、LDIF は新金融機関法（2011 年より施行）においても規制対象になっておらず、いずれも設立後歴史が浅いことから人材面、財務内容の強化が必要と考えられる。

2-4. 現状及び課題のまとめ

2-4-1. 現状

現在、ベトナム国において PPP プロジェクトを進める上で参照すべき法令は、新 BOT 法（2009.11 制定）、PPP パイロット法(2010.11 制定) が軸となるが、新 BOT 法については施行細則(Circular No.03/2011/TT-BKHDT) が 2011 年 2 月に制定されたばかりであり、PPP パイロット法については未だ施行細則が制定されていない。

従って、現在施行されている両法については実際の運用が開始された後に運用面での細かな事項が確認され、また問題点があれば浮き出てくることになると考えられるが、以下では現時点で考えられる課題を検討したい。

2-4-2. 課題

1) BOT 法と PPP 法の相違点及び考察

①対象プロジェクト

BOT 法	PPP パイロット法
BOT、BTO、BT の契約形態による投資プロジェクト	官民連携(PPP)方式で実施されるインフラ開発プロジェクト

類似する契約形態の場合、首相決定を得たもの	
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考察：官民連携の定義が不明瞭。PPP パイロット法では BOT、BTO、BT の契約形態を排除しないものと考えられるが、PPP パイロット法の下位規範が未だ公布されていないことから、確定的ではない。

②対象投資分野

BOT 法	PPP パイロット法
道路、橋・トンネル、フェリー埠頭、鉄道、橋・トンネル（鉄道用）、空港、海港、河川港、給水システム、発電設備 首相が決定するその他インフラ施設	
排水システム 下水収集・処理システム 送電線	都市交通 ヘルスケア（病院） 環境（廃棄物処理施設）

考察：BOT 法と PPP パイロット法何れにおいても対象事業となっているもの（道路等）については、どちらの法令に準拠するべきかが判断できない。

③政府支援（公的資金）上限及び対象範囲

BOT 法	PPP パイロット法
(上限) 49%	(上限) 30%
(上限範囲内) プロジェクト本体資金	(上限範囲内) プロジェクト本体資金 付随施設建設、土地整備、土地収用・補償(*1)
(上限範囲外) 付随施設建設、土地整備、土地収用・補償(*1)、プロジェクト準備費用	(上限範囲外) プロジェクト準備費用(*2)

(*1)BOT 法において、土地収用・補償を公的資金で支弁するのは特に緊急を要するケースに限る。PPP パイロット法においては個別のプロジェクトの性質による。なお、両法ともに上記以外のものも含まれることがある。

(*2)PPP パイロット法においては、フィージビリティスタディにかかる費用は、一旦政府が支弁するが、選定された投資家が事後的に支払う。

考察：BOT 法では、49%であった公的資金の上限が PPP パイロット法では 30%となっており、また PPP パイロット法ではプロジェクト本体資金以外も当該範囲に含むことになったため、実質的な公的資金割合は数字以上に減少。

④政府支援（公的資金）の内容

BOT 法	PPP パイロット法
国家予算、政府保証による信用供与、国家による開発投資の信用供与、国有企業による開発投資資本、その他	国家予算、ODA、政府債、政府保証による信用供与、国家による開発投資の信用供与、国有企業による開発投資資本、その他

考察：BOT 法、PPP パイロット法何れにおいても、国有企業による開発投資資本は定義されておらず、国有企業による資本が（調達方法如何にかかわらず）全て公的資金として認識されるかどうか、という点等が不明瞭。

また、BOT 法には ODA、政府債が記載されていないが、関係者ヒアリングによれば「その他」に含まれるとのことで、実質的に両法における差異はない模様。国家開発投資については、ベトナム国内で唯一、ベトナム開発銀行が取り扱っているが、同行業務に関する現行法令（No.106/2008/ND-CP）において、同行は一部（上下水道等）を除き、インフラ融資は行わないこととなっており、本法との間で齟齬が見られる。同法令は現在、改訂中とのことであるが、関係筋によるとインフラ融資については変更がない見通しとのこと。

⑤自己資金の割合

BOT 法	PPP パイロット法
総投資額 1.5 兆 VND 以内のプロジェクトー自己資金は 15%以上。 総投資額 1.5 兆 VND 超のプロジェクトー1.5 兆 VND 部分までは 15%、1.5 兆 VND を超える部分は 10%以上。	民間資金負担分(総投資額の 70%以上)のうち、30%以上。従って、必要とする自己資金の割合は、総投資額の 21%以上。

考察：PPP パイロット法では、公的資金割合が減少し、民間資金負担分が BOT 法での 51%以上から、70%以上へと増加した。その影響もあって、BOT 法ではプロジェクト総額の 10~15%以上となっていた自己資金についても、PPP パイロット法では 21%以上となっており、結果的により多くの安定資金を求めるものとなっている。

⑥投資家選定にかかる競争入札及び選定基準

BOT 法	PPP パイロット法
原則競争入札だが、無競争のケースあり	競争入札(無競争の明示的な規定なし)
選定基準は、下位法規において規定(能力、経験等)	選定基準は、特に記載無し。

考察：新 BOT 法において競争入札の原則制が強化され、唯一、投資家提案プロジェクトで他に入札者がいないケースのみ無競争とする規定が残されていたが、PPP パイロット法においては無競争の規定が明示的には存在しない。即ち、投資家提案プロジェクトに関し、例え当該プロジェクトを提案した投資家であっても、形式的には他の投資家と全く同一条件という形となっている。

⑦権限委譲

BOT 法	PPP パイロット法
グループ B,C プロジェクト(地方政府案件)についての権限委譲あり。	権限委譲にかかる規定無し。

考察：PPP パイロット法においては権限委譲の規定がないが、これが原則的に小規模のプロジェクトを取り扱わない（即ち国家重要プロジェクト及びグループ A 相当の規模のみを取り扱う）ことを意味するかどうかは不明。

⑧関係機関等

BOT 法	PPP パイロット法
計画投資省、財務省、法務省、地方レベルの人民委員会等。 省庁間ワーキンググループ (Inter-branch working group) 組成	計画投資省、財務省、法務省、国家銀行等。計画投資省の権限強化。 省庁横断タスクフォース(Inter-sectoral Task Force) 組成。

考察：BOT 法における省庁間ワーキンググループが、基本的にはプロジェクト選定後の業務を取扱うのに対し、PPP パイロット法においては、ITF の公示前段階からの関与が想定されている。大型プロジェクトは一般に関係省庁間の利害調整が難しいところ、PPP パイロット法における ITF がどこまで有効に機能するかが注目される。

2) BOT 法及び PPP パイロット法の問題点

①新旧 BOT 法制下

BOT 法制定により、一応の制度的枠組みが設定されたことになるが、a)BOT 法でなお不足している事項、b)BOT 法上の規定はあるが、実際の取扱が異なっている（ケースが多い）等、運用面で問題がある事項、が存在する。

a) 法制上の問題点

- ・ 公的資金は上限 49%の範囲で認められているが、公的資金の範囲が不明瞭。また、公的資金を支給する明示的な基準がない。
- ・ 政府によるフィージビリティスタディを実施した上で競争入札を実施する仕組みとなっているが、入札参加者にとってはリスク判断することが困難な状況と考えられ、それゆ

え予め予定されていた国有企業等が落札するケースが多いように思われる。(ODA による事前 FS がある場合は大丈夫だが、それ以外のケースでは不十分なことが多い)

b) 運用上の問題点

- ・事業者選定手順については、BOT 法改訂により制度上は改善したことになるが、関係者ヒアリングによれば、完全な形で入札を実施している案件は極めて少ないとのことであり、選定手続きの透明性に問題が残る。但し、2011年3月より施行された下位規定(Circular No.03/2011/TT-BKH)には競争入札に関する条項が存在しているため、今後改善される可能性あり。
- ・政府支援は 49%以内ということになっているが、例えば上述のハノイーハイフォン高速道路プロジェクトにおける VDB による資金供給は調達時に政府保証が付される等完全に政府支援と言えるもので、それを加えると政府支援は優に 50%を超えることとなり、当該規定が曖昧に運用されている感が強い。

②PPP パイロット法施行後

PPP パイロット法はあくまでパイロットプロジェクトにかかる規定であるが、今後、同法を基礎とした下位規定発行等包括的な法整備に進むことが想定されるため、現時点で考えられる課題を以下に整理する。

- ・BOT 法と PPP パイロット法が併存することになるが、両法の対象事業は共通部分が多くあるところ、両法ともに該当するプロジェクトについて、何れの法に準拠するのかが不明瞭。
- ・政府支援分が総事業費の 30%以内と規定されているが、BOT 法 (49%) に比し割合が低下しており、また当該枠の外で活用可能な政府支援の項目も減少しているため、PPP パイロット法制下での政府支援が量的に十分かどうか懸念あり。加えて、補助金的資金の導入基準、金額算出基準等具体的な内容が不足。
- ・政府支援の割合減少と相俟って、より多くの自己資金 (借入等に依存しないもの) が必要とされており、事実上、参入可能企業は手元資金が潤沢な企業に絞られる虞あり。
- ・国有企業が民間企業と同じステータスで関与できるかどうか不明瞭。
- ・計画投資省 (MPI) に権限が集中する体裁となっているが、関係省庁間の協力体制がスムーズに運ぶかどうかは不安要素である。省庁横断タスクフォースが組成されてはいるが、どれほどの権限・機能を有するかは不透明。
- ・投資家提案のプロジェクトの採択可能性は明記してあるものの、当該投資家に事業実施の優先権はなく、プロジェクト提案者に対するインセンティブがないと言える。
- ・政府による有償融資は、事実上唯一の政府系金融機関である VDB によって実施されてきたが、現行の VDB 関連法令では、VDB の業務範囲に主要なインフラプロジェクト向け融資が含まれておらず、融資の形態での政府支援が今後どのようになされるかが不明。

3. PPP インフラプロジェクトの資金調達

3-1. BOT 案件の資金調達

3-1-1. 現在の慣行

「PPP法」以前、ベトナムにおけるインフラ開発プロジェクトに適用される基本ルールは Decree78/2007/ND-CP（以下「BOT 法」。2007 年施行。2009 年 11 月 Decree no.108/2009/ND-CP にて改正。）である。この BOT 法では以下の領域におけるプロジェクトの開発・運営・所有に対し政府の支援を与えることが規定されている。（Article 4 “Investment domains”）

- a) 道路、道路橋、道路トンネル、フェリー乗り場
- b) 鉄道、鉄道橋、鉄道トンネル
- c) 空港、港湾（海、河川）
- d) 上水道設備、汚水排水設備、汚水管理処理設備
- e) 発電所、送電系統
- f) その他首相が定める事業

そしてこれら事業を行う事業会社”Project enterprise”には以下の財務的条件が課されている。（Article 5 “Capital sources for project implementation”）

1. 資金調達は project enterprise 自身が主体となって実施する。
2. project enterprise のエクイティ（資本）を資金調達総額の 15%以上に維持させなくてはならない。ただし資金調達総額が 1.5trillion VND 以上の場合は「1.5trillion VNDx15% + 1.5trillion VND を超える部分 x10%」を維持しなくてはならない。

政府による資金拠出額は総資金調達額の 49%を超えてはならない、とされている。（Article 6）※政府出資には政府の資金拠出額に加え、出資に対する政府保証も含まれる。

尚、2011 年 1 月施行予定の PPP pilot 法では政府の資金拠出額の比率上限は 30%となっている。

3-1-2. VIDIFI ハノイ-ハイフォン高速道路案件

VIDIFI はハノイ-ハイフォン間高速道路（新 5 号線）を建設・運営することを目的として設立され、随意契約により本事業の実施主体に選定された。本事業の収益寄与までの収入補完のため沿線での工業団地建設、住宅開発の権利も付与されている。（プロジェクト概要は前述「2-3-2. プロジェクト実例」参照）

当面の経常収入としては、現 5 号線（料金収受所 2 ヲ所）、10 号線（1 ヲ所）の通行料金を収受。沿線の住宅開発、工業団地開発の権利も付与されているが、住宅開発は 2 年後より分譲（現金収入）、工業団地は未だ検討中の段階。

ハノイ-ハイフォン高速道路プロジェクトは事業期間 35 年間の BOT プロジェクト。進捗は、

10 工区のうち、8 工区で工事契約が完了、うち 5 工区で工事開始済み。工事契約に関しては、工区毎に VDB 側の資金手当ての進捗に合わせて手続きを開始（bidding 開始）することになるが、昨年は資金調達の遅れから一部契約手続きが遅れることとなった。その他土地収用の遅れもあり、現時点での高速道路完成見込みは当初計画より 2 年遅れの 2014 年。

資金調達

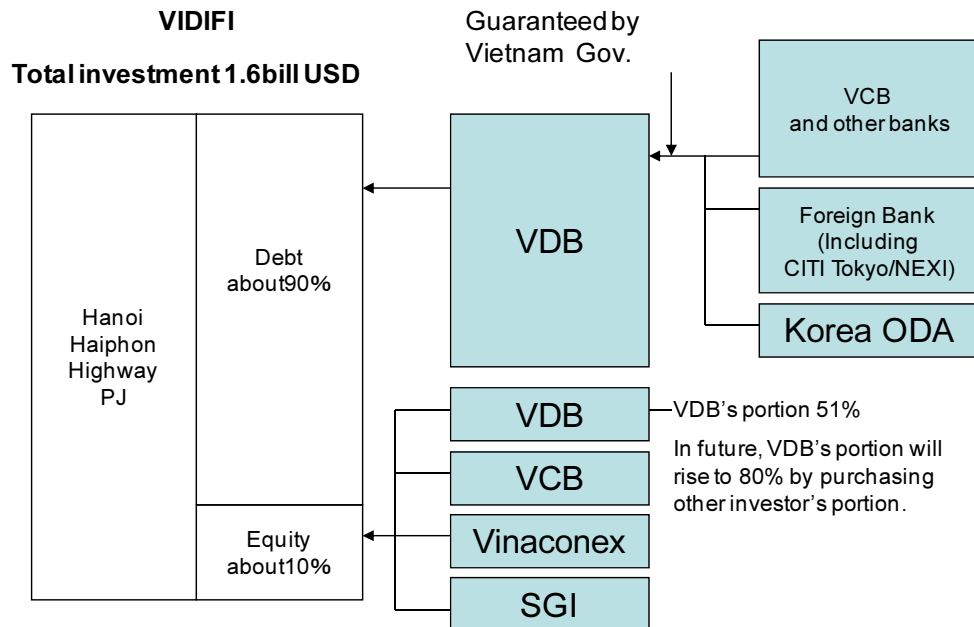
設立時払込資本は現行 51%を VDB が出資（将来的に VCB 分を買い取り 80%まで引き上げ予定）、残りを Sai Gon Invest Group(SGI)、Joint Stock Commercial Bank for Foreign Trade of Vietnam(VCB)、VINACONEX が出資。BOT 法ではプロジェクトエンティティの自己資本比率は 15%以上とされているが本件は特例として政府の承認を得て現在は 10%程度となっている。

ローンは VDB に一本化されているが国内銀行、外国銀行のバイヤーズクレジット及び韓国からの ODA 資金による調達が含まれている。外国銀行には CITI Bank 東京支店も含まれ NEXI 保険が付保。これら VDB への貸付には 100%越政府保証付き。

【資金調達概要】

Loan			
90%	レンダー	比率 (対総調達額)	備考
	VDB	90% (融資額の 100%)	以下調達先からのバックファイナンスあり。 韓国 ODA 融資 元利払：韓国ウォン建 外国銀行(CITI 東京など) 元利払：USD 建 国内商業銀行 元利払：VND 建
Equity			
10%	スポンサー	出資比率	備考
	VDB	51%	VCB の持ち分は将来 VDB が取得する予定であり、取得後は VDB 出資比率 80%となる。
	VCB	29%	
	Vinaconex	計 20%	
SGI			

VIDIFI's fund mobilization flow



調達資金総額約 1.6bill USD。通行料収入は 5 年毎を目処に値上げをする前提で、かつ通行料増も見込んで弁済計画を策定している。(事業期間 35 年で約 10 倍程度に増加を想定) コンセッション期間終了時は Ministry of Transportation (MOT) に譲渡予定。

3-1-3. Thu Duc water plant project

Ho Chi Minh City 近郊の Linh Trung 輸出加工区 Thu Duc 地区にある浄水場施設。スポンサーは 6 社からなり出資額合計 VND500billion。

総事業費は VND1,700billion で残額 VND1,200billion をローンで調達している。

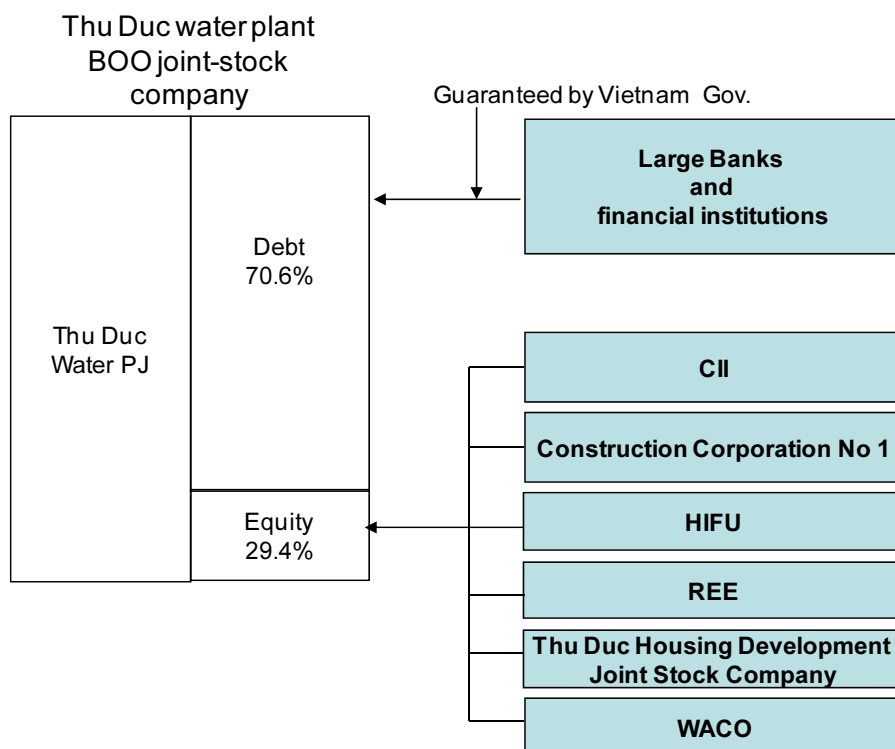
当初は 25 年間のコンセッション条件の BOT 案件として検討されていたが、25 年間の事業リスク負担を単独スポンサーに対し強いる点、施設運営や資金調達、建設技術など多様な専門性がスポンサーに求められる事業であった点から 2003 年ホーチミン市人民委員会の決定により複数スポンサーによる BOO 案件へ変更となった。2005 年諸契約締結と着工。

給水開始から 10 年間の off-take 契約を Saigon Water Supply Corp(SAWACO、ホーチミン市水道公社)と締結することで当初キャッシュフロー収入の安定化を図っている。(買取単価は 0.2108USD/m³。想定供給水量 300,000 m³/日)

【資金調達概要】

Loan		
70.6%	レンダー	比率（対総調達額）
	大手銀行及び金融機関 ※詳細不開示	70.6%
Equity		
29.4%	スポンサー	出資比率
	Ho Chi Minh City Infrastructure Investment Joint Stock Company(CII)	40%
	Construction Corporation No 1	20%
	HCMC Investment Fund for Urban Development (HIFU)	16%
	Refrigeration Electrical Engineering Corp.(REE)	10%
	Thu Duc Housing Development Joint Stock Company	10%
	Water and Environment Joint Stock Company(WACO)	4%

Thu Duc water Project



3-1-4. Bitexco 社 インフラプロジェクト

当社の主な投資活動分野は不動産、水力発電、道路、鉱山等。特に不動産分野及び水力発電分野においては同国有数の開発事業者。

過去に BOT,BT 案件を手掛けており、それぞれ詳細は以下。

Daugiay-Phanthiet Expressway Project (DPEP)

ホーチミン近郊の高速道路整備プロジェクトで、世銀主導の PPP パイロットスタディ MPI 選定プロジェクト。応募 3 件のうちから当プロジェクトが選定されたもの。MPI によるプロジェクト承認も得ている (MOT より受領した PPP プロジェクトリストにも記載あり -No.10)。

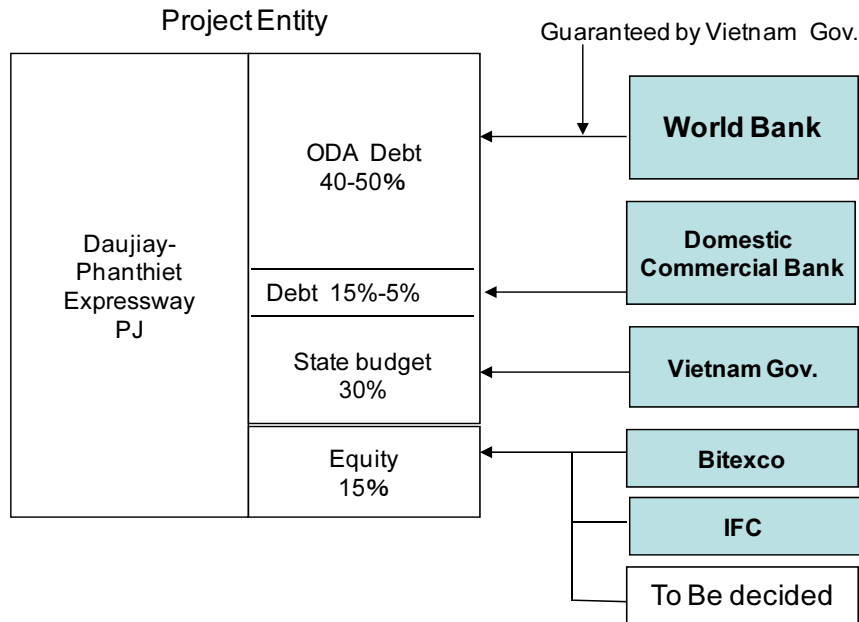
PPP パイロットプロジェクト法との関係では、当プロジェクトは同法施行 (2011 年 1 月) 前に選定されたものであるため、同法の適用を受けず、当社が第一投資家であることは既に認定されている (現行 BOT 法においても競争入札は規定されているが、施行規則もないため、実質的に空文化しているとのこと)。第二投資家として IFC が参加することが決まっております。世銀との間では第三投資家は競争入札により選定することを合意済。パイロットプロジェクトを早期に実施したい世銀の思惑もあって、既に事業者選定等ある程度出来上がっている本プロジェクトをパイロット法下におけるものとして新たに投資家を競争入札で公募するわけにはいかず、第三投資家を公募する、ということになった模様。

資金調達の構成は自己資金 15% (第二投資家含む)、残額 (85%) を世銀、補助金、残りを民間借入 (期間 10 年程度) の見込みとのこと。世銀からの融資にはベトナム政府保証が付保されている。(詳細以下)

【資金調達概要】

Loan			
55%	レンダー	比率 (対総調達額)	備考
	World bank	40%-50%	ベトナム政府保証付き。USD 建元利弁済。
	国内銀行	15%-5%	
30%	政府補助金	30%	
Equity			
15%	スポンサー	出資比率	備考
	Bitexco	未定	未確定。現状第一投資家を Bitexco、第二投
	IFC	未定	資家を IFC とし、第三投資家を募集する方
	未定	未定	向で検討中。

Daugiy-Phanthiet Expressway Project



第三投資家選定手続きは完全に透明な競争入札により実施されるので、当然日本の投資家にも可能性はある。今後コンサルタント及び当社協議により入札概要を固めるが、重要な点はファイナンス組成等で本プロジェクトに何らかの貢献できる存在であること。

Thanh hoa 高速道路 BOT プロジェクト

Decree 87（旧 BOT 法）の下で実施された案件で、競争入札手続きはなし。コンセッション期間は完工から 19.7 年間。

立退き費用は政府補助金（5 百万 USD）で賄われ、その他必要費用 50～60 百万 USD 相当。VND440billion を Vietinbank より 10 年間の長期コーポレートローンで調達している。自己資本比率は約 30%。本案件は全長 10km の小さなプロジェクトということもあり、コーポレート借入での長期ローン調達で対応している。 ※新 BOT 法(Decree78)では、立退き費用も全プロジェクトコストの一部として計算されることとなった。

3-2. 民間インフラファンド

3-2-1. 投資戦略

ベトナムにおける国内民間インフラ専門ファンドは、Vinacapital 社が運用する Vietnam Infrastructure Limited 一件のみであり、同社も投資対象はインフラ事業そのものではなくインフラ事業に関連する企業の上場株式の短期的な取引益を目的とするものであったり、インフラ事業への投資の対価として付与される土地の転売益、工業団地の開発分譲利益を

目的とするものである。

Vinacapital 社以外で、インフラファンド組成を検討中のファンドマネージャーにもヒアリングしたが、「ベトナムでは、道路通行料や水道料金などの公共料金の設定が依然低く、かつ収支を担保する政府補助金も現状無いことから、インフラ事業そのものからは事業収益を得るのが困難である」との見方が太宗であった。そのため商業ベースの投資基準を有する民間ファンドは高速道路事業や水道事業などは投資クライテリアに入っていない。

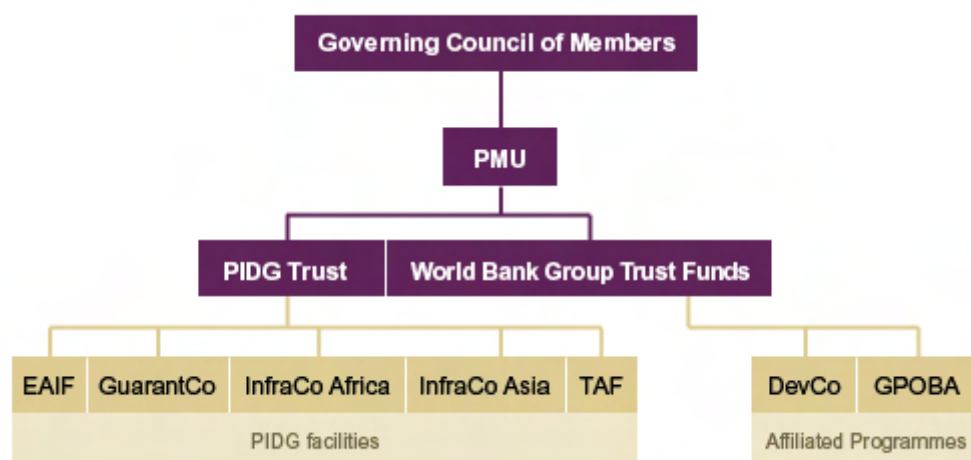
3-2-2. Vinacapital Ltd.

Vinacapital Group は総運用資産 17 億ドルのベトナムにおける有力資産運用会社であり、不動産、ベンチャー（米有力 VC である **Draper Fisher Jurvetson** と合弁）、プライベートエクイティ、債券、インフラの各ファンドを運用。Vietnam Infrastructure Limited はベトナムで唯一インフラ関連株式に特化したファンドであり、ロンドン証券取引所 AIM 市場に上場するクローズドエンド型。ファンド設定がベトナム投資ブームの頂点であった 2007 年 7 月であったため、現在の正味自己資本は\$217mm（3 月 11 日現在）の設定来利益はマイナス 36%と低迷してる。投資対象はインフラ関連企業の上場株式や工業団地の開発分譲などの実質不動産資産が中心。

3-2-3. InfraCo Asia development Pte.,Ltd.(InfraCo Asia)

InfraCo Asia は、欧州を中心とした国の donor により組織・出資されている The Private Infrastructure Development Group(PIDG)の対開発途上国向けインフラ事業への資金・技術支援を行う facility の一つである投資会社。PIDG を組織する donor は UK Department for International Development(DFID)、the Swiss State Secretariat for Economic Affairs(SECO)、the Netherlands Ministry of Foreign Affairs(DGIS)、the Swedish International Development Cooperation Agency(Sida)、IFC/World Bank、Austrian Development Agency(ADA)、Irish Aid、KfW となっている。PIDG 全体としては 2002 年から投資を開始し、USD606mil を投資済み。(国別：Nigeria USD135, Kenya USD76mil, Uganda USD65mil, India USD55mil, Ghana 38m セクター別：telecom USD204mil, energy USD171mil, industry USD147mil, airport USD39mil)

【PIDG の各機関構成】



InfraCo Asia は本部をシンガポールに置き 2010 年 10 月から活動を開始しているが、現時点では取組案件はまだない模様。投資対象はベトナムのほかインド、バングラディシュ、ラオス、カンボジア、フィリピン、インドネシアなど南アジアの開発国諸国（中国は対象外）におけるインフラ事業のうち、初期投資の調達が困難であったり、当該国事業者のみでは技術的ハードルが高い事業など。案件規模は 1 件あたり USD75mil を上限とする。2011 年 2 月に具体的な対象業種は以下の通り。

- Water & Waste Water
- Transport & Logistics
- Communication
- Renewable & Conventional Power
- Transmission
- Pipelines
- Urban Infrastructure
- Agri-Infrastructure
- Cement & Fertilizer and Others

運用チームは米国 AES 社などの先進国インフラ関連企業出身者で構成されており、12 名の陣容。ヘッドである Mr. Surender Singh は AES、米国 Merrill Lynch 及び IDBI でキャリアを積んだ人物である。

案件選定基準は以下の目安を設けている。

Development Partner

- ✓ *Commitment to project*

- ✓ *Acceptance of InfraCo Asia's role*

Development Path

- ✓ *Amenable regulatory environment*
- ✓ *Visible path to closing*
- ✓ *Commercial tariff*
- ✓ *Technically feasible*

Govt. Commitment

- ✓ Government's understanding of InfraCo Asia's objectives
- ✓ Government's acceptance of economic user charges
- ✓ Government's implementation support

Exit Considerations

- ✓ Understand potential buyers
- ✓ Exit Valuations
- ✓ Can retain interest longer if needed
- ✓ Can arrange investment capital from affiliates

最終的に対象国の貧困削減と社会的利益に寄与できること、民業圧迫の無いこと及び収支的に成立しうることの3点を確認して選定を行う。

また、同じく PIDG の機関である InfraCo Africa は 2005 年から活動を開始しており、多くの実績を残している。

【参考：InfraCo Africa のトラックレコード】

Kpone IPP project (Ghana)

発電容量 400MW ガスコンバイウンドサイクル発電

総事業コスト USD 500mil

事業期間 開発 2 年間 運転 25 年間 2007 年着工

共同出資パートナー Reltub Company Limited of Ghana, Cenpower of Ghana

成果 Ghana 社会全体の電力文明へのアクセスを促進。West African Gas Pipeline project からのオフテイクによる同プロジェクトへの収益貢献。

Cabeolica Wind power PPP project (Cape Verde)

発電容量 28MW 4 発電所合計 風力発電

総事業コスト EUR 65mil

事業期間 2010 年着工 運転期間・コンセション期間ともに不詳

共同出資パートナー Cape Verde 政府、Electra (PPP project)

レンダー EIB EUR30mil, AfD EUR 15mil

成果 Cape Verde における電力不足の解消に寄与。同政府は 2020 年までに電力生産量の 50%を再生可能エネルギーとする政策を推進中。

Chiansi Irrigation project (Zambia)

Zambia の農地灌漑事業。Chiansi エリア 2400 ヘクタールを対象とし、近隣エリアの貧困層農民が共同出資するプロジェクト会社が同エリア内に居住する土地所有者 650 世帯に対し販売可能な農作物を生産できるよう 25 年間の灌漑サービスを行う。近隣エリア農民は同時に農業へも従事し所得を得る。

スキーム 同エリアの農業従事者多数がプロジェクト会社に少額ずつ出資し、プロジェクト会社は地主から土地を借り入れる。借り入れた用地を灌漑し農作物を生産・販売した収益で農地リース料、配当を支払う。

総事業コスト USD31.3mil

事業期間 2008 年～2010 年 2 年間

共同出資パートナー Chansi Water Development Trust, 近隣エリア住民多数、Zambia 政府

成果 灌漑技術導入による農業生産性の飛躍的向上に加え、250 人以上の雇用創出、900 世帯 9000 人の飢え撲滅、15000 人の所得向上など。

なお、InfraCo については、プロジェクト組成に関するドナーの取り組みの観点から、5(e)ii でもその機能について詳述する。

3-3. 資金調達における課題

3-3-1. 財政負担

これまで見てきた VIDIFI や Daugiay-Phanthiet Expressway Project の例では、VDB からの貸出や ODA 資金への政府保証の例が見られた。これらは先行事例としてパイロットプロジェクト的な位置づけもあるため、政府が資金調達に関与することの意義は認められるが、今後より大きな規模で PPP を導入し、民間資金によるインフラ開発を行うことで財政負担を減らす目的があるのであれば、政府による資金供給や債務保証は限定的に運用されるべきである。

新 PPP 法では、政府による貸付及び債務保証も VGF の一部として計算されることが明示されているため、今後はより慎重な運用となることが予想される。

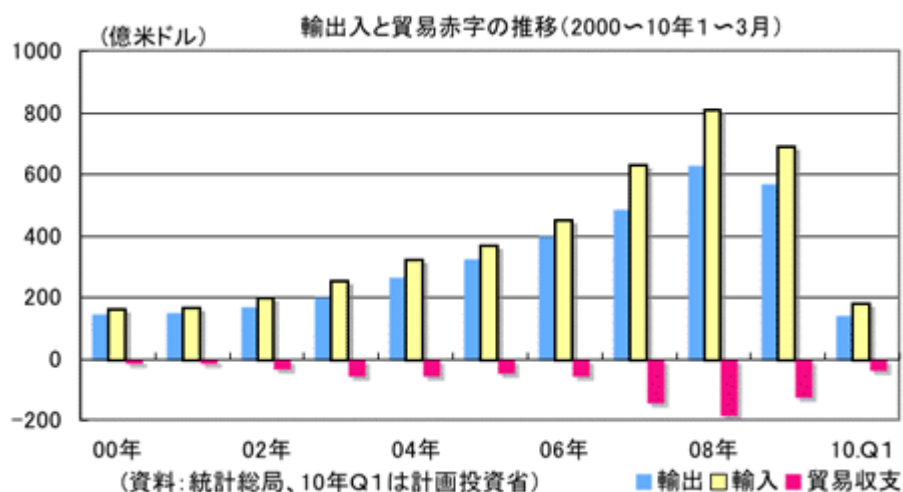
3-3-2. 為替リスク

ベトナムドン (VND) は、特に 2007 年以降の原油・穀物など商品価格の急激な上昇とその後の高止まりを主因とし拡大する対外貿易赤字を背景に一方的な切り下げ傾向が続いており、対米ドル (USD) で 1996 年に 1USD=10,000VND であったのが現在

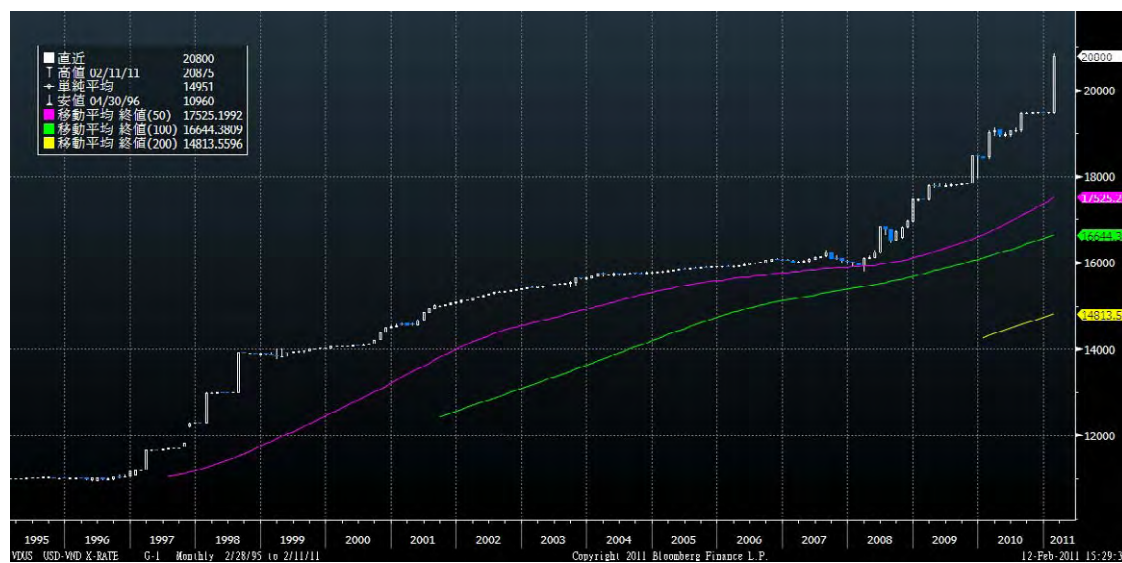
1USD=20,800VND となっている。

この傾向のもとではベトナム国内事業者は外貨建て元利弁済額が VND ベースで増加し、一方外国人投資家側としては VND 建てでの投融資は自国通貨換算での元本棄損リスクを負うことになることから、外国人投資家と国内事業との資金マッチング市場の形成が困難となっている。

現地 CITI 証券やベトナム債券協会など機関投資家へのヒアリングによると、外国人投資家はこの VND 安傾向が今後継続する可能性が高いと予測していることから、当面インフラプロジェクトへの主要な資金供給者は国内商業銀行と政府といった状況が続く可能性が高い。為替リスクへの対処としては、ベトナム政府が外貨建て元利金弁済に対する保証を供与することも考えられる(VIDIFI ハノイ - ハイフォン高速道路案件における VDB 調達、Bitexco Daugiay-Phanthiet 高速道路案件における世銀融資など)が、こうした為替リスク保証も政府の負担となるため、VGF の一部として慎重な運用が必要である。



【対1USDのVNDレート推移】



4. 諸外国における PPP インフラプロジェクトファイナンスの現状

本セクションでは、先進国における PPP インフラプロジェクトの資金調達（リスク管理、社債とローンの選択、エクイティファンドの役割等）について整理した上で、現在世界最大の PPP インフラ投資大国となっているインド、ベトナムと同様 PPP によるインフラ整備を目指すインドネシアでの実地調査の結果を報告し、もってベトナムが今後 PPP インフラ投資を活発化させるために必要とされる金融上の施策について提案を行いたい。

まず、先進国、新興国ながら世界で最も PPP インフラプロジェクトが盛んな国の一つであるインド、ベトナムにおける PPP インフラプロジェクトの資金調達の現状を整理すると以下の通りである。なお、インドネシアは未だ PPP インフラプロジェクトの実績に乏しい「準備中」の状態であるが、インドネシア政府は様々な先進的取り組みを行っており、その状況は別途後述する。

各地域における民間インフラプロジェクトの負債調達

	先進国	インド	ベトナム
調達手段	プロジェクトファイナンス 融資(大多数)／ 社債(英国等)	プロジェクトファイナンス 融資 (銀行・ノンバンク)	コーポレートファイナンス プロジェクトファイナンス 商業銀行、開発銀行
金利	固定 融資+金利スワップ固定 金利社債	変動 毎月変更(銀行) 3-5年毎変更(ノンバンク)	変動(商業銀行) 固定(開発銀行)
通貨	プロジェクト国通貨	インド・ルピー	ベトナム・ドン、外貨(ODA)
期間	超長期 銀行(15-20年) 社債(30年以上も)	超長期 15から20年	発電・道路では12年 その他は6-8年

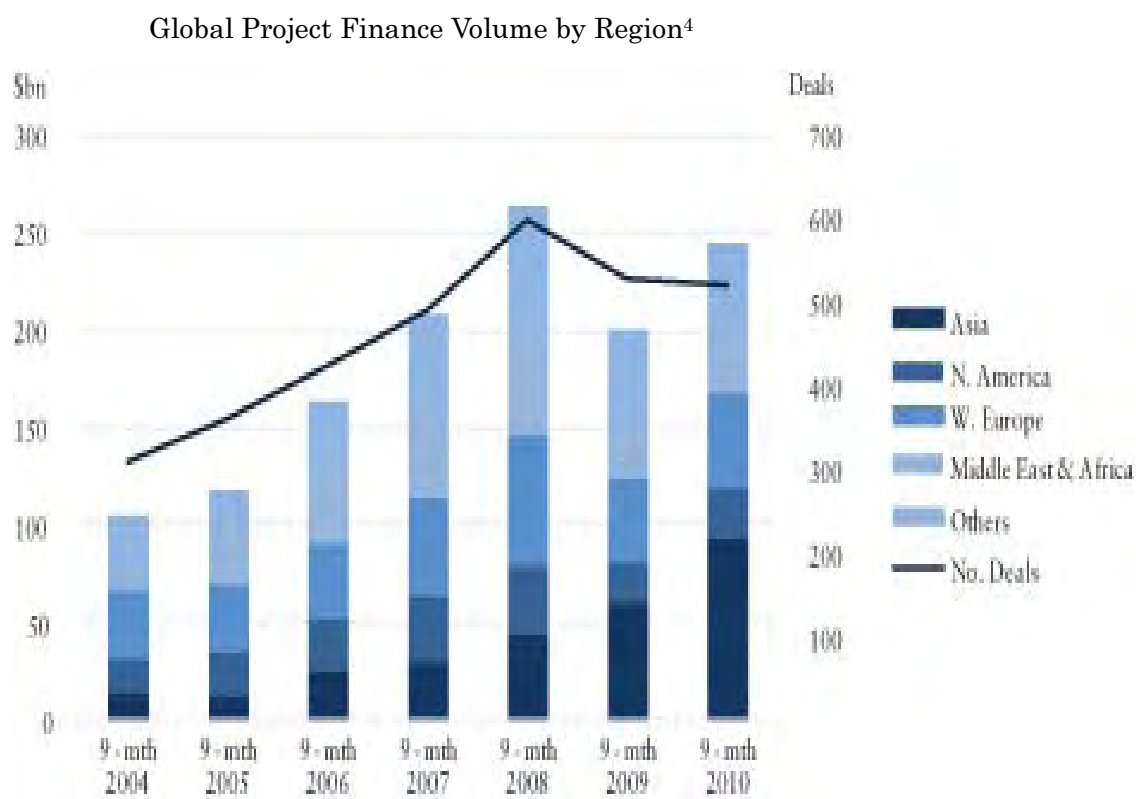
各地域における事業実施主体（出資者）

先進国	インド	ベトナム
民間の事業実施主体 エクイティファンド	民間の事業実施主体	民間(国営企業は?)

理論的な「完成型」を求めるならばベトナムも「先進国」で整備されているものと同様の制度を設けるべきと考えられるが、現在世界最大のプロジェクトファイナンス大国であるインドでも「固定金利の超長期融資・社債」は存在していないことを認識すべきである。先進国と同様の金融機関、資本市場の整備は中長期的な目標としつつも、固定金利で長期負債を調達する手段が無く、又、プロジェクトファイナンスの概念も一般的でないベトナムにとっては、インドの事例を当面の参考とすべきと考えられる。

4-1. 世界的なプロジェクトファイナンスの増加

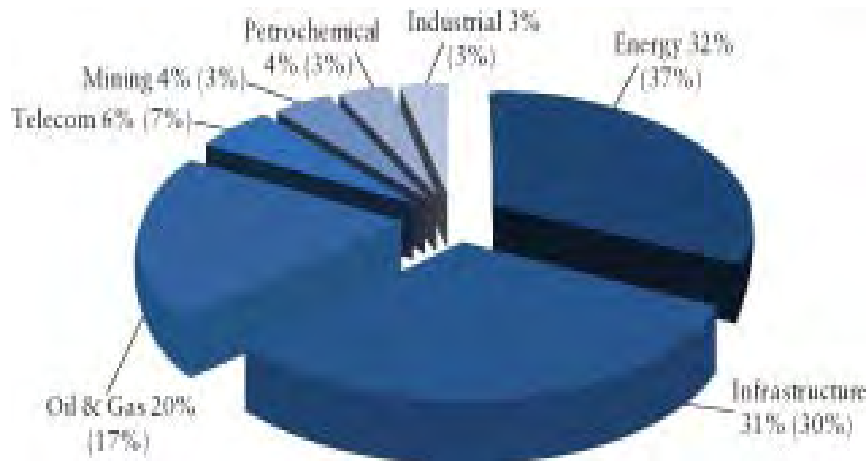
アジアのインフラ整備、中東アフリカの資源開発等に牽引され、世界のプロジェクトファイナンスは過去 5 年間で倍以上に成長している。最も大きな伸び率を見せているのがアジアであり、中でも後述するインドの伸びが大きい。プロジェクトファイナンスの業界誌である Dealogic が定期的に発表する統計でも、この傾向が分かる。



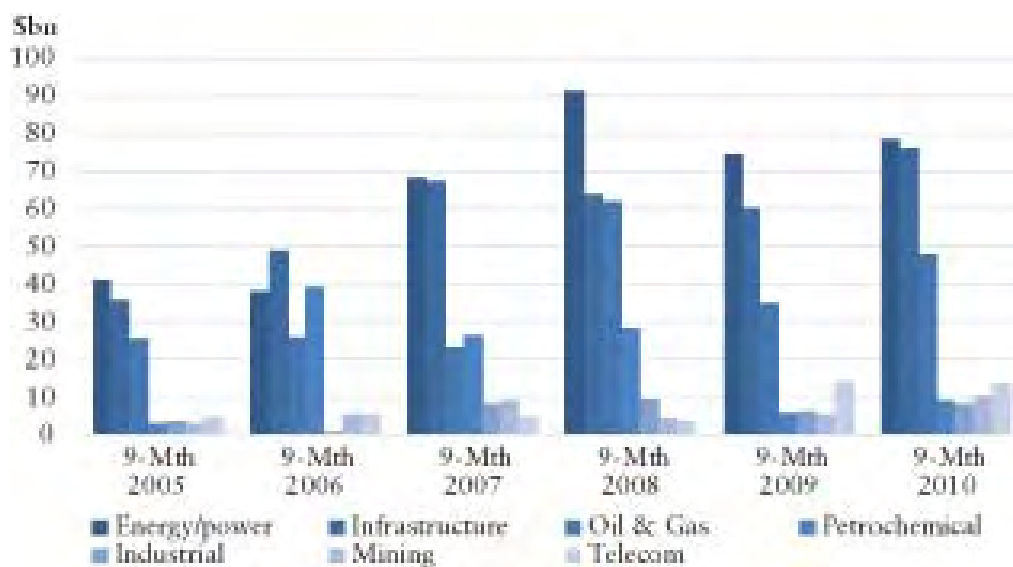
⁴ Dealogic Third Quarter League Tables 2010 - Analysis 08 November 2010 , ProjectFinancemagazine.com

業種別では、発電及びインフラ（道路、鉄道、港湾等）の2分野で約7割を占めている。

Global Project Finance; Sector Volumes (First 9 months 2010)⁵



Global Project Finance; Sector Volumes (First 9 months 2010)⁶

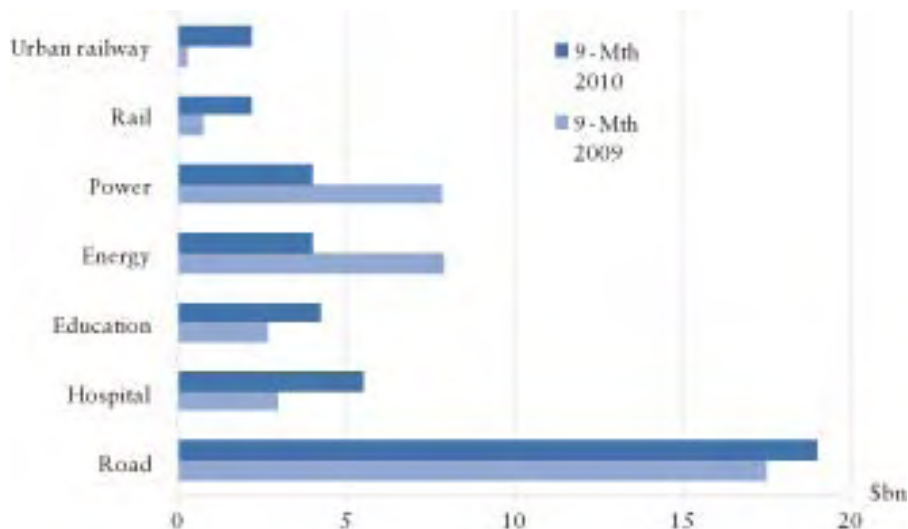


⁵ Dealogic Third Quarter League Tables 2010 - Analysis 08 November 2010 , ProjectFinancemagazine.com

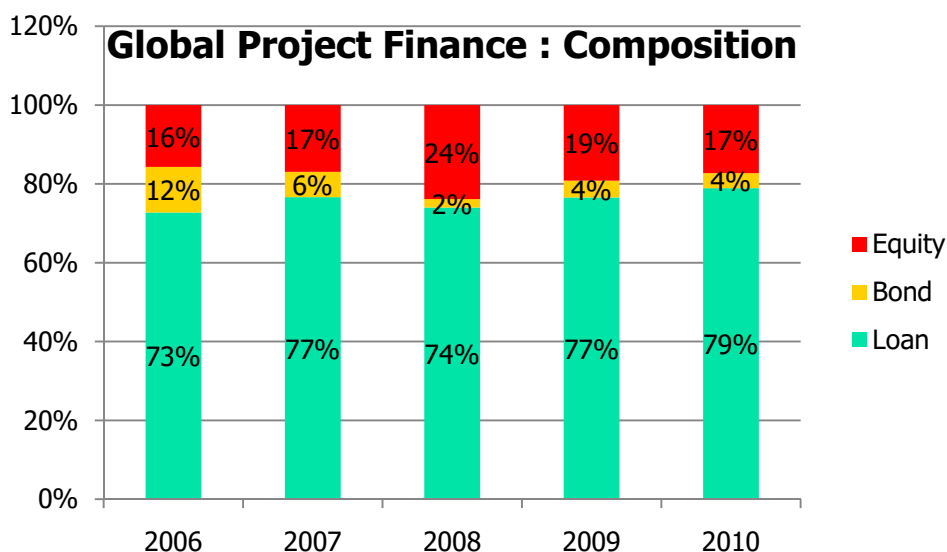
⁶ ditto

プロジェクトファイナンスの中でも、PFI 又は PPP と分類される分野（商業ベースの発電案件や民営化された通信案件等は除く）では道路案件が最も大きい。

Global Project Finance; Sector Volumes PFI/PPPs⁷



2011年2月に発表された2010年1年間のプロジェクトファイナンスの総額3,546億ドルを調達方法別に見ると、負債が83%（内ローンが79%）、出資が17%となっている。⁸



⁷ Dealogic Third Quarter League Tables 2010 - Analysis 08 November 2010, ProjectFinancemagazine.com

⁸ ditto

4-2. 先進国における PPP インフラプロジェクトの負債調達

4-2-1. リスク管理の観点より

先進国の民間インフラ開発業者は、PPP インフラプロジェクトの為の負債を調達する際、流動性リスク、為替リスク、金利変動リスクを回避するため、以下の 3 点に留意して借入条件を決定する。

- (1) 収入（コンセッション）期間と合致した借入期間（流動性リスクへの対応）
- (2) 収入通貨と同じ通貨による借入（為替リスクへの対応）
- (3) 固定金利での借入（金利変動リスクへの対応）

これを、豪州及び米国で 8 つの有料道路を運営する PPP インフラ専門企業であるトランスアーバン・グループ（豪州証券取引所上場）の 2010 年財務諸表摘要 38「財務リスク管理」を例にとって説明したい。

a) 流動性リスクへの対応

長期間で回収する資産への投資を短期借入で行う場合、事業者は満期が到来する借入金の返済資金を新たな借入で賄う必要が生じる。事業が不調に陥った場合、借り換えに応じる銀行は少なくなることから、資金繰りが破たんするリスクが高まる。

このようなリスクを軽減するためには収入及び支出見込みに応じて借入期間を設定し、借り換えリスクを生じさせないと共に、当面必要な資金については現預金や銀行からの借入枠を確保することで対処することが求められる。

トランスアーバン・グループは流動性リスクへの対応について、以下のように述べている。
「当グループは短期的な財務柔軟性を維持し、支払い義務に応じることが出来るだけの現金及び未引き出しの借入枠を確保しております。財務部門は今後 12 カ月の短期及び 5 年間の中期的流動性について、業務経費見通し、確約済設備投資、債権者への支払いに基づいて予測しています。長期的流動性につきましては、戦略策定の過程で検討されております。」

9

b) 為替リスクへの対応

国際的に業務を行う事業者は、為替レートの変動に伴う損失のリスクを常に抱えている。インフラ事業者のように、巨額の固定資産を抱える場合には為替レートの変動から生じる資産と負債のズレが損益上大きな問題となるため、外国に保有する資産の取得資金は当該国通貨で調達されることが望ましい。

⁹ Transurban Group Annual Report 2010, p.120

この点についてトランスアーバン・グループは、以下のように述べている。

「為替リスクは投資リスク及び業務リスクとして認識されております。外国資産への投資から発生する為替リスクは、通常同一通貨での借入を行うことによって管理され、今後 12 カ月に発生すると予想される業務上の為替リスクはヘッジ、同通貨での反対取引、又は、外貨の引き出しによって管理されております。」¹⁰

c) 金利変動リスクへの対応

長期に安定的な収益を生むインフラ資産を取得するための借入を変動金利で行う場合、金利上昇によって利益が減少するリスクがある。このリスクを管理するため、長期借入は固定金利で行うことが一般的であり、具体的な方法としては、変動金利で借り入れた銀行融資を金利スワップで固定金利に転換する方法と、長期固定金利債券を発行する方法がある。

この点についてトランスアーバン・グループは、以下の通り述べている。

「グループの金利リスクは主に長期借入から生じており、財務セクションは、固定金利での借入又は金利スワップによる変動金利の固定化で対応しております。固定金利での借入を行うよりコストが低いため、変動金利で借り入れた資金を金利スワップで転換することが一般的です。グループの方針として、借入に伴う財務制限条項以上の金利リスクヘッジを行うこととしており、財務制限条項は契約毎に 50% から 80% をヘッジすること定められておりますが、2010 年 6 月 30 日現在、グループの金利リスクは 99% ヘッジされております。」¹¹

4-2-2. 先進国プロジェクトファイナンスにおける社債と融資

先進国におけるプロジェクトファイナンスの手段は、大きく社債と融資に分かれる。インフラプロジェクトは収入が固定的であることが多く、且つ、借入期間が通常のコーポレートローンに比して長いことから、長期固定金利の社債が理論的に適しているが、実際には融資が太宗を占めている。前述の通り、プロジェクトファイナンスの業界紙 Dealogic がまとめた 2010 年のプロジェクトファイナンスの総額によれば、社債の 135 億ドルに対して、融資が 2800 億ドルと 20 倍以上の規模となっている。¹²

欧州 PPP 知識センター（欧州投資銀行、欧州委員会、加盟各国による PPP 推進のための

¹⁰ Transurban Group Annual Report 2010, p.119

¹¹ Transurban Group Annual Report 2010, p.120

¹² Dealogic Full-year 2010 League Tables – Analysis, 08 February 2011, ProjectFinancemagazine.com

共同プロジェクト) は昨年 3 月に「資本市場と PPP 資金調達」¹³という報告書を発表し、PPP インフラプロジェクトにおける社債と融資の長所及び短所を整理している。報告書は欧州での状況について分析したものであるが、内容は他地域にも適用できると考えられるため、以下に論旨を引用する。

同報告書によれば、PPP インフラプロジェクトの資金調達に、社債市場を活発に活用しているのは欧州でも英国のみとのことである。大陸欧州では、インフラプロジェクトに限らず資本市場の活用度合いが英米に比して低いこともその主たる要因であるが、資本市場が活用されない理由について同報告書は以下を指摘する。

a) 資本市場の未発達

制度整備を行う政府、資金を調達する企業、資金運用者の全てに知識、経験が不足。

b) 民間の年金基金の未発達

民間の年金基金が発展していない国では、長期運用ニーズが少ない。

c) 強力な地場銀行による資金供給

大陸欧州ではドイツやフランス等でも銀行の力が強く、市場シェアを維持するために好条件で資金を提供することが可能である。

d) インフラ債を保証するモノライン保険会社の未発達

個々のインフラプロジェクトの信用力は BBB 程度に留まることが多く、機関投資家の投資対象となるためにはモノライン保険会社による保証を受けて AAA 等の高格付けを付与する必要がある。但し、英国においてもリーマンショックで打撃を受けたモノライン保険会社は機能を完全に回復していない。

これに加えて同報告書は、インフラプロジェクトにおける社債と融資の長所及び短所を以下の通り整理している。

¹³ “Capital markets in PPP financing- Where we were and where are we going?”
European PPP Expertise Center (EPEC), March 2010

長期プロジェクトファイナンスにおける社債と融資の比較

	社債	融資
調達コスト	△モノライン保険が保証すれば融資より安い（英国） 但し、発行手数料やネガティブキャリーも要考慮	△銀行間の競争が激しければ金利は低下
期間	○先進国では 30 年以上も	スワップ期間に制約される為、長くても 20 年
意思決定の柔軟性	△モノライン保険が存在しなければ条件変更困難	○エージェント銀行が条件変更にも対応
確実性		○エージェント銀行が総額を引き受け
インフレ・ヘッジ	○インフレ連動債が存在	

e) 調達コストの比較

調達コストの比較は刻々と変わる市場の需給状況によって変化するため、常に社債と融資のどちらが安いとは言えないものの、サブプライム危機前にモノライン保険会社の保証によって最上級の AAA 格を得ていた社債では価格に優位性があったとされる。ただし、モノライン保険会社が存在しない場合にはそもそも個別の PPP インフラプロジェクトが社債を発行できるか否かに疑問が残るため、モノライン保険会社抜きでのコスト比較は容易では無いと考えられる。先進国においてはサブプライムショックによって大きく傷ついたモノライン保険会社の復活が PPP インフラプロジェクトの社債による資金調達に大きく影響するが、エマージング市場においてはそもそも同様の組織が存在しないことに留意が必要である。

社債の調達コストを考える際に重要なのが、ネガティブキャリーと発行に関わる手数料である。ネガティブキャリーとは社債を発行した後、プロジェクトの建設が完了しコントラクターへの支払いが終了するまでの間に発生する社債件者への利払いと調達した資金を預金することによって得られる金利収入の差額である。銀行融資は、コントラクターへの支払い義務が生じる都度資金交付を受けられ、融資枠の未引出期間には金利より低いコミットメントフィーを支払えば済むため、建設期間が長くなると社債による調達コストが融資に対して不利になる。

さらに、社債には発行に関わる手数料の問題がある。社債を発行するに当たっては、目論

見書の作成や投資家への販売に関わる費用など、調達額に左右されない固定費的支出が多いため、調達額が小さいと手数料の比率は高くなることに留意が必要である。融資を受ける場合にも契約書作成費用等固定費はあるが、社債に比してその比率は小さいため、同報告書でも英国の事例でも調達額が大きくなるに連れて社債を利用する率も高くなる傾向が記載されている。

UK PPP Financing: Bank vs Bond Execution

In the period 1996 to 2009, a total of 663 PPP projects were signed.

- Of the 48 projects with a capital value \geq £ 200 million, 25 were bond-financed (52%)
- Of the 28 projects with a capital value \geq £ 300 million, 18 were bond-financed (64%)
- Of the 11 projects with a capital value \geq £ 500 million, 8 were bond-financed (72%)

The figures above all refer to the initial financing arrangements for the projects and do not take into account any subsequent refinancings.

Source: HM Treasury and Partnerships UK

f) 期間

4-2-1. (c)で述べたとおり、PPP インフラプロジェクトは収入が公共料金で硬直的であるために事業者は金利を固定する必要性が生じるが、長期固定金利での資金調達を可能にするとの観点においては社債が有利である。社債はそもそも固定金利で発行されることが多く、先進国の成熟した市場においては 30 年を超えて発行されるケースもある。融資は通常変動金利で行われ、これを金利スワップで固定金利に変更する為、返済期間は銀行の融資姿勢に加えて市場で調達可能なスワップ期間にも制約されることとなる。スワップ期間は一般的に先進国で 20 年以内、途上国では 10 年以内であり、又、そもそも短期の預金で調達する銀行は 20 年を超える融資には消極的であるため、事業者はコンセッション期間中に借り換えを行うことが必要となる。欧州では借り換えの際に生じる金利上昇分を事業者の報酬に上乘せすることで政府が借り換えに関わるリスクを一部負担するケースが一般的とのことであるが、同様の事例はインドでも聞かれた。

g) 意思決定の柔軟性

意思決定の柔軟性では融資に優位がある。PPP インフラ向け融資は通常シンジケートローンによって行われる場合が多いが、主要な条件交渉の窓口はエージェント銀行に委ねられており、事業者が政府とコンセッション条件等を詰める中で生じる融資契約の変更要請に迅速に対応することが出来る。

一方、社債の条件変更は受託会社に取りまとめて社債権者の投票に掛け、一定以上の賛成を得なければならず、現実的ではない。例外は社債の元利返済を保証しているモノライン

保険会社が条件変更に応じる場合であるが、ベトナムを含むエマージング市場ではモノライン保険会社が存在していない。条件変更の可能性の低い既存プロジェクトの借り換えでは社債でも対応可能であるが、開発を伴う新規プロジェクトへの対応には融資に優位性があると言える

h) 確実性

融資ではエージェンツ銀行が必要額を必ず融資する旨のコミットメントレターを発出すれば、シンジケーションの成否に関わらず資金調達はほぼ確実になると言える。欧州においても金融危機前には潤沢な資金を有した銀行が先を争って事業者にコミットメントレターを発出していたとのことであるが、後述する通り現在のインドでも状況は同じであり、「事業者から話を持ちかけられたら 3 カ月以内にコミット出来なければエージェンツの地位は獲得できない」と話す現地民間銀行もあった。

一方、社債は幹事証券会社が売れ残った分の買い取りを法的義務として負っておらず、さらに金利条件も発行直前にならないと決定出来ない点で、一般的に融資より確実性に劣ると考えられている。

但し、金融危機においては、銀行もシンジケートローン引受契約を「重大な環境変化」を理由に変更又はキャンセルするケースもあるため、留意が必要である。同報告書も、2010年3月時点では融資、社債共に同等のリスクがあると述べている。

i) インフレ・ヘッジ

先進国の多くでインフレ連動債が発行されており、収入がインフレに連動する PPP インフラプロジェクトにとっては有効なツールになると考えられる。預金を中心に資金を調達する銀行融資では、元本をインフレに連動させることは困難である。

結論としては、長期社債の投資家が多数存在し、モノライン保険会社等も存在する等高度な資本市場を有する英米等では社債と融資は特性に応じた使い分けが可能であるが、それ以外の市場では PPP インフラプロジェクトの大部分が融資によって調達されている。資本市場の発展も含め、中期的に社債による資金調達の道筋を整備することは必要であるが、短期的には融資を中心とした資金調達の仕組みを検討すべきと考えられる。

4-2-3. 先進国におけるインフラ・エクイティ・ファンド

財政難からインフラ整備への民間資金導入を図ってきた英国及び豪州では、資金の出してのみならず事業の担い手としてもインフラファンドが台頭し、次いで北米でもマッコーリーなど豪州の運用会社や民間発電会社等が担い手となったインフラファンドの組成が増えている。その背景には、高齢化の進展及び社会保障制度の充実化で年金など機関投資家の存在感が増したことに加え、インフラ投資のリスクリターン特性が 30 年と超長期で安定運

用を目指す年金基金の目的と合致したことが挙げられる。

インフラファンドはリスクとしては国債と上場株式の中間に位置し、株式並みのリターンが狙えるとの統計もあり、投資家の過半が年金関連と考えられる。豪州の統計では、2002年に上場・非上場のインフラエクイティが退職年金基金全体に占める割合は平均2%に過ぎなかったが、2009年には6%を超えたとのことである。¹⁴

投資対象は豪州、欧州及び北米など主要投資家と同じ経済圏内が中心であり、金融危機前にはアジア等の新興市場も投資対象とする「グローバルファンド」も組成されたものの、途上国での投資は進んでいないようである。これは、新興国でのPPPインフラ事業の出資者となることは金融投資家にとってリスクが高いことが背景にあると考えられる（インドにおけるエクイティ投資家の現状については、4-3-2. 参照）。

¹⁴ 「豪州及び日本のインフラ分野における PPP プロジェクト」2010年8月、日本貿易振興機構

4-3. インドにおける PPP インフラプロジェクトの現状

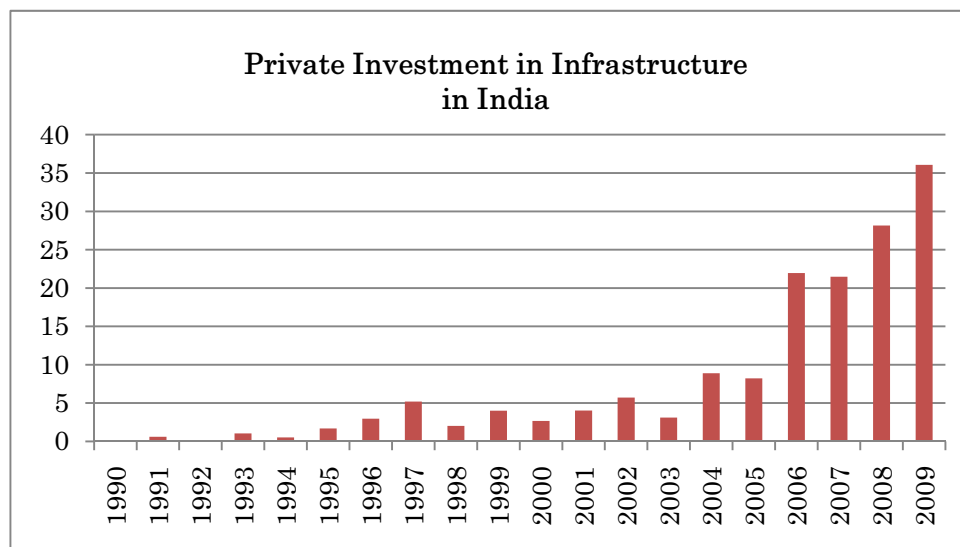
インドは現在最も成功した PPP モデルを有する国であると考えられ、民間企業による発電所建設や有料道路開発が活発に行われている。単一国として最大の PFI/PPP プロジェクトが実施されている国であり、プロジェクトファイナンスの業界誌 Dealogic がまとめた下記のグラフでも 2005 年時点では小さかったインドでの PFI・PPP 投資額（下から 2 番目）が 2010 年には豪州と東欧の合算より大きくなっていることが分かる。



インフラ開発に民間資金を導入しようというインド政府の試みは従来の社会主義から経済改革開放に転換した 90 年代から本格的に開始され、PPP 関連法制の整備、官民共同によるインフラ開発機関 IL&FS 及びインフラ金融機関 IDFC の設立などが行われた。行政、プロジェクトの実施主体となる民間企業、資金を提供する銀行の全てが PPP インフラ開発に不慣れであったため、民間がインフラ分野に大規模な投資を行うまでには 10 年以上を要したが、下表でわかる通り 2006 年以降はインフラブームとも言える様相を呈している。

¹⁵ Dealogic Third Quarter League Tables 2010 - Analysis 08 November 2010 , ProjectFinancemagazine.com

インドにおける民間インフラ投資額の推移



*in current US\$ billions

World Bank and PPIAF, PPI Project Database. (<http://ppi.worldbank.org>)より作成

4-3-1. インドにおけるプロジェクトファイナンス

資金調達面に目を向けると、インフラを含む民間経済活動資金の太宗を供給するのは商業銀行による融資であり、エマージング国としては整備されている社債市場も私募債中心で補助的な役割とのことである。旺盛な PPP インフラ開発資金需要を背景に、前出の Dealogic 誌が定期的に発表しているプロジェクトファイナンス分野（PPP に限らない商業ベースのインフラプロジェクトを含む）のローンアレンジ額世界ランキングでも、2010年の世界上位10社のうち、1位の State Bank of India、4位の IDBI Bank、5位の Axis Bank、7位の IDFC と4社をインド勢が占めている。IDFC については後述するが、インフラファイナンス専門のノンバンクである。又、世界トップ10 圏外ではあるが、ICICI 銀行もアジアのプロジェクトファイナンスローンアレンジで7位に入っている。世界第2位の台湾銀行は高速鉄道の借り換えという12億ドルの巨大案件があった為にこの地位にいるが、これ以外での実績は小さい。これに対してランク入りしているインドの銀行及び IDFC は件数も多く、このブームが継続すれば世界プロジェクトファイナンス業界の上位を占め続けると考えられる。

League tables of loan arrangers (2010) ¹⁶

Lead arranger league tables

Global project finance loans

	Mandated Lead Arranger	Value \$m	No of Deals
1	State Bank of India	25,313	69
2	Bank of Taiwan	12,039	2
3	BNP Paribas	10,122	80
4	IDBI Bank	9,915	23
5	Axis Bank	8,532	29
6	Credit Agricole CIB	7,726	85
7	Infrastructure Development Finance Co	7,471	23
8	Mitsubishi UFJ Financial Group Inc	6,282	68
9	Santander	6,075	80
10	SG CIB	5,869	60

————— インドの銀行、インフラ向けノンバンク

活況を呈するインドのプロジェクトファイナンスではあるが、先進国とは異なる点も多くあり、これが Citibank や HSBC などインドに多数支店を有する有力外資系銀行でさえ当地でのプロジェクトファイナンスにそれほど積極的に取り組んでいない理由である。その特徴には、以下のようなものがある。

a) 変動金利

インフラプロジェクト向けには 10 年を超える長期融資が一般的に実行されるが、金利は基本的に変動である。金利スワップは 10 年程度まで市場に存在するとのことであるが、足元の金利が

¹⁶ Dealogic Full-year 2010 League Tables – Table, 08 February 2011, *ProjectFinancemagazine.com*

高いこともあり、「地場民間プロジェクトスポンサーの多くがあえて固定金利化しない」との話も現地金融機関から聞かれた。インドにおける長期金利が比較的安定していたとの過去の実績もあり、インドの事業者は収入が定額のプロジェクト向け資金調達でも金利変動リスクを取っているが、金融業界の一部からは「金利変動リスクを過小評価しており、将来に向けてのリスク要因」との指摘もあった。

商業銀行よりも金利固定期間が長いとは言え、債券発行による資金調達の比率が大きいインフラ専門ノンバンク（IDFC 他の Infrastructure Finance Company）でも3～5年で金利を再設定する。これまで IDFC の発行してきた債券の平均期間が3～5年であることが理由であり、後述する期間10年の個人向け免税債も払い込みから5年経過後に期限前償還を請求できるため、超長期の金利固定は容易には実現できないものと思われる。

b) 先進国に比して厳密でない契約

先進国の銀行によるプロジェクトファイナンスは考え得るリスクの略全てを契約に反映させ、リスク回避、リスク分担を明確にさせるが、インドではそれほど厳密な契約書類は作成されない。たとえば、変動金利融資で金利が上昇した場合にコンセッション契約に基づいて収入の増加が図れるか、融資期間を十分に上回る期間のコンセッション契約を結んでおり、契約期間中に元本の返済を進められるか、等の条件が満たされなければ、先進国の銀行はプロジェクトファイナンスに参加出来ないが、インドの銀行は事業者との信頼関係から、「全てを契約書に書かなくても、問題が生じれば親会社が支援するはず」と考え、融資を行っているとのことである。

c) 書類に表れない信用力

外資系銀行は多くの PPP インフラプロジェクトの政府側の担い手である地方政府の信用力に疑問を持っているが、インドの銀行は書面に表れない噂、常識、過去からの信頼関係に依拠して融資を行っている。例えば、発電案件における電力購入者は州電力公社であるが、電力価格を農民や貧困層向けに低く抑える社会政策によってその殆どが赤字である。

さらに、有料道路案件で州政府が最低収入保証を行う場合にも、プロジェクト開業後数年経って州財政が悪化し、当該収入保証が履行されない可能性も否定出来ない。

中央政府の財政状況は国債格付機関や国債市場参加者によって厳しくウォッチされており、海外投資家にとっても判断材料は多くあるが、州政府の健全性の分析は困難で、インドにおけるインフラプロジェクトファイナンスに外国銀行が参加出来ないことの主因の一つとなっている。在インドの外銀関係者は「中央政府の保証」を要求しているが、インドの地場企業や銀行はそのような保証無しにリスク負担を行っている。

d) 商業銀行以外の多様な Debt プレーヤーの存在

① Infrastructure Finance Company（インフラ融資専門ノンバンク）

商業銀行による新規プロジェクトへの融資能力を補うため、中央政府は2010年2月、資産の75%以上をインフラへ融資し、且つ、国内信用格付A格以上を有するノンバンク向けに **Infrastructure Finance Company** という新カテゴリーを創設。個別プロジェクト及びスポンサーグループへの与信上限の緩和、銀行借入枠の増加、対外借入許可、個人向け免税債発行（投資額を収入から控除可能）などの特典を与えている。下に述べる IDFC や、国営生命保険に加え、建設大手 **Larsen&Toubro** などのインフラ事業者傘下のノンバンクで **Infrastructure Finance Company** 資格を取得して免税債を発行している。

② **Infrastructure Development and Finance Corporation, ltd.** (IDFC インド政府、国際機関、インド民間企業が設立した民間プロジェクトファイナンスの開拓者)

民間 **Infrastructure Finance Company** の草分け且つ最大手であり、且つ、インドにおけるプロジェクトファイナンス市場の育成に大きな役割を果たした存在として、IDFC について詳述したい。

現在は積極的にプロジェクトファイナンスを供給するインド商業銀行であるが、10年程前は全くインフラプロジェクトファイナンスに参加していなかった。上述したプロジェクトファイナンスの業界誌 **Dealogic** による1998年から1999年に掛けてのプロジェクトファイナンスアレインジャーの南アジアランキングを見ると、インドの商業銀行は全く名前が挙がっていないことが分かる。インド勢として唯一名前の挙がる **Industrial Development Bank of India** は現在の **IDBI** 銀行の前身であるが、この時点では政府機関であった。

All sector league tables, 15/11/98 to 15/11/99¹⁷

South Asia top 10 arrangers			
Rank	Arranger	amount (\$m)	no.
1	Industrial Development Bank of India*	333	1
2	JBIC	274	1
3	KBC Bank NV	181	3
4	ANZ Banking Group Ltd	165	4
5	World Bank	117	2
6	DBS Bank	98	2
7	Credit Lyonnais	93	2
8	Bank of America	91	2
8	Citigroup Inc	91	2
8	Banque Nationale de Paris	91	2

*Industrial Development Bank of India was a development bank before it was converted to IDBI Bank in 2003.

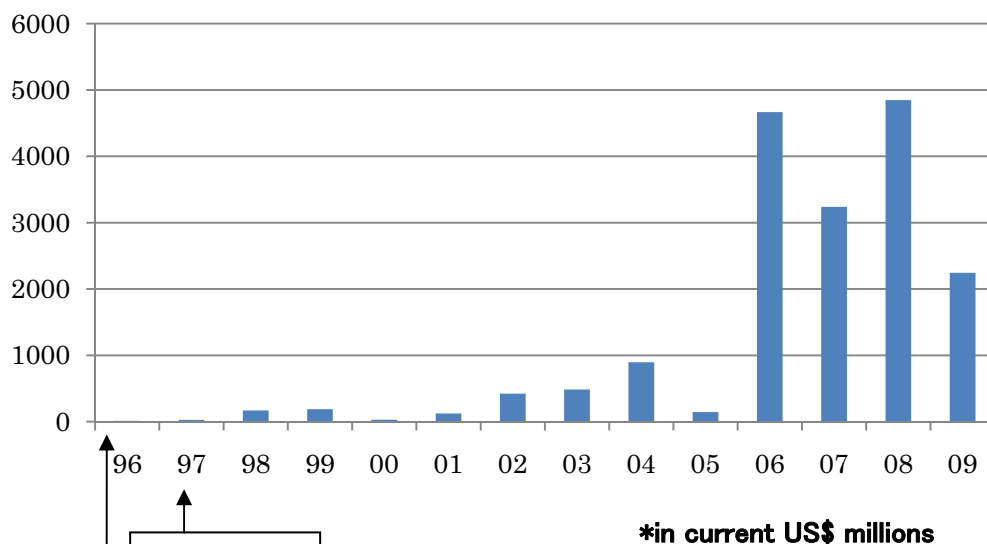
IDFC は、民間によるインフラ向けプロジェクトファイナンスを拡大するための導入剤として 1997 年にインド政府、国際金融公社、アジア開発銀行、インド商業銀行、シンガポール投資庁等の出資で設立された。会長、CEO を HDFC（住宅開発金融公社）から招いた他は、民間金融機関経験者を中心とした民間人をスタッフとして採用したとのことである。設立当初から、政府は株主として取締役を派遣するが、当社は民間企業として政府とは独立して経営されており、2005 年に上場会社となった以降は政府の影響力がさらに低下しているとのことである。

設立当初は融資すべき PPP プロジェクトが存在しなかったため、道路、港湾、電力などの分野で中央及び州政府へ PPP 関連法制の整備、プロジェクト準備から入札に至るまでのコンサルティングをフィーベースで行っていたとのことである。特に、有料道路に関しては National Highway Authority (NHA) に対して様々な提案を行い、インタビューを行った IDFC のディレクターは、「当時は自分自身 NHA の職員になったと勘違いするほど、長い時間を過ごした」

¹⁷ Project poll ,01 December 1999, ProjectFinanceMagazine.com

と述べている。有料道路への民間参入を許容する National Highway Act の 1995 年改正の後も、政府が様々な助言を求めていたことがうかがえた。

Private investment in road in India



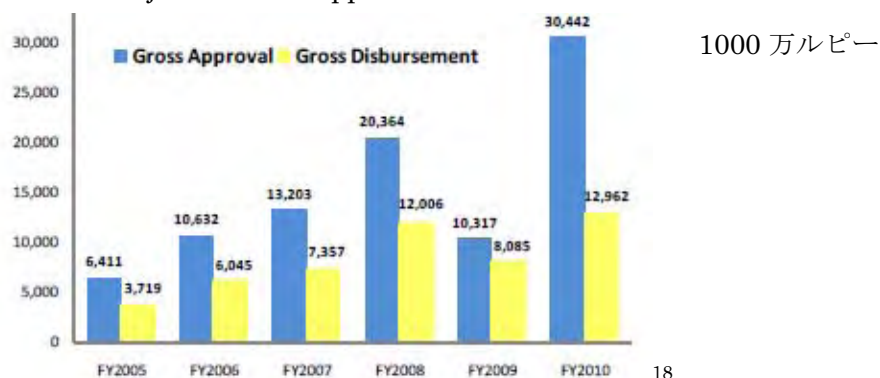
*in current US\$ millions
世銀 PPIAF, PPI Project Database から作成

↑ IDFC 設立
1995 年 民間参入を認める
National Highway Act 改正

道路の他にも港湾に関してはモデル・コンセッションを、電力に関しても独立系発電事業者 (IPP) を促進するような配電改革を提案したとのことであるが、政策提言を行うにあたっては公務員経験者を雇用しなかったのは、当時「インフラで利益を上げるのは国民から搾取すること」と思考する傾向があったためである。逆に、政策提言を行う際も民間銀行（特に外資系銀行）出身者の金融知識が多いに役立ち、民間が商業リスクを取れない案件での Annuity Scheme（政府が定期的に費用支払い）も IDFC の助言が大きく影響して導入されたとのことである。

同社は、民間インフラプロジェクトが立ち上がり始めた 2003 年頃から融資業務を本格化させたとのことである。質の高いローンポートフォリオとインド政府サポート期待で LAAA 格を有し、低利で調達した長期資金をインフラプロジェクトに転貸しており、2010 年 3 月期実績で総資産 3,356 億ルピー（6,151 億円）、自己資金 701 億ルピー（1,282 億円）、純利息マージン 3.4%、ROE16.1%となっている。

Project Finance Approvals and Disbursement



但し、当社がインフラプロジェクトファイナンスのモデルを広く示したことにより、2000年代後半からは商業銀行が民間インフラ案件への融資を積極化させており、激しい競争下で利鞘が縮小しつつある。邦銀へのヒアリングでも、「大銀行が巨額のシンジケートローンを組成しており、IDFCの影は薄い」との意見も聞かれた。上述の通り、世界のプロジェクトファイナンス組成額では第7位と健闘しているが、IDFCは利鞘が縮小する環境下で上場企業としての収益を維持、拡大すべく、インフラ関連分野の他業態へ収益の多角化を図っている。具体的には、積極的な買収戦略でインフラ向けプライベートエクイティファンドの運用会社、インフラ分野に強みを持つ証券会社、投資信託会社（将来個人の資金をインフラ分野へ回すためにスタンダードチャータード銀行から買収）などを次々傘下におさめ、さらに Debt Capital Markets 部門を新設してインフラ事業者による債券発行についても支援できる体制を確立しつつある。自らのバランスシートを使って供給出来る資金には限界があるため、インフラ関連の金融サービスは全て提供できる「ワンストップショップ」を目指しているとのことである。

本業であるプロジェクトファイナンスについても、商業銀行とのさらなる差別化のために社債調達期間を現在の5年程度から10年以上に伸ばす努力をしている。現在インドのインフラ事業者は変動金利で長期プロジェクトを行っているが、金利上昇で実際に損失を出す例が出てくれば長期固定資金へのニーズは高まると予想され、前述のインフラボンドを含めた長期社債調達を多用することで調達期間を延ばし、より長期の固定金利を提供することでも民間銀行との差別化を図りたいとしている。

- ③ India Infrastructure Finance Corporation Limited (IIFCL, 商業銀行新規融資を支援するため民間シンジケートローンの一部を引取)

民間インフラプロジェクトが非常に多く組成されているため、民間銀行の特定グループや

分野毎の与信上限に達しつつあり、次期 5 カ年計画で想定される 5 千億ドル（総インフラ投資の 50%）の民間投資をファイナンスすることは、国内民間銀行のみでは困難と想定されている。

これら民間銀行がより多くのプロジェクトへ新規融資が出来るようプロジェクト融資の一部を引き取るための機関として、IIFCL が 2006 年にインド政府 100%出資で設立された。年間の融資予算は財務省からの承認を経ているが、個々の取引については政府の関与は無く、独立して判断している。

IIFCL の主たる業務は民間商業銀行によって組成されたシンジケートローンへの参加であり、金額はプロジェクト総額の 20%を上限とし、期間は他の民間銀行より長く設定することが多いとのこと（民間銀行に先に弁済させる）。プロジェクトが完成し、資金交付条件を満たしてから 1 年を経過した融資の買い取りや、借り換えにも対応している。

IIFCL はプロジェクトスポンサーと直接交渉を行うことは無く、シンジケートローンのアレンジャーを始めとする民間銀行から相談を受けるとのことである。有力アレンジャーの ICICI 銀行によれば「より手続きを迅速に、且つ、引取額の上限も拡大するなど、IIFCL の機能に改善余地は大きい」とのことであり、民間銀行の流動性がタイトになる中で拡大する民間インフラプロジェクトへの資金需要に応えるため、より大きな役割が期待されているようである。

④ India Infrastructure Debt Fund（民間資金を利用した銀行インフラ融資買取機関としてインド政府が設立を検討中）

これまで活用されてこなかった年金基金及び生命保険、さらには海外投資家の資金を活用して商業銀行の PPP インフラ融資を買い取るべく、India Infrastructure Debt Fund の設立がインド政府の計画委員会によって 2010 年 6 月に提言された。その後、「（保険業界監督する）IRDA、（年金基金を監督する）PFRDA がインフラ融資買取ファンド構想に対し好意的な反応を示している」との一部報道もあった。¹⁹

これまで述べてきたインドのプロジェクトファイナンスのプレーヤーを 1990 年代後半と現在に分けて整理すると以下の通りとなる。なお、下記は包括的なリストではなく、他にも多くの銀行、ノンバンクがプロジェクトファイナンスに参加している。

¹⁹ IRDA, PFRDA give nod to invest in Rs 50K cr infra debt fund, Published on Thu, Oct 21, 2010 at 20:58m. www.moneycontrol.com

インドにおけるプロジェクトファイナンスの担い手の変化

		90年代	現在
シンジケート ローン組成	民間	IDFC('97 設立)	IDFC その他インフラ専門ノンバンク
相対融資			State Bank of India Axis Bank ICICI Bank (銀行に転換) IDBI Bank (銀行に転換) その他民間銀行
事業者と 交渉し、 プロジェクト へ資金供給			
	開発 機関	IDBI('64 設立) ICICI('55 設立) 多国籍・外国機関	多国籍・外国機関
シンジケート ローン参加	民間		IIDF (建設完成・操業後に融資買取) (設立検討中)
融資買取			
銀行と交渉 銀行へ資金 供給	政府 機関		IIFCL (融資当初から参加可)

4-3-2. プロジェクトへのエクイティの出し手：地場事業会社が太宗

世界の民間インフラプロジェクトのデータを収録する World Bank and PPIAF, PPI Project Database に含まれるインドでのプロジェクト事業者は、その殆どがインドの地場事業会社である。正確な統計は無いが、シンガポールテレコムやボーダフォンなどの外資系の巨額の投資があった通信や先進国のノウハウが求められる空港では外国からの投資が3割程度あるが、目下投資規模である電力では10年以上前にエンロンが投資した分を含めても1割程度、件数で最大の道路では3%に満たない水準に留まると考えられる。ちなみに、同データベースに「インド民間インフラプロジェクトのスポンサー」として記録される日本企業は丸紅株式会社（電力分野に328百万ドル）のみである。

90年代初頭まで公的機関が独占していたインドのインフラ事業であるが、タタやリライアンスといった財閥系のみならず、建設会社等各地の有力中堅企業が多数インフラ投資に参入しており、金融投資家、外資系企業とも影が薄い。インドで地場及び日系企業にヒアリングしたところ、以下の分析が聞かれた。

- そもそも事業リスクが不透明且つ不安定で先進国企業が入り込み難い
- 入札に積極的なインド地場企業は安価な上に技術力が高いところも多い
- インフラ投資は利益率が高いと考える民間企業が多く、且つ、十分な手元流動性を有しているため、資本参加を申し出ても少数株主を入れたがらない（外資のノウハウ等を必要とする場合を除く）

電力及び道路案件の出資者上位5社

分野	企業名	コミットメント
Electricity	Reliance ADA Group(印)	8,668
	Tata Enterprises(印)	6,289
	Adani Group(印)	5,882
	Jaiprakash Associates Ltd(印)	4,297
	Lanco Group(印)	4,268
Roads	Larsen & Toubro Limited(印)	2,667
	Soma Enterprise Ltd(印)	1,903
	Isolux(スペイン)	1,476
	IRB Infrastructure Developers Ltd(印)	1,368
	KMC Constructions Ltd(印)	1,258

*in current US\$ millions

World Bank and PPIAF, PPI Project Database.より作成

金融危機前の 2007 年頃まではインドをターゲットとしたインフラファンドも組成されていたが、その多くは中止、又は規模を縮小している。中で最大規模の 50 億ドルでシティグループ、ブラックスストーングループ、IDFC、IIFCL が 2007 年 2 月に立ち上げた India Infrastructure Finance Initiative は、ブラックスストーングループが「収益目線が合わない」ことを理由に早々に撤退し、規模を 10 億ドル程度に縮小した上で既存プロジェクトエクイティの二次的買い取り（1 件当たり 5-7 千万ドル）等の活動を行っているとのことである。

但し、既に多くの民間インフラ案件が展開され初めて数年が経ち、新規プロジェクトの開発資金を捻出するために既存案件の持ち分を売却する民間プロジェクトスポンサーも出てくると考えられることから、新たなインフラファンド組成の動きも出てきている。本年（2011 年）3 月 10 日には三井住友銀行がインド民間大手総合金融グループであるコタック・マヒンドラ・グループ及びカナダの大手資産運用会社ブルックフィールド・アセットマネジメント(Brookfield Asset Management Inc.)とインドに特化したインフラファンド設立を目的として協働契約を締結したと発表している。

4-4. インドネシア政府による取り組み

スハルト政権の崩壊以降停滞してきたインフラ整備を民間のノウハウと資金で行うため、インドネシア政府は PPP インフラ開発先進国から多くの制度を取り入れている。

資金調達面で特筆すべきは、インドの IDFC モデルを取り入れた PT Indonesia Infrastructure Finance (IIF) の設立と、補助金 (Viability Gap Funding) の支払い義務等政府機関の契約不履行に基づく損失補填を行う Indonesia Infrastructure Guaranty Fund (IIGF) の設立である。

a) PT Indonesia Infrastructure Finance (IIF)

前述のインド IDFC の成功を受け、IDFC の設立株主でもある世銀グループ（世銀、IFC）及びアジア開発銀行の全面的支援を受け、昨年 8 月に設立したばかりのインフラ専門ノンバンクである。設立目的は IDFC と同様に PPP インフラプロジェクトの推進及び長期資金の融資であり、当初は有料道路、発電等の優先分野におけるプロジェクト組成に向けた助言業務に取り組むとしている。資本金 1 兆 6 千億ルピアのうちインドネシア政府の出資比率は 37.5%であり、国際金融公社及びアジア開発銀行がそれぞれ 25%、これにドイツの援助機関 DEG が 12.5%を出資し、世界銀行及びアジア開発銀行がそれぞれ \$1 億の IIF への転貸資金融資をインドネシア政府に行う旨コミットしている。

現在は組織立上中であり、IDFC と同様に政府機関等に PPP インフラプロジェクトについ

で啓蒙している段階であり、個別案件への取り組みには至っていないとのことであった。

昨年 12 月に IIF を訪問し、現状についてヒアリングした内容は以下の通りである。

- 役員 3 名（CEO, Chief Risk Officer, CFO）をふくめても 10 人に満たない陣容。PPP 制度及び案件の進展が予想していたより遅いため、急いで人員を増やす予定は無いと考えている。
- President Director（元経済大臣）は政府が指名したが、役員 3 名はヘッドハンティング会社経由でこの会社に来た。CEO の前職は地場大手商業銀行の監査役だが、職歴は外資系金融機関が長い。CFO は米国人で前職はモノライン保険会社の日本拠点勤務だったとのこと（以前にインドネシアで勤務経験あり）。
- 現在は、PPP に長期金融が必要であるとの点を政府や金融関係に教育している段階であるが、実際の PPP プロジェクトが無いのでイメージがわきにくいこともあり、なかなか理解されない。社債市場は殆ど機能しておらず、生命保険や社会保険も小さいこともあり、政府が長期資金を集める仕組み作りを進めると同時に、国民全般にも長期投資について理解をしてもらう必要があるが、スハルト政権崩壊時に中銀債の支払いを一時停止された経験もあり、長期預金を含めた長期投資を行う人は少ない。

b) PT Indonesia Infrastructure Guarantee Fund (IIGF)

世界銀行及びシンガポールのテマセク財団の技術支援により、インドネシア政府 100% 出資で設立された株式会社であり、PPP インフラプロジェクトの投資家が政府の不手際、政策変更や財政難によって受ける損失を政府から独立して補填する機能を持つ。

補填する原資は当初政府からの出資金（当初は 10 億ルピア）に加え、世界銀行から 4.8 億ドルの保証枠を獲得している。又、政府 100% 出資ではあるが、政策変更の際の独立を保ち、効率的に運営されるため、民間企業として運営されている。

さらに、IIGF は PPP インフラプロジェクトに関わる政府の窓口として機能し、プロジェクト評価、保証契約交渉及び保証履行請求の処理を透明且つ適正に行うことが期待されている。現在は、良質な PPP インフラプロジェクトを組成するため、政府機関及び民間事業者に対し、様々な助言を行っている。

IIGF の保証条件及び保証範囲は以下の通りである（英文のまま掲載）。²⁰

【保証条件】 CA は Contracting Agency(各 PPP の窓口なる政府機関)

²⁰ IIGF Website

1. Criterion 1: The project must be in the transport (roads, airports, rail, and ports), energy, telecommunications, water or sanitation sectors, or other sectors as may be agreed by IIGF based on Presidential Regulation No. 13/2010.
2. Criterion 2: The project must be procured by the CA under a Public-Private Partnership in which concession contract or any other contract is awarded through a transparent and competitive tender process.
3. Criterion 3: The project must be technically, economically, financially and environmentally viable, as well as socially desirable.
4. Criterion 4: The project feasibility study should have been done by credible third party consultant.
5. Criterion 5: The Concession Agreement shall have suitable provisions for binding arbitration as required by IIGF.

In the case of IBRD Guarantee, the following additional criteria will need to be fulfilled by the project:

6. Criterion 6: The project must be consistent with Indonesia's Country Assistance Strategy (CAS) and Poverty Reduction Strategy Paper (PRSP). Further, each individual guarantee will have to meet the requirements set out in the IBRD's Articles of Agreement and other relevant provisions of IGFP project documentation. In particular, relevant provisions of OP 14.25 - Guarantees will apply.
7. Criterion 7: Project enables a sound macroeconomic situation in Indonesia
8. Criterion 8: The required fiscal capability is available to take on the proposed public financial commitments.
9. Criterion 9: An adequate sector policy framework is in place with a clear rationale for public sector involvement._

【保証範囲】

10. **Land acquisition:** Coverage for delay or failure to acquire land, or for cost in excess of cap. Includes any delay or failure that prevents land from being ready to use
11. **Licenses, permits, and approvals:** Coverage for delay or failure to grant licenses, permits, and approvals. IIGF covers delays that would have adverse effects on construction costs, financing charges, and the commencement of revenue.
12. **Financial close delay or failure:** Coverage for any delay or failure of financial closure due to any other action or inaction on the part of the government agency beyond land and licenses, permits or approvals.
13. **Change in law or regulations:** Coverage for impact of change in law or regulation in event that change in law adversely affects project, such as tax law, law on tariff structure, or law that affects project's technical specifications and results in changes in costs. Applies only If contract is explicit (not silent) in its basis on and ties with existing law.
14. **Breach of contract:** Coverage for government agency's action or inaction in violation of contract, or government agency's changing clauses of contract unilaterally.
15. **Integration with network:** Coverage for actions or inaction that affect project operations or revenue by failure (or inadequate) integration with existing or future networks.

16. **Revenue risk:** Coverage to fulfil or enforce government agency's obligations on revenue. Coverage applies only to government agency's contractually agreed payments (annuity / viability gap / minimum revenue).
17. **Demand risk:** Coverage for change, borne of government agency's actions that have an influence on demand for the project's services.
18. **Pricing risk:** Coverage to fulfill level of revenue that was not reached due to unilateral change of tariff.
19. **Enforcement risk:** Coverage for loss of revenue due to failure to enforce or protect against illegal activity (within government agency's realm of responsibility) such as evasion of tolls, siphoning of power, etc.
20. **Standalone termination risk:** Coverage for event, unrelated to other risk categories, in which government agency's action or inaction causes project to end.

5. ベトナムへの示唆

冒頭でも述べたように、社債市場及び金利スワップ等の金融サービスが未整備なベトナムにおいて、「先進国のような長期固定融資や資本市場の完成無くして PPP によるインフラ開発が出来ない」と考える必要は無い。しかしながら、インドの経験を見てもわかるように、PPP を発達させるには Bankable なプロジェクトを組成する能力を政府が備えること（Project Development Facility, PDF）及び政府による財政支援（Viability Gap Funding, VGF）の仕組みを整備することに加え、資金調達面でも民間金融機関をサポートする様々な施策、さらには自発的なインフラプロジェクト（Unsolicited Project の提案を行う企業の創設等）が必要である。PPP インフラプロジェクトの流れの中で、各主体が果たすべき役割及び援助機関が行ってきた施策をまとめたのが下記の表である。

PPP インフラ整備の各段階における官民の役割と援助機関の施策

	案件組成	FS 及び 案件認可	競走入札	建設期間	操業期間
政府	政府主導案件の組成 民間主導案件の採択	専門家専任 補助金予算確保(VGF)	契約案文及び 入札書類準備 落札者決定	監督 補助金交付	監督 補助金交付
				<div style="border: 1px solid black; padding: 5px;"> 【すでにベトナムで実施中】 <i>[他国で実績あり]</i> </div>	
民間企業	民間主導案件の準備		入札参加	建設	操業
民間 金融機関			企業へ助言 融資確約	融資契約・ 実行	元利回収 業況監視

以下に、PPP インフラプロジェクトの草創期にあるベトナムで設立を検討すべき機関を提案したい。

a) 民間インフラプロジェクト及びプロジェクトファイナンスの開拓者となるべき機関の創設 [次章に詳述]

インド IDFC の例でもあったが、「インフラプロジェクトファイナンス」という概念が定着していないベトナムにおいては、当該概念を政府機関、インフラに参入しようとする民間事業者、商業銀行、生命保険、年金基金等に啓蒙する機関が必要であると考えられる。その役割は、民間金融機関の出身者（IDFC では外資系銀行出身者を多く採用した）が務めることが効果的であると考えられ、組織も自らもリスクをとることが出来る金融機関とすべきであると考えられる。

当該金融機関は、純粋に民間資本で設立することも可能であるが、以下の理由からベトナム政府、援助機関の関与が有効であると考えられる。

- ① ベトナムにおいて PPP インフラプロジェクトファイナンスが成功するか否かは未知数であり、且つ、インド IDFC の例でもわかる通り長期の準備期間を要するためリスクが高い。弊社の収集した情報によれば、給与、オフィス等の組織運営コストだけ年間 2 億円程度を要する（前提条件は付表 1・2 参照）ため、PPP インフラ市場が立ち上がるまでに 5 年を要すると仮定しても 10 億円の操業赤字を覚悟する必要がある、民間企業にとっては大きな負担となる。
- ② このようにリスクの高い組織が有能な人材を雇用するためには、ベトナム政府のみならず、外国援助機関、国際機関等の出資による組織のステータス向上がなければ困難であると考えられる。
- ③ 中央及び地方政府への助言や、民間有力企業とのコンタクトを円滑に行うためには、政府の関与が有効である。
- ④ プロジェクト融資の原資を組織立ち上げ当初は市場又は銀行から調達することは困難であり、外国援助機関、国際機関等からの援助が必要である。

本件のインフラファイナンス専門機関設立については、独立行政法人国際協力機構の海外投融資からの出資を用いてイニシアチブをとる可能性があることから、次章で詳述する。

b) 多様な資金ソースの確保

民間インフラプロジェクトへ資金を供給するため、以下を含む様々な施策を検討すべきである。

① 短期間に実施が可能な課題

i. 生命保険会社によるインフラ向け融資の促進

生命保険業界は中長期の運用ニーズを持つ主体として、ベトナムにおける大手生命保険会社は長期投資に積極的とは言えず、特に債券投資は BaoViet グループ以外消極的であり、BaoViet グループの債券投資も国債が多い。

生命保険各社によるインフラ融資を増加させるため、有力生命保険各社（下表の 4 社や第一生命子会社）、監督当局である財務省保険局（Insurance Supervisory Agency, Ministry of Finance）とも協議を行うべきである。

FINANCIAL INVESTMENT OF SOME INSURANCE COMPANIES

As at 30/09/2010

Item	Unit: Billion VND			
	PVI	Vinare	Bao Minh	Bao Viet
Short-term investments	3,434	1,404	862 #	11,505
Short-term deposits at financial Institutions	1,640	1,385	- #	8,955
Bonds				747
Trusted investment	340	-	-	-
Short-term securities	235	-	35 #	-
Loans and trusted loans				
Listed shares	714	32	-	2,319
Other short-term investments	563	-	828 #	266
Provision for impairment	(58)	(13)	(1) #	(782)
Long-term investments	987	1,016	1,160 #	17,658
Investment in subsidiaries	-	-	-	-
Investment in Associates and joint-ventures	123	625	203 #	314
Long-term deposits at financial institutions	-	-	-	1,374
Bonds	193	389	332 #	14,248
Trusted investment	-	-	-	-
Loans and trusted loans	235			41
Advances from surrender value	-	-	-	871
Shares hold >1 years	449	-	444 #	-
Other long-term investments	6	2	185 #	970
Provision for impairment	(19)	-	-4 #	(160)
<i>*) Bonds (short-term)</i>				747
Corporate bonds 1-5 years (8%-11.5%)				558
Government bonds 5-7 years (8.5%-12.1%)				189
<i>**) Bonds (long-term)</i>				14,248
Corporate bonds 2-20 years (7.2%-16%)				4,308
Government bonds 2-15 years (7.7%-12.1%)				9,940

ii. 公的年金による PPP インフラ融資

ベトナムの公的年金に関する情報は限られているが、未だ発展途上の生命保険業界よりもはるかに規模が大きいと考えられる。現在国債購入や政府への貸出に回っている分は既に活用されていると考えられるが、国営商業銀行に預金されている分の一部を PPP インフラプロジェクトへの融資に転用することの可否について検討が必要と考えられる。

iii 民間金融機関による税制優遇付きの個人向け運用手段の開発

ベトナムにおいて個人の長期定期預金や債券購入は一般的ではない。PPP インフラプロジェクト向け中長期資金を国民から広く募るため、インドで導入されたような免税特典付きの債券等の貯蓄商品導入の可能性につき、中央銀行及び財務省と協議すべきである。

② 長期的に取り組むべき課題

i 社債発行を活発化且つ長期化させる資本市場整備

PRSC の一環として財務省金融銀行局が債券市場育成ロードマップを作製中であるが、重要な視点の一つとしてインフラ債の振興を含むべきである。ベトナムの債券市場は発達しつつあるが、未だ規模が小さく、又、発行される債券の大部分が国際および政府保証債であり、社債の比率も他のアセアン諸国に比して低い。民間インフラプロジェクトへの固定金利資金の供給源としての整備が望まれる。



ベトナム債券市場協会資料より



ベトナム債券市場協会資料より

ii 長期債市場の投資家となる民間年金の振興

先進国におけるインフラファンドの受け皿であり、且つ、インドにおいてもインフラ向け融資の受け皿として期待されているのが民間年金基金である。上記①iii で述べた個人向け運用手段の開発と並行し、より大規模の国民の資産をインフラ整備に活用する手段として、民間年金基金を拡充すべきであり、関係各省と協議すべきである。

又、今回の調査スコープの範囲外であるが、VGF の設計及びプロジェクト組成についてもインドネシア及びインドでの経験から以下の3点を提案したい。

c) VGF 制度設計における IGF (政府の obligation を保証するファンド) の検討

VGF 制度の詳細設計を行う中で、「最低収入保証」等将来にわたって政府に支払い義務が残る場合、民間事業者は将来の財政状況や政策変更等のリスクを負担することとなり、入札に応じる際の追加的懸念事項となる。

インドネシア IIGF のような政府の支払い義務を保証するファンドを組成し、国際機関やその他の援助機関からの保証を確保することができれば、この懸念を軽減することが出来る。

d) Project Development における「金利見直しに対応したコンセッション条件の検討」

先進国のような超長期社債を発行する資本市場の整備は、中期的に困難であるとの観点に立ち、定期的に金利が見直されるとの観点にたつてコンセッション条件を検討することも必要である。インドでは自国の成長力に自信を持つ民間投資家が金利変動リスクを負担し

ているとのことであるが、ベトナムで民間事業者が同様の行動に出るとの保証は無く、まして先進国からの資金を期待するのであればなおさら、金利変動リスクを民間事業者に負わせず、政府又は利用者が負担するような制度設計をする必要がある。

e) 民間プロジェクトの担い手となる企業の創設

(インドの IL&FS, PIDG²¹による InfraCo がモデル)

本報告書の主題は資金調達に関するものであるが、民間企業のノウハウを効率的インフラ整備に活用する為に必要な民間主導案件の担い手となるべき企業の創設について、過去にインド政府や欧州援助機関が行ってきた試みについて紹介したい。民間企業が脆弱なベトナムにおいて PPP インフラ整備を推進するに当たっても、インフラ開発企業の創設、既にベトナムを主要市場と位置付けて昨年創設された InfraCo Asia の活用を考慮すべきであろう。

i. Infrastructure Leasing & Financial Services Ltd(IL&FS)

IDFC が商業銀行にプロジェクトファイナンスの見本を提供したように、プロジェクトスポンサーにエクイティ投資家として民間インフラプロジェクト開発の見本を提供したのが Infrastructure Leasing & Financial Services Ltd.(IL&FS)である。IL&FS はインフラ分野に民間資金を導入すべく中央銀行、国営投資ファンドである Unit Trust of India, 住宅金融公社の出資によって設立され、その後国債金融公社及び日本のオリックス株式会社や国営生命保険会社やアブダビ投資庁の出資を受けた。リース及び金融サービスの名称通り、資産運用や証券関連サービスも提供するが、本業は自ら開発事業者になって新規の民間インフラプロジェクトを実行することであり、「御社は金融機関か？インフラ開発業者か？」との問いには「どちらでもあるが、どちらかと言われれば開発業者」と答える職員が多い。現在も、電力、土地造成を行う IIDC(IL&FS Infrastructure Development Corporation Limited)、有料道路、港湾等交通インフラ開発を行う ITNL(IL&FS Transport Network Limited) 等を通じて積極的にインフラ開発に携わっている。

IL&FS はインドにおける有料道路 PPP の草分けと言われる Noida Toll Bridge Project を民間スポンサーとしてデリー市及びノイダ市当局とともに開発し、ロンドン AIM 市場に上場させた実績でインドにおけるインフラ開発業者としての地位を確立したが、パイオニアとして新分野を開拓するのは大変な時間と労力を要した。当該案件は「PPP」という概念が定着していなかった 1992 年 4 月に IL&FS、デリー及びノイダ当局が MoU 締結することに成功したものの、開業は 2001 年 2 月と実に 9 年もの時間と、デリー市、ノイダ市、中央

²¹途上国での民間によるインフラ開発を支援する欧州 6 カ国(英国、オランダ、オーストリア、アイルランド、スイス、スウェーデン)の共同組織 Private Infrastructure Development Group

政府、ノイダ市の属するウッタール・プラデッシュ州政府といった多数の関係者との調整を要した。その後本案件は、「民間企業に不当に有利なプロジェクトである」と批判を浴びることになるが、本件で「PPP インフラプロジェクトが有望な投資機会である」と民間投資家にアピールすることが、現在のブームを引き起こす大きな要因になったと言える。

このような開拓者の役割を IL&FS が果たすことで政府と民間の双方にとって使い勝手の良い PPP の枠組が少しずつ形成され、現在では多くの民間業者が参入するところとなったが、この困難な役割を担う民間企業が自発的に発生するか否かは疑問である。ベトナム政府、援助機関、国際機関等がリスクをとることも検討すべきではないであろうか。

ii. InfraCo.

3-2-3 でも紹介したが、InfraCo.は途上国での民間によるインフラ開発を支援する欧州 6 개국²²の共同組織 **Private Infrastructure Development Group (PIDG)**の出資で設立された民間インフラプロジェクト組成を専門に行う企業であり、アジア及びアフリカにそれぞれ一社ずつが設立されている。ここでは、その機能について詳述する。

InfraCo.は、「途上国のインフラ投資に民間企業が参加出来ないのは、資金不足ではなく、収益性の高いプロジェクトが不足していることが主因」との分析に基づき、「収益性の高い事業の発見というコスト及びリスクを負担する」ことを目的としている。具体的には、以下の手順で業務を行っている。

- (a) 民間資金によるプロジェクトの可能性発掘
- (b) プロジェクト子会社を設立し、経済、商業、環境、技術等の詳細調査実施
- (c) 政府、利用者等と料金等について長期契約を締結
- (d) フィージビリティ・スタディ実施
- (e) 土地利用権の確保
- (f) 建設業者、運営業者との交渉
- (g) 融資契約の交渉
- (h) 第三者へのプロジェクト子会社売却（もしくは第三者からの出資受け入れ）

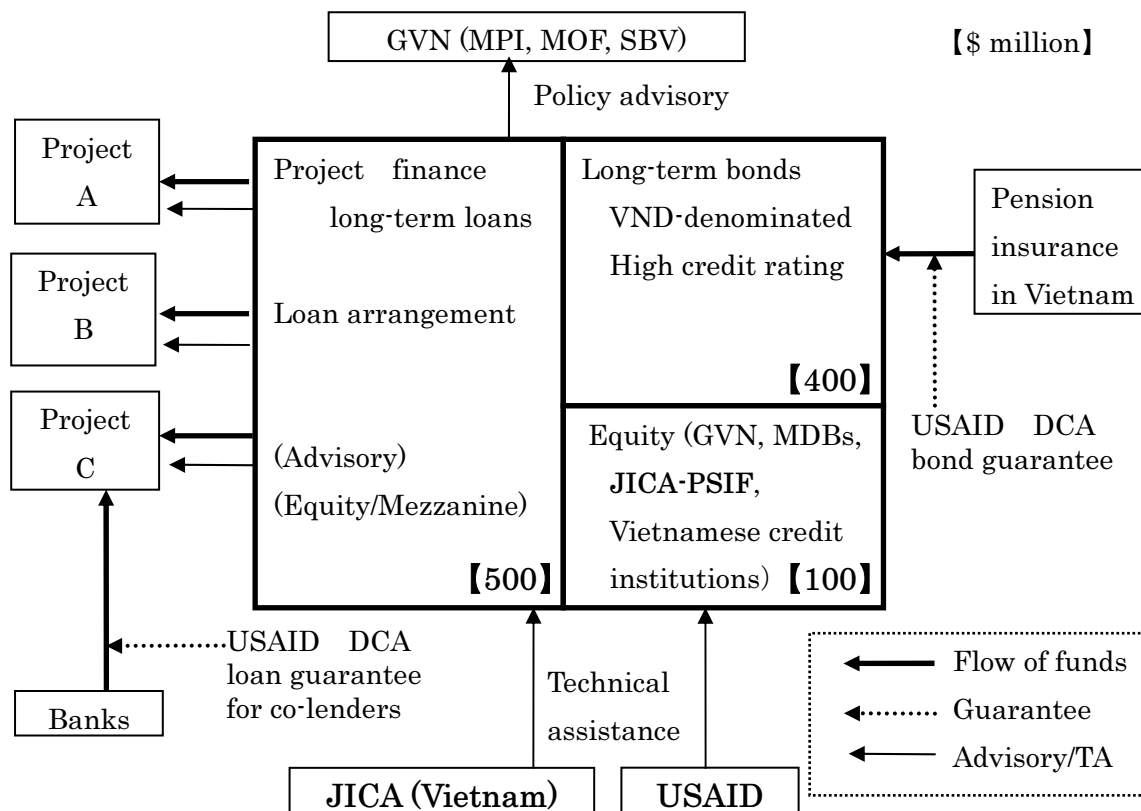
InfraCo はアフリカで 2005 年から活動しており、既に発電、灌漑、汚水処理など 10 件ほどのプロジェクトを手掛けている。この成功を受けて昨年 10 月に、シンガポールを拠点とする **InfraCo Asia** を設立してアジアでの活動を開始。対象とする国はフィリピン、ベトナム、ラオス、カンボジア、インドネシア、インド、バングラデシュ、ネパール、スリランカとしている。

²² 英国、オランダ、オーストリア、アイルランド、スイス、スウェーデン

InfraCo の株主は援助機関のみであるが、独立採算の民間企業として運営されており、インフラ開発、金融分野に経験を持つ人材を民間から採用して経営にあたらせている。民間としての経営原則の維持は、市場メカニズムを利用する PPP 市場で活動する主体として重要である。

6. Project Finance Company (PFC) 設立について

(a) 組織の概要 (想定する出資者、協力者、主たる資金提供スキーム)



PFC の主たる業務 :

- ① PPP インフラプロジェクトに対する長期融資及びシンジケーション
- ② PPP インフラプロジェクトに対するメザニン投資及び出資
- ③ PPP インフラプロジェクト促進に関する政府への政策助言
- ④ PPP インフラプロジェクトの民間スポンサーに対する金融助言

(b) 設立及び運営に関する法制度

ベトナムにおいては、金融機関以外の主体が融資業務を行うことは金融機関法 [Law on Credit Institutions No.47/2010/QH12 of the National Assembly dated June 16, 2010] 第8条2項によって禁じられている。

金融機関とは、銀行(banks)、ノンバンク(non-banking credit institutions)、マイクロファイナンス(micro-finance institutions)、人民信用基金(people's credit funds)を指すが、Project Finance Company の主たる業務と合致するのは、以下を遂行できるノンバンクである。

- ① 貸付、エクイティ投資、アドバイザー（financial and monetary consultancy）
- ② 社債発行、1年超の預金、銀行借入による資金調達

ノンバンクとして業務を行う上での関係法令は上記の金融機関法であるが、留意を要するのは、昨年制定され今年一月から施行されている上記金融機関法の以前に存在した関係法令²³（以下「旧ノンバンク法という」）が正式に廃止されていないことである。このため、どちらの法令の規定に従うかにより、以下に述べるマネジメント体制、出資者数等に違いが出てくるため、本報告書においては、必要に応じて二つを併記することとする。実際に設立手続きを開始する場合には、中央銀行及びベトナム財務省と協議する中で明確化してゆく手続きが求められる。

(c) 組織構造（Limited Liability Company 有限会社）

金融機関法、旧ノンバンク法のどちらにおいても、外国資本の入るノンバンクは株式の譲渡が自由な Joint Stock Company として設立することを禁じており、持ち分の移転に制約のある Limited Liability Company としなければならない。

ベトナム統一企業法²⁴における株式会社と有限会社の違いは以下の通りである。

項目	有限会社		株式会社
	1名有限会社	2名以上有限会社	
創業者としての出資者数	1名	2名～50名	3名以上
出資者	組織或いは個人	組織或いは個人	組織或いは個人
定款資本金	出資者の持分は払込資本に応じる	同左	持分は株式の保有数に応じる
株式発行	不可能	同左	可能
資本金の増減	原則として、減資が不可能、増資の際にはライセンスの変更手続きも併せて行う必要がある。	増資も減資も可能	増資も減資も可能 ・ 会社が株式の買戻し或いは第3者への譲渡を行う場合を除き、会社へ出資した普通株資本金の回収が不可能

²³ Decree No. 79/2002/ND-CP of the Government dated October 4, 2002 on organization and operation of finance companies (the “Decree No. 79”)及び Decree No. 81/2008/ND-CP of the Government dated July 29, 2008 amending and supplementing a number of Articles of the Decree No. 79 (the “Decree No. 81”)

²⁴ Law on Enterprises No. 60/2005/QH11 of the National Assembly dated November 29, 2005 (as amended)(the “Law on Enterprises”)

責任範囲	払込資本金の範囲	同左	同左
持分の譲渡	持分の一部か全部の譲渡が可能。	持分の一部か全部の譲渡が可能である。	持分（株式）の譲渡可能。しかし、創業後の最初の3年間は譲渡不可能。
払込の実施に関する規制	定款に定められた出資スケジュールに従う。数回に分けて、出資金額を送金することが可能である。	同左	創業者は、投資証明書が発給された後、90日以内に出資を実施しなければならない。なお、創業者が20%は普通株式を保持していなければならない。
組織体制	会長、社長と監査役となる。	社員総会 監査役会（11名以上の社員を有する場合設置） 取締役（社長 ²⁵ ）	株主総会、経営会議及び取締役（社長）、監査役会（個人の株主が11名以上或いは会社の総株式の50%以上を所有する法人の株主がある場合に設置）
経営者の監督機関	会長或いは社員総会が最高の決定権を持つ	社員総会が最高の決定権を持つ	株主総会が最高の決定権を持つ
法的代表者	社長或いは社員総会の会長 (社長は社員総会の会長を兼務可)	社長或いは社員総会の会長 (社長は社員総会の会長を兼務可)	社長或いは経営会議会長 (社長は経営会議会長を兼務可)
会社形態の変更	2名以上有限会社か株式会社に変更可	1名有限会社か株式会社に変更可	有限会社に変更可

金融機関であるノンバンクで留意が必要なのは、上記の一般規定に加え、特別法である新旧の金融機関法によって様々な制約が課せられていることである。具体的には、追加的経営機関の設置、有限会社の社員数に制限（金融機関法では5名）、持分譲渡に中央銀行の承認が必要になる等であるが、詳細は後述する。

(d) 実施期間

²⁵ 取締役が複数存在する場合に社長を指名することが出来る

有限会社は永続機関であるため、投資組合のように予め10年程度と短期の業務期間を設定することはない。又、時間と共にノウハウを蓄積する「金融機関」という組織の性格上も、永続機関とすることが望ましいと考えられる。

出資者が資金を回収する手段としては、持ち分を譲渡する必要があるが、様々な制約が存在する。この点については、(q) 資金回収における戦略で詳述する。

(e) マネジメント体制

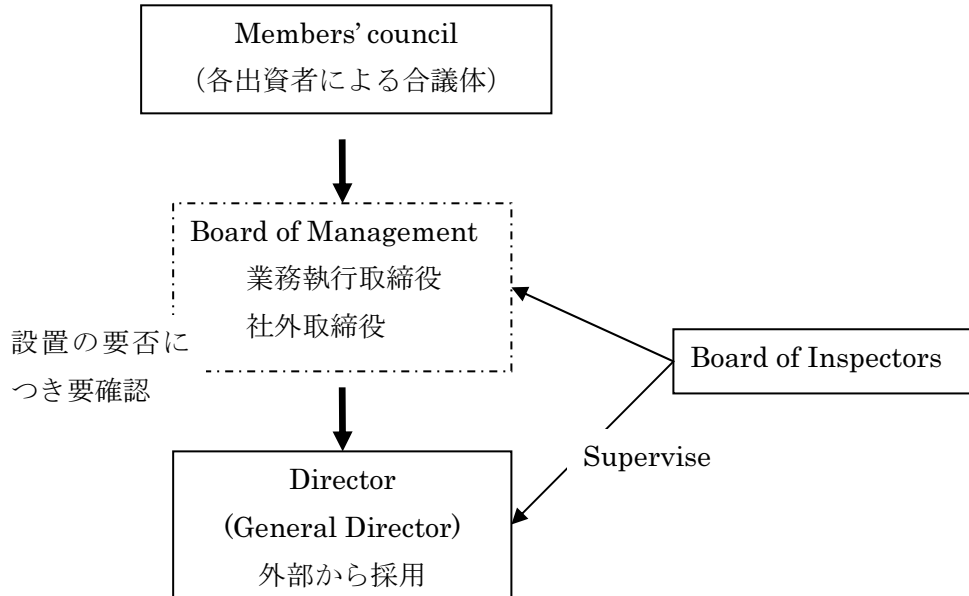
ベトナムにおける一般的な有限会社の経営体制は、株式会社の株主総会に相当する社員総会と、取締役による業務執行という2段階であり、株式会社では必要とされている経営会議は任意とされているが、旧ノンバンク法では設置が明記されていた。金融機関法では経営会議の設置を求める記述は無いとのことであるが、実際に会社を設立する場合には、中央銀行及び財務省に経営会議設置の有無について確認すべきと考えられる。

旧ノンバンク法	金融機関法 (記述が無い場合、通常の企業法の規定通りと想定)
Members' Council (社員総会。最重要事項のみを議決) Board of Management [経営会議。出資者の決定によるものを除く最高決定機関] Board of Inspection (監査役会) Director (General Director)取締役 (社長) ²⁶	Members' Council (社員総会、最高決定機関) Board of Inspection(監査役会) Director (General Director)取締役 (社長)
定款で他の定めがない場合、取締役 (社長) Director (General Director unless the charter provides otherwise)	社員総会会長又は取締役 (社長) Chairman of the Members' Council or Director (General Director)

実務面においては、設立当初の出資者が少数であることもあり、各出資者が重要な方向性や経営者の採用、巨額の投資などについて直接意見を交わすことは容易であると考えられ、さらに、マネジメントを担う取締役も少数であると考えられるため、経営会議の設置は必ずしも必要ではないと考えられる。但し、社外取締役として全ての株主から独立し、日々の運営を監視する役割を担う人物を採用する場合には制度としての経営会議を設置すべきである。

²⁶ 社長は、取締役が複数存在する場合に指名することが出来る

Project Finance Company のマネジメント体制



上記の体制は、他国における類似組織におけるマネジメント体制とも類似した機能を有している。4-4(a)で述べたインドネシアの IIF が設立間もないノンバンクであり、且つ、政府、複数の援助機関、民間金融機関（予定）を出資者に持つという意味で PFC と類似するが、インドネシアの法律に基づき設立された Limited Liability Company としては出資者の代表者から構成され組織運営を監督する Board of commissioners と日々の組織経営を担う Board of directors からなる経営体制を持つ。Board of commissioners には最大株主であるインドネシア政府が 2 名、ADB、DEG、IFC がそれぞれ 1 名ずつメンバーを指名しており、必要に応じて社外から Independent Commissioners の採用を検討することである。Board of directors は、4-4(a)で述べた会長、社長、CFO の 3 名から構成されている

(f) マネジメントの選定基準

国際機関や援助機関の出資によるインフラ向け機関として設立され、民間企業として運営されているインドネシアの IIF、PIDG による InfraCo の経営陣は外部から採用した人材によってなされているが、それら機関へのインタビュー及び書類調査によって、以下の共通項が見受けられた。

- ① 国際的金融機関や多国籍企業での勤務経験があり、出資者である国際機関及び援助機関と「共通言語で会話が可能である」

- ② 主たる活動地における業務経験を持つ（IIFでは「CFOは外国人でも良いが、CEOはインドネシア人が望ましい」との意見が国際機関からあったとのこと）

例として、IIFのCEOタスウィン氏の経歴は以下の通り（英文のまま記載）である。ドイツ銀行、シティバンク、バークレイズキャピタルに勤務し、地場銀行でも監査役を務めるなど、欧米の金融慣行に通じ、且つ、インドネシアのビジネス界にもつながりを持っていることが分かる。IIF設立に際しては、CEOを含む経営陣をスカウトするためにシンガポールのヘッドハンティング会社を雇用したとのことである。

Taswin Zakaria

Vice President of Deutsche Bank AG Jakarta from 1997 to 2001. Mr. Zakaria held several other positions at Citibank N.A. Jakarta, including Corporate Banking Unit from 1995 to 1997; Head of Institutional Remedial Management from 1994 to 1996, and as an Assistant Manager of Financial Analysis Unit from 1993 to 1997. He has been Commissioner of PT Bank Internasional Indonesia since December 16, 2003. He has been an Independent Commissioner of PT Jasa Angkasa Semesta Tbk since 2005. Mr. Zakaria was a Director at Barclays Capital Jakarta since 2001. He earned his BSBA in Accounting with Cum Laude (Honours) from Ohio State University in 1992.²⁷

さらに、昨年PIDGによって設立されたInfraCo Asiaの社長（Managing Director）であるSurender Singh氏も、AES（国際的独立発電業者）、メリルリンチ証券、インドのIDBI銀行での勤務経験があるとのことであり²⁸、かつInfraCo Asiaが主要市場と位置付けるインドの出身である。

ベトナムにおいては、インドネシアやインド以上に国際金融慣行とベトナム国内事情の両方に通じた人物が希少であると考えられるため、業務及び組織の立上を担える人材の確保できるか否かがPFC成功のカギを握ると考えられる。

(g) 資金調達方法（出資）

出資者の構成は当該機関の目的、業務遂行に必要な技術的、資金的リソースの確保等に影響を及ぼす重要事項である。「民間インフラプロジェクトファイナンスを開拓する」との重要であるが困難な政策目的を達成するに当たっては、その成功例であるインドIDFCと同様に中央政府、国際機関（IFC、ADB）、国内金融機関及び外国政府などが出資者として連れ、協力体制を内外にアピールする必要がある。本PFCの設立株主も、下記①で述べる金融機関法の規制に配慮しつつ、ベトナム政府（下記②で詳述）、援助機関（下

²⁷ businessweek.com , Executive Profile & Biography, Bank International Indonesia

²⁸ InfraCo Asia のウェブサイトより

記③で詳述)を中心に、ベトナムの主要金融機関(下記④で詳述)も含めて構成することが望ましい。同様の試みであるインドネシアの IIF においても、設立株主はインドネシア政府、国際機関(IFC、ADB)、他国援助機関(ドイツの DEG)であったが、内外金融機関からの出資も模索中とのことである。

ただし、現時点でベトナム政府による出資が了承されていないことから、ベトナム政府の出資無しに本件機関を設立することの可能性について下記⑤で検討したい。

① 金融機関法上の出資規制

金融機関法及び旧ノンバンク法は、外国人によるベトナム金融機関への出資に関し、以下の規制を課している。PFC へのベトナム政府、援助機関、ベトナム民間金融機関の構成を考える際には、これらの条件を勘案しなければならない。

- i. 合弁金融機関への複数出資者の最大数は「5名」とし、出資者一人当たり持ち分の上限は50% (金融機関法 70.1 条)
- ii. ベトナム金融機関の株主となる外国人は、「母国の法律に基づく金融機関」を含まなければならない (旧ノンバンク法 Decree81 1.3 条)
- iii. ベトナム企業を株主に含める際には、ベトナム株主の比率を51%以上にすることが必要であり、且つ、ベトナム株主の70% (最低でも全体の35.7%) はベトナム法上の金融機関でなければならない (旧ノンバンク法 Decree81 1.4 条)

② ベトナム政府による出資

現段階で同意は得られていないが、以下の理由からベトナム政府の出資は是非確保したいところである。

- i. 外国援助機関、国際機関、国内民間機関等を巻き込み、長期プロジェクトファイナンスを供与するという新業務の開拓を行う PFC の業務は、通常のノンバンク規制、監督の領域を大きくはみ出すものであり、ベトナム政府による様々な特例扱いを必要とする。計画投資省、財務省等が直接株主となることは、中央銀行その他の関係者に対し、大きな影響力を持つと考えられる。
- ii. PPP プロジェクトの組成に関する政策助言や民間投資家の PPP インフラへの投資に関する財務助言を行うにあたって、「政府の後ろ盾」は PFC の信用を大きく向上させることとなる。
- iii. 国際機関、他の援助機関に出資を呼び掛けるにあたって、ベトナム政府が PFC を必要と感じており、且つ、相応の人的、物的支援を行うとの意思表示としても、口頭又は文書による支援表明では不足と考えられる。ベトナム政府が PFC に出資し、社員総会に政府の代表が出席することは、対援助機関、国際機関向けのメッセージとしても重要である。

インドネシア IIF の例でも、インドネシア政府を借入人として世銀及び ADB

が IIF へ転貸資金をそれぞれ約 1 兆ルピア融資する約定がなされており、これも政府が深く関与することで得られた追加支援の例と言える。

PPP 制度の構築が進む中で、ベトナム政府が PFC の役割を再評価する可能性はあると考えられるため、今後も折に触れて計画投資省の PPP タスクフォース、財務省の関係部署等にコンタクトを継続すべきと思われる。

③ 国際機関、他の援助機関

前述の通り、PFC と同様の機関はインド (IDFC) 及びインドネシア (IIF) で設立されている為、最も有望な出資者候補は両案件ともに関与している国際金融公社 (IFC) 及びアジア開発銀行 (ADB) である。昨年設立されたインドネシア IIF に参加するドイツの援助機関 DEG も候補であるが、金融機関法による株主数上限 (5 名) に鑑み、IFC 及び ADB には劣後すると思われる。なお、USAID は出資機能を持たないが、PFC 及びその共同融資銀行へ債務保証を供与する予定である。

④ ベトナムの民間金融機関

設立当初のリスクの大きさに鑑みれば、純粋に収益を目的とした民間投資家から出資を得ることは困難であると考えられるが、IDFC のケースと同様に「市場を育成する責任を有する」、及び、「ベトナムにおける産業界とのパイプを提供する」との観点から国内の大手金融機関を加えることも有益であると考えられる。インドネシアの IIF でも、民間金融機関としての運営ノウハウ獲得の観点から内外の有力銀行を出資者として加えるべく交渉中とのことである。

2008 年 12 月に発表された世界銀行のレポート²⁹によれば、インフラ向け融資の大半が国営商業銀行から国営企業を経由して行われているとのことである。個々の銀行名は明らかにされていないが、電力、石油、石炭業界との繋がりの強い Vietcombank、BIDV、Incombank の 3 行による融資が大きいと考えられるため、この 3 行が候補になると考えらる。

加えて、金融機関法上の「ベトナム側出資者の 7 割は金融機関で無ければならない」との規制対応としても、国営商業銀行を含めることは有効である。本規制に関しては、政府出資をベトナム開発銀行を経由させることによって要件を満たす方法も考えられるが、立法の趣旨に鑑みれば国営商業銀行 1 行又は複数行で全出資額の 37.5%を満た

²⁹ Infrastructre Financing in Vietnam, The Evolving Role of Banks, Capital Markets, Infrastructure Funds, and PPPs, December 01, 2008, The World Bank

す方が望ましいと言えよう。

⑤ ベトナム政府を含めない株主構成

上記で述べてきたのが理想形として考えられる株主構成であるが、ベトナム政府が出資者とならないケースを想定したい。

まず、ベトナム政府の出資抜きに PFC の設立を考える場合には、他の援助機関から出資その他のサポートを得ることもより困難になることを認識しなければならない。第 5 章 a)でも述べた通り、「民間プロジェクトファイナンスの開拓者」としての PFC が行おうとする業務が失敗に終わるリスクは高いため、出資を行う援助機関からもホスト国政府の資金面を含む全面支援が要求される。又、ホスト国政府の出資は PFC の政策的優先順位を示すものとしても重要であり、「支援する」との言葉だけでは援助機関に出資を呼び掛けるに不十分である。本調査の過程でアジア開発銀行と行った議論の中でも、「インドでもインドネシアでもインフラ専門金融機関の設立にはホスト国政府がリーダーシップを発揮し、かつ、出資を含めたリスク負担を行った。PPP を取り巻く環境は引き続き不安定であり、ベトナム政府の出資は PFC が苦境に陥った際のバッファと想定出来るため、非常に重要である」との立場を崩さなかった。

援助機関からのサポートが限定的となるとの想定で、主要出資者として PFC の設立を担うことが可能と考えられるのは、内外の金融機関である。ベトナムの金融規制上、ノンバンクの主要株主は金融機関でなければならないことは述べたが、世銀グループ等の国際金融機関に代わって融資業務、資金調達に関するノウハウを PFC に提供するとの観点でも適任であると考えられる。本件調査においては、出資者候補となるべき金融機関に PFC への出資意向を聞くことは行っていないため、あくまで机上での検討であるが、内外金融機関の PFC 出資可能性について整理したい。

最初に、日本を含む外国金融機関が主導権をとって PFC を主導する可能性であるが、現時点でベトナム国内にプロジェクトファイナンスの担当者を常駐させている例が限定的であることに鑑みても、「インフラプロジェクトファイナンスの開拓者」としてのリスク負担を積極的に行うことは考えにくい。又、外国金融機関のベトナムでの活動が外資系企業との取引を中心としたものであり、現地企業や地方自治体とのつながりが弱いことも、業務の立ち上げに当たっての障害になると考えられる。

次に、上記④で述べたベトナムの主要金融機関であるが、「ベトナムにおけるプロジェクトファイナンスを育成する」との責務を有しているとの点ではベトナム政府に次ぐ位置にあると考えられるが、営利法人として運営されているため政策意義のみでは出資は正当化出来ない。又、これら金融機関は資金調達面でも案件発掘面でもベトナム国内で最も優位にあるため、JICA との合弁に参加することのメリットを如何に創出するかも

重要になる。PPP 市場の有望性及びプロジェクトファイナンスの分野で先導的立場をとることのメリット、さらに JICA とどのような協働が可能であるかに関し、候補となる金融機関と協議を行うことが必要である。

ベトナムの主要金融機関を株主として想定する場合、主導権を渡すことも覚悟すべきであろう。ベトナムにおいて金融業を行うに当たっての知識、利用可能なリソース、ネームバリューなどの面においてベトナム金融機関が外国からの投資家に優っていることは間違いなく、さらに株式の過半を有することから株主総会での発言力もある。複数金融機関に株式を分散し、単独の金融機関に主導権を渡さない方法も理論的にあり得るが、この場合は複数株主の意向に左右されて社内の意思決定が阻害されて業務が機能しなくなる可能性が大きく、又、そもそも自ら主導権を取れない事業に大きなリソースをコミットする金融機関が現れるか否かも疑問である。

インドやインドネシアのような「ベトナム政府と援助機関による会社」案を放棄する場合の次善策としては、「JICA の趣旨に賛同するベトナム主要金融機関によるインフラプロジェクトファイナンス事業を、少数株主としてサポートする」との形が現実的であると考えられる。

出資に代えてベトナム政府が外部に対して PFC に対する支援を示す対策としては、政府の重要人物を PFC の要職につける方法が考えられるが、この方法をとる場合 PFC の運営に政治的影響が及ぶ危険性もあり、注意深い検討が必要である。

(h) 資金調達方法（融資）

「長期のドン建て融資を提供する」とのミッションに鑑み、資金調達方法はベトナム国内における中長期の社債によることが望ましい。但し、5(b)②i で述べたようにベトナムにおける社債市場は非常に未発達であり、発行条件や発行規模について推計することは困難である。

複数の証券会社に対して行ったインタビューでも、「そもそも PFC の資産内容が明らかにならないければコメント出来ない」との答えが圧倒的であった。政府や国際機関などによる出資という信用力に加え、まずは出資金を原資として有望案件向け融資の実績を積み重ね、その上で有力証券会社を雇用して調達戦略を練る必要がある。

又、5(b)②で述べた通り、社債市場の整備、投資家としての保険業界、民間年金の育成、税制優遇付きのインフラ債券発行などにつき、ベトナム財務省及び援助機関による動きもフォローする必要がある。

(i) 資金提供を行う対象事業及び選定方法

PFC の設立目的が「インフラプロジェクトファイナンスを通じてベトナムにおける民間インフラ開発を促進すること」にあることから、対象事業は「経済合理性を持ち、債務返済能力を有するインフラ事業」(Commercially viable and bankable infrastructure projects)と定義付けられる。Bankable なインフラ事業とは、以下をすべてクリアする案件であると言える。

① プロジェクト完工リスク

計画期間内に、計画されたコストの範囲内で計画された性能の設備が完成すると合理的に判断出来ること。又、万が一完成出来ない場合にも、プロジェクトスポンサーによる債務保証やコントラクターによる賠償義務(及びそれを担保するパフォーマンスボンド)によって貸し手に損失が及ばないような契約があること。

② キャッシュフローに関するリスク

道路の交通量等の需要予測が保守的になされているか、費用見通しが適切になされているか等、専門家による詳細調査がなされているか。需要予測が困難な場合には、需要家(売電契約の相手方である電力会社や、道路の恩恵を受ける地域の自治体等)によって債務の返済に最低限必要な支払い保証がなされているか等。

③ 操業リスク

効率的な運営(操業、メンテナンス)を行いうる実績ある主体が確保されているか。万が一の事故に備えた保険契約等は整備されているか。

④ スポンサーリスク

プロジェクトスポンサーは、政府、近隣住民、コントラクター、銀行団等との利害調整を着実に遂行し、且つ、プロジェクト完成、債務の返済まで健全な財務体力を維持出来るか。

⑤ 政策変更リスク

インフラプロジェクトは政策の変更による影響を強く受けるため、プロジェクトに不利な政策変更が起こらないと考えられるか。例えば、有料道路完成後に契約で認められた利用料金の増額を認めない、あるいは、値下げを命令するなどは実際に頻発した例である。さらに、政権交代後に前政権が約束した補助金を交付しない例もあり、最悪なケースとしては資産が不当な条件で収用されることもある。

投融资の対象は、Bankable であれば PPP Pilot 法に沿ったものである必要は無く、BOT 法に準拠している必要性も無いと考えられる。但し、上記の政策変更リスクへの対応と

して、法律に変わる裏付けが必要となり、例えばベトナムにおける発電案件で見られるような売電契約の履行及び外貨交換を国際機関や輸出信用機関など他のソブリン主体を巻き込んだ形でベトナム政府に約束させる等の措置が必要となる。

ベトナムにおける現状に鑑み、**Bankable** なプロジェクトが短期間に多数実現されるかは疑問であるため、PFC が実現可能性の高い分野、プロジェクトスポンサーを特定し、積極的に助言を与えることで少しずつ **Bankable** なプロジェクトを生みだしてゆくことが必要である。当面必要なのは「多くあるプロジェクトから良い案件を選ぶ選定基準」では無く、「取り組み可能な案件を判断する足切り基準」であって、後述する「リスク」と「収益性」の二つの観点から検討されなければならない。

なお、出資を行う場合でも PFC の金融投資家としての側面から出資は 30%程度を上限に定めるべきであり、事業者自身に過半の出資を残して事業に対する責任を明確にすべきと考えられる。

投融資対象案件の最低収益率は、PFC の調達金利、銀行預金等他の運用手段との比較でプロジェクトのリスクに見合った利鞘を確保し、かつ、事業収益の下振れに備えた余剰を確保すべきと考えられるが、インフレ率及び金利が大きく変動するベトナムにおいて具体的な数字を想定することは困難である。PPP パイロットプロジェクトの選定が進み、具体的な案件の条件が見えてきた時点で、計画投資省が想定する PPP インフラプロジェクトの適正利益率と、PFC の想定調達金利及び運営資金に照らし、現実的な計画を立案すべきと考えられる。

投融資対象事業の想定規模についても具体的な案件が見えていない中で明確な想定は困難であるが、下記 (o) で行った収支計算においては、一件当たりの融資額を 3 千万ドルと想定した。PFC は単独でプロジェクトの融資部分を全て供給するのではなく、5 行程度で分割するとして借り入れ部分が 1 億 5 千万ドル、自己資本部分が全体の 25%だとするとプロジェクト総額は 2 億ドルとなる。当該金額の妥当性についても、上記の最低収益率と同様、パイロットプロジェクトが見えてきた段階で再検証する必要がある。

(j) 案件形成

民間金融機関が行っているように、関係官庁、プロジェクトスポンサー候補と緊密な連絡を取り、実現可能性の高いプロジェクトを早期に捕捉して財務助言を提供するなどすべきである。

(k) 資金提供を判断する委員会等の有無

6(e) マネジメント体制で述べた通り、ノンバンクにおける資金提供は日常業務の一環であり、経営会議又は取締役が判断すべきことである。しかしながら、PPP に関する制度から作り始めているベトナムにおいては、どのような案件が投融資対象としてふさわしいか、出資者間及び経営陣の間で共通イメージを持つことが難しい立ち上げ期においては、個別案件が出てくる毎に出資者の代表と経営陣が意見交換し、出資者に拒否権を持たせるような投融資委員会の設置を検討すべきである。

(I) リスク及びリスクマネジメント方法

ノンバンクとして PFC が直面する最大のリスクは実行したプロジェクトファイナンスローンが貸し倒れる信用リスクであるが、この他にも、流動性リスク、オペレーションリスク、腐敗リスク、レピュテーションリスク等が考えられる。

① 信用リスク

信用リスクをマネージする方法としては、(i)で述べた諸リスクに関する審査を案件取り組み時に厳しく査定することに加え、過去に実行したローンの借り手の状況を定期的にモニターし、危険な兆候を発見した場合には速やかに改善策を助言する等の施策が必要となる。

② 流動性リスク

流動性リスクは、融資の実行や運営経費の支払いに必要な手元現金が不足するリスクである。インフラ專業の長期融資ノンバンクである PFC は、短期貸付が多い商業銀行や一般のノンバンクに比べると資金収支の予測が立てやすいが、予定していた社債が発行できなくなるリスク、銀行からのつなぎ融資が受けられなくなる等のリスクを想定し、余裕をもった資金繰りや銀行からのバックアップライン確保等を心がけるべきである。

③ オペレーションリスク

金融機関の業務においては、事務ミスによる資金未達、不正による横領、顧客情報の流出等様々なリスクが存在する。これらのリスクを軽減するため、マニュアルの整備による事務レベルの向上、独立した管理部門と経理部門を設けることによる相互牽制、業務システムの整備による情報管理等を徹底することが必要である。

④ 腐敗リスク

ベトナムにおいて最も大きなリスクが腐敗リスクである。特定の利害関係者から持ち込まれた案件に対し、適切な審査を経ないで投融資がなされることは防止されなければならないが、又、共産党や政府からの圧力に対してもこれを牽制する仕組みが必要であ

る。この点でも、国際金融機関等での業務経験を有する有能な CEO を獲得することが重要であり、又、6 (k) にて述べた出資者代表を交えた投融資委員会も有効であると考えられる。

IDFC 及び IIF においては、「政府の支援」を確保しつつ、「政府による経営への関与を通じた腐敗の防止」の観点から、政府持分を株主中最大としつつも過半数としなかったとのことである。

⑤ レピュテーションリスク

ノンバンクという金融機関である以上、信用は最も大事な資産である。ズサンな審査による大規模損失、投融資案件による環境破壊、従業員へのハラスメント、上述の腐敗など、単に「合法である」に留まらない国際水準の規範をもった組織を作りあげることが必要である。

(m) 資金回収における戦略

資金回収における戦略とは、大きく①個別投融資案件の回収と②PFC に対する出資金の回収に分けて考えられる。

① 個別投融資案件の回収について

PFC の主たる業務であるプロジェクトファイナンスローンにおいては、利息及び元本の返済方法について融資契約に明記されるため、回収方法の問題は生じない。しかしながら、PFC は必要に応じて出資も行う想定となっているため、出資金の回収については留意が必要である。

インフラプロジェクトは 20 年といった超長期のコンセッション期間を通じて得られる収入で出資を回収し、利益を得る長期投資であり、コンセッションの途中で資金を回収するためには自らの出資分を第三者に買い取ってもらう必要がある。この場合、有望な候補としては当該プロジェクトの他の出資者であるが、それが不可能な場合は他の投資家を探すこととなる。未上場株式の流動性は元々低い、インフラプロジェクト会社の株式は特殊であるため、コンセッション期間中の売却はさらに困難であるため、出資時点で途中売却を求めるのであれば、プロジェクトの主要スポンサーに対するプットオプションを確保する等の施策が重要である。

② PFC に対する出資金の回収について

PFC のモデルであるインドの IDFC は設立から 9 年後の 2005 年に株式を上場し、設立株主に出資金を回収する機会を提供した。又、昨年設立されたインドネシアの IIF についても、ADB 及び IFC は株式上場を出資金回収の重要な手段と位置付けている。

一方、6(b)で述べた通り、ベトナムにおいては外国人の出資をもって設立された金融機関を株式会社とすることは出来ないため、株式上場という選択肢は取りえない。出資から一定期間ののちに資金を回収することは IFC、ADB 等の国際機関にとっても必要なことであり、「組織設立から一定期間を経過、又は、業容が一定規模に拡大した場合には、ベトナム金融機関出資者へのプットオプションを事前に獲得する」等の工夫が必要である。当該金融機関が PFC を 100%子会社としてグループ内にとどめ置く選択肢に加え、外国人持ち分を全てベトナム金融機関である出資者に譲渡すれば PFC を株式会社へ転換し、上場して自らの持ち分を放出することも可能になる。

(n) 遵守される環境社会配慮基準

インドネシアの IIF の設立に際しては、投融資対象案件が環境及び社会に与える影響について世界銀行及び IFC と同等の基準を持って審査し、軽減し、モニターすることが求められている。IFC の環境基準は、民間の国際金融機関がプロジェクトファイナンスを行う際に遵守すべきイクエーター原則のモデルともなっており、国際機関及び援助機関の出資を受ける主体として PFC もこれを遵守すべきであると考えられる。

さらに、国際協力機構を含むその他の援助機関の出資者もそれぞれの環境社会基準を有していることから、協議の上でそれらの基準もマニュアルに反映すべきである。

(o) 妥当とされる資金規模の特定

ベトナムにおいて今現在 Bankable なプロジェクトは多く存在しないことから、ニーズから逆算して資金規模を特定することは困難である。この為、類似事例の規模と運営経費から逆算した規模という二つの方法で数字を求めてみたい。

① 類似事例

PPP インフラ整備が未発達な市場で、あえてその振興のために専門ノンバンクや融資ファンドを設立する例は様々な国際機関及び援助機関によって実施されている。ここでは、比較的新しい事例としてインドネシア政府、世銀グループ(世銀及び IFC)、ADB 及びドイツの援助機関 DEG の出資で昨年 8 月に設立された IIF と、PIDG³⁰とその他欧州援助機関、南アフリカの商業銀行によって設立された Emerging Africa Infrastructure Fund.(EAIF)を取り上げたい。

³⁰途上国での民間によるインフラ開発を支援する欧州 6 カ国(英国、オランダ、オーストリア、アイルランド、スイス、スウェーデン)の共同組織 Private Infrastructure Development Group

i. PT Indonesia Infrastructure Finance (IIF)の資金規模

4-4(a)で述べた通り、IIFの当初資本金は1兆6千億ルピアであり、これに加えて世銀及びADBがそれぞれ\$1億ドルの劣後ローンを供与する予定となっているが、これをまとめると下表のようになる。

Capitalization of PT IIF³¹

		Rp Billion	USD million	Equity Share	Total Share
Equity	Government of Indonesia (GoI)	600	67	37.5%	17.7%
	ADB	400	45	25.0%	11.8%
	IFC	400	45	25.0%	11.8%
	DEG	200	22	12.5%	5.9%
	Total	1,600	179	100.0%	
Sub Debt via GoI	ADB		100		26.4%
	World Bank		100		26.4%
	Total		200		
Total Capitalization			379		100.0%

USD1=Rp8,937(as of August 9, 2010. Dara from Bloomberg)

この表を見るとADB及び世銀グループが出資金の半分、総資金の76.4%を支出していることが分かり、本件がこの2機関に大きく依存していることが分かる。但し、当初計画ではADB及びIFCからの出資はそれぞれ20%を上限とすることが予定されていたとのことであり、出資比率の引き上げは興味を示していた他の援助機関が出資金額の大きさ(DEGと同様と仮定して約USD20mm)から断念し、且つ、インドネシア政府も当初予定の40%をやや下回る出資となった為に止むを得ず引き上げたとの情報もあった。

劣後ローンはドル建てでインドネシア政府に対してなされ、これをインドネシア政府がルピアに転換してIIFへ転貸する形をとっており、返済義務、為替リスクはインドネシア政府が負っている。

ii. Emerging Africa Infrastructure Fund.(EAIF)

EAIFはアフリカのサブサハラ地域における民間のインフラ開発プロジェクトに

³¹ 報道資料、ヒアリングからの情報を総合して作成

ドルまたはユーロ建ての長期融資を行うため、PIDG³²による出資、と欧州及び南アフリカの開発機関による劣後ローン、国際機関、欧州開発機関、英国 Barclays Bank(南アに銀行子会社あり)、南アフリカの大手商業銀行 Standard Bank 及び国際機関 (IFC 及びアフリカ開発銀行) によるシニアローンが供与されている。

Capitalization of EAIF³³

		USD million	Total Share
Equity (PIDG)	UK(DFID)	150.0	25.0%
	Swiss (SECO)		
	Netherland (DGIS)		
	Sweden (Sida)		
	Austria (ADA)		
	Ireland (IrishAID)		
	Germany (KfW)		
Sub Debt	Netherland (FMO)	40.0	6.7%
	South Africa (DBSA)	25.0	4.2%
	Germany (DEG)	20.0	3.3%
	Sub Total	85.0	14.2%
Senior Debt	Barclays Bank plc	100.0	16.7%
	Germany (KfW)	95.0	15.8%
	Standard Bank	87.5	14.6%
	IFC	36.3	6.0%
	AfDB	31.3	5.2%
	OeEB	15.0	2.5%
	Sub Total	365.0	60.8%
Total		600.0	100.0%

USD1=Rp8,937(as of August 9, 2010. Bloomberg)

EAIF は、欧州各国の協調及びアフリカに大きなプレゼンスを持つ商業銀行の大きなコミットメントによって組成されている。欧州各国の関与の強さは、ドイツや

³²途上国での民間によるインフラ開発を支援する欧州6カ国(英国、オランダ、オーストリア、アイルランド、スイス、スウェーデン)の共同組織 Private Infrastructure Development Group

³³ EAIF のウェブサイトより

オランダのように出資に加えて出資機関とは別の機関を利用した融資も行っている点にも表れている。又、ファンドの運用は南アフリカのスタンダードバンクを中心とした組成された **Frontier Markets Fund Managers Limited** によって商業銀行基準で経営されており、この点が援助機関、国際機関に加えて商業銀行が参加することを可能にしている。なお、PIDG グループ内の出資割合は不明であるが、均等と仮定した場合の一カ国あたり出資額は\$2,140 万となり、上述のインドネシア IIF に対する DEG の出資額とほぼ同等となる。

② 運営経費の面からの考察

金融規制を順守し、適切にリスク管理を行いながらノンバンクを運営するには相応の組織を維持することが求められ、又、6(e)で述べたような国際機関から信頼を勝ち取る経営陣を雇用するにも相応の費用がかかる。現在のベトナム金融業界における給与レベル、ハノイ及びホーチミンにおけるオフィスその他の業務遂行費用のヒアリングに基づいて作成した運営経費の見込みが付表 1 であり、加えて最も大きな支出である人件費については付表 2 に内訳を記載した。これによれば、初年度の総運営経費は\$230 万強と考えられ、これがインフレ及び業容拡大に伴って増加する。

この費用を賄う為に必要とされる利息収入は、PFC の設立当初は資本金を持って融資するために利息全額が PFC の収益になると想定すれば、\$1,500 万の融資に 15.5%の利息を課すことで実現可能である。ただし、この 15.5%という数字は、法人向け 5 年定期預金でさえ 12%の金利を支払っている³⁴現時点（2011 年 3 月）では保守的と言える（実勢は 20%）が、金利変動の激しいベトナムにおいて長期の平均的金利水準を推定することは困難であるため、あくまで参考としての数字である。

運営経費を賄うのみでは出資者に配当を支払うことが出来ないため、融資の金額を積み増してゆくことが必要となる。さらに、設立から 3 年程度は融資すべき案件が存在しないため啓蒙活動に費やさざるを得ないことからこの間は操業赤字が継続する（保守的な収支予想の為アドバイザー収入は想定しない場合）との前提に立てば、これを穴埋めする収益も必要となる。これらを踏まえて作成した設立から 9 年間の収支予想が下表である。

³⁴ Vietcombank ウェブサイトによる法人向け預金金利より

PFC収支見込み

(百万ドル)

設立後経過年数	1	2	3	4	5	6	7	8	9
利稍収入				2	9	15	16	18	19
設立・運営費用	3	2	2	3	3	3	4	4	4
税引前収支	(3)	(2)	(2)	(0)	6	12	13	14	15
累積利益(費用)	(3)	(5)	(8)	(8)	(1)	10	23	37	51
融資残高				30	90	208	320	423	516
その他資産(現金等)	1	1	1	20	10	20	30	40	50
総資産	1	1	1	50	100	228	350	463	566
								-	-
資本金	4	9	9	50	100	100	100	100	100
借入金						128	250	363	466
運営費用／融資残高				9%	3%	2%	1%	1%	1%
資本収益率	-74%	-26%	-29%	-1%	6%	12%	13%	14%	15%
自己資本比率						48%	31%	24%	19%
貸出利息	15.5%	15.5%	15.5%	15.5%	15.5%	15.5%	15.5%	15.5%	15.5%
借入利息						13.0%	13.0%	13.0%	13.0%

この想定によれば、単年度で出資金に対する一般的なりターンである 15%に近付くのは融資残高が\$5 億超となる必要がある。

なお、出資金は総額\$1 億と想定したが、これは IIF 及び EAIF における援助機関（世銀、ADB 以外）の平均出資金 2000 万ドルに、ベトナム金融機関法上の出資者数 5 名を掛けた金額である。

資金規模は①i) ii)で述べた IIF（約 3.8 億ドル）、EAIF(6 億ドル)に鑑み 5 億ドルと想定し、その内 1 億ドルを出資金とするとの想定が妥当であると考えられる。但し、この数字はあくまで目安であり、他の株主の出資余力、目標リターン、想定されるプロジェクトの規模によって大きく左右されるため、出資者予定者と協議の上で決定することが求められる。

(p) 手続き及びスケジュール

今後の手続きとしては、まず共同出資者予定者を確保することである。6 (g) で述べたベトナム政府、大手金融機関（Vietcombank, BIDV, Incombank）、ADB、IFC と早急に協議を開始すべきである。

設立スケジュールであるが、PFC の目的が「今現在は存在しないインフラプロジェクトファイナンス市場を開拓する」であることに鑑み、「いつ設立すべきである」との客観的な指標は存在しない。早期に設立すれば政府機関やスポンサー候補となる企業へのアドバイザ

リーを通じて PPP 制度の確立に貢献することは出来るが、主たる収入である利息収入を得る為の融資実行までの準備期間が長期化し、操業赤字が拡大することとなる。一方、PFC の設立が遅くなれば、PPP 制度の確立を遅らせるリスクもある。「最適なタイミング」については、各出資者による多面的な検討に基づいた判断が必要とされる。

出資者候補との交渉も長期にわたって粘り強く続けることが求められると予想され、又、この間に MPI 主導で行われている PPP 制度作りも一進一退を繰り返すと考えられる。変化する環境、それに応じた出資候補者の考え方の変化に応じ、PFC の機能、設立時期、規模等について意見を集約化することが重要である。

外国金融機関が通常の手続きに則ってベトナムにおけるノンバンク子会社設立を行う場合であっても、各省庁からの認可取得等で設立には一年以上を要するとのことであり、関係当局との折衝を早急に進めるべきであるが、株主構成が明確にならなければ議論を始めることができない。2012 年末の設立を目指すのであれば、2011 年秋までには株主構成を固めたうえで設立準備に関わるスケジュール及び費用負担について合意し、準備に必要な法律事務所、会計事務所等の専門家を雇用の上、当該専門家に設立の詳細計画策定を依頼する必要がある。本章 i)⑤で述べた通り、ベトナム政府に代えてベトナム主要金融機関を株主とするのであれば、そのような金融機関を特定するための訪問を早急を開始すべきと考えられる。

Operation cost

付表 1

No	Content	Increasing rate	1st year	2nd year
A	General management & administrative expenses		<u>2,318,551</u>	<u>2,533,834</u>
1	Salary cost	0.10	1,486,127	1,634,739
2	Depreciation for fixed assets and tools		58,227	58,227
3	Establishment cost allocated		102,667	102,667
4	Office rental expense			
	-Head office (200m2 grade A in Hanoi - 45\$/m2)	0.10	108,000	118,800
	-Branch office (100 m2 grade A in HCMC 50\$/m2)	0.10	60,000	66,000
5	Office stationary	0.10	12,000	13,200
6	Telephone and internet cost	0.10	24,000	26,400
7	Water and electricity expenses	0.10	24,000	26,400
8	Entertainment expense	0.10	60,000	66,000
9	Advertisement and PR expenses	0.10	60,000	66,000
10	Audit expense	0.10	12,000	13,200
11	Legal consultant expense (retainer)	0.10	24,000	26,400
12	Training cost	0.10	36,000	39,600
13	Business travelling expense	0.10	90,000	99,000
14	Hotel	0.10	60,000	66,000
15	Other services rendered by outsiders	0.10	24,000	26,400
16	Taxes, fees and charges	0.10	10,000	11,000
17	Contingent expenses (3% of all of the above)		67,531	73,801
B	Operational Expenses			
1	Bond issuance consultancy	1% of the total value of bond		
2	Bond issuance guarantee expenses	2% of the total value of bond		
2	Interest expenses for VND bond	Deposit interest plus 4% - 5%		

(単位 : USD)

付表 2

No	Content	N.o of staffs	Monthly salary	SI, HI, UI	Monthly salary cost	N.o of months	Yearly Increasing rate	Total salary cost		
								1st year	2nd year	3rd year
1	2	3	4	5	6	7	8	9	10	11
	TOTAL	30	99,100	8,037	111,244			1,486,127	1,634,739	1,798,213
A	Head Office	21	81,900	6,727	92,734			1,264,002	1,390,402	1,529,442
A.1	Board of Director - Non executive									
	Chairman of BOM (Vietnamese)	1	3,000	153	3,153	14	10%	43,840	48,224	53,046
	Member of BoM (Expatriate)	1	3,000	300	3,300	14	10%	45,600	50,160	55,176
	Member of BoM (Vietnamese)	1	2,500	153	2,653	14	10%	36,840	40,524	44,576
A.2	Board of Directors- executive									
	General Director - CEO (expatriate)	1	20,000	2,000	22,000	14	10%	304,000	334,400	367,840
	D.General Director (Vietnamese)	1	10,000	153	10,153	14	10%	141,840	156,024	171,626
A.3	Investment Department									
	Chief Investment Officer (expatriate)	1	12,000	1,200	13,200	14	10%	182,400	200,640	220,704
	Senior Investment Officer (expatriate)	1	7,000	700	7,700	14	10%	106,400	117,040	128,744
	Investment Officer (Vietnamese)	2	3,000	153	6,307	14	10%	81,679	89,847	98,832
	Investment Analyst (Vietnamese)	1	1,600	153	1,753	14	10%	24,240	26,664	29,330
A.4	Legal Department									
	Lawyer (Vietnamese)	1	2,500	153	2,653	14	10%	36,840	40,524	44,576
A.5	Finance Department									
	Chief Financial Officer (Vietnamese)	1	5,000	153	5,153	14	10%	71,840	79,024	86,926
	Deputy Chief Finance Officer (Expatriate)	1	4,500	450	4,950	14	10%	68,400	75,240	82,764
	Financial Specialist (Vietnamese)	1	1,500	153	1,653	14	10%	22,840	25,124	27,636
A.6	Administrative and HR Department									
	Head of Division	1	1,500	153	1,653	14	10%	19,840	21,824	24,006
	Secretary	1	800	153	953	14	10%	11,440	12,584	13,842
	IT expert	1	800	153	953	14	10%	11,440	12,584	13,842
	Driver	1	400	84	484	14	10%	5,808	6,389	7,028
A.7	Accounting Department									
	Chief Accountant	1	2,000	153	2,153	14	10%	25,840	28,424	31,266
	Accountant	2	800	153	1,907	14	10%	22,879	25,167	27,684
B	Branch	9	17,200	1,310	18,510			222,126	244,337	268,771
E.1	Board of Director									
	Branch Director (Vietnamese)	1	4,500	153	4,653	14	10%	55,840	61,424	67,566
E.2	Investment Unit									
	Senior Investment Officer - Head(Vietn	1	3,500	153	3,653	14	10%	43,840	48,224	53,046
	Investment Officer	1	2,200	153	2,353	14	10%	28,240	31,064	34,170
	Investment Analyst	1	1,500	153	1,653	14	10%	19,840	21,824	24,006
E.3	Accounting Department									
	Chief Accountant	1	2,000	153	2,153	14	10%	25,840	28,424	31,266
	Accountant	1	800	153	953	14	10%	11,440	12,584	13,842
E.4	Administrative Unit									
	Head of Division	1	1,500	153	1,653	14	10%	19,840	21,824	24,006
	Secretary	1	800	153	953	14	10%	11,440	12,584	13,842
	Driver	1	400	84	484	14	10%	5,808	6,389	7,028

Note: (*) Increasing rate for yearly salary fund is 10% compare with previous year.
Insurance and other benefit of expatriate is assumed to be 10% of the monthly salary

(単位 : USD)

Appendix 1

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

No. 108/2009/ND-CP

Hanoi, November 27, 2009

DECREE

ON INVESTMENT IN THE FORM OF BUILD-OPERATE-TRANSFER,
BUILD-TRANSFER-OPERATE OR BUILD-TRANSFER CONTRACT

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Investment Law;

Pursuant to the November 26, 2003 Construction Law;

Pursuant to the November 29, 2005 Enterprise Law;

*Pursuant to the June 19, 2009 Law Amending and Supplementing a Number of Articles of
the Laws concerning capital construction investment;*

At the proposal of the Minister of Planning and Investment;

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1. Scope and subjects of regulation

1. This Decree provides for investment domains, conditions, order, procedures and incentives; and rights and obligations of parties to build-operate-transfer, build-transfer-operate and build-transfer contracts.

The Ministry of Planning and Investment shall, on a case-by-case basis, submit other project contracts of similar forms to the Prime Minister for consideration and decision.

2. This Decree applies to investors, state agencies competent to sign and perform project contracts, and agencies, organizations, individuals and enterprises involved in project implementation as provided for in this Decree.

Article 2. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Build-operate-transfer (BOT) contract means a contract signed between a competent state agency and an investor to build and operate an infrastructure facility in a specified duration. Upon the expiration of this duration, the investor shall transfer without compensation such facility to the Vietnamese State.

2. Build-transfer-operate (BTO) contract means a contract signed between a competent state agency and an investor to build an infrastructure facility. After completely building this infrastructure facility, the investor shall transfer it to the Vietnamese State. The Government will grant the investor the right to operate that facility for a specified duration to recover investment capital and earn profits.

3. Build-transfer (BT) contract means a contract signed between a competent state agency and an investor to build an infrastructure facility. After completely building this infrastructure facility, the investor shall transfer it to the Vietnamese State. The Government will create conditions for the investor to implement other projects for recovering investment capital and earning profits or shall make payments to the investor as agreed in the BT contract.

4. Project means the one to be implemented under a BOT, BTO or BT contract. Projects include national important projects and other projects classified into groups A, B and C under the construction law.

5. Another/other projects means a different project or projects which a competent state agency assigns to an investor for implementation under the terms agreed in the project contract.

6. Project contract means a BOT, BTO or BT contract as defined respectively in Clause 1, 2 or 3 of this Article and attached documents.

7. Investors include organizations and individuals defined in the Investment Law.

8. BOT, BTO or BT enterprise (below collectively referred to as project enterprise) means an enterprise established by an investor to design, build, operate and manage project works and implement other projects.

9. Feasibility study report (work construction investment project) means a combination of proposals relating to the contribution of capital for designing, building, operating and managing infrastructure facilities in the form of BOT, BTO or BT contract.

10. Infrastructure facilities means facilities encouraged for construction specified in Article 4 of this Decree.

11. Project work means a BOT, BTO or BT work.

Article 3. State agencies competent to sign and perform project contracts

1. State agencies competent to sign and perform project contracts include ministries, ministerial-level agencies, government-attached agencies and People's Committees of provinces or centrally run cities (below collectively referred to as ministries, branches and provincial-level People's Committees).

2. Based on their specific functions, tasks, powers and management conditions, ministries, branches and provincial-level People's Committees may authorize their attached agencies to sign and perform contracts of group-B and group-C projects.

3. State agency competent to sign and perform a project contract is a party to the project contract and has the rights, obligations and responsibilities as agreed with the investor in the project contract.

4. Depending on the characteristics and size of a project, a competent state agency may form a full-time section or designate a professional agency under its management to act as the focal point in exercising its rights and fulfilling its obligations indicated in the project contract but shall, in all cases, take total responsibility for the obligations committed in the project contract.

Article 4. Investment domains

1. The Government encourages the implementation of projects to build, operate and manage new infrastructure facilities or to improve, expand, modernize, operate and manage existing works in the following domains:

a/ Roads, road bridges, road tunnels and ferry landings;

b/ Railways, railway bridges and railway tunnels;

c/ Airports, seaports and river ports;

d/ Clean water supply systems; water drainage systems; and wastewater and waste collection and treatment systems;

e/ Power plants and power transmission lines;

f/ Other infrastructure facilities as decided by the Prime Minister.

2. For works specified at Point f, Clause 1 of this Article, ministries, branches and provincial-level People's Committees shall collect written opinions of concerned ministries, branches and localities and submit them to the Prime Minister for consideration and decision on a case-by-case basis.

Article 5. Capital sources for project implementation

1. Investors or project enterprises shall raise by themselves capital sources for project implementation as agreed in project contracts.

2. For a project capitalized at up to VND 1.5 trillion, the project enterprise's equity must not be lower than 15% of the project's total investment capital.

3. For a project capitalized at over VND 1.5 trillion, the project enterprise's equity shall be determined on the partially progressive principle below:

a/ For the investment capital portion of up to VND 1.5 trillion, the project enterprise's equity must not be lower than 15% of this capital portion;

b/ For the investment capital portion of over VND 1.5 trillion, the project enterprise's equity must not be lower than 10% of this capital portion.

4. Other projects must satisfy the equity requirement (if any) under law.

Article 6. Use of state capital for project implementation

1. The total state capital for implementation of a project must not exceed 49% of the total investment capital of that project.

2. For projects to be implemented to meet urgent needs for the use of infrastructure facilities and other important projects, ministries, branches and provincial-level People's Committees shall consider and decide on the use of state budget capital for building auxiliary works, organizing compensation, ground clearance and resettlement or performing other jobs to support project implementation.

3. Capital sources for supporting the implementation of a project specified in Clause 2 of this Article will not be included in the total investment capital of that project and shall be managed and used under regulations applicable to state-funded investment projects.

Article 7. Inter-branch working parties

1. Based on project negotiation and implementation requirements, a competent state agency shall set up an inter-branch working party to assist in project negotiation and implementation (below referred to as inter-branch working party). Such a party consists of:

a/ Some members representing the competent state agency;

b/ Representatives of central and local agencies in the locality where the project is to be implemented or which are involved in the project;

c/ Some independent legal, technical and financial experts as decided by the competent state agency.

2. Tasks of an inter-branch working party:

a/ To join in negotiating the project contract and assist the competent state agency in performing the tasks defined in this Decree;

b/ To join in solving problems arising from the project implementation;

c/ To perform other tasks at the request of the competent state agency.

3. The working duration of an inter-branch working party shall be decided by the competent state agency, depending on the project implementation requirements.

Article 8. Investment preparation expenses and tasks and powers of competent state agencies

1. Expenses for making and announcing lists of projects and selecting investors and other expenses relating to the performance of powers and responsibilities of competent state agencies shall be allocated from the state budget, based on approved cost estimates.

2. Expenses for formulating and appraising project feasibility study reports or project proposals, including expenses relating to the preparation of other projects (excluding project proposals made by investors under Article 11 of this Decree) shall be allocated from the state budget and other revenue sources (if any).

3. Depending on the characteristics and size of a project, the investor selected to implement the project shall pay project preparation expenses specified in Clause 2 of this Article to the competent state agency.

Chapter II

DRAWING UP AND ANNOUNCEMENT OF LISTS OF PROJECTS

Article 9. Making of lists of projects

1. Based on socio-economic development plannings and plans in each period and pursuant to

Article 4 of this Decree, ministries, branches and provincial-level People's Committees shall make lists of BOT, BTO and BT projects of branches and localities (below referred to as lists of projects).

2. For each project, a list of projects must contain the following principal details:

a/ Name of the project;

b/ Objectives of the project;

c/ Expected location for implementation of the project and other projects (if any);

d/ Summarized major technical parameters and estimated total investment capital for the project implementation;

e/ Name, address, telephone number and fax number of the state agency competent to sign and perform the project contract.

3. Depending on objectives, characteristics and location of each project on the list of projects, ministries, branches and provincial-level People's Committees shall send the list of projects to concerned ministries, branches and localities for opinion.

4. A written request for opinions of the agencies defined in Clause 3 of this Article must explain the objectives, location, designed capacity, estimated investment capital, and essential technical and financial requirements of each project on the list of projects.

5. Based on their functions, tasks and powers defined by law, within 30 working days after receiving a list of projects, concerned ministries, branches and localities shall give written opinions on the issues specified in Clause 4 of this Article and other issues.

6. An announced list of projects may be modified or supplemented in case of any modifications in branch or local socio-economic development plannings or plans or in a project on the list.

Article 10. Announcement of lists of projects

1. In January every year, ministries, branches and provincial-level People's Committees shall publish lists of projects on their websites and the Bidding Newspaper in 3 consecutive issues. The announced list of projects must contain the principal details specified in Clause 2, Article 9 of this Decree.

2. The minimum time limit for an investor to select and register to implement a project with a competent state agency is 30 working days from the date of the last publication of the list of projects under Clause 1 of this Article.

3. Upon the expiration of the time limit specified in Clause 2 of this Article, the competent state agency shall publish the list of investors that have registered in writing to implement projects on the Bidding Newspaper and the websites of ministries, branches and localities.

Article 11. Projects proposed by investors

1. Investors may request implementation of projects outside the announced list of projects and shall make and send project proposals to ministries, branches and provincial-level People's Committees for approval.

2. A project proposal must contain the details specified in Clause 2 of Article 12.

3. A dossier of request for approval of a project proposal comprises:

a/ A written request for approval;

b/ A document evidencing the investor's legal status and financial and technical capacity;

c/ A written introduction of the financial capacity and experience of implementing similar projects (if any);

d/ Other documents necessary for explaining the project proposal.

4. Ministries, branches and provincial-level People's Committees shall receive project proposals falling within their functions, tasks and powers and consider and approve them under Clauses 3, 4 and 5, Article 9 of this Decree.

For proposals of projects not yet included in branch development plannings, ministries, branches and provincial-level People's Committees shall consider and supplement according to their competence these projects to these plannings or submit such supplementation to the Prime Minister for consideration and approval.

5. In case the project proposals are approved, ministries, branches and provincial-level People's Committees shall decide to add the projects to the lists of projects and publish the principal details of these projects under Clause 2, Article 9 on their websites and the Bidding Newspaper in 3 consecutive issues. Within 30 working days from the date of the last publication, if no other investors register to implement the projects, ministries, branches and provincial-level People's Committees shall decide to designate investors with the approved project proposals to negotiate project contracts.

6. If other investors register to implement projects, ministries, branches and provincial-level People's Committees shall organize bidding for selecting investors under Article 13 of this Decree.

Article 12. Elaboration and approval of project proposals and feasibility study reports

1. Depending on the characteristics and size of a project, the competent state agency shall make a feasibility study report or a project proposal for use as a basis for making a bidding dossier and negotiating a project contract with the investor.

2. A project proposal comprises:

a/ Analysis of the necessity and advantages of implementation of the project in the form of BOT, BTO or BT contract as compared to other forms of investment;

b/ Expected capacity, location and area of construction, work items, and land use demand;

c/ Analysis and preliminary selection of technologies and techniques; conditions for the supply of supplies, equipment, materials, energy, services and technical infrastructure; ground clearance and resettlement plans (if any); the project's impacts on the eco-environment, fire and explosion prevention and fighting and security;

d/ Preliminary determination of the project's total investment capital;

e/ Determination of goods prices and service charges expected to be collected from the operation of the work;

f/ Determination of the work construction and operation duration, and methods of management and operation (for BOT and BTO projects);

g/ Conditions for and methods of transfer and receipt of the work under the provisions of Chapter VI of this Decree;

h/ Proposed application of investment incentives and supports and government guarantee (if any) under the provisions of Chapter VII of this Decree;

i/ Preliminary evaluation of the project's socio-economic benefits;

j/ For BT projects, in addition to the details specified at Points a, b, c, d, g, h and i of this Clause, a project proposal must indicate payment conditions or conditions for implementing other projects.

3. For BOT and BTO projects, a feasibility study report must contain the details prescribed by the construction law and the details specified in Clause 2 of this Article.

4. For BT projects, in addition to the details prescribed by the construction law, a feasibility study report must contain the relevant details specified at Points a, b, c, d, g, h, i and j, Clause 2 of this Article.

5. The competence to approve feasibility study reports and project proposals is specified as follows:

a/ The Prime Minister may approve feasibility study reports and proposals of national important projects under the National Assembly's resolutions; projects requiring land area of 200 ha or more; projects requiring government guarantee; and group-A projects capitalized at VND 1.5 trillion or more;

b/ Ministers, heads of ministerial-level agencies and chairpersons of provincial-level People's Committees may approve feasibility study reports and proposals of other projects of groups

A, B and C.

Chapter III

SELECTION OF INVESTORS FOR NEGOTIATING PROJECT CONTRACTS

Article 13. Bidding for selecting investors

For a project on the announced list of projects with 2 or more investors registering to implement, the competent state agency shall organize domestic or international open bidding for selecting investors.

Article 14. Designation of investors

Investors may only be designated in any of the following cases:

1. Within the time limit specified in Clause 2, Article 10 of this Decree, only one investor registers to implement the project;
2. The case specified in Clause 5, Article 11 of this Decree.
3. The project should be implemented to meet urgent needs for use of infrastructure facilities as decided by the Prime Minister at the proposal of a ministry, branch or provincial-level People's Committee and based on the appraisal report of the Ministry of Planning and Investment.

Article 15. Negotiation and signing of project contracts and related contracts

1. Based on investor selection results specified in Articles 13 and 14 of this Decree, the competent state agency shall negotiate the project contract with the selected investor.
2. The rights and obligations of project enterprises and the right to receive projects under Articles 16 and 17 of this Decree and contracts related to project implementation (if any) may be negotiated simultaneously with project contracts.
3. After finishing negotiations, project contracts and contracts related to project

implementation (if any) shall be initialed between the involved parties.

4. After a project is granted an investment certificate under the provisions of Chapter V of this Decree, the investor and the competent state agency shall officially sign the project contract. In case of any modifications in the project contract as compared with the initialed one, the investor shall notify such modifications to the investment certificate-granting agency before officially signing the project contract.

Chapter IV

PROJECT CONTRACTS

Article 16. Contents of a project contract

1. A project contract indicates the objectives, scope and contents of the project; the rights and obligations of the parties to design, build, operate and manage the project work and other projects (if any).

2. The rights and obligations of a project enterprise shall be agreed by either of the following methods:

a/ After being established, the project enterprise shall sign the project contract to join the investor as a party to the project contract;

b/ The competent state agency, the investor and the project enterprise shall sign a document permitting the project enterprise to receive and exercise the rights and fulfill the obligations of the investor as indicated in the project contract. This document is an integral part of the project contract.

Article 17. Right to receive projects

1. The parties may agree on the lender's receipt of some or all of the rights and obligations of the project enterprise (below referred to as the right to receive projects) in case the project enterprise or the investor fails to fulfill the obligations indicated in the project contract or the loan contract. After receiving a project, the lender shall fulfill all the obligations of the project enterprise or the investor as indicated in the project contract.

2. The conditions and procedures for exercise and contents of the lender's right to receive a project must be specified in the loan contract, written loan guarantee or another agreement signed between the project enterprise or the* investor and the lender, and are subject to approval of the competent state agency.

Article 18. Transfer of rights and obligations under project contracts

1. An investor may transfer some or all of his/her/its rights and obligations under the project contract.

2. The transfer of part or the whole of another project must comply with conditions and procedures prescribed in the investment and construction laws and relevant legal documents.

3. The transfer under Clauses 1 and 2 of this Article is subject to approval of a competent state agency and must not affect the objectives, size, technical standards and implementation progress of the project and other conditions agreed in the project contract.

Article 19. Modification and supplementation of project contracts

1. A project contract may be modified and supplemented in case of any change in the agreed size, work technical standards or total investment capital, or due to the occurrence of a force majeure event and in other cases as indicated in the project contract.

2. The parties shall agree in the project contract on the conditions for modification and supplementation of the project contract.

3. The modification and supplementation of a project contract is subject to approval of the investment certificate-granting agency.

Article 20. Term of a project contract

1. The term of a project contract shall be agreed by the parties to suit the domain, size and characteristics of the project and may be extended or shortened under the conditions specified in the project contract.

2. For BOT and BTO contracts, the parties shall agree on the specific points of time and duration for building and completion of a work; specific points of time and duration for operation-transfer of a work (for BOT contracts) and specific points of time and duration for transfer-operation (for BTO contracts).

3. For BT contracts, the parties shall agree on the specific points of time and duration for building and transfer of a BT work, and specific points of time and duration for operation and completion of another project depending on the project's domains, size and characteristics in accordance with the investment and construction laws and relevant legal documents.

Article 21. Termination of project contracts

1. A project contract will terminate upon the expiration of the agreed term or will terminate ahead of time when any of the parties breaches the contract without applying effective remedies, a force majeure event occurs or in other cases indicated in the project contract.

2. The parties shall agree in the project contract the conditions for contract termination and handling measures when it terminates ahead of time in the cases specified in Clause 1 of this Article.

Article 22. Application of foreign laws governing project contracts and related contracts

1. The competent state agency and a foreign investor may agree to apply foreign laws to:

a/ Project contracts;

b/ Contracts under which the performance obligations are guaranteed by the competent state agency under Article 40 of this Decree .

2. The application of foreign laws under Clause 1 of this Article must not contravene the Vietnamese law.

Article 23. Security for the project contract performance obligation

1. Measures to secure the project contract performance obligation shall be applied in the form of bank guarantee or other obligation security measures under the civil law.

2. For projects capitalized at up to VND 1.5 trillion, the amount for securing the project contract performance obligation must not be lower than 2% of total investment capital.

3. For projects capitalized at over VND 1.5 trillion, the amount for securing the project contract performance obligation shall be determined on the partially progressive principle below:

a/ For the investment capital portion of up to VND 1.5 trillion, the amount for securing the project contract performance obligation must not be lower than 2% of this capital portion;

b/ For the investment capital portion of over VND 1.5 trillion, the amount for securing the project contract performance obligation must not be lower than 1% of this capital portion.

4. The security for the project contract performance obligation is valid from the date the project contract is officially signed to the date the work is completed.

Chapter V

PROCEDURES FOR GRANTING INVESTMENT CERTIFICATES AND IMPLEMENTING PROJECTS

Article 24. Investment certificate-granting agencies

1. The Ministry of Planning and Investment grants investment certificates for:

a/ National important projects;

b/ Projects whose contracts are signed by ministries and branches or their authorized agencies being competent state agencies;

c/ Projects to be implemented in many provinces and centrally run cities.

2. Provincial-level People's Committees grant investment certificates for the projects not

mentioned in Clause 1 of this Article.

Article 25. Dossiers, order and procedures for examining dossiers and granting investment certificates

1. An investor shall submit 10 dossier sets, including at least one original, to the investment certificate-granting agency defined in Article 24 of this Decree for examination and grant of an investment certificate.

2. A dossier of application for an investment certificate comprises:

a/ A written application for a certificate;

b/ The initialed project contract and contracts related to the project implementation (if any);

c/ The feasibility study report;

d/ The joint venture contract and the project enterprise charter (if any).

3. To-be-examined contents include:

a/ Rights and obligations of the parties to the project contract;

b/ Project implementation schedule;

c/ Land use demand;

d/ Environmental solutions;

e/ The investor's proposals on investment incentives or government guarantee (if any).

4. The investment certificate-granting agency shall examine the dossier and grant an investment certificate to the investor within 45 working days after receiving a valid dossier.

Article 26. Details of an investment certificate

An investment certificate contains the following principal details:

- a/ Names and addresses of the investor and project enterprise;
- b/ Name of the project;
- c/ Objectives and size of the project;
- d/ Project implementation location and land area to be used;
- e/ Total investment capital of the project;
- f/ Project implementation schedule; capital raising schedule under the project contract;
- g/ Investment incentives and supports (if any).

2. For BT projects, in addition to the details prescribed for BOT work construction projects under Clause 1 of this Article, an investment certificate must indicate payment conditions or conditions for implementation of other projects under the project contract.

Article 27. Business registration, establishment and management of project enterprises

1. An investor shall make business registration to establish a project enterprise or shall supplement a business line in the business registration certificate (for investors that have established economic entities). The dossier, order and procedures for business registration or supplementation of business lines comply with the Enterprise Law.

2. An investment certificate granted to a foreign investor is also a business registration certificate of a project enterprise.

3. The managerial apparatus, powers and responsibilities of the project enterprise shall be decided by the investor in accordance with the terms of the project contract, the Enterprise Law, the Investment Law and relevant legal documents.

Article 28. Conditions for project implementation

1. A project shall be implemented after the investor is granted an investment certificate and under other conditions as agreed in the project contract.
2. Other projects shall be implemented according to the schedule agreed by the parties in the project contract in accordance with the investment and construction laws.

Article 29. Selection of contractors for project implementation

1. The project enterprise shall select consultancy, procurement and engineering and other contractors for the project implementation. The selection of contractors falling within the scope of regulations of the Bidding Law must comply with the legal provisions on bidding.
2. Contractor selection results must be notified to the competent state agency within 15 working days after the issuance of the contractor selection decision.

Article 30. Preparation of construction grounds

1. Provincial-level People's Committees shall clear grounds and complete procedures for allocating or leasing land for project implementation under law and the land use conditions indicated in project contracts.
2. Compensation, ground clearance and resettlement expenses shall be borne by project enterprises and included into the total investment capital of projects, unless compensation and ground clearance are funded with state budget capital under Clause 2, Article 6 of this Decree.

Article 31. Elaboration of technical designs, work construction supervision and management

1. Based on the feasibility study report and the project contract, a project enterprise shall elaborate and send a technical design to the competent state agency for supervision and inspection. In case of any modifications in the technical design as compared to the feasibility study report, the project enterprise shall submit them to the competent state agency for consideration and decision.
2. The project enterprise may itself, or hire an independent consultancy organization to, manage and supervise work construction and test before take-over work items and the

whole work according to the agreed design under the construction law and agreements in the project contract.

3. The competent state agency shall supervise and assess the fulfillment of obligations of the investor and the project enterprise in satisfying with the requirements on planning, objectives, size, technical standards, quality, capital raising progress and implementation of the project, environmental protection and other issues as agreed in the project contract.

4. The adjustment of total investment capital, technical standards and other conditions agreed in the project contract may be considered only in the following cases:

a/ The project is affected by a natural disaster or other force majeure events;

b/ There appear elements which help bring higher benefits to the project;

c/ Planning adjustments directly affect the location, size, nature and objectives of the project;

d/ Other cases as provided for by the Government.

Article 32. Management and operation of works

1. Project enterprises shall manage and operate works or operate other projects (for BT projects) under law and conditions agreed in project contracts.

2. Project enterprises may hire management organizations to perform the jobs mentioned in Clause 1 of this Article provided that they shall assume all responsibilities of the management organization.

3. In the course of operating works, BOT and BTO enterprises have the following obligations:

a/ To equally treat all lawful users of products and services provided by project enterprises; not to abuse the right to operate works for practicing discrimination against or refusing to provide services to users;

b/ To regularly maintain and repair works under project contracts, ensuring that works are operated according to their designs;

c/ To provide products and services with quantity and quality as agreed in project contracts in the operation duration until the works are transferred (for BOT projects);

d/ To ensure that works are used under the terms of project contracts.

4. BT enterprises shall implement other projects under conditions agreed in project contracts, investment certificates, investment and construction laws, and relevant legal documents.

Article 33. Goods prices, service charges and revenues

1. Prices of goods and charges of services provided by project enterprises shall be specified in project contracts on the principle of fully offsetting expenses, taking into account market prices and ensuring benefits of project enterprises, users and the State.

2. Conditions for adjusting goods prices, service charges and revenues must be specified in project contracts.

3. When adjusting goods prices, service charges and other revenues (if any), project enterprises shall notify such adjustment to competent state agencies 30 working days in advance. The adjustment of prices of goods, charges of services and other revenues managed by the State is subject to approval of competent state agencies.

Article 34. Supports for collection of service charges

Project enterprises will be given all favorable conditions to properly and fully collect service charges and other lawful revenues from the operation of works. When necessary, project enterprises may request competent state agencies to assist in collecting charges and other revenues from the operation of works.

Chapter VI

TRANSFER OF PROJECT WORKS

Article 35. General regulations on transfer of project works

1. For a BOT work, after the expiration of the work operation duration specified in Clause 2, Article 20 of this Decree, the investor shall transfer without compensation such BOT work to the competent state agency.
2. For a BTO work, after completing the work under Clause 2, Article 20 of this Decree, the investor shall transfer without compensation the work to the competent state agency and may continue operating the work under the conditions agreed in the project contract.
3. For a BT work, after completing the work under Clause 3, Article 20 of this Decree, the investor shall transfer the work to the competent state agency under the conditions indicated in the project contract.

Article 36. Finalization and transfer of BOT works

1. Within 6 months after completing a project work as agreed in the project contract, the investor shall make a dossier of finalization of the value of work construction investment capital in accordance with the construction law.
2. The competent state agency shall agree with the investor on the selection of a capable and experienced independent audit institution to audit the value of investment capital for the project work construction.
3. The transfer of a work complies with the following procedures and conditions:
 - a/ One year before the date of transfer or within the time limit agreed in the project contract, the investor or the project enterprise shall publish on newspapers such transfer and issues relating to procedures and time limit for liquidation of contracts and payment of debts;
 - b/ The competent state agency shall inspect the quality, value and practical conditions of the work against the agreements in the project contract, list the transferred assets, determine damage (if any) and request the project enterprise to repair or maintain the work;
 - c/ The investor and the project enterprise shall ensure that the transferred assets are neither used as assets for guaranteeing the fulfillment of financial obligations nor

mortgaged or pledged for securing the fulfillment of other obligations of the investor or the project enterprise arising before the time of transfer, unless otherwise provided for in the project contract;

d/ The project enterprise shall transfer technologies, provide training and conduct regular maintenance and overhaul of the work to ensure technical conditions for the normal operation of the work in compliance with the requirements of the project contract;

e/ After receiving a project work, the competent state agency shall manage and operate it according to its functions and competence.

Article 37. Transfer of BT and BTO works

1. BT works shall be transferred under the conditions and procedures specified in Article 36 of this Decree.

2. In addition to the provisions in Clause 2, Article 35 and Points b and c, Clause 3, Article 36, BTO works shall be transferred under agreements in project contracts.

3. The Ministry of Finance shall guide the finalization of the value of project works under Article 36 and this Article.

Chapter VII

INVESTMENT INCENTIVES AND SECURITY FOR INVESTORS AND PROJECT ENTERPRISES

Article 38. Investment incentives and supports

1. BOT and BTO enterprises are entitled to enterprise income tax incentives under the law on enterprise income tax.

2. Goods imported for implementing projects of BOT and BTO enterprises and contractors defined in Article 29 of this Decree are eligible for incentives under the law on import duty and export duty.

3. BOT and BTO enterprises are exempt from land use levy for the land area allocated by the State or from land use rent throughout the project implementation duration.

4. Incentives for BT enterprises are specified as follows:

a/ BT enterprises and contractors defined in Article 29 of this Decree are entitled to import duty incentives for goods imported for building BT works under the law on import duty and export duty.

Import duty on goods imported for implementing other projects complies with the law on import duty and export duty.

b/ BT enterprises are exempt from land use rent and levy for the land area used for building BT works in the work construction duration;

c/ Other projects are liable to enterprise income tax depending on the domains and geographical areas of investment under the laws on investment and enterprise income tax.

Article 39. Taxes on contractors participating in project implementation

1. Foreign contractors (if any) participating in project implementation shall pay taxes and enjoy tax exemption or reduction under the law on taxes applicable to foreign contractors.

2. Vietnamese contractors shall fulfill tax obligations under the law on taxes applicable to Vietnamese enterprises.

Article 40. Guarantee for obligations of investors, project enterprises and other enterprises

When necessary and depending on the characteristics of a project, the Government shall designate a competent agency to guarantee loans, supply materials, sell products and fulfill other contractual obligations for the investor, the project enterprise or other enterprises participating in project implementation, and to guarantee state enterprises' obligation to sell materials and purchase products and services of the project enterprise.

Article 41. Right to mortgage assets

1. Project enterprises may pledge or mortgage its assets and land use rights in accordance with law.

2. The pledge or mortgage of assets of project enterprises is subject to approval of a competent state agency, must not affect projects' objectives, progress and operation indicated in project contracts, and must comply with law.

Article 42. Right to buy foreign currencies

1. In the course of building and operating a work, the investor or the project enterprise may buy foreign currencies at credit institutions licensed to conduct foreign exchange operations for current transactions, capital transactions and other transactions under the law on foreign exchange management, covering:

a/ Payment of rent of equipment and machinery hired from overseas;

b/ Import of machinery, equipment and other products and services for the project implementation;

c/ Payment of foreign debts (both principal and interest);

d/ Payment of bank loans in foreign currencies (both principal and interest) for the import of machinery, equipment and other products and services for the project implementation;

e/ Transfer abroad of capital, profits, investment liquidation amounts and payments for the supply of techniques, services, intellectual property, and other lawful incomes (applicable to foreign investors).

2. The Government shall balance, or support the balance of, foreign currencies for important projects on energy, transport work construction and waste treatment.

Article 43. Assurance for provision of public services

1. Project enterprises may use land, roads and other auxiliary works for project implementation in accordance with law.

2. In case of scarcity of public services or restrictions on users of public works, project enterprises will enjoy priority in the use of services or the grant of the right to use public works for project implementation.

3. Competent state agencies shall assist project enterprises in carrying out necessary procedures to enjoy priority in the use of public services and works.

Article 44. Settlement of disputes

1. Disputes between competent state agencies and investors or project enterprises and between project enterprises and economic entities participating in project implementation must be first settled through negotiation or conciliation.

If failing to settle their disputes through negotiation or conciliation, the parties may bring such disputes to Vietnamese arbitral bodies or courts for settlement under Vietnamese law, except the cases specified in Clauses 2 and 3 of this Article.

2. Disputes between competent state agencies and foreign investors or project enterprises arising in the performance of project contracts and guarantee contracts under Article 40 of this Decree shall be settled at Vietnamese arbitral bodies or courts or arbitral councils set up by the parties as agreed.

3. Disputes between project enterprises and foreign organizations or individuals or Vietnamese economic institutions and between investors themselves shall be settled under the Investment Law.

Article 45. Capital and asset assurance

1. Investors' investment capital and lawful assets will never nationalized or confiscated through administrative measures.

2. When it is necessary to compulsorily purchase or requisition assets of investors, the State shall make payment or compensation for their assets and capital under the Investment Law or other conditions agreed in project contracts.

Chapter VIII

STATE MANAGEMENT OF INVESTMENT PROJECTS IN THE FORM OF BOT, BTO OR BT CONTRACT

Article 46. Tasks and powers of the Ministry of Planning and Investment

1. To elaborate and promulgate according to its competence or submit to the Government for promulgation legal documents on investment in the form BOT, BTO or BT contract.
2. To guide regulations on the making and approval of project proposals and feasibility study reports; and to select investors and negotiate project contracts, contents of a project contract, order of and procedures for the grant, modification and revocation of investment certificates, and other relevant issues falling within its competence defined in this Decree.
3. To comment on plannings and lists of projects drafted by ministries, branches and provincial-level People's Committees.
4. To assume the prime responsibility for, and coordinate with concerned ministries and branches in, submitting to the Prime Minister for consideration and decision the implementation of projects neither in the domains nor in the forms of project contract specified in this Decree.
5. To comment on the selection of investors for negotiating project contracts and appoint its representatives to join inter-branch working groups at the request of ministries, branches or provincial-level People's Committees on a case-by-case basis.
6. To examine application dossiers, and grant, modify and revoke investment certificates for projects falling within its competence as listed in Clause 1, Article 24 of this Decree.
7. To join in examining projects' issues falling within its functions and competence at the request of ministries, branches or provincial-level People's Committees.
8. To assume the prime responsibility for, and coordinate with ministries, branches or provincial-level People's Committees in, guiding, examining and inspecting according to their competence project activities; to review and evaluate the implementation of investment projects in the form of BOT, BTO or BT contract.

9. To perform other tasks and exercise other powers as provided for by law.

Article 47. Tasks and powers of the Ministry of Finance

1. To perform the tasks and exercise the powers defined in Clauses 3, 5 and 7, Article 46 of this Decree.

2. To guide the implementation of regulations on project preparation expenses and use of operating funds of competent state agencies in the course of project management; financial contents of project contracts; conditions for and methods of payment to BT project investors; and other relevant issues falling within its competence as defined in this Decree.

3. To coordinate with the Ministry of Planning and Investment in performing the tasks specified in Clause 8, Article 46 of this Decree.

4. To perform other tasks and exercise other powers as provided for by law.

Article 48. Tasks and powers of the Ministry of Justice

1. To join in negotiating issues relating to applicable laws, settlement of disputes, government guarantee and other legal issues of project contracts at the request of competent state agencies on a case-by-case basis.

2. To appraise and comment on the disparity between the terms of project contracts and domestic laws.

3. To negotiate the terms of, and give legal opinions on, project contracts on a case-by-case basis.

4. To perform other tasks and exercise other powers as provided for by law.

Article 49. Tasks and powers of other ministries and branches

1. To perform the tasks and exercise the powers defined in Clauses 3, 5 and 7, Article 46 of this Decree.

2. To make and announce lists of projects of ministries and branches in accordance with this Decree.
3. To comment on plannings on and policies for implementation of projects in the domains under their management.
4. To receive projects outside lists of projects already announced and prepare feasibility study reports or project proposals respectively under Articles 11 and 12 of this Decree.
5. To personally, or authorize their attached competent state agencies to, sign and implement project contracts under Article 3 of this Decree.
6. To approve plans and results of bidding for selection of investors for negotiating project contracts falling within their competence.
7. To coordinate with the Ministry of Planning and Investment in performing the tasks mentioned in Clause 8, Article 46 of this Decree.
8. To perform other tasks and exercise other powers as provided for by law.

Article 50. Tasks and powers of provincial-level People's Committees

1. To perform the tasks and exercise the powers defined in Clauses 3, 5 and 7, Article 46 of this Decree.
2. To draw up and announce lists of projects of localities in accordance with this Decree.
3. To comment on plannings on and policies for implementation of projects in the domains under their management.
4. To receive projects outside lists of projects already announced and prepare feasibility study reports or project proposals respectively under Articles 11 and 12 of this Decree.
5. To personally, or authorize their attached competent state agencies to, sign project contracts under Article 3 of this Decree.

6. To examine application dossiers, and grant, modify and revoke investment certificates for the projects falling within their competence as provided for in Clause 2, Article 24 of this Decree.
7. To approve plans and results of bidding for selection of investors for negotiating project contracts falling within their competence.
8. To coordinate with the Ministry of Planning and Investment in performing the tasks mentioned in Clause 8, Article 46 of this Decree.
9. To perform other tasks and exercise other powers as provided for by law.

Chapter IX

IMPLEMENTATION PROVISIONS

Article 51. Effect

This Decree takes effect on January 15, 2010, and replaces the Government's Decree No. 78/2007/ND-CP of May 11, 2007, on investment in the form of BOT, BTO or BT contract.

Article 52. Transitional provisions

1. Project investors that are granted investment certificates before the effective date of this Decree may continue implementing projects under project contracts and investment certificates.
2. Projects for which investor selection decisions are issued before the effective date of this Decree are not required to comply with regulations on bidding for selection of investors under Article 13 of this Decree.
3. Unless it is approved by the Prime Minister, investors that have signed project contracts before the effective date of this Decree and are not yet granted investment certificates shall modify these project contracts and carry out procedures for the grant of investment certificates in accordance with this Decree.

Article 53. Organization of implementation

1. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with concerned ministries and branches in, guiding the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall, within the ambit of their functions and powers, implement this Decree.-

ON BEHALF OF THE GOVERNMENT
PRIME MINISTER

Nguyen Tan Dung

Appendix 2

THE PRIME MINISTER

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

No. 71/2010/QĐ-TTg

Hanoi, November 09, 2010

DECISION

PROMULGATING THE REGULATION ON PILOT INVESTMENT IN THE PUBLIC-PRIVATE PARTNERSHIP FORM

THE PRIME MINISTER

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the November 29, 2005 Investment Law;

Pursuant to the November 29, 2005 Bidding Law;

At the proposal of the Ministry of Planning and Investment,

DECIDES:

Article 1. To promulgate together with this Decision the Regulation on pilot investment in the public-private partnership form for implementation of a number of projects as a basis for further improving mechanisms, policies and regulations on investment in the public-private partnership form.

Article 2. This Decision takes effect on January 15, 2011.

Article 3. The Minister of Planning and Investment, other ministers, heads of ministerial-level agencies, heads of government-attached agencies, and chairpersons of People's Committees of provinces or centrally run cities shall implement this Decision. The Ministry of Planning and Investment shall summarize and report any problems arising in the course of implementation of this Decision to the Prime Minister for consideration and decision.

PRIME MINISTER

Nguyen Tan Dung

REGULATION

ON PILOT INVESTMENT IN THE PUBLIC-PRIVATE PARTNERSHIP FORM

(Promulgated together with the Prime Minister's Decision No. 71/2010/QĐ-TTg of November 9, 2010)

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation and subjects of application

1. This Regulation provides for the conditions, procedures and principles to be applied on a pilot basis to a number of investment projects on development of infrastructure or provision of public services in the public-private partnership form in the sectors specified in Article 4 of this Regulation.

2. This Regulation applies to competent state agencies, investors, organizations and individuals involved in the management and implementation of projects on development of infrastructure and provision of public services invested in the public-private partnership form on a pilot basis.

Article 2. Interpretation of terms

In this Regulation, the terms below are construed as follows:

1. Investment in the public-private partnership form means that the State and investor jointly implement projects on development of infrastructure or provision of public services on the basis of project contracts.

2. Project means a project on development of infrastructure or provision of public services invested in the public-private partnership form on a pilot basis.

3. Project proposal means a competent state agency's or an investor's proposal on a project to be invested in the public-private partnership form.

4. State participation portion means a combination of all forms of state participation, including state capital, investment incentives and relevant financial policies which are included in the total investment level (total investment capital) of a project with a view to increasing its feasibility. Based on the characteristics of each project, the state participation portion may cover one or more of the above forms. The state participation portion is neither the contributed equity capital in the project enterprise nor associated with the right to receive profits from the project's revenues.

5. State capital under current law includes state budget capital, official development assistance, government bonds, state-guaranteed credit, state development investment credit, development investment capital of state enterprises and other capital sources which give rise to public debts managed by the State.

6. Project list means a list of projects which the Ministry of Planning and Investment summarizes from project proposals of competent state agencies and submits to the Prime Minister for approval under Article 14 of this Regulation.

7. Project contract means a contract signed between a competent state agency and an investor under which the State franchises investment in and operation of a work or provision of a public service to the investor within a specified period of time. Based on the characteristics of each project, a project contract stipulates commitments on the responsibilities, obligations and powers of the investor and competent state agency and the relationship between the State and investor.

8. Project enterprise means an enterprise established by an investor under law to manage and implement the project in accordance with the investment certificate and project contract.

9. Feasibility study report (work construction investment project) means a combination of proposals related to the investment of capital in designing, building, operating and managing an infrastructure facility in the public-private partnership form.

Article 3. Principles of pilot investment in the public-private partnership form

1. Attracting capital sources of the domestic and foreign private sector for infrastructure

development and provision of public services.

2. Raising the private sector capital in projects (excluding the state participation portion under Clause 0, Article 2 of this Regulation), including the investor's equity capital, domestic and foreign commercial capital and capital of other sources without giving rise to public debts.

3. The investor's equity capital in a project must represent at least 30% of the private sector capital in this project. The investor may raise commercial loans and capital of other sources (without government guarantee) which account for up to 70% of the private sector capital in a project.

4. Selecting investors to implement projects on the basis of competitiveness, fairness, transparency, economic efficiency and conformity with Vietnamese law and international practices.

Article 4. Sectors for pilot investment in the public-private partnership form

1. Roads, road bridges, road tunnels and ferry landings.

2. Railways, railway bridges and railway tunnels.

3. Urban transport.

4. Airports, seaports and river ports.

5. Clean water supply systems.

6. Power plants.

7. Healthcare (hospitals).

8. Environment (waste treatment, plants).

9. Other projects on development of infrastructure and provision of public services under the Prime Minister's decisions.

Article 5. Project selection criteria

To be invested in the public-private partnership form, a project must satisfy any of the following criteria:

1. Being important and large-sized and urgently required for economic development under the Prime Minister's Decision No. 412/QĐ-TTg of April 11.2007.
2. Being capable of refunding capital to the investor from reasonable revenues collected from users.
3. Being capable of tapping technological advantages and management and operation experience and effectively utilizing the financial capacity of the private sector.
4. Other criteria as decided by the Prime Minister.

Article 6. Investment preparation expenses

1. Investment preparation expenses include expenses for making and announcing the project list, making feasibility study reports and selecting investors, and other expenses related to the performance of tasks and exercise of powers by competent state agencies and relevant agencies. Investment preparation expenses come from the state budget and other revenues (if any).

2. Investors selected to implement projects shall pay to the State expenses for making feasibility study reports specified in Clause 1 of this Article.

Article 7. State agencies competent to sign and perform project contracts

1. State agencies competent to sign and perform project contracts include ministries, ministerial-level agencies, government-attached agencies and People's Committees of provinces or centrally run cities (below collectively referred to as ministries, sectors and provincial-level People's Committees).

2. Competent state agency may act as a party to a project contract and shall exercise the rights and perform the obligations and responsibilities as agreed with the investor in the

project contract.

3. A competent state agency shall form a full-time section or designate one of its professional units to act as the focal point in performing jobs related to the project and exercising the rights and performing the obligations stipulated in the project contract. In all circumstances, the competent state agency shall take full responsibility for its obligations committed in the project contract.

Article 8. Inter-sector working team

1. An inter-sector working team shall be set up by the Minister of Planning and Investment to assist competent state agencies in formulating and implementing projects.

The inter-sector working team is composed of representatives of the Ministries of Planning and Investment; Finance; Justice; Industry and Trade; Transport; and Construction, the State Bank of Vietnam and other relevant agencies. Members of the inter-sector working team shall assist their ministries, sectors or agencies in giving opinions on the projects in the sectors under the management of their ministries, sectors or agencies.

2. The inter-sector working team is tasked to:

a/ Appoint its members to join the bidding expert group for selecting consultants to make feasibility study reports and the bidding expert group for selecting investors to implement projects;

b/ Take part in appraising feasibility study reports and results of selecting investors to implement projects;

c/ Take part in negotiating and finalizing project contracts;

d/ Assist competent state agencies in settling problems arising during project implementation;

e/ Review experience from pilot projects to improve policies on investment in the public-private partnership form, build capacity and develop human resources for sectors and localities;

f/ Assist competent state agencies in determining state participation portions in projects:

g/ Perform other tasks under this Regulation and instructions of the Minister of Planning and Investment.

Chapter II

STATE PARTICIPATION PORTION

Article 9. State participation portion

1. The Prime Minister shall decide on state participation portions at the proposal of competent state agencies and appraisal opinions of the Ministry of Planning and Investment.
2. The total state participation portion must not exceed 30% of the total investment level of a project, except other cases decided by the Prime Minister.

Article 10. State capital within state participation portion

1. Based on the characteristics of each project, state capital may be used to cover part of the project's expenses, build supporting works, pay compensation for, ground clearance and resettlement or perform other jobs when necessary.
2. State capital within the state participation portion in a project shall be planned under the Law on the State Budget and guiding documents.
3. The raising, signing and allocation of concessional credit capital and government-guaranteed loans comply with current law. Government guarantee and the state participation portion shall be considered and decided for each project to ensure its financial feasibility and the State's macrobalancing capacity.

Article 11. Realization of state participation portions

1. Ministries, sectors and relevant agencies shall realize state participation portions in projects under the Prime Minister's decisions under Article 9 of this Regulation.

2. Competent state agencies shall exercise the rights and perform the obligations related to the use of state participation portions under project contracts.

Chapter III PROJECT PREPARATION

Article 12. Project proposals of competent state agencies

1. Based on approved infrastructure development investment master plans, plans and programs, competent state agencies shall make project proposals according to the contents specified in Clause 2 of this Article.

2. A project proposal covers:

a/ Expected size, capacity, location, construction area, work items and land use needs;

b/ The project's compliance with the sectors and criteria for project selection;

c/ Analysis and preliminary selection of technologies and techniques; conditions for the supply of equipment, materials, energy, services and technical infrastructure; preliminary plan on ground clearance and resettlement (if any); preliminary assessment of the project's impacts on the ecological and social environment;

d/ Set schedule for work construction (commencement, completion, takeover test and operation); operation duration, and the investor's management and business methods;

e/ Preliminary determination of goods prices and service charges to be collected from the operation of the work under current regulations;

f/ Conditions and methods for the transfer and receipt of the work;

g/ Expected total investment level; preliminary determination of the state participation portion; and proposals on incentives and the investment security mechanism for the project;

h/ Analysis of the project's overall effectiveness, covering the project's necessity; advantages and socio-economic benefits of its implementation in the public-private partnership form as

compared with projects wholly invested with state capital: and the feasibility of raising investment capital.

Article 13. Investors' project proposals

1. Investors may make their own project proposals in accordance with Clause 2 of Article 14.
2. An investor's project proposal must cover the contents specified in Clause 2. Article 12 of this Regulation.

Article 14. Making of the project list

1. Competent state agencies shall send project proposals to the Ministry of Planning and Investment for summarization, appraisal and submission to the Prime Minister for deciding to include the projects in the project list.
2. Investors shall send project proposals to competent state agencies based on the latter's functions of state management of the sectors or territories corresponding to the sectors and geographical areas of project implementation, and concurrently to the Ministry of Planning and Investment for monitoring. Project proposals of investors shall be considered and included in the project list under Clause I of this Article.
3. The Ministry of Planning and Investment shall assume the prime responsibility for collecting opinions of ministries, sectors, provincial-level People's Committees and agencies related to the projects in order to appraise the project, proposals as a basis for submitting to the Prime Minister for deciding to include the projects in the project list. Within 30 working days after receiving a request from the Ministry of Planning and Investment, relevant agencies shall give their written opinions on the matters falling within the ambit of their functions, tasks and powers. Past this time limit, if failing to give opinions, they will be regarded as having no objection.

Article 15. Announcement of the project list

The project list approved under Article 14 of this Regulation shall be publicized on the Bidding Newspaper, the Planning and Investment Ministry's e-portal, websites of ministries, sectors and provincial-level People's Committees and in other mass media (when necessary).

Article 16. Contents of a feasibility study report

A feasibility study report shall be made in accordance with current law and international practices to ensure that the project is capable of raising investment capital from domestic and international capital markets. Such a report contains:

1. Size, capacity, location, construction area, work items and land use needs;
2. The project's compliance with the sectors and criteria for project selection;
3. Analysis and selection of technologies and techniques; conditions for the supply of equipment, materials, energy, services and technical infrastructure; plan on ground clearance and resettlement; assessment of the project's impacts on the ecological and social environment;
4. Set schedule for work construction (commencement, completion, takeover test and operation): operation duration, and the investor's management and business methods;
5. Total investment;
6. Determination of goods prices and public-service charges to be collected from the operation of the work under current regulations;
7. Conditions and methods for the transfer and receipt of the work;
8. Expected state participation portion in the project; incentives and investment security mechanism for the project;
9. Risk analysis, rights and obligations of the involved parties.
10. Analysis of the project's overall effectiveness, covering the project's necessity: advantages and socio-economic benefits of its implementation in the public-private partnership form as compared with projects wholly invested with state capital: and the feasibility of raising investment capital.

Article 17. Making, appraisal and approval of feasibility study reports

1. Making of feasibility study reports

a/ Based on the project list approved under Article 14 of this Regulation, competent state agencies shall organize bidding under regulations to select consultants for making feasibility study reports.

b/ Within 30 working days after approving the results of selection of consultants to make feasibility study reports, competent state agencies or their authorized dependent units shall sign and perform contracts with the selected consultants.

2. Appraisal and approval of feasibility study reports

Feasibility study reports shall be appraised and approved under current regulations on investment and construction applicable to state-funded projects.

Article 18. Approval of state participation portions, investment security mechanism and other matters

1. Before approving a feasibility study report under Clause 2 of Article 17 (after appraising a project), the competent state agency shall submit to the Prime Minister the proposed state participation portion, investment security mechanism and other matters which fall beyond the competence of ministries, sectors or localities. A dossier of proposals comprises a written explanation of the above contents, the feasibility study report and other relevant documents.

2. The Ministry of Planning and Investment shall assume the prime responsibility for, and coordinate with the Ministry of Finance and concerned ministries and sectors in, appraising state participation portions, investment security mechanisms and other matters which fall beyond the competence of ministries, sectors or localities within 30 working days after receiving competent state agencies' complete dossiers specified in Clause 1 of this Article.

3. The Prime Minister shall decide on state participation portions, investment security mechanisms and other matters which fall beyond the competence of ministries, sectors or localities at the proposal of competent state agencies and based on the appraisal reports of the Ministry of Planning and Investment.

Chapter IV

SELECTION OF INVESTORS AND SIGNING OF PROJECT CONTRACTS

Article 19. Bidding to select investors

1. Based on the approved feasibility study report, a competent state agency shall make a bidding dossier and organize a domestic or international open bidding to select an investor for project implementation. Such bidding must comply with the bidding law and international practices and ensure competitiveness, fairness, transparency and economic efficiency.
2. A bid dossier must state the method of assessing the bid dossier, bidding order and procedures and draft project contract, enclosed with the approved feasibility study report, expected state participation portion in the project and the project's investment security mechanism.
3. A competent state agency shall appraise investor selection results and consult the Ministry of Planning and Investment before approving investor selection results under current regulations.

Article 20. Negotiation, finalization and signing of project contracts

1. Within 30 working days after approving investor selection results under Article 19 of this Regulation, a competent state agency shall coordinate with relevant agencies in negotiating, finalizing and initialing the project contract with the selected investor. Contents of an initialized project contract must conform to the decision approving investor selection results.
2. After a project is granted an investment certificate under Chapter VI of this Regulation, the investor and competent state agency shall officially sign the project contract. In case the investment certificate-granting agency requests modification of the project contract, the competent state agency and investor shall modify relevant contents of the contract before officially signing it.
3. The project's state participation portion and investment security mechanism specified in the project contract must not exceed those indicated in the Prime Minister's approving

decision.

Chapter V

PROJECT CONTRACTS

Article 21. Contents and form of a project contract

A project contract must stipulate the purposes, scope and contents of the project; and the rights and obligations of the involved parties in designing, building, commercially operating and managing the project work.

Article 22. Right to receive a project

1. The involved parties may agree on the lender's receipt of some or all the rights and obligations of the project enterprise (below referred to as right to receive a project) in case the project enterprise or investor fails to fulfill the obligations stipulated in the project contract or loan contract. After receiving a project, the lender shall fulfill the project enterprise's or investor's all relevant obligations stipulated in the project contract.

2. Conditions and procedures for the lender to receive a project and contents of the his/her/ its right to receive a project must be stipulated in the loan contract, loan security document or another agreement signed between the project enterprise or investor and the lender, and approved by a competent state agency.

Article 23. Transfer of rights and obligations under project contracts

1. The investor may transfer some or all his/ her/its rights and obligations under the project contract.

2. Transfer under Clause I of this Article must be approved by a competent state agency and must not affect the objectives, size, technical standards and implementation schedule of the project and other conditions agreed in the project contract.

Article 24. Modification of project contracts

1. A project contract may be modified as a result of changes in the agreed size, technical

standards or total investment capital of the work or due to force majeure circumstances or in other cases stipulated in the project contract.

2. The involved parties shall agree in the project contract conditions for contract modification.

3. Modifications to a project contract must be approved by the investment certificate-granting agency.

Article 25. Term of a project contract

The involved parties shall agree on the term of a project contract as suitable to the sector, size and characteristics of the project, which may be extended or shortened under the conditions stipulated in the contract.

Article 26. Termination of project contracts

1. A project contract's validity will expire upon the expiration of the agreed term or ahead of schedule due to violations committed by any of the parties without taking effective remedies due to force majeure events or in other cases stipulated in the project contract.

2. The involved parties shall agree in the project contract conditions for contract termination and measures to be taken when the contract terminates ahead of schedule in the cases specified in Clause 1 of this Article.

Article 27. Application of foreign law to project contracts and relevant contracts

1. Foreign law may apply to each specific project and referred, to in the bidding dossier.

2. Application of foreign law under Clause 1 of this Article must not contravene Vietnamese law.

Article 28. Security for the project contract performance obligation

1. Measures to secure the project contract performance obligation shall be applied in the form of bank guarantee or other obligation security measures under the civil law.

2. The sum to secure the project contract performance obligation must not be lower than 2% of the project's total investment capital.

3. Security for the project contract performance obligation is valid from the date the project contract is officially signed to the date the work is completed.

Chapter VI

GRANT OF INVESTMENT CERTIFICATES AND IMPLEMENTATION OF PROJECTS

Article 29. Investment certificate-granting agency

The Ministry of Planning and Investment shall grant investment certificates to projects to be invested in the public-private partnership form on a pilot basis.

Article 30. Dossiers, order and procedures for verification of dossiers, and grant of investment certificates

1. An investor shall submit 10 dossier sets, including at least one original set. to the investment certificate-granting agency defined in Article 29 of this Regulation for verification of the dossier and grant of an investment certificate.

2. A dossier of application for an investment certificate comprises:

a/ An application for a certificate;

b/ The initialed project contract and contracts related to the project implementation (if any):

c/ The feasibility study report;

d/ The joint-venture contract and project enterprise's charter (if any).

3. Verification shall be conducted on:

a/ Rights and obligations of the involved parties to the project contract:

b/ Project implementation schedule;

c/ Land use needs;

d/ Environmental solutions;

e/ State participation portion, investment incentives and project implementation security mechanism.

4. The investment certificate-granting agency shall verify the dossier and grant an investment certificate to the investor within 45 working days after receiving a valid dossier.

Article 31. Details of an investment certificate

1. An investment certificate contains:

a/ Name and address of the investor;

b/ Name of the project;

c/ Objectives and size of the project;

d/ Project location and land area;

e/ Project's total investment capital;

f/ Project implementation duration and schedule; capital raising schedule under the project contract;

g/ Investment incentives and security mechanism (if any).

2. Payment conditions must be specified in the project contract.

Article 32. Implementation of projects

1. After a project is granted an investment certificate, the investor shall make business

registration for establishing a project enterprise to implement the project. Business registration dossiers, order and procedures comply with the Law on Enterprises.

2. The investor shall decide on the managerial apparatus, powers and responsibilities of the project enterprise in conformity with the project contract, the Law on Enterprises, the Investment Law and guiding documents.

3. The rights and obligations of a project enterprise during the implementation of a project shall be agreed as follows:

a/ After its establishment, the project enterprise shall sign a project contract to join the investor in forming a party to the project contract; or.

b/ The competent state agency, investor and project enterprise shall sign an agreement to permit the project enterprise to receive and exercise the rights and perform the obligations of the investor stipulated in the project contract.

Such agreement constitutes an integral part of the project contract.

4. The parties to a project contract and relevant agencies shall perform the project contract under this Regulation and current law.

Article 33. Selection of contractors for project implementation

1. The project enterprise shall select consultancy, procurement, engineering and other contractors for project implementation. The selection of contractors is regulated by the Bidding Law and must comply with bidding regulations.

2. Contractor selection results must be notified to the competent state agency within 15 working days after a contractor selection decision is issued.

Article 34. Preparation of construction grounds

Provincial-level People's Committees shall clear the ground and complete land allocation or lease procedures for implementation of projects under law and land use conditions specified in project contracts.

Article 35. Technical designing, supervision and management of the construction of project works

1. Based on the feasibility study report and project contract, the project enterprise shall make a technical design and send it to the competent state agency for supervision and examination. In case the technical design is modified as compared to the feasibility study report, the project enterprise shall submit such modifications to the competent state agency for consideration and decision.

2. The project enterprise may itself manage and supervise or hire an independent consultancy unit to manage and supervise construction and left work items and the whole work before takeover according to the agreed design in accordance with the construction law and agreements in the project contract.

3. The competent state agency shall supervise and assess the investor's and project enterprise's response to the requirements on planning, objectives, size, technical standards, quality, capital raising and project implementation schedule, environmental protection and other matters as agreed in the project contract.

4. Adjustment of the total investment capital and modification of the technical design and other conditions agreed in the project contract may be considered only in the following cases:

a/ The project is affected by a natural disaster or another force majeure circumstance;

b/ There appear elements which bring more benefits to the project;

c/ Changes in the master plan directly affect the location, size, characteristics or objectives of the project;

d/ Other cases prescribed by the Government.

Article 36. Management and commercial operation of works

1. The project enterprise shall manage and commercially operate the work in conformity with law and conditions agreed in the project contract.

2. The project enterprise may hire a managerial unit to perform the jobs specified in Clause 1 of this Article but shall take full responsibility for such unit.

3. During the commercial operation of a work, the project enterprise is obliged to:

a/ Equally treat all lawful users of its products and services: refrain from using the right to commercially operate the work to practice discrimination or refuse to provide products or services to users;

b/ Regularly maintain and repair the work under the project contract, ensuring that the work operates according to design;

c/ Provide products and services of quantity and quality and within the time limit agreed in the project contract;

d/ Ensure that the work is utilized under the conditions specified in the project contract.

Article 37. Goods prices, service charges and revenues

1. Prices of goods and charge rates of services provided by the project enterprise shall be indicated in the project contract on the principle of covering all expenses, taking into account market prices and assuring the interests of the project enterprise, users and the State.

2. The project enterprise may only adjust goods prices, service charge rates and other revenues under the conditions specified in the project contract.

3. When adjusting goods prices, service charge rates and other revenues (if any), the project enterprise shall notify such adjustment 30 working days in advance to the competent state agency. Adjustment of goods prices, service charge rates and other revenues managed by the State must be approved by the competent state agency.

Article 38. Reporting on project implementation

1. During the project implementation, the project enterprise shall report on the project

implementation progress to the investment license-granting agency in January and July every year. The deadlines for submitting such reports are January 31 and July 31 respectively.

A report on project implementation contains:

- a/ Administrative procedures already carried out in the reporting period;
- b/ Charter capital contribution progress and investment capital disbursement situation;
- d Construction progress (if any);
- d/ Employment situation;
- e/ Land use situation (for projects that lease land directly from the State);
- f/ Situation of import and installation of equipment and machines for the creation of fixed assets to form the investment project (if any);
- g/ Production and business situation;
- h/ Achievement of the project's objectives;
- i/ Realization of the state participation portion and investment security mechanism;
- j/ Difficulties and problems arising during the project implementation (if any).

Chapter VII

FINANCIAL SETTLEMENT AND TRANSFER OF PROJECT WORKS

Article 39. Financial settlement of project works

1. Within 6 months after completing a project work as agreed in the project contract, the investor shall make a dossier for finalizing the value of the work construction investment capital in accordance with the construction law.

2. The competent state agency shall agree with the investor on the selection of a capable and experienced independent audit institution to audit the value of the project work's construction investment capital.

Article 40. Transfer of project works

1. Depending on the form of each specific project contract, a project work shall be transferred based on the characteristics of such form.

2. Transfer of a work must satisfy the following conditions:

a/ One year before the date of transfer or within the time limit agreed in the project contract, the investor or project enterprise shall publicize such transfer and relevant matters.

b/ The competent state agency shall assess the quality, value and status of the work as agreed in the project contract, make a list of assets to be transferred, determine damage (if any), and request the project enterprise to repair and maintain the work.

c/ The investor and project enterprise shall ensure that transferred assets will not be used to guarantee the fulfillment of financial obligations or mortgaged or pledged to secure other obligations of the investor or project enterprise arising before the transfer, unless otherwise specified in the project contract.

d/ The project enterprise shall conduct technology transfer, training, regular maintenance and overhaul to ensure technical conditions for normal operation of the work in conformity with requirements of the project contract.

e/ After receiving the project work, the competent state agency shall manage and operate it according to its functions and powers or assign the investor to do so as agreed in the project contract.

Chapter VIII

INVESTMENT INCENTIVES AND SECURITY

Article 41. Investment incentives

1. The project enterprise is entitled to enterprise income tax incentives under the law on

enterprise income tax.

2. Goods imported for project implementation are eligible for incentives under the law on import duty and export duty.

3. The project enterprise is entitled to exemption from land use levy for land areas allocated by the State or exemption from land rents throughout the project implementation duration.

Article 42. Taxes imposed on contractors participating in project implementation

1. Foreign contractors (if any) participating in project implementation shall pay taxes and are entitled to tax exemption or reduction under tax laws applicable to foreign contractors.

2. Vietnamese contractors shall fulfill tax obligations under tax laws applicable to Vietnamese enterprises.

Article 43. Right to mortgage assets

1. The project enterprise may pledge or mortgage assets and land use rights under law.

2. Asset pledge or mortgage by the project enterprise must be approved by the competent state agency and not affect the project's objectives, progress and operation as stipulated in the project contract and by law.

Article 44. Right to buy foreign currencies

1. During the construction and commercial operation of a work, the investor or project enterprise may buy foreign currencies at a licensed credit institution for its current transactions, capital transactions and other transactions under the law on foreign exchange management, covering:

a/ Payment for equipment and machines hired from abroad:

b/ Import of machines, equipment and other products and services for project implementation:

c/ Payment of foreign debts (both principal and interest);

d/ Payment of bank debts (both principal and interest) in foreign currency for the import of machines and equipment and other products and services for project implementation;

e/ Remittance of capital, profits, investment liquidation amounts and amounts paid for the provision of techniques, services, intellectual property rights and other lawful incomes abroad (applicable to foreign investors).

2. For some important projects in the fields of energy, construction of traffic works and waste treatment, based on project implementation requirements and opinions of the State Bank of Vietnam, the competent state agency shall submit to the Prime Minister the foreign currency balance security or support according to the procedures specified in Article 18 of this Regulation for consideration and decision.

Article 45. Security for the provision of public services

1. The project enterprise may use land, roads and other supporting works to implement the project under law.

2. In case public-utility services are scarce or public work users are limited, the project enterprise will be prioritized to be provided with services or to be granted the right to use public works for project implementation.

3. The competent state agency shall assist the project enterprise in carrying out necessary procedures to be prioritized to use services and public works.

Article 46. Guarantee for obligations of investors, the project enterprise and other enterprises

When necessary and depending on the characteristics of a project, the competent state agency shall submit to the Government for consideration and decision the designation of a competent agency to guarantee the supply of materials, sale of products and other contractual obligations for investors, the project enterprise or other enterprises participating in the project implementation and guarantee the obligation of state enterprises to sell materials to or buy products and services from the project enterprise.

Chapter IX
ORGANIZATION OF IMPLEMENTATION

Article 47. Tasks of the Ministry of Planning and Investment

1. To assume the prime responsibility for, and coordinate with relevant agencies in appraising project proposals, state participation portions, investment security mechanisms and other matters which fall beyond the competence of ministries, sectors or localities, and submitting them to the Prime Minister for approval.
2. To give opinions on investor selection results to competent state agencies.
3. To join and assist competent state agencies in implementing projects.
4. To assume the prime responsibility for, and coordinate with relevant agencies in, supervising the implementation of projects.
5. To guide regulations on investor selection, negotiation and conclusion of project contracts and other relevant matters.
6. To guide competent state agencies in planning development investment capital to be used for projects, including investment preparation capital, state capital within state participation portions in projects and other expenses related to the implementation of projects.
7. To plan central budget funds to be used for projects.
8. To raise and manage concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.
9. To act as the focal point in raising, receiving, and managing the use of, non-refundable official development assistance of bilateral and multilateral donors under current law for training, capacity building, and building a system of laws and institutions on investment in the public-private partnership form, technical assistance, and investment promotion during

the preparation and implementation of projects.

10. To organize investment promotion activities to introduce the project list and specific projects to investors and commercial capital markets at home and abroad. The Minister of Planning and Investment shall decide on specific investment promotion.

11. To organize training and capacity building activities for agencies and units regarding the management and implementation of investment in the public-private partnership form.

12. To assume the prime responsibility for, and coordinate with relevant ministries and sectors in, reviewing and assessing the implementation of this Regulation as a basis for improving the legal system on investment in the public-private partnership form.

13. To perform the tasks and exercise the powers under this Regulation, other laws and the Prime Minister's instructions.

Article 48. Tasks of the Ministry of Finance

1. To join in appraising project proposals for inclusion of projects in the project list.

2. To join in appraising state participation portions in projects, investment security mechanisms for projects and other matters which fall beyond the competence of ministries, sectors or localities.

3. To assist competent state agencies in negotiating, finalizing and signing project contracts with regard to matters under its management.

4. To supervise the progress of contribution of capital for realization of state participation portions in projects.

5. To guide competent state agencies in disbursing state participation portions.

6. To coordinate with the Ministry of Planning and Investment in planning development investment capital for projects, including investment preparation expenses, state capital within state participation portions in projects and other necessary expenses related to the implementation of projects.

7. To join in raising and managing concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.

8. To join in reviewing and assessing the implementation of this Regulation as a basis for improving the legal system on investment in the public-private partnership form.

9. To perform the tasks and exercise the powers defined in this Regulation, other laws and the Prime Minister's instructions.

Article 49. Tasks of the Ministry of Justice

1. To coordinate with the Ministry of Planning and Investment in guiding the implementation of this Regulation.

2. To give opinions on the application of foreign law (if any) indicated in bidding dossiers.

3. To join in negotiating, and give opinions on other legal matters of, project contracts at the request of competent state agencies on a case-by-case basis.

4. To join in reviewing and assessing the implementation of this Regulation as a basis for improving the legal system on investment in the public-private partnership form.

5. To perform the tasks and exercise the powers defined in this Regulation, other laws and the Prime Minister's instructions.

Article 50. Tasks of the State Bank

1. To give opinions on foreign currency security ratios, matters related to capital sources, foreign exchange management, and other matters as a basis for appraising state participation portions in projects.

2. To join in raising and managing concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.

3. To assist competent state agencies in negotiating, finalizing and signing project contracts with regard to matters under its management.
4. To coordinate with the Ministry of Finance in supervising the progress of contribution of capital for realizing state participation portions in projects.
5. To perform the tasks and exercise the powers defined in this Regulation, other laws and the Prime Minister's instructions.

Article 51. Tasks of competent state agencies

1. To plan development investment capital for projects under their management, including investment preparation expenses, state capital within state participation portions in projects and other necessary expenses related to the implementation of projects.
2. To make project proposals in the sectors and domains under their management under Article 12 of this Regulation.
3. To receive project proposals from investors, consider and propose the addition of projects to the project list under Article 14 of this Regulation.
4. To give opinions on project proposals, projects* feasibility study reports and other matters at the request of the Ministry of Planning and Investment.
5. To make project feasibility reports under Article 17 of this Regulation.
6. To propose state participation portions in projects and investment security mechanisms for projects.
7. Based on approved plans (in development investment capital, to allocate investment preparation capital for central budget-funded or -supported projects.
8. Based on feasibility study reports (including proposed state participation portions) approved under Articles 17 and 18 of this Regulation, to allocate development investment capital for projects (for investment projects managed by localities and planned by

provincial-level People's Committees) for investment with state capital within state participation portions in projects.

9. To organize bidding to select investors negotiate, finalize, sign and perform project contracts under Articles 19 and 20 of this Regulation.

10. To take responsibility before law for the implementation of projects.

11. To perform the tasks and exercise the powers defined in (his Regulation, other laws and as the Prime Minister's instructions.

Article 52. Implementation provisions

1. This Regulation shall be implemented for between 3 and 5 years after it takes effect until the Government issues a replacing decree on investment in the public-private partnership form.

2. Matters not specified in this Regulation must comply with current law and international practices under the Prime Minister's decisions.

3. The Ministry of Planning and investment shall coordinate with relevant agencies in reporting any matters arising during the implementation of this Regulation which are not yet regulated by current law to the Prime Minister for consideration and decision.-

Appendix 3

THE NATIONAL ASSEMBLY

No. 47/2010/QH12

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

Hanoi, June 16, 2010

LAW

ON CREDIT INSTITUTIONS

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;

The National Assembly promulgates the Law on Credit Institutions.

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Law provides the establishment, organization, operation, special control, reorganization and dissolution of credit institutions; and the establishment, organization and operation of foreign bank branches and representative offices of foreign credit institutions and other foreign institutions engaged in banking operations.

Article 2. Subjects of application This Law applies to:

1. Credit institutions;
2. Foreign bank branches;
3. Representative offices of foreign credit institutions and other foreign institutions engaged in banking operations;
4. Organizations and individuals involved in the establishment, organization, operation, special control, reorganization and dissolution of credit institutions; and the establishment, organization and operation of foreign bank branches and representative offices of foreign

credit institutions and other foreign institutions engaged in banking operations.

Article 3. Application of the Law on Credit Institutions, treaties, international commercial practices and relevant laws

1. The establishment, organization, operation, special control, reorganization and dissolution of credit institutions; and the establishment, organization and operation of foreign bank branches and representative offices of foreign credit institutions and other foreign institutions engaged in banking operations must comply with this Law and other relevant laws.

2. When other relevant laws otherwise provide the establishment, organization, operation, special control, reorganization and dissolution of credit institutions; and the establishment, organization and operation of foreign bank branches and representative offices of foreign credit institutions and other foreign institutions engaged in banking operations, this Law prevails.

3. When a treaty to which the Socialist Republic of Vietnam is a contracting party otherwise provides, that treaty prevails.

4. Organizations and individuals engaged in banking operations are entitled to reach agreement on the application of commercial practices, including:

a/ International commercial practices provided by the International Chamber of Commerce;

b/ Other commercial practices which are not contrary to the Vietnamese law.

Article 4. Interpretation of terms

In this Law, the terms below are construed as follows:

1. *Credit institution* means an enterprise conducting one, some or all banking operations. Credit institutions include banks, non-bank credit institutions, microfinance institutions and people's credit funds.

2. *Bank* means a type of credit institution which may conduct all banking operations under this Law. Based on their characteristics and operation objectives, banks include commercial banks, policy banks and cooperative banks.

3. *Commercial bank* means a type of bank which may conduct all banking operations and other business activities under this Law for profit.

4. *Non-bank credit institution* means a type of credit institution which may conduct one or some banking operations under this Law, except taking deposits of individuals and providing services of payment via client accounts. Non-bank credit institutions include finance companies, financial leasing companies and other non-bank credit institutions.

Financial leasing company means a type of finance company whose principal operation is financial leasing under this Law.

5. *Microfinance institution* means a type of credit institution which mainly conducts some banking operations to meet the needs of low-income individuals and households and super small-sized enterprises.

6. *People's credit fund* means a credit institution established voluntarily by legal entities, individuals and households as a cooperative to conduct some banking operations under this Law and the Law on Cooperatives for the main purpose of mutual assistance in production and business development and life.

7. *Cooperative bank* means a bank of all people's credit funds established by people's credit funds and some legal entities by contributing capital under this Law for the main purposes of systematic link, financial support and capital balancing within the system of people's credit funds.

8. *Foreign credit institution* means a credit institution established overseas under a foreign law.

Foreign credit institutions may be commercially present in Vietnam in the forms of representative office, joint-venture bank, wholly foreign-owned bank, foreign bank branch, joint-venture finance company, wholly foreign-owned finance company, joint-venture financial leasing company and wholly foreign-owned financial leasing company.

Joint-venture and wholly foreign-owned banks are commercial banks; joint-venture and wholly foreign-owned finance companies are finance companies; and joint-venture and wholly foreign-owned financial leasing companies are financial leasing companies under this Law.

9. *Foreign bank branch* means a foreign bank's subsidiary without legal entity status and the foreign bank is liable for all of the branch's obligations and commitments in Vietnam.

10. *Own capital* comprises the actual value of a credit institution's charter capital or a foreign bank branch's allocated capital, reserve funds and other certain liabilities as stipulated by the State Bank of Vietnam (below referred to as the State Bank).

11. *License* may be a license for establishment and operation of a credit institution, or license for establishment of a foreign bank branch or a representative office of a foreign credit institution or another foreign institution engaged in banking operations, which is granted by the State Bank. The State Bank's document modifying a license is an integral part of a license.

12. *Banking operations* means the trading in and regular provision of one or some of the following services:

a/ Deposit taking;

b/ Credit extension;

c/ Via-account payment.

13. *Deposit taking* means receiving money from an organization or individual as demand or term deposit, savings deposit, issuing deposit certificates, bills or treasury bills, and other forms of receiving deposits on the principles of full payment of principals and interests to depositors under agreement.

14. *Credit extension* means an agreement allowing an organization or individual to use a sum of money or a commitment allowing the use of a sum of money on the repayment principle by such professional operations as lending, discount, financial leasing, factoring, bank guarantee and other credit extension operations.

15. *Provision of services of via-account payment* means the provision of payment instruments; provision of services of payment by check, payment order, payment authorization, collection, collection authorization, bank card, letter of credit and other payment services for clients via their accounts.

16. *Lending* means a form of credit extension under which the lender gives or commits to give

the borrower a sum of money for use for a specific purpose in a certain period as agreed upon on the principle of payment of both principal and interest.

17. *Factoring* means a form of extension of credit to a goods seller or buyer through redeeming receivable or payable amounts arising from the purchase or sale of goods or provision of services under a contract on goods purchase or sale or service provision while reserving the right to claim such amounts.

18. *Bank guarantee* means a form of credit extension under which a credit institution commits to the guarantee to fulfill financial obligations of its client in case the client fails to fulfill or fully fulfill its obligations as committed. The client shall acknowledge and repay the debt to the credit institution as agreed upon.

19. *Discount* means purchasing on a definite term, or purchasing while reserving the right to claim, negotiable instruments and other valuable papers of beneficiaries prior to their due date.

20. *Re-discount* means the discount of negotiable instruments and other valuable papers which have been discounted prior to their due date.

21. *Monetary brokerage* means acting as an intermediary party for brokerage charges to arrange banking operations and other business activities between credit institutions and other finance, institutions.

22. *Payment account* means a client's demand deposit account opened by a client at a bank to use payment services provided by such bank.

23. *Derivative product* means a financial instrument valued by predicted changes in the value of a principal asset such as exchange rate, interest rate, foreign exchange, currency or other principal assets.

24. *Credit institution's capital contribution or share purchase* means a credit institution's contribution of capital to form the charter capital or purchase of shares of an enterprise or another credit institution, including also the allocation or contribution of capital to a subsidiary or an affiliated company of the credit institution; or capital contribution to an investment fund or entrustment of capital to other institutions for contributing capital or purchasing shares in the above forms.

25. *Investment by capital contribution or share purchase to hold the right to control an enterprise* includes investment accounting for over 50% of the charter capital or voting share capital of an enterprise or another investment sufficient to control decisions of the Shareholders' General Meeting or the Members' Council,

26. *Major shareholder of a joint-stock credit institution* means a shareholder directly or indirectly owning 5% or more of the voting share capital of that institution.

27. *Indirect ownership* means an organization's or individual's ownership of the charter capital or share capital of a credit institution through affiliated persons or investment entrustment.

28. *Affiliated person* means an organization or individual having direct or indirect relations with another organization or individual in any of the following cases:

a/. Parent company with subsidiary and vice versa; credit institution with its subsidiary and vice versa; among subsidiaries of a parent company or credit institution; manager or Control Board member of the parent company or credit institution, and individual or organization competent to appoint these persons with a subsidiary and vice versa;

b/. Company or credit institution with its manager or Control Board member, or with company or organization competent to appoint these persons and vice versa;

c/. Company or credit institution with organization or individual owning 5% or more of the charter capital or voting share capital of that company or credit institution and vice versa;

d/ Individual with his/her spouse, father, mother, child or sibling;

e/ Company or credit institution with individual defined at Point d of this Clause of manager. Control Board member, capital contributor or shareholder owning 5% or more of the charter capital or voting share capital of that company or credit institution and vice versa;

f/ Individual authorized to represent an organization or individual specified at Points a, b, c, d and e of this Clause with authorizing organization or individual; among individuals authorized to represent the capital share of an institution.

29. *Affiliated company of a credit institution* means a company in which the credit institution or the credit institution and its affiliated persons owns/own over 11% of the charter capital or

voting share capital, but is not a subsidiary of that credit institution.

30. *Subsidiary of a credit institution* is a company falling in any of the following cases:

a/ The credit institution or the credit institution and its affiliated persons owns/own over 50% of the charter capital or voting share capital of the company;

b/ The credit institution has the right to directly or indirectly appoint a majority or all of members of the Board of Directors or Members* Council or the Director General (Director) of the company;

c/ The credit institution may modify the charter of the company;

d/ The credit institution and its affiliated persons directly or indirectly controls/control the adoption of resolutions and decisions of the Shareholders' General Meeting, Board of Directors or Members' Council of the company.

31. *Managers of a credit institution* include chairman and members of the Board of Directors; chairman and members of the Members' Council; Director General (Director) and holders of other managerial titles defined in the credit institution's charter.

32. *Executives of a credit institution* include the Director General (Director). Deputy Director General (Deputy Director). Chief Accountant, branch director and holders of other equivalent titles defined in the credit institution's charter.

Article 5. Use of terms related to banking operations

An institution other than credit institution may not use the phrase or word "credit institution," "bank," "finance company," "financial leasing company," or other phrases or words in its name or title or in secondary parts of its name or title or in its transaction documents or advertising if the use of such phrases or words can make clients misunderstand that it is a credit institution.

Article 6. Organizational forms of credit institutions

1. Domestic commercial banks established and organized as joint-stock companies, except the case defined in Clause 2 of this Article.

2. State commercial banks established and organized as one-member limited liability

companies with wholly state-owned charter capital.

3. Domestic non-bank credit institutions established and organized as joint-stock or limited liability companies.

4. Joint-venture or wholly foreign-owned credit institutions established and organized as limited liability companies.

5. Cooperative banks and people's credit funds established and organized as cooperatives.

6. Microfinance institutions established and organized as limited liability companies.

Article 7. Autonomy in operation

1. Credit institutions and foreign bank branches have autonomy in their business activities and take accountability for their business results. No organizations or individuals may illegally intervene in business activities of credit institutions and foreign bank branches.

2. Credit institutions and foreign bank branches may refuse to extend credit or provide other services when finding that they do not fully meet the conditions to do so or such credit extension or service provision is inefficient or incompliant with law.

Article 8. Right to conduct banking operations

1. Organizations that fully meet the conditions under this Law and other relevant laws and are licensed by the State Bank may conduct one or some banking operations in Vietnam.

2. Individuals and organizations other than credit institutions are prohibited from conducting banking operations, except escrow, purchase and sale of securities by securities companies.

Article 9. Cooperation and competition in banking operations

1. Credit institutions and foreign bank branches may cooperate and compete in banking operations and other business activities under law.

2. Competition restriction or unfair competition threatening to harm or harming the implementation of the national monetary policy, safety of the credit institution system, the interests of the State and the lawful rights and interests of organizations and individuals are

prohibited.

3. The Government shall specify acts of unfair competition in banking operations and forms of handling these acts.

Article 10. Protection of client interests

Credit institutions and foreign bank branches shall:

1. Preserve and insure deposits at relevant institutions under law and publicize their deposit preservation and insurance in their head offices and branches;

2. Create favorable conditions for clients to deposit and withdraw money and guarantee the full and due payment of principals and interests of deposits;

3. Refuse the investigation, blocking, seizure or transfer of deposits of clients, unless it is so requested by competent state agencies under law or so consented by clients;

4. Publicize deposit interest rates, service charges and rights and obligations of clients for each product and service provided;

5. Publicize official transaction time and may not halt transactions during this time. When halting transactions during official transaction time, a credit institution or foreign bank branch shall post up notices of such halt at transaction places at least 24 hours before the halt. Credit institutions and foreign bank branches may not halt transactions for more than one working day, except the case defined at Point f. Clause 1, Article 29 of this Law.

Article 11. Responsibilities for prevention and control of money laundering and terrorism financing

Credit institutions and foreign bank branches shall:

1. Neither cover nor conduct business activities related to amounts of proved illegal origin;

2. Elaborate internal regulations on prevention and control of money laundering and terrorism financing;

3. Take measures to prevent and control money laundering and terrorism financing;

4. Cooperate with competent state agencies in investigating money laundering and terrorism financing activities.

Article 12. Representatives at law of credit institutions

1. The representative at law of a credit institution shall be defined in the charter of that credit institution and must be one of the following persons:

a/ Chairman of the Board of Directors or Members' Council of the credit institution;

b/ General Director (Director) of the credit institution.

2. The representative at law of a credit institution must reside in Vietnam. When absent from Vietnam, he/she shall authorize in writing another person who must be a manager or an executive of the credit institution currently residing in Vietnam to perform his/her rights and obligations.

Article 13. Provision of information

1. Credit institutions and foreign bank branches shall provide account holders with information on transactions and credit balances of their accounts as agreed upon with these holders.

2. Credit institutions and foreign bank branches shall provide the State Bank with information related to their business activities and may receive from the State Bank information on clients having credit relations with them under the State Bank's regulations.

3. Credit institutions and foreign bank branches may exchange with one another information on their activities.

Article 14. Confidentiality of information

1. Employees, managers and executives of credit institutions and foreign bank branches may not disclose business secrets of these institutions and branches.

2. Credit institutions and foreign bank branches shall keep secret information relating to accounts, deposits, deposited assets and transactions of their clients.

3. Credit institutions and foreign bank branches may not provide information relating to

accounts, deposits, deposited assets and transactions of their clients for other organizations and individuals unless it is so requested by competent state agencies under law or consented by clients.

Article 15. Backup database

1. Credit institutions and foreign bank branches shall form backup database to guarantee safe and constant operations.
2. The formation of backup database of people's credit funds, microfinance institutions and credit institutions which do not take deposits complies with the State Bank's regulations.

Article 16. Share purchase by foreign investors

1. Foreign investors may buy shares of Vietnamese credit institutions.
2. The Government shall provide the conditions, procedures and maximum levels of the total share ownership rate for foreign investors and share ownership rate for one foreign investor in a Vietnamese credit institution: and the conditions for Vietnamese credit institutions to sell shares to foreign investors.

Article 17. Policy banks

1. The Government shall establish policy banks operating not for profit to implement the State's socio-economic policies.
2. The Government shall provide the organization and operation of policy banks.
3. Policy banks shall conduct internal control and audit: elaborate and issue internal processes for professional operations: and make statistical reports and reports on operations and payments under the State Bank's regulations.

Chapter II

LICENSES

Article 18. Competence to grant and revoke licenses

The State Bank may grant, modify and revoke licenses under this Law.

Article 19. Legal capital

1. The Government shall provide legal capital applicable to each type of credit institutions and foreign bank branches.
2. Credit institutions and foreign bank branches shall preserve the actual value of their charter or allocated capital at least equal to their legal capital.
3. The State Bank shall specify the handling of cases in which the actual value of credit institutions' charter capital or foreign bank branches' allocated capital is lower than their legal capital.

Article 20. Licensing conditions

1. A credit institution may obtain a license when fully meeting the following conditions:

a/ Its charter or allocated capital is at least equal to the legal capital;

b/ Its owner is a one-member limited liability company, its founding shareholders or members are legal entities which are lawfully operating and financially capable for capital contribution. Its founding shareholders or members are individuals with full civil act capacity and financially capable for capital contribution.

The State Bank shall provide the conditions for owners of credit institutions being one-member limited liability companies and founding shareholders and members;

c/ Its managers, executives and Control Board members fully meet the criteria and conditions under Article 50 of this Law;

d/ Its charter complies with this Law and other relevant laws;

e/ It has an establishment plan and a feasible business plan which neither affects the safety and stability of the credit institution system nor creates monopoly or restrict competition or create unfair competition within the credit institution system.

2. A joint-venture or wholly foreign-owned credit institution may obtain a license when fully meeting the following conditions:

a/ The conditions specified in Clause 1 of this Article;

b/ The foreign credit institution may conduct banking operations under the law of the country in which it is headquartered;

c/ The operations to be conducted in Vietnam are those the foreign credit institution is licensed to conduct in the country in which it is headquartered;

d/ The foreign credit institution's operations are healthy and it meets requirements on total assets, financial status and safety ratios under the State Bank's regulations;

e/ The foreign institution makes a written commitment to provide supports in finance, technology, governance, administration and operation for the joint-venture or wholly foreign owned credit institution. It guarantees that the joint-venture or wholly foreign-owned credit institution preserves the actual value of its charter capital not lower than the legal capital and observes regulations on safety assurance under this Law;

f/ A competent foreign authority has signed an agreement with the State Bank on inspection and oversight of banking operations and exchange of information on banking safety oversight and made a written commitment on consolidated oversight of the foreign credit institution's operations according international practices.

3. A foreign bank branch may obtain a license when fully meeting the following conditions:

a/ The conditions specified at Points a, b, c and e, Clause 1, and Points b, c, d and f, Clause 2 of this Article;

b/ The foreign bank makes a written commitment to be liable for all obligations and commitments of its branch in Vietnam; and to guarantee the actual value of the branch's allocated capital not lower than the legal capital and its observance of regulations on safety assurance under this Law.

4. A foreign credit institution or another foreign institution engaged in banking operations may obtain a license for a representative office when fully meeting the following conditions:

a/ It is a legal entity licensed for banking operations overseas;

b/ Under the law of the country in which it is headquartered, it may set up a representative office in Vietnam.

5. The State Bank shall provide licensing conditions for cooperative banks, people's credit

funds and microfinance institutions.

Article 21. Dossiers, order and procedures for license application

The State Bank shall specify dossiers, order and procedures for license application.

Article 22. Licensing time limit

1. Within 180 days after receiving a complete and valid dossier, the State Bank shall grant or refuse to grant a license to the applicant.
2. Within 60 days after receiving a complete and valid dossier, the State Bank shall grant or refuse to grant a license for a representative office of a foreign credit institution or another foreign institution engaged in banking operations.
3. In case of refusal, the State Bank shall issue a written reply clearly stating the reason.

Article 23. Licensing fees

Licensed credit institutions, foreign bank branches, representative offices of foreign credit institutions or other foreign institutions engaged in banking operations shall pay licensing fees under the law on charges and fees.

Article 24. Business and operation registration

After obtaining a license, credit institutions and foreign bank branches shall register business; and representative offices of foreign credit institutions or other foreign institutions engaged in banking operations shall register operation under law.

Article 25. Publicity of operation

A credit institution, foreign bank branch or representative office of a foreign credit institution or another foreign institution engaged in banking operations shall publicize in the medium of communication of the State Bank and a Vietnamese daily newspaper for three consecutive issues or a Vietnamese e-newspaper for at least 30 days before starting operation the following information:

1. Its name and its head office address;

2. The numbers and dates of its license and business or operation registration certificate and its licensed business activities;
3. Its charter or allocated capital;
4. Its representative at law, director general (director) or chief representative;
5. The list of its founding shareholders or capital contributors with their respective capital contributions or of its owners;
6. The tentative inauguration date.

Article 26. Conditions for inaugurating operation

1. A licensed credit institution, foreign bank branch or representative office of a foreign credit institution or another foreign institution engaged in banking operations may operate only from the date of operation inauguration.
2. To inaugurate its operation, a licensed credit institution or foreign bank branch must fully meet the following conditions:
 - a/ It has registered its charter with the State Bank;
 - b/ It possesses a business registration certificate. It has sufficient charter or allocated capital, sufficient cash vaults fully meeting the State Bank's requirements and a head office fully meeting asset safety assurance conditions and banking operation requirements;
 - c/ It has an organizational structure, managerial and executive apparatus, internal audit and risk management and internal control system relevant to its type under this Law and other relevant laws;
 - d/ Its information technology system meets managerial and operational requirements;
 - e/ It has an internal management regulation on the organization and operation of the Board of Directors, Members' Council, Control Board and Director General (Director) and professional divisions at its head office; an internal regulation on risk management; and a regulation on network management;
 - f/ Its charter or allocated capital in Vietnam dong has been fully deposited at a non-interest

bearing blocked account opened at the State Bank at least 30 days before inaugurating its operation. Its charter or allocated capital shall be released after it inaugurates its operation;

g/ It has publicized information on its operation under Article 25 of this Law.

3. A credit institution, foreign bank branch or representative office of a foreign credit institution or another foreign institution engaged in banking operations shall inaugurate its operation within 12 months after obtaining a license. Fast this lime limit, if it fails to do so, the Slate Bank shall revoke its license.

4. A licensed credit institution or foreign bank branch shall notify the State Bank of its operation inauguration conditions specified in Clause 2 of this Article at least 15 days before the tentative inauguration date. The State Bank shall suspend the operation inauguration when such institution or branch fails to fully meet the conditions under Clause 2 of this Article.

Article 27. Use of licenses

1. A licensed institution shall use the name and strictly conduct operations as stated in its license.

2. A licensed institution may neither tamper with, buy, sell, transfer, rent nor lend its license.

Article 28. Revocation of licenses

1. The State Bank shall revoke a license when:

a/ The license application dossier contains false information in order to be eligible for obtaining a license;

b/ The credit institution is split, separated, merged, consolidated, dissolved or bankrupt;

c/ The credit institution, foreign bank branch or representative office of a foreign credit institution or another foreign institution engaged in banking operations operates at variance with its license;

d/ The credit institution or foreign bank branch seriously violates the law on compulsory reserves and operation safety ratios;

e/ The credit institution or foreign bank branch fails to implement or fully implement the State Bank's decisions to assure banking operation safety;

f/ The foreign credit institution or another foreign institution engaged in banking operations is dissolved or bankrupt or has its license revoked by a competent authority of the country in which it is headquartered, for a foreign bank branch, wholly foreign-owned credit institution or representative office of a foreign credit institution or another foreign institution engaged in banking operations.

2. The State Bank shall specify the order and procedures for license revocation in the cases defined in Clause I of this Article.

3. An institution shall terminate its business activities on the effective date of the State Bank's decision to revoke its license.

4. The State Bank shall publicize license revocation decisions in the mass media.

Article 29. Changes subject to the State Bank's approval

1. A credit institution or foreign bank branch must obtain the State Bank's written approval before carrying out procedures to change any of the following contents:

a/ Its name or place of its head office;

b/ Its charter or allocated capital, except the case specified in Clause 3 of this Article;

c/ Name or place of branch office of the credit institution;

d/ Contents, scope and duration of operation;

e/ Transfer of capital contributions of capital contributors; transfer of shares of major shareholders, transfer of shares which turns major shareholders into common ones and vice versa;

f/ Suspension of business operations for more than one working day, except cases of suspension in force majeure circumstances;

g/ Listing of stocks on a domestic or foreign stock exchange.

2. Within 40 days after receiving a complete and valid dossier, the State Bank shall issue a decision to modify a license for the changes defined at Points a. b and d. Clause 1 of this Article; or a written approval for the changes defined at Points, c, e. f and g. Clause 1 of this Article. In case of refusal, it shall issue a written reply clearly stating the reason.

Dossiers, order and procedures for approval of changes comply with the State Bank's regulations.

3. Adjustment of the charter capital of a people's credit fund complies with the State Bank's regulations.

4. When being approved to change one or some contents specified in Clause 1 of this Article, a credit institution or foreign bank branch shall:

a/ Modify its charter in conformity with the approved changes and register the modified charter with the State Bank;

b/ Register the changes specified in Clause 1 of this Article with competent state agencies;

c/ Publicize the changes defined at Points a. b, c and d, Clause 1 of this Article in the medium of communication of the State Bank and on a Vietnamese daily newspaper for 3 consecutive issues or in a Vietnamese e-newspaper, within 7 working days after obtaining the State Bank's approval.

Chapter III

ORGANIZATION, GOVERNANCE AND ADMINISTRATION OF CREDIT INSTITUTIONS

Section I. GENERAL PROVISIONS

Article 30. Establishment of branches, representative offices, non-business units and commercial presence

1. Depending on its type, after obtaining the State Bank's written approval, a credit institution may establish:

a/ Branches, representative offices and non-business units at home, even in the province or centrally run city in which it is headquartered;

b/ Branches, representative offices and other forms of commercial presence abroad.

2. The State Bank shall specify the conditions, dossiers and procedures for the establishment, termination and dissolution of the units specified in Clause 1 of this Article for each type of credit institution.

Article 31. Charter

1. The charter of a credit institution being a joint-stock or limited liability company must not contravene this Law and other relevant laws. A charter must contain the following principal contents:

a/ Name and place of the head office;

b/ Contents and scope of operation;

c/ Duration of operation;

d/ Charter capital, modes of capital contribution and increase and decrease of charter capital;

e/ Tasks and powers of the Shareholders' General Meeting, Board of Directors, Members' Council, Director General (Director) and Control Board;

f/ Modes to elect, appoint and dismiss members of the Board of Directors and Members' Council. Director General (Director) and Control Board;

g/ Full names, addresses, nationality and other basic characteristics of owners and capital contributors, for a credit institution being a limited liability company; and of founding shareholders, for a credit institution being a joint-stock company;

h/ Rights and obligations of owners and capital contributors, for a credit institution being a limited liability company; and of shareholders, for a credit institution being a joint-stock company;

i/ Representative at law;

j/ Principles of finance, accounting, control and internal audit;

k/ Modes to adopt decisions of the credit institution; principles of settlement of internal

disputes:

l/ Bases and methods to determine remuneration, salaries and bonuses for managers, executives and Control Board members; m/ Cases of dissolution; n/ Procedures for modification of the charter.

2. Charters of cooperative banks and people's credit funds comply with Article 77 of this Law.

3. A credit institution's charter and its modifications shall be registered at the State Bank within 15 days after they are approved.

Article 32. Management organizational structure of credit institutions

1. The management organizational structure of a credit institution established as a joint-stock company comprises the Shareholders' General Meeting, Board of Directors, Control Board and Director General (Director).

2. The management organizational structure of a credit institution established as a one-member limited liability company or a limited liability company with two or more members comprises the Members' Council, Control Board and Director General (Director).

3. The management organizational structure of a cooperative bank or people's credit fund complies with Article 75 of this Law.

Article 33. Cases banned from holding posts

1. The following persons may not be members of the Board of Directors, Members' Council and Control Board, Director General (Director), Deputy Director General (Deputy Director) and holders of equivalent titles of a credit institution:

a/ Those defined in Clause 2 of this Article;

b/ Those banned from acting as managers and executives under the laws on cadres and civil servants and corruption prevention and control;

c/ Those who used to be owners of private enterprises, partners of partnerships, Directors General (Directors), members of Boards of Directors, Members' Councils and Control Board of enterprises, chairmen and members of cooperative management boards at the time enterprises or cooperatives are declared bankrupt, except cases of bankruptcy in force

majeure circumstances;

d/ Those who used to be representatives-at-law of enterprises at the time these enterprises are suspended from operation or compelled to dissolve due to their serious violations of law, except cases in which the representatives-at-law are recommended by competent state agencies to reorganize and consolidate those enterprises;

e/ Those who were once suspended from holding the title of chairman of the Board of Directors, member of the Board of Directors, chairman of the Members' Council, member of the Members' Council, head of the Control Board, member of the Control Board or Director General (Director) of a credit institution under Article 37 of this Law or determined by a competent agency as having committed violations leading to the revocation of the credit institution's license;

f/ Affiliated persons of members of the Board of Directors or Members' Council or Director General (Director) may not act as members of the Control Board of the same credit institution;

g/ Related persons of the chairman of the Board of Directors or Members' Council may not act as Director General (Director) of the same credit institution.

2. The following persons may not act as chief accountant or director of a branch or subsidiary of a credit institution:

a/ Minors and those with restricted civil act capacity or having lost civil act capacity;

b/ Those who are currently examined for penal liability or serving criminal sentences or decisions of the court:

c/ Convicts of serious or more serious crimes:

d/ Convicts of crimes of infringement upon ownership whose criminal records have not been written off;

e/ Cadres and civil servants and managers of division or higher level of enterprises in which the State holds 50% or more of the charter capital, except those appointed to represent the State's capital share in the credit institution;

f/ Officers, non-commissioned officers, professional army men and defense workers of

agencies and units under the Vietnam People's Army: officers, professional non-commissioned officers of agencies and units under the Vietnam People's Police, except those appointed to represent the State's capital share in the credit institution;

g/ Other cases defined in the charter of the credit institution.

3. Parents, spouses, children and siblings of members of the Board of Directors and Members' Council, General Directors (Directors) and the spouses of these persons may not act as chief accountant or finance manager of a credit institution.

Article 34. Cases banned from concurrently holding different posts

1. The chairman of the Board of Directors or Members' Council of a credit institution may not concurrently be an executive of that credit institution, except cases in which the chairman of the Board of Directors of a people's credit fund is concurrently a member of the Board of Directors of a cooperative bank. A member of the Board of Directors or Members' Council of a credit institution may not concurrently be a manager of another credit institution, unless this institution is the subsidiary or a member of the Control Board of that credit institution.

2. The head of the Control Board may not concurrently be a Control Board member or manager of another credit institution. A Control Board member may not concurrently hold either of the following posts:

a/ Member of the Board of Directors or Members* Council, executive or employee of the same credit institution or its subsidiary, or employee of an enterprise whose member of the Board of Directors, executive or major shareholder is a member of the Board of Directors or Members' Council, or the Director General (Director) of that credit institution;

b/ Member of the Board of Directors or Members' Council or executive of an enterprise whose Control Board member is currently a member of the Board of Directors or Members' Council or executive of the credit institution.

3. The Director General (Director), Deputy Director General (Deputy Director) and holders of equivalent titles may not concurrently hold either of the following posts:

a/ Member of the Board of Directors or Members' Council or Control Board of another credit institution, unless this institution is a subsidiary of the credit institution;

b/ Director General (Director) or Deputy General Director (Deputy Director) of another enterprise.

Article 35. Automatic loss of status

1. A member of the Board of Directors or Members' Council or Control Board or a Director General (Director) automatically loses membership status or post when:

a/ He/she loses the civil act capacity or dies;

b/ He/she violates Article 33 of this Law on cases banned from holding posts;

c/ He/she represents the capital share of an organization which is a shareholder or capital contributor of the credit institution when this organization has its legal entity status terminated;

d/ He/she is no longer the authorized representative of an institutional shareholder's capital share;

e/ He/she is expelled from the Socialist Republic of Vietnam;

f/ The credit institution has its license revoked;

g/ The contract on Director General (Director) hiring terminates;

h/ He/she is no longer a member of the cooperative bank or people's credit fund.

2. The Board of Directors or Members' Council of a credit institution shall send a report enclosed with documents evidencing a holder's automatic loss of his/her post under Clause 1 of this Article to the State Bank within 5 working days after finding out such loss, take responsibility for the accuracy and truthfulness of this report, and carry out procedures to elect and appoint holder of the vacant post under law.

3. After automatically losing his/her membership status or post, a member of the Board of Directors, Members' Council or Control Board or Director General (Director) of a credit institution must be liable for his/her decisions made during his/her office term.

Article 36. Relief from duty, dismissal

1. The chairman or a member of the Board of Directors or Members' Council; the head or a member of the Control Board; or the Director General (Director) of a credit institution shall be relieved from office or dismissed when:

a/ He/she has his/her civil act capacity restricted;

b/ He/she submits his/her resignation to the

Board of Directors, Members' Council or Control

Board of the credit institution;

c/ He/she fails to join activities of the Board of Directors, Members' Council or Control Board for 6 consecutive months, except in force majeure circumstances;

d/ He/she fails to meet the criteria and conditions specified in Article 50 of this Law;

e/ The independent member of the Board of Directors fails to meet requirements on independence;

f/ In other cases defined by the credit institution's charter.

2. After being relieved from duty or dismissed, the chairman or a member of the Board of Directors or Members' Council; the head or a member of the Control Board; or the Director General (Director) of a credit institution must be liable for his/her decisions made during his/Tier office term.

3. Within 10 working days after approving a decision on relief from duty or dismissal of a post holder specified in Clause 1 of this Article, the Board of Directors or Members' Council of a credit institution shall send a report enclosed with relevant documents to the State Bank.

Article 37. Termination and suspension of holders of posts of the Board of Directors, Members' Council. Control Board and Director General (Director)

1. The State Bank may terminate or suspend the performance of the rights and obligations of the chairman and members of the Board of Directors or Members' Council, the head and members of the Control Board, and executives of a credit institution who violate Article 34 of this Law and other relevant laws when performing their rights and obligations; and request competent agencies to relieve from duty, elect and appoint or designate, when necessary,

replacement persons.

2. The Special Control Board may terminate or suspend the performance of the rights and obligations of the chairman and members of the Board of Directors and Members' Council, the head and members of the Control Board, and executives of a credit institution which is placed under special control, when necessary.

3. A person who is terminated or suspended from performing his/her rights and obligations under Clause 1 or 2 of this Article shall join efforts to remedy problems and violations related to his/her personal responsibilities when so requested by the State Bank, Board of Directors, Members' Council and Control Board of the credit institution or the Special Control Board.

Article 38. Rights and obligations of managers and executives of a credit institution

1. To exercise their rights and fulfill their obligations under law, the credit institution's charter and resolutions and decisions of the Shareholders' General Meeting or owners or capital contributors of the credit institution.

2. To exercise their rights and fulfill their obligations honestly and prudently in the interests of the credit institution and its shareholders, capital contributors and owners.

3. To be loyal to the credit institution; to neither use information, secrets and business opportunities of the credit institution nor abuse their positions and titles and the credit institution's assets for self-seeking purposes or in the interests of other organizations and individuals, harming the interests of the credit institution and its shareholders, capital contributors and owners.

4. To keep dossiers and records of the credit institution in order to provide statistics for the credit institution to manage, administer and control its activities and for the State Bank's inspection, supervision and examination.

5. To be knowledgeable about risks in credit institution operations.

6. To promptly, fully and accurately notify the credit institution of possible conflicts of interests arising from the credit institution's benefits in other institutions or its transactions with other organizations and individuals and to only conduct such transactions when so consented by Board of Directors or Members' Council.

7. Not to create conditions for themselves or their affiliated persons to take loans or use other banking services of the credit institution with conditions more preferential and favorable than those under the credit institution's general regulations.

8. To neither have their salaries and remuneration increased nor request bonus when the credit institution suffers loss.

9. To fulfill other obligations defined by the credit institution's charter.

Article 39. Responsibilities for publicity of related interests

1. A member of the Board of Directors, Members' Council or Control Board or the Director General (Director) or Deputy Director General (Deputy Director) and the holder of

another equivalent post of a credit institution shall notify the credit institution of the following information:

a/ The name, head office address, business lines and activities, number and date of the business registration certificate and place of business registration of the enterprise or economic organization in which he/she or his/ her affiliated persons owns/own a capital share or shares in his/her/their name(s) or authorizes/ authorize or entrusts/entrust other organizations and individuals to own 5% or more of its charter capital;

b/ The name, head office address, business lines and activities, number and date of the business registration certificate and place of business registration of the enterprise of which he/she or his/her affiliated persons is/are a member/members of the Board of Directors, Members' Council or Control Board or the Director General (Director).

2. Publicity of the information specified in Clause 1 of this Article and changes in related information shall be made in writing within 7 working days after such information arises or changes.

3. A credit institution shall publicize the information specified in Clause 1 of this Article annually to its the Shareholders' General Meeting or Members' Council, which shall be posted up and kept in the credit institution's head office.

Article 40. internal control system

1. An internal control system is the combination of internal mechanisms, policies, processes,

and regulations and organizational structure of a credit institution or foreign bank branch, which is developed in compliance with the State Bank's guidance and implemented to assure the prevention and prompt detection and handling of risks and meet set requirements.

2. A credit institution or foreign bank branch shall develop its internal control system to meet the following requirements:

a/ Efficient and safe operations: safe and efficient protection, management and use of assets and resources:

b/ Truthful, appropriate, full and prompt financial and managerial information system;

c/ Observance of the law and internal regulations and processes.

3. Operations of the internal control system of a credit institution or foreign bank branch shall be internally audited and regularly assessed by an independent audit institution.

Article 41. Internal audit

1. A credit institution shall set up a specialized internal audit unit under its Control Board for conducting internal audit of the credit institution.

2. The internal audit unit shall objectively and independently review and assess the internal control system; independently assess the conformity and observance of internal regulations and policies and formalities and processes established within the credit institution; and give recommendations in order to raise the effectiveness of systems, processes and regulations, contributing to ensure safe, efficient and lawful operations of the credit institution.

3. Internal audit results shall be promptly reported to the Board of Directors or Members' Council and Control Board and sent to the Director General (Director) of institution.

Article 42. Independent audit

1. Before closing a fiscal year, a credit institution or foreign bank branch shall select an independent audit institution which is competent under the State Bank's regulations to audit its operations in the subsequent fiscal year.

2. Within 30 days after selecting an independent audit institution, a credit institution or foreign bank branch shall notify the State Bank of such audit institution.

3. A credit institution must have another independent audit when the audit report contains exemption opinions of the independent audit institution.

4. Independent audit of a credit institution being a cooperative complies with Clause 3, Article 75 of this Law.

Section 2. GENERAL PROVISIONS APPLICABLE TO CREDIT INSTITUTIONS BEING JOINT-STOCK COMPANIES AND . LIMITED LIABILITY COMPANIES

Article 43. Board of Directors and Members' Council and their structures

1. The Board of Directors or Members' Council is a managerial body having the full power to decide and exercise the rights and fulfill the obligations of a credit institution on its behalf, except matters to be decided by the Shareholders' General Meeting or owners.

2. The term of a Board of Directors or Members' Council is 5 years at most. The office term of members of the Board of Directors or Members' Council follows the term of the Board of Directors or Members' Council. A member of the Board of Directors or Members' Council may be re-elected or re-appointed for an unlimited number of terms. The office term of an added or replaced member of the Board of Directors or Members' Council is the remaining term of the Board of Directors or Members' Council. The Board of Directors or Members' Council of the previous term shall operate until the Board of Directors or Members' Council of the new term takes over its work.

3. When the number of members of the Board of Directors or Members' Council becomes less than two-thirds of the total number of the members of a term or less than the minimum number of members prescribed in the credit institution's charter, within 60 days after the number of members becomes insufficient, the credit institution shall sufficiently add members to the Board of Directors or Members' Council.

4. The Board of Directors or Members' Council shall use the credit institution's seal to perform its tasks and powers.

5. The Board of Directors or Members' Council may have a secretary to assist it. The secretary's functions and tasks are defined by the Board of Directors or Members' Council.

6. The Board of Directors or Members' Council shall set up committees to assist it in performing its tasks and powers, including the risk management committee and personnel

committee. The Board of Directors or Members' Council shall define the tasks and powers of these two committees under the State Bank's guidance.

Article 44. Control Board and its structure

1. The Control Board shall conduct internal audit, inspect and assess the observance of law, internal regulations, charter, resolutions and decisions of the Shareholders' General Meeting or owners and the Board of Directors or Members' Council.

2. The Control Board of a credit institution has at least 3 members. The number of its members shall be prescribed in the credit institution's charter, of whom at least two-thirds work on a full-time basis without concurrently holding other posts or doing other jobs in other credit institutions or enterprises.

3. The Control Board has an assisting apparatus and an internal audit section and may use the credit institution's resources or hire outside specialists and organizations to perform its tasks.

4. The term of a Control Board is 5 years at most. The office term of members of the Control Board follows the term of the Control Board. A member of the Control Board may be re-elected or re-appointed for an unlimited number of terms. The office term of an added or replaced member of the Control Board is the remaining term of the Control Board. The Control Board of the previous term shall operate until the Control Board of the new term takes over its work.

5. When the number of members of the Control Board becomes less than two-thirds of the total number of the members of a term or less than the minimum number of members prescribed in the credit institution's charter, within 60 days after the number of members becomes insufficient, the credit institution shall sufficiently add members to the Control Board.

Article 45. Tasks and powers of the Control Board

1. To oversee the observance of law and the credit institutions charter in governance and administration of the credit institution; to be answerable to the Shareholders' General Meeting, owners and capital contributors for the performance of its assigned tasks and powers.

2. To issue its internal regulations; to annually review its internal regulations and important policies on accounting and reporting.
3. To conduct internal audit; to have the rights to use independent consultants and access and fully, accurately and promptly receive information and documents related to the administration and management of the credit institution to perform its assigned tasks and powers.
4. To appraise biannual and annual financial statements of the credit institution; to report to the Shareholders' General Meeting, owners or capital contributors on its appraisal of financial statements and its assessment of the reasonability, lawfulness, truthfulness and prudence in accounting, statistical work and financial reporting. To consult the Board of Directors or Members' Council before submitting its reports and recommendations to the Shareholders' General Meeting or owners or capital contributors.
5. To examine accounting books, other documents and the governance and administration of the credit institution's operations when necessary or under resolutions or decisions of the Shareholders' General Meeting or at the request of major shareholders or groups of major shareholders or owners or capital contributors or the Members' Council under law. To conduct examination within 7 working days after receiving a request. Within 15 days after completing examination, to report and explain examined matters to requesting organizations and individuals.
6. To promptly notify the Board of Directors or Members' Council when detecting a manager of the credit institution committing violations; to request the violator to immediately terminate his/her violations and remedy consequences, if any.
7. To make a list of founding shareholders, major shareholders, or capital contributors and related persons of members of the Board of Directors or Members' Council and Control Board and Director General (Director) of the credit institution; to keep and update changes in this list.
8. To request the Board of Directors or Members' Council to convene extraordinary meetings or request the Board of Directors to convene extraordinary meetings of the Shareholders' General Meeting under this Law and the credit institution's charter.
9. To convene an extraordinary meeting of the Shareholders' General Meeting when the Board of Directors makes a decision seriously violating this Law or beyond its vested powers

and in other cases under the credit institution's charter.

10. To perform other tasks and powers under the credit institution's charter.

Article 46. Rights and obligations of the head of a Control Board

1. To organize the performance of tasks and powers of the Control Board defined in Article 45 of this Law.

2. To prepare agendas of Control Board meetings based on Control Board members' opinions related to the Control Board's tasks and powers; to convene and chair Control Board meetings.

3. On behalf of the Control Board, to sign documents under the Control Board's competence.

4. On behalf of the Control Board, to convene extraordinary meetings of the Shareholders' General Meeting under Article 45 of this Law or request the Board of Directors or Members' Council to convene extraordinary meetings.

5. To attend meetings of the Board of Directors or Members' Council, to give opinions in these meetings but to have no right to vote.

6. To request the inclusion of his/her opinions in minutes of meetings of the Board of Directors or Members' Council when these opinions differ from resolutions and decisions of the Board of Directors or Members' Council and report such before the Shareholders' General Meeting or owners or capital contributors.

7. To prepare working plans for and assign tasks to Control Board members.

8. To ensure that Control Board members receive complete, objective and accurate information and have enough time to discuss on matters to be considered by the Control Board.

9. To supervise and direct Control Board members in performing their tasks, rights and obligations.

10. To authorize another member of the Control Board to perform his/her tasks when absent.

11. To exercise other rights and fulfill other obligations under the credit institution's charter.

Article 47. Rights and obligations of Control Board members

1. To observe law, the credit institution's charter and Control Board's internal regulations honestly and prudently in the interests of the credit institution and its shareholders, capital contributors and owners.
2. To elect a member of the Control Board to be the head of the board.
3. To request the head of the Control Board to convene an extraordinary meeting of the Control Board.
4. To control business activities, accounting books, assets and financial statements and recommend remedies.
5. To request officers and employees of the credit institution to provide statistics and explain business operations in order to perform assigned tasks.
6. To report on abnormal financial activities to the Control Board head and take responsibility for their own evaluation and conclusions.
7. To attend Control Board meetings, to discuss and vote on matters within the scope of tasks and powers of the Control Board, except those involving conflicts of their interests.
8. To exercise other rights and perform other obligations under the credit institution's charter.

Article 48. Director General (Director)

1. The Board of Directors or Members' Council shall appoint one of its members to be the Director General (Director) or hire a Director General (Director), except the case defined at Point c, Clause 1, Article 66 of this Law.
2. The Director General (Director) is the supreme executive of the credit institution and shall take responsibility before the Board of Directors or Members' Council for the performance of his/her rights and obligations.

Article 49. Rights and obligations of the Director General (Director)

1. To organize the implementation of resolutions and decisions of the Shareholders' General

Meeting. Board of Directors or Members' Council.

2. To decide on matters related to day-to-day business activities of the credit institution under his/her competence.

3. To set up the internal control system and maintain its effective operation.

4. To make and submit financial statements to the Board of Directors or Members' Council for approval or for reporting to competent authorities for approval. To take responsibility for the accuracy and truthfulness of financial statements, statistical reports, settlement statistics and other financial information.

5. To issue according to his/her competence internal regulations; professional processes and procedures to operate business administration, information and reporting systems.

6. To report on the credit institution's business activities and results to the Board of Directors, Members' Council. Control Board and Shareholders' General Meeting and competent state agencies.

7. To decide on the application of measures beyond his/her competence in cases of natural disasters, enemy sabotage, fires and incidents, take responsibility for these decisions and promptly report them to the Board of Directors or Members' Council.

8. To recommend and propose the organizational and operational structures of the credit institution to the Board of Directors or Members' Council or the Shareholders' General Meeting for decision according to its competence.

9. To request the Board of Directors or Members' Council to convene extraordinary meetings under this Law.

10. To appoint, relieve from duty and dismiss holders of managerial and executive posts of the credit institution, except those to be decided by the Shareholders' General Meeting, owners, capital contributors, Board of Directors or Members' Council.

11. On behalf of the credit institution, to sign contracts under the credit institution's charter and internal regulations.

12. To propose plans to use profits and handle losses of the credit institution.

13. To recruit employees; to decide on salaries and bonuses of employees according to his/her competence.

14. To perform other rights and obligations under the credit institution's charter.

Article 50. Criteria and conditions for managers, executives and holders of some other posts of a credit institution

1. A member of the Board of Directors or Members' Council must fully meet the following criteria and conditions:

a/ Being other than those specified in Clause 1, Article 33 of this Law;

b/ Possessing professional ethics;

c/ Being an individual owner or a person authorized to represent ownership of at least 5% of the credit institution's charter capital, except when being a member of the Members' Council or independent member of the Board of Directors, or holding a tertiary or higher degree in economics, business administration or law, or having at least 3 years working as a manager of a credit institution or an insurance, securities, accounting or audit business, or at least 5 years working directly in professional banking, finance, audit or accounting division.

2. An independent member of the Board of Directors must fully meet the criteria and conditions specified in Clause 1 of this Article and the following criteria and conditions:

a/ Neither currently working for the credit institution or its subsidiary nor working for the credit institution or its subsidiary for 3 preceding years;

b/ Not enjoying salaries or regular pays of the credit institution other than allowances for Board of Directors members under regulations;

c/ Having no spouse, parent, child, sibling and spouses of these persons being major shareholders of the credit institution, managers or Control Board members of the credit institution or its subsidiary;

d/ Neither directly nor indirectly owning or representing ownership of 1% or more of the charter capital or voting share capital of the credit institution; together with his/her related persons not owning 5% or more of the charter capital or voting share capital of the credit institution;

e/ Not being a manager or Control Board member of the credit institution at any time in the 5 preceding years.

3. A Control Board member must fully meet the following criteria and conditions:

a/ Being other than those defined in Clause 1, Article 33 of this Law;

b/ Possessing professional ethics;

c/ Holding a tertiary or higher degree in economics, business administration, law, accounting or audit; having at least 3 years working directly in banking, finance, accounting or audit;

d/ Not being an affiliated person of a manager of the credit institution;

e/ Residing in Vietnam during his/her office term, for a full-time control board member.

4. The Director General (Director) must fully meet the following criteria and conditions:

a/ Being other than those defined in Clause 1, Article 33 of this Law;

b/ Possessing professional ethics;

c/ Holding a tertiary or higher degree in economics, business administration or law;

d/ Having at least 5 years working as an executive of a credit institution or Director General (Director) or Deputy Director General (Deputy Director) of an enterprise with the owner's capital at least equal to the charter capital required by law for each type of credit institution or at least 10 years working directly in finance, banking, accounting or audit;

e/ Residing in Vietnam during his/her office term.

5. A Deputy Director General (Deputy Director), the chief account, director of a branch or subsidiary or the holder of an equivalent post must fully meet the following criteria and conditions:

a/ Being other than those defined in Clause 2, Article 33 of this Law; for a Deputy Director General (Deputy Director) being other than those defined in Clause 1, Article 33 of this Law;

b/ Holding a tertiary or higher degree in economics, business administration, law or the profession under his/her charge; or holding a tertiary or higher degree in a discipline other

than the above and having at least 3 years working directly in banking, finance or the profession under his/her charge;

c/ Residing in Vietnam during his/her office term.

6. The State Bank shall specify criteria and conditions for managers, executives and Control Board members of microfinance institutions.

Article 51. Approval of lists of nominees for the posts of member of the Board of Directors or Members' Council and Control Board and Director General (Director) of a credit institution

1. The list of nominees for the posts of members of the Board of Directors or Members' Council and Control Board and Director General (Director) of a credit institution shall be approved in writing by the State Bank before these nominees are elected and appointed. Elected and appointed members of the Board of Directors, Members' Council and Control Board and Director General (Director) of a credit institution must be on the list approved by the State Bank.

2. The State Bank shall specify procedures and dossiers for approval of lists of nominees for the posts specified in Clause 1 of this Article.

3. A credit institution shall notify the State Bank of the list of elected and appointed holders of the posts specified in Clause 1 of this Article within 10 working days after such election and appointment.

Section 3. CREDIT INSTITUTIONS BEING JOINT-STOCK COMPANIES

Article 52. Types of shares, shareholders

1 A joint-stock credit institution must have common shares. Owners of common shares are common shareholders.

2. A credit institution may have preferred shares which take the following types:

a/ Dividend preferred shares;

b/ Voting preferred shares.

3. Dividend preferred shares are shares for which higher dividends are paid than those paid

for common shares or than annual stable dividends. Annual dividends include fixed dividends and bonus dividends. Fixed dividends do not depend on business results of the credit institution and may be paid only when the credit institution earns profits. When a credit institution suffers losses or earns profits but such profits are insufficient for paying fixed dividends, fixed dividends to be paid for dividend preferred shares shall be accrued in subsequent years. The specific levels of fixed dividends and method of determining bonus dividends shall be decided by the Shareholders' General Meeting and indicated on stocks of dividend preferred shares. The total par value of dividend preferred shares must not exceed 20% of the charter capital of a credit institution.

Members of the Board of Directors and Control Board, the Director General (Director) and other managers and executives of a credit institution may not buy dividend preferred shares issued by the credit institution. Eligible buyers of dividend preferred shares shall be defined in the charter of a credit institution or decided by its Shareholders' General Meeting.

Dividend preferred shareholders have the rights like common shareholders, except the rights to vote, attend meetings of the Shareholders' General Meeting and nominate candidates for the Board of Directors and Control Board.

4. Only institutions authorized by the Government and founding shareholders may hold voting preferred shares. The voting preferred right of founding shareholders is valid for only 3 years after the credit institution obtains a business registration certificate. Fast this lime limit, voting preferred shares of founding shareholders may be converted into common shares. Voting preferred shareholders have the rights like common shareholders, except the right to transfer such shares to others.

5. Common shares may not be converted into preferred shares. Preferred shares may be converted into common shares under resolutions of the Shareholders' General Meeting.

6. A joint-stock credit institution must have at least 100 shareholders and is not limited in the number of shareholders.

Article 53. Rights of common shareholders

1. To attend and give opinions at meetings of the Shareholders' General Meeting and exercise the right to vote directly or through their authorized representatives. Each common share has one vole.

2. To receive dividends under resolutions of the Shareholders' General Meeting.
3. To have pre-emptive right to buy newly offered shares in proportion to the percentage of their common shares within the credit institution.
4. To transfer their shares to other shareholders within the credit institution or to other organizations or individuals under this Law and the charter of such credit institution.
5. To consider, search and extract information from the list of shareholders with the voting right and request modification of inaccurate information.
6. To consider, search, extract or copy the charter of the credit institution, books of minutes of meetings of the Shareholders' General Meeting and resolutions of the Shareholders' General Meeting.
7. To receive part of the remaining assets in proportion to the number of their shares in the credit institution when it is dissolved or bankrupt.
8. To authorize in writing others to exercise their rights and perform their obligations. Authorized persons may not stand as candidates in their own capacity.
9. To stand as candidates or nominate others to the Board of Directors or Control Board under the charter of the credit institution or under law if such is not provided in the charter. The list of candidates shall be sent to the Board of Directors by the deadline set by the Board of Directors.

Article 54. Obligations of common shareholders

1. Shareholders of a credit institution shall fulfill the following obligations:
 - a/ To fully pay within the time limit set by the credit institution for the number of shares they commit to buy; to take responsibility for debts and other asset-related obligations of the credit institution within the limit of share capital already contributed to the credit institution;
 - b/ To refrain from withdrawing contributed share capital from the credit institution in any form resulting in the decrease of the charter capital of the credit institution;
 - c/ To take responsibility before law for the lawfulness of capital contributed to and shares

purchased from the credit institution;

d/ To comply with the charter and internal management regulations of the credit institution;

e/ To observe resolutions and decisions of the Shareholders' General Meeting and Board of Directors;

f/ To take personal responsibility for, when acting in the name of the credit institution in any form, any law-breaking acts they have committed or business activities and other transactions they have conducted for self-seeking purposes or for the interests of other institutions or individuals.

2. Shareholders making entrusted investment for other institutions or individuals shall provide the credit institution with information on actual holders of entrusted shares in such credit institution. The credit institution may terminate the shareholder's rights of these shareholders when detecting their failure to provide accurate information on these actual owners.

Article 55. Share ownership rate

1. An individual shareholder may not own over 5% of the charter capital of a credit institution.

2. An institutional shareholder may not own over 15% of the charter capital of a credit institution, except the following cases:

a/ It owns shares under Clause 3, Article 149 of this Law in order to handle a credit institution that faces difficulties and ensure safety of the credit institution system:

b/ It owns state shares at an equitized credit institution;

c/ It owns shares of foreign investors under Clause 2, Article 16 of this Law.

3. A shareholder and his/her/its affiliated persons may not own over 20% of the charter capital of a credit institution.

4. The share ownership rates specified in Clauses 1, 2 and 3 of this Article include also capital amounts entrusted to other organizations or individuals to buy shares.

5. Within 5 years after obtaining a license, founding shareholders must hold shares at least equal to 50% of the charter capital of the credit institution; founding shareholders being legal entities must hold shares at least equal to 50% of the total shares held by founding shareholders.

Article 56. Offering and transfer of shares

1. Individual shareholders and institutional shareholders with their representatives being members of the Board of Directors or Control Board or Directors General (Directors) of credit institutions may not transfer their shares during their incumbency.

2. Pending the remedy of consequences caused by personal responsibility under the Shareholders' General Meeting' resolution or the State Bank's decision, members of the Board of Directors or Control Board or the Director General (Director) may not transfer their shares, unless:

a/ They act as authorized representatives of institutional shareholders which are merged, consolidated, divided, split-up, dissolved or bankrupt under law;

b/ They are ordered to transfer their shares under a court ruling; or.

c/ They transfer their shares to other investors for realizing compulsory merger or consolidation under Clause 2, Article 149 of this Law.

3. Listed shares of credit institutions shall be transferred under the securities law.

4. Within 5 years after obtaining a license, founding shareholders may only transfer their shares to other founding shareholders provided that they ensure the share ownership rates specified in Article 55 of this Law.

Article 57. Redemption of shareholders' shares

A credit institution may redeem its shareholders' shares if, after fully paying for the redeemed shares, it still ensures safety ratios in banking operations and the real value of its charter capital does not decrease to below the legal capital. In case the redemption of shares results in the decrease of the charter capital of a credit institution, the State Bank's prior written approval is required.

Article 58. Stocks

When stocks are issued as certificates, a credit institution shall issue these stocks to shareholders within 30 days after inaugurating its operation, for newly established credit institutions, or after shareholders fully pay for shares they commit to buy, for credit institutions increasing their charter capital.

Article 59. Shareholders' General Meeting

1. The Shareholders' General Meeting shall hold an annual meeting within 4 months after the end of a fiscal year. The Shareholders' General Meeting shall hold an extraordinary meeting under a convening decision of the Board of Directors in the following cases:

a/ The Board of Directors considers such meeting necessary for the interests of the credit institution;

b/ The number of the Board of Directors' remaining members is smaller than the minimum number of members provided in Clause 1. Article 62 of this Law;

c/ At the request of a shareholder or a group of shareholders that hold over 10% of total common shares for at least 6 consecutive months;

d/ At the request of the Control Board; e/ Other cases specified in the charter of the credit institution.

2. The Shareholders' General Meeting is composed of all shareholders with the voting right and is the supreme decision-making body of a credit institution. The Shareholders' General Meeting has the following tasks and powers:

a/ To approve development orientations of the credit institution;

b/ To modify the charter of the credit institution;

c/ To approve regulations on the organization and operation of the Board of Directors and Control Board;

d/ To decide on the number of members of the Board of Directors and Control Board in each office term; to elect, relieve from duty, dismiss, add or replace members of the Board of Directors and Control Board according to the criteria and conditions specified in this Law and the charter of the credit institution;

e/ To decide on remuneration, bonuses and other benefits for members of the Board of Directors and Control Board and on operating budgets of the Board of Directors and Control Board;

f/ To consider and handle according to its competence violations of the Board of Directors or Control Board which cause damage to the credit institution and its shareholders;

g/ To decide on the organizational structure and managerial and executive apparatus of the credit institution;

h/ To adopt plans on adjustment of the charter capital and share offering plans covering types and quantity of new shares to be offered;

i/ To adopt the redemption of sold shares;

j/ To adopt plans on the issue of convertible bonds;

k/ To adopt annual financial statements and plans on distribution of profits after the credit institution's tax and other financial obligations are fulfilled;

l/ To adopt the Board of Directors' and Control Board's reports on the performance of their assigned tasks and powers;

m/ To decide on the establishment of subsidiaries;

n/ To adopt plans on contribution of capital to and purchase of shares of enterprises or other credit institutions which account for 20% or more of the credit institution's charter capital indicated in the latest audited financial statement;

o/ To decide to invest in, buy or sell the credit institution's assets which account for 20% or more of the credit institution's charter capital indicated in the latest audited financial statement or any lower percentage specified in the credit institution's charter;

p/ To approve contracts valued at over 20% of the credit institution's charter capital indicated in the latest audited financial statement or any lower percentage specified in the credit institution's charter, between the credit institution and members of the Board of Directors or Control Board, the Director General (Director), major shareholders, affiliated persons of managers, Control Board members or major shareholders of the credit, institution; subsidiaries or affiliated companies of the credit institution;

q/ To decide on the division, split-up, consolidation, merger, transformation or dissolution of, or to request a court to open bankruptcy procedures for, the credit institution;

r/ To decide on solutions to major financial changes of the credit institution.

3. Decisions of the Shareholders' General Meeting shall be adopted as follows:

a/ The Shareholders' General Meeting shall adopt decisions falling within its competence by voting at meetings or collecting written opinions;

b/ Except the case specified at Point c of this Clause, a decision of the Shareholders' General Meeting shall be adopted at a meeting when it is approved by shareholders representing over 51 % of total votes of all attending shareholders or any higher percentage specified in the credit institution's charter;

c/ Decisions on the matters specified at Points b, h, o and q, Clause 2 of this Article must be adopted by shareholders representing over 65% of total votes of all attending shareholders or any higher percentage specified in the credit institution 's charter;

d/ Members of the Board of Directors and Control Board shall be elected based on accrued votes.

4. Decisions on the matters specified at Points a, d, f and q, Clause 2 of this Article shall be adopted by voting at meetings of the Shareholders' General Meeting.

Article 60. Convening the Shareholders' General Meeting at the request of the State Bank

When arises an event affecting the safety of operations of a joint-stock credit institution, the State Bank may request the Board of Directors of such credit institution to convene an extraordinary Shareholders' General Meeting and decide on matters requested by the State Bank.

Article 61. Reporting on results of meetings of Shareholders' General Meeting

Within 15 days after concluding a meeting or finishing the vote count in case of collection of written opinions, all resolutions and decisions adopted by the Shareholders' General Meeting shall be sent to the State Bank.

Article 62. Board of Directors of a credit institution being a joint-stock company

1. The Board of Directors of a credit institution being a joint-stock company must have between 5 and 11 members, including at least 1 independent member. At least half of the Board of Directors' total members must be independent members and members other than executives of the credit institution.

2. An individual and his/her affiliated persons or representatives of contributed capital of an institutional shareholder and their affiliated persons may participate in the Board of Directors in a number not exceeding one-third of total members of the Board of Directors of a credit institution being a joint-stock company, unless they are representatives of the State's contributed capital.

Article 63. Tasks and powers of the Board of Directors

1. To organize the establishment and inauguration of the credit institution after the first meeting of the Shareholders' General Meeting.

2. To take responsibility before the Shareholders' General Meeting for performing its assigned tasks and powers.

3. To submit to the Shareholders' General Meeting for decision and approval matters falling within its competence defined in Clause 2, Article 59 of this Law.

4. To decide on the establishment of branches, representative offices and non-business units.

5. To appoint, relieve from duty, dismiss, discipline, suspend the work of, and decide on salaries and other benefits for, the Director General (Director). Deputy Directors General (Deputy Directors), chief accountant, secretary of the Board of Directors, holders of titles in the internal audit section, managers and other executives under its internal regulations.

6. To adopt plans on contribution of capital to and purchase of shares from enterprises or other credit institutions which account for less than 20% of the credit institution's charter capital indicated in the latest audited financial statement.

7. To appoint representatives of contributed capital of the credit institution at other enterprises and credit institutions.

8. To decide to invest in, purchase and sell assets of the credit institution which account for 10% or more of the credit institution's charter capital indicated in the latest audited financial

statement, except those specified at Point o. Clause 2. Article 59 of this Law.

9. To decide on credit extension under Clause 7, Article 128 of this Law. except transactions specified at Point p. Clause 2. Article 59 of this Law to be decided by the Shareholders' General Meeting.

10. To approve contracts between the credit institution and its subsidiaries and affiliated companies; contracts between the credit institution and members of the Board of Directors or Control Board, the Director General (Director), major shareholders or their affiliated persons, which account for 20% or less of the credit institution's charter capital indicated in the latest audited financial statement or any lower percentage specified in the credit institution's charter. In this case, affiliated members have no voting right.

11. To examine, supervise and direct the Director General (Director) in performing his/ her assigned tasks; to annually evaluate the work performance of the Director General (Director).

12. To issue internal regulations on the organization, governance and operation of the credit institution in accordance with this Law and other relevant laws, except matters falling within the competence of the Control Board or Shareholders' General Meeting.

13. To decide on risk management policies and supervise the implementation of risk prevention measures by the credit institution.

14. To consider and approve annual reports.

15. To select under law professional assessment institutions for valuing assets contributed as capital other than the Vietnamese currency, freely convertible foreign currencies or gold.

16. To propose the State Bank Governor to approve matters under law.

17. To decide to offer new shares within the limit of shares eligible for offering.

18. To decide on offer prices of shares and convertible bonds of the credit institution.

19. To decide on the redemption of shares of the credit institution.

20. To propose plans on distribution of profits and dividends to be paid; to decide on the time limit and procedures for paying dividends or offsetting losses during the business period.

21. To prepare relevant contents and documents for submission to the Shareholders' General Meeting to decide on matters falling within its competence, except those falling within the ambit of the Control Board's tasks and powers.

22. To approve operation programs and plans of the Board of Directors; programs, contents and documents for meetings of the Shareholders' General Meeting; to convene meetings of the Shareholders' General Meeting or collect written opinions of shareholders in order to adopt resolutions or decisions of the Shareholders' General Meeting.

23. To organize, examine and supervise the implementation of resolutions or decisions of the Shareholders' General Meeting and Board of Directors.

24. To promptly notify the State Bank of information adversely affecting the conduct of members of the Board of Directors or Control Board or the Director General (Director).

25. To perform other tasks and powers defined in the charter of the credit institution.

Article 64. Rights and obligations of the Chairman of the Board of Directors

1. To elaborate working programs and plans of the Board of Directors.

2. To prepare programs, contents and documents for meetings of the Board of Directors; to convene and chair these meetings.

3. To organize the adoption of decisions of the Board of Directors.

4. To supervise the implementation of decisions of the Board of Directors.

5. To chair meetings of the Shareholders' General Meeting.

6. To ensure that all members of the Board of Directors receive adequate, objective and accurate information and have sufficient time for discussing matters to be considered by the Board of Directors.

7. To assign tasks to members of the Board of Directors,

8. To supervise members of the Board of Directors in performing their assigned tasks as well as general rights and obligations.

9. To evaluate at least once a year the work performance of each member and commissions of the Board of Directors and report evaluation results to the Shareholders' General Meeting.

10. To perform other rights and obligations defined in the charter of the credit institution.

Article 65. Rights and obligations of members of the Board of Directors

1. To honestly exercise their rights and perform their obligations under internal regulations of the Board of Directors and as assigned by the Chairman of the Board of Directors in the interests of the credit institution and shareholders.

2. To examine financial statements prepared by independent auditors, give opinions on or request executives of the credit institution, independent auditors and internal auditors to explain matters related to these statements.

3. To propose the Chairman of the Board of Directors to convene an extraordinary meeting of the Board of Directors.

4. To attend meetings of the Board of Directors, discuss and vote on matters falling within the tasks and powers of the Board of Directors under this Law, unless they are not allowed to vote because the matters conflict their benefits. To take responsibility before the Shareholders' General Meeting and Board of Directors for their decisions.

5. To implement resolutions and decisions of the Shareholders' General Meeting and Board of Directors.

6. To explain the performance of then-assigned tasks before the Shareholders' General Meeting and Board of Directors upon request.

7. To perform other rights and obligations defined in the charter of the credit institution.

Section 4. CREDIT INSTITUTIONS BEING ONE-MEMBER LIMITED LIABILITY COMPANIES

Article 66. Tasks and powers of owners

1. The owner of a credit institution being a one-member limited liability company has the following powers:

a/ To decide on the number of members of the Members' Council in each office term, which must be between 5 and 11;

b/ To appoint authorized representatives with an office term of up to 5 years for performing the owner's tasks and powers under this Law. Authorized representatives must satisfy all the criteria and conditions specified in Clause I, Article 50 of this Law;

c/ To appoint, relieve from duty, dismiss or add members of the Members' Council, the Chairman of the Members' Council, members of the Control Board, the Director General (Director), Deputy Directors General (Deputy Directors) and the chief accountant;

d/ To decide on the adjustment of the charter capital of the credit institution; to transfer part or the whole of the charter capital of the credit institution and change the legal form of the credit institution;

e/ To decide on the establishment of subsidiaries and affiliated companies;

f/ To approve annual financial statements; to decide on the use of profits after the credit institution's tax and other financial obligations are fulfilled;

g/ To decide to reorganize, dissolve, or request the court to open bankruptcy procedures for, the credit institution;

h/ To decide on remuneration, salaries and other benefits of members of the Members' Council, members of the Control Board and the Director General (Director).

2. The owner of a credit institution being a one-member limited liability company has the following tasks:

a/ To contribute capital fully and on time as committed;

b/ To observe the charter of the credit institution;

c/ To identify and separate assets of the owner from those of the credit institution;

d/ To observe law in purchase, sale, borrowing, lending, rent and lease and other transactions between the credit institution and owner;

e/ To perform other tasks defined in this Law and the charter of the credit institution.

Article 67. Tasks and powers of the Members' Council

1. The Members' Council of a credit institution being a one-member limited liability company is composed of all authorized representatives of the owner and shall, in the owner's name, exercise the rights and perform the obligations of the owner under regulations. It shall, in the name of the credit institution, exercise the rights and perform the obligations of the credit institution; and take responsibility before the owner for performing its tasks and exercising its powers under this Law and the charter of the credit institution.

2. The Members' Council of a credit institution being a one-member limited liability company has the following tasks and powers:

a/ To decide on contents of, and modify, the charter of the credit institution;

b/ To decide on annual development strategies and business plans of the credit institution;

c/ To submit to the owner of the credit institution for decision matters specified at Points c, d, e, f and g, Clause 1, Article 66 of this Law which fall within the owner's competence;

d/ To consider and approve annual reports;

e/ To select an independent audit institution;

f/ To examine, supervise and direct the Director General (Director) in performing his/ her assigned tasks; to annually evaluate the work performance of the Director General;

g/ To decide to offset losses arising during the business period;

h/ To decide on credit extension under Clause 7, Article 128 of this Law;

i/ To decide on a plan to contribute capital to or purchase shares of other enterprises or credit institutions which account for 20% or more of the charter capital indicated in the latest audited financial statement of the credit institution or another lower percentage specified in the charter of the credit institution;

j/ To decide to invest in, purchase and sell the credit institution's assets which account for 20% or more of the charter capital indicated in the latest audited financial statement of the credit institution or another lower percentage specified in the charter of the credit institution;

k/ To decide to sign contracts between the credit institution and its subsidiary and affiliated companies; and contracts between the credit institution and members of the Members' Council, members of the Control Board, the Director General (Director) or their affiliated persons. In this case, affiliated members have no voting right;

l/ To decide on market development, marketing and technology transfer solutions;

m/ To issue internal regulations related to the credit institution's organization, governance and operation in accordance with law;

n/ To propose the State Bank Governor to approve matters under law;

o/ To supervise and assess business activities of the credit institution;

p/To perform other tasks and powers defined in the charter of the credit institution.

Article 68. Rights and obligations of the Chairman of the Members' Council

1. To formulate operation programs and plans of the Members' Council.
2. To prepare programs, contents and documents for meetings of the Members' Council or for collecting members' opinions.
3. To convene and chair meetings of the Members' Council or collect members' opinions.
4. To supervise, or organize the supervision of, the implementation of decisions of the Members' Councils.
5. To sign decisions on behalf of the Members' Council.
6. To ensure that members of the Members' Council receive adequate, objective and accurate information and have sufficient time for discussing matters to be considered by the Members' Council.
7. To assign tasks to members of the Members' Council.
8. To supervise members of the Members' Council in performing their assigned tasks as well as general rights and obligations.
9. To evaluate at least once a year the work performance of each member and the Members'

Council and report evaluation results to the owner.

10. To perform other rights and obligations defined in the charter of the credit institution.

Article 69. Rights and obligations of members of the Members' Council

1. To honestly exercise their rights and perform their obligations under internal regulations of the Members' Council and as assigned by the Chairman of the Members' Council in the interests of the credit institution and owner.

2. To give opinions on or request executives of the credit institution, independent auditors and internal auditors to explain matters related to financial statements prepared by independent auditors.

3. To propose the Chairman to convene an extraordinary meeting of the Members' Council.

4. To attend meetings of the Members' Council discuss and vote on all matters falling within the tasks and powers of the Members' Council, unless they are not allowed to vote because the matters conflict their benefits. To take responsibility before the owner and Members' Council for their decisions.

5. To implement decisions of the owner and resolutions of the Members' Council.

6. To explain the performance of their assigned tasks before the owner and Members' Council upon request.

7. To perform other rights and obligations defined in the charter of the credit institution.

Section 5. CREDIT INSTITUTIONS BEING LIMITED LIABILITY COMPANIES WITH TWO OR MORE MEMBERS

Article 70. Capital contributors and their tasks and powers

1. Capital contributors of a credit institution being a limited liability company with two or more members must be legal entities, except the case specified in Article 88 of this Law. The total number of members must not exceed 5. The maximum ownership rate for a member and his/ her affiliated persons must not exceed 50% of the charter capital of a credit institution.

2. Capital contributors have the following powers:

a/ To appoint their representatives as members of the Members' Council or Control Board and relieve from duty or dismiss them on the basis of their contributed capital in the credit institution or as agreed:

b/ To receive information and reports on the operation of the Members' Council and Control Board, annual accounting books and financial statements and other papers and documents of the credit institution;

c/ To receive shared profits in proportion to their contributed capital after the credit institution has fulfilled tax and other financial obligations;

d/ To be shared the remaining assets of the credit institution in proportion to their contributed capital when the credit institution is dissolved or bankrupt:

e/ To lodge complaints and initiate lawsuits against members of the Members' Council or Control Board or the Director General (Director) for their improper performance of their rights or obligations, adversely affecting the lawful rights and interests of the credit institution or capital contributors.

3. Capital contributors have the following tasks;

a/ To refrain from withdrawing the contributed capital in any form, except the transfer of contributed capital under Article 71 of this Law;

b/ To observe the charter of the credit institution;

c/ Other tasks defined in this Law and the charter of the credit institution.

Article 71. Transfer and redemption of contributed capital

1. Capital contributors may transfer their contributed capital and be prioritized to additionally contribute capital when the credit institution increases its charter capital.

2. The State Bank shall specify conditions for receipt of transferred contributed capital and redemption of contributed capital of credit institutions.

Article 72. Members' Council

1. The Members' Council of a credit institution being a limited liability company with two or more members has the following tasks and powers:

a/ The tasks and powers specified at Points a, b, d, e, h, i, j, k, 1, m and n. Clause 2, Article 67 of this Law;

b/ To decide on the increase or decrease of the charter capital as well as the time and mode of capital raising;

c/ To report on the financial situation and business results of the credit institution, the performance of assigned tasks and exercise of vested powers by the Members' Council and its members at the request of capital contributors or competent state agencies;

d/ To decide to redeem contributed capital under this Law;

e/ To elect, relieve from duty or dismiss the Chairman of the Members' Council; to decide to appoint, relieve from duty, dismiss, sign and terminate contracts with, the Director General (Director), Deputy Directors General (Deputy Directors), the chief accountant, managers and other executives under internal regulations of the Members' Council;

f/ To decide on salaries, bonuses, remuneration and other benefits of the Chairman and members of the Members' Council, the head and members of the Control Board and the Director General (Director) in accordance with this Law, unless otherwise provided in the charter of the credit institution;

g/ To approve annual financial statements, and plans on profit use and sharing or loss offsetting of the credit institution;

h/ To decide on the establishment of subsidiaries, branches and representative offices; to contribute capital to affiliated companies;

i/ To decide on the reorganization of the credit institution;

j/ To decide to dissolve, or request the court to open bankruptcy procedures for, the credit institution;

k/ Other tasks and powers defined in the charter of the credit institution.

2. The Chairman of the Members' Council of a credit institution being a limited liability

company with two or more members has the following rights and obligations:

a/ The rights and obligations specified in Clauses 1 thru 8, Article 68 of this Law;

b/ To evaluate at least once a year the work of each member and committees of the Members' Council;

c/ Other rights and obligations specified in the charter of the credit institution.

3. Members of the Members' Council of a credit institution being a limited liability company with two or more members have the following rights and obligations:

a/ The rights and obligations specified in Clauses 1, 2 and 3, Article 69 of this Law;

b/ To attend meetings of the Members' Council discuss and vote on all matters falling within the ambit of tasks and powers of the Members' Council under this Law, unless they are not allowed to vote under Point 1, Clause 2, Article 67 of this Law; to take responsibility before the Members' Council for their decisions;

c/ To implement resolutions and decisions of the Members' Council;

d/ To explain the performance of their assigned tasks to capital contributors and the Members' Council upon request;

e/ To perform other rights and obligations defined in the charter of the credit institution.

Section 6. CREDIT INSTITUTIONS BEING COOPERATIVES

Article 73. Operation characteristics and objectives

Credit institutions being cooperatives mean credit institutions organized as cooperatives operating in the banking sector to provide mutual assistance among members for effectively conducting production, business and service activities and improving their life. Credit institutions being cooperatives include cooperative banks and people's credit funds.

Article 74. Establishment of credit institutions being cooperatives

1. Members of a cooperative bank include all people's credit funds and other capital-contributing legal entities.

2. Members of a people's credit fund include individuals, households and other capital-contributing legal entities.

Article 75. Organizational structure

1. The organizational and managerial structure of a cooperative bank or people's credit fund is composed of the Members' General Meeting, Board of Directors, Control Board and Director General (Director).

2. Members of the Board of Directors or Control Board and the Director General (Director) of a cooperative bank or people's credit fund must satisfy criteria on professional qualifications and ethics and be proficient in banking operations under the State Bank's regulations.

3. Cooperative banks and people's credit funds must have internal audit and internal control systems and conduct independent audit under the State Bank's regulations.

Article 76. Charter capital

1. The charter capital of a cooperative bank or people's credit fund is the total capital amount contributed by members and is indicated in its charter.

2. The Members' General Meeting shall decide on minimum and maximum levels of capital contribution by each member under the State Bank's regulations.

Article 77. Charter

1. The charter of a cooperative bank or people's credit fund must not contravene this Law, the Law on Cooperatives and other relevant laws. It must contain the following:

a/ Name and place of the head office; b/ Contents and scope of operation; c/ Operation duration; d/ Charter capital and capital contribution mode;

e/ Organizational structure, tasks and powers of the Board of Directors and Control Board and rights and obligations of the Director General (Director);

f/ Modes of conducting the Members' General Meeting and approving its decisions;

g/ Rights and obligations of members;

h/ Financial, accounting, control and internal audit principles;

i/ Principles of paying salaries, allowances and official-duty remuneration; handling losses and sharing profits in proportion to contributed capital and labor of members and the credit institution's use of services; and setting up, managing and using different funds;

j/ Modes of managing, using, preserving and handling common assets and accumulated capital;

k/ Cases and procedures related to division, split-up, consolidation, merger, dissolution or bankruptcy;

l/ Charter modification procedures.

2. The charter and modifications to the charter of a cooperative bank or people's credit fund shall be registered at the State Bank within 15 days after it is/they are approved.

Article 78. Rights of members

1. To attend the Members' General Meeting or elect delegates to the Members' General Meeting, attend members' meetings and vote on matters falling within the competence of the Members' General Meeting.

2. To stand as candidates or nominate others to the Board of Directors or Control Board and other to-be-elected titles under the charter of the cooperative bank or people's credit fund.

3. To deposit money, take loans and receive shared profits in proportion to their contributed capital and the use of services, of the cooperative bank or people's credit fund.

4. To enjoy social welfare benefits of the cooperative bank or people's credit fund.

5. To receive necessary information relating to the operation of the cooperative bank or people's credit fund.

6. To propose matters related to the operation of the cooperative bank or people's credit fund and request replies. To request the Board of Directors or Control Board to convene an extraordinary Members' General Meeting to settle urgent matters.

7. To transfer their contributed capital, benefits and obligations to others under law and the

charter of the cooperative bank or people's credit fund.

8. To apply for withdrawal from the cooperative bank or people's credit fund under its charter.

9. To exercise their rights defined by law and the charter of the cooperative bank or people's credit fund.

Article 79. Obligations of members

1. To implement the charter of the cooperative bank or people's credit fund and resolutions of the Members' General Meeting.

2. To contribute capital under the charter of the cooperative bank or people's credit fund and relevant regulations.

3. To provide cooperation and mutual assistance and contribute to building, and promoting the development of the cooperative bank or people's credit fund.

4. To take, within the limit of their contributed capital, joint responsibility for risks or losses arising during the operation of the cooperative bank or people's credit fund.

5. To repay loan principals and interests of the cooperative bank or people's credit fund as committed.

6. To compensate for damage caused by them to the cooperative bank or people's credit fund.

Article 80. Members' General Meeting

1. The Members' General Meeting is the highest decision-making body of a cooperative bank or people's credit fund.

2. The Members' General Meeting shall discuss and decide on the following matters:

a/ Reports on business results in a year, financial publicity, accounting, projected distribution of profits and offsetting of losses, if any; and reports on the operation of the Board of Directors and Control Board;

b/ Business orientations for the following year;

c/ Increase or decrease of the charter capital; levels of capital contribution by members;

d/ Election, relief from duty or dismissal of the Chairman and other members of the Board of Directors and the head and other members of the Control Board;

e/ Approval of a list of newly admitted members and exclusion of members from the cooperative bank or people's credit fund at the request of the Board of Directors; decision on the elimination of members;

f/ Division, split-up, consolidation, merger or dissolution of the people's credit fund;

g/ Modification of the charter;

h/ Other matters at the request of the Board of Directors, Control Board or at least one-third of total members.

Article 81. Board of Directors

1. The Board of Directors is a body which administers a cooperative bank or people's credit fund and composed of the Chairman and other members.

2. The Members' General Meeting shall decide on the number of members of the Board of Directors, which must be at least 3.

3. The office term of the Board of Directors shall be decided by the Members' General Meeting and indicated in the charter, which must be between 2 and 5 years.

4. Members of the Board of Directors must be individual members or representatives of contributed capital of legal entity members. Members of the Control Board, the chief account and treasurer of a cooperative bank or people's credit fund must not concurrently act as members of the Board of Directors and are other than affiliated persons of members of the Board of Directors.

5. The Chairman and members of the Board of Directors may not authorize persons other than members of the Board of Directors to exercise their rights and perform their obligations.

Article 82. Tasks and powers of the Board of Directors

1. To appoint, relieve from duty, dismiss, hire, or terminate contracts to hire, the Director General (Director) under a resolution or decision of the Members' General Meeting.
2. To appoint or relieve from duty Deputy Directors General (Deputy Directors) at the request of the Director General (Director).
3. To organize the implementation of resolutions and decisions of the Members' General Meeting.
4. To prepare reports assessing business results; to approve financial statements, reports on business plans and reports on the operation of the Board of Directors for submission to the Members' General Meeting.
5. To prepare agendas of the Members' General Meeting and convene the Members' General Meeting,
6. To organize the exercise of rights and performance of obligations of the cooperative bank or people's credit fund under law.
7. To consider the admission of new members and settle members' applications for withdrawal from the cooperative bank or people's credit fund, except the case of expulsion of members, and report such to the Members' General Meeting for approval.
8. To take responsibility before the Members' General Meeting for its decisions.
9. Other tasks and powers defined in the charter of the cooperative bank or people's credit fund.

Article 83. Organization and operation of the Control Board

1. The Control Board is composed of at least 3 members, including at least 1 full-time controller. The State Bank shall specify conditions for a people's credit fund to elect 1 full-time controller.
2. The head and members of the Control Board shall be elected directly by the Members' General Meeting.
3. Members of the Control Board must be individual members or representatives of contributed capital of legal entity members. Members of the Control Board may not

concurrently act as members of (he Board of Directors. Director General (Director), Deputy Directors General (Deputy Directors), chief accountant, treasurer or professional employee of the cooperative bank or people's credit fund and are other than affiliated persons of members of the Board of Directors. Director General (Director), Deputy Directors General (Deputy Directors), chief accountant or treasurer.

4. The Control Board shall take responsibility before the Members' General Meeting for the performance of their tasks and exercise of their powers.

5. The office term of the Control Board is the same as that of the Board of Directors,

Article 84. Tasks and powers of the Control Board

1. To examine and oversee the operation of the cooperative bank or people's credit fund under law.

2. To examine the implementation of the charter, resolutions and decisions of the Members' General Meeting and resolutions and decisions of the Board of Directors; to supervise the operation of the Board of Directors, Director General (Director) and members of the cooperative bank or people's credit fund.

3. To examine financial operations and supervise the observance of accounting regimes, distribution of incomes, handling of losses, use of funds, assets and state supports; to supervise safety in the operations of the cooperative bank or people's credit fund.

4. To conduct internal audit in each period and field with a view to accurately assessing business activities and the financial status of the cooperative bank or people's credit fund.

5. To receive and settle according to its competence complaints and denunciations related to the operation of the cooperative bank or people's credit fund under law and the charter of the cooperative bank or people's credit fund.

6. To convene an extraordinary Members' General Meeting in the following cases:

a/ When the Board of Directors or Director General (Director) violates law or the charter of the cooperative bank or people's credit fund or a resolution of the Members' General Meeting or when the Board of Directors fails to take or takes ineffective preventive measures at the request of the Control Board;

b/ When at least one-third of the Control Board's total members send a request to the Board of Directors or Control Board for convention of the Members' General Meeting but the Board of Directors fails to convene an extraordinary Members' General Meeting within 5 days after receiving such request.

7. To notify the Board of Directors of and report to the Members' General Meeting and the State Bank on, control results; to propose the Board of Directors and Director General (Director) to redress weaknesses and handle violations in the operation of the cooperative bank or people's credit fund.

Article 85. Director General (Director) of a cooperative bank or people's credit fund

The Board of Directors shall appoint one of its members or hire another person to act as the Director General (Director) of the cooperative bank or people's credit fund. The Director General (Director) is the supreme executive officer, having the task to administer routine activities of the cooperative bank or people's credit fund.

Article 86. Rights and obligations of the Director General (Director)

1. To realize business plans.
2. To organize the implementation of decisions of the Board of Directors.
3. To propose to the Board of Directors opinion on the organizational structure of the cooperative bank or people's credit fund.
4. To sign contracts in the name of the cooperative bank or people's credit fund.
5. To submit annual financial statements to the Board of Directors.
6. To take responsibility before the Board of Directors for his/her assigned tasks.
7. To perform their rights and obligations defined in the charter of the cooperative bank or people's credit fund.

Section 7. MICROFINANCE INSTITUTIONS

Article 87. Types of microfinance institutions

1. Microfinance institutions may be established as limited liability companies.
2. The organizational structure, governance and administration of microfinance institutions comply with this Law and other relevant laws.

Article 88. Members, contributed capital, organizational structure and operation places of microfinance institutions

The State Bank shall provide for the contribution of capital to microfinance institutions by foreign institutions and individuals; the number of capital contributors; the ownership rates and contributed capital amounts of domestic and foreign institutions and individuals at microfinance institutions; and limit in the organizational structure of the network and operation areas of microfinance institutions.

Section 8. FOREIGN BANK BRANCHES IN VIETNAM

Article 89. Governance and administration of foreign bank branches

1. Foreign banks shall decide on the organizational structure, governance and administration of their branches in Vietnam in accordance with the laws of countries in which they are headquartered and with this Law regarding organizational structure, governance, administration, and internal control and audit, and the establishment of such branches is subject to the State Bank's prior written approval.
2. Directors General (Directors) of foreign bank branches shall represent these branches before law and take responsibility for all operations of such branches and shall, according to their rights and obligations, administer day-to-day activities under this Law and other relevant laws.
3. Directors General (Directors) of foreign bank branches may not participate in the governance or administration of any credit institutions or other economic institutions and may not concurrently act as heads of representative offices of foreign banks in Vietnam.
4. Directors General (Directors) of foreign bank branches must satisfy all the criteria and conditions specified in Clause 4, Article 50 of this Law. The appointment of Directors General (Directors) of foreign bank branches is subject to the State Bank's prior written approval. The order and dossiers for approval of Directors General (Directors) of foreign bank branches and notification of appointed persons comply with Clauses 2 and 3, Article 51 of this Law,

5. When a foreign bank has two or more branches operating in Vietnam and implementing a uniform financial, accounting and reporting regime, it shall authorize the Director General (Director) of a branch to take responsibility before law for all operations of their branches in Vietnam.

Chapter IV

OPERATIONS OF CREDIT INSTITUTIONS

Section I. GENERAL PROVISIONS

Article 90. Scope of licensed operations of credit institutions

1. The State Bank shall specify the scope, types and contents of banking operations and other business activities of each credit institution in the license granted to such credit institution.
2. Credit institutions may not conduct any business activities other than banking operations and business activities specified in their licenses granted by the State Bank.
3. Banking operations and other business activities of credit institutions specified in this Law comply with the guidance of the State Bank.

Article 91. Interests and charges in business activities of credit institutions

1. Credit institutions may fix and shall publicize deposit interest rates and service charge rates applied in their business activities.
2. Credit institutions and their clients may agree on interest rates and credit extension charges to be applied to their banking operations according to law.
3. In case banking operations experience abnormal developments, in order to assure safety for the credit institutions system, the State Bank may provide a mechanism for determining charge and interest rates applicable to business activities of credit institutions.

Article 92. Issue of deposit certificates, promissory notes, treasury bills and bonds by credit institutions

1. Credit institutions may issue deposit certificates, treasury bills and promissory notes to raise capital under this Law and the State Bank's regulations.

2. In pursuance to this Law and the Securities Law, the Government shall provide for credit institutions' issue of bonds, except convertible bonds, to raise capital.

Article 93. Internal regulations

1. Pursuant to this Law and other relevant laws, credit institutions shall formulate and issue internal regulations on their professional operations, ensuring the availability of internal control and audit and risk management mechanisms applicable to each business activity and plans to tackle cases of emergency.

2. Credit institutions shall promulgate the following internal regulations:

a/ Regulation on credit extension and loan management so as to ensure proper use of loans;

b/ Regulation on classification of assets and deduction and use of risk provisions;

c/ Regulation on assessment of assets and observance of capital safety ratio;

d/ Regulation on liquidity management, covering procedures and limit for liquidity management;

e/ Regulation on the internal control system and internal audit mechanism in conformity with the nature and size of credit institutions;

f/ Regulation on the internal credit rating system;

g/ Regulation on administration of risks in credit institutions' operations;

h/ Regulation on processes and procedures, covering also principles of client identification to prevent the abuse of credit institutions for money laundering, terrorism financing and other criminal activities;

i/ Regulation on plans to tackle cases of emergency.

3. Credit institutions shall send internal regulations specified in Clause 2 of this Article to the Stale Bank right after their issue.

Article 94. Consideration and approval of credit and inspection of loan use

1. Credit institutions shall request clients to provide documents proving the feasibility of

their capital use plans, their financial capability, the lawfulness of capital use and loan security measures before deciding on credit extension.

2. Credit institutions shall consider and approve credit extension on the principle of clearly separating the responsibility of credit evaluation and extension decision.

3. Credit institutions are entitled and obliged to inspect and supervise the use of loans and repayment of debts by their clients.

4. Credit institutions may request clients to report on the use of loans and prove that loans are properly used.

Article 95. Termination of credit extension. settlement of debts and interest rate exemption and reduction

1. Credit institutions may terminate credit extension and recover debts ahead of schedule when detecting that clients have provided false information or breached credit contracts.

2. In case a borrower cannot pay a due debt, the credit institution may handle debts and assets used as loan security according to the credit contract, guarantee contract and law, unless otherwise agreed by involved parties. The rescheduling, sale and purchase of debts by credit institutions comply with the State Bank's regulations.

3. In case a borrower or its/his/her guarantor cannot pay a debt due to bankruptcy, the credit institution shall recover the debt under the bankruptcy law.

4. Credit institutions may exempt or reduce interest rates and charges for clients according to their internal regulations.

Article 96. Preservation of credit dossiers

1. Credit institutions shall keep credit dossiers, including:

a/ Credit contracts and documents stating loan use purposes, dossiers of security measures;

b/ Reports on financial status of clients;

c/ Decisions on credit extension, bearing the signatures of competent persons; when such a decision is made by a collective, a written record of the decision adoption is required;

d/ Documents made in the use of loans related to credit contracts.

2. The time limit for keeping credit dossiers complies with law.

Article 97. E-banking operations

Credit institutions may conduct business activities through electronic means under the State Bank's guidance on risk management and the law on e-transactions.

Section 2. OPERATIONS OF COMMERCIAL BANKS

Article 98. Banking operations of commercial banks

1. Taking demand deposits, time deposits, savings deposits and deposits of other types.

2. Issuing deposit certificates, promissory notes, treasury bills and bonds to raise capital at home and aboard.

3. Extending credit by:

a/ Lending;

b/ Discounting and re-discounting negotiable instruments and other valuable papers;

c/ Providing bank guarantee;

d/ Issuing credit cards;

e/ Domestic factoring; international factoring. for banks licensed for international payment;

e/ Other forms of credit after obtaining the Slate Bank's approval.

4. Opening payment accounts for clients.

5. Providing payment instruments.

6. Providing the following payment services:

a/ Domestic payment services, including check, payment order, authorized payment, collection, authorized collection, letter of credit and bank card, and collection and payment

services.

b/ Providing international payment services and other payment services after obtaining the State Bank's approval.

Article 99. Borrowing of loans from the State Bank

Commercial banks may borrow loans from the State Bank in the form of re-financing under the Law on the State Bank of Vietnam.

Article 100. Borrowing of loans from credit institutions and financial institutions

Commercial banks may borrow loans from domestic and overseas credit institutions and financial institutions under law.

Article 101. Opening of accounts

1. A commercial bank shall open a deposit account at the State Bank and must maintain on this account an average balance not lower than the compulsory reserve ratio.
2. A commercial bank may open a payment account at another credit institution.
3. A commercial bank may open offshore deposit accounts and payment accounts under the foreign exchange law.

Article 102. Organization of and participation in payment systems

1. Commercial banks may organize their own internal payment systems and participate in the national inter-bank payment system.
2. Commercial banks may participate in international payment systems after obtaining the State Bank's approval.

Article 103. Capital contribution and share purchase

1. Commercial banks may only use their charter capital and reserve funds to contribute capital or purchase shares under Clauses 2, 3, 4 and 6 of this Article.
2. Commercial banks shall establish or acquire subsidiaries or affiliated companies to conduct the following business activities:

a/ Securities issue underwriting, and securities brokerage; management and distribution of securities investment fund certificates; and securities investment portfolio management and stock trading;

b/ Financial leasing;

c/ Insurance.

3. Commercial banks may establish or acquire subsidiaries or affiliated companies operating in such areas as security asset management, local currency exchange for overseas Vietnamese, foreign exchange trading, gold trading, factoring, issuance of credit cards, consumer credit, intermediary payment services and credit information.

4. Commercial banks may contribute capital to, or purchase shares from, enterprises operating in the following areas:

a/ Insurance, securities, local currency exchange for overseas Vietnamese, foreign exchange trading, gold trading, factoring, issue of credit cards, consumer cards, intermediary payment services and credit information;

b/ Other areas not specified at Point a of this Clause.

5. The establishment and acquisition of subsidiaries or affiliated companies specified in Clauses 2 and 3 of this Article and the capital contribution and share purchase by commercial banks specified at Point b, Clause 4 of this Article are subject to the State Bank's prior written approval. The State Bank shall specify the conditions, dossiers, order and procedures for approval.

The conditions, procedures and order for establishing subsidiaries and affiliated companies of commercial banks comply with relevant laws.

6. Commercial banks and their subsidiaries may acquire or hold shares of other credit institutions on the conditions and within the limits provided by the State Bank.

Article 104. Participation in the monetary market

Commercial banks may bid for treasury bills and sell and purchase negotiable instruments, government bonds, treasury bills, state bank bills and other valuable papers in the monetary market.

Article 105. Dealing in and provision of foreign exchange services and derivative products

1. After obtaining the State Bank's written approval, commercial banks may deal in and provide to domestic and overseas clients the following products and services:

a/ Foreign exchange;

b/ Derivatives regarding exchange rates, interest rates, foreign exchange, currency and other financial products.

2. The State Bank shall specify the scope of foreign exchange trading; the conditions, order and procedures for approving foreign exchange trading; and the trading and supply of derivative products by commercial banks.

3. Commercial banks' provision of foreign exchange services to clients complies with the foreign exchange law.

Article 106. Entrustment and agency

Commercial banks may entrust, undertake entrustment or act as agents in sectors relating to banking operations, insurance business and asset management according to the State Bank's regulations.

Article 107. Other business activities of commercial banks

1. Provision of such services as cash management, banking and financial consultancy, asset management and preservation, and safe keeping.

2. Consultancy of corporate finance, business acquisition, sale, consolidation and merger and investment.

3. Trading in government bonds and corporate bonds.

4. Monetary brokerage services.

5. Securities depository, gold trading and other business activities related to banking operations after obtaining the State Bank's written approval.

Section 3. OPERATIONS OF FINANCE COMPANIES

Article 108. Banking operations of finance companies

1. Finance companies may conduct one or some banking operations below:

a/ Taking deposits of organizations;

b/ Issuing deposit certificates, promissory notes, bills or bonds to raise capital from organizations;

c/ Borrowing loans from domestic and overseas credit institutions and financial institutions under law; borrowing loans from the State Bank in the form of re-financing under the Law on the State Bank of Vietnam;

d/ Providing loans, including amortized loans and consumer loans;

e/ Providing bank guarantee;

f/ Discounting and re-discounting negotiable instruments and other valuable papers;

g/ Issuing credit cards, factoring, financial leasing and other forms of credit extension after obtaining the State Bank's approval.

2. The Government shall specify conditions for finance companies to conduct banking operations prescribed in Clause 1 of this Article.

Article 109. Opening of accounts by finance companies

1. A finance company that takes deposits shall open a deposit account at the State Bank and maintain on this account an average credit balance not lower than the compulsory reserve ratio.

2. A finance company may open a payment account at a commercial bank or foreign bank branch.

3. A finance company licensed to issue credit cards may open accounts at foreign banks under the foreign exchange law.

4. A finance company may open deposit accounts and loan accounts for their clients.

Article 110. Capital contribution and share purchase by finance companies

1. Finance companies may only use their charter capital and reserve funds to contribute capital or purchase shares under Clauses 2 and 3 of this Article.
2. Finance companies may contribute capital to, or purchase shares of, enterprises and investment funds.
3. Finance companies may only establish or acquire subsidiaries or affiliated companies operating in insurance, securities and security asset management after obtaining the State Bank's written approval.
4. The State Bank shall specify the conditions, order and procedures for approving the establishment of subsidiaries and affiliated companies of finance companies specified in Clause 3 of this Article.

The conditions, order and procedures for establishing subsidiaries and affiliated companies comply with relevant laws.

Article 111. Other business activities of finance companies

1. Receiving capital entrusted by the Government, organizations and individuals for investment in production and business projects or licensed credit extension; entrusting capital to credit institutions for credit extension. The receipt of capital entrusted by individuals and capital entrustment to credit institutions for credit extension comply with the State Bank's regulations.
2. Participating in the monetary market under Article 104 of this Law.
3. Selling and purchasing government bonds and corporate bonds.
4. Underwriting the issue of government bonds and corporate bonds; acting as agents to issue bonds, stocks and other valuable papers.
5. Providing foreign exchange services under the State Bank's regulations.
6. Acting as insurance agents.
7. Providing banking, financial and investment consultancy services.
8. Providing asset management and preservation services.

Section 4. OPERATIONS OF FINANCIAL LEASING COMPANIES

Article 112. Banking operations of financial leasing companies

1. Taking deposits from organizations.
2. Issuing deposit certificates, promissory notes, bills and bonds to raise capital from organizations.
3. Borrowing loans from domestic and overseas credit institutions and financial institutions according to law; borrowing loans from the State Bank in the form of re-financing under the Law on the State Bank of Vietnam.
4. Conducting, financial leasing.
5. Providing loans for financial lessees to add to their operating capital.
6. Providing operating leases on the condition that the total value of assets under operating leases does not exceed 30% of their total assets.
7. Extending credit in other forms after obtaining the State Bank's approval.

Article 113. Financial leasing

Financial leasing activity means the extension of medium- or long-term credit under a financial leasing contract on any of the following conditions:

1. Upon the termination of the lease term under contract, the lessee is entitled to ownership right over the leased asset or continue the asset lease as agreed upon by the two parties;
2. Upon the termination of the lease term under contract, the lessee is prioritized to purchase the leased asset at a nominal price lower than the actual value of the leased asset at the time of purchase;
3. The lease term of an asset is at least equal to 60% of the time required for its depreciation;
4. The total rent of an asset prescribed in the financial leasing contract is at least equal to the value of that asset at the time of contract signing.

Article 114. Opening of accounts by financial leasing companies

1. A financial leasing company that takes deposits shall open a deposit account at the State Bank and maintain on that account an average balance not lower than the compulsory reserve ratio.

2. A financial leasing company may open a payment account at a commercial bank or foreign bank branch.

Article 115. Capital contribution and share purchase by financial leasing companies

Financial leasing companies may neither contribute capital to, purchase shares of, nor establish subsidiaries or affiliated companies in any forms.

Article 116. Other activities of financial leasing companies

1. Receiving capital entrusted by the Government, organizations and individuals to conduct financial leasing activities. The receipt of capital entrusted by individuals complies with the State Bank's regulations.

2. Participating in bidding for treasury notes organized by the State Bank.

3. Trading in government bonds.

4. Dealing in foreign exchange, providing foreign exchange services and conducting entrusted financial leasing under the Government's regulations.

5. Acting as insurance agents.

6. Providing banking, financial and investment consultancy services to financial lessees.

Section 5. OPERATIONS OF CREDIT INSTITUTIONS BEING COOPERATIVES

Article 117. Banking operations of cooperative banks

1. The major operations of cooperative banks are regulating capital and conducting banking operations for their members which are people's credit funds.

2. Cooperative banks may conduct some banking operations and other business activities under Section 2, Chapter IV of this Law after obtaining the State Bank's written approval.

Article 118. Operations of people's credit funds

1. Taking deposits in Vietnam dong in the following cases:
 - a/ Taking deposits from their members;
 - b/ Taking deposits from organizations and individuals other than their members under the State Bank's regulations.
2. Providing loans in Vietnam dong in the following cases:
 - a/ Providing loans to their members;
 - b/ Providing loans to clients other than their members under the State Bank's regulations.
3. Providing money transfer services and conducting collection and payment for their members.
4. Other activities, including:
 - a/ Receiving capital entrusted by the Government, organizations and individuals;
 - b/ Borrowing loans from credit institutions and other financial institutions;
 - c/ Contributing capital to establish cooperative banks;
 - d/ Opening deposit accounts at the State Bank; c/ Opening payment accounts at commercial banks or foreign bank branches;
 - f/ Undertaking entrustment and acting as agents in some sectors relating to banking operations and asset management under the State Bank's regulations;
 - g/ Acting as insurance agents;
 - h/ Providing banking and financial consultancy services to their members.
5. The State Bank shall specify the geographical area of operation of each people's credit fund in its license.

Section 6. OPERATIONS OF MICROFINANCE INSTITUTIONS

Article 119. Raising of capital by microfinance institutions

1. Taking deposits in Vietnam dong in the following forms:

a/ Compulsory savings under their regulations;

b/ Deposits of organizations and individuals, including voluntary deposits of microfinance clients, except those for payment purposes.

2. Borrowing loans from domestic and overseas credit institutions, financial institutions and other domestic and overseas individuals and organizations under law.

Article 120. Credit extension by microfinance institutions

1. Microfinance institutions may only extend credit in Vietnam dong by lending. Microfinance institutions' credit extension may be guaranteed with compulsory deposits or guarantee of group of savings depositors or loan borrowers.

2. Microfinance institutions shall maintain a ratio of the total balance of credit extended to low-income individuals and households and micro-sized enterprises to the total credit balance not lower than the ratio provided by the State Bank.

Article 121. Opening of accounts by microfinance institutions

1. Microfinance institutions may open deposit accounts at the State Bank and commercial banks.

2. Microfinance institutions may not open payment accounts for their clients.

Article 122. Other operations of microfinance institutions

1. Entrusting lending and receiving entrustment of lending.

2. Providing financial consultancy services in the microfinance sector.

3. Providing collection and payment and money transfer services for microfinance clients.

4. Acting as insurance service agents.

Section 7. OPERATIONS OF VIETNAM-BASED FOREIGN BANK BRANCHES

Article 123. Operations of foreign bank branches

1. Foreign bank branches may conduct operations specified in Section 2, Chapter IV of this Article, except the following operations:

a/ Those specified in Article 103 of this Law;

b/ Operations which the foreign banks concerned are not licensed to conduct in the countries in which they are headquartered.

2. Foreign bank branches may only provide some foreign exchange services in the international market to their clients in Vietnam under the foreign exchange law.

3. The State Bank shall specify the operation contents of a foreign bank branch in its license under this Law in conformity with the size, type and area of operation of the foreign bank.

Chapter V

REPRESENTATIVE OFFICES OF FOREIGN CREDIT INSTITUTIONS AND OTHER FOREIGN INSTITUTIONS ENGAGED IN BANKING OPERATIONS

Article 124. Establishment of representative offices

Foreign credit institutions and other foreign institutions engaged in banking operations may establish representative offices in provinces and centrally run cities in the Vietnamese territory. In each province or centrally run city, a foreign credit institution or another foreign institution engaged in banking operations may establish only one representative office.

Article 125. Operations of representative offices

Representative offices of foreign credit institutions and other foreign institutions engaged in banking operations may conduct the following operations under their licenses granted by the State Bank:

1. Functioning as a liaison office;

2. Conducting market surveys;

3. Promoting investment projects of foreign credit institutions or other foreign institutions engaged in banking operations in Vietnam;

4. Accelerating and monitoring the performance of contracts and agreements signed between foreign credit institutions or other foreign institutions engaged in banking operations and Vietnamese credit institutions or businesses, and projects funded by foreign credit institutions or other foreign institutions engaged in banking operations in Vietnam;
5. Other activities compliant with Vietnam's law.

Chapter VI

RESTRICTIONS FOR SAFE OPERATIONS OF CREDIT INSTITUTIONS

Article 126. Cases of ineligibility for credit extension

1. A credit institution or foreign bank branch may not extend credit to the following organizations and individuals:

a/ Members of the Board of Directors, Members' Council or Control Board, the Director General (Director), Deputy Director(s) General (Deputy Director(s)) and holders of equivalent posts in the credit institution or foreign bank ranch; legal entities being shareholders whose capital share representatives are members of the Board of Directors or Control Board of the credit institution, for credit institutions being joint-stock companies, or legal entities being capital contributors or owners of the credit institution, for credit institutions being limited liability companies;

b/ Parents, spouses and children of members of the Board of Directors, Members' Council or Control Board, the Director General (Director), Deputy Directors General (Deputy Directors) and holders of equivalent posts.

2. Clause 1 of this Article is not applicable to people's credit funds and microfinance institutions.

3. Credit institutions and foreign bank branches may not extend credit to clients on the basis of guarantee provided by entities specified in Clause 1 of this Article. Credit institutions and foreign bank branches may not provide guarantee in any forms for credit extended to the entities defined in Clause 1 of this Article by other credit institutions.

4. Credit institutions may not extend credit to securities trading enterprises in which they have the right to control.

5. Credit institutions may not extend credit on the basis of accepting their own securities or securities of their subsidiaries as guarantee.

6. Credit institutions may not provide loans as capital contribution to another credit institution on the basis of accepting securities of the capital-receiving credit institution as security assets.

Article 127. Credit restrictions

1. A credit institution or foreign bank branch may extend neither unsecured credit nor concessional credit to the following entities:

a/ The audit institution and auditors that are auditing the credit institution or foreign bank branch; inspectors who are inspecting the credit institution or foreign bank branch;

b/ The chief accountant of the credit institution or foreign bank branch;

c/ Major shareholders and founding shareholders;

d/ An enterprise in which one of the entities specified in Clause 1, Article 126 of this Law owns more than 10% of its charter capital;

e/ The person who appraises and approves the credit extension;

f/ Subsidiaries and affiliated companies of the credit institution or an enterprise in which the credit institution has the right to control.

2. The total outstanding loans provided to the entities defined at Points a, b, c, d and e, Clause 1 of this Article must not exceed 5% of a credit institution's or foreign bank branch's own capital.

3. Credit extension to the entities defined in Clause 1 of this Article must be approved by the Board of Directors or the Members' Council of the credit institution and publicized within the credit institution.

4. The total outstanding loans provided to an entity defined at Point f. Clause 1 of this Article must not exceed 10% of a credit institution's own capital; and the total outstanding loans to all entities defined at Point f. Clause 1 of this Article must not exceed 20% of a credit institution's own capital.

Article 128. Credit extension limits

1. The total outstanding credit of a commercial bank, foreign bank branch, people's credit fund or microfinance institution extended to a single client must not exceed 15% of its own capital; the total outstanding credit of a commercial bank, foreign bank branch, people's credit fund or microfinance institution extended to a single client and affiliated persons must not exceed 25% of its own capital.

2. The total outstanding credit of a non-bank credit institution extended to a single client must not exceed 25% of its own capital; the total outstanding credit of a non-bank credit institution extended to a single client and affiliated persons must not exceed 50% of its own capital.

3. The total outstanding credit specified in Clauses 1 and 2 of this Article do not include loans sourced from capital entrusted by the Government, organizations and individuals or loans to borrowers being other credit institutions.

4. The total outstanding credit specified in Clauses 1 and 2 of this Article include the total investment in securities issued by clients.

5. The limits and conditions for credit extension for securities investment and trading by commercial banks and foreign bank branches shall be provided by the State Bank.

6. In case a single client and affiliated persons need capital in excess of the limits specified in Clause 1 or 2 of this Article, credit institutions and foreign bank branches may extend syndicated credit under the State Bank's regulations.

7. In special cases, in order to perform socioeconomic tasks, if the extension of syndicated credit by credit institutions and foreign bank branches fail to meet capital needs of a single client, the Prime Minister may decide on a maximum loan amount exceeding the limits specified in Clause 1 or 2 of this Article on a case-by-case basis.

8. The total credit extended by a credit institution or foreign bank branch under Clause 7 of this Article must not exceed 4 times of its own capital.

Article 129. Limits on capital contribution and share purchase

1. The level of capital contribution and share purchase of a credit institution and its

subsidiaries and affiliated companies in a single enterprise operating in the sectors specified in Clause 4. Article 103 of this Law must not exceed 11% of the charter capital of the latter.

2. The total level of capital contribution and share purchase of a commercial bank to enterprises, including its subsidiaries and affiliated companies, must not exceed 40% of its charter capital and reserve fund.

3. The level of capital contribution and share purchase of a financial leasing company and its subsidiaries and affiliated companies in a single enterprise under Clause 2. Article 110 of this Law must not exceed 11% of the charter capital of the latter.

4. The total level of capital contribution and share purchase of a finance company under Clause 1, Article 110 of this Law to enterprises, including its subsidiaries and affiliated companies, must not exceed 60% of its charter capital and reserve fund.

5. Credit institutions may not contribute capital to, or purchase shares of, enterprises or other credit institutions being their shareholders or capital contributors.

Article 130. Safety ratios

1. Credit institutions and foreign bank branches shall maintain the following safety ratios:

a/ The solvency ratio;

b/ The minimum capital safety ratio of 8% or higher as prescribed by the State Bank in each period;

c/ The maximum ratio of short-term funds for provision of medium-term and long-term loans;

d/ The maximum foreign currency and gold status against own capital;

e/ The ratio of outstanding loans to the total balance of deposits;

f/ The ratio of medium- and long-term deposits to the total outstanding medium- and long-term loans.

2. Commercial banks and foreign bank branches participating in the national inter-bank payment system shall hold a minimum quantity of mortgage able valuable papers as prescribed by the State Bank in each period.

3. The State Bank shall specify safety ratios defined in Clause 1 of this Article for each type of credit institution and foreign bank branch.

4. The total capital invested by a credit institution in other credit institutions and subsidiaries by capital contribution and share purchase in order to acquire the right to control enterprises operating in banking, insurance and securities must be deducted from its own capital when calculating safety ratios.

5. In case a credit institution or foreign bank branch fails to reach or likely fails to reach the minimum capital safety ratio defined at Point b. Clause 1 of this Article, it shall report to the State Bank on remedies to reach the minimum capital safety ratio according to regulations. The State Bank shall take necessary measures specified in Article 149 of this Law, including restricting the scope of operation and handling assets of the credit institution or foreign bank branch, to enable the credit institution or foreign bank branch to reach the minimum capital safety ratio.

Article 131. Risk provisions

1. Credit institutions and foreign bank branches shall set up provisions for risks in their operations. These risk provisions shall be accounted as operating costs.

2. The classification of assets, the level and method of deduction for setting up risk provisions and the use of risk provisions shall be provided by the State Bank after consulting the Ministry of Finance.

3. In case a credit institution or foreign bank branch recovers a capital amount already offset by risk provisions, this amount shall be considered turnover of the credit institution or foreign bank branch.

Article 132. Real estate trading

Credit institutions may not deal in real estate, except in the following cases:

1. They purchase, invest in and own real estates used as their business buildings and offices or warehouses in direct service of their professional operations;

2. They lease part of their own business buildings which are not yet used;

3. They hold real estate as a result of debt handling. Within 3 years after issuing a decision to

handle a security asset being real estate, credit institutions shall sell, transfer or purchase this real estate so as to ensure the ratio of investments in fixed assets and the use purposes of fixed assets specified in Article 140 of this Law.

Article 133. Requirements on safety in e-banking operations

Credit institutions and foreign bank branches shall ensure safety and confidentiality in e-banking operations under the State Bank's guidance.

Article 134. Rights and obligations of controlling companies

A company that directly or indirectly owns more than 20% of the charter capital or the total voting shares of or has the right to control a commercial bank before the effective date of this Law; or a commercial bank that has a subsidiary or affiliated company (below referred to as controlling company) has the following rights and obligations:

1. Depending on the legal type of the subsidiary or affiliated company, the controlling company shall exercise its rights and perform its obligations in the capacity of a capital contributor, owner or shareholder in the relations with that subsidiary or affiliated company under this Law and other relevant laws.
2. Contracts, transactions and other relations between the controlling company and the subsidiary or affiliated company must be established and effected in an independent and equitable manner under the conditions applicable to independent legal subjects;
3. The controlling company may not intervene in the organization and operation of the subsidiary or affiliated company beyond the rights of the owner, capital contributor or shareholder.

Article 135. Capital contribution and share purchase between subsidiaries or affiliated companies and controlling companies

1. A subsidiary and an affiliated company of a single controlling company may neither contribute capital to, nor purchase shares of, each other.
2. A subsidiary or affiliated company of a credit institution may neither contribute capital to, nor purchase shares of, such credit institution.
3. A credit institution being a subsidiary or affiliated company of a controlling company may

neither contribute capital to, nor purchase shares of, such controlling company.

Chapter VII

FINANCE, ACCOUNTING AND REPORTING

Article 136. Financial regimes

Financial regimes applicable to credit institutions and foreign bank branches comply with the Government's regulations.

Article 137. Fiscal year

A fiscal year of credit institutions and foreign bank branches starts on January 1 and ends on December 31 of the calendar year.

Article 138. Accounting

Credit institutions and foreign bank branches shall conduct accounting under the accounting law.

Article 139. Reserve funds

1. Annually, a credit institution or foreign bank branch shall deduct its after-tax profits to set up and maintain the following reserve funds:

a/ The reserve fund for supplementation of charter capital or allocated capital, which is annually set at 5% of after-tax profits. This fund must not exceed the level of charter capital or allocated capital of the credit institution or foreign bank branch;

b/ The financial contingency fund;

c/ Other reserve funds prescribed by law.

2. Credit institutions may not use the funds specified in Clause i of this Article to pay dividends to shareholders or distribute profits to owners or capital contributors.

Article 140. Purchase of, and investment in, fixed assets

A credit institution or foreign bank branch may purchase or invest in fixed assets in direct

service of its operations at no more than 50% of its charter or allocated capital and the reserve fund for supplementation of its charter or allocated capital.

Article 141. Reporting

1. Credit institutions and foreign bank branches shall make reports under the accounting and statistics law and periodical reports on professional operations under the State Bank's regulations.

2. In addition to the reports specified in Clause I of this Articles, credit institutions and foreign bank branches shall promptly report in writing to the State Bank in the following cases:

a/ Upon the occurrence of abnormal developments in professional operations which may seriously affect their business;

b/ Upon the occurrence of changes in the organizational or executive structure or the financial status of a major shareholder or other changes which may seriously affect their business activities.

3. Subsidiaries and affiliated companies of credit institutions shall send their financial statements and operation reports to the State Bank when so requested.

4. Within 90 days after the end of a fiscal year, credit institutions and foreign bank branches shall send annual reports to the State Bank according to law.

5. Within 180 days after the end of a fiscal year, joint-venture credit institutions, wholly foreign-owned credit institutions, foreign bank branches and Vietnam-based representative offices of foreign credit institutions and other institutions engaged in banking operations shall send annual financial statements of the foreign credit institutions or other foreign institutions engaged in banking operations to the State Bank.

6. Joint-venture credit institutions, wholly foreign-owned credit institutions and foreign bank branches shall promptly send reports to the State Bank when the foreign credit institutions undergo any of the following changes:

a/ Division, split-up, merger, consolidation, liquidation, bankruptcy or dissolution;

b/ Renaming or relocation of the headquarters;

c/ Change of major shareholders. Board of Directors or Executive Board;

d/ Extraordinary changes which greatly affect their organization and operation.

Article 142. Reports of controlling companies

1. Within 120 days after the end of a fiscal year, in addition to reports and documents prescribed by law, a controlling company shall make and send to the State Bank a consolidated financial statement which has been audited under the accounting law.

2. Within 90 days after the end of a fiscal year, a controlling company shall make and send to the State Bank a general report on trading transactions and other transactions between it and its subsidiaries and affiliated companies.

Article 143. Disclosure of financial statements

Within 120 days after the end of a fiscal year, credit institutions and foreign bank branches shall disclose their financial statements according to law.

Article 144. Transfer of profits and assets abroad

1. Foreign bank branches and wholly foreign-owned credit institutions in Vietnam may transfer abroad profits left after making deductions to set up funds and performing all financial obligations under Vietnam's law.

2. Foreign parties in joint-venture credit institutions may transfer abroad their shared profits after the joint-venture credit institutions make deductions to set up funds and perform all financial obligations under Vietnam's law.

3. When terminating operation in Vietnam, foreign bank branches, wholly foreign owned credit institutions and foreign parties to joint-venture credit institutions may transfer abroad assets left after liquidation.

4. The transfer of money and other assets abroad prescribed in Clauses 1, 2 and 3 of this Article complies with Vietnam's law.

Chapter VIII

SPECIAL CONTROL, REORGANIZATION, BANKRUPTCY, DISSOLUTION AND

LIQUIDATION OF CREDIT INSTITUTIONS

Section 1. SPECIAL CONTROL

Article 145. Reporting on liquidity difficulties

When facing insolvency possibilities, a credit institution shall promptly report to the State Bank on its financial status, causes and measures already taken and to be taken to remedy the situation.

Article 146. Application of special control

1. Special control means placing a credit institution which faces insolvency possibilities under the direct control of the State Bank.

2. The State Bank shall inspect and detect in time cases facing insolvency possibilities.

3. The State Bank shall consider and place a credit institution under special control when the credit institution fails into any of the following cases:

a/ It faces insolvency possibilities;

b/ Its irrecoverable debts likely result in its insolvency:

c/ It has an cumulative loss exceeding 50% of the actual value of its charter capital and reserve funds stated in the latest audited financial statement.

d/ It has been ranked "poor" under the State Bank's regulations for 2 consecutive years;

e/ It fails to maintain the minimum capital safely ratio specified at Point b, Clause 1, Article 130 of this Law within 1 year or has this ratio fallen below 4% for 6 consecutive months.

Article 147. Decisions on special control

1. The State Bank shall decide to place a credit institution under special control and set up a Special Control Board.

2. A decision to place a credit institution under special control has the following details:

a/ Name of the credit institution to be placed under special control;

b/ Reason(s) for the special control;

c/ Full names of members of the Special Control Board and specific tasks of the Board;

d/ Duration of special control.

3. The State Bank shall notify the special control decision to competent state agencies and concerned local agencies for coordinated implementation.

4. The State Bank shall specify the disclosure of information on special control of credit institutions.

Article 148. Tasks and powers of special control boards

1. A Special Control Board has the following tasks:

a/ To direct the Board of Directors, Members' Council, Control Board, Director General (Director) or holders of equivalent posts in the credit institution placed under special control to formulate a plan to consolidate its organization and operation;

b/ To direct and supervise the implementation of solutions stated in the plan on organizational and operational consolidation approved by the Special Control Board;

c/ To report to the State Bank on the operation of the credit institution and the results of implementation of the plan on organizational and operational consolidation.

2. A Special Control Board has the following powers:

a/ To terminate operations unbecomable with the approved plan on organizational and operational consolidation or contrary to regulations on safety in banking operations which may harm the interests of depositors;

b/ To terminate or suspend the right to govern, administer and control the credit institution of members of the Board of Directors, Members' Council, Control Board, the Director General (Director), or Deputy Director General (Deputy Director), when necessary;

c/ To request the Board of Directors, Members' Council, Director General (Director) to dismiss or suspend the work of a person who commits violations of law or fails to abide by the approved plan on organizational and operational consolidation.

d/ To propose the State Bank to extend or terminate the special control, provide or terminate special loans for the credit institution, purchase shares of the credit institution, liquidate the credit institution or revoke its license, or compulsorily receive, merge, consolidate or acquire the credit institution;

e/ To request the credit institution to file request for a court to open bankruptcy procedures under the bankruptcy law.

3. The Special Control Board shall take responsibility for its decisions when conducting the special control.

Article 149. Competence of the State Bank toward credit institutions placed under special control

1. The State Bank shall handle proposals of the Special Control Board specified at Point d. Clause 2, Article 148 of this Law.

2. The State Bank may request the owner of a credit institution placed under special control to increase capital, formulate and implement a restructuring plan or decide on the compulsory merger, consolidation or acquisition of the credit institution, if the owner cannot or fails to increase capital.

3. The State Bank may directly contribute capital to, or purchase shares of. a credit institution placed under special control or designate another credit institution to do so in case the credit institution placed under special control cannot implement the State Bank's requests specified in Clause 2 of this Article or in case the State Bank determines that the accumulative loss of the credit institution placed under special control exceeds the actual value of its charter capital and reserve funds staled in the latest audited financial statement and that the termination of its operations may harm the safety of the credit institution system.

4. The capital contribution and share purchase under Clause 3 of this Article comply with the Prime Minister's regulations.

Article 150. Responsibilities of credit institutions placed under special control

The Board of Directors, Members' Council, Control Board and the Director General (Director) of a credit institution placed under special control shall:

1. Elaborate a plan to consolidate the organization and operation of the credit institution and submit it to the Special Control Board for approval and organize its implementation;
2. Continue administering, controlling and managing the operation of the credit institution and assure the safety of its assets, except for cases specified at Point b, Clause 2, Article 148 of this Law;
3. Abide by requests of the Special Control Board regarding the organization, administration, control and management of the credit institution specified at Points a, b. c and f, Clause 2, Article 148 of this Law.
4. Comply with the State Bank's requests specified in Article 149 of this Law.

Article 151. Special loans

1. A credit institution may borrow special loans from the State Bank and other credit institutions in the following cases:

a/ It falls into the state of insolvency, threatening the stability of the credit institution system;

b/ It faces insolvency possibilities due to other serious incidents.

2. Special loans will be repaid prior to all other debts of the credit institution, including debts with security assets, or may be converted into contributed capital or share capital at the credit institution concerned as prescribed in Article 149 of this Law.

3. The State Bank shall specify the provision of special loans to credit institutions.

Article 152. Termination of special control

1. The State Bank shall terminate the special control placed over a credit institution in the following cases:

a/ The credit institution resumes its normal operation;

b/ The credit institution has been merged or consolidated with another credit institution during the special control;

c/ The credit institution is unable to restore its solvency.

2. The decision on termination of special control shall be notified to all concerned organizations and individuals.

3. In case of terminating special control under Point c, Clause 1 of this Article, the State Bank shall send to the court a document on the termination of solvency restoration measures.

Section 2. REORGANIZATION, DISSOLUTION, BANKRUPTCY, LIQUIDATION AND CAPITAL AND ASSET BLOCKAGE

Article 153. Reorganization of credit institutions

1. Credit institutions may be reorganized by split-up, division, consolidation, merger or transformation of the legal form after obtaining the State Bank's written approval.

2. The State Bank shall specify conditions, dossiers, order and procedures for approving the reorganization of credit institutions.

Article 154. Dissolution of credit institutions and foreign bank branches

A credit institution or foreign bank branch shall dissolve in the following cases:

1. It voluntarily applies for the dissolution in case it can repay all debts and the State Bank so approves in writing.

2. Upon expiration of its operation duration, it does not apply for extension or applies for extension but the extension is rejected by the State Bank.

3. Its license is revoked.

Article 155. Bankruptcy of credit institutions

1. After the State Bank issues a document on termination of special control or a document on the termination or non-application of solvency restoration measures, if the credit institution remains in the state of bankruptcy, it shall file a request for a court to open procedures for settlement of bankruptcy declaration requests under the bankruptcy law.

2. Upon receiving a request for opening bankruptcy procedures for a credit institution as prescribed in Clause 1 of this Article, the court shall open procedures for settlement of bankruptcy declaration requests and immediately apply procedures for liquidating the credit institution's assets under the bankruptcy law.

Article 156. Liquidation of credit institutions' assets

1. In case a credit institution is declared bankrupt, the liquidation of its assets complies with the bankruptcy law.

2. In case of dissolution under Article 154 of this Law, the credit institution shall liquidate its assets under the supervision of the State Bank and follow the order and procedures for asset liquidation prescribed by the State Bank.

3. In the process of supervising the liquidation of assets of a credit institution under Clause 2 of this Article, if detecting that the credit institution cannot repay all debts, the State Bank shall issue a decision to terminate the liquidation and request the credit institution to file an application for opening of bankruptcy procedures under Article 155 of this Law.

4. Liquidated credit institutions shall pay all costs related to the liquidation of assets

Article 157. Blockage of capital and assets of foreign bank branches

1. When necessary, in order to protect the interests of depositors, the State Bank shall block part or whole of capital and assets of a foreign bank branch.

2. The State Bank shall specify cases of blockage and termination of blockage of capital and assets of foreign bank branches.

Chapter IX

STATE MANAGEMENT AGENCIES

Article 158. State management agencies

1. The Government shall perform the uniform state management of banking operations throughout the country.

2. The State Bank shall take responsibility before the Government for the performance of the

state management of organization and operation of credit institutions and foreign bank branches.

3. Ministries and ministerial-level agencies shall, within the scope of their tasks and powers, perform the state management of credit institutions and foreign bank branches under law.

4. People's Committees at all levels shall perform the state management of credit institutions and foreign bank branches operating in their localities according to law.

Article 159. Examining, inspecting and supervising competence

The State Bank shall examine, inspect and supervise credit institutions, foreign bank branches and Vietnam-based representative offices of foreign credit institutions and other foreign institutions engaged in banking operations.

Article 160. Rights and obligations of entities subject to inspection and supervision

1. To promptly, adequately and accurately provide information and documents at the request of the State Bank during the inspection and supervision process and, at same time, to take responsibility before law for the accuracy and truthfulness of provided information and documents.

2. To report and explain about risk and operational safety recommendations and warnings issued by the State Bank.

3. To comply with the State Bank's risk and operational safety recommendations and warnings.

4. To comply with the State Bank's inspection conclusions and handling decisions.

5. To exercise other rights and perform other obligations according to law.

Chapter X

IMPLEMENTATION PROVISIONS

Article 161. Transitional provisions

1. Credit institutions, foreign bank branches and representative offices of foreign credit

institutions and other foreign institutions engaged in banking operations already established and operating under licenses granted by the State Bank before the effective date of this Law are not required to apply for renewal of their licenses under this Law.

2. Within 2 years after the effective date of this Law, credit institutions and foreign bank branches set up and operating under licenses granted by the State Bank before the effective date of this Law shall complete the organizational restructuring under this Law, except the cases specified in Clauses 3, 4 and 5 of this Law.

3. From the effective date of this Law, the election, appointment, addition and replacement of members of the Boards of Directors, Members' Councils, Control Boards, Directors General (Directors), Deputy Directors General (Deputy Directors), chief accountants, branch directors, directors of subsidiaries and holders of equivalent posts of credit institutions and Directors General (Directors) of foreign bank branches must comply with Articles 33, 34,43,44, 48, 50, 51, 62, 66, 70 and 89 of this Law.

4. For credit extension contracts signed before the effective date of this Law, credit institutions, foreign bank branches and clients may continue implement signed agreements until their expiration. The modification of the above-said credit contracts may be effected only if such modification complies with this Law.

5. The State Bank shall provide detailed guidance on the time limit, order and procedures for transformation of credit institutions and foreign bank branches which, before the effective date this Law, have been operating in contravention of Articles 55, 103, 110,115, 129 and 135 of this Law.

6. Microfinance programs and projects of political organizations, socio-political organizations, non-governmental organizations and credit institutions which have been implemented before the effective date of this Law are not required to adjust their organization and operation according to this Law. The Prime Minister shall specify the operation of microfinance programs and projects defined in this Clause.

7. From the effective date of this Law, institutions other than credit institutions which currently conduct one or several banking operations shall immediately terminate banking operations, except the cases prescribed in Clause 6 of this Article.

Article 162. Effect

1. This Law takes effect on October 1, 2011.

2. Law No. 02/1997/QH10 on Credit Institutions and Law No. 20/2004/QH11 Amending and Supplementing a Number of Articles of the Law on Credit Institutions cease to be effective on the effective date of this Law.

Article 163. Implementation detailing and guidance

The Government shall detail and guide this Law's articles and clauses assigned to it; and guide other necessary contents of this Law to meet state management requirements.

This Law was passed on June 16, 2010, by the XIIth National Assembly of the Socialist Republic of Vietnam at its 7th session. -

CHAIRMAN OF THE NATIONAL ASSEMBLY

Nguyen Phu Trong